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A COMPARATIVE ANALYSIS OF THE DEFINITION OF THE OFFENCE OF RAPE UNDER THE NIGERIAN AND SOUTH AFRICAN CRIMINAL JURISPRUDENCE

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Introduction

Rape is no doubt a major social ill that plagues most if not all societies¹. It is socially and publicly condemned and criminalised with varying degrees of punishment. However, the level of effectiveness in prosecuting the offence, securing convictions and ultimately reducing the rape statistics is often dependent on the nature of the anti rape legislation, the legal frame work for enforcement, the political will of the state and also the various socio - cultural nuances of the people of that state.

In Nigeria, besides the fact that only few reported cases get prosecuted and judgement entered, poor and inaccurate statistics and data collection by relevant authorities make it very impossible to have definite figures in term of victims. The none reporting of incidents by victims does not help matters in this respect. There is a general consensus however that Nigeria's legal frame work as regards the offence of rape is due for an overhaul from the prescribing law² to mechanisms for reporting, the investigative techniques employed by law enforcement agents, and the attitude of the judicial officers.

The Offence of Rape under Nigerian Laws

For the purpose of this discourse, the relevant laws to consider are the Criminal Code³ operating in the Southern part of Nigeria and the Penal Code⁴ which applies to the

¹ According to the U.S Department of Justice, a woman is raped every two minutes somewhere in America. "Rape Statistics worldwide", Kerry Harwin, Stop abuse of all women and children, 5th October, 2008, <http://www.causes.com/actions/52809-rape-statistics-worldwide>, accessed 30 October 2013

Sweden has the highest incidences in Europe and one of the highest in the world. Based on 2009 statistics, there were 46 incidents per 100,000 residents. The United Kingdom has 23 cases per 100,000. "Sweden tops European rape league", The Local,

The Democratic Republic of Congo has one of the highest rates in the world and sexual violence has been described as a weapon of war. "UN official calls DR Congo 'rape capital' of the world." *BBC*, 2010-04-28.

South Africa has especially high incidences of rapes of under aged girls and females between the ages of 16 to 25. "Quantitative research findings on rape in South Africa", Statistics South Africa, 2000, <http://www.statssa.gov.za/publications/rape/rape.pdf> accessed 30 October 2013

² This refers to both the substantive and procedural laws.

³ The Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria, 1990

Northern states in Nigeria. In addition there are about twelve states in the Northern parts of Nigeria that have adopted Islamic Criminal Legal System known as Sharia. These states also contain laws that criminalise rape as an offence. According to Section 357 of the Criminal Code, rape is committed by:

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 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, in the case of a married woman, by impersonating her husband, is guilty of an offence called rape.

The Penal Code in Section 282 provides similarly with the exception of the provision that one who is under 14 years of age⁵ or of unsound mind cannot give a valid consent.

The Sharia Penal Code defines rape in the same terms as the penal code, with the exception of fifteen years being substituted for the 14 years in Section 1(e) of the Sharia Code.

Thus the offence of rape in Nigeria can be stated briefly to be committed when a male has sexual intercourse with a non consenting female who is not his wife⁶. Sexual intercourse with a female whose consent was obtained by force, threats or intimidation, as well as sexual intercourse with an unconscious female or one who had been substantially impaired by administering drugs or intoxicants for the purpose of preventing resistance would be held to be non-consent.

The South African Law On Rape

For South Africa, the legislative response to the prevalence of the offence is the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007⁷, hereinafter referred to as SORMA. Section 1 of the Act defines rape thus:

⁴ Penal Code (Northern States) Federal Provisions Act, No 25, Laws of the Federation of Nigeria, 1960

⁵ Section 282(2) however exempts married girls of the same age whose husbands may have sexual intercourse with if they have attained puberty

⁶ Professor Chukkol defines rape as intercourse with a non-consenting female with the knowledge by the accused that his victim was not consenting. See Kharisu Chukkol, 'The Law of Crimes in Nigeria' ABU Press Ltd, Kaduna (1989) pg. 186

⁷ No 32 of 2007

Any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape.

A close look at the legal definition of rape in South Africa reveals features which makes it more compatible with the contemporary definition of the offence in many countries than its Nigerian counterpart whose criminal code has remained as rigid as the common law upon which it was founded. Those differences are discussed seriatim:

Gender Specificity of The Act of Rape In Nigeria

The Nigerian law on rape defines rape as unlawful sexual intercourse of a man with a woman or girl. Specifying the possible perpetrator and victim, implies that in Nigeria, only a man can be found guilty and convicted of rape and only a woman or girl can be the victim of rape. The explanation for this can be found in the historical development of the offence.

The word rape originated from the latin word "rapere" which means to seize or take by force. The offence was until recently defined as a serious property crime against the male who had an association with the female victim. Accordingly, rape of a married woman was a crime against her husband or of an unmarried woman against her father. Thus in biblical times the rapist might be compelled to marry her instead of receiving the full penalty if her father agreed⁸.

Several reasons have been advanced for the retention of the definition of rape with men as the offenders and women as victims. One argument is that women are more often the victims of rape and there is need to keep the definition of rape, gender specific to recognise this prevalence and also to be able to tackle it from the angle of being one of the various forms of gender specific crimes against women and girls. While it is largely true that women are the highest victims of rape, it also perpetuate the discriminatory sentiments that "The purpose behind early rape law was to protect the chastity of women and thus their property value for their fathers and husbands."⁹

This *status quo* also overlooks one major characteristic of rape which is its nature as an abuse of power. Experts have shown that while rape may have several sexual underpinnings, it is however, an abuse of power by a stronger party over a weaker and

⁸ See The Holy Bible Exodus 22:16. , Deuteronomy 22:28-29 King James Version.

⁹ See *People v Liberta* 64 NY 2d 154, p, 167 (1984)

more helpless one¹⁰. Removing gender barriers in defining rape will bring about a better understanding of the power dynamics that come into play in rape cases without being blinded by the sexuality of the individuals involved¹¹. Though this power dynamics is more often reflected in sexual relations between males and females, with males on top due to physical, economic and social circumstances that often times place the man over the woman, the offence of rape has evolved past an offence created to protect the chattel in the person of the woman or emphasize male aggression to reflect the current need to protect the privacy, dignity and bodily integrity of each person.

Another argument against expanding the scope of actors in rape is that it is impossible for a man to be raped by a woman or another man given that the *actus reus* of rape is penetration of the vagina¹². This assertion has been declared scientifically erroneous and unfair to the menfolk and persons of unusual sexual orientation. This notion is merely a product of social conceptions which frame the man as always a willing participant in sexual relations; incapable of rejecting the opportunity to have the same, and in the unlikely event he is so unwilling to participate, is physically incapacitated from performing the act. Up to date definitions of rape recognise that rape is not limited to penile/vaginal rape but can be with any bodypart, an object or oral penetration¹³. Some more inclusive definitions do not even require penetration. Doing away with the penile/vaginal penetration straightjacket is clearly in line with the realities relating to such an act as rape. It is an acknowledged fact that men as well as women can be raped and that rape can be committed with an object other than the penis. The object may be inserted in other parts of the body besides the vagina also that such invasion can bring as much physical and emotional pain and sense of violation in the victim as much as non consensual vaginal penetration. This more inclusive definition is also advantageous to assaulted women as it may reduce the emphasis on satisfying the vagina penetration requirement needed to prove rape and consequently grant as wide a net of protection for victims as possible.

¹⁰ Annabelle Mooney "When a woman needs to be seen, heard and written as a woman: Rape law and an argument against gender neutral language", *International Journal for the Semiotics of Law*, 2006, 19:39-68

¹¹ Philip N. S. Rumney In defence of gender neutrality within rape", 6 *Seattle J. Soc. Just.* 481 2007-2008.

¹² The offence is regarded as complete upon penetration and there is liability, regardless of non ejaculation or the rupturing of the hymen. See *R v Seidu*, (1960) *W.R.N.L.R.* Pg 38

¹³ In 2002, the World Health Organisation defined it as physically forced or otherwise coerced penetration even if slight of the vulva or anus using a penis or other body parts or an object. This has influenced, the United States FBI who in their 2012 Uniform Crime Reports defines rape as penetration no matter how slight of the vagina or anus with any body part or object.

In South Africa

Under South African law, the actus reus of the offence of rape, i.e any act of sexual penetration includes any act which causes penetration to any extent whatsoever by—

- (a) *the genital organs of one person into or beyond the genital organs, anus, or mouth of another person;*
- (b) *any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or*
- (c) *the genital organs of an animal, into or beyond the mouth of another person*

On this score the South African law definition of rape and the actus reus of penetration covers all possible variants of committal of the offence and all possible range of victims, regardless of sexual orientation. It has also made conviction for another specie of rape-anal rape- possible¹⁴.

The Element of Consent

In a good number of jurisdictions, the requisite *mens rea* for establishing the commission of rape is the intention to have sexual intercourse with a non - consenting female with the knowledge that she is not consenting to it or when one is reckless as to such consent or lack of it¹⁵. Thus, consent, often plays a pivotal role in securing the conviction of perpetrators. In fact, it is the element of consent that draws the line between consensual sexual conduct and rape. It is thus conceivable that the manner in which the element of lack of consent is drafted goes a long way in determining the culpability of the accused and how well it has captured the fears and misgivings of the victim at the time the crime was committed.

Nigeria

The word "consent" is not defined in either of the two codes but it has been the subject of judicial interpretation under both common law and Nigerian law which is instructive to understand how consent or lack of it is construed. Sexual intercourse can

¹⁴Masiya v. Director of Public Prosecutions, Pretoria and Another (Centre for Applied Legal Studies and Another, *Amici Curiae*2007 (5) SA 30 (CC

¹⁵See KharisuChukkol opcit. note 6 above

amount to rape in a situation where the victim is in such a state that she can neither say "yes" or "no". In the case of *Rv Lock*¹⁶ the court defined consent to mean active will in the mind of a person to permit the doing of the act complained of and knowledge of what is to be done or the nature of the act that is being done. In the English case of *Rv Camplin*¹⁷ the accused was able to have sexual intercourse with his victim by making her drunk. In another the victim was asleep¹⁸. Another category of victims to consider here is the mentally helpless and unsound and those which the law considers due to age incapable of giving consent. It suffices to point out here that though the victims were not in a state to say "No" they did not say "yes".

The drafters of the Criminal Code and Penal Code went to great lengths to enumerate possible situations where consent would be deemed invalid or untrue and they include where there is no consent broadly speaking or where it is with her consent, but such consent was obtained by force or threat of force, or intimidation or threat of intimidation or by false and fraudulent misrepresentation. Though these are not enumerated in the statute in an attempt to cover the field with regard to lack of consent, the courts have sometimes shown a propensity in this matter to be bound by limiting rules of interpretation. The resultant effect of this is to place an emphasis on the force element with the consequence that physical resistance became the means of construing consent or lack of it. Such interpretation would work to the detriment of victims rather than helping them. This unfavourably drafted definition adds an extra layer of the burden of proof on the victim. This is in addition to the requirement of corroboration which arises when the accused denies culpability and could be a matter of law or practice depending on the circumstances of the case.¹⁹

Lack of consent is especially hard to prove in cases adjudicated under the Sharia law. This is because of the requirements of the law which lists out conditions that must be fulfilled in order to prove rape. Section 127 of the Kano State Sharia Penal Code law of 2000 sets out the conditions a victim must have met before a valid claim of rape can be made. They are as follows: faith in Islam, maturity, sanity, liberty, valid marriage, consummation of the marriage and four witnesses or a confession. While it is tenable that the reason for these conditions is to prevent unfounded claims of rape from being made, the unfortunate consequence of this is that alleged victims who make allegations which the

¹⁶(1872) *CL* 10 at p. 11

¹⁷*R v Camplin* cited by Smith & Hogan: Criminal law 2nd ed. Oxford University Press (London) at p. 326

¹⁸*R v May* (1873) 12 *Cox Cr. C.* 311

¹⁹Under the Penal Code corroboration is required as a matter of law for rape cases falling under Section 282(1)(e) where the victim is under 14 years old. In all other cases it is a matter of practice. While corroboration is a must in the former case, in the latter case it is not compulsory and a judge after warning himself may go ahead and convict the jury.

courts find to have no merit are severely punished. A woman who fails to establish any of these conditions is liable to imprisonment for one year and up to 100 lashes of cane²⁰

This is especially worrisome because, by the very nature of rape, there are hardly ever any witnesses to the crime. Therefore having such a requirement is mostly counterproductive in a drive to protect victims and punish rape. Hence in trial, the victim always has to prove and re-establish that in fact there was no consent. This is even worse in the event the lack of consent was not vehemently voiced. An application of this "resistance standard" rather than "consent standard" also meant that particularly at risk for non-vindication are victims who know their attacker²¹ and fear physical retaliation if they go beyond a mere verbal expression of non consent²². In the case of *Rv. Kufi*²³, the fact that the victim had consented to previous sexual encounters made the court reluctant to believe the complainant's denial of consent in the instant case. Also the court took her character and profession as a prostitute into account²⁴ and subsequently acquitted the defendant.

South Africa

It is instructive to note that in South Africa, the law prohibited the use of a complainant's past sexual history and moral conduct as evidence in a rape trial, except with the leave of court, when the court is satisfied that it is material to the facts of the present case.

The issue of consent is also dealt with in the SORMA. It is simply stated: "without the consent of the complainant". With non mention of the force element, this phrase is open to the broadest interpretation possible. This blanket provision can more arguably cover all ranges of lack of consent by the victim whether they are violent or not. As earlier

²⁰ See S. 128 of the Kano State Sharia Penal Code Law of 2000 which provides "The conditions for proving the offences of *zina* (fornication or adultery) or rape in respect of a married person are as follows: (a) Islam; (b) maturity; (c) sanity; (d) liberty; (e) valid marriage; (f) consummation of the marriage; (g) four witnesses; or (h) confession. If any of the above conditions has not been proved by the person alleging *zina* or rape there is no punishment of stoning to death; the person alleging such offence shall be imprisoned for one year and shall also be liable to caning which may extend to one hundred lashes."

²¹ Including having had previous sexual encounters with the person

²² It also means that the court would be saddled with the subjective task of gauging the amount of physical resistance that would be considered reasonable in a given situation. See Lyon Matthew R. "No means No? Withdrawal of Consent during Intercourse and the continuing evolution of the definition of Rape. *Journal of Criminal Law and Criminology* Vol 95, No.1 Northwestern University School of Law

²³ (1960) W.N.L.R. 1.

²⁴ The Law of evidence in Nigeria allows the defendant in a rape case to show the woman to be of generally immoral character. See Section 244 of the Evidence Act, 2011.

stated, the "evidence of force standard" places the victim at a disadvantage by placing on her the burden of proving lack of consent.

The South African definition of rape is not plagued by this problem as a more clinical term has been used by way of the term: "sexual penetration". This consequently conveys the requirement of penetration and also the sexual nature of it, without consequently inducing the element of consensual intercourse as is the case in the Nigerian definition. The legal requirement of proving rape beyond reasonable doubt is significantly a hard task

The Issue of Marital Immunity to Rape

Closely related to the consent element in rape is the issue of marital rape. Marital rape is the husband's sexual intercourse with his wife, with the knowledge that she does not consent. It is also called spousal rape.²⁵ Though a growing number of countries have by legislative and judicial pronouncements eradicated the spousal immunity to rape, the number of countries who retain the spousal exemption are more.

One justification given for the retention of spousal immunity to rape is that, upon entering a marriage contract, the woman gives her consent to all future acts of intercourse. i.e. she gives one irrevocable consent upon marriage²⁶. This was ascribed to the English Jurist Sir Matthew Hale who wrote that the wife 'hath given up herself in this kind unto her husband, which she cannot retract.'²⁷

Another reason is the belief that a woman is owned by her husband. This is promoted by the culture of paying bride price common to most African tribes. The presumption that the woman is a chattel purchased and so can be used in whatever way her husband sees fit is the result. This perpetuates a culture of impunity and disregard for the woman.

Religion in form of the oneness theory which has its roots in the Bible²⁸ and the quoran also serves to perpetuate the impossibility of marital rape. This theory postulates that the husband and wife are one and inseparable and as the saying goes: It is impossible to rape oneself? For centuries, the Biblical injunction that husband and wife belong to "one body" has been interpreted to mean that any attempt on the wife's part to deny her husband's sexual demands was sinful.²⁹ Similarly, in Islamic religion it is believed that a

²⁵See Carol Arinze - Umobi and Ogugua Ikpeze 'Rape in Matrimony: Entrenched Global Disaster' in *Gender Rights Law in Nigeria* Vol. 1. Folmech Printing and Publishing co. Ltd, 2008.

²⁶Per Hawkins J. In *R v. Clarence* (1889) 22 Q.B.D. 23 at 51.

²⁷Cited in Lord Matthew op cit note 23 above

²⁸ See Holy Bible Genesis 2:24. King James Version

²⁹Schwendinger and Schwendinger, 'Rape and Inequality' Sage Publication, 1983. See also Holy Bible 1 Corinthians 7:2-5

women who denies her husband sexual intercourse will be cursed by the Angels.³¹ Islam conceives that a man has unrestricted sexual intercourse with his lawful wife. Except for valid and credible reasons which necessitate mutual understanding of both spouses, the wife cannot say no to any sexual overtures from her husband.

Other reasons include the fact that a marriage relationship presupposes that sex takes place, also a man's psycho biological make up in that he is unable to control his sexual appetite once aroused especially towards his own wife and the argument that permitting marital rape would lead to criminal law incursion into the sacred institution of marriage.³²

There are however situations which are exemptions to the general rule of spousal exemption. These are when a competent court has made a decree of judicial separation and the wife is no longer bound to cohabit with the husband³³, where there is a *decree nisi* declared to effectively end a marriage³⁴ or where the court has granted an injunction to restrain a husband from molesting his wife³⁵.

Nigeria

Contrary to emerging trends by other jurisdictions to recognise in the face of realities the possibility of marital rape, Nigerian rape law even in its most recent form³⁶ does not recognise marital rape except those which fall under the exceptions enumerated above. This is clear from the reading of the law in both the Criminal Code and the Penal Code, which have similar definitions. Section 6 of the Criminal Code has expressly excluded sexual conduct between husband and wife from being unlawful³⁷; therefore in Nigeria, it is a legal impossibility for a man to rape his wife, regardless of his intention or the circumstances of the act.

³¹Muslim Hadith (sayings of the Prophet of Islam) Narrated by Abu Hurayrah that the prophet said, 'By the One in Whose Hand is my soul, there is no man who calls his wife to his bed, and she refuses him, but the One Who is in heaven will be angry with her, until the husband is pleased with her once more'.

³²See Adebayo F.A.R. and Oluseyi Olayinka, "Recognising Sexual Rights and Reproductive Justice in Marriage: should the husband be guilty of Rape of his wife?" *Journal of Public Law, National Ankara University* Awa 2015

³³*R v Clarke* (1949) 33 Cr App R 216

³⁴*R v C B-v* (1974) 1 All ER 563

³⁵See *Caru Arizone-Duoin et al* op cit para 26 above

³⁶Section 251 of the Criminal Law of Lagos State 2011 provides that sexual intercourse between a man and a woman who are married is not unlawful

³⁷See also Section 112(C) of the penal code which provides that sexual intercourse by a man with his own wife is not rape if she has attained the age of puberty

This legal provision also finds firm footing in the cultural and social ideals of a large percentage of Nigerians and so, even though both the Criminal Code and Penal Code are largely an inheritance of British colonial rule, they find resonance in the present day socio political setting. This is clearly evident in the Sharia Penal Code which was introduced by 12 Northern Nigerian States in quick succession from 2000. The Kano State Sharia Penal Code Law provides in Section 126(2) that sexual intercourse by a man with his own wife is not rape.

By maintaining this status quo, it is evident that the Nigerian legislative community has refused to acknowledge the high prevalence of this form of sexual violence and have made marriage a condition which effectively removes a woman from the ambit of legal protection. It has also ignored the obvious evidence of the psychological, physical and emotional trauma this phenomenon have on victims. Research into the area has also shown that marital rape usually has more severe and long term consequences on the victim. This is due to the physical abuses that usually accompany the act, but more especially due to the emotional trauma caused to the victim from several incidents of act. There is often also a strong sense of betrayal and mistrust, most victims have, as Kersti Yllo³⁷ put it, they have been abused and degraded by the one person they made a life commitment to and ordinarily ought to protect them. Women raped by their spouses are also shown to have higher rates of anger and depression than women raped by strangers and those they do not know as well³⁸. They are also less likely than those raped by strangers to report their assaults. This is often due to a sense of family loyalty, the fear of retribution from the perpetrator, economic and social dependence on the perpetrator or sometimes even out of a sense of them simply carrying out their wifely duties.

The state of the law means that a large number of possible accused have either been found not guilty or found guilty for lesser offences.³⁹ In the case of *R v Caswell*⁴⁰, where the husband was reported to have attacked the wife in a public park, kicked her in the face, dragged her to a nearby public lavatory and had sexual intercourse with her, it was held that the husband was not guilty of rape under Nigerian criminal law, and was accordingly convicted for assault and indecent assault.

³⁷Kersti Yllo "Marital rape", Battered women's justice project, 1996, http://www.bwjp.org/files/bwjp/articles/Marital_Rape.pdf accessed on 30th October 2013

³⁸David Finkelhor, Kersti Yllo "Licence to rape", Free Press, 1987

³⁹In *Alawusa v Odusote* (1941) WACA pg 140, the court held that if a husband uses force or violence to obtain intercourse, he may be guilty of assault or wounding though the full force of the law will not be meted to him.

⁴⁰*R.V Caswell* {1984} Crim. law report 111

The reality in line with international protocols and global best practices⁴¹ is to recognise the woman as an independent and separate individual capable of self-determination within and possessing inalienable human right to dignity, bodily integrity and freedom from torture in and outside the institution of marriage.

South Africa

In the case of South Africa, marital rape is expressly prohibited. The Sexual Offences Act provides in Section 56 that marital relations do not constitute a valid defence to the offence of rape. In addition, the encompassing language of "any person" perpetrating the act against any other person rightfully incorporates spouses of various variations of domestic relations between victims and accused alike. In addition, Section 5 of the Domestic Violence Act of 1993 expressly provides that marital rape is an offence. This further states unequivocally that South African law does not support or endorse the practice, but in fact criminalises it. This is clearly an admirable legal development that Nigerian lawmakers can take a cue from.

Conclusion

Our look at the law on rape in the two jurisdictions was limited to matters arising from their respective definitions of the act. We have found that in line with the current trends in criminal law and criminology, the South African definition is more encompassing and accommodating of a wider category of accused persons and victims. In addition, the prejudicial need to show evidence of force as a means of proving non consent also appears to be better taken care of. However, the criminalisation of marital rape as the best approach to deal with non-consensual sexual intercourse between married couples is subjective and somewhat controversial. This is without prejudice to the authors' view that it is indeed worthy of more stringent laws and administrative policies than are currently in place in Nigeria.

This work and indeed any on the contemporary dimensions on the law of rape would be incomplete without mention of post penetration rape, which in jurisdictions where recognised serves to expand the definition of non consent. Post penetration rape epitomised by the case of John Z⁴² simply means that rape can be committed in situations

⁴¹ Article 2(a) of United Nations Declaration on the Elimination of Violence against Women, A/RES/48/104, 20th December, 1993, expressly categorizes marital rape as a form of violence against women, while Article 2(c) places physical, sexual and psychological violence perpetrated or condoned by the state as violence against women and should be eliminated. In addition, Article 4 enjoins states to condemn violence against women and should not condone such under the guise of custom, tradition or religion.

⁴² Before John Z there had been two previous cases. *State v Way* 254 SE 2d 760 NC (1979), *Battle v State* 414 A.2d 1266 Md 1980, *People v. John Z.*, 60 P.3d 183, 184 (Cal. 2003). The facts of John Z's case is as

where consent is withdrawn after penetration. Neither of the two jurisdictions under consideration has incorporated this rule by law or policy.

It appears that this reform in the law on rape is native to and mostly associated with the United States where only a number of States have altered their law accordingly. It has been generally criticised as being unworkable because of the impossibility of determining when a partner should stop after the woman has withdrawn her consent, it is also thought to victimise and punish men and trivialise the experience of the women who were raped without consent from the beginning.

The present Nigerian legislation on rape is to a large extent ill equipped, as seen from its definitional inadequacies, to effectively stem the tide of rape in its various forms, and until appropriate legislative reforms relating to the definition of the crime and the ingredients to prove same are undertaken, all other efforts such as better law enforcement, a sympathetic judiciary and a more educated populace, will do very little to improve citizens' protection against rape.

follows: Sometimes in March 2000, 17-year-old Laura willingly engaged in sexual intercourse with John whom she met at a party. The sex lasted for approximately ten minutes. In the course of the activity, Laura said to John, 'I need to go home' to which John responded that Laura should give him a minute. This happened three times. It was in evidence that after Laura's objections, John continued to have sexual intercourse with her for approximately sixty to ninety seconds before discontinuing the act. Laura subsequently complained that John raped her and the trial court convicted John of Rape. Dissatisfied with the verdict, John appealed against the decision. The appeal eventually got to the Supreme Court of Carolina. On January 6, 2003, the majority of the Justices found John guilty of rape. In doing so, the court interpreted the California rape statute to include situation where the victim initially consents to intercourse, but then withdraws her consent after penetration