



REGULATION OF MATRIMONIAL SEXUAL WRONGS THROUGH CRIMINAL LAW SANCTIONS IN NIGERIA: ANY LESSONS FROM OTHER COUNTRIES?

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ABSTRACT

In recent times, there has been a worrisome increase in sexual offences in Nigeria ranging from rape to attempted rape, child defilement to human trafficking and in particular, matrimonial sexual wrongs. Extant legislations aimed at curbing the malice have proven ineffective while victims of sexual wrongs particularly matrimonial sexual offences are left uncompensated. To this end, the paper examines the treatment of matrimonial sexual offences within the criminal justice system in Nigeria. Most jurisdictions believe that in as much as there is marriage, the spouse cannot complain of any sexual wrong done to her by the other party - that it is a right and not a privilege to have sexual intercourse with or without the consent of the other party. The paper finds that there is inadequate legislations aimed protecting the spouse against incidences of matrimonial sexual wrongs in Nigeria. Using the comparative methodology, the paper juxtaposes the Nigerian position with some other jurisdictions and calls for legislative rethink in Nigeria.

Keywords: Matrimonial Sexual Wrongs, Criminal Sanctions, Nigeria, Reform.

1. INTRODUCTION

It is commonly believed that by her matrimonial consent to marriage contract, a wife has given herself into sexual intercourse (together with the commonly shared ideal that she cannot retract her decision) and thus the husband cannot be guilty of a matrimonial sexual wrong committed by him on his wife. Historically, many cultures have had a concept of spouses' conjugal rights to sexual intercourse with each other. The proposition of Christian teaching influence of western culture, Islamic teaching in the Islamic world and other religious faiths share the same point of view that in a marriage life the husband and wife render to each other the affection due to each other. Therefore, the wife does not have authority over her own body in order to refrain from sexual relation. This presumption logically put the husband in a position that he has the authority on the wife's body.

From the same point of view it can also be said that the husband does not either have authority over his own body, but the wife does. For instance, the following Biblical injunction had influential values in western world culture until the 1990's: "Do not deprive one another except with consent for a time that you may give yourselves to fasting and prayer; and come together again so that Satan does not tempt you because of your lack of self-control¹."

¹ 1 Corinthians 7:3-5, the Holy Bible.

Additionally, one has to keep in mind that in Islam, as in all other religion, adultery is a grave sin² and marriage encouraged spouses to refrain from this big sin. Right from the point of marriage, the Quran recognizes the right of the man in the marriage contract and preaches fulfillment and obedience by the woman towards those rights³. Married men thus automatically think and believe that having sex with their wives is helpful at least in two ways - one do not commit one of the biggest sin and secondly, enjoyment of physical needs with peaceful mind regardless of women consent is an essential corollary of marriage. The Consent is subsumed to have been given upon the woman consenting to marry the man.

However, it is a reputable presumption that a child who is forced into marriage does not have the right to refuse the man's sexual advances. Also, most husbands believe that they are the head of the family and that women are created for their use. In that wise, they have right to subject their spouse to sexual intercourse in whatever form notwithstanding any protest from the woman. They sexually harass, humiliate, abuse and even rape their spouse. Some commit adultery and feels it is culturally permitted and the woman dare not complain as she would be threatened with the punishment of divorce and the man readily proceeds to marry another woman. Part 2 of this paper examines the several types of matrimonial sexual wrongs and underpinning criminological philosophy in their creation. Part 3 focuses on arguments for and against the criminalization of certain matrimonial offences. The paper juxtaposes the Nigerian position with what is obtainable in another jurisdiction and x-rays the lessons therefrom, in Nigeria. In Part 4, the paper is concluded and recommendations for reform are made.

2. THE UNDERLINING PHILOSOPHY OF MATRIMONIAL SEXUAL OFFENCES

2.1 *Marital Rape*

Marital Rape is any unwanted sexual acts by a spouse or ex-spouse, committed without consent and/or against a person's will, obtained by force, or threat of force, intimidation, or when a person is unable to consent. These sexual acts include intercourse, anal or oral sex, forced sexual behaviour with other individuals, and other sexual activities that are considered by the victim as degrading, humiliating, painful, and unwanted⁴. Legally, marital rape is divided into three categories:

- a) Violent rape
- b) Force-only rape
- c) Sadistic or obsessive rape

Marital rape is a controversial concept because people continue to believe in the following myths and misinformation about spousal rape.

- a) There are those who believe that marital rape is contractually impossible because of the false belief that wives give up their right to give consent when they become married.
- b) Many believe in the concept of marital unity and that a husband and wife are one person under the law which means to them that the legal existence of a wife is suspended.
- c) There is concern that possible marriage reconciliation would be prevented by marital rape laws.
- d) Culture plays a role in this controversy because in many countries, a wife is still considered as property of the husband, so a husband cannot be convicted of hurting his own property.
- e) There are folks who believe that marital rape is not as physically and emotionally damaging as stranger rape.

² Qur'an provides the punishment for adultery in verses 15 and 16 of Surah 4.

³ Surah 4 verse 34 Ali Unal, *The Qua'an with annotated interpretation in Modern English*; The Light Inc.

⁴ Available at <http://marriage.about.com/cs/maritalrape/f/maritalrape11.htm>. Accessed 01 August 2014.

- f) There is also the fear that out of revenge or for their own personal gain, women will destroy their husbands' lives by making false allegations of marital rape.
- g) Some worry that the legal systems in trying to deal with marital rape would be bogged down by cases that would be impossible to prove.

Due to these controversy, lot of countries before refused to legislate on marital rape but of recent countries have stated making it an offence to rape once spouse.

2.2 Selected Countries Where Marital Rape is Criminalised

In England and Wales, the views which contributed to rape laws not being applicable in marriage can be traced, at least partially, to the 17th century, to English common law, which was exported to the US. The views of Sir Matthew Hale, a 17th-century English jurist, published in, *The History of the Pleas of the Crown (1736)*, stated that a husband cannot be guilty of the rape of his wife because the wife 'hath given up herself in this kind to her husband, which she cannot retract'. This was the law in England and Wales for more than 250 years until it was abolished by the House of Lords, in the case of *R. v. R⁵* in 1991.

In United States of America, prior to the mid-1970s marital rape was not a crime. Traditional rape laws in the US defined rape as forced sexual intercourse by a male with a 'female not his wife', making it clear that the statutes did not apply to married couples. The 1962 Model Penal Code stated that, 'A male who has sexual intercourse with a female not his wife is guilty of rape if: (...)'.⁶ In 1993, North Carolina became the last state to remove the spousal exemption.⁷ On July 5, 1993, marital rape became a crime in all 50 states, under at least one section of the sexual offense codes.⁸

2.3 Comparative Analysis: Examples from the United States

In Ohio, a rape that happens in marriage when the spouses are living together can only be charged under *subsection A (2) of 2907.02 Rape*, which states that: "No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." By contrast, a person who is not married to the accused or who is married but living separately and apart can rely on many laws which deal with various forms of coercion. It is notable that *subsection A(1)(a) of 2907.02 Rape* that deals with drugging someone 'surreptitiously or by force, threat of force, or deception' to coerce them into sex does not apply in marriage (except in case of separation). The whole article *2907.03 Sexual Battery*, that deals with various forms of coercion (for instance, it states in subsection in A (1) that 'the offender [commits a crime when he] knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution') does not apply at all to married people.⁹ In Idaho (which remains one of the few states which has gender specific rape laws) a married woman can bring a charge of rape against her husband only under subsections (4) and (5) of *18-6101. Rape defined* (because Article *18-6107. Rape of spouse* states:

"No person shall be convicted of rape for any act or acts with that person's spouse, except under the circumstances cited in subsections (4) and (5) of section 18-6101, Idaho Code)."

⁵ Available at <<http://www.bailii.org/uk/cases/UKHL/1991/12.html>> accessed 15 August 2014.

⁶ Available wps.prenhall.com/wps/media/objects/13023/13335893/downloadables/ accessed 15 August 2014.

⁷ 'The National Center for Victims of Crime', Available at Library/ Document Viewer /Ncvc.org. Accessed 14 August 2014.

⁸ *ibid*

⁹ Available at <www.Codes.ohio.gov.> accessed 12 August 2014.

The law further provides that a married woman can bring charges: (4) Where she resists, but her resistance is overcome by force or violence; and, (5) Where she is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anesthetic substance.

Connecticut has a specific crime dealing with forced sex with a spouse and this does not apply only to spouses but also to unmarried cohabitants. The law is narrower than the other sex laws and it has a shorter penalty. It is called *Section 53a-70b - Sexual Assault in Spousal or Cohabiting Relationship* and it reads:¹⁰

“No spouse or cohabitor shall compel the other spouse or cohabitor to engage in sexual intercourse by the use of force against such other spouse or cohabitor, or by the threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to fear physical injury.”

The spousal rape law of Connecticut makes reference to force used or threatened against the ‘other spouse or cohabitor’ while the ‘ordinary’ sexual assault law deals with force used or threatened against the ‘other person or against a third person’.¹¹ In Nevada law, ‘it is no defense to a charge of sexual assault that the perpetrator was, at the time of the assault, married to the victim, if the assault was committed by force or by the threat of force’.¹² This seems to imply that if force or threat of thereof were not used, marriage can be a defense. The general definition of sexual assault uses the wording ‘against the will of the victim’ or ‘under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct’.¹³

In Oklahoma, rape by a spouse can only be charged under subsection (B) of *Section 1111 - Rape Defined* which states:¹⁴ “... Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.” For instance, a person in Oklahoma cannot charge her/his spouse for rape if she/he is compelled to submit due to drugs administered by or with the privity of the accused as a means of forcing the victim to submit, or when she/he is unconscious, as these situations are dealt under subsection (A) of Section 1111 which define rape as intercourse ‘with a male or female who is not the spouse of the perpetrator’.

In Virginia, the main difference lies in punishment. Under certain circumstances, if the victim and the attorney for the Commonwealth agree, the perpetrator can undergo a therapy program, which if completed successfully, replaces any punishment. This can happen if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.¹⁵ While the victim has to agree to this option, this can expose the victim to intimidation and threats from the perpetrator or to social pressure to remain in the relation.

Maryland law states that, if the spouses are living together, a prosecution can take place only if the accused uses force or threat of force and the act is without the consent of the spouse. If the spouses are separated they are treated as if they were strangers¹⁶ A similar situation exists

¹⁰ Available at Law.justia.com. Accessed 12 August 2014.

¹¹ Available at <<http://law.justia.com/codes/connecticut/2005/title53a/sec53a-70.html>> Accessed 12 August 2014.

¹² Available at Leg.state.nv.us. Accessed 14 August 2014.

¹³ Ibid.

¹⁴ Available at www.Oscn.net. Accessed 11 August 2014.

¹⁵ Available at www.Leg1.state.va.us> Accessed 12 August 2014.

¹⁶ See Section § 3-318. Statutes.laws.com. Accessed 12 August 2014.

in Mississippi. A person can be convicted of sexual battery of a spouse when they are living together only if he engages in forcible penetration against the victim's will.¹⁷ This excludes, among others, situations where the victim is rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent.¹⁸

In Rhode Island, Article § 11-37-2 'First degree sexual assault', has four subsections; while subsections 2, 3 and 4 apply to spouses, subsection 1 does not; it reads: 'The accused, *not being the spouse*, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.'¹⁹ This has the result of excluding from prosecution, among other situations, incidents where the victim was drugged by the perpetrator. 'Mentally incapacitated' is defined by legislation as:

“A person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anaesthetic, or other substance *administered to that person without his or her consent*, or who is mentally unable to communicate unwillingness to engage in the act.”²⁰

In Minnesota, certain sexual offenses do not apply to spouses (unless they are separated), and neither do they apply to unmarried cohabitants. These are offenses that deal with situations where the lack of consent is due to the incapacity of consent of the victim, including where the victim was drugged by the perpetrator. Article 609.349 'Voluntary relationships' creates this exemption.²¹ This article excludes situations where the victim was mentally impaired, mentally incapacitated, or physically helpless. The term 'mentally incapacitated' is defined as a person who under the influence of alcohol, a narcotic, anesthetic, or any other substance, *administered to that person without the person's agreement*, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.²²

In Michigan, Section 750.520l excludes situations where the criminality comes solely due to the spouse being mentally incapable, or mentally incapacitated.²³ Section 750.520a Defines 'Mentally incapacitated' to mean that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person *without his or her consent*, or due to any other act committed upon that person *without his or her consent*.²⁴

Iowa contains an unusual exemption. Subsection (2) of article 709.4 Sexual Abuse in Third Degree, excludes sexual acts committed by adults with children as young as 12, provided the parties are cohabiting as husband and wife.²⁵ This does not refer only to legal marriages, but also to informal cohabitation. (Iowa is one of few states which recognize common law marriage). In 2012, a man who got his 13-years old live-in-girlfriend pregnant tried to rely on this law. The man, who was of Mexican origin, argued that his relation could be considered as similar to marriage under cultural norms as they exist in his Mexican culture. The court rejected this

¹⁷ Available at Mscore.com> Accessed 12 August 2014.

¹⁸ Ibid.

¹⁹ Available at <http://webserver.rilin.state.ri.us/Statutes/TITLE11/11-37/11-37-2.HTM>. Accessed 12 August 2014.

²⁰ ibid

²¹ <https://www.revisor.mn.gov/statutes/?id=609.349>

²² <https://www.revisor.mn.gov/statutes/?id=609.341>

²³ <http://www.legislature.mi.gov/%28S%282cv10feqxr35ea552rmon055%29%29/mileg.aspx?page=getObject&objectName=mcl-750-520l>

²⁴ <http://www.legislature.mi.gov/%28S%282cv10feqxr35ea552rmon055%29%29/mileg.aspx?page=getObject&objectName=mcl-750-520a>

²⁵ <http://coolice.legis.iowa.gov/coolice/default.asp?category=billinfo&service=iowacode&ga=83&input=709#709.4>

argument, ruling that the exemption could be used only if the couple ‘objectively cohabited in the status of husband and wife, whether common law or otherwise’, not if they merely believed they did.²⁶

South Carolina represents the most extreme situation. Not only is marital rape punished less severely and the victims have only 30 days to report, but the law requires a higher level of violence to be used. The law, titled ‘Spousal Sexual Battery’ reads as follows:²⁷

“(A) Sexual battery, as defined in Section 16-3-651(h), when accomplished through use of aggravated force, defined as the use or the threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature, by one spouse against the other spouse if they are living together, constitutes the felony of spousal sexual battery and, upon conviction, a person must be imprisoned not more than ten years.”

A relatively similar law existed in Tennessee until 2005, when it was repealed. The law stated that a person could be guilty of the rape of a spouse at a time they are living together only if that person either was armed with a weapon or any article used or fashioned in a manner to lead the alleged victim to reasonably believe it to be a weapon or caused serious bodily injury to the alleged victim. This meant that, in practice, most cases of marital rape could not be prosecuted, since few rapes involve such extreme circumstances. The law was finally repealed in 2005, allowing for marital rape to be treated like any other type of rape.²⁸ The bill to repeal the old law has been introduced more than ten times before it succeeded.

In South Africa rape law took after common law. It was not, until recently, a crime for a man to use force on his wife to have intercourse with her. Rape in South Africa was governed by the Criminal Law (sexual Offences and Related Matters) Act.²⁹ This Act provides a broader definition for the offence of rape. It addresses the archaic law on sexual offences that existed prior to this law coming into effect. Among critical things, it repeals the common law offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender.

This means a woman, a man (or child) can now be raped by another woman or man.³⁰ The laws governing rape in South Africa are almost completely detached from their common law roots. Marital rape is now a crime in South Africa as a result of the Prevention of Family Act³¹, which made rape in marriage illegal throughout South Africa. Also the rule that boys under the age of 14 are incapable of rape has been repealed³². It is now settled that boys under 14 can be found guilty of rape³³ and lastly rape is now broadly defined to accommodate penetration by objects and any form of penetration without consent. In recent years many other countries criminalized marital rape. For instance: Malaysia changed its laws to that effect in 2007; Turkey in 2005; and Bolivia earlier 2003.

Under the Indian Penal Code sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. Marital rape is not a crime. Hindu Marriage Act 1955 says a wife is duty-

²⁶ http://statecasefiles.justia.com/documents/iowa/court-of-appeals/2-660-11_1305.pdf?ts=1346943878

²⁷ Lawserver.com

²⁸ Womenshealthnews:Lexisnexis.com

<http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=%20SB0556&GA=104>

²⁹ No 32 of 2007 (Section 72)

³⁰ The New Sexual Offences Act: protecting our children from sexual predators. Retrieved from <http://www.justice.gov.za/docs>. Accessed 19-06-2014

³¹ No 133 of 1993

³² Section 1 Law of Evidence and criminal Procedure Act (Amendment Act) No 103 of 1987.

³³ R V. Milton (1988) 1SACJ 123

bound to have sex with her husband. Denying sex, according to traditional Hindu beliefs, goes against the duties of an ideal wife. A judge in India officially confirmed that rape laws do not apply to married couples — once they are legally wed, forced sex is no longer a crime.³⁴ What is especially chilling is that the judge, Virender Bhat, was hearing a case in which a woman alleged she had been drugged, then forced to marry, and then raped - in other words, she had not consented to the marriage or the sex. Bhat said there was no evidence that the accuser had been drugged, but he also said that if the woman's husband (identified only as Vikash) had forced himself on her that would not qualify as rape under Indian law. In his words:

“The prosecutrix (the wife) and the accused (Vikash) being legally wedded husband and wife, and the prosecutrix being major, the sexual intercourse between the two, even if forcible, is not rape and no culpability can be fastened upon the accused.”³⁵

This is not the first time marital rape has been an issue in India. Recently, after a student was raped and murdered in Delhi, a committee headed by former Indian Supreme Court Chief Justice J.S. Verma made a number of recommendations for improving India's rape laws, including doing away with the marital rape exemption. According to the Verma Committee's report:³⁶ Under the Indian Penal Code sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. The country strengthened its sexual assault laws based on the committee's recommendations, but the marital rape law remained unchanged - and this new ruling just reconfirms it.

Also in Nigeria, Rape is defined as ‘unlawful carnal knowledge of a woman without her consent.’³⁷ Rape in Nigeria is governed by two different Acts; the Criminal Code Act³⁸ and the Penal Code Act³⁹. The latter is applicable only in the Northern Nigeria while the former is applicable in all other states. The provisions of the Criminal Code concerning rape can be paraphrased as meaning that a man who has unlawful sexual intercourse with a woman without her consent if it is gotten through threat, fraud or any kind of force, will be guilty of the offence of rape. The provisions of the penal Code are similar to this but are expressed in a different way.

For an offence to constitute rape in Nigeria there must be unlawful carnal knowledge which must be complete upon penetration. The slightest penetration, if adequately proved will constitute the offence of rape.⁴⁰ According to the law, a boy of 12 years old cannot commit rape, a man cannot rape his wife and only a woman can be raped. In other words, marital rape is not an offence in Nigeria. This places India and Nigeria in the company of a handful of countries, including China, Afghanistan, Pakistan and Saudi Arabia.

2.4 Sexual Assault

Sexual Assault is an unwanted sexual contact that stops short of rape or attempt rape. This includes sexual touching and fondling.⁴¹ Sexual assault or abuse is any type of sexual activity that a person does not agree to, including:

³⁴ http://www.salon.com/2014/05/15/marital_rape_is_officially_legal_in_india_partner/

³⁵ *ibid*

³⁶ *Ibid.*

³⁷ Section 6 of the Criminal Code Act Cap C.38 LFN 2004.

³⁸ Section 357 Cap C.38 LFN 2004.

³⁹ Section 282 cap. P. 38 LFN 2004.

⁴⁰ *Iko v The State* (2001) 14 NWLR (Pt. 732) 221 @424; *Ogunbayo v. State* (2007) 29 NSCQR 806.

⁴¹ <https://www.rainn.org/get.information/types-of-sexual-assault/sexual-assault>.

- a) Touching once body or making one touch someone else's.
- b) Incest or sexual contact with a child.
- c) Someone watching or photographing one in sexual situations.
- d) Someone exposing his or her body to one.

There is no law in most country that regulates this. This is already the custom which spouses do carry out even in public without the consent of other party.

2.5 Adultery

Legal definitions of adultery vary. For example, New York defines an adulterer as a person who 'engages in sexual intercourse with another person at a time when he has a living spouse, or the other person has a living spouse'.⁴² North Carolina defines adultery as occurring when any man and woman 'lewdly and lasciviously associate, bed, and cohabit together'.⁴³ Minnesota law provides: 'when a married woman has sexual intercourse with a man other than her husband, whether married or not, both are guilty of adultery'.⁴⁴ In the 2003 New Hampshire Supreme Court case *Blanchflower v. Blanchflower*, it was held that female same-sex sexual relations did not constitute sexual intercourse, based on a 1961 definition from *Webster's Third New International Dictionary*; and thereby an accused wife in a divorce case was found not guilty of adultery. In 2001, Virginia prosecuted an attorney, John R. Bushey, for adultery, a case that ended in a guilty plea and a \$125 fine.⁴⁵

The *Encyclopedia of Diderot & d'Alembert*,⁴⁶ also equated adultery to theft writing that 'adultery is, after homicide, the most punishable of all crimes, because it is the cruelest of all thefts, and an outrage capable of inciting murders and the most deplorable excesses'.⁴⁷

The Merriam-Webster Online Dictionary defines adultery as voluntary sexual intercourse between a married man and someone other than his wife, or between a married woman and someone other than her husband. In other words, it is having sex with someone who is not once spouse. According to the Biblical definition, adultery is a sexual act committed outside of a marital relationship and against the marriage⁴⁸. Also known as infidelity, 'adultery' is used interchangeably with terms such as cheating, extramarital sex or having an affair.

Adultery has been around since Abraham and Jacob, the first recorded husbands to be unfaithful to their wives. Later, God recorded his position on adultery in the Seventh Commandment, 'Thou Shall Not Commit Adultery'. Throughout Biblical history, even God's chosen servants fell victim to adultery - including King David, who cheated on his wife with Bathsheba.⁴⁹ As a result, David lost the son he produced with Bathsheba, as well as suffering emotionally and spiritually because he had failed God.

Divorce has always been a subject in literature, including the writings of Shakespeare. Several centuries ago, it was even punishable by death in some countries. Although it is taken more lightly in modern America, it's still a serious offense in the Middle East and Asia. Adultery usually leads to divorce, hurting everyone connected to the offenders, including grown children. Throughout the world and in most religions, the act of adultery has been considered a crime punishable even by death. The Romans, the Jews, the Hindus, and many other cultures demanded that adulterers be executed.

⁴² "New York Penal Law Section 255.17". Retrieved 2010-07-12.

⁴³ "North Carolina Statute 14-184". Archived from the original on 25 June 2010. Retrieved 2010-07-12.

⁴⁴ "Minnesota Statute section 609.36". Retrieved 2010-07-12.

⁴⁵ Appel, Jacob M. (October 6, 2009). "Hate the Husband? Sue the Mistress!" Huffingtonpost.com. Retrieved 2010-07-12

⁴⁶ Vol. 1 (1751)

⁴⁷ <http://quod.lib.umich.edu/cgi/t/text/textidx?c=did;cc=did;rgn=main;view=text;idno=did2222.0000.328>

⁴⁸ John 8:4

⁴⁹ 2 Samuel 11-12.

Adultery is considered by Christians to be immoral and a sin, based primarily on passages like Exodus 20:14, 1 Corinthians 6:9–10. Although 1 Corinthians 6:11 does say that ‘and that is what some of you were. But you were washed’, it still acknowledges adultery to be immoral and a sin. The sixth commandment (seventh in some traditions) (‘Thou shalt not commit adultery’) is also a basis. Catholicism ties fornication with breaking the sixth commandment in its Catechism.⁵⁰ It teaches that Jesus taught that indulgence in lustful thoughts could be just as harmful to the soul as actual adultery, and that both carry the same weight of guilt:

“But I tell you that anyone who looks at a woman lustfully has already committed adultery with her in his heart.⁵¹ But I tell you that anyone who divorces his wife, except for marital unfaithfulness, causes her to become an adulterous, and anyone who marries the divorced woman commits adultery.”⁵²

However, Christ also showed forbearance to those committing adultery, although still commanding repentance, perhaps most famously in the story related in the Eighth Chapter of John:

“Then the scribes and Pharisees brought to Him a woman caught in adultery. And when they had set her in the midst, they said to Him, ‘Teacher, this woman was caught in adultery, in the very act. Now Moses, in the law, commanded us that such should be stoned. But what do you say?’ This they said, testing Him, that they might have something of which to accuse Him. But Jesus stooped down and wrote on the ground with His finger, as though He did not hear.”

So when they continued asking Him, He raised Himself up and said to them, “He who is without sin among you, let him throw a stone at her first.” And again He stooped down and wrote on the ground. Then those who heard it, being convicted by their conscience, went out one by one, beginning with the oldest even to the last. And Jesus was left alone, and the woman standing in the midst. When Jesus had raised Himself up and saw no one but the woman, He said to her, ‘Woman, where are those accusers of yours? Has no one condemned you?’ She said, ‘No one, Lord.’ And Jesus said to her, ‘Neither do I condemn you; go and sin no more.’⁵³ Some churches have interpreted adultery to include all sexual relationships outside of marriage, regardless of the marital status of the participants.

Under Muslim law, adultery in general is sexual intercourse by a person (whether man or woman) with someone to whom they are not married. Adultery is a violation of the marital contract and one of the major sins condemned by Allah in the Qur'an. Qur'anic verses prohibiting adultery include; ‘Do not go near to adultery. Surely it is a shameful deed and evil, opening roads (to other evils)’;⁵⁴ ‘Verily, my Lord has prohibited the shameful deeds, be it open or secret, sins and trespasses against the truth and reason.’⁵⁵

Punishments are reserved to the legal authorities and false accusations are to be punished severely.⁵⁶ It has been said that these legal procedural requirements were instituted to protect women from slander and false accusations: i.e. four witnesses of good character are required for

⁵⁰ "Catechism of the Catholic Church - The sixth commandment". Vatican.va. 29 October 1951. Retrieved 2 August 2013.

⁵¹ Matthew 5:28

⁵² Matthew 5:32

⁵³ John 8: 3-11

⁵⁴ Quran 17:32

⁵⁵ Quran 7:33

⁵⁶ Online Qur'an Project Chapter 24.

conviction, who were present at that time and saw the deed taking place; and if they saw it they were not of good moral character, as they were looking at naked adults; thus no one can get convicted of adultery unless both of the accused also agree and give their confession under oath four times.⁵⁷ The punishment prescribed by the Qur'an is flogging 100 times in public for those found guilty. According to the prophet Muhammad, an unmarried person who commits adultery or fornication is punished by flogging 100 times; a married person, however, may receive the heavier punishment of stoning to death if convicted of adultery.⁵⁸

In some East Asian countries or regions, including Korea and Taiwan, adultery continues to be a crime. In the Philippines, adultery (defined as consensual sexual intercourse between a married woman and a man who is not her husband) and a related act of concubinage (a man cohabiting with a woman who is not his wife), are considered crimes under the Revised Penal Code of the Philippines. Adultery is not a crime in China mainland, but constitutes grounds for divorce.

In Pakistan, adultery is a crime under the Hudood Ordinance. The Ordinance sets a maximum penalty of death, although only imprisonment and corporal punishment have ever actually been imposed. The Ordinance has been particularly controversial because it requires a woman making an accusation of rape to provide extremely strong evidence to avoid being charged with adultery herself.

In Indian law, adultery is defined as sex between a man and a woman without the consent of the woman's husband. The man is prosecutable and can be sentenced for up to five years (even if he himself was unmarried) whereas the married woman cannot be jailed.⁵⁹ Men have called the law gender discrimination in that women cannot be prosecuted for adultery.⁶⁰ Extramarital sex without the consent of one's partner can be a valid ground for monetary penalty on government employees, as ruled by the Central Administrative Tribunal.⁶¹

In Southwest Asia, adultery has attracted severe sanctions, including death penalty. In some places, such as Saudi Arabia,⁶² the method of punishment for adultery is stoning to death. Proving adultery under Muslim law can be a very difficult task as it requires the accuser to produce four eye witnesses to the act of sexual intercourse, each of whom should have a good reputation for truthfulness and honesty. The criminal standards do not apply in the application of social and family consequences of adultery, where the standards of proof are not as exacting.

Most European countries have decriminalized adultery. Adultery is not a crime in most countries of the European Union, including Austria, the Netherlands, Belgium, Finland, Portugal, Greece or Sweden. In some Southern-European countries,⁶³ adultery can lead to the so called vendetta, which is illegal (with penalties up to life sentence), but carries reduced sentences.

In Nigeria adultery is not a criminal offence, but it is a ground for divorce like in most African Countries. Adultery is such a grave act; humanity has gradually arrived to a stage where few people consider adultery a wrong action. In our modern 'advanced' age, adultery is celebrated, enjoyed, and even encouraged by some so-called 'experts.' Although adultery has

⁵⁷ "American Muslims need to speak out against violations of Islamic Shariah law". Asmasociety.org. Retrieved 2010-07-12.

⁵⁸ Hadith Muslim 17:4192. Also, see the following: Bukhari 6:60:79, Bukhari 83:37, Muslim 17:4196, Muslim 17:4206, Muslim 17:4209, Ibn Ishaq 970

⁵⁹ Wiederman, M. W. (1997). "Extramarital sex: Prevalence and correlates in a national survey". *Journal of Sex Research* 34 (2): 167–174. doi: 10.1080/00224499709551881. JSTOR 3813564.

⁶⁰ Atkins, D. C.; Baucom, D. H.; Jacobson, N. S. (2001). "Understanding Infidelity: Correlates in a National Random Sample". *Journal of Family Psychology* 15 (4): 735–749. doi:10.1037/0893-3200.15.4.735. PMID 11770478

⁶¹ Laumann, E. O.; Gagnon, J. H.; Michael, R. T.; Michaels, S. (1994). *The social organization of sexuality: Sexual practices in the United States*. Chicago: University of Chicago Press. ISBN 0-226-46957-3.

⁶² Divale, W. (2000). Pre-Coded Variables for the Standard Cross-Cultural Sample, Volume I and II. Jamaica, NY: York College, CUNY. Distributed by World Cultures at <http://worldcultures.org/SCCS1.pdf>. See Variable 170 and Variable 171.

⁶³ <http://en.wikipedia.org/wiki/Adultery>

been historically regarded as a legal wrong, it has not always been considered a crime. Adultery is viewed by the law in many jurisdictions as an offense injurious to public morals and a mistreatment of the marriage relationship. Statutes attempt to discourage adultery by making such behavior a ground for Divorce against an adulterous spouse.

For various reasons, most couples who marry do so with the expectation of fidelity. Adultery is often seen as a breach of trust and of the commitment that had been made during the act of marriage. Adultery can be emotionally traumatic for both spouses and often results in divorce.⁶⁴ However, in a new work, *The New Rules* by Dr Catherine Hakim, a French sociologist and author, refers to the UK arguing that a 'sour and rigid English view' of infidelity as opposed to the 'wonderful French way' of male infidelity is condemning millions of people to live frustrated 'celibate' lives with their spouses. She argues that there is such a thing as a 'successful affair' in which both parties are happier but no one gets hurt: 'Sex is no more a moral issue than eating a good meal,' she writes. The fact that we eat most meals at home with spouses and partners does not preclude eating out in restaurants to sample different cuisines and ambiances, with friends or colleagues.⁶⁵

2.6 Child's Marriage

Child marriage is a formal marriage or informal union entered into by an individual before reaching the age of 18. Child marriage is a force marriage and a force marriage is defined as a marriage "conducted without the valid consent of one or both parties and is a marriage in which duress - whether physical or emotional - is a factor". Marriage should be a partnership between two consenting adults. That no man, woman or child should ever be forced, bullied, sold or trapped into a marriage. Forced marriage is a crime which exists in the shadows of society. Every year forced marriage sentences millions of women and young children to a life in slavery. It's a crime that's widespread, but rarely spoken about – a crime that flourishes in the shadows of society. The UN says that forced marriage is likely to increase in the coming years unless major changes occur.⁶⁶ Forced marriage is considered a 'practice similar to slavery' and was made illegal in international law nearly 60 years ago.⁶⁷

In Nigeria, particularly northern Nigeria has some of the highest rates of early marriage in the world. The Child Rights Act, passed in 2003, raised the minimum age of marriage to 18 for girls. However, federal law may be implemented differently at the state level, and to date, only a few of the country's 36 states have begun developing provisions to execute the law. To further complicate matters, Nigeria has three different legal systems operating simultaneously—civil, customary, and Islamic - and state and federal governments have control only over marriages that take place within the civil system.

Domestic violence is a widespread problem; some studies report that up to 81 percent of all married women admit experiencing some form of verbal or physical abuse by their husbands. One study of Demographic and Health Survey data suggests that the lower the age at marriage, the higher the risk of domestic violence.⁶⁸

2.7 Divorce As Solution

From the above one we appreciate that the most common remedy of this matrimonial sexual wrong is divorce and spouses still most times decide not to divorce their partner. There

⁶⁴ "About.com Divorce Support, "Why Does Infidelity Often Lead to Divorce?". About.com. Retrieved 2011-05-12.

⁶⁵ Mother Tongue (2012-08-20). "Puritan view of adultery turns Brits into 'caged animals' says academic". London: Telegraph. Retrieved 2013-09-28.

⁶⁶<http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf>.

⁶⁷<http://www.antislavery.org.au/resources/fact-sheets/97-fact-sheet-5-what-is-forced-marriage.html>.

⁶⁸ UNFPA NIGERIA: <http://nigeria.unfpa.org/nigeirachild.html>

are many reasons why some women stay in intimate relationships that are violent or abusive. These include:

- societal pressures
- to prevent disruption to her children
- a lack of alternatives e.g. financial constraints
- fear that leaving might lead to further violence
- shame about speaking out about what has happened
- difficulty recognizing or accepting what is happening
- blaming themselves for what is happening
- hope that their partner's behaviour will change

Staying in a relationship that involves or has involved sexual violence does not mean a woman is 'weak' or any less deserving of specialist support and justice than a woman raped in any other kind of circumstance. The question which we ought to ask our self is that if the woman due to the above reasons decided not to divorce, why should each state of the world not have criminal law that will regulate Matrimonial sexual wrongs? There are a lot of criticisms over this.

3. CRITICISMS FOR AND AGAINST REGULATION OF MATRIMONIAL SEXUAL OFFENCE

Some people believe that Laws against matrimonial sexual wrongs have been named as invasive and incompatible with principles of limited government. Much of the criticism comes from libertarianism, the consensus among whose adherents is that government must not intrude into daily personal lives and that such disputes are to be settled privately rather than prosecuted and penalized by public entities. It is also argued that matrimonial sexual wrongs are rooted in religious doctrines; which should not be the case for laws in a secular state.

Opponents of matrimonial sexual wrongs regard them as painfully archaic, believing they represent sanctions reminiscent of nineteenth-century novels. They further object to the legislation of morality, especially a morality so steeped in religious doctrine. Support for the preservation of the matrimonial sexual wrongs comes from religious groups and from political parties who feel quite independent of morality, that the government has reason to concern itself with the consensual sexual activity of its citizens ... The crucial question is: when, if ever, is the government justified to interfere in consensual bedroom affairs?⁶⁹

Laws against matrimonial sexual wrongs were based upon the idea that woman is a chattel, so that to make love to a married woman is to deprive the husband of her services. It is the frankest and most crass statement of a slave-situation. To me, every woman has an absolute right to travel in her own orbit. There is no reason why she should not be the ideal hausfrau, if that chance to be her will. But society has no right to insist upon that standard. It was, for practical reasons, almost necessary to set up such taboos in small communities, savage tribes, where the wife was nothing but a general servant, where the safety of the people depended upon a high birth-rate. But to-day woman is economically independent, becomes more so every year. The result is that she instantly asserts her right to have as many or as few men or babies as she wants or can get; and she defies the world to interfere with her. More power to her.

Opponents of adultery laws argue that these laws maintain social norms which justify violence, discrimination and oppression of women; in the form of state sanctioned forms of violence such as stoning, flogging or hanging for adultery; or in the form of individual acts of violence committed against women by husbands or relatives, such as honor killings, crimes of

⁶⁹ Weissler, Benjamin. "Government and the Bedroom." July 13, 2012. *Yale Undergraduate Law Review*.

passion, and beatings.⁷⁰ United Nation Women has called for the decriminalization of adultery.⁷¹ A Joint Statement by the United Nations Working Group on discrimination against women in law and in practice in 2012 stated:⁷²

“The United Nations Working Group on discrimination against women in law and in practice is deeply concerned at the criminalization and penalization of adultery whose enforcement leads to discrimination and violence against women.”

Another argument against the criminal status of adultery is that the resources of the law enforcement are limited, and that they should be used carefully; by investing them in the investigation and prosecution of adultery (which is very difficult) the curbing of serious violent crimes may suffer.⁷³

3.1 *Effect And Aftermath Of Matrimonial Sexual Offences*

The effect of matrimonial sexual offences is stronger than that of rape because is been carried out by one's spouse who one will be seen every day after the incidence and which the act may be a continuous action. It is incredible personal and destructive crime. Its effect on victims can be felt psychologically, emotionally and physically. These effects can be brief in duration or last a very long time.

3.2 *Physical Effects*

- a) Common physical injuries received by matrimonial sexual wrong victims include: vaginal bleeding or infection, fibroids, decreased sexual desire, genital irritation, pain during intercourse, chronic pelvic pain and urinary tract infections. Also the victim might have migraines and other frequent headaches, back pain and facial pain. Physical injuries such as gynecologic, rectal or internal hemorrhage may also result when the person is abused or raped.⁷⁴
- b) Unwanted Pregnancy: This may occur from the sexual harassments or abuse of spouse. This is due to the fact that the man rarely thinks of using protection before having sexual intercourse with the victim. The stigma of being impregnated by the offender in such a way usually causes a lot of trauma to the victim especially when it is ones husband.
- c) In forced vaginal penetration, abrasions and cuts commonly occur, thus facilitating the entry of virus through the vaginal mucosa. Therefore, unless treatment is administered immediately, the victim may likely contract a disease. Also if any of the party is in the act of adultery, the other spouse can easily contacted sexually Transmitted Disease.
- d) Harassment & Threat to Life: Force is threat to life and where ever there is force or harassment, Death do not far from such place.

⁷⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672>

⁷¹ (<http://www.endvawnow.org/en/articles/738-decriminalization-of-adultery-and-defenses.html>)

⁷² *ibid*

⁷³ *Suffolk law review, The Validity of Criminal Adultery Prohibitions After Lawrence v.Texas*; pg. 859 "Lack of enforcement suggests the prevailing view that police resources are better spent elsewhere.

⁷⁴Effects of rape and aftermath. Rape Crisis online Encyclopedia. Retrieved from <http://rapesurvivor.pbworks.com>.

3.3 Psychological Effects

The most common long term effect of sexual assault and marital rape are the invisible (psychological) ones.⁷⁵ The immediate symptoms of rape trauma include having unpredictable and intense emotions. The victim may have an exaggerated startle response, may have memories and intrusive thoughts about the assault, nightmares, sleeping difficulty and concentrating difficulty. Immediate symptoms may also involve Acute Stress Disorder (ASD). Symptoms of this are⁷⁶:

- a) Feeling numb and detached, like being a daze or a dream, or feeling that the world is strange and unreal.
- b) Difficulty remembering important part of assault.
- c) Reliving the assault through repeated thoughts, memories or nightmares.
- d) Avoidance of things (places, thoughts, feelings) that remind the victim of assault.
- e) Anxiety or increased arousal (sleeping difficulty, concentrating, etc.)

3.4 Short Comings Of The Nigerian And Other Allied Country Law On Sexual Wrong

The Nigerian Law on rape and other related matters is inadequate in the following ways:

- a) It does not recognize or criminalize spousal rape. The Criminal Code⁷⁷ defines ‘unlawful carnal knowledge’, which amounts to rape as ‘carnal connection which take place otherwise than between husband and wife.’
- b) The penal Code⁷⁸ states that a man is said to commit rape... save where he had sexual intercourse with his wife. It further stated that sexual intercourse by a man with his own wife is not rape, if she has attained puberty.⁷⁹
- c) It still holds that boys under 12 cannot commit rape as they are incapable of carnal knowledge.⁸⁰ No evidence to the contrary will be allowed to be adduced as this is an irrebuttable presumption of law.⁸¹
- d) It allows the adducing of evidence of the past sexual life dealing of the prosecutrix. It also allows it to be proved that the prosecutrix is of generally immoral character.⁸² This is wrong because it is based on the belief that rape of an immoral woman is not as serious as that of a chaste woman.
- e) It still maintains a gender specific definition of the offence of rape. Thus, according to the law, only a man through penile penetration of the vagina can commit rape and only a woman can be raped. The law provides that: ‘Any person who has unlawful carnal knowledge of a woman or girl without her consent or ... is guilty of an offence which is called rape.’⁸³
- f) Adultery is not criminalized in any Nigeria law. It is just a ground for divorce but bigamy is an offence.

3.5 Matrimonial Sexual Offences Reform And Legal Process

The need for the reform of Matrimonial sexual offences related laws has been recognized all over the world and this reform has, in recent times, been made a top priority in many countries

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Section 6 Criminal Code. C. 38 LFN 2004.

⁷⁸ Section 282 (1) Penal Code. Chapter P. 3 LFN 2004.

⁷⁹ S.282 (2) Penal Code.

⁸⁰ Section 30 Criminal Code C. 38 LFN 2004.

⁸¹ Aguda. A.T., the Law of Evidence (4th Ed). Spectrum Law Series. (1999) pg. 247.

⁸² Section 210 of the Evidence Act. Chapter E. 14 LFN 2004

⁸³ S: 357 Criminal Code Chapter C.38 LFN 2004

of the world. A number of countries including those discussed earlier, have paid special attention to the amending of obsolete laws to meet modern standards. Some notable areas of reform are: The enactment of the Rape Shield Law in Canada⁸⁴ and the United States.⁸⁵ The Rape Shield Law is a statute that restricts or prohibits the use, in rape or sexual assault cases, of evidence about the past sexual conduct of the victim. A typical shield statute does not prevent the introductions of any relevant and otherwise admissible evidence but requires that the relevancy of any evidence of the previous sexual conduct of the complaining victim must be determined in a pre-trial hearing before the judge in camera⁸⁶.

The recognition and criminalization of marital rape: Rape in marriage has been criminalized in all 50 states of the United State of America⁸⁷. The decision in *R vs. R*⁸⁸ showed that marital rape is now also viewed as a crime in England. In South Africa, marital rape was made a crime by the Prevention of Family Violence Act.⁸⁹

The broadening of the definition of rape to include forced anal and oral intercourse and penetration with foreign objects by all the countries discussed and many others. Thus the sexual violation of a man is now recognized and criminalized. It is now recognized in some jurisdictions that adultery has been criminalized and spouse can be guilty of it. There is also increased agitation in Nigeria and other country like Indian for the amendment and reform of the law of rape. In order to tackle the inadequacies of the present laws on rape, the Nigeria Law Reform Commission has identified possible areas of reforms. Some of the recommendations proposed by the commission include a gender-neutral definition of rape so as to accommodate the rape of a man or of a woman by another woman⁹⁰. To avoid stigmatization and also encourage more people to report rape, the Commission recommends that section 36(4) of the 1999 Constitution which provides for circumstances under which proceeding in court may be held in camera, be invoked in rape trials. The NLRC further recommend that, 'the irrebuttable presumption of law that a male person under the age of 12 is incapable of having carnal knowledge provided in Section 30 of the Criminal Code be done away with'⁹¹. The recommendations have not seen the light of the day.

4. CONCLUSION AND RECOMMENDATIONS

There must be a total overhaul of the whole matrimonial sexual wrongs processing system in countries which do not have modern regulation or law correcting it if any change is to be felt. It is therefore humbly recommended that if there is to be effective reform of laws, the following must be done. The gender-specific definition of rape should be done away with. Men may not have chastity or virginity to protect but the law on rape should protect them also. The belief that only woman can be raped is out-dated and thus perpetrators of homosexual rape must be severely punished.

Marital rape should be recognized and criminalized. The view that a woman belongs to her husband must be shelved as despite the fact that two people are married, they are still, in actual fact, two distinct bodies and personalities. Thus a man has no right to force his wife to have sexual intercourse with him if she does not wish to. Most of the men who commit marital rape do not do it because they love their wives and thus want to consummate that love, they do it to assert power over their wives and sometimes just out of plain cruelty.

⁸⁴ Bill C-49. Amendment to the Canadian Criminal Code (1992)

⁸⁵ Rape shield Statutes (by U.S state).

⁸⁶ Black's Law Dictionary. (10th Ed.)

⁸⁷ Polisi CJ Spousal Rape Continue to Evolve. Retrieved from <http://www.women news.org/home/rape>. Accessed 12/7/013

⁸⁸ (1991) 1 All England Law Reports, 747

⁸⁹ No. 133 of 1993

⁹⁰ Ruby Rabiou 'Nigeria: Reforming Rape Laws' Reported in the Daily Trust. Retrieved from www.allafrica.com accessed 12/7/2013

⁹¹ *ibid*

The consent to intercourse given with marriage is given out of love. Thus once a man needs to rape his wife to get sexual gratification, it is clear that there is no love between them and the marriage has broken down already. Husband should no longer be allowed immunity from raping their wives.

Child's marriage should be criminalized. It is barbaric to have sexual intercourse with underage under the pretext that she is one's wife. Also, the legal exemption of boys below the age of 12 from criminal liability for rape should be revised. This exemption is probably based on a belief that boys of that age are too innocent to know anything about intercourse. The unfortunate truth, however, is that, in this jet age, children are robbed of their innocence much earlier than the age of 12. A study carried out in North- Eastern Nigeria showed that among boys the age of sexual debut ranged from 10-26.⁹² This shows that boys as young as 10 have begun to engage in intercourse. The youngest father on the record on Sean Steward of England. He was 12 years old when he fathered a child.⁹³ Britain's Alfie Pattern was also twelve years old when he got his girlfriend, 15 years old Chantelle Steadman, Pregnant⁹⁴.

It is obvious that the belief 12 years old boys cannot perpetuate carnal knowledge is old-fashioned and out-dated. The above analysis shows that they are capable of intercourse as well as fathering children. It is therefore desirable that the Nigerian law makers revise this law and reduce the age of exemption to one where it is physically and biologically impossible for a boy to effect penetration (which is the essential element for the offence of rape). It is recommended that law,⁹⁵ which allows evidence of the previous sexual dealing of the prosecutrix to be adduced and which allows it to be proved that she is generally of immoral character, be cancelled. This is because it is rooted in the myth that most women who are raped did something to deserve it.

Also, measures should be taken to protect the identity of victims to prevent further trauma to them. A marital rape shield should be enacted to restrict the kind of evidence that can be given at rape trials. The passing of sentence for marital rape in all jurisdictions should begin to reflect the seriousness of the offence. Too often, perpetrators of this heinous act get away with extremely lenient sentences which do not serve the purpose of adequate punishment and do nothing to deter future offenders. It is therefore recommended that a minimum sentence of 5 years should be sent for the offence of marital rape.

The concern country should take a cue from other countries in the creation of matrimonial sexual offence advice centers. These centers would provide counselors who would give medical and legal advice to victims and show them the steps to take in reporting the crime. The police should also be educated on the delicate state of mind that victim are usually in. they should not grieve them further by mocking them or making light of their predicament

The Government should ensure the publishing of official marital rape statistics. Rates of reporting, prosecution and conviction should also be published. This is because adequate knowledge of how frequently a crime is perpetuated will assist the police in combating such a crime and will make them aware of any success achieved in their efforts to curb the crime. A cue should be taken from America where the names and addresses of sex offenders are easily accessible from the register. The registration of sex offenders will help people know, and therefore keep their distance from, sexual offences.

Matrimonial sexual offences have been a controversial issue and the controversy surrounding it is yet to be quelled despite the great effort on the parts of government and law makers all over the world. It is doubtful if the issue of matrimonial sexual offences can successfully be rid of controversy as one may change the law but changing the mentalities of people is a totally different matter.

⁹² Ajuwon et al. Sexual Behavior and Experience of Sexual coercion among secondary school students in three states in North Eastern Nigeria. Retrieved from <http://www.biomedcentral.com>. 18/07/2013.

⁹³ Esberg J. What is the youngest age to father a child? Retrieved from www.articlesbase.com. 18/07/2013.

⁹⁴ Lee Thompson, "Little family.....Alfie, Chantelle and baby Maisie".retrieved from www.thesun.co.uk. Accessed 22/07/2013

⁹⁵ Section 210 of the Evidence Act Chapters E.14 LFN 2004 (Nigeria)

The enacting modern legislation is only a step in the right direction. It must be ensured that these laws are adequately enforced and also the populace is encourage in as many ways as possible to offer their support and sympathy to victims. It is also necessary for the Government and law makers to do their part in the attempt to rid the world of this scourge. If any progress is to be made, urgent legislative reform must be embarked upon and changes must be made to ensure that the criminal law is flexible enough to accommodate modern issues that have arisen. Only then can the fight against matrimonial sexual offences can have any meaning.

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