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Review Article

The Crime of Rape and Sexual Violence against Women in Nigeria: A Comparison with Other Common Law Countries

Ngozi Alili
Faculty of Law, Kogi State University, Anyigba, Nigeria

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ABSTRACT
This discourse is a comprehensive look at the offence of "rape" as a legal concept, taking into consideration, the primordial, mythical and legal beliefs and meanings associated therewith. It analysed recent statutory changes and developments in this area of the law, particularly under the English common law in contradistinction from the almost static provisions of some African penal statutes relating to the offence of rape. The propelling aim was to appreciate the difficulties associated with efforts to convict persons accused of committing the offence of rape and the legality of calling in aid corroboration in amelioration of these difficulties. It was observed that, the statutory ingredients of the offence do not accommodate such a practice. It became significant that the myths and traditional beliefs surrounding the claim of an alleged victim of rape imported the burden of a rebuttal on the accused. It was observed that sympathy on the part of the courts for alleged rape victims sway their decisions in favour of such victims. This emotional consideration by the courts may have informed he demands for corroborative evidence to seal all escape routes for the accused even when not statutorily provided for. Absence of corroborative evidence may on the reverse, favour the accused though the prosecutrix may concoct one to secure conviction. It was concluded that rape cases should be determined on the basis of the dry provisions of the relevant penal statutes devoid of extraneous considerations, such as corroboration.
Keywords: rape; sexual violence; women; common law; Nigeria.

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ABSTRAK
Kajian ini merupakan pandangan komprehensif terhadap"pemerkosaan" sebagai konsep hukum, dengan mempertimbangkan beberapa hal yaitu keyakinan primordial, mitos dan hukum serta makna yang terkait dengannya. Penelitian ini menganalisis perubahan perundang-undangan terbaru dan perkembangan di area hukum ini, terutama di bawah hukum umum Inggris berlainan dari ketentuan beberapa undang-undang pidana Afrika yang berkaitan dengan pelanggaran perkosaan. Tujuannya yaitu mendorong untuk menghargai kesulitan-kesulitan yang terkait dengan upaya untuk menghukum orang-orang yang dituduh melakukan pelanggaran pemerkosaan dan legalitas untuk pemanggilan bantuan bagi kesalahn dalam triptofan kesulitan-kesulitan ini. Hasil pengamatan menunjukkan bahwa badan hukum pelanggaran tidak dapat menampung praktik tersebut. Hal ini menjadi penting bahwa mitos-mitos dan kepercayaan tradisional yang berkembang mengklaim bahwa yang diduga sebagai korban perkosaan dijadikan beban bantahan pada terdakwa. Diamati bahwa simpati bagi pengadilan untuk korban dugaan pemerkosaan tidak lagi objektif untuk mengambil keputusan mereka yang dapat mendukung korban tersebut. Pertimbangan emosional ini oleh pengadilan menginformasikan perlunya permintaan bukti untuk menutup semua rute pelarian diri bagi terdakwa. Disimpulkan bahwa kasus pemerkosaan harus ditentukan berdasarkan ketentuan undang-undang pidana yang relevan.
Kata kunci: pemerkosaan; kekerasan seksual; wanita; common law; Nigeria.

E-mail address: ngozialili@gmail.com
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1. Introduction

One way in which men can gain access of women's bodies, physically and psychologically, is through rape. Rape depicts a site of struggle unconsented sexual contact with the female body. At the level of meaning, it comprises a struggle over the interpretation of an act, which represents different things to men and women[1]. It would seem that contemporary notions about rape portray it as an act rather than violent access to the female body that victims of rape feel less respected or esteemed, that women are sometimes not sincere about being raped and there is the belief that women are responsible for being victimized. These ultimately create the impression that "only bad girls get raped, women provoke rape by their physical appearance," "all women want to be raped," and they also asked for it. This is so because "any healthy woman can resist a rapist if she really wants to" for "women cry rape" only when they have been "jilted"[2].

Pedestal myth is one of the first main beliefs which holds women to a higher standard of moral conduct. Essentially, women are placed on a pedestal, they should be virtuous, they should not be sexually active nor should they tell immoral jokes or get intoxicated. The view or opinion that women should be more virtuous than men promotes a double standard and gives men a privileged position over women. "Pedestal myths" encourage others to believe that victims "got what they deserved" since they behaved in an inappropriately provocative way. It would therefore, seem that women are "legitimate victims "only when the rape gives the semblance of violating traditional female role expectations. Accordingly, "pedestal myths" persuade the victim into the role of a fallen angel who is forced by the legal system to defend her "heavenly qualities after her fall from grace."

In perpetuating such constructions, legal representations of rape continue the distinction between real rape (i.e. legal rape) and other degrees of forced intercourse which do not fulfill the legal requirements[3].

The study adopted the conceptual and doctrinal approach. It gathered, examined and analyzed primary and secondary source materials, such as legislations, textbooks, precedents and learned journal articles. The approach in deserving circumstances, compared the views and contributions from other common law jurisdictions and incorporated them. It made some observations, conclusions and recommendations for reforms.

[1] Bridgman J.O. and Mills S, *Feminist Perspectives on Law: Laws Engagement with the Female Body* (London: Sweet & Maxwell, 1998). p. 392.
[2] Stewart M.W, Dobbin S.A, and Gatowski S.I, *Definitions of Rape: Victims, Police and Prosecutors* (4 Feminist Legal Studies, 1996). p. 159.
[3] *Ibid*. p. 161.

2. Discussion

2.1 Rape Legally Defined

Contemporary definition of rape has proved hugely problematic for many feminists. Critique of the various definitions is based largely upon the interpretation of the act of rape from a male perspective and its failure to consider adequately, female experience of acts of sexual violence. The English Sexual Offences Act[4], provides that for a man to rape a woman or another man.Under the Act, rape is defined as when: "*A person (a) intentionally penetrates the vagina, anus or mouth of another person (b) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consent*"[5].

The two elements which comprise the legal definition demand an act and a state of mind. The act is that of sexual intercourse with a person who does not consent. The state of mind is that accused does not reasonably believe that his victim consents. It would seem that the old requirement of recklessness as an aspect of the mensrea of rape has been disregarded under the 2003 Act. Today, lack of reasonable belief that the victim consents replaces recklessness as to whether or not the victim consents and whether a belief is legally justifiable is to be determined having regard to all the circumstances of the case, including any steps taken by the accused to determine whether his victim consents[6].

In Morgan, it was held that rape was not proved if the man may have believed that the woman was consenting, even if that belief was unreasonable. This caused much disquiet, mainly because it was erroneously supposed that the man needed do no more that assert this belief in consent to secure his acquittal[7]. The Heilbron Committee, while upholding the decision in Morgan, recommended the declaratory provision as contained in Section 1 (2) of the English Sexual offences Act (as amended by the 1944 Act) thus:

> *"It is hereby declared that if at a trial for a rape offence, the jury has to consider whether a man believed that a woman or man was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed."*[8]

[4] *English Sexual Offences Act*, 2003. Section 1 (1).
[5] This definition replaces that found in the sexual offences Act, 1956, S. (as amended) and S. 1 (1) (c) and (2) replace S. 1 (2) of the sexual offences (amendment) Act, 1976. The principal changes are that rape can now be committed by the penetration of the mouth by the penis (sometimes called "oral rape") and that the *mensrea* is now extended to situations where the accused had an unreasonable belief in the victim's consent (thereby overruling *DPP v. Morgan* (1976)A.C 182).
[6] *Ibid*. Section 1 (2).
[7] J.C. Smith and Brian Hogan, *Criminal Law*, 10th ed. (London: Lexis Nexis, Butterworths, 2002). p. 466.
[8] Cmnd 6352 (1975). See also, (1976) Crim. LR. 97. It is this declaration that metamorphosed into *English Sexual Offences Act*. Section 1 (1) (c).

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This is a matter of common sense, and is not peculiar to rape cases. Whenever a court is to determine whether a person knows a fact or foresaw a consequence, the fact that a reasonable man would have known the fact or foreseen the consequence is evidence that the accused knew or foresaw, but the decision must be made in the light of the whole evidence, including the accused's own testimony (if given) to the effect that he did not know or foresee, as the ease may be[9].

The Nigerian Codes[10] differently defined rape. Under the Criminal Code:

> "*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.*"[11]

The Criminal Code definition concentrates on vaginal rape without a mention of the organ of the body to be used by prospective rapist. It is also silent on other forms of rape, such as oral and anus rape. Under the Penal Code:

> *"A man is said to commit rape if he has sexual intercourse with a woman; (a) against her will (b) without her consent, (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt, (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, (e) with or without her consent, when she is under fourteen years of age or of unsound mind."*[12]

The Penal Code provision relating to what legally constitutes the offence of rape, appears to be verbose, repetitive and ambiguous. The phrases: "against her will" and "without her consent" as used in (a) and (b) above seem to mean the same thing just as paragraphs (c) and (d) would seem superfluous as they may have added nothing new. As succinctly put by Chukkol[13]:

> "*Section 282 (1) (c) & (d) of the Penal Code really talk of the same thing, i.e., situations where there cannot be true consent. When one is put in fear to yield to an act or where one yields to an act under misconceptionof a fact, i.e., believing the-accused to be her husband, there is no consent so to speak of and thus, paragraphs (c) and (d) are really superfluous as they do not add anything new.*"[14]

[9] J.C. Smith and Hogan, *Criminal Law*. p. 467.
[10] Criminal and Penal Codes. The Criminal Code holds sway in the southern part of the country while the penal code applies to the northern part of Nigeria.
[11] Section 357, Criminal Code Act (Cap. C 38) LFN 2004.
[12] Section 282 (1) Penal Code Act (Cap. 532) LFN (Abuja) 1990
[13] K.S Chukkol, *The Law of Crimes in Nigeria, RvsdEdn* (Zaria: ABU Press Ltd, 2010). p. 323.
[14]

In Ghana, rape is defined as the carnal knowledge of a female of sixteen years or above without her consent and whenever a person is being tried for the offence of rape in Ghana, it is important to establish carnal knowledge or unnatural carnal knowledge and the carnal knowledge or unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration.

Unlike the relevant Nigerian Codes provisions, the law in Ghana, though simplistic, took many issues for granted, particularly as they relate to the various acts that may constitute or invoke lack of consent both on the part of the accused and the victim of his act and this may create some interpretative problems for the judiciary in Ghana.

The Indian Code's provisions seem to be as comprehensive as is the case under the Nigerian codes. Thus:

> "*A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions, i.e., (1) against her will, (2) without her consent, (3) with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt, (4) with her consent, when the man knows that he is not her husband and that his consent is given because she believes that he is another man to whom she is or believed herself to be lawfully married, (5) with her consent, when, at the time of giving such consent, by reason of unsoundness of mind, or intoxication or the administration by him personally or through another, of any stupefying or unwholesome substance she is unable to understand the nature and consequences of that to which she gives consent or (6) with or without her consent, when she is under sixteen years of age.*"[15]

Unlike the English Act, the Indian law restricts the commission of the offence to male accused and also, did not consider oral rape. It nonetheless considers situations where the victims of rape is intoxicated for that purpose by their assailants.

In Kenya, it would seem that the offence of rape which was repealed is yet to be reenacted[16]. What is retained by the 2009 Act in chapter XV dealing with the offences against morality, is the offence of "detention of females for immoral purposes, under which it is a felony for any person to detain another against his or her will in or upon any premises with intent that he or she may unlawfully have sexual connection with that person[17].

The Ugandan Code provide that;

> "*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*

[15] Sections 98 and 99 of the Criminal Code (amendment) Act, 2003 (Cap. 646).
[16] Section 375, Indian Penal Code (Cap. 42) Act, 1973.
[17] The Penal Code Act (Cap. 63) Laws of Kenya, 2009 has repealed without replacement, sections 147 to 150 of the 2003 and 2006 Acts which defined and codified the ingredients and punishment for the offence of rape.

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> *or intimidation of any kind or by fear of bodily harm or by means of false representation as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape*."[18]

In India, the victim of rape may not know the nature of the act as a result of intoxication inflicted on her by the accused or his agents but the Ugandan Act did not specify the type of false misrepresentation capable of making the victim of rape not to know the nature of the act.

Nonetheless, it would seem that the Nigerian, Indian and the Ugandan codes provisions share some common features and characteristics of great similarity with the Indian and the Ugandan Codes' provisions is the American Law pursuant to the Model Penal Code provision. Here, a male who has sexual intercourse with a female who is not his wife is guilty of rape if (a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone or (b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge, drugs, intoxicants or other means for the purpose of preventing resistance or (c) the female is unconscious or (d) the female is less than 10 years old[19].

The American Law helps us to appreciate the word "girl" as used in the Ugandan Law to mean a female who is less than 10 years old. It would seem that the courts while interpreting relevant codes' provisions do not deviate much from the statutory definitions of the offence of rape, except where a particular statute failed to offer a working definition. Thus, the Nigerian Court of Appeal, in Ahmed v. Nigerian Army,[20] defined rape in accordance with provisions of relevant statutes. According to the court:

> *"By the provisions of section 282(1) of the Penal Code Law, which is impari materia with section 76 of the Armed Forces Act (Cap. A20) laws of the federation of Nigeria, 2004, a man is said to commit rape when he has sexual intercourse with a woman: (a) against her will or, (b) without her consent, or (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt, or (d) with her consent, when the man knows that he is not her husband and that her consent is given because she is or believes herself to be lawfully married or, (e) with or without her consent when she is under 14 years of age or of unsound mind."*

Under the Nigerian Law, when compared with the American law, a girl is a female under the age of 14 years and not 10 years as applicable under the Model Penal Code. The common law required that a youth be at least 14 years old before he could be charged and

[18] Section 151, 2009, Act.
[19] Section 123, Penal Code Act (Cap. 120) Laws of Uganda 1950.
[20] Section 213.0 of the Model Penal Code.

found guilty of rape and most American jurisdictions follow this common law principle. The concept is not based on the physical capacity of a youth, but rather on the belief that a boy under the age of 14 should not be punished for the serious offence of rape. Nonetheless, his conduct could justify punishment under other charges[21]. Again, a distinction between a woman's husband and a man to whom she is married or believes herself often be lawfully married, may be difficult to draw. If a belief is created in the mind of a woman by the accused to the effect that she is married to a person who is not factually and legally her husband, absence of consent may still prevail[22].

2.2 Ingredients of The Offence of Rape

Comprehensive and legally acceptable statement on the ingredients of the offence of rape, would be one that embodies both the mensrea and the actus reus of the offence and this has necessitated the adoption of the dictum of the Supreme Court of Illinois in *People v. Faulisi*[23], which runs thus:

> "*In a charge of forcible rape, the fact that the act of intercourse was performed forcibly and against he will of the complaining witness is a necessary element of the crime which must be proved beyond a reasonable doubt. The degree of force exerted by the defendant and the amount of resistance on the part of the complaining witness are matters that depend upon the facts of the particular case. ....it is, however, fundamental that in order to prove the charge of forcible rape, there must be evidence to show that the act was committed by force and against the will of the female, and if she has use of her faculties and physical powers, the evidence must show such resistance as will demonstrate that the act was against her will.*"

It would seem from the above dictum of the American Supreme Court, that themensrea of rape is the intention by a man to have sexual intercourse with a woman against her will or without her consent while the actusreus is actually having that intercourse (penetration) with her against her will or without her consent.

2.3 Mens Rea of Rape

Except in strict liability offences, the state of the accused's mind at the time of allegedly committing an offence is material in establishing the commission or otherwise of the offence. Thus, in rape cases, it is not only the physical act of sexual violence that may create practical problems, the mental element requires it to be established that the accused knows that the victim is not consenting to intercourse, or is reckless as to whether she is

[21] (2011)1 NWLR (pt. 1227) 89 at 109-110. See also, *Igbine v. The State* (1997)9 NULR (pt. 519)101.
[22] Gardner T.J and Manian V, *Criminal Law: Principles, Cases and Readings*, 2nd ed. (St. Paul: West Publishing co., 1980). p. 468.
[23] Smart C, "Laws Power, the Sexed Body, and Feminist Discourse," *Journal of Law and Society* 17, no. 2 (1990): 194–210. View Item Google Scholar

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consenting or not. The question has arisen as to whether an honest, but mistaken belief in consent is sufficient to negate the criminal liability of the accused[24].

This problematic situation which held sway in this area of the law, even at the time the case *DPP v. Morgan*[25] was decided, has been tackled and/or modified by some provisions in the English Sexual Offences Act, 2003[26] to include any of the following states of mind-(1) where accused knows that his victim does not consent, (2) where accused gives no thought to whether his victim consented and this would cover a case where the accused had decided to engage in sexual penetration of his victim whatever her wishes and therefore gave no thought to whether she consented and(3) where accused does not reasonably believe that his victim consents and this may cover a case where the accused does whether the victim consents, but simply does not care whether or not she does or believes that the victim is consenting but does not have reasonable grounds for his belief[27].

In determining what constitutes "a reasonable belief" on the part of the accused, the courts are to be guided by the facts and circumstances of each case, including any steps taken by the accused to ascertain whether his victim consents or not[28]. Lack of resistance to sexual advances on theonthe part of the woman may not amount to consent as she may submit to sexual intercourse for the fear of unfavourable consequences of her refusal as a person is said to consent if he or she consents by choice and has the freedom and capacity to make that choice[29]. Consent finds expression in choice and freedom to choose while submission involves compulsion backed by imminent threat and intimidation and this does make room for the exercise of choice and freedom to choose. It has thus been held that:

> *"Resistance is not necessary under circumstances where resistance would be futile and would endanger the life of the female as where the assailant is armed with deadly weapon, and that proof of physical force is unnecessary if the prosecuting witness was paralyzed by fear or overcome by superior strength of her attacker."*[30]

Most of the Penal statutes herein discussed contain conducts or acts onthe part of the accused that may not warrant or accommodate positive resistance on the part of his victim, such as threat, intimidation, use of demobilizing substances, being equipped with weapons,

[24] 25 III. 2d 457, 185 N.E. 2d 211 (1962).
[25] J.O. and S, *Feminist Perspectives on Law: Laws Engagement with the Female Body*. p. 395.
[26] *English Sexual Offences Act*. (1976) AC 182.
[27] *Ibid*. Section 1 (1).
[28] Herring J, *Criminal Law: Text, Cases and Materials* (New York: Oxford University Press, 2004). p. 412.
[29] *English Sexual Offences Act*. Section 1 (2)
[30] *Ibid*. Section 74.

fraud, age etc, but only the English statute dwelt on theonthe accused state of mind that many negative consent on the part of his victim.

2.4 Actus Reus of Rape

The position of the Nigerian Court of Appeal, which appears to be comprehensively all-embracing, may be adopted to the effect that:

> *"The important and essential ingredient of the offence of rape is penetration, sexual intercourse is deemed complete upon proof of penetration of the penis into the vagina. Emission is not a necessary requirement of the offence of rape. Any or even the slightest penetration will be sufficient to constitute the act of sexual intercourse. Thus, where penetration is proved but not of such a depth as to injure the hymen, it will be sufficient to constitute the crime of rape. Therefore, proof of the rupture of the hymen is unnecessary to establish the offence of rape. In this case, the appellant's contention that the girl was not a virgin at the time of medical examination does not change the fact of rape once the penetration is established. Whether the prosecutrix is a minor or an adult, to secure conviction for rape, there must first be proof of penetration of the vagina and the penetration must be linked with the accused."*[31]

In states utilizing the traditional rape statutes, the state must demonstrate that intercourse occurred. Evidence must be produced showing that the penis penetrated, to some extent, into the vagina. Under traditional rape statutes, rape is committed by the penetration of the penis, not a finger, broomstick, or bottle. Assaults of that nature are not prosecutable as rapes. It is not necessary to show complete penetration or that the accused had an orgasm to prove rape. A showing of partial penetration of the vulva or the labia of the victim is sufficient. Proof of penetration is usually shown by statement of the victim in court and/or by statements of the examining physician[32].

2.5 Corroboration and Proof of Rape

As is generally applicable in other cases of criminal allegations, proof of rape is a matter of factual and credible evidence, exception circumstances of outright confession on the part of the accused. It has been the law and practice, prior to some legislative reforms, that the prosecution shows corroboration for the victim's testimony. Here, the prosecution is expected to give supplementary and additional evidence to that already given, the essence of which is to strengthen, to add weight or credibility to existing facts by additional and

[31] T.J and V, *Criminal Law: Principles, Cases and Readings*. p. 468.
[32] *Ahmed v. Nigerian Army* (Supra). See also, *Ogunbayo v. The State* (2007)8 NWLR (pt. 1035)157, *The State v. Ojo* (1980)2 NCR 391, *Jegede v. The State* (2001)14 NWLR (pt. 733)264, *Igabele v. The State* (2006)6 NWLR (pt. 975)100, *Okoko v. The State* (1964)1 ALL NLR. 423, *Seismograph Services (Nig.) Ltd v. Ogbeni* (1976)4SC 85, etc.

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confirming facts or evidence, though this may be of a different or similar character on the same point[33].

This requirement was considered in *United States v. Woley*[34]. Here, a 12-years-old girl accused the two accused persons of raping her. The corroborative evidence was to the effect that (1) three police officers testified that the complainant was crying and upset, (2) that her clothing was disheveled, (3) that she had no coat even though it was a cold day, (4) that she promptly reported the offence, and (5) that her coat was found in the apartment where she said the offence took place. Two of the three judges sitting on the Court of Appeals for the District of Columbia reversed the convictions on grounds that the "most effective corroboration would have been medical evidence.The court described as "irresponsible" the conduct and decision of the prosecutor to proceed without the examining doctor available as a witness, though there had been three abortive trial dates during which the doctor was on vacation and the case could not go on.

Thus, a better position is that corroboration should not be tied to atoa particular specie of evidence. What matters is that a corroborative evidence should add value, credibility and confirm existing pieces of evidence. It would accordingly seem that the Nigerian Court of Appeal got it right when it held that:

> *"A piece of evidence offered as corroboration for the offence of rape must be: (a) cogent, compelling and unequivocal as to show without more that the accused committed the offence charged (b) be an independent evidence which connects the accused with the offence charged, and (c) be evidence that implicates the accused in the commission of the offence charged."*[35]

Nonetheless, the requirement of corroboration in sex offences, particularly rape, has come under sharp attack in recent times. Feminist have found the requirement unjust to women and prosecutors have argued that it makes convictions too difficult to obtain. The view or opinion that the testimony of a single witness is inadequate to establish a crime is an ancient one. Though the Code of the Emperor Justinian Emperor Justinian provided that on any important issue, the testimony of one witness was insufficient the common lawcommonlaw reflect the requirement of corroboration for all crimes except perjury. Thus, there is no common law requirement of corroboration for any sex offence[36].

[33] Henry Campbell Black, *Black's Law Dictionary, 6thEdn (, ,)* (St. Paul: West Group, 1990). p. 344.
[34] 517 F. 2d 1212, 170 its App. D.C 382 (1975).
[35] *Ahmed v. Nigerian Army* (*Supra*). See also, *Sambo v. The State* (1993)6 NWLR (pt. 300) 399, *Upahar v. The State* (2003)6 NWLR (pt. 816) 230, *Ifejirika v. The State* (1999)3 NWLR (pt. 593)59, etc.
[36] Lees S, *Ruling Passion: Sexual Violence, Reputation and the Law* (Buckingham: Open University Press, 1997). pp. 78-79.

Today, thirty-five states in America have rejected the corroboration requirement for rape.Of these jurisdictions that retain the requirement, about half, including the District of Columbia, do so in the absence of legislation[37].

The substance of the corroboration requirementcorroboration requirement varies enormously from one jurisdiction to another, ranging from a requirement of corroboration for force, penetration and identity, to minimal corroboration of any part of the victim's testimony [38] . Numerous justifications have been advanced for the requirement of corroboration in sex cases, and an examination of these rationales reveals a tangled web of legitimate concerns, outdated beliefs and deep-seated prejudices. In addition to the problem of false charges, the corroboration requirement may be justified on the theory that rape is a charge, unusually difficult to defend against. It is indeed an occasion easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent. There is, nonetheless a little hard evidence with which to test this theory, and available studies only suggests that an accused is unlikely to be convicted of rape on the uncorroborated testimony of the victim in those jurisdictions that do not require corroboration.

There is also, the theory of the corroboration requirement which stems from discrimination against women. It is said that traditional sex stereotypes have resulted in rape cows that protect men rather than women. Punishments for rape are high because a "good" woman is a valued possession of a man. Corroboration is required because to a "good" woman, rape is "a fate worse than death" and she should fight to death to resist it and if such fight is not put up, the woman must have consented or at least enticed the rapist, who is for that reason, blameless. Analyzing all these justifications in order to separate the valid from the invalid is no easy task. We know enough to betobe troubled, but not enough to know how to resolve our troubles. Ultimately, we have to bear with the terrible period known as "meanwhile".

3. Conclusion

The offence of rape is centered on issue of the presence of consent on the part of the victim of an alleged rape. alleged rape.This has provided the focus of much feminist criticism. Consent is construed from a male perspective in that it demands consideration of the event as the man believed it to be and it would seem in practice, that consent is assumed

[37] It would seem that he Courts in Nigeria apply the corroboration requirements without legislative backing. See, Ahmed V. Nigerian Army (Supra).
[38] T.J and V, *Criminal Law: Principles, Cases and Readings*. p. 471.

and the burden of proving otherwise is on the raped woman. Reason, which is the law's primary tool, which is used and sometimes not used to construe the male as subject of rape has been analyzed and seems to wear many masks, namely, the reasonable man and his reasonable belief. In practice, the mental element In theInthe crime of rape is that the act was deliberate. Belief that the woman was not consenting and not caring whether she consented or not on the part of the man is the state of mind which must be proved and this must rest on reasonable grounds. The problems associated with the proof of rape may not warrant the courts to demand for corroboration without legislative enactments to that effect.

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