



## An appraisal of literature review and theoretical framework in legal research

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### Abstract

This paper seeks to appraise the requirements for evincing the structural bedrock of legal research which are predicated on two fulcrums- Literature review and Theoretical framework. Deeply concerned by the disturbing decline in the quality, structure and composition of legal research conducted by scholars and researchers alike, this study attempts a reformatory discourse to refresh, review and reveal the basic requirements, processes and procedure for heralding a researchable work and avers that any legal research that fails to kick-start on the solid ground of a robust and relevant literature review and theoretical framework does not qualify as a legal writing properly so-called. The paper concludes that a legal researcher must engage in a worthwhile literature review along the lines of his proposed study and in similar or related literature and situate same within a theoretical framework in order keep the work focused, assess the merits of existing studies with a view to conducting further, more robust and better research, avoid duplication of existing studies and assess valuable information on the proposed study and elicit an instant theoretical framework in justifying the research questions set out for intellectual interrogation.

**Keywords:** literature review, theoretical framework, legal research

### Introduction

One of the initial responsibilities of a legal researcher particularly those undertaking a Doctorate of Philosophy (PhD) program or a Master's degree by Research is how to write a well-structured research proposal prior to writing their thesis or dissertation. Literature review and theoretical framework are part of the components contained in a standard research proposal. It is also important for writing treatises and academic papers. A literature review is simply a summary of what existing scholarship knows and has shared about a particular topic. Most times, this is based on secondary sources, that is, what other people have already written on the subject; it is therefore mostly not concerned about discovering new knowledge or information. Thus, it is a prelude to further research and an exhaustive digest of scholarly opinions. However, where not much literary ink has flown in the direction of one's research interest or enquiry, a legal scholar might conduct what is called a Pilot research.

Having chosen an approved research topic, a diligent researcher is expected to familiarize himself with existing works to see what other scholars have written or said in the area of his research interest. The established writers in the area of law, the mode and manner in which they interrogated, critically analysed and discussed the topic will be a subject-matter under literature review. The perceived shortcomings noticed in their argument and presentation would equally be examined. Other likely questions to ask when engaging in literature review are as follows: Is there any oversight in existing works to be identified and consequently filled? What further developments have taken place which the previous writers did not provide or include in their discussions? What are the names of the writers? If need be, a bibliography of authors who have written in the area can be stated.

On the other hand, a theoretical framework provides the foundation upon which the research structure is laid and acts

as a guide to the researcher in knowing the hypotheses to be generated and the type of information or data to be collected. Theoretical frameworks help to situate the research within a particular approach in explaining the problem, thus giving the researcher a clear goal. In a legal research, recent findings show that some of the theoretical frameworks that can be used are: Historical research, comparative research, analytical Research among others.

This paper shall therefore thoroughly examine the concept of literature review in legal research. It will also consider the uses and functions of literature review in a thesis. Thereafter, it will discuss literature search and review in social sciences and law discipline. Then the other part of the topic that is, theoretical framework in legal research shall equally be analysed. The usefulness of theoretical framework shall also be explored with a view to illuminating the bounds dovetailing into a conclusion.

### Literature Review in Legal Research

In general terms, literature review is a discussion of the researcher's knowledge about the topic under study and how that knowledge is supported by research literature. Most times, literature review acts as the foundation of the research. Literature review entails a critical assessment of all relevant works that have been done by other scholars in the area of inquiry, indicating their strength and weaknesses. "Doing a literature search" is an integral part of any serious research. In *academe*, "the literature" has become a collective noun that holds different meanings for its diverse users. The expression "the literature" typically refers to published writings in books, journals, conferences proceedings and Internet websites that relate to the field of investigation within which a student's project lies. Such literature includes unpublished theses and dissertations.

However, in contemporary academic parlance, "the literature" is used to describe 'a physical corpus of writing that relates to a specific corpus of published works, the

accumulated knowledge that resides within the corpus, (and) work in progress that when finished will add to the corpus of knowledge'. The above applications of the term may have slightly different points of significance between and within disciplines. But the meaning of their end use is the same to wit. "The literature" describes 'a specific body of knowledge (the corpus) that is recognized by its respective users'.

In a research proposal, there are at least four sources of literature that should be searched namely: journals, major books on the subject, monographs and dissertations. As a researcher progresses in his research, it will be important to present the facts for which the thesis is premised. There will be a need to prove that the researcher understood what he has read and appreciate its relevance to the proposed research.

### **Functions and Uses of Literature Review in Legal Research**

The emphasis under this sub-head is a critical analysis of relevant literature and not just any literature. It would amount to a waste of time for the researcher to spend much valuable time reading works that are not relevant to his topic or issues to be addressed. As such, literature review has a lot of usefulness, some of which are stated hereunder:

1. The main goal of a literature review is to acquaint the researcher with works that have been done in the area of his research and thus ascertain the state of knowledge and deciding whether or not the subject-matter is research-worthy. For the researcher to contribute to knowledge, he or she needs to be familiar with the works of previous scholars and researchers. This will make it possible for the researcher to identify and try to fill gaps that may have been identified as existing in the earlier works. Thus, the researcher can build on works already done by other researchers by taking it further or engage in an informed criticism of existing works. This is essential for the academic and scientific enterprise which relies on accumulation of knowledge and information.
2. The literature review can enable the researcher to relate his work to previous works that had similar results. This will increase the validity of his research findings.
3. The literature review is very critical to any legal research as it can also provide a useful guide for the researcher about factors that are correlated with the phenomenon being studied. This can assist in eliminating unnecessary duplication of effort by minimizing focus on barren issues or variables. It can also assist the researcher in sharply orientating his work and situating same appropriately within a specific research interest.
4. Again, literature review can lead to the collection of useful information about research methodology/design, instrument selection and construction, sampling, data collection and analysis.
5. In addition, literature review can, based on the challenges that were faced by previous researchers, alert the researcher about difficulties that he/she may likely encounter in the research process. As such, the researcher can benefit from a knowledge of how the earlier researchers responded to the problems encountered, thus enabling him to think ahead on how to overcome the challenges.

6. Hart asserted that the literature review plays a role in discovering important variables relevant to the topic; synthesizing and gaining new perspective; identifying relationship between ideas and practice; establishing the context of the topic or problems rationalizing the significance of the problem; understanding the structure of the subject and relating ideas and theory to applications.
7. Literature review can equally identify the gaps or paucity of information relevant to specific areas in the literature; and these gaps can be filled by the instant work of a researcher. This is essential especially because the gaps to be filled in the existing literature is the instant researcher's contribution to knowledge and if there is no such gap in literature, then, the research is altogether needless, unnecessary and baseless. The previous research is thus good as it is and requires neither review nor updated reform.
8. Literature review enables the researcher to select, organize and classify his data in order to present and conduct an organized and focused research.
9. A good literature review exposes the theories which the researcher comes across during the review.
10. Lastly, literature review also enables the researcher to set out his stated objectives based on addressing the identified existing gaps in literature and thus consequently give him a structured pathway upon which to dissipate his research energy.

### **Literature Search and Review in Law and Social Sciences**

Research is not conducted with a blank mind. Researchers usually have some basic ideas and background information of the research. It is noted here that the procedure for conducting research and carrying out literature review vary from discipline to discipline- It is not the same in social sciences and law. This is largely because the objectives and instruments of their research are not the same. Nevertheless, it is usually still necessary to update basic ideas on similar discipline despite the procedural difference and benefit from the ideas and research findings of other scholars. An essential source of information about various issues or research topics is the existing literature on such topics. How do researchers get information about existing literature? When they get information, what should they do with it? These and many other issues connected with literature review shall be examined in this academic paper.

### **Sources of Literature Review**

The library is very important in any academic research, because it is the repository of published works. The importance of the library to a researcher cannot be underestimated. There are diverse published works in the library. These include textbooks, monographs, reports, journals, abstracts etc. These also double as the sources of literature review. Newspapers and magazines are also useful sources of information for research. But the use of newspapers and magazines in academic research is usually limited to the provision of background general information. This is because even when they are based on research, such research is usually not rigorous enough to satisfy the strict conditions required for reliability and validity in academic studies. Other sources of useful information in the library include listed publications by the national, microfilms and a

listing of new additions to the library stock. For an effective literature review, a researcher must know the libraries which are available locally and the types of materials they may have and appropriately decide on which of them to use. This study also strongly warns that legal researchers should desist from using materials from Wikipedia as they are mostly not peer-reviewed and cautiously make use of online sources in conducting their legal research.

### How to Conduct a Literature Review

Literature review should consist of critical assessment of all relevant works that have been done by other scholars in the area of inquiry, including their strengths and weaknesses. For example, if a researcher is writing on the causes of insecurity. He may not be interested in studies of the effects of terrorism on the political economy or the characteristics of terrorists' victims, except they relate directly to the research topic. A good starting point in this regard is to identify the key concepts and provide a guide on the type of literature to look for. For example, if we have a topic such as: The Trend and Pattern of Sentencing Practices in Nigeria, the key concepts will be "Sentencing practices, "Trend" and "Pattern" and it is materials on these that should be sought and reviewed. On receiving the material, researchers should check through the table of contents and the indices as well to identify relevant sections of the book. This will save time, instead of reading through the entire book/journal. The first objective should be to find out whether the source has any information about the research topic. If it does, researchers should find out what sort of information, and how much information it has. If it is established that the material is relevant, the researcher should then read through and make summary notes. The literature review should be arranged in a systematic way either on a thematic basis or in a chronological order. The chronological order can be very useful for indicating trends, while the thematic arrangement can be useful in highlighting the general conclusions from the review. For example, in reviewing works on the effects of criminal victimization, a researcher may organize his review into thematic place. The review should be presented as summaries, including the methods adopted and their appropriateness, significant findings, strengths and limitations, etc. Necessary publication information (such as names of author(s), titles of book/journals, titles of articles, publishers, year of publication *et al*) about the material reviewed should also be provided in the literature review. It is of immense benefit for researchers to keep proper notes, including names and references, as they read the literature.

Some scholars recommend the use of index cards for note-keeping. The main benefit of this is that they enable the researcher to collate information about various topics, books which can then be arranged as the researcher wishes. For example, the index cards can be arranged according to call number, so that if the researcher has direct access to library books, this arrangement will make it possible for him to organize his search in a systematic manner instead of running from one part of the library to another. Where direct access is not allowed, the assistance of the library staff should be sought in getting the book/journal. It should be noted that the index cards may also be arranged chronologically or thematically.

While engaging in literature review, researchers should eschew or desist from plagiarism. The surest safeguard against this is proper documentation and acknowledgement

of other people's ideas. This can be done through proper referencing which is the consistent acknowledgment of authorship to avoid plagiarism and copyright violation. In any case, stealing from a single author without acknowledgement is intellectual dishonesty and plagiarism, whereas picking the thoughts of many authors and appropriately acknowledging them is research.

### Ways of Documenting in Literature Review

'Documentation' refers to the acknowledgement and identification of materials such as data, quotations and opinions from various sources which have in one way or another contributed to the quality and content of the literature review. Documentation is an essential part of the research process. It applies not only to literature review, but all aspects of the research work and other academic writings such as term papers, seminar/conference papers, articles, speeches, *et al*, in which idea, materials or quotations from other sources are used.

### Roles of Documentation

The documentation plays an important role in legal research. First, adequate documentation provides readers with information relating to the source(s) of the writer's information. This can serve two purposes:

- In cases of those who may doubt either the authenticity of the information supplied or the validity of the writer's interpretation of the reported information, documentation can enhance their confidence in the writer's paper.
- In cases of those who may wish to read more about the issue discussed or information supplied, documentation will provide all the necessary information about the sources. This is very important especially for empirical legal research so that readers can validate or refute the conclusions through observable materials.

Secondly, documentation serves as a security against accusations of plagiarism. If a writer uses several words, or data from another writer or source without adequately documenting the source, he will be guilty of plagiarism which is seriously condemned in the academic circles.

### Timing and Content of the Documentation

The writer may not document materials if the information supplied is one that is a common knowledge, such as writing that 'Nigeria became independent on 1<sup>st</sup> October, 1960'. This is a statement of fact which is generally known to be true and uncontroversial. Besides, when an opinion, sentence or idea is the writer's own original thought, there is no need to document except if he is quoting from an earlier work he did. But in situations where the information is a specialized one or one that is controversial, there is the need for documentation, such as when making assertions about the rate of inflation, spate of insecurity or infidelity in Nigeria or the level of unemployment. This may become imperative to avoid fabrications by the writer and give confidence to the information, there will be a need to reference the information properly.

In addition, when three more words or sentences are quoted verbatim from another person or publication, the writer should so acknowledge them. The writer should also document sources of technical information used in the paper, including tables and diagrams, if they are not his original work.

### Theoretical Framework in Legal Research

The theoretical framework is one of the most important aspects in the legal research process, but is often misunderstood and misconstrued by doctoral candidates, scholars and Master's students as they prepare their thesis research study or write an academic paper. It must equally be noted that literature review and theoretical framework are not the same, if not, they would not be written separately. The importance of theory-driven thinking and acting is stressed in relation to the selection of a topic, the development of research questions, the conceptualization of the literature review, the design approach and the analysis plan for the dissertation or thesis study.

The theoretical framework is one of the most important aspects in the research process and a component that is often minimally covered in doctoral coursework. A writer has thus described the struggle to identify and prepare the theoretical framework for the dissertation as "the most difficult but not impossible part of the proposal". Some Scholars have also notably observed that some doctoral students often express confusion, a lack of knowledge and frustration with the challenge of choosing a theoretical framework. But the essence of a theoretical framework cannot be overemphasized. The theoretical framework is the foundation from which all knowledge is constructed (metaphorically and literally) for a research study.

It serves as the structure and support for the rationale for the study, the statement of the problem, the purpose, the significance and the research questions. The theoretical framework provides a grounding base or an anchor, a fulcrum and a foundation upon which the literature review is predicated and most importantly, the methods and analysis. An author emphatically stressed the importance of identifying one's theoretical framework for a dissertation study as follows:

*A researcher's choice of framework is not arbitrary, but reflects important personal beliefs and understandings about the nature of knowledge, how it exists (in the metaphysical sense) in relation to the observer, and the possible roles to be adopted, and tools to be employed consequently by the researcher in his/her work.*

Without a theoretical framework, the structure and vision for a study is blurred, much like a house that cannot be constructed without a blueprint. But a research proposal which entails a theoretical framework makes the dissertation studies to be strong and well-structured with an organized flow from one chapter to the next. Silver and Herbst, and even Lester have acknowledged that journal submissions are often rejected for being atheoretical, or having no theory.

This makes the teaching, studying and understanding of theoretical framework in a research work to be indispensable and very invaluable. Accordingly, this part of our paper shall provide a general overview of the theoretical framework and it will further highlight how to understand, select and integrate a theoretical framework into one's research when writing a dissertation or a thesis.

### Conceptual Definition of Theoretical Framework

The theoretical framework is the "blueprint" for the entire dissertation inquiry. It serves as the guide on which to build and support your study and also provides the structure to define how one will philosophically, epistemologically, methodologically and analytically approach the dissertation as a whole. Eisenhart defined a theoretical framework as "a

structure that guides research by relying on a formal theory, constructed by using an established coherent explanation of certain phenomena and relationship."

Hence, the theoretical framework is made up of the selected theory (or theories that under-grounds one's thinking with regards to how you understand and place to research your topic, as well as the concepts and definitions from that theory that are relevant to your topic. Lovitts empirically defines criteria for applying or developing theory to the dissertation that must be appropriate, logically interpreted, well understood, and align with the question at hand. Sarter expressed the import of all theoretical framework when he stated there is "limited usefulness of findings and conclusion" when a study is not justified by a theoretical framework. As such, it is obvious that there are evidence across disciplines that the inclusion of a theoretical framework certainly leads to a sound and quality research.

Thus, a legal researcher must be able to situate his research work within an existing theory or theories through a coherent and functional theoretical framework. It is inconsequential that there are many identified theories as expected on a treatise on any area of law, but a good research work must be situated and pin-pointed in a chosen, identified theory, for instance: the humanist elongation theory, the consumer rights' theory, the agency theory or the homosexual-ailment philosophy. This also would not preclude a researcher from proposing a mix of more than one theory as the basis of his research work, whilst aligning with one.

### Distinguishing between a Theoretical Framework and a Conceptual Framework

Sometimes, theoretical frameworks are equated with conceptual framework, but these terms are neither interchangeable nor synonymous. The major differences between the two terms are as follows:

1. A theoretical framework is derived from an existing theory or theories in the literature that has already been tested and validated by others and is considered a generally acceptable theory in the scholarly literature. Traditionally, theoretical frameworks are developed a priori, or before data collection in quantitative designs. But a theoretical framework may also involve a theory that is developed in the course of the dissertation study. Theoretical framework often emerges in data analysis phase. On the other hand, the conceptual framework offers a logical structure of concerned concepts that help provide a picture or visual display of how ideas in a study relate to one another within the theoretical framework. It is not simply a string of concepts but a way to identify and construct for the reader's epistemological and ontological worldview and approach to the researcher's topic of study. The conceptual framework also gives the legal researcher an opportunity to specify and define concepts within the problem.
2. A conceptual framework on the other hand enables the researcher to understand how the research problem will best be explored, the specific direction the research will take and the relationship between the different variables in the study. On their own, Miles & Huberman categorized it as a system of concepts, assumptions and beliefs that support and guide the research plan. The authors align their thoughts with them and opines further that a conceptual framework sets the tone for the research enquiry.

### Examining Different Techniques in Theoretical Framework.

It has often been said that there are so many theories from which a researcher can adopt one or a combination of two or more in explaining the research. In a legal research, the recent findings show that some of the theoretical frameworks that can be utilized are:

- a. Historical research
- b. Comparative research
- c. Analytical research
- d. Statistical research
- e. Ethnographic research
- f. Teleological research
- g. Empirical research

Theoretical frameworks help to situate the research within a particular approach in explaining the problem, thus giving the researcher a clear focus. The following list details a sampling of commonly used theories across disciplines. They are:

- Transformational/relational Theories
- Agency Theory
- Situational theories
- Behavioural theories
- Nature and Nurture Theory
- Inter-subjectivity theory
- Marxist theory
- Functionalist theory
- Change theory
- Feminist theory, etc

### Integrating the Theoretical Framework in Legal Research Methods

The theoretical framework and literature review are intrinsically linked. Most times, a theoretical framework can be used as a guide for logically developing and understanding the different, yet interconnected parts of the literature review. The theoretical framework and literature can be developed harmoniously, and then be used to support the data, interpret the findings and underlie the recommendations.

One of the many values of having a clearly identified theoretical framework for a dissertation study is the ability to use the material gathered to support and build the methodological plan. The use of a theoretical framework is not limited to problem formulation and the literature review – it should guide the study throughout the dissertation. Theories generally provide clear directions for how the researcher has moved beyond intuition and “pre-theoretical commitments” to a solid basic for understanding and conceptualizing a topic within the context of the study. A theoretical framework permits the researcher to identify the design and the evaluation of a problem in a way that will allow the theory to be measured, tested and extended to serve as a guide for the design of a study. A good theoretical framework will consequently offer the reader all the pieces needed to understand how the researcher has assembled the study.

### Concluding Remarks

In conclusion, a legal researcher must engage in a worthwhile literature review along the lines of his proposed study and in similar or related literature in order keep the work focused, assess the merits of existing studies with a

view to conducting further, more robust and better research, avoid duplication of existing studies and assess valuable information on the proposed study and elicit an instant theoretical framework in justifying the research questions, the statement of the problem, the significance of the study, and find plausible ways of helping to determine the research design and the analysis plan. This is also essential when writing an academic paper as it allows some measure of focus, insight, plausible background to the legal enquiry and a thematic construction of the intellectual interrogation. Thus, literature review provides an illuminating expose on a proposed research and a sound theoretical framework makes the dissertation richer and gives a clear explanation to justify the findings and conclusions reached in the dissertation or thesis. Both are essential to conducting a valid, robust, beneficial, effective, superbly enriching and intellectually stimulating legal research and neither can exist without the other in the hatching of a worthwhile legal writing. It is hoped that legal researchers the world over can have a better understanding of these important concepts, so as to deeply enrich their legal writing and give same both content and structure as an integral part of their legal enquiry.

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