



Rape in a Contemporary Nigeria: The urgent Need for a Review of the Legal Responses

¹Dr. Adekunbi Imosemi & ²Miss. Odusanya Adedamola

Senior Lecturer, Department of Jurisprudence and Public Law, School of Law and Security Studies, Babcock University, Ilishan-Remo, Ogun State, Nigeria.

E-mail: imosemia@babcock.edu.ng

²Babcock University, Ilishan-Remo, Ogun State, Nigeria

ABSTRACT

Rape is a destructive crime on the victim across the globe. The victims are devastated physically, psychologically and emotionally. The trauma of rape leaves the victims with scars throughout their lifetime and makes it impossible for them to relate with other people and the opposite sex. The work analysed evolutionary psychological perspective on why people rape and with the emergence of permissibility and adoption of same sex relationships and marriage in some jurisdictions across the world, it is evident that a man can rape a man, a woman can rape a man and a woman can also rape another. Other developed countries have constantly amended their laws on rape, unfortunately under the criminal justice dispensation in Nigeria, the legal framework on the crime of rape needs urgent and necessary reviews both substantively and procedurally as canvassed in this study. The Nigerian Criminal and Penal code should be compared with other provisions of the world and reviewed so that the ambiguity in our laws can be clear and direct like other foreign jurisdictions. It is recommended that the concept of rape particularly in terms of prosecution should be urgently revisited and amended in order to ensure justice for the victims and meet up emerging trends of rape in the Nigeria. It is concluded in this work that except the laws on rape are reviewed, victims will continue to have their rights to justice breached due to the lacunae in the law while the perpetrators of this heinous crime will continue to live above justice and commit more of this crime. .

Keywords: Rape, Crime, Victim, Criminal Code, Penal Code

INTRODUCTION

In view of the menace of rape in Nigeria, the crime been one that is considered to be the worst nightmare in a woman or girl's life, as so many times led to the stigmatization of many in the society and has disoriented many in the society. Rape is a form of gender-based violence which knows no border.¹ It is a global pandemic affecting both the old and young, people of various classes and both the educated and uneducated, regardless of their, ethnic background or religion.² Sadly, women and girls are the most affected of this crime. Most crimes of rape are not reported for reasons such as the social stigma attached to the victim, the fear of being ostracised from the family and community and also the fact that the police may be unwilling to make an official report due to insufficient evidence.³

¹ Hilary Chukwuka and Habila Kitause , 'Rape Epidemic in Nigeria: Cases, Causes, Consequences, and Responses to the Pandemic' Impact: International Journal of Research in Applied Natural and Social Science, (2014), volume 2, Number 1, page 31-34

² ibid

³ ibid

Many countries such as England and the United States of America” have changed their laws on rape to meet up with the various immorality and prevalent sexual abuses of the twenty-first century.⁴ However, the provisions for rape laws in Nigeria needs to be reviewed as the laws are not reflecting changes in the society and the laws are also rigid. Our failure in updating our laws on rape, to deal with the ambiguity in the law is also a reason why victims of rape are deterred from taking the matter to the police, knowing that there is a high likelihood that the accused would not be found guilty of the crime when the matter gets to court.⁵ Rape can be perpetrated by a man or a woman but this paper is focused on the woman and girl as the victim.⁶

Rape is defined as one of the most pervasive forms of violence against women and a crime in which the assailant uses sex to inflict humiliation on the victim or exert power and control over the victim.⁷ It is well documented and widely accepted that rape causes severe physical and psychological pain. Further, it is undeniable that rape can have serious physical, mental and psychological and consequences for the victims, including death, unwanted pregnancies, complications in childbirth and sexually transmitted infections including HIV/AIDS. In Nigerian law, the crime of rape is defined as the unlawful non-consensual carnal knowledge of a woman by a man.⁸

The Nigerian authorities at both federal and state levels have failed adequately to address gender-based violence including rape. The current provisions relating to rape in the country’s criminal justice system is out-dated and needs an urgent reform in conformity with societal needs, law is dynamic and should change when the society changes. It has been discovered that the mental health effects of rape are devastating as rape survivors are the largest group of persons with post-traumatic stress disorder.⁹

Recent legislation on the subject of rape across the world demonstrates a continued departure from the traditional common law definition wherein rape can only be committed by a man upon a woman or girl. The recent legislation provides that rape can be committed upon the penetration of the vagina, mouth or anus of the victim in contrast to the traditional definition wherein only the penetration of the vagina was sufficient to constitute the offence of rape.¹⁰

The statutory control of rape in Nigeria is restricted and needs to be expanded. When we take a look at the statutory control of rape in England, their laws reflects what is going on in their society. Their definition of law was changed to cover several crimes which were not foreseen in their previous constitution. The provisions of rape law in Nigeria are in sharp contrast with the recent legislation in contemporary society. It is time we like the rest of the world deviate from our old ways and embrace a more refined law in the interest of all Nigerians.¹¹

This paper thus seeks to consider the law of rape under Nigerian law so as to come up with recommendations for the amendment of the relevant laws to bring them in line with the definition of the concept in other jurisdictions and also the inadequacies of the criminal code and penal code in curbing sexual offences”.

⁴ Akinwale Ashiru and Magaret Orifowomo ‘*Law of Rape in Nigeria and England: NEED TO Re-invent in the Twenty-First Century*’ Journal of Law, policy and Globalization, (2015), volume 38 page 28-38

<http://www.iiste.org/journals/index.php/JLPG/article/viewFile/23513/24235> accessed 10 August 2018.

⁵ ibid

⁶ Akinwale Ashiru and Magaret Orifowomo ‘*Law of Rape in Nigeria and England: NEED TO Re-invent in the Twenty-First Century*’ Journal of Law, policy and Globalization, (2015), volume 38, page 28-38

<http://www.iiste.org/journals/index.php/JLPG/article/viewFile/23513/24235> accessed 10 August 2018.

⁷ Chineze Onyejekwe, ‘*Nigeria: The Dominance of Rape*’ Journal of International women’s, (2008), volume 10, page 48-63

⁸ Criminal Code Act S.357

⁹ Rebecca Campbell and Sharon Wasco, ‘*Understanding Rape and Sexual Assault*’ journal of Interpersonal Violence, (2005), volume 20, Number 1, page 127-131

¹⁰ ibid

¹¹ Akinwale Ashiru and Magaret Orifowomo ‘*Law of Rape in Nigeria and England: NEED TO Re-invent in the Twenty-First Century*’ Journal of Law, policy and Globalization, (2015), volume 38, page 28-38

<http://www.iiste.org/journals/index.php/JLPG/article/viewFile/23513/24235> accessed 5 October 2018.

It also discusses the fact that the definition of law in both the criminal code and penal code needs to be expanded and should be directly punished as rape with all severity as it is done in other countries of the world

The Concept of Rape

The word rape derives from the Latin verb “Rapere” which means to seize or take by force. The word generically had no sexual connotation and is still used generically in English. In Roman law, rape was classified as a form of *crimen Vis*, “crime of assault”¹². Unlike theft or robbery, rape was termed a “public wrong” as opposed to a “private wrong”. It is a “forced unwanted sexual intercourse; it is also sometimes also called sexual assault which can happen to both men and women of any age.¹³ Rape which in medical parlance is defined as penile penetration of vulva¹⁴ is the most serious kind of sexual assault and is punishable with imprisonment for life with or without whipping. Rape has always been condemned by most societies around the world, it is usually associated with primitiveness and brutality.¹⁵ Rape simply means sexual intercourse with a girl or woman without the consent of the girl or woman. In Nigeria, a man commits rape if he has unlawful sexual intercourse with a woman who is not his wife and who at the time of the intercourse, does not consent to it. These two features of rape are encapsulated in two major statutes in Nigeria: the Criminal code and the Penal code.

Rape in Hornby¹⁶ is defined as the crime of forcing somebody to have sex with one especially using violence. It is posited that rape could even happen ‘without the use of force’.¹⁷ By this, it is meant, that if for instance an adult of any age tactfully seduces a child of a tender age for either marriage or sex with an enticing gift and the child after collecting same willingly give in for it with the man, it is said to be also rape. This type of rape is viewed as “a sex act carried out by pathological men who were unable to control their own sexual desires.¹⁸

Rape is a serious and deeply damaging crime. It is unique in the way it strikes at the bodily integrity and self-respect of the victim, in the demand it makes on those public authorities required to respond to it and in the controversy it generates.¹⁹ Rape is said to be unique as it is an inherently lawful activity made illegal because of lack of consent. The absence of consent converts what would otherwise be a naturally activity into a serious and violent wrong. In all cultures and religion rape is seriously frowned at. It is a serious crime even if the victim suffers no physical injury, minor cuts and bruises. That is because rape violates intimacy and autonomy in a way that physical injuries cannot.²⁰

Rape has a devastating effect on its victims, their families and the society in general; the victims of this act face grave physical and psychological problems years after the incident and may carry the scar for life. This ranges from serious injuries, HIV infections, unwanted pregnancies etc.²¹

In Nigeria, rape is defined in both the Criminal and the Penal codes. Section 357 of the criminal code defines the crime of rape as having:

¹² Adolf Berger, ‘*Encyclopaedic Dictionary on Roman Law*’ Philadelphia: The American society, (1953), volume 43 page 667-768

<http://books.google.com/books?id=iklePELrR6QC> accessed 7 September 2018.

¹³ Medhelp Organization, Rape Survivor: www.medhelp.org/rape/survivor accessed 7 September 2018.

¹⁴ ibid

¹⁵ Garner Adams ‘*The African Anthropologist*’ Council for the Development of Social Science Research in Africa, (2012), volume 19 Number 1-2 page 33–41

¹⁶ Albert Hornby, Oxford Advanced Learner’s Dictionary of Current English, (New York: Oxford University Press 7th edn 2006)

¹⁷ Abinus Chiedu, ‘*Rape of Nigerians and Country: What Shall We Do?*’ (2012)

<http://nigerianvillagesquare.com/forum/threads/rape-of-nigerians-and-country-what-shall-we-do.74401/> accessed 11 September 2018.

¹⁸ ibid

¹⁹ Stanley idum, ‘*Corroboration and Law of Rape in Nigeria: As the Evidence Act Done Anything New*’ Commercial and Industrial Law Journal, (2012), volume 3 Number 1 page 361-380.

²⁰ Aliyu Ahmad, ‘*The Crime of Rape in Nigeria: Inadequacies of Protection Mechanism*’ Umaru Musa Yar’adua University Law Journal, (2014), volume 1, Number 1

²¹ ibid

“Unlawful carnal knowledge of a woman or girl without her consent, if the consent is obtained by force or by means of threat or intimidation of any kind or by fear or 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”.²²

While according to section 282(1) of the Penal Code of Northern Nigeria:

“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 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.”²³ Although the provisions of rape found in both codes are similar, there are some little differences. The offence under the criminal code is punishable with imprisonment for life with or without caning, while under the Penal Code, the offence is punishable with imprisonment for life or for a less term and shall also be liable to a fine. In Nigeria, penetration is one of the requirements of rape.

In every legal system, rape is regarded as a serious crime because it is an outrage on and a gross violation of the physical and emotional integrity of the woman.²⁴ Under English common law, rape is defined as “the carnal knowledge of a woman forcibly and against her will”. At common law, the unlawful sexual intercourse committed by a man with a woman not his wife through force or against her will comes with the requirement of at least a slight penetration of the penis into the vagina. Under the English Sexual Offences Act 2003 in England and Wales, rape is defined as non-consensual penile penetration of the vagina, anus or mouth of another person. The old law defined rape as non-consensual or anal intercourse. The new law also made rape punishable by a maximum sentence of life imprisonment.²⁵

In criminal law, rape is an assault by a person involving sexual intercourse with another person without that person’s agreement.²⁶ Outside of law, this term is often used interchangeably with sexual assault, a closely related form of sexual assault typically includes rape and other forms of non-consensual activity.²⁷

A study of the history of rape cases help to shed some light on how the crime is most commonly committed. Rape is perpetrated through the use of physical force, threat or harm, including death threats against a member of a family. People who carry out violent rapes include strangers and people the victims already know. Friends, acquaintance and other people may also commit rape on a date or even in an existing romantic relationship, where it is professed that consent for sexual activity was not given or was given under duress. An indictment for rape may be prosecuted at any time but delay in prosecution or failure to make complaint on the earliest opportunity affords strong presumptive evidence of consent.²⁸

Rape has become a recurring decimal across the country, teenage girls, primary school pupils and even elderly women are raped.²⁹ Some states are deeper into the rape crime and yet little is heard of prosecution and conviction. The truth is that most cases of rape and child abuse are actually not reported, the culprits go scot-free and thereby constitute a great threat to the female folks, at the same time most of

²² The Criminal Code, Section 357.

²³ Penal Code, Section 282

²⁴ Aliyu Ahmad, ‘*The Crime of Rape in Nigeria: Inadequacies of Protection Mechanism*’ Umaru Musa Yar’adua University Law Journal, (2014), volume 1, Number 1

²⁵ Oxford dictionaries, Rape: <http://en.oxforddictionaries.com/definition/rape> , accessed 6 September 2018.

²⁶ Christina Tchen ‘*Rape Reform and a Statutory Consent Defence*’ Journal of Criminal Law and Criminology, (1983), volume 74, Number 4

²⁷ *ibid*

²⁸ Akinwale Ashiru and Magaret Orifowomo, “*Law of Rape in Nigeria and England: Need to Re-invent in the Twenty-First Century*” Journal of Law, Policy and Globalization, (2015), volume 38, page 28-38

<http://www.iiste.org/Journals/index.php/JLPG/article/viewfile/235133/24235>, accessed 62September 2018.

²⁹ The Guardian; august 27, 2013. www.Afrevjo.net/laligens, accessed 2 September 2018.

the reported cases are not prosecuted due to the attitude of some parents and guardians who would prefer not to pursue the case for fear of possible stigmatization of the victim".³⁰

It is however worrisome that people prefer to suffer in silence, having been victims of offences that have sanctions. Which is in fact because of the way the society is and they do not want to draw unnecessary attention to the victim.³¹ Nevertheless, the provisions for the crime of rape in Nigeria needs to be reviewed, the provisions of other countries should be looked at thoroughly and used as a basis for changing our backdated laws.³²

In view of the foregoing, the peculiar patterns of rape are explored so as to comprehend how and why this heinous crime is commonly perpetrated.

Patterns of Rape

There are different motives by which rapists' commits their acts of rape, each rape attack is different depending on the motive of the rapist or attacker. There are a number of pattern in the incidence of rape:

The Anger Rape

It accounts for forty percent of the rape that occurs nationwide.³³ It is characterized by physical brutality "with the rapist using far more force than is necessary to subdue the victim."³⁴ The experience for the offender is one that is of conscious anger and rape. He expresses his rage both physically and verbally upon the victim during the attack. His aim is to hurt and debase the victim, he often show his contempt through abusive and profane languages.³⁵ The anger rapist considers rape the ultimate offense he can commit against his victim. Such a rapist strike sporadically and infrequently because the attack will discharge his anger and relief his frustrations for a time. But eventually he will reach his boiling point once more and offend again. His need is to hurt and degrade his victim, his weapon being sex and his motive is revenge.³⁶

The Power rape

The objective of the rapist is to control and not to harm his victim. Sexuality becomes a way to compensate for his underlying feelings of inadequacy and feeds his issues of mastery, control, strength, authority and capability. The power rapist rely on verbal threats, intimidation with a weapon and only uses the amount of force necessary to subdue his victims.³⁷

The power rapist tend to have fantasies about sexual conquests and rape, he may even believe that even though the victim initially resists him and he overpowers her, she will eventually enjoy the rape. He needs to believe that the victim enjoyed "it" and he may even ask her for a date later. Because this is only a fantasy, he does not feel reassured either by his own performance or the victim's response. He feels that he must look for another victim, convinced that this other victim will be "the right one". Hence his offences may become repetitive and compulsive. He may commit a series of rape over a short period of time.³⁸

³⁰ ibid

³¹ Akinwale Ashiru and Magaret Orifowomo, "Law of Rape in Nigeria and England: Need to Re-invent in the Twenty-First Century" Journal of Law, Policy and Globalization, (2015), volume 38, page 28-38
<http://www.iiste.org/Journals/index.php/JLPG/article/viewfile/235133/24235>, accessed 6 September 2018.

³² Ibid

³³ Geshem Organisation, Patterns of rape: <http://geshem.bi.tocotox.org/patternsa.html> , accessed 6 September 2018.

³⁴ ibid

³⁵ Men Who Rape, Springer Link: http://link.springer.com/chapter/10.1007%2F978-1-4899-6078-8_4, accessed 6 September 2018.

³⁶ James LeBeau: 'Patterns of Stranger and Serial Rape Offending: Factors Distinguishing Apprehended and at Large Offender' Journal of Criminal Law and Criminology, (1987), volume 78. <http://scholarlycommons.law.northwestern.edu/jclc/vo78/iss2/4> , accessed 6 September 2018.

³⁷ ibid

³⁸ ibid

The Sadistic Rape

In the sadistic rape, the rapist transforms both anger and power so that aggression becomes sexual and thus eroticized for him. He finds intentional maltreatment of his victim sexually gratifying, he takes pleasure in her torment, distress and anguish. Sadistic rape usually involve torture and restraint. Sometimes it can take on naturalistic and other bizarre qualities. The victim's injuries will be primarily focused on the sexual areas of her body, there may be mutilation of these areas, and the victim may use some type of instrument or foreign object to penetrate his victim.³⁹

The sadistic rapist's assault is deliberate, calculated and pre-planned. The rapist often blindfolds his victim or wears a disguise. Prostitutes or other women who he perceives to be promiscuous are often the sadistic rapist's target. The victims of a sadistic rapist may not survive the attack. For some offenders the ultimate satisfaction is gained from murdering the victim.⁴⁰

The Robbery Rape

Robbery rape is another prominent and emerging pattern of rape which is very prevalent in Nigeria. The robbers go to their victim's house to steal their properties and sometimes to kill their victim and end up raping the victim which is not what they set up to do in the first place, many of their victims are usually silent due to shame and the myths held by people concerning people that are raped. Some arrested robbery suspects said raping young girls and married women give them spiritual powers. Although they report the robbery but they do not report the rape for fear that the robbers would return and because of the shame associated with rape. This also gives the robbers more audacity to commit this atrocity. Their egos are fed by the fact that their victim do not report to the police and this makes them more bold and fearless.

Why do People Rape?

False stereotypes and misconceptions about who rapists are, how rapists behave and why they rape continue to hamper the criminal justice system. These stereotypes and misconceptions stems from decades of social science" research and media coverage that have focused on the tiny handful of rapists whose crimes are reported by victims and who are then subsequently successfully prosecuted. These incarcerated rapists have been extensively studied, many of them committed acts of grievous violence, "inflicting gratuitous injury on the victim. In many cases the victim was total strangers and often these cases received considerable media coverage. As a result, there is a widespread belief that rapists typically attack strangers, use weapon and inflict extensive physical injuries. Thus, when a rape case arises in which the rapist does not seem to fit this stereotype, many people find it hard to view the assault as a "real rape".⁴¹

Rape of women by men has occurred throughout recorded history and across cultures. Rape will be discussed from an evolutionary psychological perspective. Evolutionary psychology is a powerful heuristic tool that allows researchers to develop and test novel hypotheses about complex behaviours such as rape. Some researchers have argued that men have evolved psychological mechanisms that motivate them to rape in specific contexts.⁴²

Some men are motivated to rape if they have no other means of securing copulation. This may be referred to as the disadvantaged male hypothesis. When deprived of mates by normal means, some men resort to rape.⁴³ Furthermore, Lake Krill, presented evidence that men convicted of rape display lower facial

³⁹ ibid

⁴⁰ ibid

⁴¹ David Lisak, 'Repeat rape and Multiple Offending among Undetected Rapists' Violence and Victims, (2002) volume 17, page 73-84.

http://www.binghamton.edu/counseling/documents/RAPE_FACT_SHEET1.pdf, accessed 6 September 2018.

⁴² William McKibbin, Todd Shackelford, Aaron Coetz and Valerie Starratt; 'Why Do Men Rape? An Evolutionary Psychological Perspective' Review Of General Psychology, (2008), volume 12, Number 1, page 86-97

<https://www.mta.ca/~ogould/FLIPS/Flips5McKibbin.pdf>, accessed 6 September 2018.

⁴³ ibid

symmetry, an indication of poor genetic quality. Men with lower facial symmetry are perceived as less desirable and less attractive.⁴⁴

Some are driven by the rigid view of the roles of men and women in the society. They see themselves as hyper-masculine, they are always on the alert for any perceived slight to their masculine identities and they are made anxious by any situation that might cast doubt on their perceived masculinity. Thus, while in general, violence and aggression are perceived to be masculine rather than feminist, the rapist tend to view aggression and violence as crucial markers of his adequacy as a male. They prove to him that he is a real man.

Men also rape from what has been termed “sexual violent subcultures”. Examples are fraternities and delinquent gang. These subcultures are powerful forces that reflects the rapist view about women and sexual conquest. For example, some fraternities present the use of pornography as certain form of entertainment, providing explicit images of rape as being acceptable, non-criminal and the sign of male virility.⁴⁵

Men also rape because of the underlying feeling of anger and hostility towards women which may have been because their biological mother abandoned them or because they were abused as children. It could also be as a result of a broken heart. Some just typically feel easily slighted by women for no reason and carry grudges against them. This underlying hostility is easily evoked and colours their distorted perception of women as teasers who either secretly want” to be coerced into sex or else deserve it. They have a strong desire to dominate and to be in control of women and are carefully fearful of being controlled by women.⁴⁶

Psychological Effects of Rape

The psychological effects of rape affect the mind as well as the human body. Victims of rape if not attended to properly or if they refuse to seek help may end up in mental institutions. Some of them need to be counselled about forgiveness and letting go. Basically they need to speak up without fear as they did not commit any crime. They should be willing to report and not remain silent, so that the perpetrators are punished accordingly. This people should be helped and not criticised for being raped. Symptoms arising from rape or sexual violence resolve for approximately for victim-survivors within three months and WHO recommends ‘watchful waiting’ during this period.⁴⁷ The following are some of the psychological effects of rape on victims;

Acute stress reaction

Where a victim has suffered an experience of rape, it comes with psychological and mental shock.⁴⁸ It is a psychological “condition that arises in response to a terrifying or traumatic event. It should therefore not be confused with the unrelated circulatory condition of shock, it can also be called “Acute stress disorder”.⁴⁹ This disorder is as a result of traumatic events which a person experiences or witnesses that causes the witness to become extreme, disturbing and acting with an unexpected fear, stress or pain, that involves or threatens serious injury, perceived serious injury or death to themselves or someone else.⁵⁰

⁴⁴ Lake Krill, ‘Do good genes predict forced copulation? A test of whether facial symmetry is related to sexual battery’(2006)

⁴⁵ David Lisak, ‘Repeat rape and multiple offending among undetected rapists. *Violence and Victims*’, (2002), volume 17, page 73-84

http://www.binghamton.edu/counseling/documents/RAPE_FACT_SHEET1.pdf, accessed 10september 2018.

⁴⁶ ibid

⁴⁷ World Health Organisation, “*Responding to Intimate Partner Violence and Sexual Violence against Women*”, WHO Clinical and Policy Guidelines. Geneva, World Health Organization.

⁴⁸ Melinda Smith and Jeanne Segal, “Acute Stress” (2014): <http://www.mwntal-health-matters.com/disorders/acute-stress>, accessed 10 August 2018.

⁴⁹ ibid

⁵⁰ Chris Creamer ‘Acute stress disorder is of limited benefit in predicting post-traumatic stress disorder in people surviving traumatic injury’ *Behaviour Research and Therapy*, (2004), volume 42, page 315-328

Acute stress reaction is a variation of Post-Traumatic Stress Disorder (PTSD) and is the mind and body response to feelings of intense helplessness, this feeling may be perceived or real. When rape occurs the victims of such circumstance undergoes this disorder.⁵¹ Victims of rape who experience this begin to show some signs, such as; numbing, reliving the experience of what happened to them through thoughts, flashbacks and dreams.⁵² During this period, they feel symptoms of anxiety and this lasts for a period of 2days or 4 weeks. Victims of this kind of disorder undergo stress, depression, anger and despair and seem to retract from the society.⁵³ They feel they do not have anything to give or impact to the society. This is why it is advisable to withdraw such individuals from the environment where they still feel pain from the incidence". The best cure for people with this type of disorder is counselling and psychotherapy. Medication can also be used for a short duration to stabilize such individuals.⁵⁴

Rape Trauma Syndrome

This is the psychological trauma experienced by a rape victim that includes disruption to normal, physical, emotional, cognitive and interpersonal behaviour.⁵⁵ This is common to rape victims especially after few months or years. This symptom is not restricted to only female victims because male victims are also subject to this.⁵⁶

Post-traumatic Stress Disorder

When an individual is raped, the fear that grips the individual is so much as to destabilize the whole body system. The reaction that the body notices is so much as to cause stress. Individuals who experience this may feel stressed or frightened when they are not in danger.⁵⁷ However in majority of cases, it occurs after a physical harm or a threat of physical harm. This does not only occur when a person has been harmed but also when an individual has witnessed a terrible ordeal or something has happened to a loved one or strangers that ordinarily affected the individual.⁵⁸ The symptoms of Post-traumatic Stress Disorder can be grouped into the following.

Re-experiencing Symptoms

This episode comes with flashbacks, reliving the trauma over and over, including physical symptoms like a racing heart or profuse sweating, bad dreams and frightening thoughts. This is likely to cause problems in a person's everyday routine. Its starting point may be from the person's own thoughts and feelings. The environment pictured in the head while the act of rape was committed could trigger this, words spoken, objects seen in the environs can be rapt reminders to this event.⁵⁹

Hyper-arousal Symptom

When this happens, the individual experiences episodes of being easily startled, feeling tensed or on edge, having difficulty sleeping or having angry outbursts. The hyper-arousal symptoms are usually constant, instead of being triggered by things that remind one of the traumatic event. They can make the person feel stressed and angry. These symptoms may make it hard for such an individual to do daily tasks such as eating, sleeping or concentrating.⁶⁰

⁵¹ ibid

⁵² Melinda Smith and Jeanne Segal, Acute stress (2014): <http://www.mwntal-health-matters.com/disorders/anxiety-disorders/acute-stress>, accessed 1 September 2018.

⁵³ Bergin and Garfield, *Lambert Bergin and Garfield's Handbook of Psychotherapy and Behaviour change*, (New York: John Wiley's Sons, 5th Edt 2004).

⁵⁴ ibid

⁵⁵ Ann Wolbert and Lynda Holmstrom, 'Rape Trauma Syndrome', Am J Psychiatry, (1974), volume 9, Number 1

⁵⁶ ibid

⁵⁷ ibid

⁵⁸ ibid

⁵⁹ Melinda Smith and Jeanne Segal: Post-Traumatic Stress Disorder (2014): http://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-pstd/index.shtml?utm_campaign=Social, accessed 19 August 2018.

⁶⁰ ibid

Depression and Low Esteem

This is one of the major problems that can become worse when the accident is not reported. Depression and low self-esteem often go hand-in-hand. Low self-esteem leaves individuals vulnerable to depression and depression batters low self-esteem.⁶¹ A victim that has been raped suffers a lot already through individuals who come around to poke nose on issues which ordinarily do not matter to them. Depression often distorts thinking, making a once confident person feel insecure, negative and self-loathing.⁶² In the instance of married women being raped, it was held in the case of *Alawusa v Odusote*,⁶³ that if a husband uses force or violence to obtain intercourse, he may be guilty of assault or wounding.

The Societal Effects of Rape

Rape impacts a society by attacking the cohesion and mutual protection that makes a society.⁶⁴ Rape is a crime expressed in the violent exercise of physical violation, when we allow such crimes to go without the most vigilant, vigorous investigation and punishment. We allow for the whole segment of society to be diminished.⁶⁵

The society play a lot of role on the victim, its impact on the life of a victim cannot be over-emphasized as the society can either make or mar a person. The victim of rape in a society is subject to public opinions as a result of being raped. The opinion whether negative or positive has effect in the life of the victim.

Rape by strangers is usually less common than rape by a person the victim knows.⁶⁶ One begins to wonder how this generation has quickly lost its form of moral and societal values. Despite the multiplicity of religious centres, schools and even breakthroughs recorded in technology and science. The radiating impact of rape does not stop with the survivor's health and well-being. Research indicates that coping with the aftermath of rape can cause significant stress for the family, friends and significant others of sexual assault survivors. Professionals who help women recover from rape are not spared its devastating effects as rape crisis centre staff, rape victims advocates and sexual assault therapists experience vicarious trauma. Even those who study rape can become emotionally affected by bearing witness to the devastating impact of this crime.⁶⁷

The societal effects of a community will essentially revolve around the response the society makes. In developed countries, societal response will commonly be positive and encouraging for the victim. But in less developed countries, like Asia, Africa, the Caribbean and other poor countries where rape victims are neglected and the crime itself is not prioritized, societal response will often be negative.⁶⁸ It could either be in the form of social and legal justice. The victim is left alone to battle the aftermath of the rape.

Also, when victims are stigmatized by the society because they are raped, they tend to give in to thoughts of suicide: they give up on living. The society affects the life of a victim in the sense that when they support victims and make sure perpetrators are brought to justice, the victims through their support get through the phase and are able to respond more to treatment.

The society should come together to fight this crime because rape can happen to anybody. If the society is not in unity, several crimes will be committed and those who are responsible will go scot-free. As a result the society needs to take a stand together.

⁶¹ John Grohol, (2013). <http://www.psychCentral.com>, accessed 22 September 2018.

⁶² Deborah Serani, *Living with Depression* (Rowman and Littlefield Publishers 3rd Edn 2012).

⁶³ (1941) WACA Page 140

⁶⁴ Rashi Vidyasagar, Quora, How would you say rape impacts a society: <http://www.quora.com/how-would-you-say-rape-impacts-society>, accessed 17 October 2018.

⁶⁵ *ibid*

⁶⁶ Sam Ibok, Nation Online; 'The effects of rape on our society': <http://thenationonlineng.net/the-effects-of-rape-on-our-society/>, accessed 20 October 2018.

⁶⁷ Rebecca Campbell, Sharon Wasco, 'Understanding Rape and Sexual Assault' *Journal of Interpersonal Violence*, (2005), volume 20, Number 1, page 127-131

⁶⁸ Caribbean Current, 'The effects of rape on the victim and the community' <http://thecaribbeancurrent.com/the-effects-of-rape-on-the-victim-and-the-community/>, accessed 17 October 2018.

The Legal Framework

In Nigeria a man commits rape when he has unlawful sexual intercourse with a woman who is not his wife and who at the time of the intercourse does not consent to it. It is pertinent to state here that while the Criminal Code is applicable to the southern states of Nigeria, the Penal Code is applicable to the northern states.⁶⁹

At common law, rape is defined as an unlawful sexual intercourse with a woman against her will. The essential elements of the crime were sexual penetration, force and lack of consent. Also women who were raped were expected to have put up some sort of physical resistance to the utmost of their powers, otherwise the man would not be convicted of rape. The Criminal Code and the Penal Codes codified to a large extent the common law position on the crime of rape in their various sections.⁷⁰

It is important to note that the Nigerian law on rape excludes anal penetration and penetration by some objects, unlike some other jurisdiction like England and the USA.⁷¹

The Provisions of Rape under the Criminal Code

According to the provision of Section 357 of the Criminal Code, “rape occurs when a person has unlawful carnal knowledge of woman without her consent, if with her consent by means of threat or intimidation, by means of fraudulent misrepresentation as to the act or by impersonating her husband.

The meaning of unlawful carnal knowledge is expressly provided for in s.6 of the criminal code. It defines carnal knowledge as: “Carnal connection which takes place otherwise than between husband and wife.”

The section also further states that an important element of carnal knowledge or carnal connection is penetration.⁷² The slightest penetration of the vagina by the penis is sufficient. It is not necessary that the hymen was ruptured or there was ejaculation.⁷³ The code does not recognise that the penetration of a woman or girl’s anus or mouth could be equally as traumatic as the vagina and that it should be considered as one of the elements which may constitute rape. Only a woman or girl may be raped as far as the wordings of the code suggest. Even though in this day and age, there have been cases of men and boys claiming to be raped, the Criminal Code Act does not take cognisance of this fact.

According to S.30 of the criminal code act, a male person under the age of 12 years is presumed to be incapable of having carnal knowledge. This is an irrefutable presumption which means that he cannot be guilty of the offence of rape or attempted rape”, even if it is shown that he has reached puberty despite his age. He may however be convicted of indecent assault.

Since it is required that there must be genital penetration which a woman is incapable of doing, a woman would not be physically capable of committing the offence, but may be guilty of counselling or abetting rape. Interestingly, although a woman may not be physically capable of committing rape against a man or another woman, she may however be charged and found guilty of the offence of rape.⁷⁴ This implication is deduced under S.7 of the Criminal Code which defines who a principal offender is. It provides that:

“When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of committing the offence and may be charged with actually committing it,

- a) Every person who actually does the act or makes the provision which constitutes the offence;
- b) Every person who does or omits to do an act for the purpose of enabling or aiding another person to commit the offence:

⁶⁹ Emmanuel Obidimma, ‘Time for a New Definition of Rape in Nigeria’ *Research on Humanities and Social Sciences*, (2015), Volume 5, Number 18

<http://www.iiste.org/Journals/index.php/RHSS/article/viewFile/26090/26764>, accessed 6 September 2018.

⁷⁰ Olugbenga Olatunji, Penetration Corroboration and Non-Consent: ‘Examining the Nigerian Law of Rape and Addressing its Shortcomings’ *University of Ilorin Law Journal*, (2012), Volume 8, page 79-105.

⁷¹ *ibid*

⁷² Elements of rape: www.djetlawyer.com, accessed 13 September 2018.

⁷³ Akinwale Ashiru and Margaret Orifowomo, “Law of Rape in Nigeria and England: Need to Re-invent in the Twenty-First Century” *Journal of Law, Policy and Globalization*, (2015), volume 38, page 28-38

<http://www.iiste.org/Journals/index.php/JLPG/article/viewfile/235133/24235>, accessed 6 September 2018.

⁷⁴ Adeyemi Ijalaiye, ‘Sexual Offences in Nigeria’ *Nigerian Interfaculty Law Journal*, (1991), volume 2 page 1

- c) Every person who aids another person committing the offence
- d) Every person who counsels or procures any other person to commit the offence.”⁷⁵

Thus, whether one considers a woman in such a situation as either a principal in the first or second degree or accessory before the fact, if her act is caught under any of the provisions in S.7, she would be considered as a principal offender of the crime of rape.

The legal principal that a woman gives an irrevocable consent to sexual enjoyment on marriage to her husband still exists. Since S.6 of the Criminal Code⁷⁶ also defines unlawful carnal knowledge as “carnal connection which takes place otherwise than between a husband and a wife”, this implies that a husband cannot be guilty of raping the wife.⁷⁷ This exception is an old fashioned one and is generally attributed to the fact that wives were viewed (and still are) as the husband’s chattel, having been bought by them. The woman is taken to have given her irrevocable consent to sexual enjoyment on marrying him. The law should however take cognisance of the fact that this should not mean that a woman has impliedly consented to accede to her husband’s unreasonable and inordinate demands for sex. However, where a husband uses force or violence against her to exercise his right, he may be guilty of assault. The legal principle that a man cannot rape his wife, would not apply in two situations. These are where the marriage has been dissolved or if a competent court has made a separation order which contains a clause that the wife is no longer bound to cohabit with her husband.

The Crime of Rape under the Penal Code

The Penal Code applies in the Northern States of Nigeria. Section 282 of the Penal Code provides that “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 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”.⁷⁸

Although a woman cannot commit the offence of rape under the Penal Code Act, she may however be charged by the prosecution with abetting rape under section 83 of the code. Mere penetration under the penal code is sufficient to constitute the sexual intercourse necessary to the offence of rape. Cases under the penal code show the importance the court attach in providing evidence of penetration to a charge of rape.⁷⁹ However, the definition under the definition of rape under the Penal Code is narrower than that under the Criminal Code in the sense that where the latter uses the term “carnal knowledge” implying that penetration of the vagina could be done by penetration of foreign object, the term “sexual intercourse under the penal code implies that only a penis can penetrate a vagina.

The Penal Code does not describe what consent is but describes what consent is not. Consent is not when a woman agrees to have sexual intercourse with the rapist when it is obvious that she was put in fear, when the woman consents without the woman thinking she is agreeing to her husband.⁸⁰ Even then, it goes without saying that absence of consent from the victim is an essential ingredient to a charge of rape. The consent must not be obtained by force, fraud or misrepresentation.⁸¹ Apart from the various instances

⁷⁵ Criminal Code, S. 7

⁷⁶ *ibid*, S.6

⁷⁷ Also section 282(2) of the penal code provides that “Sexual intercourse by a man with his own wife is not rape if she has attained puberty.”

⁷⁸ Penal Code CAP 89 Laws of the Federation 2004.

⁷⁹ Stanley Idum, ‘Corroboration and Law of Rape in Nigeria: As the Evidence Act Done Anything New’ Commercial and Industrial Law Journal, (2012), volume 3, Number 1, page 361-380

⁸⁰ Penal Code, S. 282

⁸¹ *ibid*, S. 39

which the section lists as to what would not constitute consent, it is interesting to note that rape is still committed even where a girl under 14 years of age or of unsound mind consents.⁸²

Violence Against Persons Prohibition Act 2015 (VAPP)

The Violence Against Persons (Prohibition) Act, (2015),⁸³ prohibits all forms of sexual violence against” persons in both private and public life. It also provides maximum protection and effective remedies for victims and punishment of offenders.

Section 1⁸⁴ of VAPP states that “A person commit the offence of rape if

- a. 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
- b. The other person does not consent to the penetration or
- c. The consent is obtained by force or 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 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”.

This Act is a great improvement in our laws when compared with both the Criminal Code and the Penal Code which only provides only for the vagina, it does not take into consideration the fact that persons may penetrate with objects, mouth etc. the VAPP Act provides for anus and the mouth of another person with any part of the body or anything else. This is a wider provision as criminals who feel that since the Criminal and Penal Code provides only for penetration of the penis into the vagina and may want to use objects or their hands, mouth or any part of their body to penetrate the vagina to escape the punishment for rape will be punished accordingly. The VAPP Act in Section 1(2) provides that

“A person convicted of an offence under subsection 1 of this section is liable to imprisonment for life except

- a. Where the offender is less than 14 years of age, 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
- c. In the case of rape by a group of persons, the offenders are liable jointly to a maximum of 20 years imprisonment without an option of fine.”

The only limitation concerning the VAPP Act is that it applies only to the Federal Capital Territory and not to the whole of Nigeria. Section 27 of VAPP Act⁸⁵ provides that “Only the high court of the federal capital territory, Abuja empowered by an Act of parliament shall have the jurisdiction to hear and grant any application brought under this Act”.

Subject to this section, the VAPP Act does not apply to the whole of Nigeria. Another law should be made just like the VAPP Act but must apply to the whole country. Also, new provisions should be made because the VAPP Act did not include “spousal rape” though it made provisions for spousal battery; it did not include rape of minors and mentally incapacitated persons who are often taken advantage of by paedophiles and sexually unsatisfied men. Although the VAPP Act is an improvement in our laws”, the government should not rest on their oars and keep updating our laws to meet up with changes and new developments in the society.

International Instruments on Rape

As regards dignity of human persons, a lot of laws guide the affairs of individuals who have been violated in one way or the other. The 1999 constitution of the federal republic of Nigeria provided for the protection of the dignity of individuals, it stated that every individual is entitled to respect for the dignity of his person and accordingly:

- a. “No person shall be subjected to torture or to inhuman or degrading treatment,

⁸² ibid

⁸³ Hereinafter known as VAPP Act in this study.

⁸⁴ Violence Against Persons (Prohibition) Act, (2015), S. 1

⁸⁵ VAPP Act (2015) Section 27

- b. No person shall be held in slavery or servitude and,
- c. No person shall be required to perform forced or compulsory labour”.

The term human dignity became a relatively new concept at the end of World War II. Dignity of human person was prompted as a result of the acts of violence and genocide emanating from the war. The UN Declaration of Human Right provides that all human beings are born free and equal in dignity and rights.⁸⁶ The imputation of dignity on a person according to the court of appeal in *Uzoukwu v Ezeonu*⁸⁷ would include mental harassment and physical brutalization, while inhuman treatment typifies the lack of human sentiments, belittling of one’s societal status or character and the degradation of one’s value or position of a person.

Human dignity renders one worthy or deserving respect because dignity could be understood to specify certain forms of social respect, such as availability of goods, services and opportunities. As an underlying principle of international human right law, human dignity is linked to the values of autonomy and equality.⁸⁸ Thus for example the Universal Declaration of Human Rights and International Covenant on Civil and Political right in there preamble stipulates that the recognition of dignity and equality is a foundation of freedom.⁸⁹ Rape as it is breaches the right to respect of a person as the person is treated inhumanly by refusing her choice of not having sex with the perpetrator.

CONCLUSION

It is concluded in this work that except the laws on rape are reviewed, victims will continue to have their rights to justice breached due to the lacunae in the law while the perpetrators of this heinous crime will continue to live above justice and commit more of this crime. .

Rape being one of the dominant crimes in “Nigeria, affects the victim, psychologically, physically and socially. With the laws provided in the criminal code and the penal code, which are not enough to cover the various aspect of rape, the goals of these laws can only be achieved partially. If laws are enacted to partially provide for a crime in the society, of what use is that law to the society. There is need to update our laws to reflect the basic needs of the society and look at the laws of developed countries like England and America, and learn from these countries who have over the years found a way to provide for the different aspects to rape which they didn’t foresee. Although, the Violence against Persons (Prohibition) Act⁹⁰ which was enacted in 2015, made some new changes to the laws by giving a new definition to rape in Nigeria, it is disheartening that this act applies only to the federal capital territory” that is an action can only be brought against the person when it happens in that jurisdiction and not anywhere else.

RECOMMENDATIONS

It is strongly recommended that the various provisions of the relevant laws on rape are to be urgently reviewed by the National Assembly, particularly in terms of investigations and prosecution. Furthermore, Forensic Laboratories should be established in every state in Nigeria in order to effectively confirm and link an accused person directly to the crime of rape. This will further ensure that offenders do not go unpunished. The definition and provisions of rape should be made broader under our laws and attention should be paid to the circumstances surrounding rape in the country. Each state in Nigeria should have their own laws regarding rape and other offenses, and they must be implemented without prejudice. There should be provision made so that the VAPP Act does not only apply to the FCT but also to each state in Nigeria, as the crime rates in this state will be affected, leaving the other states.

The society should support rape victims, empathise with them instead of stigmatizing them as they respond to treatment more when there support and care are available. Adequate and functional

⁸⁶ United Nations Declaration of Human Right (1948) Article 1.

⁸⁷ (1991) 6 NWLR (pt. 200) 708 at 764-778.

⁸⁸ Human dignity: <http://www.corteidh.or.cr/tablas/r30885.pdf> , accessed 14 September 2018.

⁸⁹ "Kaufmann Peterson, Kuch Holman and Christie Neuhaeuser, ‘Humiliation Degradation, Dehumanization’ Library of Ethics and Applied Philosophy, (2011), volume 2 <http://www.springer.com/series/6230>, accessed 14 September 2018.

⁹⁰ VAPP Act (2015)

rehabilitation centres and NGO's should be made available to victims of rape and there should be public sensitization and awareness so that the society will know the victims are not to blame and they can give adequate support to them.

There should be an improvement in the way the police and other criminal justice officials treat victim of rape. These people should be trained on how to talk and respond to rape victims. Rape should also be attacked from the grassroots, local government should make sure there are enough educational centres to keep adolescents busy without having any time to look at pornography which is what triggers rape. Also, there should be tracts made available to the community so that the various information on rape is passed across to the people.

There should be improved medical and health services available for the victims; they should have an insurance covering them in the hospitals as many of these victims do not even have means of getting treatment. Psychological provisions should be made available for rape victims also as they need all the help they can get to remain stable and functional in the society. Nigeria should not be left out in the reforming of their laws, as many countries in Africa have made it a priority to reform their laws.