Marital rape under Nigerian lawj

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As human beings evolve and our societies change, our laws must keep up with the changes and define our interactions in the context of our new societies. There are many areas of our laws in Nigeria that have not kept up with the times. And there are areas of modern Nigerian society that need the guiding hands of legislature or pronouncements from the courts.  
  
The Nigerian Criminal Code in Section 357 states that, “Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of 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.”  
  
Section 6 of the Criminal Code defines unlawful carnal knowledge as that which takes place otherwise than between husband and wife; and the offence is complete upon penetration. In other words, marital rape is not an offence in Nigeria. A husband cannot rape his wife. It is assumed that the wife gives implied general consent to sexual intercourse with her husband upon entering the marriage contract. This implied consent is revocable either by an order of a court or a separation agreement. In his book, History of the Pleas of the Crown (1736), Sir Matthew Hale wrote, “But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract.”  
  
In the Penal Code, Section 281(1) provides that: “A man is said to commit rape who… has sexual intercourse with a woman in any of the following circumstances – (a) against her will; (b) without her consent; (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt; (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; (e) with or without her consent, when she is under fourteen years of age or of unsound mind.”  
  
Similarly, under the Penal Code, there is no offence of marital rape, provided the wife has attained the age of puberty.  
  
Criticism of the provisions on rape under both codes raises at least three issues: (1) the offence of rape is gender specific, only men can commit the offence of rape; (2) the act amounting to rape is limited to penile penetration of the vagina – anal or oral sex or penetration using objects or other parts of the body such as the tongue or finger, do not constitute sexual intercourse for the offence of rape; and (3) marital rape – both codes provide (with certain exceptions) that sexual intercourse between a husband and wife cannot constitute the offence of rape.  
  
The Sexual Offences Bill 2013, which was passed by the National Assembly but was never assented to by the President. The National Assembly has also chosen not to force the Bill into law by overriding the need for the President’s assent. The bill expanded the definition of rape to cover both genders; in other words, under the bill a woman is capable of committing the offence of rape. It also provided for a sexual assault offence for non-genital penetration, i.e., penetration with mechanical objects or other parts of the body like the finger or tongue. There was some controversy surrounding the bill particularly over the age of sexual consent. The provisions in section 7 of the bill were misinterpreted as reducing the age of sexual consent to age 11 and the entire bill was resisted. This may have informed the President’s reluctance to give his assent and sign it into law.  
  
There is also the Violence Against Persons (Prohibition) Act (VAPPA) of 2015, which, unfortunately, applies only to the Federal Capital Territory, Abuja. VAPPA also expands the definition of rape to include both genders as capable of committing the offence of rape.  
  
Neither the Sexual Offences Bill nor VAPPA addresses concerns about marital rape. However, Lagos State has a domestic violence law that takes sexual offences beyond unlawful “carnal knowledge” and, in my thinking, prepares the ground for future prosecution of marital rape in Lagos State. This Lagos State law [The Protection Against Domestic Violence Law (2007)] was enacted to “provide protection against domestic violence and for connected purposes.”  
  
The law defines domestic violence as any of the following acts – “physical abuse; sexual abuse exploitation including but not limited to rape, incest and sexual assault; starvation; emotional, verbal and psychological abuse; economic abuse and exploitation; denial of basic education; intimidation; harassment; stalking; hazardous attack including acid bath with offensive or poisonous substance; damage to property; entry into the complainant’s residence without consent where the parties do not share the same residence; or any other controlling or abusive behaviour towards a complainant, where such conduct harms or may cause imminent harm to the safety, health or well-being of the complainant; and deprivation.” (Emphasis, mine)  
  
The law goes further to define sexual abuse as, “any conduct that abuses, humiliates, degrades, or otherwise violates the sexual integrity, or dignity of the victim.”It would be interesting to see how lawyers and the courts in Lagos put this law to use, and whether other states will follow in the steps to Lagos to disturb the illusion that a wife gives an irrevocable, unqualified, consent to sexual intercourse once she enters into a marriage.  
  
For now, under Nigerian criminal law, a man may be charged with assault, depending on the circumstances under which he has sexual intercourse with his wife, but he cannot be charged with raping his wife.  
  
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