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## SEXUAL OFFENCES AND THE LAW IN NIGERIA : AN INJUSTICE TO THE FEMALE ADOLESCENT

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*In recent times, cases of sexual assaults on female adolescent girls is growing in prominence. This constitutes a serious jeopardy to the adolescent girl in Nigeria. Under the Nigerian Laws, sexual offenses are extensively dealt with. The question however is the fairness of the law to the victim - the adolescent girl. This paper examines the law on some sexual offences, the process of investigation and prosecution. These issues would be critically examined vis a vis the effect and fairness on the adolescent girl. Finally recommendations would be made on how the law can bring justice to the adolescent girl.*

### INTRODUCTION

All over the world, it is increasingly felt that cases of sexual molestation and abuse on females especially the adolescent, is growing in its prominence and is on the increase. The increase, attributed to many factors which include exposure of adolescent girls to unnecessary risks, such as street trading, and early marriages, is causing considerable anxiety in all segments of the society. It is not therefore surprising that Adeyemi (1992) says that the traditional area of female criminal victimization are basically in the province of sex related offences.

The aim of Criminal Law according to Beccaria (1989) is to curb passions excited by vivid impressions of present object and the punishments are necessary for protection of the deposit to public security. Furthermore, Okonkwo and Naish (1980), have stated that the function of the Criminal Law, decided in England by the Wolfenden Committee on Homosexual Offences and prostitution is :

- (a) To preserve public order and decency
- (b) protect the citizen from what is offensive and injurious; and
- (c) To provide sufficient safeguards against the exploitation and corruption of the more vulnerable of the society (for example, the young; the weak in mind and body; the inexperienced). It is stated by the American Law Institute Model Penal Code that in modern legal system, one of the objectives of the criminal law is to forbid and prevent conducts that unjustifiably and inexcusably inflict or threatens substantial harm to individual or public interest.

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In Nigeria, the various laws contain a bewildering multiplicity of different provisions on offences which contain sexual elements and some are drafted in gender neutral terms. However offences such as Rape, Defilement and Indecent Assault on females are gender specific. As the exposure of adolescent females to risk of sexual molestation is on the increase, also cases of sexual assault have increased. Recognizing that the adolescent female occupy a unique position in any society (because this age is the transition period between childhood, and by reason of age, mental immaturity, physical anatomy and vulnerability), there is need for special care of this category of females.

In spite of the verbose offences with sexual elements contained in the Nigerian statute, the protection afforded by the law presently is inadequate and has resulted into injustice to the adolescent female in view of the range of sexual offenses against the female adolescent, focus will be on a few common sexual offenses in the Nigerian society. These are Rape, Defilement and Indecent Assault. This paper examines the law on rape, defilement and indecent assault and the injustice inflicted on the adolescent female. Finally, suggestions and recommendations geared at ensuring adequate protection and remedies to the adolescent female are proffered.

#### THE LAW ON SEXUAL OFFENCES IN NIGERIA

For clarification purpose, it is necessary to define the term "adolescent" as it is used in this paper. This is because there are different definitions under the laws of different countries. According to Burke, (1976) under the Roman law, an adolescent is a person between the ages of puberty (14 in boys, 12 in girls) and majority (25 years). For the purpose of this paper, an adolescent refers to the ages between thirteen and eighteen years (Hornby, 1984).

#### Law on Rape

Rape is a gender oriented offence under the Nigerian Law: this is because only a female can be victim of rape. The principal statute on rape is the Criminal Code (CC) and section 282 of the Penal Code (PC). The provisions are almost similar, but with differences that will be discussed later. The Criminal code provides that

"Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threat 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 impersonating her husband is guilty of an offence called rape"

To succeed in a case of rape, it must be proved by the prosecution that there is unlawful carnal knowledge of the female without her consent. Under section 6 of the Criminal Code the term "unlawful" means "otherwise than between husband and wife". This means an illicit sexual intercourse taking place outside the bonds of marriage (Chapman 1959). Therefore under the Nigerian law, a man cannot rape his wife except there has been a judicial separation or divorce. This is also the position in Northern Nigeria except that section 282(2) of the Penal code provides that it is only if the wife has attained puberty that sexual intercourse without consent between husband and wife would not amount to rape. The Nigeria law is

that, though a husband cannot be charged for rape, except in certain cases, the husband can be charged and convicted for indecent assault (Miller 1954).

The term carnal knowledge means sexual intercourse, and it is complete upon penetration according to section 6 CC and 282 PC. Penetration, however slight satisfies this requirement (Card, 1992). Penetration is complete when the male organ reaches the labia minora and neither ejaculation of semen or rupture of the hymen is necessary to constitute the offence of rape. (Marsden 1891; Hughes, 1841). Rape as an offence, can only be committed if the offender uses his male organ and it is only committed via the vagina (Khan, 1990). This means that intercourse via the anus or with any other object other than the male organ is not rape. However such acts may be punished under Section 360 CC or Section 285 PC which are provisions relating to indecent assault, or under Section 355 CC or Section 284 PC relating to assaults with intent to commit unnatural offences.

An essential feature of the offence of rape is the absence of the consent of the victim. Consent in this sense must be real (Buari, 1964). It is however not an excuse to say that the victim is a common prostitute, or that she consented to sexual intercourse with the accused person on other occasions. Though it should be stated that these facts may make the court not to believe the victim's evidence that she did not consent.

It is to be noted, that consent would not be said to have been given in the following instances: That is consent as a result of fraud (Williams, 1923); consent by threat (Jones, 1861), consent got when the victim is drunk (Lang 1975) or young (Howard, 1965); where the victim is mentally deficient (Barret, 1875), where the accused impersonates the husband of the woman (S. 357 CC; section 282 PC) or where her knowledge of understanding are such that she is not in a position to decide whether to consent or resist. In addition the Penal Code states in Section 282(1) that consent will not be regarded as real where it is obtained by fear of death or of hurt.

In spite of the fact that the Criminal Code and the Penal Code are the principal statutes on rape in Nigeria, there are other statutes that deal with the offence of rape. One of such is the Evidence Act (1990). As regards the evidence required in the successful prosecution of a rape case, section 210 of this Act provides that where a victim complains of rape, evidence may be shown that she is of general immoral character and that she had sexual intercourse with other men including the accused person. The presumption would appear to be that an adolescent female with a lot of sexual experience is more likely to have consented to sexual relations with a man and that she is of immoral in character.

Another relevant area of evidence as it relates to rape, is the issue of corroboration. It would appear that an adolescent female between the ages of thirteen and sixteen may have to look for another evidence to corroborate her evidence to secure a conviction in a rape charge. It must be stated that this is not a rule of law but a rule of practice in Nigeria. The rule is that, it is unsafe to convict upon the uncorroborated testimony of the complainant only (Ogwudiegwu, 1968; Ibeakanma, 1963). As aptly put by Ademola Chief judge (West) (as he then was) in Inspector General of police Vs Summonu (1957)



"It is not a rule of law that in sexual offences, an accused person should not be convicted on the uncorroborated evidence of the prosecutrix, but the proper direction is that it is not safe to convict on the uncorroborated evidence of the prosecutrix, but that the jury may having paying attention to the warning, nevertheless convict if they are satisfied of the truth of the evidence"

However, the jury system no longer operates in Nigeria, therefore it is the judge, sitting alone, that cautions himself, that it is unsafe to convict an accused, if the evidence before him is uncorroborated by an independent testimony of another witness.

Furthermore, there is an irrebuttable presumption under the law of evidence as it relates to rape and all other sexual offences that have sexual intercourse as one of their requirements. This is that a boy below the age of twelve years (12) is presumed to be incapable of having sexual carnal knowledge. (Section 30 CC; Waite, 1892). However the Penal code goes on to qualify this presumption by stating that this presumption is only applicable to children above seven years (7) and under twelve years of age who have not attained sufficient maturity of understanding to judge the nature and consequences of an act (section 50 PC). This provision under the Penal Code is applicable to all offences and not exclusive to sexual offences. The issue of immaturity must be proved under the Criminal Code. It is important to note that such a boy below twelve years of age, though cannot be charged for rape, can be charged for indecent assault.

On the issue of punishment, rape being the most serious kind of sexual assault attracts a punishment of imprisonment for life with or without whipping under section 358 CC and under section 283 PC and the punishment for rape is life imprisonment or any less term. However there is an additional penalty under the penal Code and this is an addition of a payment of fine.

The Law on Defilement.

#### The Law on Defilement

Defilement is another sexual offence. The offence of defilement is categorized according to different ages. It falls into two categories. These are defilement of girls under thirteen years (13); and defilement of girls under sixteen years (16) but above thirteen years. For this purpose, only cases of defilement of adolescent girls will be considered.

#### Defilement of girls under Sixteen years but above thirteen years

This is another offences commonly committed on female adolescent in Nigeria Under section 221 CC, any person who has unlawful carnal knowledge of a girl under the age of sixteen but above thirteen years is liable to two years imprisonment. It should be noted however that the ages of thirteen and sixteen years applies only to Lagos State. In other parts of Western and Eastern States, the age ranges are eleven and thirteen years.

The term "unlawful Carnal knowledge" is as defined in the law of rape (Section 6 CC; Section 282 PC). Furthermore the presumption that a boy below the age of twelve years is incapable of having carnal knowledge under the Criminal and Penal codes also apply to the offence of defilement. However a distinction in the laws of rape and defilement is that under the law of defilement, consent is not a requirement. The accused is held to be guilty even

when the victim consents.

Under Section 39 of the Penal code, a girl under the age of fourteen years, cannot give her consent. It is noted that in Northern Nigeria, for all purpose, the offence is called rape where the victim is an adolescent girl under the age of fourteen years. This is disregarding the fact whether she consents or not to sexual intercourse. Therefore the difference between the position in the North and that in the South is that in the south, under the Criminal Code, the adolescent girl of between thirteen and sixteen years of age (13-16 years) is protected from unlawful carnal knowledge because the law regards it that she is incapable of giving consent. On the other hand in the North, it is only a girl under the age of fourteen years (14) that is regarded as incapable of giving her consent to sexual intercourse. After the age of fourteen years, the law in the North is that if the adolescent girl gives her consent to sexual intercourse, then no offence has been committed. However if she does not consent and there is sexual intercourse, the offence of rape is said to have been committed. Under the Criminal Code, if a girl below the age of sixteen years (16) but thirteen years does not consent to an act of sexual intercourse, an accused can be charged for rape despite the age of the victim (Ratcliffe, 1882). The rationale of this offence of defilement is to protect female adolescents who while they may understand the act, may easily be open to persuasion and exploitation because of their age and inexperience.

Under Section 221 of the Criminal Code, it is a defence to the accused to prove that he believed on reasonable grounds that the girl was sixteen years of age or above sixteen years. However under Section 222 (C) of the Criminal code, this defence would only avail the accused person, if he is under twenty one years of age (21) and he has never been previously charged for any such offence. In the North an accused has a defence if he can prove that he has the intelligent consent of the girl, whatever her age. However it must be noted that in the North, if the accused believed that the girl is sixteen years or above and whilst having sexual intercourse with her, she does not consent, this act will amount to rape. This defence is only open to the accused only where the girl consents and it is found out that she is below the age of sixteen whereas the accused believed she was above sixteen years.

It is note worthy that proof of age under the law is usually by medical evidence, evidence of parents or witnesses who has personal knowledge of age or facts surrounding age, and a birth certificate obtained under the Birth, Death and Burial Act or other legislations.

The law on defilement makes provision for the adolescent female who is mentally deficient. A mentally deficient person is a person suffering from a state of arrested or incomplete development of mind which include severe impairment of intelligence and social functioning (Card, 1992). It is an offence to have or attempt to have unlawful carnal knowledge of an adolescent girl who is of unsound mind (Section 221(1) CC; Section 39b and 282(1)e PC).

The issue of consent is not a requirement under this offence since it is known that the mentally deficient female adolescent will have an impaired concept in the conduct in question. In addition, the question of age is not of importance where the victim is of unsound mind



since such a victim of any age is vulnerable and easily open to persuasion and exploitation.

There is a time limit, for the commencement of prosecution in a case of defilement. Under the Criminal code, the prosecution for an offence of defilement must start within two months after the offence is committed and an accused cannot be convicted upon the uncorroborated evidence of one witness (Section 221 C). This means, the evidence of one witness cannot sustain a conviction in a case of defilement except there is an independent testimony of another witness. The issue of corroboration in defilement, unlike in the case of rape is required as a matter of law and not of practice. This is by virtue of Section 178(5) of the Evidence Act (1990).

Like in other sexual offenses, the punishment for defilement is a sentence to a term of imprisonment, but it attracts a lesser term, which is two years imprisonment (Section 221 CC).

#### The Law On Indecent Assault

Indecent assault is a common sexual offence committed on adolescent girls, but it has been trivialized because of the level of tolerance and permissiveness in the Nigeria Society. Except in cases of gross indecency which falls slightly short of defilement or rape, the offence of indecent assault has low reportability rate like other sexual offences (Oloruntimehin, 1992).

The codes does not define an indecent assault. However an assault by virtue of section 252 CC is committed when a person strikes, touches or moves or otherwise applies force of any kind to another without his consent or with his consent if such consent is obtained by fraud. An assault is indecent when it is morally disgusting, obscene or offensive. It should be stated that fondling or touching certain parts of a girl or woman without her consent generally is indecent assault.

At a tender age, adolescent girls are sometimes exposed to unnecessary risks such as hawking in motor packs, market places or working as service girls at bars and eating places. Due to their immaturity and ignorance these girls at times do not realise that they are indecently assaulted. The offence is provided for in Section 222 Criminal Code and Section 285 of the Penal Code. In Section 39 of the Penal code, a female under the age of fourteen is regarded as being incapable of giving consent and also a female of unsound mind, or one under fear of injury cannot give consent. Furthermore, under the Penal Code, consent by a person under the age of sixteen, to an indecent assault by her teacher, guardian or any person entrusted with her care or education is deemed not to be consent. This provision is to protect the female from indecent assault by school masters, guardians or persons responsible for the adolescents care and education (Section 285 PC). Under Section 222 CC, indecent assault is said to be committed when any person unlawfully and indecently "deals with" a female under the age of sixteen (Chauhan, 1981). The term "deals with" includes doing any act which if done without consent would constitute an assault as seen in Section 252 of the Criminal Code where the term assault is defined. Under the Criminal Code Section 222, the offence attracts a punishment of two years imprisonment or three years with or without whipping where the female is below thirteen years. It is note worthy that under the Penal

Code, the punishment of the offence of indecent assault is more severe. Gross indecency attracts punishment for a term of imprisonment which may extend to seven years in addition to a fine.

As discussed above, the restriction on the defence of reasonable belief that the female is above sixteen years of age also applies. Therefore an accused person can only raise this defence if he is below the age of twenty one years of age and he has never been charged for such an offence.

#### THE INJUSTICE

While most of the sexual offences discussed above are protective in purpose, in the totality, the law has not provided adequate protection for the female adolescent in Nigeria. An in-depth study of these offences has revealed that injustice is still inflicted on the adolescent girl.

Tracing the history of the law on rape, it was said that the creation of the offence was not to protect the female. The truth is that rape was regarded as theft of another man's property (Le Grand 1973; Mitra 1979). The injustice therefore arose right from the inception of the offence. The objective of the law of rape should be the protection of the female as to her choice of partner in intercourse. In the case of a female child or adolescent, her protection should be as a result of her age and for the defective female, who, due to the mental deficiency cannot decide between what is good or bad.

#### "Unlawful Carnal Knowledge"

The term as seen above excludes sexual intercourse between husband and wife (Section 6 CC) or sexual intercourse of a man with his wife who has attained puberty (S. 282 PC). Interestingly, the rationale for this position of the law dates back to 1736, when Hales stated that

"But the husband cannot be guilty of a rape committed by himself upon his lawful wife for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind into her husband which she cannot retract"

It is however not surprising that such a statement could be made during that period, because at common law it is believed that a husband could inflict corporal punishment on his wife and restrict her liberty.

It is known that in some cultures in Nigeria, early marriages are encouraged and enforced among the adolescent girls. This could be as early as the age of thirteen years. There appears to be a contradiction in the rationale behind the laws on rape and defilement and the issue of consent in the law of defilement. The contradiction is that on one hand, these females are being protected by the law, because it is felt that they are inexperienced due to the age. On the other hand carnal knowledge of such a young adolescent female, by her relatively older husband without her consent is not regarded as an offence under the law. This is injustice. Although the law should not dabble into domestic issues, the adolescent girl



albeit a wife should be shielded from sexual exploitation. In addition, customs like early marriage harmful to the development of the adolescent should be prohibited (Grange, 1990; Ebigo, 1990).

This injustice in the Nigeria law becomes apparent now that there is a review of the English Law in the area of marital consent. It is known that the English Law is the source of the Nigeria Law on this issue of Criminal Law. In England, right from the middle of the twentieth century, the presumption of marital consent has whittled away by the court devising exceptions to it. In *R.V. Clarke* (1949), the judge held that the wives deemed consent to intercourse had been revoked by an order made by the Justice that she no longer be bound to cohabit with her husband. Again in *O'Briens case* (1974), consent was said to have been revoked by the pronouncement of an order of the court granting a divorce. The judge at that time, said that consent was to sexual intercourse, during the time as the ordinary relation created by the marriage contract subsisted between them. Furthermore, the courts decided that mere filing of a divorce petition would not vitiate the marital consent (Steele 1976). However, the issue of marital consent has witnessed a change in England with the decision of the House of Lords in *R V R* (1991). The common Law rule on marital consent has been swept aside and there is no marital exception to the law of rape. It was held in *R V R* that

"The Common Law rule is capable of evolving in the light of changing social, economic and cultural development. Hales proposition reflected the state of affairs in these respect at the time it was enunciated. Since then, the status of women and particularly married women has changed..... Hales proposition involves that a wife gives her irrevocable consent to sexual intercourse with her husband under all circumstances and irrespective of the state of her health or how she happens to be feeling at the time. In modern times, any reasonable person must regard that conception as quite unacceptable"

The position of the law in the North that it is only where the wife has attained the age of puberty that sexual intercourse between husband and wife would not amount to rape where consent is absent (s. 282 PC) does not make the adolescent's position better. In modern days where females are now known to be attaining puberty at a very early stage, it is an injustice on the young married adolescent girl, to allow her husband to have sexual intercourse with her at any time without her consent, because the law takes it that she has attained puberty, even when it is at an earlier age.

The recent change in the English Law as discussed above, is an enviable decision which if incorporated into the Nigerian legislation, will afford protection to the adolescent girl forced into early marriage.

### Consent

From the law, it is clear that consent as a result of threat, intimidation or fear of harm is no consent. However it is discovered that it is left to the court to decide the extent to which it will vitiate consent and this fact has in some cases resulted in injustice. In *R V Olugboja*, (1981) a constable induced the victim to consent to sexual intercourse by threatening to report her for an offence, and he was held not liable for rape by the court. The court held that the

victim had a benefit to derive by consenting, which she actually did. It is submitted that this is injustice. So far it found as a truth, that consent was as a result of threat or intimidation, it should not matter whether the victim will derive any benefit by consenting. Such a fact should vitiate consent.

### Corroboration

The need for corroboration in cases of sexual offences is another area that inflicts injustice on the adolescent girl. It is known that, rape and defilement like other sexual offences are not usually committed in the full view of the public. The law however stipulate that, independent evidence like the distressed condition of the complainant after the act. (Redpath 1962), conduct of the accused including a confession of the offence by the accused (Ojo, 1980) and other factors soon after the offence may corroborate the evidence at trial. It should be noted that this independent evidence may be easily proved in developed countries where telephone services are readily available and the police can promptly respond to a call. A victim in such a country, can make use of such developed Communication facility and the police can quickly get to the scene of crime. This will enable the police to see and give evidence as to her state of distress immediately after the crime. It is submitted that these facilities are not available in Nigeria and in most cases, that is if the victim reports, it is after she has cleaned herself up, by which time there is little or no evidence to show that she was indeed sexually assaulted. Though the requirement of corroboration is plausible, nevertheless care should be taken not to prejudice the victim.

### Trial and Cross Examination

Another area of injustice comes up during the trial and cross examination of an adolescent victim. The traumatic experience of a female adolescent in the court of law during trial of a sexual offence and the exposure to public glare is an artefact of inadequate and insensitive procedure of handling a young sexual victim. A female adolescent who has been sexually assaulted may, due to shame and exposure to the public be incoherent. The fact is worsened when such a victim is left to the counsel of the accused for cross examination, and she is asked about her past sexual life, her history and character. This type of evidence is prejudicial to the victim and may make it difficult for her to prove that she did not consent.

Another area of injustice is brought about by the fact that the adolescent girl, who is a victim of a sexual assault is subject to give evidence as a prosecution witness. In fact she is the complainant and she must give evidence to substantiate her case. In most cases, in the process of giving evidence, she may break down in tears, she may be embarrassed with questions about her past sexual life. On the other hand, the accused person is not compelled in law to give evidence and he may choose not to give evidence (Walklate 1989). It should be stated that victims previous sexual activities though relevant should not be overemphasized in court. This is because, it has the tendency of beclouding the issue at hand and diverting unnecessary attention to the victim. The embarrassing position of a sexual victim and the



social stigma on her may be part of the reasons why only one in about twenty cases of sexual assault is reported. (Oloruntimehin, 1992; Glaser and Frosh, 1988).

#### Irrebuttable presumption of a boy below twelve years

The irrebuttable presumption that a boy below the age of twelve years is incapable of having sexual intercourse as provided in Section 30 CC and therefore cannot be convicted for rape or defilement is unreasonable, unfounded and a gross injustice on the adolescent female who has been raped or defiled. It is difficult to justify this type of presumption. If it is based on the presumption that a male boy of twelve years has not reached puberty, the presumption is ill-founded. Furthermore, the issue of puberty is irrelevant to his capacity to sustain an erection and therefore penetrate the victim as required by the law. The issue of puberty may be relevant had it been that the offences of rape and defilement require that a full act of intercourse ending in ejaculation is necessary. Since this is not the case and such evidence is not required, this presumption is a nonsense and a gross injustice on the female who has been raped in the real sense.

The offence of rape should be secured whether committed by a matured adult or a child, if such a child knows the nature and consequence of having sexual intercourse which is complete upon penetration. The above recommendation is similar to the provision in Section 50 of the Penal Code. If the law wants to protect males of this age, there are other ways by which this could be done and this should not be at the expense of the adolescent girl. Moreover in England, there is a recommendation for the abolition of the presumption by the Criminal Law Revision Committee (command 9213 1984).

#### Punishment

In southern Nigeria, the punishment for sexual offences is imprisonment for a term of years ranging from two years to life imprisonment. (Sections 358, 221, 222 CC). In the case of rape, the punishment could be with or without whipping. In the Northern State, the punishment is also imprisonment but the term of years differ. It ranges from life imprisonment to seven years imprisonment. Under the Northern law, in addition to this term, the accused person pays a fine. It is discovered that under the present Nigerian criminal justice system, focus is on both the state and the offender and the victim is usually excluded. The Nigerian Criminal Justice System has not made provisions to tackle the issue of remedies to victims. This present position of the Nigerian Criminal Justice System is unlike what obtains under the Customary African Criminal Justice System which focused mainly on the interest of the victim, the community, and the offender. Up till now, the native courts reject the approach of the common law which takes into consideration the interest of the victim (Adeyemi 1989).

The injustice to the adolescent female becomes apparent in this issue of punishment when it is realised that the accused if convicted, go into prison for the term of imprisonment, and after serving the term he is released, or in some cases he may be released before the expiration of the term for being of good behaviour. On the other hand, the victim who has

suffered the shame, sometimes with minor or serious injuries, or psychological damage from the sexual assault which may have lasted a few minutes or hours, is expected to be pacified by the fact that the person who assault her has been put away for sometime. Meanwhile such a victim is left with a permanent impression which may be for a life time or with long term effects. According to Adeyemi (1992), rape and other sexual offence tend to be committed within the domestic environment predominantly by neighbours, co-tenants, other acquaintances and lastly (and very rarely too) by strangers. Following this assertion by Adeyemi, it is injustice to a victim, where the violence is located near the home situation, and the victim may have to live in the same environment with the accused after he is released from prison. The injustice becomes more obvious on the victim, where the offender was not convicted but in fact the act occurred. In such a case, the victim is usually embittered for not receiving any justice.

Furthermore, the classification of the punishment of an offender according to the age of the victim that has been sexually abused has no justification and it is an injustice on the adolescent female. The punishment for defiling a girl under the age of thirteen years is life imprisonment according to Section 218 CC. This is also the punishment for having sexual intercourse with a female adult who does not consent. An accused who has defiled an adolescent girl under the age of sixteen years but above thirteen years in Section 221 of the Criminal Code has a term of two years imprisonment imposed on him. This is also the punishment for an offender who has sexually assaulted a defective adolescent girl (section 221(2) CC). The difference between these two provisions above is that of age, but the requirement are almost similar. Consent is not necessary in the case of defilement, this is because it is a more serious offence having regard to the age of the victim. If the law seeks to protect adolescent females and generally from sexual assault due to either their age or mental deficiency, there is no rational reason why there should be such a wide gap in the punishment meted out to any offender that sexually assault a female under the above age groups.

#### Limitation of Time

There is the problem of limitation of time and this is another area of injustice on the adolescent female, in the law on sexual offences. The limitation of time for the prosecution of the case is found in the offence of defilement. (Section 221 CC). There is no corresponding provision under the Penal Code. The law is that, the prosecution for the offence of defilement involving an adolescent must commence within two months after the sexual offence was committed. If prosecution does not commence within this period, the offence becomes statute barred, that is it can no longer be prosecuted. It should be noted that generally, it is not in all offences of a sexual nature that time limitation is imposed. For example, there is no time limitation for the prosecution of an offence of rape, which is equally a serious sexual offence. The time limitation stipulated for the offence of defilement an equally serious sexual offence is unwarranted and cannot be justified. Having regard to the



nature of the offence of defilement, the age of the victim involved, the physical damages it causes on the victim and the social stigma on such a victim, it is submitted that the law taking note of these facts, should give reasonable time to the victim (complainant) to get herself together and calm enough to give evidence in court under the full view of others. (Estrich 1987) This determination and courage may take some time. This time limitation, which is too short, only inflicts injustice on a victim who is ready to prove her case. It is not advocated that the time should be left open but that it should be extended to twelve months. Since rape which is equally a grievous sexual offence has no limitation of time, there should not be a short time limit for the offence of defilement, and the age of the victim in a case of defilement should not be a disadvantage, as to bring injustice on her.

### Social Stigmatization

The society has a part it plays in inflicting injustice on the adolescent female in sexual offences. Considering the nature of this crime, which carry a high degree of social disapproval and the odium which victims believe would be attached to them, victims of rape especially the adolescent girl in most cases do not report or are advised not to report sexual violence on them to the appropriate authority. This accounts for the low reportability rate of sexual offences in Nigeria. (Oloruntimehin 1992). In Nigeria, a known victim of rape is regarded as being of loose morals, and in the choice of a life partner she is definitely not considered as a suitable choice. For these reasons and many others, the victim of rape prefers to suffer in silence.

### RECOMMENDATIONS

This paper has highlighted and examined the laws on specific sexual offences and the injustice brought about on the adolescent female. There is need for reforms in certain areas of the law.

#### Review of some existing laws

There is need to review the laws on sexual offences in line with changes in the society. With social and cultural development, the Criminal code which was enacted about four decades ago is due for a major review. It is recommended that a reform committee be set up to look into the present laws on sexual offences in Nigeria. The committee should look at the recommendations of different committees in other countries in this area of the law and where these are relevant and applicable to the Nigerian setting, adopt such recommendations. For example in England, the principal statute on sexual offences in the sexual offences Act 1956, amended by the 1976 Act. There is already an attempt to restate the sexual offences law in England with the setting up of the Criminal Law Revision Committee. Several recommendations of this committee were incorporated into the 1989 Draft Criminal Code Bill of England. This Draft Criminal Code Bill restates the present law on sexual offences with some substantial amendment. The Draft Criminal Code Bill was in response to a strong support for codification of the English Criminal Law.

Areas that should be review in the law on sexual offences in Nigeria include the following:

- (a) The presumption that a boy under the age of twelve is incapable of sexual intercourse should be abolished (Clause 84 of the Draft Criminal Code Bill of England).
- (b) The rule that allows evidence of 'past history of the victim's sexual habit' should be relaxed. The Nigerian law should adopt the recommendation of an advisory group on the law of rape appointed in England in 1975 that a woman's sexual experience with partners of her own choice are neither indicative of untruthfulness nor of general willingness to consent.
- (c) In the light of modern psychology, the technical rule of corroboration in sexual offences as discussed above is a crude rule. If in other offences, evidence of the victim is sufficient, the evidence of sexual assault by a victim should be sufficient if well proved to sustain a charge of sexual assault.
- (d) The time limitation for the commencement of action in defilement cases is too short. The time for commencement of prosecution should be left open as in the case of rape. If a victim of rape is not restricted, then the victims of other sexual offences should not be restricted.
- (e) On the issue of punishment, imprisonment, fines or whipping should not be the only punishment for sexual offences as the victim does not derive any visible benefit. It is recommended that there should be remedies available for the victim. This should include compensation. Presently, in so far as the Southern provisions are concerned, there are no provisions on compensation as a form of sentence. It is only under the Penal Code (Section 78) that the courts are empowered to order a convicted person to pay compensation either in addition or in substitution for any other punishment. However the use of the words ".....pay compensation to any person injured" in that provision, is restrictive. The phrase "...pay compensation to any person or any lawful complainant who suffers injury, loss or damage...." is suggested. This is because the word "injured" may be restricted to physical injury only, and furthermore the suggestion allows the husband of a rape victim to be brought in and adequately compensated. (Adeyemi 1989). It is therefore suggested that compensation as a form of sentence in cases involving sexual offences, should be extended with the suggested phrase into the Criminal Code.
- (f) In addition, concerning sexual offences as it affects female adolescents, the law makers should adopt the recommendation of the seventh United Nations Congress on the prevention of crimes and the Treatment of Offenders on "The Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power" The recommendation states:

"The Declaration recommends measure.....to improve access to justice and fair treatment, restitution, compensation and social assistance for victims of crime"

These measures should include legislations to advance the victim's cause in sexual offences. This will be in line with the steps taken in the United States of America where there exist two main legislations to advance the victim's cause. These are The Federal



Victims Witness protection Act 1982 and The Federal Victims of Crime Act. Furthermore, France, England and Wales are some other countries setting the trail for victims support. (Waiklate 1989) It is recommended that Nigeria should also adopt the method.

- (g) It is also suggested that centres like "the Rape Crises Centre" and "Refuge Movement", available in other countries, should be established in Nigeria, where victims of sexual offences can go to seek medial, psychological and legal help. The aim of such centres should be to provide a place where adolescent girls especially, who have been sexually assaulted can talk with professionals and other adolescents who are also victims. These centres should be opened at all times. In addition, such centres should educate adolescent girls about the reality of rape and other sexual offences and ways of preventing and resisting sexual molestations and future attacks. Moreover coping strategies for victims should also be given at such centres.
- (h) There has been several calls for the abolition of the custom of early marriage. It is again emphasized that early marriages amongst adolescent girls should be prohibited. presently, there are some adicts prohibiting this custom in certain areas in the North. This issue should be addressed as a national problem as it exposes these girls to sexual and exploitation which contravene Article 39 of The United Nations Convention on the Rights of the Child. It must however be stated that Nigeria ratified this Charter on March 21 1991.

## CONCLUSION

An adolescent female like any Nigerian has rights. She has a right to be protected and shielded from acts such as sexual exploitation and abuse, that are harmful to her. Where she is concerned, the police, the courts and the society in general must have as their primary consideration her best interest. Steps must be taken to protect the female adolescent from all forms of injustice arising from the present position of the law on sexual offences. The adolescent female, is a future leader. Everything must be done to preserve her from physical, emotional and moral dangers so that she can develop normally. An atmosphere devoid of injustice ensured for the female adolescent, guarantees a better tomorrow for the Nation.

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