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# AN APPRAISAL OF SEXUAL OFFENCES UNDER NIGERIAN CRIMINAL LAW

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GOU/U21/LAW/325

A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL. B) OF GODFREY OKOYE UNIVERSITY.

JUNE, 2026.

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DECLARATION

I , CONDOLEEZA ULOAKU ASIKA, hereby declare that this Long Essay titled “An Appraisal of Sexual Offences Under the Nigerian Criminal Law” is an original work carried out by me in the Faculty of Law, Godfrey Okoye University, under the supervision of Dr. Okika Josephat.

This work has not been submitted either wholly or partially, for any other degree or professional qualification at any other institution of higher learning within and outside Nigeria.

All sources of information and quotations used in this work have been duly acknowledged.

CONDOLEEZA ULOAKU ASIKA DATE



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## CERTIFICATION

I, CONDOLEEZA ULOAKU ASIKA, with registration number GOU/U21/LAW/325 hereby certify that this research carried out by me, with the direct and diligent supervision of Dr. Josephat Okika, has been aproved by the Faculty of Law, Godfrey Okoye University, Enugu.

Asides from the sources cited and recognised in this research project, this study is an original work and has not been presented in part or in full, for any degree of this university or any other university to the best of my knowledge.

…….. ……

Dr. Josephat Okika DATE

PROJECT SUPERVISOR

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Dr G O Omeh DATE

Ag. DEAN, FACULTY OF LAW

…….. ……..

EXTERNAL EXAMINER DATE



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## DEDICATION

This project is dedicated to all victims of sexual violence whose experiences continue to inspire the pursuit of justice, legal reform, and the protection of human dignity. It is equally dedicated to every individual seeking a more just and humane legal system.



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## ACKNOWLEGEMENT

First and foremost, I give glory to God Almighty for the successful completion of this project. His strength and guidance put me through all the highs and lows of this academic journey which was made possible by him.

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National Human Rights Commission Act 2004

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Penal Code Cap 53 Laws of the Federation of Nigeria, 2004.

Punishment of Incest Act 1908

Sexual Offences Act 2003

Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

Violence Against Persons (Prohibition Act) 2015



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## LIST OF ABBREVIATIONS

| | |
|---|---|
| ACRWC | African Charter on the Rights and Welfare of a Child |
| AER | All England Reports |
| CA | Court of Appeal |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CFRN | Constitution of the Federal Republic of Nigeria |
| CH | Chancery Law Reports |
| Crim | Criminal |
| EWCA | England and Wales Court of Appeal |
| Fam | Family Law Reports |
| HL | House of Lords |
| KB | King's Bench Division |
| LPELR | Law Pavillion Electronic Law Reports |
| MLR | Medical Law Reports |
| NAPTIP | National Agency For the Prohibition of Trafficking in Persons. |
| NCoS | Nigerian Correctional Service |
| NHRC | National Human Rights Commission. |
| NMLR | Nigerian Monthly Law Reports |
| NWLR | Nigerian Weekly Law Reports |
| OUP | Oxford University Press |
| QBD | Queen's Bench Division |
| TIPPEA | Trafficking in Persons (Prohibition) Enforcement and Administration Act |



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| | |
|---|---|
| UKHL | United Kingdom's House of Lords |
| UNICEF | United Nations Children's Fund |
| VAPP | Violence Against Persons (Prohibition) Act |
| WACA | West African Court of Appeal |
| WLR | Weekly Law Reports |



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## ABSTRACT

This research critically examines sexual offences and the defences available to accused persons under Nigerian Criminal Code Act, Penal Code Act, Violence Against Persons (Prohibition) Act, and relevant judicial authorities. The study explores the legal framework governing offences such as rape, defilement, incest, indecent assault, unnatural offences, and acts of gross indecency, while analysing the extent to which existing laws effectively balance victim protection with the constitutional rights of accused persons. Adopting a doctrinal research methodology, the study relies on primary and secondary sources including statutes, judicial decisions, textbooks, journal articles and scholarly opinions. It examines major defences available in sexual offence trials, including mistake of fact, consent, insanity, intoxication, duress, necessity, alibi, and other procedural safeguards. Specific attention is given to the judicial interpretation of these defences and the evidentiary challenges surrounding their application.It was discovered that although Nigerian law has made significant progress through reforms such as the Violence Against Persons (Prohibition) Act, several provisions within the Criminal Code and Penal Code remain outdated and inconsistent with modern human rights standards. The study further reveals the certain traditional doctrines, including the marital rape exemption and strict evidentiary requirements, continue to hinder effective justice delivery in sexual offence prosecutions. While the law seeks to protect victims of sexual violence, the operation of some defences and procedural barriers often creates tension between fairness to the accused and adequate protection for complainants. The study concludes that there is a pressing needfor legislative and judicial reforms aimed at modernising sexual offence laws, clarifying the scope of available defences, strengthening victim protection mechanisms, and ensuring compliance with constitutional and international human rights standards.




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# CHAPTER ONE

# INTRODUCTION

## 1.1 Background to the Study

Sexual offences are one of the grievous crimes known to Criminal law. They violate the integrity and autonomy of victims and also breach public morality and social order[1]. In Nigeria, these offences spark intense debates because of how common and culturally sensitive they are, the difficulties of prosecution[2], and more importantly, the oblivion of many people as to the defences available to them as the accused in a sexual offence trial.

The legal regulation of sexual conduct in Nigeria was largely influenced by its colonial legal heritage, indigenous customary practices, and religious teachings., amongst others[3] and there is a dire need for reform and unification of the laws which govern sexual offences in the country. In light of these variables, this research seeks to critically examine sexual offences vis a vis the defenses available under Nigerian Criminal Law.

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[1] Smith, Hogan & Ormerod, Smith and Hogan's Criminal Law ( 15th edn, Oxford University Press 2018) 938

[2] World Health Organisation, Violence Against Women Prevalence Estimates (2021); M O Afolayan, 'Comparative Legal Analysis of the Offence of Rape in Nigeria, The UK and the USA ' *International Journal of Criminal Common Statutory Law 45.*

[3] T O Elias The Natue of African Customary Law (Manchester University Press 1956)



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## 1.2 Statement of the Problem

Despite the plethora of legislation criminalizing sexual offences in Nigeria, the rate of sexual violence remains very high[4] and conviction rates are at a significant deficit[5]. This situation reflects not just a social problem but a deep -seated legal and institutional challenge. While the Criminal Code[6], Penal Code[7], Violence Against Persons (Prohibition) Act[8] and Child Rights Act[9] collectively form the legal framework for dealing with sexual offences, gaps and inconsistencies in their application have continued to hinder effective justice delivery.

For instance, Section 55 of the Penal Code [10]encourages one to beat his wife in order to correct her, this goes against the constitutional right to dignity of human person in Section 34 of the Constitution[11], in Islamic law, the male gender is viewed as a protector and maintainer of women according to the Quran[12] because Allah has preferred one over the other, this portrays the weakness of women. Section 353 of the Criminal Code[13] makes indecent

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[4] National Bureau of Statistics and United Nations Office on Drugs, Crime Experience and Security Perception survey (Latest Edition);United Nations Children's Fund, A Statistical Snapshot of Violence Against Girls in Nigeria.

[5] Ernest Ogbu, Legal Brief: Rape as a Penal Offence in the Nigerian Violence Against Persons (Prohibition) Act, 2015: A Forensic Investigative Approach; *African Journal of Criminology and Justice Studies,* 2020 Vol.13
According to CLEEN Foundation reports on criminal justice administration.
[6] Cap. C.38, Laws of the Federation of Nigeria, 2004.
[7] Cap.P3, Laws of the Federation of Nigeria, 2004.
[8] 2015.
[9] Cap C50, Laws of the Federation of Nigeria.
[10] Cap.P3, Laws of the Federation of Nigeria, 2004.
[11] Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[12] 4:34
[13] Cap. C.38, Laws of the Federation of Nigeria, 2004.



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assault against males a felony punishable by 3 years in prison, while the same Criminal Code[14] in Section 360 makes the same offence against females a mere misdemeanour punishable by 2 years in prison. There also is also no express provision criminalising marital rape in any of the codes.

It is upon this background that this research aims at the reconciliation of the gaps and inconsistencies that militate against justice delivery in dealing with sexual offences.

### 1.3 Research Questions

1. How are sexual offences defined and classified unde the Criminal Code Act[15], The Penal Code[16] and the Violence Against Persons Prohibition Act[17].

2. What are the major defences available to persons accused of sexual offences in Nigeria and how have Nigerian courts interpreted and applied these defences, particularly in cases involving consent and mistake of fact?

3. To what extent do existing defences in sexual offence cases promote or hinder justice for victims of sexual violence while safeguarding the fair trial rights of accused persons and what reforms are necessary to address the identified shortcomings.

[14] ibid
[15] Cap. C.38, Laws of the Federation of Nigeria, 2004.
[16] Cap.53, Laws of the Federation of Nigeria, 2004.
[17] 2015



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4. How do outdated provisions such as the marital rape exemption conflict with modern principles of human rights and constitutional guarantees of equality and dignity?

## 1.4 Aims and Objectives of the Study

1. To examine the definition and classification of sexual offences under the Criminal Code[18], Penal Code[19], and the Violence Against Persons (Prohibition) Act[20].

2. To identify and analyse the principal defences available to individuals in sexual offences and to evaluate how Nigerian Courts have interpreted and applied these defences in practice.

3. To analyse the adequacy of these existing laws and defences in balancing the rights of victims and accused persons, and to propose reforms that enhance justice, equality, and human rights protection.

4. Examine the extent to which existing provisions, such as the marital rape exemption, conflict with constitutional guarantees of dignity, equality, and human rights.

## 1.5 Research Methodology

[18] Cap. C.38, Laws of the Federation of Nigeria, 2004.
[19] Cap. C.53, Laws of the Federation of Nigeria, 2004.
[20] 2015.



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This research adopts a doctrinal approach, involving both primary and sccondary sources The primary sources utilised in this research include statutes and judicial decisions while the secondary sources include textbooks from renowned authors, journal articles, law reports such as the Nigerian Weekly Law Reports, All Nigerian Law Reports, Law Pavilion, online databases and Chancery Division Reports, among others.

### 1.6 Scope and Limitations of the Study

The study is confined to a legal analysis of sexual offences and the defences available to accused persons under Nigerian Criminal Law. This research is anchored on statutory provisions contained in the Criminal Code Act[21], Penal Code Act[22], and the Violence Against Persons (Prohibition) Act,[23] reference shall also be made to the Constitution[24] alongside judicial authorities that have interpreted and applied these laws.

While reference may be made to practical challenges affecting the prosecution of sexual offences , the focus of the research remains on the substantive and procedural legal issues arising from the operation of these laws.

### 1.7 Significance of the Study

This study seeks to contribute to the already existing scholarship on sexual offences and criminal responsibility in Nigeria. It is hoped that the findings and

[21]Cap. C.38, Laws of the Federation of Nigeria, 2010.
[22] Cap.53, Laws of the Federation of Nigeria, 2004.
[23] (2015).
[24] Constitution of the Federal Republic of Nigeria 1999 (as amended).



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recommendations will be of value not only to academics and students, but also to legal practitioners, judges, policymakers, and other stakeholders involved in the administration of criminal justice. By identifying areas of legal uncertainty and highlighting the need for reform, the styudy aims to promote a more responsive legal framework that protects victims of sexual violence while preserving the fundamental rights of accused persons.

## 1.8 Literature Review

Scholarly discourse on sexual offences in Nigerian Criminal Law reveals a long-standing dissatisfaction with existing legal frameworks. The topic continues to attract academic attention because it cuts across criminal jurisprudence, human rights, and social policy.

Early Nigerian Criminal Law scholars such as Okonkwo and Naish[25] examined sexual offences through the lens of morality and public order. They saw the Criminal Code as a colonial inheritance that reflects "Victorian" notions of chastity and female modesty rather than actual protection of sexual autonomy. In their view, offences like rape and defilement were historically designed to protect male proprietary interests in women[26], instead of women's right to bodily independence.

[25] Okonkwo and Naish, Criminal Law in Nigeria (5th edn, Spectrum Books Ltd, 2012).
[26] Susan Brownmiller , Against Our Will:Men, Women and Rape (Simon and Schuster 1975).



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The major causes of sexual violence have also been highlighted by scholarly works, for instance, men have been perceived culturally and socially to be exert power aggressively. These attributes have been said to contribute to the social acceptance of the dominant nature of men.[27] A prevalent number of Nigerian societies are patrilineal such that females have only 'user right" and are extremely submissive and obedient.[28] There has also been commentary on the problems faced in investigating and prosecuting rape including, but not limited to lack of public awareness, lateness in reporting, evidentiary issues, victimisation, parental separation, investigation compromise, intimidation, unwillingness of survivors to advocate against the crime, delay in prosecution, limited resources etc.[29]

Consent is also another controversial concept in Nigeria's legal regime. First of all, the Criminal Code didn't define the concept of consent, the fact that it is a key element in rape prosecutions would lead one to wonder why it doesn't have an express definition in the Act.[30] Another issue is that of proof of consent, the Criminal Code requires the prosecution to prove lack of consent, this is a very difficult task especially in cases where there is no physical evidence or

[27] Obi, Violence Against Persons (Prohibition) Act 2015: Advancing Legal Protections of Women Against Violence in Nigeria.
[28] ibid
[29] Ernest Ogbu, Legal Brief: Rape as a Penal Offence in the Nigerian Violence Against Persons (Prohibition) Act, 2015: A Forensic Investigative Approach; *African Journal of Criminology and Justice Studies,* 2020 Vol.13.
[30] A, Dimas, A Comparative Analysis of the Legal Frameworks for the Offence of Rape in Nigeria and India: Addressing the Pitfalls in Nigeria, *African ajaournal of Criminal Law and Jurisprudence. (2024) 9 .* https://journals.ezenwaohaetorc.org/index.php/AFJCLJ/article/view/2954



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witnesses.[31]

With regards to marital rape, the issue has been a rising concern in contemporary human society due to its endemic nature[32]. It is also interesting to note that the rate at which the crime is committed is not commensurate with the rate at which it is recorded and reported.[33] A national survey found that only 18.1 percent which is less than one in five of some 10,000 rape victims reported to the police.[34] The Nigerian laws on rape are blind to the fact that a man can forcefully have sexual intercourse with his wife without her consent. This is reflected in the two statutes in Nigeria, for example, Section 6 of the Criminal Code[35] defines unlawful carnal knowledge to the exclusion of sexual intercourse between man and wife.

More recent commentators, argue that while the code remains relevant, its language and structure are outdated as they did not adequately protect women from violence[36] Women's rights and other civil society groups began to agitate for a reform of the extant laws to protect women from violence and discrimination[37]. Some scholars have also observed that the Codes define rape narrowly as vaginal penetration of a woman by a man, this definition unfairly

[31] ibid
[32] C, Arinze-Umobi and C N, Dinwoke A Case for the Criminalisation of Spousal Rape: *Law and Justice Social Review* 2 (1) 2021. https://www.nigerianjournalsonline.com/index.php/LASJURE/article/viewFile/2058/2011>
[33] ibid
[34] CLEEN Foundation, 'National Crime Victimisation Survey 2005', < http://www.cleen.org> (accesed on 19th February 2021).
[35] Cap C.38 Laws of the Federation of Nigeria, 2004.
[36] Cheluchi Onyemelukwe., Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act, 2015, *De Paul Journal of Women, Gender and the Law. (2016)* https://via.library.depaul.edu/jwgl/vol5/iss2/3 (accessed on 19th February, 2026).
[37] ibid



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excludes male victims and non-vaginal acts from protection.[38] These limitations have been criticised for enabling female offenders go scot free for crimes which would undoubtedly constitute rape if a man committed the same act.[39] It has been highlighted that many rape cases collapse at the prosecution stage due to lack of corroborative evidence which is a core requirement[40] or because victims withdraw out of fear or shame. This reinforces the argument for a more victim-centred approach to justice.

Scholars widely acknowledge that the law of defences plays an important role in the adjudication of sexual offences, yet Nigerian criminal law retains several traditional common law defences that remain contentious in modern practice. Some scholars argue that these defences, especially consent and mistake of fact, have been historically interpreted in ways that disadvantage complainants. Courts have continuously established in cases such as *Okoyomon v The State*[41] that belief as to age is not a valid defence, demonstrating the law's strict protection of minors. Ogunyemi[42] on the other hand observed that while defences such as insanity and intoxication are theoretically available, they are rarely raised in sexual offence cases due to the stigma and evidentiary burden required to establish them.

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[38] Nwankwo, Obiora, 'The Gender Dimensions of Rape Law Reform in Nigeria' *Nigerian Law Journal* (2010) 14 (1) .
[39] Childs, Mary and Louise Ellison, *Feminist Perspectives on Evidence (*London: Cavendish Publishing, 2000) 156.
[40] Hanson D, An Examination of Challenging Issues on Sexual Offences in Nigerian Criminal Law Jurisprudence, *International Journal of Recent Research in Social Sciences and Humanities.* (2023) Vol. 10, 2, 140-149.
[41] [1973]] 9 SC 7.
[42] A Ogunyemi, 'The Defence of Mistake of Fact in Sexual Offences under Nigerian Criminal Law' *Nigerian Bar Journal.*



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# CHAPTER TWO

# CONCEPTUAL AND THEORETICAL FRAMEWORK

## Conceptual Framework

1. The Concept of Sexual Offences

Sexual offences in the ordinary sense connotes illegal acts which involve sexual behaviour that occurs without the consent of one of the parties or acts that are



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illegal by law whether or not consent was given. They are defined to include rape, sexual assault, and intimidation, particularly focusing on acts that violate, humiliate or degrade the sexual integrity of any person.[43] They encompass a wide range of grievous sexual activity which is deemed unlawful when carried out. Under Nigerian Law, these offences are primarily governed by the Criminal Code[44] which applies in the South and Penal Code[45] which applies in the North , and the VAPP[46] Act, which applies federally and to the Federal Capital Territory, Abuja.[47]

In *Iko v The State*[48] the Supreme Court emphasised that sexual offences such as rape are grievous crimes that violate the bodily integrity and dignity of the victim. The VAPP Act modernised these offences by expanding the meaning of rape beyond penal-vaginal penetration and recognising gender-neutral protection, i.e. both genders can commit the offence of rape. In spite of that, conceptual and practical gaps remain, especially regarding marital rape and the evidentiary burden placed on victims.

Nigerian criminal jurisprudence recognises that for an individual to be held criminally responsible, both the actus reus (physical act) and mens rea (guilty mind) must be present. This was upheld in *Shoulade v The Republic*[49] where the court held that the mental element of intention or recklessness must accompany

[43] Violence Against Persons (Prohibition) Act, 2015.
[44] Cap. C38, Laws of the Federation of Nigeria, 2004.
[45] Cap. P3, Laws of the Federation of Nigeria, 2004.
[46] Violence Against Persons (Prohibition) Act, 2015.
[47] The VAPP Act also applies to states which have adopted it as part of their laws.
[48] [2001] Federation Weekly Law Reports (Pt. 70) 1601.
[49] (1966) JELR 91715 (SC).



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the physical act before liability can arise. In sexual offences, liability is often tied to proof that the accused committed a prohibited sexual act on purpose without lawful consent. The rationale is to ensure that only those whose conduct and intent meet the threshold of culpability are subject to punishment, preserving the fairness that underpins criminal trials.

2. The Concept of Defences in Criminal Law

A defence is an exception or an exemption which either mitigates an accused person's criminal liability or completely exonerates a person from criminal liability. It is a legal justification or excuse recognised by law that absolves an accused person from liability or reduces punishment. Defences serve the principle of fairness ensuring that individuals are not wrongfully punished when moral or legal justification exists.

In *Udosen v State*[50], it was observed that a successful plea of insanity, mistake, or duress could exonerate an accused if properly established. The Nigerian Law recognises general defences[51] such as insanity and compulsion, and specific offences such as consent and mistake of fact. These defences are critical for safeguarding the rights of defendants and ensuring due process.

3. The Concept of Consent

Consent is a central but highly contested issue in sexual offence cases. It refers to a voluntary, informed, and unforced decision to engage in sexual act. Under

[50] [2007] 4 Nigerian Weekly Law Reports (Pt. 1023) 125.
[51] Sections 28-33 of the Criminal Code Act.



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the Criminal Code[52] and the Penal Code[53], where there is no consent, it is an important element of proving rape.

The courts continue to underscore that genuine consent must be free and voluntary. An instance is in *Posu v The State*[54] the court held that consent obtained fraudulently, force or intimidation is no consent at all. However, the Criminal Code's presumption that a wife cannot say that her husband raped her, due to implied marital consent as provided under section 6 of the Act[55], remains one of the most criticised provisions. This Presumption of marital consent is based on the old common law principle stated in *R V Clarke*[56] that once a woman gets married, she automatically gives permanent consent to having sex with her husband.

This marital rape exemption has been widely condemned for conflicting with constitutional principles of dignity and equality pursuant to Sections 34 and 42 of the Constitution[57] and international intruments such as the Convention on the Elimination of All Forms of Discrimination Against Women.[58] Thus, while consent functions as a potential defence, its misuse and misinterpretation often perpetuate injustice and reinforce patriarchal biases within the criminal justice system.

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[52] Section 357.
[53] Section 282.
[54][2011] 3 Nigerian Weekly Law Reports (Pt. 1233) 1.
[55] Criminal Code Act Cap C38 Laws of the Federation of Nigeria, 2004.
[56] [1949] 2 All English Reports 448.
[57] Constitution of the Federal Republic of Nigeria 1999 (as amended).
[58] Article 1 defines discrimination broadly to include any distinction, exclusion or restriction based on sex that impairs or nullifies women's enjoyment of human rights and fundamental freedoms. Article 2 obligates states to abolish laws and customs that constitute discrimination..



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4. The Concept of Justice and Human Rights.

Justice is the moral foundation of all criminal adjudication. It demands impartiality, fairness, and respecting human dignity. The Nigerian constitution expressly guarantees equality before the law and the right to a fair hearing.[59] In *AG of Bendel State v AG of the Federation.*[60] The apex court confirmed that justice must not only be done but manifestly be seen to be done. When it comes to sexual offences, justice requires balancing the protection of victims with the preservation of the accused's procedural rights especially the right to dignity and to be free from discrimination[61] and upholding of the accused right to being an innocent man until being proven guilty.

## 2.2 Theoretical Framework

1. Natural Law Theory

Natural Law theory holds that the legitimacy of law is derived from universal basic moral principles inherent in human nature rather than societal conventions which enable human beings to discern right from wrong. It refers to the idea that there is a single standard of truth or rightness for everybody which is equally known by all persons.[62]Thinkers like Thomas Aquinas and Cicero maintained that a law that is unjust can not be said to be law.[63] In the Nigerian context, this theory supports the argument that sexual offences are moral as

[59] Sections 17(2)(a) and 36.
[60] [1982] 3 Nigerian Constitutional Law Reports 1.
[61] Section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[62] Dennis LLoyd, Introduction to Jurisprudence, ( 1st edn Stevens & Sons Limited 1959).
[63] Lex iniusta non est lex.



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well as legal wrongs, and that any law which tolerates acts such as marital rape violates natural justice. The court's reasoning in *Lakanmi v Attorney General (Western Region)*[64] reflects natural law ideals that the rule of law and moral legitimacy must prevail over arbitrary authority.

2. Legal Positivism

Legal Positivism, associated with John Austin and H.L.A Hart, asserts that law does not attain validity by reason of its moral rightness but because it was enacted by proper authority. Positivism is reflected in Nigeria's continued application of colonial era codes that define and punish sexual offences. Although such laws may appear outdated, positivists argue that until amended by the legislature, they remain binding. The case of *Aoko v Fagbemi*[65] portrays this view. In the instant case, the court held that an act cannot be punished unless clearly defined as a crime by law. Positivism thus helps explain the persistence of certain legal provisions despite evolving moral or social standards.

3. Feminist Legal Theory

This theory emerged as a response to the observed inadequacies of traditional legal doctrines in its approaches towards the experiences of women and girls. The theory argues that many legal institutions and rules

[64] [1970] All NLR 111.
[65] [1961] 1 All NLR 400.



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have historically been shaped by patriachical assumptions that disadvantage women and fail to adequately account for gender based harm . They aggrssively posit that feminist jurisprudence showcases instances where the laws are designed with odds against women . Sexual offences disproportionately affect women and many scholars argue that traditional legal approaches place excessive burden on victims seeking justice. They all argue that legal standards conserning consent, corroboration, credibility and resistance have always reflected male centered assumptions about sexual behaviour. Within the Nigerian context, feminists have focused on issues such as the marital rape exemption, cultural attitudes towards sexual violence and evidentiary requirements that discourage reporting. The enactment of the Violence Against Persons (Prohibition) Act[66] represents a a giant leap towards addressing these concerns. The theory is also supported by international instruments such as the CEDAW[67] which requires party states to eliminate discriminatory practices and ensure that women are equally protected under the law. . This theory therefore provides a useful framework for assessing whether or not Nigerian laws properly protect the bodily autonomy of women and shield them from violence and exploitation.

4. Social Contract Theory

[66] 2015.
[67] Adopted by the UN General Assembly 1979.



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This theory is associated with philosophers such as John Locke, Thomas Hobbes and Jean-Jacque Rousseau. The theory suggests that people voluntarily give up a certain degree of their liberty to the state in exchange for protection of their lives, liberty and property. It is therefore safe to say that whether or not a government is legitimate is determined by their ability to secure the welfare of citizens. As it relates to sexual offences, the theory emphasises the responsibility of the state to shield individuals from violence, exploitation, and abuse. Sexual violence violates the bodily security and autonomy which the citizens expect the government to protect. This theory also supports the existence of defences. While society expects offenders to be punished , there is an equal expectation that the legal system would act fairly and respect the constitutional rights of accused persons.[68] Defences such as insanity, alibi, mistake of fact, and consent serve as safeguards against erroneous conviction and assist in the maintenance of public confidence in the administration of justice.

5. Utilitarian Theory of Punishment

Utilitarianism, as developed by Jeremy Bentham and John Stuart Mill, views punishment as justified only when it produces social benefits such as deterrence, rehabilitation, or the protection of society. Within the Nigerian context, this theory supports reforms aimed at preventing sexual offences

[68] Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).



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through deterrent sentencing and public education. In *R v Owoh*[69] the court affirmed that the aim of punishment is not vengeance but the protection of the community. Utilitarian reasoning therefore underpins modern calls for stiffer penalties and victim support mechanisms as tools for promoting societal welfare

[69] [1961] All NLR 659.



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# CHAPTER THREE

# LEGAL AND INSTITUTIONAL FRAMEWORK

## 3.1. Legal Framework

### 3.1.1. *Constitution of the Federal Republic of Nigeria 1999 (as amended)*

The Constitution is the "grundnorm", it is the apex law of the country and therefore it gives validity to every other law in the country, including laws on sexual offences. Although the Constitution does not specifically define sexual offences, it provides the foundation for the protection of victims and the fair trial rights of accused persons. Most of these provisions are embedded in the bill of rights in Chapter 4 which provide for inherent and inalienable freedoms accruing to every citizen of Nigeria. These include the right to dignity of human person,[70] which establishes that sexual offences violate bodily integrity and autonomy, another right embedded therein is the right to personal liberty is also another relevant provision that highlights that every citizen of Nigeria has the right to total bodily control and integrity free from external harm or violation.

One of the most relevant provisions is the right to fair hearing and presumption of innocence[71] this provision is of paramount importance because it ensures that accused persons enjoy due process before conviction. The right to freedom from discrimination[72] is also particularly relevant where women and children suffer gender-based violence.

[70] Section 34 Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[71] Section 36 Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[72] Section 42 ibid



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The constitution therefore requires courts to balance victim protection with the constitutional rights of accused.

### 3.1.2. *Criminal Code Act*[73]

The Criminal Code Act, applicable in the Southern States of Nigeria, constitutes one of the principal statutes governing sexual offences in Southern Nigeria. It codifies numerous offences against the person, morality, and public order, while also providing general principles of criminal responsibility and recognized defences.

With respect to sexual offences, the Criminal Code creates and regulates offences such as rape[74], attempted rape, defilement of girls under specified ages[75], indecent assault,[76] unnatural offences[77], acts of gross indecency[78], and other offences connected to sexual exploitation.[79] `

Apart from creating offences, the Criminal Code also establishes defences available to accused persons, including mistake of fact[80], insanity[81], intoxication[82] and duress often coined as self defence. These provisions reflect the fundamental criminal law principle that punishment should only be imposed where both the physical element (actus reus) and the mental element (mens rea)

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[73] Cap C38, Laws of the Federation of Nigeria, 2004.
[74] Section 357, Criminal Code Act, Cap C.38, Laws of the Federation of Nigeria, 2004.
[75] Section 218 ibid
[76] Section 353 ibid
[77] Section 214 ibid
[78] Section 217 ibid
[79] Sections 222-223A ibid
[80] Section 25 ibid
[81] Section 28 ibid
[82] Section 29 ibid



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have been established beyond reasonable doubt, except in cases of strict liability.

### 3.1.3. The Penal Code Act

The Penal Code Act[83] is the principal criminal legislation applicable in Northern Nigeria. It is heavily influenced by the Sudanese Penal Code, Islamic legal principles, English criminal law, and Indian Criminal jurisprudence. Like the Criminal Code, the Penal Code criminalises numerous sexual offences and establishes the conditions under which criminal responsibility may arise. The code criminalises rape[84], incest[85], acts of gross indecency[86] unnatural offences[87], procuration of minors[88] and other offences dealing with sexual immorality and exploitation[89].

Additionally, the Penal Code recognizes several defences that may absolve an accused person from criminal liability. These include insanity, intoxication, mistake of fact, compulsion and infancy. These defences are based on the principle that criminal punishment should only be imposed where an accused possessed the necessary mental capacity and criminal intention required by law.

### 3.1.4. Violence Against Persons (Prohibition) Act, 2015 (VAPP ACT)

[83] Cap P3, Laws of the Federation of Nigeria, 2004.
[84] Section 282, Penal Code, Cap P3, Laws of the Federation of Nigeria, 2004.
[85] Section 390 ibid.
[86] Section 285 ibid.
[87] Section 284 ibid.
[88] Section 271 ibid.
[89] Sections 272-274 ibid.



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The VAPP Act[90] represents one of the most significant legislative reforms in Nigeria's criminal justice system concerning the prevention and punishment of violence against persons, particularly sexual and gender-based violence. It was enacted with the primary objective of eliminating all forms of violence in both public and private life, providing maximum protection and effective remedies for victims, and ensuring the punishment for offenders. Unlike the Criminal Code and the Penal Code, which were enacted during the colonial period , the VAPP Act reflects modern international human rights standards by adopting a victim-centered and rights based approach to violence. Initially, the Act applied only within the Federal Capital Territory (FCT), Abuja, by virtue of its status as a federal enactment. However, over 30 states have subsequently domesticated the Act or enacted similar legislation, thereby extending its application beyond the FCT.

One of the most remarkable innovations of the VAPP Act is its broader and more progressive definition of rape than that contained in the Criminal Code and Penal Code.[91]

The section recognizes rape as intentional penetration of the vagina, anus or mouth of another person without consent, or where consent has been obtained through force, intimidation, fraud, coercion or other unlawful means. Unlike the Criminal Code, the definition is gender-neutral and consent based, recognizing that both men and women can be victims of rape, and that all forms of non-

[90] 2015.
[91] Section 1, Violence Against Persons (Prohibition) Act, 2015.



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consensual sex will amount to rape whether or not it occurred between spouses. The Act also recognises the crime of incest[92] and indecent exposure[93]. The VAPP Act remains Nigeria's most comprehensive legislation addressing sexual and gender based violence and has substantially modernized the legal framework for protecting victims while ensuring accountability for offenders.

### 3.1.5. Child Rights Act, 2003

The Child Rights Act (CRA), 2003 is one of the most significant pieces of legislation enacted to protect children in Nigeria. It was enacted to domesticate the United Nations Convention on the Rights of a Child (CRC)[94] and the African Charter on the Rights and Welfare of a Child[95], thereby bringing Nigeria's child protection laws in line with international standards. The Act applies to every person below the age of eighteen[96] and establishes that the best interest of the child shall be the paramount consideration in any action concerning a child. The Act criminalises, inter alia, child marriage,[97] buying and selling of children for the purpose of prostitution, intercourse or any unlawful purpose,[98] sexual intercourse with a child and every form of sexual abuse or sexual exploitation,[99] and other forms of sexual exploitation including inducement to prostitution and

[92] Section 25 ibid.
[93] Section 26 ibid.
[94] 1990
[95] 1990
[96] Section 277, Child Rights Act, 2003.
[97] Section 21, Child Rights Act,2003.
[98] Section 30 ibid.
[99] Section 31 ibid.



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pornography[100]

### 3.1.6. *Administration of Criminal Justice Act, (ACJA) 2015*

The ACJA was enacted to reform Nigeria's Criminal Justice system by ensuring the efficient management of criminal justice institutions, speedy dispensation of justice, protection of society from crime, and protection of the rights of suspects, defendants and victims.[101] Unlike the Criminal Code and the Penal Code, the ACJA does not create criminal offences, rather it regulates criminal procedure from arrest through investigation, prosecution, trial, sentencing and appeals. Relevant to this study is the protection of the constitutional rights of accused persons who are facing trial. The ACJA seeks to ensure that these accused persons and victims alike receive justice without unnecessary delay.

The Act regulates arrest procedures[102] such as the requirement of humane treatment of suspects and prohibits torture, cruel or degrading treatment[103] it also gives suspects the right to consult legal practitioners.[104]

### 3.1.7. *Trafficking in Persons (Prohibition) and Enforcement and Administration Act, 2015. (TIPPEA)*

The TIPPEA is Nigeria's Principal legislation against human trafficking and sexual exploitation. It repealed the earlier 2003 Act and expanded Nigeria's legal Framework for combatting trafficking in persons in accordance with international

[100] Section 32 ibid.
[101] Section 1, Administration of Criminal Justice Act, 2015.
[102] Sections 3-17 Administration of Criminal Justice Act.
[103] Section 8 ibid.
[104] Section 17 ibid.



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standards. The Act recognizes important provisions such as but not limited to trafficking in persons[105], procurement of persons for prostitution,[106] procuring or recruiting persons for sexual exploitation[107], keeping brothels and exploiting victims for prostitution[108], child trafficking[109], child pornography[110].

The TIPPEA therefore complements the Criminal Code[111] and VAPP ACT[112] by targeting organized sexual exploitation and trafficking while also providing rehabilitation and support for victims.

### 3.1.8. *Evidence Act 2011 (as amended)*

The Evidence Act governs the admissibility, relevance, credibility and weight of evidence in judicial proceedings in Nigeria. Although it does not create sexual offences, it plays a crucial role in determining how sexual offence cases are investigated and prosecuted. It regulates the admissibility of documentary evidence,[113] the burden of proof in criminal cases lies on the prosecution who asserts the facts giving rise to the criminal trial,[114] this extends to include the proof of the accused's alibi. The prosecution must also prove its case beyond reasonable doubt. On the flipside, the accused has the burden to prove the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which

[105] Section 13, Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015
[106] Section 14 ibid.
[107] Section 15 ibid
[108] Section 16 ibid.
[109]Section 17 ibid.
[110] Section 19 ibid.
[111] Cap C.38 Laws of the Federation of Nigeria, 2004.
[112] 2015.
[113] Sections 91-92, Evidence Act, 2011.
[114] Section 135, Evidence Act, 2011.



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he is charged is upon such person[115]. The Act also ensures a fairly carried out cross examination process which upholds the accused person's presumption of innocence.

The Act reinforces the constitutional presumption of innocence while ensuring that convictions are based on credible and admissible evidence.

3.1.9. ***Cybercrimes (Prevention and Prohibition) Act 2024.***

The Cybercrimes Act is Nigeria's principal legislation regulating offences committed through computers, digital devices and electronic communication. Although originally enacted to combat cybercrime, it has become increasingly relevant to sexual offences because many modern forms of sexual abuse are perpetrated online.

3.1.10. ***International Legal Framework***

Nigeria is party to numerous international instruments that impose obligations on the state to prevent sexual violence, protect victims, prosecute offenders, and uphold the fair trial rights of accused persons. Although some of these instruments are not self executing unless domesticated, they have significantly influenced legislative reforms in the domestic legal framework, the Principal instruments include the Universal Declaration on Human Rights[116], Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[117] The

[115] Section 141, Evidence Act, 2011.
[116] Adopted by the UN General Assembly on 10th December, 1948.
[117] 1979



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African Charter on Human and Peoples' Rights (Banjul Charter)[118] which was domesticated in Nigeria through the African Charter on Human and People's Rights (Ratification and Enforcement) Act, [119] the Convention on the Rights of a Child [120], African Charter on the Rights and Welfare of a Child (ACRWC)[121] and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).[122] These international and regional instruments collectively require Nigeria to enact effective laws against sexual offences, eliminate discrimination and violence against women and children, provide access to justice and appropriate remedies for victims and guarantee fair trial rights and due process.

## 3.2. INSTITUTIONAL FRAMEWORK

### 3.2.1. *Nigerian Police Force*

The Nigerian Police Force is the foremost law enforcement agency responsible for the investigation and initial prosecution of sexual offences. The Police Force is established under the Constitution[123] while its powers duties and operational structure are set out in the Police Act.[124]

To improve the handling of sexual and gender based violence, the Police Act

[118] Adopted on 27 June, 1981
[119] Cap A9, Laws of the Federation of Nigeria, 2004.
[120] Adopted by the United Nations General Assembly on 20 November 1989.
[121] Adopted on 11 July 1990 by the defunct OAU, now the African Union.
[122] Adopted on 11 July 2003 in Maputo, Mozambique.
[123] Section 214, Constitution of the Federal Republic of Nigeria 1999 (as amended).
[124] Sections 3 and 4, Police Act 2020.



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empowerws the Inspector General of Police to administer and organize the Police Force into various components, units or groups for effective policing[125] such as the Gender Unit, Family Support Unit (FSU) and Gender Based Violence Desk (GBV).

### 3.2.2. *The Judiciary*

The Judiciary is the arm of government responsible for the interpretation and application of the law and the administration of justice. It plays a central role in the adjudication of sexual offences by ensuring that sexual offences are conducted in accordance with the law, the constitutional rights of the accused are preserved, and justice is done to victims.

The judiciary derives its validity and authority from the constitution[126] which vests the judicial powers of the federation and states in the courts established by the constitution. These courts include the Supreme Court[127], Court of Appeal,[128] Federal High Court,[129] FCT High Court,[130] and State High Court.[131]

The High Courts posess unlimited jurisdiction to hear and determine criminal proceeding involving offences and punishments.[132] Consequently, serious sexual offences such as rape, defilement, incest, and other related offences are tried

[125] Section 9 (1) (c), Police Act 2020.
[126] Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[127] Section 230, CFRN.
[128] Section 237 CFRN.
[129] Section 249 CFRN.
[130] Section 255 CFRN.
[131] Section 270 CFRN.
[132] Sections 272(1) & 255(1) CFRN ; Posu v State (2011) 2 NWLR (Pt.1234) 393.



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before the High Court.

The Judiciary also serves as the guardian of constitutional rights throughout judicial proceedings. The Constitution guarantees that every person is entitled to a fair hearing, is presumed innocent until proven guilty, has the right to legal representation, and must be given adequate opportunity to defend themselves.[133] These safeguards ensure that while victims receive justice, innocent persons are not wrongfully convicted.

Nigerian courts also contribute significantly to the development of sexual offence jurisprudence through judicial interpretation. Their decisions clarify the meaning of statutory provisions, define the elements of sexual offences[134] and determine the scope and application of certain defences such as insanity,[135] intoxication,[136] mistake of fact,[137] and alibi.[138] In doing so, the judiciary ensures consistency in the interpretation and enforcement of Nigeria's criminal laws.

### 3.2.3. *Federal and State Ministries of Justice.*

The office of the Attorney General of the federation and the Attorneys General of the states are constitutionally established[139] They are the Chief Law Officers of the federal and state ministries of justice respectively, They are responsible for supervising criminal prosecutions and ensuring the proper administration of justice. Their prosecutorial powers are also specifically provided under the

[133] Section 36 CFRN.
[134] Okem v State (2018) LPELR-49563 (CA) defines and clarifies the meaning of acts of gross indecency.
[135] Loke v State (1985) 1 NWLR
[136] Owie v State (1985) 1 NWLR (Pt.3) 470.
[137] Okoyomon v State (1973) 1 NMLR 292.
[138] Adebiyi v State (2016) 8 NWLR (Pt 1515) 459.
[139] Sections 150 & 195 Constitution of the Federal Republic of Nigeria 1999 (as amended).



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constitution[140] which include to institute and undertake proceedings, to take over and continue proceedings, and to discontinue proceedings at any stage (nolle prosequi).[141] These powers are however not absolute and must be in the interest of justice, public interest and to prevent abuse of legal process.[142] This constitutional safeguard ensures that prosecutorial discretion is exercised responsibly and not arbitrarily.

During the trial of sexual offences, prosecutors from the Ministry of Justice present evidence, examine and cross examine witnesses, tender exhibits, address the courts on points of law and seek appropriate convictions where the prosecution has proved its case beyond reasonable doubt. They also ensure that prosecutions are conducted fairly and in accordance with the constitution, the ACJA[143] or applicable State Administration of Criminal Justice Laws, and other relevant criminal statutes.

### 3.2.4. *Legal Aid Council of Nigeria*

The Legal Aid Council of Nigeria (LACON) is a statutory body established under the Legal Aid Act[144] to provide free legal services to indigent persons who are unable to afford legal representation. The council plays a significant role in promoting access to justice, fair hearing and legal representation of both victims and accused persons.[145]

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[140] Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[141] State v Ilori (1983) 1 SCNLR 94.
[142] Section 174(3) and 211(3) CFRN 1999 (as amended).
[143] 2015.
[144] 2011.
[145] Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).



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The functions of the council are provided under the Act[146] which empowers it to provide legal representation, legal advice, legal assistance and legal education to eligible persons. In the context of sexual offences, the Council primarily represents accused persons who cannot afford legal practitioners, thereby ensuring that they receive adequate legal representation throughout the criminal trial. In the case of *Josiah v State*[147] the court emphasized that a person charged with a serious criminal offence should not be denied the opportunity of proper legal representation, as this is fundamental to a fair trial. In appropriate cases also, it provides legal advice to victims of sexual and gender based violence, refers victims to relevant support services, and participates in public enlightenment programmes aimed at protecting vulnerable persons.

Beyond prosecutorial functions

### 3.2.5. *National Agency For the Prohibition of Trafficking in Persons (NAPTIP)*

NAPTIP is established by the Trafficking in Persons (Prohibition) Enforcement and Administration Act[148] and further recognised under the VAPP Act[149] as the principal agency responsible for implementing and coordinating the provisions of the Act.

The Agency is responsible for preventing, investigating, and prosecuting offences relating to human trafficking, particularly those relating to sexual exploitation, child trafficking, forced prosecution and other forms of modern slavery. Under

[146] Section 8 of the Legal Aid Act, 2011.
[147] (1985) 1 NWLR (Pt.1) 125.
[148] Section 1 TIPPEA Act, 2015.
[149] Section 44 VAPP Act, 2015.



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the TIPPEA Act[150] NAPTIP is empowered to enforce the provisions of the Act, arrest offenders, investigate trafficking offences, prosecute suspects, and coordinate national efforts against trafficking in persons.

Beyond prosecutorial functions, NAPTIP is also mandated to provide protection, rehabilitation, counselling, temporary shelter, medical assistance and reintegration programmes for victims of trafficking and sexual exploitation.[151] Victims of trafficking and explotation also have the right to institute a civil action against his/her trafficker and receive compensation.[152] Since many trafficking offences involve forced prostitution, child sexual exploitation, sexual slavery, and other forms of sexual abuse, NAPTIP plays a significant role in enforcing Nigeria's sexual offence laws regarding trafficking and exploitation by combining criminal prosecution with comprehensive victim protection and rehabilitation.

### 3.2.6. *National Human Rights Commission (NHRC)*

The NHRC is statutorily established.[153] The Commission is vested with the responsibility of promoting, protecting and enforcing the Fundamental Human Rights guaranteed under the Constitution.[154] The functions as contained in the Act[155] include to investigate allegations of Human Rights violations, receive and determine complaints, visit places of detention, monitor compliance with

[150] Section 4, TIPPEA Act, 2015.
[151] Section 50, TIPPEA ACT, 2015.
[152] Section 52 TIPPEA Act, 2015.
[153] Under Section 1 of the National Human Rights Commission Act, Cap N46, Laws of the Federation of Nigeria, 2004. As amended by the National Human Rights Commission (Amendment) Act, 2010.
[154] Chapter 4, CFRN 1999 (as amended)
[155] Section 5, NHRC Act.



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international human rights obligations, and make recommendations to appropriate authority.

In relation to sexual offences, then NHRC investigates complaints involving rape, sexual abuse, sexual exploitation and other forms of gender based violence where fundamental human rights have been violated.

Through collaboration with the Nigeria Police Force, Ministry of Justice, NAPTIP and civil society organisations, the NHRC contributes significantly to ensuring accountability for perpetrators and effective victim protection.

### 3.2.7. *Nigerian Correctional Service (NCoS)Nigerian Correctional Service Act*

The Nigerian Correctional Service is established under the Nigerian Correctional Service Act[156] which transformed the former Nigerian Prisons Service into a modern correctional institution. The Service is responsible for the safe custody , welfare, rehabilitation and reintegration of person s who have been legally committed into correctional centres. Its statutory functions are set out under the Act,[157] which include taking custody of convicted persons and persons awaiting trial, implementing correctional programmes, facilitating vocational and educational training, and promoting the reformation and reintegration of offenders into society.

In relation to the context of this study, the Nigerian Correctional Service is responsible for the lawful detention of persons convicted persons by the

[156] Section 2 Nigerian Correctional Services Act, 2019.
[157] Section 12, NCOS Act, 2019.



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courtsand the enforcement of custodial sentences imposed for offences such as rape, defilement, incest and sexual exploitation. The Service also administers rehabilitation programmes, including counselling, behavioural modification, educational opportunities, and vocational training aimed at reducing recidivism. The commission also administers non-custodial measures where applicable[158], such as probation, parole, community service etc. although persons convicted of serious sexual offences are generally subject to custodial sentences . However, persons convicted of serious sexual offences such as rape or defilement are generally sentenced to terms of imprisonment under the relevant substantive criminal laws, making non-custodial measures rarely applicable to such offenders.[159]

# CHAPTER FOUR

# ANALYTICAL REVIEW OF SEXUAL OFFENCES VIS-A-VIS THEIR DEFENCES UNDER THE NIGERIAN CRIMINAL LAW

## 4.1 MAJOR SEXUAL OFFENCES

The main sexual offences recognised in Nigerian Criminal law include rape, defilement of young persons, incest and indecent assault. These offences are codified under the Criminal Code Act[160], especially in sections that address morality-related crimes.

### 4.1.1 *Rape*

[158] Part II (Sections 37-44), NCOS Act, 2019.
[159] Hon. Justice Bright E Oniha, Non Custodial Sentencing In Nigeria: Contemporary Incarceration Without Walls, 2025.
[160] Cap C38, Laws of the Federation of Nigeria, 2004.



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Rape is considered one of the most serious and contentious sexual offences under Nigerian criminal law. According to the Criminal code, a man is said to have committed rape when he has unlawful carnal knowledge of a woman or girl without her consent or with her consent obtained by force, threat, intimidation, fraud, or impersonation. A person who commits rape is liable to a sentence of life imprisonment[161]

However, the constricted way which rape was defined in the Criminal Code faces ongoing criticism. It typically assumes a male offender and a female victim, which then ignores other modes of sexual abuse. As noted by Akinseye George[162], this gender specific framing does not align with current human rights standards.

A broader view of rape is reflected in the modern legislation such as the VAPP Act[163] which widens the meaning of rape to include every manner of sexual penetration that is gender inclusive and not consensual acknowleges that consent obtained through coercion, deception, or abuse of power is invalid.[164]

Scholars like Okonkwo and Naish[165] define rape as unlawful carnal knowledge without lawful consent emphasising that penetration and lack of consent are

[161] Section 358.

[162] Akinseye George 'Rape and the Nigerian Criminal Law*', Journal of African Law, 2014.*

[163] 2015.

[164] Section 1 expands the concept beyond penile-vaginal penetration and removes some of the rigid evidentiary requirements that historically hindered prosecution.

[165] C O Okonkwo and M E Naish, Criminal Law in Nigeria (3rd edn, Spectrum Books Ltd 2012)



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key factors. While Glanville Williams[166] views rape more broadly as an intrusion of a person's sexual independence where participation is not genuinely voluntary.

In *Posu v State*[167], the court described rape as a situation where a man engages in sexual intercourse with a woman without her consent, or where consent is obtained through force, fear or deception. In the case of *Ogunbayo v State*[168] the court made it clear that consent gotten under intimidation or threat cannot be seen as true consent under the law.

In light of this, two main elements define the rape as a crime; *penetration and lack of consent*. The courts have consistently held that even the slightest penetration is enough to establish sexual intercourse. This means that the prosecution does not have to prove prolonged intercourse as the penetration, however minor, is sufficient to prove the act. This was affirmed in *Posu v The State*[169] and further supported in the case of *Idrisa Ali v State*[170] where the court of appeal stated:

"The slightest penetration of the female organ by the male organ is sufficient to constitute the offence of rape"- Per Rhodes-Vivour JSC.

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[166]Glanville Williams, Textbook of Criminal Law (2nd edn, Stevens & Sons 1983)

[167] (2011) 3 NWLR (Pt 1234) 393

[168] (2007) 8 NWLR (Pt. 1035) 157

[169] (2011) 3 NWLR (Pt 1234) 393.

[170] (2015) 10 NWLR (Pt. 1466) 1 (SC).



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4.1.1.1 *Consent*

The issue of consent is more complex. Consent is essential in determining rape and it remains a contentious aspect in prosecutions. In *Ahamefule v Imperial Med Centre*[171] consent was by the court thus:

> "consent in legal parlance involves an element of volition, a voluntary agreement which is the deliberate and free act of the mind"

Consent is understood as a free, voluntary and informed agreement to carry out sexual acts. Under the Criminal Code Act,[172]consent is invalid if a person submits out of fear, pressure, or deception as the law does not recognise such situations as true consent. This reflects the reality that many victims are too frightened or psychologically overwhelmed to resist. In *Ogunbayo v State*[173], the court emphasised that where the victim evidently submitted due to fear or intimidation, this submission cannot be considered consent in the eyes of the law. Some authors argue that evidence of struggle or resistance would typically proves lack of consent but it is not always necessary.[174] For example, having intercourse with a woman who is asleep is rape, it is also considered rape if a man impersonates her husband to gain consent[175], or if the victim is mentally impaired or too young to understand what the act entails, as this obviously

[171] (2004) JELR 45108
[172] Section 357.

[173] (2007) 8 NWLR (Pt. 1035) 157.

[174] Oluyemisi A. Bamgbose & Sonia Akinbiyi, *Criminal Law in Nigeria, (* Evans Brothers [Nigeria Publishers] Ltd. 2015).

[175] Section 282 Penal Code, Cap P3 Laws of the Federation of Nigeria, 2004.



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cannot equate to consent.[176]

It is also possible for a woman to say yes to sexual intercourse initially but subsequently change her mind thereby withdrawing the earlier given consent and also for a woman to initially say no and subsequently grant consent, it has been questioned whether or not these instances will amount to rape or not.[177]

The totality of this shows that the prosecution must prove beyond a reasonable doubt that the complainant did not voluntarily give consent, this position emphasises not just the presence of agreement but also the context in which it was given. This principle was reinforced in *Ogunbayo v State*[178]. There are many evidentiary challenges associated with rape and other sexual offences due to demanding evidence requirements.

Consequently, an accused person cannot be convicted based solely on the testimony of a single witness which is not corroborated. While this is not a strict legal rule, it serves as a persuasive principle that it is unsafe to convict based solely on the uncorroborated testimony of the complainant. Oluyemisi[179] argues that the corroborative testiomony must implicate the accused person in the specific aspect of the offence which he was charged and not just any part of the plaintiff's story. That being said, evidence which confirms just collateral or

[176] C O Okonkwo and M E Naish, Criminal Law in Nigeria (3rd edn, Spectrum Books Ltd 2012)

[177] I P Nwakoby and C S Nwakoby, 'Legal Examination of the Challenges Confronting the Offence of Rape in Nigeria'. (2012) 5(1) *Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law.* https://www.nigerianjournalsonline.com/index.php/COOUJPPL/article/download/3963/3853

[178] (2007) 8 NWLR (Pt. 1035) 157.

[179] Oluyemisi A. Bamgbose & Sonia Akinbiyi, *Criminal Law in Nigeria, (* Evans Brothers [Nigeria Publishers] Ltd. 2015).



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unimportant parts of the witness's story is inadequate.[180]

4.1.1.1 *Marital Rape.*

A prominently debated limitation of the traditional definitions of rape is the lack of recognition for marital rape under the Criminal Code Act. Traditionally, common law held that a wife automatically consented to sex once she gets married . This principle effectively protected husbands from being charged for the rape of their wives. Modern scholars have strongly criticised this view. Temkin[181] argues that consent should be seen as a continuing and revocable agreement, rather than a one-time concession. Similarly, Ashworth[182] maintains that the law should respect individuals' autonomy within marriage, including the right to refuse sexual relations.

Judicial decisions and recent legislative changes indicate a shift from this direction. In *R v R*[183] the House of Lords rejected the long-held common law idea of implied marital consent determining that a husband could indeed be guilty for the rape of his spouse. This decision indicates a contemporary view that consent must be ongoing and revocable.

However, there is no well recognised Nigerian case where a husband was successfully prosecuted for raping his wife, this is not an oversight,but a result of historical legal barriers. Under the Criminal Code, rape requires "unlawful

[180] Sambo v State (1993) 6 NWLR (Pt. 300) 399 ; Upahar v State (2003) 6 NWLR (Pt 816) 230
[181] J Temkin, *Rape and the Legal Process (2nd edn, Oxford University Press 2002) 56*

[182] A Ashworth, *Principles of Criminal Law* (7th edn, Oxford University Press 2013) 412

[183] (1992) 1 AC 599 (HL)



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carnal knowledge" and intercourse within marriage doesn't fall under the ambit of "unlawful". Therefore, sexual activity between spouses is regarded as lawful regardless of consent. Under the Penal Code, to have sex with one's wife is explicitly not rape if she has attained puberty. However , modern legislation such as the VAPP Act[184] which now focuses on a consent based definition of rape, alongside persuasive authorities like *R vR*[185] suggest a gradual shift towards recognising marital rape within a consent-based framework at least within jurisdictions where the Act applies. Nevertheless, the lack of uniform application across Nigeria means that the legal position remains somewhat unsettled.

### *4.1.2 Defilement of Young Persons*

The law places special emphasis on protecting minors from sexual exploitation. Under the Criminal Code[186], sexual intercourse with a girl under thirteen constitutes defilement and attracts life imprisonment. The Act also penalises attempted defilement. If the victim is between thirteen and sixteen years, or an idiot within the meaning prescribed by law, the offence is a classified misdemeanour and the offender is liable to imprisonment for 2 years.

The defining feature of this offence is that consent is legally irrelevant. The law

[184] 2015

[185] (1992) 1 AC 599 (HL)

[186] Section 218



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presumes that minors are mentally incapable of giving informed consent to sexual activity. Thus, any purported agreement by the child does not exonerate the accused. The Supreme Court in *Okoyomon v State*[187] emphasisied that the protection of children is grounded in strong public policy considerations. The court made it clear that defences such as mistaken belief as to age are generally insufficient, particularly where the circumstances suggest negligence or recklessness on the part of the accused. This protective approach is reinforced by the Child Rights Act which criminalises a vast array of exploitative practices including child prostitution and pornography. As observed by Owasanoye[188] these provisions signify a shift towards recognising children as "rights-bearing" individuals deserving of enhanced legal safeguards.

In light of the above, in trial, the prosecution must necessarily establish that there was penetration, that the victim was below the statutory age[189] this element has been emphasised to be of paramount importance by the courts, In *Samson v State*[190] the court held that "proof of age of the victim is fundamental and must be established beyond reasonable doubt". One must also prove that the identity of the person is not in doubt,[191] and that the act was unlawful.[192] It is

[187] (1973) 1 NMLR 292 (SC)

[188]Bolaji, Olufunmileyi Owasanoye, 'Child Protection in Nigeria', *Nigerian Law Journal', 2012*

[189] Courts insist on strict proof of age because it is what distinguishes defilement from other sexual offences.

[190] (2019) LPELR-47011 (CA)

[191] When identity is in doubt, it raises the question of criminal liability and therefore the court may refuse to convict.

[192] This requirement is usually straightforward because the law automatically renders sexual intercourse



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also note-worthy that consent is not an element needed to be proven by the prosecution as the law presumes that a child lacks the legal capacity to consent to having sex, the implication of this is that even if the child appeared willing, it does not matter in law.[193]

In defilement cases, a common difficulty lies in proving the victim's age , which is a crucial element of the crime. Many victims in Nigeria do not possess birth certificates or reliable documentation. For instance, in a rural setting, a child may only know their age approximately and parents may provide inconsistent accounts. This creates room for reasonable doubt which the defence can exploit. Courts have repeatedly stressed the importance of strict proof of age and failure to establish this element can result in an acquittal.

### 4.1.3 *Incest*

In the past, incest was not classified as a crime under Common Law. It was seen as more of a moral wrong and was fully under the jurisdiction of the ecclesiastical (church) courts. The church regarded marriages between individuals related by blood or certain forms of relationship (affinity) up to the third degree as invalid.[194] Those who violated these rules were not criminally punished but were regarded to undergo penance, which could involve public

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with a child as unlawful, regardless of circumstances.

[193] Okoyomon v State (1973) 1 NMLR 292 (SC) Per Fatayi-Williams JSC

[194] Oluyemisi A. Bamgbose & Sonia Akinbiyi, *Criminal Law in Nigeria, (* Evans Brothers [Nigeria Publishers] Ltd. 2015)



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confession or the payment of money[195] Incest however ceased to be an offence under the Ecclesiastic court in 1908 with the enactment of the Punishment of Incest Act[196]. Today, the offence is governed by statutory provisions including those found in the Sexual offences Act (1956)[197]

Incest is looked down upon, both in Civil Law[198] and Criminal Law. Under Criminal Law, incest, although not criminalised under the Criminal Code Act[199], is an offence in most states of the former eastern region. It is however explicitly criminalised under the Penal Code[200] which prohibits sexual intercourse between persons within prohibited degrees of familial relationship such as parents, children, grandchildren or siblings. The offence of incest may be committed by both men and women[201] It is also Criminalised under the VAPP Act[202] which provides that a person who knowingly and willfully has carnal knowledge of another person within the prohibition degrees of consanguinity or affinity contained in the schedule to the Act commits the offence of Incest, whether the Act is committed with or without the consent of the other person. The

[195] Bailey V and Blackburn S, 'The Punishment of Incest Act 1908: A Case Study of Law Creation' *1979 Criminal Law Review*

[196] 1908

[197] Sections 10 and 11, Sexual Offences Act (1956).

[198] Matrimonial Causes Act Cap M7, Laws of the Federation of Nigeria, 2004 invalidates marriages entered into by spouses within the prohibited degrees of affinity and consanguinity.

[199] Cap C38, Laws of the Federation of Nigeria, 2004.

[200] Section 390 of the Penal Code, Cap 89, Laws of the Federation of Nigeria, 1963

[201] A female may be guilty if they voluntarily permit a man within the prohibited degrees of familial relationship to have sexual intercourse with her.

[202] Section 25 VAPP ACT, 2015.



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punishment for Incest under the Act depends on whether it was consensual or not. When there is no valid consent, the offender is liable to a minimum of 10 years imprisonment without the option of a fine. When both parties knowingly consent, each is liable to 5 years imprisonment without the option of a fine.

To establish the offence, it must be shown that sexual intercourse occurred[203], that the parties are within the prohibited degrees of kinship, and that the accused knew of the relationship. This was clearly illustrated in the case of *Idrisa Ali v The State*[204] where the Court of Appeal upheld a conviction of a father who raped his two 12-year-old daughters. He was sentenced to 7 years imprisonment for the offence of Incest.

The justification for criminalising incest extends beyond moral condemnation. It encompasses concerns about abuse of trust within family structures, psychological harm, and potential genetic consequences. Incest offences are fundamentally rooted in the need to maintain the integrity of the family unit [205] . The rationale for the criminalisation of incest raises a number of prepositions, one of which is to prevent the risk of genetic transmission of diseases attached to conception [206] . The offence is also said to align with religious principles[207]

[203] Sexual intercourse is the Actus Reus which must involve the act of penetration like that of rape.

[204] (2022) 29 E-WRN/03 (CA)

[205] Smith, Hogan & Ormerod, *Smith and Hogan's Criminal Law* ( 15th edn, Oxford University Press 2018)

[206] Oluyemisi A. Bamgbose & Sonia Akinbiyi, *Criminal Law in Nigeria, (* Evans Brothers [Nigeria Publishers] Ltd. 2015)

[207] Leviticus 18: 6-18. Holy Bible, New King James Version.



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In practice, there are evidentiary challenges facing the prosecution of incest as such acts typically occur in private settings. Courts often rely on the credibility of witnesses and corroborrative evidence which may not be at times accurate as victims, often minors, may be reluctant to report the offence due to shame, fear, or emotional attachment to the offender. In some instances, family members may attempt to conceal the abuse in order to avoid social stigma. These factors can complicate both investigation and prosecution.

### *4.1.4 Indecent Assault*

Indecent assault occupies an important place within the spectrum of sexual offences, as it addresses forms of sexual misconduct that do not amount to rape but nonetheless constitute serious violations of personal dignity and bodily integrity. Under the Criminal Code[208] a person commits the offence when he unlawfully or indecently assaults another and if found guilty is liable for a felony punishable by two to three years in prison as the case may be[209]. Although the provision appears brief, it is quite wide in scope and has been significantly shaped through judicial interpretation.

The offence of Indecent assault requires proof of three elements: that there was an assault, that the act was indecent in nature, and that it was committed without lawful justification. The concept of assault is however not limited to physical acts of violence , it may include any intentional act that results in unwanted physical

[208] Section 353 Criminal Code Act, Cap C.38, Laws of the Federation of Nigeria, 2004.

[209] Indecent assault on a female is a misdemeanor while Indecent assault on a male is a felony.



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contact or creates a reasonable apprehension of such contact. What distinguishes indecent assault from ordinary assault, however, is the sexual character of the act.

The question of indecency has been approached by the courts by applying an objective test, that is, whether the conduct would be regarded as indecent by reasonable members of the society. This was articulated in *R v Court*[210] where it was held that an act may be considered indecent if it has a sexual connotation and offends accepted standards of propriety. Nigerian courts have adopted similar reasoning, recognising that indecency is not strictly defined but depends on the circumstances of each case. In the case of *The State v Bright Asiriuwa*[211], the accused was formally charged with indecent assault punishable under the then criminal code applicable in Edo state in addition to a separate charge of rape. The facts showed that he had "unlawfully and indecently dealt with" an 11-year-old girl, which the prosecution characterised as indecent assault. The High Court convicted the accused for indecent assault upon the basis that the prosecution led testimony pointing to the deliberate touching of the girl's body which was categorised as being much more than innocent contact.

Indecent assault covers a wide range of behaviour including unwanted private part or body contact, forceful sexual advances or sexually humiliating or

[210] (1986) EWCA Crim J1017-1

[211] (HAB/1C/2008, Edo State High Court Benin Judicial Division, 15 October 2014)



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degrading acts. This makes the offence particularly essential in addressing actions that fall short of the penetration threshold but still cause significant psychological, emotional and physical harm.

Temkin[212] has emphasised that focusing solely on offences like rape risks overlooking the less visible and equally harmful forms of sexual violation. He further argues that the law must recognise the broad spectrum of sexual misconduct in order to provide adequate protection for victims.

Despite its usefulness, the offence is faced with challenges, the most pressing of which is in the determination of what qualifies as "indecent" given that societal standards on morality vary over time and across communities. This introduces a degree of subjectivity, which may lead to inconsistencies application. Another challenge is the unfair disparity in the punishment for the crime against males and females such that Section 353 of the Criminal Code[213] makes indecent assault against males a felony punishable by 3 years in prison, while the same Criminal Code[214] in Section 360 makes the same offence against females a mere misdemeanour punishable by 2 years in prison. This is highly unreasonable considering the fact that women tend to be mentally physically weaker and more fragile than men and therefore require a higher level of protection from such acts of violence.

Additionally, as with other sexual offences, issues of consent and credibility

[212] J Temkin, *Rape and the Legal Process (2nd edn, Oxford University Press 2002).*

[213] Cap. C.38, Laws of the Federation of Nigeria, 2004.

[214] ibid



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often arise, particularly when there are no independent witnesses.

## 4.2 Related Sexual Offences

Beyond the major offences, Nigerian law recognises other forms of sexual misconduct which can disrupt the physical autonomy and integrity of a person.

### *4.2.1 Unnatural Offences*

Section 214 of Criminal Code criminalises acts described as being "against the order of nature with any man, woman or animal". These offences often include non-procreative sexual acts which do not involve penile-vaginal intercourse and are often interpreted by the courts to mean sodomy (anal intercourse) and bestiality.These provisions have traditionally been used to criminalise same sex consensual acts and in some interpretations, non-coital homosexual acts. The crime attracts a penalty of 14 years in prison and if commited by force, 21 years.

In trial, the prosecution must prove penetration, that the intercourse was against the order of nature[215], and that it was intentional. In *State v Sabiu Suleiman*[216] the Court laid emphasis on the importance of proving anal intercourse as an unnatural offence under the Penal Code. It was further stated in *Magaji v The Nigerian Army*[217] that the prosecution must prove the specific nature of the act alleged to be against the order of nature, what happened in this case was that a in the Nigerian Army Major got charged on a charge of sodomy, contrary to

[215] Magaji v State (2019) LPELR-48820 (CA)

[216] JDU/337C/2020, Jigawa State High Court, Jigawa Judicial Division, June 21, 2021. (Unreported)

[217] (2008) 8 NWLR (Pt 1089) 338



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Section 81(1) (a) of the Armed Forces Decree[218]. It was decided by the court held that the direct evidence of the witness clearly proved the offence of sodomy.

This underpins one of the many issues associated with the expansive labelling of this offence. Scholars and human rights commentators argue that the broad wording associated with unnatural offences "against the order of nature" could create room for arbitrary enforcement.

### *4.2.2 Acts of Gross Indecency*

Section 217 of the Criminal Code addresses acts of gross decency, whether committed in public or private. In simple terms, this refers to sexual behaviour that is considered seriously improper or offensive by societal standards, even if it does not involve full sexual intercourse. It may include acts such as inappropriate sexual touching, explicit conduct, or other behaviour with a clear sexual element that violates accepted norms of decency. The offence was defined in *Okem v State*[219] thus:

> "Acts of gross indecency are those that outrage public decency whether in public or private" --Per Lokulo-Sodipe, JCA.

What is considered as important here is not just the act itself , but how it would be viewed by a reasonable member of the society, this was further established in *Eze v State*[220] where the court held that indecency is determined by the standard

[218] No.105 1993.
[219] 2018 LPELR-49563 (CA)

[220] (2020) LPELR-49563 (CA)



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of reasonable members of the society, this is to say that the law relies heavily on general moral judgement rather than a strict definition.

The lack of a precise definition makes the concept both useful and problematic in the sense that, viewing it from one angle, it allows the law to cover a wide range of misconduct that might otherwise fall through the cracks but from another angle,, it introduces uncertainty since what counts as "indecent" can vary depending on social and cultural attitudes.

### 4.3 Offences Connected to Sexual Exploitation

The Criminal Code also addresses the commercial and exploitative dimensions of sexual activity, recognising that sexual offences are not always isolated acts but can be part of organised systems of abuse and profit making. Although not purely conventionally recognised sexual offences, they are also acts which violate a person's bodily integrity for the benefit of others or for commercial purposes. These provisions are particularly concerned with situations where individuals are manipulated, controlled or coerced into sexual activity for the benefit of others.

The Criminal Code makes provisions relating to procurement for prostitution[221], detention for sexual purposes[222], and living on the earnings of prostitution[223] and they are all aimed at curbing such exploitation. For instance, procurement

[221] Section 223 Criminal Code Act Cap C38, Laws of the Federation of Nigeria, 2004.; Akinola v State (2017) LPELR-42547 (CA).

[222] Section 222 Criminal Code Act Cap C38, Laws of the Federation of Nigeria, 2004

[223] Section 223A Criminal Code Act Cap C38, Laws of the Federation of Nigeria, 2004 .



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typically involves including or facilitating a person, often through deception, pressure or abuse of authority to engage in prostitution. Similarly, the offence of detaining a person for sexual purposes targets situations where victims are confined or restricted in order to make them available for exploitation. The prohibition against living on the earnings of prostitution is directed at those who financially benefit from the exploitation of others, such as pimps or traffickers.

These offences reflect an understanding that sexual wrongdoing frequently operates within wider networks of control and economic gain, rather than merely as individual misconduct. As Okonkwo and Naish[224] observe, the criminal law in this area seeks not only to punish direct offenders but also to dismantle the structures that sustain exploitation. Particular emphasis is placed on the protection of minors, who are especially vulnerable to manipulation and abuse. The Child Rights Act[225] reinforces this protection framework by criminalising child prostitution, child pornography, and other forms of sexual exploitation. As noted by UNICEF Nigeria, children are at higher risk due to their dependence and limited capacity to resist or report abuse, thereby necessitating stronger and more targeted legal safeguards.

## 4.4 Comparative Note on the Penal Code

A comparison between the two codes reveal that, although both systems criminalise sexual offences, they differ in structure, language and underlying

[224] C O Okonkwo and M E Naish, Criminal Law in Nigeria (5th edn, Spectrum Books Ltd 2012)

[225] Cap C50, Laws of the Federation 2010.



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assumptions.

The Criminal Code defines rape as unlawful carnal knowledge of a woman without her consent.[226] The emphasis here is on penetration and absence of consent. In contrast, the Penal Code[227] defines rape in similar terms but goes further to include situations involving fear of death, hurt, or where the victim is incapable of consenting. This makes the Penal Code slightly broader in its recognition of coercive circumstances.

However, there also seems to be a major point of divergence which lies in the treatment of marital rape. While the Criminal Code indirectly excludes marital rape through the concept of "unlawful carnal knowledge", the Penal Code is more explicit and recognizes rape in marriage but in a very restricted manner, it provides that sexual intercourse by a man with his wife cannot be seen as rape once she has attained puberty[228], the implication of this is that if a wife has not attained puberty, her husband can be guilty of raping her. The provision clearly reinforces the conventional notion of implied marital consent. A major issue here is also the fact that girls attain puberty at different stages, some at a very young age, as young as 14, do we then assume that a 15 year old cannot be a victim of rape just because she is married? Do pedophiles now have the privilege hiding under the blanket of "marriage" to commit grievous acts? The legislature need to deeply look into that aspect of the law because it is highly repugnant to natural

[226] Section 357, Criminal Code Act, Cap C 38, Laws of the Federation of Nigeria, 2004.

[227] Section 282 ibid

[228] Section 282 (2) Penal Code, Cap P3 Laws of the Federation of Nigeria, 2004.



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justice, equity and good conscience.

With respect to defilement, both codes seek the protection of minors but execute different methods. The Criminal Code focuses on specific age brackets and imposes strict liability making consent irrelevant. The Penal Code[229] similarly criminalises sexual intercourse with minors but often frames the offence within broader provisions relating to rape and sexual assault. In both systems, the protection of children is a key objective although evidentiary challenges persist.

In relation to indecent assault and similar offences, the Criminal Code expressly recognises indecent assault[230] covering non-penetrative sexual violations. The Penal Code, on the other hand, uses broader terms such as "assault or criminal force with intent to outrage modesty."[231] Although the wording differs, both provisions aim to capture inappropriate sexual conducts that fall short of the threshold of rape.

The Criminal Code also contains crimes like "unnatural offences"[232] and gross "indecency"[233] which are mirrored in the Penal Code through provisions dealing with "unnatural acts" and immoral behaviour[234]. However, both regimes have

[229] Cap P3 LFN 2004 Section 282
[230] Section 353 Penal Code, Cap P3 Laws of the Federation of Nigeria, 2004.

[231] Section 268 Penal Code, Cap P3 Laws of the Federation of Nigeria, 2004.

[232] Section 214 Penal Code, Cap P3 Laws of the Federation of Nigeria, 2004.

[233] Section 217 Penal Code, Cap P3 Laws of the Federation of Nigeria, 2004.

[234] Sections 284 and 285 Penal Code, Cap P3 Laws of the Federation of Nigeria, 2004.



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been criticised for vague language, which can lead to inconsistent interpretation and enforcement.

In the area of incest, The Penal Code contains a specific provision[235] which criminalises sexual intercourse between persons within prohibited degrees of relationship and require proof of knowledge of that relationship. The Criminal Code, however does not contain an equivalent offence expressly termed as "incest". Instead, such conduct may be prosecuted under general provisions relating to rape or sexual assault, depending on the circumstances. This represents a structural difference, with the Penal Code treating incest as a distinct offence, while the Criminal Code addresses similar conduct indirectly.

Overall, while the two codes share a common objective of regulating sexual misconduct, they differ in formulation, labelling, and emphasis. The Penal Code tends to be more explicit in certain parts, particularly regarding marital relations, while the Criminal Code reflects a more traditional common law structure. These differences highlight the challenges of achieving uniformity in Nigeria's criminal law system.

## 4.5 **Defences**

The law governing sexual offences in Nigeria is often approached from the victim protection point of view in conjunction with moral regulation and societal order.

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[235] Section 390 Penal Code, Cap P3 Laws of the Federation of Nigeria, 2004.



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However, an equally important segment, though not emphasised often, is the aspect of protecting the accused's rights . Criminal law, at its very core, is not designed solely to punish wrongdoing, but to ensure that punishment is imposed only upon the due establishment of guilt beyond reasonable doubt and in accoring to due process.

Within the framework of criminal justice, defences serve as a critical safeguard. They operate either to entirely nullify criminal responsibility or to reduce the degree of liability attached to an accused person. In sexual offence matters, the invocation of defences is particularly sensitive, as it often intensively juxtaposes the credibility of the complainant with the constitutional rights of the accused.

It is against this backdrop that this chapter examines some of the defences available to an accused person during trial that enables him to adequately exercise his constitutional rights in accordance with the fundamental principle that an accused person is presumed innocent until proven guilty[236]. The defences are as follows:

### 4.5.1 Mistake Of Fact

The defence of mistake of fact is enshrined in Section 25 of the Criminal Code,[237] which provides that a person who does or omits to do an act under an honest and reasonable, but mistaken belief in the existence of any state of things is not criminally responsible, provided that in a situation where the state of things mistaken were true, the act would

[236] Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
[237] Cap C 38 LFN 2004



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be lawful. The "existence of a state of things" in the supposed context of Section 25[238] presumably means that at the time he committed the act, the accused was misinformed as to certain material facts existing at the relevant time.[239]

In sexual offences, the defence usually arises in relation to *age* and *consent.* Simply put, an accused person may contend that he believed, although mistakenly, that the accused consented to the act[240] or that the accused was of age. An instance is where a husband told the accused that his wife would pretend to resist sexual intercourse. The men relied on this and believed she consented.

The defence as it relates to age is significantly restricted in cases involving minors. As disussed in chapter three(3) above, the offence of defilement of girls under a specified age is an offence of strict liability[241] i.e. the mental element of the crime is immaterial. Therefore, a mistaken belief as to the victim's age , no matter how honest, does not constitute a defence. This position was firmly established in *Okoyomon v State*[242] where it was held that belief as to age is immaterial in offences involving underage victims. The courts have strongly maintained this standard in order to ensure maximum protection for minors. Several authors have also agreed with this stance, according to Akinseye-George, strict liability in sexual offences involving minors is necessary "to prevent offenders from escaping liability through unverifiable claims of belief"[243]

More recent cases have reaffirmed this position. In *Yakubu v State*[244] the Court of Appeal reiterated that in offences involving minors, the prosecution is not required to

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[238] Ibid
[239] C O Okonkwo and M E Naish, Criminal Law in Nigeria (5th edn, Spectrum Books Ltd 2012) p. 109
[240] DPP v Morgan (1976) AC 182
[241] Sections 218 and 221 of the Criminal Code Act
[242] (1973) 1 NMLR 292
[243] Yemi Akinseye-George, Sexual Offences in Nigeria: Law and Practice (Princeton Publishing 2016)
[244] (2014) LPELR-22467 (CA)



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prove lack of consent, and any purported belief by the accused as to the victim's age is irrelevant. Similarly in *Isa v State*[245] the court highlighted that once the age of the victim falls within the prohibited bracket, the liability of the accused is established and the acclaimed mistaken belief of the accused is totally immaterial.

With respect to consent, the defence is often more intricate. The test applied by courts is whether the accused's belief in consent was both honest and reasonable in the circumstances, this requirement of honesty and reasonableness is not a mere repetition of words, a mistake may be honest and not reaonable, and conversely, a mistake may be quite reasonable but very dishonest, in both situations, the defence cannot arise.[246] The test of honesty is purely subjective but the test for reasonableness is a bit more cumbersome as it has been consistently modified in various judicial precedents[247] the scholarly opinion is however to the effect that the courts should adopt a benchmark of reasonableness which reflects the benchmark of the broader community from which an accused comes even if it entails their classifying as reasonable opinion or beliefs unnacceptable to the bench themselves and the educated minority.[248]

In *Posu v State*[249] the court held that consent must be free, voluntary and unequivocal, and that any belief in consent must be carefully scrutinised against the surrounding facts. This stance has been reinforced in more recent cases like *Kazeem Popoola v State*[250] where the Court of Appeal further clarified the concept of consent in rape cases, especially in relation to evidence and credibility. The court stated to the effect that want

[245] (2016) 6 NWLR (Pt 11508) 243
[246] C O Okonkwo and M E Naish, Criminal Law in Nigeria (5th edn, Spectrum Books Ltd 2012) p. 111
[247] Gadam v R (1954) 14 WACA 442; Lamba Kunmbin v Bauchi N A (1963) NNLR 49
[248] C O Okonkwo and M E Naish, Criminal Law in Nigeria (5th edn, Spectrum Books Ltd 2012) p.113
[249] (2011) 2 NWLR (Pt. 1234)393
[250] (2013). 17 NWLR (Pt. 1382) 96.



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of consent is a paramount element of rape, which the prosecution must prove beyond reasonable doubt and that the conduct of the victim before, during, and after the act is relevant in determining whether consent existed. This approach emphasises that consent must be determined from the totality of circumstances. The court further rejected the notion that the absence of physical resistance or visible injuries implies consent.

The court also drew a crucial line between consent and mere submission in the case of *Musa Natasha v The State*[251] and further held that fear or coercion induced compliance cannot be seen as valid consent in law. Therefore, for a defence of mistake of fact to avail an accused person in sexual offence cases, believing that there is consent must not only be honest but also reasonable in the circumstances.

In light of the judicial stance in the foregoing cases, the approach reflects an adjustment away from rigid and outdated expectations of victim resistance towards a more contemporary and realistic evaluation of consent that recognises psychological coercion and power disparity.

### 4.5.2 Insanity and Mental Incapacity

The defence of mental incapacity was provided for under Secction 28 of the Criminal Code[252] which states to the effect that a person is not criminally responsible if , at the time of doing the act, they are in such a state of mental disease or natural mental infirmity as to deprive the of the capacity to understand what they are doing or control their actions. The provision reflects the common law principles established in the

[251] (2017) LPELR-42359 (SC)
[252] Cap C38 LFN 2004



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McNaghten rules [253] which remain the foundation of the defence of insanity. In the locus classicus of *Loke v The State*[254] the court highlighted that when a defendant relies on insanity as a defence, they must prove on the balance of probabilities that they were suffering from a disease of reason at the time of the offence. Although the case majorly borders on the offence of murder, it underpins the cumbersome requirements for relying on a mental health defence in Nigerian criminal law. This high threshold of evidence reflects an underlying concern which is that the law is too cautious of excusing criminal liability on grounds that are very diificult to prove or objectively verify. Unlike other defences, the defnence of insanity is sui generis as it depends heavily of if not solely on expert medical testimony, behavioural history, and surrounding circumstances. Due to these factors, courts are often reluctant to accept it unless the evidence is overwhelming and leaves little room for doubt.

Scholarly opinion reinforces the fact that this caution, while reasonable, also creates practical loopholes. Okonkwo and Naish[255] argue that insanity is difficult to establish and requires a close range of persuasive medical and factual evidence from the defence. There is also a stigma associated with openly admitting mental illnesses which discourages accused persons from raising the defence in its entirety. In the context of sexual offences, this reluctance is even more prominent considering the moral judgement already associated with such offences. In practice, the defence exists more in theory than in reality especially in sexual offence cases. Its success is rare due to strict legal requirements and heavy evidentiary demands. Social stigma associated

[253] Rules stemming from the 1843 trial of Daniel McNaghten which constitute a legal test to determine criminal insanity, they state that a defendant is not guilty by reason of insanity if, at the time of the act, they were suffering from a defect of reason that they did not understand the moral or criminal nature of their act.
[254] (1985) 1 NWLR 1
[255] C O Okonkwo and M E Naish, Criminal Law in Nigeria (5th edn, Spectrum Books Ltd 2012)



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with mental illness surrounding mental illnesses further limits its use, making it a narrowly applied safeguard rather than practical defence.

### 4.5.3 Intoxication

The defence of Intoxication is governed by Section 29 of the Criminal Code Act[256]. It is a defence limited in effect which argues that voluntary or involuntary substance use prevented the defendant from forming the necessary mens rea(guilty mind), this was acknowledged by the court in *Owie v The State*[257] and the court further held that in rare cases, intoxication may prevent the formation of the required mens rea. The general rule is that someone who voluntarily consumes alcohol or drugs cannot ordinarily rely on that condition to escape criminal responsibility. This reflects the policy position that self-induced intoxication should not become a shield for unlawful conduct. The decision in *Owie v The State*[258] confirms that intoxication does not operate automatically as a defence merely because an accused has consumed alcohol or drugs. The burden remains on the accused to bring himself within the statutory limits of the defence.[259]

The general rule therefore applies to crimes where the mens rea required is minimal, usually just recklessness or a low level of intent, such as reckless wounding or common assault. In such cases, voluntary intoxication generally does not serve as a defence.There is however an exception with regards to specific intent i.e crimes requiring a special mental element e.g intent to kill or inflict grievous harm, intent to steal etc. In such crimes, voluntary intoxication may affect criminal liability where it

[256] Cap C38 Laws of the Federation of Nigeria, 2004.
[257] (1985) 1 NWLR (Pt.3) 470
[258] Ibid
[259] C O Okonkwo and M E Naish, Criminal Law in Nigeria (5th edn, Spectrum Books Ltd 2012)



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prevents the formation of the requisite mental element.[260] This principle was demonstrated in *DPP v Majewski*[261] where the House of Lords held that voluntary intoxication is not a defence to crimes of basic intent. In the context of sexual offences, this distinction is particularly significant. Many sexual offences, especially those involving assaultive conduct or non-consensual penetration are treated in a manner analogous to offences of basic intent. Nigerian court have consistently drawn from this reasoning, reinforcing the position that self-induced intoxication can not exclude abusive conduct.[262]

The courts have also reflected a cautious stance with regards to mistaken belief formed under intoxication. In *Ejinima v The State*[263] the court emphasised that voluntary intoxication will not excuse criminal liability unless it renders the accused incapable of forming intent, a threshold rarely met in sexual offences..

Nigerian scholars have argued that allowing intoxication to excuse sexual offences would undermine both deterrence and victim protection.[264] The modern trend therefore strongly favours restricting, rather than expanding, the operation of intoxication in this context. Practically, therefore, intoxication is unlikely to succeed as a defence in sexual offence cases. The courts prioritise protecting victims and public policy concerns, ensuring that offenders cannot hide under the umbrella of drunkenness or drug use to evade responsibility for acts that violate bodily autonomy and consent.[265]

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[260] C O Okonkwo and M E Naish, Criminal Law in Nigeria (5th edn, Spectrum Books Ltd 2012) ; Smith, Hogan and Ormerod, *Smith and Hogan's Criminal Law* (15th edn, Oxford University Press, 2018)
[261] (1976) UKHL 2
[262] Ejinima v The State (1991) 6 NWLR (Pt. 200) 627
[263] ibid
[264] I P Nwakoby and N E Emeka, 'A Voyage into the Legal Theories of the Offence of Rape in Nigeria' (2025) Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law

[265] I P Nwakoby and C S Alazor 'Analysis of Legal Requirements for the Proof of Rape in Nigeria" (2025)



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### 4.5.4 Duress and Necessity

The Nigerian criminal law recognises that, in very rare situations, external pressure or emergency circumstances may so constrain a person's will such that blame may be reduced or, in very limited, excluded all together[266] because it raises the question as to whether the act is followed by a corresponding mens rea. It is within this framework that the defences of duress and necessity are traditionally situated.

Although often discussed together, duress and necessity are conceptually distinct. Duress, often coined as "self-defence", concerns situations where an accused commits a crime because he is forced through threats of immediate death or severe bodily harm.[267] Necessity, on the other hand, applies where an unlawful act is committed in order to avert a greater danger or prevent an imminent harm[268]. In both instances, the law is not approving the conduct, but questioning whether full responsibility should attach in the circumstances.

Under Nigerian law, these principles find statutory expression. Section 32 of the Criminal Code[269] provides for compulsion as a defence in restricted circumstances, while sections 33, 34, and 35 of the Penal Code[270] contain provisions dealing with compulsion and acts done to prevent greater harm. Despite their criminalisation, courts, due to the grievous nature of sexual crimes, have been unwilling to accept that either coercion or emergency circumstances can justify conduct that directly violates another

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*Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law*
[266] J Horder, 'Excusing Crime' (2004) 63 *Cambrige Law Journal 107*
[267] Andrew Ashworth, *Principles of Criminal Law* (7th edn, Oxford University Press 2013); *R v Graham (1982) 1 WLR 294 (CA)*
[268] Stanley Yeo, 'Necessity in Criminal Law' (1988) 4 *Oxford Journal of Legal Studies* 287; Glanville Williams, 'Necessity' (1978) 28 *University of Toronto Law Journal* 123.
[269] Cap C38 Laws of the Federation of Nigeria, 2004.
[270] Cap 58 Laws of the Federation of Nigeria, 2004.



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person's bodily autonomy and dignity.[271]

#### 4.5.4.1 *Duress*

The defence of duress rests on the idea that criminal liability may be reduced or excluded where the accused acted because of threats so serious and immediate that a person of ordinary firmness might have acted similarly. However, the law does not allow every form of pressure to apply. The threat has to be grave, usually involving death or serious violence, and it must be imminent. The accused must also show that there was no safe avenue of escape and that the response to the threat was proportionate.[272] This is also known as Self defence.

The requirements were clearly shown in *R v Graham*[273], the court formulated a well-known objective test for duress. The Court considered both the accused's own pereption of the threat and whether a reasonable person in the same situation would have succumbed to it. The objective element reflects the law's concern that duress should remain a narrow exception rather than a broad excuse for criminal conduct.[274] This defence was further restricted in *R v Hasan*[275] where the court stressed that the law expects a high degree of resistance before threats can excuse criminal conduct , particularly where the accused placed himself in circumstances where coercion was foreseeable.

The courts have also consistently emphasised that duress has limits. In *R v Howe*[276] the court refused to allow duress to be a defence to murder, emphasizing that some crimes

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[271] A U Onochie and S O Nmor 'A Critical Evaluation of the Evaluation of Rape Laws in England and Nigeria: A Comparative Analysis' (2024) 9 *African Journal of Criminal Law and Jurisprudence)*
[272] Smith, Hogan and Ormerod, *Smith and Hogan's Criminal Law* (15th edn, Oxford University Press, 2018)
[273] R v Graham (1982) 1 WLR 294 (CA)
[274] Andrew Ashworth, *Principles of Criminal Law* (7th edn, Oxford University Press 2013)
[275] R v Hasan (2005) UKHL 22,
[276] R v Howe (1987) AC 417 (HL)



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are so grave that threats, however serious, cannot excuse their commission. Although the instant case concerned homicide, its reasoning has been influential in shaping judicial attitudes toward other offences involving profound personal violence, including sexual offences.

Applied to rape or defilement, the logic of these authorities make the defence almost impossible to sustain. It would be difficult for a court to accept that a threat to an accused can justify transferring harm to an innocent victim through sexual violation. In Nigeria , sexual offences are treated as inherently wrongful in a way that makes justificatory defences especially problematic.[277] For this reason, duress is largely regarded as unavailable in relation to principal sexual offences. At most, it may be relevant to ancillary conduct associated with a sexual offence. For example, a person forced at gunpoint to assist in transporting a victim may attempt to invoke duress regarding that assistance, Even then, the evidential threshold would remain extremely high.[278]

This narrow position aligns with Nigerian Law. While statutory provisions acknowlege compulsion in a restrictive way, Nigeria courts usually interprete excuse based defences conservatively, especially in serious offences. There is no recognised Nigerian appellate case which suggests that duress will excuse rape or defilement at the time of this research, and the structure of Nigerian  law on sexual offences makes it quite obvious that such an offence would not succeed.

#### *4.5.4.2 Necessity*

[277] I P Nwakoby and N E Emeka, 'A Voyage into the Legal Theories of the Offence of Rape in Nigeria' (2025) Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law

[278] E C Lubaale, 'The Defence of Duress: Inconsistent International Criminal Court Rulings and National Law Guidance' (2025) *Criminal Law Forum.* https://link.springer.com/article/10.1007/s10609-025-09517-2



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Necessity is based on an entirely different rationale. Rather than focusing on coercive threats from another person, it has to do with instances where an accused person breaks the law to prevent a greater evil.[279] The defence has always been controversial, largely because of fears that a broad doctrine of necessity could undermine the certainty of criminal law.[280] This concern was famously expressed in *Southwark London Borough Council v Williams*[281] where Lord Denning warned that necessity, if loosely applied, could become a mask for disorder.

A more structured approach emerged in *Re A (Children)*[282], where the court indicated that necessity may only arise where the act was required to avert imminent and irreparable injury, and no action beyond what was reasonably necessary was undertaken, and the harm inflicted was commensurate with the harm prevented. Yet even in emergencies, the defence is tightly restricted. In *R v Dudley and Stephens*[283] the defence was rejected regardless extreme survival circumstances. The decision remains a powerful authority for the proposition that grave necessity does not automatically excuse lawful conduct .

Within sexual offences, necessity is understandably more difficult to sustain. One could hardly conceive of rape as the lesser evil chosen to avoid greater harm. Sexual violence is itself a serious harm, and courts will be unlikely to regard it as proportionate response to danger.[284] The protective nature of sexual offences law makes it highly resistant to

[279] Stanley Yeo, 'Necessity in Criminal Law' (1988) 4 *Oxford Journal of Legal Studies* 287.
[280] Glanville Williams, 'Necessity' (1978) 28 University of Toronto Law Journal 123.
[281] (1971) Ch 734.
[282] *(2001) Fam 147.*
[283] (1884) 14 QBD 273.
[284] A U Onochie and S O Nmor, 'A Critical Evaluation of the Evolution of Rape Laws in England and Nigeria: A Comparative Analysis' (2024) 9 African Journal of Criminal Law and Jurisprudence.



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arguments that such conduct can ever be justified as necessary.[285]

The narrow scope of duress and necessity in sexual offences rests on rigid policy considerations. First, sexual offences involve serious invasions of bodily integrity and autonomy. Allowing broad excuses would undermine the protective purpose of criminal law.[286] Second, wider recognition of these defences could encourage fabricated claims of coercion , thereby weakening accountability.[287] Third, the law generally rejects the idea that one innocent person should be harmed so that another person will avoid threatened harm. A threatened offender is not ordinarily permitted to preserve himself by violating another's bodily integrity.[288] Lastly, modern approaches to sexual offences increasingly prioritise victim protection and reject justificatory narratives that mitigate offender responsibility.[289]

In light of the above, both doctrine and policy support the view that duress and necessity have, at most, a marginal role in this area.

### 4.5.5 *Alibi and Other Procedural Defences*

Procedural defences, unlike substantive defences, do not seek to justify or excuse the allged criminal conduct; rather, they operate to weaken or dismantle the prosecution's case by exposing evidentiary or procedural deficiencies. Among these, alibi, which is a defence to all criminal responsibility, has received considerable judicial attention in Nigerian Criminal law.

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[285] I P Nwakoby and C S Alazor, 'Analysis of the Legal Requirements for the Proof of the Offence of Rape in Nigeria' Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law (2025).
[286] Andrew Ashworth, Principles of Criminal Law (7th edn, Oxford University Press 2013)
[287] J Horder, 'Excusing Crime' (2004) 63 Cambrige Law Journal 107
[288] R v Howe (1987) AC 417 (HL); Andrew Ashworth, Principles of Criminal Law (7th edn, Oxford University Press 2013)
[289] I P Nwakoby and C S Alazor, '*Analysis of the Legal Requirements for the Proof of the Offence of Rape in Nigeria*' Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law (2025)



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An alibi arises when an accused person alleges to have been somewhere else asides the crime scene, at the time the crime was committed. In *Adebiyi v The State,*[290] the Supreme Court defined alibi to mean "elsewhere", where the accused claims they were not at the scene of the crime, making it impossible to commit the crime.[291] Pursuant to the Evidence Act[292], the burden of proof lies on the prosecution to prove their assertion beyond reasonable doubt including proof that the defendant's alibi is not sufficient.

The courts have also held severally that this defence must be raised timeously and promptly, preferrably at the earliest opportunity sufficient particulars and , enable sufficient and thorough investigation [293] It must therefore not be used as a "trump card" for the first time in court, but rather in the initial police statement to avoid it being dismissed as an afterthought.[294] In *Ozaki v The State*[295], the court emphasised that the duty imposed on the prosecution is substantive rather than perfunctory i.e. a mere denial of the alibi is insufficient without evidence of proper investigation. Similarly, in *Adedeji v The State*[296], it was established that failure to investigate a properly raised alibi may create reasonable doubt in favour of the accused. This principle reinforces the constitutional presumption of innocence[297] and underscores the prosecution's evidential burden.[298]

However, Nigerian courts have also clarified that the defence of alibi is not absolute . In

[290] (2016) 8 NWLR (Pt.1515) 459
[291] Okosi v State (1989) 1 NWLR (Pt 100) 642. ; Oladipupo v The State (1993) 6 NWLR (Pt 298) 131.
[292] Section 131, Evidence Act, 2011
[293] Ozaki v The State (1990) 1 NWLR (Pt 124) 92 ; Ndidi v State (2007) 13 NWLR (Pt 1052) 633
[294] Kareem v The State (2021) 11 NWLR (Pt 1366) 619
[295] 1990 1 NWLR (Pt. 124)92
[296] (1971) 1 All NLR 75
[297] Section 36 (5) Constitution of the Federal Republic of Nigeria 1999 (as amended)
[298] T A Aguda, The Law of Evidence in Nigeria (Spectrum Books 1988) pp 286-290



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*Nwosisi v The State*[299] the Supreme Court held that where there is positive , direct and credible evidence placing the accused at the scene of the crime, the alibi will fail. This position was reaffirmed in *Ikemson v The State* [300] where the court noted that strong identification evidence can effectively displace alibi. Thus the successful plea of alibi depends not merely on its assertion but on its plausibility, consistency, and the existence of corroborative circumstances.[301] As noted from a scholarly standpoint, the evidential value of an alibi is significantly heightened where the prosecution's case lacks independent corroborration.[302]

The importance of alibi becomes even more pronounced with regards to sexual offences. These offences are often committed in private settings, with little or no eye witness corroboration. As a result, prosecutions frequently rely greatly on the testimony of the complainant, in such circumstances, the defence of alibi directly contests the accuracy of identification.

While there is no strict requirement of corroboration in rape cases, courts are very cautious when it comes to evaluating such evidence.[303] In such circumstances, a credible alibi may introduce reasonable doubt, particularly where the prosecution fails to put forth forensic or circumstantial evidence connecting the defendant to the sexual crime. This presents a dilemma, on one hand, the courts seek to avoid wrongful convictions by insisting that the prosecution disprove alibi beyond reasonable doubt and on the other hand, they are cautious not to allow procedural defences to undermine

[299] (1976) 6 SC 109,
[300] *(1989) 3 NWLR (Pt. 110) 455*

[301] F Nwadialo, Modern Nigerian Law of Evidence (2nd edn, University of Lagos Press 2006) p 213
[302] p 215 ibid.
[303] O Temitayo, 'Proof and Challenges in the Prosecution of Rape Cases' (2015) 3(1) *Journal of Law and Criminal Justice* 1



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genuine complaints in offences that are naturally not easy to prove. The defence of alibi in sexual offences therefore is not neutral as it disproportionately favours the accused where the system lacks forensic capacity. Its effectiveness ultimately reflects not doctrinal strength, but the systemic limitations of criminal investigation in Nigeria.

Other procedural defences include:

a) Admissibility of Evidence

The defence may challenge the admissibility of confessional statements or improperly obtained evidence which may be excluded within the discretion of the court.[304] Courts have excluded evidence obtained in violation of constitutional safeguards[305] thereby weakening the prosecution's case.

b) Contradictions and Inconsistencies

Material inconsistencies in the prosecution's case may be fatal. In *Onubogu v The State*[306], the Supreme Court held that contradictions on material facts create reasonable doubt and must be resolved in favour of the accused, see *Kalu v The State*.[307] This is particularly significant in sexual offence cases where witness testimony may be the primary or sole evidence. Material inconsistencies also affect medical evidence in sexual offences.

c) Failure of Investigation

A recurring issue in Nigerian criminal justice in inadequate investigation. When there is failure to investigate key elements such as an alibi or forensic evidence, especially in

[304] Sections 14 and 15 of the Evidence Act (2011)
[305] Section 36 CFRN 1999 (as amended)
[306] (1974) 9 SC 1
[307] (1998) 13 NWLR (Pt. 583) 531



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offences like rape where such evidence is of paramount importance, may undermine the prosecution's case. There is an increasing reliance on procedural defences and this reliance is attributable to systemic weaknesses in criminal investigation, particularly in the aspect of forensic support and poor preservation of evidence.[308]

d) Identification Evidence

Given the private nature of many sexual offences, identification is often central as it is essential for the proof of an accused's identity beyond reasonable doubt. Nigerian courts, guided by persuasive authority have warned against relince on weak or uncorroborated identification evidence.[309]

### 4.5.6 Misrepresentation

The idea of misrepresentation does not operate as an independent defence in sexual offences.. Instead it is tied to the question of consent, which is the central issue in most sexual offence prosecutions. Under Nigerian criminal law, consent obtained by fraud or misrepresentation may be considered invalid depending on the nature and extent of the deception. This means that not every form of dishonesty will negate consent. The law draws an important distinction between material misrepresentation that goes to the root of the act, and mere inducements or lies that do not fundamentally affect the complainant's decision. For instance, a choirmaster misled a 16-year-old girl into believing sexual intercourse was a medical operation to improve her voice and was found guilty as the consent was negated due to the material nature of the act.[310] A similar situation ensued where the accused falsely claimed that the sexual act was a

[308] I P Nwakoby and C S Nwakoby, 'Legal Examination of the Challenges Confronting the Offence of Rape in Nigeria'. (2012) 5(1) *Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law*
[309] R v Turnbull (1977) QB 224
[310] R v Williams (1923) 1 KB 340



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surgical procedure, the court held that the consent given was invalid.[311]

In contrast, courts have been reluctant to vitiate consent where the misrepresentation relates to collateral matters. The distinction was raised in *R v Linekar* [312] where a false promise of payment did not invalidate consent.

From another angle, a woman cannot deny consent when a man has misrepresented himself to her as an impostor which later turned out to be false. For instance, where a driver to the Minister of Finance had sexual intercourse with a woman while she was under the mistaken belief that he himself was the minister of finance, the woman cannot withdraw consent when she eventually discovered that he was not in fact the minister himself. There are no judicial authorities on this aspect of misrepresentation at the time of this research.

This area of law is still evolving and it raises several policy questions. On one hand,one may presume that limiting the scope of misrepresentation as a vitiating factor may help prevent the criminal law from being used to control personal relationships or moral wrongdoing. On the other hand, it may leave certain victims without adequate protection, especially in cases that have to do with emotional or psychological manipulation.

[311] R v Flattery (1877) 2 QBD 410
[312] (1995) 3 All ER 69



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# CHAPTER FIVE

# SUMMARY, FINDINGS, AND RECOMMENDATIONS.

## 5.1. Summary of Findings

Several findings emerged in this study. Chapters one and two laid down the historical foundations which form the background of this study. The legal concepts peculiar to the study were set forth such as the concept of sexual offences, consent, defences and



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justice and human rights. The research topic was also looked at from a jurisprudential point of view as the various theories of law which support the study of Sexual Offences were laid out such as the Natural Law theory, the theory of Legal Positivism and the Utilitarian Theory of Punishment. It was observed that sexual offences are not just offences against morality as historically perceived but are also severe violations of bodily integrity autonomy, dignity and to some extent, personal security.

In Chapter Three, the study found that one recurring problem that raises an important concern is the fact that the legal framework regulating these sexual offences remains disorganised due to the simultaneous operation of the Criminal Code, Penal Code, Child Right's Act, and the VAPP Act. The implication of this is that there is no uniformity in the application of sexual offence laws throughout Nigeria.

It is submitted that the provisions under the criminal code and Penal Code are heavily narrow and outdated, particularly in relation to rape, which is traditionally defined in terms that contemplate only penile-vaginal penetration implying that there is always a male offender and a female victim. This approach becomes particularly problematic because it may unintentionally exclude several other forms of sexual violence recognised in modern legal systems such as penile-anal penetration, for example, which could involve both a male victim and a male offender.

This study further revealed that the Violence Against Persons Prohibition Act[313] adopts a broader and more contemporary approach by recognising various forms of non-consensual penetration and placing its focus on absence of consent. The significance of this can not be overstated because it paves the way for the partial recognition of non consensual sex within marriage which has long been unrecognised by Nigerian

[313] 2015



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legislation and judicial decisions. Moreso, it is an expansion of the limited definition of rape in the Criminal Code such that all forms of non consensual penetration can fall under the ambit of rape[314]. At the same time, however, the limited application of the VAPP Act across Nigeria continues to weaken its overall effectiveness.[315]

More emphasis was laid in regards to the concept of marital rape. The study revealed that there is a continued non-recognition of marital rape under the Criminal Code[316] and Penal Code[317] and it is becoming even more difficult to justify in light of modern principles of dignity, equality, and autonomy. In the opinion of this researcher, although recent developments suggest a gradual shift towards an approach heavily based on consent,[318] the absence of a uniform position across Nigeria means that the law remains uncertain in its application.

Regarding the issue of consent, the research showed that Nigerian courts have generally and consistently recognised that consent must be free, voluntary and informed, and that consent obtained through force, intimidation, fear, deception or coercion cannot amount to valid consent in law. This, to some extent, answers the research question concerning how Nigerian courts interpret consent in sexual offence prosecutions.

That said, the practical application of this principle still presents some difficulties such that in many sexual offence cases, emphasis is most times laid on evidence of physical resistance or struggle irrespective of the fact that victims may have submitted out of

[314] Kyemong v State (2021) JELR 108937 CA.
[315] The Act primarily applies only in the FCT. To be effective nationwide, each of Nigeria's 36 states must individually domesticate it through their Houses of Assembly.
[316] Cap C38 LFN 2004
[317] Cap P3 LFN 2004
[318] VAPP Act (2015)



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fear, intimidation, psychological pressure, or manipulation without actually consenting to the act. What this suggests is that although the law appears progressive in theory, its practical application is still influenced by outdated assumptions.

The study also revealed that evidentiary difficulties remain one of the greatest obstacles to the successful prosecution of sexual offences in Nigeria. Although corroborration is no longer strictly required, courts still approach uncorroborated testimony with caution, thereby creating difficulties for victims seeking justice.

In chapter four, the research found that Nigerian criminal law recognises defences such as mistake of fact, insanity, intoxication, duress, necessity, alibi, contradiction in evidence, and weak identification evidence.

The research also found that the defence of mistake of fact is unavailable in offences such as defilement because minors are regarded as incapable of giving legal consent. In the same vein, insanity and intoxication rarely succeed because courts require strict proof before excluding criminal liability. It was also revealed that although duress and necessity are recognised under Nigerian criminal law, they rarely succeed in sexual offence prosecutions because of the serious nature of the offence involved.

To conclude, one of the major findings of the research is that the prosecution of sexual offences under Nigerian criminal law  requires a delicate balance between protecting victims of sexual violence and safeguarding the constitutional rights of accused persons. While the law must provide effective prosecution, it must equally uphold the principles of fair hearing, the presumption of innocence, and the availability of legitimate legal defences. The study found that denying valid legal defences in the pursuit of convictions would undermine the integrity of the criminal justice system, just as



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allowing outdated laws or overly broad defences to shield offenders would deny justice to victims.

### 5.2. Recommendations.

In light of the findings made in the course of this research, the following recommendations are proposed .

1. Enactment of a Uniform Sexual Offences Law

There is a pressing need for a comprehensive and uniform sexual offences legislation applicable throughout Nigeria. There are multiple statutes regulating sexual offences and this has created inconsistencies in definition, interpretation, and enforcement. A unified legal framework would provide more clarity, consistency, and equal protection across all jurisdictions. Such legislation should also adopt modern and gender-neutral definitions of sexual offences with greater emphasis placed on absence of consent instead of outdated descriptions based on the traditional notions of sexual intercourse. There should also be uniformity in the punishment for indecent assault against males and females, if possible, the punishment for that against females should be much more severe for obvious reasons.

2. Reform on the Law of Consent : The Law relating to consent should be even more clarified through express statutory provisions and not just judicial decisions. Nigerian legislation like the Criminal Code Act should be modified to expressly include the definition of consent and should clearly recognise that consent must be free, informed, voluntary and capable of being withdrawn at any stage. The law should expressly provide that silence and lack of physical resistance does not automatically imply consent and more importantly, consent obtained through



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intimidation, manipulation, fear, deception, abuse of authority, or psychological pressure is invalid. These provisions would reduce uncertainty and also bring Nigerian law more in line with contemporary understandings of independence and integrity of the human body.

3. Express Criminalisation of Marital Rape

The continued exclusion of marital rape from criminal liability is no longer sustainable in a modern democratic society such as Nigeria. Marriage should not be used as a blanket waiver of bodily autonomy or personal dignity. Consent within marriage must remain continuously revocable, and non-consensual sexual intercourse between spouses should attract criminal liability regardless of marital status.

4. **Strengthening Investigative and Forensic Mechanisms**

One recurring problem identified in this research is the poor quality of investigation in sexual offence cases. Government must invest more seriously in modern forensic and investigative infrastructure including forensic laboratories, specialised sexual assault centres, improved medical examination procedures, and proper evidence preservation systems.

5. Establishment of Specialised Sexual Offence Tribunals : Sexual Offence trials often involve sensitive evidence and vulnerable witnesses. Ordinary criminal courts are mostly overcrowded and not adequately equipped to deal with such matters efficiently. Because of this, sexual offence tribunals should be established . These tribunals would improve judicial expertise, reduce delays, and create a more sensitive environment for victims while still putting into consideration, the fair trial



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rights of accused persons.

6. Judicial Training and Sensitisation : Judges, prosecutors, and law enforcement officers should undergo sustained training on trauma-informed adjudication, consent, evidentiary challenges, and the treatment of vulnerable witnesses. This is of very important because some harmful stereotypes and victim-blaming assumptions, especially regarding the female gender, still influence the handling of sexual offence cases indirectly.

7. Reform of Evidentiary Practices: Although corroboration is not such a strict requirement any longer, remnants of the old cautionary approach still affect rape prosecutions. Courts should place greater emphasis on the totality of evidence rather than the unrealistic expectations of physical resistance or independent eyewitness testimony. Greater reliance should be placed on forensic evidence, circumstantial evidence, medical reports, digital evidence (where available) and the overall credibility of the witness.

8. Improved Victim and Witness Protection

Victims of sexual offences should receive greater institutional support throughout criminal proceedings. Measures such as in-camera proceedings, witness anonymity, counselling services, victim support programmes, and witness protection mechanisms should be strengthened to r educe secondary victimisation and encourage victims to come forth and receive justice.



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9. Continuous Review of Sexual Offence Laws :

The society is evolving every day and therefore sexual offence laws should not remain static but adjust to the changes of society. Continuous review is necessary to ensure that Nigerian Criminal Law keeps pace with changing social realities, constitutional values and evolving human rights standards.

## 5.3. Conclusion

This study has examined the nature of sexual offences and the defences available to accused persons under Nigerian Criminal Law and has revealed that while the law aimed to safeguard victims from sexual violence, it must also protect the constitutional rights of accused persons by recognising the legitimate defences and guaranteeing fair trial. It is concluded that in order to achieve true justice in sexual offences, there must be a judicious balance between the protection and preservation of the rights of accused persons, and that comprehensive legislative, judicial, and institutional reforms are necessary to ensure a more equitable, effective and rights-based criminal justice system in Nigeria.



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