

# Judicial Interpretation of Consent in Rape Cases in Nigeria: Socio-Cultural Dynamics and Legal Impacts

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**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 and adversely 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. 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 among other things, 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:** judicial interpretation, consent, rape cases, Nigeria socio-cultural dynamics, legal impacts

## 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.

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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. 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.

### **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 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>2</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

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<sup>2</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

issues requires a comprehensive approach that combines legal reform, societal education, and victim-centered judicial practices to ensure justice for survivors and prevent sexual violence.

### **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>3</sup>. The world Health Organization has said rape as is assault of a sexual nature<sup>4</sup>

In *Adeoti v The State*<sup>5</sup>, the court in delivering Judgment said that 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 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:

1. **The Criminal Code Act**<sup>6</sup> s.357: This law applies in all the Southern States of Nigeria
2. **The Penal Code Act**<sup>7</sup>, s. 282: This law applies in all the northern States of Nigeria
3. **The Child Right's 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>9</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

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<sup>3</sup> "Rape". [legaldictionary.thefreedictionary.com](http://legaldictionary.thefreedictionary.com)

<sup>4</sup> *Isah v State of Ekiti* (2024) LPELR-61971 p30-31, paras A-C

<sup>5</sup> (2009) ALL FWLR Pt. 454, p1450

<sup>6</sup> Cap C38 LFN, 2004

<sup>7</sup> Cap C53 LFN, 2004

<sup>8</sup> Cap C50, LFN 2004

<sup>9</sup> 2015

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 because unlike the Criminal code and penal code it provides for gender neutrality, expanded scope of what "penetration" means, protects vulnerable groups like children and comprehensive penalties for offenders. The case of *HALADU v FRN*<sup>10</sup>, is particularly instructive on this points. 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>11</sup>

### Conceptualizing Consent:

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.

- a. **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.

b.

In the case of *Ahamefule v. Imperial Med. Centre*<sup>12</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 United Kingdom Sexual Offences Act<sup>13</sup> of the and the cases of *Oriyomi v FRN*<sup>14</sup>, *Isa v State*<sup>15</sup>, are very supportive of the holding of the court in *Ahamefule v Imperial Med. Centre*<sup>16</sup>

The issue of consent freely given is germane to the establishment of the offence of Rape<sup>17</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. This was the reasoning of the court in *R v Olugboja*<sup>18</sup>.

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<sup>10</sup> (2022) LPELR-56996 (CA) p 32-33 paras A

<sup>11</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

<sup>12</sup> (2005) 5 NWLR (Pt. 917) 51

<sup>13</sup> 2003

<sup>14</sup> (2023) LPELR-61037(CA)

<sup>15</sup> (2016) 6 NWLR (PT 1508)P 243

<sup>16</sup> supra

<sup>17</sup> *Rabiu v State* (2005)7 NWLR (Pt. 925)491.

<sup>18</sup> (1981)3 All ER 443.

b. Consent must not be obtained by fraud, deception or misrepresentation. This was the crux of the decision in *R v Flattery*<sup>19</sup>. The cases of *R v Williams*<sup>20</sup> and *R v Harms*<sup>21</sup>. 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<sup>22</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 as was held in *Assange v Swedish Prosecution Authority*<sup>23</sup>.

### **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>24</sup>. This was adumbrated in *Danjuma v State*<sup>25</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.

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>26</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>27</sup> stated Per SANKEY J.S.C that the prosecution must prove by virtue of s. 283

<sup>19</sup> (1877) 2 QBD 410

<sup>20</sup> (1923)1 K.B. 340

<sup>21</sup> (1943) CanLII 146 (SK CA)

<sup>22</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>23</sup> (2011) EWHC 2849 (admin)

<sup>24</sup> The 1999 constitution of Nigeria(amended)

<sup>25</sup> (2019) 10 NWLR ( PT. 1679) P. 13-17 paras C

<sup>26</sup> (2016) LPELR-405419(SC)

<sup>27</sup> (2024) LPELR-62527(SC)

- (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.”

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>28</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. The cases of *IKO V STATE*<sup>29</sup>, *JEGEDE V STATE*<sup>30</sup> and *POSU V STATE*<sup>31</sup> also support this position.

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.

### **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. This was the holden in the English case of *DPP .V. Morgan*<sup>32</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>33</sup>. Under Section 50 the Penal

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<sup>28</sup> (2016) 1 S.C (PT. III) P.94

<sup>29</sup> (2001) LPELR-1480 (SC)

<sup>30</sup> (2001) 14 NWLR (Pt. 733) 264

<sup>31</sup> (2011) 2 NWLR (Pt. 1234) p.393 at 414

<sup>32</sup> (1975)2 All ER 347

<sup>33</sup> Criminal Procedure Act, s. 176.

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 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>34</sup>, except where there is a subsisting valid order of judicial separation or a decree nisi of divorce.

### **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. 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>35</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>36</sup> Lord Morris said that corroboration is to confirm only to augment credible evidence not deficient evidence. This was also the position in *R v Baskerville*<sup>37</sup>

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>38</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>39</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>40</sup> and this was followed in the cases of *Obri v State*<sup>41</sup>, *In Dagayya v State*<sup>42</sup> and *Isaac Sambo v State*<sup>43</sup>.

Corroborative evidence may include:

<sup>34</sup> Definition of unlawful carnal knowledge by Section 6 of the Criminal code

<sup>35</sup> *supra*

<sup>36</sup> (1973) A.C. pg 296 at 315

<sup>37</sup> [1916] 2 KB 658

<sup>38</sup> (1981) LPELR-2644(SC)

<sup>39</sup> (2007) 3 sc (pt II) p. 33-36, paras. A-D6

<sup>40</sup> Section 209 of the Evidence Act 2011

<sup>41</sup> (1997) LPELR-2194 (SC)

<sup>42</sup> (2006) LPELR-912 (SC) P. 18-19 Paras. E-C

<sup>43</sup> (1993) 6 NWLR (Pt 300) 399

i. Medical Evidence: medical reports showing physical injuries or signs of sexual intercourse (e.g. hymenal tear or bruises). In *State v Ijiwande*<sup>44</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.*”

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

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

### **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 counseling or advocacy. Without adequate preparation and support (psychological and emotional), victims may struggle to present

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<sup>44</sup> (2020) LPELR-51627(CA)

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>45</sup>.

### **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>46</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;

**Victim blaming:** Victim blaming is rooted in the notion that a victim's actions, appearance, or decisions contributed to the crime, for instance the victims dressing or disposition, evidence of prior sexual intercourse, if the victim delays in making a report, etc

**Stranger-Rape Stereotypes:** Rape is mostly thought to be perpetuated by strangers but there are many clear cases where they are perpetuated by familiar persons to the victim. Most times the perpetrator and victim often share a pre-existing relationship, which may involve trust or authority.

**Previous Romantic relationship.** This is mostly grounded on the assumption that a previous romantic or sexual relationship implies ongoing consent. The court has held in the case of *Okoh v Nigerian Army*<sup>47</sup>, that mere proof of previous romantic relationship is not sufficient as a defence in rape cases.

**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.

**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>48</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.

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<sup>45</sup> Section 38 & 39 Violence Against Persons Prohibition Act 2015

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<sup>47</sup> (2013) 1 NWLR (Pt. 1334) 16

<sup>48</sup> (1889) 59 NY 374 1874.

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.

### **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;

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>49</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 wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract.*"<sup>50</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>51</sup>. This theory of implied consent is the most endorsed justification for the spousal rape exemption.

<sup>49</sup> Garner B. A (ed.) Black's Law Dictionary, 10th Edition, p. 1450

<sup>50</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>51</sup> S. Elvy, "A Post Colonial theory of Spousal Rape: the Caribbean and beyond". (2015) 22 Michigan Journal of Gender and Law P. 150

The provisions of the Criminal and Penal codes<sup>52</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 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.

## CONCLUSION AND RECOMMENDATION

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<sup>52</sup> Section 6 of the criminal code Act and Section 282(2) of the Penal code Act

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. **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."
2. **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:
3. **Specialized sexual offenses courts:** Establish special fast-track courts with trained judges to handle rape cases efficiently.
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.