

**AN APPRAISAL FOR THE LEGAL FRAMEWORK FOR GENDER-NEUTRALITY IN
RAPE CASES IN NIGERIA**

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BY

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**AN APPRAISAL FOR THE LEGAL FRAMEWORK FOR GENDER-NEUTRALITY IN
RAPE CASES IN NIGERIA**

DECLARATION

I hereby declare that this project work titled “AN APPRAISAL FOR THE NIGERIA LEGAL FRAMEWORK AND THE IMPLICATION FOR GENDER-NEUTRALITY IN RAPE LEGISLATION”, submitted to Faculty of Law, Alex Ekwueme Federal University Ndufu-Alike Ikwo, Ebonyi State is a record of an original work done by me under the guidance of Dr. Nnaemeka Amadi. This project work is submitted as a partial fulfillment of requirements for the award of the degree of Bachelor of Laws. The results embodied therein in this thesis has not been submitted to any other University or Institute for the award of any degree or diploma.

EKE MIRACLE HELEN

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SIGNATURE AND DATE

CERTIFICATION

This is to certify that this long essay titled “**AN APPRAISAL FOR THE LEGAL FRAMEWORK FOR GENDER-NEUTRALITY IN RAPE CASES IN NIGERIA**” has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo” as an original work carried out by Eke Miracle Helen with registration number 2020/LW/14176 in the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, under the guidance and supervision of Dr. Nnaemeka Amadi.

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This project is dedicated first to Almighty God, the source of my wisdom and strength, and to my loving parents, Mr and Mrs. Micheal Eke whose sacrifices, encouragement, and prayers have made this journey possible.

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Abstract

This research appraises the Nigerian legal framework concerning rape legislation, with a specific focus on its implications for achieving gender neutrality. The study addresses the historical and ongoing challenges posed by traditional legal definitions of rape, which have historically been gender-specific, primarily defining the crime as the sexual violation of a female by a male. This gendered approach fails to protect male victims of sexual violence, leaving a significant gap in the legal system. The research problem lies in the discriminatory and incomplete nature of existing laws, which do not align with modern human rights principles of equality and non-discrimination. The study aims to provide a comprehensive analysis of the current legal regime, including key statutes like the Criminal Code Act and the Violence Against Persons (Prohibition) Act, and to examine their effectiveness in promoting a gender-neutral approach. It employs a doctrinal research methodology, analyzing primary and secondary legal sources, and a comparative analysis of gender-neutral rape laws in other jurisdictions such as the United Kingdom, Canada, and South Africa. This comparative approach highlights best practices and potential pathways for reform. Key findings will reveal the deficiencies in Nigeria's legal framework and its divergence from international human rights standards, such as those outlined in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Maputo Protocol. The research concludes by offering specific, actionable recommendations for legal reform, policy development, and implementation strategies to create a more inclusive and equitable legal system that protects all individuals from sexual violence, regardless of gender. Ultimately, this work contributes to the ongoing discourse on legal reform and gender equality in Nigeria

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The conceptualization of rape and sexual violence has undergone significant evolution across jurisdictions globally, particularly regarding the understanding of who can be victims and perpetrators of these crimes. Historically, rape has been predominantly conceptualized as a crime committed by men against women, a perspective that has significantly influenced the development of rape legislation across different legal systems, including Nigeria.¹ This traditional understanding is reflected in the Nigerian Criminal Code, which defines rape as an act solely committed by males against females, thus excluding the possibility of male victims or female perpetrators.²

The Criminal Code Act, applicable in Southern Nigeria, explicitly defines rape in Section 357 as having "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."³ Similarly, the Penal Code, applicable in Northern Nigeria, confines the concept of rape to acts committed by men against women, albeit with slight variations in language and scope.⁴

However, contemporary social realities and evolving international human rights standards have increasingly challenged this gender-restrictive understanding of rape. Research and evidence from

¹ Okonkwo, C.O. and Michael E. Naish, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd ed., Ibadan: Spectrum Books, 1990) 288.

² Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004, Section 357.

³ Ibid

⁴ Penal Code, Cap P3, Laws of the Federation of Nigeria, 2004, Section 282.

various parts of the world, including Nigeria, indicate that sexual violence transcends traditional gender boundaries, with males also being victims and females potentially being perpetrators.⁵ This reality has prompted several countries to adopt gender-neutral rape laws, which recognize that anyone, regardless of gender, can be both a victim and a perpetrator of rape.

Countries such as the United Kingdom, through the Sexual Offences Act 2003, have expanded their definition of sexual offenses to encompass a wider range of non-consensual sexual acts, though maintaining some gender-specific elements.⁶ Canada and South Africa have moved further towards full gender neutrality in their rape laws, recognizing that sexual violence can be perpetrated and experienced by individuals of any gender.⁷ These reforms reflect an evolving understanding of the nature of sexual violence and a commitment to ensuring equal protection for all victims under the law.

In Nigeria, the Violence Against Persons (Prohibition) Act (VAPP Act) 2015 represents a significant step towards addressing these gaps in the traditional criminal law framework. The VAPP Act introduces a broader definition of rape that recognizes penetration of any body part or object into any part of another person's body without consent as rape.⁸ However, the effectiveness of this legislation has been constrained by its limited jurisdictional application to only the Federal Capital Territory, Abuja, leaving many states to continue operating under the gender-restrictive provisions of the Criminal and Penal Codes.

⁵ Stemple, Lara, "Male Rape and Human Rights" (2009) 60(3) *Hastings Law Journal* 605.

⁶ Chaudhry, Shazia, Andrew Palmer, and Sarah Brown, "The Sexual Offences Act 2003: Implications for Male Victims of Rape" (2013) 77(1) *Journal of Criminal Law* 45.

⁷ Ashworth, Andrew, *Principles of Criminal Law* (6th ed., Oxford: Oxford University Press, 2009) 340.

⁸ Violence Against Persons (Prohibition) Act 2015, Section 1.

The discrepancy between these legal frameworks raises important questions about Nigeria's commitment to gender equity, human rights, and the protection of all citizens from sexual violence. It also highlights the complex interplay between law, culture, and social change in the Nigerian context. As Nigeria continues to engage with international human rights standards and domestic advocacy for legal reform, the question of gender neutrality in rape legislation becomes increasingly pertinent.

1.2 Statement of the Problem

The current legal framework for rape in Nigeria presents several critical challenges that undermine the comprehensive protection of all individuals from sexual violence. The primary issue lies in the gender-restrictive definition of rape embedded in Nigeria's principal criminal statutes the Criminal Code applicable in Southern Nigeria and the Penal Code applicable in Northern Nigeria. These statutes, which originate from colonial legal traditions, define rape in explicitly gendered terms, recognizing only females as potential victims and males as potential perpetrators.⁹

This gender-restrictive framework creates a significant protection gap for male victims of sexual violence, who cannot seek justice through rape laws and must instead rely on less severe offenses such as "indecent assault" or "unnatural offenses," which carry lesser penalties and fail to capture the gravity of the violation experienced.¹⁰ This discrepancy in legal protection contravenes fundamental principles of equality before the law and equal protection of all citizens, as enshrined in Section 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).¹¹

⁹ Nwankwo, Obiora, "The Gender Dimensions of Rape Law Reform in Nigeria" (2010) 14(1) *Nigerian Law Journal* 21.

¹⁰ Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004, Sections 353 and 214.

¹¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 42.

Furthermore, the exclusion of female perpetrators from rape legislation reflects an outdated understanding of sexual violence that fails to align with contemporary research on the dynamics of sexual aggression and coercion. This exclusion potentially enables female perpetrators to evade appropriate legal sanctions for acts that would otherwise constitute rape if committed by a male.¹²

The Violence Against Persons (Prohibition) Act (VAPP Act) 2015 has attempted to address these gaps by introducing a more inclusive definition of rape. However, its jurisdictional limitation to the Federal Capital Territory significantly restricts its impact at the national level.¹³ While some states have adopted variations of the VAPP Act, implementation remains inconsistent across the federation, resulting in an uneven landscape of legal protection against sexual violence.

Additionally, the coexistence of multiple legal frameworks governing rape—the Criminal Code, the Penal Code, the VAPP Act, and various state-level adaptations—creates legal uncertainty and complexity. This fragmentation impedes the development of a coherent jurisprudence on sexual violence and complicates the enforcement of rape laws across jurisdictional boundaries within Nigeria.¹⁴

Moreover, the current legal framework fails to adequately address the evolving understanding of sexual consent and coercion in contemporary discourse. The narrow definition of force and consent in traditional rape laws does not sufficiently capture the range of circumstances under which sexual

¹² Childs, Mary and Louise Ellison, *Feminist Perspectives on Evidence* (London: Cavendish Publishing, 2000) 156.

¹³ Onyemelukwe, Cheluchi, "Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act, 2015" (2016) 5(2) *DePaul Journal of Women, Gender and the Law* 1.

¹⁴ Adeyemi, A.A., "Rape: A Contemporary Legal Issue" (2010) 3(1) *Justice Journal* 78.

autonomy may be violated, such as psychological coercion, abuse of power or authority, or exploitation of vulnerability.¹⁵

These legal deficiencies are compounded by practical challenges in the implementation of existing laws, including inadequate training of law enforcement personnel, limited forensic capabilities, and sociocultural barriers that discourage reporting and prosecution of sexual offenses.¹⁶ Together, these factors create a significant gap between the legal framework and the lived experiences of victims of sexual violence in Nigeria.

The combination of conceptual, jurisdictional, and practical challenges in Nigeria's rape legislation necessitates a comprehensive evaluation of the current legal framework and its implications for gender equality and human rights protection. This study aims to address this need by providing a critical appraisal of the Nigerian legal framework for rape and its implications for gender neutrality

1.3. Research Questions

1. To what extent does the definition of rape in the Nigerian Criminal and Penal Code contribute to the legal invisibility of male rape in Nigeria?
2. To what extent do cultural, social, and institutional biases in Nigeria contribute to the gender neutrality of rape in Nigeria?
3. What challenges and prospects exist for reforming rape laws in Nigeria to reflect gender neutrality?

¹⁵ UN Women, *Handbook for Legislation on Violence against Women* (New York: United Nations Entity for Gender Equality and the Empowerment of Women, 2012) 24.

¹⁶ Human Rights Watch, *Everyone's in on the Game: Corruption and Human Rights Abuses by the Nigeria Police Force* (New York: Human Rights Watch, 2010) 56.

4. What comparative legal framework can Nigeria learn from in strengthening its own legislation?

5. What moment exist for the entrancement of gender neutrality legislation in Nigeria?

1.4 Aim and Objectives of the Study

The overarching aim of this study is to critically appraise the Nigerian legal framework governing rape and sexual violence, with emphasis on its implications for gender neutrality and equal protection of all citizens, regardless of gender. This appraisal seeks to identify gaps, inconsistencies, and areas for potential reform in light of evolving international standards and domestic realities.

To achieve this aim, the study sets out the following specific objectives:

1. To examine the historical development and current status of rape legislation in Nigeria, encompassing the Criminal Code, Penal Code, Violence Against Persons (Prohibition) Act 2015, and relevant state-level adaptations.
2. To critically analyze the gender-specific elements of Nigeria's rape laws and their implications for justice, equality, and human rights protection.
3. To evaluate the adequacy of the current legal framework in addressing contemporary understandings of sexual violence and consent.
4. To compare Nigeria's approach to rape legislation with international human rights standards and best practices from other jurisdictions that have adopted gender-neutral rape laws.
5. To assess the practical challenges and sociocultural factors that influence the implementation and effectiveness of rape laws in Nigeria.
6. To propose evidence-based recommendations for legal reform towards a more inclusive, gender-neutral framework for addressing rape and sexual violence in Nigeria.

Through these objectives, the study aims to contribute to the scholarly discourse on gender, law, and human rights in Nigeria while also providing practical insights for legal reform and policy development.

1.5 Research Methodology

This study employs a qualitative, doctrinal legal research methodology, complemented by comparative and socio-legal approaches. The primary method involves doctrinal analysis of legal texts, including statutes, case law, and authoritative legal commentaries. This approach allows for a systematic examination of the conceptual and normative foundations of rape legislation in Nigeria, as well as the internal coherence and consistency of the legal framework.

1.6 Scope and Limitations of the Study

This study focuses on the legal framework governing rape and sexual violence in Nigeria, with specific attention to the gender dimensions of these laws. The research encompasses an analysis of primary legal sources, including the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Criminal Code Act, the Penal Code, the Violence Against Persons (Prohibition) Act 2015, and relevant state-level adaptations of these laws. The study also examines judicial interpretations of these statutes through case law, where available.

Additionally, the study incorporates a comparative analysis of rape legislation in selected jurisdictions, focusing on countries that have adopted gender-neutral approaches. However, this comparative analysis is not exhaustive and is intended primarily to provide context for the evaluation of Nigerian laws rather than to present a comprehensive global survey of rape legislation.

The temporal scope of the study extends from the colonial origins of Nigeria's criminal laws through contemporary developments, with emphasis on the current legal framework and recent reform initiatives. The research also considers ongoing debates and proposed reforms in Nigerian rape legislation.

Several limitations constrain the scope and depth of this research. First, the paucity of comprehensive data on sexual violence in Nigeria, particularly regarding male victims and female perpetrators, limits the empirical basis for evaluating the impact of gender-restrictive laws. Second, the limited jurisprudence on rape cases involving non-traditional victim-perpetrator combinations restricts the analysis of judicial approaches to these situations.

Third, the fragmentation of legal authority in Nigeria's federal system, with varying levels of adoption of the VAPP Act across states, complicates the task of providing a unified analysis of the national legal framework. Fourth, the sensitive nature of sexual violence and the associated stigma may affect the candor and comprehensiveness of available information from stakeholders and survivors.

Despite these limitations, the study strives to provide a nuanced and thorough analysis of the legal framework within the available parameters, acknowledging where gaps in knowledge exist and suggesting areas for future research.

1.7 Significance of the Study

This research holds significant implications for legal scholarship, policy development, and human rights advocacy in Nigeria. By critically examining the gender dimensions of rape legislation, the study contributes to the growing body of scholarship on gender and law in Nigeria, helping to advance understanding of how legal frameworks can either perpetuate or challenge gender inequalities.

For legal practitioners and judiciary, the study provides a comprehensive analysis of the current state of rape laws across different jurisdictions within Nigeria, highlighting inconsistencies, ambiguities, and areas requiring judicial clarification. This analysis can inform legal arguments, judicial reasoning, and the development of jurisprudence in cases involving sexual violence.

For policymakers and legislators, the research offers evidence-based insights into the limitations of current rape laws and the potential benefits of adopting more gender-neutral approaches. By examining best practices from other jurisdictions and evaluating their applicability to the Nigerian context, the study provides a foundation for informed policy decisions and legislative reforms.

For law enforcement agencies, the study highlights practical challenges in implementing rape laws and suggests approaches for more effective investigation and prosecution of sexual offenses, regardless of the gender of victims or perpetrators. This can contribute to improved handling of rape cases and better outcomes for survivors seeking justice.

For civil society organizations and human rights advocates, the research provides analytical tools for critiquing current laws and advocating for reforms that better protect all individuals from sexual violence. By framing the issue of gender neutrality in rape laws within the broader context of constitutional rights and international human rights standards, the study strengthens the normative basis for advocacy efforts.

For survivors of sexual violence, particularly those who fall outside the traditional victim-perpetrator paradigm, the study acknowledges their experiences and articulates the legal challenges they face in seeking justice. By making visible these gaps in protection, the research contributes to efforts to ensure that all survivors have equal access to legal remedies.

Finally, for legal education, the study provides a contemporary analysis of an evolving area of criminal law, enriching the curriculum for law students and contributing to the development of critical perspectives on gender, sexuality, and law in Nigeria.

1.8 Chapter Analysis

This research is structured into five chapters, each addressing specific aspects of the topic:

Chapter One:

This chapter provides the foundational context for the research, outlining the background to the study, the statement of the problem, aim and objectives, scope and limitations, significance of the study, and the research methodology. It establishes the conceptual framework for understanding the gender dimensions of rape legislation in Nigeria and sets the stage for the subsequent chapters.

Chapter Two:

This chapter explores key concepts relevant to the study, including rape, consent, gender neutrality, and gender equality. It reviews existing literature on rape legislation in Nigeria and internationally, with particular attention to scholarly perspectives on gender-specific versus gender-neutral approaches. The chapter identifies gaps in the literature and positions the current study within the broader academic discourse.

Chapter Three

This chapter provides a comprehensive analysis of the existing legal framework for rape in Nigeria, examining the provisions of the Criminal Code, Penal Code, and the Violence Against Persons (Prohibition) Act 2015. It discusses the historical development of these laws, their jurisdictional application, and their treatment of gender in defining rape. The chapter also analyzes relevant case law to illustrate how these provisions have been interpreted and applied by Nigerian courts.

Chapter Four

This chapter examines approaches to rape legislation in selected jurisdictions that have adopted gender-neutral frameworks, including the United Kingdom, Canada, and South Africa. It also analyzes international human rights standards relevant to sexual violence and gender equality, including instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). The chapter evaluates Nigeria's compliance with these standards and identifies areas of divergence.

Chapter Five:

This final chapter synthesizes the findings from the previous chapters to draw conclusions about the current state of rape legislation in Nigeria and its implications for gender neutrality. It offers specific recommendations for legal reform, policy development, and implementation strategies to address the identified gaps and challenges. The chapter also suggests areas for future research to further advance understanding of this complex topic.

Through this structured approach, the research aims to provide a comprehensive analysis of the legal framework for rape in Nigeria, its gender implications, and potential pathways for reform towards greater gender neutrality and equal protection of all individuals from sexual violence.

CHAPTER TWO: CONCEPTUAL CLARIFICATION, THEORETICAL FOUNDATION AND LITERATURE REVIEW

2.1 Conceptual Clarifications

2.1.1 Rape

The concept of rape, both in legal and sociological discourse, represents a complex interaction of bodily autonomy, consent, power, and control. Legally, Nigeria's Criminal Code Act under Section 357 narrowly defines rape as the unlawful carnal knowledge of a woman or girl without her consent, or with consent obtained by force or fraud, committed by a man against a woman only.¹⁷ This definition reflects a gendered conception that excludes male victims and female perpetrators.

Such a restrictive definition has been widely criticised for its failure to reflect the evolving understanding of sexual violence. Legal scholars argue that defining rape exclusively as penile-vaginal penetration fails to account for other forms of non-consensual sexual activity, such as anal or oral rape, and does not recognise rape of men or boys. It also undermines the human rights of male victims, reinforcing the stereotype that only women can be victims of sexual violence.

Socially, rape is often interpreted through the lens of gender stereotypes that reinforce male dominance and female vulnerability. This has led to what Catharine MacKinnon described as the "sexualization of dominance," wherein rape is not just a physical act but also an expression of social power. From a criminological standpoint, scholars argue that rape should be viewed not

¹⁷ Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, s. 357.

merely as a sexual offence, but as a violent crime that reflects systemic gender and power inequalities.

The Violence Against Persons (Prohibition) Act 2015 attempts to modernise the legal definition of rape by broadening it to include penetration of any part of the body with any object or other body part without consent, irrespective of gender¹⁸. However, this Act is only applicable in thirty five states out of thirty six states in Nigeria.

2.1.2 Consent

Consent is the doctrinal hinge of modern rape law: it is the normative fact the prosecution must disprove (and the defence may sometimes attempt to rebut). Under Nigeria's older statutes the offence is framed in terms of "unlawful carnal knowledge" — a formulation that makes lack of lawful consent central to criminality — and the Criminal Code (applicable in southern jurisdictions) expressly defines rape in terms of carnal knowledge "without her consent" and lists certain vitiating circumstances (force, threats, fear, fraud, personation of husband). The Penal Code which is enforceable in northern jurisdictions, likewise defines rape by reference to intercourse "against her will" or "without her consent" and specifies situations in which apparent consent is vitiated. These statutory texts therefore locate the offence on a tripartite analysis: (i) the physical act (penetration), (ii) the mental element (the perpetrator's intention), and (iii) the absence or vitiation of consent — the last of which is dispositive of culpability under those Codes.

The Violence Against Persons (Prohibition) Act [2015](#) (VAPP) marks a doctrinal and drafting departure from the colonial-era Codes. The VAPP defines rape in gender-neutral language (a "person" who intentionally penetrates the vagina, anus or mouth of another person without that

¹⁸ Violence Against Persons (Prohibition) Act 2015, s. 1.

person's consent) and expressly lists the circumstances that negate consent (force, threat, intimidation, fear of harm, fraud, stupefying substances, and personation of a spouse). That statutory re-definition shifts the legal focus from a narrow male-perpetrator/female-victim model to a consent-centred test that recognises different forms of penetration and different victim identities; as such the VAPP embodies the contemporary doctrinal proposition that consent — not the mere existence of intercourse or the identity of parties — is the legal pivot.

Analytically, consent is multi-dimensional. In doctrinal terms it must be: (i) Voluntary (not produced by force, threats, or by exploitation of vulnerability); (ii) informed (not induced by fraud as to the nature of the act); and (iii) given by a person with capacity (age, mental competence and freedom from stupefying intoxication matter). Doctrinally dangerous categories include “consent by submission” (where the victim accedes under duress or fear) and “consent obtained by deception” (impersonation of spouse, false pretence). Nigerian judicial pronouncements and Commonwealth precedent make two points repeatedly: first, submission is not necessarily consent (a person may submit to avoid worse harm); second, courts will inquire into the victim's state of mind immediately before the act to determine whether submission amounted to consent.

The classic articulation of the submission/consent distinction in Commonwealth jurisprudence — *Regina v Olugboja* — has therefore been influential when Nigerian courts and commentators discuss consent as a question of the victim's subjective state and the objective circumstances surrounding the act. Several practical and doctrinal flashpoints follow from that understanding:

(1) Capacity: Statutory schemes treat minors, persons of unsound mind, and those rendered unconscious or heavily intoxicated as incapable of giving legal consent; thus intercourse with such a person is criminal irrespective of apparent acquiescence.

(2) Withdrawal: Modern consent doctrines treat consent as temporally limited — it may be withdrawn at any time — so post-withdrawal penetrative acts are non-consensual.

(3) Mistake of fact: Some jurisdictions allow a defence where the accused honestly and reasonably believed the complainant consented; Nigerian statutes and courts treat this area unevenly and commentators urge clear legislative treatment to avoid ad hoc judicial importation of an evidential “honest belief” defence.

(4) Proof: Because consent is a negative fact for the prosecution, evidential problems arise — courts have historically required corroboration in many sexual-offence trials and judges are alert to the danger of convicting on uncorroborated testimony alone; that evidential posture interacts with consent law to produce practical hurdles for prosecution. A consent-centered statute does not simply re-label acts: it reorders prosecutorial focus, forensic practice (evidence preservation and SANE examinations), and adjudicative testing. A gender-neutral, consent-based definition (as in VAPP) requires the law to specify:

(a) the list of vitiating circumstances

(b) rules on incapacity and intoxication

(c) the treatment of withdrawal

(d) the admissibility rules that prevent irrelevant sexual history from displacing consent analysis (i.e., robust rape-shield protections)

These technical drafting choices determine whether “consent” will be a meaningful protective standard or an empty formula in a legal system impeded by bureaucratic obstacles.

2.1.3 The Concept of Sexual Autonomy and Bodily Integrity

Sexual autonomy and bodily integrity are normative legal concepts that supply the constitutional and human-rights justification for criminalising non-consensual sexual conduct. Sexual autonomy describes the individual right to make self-determining choices about sexual relations; bodily integrity is the correlative right not to have the body violated without lawful consent. Under the 1999 Constitution these normative claims find textual allies: the right to respect for the dignity of the person and prohibitions on inhuman or degrading treatment¹⁹ together articulate a constitutional commitment to human dignity, while equality and non-discrimination provisions²⁰ require the state to protect individuals without invidious distinctions. Those constitutional benchmarks support the claim that the law ought to punish non-consensual sexual invasion as an affront to dignity and to equality. The colonial Codes’ historic treatment which defined “unlawful carnal knowledge” as only that which occurs “otherwise than between husband and wife” carved out a marital exemption to criminal liability and thereby placed married women’s sexual autonomy outside the protective ambit of criminal law. The Criminal Code’s textual definition (and parallel Penal Code formulations) blessed a construction of marital sexual access that is inconsistent with modern understandings of bodily integrity. That statutory marital exemption frustrates gender-neutral reform because it embeds a sexed power relation (husband’s sexual access to wife) into the definition of crime; abolition of that exemption is therefore a fundamental requirement of any gender-neutral rape statute. By contrast, the VAPP Act’s consent-centred drafting rejects the

¹⁹ Section 34 Constitution of the Federal Republic of Nigeria

²⁰ Section 42

marital carve-out (its definition refers to a “person” and makes no spousal exemption), thereby bringing marital rape within the scope of criminality where the Act is operative. The VAPP thus re-frames sexual autonomy as a general right owed to every person irrespective of marital status or sex: non-consensual penetration is an invasion of bodily integrity punishable by law. Because the VAPP is a federal statute and requires domestication in states for full local effect, the Act’s protective potential depends on adoption across Nigeria’s federating units; patchy domestication means that the constitutional and statutory protection of sexual autonomy is currently uneven in practice.

The human-rights overlay is also important. Nigeria is party to international instruments (for example, CEDAW and the Protocol to the African Charter on Women’s Rights — the Maputo Protocol) that require states to adopt laws protecting women from sexual violence and to eliminate discriminatory legal regimes. Those treaty obligations reinforce the constitutional and statutory arguments for treating sexual autonomy as a protected interest and for re-drafting rape law to be gender-neutral and rights-conformant. In policy terms, recognizing bodily integrity as a core legal interest obliges the state not only to criminalise non-consensual sex but to provide forensic, medical, psychosocial and rehabilitative services for victims of sexual violence of every gender.

2.1.4 The Concept of Gender Neutrality

In rape legislation, it calls for statutory definitions and prosecutorial frameworks that recognise all persons—men, women, and non-binary individuals—as potential victims or perpetrators. Gender neutrality advocates for the removal of gendered language that inherently restricts protection or criminal liability to specific sexes.

Historically, rape laws emerged within patriarchal societies where the sexual autonomy of women was legally framed in relation to male honour or ownership. Consequently, traditional definitions, including those in Nigeria's Criminal Code Act²¹, which defined rape in Section 357 as "having unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent was obtained by force or intimidation of any kind, or by fear of harm, or by means of false act, or, in case of a married woman be personating her husband". The offence is punishable by imprisonment for life with or without caning.

The term "carnal knowledge" has been judicially interpreted to mean penile-vaginal penetration. This interpretation, cemented by case law, makes it legally impossible to prosecute the rape of a male victim under this provision. It constructs rape exclusively as a male-on-female crime, with men as natural perpetrators and women as inherent victims. This construction, however, no longer aligns with modern understandings of gender, sexual violence, and human rights.

Under the Criminal laws of Lagos state²², "any man who has unlawful sexual intercourse with a woman or girl, without her consent, is guilty of the offence of rape".

The principle of gender neutrality is not merely theoretical—it has significant implications for access to justice. Where rape laws are gender-specific, male victims face insurmountable legal barriers to prosecuting their assailants, and female perpetrators escape legal accountability. For instance, under Nigeria's Penal Code, rape must involve penetration by a penis, thus precluding the possibility of female-on-male or male-on-male rape²³. This section states that, "a man is said

²¹ Section 357 of the Criminal Code defines rape as "unlawful carnal knowledge of a woman or girl, without her consent.

²² Section 258

²³ Penal Code Law, Cap 89, Laws of Northern Nigeria 1963, s. 282.

to commit rape when he has sexual intercourse with a woman in any of the following circumstance: against her will; with her consent when it is obtained by putting her in fear of death or hurt.” This legal position fails to reflect contemporary realities, including male victimization in schools, religious institutions, and conflict zones.

Comparative jurisdictions such as the United Kingdom and Canada have revised their statutory definitions of rape and sexual assault to adopt gender-neutral language. The UK's Sexual Offences Act 2003, for example, defines rape as any intentional penetration with a penis of the vagina, anus, or mouth of another person without consent, irrespective of the victim's gender.²⁴ Nigeria's VAPP Act attempts a similar reform, but Nigeria's abysmal implementation has undermined its potential transformative effect.²⁵

A gender-neutral legal framework ensures that the law responds to the substance of the crime—non-consensual sexual violation—rather than the anatomy or identity of those involved. It embodies the fundamental constitutional principle of equality before the law, guaranteed under Section 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).²⁶ This section guarantees the right to freedom from discrimination. It prohibits the government from subjecting its citizens to disabilities or granting privileges based on their ethnic group, place of origin, sex, religion or political opinion.

²⁴ Offences Act 2003 (UK), s. 1.

²⁵ Violence Against Persons (Prohibition) Act 2015, s. 1.

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 42.

2.1.5 Masculinity and Vulnerability

Masculinity has long been defined by social norms that celebrate dominance, stoicism, aggression, and invulnerability. These norms form the bedrock of gender stereotypes which undermine the recognition of men as potential victims of sexual violence. Within the rape discourse, masculinity is often treated as incompatible with victimhood—a dynamic that silences male survivors and impedes legal recognition of their suffering.

In many cases, male victims encounter disbelief, ridicule, or even blame when reporting sexual assault. A key contributor to this phenomenon is the societal presumption that men are always willing participants in sexual activity and possess the physical strength to resist unwanted advances. This stereotype is deeply entrenched in patriarchal cultures such as Nigeria's, where masculinity is associated with resilience, dominance, and heterosexual conquest.

Furthermore, criminal law itself may entrench these stereotypes. The failure of statutory definitions of rape in Nigeria to acknowledge male victimisation reflects an underlying assumption that men cannot be violated sexually. This not only invalidates their experiences but also denies them access to justice. Empirical studies in sub-Saharan Africa reveal that a significant number of male sexual assault cases go unreported due to fear of stigmatisation, lack of institutional support, and absence of legal remedies.

A human rights-based approach to rape law reform must recognise masculinity as a socially constructed, fluid identity that does not preclude vulnerability. Doing so dismantles legal and cultural barriers that have historically excluded male victims from protection and justice. It also affirms the universality of bodily autonomy and the indivisibility of human dignity.

2.1.6 Male Victimization

Male victimization in rape scenarios is often obscured by cultural, institutional, and legal structures that fail to recognise men as credible victims. Power dynamics in cases of sexual violence are not limited to physical strength; they include institutional authority, psychological manipulation, age disparity, and economic dependence. For instance, boys in custodial institutions or students under the control of educators may be coerced into sexual acts, not through brute force, but through subtle abuse of trust and authority.

The framing of rape as an act of power rather than mere sexual desire is vital to understanding male victimization. This perspective is supported by theorists such as Susan Brownmiller, who posits that rape is a conscious process of intimidation through which men keep women in a state of fear. However, this thesis can be expanded to acknowledge that such intimidation also functions across gender lines, especially when institutional hierarchies, not sex alone, serve as the basis of coercion.

In Nigeria, legal and media narratives rarely capture the experiences of male victims, particularly where the perpetrators are women or adult figures. This erasure not only affects public perception but also policy design and judicial outcomes. There is a growing need for intersectional legal reform that acknowledges how gender, age, socio-economic class, and institutional roles converge to produce conditions of sexual vulnerability for men.

Legal systems must adapt to this complexity by recognising diverse forms of victimization, eliminating gender-biased statutory language, and training law enforcement officers to respond to male victims with the same urgency and sensitivity accorded to female victims.

2.2 Theoretical Foundation

This section examines the theoretical foundations that inform the conceptual and legal analysis of male victimisation in rape law. The purpose of applying these frameworks is to understand the intersection of law, society, and human behaviour, and to provide a critical lens for evaluating gendered assumptions in sexual offence legislation.

2.2.1 Social Construct Theory

Social construct theory, also known as social constructionism, is a school of thought that posits that many things we take for granted as natural or objective truths are, in fact, products of human interaction and cultural context. This theory argues that what we consider "reality" is built and maintained through shared beliefs, ideas, and language. In the context of law, this means that legal concepts like crime, justice, and even the definition of a person or a crime, are not universal but are socially constructed and can change over time.

Application to Nigerian Rape Law

Applying social construct theory to the Nigerian legal framework on rape reveals that the crime itself is a social product, shaped by the country's unique cultural, social, and historical circumstances.

1. The Social Construction of Rape

Historically, in many societies including those in Nigeria, rape wasn't constructed as a crime of violence against a person. Instead, it was socially constructed as a crime against a man's property, with the victim (a woman) being the object of the crime. This social understanding directly

influenced the legal definitions of rape in the Criminal and Penal Codes, which focused on the gender of the victim and the act of penile-vaginal penetration. The law's language reflects this social construction. For example, the focus on "unlawful carnal knowledge of a woman" in the Criminal Code is not an objective legal truth but a product of a society that viewed women's sexuality as something to be controlled and owned by men.

2. The Social Construction of Gender

Social construct theory asserts that gender is not just a biological reality but is also a social construct. Society creates and assigns specific roles, behaviors, and expectations to men and women. These gender roles are then reinforced by legal and social institutions. In Nigeria, the social construction of masculinity as dominant and invulnerable, and femininity as submissive and vulnerable, has a profound impact on rape law.

- **Male Victims:** The legal invisibility of male rape victims is a direct result of this social construction. Since society does not construct men as "vulnerable victims" of sexual violence, the law did not see the need to protect them from it. A man who reports being raped challenges this social order, and his claim is often met with disbelief or ridicule because it contradicts the socially constructed norms of male invulnerability.
- **Female Perpetrators:** The social construction of women as being inherently non-violent or passive also contributes to a legal bias. The idea of a woman raping a man is often dismissed as a joke or a legal impossibility because it defies the socially accepted gender roles of perpetrator and victim. The old legal codes, by explicitly naming a "man" as the perpetrator, reinforced this social construction.

3. The Law as a Tool of Social Construction

Social construct theory argues that the law is not just a mirror of society but is also an active participant in shaping it. The law's language and categories create the social reality they purport to describe.

- **Criminal and Penal Codes:** These codes actively participated in the social construction of rape as a gender-specific crime. By explicitly defining rape in gendered terms, they gave legal authority to and reinforced a patriarchal social reality. The codes told society that male rape was not a real crime, thereby ensuring its continued silence and invisibility.
- **The VAPP Act:** The Violence Against Persons (Prohibition) Act (VAPP Act) represents a different social reality. By using gender-neutral language ("a person") and expanding the definition of rape to include anal and oral penetration, the law is attempting to deconstruct the old social norms and construct a new reality where all individuals, regardless of gender, are recognized as potential victims of sexual violence. The VAPP Act is a tool for social engineering, aiming to create a more equitable and inclusive understanding of crime and victimhood.

The conflict between the old codes and the VAPP Act is a clear example of how different legal instruments reflect and actively create different social realities. The challenge now is to ensure that the VAPP Act's new social reality becomes the dominant one, effectively dismantling the old legal and social constructs that have marginalized male victims for so long.

2.2.2 Feminist Legal Theory

Feminist legal theory challenges the patriarchal underpinnings of the law and exposes how legal systems historically reflect and reinforce male dominance.²⁷ In the context of rape legislation, feminist theorists initially focused on highlighting women's systemic vulnerability to male violence and the need for laws that recognise the sexual autonomy of women. Scholars such as Catharine MacKinnon and Andrea Dworkin argued that rape is not merely a personal crime, but an instrument of patriarchal control.²⁸

Feminist legal theory, often abbreviated as "Fem-crit", is a school of jurisprudence that examines how the law has historically been used to create, maintain, and perpetuate gender inequality and subordination. It critiques the traditional legal framework, arguing that it is not a neutral or objective system but rather a reflection of a patriarchal society that privileges male perspectives and experiences. This theoretical lens is crucial for an appraisal of the Nigerian legal framework on rape, as it helps to expose the inherent biases and gender-specific language of the statutes.

While early feminist legal theory prioritised the protection of women as victims, contemporary strands of feminism now recognise that gender-based violence is a broader phenomenon that includes male victimisation. Third-wave and intersectional feminists acknowledge that rigid gender binaries harm all individuals and call for legal reforms that address all forms of sexual violence irrespective of gender.²⁹

²⁷ Bartlett, K., "Feminist Legal Methods", (1990) *Harvard Law Review*, Vol. 103, 829.

²⁸ MacKinnon, C., *Toward a Feminist Theory of the State* (Harvard University Press, 1989), 161.

²⁹ Crenshaw, K., "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color", (1991) *Stanford Law Review*, Vol. 43(6), 1241.

However, feminist theory also warns against reforms that neutralise gender at the expense of recognising historically embedded inequalities. Thus, it advocates for an inclusive but context-sensitive approach to law reform—one that expands protection without erasing the structural realities of power imbalances that still disproportionately affect women.³⁰

A persistent Female Legal Theory critique is the symmetry fallacy, when law treats genders as similarly situated in domains structured by power, those already disadvantaged lose. Gender-neutral drafting can recognise male victims and capture female-on-male or same-sex assaults that the Codes miss. But if neutrality is used to argue that “rape is not a women’s issue,” it may deflect resources from the statistically predominant harm to women and girls, and under-address coercive environments (dependency, economic duress, customary hierarchies). An Female Legal Theory informed reform agenda therefore couples neutrality of the offence with asymmetry-sensitive implementation (specialised units, shelters, survivor services, and training targeted to the patterns of harm women disproportionately).

2.2.2 Queer Theory

Queer theory critically interrogates societal norms around sexuality and gender, particularly the binary constructions of male/female and heterosexual/homosexual. Developed from post-structuralist and LGBTQ+ activist scholarship, it destabilises fixed categories of identity and calls attention to the fluidity and performativity of gender and sexual expression.

Queer theorists argue that rape laws premised on rigid gender roles not only erase the experiences of queer and gender-nonconforming persons but also reproduce heteronormativity within the legal

³⁰ Smart, C., *Feminism and the Power of Law* (Routledge, 1989), 98.

order²⁶. For instance, male victims of same-sex sexual assault often face criminal justice systems that pathologise their experiences or reframe them through a lens of deviance, rather than recognising the core issue of non-consensual violation.

In Nigeria, where anti-LGBTQ+ laws like the Same Sex Marriage (Prohibition) Act 2014 exist, queer theory exposes how legal definitions of sexual crimes operate within a wider regime of state-sanctioned heteronormativity. Such a regime can deter male victims—particularly those assaulted by other men—from reporting crimes due to fear of criminalisation.³¹

Queer theory thereby reinforces the argument for comprehensive, inclusive, and gender-neutral rape laws that recognise consent and coercion as central, not sexual identity.

2.2.3 Critical Legal Studies (CLS)

The Critical Legal Studies movement argues that the law is not neutral or objective, but rather a product of social, political, and economic power structures. CLS scholars contend that legal doctrines often mask ideological commitments and perpetuate the interests of dominant groups under the guise of fairness and justice

When applied to sexual offence legislation, CLS reveals how the legal framing of rape reflects cultural assumptions about masculinity, femininity, and power. It challenges the notion that male victims are statistically insignificant or socially implausible and criticises the judicial system for ignoring or trivialising their claims.

³¹ Awolowo, O., “Criminalising Sexuality: The Impact of Anti-LGBT Laws on Sexual Violence Victims in Nigeria”, (2022) *Nigerian Law and Society Journal*, Vol. 11(2), 77.

CLS supports an interpretive approach to law that focuses on the experiences of marginalised individuals and critiques formalistic reasoning that fails to account for lived realities. In Nigeria, where rape laws are historically rooted in colonial and religious legal systems, CLS encourages a deconstruction of those traditions in favour of a more responsive and emancipatory jurisprudence.

2.2.4 Natural Law Theory

Natural law theory posits that law must be rooted in universal moral principles that are discoverable through human reason. It maintains that certain rights, such as bodily integrity and freedom from harm, are inherent in human nature and not contingent on legal recognition.³²

From a natural law perspective, the exclusion of male victims from rape protection is inherently unjust, as it violates the universal moral norm that all persons have a right to personal autonomy and dignity³². This theory therefore supports the argument for gender-neutral rape laws, not merely on procedural grounds, but as a matter of moral justice.

It challenges legislators to recognise sexual violence as a violation of the natural order of human relations and to frame laws in a way that protects all individuals, regardless of gender, from such violations.

2.2.5 Legal Positivism

Legal positivism is a jurisprudential school that insists on a clear separation between law and morality. As theorised by scholars such as John Austin and H.L.A. Hart, positivists assert that the

³² Finnis, J., *Natural Law and Natural Rights* (Oxford University Press, 1980), 106.

validity of a law is determined by its source namely, whether it was enacted according to established rules of legal recognition rather than by its moral content.³³

In the context of rape law and male victimisation, legal positivism provides a valuable analytical lens in understanding the legislative rigidity and gender biases historically embedded in legal definitions. For instance, traditional Nigerian rape statutes, such as Section 357 of the Criminal Code Act, defined rape strictly in terms of penile-vaginal penetration by a man against a woman without her consent³⁴. Positivists would argue that unless the statute is explicitly amended through recognised legislative means, the courts are bound to apply the law as it is, not as it ought to be.

This has critical implications for male victims. Legal positivism explains why courts, despite acknowledging the injustice of excluding male victims, may feel constrained in recognising male rape due to a lack of statutory basis. The doctrine of *legality* *nullum crimen sine lege* prohibits judicial activism where no enabling statute exists. Hence, the male victim is often left without a direct remedy unless the law is reformed through legislative action.

Nevertheless, legal positivism has its critiques, particularly when applied to morally repugnant outcomes. In cases of sexual violence, positivism may appear too rigid, giving precedence to form over substance. This is especially evident in jurisdictions where archaic legal definitions persist, yet no formal statutory reform has occurred.

Despite these limitations, legal positivism serves a critical function in ensuring legal certainty and predictability. It also highlights the urgent need for legislatures to proactively reform outdated

³³ Hart, H.L.A., *The Concept of Law* (Oxford University Press, 1961), 107–110.

³⁴ Criminal Code Act, Cap C38 LFN 2004, s 357.

laws, since courts operating under a positivist tradition may be institutionally limited in expanding interpretations to accommodate evolving social realities³⁵.

2.2.6 Utilitarianism

Utilitarianism, a consequentialist theory associated with Jeremy Bentham and John Stuart Mill, advocates for actions and laws that produce the greatest happiness for the greatest number.³⁵ When applied to law, utilitarianism evaluates legal rules not by their origins or moral conformity, but by their outcomes or social utility.

The application of utilitarianism to male victimisation in rape law produces powerful arguments for reform. A utilitarian analysis begins by asking: Does the exclusion of male victims from legal protection produce more harm than good? Clearly, the answer is yes. A system that fails to protect a significant class of victims contributes to underreporting, psychological trauma, and public mistrust in the justice system.

Furthermore, including male victims within the protective ambit of rape laws enhances societal well-being by ensuring equity, encouraging reporting, and deterring perpetrators—regardless of gender. From a utilitarian standpoint, gender-neutral rape laws achieve greater social utility because they protect a broader class of vulnerable persons, promote legal inclusiveness, and reflect contemporary realities of human behaviour and victimhood.³⁶

Utilitarianism also recognises that reforming the law to protect male victims does not negate protections for female victims; instead, it amplifies justice as a shared societal good. Policies and

³⁵ Bentham, J., *An Introduction to the Principles of Morals and Legislation* (1789), ed. J.H. Burns and H.L.A. Hart (Oxford University Press, 1996), 11.

³⁶ Mill, J.S., *Utilitarianism* (1863), ed. M. Warnock (Collins, 1962), 47–50.

legal frameworks that address all forms of sexual violence contribute to a safer and more cohesive society—outcomes that are consistent with the utilitarian ideal.

However, critics of utilitarianism argue that it may sacrifice minority interests in the name of majority welfare. This limitation is important when the experiences of male victims are not widespread or well-documented in statistical terms. Yet, in the context of human rights and sexual violence, most modern utilitarians agree that even relatively small populations deserve protection if the cost of exclusion is high in terms of human suffering³⁸.

2.3 Literature Review

2.3.1 Historical Overview of Rape Law and Gender

Historically, rape law has been inextricably bound to a gendered paradigm that constructed sexual violence as a crime committed *by men against women*. Early common law definitions of rape in England—which profoundly influenced Nigerian colonial-era and post-colonial legislation—treated rape as a violation of a woman's chastity rather than her bodily autonomy.³⁷

The legal concern was often with the protection of male property interests (i.e., fathers and husbands) in the sexual "purity" of women⁴¹.

This patriarchal origin meant that male victims were invisible by design. The male body was not constructed as a site of sexual violation but as one of sexual agency and dominance. In fact, most historical rape laws did not even conceive of non-consensual acts committed against men as “rape” they were treated under different headings such as “indecent assault” or not criminalised at all.

³⁷ Temkin, J., *Rape and the Legal Process*, 2nd edn (Oxford University Press, 2002), 23.

Even as feminist legal scholars began to reform rape laws in the 20th century, the focus remained predominantly on women's victimisation—a necessary emphasis given historical injustices. However, this focus sometimes unintentionally reinforced the notion that men could only be perpetrators, never victims. As a result, the development of rape laws across common law jurisdictions—including Nigeria—retained gender-specific language and assumptions well into the 21st century.

In Nigeria, laws such as Section 357 of the Criminal Code and Section 282 of the Penal Code define rape exclusively in terms of male-on-female penetration.³⁸ These statutes inherited from colonial jurisprudence mirror historical trends and remain largely unreformed, despite global movement toward gender neutrality.

2.3.2 Contemporary Academic and Legal Debates on Male Victimisation

Modern scholarship has begun to seriously engage with the issue of male rape victims, but the literature remains uneven. In Western jurisdictions, researchers have documented the growing recognition of male victimisation in both law and policy. For example, the UK Sexual Offences Act 2003 redefined rape to include male victims by focusing on non-consensual penetration with a penis, regardless of the gender of the victim³⁹. The law also introduced other sexual offences to capture female-on-male sexual violence, recognising the complexity of sexual assault dynamics.

Academic responses to these reforms have been mixed. Some scholars, like Rumney, argue that inclusion of male victims in rape law is a necessary evolution toward equitable justice⁴⁰. Others

³⁸ Criminal Code Act, Cap C38 LFN 2004, s 357; Penal Code Act, s 282.

³⁹ Sexual Offences Act 2003 (UK), s 1.

⁴⁰ Rumney, P.N.S., "Innocence Lost: Defining Male Rape Under the Law", (2008) Criminal Law Review, 21–24.

caution that legal reforms must be accompanied by cultural shifts in how male victimhood is perceived, lest the reforms remain merely symbolic. The stigma, shame, and social disbelief associated with male victimisation still serve as significant barriers to justice, and these sociocultural realities must be addressed alongside doctrinal changes.

African scholarship, by contrast, has been less robust. While there is growing interest in reforming rape law, much of the literature continues to reflect a female-centric paradigm, with male victims mentioned—if at all—as peripheral concerns. This creates a gap in theoretical, empirical, and practical knowledge regarding the experiences of male survivors in African contexts, including Nigeria.

This gap is not without consequence. Without adequate academic engagement, law reform efforts remain sluggish, and judicial interpretation continues to reflect outdated assumptions. Moreover, absence of data and analysis perpetuates the myth that male rape is either rare or impossible, despite growing evidence to the contrary.

2.3.3 Existing Nigerian Scholarship

In Nigeria, the literature on rape and sexual violence has expanded in recent years, driven by advocacy campaigns, NGO interventions, and international pressure. Scholars have addressed issues such as rape culture, legal reform, consent education, and the enforcement challenges faced by the Nigerian criminal justice system. However, a critical limitation persists: the virtual erasure of male victims from mainstream legal discourse.

Most Nigerian legal commentaries on rape—both academic and judicial—focus on the inadequacies of the law in protecting female victims. This is understandable given Nigeria's

alarming rates of gender-based violence against women. However, the overwhelming emphasis on female victimhood results in a failure to interrogate the broader gender assumptions underpinning legal frameworks. In particular, the rigid legal definition of rape under the Criminal Code and Penal Code is seldom questioned on the basis of its gender exclusivity.

This has two major consequences. First, it reinforces the invisibility of male victims within legal, academic, and societal frameworks. Second, it hampers the ability of legislators and legal reformers to conceptualise inclusive solutions. While the Violence Against Persons (Prohibition) Act 2015 offers a broader definition of sexual violence, its limited geographical application to the Federal Capital Territory and uneven implementation undermines its reformative potential.⁴¹

There is also a paucity of empirical studies examining the lived experiences of male rape victims in Nigeria. Without such data, arguments for reform remain theoretical, lacking the persuasive power that grounded research could bring. This research project seeks to bridge this gap by highlighting both the doctrinal and lived realities of male victimisation under current rape laws.

2.4 Gaps in the Literature

2.4.1 Gender Exclusivity in Legal Scholarship

One of the most glaring gaps in the literature is the gender exclusivity in the treatment of rape victims. The dominant academic paradigm conceptualises rape primarily as a women's issue. While this perspective is justified by historical patterns of oppression and ongoing patriarchal

⁴¹ Violence Against Persons (Prohibition) Act 2015, s 1; See also Okoro, O., "The VAPP Act and the Future of Sexual Offences Legislation in Nigeria", (2022) *African Legal Studies*, Vol. 5, 44–46.

violence against women, it has had the unintended consequence of marginalising male victims from the legal imagination.

Most Nigerian legal commentaries on rape law whether in textbooks, journal articles, or judicial opinions fail to problematise the binary construct that sees men as perpetrators and women as victims. This narrow dichotomy has become entrenched, making it difficult to discuss or legislate for alternative realities. For instance, critical legal texts like *Okonkwo and Naish: Criminal Law in Nigeria* do not address the issue of male rape at all⁵³. Such exclusion perpetuates silence and invisibility.

Moreover, feminist legal theories—though indispensable in rape law reform have not sufficiently expanded their analytical scope to include male victimisation as part of the broader discourse on power, violence, and consent. As such, there exists a theoretical vacuum within Nigerian scholarship that this research seeks to fill by arguing for a gender-inclusive framework in understanding sexual violence.

2.4.2 Doctrinal Inertia and Lack of Reform Advocacy

Another critical gap is the absence of sustained legal reform advocacy concerning male rape victims. Unlike countries such as the UK, Canada, or South Africa, where legislative reforms have moved toward gender neutrality in sexual offences, Nigeria has remained stagnant. The Criminal Code and Penal Code remain rooted in colonial-era definitions that explicitly define rape as penetration of the vagina by a man⁵⁴. No major legislative initiative or sustained academic campaign has targeted this exclusion.

Academic literature in Nigeria has been largely silent on this doctrinal inertia. Even recent works that advocate for the review of rape laws rarely mention the need for gender-neutral definitions.

This neglect leaves a significant vacuum in the legal scholarship which this research addresses. It calls for a comprehensive reconstruction of the legal definition of rape to reflect contemporary realities of sexual victimisation across all genders.

Furthermore, judicial interpretation of rape laws in Nigeria has not evolved. Courts continue to rely on the limited statutory definitions without questioning their gendered assumptions. Unlike the UK where courts have played an active role in shaping rape jurisprudence post-Sexual Offences Act 2003, Nigerian courts have not developed a jurisprudence sensitive to male victims. This stagnation underscores the urgency of the reforms proposed in this research.

2.4.3 Absence of Victim-Centred Research

A fundamental shortfall in the existing literature is the dearth of empirical data on male victims of rape in Nigeria. Most discussions of male rape are either theoretical or anecdotal. There is little or no rigorous, victim-centred research that captures the lived experiences of male survivors of sexual violence.

This lack of data makes it difficult to assess the scope and impact of the problem, thereby weakening the case for reform in the eyes of lawmakers, courts, and the public. In contrast, countries such as the UK and the U.S. have benefitted from research conducted by institutions like the Office for National Statistics (UK) and the CDC (U.S.), which regularly produce data on sexual violence across genders

In Nigeria, however, government agencies, civil society organisations, and academic institutions have largely failed to document or examine male victimhood. Consequently, even where male rape occurs, it is frequently misclassified, under-reported, or ignored entirely. This research seeks to

provide not only a doctrinal critique but also a conceptual foundation for future empirical inquiries by framing the issue as one of legal, social, and human rights urgency.

2.4.4 Overreliance on Western Legal Frameworks Without Local Contextualisation

Much of the comparative literature on male rape draws heavily on developments in Western jurisdictions. While this is helpful in highlighting reform possibilities, such reliance often lacks contextualisation for African and Nigerian legal realities. There is insufficient scholarly effort to evaluate how Nigeria's socio-cultural environment—such as religious beliefs, masculinity norms, and institutional weaknesses—affects male victimisation and its legal recognition.

For example, stigma around homosexuality (often wrongly conflated with male rape), cultural perceptions of male invulnerability, and the taboo nature of sexual violence in conservative communities pose unique barriers to justice for male victims in Nigeria⁵⁶. Western models of legal reform cannot simply be transplanted without adjusting for these social dynamics.

This research bridges the gap by combining doctrinal analysis with socio-legal inquiry, taking into account Nigeria's cultural, legal, and institutional frameworks. It thus offers a locally grounded approach to the reform of rape laws that can be both effective and culturally sensitive.

2.4.5 Neglect of Psychological and Social Consequences for Male Victims

Finally, the literature has largely ignored the psychological, emotional, and social consequences experienced by male rape victims. Male survivors often experience profound trauma, including depression, suicidal ideation, sexual dysfunction, and identity crises. However, most legal scholarship—focused on doctrinal clarity and statutory reform—fails to incorporate these psychosocial dimensions.

A more holistic approach is needed: one that does not merely aim to change laws but also to understand and validate the emotional pain and social alienation suffered by male survivors. By highlighting this gap, this research argues for a trauma-informed reform model that recognises the full spectrum of harm experienced by all rape victims—regardless of gender.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK

The legal regime governing rape in Nigeria is built upon a complex foundation of statutory laws, human rights treaties, and evolving legislative proposals. Despite increasing awareness, existing frameworks remain largely gender-specific, often sidelining male victims. This section undertakes a detailed appraisal of the current and emerging legal provisions relevant to addressing male rape and advocating for gender neutrality in Nigerian rape legislation.

3.1.1 Criminal Code Act (1990)

The Criminal Code Act

The Criminal Code, which governs criminal matters in the Southern States of Nigeria, defines rape in a manner that renders male victims legally invisible⁴². Section 357 of the Criminal Code Act defines rape as: "Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force, or by means of threats or intimidation, or by fear of harm, or by means of false and fraudulent representations as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of a felony and is liable to imprisonment for life."⁴³

The term "carnal knowledge" has been judicially interpreted to mean penile-vaginal penetration. This interpretation, solidified by decades of case law, means that for a successful prosecution of

⁴² Criminal Code Act, Cap C38 LFN 2004, s. 357.

⁴³ Cap C38, Laws of the Federation of Nigeria, 2004

rape, the victim must be female. Acts of non-consensual anal or oral penetration against a male victim, or by a female perpetrator, simply do not meet the legal threshold for rape under this law. Instead, such acts are often prosecuted under lesser, and less stigmatizing, offences.

Legal Challenges:

Misclassification of Offenses: A perpetrator who anally rapes a man would not be charged with rape under the Criminal Code. The offence would likely be charged as an "unnatural offence" under Section 214 or a similar provision, which carries a lower penalty and does not reflect the severity of the crime. This misclassification perpetuates a false sense of impunity and trivializes the immense trauma suffered by the male victim.

Lack of Precedent: Due to the restrictive definition, there is a distinct lack of judicial precedent on male rape under the Criminal Code. This absence of case law reinforces the legal void and presents a formidable barrier for legal practitioners seeking to advocate for male victims.

The key issue with this provision is its gender-specificity. The victim must be a "woman or girl", implicitly excluding males from the statutory definition of rape. This linguistic exclusivity entrenches a legal invisibility for male victims, fostering an environment where male rape is either ignored or mischaracterized as lesser offences, such as assault or indecent act.

Additionally, the provision prescribes vaginal penetration by a penis as the only recognised form of rape. Male-on-male rape or female-on-male coercion is thereby excluded from the ambit of Section 357, failing to reflect the broader spectrum of non-consensual sexual experiences. Legal commentators have consistently critiqued this for its failure to capture anal, oral, or object penetration, despite such acts meeting the thresholds of violence and trauma associated with rape.

This statutory omission undermines equal protection under the law, violating Section 42 of the 1999 Constitution of Nigeria (as amended), which guarantees freedom from discrimination.⁴⁴ It also runs counter to Nigeria's international human rights obligations, particularly the obligation to protect all citizens from torture and inhuman treatment.

3.1.2 Penal Code (Northern States) Federal Provisions Act (1960)

The Penal Code, applicable in Northern Nigeria, is equally flawed in its restrictive gender scope. Section 282 of the Code states:

"A man is said to commit rape who has sexual intercourse with a woman in any of the following circumstances..."⁴⁵

This provision not only makes rape exclusive to female victims but also criminalizes only male perpetrators. It presumes heterosexual dynamics, thereby ignoring male victims, female perpetrators, and non-binary realities. Furthermore, under Sharia law, operative in several Northern states, sodomy is criminalized but conceptually divorced from rape. While it punishes acts involving anal sex, it fails to consider lack of consent, which is central to the concept of rape.

Thus, both the Penal and Criminal Codes fail to offer holistic protection for male victims. Rather than approaching sexual violence from the prism of non-consensual violation, they interpret it solely through the lens of traditional sexual norms and morality.

44 Constitution of the Federal Republic of Nigeria (1999), s. 42.

45 Penal Code (Northern States) Federal Provisions Act, s. 282.

3.1.3 Violence Against Persons (Prohibition) Act (2015)

The Violence Against Persons (Prohibition) Act (VAPP Act) represents Nigeria's most progressive sexual offence legislation. Under Section 1 of the Act:

"A person commits the offence of rape if he or she intentionally penetrates the vagina, anus, or mouth of another person with any part of his or her body or anything else, without the consent of that person..."⁴⁶

This definition marks a paradigm shift from the restrictive language of the Criminal and Penal Codes. For the first time in Nigerian statutory law, rape was rendered gender-neutral. Both men and women can now be perpetrators or victims, and rape includes oral, anal, and object penetration.

This inclusiveness aligns with international best practices, notably the Rome Statute of the International Criminal Court, which classifies any non-consensual sexual penetration as rape, regardless of gender.⁴⁷

Nevertheless, the VAPP Act faces implementation constraints. It is only operational in the Federal Capital Territory (FCT), unless domesticated by other states. As of 2024, many states — particularly in the North — have yet to adopt the Act, effectively denying male victims outside Abuja the protection it affords.

⁴⁶ Violence Against Persons (Prohibition) Act, 2015, s. 1.

⁴⁷ Rome Statute of the International Criminal Court, Article 7(1)(g).

3.1.4 Sexual Offences Bill (2019)

The Sexual Offences Bill, introduced in 2019, was a bold legislative attempt to consolidate Nigeria's sexual offences laws. Among its highlights was a broad and inclusive definition of rape, inspired in part by the South African Sexual Offences Act of 2007.⁴⁸

The Bill defined rape to include:

- i. Penetration of any orifice (vaginal, anal, or oral)
- ii. Use of body parts or objects
- iii. Absence of consent as central to the offence
- iv. Recognition of all genders as victims and perpetrators

The Bill also proposed minimum sentencing standards, with rape attracting up to life imprisonment, and provided for victim protection, including psychological counselling and shelter.

Despite its merits, the Bill failed to pass into law. Critics cited concerns over duplicity with the VAPP Act, and a lack of consensus among stakeholders. Nonetheless, its existence highlighted growing awareness of the limitations of existing laws and the emerging demand for gender inclusivity in sexual violence legislation.

48 South African Sexual Offences Act 2007; See also: NASS, "Sexual Offences Bill," 2019 (Bill Summary).

3.1.5 African Charter on Human and Peoples' Rights (1981)

Nigeria ratified the African Charter on Human and Peoples' Rights (ACHPR) in 1983, thereby binding itself to uphold the rights enshrined therein.⁴⁹ Article 5 of the Charter provides:

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation... particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

The ACHPR, unlike Nigeria's domestic laws, takes a non-gendered approach to dignity and protection. Male victims of sexual violence fall squarely within its ambit. The Charter has been held to have direct domestic application in Nigeria without the need for enabling legislation, as affirmed in *Abacha v. Fawehinmi*.⁵⁰

Thus, where domestic law fails to recognise or protect male victims of rape, the ACHPR offers a direct constitutional remedy, empowering courts to act upon violations of dignity and bodily integrity.

49 African Charter on Human and Peoples' Rights (1981), Article 5.

50 *Abacha v. Fawehinmi* [2000] 6 NWLR (Pt. 660) 228.

3.1.6 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

This Convention obligates state parties, including Nigeria, to prevent acts of torture and inhuman treatment, whether inflicted by public authorities or with their consent or acquiescence.⁵¹

Sexual violence especially where the State fails to act may constitute torture under this Convention. The UN Committee Against Torture has clarified that male victims of rape fall within its purview, and that states have a duty to prevent such abuse and offer redress.⁵²

By failing to criminalise male rape or provide remedy to its victims, Nigeria risks violating Article 1 of the Convention. Furthermore, failure to prosecute rape cases involving male victims may amount to constructive complicity, especially where institutions demonstrate systemic negligence or discriminatory inertia.

3.1.7 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

Though CEDAW focuses on women, its implementation must not result in the inverse discrimination against men. While its preamble recognises the historical disadvantage women face, it does not prohibit states from crafting gender-neutral laws.

Interestingly, General Recommendation No. 19 issued by the CEDAW Committee recognises gender-based violence as a form of discrimination, but it also encourages state parties to ensure

51 UN Convention Against Torture, 1984, Article 1.

52 UN CAT Committee, General Comment No. 2 (2008), para. 3.

that legal protection is afforded to all victims, especially in contexts where the law has traditionally failed.⁵³

Nigeria's persistent gender-specific rape laws, therefore, may violate CEDAW's equality obligations, not because they fail to protect women, but because they deny men equivalent protection from the same category of harm.

3.1.8 Case Law/Precedent

The doctrinal and practical gaps in Nigeria's rape law are reflected and reinforced by judicial decisions. A careful survey of reported decisions shows repeated themes:⁵⁴ the Criminal and Penal Codes' historic emphasis on penile-vaginal penetration and female victims;⁵⁵ courts' reliance on statutory language and the limits this place on judicial innovation and⁵⁶ evidential and procedural hurdles (corroboration, proof of penetration, standards of consent) which shape outcomes in sexual-offence trials. Below we summarise key Nigerian decisions and relevant persuasive precedents, analyse their holdings, and explain their significance for legislative reform toward gender neutrality.

1. Francis Odili v. The State (Supreme Court of Nigeria, 1977) — evidentiary standards and proof of intercourse

Summary of facts & holding: The Supreme Court's decision in Odili addressed, among other matters, the standard for accepting evidence in sexual-offence trials and reinforced the necessity for careful factual evaluation by trial courts before conviction. Although Odili is not a gender-neutrality decision per se, it is frequently cited for principles that govern proof and corroboration (for example, the need to rely on

53 UN CEDAW Committee, General Recommendation No. 19 (1992), para. 9.

⁵⁴ Francis Odili v. The State (SC.431/1975) \[1977] NGSC 10. (Supreme Court of Nigeria)

⁵⁵ Okoyomon v The State (1973) NMLR 292 (Supreme Court of Nigeria)

⁵⁶ The State v Aibangbee & Anor (1988) Court of Appeal (Nigeria)

admissible evidence rather than conjecture). The case illustrates the judiciary's strict reliance on the available statutory text and the evidence adduced.

Significance for male-victim protection: Odili shows that Nigerian courts will not easily expand offences beyond statutory wording without clear legislative direction. This underscores the point that meaningful inclusion of male victims into rape law requires statutory amendment, not merely judicial reinterpretation. Where evidence would otherwise support a male-victim rape prosecution, courts are constrained by the Criminal and Penal Codes' wording unless the VAPP (or amended Code) is applicable.

Summary of facts & holding: Okoyomon is a leading Nigerian case on the elements of rape, particularly on what constitutes proof of "carnal knowledge" (penetration) and the requirement for corroborative evidence in certain contexts. The decision reflects older common-law formulations that equate rape with penile-vaginal intercourse and focuses on establishing penetration to satisfy the offence.

Significance for male-victim protection: The case highlights a technical barrier for prosecuting male rape under the Criminal Code: the statutory focus on penile-vaginal penetration means that acts such as anal or oral penetration (commonly experienced by male victims) often fall outside the statutory definition and hence outside the crime of "rape" as traditionally charged. This doctrinal inertia reinforces the need for statutes that define rape by absent consent and by a range of penetrative acts rather than by anatomy.

The Aibangbee decisions (trial/court of appeal reporting) dealt with evidential sufficiency and credibility in sexual-offence trials. The appellate decisions stressed that findings of fact and credibility must rest upon evidence properly adduced and not on assumptions. They also elaborate the court's duty to ensure the accused's right to a fair trial and to require the prosecution to discharge its burden beyond reasonable doubt.

Significance for male-victim protection: Aibangbee illustrates how evidentiary expectations in Nigerian courts can sometimes disadvantage victims (male or female) where evidence is limited. For male victims who often report late or where physical evidence is scarce these judicial requirements can further impede convictions, emphasising the importance of improved forensic capacity and victim-sensitive investigation protocols in the institutional framework.

Posu involved gang rape convictions and has been cited in literature critiquing the often-lenient sentencing patterns for sexual offences in Nigeria despite the severity of the offences. Judicial commentary in subsequent scholarship notes the discrepancy between statutory maximums and actual sentences imposed⁵⁷. Sentencing patterns affect deterrence and public confidence. If courts impose lighter sentences for sexual offences, perpetrators including those who assault male victims may face inadequate punishment. This shows the need not only to reform statutory definitions (to include male victims) but also to encourage judicial sentencing guidelines and training to reflect the gravity of sexual violence across genders.

Summary of facts & holding: *Olugboja* is a leading authority on consent: the Court held that submission to sexual intercourse does not automatically equal consent and that the fact of lack of physical resistance may not defeat a finding of non-consent. The decision distinguishes between genuine consent and mere submission under duress or fear⁵⁸.

3.2 Institutional Framework

While legislative reforms are crucial, the protection of male victims of rape and the pursuit of gender-neutral rape laws in Nigeria are largely ineffective without strong institutional backing. Several government agencies, human rights bodies, and enforcement institutions play critical roles in supporting victims, ensuring justice, and advocating for reform. This section delves into the institutional framework — identifying the key agencies, analyzing their statutory roles, and evaluating their effectiveness in addressing male rape and promoting gender neutrality.

⁵⁷ *Posu v State* (2011) 3 NWLR (Pt 1234) 393 (Court of Appeal, Nigeria)

⁵⁸ *R v Olugboja* [1982] QB 320 (Court of Appeal, England and Wales).

3.2.1 Legal Aid Council of Nigeria (LACoN)

The Legal Aid Council of Nigeria (LACoN) was established under the Legal Aid Act of 1976 (now Legal Aid Act, Cap. L9, Laws of the Federation of Nigeria 2010) to provide legal representation and services to indigent Nigerians.

Mandate and Functions

LACoN is mandated to:

1. Provide legal assistance and representation to citizens who cannot afford legal services, especially in criminal matters.
2. Offer advice and counselling to vulnerable individuals.
3. Facilitate access to justice for victims of rights violations.

Role in Addressing Male Rape

Although not explicitly targeted at male rape victims, LACoN has extended its services to survivors of sexual violence, irrespective of gender. It provides legal representation and guides victims through the criminal justice process, especially where victims seek to pursue rape charges or civil remedies.

However, cultural perceptions and statutory limitations — such as the lack of gender-neutral rape laws in the Criminal and Penal Codes — significantly constrain LACoN's impact. Male victims are often reluctant to approach the Council due to stigma and fear of ridicule. The Council also faces resource and capacity limitations, which hinder its ability to launch public awareness campaigns specifically focused on male sexual abuse.

Nevertheless, LACoN has supported the implementation of the Violence Against Persons (Prohibition) Act 2015 in states where it is domesticated, aiding male victims who can claim protection under its broader definitions of sexual violence.⁵⁹

3.2.2 National Agency for the Prohibition of Trafficking in Persons (NAPTIP)

Established under the Trafficking in Persons (Prohibition) Enforcement and Administration Act (2015), NAPTIP was initially designed to combat human trafficking, but its mandate has grown to include all forms of sexual exploitation and abuse.

Functions

NAPTIP's duties include:

- i. Investigating and prosecuting trafficking and sexual exploitation cases.
- ii. Providing shelters, medical care, counselling, and rehabilitation services to victims.
- iii. Conducting advocacy campaigns and stakeholder training.

Involvement with Male Victims

While most of NAPTIP's shelters and outreach programs were originally female-focused, the agency has recognized the vulnerability of boys and men in trafficking rings — especially for forced labour and sexual slavery. In recent years, NAPTIP has begun to address male victimhood more deliberately, though challenges remain.

⁵⁹ NAPTIP Annual Report, 2022, p. 33.

Importantly, NAPTIP administers cases under the VAPP Act, which allows for broader interpretations of rape and sexual violence, regardless of gender. Through its Public Enlightenment Department, the agency has initiated limited but notable campaigns aimed at sensitizing communities to male vulnerability in sexual crimes.

Still, institutional bias, under-reporting, and societal disbelief remain strong barriers to male victims' access to NAPTIP services. A shift toward institutional inclusivity and gender-neutral training among NAPTIP personnel is needed to improve outcomes for male survivors.

3.2.3 National Human Rights Commission (NHRC)

Established under the NHRC Act of 1995 (amended in 2010), the National Human Rights Commission is the apex human rights body in Nigeria. It is empowered to:

- i. Investigate allegations of human rights violations.
- ii. Recommend prosecutions and policy reforms.
- iii. Educate the public on human rights and engage in legal advocacy.

Relevance to Male Rape and Gender-Neutral Law

NHRC plays a vital role in the promotion and protection of rights related to bodily autonomy and dignity, which are often implicated in rape cases. The Commission recognizes sexual violence as a human rights issue and has occasionally issued statements condemning abuse against all genders.

The NHRC is one of the few government institutions that has, on occasion, acknowledged the existence of male rape and the need for inclusive legal frameworks. However, these

acknowledgments rarely translate into large-scale policy change or nationwide campaigns due to bureaucratic inertia and limited political will.

Moreover, male victims who report their cases to the NHRC often do so anonymously, fearing public stigma or non-recognition by the justice system. The Commission's investigative reports and recommendations to government often lack binding effect, making it reliant on civil society partnerships and media pressure to push reforms.

Nevertheless, the NHRC remains a critical partner in advocating for a gender-neutral legal system by issuing advisory opinions, participating in public interest litigation, and lobbying the National Assembly for statutory amendments.⁶⁰

3.2.4 Ministry of Women Affairs and Social Development

The Federal Ministry of Women Affairs and Social Development (FMWASD) is the national body responsible for the development, protection, and empowerment of women and vulnerable groups. While its name suggests a female focus, its mandate includes promoting the rights of vulnerable populations, including children and victims of abuse.

Responsibilities and Challenges

FMWASD:

- i. Coordinates with state ministries to provide support for victims of sexual and domestic abuse.

⁶⁰ NHRC Act 1995 (as amended in 2010), ss. 6–7.

- ii. Runs public awareness campaigns on gender-based violence.
- iii. Offers psychosocial and economic empowerment programs.

However, male victims of rape are often excluded from these programs — either by policy design or by prevailing assumptions about gender roles. Even when male victims present themselves, service providers within the Ministry and its state affiliates often lack training to deal with male trauma survivors or even recognize their legitimacy.

Although the VAPP Act mandates inclusivity, and the Ministry nominally endorses this legislation, implementation has largely been skewed toward women and girls. The Ministry has yet to launch any nationally coordinated awareness campaign specifically addressing male sexual violence, thereby perpetuating societal invisibility of male victims.

To better serve all citizens, the Ministry must expand its scope and reorient staff training, budget allocations, and program designs to reflect a truly gender-neutral approach.

3.2.5 Nigerian Police Force (NPF)

The Nigerian Police Force (NPF) is the primary law enforcement and investigative body responsible for handling reports of criminal conduct, including rape.

Structural Role

NPF investigates, arrests, and prosecutes alleged offenders of rape and sexual assault. It also works with the judiciary and relevant ministries to ensure victims are protected during trial.

Shortcomings in Protecting Male Victims

The Force has been widely criticized for its handling of rape cases with complaints ranging from victim-blaming to corruption, insensitivity, and lack of investigative capacity. These problems are amplified in the context of male victims.

Culturally ingrained stereotypes within the police such as the belief that men cannot be raped, or that male victims must be homosexual have made it difficult for male survivors to receive sympathy, seriousness, or due process when lodging complaints. Many police stations lack standard operating procedures for handling rape allegations brought by men, and some officers outright reject such cases.

Moreover, male-on-male rape is often charged under laws criminalizing same-sex relationships (e.g., the Same Sex Marriage (Prohibition) Act, 2014), further punishing the victim and deterring reporting.

The Gender Units introduced in some police commands established to handle sexual and gender-based violence have shown promise in supporting female victims but have yet to make male inclusivity a central part of their mandate. Reforms in recruitment, training, and victim-protection protocols are essential if the NPF is to become a reliable ally in protecting male rape victims.

CHAPTER FOUR

ANALYSIS OF LEGAL ISSUES IN GENDER NEUTRALITY IN RAPE CASES IN NIGERIA

4.1 The Protection of Male Victims of Rape under Nigerian Law

The protection of male victims of rape under Nigerian law remains a deeply problematic and underdeveloped aspect of criminal jurisprudence. Historically, the Criminal Code Act of 1990 (applicable in Southern Nigeria) and the Penal Code of 1960 (applicable in Northern Nigeria) restricted the definition of rape exclusively to the unlawful carnal knowledge of a *woman or girl* without consent.⁶¹ This statutory construction, rooted in Victorian-era English common law, effectively excluded male victims from recognition and protection.

The Criminal Code Act, Section 357, defines rape as carnal knowledge of a woman or girl without her consent.⁶² The Penal Code, Section 282, similarly restricts the definition to penile-vaginal penetration.⁶³ Consequently, men who are sexually assaulted through anal penetration, oral compulsion, or other non-consensual sexual acts are not legally recognized as rape victims under these laws. Instead, such acts are prosecuted as “unnatural offences” or “indecent assaults” under sections 214–216 of the Criminal Code or section 284 of the Penal Code.⁶⁴ This classification trivializes the gravity of the violation and undermines the principle of equal protection under the law.

The Violence Against Persons (Prohibition) Act (VAPP) of 2015 introduced a progressive shift by expanding the definition of rape to include penetration of any part of the body without consent,

⁶¹ Criminal Code Act, Cap. C38, LFN 2004, s. 357.

⁶² Ibid

⁶³ Penal Code (Northern States) Federal Provisions Act, Cap. P3, LFN 2004, s. 282.

⁶⁴ Criminal Code Act, ss. 214–216; Penal Code, s. 284.

regardless of gender.⁶⁵ Section 1 of the Act states that a person commits rape if he or she intentionally penetrates the vagina, anus, or mouth of another person with any body part or object without consent.⁶⁶ This gender-neutral provision marks the first statutory recognition of male victims of rape in Nigeria. However, the Act's application is geographically limited to the Federal Capital Territory (FCT), unless domesticated by individual states. To date, only a fraction of Nigeria's 36 states have domesticated the Act, leaving male victims in many regions still unprotected by gender-neutral definitions.⁶⁷

From an international perspective, Nigeria is obligated under the African Charter on Human and Peoples' Rights (1981) and the United Nations Convention Against Torture (1984)⁶⁸ to protect all individuals from inhuman or degrading treatment, including rape. Yet, the lack of comprehensive domestication of the VAPP Act undermines compliance with these obligations.

In practice, male victims face significant legal and procedural hurdles. Even where gender-neutral laws exist, law enforcement agencies and prosecutors remain reluctant to pursue cases involving male complainants due to social stigma, disbelief, or homophobic interpretations of the law. Thus, while legislative reform through the VAPP Act represents progress, effective protection of male victims remains incomplete, unevenly applied, and structurally fragile.

4.2 The Impact of Social and Cultural Barriers on Male Victims of Rape in Nigeria

Legal recognition alone does not guarantee justice. In Nigeria, deep-seated cultural and social norms act as formidable barriers against male victims seeking justice.

⁶⁵ Violence Against Persons (Prohibition) Act 2015, s. 1.

⁶⁶ Ibid

⁶⁷ CLEEN Foundation, Domestication of the VAPP Act in Nigeria: Challenges and Prospects (2019).

⁶⁸ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 16.

Firstly, masculinity in Nigeria is constructed around strength, dominance, and invulnerability. A man who admits to being raped risks being labeled as weak, emasculated, or homosexual.⁶⁹ This cultural bias silences many victims, leading to chronic underreporting. Victims who attempt to report often face ridicule not only from society but also from police officers, prosecutors, and even judges.

Secondly, religious frameworks compound this problem. In both Christian and Islamic settings, sexual purity and moral uprightness are highly emphasized. Male rape victims may fear being blamed for immoral conduct or accused of homosexuality, which remains criminalized under the Same-Sex Marriage (Prohibition) Act 2014.⁷⁰ The conflation of male victimhood with homosexuality discourages survivors from seeking justice or treatment.

Thirdly, family honor and social stigma play a role. In patriarchal communities, families often prefer silence to public disgrace. A male child admitting to rape may be viewed as dishonoring his family name. This perpetuates silence and isolation for victims, reinforcing their trauma.

Moreover, Nigerian society tends to trivialize cases where the perpetrator is female and the victim male. Rather than being recognized as victims, men are often teased or congratulated, thereby dismissing their trauma as “sexual initiation” rather than assault. This trivialization creates a culture of denial and normalization of abuse, making redress nearly impossible.

⁶⁹ Connell, R. W., *Masculinities* (2nd ed., 2005).

⁷⁰ Same-Sex Marriage (Prohibition) Act, 2014.

The consequence of these cultural and social barriers is a cycle of impunity for perpetrators and psychological re-victimization for survivors. Male victims not only suffer the physical and emotional trauma of rape but also carry the burden of societal disbelief, silence, and shame.

4.3 A Comparative Analysis of the Nigerian Legal Framework on Rape with International Best Practices

When placed against international best practices, Nigeria's legal framework on rape reveals significant gaps in inclusivity, enforcement, and victim support.

Globally, many jurisdictions have embraced gender-neutral rape laws. For instance, in the United Kingdom, the Sexual Offences Act 2003 defines rape in a gender-neutral manner, recognizing penetration of the vagina, anus, or mouth without consent.⁷¹ Similarly, South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 expanded the definition of rape to cover all non-consensual sexual penetration, regardless of the victim's gender.⁷²

International instruments reinforce this trend. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), while focused on women, obligates states to ensure equality before the law.⁷³ The Istanbul Convention (2011) explicitly defines rape in gender-neutral terms and mandates comprehensive victim support services.⁷⁴

⁷¹ Sexual Offences Act 2003 (UK), s. 1.

⁷² Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (South Africa).

⁷³ CEDAW, 1979, arts. 2 and 15.

⁷⁴ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), 2011.

In contrast, Nigeria remains encumbered by outdated legal codes (Criminal and Penal Codes), which enshrine gendered definitions of rape. While the VAPP Act aligns with international best practices, its limited adoption creates uneven protections. Thus, Nigeria lags behind countries that have established harmonized, nationwide gender-neutral rape statutes.

Moreover, international best practices emphasize holistic victim support services, including counseling, legal aid, and healthcare. Nigeria's system lacks specialized facilities for male victims, with most services directed toward women and children. This absence of institutionalized psychosocial support widens the gap between Nigeria and global standards.

Therefore, while Nigeria has made some progress through the VAPP Act, it remains inconsistent, fragmented, and insufficient compared to international best practices.

4.4 The Role of Law Enforcement Agencies and the Judiciary in Addressing Male Rape Cases in Nigeria

The Nigerian legal system vests the responsibility of enforcement and adjudication of rape laws in law enforcement agencies (primarily the Police) and the judiciary. However, their roles in addressing male rape cases have been deeply inadequate.

Law enforcement agencies serve as the entry point for victims. Yet, police officers are often ill-trained and culturally biased, frequently dismissing male rape allegations as impossible or fabricated. A lack of sensitivity training, combined with institutionalized patriarchal norms, results in poor documentation, mishandling of evidence, and refusal to prosecute.

The judiciary is similarly constrained. Judges must interpret laws that still embody gendered definitions, especially under the Criminal and Penal Codes. Even when cases are prosecuted under

the VAPP Act, judges often rely on corroboration rules, demanding medical or physical evidence that is frequently unavailable.⁷⁵ This raises the evidentiary threshold to levels unattainable for many victims, effectively denying justice.

Additionally, the judiciary has been slow in adopting victim-sensitive procedures, such as in-camera hearings or anonymity for complainants. Male victims are therefore exposed to humiliating cross-examinations and public stigmatization in open courts.

The cumulative effect is a systemic failure of law enforcement and judicial institutions to provide an enabling environment for male victims of rape to access justice. This failure reinforces the cycle of silence, underreporting, and impunity for perpetrators.

4.5 Towards a Gender-Neutral Approach to Rape Legislation in Nigeria:

Recommendations for Reform

Given the shortcomings of Nigeria's current framework, a gender-neutral reform agenda is imperative.

First, there is a need to harmonize Nigeria's rape laws. The Criminal and Penal Codes should be amended to adopt the gender-neutral definition of rape as contained in the VAPP Act. This would ensure uniform protection for victims nationwide, eliminating the present legal disparities.

Second, Nigeria must domesticate international instruments, particularly the Istanbul Convention and relevant African Union guidelines. Such domestication would strengthen Nigeria's commitment to non-discrimination and human rights obligations.

⁷⁵ Evidence Act, Cap. E14 LFN 2011.

Third, institutional reforms are necessary. Police training programs should include gender sensitivity modules, specifically addressing male victimization. The judiciary must adopt procedural reforms, such as specialized sexual offences courts, in-camera hearings, and reduced corroboration requirements.

Fourth, comprehensive victim support systems should be established. Shelters, counseling services, and rehabilitation programs must be designed to accommodate male survivors alongside female survivors. Public enlightenment campaigns, spearheaded by the National Orientation Agency (NOA), should dismantle stereotypes that stigmatize male rape victims.

Finally, political will and civil society advocacy are crucial. Lawmakers must recognize the urgency of reform, while NGOs and advocacy groups should continue to pressure the state and raise awareness about male victimization.

These reforms, taken collectively, will pave the way for a truly gender-neutral rape legislation in Nigeria that guarantees justice, equality, and dignity for all victims of sexual violence.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary

This research has examined the Nigerian legal framework on rape and its implications for gender neutrality. It began by highlighting the gender-exclusive definitions of rape in the Criminal Code Act and the Penal Code, which only recognize women as victims and men as perpetrators. This gendered conception excludes male victims from statutory protection and female perpetrators from accountability.

The study also reviewed the Violence Against Persons (Prohibition) Act (VAPP Act) 2015, which represents a landmark step towards gender-neutral rape legislation in Nigeria by recognising that any person can be a victim or perpetrator of rape. However, the Act's limited jurisdiction to the Federal Capital Territory leaves many Nigerians still governed by outdated gender-specific laws.

In its analysis, the research also identified the impact of cultural and social barriers that prevent male victims from reporting rape, including stigma, masculinity stereotypes, and religious misconceptions. Furthermore, the research compared Nigerian laws with international best practices, such as the United Kingdom's Sexual Offences Act 2003 and South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, both of which adopt gender-neutral definitions of rape.

Finally, the work evaluated the institutional role of law enforcement agencies, the judiciary, and human rights institutions in Nigeria. Findings revealed systemic failures, including inadequate training, bias against male complainants, poor victim support systems, and inconsistent judicial interpretations.

5.2 Recommendations

i. Amendment the Criminal and Penal Codes

One of the most urgent reforms is the amendment of Section 357 of the Criminal Code Act and Section 282 of the Penal Code. Both statutes presently define rape in gender-specific terms, restricting the victim to a “woman or girl” and the perpetrator to a “man.” This definition is outdated, exclusionary, and inconsistent with contemporary realities.

The definition should expressly recognize that “any person” who intentionally penetrates the vagina, anus, or mouth of another person with any body part or object, without consent, commits rape. This change would:

Extend legal protection to male and non-binary victims, who are currently excluded. Recognize female perpetrators, who presently evade accountability under the gendered definition. Bring uniformity between the principal criminal statutes and modern human rights standards. By enacting these amendments, the National Assembly will ensure that Nigerian criminal law focuses on the absence of consent, rather than the gender or identity of the victim and perpetrator.

ii. Nationwide Domestication of the VAPP Act: All states of the federation should domesticate the VAPP Act to ensure uniformity in the protection of victims across Nigeria.

Civil society organisations, the Nigerian Governors’ Forum, and the Federal Ministry of Justice should collaborate to fast-track domestication through legislative advocacy and capacity building in state Houses of Assembly.

iii. Institutional Reform and Training: Law enforcement agencies, particularly the Nigerian Police Force, should undergo mandatory gender-sensitivity and victim-support training to enable officers handle male rape complaints without bias. To address this, the following reforms are necessary:

Mandatory gender-sensitivity training for all officers, focusing on how to handle male victims with empathy and professionalism. Establishment of Sexual and Gender-Based Violence (SGBV) desks in every police

division, staffed with specially trained officers. Introduction of clear standard operating procedures (SOPs) to ensure that rape complaints by male victims are treated with the same seriousness as those by female victims.

These reforms will not only improve reporting rates but also restore public confidence in law enforcement.

iv. Judicial Reforms: The judiciary should adopt victim-sensitive procedures, The judiciary must play a proactive role in ensuring that rape trials protect victims from secondary trauma. Recommended reforms include:

In-camera proceedings for rape trials to preserve victims' privacy and dignity. Granting anonymity orders to complainants so that their identities are shielded from media publicity. Developing judicial guidelines on the interpretation of consent, withdrawal of consent, and marital rape. These reforms will create a survivor-centered justice system that reduces re-victimization and delivers timely remedies.

v. Public Awareness Campaigns: The National Orientation Agency and relevant ministries should launch campaigns to challenge harmful stereotypes about masculinity and rape, educating the public that anyone, regardless of gender, can be a victim or perpetrator.

Legal reforms will be ineffective without corresponding social change. Deep-seated cultural stereotypes in Nigeria continue to portray rape as exclusively a women's issue, while dismissing the possibility of male victimhood.

The National Orientation Agency (NOA), in collaboration with ministries of education, health, and women affairs, should launch nationwide campaigns aimed at:

Challenging myths that "men cannot be raped."

Educating the public on the principle that consent, not gender, is the core determinant of sexual autonomy.

Promoting positive masculinities that emphasize respect, empathy, and accountability.

Using schools, religious centers, and media platforms to normalize discussions on gender-neutral rape laws.

Such campaigns will help reshape public perception and encourage victims of all genders to seek justice.

vi. Victim Support Services: The government should establish gender-inclusive shelters, counseling centres, and medical facilities for all survivors of sexual violence. Beyond legal recognition, survivors require holistic support systems. The government, in collaboration with NGOs, should establish Gender-inclusive shelters across all geopolitical zones, providing safe spaces for both male and female survivors. Counseling and trauma therapy centers, staffed by professionals trained in handling the unique psychological impact of sexual violence on different genders. Specialized medical facilities that provide forensic examination, HIV post-exposure prophylaxis (PEP), and other critical interventions. Rehabilitation and reintegration programs, including vocational training, to assist survivors in rebuilding their lives. By institutionalizing such services, Nigeria will not only prosecute offenders but also provide meaningful healing for survivors.

vii. International Obligations: Nigeria should align its domestic rape laws with international standards, particularly the Istanbul Convention and African human rights instruments, to strengthen compliance with global best practices.

By doing so, Nigeria will:

Demonstrate commitment to global standards of human rights. Enhance its reputation in the international community. Provide stronger legal grounds for domestic advocacy and litigation.

Such alignment will ensure that Nigerian rape laws are not only modernized but also consistent with the universal principles of equality, dignity, and justice.

viii. International Obligations Towards a Convention on the Elimination of All Forms of Discrimination Against Men: While Nigeria has ratified various international and regional human rights treaties—including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Maputo Protocol there remains no equivalent treaty that expressly protects men from discrimination and harmful stereotypes. This gap contributes to the invisibility of male survivors of sexual violence and reinforces patriarchal notions that men cannot be victims.

To address this imbalance, Nigeria should advocate at the United Nations and the African Union for the drafting and adoption of a “Convention on the Elimination of All Forms of Discrimination against Men (CEDAM)”, modeled after CEDAW but tailored to men’s unique vulnerabilities. Such a convention should: Affirm the principle that all persons, regardless of gender, deserve equal protection against violence, exploitation, and harmful stereotypes.

Oblige States Parties to eliminate cultural and institutional practices that stigmatize male survivors of rape or deny them access to justice.

Promote gender-neutral criminal law reforms that acknowledge men as both victims and perpetrators of sexual offences.

Establish international monitoring mechanisms similar to the CEDAW Committee to hold states accountable for addressing discrimination against men.

Complement existing treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights, ensuring a truly inclusive human rights regime.

By championing the creation of such a convention, Nigeria would position itself as a leader in progressive gender-neutral human rights advocacy, ensuring that both men and women enjoy equal dignity, protection, and justice.

5.3 Conclusion

The research concludes that Nigeria’s current legal framework on rape remains fragmented, inconsistent, and inadequate for the protection of all victims. The Criminal and Penal Codes continue to perpetuate a gender-exclusive definition of rape that denies male victims equal protection under the law. While the VAPP Act provides a progressive and inclusive approach, its limited territorial application has hindered its transformative potential.

The study also concludes that the failure to adopt a uniform gender-neutral rape law in Nigeria violates constitutional guarantees of equality and non-discrimination under Section 42 of the 1999

Constitution (as amended), as well as international obligations under instruments such as the African Charter on Human and Peoples' Rights and the Convention Against Torture.

Beyond legal provisions, deep-rooted socio-cultural perceptions of masculinity and sexuality further silence male victims and impede their access to justice. Unless Nigeria harmonizes its laws and confronts these socio-cultural barriers, the promise of equality before the law in matters of sexual violence will remain unattained.

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