LEGAL PROTECTION FOR RAPED VICTIMS: IMPERATIVES OF DOMESTIC AND INTERNATIONAL LAWS[1]

Abstract

Rape has a history that almost equaled the history of man's creation. Culturally, it is an offence which stands on the same pedestal with the offence of murder since a suspect accused of rape is expected to go into hiding while his people make efforts to cleanse the shame on the face of the family of the rape victim. Despite all these, the offence of rape in Nigeria seems to be on the increase and the question on every lip is what the cause is? Does it mean that the punishment stipulated for it in the extant laws is no longer heavy enough to deter would-be rapist or are there factors which ostensibly offer more incentives for rape than the risk of its punishment. Furthermore, there is the fact that women have always been perceived as the weaker vessel, and so have been subjugated and oppressed by culture in most African societies. Rape is simply an unlawful sexual intercourse between a man and a woman, vice versa, without the consent of the victim. This paper uses a doctrinal research methodology to explore the meaning of rape and consent in different jurisdictions, types and elements of rape and of course punishment for rape in different jurisdictions and further discussed the legal and institutional protection for raped victims. This paper therefore recommends among other things for some review of some of the laws on rape to accommodate definitions of rape, consent etc. and recommends stiffer punishments.

Keywords: Consent, Rape, Victims, Women, Offence

1.0. Introduction

In Nigeria, incidences of rape are fast assuming a threatening dimension that requires urgent intervention considering the increasing rate. Rape, like other forms of violence against women, is an infringement on women's rights, privacy, self-preservation and dignity. Available data in the print and electronic media reveal that the issue of rape has become a serious social problem of epidemic proportions and no longer an isolated criminal act affecting just a few women in the society. In recent times the incidences of rape have increased at an alarming rate in Africa and also in Nigeria leading to the death of so many women. There is little or no policy or law that helps protect the victims as they are most times blamed, stigmatized and humiliated by the public if it is brought to the public domain. This hinders victims from embracing a mindset of reporting such an inhumane crime to the appropriate authority. With the way things are going, it cannot be said that it is a particular age bracket that engage in such act because even the elderly adults

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in the society engage in this animalistic act. In essence, teenagers, young men and old men engage in forceful sex with the opposite sex.
The present paper reviews generally the concept of rape, the legal framework for handling rape in Nigeria, loopholes therein and the way forward for curbing rape.

2.0. Conceptual Clarifications

2.1 Rape

Rape is simply defined in most jurisdictions as sexual intercourse, or other forms of sexual penetration, committed by a perpetrator against a victim without their consent.[2] The definition of rape is inconsistent between governmental health organizations, law enforcement, health providers, and legal professions.[3]Rape can also mean an unlawful sexual intercourse between a man and a woman, vice versa, without the consent of the victim. Rape can occur even without the intervention of the human genitals.

2.2. Types of Rape[4]

1. Date Rape: this is a type of rape in which the individuals have agreed on social engagement. The assailant may be an acquaintance or a person one has been dating.
2. Power Rape: a power rapist wants to capture, conquer and control their victim.
3. Gang Rape: this is when a group of people participate in the rape of a single victim.
4. Anger or Retaliatory Rape: it involves expression of hatred and rage towards the victim.
5. Sadistic Rape: the rapist in this case is obsessed and forces the victim to act out a part in some sort of role-play, it could involve mutilation, or torture as a means of getting the rapist excited.

2.2. Elements of Rape

From the above premises, it is necessary to spell out some elements of rape, which are:

a. Unlawful carnal knowledge of the victim;
b. There must be Penetration, no matter how slight it is;
c. There must be proof of such penetration;
d. Consent was not gotten or was ill gotten or was gotten through fear of threat, intimidation or was gotten by fraudulent representation of the victim's spouse;
e. Consent of a child below sixteen or fourteen years amounts to rape, even if it is the lady that suggests the idea.
f. It was the accused that committed the offence.[5]

Upon the establishment of these elements, the evidence of the victim must be corroborated with other evidence to grant conviction.[6]

D. Smith, Merril, ' Encyclopedia of rape ' 1st Edn. (Greenwood Press 2004). 169- 170.
[3] S.L. Maier, 'I Have Heard Horrible Stories: Rape Victim Advocates' Perceptions of the Revictimization of Rape Victims by the Police and Medical System- Violence against Women. .(accessed 12th May 2023).
[4] Wikipedia, 'Rape.'
https://en.wikipedia.org/wiki/Rape#:~:text=Incidences%20of%20rape%20are%20classified,war%20rape%20and%20statutory%20rape. Retrieved on September 22, 2024.
[5] Nnamani Ogbonna, 'Rape under Nigerian Law.' https://businessday.ng/opinion/article/rape-ppunder-nigeria-law/amp/ retrieved on September 24, 2024.
[6] Akpanefe v The State (1969) 1 All NLR 420.

2.4. Consent

In the case of *Ahamefule v. Imperial Med. Centre,*[7] consent was defined by the court thus: 'consent in legal parlance involves an element of volition, a voluntary agreement which is the deliberate and free act of the mind.'

Consent refers to the permission or freedom and capacity to make a choice on whether to have sex or not. When a woman says "no" to sex, her "no" should be taken as "no". It is possible that a woman who gives her consent to a sexual intercourse at the beginning may later change her mind in the course of the "act" and it is also possible that a woman who does not give her consent at the beginning may later decide to consent to it. Can it be said that there is rape in any of the situations?

Consent is when someone agrees, gives permission, or says "yes" to sexual activity with other persons. Consent is always freely given and all people in a sexual situation must feel that they are able to say "yes" or "no" or stop the sexual activity at any point. [8]At the core of consent lies the fact that every individual is the master of himself or herself and reserves the right not to be played with or acted upon by another in any manner especially sexual manner without his or her express permission this said permission ought to be obtained by the one who wants to act upon the person of the other expressly.

It has been argued in some settings that consent may be categorized into three[9]. For purposes of arriving at the context ~~of~~ in which consent is being discussed, it is pertinent to dwell on the three types of consent before moving on with the discourse. The three types of consent include explicit consent, implicit consent and opt-out consent.[10] Explicit consent is referred to as that where the individual has informed knowledge about what information he or she is giving.[11] In explicit consent, he or she has the option to give or not to give the consent required. It is the type of consent required in a sexual matter. It can also be taken as informed consent. Implicit consent on the other hand is consent that is implied from your conduct.[12] It suffices to say that a person reads from your conduct the fact that you said yes or no. This kind of consent is the one that is operational in Nigeria especially when sex is involved. This is so because some have formed the onerous opinion that a woman's 'no' means a subtle 'yes'. In other words, it has been argued that a woman's 'no' is indirectly a 'yes' and that from her conduct while verbally saying 'no' she desires the sexual act. This type of consent is wrong and cannot be used to measure consent in sexual matters. The third type of consent which is the 'opt out' consent entails that the person in question has only one option and that is to withdraw consent.[13] So when faced with the 'opt out' consent, the person is expected to withdraw consent.

Lack of consent is the key to the definition of rape.[14] Consent is affirmative "informed approval, indicating a freely given agreement" to sexual activity.[15] It is not necessarily expressed verbally, and may

[7] [2000] 5 NWLR (Pt. 917) 51
[8] Sexual Assault Prevention and Awareness Centre, University of Michigan, 'Consent, Outreach and Relationship Education.' https://sapac.umich.edu/CORE retrieved on September 24, 2024.
[9] This argument is common among medical personnel.

[10] Securiti, 'What are the Different Types of Consent.' https://securiti.ai/blog/types-of-consent/ retrieved on September 24, 2024.
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] Rape- legaldictionary.thefreedictionary.com.

instead be overtly implied from actions, but the absence of objection does not constitute consent. Lack of consent may result from either forcible compulsion by the perpetrator or an inability to consent on the part of the victim (such as people who are asleep, intoxicated or otherwise mentally compromised). [16] However consent of the victim is a complete defense.[17]

Under the Nigerian law, "consent" is not clearly defined in the Criminal or Penal Code. It presupposes that the meaning of the term 'consent' can be found elsewhere outside the ambit of the Criminal Code. Under the Sexual Offences Act, Section 74 [18] seeks to define consent as a situation where the person offers his agreement by choice and at the same time has the freedom and capacity to make that choice. It follows that in prosecuting such a matter, the prosecutor must ensure that the complainant had the capacity to make a choice about whether or not to take part in the sexual activity at the time in question and secondly establish that the choice was made freely and not in any way constrained or obtained by coercion. Where these two are satisfactorily established, then it can be said that it is consensual sex.[19]

However, under the UK's Sexual Offences Act, consent is extensively defined and it amounts to rape, if a man continues sexual intercourse after a woman withdraws her consent or starts a sexual intercourse where there is no consent, not minding the fact that consent is given midway[20]. In India, consensual sex given on the false promise of marriage constitutes rape.[21]

3.0. Legal and Institutional Frameworks for the Protection of Rape Victims

Nigeria is one indivisible Nation which has its establishing law codified as the Constitution of the Federal Republic of Nigeria. Every sector in the country has an establishing law which punishes the breach of it. Different crimes loom large in the country, one of which is rape. Apparently, Nigeria is one of the countries with high rape incidences in the world.[22] The continuing occurrence of this crime necessitated the federal government to promulgate some laws that curtail the offence of rape. They include the following: the Constitution of the Federal Republic of Nigeria 1999 (as amended 2011, **C**riminal Code Act,Penal Code, Violence Against Persons (Prohibition) Act, 2015, the Child Right Act, 2003, the Cyber Crime Act 2015, Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015,The African Charter on Human and People's Right (Ratification and Enforcement) Act, 1990

3.1 The Constitution of the Federal Republic of Nigeria 1999 as amended

The Constitution[23] is the *grund norm* and chapter IV deals extensively with fundamental rights. Its provisions provide for the sanctity of life of Nigerians. Section 34 of the Constitution provides that every

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[15] Basile, KC; Smith, SG; Breiding, MJ; Black, MC; Mahendra, RR (2014). "Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements, Version 2.0" (PDF). National Centre for Injury Prevention and Control, Centers for Disease Control and Prevention.

[16] Rape and sexual violence: Human Rights Law and standards in the International Criminal Court. Amnesty International 2011

[17] Iko v. State [2001] 14 NWLR (Pt. 629) 86

[18] Sexual Offences Act 2003 of the United Kingdom

[19] R v Bree [2007] EWCA 256

[20] Sexual offences Act, 2003, s. 75 – 76

[21] The Hindu, 'Sex on false promise of marriage is rape: Supreme Court.' https://www.thehindu.com/news/national/sex-on-false-promise-of-marriage-is-rape-supreme-court/article26831183.ece retrieved on September 24, 2024.

[22] ResearchClue.com, 'Legal and Institutional Framework for the Protection of Rape Victims.' https://nairaproject.com/projects/6009-legal-and-institutional-framework-for-the-protection-of-rape-victims-in-nigeria.html#:~:text=Apparently%2C%20Nigeria%20is%20one%20of,of%20rape%20in%20the%20country retrieved on September 24, 2024.

[23]Constitution of Federal Republic of Nigeria 1999 as amended.

human has a right to dignity of his person and shall not be subjected to any inhumane or degrading treatment or torture. This means that every person, both male and female has the right to be treated fairly without any form of abuse.

Section 33 of the Constitution provides that every citizen of the country has the right to life and shall not be taken from him. The offence of rape can culminate in the death of the rape victims, either during the act or after the incident. Such death amounts to murder. Murder also can occur owing to the grievous bodily harm – rape – inflicted on the victim.

3.2 Violence Against Persons (Prohibition) Act, 2015

This Act was signed by the former President Goodluck Jonathan on 25th of May, 2015 also known as the VAPPA 2015**.** It was promulgated to curb violence against persons it has been enacted in Anambra State as Anambra State Violence against Persons (Prohibition) Law, 2017**.** The VAPPA defined rape as any intentional penetration into any part of the human body whether through the vagina, anus, mouth of another person with any part of his or her body or anything else without consent or where such consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or addictive capable of taking away the will of such person or in the case of a married person, by impersonating him or her spouse.[24]

The Act further provides that where the offender is found culpable under section 1, he would be sentenced to life imprisonment.[25] Where the offender is less than 14 years, the punishment is a maximum term of 14 years imprisonment.[26] In other cases, a minimum term of 12 years imprisonment is provided by the Act.[27] For gang rape, the offenders are liable jointly to a minimum term of 20 years without option of fine.[28] The Act also recommends the award of appropriate compensation to the victim by the court[29] and finally on this, the Act mandates that a register of sexual offender be maintained.[30]

From the foregoing, it would be observed that there is an expansion on the definition of rape and its prohibition. While other laws may have restricted their definition of rape to protect only females in relation to vaginal penetration without consent[31] the Act has taken a giant leap by expanding the meaning and scope of rape. Going by the definition of rape in the Act, we would discover that both males and females can be raped and are protected by the Act. The issue of rape being gender biased has been topical in the Nigerian legal jurisprudence for some time because the laws as they are failed to recognize instances where a man could be raped.[32] The provisions of the Act has also taken a progressive stance by recognizing that sex now goes beyond the use of the primary sexual organs and extends the scope to anus and mouth. This is another success because in time past in Nigeria it was difficult to bring forceful anal or oral sex under the umbrella of rape as such was not part of our laws. Another interesting point is that penetration here need not only by the sex organ (penis) of the offender but by any part of his body or anything else. This is an improvement on the Criminal Code Act and Penal Code that requires sexual

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[24]Violence Against Persons (Prohibition) Act, 2015 s. 1 herein after the "Act"; Anambra State Violence Against Persons (Prohibition) Law 2017, s 3(1)(2)
[25]*Ibid* s 2(1)
[26] *Ibid* s 2(1)(a)
[27] *Ibid* s 2(1)(b)
[28] *Ibid* s 2(1)(c)
[29] *Ibid* s 3
[30] *Ibid* s 4
[31] Penal Code s 281; Criminal Code Act s357
[32] An instance was reported in the Daily Post of 17th July, 2012 of a man that allegedly raped to death by his wives. This case was not treated as rape but manslaughter.

intercourse. Again, consent must have been vitiated or was obtained by force or threat of use of force or intimidation or deceit including impersonation.

Sanction for the offence of rape is adequate but for gang rape, the penalty should be for life too. Leaving the issue of compensation at the discretion of the court appears superfluous. The Act should have stipulated a minimum amount which would allow the judges to award compensation that will be punitive against the offender as this would serve as a deterrent to others. Maintaining a database of sexual offenders is a laudable step but we are yet to see how this will play out as record keeping appears to be a herculean task for the nation.

Furthermore, the Act makes it an offence for anybody to be involved in acts of indecent exposure. The provision will be quoted verbatim, thus:

A person who intentionally exposes his or her genital organs, or a substantial part thereof with the intention of causing distress to the other party, or that another person seeing it may be tempted to commit an offence under this Act commits an offence termed "indecent exposure"[33] A person who intentionally exposes his or her genital, or a substantial part thereof and induces another to either message or touch with the intention of deriving sexual pleasure from such acts commits an offence under this section[34]

Upon conviction the culprit is sentenced to 1year imprisonment or to a fine not exceeding N500, 000.00 or both. Jurisdiction to try these offences is vested in the High Court of the Federal Capital Territory [35]and the police is empowered to arrest a suspect with or without a warrant to arrest and also is under a duty to assists the victims of such violence as contained the Act[36] Limiting jurisdiction to the High Court of the FCT may be a setback in terms of the implementation of the Act. The Act would also appear to have duplicated some of the provisions of already existing criminal laws and the liberty of citizens which are guaranteed under sections 35, 40 and 41 of the Constitution of the Federal Republic of Nigeria as amended 2011.

Generally, it can be safely concluded that the Act contains provisions on effective remedies, including the right to assistance for victims. By the provisions of section 38 of the Act, "every victim is entitled to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through government agencies and/or non-governmental agencies providing such assistance. Victims are to have access to the available legal, health and social services and any other relevant assistance they may need. They are further entitled to re-integration and rehabilitation programmes of the state as this will enable the victims to acquire necessary pre-requisite skills in any vocation of their choice in addition to necessary formal education and access to micro credit facilities. It is expected that all the 36 states in the federation would enact their own laws on violence against persons. Ebonyi, Lagos, Jigawa states have legislated against domestic violence and Edo and Cross River states have legislated on female genital mutilation.[37]

Although the VAPPA has improved on the provisions of the Penal and Criminal Codes, nevertheless these laws will be examined as the various states have not enacted their own laws in this regard.

[33]Violence Against Persons (Prohibition) Act, 2015, s 26(1)
[34]Violence Against Persons (Prohibition) Act, 2015 s 26(2)
[35] Ibid, s 27
[36]Ibid, s 32 (1) (2) (3)
[37] Migrationsverker, 'Report: Nigeria – Female Genital Mutilation.' https://www.migrationsverket.se/ retrieved on September 24, 2024.

3.3 The Penal Code

The Penal Code[38] is applicable in the Northern states of the Federation. Rape[39] is said to occur under the Penal Code where a man has sexual intercourse with a woman in any of the following circumstances: against her will; without her consent **w**ith her consent, when her consent has been obtained by putting her in fear of death or hurt; with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, with or without her consent, when she is under fourteen years of age or of unsound mind.

Under the Penal Code, mere penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape. Interestingly, the Code did not specify that corroboration is a requirement under the law in order to establish the offence. The punishment for rape is fourteen years. This is rather not stiff. It should be life imprisonment as this will be serving as deterrence to perpetrators. Maximum time of 14 years is not enough. Acts of gross indecency[40] attracts a jail term of seven years and also a fine. Finally, incest attracts a term of imprisonment which may extend to seven years.

3.4 The Criminal Code

The Criminal Code Act[41] is applicable to the southern states of the country. States have their criminal laws. Rape is defined under the Criminal Code thus:

> Any person who has unlawful carnal knowledge of a woman or girl, without her consent or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.[42]

The ingredients of the offence of rape include:

a. That the accused had sexual intercourse with a woman (the victim) against her will;
b. The act of intercourse was unlawful not being between husband and wife;
c. Penetration is proved;
d. The accused must have the requisite *mens rea*, i.e. intention to have intercourse without the victims consent; and
e. Evidence must be adduced to corroborate the complaint. This is not a requirement of law but practice.

In *Adeoti v State*[43] the Court of Appeal held that the offence of rape is said to be consummated where a man has unlawful carnal knowledge of a woman or girl without her consent or where consent is obtained by force or by means of threat or intimidation of any kind or by fear of death or possible bodily harm or by means of deceit, falsehood or fraudulent representation as to the nature of the act. The court further held that the essential and most important ingredient of the offence of rape is penetration and unless penetration is proved, the prosecution must fail. Penetration however slight is sufficient and it is not

[38] Penal Code, s 281
[39] Ibid,, s 282
[40] Ibid, s.285
[41] Cap.C38 Laws of the Federation of Nigeria, 2010
[42] Criminal Code Act, s.357
[43] [2009] All FWLR (Pt 454) 1450

necessary to prove injury or rupture of the hymen to constitute the crime of rape. Also, in the *Ogunbayo v State*[44], the Supreme Court held that sexual interference is deemed complete, upon proof of penetration of the penis into vagina. Emission is not a necessary requirement. It has however been held, that any, even the slightest penetration will be sufficient to constitute the act of sexual intercourse. This is why, even where the penetration was proved but not of such a depth as to injure the hymen, it has been held to be sufficient to constitute the crime of rape. Thus, proof of the rupture of the hymen is unnecessary to establish the offence of rape. In this same case, the Supreme Court made references to the case of *State v Ogwudiegwu*[45] where it was held that in the offence of rape, in order to secure a conviction, corroborations of the evidence of the complainant implicating the accused is not essential, but a judge must warn himself of the risk of convicting on the uncorroborated evidence of the complainant.

The issue of corroboration has been quite thorny in the criminal law jurisprudence for the offence of rape. These days the manner in which the crime occurs makes it practically impossible to require corroboration. For instance, where a man is caught in the act, what other corroboration is needed to convict such a person or where it is the defilement of a child by an adult with a threat of harm on the child if she dares report and the act continues until the parents of the child discovers same either as a result of change in the attitude of the child or the child is hurt and bleeding and confesses to the parents that she has been constantly defiled by the suspect. What would be the corroborating evidence in this situation? This issue is germane because in the case of *Sambo v State*[46]the court held that if the prosecution can secure the conviction of the accused, the victim's evidence must be corroborated and that the corroborating evidence must be cogent, compelling and unequivocal as to show without more that the accused committed the offence charged; independent evidence which connects the accused with the offence charged; and evidence that implicates the accused in the commission of the offence charged.

It is humbly submitted that this can no longer be the true representation of the law considering the rate of sexual violence in our society. Some of these things are going on unnoticed and being perpetrated by people who appear to be more powerful than their victims. Hence, these victims perpetually become their sex slave or objects of sexual gratification at their beck and call because finding evidence to corroborate the act of rape appears to be a herculean task. The researchers further submit that if the vulnerability of victims is not addressed urgently, our streets and neighbourhoods will be filled with rapists and paedophiles wreaking havoc on the vulnerable victims. The researchers herein align themselves with the position of the court in the case of *Iko v State*[47] where it held that –

> "the proper direction is that it is not safe to convict on the uncorroborated evidence of the prosecutor. The court may, after paying due attention to the warning, nevertheless convict the accused person if it is satisfied with the truth of her evidence.

It is the of the researchers herein that the court need not look for evidence of corroboration in order to convict on the offence of rape. This is because there is no statute stating so. This paper has looked at the Violence against Persons (Prohibition) Act, the Penal Code and the Criminal Code Act and none of these laws requires corroboration. Offences that require corroboration in the Criminal Code do not include rape. Corroboration thrived with the jury system where the judge warns the jury of the danger of convicting on the uncorroborated evidence of the victim. The question then is, whether this is still necessary in Nigeria, when we no longer have the jury? If we continue to insist on corroboration, is our justice system not pretentious and can the law afford to be pretentious, the answer is no. continuous insistence on the

[44] [2007]All FWLR (Pt. 365) 408
[45] [1968]NMLR 117
[46] [1993]6 NWLR (Pt.300) 399
[47] [2001] All FWLR (Pt.68) 1161; [2001] 14 NWLR (Pt.732) 221

requirement for corroboration makes the Nigerian justice system look pretentious. Our criminal justice system must move forward and protect citizens against crimes that infringes on their honor and dignity. In *Rabiu v State*[48], the Court of Appeal held that where the prosecutrix testified that the accused inserted his penis into her vagina, the law requires such evidence to be corroborated by an independent witness. The question again is how and who will be this independent witness. If the offence is complete upon the slightest penetration without emission and done in secret, who then is qualified to be this independent witness. The paper submits that only the victim is qualified. In *Ahmed v Nigerian Army*[49], the court held that in the instant case the PW 2 Ruth Waziri testified with clarity not only that she had been severally raped more than three times, she was also able to note and state the two birth marks around the pubic area of the appellant and on the thigh which was confirmed. This was taken as enough to secure a conviction.

Obviously there appears to be some level of uncertainty with the laws as regards corroboration in rape cases. It is hoped that this will be resolved as quickly as possible so that rape suspects will not be allowed to roam the streets of Nigeria simply because the victim could not corroborate her statement or evidence. The Criminal Code also stipulates that the punishment for the offence of rape is life imprisonment with or without caning. It is trite to note here that it is only recently that the courts stopped handing down lesser punishments unlike before. For instance, in the case of *Posu v State*[50], the appellants were charged with the offence of rape. At the trial, the prosecution called PW 1 who was a friend to the appellants and was in company of the appellants when they committed the offence to testify. At the conclusion of the trial, the trial court found the appellants guilty as charged and convicted them. Aggrieved by their conviction, the appellant appealed to the Court of Appeal contending inter alia that PW 1 should have been held as an accomplice under section 7 of the Criminal Code whose evidence should have been treated with caution.

The Court of Appeal affirmed the decision of the lower court and dismissed the appeal. Not yet satisfied, the appellants appealed to the Supreme Court. The Supreme Court held that: .... a light sentence for the offence of rape as in the instant case must never be imposed. This may have unsavory effect of turning rape into a past time by flippant youths. By virtue of the provision of section 358 of the Criminal Code Law of Ogun State, any person who commits the offence of rape is liable to imprisonment for life, with or without whipping.

It is surprising that the appellants were sentenced to three years in prison. The reasoning of the Supreme Court was that since there was no cross-appeal, there is nothing that can be done on the strange sentence. Upon what premise did the trial court based its sentence? To substitute life imprisonment with a three-year term, to the mind of the present writer tantamount to trivializing the offence of rape. This paper condemns the sentence in totality.

One wonders why the trial judge sentenced the appellants to three year imprisonment after the trial showed that there was over-whelming evidence that the appellants took time to rape a defenseless young girl in a horrific and degrading manner. This paper submits that such persons as the accused should not be allowed to have a place in a decent society. What then happens after three years? At the time of writing this paper, the appellants had completed their jail terms and nobody can tell what they have been up to. The paper strongly advocates that the register of those convicted of rape as recommended by the VAPP Act 2015 be made a reality.

Again there is the offence of attempted rape[51] which attracts fourteen years imprisonment for the offenders. Indecent assaults on females[52], abduction of females and abducting females under sixteen

[48] [2005] 7 NWLR (Pt.925) 496
[49] [2011] 2 NWLR (Pt. 1234) 393
[50] Criminal Code, s.359
[51] Criminal Code, s.360
[52] *Ibid*, s.361

years[53] are all crimes under the Criminal Code and attracts a term of imprisonment of two and seven years respectively. It is trite to note that in cases of abduction of girls below sixteen years, ignorance of the girl's age, and consent cannot be a defence for the accused person. In the case of Ese Oruru[54] for instance, a lot of argument was made in favour of the abductor to the effect that Ese was seventeen years old in order to absolve him of any blame. There was also argument indicating that Ese gave consent. The trial is ongoing and we would all wait to see what becomes of the abductor and his defenses since it has been proven that Ese is just a fourteen-year-old girl. The Criminal Code prohibits the defilement of girls below eleven years[55] and offenders are liable to life imprisonment upon conviction. Where the girl is thirteen years[56], the accused is guilty of a felony and liable to fourteen years upon conviction. But note that no person can be convicted of either of the offences upon the uncorroborated testimony of one witness.[57] Where a girl is under sixteen but above thirteen, any person who attempts to have carnal knowledge of her or an idiot is guilty of a misdemeanor and is liable to imprisonment for two years upon conviction.[58]

3.5The Childs Right Act, 2003

The Child's Right Act was enacted in 2003 to protect the rights of children as the children are the future of any country. The Act in section 1 states that every action concerning a child whether undertaken or service... must be in the best interest of child. The Act defines a child as any person below the age of 18 years[59]. It went further to state that no person is permitted to have sexual intercourse with a child[60] and the punishment is life imprisonment[61]. The Act does not allow the defence of ignorance of the child's age[62] or that the child gave consent for the sexual intercourse.[63] Section 11 (a) prohibits subjecting a child to physical, mental or emotional injury, abuse, neglect or maltreatment including sexual abuse. There is no punishment for violation. More interesting is the fact that the Act prohibits any other forms of sexual abuse and exploitation of a child and upon conviction, the offender is liable to a term of fourteen years. Section 21-23 prohibits the betrothal or marriage of children below 18 years. It is unfortunate to note that some states have a problem with these provisions in the Act as they view them as contrary to their culture, custom and for some religion. Marriage had been used often to legitimize a variety of sexual violence against women and young girls. The custom of marrying off young girls is observed in many parts of the world. The practice which is legal in many parts of the world is a form of sexual violence, since these children are unable to either give or withhold consent and most of them know little or nothing about sex before marriage and their first sexual encounters are usually forced[64]. Generally, in Nigeria, the mean age of first marriage is 17 years, but in Kebbi State of Northern Nigeria, the average age at first marriage is just over 11 years[65]. It is sad to note that this form of sexual violence is quite rampant in the Northern parts of Nigeria. Children's Day celebration of 2016 had as its theme: "Protect the right of the child in the

[53] *Ibid* , s.362
[54] F Fani-Kayode, 'The Sad case of Ese Oruru.' https://punchng.com/the-sad-case-of-ese-oruru/#google_vignette retrieved on September 24, 2024.
[55] Criminal Code, s. 218
[56] *Ibid*
[57] Ibid
[58] Ibid, s.221 1(1) (2)
[59] Child's Right Act 2003, s.21
[60] Ibid, s.31(1)
[61] Ibid, s.31(2)
[62] Ibid, s.31(3)(a)
[63] Ibid, s.31(3)(b)
[64] V. Sharma et al, "Can Married Woman Say No to Sex? Repercussion of the Denial of the Sexual Act", Journal of Family Welfare (1998) Vol. 44, p.1-8
[65] UNICEF Innocenti Research Centre, 'Early Marriage: Child Spouses, Innocenti Digest (2001) No. 7. P.10

face of violence and insecurity and end child Marriage".[66] States, irrespective of their opinions are enjoined to enact their states Childs Right law. Only 26 out of 36 states in Nigeria have been able to enact their own state laws as at May 2014. Others are encouraged to follow suit if we must save our children.

3.6 The Cyber Crime Act, 2015

The Cyber Crimes (Prohibition, Prevention etc) Act[67] in its explanatory memorandum posits that the Act is enacted to provide an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. This Act is divided into eight parts with 59 sections and Schedules. Under Part III which deals with offences and penalties, the Act contains sections on sexual offences that are committed on the cyberspace and these will be discussed.

Under the Act, child pornography and other related offences were addressed. The Act provides that any person who intentionally uses any computer system or network in or for: producing child pornography, offering or making available child pornography, distributing, or transmitting child pornography, procuring child pornography for oneself or for another person, possessing child pornography in a computer system or on a computer-data storage medium: commits an offence under this Act[68]

This legislation is quite timely in Nigeria considering the degree of sexual violence on children. The explosion of online channels for both adults and children makes the internet an avenue for adults to perpetrate this crime on unsuspecting children. The Act provides a term of imprisonment of 10 years or an option of fine not exceeding N20, 000,000.00 (Twenty Million Naira) for anybody found guilty of the offences under categories a, b, c of this section and a term of imprisonment for 5 years or a fine not exceeding 10, 000, 000.00 (Ten Million Naira) for offences under categories d and e.

An examination of the above provision reveals that the punishment for the offence is quite prohibitive and the drafters of the law should be commended but the snag lies with the implementation of this law. There should be an effective mechanism for monitoring the use of internet in Nigeria. Most people are hooked on the internet without any regulatory framework and this makes it difficult for government and law enforcement agencies to track, arrest and prosecute these perpetrators. Until this is done the legislation may be a dead letter law even in the face of happenings in Nigeria that has shown that Children have been victims of this crime.

The next offence is captured under section 23 (3) and it states: A person, who intentionally proposes, grooms or solicits, through any computer system or network, to meet a child for the purpose of:

(a) Engaging in sexual activities with the child;

(b) Engaging in sexual activities with the child where:

(i) Abuse is made of coercion, inducement, force or threats,

(ii). Abuse is made of a recognized position of trust, authority or influence over the child, including within the family, or

(iii). Abuse is made of a particularly vulnerable situation of the child, mental or physical disability or a situation of dependence;

[66] S A Usman, 'Saraki Celebrates Children's Day, Calls for Implementation of Child Rights Act.' https://dailypost.ng/2016/05/27/saraki-celebrates-childrens-day-calls-for-implementation-of-childs-rights-act/ retrieved on September 24, 2024.
[67] Cyber Crimes (Prohibition and Prevention) Act 2015
[68] *Ibid*, s.23

(c) Recruiting, inducing, coercing, exposing or causing a child to participate in pornographic performances or profiting from or otherwise exploiting a child for such purposes; commits an offence under this Act.

Upon conviction of the accused, the Act prescribes a term of imprisonment of 10 years and a fine not exceeding N15, 000.00 (fifteen thousand Naira) for offences under category (a). A glance at this punishment would show that it is quite cumulative. The Act made use of the word "and" which indicates that in addition to 10 years imprisonment, the culprit will also pay a fine. For offences under categories (b) and (c) the culprit will be jailed for 15 years and also pay a fine not exceeding N25, 000.00 (Twenty-five thousand Naira) only. The Act also in section 24 (1) provides that any person who knowingly sends a message or other matter by means of computer systems or network that is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent is guilty of an offence under the Act is liable upon conviction to 3 years imprisonment or an option of fine not exceeding N7, 000.00 (Seven Thousand Naira) only. Here the punishment is disjunctive. It is either a fine or a term of imprisonment.

The problem associated with this kind of penalty is that the offenders will always pay the fine (where the value of the fine is not punitive as in this case) and walk the streets free and continue in their acts thereby honoring the Act more in breach. Punishments for sexual violence should be prohibitive to serve as deterrence to others.

3.7Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015

This is an Act which was initially passed in 2003 and amended in 2005 and 2015 by the Federal Government. It is enacted to provide an effective and comprehensive legal framework for the prohibition, prevention, detection, prosecution and punishment of human trafficking and related offences and also protect victims of human trafficking. It provides that any person that exports or import any person under the age of 18 for purposes of seducing or forcing such person into prostitution [69] or any person who by use of deception or coercion or whatever means induces any person under the age of 18 years knowing that the person will be forced or seduced into illicit intercourse with another person[70] is liable on conviction to imprisonment for 10 years without an option of fine

It also provides that any person having the custody, charge or care of any person under the age of 18 years causes or encourages seduction, unlawful carnal knowledge or the commission of an indecent assault[71] or procures any person under the age of 18 years to have a carnal knowledge with any other person either in Nigeria or outside Nigeria is liable upon conviction to 10 years imprisonment[72] or procure any person for prostitution, pornography and use in armed forces.[73]

3.8The African Charter on Human and People's Right (Ratification and Enforcement) Act, 1990

This Charter recognizes and guarantees the protection of every person; rights to dignity, freedom from torture or degrading treatments, freedom from all forms of discrimination, rights to satisfactory working conditions and equal treatment of people respectively.

[69] Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, s.11
[70] Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, s.12
[71] Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, s.13
[72] Ibid, s.14
[73] Ibid, s.15, 16, 17 & 18

4.0. International Framework for the Protection of Rape Victims

4.1. Statute of the International Criminal Tribunal for the former Yugoslavia (1993)

Article 5 (g)(i) states that the International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population (...) (g) rape (...) (i) other inhumane acts.[74]

4.2. Statute of the International Criminal Tribunal for Rwanda (1994)

Article 3(g)(i) provides that the International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds; such crimes as rape and other inhumane acts.[75]

4.3Rome Statute of the International Criminal Court, 1998

Article 8(2) (e) (vi) of the Roman Statute of the International Criminal Court states that other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the acts such as committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constitute a serious violation of article 3 common to the four Geneva Conventions.

4.4. Convention on Elimination of All Forms of Discrimination against Women[76]

Violence against women is regarded as a human right violation hence the ratification of conventions by the United Nations on elimination of violence against women. The Declaration on Elimination of all forms of violence against women which came into force in 1993 became the first international mechanism implicitly address violence against women.[77] This declaration was adopted by the United Nations with the aim of elimination of all forms of violence against women in addition to CEDAW. The declaration recognizes the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings.[78]

Article 1 of the declaration defines violence against women as means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.[79] From this definition violence of women in their private life can be married life and this would include marital rape.

[74] https://www.cyty.org/x/file/Legal Library/Statute-Sept09_en.pdf
[75] https://www.ictr.org/portals/o/English/Legal/Statute/2010.pdf
[76] CEDAW.
[77] Global norms and standards: Ending violence against womenhttp://www.unwomen.org/en/what-we-do/ending-violence-against-women/global-norms-and-standards Last accessed 21st March 2019
[78] Preamble of Declaration on the Elimination of Violence against Women.
[79] Article 1 of Declaration on the Elimination of Violence against Women

CEDAW was ratified to ensure eradication of injustices happening to women and affirmation of the principles of equality. The convention states that discrimination against women goes against the principles of equality of rights and respect of human dignity.[80]The core principles of the treaty are equality, non-discrimination and state obligation. States have an obligation to implement the rights provided in the convention upon ratification and one of the rights is eradication of violence against women. Although the convention does not explicitly provide marital rape as violence against women but generally provides for elimination of violence against women. The CEDAW committee in their comments reference violence against women to include gender-based violence which also covers sexual violence. Article 2 gives an obligation to states to repeal all national penal provisions which constitute discrimination against women.[81]

4.5 International Convention on Civil and Political Rights. [82]

The convention emphasizes on the recognition of the inherent dignity and of the equal and inalienable rights of the human family. **(Include source of the information).** Meaning that everyone is entitled to these rights and that they cannot be taken away or be transferred. This convention ensures that the civil rights and political rights are respected, protected and available to everyone and without any form of discrimination. **(Include source of the information).** Member states are obligated to take measures to ensure that both men and women can enjoy their civil and political rights. It recognizes the right of human beings to inherent dignity of each individual which everyone is entitled to.[83]

4.6The International Convention on Economic, Social and Cultural Rights (ICESCR)

This convention recognizes that rights derive from the inherent dignity of the human person. The preamble recognizes the inherent right dignity and the equal and inalienable rights of all members of the human family. States are under obligation to respect and observe human rights and freedoms.[84]

4.7Project Alert on Violence against Women

It was set up in Nigeria in 1999, aims to promote the rights of women and young girls.[85] The organization works with vision of promoting zero tolerance for abuse and domestic violence against women in Nigeria.

4.8 World Health Organization[86]

W.H.O. plays a key role in bringing attention to and responding to violence against women as a public health and gender equality issue.[87] This is done through research and evidence-building to highlight the magnitude of violence against women, its risk factors and consequences, and to identify effective interventions for prevention and response. Furthermore, through developing guidelines and tools, setting norms and standards for an effective health response to violence against women, strengthening country capacity of health systems and providers to prevent and respond to violence against women and

[80] Preamble of the Convention on the Elimination of all Forms of Discrimination against Women
[81] Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women.
[82] ICCPR.
[83] International Convention on Civil and Political Rights Article 2&3
[84] Preamble of International Convention on Economic, Social and Cultural Rights.

[85] Project Alert on Violence Against Women, 'Project Alert in Brief.' https://projectalertnig.org/breif-info/ retrieved on September 24, 2024.
[86] WHO.
[87] WHO, 'Violence against Women.' https://www.who.int/news-room/fact-sheets/detail/violence-against-women retrieved on September 24, 2024.

encouraging leadership in health systems and building political will to address violence against women through advocacy and partnerships.

4.9 National Agency for the Prohibition of Trafficking in Persons

This agency was created on 14th day of July, 2003 by the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2003.[88] The Agency is the Federal Government of Nigeria's response in addressing the scourge of trafficking in persons and charged with the responsibility of coordinating all the nation's crime prevention and law enforcement resources to stamp out human trafficking and uplift the vulnerable from exploitative tendencies.[89]

5.0. Conclusion and Recommendations

In view of different advancements of the modern world, the law should be amended and the definition should be expanded to enable the agencies assigned to curb this menace to perform effectively as the crime of rape is on the increase daily and the government should see reasons why there is need for amendment rather than reading recommendations as a fruitless exercise and victims of rape should be offered some protection, encouragement to voice out and confidentiality within the scheme of criminal justice architecture which allows essential persons to be present in court. The researchers believe that sexual assault can be prevented but apparently there is urgent need for a paradigm shift from the radical feminists' movement of the 1970s to expanded prevention efforts which recognize differences based on culture, sexuality, ability, age and gender[90]In putting in place the existing punishment for the offence of rape, the drafters of the law should be led by comparing other jurisdiction's legislation on rape which has also changed as the world transforms daily. It is in this light that it will be permissible to state that our law makers should take a succinct look into the crime of rape and the definitions should be expanded as against its present interpretation. Also the law makers and the society at large should take cognizance of some causes that contributes to the increase in rape cases such as the following: exposure to modernity, peer group/influence, weakness of the criminal justice system, stigmatization, poor parenting ex cetera and as such it lead to more sensitization and enlightenment of the members of the society. We further recommend as follows:

Establishment of Special Court for Sexual Offences

This should be established nationwide where the trial of a rape offence should be reviewed and tried, possibly in camera to protect the virtues or dignity of the victim and government established center be put in place to report rape and sexual offences rather than the police station.

5.2.Stiffer punishment like Castration for Rape

Castration is a process where a man's testicles is removed and after the said testicle is removed. Then the man ceases to have urge for sex because the body now has a low level of the male hormone testosterone[91]

[88] NAPTIP, About Us.' https://naptip.gov.ng/about-us/#:~:text=National%20Agency%20for%20the%20Prohibition%20of%20Trafficking%20in%20Persons%20(NAPTIP,scourge%20of%20trafficking%20in%20persons. Retrieved on September 24, 2024.

[89] *Ibid.*

[90] National framework for sexual assault prevention. A report prepared for the Australian government's office of the status of women by Ubris Keys Young www.ofw.facs.gov.au/downloads/pdfs/d_v/sexual_assault_prevention.pdf . [accessed on 2nd June 2023].

[91] Slate.com, 'Can a Sex Offender still have Sex after He's been Castrated?' https://slate.com/news-and-politics/2007/12/can-a-sex-offender-still-have-sex-after-he-s-been-castrated.html retrieved on September 24, 2024.

Domestication of the Violence Against Persons (Prohibition) Act, 2015 by all the States of the Federation:[92] The lawmakers of both the Federal and States level should work towards ensuring that the VAPP Act is domesticated by all states of the federation to regulate domestic violence and all forms of sexual abuses as reports show that only fifteen (15) states have so far signed it into law[93]

Public Enlightenment / Need for Awareness: Public enlightenment has been shown to be a critical tool in changing behavior, attitude, beliefs and value system of people.[94] Therefore there should be intense public enlightenment and education at schools, social clubs, cultural group gatherings, churches, mosques and through the media, to first of all, demystify the myths about sexual assault.

Compulsory Education: The Universal Basic Education as introduced in Nigeria with the enabling law, has the potential to take children off the street and at least obviate the poverty reason, usually responsible for non-enrolment in school and may also mitigate other religious and cultural reasons adduced for not sending, especially, the girl-child to school. The law has mandated that all Nigerian children must be enrolled in schools and failure to do so, parents or guardians would be prosecuted. Sexual assault prevention requires a solid foundation and one of the pillars would be addressing the gross inequality against the girl child in the educational system.[95]

[92] https://www.partnersnigeria.org/vapp-tracker/
[93] https://www.partnersnigeria.org/vapp-tracker/
[94] IE Nwosu, 'Mobilizing people's support for development: an analysis of public enlightenment campaigns in Africa. Africa Media Review. 1986;1(1):48–65.
[95]Girls' Education in Nigeria. UNICEF. Accessed via www.bellevuecollege.edu/liberalarts/sir / images/Nigeriafinal.pdf .retrieved on September 24, 2024.