

FIGHT AGAINST THE OFFENCE OF RAPE IN NIGERIA: THE IMPACT OF THE VIOLENCE AGAINST PERSONS (PROHIBITION) ACT, 2015

Hope Lifted Haruna*

Hadiza Mohammed Isa**

Abstract

The rising incident of rape cases perpetrated by state and non-state actors in recent time leaves much to be desired as to the effectiveness of the implementation of penal laws in Nigeria. The need for adequate retribution for wrongs done and possible compensation for victims cannot be overemphasised. Using doctrinal method, this paper seeks to appraise the impact of the enactment of the Violence against Persons (Prohibition) Act, 2015 in combating the offence of rape in Nigeria with the redefinition of what constitutes rape, introduction of compensation for victims and establishment of convicted sexual offenders register. The paper recommends that there is the need to make the sexual offences register more accessible to the general public as required by the Act. The paper used doctrinal method to collate materials.

Keywords: Fight; Rape; Offence; Impact; Violence.

1. Introduction

The crime of rape is as old as man and same has been viewed as one of the heinous crimes in Nigeria¹ and indeed all over the world. The recent rise in the reports of the incidences of rape is at an alarming rate requiring serious attention from all stakeholders giving rise to different degrees of punishment including surgical castration as enacted by the Kaduna State Government as punishment for rape². Also Dawodu and Amadasun lamented on the issue of the rise in the number of rape cases in the following words:

The incidence of rape has become a social problem as a result of the alarming rise in rape cases. Recently in June 2020 reports from the police department in Kano state, Nigeria revealed that a 32-year-old man confessed to having raped over 40 women within the state. In the same vein, the Premium Times also observed that

* LLB (Hons) (Kogi State University, Anyingba); BL (NLS), PGDE (NOUN); LL.M (ABU Zaria) Lecturer II, Nigerian Law School, Yola Campus, E-mail: harunahope16@gmail.com, Phone No: 07031608600, 09020015283.

** LLB (Hons) (University, of Maiduguri); BL (NLS) .M.A (ABU Zaria) Lecturer II, Nigerian Law School, Yola Campus, E-mail: hadizamohammed111@gmail.com, Phone No: 07034366636.

¹B. E Ewulum, 'Revisiting the Definition of Rape Under the Nigerian Criminal Jurisprudence' (2020) vol. 2(3) IRLJ 85.

² Adesoji Kolawole Adebayo, Adepoju Adebisi Anthony and Emmanuel Chinake Emmanuel, 'Definition of Rape and overview of Surgical Castration as a Punitive Measure for Reducing the Menace in Nigeria' (2021) Vol. 8(3) Nnamdi Azikiwe University, Akwa Journal of Commercial and Property Law.

Nigeria recorded 717 cases of rape within five months, specifically from January through May 2020 (Premium Times-News, 2020).³

In the Christian faith, the old Testament contains the injunction given to Moses for the Israelites which stipulated death by stoning as punishment for rape and in some cases, the perpetrator will be made to marry the victim with the instruction not to divorce her as long as he lives; in addition to payment of monetary compensation to her father.⁴ The trauma of the violence of rape on the victim is better imagined than experienced. Hence, the reason why it is frowned at. Alao⁵ reiterated the sad reality of the increase in rape on both male and female victims with attendant consequences such as flashbacks on the experience, post-traumatic stress disorder, self-harm, sexually transmitted infections such as HIV/AIDS, pregnancy amongst many other which may be suffered by the victims. The courts have also frowned at the offence and come down heavily on offenders. In the case of *Idi v. State*⁶, the appellant was charged and convicted for the rape of a seven years old girl. In convicting the appellant, the Supreme Court, Per Ogunbiyi J.S.C. stated thus:

I wish to stress in strong terms and condemn the unwholesome and disgraceful behavior of the appellant. He is not a person fit to be associated within a decent society. His conviction and sentence is what people of his kind should deserve. He should be kept behind the bars in terms of the judgment meted on him by the two lower court.⁷

The bitter case of one Miss Ochanya Ogbanje (now late)⁸ a 13 year old girl who was raped by her uncle and his son and died of complications arising from the act is still fresh in our minds. It was rather unfortunate that the court acquitted and discharged the accused on grounds that the prosecution did not prove its case beyond reasonable doubt while the son is said to have escaped.

³ Oluwatosin Abigail Dawodu and Clara Nkechi Amadasun 'Sociological Review on the Incidence and Implications of Rape on Victims in Nigeria', (2021) Vol.1(1) Nigerian Journal of Social Problems and Social Policy Review, 17<<https://www.nigerianjournalonline.com/index.php/NJSPSPR/article/view/2127/2076>> accessed 7 October 2022

⁴ Deuteronomy 22 v.25-29.

⁵ Alao Oluwafemi Joseph 'An Examination of Impact of Rape on the Victims and the Socio- Development of Nigeria', (2018) Vol. IX, No. III Quarter III, Afro-Asian Journal Social Sciences 6-7, <<https://onlinersearchjournals.com/aajoss/art/288.pdf>> accessed 19 October 2022.

⁶ (2018) 4N.W.L.R (Pt. 1610)359

⁷(2018) 4N.W.L.R (Pt. 1610)359; 388.

⁸ Evelyn Okakwu, Ochanya: State Court Acquits Husband of Raping Minor, Federal Court Convicts wife of Negligence, Premium Times, 28 April 2022 <<https://www.premiumtimesng.com/news/headlines/526604-ochanya-state-court-acquits-husband-of-raping-minor-federal-court-convicts-wife-of-negligence.html>> accessed 30 October 2022.

The wife of the alleged rapist was however convicted for the offence of negligence for not carrying out her duty to protect the child who was left in her care.⁹

The focus of this paper is to examine the impact of the provisions of the Violence Against Persons (Prohibition) Act hereinafter referred to as “The Act” on the fight against the menace of the offence of rape which is fast translating into a monstrous situation which if not stopped is capable of destroying every form of human dignity which is considered a fundamental right.¹⁰

2. Brief Overview of the Act

The Act is divided into six (6) parts. Part one (1) which covers sections 1-26 covers offences under the Act which includes, rape, inflicting physical injury on a person, coercion, wilfully placing a person in fear of physical injury, offensive conduct, prohibiting female circumcision or genital mutilation, forceful ejection from home, depriving a person his/her liberty, damage to property with intent to cause distress, forceful financial dependence or economic abuse, forced isolation or separation from family and friends, emotional, verbal and psychological abuse, harmful widowhood practices, abandonment of spouse, children and other dependents without sustenance, stalking, intimidation, spousal battery, harmful traditional practices, attack with harmful substance, administering a substance with intent, political violence, violence by state actors, incest and indecent exposure. These offences are defined with corresponding terms of imprisonment and fines as the case may be.

Part two (2) covers sections 27-28 which establish the jurisdiction of the court to administer the Act, application for protection order, consideration for the application of the order, the rights of victims under the Act amongst others. Part three (3) covers sections 39-43 which deal with the responsibilities of service providers under the Act, definition of a dangerous sexual offender as someone who has been convicted more than once for a sexual offence or one who commits a sexual offence in the company of another or one who commits sexual offence against a child. Part four (4) which is section 44 makes reference to the regulatory body responsible for administering the Act, to wit: National Agency for the Prohibition of Trafficking in Persons and other related matters (NAPTIP). Parts five (5) and six (6) cover sections 45 and 46 and relate to amendments and interpretation sections respectively.

3. Appraisal of Rape under the Act

⁹ Ibid.

¹⁰ 1999 CFRN (as amended), Section 34.

Before the enactment of the Act, rape was defined as the 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 threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband.¹¹ Similarly, under the Penal code it is captured thus:

‘(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; (d) with her consent when the man knows that he is not her husband and that her consent is 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.¹²

One common denominator of the provisions of both the Criminal Code and the Penal Code is that the offence of rape can only be committed against a woman where a man not being her husband engages in an act of sexual intercourse with her against her consent or with consent where same was fraudulently or violently obtained. The courts have held in plethora of cases that penetration no matter how slight is sufficient to prove the offence of rape. Due to development and ingenuity on the part of criminal elements, the definition of rape has attracted several modifications to cater for current realities in various jurisdictions including Nigeria. Rape therefore, in Nigeria is defined in the following terms:

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) The other person does not consent to the penetration; or (c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or addictive capable of taking away the will of

¹¹ Criminal Code Act, Cap C38, LFN 2004, Section 357.

¹² Penal code, Section 282.

such person or in the case of a married person by impersonating his or her spouse.¹³

The implication of this definition is that both the female and male genders are capable of becoming victims of rape. Also, the penis is not the only instrument of penetration as rightly captured under the Act. The use of any instrument to penetrate the vagina, anus or mouth of another person intentionally without the consent of that person or where consent is given under force or fraudulent misrepresentation will amount to rape. As noted by Ewulum¹⁴ that current realities reveal that women can strap on dildos to penetrate both men and women. Thus, the need to expand the definition of rape to include use of anything for such penetration. Consequently, all genders are protected against the offence of rape. Suffice to state that this provision is in tandem with global trend considering the rise in cases of male rape victims.¹⁵ Commenting on the Indian position which has a similar provision like the Nigerian definition¹⁶, it was stated that anything in the definition of rape simple means “fingers, toes, tongue or any part of the body”. The inference that can be drawn from this sections on what constitutes the offence of rape are as follows:

- i. Penetrating the vagina, anus or mouth of a person with any part of the body or anything.
- ii. Such penetration being done without the consent of such person.
- iii. Where consent is obtained by force, threat or intimidation of any kind or fear of harm.
- iv. False or fraudulent misrepresentation of the nature of the act listed in (no.1) above.
- v. Use of substance or additives capable of taking away the will of a person.
- vi. Impersonating the spouse of a married person in the case of a married person.

4. Impact of the Act on the Fight against the Offence of Rape in Nigeria

The Act¹⁷ was enacted with the objective of prohibiting all forms of violence against persons in private and public lives and providing maximum protection and effective remedies for victims

¹³ Violence against Persons Prohibition (Act) 2015, Section 1(1).

¹⁴ Ewulum (n.1) 87

¹⁵ Scott M. Wafield ‘Men Cannot be Raped: Correlates of Male Rape Myth Acceptance’, (2018) 36 (13-14) Journal of Interpersonal Violence 1-27 <<https://journals.sagepub.com/doi/abs/10.1177/0886260518817777>> accessed 20 September 2022.

¹⁶ M. O. Ozzi and C. Obinuchu ‘The Challenges of Rape Victims in Nigeria and the way Forward’ (2016), Vol. 8 No.2 The Journal of Jurisprudence and Contemporary Issues, 240, https://www.researchgate.net/profile/Mabel-Izzi-3/publication/332290886_THE_CHALLENGES_OF_RAPE_VICTIMS_IN_NIGERIA_AND_THE_WAY_FORWARD/links/5cac592c299bf118c4bd12c2/THE-CHALLENGES-OF-RAPE-VICTIMS-IN-NIGERIA-AND-THE-WAY-FORWARD.pdf accessed 19 October 2022.

¹⁷ Violence against Persons (Prohibition) Act, 2015

and punishment of offenders. The Act has created several innovations by criminalizing certain conducts which have hitherto formed basis for discussions considering the danger such acts pose to the public. Some of the innovations brought in by the Act is the criminalization of harmful traditional practices such as female genital mutilation and widowhood practice. The focus of this paper is however on the impact of the Act on the fight against rape.

4.1 The Re-Definition of the Offence of Rape

This is a major innovation of the Act. The definition of rape was limited to having carnal knowledge of a woman or girl without her consent,¹⁸ thereby making the offence of rape only capable of being committed against the female gender. The Act¹⁹ provides that any form of penetration into the vagina, anus or mouth of any person without their consent amounts to rape. Anyone convicted of the offence can be sentenced to various terms of imprisonment²⁰ with 12 years being the minimum and life imprisonment as maximum in appropriate cases without the option of fine.

4.2 Establishment of a Compensatory Regime

Under the Act, in addition to terms of imprisonment, there exists a compensatory regime for victims. This is a radical shift from the jurisprudence of criminal laws which are hitherto concerned with the punishment of offenders with little or no consideration for the plight of the victim other than the satisfaction that comes with the fact that the offender has been adequately punished for his wrong doing. The Act²¹ however makes provision for compensation for victims of rape in appropriate circumstances. Ojuade in her work opined that compensation is necessary to cover costs such as inability to work due to psychological illness arising from the said abuse and cost of therapy to deal with the effects of the abuse²².

4.3 The Establishment of a Register for Convicted Sexual Offenders

This register is to be maintained and made accessible to the public by the National Agency for Prohibition of Trafficking in Persons and other Related Matters (NAPTIP)²³ which is the regulatory body for the implementation of the Act. The essence of this register as encapsulated by the website of NAPTIP is to name and shame sexual offenders and also serve as a reservoir

¹⁸ Criminal code, Cap. C.38, LFN 2004, Section 357.

¹⁹ Violence against Persons (Prohibition) Act, 2015, Section 1.

²⁰ Ibid, Section 1(2) (a) - (c).

²¹ Ibid, Sections 1(3), 2(5) and 24(5).

²² Ewulum (n. 1) 156

²³ Violence against Persons (Prohibition) Act, 2015, Section 1 (4).

for background checks for such individuals to ensure they are kept away from vulnerable groups like children.²⁴ The access to the register is however at a fee from anyone seeking information in the register.²⁵ NAPTIP has received about one thousand, one hundred and eight (1,108) cases and secured about eleven (11) conviction since 2015 till date.²⁶

4.4 Consequential Amendments of Existing Laws

The Act equally made a consequential amendment of the Criminal Code, Penal Code and any other law with regard to any offence under this Act.²⁷ The implication therefore, is that the definition of rape under this law supersedes any other definition provided under any other law in Nigeria. However, the Act is limited to the Federal Capital Territory.²⁸ However, it is quite commendable that most states in Nigeria, save Gombe, Kano, Katsina and Zamfara states have adopted the Act with modifications.²⁹

5. Conclusion and Recommendation

The rising cases of rape across all genders was a call to revisit the definition of rape under the Nigerian criminal jurisprudence to which the Act has come up to tackle with a recognition of the offence to now mean an intentional penetration of the vagina, anus and mouth of a person by any person or with the use of anything. This is commendably in tandem with global trend as men have also been victims of rape. In the light of the discussion above, the following recommendations are made.

The convicted sexual offences register as noted, is made accessible only upon the payment of a token to NAPTIP.³⁰ It is opined that this is derogation from the intent of the Act which provides that the register should be made accessible to the public.³¹ The essence of this register is not a money making avenue but a way to name and shame sexual offenders. Thus, the Agency should remove the requirement of payment and let the register be displayed for easy access considering the danger such convicted persons pose to society.

²⁴ <https://sp.nsod.naptip.gov.ng/background-check/login.ph> accessed on 10 October 2022.

²⁵ Ibid.

²⁶ Ijeoma Amugo M, NAPTIP mail services, 25 October 2022

<<https://mail.google.com/mail/u/0/#inbox/KtbxLwghkWJHgqmdRhgGTXcdQSZJsgvRg>>

²⁷ Violence against Persons (Prohibition) Act, 2015 Section 45 (1) and (2).

²⁸ Violence against Persons (Prohibition) Act, 2015, Section 47.

²⁹ Rule of Law and Empowerment Initiative, Vapp Tracker <<https://www.partnersnigeria.org/vapp-tracker/>> accessed 18 October 2022.

³⁰ NAPTIP, Nigeria Sexual Offender and Service Provider Register, <<https://sp.nsod.naptip.gov.ng/background-check/login.php>> accessed 18 October 2022.

³¹ Violence against Persons (Prohibition) Act, 2015 Section 1 (4)

Also, government and non-governmental organizations should carry out awareness of this Act and its benefits and mount pressure on states that are yet to enact this law, to do so, while monitoring its implementations in states that have enacted the law.