

ADVOCACY FOR THE ABOLITION OF MARITAL RAPE IMMUNITY IN NIGERIA: A COMPARATIVE ANALYSIS OF NIGERIA AND THE UNITED STATES OF AMERICA

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Abstract

Human beings are an indispensable component of a society whose bedrock lies in the family units and whose roots in turn lie ideally in marriages. Consequently, if the society must develop and endure, the family units and their marriages must be preserved and protected. Marriage, the type notwithstanding, is a globally respected and recognized contractual institution which confers status, rights and obligations. Important among the rights also known as consortium is the right to sexual intercourse by the couples resulting from the mutual matrimonial consent and contract which is non-retractable except by divorce, dissolution of marriage or decree of separation. This hitherto age-long non-retractable consent constitutes the foundation of marital rape immunity by which a husband cannot be prosecuted for raping his wife in Nigeria. However, there are calls in recent years, against the law, cultural and religious beliefs in Nigeria for the removal of marital rape exemption due to agitations and the outlaw of marital rape immunity in some jurisdictions like the United States. Through the doctrinal approach, this article observes that such advocacies founded on what obtains in the western world which is against the cultural and religious beliefs of Nigerians are capable of disintegrating the bedrocks of the family and society and which will eventually cause negative consequences in Nigeria in the long run. The article recommends the sustenance of pro-marital rape exemption statutes and the repeal/amendment of statutes that are indifferent or partially supportive of marital rape criminalization in Nigeria.

Key words: Abolition, Advocacy, Culture, Erosion, Immunity and Rape

1. Introduction

The orthodox meaning of the concept of “rape” as it relates to sexual connection is when a man has unlawful sexual intercourse with a woman or girl without her consent. It involves a situation where the man knows that consent was not given yet he is reckless and careless about the issue of consent and goes ahead to have the intercourse. Embedded in this traditional meaning of rape, are the following key points: a man must be the perpetrator and a woman or girl must be the victim of the act because the crime is gender sensitive or gender specific;¹ there must be sexual intercourse which is established upon the slightest penetration;² the sexual intercourse must be unlawful which can be established if the sexual intercourse takes place between a man and a woman or girl who are not lawfully married;³ the sexual intercourse is without the consent of the

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¹ Bamgbose, O., & Akinbiyi, S., *Criminal Law in Nigeria*, (Evans Brothers Nigeria Limited., 2015), p. 181.

² *Criminal Law of Lagos State*, 2011. s. 258(4); and Criminal Code, Cap. C38, Laws of the Federation of Nigeria, 2004, s. 6.

³ Criminal Code, s. 6.

woman or girl;⁴ and the sexual intercourse involves the penis and the virginal, that is, penile penetration.⁵

The crime of rape has been viewed very seriously thereby attracting a very severe penalty from time immemorial. In the modern times however, the spectrum of what constitutes rape has been enlarged in some jurisdictions like the United States, South Africa, Norway and Canada through legislation, human rights activism and judicial activism to include, sexual intercourse between couples if it is without the consent or sustained / continued consent of the female partners thereby removing the longstanding marital rape exception or immunity by which the husband could not be prosecuted for raping his own wife. The modern concept of rape also includes some other absurdities such as anal penetration, oral penetration and penetration of any opening in the female body with human parts⁶ other than the penis and even objects that are not human parts. All these inclusions were not part of the original definition of the concept of rape.

Given these changes in the constituents of the offence of rape as highlighted above in some legal systems, there have been some intensified efforts from feminists, human rights activists and writers against the inclusion of marital rape exemption thus, pressing for its abolition in Nigerian legislation. In other words, the advocacy of the marital rape exemption abolitionists is aimed at the removal of the marital rape immunity being enjoyed by husbands over the years in Nigeria. The implication of this advocacy is that where a man is alleged of rape by his wife, the man is liable to be prosecuted and where he is found guilty in the course of prosecution, he is liable to be punished.

The advocacy for the exclusion of marital exemption clause notwithstanding, it is important to remark that those calls are capable of disintegrating marriages and by extension the family units which are the bedrock of the society. This is because marriage is the social institution that forms the foundation of the family unit which in turn is the basis of the community or society through population. It should be noted that a marital relationship will come to naught when the husband is imprisoned. This is the possible explanation for the inclusion and or retention of the marital rape immunity clause in the Nigerian law of rape to avoid unwarranted intrusion of the penal law into the life of the family.⁷ We must therefore strive very hard to preserve marriages and the family units because of the negative consequences which their erosion would have on our society at least in the long run.

In view of the foregoing, this article sets out to strongly canvass the retention of marital rape immunity for married men thus maintaining the seeming⁸ status quo in Nigeria. Consequently, this article is divided into fourteen parts. While part one deals with the introduction to this article, part two deals with the clarification of some terms which are ancillary to the main theme

⁴ *Ibid.* See Penal Code, ss. 357 and 282(1) (b).

⁵ Criminal Code of Lagos State, s. 258(4).

⁶ Violent Against Persons (Prohibition) Act, 2015, s. 1(1) (a).

⁷ The United States Model Penal Code, drafted in the 1950s; Criminal Code, s. 357; Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963, s. 282, Shari'ah Penal Code Law of Zamfara State, No. 10 of 2000, s. 128 and Criminal Code of Lagos State, 2015, s. 258.

⁸ Although the general belief is that the offence of marital rape is not in existence in Nigeria, this is not completely true because section 282(2) of the Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963, made provision for "qualified" marital rape in Northern Nigeria.

of this study. In part three, the meaning of marriage was examined while in part four, the rights and obligations of marital relationship were considered. In part five, the essentials of the family to the society were x-rayed and in part six, the existing legal framework for the offence of rape in Nigeria was examined. Similarly, in part seven, the modern forms of the crime of rape were treated and in part eight, marital rape in Nigeria was handled. Marital rape in some jurisdictions and calls for the criminalization of marital rape in Nigeria were respectively discussed in parts nine and ten. Matters arising from the discussions and the plausible effect of the removal of marital rape exemption on the family and society were treated in part eleven. In parts twelve and thirteen, observations and recommendations were respectively highlighted while the article was concluded in part fourteen.

2. Clarification of Terms

A proper understanding of this discourse requires the clarification of some relevant terms. Thus, apart from some main concepts like rape and marriage which would be explained in detail in other parts of this article, some ancillary terms like immunity, marital rape exception, family and invalid marriages shall be clarified in this part of this article as follows:

- 2.1 **Erosion:** Literally, erosion means the gradual decline of something or to gradually destroy or make something weaker over a period of time.⁹ Thus, as used in this article, it refers to the gradual wearing away or decline and eventual destruction of the values that made Nigerians a unique people which may happen to the family unit and by extension the Nigerian society if the call for the removal of marital rape immunity is acceded.
- 2.2 **Immunity:** The word, “immunity” depends on the context in which it is used. It refers to a state or condition of being protected or exempted from something. According to Brayan A. Garner,¹⁰ “it is any exemption from duty, liability or service of process; especially, an exemption granted to a public official.” It is essentially exemption or exclusion from legal proceedings.¹¹
- 2.3 **Marital Rape Exception:** This is the age long exception granted a married man whereby he cannot be prosecuted for raping his wife. It is a kind of immunity that shields him from prosecution if the crime of rape is alleged against him by his wife. Through this exception, marital rape is a legal impossibility.
- 2.4 **Family:** Ideally, marriage is the foundation of the family. However, there are times when families may be formed without or outside marriage. In all situations however, the concept of family encompasses the father, mother, children and relatives. When it is used in relation to only the father, mother and children, we have the nuclear family but when it includes relatives, such family is known as the extended family. It is the families that form the basis of interactions and integration in communities and the society as a whole.
- 2.5 **Invalid Marriages:** These are marriages that are void *ab-initio* and or voidable which are the grounds for the decree of nullity of marriage.¹² A marriage is void where it is not recognized as a lawful¹³ union by the law of the place where it was contracted such as when one of the parties is in an existing lawful marriage, non-compliance with the law of

⁹ Hornby, A. S., *Oxford Advanced Learner's Dictionary of Current English*, 7th edition, (Oxford, Oxford University Press, 2005), p. 494.

¹⁰ *Black's Law Dictionary*, 8th edition, (USA, Thomson West, 2004), p. 765.

¹¹ See Sheila Bone, *Osborn's Concise Law Dictionary*, 9th edition, (London, Sweet & Maxwell, 2001), p. 198.

¹² Matrimonial Causes Act, s. 34.

¹³ Matrimonial Causes Act.

the place of celebration, marriage within the prohibited degree of consanguinity or affinity, lack of real consent and when one of the parties is not of marriageable age.¹⁴ Under a void marriage, the parties never acquired the status of husband and wife because the marriage is taken not to have come into existence. On the other hand, a marriage is voidable if it is good while it subsists but may be annulled at the instance of one of the parties owing to existing defects such as pregnancy of wife for another man, incapability to consummate the marriage, unsoundness of mind, mental disorder or epilepsy, venereal disease in a communicable form, breach of the prohibited degree of consanguinity or affinity.¹⁵ Other illegal or invalid marriages include all forms of human-animal marriage which is often associated with zoophilia like when humans marry their pets; and other acts of bestiality.¹⁶

3. Meaning of Marriage

It is considered necessary in this article to examine the meanings of the concept of marriage. This is because one of the sub-themes of this work, “marital rape” and its exclusion or immunity principle are connected to marriage and in fact can only occur in a marital relationship. Marriage thus, has a lot of implications on the topic of this article.

Marriage is a concept that is capable of assuming different definitions depending on the sex or sexes and the number of persons involved in the marriage relationship. However, until a few decades ago, marriage was generally believed to be a union between a man and a woman¹⁷ or some women.¹⁸ It is the first social institution in the world and in its original form, it is the root of the family unit¹⁹ and through procreation and thus population, it is the bedrock of the society. It is a relationship that is recognized and regulated by the society through legal, cultural and religious norms. The importance of marriage forming the basis of the family; and many families culminating into a society through demography has underscored the involvement of the National Assembly as well as the House of Assembly of the States in Nigeria in legislating on various aspects of marriage and family.²⁰ In Nigeria, it is worthy of mention that statutory marriage is synonymous with monogamous marriage while customary marriage which is essentially polygamous includes, widow inheritance or levirate marriage and surrogate marriage.²¹

Thus, it may not be feasible to give a short, straight forward and generally accepted definition of the concept of marriage. This is not only because of the differences between the statutory and customary systems of marriage but also because of the existence of different types or “species” of marriage. Consequently, the meaning of marriage may be more explicit if some types or

¹⁴ *Ibid*, s. 3.

¹⁵ *Ibid*, s. 5.

¹⁶ Premium Times Nigeria <https://www.premiumtimesng.com> accessed on 20/7/2025 @ 5 am.

¹⁷ Monogamous marriage.

¹⁸ Polygamous marriage.

¹⁹ Aderibigbe, R., *Family Law in Nigeria*, (Godas Publishing Consult, 2004), p. 1.

²⁰ The Constitution of the Federal Republic of Nigeria, 1999 as amended. See item 61 of the exclusive legislative list in the Second Schedule. In it, the National Assembly is to legislate on Statutory Marriage hence we have the Marriage Act, the Matrimonial Causes Act and the Same Sex Marriage (Prohibition) Act, 2013. By implication of the Constitutional provision, the State House of Assembly and the Local Government legislative arm are to legislate on Customary and Islamic law marriages since they are based on the local customs and religions in the various States and Local Government Councils.

²¹ See Aderibigbe, R., *op.cit* @ pp. 1, 21-22.

species of marriages such as monogamous, polygamous, polyandry and same sex marriages are discussed.

3.1 Monogamous Marriage: This is essentially the English type of marriage which is known as statutory marriage in Nigeria. It was defined by Lord Penzance in *Hyde v Hyde*,²² as, "... the voluntary union for life of one man and one woman to the exclusion of all others." Similarly, monogamous marriage was statutorily,²³ defined as, "a marriage which is recognized by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage."²⁴ The above definitions have revealed the key features of monogamous marriage to include: a relationship between two persons each having the opposite sex of the other partner; consent of both parties signifying the voluntariness of the relationship; the contemplation of a life time relationship by the parties or the life time of the party who predeceases the other party;²⁵ the exclusion of all other persons; and a relationship that is recognised as between the two parties by the law of the place where it was contracted.

3.2 Polygamous Marriage: This is a voluntary marital relationship for life comprising of one man and two or more wives. According to Aderibigbe, R. M., "it is a voluntary union of one man and one woman to the inclusion of some others."²⁶ Polygamy or marrying more than one wife by a man in Nigeria is a feature of our customary law. Consequently, the incidents of customary marriages like, quantum of bride price, celebration, rights and duties and dissolution of customary law spouses are governed by customary law which is largely unwritten and variable from one locality to another.²⁷ Noteworthy is the fact that customary law includes Islamic customary law which is largely based on the provisions of the Holy Qur'an and the teachings otherwise called the Hadith or Sunnah of Prophet Muhammad. While polygamous marriage under other customary laws is unlimited as to the number of wives that can be married by one man, the number of wives that can be married by one man under Islamic customary law is regulated hence it is referred to as "restricted" polygamous marriage, the maximum number being four.²⁸

3.3 Polyandry Marriage: This is one of the deviations from the tradition meaning of marriage which involves a man and a woman; or a man and two or more wives. Polyandry is a marriage where one woman marries two or more men at the same time, the husbands being referred to as "co-husbands". It is a form of matriarchal polygamous marriage in which a woman takes two or more husbands at the same time; or a situation involving a woman who

²² (1886) LR 1 P & D 130 @ 133.

²³ Interpretation Act, Cap. 123, Laws of the Federation of Nigeria, 2004.

²⁴ *Ibid.*, see section 18.

²⁵ This life time concept does not foreclose the termination of the relationship at any time because marriage can be subjected to dissolution, divorce or separation in the life time of the parties. This is probably why section 18 of the Interpretation Act used the phrase, "during the continuance of the marriage."

²⁶ *Op.cit* @ p. 2.

²⁷ The State and Local Governments being closer to the various localities with their peculiar customs, traditions and religions are saddled with the responsibility of the regulation of customary laws including the laws that affect customary marriages. See Nwogugu, E. I., *Family Law in Nigeria*, (Heinemann Educational Books, Plc., 2001), pp. Lxxxii-Lxxxiii

²⁸ Qur'an 4:3. See Abdur-Rahman, I. D., *Shari'ah: The Islamic Law*, (Ta Ha Publishers, 1997), pp. 144-148.

is having a subsisting marriage with a man taking additional man or men as her husbands, at the same time. The following tribes allow polyandry in their midst: Tibet in the Nepal part of China and India; Bororo, Amazonian and Tupi-Kawahib of South America; and Massai of Kenya.²⁹ In Nigeria, there is evidence that polyandry is unlawful.³⁰

- 3.4 **Same Sex Marriage:** Same sex marriage is a deviation from natural order. It is a union of persons of the same sex for instance “woman to woman” which may happen where a wealthy barren woman marries a girl for the purpose of bearing children for her; or a marriage of two women that would be practicing lesbianism. Same sex marriage could also be between two males (men) who practice gay. Since Netherlands legalised same-sex marriage in 2000, several other countries in Western Europe, North and South America as well as South Africa have also enacted laws approving same-sex marriage. However, same-sex marriage is prohibited³¹ in Nigeria as at today in 2025.

4. Rights and Obligations in Marital Relationship

Marriage confers on the couples to it a status and rights and duties which are peculiar to only the husband and wife. The all-embracing term that is used to describe the rights and duties of husband and wife is consortium which amongst others includes:

- 4.1 **Cohabitation of both the Husband and Wife:** Cohabitation is taken in its wider sense and does not necessarily refer to only the physical cohabitation of the husband and wife under the same roof. It includes the living apart of the parties under certain circumstances like employment in organisations where employees can be deployed to various locations.
- 4.2 **Sexual Intercourse:** Marriage entitles the husband and wife to have sexual intercourse whenever they want it. Sexual connection between the parties in a marriage is lawful in the “eyes” of the law.
- 4.3 **Mutual Defence:** Both spouses are entitled to protection from each other. This involves the defence of self and marriage partner against unwarranted attacks.
- 4.4 **Protection from Criminal Responsibility:** Another incident that flows from marital relationship is protection from criminal responsibility in respect of the crime of conspiracy if it involves only both of them as well as protection from being an accessory after the fact where any of the parties assists the other party to escape punishment for a crime committed by that other party. This is because of the “single person theory” since both of them are regarded as one upon marriage.

5. Essentials of the Family to the Society

Flowing from the rights and duties of marriage are the essentials or contributions of marriage to the family through to the society. It needs be echoed that the family is the first unit in the society and its contributions cannot be over-emphasized because no society exists in isolation to the exclusion of family units. Some of the contributions are briefly discussed seriatim.

5.1 Economic Unit: The family unit which is also known as the household is one of the economic units in the society others being the firms and the government. The household as an

²⁹ The Nations Newspaper, <https://thenationonlineng.net>. Accessed on 18/7/2025 @ 8. Pm; <https://guardian.ng> Accessed on 18/7/2025 @ 8:30 pm.

³⁰ See the case of *Kpelanya v. Tsoka & Anor.* (1971) NNLR 66; section 6(2) of the Native Authority Declaration of Idoma Native Marriage Law and Custom Order, 1959; and Nwogugu, E. I., *op.cit* @ p. Lxxxiv.

³¹ Same Sex Marriage (Prohibition) Act, 2013.

economic unit engages in the economic activities of pooling resources together, production, demand, supply, consumption and savings.³²

5.2 Population: One of the rights and obligations of marriage is sexual intercourse which is the natural basis of procreation and provision of the human component of the environment and society. Without procreation, human existence will gradually go into extinction.

5.3 Provision of Basic Needs: The family is the source or fountain from which the basic needs of humanity emanates. These basic needs include food, shelter, hospitality and care for both children and the aged. Without the supply of these basic needs, the existence of the society is utterly impossible.

5.4 Socialization: The family is the primary agent of socialisation. Values, norms and behaviours are transmitted from one generation to another. Without the family units, this all important component of society will be a mirage.

6. Existing Legal Framework for the Offence of Rape in Nigeria

In all jurisdictions in the world, rape is the most serious of all sexual offences. In Nigeria, rape is the unlawful sexual intercourse which a man has with a woman without her consent. This traditional meaning of rape is gender sensitive because it is only a man that can be the offender or perpetrator of the crime while a woman is always the victim. Again, it essentially involves the male sexual organ (penis) and the female sexual organ (vagina). It is pertinent to remark that the dualism of the Nigerian legal system has occasioned the criminal laws of Nigeria being codified in different statutes for the Northern and Southern parts of Nigeria.

In the southern part of Nigeria, the major statute for criminal law is the Criminal Code.³³ It defines rape as follows:

Any person who has unlawful carnal knowledge of a woman or a 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 personating her husband is guilty of an offence which is called rape.³⁴

It is noteworthy that the Criminal Law of Lagos State, 2011 also defines rape in like manner in section 258. Similarly, the Penal Code Law³⁵ which operates in the Northern part of Nigeria defines rape as:³⁶

- (1) A man is said to commit rape who save in the case referred to in subsection (2), has sexual intercourse with a woman in any of the following circumstances:
 - (a) Against her will;
 - (b) Without her consent;
 - (c) With her consent when her consent has been obtained by putting her in fear of death or of hurt;

³² Igbinobaro, G. O., *Simplified Economics for West Africa*, (Best Ventures, 2013), pp. 18-19.

³³ Cap. C38, Laws of the Federation of Nigeria, 2004.

³⁴ *Ibid.* see section 357.

³⁵ Cap. 89, Laws of Northern Nigeria, 1963.

³⁶ *Ibid.* see section 282. It is to be noted that rape is defined in the same way in Sections 375 and 316 of the Pakistani and Sudanese Penal codes respectively.

- (d) With her consent when the man knows that he is not her husband and that her consent was given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- (e) With or without her consent when she is under fourteen years of age or of unsound mind.
- (2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

Worthy of note again is the fact that the Shari'ah³⁷ Penal Code Law also has two subsections in its provision for rape just like the Penal Code Law with the first subsection³⁸ exactly as above but deviated from the wordings of the second subsection of the Penal Code Law by stating that, "Sexual intercourse by a man with his own wife is no rape."³⁹ In the same vein, the Violence Against Persons (Prohibition) (VAPP), Act,⁴⁰ provides with respect to the offence of rape as follows:⁴¹

A person commits the offence of rape if –

- (a) He or she intentionally penetrates the vagina, anus, or mouth of another person with any part of his or her body or anything else;
- (b) Without the consent of the other person; or
- (c) Where such consent is obtained by force, threat, intimidation, or false pretences."

The VAPP Act provides in section 1(2) that, "the absence of resistance shall not be regarded as consent to the sexual act." It is imperative to remark that this Act does not distinguish between persons who are married and who are not married as in the case of the Criminal, Penal and Shari'ah Penal Codes as well as the Criminal Law of Lagos State which were considered above.

6.1 Elements of the Offence of Rape

A careful examination of the above statutory provisions concerning rape in Nigeria brings to the fore the following elements which must be established before conviction can be secured.

- 6.1.1 **That there was Carnal Knowledge:** This is also known as sexual intercourse or sexual connection between a man and a woman or girl. While the old⁴² enactments took carnal knowledge to involve only the penis and the vagina; the recently enacted VAPP Act added "anus and mouth" as part of the "openings" to be penetrated and "any part of his or her body or anything else" as part of the "things" that could be used to penetrate the openings, to the definition of rape.⁴³
- 6.1.2 **That the Carnal Knowledge was Unlawful:** Carnal knowledge is unlawful if it occurs between persons who are not married. Thus, in regard to the lawfulness of carnal

³⁷ The Shari'ah Penal Code in Nigeria at the moment is like a regional legislation which has been domesticated by some Northern States like Zamfara, Borno, Sokoto, Yobe, Jigawa, Kano and Kebbi.

³⁸ *Ibid*, s. 128(1).

³⁹ *Ibid*. s. 128 (2).

⁴⁰ VAPP Act, 2015. This Act is limited in scope of coverage being enforceable only in the Federal Capital Territory Abuja.

⁴¹ *Ibid*, s. 1(1).

⁴² The Criminal Code, Penal Code Law of Northern Nigeria and Shari'ah Penal Code of Zamfara State and the Criminal Law of Lagos State.

⁴³ Violence Against Persons (Prohibition) Act, 2015, s. 1(1) (a).

knowledge, once there is a marriage between a woman and a man⁴⁴ the sexual intercourse is lawful and cannot be a subject of successful criminal litigation, if the marriage is subsisting.⁴⁵ However, in Northern Nigeria where the Penal Code Law operates, sexual intercourse between a married man and woman may be taken as unlawful if the woman is a minor who has not attained puberty.⁴⁶ Besides, the law in Nigeria⁴⁷ and in some other jurisdictions stipulates that a male person under the age of 12 is incapable of having carnal knowledge. This is a non-rebuttable presumption of law.

6.1.3 That the Carnal Knowledge was Without the Consent of the Girl or Woman.

Although carnal knowledge among unmarried adults is unlawful, it can only amount to the offence of rape if it is not consensual. Therefore, for the prosecution to succeed in proving a case of rape, it must establish that there was lack of consent. Where consent was obtained from the woman by fraud, force, intimidation, threat, false representation, fear of any harm that would be done to her or any person or impersonation, such consent is vitiated.⁴⁸ Also, consent may be vitiated through incapacity on the part of the woman who is alleged to have granted consent on account of the age of the victim if she is a minor⁴⁹ and on account of persons incapacitated in one way or the other either through unsoundness of mind⁵⁰ or imbecility or physically challenged person whose reasoning is impaired.

6.1.4 That there was Penetration: This is one of the points to prove a case of rape and carnal knowledge is said to be complete upon the penetration of the Vagina.⁵¹ In other words, the offence of rape is committed when there is unlawful carnal knowledge which is in turn complete, when the male genital organ (penis) penetrates the vulva or vagina. The slightest penetration⁵² is sufficient to establish carnal knowledge because the emission of semen by the male is not necessary to constitute the offence. Penetration is used to express the minimum conduct of the accused person that will amount to his having the carnal knowledge of the woman. The term “complete” as used in the definition of carnal knowledge means, “come into existence” as against the “end” of the carnal knowledge which may involve the release or emission of semen from the male genital organ into the female genital organ. However, where aid is given to the perpetrator of this crime after he had penetrated, the aider is liable being a party to the offence.⁵³ It is pertinent to remark here that if a husband that is not supposed to be liable or guilty of rape of his wife uses force or violence to exercise his right to sexual intercourse, he may be guilty of assault or wounding depending on the degree and result of the violence used.⁵⁴

⁴⁴ Criminal Code, s. 6 and Penal Code Law of Zamfara State, s. 282 (2).

⁴⁵ Separation order with clause of non-cohabitation with the husband revokes the implied consent of intercourse at the time of making it. Attainment of puberty is also required in the Northern part of Nigeria for the sexual intercourse between a husband and wife to be lawful.

⁴⁶ Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963., s. 282 (2) .

⁴⁷ Criminal Code, Cap. C38, Laws of the Federation of Nigeria, 2004, s. 30.

⁴⁸ *Ibid*, s. 357; Penal Code Law of Zamfara State, s. 282(1) (c) (d).

⁴⁹ Penal Code Law of Northern Nigeria, s. 282(1)(e).

⁵⁰ *Ibid*.

⁵¹ Criminal Code, s. 6.

⁵² *R v Kufi* (1960) N.W.L.R 1. See also Bamgbose, O., & Akinbiyi, S., *Op.cit @* p. 177.

⁵³ *R v. Mayberry* (1973) Q.D. R. 211 (Skerman J. Dissenting); see section 7 of the Criminal Code.

⁵⁴ *R v. Miller* (1954) Q.B. 282.

It is worthy of note that medical examination may be of help in establishing penetration and thus, carnal knowledge. Besides, it is pertinent to state that the consequence of conviction for the crime of rape is very grave. The offence attracts the highest custodial punishment amongst others in the Criminal Code,⁵⁵ Penal Code Law,⁵⁶ the Criminal Law of Lagos State,⁵⁷ and the Violence Against Persons Prohibition Act.⁵⁸ In the Shari'ah Penal Code Law of Zamfara State, where the offender is unmarried, he shall be subjected to caning of one hundred lashes and imprisonment for one year⁵⁹ but if he is married, he shall be punished with stoning to death.⁶⁰

7. Modern Forms of the Crime of Rape

In the modern times however, the concept of rape has continued to morph from one jurisdiction to another. This is the reason we now have different species of the crime of rape amongst which are the followings:

7.1 Date Rape: The word “date” as used in connection with rape means an arrangement to meet somebody who may be a known person like a friend or an unknown person like a stranger at a particular time.⁶¹ Thus, date rape simply means the crime of rape that emanated from a date. It may be the rape of a person by an acquaintance with whom the victim may have had a consensual sex in the past or by a person who is not quite familiar to the victim provided there was an arrangement to date. Consequently, date rape may occur between coworkers, school mates, family friends, teachers and even strangers.

7.2 Gang Rape: This is the rape of a person by a number of persons one after the other.⁶² Sometimes, such rape participants or rapists are involved in the consumption of alcohol and drugs with the possibility of severe sexual assault and less resistance from the single victim.

7.3 Child Rape: This is when a minor is sexually abused. Child rape may be committed by non-family members who are caregivers or persons in position of authority over the child such as school teachers and religious authorities. When child rape is committed by an adolescent or a child, it is called, “child-on-child” sexual abuse but when committed by close relatives such as brothers, father, uncles, grandfather or cousins, it is called incest.⁶³

7.4 Custodial Rape: The concept of custodial rape may be used in specific or general terms. In specific terms, custodial rape refers to the rape of persons in custody such as suspects, prisoners and patients by persons in authority such as police officers, prisons or correctional facility staff and hospital employees. It may also be used in connection with children in other institutions like orphanages. Thus, when a child under institutional care like orphanage or welfare are raped or sexually abused by persons in or having authority in such institution, custodial rape is said to

⁵⁵ Cap. C38 Laws of the Federation of Nigeria, 2004. The custodial sentence is life imprisonment with or without caning. See section 358.

⁵⁶ Cap 89, Laws of Northern Nigeria, 1963. The custodial punishment is life imprisonment or any less term and shall be liable to fine. See section 283.

⁵⁷ The Criminal Code of Lagos State, 2011. The custodial punishment is life imprisonment. See section 258(1).

⁵⁸ The VAPP Act, 2015 specified a maximum of life imprisonment for offenders above 14 years and a minimum of 12 years imprisonment. However, the maximum term is 14 years imprisonment for offenders under 14 years of age. See section 1(2) thereof.

⁵⁹ Shari'ah Penal Code Law of Zamfara State, s. 129(a).

⁶⁰ *Ibid*, s. 129(b).

⁶¹ Hornby, A. S., *Op.cit.*, @ p. 371.

⁶² *Ibid* @ p. 613.

⁶³ Courtois, C. A., *Healing the Incest Wound: Adult Survivors in Therapy*, (W.W. Norton & Co., 1988), p. 208.

occur. On the other hand, in general or broad terms, custodial rape includes rape by anyone in a position of authority such as an employer, landlord, contractor and moneylender. Victims of custodial rape are frequently minorities, the poor who are needy and people of low status.

7.5 Corrective Rape: This is the rape that is targeted against sexual perverts like bisexuals, gays, lesbians and transgender as a punishment for their unacceptable sexual orientation with a view of correcting or resetting their sexual thinking to conform to societal norms. The term “corrective rape” was coined in South African following the celebrated incident involving sports star, Eudy Simelane.⁶⁴

7.6 Post-Penetration Rape: Unlike Date rape which could occur between persons who are complete strangers, post-penetration rape happens when the woman who initially consented to the sexual intercourse with the offender later makes it clear to the offender that she no longer wants to continue with the sexual intercourse for whatever reason but the offender refused to terminate the sexual intercourse. It is important to emphasise that for a post-penetration rape to occur, the woman must communicate her withdrawal of consent to the man because merely changing her mind does not terminate her initial consent thereby transforming the original consensual sexual intercourse to rape.⁶⁵

7.7 Marital Rape: This is rape that occurs between husband and wife or married couple. It is variously known as spousal rape, wife rape, husband rape, partner rape or intimate partner sexual assault. It may take the form of post-penetration rape whereby the wife in the course of sexual intercourse with her husband communicates to him that she is tired and does not want the sexual intercourse to continue yet the husband forces her to continue against her will.⁶⁶

7.8 War Rape: This is rape that is committed by military men, combatants or civilians during war or armed conflict or during military occupation. It also covers a situation where girls and women are forced into prostitution or sexual slavery by an occupying force or power.⁶⁷

8. Marital Rape in Nigeria

As could be seen from the last two preceding parts of this article where the existing legal framework for the offence of rape in Nigeria and the modern forms of rape were discussed, it could be seen from all the statutory provisions for rape that all the various species of rape are crimes that are completely prohibited under the Nigerian law except marital rape that is partially prohibited in the Penal Code Law.⁶⁸ This is because the offence of rape in whichever form be it date rape, custodial rape, correction rape, war rape, gang rape, child rape or post-penetration rape is taken as rape and can be prosecuted and punished as such the number of persons involved, how and where it occurs notwithstanding except “marital rape” which is permissible particularly in the southern part of Nigeria. Thus, while it could be said without any fear of contradiction that

⁶⁴ Silvio, L. D., “Correcting Corrective Rape: Carmichele and Developing South Africa’s Affirmative Obligations to Prevent Violence Against Women”, *Georgetown Law Journal*, 99 (2011), pp. 469-515.

⁶⁵ *State v Robinson*, 496 A.2D 1067, 1070 (Me. 1985); *State v Baby* 404 Md. 220, 946 A.2d 463 (2008).

⁶⁶ Bulus, L., Marital Rape: “Evolving Trends and the Way Forward”, *BIULJ*, Vol. 5, (2022), pp. 138-153. Visit: SSRN eLibrary <https://papers.ssrn.com> > accessed on 3/11/2025 @ 2023 hours.

⁶⁷ Margot Wallstrom, Rape as a Tactic of War, UN Women <https://www.unwomen.org> > accessed on 3/11/2025 @ 2038 hours.

⁶⁸ Cap. 89, Laws of Northern Nigeria, 1963.

the crime of marital rape is unknown to law in southern Nigeria,⁶⁹ the same cannot be said concerning marital rape in the northern part of Nigeria because there is partial or conditional recognition of marital rape resulting from the statutory provision which says, “Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.”⁷⁰

The above assertion with respect to the southern part of Nigeria can be justified from the following clear provisions of law which negated the “unlawfulness” in the act described as marital rape: (1) “... ‘Unlawful carnal knowledge’ means carnal connection which takes place otherwise than between husband and wife.”⁷¹; and (2) “Sexual intercourse between a man and a woman who are married is not unlawful.”⁷² It follows that husbands in southern part of Nigeria have marital rape “immunity” by which they cannot be prosecuted for the crime described as “marital rape”.

Furthermore and consequent upon the foregoing discussions, it is germane to observe that the position of law concerning marital rape in the northern part of Nigeria may be viewed from two perspectives. On the one hand, the Shari’ah Penal Code Law⁷³ and the Penal Code Law of northern States like Sokoto and Kano are united or in complete support of the position of law in southern Nigeria through their provision that says “Sexual intercourse by a man with his own wife is no rape.”⁷⁴ On the other hand, in the Penal Code Law of Northern Nigeria,⁷⁵ there is partial or conditional recognition of marital rape through the following words, “Sexual intercourse by a man with his own wife is no rape, if she has attained to puberty.”⁷⁶ This qualified exception to marital rape is an acknowledgement or acceptance and recognition of the existence of the offence of marital rape under that law. The implication of that provision in the Penal Code Law of Northern Nigeria is that where a husband has sexual intercourse with his wife who has not attained puberty against her will or without her consent or with her consent if such consent was obtained by force or putting her in fear of death or hurt, he shall be guilty of rape and punished accordingly.⁷⁷ It must however be noted that all Northern States have their respective Penal Code Laws that recognised marital rape immunity in the crime of rape such that a husband cannot be prosecuted for raping his wife.

Again, it is important to remark that in the VAPP Act which operates in the Federal Capital Territory, Abuja, there is no distinction between married and unmarried persons in its definition of rape. Consequently, it could be safely inferred that where a husband uses violence in raping his wife, he may be prosecuted under the VAPP Act. It is however noteworthy to say that there is dearth of judicial authorities to support the existence of the crime of marital rape not only in Northern Nigeria where the Penal Code Law and the VAPP Act operate but also other parts of Nigeria and to that extent, it could be safely said that marital rape is not an offence in Nigeria.

⁶⁹ See *Aoko v Fagbemi* (1961) 1 All NLR 400.

⁷⁰ Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963, s. 282(2).

⁷¹ Criminal Code, Cap. C38, Laws of the Federation of Nigeria, 2004, s. 6.

⁷² Criminal Law of Lagos State, 2011, s. 258(3).

⁷³ Shari’ah Penal Code Law of Zamfara State, No. 10 of 2000.

⁷⁴ *Ibid*, s. 128(2). This section forecloses or excludes all possibilities of prosecuting marital rape.

⁷⁵ Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963.

⁷⁶ *Ibid*, s. 282(2).

⁷⁷ *Ibid*.

9. Marital Rape in Some Jurisdictions

It is considered important to examine what obtains in some other climes with a view of knowing or determining the way forward in our legal system. Consequently, in this part of this article, a brief examination of the position of marital rape in the United States of America, India and Saudi Arabia shall be undertaken. The choice of India is based on its being the most populous country in the world.⁷⁸ The United States of America is considered for its leading role in legislation and judicial activism and Saudi Arabia is chosen because of its religious significance in the world.

9.1 Marital Rape in the United States of America

In the United States of America, the removal of marital rape immunity or exception started in Michigan and Delaware in 1974 and by 1993, all the 50 States of the country have criminalized marital rape.⁷⁹ However, although marital rape is a criminal offence nationwide in the US, there are variations in the definition of what constitutes marital rape and the penalties that are awarded in some situations especially where violence is not involved. Consequently, some jurisdictions require considerable promptness of complaint or report, resistance or physical injury possibly for the determination of the credibility of the victim.

For example, in the State of Idaho, spousal rape is defined as,⁸⁰ “No person shall be convicted of rape for any act or acts with that person’s spouse except under the circumstances cited in subsections (4) and (5) of section 18-6101.” A married woman can bring charges (of rape against her husband) under the following circumstances: “Where she resists but her resistance is overcome by force of violence.”⁸¹ “Where she is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm accompanied by apparent power of execution or is unable to resist due to intoxication, narcotic or aesthetic substance.”⁸²

In Nevada, the law requires the use of force or threat of force. The law provides thus, “It is no defence to a charge of sexual assault that the perpetrator was at the time of the assault married to the victim, if the assault was committed by force or threat of force.”⁸³

Under the Model Penal Code drafted by the American Law Institute, rape is not a first degree felony if there is no serious bodily harm or if the victim was a voluntary social companion and had previously permitted sexual liberties.⁸⁴

9.2 Marital Rape in India

The Indian Penal Code contains partial marital rape exception. It provides as follows: “Sexual intercourse by a man with his own wife, the wife not being under 15 years of age is not rape.”⁸⁵ However, where the husband and wife are living separately after a legal decree and the husband

⁷⁸ Worldmeter <https://www.worldmeters.info> accessed on 27/7/2025.

⁷⁹ Wagner Reese, LLP <https://www.wagnerreese.com> accessed on 6/11/2025 @ 09:01 hours.

⁸⁰ Section 18-6107.

⁸¹ Section 18-6101(4).

⁸² *Ibid*, subsection (5).

⁸³ Section 200.373.

⁸⁴ Mc Cammon, H.J., Campbell, K.E., Granberg, E.M., and Mowery, C., “How Movements Win: Gendered Opportunity Structures and U.S. Women’s Suffrage Movements 1866-1919” *America Sociological Review* 66: 49-70.

⁸⁵ Indian Penal Code, s. 375.

has sexual intercourse with the wife without her consent, he shall be punished with imprisonment ranging from two to seven years in addition to a fine.⁸⁶ Also, communication between husband and wife under the Indian Evidence Act is privileged. The implication is that the parties are precluded from disclosing any matter between them in court except when one of the partners is being prosecuted for an offence against the other partner. Thus, since marital rape is not a crime for which the husband can be prosecuted except where the wife is under 15 years of age, the evidence is inadmissible although relevant. Consequently, depending on the degree of violence used, the husband may be prosecuted for other offences but not rape.

9.3 Marital Rape in Saudi Arabia

In Saudi Arabia, it is the Islamic law that regulates almost every aspect of life of women. Islamic law encourages total submission in marriage and normal daily contacts. Women are restricted from mingling with unrelated men and adultery is a criminal offence that is severely punishable. Feminists and human rights activists see the prevalence of the patriarchal system in Saudi Arabia and its deep rooted cultural norms, customs and traditions as discriminatory against women but have not been able to change them owing to their foundation in Islamic law.

10. Calls for the Criminalization of Marital Rape in Nigeria

From its humble beginning, the offence of rape has been a gender sensitive crime only against the man with reprieve for him only when it happens between a husband and wife. This position of the law was seen as inadequate and subjection of married women to “slavery and consistent” sexual assault which is unacceptable to feminists and human rights activists. The success in their agitation in the United States of America which culminated into the criminalization of marital rape has led to intensive clamours in developing countries including Nigeria for the removal of marital rape immunity.

This clamour in Nigeria led to the sponsoring of the Sexual Offences Bill and the Violence Against Persons (Prohibition) Bill which sought to remove marital rape exemption amongst others. Of the two bills, it was the Violence Against Persons (Prohibition) Bill that was passed thus, becoming an Act of the National Assembly although with a limited area of coverage being applicable only in the Federal Capital Territory, Abuja. However, this Act did not distinguish between married and unmarried men hence it may be interpreted to have prohibited marital rape immunity implicitly.

It must be stated here that the clamour for the abolition of marital rape immunity or the removal of the age long exemption to rape in marriages is purely borne out of concerns to place the law of rape in Nigeria at the same pedestal with the position of law in the western world and not because marital rape is prevalent in the country. This is so because if there are marital rape cases, they are often unreported⁸⁷ and many wives are not willing to have broken homes and their means of sustenance and support removed since there are no arrangements to cater for such persons by the State.

⁸⁶ *Ibid*, s. 376 A

⁸⁷ Rape is often underreported in our society. This is essentially because of the stigma and trauma which the victims often suffer. See Bamgbose, O., & Akinbiyi, op. cit. @ p. 175.

11. Matters Arising

Nigeria is a multi-cultural society with a dual legal system comprising the English or common law tradition which came to be as a result of colonialism; and the customary law tradition of the various indigenous communities. Marital rape is a topic that has a lot of implications on the culture and religion of the people as well as the family component of the society. Thus, under matters arising from our discussions so far in this article, we shall consider the compatibility questions of the removal of marital rape exemption on the Nigerian culture; religions; and the effect of the removal of marital rape exception on the family and society.

11.1 Removal of Marital Rape Exemption and the Nigerian Culture

Culture was defined by Hornby, A. S., as “the customs and beliefs, art, the way of life and social organization of a particular country or group.”⁸⁸ It is the common beliefs, practices, and material objects that constitute a way of life for a group of people and it encompasses things like language, customs, traditions, food and social norms that shape behaviours and interactions in a society. Nigeria being a multi-cultural society has all above cultural components in diversity.

The diversity notwithstanding, marriage is an institution that is recognized and respected in all the cultures of Nigeria. Accordingly, apart from the status of “husband and wife”, couples are respected and accorded some preferential treatments in the society. For example, in almost all communities, there are some leadership positions or committees⁸⁹ which only married men and women can occupy to serve the community because it will be unreasonable for unmarried persons to decide the fate of married individuals where and when there are disputes because experience matters. Besides, marital status goes along with responsibility hence the government and private establishments as well as high commissions and embassies are more at home with married persons in their dealings with prospective employees and travellers.

Preceding the attainment of marital status is the fulfilment of some obligations concerning marriage which include the payment of bride price and all other necessary ceremonies according to the custom of the parties or the specifications of the Marriage Act. Until all the obligations are fulfilled, the rights and privileges of marriage are not accruable to intending parties. However, as soon as the obligations are fulfilled, the various cultures of the Nigerian people regard the married woman as the “property” of her husband and the customary law on rape was intended to protect the “husband’s property” in the wife’s body.⁹⁰ It is upon the fulfilment of the obligations that a husband can lawfully refer to a woman as “my wife”. Embedded in the marriage contract is the notion that the woman has openly and by all necessary implications consented to have sexual intercourse with the man.⁹¹ Since marriage ought to endure throughout the life time of the first partner to die, such consent is taken to be continual because they cannot be renewing the contract anytime the parties want to have sexual intercourse.⁹²

⁸⁸ Op. cit @ p. 357.

⁸⁹ In Uzere Community of Isoko South Local Government Area of Delta State, only married men and women are allowed to serve in its marriage committee.

⁹⁰ Bamgbose, O., & Akinbiyi, op. cit. @ p. 175.

⁹¹ Aderibigbe, R., op. cit. @ p. 15.

⁹² See the extra-judicial declaration of Sir Matthew Hales, “The husband cannot be guilty of a rape committed by himself upon his wife. For by mutual matrimonial consent and contract, the wife hath given herself up in this kind unto her husband which she cannot retract.” Cited in Bennice, J.A., and Resick, P.A., *Marital Rape: History, Research, and Practice*, Trauma, Violence & Abuse, (2003) 4, p. 228.

Arising from the above, where marital rape exemption is removed, spouses would be encouraged to litigate against themselves which is uncustomary and untraditional. Consequently, such legal reforms will work hardship and deny the families all the cultural advantages and encourage broken homes. This will in turn lead to single mothers and fathers being all over the place with negative impacts on the societies who will bear the ultimate effect of improper upbringing of the leaders of tomorrow.

11.2 Compatibility of Marital Rape Exemption and Religious Teachings

Although Nigeria is a secular State and there is freedom of religion among the citizens,⁹³ three major religions are identifiable namely: Christianity, Islam and Traditional religion. Following the English tradition, Christianity is mainly in support of monogamous marriage while Islamic and Traditional religions are essentially pro-customary and support polygamous marriage. All these religions in Nigeria are united in terms of desiring a peaceful union in the marriages of their followers. Under these religions, when a woman is married to a man, they become “one”, doing everything in common almost “to the exclusion” of all others. The religions encourage the women or wives to be submissive to their men or husbands.⁹⁴ They are not expected to litigate among themselves rather they ought to join forces to fight their “common enemy”. Criminalising marital rape by which the husband or the offender would be punished would cause disharmony, disunity, friction and chaos into the family system with the attendant effect on the society. It is therefore clear that the removal of marital rape immunity through its criminalisation is incompatible with the various religious practices in Nigeria.

11.3 Effect of Exclusion of Marital Rape Immunity on the Family / Society

While a society is the aggregate of people living together in a more or less ordered community, a community is a group of people living in the same place or having a particular characteristic in common. In their broadest meaning, society and community may be likened to a country. From the meanings of both society and community, two indispensable elements are embedded namely, people or the human population and the place or area. The population of the area or the people inhabiting the area comprises the various family units or households whose basis, foundation or building block is marriage.

It is germane to remark that in any economy, the people are an indispensable factor in its quest for development. This is because it is the individuals and the families in an economy that act in conjunction with other economic units like the firms and government institutions to bring about development in a society through their engagements in the economic activities of production, exchange, consumption and savings. In other words, it is these economic units that collectively take decisions that can shape the overall economic and political landscape of a society. Suffice to say that the existence of a society cannot be separated from its demography whose determination lies in the population without which the human factor will be missing. It follows that for the society to stand or remain, anything that can erode or reduce the efficiency, quality and output of the people must be discouraged. Thus, since it is the people that shape the environment or society, it is of utmost importance that their foundation should be preserved.

⁹³ Constitution of the Federal Republic of Nigeria, 1999, s. 38(1).

⁹⁴ Ephesians 5: 22-24.

A fundamental question that comes to mind is, “what effect would the criminalisation of marital rape have on the people of the society?” The simple answer is that it would have a destabilization effect on many families. This is logical from the fact that the criminalization of marital rape will definitely lead to the prosecution of many husbands who would be punished. Sending husbands to prison custody or any other punishment would directly mean that there would be instability in many families, waste of time and energy for litigation which will eventually lead to broken homes all over the place. Since children and the youths are the leaders of tomorrow, proper upbringing requiring efforts of both parents are sine qua non. Broken homes must be discouraged because it goes to the root of the society which if allowed to exist at all is capable of eroding the society in the long run.

12. Observations

The discussions so far have established the following observations:

1. That criminalizing marital rape to pave way for the prosecution of husbands that are accused by their wives of the offence of marital rape would work hardship against the family system and by extension the society in the long run.
2. That marital rape is not prevalent in Nigeria but the advocacy for the removal of marital rape immunity is intended to bring Nigeria at par with western civilization which is emphasizing gender equality.
3. That the cultural and religious settings of Nigeria support the patriarchal system where the male (husband) is the head of the family and not matriarchal or gender equality without identifiable head.
4. That the present legal regime in Nigeria is not inconsonance with the removal of marital rape immunity.

13. Recommendations

Arising from the above observations / findings, it is hereby suggested that Nigeria must be wary of wholesale copying the “so-called” civilizations from other countries especially when they can negatively affect the society both in the short and long terms. Nigeria must stand firm against amoral conducts just as it did in the enactment of the law prohibiting same sex marriage in Nigeria even when it was in vogue in many countries. Furthermore, the following specific recommendations are hereby offered for the protection of the Nigerian society from gradual decline and destruction.

1. Calls for the criminalization of marital rape in Nigeria should be ignored and the status quo in the Criminal Code, the Penal Code Law of Zamfara State and the Criminal Law of Lagos State which allows no room for the prosecution of a husband for the rape of his wife should be retained and sustained.
2. Section 282(2) of the Penal Code, Cap. 89, Laws of Northern Nigeria that gave partial approval or recognition to marital rape should be amended to remove the clause, “if she has attained to puberty” for it to align with the Penal Code Law of Zamfara State and all other laws in Nigeria that explicitly allowed marital rape immunity.
3. The Violence Against Persons (Prohibition) Act 2015 should be amended to distinguish between married and unmarried persons and to grant marital rape immunity to husbands in consonance with other statutes that contain marital rape exemption in Nigeria.

14. Conclusion

The Nigerian society has its foundation in the various family units which in turn have their roots in the marriage institution. This institution must be preserved if the society must be protected from decline and gradual deterioration. The culture and religions of the people of Nigeria should be respected and wholesale importation of western ideals should be discouraged. Consequently, any apparent or remote substance, object or action that can negatively affect the Nigerian society must be discouraged. In this wise, it is hereby emphasized that the criminalization of marital rape in Nigeria has the potentials of dividing homes and families which will negatively affect the population rejuvenation process in the Nigerian society.