



Rape and the Hurdles of Proof in Nigeria: A peep into the law

Mary Arthur-Jolasinmi¹ * and Juliet Nkechinyere Odimma²

¹Philomath University, Kuje, Abuja FCT

²Margaret Lawrence University, Abuja

*Corresponding Author

Email: maryfaithj@philomath.edu.ng

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Abstract

The occurrences of rape over time in human history can be considered as another form of murder on the psychology, emotions and dignity of the victim. Like other forms of violence against women, it is an infringement on the victims' rights to self-autonomy, privacy, self-preservation and self-esteem. Regrettably, incidences of rape are rapidly taking a frightening dimension that necessitates crucial intervention. This article interrogates the dilemma of rape, the culture of blaming the victim, essential elements needed to establish culpability of rape and the corroboration requirement in establishing the act. The articles reviewed the hurdles of corroboration and argued that the rules are discriminatory since they distinguish between the gender of the victims, as most victims of rape in Nigeria are female; the corroboration rules are offensive, and the reasons for their subsistence are not factual. The articles described Nigerian law on rape as a statute begging for review and recommend that Nigerian law on rape should be reviewed to reflect the present realities.

Keywords: Rape, Proof, Rape victim, Rape law

INTRODUCTION

Rape is a crime that is associated with serious psychological harm.¹Victims of rape not only suffer from higher rates of mental health problems and suicidal behaviours, but often experience intense feelings of shame and guilt.² The sense of guilt is compounded by the traditional assumption that rape is an act of sex, insofar as this implies that the victim of rape was a complementary partner in an act that carries a lot of personal and moral significance.³

Rape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration carried out against a person without that person's legal consent.⁴ The act may be carried out by physical force, coercion, abuse of authority, or against a person who is incapable of giving valid consent, such as in cases of child rape⁵

Being perhaps the most underreported monstrous offense, mainly due to societal radicalism, stigmatisation/trauma during prosecution.⁶Victims and survivors are mostly psychologically and emotionally traumatised either by being criticised for their dressing as being the reason for the abuse or by being labelled or accused for a lifetime.⁷ The victim may, afterwards, present a wide range of physical, emotional, cognitive and behavioural symptoms.⁸ Unfortunately, a majority of rape incidents are committed by people known to the victim, and these are mostly under-reported, mostly due to the fear of not being believed, or even being blamed for being raped.⁹This trend has built an unsafe culture of silence that stops survivors from speaking up and seeking justice. This is undesirable in the present civilisation, that survivors of rape are still subjected to torturous ordeal, harmful cultural stereotypes, failures of law enforcement to investigate rape cases, toxic misogyny and insufficient support for survivors, have created a culture of silence and impunity which continues to fail victims of rape in their quest to get justice.¹⁰This further traumatises victims.¹¹

Recently, discourse on rape has shifted beyond the capacity and the need to prosecute offenders into procedural and technical analysis.¹²Issues include the actual definition of the crime of rape under domestic laws and the relevance of consent.¹³Debates have ensued on the definition of what qualifies as rape vis-à-vis the broad mechanical definition laced around the absence of gender-equal philosophy.¹⁴

¹ Hane H.Maung 'A Dilemma in Rape Crisis and a Contribution from Philosophy' (2021) 93, *Humanities, and Social Science Communication*. 8

² Julia Schwendinger and Herman. Schwendinger, 'Rape Victims and the False Sense of Guilt'(1980) 4, *Journal of Crime and Social Justice*,12

³ Patricia L.N.Donat, D'Emilio John, 'A feminist redefinition of rape and sexual assault: historical foundations and change'(1992)1, *Journal of Social Issues* 48, 9–22.: Vidal ME, Petrak J 'Shame and adult sexual assault: a study with a group of female survivors recruited from an East London population'2007)22, *Sexual and Relationship Therapy* 2.159–171.

⁴ Michael Joseph & Toluwani Bamigboje 'Rape Under the Nigeria Laws and the Need for Amendment'
<https://legalpediaonline.com> accessed 8 June, 2025

⁵ *ibid*

⁶ Omosehin, Foluke & Alausa, Jamiu Abiodun 'Rape Scourge and Sexual Violence: A Sociological Perspective' (2023)28 *IOSR Journal of Humanities and Social Science*. 8, 46-50

⁷ Penelope K. Trickett, Jennie G. Noll and Frank W.Putnam ' The Impact of Sexual Abuse on Female Development: Lessons from a Multigenerational, Longitudinal Research Study' <https://pmc.ncbi.nih.gov> accessed 18 August, 2025

⁸ Omosehin, Foluke & Alausa, Jamiu Abiodun 'Rape Scourge and Sexual Violence: A Sociological Perspective' (2023)28 *IOSR Journal of Humanities and Social Science*. 8, 46-50

⁹ Rachael Goodman-Williams, Jessica Volz and Kathryn Fishwick's Reasons for not Reporting Among Sexual Assault Survivors Who Seek Medical Forensic Exams: A Qualitative Analysis' (2023) <https://pmc.ncbi.nih.gov> accessed 8 June, 2025

¹⁰ Prithwish Ganguli ' Rape Victims' Quest for Justice: Navigating the Criminal Justice System' <https://ssrn.com/abstract> accessed 8 June,2025.

¹¹ Centre for Women's Justice, ' Decriminalisation of Rape: Why the Justice system is Failing Rape Survivors and what needs to be Done' <https://endviolenceagainstwomen.org.uk> accessed 8 June, 2025

¹² Michael Joseph & Toluwani Bamigboje 'Rape Under the Nigeria Laws and the Need for Amendment'
<https://legalpediaonline.com> accessed 8 June, 2025

¹³ Section 264, Criminal Laws of Lagos State defines consent for the purpose of the definition of Rape in Law

¹⁴ R. Whisnant, Feminist Perspectives on Rape(2009)<https://plato.stanford.edu> accessed 15 June,2025

Hence, the various laws criminalising the act in its various forms, however, have not been able to shield survivors/ victims from the ridicule of society and stigmatisation when reported.¹⁵ Hence, the persistence of the culture of hiding the monstrous act from the public sphere.¹⁶ Moreso, the hurdles of proof in the prosecution of rape cases, which commences from the investigation, especially where the victim is a minor, require corroboration as a mandatory requirement.¹⁷ Regrettably, the article posits that in almost all instances, it is difficult to find corroborative evidence to establish the offence beyond a reasonable doubt.¹⁸

The Law of Rape: Penetration Review

According to Nigerian 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 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”¹⁹

Flowing from the provision of the Criminal Code, it is important to interrogate the statute’s definition of ‘canal knowledge’ being a significant emphasis in qualifying the offence as rape and the provision in section 6²⁰, which implied that, as far as the offence of rape is concerned, the element of the offence is complete upon penetration. There must be penetration for the offence of canal knowledge to be complete in Nigeria.

To sustain the above, it is immaterial to establish that the hymen was broken or that there has been a release of semen.²¹ The slightest penetration of the vagina is sufficient to establish the offence²² even when such penetration did not injure the hymen.²³ It is important to note that the offence of rape cannot be completely established without penetration.²⁴ However, sexual intercourse which takes place after penetration forms part of the offence.²⁵ Consequently, penetration, amongst other acts, determines whether there has been carnal knowledge or not, for the purposes of establishing the offence of rape.

Considering the relevance of establishing the act of penetration in rape, the following elements under the Nigerian Criminal Code, amongst others, should be noted:

- That slightest penetration is enough to establish the offence, once any part of the male organ touches the vaginal lip "Labia Menorah"²⁶
- Penetration must be through the vagina and not the anus or any other part²⁷
- Penetration can only be by a male organ and not any other object. Consequently, penetration of the vagina by finger, stick, an effigy of a penis or any other object²⁸ cannot amount to rape; at best,

¹⁵ Jacob.M. Agboli, Dealing with Rape Cases in Ghana: The Law, The Victim and the Offender (2023) *Sexual Offending :Theory , Research and Prevention* 18

¹⁶ *ibid*

¹⁷ Evidence Act, 2011, LFN, section 209(3)

¹⁸ Maggi Wittlin, Theorizing Corroboration (2023) The Fordham Law Archive of Scholarship and History <https://ir.lawnet.fordham.edu> accessed 21 June,2025

¹⁹ Section 357 of the Criminal Code Act, LFN, 2004

²⁰ Section 6 of the Criminal Code Act, LFN, 2004

²¹ G. N. Okeke and M. O. Ilobinso, An Appraisal of the Offence of Rape under Nigerian Laws (2021) , *UNIZIK Law Journal* 17(1) 116

²² *ibid*

²³ *Ogunbayo v State* (2007) All FWLR (Pt 365) 40; *The State v Jegede* (2001) 7 SCNJ 135 at 141

²⁴ *R v. Kufi*(1960) W.N.L.R. 1

²⁵ *R v. Mayberry*(1973) Qd. R. 211 (Skermen J. dissenting)

²⁶ *Iko v. State* [2001]35 W.R.N. 1; *State v. Maigemu*[1973] L.L.R. 117 @ 121;*R v. Kufi*(supra). In *Iko v.State*(supra), the court stated in clear terms that the essential and most important ingredient of the offence of rape is penetration and that unless penetration is proved, the prosecution must fail.

²⁷ *Iko v. State* supra;*R v. Khan*[1990]2 All E.R 788

²⁸ *R v. Gatson* 78 CAR 164

these forms of penetration can be categorised and punished as injury occasioning harm' indecent assault' or assault with intent to commit unnatural offence²⁹.

The Nigerian Criminal Code has painstakingly sustained the time-honoured definition of penis-vaginal analysis³⁰ evidencing that neither ejaculation of semen nor rupture of the female hymen is necessary to constitute rape³¹ once penetration is established and the intercourse continues, any aid given after penetration makes the aider a party to the offence.³² Following the provision of the Nigerian Criminal Code, the slightest penetration of the vagina is sufficient to sustain the act of rape, where there is no consent

Nevertheless, the paper aligns with the argument that there is a lacuna that needs to be filled because the code only provides for penetration by the male genitals, and not other objects³³ and did not envisage the penetration of other parts of the body.³⁴ Non-review and consideration of the various other kinds of penetration creates a wide lacuna, and is very vital as the statute in review and its provision did not envisage the several modes of committing the offence of rape, as it has been revealed recently.³⁵

The paper adopts the argument that the various other mode of penetration by other parts of the body such as finger, use of objects such as stick, artificial phallus/toy that were not provided for in the act should be considered and the requirement of penetration of the vagina as a criteria to qualify the offence of rape should be expunged and reviewed to give life to penetration of other parts of the body such as anus and mouth³⁶

The Violence Against Persons Prohibition (VAPP) Act of 2015, considered the other forms of non-consensual intentional penetration of any opening in an individual body, vaginally, orally, or anally without their consent or with consent obtained by intimidation, falsehood, use of under the influence of psychoactive substance.³⁷ This allows men to be recognised as potential victims³⁸

The Nigerian Criminal Code and the Penal Code are outmoded statutes that are begging for review.³⁹ The definition of rape under these statutes did not envisage the present reality and the monstrous pattern of its occurrences in reality.⁴⁰ As the world evolves, so does the law; hence, the increasing enlightenment on rape and the expansion in legislation on the menace of rape interrogate a cross-dimensional perspective.⁴¹ For instance, the Criminal Law of Lagos State looked beyond the scope of the Criminal and Penal Code, which was a colonial manuscript handed down, by precisely stating that sexual intercourse between a man and his wife is not rape.⁴²

²⁹ Ibid. s. 352

³⁰ Olujemisi. Bamgbose, 'A Reflection on the Past, Present and Future of Rape Law' (2002) Vol II JPBL p.128 at p.129.

³¹ In R v. Marsden [1891] 2 Q.B. 149 where the prisoner contended that there was no emission of seed(semen), the court held that this is not necessary to prove the offence of rape. Also in R v. Hughes (1841) 9 C & P 752 where the prisoner's claim was that since there was no rupture of the hymen, he could not be found guilty of the offence of rape, the court held that this also is not a sine qua non to obtaining conviction against an accused, and that all that was required is that there is penetration.

³² R v. Mayberry (supra); Kaitamaki v. Queen [1984] 3 W.L.R. 137

³³ G. N. Okeke and M. O. Ilobinso, An Appraisal of the Offence of Rape under Nigerian Laws (2021) , UNIZIK Law Journal 17(1) 116

³⁴ ibid

³⁵ Ibid @p.117

³⁶ G. N. Okeke and M. O. Ilobinso, An Appraisal of the Offence of Rape Under Nigeria Laws 17 UNIZIK Law Journal (2021) 1 p117

³⁷ Violence Against Persons (Prohibition) Act, 2015. Section 1

³⁸ Akpoghome Theresa Uzoamaka. 'Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria (2016) Journal of Law and Criminal Justice, 4(2), 17–30. 10.

³⁹ G. N. Okeke and M. O. Ilobinso, An Appraisal of the Offence of Rape under Nigerian Laws (2021) , UNIZIK Law Journal 17(1) 116

⁴⁰ ibid

⁴¹ Seun Afolayan, Comparative Legal Analysis of the Offence of Rape in Nigeria and United States of America (2023) *International Journal of Criminal , Common and Statutory Law* 3(2) 55-58

⁴² Section 258, Criminal Law of Lagos State, 2011. No 11 resources

Furthermore, the Violence against Persons Prohibition Acts presented a broader perspective of rape by defining rape as an act that occurs “when a person intentionally penetrates any part of the person’s body or any object, into any opening of another person’s body without consent, or with consent obtained by fraud, threats or intimidation”⁴³ it interrogated rape from a wider perspective unlike the Criminal Code and the Penal code, it viewed rape as an unlawful non-consensual sexual carnal knowledge of a person, with penetration of any opening in a person’s body by any body part or object regardless of their gender and marital status without consent.⁴⁴ It placed priority on the lack of consent as a vital ingredient of the offence, irrespective of the status or gender.⁴⁵ Its exposition of rape is gender-neutral, evidencing that both men and women can be victims, as well as perpetrators.⁴⁶

It is needful to emphasise that within Nigerian legal jurisprudence, sex between husband and wife does not qualify as rape⁴⁷ even when there is no consent.⁴⁸

The definition differs. Mostly, it is defined as non-consensual oral, anal, or vaginal penetration of the victim by body parts or objects using force, threats of bodily harm, or by taking advantage of a victim who is incapacitated or otherwise incapable of giving consent⁴⁹

Consent

Consent is a deliberate and informed agreement to a precise action or sequence of actions.⁵⁰ It indicates the willingness of a person to voluntarily participate, or permit the happening of a course of action or act.⁵¹ For consent to be valid, it must be given willingly, precisely, informed, recent, and given by one who has the capacity to do so.⁵² Consent denotes the authorisation or freedom and capacity to choose whether to have sex or not⁵³ is a voluntary, sexual positive agreement between the participants to engage in specific sexual activity⁵⁴. Consent is an affirmative informed approval, indicating a freely given agreement to sexual activity.⁵⁵ It has been described as an ‘internal state of willingness’, ‘an act of explicitly agreeing to something’, and ‘behaviour that someone else interprets as willingness’⁵⁶. It may be communicated directly, indirectly, verbally and/or non-verbally⁵⁷. The Criminal Code⁵⁸ defined consent as “the voluntary agreement of the complainant to engage in the sexual activity in question”.

The court, in deciding whether lack of consent was an indispensable ingredient in determining the offence of rape, held in *Akpan v The State*⁵⁹ that rape is the unlawful carnal knowledge of a girl or woman without her consent.

⁴³ section 1 and 26 of the Violence Against Persons Prohibition Act, 2015.

⁴⁴ Violence Against Persons (Prohibition) Act 2015, section 1

⁴⁵ ibid

⁴⁶ Violence Against Persons (Prohibition) Act 2015, section 1

⁴⁷ Section 6 Criminal code LFN, 2004

⁴⁸ Seun Afolayan, Comparative Legal Analysis of the Offence of Rape in Nigeria and United States of America (2023) *International Journal of Criminal , Common and Statutory Law* 3(2) 55-60

⁴⁹ Mary. P Koss, Detecting the Scope of Rape: A Review of the Prevalence Research Methods (1993) *Sage Journals* <https://journals.sagepub.com> accessed 8 June, 2025

⁵⁰ UCR Care Program ‘ What is Consent ?’ <https://care.ucr.edu> accessed 8 June, 2025

⁵¹ Jonathan Cooperman ‘Informed Consent- An Overview’ (2008) *Legal and Ethical Management Issues*. <https://www.sciencedirect.com> accessed 8 June, 2025

⁵² Fida .K. Dankar ‘ Informed Consent in Biomedical Research’ <https://www.sciencedirect.com> accessed 8 June, 2025

⁵³ The Women Centre of North West University, Illinois . www.northwestern.edu/womenscentre/issues-information/sexual-assault/definingsexual-assaults accessed 8 June, 2025

⁵⁴ ibid

⁵⁵ Basile Kathleen, Smith Sharon, Breiding Matthew, Black Michele, Mahendra, Reshma ‘Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements’ (2014) Version 2.0. National Centre for Injury Prevention and Control, Atlanta, Georgia. <https://www.scribd.com> accessed 3 June, 2025

⁵⁶ Muehlenhard, Charlene, Terry Humphreys, Kristen. Jozkowski, and Zoe. D. Peterson (2016). ‘The Complexities of Sexual Consent Among College Students: A Conceptual and Empirical Review.’ *The Journal of Sex Research* 53:4–5, 457–487.

⁵⁷ Beres, Melanie. ‘Spontaneous’ Sexual Consent: An Analysis of Sexual Consent Literature’ (2007) *Feminism and Psychology* 17 (1): 93–108.

⁵⁸ Section 273(1) of the Criminal Code LFN, 2004

⁵⁹ (2014) LPELR- 22740(CA)P. 47, Para A-B

Consequently, flowing from the decision above, it is evident that consent is a vital ingredient to sustain the offence of rape. However, where consent is gotten by coercion, threat, intimidation, by fear of harm or by means of false representation as to the nature of the act, this does not qualify for consent in a real sense.⁶⁰ Butressing the relevance of consent, the court in *Ogunbayo v The State*,⁶¹ in determining whether or not a person who had carnal knowledge of a woman without her consent is guilty of rape, the court held that consent is vital and of great importance in establishing the offence of rape where there is penetration of the vagina, no matter how slight.

Okeke and Ilobinso⁶² drew a clear distinction between consent and submission. They described consent as a willing state of the mind to proceed with the act in question, i.e., the act of sexual intercourse, while submission may be due to threat, fear or intimidation. The analysis of Okeke and Ilobinso⁶³ drew strength from *R v Day*,⁶⁴ where the prisoner, a macho man, agreed to accompany a ten-year-old girl on a lonely lane where he had carnal knowledge of the girl. The court, in its opinion, classified this as a submission and not a consent.

Furthermore, the court held that consent includes submission, but that does not necessarily mean that a mere submission includes consent.⁶⁵ As the victim may have submitted out of fear of death, fright or coercion.⁶⁶ Consent gotten by coercion, fraudulent misrepresentation or by means of threat or intimidation or fear of harm, exhaustion after a tenacious scuffle and struggle does not qualify for consent.⁶⁷

This paper argues that it is appropriate for consent to be unswervingly/verbally given rather than being assumed by the seeming lack of refusal. Therefore, verbal communication of ‘yes’ must be obtained⁶⁸

Rape surge

Recently, incidents of sexual offences have been on the increase. Rape is now increasingly and deliberately used as an intentional tactic of terror on unsuspecting persons by supposedly peacekeeping officials⁶⁹. Being an offence with extremely controversial phenomenon and emotional issues, its effect on society cannot be ignored, yet it is one of the most under-reported crimes, characterised with difficulties in obtaining accurate official statistics to show the frequency of this offence, but one can say that it is on the increase.⁷⁰

Presently, Nigerians are overwhelmed with strange news of fathers who are ordinarily supposed to protect their daughters from sexual molesters, now the sexual predators⁷¹. The atrocious rape culture, fault-finding, demeaning the victim and the vulgar responses of the responsible institutions have deemed the gleam hope

⁶⁰ UCR Care Program ‘What is Consent?’ <https://care.ucr.edu> accessed 8 June, 2025

⁶¹ (2007)8 NWLR (Pt. 1035)157 at 178

⁶² G. N. Okeke and M. O. Ilobinso, AN Appraisal of the Offence of Rape Under Nigerian Laws (2021) 17 ULJ 1 p119

⁶³ G. N. Okeke and M. O. Ilobinso, *ibid*

⁶⁴ (1841)9 C & P 722.

⁶⁵ *R v, Day* (1841), C&P 722 at 724. Per Lord Coleridge

⁶⁶ *R v. Olugboja* [1981]3 All E.R 443. This is a case where the victim was raped by two Nigerian brothers. When she was raped by the 1st accused, she fought tooth and nail to prevent her violation, but she was beaten blue black by the saidaccused until he had his way. On being approached by the 2nd accused for the same purpose, shesubmitted/succumbed without putting up any resistance.

⁶⁷ G. N. Okeke and M. O. Ilobinso, An Appraisal of the Offence of Rape under Nigerian Laws (2021) ,*UNIZIK Law Journal* 17(1) 116-119

⁶⁸ Setty, Emily. ‘Sex and Consent in Contemporary Youth Sexual Culture: The ‘Ideals’ and the ‘Realities’ (2020) *Sex Education* 21 (3) 331–346.

⁶⁹ Joe Read ‘Sexual Violence and the Boko Haram Crisis in the North-East Nigeria’, Humanitarian Practice Network (Maiduguri, 24 October 2017), www.odihpn.org accessed 8 June 2025

⁷⁰ Chinedu A. Idoko, Ed Nwobodo and Chinelo Idoko ‘Trends of Rape Cases in a Nigerian State’ <https://pmc.ncbi.nlm.nih.gov> accessed 8 June,2025

⁷¹ Arthur-Jolasinmi, M. ‘Sexual Assault, An Odious Pandemic: A Review of the biases that Incriminate Victims’ (2024) 5 IJPL, 8

and enhanced the continued culture of silence despite reasonable societal awareness. This has persisted in this direction due to societal stereotypes and misogyny⁷²

In Nigeria, though not a legal requirement anymore due to the removal of section 179(5) of the repealed Evidence Act⁷³ which required corroboration on sexual offences, but that of common law, over time in practice, has required that evidence must be adduced to corroborate the complaint of the victim. For the offence of rape to be properly established, there must be corroborative evidence, which usually comes from an eyewitness account or medical evidence.⁷⁴ Cautioning about this, the court in *Inspector Dantalle Mohammed v Kano State*⁷⁵ held that it is unsafe to convict on uncorroborated evidence of the complainant. However, to properly secure a conviction in the offence of rape, corroborations of the evidence of the complainant implicating the accused are not essential, but a judge must be careful of the risk of convicting on the uncorroborated evidence of the complainant.⁷⁶

Nigeria's apex court in *Nwambe v State*⁷⁷ emphatically defined corroboration as the confirmation of a witness's evidence by independent testimony. Corroboration is actually nothing more than evidence which confirms, supports or strengthens other evidence, being evidence that renders others more probable⁷⁸. As the world evolves, so has the practice of law and rules regulating criminal trials *vis-à-vis* the formal procedures of discharging the burden of proof beyond a reasonable doubt.⁷⁹ This civilisation has shifted from the structure of the outmoded formalism of the rule of number to the concept of evidence and proof⁸⁰ this gave rise to novel rules of practice that expunged the notion of corroboration from some jurisdictions, including Nigeria.⁸¹ This old-fashioned requirement of corroboration was classified as a mechanical tool, not suitable for any contemporary judicial practice and has been swept off the path due to modernisation and dynamism of law.⁸²

In reality, this requirement is not achievable, as offenders ensure that the evil act is done in an enclosed private place where members of the public may not access.⁸³ Most times, someone may get to the rape scene after the offender has successfully carried out the act.⁸⁴

The Nigerian defunct Evidence Act⁸⁵ provided that:

A person shall not be convicted of the offences mentioned in sections 218, 221, 223, or 224 of the Criminal Code upon the uncorroborated testimony of one witness.

Accordingly, S. 218 provides that: Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for life, with or without caning. Any

⁷² *ibid*@p6

⁷³ Evidence Act, Cap, E14, LFN, 2004

⁷⁴ Section 179(5) Repealed Evidence Act, Cap, E14, LFN, 2004

⁷⁵ (2018) 13 NWLR (Pt.1635)25

⁷⁶ Olaide Gbadamosi and Maruf Adeniyi ' A Critical Appraisal of Corroboration in the Crime of Rape in Nigerian Legal System (2022) *Turf Law Journal* (2) 2, 17-19

⁷⁷ (1995) 3 SCNJ 77

⁷⁸ Director of Public Prosecution v Kilbourne (1973) AC. 729

⁷⁹ Adamu Tanimu, Burden of Proof in Criminal Cases (2023) *African Journal of Criminal Law and Jurisprudence* 8 19-22

⁸⁰ Irving Younger ' The Requirement of Corroboration for Prosecution of Sex offences in New York' (1971) *Fordham Law Review*, .40, 2,264

⁸¹ Removal of section 179(5) of the repealed Evidence Act, LFN, 2004

⁸² Ewulum Ifechukwu, The Requirement of Corroboration on the Offence of Rape and other Sexual Offences: A Revisit to the Nigerian Judicial Position (2020) <https://thenigerianlawyer.com> access 8 June, 2025

⁸³ Chidike O. Ezegwui et'al, Perception and Prevalence of Rape: A Survey Among in-school Adolescents in Rural Southwest Nigeria (2023) *Journal of National Medical Association* (115) 6 545-549

⁸⁴ *ibid*

⁸⁵ Section 179(5) Evidence Act, LFN, 2004 (Repealed)

person who attempts to have unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for fourteen years, with or without caning.

S. 221: Any person who-

- (1) has or attempts to have unlawful carnal knowledge of a girl being of or above thirteen years and under sixteen years of age; or
- (2) knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her; is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without caning.

S. 223: Any person who-

- (1) procures a girl or woman who is under the age of eighteen years to have unlawful carnal connection with any other person or persons, either in Nigeria or elsewhere; or
- (2) procures a woman or girl to become a common prostitute, either in Nigeria or elsewhere; or –
- (3) procures a woman or girl to leave Nigeria with the intent that she may become an inmate of a brothel elsewhere; or
- (4) procures a woman or girl to leave her usual place of abode in Nigeria, with intent that she may, for prostitution, become an inmate of a brothel, either in Nigeria or elsewhere; is guilty of a misdemeanour, and is liable to imprisonment for two years.

S. 224: Any person who-

- (1) by threats or intimidation of any kind, procures a woman or girl, to have unlawful carnal connection with a man, either in Nigeria or elsewhere; or
- (2) by any false pretence procures a woman or girl to have unlawful carnal connection with a man, either in Nigeria or elsewhere; or
- (3) administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with the intent to stupefy or overpower her to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her; is guilty of a misdemeanour, and is liable to imprisonment for two years.

Clearly, from the provisions above, the prosecutor cannot secure any conviction on rape upon the uncorroborated evidence of one witness, hence the statutory requirement of adducing evidence to corroborate the victim's testimony.

As a result of the dynamic nature of law, in line with societal experience, the Evidence Act, 2011⁸⁶ expunged the section⁸⁷ that is required for corroboration in sexual offences under the Nigerian law, and has no recourse to the same, as corroboration is no longer a requirement to sustain a conviction for sexual offences, rather the court is at liberty to convict based on the evidence brought before the court.

This paper argues that expunging this chain on the wheel of justice, which was a vital practice requirement that successfully truncated the punishment of offenders for the offence of rape, is a reform that points a dim light at the end of the tunnel.⁸⁸ The removal of the procedural chains births a civilisation.

⁸⁶ Enacted in May, 2011 and it repealed Evidence Act, Cap. E14, Laws of the Federation, 2004.

⁸⁷ Section 179(5) Evidence Act, 2004 LFN, 2004

⁸⁸ Olaide Gbadamosi and Maruf Adeniyi 'A Critical Appraisal of Corroboration in the Crime of Rape in Nigerian Legal System (2022) *Turf Law Journal* (2) 2, 17-19

CONCLUSION

The existence of ambiguities and inadequacies in the relevant criminal laws relating to sexual offences and the inability to prove cases successfully when instituted have left much to be desired.⁸⁹ Despite these recent efforts to broaden the definition of rape in some jurisdiction and incorporate definitions that are more closely aligned with the present realities, social opinion on rape, such as blaming the victim which is enhanced by complex interplay of cultural, social and individual factors laced around devaluation of women and the overarching problem of rape and its consequential societal stigma continually births new challenges with increasing prevalence and change in pattern.⁹⁰

The paper appraises rape under the Nigerian Criminal Code and Penal Code, and posits that the two instruments in review did not specifically define who can commit the offence of rape, on whom it can be committed and what constitutes the act. Applauding the improvement ushered in by the Violence against Persons (Prohibition) Act, 2015, as a progressive step, which gave answers to limitations in the instant laws but remained silent on the issues of spousal rape, which is an obvious snag.

It restates the fact that non-consensual sexual intercourse with the victim by the accused is a vital prerequisite to sustain the offence of rape, and the act is deemed complete upon penetration even without the emission of semen. It summarises that rape is a very complex and awfully described cankerworm with deep challenging complexities even at trial which is mostly enabled by poorly biased investigations, multiple attrition stages within the criminal justice with uneven outcomes, and its definition. Which is defined as an act of having non-consensual unlawful carnal knowledge of a woman or girl, or 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 act, or, in case of a married woman, be personating her husband is considered as an analysis that certainly does not represent the present realities⁹¹ the upsurge of rape and the various forms of perpetuating violence reveals the need to peep into the extant laws and re- interrogate its usefulness, whether it qualifies to address the present realities.

Conclusively, it is posited that incidences of rape can be reduced when the culture of ignoring harmful cultural stereotypes, mostly due to toxic misogyny and patriarchal norms, is reviewed. This culture has emboldened perpetrators and caused deep silence amongst survivors due to the fear of not being believed or being blamed for the rape. This torturous ordeal faced by victims/ survivors deepens their pain. When the strings causing bottlenecks around the trial are reviewed from the known paradigm to a renewed framework which identifies differences in its occurrences, rather than relying on an outmoded procedural structure that incriminates the victim.

⁸⁹ Arthur-Jolasinmi, Mary. 'Sexual Assault, An Odious Pandemic: A Review of the biases that Incriminate Victims' (2024) 5 *IJPL*, 8

⁹⁰ *ibid*

⁹¹ Opatewa I, (2016) 'Extending the Frontiers of Offence of Rape in Nigeria Criminal Law'. *NLBJ* September 2, Volume 4 Issue.