

A STUDY ON LEGAL RIGHTS AND CHALLENGES OF SURROGATES IN INDIA

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ABSTRACT

It is an empirical study on legal rights and challenges of surrogates in India. The word “surrogate” is derived from the Latin word surrogates means a “substitute”. Right to reproduce their child is an unalienable right of every existence. Parenting is a life altering and most permanently satisfying experience. The absence of a child is considered as a stigma to the family. There are numerous cases where the incapability to have a child led to wedded breakdown. The incapability to have a child which is known as infertility in medical terms is a global problem. According to the WHO Report the prevalence of infertility across the globe including India is around 10- 15 percent. This research aims to study on the challenges of surrogates, whether it has been considered only as commercial business, to find out the reasons for the practice of surrogation, to explore the social stigma on surrogacy which is considered as prostitution. The results show that surrogacy is a part of commercial business in India. Poverty being a factor to become a surrogate mother this may be due to that when there is a monetary need for women and has financial burden they tend to work as surrogate mother and women feel it is her right to body to do whatever she feels to do and also there are women who want to make other family happy by giving birth to child not only for monetary purpose also agreed that they should be law to protect surrogacy this might be due to that this practice also involves human trafficking and breach of trust so to avoid all this there should be proper law to protect surrogacy. Basically women are emotionally attached to their child when they are in the womb itself so after birth one has to give the child which she carried for months is the difficult part.

KEYWORDS – Surrogation, women, infertility, rights, challenges

INTRODUCTION:

It is an empirical study on legal rights and challenges of surrogates in India. The word “surrogate” is derived from the Latin word surrogates means a “substitute”. In Black’s Law Dictionary, Surrogacy is an agreement where a woman agrees to be artificially inseminated to carry with the semen of another woman’s husband. Right to reproduce their child is an unalienable right of every existence. Parenting is a life altering and most permanently satisfying experience. The absence of a child is considered as a stigma to the family. There are numerous cases where the incapability to have

a child led to wedded breakdown. The incapability to have a child which is known as infertility in medical terms is a global problem. According to the WHO Report the prevalence of infertility across the globe including India is around 10- 15 percent.

According to the Hindu tradition it also offers cases of surrogacy that shows the secretiveness due to which practise of surrogacy still encircles us. In Bhagavata Purana, Vishnu ji heard Vasudev’s prayers praying to Kansa not to kill all sons being born. Vishnu heard these prayers and had an embryo from Devika’s womb transferred to the womb of

Rohini, the other wife of the vasudev. Rohini then gives birth to the baby Balaram, brother of Krishna and intimately raises the child while Vasudev and Devki tell Kansa that the child was born dead. The History of surrogacy also belonged to the Mahabharata, as in Mahabharata Gandhari delivered a semi solid material on the place of delivering a child, Maharishi Vyas further divided that semi solid material into 100 pieces and planted them in different pans. therefore the 100 Kauravas were born. India's First IVF baby and world alternate baby Kanupriya was born 67 days later on 3rd of October 1978. The baby Kanupriya is the result of the sweats made by Dr. Subhas Mukherjee and his two mates in Kolkata. The Birth of this first IVF Indian baby was a part of tremendous debate.

There are two main types of surrogacy in India: 1) commercial surrogation and 2) altruistic surrogation. Commercial Surrogacy means for business purpose In this type of surrogacy the surrogate mom remunerated and over all the needed medical charges during the course of the surrogacy. Altruistic Surrogacy as humanitarian service In this particular type of surrogacy the surrogate mom doesn't take any type of monetary remuneration for her pregnancy except the essential needs for her medical charges. The legal rights of surrogates are under article 19(1) (d) they have the right to do the desired occupation and this will be violated if the commercial business is banned in India and Article 21 right to earn a livelihood under Indian constitution 1950. There are also other international rights which are recognized, they are article 27 of UDHR and article 15 of ICESCR.

In gujarat there is an anand baby farm for the practice of surrogation which is popular in that state. Countries like France, Germany, Bulgaria and Spain prohibit all forms of surrogation. The commerce of a child is a thing that can be hard to imagine as the child is a symbol of the love not of the plutocrat and having a child is a perception down from the conception of marketing conditioning. But

surrogacy has become a part of the marketable business in a country like India. This commercialisation of surrogacy has now become a political debate for the Indian society. The request of surrogacy is now getting veritably large and growing veritably fleetly. There are "N" figures of implicit parents in a country like India desire to hire other women to bear their child. The conception of surrogacy has revolved around an ordinary biotic function of the body of a woman into a marketable contract and hence the surrogate services are now indeed publicized. Surrogates are being enlisted and the operating agencies make huge gains from them. The commercialization of surrogacy is nothing but the giving rise to the new problem of dealing with children and setting up breeding granges which may turn women into baby producers.

In the time 2002 marketable surrogacy was legalized by the India seeing this immense growth of surrogacy in India leads to the growth of the numerous marketable surrogacy establishment who claims to have the speciality in the surrogacy law and aiding the nonnatives who came India in hunt of mom womb as a rent. Similar rallying is considered to be veritably combustive in nature as it leads the commercialisation of the baby selling and also harms the quality and the character of the vouchsafed miracle of the women's reproductive capabilities. The 228th report of the Law Commission of India has recommended to enjoin the process of marketable surrogacy and legislated the suitable legislation which allows performing humanitarian surgery which is ethical. There were certain guidelines issued by the Indian council of medical exploration for regulating surrogacy arrangements: The surrogate mom would be entitled for the financial compensation, the value of which would be decided by the couple and the surrogate mom and The surrogate mom can not contribute her own egg for the surrogacy and that she must relinquish all maternal rights related to the surrogate child. **AIM:** To study on the legal rights

of surrogates and the major reason for women to practice surrogation.

OBJECTIVES:

- To study on the challenges faced by the surrogates in india
- To explore the legal rights to practise surrogacy
- To study whether surrogacy has become a commercial business in india
- To explore on the social stigma towards the practice of surrogacy

REVIEW OF LITERATURE:

Carmeli (2010), There was a quantitative study done by Daphna Birenbaum and Carmeli to assess and compare the prevalence of Gravid surrogacy in the USA and Israel. The results of the study highlight that different countries have their own rules and methods for the process of surrogacy in their nation.

Tiwari (2019), The author had done an overview on Commercial Surrogacy in India. Though Commercial Surrogacy has been supported on the grounds that it helps both the childless couple and the surrogate, it has also been blamed on the grounds that it exploits the surrogates.

Phillips et al. (2019), A methodical review conducted by Amy M Phillips et al(2019) to examine the frequency and conditions of surrogate gestation and motherly and perinatal issues. The review revealed that surrogacy allows for parenting when it is insolvable or exceedingly delicate.

Patel et al. (2018), stated in his composition that surrogacy is an important system of supported reproductive technology wherein a woman carries gestation for another couple and a sapience into different aspects of surrogacy practices was anatomized by. Number of couples around the world require surrogacy services for colourful reasons. Although this arrangement seems to be salutary for all parties concerned, there are complex social,

ethical, moral, and legal issues associated with it.

Nicole F Bromfield (2014), The purpose of the paper is to present global surrogacy dynamics written in a manner to help the reader understand this complex phenomenon, including a discussion of the associated problems and ethical dilemmas. **Neha (2015)**, One of the fastest-growing categories of cross-border reproductive care is international surrogacy, the act of infertile clients traveling internationally to engage the paid services of foreign surrogates to carry their babies to term.

Caroline Vincent (2013), 'The procedure that became legal in India in 2002 is different from other countries which have adopted the same practice in one very critical way-India does not strive to provide a rare solution for infertile couples, but instead seeks to maintain hegemony in an increasingly viable industry. This booming market comes at a dangerous time because India has no laws in place to protect the rights of the surrogate.

Alene D (2021), The present paper addresses the legal and socio ethical context in which India introduced the Surrogacy Bill 2019. It argues that, even though the proposed legislation addresses and responds to some of the legal and ethical concerns such as informed consent and legal parentage, it stops short of ensuring the welfare and well-being of the surrogate. Second, the legal certainty of parentage and the child's rights comes at the cost of the physical and psychological well-being of the surrogate.

Nilofar Rahematkhan Sodagar (2018), as well as the contract between the intending parents and the surrogate mother-to-be. The present paper addresses the legal and socio ethical context in which India introduced the Surrogacy Bill 2019. It examines the extent to which the proposed law responds to the legal challenges and socio ethical concerns that surfaced in the course of unregulated transnational commercial-surrogacy arrangements in India. It argues that, even though the proposed

legislation addresses and responds to some of the legal and ethical concerns such as informed consent and legal parentage, it stops short of ensuring the welfare and well-being of the surrogate.

Karen Smith Rotabi (2012), The author in the paper deals about the procedures of adoption and surrogacy in different countries and between two or more countries. He concludes that Inter-country adoption has declined significantly since 2004.

Amanda Van Beinum (2012), Reproductive medical tourism is by some accounts a multibillion dollar industry globally. The seeking by clients in high income nations of surrogate mothers in low income nations, particularly India, presents a set of largely unexamined ethical challenges. In this paper, eight such challenges are elucidated to spur discussion and eventual policy development towards protecting the rights and health of vulnerable women of the Global South.

Hypatia (2011), The author in this particular paper suggests there is a possibility that we might reduce these shortcomings by framing normative and ethnographic engagement with global surrogacy as questions of reproductive justice.

Dina Sidhva (2010), This article overviews current evidence on surrogacy in India, and discusses the extent to which proposed legislation, the Assisted Reproductive Technologies Bill and Rules 2009, satisfactorily addresses social workers' concerns to ensure adequate protection of the interests of young Indian women engaged in surrogacy, as outlined in the International Federation of Social Workers' policy on cross-border reproductive care.

Erin Nelson (2013), There is a particularly acute need for certainty in the context of global trade in surrogacy services, both because of the number of parties who may be involved in creating familial relationships and because of

the vulnerabilities created as a result of surrogacy arrangements.

Karin Hammarberg (2014), This article discusses legislation, policy and practice as they relate to Australians' use of surrogacy in India and also how surrogacy works in a different manner in Australia and India.

Twine Routledge (2012), It reviews current surrogacy-related legislation and regulation in Australia and India and existing evidence about the challenges posed by transnational surrogacy, and considers how restrictive Australian legislation may contribute to the number of Australians undertaking surrogacy in India.

Vida Panitch (2013), The author concludes not in favour of a global ban but with suggestions on how developing nations that permit commercial surrogacy might better protect the negative reproductive rights of their female citizens, thereby making them less vulnerable to exploitation.

S Gola (2021), The paper talks about the legal certainty of parentage and child's rights and also it comes at the cost of physical and psychological well-being of the surrogate. The Bill also overlooks the sociocultural realities in the patriarchal hierarchies.

Raywat Deonandan (2015), Reproductive tourism is a phenomenon in which people cross international borders to access reproductive technologies. It has become a multibillion dollar global industry presenting unique legal, ethical, risk management challenges.

Deomampo (2015), Over the past decade, India has attracted would-be parents from around the globe which has helped many to build families through gestational surrogacy. Transnational surrogacy faces challenges of conventional understandings of kinship, family.

METHODOLOGY:

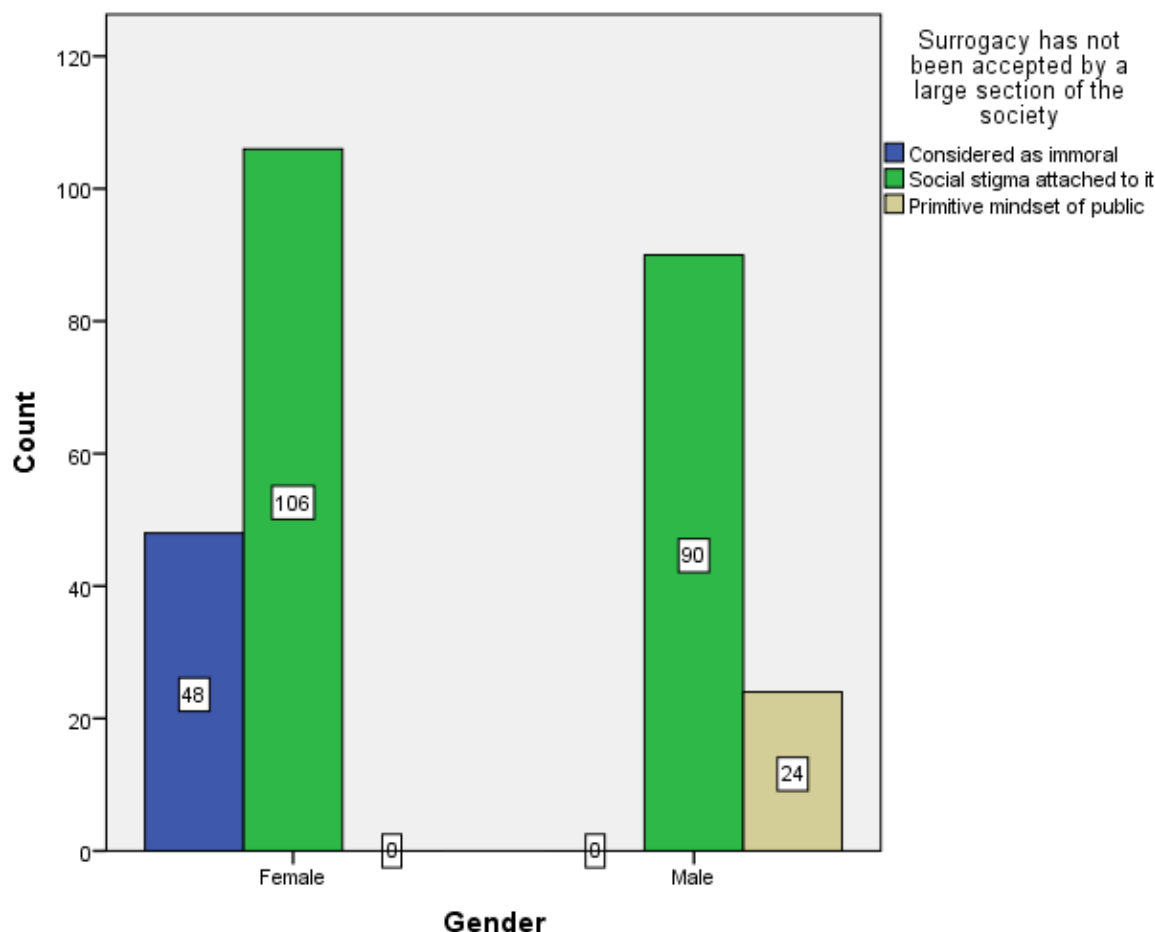
The Research method which has been followed by the researcher is an Empirical method. A total of 217 samples have been collected

through convenience sampling methods. Data collection has been done by mailing questionnaires. Independent variables taken in this research are Age, gender, Educational qualification, Marital status. Dependent

variables are whether the government is taking effective measures, social stigma attached to surrogacy, poverty and unemployment being reasons for practice of surrogacy. The statistical tool used is graphical representation.

ANALYSIS:

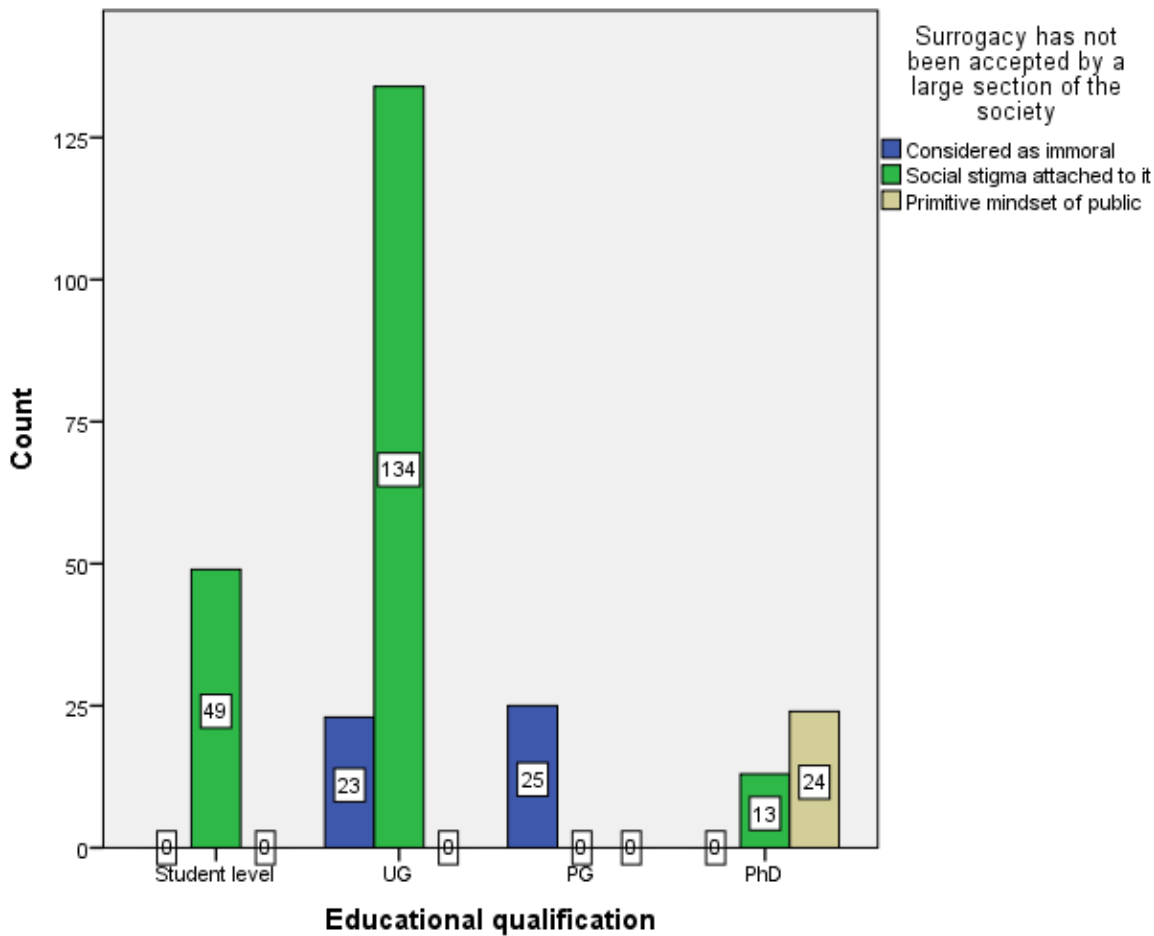
Figure 1



Legend : Figure 1 represents the Gender distribution of the respondents and their opinion as to why Surrogacy has not been accepted by a large section of the society.



Figure 2



Legend : Figure 2 represents the Educational qualification of the respondents and their opinion as to why Surrogacy has not been accepted by a large section of the society.

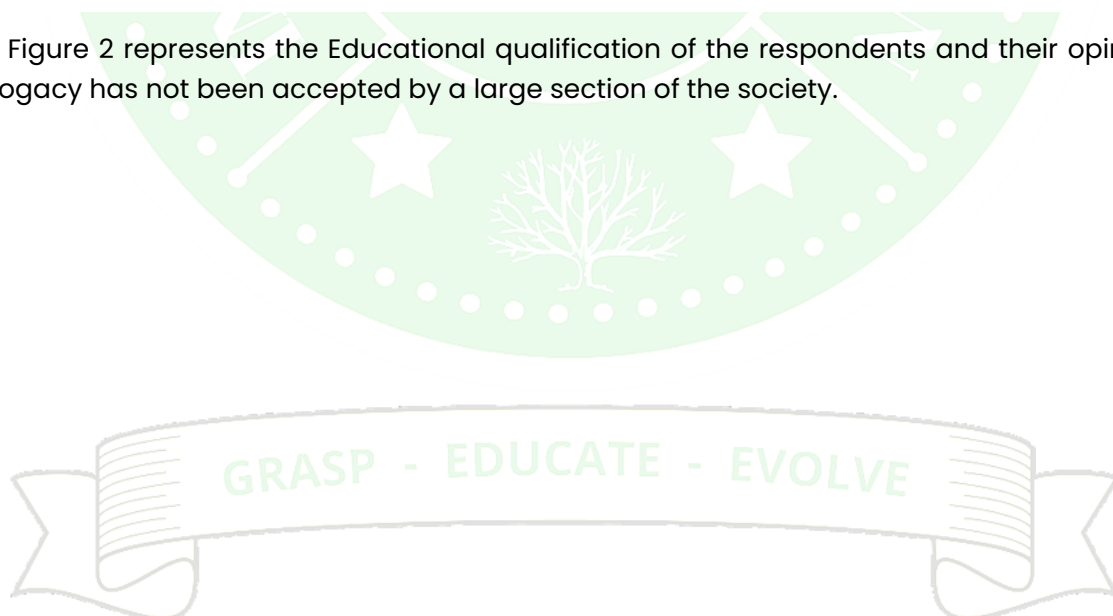
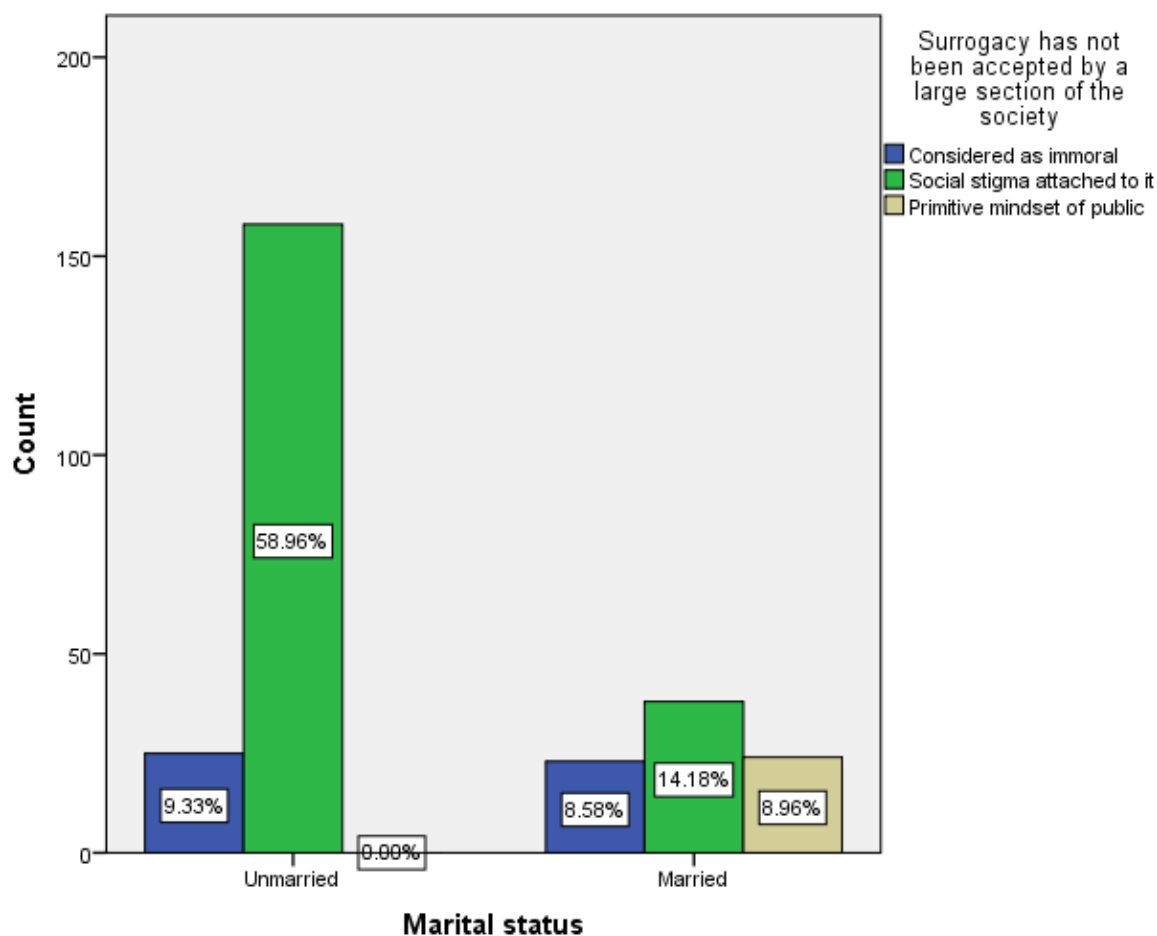


Figure 3



Legend : Figure 3 represents the Marital status of the respondents and their opinion as to why Surrogacy has not been accepted by a large section of the society.

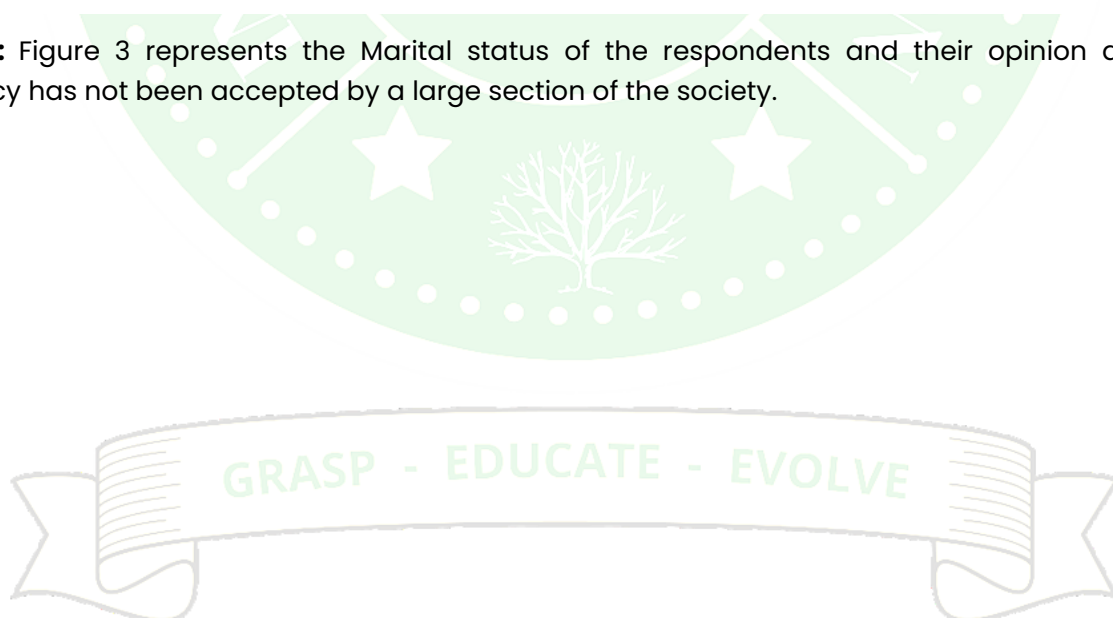
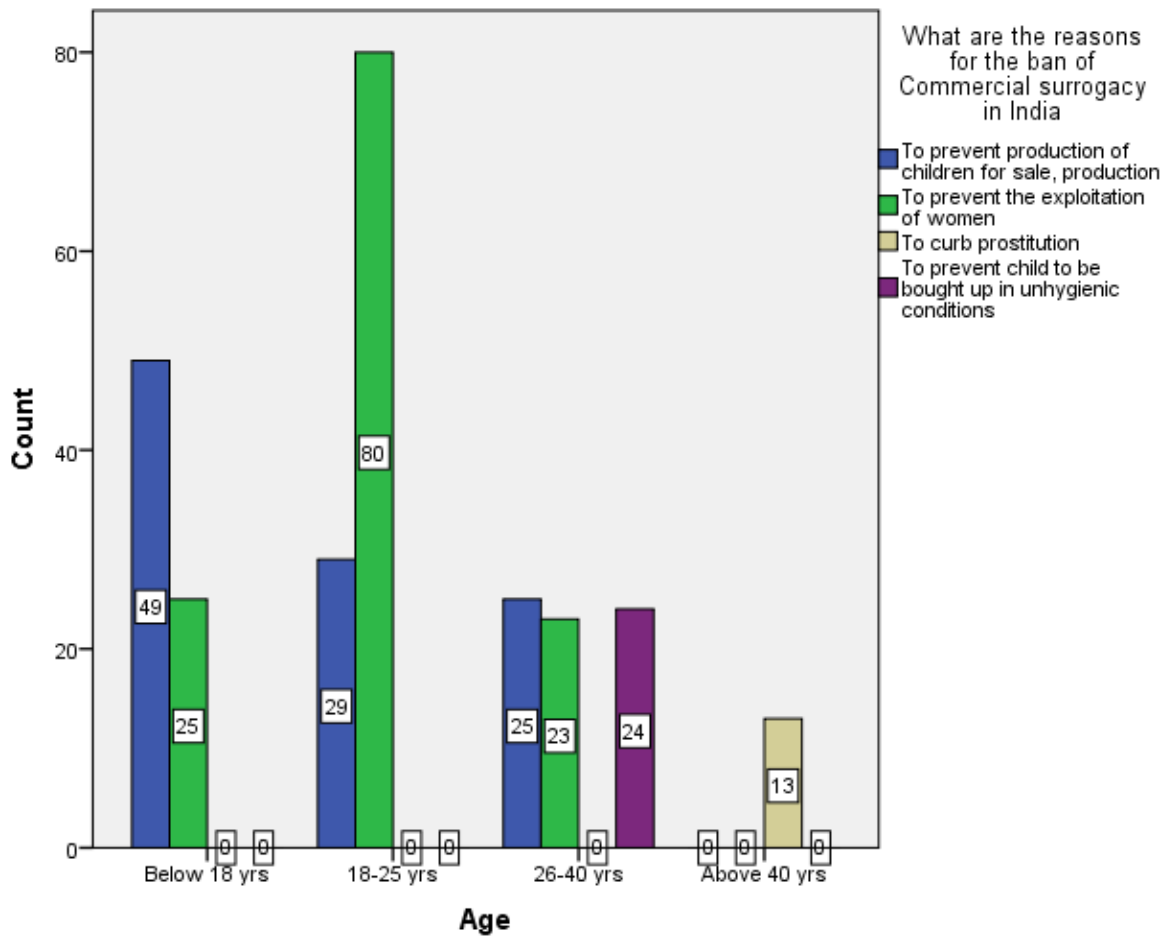


Figure 4



Legend : Figure 4 represents the Age distribution of the respondents and their opinion on the main reason for the ban of Commercial surrogacy in India.

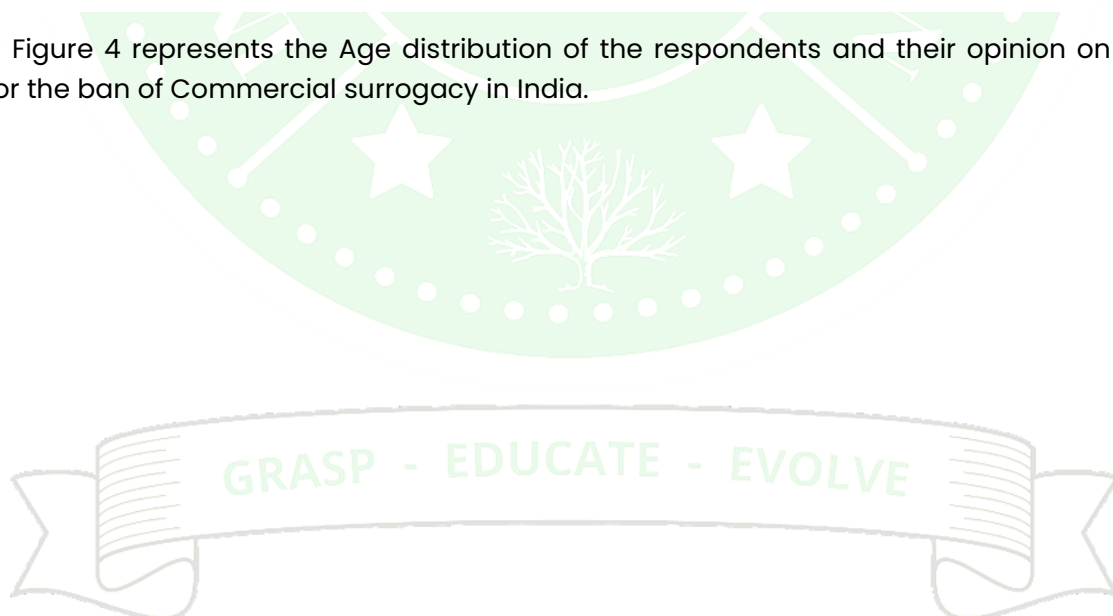
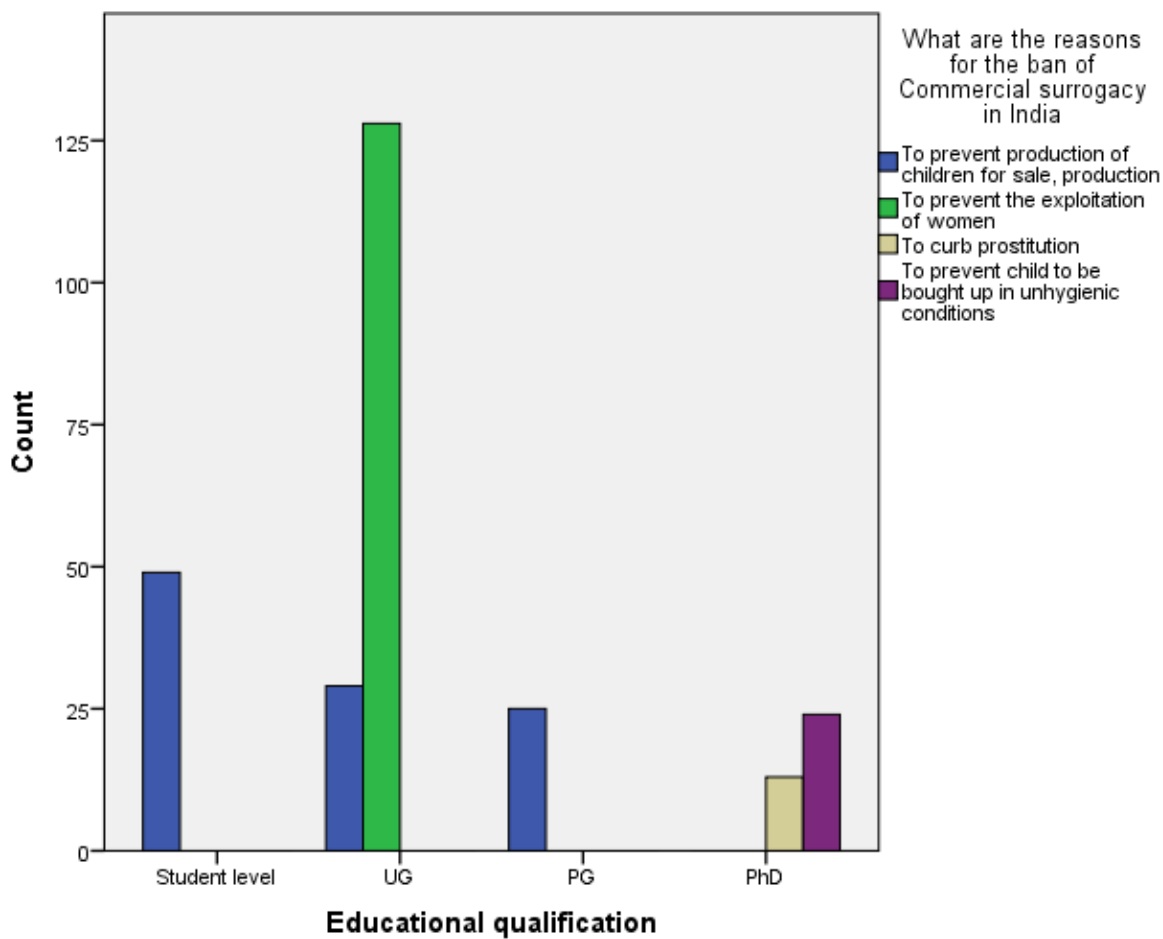


Figure 5



Legend : Figure 5 represents the Educational qualification of the respondents and their opinion on the main reason for the ban of Commercial surrogacy in India.

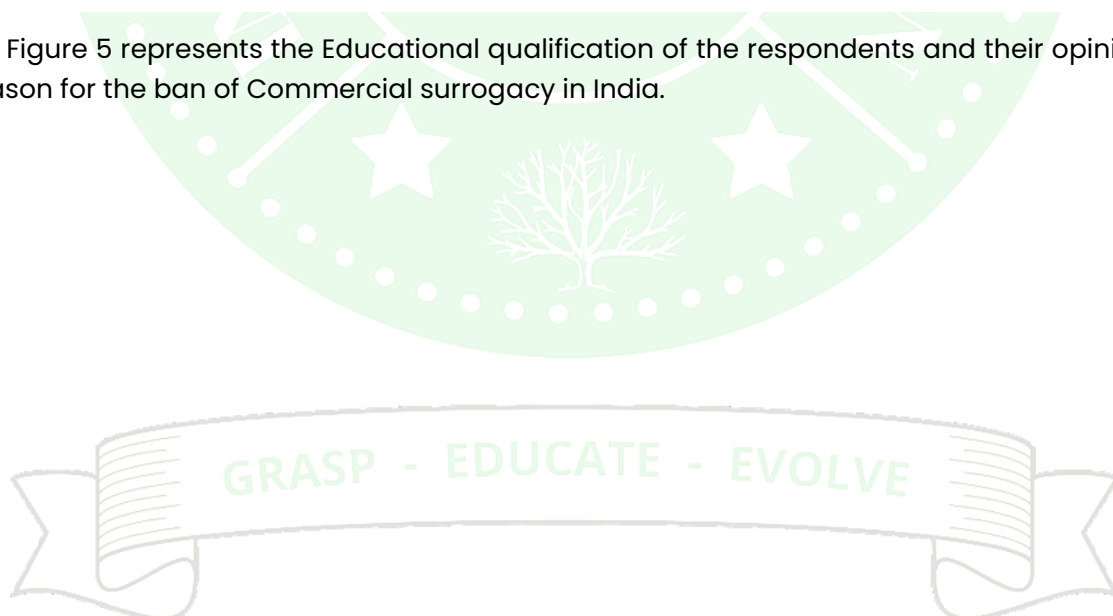
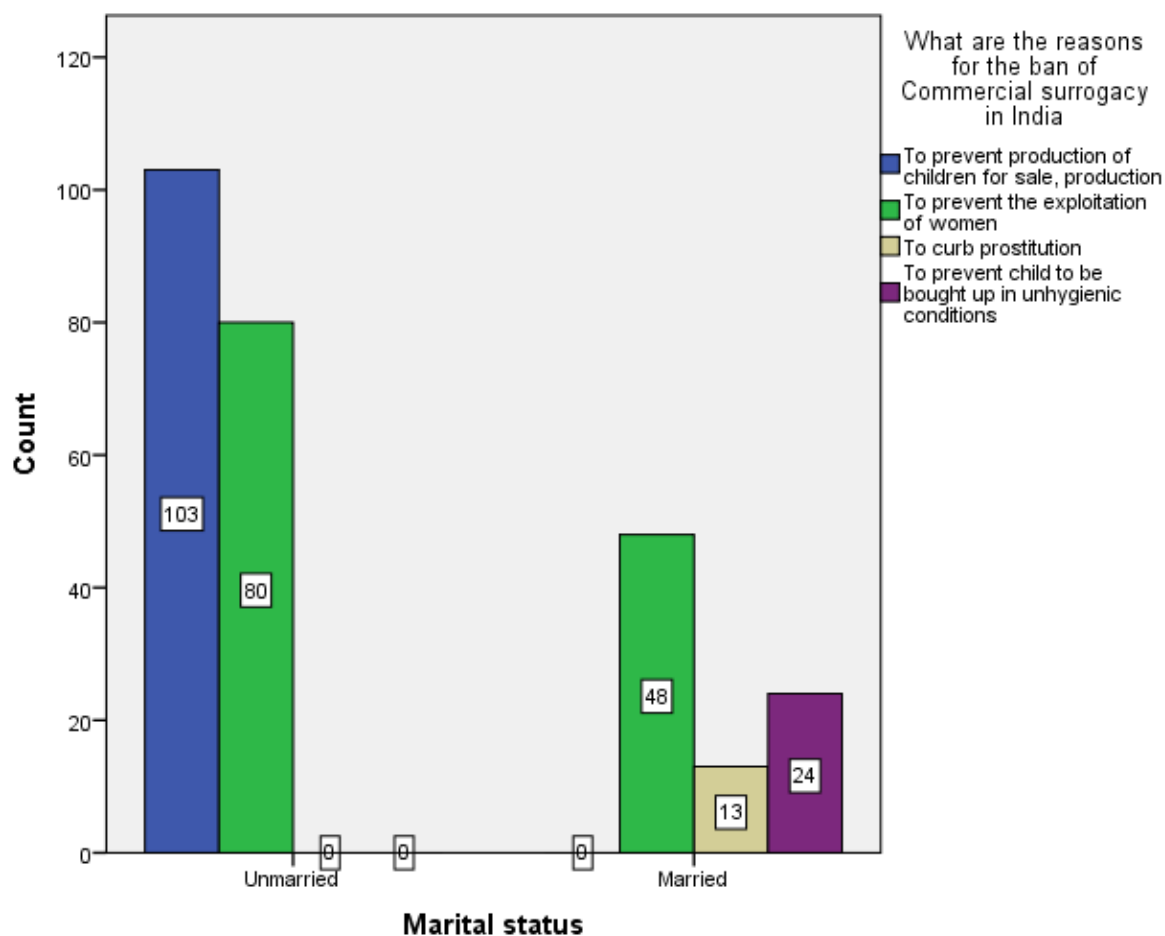


Figure 6



Legend : Figure 6 represents the Marital status of the respondents and their opinion on the main reason for the ban of Commercial surrogacy in India.

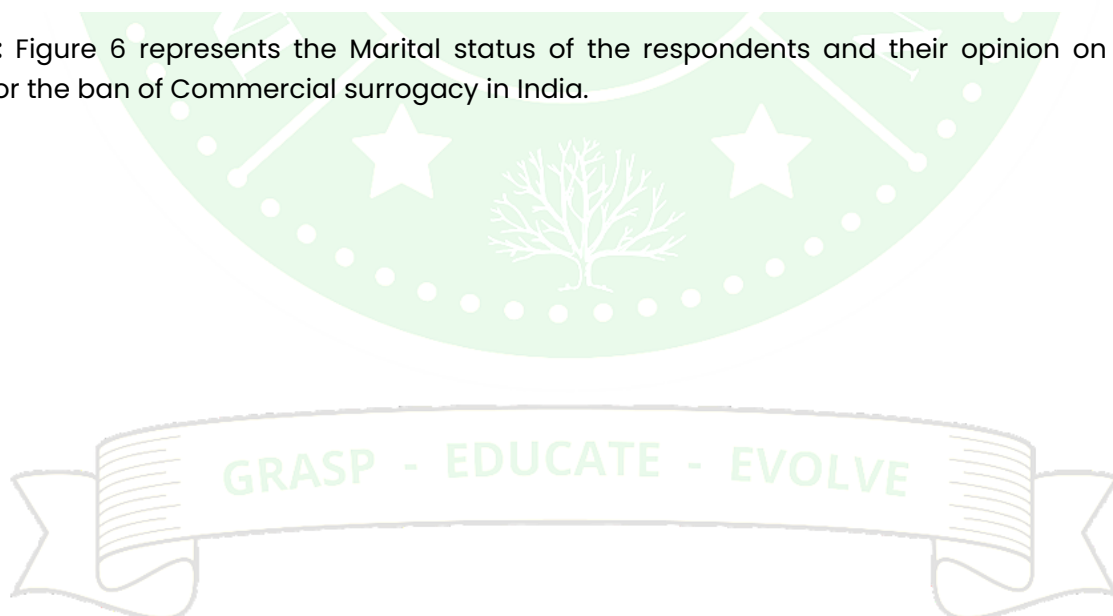
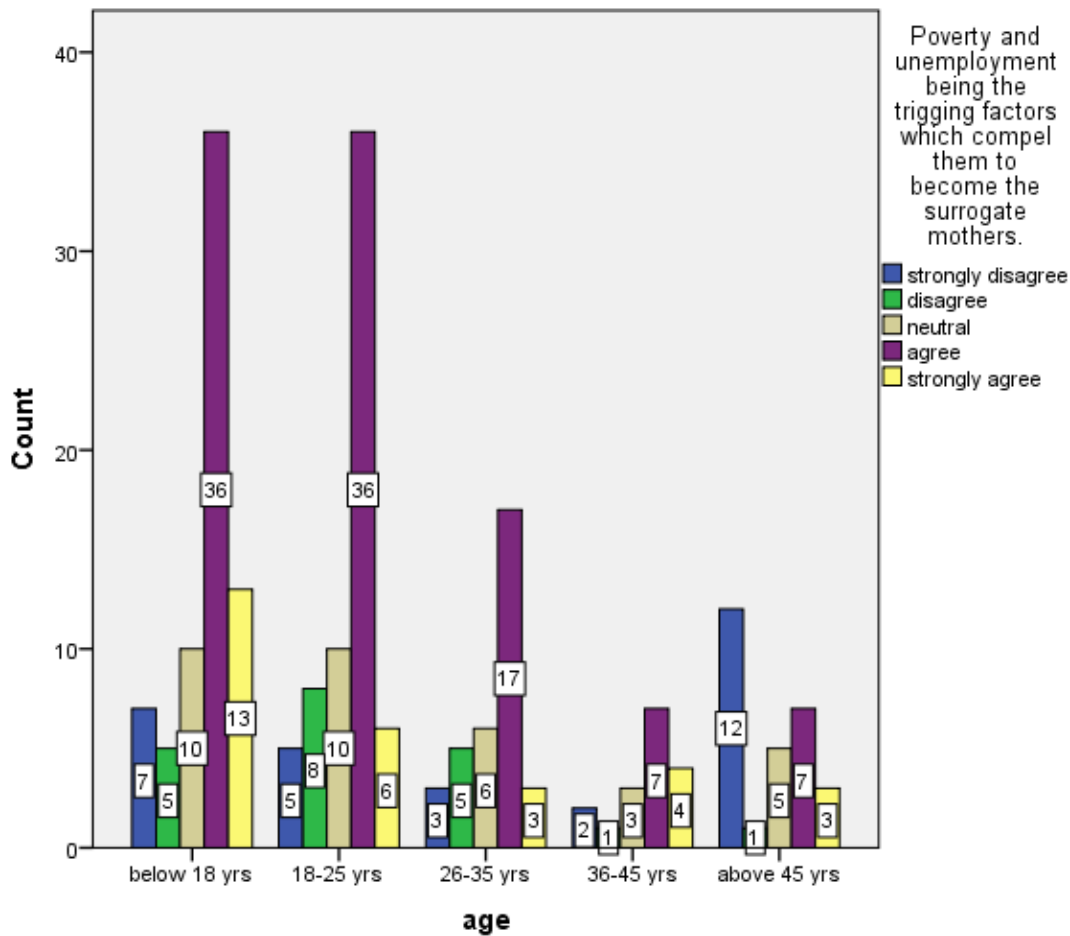


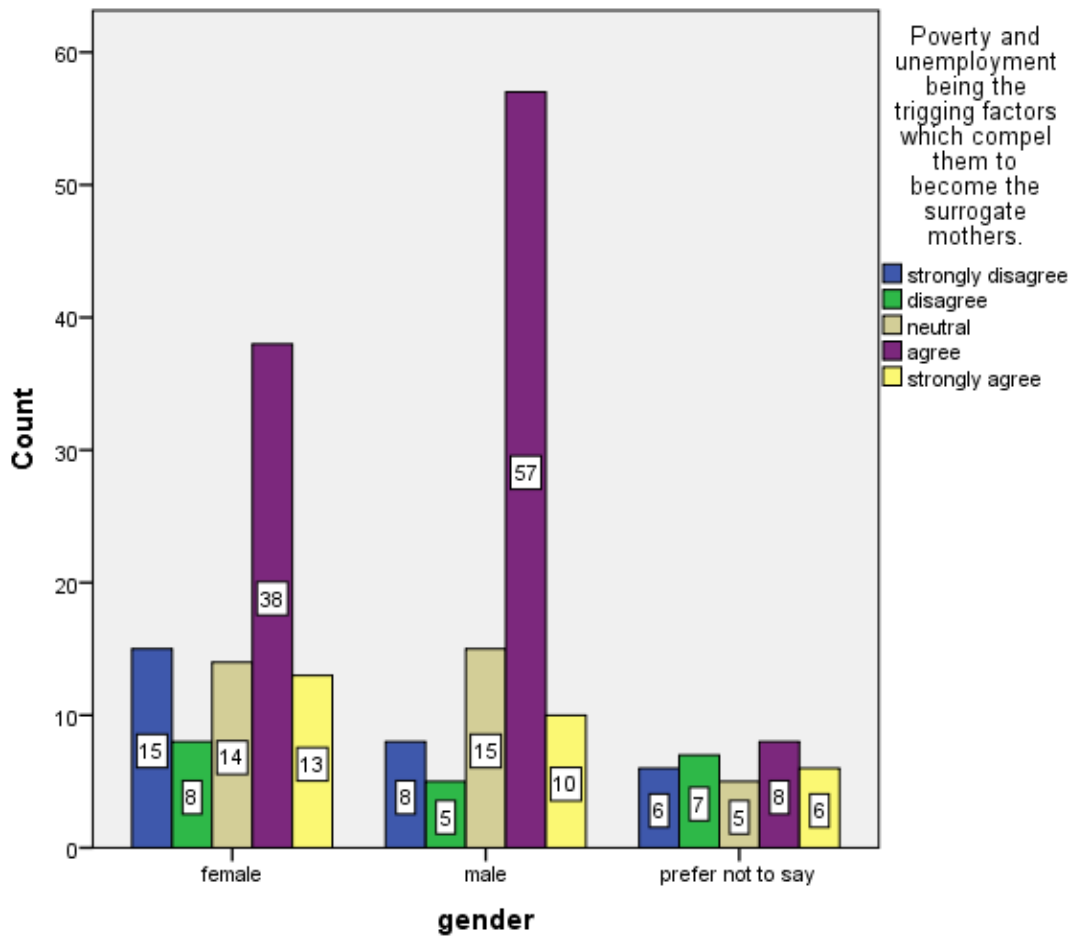
Figure 7



Legend: Figure 7 represents the relationship between the age group of the respondents and their agreeability to the statement, Poverty and unemployment being factors that trigger them to become a surrogate mother.



Figure 8



Legend: Figure 8 represents the relationship between the gender distribution of the respondents and their agreeability to the statement, Poverty and unemployment being factors that trigger them to become a surrogate mother.

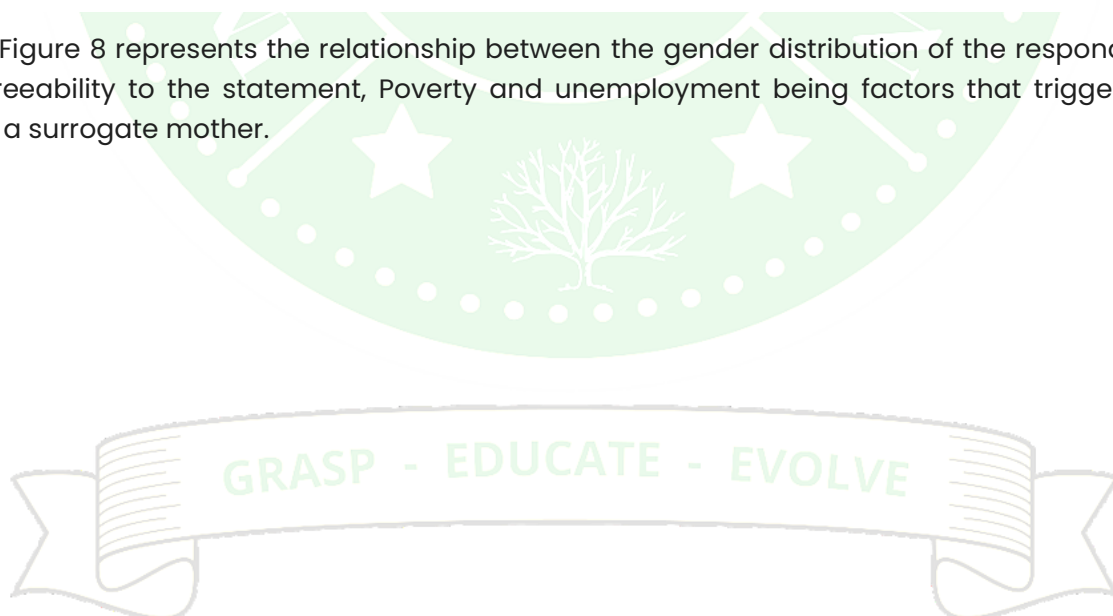
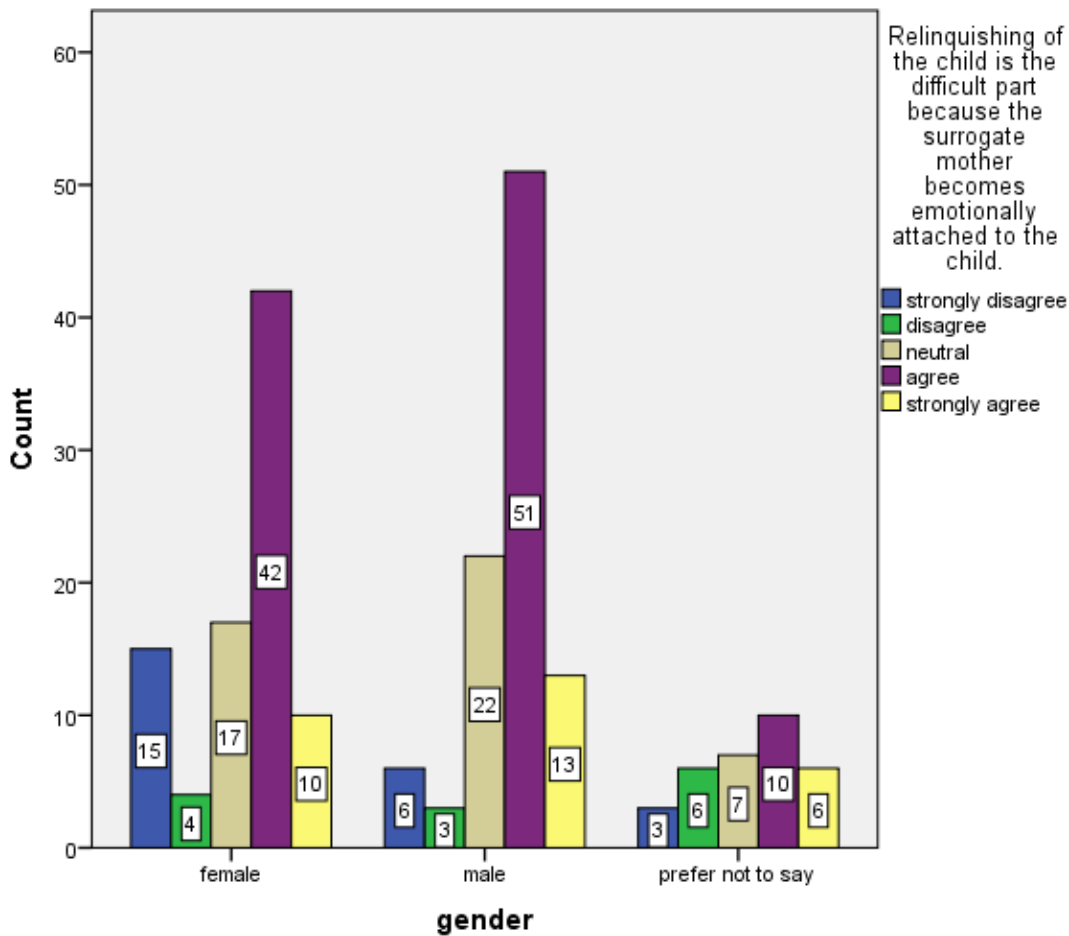


Figure 9



Legend: Figure 9 represents the relationship between the gender distribution of the respondents and their agreeability on relinquishing the child is a difficult part of surrogates.

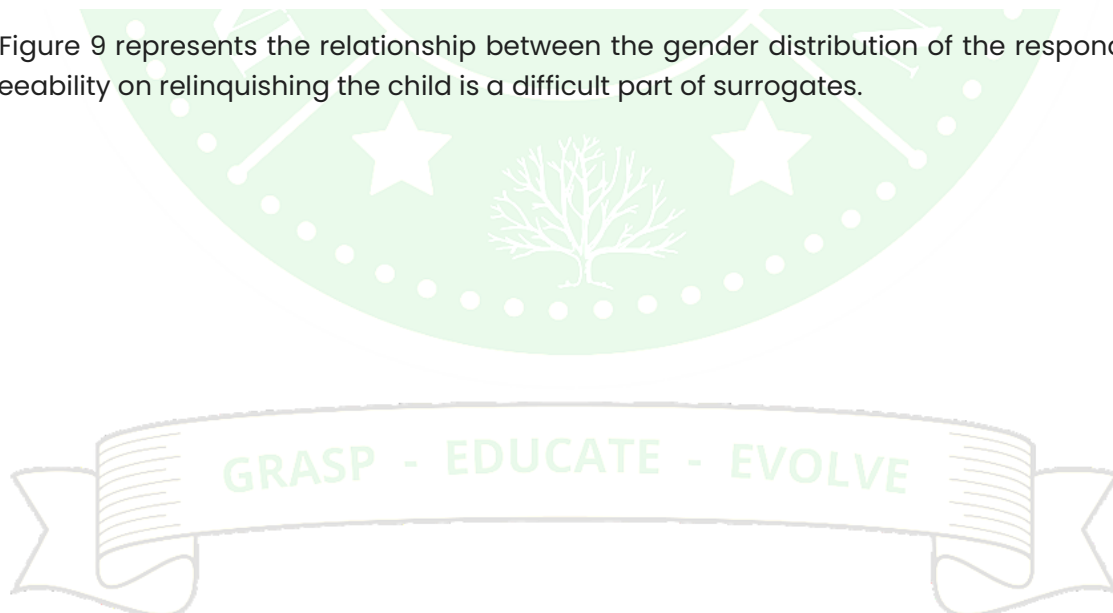
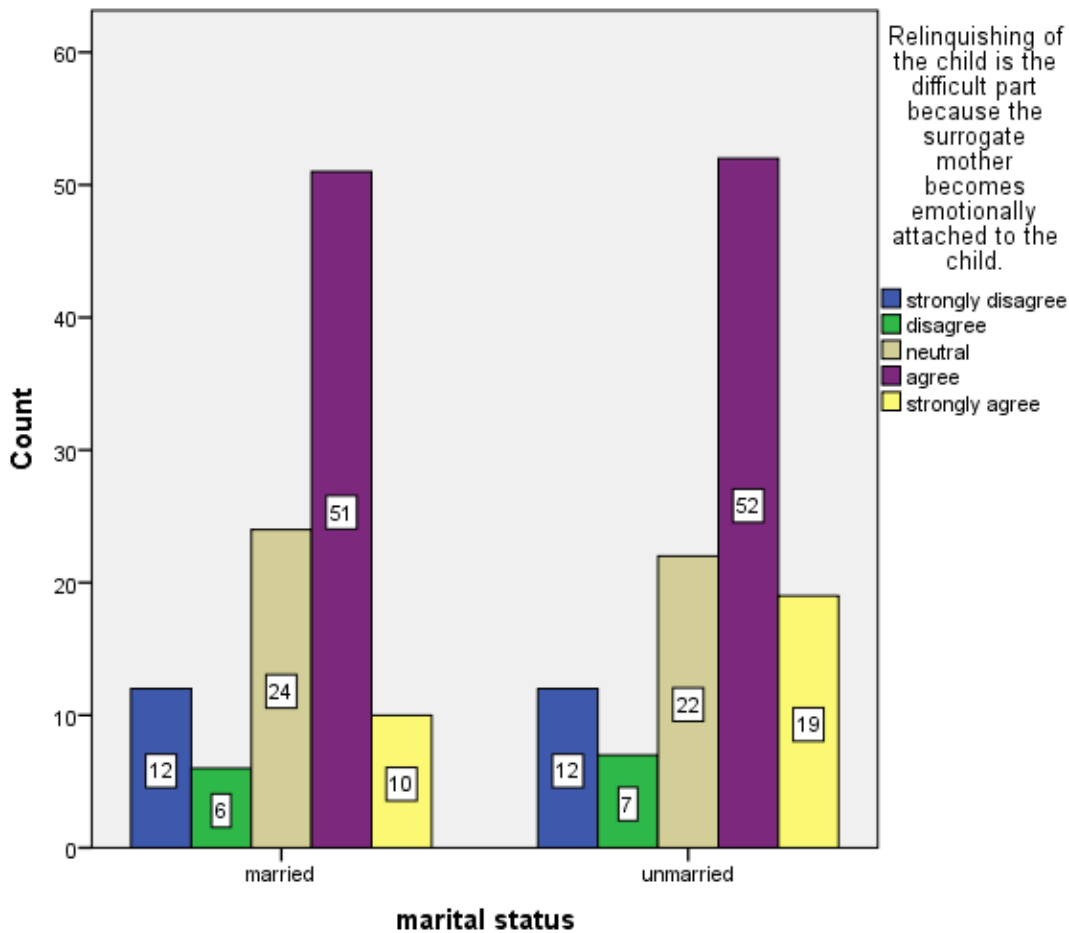


Figure 10



Legend: Figure 10 represents the relationship between the Marital status of the respondents and their agreeability on relinquishing the child is a difficult part of surrogates.

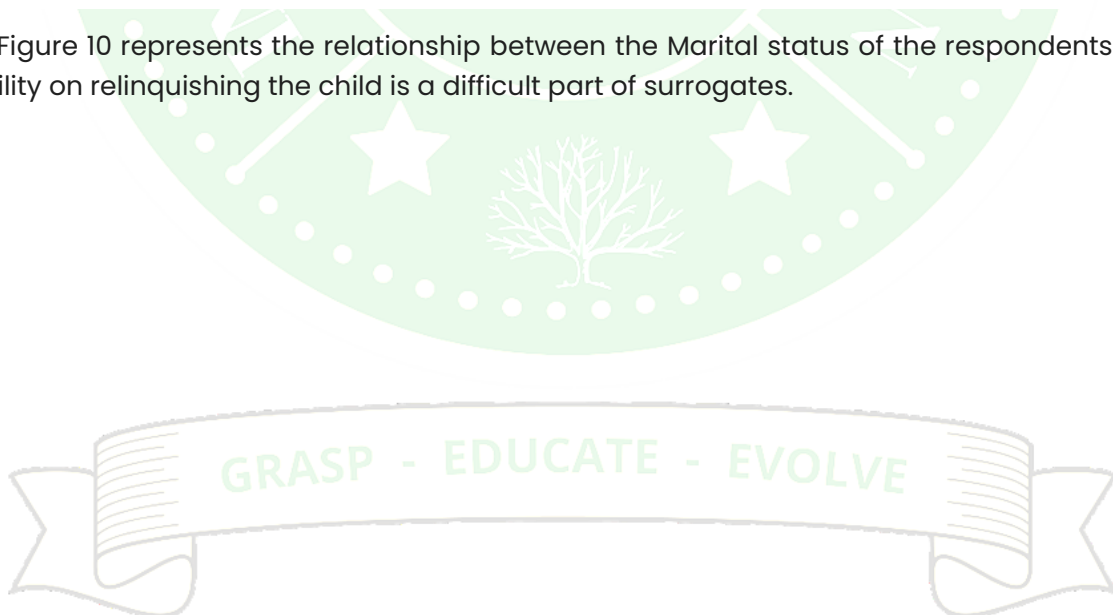
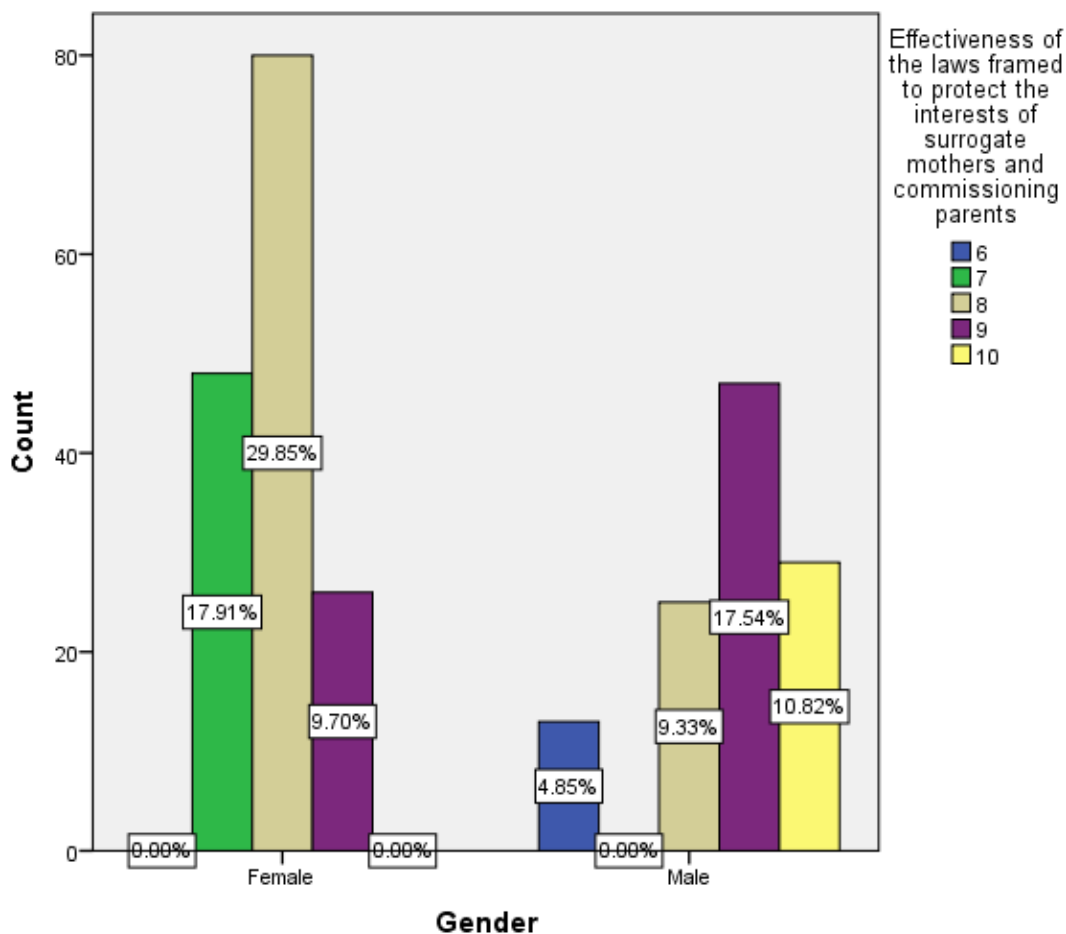


Figure 11



Legend : Figure 11 represents the Gender distribution of the respondents and their opinion on the effectiveness of the laws framed to protect the interests of surrogate mothers and commissioning parents.

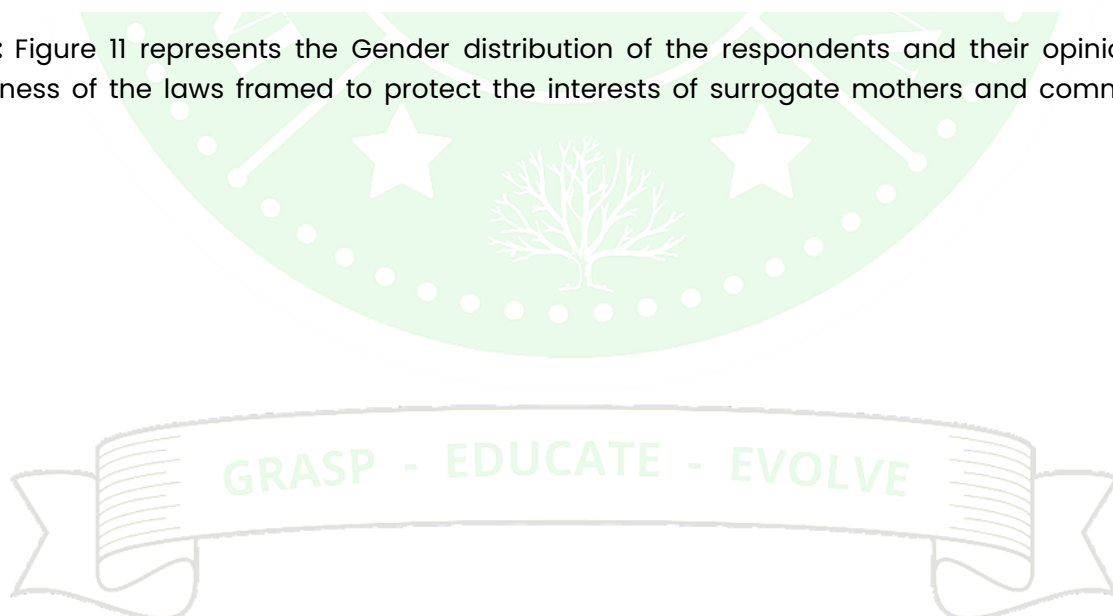
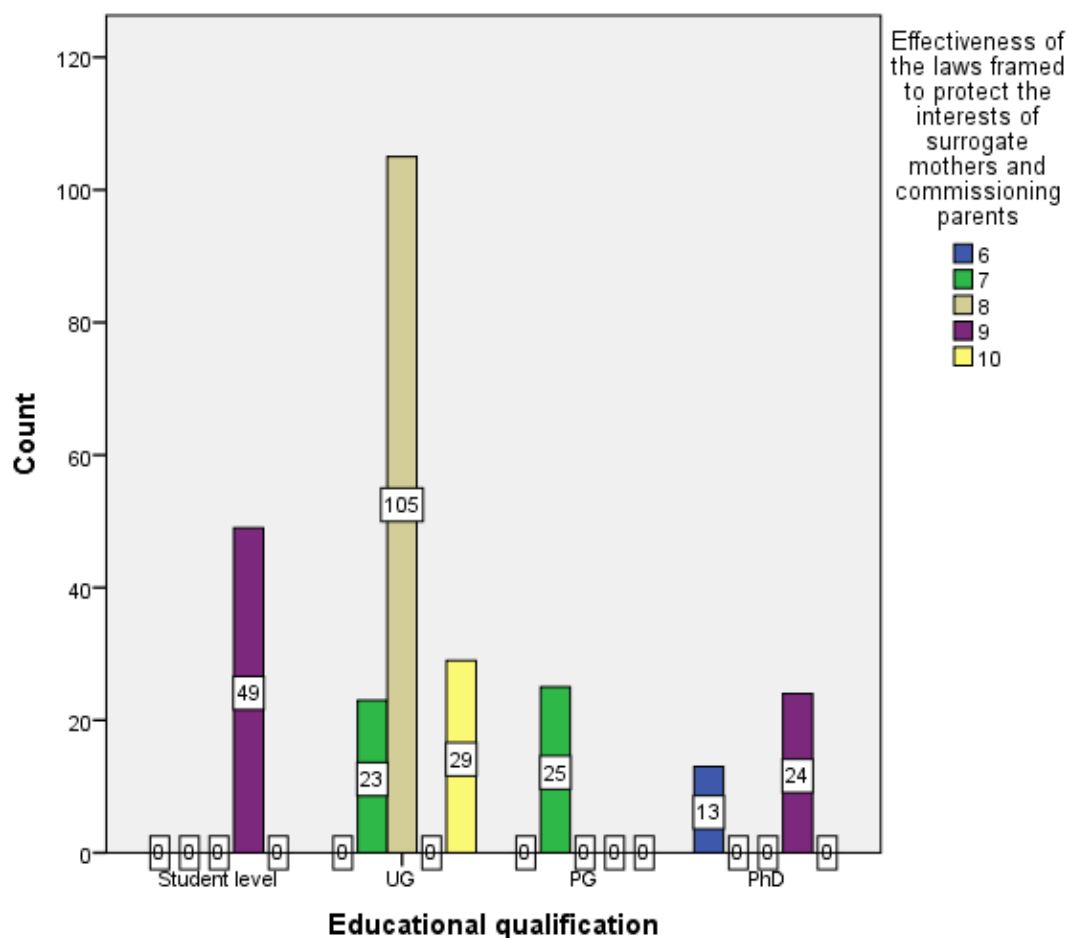


Figure 12



Legend : Figure 12 represents the Educational qualification of the respondents and their opinion on the effectiveness of the laws framed to protect the interests of surrogate mothers and commissioning parents.

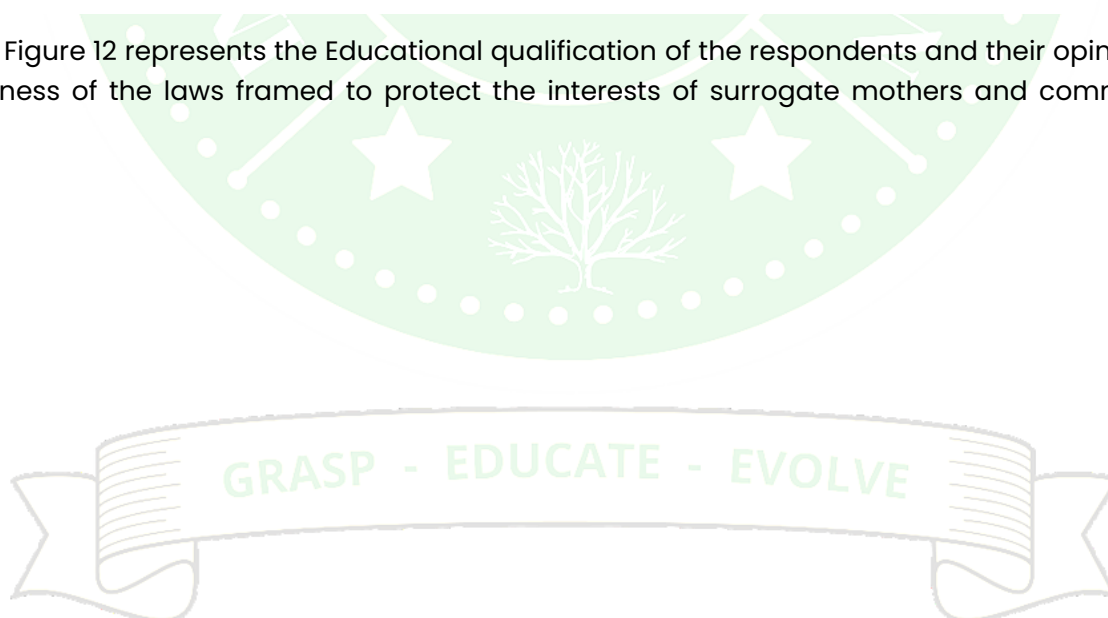
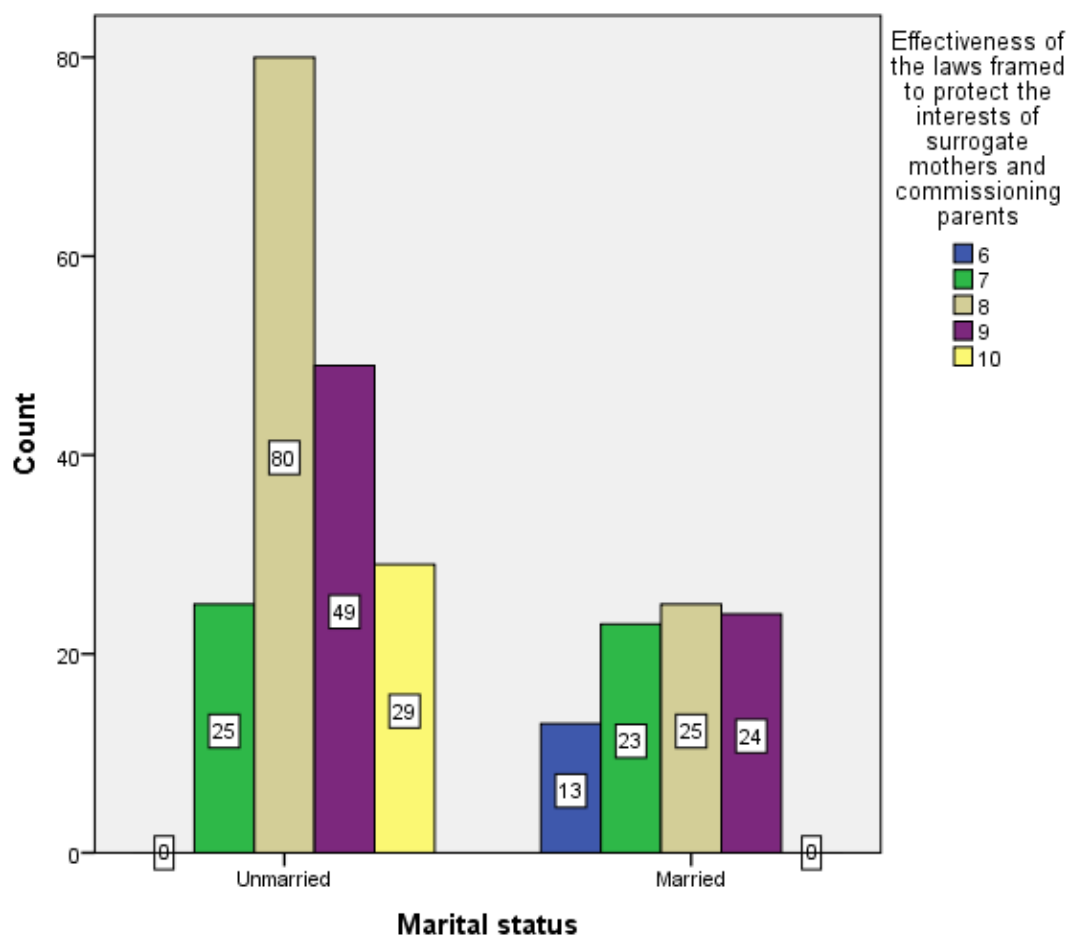


Figure 13



Legend : Figure 13 represents the Marital status of the respondents and their opinion on the effectiveness of the laws framed to protect the interests of surrogate mothers and commissioning parents.

TABLE 1:

Correlations

		gender	Relinquishing of the child is the difficult part because the surrogate mother becomes emotionally attached to the child.
gender	Pearson Correlation	1	.047
	Sig. (2-tailed)		.496
	N	215	215
Relinquishing of the child is the difficult part because the surrogate mother becomes emotionally attached to the child.	Pearson Correlation	.047	1
	Sig. (2-tailed)	.496	
	N	215	215

Legend : Table 1 represents the correlation between the age group and relinquishing of the child is the difficult part because the surrogate mother becomes emotionally attached to the child.

TABLE 2:

ANOVA

Poverty and unemployment being the triggering factors which compel them to become the surrogate mother

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	23.107	4	5.777	4.046	.004
Within Groups	299.851	210	1.428		
Total	322.958	214			

Legend : Table 2 represents the anova of poverty and unemployment being the triggering factors which compel them to become the surrogate mother.

RESULTS:

The majority of both male and female respondents have felt that surrogacy has not been accepted by a large section of the society because of the social stigma attached to it (**Fig 1**). The majority of Student level, UG respondents have felt that surrogacy has not been accepted by a large section of the society because of the social stigma attached to it, whereas PG respondents have felt because it is considered as immoral (**Fig 2**). The majority of both unmarried (58.96%) and married (14.18%) have felt that surrogacy has not been accepted by a large section of the society because of the social stigma attached to it (**Fig 3**). The majority of the respondents below the age of 18 yrs have felt that the main reason for ban of commercial surrogacy should be to prevent production of children for sale, prostitution (**Fig 4**). The majority of the UG respondents have felt that the main reason for ban of commercial surrogacy should be to prevent the exploitation of women (**Fig 5**). The majority of unmarried respondents (103) have felt that the main reason for ban of commercial surrogacy should be to prevent production of children for sale, prostitution and the majority of the married respondents (48) have felt that the main reason for ban of commercial surrogacy should be to prevent the exploitation of women (**Fig 6**). The majority of the age group of below 18 yrs, 18-25 yrs, 26-35 yrs have agreed that poverty and unemployment being a triggering factor to

become a surrogate mother (**Fig 7**). The majority of both the male and female respondents have agreed that poverty and unemployment are triggering factors to become a surrogate mother (**Fig 8**). The majority of both male and female respondents have agreed that relinquishing the child is the difficult part (**Fig 9**). The majority of both male and female respondents have agreed that relinquishing the child is the difficult part (**Fig 10**). On a scale of 1-10, the effectiveness of the laws in protecting surrogate mothers have been rated 8 by the majority of the females and 9 by the majority of the males (**Fig 11**). On a scale of 1-10, the effectiveness of the laws in protecting surrogate mothers have been rated 9 by the majority of Students and rated 8 by the majority of the UG respondents (**Fig 12**). On a scale of 1-10, the effectiveness of the laws in protecting surrogate mothers have been rated 8 by the majority of both the married and unmarried respondents (**Fig 13**). **Table 1 :** There is a significant difference of opinion among the age group of the sample population. **Table 2:** There is a significant difference of opinion between the education qualifications of the sample population.

DISCUSSION:

The analysis of the graphs suggest that though Surrogacy is an age old practice it is still considered a taboo in the society and the social stigma attached to it is the main reason as to

why it has not been accepted by a large section of the society. Also because it involves a sexual service through an agent so it is equated to prostitution by many in the society. The Surrogacy (Regulation) Bill has been pending, it seeks to ban commercial surrogacy. It should be banned to prevent the exploitation of women and also production of children for sale and prostitution which is turning Surrogacy into a business all across the globe. Poverty and unemployment serving as triggering factors for one to become a surrogate mother has differing opinions, a few disagree to it because women have the right to her body and she can do anything with it and whenever she wants while others have felt that due to financial burdens and need of money for basic requirements some agree to become surrogate mothers. Surrogacy might just be a practice in fact but it is a family builder for many also some surrogate mothers have developed an emotional attachment with the child and relinquishment of the child becomes a difficult part for them. Further, Our nation hasn't implemented many laws for protection of surrogate mothers and commissioning parents however the present legislations have so far been effective. But, there are loopholes which need to be addressed.

LIMITATIONS :

One of the major limitations of the study is the sample frame. There is a major constraint in the sample frame as the data was collected from a small area from the respondents. So, it was difficult to extrapolate it to a larger population and also that the actual and clear opinions of people remained unexpressed. Another limitation is the sample size of 217, which cannot be used to assume the thinking of the entire population in a particular country, state, or city. The physical factors have a larger impact, thus, limiting the study.

SUGGESTIONS :

In India, surrogacy is purely a contractual understanding between the parties so care has to be taken while drafting agreement so that it

does not violate any of the laws like, e.g., points to be taken into consideration why does the intended parents opt for surrogacy, particulars of the surrogate, type of surrogacy, mentioning about paternity in the agreement, the creation of registry for biological father of children in an adoption cases, rules set forth on how and when genetic testing can be done to determine paternity, compensation clause, unexpected mishappening to the surrogate mother, child's custody, regarding the jurisdiction for the disputes arising out of agreement.

The Indian government drafted legislation in 2008 and finally framed an ART regulation draft bill in 2010. The bill is still pending and not presented in the parliament. The proposed law needs proper discussion and debate in the context of legal, social and medical aspects. The government must seriously consider enacting a law to regulate surrogacy in India in order to protect and guide couples seeking such options. Without a foolproof legal framework implementation couples will invariably be misled and the surrogates exploited.

CONCLUSION:

Surrogacy in the world isn't a new conception of having a child but the process of the surrogacy had been rehearsed from ancient times. The system of the surrogacy isn't only limited to the couples who are infertile or not suitable to have a child without any medical disfigurement but the surrogacy is also rehearsed by anyone who wishes to have a child. Due to the rising number of surrogacy processes it influences the country or the world in raising the debates on the legal, ethical, religious and the moral issues each over the world. The proliferation in the process of marketable surrogacy leads to the violation of the mortal rights but marketable surrogacy safeguards the reproductive appanage of the infertile women. This research results shows that this practice also involves human trafficking and breach of trust so to avoid all this there should be proper law to protect surrogacy, poverty being factor to become a

surrogate mother this may be due that the women feel it is her right to body to do whatever she feels to do and also there are women who wants to make other family happy by giving birth to child not only for monetary purpose. Since India has interdicted consensual homosexuality their right to gain surrogacy services to beget a child must be addressed. Passing the long- pending supported Reproductive Technology(ART) Bill will make the surrogacy act more important.

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