

LEGAL EXAMINATION OF THE CHALLENGES CONFRONTING THE PROSECUTION OF OFFENCE OF RAPE IN NIGERIA***

Abstract

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. 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. It is important to look at the Nigerian criminal justice system and through its lens to look also at the Nigerian society which seems to encourage the offence of rape. It is a statement of fact to say that the Nigerian criminal justice system rests on a tripod comprising the police, the judiciary and the prison. The institution saddled most with the problems of administration of criminal justice exhibit lackadaisical attitude towards reports of rape. This paper seeks to investigate, explore and examine the underpinning jurisprudence of the offence of rape in Nigeria. Examining the defects and challenges of the Nigerian criminal justice system as regards the issue of rape and provide viable and sustainable recommendations that would help in curtailing the menace in the country. The prosecution in most cases of rape fail to secure conviction more often than not because there was not corroboration of the evidence of prosecutrix as to penetration.

Keywords: rape, stigmatization, vava, sexual violence. child's right, dignity

1. 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. Since time immemorial, rape which is one of the oldest crimes in the history of the human race has caused a lot of pain and agony to individual rights with different jurisdictions spelling out the punishment if anyone is found guilty of same.

Sadly, rape has continued to occur with no sign of ceasing but rather on the increase in virtually every part of the world. This act which at a certain time was largely perceived to have occurred as a result of lust does not seem to be so anymore. Statistically, victims of rape have no age limit as

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babies, and the aged are vulnerable to this menace including female and young male. The fact that the issue of rape is centrally focused on the female as the main victim is evidence; male gender is equally sexually abused now and then by either their fellow men or women, male victims find it most difficult to speak about sexual violence against them or report same, and when they speak out, they are often ignored. The danger of this is that because they are ignored when they muster the courage to speak up or report sexual abuse against them, it leads to under reporting that makes statistics unavailable, lack of unavailable statistics makes the seriousness of the problem unknown and when a problem is unknown, a policy cannot be adequately put in place to address it.

Statutorily, section 357 of the criminal code defined rape as. “As 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”. The Violence Against Persons Prohibition Act (VAPP) further made an elaborate definition of rape in section 1 thus, “ A person commits the offence of rape if ; he or she intentionally penetrates the vagina , anus or mouth of another person with any other parts of his or her body or anything else” If the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false or fraudulent representation as to the nature of the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person , by impersonating his or her spouse .

The above provision is undoubtedly a game changer as it now accommodates certain important features not found in the Criminal Code. While the Criminal Code only recognizes female rape, the VAPP law provides for rape of either sex which means that both male and female can be victims and perpetrators of rape. Consequently, penetration can now be performed with other parts of the body other than the penis and other parts of the body. The American experience on rape cases is a prototype of societal sentiment in Africa, perhaps even direr, especially in Nigeria. The notion that, somehow, when a person gets raped in Nigeria, the victim must share in the causative factors leading up to the despicable conduct of their violators, has, been partially responsible for the general reluctance of survivors to step out of their closets to report the crime. This should not be the case in any developing society that seeks to enthrone a framework of accountability for the actions of adult members of society.

2. Rape

The issue of rape is not an abstract issue as it has unveiled its ugly mask in every society, and how do we describe the brutal nature of this shameless masquerade in Africa, especially in Nigeria? What could have triggered the increase in recent times? What could have caused perpetrators to sexually assault their victims?¹² These questions are not easily answered, because in rape cases questions are easily asked but answers are much more difficult and inconvenient to answer. The closest thing to an answer is the cold shoulder, the emotional reaction that one receives when the issue is mentioned.

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an infringement on women's rights, privacy, self-preservation and dignity. 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. Since time immemorial, rape is a crime has caused a lot of pain and agony to individual rights with different jurisdictions spelling out the punishment if anyone is found guilty of same. However, rape has continued to occur with no sign of ceasing but rather on the increase in virtually every part of the world. This act which at a certain time was largely perceived to have occurred as a result of lust does not seem to be so anymore¹. With the way things are going, we cannot say that it is a category of a particular age that engage in such act because even the elderly adults in the society partake in this animalistic act. In essence, teenagers, young men and old men engage in forceful sex with the opposite sex.

3. Rape and the Nigerian Police Force

The legal hurdle placed on the shoulders of victims in our jurisprudence in proof of rape cases is numerous; thus, it is a general rule of law that the court should not convict accused persons of any offence without corroborations thereby making it difficult for victims to prove their cases. Although there are exceptions to this rule but popular opinion remains the general rule. It is therefore not easy for complainants of rape matters to prove their cases in court. Section 66 of Police Act² empowers the police to prosecute criminal offences in all courts in Nigeria. This statutory provision has received judicial blessings in a plethora of cases³. This provision not only empowers the Nigerian Police with the power to investigate and arraign, they are also imbued with the power to prosecute⁴.

For a complainant in Nigeria, the provision of the law is that she is at best a witness to the crime and the wrong was done to the society for which the society is expected to exact revenge adopting any of the rationale for sentencing available in law. However, the reality on the ground is that the victim is the arrow-head of the prosecution both financially and materially. It therefore follows that where the victim is not financially buoyant to move the case, the case may suffer an immediate miscarriage. Basically, a victim of a crime is expected to lodge a complaint to the Police who in turn will take it up from there. Joy Nzi Ezeilo, rightly observed that⁵, “the police abuse their power, either while on duty or off duty but still wearing their uniform”. She explained that few such cases are reported because “women who have been raped by the police are afraid of being stigmatized in the community and in the family”. In addition, the police are generally not trusted to investigate adequately alleged human rights violations by their own forces, given corruption within the police force and lack of an independent police complaints mechanism. It is an established fact that police in Nigeria seems to contribute to the culture of tolerance for sexual violence against women. Thus, the court per Umoh Enah J, recently lampooned the Nigerian Police for its poor handling and prosecution of an alleged rapist. As revealed by statistics, over a hundred cases of violence against the child and women often go without any of the culprits being prosecuted and jailed”.

¹ National women organization international, punch news. Org accessed on 10 August 2023

² Section 66 Police Act 2020

³ NPS v Adekanye (No1) 2002 15 NWLR Pt 790 at 318, Ajakaiye v FRN 2010 11 NWLR Pt 1206 at 526

⁴ ibid

⁵ Dealing with rape scourge | The Nation Newspaper (thenationonlineng.net) accessed on 8/8/2023

It is trite that in a rape case, the prosecutor must be able to prove the following elements beyond reasonable doubt⁶ which is most time very difficult for the prosecution to achieve due to unavoidable circumstances such as, death of the victim, relocation of the victim and so on. The poor administration of criminal justice and weak law enforcement creates an environment where rape is committed with freedom⁷. As a result of the inadequacy of the law in solving this problem, women advocates are presently trying to prevent future rapes by educating the public, ensuring that quality services are provided to victims in order to encourage accountability and ensure that the perpetrators are brought to justice. The Child Rights Law⁸ also made provisions that, anyone convicted for rape is liable to life imprisonment. Unfortunately, few people seem to be focusing on agitating for enforcement of the law and reducing the difficulties encountered by prosecution for a fair case in court. Rather, culprits are being discharged and acquitted regularly.

It is pertinent that rape victims are encouraged to lodge a complaint with the Police immediately after the offence is committed. This complaint involved a statement narration of the details of the offence which will then be signed and dated by the victim as well as the Investigative Police Officer (IPO). The IPO in charge of the case is expected to conduct an investigation and make a report based on his findings. Details such as torn clothes, existence of semen in clothes, noticeable bruises on the victims are to be included in the report and such material evidence would be collected by the Police and kept as evidence pending when they could be tendered in court. This will amount to good and useful evidence that could be relied on by the courts in establishing the offence of rape

4. Nigerian Statutes on Rape

Section 34(1) provides that, “every individual is entitled to respect for the dignity of his or her person and no person shall be subjected to torture or to inhuman or degrading treatment”. Sexual violence in any form is an act against the personal dignity and honour of any person. It is torture of the highest order and contrary to the provisions of the constitution. It is inhuman and degrading and has led to the death or psychological trauma for victims. Basically, sexual violence in whatever form is an infringement of a fundamental right of the victims. The Constitution however did not define acts that would constitute breach of human dignity or torture although it can be implied. Section 34(2) explains acts that would constitute “forced or compulsory labour”. Conversely, the Criminal⁹ and Penal Codes¹⁰ has provisions addressing sexual violence but the punishments for the offenses differ a great deal in both legislations. The judiciary has not been of much help in this regard as the punishment for offenses are so watered down against the provisions of the statutes. The Criminal Code Act¹¹ made provisions on rape thus;

Section 357 of the Criminal Code Act defines rape as follows;

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

⁶ Posu v. State (2011) 3NWLR (Pt. 1234) 393

⁷ Amnesty International 2006

⁸ (31(2) Child Rights act 2004

⁹ S. 357 Criminal Code ACT

¹⁰ Penal Code S 282

¹¹ CAP C 38 LFN 2010

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.

It follows in section¹² of the same Act that the punishment for the offence of rape is imprisonment for life. It is imperative at this point to refer to the Criminal Code's definition of 'carnal knowledge' since that is the key word in the offence. According to the Criminal Code Act¹³, the offence of rape is complete upon penetration. Further, unlawful carnal knowledge is one which takes place otherwise than between husband and wife. It is pertinent to know that the offences of rape and defilement are not gender specific, it is applicable to both male, female, adult and children. However, the Criminal Code¹⁴ recognizes females as the only gender capable of being abused sexually. This provision makes penetration of the vagina an essential element in establishing rape and allied offences. This provision, in effect, automatically exclude from application cases of sexual abuse against males. The Criminal Code also regards a male below the age of 12 years as being incapable of having carnal knowledge.¹⁵ In the writer's view, this provision is completely flawed and does not take into account present day realities in which male children of lower ages have been reported to be involved in such acts. Where the law does not recognize an act as an offence, how then can a victim of same obtain justice and how can such perpetrators be brought to justice?

The Criminal Code Act¹⁶ goes further to prescribe a limitation period within which such actions must be instituted and a period of 2 months within which an action must be brought after the commission of the act. The legal effect of this provision is that any action brought after the limitation period will not be statute barred in a court of law. This provision is an exception to the general rule that there is no time limit for the institution of criminal actions. Arguably, the purpose of this provision as to limitation might be to ensure that there is still reliable evidence linking an accused to the crime, however, this could be exploited by unscrupulous suspects or prosecutors who simply need to ensure that prosecution is delayed by every "legal" means available until expiry of the period limited, in order to enable suspect walk away free and prowl around town for their next victim. The Criminal Code¹⁷ provides that anyone who has or attempts to have carnal knowledge of a girl above the age of thirteen and under the age of sixteen or a woman or girl of unsound mind is guilty of a misdemeanour and liable to imprisonment of 2 years with or without caning. This provision regards such acts as a misdemeanour as opposed to rape which it regards as a felony. It also prescribes a lesser offence for the commission of same as opposed to that of rape which is met with a punishment of life imprisonment. The section goes further to provide that the accused may rely on the defence that he believed on reasonable grounds that the girl was of or above the age of 16 years. This provision is further qualified in Section 222(c)¹⁸ which requires that for an accused to rely on this defence he must be below the age of 21 years and had not been previously charged with such offence. Just like the previous Section¹⁹, it insists that such actions be instituted within 2 months and for the prove of rape certain elements must be present;

¹² S. 358 Criminal Code Act

¹³ S. 6 Criminal Code Act

¹⁴ S. 357 Criminal Code Act, Section 218 Criminal Code Act.

¹⁵ S. 30 Criminal Code Act

¹⁶ S. 218 Criminal Code Act

¹⁷ S. 221 Criminal Code

¹⁸ Criminal Code Act

¹⁹ *ibid*

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

Under the Nigerian criminal justice these elements have been judicially tested and are thus discussed briefly;

In *Adeoti v State*,²⁰ 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 necessary to prove injury or rupture of the hymen to constitute the crime of rape.

Again, in *Ogunbayo v State*²¹, 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 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. In this same case, the Supreme Court made references to the case of *State v Ogwudiegwu*²² 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 of the offence of rape.

The Penal Code²³ equally provides that, “(1) A man is said to commit rape who ... has sexual intercourse with a woman in any of the following circumstances:- (a) against her will; (b) without her consent; (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt; (d) 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 the man to whom she is or believes herself to be lawfully married; (e) with or without her consent when she is under fourteen years of age or of unsound mind.

(2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

²⁰ (2009) All FWLR (Pt 454) 1450

²¹ (2007) All FWLR (Pt 365) 408

²² (1968) NMLR 117

²³ S. 282 Penal Code

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This definition presumes only penetration of a vagina by a penis and discriminates against women and girls who may have been raped by use of a foreign object or who have been penetrated orally or anally by the penis. (In addition, the definition in Section 282 is not gender-neutral and is based on the concept that only a woman can be raped.

The second issue to be addressed is assault or criminal force to women with intent to outrage modesty.²⁴ This section provides that whoever uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished with 3 years' imprisonment or with fine or both. Here no specific amount was stated.

A careful reading of the above provision would reveal that there is room for imprisonment because the Code used the word "shall" for imprisonment and fine but the term of imprisonment is left at the discretion of the court. An indication that the culprit must pay a fine which is not stipulated is scaring as the fine may be an inducement for him to further commit the crime. This provision is not stiff and will be honoured more in breach. Little wonder, most people hide under the guise of religion to perpetrate acts of sexual violence. A lot of under aged girls have been procured or abducted and justified by religion. Under the 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 too short and snot 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 indecency²⁵ attracts a jail term of seven. years and also a fine. Finally, incest attracts a term of imprisonment which may extend to seven years.

Om further aim to eradicate the hardship of the Criminal and Penal Code, VAPPA was enacted to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders and for related matters. The enactment of the Violence against Persons (Prohibition) Act, 2015, (VAPP Act) has helped to widen the scope and depth of sexual offences where it defines rape as the intentional penetration of the vagina, anus or mouth of another person with any part of his or her body or anything else. By this definition, the victims similar laws. It is recommended that other states of the Federation consider domesticating these principles by incorporating them in existing laws or enacting altogether new but similar legislations.

In protection of minors, the Child's Right Act made provisions stating thus;²⁶ 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 years²⁷ and further states that no person is permitted to have sexual intercourse with a child²⁸ and the punishment is life imprisonment²⁹. The Act does not allow the defence of ignorance of the child's age³⁰ or that the child gave consent

²⁴ S. 268 Penal Code Act

²⁵ S. 285 Penal Code

²⁶ S. 1 Child's Right Act

²⁷ S. 21 Child's Right Act 2003

²⁸ *ibid*

²⁹ *ibid*

³⁰ *ibid*

for the sexual intercourse.³¹Section 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 14 years. Section 21-23 prohibits the betrothal or marriage of children below 18years. 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 legitimise 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 forced³². Generally, in Nigeria, the age of marriage is 17 years, but in Kebbi State of Northern Nigeria, the average age at marriage is just 11 years³³. It is sad to note that this form of sexual violence is quite rampant in the Northern parts of Nigeria of the offences of rape and defilement are no longer restricted to females but may now include males as it should be. It also recognizes the fact that any intentional penetration of the anus and mouth and not just the vagina constitutes rape.

It goes further to introduce the establishment and operation of a register for convicted sexual offenders which is to be made accessible to members of the public. The provisions of this Act shall also supersede any other provisions on similar offences in the Criminal Code and Penal Code.³⁴ While this is an interesting introduction into our jurisprudence for name and shame purposes, it should be noted that this Act only applies to the Federal Capital Territory, Abuja and, by extension, only the High Court of the Federal Capital Territory has jurisdiction to hear and grant any application under this Act.³⁵To their credit, similar laws have been enacted in some other states like Anambra, Ebonyi and Oyo while states like Ekiti³⁶and Lagos State³⁷ already had pre-existing

5. Challenges Confronting the Prosecution of Rape

The difficulty in prosecuting sexual offences in Nigeria has only worsened the rape pandemic as, in most cases, the perpetrators are allowed to walk free and emboldened to re-enact such despicable conduct on future unsuspecting victims. Some of these challenges in prosecuting sexual offences range from the reluctance of victims to report such crimes, the existence of loopholes in the relevant criminal laws relating to sexual offences, ignorance of persons on the proper procedures and channels to follow when such offences occur, the inability to prove such cases successfully when instituted, and the seeming reluctance of judicial authorities to impose the full punishment prescribed by law on convicted offenders.

³¹ *ibid*

³² Sharma, V. et al, "Can Married Women Say No to Sex? Intimate Partner Violence and Barriers to Help-Seeking Among Black, Asian, Minority Ethnic and Immigrant Women: A Qualitative Metasynthesis of Global Research - Joanne Hulley, Louis Bailey, Gill Kirkman, Graham R. Gibbs, Tim Gomersall, Amrana Latif, Adele Jones, 2023 (sagepub.com) , accessed on 9 August 2023

³³ UNICEF Innocenti, Research Centre "Early Marriage: Child Spouses, Innocenti Digest (2001) No. 7, p10 Early Marriage: Child Spouses (unicef-irc.org)

³⁴ S. 45(2) VAPPA, 2015

³⁵ S. 27 VAPPA, 2015

³⁶ Ekiti State Gender-Based Violence Prohibition Law 2011

³⁷ Lagos State protection against Domestic Violence Law, 2014

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The reluctance of victims of sexual offences to report cases is a major factor that has compounded the prevalence of such offences. This factor could be traced to the popular notion that a victim must have committed some contributory act (such as wearing clothes that exposed parts of their bodies, moving around late at night, visiting persons of the opposite sex alone etc.) that made him/her susceptible to that crime. The mainstreaming of this societal belief system that entails blaming the victim rather than the perpetrator, is in this writer's view, at the heart of fixing this social menace: it undermines the effectiveness of any proactive step taken to tackle the problem. The recent case of a mother beating up and blaming her 2-year-old daughter for getting raped and paying no attention to the rapist is a classic case in point.³⁸ This discourages victims from speaking up as they reckon that their complaints would be treated with kid gloves by the Police, not take into account present day realities in which male children of lower ages have been reported to be involved in such acts. Where the law does not recognize an act as an offence, how then can a victim of same obtain justice and how can such perpetrators be brought to justice?

The only cause of rape is the rapist; however, there are some factors that catalyse or confront the increasing challenges of rape with the prosecution of the offence of rape cases in Nigeria. The state of Nigeria's poorly defined criminal laws and weak law enforcement creates an environment where rape is committed with freedom³⁹ and the prosecution of the offence of rape herculean task. As a result of the inadequacy of the law in solving this problem, women advocates are presently trying to prevent future rapes by educating the public, ensuring that quality services are provided to victims in order to encourage accountability and ensure that the perpetrators are brought to justice. According to the Child Rights Law⁴⁰ anyone convicted for rape is liable to life imprisonment. Unfortunately, few people seem to be focusing on agitating for enforcement of the law and reducing the difficulties encountered by prosecution for a fair case in court. Rather, culprits are being discharged and acquitted regularly. Thus, women and girls continue to be raped and molested. Nigeria's economic and political conditions, as well as social norms support stereotypical divisions between men and women⁴¹. Other causes of rape include alcohol and drug abuse, idleness, poor parenting, pornography, psychological disorder, bad company and stigmatization, at any rate, experts, in considering the persistent nature of these rape cases in Nigeria advance the following causes for the unfortunate reality.

Again, sentencing is arguably the most important area of the criminal justice system, the duty of courts to impose the right sentence is paramount to the administration of criminal justice. Thus, section 416 of Administration of Criminal Justice Act states that a court may sentence the convict to a term of imprisonment as prescribed by law, it is paradoxically the most incoherent and extremely difficult task in criminal justice delivery. This is owing to the facts that; courts are often confronted with serious decision of policy to decide which among the conflicting objectives of criminal sentencing that is applicable to a particular fact of a case before proceeding to impose the right quantum and quality of sentence that can serve the real essence of justice. Sadly, it appears that the prevalence of rape in Nigeria is borne out of the failure of courts to award just, consistent and proportionate sentences, as to send the right signal to society. It is suggested that rape offenses

³⁸ <https://www.lindaikejisblog.com/2020/6/nigerian-mother-beats-blames-and-calls-her-2-year-old-daughter-an-ashawo-after-being-raped-video.html>

³⁹ Amnesty International 2006, punch newspaper., the effects of rape by Edward james

⁴⁰ (31(2)

⁴¹ Chiazor I.A., Ozoya M.I., Udume M. & Egharevba M.E: Taming the Rape Scourge

be classified based on the seriousness of the act forming the offence for the purpose of sentencing also, specific sentencing guidelines for rape be made to promote uniformity, consistency and transparency in sentencing rape offenders and the enactment of Sex Offenders Registration Act is as well recommended to clearly specify the implications of registering sex offenders.

6. Prove of Offence of Rape in Court

Despite the Nigerian authorities' declaration of a "state of emergency" on sexual and gender-based violence, rape persists at crisis levels with most survivors denied justice, rapists avoiding prosecution, and hundreds of cases of rape going unreported due to pervasive corruption, stigma and victim blaming, Amnesty International said in a report published today. Despite the statutory provisions on rape, thus Acts and Laws are silent on the word "consent". The court in *Salisu Mamuda v the state*⁴² discussed the ingredients to prove for the offence of rape to include, Penetration, Corroboration, Not Spouse and Consent (obtained by fraud, force, threat, intimidation, deceit, impersonation).

6.1 Consent

In *Ahamefule v. Imperial Med. Centre*, 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.' Therefore, 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?

Another area in which the law has proven to be inadequate is the lack of convergence on the legally accepted age of consent. The Child Right's Act prescribes 18 years as the age of consent and declares any act of sexual intercourse with any person below that age as unlawful and a criminal offence. However, not all states have domesticated that law; in fact, about 12 Nigerian states, most of which are located in the Northern part of the Country, are yet to domesticate the same. The Penal Code prescribes 14 years as the age of consent as it provides that a child below the age of 14 is incapable of giving consent. The Criminal Code has no specific provision on the age of consent; however, one could assume from the tenor of the Act that a person below the age of 13 is regarded as a child. There is need for harmonization of the age of consent for this purpose and for same to be operational throughout the country. This author proposes that the age of consent be no lower than 18 years, as a veritable tool for controlling sexual offenses against children, especially in cases of statutory rape.

6.2 Requirement of Corroboration in Trial for Offence of Rape

Corroboration simply means independent evidence tending to support and strengthen other evidence before the court and confirm in some material aspect that the accused committed the offence. Corroboration need not only be the testimony of a witness, it may be in the form of a medical report, testimony of a medical practitioner that examined the victim immediately after the act, a Police report from scene of crime, authentic footage from CCTV cameras or authentic video

⁴² (2019) LPELR 46343 SC

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or audio files (strict compliance with section 84 Evidence Act, 2011) establishing the offence. It should be noted that the absence of the above will not in itself prevent the court from convicting⁴³ (except where the testimony is from a child below the age of⁴⁴); rather, its existence could make the courts more inclined to convict an accused.

The prosecution in most cases of rape fail to secure conviction more often than not because there was no corroboration of the evidence by the prosecutrix as to penetration. Jurisprudentially, It is not trite that the evidence of the prosecutrix must be corroborated before there can be conviction rather it is the common law that provides for same and yet says that a judge may however convict, the accused upon uncorroborated evidence of the prosecutrix after has warned himself that it is not safe to convict upon such evidence.

The issue of corroboration has been quite thorny in the criminal law jurisprudence for the offence of rape. The manner in which sexual violation 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*⁴⁵ 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 the writer's view 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 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. Our criminal justice system must move forward and protect citizens against crimes that infringes on their honour and integrity.

7. Prospects to the Challenges Confronting the Prosecution of the Offence of Rape

The International Crime on Statistics and Justice by the United Nations Office on Drugs and Crime (UNODC) find that worldwide, most victims of rape are women and most perpetrators male. Incidences of rape against women are rarely reported to the police and the number of female rape

⁴³ *Oludotun Ogunbayo v. The State* (2007) LPELR – 2323 (SC), where the Supreme Court held that it is not a rule of law that an accused cannot be convicted on the uncorroborated evidence of the prosecutrix.

⁴⁴ S 209 Evidence Act 2011

⁴⁵ (1993) 6 NWLR (Pt. 300) 399

victims is significantly underestimated⁴⁶. Most rape is committed by someone the victim knows⁴⁷. By contrast, rape committed by strangers is relatively uncommon. Statistics reported by the Rape, Abuse & Incest National Network (RAINN) indicate that 7 out of 10 cases of sexual assault involved a perpetrator known to the victim⁴⁸.

The Punch Newspaper reported in 2005 that 513 people (134 women and 379 men) were in police custody in connection with 423 cases of rape in Lagos State during the first four months of 2005. Many of the rape cases were believed to have taken place in institutes of higher education⁴⁹. One of these immoral and inhumane acts occurred sometimes in May 2020 somewhere around Narayi, in the southern part of Kaduna State, Nigeria where an 18-year-old girl simply identified as Miss Jennifer was gang raped by a group of five boys said to be her friends after giving her a drink containing alcoholic substance which caused her to sleep off and remain unconscious while they engaged in the act and which presently has left her in a poor mental state⁵⁰.

Another recent occurrence on May 27, 2020 is the case of one Miss Uwavera Omozuma a 22-year old Microbiology student of University of Benin who was raped while she was reading in a church close to her house and after which she was hit with a fire extinguisher which later resulted in her death⁵¹. The perpetrators of this act have also taken the habit of violating underage girls even below the age of 10 years. Therefore, incidences rape being committed this present day and time can no longer be termed as lust but rather an act of wickedness as most of the culprits end up killing their victims either directly or indirectly as the victims may die due to loss of blood or committing suicide as a result of the trauma experiences or stigmatization by the society and sometimes as a result of trying to abort the pregnancy arising from the act.

Based on the current increase of this animalistic act happening all over the world with Nigeria not being an exception, it is pertinent to note that the punishment as provided by our laws need to be amended to be more strict and also modalities be put in place for quick dispensation of rape cases in Nigeria. In support of the above is the wordings of Per I.T. Muhammad J.S.C in respect of the case of *Shuaibu Isa v. State*⁵², where His lordship by way of obiter referred to a rapist thus;

A rapist is worse than an animal. He has no moral rectitude. He throws overboard, the limit of his legal rights and he can, shamelessly, deprive another person (more painfully, female children of under age) of their God given rights of protecting the chastity and sanctity of their body and mind. He is all out to pollute such chastity and sanctity. He has no respect for human beings! He can commit any atrocity. He is a cancer to the society. What a shame!

⁴⁶Harrendorf, Haskenan, Malby, Stefan, Marku, Steven. "International Statistics on Crime and Justice" (PDF). www.unodc.org. United Nations Office on Drugs and Crimes.

⁴⁷Finley, Laura (2018). "Acquaintance rape". In Smith, Merril D. (ed.). *Encyclopedia of Rape and Sexual Violence*, Volume 1. ABC-CLIO. p. 1. ISBN 978-1-44-084489-8.

⁴⁸Smith, Merril D., ed. (2018). "Stranger rape". *Encyclopedia of Rape and Sexual Violence*, Volume 2. ABC-CLIO. p. 430. ISBN 978-1-44-084489-8.

⁴⁹The Punch, 3 June 2005, chimdilim okeke essay on the scourge of rape accessed on 8th of august 2023

⁵⁰<https://www.google.com/amp/s/www.qed.ng/justiceforjennifer-18-year-old-allegedly-gang-raped-in-kaduna/amp/>

⁵¹<https://www.google.com/amp/s/www.bbc.com/news/amp/world-africa-52868835>

⁵²(2016) 6 NWLR (Pt.1508)

Lagos State on its part has created the Special Offences Court to hear sexual offences speedily but there is still need for extra effort to tackle this virus called rape virus rapidly spreading. However, other states have not come out to follow suit on tackling sexual offences the way Lagos State has done. Federation considers domesticating these principles by incorporating them in existing laws or enacting altogether new but similar legislations

8. Conclusion

The scourge of rape and defilement in our society isn't about to go away unless society adopts deliberate steps to understand its socio-cultural causes and what legislative and institutional reforms are required to contain and ultimately reduce it. Assailants, typically, leave their victims physically and emotionally traumatized. Some survivors are scarred for life and become psychological wrecks. Given the criminal nature of the act and the stigmatization associated with survivors, efforts towards finding sustainable solutions would require a multi-dimensional approach. The dilemma associated with trauma of dealing with the aftermath of sexual violence is critical to the process of healing, rehabilitation and reintegration into society of survivors. There are organizations dedicated to providing the necessary assistance to victims. Victims of sexual offences are encouraged to get help from centers and organizations dedicated to providing multi-dimensional and multi-level assistance and support services ranging from provision of access to forensic medical assistance, pro bono legal aid as well as rendering of professional counselling services to victims.