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Definition of Rape and Overview of Surgical Castration as a Punitive Measure for Reducing the Menace in Nigeria

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Abstract

The rate at which rape is increasing in Nigeria is alarming. The Nigerian Penal and Criminal Codes define rape as penetration of virginal by the penis. This implies that only men are capable of committing rape. The punishment for rape varies from one jurisdiction to the other ranging from life imprisonment to death penalty. In Nigeria, the punishment for rape offence is life imprisonment. However, despite the punishment for rape, it has not deterred the perpetrators to decline from the heinous act, rather it keeps increasing. There is a need to introduce a stiffer punishment to curb the incessant menace of rape in our society. This paper examines the definition of rape, the Nigerian legal frame work on rape, surgical castration as an option to curb rape menace and related issues associated with surgical castration on rape. This article adopts doctrinal method of research with the use of primary and secondary materials such as the Statutes, decided cases, online journals, textbooks, conference papers, published articles and newspaper. This paper concludes that surgical operation should be adopted as the punishment for rape offence especially for serial rapists but at the same time, adequate measures should be put in place to protect innocent persons who were wrongly alleged. This paper recommends that, the definition and punishment of rape under the Nigerian laws be reviewed to introduce surgical castration as a punishment for rapist and also broadens the definition of rape.

Keywords: Rape, Menace, Reduction, Surgical castration, Nigerian laws

1.0 Introduction

Rape can be classified as one of the global challenges against humanity, right to dignity of persons, personal liberty and right to life.[1] Rape has been in existence for a very long period of time, it is

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[1]Babalola Abegunde, 'Re-Examination of Rape and Its Growing Jurisprudence under International Law' [2013] (6)(4) *Journal of Politics and Law*; 187; Debra Bergoffen, 'Exploiting the Dignity of the Vulnerable Body: Rape as a Weapon of War' [2016] (38) (3) *Philosophical Paper, American University Washington*, 109-110; Mark Ellis, 'Breaking the Silence: Rape as an International Crime' Case Western Reserve [2007] (38)(2) *Journal of International Law*, 226; DubravkaŠimonović and Yasmeen Hassan 'Rape As a Grave & Systematic Human Rights Violation & Gender-Based Violence Against Women' Expert Group Meeting Report, (2020) *United Nations Human*

now fueled by the advent of globalization through electronic and printed media to boost public knowledge about rape.[2] The record of rape being a sexual violence[3] against individual can be traced to the Holy Bible used by the Christians where the story of sexual immoral acts of Sodom and Gomorrah was related.[4] In addition to this, there were other examples of rape and immoral sexual acts with violence recorded in the Bible such as the account of Lot and his two daughters,[5] Jacob' s daughter that was raped by Shechem[6] and David's daughter Tamar who was raped by her brother Amnon.[7] Rape is also forbidden under the Islamic laws and it attracts punishment if such act is committed.[8]History also revealed that rape can also be traced to the First Statute of Westminster in 1275 after the ancient Hebrews, where the rights of women were said to be violated and as a result, rape was said to be a crime of violence and threat to public safety.[9]

In a simple term, rape can be perceived as sexual intercourse between a man and a woman or a girl without the consent of the victim or where the consent was obtained by force or threat. It is important to state that, the consent of rape differs from one jurisdiction to another and as result, various definitions of rape would be considered later in this paper to give a clearer understanding of the concept. Rape can be described as a cankerworm which is thriving with deepening roots especially in Nigeria.[10] It is so unfortunate that the offence of rape is committed with impunity by the culprits part of which are state actors or law enforcement officers who are supposed to protect the interest of the masses with adequate security.[11] The case of rape cut across every boundary

Right Special Procedures <https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/EGM_EN-SR_Report.pdf>accessed 4 March, 2021.

[2]I. A Chiazor, and others, 'Taming the Rape Scourge in Nigeria: Issues and Actions' [2016] (14)(3) *Journal of Gender & Behaviour, Ife Centre for Psychological Studies/Services, Nigeria*, 7772-7773.

[3] Sexual violence includes rape, incest, child sexual assault, ritual abuse, non-stranger rape, statutory rape, marital or partner rape, sexual exploitation, sexual contact, sexual harassment, exposure, and voyeurism.

[4] Robert KulobaWabyanga, 'The destruction of Sodom and Gomorrah revisited: Military and political reflections' [2015] (28)(3) Journal of Old Testament Essays, Pretoria Available online at <http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1010-99192015000300016.>accessed 4 March, 2021. See the Book of Genesis in the Bible Chapter 19; Chapter 54 in the Holy Quran; Samson O. Olanisebe and Adewale J. Adelakun,'Re-Interpreting "Sodom And Gomorrah" Passages in the Context of Homosexuality Controversy: A Nigerian Perspective' [2013] (3)(2) *Ilorin Journal of Religious Studies*, 193.

[5]See the book of Genesis chapter 19 verses 30-38.

[6]Genesis 34: 1-31.

[7] 2 Samuel Chapter 13.

[8] Rape under Islamic jurisprudence is usually referred to as al-istikraah or al-zinabi'l-jabr, under the general law of zina which means adultery. Thus, Quran 17:32 provides that "Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils)." and Quran 24:2 also provides that "The woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment."

[9] Edward Shorter, 'On Writing the History of Rape', [1977] (3)(2) *Journals of Women in Culture and Society*, University of Chicago Press, 472 Bruce A. MacFarlane, 'Historical Development of the Offence of Rape' in Wood and Peck (eds) *100 years of the criminal code in Canada; essays commemorating the centenary of the Canadian Criminal Code*, (Canadian Bar Association 1993), 1-2.

[10] S.C. Okafor-Udah, 'Ethical Problems of Rape as a Social Cankerworm in Our Present day', *African Journals Online*<https://www.ajol.info/index.php/ajol>accessed on 7 March 2021.

[11]Philip M. Stinson, and others, 'Police Sexual Misconduct: A National Scale Study of Arrested Officers' [2014] *Journal Criminal Justice Faculty Publication*, <https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1029&context=crim_just_pub.>accessed 7 March 2021.

regardless of the ages of both the perpetrator and the victims. Thus, several instances of rape have been reported to occur between landlords and his tenants,[12] teacher and students,[13] in-laws, master and his maid or male servant,[14] traditional ruler and his subjects,[15] a young person and old people, peer groups[16] and so on.

The offence of rape can be classified to different types such as statutory rape[17], gang rape,[18] war time rape,[19] child/baby rape,[20] date rape,[21] and marital rape[22] where law of the state provides for such, to mention but a few. Rape can be committed in the following instances such as; where the victim is unconscious, impaired or drunk, forced oral sex, unwanted sex without physical resistance, forced sex between husband and wives and so on. It is important to state that the condition of the victim whether the he or she would give consent if properly sought is immaterial.

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[12]There was a report of an incident that happened where Taiwo Bakare a 42 year old fingered and attempted to insert his manhood forcefully inside the private part of a 10 year old girl who is his tenant's daughter before he was caught after luring her with a sweet in his parlor. He was thereafter arrested and taken to Igando Police Station in Lagos.<https://standtoendrape.org/nigeria-landlord-defiles-tenants-10yo-daughter/< accessed on 8 March 2021; in addition, on 29th of June, 2019, MrOssai Anthony, a landlord assaulted and raped two young sisters Grace and Janet who are 9 and 12 years respectively and thereafter fled. This was reported by International Centre for Investigative Reporting<https://www.icirnigeria.org/report-landlord-rapes-two-young-sisters-and-flees-nearly-two-years-after-justice-still-eludes-devastated-family/<accessed on 8 March 2021

[13] There was a report of rape by Dr. Stephen Ukenna against a 17-year-old female student in his office on the campus at Covenant University, Ota, Ogun State, which eventually led to his dismissal from work <http://saharareporters.com/2021/03/18/covenant-varsity-dismisses-lecturer-raping-teenage-student-inside-office< accessed on 22 March 2021. In addition, there were reports of two teachers from Nassarawa state who raped their students. Ndang Atiku a 38 year old and a teacher at Shepherds International College Akwanga was allegedly caught fingering a minor, Elizabeth Jubrin who is eight years old in the school. Likewise, Martins Ugochukwu, a 26 year old and a student teacher from the state College of Education Akwanga, posted to GSS Ube, was arrested after raping his student. Reported by David Odama in Vanguard News Paper June 4 2021 <https://www.vanguardngr.com/2021/06/2-teachers-arrested-for-allegedly-raping-minors-in-nasarawa/<ccessed on 10th June, 2021.

[14] Ben Ezeamalu, 'How we raped, killed Cynthia Udoka Osokogu, suspects in murder of General's daughter confess' *Premium Times* (August 22, 2012)<https://www.premiumtimesng.com/news/97417-how-we-raped-killed-cynthia-suspects-in-murder-of-generals-daughter-confess.html> accessed on 10 March 2021.

[15] There was a case of a 23-year-old Hellen Okpara, a member of National Youth Service Corps (NYSC) that was allegedly raped by a traditional ruler in Osun State, Oba Adebukola Alli, the Alowa of Ilowa in Obokun local government area of the state. Reported on 20 March, 2012 by *YetundeOladejo* in Daily Champion on 20 March, 2012<https://allafrica.com/stories/201203200801.html<accessed on 10 March 2021.

[16]There was a report from the CNN of how Uwaila Vera Omozuwa who was studying microbiology at university in Nigeria's Benin City was raped and killed in church <**https://edition.cnn.com/2020/06/05/africa/nigeria-student-rape-family-account-as-equals-intl/index.html<accessed on 11 March 2021.**

[17] Statutory rape is a crime that involves sexual contact with a person who is under an age specified by law, commonly referred to as the "age of consent." Most states no longer refer to this crime as statutory rape.

[18] The act of forcing a person to submit to sexual intercourse with several men or women one after the other.

[19] The *rape* of women and men by soldiers during wartime

[20]It is a Child sexual abuse which is also known as child molestation. It is a form of child abuse in which an adult or older adolescent uses a child for sexual stimulation

[21]**Date rape** is also known as **acquaintance rape**, it is a term used largely in industrialized countries to describe the forcing or coercing of a victim into unwanted sexual activity by a friend, romantic suitor, or peer through violence, verbal pressure, misuse of authority, use of incapacitating substances, or threat of violence or force to have sexual intercourse against their will.

[22]Marital Rape is the term used to describe sexual acts committed without a husband or wife's consent or against his or her will by the other spouse, or a forcible sexual assault by a spouse at a time when the sexual encounter was neither solicited nor welcome.

There are several factors that can cause rape such as peer group pressure, alcoholism, hard drugs, pornography, act of revenge, indecent dressings and so on.[23]

Due to the menace rape has caused in the society, there are various legislations on its punishment which ranges from one jurisdiction to the other. For example, in the United State, United Kingdom, India and Nigeria the punishment for rape is life imprisonment,[24] whereas, in places like China, Egypt, North Korea and Saudi Arabia the punishment for rape is death.[25] As much as death penalty is condemned by the international community, it has not deterred the perpetrator of rape to stop the heinous acts. Whereas, the effect of rape on some victims has damaged their lives beyond repair while some who could not bear the shame would rather prefer to commit suicide.[26] It becomes pathetic where the act led to an unwanted pregnancy which can lead to an abortion and taking of chemical substances which can cause irreversible damage in the life of the victim.

Despite, the punishment for the offence of rape in Nigeria, the offence appears to be on the increase and becoming more rampant. This is worrisome and has brought about a question whether the punishment of rape in Nigeria is not heavy enough to deter the would-be rapist in our society? No wonder, the Kaduna state government has signed into law a stiffer punish for rape offence against the minor which is surgical castration for the culprit if convicted.[27] Thus, this paper seeks to look into definitions of rape, legal frame work on rape, surgical castration as an option to curb incessant rape menace, types of surgical castration that can be used and related issues on surgical castration if allowed in Nigeria.

2.0 Definition of Rape and Legal Frame Work

The offence of rape is a criminal offence which is punishable under the law. There are various legislations on rape at domestic and international levels. Rape offence is a threat to the society especially for those who have been victims. Various definitions including those provided by the statutes would be considered under this section to give a broad and vivid understanding about the concept of rape.

2.1 Definition of Rape

The term rape has been perceived in various ways. Rape can be explained as any form of sexual intercourse without free mutual consent between those involved. Rape can also be explained as an

[23]Mofoluwawo Esther Omoniyi, 'Rape Endemic in Nigeria: Causes, Effect and Probable Way Out', [2017] (17)(2) *Journal of Humanity-Social Science Interdisciplinary*, 3.

[24]Section 1(4) of Sexual Offences Act, 2003, provides that a person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life; Section 376 (2) of the India Penal Code, 1860 and Section 358 of the Nigerian Criminal Code Act provides that; "Any person who commits the offence of rape is liable to imprisonment for life, with or without caning." This section shares the same provision with Section 283 of the Nigerian Penal Code which provides that; "Whoever commits rape shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

[25]Rohit Bhattacharya, 'This Is What They Do To Rapists In Different Countries Around The World'<https://www.scoopwhoop.com/inothernews/punishing-rape-globally/> accessed on 12 March 2021

[26] Rebecca Campbell, 'The psychological impact of rape victims' [2016] *Article in American Psychologist*, Michigan State University, 710.

[27]JanviManchanda, 'Nigeria State's Governor Passes New Castration Law for Rape Convicts on 11 September, 2020'<https://www.republicworld.com/world-news/africa/nigeria-kaduna-governor-passes-new-law-which-says-rape-convicts-will.html> accessed on 12 March 2021.

unlawful behavior or action such as making a child or an adult touch, suck or caress one's private parts to derive sexual pleasure.[28] Rape in medical parlance is defined as penile penetration of vulva of a girl or woman without the consent of the girl or woman[29]. The World Health Organization (WHO) sees rape as sexual assault against another person without that person's consent while the violation may be carried out using physical force, coercion, abuse of authority or with a person who is incapable of valid consent.[30] Rape can also be defined as the unlawful carnal knowledge of a woman or girl without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act.[31] From the above definitions of rape, the common words are; sexual intercourse, force and without consent, this makes is clearer that rape involves sexual intercourse, threat, blackmail, deceit, force or coercion.

2.2 Legal Frame work on Rape

Rape is a serious offence under the Nigerian Laws. Thus, the Constitution, Criminal and Penal Codes being the principal enactments governing criminal activities in Nigeria condemn rape. Although the Constitution does not expressly address rape, however, it clearly prohibits torture and other inhuman or degrading treatment. Section 34 (1) of the Constitution provides that: "*Every individual is entitled to respect for the dignity of his person, and accordingly, no person shall be subjected to torture or to inhuman or degrading treatment*".[32]

In addition to the above, the Criminal Code[33] and the Penal Code[34] which govern the southern and northern parts respectively are the direct legislation on criminal offences in Nigeria. Rape is defines under the Criminal Code as;

> *"Any person who has unlawful carnal knowledge of a woman or girl without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape."*[35]

The Criminal Code also provided for the punishment of rape offence as imprisonment for life.[36] On the other hand, the Penal Code which is applicable in the North explains situations where the

[28]Mofoluwawo Esther Omoniyi, 'Rape Endemic in Nigeria: Causes, Effect and Probable Way Out' [2017] (3)(12) *The Journal of Social Sciences Research*, 120-121.

[29] 2. Sexual Violence: Prevalence, Dynamics and Consequences https://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap2.pdf> accessed on 13 March 2021.

[30]World Health Organization, 'Understanding and Addressing Violence Against Women'<https://apps.who.int/iris/bitstream/handle/10665/77434/WHO_RHR_12.37_eng.pdf;jsessionid=72DFEE0E0C6E48EFFBDC008EA0F8DFC7?sequence=1> accessed on 13 March 2021.

[31] Emmanuel O Obidimma, and Q C Umeobika, 'Time for a new Definition of Rape in Nigeria' [2015] (5)(18) *Journal of Research on Humanities and Social Sciences*,113.

[32]*CFRN*, 1999, s34.

[33]Nigerian Criminal Code Act Cap 38, LFN, 2004.

[34] Penal Code (1963). Cap 89, Laws of Northern Nigeria.

[35] Section 357 of the Nigerian Criminal Code Act Cap 38, LFN, 2004.

[36] Section 358 of the Nigerian Criminal Code Act Cap 38, LFN, 2004.

offence of rape can be committed when it stated that; a man is said to commit rape when he has sexual intercourse with a woman in any of the following circumstances;

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is the man to whom she is or believes herself to be lawfully married;

(e) with or without her consent when she is under fourteen years of age or of unsound mind.[37]

However, sexual intercourse by a man with his wife is not rape, if she has attained puberty.[38]

From the above definitions, there are certain issues that can be addressed. These definitions revealed that only a man can rape with the usage of the phrase 'penetration of the vulva and virginal by the penis without consent'. It is not in doubt, that our laws on rape are obsolete and has failed to catch up with the modern trend. The era where only men can be convicted of the offence of rape had passed. Thus, women can also be convicted of rape if she acts as an accessory or where she uses force, threat or set a man in motion to rape another woman.[39]

It is pertinent to consider the definition of rape in the Statutes of other jurisdictions for better understanding of rape in the modern trend. The United States Department of Justice defined rape as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.[40]

In the United Kingdom an offence of rape is committed when one intentionally penetrates the vagina, anus or mouth of another person with his penis, without the consent of the other to the penetration.[41] Consent is an essential element to prove rape in the United Kingdom. An offence of rape can be established the moment one of the parties breaches the terms agreed upon before the sexual intercourse begins as decided by the court in *R (F) v DPP*[42]. In this case, the claimant consented to her husband to have sexual intercourse on the condition that her husband will not ejaculate inside her virginal because she does not wish to become pregnant. However, the husband refused to withdraw and ejaculated inside her. The wife became pregnant and sued the husband to

[37] Section 282 of the Penal Code (1963). Cap 89, Laws of Northern Nigeria.

[38]Ochem Charles Emeka and C. T. Emejuru, 'An Appraisal of the Jurisprudence of Spousal Rape in Nigeria' [2015] (1)(1) Donnish Journal of Law and Conflict Resolution, 4.

[39] It is the duty of our law makers to amend the Nigerian law on rape to cover a situation in which a man is raped by a woman. The recent trends in advanced countries of the world where women raped men should be an eye opener to our policy makers. For instance as far back as 1973 in French Court, two ladies were convicted of raping a man. They gave him a lift in their car and drove him to their apartment where they had sexual intercourse with him in turn against his wish.

[40]Derek Gilna, 'Department of Justice Expands Definition of Rape to "Ensure Justice' *Prison Legal News* (United States of America, August 22 2016)<https://www.prisonlegalnews.org/news/2016/aug/22/department-justice-expands-definition-rape-ensure-justice/>accessed on 18 March 2021.

[41] Section 1 of the Sexual Offences Act (2003).

[42][2014] Q.B. 581.

court for rape. Justice Fulford and Justice Sweeney held that the wife was deprived of choice relating to the crucial feature on which her original consent to sexual intercourse was based and the act of her husband falls within the statutory definition of rape.

Under the United Kingdom law, a person guilty of rape offence is liable, on conviction to imprisonment for life. In South Africa, by their amended legislation on rape, a person is said to have committed rape where he or she unlawfully and intentionally commits an act of sexual penetration with a complainant without the consent of the victim.[43] The Republic of South African law on rape gave a broad definition of rape or forceful sexual penetration as any act of penetration into any genital organs and other openings such as mouth and anus of a person or animals. It does not matter whether the victim is incapable in law of appreciating the nature of the sexual act, mentally unstable, a minor, asleep, unconscious or is under the influence of any medicine, drug, alcohol or other substance.[44] Furthermore, rape is also a situation where the *perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.*[45]

From the above definitions, other jurisdiction made the definition of rape to cover so many lacuna Nigeria laws failed to cover. These lacunas include:

i. attributing rape offence only to men;
ii. failure to include penetration of other openings in the body of a man or woman as rape;
iii. using or inserting other part of the body such as finger or foreign objects such as stick, bottle, keys, and;
iv. sexual objects as rape.

Whereas, it is not in doubt that these strange acts are the things trending in our present society. In addition, the Nigerian laws on rape do not makes a woman who facilitated or inserted the penis or any other object into the openings of a man or a fellow woman guilty of rape offence. This lacuna in Nigerian legislations on rape will continue to make rape difficult to prove except review is done on our laws.

It is imperative to make mention of a distinct dimension of rape against the general provision of the Criminal and Penal Codes. Thus, the provision of the Violence Against Persons Prohibition Act provides that *"A person commits the offence of rape if he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his/her body or anything else without consent, or the consent is obtained by force."*[46]This definition gives a broader scope of rape by covering some of the lacuna in the Criminal and Penal codes in rape offences by not restricting the offence of rape only to men.However, this law has not been domesticated in all the

[43] Criminal Law (Sexual Offences and Related Matters) Amendment Act, Republic of South Africa Act No 32, 2007.
[44] Section 1and 2 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Republic of South Africa Act No 32, 2007.
[45] See Article 7(1)(g) of the Elements of Crimes of the Roman Statute of International Criminal Court.
[46] VAPPA, 2015, s1

states in Nigeria. Thus, this law is only applicable in Abuja and few other states such as Benin and Kaduna for instance. Most Southern States in Nigeria are still governed by the Criminal Code Act.

3.0 An Overview of Surgical Castration to Reduce Rape Menace

The offence of rape is a serious crime that deserves a serious punishment. The offence of rape is punishable under both Criminal and Penal Codes. Before the recent amendment of the Criminal and Penal Codes, the offence of rape was punishable with determinable years of imprisonment. However, it was discovered this punishment did not curb rape menace rather it keeps increasing on a daily basis. The incessant of rape offence in our society necessitated a need for stiffer punishment from years of imprisonment to life imprisonment as stipulated in our present Criminal and Penal Codes. The question that needs an answer is whether, the current punishment for rape which is life imprisonment has been able to curb the menace in our society? The response to this question is in the negative because life imprisonment has not in any way deterred people from the offence of rape.

Apart from the fact that rapists are threat to the society, the offence of rape are majorly not reported and those reported are not pushed to court for trial.[47] It is unfortunate that, some of the cases that went into trial are mishandled by the prosecution and the few culprits convicted might be sentenced to a lesser terms, some will enjoy executive pardon, some will jail break, while some would be rescued by their gangs and reintegrate back to the society to cause more havoc. It is not a gain saying that imprisonment has not reduce the commission of rape offence in our society because many culprit are not scared of prison where they enjoy free shelter and feeding.

There is a need for a paradigm shift in the punishment of rape from life imprisonment to surgical castration due to the prevalence of the wicked act in the society. It is obvious that the life imprisonment provided by Criminal and Penal Codes have not in any way reduced the menace, no wonder in some jurisdiction, the punishment of rape is death.[48] However, it is understood that the International law frowns at capital punishment but at the same time, the lives of the innocent citizens cannot be held to ransom where the perpetrators of rape offences are increasing every day. The Kaduna State government has stepped a bit further above the general laws on rape in Nigeria to impose a stiffer penalty on rape offenders which is surgical castration.

The Kaduna State Governor, Nasir Ahmed El-Rufai on the 11th of September, 2020 signed the amended penalties for the offence of rape of a child. The new punishment for rape of a minor in Kaduna State Law are surgical castration [49] and bilateral salpingectomy [50] for male and female convicts respectively in addition to death penalty where needed.[51] The law further stated that a

[47]I. A Chiazor, and others, 'Taming the Rape Scourge in Nigeria: Issues and Actions' [2016] (14)(3) *Journal of Gender &Behaviour, Ife Centre for Psychological Studies/Services, Nigeria*, 7773; **Nosmot Gbadamosi**, 'Why Nigeria Is Losing Its Fight to Prosecute Rape' <https://foreignpolicy.com/2021/01/18/nigeria-losing-fight-prosecute-rape-sexual-assault-defamation-metoo/> accessed on 30 March 2021.

[48]Countries like Bangladesh, India, Pakistan, Saudi Arabia, Iran, United Arab Emirates and China<https://www.jpost.com/international/which-countries-punish-rape-with-the-death-penalty-645557< accessed on 30 March 2021.

[49] Castration means removal of the testicles of a male person which leads to sterility.

[50]A bilateral salpingo-oophorectomy is surgery to remove both of ovaries and fallopian tubes.

[51]KSPCL, 2020, s258.

convict who raped a minor would be listed in the Sex Offender Register to be published by the Attorney General of the State.[52]

The above is a stricter punishment for rape offenders against the minor with death where the victim is below the age of 14 years and life imprisonment if the victim is above 14 years.[53] It is opined that, surgical castration for male and bilateral salpingectomy should be extended to the rape offence against adults and such must reflect in both Criminal and Penal Codes in order to tailor the current position of the Kaduna State Law on rape of minor. It is believed, that this will serve the cause of justice against the culprits of rape and also reduce the menace, havoc and threat they pose on the society. It is important to consider few of the provisions of the Kaduna State Penal Code (Amendment) Law, 2020 on rape. Thus, section 258 (1) provides that "Whoever commits rape of a child below the age of fourteen (14) years shall on conviction, be punished with Surgical Castration and death".[54] From the interpretation of this law, it does not restrict the victim of the offence of rape to female children alone. It equally provided punishment for the rape of a male child where it states that; whoever has sexual intercourse with a male child below the age of fourteen years shall be punished with surgical castration and death.[55]

With respect to the offence of rape of a person who is above the age of 14 years which is more relevant to this paper, the amended Kaduna State Law on rape of a minor provides that where the victim is above fourteen years, the Court shall on conviction sentence the accused with a punishment of surgical castration and life imprisonment. Hence, the surgical operation referred to here is for both male and female convicted of rape offence.[56] It is important to state here that this new development on the offence of rape should be looked into by the National Assembly to revisit our Statutes on rape without sentiment or religious bias. This is very crucial at the moment as the offence of rape keeps growing beyond control on a daily basis.

There has to be a lasting solution to stop the rapist from the threat and terror they unleash on the society. In many instances, the victim of rape are being killed in the process and the law officers who are supposed to be the confidants of the citizens at times treat rape cases with levity. The few victims who are bold enough to report many of such reported cases may not see the light of the day. It is not surprising that some officers of the law such as the police, custom, prison warders, and soldiers are also partakers in this heinous act and make it difficult to bring culprits to book.[57]In view of this, it is advisable to bring a lasting solution to curb this rape menace by introducing surgical castration against the offender whether male or female. Surgical castration for both men

[52]KSPCL, 2020, s258 (6).
[53]KSPCL, 2020, s258 (4).
[54]KSPCL, 2020, s258 (1).
[55]KSPCL, 2020, s258 (2).
[56]KSPCL, 2020, s258 (5).
[57] Brito Ruiz, 'The Rape of Nanking: a historical analysis of the aftershocks of wartime sexual violence in international relations' (University of PontificiaComillas, Madrid, 2018) 3. Where the author illustrated how Japanese soldiers raped approximately 80,000 women during the Nanking Massacre. Adriana kovalovska, 'Rape of Muslim Women in Wartime Bosnia' [1997] (3.931) *ILSA, Journal of International and Comparative Law*, 932. The article discussed how Serbian soldiers raped at least 30,000 to 50, 000 Bosnian Muslim women in mass rape camps during the Bosnian civil war. This action made the International Criminal Tribunal to declare rape as crime against humanity in 2001. Also, an estimated half million of Tutsi women were raped during the 1994 Rwandan genocide.

and women can also take the form of sterilization as a punishment for rape which can be by tubal ligation,[58] vasectomy,[59]hysterectomy[60] and hysteroscopy.[61]

Although, one may query the adequacy of bilateral salpingectomy, tubal ligation, hysterectomy and hysteroscopy as punitive measures to punish a female rapist on the ground that these will only affect reproduction capacity in such a convict but does not in any way reduce sexual pleasure that can be enjoyed by them during intercourse.

4.0 Related Issues on Surgical Operation

The punishment for rape offence in Nigeria is perceived weak without much effect and as a result, surgical castration is being suggested to curb the menace of rape in the country. However, it is important to discuss some of the likely issues that can come up as a result of using surgical castration as punishment for convicted rapists. Some of these issues are discussed below;

i. **Post Penetration Rape:** The concept of post penetration rape was developed and firstly raised by the Supreme Court of North Carolina in the case of *People v John*[62]. Post penetration can occur where both parties initially agreed to have sexual intercourse and while in the middle of the act, one of the parties communicates to withdraw the consent, the other party can be guilty of rape where he or she refuses to stop. The question that follows is, in Nigeria can a person be convicted of rape where consent is withdrawn in the middle of sexual intercourse? Some arguments have been proffered that a person in such an act can be compared with a running machine which cannot be expected to stop immediately it is off. This indicates that a person cannot be convicted of rape where he or she does not withdraw immediately the consent is revoked.

   Under the Nigerian law, especially in the Criminal and Penal Codes, it is doubtful if rape can be successfully proved because consent[63] and post penetration were not clearly addressed or defined. As a result of this, it will be difficult for the victim to prove rape in this situation and the court must be very careful in exercising its discretion on whether such accused person in this situation should be convicted or not especially if surgical operation would be the punishment for such an act because it is irreversible.

[58]It is generally known as "having one's tied". This is when the fallopian tube which allows the sperm to fertilize the ovum and at the same time carry the fertilized ovum to the uterus are closed or tied. Once it is held, there will be no release of ovum for fertilization and thus prevents pregnancy.

[59]This is the process by which the tubes that connect the testicles to the prostate are cut and closed. This prevents sperm produced in the testicles from entering the ejaculated semen

[60]This is a process by which the uterus is permanently removed by a surgical operation to prevent pregnancy.

[61]In this method, a small device is placed into the opening of the fallopian tubes the device causes scars on the tissues to block the fallopian tubes thereby rendering a person unfertile for reproduction.

[62] People v. John Z., 60 P.3d 183, 184 (Cal. 2003).

[63] However, under the UK's Sexual Offences Act, consent is extensively defined and it amounts to rape, if a man continues sexual intercourse after a woman withdraws her consent or starts a sexual intercourse where there is no consent, not minding the fact that consent is given midway.

ii. **Victims and the methods of committing rape:** Generally, Under the Nigerian law, a man cannot be a victim of rape. This is because our laws are gender bias on rape since only men can rape under the Nigerian law. Whereas, in reality men can be raped either by a woman or by another man through anal or oral sex. It is unfortunate that it will be difficult to sustain and prove a case of rape against a woman who has forced a man to have sexual intercourse with her either through threat or inducement because the definition of rape in the Nigerian law does not cover such acts. Since Nigerian laws are centered on the penetration of the virginal or anus to prove rape, what happens where someone has been sexually abused with fingers, sex toys or foreign objects to penetrate the openings in the body without the usage of penis? It is opined that where there is a stiffer punishment like surgical castration, there should be proper legislations on related issues that can emanate from rape and the lacuna created by our laws on rape must be covered before a stiffer punishment is measured in order to promote sanity and drastic reduction of rape offences in our society.

iii. **Malice and wrong conviction:** Rape matter is one of the difficult cases to prove in court and as a result, it requires due diligence on the part of the prosecution and the court to avoid wrong conviction. Malice can be a ground for framing someone up for rape especially where there is failure of promises or as a result of revenge. It is not in doubt that there are many people in jail as a result of wrong conviction especially where the convict is an indigent who cannot afford to hire a good lawyer to exercise the right of appeal. The court is not a Father Christmas neither is the court an oracle to know what has not been presented before it. However, where surgical operation would be introduced to punish a rapist, adequate time must be used to analyze the evidence before the court and the court must not be in a haste to convict on rage.

iv. **Compelled Rape**: A compelled rape[64] can occur where A forces B to rape C without the consent of B and C. In a situation where the court is faced with this type of issue, what would be the reaction assuming such a person was being compelled at a gun point? If the court allowed such a person to go scot free, would that not be an avenue to open a flood gate for scrupulous rapist to hide and plead not guilty? It is believeds that the court would exercise its discretion judiciously if faced with such a situation

v. **Death of the victim:** Adoption of surgical castration to punish rapist can lead to an increase in the death of the victim after the heinous act. This is an attempt for the perpetrator to clean and clear any trace to them. The officers of the law are expected to be up and doing in order to give adequate protection to the citizens and bring culprits to book. The death of the victim of rape is an important factor to be considered before a stiffer punishment is introduce on rape. The question is how can the lives of the rape victims be adequately secured? Is there timeous response team whenever rape incident occurred to secure the environment? What measure has the government put in place to protect and secure the victims and the society at large against rape? All these would need to be considered by the

[64] This is not provided by our law but Section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Republic of South Africa Act No 32, 2007 envisaged such and provides that any person ("A") who unlawfully and intentionally compels a third person ("C"), without the consent of C, to commit an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of compelled rape.

government if stiffer punishment such as surgical castration would be made against rape in Nigeria.

vi. **Corruptions of the law officers**: One of the serious challenges to think about if a stiffer punishment would be levelled on rape in our society is the corrupt practices of the Nigerian Law Officers especially the Police officers.[65] Although, there is a trait of corruption in every sector but it is rampant among the law officers who are directly involved in public safety and maintenance of law and order. There is a need for proper sanitation to be done among Nigerian law officers to reduce their porous and crude method of operation. Corruptions of law officers especially the Police are alarming. Surgical castration as a stiffer punishment for rape cannot be implemented without adequate conservation of law and justice among the law officers. An instance may occur where a child of a public figure commits rape and because of corruption another innocent citizen is arrested, locked up, prosecuted and sentenced into prison in place of the public figure's child who actually committed the offence.

It will be a grave error and miscarriage of justice if an innocent person who has been framed up as a replacement for another culprit of rape due to corruption to suffer a terrible punishment of surgical castration which is irreversible. Hence, situation like this should be thought of and well prepared for if surgical castration would be used as a punishment for rape in Nigeria.

From the above, surgical castration would be a very useful punishment to curb rape menace but while such is done, these factors and issues should be put into consideration in order not to punish an innocent citizen. As a result of this, it is suggested if surgical castration would serve as punishment for rape; the court should do its best to be convinced beyond doubt before the conviction and sentencing are passed.

5.0 Conclusion

Rape is one of the rampant heinous acts perpetrated in our society today by men and women. It is an act of having sexual intercourse with another person without consent or where the consent was induced or obtained by force. The categorization of rape includes; statutory rape, gang rape, war time rape, child/baby rape, date rape, and marital rape. The offence of rape is not restricted to age, tribe, sex, colour and society, it is a global problem. This paper revealed that the offence of rape can be traced to the Bible where few examples of sexual intercourse without consent was recorded such as the account of David's daughter who was raped by her brother, Lot that was raped by her two daughters and so on. The offence of rape in Nigeria is characterized with a lot of challenges ranging from the legal frame work which gave shallow definitions of rape as the penetration of virginal by penis there by presented men as the only person who can rape, to the ways rape can be committed which is limited to insertion into only the virginal.

[65]Ahmed Tijjani Ibrahim, 'Analysis of Corruption in the Nigerian Police Force' [2019] (24)(9) Journal Of Humanities And Social Science, 2-3.

This paper espoused that the Criminal and Penal Codes which are the major legislations on rape in Nigeria is full of lacuna on the issue of rape thereby make the offence of rape difficult to prove due to the loop holes. Thus, this paper considered various definitions of rape from other jurisdictions in order to broaden the meaning of rape. Rape is said to include the usage of any parts of the body, objects or foreign objects into any opening of another person for sexual gratification. The punishment of rape in some jurisdiction is death while in Nigeria it is life imprisonment. However, it appears this sanction is weak and has not reduced the menace of rape in our society as the crime rate keep increasing at alarming rate on daily basis.

It is not a gain saying that the offence of rape is rampant in our society and at the same time, the perpetrators are not adequately punished to curb the act. Some of the perpetrators either go scot free due to silence of the victim or as a result of the negligence of the law officers. Thus, they reintegrate themselves back into the society to cause further havoc against other citizens. Nigerian laws on rape require stiffer punishments to curb this menace due its prevalence in our society. Hence, this paper suggested surgical castration which is applicable to both men and women as a way of reducing rape menace in Nigeria. The castration can be by tubal ligation, bilateral salpingectomy, vasectomy, hysterectomy, castration or hysteroscopy. It is opined that the more rapists are rendered sexually in-active, the lesser the threat and untold hardship on the victims will experience.

This paper further discussed related issues on the adoption of surgical castrations as punishment for rape in Nigeria. Surgical castration is irreversible if performed and as a result, the court must be conscious in passing such sentence on the alleged rapist. The issue of post penetration, malice against the alleged person, corruption of law officers and methods of committing rape must be well considered by the court before conviction. This is because our laws on rape do not provide clear provisions on these to avoid levying such an irreversible punishment on an innocent person. In addition, those who are alleged of post penetration rape should be given a lesser punishment because there was consent initially before such was withdrawn in the middle of the act.

Finally, this paper concludes that surgical operation should be adopted as punishment for rape offence in Nigeria especially for the serial rapists after duly prosecuted. However, adequate measures should be put in place to protect innocent persons who were wrongly alleged.

6.0 Recommendation

In view of the above discussion, this paper recommends as follows;

1. There should be a general review of Nigerian laws on rape to cover some lacuna created by the present Criminal and Penal codes on the definition of rape, the issue of consent and post penetration rape.
2. There should be a stiffer punishment especially for the serial rapists; hence surgical castration is recommended for both male and female after conviction to reduce the threat and the mayhem they unleash on the society.
3. The punishment for post penetration rape should be less severe and this should be addressed in our laws.

4. The court should take adequate measures while prosecuting rape perpetrators if surgical operation would be allowed and desist from hasty judgment for the purpose of those that might have been wrongly alleged because surgical castration is irreversible.