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Rape under the Violence Against Persons (Prohibition) Act 2015: An Appraisal

Onwa Ali Onwa[*]

Abstract

This paper provides a critical appraisal of rape under the Violence Against Persons (Prohibition) Act 2015 (VAPPA) within the broader context of Nigerian criminal law. Historically, rape jurisprudence in Nigeria, derived from the Criminal Code and Penal Code, was gendered and restrictive—permitting only male perpetrators and female victims through penile-vaginal penetration, while exempting marital rape. The VAPPA 2015 introduced transformative reforms by adopting a gender-neutral definition, expanding the concept of penetration to include the mouth and anus, and recognizing rape by any body part or foreign object. Using doctrinal legal methodology, this paper examined the VAPPA's provisions alongside the Criminal Code, Penal Code, Child Rights Act, and Cybercrime Act, analyzing judicial interpretations and persistent legal challenges. It found that while the VAPPA represents significant progressive reform, critical gaps remain: the preservation of the marital rape exemption, the non-statutory but persistently applied corroboration requirement, and implementation challenges across jurisdictions that have not domesticated the Act. The paper recommends legislative amendment to criminalize marital rape, judicial training on the VAPPA's expanded provisions, harmonization of conflicting statutory ages of consent, and enhanced victim protection mechanisms to align Nigerian law with contemporary understandings of sexual violence as an offence against bodily integrity rather than gender-specific morality.

Keywords: Rape, spousal rape, violence, consent, penetration, criminal code, penal code

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1. Introduction

Rape remains one of the most profound violations of human dignity known to law—an offence that strips away not merely bodily autonomy but the very essence of personhood.[1] For centuries, the legal conception of this crime was filtered through a patriarchal lens that reflected less about protecting victims and more about preserving masculine notions of property: a father's interest in his daughter's virginity, a husband's claim to his wife's fidelity. The law, in its earliest formulations, concerned itself not with the violation of a woman's will but with the diminution of her value in

* LL.B (Hons) Nig, LL.M (EBSU), PDE (PLCE), Ph.D (EBSU), JP. Lecturer, Department of Jurisprudence and international Law, Ebonyi State University, Abakaliki. E-mail onwall.ali@gmail.com.

1 V. Bergelson, 'Autonomy, Dignity, and Consent to Harm', (2008) 60(3) *Rutgers Law Review*, 723.

the eyes of the men who owned her.[2] This historical inheritance cast a long shadow over Nigerian jurisprudence, shaping the definition of rape in ways that excluded entire categories of victims and perpetrators from the law's protective embrace.

The legal landscape of rape in Nigeria has, until recently, been characterised by a peculiar myopia. Under both the Criminal Code applicable in Southern Nigeria and the Penal Code governing the North, the offence of rape could only be committed by a male upon a female, through penile-vaginal penetration.[3] This definition left untouched a vast terrain of sexual violation—oral and anal penetration, assault by objects, and the possibility of female perpetrators or male victims. More troubling still, the institution of marriage operated as a complete bar to prosecution, with the law presuming a wife's perpetual consent to sexual intercourse with her husband, regardless of her actual will. These limitations reflected not divine decree but historical accident—the uncritical reception of English criminal law, filtered through colonial assumptions about gender, sexuality, and the proper boundaries of state intervention in the private sphere. The enactment of the Violence Against Persons (Prohibition) Act, 2015 (VAPPA) represents a seismic shift in this legal topography. For the first time in Nigerian criminal jurisprudence, the Act offers a gender-neutral definition of rape, recognises the possibility of penetration beyond the vagina to include the mouth and anus, and acknowledges that rape may be committed using not only the penis but also other body parts or foreign objects. These innovations purport to bring Nigerian law into alignment with contemporary understandings of sexual violence as an offence against bodily integrity rather than a gender-specific crime rooted in outmoded social constructs. Yet between legislative aspiration and practical reality lies a gulf that demands careful examination.

This paper is animated by a central research problem: despite the transformative potential of the VAPPA 2015, significant gaps remain between the legal framework and the lived experiences of victims, between statutory provisions and judicial interpretation, and between the promise of gender neutrality and the persistence of deeply entrenched legal doctrines that continue to exclude certain forms of sexual violation from the ambit of criminal sanction. The marital rape exemption, preserved even under the VAPPA, stands as a particularly stark illustration of law's failure to protect vulnerable persons within relationships where vulnerability is often most acute. Similarly, the evidentiary requirements that have historically attended rape prosecutions—particularly the insistence on corroboration—continue to erect formidable barriers to justice, despite the absence of any statutory mandate for such requirements. The purpose of this paper is threefold: first, to undertake a critical examination of the provisions of the VAPPA 2015 relating to rape, situating this analysis within the broader context of Nigerian criminal law as embodied in the Criminal Code, Penal Code, Child Rights Act, and Cybercrime Act; second, to interrogate the persistent questions that have vexed Nigerian jurisprudence on sexual offences—including the capacity of husbands to rape wives, the evidentiary standards required for conviction, and the treatment of victims within the criminal justice process; and third, to evaluate whether the innovations introduced by the VAPPA represent genuine progress or merely cosmetic changes that leave fundamental structural problems unaddressed.

In order to fulfill its objectives, the paper is divided into the following: Section two clarifies the conceptual terrain, examining the definitions of rape, consent, and penetration that underpin the legal framework. Section three traces the historical evolution of rape law in Nigeria, from indigenous customary systems through colonial imposition to contemporary legislative developments. Section four dissects the legal elements of the offence—actus reus, mens rea,

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2 C.E. LeGrand, 'Rape and Rape Laws: Sexism in Society and Law', (1973) 61 *California Law Review*, 919, at 924.

3 E.OC Obidimma & Q.C. Umeobika, 'Time for a new Definition of Rape in Nigeria', (2015) 5 *Research on Humanities and Social Sciences*, 112, 115

capacity, and the categories of persons who may be victims or perpetrators. Section five undertakes a comprehensive analysis of the legal framework governing rape across multiple statutes, including the VAPPA 2015, Criminal Code, Penal Code, Child Rights Act, and Cybercrime Act, examining both their provisions and their judicial interpretation. Section six concludes with reflections on the distance travelled and the journey yet ahead, offering recommendations for reform that might bring Nigerian law closer to the ideal of equal protection for all persons against sexual violence.

2. Clarification of Terms

2.1 Rape

There are many meanings ascribed to rape. The Merriam-Webster's Dictionary defined rape as "unlawful sexual activity and usually sexual intercourse carried out forcibly or under treat of injury against the will usually of a female or with a person who is beneath a certain age or incapable of valid consent".[4] Rape accroding to the Black's Law Dictionary[5] involves "unlawful sexual intercourse committed by a man with a woman not his wife through force and against her will". It further defined the term as "unlawful sexual activity (especially intercourse) with a person (usually a female) without consent and usually by force or treat of injury".

Many scholars have, as well, held their views on what conduct constitutes rape. It is pertinent to consider some of these views. According to Easteal, rape is "the penetration of the mouth, vagina or anus by any of the attacker's body or by an object used by the attacker, without the consent of the victim".[6] Okonkwo and Naish, drawing inspiration from the wordings of section 358 of the Criminal Code, defined rape simply as "the most serious kind of sexual assault punishable with imprisonment for life with or without whipping".[7] For Khariju, rape means "having sexual intercourse with a non-consenting female, with the knowledge by the accused that his victim was not consenting".[8]

The legal definition of rape is contained in section 357 of the Criminal Code, section 282 of the Penal Code and section 1 of Violence Against Persons (Prohibition) Act (VAPP), 2015. By the provision of section 357 of the Criminal Code, 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 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, in the case of a married woman, by impersonating her husband, is guilty of an offence called rape". By section 358 of the same Act, any person who commits rape is liable to imprisonment for life with or without canning. Section 282(1) of the Penal Code puts the definition of rape thus:-

> A man is said to commit rape where, except in the case referred to in Section 2 of this section, he has sexual intercourse with a woman in any of the following circumstances:-
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> (a) against her consent;
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> (b) without her consent;

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4 "Rape." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/rape. Accessed 9 Mar. 2026.

5 B. Garner, (ed.) *Black's Law Dictionary*, 10th edition, (USA: Thomson Reuters, 2014) 1450.

6 P.W. Easteal, "Violence Prevention Today", Australia Journal of Forensic Sciences-January 2011.

7 Okonkwo and Naish, *Criminal Law in Nigeria*, 2nd edition, (Ibadan: Spectrum Books Ltd. 2012) 271.

8 S.C. Kehariju, *The Law of Rape in Nigeria*, (Ahmadu Bello University Press Ltd. Zarla, Kaдила, 2010).

(c) without her consent, where 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 another 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.

Section 282(2) of the Code provides that sexual intercourse by a man with his own wife is not rape, provided she has attained the age of puberty. Section 1 of VPPA, 2015, gives quite a broader definition of the term thus:

A person commits the offence of rape if:-

(a) he or she penetrates the vagina, mouth or anus of another person with any other part of his body or anything else;

(b) the other person does not consent to the penetration; or

(c) the consent is obtained by force or means of threat or intimidation of any kind or by fear or harm or by means of false or 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 his or her spouse;

A person convicted of rape under this section is liable to imprisonment for life except:-

(a) where the offender is less than 14 years of age, in which case the offender is liable to a maximum of 14 years imprisonment;

(b) in all other cases, to a maximum of 12 years imprisonment without an option of fine; or

(c) In the case of gang rape, the offenders are liable jointly to a minimum of 20 years imprisonment without an option of fine.

2.2 Consent

There is no standard legal definition of 'consent' as provided in the Nigerian criminal legislations, including VAPPA, 2015. What we have in these laws is a definition by negation; wherein consent is deemed not validly obtained, where the act of rape is done by means of force, threat of death or harm, fraud or misrepresentation, the application of addictives or any other substance capable of taking away the will of a person, or by impersonation of one's spouse. Recourse is however, made to the Black's Law Dictionary, which defines the term 'consent' to mean "a voluntary yielding to what another purposes, especially given voluntarily by a competent person".

The absence of consent is a vital point to pin-down the culprit, whereas, consent can be a defence to the offence of rape. Howeevr, for consent to serve as a defence to rape, the claim of consent must be valid, or validly obtained. By the provisions of section 1(1)(c) of VAPPA, 2015, section 357 of the Criminal Code and Section 282(1)(c) & (d) of the Penal Code, consent obtained by means of force, threat of death or harm or injury, deceit, intimidation, or fraudulent misrepresentation 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 his/her spouse is consent unlawfully/invalidly obtained. In *R v. Williams*,[9] the defendant, a singing coach, told his pupil that she needed an operation to improve her singing voice, to which she agreed. The operation consisted of him having sexual intercourse with her. After the incident, the defendant was charged with rape. He contended that she had consented to his action. The Court held that her consent was vitiated by fraud as to the nature of the act.

To have a carnal knowledge of a sleeping woman is rape; it is immaterial that the latter would not have refused consent if she were awake. Also, consent from an underage person is not a valid consent in law. In the same vein, submission or consent by a person of unsound mind or a person of weak intellect is not a valid consent, except in the case of the former, during his/her period of lucidity[10] or in the case of the latter, if it is proved that he/she understood the nature of the act and where this is the case, Okonkwo and Naish submits that the fact that accused person deceived the complainant about the former's state of health is immaterial.[11]

2.3 Penetration

There is no standard definition of the term 'penetration' in the VAPPA, 2015, and other rape legislations in Nigeria. The Black's Law Dictionary defines the term 'penetration' with respect to rape to mean the entry of the penis or some other part of the body or a foreign object into the vagina or other bodily orifices. Although, VAPPA 2015, which has a broader perspective about rape than all other legislations in this regard, gave no exact definition of 'penetration', the definition in the Black's law dictionary appear to capture the intention of the drafters of the VAPPA 2015.

Under the Criminal Code and Penal Code, the terms "unlawful carnal knowledge" and "sexual intercourse" respectively, means one and the same thing – penetration.[12] Without penetration, there could be any other offence but rape. Thus, penetration, or in other words, 'carnal knowledge', is one of the essential elements that must be proved against an accused person for such person to be guilty of rape. For this purpose, it is not necessary to prove that the hyrnen was ruptured or that there was an emission of semen into the vagina or any other bodily orifices penetrated. The depth of the penis (or other part of the body or the foreign object) is immaterial. The slightest penetration of the vagina is sufficient. In *Ogunbayo v. State*,[13] and *Posu v. The State*,[14] among other cases, the Courts have held that penetration and lack of consent are essential ingredients in the offence of rape and sexual intercourse is deemed complete upon proof of penetration of the vagina by the penis, no matter how slight. It is worthy of note, however, that penetration as used over the years by the apex and lower Courts has always meant penile-vaginal penetration.

3. Rape under the Nigerian Legal System

Prior to the arrival of the British Criminal Law, there were in existence in the area now known as Nigeria some systems of customary (indigenous) criminal laws which regulated the standard of behviour of people of the different parts the territory. These laws were generally unwritten. In southern part of the territory were numerous relatively simple systems of social norms based on the units of the family, village or the group of villages. In the North was a highly developed system of Moslem law of crime with different schools such as the Maliki School which was the most

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9 (1923) 1 KB 340.
10 Section 282 (1)(e) of the Criminal Code.
11 Okonkwo and Naish, *Criminal Law in Nigeria*, 2 edition (Ibadan, Spectrum Books Ltd. 2012) 273.
12 Section 6 of the Criminal Code and Section 282 of the Penal Code.
13 (2007) 2 NWLR (Pt, 1035) 157 at 173.
14 (2011) 2 NWLR (Pt. 1234) 393 at 416-417

dominant.[15] In the North also were pagan communities which had retained in varying degrees their own criminal laws, or blended them with Moslem law. The coming of the British did not at first change the situation much.

In the year 1861, King Dosunmu of Lagos ceded Lagos to British control and Lagos became a crown colony.[16] Consequently, the English Common law which included the common law of crime was introduced into Lagos.[17] These laws, however, operated only in Lagos; indigenous laws were still applicable in the protectorates. In 1904, the Lord Lugard's administration in Northern Nigeria introduced by proclamation a Criminal Code whose purpose, the preamble stated was to declare, consolidate and amend criminal law.[18] This resulted in a situation in which three criminal justice systems operated throughout the country – English criminal code in Lagos, the criminal code in the North and the indigenous criminal customary law in the South.[19]

To solve this problem, the British decided to extend the provisions of the English criminal code to the whole country in 1916. The code was tailored closely with the Queensland Code, introduced into the state of Queensland, Australia in 1899. The extension of the code to apply to the whole Nigeria caused agitation from the northern part of the country, as the code was in conflict with some provisions/practices of Islamic law. One fact of the major areas of contention was that Islamic law allowed the infliction of punishment unrecognized by the Criminal Code. Also, whereas the Criminal Code made provision for defence of provocation, Islamic law did not consider any defence like provocation to mitigate a sentence of death in order to reduce same to slaughter.[20] In a bid to resolve this conflict, Section 4 of the English criminal code was amended to divest native tribunals of their criminal jurisdiction. However, section 10 of the Native Court Ordinance 1933 saved the criminal jurisdiction of the Native courts, subject to the humanity of the punishment imposed.

In *Gubba v. Gwandu Native Authority,*[21] the West African Court of Appeal clarified the seeming ambiguity caused by the existence of the two pieces of legislations. The court held that the correct interpretation of the relevant section of the 1933 legislation was that:

> (1) Where a native court tried an offence which was an offence only against native law and custom, then it could carry it in accordance with native law and custom and could inflict the customary penalty. But
>
> (2) Whenever the offence tried was an offence under the code, then, even though it might also be an offence against native law and custom, the only law to be applied was that of the code.

On the particular fact of *Gubba's case* involving homicide in circumstances of provocation, it followed from the court's reasoning that the (Native) Moslem Court should have considered the

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15 S.O. Rabi'u, 'Shari'ah Hudud and Northern Nigerian Penal Code', (2026) 2(1) *International Journal of Law*, 8-12.

16 A.A. Akinsanya & R.A. Akindele, 'Legitimate Trade, Annexation and Cession of Lagos and International Law', (2018) 7(1) *Journal of Management and Social Sciences*, 266.

17 J.A. Yakubu, 'Colonialism, Customary Law and Post-Colonial State in Africa: The Case of Nigeria', paper presented at 10th CODESRIA General Assembly on "Africa in the New Mellenium", Kampala, Uganda, 8-12 December, 2002, available at: https://nigerianlawguru.com/wp-content/uploads/2024/09/COLONIALISMCUSTOMARY-LAW-POST-COLONIAL-STATE-NIGERIA.pdf

18 Okonkwo and Naish, *Criminal Law in Nigeria*, 2nd edition (Ibadan: Spectrum Books Ltd, 2012) 4.

19 Ibid.

20 O. Olamide, "Historical Evolution of Nigeria Criminal Law", Available at http://djetlawyer.com/historical_evolution_of_Nigeria_Law/ Accessed on 06-03-2020

21 (1947) WACA Vol. 12.

plea of provocation in a charge of murder. The judgment in *Gubba's case* caused a lot of discontent among Moslem communities, who saw Islamic law as being relegated to the background. This was due to the fact that the criminal code covered most aspect of the native law. To solve this puzzle, a committee was set up. The committee proposed that a Customary (Native) Court trying a criminal case had the right to try and sentence the case under Customary (Native) law without regard to the provision of the criminal code. This was applied in the case of *Kano Native Authority v. Fgoji*[22] and *Tsamiya v. Bauci Native Authority*.[23]

The principle followed in the above case were however, truncated in the case of *Mizzabo v. Sokoto Native Authority*,[24] where the court held that though Native court has power to try a case under native law and custom, it cannot impose a higher sentence than the accused would have gotten had he been tried under the Criminal Code. This meant that the case would be tried under customary law but for sentencing recourse had to be made to the Criminal Code. This further caused more conflict in the Northern region. To solve this problem, another committee was set up in 1958 to address this issue. The committee proposed either the whole acceptance of English Criminal Code, the whole acceptance of Islamic law or a hybrid between both of them. After heated debate and wide consultations, it was decided that a hybrid was the best choice. This was brought into effect through the introduction of the Penal Code in 1959.[25] The code which displaced the Criminal Code from the Northern region was happily welcomed, owing to the fact that the code, which was fashioned after the Indian Penal Code of 1860 and Code of Sudan was really working successfully among the Moslem communities in those areas for whom the codes were made. The Penal Code contained some elements of Islamic law through the criminalization of certain acts like adultery, section 387 and 388; drinking of alcohol Section 403; insulting the modesty of Moslem women section 400 e.t.c.

In the rest of Nigeria, traditional criminal law was much less firmly entrenched than in the north and the decision was taken at the 1958 Constitutional conference to abolish customary criminal laws in Nigeria altogether.[26] Thus, the following provision was written into the 1959 Bill of Rights, and became section 22(10) of the 1963 Constitution (now Section 36(12) of the 1999 Constitution of the Federal Republic of Nigeria as amended:-

> No person shall be convicted of a criminal offence unless that offence is defined and penalty therefore prescribed in a written law.

Accordingly, rape as an offence is included among numerous offences as are contained in both the Criminal and Penal Codes, which govern the southern and northern parts of Nigeria respectively. The offence is defined and its penalty prescribed respectively in sections 357 and 358 of the Criminal Code (which applies to Southern part of Nigeria) and sections 282 and 283 of the Penal Code (which applies in the northern part of Nigeria). In 2015, the National Assembly handed down yet another criminal legislation – the Violence Against Persons (Prohibition) Act 2015. This Act, in section 1, makes specific provision for the offence of rape, even in a broader perspective than the Criminal and the Penal Codes. By virtue of section 45(2) of the Act, the provisions of the Violence Against Persons (Prohibition) Act shall supersede the provisions of the Criminal and the

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22 (1957) N.R.L.N.L.R 57.
23 (1957) N.R.L.N.L.R 73.
24 (1957) N.R.L.N.L.R 133.
25 Olamide, n 20.
26 H. Bourbeau, M.S. Umar and P. Bauman, 'SHARI'AH CRIMINAL LAW IN NORTHERN NIGERIA: Implementation of Expanded Shari'ah Penal and Criminal Procedure Codes in Kano, Sokoto, and Zamfara States, 2017–2019', United States Commission on International Religious Freedom, December 2019, available at: https://www.uscirf.gov/sites/default/files/USCIRF_ShariahLawinNigeria_report_112019%20v3R.pdf.

Penal Codes with respect to similar offences in, any State of the Federation that domesticates/adopts the Act.

4. Legal Elements of the Offence of Rape

The elements of the crime of rape are those circumstances, facts or ingredients that must be proven to achieve conviction of an accused person of the crime. Like every other offences save strict liability offences, which needs only actus reus, rape cannot be said to have occurred without mens rea (the guilty mind or mental element) and actus reus (the guilty act).[27] Before a Court can find a defendant guilty of rape, the prosecution must present evidence which proves these circumstances, i.e. the mens rea and actus reus, such that even when opposed by any evidence the defence may choose, is credible and sufficient to prove beyond reasonable doubt that the defendant committed each element of the crime.

4.1 Actus Reus of Rape

The actus reus of rape is penetration, carnal knowledge or sexual intercourse. It could be unimaginable to say that rape has occurred without the perpetrator penetrating the vagina, anus or other bodily orifices of the victim. Moreover, for penetration to form the actus reus of rape, same must have occurred without the victim's consent; otherwise, the act of penetration is simply an agreement between them and cannot by any stretch of imagination be termed rape. The conjunctive reading of section 1(1)(a) & (b) of VAPPA 2015 states that a person commits the offence of rape if he/she penetrates the vagina, anus or mouth of another person with any part of his/her body or with a foreign object and without the latter's consent. A fair interpretation of this provision would suggest that section 1(1) of the Act merely introduced penetration and nothing more. The actus reus of the offence is found where the Act criminalized the act of penetration in section 1 in circumstances where “the other person does not consent to the penetration”. The introduction of the phrase "does not consent" which renders that act of penetration in Section 1(1)(a) a crime, constitutes the actus reus of rape.

Section 357 of the Criminal Code referred to the act of penetration as carnal knowledge, and by the provision of the Code, the slightest penetration of the vagina is sufficient. Section 282 of the Penal Code referred to penetration with the words “sexual intercourse” and provides that when it occurs without a woman's consent, it becomes rape. The Section further provides that rape is complete upon the slightest penetration. By the combined reading of section 1 of VAPPA 2015, section 357 of the Criminal Code and section 282 of the Penal Code, where penetration occurred but with consent obtained by means of threat of arm or injury or death, fraud or misrepresentation as to the nature of the act, the application of addictive or any substance capable of taking away the will of the victim or, by impersonating the victim's spouse, such consent is invalid and the penetration still constitutes actus reus of rape. Summarily, it has been held in *R v. Kufi*[28] that there cannot be rape without penetration, and the offence is complete even upon the slightest penetration.

4.2 Mens Rea of Rape

The mens reus of rape is the intention to have sexual intercourse with a woman without her consent. In the event of having sexual intercourse, one should be able to know if the other person is consenting. This has been judicially stated in *D.P.P. v. Morgan*,[29] the House of Lords in this case,

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[27] M.O.A. Ashiru & O.A. Orifowomo, ‘Law of Rape in Nigeria and England: Need to Re-Invent in the Twenty-First Century’, (2015) 38 *Journal of Law, Policy and Globalization*, 28.

[28] (1960) W.N.L.R.

[29] (1975) 2 All E.R. 347; Section 25 of the Criminal Code.

held that if the accused honestly believed that the victim was consenting, he lacks mens rea. The House of Lords emphasized that the reasonableness of the defendant's belief would be taken into account by the jury as to know whether such belief could be entertained.

If a person is aware of the fact that the other was not consenting and went ahead to have sexual intercourse with her or, was indifferent as to whether she is consenting or not, such person is guilty of rape. However, where a person realizes only after the intercourse has commenced that the other person is not consenting, the Privy Council has held in *Kultamaki v.The Queen*,[30] that he is guilty of rape, if he proceeds after that time. In *Maouloud Baby v. State of Marland*[31] the Court held in 2007 that a person may withdraw consent after giving it, and that where the accused observed that the other has withdrawn consent and continues instead of withdrawing penetration immediately, he is guilty of rape.

Stewart and Daudu[32] suggests that the mens rea of the offence of rape should contain the following:-

a) The defendant's intention to have sexual intercourse with the victim without consent;

b) The defendant knew that the victim was not consenting;

c) The defendant was aware that the victim might not be consenting or did not believe that the victim was not consenting;

d) An intention to have intercourse with a woman indifferent as to whether she was consenting or not.

Where there is a perceived or purported consent by a person who is incapable of giving a valid consent, such as a minor, an insane (except during period of lucidity), or a sleeping woman, such consent is not real, and an accused who claims to have such consent is still guilty of rape.

4.3 Capacity to Commit Rape

Our laws have stipulated the age or circumstances upon which one could be considered as having the ability to commit rape. The Criminal Code, having as usual the patriarchal undertone provides in section 30, that a male under the age of 12 years of age is presumed to be incapable of having carnal knowledge. It follows from this that he cannot be guilty of rape or attempted rape, although on such a charge he may be convicted of indecent assault.[33] This presumption is one of law and cannot be rebutted by showing that the accused has reached the full state of puberty even though he is below the age of 12 years.[34] A husband is incapable of raping his wife. This is contained in section 6 of the Criminal Code, which defined carnal knowledge as "carnal connection which takes place otherwise than between husband and wife". Also, a woman cannot be guilty of committing rape upon a man because, according to section 357 of the Criminal Code, the offence can only be committed upon a woman or girl by a man.

The Penal Code presented on its own that no act is an offence which is done by a child under 7 years of age; or by a child above 7 years of age but under 12 years of age who has not attained

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30 (1980) 1 NLR 59.

31 946 A.2d 463 (Md.2007).

32 Stewart and Daudu "Unlawful Carnal Knowledge: An Examination of the Offence of Rape and Sexual Offences under the Nigerian Law and Justice System", 15(1) *University of Benin Law Journal* 24.

33 Section 176 of Criminal Procedure Act.

34 Okonkwo and Naish, *Criminal Law in Nigeria*, 2nd edition (ibadan: Spectrum Book) 272.

sufficient maturity of understanding to judge the nature and consequences of that act.[35] Also, section 282(2) of the Penal Code provides that sexual intercourse by a man with his own wife is not rape, provided she has attained puberty. Unlike sections 30 and 50 of the Criminal Codes respectively, section 1(2) of VAPPA 2015 underscores the fact that a male person below the age 12 years may have reached the full state of puberty and, thus capable of having carmal knowledge. Consequently, the Act provides that a person below the age of 14 years who violates the provision of section 1(2)(a) of VAPPA, 2015 will be liable to a term of imprisonment not exceeding 14 years. These provisions were buttressed by a case in New Zealand in which an 11 year old boy (James Rush) impregnated a 36 years old woman.[36] With respect to the capacity of a man to rape his wife, the VAPPA, 2015 makes similar provision with the Criminal Codes to the fact that a person cannot rape his/her spouse by virtue of section 1(1)(c) of the Act.

4.4 Those who Can be Raped

By the provision of our old laws, (the Criminal Code and Penal Code) which have as well enjoyed judicial support and affirmation, it is not within imagination nor within any iota of contemplation, that a female can rape a man. Thus, right from advent of the Criminal Code in 1916 to the enactment of the Penal Code in 1959 and even to the present time, among States of the Federation which have not domesticated the VAPPA 2015, only a woman or girl can be raped. Section 6 and 357 of the Criminal Code, section 282 of the Penal Code as well as plethora of cases,[37] buttress this point.

The VAPPA 2015 has made quite a novel provision with respect to the offence of rape, to the fact that by virtue of section 1 of the Act, a person of any gender can be a victim of rape. This in the light of the fact that although the male gender do not posses vagina, they possess a mouth and anus, which also forms part of the medium through which the crime of rape can be committed in our contemporary society.

4.5 Rape of a Spouse or a Partner

The VAPPA 2015 in all fours upholds the provisions of the Criminal Code and Penal Code as to the question or provision whether a man can rape his wife or vice versa. Section 6 of the Criminal Code, gives a convincing meaning of the term 'carnal knowledge' and provide an exemption to persons who can be held liable for the offence and these persons include husband and wife.[38] It follows that the affairs between husband and wife resulting in sexual intercourse is not unlawful, whether or not consent was given. However, under section 282(2) of the Penal Code, it has been provided that a husband who has carnal knowledge of his wife when she has not attained the age of maturity amounts to an offence of rape.

The position of the law is that once there is dissolution of marriage by a competent Court or if a competent Court has made a separation order containing a clause that the wife will be no longer bound to cohabit with her husband, then the implied consent to intercourse given by the wife at marriage is revoked and while the order is in force, it will be rape to have intercourse with her

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35 Section 50 of the Penal Code.

36 James Rush "Boy, 11, fathers child with 36 years mother of school friend; prompting calls for reform of New Zealand's Rape Laws" available at <http://www.dailymail.comuk/news/article-2342015/boy-is-father-child-36rears-old-mother-school-friend-prompting-call-reform-reform-Newzealands-rape-laws-htm cited by A.N. Nwazuoke, "Critical Appraisal of the violence Against Persons (Prohibition) Act, 2015" (2016) 47 *Journal of Law, Policy and Globalization*, 213.

37 See *Ogunbayo v. State* (2007) All FWLR (Pt. 365) 408; *Adeoti v. State* (2009) All FWLR (Pt.454) 1450 C.A; *State v. Ogwudigwe* (1968) NMLR 117; *Iko v. State* (2001) LPELR-SC 177/2001; *Posu v. State* (2011) 2 NWLR (Pt.1234) 393 at 416-417.

38 See also section 357 of the Criminal Code, section282 of the Penal Code and section 1 of VAPPA 2015.

without her consent. In *R. v. Clatke*,[39] the Court affirmed that a husband will be guilty of rape upon his wife without her consent where a separation order was in force. However, the mere fact that the wife of a man has filed a petition for divorce does not by itself revoke the implied consent. This was the position of the Court in *R. v. Miller*.[40] In any case, where a person is incapable of committing rape he or she may be charged with the offence by virtue of section 7 of the Criminal Code, if he/she aides, counsels or procures any other person for the purpose of committing rape, where there is actual commission of the offence.

Though a husband or wife cannot be held liable for the offence of rape on their partner, he or she may be liable for aiding or abetting the act. Thus, if a husband or wife procures or instigates someone else to have sexual intercourse with his or her partner against the latter's will, the husband or wife will be held as an abettor under the law.[41]

5. Legal Framework and Jurisprudence of Rape in Nigeria

5.1 Rape under the Violence Against Persons (Prohibition) Act 2015

The Violence Against Persons (Prohibition) Act, 2015 came into force on 23rd May 2015. It is comprised of 48 sections and a Schedule consisting of six forms. According to the long title of the Act, the object of the Act is to eliminate violence in private life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders and for other related matters. The VAPPA deals with sexual violence in sections 1, 6 and 26, and is the first criminal legislation to expand the concept of rape beyond penetration of the vagina and anus to include penetration of the mouth by the penis.

In addressing rape, the VAPPA provides in section 1(1) that a person commits the offence of rape if:-

(a) He or she intentionally penetrates the vagina, anus or mouth of another person with any part of him or her body or with anything else;

(b) The other person does not consent to the penetration;

(c) The consent is obtained by force or means of threat or intimidation by any kind or by fear of harm or by means of false or 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 his or her spouse.

Section 1(2) further provides that where the offender is found guilty under sub-section 1, he would be sentenced to life imprisonment except:-

(a) Where the offender is less than 14 years of age, the offender is liable to a maximum of 4 years imprisonment;

(b) In all other cases, to maximum of 12 years imprisonment without an option of fine;

(c) In the case of gang rape, the offenders are liable jointly to a maximum of 20 years imprisonment without an option of fine.

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39 (1941) 33 Cr. App. R.216.
40 (1954) 2 Q.B. 282.
41 Section 7 and 83 of Criminal Code and Penal Code respectively.

As has been pointed out, the VAPPA contains innovative provisions on the offence of rape that are meant as proactive measures to control the scourge of rape, which is fast spreading like cancerous growth in varied style and dimensions and practically needs urgent intervention in order to guarantee continued safety of lives and health of persons of all ages and gender across all parts of Nigeria. One of the innovations as has been noted earlier is the recognition of rape as an offence capable of commission by and against any gender. Happenings and reports from many angles and platforms in recent time have proven the fact that males are nearly squarely as victims of rape as they are perpetrators of the same, and this justifies this new position of the VAPPA.[42]

Another provision worthy of note in the VAPPA among others is the fact that it provides stricter punishment for rape offenders. It is pertinent to note that although the punishment for rape as provided in the Criminal Code and Penal Code is life imprisonment, the Courts have not interpreted the sentence to mean mandatory one. Thus, we have seen many cases were rape offenders were handed down lesser or somewhat lenient sentences. For example, in *Popoola v. State*,[43] the appellant was charged under section 358 of the Criminal Code Laws of Ogun State 1978, which is in pari materia with section 358 of the Criminal Code Act. The appellant was alleged to have raped a student of Abeokuta Grammar School, Ogun State. He was sentenced to 5 years imprisonment by the trial Court. The sentence was affirmed by both the Appeal and Supreme Courts. Also, in *Iko v. State*,[44] the appellant was sentenced to 7 years imprisonment for rape of a School girl. The judgment was disallowed by the Supreme Court, however, for lack of corroboration.

The VAPPA on its own as well did not state the life imprisonment prescribed as penalty for rape offenders is a mandatory sentence. However, it has placed a benchmark on the maximum term which a judge is expected not to descend below in handing down a sentence on a rape offender, except in the case of a person below the age of 14 years, in which case the judge can sentence him to any term not exceeding 12 years. It is not out of place to state that this tougher sentence prescription is aimed at achieving two objects: firstly, to give deserving punishment to offenders and secondly, to deter would be offenders from indulging in the unlawful act, seeing the length of term given to convicted persons.

5.2 Rape under the Criminal Code Act

The Criminal Code Act is applicable to the Southern States of Nigeria as Criminal Code Laws of the various States. The Criminal Code Act is the first criminal legislation to be made in the history of Nigeria legal system, dating back from 1904 when it was made to apply only to the colony of Lagos until 1916 when it was extended to apply to the whole of Nigeria and presently applying in Southern States of Nigeria. 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 such consent is obtained by force or by means of false and fraudulent representation as to nature of the act, or, in the case of a married woman, by impersonating her husband, is guilty of an offence called rape.

Uzoamaka Akpogome, going by the aforementioned section, has listed the ingredient that must be proved to secure a conviction against an offender to include:-

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[42] J.C. Thomas & J. Kopel, 'Male Victims of Sexual Assault: A Review of the Literature', (2023) 13(4) *Behav Sci (Basel)* 304.
[43] (2013) 17 NWLR (Pt. 1382) 100.
[44] (2001) 14 NWLR (Pt. 732) 221.

i) That the accused person had sexual intercourse with a woman or girl (the victim) against her will;

ii) That the accused had the requisite mens rea i.e. intention to have sexual intercourse without the victim's consent;

iii) That the act of intercourse was unlawful not being between husband and wife;

iv) That there was penetration; and

v) Evidence must be adduced to corroborate the complaint. This is a matter of practice and not a requirement of the law.

These elements have been judicially tested and will be discussed albeit briefly. In *Adeoti v. State*,[45] 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 any means of fraud 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.

The issue of corroboration has been quite thorny in the criminal law jurisprudence for the offence of rape. Recently, the manner in which the crime of rape occurs makes it practically impossible to require corroboration.[46] For instance, where the offender is caught in the act, what other corroboration is needed to convict the culprit or where it is defilement of a child by an adult with a threat of harm on the child if she dare report and the act continues until the parents of the child discover 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? It is the submission of this paper that each rape case should be treated on its own merit as corroboration in evidence of rape, so to say, is not a statutory provision but a matter of practice.

In *Sambo v. State*,[47] the Court held that if the prosecution can secure the conviction of the accused, the victim's evidence must be corroborated and that the corroboration evidence must be cogent, compelling and unequivocal as to show without more that the accused committed the offence charged; an independent evidence which connects the accused with the offence charged, and evidence that implicates the accused in the commission of the offence charged. The Court has, however, held in *State v. Ogwudigwe*,[48] that in the offence of rape, in order to secure conviction, corroboration of the evidence of the complainant implicating the accused is not essential, but the judge must warn himself of the risk of convicting on the uncorroborated evidence of the complainant. In the manner, the Court held in *Ahmed v. Nigerian Army*[49] that where in the instant case the PW2 Ruth Waziiri testified with clarity not only that she has been severally raped more than three times, but that she was able to note and state the two birth marks around the pubic areas of the appellant and on the thigh which was confirmed, this was enough to secure a conviction.

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45 Section 357 of the Criminal Code Act.

46 H.U. Agu, 'The Requirement of Corroboration in the Prosecution of sexual Offences in Nigeria: A Repeal or Reform?', (2011-2012) 10 *Nigerian Juridical Review*, 174.

47 (1993) 6 NWLR (Pt. 300) 399.

48 (1968) NMLR 177.

49 (2011) 2 NWLR (Pt. 1234) 393.

Although the Criminal Code Act is the foremost criminal legislation enacted to control crimes and regulate the behaviour of persons in Nigeria, and remains the foundation of criminal law in the country, upon which subsequent legislations have built, however, with respect to the offence of rape, which is the particular area of research in this work, the Act contains a major flaw. That is, that it makes a gendered provision about the offence in the sense that the offence can be imagined to be capable of commission only by a man on a woman/girl and nothing more.

5.3 Rape under the Penal Code Act

The Penal Code Act is applicable in the Northern States of the Federation. It was enacted in 1959 after the Criminal Code seemed difficult to operate in that area, right from 1916 when the latter was extended beyond Lagos colony to apply to all parts of the country. The operational hitch which marred the criminal code in the northern part of Nigeria and agitations which demanded a thorough amendment or total abolition of the criminal code from that part has been attributed to the peculiarity in the socio-cultural, political and religious system of the northern people who were predominantly Moslems. These peculiarities saw to the manifest conflict between Islamic laws and certain provisions of the Criminal Code. The Penal Code was therefore enacted to accommodate some of these peculiarities and to create a balance between English laws and Islamic law.

The Penal Code like the Criminal Code was enacted to be a legal instrument for crime control and regulation of behaviour of persons in the northern part of the Federation. The offence of rape is contained in section 282(1) of the Penal Code and the section provides thus:

> A man is said to commit rape who, except in the case referred to in sub-section 2 of this section, 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 or without her consent, when the man knows that he is not her husband and that the consent is given because she believe that he is another man to woman she is or believes herself to be lawfully married;
>
> (e) with or without her consent, when she is under 14 years of age or of unsound mind.

Section 282(2) provides that sexual intercourse by a man with his own wife is not rape, if she has attained puberty. Section 283 provides that whoever commits rape shall be punished with imprisonment for life or for any less term and also shall be liable of fine. Under the Penal Code, for a suspect to be found guilty of rape, some ingredients as have been enunciated under Criminal Code and VAPPA must be proven. These ingredients are:-

(i) that the offender penetrated the vagina of the victim;

(ii) that the offender knew that the victim was not consenting to the penetration or was indifferent whether the victim was consenting or not;

(iii) that the offender has the required mens rea, having obtained the consent by fraud;

(iv) that the offender is not the husband of the victim;

(v) that the offender is the husband of the victim, but the latter has not attained the age of puberty;

(vi) corroboration of the evidence of the victim/complainant.

The only provision contained in the Penal Code as against the Criminal Code and VAPPA is ingredient No (v) mention above. The Penal Code is the only criminal legislation in Nigeria so far, to criminalize marital rape. By the provision of this Act, a man is guilty of rape on is wife, if she as not attained puberty.[50] The Penal Code also makes express provision for rape of persons below the age of 14 years or persons of unsound mind.[51] For this class of persons, it is rape to have sexual intercourse with them, with or without their consent. These express provisions are not contained in the Criminal Code and VAPPA. They are impliedly read into them because of the circumstances surrounding this class of persons, that is, their legal incapacity to give a valid consent to sexual intercourse, except in few exceptional cases, especially with respect to persons of unsound mind – period of lucidity.

5.4 Rape and the Child Rights Act

The Child Rights Act was enacted in 2003.[52] It is aimed at protecting the rights of children, as children are the future of any country. The Act states in section 1 that in every action concerning child, whether undertaken by an individual, a public or private body, institution or service, Court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration. The Act defines a child in section 277 to mean a person under the age of 18 years.

Children, after considering disabled persons, are the most vulnerable class in the society. They are too tender both in mind and body to possess many of what it takes to carter, protect or make the best decisions for themselves.[53] This is why nature has placed a child under the guidance, protection, provision and supervision of his/her parents or guardian for years, until he develops the requisite consciousness to exist in his best interest and interest of the society. Unlike some lower animals that can exist independently immediately after birth, the vulnerable nature of a child is the underlying reason why the Act was adopted into Nigeria to make specific provisions against exploitation, abuse and undue advantage of the child and to punish offenders accordingly. One of such abuses which are the primary consideration in this work is sexual violence, especially rape, which is the most heinous form of sexual violence.

Section 31(1) of the Act provides that no person shall have sexual untercourse with a child. Section 31(2) provides that any person who contravenes the provision in section 31(1) commits an offence of rape and is liable on conviction to imprisonment for life. The Act does not allow the defence of ignorance of the child's age or the fact that where a person is charged with an offence of rape under the Act, it is immaterial that the offender believed the child to be or of above the age of 18 years or, by the provision of section 31(3)(b), that the sexual intercourse occurred with the consent of the child.

The Act prohibits anyd 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 persons

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50 Section 282(2) of the Penal Code Act.

51 Section 282(1) (e) of the Penal Code.

52 I.P. Enemo, 'Child Rights Act 2003 and the Protection of Children against Trafficking', (2023) 18 *The Nigerian Juridical Review*, 102-115.

53 Ibid, 104.

below the age of 18 years and any person who betrothed a child or to whom a child is betrothed or who is a party to such betrothal is liable on conviction to a fine of five hundred thousand naira (N500,000.00) ar imprisonment for a term of five years or to both such fine and imprisonment.

The Act sees sexual intercourse with person below the age of 18 years as rape, and not even marriage is an excuse to suck intercourse. But by nature, I is always impossible for a man who married a wife to avoid having intercourse with her, especially where she has attained puberty. It is however, a known fact that most girls attain puberty below 18 years. This is the reason why the Act prohibits marriage of a girl under the age of 18 years in the first place, without giving puberty as exception to this provision. It is unfortunate, however, to note that some States in Nigeria have problem with this provision in the Act, as they view them to be contrary to their custom and religion.[54]

Marriage has been used often as a cloak 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 especially in Africa, and the practice which is legal in these parts is a form of sexual violence, since these children are unable to either give consent or withhold same and most of them know little or nothing about sex before marriage and their first sexual encounter are always forced.[55]

It is sad to note, however, that although the Act has placed the age of majority at 18 years, most states especially in the Northern part of Nigeria are still practicing child marriage.[56] And it is unfortunate to observe that this practice enjoys the backing of the law, as a northern man can marry and have sexual intercourse with a girl child and not be guilty of rape by virtue of section 282(2) of the Penal Code, provided such girl child as attained puberty. This is a point where the Child's Rights Act is in conflict with provision of the Penal Code Act. It is humbly submitted that the provision of the Child's Rights Act is more accommodative in contemporary society, and where two equal laws are in conflict with each other, it is a reasonable general belief that the latter law is the better law.[57] Thus, the Child's Rights Act of 2003 is a latter and better law in this regard.

5.5 Rape under the Cybercrime Act

The Cybercrime (Prohibition, Prevention e.t.c.) Act 2015 in its explanatory memorandum postulates that the object of the Act is to provide an effective, unified and comprehensive legal regulatory and institutional framework for prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria.[58] The Act was further enacted to ensure the protection of critical national information, infrastructure, and promote cyber-security and the protection of computer systems and network, electronic communication, data and computer program, intellectual property and privacy rights.[59] The Act is divided into eight parts with fifty-nine sections and Schedules. Under Part 3, which deals with offences and punishment, the Act contains sections that deal with sexual offences that are committed in cyberspace.

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54 K.O. Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions against Realisation of Education Rights', (2015) 12 *US-China Law Review*, 812.

55 V. Sharma *et al*, "Can Married Women Say No to Sex? Repercussion of Denial of Sexual Act" (1998) 44 Journal of Family Welfare, 1-8. Cited by T. U. Akpoghome, "Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria", (2016) 4(2) *Journal of Law and Criminal Justice*, 17-30.

56 Fayokun (n 51) 812.

57 E.C. Ibe, 'The Superiority Contest between Legislation and Judicial Precedent as Sources of Nigerian Law', (2020) 1 *International Journal of Law and Clinical Legal Education*, 33.

58 M.E. Nwocha, C.V. Iteshi & P.M. Awada, 'An Overview of the Nigerian Cybercrime Act 2015 (AS amended)', (2025) 9(1) *African Journal of Law and Human Rights*, 102.

59 Ibid.

Section 23 of the Act provides that any person who intentionally uses any computer system or network in or for:-(a) producing child pornography; (b) offering or making available child pornography; (c) distributing or transmitting child pornography; (d) possesses child pornography in a computer system or on a computer storage medium, commits an offence under this Act and shall be liable on conviction:-

(i) In the case of paragraphs (a) (b) and (c), to imprisonment for a term of 10 years or a fine of not more than twenty million naira (N20,000,000.00) or both fine and imprisonment; and

(ii) In the case of paragraphs (d) and (e), to imprisonment to a term of not more than 5 years or a fine of not more than ten million naira (10,000,000.00) or to both fine and imprisonment.

This legislation is quite timely in Nigeria considering the degree of sexual violence on children and young persons. The explosion of online channels for both adults and children make the internet an avenue for adults to perpetuate this crime on unsuspecting children.[60] The punishment for crime as contained in this Act is quite prohibitive and commendable. The snag lies with the implementation of this law.

The next offence is captured under section 23(3). This section states that a person, who intentionally proposes, grooms or solicits, through any computer system or network to met a child for the purpose of:-

(a) engaging in sexual activities with the child;

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

(i) use is made of coercion, inducement, force or threat;

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

(iii) abuse is made of a particular vulnerable situation of the child's mental or physical disability or a situation of dependence.

(c) recruiting, inducing, coercing, exposing or causing a child to participate in pornographic performance or profiting from or otherwise exploiting a child for such purpose; 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 fifteen thousand naira (N15,000.00) for offence under paragraph (a). For offence under paragraph (b) and (c), the culprit will be jailed for 15 years and also pay a fine not exceeding twenty five thousand naira (N25,000.00).

The Act also in section 24(1) provides that any person who knowingly send a message or other matters by means of computer system or network that is grossly offensive, pornographic or of an indecent, obscene or menacing character or cause any such message or matter to be sent is guilty of an offence under this Act and is liable on conviction to 3 years imprisonment or an option of fine not exceeding seven thousand naira (7,000.00). It is worthy to note that section 23(5) of this Act defines a child as a person below the age of 18 years.

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[60] J.O. Ezeanokwasa, 'Child Pornography under the Cybercrimes Act 2015 of Nigeria: The Law and Its Challenges', (2019) 4 *African Journal of Criminal Law and Jurisprudence*, 94.

The significance of the aforementioned sections, among other sections of related provisions, is that it is geared towards curtailing incidents of child rape and other forms of sexual violation within the cyberspace. Children are, by any nature, incapable of giving a valid consent to sexual activities whenever, wherever and however. The advent of this Act generally, and particularly with respect to its provisions in sections 23 and 24 is a timely one at this time in our society and country where the scourge of child rape and other forms of sexual violence is speedily eating deep into the fabrics of the moral and consciousness of quite a number of persons in this computer age.

Institutions involved in the implementation of the Act includes the Nigerian Police Force, Nigerian Correctional Services, the Ministry of Justice, Ministry of Women Affairs, and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP).

6. Conclusion

The totality of mankind has been described by the Marxists as that of continuous development from the realm of necessity to the realm of freedom. Drawing logically from their philosophy, we could say that sex is a necessity for man's reproduction and continuous sustenance on the face of the earth; and sexual activities, in ideal situation, should occur strictly between husband and wife. However, where the ideal situation is no more the order of the day, there is at least the need for individuals to reserve the right/freedom to say yes or no to sexual desires or advances of other persons and such should be respected. The need for individuals to have their responses to sexual desires and advances outside the bounds of marriage, respected by other persons desirous of a sexual relationship or sexual intercourse is what culminated into the commission of crime, and the eventual enactment of the laws on rape.

Our age can rightly be described as an age of sex. Sex now predominate the thoughts of an average man (both male and female) and the burning desire for it cuts almost equally across all genders. This urge results in rape, where self-discipline is lacking to quench the fire. Unlike the traditional days, when only man rape women and girls, today, the female gender has joined in perpetrating the crime both against her own gender as well as the opposite gender. This explains the reason for the enactment of the Violence Against Persons Prohibition) Act, 2005, which has now balanced the long-held lopsided impression created under the Criminal Coe and Penal Code, that only the female gender can be raped.

Yielding no good to the society, the resultant effect of rape is pathetic, sexually transmitted diseases, and in worst cases, death, among other ills. What makes a sexual intercourse rape is when a Court of competent jurisdiction adjudges such intercourse to be rape. Thus, achieving justice for rape victim must involve the prosecution clearing-up the whole task of synthesizing the victim's evidence or testimony and the medical report with the position of the law to abolish ingredients (which have been discussed earlier) required for an act to constitute rape.

The above notwithstanding, the most ugly development associated with rape cases is that rather than make the trial decent and non-dehumanizing, the trial is always conducted in a way that becomes more of the accused person's trial and the victim's tribulation. The latter will at the long run be more ashamed in the course of the proceeding than he/she ever was, in a bid to extract evidence and in the course of cross-examination by the defence counsel. However, this experience by victims is inevitable as any rape case, like every other criminal case, is a matter of the accused person's name, innocence and freedom which are at stake.

Regrettably, though, the fact that the victim would be subjected to some lawyers' indecent and embarrassing questions during the preceding has contributed to many a number of unreported incidents of rape. In addition, the fact that rape victims always dread the possibility of their identity

revealed to the public during the Court proceeding. Thus, many victims prefer to keep the incident to themselves rather than exposing themselves to the public in the course of Court proceeding, in view of the fact that such exposure could fetch more ill-treatment from the society. To this however, the provision of section 232 of the Administration of Criminal Justice Act, 2015 is applaudable. By the provision of this law, the identities of rape victims are to be kept hidden from public view during Court proceedings.

The hard rules adopted in our Court procedures and laws have made it very difficult to establish the offence of rape, because substantiation of mens rea is the basic need of the Court to ground conviction. Such hard rule was adopted in *Iko v. State*.[61] The fact of this case revealed that the appellant, a taxi driver, who was supposed to carry the victim to Uyo where she was studying, instead carried her to a certain place, wound up the car glasses and forcefully had carnal knowledge of the victim. It was glaring by evidence adduced that there was rape, but despite the exercise of the activism of the trial Court, the Supreme Court quashed the decision convicting the appellant for want of corroboration. The Supreme Court's judgment in this case demonstrates that most times, our Courts allow technicalities to override express provisions of law, even in a glaring substantiated case.

So far, the position of our laws do not cover marital rape. It is disheartening that no spouse, especially the women against whom this position affects most have, either as an individual woman or women group, sought to challenge this discriminatory position. Being a structural defect in our legal system, it seems to impliedly define a woman as a mere sexual property existing in marriage at the mercy of the sexual pleasure of her husband.

Available research indicates that the provision of the Violence Against Person (Prohibition) Act, 2015, to the effect that men can be raped by women, is yet to witness a practical decision of Courts along that line. But it is hoped that when the Court is faced with such complaint by a male victim, back-up with substantial evidence, it would, in its wisdom, deliver a ground-breaking judgment to transmit what, at the present, still exist in letters to a practical understanding and example of realty in our contemporary society, which is fast-deviating from sane conduct and sound moral value to unbridled animalistic exhibition.

[61] (2004) 14 NWLR (Pt. 732) 221.