



# AHMADU BELLO UNIVERSITY LAW JOURNAL

FACULTY OF LAW

AHMADU BELLO UNIVERSITY, ZARIA - NIGERIA.

website: <https://abulj.org.ng> | e-mail: [abulj@abu.edu.ng](mailto:abulj@abu.edu.ng)

## JUDICIAL INTERPRETATION OF CONSENT IN RAPE CASES IN NIGERIA: SOCIO-CULTURAL DYNAMICS AND LEGAL IMPACTS

PETER ITSUELI\*

OGHENERUONA OKUBA\*\*

---

### Abstract:

The concept of consent lies at the heart of rape jurisprudence, yet its interpretation remains a contentious issue in Nigeria, where cultural, religious, and societal norms heavily influence the judicial process. This article critically examines how Nigerian courts interpret consent in rape cases, considering the statutory framework, judicial reasoning, and socio-cultural factors that shape these interpretations. It analyzed key provisions in the Criminal Code, Penal Code, and Violence Against Persons (Prohibition) Act 2015, highlighting gaps and ambiguities in the legal definitions of Rape and consent in rape cases. The article evaluates the broader impact of judicial interpretations on public perceptions, victim protection, and access to justice, while proposing reforms to align legal standards with societal realities. The non-doctrinal and comparative methodology for research were adopted. By interrogating these issues, the article aims to provide a comprehensive understanding of how law, culture, and society intersect in shaping the discourse on consent in rape cases, ultimately advocating for a more equitable and effective legal system. It was recommended that rape needs to be given a broader definition to cater for more sexually abusive situations, the violence against persons Act need to be compulsorily domiciled in every state of the federation public awareness campaigns so that everyone understands the offence of rape and improved victim support and protection.

---

**Keywords:** Rape, Interpretation, Criminal Code, Socio-Cultural Dynamics, Legal Impacts

## 1.1 Introduction

Rape, with far-reaching consequences for victims, families, and the society at large, remains one of the most pervasive and underreported crimes in Nigeria. The prosecution of rape cases is centered on the concept of consent, a complex and multifaceted issue that determines whether sexual activity is voluntary or constitutes a criminal offence. While the legal definition of rape across Nigerian statutes emphasizes the absence of consent, the interpretation and application of this concept by courts often reflect underlying socio-cultural norms and patriarchal attitudes. As a result, survivors frequently face significant barriers to justice, with courts sometimes prioritizing societal norms over the protection of victims' rights thereby perpetuating a culture of impunity for sexual violence.

In Nigeria, rape laws are governed by multiple statutory frameworks, including the Criminal Code applicable in the Southern States, the Penal Code in the Northern States, and the Violence Against Persons (Prohibition) Act (VAPP Act) 2015. Despite these laws, inconsistencies in the definition of consent and varying evidentiary requirements have created challenges in securing convictions. Moreover, judicial attitudes towards consent often reveal deep-seated biases.<sup>1</sup>

Nigeria's patriarchal society and cultural norms often blame victims for their assault. Religious beliefs, traditional practices, and community pressures contribute to stigmatization, discouraging survivors from reporting rape or pursuing legal action. These dynamics not only influence public perceptions but also shape judicial reasoning, as judges and legal practitioners operate within the

---

\* LL. B, LL.M, PhD,BL; Lecturer, Public Law Department, Faculty of Law, Delta State University; [peteritsueli@gmail.com](mailto:peteritsueli@gmail.com).

\*\* LL.B,BL;Legal Research Officer; High Court of Justice, Warri, Delta State; [o.cokuba@gmail.com](mailto:o.cokuba@gmail.com).

<sup>1</sup> O. Ojigho, Amnesty International, Nigeria, 'Failure to tackle rape crisis emboldens perpetrators and silences survivors' November 17, 2021 <https://www.amnesty.org/en/latest/news/2021/11/nigeria-failure-to-tackle-rape-crisis-emboldens-perpetrators-and-silences-survivors/> on 01/02/2025

same cultural milieu. This intersection of law and culture raises critical questions about the effectiveness of the legal system in addressing rape and protecting victims.

The judicial interpretation of consent also has significant implications for society because it influences public attitudes toward sexual violence, determines the extent to which victims are protected under the law, and impacts the willingness of survivors to seek justice. Cases where courts fail to adequately define or apply the concept of consent can undermine public confidence in the justice system and perpetuate harmful stereotypes about rape. Conversely, progressive judicial decisions have the potential to challenge societal norms, promote gender equality, and set legal precedents that protect victims' rights. It cannot be over emphasized that rape has myriad of far reaching effects on its victims affecting their physical health, mental health, sexual health and a myriad of ways which are debilitating on the wellbeing of the victims<sup>2</sup>

## **1.2 The Concept of Rape and Consent**

Rape is universally recognized as one of the most grievous violations of human dignity, involving the unlawful and non-consensual act of sexual intercourse or penetration. It is both a criminal offence and a moral wrong, with significant psychological, physical, and social consequences for victims. At the core of the offense of rape, is the absence of consent; a critical determinant that distinguishes lawful sexual activity from a criminal act. The concepts of rape and consent are therefore deeply intertwined and their interpretation varies across legal systems, societal norms, and cultural contexts.

In English parlance, rape is typically defined as the act of sexual intercourse carried out against a person's will or without their consent. In Nigeria, statutory frameworks such as the Criminal Code, the Penal Code, and the Violence Against

---

<sup>2</sup> The Advocates for Human Rights, 'Stop violence against Women' Nov. 12, 2023 accessed at [https://www.stopvaw.org/health\\_consequences\\_of\\_sexual\\_assault](https://www.stopvaw.org/health_consequences_of_sexual_assault) on 01/02/2025

Persons (Prohibition) Act 2015 (VAPP Act) provide the foundation for defining and prosecuting the offence of rape. These laws describe the act of rape as involving force, coercion, or fraud, with a focus on the victim's inability to voluntarily agree to the sexual act. However, the scope of what constitutes rape differs significantly depending on the jurisdiction and the specific statute applied.

Central to the legal determination of rape is the concept of consent, which refers to a voluntary, informed, and unequivocal agreement to engage in sexual activity. For consent to be legally valid, it must be obtained freely, without any form or kind of force or coercion, intimidation, or foul play (deceit). Moreover, consent must be ongoing and can be withdrawn at any point during the sexual act. In cases involving minors, persons with mental incapacities, or those under the influence of drugs or alcohol, the capacity to give consent is often questioned or outright negated by law. Despite its apparent clarity in legal theory, the application of consent in rape cases is fraught with complexities. Courts must grapple with issues such as:

- (a) Whether consent was explicitly communicated or could be inferred from the victim's behavior.
- (b) Whether fear, coercion, or social pressure rendered the consent invalid.
- (c) Whether the victim was in a position to give consent due to age, mental state, or intoxication.<sup>3</sup>

Ultimately, the concept of rape and consent extends beyond legal definitions to reflect deeper societal values about bodily autonomy, gender equality, and human dignity. Addressing these issues requires a comprehensive approach that

---

<sup>3</sup> G.N Okeke , 'An Appraisal of the Offence of Rape under Nigerian Laws' UNIZIK, law Journal 17 (1) 2021 accessed at <file:///C:/Users/USER/Downloads/An+Appraisal+of+the+Offence+of+Rape+under+Nigerian+Laws2.pdf> on 01/02/2025

combines legal reform, societal education, and victim-centered judicial practices to ensure justice for survivors and prevent sexual violence.

### **1.3 Legal Framework on the Offence of Rape in Nigeria**

Rape is an offence which is sexual. It involves involuntary sexual intercourse usually by a man against a woman, although, in the light modern realities it is obvious that this definition may not be able to stand in the face of contemporary issues. When a person commits rape he has usually employed the use of force, abuse of authority, or other acts capable of depriving the victim of giving legal consent. For there to be rape there must be some form of unjustifiable or unlawful penetration of the body of the victim by the offender by himself or using a tool<sup>4</sup>. The World Health Organization has said rape is assault of a sexual nature<sup>5</sup>

In *Adeoti v The State*<sup>6</sup>, the court in delivering Judgment said that as long as a man has carnal knowledge of a woman without obtaining the woman's consent or even where he obtains her consent, if that consent was forcibly obtained or such consent was got by intimidation of the woman or where such consent was obtained by putting the woman in fear of detriment or death or even harm to her body; or where the victim is under a misapprehension of who the offender is and this misapprehension is deliberately caused by the offender, or there is fraud, such consent cannot be said to be legally obtained

**Definition of Rape under Various Nigerian Laws:** In Nigeria, the offence of Rape is defined, established and governed by the category of laws listed out below:

---

<sup>4</sup> "Rape". [legaldictionary.thefreedictionary.com](http://legaldictionary.thefreedictionary.com)

<sup>5</sup> *Isah v State of Ekiti* (2024) LPELR-61971 p30-31, paras A-C

<sup>6</sup> (2009) ALL FWLR Pt. 454, p1450

1. The Criminal Code Act<sup>7</sup> s.357: This law applies in all the Southern States of Nigeria
2. The Penal Code Act<sup>8</sup>, s. 282: This law applies in all the northern States of Nigeria
3. The Child Right's<sup>9</sup> Act s. 31: This law is a federal enactment in Nigeria and is domiciled by many states in Nigeria.
4. The Violence against Persons (Prohibition) Act<sup>10</sup> (VAPP ACT)

It is submitted that of all these positive laws the provision of the Violence Against Persons Act is the most pervasive as it expands the definition of rape and the place of consent in establishing the offence of Rape.

### **Violence Against Persons Prohibition Act (VAPP ACT) 2015**

**section 258** of the **VAPP Act** provides that a person commits the offence of rape if the person whether a male or female penetrates the anus, vagina, anus, or mouth of another person with any part of his or her body or with anything else, where the victim does not legally give consent or even where consent is given it was given by coercion or threats to the victims wellbeing, or by intimidation or by otherwise making the victim afraid and without options; or by obtaining consent by representations that are false or fraudulent as to the meaning of rape; or the use of addictive substance(s) like narcotics which have the ability of making the victim unable to control his or her own will; or by impersonating a married woman's husband.

The VAPP Act provides a more comprehensive and progressive definition of rape in Nigeria. The key features of the definition by the VAPP Act include;

---

<sup>7</sup> Cap C38 LFN, 2004

<sup>8</sup> Cap C53 LFN, 2004

<sup>9</sup> Cap C50, LFN 2004

<sup>10</sup> 2015

1. **Gender Neutrality:** Unlike the Criminal and Penal Codes, which primarily focus on male perpetrators and female victims, the use of “he or she” by the VAPP Act acknowledges that anyone, regardless of gender, can be a perpetrator or victim of rape.
2. **Expanded Scope of Penetration:** The Act goes beyond traditional definitions by recognizing penetration of the anus, vagina, or mouth using any body part (e.g. fingers) or an object (e.g. cucumber, bottle, candle etc) as rape.
3. **Protection of Vulnerable Groups:** The Act's comprehensive definition protects children, persons with disabilities, and others vulnerable to exploitation, ensuring no form of sexual violence is ignored.
4. **Consent:** The Act emphasizes the absence of free, voluntary, and informed agreement. Consent obtained through force, intimidation, deceit, or the victim's incapacity (due to age, mental or physical disability, or unconsciousness) is deemed invalid.
5. **Comprehensive Penalties:** Under Section 2 of the VAPP Act, the punishment for rape includes imprisonment for life, though mitigating circumstances may reduce it to a minimum of 12 years for first-time offenders and 14 years for repeat offenders.

In the case of *Haladu v FRN*<sup>11</sup>, the court emphasizing the meaning of rape and sexual abuse under Section 1(1) of the VAPP ACT stated Per IGE J.C.A that the offence of rape is established not only where there is penetration of the vagina by the penis but even where a stick or other object or other part of the body is used as long as consent was not given and the victim or offender may be a man or a woman.

The VAPP Act's definition of rape is a landmark in Nigeria's legal history, addressing long-standing gaps in the legal framework. This expanded scope

---

<sup>11</sup> (2022) LPELR-56996 (CA) p 32-33 paras A

reflects the reality of sexual violence, covering non-traditional forms of rape and addressing instances that were previously overlooked under older laws. The Act eliminates the limitations imposed by the criminal and Penal codes, making its definition more inclusive and aligned with international human rights standards.<sup>12</sup>

#### 1.4 Conceptualizing Consent

Consent refers to a person's voluntary, informed, and unequivocal agreement to take part in a sexual act. Where the determination of the offence of rape is based on consent, how consent is conceptualized and assessed in relation to the behavior and intentions of the accused and the victim is of paramount importance. However, it should be noted that although consent is germane to the defining and proving rape, there is a lot of discordant views about what amounts to factual or legal consent, what the prosecution needs to prove to establish that consent was not given freely, and how to establish and prove in what ways the absence of consent or the presence of consent can be proved in various circumstances. When a court is called upon to determine if consent is legally given it may need to look at factors like the party's relationship leading up to when the offence of rape was allegedly committed, to decipher the kind of relationship the parties had which will help the court to determine if the *mens rea* to commit the offence of rape existed in the first place. In many rape cases, the crucial question may not be whether the victim did agree to have sex but, even if she did, whether her choice was sufficiently voluntary in the circumstances to render her consent valid or whether it was reasonable for the offender to think that there was consent freely given. These questions involve an evaluative judgment based on limited evidence and competing factual accounts as to what took place. In circumstances involving uncertainty and ambiguity, there is considerable scope for relying on

---

<sup>12</sup> Brain Builders Youth Development Initiative, 'Fact-Sheet on Violence against Persons Prohibition(VAPP) Act accessed at file:///C:/Users/USER/Downloads/An+Appraisal+of+the+Offence+of+Rape+under+Nigerian+Laws2.pdf on 01/02/25



assumptions and pre-conceived ideas about normative behavior within heterosexuality.

Nigerian courts have dealt with the concept of consent in several landmark cases, emphasizing the need to examine the key aspects or components of consent and how they are applied in rape cases.

- (1) **Consent must be free and voluntary:** Free and voluntary consent refers to an individual's genuine, uninfluenced agreement to engage in an act or transaction. In legal context, particularly in criminal law and sexual offences, it emphasizes that consent must be given freely, without coercion, manipulation, undue influence or any other external pressures that compromise autonomy. Any sexual activity resulting from force, intimidation, threats, or manipulation is deemed non-consensual.

In the case of *Ahamefule v. Imperial Med. Centre*<sup>13</sup>, consent was said to be given only where both parties freely acquiesce to engage in the sexual intercourse, and this is so expressed by deliberate acts by the parties.

Section 74 of the Sexual Offences Act (2003) of the UK seems to be in tandem with the position in *Ahamefule v Imperial Med. Centre*<sup>14</sup> only adding that the victim must have had the freedom and capacity to either give or withhold consent. Thus consent can be seen as consisting of the twin pillars of a wilful choice and the capacity to so choose. In *Oriyomi v FRN*<sup>15</sup>, the court noted that consent given or where not given is important because rape cannot be established once the court finds out that consent was freely given and the person giving such consent had age capacity to give such consent and was neither defrauded, forced nor coerced to give such consent. Also, in the case of *Isa v State*<sup>16</sup>, the supreme court re-

---

<sup>13</sup> (2005) 5 NWLR (Pt. 917) 51

<sup>14</sup> *supra*

<sup>15</sup> (2023) LPELR-61037(CA)

<sup>16</sup> (2016) 6 NWLR (PT 1508)P 243

echoed the position in *Oriyomi v FRN*<sup>17</sup> but said it involved aggressive carnal knowledge. It is submitted that this should not be interpreted to mean that if the sexual activity is unresisted or 'slow' it will not be rape because it would still be rape by all statutory definitions.

The issue of consent freely given is germane to the establishment of the offence of Rape<sup>18</sup>. It is however crucial to highlight an apparent distinction between consent and submission. While consent is a willing state of the mind to proceed with the act in question, that is act of sexual intercourse, submission may be due to threat, fear or intimidation. In *R v Olugboja*<sup>19</sup>, the victim was raped by two Nigerian brothers, one after the other. She fought relentlessly to prevent her violation by the 1st defendant, but she was beaten by the said accused until he had his way. On being approached by the 2nd defendant, she submitted/succumbed without putting up any resistance. The court of appeal in upholding the conviction of the defendants explained inter alia that the consent given by the victim to the second brother was not real consent and both brothers were convicted by the court. The victim was held to have submitted out of fright because of what she experienced with the first defendant when she was struggling to resist. From the instant case it is clear that mere submission to sex does not necessarily indicate consent but obvious submission from exhaustion after persistent struggle, resistance and fear of harm.

(a) Consent obtained by fraud, deception or misrepresentation: Consent is vitiated when obtained through;

- Misrepresentation of identity, such as impersonating another person: consent will be vitiated where the victim consented because she believed she was to have to sexual intercourse with the person to whom she was legally married.

---

<sup>17</sup> (Supra)

<sup>18</sup> *Rabiu v State* (2005)7 NWLR (Pt. 925)491.

<sup>19</sup> (1981)3 All ER 443.

- Deception Regarding the nature of the act like misleading the victim about the nature of the act of sexual intercourse; In the English case of *R v Flattery*<sup>20</sup> The defendant, John Flattery posed as a medical doctor and surgeon. The victim, aged 19 went in the company of her mother to consult with the doctor(offender). The doctor said the victim needed surgery and while he was supposed to be performing surgery on the victim had sex with her. The court held that consent was never given to the offender as the victim only submitted to a medical procedure and not to sexual intercourse<sup>21</sup> . The cases of *R v Williams*<sup>22</sup> and *R v Harms*<sup>23</sup> also buttressed this position, that where consent is given and something else is done beyond the consent given there cannot be said to be real consent.

It is important to note that there is a contrast between consent to an act of sexual intercourse itself under a deception and consent to that act of sexual intercourse induced by a deception as to a matter antecedent or collateral thereto. In *R v Linekar*<sup>24</sup>, the offender deceived the victim (a prostitute) into having sex with her for payment of £25 but never planned to pay the money. The court of appeal acquitted the defendant stating that "*a promise to pay, even if deceitful, does not affect the nature or purpose of the act in a way that vitiates consent. The fraud itself related to an ancillary issue that she would receive payment....*"

In cases involving religious or spiritual manipulation, where a cleric or spiritual leader uses divine promises to obtain sexual consent, courts have held such consent to be invalid. One example is the notorious case of *Michael Olorunbi* a 60 years old church pastor and self-acclaimed prophet who was convicted by the

---

<sup>20</sup> (1877) 2 QBD 410

<sup>21</sup> Rv. Case 19 LJ (Mag. C) 174

<sup>22</sup> (1923)1 K.B. 340

<sup>23</sup> (1943) CanLII 146 (SK CA)

<sup>24</sup> (1995) QB 250

Birmingham Crown Court for abusing six girls and a boy over a 20-year period, claiming the baths would cleanse their souls and ward off evil<sup>25</sup>.

- Misrepresentation of facts like misleading the victim about the circumstances and consequences of the act. Where before the outset of sexual intercourse, there was a clear precondition concerning its nature upon which the complainant's consent was predicated, the defendant may be found guilty of rape if he intentionally disregards such precondition during the act. In the Swedish case of *Assange v Swedish Prosecution Authority*<sup>26</sup>, Assange was charged with the offence of rape for allegedly 'stealthing' a woman<sup>27</sup>. The defendant contended that the woman consented to the sexual intercourse. The court however held that lying about wearing a condom can vitiate consent in the ordinary sense if the partner made it clear that having sex was conditional on the defendant wearing a condom.

### **Burden of Proof in Rape Trials:**

Under Nigerian law, the burden rests primarily on the prosecution to prove beyond reasonable doubt that the accused is guilty of the offense. This standard is rooted in the constitutional presumption of innocence as provided in Section 36(5)<sup>28</sup>. This was adumbrated in *Danjuma v State*<sup>29</sup> where the court held that the standard of proof in criminal cases is proof beyond reasonable doubt. The court added that in such cases the burden of proof falls on the person who asserts the commission of the offence or crime as provided for by s.139 of the Evidence Act.

---

<sup>25</sup> "Michael Oluronbi: 'Holy bath' rapist jailed for 34 years" BBC News. 6 March 2020 <<https://www.bbc.com/news/uk-england-birmingham-51767053>> accessed 22 January 2025

<sup>26</sup> (2011) EWHC 2849 (admin)

<sup>27</sup> Stealthing is having sex with a woman but removing the condom before or during sex without telling her.

<sup>28</sup> The 1999 constitution of Nigeria(amended)

<sup>29</sup> (2019) 10 NWLR ( PT. 1679) P. 13-17 paras C

The evidential burden may however, shift to the accused to cast some doubt on the prosecution's case and not necessarily to prove his innocence.

The ingredients which the prosecution is required to prove to establish rape in a court of law vary depending on the applicable legal framework. These essential elements are well established by various legal precedents and statutory provisions. In the case of *Lucky v State*<sup>30</sup> the Apex court stated that the essential ingredients of the offence of rape which the victim must prove include the following:

- (1) That the accused had sexual intercourse with the victim.
- (2) That the act of sexual intercourse was done without consent or that the consent (if any) was obtained by fraud, force, threat, intimidation, deceit or impersonation.
- (3) That the victim was not the wife of the accused.
- (4) That the offender had the evil mind and intention, to have sexual intercourse with the victim without obtaining consent and that the accused acted recklessly not caring whether the victim consented or not.
- (5) That there was penetration.

On ingredients of the offence of rape under the penal code, the court in *Ayuba v. State*<sup>31</sup> stated Per SANKEY J.S.C that the prosecution must prove by virtue of s. 283

- (a) That the offender had sexual intercourse with the victim in question.
- (b) That the act of sexual intercourse was done in circumstances falling under any of the provisions of the five paragraphs in Section 282(1)
- (c) That the woman was not the wife of the offender; or if she was, she had not attained puberty;
- (d) That there was penetration."

---

<sup>30</sup> (2016) LPELR-405419(SC)

<sup>31</sup> (2024) LPELR-62527(SC)

It follows therefore that for a successful conviction, the prosecution must establish the following elements beyond reasonable doubt:

**ACTUS REUS:** The Actus Reus or physical element of rape is found in the illegal or unlawful sexual intercourse without the victim's consent. In determining the element of rape, the Criminal code in Section 6 states that carnal knowledge is proved once it is established that there was penetration of the vagina by the penis.

Penetration is a very important element that must be proved for the offence of rape to be complete, and it is the major distinguishing factor between rape and other sexual offences. As has been held in a plethora of decided cases, there cannot be rape without penetration. In the case of *Isa v. State*<sup>32</sup> the Supreme Court stated that once there is penetration no matter how slight it suffices ;whether there was seminal emission or not is irrelevant.

In *Iko V State*<sup>33</sup> the court also emphasized the importance of proving penetration in a charge of rape when it noted that the essential and most important ingredient of the offence of rape is penetration and unless penetration is proved the prosecution must fail. The principle was also reiterated in *Jegede V State*<sup>34</sup> and *Posu V State*.<sup>35</sup>

Penetration under the Criminal and Penal Codes simply imply “penetration of a vagina by a penis”. The VAPP Act however, expands the definition in Section 1 to cover cases where penetration was the mouth or anus not just the vagina. From the above provisions of the VAPP Act, intercourse does not only take place upon the penetration of vagina by the penis and the offence of Rape can also be

---

<sup>32</sup> (2016) 1 S.C (PT. III) P.94

<sup>33</sup> (2001) LPELR-1480 (SC)

<sup>34</sup> (2001) 14 NWLR (Pt. 733) 264

<sup>35</sup> (2011) 2 NWLR (Pt. 1234) p.393 at 414

established once the anus or mouth of a person is penetrated with any other part of the accused person's body or anything else.

### **MENS REA:**

Rape is a crime of basic intent therefore the prosecution must prove the intention to commit rape. Intention will be inferred where a person has unlawful carnal knowledge of the victim without her consent or is reckless as to whether or not she gave her consent. In the English case of *DPP V. Morgan*<sup>36</sup>, the court held that although the husband of the victim told the offenders that the victim had given her consent, they were reckless as to whether that was true or not and convicted them. The above decision confirms the subjective test of recklessness in the offence of rape in relation to elements of the offence<sup>37</sup>.

**CAPACITY:** The legal concept of "capacity" in the context of rape refers to the ability of an individual to commit or be held liable for the offense of rape under the law. This concept involves an analysis of the mental, physical and legal factors that determine whether a person can be deemed capable of committing rape. It involves several legal considerations, including the age and mental state of the accused person.

From the provisions of Section 30 of the Criminal Code, a boy who is less than twelve years is presumed to be incapable of having carnal knowledge. By the provisions of the Act such a person can only be convicted for indecent assault<sup>38</sup>. Under Section 50 the Penal Code, a child over 7 years can be charged and arraigned for rape if it can be proved, that he has was sufficiently mature and understood the nature and consequences of what he was doing. However, the provisions of Section 2 of the VAPP Act particularly in paragraph (a), renders a

---

<sup>36</sup> (1975)2 All ER 347

<sup>37</sup> Ater, Solomon Vendaga, 'The law on the offence of rape in Nigeria; challenges and recommendations' (2022) < [https://barristerng.com/#\\_ftnref19](https://barristerng.com/#_ftnref19) > accessed 20 January 2025.

<sup>38</sup> Criminal Procedure Act, s. 176.

person under 14 years of age capable of being criminally liable for the offence of rape.

Concerning gender, the Criminal and Penal Codes presumed that only males could commit rape, as the offense was defined as "unlawful carnal knowledge of a woman." The VAPP Act however, by the use of 'He or She' acknowledges that anyone, regardless of gender, can be an offender or victim of rape.

It is necessary to point out that traditionally, from the provisions of the Criminal and Penal Codes, a husband cannot be guilty of rape against his wife<sup>39</sup>, except where there is a subsisting valid order of judicial separation or a decree nisi of divorce.

**CONSENT:** An essential ingredient of the offence of rape is that the intercourse must be without the consent of the prosecutrix. The Supreme Court of Nigeria has defined consent in the context of rape cases as a voluntary, unequivocal agreement to engage in the specific sexual activity in question. The landmark case of *Ogunbayo v State*<sup>40</sup>, further clarifies that the absence of consent is a crucial element in the definition of rape and the burden of proof lies on the prosecution to establish beyond reasonable that the sexual act was performed without the consent of the victim.

### **1.5 The Use of Corroboration and Its Impact:**

Corroboration has historically played a significant role in rape trials in Nigeria. It refers to the requirement for additional independent evidence to support the complainant's testimony. This judicial expectation has both procedural and substantive implications, deeply influencing the prosecution of rape cases. The requirement for corroboration in sexual offense cases stems from the belief that allegations of such crimes are easily made up and difficult to refute or discredit.

---

<sup>39</sup> Definition of unlawful carnal knowledge by Section 6 of the Criminal code

<sup>40</sup> (2007) LPELR- 2323(SC) P. 19, Paras B-F



This brings to mind, the Biblical case of Joseph and Potiphar's wife who cried rape and had Joseph thrown into prison, when in fact she attempted to seduce him and he shunned her advances. In the case of *Popoola v State*<sup>41</sup>, the court defined corroboration as affirming and confirming or giving firm support to a person's statement, or faith. However, In *D.P.P v Hester*<sup>42</sup> Lord Morris said that corroboration is to confirm only to augment credible evidence not deficient evidence. In *R v Baskerville*<sup>43</sup> it was held per Lord Reading CJ that evidence in corroboration must be independent evidence that links the accused with the commission of the offence and must be on that shows his involvement in the commission of the offence.

The role of corroboration has become cardinal in the procedure of establishing the offence of rape in Nigerian courts and its importance or necessity has been debated in plethora of cases. In *Omowole v the State*<sup>44</sup>, the Supreme Court noted that while corroboration is desirable, it is not a mandatory legal requirement under Nigerian law. This was also the court's position in the case of *Ogunbayo v State*<sup>45</sup>.

It is vital to point out that the requirement of corroboration becomes mandatory, when the victim is a child as stipulated by the provisions of the Evidence Act. According to this provision a child can only give unsworn evidence<sup>46</sup>. In the case of *Obri v State*<sup>47</sup>, the Supreme Court stated that “...the court must not convict on the unsworn evidence of a child unless his evidence is corroborated by some material evidence in support thereof implicating the accused.” In *Dagayya v State*<sup>48</sup>, the court also reiterated the necessity of corroborating the unsworn evidence of a child. Also, in *Isaac Sambo v State*<sup>49</sup>, the Supreme Court held that

---

<sup>41</sup> supra

<sup>42</sup> (1973) A.C. pg 296 at 315

<sup>43</sup> [1916] 2 KB 658

<sup>44</sup> (1981) LPELR-2644(SC)

<sup>45</sup> (2007) 3 sc (pt II) p. 33-36, paras. A-D6

<sup>46</sup> Section 209 of the Evidence Act 2011

<sup>47</sup> (1997) LPELR-2194 (SC)

<sup>48</sup> (2006) LPELR-912 (SC) P. 18-19 Paras. E-C

<sup>49</sup> (1993) 6 NWLR (Pt 300) 399

to ground a conviction, the unsworn evidence of the child must be corroborated: and the corroborating evidence required is some independent evidence which connects the accused with the offence charged. The court went further to state that such corroborative evidence must be sufficiently cogent, compelling and unequivocal as to show without more than the appellant committed the offence charged/proved.

Corroborative evidence may include:

-Medical Evidence: medical reports showing physical injuries or signs of sexual intercourse (e.g. hymenal tear or bruises). In *State v Ijiwande*<sup>50</sup>, the court held thus; “*The law is settled that in a rape case, medical evidence of the examination of the prosecutrix confirming the allegation of recent forcible coitus is direct unequivocal corroborative evidence that the prosecutrix was raped.*”

-Direct Evidence: Independent evidence of person(s) who saw or witnessed events related to the alleged crime such as the testimony of an eyewitness.

-Circumstantial Evidence: Indirect Evidence in proof of one or more facts which gives rise to the logical inference that the crime was committed, such as evidence of rape trauma syndrome.

The impact of the requirement of corroboration on rape trials in Nigeria is akin to a double edged sword with both positive and negative consequences. On the one hand, it may help guard against false accusations and protect defendants from wrongful conviction by providing an additional layer of verification, thereby ensuring that the conviction is based on reliable and consistent evidence. On the other hand, practical insistence on corroboration often places undue burden on victims, many of whom may lack access to independent evidence or face cultural and systemic barriers to obtaining it. This can prolong investigations and trials,

---

<sup>50</sup> (2020) LPELR-51627(CA)

causing further trauma to victims and also contribute to low conviction rates for rape and other sexual offenses.

## **1.6 Challenges in Establishing Consent in Court**

In Nigeria, the issue of establishing consent in rape cases poses significant challenges, particularly in court proceedings. These challenges flow from cultural, legal, evidentiary, and procedural factors. Below is an analysis of some of the challenges:

**1. Ambiguity in the Definition of Consent:** The Legal Framework regulating rape in Nigeria has failed to provide a comprehensive definition of consent. This lack of a clear, uniform definition makes it difficult for courts to determine what constitutes valid consent, leading to inconsistent judicial interpretations.

**2. Burden of Proof:** The Legal Standard is that the prosecution bears the burden of proving beyond reasonable doubt that the act occurred without the victim's consent. This high standard often places an undue burden on victims, who may struggle to provide direct evidence of lack of consent, especially in cases without witnesses or physical evidence.

**3. Reliance on Corroborative Evidence:** Courts often demand corroborative evidence, such as medical reports, eyewitness accounts, or physical injuries, to support claims of non-consent. Many rape cases lack corroboration due to delayed reporting, fear, or the private nature of the crime. This reliance on corroboration can result in acquittals even when the victim's testimony is credible.

**4. Evidentiary Issues:** While medical reports can show sexual activity, they often fail to definitively prove lack of consent. Courts may misinterpret the absence of physical evidence of resistance or injuries as indicative of consent, ignoring psychological factors like fear or coercion.

**5. Inadequate Legal Representation and Support:** Many victims lack access to competent legal representation or support services, such as counselling or

advocacy. Without adequate preparation and support (psychological and emotional), victims may struggle to present coherent, compelling testimony in proof of lack of consent. The VAPPA has however, provided a broader definition of consent and prohibits victim-blaming defenses and has provisions safeguarding victims' rights with legal, medical, and psychological support to victims<sup>51</sup>.

### 1.7 Rape Myths and Stereotypes in Nigerian Jurisprudence

Rape myths and stereotypes significantly influence societal perceptions of sexual violence and the legal framework surrounding it. In Nigeria, these myths have found their way into judicial decisions, public discourse, and legislative practices, impacting how victims are treated and the dispensation of justice. A myth has been defined as a popular belief or tradition that has grown up around something or someone. It can also refer to an unfounded or false notion<sup>52</sup>. Rape myths are prejudiced, false beliefs about sexual violence, often used to justify or trivialize the offense, blame victims, or exonerate perpetrators. Examples include;

- (a) **Victim blaming:** Victim blaming is rooted in the notion that a victim's actions, appearance, or decisions contributed to the crime. This reflects societal attitudes that prioritize maintaining patriarchal norms over addressing systemic issues like gender-based violence. Rape cases often involves questioning:
  - The Victim's Dressing: Suggesting that the victim's provocative dressing incited the assault. The practice of "judging" the victim's clothing in conversations about sexual assault is prevalent in Nigeria. Statements like *"with the way she dressed, she was asking for it"* along with rape survivors being asked *"Well, what were you wearing?"*, have been the norm for ages.

---

<sup>51</sup> Section 38 & 39 Violence Against Persons Prohibition Act 2015

<sup>52</sup>

- The Victim's Behavior: Criticizing actions such as drinking, attending parties, being out late and even the victim's sexual history. The notion is that evidence of prior sexual activity by the victim makes it more likely that she consented to any particular sexual encounter whereas in reality, premarital relations are not unusual. This belief fuels the inference that sexually active women generally tend to consent to sexual advances, regardless of the nature or circumstances of each case. The result is the misconception that once a woman has voluntarily engaged in intercourse, the law grants less protection to her right to refuse intercourse in the future.
  - The Victim's Credibility: Doubting the victim's account, especially if they delay reporting or fail to resist physically.
- (b) **Stranger-Rape Stereotypes:** The concept of stranger-rape stereotypes revolves around the false belief that rape is typically committed by a stranger in a violent, sudden, and physically aggressive attack. This stereotype has permeated societal narratives, legal systems, and cultural perceptions, often overshadowing the reality that most sexual assaults are perpetrated by individuals known to the victim. Contrary to the stranger-rape stereotype, the offence of rape is mostly committed by individuals known to the victim, such as friends, family members, neighbors, or colleagues as it often occurs in familiar and trusted settings (Acquaintance rape). Studies and reports indicate that intimate partner and acquaintance rape are significantly underreported due to societal stigma and the assumption that such acts do not qualify as rape.

The reality of Acquaintance rape is characterized by the following;

**-Trust and Relationship:** The perpetrator and victim often share a pre-existing relationship, which may involve trust or authority. This is mostly grounded on the assumption that a previous romantic or sexual relationship implies ongoing consent. Implied consent refers to consent that is inferred from a person's actions, behavior, or the circumstances, rather than being explicitly stated. It is non-verbal

and often situational. The interpretation of implied consent heavily relies on the context of the interaction. Actions such as physical closeness, body language, or reciprocating affection may suggest implied consent. Implied consent is more subjective and open to misinterpretation, which makes it legally risky. The debate about interpretation of “implied consent” raises the question “*Does consent exist in perpetuity?*” In the case of *Okoh v Nigerian Army*<sup>53</sup>, the appellant in his defense to the charge of rape, contended that there was an active sexual relationship between him and the victim which could be construed as consent. Rejecting this argument, the court held that: “*Rape is rape, once proved. The fact of previous intercourse or the existence of or presumed suspected active sexual partnership, will not negate the offence of rape by imputing consent where the contrary has been proved. In the instant case, even if the prosecutrix and the appellant were hitherto consensual lovers who were having sexual intercourse, the occasion of the fateful sex in the circumstances found at the trial court constituted the offence of rape nonetheless.*”

-Nonviolent Coercion: Acquaintance rape frequently involves psychological manipulation, intimidation, or subtle coercion rather than overt physical violence. Psychological coercion, which involves the use of emotional manipulation or threats to exploit a person’s fears or vulnerabilities, can also vitiate consent. This is particularly common in situations where there is a power imbalance between the parties, such as in cases involving employer-employee, or Teacher-Student relationships. In some cases, coercion can take the form of social or economic pressure. For example, if an individual is threatened with losing their job, home, or social standing unless they consent to sexual activity, such consent is not valid. While these forms of pressure may not involve physical harm, they nonetheless exert significant influence over the individual’s decision-making, making it impossible for them to freely consent.

---

<sup>53</sup> (2013) 1 NWLR (Pt. 1334) 16

-Setting: The stereotype links rape to specific settings, such as late-night assaults or attacks in secluded areas whereas in reality, the act often occurs in private, familiar spaces such as homes, schools, or workplaces, complicating evidentiary requirements.

- (c) **Resistance expectations:** refers to the belief that victims of rape must demonstrate physical or verbal resistance to prove non-consent. This expectation flows from outdated stereotypes that associate "real" rape with active, violent struggle, often accompanied by physical injuries. Under the common law, a victim was expected to show that she resisted to her utmost ability which was deemed evident in actual physical resistance to the sexual advance and mere verbal objection to such advance would not suffice. Thus in **People v. Dohring**<sup>54</sup>, the Supreme Court of Nebraska reversed a conviction on the ground that the woman submitted to the sexual intercourse when she had the power to resist.

In recent times however, Nigerian courts have recognized the irrelevance of resistance in proving rape and evolving Legal Standards like the Violence Against Persons (Prohibition) Act has redefined rape in broader terms, emphasizing the absence of consent rather than the presence of resistance. The Act recognizes coercion, fear, and intimidation as factors negating consent, marking a shift away from resistance expectations.

### **1.8 Cultural and Religious Influences on the Concept of Consent in Rape Cases in Nigeria**

In Nigeria, the understanding and application of consent in rape cases is heavily influenced by the country's diverse cultural practices, religious doctrines, and deeply entrenched misogynistic norms. These influences shape societal attitudes, judicial decisions, and even victims' willingness to report sexual violence, creating significant barriers to justice for survivors. These influences include;

---

<sup>54</sup> (1889) 59 NY 374 1874.

1. **Gender Roles** (Male sexual Dominance): Nigerian culture often equates masculinity with sexual prowess, positioning men as dominant figures whose masculinity is validated by their ability to conquer women sexually. The more aggressive and forceful a man is in his pursuit of sex, the more he is seen as "manly." The idea that "real men persist and don't take no for an answer" normalizes coercion as seduction rather than as a violation of consent.

2. **Marital and Conjugal Rights:** (Bride Price and the Perception of Ownership in Nigeria): Since time immemorial, women are regarded as chattels owned by their husbands, by virtue of the dowry/bride price paid to their parents and the marriage vows of "*...to have and to hold ...till death do us part*". The practice of bride price payment, where a groom or his family provides money or gifts to the bride's family as part of the marriage rites, is deeply entrenched in our Nigerian culture. While this tradition is often celebrated as a mark of respect and honor, its implications can sometimes perpetuate harmful gender norms, particularly regarding the perception of ownership over women. This notion stems from patriarchal norms that treat women as property rather than individuals with autonomy, thereby undermining the concept of consent within marriage, as women are often expected to fulfill their husbands' sexual desires unconditionally. In Nigeria courts often refuse to recognize spousal rape, making it nearly impossible for married women to seek legal redress thus forcing women to endure nonconsensual conjugal relations due to fear of stigma, divorce, or economic dependence.

According to Black's Law Dictionary, spousal rape is when a husband engages in sexual activity with his wife forcibly or without her consent.<sup>55</sup> Generally, at common law, a husband cannot be convicted for raping his wife. This conception was founded on the proposition of Sir Matthew Hales who is credited with stating that "*The husband cannot be guilty of a rape committed by himself upon his lawful*

---

<sup>55</sup> Garner B. A (ed.) Black's Law Dictionary, 10th Edition, p. 1450



wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract.”<sup>56</sup>

At common law, it is believed that a marriage was embodied in a contract, and the terms of this contract included a wife’s irrevocable consent to have sexual intercourse with her husband whenever he wished<sup>57</sup>. This theory of implied consent is the most endorsed justification for the spousal rape exemption.

The provisions of the Criminal and Penal codes<sup>58</sup>, reinforces the theory that consent is permanently given in marriage hence a man cannot be found guilty of raping his wife. It must however, be observed that Section 282(2) of the Penal Code provides a rider by stating that; “*Sexual intercourse by a man with his wife is not rape if she has attained puberty*”. The unambiguous wordings of the aforementioned section can be logically interpreted to mean that a man can be guilty of raping his wife, if the wife in question has not attained puberty. There is however no known reported cases where such interpretation was put forward.

The VAPP Act defined the offence of rape without the traditional exemption of spousal rape in both the Criminal and Penal Codes. The puzzle still remains how this seemingly “silence” on spousal rape should be construed and interpreted by courts.

**3. Child Marriage:** In some parts of Nigeria, child marriage is culturally accepted, particularly in rural and northern regions where young girls are often married off without understanding or having the capacity to give informed consent, further normalizing the violation of their sexual autonomy. Cultural norms and misogyny be damned, by the provision of Section 282(2) of the Penal Code, a lot of men who indulge in child marriage, especially in the northern part

---

<sup>56</sup> M. Hale, “History of the pleas of the crown”. < <https://www.britannica.com/topic/History-of-the-pleas-of-the-crown> > accessed 28 January, 2025

<sup>57</sup> S. Elvy, “A Post Colonial theory of Spousal Rape: the Caribbean and beyond”. (2015) 22 Michigan Journal of Gender and Law P. 150

<sup>58</sup> Section 6 of the criminal code Act and Section 282(2) of the Penal code Act

of Nigeria can safely be convicted of raping their child-wives. This may be so because most of the child-wives might not have attained the age of puberty.

**4. Traditional Practices:** Sexual relations may be tied to cultural or religious rituals, where consent is either presumed or ignored. In some cultures in western Nigeria for example, once the “deity” picks any woman as wife for the king, such woman is expected to marry the king and her consent is immaterial. Traditional belief systems often prioritize community harmony over individual rights, discouraging victims from reporting sexual violence to avoid shame or ostracism.

**5. Doctrine of Submission:** Christian teachings often emphasize that wives submit unconditionally to their husbands. For instance, the Holy bible in Ephesians 5:22-24 which admonishes a wife to submit to her husband has over time, been misinterpreted to mean being subservient to her husband. This has been used to justify non-consensual sex in marriage and Christian leaders in Nigeria avoid addressing marital rape, perpetuating the idea that consent is irrelevant within marriage. Islamic teachings also encourage the belief that a wife cannot refuse her husband. In cases of domestic violence or marital disputes, women are often told to endure the abuse and pray for their husbands because ‘the church’ forbids divorce.

**6. Silence on Sexuality:** In many communities, a discussion about sex and consent is seen as a taboo, leaving individuals, especially women, without the knowledge or support to assert their rights. Many Christian leaders in Nigeria also avoid addressing the issue of sex and consent in their sermons.

Religious and cultural stigmas surrounding sexual violence can result in victims being pressured to reconcile with perpetrators or accept the assault as fate. Addressing these influences requires a combination of legal reforms, public education, and community engagement to ensure that consent is understood, respected, and upheld in all sexual relationships. Only then can Nigeria move toward a more equitable and just society for all.

## 1.9 Conclusion

In conclusion, the judicial interpretation of consent in rape cases reflects a complex interplay of legal principles and socio-cultural norm. While legal provisions provide a framework, inconsistencies in judicial reasoning and deeply rooted societal norms and prevailing patriarchal attitudes continue to shape court decisions and hinder justice for survivors. To bridge this gap, below are some proposed reforms for a more equitable and effective system:

1. **Broaden the Legal Definition of Rape:** It is recommended that there is a need to review the laws on rape in Nigeria to expand the definition to include all genders as potential victims and perpetrators, and also recognize other forms of non-consensual penetration beyond vaginal penetration, including oral and anal rape. It is also recommended that there is an urgent need to amend these laws to recognize marital rape.
2. **Define Consent in Clear and Comprehensive Terms:** A statutory definition of consent in rape cases in clear terms to provide an affirmative consent standard. The law makers can introduce a provision similar to the UK's Sexual Offences Act 2003, defining consent as "free, voluntary, and informed agreement without coercion, fraud, or incapacity."
3. **Improve Victim Protection and Support:** The social stigma and intimidation associated with rape across the globe forces victims in Nigeria to conceal rape assaults to save themselves from shame and public embarrassment leading to secondary victimization. In this regard, the following reforms are proposed:
  - i. -Specialized sexual offenses courts: Establish special fast-track courts with trained judges to handle rape cases efficiently.
  - ii. -Confidentiality protections: Ensure identity protection and allow victims to testify in closed trials or even via video link to reduce trauma.
  - iii. -Mandatory police training: Train law enforcement agents on trauma-informed investigations.

- iv. -Expand survivor support: Establish state-funded rape crisis centers and psychological support services across all states. (The VAPP Act in section 38 has made provisions to safeguard the rights of every victim of sexual violence).

**4. Domestication of the Violence Against Persons (Prohibition) Act, 2015:** The VAPP Act which provides a broader scope and reflects modern trends about the offence of rape is only mandatorily applicable in the Federal Capital Territory (FCT), and many states have not domesticated it. It is proposed that the lawmakers at both the Federal level and States level should work hand in hand at making sure that the VAPP Act is domesticated as of right in all the states in Nigeria to control domestic violence and all types of abuse that are sexual and to guarantee uniformity in rape laws in all the states of the Nigerian federation.

**5 Public Education and awareness:** The writer advocates for comprehensive sensitization programs to educate citizens about the misconceptions and hackneyed narratives about sexual abuse and how they can be properly addressed. This can be achieved by organizing seminars, workshops and awareness campaigns in schools, churches, mosques and other social gatherings. With the increase in social media traffic, sensitization can even be done via available electronic media and digital channels like Instagram, WhatsApp broadcasts, and Twitter, amongst others. This would help inform citizens about rape laws, available remedies and precautions and also to alter the stereotypical narratives associated with rape in Nigeria. Sex education in schools (especially for young children and teenagers) is also crucial to enlighten them about their rights and intricacies of sexual abuse. Parents must also be apprised about the need to have intimate talks with their children in this regard.