

A COMPARATIVE ANALYSIS OF DOCTRINAL AND NON-DOCTRINAL LEGAL RESEARCH

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ABSTRACT

Legal research is a systematic process that examines legal principles, statutes, regulations, and cases to gather and interpret information relevant to legal matters. Its role extends beyond established knowledge, aiming to evolve legal principles and enhance the justice system. This article explores legal research's attributes, methods, and importance in driving positive societal change and justice. Legal research encompasses activities beyond information gathering, enriching legal knowledge through updates, alterations, and introductions. It investigates the relationship between law and society, involving codes, acts, and constitutions. Scientific in nature, legal research involves discovering new facts, verifying old ones, analyzing sequences, exploring interrelationships, offering causal explanations, and developing tools. Its objectives include concept manipulation, hypothesis testing, and promoting justice and equitable governance. Legal research's significance lies in shaping laws, addressing business challenges, aiding courts, raising legal awareness, guiding practitioners, and improving justice. It explores doctrinal (analyzing legal concepts) and non-doctrinal (empirical) research, both contributing to a holistic understanding of the law's impact. Doctrinal research relies on sources like statutes, cases, and history, analyzing doctrines, systematizing propositions, and studying institutions. Background reading is vital. It's normative, establishing legal norms through reasoning. Non-doctrinal research employs empirical insights from various fields to understand law's real-world functioning, enriching legal analysis.

Keywords: *Legal Research, Systematic Process, Evolving Legal Principles, Societal Impact, Doctrinal and Non-Doctrinal Approach*

INTRODUCTION

Legal research is a multifaceted process that involves a systematic exploration of legal principles, statutes, regulations, and cases to gather, analyze, and interpret information pertinent to legal matters.¹⁶³ It plays a crucial role in advancing the understanding of legal concepts and their application in society. The scope of legal research extends beyond the confines of established knowledge, aiming to contribute to the evolution of legal principles and the enhancement of the justice system.

Legal research is an intellectual pursuit that goes beyond the mere act of gathering information. It encompasses activities such as updating existing knowledge, making alterations, introducing new elements, segregating relevant information, eliminating inconsistencies, and rectifying inaccuracies.¹⁶⁴ This dynamic process embodies the essence of research by continuously enriching the repository of legal knowledge. The subject of legal research revolves around the principles of law and the institutions that enforce them. It delves into the intricate relationship between

¹⁶³ MORRIS L. COHEN & KENT C. OLSON, *LEGAL RESEARCH IN A NUTSHELL* (1996).

¹⁶⁴ Raymond V. Bowers & Frederick Lamson Whitney, *The Elements of Research*, 3 *AMERICAN SOCIOLOGICAL REVIEW* 131 (1938).

the realm of law and the world it is designed to govern. Legal research involves a structured investigation into legal issues, encompassing various aspects such as codes, acts, constitutions, and more.

SCIENTIFIC NATURE OF LEGAL RESEARCH

Dr. P. Young's characterization of legal research as a scientific undertaking highlights its systematic and methodical nature. It involves a series of steps:¹⁶⁵

Discovery of New Facts

Legal research seeks to unearth previously unknown facts or information within the legal domain.

Verification of Old Facts

It involves validating established facts to ensure their accuracy and relevance.

Analysis of Sequence: Legal researchers analyze the sequence of events, legal developments, and chronological order of legal principles.

Interrelationship Analysis

It investigates the connections and interdependencies between various legal elements.

Causal Explanation

Legal research aims to provide explanations grounded in causal relationships, often within a theoretical framework.

Development of Tools and Concepts: Through legal research, new tools and concepts are developed to facilitate a balanced and reliable study of human behavior within the legal context.

OBJECTIVES OF LEGAL RESEARCH

Legal research serves several objectives that contribute to the advancement of legal understanding and its practical applications:¹⁶⁶

1. Manipulation of concepts, symbols, and things to facilitate generalization.
2. Extension and verification of existing knowledge.
3. Construction of theories and practical applications based on acquired knowledge.
4. Exploration of phenomena to gain insights and explanations.
5. Determination of frequencies and associations within legal phenomena.
6. Accurate portrayal of characteristics through descriptive research.
7. Testing of hypotheses related to causal relationships.
8. Examination of legal history, institutions, and their development.
9. Analysis of the nature and scope of new laws and legal institutions.
10. Evaluation of the merits and shortcomings of existing laws, along with suggestions for improvements.
11. Assessment of the interaction between legislative and judicial bodies, offering recommendations for collaboration.

SIGNIFICANCE OF LEGAL RESEARCH

1. The significance of legal research is deeply rooted in its role as a catalyst for positive social change and the pursuit of justice:¹⁶⁷
2. It aids governments in crafting effective laws aligned with their economic and social agendas.
3. Legal research contributes to resolving operational and planning challenges faced by businesses, industries, and taxation.
4. Courts benefit from legal research by finding well-founded solutions to complex legal issues.
5. It raises legal awareness in society and promotes informed decision-making.

¹⁶⁵ *Id.*

¹⁶⁶ Alan E. Feuerstein & Peter G. Maggi, *Computer Investment Research*, 24 FINANCIAL ANALYSTS JOURNAL 154 (1968).

¹⁶⁷ *Id.*

6. Legal practitioners rely on research findings to navigate intricate legal problems.
7. Legal research supports the evolution of laws, enhancing justice, equity, and good conscience.

Henceforth, legal research is an essential and dynamic field that involves systematically exploring legal principles, institutions, and phenomena. Its objectives range from expanding knowledge to practical application, historical analysis, and suggesting improvements to the legal system. The significance of legal research lies in its power to shape laws, policies, and societal perceptions, ultimately contributing to the advancement of justice and equitable governance.

KINDS OF LEGAL RESEARCH

Legal research can be categorized into different approaches, each offering a unique perspective and methodological framework. Two primary categories are doctrinal (traditional) research and non-doctrinal (empirical) research.¹⁶⁸

1. Doctrinal (Traditional) Legal Research

The doctrinal legal research method is deeply rooted in the exploration of legal concepts and principles derived from various sources such as cases, statutes, and rules. The term "doctrine" originates from the Latin word "doctrina," which translates to instruction, knowledge, or learning. Doctrinal research involves delving into established legal materials to extract, analyze, and understand legal doctrines and principles.¹⁶⁹

During the 19th and 20th centuries, doctrinal research held significant influence over legal scholarship and the prevailing view of law. As a result, it has become a dominant research approach in the field of law. This method is focused on studying legal doctrines and their development and application. The pursuit of

stability and certainty in the legal system makes doctrinal research an essential endeavor for legal scholars and researchers.

In doctrinal research

Analysis of Legal Doctrine: Researchers examine legal doctrines and analyze how they have been formulated, interpreted, and applied.

Systematization of Legal Propositions

Legal propositions and principles are organized and ordered in a logical and rational manner.

Study of Legal Institutions: Legal institutions are studied through the lens of legal reasoning or rational deduction.¹⁷⁰

Doctrinal research primarily emphasizes substantive law, including rules, doctrines, concepts, and judicial pronouncements. It is grounded in legal propositions and judicial decisions, as well as other conventional legal sources like parliamentary debates, which provide insights into legislative intent and policy history. Examples of doctrinal research include the classical works of legal scholars on topics such as the law of trusts and administrative law. This type of research is often referred to as traditional research or armchair research, as it involves comprehensive analysis and interpretation of existing legal materials.

NON-DOCTRINAL (EMPIRICAL) LEGAL RESEARCH

In contrast to doctrinal research, non-doctrinal legal research takes an empirical approach. This method involves collecting and analyzing data to study legal phenomena in real-world contexts. Empirical research explores how laws are implemented, their impact on society, and how legal processes function in practice.¹⁷¹ It often involves surveys, interviews, observations, and statistical analysis.

¹⁶⁸ Parth Indalkar, *Legal Research and Methodology*.Pdf, https://www.academia.edu/38460017/Legal_Research_and_Methodology_pdf (last visited Aug 31, 2023).

¹⁶⁹ George P Smith II, *Dickerson: The Fundamentals of Legal Drafting*, MICHIGAN LAW REVIEW.

¹⁷⁰ P.M. Bakshi, *The Discipline of Legislative Drafting*, 34 JOURNAL OF THE INDIAN LAW INSTITUTE 1 (1992).

¹⁷¹ *Id.*

Empirical legal research aims to:

Study Legal Realities: Researchers investigate how laws are applied and experienced in various situations.

Assess Social and Legal Impact

The impact of legal norms on individuals, groups, and society as a whole is evaluated.

Analyze Legal Processes: Empirical research sheds light on the efficiency and effectiveness of legal procedures. In recent years, there has been a growing emphasis on combining doctrinal and empirical approaches to gain a more comprehensive understanding of legal issues. This interdisciplinary approach enables researchers to explore legal concepts within their practical contexts, bridging the gap between legal theory and real-world application.

Therefore, both doctrinal and non-doctrinal legal research methods play critical roles in advancing legal scholarship and practice. Doctrinal research focuses on the analysis and interpretation of legal principles derived from established sources, while non-doctrinal research adopts an empirical approach to understand the practical implications of legal norms. By utilizing both approaches, researchers can contribute to a more holistic understanding of the law and its impact on society.

SOURCES OF DOCTRINAL LEGAL RESEARCH:

Doctrinal legal research relies on a range of conventional legal sources to derive insights, analyze legal propositions, and explore legal concepts. While scholars engaged in doctrinal research often supplement their findings with secondary data, the foundation of this approach is rooted in primary legal materials.¹⁷² Some of the sources commonly used in doctrinal research include:

Statutory Materials

Primary legal sources such as statutes, regulations, ordinances, and legislative documents are pivotal in understanding legal norms established by the legislative bodies.

Reports and Committees

Reports issued by governmental bodies, committees, and commissions offer valuable insights into the context, intentions, and recommendations behind legal provisions.

Legal History

The historical evolution of legal principles, doctrines, and legal institutions provides crucial context for understanding the development and application of laws.

Judgments

Judicial decisions, particularly those from appellate courts, serve as authoritative interpretations of legal principles and contribute to legal precedent.

Case Reports

Reports of specific legal cases, including lower court decisions, provide concrete examples and applications of legal concepts.

Case Law Digests

Legal research tools that compile summaries of cases, often organized by topic or legal issue, facilitate easy access to relevant case law.

CHARACTERISTICS OF DOCTRINAL RESEARCH METHOD:

The doctrinal research method is centered on analyzing legal propositions and concepts, often drawing from both primary and secondary sources. It involves:

- Utilizing primary sources like enactments, administrative rules, regulations, and case law.
- Exploring legal concepts and principles found in cases, statutes, and rules.

¹⁷² *Id.*, *supra* note 8.

- Synthesizing various legal rules, principles, norms, and interpretive guidelines.

METHODOLOGY OF DOCTRINAL RESEARCH:

Doctrinal research, often conducted within libraries and archives, is a common approach in legal research. It seeks definitive answers to legal questions and inquiries.¹⁷³

This method:

- Focuses on analyzing legal doctrines and their development and application.
- Analyzes legal propositions in appellate court reports, legal theories, and various legal materials.
- Aims to find "one right answer" to specific legal issues.
- Necessitates background reading using sources like dictionaries, encyclopedias, major textbooks, treatises, and journals.
- Requires extensive citation checking, often through footnotes, to validate legal principles and understand their implications.

Significance of Background Reading

Background reading forms a critical foundation for doctrinal research. It aids researchers in comprehending legal principles, understanding terminology, and summarizing the legal landscape within the field of study. These initial steps help researchers identify the specific legal issues that require further investigation.¹⁷⁴

Therefore, doctrinal legal research relies on primary legal materials such as statutes, cases, and regulations, supplemented by secondary sources like reports and committees. It involves analyzing legal concepts, synthesizing rules and principles, and seeking definitive answers to legal questions. Background reading and citation checking are integral to this methodology, ensuring a solid understanding of legal propositions and their application.

¹⁷³ *Id.*

¹⁷⁴ Bowers and Whitney, *supra* note 3.

NORMATIVE CHARACTER OF DOCTRINAL RESEARCH

Doctrinal research holds a normative character within the realm of legal studies due to its focus on establishing norms, standards, and principles for human behavior in specific situations. Law, as a normative science, prescribes rules and standards that govern human conduct within a given context and is enforceable through state-sanctioned mechanisms.

Legal Norms and Standards

In its essence, law serves as a framework for guiding human behavior by setting forth norms and standards that define permissible and prohibited actions. Doctrinal research plays a crucial role in delineating these norms by analyzing legal doctrines, arranging them systematically, and studying legal institutions. Through rational and logical reasoning, doctrinal research contributes to the creation and development of legal norms that regulate societal behavior.¹⁷⁵

Judge-Made Law

Even during periods when the philosophy of analytical positivism was prevalent, which posited that judges merely declare existing law rather than create it, judicial creativity and lawmaking were evident. The development of common law by judges is a prime example of judges actively shaping the law through their decisions. The principles derived from case law are not treated as immutable truths but as adaptable working hypotheses that are continuously tested and revised through subsequent cases.

Contributions of Doctrinal Research

Doctrinal research has contributed to the creation of new areas of law, such as tort law and administrative law. As society's focus shifts towards achieving social welfare and responding to economic and technological advancements, the role of law in shaping

¹⁷⁵ *Id.*

society and ensuring justice becomes more pronounced.¹⁷⁶

Normative Character of Doctrinal Research

In the context of normative character, doctrinal research is concerned with discovering, developing, and defining legal doctrine. This research takes the form of asking the question, "What is the law?" It involves engaging with legal theories and principles to provide answers to complex legal issues.

MERITS OF DOCTRINAL RESEARCH

There are several advantages associated with the library-based research methodology:

Tradition and Training

Legal scholars often initiate their research journey through doctrinal methods during their legal education.

Acceptable Character

Research conducted under this approach is widely accepted within legal communities and institutions.

Strong Foundation

Doctrinal research forms the bedrock of legal scholarship and remains relevant in law schools and firms.

Focus on Existing Law

It aligns with the practical concerns of legal practitioners, focusing on existing laws and their application.

DEMERITS OF DOCTRINAL RESEARCH

Theoretical and Technical

Doctrinal research can be overly theoretical, conservative, and lacking in consideration of social and political implications.¹⁷⁷

Narrow Focus

It may restrict the researcher's perspective and overlook broader social contexts.

Limited Consideration: Social, economic, and political dynamics of legal processes might be underestimated.

Context Ignorance

Failing to account for the community and societal impact of legal norms.

NON-DOCTRINAL RESEARCH

Non-doctrinal research, also known as social legal research, employs methods from other disciplines to generate empirical data that addresses legal questions. It draws insights from fields like behavioral sciences and economics to analyze legal phenomena in real-world contexts. This approach enriches legal analysis by grounding it in practical application and understanding how the law functions in society.¹⁷⁸

Thus, doctrinal research's normative character lies in its establishment of legal norms and standards through rational reasoning. While it has its merits and demerits, it remains a fundamental approach in legal studies. Meanwhile, non-doctrinal research brings interdisciplinary perspectives, empirical insights, and real-world applicability to legal analysis, expanding the understanding of law's impact on society.

CONCLUSION

In conclusion, legal research is a dynamic and multifaceted endeavor that goes beyond the mere accumulation of legal information. It involves a systematic exploration of legal principles, statutes, regulations, cases, and historical context to extract, analyze, and interpret information that is pertinent to the realm of law. This process serves not only to enrich existing legal knowledge but also to shape the evolution of legal principles and

¹⁷⁶ Amy Sloan, *Basic Legal Research: Tools & Strategies, Eighth Edition*, BOOKS (2021), https://scholarworks.law.ubalt.edu/fac_books/110.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

contribute to the betterment of the justice system.

Legal research operates as a scientific pursuit, involving the discovery of new facts, validation of existing information, analysis of sequences and interrelationships, and the development of tools and concepts. Its objectives encompass manipulating concepts, hypothesis testing, and promoting justice and equitable governance. The significance of legal research is far-reaching, influencing the creation of laws, addressing business challenges, aiding judicial decisions, raising legal awareness, guiding legal professionals, and improving the overall state of justice.

The field of legal research is characterized by two primary approaches: doctrinal (traditional) research and non-doctrinal (empirical) research. Doctrinal research delves into established legal materials, analyzing doctrines, systematizing propositions, and studying legal institutions. It plays a normative role in shaping legal norms and principles. On the other hand, non-doctrinal research employs empirical insights from various disciplines to understand how laws function in practical settings, thereby bridging the gap between legal theory and real-world application.

Both doctrinal and non-doctrinal approaches contribute distinctively to the advancement of legal scholarship and practice. Doctrinal research relies on primary legal sources to establish legal norms and principles, while non-doctrinal research incorporates interdisciplinary perspectives and empirical data to provide a more comprehensive understanding of law's impact on society. Therefore, legal research serves as a driving force behind positive societal change, justice, and equitable governance. By continually exploring legal concepts, principles, and their real-world implications, legal researchers contribute to the evolution of legal systems, the enhancement of justice, and the promotion of a fair and well-informed society.

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