

A STUDY ON LEGAL RIGHTS AND CHALLENGES OF SURROGATES IN INDIA

AUTHOR – P. SUDARVIZHI, B.B.A.,LL.B.(HONS) STUDENT, SAVEETHA SCHOOL OF LAW, SAVEETHA INSTITUTE OF MEDICAL AND TECHNICAL SCIENCES, SAVEETHA UNIVERSITY, CHENNAI, INDIA. MAIL ID:SUDARVIZHI2102@GMAIL.COM

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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 unread 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 wants 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 unread 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. 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. 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:

1. To study on the challenges faced by the surrogates in india
2. To explore the legal rights to practice surrogation
3. To study whether surrogation being a commercial business in india
4. To explore on the social stigma towards the practice of surrogation
5. To study on the major reason for women to practice surrogation

REVIEW OF LITERATURE:

(Birenbaum-Carmeli and Carmeli 2010)A quantitative study done by Daphna Birenbaum-Carmeli et al to assess and compare the prevalence of Gravid surrogacy in the USA and Israel.

(Tiwari 2019) 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 colorful 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, Karen Smith Rotabi (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, Alene D,(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. 2 This booming market comes at a dangerous time because India has no laws in place to protect the rights of the surrogate.

International Journal of Law 2021:The present paper addresses the legal and socioethical 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: Intercountry 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): I suggest 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

Twine Routledge, 2012: This article discusses legislation, policy and practice as they relate to Australians' use of surrogacy in India. 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.

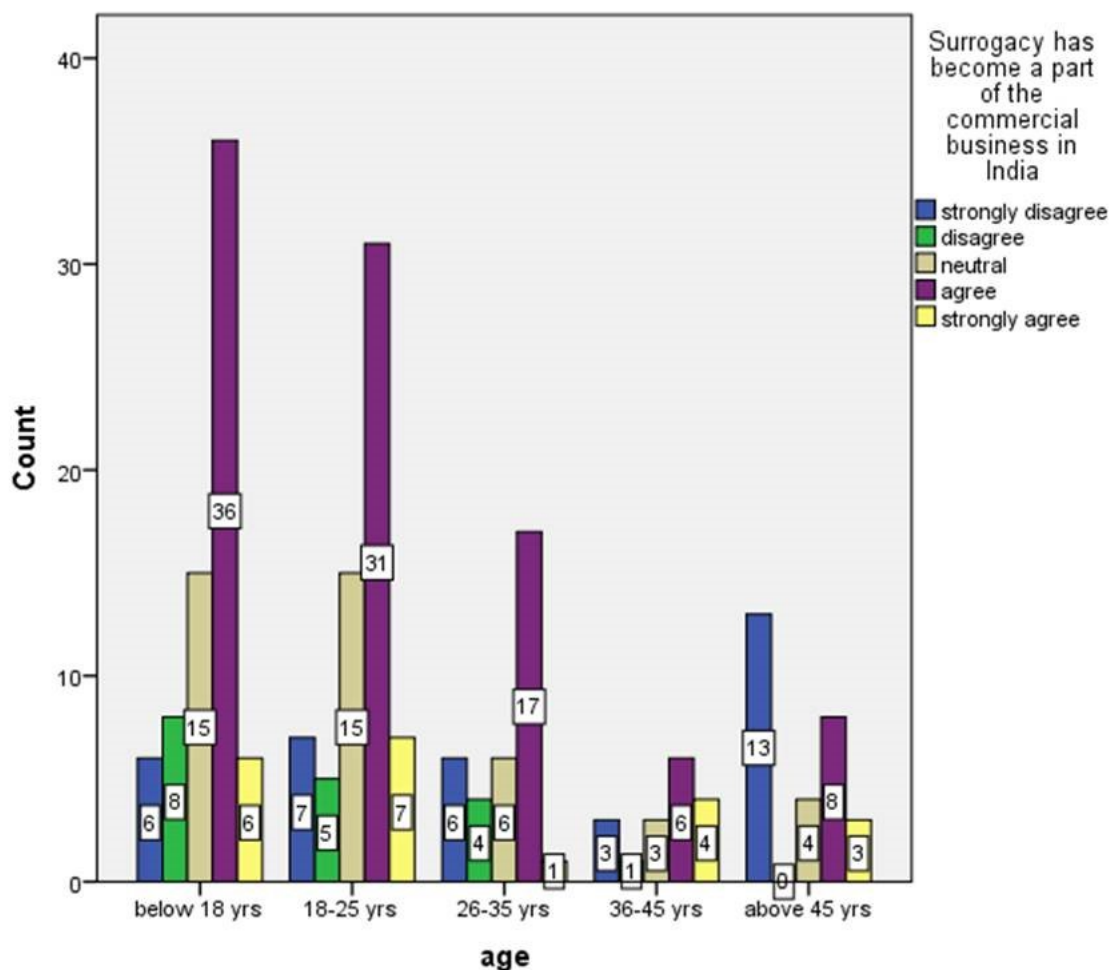
Vida Panitch, Hypatia 2013: I conclude not in favor of a global ban but with suggestions on how developing nations that permit commercial surrogacy might better protect the negative reproductive rights of their female citizens, thereby making them less vulnerable to exploitation.

METHODOLOGY:

The Research method which has been followed by the researcher is a descriptive method. Here total of 207 samples have been collected through convenience sampling method data collection has been done by mailing questionnaires. Independent variables taken in this research are gender, age, educational qualifications, occupation, location. dependent variables are whether government is taking effective measure, social stigma on surrogates, poverty and unemployment being reason for practice of surrogacy. The statistical tool used is SPSS through graphical representation.

ANALYSIS

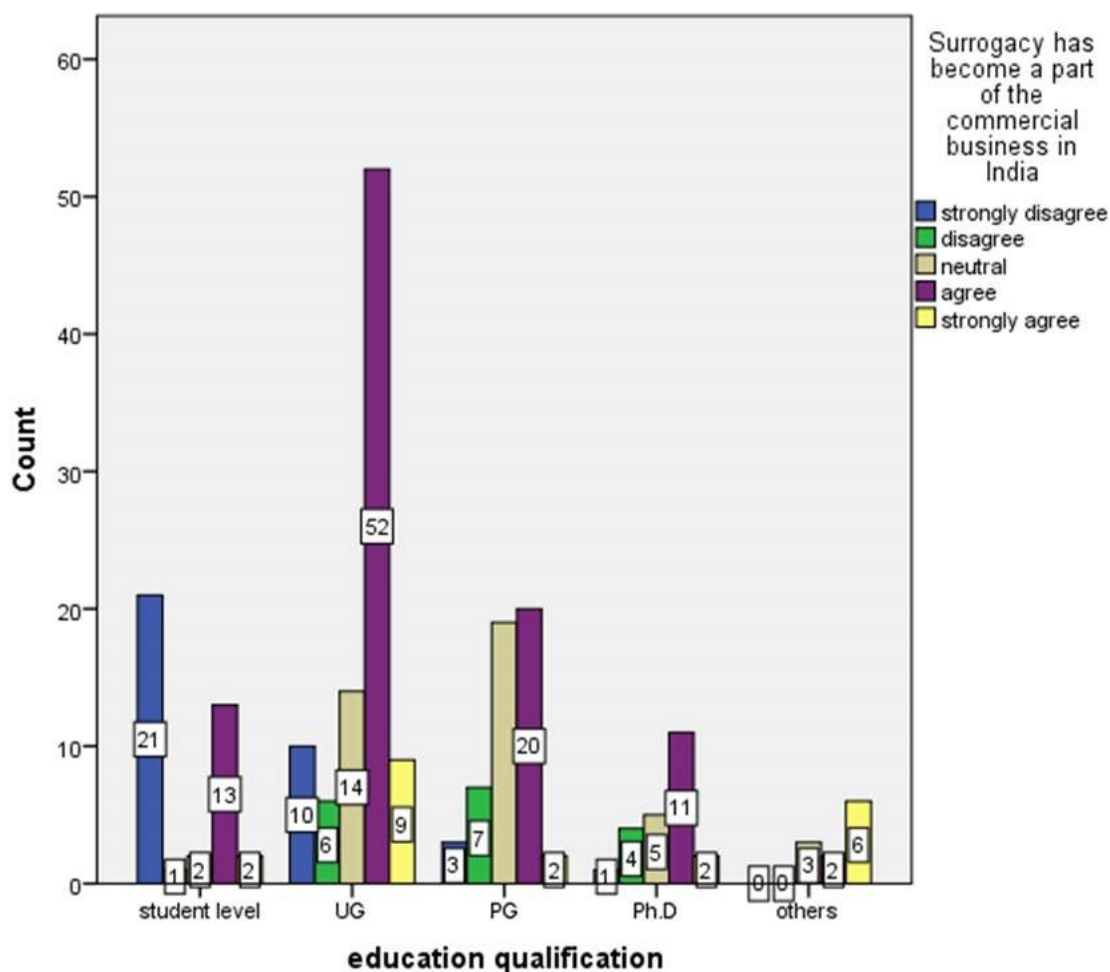
FIGURE 1



LEGEND: This figure represents the relationship between the age group of the respondents and their opinion on surrogacy as commercial business in India.



FIGURE 2:



LEGEND: This figure represents the relationship between the age group of the respondents and their opinion on surrogacy as commercial business in India

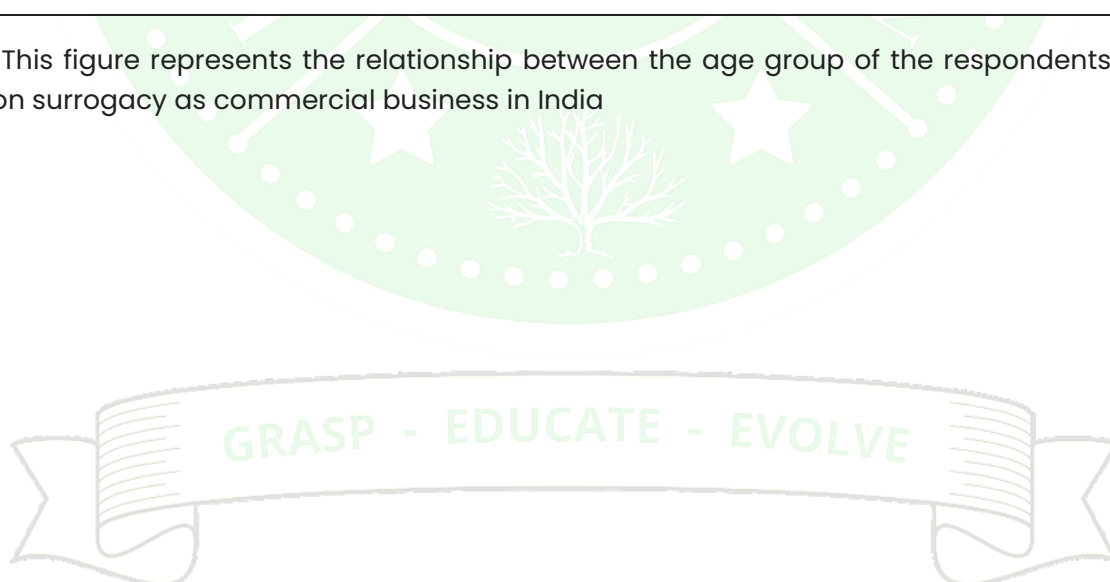
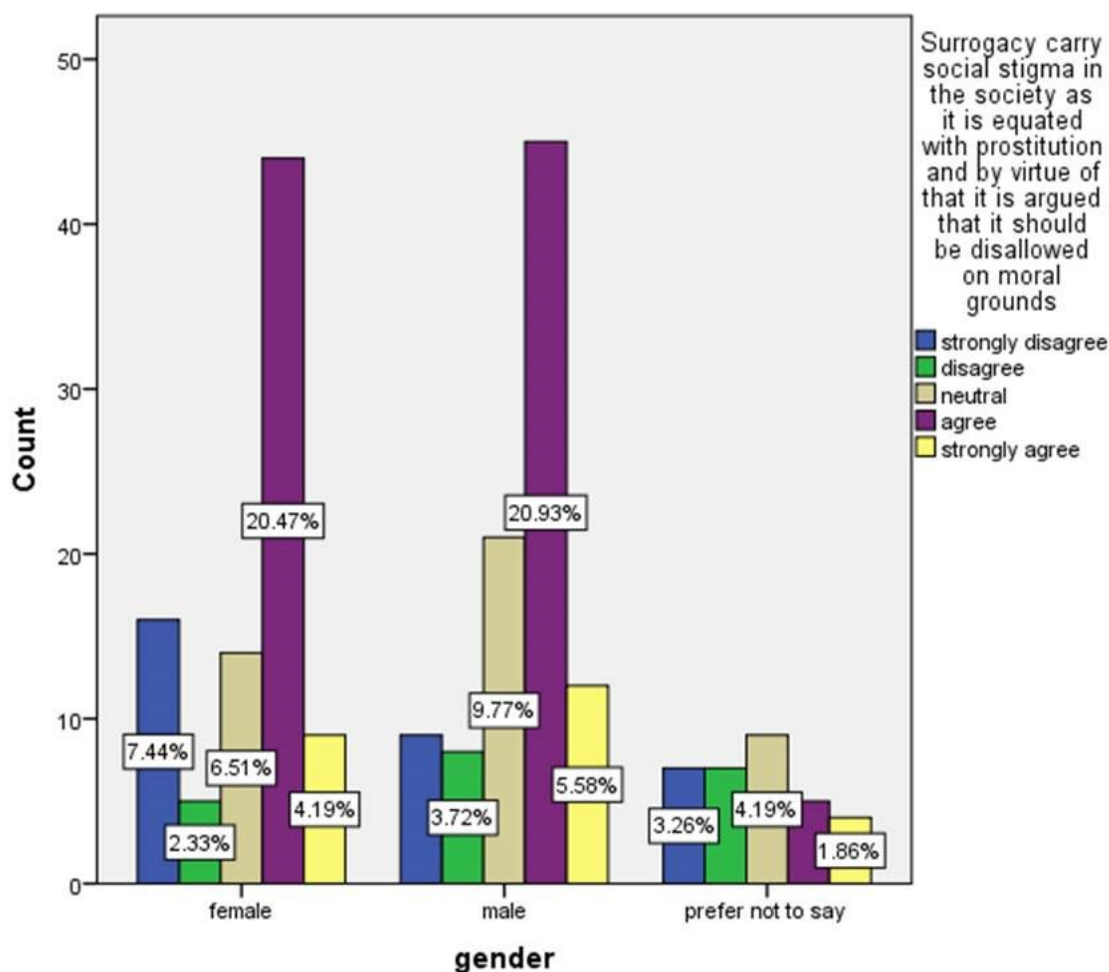


FIGURE 3:



LEGEND: This figure represents the relationship between the gender of the respondents and their opinion on surrogacy carrying social stigma and compared with prostitution.

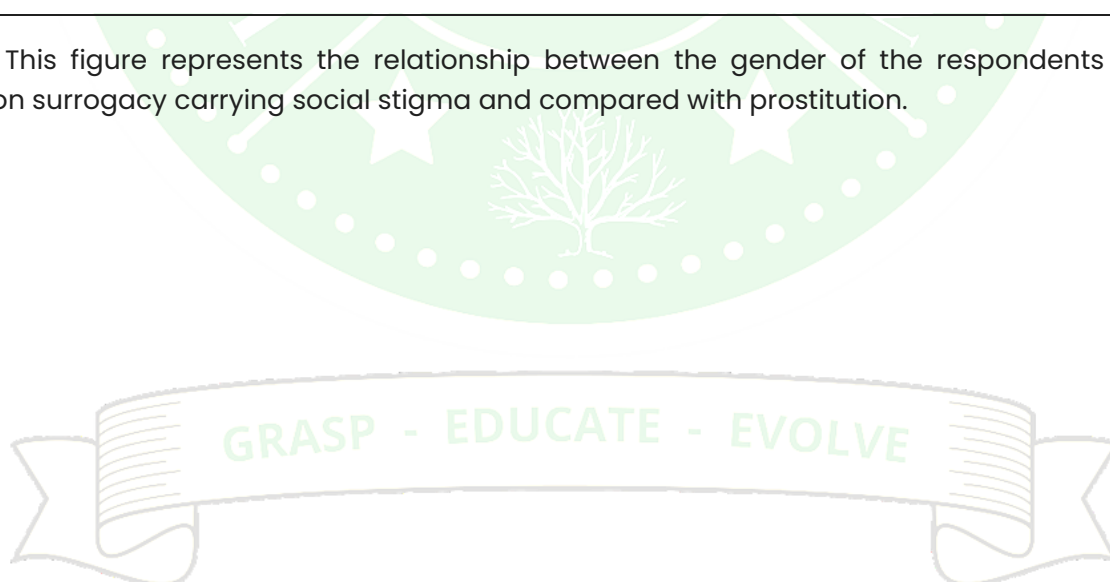
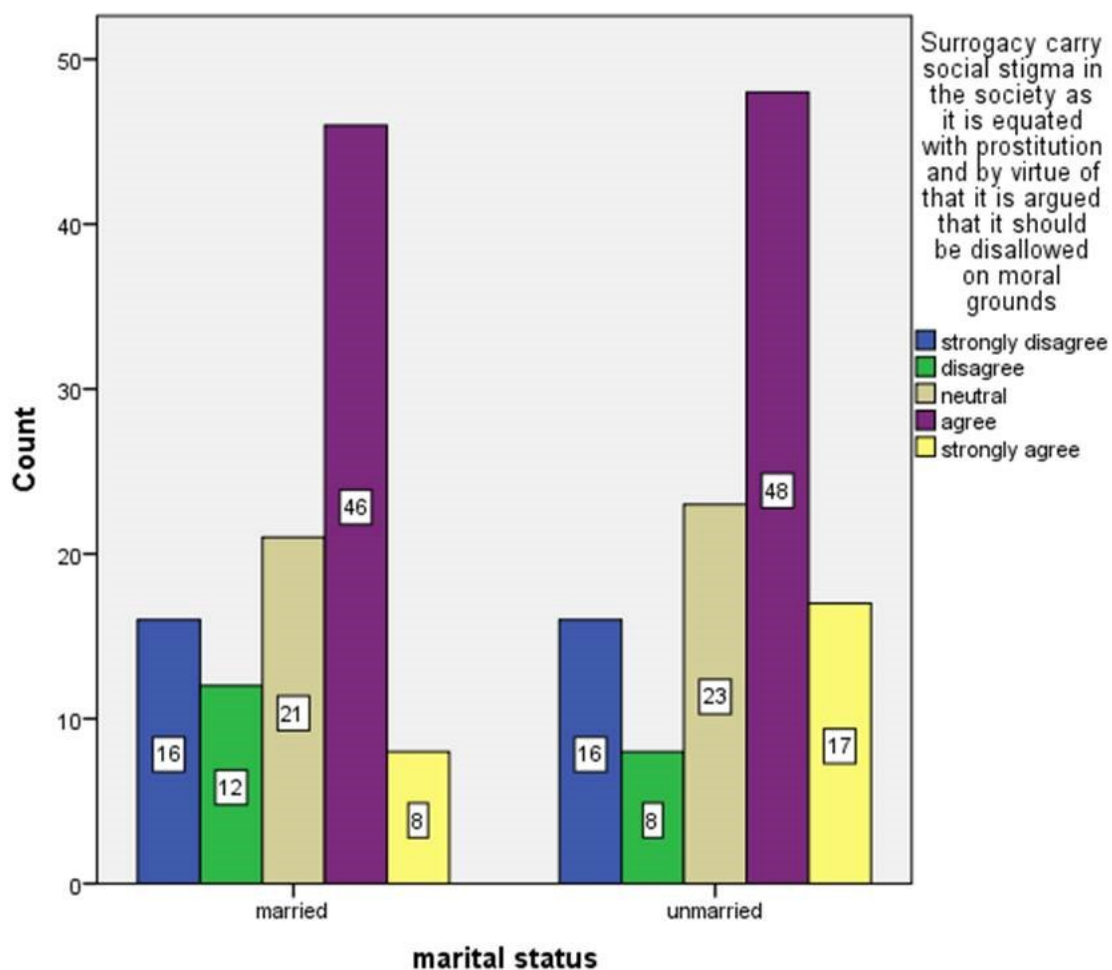


FIGURE 4:



LEGEND: This figure represents the relationship between the marital status of the respondents and their opinion on surrogacy carrying social stigma and compared with prostitution.

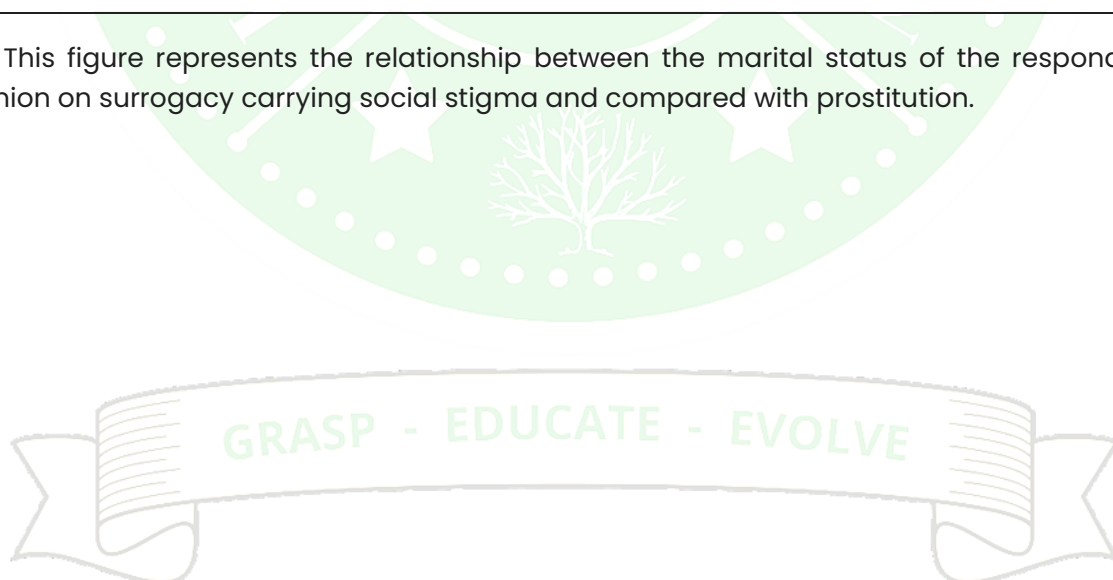
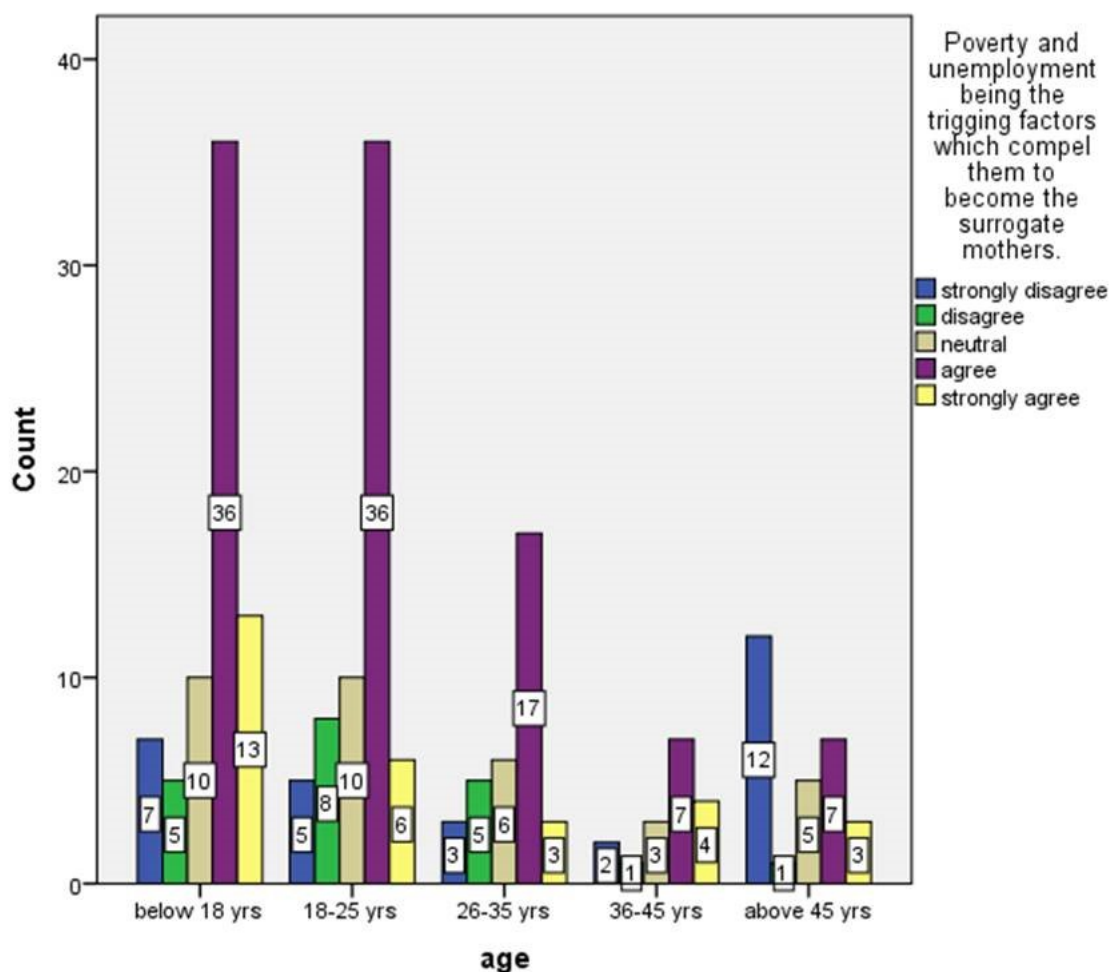


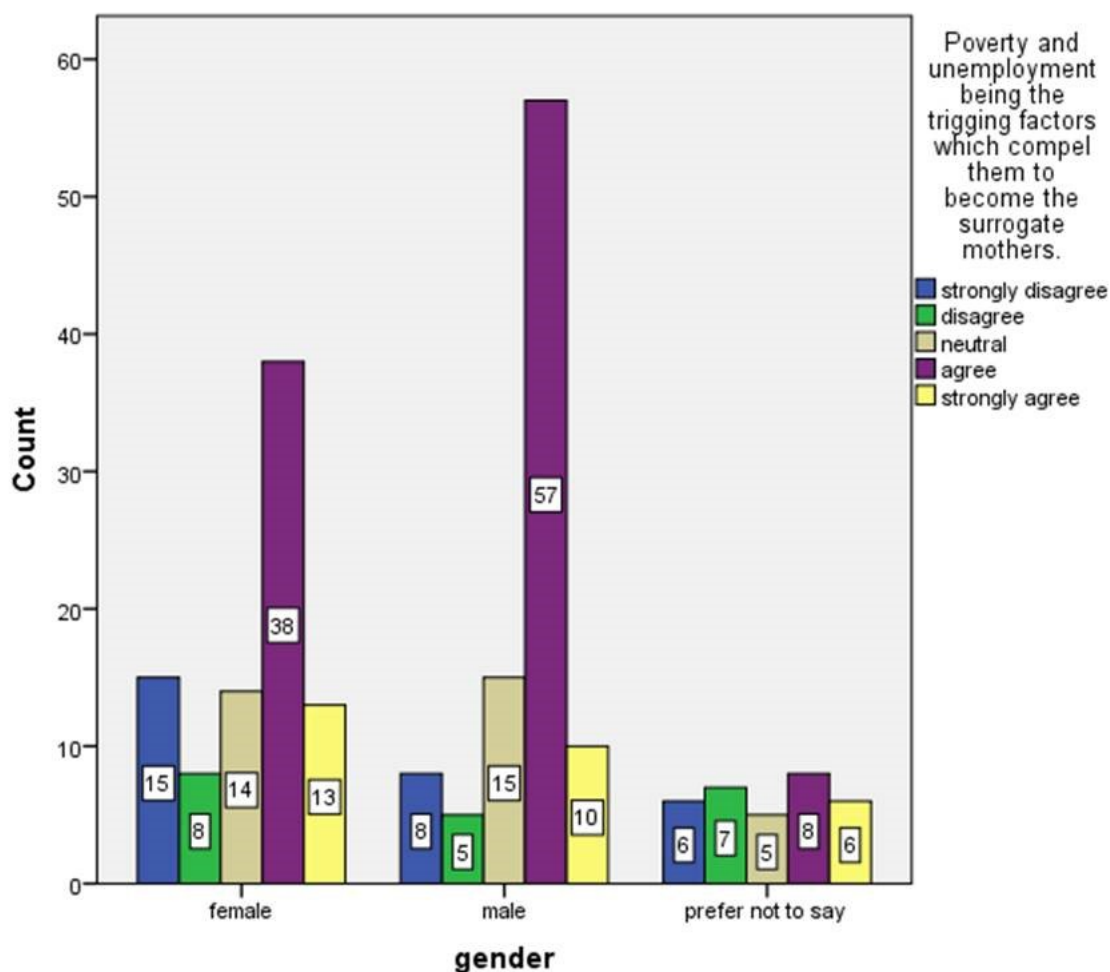
FIGURE 5:



LEGEND: This figure represents the relationship between the age group of the respondents and their opinion on poverty and unemployment being factors for them to become a surrogate mother.



FIGURE 6:



LEGEND: This figure represents the relationship between the female respondents and their opinion on poverty and unemployment being factors for them to become a surrogate mother.

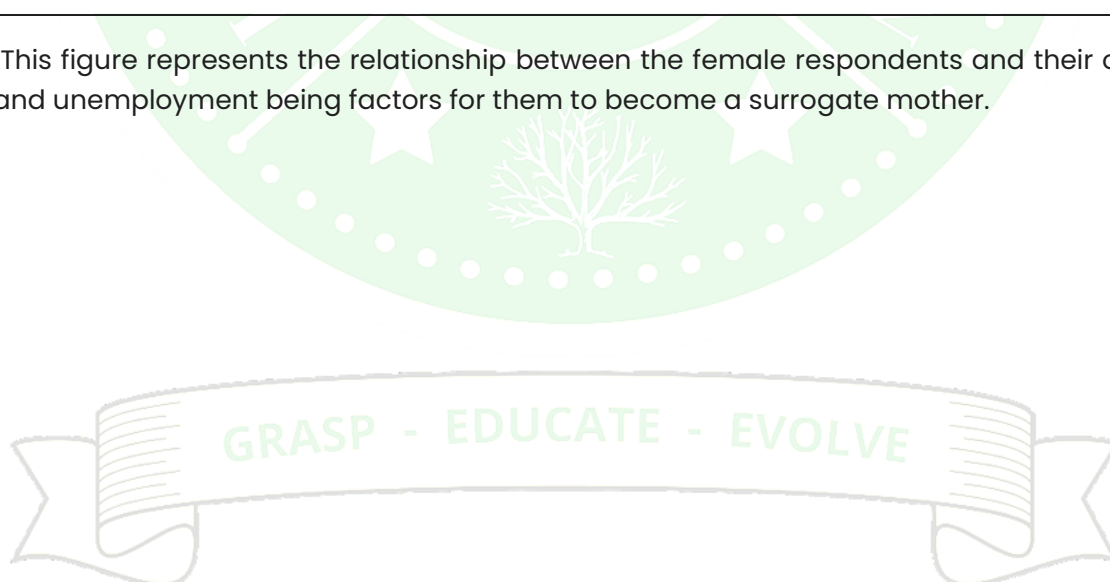
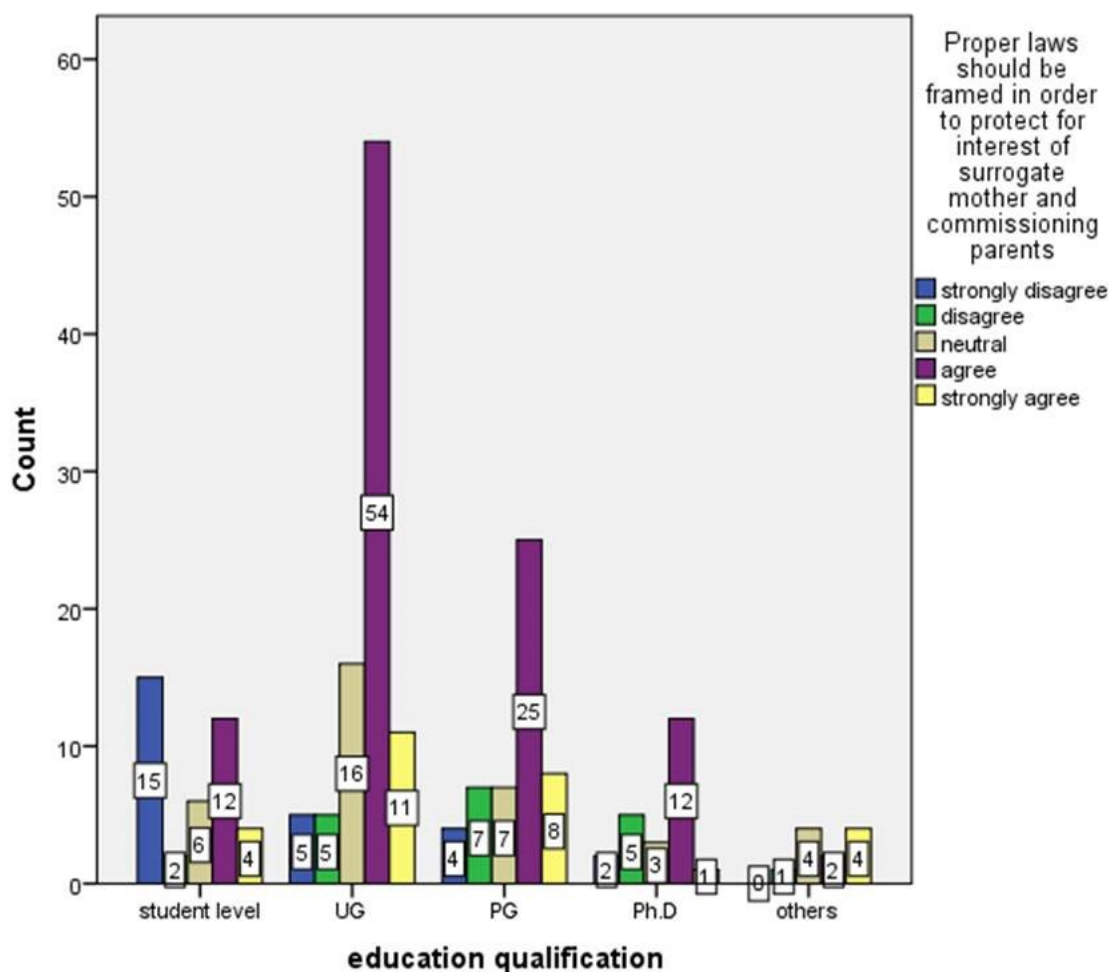


FIGURE 7:



LEGEND: This figure represents the relationship between the education qualification of respondents and their agreeability on whether proper laws should be made to protect surrogacy.

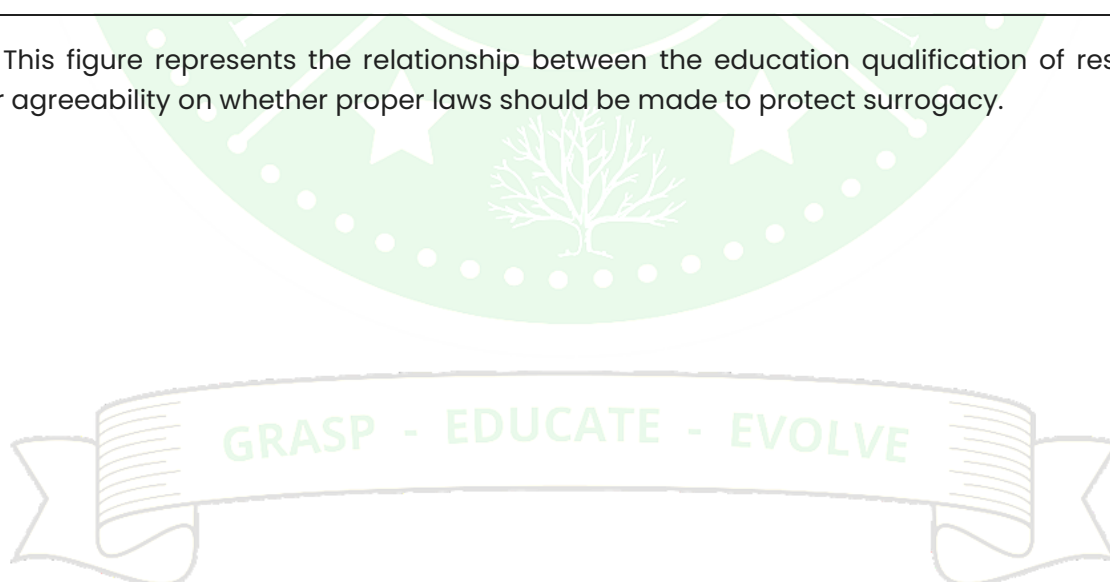
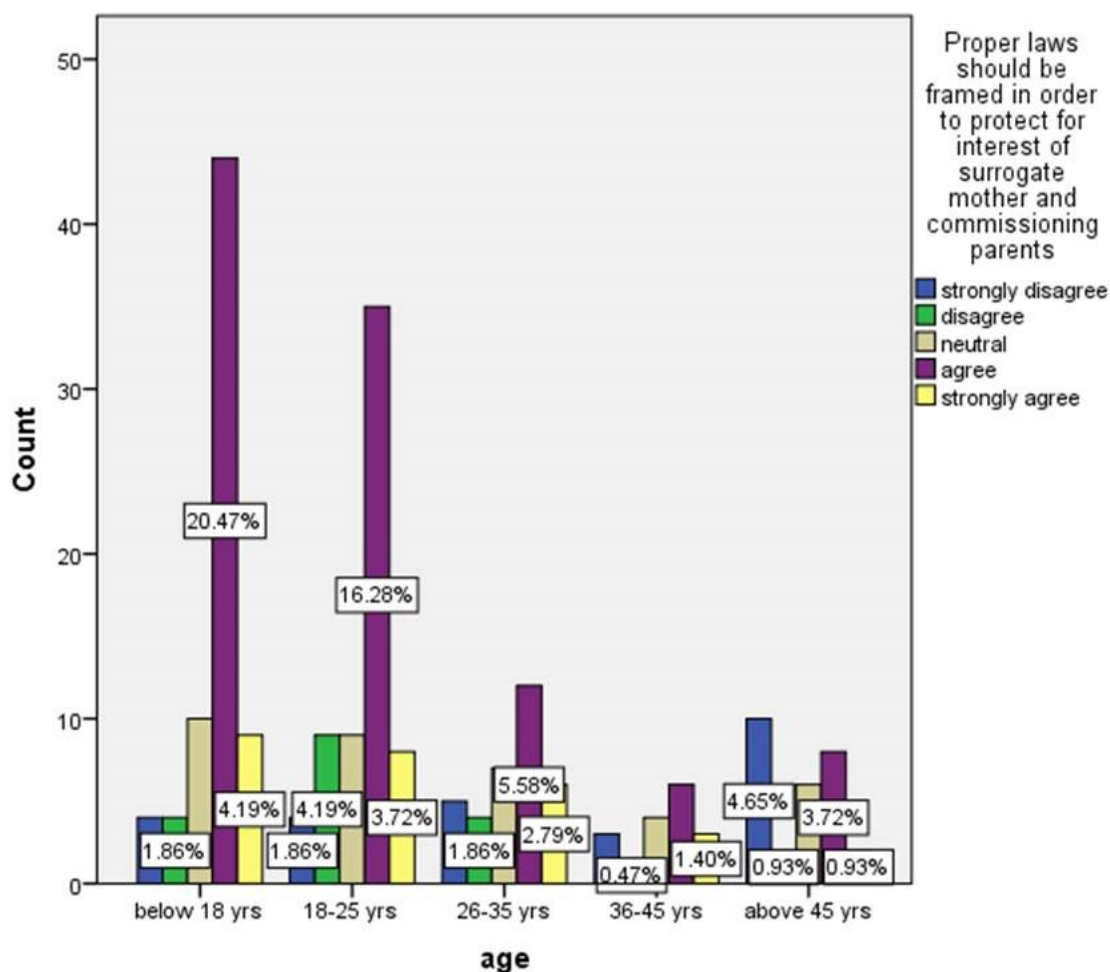


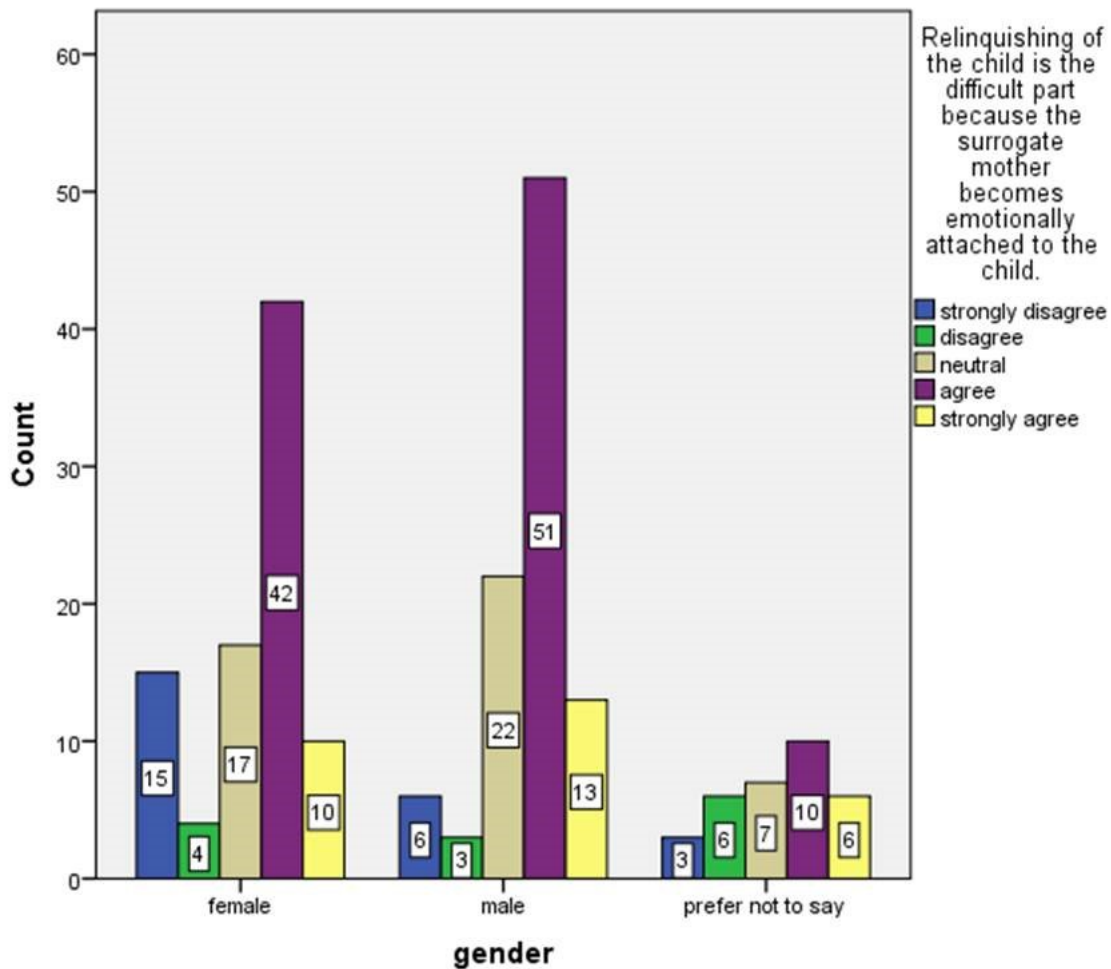
FIGURE 8:



LEGEND: This figure represents the relationship between the age group of respondents and their agreeability on whether proper laws should be made to protect surrogacy.



FIGURE 9:



LEGEND: This figure represents the relationship between the gender of the respondents and their agreeability on relinquishing the child is a difficult part of surrogates.

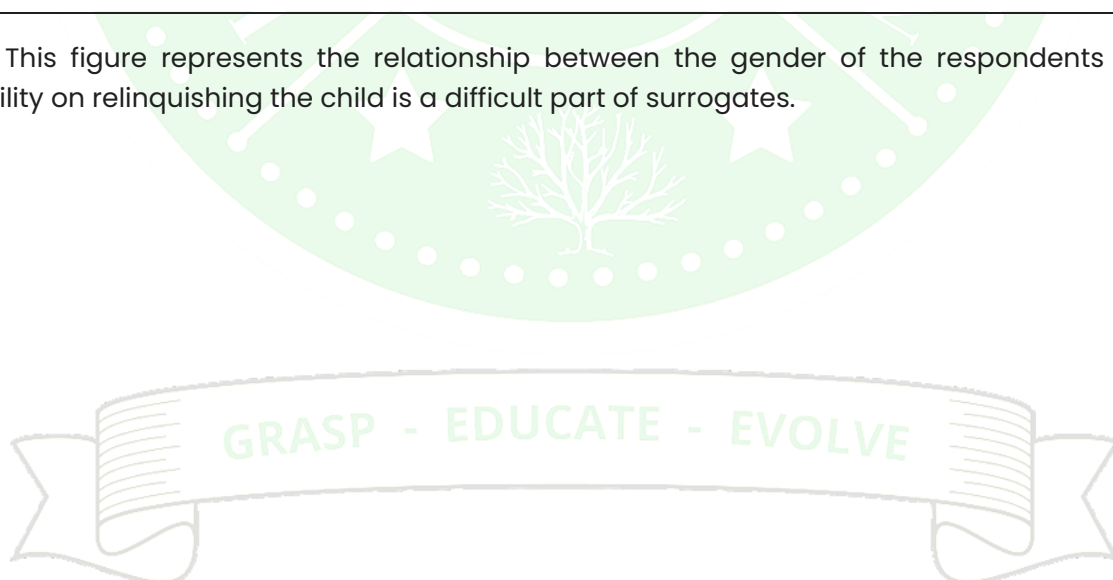
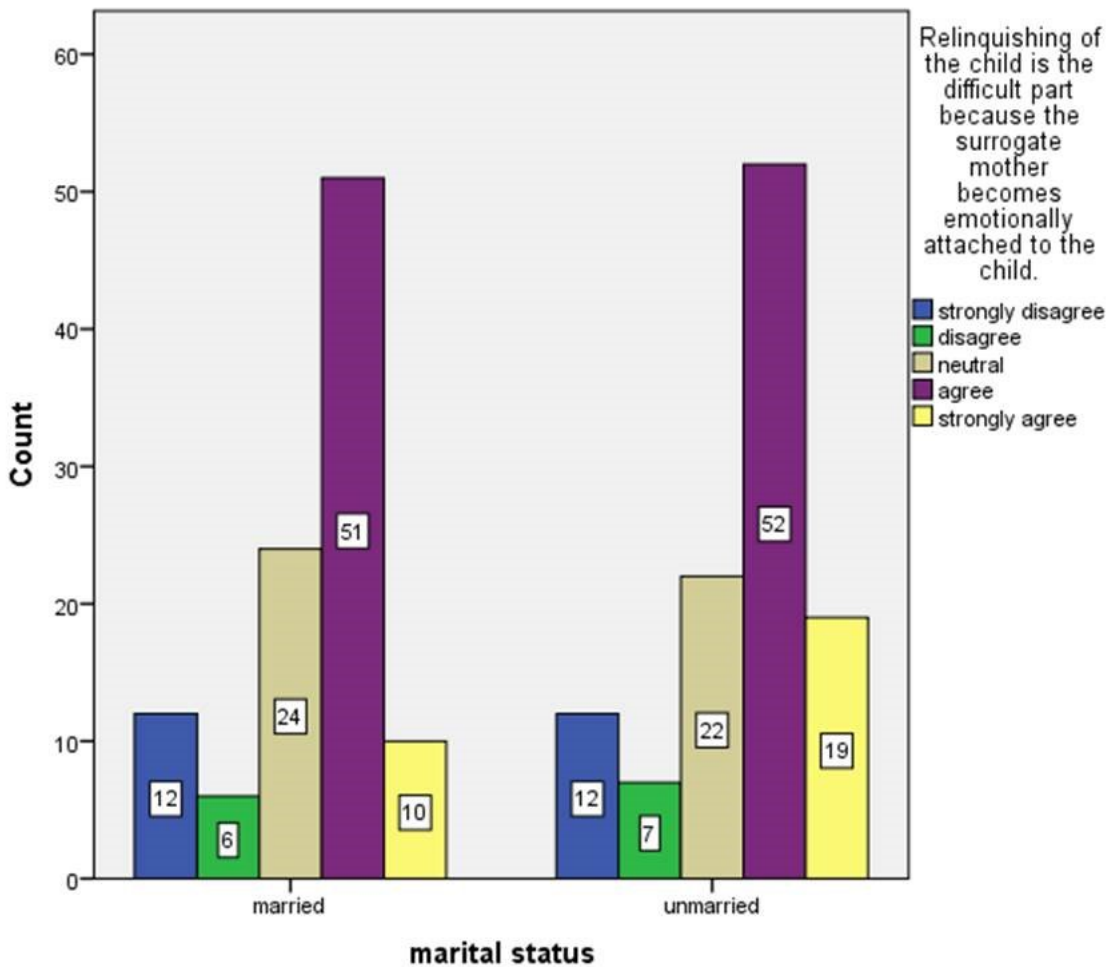


FIGURE 10:



LEGEND: This figure represents the relationship between the marital status of the respondents and their agreeability on relinquishing the child is a difficult part of surrogates.

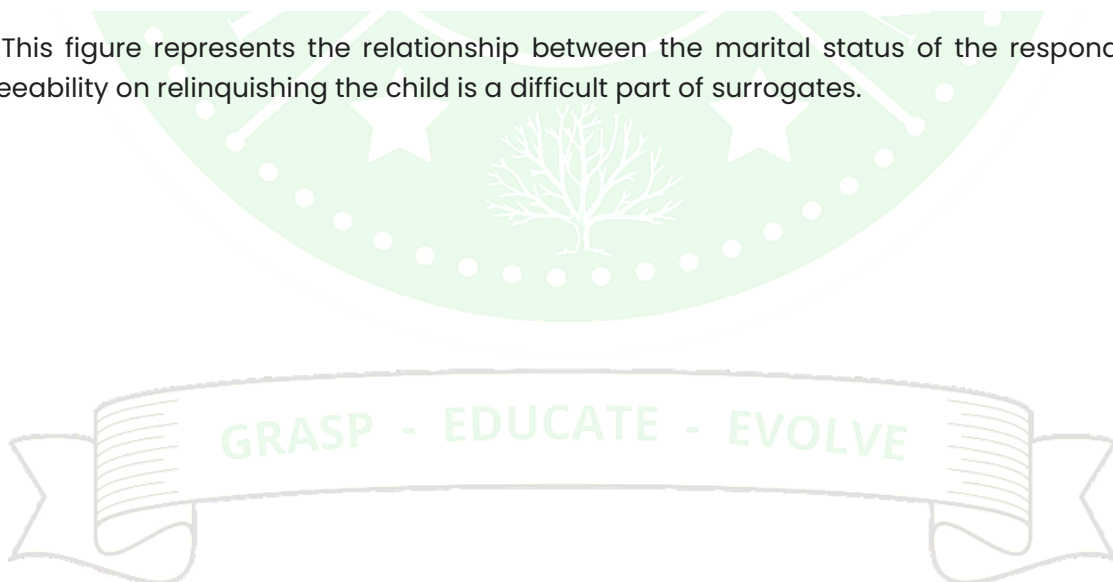


TABLE 1:

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: this table 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: This table represents the anova of poverty and unemployment being the triggering factors which compel them to become the surrogate mother.

RESULT:

majority of all the age group of the respondents have agreed that surrogacy is a part of commercial business in india. (FIG 1) majority of the UG qualified respondents have agreed that surrogacy is a commercial business in India. (FIG 2) majority of male respondents have agreed surrogacy as social stigma (FIG 3) majority of unmarried respondents have neutral in opinion that surrogacy as social stigma (FIG 4) majority of the age group of 18-25 yrs have agreed that poverty being a factor to

become a surrogate mother (FIG 5) majority of the age group of 18-25 yrs have disagreed that poverty being factor to become a surrogate mother (FIG 6) majority of the UG qualified respondents have agreed that they should be law to protect surrogacy (FIG 7) majority of all the respondents have agreed that they should be law to protect surrogacy. (FIG 8) majority of the female respondents have agreed (FIG 9) majority all respondents have agreed this may be due to the fact that because always the mother (FIG 10). **TABLE 1** : There is 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:

majority of all the age group of the respondents have agreed that surrogacy is a part of commercial business in India. This might be because they are aware or would have witnessed women being paid for surrogate mothers(**FIG 1**) majority of the UG qualified respondents have agreed that surrogacy is a commercial business in India. This might be because they are aware of that business where the mother's womb has been given for rent and also they might be aware that the bill has been proposed in order to ban commercial surrogacy.(**FIG 2**)majority of male respondents have agreed surrogacy as social stigma this may be due to that they are aware of the difference between surrogacy and prostitution,then it is considered as social stigma because it involves as sexual service like prostitution surrogates also act through agent.(**FIG 3**)majority of unmarried respondents have neutral in opinion that surrogacy as social stigma this may be due to that both surrogacy and prostitution is morally wrong and bad in the eyes of the society but when it's comes to women it's her right to body to do things.(**FIG 4**) majority of the age group of 18-25 yrs have agreed that 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 mothers.(**FIG 5**)majority of the age group of 18-25 yrs have disagreed that 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.(**FIG 6**)majority of the UG qualified respondents have 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.(**FIG 7**)majority of all the respondents have agreed that there should be a law to protect surrogacy. This might be due to that in order to ensure proper procedure for surrogacy and no other illegal practice through agents .(**FIG 8**)majority of the female respondents have agreed this may be due to the fact that basically women are emotionally attached to their child when they are at womb itself so after birth one have to give the child which she carried for months is the difficult part.(**FIG 9**)majority all respondents have agreed this may be due to the fact that because always the mother – child bond inside the womb is very emotional and when they get separated after the birth it will be very difficult.(**FIG 10**)**TABLE 1 :** There is significant difference of opinion among the age group of the sample population. This may be due to the fact that they feel that women have legal rights to their reproductive body.**Table 2:** there is a significant difference of opinion between the education qualifications of the sample population.

LIMITATIONS:

There are various limitations in this study which includes-There is a major constraint in the sample frame as the data was collected only from the respondents because of a particular area. Another limitation is the sample size of 201, which cannot be used to assume the thinking of the entire population in a particular country, state, or city.

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. Suggestions: Since India has interdicted consensual homosexuality their right to gain surrogacy services to beget a child must be addressed.3. Ought to address the arising issues like children born out of ART ways with their dead parent's gametes cells.4. Passing the long- pending supported Reproductive Technology(ART) Bill will make the surrogacy act more important.

REFERENCE:

1. Assisting Reproduction, Testing Genes: Global Encounters with New Biotechnologies, by Daphna Birenbaum-Carmeli and Marcia C. Inhorn Matt James Pages 242-244 | Published online: 21 Apr 2015
2. Tiwari, N. (2019). Commercial Surrogacy in India: An Overview. Asian Review of Social Sciences, 8(2), 35-41. <https://doi.org/10.51983/arss-2019.8.2.1592>
3. Phillips, Amy M. MD*; Magann, Everett F. MD†; Whittington, Julie R. MD‡; Whitcombe, Dayna D. MD§; Sandlin, Adam T. MD* Surrogacy and Pregnancy, Obstetrical & Gynecological Survey: September 2019 - Volume 74 - Issue 9 - p 539-545 doi: 10.1097/OGX.0000000000000703
4. Patel NH, Jadeja YD, Bhadarka HK, Patel MN, Patel NH, Sodagar NR. Insight into different aspects of surrogacy practices. J Hum Reprod Sci [serial online] 2018 [cited 2022 Available from: <https://www.jhrsonline.org/text.asp?2018/11/3/212/245866>
5. Global surrogacy, exploitation, human rights and international private law: a pragmatic stance and policy recommendation
6. Recent trends in reproductive tourism and international surrogacy: ethical considerations and challenges for policy Raywat Deonandan Risk Management and Healthcare Policy 8, 111, 2015.
7. Liberation or exploitation: commercial surrogacy and the Indian surrogate Caroline Vincent, Alene D Aftandilian Suffolk Transnat'l L. Rev. 36, 671, 2013
8. One step forward or one step back? Autonomy, agency and surrogates in the Indian Surrogacy (Regulation) Bill 2019 Swati Gola International Journal of Law in Context 17 (1), 58-74, 2021
9. Insight into different aspects of surrogacy practices Nayana Hitesh Patel, Yuvraj Digvijaysingh Jadeja, Harsha Karsan Bhadarka, Molina Niket Patel, Niket Hitesh Patel, Nilofar Rahematkhan Sodagar Journal of human reproductive sciences 11 (3), 212, 2018
10. The decline in intercountry adoptions and new practices of global surrogacy: Global exploitation and human rights concerns Karen Smith Rotabi, Nicole Footen Bromfield, Affilia 27 (2), 129-141, 2012
11. Ethical concerns for maternal surrogacy and reproductive tourism Raywat Deonandan, Samantha Green, Amanda Van Beinum Journal of Medical Ethics 38 (12), 742-745, 2012
12. Reconceiving surrogacy: Toward a reproductive justice account of Indian

- surrogacy, Alison Bailey, Hypatia 26 (4), 715-741, 2011
13. Globalization and cross-border reproductive services: Ethical implications of surrogacy in India for social work George Palattiyil, Eric Blyth, Dina Sidhva, Geeta Balakrishnan International social work 53 (5), 686-700, 2010:
 14. Global trade and assisted reproductive technologies: regulatory challenges in international surrogacy, Erin Nelson Journal of Law, Medicine & Ethics 41 (1), 240-253, 2013:
 15. Barriers for domestic surrogacy and challenges of transnational surrogacy in the context of Australians undertaking surrogacy in India Louise Johnson, Eric Blyth, Karin Hammarberg Journal of law and medicine 22, 136-154, 2014:
 16. Outsourcing the womb: Race, class and gestational surrogacy in a global market France Winddance Twine Routledge, 2012
 17. Surrogate tourism and reproductive rights, Vida Panitch, Hypatia 28 (2), 274-289, 2013: 1
 18. Duffy DA, Nulsen JC, Maier DB, Engmann L, Schmidt D, Benadiva CA. Obstetrical complications in gestational carrier pregnancies. Fertil Steril 2005; 83:749-54.
 19. Parkinson J, Tran C, Tan T, Nelson J, Batzon J, Serani P. Perinatal outcome after in-vitro fertilization-surrogacy. Hum Reprod 1998; 14:671- 76.
 20. Desai, K. (2012). India's surrogate mothers are risking their lives. They urgently need protection. The Guardian, June 5, US Edition