

Chapter 15

Doctrinal Legal Research: A Library-Based Research

Gaurav Shukla

University of the South Pacific, Fiji

ABSTRACT

This chapter is an attempt to provide a basic understanding to law researchers of doctrinal legal research. The chapter is drafted in such a manner that it will give a systematic approach to acquainted with the doctrinal legal research. It includes the brief historical background, purpose, and steps to conduct doctrinal legal research, tools that are used, advantages and limitations, and summing up with a conclusion. The author has tried his best effort to give all the relevant tools, however, there were limitations due to the huge expansion of information and technology, e.g. social media. These limitations restrain the author to stick to more traditional tools of research.

1. INTRODUCTION

According to H.L.A. Hart a prominent jurist of the positive school of jurisprudence, doctrinal research “takes an internal, participant-oriented epistemological approach to its object of study” (Paul, 2008, p. 30) Doctrinal research also known as library-based research or called as “black letter” methodology (Jerome Hall Law Library, 2019, para 3) is focused research on the letter of law instead of law in action. In this research methodology one doesn’t have to work or collect data from the field rather the researcher composes a descriptive and detailed analysis of legal rules and regulations, case laws, juristic writings, etc from primary and secondary sources. Primary and secondary sources are discussed future in the later part of this chapter.

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Doctrinal Legal Research

The doctrinal legal method revolves around gathering information, organizing them, and describing the law.

The chapter starts with the definitions of doctrinal legal research given by prominent jurists with an expression of concern about the relevance of these definitions in the digitalised world. Then after the author tested the historical background of doctrinal research.

Further, the chapter provides the readers with the tools that are traditional as well as contemporary for conducting doctrinal legal research. Its purpose and steps to conduct are elaborated in the later part of the chapter followed by the advantages and limitations of doctrinal legal research. This chapter will help the law researcher to explore the doctrinal legal research method which has been useful for attorneys, judges, etc, this method helps to examine legal theories and doctrines and provide the solution to legal problems with lesser time

2. BACKGROUND

The doctrinal legal research is like the Roman God Janus who has two faces one looking into the past and another in the future, doctrinal research has strong roots in the past, but now transitioning towards a digitalised single world (Hutchinson, 2015, p. 136). In the 1980s doctrinal legal research was the predominant form of research used for the assessments of law. The Australian Pearce Committee 1987 highlighted doctrinal legal research as the category in its research taxonomy ((Hutchinson, 2015, p. 131)

In 1987 The Australian Pearce Committee defined doctrinal legal research as “research that provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments” (Pearce, Campbell & Harding, 1987, p. 312). The definition was further expanded by The Council of Australian Law Deans stating, “Doctrinal research, at its best, involves rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials” (Council of Australian Law Deans, 2005, p. 3).

The Dean of Harvard Law School Martha Minow stated that doctrinal restatement is one of the essential contributors that legal researchers make to their research (Minow, 2013, p. 65). From the civil law countries’ perspective, Rob van Gestel and H.-W. Micklitz defined doctrinal legal research as, “arguments are derived from authoritative sources, such as existing rules, principles, precedents, and scholarly publications” (Gestel & Micklitz, 2011, p. 26).

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