

Absence of a Legal Framework, a Limitation to the Practice of Surrogacy in Nigeria

Sylvester Onuegbunam Nweze¹, Malachy Nwaeze Ezenwaeze²,
Johnson Ifeanyi Onyekpa³

^{1,2,3}Department of Obstetrics and Gynaecology, Enugu State University of Science and Technology Teaching Hospital, Enugu, Nigeria.

Corresponding Author: Malachy Nwaeze Ezenwaeze

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ABSTRACT

Introduction: The human passion for procreation and perpetration of lineage has remained since existence. Surrogacy implies the use of a substitute mother to gestate a pregnancy for another woman and thereafter relinquishes the child/children and any parental entitlement to the child/children to the commissioning parents. It is a veritable option for couples who have not been successful in their efforts to bear children.

Objective: to assess the awareness, practice, and limitations to practice of surrogacy in Igbo Ukwu community of Anambra State, South-East Nigeria.

Methodology: A descriptive cross-sectional study which involved 200 male and female community members of Igbo Ukwu in Anambra. Sample size of 200 was calculated for the study using the Kish formula for cross sectional studies. Simple random sampling was used in selecting participants who converged in the community square. A structured self-administered questionnaire was employed in gathering information on socio-demographic characteristics, knowledge, practice, and limitations to practice of surrogacy. Data was analyzed using Statistical Packages for Social Sciences (SPSS) version 23.0. Descriptive statistics was used to summarize the results which were presented with the aid of a pie chart, bar chart and frequency tables. The level of significance was set at 95% probability level ($p < 0.05$)

Result: Most of the research participants were within the age group 28 – 37 years (40.0%), with mean age of 25.3+1yrs. The study

population comprised mainly of people who had formal education (93.0%). There was high level of awareness of surrogacy arrangement in the studied population (84%). However, the practice of surrogacy was generally poor; only four (4) respondents out of 120 females that participated in the study (3.3%) had acted as surrogate mother. Financial benefit was mainly the reason for accepting surrogacy as noted in 47.8% of research participants, while fear of victimization due to absence of a legal framework (54.3%) and to a lesser extent, culture (27.1%) and religious inclination (28.6%) were the main reasons limiting the practice of surrogacy among the participants

Conclusion: There is an obvious disconnect between the level of awareness and practice of surrogacy mainly due to fear of victimization from lack of a legal framework. This calls for a need to institutionalize a legal framework to control assisted reproductive technology practice in Nigeria which will restore the hope and aspirations of the infertile couple in need of surrogacy and other assisted reproductive techniques.

Key words: surrogacy, awareness, practice, limitations, legal framework

INTRODUCTION

The human passion for procreation and perpetration of lineage follows a biblical injunction from God “be fruitful, and multiply, and replenish the earth, and subdue it” Genesis 1:28. Since then human race has not reneged, instead there is increased cultural attachment to child

bearing and believe that every marriage must be blessed with child/children. This cultural believe has brought so much burden/concern to those faced with the challenges of infertility. The burden of infertility is often heightened by the family pressures and the assumption that it is a reward of once misdeed at a point in his or her existence in life especially the female folks. Infertility is defined as the inability to attain a clinical pregnancy or impregnate a woman after a year or more of regular unprotected coitus [1]. It is a global burden. The prevalence rate of infertility was estimated to be about 17%, and 1 in every 6 women within the reproductive age experiences delay in conception [2]. In United Kingdom 1 in every 8 women and 1 in every 10 men are reported to suffer from infertility [3]. In India, about 10-14% of the population is faced with infertility with greater rates in urban areas where 1 out of 6 couples are affected [4]. Infertility constitutes about 50% of gynaecological consultations in developing countries and the Prevalence of infertility in sub-Saharan Africa is reported to be higher, with 10-30 % of couples affected in Nigeria [5], others reported prevalence of 20 % with equal male and female affectation [6]. In more recent study, a higher prevalence to the tune of 30-40% was reported in Sub-Saharan Africa [7]. In Nigeria, infertility rate was noted to be high [8]. Infertility could be from male factor, female factor or from other factors. Male factor infertility has been on the increase. It was noted that up to 40-50% factor in infertility in Nigeria is due to male factor [9, 10]. This has informed closer/balanced evaluation of infertile couples during assessment in the clinic instead of emphasis on female factor only. Recent advances in medicine through assisted reproductive technologies (ARTs) like surrogacy have revolutionized the narratives. Most of the infertile couples now leverage on these new advances as a panacea to their condition. Surrogacy implies the use of a substitute mother to gestate a pregnancy for another woman and

thereafter relinquishes the child/children and any parental entitlement to the child/children to the commissioning parents, usually an infertile couple [8]. The burning desire for the infertile couple to achieve pregnancy makes them to explore every options and surrogacy can be one of those options [11]. The modern day surrogacy can be likened to the traditional practice of some ethnic regions in Nigeria where a woman faced with infertility often marries a wife for her husband for purpose of procreation [12]

“Surrogate,” originated from the Latin word, *surrogatus*, meaning, a substitute or person appointed to act in the place of another [13]. Surrogacy is of two types, traditional surrogacy and gestational surrogacy [14]. Traditional surrogacy is the type of surrogacy where the surrogate has a genetic contribution in the conception of the baby, such as the use of her own oocytes in invitro fertilization (IVF) or by being inseminated with the intended father’s semen [15]. The second type known as gestational surrogacy is where the surrogate has no genetic contribution and is only a carrier of the pregnancy. Surrogacy arrangement can be either for altruistic or commercial consideration. Altruistic surrogacy relates to an arrangement whereby the commissioning or intending couple does not pay the surrogate mother any compensation except reasonable expenses like, legal charges, loss of earnings, medical expenses and insurance coverage related to the pregnancy and postpartum period [16]. Altruistic surrogacy is permitted under various conditions in Belgium, Greece, Holland, United Kingdom, Portugal, Australia, Canada, New Zealand, and some North American states [17]. On the other hand, commercial surrogacy relates to a surrogacy arrangement which is undertaken by the surrogate mother for payment or monetary incentives in cash or kind aside from the payment of medical expenses and insurance coverage associated with the pregnancy [18]. Commercial surrogacy is legal with no

restrictions in the nations of Georgia, Israel, Ukraine, Russia, United States and California [19]

Surrogacy practice in Nigeria is bedeviled by a lot of legal, ethical and socio-cultural issues. While some countries like the United Kingdom and South Africa have laws regulating the practice of surrogacy, others like Nigeria do not [8]. This has encouraged undue exploitation of desperate infertile couples and surrogate mothers, unethical practices and abuse of rights of children born through surrogacy arrangements. Some health personals also shy away from the practice of surrogacy for the fear of victimization. Surrogacy as an option of management of infertility has been officially in practice in some developed countries like United Kingdom since 1985 following the laid down bedrock Surrogacy Arrangements Act (SAA) of 1985 [20]. A gestational carrier was first used in 1985 and it is believed that 0.2 percent of children born in assisted reproduction clinics in UK were through a surrogacy arrangement [21]. Between 1999 and 2013, there were 30,927 surrogate pregnancies in the United States [22]. In India, more than 25,000 children have been born through gestational surrogacy [23]. In Spain, even though the practice is yet to be legalized, it is estimated that figures for children born through surrogacy could exceed 1,500 [24]. However, surrogacy has remained unpopular in Nigeria because of lack of legal framework. With legal framework insitu like in United Kingdom (UK) all that is required of the commissioning parents following surrogacy arrangement is to apply for parental order to legally terminate the status of the surrogate mother once the arrangement is concluded [25]. In United kingdom, the commissioning couple is expected to certify the following conditions: domicile in UK, must have reached the age of 18years, married, make an application to be the commissioning parents within 6months of the child's delivery, ensure that one of them at least has a genetic relationship with the child [26], consent to

the parental order; ensure that the child's home must be with the commissioning parents [25], provide the court with a full certified copy of an entry in the register of live-births [27] and pay only a reasonable expenses to the surrogate mother [28]. Several attempts have been made at providing framework for regulating assisted reproductive technology in Nigeria, ranging from Assisted Reproduction Authority (Establishment) Bill 2012 [29] that was rejected due to lack of input from Nigerian Medical Association (NMA) and the Society for Obstetrics and Gynaecology of Nigeria (SOGON), the National Health Act 2014 [30] passed into law that bans the practice of ARTs, to the National Health Act (Amendment) Bill 2016 that is still pending in the national assembly [31]. Surrogacy practice in Nigeria is shrouded in so much secrecy due to negative media reportage on baby factories [32], the uninformed usually equate surrogacy arrangements to baby factories [33]. This misconception can be linked to the actions of mischievous elements who rents unused buildings where pregnant women are kept until they give birth to their children—the so called baby factories, which are illegal human exploitation networks [34]. Twenty baby factories were identified in Nigeria between 2008 and 2014 [19]. This ambiguity has impaired to an extent the recognition of surrogacy arrangements in Nigeria and its practice by many infertile couples in need of it to avert stigmatization. Absence of a legal framework is also likely going to pose a challenge in seeking legal redress in event of dispute arising from the surrogacy arrangement; also many unqualified medical practitioners have taken advantage of unsuspecting desperate infertile couple who are in need of surrogacy arrangement as well as abuse of the rights of children born through surrogacy.

Institutionalizing a regulatory framework to control assisted reproductive technology practice in Nigeria will surely restore the hope and aspirations of the infertile couple

in need of surrogacy and other assisted reproductive techniques. This work aims at determine the awareness, practice and limitations of surrogacy practice in Anambra State, South East Nigeria

METHODOLOGY

A descriptive cross-sectional study which involved 200 male and female community members of Igbo Ukwu in Anambra State, South- East Nigeria. Sample size of 200 was calculated for the study using the Kish formula for cross sectional studies. Simple random sampling was used in selecting participants who converged in the community square. A structured self-

administered questionnaire was employed in gathering information on socio-demographic characteristics, knowledge, practice, and limitations to practice of surrogacy. Participation was voluntarily and data obtained treated with absolute confidentiality. Data was analyzed using Statistical Packages for Social Sciences (SPSS) version 23.0 (IBM Corporation, Armonk, USA). Descriptive statistics was used to summarize the results which were presented with the aid of a pie chart, bar chart and frequency tables. The level of significance was set at 95% probability level ($p < 0.05$)

RESULTS

Table 1: Demographic distribution of respondents

Demography	Value (%)
Age (year)	
18 – 27	72 (36.0)
28 – 37	80 (40.0)
38 – 47	34 (17.0)
48 – 57	10 (5.0)
58 – 67	4 (2.0)
Sex	
Male	80 (40.0)
Female	120 (60.0)
Occupation	
Student	86 (43.0)
Apprenticeship	22 (11.0)
Petty trading	22 (11.0)
Farming	8 (4.0)
Unemployed	8 (4.0)
Civil servant	20 (10.0)
Business executive	12 (6.0)
Professional	10 (5.0)
Retired	4 (2.0)
Artisan	8 (4.0)
Educational status	
Non-formal	14 (7.0)
Primary	6 (3.0)
Secondary	30 (15.0)
Tertiary	80 (40.0)
Postgraduate	70 (35.0)
Marital status	
Single	68 (34.0)
Married	100 (50.0)
Separated	24 (12.0)
Divorced	2 (1.0)
Widowed	6 (3.0)
Religion	
Christian	180(90.0)
Muslim	6 (3.0)
Traditional	14 (7.0)

A total of 200 respondents, comprising 80 (40.0%) males and 120 (60.0%) females participated in the study. They were between 18 and 67 years old, majority being

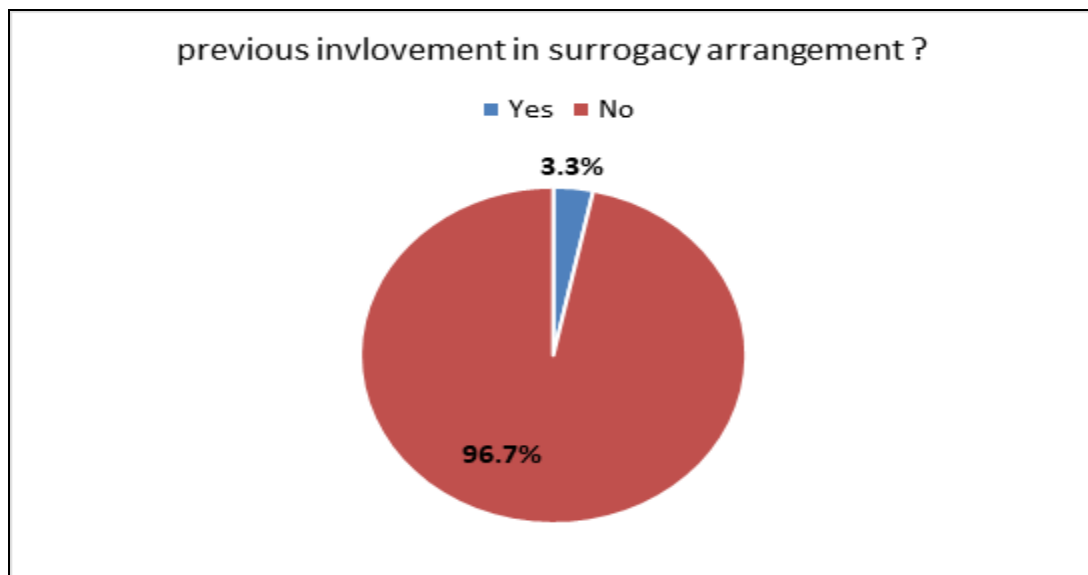
in the age groups 28 – 37 years ($n = 80$; 40.0%), and 18 – 27 ($n = 72$; 36.0%). Majority of the respondents were students 86 (43.0%), occupation of others include;

apprenticeship 22 (11.0%), petty trading 22 (11.0%) and civil service 20 (10.0%). The study population could be classified as formally educated as only 14 (7.0%) had non- formal education compared to 30 (15.0%), 80 (40.0%) and 70 (35.0%) who had secondary, tertiary and postgraduate education respectively. Married people were 100 (50.0%), single 68 (34.0%) and separated 24 (12.0%) (Table1).

Table 2: knowledge of respondents about surrogacy

Knowledge	Value (%)
Have you heard about surrogacy	
Yes	168 (84.0)
No	32 (16.0)
If yes, what is your source of information?	
Friends	30 (17.9)
Radio	34 (20.2)
Television	30 (17.9)
Newspaper	14 (8.3)
Social media	56(33.3)
Teacher	4 (2.4)
In your own understanding, what is the meaning of surrogacy?	
A person under an agreement to get pregnant	58 (33.6)
Adoption	2 (1.2)
Can't explain	2 (1.2)
Don't know	2 (1.2)
Getting pregnant for another person to own the baby	4 (2.3)
To carry another woman's child in your womb for her	104 (60.5)
Total	172
Do you know anyone who had served as surrogate mother?	
Yes	12 (6.0)
No	188 (94.0)

Figure 1: Practice of surrogacy



Among the 200 respondents, 168 (84.0%) had heard about surrogacy before the study. They got the information mainly from social media (33.3%), radio (20.2%), television (17.9%), and friends (17.9%). When asked to explain what they understand by surrogacy, out of 172 persons who responded to this question, 104 (60.5%) said

it is "to carry another woman's child in your womb for her", 58 (33.7%) as "a person under an agreement to get pregnant", and 4 (2.3%) as "getting pregnant for another person to own the baby". Other said it is same thing as "adoption", 2 (1.2%), while 2(1.2%) each said they "don't know" and "can't explain". Those who said they know

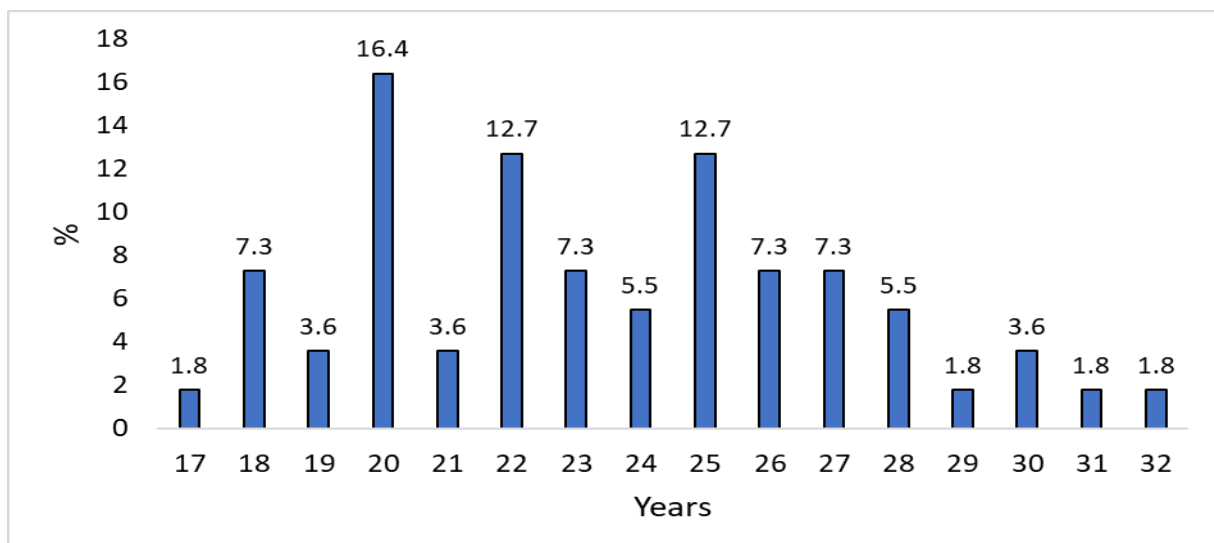
someone who had engaged in surrogacy arrangement were 12 (6.0%) (Table 2). Among the 120 women who participated in the study, only 4 respondents (3.3%) said

they had acted as surrogate mother previously as against 116 (96.7%) who had never done so (Figure 1).

Table 3: Perception of respondents about surrogacy

Perception	Values (%)
Thinks surrogacy can cause problem in the future	
Yes	62 (31.0)
No	138 (69.0)
Thinks surrogacy can lead to inability to conceive	
Yes	30 (15.0)
No	130 (66.0)
Don't know	38 (19.0)
What you think is the reason people practice surrogacy	
Humanitarian purpose	66 (33.0)
Money involved	124 (62.0)
Does the surrogate mother have any claim over the baby?	
Yes	60 (30.0)
No	110 (55.0)
Don't know	26 (13.0)
Would you like the commissioning parents to know the surrogate mother?	
Yes	70 (35.0)
No	130 (65.0)
Would you like the surrogate mother to know the commissioning parents?	
Yes	68 (34.0)
No	132 (66.0)
Is it right for a single lady to practice surrogacy?	
Yes	74 (37.0)
No	126 (63.0)
Is it right for a married woman to practice surrogacy?	
Yes	74 (37.0)
No	126 (63.0)
Is it right for a widower to practice surrogacy?	
Yes	96 (43.0)
No	104 (52.0)
Is it right for a lady who is separated from her husband to practice surrogacy?	
Yes	86 (43.0)
No	114 (57.0)
At what age can a person practice surrogacy?	
Any age	42 (21.0)
Don't know	110 (55.0)
Others	44 (22.0)

Figure 2: Respondents choice of suitable age for practice of surrogacy



The perception of the respondents concerning surrogacy is summarized in Table 3. More than half of the respondents did not think that surrogacy could cause a problem in the future (69.0% vs. 31.0%). Only 30 (15.0%) of respondents think that surrogacy could lead to inability to conceive. They think the reason why people accept the duty of a surrogate is more due to the monetary benefit (62.0%) than from a desire to provide a humanitarian service (33.0%). More than half of the respondents (55.0%) think that a surrogate mother does not have a right to the baby while 30.0%

thinks she does. A greater fraction of the respondents was unfavourably disposed to letting the commissioning parents knowing the surrogate mother (65.0%), and the surrogate mother knowing the commissioning parents (66.0%).

In response to the question, “at what age can a person practice surrogacy?” 42 (21.0%) chose at any age, 110 (55.0%) did not know, and 44 (22.0%) chose others (Table 3). When asked to specify what they meant by “others”, the entries listed included ages 17, 18 and so on till 32 years (Figure 2).

Figure 3: Willingness to serve as a surrogate mother among female respondents

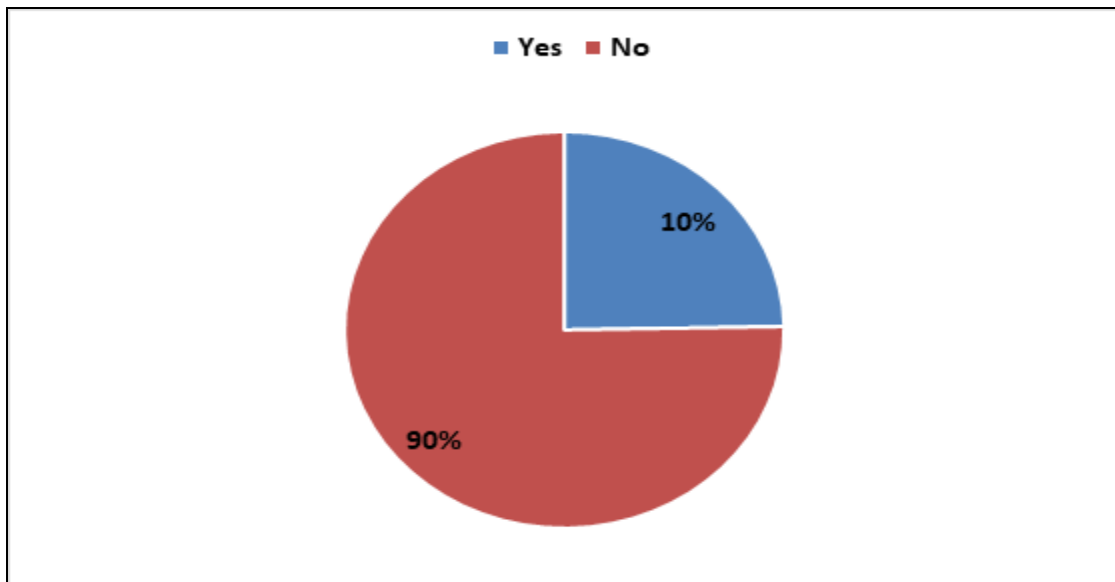


Figure 4: Reason behind willingness to serve as a surrogate mother among female respondents

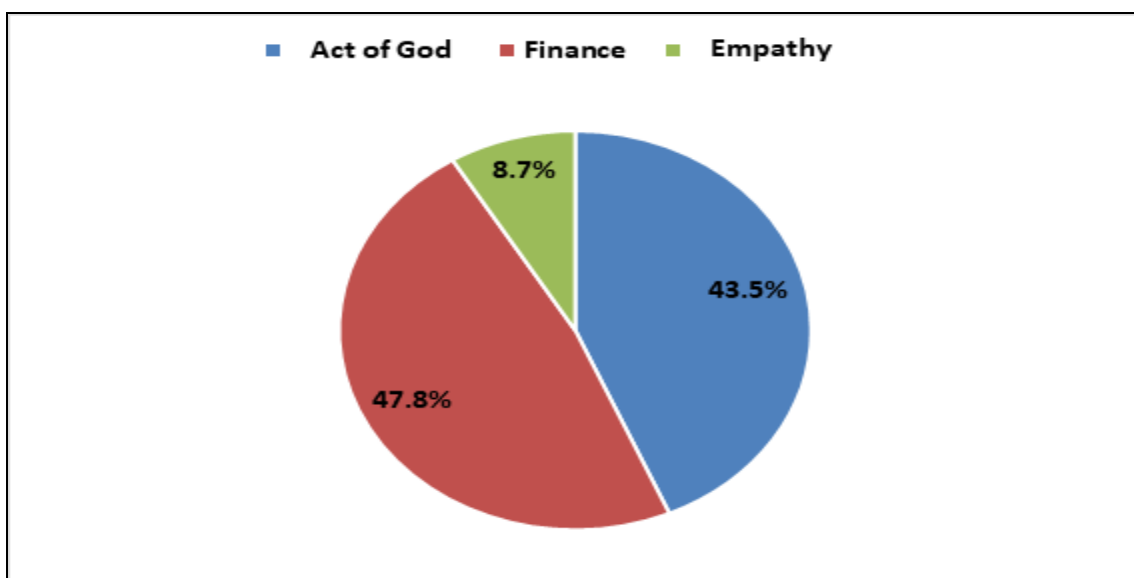
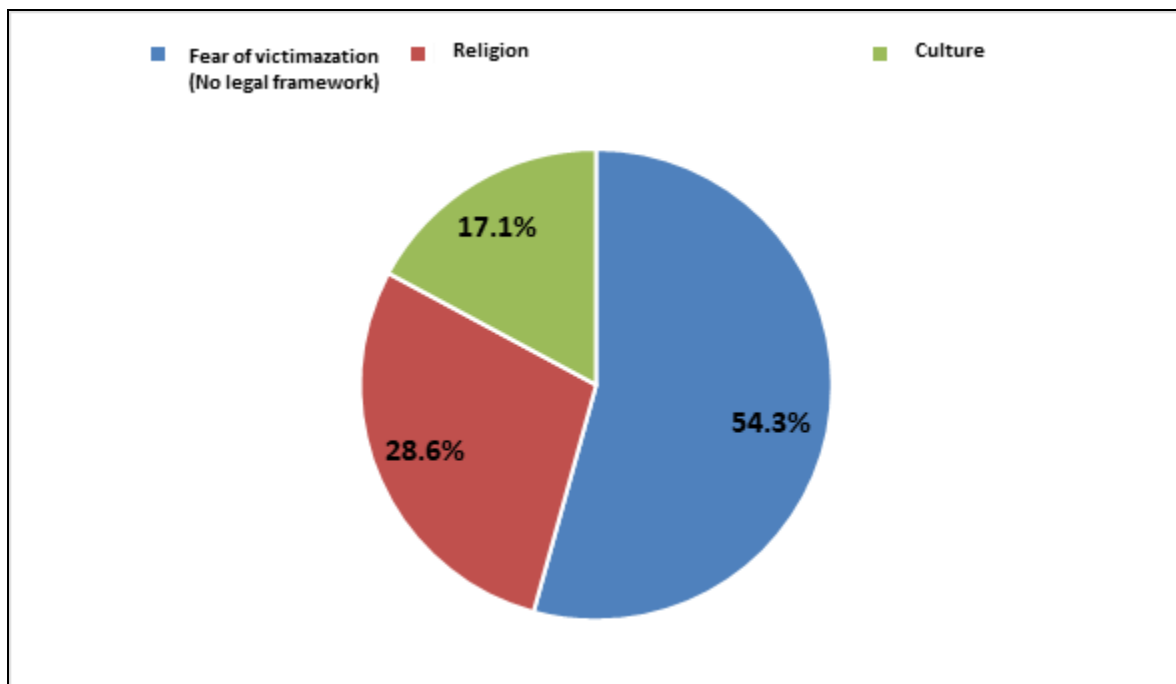


Figure 5: Reason behind unwillingness to serve as a surrogate mother among female respondents



From a total of 120 female respondents who responded to the question “If you were asked to be a surrogate mother would you?” only 12 respondents (10%) answered on the affirmative (Figure 3A). Majority of the people who would be willing to act as

surrogate mother would only do so for financial reasons (47.8%) and due to work of God (43.5%) (Figure4). The reason given for refusal to act as surrogate were mainly fear of victimization (54.3%) and religion (28.6%) (Figure5).

Table 4: Demography in relation to knowledge of surrogacy

Level of education	Number of respondents	Have you heard about surrogacy before?	
		Yes	No
Non-formal	14	8 (57.1)	6 (42.9)
Primary	6	4 (66.7)	2 (33.3)
Secondary	30	20 (66.7)	10 (33.3)
Tertiary	80	72 (90.0)	8 (10.0)
Post-graduate	70	64 (91.4)	6 (8.5)
	200	168 (84.0)	32 (16.0)
		$\chi^2 = 20.578, df = 4, p < 0.0001$	
Age group (year)			
18 – 27	72	62 (86.1)	10 (13.9)
28 – 37	80	72 (90.0)	8 (10.0)
38 – 47	34	24 (70.6)	10 (29.4)
48 – 57	10	10 (100)	0 (0)
58 – 67	4	0 (0)	4 (100)
		$\chi^2 = 29.837, df = 5, p < 0.0001$	
Marital status			
Single	68	58 (85.3)	10 (14.7)
Married	100	84 (84.0)	16 (16.0)
Separated	24	22 (91.7)	2 (8.3)
Divorced	2	2 (100)	0 (0)
Widowed	6	2 (33.3)	4 (66.7)
		$\chi^2 = 12.976, df = 4, p = 0.011$	

The demography of the respondents in relation to prior knowledge about surrogacy is presented in Table 4. Those who had prior knowledge of surrogacy was generally

higher with increasing level of education and was statistically significantly ($\chi^2 = 20.578, df = 4, p < 0.0001$). Similar higher knowledge was noted in the younger

respondents (18 – 47 years) than the older ones (48 – 67) as well in the married group.

DISCUSSION

A total of 200 respondents, comprising 80 (40.0%) males and 120 (60.0%) females participated in the study. They were between 18 and 67 years old, majority being in the age groups 28 – 37 years (n = 80; 40.0%), and 18 – 27 (n = 72; 36.0%). Most of the respondents were students 86 (43.0%), occupation of others include; apprenticeship 22 (11.0%), petty trading 22 (11.0%) and civil service 20 (10.0%). The study population could be classified as formally educated as only 14 (7.0%) had non- formal education compared to 30 (15.0%), 80 (40.0%) and 70 (35.0%) who had secondary, tertiary and postgraduate education respectively. Married people were 100 (50.0%), single 68 (34.0%) and separated 24 (12.0%) (Table1).

Among the 200 respondents, 168 (84.0%) had prior knowledge of surrogacy before the study. They got the information mainly from social media (33.3%), this high level of awareness which was mainly from social media may not be surprising because, proliferation of communicating gadgets as well as platforms via which information can easily circulate online have been found to be on the increase [35]. Increased level of education was associated with higher knowledge of surrogacy and this was statistically significant ($\chi^2 = 20.578$, $df = 4$, $p < 0.0001$). Similar higher knowledge was noted in the younger respondents (18 – 47 years) than the older ones (48 – 67) as well as in the married group. Even with the high level of awareness, the practice is low as only 4 respondents (3.3%) out of 120 females that participated in the study had acted as surrogate mother previously as against 116 (96.7%) who had never done so (Figure 1) and those who said they knew someone who had engaged in surrogacy arrangement were only 12 (6.0%) (Table2). From a total of 120 female respondents who responded to the question “If you were asked to be a surrogate mother would you?”

only 12 respondents (10%) answered on the affirmative (Figure 3). Majority of the people who would be willing to act as surrogate mother would only do so for financial reasons (47.8%) and as act of God (43.5%) (Figure4). The reason given for refusal to act as surrogate were mainly fear of victimization due to absence of a legal framework on surrogacy (54.3%), religious inclination (28.6%) and culture (27.1%) (Figure5). Absence of a legal framework has also been noted in literature as a drawback to the practice of surrogacy in Nigeria [8]

Concerning the perception of the respondents on surrogacy, more than half of the respondents did not think that surrogacy could cause a problem in the future (69.0% vs. 31.0%). Only 30 (15.0%) of respondents felt that surrogacy could lead to inability to conceive. More than half of the respondents (55.0%) felt that a surrogate mother does not have a right to the baby while 30.0% thinks she does. A greater fraction of the respondents was unfavourably disposed to letting the commissioning parents knowing the surrogate mother (65.0%), and the surrogate mother knowing the commissioning parents (66.0%).

In response to the question that aimed to assess the definition of surrogacy and suitable age for practice of surrogacy, only 4 respondents (2.3%) had a good knowledge of the answer to the questions asked.

CONCLUSION

Surrogacy is a veritable option in some infertile couples. There is an obvious disconnect between the level of awareness and practice of surrogacy mainly due to fear of victimization from lack of a legal framework. This calls for a need to institutionalize a legal framework to control assisted reproductive technology practice in Nigeria which will restore the hope and aspirations of the infertile couple in need of surrogacy and other assisted reproductive techniques.

Data Availability: All the necessary data are included in the manuscript

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