



DEBOTTLENECKING THE LAW TO RESTRAIN AND SUPPRESS THE ABUSE OF LASSES IN NIGERIA

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Abstract

There have been reports lately and noticeable rise in cases of rape and abuse of ladies in the country which has resulted in suggestions that the laws in place presently made to tackle this misbehavior have been somewhat futile. Therefore, in this writing, we are trying to indicate the "ineffective" areas in the present laws which are hindering the successful prosecution of cases of rape against women or girls in Nigeria. The response of country's laws to these "ineffective" areas were deliberated upon. We therefore indicated some legal actions that can be taken couple these areas in the laws which will make them more effective in tackling the rising cases of rape of lasses in Nigeria.

Key Words: Law, Rape of lasses, Nigeria.

Introduction

The uptrend incidents of rape and abuse of women including the girl child, suggests that the present approach of Nigerian law, is not the legal solution to this issue. Discourse on cases of rape of women is increasingly dominating the public space in Nigeria. This may be because of the rise in the number of Police account of reported rape cases in Nigeria during the first five months of 2020.¹ This figure may be comparatively lower than is actually the case, because for various reasons, including the fear of stigmatization, police extortion and lack of trust in the criminal justice system, the vast majority of sexual assault victims do not make formal reports at police stations.^{1s} In recent times, it became apparent in Nigeria that minors are also increasingly constituting a sizeable proportion of rape victims. The problem lies not in tabulating the number of rape cases (including that of children) recorded within a specified period, the problem

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¹The "Nigeria Police Force" disclosed that it received a total of 717 rape cases between January to May 2020 (Rape: 717 Cases Reported in Five Months in Nigeria"<http://saharareporters.com/2020/06/15/rape-717-cases-reported-five-monthsnigeria> (accessed 19/10/2020))

² Kunle Adebajo"Fact Check: Are 2 million Nigerians raped every year? Here is what we know"ICIR<https://www.icirnigeria.org/cdn.ampproject.org/v/s/www.icirnigeria.org/factcheck-are-2-millionnigerians-raped-every-year/amp/> (accessed 19/10/2020), Also Kunle Adebajo "REPORT: Brazen police extortion is frustrating rape victims' quest for justice In Nigeria"ICIR<https://www.icirnigeria.org/report-policeextortionIs-frustrating-rapevltims-quest-for-Justice-in-nlgena/> (19/10/2020)

is the extent to which such cases bothering on rape, including rape of minors have been successfully prosecuted in Nigerian courts or the culprits handed the appropriate punishment in the circumstance.²³⁴

In other words, apart from the psychologically traumatic effect on the victims, rape is a criminal offence globally, including Nigeria. Nigerian legislation punish rapist with imprisonment including life imprisonment.⁵ However, as we have noted, the amount of convictions secured for rape cases, is grossly insignificant compared to the number reported to Police.⁶ Our concern is the apparent ineffectiveness of sanctions in deterring the would-be perpetrators of the act on adults and shockingly on children despite the sentence of life imprisonment attached.⁷ We, in the circumstance, seek for an answer.

Aside the apparent ineffectiveness of sanctions, there are also cases of the inability of prosecution to prove beyond reasonable doubt, the culpability of accused persons due mainly to inability to master and pragmatically manipulate available evidence to achieve the objective of securing a conviction.⁸ The concern the researchers have is to identify the pitfalls facing a prosecutor and suggest ways, to the prosecutor and the public on how to deal with them.⁹ In this respect, we posed two questions: first, what are the pitfalls facing a prosecutor in the trial of an accused person for rape? Second, how can a prosecutor legally tackle these pitfalls?

Furthermore, a figure or numbers of factors have been selected as assisting the increment in the prevalence of rape cases within Nigeria, especially as it affects the girl child and we strongly believe that if we can inhibit the effect of these factors the incidents of rape of women and children will be significantly reduced. We therefore posed the question, how can the law be manipulated to counter factors enabling rape of women and children in Nigeria?

³ Gift Aginga "Epidemic" of Rape Assailed in Nigeria" <https://www.voanews.com/africa/epidemic-rapeassailed-nigeria> (accessed 2/8/2020), Joy Ngozi Ezeilo "The Rape Scourge In Nigeria" <https://www.thlsdaylive.com/index.php/2020/06/30/the-rape-scurge-in-nlgena/> (accessed 2/8/2020); Idoko CA, Nwobodo E.D, doko C1 "Trends in Rape cases in a Nigerian State AfriHealth SCI. 2020, 20 (2) 668-
<https://doi.org/10.4314/abs.v20iz.17> (accessed /4/ 9 /2021)

⁴ Md. Abdul Wohab, Sanzida Akhter "The effects of childhood sexual abuse on children's psychology and employment" *Procedia Social and Behavioral Science* 5 (2010) 144-149 <https://www.sciencedirect.com/science/articles/pii/S1877042810014370/pdf?md5=> (accessed 19/8/2021)

⁵ <https://www.prelumtimesng.com/news/top-news/192895-only-18-rapeconvictionsrecorded-in-Nigeria-Iegalhistory-lawyer.html> (accessed 4/9/2021).

⁶ <https://www.icinegna.org/fact-check-no-itisnt-true-nigena-has-recorded-only-18convictions-in-rape-cases/> (accessed 4/9/2021)

⁷ Criminal Code Act, section 358

⁸ Karl Hanson, R. "The Psychological impact of sexual assault on women and children: A Review" *Annals of Sex Research* 3, 187-232 (1990) <https://doi.org/10.1007/BF00850870> (accessed 7/5/2021)

This work is in other words, branched into four parts. The first part tackles with the pitfalls that hinder attempts to mitigate the rape of ladies, including the girl child in Nigeria, while the second part deals with suggested legal responses to these pitfalls. The third part, treats with suggestions for enhancing the legal responses to the pitfalls hindering attempts to curb the rape of ladies in Nigeria and the fourth part, deals with the conclusion.

Pitfalls Facing Prosecutor in the Trial of accused Person for Rape a. Punishment for Rape

As we noted, the offence of rape attracts as much as life imprisonment under most laws in Nigeria however despite the relatively long period of incarceration the incidents of rape, including rape of the girl child, have continue to increase.¹⁰ Studies has indicated that while imprisonment is a crucial means of incapacitating and penalizing those who engage in criminal activities, evidence demonstrates that lengthy jail sentences, have limited efficacy in deterring individuals from committing further offenses.¹¹ The belief that imprisonment will reduce crime has been described as merely a "belief" as there is little (if any) evidence to, support the idea that imprisonment can reduce crime on any significant scale anywhere in the world Indeed "...Existing research suggests that enhancing the certainty of punishment, rather than its severity, is more likely to result in deterrent effects.¹²¹³ Given this fact, it is not unexpected that the number of rape cases in Nigeria, has continued to grow over the years, despite the severe punishment of life imprisonment for those found guilty.¹²

b. Evolving Meaning of Rape in Nigeria laws

Criminal Code Act of Nigeria describes Rape in the following term; Any person who has unlawful carnal knowledge of a woman or girl without her consent or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm or by means of false and fraudulent representation as to the nature of the act or in the case of a married woman by personating her husband is guilty of an offence which is called rape.¹³

This offence can be committed against a woman (old or young). It is therefore held to be bad for legal counsel to argue that a person who raped a 9 years old girl, should not

¹⁰ Chiazor IA, Ozoya MT, Udume M & Egh3reva ME "Taming the Rape Scourge: Issues and Actions" (2016) 14 (3) Gender & Behaviour 7764-7785

¹¹ For instance, a 2017 Nigerian Bureau of Statistics reports shows that there were 2279 reported cases of rape in Nigeria with no conviction cited in Nduka Orjinmo "We are tired: Nigerian women speak out over wave of Violence" www.bbc.com/cdn.ampproject.org (assessed 6/4/2021)

¹² Lukas Muntingh "Punishment and Deterrence: Don't Expect Prisons to Reduce Crime" https://www.researchgate.net/publication/301275894_Punishment_and_deterrence_Don't_expect_prisons_to_reduce_crime (accessed 3/7/2021)

¹³ Valerie Wright Deterrence In Criminal Justice: Evaluating Certainty vs. Severity of

be charged with rape but with defilement of girls under 11 years.¹⁴ The Penal Code applicable to Northern Nigeria, has similar provisions but introduced an interesting innovation.¹⁵

The Criminal Code Act explains that the term "unlawful carnal knowledge" means carnal connection which takes place otherwise than between husband and wife while "carnal connection" or carnal knowledge is commonly used to describe a specific offence. Regarding that specific aspect. Is fully accomplished upon entry.. "Penetration" in this context means the "penetration" of the penis into the vagina and any or even the slightest penetration being sufficient to constitute the act sexual intercourse.¹⁴ In other words, partial or incomplete penetration of the vagina by the penis of the accused is sufficient to prove the offence of rape. Consequently "emission" of semen and rupture of hymen are not necessary to prove the offence of rape.

The Violence Against Persons (Prohibition) Act, 2015, provides, an individual commits the crime of rape if -

- a. She or he intentionally penetrates the vagina, anus or mouth of another person with any other part of his body or anything else,
- b. The other individual does not give permission for the penetration or
- c. The consent is gained by force or fear of harm, by means of threat or intimidation of any kind or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by pretending to be his or her spouse.¹⁵

Furthermore, the instrument of penetration does not necessarily have to be the male genital organ, as specified in the Criminal Code Act, but can be any portion of the perpetrator's body or any other object. This Act has obviously expanded the meaning of rape to include penetration of anus or mouth of the victim .The Act, also do expressly recognizes the gang rape. The provisions of this Act supersede the Criminal Code Act. Penal Code Act and Criminal Procedure Act. The only snag is that this law is applicable only to the Federal Capital Territory of Nigeria and not to the States of Nigerian

Punishment The Sentencing Project <https://www.sentencingproject.org> (accessed 3/7/2021) 13 Criminal Code Act (Cap, C 38) Laws of the Federation of Nigeria (LFN) 2010, section

357. This is replicated In the Criminal Code Laws of most States in southern part of Nigeria, See for instance, Criminal Code Law (Cap, 36)Laws of Anambra State 1991, section 308 Criminal Code Law (Cap, 30) Laws of Enugu State 2004, section 308,

¹⁴*Onoyiwa v. State* (2018) LPELR- 44255 (CA)

¹⁵Penal Code Act, section 282

¹⁶ *Aliyu v. State* (2019) LPELR- 47421 (SC) *Natsaha v. State* (2017) LPELR-42359 (SC)

¹⁷ Violence against Persons (Prohibition) Act, section 1 (1). Violence against Person (Prohibition) Act, section 1 (2)(c). Violence against Person (Prohibition) Act, section 45 (2).Violence against Person (Prohibition) Act, section 47.

Federation. The States are left to birth their own legislation on this area. However, the legislations in these States have essentially the same provisions with Violence Against Persons (Prohibition) Act, 2015.

Including the provision on rape, For instance, Enugu State Violence Against Persons (Prohibition) Law provides:

- (1) A person commits the offence of rape if-
 - (a) He intentionally or purposely penetrates the vagina, anus or mouth of another person no matter how slight with his sex organ or any other part of his body or anything else:
 - (b) The other individual does not consent to the penetration or
 - (c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the Act or the use of any substance or addictive capable of taking away the will of such person or in the case of a married person by impersonating his partner /spouse.¹⁶

The Violence Against Individuals (Prohibition) legislation changed the existing meaning of rape under Nigerian Law since the first legislation in 2015.¹⁷ First, rape is now no longer fulfilled only and exclusively on the slightest penetration of the vagina with the penis without consent but includes penetration of the vagina with any bodily part or object. Further, the subject of the "slightest penetration is now not limited to the vagina but includes "the mouth and anus of the victim," This expansion by the Violence Against Persons (Prohibition) legislation in Nigeria raises the possibility of the perpetrators of forced gay sodomy to be charged for rape. Prior to VAPP legislation they would unlikely be charged for rape.

c. Proof of Rape under Nigerian Law

(a) *Proof Necessary Elements of Rape:* In order to establish the offence of rape in Nigeria, it is legally essential for an individual to provide proof beyond a reasonable doubt of the necessary elements.¹⁸ The Supreme Court of Nigeria has interpreted "proof beyond reasonable doubt" in different ways. In *State v. Onyenkwu Pats- Acholonu* JSC made this apt explanation,

...it must be emphasized and stated that evidences beyond reasonable doubt does not mean or import or connote beyond any degree of certainty. The term strictly means that within the bounds of evidence adduced and staring the court in the face, no tribunal of justice worth its

¹⁶ Violence Against Person (Prohibition) Law No.2 of Enugu State, Section 3 (1)

¹⁷ Criminal Code Act, sections 214, 215 and 217

¹⁸ Evidence Act, section 135 (1), See *Yusuf v. FRN* (2017) 43830(SC) (2004) LPELR- 3116 (SC) Pp. 44-45

salt would convict on it having regard to the nature of evidence led and the law marshaled out in the case ...

To *Rhodes- Vivour JSC*, (as he then was), this term simply means establishing the guilt of the accused person with compelling and conclusive evidence. In *Ewugba v FRN*, Rhodes- Vivour sees the nature evidence required to establish the guilt of the accused person in "proof beyond reasonable doubt" cases as one which must be Compelling and reliable. In *Ajayi v State*, Fabiyi JSC, defines this phrase as simply meaning "..... establishment of all the ingredients of the offence charged in tandem with the dictates of section 138 of the Evidence Act and section 36 (5) of the 1999 Constitution (as amended). In *State v Salawu*, Adekeye JSC, (as he then was), explained the phrase thus.

... if at the conclusion of trial on the entire evidence the court is left with no doubt that the offence was committed by the accused, the burden is discharged....

In *Atolahan v State*, Peter Odili JSC, quoting Tobi JSC in *Ani v. State*, stated this phrase to mean that "..... the facts proven must by virtue of their probative force establish guilt..." In *Dahiru v State*, Bage JSC explained that the term simply means ".....establishing the guilt of the accused person with compelling and conclusive evidence, a degree of compulsion which is consistent with a high degree of probability..."¹⁹²⁰

There are two(2) cardinal factors a person demanding to prove rape need to prove same beyond reasonable doubt in this context. For a start, he needs to establish that the carnal knowledge she had with the accused person was without her consent or willingly given. Second, he needs to establish that there was a penetration "of vagina", as Kekere- Ekun JSC, explained.

Penetration is the most important and essential ingredient of the offence. The sexual intercourse will be deemed by the court as complete upon proof of penetration of the penis into the vagina. Any or even the slightest penetration will be sufficient to constitute the act of sexual intercourse.²⁰

(b) Place of Direct and Circumstantial Evidence: Rape usually takes place in situation that involves only the victim and the accused so it is difficult to find corroborating evidence in most cases to the direct evidence of the victim. In such cases, the Courts usually fall back on circumstantial evidence for corroboration. In *Oniotola & Ors.v State* Oguntade JSC, observed.

The nature of circumstantial evidence and its reliability in criminal cases have been considered by this court on several occasions. In *Ukorah v.State* (1977) 4 SC III at

¹⁹ *Smarth v. State* (2016) LPELR-40827 (SC) p.27 para.B-D; *Hassan v. State* (2016) LPELR-42554 (SC) p. 27 para.D-F; *Nwankwoala v. FRN* (2018) LPELR-43891 (SC) p. ²⁰ para.B-E.

²⁰ *Popoola v State* (2013) LPELR-20973 (SC) p.32

115116, In the opinion of Justice Idigbe, the Court recognizes that circumstantial evidence can be just as reliable, if not more reliable, than other types of evidence. Circumstantial evidence refers to a collection of circumstances that, when combined, form a complete and uninterrupted chain of evidence. If the jury is convinced that this chain of evidence has been established, they are justified in basing their decision on such circumstantial evidence.²¹

The learned author of *Wills on Circumstantial Evidence*, on the same page, makes reference to a direction of the court (and to which, we think, we should draw attention, with approval)²² in the case of *Emperor v. Browning*²³, where it was stated: "In a case in which there is no direct evidence against the prisoner but only the kind of evidence that is called circumstantial, you have a twofold task; you must first make up your minds as to what portions of the circumstantial evidence have been established and then when you have got that quite clear, you must ask yourselves is this sufficient proof? It is not sufficient to say, if the accused is not the murderer,

I know of no one who is. There is some evidence against him and none against anyone else. Therefore, I will find him guilty. Such a line of reasoning as this is unsound, for experience shows that crimes are often committed by persons unknown who have succeeded in wholly covering their tracks ...".²⁴

The courts in Nigeria are empowered generally to convict an individual based on the uncorroborated evidence of a victim but they are reminded by rules of practice that to do so would be unadvisable. The Supreme Court of Nigeria has stated the position as follows:

...In any case. it is not a rule of law but one of practice that an accused person in a charge of rape cannot be convicted on the uncorroborated evidence of the prosecutrix, In such a case, the trial Court is required to warn itself that it is unsafe to convict on the uncorroborated evidence of the prosecution prosecutrix and could convict after paying due attention to the warning if it is satisfied with the truth of her evidence.²⁵

Where the victim is a child, the position of the law is different. The Nigerian Evidence Act permits the court to receive evidence of children even when not given on oath. However, where a sole witness is a child and he gives unsworn evidence as required by law, the courts should not convict an accused person based on such unsworn evidence without corroboration.²⁶

²¹ *Natsaha v State* (2017) LPELR-42359 at p. 30 (paras. D-F)

²² Chung and Miao, cited in *Wills on Circumstantial Evidence*, Seventh Edition (1936) p.324).

²³ *Emperor v. Browning*, 39 IC 322

²⁴ *Adie v State* [1980] 1- 2 SC 116

²⁵ See *Sunmonu v. IG* (1957) WRMLR 23; *R v. Graham* (1910) 4 CR App Rep 218; *R v. Pitts* (1914) 8 CR App Rep 65; *Reckie v. The Queen* 14 WACA 501; *Ibeakanma v. The Queen* (1963) 2 SCNLR 191 at 195

²⁶ Evidence Act, section 209 (1). Evidence Act, section 209 (3).

d. Factors propping incidents of Rape in Nigeria

Mainly, there are some factors identified as propping increased incidents of rape cases in Nigeria and they include exposure to modernity; mishandling of cases by law enforcement agents, Peer Group Pressure Influence, myth about sex, influence of indecent dressing and nature of adolescents.²⁷ Surprisingly attempt was made to implicitly narrow perpetrators of rape to mainly adolescents.²⁸ However, available data suggests that the perpetrators cut across all age brackets.²⁹

It is furthermore, postulated in another work that Child sexual abuse among adolescents with physical contact happened most frequently in a public place or a house other than the victims and most perpetrators were known to the victims.³⁰ Based on other works in this area, the work postulates that child pornography usually causes arousal but it is not known if the pornography makes the perpetrators to act based on their arousal although it seems to be part of the constellation about what causes them to abuse.³² This postulation is however based on non-Nigerian studies. The problem is that studies on this relationship over the years have not been definite. While a lot of studies do not see any relationship in any aspect between viewing pornography and violent rape, some

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Ezeugwu EC, Ohayi SR, Iyoke AC, Nnaji HC (Supra note 5, p.182) suggest that rape equally occur In the victim's residence.

³² <https://www.bbc.com/future/article/20170926-is-porn-tJarmful-the-evidence-themyths-and-theunknowns> (accessed 18/8/2020)

³³ Raquel Kennedy Bergen and Kathleen A. Bogies "Exploring the Connection Between Pornography and Sexual Violence (2000) 15(3) Violence and Victim 227-234, Ferguson

³⁴ O, Hartley PD "The Pleasure is momentary ... the exposure damnable? The influence of Pornography on Rape and Sexual Assault" (2009) 14 (5) Aggression and Violent Behaviour 323-329, Kutchinsky B "The Effects of Easy Availability of Ponography on Incidence of Sex Crimes: the Danish Experience" (1973) 29 (3) J Soc. Iss. 163-181, Michael castleman MA "Evidence Mounts: More Porn Less Sexual Assault"<http://www.psychologytoday.com.cdmamprojed.corgtv/www.psychology.com/u/s/blog/all-about-sexj201601/evidence-mounts-more-pornless-sexual-assault> (accessed 1/5/2020)

³⁵ B. Kutchinsky "Pornography and Rape: theory and practice? Evidence from crime data In four countries where Pornography is easily available" (1991) 14 (1-2) Int. J. Law Psychiatry 47-64, Diana EH Russell "Pomography and Rape" (1995) 12 (2) Prevention In Human Services 45-79,

³⁶ Flood M "The harm of Pornography Exposure among Children and Young People" (2009) 18 (6) Child Abuse Review 384-400, "Is there Connection Between Porn Culture and Rape Culture? Report of National Center for Sexual Exploitation (an American conservative non-profit group known for its antipornography advocacy) <https://fightnewdrugs.org/violence-Is-rape-connectedwithporn/> (accessed 1/5/2020)

Subomi Plumptre "TheRise of Internet Pom and its Generational impact" https://www.google.com/search/Q=subomi%20Plumptre%3A%20the%20rise%20of%20internet%20Pom%20and%20its%20generational,&ie=utf_8&oe=utf8&a=t&rls=or&.moZilla:enUs:official&client=firefox_a&source=hP&channel=np

(accessed 23/9/2021)

³⁷ Fredrick O. Oshiname, Akintayo O. Ogunwale, Ademola J. Ajuwon "Knowledge and' Perceptions of Date Rape among Female Undergraduates In a Nigerian University" (September 2013) 17 (3) African Journal of Reproductive Health 137-148.

suggest otherwise. Others acknowledge that there are some relationships but not significant.³³³⁴ However, as Jessica Brown observed. "It's a tricky sea to research but until the answers are more definitive, the evidence so far suggests that the likelihood that porn has a negative effect, very much, depends on the individual consuming it".³⁵

Majorly, we do not have much research into this area in Nigeria. However, the few researches in this area tend to suggest a link between pornography or at least a part played by pornography in inducing rape.³⁶ According to Oshiname, Ogunwale, Ajuwon among the "substances" used by perpetrators of date rape to facilitate their action including being subjected to watch pornographic movies.³⁷

Aside these, it is argued that "rape culture is allowed to continue when we buy into ideas of masculinity that see violence and dominance as "strong" and "male" and when women and girls are less valued. Indeed, throughout history, rape has been used as a weapon of war and

oppression"³¹.

Legal Responses a. Punishment for Rape

Although punishment for rape³² is well spelt in legislations however there is also a statutory mandate on a judge or any arbiter not to impose maximum sentence on first offenders.³³ Such arbiter has statutory leverage to even impose a fine in lieu of imprisonment. Indeed, such leverage implies that it is only when the fine is not paid that imprisonment will be considered.⁴¹ The leverage of fine will not be available wher/e a law prescribes the minimum period of imprisonment to be applied.

b. Evolving definition of Rape Under Nigerian law

From our discussion so far, rape within the precincts of Nigerian law, will therefore involve all sexual acts or acts of sexual coloration carried out without prior consent of the victim. If the victim consented to such acts, then the offence of rape will not result.³⁴

The definition of Rape in the Criminal Code envisages absence of consent which invariably means that where the victim consents it will no longer be rape. However, there might be doubts as to whether a girl child falls within this definition of rape in

³⁸ Ibid, 144-145

³⁹ Criminal Code Act (Cap C 38) LFN 2010, section 358.

⁴⁰ section 416 (2) (d) of Administration of Criminal Justice ct 2015

⁴¹ *Ogunbayo v. State* (2007) 8

NWLR (Pt. 1035) 157 at 185

⁴² Administration of Criminal Justice ct 2015, Section 420 (4).

view of the issue of consent. The provisions of the Criminal Code legislation, however, appear to have the girl child in contemplation as potential victim of rape. The employment of the term "woman or girl" in the definition of rape, evinces such contemplation.³⁵ The courts seem to agree with this position. For instance, in *Onoyiwa v State*³⁶, Counsel for the accused argued that the accused should not have been charged with the offence of the rape of a 9 year old girl instead he should have been charged with defiling of a girl under 11 years. However, this argument was rejected by the Court, who felt that the accused can be charged for the offence of rape since the definition of the offence envisages both "woman" and "girl". VAPP legislation do not differ from the Criminal Code on this issue. Instead of gender specific terms like "woman or girl" used in the Criminal Code, VAPP uses "person" which can accommodate a woman or a girl in its definition. It therefore appears that under extant relevant legislation in on this issue in Nigeria, the girl child can be a victim of rape in same circumstances as a woman. The Penal Code, is innovative in the respect. It clearly outlays rape with persons under 14 years or of unsound mind.³⁷

c. Proof of Rape under Nigerian Law

A Constitutional requirement for a person charged with committing criminal offences in Nigeria, including rape, is that he has a right to be presumed innocent until the prosecution proves the contrary.³⁸ This therefore, places enormous responsibility on the prosecution to carefully present the case of the victim while being wary that any negligence in his prosecution may be exploited to hilt by the defence. In this regard, the prosecutor must be conversant with the legal position on consent and penetration with respect to rape cases.³⁹ In addition, the prosecutor must know when to resort to and the "quality" of circumstantial evidence to use in corroborating the direct evidence of the victim because of the absence, in most cases of direct evidence from a witness corroborating the commission of the offence, although tendering of evidence to corroborate direct evidence is not part of our statutes but our courts feel uncomfortable convicting an accused without it.

d. Factors propping incidents of Rape in Nigeria

The response of the law to factors propping incidents of rape in Nigeria depends on the factor in review. For instance, there is no law addressing such factors as modernity, peer group pressure/influence, myth about sex, influence of indecent dressing and nature of adolescents. Other factors like mishandling of cases by law enforcement agents and

⁴³ Criminal Code Law of Bendel State, sections 358 and 218 respectively. Bendel State was already extinct and replaced by two other States, Delta and Edo, by the time this case was commenced. However, Legislations of the defunct Bendel State applied for a while in these new States.

⁴⁵ *Onoyiwa v. State* (2018) LPELR- 44255 (CA) Per Philomena Mbua Ekpe J.C.A (Pp. 9- 12, paras. E-D).

⁴⁶ Penal Code Act, section 282 (1) (d).

⁴⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) section 36 (5), See also *Yusuf v FRN* (2017) 43830(SC)

⁴⁸ Nigeria Police Act 2020, section 31

pornography elicited some responses from the law. Nigeria Police Force is the principal law enforcement agent in Nigeria and most cases of rape are first reported to them. Nigeria Police officers are empowered to investigate an allegation of crime in accordance with due process and report finding to the Attorney-General. Some form laws or regulations are generally in place to regulate the sale and consumption of pornography at least in the public space in Nigeria.⁴⁰ This regulation is not without constitutional backing. Private circulation and consumption of pornography is not largely prohibited except for child pornography."⁴¹

Recommendations a. Punishment for Rape

As we earlier noted in this work, researches indicate that increases in the certainty of punishment, as opposed to the *severity* of punishment is likely to deter would be rapist. The extant provisions on legislation dealing with rape in Nigeria and judicial application of these provisions suggests that the emphasis in Nigeria, seems to be more of severity than certainty. The extant provisions on rape, all prescribe punishments. However, as we earlier noted, the courts are given the latitude to impose a punishment less than what the status prescribed. Sadly, this leverage has been used by the courts to impose punishments which tended to trivialize the effect of rape on the victims. For instance, the latitude has resulted in a trial court sentencing an accused to seven years imprisonment with hard labour with an option of fine of five thousand naira. In another case, the accused person was sentenced to, instead of the offence prescribed in the statute to five years imprisonment and a fine of N100,000.00 (One Hundred Thousand Naira).⁴² The imposition of these lesser punishments, in our view, does not meet the gravity of the offence and leaves room for *uncertainty* as to punishment for cases of rape reported to them accountable and therefore punished accordingly.

We do not claim to have exhausted all the possible legal approaches to tackle the issue of rape of ladies in Nigeria in this work but we feel that this is a modest attempt and that if the suggestions in this work is implemented it will assist in strengthening the law to effectively contribute in the quest to curb the scourge of rape of ladies in Nigeria.

⁴⁹ Criminal Code Act (Cap C 38) LFN 2010, sections 233B- 233D

⁵⁰ Cybercrime (Prohibition Prevention etc) Act 2015, section 23

⁵¹ See *Ogunbayo v. State* (2007) 8 NWLR (Pt. 1035) 157.