Module V

Empirical Legal Research Methods

Note: This reading resource is a part of the '*Legal Research and Writing Course*' by Lawctopus Law School.

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Learning Outcomes

This module concerns empirical research methods. Here, learners will learn how to:

Sample from a population;

Conduct meaningful interviews for empirical legal research;

Conduct ethnographic research through surveys and participant observation; and

How to analyse empirical data using coding

The Example

Consider the following research question and hypothesis about the Surrogacy (Regulation) Act, 2018, which prohibits all commercial surrogacy in the country. We will refer to these throughout the module:

Research Question:

Has the frequency of commercial surrogacy significantly reduced post the Surrogacy (Regulation) Act, 2018?

Hypothesis:

The frequency of commercial surrogacy has **not** significantly reduced post the Surrogacy (Regulation) Act, 2018.

You can immediately spot at least two words or phrases that need more clarity.

What is "significant reduction"? How is "frequency" defined?

At the beginning of your research, you must settle on an understanding of these terms.

We discussed in Module II that these terms should be defined along with the statement of the research problem itself, so that the reader is on the same page as you from the start.

E.g., you could define "frequency" as monthly frequency, i.e. the number of cases every month in which a commercial surrogate was hired by contract (whether or not the pregnancy was ultimately carried to term).

Further, "significant reduction" could be defined as a reduction of 10% or more.

Sampling

We discussed sampling in detail in Module III.

Let's now apply it to the problem at hand.

You want to know if the frequency of commercial surrogacy has reduced – *where*? Suppose you decide to conduct your study in Delhi and Haryana. How many surrogate women (present or past) should you interview in Delhi and Haryana for thorough research?

Once the sample is decided, you can move straight to the data collection process. There are several research *methods* used to collect data. Three of them are discussed in detail below: interview, survey and participant observation (ethnographic research).

Interviews

All interviews should be conducted professionally. The interviewee should be treated with respect and all steps should be taken to ensure his/her comfort and security. Here are a few things you should always keep in mind while conducting interviews.

Before the Interview

Script: Prepare for the interview well. While it is good to aspire for an organic conversation during the interview, you must also avoid a directionless chat. This can be done by preparing beforehand an interview script (more rigid) or a set of questions (less rigid) and explaining the scheme of the interview to the participant at the very beginning. Within this pre-decided broad scheme, you can let the interviewee/participant take control of the discussion.

Pro Tip: Don't lose sight of your hypothesis! Your questions must be tailored to it.

Confidentiality and Security: You must always ensure the participants' safety, and confidentiality is often a big part of this. Depending on the context of your research, participants may face threats of harm to life & health or other tangible harms such as fear of arrest, loss of employment and/or reputation etc. Therefore, the interview must be held in a confidential setting where the participant's identity is not exposed. Further, you should conduct the interview at a place without disturbances or distractions.

Pro Tip: Taking visible steps to ensure the participant's safety also makes the participant feel more open and comfortable with the interview process.

Informed Consent: At the outset, the interviewee must be told that the interview is completely voluntary, and s/he should feel comfortable in terminating it whenever s/he

wants (and if the participant exercises this option and decides to end the interview, you must immediately respect that decision.) You should also explain the purpose of the interview, say how long an interview usually lasts, and invite him/her to ask questions before the interview begins. A written consent form may be used. Permission must specifically be taken for taking notes or using recording devices.

Duration: Keep enough time for the interview so that you can collect all important facts.

In deciding this, don't just consider the time you need to ask your questions – in many interviews, the participant has so much to tell that he/she goes beyond the scope of the question asked and keeps talking. This is a sign of a good interview, as it shows that the participant is comforting speaking to you.

A good interviewer will try to not break the participant's flow of speech. Make sure you have enough time for this.

Support: It is good to tell the interviewee that s/he is welcome to bring a supporting person with them if s/he wishes. You want to make him/her feel as comfortable in the process as possible.

Asking Questions during the Interview

Language: The interview must be conducted in a language the participant is comfortable with. Preferably, the language used should be the participant's native tongue. Not only does this make him/her most comfortable talking to you but also ensures better expression of ideas by him/her.

Respecting his/her identity: You must be careful in acknowledging and respecting the participant's identity which might be different from yours. You must be sensitive towards his/her individual experiences. A good interviewer will do as much research as possible

about the group to which the participant belongs to know more about his/her possible experiences.

Sometimes, the interviewee belongs to a vulnerable group, in which case there is an even heavier obligation to be sensitive and careful. Often, the best practice is to have an interviewer having the ability to speak meaningfully with the participant. To the extent possible, e.g., in our surrogacy research example, commercial surrogates should be interviewed by women. This makes the interview process more respectful and comfortable for the participant.

Body Language: It is very important to maintain the right behaviour and body language during the interview. The participant is likely to respond more positively if you appear interested in and receptive to what s/he has to say.

1. A good interviewer keeps acknowledging the participant's responses. Encouraging nods and words like "hmm", "right", "yes", "I follow" etc. are effective tools to tell the participant that you're listening with keen interest.

Again, this is best done in the participant's native language.

2. Your body language should be *neutral*. This means you shouldn't act surprised when you hear a response you didn't expect, disgusted when you hear an opinion you don't like, or excited when you hear facts or opinions you wanted to hear, etc. Such expressions put you in the focus, which is not the goal. The idea is to listen more and speak less.

Chill! There is a thin line between being zealous and overzealous. Overzealous interviewers bombard the participant with multiple questions in the same breath. This is overwhelming for the participant and s/he might give shorter answers to each question in an attempt to quickly answer all questions (lest s/he forget the remaining questions). Don't do this. Ask one question at a time. Elicit all information on that point before asking the next question.

Bad Questions: There are two kinds of questions you must always avoid.

1. Value-laden questions, i.e. questions that don't sound *neutral*, should be avoided.

   E.g., do not ask *"how do you manage such a terrible lifestyle?"* It is possible that your interviewee actually likes his/her lifestyle, and value-laden questions like this one can alienate him/her from you. This harms the interview process.

2. You should also avoid "why" questions. E.g., if the participant says that she strongly thinks surrogacy is a noble profession, it is not a good idea to ask, *"why do you say*

that?" The desire to know more about her opinion is natural, but there are better ways of asking her to say more.

E.g., you can maintain an encouraging nod and ask, *"would you like to tell us more?"* The two questions ask the same thing, but the former is likely to put the interviewee on the defensive, as if she has been asked to defend her stance. The latter question sounds less confrontational and puts her in control.

Take a Team: Ideally, the interview should be conducted by a team of at least two persons, one asking questions and the other taking notes. It is tough for one person to engage meaningfully with the participant and simultaneously take notes (it requires breaking eye contact repeatedly!).

However, it is often not possible to take a team. It is hence advisable that individual researchers build the necessary skills for talking and taking notes at the same time.

Of course, if you're recording the interview using a technological device, you might not need a second person in your team. But recording devices must be used only with prior informed consent of the interviewee, and while planning the interview process, you must always account for the possibility that s/he will say no to the use of a recording device.

In any case, it is good to have a notetaker on the team. You never know when technology might decide to malfunction. Further, participants often convey emotions that an audio recorder cannot capture.

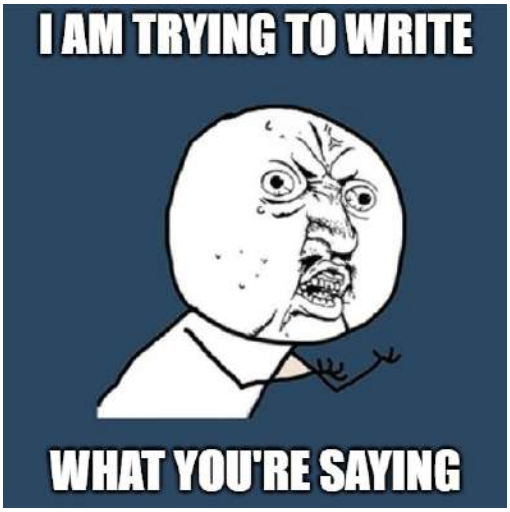
E.g., if s/he cries, smiles, is visibly nervous/scared, or even makes vulgar gestures in anger, a human notetaker can record it, but the technological device will miss it.

If the context requires, you must also have an interpreter on your team. You don't want language barriers to ruin the interview. You must also ensure that the interpreter follows the rules discussed above – s/he should respect the participant's identity, phrase questions neutrally and acknowledge responses.

Taking Notes during the Interview

No filtering: To the extent possible, everything should be noted down by the notetaker. Don't filter content at the stage of the interview or survey etc. While any filtering, sorting or analysis can happen at the later stage when you're analyzing data, it is possible that you won't be able to conduct the interview or survey again (or that doing it will cost much time and resources). So, even if your instinct tells you something is irrelevant, take it down for now and think over it later.

Speed/Accent Adjustments: Often, keeping pace with the speaker is tricky. The notetaker must be efficient in using acronyms and abbreviations wherever possible to ensure nothing is missed.



The notetaker and interviewer should also have a talk in advance about controlling the pace of the interview – it is the job of the interviewer to ensure that the pace is slow enough to enable taking notes and fast enough to be an organic conversation (it is important to ensure that the participant's natural flow is not disturbed).

Despite this, if something gets out of hand during the interview, the notetaker should (occasionally) feel free to politely request the participant to speak slowly.

Hurdles: Finally, the notetaker must also record the obstacles, if any, faced during the process. This is essential to preserve the integrity of the research – researchers should be honest about how reliable their research output is.

After the Interview

Follow up: Quickly go through your notes to identify the points you have missed, if any. Ask the interviewee any follow-up questions you have, and request clarifications on missed points.

Respect: Thank the participant for his/her time and investment and tell him/her how to contact you if s/he wants to. Invite him/her to ask questions, if s/he has any. Keeping with your promise of confidentiality, store and backup your notes and/or electronic recordings in a secure location.

Finish Notes: Immediately after the interview, note down spontaneous observations, if any.

E.g., if the recording device stopped working, there were any surprises during the interview, or the participant was visibly uncomfortable during the interview, you should note it down. You should also spend a couple of minutes clarifying any unclear scribbles in your notebook. To the extent possible, also make use of technology and transcribe all your notes on a computer. All of this should happen as soon as possible after the

interview. This is because if there is time lag in between, you might forget what took place in the interview, what the abbreviations or symbols used in your notes mean, etc.

Surveys

Surveys are like interviews. But they are a *broader* exercise than interviews.

While an interview works through personal, one-on-one communication between you and the participant, a survey works through circulation – you simply send the survey questions to your intended audience and request them to write down their answers or, in case of MCQs, select the right option.

Many points discussed above in the "Interview" section apply to surveys as well:

- Informed consent to participate must be obtained from participants by clearly telling them the purpose and sponsors of the research.
- The survey questionnaire must be prepared in a language the participants understand (it is preferable that they have native fluency in it).
- Confidentiality of the responses must be preserved if the participants demand, and they must be given the opportunity to demand so.
- Use courteous language and be sensitive to your audience.
- Ask neutrally worded questions which are neither value-laden nor suggestive.
- While a survey must have fixed questions, such questions force participants to think in boxes. For this reason, participants often have additional comments to offer. They might also want to give you feedback on the quality of the research and how to improve the questionnaire. Space should be left at the bottom for any such remarks or feedback.

Surveys may be conducted online or offline. Both have their pros and cons.

Online surveys, such as those conducted using forms (e.g. on SurveyMonkey or Google Forms) or those sent over e-mail are easier to distribute quickly to many people. But such surveys are limited in their reach. They cannot reach people who lack access to computer & internet facilities or otherwise do not know how to operate a computer.

Instead, you could reach such people by using offline paper surveys which you could hand out and later collect from participants.

Participant Observation (Ethnography)

Participant observation is a way of data collection in "ethnographic" (study of cultures) research. As the name suggests, this is significantly different from surveys and interviews – here, rather than just directly asking questions to the participants, a participant observer *studies* them.

One could do this by reading about the participant group, through discussions or even by living among the participants. The choice of method depends on the goals of the research.

Some participant observers live undercover (i.e. hide their identities) to conduct research. Do you think this is ethical? What about the participants' informed consent? Read this interesting article about the ethics of participant observation.

Our discussion so far covered the main methods of data collection in ethnographic research. What comes next is preserving the data collected using these methods.

Analysis

Once collected, data needs to be analysed. Here are a few tips to conduct analysis.

Analysing Quantitative Data

Once numbers are collected, they should be organized and stored in a way that they are capable of being analysed and understood. Data organisation must be done in a way relevant to your research question and hypothesis, and you must make full use of technological tools to do this work.

E.g., Microsoft Excel is an excellent tool that allows you to collate your numbers in a tabular form. Excel also allows you to then convert this tabular data into other forms, such as linear graphs, bar graphs, pie charts etc.

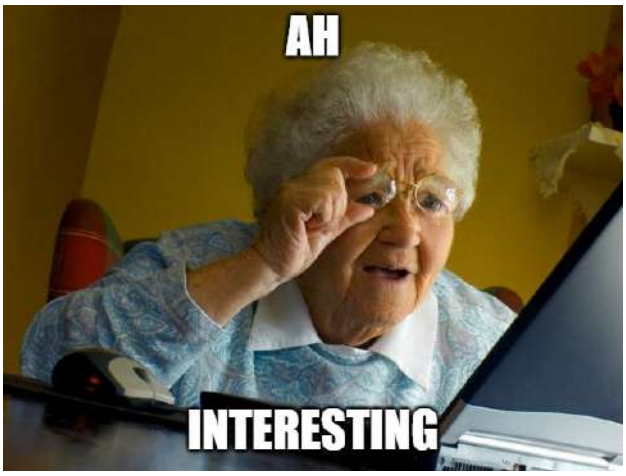
This processed form of data is much more useful than the raw data you initially feed into the program and can lead you to concrete findings on your research question. (You can learn how to use Excel here and here. Some additional tips are here.)

Apps like SAS, Tableau Public and RapidMiner are more advanced. They offer predictive analysis as well – they analyse past data to predict future events.

Analysing Qualitative Data

This is a very contentious area. How do you convert qualitative data into objective figures for analysis? Three methods of data analysis are commonly discussed:

Classical content analysis (Coding): This is the most common method of analysis. The researcher uses different codes/labels to classify data.



E.g., an interviewed physician might have said that there is no change in the number of commercial surrogacy operations she has administered or overseen after the enactment of the Surrogacy (Regulation) Act, 2018, and an interviewed commercial surrogate might have said that the market for commercial surrogacy has drastically reduced and she now has trouble finding work.

These statements will be placed under different labels to distinguish them for the purposes of analysis.

Here are the steps involved in Coding:

1. Research Aim: Revisit your research aim and carefully read it. This will help you focus your mind and execute the other steps in this exercise.
2. Raw text to relevant text: There is no set rule as to how this should be done. But this exercise should be guided by your research aim. When you approach the raw data from that perspective, you would be able to extract the relevant text from it. Here are some factors you can consider in deciding the relevance of the text:
    - It relates to your research purpose.
    - It clarifies your thoughts.
    - It occurs repeatedly in the information.
    - It just seems important.

There are at least three ways to ensure that you don't filter out important information. The first is to not analyse data alone. When three people analyse the same data, chances are lesser that important stuff will be missed out.

A second way is to have someone from the participant group read the raw text and conduct the same exercise – their perspective on relevance of data is likely to be very helpful. The

third way is to send the extracted *relevant* text to a few members of the participant group. They can tell you if there's something else that should be added.

3. Relevant text to repeating ideas: You will find some ideas being said by multiple people in the relevant parts of their interviews. They can be identified by synonyms and similar words etc. These should be noted carefully.

   Further, give each idea a name – a code – to ease the following process.

   This is the most labour-intensive step. You will have to revisit the data repeatedly to ensure that the categorisation of ideas is satisfactory.

4. Repeating ideas to themes: The repeated ideas coded and identified above should now be grouped together. This will reveal broad themes. To ensure that you group only similar ideas together, you can refer to pre-existing literature to note how ideas are grouped there.

   You can also share the grouped themes with a member from the participant group to take their feedback on the grouping.

5. Themes to Story: This is where you create a story using the themes you have. You explain how you derived the themes from raw data. This step completes your analysis.

   One of the most basic qualities of a researcher is the tenacity to *repeat the process*. This ensures that you do not miss out on any ideas or themes while conducting your analysis, and hence that your story is complete.

Discourse analysis: This analysis is hardly interested in the content of the data collected. Rather, it focuses on the kind of discourse that is happening. What kind of words are being used? Is the grammar changing? Is the language different? Is the speaker hesitating? Depending on your research question and hypothesis, discourse analysis could be relevant in some settings.

E.g., if you are conducting an experiment to know if people from a given village have more respect for a lawyer than for a doctor, you could request the participants to speak to lawyers and doctors, and note if the participants' language & behaviour are different in the two cases.

Grounded theory method: Under this method, you don't approach the data with a previously decided hypothesis in mind. Instead, you read the data carefully and identify possible research points. Many researchers believe this is a more organic way of doing

research which comports with inquisitiveness. Many others criticise this approach because they believe that it lacks discipline and focus.

Key Takeaways from this Module

Interviews are one method of collecting data. A few general tips are as follows.

- Before the interview: Prepare a script or questionnaire. Choose a confidential and secure place for the interview. Obtain informed consent from the participant after explaining the purpose of the interview. Keep enough extra time for the interview to accommodate the participant's desire to talk. Finally, tell the participant that s/he is welcome to bring a supporting person with them.

- Asking questions during the interview: Conduct the interview in a language the participant is comfortable with. Respect his/her identity and be sensitive to his/her individual experiences (even more so when s/he belongs to a vulnerable group). Maintain a neutral but encouraging body language -- give nods and say words like “hmm”, “right” etc. to communicate that you're listening. Don't ask too many questions at once, and never ask value-laden or “why” questions. Take a team if need be, and the team should comprise of a notetaker and an interpreter, according to the context.

- Taking notes during the interview: Don't filter content at the notetaking stage. Any filtering, sorting or analysis can happen at the later stage when you’re analysing data. The notetaker must keep up with the speaker's speed (though there can be prior agreement between this and the interviewer), and must also record the obstacles, if any, faced during the process.

- After the interview: Ask the interviewee any follow-up questions to clear your doubts, if any. Thank the participant for his/her time and investment and tell him/her how to contact you if needed. Invite him/her to ask questions, if there are any. Afterwards, finish your notes, write down spontaneous observations and clarify any unclear scribbles. Also transcribe your notes if possible. Both the finishing touch and the transcription should happen as soon as possible after the interview – if there is time lag in between, you might forget what took place in the interview, what the abbreviations or symbols used in your notes mean, etc. Store and backup your notes and/or electronic recordings in a secure location.

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Data analysis must be done in a way relevant to your research question and hypothesis, whether the data is qualitative or quantitative. Some tools to analyse quantitative findings are Excel, SAS, Tableau Public and RapidMiner. Qualitative data may be processed using one of three methods, i.e. classical content analysis (coding), discourse analysis or ground theory method.

Recommended Resources

Empirical Legal Research Study Design (Yale Law School)

Empirical Research Services (Harvard Law School)

General Guidelines for Conducting Research Interviews (Free Management Library)

How to Choose: Zotero, Mendeley, or EndNote (Washington University)

Jessica Marie Falcone, *'I spy...': The (Im)possibilities of Ethical Participant Observation with Antagonists, Religious Extremists, and Other Tough Nuts* (Michigan Discussions in Anthropology 18: 243–282, 2010)

Learn Zotero: Step by Step Tutorial (Roshan Ali, YouTube, 23 July 2017)

Lisa Webley, *Qualitative Approaches to Empirical Legal Research* in *Peter Cane & Herbert M. Kritzer* (eds.), The Oxford Handbook of Empirical Legal Research (OUP 2010)

The Lund-London Guidelines on International Human Rights Fact-Finding Visits and Reports by Non-Governmental Organisations (Raoul Wallenberg Institute of Human Rights and Humanitarian Law, International Bar Association)

Vidhi Centre for Legal Policy, COMMERCIAL COURTS ACT, 2015: AN EMPIRICAL IMPACT EVALUATION (10 June 2019)

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