

Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development

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Abstract

The doctrinal legal methodology is a period of time to alteration and transition. The scope of the doctrinal method is the choices can make the identified the problems and challenges can be easily encountered by research scholar.

All legal researchers are use of doctrinal research method. In this transitional time, legal scholars, law teacher and academic lawyers are using evidence and methods from other disciplines into their reasoning to bolster their reform law and legal System towards the Research development.

It also interplays the discipline of law with other disciplines in the pursuit of law reform and legal System towards the Research development. It focuses on the law reform commissions, and those independent government committees to play such an important role in law reform in common law jurisdictions. For this purpose, the secondary data from law books, law articles, law journal, newspaper etc. have been used.

Keywords: doctrinal research, character, sources, role, tools

1. Introduction

The word Research is derived from the French word research meaning to search or seek again”^[1]. It means that to intensive research with a view to become certain and to investigate thoroughly”^[2]. Research is main roots to find the appropriate the solution of the problems of the society. It is directly proportional to the development, and development is directly proportional to the reformation of society”^[3]. In order, the researcher also finds out the need of law reform towards the Social development, and thereto, the Research is one of the important tools for law reform and changing the pattern of the Society.

The Nature of Law and Society are requires to change according to the circumstance, but most important things that Law can change the social relations as well as Society. The law has to be reformed according to the need of society and community. Similarly, there are many problems in the society and these problems will be never end.

Now day, the legal research has undergone a tremendous change on the path of better understanding of the role of the law in society. It also need to emphasis on repeal of outdated legislation and other codification of Legislation. The law reform is become more complex and unworkable some reshaping of areas of law especially in the common law. It also devising of new legislative and regulatory framework designed to meet new challenges facing in society especially

those arising for scientific and technological development.

The emerging of new trend for law reform agencies need to review the impact of relatively recent legislation and find out the objectives of such legislation and recommended further reforms. The Law reform is the process of examining existing laws and advocating and implementing changes in a legal system, usually with the aim of enhancing justice or efficiency”^[4].

Similarly, Legal research wanted to undertake the law reforms are broadly classified into two categories i.e. doctrinal legal researches and socio-legal research. The doctrinal legal researches are important element to identify the various problems of the society. It is very helpful to improve the social relations as well as Society while reform law towards the Social development. Therefore, the legal research Scholar and academic lawyers are use of the doctrinal research method in the pursuit of law reform.

2. What is doctrinal Legal Research Method?

The word doctrine has derived from Latin which means to instruction, knowledge or learning”^[5]. The doctrine legal research is research into legal concept and principle of all types of case, statutes and rules”^[6]. It was dominated the influence in 19th and 20th century view of law and legal scholarship, therefore, it tends to dominant research design.

The doctrinal research, is concerned with analysis of the legal

¹ Dr. Rattan Singh, *Legal Research Methodology*, published by LexisNexis, 1st Edition 2013, India, at 5

² *Ibid*

³ Rattan Singh, *Legal Research Methodology*, published by LexisNexis, 2nd Edition 2016, India, at 4

⁴ *Ibid*

⁵ See, <http://www.studymode.com/essays/Significance-And-Relevancy-Of-Doctrinal-Research-55442354.html> dated 7/10/2017

⁶ *supra* Note 5

doctrine and how it has been developed and applied”^[7] and these types of research known “as pure theoretical research”^[8]. The stability and certainty of law are desirable goals and social value to be followed and which make the doctrinal research a primary concern to a legal researcher”^[9]. According to S.N. Jain observed that doctrinal research involves analysis of case law, arranging, ordering and systematising legal propositions and study of legal institution through legal reasoning or rational deduction”^[10] It also provides the systematic exposition of the rules which are governing in a particular legal category. Perhaps, the doctrinal research also predicts future development and explains the areas of the difficulty.

The doctrinal research, thus involves systematic analysis of statutory provision and of legal principle involves therein, or derived there from, and logical and rational ordering of the legal propositions and principles”^[11]. It also said that doctrinal research is basically are research into law. Mostly the researchers also give the more emphasis on substantive law rules, doctrines, concept and judicial pronouncements; however the doctrinal research based on the legal proposition and judicial pronouncement of the appellants’ courts and other conventional legal material such as parliamentary debates, revealing the legislative intent, policy and history of the rule or doctrine”^[12].

Similarly, the classical works of legal scholars on law of torts and administrative law are example of doctrinal legal research”^[13]. These types of research are also called as traditional research or arm chair research. Mostly this types of research is carried only by the judges, lawyer and law teachers and legal research scholars. The legal academic has been always success through measured within a doctrinal methodology framework. It includes the tracing of legal precedent and legislative interpretation. The doctrinal research has always included an interdisciplinary aspect.

However, the doctrinal research involves a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation. It also the critique conceptual analysis is based on an understanding of the rules of precedent between the court jurisdictions and the rule of the statutory interpretation. Even the tacit discipline knowledge such as the difference between a civil and criminal jurisdiction. The various tests of liability along with the acknowledged reasoning methods borrowed from philosophy and logic such as induction and deduction. Similarly, the doctrinal method relate to law’s discipline paradigm.

The doctrinal method has been widely criticised, largely because of has never been explicated sufficiently for Non-lawyer or for lawyers themselves. It pertained to note here that whatever in the literature it is called as doctrinal research.

⁷ *supra* Note 2

⁸ *supra* Note 2 at 148

⁹ See, S.N.Jain, *doctrinal research and Non-doctrinal Legal research*, Reprinted from 17 journal of the Indian Law Institute, (1975).

¹⁰ Dr. S.R. Myneni, *Legal Research Methodology*, published by Allahabad Law Agency, Faridabad, 2014, at40

¹¹ *supra* Note 8

¹² *supra* Note 11

¹³ See, *supra* Note 12

Probably, these types of research are restricted itself, because it is analysis of the textual law with reference to case law and doctrine. Therefore, it is very difficult this types of research because it is not interdisciplinary.

According to this doctrinal research methodology it does not make use of qualitative and quantitative legal research tools because it give a broader perspective to the dimension of law while linking to the society which after all law are regulates. Many researchers were observed that the Law remain as a social phenomenon.

Therefore, the legal research has traditionally been concerned with the development of legal doctrine. Such as the laws, a regulation, ruling and law case has been used in the research. The doctrinal research has been associated with diverse activities for codification and law reporting etc... However, the doctrinal research has also play very important role in the research development and functioning of legal systems because it has produced much research of outstanding quality.

3. Sources of doctrinal Research

The ordinarily conventional legal source is used in doctrinal research, and hardly the research scholar is undertaking only doctrinal research to take in secondary data relevant to his proposition. The research scholar is used the following sources like statutes or enactment, report committees, legal history and judgment etc.

Most of the doctrinal research sources are text books, periodicals, and commentaries but they are not possess as much authority as the original sources like enactment and case published by authorized publisher. Similarly, the acts passed by state legislatures and parliament fall under the category of precedents. But all case laws decided by Supreme Court and high courts which are binding of lower courts are also part of doctrinal research sources. Therefore, “the quality of doctrinal research depends upon the sources materials on which the researcher depends upon for his study”^[14].

4. Characterise of doctrinal research method.

The doctrinal legal research method involves an analysis of legal propositions or legal concept is the main base of the studies. These types of research used “the reports of appellate courts and conventional legal theory”^[15] as sources of data. However, the legal propositions from enactments, administrative rules and regulation, cases law of courts etc can be a part of doctrinal legal research.

The legal concepts and principles of all types’ cases, statute and rules are used in the doctrinal legal research. Most of the cases the reaches scholar, lawyers and law teachers are focuses on the legal data gathered from case laws, legislation, law journal and article, law reforms reports, parliamentary materials, policy documents, relevant text law books etc.

The doctrinal legal research means the research into law and legal concepts and it is also based on the theoretical and pure in the nature. The doctrinal legal research is closely linked with the doctrine of precedent. The term of doctrine means the synthesis of various rules, principles, norms, interpretive

¹⁴ Dr. S.R. Myneni, *Legal Research Methodology*, published by Allahabad Law Agency, Haryana, 5th Edition 2005, India, at 40

¹⁵ *Ibid*

guidelines and values. Therefore, in the doctrine legal research, the researcher makes his research based on secondary data which is relevant to his proposition

5. Role of the Hypothesis in doctrinal research

The hypothesis has major role to verify the authoritative sources which are used in the doctrinal legal research. It also deals with the identification of authoritative the sources and how to use of techniques to find them out. Even the doctrinal researcher should know how to use a la library. Generally, there have been gaps in statutes and the courts which have to evolve doctrinal principles, standards and norms. Further, there was ambiguity in the statutory language.

Mostly in the doctrinal legal research does not involve any filed study. Accordingly to the doctrinal legal studies, researchers have not ordinarily to test any hypothesis in order to prove or disprove”^[16]. Sometime the hypothesis was “formulating simple question to guide the research”^[17] and most of “the research are exploratory, descriptive or explanatory in nature”^[18]. The doctrinal legal research, problems or questions are raised for the purpose of seeking credible answer or solutions. These “questions in most cases take the place of hypothesis”^[19], similarly the question was raise the problem and issues but “hypothesis suggested tentative concrete and testable answer”^[20].

6. Tools of doctrinal Research

1. Statutory materials.
2. Reports of Committees.
3. Legal history.
4. Judgments.
5. Case Reports.
6. Case and Digest.

7. Suggestion and Conclusion

While the doctrinal core of legal scholarship remains intact, and the legal scholars are endeavoring to accommodate statistics, comparative perspectives, social science evidence and methods, and theoretical analysis etc. Within the legal research framework, in order to provide additional ballast for law reform and Legal System towards the research development.

Meanwhile, the doctrinal research has been change the political philosophy of law. Now it's give more important to sociological law because the major tools of a legal researcher are used sociological and empirical data. Even the sociological law always tries to investigate through empirical data that how the law and legal institutions effect on human attitudes and impact it creates on society. However, the legal researchers are concerned with empirical investigation but the analysis and manipulation based on the theoretical concepts.

Similarly, the law had a research paradigm based predominantly in the doctrinal methodology. It has been based in liberal theory and positivism, because the framework of

tracing common law precedent and legislative interpretation. In the doctrinal method, the legal researcher widely used the legal theory research; law reform research and public policy research.

Therefore, that doctrinal research is undertaken mainly qualitative and distinctive according to accepted discipline standards and rules. But it also requires to undertaking into the research field for specific language and knowledge of skills. However, it also required legal research skills education in the research field to changed and continue to develop in order to more fully meet the needs of students, profession and other academic person in the contemporary of the legal environment. In doctrinal research methodology it required the high level of critique and review as contextual background. The primary sources for doctrine is centre for reading and needs to a guiding principle for reform of law and legal system for research development in legal research.

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¹⁶ Anwarul Yaqin, *Legal Resarch and writing Methods*, published by LexisNexis, India., 2008, at 29

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *See, supra Note15*

²⁰ *See, supra Note15 at 30*