

## **EXTENDING RAPE FRONTIERS: In Light of Violence Against Persons (Prohibition) Act, 2015 and Mass Media Portrayals**

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### **Abstract:**

**Background:** EXTENDING RAPE FRONTIERS: In Light of Violence Against Persons (Prohibition) Act, 2015 and Mass Media Portrayals interrogates extant conceptions and legislations of rape, informed by feminist principles of equity, inclusion, and intersectional approaches and the importance of understanding power relations. This study questions existing gender assumptions and draws attention to overlooked male sexual victimization and is therefore a courageous attempt to explore alternative approaches to the overlooked cross-gender sexual victimization and exploitation just as it may sound anti-social. Obviously, rape afflicts females predominantly while mass media reportage is slanted and inadequate, but rather than apportion blame, this paper examines the shared, communal responsibility of the mass media, individual duty of care, survival and self-preservation strategies aimed at dissuading the perpetrators of the crime and encouraging gender-harassed and exploited victims to speak up towards reducing the occurrence of this heinous and degrading crime.

**Methodology:** This researcher reviewed the expanded definitions and perspectives of the definition and conception of rape as seen under the Criminal and Penal Codes in favour and the VAPP Act, 2015. Extensive literature and case law were also reviewed, analysed, synthesised and highlighted. Due to dearth accessible research statistics in Nigeria, the author draws from other jurisdictions such as the United States and the United Kingdom to make the case.

**Conclusions:** Literature suggests a high prevalence of sexual victimization among males that in many circumstances mirror those found among females but highly under-reported due to reliance on traditional gender stereotypes and inconsistent definitions. In this regard, the scholar opines that the mass media should up their game and recommends changes that move beyond traditional gender assumptions, which can harm everyone.

**Keywords:** Feminist principles, Violence Against Persons (Prohibition) Act, 2015, Made to Penetrate, Sexual Harassment, Gender-Neutrality, Mass Media.

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Date of Submission: 08-05-2021

Date of Acceptance: 23-05-2021

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### **I. INTRODUCTION**

**Rape** is one of the most heinous sexual offences against a person. There has been a persistent rise in rape incidence in Nigeria in recent years. Thus, the criminal justice system should be well-equipped to provide necessary protection for the victim while not ignoring the rights of the accused.

In a story told by Natasha McKeever, two of her friends (on separate occasions) had a similar experience. They both fell asleep at a party, severely intoxicated, and woke up to find a stranger having sex with them. The reactions from others to these events were very different in each case. One was taken very seriously as a case of rape and the other was seen as a bit of a joke. The reason for the difference in responses was that the first of her friends is a woman who had woken up to find a man having sex with her while the second is a man who had woken up to find a woman having sex with him. Neither friend contacted the police, 'but had they done, my female friend could have pressed charges of rape, whereas my male friend could have pressed charges for sexual assault or 'causing a person to engage in sexual activity, but not rape, because only a man can commit rape in the United Kingdom.'

One of the major concerns of **feminists** in the United States has been the law and social reality of rape. As the incidence and prevalence of rape in Nigeria and some other countries is appallingly high, and continues to rise, feminists are raising serious questions about the present state of the law and social reality of rape. Feminists themselves advocate the principles of equity, inclusion, and intersectional approaches to understanding power promote and thereby question existing gender assumptions.

The term **gender-neutrality** in rape legislations recognize that both men and women can be rape victims as well as perpetrators, representing a shift from traditional understandings of the nature, effects, and

dynamics of non-consensual penetrative sex acts in favour of empirical methods of appropriately segregating criminal conduct. Male rape was first recognized under English law in 1994 when the definition of rape was revised so as to include non-consensual, penile-anal intercourse of a woman or a man. Lori Girshick notes that: The lesbian, bisexual, and gay communities have generally denied abuse, silenced victims, and protected abusers. This loyalty to the community has made it difficult to expose the negative aspects of abusive same-sex relationships.

The purpose of Gender neutrality is to expand the definition of rape to recognise male victims and female perpetrators while not undermining the rights of the accused. Jurisdictions that have adopted gender-neutral laws include Canada, all Australian states, the Republic of Ireland, Finland, England and Wales, and the vast majority of states within the United States have adopted an expansive definition of sexual intercourse that includes penetration of the vagina, anus, or mouth with a penis, hand, tongue, or inanimate object.

## **II. VIOLENCE AGAINST PERSONS (PROHIBITION) ACT, 2015, RAPE, MADE TO PENETRATE**

The main legislations which cover rape offences in Nigeria are the **Criminal Code** applicable in the Southern states of Nigeria, the **Penal Code** applicable in the Northern states of Nigeria, the **Violence Against Persons (Prohibition) Act, 2015** applicable only to the Federal Capital Territory, Abuja. For the purpose of this work, the provisions of the Criminal Code on the offence of rape will be critically analysed. In light of the rising number of rape cases in a society which promotes equality of all genders and persons, the question must then be asked as to what is responsible for the increased vulnerability of the female gender to various forms of sexual abuse, inclusive of rape.

In simple terms, **rape** is forceful non-consensual sexual intercourse with someone who is not one's lawful wife. It is the sexual penetration of a woman against her will. According to the **Black's Law Dictionary**, "*The common law crime of rape requires at least slight penetration of the penis into the vagina.*" **Section 357 of the Criminal Code** defines the crime of rape for the purpose of the Act as the "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 threat or intimidation of any kind, or by fear of harm, or by means of fraudulent representation as to the nature of the act, or, in the case of a married woman, by impersonating the husband." We will now subject this definition to critical analysis.

Under **section 6 of the Code**, 'unlawful carnal knowledge' is defined as carnal connection which takes place otherwise than between husband and wife. Thus, Nigerian law does not recognise marital or spousal rape that is forced sexual intercourse by a husband with his wife against her will. The section also states that when the phrase "unlawful carnal knowledge" is used in the definition of an offence, it implies that the offence is complete upon penetration. Even the slightest penetration will be sufficient as stated by the Supreme Court in the case of **Ogunbayo v State (2007) 8 NWLR [Pt. 1035] 157 S.C.**

This unlawful carnal knowledge constitutes the *actus reus* (guilty act or physical element) of the offence which must be proved in order to secure a conviction of the offender on a charge of rape.

Also, the offence of rape can only be committed by male persons in Nigeria, particularly those of or above twelve years of age as those under this age are presumed by law to be incapable of having carnal knowledge and thus cannot commit or be guilty of the offence of rape, as provided under **section 30 of the Criminal Code**.

The standard of proof in rape cases is the same as that required in all criminal proceedings by **section 135 of the Evidence Act**, which is proof beyond reasonable doubt. Unfortunately, the common practice in Nigeria is to require the prosecution and the victim to provide the court with corroborative evidence that the act of rape was committed and it was, in fact, committed by the accused person. Thus, the court in **Upahar v State (2003) 6 NWLR [Pt. 816] 230 C.A.** stated that the solitary evidence of the victim is not sufficient to establish the offence of rape. There must necessarily be independent credible corroborative evidence that must not only support the claim of the victim that the accused raped her but must also unequivocally implicate the accused person.

The punishment of rape is prescribed under **section 358 of the Criminal Code** to be imprisonment for life, with or without caning. With such a heavy punishment attached to the crime of rape, it is expedient that the court exercises due care in proceedings involving rape as a conviction of rape carries with it dire legal and social consequences for the perpetrator. This also raises the issue of false rape allegations levelled against men, especially famous men, in the news media and social media which can completely tarnish the image of these men who have in fact not committed rape. The mass media must thus play a neutral role in leaving investigations of these allegations to the police and should only report on the cases after they are verified to be true.

Section 26(1) of Violence against Persons (Prohibition) Act (VAPP) provides that; 'A person who intentionally exposes his or her genitals, or substantial part thereof, with the intention of causing distress to the

other party, or that another person seeing it may be tempted or induced to commit an offence under this Act, commits an offence termed ‘indecent exposure.’

This provision will conveniently address issues of wilful sexual stimulation from the victim directed at the accused causing the latter to commit an offence. It makes the victim’s act or contribution to the accused’s unlawful act an offence itself and also a mitigating factor. It is germane to note that VAPP applies only to the Federal Capital Territory, Abuja. In other words, the Act does not apply in all the 36 states of the Federation. The Criminal Code, Penal Code and Sharia Penal Code still apply in the territories they were enacted for. The Act is limited in its application, except it is passed by the State Houses of Assembly as a State Law. A Ghanaian artist was recently charged in 2015 for indecently exposing his genitals while performing on stage.

The discussion of rape cannot be complete without touching briefly on the concepts of **Sexual Harassment, Made to Penetrate and Defence of Provocation**. Appreciation of sexual arousal and the responses of both male and female to sexual arousal will help the law to adequately address cases of rape and sexual offences. There is no doubt, that at times, the victim in one way or another played a part contributing to the rape by sexually arousing the victim with its potential impact on sexual decision-making under the law in Nigeria. sexual arousal has the ability to impair self-control and decision making at the time of sexual arousal. Availing the defence of provocation to situations where the victim of rape caused the sexual arousal, may serve as mitigating factor. However, there has been a clamour in the last few decades from scholars suggesting necessary changes in the Nigerian rape law towards gender neutrality to bring it in conformity with global development in this area as well as to take care of the changing realities in human sexuality.

**Sexual Stimulation** according to Oxford Advanced Learner’s Dictionary, is to make somebody interested and excited about something. Sexual stimulation is any stimulus (including bodily contact) that leads to, enhances and maintains sexual arousal, and may lead to orgasm. Kolawole-Amao (2018), explains that the physiological component of sexual arousal includes changes in cardiovascular function such as heart rate, blood pressure, respiration, and genital response – erection in men while it involves the swelling of the genital tissues with blood in women. The presumption is that men respond more strongly to visual stimuli than women do. It is generally believed that women react more to physical stimuli and touch. Thus, sexual arousal may increase the likelihood of sexual coercion done in the heat of the moment.

Rape laws in Nigeria beyond the recognition that a man should control himself, should consider gender and biologically imposed responses to sexual stimulations by providing for the defence of provocation. Ssexual provocation, according to Kolawole-Amao, includes both male and female nudity together, heavy petting and kissing, caressing, smooching, dresses exposing breasts, thighs, pubic area, watching porn together, sexting or exchange of sexual content, phone sex or too much discussion relating to sex to the point of arousal. Ssexual arousal is a biological response which can impair the judgment of the aroused and the process of decision-making doing what he/she ordinarily wouldn’t have done which, if undermined, may suggest the attribution of superhuman power to such a person.

### **III. THE RESPONSIBILITY OF MASS MEDIA IN RAPE**

Communication is the essence of life and the availability of clear and accurate information is essential to making educated decisions and growing our understanding of others’ experiences. The main means of mass communication including broadcasting, publishing, and the Internet collectively regarded as mass media. However, the so-called Social media has become a central source of information, mis-information, and advertising in disguise.

Coverage is defined by *Chambers 21st Century Dictionary* as the extent to which a news item is reported in any of the media. Reporting is defined as giving an account of some topical stories through researching, discovery, selection and presentation of all material facts to weave a comprehensive story. The press, radio, television and other agencies of the mass media are charged with the responsibility of gathering, writing and disseminating ideas, opinions and information of all kinds. The mass media is the platform or avenue through which citizens of Nigeria exercise their right to freedom of expression and the press without interference, guaranteed under section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Among the most important roles that the mass media plays in any given society include socialization, provision of information and interpretation of information. The mass media is the main source of information and news relied on by members of the public to keep abreast with social, cultural, economic and political events and happenings within Nigeria and around the world.

As a secondary agent of socialisation, the mass media aids members of the society in learning, developing or imbibing values, beliefs, cultures, norms and other behaviours which are generally acceptable in a particular society. Thus, many of the opinions and views that people hold about social phenomena and social vices are largely based on the popular view as portrayed by the mass media. Also, many are spurred to imitate the behaviours displayed and reinforced on the television, in films and on social media. This is why the news

outlets must, as a matter of necessity, endeavour not to promote immoral and unquestionable characters which will in turn promote the commission of rape.

The manner in which rape is presented by the news organisations and on social media platforms makes victims reluctant to speak out against the evil as most reports cast contributory blame on the woman or girl that their provocative dressing, seductive approach or provocation of the man to anger, is in fact, the cause of the rape. They tend to disregard the animalistic attitude and behaviour of the perpetrators of this act saying things like “men cannot help themselves” as if this could ever be reason enough to commit rape.

The mass media shapes the behaviour and attitudes of members of the society by the way it presents and interprets information to the public. It decides what pieces of news to produce, sometimes reporting more than just factual data. The mass media frames the information it communicates to the public. The framing theory of information communication postulates that the interpretation of a message depends on how the narrative is presented. Our brains store information systematically by categorization. When we employ certain frames, all information connected to a subject becomes activated and brings the information to our recollection. However, when we receive new information that does not align with the knowledge or beliefs we already have, it is more difficult to process as the new data does not connect to the current framework.

The news media has affected how the public perceive who is at fault and how problems can be resolved through individual and societal responsibility in any given case of rape. The mass media may use episodic frame or emotional reporting which focuses on an individual occurrence of rape, generating public sympathy for the victim. A thematic frame on the other hand places the rape incident within a broader context, analysing the events like statistical data with a view to addressing and attempting to resolve issues that have the tendency to affect the society as a whole. The more favoured approach to reporting is the thematic frame because of its focus on the larger systematic problem of rape in society.

More often than not, in reporting cases of rape, what matters most is not what is said but how it is said. A journalist may employ semantic frames, using specific words to describe a story in order to influence or persuade people. Words can be employed in such a way that members of the public feel less connected to the rape. For instance, when words like “accuser” is used in place of “victim”, it tends to downplay the role of the person who has been raped and may even subtly suggest that the incidence of rape did not, in fact, occur. The public also reacts less sympathetically to the plight of such persons when euphemistic words and phrases are used in the reporting of rape cases. The word “rape” may also be made to appear less heinous or severe when substituted with phrases like “non-consensual sex”, “sexual assault”, “sex”, “caressing” or “fondling” which do not fit the occurrence at hand but effectively downplay it to seem like a pleasurable act. The perpetrator may often be removed from the entire discourse when passive statements like “she was sexually assaulted” or “the rape occurred” are employed.

Rape culture is a concept which collectively refers to the societal belief that normalizes and justifies sexual abuse and violence against women and girls, influencing the way society talks about rape and sexual abuse. With women’s bodies being objectified, widespread victim blaming and violence perpetrated against women in films and music as entertainment, rape culture has pervaded almost all aspects of society. This has promoted a lot of misinformation, misconceptions, myths, stereotypes and victim-blaming. Thus, there are many myths surrounding rape which are portrayed by the news media. Some of them include that all rapists are men, all victims are women and that victims provoked the rape based on the idea that the victim deserves what happened and that “bad things happen to bad people”. The resultant effect of the myths is a shift in blame from the rapist to the victim. The Canadian Resource Centre for Victims of Crimes (2020) states that “Media coverage can re-victimize victims, especially if overly sensational or inaccurate. It can reinforce misconceptions and myths about crime victims.”

#### **IV. CONCLUSIONS**

Rape is one of the most under reported and under prosecuted crimes in virtually all countries. It must also be noted that under the laws of countries like the United States of America, rape can be committed by husbands (marital rape). Under current UK legislation, only a man can commit rape along stereotypes suggesting that:

- a) Men are ‘always up for sex’
- b) Women’s sexual purity is more important than men’s
- c) Sex is something men do to women

McKeever puts it succinctly that the idea of men uncontrollable sex drive leads to the belief that it is somehow the job of women to rein it in for them. Women are sometimes described as ‘asking for it’ for being drunk, flirtatious, or even just wearing sexy clothes. The implication is that men cannot help themselves if tempted. Indeed, a 2009 study of men in London who pay for sex, conducted by Melinda Farley, Julie Bindel, and Jacqueline Golding, found that 44% believed that prostitution decreases rape (there is no empirical evidence for this claim), suggesting they believed that men need a sexual outlet, and if they can’t pay for it, they will rape

women. Linked to the idea that men have an uncontrollable sex drive is the idea that women do not have a strong sex drive and should be, in some ways, protected from sex:

- a) Sex is something that men do to women.
- b) This is, in part, because men have an uncontrollable desire for sex; women are less bothered about sex.
- c) Due to men's uncontrollable desire for sex, women must moderate their behaviour so that they don't tempt men to rape them.
- d) Men are sexually aggressive/dominant (or should be); women are not (or shouldn't be).
- e) A woman's worth is determined, in part, by her sexual purity; a man's worth is determined, in part, by his sexual prowess.

Rape law is by no means the only, or most important, cause or consequence of these beliefs, nor would changing it eradicate them. However, it would be an indication that the government recognises that women can be sexually aggressive and dominant, that men are not always 'up for' sex, and that both men and women have an interest in their sexual integrity and autonomy not being violated.

The mass media plays a crucial role in how people in the society view rape. Thus, it must endeavour to portray rape as the heinous crime it is, avoid victim blaming and assist the law enforcement agencies in the apprehension of rapists. With the adoption of this mixed approach, this study intends to achieve a redefinition of rape and examine Nigeria's extant laws and legislations on rape in order to validate or invalidate their relevance in contemporary Nigeria and globally.

The social problem faced by sexual assault victim/survivors, is complicated and not very well understood. This study will help fill the communication gaps by promoting knowledge, creating awareness, shaping attitudes and influencing change. Media advocacy is a way of talking to the entire community about sexual violence. People's opinions are shaped by what they see and read. The media is a tool advocates can use to start responsible and complex conversations. That is not to say that this effort will tackle the observed defects in contemporary media, but rather that the media as a tool for socialization and education (good, bad and indifferent) can be harnessed in ways that drive community advocacy toward a world free from sexual violence, says the Minnesota Coalition Against Sexual Assault (MNCASA).

On a final note, the mass media should embark on a more objective, investigative, informative and educative to provide the required balance to their reportage and coverage.

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Victor Aganbi. "EXTENDING RAPE FRONTIERS: In Light of Violence Against Persons (Prohibition) Act, 2015 and Mass Media Portrayals." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(05), 2021, pp. 20-24.