Rape and arrogance of law

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The common cliché is that law is an ass. While that may be right, it may, however, be more appropriate with respect to the provisions of the predominant laws on rape in Nigeria – the criminal and penal codes; and also the case laws, to say that, the law on rape is a horse. Otherwise, if one is gender fair-minded, how can one appreciate the highly technical hurdles as have been held by some courts, as necessary requirements for the proof of rape, under our criminal justice system? Worse still, how can one explain or justify the ordeal and rape on human dignity, otherwise called legal trial, that, a prosecutrix (a rape victim) undergoes, under our adjectival legal system, to secure the conviction of a rapist?  
  
These challenges encourage the incidents of rape, and the time for action is now. Just last week, it was in the news, that one Corporal Anthony Onoja, of the Nigeria Police, allegedly, sexually assaulted a two-year-old girl in Mararaba, Nasarawa State. Leading a debate on the incident in the Senate, Senator Helen Esuene, from Akwa Ibom state, while decrying the cruelty in the instant case, and the insecurity of girl-child, in the country, observed that the alleged rapist was yet to be arraigned for the offence. Expressing angst, many Senators, including Abdul Ningi, Chris Anyanwu, Bello Tukur, Ifeanyi Okowa and many others, called for Corporal Onoja’s head, if the story originally aired by the Nigerian Television Authority (NTA), is true.  
  
Noticeably, their colleague, Senator Ahmed Yerima, a self-confessed pedophile, was not listed, among the troubled Senators. I believe many Nigerians still remember that the distinguished Senator, recently, was able to mobilise many of his colleagues, in this same Senate, to defeat a proposed amendment of section 29(4)(b) of 1999 the constitution, to alter the definition of girl-child by marriage, instead of by age. So, it is possible that most of the comments and cries in the Senate, by many of the Senators, are mere crocodile tears and opportunity for photo shots. Of course, if the Senate feels offended by this comment, they have a chance to prove skeptics like me, wrong. They can do that, by expanding the provisions of sexual offences in the criminal and penal codes, to include sexual harassments and assaults. In making the amendments, legislators across the country, can also adopt modern and less tedious definitions of sexual offences. The Senate can also pressurise the states, to localise such new amendments and furthermore, comprehensively defeat, Senator Yerima, on the constitutional provision that portrayed them in bad light, recently. That will help convince them that their angst, against Corporal Onoja, is genuine.  
  
There is also an urgent need for special workshops for judges on sexual and other offences against morality, to help them reappraise their orientations on the requirements for proof of rape and related offences. Regrettably, a few weeks ago, Justice Folola of Osun State High Court freed the Alowa of Ilowa-Ijesa, Oba Adebukola Alli, who had confessed that he a sexual intercourse with a Youth Corps member, posted to serve in his domain. While the Corps member alleged that she was raped, the monarch claimed that the sexual intercourse was consensual. In freeing the alleged rapist, Justice Folola misdirected himself, when he reportedly held that the failure to tender the torn under-pant and bed-sheets, defeated the claim of violence (lack of consent), and as such held that without a proof of violence, the prosecution’s case failed. The judge gave too much weight to the need to tender the entrails of violence, even when there was evidence that the victim called for help, before the alleged incident.  
  
Even more gregarious in favour of the accused person, in the judgment, was the report that the Honourable Judge, held that penetration was not proved by the prosecution, when the monarch had confessed, in the open court, that he actually had sex with the Corps member on the claim that she is his girl friend. Obviously, the accused, and probably the judge, did not avert their mind to the fact that a girl friend can be raped, once she withholds consent, to the sexual act. To show how bizarre the legal requirements for the proof of rape can be, it was earlier reported that during the trial, the defence lawyer, had asked the alleged rape victim, to show in the open court, her private part, for an examination, to determine whether there are marks or injuries to prove, the ingredient of force, in the definition of rape, as provided in Section 357, of the criminal code!  
  
For reasons that may likely bother on the sociology of the society, particularly the stuff, that it is a man’s world, the ingredients of rape, has been so restricted, that many view the proof of actual violence, as a necessary requirement for conviction in rape trial. But that is absolutely wrong. Indeed, the provision of the criminal code, despite its limitations, is still not fully called to action, in many trials. In defining rape in the criminal code, what constitutes the absence of consent is the crux of the definition. The Section 357 provides inter alia: “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…” In the oba’s case, the definition of consent appears to have been too restrictive, hinging on actual violence.