

# Understanding the Theory, Theoretical Framework and Conceptual Framework in Legal Research

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**Abstract:** For higher research students and early career researchers, the process of identifying and developing a theory, theoretical framework, and conceptual framework can be quite challenging. Identifying these frameworks is significant in academic writing, particularly in formulating research studies and situating them within a well-structured framework that guides the investigation. Legal research may not always clearly articulate the differences between a theoretical framework and a conceptual framework. This ambiguity can lead to confusion, as researchers often use these terms interchangeably without recognizing the important distinctions between them. This research finds that approaching these frameworks with clarity is essential for effectively communicating research objectives and methodologies. This research aims to attempt to identify the differences in legal research and find that understanding the differences helps not only strengthen the rigor of their studies but also contributes to a broader academic discourse, particularly within the legal field.

**Keywords:** Theory; Theoretical Framework; Legal Research; Conceptual Framework.

## INTRODUCTION

Identifying and developing a theory, theoretical framework, and conceptual framework can present challenges for higher research students and early career researchers, as they often invest substantial time in comprehending and defining these terms. These concepts have gained heightened importance as integral components of a manuscript, enabling the conceptualization of research studies within a structured framework. However, in legal research, the precise distinctions between theoretical framework and conceptual framework may not always be explicitly delineated. In some instances, these terms are used interchangeably. Accordingly, these terms are used in different ways in different research approaches and are not consistently followed as some lack influence according to the nature of the research. For instance, some researchers include a chapter to discuss the theoretical and conceptual framework, while others include them in the research methodology section. The details methodology is not considered vital in the academic study unless a qualitative or quantitative empirical research design is adopted. Accordingly, when research falls under the ambit of the same disciplines (i.e. intra-disciplinary or mono-disciplinary) and includes a doctrinal analysis, desk review, or black-letter approach, the methodology part is not discussed in detail;

generally, it exhibits the general description of primary and secondary data analysis (Langbroek et al., 2017). On some occasions, supervisors also do not insist on providing rigorous theory-based explanations for their research studies or extensively teaching in the research methodology courses offered for higher research studies.

The existing literature exhibits a significant deficiency in scholarly research that explains the concepts of theoretical and conceptual frameworks. For example, Ngulube et al. highlight a striking disparity in search results when exploring these terms on Google Scholar. A search for “theoretical framework” produced approximately 3.8 million articles, whereas the phrase “conceptual framework” yielded nearly 23.5 million results. Notably, an examination of the first 100 sources from both searches reveals that these terms were often utilized without any accompanying definitions or explicit explanations regarding their application. This lack of clarity is particularly concerning, as it contributes to a broader issue faced by many postgraduate students and their research supervisors. As a result, students often struggle to generate, select, develop, and implement their frameworks in a coherent and academically sound manner. This gap in the literature undoubtedly underscores the challenges that these individuals encounter in drafting theoretical and conceptual frameworks.

In an interdisciplinary and multidisciplinary research setting, recognising the best theory suited for the research objectives and developing theoretical and conceptual frameworks have become vital since law research falls into the broad categories of social science and humanities. As Howarth advocates, the law often appears to be a crossroad between the social sciences and the humanities movement in legal scholarship; for instance, the law and economics movement and the law and literature movement represent attempts to portray the law as social sciences or humanities.

This research provides a brief analysis of the importance of setting a theoretical framework and understanding the difference between theory and theoretical and conceptual frameworks. It concludes that when legal research adopts a multidisciplinary approach, consideration of theoretical and conceptual frameworks momentarily benefits the researcher to produce an acceptable study outcome, and it would persuade examiners, decision-makers, and policymakers. Understanding the difference between the terms would support the research in structuring the research methodically and simplifying it so that readers can understand the arguments, analyses, and findings.

## **APPROACH TO LEGAL RESEARCH**

The impact of globalisation, privatization, and internationalisation has changed the traditional approach to legal research and adopted a more innovative approach to finding the effect of law, legal concepts, and reasoning used to predict the outcome of law and its applicability in the changing society. Thus, modern legal research recognises multidisciplinary and interdisciplinary approaches as the law interface with many other disciplines. For instance, recent past research themes primarily related to law and contemporary issues – for example, law intersects with economics, technology, society, business, education, health, religion, law, and culture. Thus, the central part of legal research falls into the socio-legal perspective that focuses on regulating human conduct for the required outcome of law enforcement. This is because the law is a necessary discipline that shapes such as social behaviours and business practices; structures the corporate world; defines

human rights obligations; reforms trade-related aspects of laws based on economic principles, sustainable development concepts, and human rights; and assists and persuades decision-makers and policymakers in ensuring that they make good decisions in accordance with legal thoughts, conceptual analysis, the quality of reasoning and the rhetoric.

The traditional approach to legal scholarship, which systematically follows the compartmentalised structure of law, such as intra-disciplinary or mono-disciplinary—constitutional law, criminal law, public law, private law, and administrative law—now focuses on broader aspects of analysis. This method of traditional approach to legal research is considered to be very narrow. For instance, doctrinalism, often criticized for its rigidity and focus on technicalities, can hinder understanding of law and society, impoverishing the questioning spirit of law students and teachers. On the other hand, interdisciplinary research can lead to more informed and balanced judgments. Thus, broader aspects are not limited to authoritative texts such as legislation, case law, and doctrinal literature, the primary sources of information for understanding positive law but also include interdisciplinary or multidisciplinary approaches. However, they permeate the non-legal discipline to create practical applicability in a concrete case. Legal research, thorough academic research, is now more on meeting a realistic approach to the law and society. As Langbroek et al. highlight, ‘it is a precondition for legal analysis in any form that the researcher should not only know the traditional elements of the law but also about the quickly changing societal, economic and technological contexts and, possible, other aspects of relevance.’ One of the important aims of socio-legal research is training to produce more socio-legal scholars since they have a crucial role in addressing social issues and contemporary challenges.

As per Thomas et al., academic legal research can be categorised into three broad aspects: ‘law as a practical discipline,’ ‘law as humanities,’ and ‘law as social sciences’ in a conceptual framework. Accordingly, the socio-legal analysis of laws becomes significant, and there is no universally accepted definition of what constitutes a socio-legal or law and society. It is based on individual aspects of the approach and what such an approach

necessarily encompasses. Social science research aims to discover ‘why people behave as they do’. In social science, the scientific method is used to conduct research – beginning with identifying the problem statement, formulation of research questions, developing a hypothesis, establishing objectives, outlining the methodology and research design, and drawing concluding remarks and recommendations. To this end, it is crucial to adopt a coherent and consistent approach to research inquiries, employing systematic methods within a clear theoretical framework for data collection and analyse. This process facilitates the identification of a well-defined legal rationale, along with recommendations and future direction for the law.

There are different types of approaches to legal research as discussed above such as intra-disciplinary (mono-disciplinary), interdisciplinary, multidisciplinary, cross-disciplinary, and trans-disciplinary. Before employing an approach to research, it is crucial to understand the research method and methodology as these concepts may vary. Accordingly, research method refers to the tools and techniques used by the researcher and methodology refers to the underlying theoretical approach that justifies the use of those methods. The following table provides a summary of the difference between above two.

**Table 1:** Difference between Methods and Methodology

Aspect	Methods	Methodology
<b>Definition</b>	Research methods are the techniques used by researchers to conduct their studies. They encompass all methods employed during the investigation of a research problem. In applied research, the goal is to find solutions to specific problems, which requires relating available data to unknown aspects of the issue. E.g., practical tools or steps [survey, case laws, statutes]	The theoretical framework or philosophy behind the choice and use of research methods. e.g., justifying the choice of methods [ doctrinal, empirical]
<b>Purpose</b>	Focuses on the " <b>how</b> " of the research process (practical steps). Research methods help us collect samples, and data and find a solution to a problem	Focuses on the " <b>why</b> " of the research process (theories or philosophies guiding the methods) based on theoretical frameworks or research goals.

Types of research approaches;

- Intra-disciplinary research- involves a single area or discipline
- Interdisciplinary research – More than one discipline
- Multidisciplinary research -Multidisciplinary research involves researchers from different disciplines working independently on a common problem or research question.
- Cross disciplinary –Cross disciplinary research involves viewing one discipline from the perspective of another.
- Transdisciplinary – involves different disciplines, across disciplines, and beyond each single discipline

All those types of research can be further divided. For instance, Siems identifies further categories of interdisciplinary legal research. Basic interdisciplinary research uses academic disciplines to answer questions, leading to a more

balanced judgment but may be rigid and dogmatic. Advanced interdisciplinary research provides a comprehensive view of a topic without focusing on one piece of the jigsaw, requiring a shift in methodology and university structure. However, it may overlook confirming evidence.

## SETTING UP A THEORETICAL FRAMEWORK

In higher-degree research, formulating a theoretical framework holds significant importance as it serves multiple purposes. It provides an overarching view of the entire study, encompassing various aspects such as the research problem, objectives, hypothesis, theories, significance, limitations, and research questions. Accordingly, the theoretical framework acts as a survey that conceptualizes different dimensions of the

research, offering a structured framework to guide the study and formulating a theoretical framework assists in organizing the research study by adopting the most suitable research method and methodology, as well as conducting a comprehensive literature survey analysis. Some scholars argue that the theoretical framework serves as the "blueprint" for the entire dissertation inquiry, providing a structured foundation to approach the research study philosophically, epistemologically, methodologically, and analytically. It offers a roadmap for the research process, ensuring a coherent and systematic approach to address the research questions and achieve the desired research outcomes. Grant and Osanloo (2014) advocate that,

“without a theoretical framework, the structure and vision for a study are unclear, much like a house that cannot be constructed without a blueprint. By contrast, a research plan with a theoretical framework allows the dissertation study to be strong and structured with an organised flow from one chapter to the next”

Thus, when a research study comprises an explicit reference to the theoretical framework allows the researcher to address questions of ‘why’, ‘how’, and ‘what extent’—in the meantime, permitting the reader to evaluate the study critically. As analyzed by Kivunja, a theoretical framework serves multiple objectives within a research study. It contributes to enhancing the quality of data by ensuring credibility and internal validity. It aids in data analysis and findings by promoting transferability and external validity, allowing for the generalizability of results beyond the specific research context. Additionally, the theoretical framework contributes to the reliability and objectivity of the findings, ensuring confirmability and maintaining the overall integrity of the research study.

## IDENTIFYING A THEORY: IS IT DIFFERENT FROM THE THEORETICAL FRAMEWORK?

The theoretical framework includes an expression of a theory deemed to be evaluated throughout the research or ‘developing a theory’. Thus, the theory is somewhat different to the theoretical framework though they use it interchangeably. Some argue that postgraduate students need help distinguishing these two concepts in the first few months of their research journey.

Kivunja defines theory based on literature as a ‘generalised statement of abstractions or ideas that asserts, explains or predicts relationships or connections between or among phenomena, within the limits of critical bounding assumptions that the theory explicitly makes. A researcher has a wide range of options in choosing a theory that supports arguments, solves problems, and analyses data.’ Accordingly, theories may be drawn from a variety of disciplines.

Theories from a jurisprudential perspective explain how justice is maintained in society through various schools of thought— naturalism, sociology, and positivism. Scholars in the sociological school of jurisprudence see the law as a tool to be used in ‘social engineering’ as the sociology school of thought emphasises that the law is derived from the life of the community. Similarly, critical legal studies believe legal rules are unnecessary and that legal disputes should be solved using rules of fairness; law and economics schools highlight that promoting market efficiency should be the central concern of legal decision-making; feminist legal theory advocates a woman’s perspective on a number of key legal issues. The theoretical framework demonstrates an understanding of theories through an array of literature. At the same time, developing and using theoretical and conceptual frameworks are not straightforward since they are not found in literature – so researchers should develop their own frameworks. Varpio et al. understand ‘a theoretical framework is a reflection of the work the researcher engages in to use a theory in a given study.’ As discussed above, law intersects with other disciplines; therefore, identifying theory may assist

in logical arguments. The figure below illustrates the connection and distinction between theory, theoretical framework, and conceptual framework.

The theoretical framework demonstrates an understanding of theories through an array of literature. At the same time, a theoretical framework is often not readily found in the literature. Lara (et al., 2020) understand 'a theoretical framework is a reflection of the work the researcher engages in to use a theory in a given study.' As discussed above, law intersects with other disciplines; therefore, identifying theory may assist in logical arguments. The following example is simply on how to choose a theory and thereby form a theoretical framework.

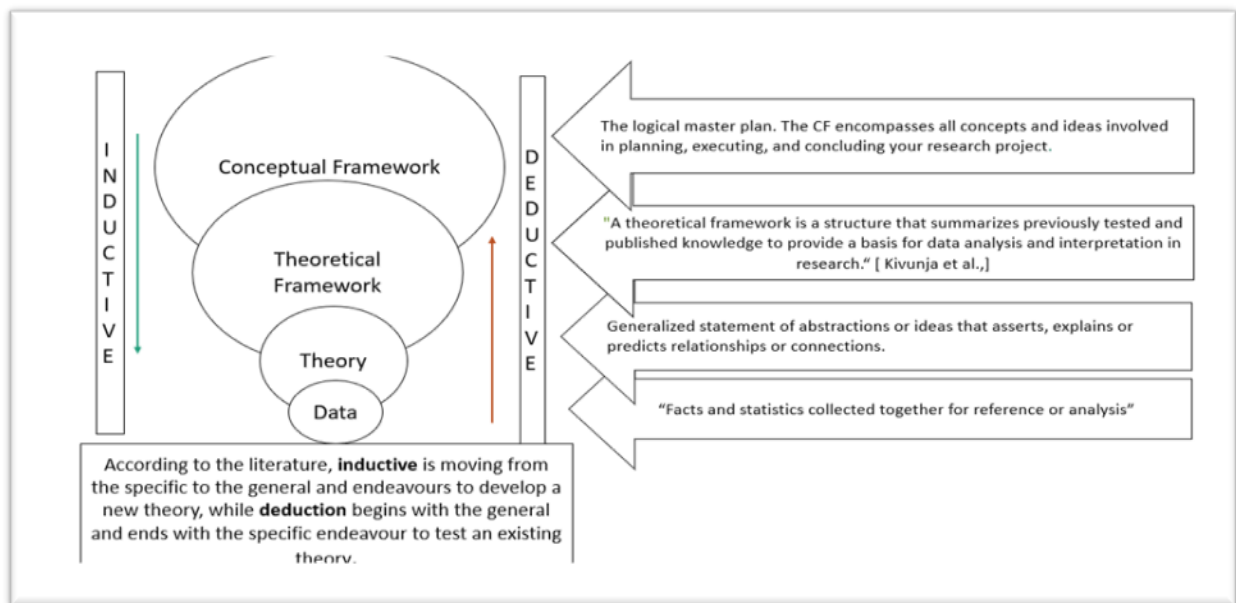
1. Focus - The first step is to have a clear understanding of one's research, both in terms of the broad area and the specific focus and identifying the research problem, objectives, and

research questions. Think about the perspective or lens the researcher uses to examine the issue – whether it's from an intradisciplinary or interdisciplinary – [i.e., economic, environmental, or legal standpoint]

2. Theories/Concepts – Identify the key theories or concepts that are relevant to the research. For the above example, the researcher might consider using a lens that incorporates market economic theory, economic models, or environmental theories depending on the research focus.

3. Key terms – Identifying essential key terms that are central to the chosen area of the research. This will guide the literature search and help define the scope of your study.

4. Justification – Choose the most suitable theory or theories that best align with the research goals, and justify the choice.



**Figure 1:** Understanding, Theory, Theoretical, and Conceptual Framework.

## CONCEPTUAL FRAMEWORK: HOW DOES IT DIFFER FROM A THEORETICAL FRAMEWORK?

While the conceptual and theoretical frameworks can be challenging to differentiate, existing literature highlights their distinctiveness, and it is possible for a research inquiry to

incorporate both frameworks. The theoretical framework is based on existing theories. However, the researcher is free to develop their own conceptual framework for the thesis inquiry. The conceptual framework builds on previous research, bringing together insights from various disciplines and theoretical perspectives. It serves as the foundation for organizing ideas and guiding the research process, providing a framework for understanding and analyzing the research topic. The framework includes key points or areas that a specific study intends to analyze systematically. It

facilitates the investigation of theories, concepts, and principles relevant to the research topic, and it may include a comparative study. The framework provides a structured approach that allows researchers to systematically examine and analyze the key components of their study, contributing to a comprehensive understanding of the research topic. According to Varpio et al., 'the theoretical framework provides a general representation of relationships between things in a given phenomenon. The conceptual framework, on the other hand, embodies the specific direction by which the research will have to be undertaken.' Figure I explains the similarities and differences between theory, theoretical framework, and conceptual framework across objectivist deductive and subjectivist inductive approaches to research.

The deductive and inductive methods are typically used in quantitative and qualitative research methods, respectively. According to the

literature, inductive is moving from the specific to the general and endeavour to develop a new theory, while deduction begins with the general and ends with the specific endeavour to test an existing theory. Arguments based on laws, rules, or other widely accepted principles are best expressed deductively. Based on the existing literature, authors identify the characteristics of the conceptual framework and thereby differentiate the theoretical framework; - a motivation for selecting concepts and linking them to a research problem; a set of concepts and aspects of theories that assist in establishing coherence in research; less developed than theories; giving direction to research, just as the theoretical framework does; a diagrammatic representation of concepts and their relationship in a specific research context; and linking abstractions to empirical data. Table II provides a summary of the differences between theoretical and conceptual frameworks based on existing literature.

**Table 2:** Difference between Theoretical and Conceptual Framework

<b>Theoretical Framework</b>	<b>Conceptual Framework</b>
A TF is a specific, existing theory or model that you choose as the lens through which to view the specific research problem of your study.	A conceptual framework is a theory or model of your own creation – one that helps you explore a particular research problem.
Use a theoretical framework for quantitative studies – [Can be used to test the hypothesis /theory]	A conceptual framework for qualitative studies – [can be used to develop hypothesis/theory]
Chosen by researcher	Built by researchers based on existing theories/models
Existing ideas	Existing +Researcher's idea
Testing the theory/ies	Developing of theory
Deductive approach	Inductive approach

A researcher may incorporate both theoretical and conceptual frameworks into their study. Accordingly, depending on the nature of the research questions and objectives, the researcher may employ both quantitative and qualitative methods. Ultimately, the combination of these methodologies may lead to an inductive-deductive approach. This means that the researcher might start with specific observations or data (induction) to identify patterns, and then move toward broader generalizations or theories (deduction) based on those findings. This flexible approach enhances the depth and breadth of the research, making it more robust and relevant. However, the methodology is fundamentally determined by the researcher's

discretion and tailored to address the specific research problem at hand. It outlines the systematic approach necessary for identifying and developing solutions to the issues being investigated.

**Table 3:** Key Research Elements and Approaches in a Research

Aspect	Explanation	Example
Theory	Broad principle explaining phenomena.	Supply and Demand Theory – Higher wages might reduce labor demand, leading to unemployment.
Theoretical Framework	Application of a specific theory to guide research.	Using Supply and Demand Theory to frame the study of how wage increases affect employment.
Conceptual Framework	Specific concepts and their relationships within the study.	Connecting minimum wage, employment rate, and job availability in the analysis.
Methodology	The overall approach, rationale, and philosophy behind the research.	Positivist approach, justifying the use of quantitative methods to test hypotheses.
Method	Specific techniques or tools for data collection and analysis.	Surveys, labor statistics, and regression analysis to measure employment changes.
Inductive Approach	Building theories from specific observations or data.	Observing employment trends after a wage hike to develop a new theory on wage-employment links.
Deductive Approach	Testing existing theories using data and hypotheses.	Testing Supply and Demand Theory by analyzing employment data after a wage increase.

## CONCLUSION

“Theories and constructs are a bit like spectacles – some help you to see more clearly the object you are concerned with, while others merely give you a foggy, blurred image. Change the object of your concern, however, and the second pair of spectacles might be more useful.” Understanding the similarities and differences between theory,

theoretical framework, and conceptual framework is crucial for developing a solid foundation for research. It allows researchers to organize their key ideas and present their findings in a coherent and organized manner. This article aims to contribute to the existing knowledge by exploring the distinctions between theory and theoretical and conceptual frameworks within the context of legal research.

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