

**A Legal Perspective of Domestic Violence In The Home**

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**LCU/PG/002724**

**Being A Thesis Written In The Faculty Of Law And Submitted To The Postgraduate  
College, Lead City University, Ibadan**

**In Partial Fulfillment Of The Requirement For The Award Of Master Degree (LL.M) in  
Law.**

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## DECLARATION

I, Adetutu Banjo hereby declare that this long essay titled ‘A legal perspective of Domestic Violence in the Home’, was carried out by me in the faculty of Law, Lead City University, Ibadan, under the supervision of Dr.Oluyemisi Abimbola. The information derived from the literature has been fully acknowledged in the text and the lists of references provided. No part of this work has been presented for another degree or diploma at any institution.

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**ADETUTU BANJO**

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## CERTIFICATION

**This is to certify that Adetutu Motunrayo Banjo with matriculation number LCU/PG/002724 carried out the research work titled ‘A Legal Perspective of Domestic Violence In The Home’ in the Department of Law, Faculty of Law, Lead City University, Ibadan, Oyo State, for the award of the Master of Laws(LL.M) Degree and that this has not been previously submitted**

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## APPROVAL

This research entitled 'A Legal Perspective Of Domestic Violence In The Home' written by Adetutu Motunrayo Banjo has been read and approved as meeting the standards of the Faculty of Law, Lead City University, Ibadan, in partial fulfilment of the requirement for the award of Master of Laws (LL.M) degree of Lead City University, Ibadan.

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## **DEDICATION**

I dedicate this Long Essay to God Almighty my creator, my strong source of inspiration, wisdom, knowledge and understanding. He has been the source of my strength throughout this program and on His wings only I soared.

I also dedicate this to my darling husband Mr. Olusesan Taiwo Banjo and my supervisor Dr. Oluyemisi Abimbola ,who encouraged me all the way and whose encouragement have made sure that I give it all it takes to finish that which I have started. May the blessing of God be with them now and always “Amen”

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## Abbreviations

UDHR	Universal Declaration on Human and People's Right
CFRN	Constitution of the Federal Republic of Nigeria
ACHPR	African Charter on Human and People's Rights
FCT	Federal capital Territory
HR	Human Rights
NHRC	National Human Rights Commission
PCC	Public Complaints Commission
LAC	Legal Aid Council
FREP	Fundamental Enforcement Procedure Rules

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## ABSTRACT

*Domestic violence is one of the social vices that are prevalent in a society. The negative effects cannot be overemphasized. It is important to protect children in violent homes from the negative effects in order for them to grow up to be responsible adults. Thus, the aim of this study is to appraise and critically examine the legal perspective of domestic violence in the home with a view to enforcing provisions of the law against perpetrators and to propose timely legal intervention for the reduction of domestic violence.*

*This study adopted a qualitative methodology, that is, library-oriented research. It makes use of both primary and secondary sources. The primary sources: for instance includes, the 1999 Constitution of the Federal Republic of Nigeria, as amended, Violence Against Persons Prohibition Act, 2015; The Administration of Criminal Justice Act 2015; Protection against Domestic Violence, Lagos State; Ekiti State Gender Base Violence; The Ebonyi State Protection against Domestic Violence Law, 2007; The Cross River Domestic Violence; Maltreatment of Widow's Prohibition Law, 2014; judicial precedents and opinions of legal scholars on the discourse.*

*This study found out that in order to drastically reduce the menace of domestic violence in Nigeria, different laws have been put in place by the National assembly and the state houses of assemblies. However, the major problem with the laws in place is the enforcement mechanism.*

*This study concluded that the stakeholders and the major actors in the administration of justice must take up their responsibilities and ensure that the menace of domestic violence does not hunt the society by charging, prosecuting and ensuring that the offenders face the wrath of the law.*

**Keywords:** Domestic Violence, law, home.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background to the Study

Violence refers to the deliberate and forceful application of physical power, typically marked by intense anger, passion, or indignation. It often involves a heightened emotional state, such as fury or outrage, which amplifies the aggressiveness of the act. In many cases, violence is executed unlawfully, with the clear intent to cause harm, injury, or damage. It is an intentional and forceful response, often driven by negative emotions or extreme frustration, and it transgresses legal and moral boundaries by its very nature. Whether through direct physical aggression or destructive actions, violence seeks to exert control or inflict suffering, often disregarding the rights and well-being of others.<sup>1</sup> Domestic violence can be broadly defined as a pattern of abusive behaviors—whether physical, sexual, emotional, or verbal -that occur within relationships where individuals have shared an intimate or familial connection at some point. This abuse can manifest in various forms: physical violence, such as hitting, slapping, or choking; sexual violence, including coercion or assault; emotional abuse, which can involve manipulation, humiliation, or controlling behaviors; and verbal abuse, which might encompass name-calling, threats, or belittling. Domestic violence does not necessarily require physical contact but can also involve psychological and emotional harm that undermines the victim's sense of safety, autonomy, and well-being. It can occur between partners, spouses, or family members, and the abuse often takes place behind closed doors, making it a deeply hidden and complex social issue.<sup>2</sup> The issue of domestic violence being perceived as gender-biased has been a significant

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<sup>1</sup>B.A. Garner, *Black's Law Dictionary*, (9<sup>th</sup> Ed 2009). United States: Thomson Reuters Publishing Company, 2009) at 1705.

<sup>2</sup>Ibid p. 1705.

jurisprudential concern in Nigeria for an extended period. Historically, the legal framework in the country, as it stood at the time, failed to acknowledge the possibility that men could also be victims of domestic violence—whether in the form of sexual, emotional, or physical abuse. Nigerian law, which has often been influenced by cultural norms and patriarchal structures, primarily viewed domestic violence as something that happened to women, with little or no legal recognition given to the experiences of male victims. This gendered perspective not only excluded men from receiving the necessary legal protection but also reinforced harmful stereotypes about masculinity, suggesting that men could not be vulnerable to abuse in intimate or familial relationships. As a result, cases where men were subjected to domestic violence—whether by a female partner or another family member—were often dismissed or not taken seriously within the legal system. This gap in the law has sparked considerable debate, with advocates calling for reform to ensure that all victims of domestic violence, regardless of gender, receive equal protection under the law and that domestic violence is recognized as a pervasive issue that affects both men and women, in varying forms.<sup>3</sup>

Against this backdrop, it can be said that one of the deeply rooted ills of society, which has long been recognized as a major social problem, is domestic violence. This issue, which encompasses a wide range of abusive behaviors—physical, emotional, sexual, and psychological—has been acknowledged as a significant violation of human rights and personal dignity. As society has become more aware of the destructive impact of domestic violence on individuals and communities, numerous laws have been enacted both at the national and international levels to prohibit such abuse and provide legal recourse for victims. These laws, which span across various legal domains, from criminal law to family law, aim to protect individuals from violence

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<sup>3</sup>O.N. Aihie, *'Prevalence of Domestic Violence in Nigeria: Implications for Counselling'* (2009) 2 (1), *Edo Journal of Counselling*, 3.

and coercion within intimate and familial relationships, and to ensure that offenders are held accountable for their actions. Despite these legal provisions, however, domestic violence continues to persist, often fueled by societal factors such as gender inequality, cultural attitudes, and economic stress. Nevertheless, the growing body of laws ranging from the Violence Against Persons (Prohibition) Act in Nigeria to international conventions like the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—signals a collective effort to eradicate domestic violence and support victims in seeking justice. The legal framework, while vital, is just one aspect of a broader societal shift needed to address the root causes of domestic violence and foster a culture of respect, equality, and non-violence. This includes a wide range of harmful behaviors, such as sexual abuse, emotional abuse, physical abuse, and many other forms of mistreatment that individuals may endure within the context of intimate or familial relationships. Sexual abuse, for example, refers to any form of unwanted sexual contact or coercion, ranging from rape to other forms of sexual assault, harassment, or exploitation. Emotional abuse, on the other hand, encompasses a variety of manipulative tactics that aim to control, belittle, or undermine the victim's sense of self-worth, often through verbal insults, constant criticism, threats, intimidation, or gaslighting—where the abuser manipulates the victim into doubting their own perceptions or sanity. Physical abuse includes acts of violence such as hitting, slapping, punching, kicking, or other forms of bodily harm that cause physical injury or trauma to the victim. Additionally, there are many other forms of abuse, such as financial abuse, where an abuser controls or restricts the victim's access to financial resources; psychological abuse, which can involve isolating the victim from friends and family; and even stalking or harassment, which involves repeated unwanted attention or surveillance that instills fear in the victim. All of these forms of abuse are harmful, and their consequences can be long-

lasting, affecting the victim's physical health, emotional well-being, and overall quality of life. Together, these abuses often create an environment of fear, control, and manipulation, making it difficult for the victim to escape or seek help. The concept of domestic violence refers to a range of abusive behaviors that occur within intimate or familial relationships, and while the act of domestic violence itself may not be explicitly prohibited under Nigerian law in a broad sense, specific forms of abuse that constitute domestic violence are, in fact, outlawed. In other words, while the legal system does not necessarily define "domestic violence" as a single, overarching crime, many of the individual acts that make up domestic violence—such as physical assault, sexual assault, emotional abuse, and intimidation—are prohibited by various laws. For instance, the Nigerian legal framework criminalizes physical violence, including battery and assault, under the criminal code, which directly addresses actions such as hitting, slapping, or causing bodily harm. Similarly, sexual violence, such as rape and other forms of sexual assault, is explicitly prohibited under Nigerian law. The Violence Against Persons (Prohibition) Act, enacted in 2015, further strengthens the legal approach by addressing not only physical and sexual violence but also psychological abuse, intimidation, and harassment in domestic settings. Therefore, while domestic violence as a broad term may not be uniformly defined or prohibited, the laws of Nigeria specifically prohibit the harmful actions that contribute to it, offering a legal basis for victims to seek protection and justice. This distinction highlights the complexity of legal definitions and the need for ongoing reform to ensure comprehensive protection for all victims of domestic violence.<sup>4</sup> It is seen as a plague and cankerworm in society, a deeply ingrained issue that spreads silently but insidiously, affecting individuals, families, and entire communities. Domestic violence, in this regard, can be likened to a destructive force that erodes the fabric of

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<sup>4</sup>Violence Against Persons Prohibition Act, 2015; Protection against Domestic Violence, Lagos State, 2018; Ekiti State Gender Base Violence Law, 2019 etc.

society, inflicting long-lasting damage to its victims and perpetuating cycles of trauma and abuse. Much like a plague, it spreads from one generation to the next, often going unreported or dismissed, allowing it to remain entrenched in communities and perpetuating a culture of silence and suffering. The comparison to a cankerworm suggests that it is a problem that starts small or unnoticed but grows and spreads, causing increasing harm over time, weakening the very core of family structures, mental health, and social cohesion.

In fact, it can be said that domestic violence is a pandemic of monumental consequences, much like a disease that affects large segments of the population and has far-reaching effects. This “pandemic” isn't confined to any one demographic across gender, age, socio-economic status, or ethnicity, people are affected by domestic violence, though certain groups may be more vulnerable than others. Just as a pandemic can destabilize societies, disrupt economies, and strain healthcare systems, domestic violence also has extensive social, psychological, and economic repercussions. The emotional and physical toll on victims can lead to lifelong trauma, while the societal costs ranging from healthcare expenses and lost productivity to the destabilization of communities are immense. The legal and law enforcement systems are often overwhelmed by the sheer volume of cases, further exacerbating the problem.

Despite its widespread prevalence, domestic violence is often underreported due to fear, shame, or social stigma, making it even harder to address effectively. Thus, its pervasive nature makes it akin to a hidden epidemic that requires urgent attention, comprehensive legal reforms, and widespread societal intervention. Acknowledging it as a "pandemic of monumental consequences" underscores the urgency with which society must tackle this issue, not just as a private matter, but as a public health and human rights crisis that demands immediate and

sustained action. Also, sexual offense, as an integral part of domestic violence, is punishable with life imprisonment, highlighting the severity with which the law views such acts. Sexual abuse, including rape, sexual assault, or any form of coerced or non-consensual sexual conduct, is a grave violation of an individual's autonomy and dignity. In the context of domestic violence, where such offenses often occur within intimate or familial relationships, the law recognizes the profound psychological, emotional, and physical harm caused to the victim. Consequently, those found guilty of committing sexual offenses in such relationships can face life imprisonment, which reflects the seriousness of these crimes and the state's commitment to protecting victims from such egregious violations.

Additionally, physical abuse, which can include acts like hitting, slapping, choking, or any form of violence that causes bodily harm, is also considered a serious criminal offense under the law. An offender who engages in such acts may be liable for assault, battery, or other related offenses, depending on the nature and extent of the violence. The law provides for various penalties for physical abuse, including imprisonment and fines, and in some cases, the punishment can be quite severe, particularly if the abuse results in significant injury or harm to the victim. The legal framework seeks to hold perpetrators accountable and deter future abuse by imposing these stringent penalties.

In the case of both sexual and physical abuse, the law aims to send a clear message: such conduct will not be tolerated, especially within the confines of a domestic or intimate relationship. Domestic violence, as a multifaceted problem, requires a multifaceted legal response, with punishments that range from life imprisonment for severe offenses to imprisonment and fines for other forms of abuse. This legal approach not only seeks to ensure justice for victims but also

works to reduce the prevalence of domestic violence in society by holding perpetrators accountable and providing a deterrent against future offenses.<sup>5</sup> This will also include childhood abuse, which could also be seen as a form of domestic violence in the context of the above definition. Childhood abuse, whether physical, sexual, emotional, or psychological, constitutes a severe violation of a child's rights and well-being, and, when considered through the lens of domestic violence, can be seen as a form of violence occurring within the family or home environment. Domestic violence is not limited to the interactions between adult partners or spouses; it extends to all forms of abuse that occur within a household, including the mistreatment of children by parents, guardians, or other family members.

Physical abuse in childhood can involve actions such as hitting, beating, burning, or any other form of violence that causes harm to the child's body. Sexual abuse can include molestation, rape, or any form of coerced sexual activity. Emotional or psychological abuse often manifests as verbal threats, constant belittling, intimidation, or manipulation that damages the child's self-esteem, emotional development, and sense of security. Such abuse can have profound and lasting effects on a child's mental health, leading to long-term issues such as anxiety, depression, post-traumatic stress disorder (PTSD), and difficulties in forming healthy relationships in adulthood.

When viewed in the context of domestic violence, childhood abuse becomes part of the broader cycle of violence that can exist within a household. Children who experience abuse may grow up to normalize violent behavior, either becoming victims or perpetrators themselves in future relationships. Furthermore, domestic violence often creates a toxic family environment where power and control are exerted over vulnerable members, including children, and where fear, manipulation, and suffering are daily realities.

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<sup>5</sup> C. Wigwe, *Introduction to Nigerian Criminal Law*, (Ghana: Mouncrest University Publications, 2016) 275.

By including childhood abuse as a form of domestic violence, the definition broadens to recognize that domestic violence can impact people at all stages of life, not just between adult partners. This recognition also emphasizes the need for comprehensive legal protections and support systems that extend to children, ensuring that they are not only protected from harm but are also provided with the necessary resources for recovery and healing. Domestic violence, when viewed in this broader sense, requires an integrated approach that addresses the complexities of abuse in all its forms and ensures that victims regardless of their age are able to access justice and support. It must be noted that what constitutes physical, sexual, emotional, and verbal abuses as forms of domestic violence often times would be influenced by the socio-cultural norms of a particular society. The way in which abusive behaviors are perceived, defined, and responded to is not universally fixed but is often shaped by the values, beliefs, and customs prevalent in a given cultural or social context. What one society may consider an unacceptable act of abuse, another society might not recognize as such, or might even condone under certain circumstances.

For example, in some cultures, physical discipline of children or spouses may be seen as a normal part of family life, and what might be considered physical abuse in one society may be viewed as a traditional or acceptable form of punishment in another. Similarly, sexual abuse in the context of marriage, such as forced sex or marital rape, might not be recognized as a criminal offense in certain societies where cultural or religious beliefs dictate that a wife has an inherent duty to comply with her husband's sexual demands. In contrast, in societies with progressive legal frameworks and a broader understanding of human rights, such actions would be unequivocally labeled as sexual violence and subject to legal sanctions.

Emotional and verbal abuse can also be highly influenced by cultural norms. In some societies, harsh verbal criticism, belittling, or emotional manipulation might be considered part of normal family dynamics, while in others, such behavior would be immediately recognized as psychological abuse. In many cultures, gender roles can play a particularly significant role in how abuse is understood; for example, women may be seen as subordinate to men, and any form of verbal or emotional degradation may be normalized as part of the unequal power dynamics between the sexes.

Socio-cultural norms also affect the willingness of victims to report abuse. In societies where there is strong stigma attached to being a victim of domestic violence, victims may be reluctant to speak out, fearing social ostracism, shame, or dishonor. Gender norms can also influence this dynamic, as women may face even greater social pressure to stay silent about abuse, while men might feel disempowered or emasculated by admitting to being victims of violence, particularly when such behaviors are considered "unmanly" or weak.

Thus, the way domestic violence is understood and responded to can vary widely depending on cultural values, societal expectations, and legal interpretations. Recognizing this is critical for effective intervention, as it underscores the need for culturally sensitive approaches to both prevention and support for victims. This also highlights the importance of legal frameworks that can challenge and shift harmful cultural practices, ensuring that all forms of abuse, regardless of societal norms, are recognized and punished as crimes. Ultimately, the law must strive to protect victims from harm, regardless of whether their experiences align with traditional cultural views of what constitutes "acceptable" behavior in relationships.

Tracing the historical antecedent of domestic violence in Nigeria, as in many other African countries, it is observed that the beating of wives and children has historically been widely sanctioned as a form of discipline. In many traditional societies, physical punishment within the family was not only accepted but often considered a necessary and culturally appropriate method of maintaining order and authority in the household. This practice was rooted in deeply ingrained societal norms that viewed authority figures—especially male heads of households—as having the unquestionable right to control and discipline family members, particularly women and children.

In these cultural contexts, physical violence, including the beating of wives and children, was seen as a legitimate means of enforcing obedience, respect, and moral behavior. Wives, in particular, were often expected to submit to their husbands in all matters, and any perceived act of insubordination or disrespect could be met with corporal punishment. Similarly, children, who were considered the property of their parents, were expected to endure physical punishment as a means of teaching them discipline and respect for authority. This was seen as a way to instill obedience and social conformity, with little regard for the potential psychological or physical harm that might result from such treatment.

Historically, these practices were not viewed as abusive in the traditional sense, as they were so deeply embedded in the cultural fabric of society. In fact, in many communities, the use of physical force to enforce discipline was widely supported, and those who refrained from using corporal punishment might even be viewed as weak or ineffective parents or spouses. In this way, domestic violence—especially in the form of physical punishment—was normalized and

institutionalized, and legal or social interventions to challenge or stop such practices were minimal or nonexistent.

The perception of domestic violence as a culturally sanctioned form of discipline persisted well into the 20th century, despite evolving understandings of human rights and the growing recognition of gender equality. For a long time, the legal systems in many African countries, including Nigeria, did not adequately address domestic violence, in part because it was seen as a private matter within the family unit. In many cases, traditional legal systems or customary laws upheld the authority of the patriarchal figure, often disregarding the rights of women and children who were subjected to violence in the home.

However, with the advent of more modern legal frameworks and the growing influence of international human rights standards, the view of domestic violence as an acceptable form of discipline has begun to shift. Over time, advocacy from women's rights organizations, child protection agencies, and human rights defenders has raised awareness about the harm caused by such practices, challenging the cultural norms that once sanctioned them. Legal reforms, such as the Violence Against Persons (Prohibition) Act in Nigeria, have worked to criminalize domestic violence, including the beating of wives and children, and provide legal protections for victims.

Despite this progress, however, the cultural legacy of physical discipline as a form of control and authority remains entrenched in many parts of Nigerian society, particularly in rural areas or among older generations. This underscores the ongoing challenge of eradicating domestic violence, as deep-seated cultural attitudes towards family discipline must be confronted

alongside legal reforms in order to create lasting change.<sup>6</sup> Therefore, in beating their-children, parents believe they are instilling discipline in them, much the same way as in husbands beating their wives, who are regarded like children to be prone to indiscipline which must be curbed. This is especially so when the woman is economically dependent on the man, a situation that often exacerbates the dynamics of domestic violence and makes it even more difficult for the woman to escape the abusive relationship. In many cases, economic dependence creates a power imbalance where the man holds significant control over the woman's life, including her access to financial resources, mobility, and personal autonomy. When a woman relies on her partner for financial support—whether for housing, food, healthcare, or other basic needs—she may feel trapped in the relationship, unable to leave even if she is subjected to abuse. The abuser may use this dependency as a means of control, threatening financial deprivation, or deliberately withholding money or resources to reinforce the woman's reliance on him.

Economic dependency also increases the vulnerability of women to various forms of manipulation, coercion, and emotional abuse. The abuser may justify his violent or controlling behavior by exploiting the woman's fear of losing financial security, making her feel as though she has no choice but to tolerate the abuse in order to avoid economic hardship. In some cases, the abuser may also belittle the woman's ability to support herself, making her feel incapable of surviving on her own or that she is unworthy of a better life outside the abusive relationship.

Moreover, when women are economically dependent on their partners, they may lack the means or opportunities to seek help, whether from family, friends, or authorities. They may not have access to their own bank accounts or credit, or may be restricted in their ability to find

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<sup>6</sup>UNICEF Innocenti Research Centre. *Domestic Violence against Women and Girls*; Innocenti Digest No .6 - May 2000), [www.unicef-13icdc.org](http://www.unicef-13icdc.org) last accessed 25/10/2023.

employment, further isolating them from potential sources of support. In such situations, the woman's dependence on the man is not just economic but emotional, as she may also feel psychologically trapped, believing that without him, she would have no means of survival or security.

The impact of economic dependence on the ability to leave an abusive relationship is especially evident in contexts where traditional gender roles prevail, and where women are often socialized to prioritize their roles as wives and mothers over their personal independence. This can lead to a situation where the woman feels morally or culturally obligated to stay in the relationship, even if it is abusive, because of societal expectations regarding marriage, family, and female sacrifice. In some cases, extended family or community pressures may also play a role, as there can be strong social stigmas attached to divorce or separation, further trapping the woman in the abusive dynamic.

Addressing the issue of economic dependence is therefore a critical component of efforts to combat domestic violence. Providing women with access to economic resources, education, job opportunities, and financial independence can significantly reduce the power imbalance that makes them vulnerable to abuse. Legal reforms that empower women to gain control over their finances, as well as social programs that offer financial support and shelter for women fleeing abusive relationships, are essential in helping them break free from the cycle of abuse. Additionally, raising awareness about the connection between economic dependence and domestic violence is key to shifting cultural norms and ensuring that women are able to claim their rights to safety, independence, and dignity.<sup>7</sup> The society is basically patriarchal, and

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<sup>7</sup>O.N. Aihie, *Prevalence of Domestic Violence in Nigeria: Implications for Counselling* (2009) 2 (1), *Edo Journal of Counselling*, 3.

women's place within the scheme is decidedly subordinate. This means that, at its core, the social, cultural, and political structures in many societies—especially in patriarchal societies like Nigeria—are built on the foundation of male dominance and authority. In such societies, men are typically seen as the primary decision-makers, breadwinners, and heads of households, while women are often relegated to more passive or supportive roles, primarily centered around domestic duties, child-rearing, and maintaining the household. This power dynamic creates an inherent inequality between the genders, which is deeply embedded in both everyday practices and formal systems.

In a patriarchal system, gender roles are strictly defined, and women are expected to conform to traditional norms that place them in subordinate positions to men. These roles often limit women's opportunities for education, employment, and participation in public life, and their access to resources is often restricted. For instance, women may be discouraged or outright prevented from pursuing careers or higher education, with the belief that their primary function is to support their husbands and care for the children. In many cases, women's financial autonomy is constrained, and they are often economically dependent on male family members, whether fathers, husbands, or brothers, further reinforcing their subordination within the family and society at large.

This patriarchal structure is often legitimized through cultural, religious, and legal frameworks that reinforce the notion that women are inferior to men or that their primary worth is defined by their roles as wives and mothers. In some cultures, the idea that men are the "head" of the family is not only a societal expectation but also a legal mandate, giving men control over decisions related to family finances, child-rearing, and even the mobility and social activities of women.

Women's voices, contributions, and needs may be marginalized, and their autonomy may be seen as secondary to the authority and desires of the male head of the household.

The subordination of women in a patriarchal society also manifests in various forms of gender-based violence, including domestic violence, sexual harassment, and exploitation. In such environments, women are more likely to be subjected to control and abuse by male partners, and their suffering is often overlooked or minimized because of the societal belief that men have a right to assert authority over women. When women's voices and experiences are silenced or dismissed, they become even more vulnerable to exploitation and abuse. The normalization of these power imbalances means that the abuse is often seen as a private or familial issue, rather than a societal or legal concern, making it harder for women to seek help or escape their circumstances.

Moreover, the cultural view of women as subordinate is also reflected in the legal and political spheres. Women may face discrimination in inheritance laws, political representation, and workplace rights. The legal frameworks in many countries still uphold patriarchal values that restrict women's full participation in society, leaving them without adequate protection or recourse in cases of discrimination or abuse.

However, it's important to recognize that this subordination is not an immutable or natural state but a product of long-standing cultural, social, and institutional practices. Over time, social movements and advocacy for women's rights have challenged these patriarchal structures, calling for greater equality, autonomy, and representation for women. In many parts of the world, including Nigeria, significant strides have been made in terms of legal reforms, education, and empowerment initiatives aimed at addressing gender inequality. Yet, the deeply entrenched

cultural norms and practices that perpetuate women's subordination remain a powerful barrier to achieving full gender equality.

In this context, addressing the subordination of women within patriarchal structures requires not only legal reforms but also cultural and societal shifts in attitudes toward gender roles. This includes challenging stereotypes, promoting gender equality in education and employment, and ensuring that women have equal access to resources, opportunities, and decision-making processes in both public and private spheres. Ultimately, dismantling patriarchy is essential to ensuring that women are no longer seen as subordinate but as equal partners in all aspects of life. Domestic violence, therefore, functions as a means of enforcing conformity with the role of a woman within customary society. In many traditional or patriarchal societies, there are deeply ingrained expectations about what a woman's role should be, and these roles are often narrowly defined around being a wife, mother, and caretaker, with little room for deviation or individual autonomy. The use of violence, whether physical, emotional, or psychological, becomes a tool through which these societal norms and expectations are reinforced and maintained. In this context, domestic violence is not just an act of aggression; it is a form of control designed to ensure that women remain within the boundaries of these prescribed roles, reinforcing the power dynamics that keep them subordinate to men.

In customary societies, where traditions and cultural norms dictate behavior, the idea of a "proper" woman is often closely tied to her obedience, subservience, and dedication to the household. Women are expected to be obedient to their husbands, to care for their children, and to maintain the home. Any challenge to this expectation—whether in the form of a woman asserting her independence, expressing her desires, or resisting an abusive relationship—can be

viewed as a violation of these cultural norms. In such cases, domestic violence is often used as a punitive measure to force women back into compliance with their societal roles. It becomes a mechanism of enforcement, ensuring that women do not stray from their prescribed position in the family or the community.

For example, when a woman attempts to pursue education or a career outside the home, or when she expresses a desire to make her own decisions about her life, such actions may be perceived as threats to the traditional family structure. In response, domestic violence may be used as a tool to reassert control, reinforcing the idea that a woman's place is in the home and under the authority of her husband or male family members. Similarly, if a woman seeks to leave an abusive relationship or challenges her partner's authority in any way, violence may be used to intimidate her into submission, reinforcing the belief that any act of defiance against her partner's authority is unacceptable.

This use of violence to enforce conformity also reflects broader societal beliefs about gender and power. In many societies, women are not seen as fully autonomous individuals but rather as property or extensions of male authority. Therefore, when a woman steps out of line—whether by asserting her independence, rejecting abuse, or trying to exercise her rights—it can be seen as an affront to the established power structures, and violence is used as a means to reassert that dominance. The violence is not necessarily about anger or personal conflict; rather, it is about maintaining control and order within the context of deeply ingrained patriarchal norms.

Moreover, domestic violence in this context often occurs with the tacit or overt approval of the wider community. In some societies, family disputes and violence are seen as private matters, with minimal intervention from external authorities such as the police or social services. This

silence, or even passive acceptance, allows the cycle of abuse to continue, as there is little to no societal pressure to challenge the norms that enable such violence. When communities do not condemn domestic violence or actively challenge the cultural norms that justify it, the abusive behaviors are perpetuated, and women continue to be subjected to violence as a means of maintaining their subjugation.

In sum, domestic violence in many customary societies is not just an isolated form of abuse; it is intricately linked to the enforcement of gender roles and societal expectations. It serves as a mechanism for ensuring that women adhere to their traditional roles, thereby perpetuating the broader patriarchal structures that define their place in the family and society. Overcoming domestic violence in such contexts requires not only legal reforms and greater protections for women but also a profound cultural shift in how gender roles and power dynamics are understood and challenged. Only by dismantling these entrenched norms and empowering women to live freely, safely, and autonomously can the cycle of violence and subordination be broken. It therefore does not matter if the woman is economically dependent or not, her position, like that of the children is subordinate. Violence against women in the home is generally regarded as belonging to the private sphere in Nigeria and is therefore shielded from outside scrutiny. A culture of silence reinforces the stigma attached to the victim rather than condemning the perpetrator of such crimes. In many societies, particularly in those with deeply entrenched patriarchal values, there is often an unwritten rule that discourages open discussion about domestic violence and other forms of abuse. This "culture of silence" stems from a variety of factors, including fear, shame, and social taboos surrounding private matters, especially within families and intimate relationships. When victims of domestic violence speak out, they are frequently met with disbelief, blame, or even condemnation, while the perpetrators often remain

unchallenged or, in some cases, even protected. This silence around abuse not only isolates the victim but also perpetuates a system where the perpetrator's actions are excused, overlooked, or even normalized.

In such a culture, the focus often shifts to the victim's behavior, choices, or perceived shortcomings. For example, a woman who reports being abused might be asked, "What did you do to provoke him?" or "Why didn't you leave sooner?" This questioning places the burden of responsibility on the victim, implying that the abuse is somehow her fault. It may even extend to victim-blaming attitudes that suggest the woman deserved the abuse or brought it upon herself through her actions, clothing, or behavior. As a result, the victim is made to feel guilty, ashamed, or responsible for the violence inflicted upon her, rather than receiving the support and compassion she needs. The victim may internalize this shame and feel isolated or stigmatized, leading her to either remain silent about the abuse or stay in the relationship to avoid the social scrutiny or judgment she fears.

On the other hand, the perpetrator of the abuse often faces little or no consequences in a culture of silence. In some cases, perpetrators may be shielded by their families, communities, or even the legal system, which may downplay or overlook the seriousness of the violence. For example, family members might defend the abuser, making excuses like "He was under stress" or "She made him angry," effectively shifting the responsibility away from the abuser and onto the circumstances or the victim's behavior. This not only protects the abuser from facing justice but also sends a dangerous message that their actions are either acceptable or excusable, allowing the cycle of violence to continue.

In many instances, the silence surrounding domestic violence is compounded by social stigma. The victim may fear social ostracism or judgment if her abuse becomes public. In communities where traditional gender roles are rigidly upheld, a woman may be seen as "dishonorable" if she speaks out against her abuser or leaves a marriage, as divorce or separation might be seen as a failure or a violation of cultural expectations. This fear of being stigmatized can trap the victim in an abusive situation, as she may feel that it is better to endure the violence silently than to face the social fallout of speaking out. The result is that the victim remains trapped, not only by the abuse but also by the social barriers that prevent her from accessing help, justice, or support.

Furthermore, the culture of silence is often perpetuated by systemic issues, such as a lack of legal protection for victims, insufficient support services, and weak law enforcement. In some cases, the police or other authorities may fail to take the victim's complaint seriously, trivializing the abuse or even siding with the perpetrator. When legal systems and support networks do not respond effectively to victims' needs, it reinforces the idea that domestic violence is a private matter that should be dealt with behind closed doors, further silencing victims and enabling perpetrators to avoid accountability.

Ultimately, a culture of silence not only protects the perpetrator but also erodes the social fabric by normalizing violence and enabling a cycle of abuse. It discourages victims from speaking out and seeking help, making it more difficult for them to break free from abusive situations. This silence also hampers efforts to challenge the underlying cultural norms that perpetuate domestic violence, such as gender inequality, the normalization of violence in relationships, and the acceptance of abusive behavior. For real change to occur, this culture of silence must be dismantled. Communities, legal systems, and social structures must shift towards a more

supportive and responsive approach that condemns the perpetrator's actions and validates the victim's experience, ensuring that they are not further victimized by stigma, silence, or shame. Only then can the true scope of domestic violence be addressed, and victims empowered to seek justice, safety, and healing.<sup>8</sup>

Furthermore, examples of domestic violence abound in Nigeria. For instance, the most recent abuse is the example of a business mogul, popularly known as “IVD” in Lagos state who passionately watched his wife (Bimbo) burnt to death without any help.<sup>9</sup> Furthermore, according to the Attorney General of Lagos State, Moyosore Onigbanjo SAN, on 1<sup>st</sup> September, 2022, Lagos State Government has a total of 4,860 cases of domestic violence, rape, sexual assaults and others reported between 1<sup>st</sup> September 2021 and July 31, 2022.<sup>10</sup> At the same time, Lagos State Domestic Violence Agency have revealed that 4860 domestic and sexual violence cases have been recorded this year, with 11 women dying from domestic violence incidents in 20 months.<sup>11</sup>

From the above instances, it is quite unfortunate that the issue of domestic violence is rising almost every day and the reason for its prevalence is because there is no law in place that captures the concept of the domestic violence as a whole but only covers some part of the domestic violence. For instance, there are laws regulating physical abuse which includes assault, affray, murder, manslaughter etc. The same thing applies to sexual abuse which includes rape, defilement, abduction etc. but there is no law regulating emotional abuse in Nigeria.

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<sup>8</sup>Afrol News Half of Nigeria's Women experience domestic violence, (2007) <http://www.afro.com/articles/16471> last accessed 25/10/ 2023.

<sup>9</sup> See The Vanguard, 18<sup>th</sup> October, 2022, 8.

<sup>10</sup> See Punch Newspaper 1<sup>st</sup> September, 2022, 18.

<sup>11</sup> See The Guardian Newspaper, 27<sup>th</sup> September, 2022, 27.

Today, the cardinal aim of the law of domestic violence is to protect a person or persons from sexual assault, physical assault and emotional abuse.<sup>12</sup> The Nigerian legal system is characterized by its adversarial method; this system applies to both civil and criminal cases before the courts.<sup>13</sup> Meanwhile, Criminal Procedure includes the administration of the machinery put in place by the state to ensure that offenders are apprehended, investigated, prosecuted, convicted and sentenced. From time immemorial, women have always been presumed to be the victims of domestic violence and this is so as a result of wordings of the Criminal and Penal Code without considering the emerging trends in the society. Thus, A.O. Agomoh was of the view that domestic violence in Nigeria is prevalent because there is no specific law that prohibits it. He asserted further that most of the authors who had written extensively on the discourse majorly wrote on domestic violence against women and sexual abuse which only serves as an integral part of domestic violence.<sup>14</sup> Aihie also posited that the insufficient law on domestic violence is not the major problem because it is one thing to enact the law and it is another to implement it and that Nigeria as a whole lacks an enforcement mechanism in relation to law. He asserted further that a society with laws without an enforcement mechanism is a retrogressive society.<sup>15</sup>

Consequent upon the above, it is seen that the subject matter of domestic violence is of common knowledge globally due to the high rate of occurrence and as such there is the dire need to

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<sup>12</sup> O.C. Emeka & C.T. Emejuru, 'An appraisal of the Jurisprudential role in Nigeria'; *Donnish Journal of Law and Conflict Resolution* (2007) 1 (1) available at <http://donnishjournal.org.ng> accessed 25/10/2023.

<sup>13</sup> J.A Asein, *Introduction to Nigerian Legal System*, (2<sup>nd</sup> ed. Lagos: Ababa Press Ltd. 2005) 8; Also see *Eholor v. Osayande* [1992] 6 N.W.L.R. 524 at 541-542.

<sup>14</sup> A. O. Agomo, *Prevalence of Domestic Violence in Nigeria* (2010) 8 (20) *Nigeria Journal of Psychiatry*, 4.

<sup>15</sup> O. N. Aihie, *Prevalence of Domestic Violence in Nigeria: Implications for Counselling* (2009) 2 (1), *Edo Journal of Counselling*, 5.

address the issue with a view to curbing it.<sup>16</sup> It is to this end that government needs to take positive steps rather than mere rhetoric considering the grave consequences it has on victims and the society at large. Domestic violence could be regarded as a crime against humanity which the law should give the needed bite in order to one day eliminate or minimise its occurrence. We hope that the stigma associated with domestic violence can be done away with as it has led to under reporting of domestic violence cases as victims prefer to live with it than come out to report.<sup>17</sup>

Against this backdrop, this study will appraise the fundamental issues relating to domestic violence in Nigeria.

## **1.2 Statement of the Problem**

It is no more news that the issue of domestic violence goes beyond the sentiments of gender, sexual assault and related offences. It also includes but is not limited to emotional abuse, physical abuse and other related abuses. The laws<sup>18</sup> in place do not recognize emotional abuse as an important aspect of domestic violence as those laws are strictly concerned with sexual and physical abuse. Also, going by the tenor of the Nigerian law, only female can be a subject of abuse in the home whereas male children are experiencing same from their biological parents, siblings, friends, neighbours and acquaintances. In spite of the relevant laws including the provisions of the Violence against Persons Prohibition Act, the menace of abuse in the home still persists and it is this vacuum that this study seeks to fill by expanding the meaning, nature and scope of domestic violence under different legislative enactments in Nigeria.

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<sup>16</sup> M. O. Izzi, C.O. Obinuchi; *'The Challenges of Rape Victims in Nigeria'* (2016) 2 (8), *The Journal of Jurisprudence And Contemporary Issues*, 2.

<sup>17</sup>M.O. Bakare, M.D. Asuquo, A. O. Agomoh, *Prevalence of Domestic Violence in Nigeria* (2010) 20 (8) *Nigeria Journal of Psychiatry*, 2.

<sup>18</sup>The Nigerian statutes in relation to Domestic violence.

Also, another problem that this research work seeks to critically examine is the enforcement of the laws on domestic violence. To what extent are these laws enforced where they are applicable in Nigeria? This shall also be a subject of this discourse. Against this backdrop, this study will identify the problems associated with enforcement mechanism in relation to domestic violence and provide recommendations thereafter.

Furthermore, another problem that this study seeks to identify is that victims of domestic violence prefer to live with the stigma of abuse rather than report to security agencies because the victims have the tendency to think that the case may be compromised as a result of corruption among the security officers. . This is unconnected with the fact that the offenders can buy their way out at the point of arrest without being investigated or prosecuted for the offences of domestic violence. This problem will be addressed by this study as well.

Also, as the adolescent period is the transitional phase of development and growth between childhood and adulthood, it is observed that many children during this transition have experience different forms of domestic violence which ranges from defilement, sexual assault, rape to mention but a few. This study will address the violence experience by children in violent homes and the negative effects the violence has on the children while growing up.

### **1.3 Aim and Objectives of the Study**

The aim of this study is to critically examine the concept of Domestic violence under the Nigerian law. The specific objectives of this research are to:

1. examine the legal framework of domestic violence in Nigeria.
2. assess progress of the enforcement mechanism of laws that prohibits domestic violence in Nigeria.
3. Identify the challenges associated with investigation, prosecution and enforcement

### **1.4 Research Questions**

1. What is the legal framework of domestic violence in Nigeria?
2. How are the laws in relation to domestic violence enforced in Nigeria?
3. What are the fundamental problems with the law enforcement agents in relation to investigating and prosecuting and enforcing the cases of domestic violence?

## **1.6 Methodology**

The methodology adopted and explored in this research work is qualitative i.e. library oriented research. This study relies on Primary and secondary sources of law.

The primary source: for instance includes, the 1999 Constitution of the Federal Republic of Nigeria, as amended, Violence Against Persons Prohibition Act, 2015; The Criminal Code; The Penal Code; The Criminal Procedure Act; The Criminal Procedure Code; The Administration of Criminal Justice Act 2015; Protection against Domestic Violence, Lagos State; Ekiti State Gender Base Violence; The Ebonyi State Protection against Domestic Violence Law, 2007; The Cross River Domestic Violence and Maltreatment of Widow's Prohibition Law, 2014; and judicial precedents.

Secondary source includes books, journal articles, and periodicals, opinion of specialists and practitioners all of which are expected to add value to the quality of the work.

## **1.6 Significance of the Study**

So many issues are associated with the Nigerian Criminal Justice System. Violence against persons is one of the offences recognised under the Nigerian Criminal Law. However, domestic violence has not been properly codified in some parts of the country. The reason is that it is not distinguished from the law of tort of battery and assault though it is as common as other crimes. On the other hand, where it is recognised, the enforcement mechanism is nothing to write home about. Hence, the need for people to be aware of this heinous crime. Thus, this study is relevant for the proper enlightenment of every individual in the society to know the negative effects of domestic violence. It will also be of tremendous help to law teachers, law students, Non-

Governmental Organizations, public institutions and other stakeholders who are interested in domestic violence and other related subjects.

Also, the importance of this study is to create awareness among the people in the society and a way to sensitise the society on the negative effects of domestic violence on adolescents as members of a household in Nigeria.

### **1.7 Scope of the Study**

This study will cover the legal framework of domestic violence in Nigeria. Domestic violence is a societal ill all over the world. It concerns everybody in the society because it can mar the future of both the young and the old, man and woman and it is not a gender issue. This will limit the focus to the reasons why domestic violence is on the increase in Nigeria and the possible solutions to reduce it drastically or if possible, ensure that it has no place in the society any longer.

### **1.9 Operational Definition of Terms**

**Domestic:** This is relating to the family or the household.

**Violence:** This is the use of physical force usually accompanied by fury, vehemence, or outrage; especially physical force unlawfully exercised with the intent to harm.

**Domestic Violence:** This is a type of violence between members of a household usually spouses; an assault or other violent act committed by one member of a household against another.

**Rape:** This is an unlawful sexual intercourse committed by a man with a woman who is not his wife through force and against her will.

Harassment: These are words, conduct, or action that being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose.

Crime: This is an act that the law makes punishable; the breach of a legal duty treated as the subject matter of criminal proceedings.

Offender: This is a person who has committed an offence.

Court: This is a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice.

Prison: This is a state or federal facility of confinement for convicted criminals

Police: This is the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime.

## **1.9 Structure of the Study**

Chapter One covers General Introduction which include Introduction, Background to the Study, Statement of Problem, Aim and Objectives, Research Methodology, Research Questions, and Chapter Outline.

Chapter Two is the Literature Review.

Chapter three examines the Legal and Institutional Framework which includes highlights of the relevant laws under the Nigerian law and the institutions saddled with the responsibility of upholding the law and bringing perpetrators of domestic violence to book.

Chapter four examines conceptual framework which includes the introduction, meaning and nature of domestic violence in Nigeria, historical background and evolution of domestic violence in Nigeria, meaning and nature of sexual assault, scope of physical assault, Problems related to the prohibition of domestic violence in Nigeria, this includes an examination of the societal and cultural problems associated with domestic violence and the problems associated with the proof of domestic violence, forms of domestic violence, types of sexual assaults, domestic violence and its effects in the society, causes of domestic violence in Nigeria, compensations and remedies available to victims of domestic violence in Nigeria.

Chapter Five covers summary of findings, conclusion and recommendations.

## CHAPTER TWO

### A LITERATURE REVIEW

#### 2.1 Literature Review

A plethora of legal scholars have written on the menace of domestic violence in Nigeria. The authors have identified the major causes of domestic violence and its prevalence in Nigeria, thus a lot of fundamental questions have been raised on how domestic violence can be eradicated within the Nigerian legal system however, there are no satisfactory answers to provide a probable and palpable solutions to the total eradication of domestic violence in Nigeria.

Against this backdrop, it can be said that there are scholarly works on the menace of domestic violence in Nigeria but none has actually dealt extensively on the legal dynamism of domestic violence in Nigeria. The limitations of available statistics provided by scholars do not necessarily identify the technological, social, cultural, economic and legal dynamism of the issue of domestic violence. However, this does not however mean that their work is a failure or not important. This does not suggest that the previous works are irrelevant to the subject matter of the work. Some of them are quite invaluable and imperatively insightful. To support this assertion that there are works on fundamental solutions to the prevalence of domestic violence in Nigeria by authors and scholars of domestic violence, a few textbooks, journals and internet materials dealing with this subject have been consulted.

A.O. Agomoh was of the view that domestic violence in Nigeria is prevalent because there is no specific law that prohibits it. He asserted further that most of the authors who had written extensively on the discourse majorly wrote on domestic violence against women and sexual

abuse which only serves as an integral part of domestic violence.<sup>19</sup> Aihie also posited that the insufficient law on domestic violence is not the major problem because it is one thing to enact the law and it is another to implement it. That Nigeria as a whole lacks an enforcement mechanism in relation to law. He asserted further that a society with laws without an enforcement mechanism is a retrogressive society.<sup>20</sup>

Okpeh<sup>21</sup> also pointed out that, a lot of violence to which women are exposed to in the society is only a reflection of the violence that is domiciled in the family from where the ugly trend is nurtured to call domestic violence. It is also pointed out that, domestic violence is domiciled in the family where women, children, and the youth are either direct or indirect victims<sup>22</sup>. The legitimacy of acts of domestic violence such as spousal abuse, sexual abuse, early marriage and deprivation of women's rights are strongly enacted much more within the family than elsewhere. It is also discovered that there is relationship between the manifestation of violent behavior and the composition of the family<sup>23</sup>. It is argued that aggression and violence are learned behavior which starts right from the family. With specific reference to domestic violence, a lot of violence to which women are exposed at the larger levels or society is only a reflection of the violence that is domiciled in the family and vice versa. It is within families that all of us learn to identify and accept domestic violence and alter it as lifestyle. Genyi<sup>24</sup> submitted with respect that, domestic violence is a very serious social, economic and psychological problem that has no

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<sup>19</sup>A. O. Agomo, *Prevalence of Domestic Violence in Nigeria* (2010) 8 (20) *Nigeria Journal of Psychiatry*, 4.

<sup>20</sup>O. N. Aihie, 'Prevalence of Domestic Violence in Nigeria: Implications for Counselling' (2009) 2 (1), *Edo Journal of Counselling*, 5.

<sup>21</sup>E. D. Okpeh, 'A nationwide survey of domestic violence shelters' programming for older women'. *Violence Against Women Journal, University of Calabar* (2021) 1 (4), 559-571.

<sup>22</sup>O. Olatunji, 'Penetration Corroboration and Non-Consent: Examining the Nigerian Law of Rape and Addressing its Shortcomings' *University of Ilorin Law Journal*, (2012) 8p. 79-105.

<sup>23</sup>Ibid.

<sup>24</sup>C. Genyi, *Structural contexts culturally competent approaches community again ting and social changes: Domestic violence at the margins. Readings on race, class, gender and culture Piscutary* (Ns. Rutgers University press, 2005) 1 (4) 29.

cultural or social, economic and psychological group inhibition. Beyond the absence of any unknown barrier not even legal, its occurrence has profound and destructive consequences which ranges from physical, emotional and financial effects on the inhabitants of the home be it the women, children or men. Domestic violence is orchestrated as a desire of one party in a relationship to dominate and control the other partner. It may be power breakdown and distortion of an intimate relationship. Relationships that are characterized by violence may be distorted but may not be broken down. This is inferred from the immediate build-up of cordially or even outright expression of a profound level of affection. In such circumstance, it could be attributed to a spontaneous outburst. Physical injuries and other consequences from domestic violence are sexual abuse and gender inequalities. Physical and sexual abuse can lead to gynecological problems such as pelvic inflammatory disease (PID), chronic pelvic pain and vaginal bleeding among other medical problems. Utulu<sup>25</sup> continued that physical violence which is intentional use of force example, slapping, pushing, biting, choking, using knife, gun, and other weapons with the potential for causing injury, harm or death. It also includes coercing other people to commit such acts which can be actual or threatening. Sexual violence comes in three categories. Actual or threats of physical force to compel a person to engage in a sexual act against his/her will. Attempted or completed sex act with a person unable to understand such as rape with an object. Psychological and emotional violence is defined as harm to the victim caused by acts or threats of acts such as humiliating, name calling embarrassing victim deliberately especially in public, controlling victims movement and activities, isolating victim from friends and family, controlling financial resources, withholding information or resources, threatening to harm a child or pet breaking on object. Economic abuse is when the abuser has complete control over the

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<sup>25</sup> A. Utulu, *'Domestic violence in the immigrants and refugee community responding to the needs of immigrant's woman'*, *University of Nigeria social sciences journal*, [200] 1(6 p. 48. .

victim's money and other economic resources. Usually, this involves putting the victim on a strict "allowance", withholding money at will and forcing the victim to beg for the money until the abuser gives them some money. It is common for the victim to receive less money as the abuse continues. This also includes (but is not limited to) preventing the victim from finishing education or obtaining employment, or intentionally squandering or misusing communal resources. This is real with some men in some families where the husband receives the wife's salaries and gives her as the need arises.

Garba<sup>26</sup> also lent his credence to prevalence of domestic violence by contending that it means nothing more than any form of abusive behaviour in any relationship used by partner to gain or maintain power and control over another partner. Violence on the other hand is the intentional use of physical force with the intension for causing injury, harm, disability or death. The researcher is giving an example of a typical case of a man beating his wife each time he sends her to the market with little money to buy foodstuff, he could be expecting the money to buy a lot of things only for her to buy a few items which the money could afford and he ends up in beating her. According to a recent study conducted by Famwang,<sup>27</sup> in Oyo state, 40% interviewed said they were victims but it has not been documented because there is widespread tolerance for domestic violence. Furthermore, in 2021, working women in Lagos about 64.4% alleged that they were beaten by their partners either husbands or boyfriends, 56.2% market women is married, she is expected to endure whatever she meets in her matrimonial home. This statement in the humble opinion of the researchers is an aberration of matrimonial law to jeopardize womanhood and marital harmony. Also, it gives men open license to man handle their

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<sup>26</sup>J.A. Garba, 'Facts about domestic violence', [1996] *University calabar journal* 1 p. 68

<sup>27</sup>S.T. Famwang, 'Emprical Analysis of Domestic Violence in Oyo state of Nigeria', a Thesis submitted to the Faculty of Social Sciences, University of Ibadan, 2021.

partners. In the word of Banki Moonb<sup>28</sup>, “Violence against women and girls continued unabated in every continent, country and culture. It takes a devastating toll on women’s lives, on their families and in the societies as a whole. Societies prohibit such violence yet the reality is that, too often it is covered up or condoned. According to another recent finding by the amnesty international, 20% of urban women and 29% of rural women do not know if they are victims of abuse”<sup>29</sup>. The research also pointed out that in Africa, not just Nigeria, information about women rights are not known, the police force and judiciaries are not capable of aiding female victims and more importantly, safe house where women or victims of abuse could escape to do not exist. The head of department of sociology of the Kaduna State University, Hauwa said<sup>30</sup>, “when victims of domestic violence go to their parents’ houses, they are rejected, so they have to go back to that house where they have been battered. Information found in the Annals of African medicine volume 3, November, 2004, 4-6 said, women in Zaria who come for medical check -up, about 178 were questioned, 79 of these women who happened to be pregnant had least secondary school education; 28% and 56 percent experience and had knowledge of domestic violence respectively, of the 56%, 36% beaten up while 22% were forced to have sex. They pointed out that their spouse are the most common culprits and 39% said they could keep domestic violence secrets”.

Ajoni<sup>31</sup> supported this assertion by saying, poor response of law enforcement agents leads to low reporting. Other challenges in this are rape, and other sexual offence, human trafficking and

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<sup>28</sup>United Nation Secretary General, 2008.

<sup>29</sup>S.T. Famwang, op. cit. p. 48.

<sup>30</sup>A.T. Hauwa, *Definitional issues cited in R. K. Bagudu*(Eds.), Sourcebook on violence against women (pp. 23-34).

<sup>31</sup>J. Ajila and R. Olutola, ‘*Physical violence in America families*’:*New Brunswick nj: transaction. Human rights, New York journal*,(1990) 1 p. 56.

cultural practices (child marriage, female Genital Mutilation, widowhood practices. Yusuf<sup>32</sup> also pointed out in *Annals of Africa Medicine* that, domestic violence also persists more often than not; victims are advised to settle out of court to avoid dabbling into family matters. To curb this social menace orientation and awareness campaigns should be embarked upon in each society. Shelter should be provided for victims to flee to when faced with violent situations, children should be taught from their tender age to respect one another irrespective of sex. The religion bodies and organizations should also lend to those campaigns by counseling intending couples married couple and individual to learn to control or manage their anger as not to reduce to animals in their homes. According to the Center for Disease Control and Prevention<sup>33</sup>, women who have experienced domestic violence are 80% more likely to have heart disease, 60% more likely to have asthma and 70% more likely to drink heavily than those women who have not experienced intimate partner violence.

B.T. Bakare<sup>34</sup> referred to sexual abuse as molestation, as the forcing of undesirable sexual behaviour by one person upon another, where that force fails short, it is being called sexual assault. The term also covers any behaviour by any adult towards a child to stimulate either the adult or child sexually. When the victims are younger than age of consent it is referred to as child sexual abuse. United Nations Children's Fund Innocent Research centre,<sup>35</sup> stipulated that, sexual abuse and rape by an intimate partner is not considered a crime in most countries and women in many societies do not consider forced sex as rape if they are married to or cohabiting with the perpetrator. The assumption is that, once a woman enters in to a contract of marriage, the

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<sup>32</sup> Yusuf op. cit. p. 22.

<sup>33</sup> CDCP, 2008.

<sup>34</sup> Ibok, A. K., & Ogar, O. T. Traditional Roles of African Women in Peace Making and Peace Building: An Evaluation. GNOSI: [2018]. *An Interdisciplinary Journal of Human Theory and Praxis*, 1(1), 41-58.

<sup>35</sup> Ibid

husband has the right to unlimited sexual access to his wife. Surveys in many countries revealed that approximately to 15 percent of women report being forced to have sex with their intimate partners. Genyi<sup>36</sup>, explained that, sexual violence is divided into three categories, use of physical force to compel a person to engage in a sexual act against his or her will, whether or not the act is completed, attempted, sex act 30 involving a person who is unable to understand the nature or condition of the act, unable to decline participation, or unable to communicate unwilling to engage in the sexual act because of underage, immaturity, illness, disability or the influence of alcohol or other drugs or because of intimidation of pressure and abusive sexual contact.

Meanwhile, there are other offences that translate to domestic violence or seen as an integral part of domestic violence in Nigeria. Those offences include physical assault, sexual assault, rape other forms of domestic offences. They are punishable under the relevant laws in Nigeria. The Nigerian justice system<sup>37</sup> which comprises of the Police, Courts and the Prisons established with great influence of colonial orientation is currently bedeviled by several problems as delay in police investigations, overuse of prison sentences by the courts, non-adherence to the complainant, accused and Nigerian Justice System.

According to Malemi,<sup>38</sup> injustice, whether at the Police, Courts or Prison comes in various forms such as abuse of power, exclusion of the members of the Armed Forces or paramilitary, misuse of discretion, arbitrary arrest and unlawful detention, unfair denial of bail, torture, criminal punishment without fair trial, discrimination, unwarranted dismissal, misappropriation of another's property, outright oppression and unfair or inhuman conduct.

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<sup>36</sup> Ibid

<sup>37</sup> Nigerian Justice System: The Ideal, Hope and Reality Sahel Analyst: ISSN 1117-4668, 114

<sup>38</sup> E. Malemi, *The Nigerian constitutional law*. (Lagos: Princeton Publishing Company 2010), 81.

Akinbiyi<sup>39</sup> noted that the court or a presiding judge has duties of controlling court proceedings, doing justice between parties, upholding the independence of the judiciary and principles of fair hearing, politeness and courtesy to all, especially the two parties and maintenance of high standards of behaviour. Competence and hard work are therefore, the indispensable tools for the effective performance of judicial functions.

According to Professor Nwabueze,<sup>40</sup> the judiciary/courts have strategic roles of guarding and enforcing the constitutional limitations on power, guardians and dispensers of justice for all as enshrined in laws and resolution of conflicts between, among individuals and between individuals and state. According to Berlatsky,<sup>41</sup> he also concurred that there are four justifications for establishing prisons and imprisonment as punishment, deterrence, rehabilitation and public protection. The role of the Police/prosecution to every justice system is first and most strategic as noted by Forst,<sup>42</sup> the Police who are called first to receive complaints, call for help or redress against any injustice.

One of the problems associated with the administration of Justice in Nigeria is injustice as delay in criminal trial is not only unfair to the accused himself but also seen as injustice to the entire community. According to Malemi,<sup>43</sup> injustice, whether at the Police, Courts or Prison comes in various forms such as abuse of power, exclusion of the members of the Armed Forces or paramilitary, misuse of discretion, arbitrary arrest and unlawful detention, unfair denial of bail,

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<sup>39</sup>S. Akinbiyi, *Ethics of legal profession in Nigeria*. (Abeokuta: Augustus Publication 2003), 120.

<sup>40</sup>B. Nwabueze, *The Judiciary as the third estate of the realm*. (Ibadan: Gold Press Limited 2007), 13.

<sup>41</sup>N. Berlatsky, *Imprisonment*. (Detroit: Gale Cengage Learning 2010), 26.

<sup>42</sup>B. Frost, *Errors of justice*. (Cambridge: Cambridge University Press 2004), 22.

<sup>43</sup>E. Malemi, *The Nigerian Constitutional Law*. (Lagos: Princeton Publishing Company 2010), 23.

torture, criminal punishment without fair trial, discrimination, unwarranted dismissal, misappropriation of another's property, outright oppression and unfair or inhuman conduct.

According to Wiwge<sup>44</sup> rape is seen as the most grievous form of sexual assault and is thus punishable with imprisonment for life. It is a pandemic that has monumental consequences on the victims and should not be condoned in any form in the society.

Also, incidences of sexual abuse of a male child are as prevalent in societies as those of the female child. For example, a hospital-based review in KwaZulu-Natal, South Africa revealed that there were 131 reported cases of sexually abused boys over a three year period<sup>45</sup>.

Also, in the study carried out by Biodun Ogunyemi<sup>46</sup> it was reported that it is noteworthy that no cases of male child victims of sexual abuse was found, owing to the fact that male child victims are less likely to disclose their experience following the sexual abuse. However, that is not to say that the incidences of male child victims do not occur.

Even though the incidence rates have only marginal differences, it seems that the cases of female abuse have received more attention. Researchers have discovered that the male child victim is more likely to be at a disadvantage compared to his female counterpart, in terms of having a redress of the problem. This disadvantage is directly linked with the reluctance of the male child victim to report the incidences.

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<sup>44</sup> C. Wigwe op. Cit., 275.

<sup>45</sup> F. Bejide, '*Male Child Victim of Sexual Abuse in Nigeria*'. *Frontiers of Legal Research*, [2014] 2 (1), 83-99. Available from <http://www.cscanada.net/index.php/flr/article/view/10.3968/5746> last assessed on the 4<sup>th</sup> February, 2023.

<sup>46</sup>Biodun Ogunyemi "Knowledge and Perception of Child Sexual Abuse in Urban Nigeria: Some Evidence from a Community-Based Project", 46.

The non-reporting of incidences could be due to a variety of reasons. First of all, consciously or unconsciously, because females are said to be the “weaker sex”, they are perceived to be more disadvantaged sexually and thus more prone to be victims of sexual abuse than their male counterparts. This notion however may not be correct at all times.

Another reason is that a man’s ego and masculinity may prevent him from exposing an action that seemed to have robbed him of them. Men are likely to find it difficult to admit to having been sexually abused because a number of cultures around the world encourage male dominance, making them believe they should be in charge of every aspect of their lives, such that when boys are abused, they often think they should have been able to confront and, if possible, arrest the situation and stop the abuser.

Also, a profound scholar in this regard, Lisak,<sup>47</sup> said that male gender norms dictate that “appropriately masculine” men do not acknowledge and certainly do not express their own pain, vulnerability or feelings of helplessness.

For all the above reasons, even though the incidences occur, abuse cases involving male (child) victims are less reported than their female counterparts. Sexual abuse on male children has been found, by scholars, to have lasting and profound effects on the abused child, even throughout the continuum of life. Depending on a variety of factors, the effects of the abuse vary from one victim to the other. Such factors include the age of the child when the abuse happened; the younger a child at the onset of the abuse, the worse the long lasting effects on the child.

Critically looking at some of the effects sexual abuse can have on men, it has been discovered that some of these effects have turned out to be possibilities of occasions of crime. For instance, uncontrolled anger can lead to crimes of violence.

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<sup>47</sup>D. Lisak, ‘Men as victims: Challenging Cultural Myths’. *Journal of Traumatic Stress*, [1993] 6, 577– 580.

In some of the interviews in the research study, one of the men was quoted as saying that in a fit of rage, he found himself uncontrollably strangulating a woman. A lot of their pent up anger resulted in physical violent expressions of beating people up, or creating images of violence against others in their minds' eye. Some of the men were more enraged because they felt they had no empathy and help from a world that was ready to assist only female victims of sexual abuse, but would rather downplay a distress call of a male victim.

According to Rado<sup>48</sup> he was of the view that male rape is a myth because of gender stereotypes and social norms regarding masculinity and male sexuality. The gender role socialization process, rooted in social norms, begins in early childhood and appears to have changed little in the past 40 years. These norms specify that men are expected to live up to the heterosexual masculine ideal (i.e., hegemonic masculinity) and possess traits such as toughness, independence, aggressiveness, and dominance. Traits such as submissiveness, emotionality, compliance, and homosexuality are not consistent with social norms regarding masculinity. Socially constructed notions of masculinity are not consistent with constructions of the rape victim as feminine, weak, and defenseless. Thus, based on socially constructed definitions of masculinity, Lisak<sup>49</sup> was of the view that “real men” cannot be rape victims. This is consistent with research findings of David and Pollard<sup>50</sup> that male victims of rape are blamed more than female victims. Additionally, sexuality is important to the discourse on male rape given those constructions of masculinity are

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<sup>48</sup> K. Rado, ‘*The Veterans Health Administration and military sexual trauma*’. [2007] 97, 2160-2166, *American Journal of Public Health*, 24.

<sup>49</sup> D. Lisak, ‘*Men as victims: Challenging Cultural Myths*’ [1993] *Journal of Traumatic Stress*, 6, 577– 580.

<sup>50</sup> M. Davies, P. Pollard, &J. Archer, “*The influence of Victim Gender and Sexual Orientation on Judgments of the victim in a depicted stranger rape*”. *Violence and Victims*, [2001] 16, 607–619.

so closely connected to heterosexuality. Because of these close connections, Grahams<sup>51</sup> posited that men who are raped are often assumed to be homosexual and less deserving of sympathy and assistance.

According to Tjaden & Thoenne any form of physical assaults, rape and stalking perpetrated by a woman's former or current partner is defined as domestic violence.<sup>52</sup>

Another definition by the UN Declaration on the Elimination of Violence against Women (UN, 1993) is that, violence against women is any gender based violence act that ends or might end up with sexual, physical abuse or harm ones mental functioning or causes pain to the victim, in this case woman, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private.

However, The World Health Organization (WHO) report on violence and health defines violence as any deliberate act of violence by using physical force or threats against ones will or a group of people, which might result in death, psychological harm, injury and deprivation.<sup>53</sup>

Holden<sup>54</sup> defines domestic violence as any assaultive and coercive behavior by adults against their intimate partners. Psychoanalytic theories focus on individual internal psychological processes that create need to be abusive or to accept abusive behaviour. Social theories focus on how aggression abuse and violence are learnt and transferred by individual members of the family to others within a family.

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<sup>51</sup> Graham, R. "Lacking compassion: Sociological Analyses of the Medical Profession" [2006] *Social Theory & Health*, 4, 43–63

<sup>52</sup> Cited in Jang, D Lee, D & Merello, 'Domestic violence in the immigrants and refugee community responding to the needs of immigrant's woman', [2009] *American Journal of Public Health*, p. 8.

<sup>53</sup> World Health Organization, 2019.

<sup>54</sup> D. Holden, "Factors influencing employee performance in local authority in Oyugis Town Council; 'A survey of the level of public service delivery', [2011] *Uniben Journal* 1 (2), p. 29.

Cognitive behaviour theories also focus on how aggression, abuse, violence, are learnt and transferred among individuals, but these theories further attempt to explain why abusive behaviour are sometime transmitted from generation to generation while other times there are not. Family and systems theories focus on interaction between family members and the shared responsibility for the events that occur within the family system.<sup>55</sup>

The people continue to suggest that at least some men whose intimate partner violence (IPV) did not receive adequate nurturing in the first years of development. Dutton et al found that becoming an adult perpetrator of (IPV) was significantly correlated with violence in the family of origin as well as with parental rejection. Attachment theory emphasizes reciprocity between individuals within a relationship. It is defined as reciprocal enduring emotional tie between an infant and caregiver with both parties actively contributing equality of the relationship. According early attachment theories, Bowlby 20 and Auns worth 21 an infant develops a working modell of what can be expected from his or her primary caregiver.

The first theory developed in United States is psychopathology theory which says that men who batter their wives were mentally ill and could be cured through medication or psychiatric treatment. Joan,<sup>56</sup> note that in reality, battered women are mentally ill and many of who were institutionalized were misdiagnose because of failure to recognize or understand the physical and psychological effect of domestic violence. The next theory is learnt behaviour theory violence. This argues that men batter because they had learnt violence their families as children and women sought abusive men because they saw being abuse.

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<sup>55</sup>Jones and Battiet SASS, Facts about domestic violence, 1966, SASS home page at [http:// www port up. com](http://www.portup.com).Last accessed 4<sup>th</sup> February, 2023.

<sup>56</sup>S. Joan,*Introduction to social science Research: A handbook on methodologies* (Hemicraft publishing press, Dolcom, 2004) 89.

Another theory developed is a loss of control theory. This argues that men are abusive when they drink alcohol which causes them to lose control. These theorists argued that gendered societal expectations prevent men expressing anger and frustration. These feelings would build up until the man loses his control and releases his feelings through use of violence. Theory of learned helplessness. Lenore Walker, a psychologist in the UN, studied the behaviour of women who stayed in violence relations. Walker hypothesized that women stay in abusive relationships because constant abuse strips them of the will to leave. The next theory was—a family conflict model. According to this model, both partners contribute to violence. The family model is closely related to the cycle of violence description of domestic abuse.

Domestic violence against women and children is a major global challenge considering the negative outcomes. Hamm argued that Nigeria is also among nations where domestic violence seems to be thriving unfettered. Women in Nigeria, like most parts of the world, are victims of domestic violence without regards to age, class, religion or social status<sup>57</sup>. Violence against women and children affects learning. Statistics show that more women suffer from domestic violence than men. Children too are targets of domestic violence either when they face the domestic violence like maltreatment, sexual abuse and so on or through exposure to it as other members of the family especially mothers come under cruel treatment of their partners. Domestic violence has a negative impact on learning as those children or adolescents who go through it face emotional disturbances which could lead to attention deficit, poor peer interaction and low self-esteem.

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<sup>57</sup>P. Sen, “Enhancing women choices in responding to domestic violence in calculate: a comparison of employment and education” [1996], *The Europeans journal development research*, 37.

Ajila and Olutola,<sup>58</sup> posited that the home has impact on students' psychological, emotional, social and economic state as family setting can affect their life circumstances and level of performance. Parental conflicts can affect children's emotional stability and this could translate to poor learning.

WHO<sup>59</sup> defined violence as the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal- development or deprivation? Students from families where they encounter domestic violence often transfer maladjusted behaviour into the classroom environment.

Aihie<sup>60</sup> reported that West Africa as a region permitted and admitted domestic violence against women in some of its cultures. This means domestic violence is protected by certain traditional practices in Nigeria and some parts of Africa. Where there is domestic violence, children suffer the impacts as well even when they are not the direct sufferers. This is so because children or adolescents are very close to their mothers who often go through the pains of domestic violence. Studies show that more women face domestic violence than men. Counsellors have a role to play to address the menace of domestic violence.

This is because the learners' well-being is very important to counsellors. Counselling interventions will help to reduces incidence of domestic violence.

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<sup>58</sup>J. Ajila and R. Olutola, *Physical violence in America families: New Brunswick nj: transaction*"[1990]. Human rights, New York Journal, 5.

<sup>59</sup> World Health Organization, (2019) a Monthly Double-Blind Peer Reviewed Refereed Open Access International e-Journal - Included in the International Serial Directories, 4.

<sup>60</sup>K. Aihie, when women are under the influence. Does drinking or drug use by women Prorok beatings by men? In recent developmentts in alcoholism, Alcoholism and violence'.( *Plenum press, New York, 1997*) 13.

Adeniyi & Ogunesan,<sup>61</sup> posited that counselling is a process of assisting a client who is sad, discouraged, disorganized, and need assistance from a professional who is trained in psychotherapy to identify such challenges and assist the client to adjust and live a happy life. Counselling deals with wellness, personal growth, career, and pathological concerns. In other words, the counsellor's work involves therapeutic relationship between the counsellor and the client. Domestic violence is a social menace which must be addressed now; and counsellors must be in the front line leading the war against it. Osiki,<sup>62</sup> noted that counselling is a process that may be developmental or intervening and that it focuses on client's goals, thereby making it healthy for the victims and offenders of domestic violence.

## **2.2 Theoretical Framework**

### **2.2.1 The Conflict Theory**

The Conflict theory is a theory that is useful in analyzing domestic violence in Nigeria.<sup>63</sup> Violence as a special phenomenon is a social problem, menace, and deviant in nature as their activities diverge to the behavioural expectations set by the society. This is why the conflict theory emerged to oppose the argument propagated by the functionalist theory which posits that domestic violence is a destruction on the adolescents in the home.

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<sup>61</sup>R. Adeniyi and F. Ogunesan: 'Domestic violence in the immigrants and refugee community responding to the needs of immigrant's woman', [2020] *University of Ibadan Journal*, 1 (2) 67.

<sup>62</sup>Ibid.

<sup>63</sup> Yusuf Rakiya, Street Begging Practices in Nigeria: A Conceptual Review, [https://www.researchgate.net/publication/357909135\\_STREET\\_BEGGING\\_PRACTICES\\_IN\\_NIGERIA\\_A\\_CONCEPTUAL\\_REVIEW](https://www.researchgate.net/publication/357909135_STREET_BEGGING_PRACTICES_IN_NIGERIA_A_CONCEPTUAL_REVIEW) last accessed 25/12/2022.

Marxism, an offshoot of the conflict theory will provide a philosophical starting point on which the conflict theory rest. The basic argument of the Marxian perspective is that poverty in capitalist society is an expression of a system of inequality which is an innate feature of capitalism.

Marx contended seriously that in a capitalist society, wealth, and fame are concentrated in the few bourgeoisies while the greater part happened to be the proletariat classes are forced to sell their labour and gain salary in return. Dahrendorf<sup>64</sup> adopted Karl Marx idea of class conflict and Max Weber approval of power as an important constituent of stratification come up with his idea of modern capitalism which he argued that top executive at the helm of government and private organizations are also powerful groups of exploiters that can facilitate inequality in the society.

Gent and Mills<sup>65</sup> employed the Marxist approaches to explain how social stratification influences social behaviours such as condoning domestic violence in the society. They also contended that the condonation of domestic violence is the outcome of the differential in opportunities and life change people experience in the society. Meaning, the inability of the society to provide equal access to opportunities for all to make available for themselves the material goods and positive living result to condoning domestic violence in the home.

### **2.2.2 Radical feminist theory.**

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<sup>64</sup>Dahrendorf cited in Haralambos and Holborn, *Sociology: Themes and Perspectives* (London: HaperCollins Publishers Limited, 2004), 22.

<sup>65</sup>Cited in A.O. Fawole, D. Ogunkan et al, *The Menace of Begging in Nigeria Cities: A sociological Analysis*. [2011] 3,(1), *International Journal of Sociology and Anthropology*, 9-14.

The basic tenets of this theory are somewhat reminiscent of Second-Wave Feminists' ideology of the early 1960s, with the pioneer work of Betty Friedan titled 'The Feminine Mystique', forming the foundation to radical feminist thoughts.<sup>66</sup>

Although both perspectives advocate the necessity for women emancipation and redemption of crime and its etiologies, radical feminist theory emerged in the 1970s with its central focus on patriarchy the "set of hierarchical relations between men, and solidarity between them, which enables them to control women".<sup>67</sup> In its broader conception, patriarchy refers to "a power relationship inherent in the structures and social relations within which the subordination and exploitation of women occur and it is used to explain the institutionalization of male power and domination over women."<sup>68</sup> At the heart of many feminists<sup>69</sup> is the question: 'and what about the women'? In paraphrasing and situating this question within the context of this research, the researchers then ask: Why the subjection of women/ girls to servitude by beating them in the home despite several laws against it? To explain this, advocates of feminist theory affirmed that "the situation of women is as the consequence of a direct power relationship between men and women in whom men have fundamental and concrete interests in controlling, using and oppressing women with practice of domination as rooted in patriarchy".<sup>70</sup> Apparent from the thoughts of these scholars is the fact that domination and the menace of domestic violence are

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<sup>66</sup> J. Mistique, *Poverty and Youth Migration Out of Nigeria: Mary Juachi Eteng, Enthronement of Modern Slavery*, (1963), 29.

<sup>67</sup>T. Hartmann *Transnational Organised Crimes: An Assessment of Human Trafficking and the Challenges Militating against a Total Elimination in Nigeria*, [1981], 368.

<sup>68</sup>A. Walby. *The use of women and children in suicide bombing by the Boko Haram terrorist group in Nigeria*, [1980], 173-201.

<sup>69</sup>B. Ritzer, *Poverty and Youth Migration Out of Nigeria: Mary Juachi Eteng, Enthronement of Modern Slavery*, 2011, 11.

<sup>70</sup> Ibid.

clandestine and socio-economic organized crimes with cultural and religious inducement and overtone. They are sister social problems to watch in modern Nigeria.

Their ideas explain how the perpetrators who are for the most part-men make women more vulnerable to different kinds of slavery which is often precipitated by the institution of patriarchy. Women are everywhere violently oppressed by the system of patriarchal arrangements and gender system of domination and subordination.<sup>71</sup> Since patriarchy describes the dominance of men in social and cultural systems, it also determines class structures, economic and power relations, as well as who to use as slaves under any guise. Marginal and relative poverty, social exclusion, alienation and inequalities as structural violence are believed to thrive in patriarchal cultures, with children and female populations bearing the brunt of it all. It is no wonder therefore, that victims of domestic violence are predominantly young girls, young boys and women.<sup>72</sup>

Radical feminist theory is important to the study of domestic violence and consequent sexual exploitation of girls by hoodlums and others who may take advantage of young girls on the street. At its core, the theory encapsulates the thrust and kernel of the discourse in some depth, directly linking the practices to disrespect, hatred, control, abuse and violence against humanity. For radical feminists, patriarchy is the least noticed yet the most significant structure of social inequality; it is an act of violence practiced by men and by male-dominated organizations against women in complex practices of exploitation and control.

### **2.2.3 CLADEA/Human Dignity Theory**

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<sup>71</sup> Lerner 1986, Exploring socio-demographic factors, avoiding being a victim and fear of crime in a Nigerian university, (1986), 28.

<sup>72</sup> Namel et al, , Comparative Analysis of Child Sexual Abuse and Terrorism in Rural Areas - Case Study, (2018), 28.

This theory is also known as “Human Dignity Theory”. It states that every person should be respected and should not be subjected to any form of human denigration. Over the years, it has been observed that an act of domestic violence is a form of human degradation. The prevalence of domestic violence is unconnected with the fact that people want to survive and reduce a level of poverty in their lives. And get married to men who are violent in nature all in the name of survivorship.

Mea & Sims<sup>73</sup> defined Human Dignity as the idea that every human being has a transcendent value that resides within his or her essence. They see it as an indispensable aspect of humanity. For them, humans are the ends in themselves, and as individuals, they have a right to treatment that reflects a deep respect for their human rights. Human Dignity is defined as the ability to establish a sense of self-worth and self-respect as well as the ability to respect others.<sup>74</sup> Similarly, Lee<sup>75</sup> sees dignity as the state of being treated with respect or honour, with a sense of self-worthiness and self-esteem. Pirson<sup>76</sup> explains that the concept arises from the universal vulnerabilities’ human beings experience through life and that people will earn dignity through their actions. Later, Pirson et al.<sup>77</sup> state that human dignity is inherent and universal. Kipper<sup>78</sup> sees human dignity as a matter that affects every human being. This issue transcends all other levels of social analysis, as being an equal member in the realm of subjects and authorities of

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<sup>73</sup>W.J. Mea, & R. R. Sims, Human dignity-centered business ethics: A conceptual framework for business leaders. (2019), 160 (1), *Journal of Business Ethics*,53-69.

<sup>74</sup>M. Pirson, *Humanistic Management: Protecting Dignity and Promoting Well-Being*. (Cambridge: Cambridge University Press, 2017), 32.

<sup>75</sup>M.Y.K Lee, Universal human dignity: Some reflections in the Asian context. [2008], 3(1),*Asian Journal of Comparative Law*, 1–33.

<sup>76</sup> M. Pirson, *Humanistic Management: Protecting Dignity and Promoting Well-Being*. (Cambridge: Cambridge University Press, 2017), 16.

<sup>77</sup>Ibid.

<sup>78</sup> K. Kipper, ‘Aligning civic and corporate leadership with human dignity: activism at the intersection of business and government’. [2017] 146(1), *Journal of Business Ethics*, 125-133.

justification. Melé<sup>79</sup> explains that human dignity is the idea that every human person is worthy of esteem, honour, and respect. Bolton and Sayer<sup>80</sup> share ideas about dignity; their concept of human dignity is an ultimate value for understanding the conditions of work and labour. Also, human dignity is a subjective experience of well-being, contingent on the collective sum of (inter) individual experiences of values. They also stated that it serves as a common ground in our efforts to identify and secure humanity's local to global common interests in an increasingly interconnected world. Finally, the International Labour Organization (ILO, 1974) defines dignity as a fundamental human right. ILO states that all human beings, irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security, and equal opportunity.

This theory is relevant to this study because some women stay in abusive marriage and relationship as a means to survive.

#### **2.2.4 Framing Theory**

The study is anchored on Framing Theory. This theory is believed to have been popularised by Erving Goffman in 1974.<sup>81</sup> The theory, besides accepting that the media focuses attention on certain issues they consider topical and thereby drawing the attention of the masses to it, also posits that the way, manner and language with which such issue is presented to the masses largely influence the masses perception of it <sup>83</sup>. In essence, framing theory opined that how a matter is presented to the audience influences the choices they make about such a subject matter <sup>84</sup>.The theory suggests that people interpret what is going on around their world through their

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<sup>79</sup>D. Melé, *Scholastic thought and business ethics: An overview*. In C. Lütge, *Handbook of the philosophical foundations of business ethics*, (2013), 133–158.

<sup>80</sup>A. Sayer, *Dignity at work: Broadening the agenda*. Organization, (2007), 14, 565–581.

<sup>81</sup>Ibid.

primary framework. These primary frames are made up of natural and social frames through which an individual is able to interpret the communication stimuli coming his way on a daily basis. The theory makes four major assumptions: journalists select the topics they will present and still bear the professional responsibility of deciding how the selected topics would be presented to the audience. This means that framing theory believes that the media not only determines the issues audience think about but also influence show the audience think about the issue; and interpret information through their own frame. Audience frames may overlap or contradict the media frames, media frames are reinforced every time they are evoked, whether positively or negatively and frame building is a systematic process that occurs over time.

Therefore, frame is simply the way a communication source defines and constructs any piece of communicated information or message with a view to subtly swaying the mind of the audience towards a predetermined sentiment.

The theory that this study relies upon is known as CLADEA Theory or Human Dignity Theory. This is unconnected with the fact that this theory states that every person should be respected and should not be subjected to any form of human denigration. Over the years, it has been observed that an act of domestic violence is a form of human denigration. The prevalence of domestic violence is unconnected with the fact that some women want to survive and reduce a level of poverty in their lives by subjecting them to any form of abuse in the matrimonial home.

The gap that this study will fill is the non-enforcement of the relevant laws in relation to domestic violence in Nigeria.

### CHAPTER THREE

#### LEGAL AND INSTITUTIONAL FRAMEWORK OF DOMESTIC VIOLENCE IN NIGERIA

Although violence in the home can be directed toward children, the elderly, or other household members, most often this term is used to represent violence between adolescents or adults who are currently or were previously involved in a romantic or intimate relationship. Domestic violence occurs between spouses, ex-spouses, and couples who are dating or who dated previously.<sup>82</sup> The violence between these individuals is not limited to the home setting and may occur in locations outside the home as well. It domestic violence focuses on the structure of the family. It is believed that certain characteristics put a family or a couple at risk for violence. Individuals who have witnessed violence within their own family as a child may be more likely to imitate similar behavior in their relationships as adults. At the same time conditions lead to stress and conflict in the family. Factors such as low socio- economic status; low-income occupations; which may

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<sup>82</sup> .A Aduayi O.S Aduayi , O.A Olasode, ‘Sexual coercion and violence among young women in Nigeria’: [2016] a northern and southern comparison. African Journal of Reproductive Health: 37-43.

result in frequent unemployment and little to no social support from family create high levels of stress. It is hypothesized that individuals who have learned to resolve conflict with violence use violence as a method of coping these types of stresses. An equal distribution of power in the relationships between men and women assigns women a lower status. From this position of subordination, women become dependent upon their spouses or partners and are subjected to the demands and abuse of their mates. Ajik<sup>83</sup> pointed out that, permission for violence by men against their wives has been reinforced through western religion and law for countries. These laws are just only on paper as some of them are not enforced.

It is against this backdrop, this chapter will examine the legal and institutional framework of domestic violence in Nigeria.

### **3.1 Internal Conflict of Law, Child Marriage and Domestic Violence in Nigeria**

Conflicts of Laws exist both in international law and municipal law. The existence of different ideological and legal systems gives rise to conflict of laws of multiple nature.<sup>84</sup> When there is a conflict between the legal system and laws of different nations, a branch of law known as private international law is called in to resolve the conflict.<sup>85</sup> However, if the dispute is between systems of law within a particular state, the problem assumes a special character and recourse must be had to the different Court Rules and Local Statutes for the resolution of such conflicts. This type of conflict is very pronounced in Nigeria. This is as a result of a multiplicity of reasons.

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<sup>83</sup>O.N. Aihie, 'Prevalence of Domestic Violence in Nigeria: Implications for Counselling', [2009] Edo Journal of Counselling 2 (1), p.3.

<sup>84</sup>Z.A Abdulsalam, "An Appraisal of The Ascertainment Of Applicable Law Of Torts In Conflict Of Laws" (Unpublished) LL.M Thesis Submitted to the Postgraduate School, (Ahmadu Bello University, Zaria, 2014) p. 24

<sup>85</sup> Ibid

First, most part of our customary law still remains un-codified with the result that obsolete laws exist side by side with new ones.<sup>86</sup> Secondly, the reception of the laws of a country with higher level of economic development and totally different historical and cultural background. This is very evident in the subjection of our customary laws to English standards for its validity. Thirdly, adherence to the doctrine of precedence requires constant touch with the laws to avoid the application of laws that have since changed. Fourthly, the multi-ethnic nature of the Nigerian polity has also led to a multiplicity of customary laws with the result that conflict in customary law exists even within the same geographical location.<sup>87</sup>

It has been stated earlier that the issue of marriage in Nigeria is a matter regulated by the federal government as long as such marriage is contracted statutorily.<sup>88</sup> Thus, there can be no problem relating to conflict of law in Nigeria in relation to statutory marriage except where such conflict occurs on the basis of private international law, usually, in the cases of double-deck marriages. However, customary marriage is largely regulated by the bodies of unwritten and non-unified customary law and the Islamic law of marriage as found in all of the geographical areas constituting Nigeria.

Historically, the absence of formal court system in Africa as it is structured in the Europe made the foreign writers concluded that there was no court system, and legal administration in existence before the arrival of colonial overlord. Olaoba<sup>89</sup> is of the view that the regulation and enforcement of law is not absolutely attached to these paraphernalia of structure, adding that there are other agencies that enhanced the administration of justice in African such as age-grades and secret

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<sup>86</sup>Fayokun Op. Cit. p. 820

<sup>87</sup> Ibid

<sup>88</sup> As evident in item 61, Second Schedule, Part 1, Constitution of the Federal Republic of Nigeria, 1999 as amended in 2011

<sup>89</sup> O.B Olaoba *Legal Research in Royal Domain; The Experience of a field Researcher in Handbook in African Studies* (Ibadan: John Archers Publishers Ltd. 1992) pp 24 – 25

societies – the *Ogbonis*, *Odi* in Ijebu, the *Emese* in Ife, Ekiti and Ijesha, *Baale* in Ibadan, *Igbimo Ilu* in Ibarapa – all these opinions fail to address the dynamism of African customary law of which Yoruba legal tradition is a key part, with respect to its modern relevance.<sup>90</sup>

One point to make here is that the legal system of Nigeria is pluralistic in nature, the explanation that Nigeria is composed of about 300 ethnic groups, the largest of which are the Hausa (Northern Nigeria), Igbo (south-east) and Yoruba (south-west). Other than the Hausa that mostly practice Shari'a law, each ethnic group has a system of customary law, although variations are noticeable among communities in these groups.<sup>91</sup> In 1914, the Supreme Court Ordinance established the Supreme Court of Nigeria and mandated it to apply the common law of England, the doctrines of equity, and the statutes of general application in force in England on 1 January 1900. On 1<sup>st</sup> October 1954 Nigeria became a federation with a central government in Lagos and three regional governments in the north, west and east. On 1 October 1960 it became independent with a federal constitution and constitutions for the three regions.<sup>92</sup> On 1 October 1963 it became a republic, and severed judicial and political ties with Britain. Following a civil war that lasted from 1967 to 1970, and several coups d'état, a constitution was adopted in 1979, and later modified into the current 1999 Constitution.

Nigeria's legal system, thus, is based on the Constitution, the received English common law, local legislation, Shari'a law, and customary law. As a federation consisting of a central government, 36 states grouped under six geo-political zones, and nearly a

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<sup>90</sup> Ibid

<sup>91</sup> *Egharevba v Orunonghae* [2001] 11 NWLR [Pt 724] 318 [CA] 337 per Ibiyeye JCA

<sup>92</sup> Nigeria Independence Act of 1960 8 & 9 Eliz 2 CAP. 55.

thousand local government councils, law making is shared.<sup>93</sup>

Unlike federal law with unlimited territoriality, state and local council laws are limited to their respective territories.

Having established the pluralistic nature of Nigerian law, it remains to be said that the co-existence of these laws usually lead to the problem of the choice of law to be applied in certain circumstances as demonstrated in this section. The Nigerian legal system runs on three somewhat distinguishable streams of civil law, Islamic law and customary law. For instance, marriages under customary law are not invalidated merely because they do not meet the conditions stipulated for marriages under the Marriage Act, for they operate under different systems of law.<sup>94</sup> Statutory provisions enjoin the High Courts to administer customary law along with law from other sources.<sup>95</sup> In *Oppion v. Ackinie*,<sup>96</sup> it was held that, the continued exercise of the jurisdiction of customary courts was not inconsistent with that of the High Court but that both are “co-existent”. Thus, marriages and matrimonial causes in customary law exist side by side with statutory marriages. The plurality of laws in the Nigerian legal system no doubt introduces a complexity which is bound to generate conflict of law problems. In the words of Niki Tobi:

Nigeria is a multi-lingua country with diverse varied and various ethnic groups, cultures and traditions. The sociology of the country is not only complex but highly diversified and heterogeneous. This type of society certainly gives rise to conflict problems in our laws,

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<sup>93</sup> Constitution of the Federal Republic of Nigeria, (CFRN), 1999 s. 2(2) & 4

<sup>94</sup>Fayokun Op. cit. p. 819

<sup>95</sup>for instance sections 12(1) and 26(1) of the High Court Law, Cap. 52, Laws of Lagos State, 1973. Similar provisions abound in the High Court Laws of other states

<sup>96</sup> (Unreported) Quoted In Niki Tobi, “Sources of Nigerian Law” (MIJ Publisher 1996), P. 14

particularly when that highly diversified society operates a plurality of laws<sup>97</sup>

The focus here is then to determine the appropriate lawful age at which a person can be said to have been marriageable in the face of the available customary laws and the various Child Rights Laws of States, this is owing to the fact that there are cases of inter-tribal marriage and movement of persons from their indigenous communities to other communities, would it then be said that a marriage purportedly contracted under a customary law may be rendered void if circumstances takes such person to another community or could it be said that a girl who would have been marriageable under the native law of Kano who may not have been marriageable under the customary law of the Yorubas would then become non-marriageable because she is getting married to a Yoruba man. The way to explain this kind of conflict can be seen in the dictum of James, L. J. where he observed that;

Can it be possible that a Dutch father stepping on board a steamer at Riterdam with his dear and lawful son should on his arrival at the port of London find that the child has become a stranger in blood and in law, and a bastard filliu nullius? (Because the law of marriage in London does not accept the marriage law of the Dutch people<sup>98</sup>

In conflict of laws, in order to determine the law of the particular jurisdiction that will be applicable, certain conditions have to be considered, this principles include inter alia, the following:

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<sup>97</sup> Ibid

<sup>98</sup> Re Goodmann's Trust (1981) 17 Ch. p. 298

- i. The *lex fori* rule which dictates that the law of the forum or the court where the matter is instituted should be applied
- ii. The *lex loci* which dictates that the law of the place where rights were acquired or liabilities incurred should be applied, it identifies the *contractus, delicti, domicilii, solutionis, cerebationis*, etc. where the suit was brought

Meanwhile, in matrimonial cases, the applicable law is determined by the principle of *lex loci celebrationis*.<sup>99</sup> This means the law of the place where the marriage was made or celebrated. It may mean the law of the place where a marriage contract was celebrated i.e. *lex loci celebrationis*. In this regard, if the validity of a marriage is in question under conflict of laws, the question is determined by recourse to the connecting factor of the place where the marriage was celebrated. For example, if a *Gbagujiman* from *Kakauin* Kaduna South Local Govt. Area contract a marriage under native law and custom and the validity of that marriage is in question in a court in U.S.A. the validity of that marriage would be determined by recourse to *lex loci celebrationis* of the parties.<sup>100</sup> In the circumstance, the personal law of the parties in *Kakau* village of Kaduna State of Nigeria would be resorted to in order to determine the validity of their marriage in U.S.A. It is not the law of the state in U.S.A. where the matter is, that will determine the validity of the marriage.<sup>101</sup> The challenge here will then go to the fact that if a man from Lagos, Nigeria marries a girl from Zamfara state who is below the age of 18 years, the said marriage will be valid while contracted on the basis of the principle of *lex loci celebrationis* but if the said man moves back to Lagos where marriage to a girl below 18 years is prohibited, could he have been said to have committed an offence under the Lagos law? this conflict is created as a result of the lack of availability of a unified legislation on the definition of who a child is. The

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<sup>99</sup>Z.A Abdulsalam Op. cit. p. 27

<sup>100</sup> Ibid

<sup>101</sup> Ibid

kind of conflict of law pointed out here is conflict among customary laws within Nigeria owing to the nature of diversity of the various customary laws.

### **3.2 Legal Protection against child Marriage and Domestic Violence in Nigeria**

It will be stated that the protection or otherwise of child marriage against domestic violence can only be found in the sources of our laws. Primarily, the sources of the Nigerian Law as it relates to the point of discourse include the following:

- i. The Constitution
- ii. The Marriage Act
- iii. The Child Rights Act and Laws of various states where applicable
- iv. African Charter on Human and Peoples' Right (Ratification and Enforcement) Act<sup>102</sup>

It is in light of the above that the legal provisions against Child Marriage in Nigeria shall be examined.

#### **3.2.1 The Constitution**

It is imperative to note that in the hierarchy of laws in Nigeria, the Constitution is the most superior as provided in Section 1 (1),<sup>103</sup> the Constitution further provides that where any law is inconsistent with the provisions of the Constitution, such law shall be rendered void to the extent of its inconsistency.<sup>104</sup> Item 61, Second Schedule, Part 1 of the said constitution<sup>105</sup> further provides that statutory marriage are matters reserved for the regulation of the National Assembly.<sup>106</sup> Thus, the provision of Marriage Act and the Matrimonial Causes Act regulates the

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<sup>102</sup> CAP A 10, Laws of the Federation of Nigeria, 2004

<sup>103</sup> Constitution of the Federal Republic of Nigeria (CFRN) 1999

<sup>104</sup> Ibid, Section 1 (3)

<sup>105</sup> Ibid

<sup>106</sup> Being a matter contained in the Exclusive Legislative list

statutory marriage while the provision of the Child Rights Act will be applicable alongside the Marriage Act to regulate age of marriage.<sup>107</sup> Thus, it can be said that the Constitution of Nigeria acts as an enabling law to empower the National Assembly to make laws to include laws which are capable of eradicating early child marriage.<sup>108</sup> However, the constitution failed to cover the field when it excluded the Customary Marriage and Islamic marriage from the exclusive list. Hence, the inability to have a unified position on the validity or otherwise of child marriage. As a way of advocating for the protection of the girl-child against early marriage, Adeniyi<sup>109</sup> explains that the rights contained in Chapter IV of the constitution encompass the issues that raise concern in the child marriage cases. In the institution of child marriage, the girl child's life is threatened by the early pregnancy, her dignity and respect as a person is compromised by the lack of consent and relationship in the age gap between her and her husband. Thereby, concluding that the right to human dignity, private life which is significant in terms of the right to marry and establish a family are wide enough to void the menace of child marriage.<sup>110</sup> Further, the Constitution in Section 17 (3) (f)<sup>111</sup> provides that the state policy must be directed towards ensuring that children and young persons are protected against any exploitation whatsoever. However, this provision is only contained in the aspect of the law which is not justiciable.<sup>112</sup>

### **3.2.2 Marriage Act**

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<sup>107</sup>Prohibits any person under the age of 18 years from being capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever

<sup>108</sup> The powers of the National Assembly to make laws for the good governance of Nigeria or any part thereof in Section 4, Constitution of the Federal Republic of Nigeria is apposite here

<sup>109</sup>O.O Adeniyi "Legal Protection of the Girl Child against Child Marriage (Aure Yarinya) in Nigeria" (Unpublished) LLD thesis Submitted in the Faculty of Law University of Pretoria, 2016, p. 123

<sup>110</sup> Ibid

<sup>111</sup> CFRN, 1999

<sup>112</sup> Ibid, Section 6 (6) (c)

Under the Marriage Act, there are specific provisions that address the requirements and conditions necessary for a marriage to be considered valid, as we have previously discussed,<sup>113</sup> the most important of this relates to the couple's consent which is therefore important and must be voluntary or real, and without fraud or duress. Parental consent is only required where either or both parties are under twenty one, in which case the absence of parental consent will invalidate the marriage. However, it is observed that the Marriage Act does not address the issue of marriageable age, except in situations where parental consent is needed for individuals under 21 years old. This means the Act does not set a minimum age for marriage but requires those under 21 to obtain parental approval. Thus, aside from this stipulation, the Act remains silent on age restrictions for marriage, revealing a gap in the legislation regarding the establishment of a clear legal age for marriage.

### **3.3 The Child Rights Act and Laws of various states where applicable**

Since the Marriage Act does not specify a marriageable age, Nwogugu<sup>114</sup> holds that recourse must be made to the common law of England which specifies the age of puberty, being fourteen years for boys and twelve for girls.<sup>115</sup> It is submitted that this position will not hold water, it is true that the Marriage Act does not provide for the minimum age of marriage. However, recourse is not to be had to common law anymore, it would rather be had to the Child Rights Act which has the effect of repealing this common law provision as shall soon be seen.

The Child Rights Act enshrines the principle that individuals below the age of eighteen lack the legal capacity to enter into marriage. It expressly prohibits any such unions and declares them invalid in the eyes of the law. This legislative provision safeguards children from the potential

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<sup>113</sup> Marriage Act s 33

<sup>114</sup>E.I Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books Nigeria Plc 1974) p. 23

<sup>115</sup> Ibid

harms and vulnerabilities associated with early or forced marriages, ensuring their rights to protection, education, and autonomy are upheld. By establishing this legal framework, the Act aims to promote the well-being and development of children, acknowledging their evolving capacities and the need for their best interests to be paramount in all matters concerning them.<sup>116</sup>

It even prohibits child betrothal by a parent or guardian, criminalising the practice and providing for the punishment for offenders who could be the parent or guardian, or the person who marries or is betrothed to the child.<sup>117</sup> Unlawful sexual intercourse is prohibited under the Child Rights Act.<sup>118</sup> Sexual intercourse in a marriage with a child would be regarded as unlawful sexual intercourse but the Act goes further by specifying forms of sexual abuse and exploitation as well as providing blanket cover against any form of exploitation which is not expressly named in the Act but which is prejudicial to the welfare of the child.<sup>119</sup>

Also, Section 14 of the Act<sup>120</sup> provides that every child has a right to parental care and protection, and accordingly, no child shall be separated from his parents against the wish of the child except for the purpose of his education and welfare; Section 15 (5)<sup>121</sup> further provides for the education of a child who gets pregnant before completion of her education, it provides that a female child who becomes pregnant, before completing her education shall be given the opportunity, after delivery, to continue with her education, on the basis of her individual ability.

The Child Rights Act is an avenue by which the menace of child marriage can be effectively combated. However, the problem is its restricted application, according to Fayokun,<sup>122</sup> the

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<sup>116</sup> Section 21, Child Rights Act, 2003

<sup>117</sup> Ibid, Sections 22 and 23

<sup>118</sup> Ibid, Section 31

<sup>119</sup> Ibid, Section 33

<sup>120</sup> Ibid

<sup>121</sup> Ibid

<sup>122</sup> Op. cit, p. 894

implementation of the Child Rights Act faces challenges in certain northern parts of the Nigeria, in particular on the issue of marriageable age. Braimah<sup>123</sup> highlights Item 61 Part 1 and the Second Schedule of the Nigerian Constitution as discusses above along with some other provisions as factors inhibiting the acceptance and application of the Child Rights Act in certain of the northern states.

### **3.3.1 African Charter on Human and Peoples' Right (Ratification and Enforcement) Act**

It has been stated earlier that the Child Rights Act is not automatically applicable to states in relation to marriage which are celebrated in line with customary or Islamic law. Meanwhile, Nwauche<sup>124</sup> argues that where a state fails to domesticate the Child Rights Act, recourse can be sought in the domesticated African Charter on Human and People's Rights through the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap 10 of the Laws of the Federation of Nigeria 1990 for protection of the girl child against child marriage. This is because of the fact that where the requirement of Section 12 (1) of the Constitution is met in relation to an international treaty, such treaty will no longer be treated as international law, it is rather a domestic law.<sup>125</sup> It can therefore be employed in any instance relating to the rights of citizens since the Charter now has a universal application throughout the Federal Republic of Nigeria. In Article 18 (3), the African Charter mandates the state to ensure the rights of the child as contained in the Convention on the Right of the Child, this is presented below:

*the State shall...ensure the protection of the rights of the woman  
and the child as stipulated in international declarations and  
conventions*

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<sup>123</sup> T. S. Braimah, "Child marriage in Northern: Section 61 Part 1 of the 1999 Constitution and the protection of children against child marriage", (*African Human Rights Law Journal*. Vol. 14, 2014) p. 485

<sup>124</sup> ES Nwauche, "Civil Questions Involving Customary Law as the Basis of Appellate Jurisdiction in Nigeria", (*Acta Universitatis Danubius. Juridica*, 2015) Vol. 11 (1), p. 427

<sup>125</sup> *Ibid*; *Abacha v Fawehinmi* [2001] 51 W.R.N. 29

The international declaration and convention referred to above is submitted to include the Child Rights Convention. Thus, it will be stated that the protection given to the child under the CRC can be given effect to as the legal marriageable age in Nigeria by the argument above. Reference would then be made to Article 1 of the said convention which provides that

*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*

Meanwhile, the convention defines a child as a person under the age of 18, the provision 'unless under the law applicable to the child, majority is attained earlier', contradicts this and does not help to eradicate child marriage.<sup>126</sup> For instance, in Northern Nigeria, where traditional and cultural practices are heavily influenced by Islam and laws derived from Shari'a, the age of majority for girls is attained pre-puberty. However, the solace comes from the fact that the ACHPR mentions that all declaration should be given effect to. Thus, we can consider the African Children's Charter in Article 1 sets the age of childhood below 18 years, without affording states the opportunity to prescribe otherwise. The prohibition of child marriage is included in the African Children's Charter under article 21 (2), which states:

*Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.*

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<sup>126</sup> L. Askari, "The Convention on the Rights of the Child: The necessity of adding a provision to ban child marriages" (*ILSA Journal of International and Comparative Law* 1999) Vol. 5, p. 124.

Therefore, it can be said that whenever this line of argument presents itself before the court, it would be apt that the ACHPR be given effect to as the law prohibiting marriage to persons below 18 year.

### 3.3.2 The Rights of the Girl Child to Education

Right to education generally is a social and economic right that is encapsulated under section 18 (1) of the Nigerian Constitution<sup>127</sup> which provides inter alia that:

*“Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels”*

As lofty as this above is, it is not justiciable because it is embedded under Chapter II of the Nigerian Constitution<sup>128</sup>. However, in the case of *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria & University Basic Education Commission*,<sup>129</sup> where Article 17 of the ACHPR provides that:

- i. Every individual shall have the right to education
- ii. Every individual may freely take part in the cultural life of his community
- iii. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

It is interesting to note that the above article is subject of deliberation before the ECOWAS Court. The court held that Article 17 of the ACHPR, (to which Nigeria is a signatory) states categorically that every Nigerian has the right to education<sup>130</sup>. In addition, in *Socio-Economic*

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<sup>127</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended.

<sup>128</sup> Ibid

<sup>129</sup> Suit No:ECW/CCJ/App/12/07; Judgement No: ECW/CCJ/JUD/07/10, delivered at Abuja, Nigeria on 30/11/2010

<sup>130</sup> A. Govindjee and A. Taiwo, “Justiciability and Enforceability of the Fundamental Objectives and Directive Principles in Nigeria: Lessons from South Africa and India” (2011) Nigerian Bar Journal August Vol. 7, Publication of the NBA, 93.

*Rights and Accountability Project (SERAP) V Federal Government of Nigeria*,<sup>131</sup> the plaintiff litigated to induce the defendant to implement the right to education could not be prescribed under section 18 of the Nigerian constitution. In dismissing the objection, the Community Court (ECOWAS) held that:

*“... the Plaintiff alleges a breach of right to education contrary to the provisions of the African Charter on Human and People’s Rights. The right to education recognized under Article 17 of the African Charter is independent of the right to education captured under the Directive Principles of State Policy of the 1999 Federal Constitution of Nigeria...”*

It is worthy of mention that the Preamble to the African Charter states that “ civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights”.<sup>132</sup> Nonetheless as noted above the Directive Principles of State Policy in Chapter II of the Nigerian Constitution are not justiciable. However, it can be argued that they can be sanctioned through the ACHPR. By virtue of Section 12 of the Nigerian Constitution, international treaties shall have the force of law when enacted into law by the National Assembly.<sup>133</sup>

From the above, it is evident that right to education is a right recognized and enforceable under Article 17 of the African Charter on Human and People’s Rights, 1981. Lending credence to the

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<sup>131</sup> (Unreported) Suit No: ECW/CCJ/APP/08/08

<sup>132</sup> Y. Olomajobi, *Human Rights and Civil Liberties in Nigeria*: (Lagos; Princeton & Associates publishing Co. Ltd. 2016) at p. 5

<sup>133</sup> Constitution of the Federal Republic of Nigeria, (1999) as amended s 12(1); *Fawehinmi v Abacha* [2001] 51 WRN 29; *Ogugu v state* [1994] 9 NWLR (Pt. 366) 1 at 26-27; *Ubani v Director, SSS* [1999] 11 NWLR Pt. 129.

provision of the African Charter on Human and People's Rights, CEDAW in its Article 3 provides that states parties shall take appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights fundamental freedom on a basis of equality with men. Therefore, it is the right of every girl child to get education and they cannot be discriminated against based on gender or sex as the Nigerian Constitution<sup>134</sup> provides that every person should be treated equally.

### **3.4 The Impact of Girl's Education on Child Marriage**

The school serves as a crucial institution beyond the family, playing a pivotal role in the socialization process of young individuals into various aspects of adult life. Beyond academic education, schools impart vital social and emotional skills, ethical values, and civic responsibilities necessary for navigating the complexities of adulthood. Through interactions with peers, teachers, and diverse learning experiences, students develop communication abilities, teamwork, problem-solving skills, and a sense of civic duty. Moreover, schools provide platforms for cultural exchange, critical thinking, and exposure to different perspectives, preparing young people to contribute positively to society and thrive in diverse environments. More years of schooling have been associated with many positive outcomes, including later ages of marriage, lower fertility, and healthier and better-educated children, economic development. However, early marriage inevitably denies children of school age their right to the education they need for their personal development their preparation for adulthood, and their effective contribution to the future wellbeing of their family and society. Indeed, married girls who would like to continue schooling may be both practically and legally excluded from doing so. Marriage

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<sup>134</sup> Constitution of the Federal of Nigeria, 1999 as amended.

at a young age denies children the opportunity to develop their intellectual and social skills, including the ability to express themselves and to blossom in their own sense of autonomy, which are arguably the principal aims of education.<sup>135</sup> The essence of the rights to education and to health is that they facilitate and ensure the effective enjoyment of other human rights.

For a number of poorer families, the potential rewards of educating daughters are too far off and therefore their education is not recognized as an investment. Families perceive that a girl's education will only benefit her husband's household, and not her parents. Additionally, some parents believe that girls do not need an education for their roles as wives and mothers, that education undermines cultural practices, and it teaches the girl to reject tradition. The following citation illustrates well the case:

*At the age of about 14 years, my father sent me to my uncle so that he could let his wife train me for marriage. He believe that if continued to go to school, I would be spoilt girl” and no man would agree to marry me. Being spoilt girl meant that I would be too wise to marry back in his village where he could get my dowry.*<sup>136</sup>

However, there is a saying that when you educate a woman you educate a nation.<sup>137</sup> Education, even at a basic level, is not only about livelihood and technical skills but more importantly provides social ‘connectedness’ or aptitude which enables one to access key resources to alleviate poverty. By interacting with others, individuals acquire the social skills and personal

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<sup>135</sup> R. Hodgkin & P. Newell, *Implementation Handbook for the Convention on the Right of the Child*, (London: UNICEF, 1998) pg. 551

<sup>136</sup> K. O. Fayokun *Legality of child marriage in Nigeria and Inhibitions against realization of Education Rights*, (China Law Review 2015) Vol. 12 @ pg. 824

<sup>137</sup> Y. Olomjobi, *Human Rights and Civil Liberties in Nigeria*: (Lagos; Pinceton & Associates publishing Company Ltd. 2016) at p. 4

capacities needed to access resources and opportunities, and to form social networks for support and assistance when required in the future. Individuals can also develop their self-esteem and confidence to voice their opinions and to take control over their own actions, lives and bodies. Other positive benefits of education are linked to improved reproductive health and child survival and welfare.<sup>138</sup>

Educated women are more likely to have a say in decision-making regarding the size of their families and the spacing of their children. They are also likely to be more informed and knowledgeable about contraception and the healthcare needs of their children. Adolescent girls who marry outside their communities tend to lose the close friendships they had formed in their parental homes, and often become quiet and subdued. This means that even where girls have developed social networks they are unable to access them from their marital community<sup>139</sup>. The universal right to education has been affirmed by the world's governments for more than 50 years, most recently by the Millennium Development Goals adopted by the 191 member states of the United Nations in 2000. However, some 115 million children among them 62 million girls are still denied this right. According to data from UNICEF<sup>140</sup>, outside of the developed world, only 76 percent of all boys and 70 percent of all girls attend primary school.

While marriage does not have to mean that a girl's or boy's education finishes, the attitudes of parents, schools and spouses in many societies mean that it often does. Husbands of young wives are often older men, who expect their wives to follow tradition, stay home and undertake household and child-care duties. A girl may be unable to go against her husband's wishes and the husband's family may refuse to invest their scarce resources in the wife's continued schooling.

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<sup>138</sup> V.A Aduayi O.SAduayi , O.A Olasode, 'Sexual coercion and violence among young women in Nigeria': a northern and southern comparison. *African Journal of Reproductive Health* 2016: 37-43.

<sup>139</sup> Ibid

<sup>140</sup> R. Hodgkin & P. Newell, *Implementation Handbook for the Convention on the Right of the Child*, (London: UNICEF, 1998) pg. 551

Some schools often have a policy of refusing to allow married or pregnant girls or girls with babies to return. They may believe that it will set a bad example to other pupils or that other parents will be angry to see the school go against the traditional beliefs. Even if they do permit girls to return, the school environment - rules, timetables and physical conditions - can make it too difficult for a girl to attend school and perform her duties as wife and mother at the same time. Bullying and abuse by teachers, pupils and other parents can further reduce girls' self-confidence and sense of security, forcing them to give up on schooling.

When girls drop out of school to get married, there is a knock-on effect for the community as a whole, and for future generations. Evidence suggests that children of young, uneducated mothers are less likely to have a good start to their education, do well in class or continue beyond the minimum schooling. Their daughters especially are likely to drop out, marry young and begin the cycle again<sup>141</sup>. Research shows<sup>142</sup> that the school dropout girls in Nigeria somehow become fully dependent on their husband and cannot be self-reliant. It legitimizes the process in which girls gradually lose their ability to make choices in their lives due to having lack of education. Moreover, the way both boys and girls are getting socialized is still problematic in this 21st century because it promotes the gender hierarchies where the sex role socialization of the girls often keep them lagging behind.

### **3.4.1 Rape as a form of Domestic Violence**

Nigeria's criminal legal system is equipped with a comprehensive framework and an array of legal facilities to effectively address and deter criminal activities, ultimately ensuring that wrongdoers are held accountable and brought to justice. This system encompasses various

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<sup>141</sup> V.A Aduayi O.SAduayi , O.A Olasode, Sexual coercion and violence among young women in Nigeria: a northern and southern comparison. (African Journal of Reproductive Health 2016) pg. 37-43.

<sup>142</sup>L. Sanusi, National Commission for Mass Literacy, Adult and Non-formal Education (2013) pg. 4

components such as laws, regulations, law enforcement agencies, courts, and correctional facilities, all working together to combat crime. Through the implementation of these measures, the legal system aims to curb criminal behavior, protect the rights of citizens, and maintain law and order in the country. Additionally, it serves as a mechanism to investigate, prosecute, and adjudicate criminal offenses, thereby upholding the principles of justice and fairness within society. Rape being the subject of discussion in this essay is criminalized by several statutory provisions and the punishment for the offence is also provided in the statutes thereof. Apart from the legal framework, the criminal justice system also makes provision for the institutional framework of the offence of rape. These institutions among other things ensure proper procedure of bringing an offender of rape before a competent court for trial and consequently for sentence upon conviction.

This chapter therefore examines these legal frameworks from the Criminal Code Act,<sup>143</sup> the Penal Code as well as the Violence against Persons Act.<sup>144</sup> It also focuses on institutional frameworks i.e. the Nigerian Police, the Correctional service as well as the court as well as their roles in combatting the offence of rape. The chapter will also take a look into inherent loopholes in these legislations and consider how these loopholes can be repositioned to meet the present need of fighting rape in our society.

### **3.4.2 Legal Framework of Rape under the Nigerian Law**

The legal framework of rape as mentioned above are the statutory legislations which are put in place by the Nigerian Criminal Justice system with a view to establishing enforcement bodies,

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<sup>143</sup>CAP C 38 LFN 2010

<sup>144</sup> Violence Against Persons (Prohibition) Act, 2015

regulate their conduct, criminalize the offence of rape as well as prescribing the procedure for enforcing the punishments of offenders.

Furthermore, legal framework is also made up of case laws as in the judicial decisions of courts regarding the offence of rape and other sexually related offences. These decisions of court are the applications and interpretations of the legislations by the courts as enacted by the legislatures. In the locus classicus case of *The State v Olumuyiwa Ayodele*<sup>145</sup>, the court convicted the accused persons for rape based on the application and interpretation of section 357 of the Criminal Code<sup>146</sup> after evidence was adduced and corroborated.

### **3.4.3 Rape under the Criminal Code**

The Nigerian Criminal Code Act is applicable to the southern states of the country. Different states have replicated same as criminal law in Nigeria. Rape is defined under the Criminal Code thus: Any person who has unlawful carnal knowledge of a woman or girl, without her consent or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.<sup>147</sup>

The ingredients of the offence of rape include:

1. That the accused had sexual intercourse with a woman (the victim) against her will;
2. The act of intercourse was unlawful not being between husband and wife;
3. Penetration is proved;
4. The accused must have the requisite mensrea, i.e. intention to have intercourse without the victims consent; and

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<sup>145</sup> 1982 (2) NCR 297

<sup>146</sup> Supra

<sup>147</sup>Section 357 Criminal Code Act

5. Evidence must be adduced to corroborate the complaint. This is not a requirement of law but practice.<sup>148</sup>

These elements have been judicially tested and will be discussed albeit briefly

In *Adeoti v State*,<sup>149</sup> the Court of Appeal held that the offence of rape is said to be consummated where a man has unlawful carnal knowledge of a woman or girl without her consent or where consent is obtained by force or by means of threat or intimidation of any kind or by fear of death or possible bodily harm or by means of deceit, falsehood or fraudulent representation as to the nature of the act. The court further held that the essential and most important ingredient of the offence of rape is penetration and unless penetration is proved, the prosecution must fail. Penetration however slight is sufficient and it is not necessary to prove injury or rupture of the hymen to constitute the crime of rape.

Also in the *Ogunbayo v State*<sup>150</sup>, the Supreme Court held that sexual interference is deemed complete, upon proof of penetration of the penis into vagina. Emission is not a necessary requirement. It has however been held, that any, even the slightest penetration will be sufficient to constitute the act of sexual intercourse. This is why, even where the penetration was proved but not of such a depth as to injure the hymen, it has been held to be sufficient to constitute the crime of rape. Thus proof of the rupture of the hymen is unnecessary to establish the offence of rape. In this same case, the Supreme Court made references to the case of *State v Ogwudiegwu*<sup>151</sup> where it was held that in the offence of rape, in order to secure a conviction, corroborations of the evidence of the complainant implicating the accused is not essential, but a judge must warn himself of the risk of convicting on the uncorroborated evidence of the complainant. The issue of

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<sup>148</sup> A.M. Adebayo, *Criminal Code Act with Annotated* (Lagos: Princeton Publishing and Co., 2012) p. 341

<sup>149</sup> [2009] All FWLR (Pt 454) 1450

<sup>150</sup> [2007] All FWLR (Pt 365) 408

<sup>151</sup> [1968] NMLR 117

corroboration has been quite thorny in the criminal law jurisprudence for the offence of rape. These days the manner in which the crime occurs makes it practically impossible to require corroboration. For instance, where a man is caught in the act, what other corroboration is needed to convict such a person or where it is the defilement of a child by an adult with a threat of harm on the child if she dares report and the act continues until the parents of the child discovers same either as a result of change in the attitude of the child or the child is hurt and bleeding and confesses to the parents that she has been constantly defiled by the suspect. What would be the corroborating evidence in this situation? This issue is germane because in the case of *Sambo v State*<sup>152</sup> the court held that if the prosecution can secure the conviction of the accused, the victims evidence must be corroborated and that the corroborating evidence must be cogent, compelling and unequivocal as to show without more that the accused committed the offence charged; an independent evidence which connects the accused with the offence charged; and evidence that implicates the accused in the commission of the offence charged.

In the case of *Iko v State*<sup>153</sup> where it held that ... “the proper direction is that it is not safe to convict on the uncorroborated evidence of the prosecutor. The court may, after paying due attention to the warning, nevertheless convict the accused person if it is satisfied with the truth of her evidence...”

It is expedient to state that there is the offence of attempted rape as in Section 360 Criminal Code which attracts fourteen years imprisonment for the offenders. Indecent assaults on females also in Section 361 of the criminal code, abduction of females and abducting females under sixteen years in section 362 of the same act are all crimes under the Criminal Code and attracts a term of imprisonment of two and seven years respectively. More so, The Criminal Code prohibits the

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<sup>152</sup> [1993] 6 NWLR (Pt. 300) 399

<sup>153</sup> [2001] FWLR (Pt. 68) 1161 or [2001] 14 NWLR (Pt. 732) 221

defilement of girls below eleven years<sup>154</sup> and offenders are liable to life imprisonment upon conviction. Where the girl is thirteen years, the accused is guilty of a felony and liable to fourteen years upon conviction. But note that no person can be convicted of either of the offences upon the uncorroborated testimony of one witness.<sup>155</sup> Where a girl is under sixteen but above thirteen, any person who attempts to have carnal knowledge of her or an idiot is guilty of a misdemeanor and is liable to imprisonment for two years upon conviction.<sup>156</sup>

One of the major loopholes in the criminal code is the fact that it only covers the offence of rape of woman gender. It gives no provision to protect the male gender from rape. Also, the code does not provide for enough punishment for other sexual related offences such as two years imprisonment for defilement of a girl under sixteen but above thirteen. It is therefore submitted that some of these provisions be reconsidered to address the surge of rape in the society.

### **3.4.4 Rape under the Penal Code**

Rape<sup>157</sup> is said to occur under the Penal Code where a man has sexual intercourse with a woman in any of the following circumstances:

1. against her will
2. without her consent
3. With her consent, when her consent has been obtained by putting her in fear of death or hurt.
4. With her consent when the man knows that he is not her husband and that her consent is given because
5. She believes that he is another man to whom she is or believes herself to be lawfully married.

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<sup>154</sup> Section 218 Criminal Code

<sup>155</sup> *ibid*

<sup>156</sup> Section 221 1(1) (2) Criminal Code

<sup>157</sup>section 282 Penal Code

6. With or without her consent, when she is under fourteen years of age or of unsound mind.

Under the Penal Code, mere penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape. Interestingly, the Code did not specify that corroboration is a requirement under the law to establish the offence, this is a major lacuna because, sentencing the accused persons for the offence of rape without corroboration would constitute a great havoc on right to justice of the accused and the society as a whole. Also, the punishment for rape is fourteen years; similar to the inherent loophole in the criminal code. It is suggested that the punishment of rape be life imprisonment to serve as enough deterrence to perpetrators. Maximum time of 14 years is not enough.

#### **3.4.5 Rape Under Violence Against Persons (Prohibition) Act**

This Act was signed by the former President Good luck Jonathan on 25th of May 2015. The Act deals with sexual violence in sections 1, 6, and 26 respectively. The Act states that:

A person commits the offence of rape if:<sup>158</sup>

- (a) He or she intentionally penetrates the vagina, anus, or mouth of another person with any other part of his body  
or anything else;
- (b) The other person does not consent to the penetration; or
- (c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false or fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

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<sup>158</sup>Section 1 violence Against Persons (Prohibition) Act, 2015

The Act further provides that where the offender is found culpable under section 1, he would be sentenced to life imprisonment<sup>159</sup>. Where the offender is less than 14 years, the punishment is a maximum term of 14 years imprisonment.<sup>160</sup> In other cases, a minimum of 12 years imprisonment is provided by the Act<sup>161</sup> and for gang rape, the offenders are liable jointly to a minimum term of 20 years without an option of fine.<sup>162</sup> The Act also recommends the award of appropriate compensation to the victim by the court<sup>163</sup> and finally on this the Act mandates that a register of sexual offender be maintained.<sup>164</sup>

From the foregoing, it would be observed that there is an expansion on the definition of rape and its prohibition. While other laws may have restricted their definition of rape to protect only females in relation to vaginal penetration without consent<sup>165</sup> the Act has taken a giant leap by expanding the meaning and scope of rape. Going by the definition of rape in the Act, we would discover that both males and females can be raped and are protected by the Act. The issue of rape being gender biased has been topical in the Nigerian legal jurisprudence for some time because the laws as they are failed to recognize instances where a man could be raped.<sup>166</sup> The provisions of the Act has also taken a progressive stance by recognizing that sex now goes beyond the use of the primary sexual organs and extends the scope to anus and mouth. This is another success because in time past in Nigeria it was difficult to bring forceful anal or oral sex under the umbrella of rape as such was not part of our laws.

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<sup>159</sup>Section 2(1) VAPPA 2015

<sup>160</sup>Section 2(1) (a) VAPPA 2015

<sup>161</sup>Section 2(1) (b) VAPPA 2015

<sup>162</sup>Section 2(1) (c) VAPPA 2015

<sup>163</sup>Section 3 VAPPA 2015

<sup>164</sup>Section 4 VAPPA 2015

<sup>165</sup>Section 281 Penal Code and section 357 Criminal Code Act

<sup>166</sup> An instance was reported in the Daily Post of 17<sup>th</sup> July 2012 of a man that was allegedly raped to death by his wives. The case was not treated as rape but as manslaughter

Another interesting point is that penetration here need not only by the sex organ (penis) of the offender but by any part of his body or anything else. This is an improvement on the Criminal Code Act and Penal Code that requires sexual intercourse. Again, consent must have been vitiated or was obtained by force or threat of use of force or intimidation or deceit including impersonation.

Sanction for the offence of rape is adequate but for gang rape, the penalty should be for life too. Leaving the issue of compensation at the discretion of the court appears superfluous. The Act should have stipulated a minimum amount which would allow the judges to award compensation that will be punitive against the offender as this would serve as a deterrent to others. Maintaining a database of sexual offenders is a laudable step but we are yet to see how this will play out as record keeping appears to be a herculean task for the nation.

The Act addresses another egregious form of sexual violence: female circumcision, also known as female genital mutilation (FGM). This practice involves the partial or complete removal of external female genitalia for non-medical reasons, often causing severe physical and psychological harm. By explicitly prohibiting FGM, the Act seeks to protect the bodily integrity and health of women and girls. Furthermore, it aims to eradicate this harmful tradition by raising awareness, providing support services for survivors, and imposing legal penalties on perpetrators. By taking a stand against FGM, the Act contributes to safeguarding the rights and dignity of women and girls, promoting gender equality, and advancing public health initiatives.<sup>167</sup> The Act prohibits this practice in clear terms when it provides that ‘the circumcision or genital mutilation of the girl child or woman is hereby prohibited.’<sup>168</sup>To drive home the point, the Act further stipulates that any person that performs Female Genital Mutilation (FGM) or female

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<sup>167</sup>Section 6 VAPPA 2015

<sup>168</sup>Section 6 (1) VAPPA 2015

circumcision or engages another to perform such is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N200,000.00 or both.<sup>169</sup> An attempt to commit the offence attracts a term of imprisonment not exceeding 2years or to a fine not exceeding N100, 000.00 or both upon conviction.<sup>170</sup> Where a person incites, aids, or counsels another to commit the offence of FGM, upon conviction, the person is sentenced to a term of imprisonment not exceeding 2years and to a fine not exceeding N100, 000.00 or both.<sup>171</sup>

As laudable as the enactment of this Act, it is expedient to state that it will not be enforceable unless states incorporate it into their own laws or enact their own laws in this regard. It therefore desirable that all the 36 states in the federation would enact their own laws on violence against persons. Ebonyi, Lagos, Jigawa states have legislated against domestic violence and Edo and Cross River states have legislated on female genital mutilation.

### **3.5 Other Enactments**

#### **3.5.1 The Constitution**

In the legal context, the constitution serves as the grundnorm, meaning the ultimate or highest norm upon which all other laws and regulations derive their authority and validity. It is the supreme law of the land, establishing the framework for governance, delineating the powers and responsibilities of the government, and safeguarding the rights and freedoms of individuals within society.

Chapter IV of the constitution is particularly significant as it extensively addresses fundamental rights. These rights encompass a broad range of civil, political, economic, social, and cultural

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<sup>169</sup>Section 6 (2) VAPPA 2015

<sup>170</sup>Section 6(3) VAPPA 2015

<sup>171</sup>Section 6 (4) VAPPA 2015

liberties that are considered essential for the dignity, well-being, and autonomy of every individual. They include rights such as the right to life, liberty, and security of person; freedom of expression, assembly, and association; right to privacy; right to education; right to health; and right to fair trial, among others.

Chapter IV not only enumerates these fundamental rights but also establishes mechanisms for their protection and enforcement. It outlines the duties of the state in upholding these rights, provides avenues for redress in case of violations, and empowers the judiciary to adjudicate disputes related to fundamental rights. Through its provisions, Chapter IV plays a crucial role in ensuring that the principles of justice, equality, and human dignity are upheld within the legal system and society at large.

Section 34 is entitled “right to dignity of human person” and subsection 1 states that: “every individual is entitled to respect for the dignity of his/her person and accordingly (a) no person shall be subjected to torture or to inhuman or degrading treatment”.

Sexual violence in any form is an act against the personal dignity and honour of any person (victim). It is torture of the highest order and contrary to the provisions of the constitution. It is inhuman and degrading and has led to the death or psychological trauma for victims. Basically, sexual violence in whatever form is an infringement of a fundamental right of the victims. The constitution however did not define acts that would constitute breach of human dignity or torture although it can be implied but in sub (2) of the same section 34, the drafters took time to explain acts that would constitute “forced or compulsory labour”, such interpretation should be given to section 34 (1) (a). Listing acts that would constitute a breach of this provision would be a step in the right direction to avoid multiplicity of interpretations and ambiguities.

On the other hand, the constitution makes further provision for the presumption of innocence of any accused person by stating that an accused is presumed to be innocent until he is proved guilty.<sup>172</sup>

### **3.5.2 The Child Rights Act**

The Child's Right Act, 2003 The Child's Right Act was enacted in 2003 to protect the rights of children as the children are the future of any country. The Act in section 1 states that every action concerning a child whether undertaken or service... must be in the best interest of child. The Act defines a child as any person below the age of 18 years.<sup>173</sup> It went further to state that no person is permitted to have sexual intercourse with a child<sup>174</sup> and the punishment is life imprisonment.<sup>175</sup> The Act does not allow the defence of ignorance of the child's age<sup>176</sup> or that the child gave consent for the sexual intercourse.<sup>177</sup> Section 11 (a) prohibits subjecting a child to physical, mental or emotional injury, abuse, neglect or maltreatment including sexual abuse. There is no punishment for violation. More interesting is the fact that the Act prohibits any other forms of sexual abuse and exploitation of a child and upon conviction, the offender is liable to a term of fourteen years. Section 21-23 prohibits the betrothal or marriage of children below 18 years. It is unfortunate to note that some states have a problem with these provisions in the Act as they view them as contrary to their culture, custom and for some religion. Marriage had been used often to legitimize a variety of sexual violence against women and young girls. The custom of marrying off young girls is observed in many parts of the world. The practice which is legal in many parts of the world is a form of sexual violence, since these children are unable to either give or withhold consent and most of them know little or nothing about sex before marriage and

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<sup>172</sup> Ibid, Section 36(5)

<sup>173</sup> 8 Section 21 of the Child's Right Act

<sup>174</sup> Section 31 (1) Child's Right Act

<sup>175</sup> Section 31 (2) Child's Right Act

<sup>176</sup> Section 31 (3) (a) Child's Right Act

<sup>177</sup> Section 31 3(b) Child's Right Act

their first sexual encounters are usually forced<sup>178</sup>. Generally, in Nigeria, the mean age of first marriage is 17 years, but in Kebbi State of Northern Nigeria, the average age at first marriage is just over 11 years.<sup>179</sup> It is sad to note that this form of sexual violence is quite rampant in the Northern parts of Nigeria. Children's Day celebration of 2016 has its theme as: "Protect the right of the child in the face of violence and insecurity and end child Marriage". States, irrespective of their opinions are enjoined to enact their states Childs Right law. Only 26 out of 36 states in Nigeria have been able to enact their own state laws as at May 2014.

### **3.5.3 The Evidence Act**

The Evidence Act provides for the proof of criminal offences as rape in Nigeria.

In criminal cases such as rape, by virtue of the general principle of law that states that he who asserts must prove, the burden of proving the guilty of the accused lies on the prosecution.

Section 139 (1) of the Evidence Act states that the burden of proving that any person has been guilty of a crime or wrongful act is on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.

Also, the evidence Act makes provision for corroboration of evidence. Corroboration means the act of supporting or authenticating an evidence by adducing additional piece of evidence as a backup.<sup>180</sup> This principle is recognized in section 179(1) of the Evidence Act which states that except as provided, no particular number of witnesses shall in any case be required for the proof of any fact<sup>181</sup>

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<sup>178</sup> V. Sharma, et al, "Can Married Women Say No to Sex? Repercussion of the Denial of the Sexual Act", Journal of Family Welfare (1998) Vol. 44, pp. 1-8

<sup>179</sup> UNICEF Innocenti, Research Centre "Early Marriage: Child Spouses, Innocenti Digest (2001) No. 7, p10

<sup>180</sup> E.E. Aloba, *Criminal Law and Sexual Offence* (Princeton Publishing Company Lagos 2016) P. 184

<sup>181</sup><sup>181</sup> See also *Ogbodu v State* [1987] 2 NWLR 21

In the decided case of *R v. Selwyn*,<sup>182</sup> it was held that in rape cases, the court has to take special care to ensure that the testimony of a complainant is safe. This is done by looking for corroboration in other testimonies or other sources of evidence.

Corroboration although not a requirement, the court is to warn itself if acting on the complainant's testimony, of the danger of convicting a person without corroboration.

It is also considered pertinent in the Law of Evidence to give attention to the medical report in rape cases. Therefore, it is imperative for the police or the prosecution to place considerable reliance on the circumstantial evidence to establish the offence of rape since there is usually no presence of eyewitnesses in the offence.

#### **3.5.4 Institutional Framework On Rape**

These include the enforcement agencies that are saddled with the responsibilities of bringing offenders of rape to justice. They carry out these functions with regards to the statutory enactments as explored above. These bodies are; the police, the Attorney General of the Federation as well as the Attorney General of the State, the judiciary and the Prison services.

#### **3.5.5 The Office of the Attorney-General of the Federation**

It is trite that a criminal offence such as rape is committed against the State or Federation and can only be tried by same. This also implies that the case rape cannot be charged by an individual or private person except where a fiat is granted. The power of the Attorney General in Nigeria can be vested at the Federal level and through each states.

Section 150 of the 1999 constitution underscores the office of the Attorney General for each states. It states that:

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<sup>182</sup> (unreported. Criminal Case No. 5 of 1998) Lungole – Awitch J Stated at page 3-4

“There shall be an Attorney General for each state who shall be chief law officer of the state and commissioner of justice of the Government of that state.”

Originally the power to prosecute for a criminal offence is bestowed upon the Attorney General of the Federation or the Attorney General of the State as the case may be. This is evident in Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides as follows:

1. To institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a martial court.
2. To take over and continue any such criminal proceedings that may have been constituted by any other authority or person.
3. To discontinue at any stage before judgement is delivered any such criminal proceedings

174 (2) The powers conferred upon the Attorney General of the Federation under sub-section (1) of this section may be exercised by him in person or through Officers of his department".

The Attorney-General of the Federation<sup>183</sup> may prefer information in any court in respect of an offence created by an Act of the National Assembly. The Attorney-General also has power to issue legal advice or directives to the police.<sup>184</sup> The powers of the Attorney-General of the Federation also have power to discontinue criminal cases by entering a *nolleprosequi*<sup>185</sup>

In the case of *Frn v. Osahon & Ors*,<sup>186</sup> Per Belgore, J.S.C while commenting on the nature of *nolleprosequi* vis-à-vis the powers of the Attorney General averred that:

"Any other authority or person" can definitely institute criminal prosecution. The powers of the Attorney-General of the Federation or of the State are not exclusive, any other person or

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<sup>183</sup> Section 104 (1) Administration of Justice Act, 2015

<sup>184</sup> Ibid, section 105 (1)

<sup>185</sup> Ibid, section 107, section 174 of the 1999 CFRN, as amended

<sup>186</sup> [2006] LPELR-SC.23/2004

authority can prosecute. However, the Attorney-General can take over or continue the prosecution from any such authority or person. He can also discontinue by way of *nolleprosequi*." and to withdraw from prosecution in trials and inquiries and the legal effects of any of such powers when exercised are also provided for in the Administration of Criminal Justice Act.<sup>187</sup> Flowing from the aforementioned provisions of law, it can be submitted that the powers of the Attorney General to discontinue a criminal action by way of *nolleprosequi* is exclusive and personal to him although every other duties can be delegated by him. The effect of this is that the Attorney General may use this power in favour of an accused person who is in his good book and by extension, this has also affected the administration of justice in bringing the perpetrators of rape to justice. It is submitted that the laws be amended to ensure that the excesses of the Attorney General is put in check to avoid abuse of power.

### **3.6 The Nigeria Police**

The Nigeria police are saddled with a lot of responsibilities which relate to the maintenance of law and order, safety of lives and property and the security of the state.

The offence of rape is one which constitutes a great threat to the rights to life, and the dignity of individuals in the society, therefore, the police among other functions sustain the legal duty to prosecute for rape. The structure of the police is stipulated in the Police act vis-à-vis the constitution. Section 215 (2) 1999 CFRN, as amended also provides that:

*“The Nigeria Police Force shall be under the Command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in a state shall; subject to the authority of the Inspector-General of Police, be under the command of Commissioner of Police of that state”*

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<sup>187</sup> Ibid, section 108

In the same vein, Section 23 of the Police Act also empowers the police to institute a criminal action while section 381 (b) Administration of Criminal Justice Act allows a public officer which includes but not limited to police to institute a criminal proceedings. However, this power of the Police is subject to the powers of the Attorney-General of the Federation. It is the duty of the Nigeria Police Force to keep Central Criminal Records Registry.<sup>188</sup> The purpose of this is to ensure that every state police command have the records of every suspect being tried by the court and these records are to be transmitted to the Central Criminal Records within 30 days of the judgment. Section 23 of the Police Act provides as follows:

*Subject to the provisions of Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (which relate to the power of the Attorney General of the Federation and of a State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any Court of law in Nigeria), any Police Officer may conduct in person all prosecutions before any court, whether or not the information or complaint is laid in his name.*<sup>189</sup>

In a rape case, the role of the police begins with due investigation as soon as a complaint has been lodged or suspicion of the commission of an offence. Therefore, anyone who usurps or obstructs the police in carrying out this duty will be guilty of felony and be liable for three years imprisonment<sup>190</sup>

The police also have the duty to arrest offender of a rape case, obtain statements from the complainants, the offender himself as well as the potential witnesses.<sup>191</sup> Furthermore, the police is authorized to take and record fingerprint impressions, pieces of evidence, photographs for the purpose of identification and presenting before the court. Section 6(6) of the Criminal Procedure

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<sup>188</sup> Section 16 of the Administration of Criminal Justice Act, 2015

<sup>189</sup> IGP V. Andrew (2014) LPELR-CA/AE/78c/2013

<sup>190</sup> Section 356(2) Criminal Code Act.

<sup>191</sup> Section 4 Police Act 2004

Act provides for the power of the police to request and obtain medical evidence where then accused person is charged with an offence whose nature and circumstances require a medical examination.

Consequent upon the afore-stated duties and powers of the police in prosecuting a criminal case as rape, it is clear that the relationship between the police and the judiciary is crucial in the administration of criminal justice in Nigeria.

### **3.7. The Chief Magistrate**

The Administration of Criminal Justice Act, 2015 make provisions for the protection of the interest of suspects. The police is compelled and mandated police to report to supervising Magistrates on the last working day of every month, the cases of all suspects arrested without warrant within the limits of their respective stations or agency whether the suspects have been admitted to bail or not<sup>192</sup>. The Magistrate will in turn forward such reports to the Criminal Justice Monitoring Committee which shall analyze the reports and advise the Attorney-General of the Federation as to the trends of arrests, bail and related matters. To enforce such reports by the police, Section 33(5), (6)<sup>193</sup> provides that in the absence of such reports by the police, the supervising Magistrate shall forward a report to the Chief Judge of the State and the Attorneys-General of the State for appropriate remedial action<sup>194</sup> and in case of Abuja, to the Chief Judge of the Federal Capital Territory, Abuja and the Attorney- General of the Federation for remedial action.<sup>195</sup> Section 34 of the Act<sup>196</sup> also provides that the Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Judge for

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<sup>192</sup>Ibid, Section 33 (1)

<sup>193</sup> Ibid

<sup>194</sup>Ibid, Section 33 (5)

<sup>195</sup>Ibid, Section 33 (6) ACJA

<sup>196</sup> Ibid

that purpose, shall, at least every month, conduct an inspection of police stations or other places of detention within his territorial jurisdiction other than the prison.

The duties saddled on the Magistrate during the visit are as follows<sup>197</sup>:

- a. Call for, and inspect, the record of arrests;
- b. Direct the arraignment of a suspect;
- c. Where bail has been refused, grant bail to any suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the Magistrate and in so doing, the officer who arrested the suspect is duty bound to make available the following to the visiting magistrate<sup>198</sup>:
  - (a) The full record of arrest and record of bail;
  - (b) Applications and decisions on bail made within the period; and
  - (c) Any other facility the Magistrate requires to exercise his powers under that subsection

The Act also provides that where any officer in charge or authorized to make an arrest does not comply with the provision of subsection 3 by making all the relevant particulars available to the visiting magistrate, his act will be treated as a misconduct and shall be dealt with in accordance with the relevant Police Regulation under the Police Act or any other agency saddled with that responsibility.<sup>199</sup>

### **3.8. The Correctional Service**

The criminal code act in its section 17 prescribes series of punishment of criminal acts. It must be explained that the code and other act prescribes a definite category of punishment for the offender of rape which is termed imprisonment. The correctional service is therefore saddled

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<sup>197</sup>Ibid, Section 34 (2)

<sup>198</sup>Ibid, Section 34 (3)

<sup>199</sup>Ibid, Section 34 (1)

with the duties of ensuring proper correction of inmates, security of life and property which is the primary function of any criminal justice system. The place of the correctional institutions such as prison cannot be overemphasized. The prison system is an integral part of the criminal administration of justice in a state. This is because the institution is expected to serve as the melting point for the activities of the security agencies. The Nigerian prison system was established in accordance with three forms of penal legislation which operate alongside each other in the country. The Penal code and the accompanying Criminal Procedure Code cap 81 laws of the federation 1990 (CPC), the Criminal code and the accompanying Criminal Procedure Act Cap 80 laws of the federation (CPA) and the Sharia penal legislation in 12 Northern States of Nigeria which is applied to only. Indeed, the main aim of establishing the prison institution in Nigeria is to provide rehabilitation and correctional services for those who violated the rules and regulations of their society.

The prison system is also expected to inculcate in the offenders basic moral values that will make them become law abiding citizens. Prisons are generally conceived as corrective institutions. This is the prime objective of establishing prisons all over the world. Prisons are usually structured to identify the peculiar problem of each inmate and devise means of guiding the individual out of the problem. However, it is painful to see that a crucial aspect of identifying the inmates' needs is grossly neglected in Nigeria. Despite Nigeria's progress on democratic, economic and political reforms, Nigeria's prisons are yet to make appreciable impact on the welfare of the inmates. Nigeria's prisons are "living hell", it is therefore recommended that basic amenities be provided for the inmates as well as proper training of the prison wardens.

### **3.9. Institution of a Criminal Matter by a Private Legal Practitioner**

It is instructive to state that a rape can also be instituted by a private individual. A private person can institute criminal proceedings under the Administration of Criminal Justice Act<sup>200</sup> by fiat of the Attorney General of the Federation, by complaint<sup>201</sup> or by information if the conditions provided in Section 383 of the Administration of Criminal Justice Act are complied with. The conditions provided are as follows:

- a. The information must have been endorsed by the Attorney General of the federation or a law officer acting on his behalf that he has seen the information and has declined to prosecute the offence set out therein;
- b. The private legal practitioner must enter a recognizance in such sum as may be fixed by the court with a surety, to prosecute the information to conclusion from the time the defendant shall be required to appear; pay such costs as may be ordered by the court; or deposit in the registry of the court, such sum of money as the court may fix.

Where a private prosecutor withdraws from a prosecution for an offence under the provisions of Section 108<sup>202</sup>, the court may in its discretion award costs against the prosecutor.<sup>203</sup>

### **3.10 Comparative Analysis on Law of Rape in other Commonwealth Jurisdiction**

It has been seen from the previous chapters that rape occurs in every part of the world. Many people tend to understand the meaning of consent but seems to ignore it because the victims are not willing to open up to people and authorities. This position is not so in developed countries as any slight penetration without consent is charged in court and the authority always ensure that the perpetrators are brought to book. In other common wealth jurisdictions, it is observed that rape is not gender-based as a male can rape a female and vice-versa. Nigeria as a common wealth

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<sup>200</sup> *ibid*

<sup>201</sup> *Ibid*, section 89 (3)

<sup>202</sup> *Ibid*

<sup>203</sup> Section 108 (4)

state also follows suit by enacting Violence against Person Prohibition Act in Abuja and this has been replicated by some states in Nigeria.

It also flows that because Violence against Person Prohibition Act is not domesticated in every state, to charge or arraign a lady for the offence of male rape is seen as a mirage. It is against this backdrop this chapter seeks to examine the concept of rape in other common wealth jurisdictions like United Kingdom, Canada and South Africa.

### **3.10.1 The United Kingdom (England and Wales)**

In the United Kingdom, until 1994, the offence of rape could only be committed against a woman. Before 1994, rape was restricted to vaginal intercourse. It was extended to anal intercourse by the Criminal Justice and Public Order Act 1994, so that men as well as women could be the victims of rape. The Sexual Offences Act 2005<sup>204</sup> has further extended the offence to cover oral intercourse, but penetration by objects other than the penis is not covered by the offence. Situations where a man was forced to submit to buggery were sometimes described in the media as male rape, but in legal terms they could only be charged as indecent assault or buggery. This was changed by the Criminal Justice and Public Order Act 1994, so that now both women and men can be victims of rape.

Research by Michael King and Gillian Mezey<sup>205</sup> looked into the issue of male sexual assault before this change in the law. Sexual offences are generally under-reported, which means that not only do we not know the true number which are committed, but also that if the offence is not

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<sup>204</sup> (1) A person (A) commits an offence if—(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents.

<sup>205</sup> Cited in Catherine Elliot & Francis Quinn, *Criminal Law*, 8<sup>th</sup> Edition, 2010, p. 203

reported, it cannot be prosecuted, so the offenders go unpunished. King and Mezey<sup>206</sup> discovered that sexual assaults on males were even less likely to be reported than sexual offences generally, for a variety of reasons: victims feared that they would not be believed, or that people would assume they were gay, or they blamed themselves, thinking that as men they should have been able to fight off their attacker. Where the offence involved incest, the victims were often under considerable emotional and physical pressure not to report. Finally, in the past, male complainants were not guaranteed anonymity so they feared unwanted publicity. It may be that some of these fears will decrease with time now that male rape has received official recognition and anonymity is guaranteed to both male and female victims.<sup>207</sup> Meanwhile, a husband can rape his wife and vice-versa in the United Kingdom.

Thus, at common law, only a man can be a defendant to a charge of rape; in law a woman cannot commit rape. However, a woman may be charged with being an accomplice to rape: for example, Rosemary West, wife of the serial killer Frederick West, was initially charged on two counts of aiding and abetting the rape of a girl. In *R. v K and C*<sup>208</sup> two teenage girls were convicted as accomplices to a rape.<sup>209</sup>

### 3.11 Canada

The word rape is not used in the Canadian Criminal Code. Instead, the law criminalizes "sexual assault". Sexual assault is defined as sexual contact with another person without that other person's consent. Consent<sup>210</sup> is seen as "the voluntary agreement of the complainant to engage in the sexual activity in question".

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<sup>206</sup> Ibid

<sup>207</sup> Catherine Elliot & Francis Quinn, *Criminal Law*, 8<sup>th</sup> Edition, 2010, p. 203.

<sup>208</sup> [1997] QC 1 234.

<sup>209</sup> This position is true in Nigeria.

<sup>210</sup> section 273.1(1) Canadian Criminal Code

The Canadian position on rape (sexual assault) is very interesting and broad. This is because the only the element required to prove the offence is lack of consent from the victim regardless of the victim's sex or gender; the particular orifice that was penetrated; or the object of penetration be it the finger/hands, or the penis, or any other object for that matter.

Marital rape is both a product of and a contributing factor to women's inequality in Canadian society and internationally. Nevertheless, before 1983 it was legally permissible for a man to rape his wife in Canada without criminal sanction.<sup>211</sup> A package of reforms to the Criminal Code was enacted in 1983,<sup>212</sup> and for the first time since confederation marital rape was categorized as a criminal offence. Contemporaneous and subsequent reforms to the sexual assault provisions in the Criminal Code also recognized women's equality and right to be free from sexual violence. However, the interpretation of these provisions by the courts, along with defence lawyer tactics and lingering assumptions about sex in spousal relationships, have made it difficult to obtain appropriate legal remedies for marital rape in light of issues related to consent, mistaken belief in consent, sexual history evidence and the production of personal records.<sup>213</sup> Concerns also remain about low rates of reporting marital rape and the treatment of those cases that are reported by the police, Crown prosecutors and courts.<sup>214</sup> Few statistics are available on the impact of sexual

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<sup>211</sup>This paper was written for the equality effect (formerly the African and Canadian Women's Human Rights Project). Many thanks to Susan McDonald, Fiona Sampson and VasanthiVenkatesh for research assistance and collaboration, and to the members of the ACWHRP marital rape subcommittee and participants in the Nairobi workshop for their insights and comments. Particular thanks to Sheila McIntyre and Melanie Randall for their detailed comments on the paper, and to Elizabeth Sheehy for sharing resources. Also, my deep appreciation goes out to the law students from across the country who reviewed hundreds of cases to find and summarize those dealing with marital rape: Antonio Giambardino, Miriam Gibbs, Brynne Harding, Michelle Johnston, Stephen Lajeunesse, Monica Lee, Nicole Ludwig, Charles McRoberts, Lindsay Merrifield, Gabrielle Motuz, Orlagh O'Kelly, Carolyn Stroz, Meghan Tonner, Elizabeth Whitsitt, and Miriam Yosowich; Criminal Code of Canada, R.S.C. 1970, c. C-34.

<sup>212</sup>See below section IIIB.

<sup>213</sup>Bill C-127, Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125.

<sup>214</sup>See below section II.

violence laws on marginalized men and women,<sup>215</sup> and Indigenous peoples in Canada continue to be denied sovereignty to deal with interpersonal violence according to their own laws.

Numerous Canadian statistical and social science reports paint a picture of women's (in)equality, and the harms, incidence rates and reporting rates of sexual violence and marital rape, as well as services available (and gaps in services) to survivors of such violence.<sup>216</sup> Viewed together, these data suggest the links among socio-economic inequality, being targeted for violence, and the failures of law and the state to respond effectively and meaningfully to such human rights breaches.

There are few specific statistics available on the incidence of sexual violence including rape in intimate relationships. The Canadian Panel on Violence Against Women (1993) reported on findings from the Women's Safety Project, where 81% of sexual assaults in the survey sample were perpetrated by men who knew their victims, and 38% were committed by husbands, common law partners or boyfriends. Although these statistics were not disaggregated, the Panel noted the unique vulnerability of some women to violence – poor women, racialized women, Aboriginal women, immigrant women, lesbian women, women with disabilities, older women, and rural women. This increased vulnerability was tied to marginalized women's systemic inequality and devalued humanity, in addition to dependency on men or isolation. Health Canada's report *The Family Violence Initiative* confirms statistics about the vulnerability of marginalized women to family violence, including Aboriginal women, women living in rural and remote communities, women with disabilities and ethno-cultural minority women.

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<sup>215</sup>See below section II

<sup>216</sup>Of course, the denial of Indigenous peoples' sovereignty goes far beyond issues relating to interpersonal violence. See Mary Eberts and Patricia Monture, "Is 'Customary Law' a Solution or a Continuing Problem of Colonial

Although the 1999 General Social Survey found comparable self-reported rates for male (7%) and female (8%) spousal violence (marital rape) over a 5 year period, it also found that women are more likely to be subject to serious forms of domestic violence, including sexual assault (marital rape) (20% of women and only 3% of men). Women who survive domestic violence are more likely to seek medical attention than men (13% compared to 2%), and are 3 times more likely to fear for their lives. According to the 2004 General meeting of Scientist on rape in Canada<sup>217</sup>, Aboriginal women are 3 times more likely to be victims of spousal abuse than non-Aboriginal women, and Aboriginal women are more likely to experience serious forms of spousal violence (marital rape), including sexual assault (54% as compared to 37% of non-Aboriginal victims). Visible minority and immigrant women were not found to be subject to a greater risk of spousal violence, and no specific findings were reported with respect to sexual violence in intimate relationships for these groups. Another important statistic from the 1999 General Meeting of Scientist on rape<sup>218</sup> is that post-separation, 35% of women who were assaulted by their ex-partners were sexually assaulted.

A 2008 study by Justice Canada examined links between the high rates of family violence and sexual assault including rape in the Territories and offenders' past histories of abuse. It reports that in 2005, the rate of sexual assaults in Canada was 7.2 per 10,000 population, while in the Territories, which has a much higher Aboriginal population, the rate ranged from 79.7 per 10,000 in Nunavut to 18.1 in the Yukon. Data from Crown prosecutor files were analyzed in relation to separate categories of family violence and sexual assault cases including rape, resulting in the finding that 4% of sexual assaults were committed against current spouses or partners.

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<sup>217</sup> Ibid

<sup>218</sup> Ibid

In spite of these incidence rates, studies suggest that marital rape is vastly underreported to police. Once again, there are no statistics gathered specifically for this form of violence. However, general statistics on reporting rates for sexual assault are most likely apt in the context of marital rape as well. Indeed, reporting rates are likely even lower for sexual violence in the context of spousal relationships, particularly if the parties remain together.<sup>219</sup>

While this seems encouraging, empirical research shows that it is difficult to isolate the actual impact of the reforms themselves from other factors that may have contributed to increased rates of reported sexual assaults. This research confirms the results of a number of studies conducted by Justice Canada<sup>220</sup> in the mid-1980s examining the impact of sexual assault law reforms in 1983 in six Canadian cities. Researchers reviewed police, Crown and sexual assault centre files, undertook interviews with criminal justice personnel, service providers, and victims, and engaged in court monitoring.

Those sexual offences that are reported are less likely than other violent offences to be considered “founded”, and less likely to result in charges, prosecutions, or convictions. Sexual Offences in Canada (2003) reported that 16% of sexual offences were deemed unfounded in 2002, compared with a 7% unfounded rate for other violent crimes between 1991 and 2002.

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<sup>219</sup>Sexual Offences in Canada (2003), supra at 9. Of all founded sexual offences, 37% were not cleared by charges or otherwise, compared to 28% of other violent offences (ibid.). For recent analyses of unfounding in sexual assault cases, see Teresa DuBois, “A Critical Analysis of Police Investigation: The “Wrongful Unfounding” of Sexual Assault Complaints” and A. Blair Crew, “Striking Back: The Viability of a Civil Action against the Police for the “Wrongful Unfounding” of Reported Rapes”, both forthcoming in Elizabeth Sheehy, ed., *Sexual Assault Law, Practice & Activism in a Post-Jane Doe Era* (Ottawa: University of Ottawa Press, 2011). 55 Tina Hattem, *Survey of sexual assault survivors* (Ottawa: Department of Justice Canada, 2002) at 9-10. Surveys were conducted by telephone with women recruited by sexual assault centres in Ontario, B.C., Nova Scotia and Newfoundland. It is unclear how many of these cases involved sexual violence in spousal relationships, and responses were not disaggregated.

<sup>220</sup> Ibid

Further, only 44% of founded sexual offences were cleared by the laying of charges, compared to 50% of other founded violent offences.<sup>221</sup>

A Survey of sexual assault survivors conducted by the Department of Justice in 2000 provides some context for why sexual assault survivors choose to report sexual violence (or not)<sup>222</sup>. This survey found a much higher reporting rate of sexual violence than the reports noted above, with 64 out of 102 survey respondents having reported to the police. Perpetrators were arrested in 43 out of 64 of the reported cases, charges were laid in 39 out of 64 cases, and convictions were obtained in 18 out of 30 cases. Women indicated their reasons for reporting the sexual violence to the police, including a desire to expose or punish the perpetrator, to protect themselves, their children, or other women, and for personal healing. They included fear of or previous negative experiences with the criminal justice system, fear of record disclosure, pressure from their family, and fear of the perpetrator.<sup>223</sup> Overall, the factual context highlighted in this section suggests that Canadian women continue to experience multiple forms of inequality, including vulnerability to sexual violence in spousal relationships. The incidence of this form of violence is belied by low reporting rates, more so than for other violent offences. Reforms to the law on sexual offences are clearly important as a way of responding to these issues, but so too are other

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<sup>221</sup>Sexual Offences in Canada (2003), *supra* at 9. Of all founded sexual offences, 37% were not cleared by charges or otherwise, compared to 28% of other violent offences (*ibid.*). For recent analyses of unfounding in sexual assault cases, see Teresa DuBois, “A Critical Analysis of Police Investigation: The “Wrongful Unfounding” of Sexual Assault Complaints” and A. Blair Crew, “Striking Back: The Viability of a Civil Action against the Police for the “Wrongful Unfounding” of Reported Rapes”, both forthcoming in Elizabeth Sheehy, ed., *Sexual Assault Law, Practice & Activism in a Post-Jane Doe Era* (Ottawa: University of Ottawa Press, 2011). 55 Tina Hattem, *Survey of sexual assault survivors* (Ottawa: Department of Justice Canada, 2002) at 9-10. Surveys were conducted by telephone with women recruited by sexual assault centres in Ontario, B.C., Nova Scotia and Newfoundland. It is unclear how many of these cases involved sexual violence in spousal relationships, and responses were not disaggregated.

<sup>222</sup>J. and J. Research Associates Ltd., *An Evaluation of the Sexual Assault Provisions of Bill C-127*, Fredericton and Saint John, New Brunswick (1988); Ekos Research Associates Inc., *Report of the Impact of the 1983 Sexual Assault Legislation in Vancouver, British Columbia* (1988); Ekos Research Associates Inc., *Report of the Impact of the 1983 Sexual Assault Legislation in Hamilton-Wentworth* (1988)

<sup>223</sup>Lethbridge, Alberta (1988); University of Manitoba Research Ltd., *Social Sciences Division, Report of the Impact of the 1983 Sexual Assault Legislation in Winnipeg, Manitoba* (1988).

measures. For example, the Survey of sexual assault survivors had several recommendations for broader reforms to the criminal justice system, including the need to change beliefs and attitudes of criminal justice personnel, training of such personnel, changes to court procedures (e.g. closed courtrooms, testifying away from the accused, disallowing cross-examination by self-represented accused, and more expeditious handling of their cases), denial of access to personal records, and the provision of more support, information, compensation and control over the process to victims. In addition to reforms to the justice system, fundamental structural responses dealing with the compound socio-economic, physical, psychological, dignitary and spiritual harms of poverty, social and political inequality and colonization, must be implemented to combat the interlocking relations of oppression that enable abuse and underpin legal rules and practices favouring perpetrators.<sup>224</sup>

### 3.12 South Africa

In South Africa, rape is defined by the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).<sup>225</sup> This act has repealed the common law offence of rape and replaced it with a new expanded statutory offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender. Rape is defined in section 3 of the act as follows:

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<sup>224</sup>Janine Benedet and Isabel Grant, "Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Consent, Capacity, and Mistaken Belief" (2007) 52 McGill L.J. 243 at 256, citing Deborah Tharinger, Connie Burows Horton & Susan Millea, "Sexual Abuse and Exploitation of Children and Adults with Mental Retardation and Other Handicaps" (1990) 14 Child Abuse and Neglect 301 at 304 (estimating a 1 in 30 reporting rate for women with disabilities, compared to 1 in 5 for women without disabilities).

<sup>225</sup> A. Damola, Law and Justice (2015) <http://www.justice.gov.za/legislation/acts/2007-032.pdf> last accessed 8/9/2023.

*Any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape. and "sexual penetration" is defined as: any act which causes penetration to any extent whatsoever by—*

*(a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person; (b) any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or (c) the genital organs of an animal, into or beyond the mouth of another person.*

The law also clarifies that marital rape is illegal; section 56 of the Act provides that: the genital organs or anus of another person; or (c) the genital organs of an animal, into or beyond the mouth of another person. Whenever an accused person is charged with an offence under section 3, 4, 5, 6 or 7 it is not a valid defence for that accused person to contend that a marital or other relationship exists or existed between him or her and the complainant.

### **3.13 Lessons learnt from other jurisdictions**

The first lesson learnt is on marital rape. It is discovered that a husband can rape his wife in other common wealth jurisdictions earlier discussed as the law gives legal backing to martial rape. Meanwhile, it is one thing to make the law and another to implement it. It is also discovered that many women refuse to report their husbands to the police whenever they are raped because they see it as insignificant.<sup>226</sup>

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<sup>226</sup>K.C.Basile, Prevalence of wife rape and other intimate partner sexual coercion in a nationally representative sample of women. *Violence and Victims*, (2002) 17(5), 511-524

In spite that fact that laws give legal backing to marital rape and makes it an offence, many scholars still maintained that it is not likely for a man to rape his wife and if he does, the police may not even prosecute same in a court of law. Thus, Sir Mathew Hale was of the view that a man cannot rape his wife.<sup>227</sup> The justification was provided by Sir Matthew Hale (1609-1676)<sup>228</sup>, the former chief justice of England. The theory of Hale presumed that once a woman is married, the consent to sexual intercourse is automatically assumed in favour of the husband, which she cannot revoke.

In substance, the contract of marriage is a licence to the husband to control her sexual autonomy in return for his “protection”. This “contractual theory” ties in with the second justification for the exemption - “the property theory”. As per this theory, a woman “belongs” to her father before marriage, and is her husband’s property thereafter. Since the owner of the property is empowered to use his property according to his own needs, the question of a husband raping his wife does not arise. The final justification of marital rape exemption is the “unification theory”.

According to this theory, the wife forfeits her legal existence on getting married; consequently, her legal and individual identity merges with that of her husband’s. Since the wife is legally non-existent, it is not legally possible for a man to rape his wife. The above stated three justifications make little noise, especially, in today's scenario. The reason being, the contemporary definitions of consent require a man to obtain the women's unequivocal voluntary consent to participate in the sexual acts. Further, the concept of “irrevocable consent” arose at a time when divorce was virtually impossible. With divorce laws recognizing that marriage is itself revocable, it is difficult to justify “irrevocable consent” to sex within marriage contract. Additionally, the notion

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<sup>227</sup> Ibid

<sup>228</sup> Ibid

that a woman is a man's property, and that she does not have an independent legal identity has been decisively and overwhelmingly rejected.

However, the overhaul of the old archaic definitions gave room to the newer justifications for the exemption. These include; first, women will fabricate rape charges; second, a complaint of marital rape breaks the marital relationship; and third, the law provides other remedies which the wife can exercise. With feminist jurisprudence germinating all over the world, of late, these justifications seem irrational at the very outset.<sup>229</sup>

If marital rape exemption is justified on the basis that a wife's complaint cannot often be believed, and consequently, a woman raped by her husband is to be treated differently from another woman raped by a man who is not her spouse, such differentiation does not have a rational basis. Further, if fabrication is actually a major concern, then safeguards should be provided against it rather than not criminalizing marital rape. The bond of marriage does not sustain merely on sex and the phobia of frivolous litigation should not be a hurdle in offering protection to those caught in abusive traps, especially in cases where the victims are denigrated to the status of chattel. It is true that when any law is passed, there are always apprehensions that it could be misused, but then that holds solid for every law enacted and passed, and in spite of that, these laws still exist because the positives outweigh the risks of potential misuse. It is true that marriage presupposes consent; but it is also true that the said consent must be encapsulated within the fabric of an individual's autonomy over his or her body, irrespective of the gender. If non-consensual sex is considered a crime out of marriage, the same treatment must be meted out to non-consensual sex within a marriage. Eventually, it all boils down to the autonomy over

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<sup>229</sup>J.C. Campbell, &P. Alford (1989). The dark consequences of marital rape (1989)8(9) *American Journal of Nursing*, 946-949.

one's body, which is a basic human right, regardless of marital status. It is also discovered in the developed world that both male and female can be raped.

## **CHAPTER FOUR**

### **PROBLEMS ASSOCIATED WITH DOMESTIC VIOLENCE IN NIGERIA**

Domestic violence is alarmingly prevalent in contemporary Nigeria, constituting a grave social issue that transcends conventional boundaries of gender, race, and nationality. It manifests as a pervasive pattern of abusive behavior occurring within intimate relationships or familial settings, encompassing physical, sexual, psychological, and economic forms of maltreatment.

While traditional narratives often depict domestic violence as primarily affecting women and children, the reality is far more nuanced. Men, too, experience domestic abuse, albeit to a lesser-reported extent due to societal norms and stereotypes surrounding masculinity. This underscores the importance of recognizing domestic violence as a human rights violation that impacts individuals irrespective of their gender identity or expression.

Domestic violence's pervasive nature extends beyond simplistic categorizations based on socio-economic status, educational attainment, or ethnic identity. It affects individuals from all walks of life, regardless of their socio-economic background, educational level, or cultural heritage. This means that no demographic group is immune to its impact, and anyone can be a victim or perpetrator of domestic violence.

Within Nigeria's diverse society, domestic violence occurs in affluent households as well as those struggling with poverty. It can be found among highly educated individuals as well as those with limited formal education. Additionally, it transcends ethnic boundaries, affecting people from various cultural backgrounds across the country.

The complexity of domestic violence arises from the multitude of factors contributing to its occurrence, including but not limited to socio-economic disparities, cultural norms, family dynamics, and individual psychological factors. Economic stress, substance abuse, intergenerational trauma, and societal attitudes toward gender roles all play roles in shaping patterns of abuse within households.

Recognizing that domestic violence is not confined to any specific demographic group is crucial for developing effective prevention and intervention strategies. It underscores the need for

tailored approaches that consider the unique circumstances and challenges faced by different communities. By acknowledging the diverse contexts in which domestic violence occurs, efforts to address this issue can be more inclusive, responsive, and ultimately, more impactful in promoting safety and well-being for all individuals affected by domestic violence.

Factors such as economic instability, substance abuse, intergenerational trauma, and cultural beliefs about power and control contribute to its prevalence, highlighting the intricate intersections of social, economic, and cultural dynamics.

Tackling domestic violence demands a comprehensive approach that addresses its root causes while providing holistic support to survivors. This includes legislative reforms to strengthen legal protections, law enforcement efforts to hold perpetrators accountable, and initiatives aimed at challenging harmful gender norms and promoting healthy relationship dynamics.

Moreover, raising awareness about domestic violence and fostering a culture of empathy, respect, and accountability within communities are essential components of prevention and intervention strategies. By recognizing the universality of domestic violence and mobilizing collective action to address it, Nigeria can strive towards building a society where every individual is guaranteed safety, dignity, and equality within their own homes.

The prevalence of domestic violence in Nigeria is a deeply concerning phenomenon that permeates every corner of the country, affecting individuals and families across diverse communities and regions. Numerous factors contribute to the widespread occurrence of domestic violence, creating a complex web of social, cultural, economic, and psychological influences.

One significant factor is the persistence of patriarchal norms and gender inequalities within Nigerian society. Traditional beliefs and cultural practices often reinforce unequal power dynamics between men and women, perpetuating notions of male dominance and control over women's lives. This imbalance of power can fuel attitudes and behaviors that justify or excuse violence within intimate relationships.

Economic instability and poverty also play a critical role in exacerbating domestic violence. Financial stressors can intensify tensions within households, leading to increased conflict and aggression. Limited access to economic resources and opportunities may further restrict the autonomy of victims, making it difficult for them to leave abusive situations or seek help.

Moreover, the lack of effective legal and institutional frameworks to address domestic violence poses significant challenges. Weak enforcement of existing laws, inadequate support services for survivors, and cultural barriers to seeking justice often contribute to a culture of impunity for perpetrators.

Furthermore, the normalization of violence and the stigma associated with disclosing abuse can silence victims and perpetuate cycles of violence within families. Social attitudes that minimize or justify domestic violence as a private matter further hinder efforts to address this issue effectively.

Addressing the root causes of domestic violence in Nigeria requires a comprehensive approach that addresses socio-economic inequalities, challenges harmful gender norms, strengthens legal protections, and enhances access to support services for survivors. It also necessitates fostering a culture of zero tolerance for violence and promoting gender equality and respect within

communities. By addressing these multifaceted factors, Nigeria can work towards creating a society where every individual can live free from the threat of domestic violence.

The factors include social, cultural and religious factors. These factors among others shall be examined in this chapter. This chapter will also look at sexual assaults as an integral part of domestic violence in Nigeria. It will also provide palpable and probable solutions to the problems associated with domestic violence in Nigeria.

Against this backdrop, this chapter seeks to address the problems of domestic violence in Nigeria.

#### **4.1 Causes of Domestic Violence in Nigeria**

Child marriage serves as a significant root cause of domestic violence, perpetuating cycles of abuse and gender inequality within societies. When children, particularly girls, are forced or coerced into marriage at a young age, they are thrust into adult roles and responsibilities for which they are ill-prepared, both physically and emotionally. This early entry into marriage often deprives them of their autonomy, education, and opportunities for personal development.

Child brides are particularly vulnerable to domestic violence due to their subordinate status within the marital relationship. They may lack the power to negotiate or refuse unwanted sexual advances, make decisions about their own bodies, or seek help if they experience abuse. Moreover, they are often isolated from support networks and may face social stigma or familial pressure to remain in abusive marriages.

Furthermore, the dynamics of child marriage perpetuate unequal power relations between spouses, with older husbands exerting control over younger wives. This power imbalance can lead to various forms of abuse, including physical, sexual, emotional, and economic violence.

Child brides may suffer from higher rates of domestic violence compared to women who marry later in life, exacerbating their vulnerability and perpetuating cycles of intergenerational abuse.

Moreover, the harmful effects of child marriage extend beyond individual victims to impact entire communities and societies. It undermines efforts to achieve gender equality, hinders social and economic development, and perpetuates cycles of poverty and inequality. By perpetuating harmful gender norms and practices, child marriage reinforces the subordination of women and girls, perpetuating a culture of violence and discrimination.

Addressing the root causes of domestic violence, including child marriage, requires comprehensive strategies that promote gender equality, protect children's rights, and empower individuals and communities to challenge harmful practices and norms. This includes enforcing laws that prohibit child marriage, providing access to education and economic opportunities for girls, strengthening support services for survivors of domestic violence, and promoting gender-sensitive approaches to addressing violence within families and communities. By addressing the structural factors that perpetuate child marriage and domestic violence, societies can work towards creating safer and more equitable environments for all individuals, free from the threat of violence and exploitation.

The Secretary General of United Nation (2004) explained that early marriage involves the marriage of a child below the age of 18 years.<sup>230</sup> Young girls have not achieved full maturity and capacity to act, and lack ability to control their sexuality. When they marry and have children, their health can be adversely affected. Early marriage has inflicted dangerous and devastating effects on young girls who are compelled to tie the knot in most cases. The convention on the

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<sup>230</sup>M.O. Bakare and M.D. Asuquo and A. O. Agomoh, 'Prevalence of Domestic Violence in Nigeria', [2010] *Nigeria Journal of Psychiatry*, 8 (20) p. 2

Elimination of all forms of Discrimination Against Women (CEDAW) adopted in (1979) affirmed that the principle of 3 fundamental rights and freedom of every human being are guided by a broad concept of human right that stretches beyond civil and political rights to the core issues of economic survival, health and education that affect the quality of daily life for most women and children. United Nation General Assembly (1993) postulated that violence and abusive behaviour continue to be a major cause of death, injury, stress and fear in various families. Domestic violence and abusive behaviour are responsible for poor family relationship, although personality conflicts and troubles within a marriage affect intimate behavior.<sup>231</sup> The members of the family all have duties and responsibilities toward one another and to the family as a whole. These duties and responsibilities vary from member to member because of their natural relationships. Such behavior can be seen in a man that stopped the wife from government employment and made her to engage in preparation and sales of local wine (burukutu) for many years. The woman could not further her education after primary school certificate. It is discovered that husbands and wives do not discuss family issues but husbands take sole decisions. Through interactions with friends and colleagues, women talk about their situations at home, there they are commonly abused by their spouses through battering, sexual abuse, giving out female children in marriage at the early years and depriving them neither to participate in the decision of child marriage nor to take part in family affairs.<sup>232</sup> Such early marriages limit education, affects young girls' academic pursuits, the future compromised and other opportunities often leading to early child bearing and increased health risks. Early child bearing affects female reproductive organs and health problems such as unsafe abortion, and obstetric fistula. Husbands take decision whether it suits the family or not. Though most wives and

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<sup>231</sup>A. O. Agomo, 'Prevalence of Domestic Violence in Nigeria' *Nigeria Journal of Psychiatry*, (2010)8 (20)p. 4

<sup>232</sup>M. O. Izzi and C.O. Obinuchi; 'The Challenges of Rape Victims in Nigeria': [2016] *The Journal of Jurisprudence And Contemporary Issues*, 8 (20) p.2

children suffer the consequences of the head of the family's decisions. It is also observed that violation of women at home has made women situation difficult to participate fully in issues concerning them in the home and in the society. As such, women have no freedom to speak for themselves because of fear of punishment from their husbands. Men think women are meant for giving birth, taking care of the children and doing only domestic works. Alson and Defrain<sup>233</sup> stated that, aggression and violence are learned behaviors which start right from the family with specific reference to gender-based violence. Okpeh<sup>234</sup> also pointed out that, a lot of violence to which women are exposed to in the society is only a reflection of the violence that is domiciled in the family from where the ugly trend is nurtured to call domestic violence. It is also pointed out that, domestic violence is domiciled in the family where women, children, and the youth are either direct or indirect victims<sup>235</sup>. The legitimacy of acts of domestic violence such as spousal abuse, sexual abuse, early marriage and deprivation of women's rights are strongly enacted much more within the family than elsewhere. It is also discovered that there is relationship between the manifestation of violent behavior and the composition of the family.<sup>236</sup> It is argued that aggression and violence are learned behavior which starts right from the family. With specific reference to domestic violence, a lot of violence to which women are exposed at the larger levels or society is only a reflection of the violence that is domiciled in the family and vice versa. It is within families that all of us learn to identify and accept domestic violence and alter it as lifestyle.

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<sup>233</sup> O.C. Olsan and E.A. Defrain, 'An appraisal of Domestic Violence in Nigeria;' [2007] *Donnish Journal of Law and Conflict Resolution*1 (1) available at <http://donnishjournal.org.ng> accessed 18/08/2023.

<sup>234</sup> E. D. Okpeh, "A nationwide survey of domestic violence shelters' programming for older women". [2021] *Violence Against Women Journal, University of Calabar*1 (4), 559-571.

<sup>235</sup>O. Olatunji, 'Penetration Corroboration and Non-Consent: Examining the Nigerian Law of Rape and Addressing its Shortcomings' [2012] *University of Ilorin Law Journal*, 8p. 79-105.

<sup>236</sup>Ibid.

Genyi<sup>237</sup> submitted with respect that, domestic violence is a very serious social, economic and psychological problem that has no cultural or social, economic and psychological group inhibition. Beyond the absence of any unknown barrier not even legal, its occurrence has profound and destructive consequences which ranges from physical, emotional and financial effects on the inhabitants of the home be it the women, children or men. Domestic violence is orchestrated as a desire of one party in a relationship to dominate and control the other partner. It may be power breakdown and distortion of an intimate relationship. Relationships that are characterized by violence may be distorted but may not be broken down. This is inferred from the immediate build-up of cordially or even outright expression of a profound level of affection. In such circumstance, it could be attributed to a spontaneous outburst. Physical injuries and other consequences from domestic violence are sexual abuse and gender inequalities. Physical and sexual abuse can lead to gynecological problems such as pelvic inflammatory disease (PID), chronic pelvic pain and vaginal bleeding among other medical problems. Utulu<sup>238</sup> continued that physical violence which is intentional use of force example, slapping, pushing, biting, choking, using knife, gun, and other weapons with the potential for causing injury, harm or death. It also includes coercing other people to commit such acts which can be actual or threatening. Sexual violence comes in three categories. Actual or threats of physical force to compel a person to engage in a sexual act against his/her will. Attempted or completed sex act with a person unable to understand such as rape with an object. Psychological and emotional violence is defined as harm to the victim caused by acts or threats of acts such as humiliating, name calling embarrassing victim deliberately especially in public, controlling victims movement and

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<sup>237</sup>C. Genyi, "Structural contexts culturally competent approaches community again ting and social changes: Domestic violence at the margins. Readings on race, class, gender and culture Piscutary"(Ns. Rutgers University press,2005) 1 (4) 29.

<sup>238</sup> A. Utulu, 'Domestic violence in the immigrants and refugee community responding to the needs of immigrant's woman', ,[2009] *University of Nigeria social sciences journal*1(6 p. 48. .

activities, isolating victim from friends and family, controlling financial resources, withholding information or resources, threatening to harm a child or pet breaking on object. Economic abuse is when the abuser has complete control over the victim's money and other economic resources. Usually, this involves putting the victim on a strict "allowance", withholding money at will and forcing the victim to beg for the money until the abuser gives them some money. It is common for the victim to receive less money as the abuse continues. This also includes (but is not limited to) preventing the victim from finishing education or obtaining employment, or intentionally squandering or misusing communal resources. This is real with some men in some families where the husband receives the wife's salaries and gives her as the need arises.

Garba<sup>239</sup> also lent his credence to prevalence of domestic violence by contending that it means nothing more than any form of abusive behaviour in any relationship used by partner to gain or maintain power and control over another partner. Violence on the other hand is the intentional use of physical force with the intention for causing injury, harm, disability or death. The researcher is giving an example of a typical case of a man beating his wife each time he sends her to the market with little money to buy foodstuff, he could be expecting the money to buy a lot of things only for her to buy a few items which the money could afford and he ends up in beating her. According to a recent study conducted by Famwang,<sup>240</sup> in Oyo state, 40% interviewed said they were victims but it has not been documented because there is widespread tolerance for domestic violence. Furthermore, in 2021, working women in Lagos about 64.4% alleged that they were beaten by their partners either husbands or boyfriends, 56.2% market women is married, she is expected to endure whatever she meets in her matrimonial home. This

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<sup>239</sup>J.A. Garba, 'Facts about domestic violence', [1996] *University calabar journal* 1 p. 68

<sup>240</sup>S.T. Famwang, 'Empirical Analysis of Domestic Violence in Oyo state of Nigeria', a Thesis submitted to the Faculty of Social Sciences, University of Ibadan, 2021.

statement in the humble opinion of the researchers is an aberration of matrimonial law to jeopardize womanhood and marital harmony. Also, it gives men open license to man handle their partners. In the word of Banki Moonb,<sup>241</sup> “Violence against women and girls continued unabated in every continent, country and culture. It takes a devastating toll on women’s lives, on their families and in the societies as a whole. Societies prohibit such violence yet the reality is that, too often it is covered up or condoned. According to another recent finding by the amnesty international, 20% of urban women and 29% of rural women do not know if they are victims of abuse”.<sup>242</sup> The research also pointed out that in Africa, not just Nigeria, information about women rights are not known, the police force and judiciaries are not capable of aiding female victims and more importantly, safe house where women or victims of abuse could escape to do not exist. The head of department of sociology of the Kaduna State University, Hauwa said,<sup>243</sup> “when victims of domestic violence go to their parents’ houses, they are rejected, so they have to go back to that house where they have been battered. Information found in the Annals of African medicine volume 3, November, 2004, 4-6 said, women in Zaria who come for medical check -up, about 178 were questioned, 79 of these women who happened to be pregnant had least secondary school education; 28% and 56 percent experience and had knowledge of domestic violence respectively, of the 56%, 36% beaten up while 22% were forced to have sex. They pointed out that their spouse are the most common culprits and 39% said they could keep domestic violence secrets”.

In Enugu, survey research was conducted in two tertiary health institutions from January 1st to March 31st 2021, the group was made up of 600 men, 70% reported abuse in their families 92%

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<sup>241</sup>United Nation Secretary General, 2008.

<sup>242</sup>S.T. Famwang, op. cit. p. 48.

<sup>243</sup>A.T. Hauwa, *Definitional issues cited in R. K. Bagudu*(Eds.), Sourcebook on violence against women (pp. 23-34).

were their female partner while 3% male victims. The most common form was shouting at their partners which was 93%, slapping and pushing 77% and pushing and kicking 46%<sup>244</sup>. Cultural factors, embarrassment and refusal attacks were said to be responsible for 8.1 of gross under reporting<sup>245</sup>. There are just the state and areas that were able to carry out the survey, many cases remain hindered and it is taking its toll on the society especially where the children become orphaned of one or both parents leaving the children at the mercy of society to cater. It is also pointed out that the law provided the protection of individuals against this social menaces, but people are not just aware of it.<sup>246</sup> However, others argued that, the law is not enough to protect as penal code,<sup>247</sup> section 55 allows a husband to punish his wife without inflicting any injury, and this may not stop domestic violence. Before solutions are preferred it would be wise to look at the factor that causes domestic violence and its increase. These factors cut across economic, social, cultural and even psychological. Here also it should be noted that domestic violence is said to rear its ugly head when the economic standing or level of a family is threatened.

It is further noted that, a man is unable to fulfill his economic elements when he does not have enough money to cater for the family or to measure up to her, frustration sets in which he cuts out in violence.<sup>248</sup> It was added that, men when drunk with alcohol are capable of violence; they beat their wives and in some case force them to spousal sex. Also, drug addicts too should not be left out because they are also capable of violence. An example of a couple in Iowa, USA who were in the habit of getting drunk together and the man always beats the wife thoroughly was

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<sup>244</sup> Bureau of justice statistics, 2005.

<sup>245</sup> Utulu op. cit. p. 23.

<sup>246</sup> Centers for Disease Control & Prevention, Building data systems for monitoring and responding to violence against women: Recommendations from a workshop. Morbidity & Mortality Weekly Report, 2018.

<sup>247</sup> Laws of the Federation of Nigeria, 2004.

<sup>248</sup> L. Yusuf, Domestic violence theories, research, and practice. In A. R. Roberts (Ed.), Handbook of domestic violence intervention strategies: Policies, programs, and legal remedies (pp. 23-48).

cited. It is worthy to note that this man is not poor. This way of life continuous till the man was imprisoned for five years of domestic violence. The wife waited for him and after his release, she went back to him. Unfortunately he murdered her and left her body.<sup>249</sup> In Nigeria, case of women 20 stabbed even to death, acid bath and nasty words that affect psyche of the women have been the order of the day. Representatives of the Legal Defence Assistant Project (LEDAP)<sup>250</sup> revealed that, criminal justices in our country provides almost no protection for women from violence. It was also added that the police and courts often dismiss domestic violence as family matters fail to investigate. In a similar perspective, Ajoni<sup>251</sup> supported this assertion by saying, poor response of law enforcement agents leads to low reporting. Other challenges in this are rape, and other sexual offence, human trafficking and cultural practices (child marriage, female Genital Mutilation, widowhood practices. Yusuf<sup>252</sup> also pointed out in annals of Africa medicine that, domestic violence also persists more often than not; victims are advised to settle out of court to avoid dabbling into family matters. To curb this social menace orientation and awareness campaigns should be embarked upon in each society. Shelter should be provided for victims to flee to when faced with violent situations, children should be taught from their tender age to respect one another irrespective of sex. The religion bodies and organizations should also lend to those campaigns by counseling intending couples married couple and individual to learn to control or manage their anger as not to reduce to animals in their homes. According to the Center for Disease Control and Prevention<sup>253</sup>, women who have experienced domestic violence are 80% more likely to have heart disease, 60% more likely to

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<sup>249</sup> L.D. Dugan, L.D.S. Nagin, & K. Rosenfeld, 'Do domestic violence services save lives'? [2005] *National Institute of Justice Journal*, 2 (5), 20-25.

<sup>250</sup> S. Joan, *Introduction to social science Research: A handbook on methodologies* Hemicraft publishing press, Dolcom, 2004 p. 29.

<sup>251</sup> J. Ajila and R. Olutola, 'Physical violence in America families' :New Brunswick nj: transaction. *Human rights, New York journal*, (1990) 1 p. 56.

<sup>252</sup> Yusuf op. cit. p. 22.

<sup>253</sup> CDCP, 2008.

have asthma and 70% more likely to drink heavily than those women who have not experienced intimate partner violence.

### **Abuse Against Women**

according to Adeniyi and Ogunesan,<sup>254</sup> former U.S Surgeon General viewed the home as actually a more dangerous place for American, marriage is usually considered to be a loving and supportive social institution, it is, in fact, more violent than the military, except in time of war<sup>255</sup> . It was further argued that battering is a major cause of injury for women between two and four million victimized by their intimate partners each year in the United States. Though women are likely to fear attack by strangers, FBI data indicated that 51% of all murdered women are likely by husband, ex-husband, or boyfriend<sup>256</sup>. Johns Hopkins university study found that one in three US women have been the victim of domestic abuse that half of those have been assaulted before the age of 18.<sup>257</sup> Researchers estimated that approximately three million people, most women are severely assaulted each year by their spouses.<sup>258</sup> Most cases are not reported for a variety of reasons. Victims often do not recognize the violence as abuse because in some ethnic and cultural group violence against women is the norm<sup>259</sup> Famwang stated that society's traditional respect for family privacy also inhibits reporting, victims may feel guilt of shamed for being abused or may fear the partner will retaliate if they report of the incident. Spousal abuse occurs because men are generally bigger and stronger than women, husbands have higher rates of inflicting the most dangerous and injurious forms of violence on wives. Much violence by

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<sup>254</sup>R. Adeniyi and F. Ogunesan, '*Domestic violence in the immigrants and refugee community responding to the needs of immigrant's woman*', (2020) p. 89.

<sup>255</sup>K. Aihie, '*When women are under the influence. Does drinking or drug use by women Prorok beatings by men? In recent developments in alcoholism*', 13. Alcoholism and violence. plenum press, New York, 1997

<sup>256</sup> Ibid.

<sup>257</sup>R. Adeniyi and F. Ogunesan '*Domestic violence in the immigrants and refugee community responding to the needs of immigrant's woman*', (2020) p. 79.

<sup>258</sup>Gelles, 2000a cited in Olson and Defrain, 2006, Introduction to Domestic Violence in Nigeria, 2009.

<sup>259</sup>Famwang op. cit. p. 29

wives appears to be in self-defence.<sup>260</sup> A dating relationship is apparently more likely to violent than a marital relationship. The national family violence survey of 5,768 couples found that 20% of the dating couples experienced a physical assault during the previous years, compared with 15% of the married couples. Olson and Defrain,<sup>261</sup> stated that, courtship is a training ground for marriage and also, apparently, a training ground for spousal abuse. Example of spousal abuse can be found in the family and serve to justify a husband's right to control the behaviour of his wife., during the middle ages, English common law allowed a husband to chastise his wife as long as he used a stick no longer than the width of his thumb, a concept commonly known as the "rural of the thumb". Although legislation was enacted in the American colonies to outlaw domestic violence in 1641, with later laws originating in the late 1800s, the laws were not usually enforced and served only to curtail 23 extreme case of violence. It is pinpointed that American society's apparent acceptance of domestic violence resulted from long-held beliefs in western society that supported a husband's control of his wife discouraged intervention by the law. Asia and Olson<sup>262</sup> conducted a survey on 20,951 married couples from all 50 states and had couples complete the enrich couple inventing. The average age was 62 for males and 35 for females, and they had been married from 2 to 30 years. Couples were classified into one of four group based on their level of abuse; non abusive (61%) only wife abusive (8%) only husband abusive (17%) and volatile-both abusive (13%)<sup>263</sup>. Arias and Pape<sup>264</sup> pointed out that, marital violence has been

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<sup>260</sup>J. Ajila and R. Olutola, *Physical violence in America families:New Brunswick nj: transaction*.Human rights, New Yor, 1990

<sup>261</sup> Ibid.

<sup>262</sup>K. Aihie, *When women are under the influence. Does drinking or drug use by women Prorok beatings by men? In recent developmtns in alcoholism, vol, 13.Alcoholism and violence*.plenum press, New York, 1997

<sup>263</sup>Chris O. Abakare, DOMESTIC VIOLENCE AGAINST WOMEN IN NIGERIA: A PHILOSOPHICAL STUDY, 2021 [https://www.researchgate.net/publication/351457177\\_DOMESTIC\\_VIOLENCE\\_AGAINST\\_WOMEN\\_IN\\_NIGERIA\\_A\\_PHILOSOPHICAL\\_STUDY](https://www.researchgate.net/publication/351457177_DOMESTIC_VIOLENCE_AGAINST_WOMEN_IN_NIGERIA_A_PHILOSOPHICAL_STUDY)last accessed 28th June, 2022.

<sup>264</sup>Ishola, S. A. (2016). Domestic Violence: The Nigerian Experience. *Asia-Africa Journal of Mission and Ministry*, 13, 3–16. <https://doi.org/10.21806/aamm.2016.13.01>

found to be more common among young couple, among couple with low occupational status and income and job dissatisfaction; among couple who are socially isolated: among couple who have a greater numbers of dependant children in the home and among couple who experienced violence in their family of origin. Violent couple relationships are associated with poor conflict-resolution and communication skills, and unequal decision – making responsibilities which tend to be held solely by the husband.<sup>265</sup>

Straus and Gelles<sup>266</sup> further revealed that, despite the attention that domestic violence issues have received, publicized instance of domestic violence continue to occur. Like the case of O.J. Simpson was both a famous football player and actor received a six month sentence in 2000 for vandalizing his wife's car during an argument. Also in 2001, former heavy weight boxing champion Riddick Bowe was charged with three-degree assault for fight with his wife. Street and arias,<sup>267</sup> pointed out that, psychological abused women have an increased chance of serious or chronic illness, lower levels of relationship satisfaction and lower levels of perceived power and control. These women experience psychological distress including fear, low self- 25 esteem, depression, an inability to trust others, feeling of inferiority and helplessness. Arias and Pape 1999<sup>268</sup> suggested that, the psychological and behaviour dysfunction of children exposed to inter-personal psychological abuse is similar to that found in children exposed in inter-personal

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<sup>265</sup>Kamal, I. (2018). Gender Inequality and Violence against Women. *Open Access Journal of Biomedical Engineering and Biosciences*, 2(4).

<sup>266</sup>Khan, A. R., &Ratele, K. (2020). Assessing the Policy Implementation of the Bangladeshi Domestic Violence Act: Any Lessons for Protecting South African Women in their Homes? *South African Review of Sociology*. <https://doi.org/10.1080/21528586.2020.1741443>

<sup>267</sup>Cited in Olson and Defrain, *Analyses of Violence against Women*, 2006.

<sup>268</sup> *Ibid*, p. 7.

physical abuse. Asia and Olson<sup>269</sup> stated that, researcher and clinical have hypothesised that a number of factors contributed to the likelihood of spousal abuse in a family. These factors are rather similar to those found in the national survey of spouse abuse. These factors are violence in the family of origin, low self-esteem, isolation, alcohol, economic stress, male dominance and other cultural factors. Violence in the family of origin. The family system theory attributes a tendency toward domestic violence as an adult to growing up in a violence home, where the child learns to be a victim as well as potential victimizers. They often develop a sort of “pecking order” attitude toward violence. You get beaten up when you were small, than when you are big, you repeat what you learned. Female children typically learn to be victims again in their marriage.<sup>270</sup> The United Nations Expert Group on Violence observed that, women (may) become targets for abuse in their role as wives, mother and daughter-in-law, ex-lover or domestic servant. The perpetrators of the abuse are usually the men of the family, be the husband, ex-husband, lover, ex-lover. Such violence could be linked to common drunkenness. Low self-esteem, Olson and Defrain<sup>271</sup> revealed that, the abusive spouse may feel inadequate and may use violence to gain control. The abused spouse may passively accept the violence feeling that she or he deserves nothing better. Youth. Gelle<sup>272</sup> argued that, age and spouse abuse are statically related. Marital violence is twice as likely among couples who are under age 30 than among those over age 30.

### **Economic Stress/Abuse.**

Although spouse abuse occurs in families at all income levels, economic stress increases the likelihood of wife battering. Spousal abuse is more likely in low income families and

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<sup>269</sup> Ibid, pg. 12.

<sup>270</sup> Ibid, p. 32.

<sup>271</sup> Olson and Defrain op;cit. p. 9.

<sup>272</sup> Ibid p. 23.

unemployed men are twice as likely to batter their wives as employed men. Gelle<sup>273</sup> stated that, social isolation is also a factor in spousal abuse. Abusers often feel isolated and alone. They have fewer contacts with friends, neighbors and relatives and engage in fewer social activities than non-abusers do. In stressful times, they have no social support network upon which to call. Alcohol. H stressed further that, alcohol is implicated in a high percentage of domestic violence incidents. Many men who assault their wives are found to have been drinking.<sup>274</sup> Substance Abuse and Mental Health Services Administration<sup>275</sup> argued that alcohol facilitates violence by helping break down the abuser's inhibitions. But alcohol is never the sole cause of a violent episode. Drinking is no more an excuse for assaulting another human being than it is for killing someone in a car accident. Other system of social justice would break down if people were not held responsible for their behavior. Male Dominance. Professionals and clinicians studying abuse from a feminist perspective have identified clues as to why men batter women. They noted that many in our culture believe that males have the right to control their partners. Men have also been socialized to believe that aggression is an acceptable normal response to stress and anger. A patriarchal family system influences males to assume the head-of-the-household role and women to accept subordinate status. Equalitarian decision-making is associated with non -violence in families. Research showed that levels of wife beating and husband beating are higher among husband dominant couples than among democratic couples<sup>276</sup> Other cultural factors includes culture depersonalization and objectification of women are reinforced by pornography and by

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<sup>273</sup>Campo, M. (2015). Domestic and family violence in pregnancy and early parenthood: Overview and emerging interventions. In Australian Institute of Family Studies. <https://aifs.gov.au/cfca/sites/default/files/publication-documents/cfca-resource-dv-pregnancy.pdf>

<sup>274</sup> Ibid.

<sup>275</sup>UNICEF Innocenti Research Centre. *Domestic Violence against Women and Girls*; Innocenti Digest No .6 - (May 2000), [www.unicef-13icdc.org](http://www.unicef-13icdc.org) last accessed 18/08/2023

<sup>276</sup> A. Gelle, 2000 cited in Olson and Defrain 2006, *Domestic violence*, 2010 p. 28.

advertising that uses sexy women to sell products. Victim blaming is common as rape trials often reveal. We live in society with a high tolerance for overt coercion and the use of physical force to gain control over others<sup>277</sup>. All of these social factors are viewed as contributing to the epidemic of domestic violence in this country.

### **Prevention of Spousal Abuse**

Pence and McDonnell<sup>278</sup>, explained that, counselors commonly advise battered women to leave their husbands and go to a relatives or a friend's home or to a shelter for battered women. But this is easier said than done. Some men panic when women leave because they feel they are losing control. Panic can lead to even more violent behaviour. The first shelter for battered women opened in 1974; today there are several thousand shelter across the country. Shelter provide safety for the abused spouse and children; temporary housing, food and clothing, counseling to build a stronger self-concept and practical guidance such as finding employment and legal assistance<sup>279</sup>. Responding to pressure from the women's movement, police department are now more likely to make arrest in case of domestic violence. Assault against a spouse is seen as a serious offence. After studying, research findings indicated that men who had spent time behind bars were less like to assault their partners again, the Duluth Minnesota, police department was first in the united states to make arrest mandatory for suspected batterers. As a

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<sup>277</sup> Pence and McDonnell, 2000 in Olson and Defrain, 2006

<sup>278</sup>McCann, I. L., & Pearlman, L. A. (2015). Psychological trauma and adult survivor theory: Therapy and transformation. In *Psychological Trauma and Adult Survivor Theory: Therapy and Transformation*. <https://doi.org/10.4324/9781315803715>

<sup>279</sup>Indu, P. S., Anilkumar, T. V., Pisharody, R., Russell, P. S. S., Raju, D., Sarma, P. S., Remadevi, S., Amma, K. R. L., Sheelamoni, A., & Andrade, C. (2017). Prevalence of depression and past suicide attempt in primary care. *Asian Journal of Psychiatry*, 27, 48–52. <https://doi.org/10.1016/j.ajp.2017.02.008>

society, our ultimate goal should be the prevention of domestic violence.<sup>280</sup> To do this we need not to only treat those families in which violence has occurred, but also address the causes of violence. We live in a society that devalues women and children and glorifies power, the use of force and the domineering behaviour associated with alcohol abuse.

### **Sexual abuse against women**

B.T. Bakare<sup>281</sup> referred to sexual abuse as molestation, as the forcing of undesirable sexual behaviour by one person upon another, where that force fails short, it is being called sexual assault. The term also covers any behaviour by any adult towards a child to stimulate either the adult or child sexually. When the victims are younger than age of consent it is referred to as child sexual abuse. United Nations Children's Fund Innocent Research centre,<sup>282</sup> stipulated that, sexual abuse and rape by an intimate partner is not considered a crime in most countries and women in many societies do not consider forced sex as rape if they are married to or cohabiting with the perpetrator. The assumption is that, once a woman enters in to a contract of marriage, the husband has the right to unlimited sexual access to his wife. Surveys in many countries revealed that approximately to 15 percent of women report being forced to have sex with their intimate partners. Genyi,<sup>283</sup> explained that, sexual violence is divided into three categories, use of physical force to compel a person to engage in a sexual act against his or her will, whether or not the act is completed, attempted, sex act 30 involving a person who is unable to understand the nature or

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<sup>280</sup>Indu, P. S., Anilkumar, T. V., Pisharody, R., Russell, P. S. S., Raju, D., Sarma, P. S., Remadevi, S., Amma, K. R. L., Sheelamoni, A., & Andrade, C. (2017). Prevalence of depression and past suicide attempt in primary care. *Asian Journal of Psychiatry*, 27, 48–52. <https://doi.org/10.1016/j.ajp.2017.02.008>

<sup>281</sup>Ibok, A. K., & Ogar, O. T. (2018). Traditional Roles of African Women in Peace Making and Peace Building: An Evaluation. *GNOSI: An Interdisciplinary Journal of Human Theory and Praxis*, 1(1), 41-58.

<sup>282</sup>Ibid

<sup>283</sup> Ibid

condition of the act, unable to decline participation, or unable to communicate unwilling to engage in the sexual act because of underage, immaturity, illness, disability or the influence of alcohol or other drugs or because of intimidation of pressure and abusive sexual contact. According to Heise et al., (2000), sexual violence and exploitation are abuse of power, young women are especially at risk, and the violation can have devastating and long consequence. Statistics on rape suggest that between one-third and two-thirds of rape victims world – wide are young women who can be subjected to sexual violence. Women are at risk of becoming infected with HIV and other STI, physical injuries and psychological trauma. Studies also showed that young people who have been victims of sexual abuse are more likely to engage in high-risk sexual behaviour than those who have not been abused.. Similarly, poverty leads many young women in sub-Sahara Africa and elsewhere into sexual relationship within the family who will give the young women other necessities such as clothing and food in exchange for sex.

### **The Effects of Sexual Abuse Against Women**

Adiru pointed out that, violence against women is often categorized as sexual or emotional violence. Globally, one-third to one-half of all physical abused women also report for sex.<sup>284</sup> Sexual and physical violence appear to increase women's risk for many common gynecological disorder including vaginal bleeding, painful menstruation, vaginal discharge, sexual dysfunction, pelvic inflammatory disease and painful intercourses. Walker et al<sup>285</sup>added that, sexual abuse may also be linked to the etiology of chronic pelvic pain, a debilitating condition that frequently has no identifiable cause. Chronic pelvic pain is responsible for ten percent of all gynecological visits and one quarter of hysterectomies. He further stressed that, a number of studies have found that women suffering chronic pelvic pain are more likely to have a history of sexual abuse by

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<sup>284</sup> Ibid

<sup>285</sup> Ibid

their partners. Akpan et al.,<sup>286</sup> revealed that, sexual abuse affects the lives of women who live within the boundaries of those abusive relationships. He argued further that sexual abuse as a crucial public health problem that has devastating physical and emotional consequences for women. He also stated that, in addition to causing immediate injury and mental anguish, sexual violence increases women's risk of future ill health. A wide range of studies showed that women who have experienced sexual violence have greater risk of subsequent health problems. The more severe the abuse, the greater the number of symptoms and the more severe the effect of women's physical and mental health. Furthermore, in many parts of the world, marriage is interpreted as granting men unconditional sexual access to their wives a "right" through force if necessary. Among 98 percent of currently married women in Pradesh, India, 68 percent report being coerced into sex by their husbands, 31 percent report being forced through beatings. Also, stated there is a high level of non-consensual sex occurring in marital unions is supported through both qualitative and quantitative data. Bradlen<sup>287</sup> pointed out that, sexual abuse can put women at risk of infection and unwanted pregnancy if forced to have sex or dare using contraception or condoms because of their partner's reaction. A history of sexual abuse lead to unwanted pregnancy and indirectly by increasing sexual risk<sup>288</sup>; Bayer and Fine,<sup>289</sup> Buther and Burtain<sup>290</sup> revealed that, childhood sexual abuse is associated with earlier age at first intercourse and an increase in certain risk behaviours such as having sex with many partners. The study of

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<sup>286</sup>O. Bamgbose, Customary Law Practices and Violence against Women: The Position under the Nigerian Legal System." Paper presented at 8<sup>th</sup> International Interdisciplinary Congress on Women hosted by Department of Women and Gender Studies, University of Makerere. July 2002. P. 7

<sup>287</sup> Ibid.

<sup>288</sup>O.O. Adeniyi, *Legal Protection of the Girl Child Against Child Marriage* (aureyarinya) in Nigeria (unpublished LL.D Thesis submitted to the Faculty of Law, University of Pretoria South Africa, 2016) pg. 143

<sup>289</sup> Cited in O.O. Adeniyi op. cit. p. 45.

<sup>290</sup>Coomaraswamy, R. (1994). Rapporteur on violence against women appointed. In WINNews (Vol. 20, Issue 3).

the Secretary General United Nation<sup>291</sup> pointed out that, depression is one of the most common consequences of sexual abuse and physical violence. Women who suffer sexual abuse are at risk of stress and anxiety disorders, including post-traumatic stress disorder. A study in Michigan,<sup>292</sup> United States found that, 59 percent of women had experienced several sexual abuse in the previous 12 months had psychological problems compared to 20 percent of those who report on abuse. Studies showed that, sexual abuse of intimate partner is the most common cause of post-traumatic stress disorder in women. It has also been shown that, women who have 33 been sexually abused are at risk of suicide. Post-traumatic stress disorder in particular appears to be a significant risk factor suicide. Bethea,<sup>293</sup> further explained that, the effects of forceful, hurtful, exploitative sexual relationship can last for a long time. The abused person may carry a burden of guilt, shame, lower self-esteem and depression for years and may suffer from sleep disturbance and/or eating disorders (including anorexia and bulimia). Individual difficulty trusting one's partner, and in ability to relax and enjoy lovemaking, avoidance of sex inhibited sexual desire, and inability to achieve orgasm. One study by the Illinois Department of children and family services found that more than half of the 445 teenager mother questioned had been sexually abused and had been forced to have sex.

### **Prevention of Sexual Abuse**

Therapist might work on developing family members' self-esteem and improving family relationships. People who have been victims of sexual abuse are more likely to engage in high-risk sexual behaviour than those who have not been abused. Similarly, poverty leads many women in sub-Saharan Africa and elsewhere into sexual relationships within the family who will

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<sup>291</sup>Ibid.

<sup>292</sup> Ibid.

<sup>293</sup>K.O Fayokun, Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights, [2015], *US-China Education Review*, Vol. 5 (7), p. 461

give women money and other necessities such as clothing and food in exchange for sex. In an effort to prevent sexual abuse, many organizations and schools in this country should have educational programs for women on “good touch and bad touch”. Education can also help women on how to behave in sexual abusive situation. Teachers, physicians, mental health professional and police officers are key figure in women protection. Home economist should give talk to women on sexual abuse during women gathering in the church, mosque and conference.

#### **4.2 Child Marriage as a Factor for Domestic Violence and the Nigerian Legal Framework**

The attempt in this section is to consider the legal framework relating to child marriage in Nigeria. It will be said that the law that covers the field in relation to the protection of children is the Child Rights Act, 2003 which prescribes the age of childhood below 18. Also, the Child Rights Act prohibits child marriage. However, for the purpose of customary law and Islamic marriages, the age of childhood prescribed by the Act is ineffective. This is made so by virtue of Item 61 of Part 1 of the Second Schedule to the 1999 Constitution which removes the matters relating to the formation of Islamic and customary marriage from the jurisdiction of the National Assembly. Hence, the minimum age of marriage can only be prescribed by the states houses of Assembly. Therefore, this explains why there is no unified marriageable age in Nigeria. Consequently, when a person marries a child under Islamic law in Northern Nigeria and is consequently in contravention of the Child Rights Act, such a person cannot be prosecuted because the federal government would be interfering with an Islamic marriage and would be in violation of Part 1 item 61 of the 1999 Constitution. Therefore, in relation to child marriage, Part

1 Section 61 of the 1999 Constitution renders the Child Rights Act useless, as the 1999 Constitution serves as the supreme law of the land in Nigeria, overriding all other legislation.<sup>294</sup> Thus, each state in its Child Rights Law prescribes the marriageable age, for instance, section 15(1) of the Jigawa State CRL 2006 prohibits child marriage but defines a child in section 2(1) of that Law as a person below the age of puberty. Accordingly, it would be correct to declare that Jigawa State criminalizes child marriage to the extent that a girl has not reached puberty. This is possible because puberty is defined in section 2 of the Jigawa Law as the age at which a person is physically and physiologically capable of consummating a marriage. In addition, a court is to determine according to the provisions of section 15(1) the puberty of the child bride according to the circumstances of each case. It is submitted that laws like this have not been precise enough as to the minimum age of marriage and the lack of appropriate legislation immunizes Islamic or customary marriages from the Bill of Rights.

It would be seen from the above that the weakness of the legal framework is the absence of a specified minimum age. Thus, the court has developed tests in determining whether a child could be said to be ripe enough for marriage. The court has always been guided by the best interest of the child. For instance, the cases of *Williams v Williams*<sup>295</sup> and *Odogwu v Odogwu*,<sup>296</sup> are also relevant in determining an appropriate minimum age for child marriage. In *Odogwu*, the Nigerian Supreme Court recognized the happiness and psychological development of a child as crucial in determining custody. It seems appropriate that the same considerations also apply in cases of child marriage. It is entirely possible that a child between the ages of 15 and 18 years

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<sup>294</sup> See section 1 (3), Constitution of the Federal Republic of Nigeria, 1999; *Momoh v Senate of the National Assembly* [1981] 1 NCLR 21; *Attorney General of Bendel State v Attorney General of the Federation*

<sup>295</sup>[1976] Ch 278, CA

<sup>296</sup>[1992] JELR 43170 (SC)

could be happily married.<sup>297</sup> The legality of the under-aged marriage is a dispute between the right to freedom of religion, privacy and family life.<sup>298</sup> The substance of Islamic and customary marriages depends on rights which, in their interaction with other rights, may be found to be unconstitutional. In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,<sup>299</sup> the Nigerian Supreme Court determined the limited scope of the right to freedom of religion and the right to privacy and held that:

*The right of freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The limits of these freedoms in all cases are where they impinge on the rights of others or where they put the welfare of society or public health in jeopardy.*

From the foregoing, it will be inferred that although, there are legal frameworks against the menace of early child marriage. However, the problem is that these legal provisions are weak enough to allow this menace to perpetuate itself.

#### **4.2.1 Child Marriage and Culture**

Historically, the aristocracy of some culture tends to use child marriage among different factions or states as a method to secure political ties between them.<sup>300</sup> The son or daughter of a royal family of a weaker family would sometimes arrange to marry into the royal family of a stronger

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<sup>297</sup>Otive-Igbuzor, Op. cit. p. 13

<sup>298</sup> See Chapter IV, Constitution of the Federal Republic of Nigeria, 1999

<sup>299</sup> [2001] 6 NWLR (Pt. 710) 2

<sup>300</sup>I Ogunniran, Child Bride and Child Sex: Combating Child Marriages in Nigeria, (unpublished), p. 85, available at [www.ajol.info](http://www.ajol.info) (last accessed 18/08/2023)

neighbouring power, thus preventing itself from being assimilated. In the lower classes if they were fortunate, families could use child marriage as a means to gain financial ties with wealthier people ensuring their successions.<sup>301</sup> Fayokun explains that Child marriage is rooted in the cultural traditions of the Hausa-Fulani communities in Northwest Nigeria.<sup>302</sup> Child brides often come from patriarchal societies where parents and elders play very significant or domineering roles in selecting spouses for their children. Strong cultural norms place emphasis on a girl's virginity, which is closely tied to a family honour.<sup>303</sup> Parents are disposed to marrying off their daughters at a very tender age to ensure they marry as virgins and retain the family honour. The practice of child marriage is also strongly followed as a way of protecting the girl child from sexual assault and unwanted out-of-wedlock pregnancies. Another instance added to this early child marriage among the Hausa –Fulani people is the aspect of forced marriage, the young brides are arranged into these marriages without their consent, and this was seen as a religious dictate fused into the culture of the people. However, under Shari'a law, a woman cannot be given away in marriage without her consent, except in the case of a minor.<sup>304</sup> Meanwhile, under the Maliki School of law, practiced in Northern Nigeria, the choice of husband by a Muslim woman is subject to the *ijbar*, or over-ruling power, of her father or guardian. *Ijbar* allows a father or guardian to select a husband for his daughter based on her "wider interests".<sup>305</sup> One

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<sup>301</sup> Ibid at p. 86

<sup>302</sup> K.O Fayokun, Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights, [2015], *US-China Education Review*, Vol. 5 (7), p. 461

<sup>303</sup> Ibid.

<sup>304</sup> O. Bamgbose, Customary Law Practices and Violence against Women: The Position under the Nigerian Legal System." Paper presented at 8<sup>th</sup> International Interdisciplinary Congress on Women hosted by Department of Women and Gender Studies, University of Makerere. July 2002. P. 7

<sup>305</sup> Ibid.

source, however, noted "it is not unusual to find forced marriage ... made out of monetary or other consideration in contemporary Hausa society"<sup>306</sup>

The prevalence of child marriage in Hausa-Fulani communities in Northwest Nigeria also lies along religious lines. Most child brides are from Mohammedan homes.<sup>307</sup> To a large extent, the marriage culture is dictated by Islamic religious norms. Prepubescent marriage is the norm. The man is said to promise not to touch the girl until she reaches puberty and that this practice is in line with Prophet Mohammed's marriage to Aisha.<sup>308</sup> The domineering influence of the parents and elders within the context of strong religious norms based on an interpretation of Islamic marital code fuels the belief that a girl child is fully matured for marriage and should be married off before or upon reaching puberty, the sure sign of which is the commencement of the menstrual period. It is believed that early marriage for a girl child maximizes her childbearing potential. Within that Islamic culture, the new bride is often absorbed into a large harem where she is confined to strictly domestic roles. As Islam has permeated the socio-cultural life of the Hausa-Fulani, so has Islamic law and jurisprudence become assimilated into the native law and custom especially on issues of personal law relating to marriage and family life.<sup>309</sup>

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<sup>306</sup> Ibid.

<sup>307</sup> Ibid at p. 462

<sup>308</sup> Sunan Abu Dawud 49:4917; in *Sahih Al-Bukhari*, Volume 5, Book 58, Number 234, Aisha narrated: The Prophet engaged me when I was a girl of six (years). We went to Medina and stayed at the home of Bani-al-Harith bin Khazraj. Then I got ill and my hair fell down. Later on my hair grew (again) and my mother, Um Ruman, came to me while I was playing in a swing with some of my girlfriends. She called me, and I went to her, not knowing what she wanted to do to me. She caught me by the hand and made me stand at the door of the house. I was breathless then, and when my breathing became all right, she took some water and rubbed my face and head with it. Then she took me into the house. There in the house I saw some Ansari women who said, "Best wishes and Allah's Blessing and a good luck." Then she entrusted me to them and they prepared me (for the marriage). Unexpectedly Allah's Apostle came to me in the forenoon and my mother handed me over to him, and at that time I was a girl of nine years of age.

<sup>309</sup> Fayokun Op. cit. p. 462

However, there are no available materials on the cultural stance of the Yoruba people and the Ibo people on child marriage except that there are various customs in the Ibo traditional system enabling the practice of forced marriage.

#### **4.2.1.1 Cultural Implications on Child Marriage**

Child marriage is rooted in the cultural traditions of the Hausa-Fulani communities in Northwest Nigeria. Child brides often come from patriarchal societies where parents and elders play very significant or domineering roles in selecting spouses for their children. Strong cultural norms place emphasis on a girl's virginity, which is closely tied to a family honour. Parents are disposed to marrying off their daughters at a very tender age to ensure they marry as virgins and retain the family honour. The practice of child marriage is also strongly followed as a way of protecting the girl child from sexual assault and unwanted extra-marital or teenage pregnancies.<sup>310</sup> That is, given the facts regarding sexual activities among unmarried children as young as 10 years old.<sup>311</sup> Meanwhile, it is pertinent to note from statistics presented by the former Central Bank Governor, Lamido, that in the part of Nigeria where Wasila comes from, as many as 93% of girls are being denied access to secondary education and up to 70% of women in the twenties (i.e., 20 - 29 years old) are unable to read. Further, among the 7% that enroll in secondary school, it is less than half that completes.<sup>312</sup>

#### **4.2.1.2 Cultural arguments on Child Marriage**

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<sup>310</sup> V.A Aduayi O.SAduayi , O.A Olasode, 'Sexual coercion and violence among young women in Nigeria: a northern and southern comparison'. [2016] African Journal of Reproductive Health pg. 37-43.

<sup>311</sup> O.A Olasode, *Sexual behaviour in adolescents and young people attending a sexually transmitted disease clinic* (Ile Ife, Nigeria. Esan Publishers 2007) pg. 83

<sup>312</sup> L. Sanusi, National commission for mass literacy, adult and non-formal education (2013) pg. 4

Several researchers<sup>313</sup> found that cultural defense arguments tend to be invoked under specific circumstances and in three distinct styles:

- i. Values-based arguments are used strategically to define or assert group identity. Early marriage can be part of a struggle over cultural traditions and the future meaning of those customs.
- ii. Protective arguments reflect the view that early marriage will protect girls and their families from shame and the stigma of unsanctioned sexual relations. In war-torn areas, early marriage can also be a form of safety for girls or provide their basic needs of food, water and housing when parents can no longer do so.
- iii. Misplaced attribution of cultural practices to religion. As Archbishop Desmond Tutu<sup>314</sup> has noted, some customs described as religious are not part of religion at all that is, child marriage is not a religious practice—it is a tradition. There are many good traditions that bind communities together. But traditions are also not static—they evolve. Traditions that are harmful, that have outlived their purpose, must be challenged.

#### **4.2.2 Religious Views on Child Marriage**

Religious and political institutions have often put forward interpretations of scriptures and religious law to justify early marriage. For example, in 2013, media around the world reported on a vigorous debate on child marriage in the Nigerian Senate. A leading senator who had married a 14-year old Egyptian girl asserted that under Islamic law, a girl is considered ripe for marriage if she is physically and mentally mature, no matter what her age, so that a “very big girl” could be

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<sup>313</sup> Ibid

<sup>314</sup> Ibid, pg. 23

ready for marriage at age 14.<sup>315</sup> On the 23th May, 2015, Lagos Vanguard Newspaper reported the position of the Sharia law on Child Marriage as follows:<sup>316</sup>

*“[He said that] under Sharia law, [in]any country that practices Sharia, age is not a defining factor for marriage....he noted that such international conventions were inferior to the constitutional provisions of the affected country, adding that once a convention was in conflict with the constitution of any country, the constitution naturally must prevail.*

*...Under Sharia law, you have to be physically and maturely developed....*

*...So if she is not the age of 18, Islam does not accept child marriage as you define it. Child marriage is [with] a girl that is not matured, has not reached the age of puberty; she is a minor and it is not age. You can have a very big girl who is ready for marriage at age 14, 15, 16, just as is obtained in other countries. Maturity is defined by her physical appearance; by when a girl starts menstruation, for example – she is matured”.*

These issues are all matters of faith. As I said, some people are talking out of ignorance or out of sheer mischief. I am a Muslim and Nigeria is a multi-religious society. That is why our constitution makes ample provision for Sharia law, common law and for customary law<sup>317</sup>.

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<sup>315</sup> Sunday Punch 18<sup>th</sup> April, 2010 pg. 10

<sup>316</sup> Vanguard 23th May, 2013 at p. 5

<sup>317</sup> A.M Aduradola, Child Marriage; Issues, Problems and Challenges, a paper presented at one day seminar organized by National Open University of Nigeria, (Lagos 4<sup>th</sup> September, 2013) at pg. 15-17

In response to the debate in Nigeria, advocates<sup>318</sup> for ending child marriage argued the case this way:

*It is stated that Mohammed the Prophet married a 9-year-old girl and gave out his own ten-year-old daughter in marriage. It is also well known that the Prophet also instructed that young girls should be educated, and that marriage should never be at the expense of education.*

*In both cases – the-nine-year old and the ten-year-old – though married they were made to have full education, and the [Prophet's own] marriage was not consummated until his wife was eighteen years, and his daughter was nineteen years.*

People may also assert the support of a particular religion for harmful traditional practices. GamalSerour,<sup>319</sup> director of the International Islamic Centre for Population Studies and Research at Al Azhar University in Cairo, has worked to separate specific harmful practices from the assertion that they have their roots in Islam. Al Azhar, a leading center of Islamic teaching, has declared unconditionally that female genital mutilation, for example, has never been part of Islam.<sup>320</sup>

#### **4.2.2.1. Implications of Religion on Child Marriage**

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<sup>318</sup> V.A Aduayi O.S Aduayi , O.A Olasode, Sexual coercion and violence among young women in Nigeria: a northern and southern comparison. African Journal of Reproductive Health, 2016: 37-43.

<sup>319</sup> Ibid

<sup>320</sup> Campaign to End Child Marriage in Africa (Lagos Women wing) 15

Religion is often blamed for the prevalence of child marriage.<sup>321</sup> Notably, however, the practice is not unique to any one faith; in fact, it occurs across religions and regions. For example,<sup>322</sup> in India, where 40 percent of the world's known child brides reside, child marriage is prevalent among both Muslims and Hindus. In Burkina Faso and Ethiopia, child marriage is practiced by Christians and Muslims alike. An analysis by the International Center for Research on Women<sup>323</sup> found that what is constant across countries with high child marriage rates is not adherence to one particular faith, but rather factors such as poverty and limited education opportunities for girls.

The prevalence of child marriage varies greatly even among countries that incorporate religious doctrine into their legal systems. Some Muslim-majority countries, for example, that integrates Sharia law, such as Libya, Algeria and Nigeria have relatively low rates of child marriage.<sup>324</sup> Child marriage might not be tied to one faith, but religious leaders still have a crucial role to play in curbing the practice -- particularly because marriages are often ratified as part of a religious ceremony. Working with religious leaders to tackle the scourge of child marriage has proven especially effective, both because these leaders are uniquely influential in their communities and because religious texts and traditions often encourage advocacy on behalf of the most vulnerable, including children.<sup>325</sup>

The vast majority of child brides are from Mohammedan homes.<sup>326</sup> To a large extent, the marriage culture is dictated by Islamic religious norms. Prepubescent marriage is a norm that is religiously encouraged – i.e. beside the belief that early marriage for a girl child maximizes her

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<sup>321</sup> *ibid*

<sup>322</sup> O.O. Adeniyi, *Legal Protection of the Girl Child Against Child Marriage (aureyarinya) in Nigeria* (unpublished LL.D Thesis submitted to the Faculty of Law, University of Pretoria South Africa, 2016) pg. 143

<sup>323</sup> *Ibid* pg. 148

<sup>324</sup> G. V. Bueren, *The International Law on the Rights of Child*, (Dordecht: MartinusNijhof, 1995) p. 173

<sup>325</sup> M. Happord, *Child Soldiers in International Law*, (Manchester University Press 2005) p. 23 at 142

<sup>326</sup> *Ibid*

childbearing potential. As Islam has permeated the socio-cultural life of the Hausa-Fulani, so has Islamic law and jurisprudence become assimilated into the native law and custom especially on issues of personal law relating to marriage and family life.<sup>327</sup> Christianity also believes in virginity until marriage and would rather marry early than have premarital sex, which is deemed to be fornication and a sin. This was the basis of the scenario in John chapter eight of the bible.<sup>328</sup> It remains a theme in pre-marriage counseling and also the meaning of white robe in church wedding. Extra-marital or pre-marital sex is still condemned as sin – e.g. “Flee from sexual immorality. All other sins a person commits are outside the body, but whoever sins sexually, sins against their own body. Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God?”<sup>329</sup> Hence, Christian youths are usually under peer-pressure and advised to marry early<sup>330</sup>.

In communities where child marriage is prevalent, there is strong social pressure on families to conform. Failure to conform can often result in ridicule, disapproval or family shame. Invariably, local perceptions on the ideal age for marriage, the desire for submissive wives, extended family patterns and other customary requirements, are all enshrined in local customs or religious norms. In many contexts child marriage is legitimized by patriarchy, and related family structures, which ensure that marriage transfers a father’s role over his girl child to her future spouse. The marriage or betrothal of children in parts of Africa and Asian is valued as a means of

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<sup>327</sup> T.S Braimah, *Child marriage in Northern Nigeria*, (Malthouse Publishers 2014) pg. 12: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage. *African Human Rights Law Journal* 14: 474-88

<sup>328</sup> John 8:4

<sup>329</sup> 1Corinthians 6:15

<sup>330</sup> A. Barrick, *Pastor to young Christians on Get married early*: (Ibadan, Esan Publishers 2012) p. 56

consolidating powerful relations between families, for sealing deals over land or other property, or even for settling disputes. No wonder Barnes<sup>331</sup> was of the view that:

*The strong religious message also enforce the view that marrying early is best as supported by the following views of one priest representing Ethiopian's orthodox church and these days, with western ideas spread everywhere; girls stay unmarried as late as 30. It is very scientific and modern, but in our church it is prohibited. Such girls are neither clean, nor blessed"*

#### **4.2.3 Why Child Marriage persists in Nigeria**

The practice of child marriage in Nigeria is not only prevalent but also persisting.<sup>332</sup> This is so because Nigeria is very much divided on religious grounds. The South is mainly Christian and the North is principally Islam. So, even though the country as a whole is loosely 'bound' by Federal Law<sup>333</sup> and the Nigerian Constitution<sup>334</sup>, while the Northern states in Nigeria predominantly subscribe to Sharia law, which is an integral part of customary law in Nigeria.

In Nigeria, the federal law prohibits the marriage of persons that are below eighteen<sup>335</sup>. However, the states in Nigeria that implements Sharia law do not prohibit child marriage. This tends to create a clash of laws and principles, but not to the point where the federal government feels the need to intervene. Child marriage is simply a traditional convention that has been allowed to subsist within Nigeria.

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<sup>331</sup> E.A. Barnes, 1998 op. cit. pg. 5

<sup>332</sup>K.O Fayokun, Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights, 2015, *US-China Education Review*, Vol. 5 (7), p. 461

<sup>333</sup> Child Rights Act, 2003, Matrimonial Causes Act, 2004; Electoral Act, 2010.

<sup>334</sup> Constitution of the Federal Republic of Nigeria, (CFRN), 1999

<sup>335</sup> Section 24, Child Rights Act, 2004, Section 12, Electoral Act, 2010.

The CRA 2003<sup>336</sup> having been in existence for over a decade, why does child marriage persist endlessly in Nigeria? Two seemingly insignificant loopholes in the Constitution (CFRN) 1999<sup>337</sup> are fingered as the legal obstacles against the eradication of child marriage. The first is Section 29(4), while the other is Item 61, Part 1 of the Second Schedule to the Constitution. Now, Section 29(1) permits a citizen of Nigeria of full age who wishes to renounce his citizenship to make a declaration in the prescribed manner. Section 29(4) states that “For the purposes of subsection (1) of this section: (a) ‘Full age’ means the age of eighteen years and above; and (b) Any woman who is married shall be deemed to be of full age”<sup>338</sup> (Federal Republic of Nigeria, 1999, Chapter III).

Having understandably been in the Constitution since 1979, a Senate committee in July, 2014 voted to remove the archaic “Part (b)” of the subsection, “the ruby supporting the fight against forced marriage and pedophilia”. However, after a heavy lobbying, Senator Sani Ahmed Yerima.<sup>339</sup> The second loophole is tucked away in Item 61, Part 1, of the Second Schedule to the Constitution. In the “Exclusive Legislative List” of the Federal Government is an item: “61. The formation, annulment and dissolution of marriages other than marriages under Islamic law and Customary law including matrimonial causes relating thereto”.<sup>340</sup>

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<sup>336</sup> Child Rights Act, 2003

<sup>337</sup> Constitution of the Federal Republic of Nigeria, (CFRN), 1999

<sup>338</sup> Ibid, Chapter III,

<sup>339</sup>S. A. Yerima, in the year 2000 as the then governor, had introduced full brown Islamic Sharia Code into Zamfara State. In the year 2000, Senator Yerima at 49 was alleged to have paid a 100,000 U.S. dollar dowry to marry a 13-year-old Egyptian girl at the national mosque in the capital city of Abuja. Yerima while defending his actions in a BBC interview denied breaking any law saying “I do not have to obey the Child Right Act so long it contravenes my religious beliefs”. Newspaper reports claimed Yerima had earlier married a 15-year-old girl as third wife. Curiously no charges were passed against Yerima. An official of the Egyptian Embassy in Abuja, Mohammed Saber, was however of the opinion that marrying an underage girl is illegal in Egypt

<sup>340</sup> Ibid, Chapter V,

It effectively takes marriages under Islamic and Customary law out of the federal legislative competence. In other words, though the whole country is bound by federal law, in the strict sense, the laws of the National Assembly have no effect on the formation, amendment, and dissolution of marriages under Islamic law and customary law including matrimonial causes relating thereto. Thus, the surreptitious ineffectiveness and castration of the CRA has been perfected before it was promulgated. The CRA 2003 as a federal law cannot be implemented in a state until it has been domesticated as state law. As at today, only 24 out of the 36 states of the federation have gone ahead to domesticate the CRA as state law. Of the remaining 12 states, the CRA has in fact met with stiff resistance in some northern states where Islam has been accepted as a way of life and the Sharia law has been introduced<sup>341</sup>. Unfortunately, these states are in the region ranked with the highest prevalence of child marriage in the world.<sup>342</sup>

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<sup>341</sup> See *Bornu, N. A. v Abatcha, M.* [1946]. Unreported, see Anderson (1969). (Unreported) K/204/1943 cited in Anderson, *Islamic Law in Africa*, p. 16.

<sup>342</sup>The latest research from UNICEF indicates (<http://www.prb.org/pdf11/ending-child-marriage.pdf>) that between 2007 and 2011, the number of girls getting married before the age 15 increased by 5%. The percentage managed to grow significantly despite the passing of the Child Rights Act (APA) Since 2003, which makes 18 the age of maturity and criminalises child marriage practices.

## CHAPTER FIVE

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Summary

The Nigerian legal system is characterized by its adversarial method; this system applies to all civil and criminal cases before the courts.<sup>343</sup> Meanwhile, Criminal Procedure includes the administration of the machinery put in place by the state to ensure that offenders are apprehended, investigated, prosecuted, sentenced and criminal judgments are executed. This will then cover the systems like the police, the court and the prison. The criminal justice system therefore defines every phase of procedure once an offence has been committed, from the investigation, through the trial, to the type and length of punishment if there is a conviction. The criminal justice system envisages at least three components, viz: the law enforcement, judicial process and reformatory institutions. It is defined as the collective institutions through which the accused offender passes until the accusations have been disposed of or the assessed punishment concluded.<sup>344</sup>

These criminal proceedings are regulated by law and the principal enactment in the administration of criminal justice is the Administration of Criminal Justice Act, 2015.<sup>345</sup> Prior to the enactment of this Act, the laws guiding the prosecution of offences in Nigeria include the Criminal Procedure Act,<sup>346</sup> Criminal Procedure Code,<sup>347</sup> Administration of Justice Commission

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<sup>343</sup> J.A Asein, *Introduction to Nigerian Legal System*, (2<sup>nd</sup> ed. Lagos: Ababa Press Ltd. 2005), P. 8.

<sup>344</sup>E. E. Alobo and John Inaku, An Appraisal of the Principle of Restorative Justice in the Nigerian Criminal Justice System, *International Journal of Engineering and Technological and Management Research*, (2018) 5 (1), 2018, p. 135

<sup>345</sup>The provision of this ACJA is applicable to all courts trying offences created by an Act of the National Assembly and offences tried before the High Court of the Federal Capital Territory as provided in Section 2, ACJA, 2015.

<sup>346</sup> CAP C 41, Laws of the Federation of Nigeria, 2004

Act.<sup>348</sup> However, upon the coming into force of the Administration of Criminal Justice Act, 2015, all of these laws which hitherto regulate criminal proceedings were repealed.<sup>349</sup>

It is noted that domestic violence ranging from physical abuse, economic abuse which may amount to obtaining by false pretence, child abuse and sexual abuse are offences which the law frowns at always. 2015.

## 5.2 Conclusions

It is imperative to state that the administration and dispensation of justice in general and that of criminal justice in particular plays an important role in governance irrespective of the system of government put in place. For if the society must remain in peace, individuals with criminal tendencies must be put under close checks; and their activities monitored and checkmated. It is interesting to state that the criminal Justice System is administered by three institutions which are<sup>350</sup>:

1. The police<sup>351</sup>
2. The Courts<sup>352</sup>
3. Prisons now correctional service<sup>353</sup>;

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<sup>347</sup> CAP C 42, Laws of the Federation of Nigeria, 2004

<sup>348</sup> CAP A3, Las of the Federation of Nigeria, 2004

<sup>349</sup> See Section 493, Administration of Criminal Justice Act, 2015

<sup>350</sup>C. Wigwe, Introduction to Nigerian Criminal Law, (Ghana, Mountcrest University Publishers, 2016) @ 6-7

<sup>351</sup> Section 214, 1999 Constitution of the Federal Republic of Nigeria, as amended; Section 23 Police Act; Section 56 (1) Federal High Court Act; Attorney- General of the Federation v. Osahon& 7 Ors (2006) 5 NWLR (Pt. 973) 361.

<sup>352</sup> Section 6 of the 1999 Constitution of the Federal Republic of Nigeria, as amended

<sup>353</sup> Prisons Act, Cap p29, Laws of the Federation, 2004 (as repealed by the Correctional Services Act, 2019)

And each performs distinct roles in the administration of Justice which is geared towards the proper administration of the criminal justice with the ultimate aim of achieving the existence of a society devoid of persons with anti-social tendencies or at least instilling discipline in the society by appropriately punishing violators of the criminal law. However, the three organs mentioned above are not independent of each other as they work hand in hand to achieve the above objectives.

From the above, it can be seen that the roles of the Police, courts and the prisons in bringing the perpetrator of crime to justice cannot be overemphasized. Against this backdrop, the concept of domestic violence is an act which is prohibited under our law. It is seen as a plaque and cankerworm in the society, in fact, it can be said that it is a pandemic of a monumental consequences. From the time immemorial, women have always been presumed to be the victims of domestic violence and this is so as a result of wordings of the Criminal and Penal Code without considering the emerging trends in the society. A society that embraces gender bias, physical or economic abuse or carnal knowledge of same-sex irrespective of whether it is lawful or otherwise.

Meanwhile, after the when the National Assembly observed that the provision of the Criminal and Penal Codes are inchoate in curbing the menace of domestic violence taking in cognizance the emerging and evolving society, Violence Against Persons Prohibited Act (VAPPA) was promulgated in 2015 to include men or boy as a victim of domestic violence. Various Houses of Assembly including Oyo State followed suit by promulgating related law. Upon the emergence of VAPPA and other related law, it can be argued that the concept of domestic violence is more expanded and elaborate. One of the very notable and commendable provisions of the Act is its

expansion of the meaning of domestic violence and its prohibition thereof. While other existing laws limited their scope of domestic violence to protect only females in relation to vaginal penetration without consent<sup>354</sup>, going by the synopsis of the Violence Against Persons Prohibited Act, 2015, it can be said that the Act has taken a giant stride to expand the meaning and scope of domestic violence and sexual related offences. By extension, both males and females are protected against domestic violence. The issue of domestic violence being gender biased has been a jurisprudential issue in Nigeria for a while because our law, as it then was, does not recognize situations wherein a man would or could be sexually assaulted. Thus, instances such as the one reported in Daily Post on the 17th of July, 2012<sup>355</sup> where a man was allegedly “sexually assaulted” to death by his wives, was not classified as sexual assault but manslaughter. The Act also, in its progressive nature, took cognizance of the fact that sex now goes beyond the primary sex organs and thus, extended the scope of sexual offences as an integral part of domestic violence to include anus and mouth. This is because it was difficult in times past, to bring an issue of forceful anal or oral sex under the umbrella of sexual assault simply because such occasion was not envisaged or accommodated by our laws.

Consequent upon the above, it is seen that the subject matter of domestic violence is of common knowledge globally due to the high rate of occurrence and as such there is the dire need to address the issue with a view to curbing it.<sup>356</sup> It is to this end that government needs to take positive steps rather than mere rhetoric considering the grave consequences it has on victims and the society at large. Domestic violence could be regarded as a crime against the victim and the

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<sup>354</sup> Section 357 of the Criminal Code, Cap C41, Laws of the Federation of Nigeria, 2004

<sup>355</sup> Daily Post Newspaper on the 17<sup>th</sup> July, 2012

<sup>356</sup> M. O. Izzi and C.O. Obinuchi; ‘The Challenges of Domestic violence Victims in Nigeria’: [2011] *The Journal Of Jurisprudence And Contemporary Issues Vol. 8 No. 2 p. 2*

humanity at large which the law should give the needed bite in order to one day eliminate or minimize.

### **5.3 Recommendations**

It is a notorious fact that various types of domestic violence are frowned upon by Nigerian law. Domestic violence in Nigeria, whether physical, emotional, sexual, or economic, is widely recognized as a grave offense, and there are several legal frameworks in place aimed at protecting victims and punishing perpetrators. However, despite the existence of laws such as the Violence Against Persons (Prohibition) Act (VAPP Act) and provisions in the Nigerian Constitution, the implementation and enforcement of these laws are beset with numerous challenges. These include inadequate legal awareness, underreporting of incidents, cultural stigmas, lack of sufficient support systems for victims, and the failure to fully integrate these legal protections into local practices. These problems have made it difficult to effectively combat domestic violence and offer meaningful relief to victims. To address these issues and create a more robust response to domestic violence in Nigeria, it is recommended as follows:

It is observed that there are laws governing different forms of domestic violence in Nigeria, such as physical, sexual, emotional, and economic abuse. These laws are designed to protect individuals, particularly women and children, from harmful and degrading treatment within the household. Notable among these are the Violence Against Persons (Prohibition) Act (VAPP Act) and the Child Rights Act, among others. While these legal frameworks provide a strong basis for addressing domestic violence, it is equally clear that many of these laws suffer from a critical flaw: the lack of effective enforcement mechanisms. In theory, the laws criminalize various forms of domestic abuse and prescribe penalties for offenders, but in practice, these legal

provisions are often not implemented effectively. This is due to a range of factors, including limited awareness of the laws among the public, inadequate training of law enforcement officers, weak judicial processes, and the persistence of cultural and societal norms that discourage reporting or intervening in domestic violence cases. Without strong enforcement mechanisms, victims of domestic violence continue to suffer in silence, and perpetrators are rarely held accountable. As a result, the intended deterrent effect of these laws is significantly undermined, and the legal protections they offer are rendered ineffective in many instances.

It is therefore recommended that the executive, which is saddled with the responsibility of enforcing laws, must be proactive and diligent in ensuring that these laws are enforced promptly and effectively. The executive branch, including law enforcement agencies, local government authorities, and relevant ministries, plays a crucial role in translating legal provisions into tangible action. For laws to be truly effective in combating domestic violence, it is not enough for them to exist on paper; they must be implemented without delay or obstruction. This requires a committed and coordinated effort from the executive to ensure that all necessary mechanisms—such as proper training for law enforcement officers, public awareness campaigns, and accessible support systems for victims—are in place. Additionally, strict monitoring and evaluation must be conducted to assess the enforcement of domestic violence laws and address any deficiencies. By prioritizing the enforcement of these laws, the executive will not only uphold the rule of law but also demonstrate a firm commitment to protecting the rights and dignity of victims, ensuring that domestic violence perpetrators face swift and appropriate consequences.

This proactive approach to law enforcement will drastically reduce the menace of domestic violence, as it ensures that perpetrators are swiftly held accountable and victims are given the

protection and support they need. When the executive branch takes its responsibility seriously, and the legal provisions are consistently enforced, it sends a strong message to society that domestic violence is not tolerated and that those who engage in such behavior will face consequences. This will not only serve as a deterrent to potential offenders but will also encourage victims to come forward, knowing that the law can and will protect them. Moreover, it will prevent the law from being seen as ineffective or powerless—what is often referred to as a 'toothless bulldog.' A toothless bulldog symbolizes something that appears formidable but lacks the ability to enforce its will. In the case of domestic violence laws, a lack of enforcement gives the impression that these laws are merely symbolic, unable to protect victims or deter offenders. However, when the law is enforced with vigor and consistency, it proves its strength, instilling a sense of justice and security in the public, and affirming its authority as a tool for real change.

Also, there should be more judicial pronouncements on the issue of domestic violence in relation to men and children. That is, our courts should be more firm in their decisions so that when there are good precedents, it will serve as a good law and deter people from committing it.

The current legal framework addressing domestic violence is not consolidated in a single, comprehensive document, making it difficult to navigate and apply consistently. It is therefore recommended that all relevant provisions be codified into one cohesive statute, which would not only streamline the legal process but also ensure greater clarity and accessibility. Furthermore, the law should be periodically reviewed and updated to reflect the evolving nature of societal norms and the increasing understanding of the complexities of domestic violence. This dynamic approach would help ensure that the legal protections and remedies remain effective and responsive to emerging issues in the context of domestic violence.

Furthermore, it is imperative that each state in Nigeria takes proactive steps to criminalize domestic violence within its jurisdiction. This legal change can only be realized when the state houses of assembly enact specific laws to address and prohibit domestic violence within their respective states. By doing so, the states will not only align with national objectives to combat domestic violence but also tailor their legal responses to the unique needs and circumstances of their local communities. The enactment of such laws at the state level would empower law enforcement agencies, the judiciary, and social services to take decisive actions in protecting victims, prosecuting offenders, and promoting awareness about the harmful effects of domestic violence.

It is crucial for people to understand that domestic violence has tragically claimed many lives, with countless individuals suffering and dying because they believe that issues of domestic violence are inextricably linked to cultural norms and religious beliefs. This misconception often leads victims to tolerate abuse, as they may feel pressured by societal expectations or religious doctrines that discourage seeking help or leaving an abusive situation. In many cultures, domestic violence is either normalized or dismissed as a private matter, while certain religious teachings may be misinterpreted or distorted to justify harmful behaviors, making it harder for victims to escape the cycle of abuse. As a result, the deep-seated connection between culture, religion, and domestic violence becomes a powerful barrier, perpetuating silence and suffering, and ultimately costing lives. It is essential to raise awareness about these harmful beliefs and challenge the stigma that surrounds speaking out against abuse, ensuring that individuals can access the support and protection they need without fear of cultural or religious backlash.

Many victims of domestic violence remain silent about their suffering, often refusing to speak out or seek help until it is too late—sometimes not until they reach a point of extreme

desperation, or tragically, until they take their own lives. In other cases, they are murdered by their partners or abusers, unable to escape the violence that has escalated over time. This silence is often a result of fear, shame, or a deep sense of powerlessness, with victims feeling trapped in their circumstances by emotional, psychological, or societal pressures. Some may fear retaliation, while others might feel that they have no one to turn to for support or that their cries for help will be ignored. The emotional toll of enduring prolonged abuse, coupled with the social stigma around speaking out against intimate partner violence, can make it almost impossible for many victims to break free. Tragically, it is only when these victims are pushed to their breaking points—either through self-inflicted harm or through violent acts committed by their abusers—that the true extent of their suffering becomes evident. This stark reality highlights the urgent need for a cultural shift, increased awareness, and better support systems to encourage victims to speak out before it is too late. As a result of the pervasive and often hidden nature of domestic violence, it is essential for individuals to understand that any form of domestic violence—whether physical, emotional, sexual, or psychological—is unequivocally an offense under the law. No one should have to endure abuse in silence, and the responsibility to act lies with both the community and the authorities. Victims and bystanders alike must recognize that domestic violence is not a private matter or a family issue to be kept behind closed doors; it is a serious crime that violates the rights and safety of individuals. Therefore, it is crucial for people to know that when they witness or are aware of any act of domestic violence, they should immediately report it to the nearest police station or appropriate law enforcement authority. Reporting domestic violence is not only a legal obligation but also a moral one, as it can be the key to stopping the cycle of abuse and ensuring that victims receive the protection and support they deserve. By taking action and involving the police, individuals can help ensure that offenders are

held accountable and that victims are provided with the resources they need to escape their abusive situations. Raising awareness about the importance of reporting domestic violence can contribute to a safer society and create a culture where abuse is not tolerated or excused in any form.

There needs to be a widespread awareness campaign to educate the public about the reality that domestic violence is not just a theoretical or abstract issue that exists in legal documents or on paper alone. It is a tangible, everyday problem that affects individuals and families across all segments of society. Domestic violence has real, devastating consequences for the victims, whether they are enduring physical harm, emotional trauma, or psychological abuse. By raising awareness, we can help people understand that the laws designed to protect victims are not merely symbolic—they are meant to be actively enforced and applied to prevent harm, provide support, and seek justice for those suffering. Too often, domestic violence is downplayed or overlooked because of societal taboos, misunderstandings, or a lack of knowledge about what constitutes abuse. Many individuals may not recognize the signs of domestic violence, or may fail to acknowledge that it can happen in their own communities, workplaces, or families. Awareness efforts should aim to dispel these misconceptions, empowering people to take action when they encounter or experience abuse. This shift in understanding would help society move beyond the assumption that domestic violence is a private matter and promote the recognition that it is a serious criminal issue that demands immediate attention and intervention. Only through increased awareness and education can we break the silence surrounding domestic violence and create a culture where victims feel supported and empowered to seek help.

People engage in domestic violence on a daily basis, often in ways that are hidden from public view, making it all the more insidious. For many victims, domestic violence is not an isolated or rare event; it is a repetitive, ongoing experience that they endure every single day. This can take many forms, including physical abuse, verbal or emotional manipulation, controlling behaviors, threats, and financial exploitation, all of which can occur regularly within the home. In some cases, the abuse is so normalized that it becomes part of the daily routine, with victims feeling trapped in an endless cycle of fear, intimidation, and manipulation.

In addition, domestic violence is not restricted to any one social class, ethnicity, or background—people practice it across all walks of life, in urban and rural settings, and within families of every socioeconomic status. The violence can escalate over time, starting with small controlling behaviors that may seem harmless but gradually build up to more extreme and dangerous acts of aggression. The psychological impact of experiencing domestic violence daily can be devastating, leading to long-term mental health issues such as anxiety, depression, and post-traumatic stress disorder (PTSD).

Because domestic violence often occurs behind closed doors, its prevalence is difficult to quantify, but it is a pervasive issue that affects millions of individuals globally. As such, it is essential to recognize that this is not a problem confined to a few exceptional cases; it is an ongoing crisis for many people who live with abuse day in and day out. Raising awareness of the reality that domestic violence is practiced regularly in society can help to address the stigma that surrounds it and encourage victims to seek the help and support they need to break free from the cycle of violence. It is truly unfortunate that many people remain unaware of the harsh realities of domestic violence and the serious consequences it has on individuals, families, and society as

a whole. This ignorance often stems from a lack of understanding about what constitutes abuse, how it affects victims, and the legal ramifications for perpetrators. Many individuals may not recognize the subtle signs of domestic violence, such as psychological manipulation, emotional coercion, or financial control, and may dismiss these behaviors as normal or acceptable within relationships. Additionally, some people may have misconceptions about the role of culture, religion, or societal expectations in justifying or excusing abuse, which can perpetuate harmful practices and attitudes.

This lack of awareness and education is a significant barrier to effectively addressing domestic violence. However, proper sensitization—through public awareness campaigns, education in schools, workplace training, and community outreach—can play a transformative role in changing perceptions and behaviors. When individuals are better informed about the definition of domestic violence, the impact it has on victims, and the legal consequences for offenders, they are more likely to recognize abusive behaviors and intervene. Increased awareness can also empower victims to speak out, seek help, and access the support and resources they need to escape abusive situations.

Sensitization can also help break the silence and stigma surrounding domestic violence, encouraging more open discussions about the issue and reducing the shame and fear that often prevent victims from coming forward. As people become more aware of the severity of domestic violence and its far-reaching effects, there is a greater likelihood of creating a culture of zero tolerance toward abuse. With widespread education and advocacy, society as a whole can take meaningful steps to prevent domestic violence, ultimately leading to a significant reduction in its occurrence and a safer, more supportive environment for everyone.

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University Compliance Certification

This is to certify that this project by Adetutu Motunrayo with matric number LCU/PG/002724 in the Department of Law, Faculty of Law, Lead City University is in full compliance with the approved University's guidelines.

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Signature

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Date

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