Thoughts on rape, defilement

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Text of a paper delivered by Vera Chinwuba at a symposium on The Rape Menace; Ending the silence on rape organised by the Action Group on Adolescent Health, College of Medicine, University of Lagos Teaching Hospital (LUTH), Idi-Araba, Lagos.  
  
There is no universally accepted definition of rape. Definitions of rape vary in different jurisdictions and legal systems. Rape is simply non-consensual sexual intercourse. When a man has sex with a woman without her consent. I have looked at some definitions internationally and locally.  
  
The Roman statute of the international Criminal Court is the most advanced.  
  
‘’Perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ or of the anal or genital opening of the victim with any object or any other part of the body.’’  
  
The invasion was committed by the force, or by threat of force or coercion, such as that caused by fear of violence duress, detention, psychological oppression or abuse of power against such person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.  
  
Rape is the unlawful carnal knowledge of a woman by a man forcibly and against her will. It is sexual intercourse accomplished by force and against the will of the woman. More particularly, rape is the act of having carnal knowledge of a woman by a forcibly and against her will or without her conscious permission or where permission has been attained by means of force or fear of immediate bodily harm. Rape can be committed by both force and threat.  
  
The Black’s Law Dictionary defines ‘’Rape as unlawful sexual activities especially intercourse with a person usually a female without consent and by force or threat of injury’’.  
  
The criminal code defines the offence of Rape in a similar manner.  
  
‘’Any person who has unlawful carnal knowledge of a woman or girl without her consent or with her consent, if the consent is obtained by force or by means of threat or, intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to be nature of the act, or in the case of a married woman, by impersonating her husband, is guilty of an offence which is called rape.  
  
Administration of Criminal Justice Law of Lagos State also has its definition of rape.  
  
The World Health Organisation (WHO) defines ‘’Rape as physically forced or otherwise coerced penetration even if slight of the vulva or anus using penis or other body parts or object.’’  
  
In 2012 Annual Uniform Crime Report of the Federal Bureau of Investigation defines rape as carnal knowledge of a female forcibly and against her will to …’’  
  
The above are diverse definitions of rape as a global crime. Therefore is not a local crime and it is not peculiar to Nigeria.  
  
Defilement  
  
It is important to note the distinction between rape and defilement.  
  
Means having any sexual intercourse with a child under the age of thirteen years. It is a criminal offence under the Sexual Offences Acts and Child Rights Act.  
  
The criminal code stipulates that ‘’Any person who has unlawful carnal knowledge of a girl under13 is guilty of a felony, and is liable to imprisonment for life, with or without whipping. Any person who attempts to have unlawful carnal knowledge of a girl under the age of 13 years is guilty of a felony and is liable to imprisonment for 14 years, with or without whipping. A prosecution for either of these offences must begin within two months after the offence is committed. A person cannot be convicted of either of the offences upon uncorroborated testimony of a witness.  
  
Defilement simply means to violate someone’s chastity. The offence of defilement involved a girl under 13 while rape affects a female at or above 13. It is a well laid down position of the law that a child below 13 cannot be raped. However, the age bracket differs from jurisdiction to jurisdiction. It’s important to know that rape can only occur when the virginal of the woman is penetrated. This does not mean that anal or unlawful sexual intercourse is allowed. This is a crime and covered under different descriptions in each legislation. However, it is not a mandatory sentence in all of them. Sexual assault is similar to rape but it is not. Any sexual assault is any form of sexual contact or behaviour that occurs without the explicitly consent of the recipient.  
  
Below are some of the legislations:  
  
Criminal Code – Applicable in all Sourthern States  
  
Penal Code – Applicable only in Northern states.  
  
Criminal Law of Lagos State – Applicable only in Lagos State.  
  
The Violence Against Persons Prohibition Act – Applicable only in FCT Abuja.  
  
Sexual Offences Act – The Child’s Rights Act  
  
Rape and child defilement are gender based violence (GBV) against women according to Beijin Declaration and platform for action. It is a global crime that leaves deep scars. It has caused emotional pains and exposes many to avoidable sexually transmitted diseases and some victims have killed themselves.  
  
Types of rape  
  
There are several other forms of rape (a) War rape – sexual slavery (b) Spousal rape (c) Date rape (d) Date rape drug (e) Male – male (sodomy) (f) Female – female (lesbian) rape – This is the most common and least reported especially in prisons. There are indications that these types of rape are substantially more common in real sense. Other forms of carnal knowledge are deemed unlawful in the eyes of the law.  
  
Attempted rape  
  
Any person who attempts to commit the offence of rape is guilty of a felony and is liable to imprisonment for 14 years without canning.  
  
Rape is distinct from attempted rape or assault with intent to rape. Any attempt to rape must be accompany the means to effect the crime. It therefore requires no corroboration. The evidence of the female victim is enough to sustain the conviction of the perpetrator.  
  
What constitutes rape?  
  
Deriving from the definition above, rape is unlawful carnal knowledge of a woman without her consent, by force, intimidation, threat, coercism etc. The essence of crime of rape is not the fact of intercourse, but the injury and the outrage to the modesty and feeling of the woman by means of carnal knowledge feloniously and forcibly infested.  
  
Elements of rape/ingredents of rape  
  
Penetration – carnal knowledge b. Emission of semen c. Physical force d. Constructive forcee. Resistance f. Lack of consent g. Capacity to consent h. Consent induced by fear  
  
Penetration  
  
To complete the crime of rape, penetration must occur. Emission of semen without penetration is insufficient. However what degree of penetration is required? It has been held in several case laws that a degree of penetration so slight and light that did not cause laceration or injury of the hymen would be sufficient in law for the offence of rape to be completed. Even if the victim is Virgo Intacta (Virgin) or yet to be disvirgined. The court from surrounding circumstantial satisfies it will convict such accused person. The offence is committed if the penis enters the labia of the female organ. It is not necessary for the hymen to raptured. Although sometimes ago, this was considered a sine qua non of the crime. It is also not necessary that there was a laceration of the Virginia. Some evidence is necessary to sustain a conviction. Where the prosecutrix and tending physician testify that there has been no penetration, a conviction cannot be sustained. The carnal knowledge to constitute rape must be ‘’res in re’’ but to no particular depth and the hymen need not be raptured nor body torn.  
  
b) Emission of semen  
  
The reason that proof of penetration even without emission is deemed to be sufficient is that the essence of crime of rape is the injury to the person and the outrage to the feeling of prosecutrix.  
  
c) Physical force  
  
Force, actual or constructive is an essential element of rape but no particular amount of force is necessary to constitute the crime but it is essential that actual force be used to overcome the will of the woman. Force could be by threat or serious body harm which over power the female and cause her to resistance to yield.  
  
d) Constructive Force  
  
It implies force or violence threatened as a result of noncompliance and for the purpose of preventing resistance.  
  
e) Resistance  
  
Resistance establishes two elements of the crime, force and non-consent. These are essential in every case in which the complainant has her mental and physical capacities intact.  
  
f) Lack of consent  
  
The offence of rape, the sexual act must be committed against the will of the woman otherwise it will not be considered rape. Consent given at any time prior to the penetration deprives the subsequent intercourse of its criminal character regardless of how reluctant it was given.  
  
g) Capacity to consent  
  
Where a woman is in a state of consciousness unlawful and forcible connection with her at the time is presumed to be without her consent and it is rape. As a general rule where a man has intercourse with an idiotic or insane woman without resistance or with her consent it is considered rape. If a man has connection with a woman while asleep, intoxicated or unconscious because of drugs. He is guilty of rape.  
  
h) Consent induced by fear or fraud consent obtained out of fear of personal violence is void. i) Age limit/capacity to commit offence of rape  
  
The criminal code stipulates that a male person under the age of 12 is presumed incapable of having carnal knowledge. It follow that a person cannot be guilty of offence of rape or attempted rape, although if charged he may be convicted of indecent assault.  
  
Burden of proof  
  
Rape is a criminal offence and must be proven beyond reasonable doubt.  
  
He who asserts proves. The prosecution’s burden of proving the essential elements of the case of rape is beyond reasonable doubt. Where there is an iota of doubt it is settled in favour of defendant / suspect.  
  
The law looks at whether penetration was with consent and this is sometimes hard to prove. This also informed the reason why conviction in rape cases is very low. Generally, it is believed that when someone is raped the hymen is broken but it is not true. You can have intercourse with a man for many years and still your hymen is still intact. So medical practitioners must know that it is not the broken hymen that determines rape. So please don’t look at broken hymen when working with rape victims. Some medical practitioners believe once the hymen was not broken rape has not occurred. Cases are daily thrown mainly due to lack diligent prosecution of poor police investigation and inefficiency in documentation of evidence and prosecution. The fact that there is no physical injury does not mean there was no rape.  
  
Steps to be taken before, during and after  
  
Take note of the environment where you are. Observe the person perpetrating the act on you for purposes of identification. E.g complexion, height, accent, time of the day, tribal marks (if any), colour of shirt, trousers etc. Note: If he is the only one or in a gang. You must be able to identify the rapist for purposes of prosecution.  
  
During  
  
To avoid doubt, call for help, shout, scream to attract attention, show resistance if you can. If he attacks you scratch him with your finger, make up excuse e.g period is on, or you have HIV or any other sexually transmitted disease. Look out for escape route, do anything to let you go even if for a second. Devise a special code word you can call with a family member or friend when in danger. Tell him you do not want to engage in sex with him. Did you bleed or sustain physical injury or even if your dress was torn? Inform your parents, guardian, and brother or an elder after the incident. (However depending on the age). You will be asked in court: what did you while you are being raped?  
  
In case of defilement of underage child, this may not apply because the child is incapable of consenting to rape. The victim could also be injected with drugs to prevent resistance. (Date rape drug)  
  
After  
  
After the incident report to the Police immediately before even cleaning up or taking a bath so as not to destroy the evidence. The police will send you to a general hospital (not private) for medical examination in company of an officer.  
  
Keep a copy of the medical report. After investigation, the matter will be charged to court for prosecution. You can also involve NGO like the International Federation of Women Lawyers (FIDA) of which I am a member. Get a counsel to represent you in court. You can also seek assistance from Mirabel Centre at Lagos State University Teaching Hospital, the centre offers help to rape victims or sexual assault survivors. All services apart from being provided in a compassionate caring manner are free.  
  
The above will assist greatly in prosecution of the case.  
  
Factors that instigate rape  
  
A number of reasons have been adduced for increasing sexual violence against Women in Nigeria. Its prevalence is quite disturbing. The World Health organisation states that factors include belief in family honour and sexual primary ideologies of male sexual entitlement and weak legal sanctions for sexual violence. Experts say there is no single scientific motivation for rape. While desire for power, anger sadism sexual gratification and mental depravity have considered as factors.  
  
Others include poverty provocative dressing among women. Excessive sexual orgies, pornography, alcohol abuse, being female, a sex worker having previously been raped or abused, physical attraction etc. The list is endless.  
  
Society’s perception of rape  
  
Rape is a global crime and crime against humanity. Apart from the fact that the offence devalues the human person with emotional scars and pains. In some societies the victims is blamed and sometimes castigated.  
  
In Nigeria, most victims will elect to remain silent leading to under reporting of the crime because of stigmatisation. Some have also killed themselves due to pain and stigmatisation associated with it. This informs the reason why it is the most under reported crime.  
  
Most petrifying is that most of the rape victims have been killed by the rapist after assaulting them.  
  
Rate of reporting, prosecution and conviction varies considerably in different jurisdiction. Collectively we can brace up against this evil by taking proactive steps and taking the ball by the horn to eliminate the menace from Nigeria rape must be reported no matter slight or insignificant the attempt to rape may be.  
  
Victims should not hide under stigmatisation to prevent the perpetrator from being brought to justice. The cases of Cythnia Osokogwu, and five-under graduates of Abia state University who raped a young woman despite pleading with them to spare her are cases in point. The video of that incident shook the nation. Investigation was launched nothing has come out up till today and are among the many instances.  
  
In India New Delhi, the case of 23-year-old Physiotherapist, who was beaten and gang raped and eventually died 13 days after attracted national and international condemnation. We all need to rise up and root out rape. Everyone has a role to play in the eradication of this menace from homes to religious gatherings, schools etc.  
  
Application of forensic science  
  
Forensic evidence plays a critical role in prosecution of perpetrators of rape. What is prosecution of offence of rape without forensic knowledge?  
  
In other jurisdictions adults raped in their teens have been able to get justice after several decades. Their abusers are made to face trial years after the act was committed. Forensic examination following rape has two primary functions: