



Legislations for the protection of victims of rape in Nigeria

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Abstract

This work analysed the legislations for the protection of victims of rape in Nigeria. The work recognized that the incidences of rape as a form of sexual violence has been on an alarming rate in Nigeria and seeks to understand the legislative framework for combating same. The work discovered that violence Against Persons (Prohibition) Act (VAPPA) which would have been a uniform application across Nigeria does not apply in some states because of cultural differences. The Child Rights Act is also a germane legislation. However, the work found out that some states are yet to domesticate the Child Rights Act making it difficult to be used in prosecuting paedophiles in their states. The main thrust of this work is examining the legislation for the protection of victims of rape in Nigeria. The work found out that the courts have not been of great assistance with respect to the punishment of persons found guilty of sexual violence related offences. The work adopted the doctrinal method of research in arriving at this conclusion. The work therefore recommended for a total review of the existing legislation on sexual offences and as well as adequate enforcement of the law in order to deter the would-be offenders. The work concludes that rape is crime against women and that, they are of forced sexual intercourse.

Keywords: Legislation rape, incest, crime, sexual intercourse

Introduction

The rate of sexual violence in Nigeria in recent times is both alarming and worrisome. Sexual assault, rape and incest have become a social phenomenon of epidemic proportions and it is not an isolated criminal act affecting just a few women and girls, but men and boys are also victims of sexual violence in Nigeria.

The media is replete with alarming cases of sexual violence in Nigeria. one disturbing and most prominent case is the rape of a six-month-old baby in Kano ^[1]. The media was awash also with the story of a thirteen-year-old girl Ochanya Elizabeth Ogbaje, who was allegedly raped by her uncle and cousin since she was nine years old ^[2]. Also, on Thursday, October 24, one Adegboyega Adenekan, a supervisor at Chrisland School, Lekki, Lagos was jailed 60 years for defiling a 2years old girl by Ikeja Sexual Offences and Domestic Violence Court ^[3].

Owing to the unpleasant and unsavory occurrences of sexual violence, individuals, government and non-governmental organizations have expressed increased concern over the spate of incidences of sexual abuse and violence against children all over the country.

Sexual abuse in Nigeria has a wide scope, it covers rape, domestic violence, intimate partner violence, sexual harassment, defilement, sexual exploitation and trafficking. These menaces have become a problem in the society. In the recent past, a recorded audio conversation surfaced on internet between a senior lecture in the Department of Accounting at the Obafemi Awolowo University negotiating sex for mark with a Master's in Business Administration Student, went viral ^[4].

The issue of sexual abuse 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 Nigeria? What could have triggered the increase in recent times? What have caused perpetrators to sexually assault their victims? 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 of sexual abuse is mentioned.

Sexual assault is a crime of violence that puts the victim at risk of physical injury, psychological disturbance, emotional disturbance, pregnancy and sexually transmitted disease ^[5]. The prevalence of sexual offences is on the increase with smaller percentage of the victims reporting the crime. The under reporting of cases of sexual assault is mainly due to social stigma, prejudice with regards to chances of marriage, being considered promiscuous and responsible for the incident, attendant humiliation and shame.

The cause of such increase of sexual offences can be attributed to so many factors. The factors can be unconnected with technological development and the liberalization of human and people rights. Technologically, the advent of television and cinemas help in pushing the rate of sexual offences up. The use of internet which helps people to access pornographic materials without hindrance is one of the major instigators of sexual offences. The factors that encourages such offences can go on and on. But the question that agitates the mind is, as a people that have government, what are the remedies available either legal or institutional for the protection of victims of rape and incest in Nigeria. the above question requires legal solution and that is the essence of this research.

Rape Definition

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 ^[6]. In recent times the

incidences of rape have increased at an alarming rate in Nigeria leading to the death of so many women^[7]. 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^[8]. However, till date, 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. However, victims of rape have no age limit as babies, and the aged are vulnerable to this menace. Interestingly most of the victims of rape are female. 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.

Rape is defined in most jurisdictions as sexual intercourse, or other forms of sexual penetration, committed by a perpetrator against a victim without their consent. The definition of rape is inconsistent between governmental health organizations, law enforcement, health providers, and legal professions^[9]. It has varied historically and culturally. The World Health Organization (WHO) defines rape as a form of sexual assault^[10], while the Centres for Disease Control and Prevention (CDC) include rape in their definition of sexual assault. The term rape as a form of sexual violence. Rape as generally known to all can simply be put to mean an act of a man having forceful sexual intercourse with a woman or girl.

Rape is defined as the 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^[11]. Section 357 of the Criminal Code Act applicable in the Southern part of Nigeria, defines rape as follows^[12]:

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.

It follows in section 358 of the same Act^[13] 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 section 6 of the Criminal Code Act, the offence of rape is complete upon penetration. Further, unlawful carnal knowledge is one which takes place otherwise than between husband and wife.

Section 282^[14] of the Penal Code which is applicable in the Northern part of Nigeria defines rape as follows

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.

The 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).

Furthermore, under section 1 of the Violence Against Persons (Prohibition) Act 2015 rape was defined as follows:

1. A person commits the offence of rape if – he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else; the other person does not consent to the penetration; or 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 and fraudulent representation as to 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^[15].

The definitions under the Nigeria Laws have created empty spaces which need to be given the necessary attention hence the amendment. The definition on rape explains the fact that rape can only be committed by a man against a woman and not vice versa. On this note it will be agreed because it has been recognized, that a man may also be a victim of rape and it may be perpetrated by any person including a woman. This has been trending in our present-day society. In the world of science and technology, is it not possible for a woman to actually penetrate a man through the anus or even for a woman to penetrate another woman? As this question is raging, there is also the need to clearly understand the status of a woman who procured another man to rape a woman. Will such a woman be liable as a party under section 7(d) of the Criminal Code? What may agitate the mind is will the penetration of a woman's vagina with a stick or other such instrument not suffice as rape or must the offence of rape be committed when the penetration is with or by the penis^[16]? At this time, it is imperative that we look at other definitions of the offence of rape in other countries: The Rome Statute defines the inhumane crime of rape in Article 7(1)(g) of the Elements of Crime^[17] as follows:

a. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

b. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or

abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

In the UK ^[18] under section 1 of the Sexual Offences Act (2003), it is defined as

1. A person (a) commits an offence if - he intentionally penetrates the vagina, anus or mouth of another person (b) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents. (ii) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents... (iii) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

In the US ^[19], the Department of Justice defines rape as

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

By the above definition by the department of Justice, it has shed light to the fact that there is no eternal pattern for the law and the law not only differs from one place and time to another, but is necessary subject to constant revision and renewal at any given place and time, which explains the fact that change in the law is essential to keep it just.

Factors that have Contributed to the Increase Cases of Rape in Nigeria

The only cause of rape is the rapist. However, there are some factors that catalyze or contribute to the increasing number 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 freedom ^[20]. 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 Law ^[21]. In Nigeria enacted by the federal government in May 2003, 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 encouraged 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 women ^[22]. Other causes of rape include alcohol and drug abuse, idleness, pornography, psychological disorder, and bad company. At any rate, experts, in considering the persistent nature of these rape cases in Nigeria advance the following causes for the unfortunate reality:

Exposure to Modernity

Adolescents in Nigeria today are being bombarded by various modern influences. They read about sex in novels, books, magazines and newspapers. It is said that the adolescents also "Watch various types of pornographic movies aside from being exposed to sexually overloaded advertisements in newspapers and the television. All these

and the sexually graphic music, movies, obscene literature directed at the adolescents arouse their interest in sex. Some parents allow their wards to spend too much time watching television programmes where sex is used by most manufacturers to advertise their products. These adverts help put the younger generation under terrific pressure to go into sex by all means. As a result of this exposure, the adolescents are perpetually under pressure to experiment with sex, even if it means raping.

Peer Pressure/Influence

Some literature posits that most adolescents are led into sexual promiscuity by peer influence. Peer group is an important factor in the upsurge of rape cases in Nigeria. Innocent youths who keep regular company of rapists may easily learn their evil ways, no matter how careful they think they are. Most adolescents, in trying to remain relevant and to gain the continued approval of their friends try to experiment sex even if it is through raping. It is often said that children who are more influenced by their parents are more likely to adopt socially acceptable sexual behaviour than those who are more influenced by their peers.

The Weakness of the Nigerian Criminal Justice System

It is pertinent 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 criminal justice administration is the Police. The Nigerian Police prosecutes over 70% of criminal matters in the various courts across the land. Indeed, section 23^[23] empowers the Police to prosecute criminal offences in all courts in Nigeria. This statutory provision has received judicial blessings in a plethora of cases. With this power, the Nigerian Police is not only vested with the powers to investigate and arraign, they are also imbued with the power to prosecute. Now, for a complainant in Nigeria, the theoretical 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. Of course, the lodging of the complaint does not attract any fee.

In today's Nigeria, the victim is expected to lodge the complaint with a certain amount of money. Then she provides some more money to enable the authorities to investigate the matter. In a crime of rape, when the victim rushes to the Police station to make a complaint, she is derided and, in some cases, she is likely to be asked question which further increases the pains. When she eventually succeeds in making the report, she will be given a medical paper and asked to go for a test. This test is also at her expense. Most times at the hospital, she meets with a male doctor who further makes inquiries that may even increase the pain of the rape. From there she is sent back to the Police Station where she is made to cough out money to

initiate the case at the courts and she also has to pay the prosecuting counsel. This scenario can better be imagined if the defendant is a wealthy man who can afford whatever amount that is required of him. From this point, the victim through the prosecutor is squared against the defendant who is comfortable enough to procure a sound lawyer as his counsel of choice.

According to Joy Nai Ezeilo, Executive Director of WACOL, "the police abuse their power, either while on duty or off duty but still wearing their uniform". She explained that few of 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 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. This probably may account for the reason an Abuja High Court Judge, Umoh Enah, 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.

Furthermore, in a case of rape, the prosecutor must be able to prove the following elements beyond reasonable doubt which is most time very difficult for the prosecution to achieve due to circumstances beyond their power i.e. death of the victim, relocation of the victims etc.

Stigmatization

In Nigeria, the woman is frequently victimized twice. First by the violence she endures and by the failure of the governments to bring her abusers to justice. There seems to be a culture of silence surrounding rape in Nigeria. The social stigma associated with rape across the globe forces female victims in Nigeria to conceal rape assaults in order to save themselves from shame and public embarrassment. Even parents of the raped often find it difficult to come out publicly to report such cases.

In Nigeria, when a woman is raped and it becomes public knowledge, "she and her family are "ostracized" due to the dishonour associated with rape". Another reason for not taking bold steps in reporting such cases could be for the victim's family to maintain the ever-existing cordial relationship with the parents of the perpetrator of the heinous crime. This situation encourages other intenders to go into raping since people who indulge in it go scot-free.

Poor Parenting

As a result of modernity, some parents pamper their children by not enforcing strict disciplines on them. The parents themselves engage in extra-marital affairs before them, and so they are more likely to foster children that are rude, arrogant and wayward. Children groomed in this setting (particularly male children) form a biased opinion of the opposite sex and may become rapists.

Punishment for Rape in Nigeria

Change is constant and law must grow with society. Definition of rape as well as punishment for rape has changed since 2015. Prior to 2015, rape was exclusively defined and punished under the Criminal Code for states in

southern part of Nigeria^[23]. Penal Code for states in northern part of Nigeria^[24], and the Child's Right Act of 2003 where there is a child victim^[25].

Before 2015, rape was generally defined as an act of sexual intercourse, wherein a male knowingly penetrates a female's vagina that is not his wives with his penis, without the consent of the penetrated female or with her consent that was obtained by fraud, force, threat, intimidation, deceit or impersonation^[26]. In the Criminal Code, rape is punishable with life imprisonment with or without caning while under the Penal Code, the punishment for rape is life imprisonment or lesser period with or without fine. Going by the above definition of rape, in law courts, there cannot be rape between a couple (a husband cannot be said to have raped his wife even where the husband actually raped his wife and there is overwhelming evidence). At worse, husbands that raped their wives get charged with lesser offences, including indecent assault with mere maximum punishment of 3 years imprisonment.

Since 2015, the once exclusive definition and punishment of rape has changed owing to a new law enacted by the National Assembly, titled; the Violence Against Persons (Prohibition) Act, 2015. Under this 2015 law, rape is an intentional penetration of the vagina, anus or mouth of any person with any part of the body or anything and without the consent of the person being penetrated. By this new definition, there can be rape between a couple (husband and wife). Also, boys and men can be victims of rape while rape can be performed with objects^[27].

By the Violence Against Persons (Prohibition) ac 2015, the minimum punishment for rape is 12 years imprisonment without fine and the maximum punishment is life imprisonment. However, where an offender is less than 14 years old his maximum punishment is 14 years imprisonment and where there is group/gang rape, the offenders are jointly liable to a minimum of 20 years imprisonment. Also, names of sexual offenders are to be kept in a register and made public. Victims of rape are entitled to compensation as the court deems fit.

The Violence Against Persons (Prohibition) Act 2015 operates only in Federal Capital Territory, Abuja. Some other states in Nigeria, have adopted or enacted similar laws, including Anambra State, Ebonyi States and Oyo State while more states are being urged to genuinely join this fight against rape and sexual abuse. States that are yet to enact state equivalents of the Violence Against Persons (Prohibition) Act 2015 are still bound by the limiting shackles of Penal Code in northern Nigeria and Criminal Code in Southern Nigeria.

Rape as a crime against women is a forced sexual intercourse against women. The effects of these crime is not only physical but psychological. The most detrimental impact experienced by the victims is pregnancy. Pregnancy out of wedlock due to rape leaves the victim depressed and regards the child as a disgrace rather than a gift as a motivating factor for rape victims to have abortion. Abortion in Nigeria is not only a crime but the health of victim is also in danger.

Conclusion

It is a notorious fact that the crime of rape is being committed on daily basis. The actual causes of these dastard act may be linked to security lapses and poverty, but the most annoying is that the crime is sometimes committed by

a trusted neighbor, respected grandpa, revered pastor, imam, or teachers. The study observed that most victims of rape are cajoled and deceitfully taken advantage of by their predator. The study recommend that victims of gender Based Violence must be encouraged to speak up and not allow the silence culture to deprive them from getting the desired help.

Reference

1. Nine Shocking Cases of Sexual Abuse that validate the growing concern of Nigerians' <www.adisturbingtrend_ninecasesofsexualviolenceagainstchildreninnigeria.html> accessed on 15/11/2019
2. G. Ameh, Nigerians Demand for 13years Old Ochanya Ogbaje <www.dailypost.ng> accessed on 18/10/2023.
3. Adenekan, Chrisland School supervisor jailed 60 years for child Rape obtained from <adenekan, chrislandschoolsupervisor60yearsforchildrapep.m.news.html> accessed on 07/11/2019.
4. Sex for Marks in Nigeria Universities. The Untold Stories' <https://www.google.com.ng/amp/s/www.vanguardngr.com/2018/5/sex-marks-nigerianuniversities> accessed on 08/11/2019.
5. A.D. Geidem, Prevalence and Nature of Sexual Assault among Female Students in a Tertiary Institutions in Maiduguri, Nigeria "A Cross Sectional Study" International Journal of Health Research, 2010, 3
6. G. Ameh (n. 3).
7. Ibid.
8. Genesis 34:1-2 Good News Bible.
9. S.L. Maier, "I Have Heard Horrible Stories": Rape Victim Advocator' Perceptions of the Re-victimization of Rape Victims by the Police and Medical System" 2008 (PDF) 14 at 7.
10. E. Krug et al.; World Report on Violence and Health (PDF) World Health Organization, 2002,149.
11. Posu v State (2011) 3 NWLR (pt. 1234) at 393, Iko v State (2001) 14 NWLR (pt. 732) 221, See also Lucky v State (2016) NWLR.
12. Section 357 Criminal Code.
13. Section 358 Criminal Code.
14. Section 284 Penal Code.
15. Section 1 Violence Against Person (Prohibition) Act, 2015.
16. Rape is rampant across the World and the Menace could be attributed to various social media platforms in use ranging from Instagram, Youtube, Facebook, Whatsapp. These spaces have overwhelming influence such that rape can now be committed without penis but by other means.
17. Rome Statute of the International Criminal Court adopted on 7 July, 1998.
18. A Critical analysis of the U. K's definition of rape shows that the offence can only be Committed by a man, though a man like women, could also be a victim. Under the department Justice's definition, on the other hand, both Men and Women may be victims or perpetrators. It is observed that both the US and U. K's definition make use of the Word "penetration", instead of "canal knowledge" or "Sexual Intercourse" as found in the Nigerian definitions of rape, which means that rape may be committed where a person's vagina, anus or mouth is penetrated with penis, object or any part of one's body whether there is sexual intercourse or not.
19. Ibid.
20. Amnesty International 2006.
21. Ibid.
22. I.A. Chiazor et al in their work lifted "Taming the Rape Scourge are of the view that Economic and Political Condition of Nigeria as well as social norms created division between men and women
23. Police Act Cap. P19 LFN 2004.
24. Section 357 & 358 Criminal Code.
25. Section 283 & 283 Penal Code.
26. Section 11 Childs Right Act.
27. Section 357 Criminal Code.
28. Section 1, 47 and 48 Violence Against Persons (Prohibition) Act, 2015.