

Journal of Philosophy and Culture,
Volume 5. No.1, March 2014

**Rape and Adultery in Ancient Greek and Yoruba
Societies**

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Abstract

In Athens and other ancient cultures, a woman, whatever her status and whatever her age or social class, was, in law, a perpetual minor. Throughout her life, she was in the legal control of a guardian who represented her in law. Rape, as unlawful carnal knowledge of a woman, warranted a capital charge in the Graeco-Roman world. It still carries a capital charge in some societies and is considered a felony in others. As for adultery, it may be prosecuted in some cultures while in others it is a matter to be decided by the family council.

This paper examines laws concerning the abuse of and exploitation of women in ancient and modern societies,

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especially within the context of their biologically determined roles and sexual culture. It also seeks to establish the socio-legal rights (if any) of women, especially those who were traumatised and sexually abused. The research method is mainly content analysis. It employs sources such as legal evidence in the form of recorded speeches of the Attic orators along with literary accounts, historical or legendary and epigraphic inscriptions.

Key words: Female, Sexual, Rape, Greek, Yoruba

Introduction

Ancient Greece and traditional Yorubaland were male-centred societies; with traces of misogyny featuring in the texts of this period. In 5th and 4th century Athens, the laws of the *polis* were promulgated by men. As an offshoot of this, every decision affecting the society was taken by men. The Greek word *oikos*, and Yoruba

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agboile, both mean ‘household’, and this household itself was patriarchal, where women had very negligible rights. They had limited rights to dispose of their sexual capacities and this was subject to the approval of the male members of their family, who stood in position of authority over them. Women were supposed to uphold the values of the household by adhering to the strict laws enacted by men. However, in pre-colonial Yorubaland, women partly encountered these problems because superiority was not based on gender but on economic achievement and this was recognised within the traditional system. In the cultures under study, marriages were arranged, but exposure of female infants at the whim and caprices of the family head, which was found in ancient Greece, was not a feature of the Yoruba society. As a matter of fact, responsible fathers never raised female infants in classical Greece and Rome, except they had secured an irresistible match, both

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economically and socially.

This paper investigates the occurrence of improper sexual conduct among women in antiquity, and the socio-legal implications for women who had been involved in these crimes in the Athenian and Yoruba cultures. In the study of women in antiquity, some scholars hold that Greek women were despised and kept in Oriental seclusion, while others contend that they were respected and enjoyed freedom comparable to that of most women throughout the centuries. But Classical Athenian society did not condone unnecessary closeness between the opposite sexes, because of the need for moral and sexual sanctity. Cole (1984) avers that:

The sexes were usually segregated from each other in ancient Greece, and the opportunity for sexual contact with women from men outside their families was far more limited, especially in times of peace. Husbands and fathers kept their wives and daughters under their protection at home in part because they

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did not trust them, but also because they did not trust other men. Greek standards of modesty demanded that women be protected from any sort of physical contact with any man not her husband, and the situations in which a woman's reputation were considered compromised encompassed a wide range of behaviour. Despite such care, however, unacceptable sexual contact did occur.

Segregation of the sexes varied according to social class, and the Greek view that women found sex more pleasurable than men and were more prone to inebriation, warranted the close monitoring of these women. Greek women of the upper class were jealously guarded within the peaceful shelter of the home, ringed round like precious possessions from contact with the outer world, but this degree of segregation was not possible among the lower class because they were involved in the daily running of and provision for their households (Zimmen 1931:328). But in spite of this seclusion and seeming overprotection by their menfolk,

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Greek women were recorded to still have been involved in improper sexual escapades. The fact that Athenian women took leading roles in festivals, sacrifices and funerals, provided them the opportunity for seeing and being seen outside the normal circle of family and friends. This contradicts the earlier notion of women being kept under lock and key in the fashion of an Oriental harem.

Rape is forceful or non-consensual sexual intercourse with a woman. The lack of consent and violence qualifies a specific unwanted sexual contact to be described as rape. This is the main difference between rape and adultery. The ancients were able to forestall fornication and rape by encouraging and arranging early marriage for their children. The ancient Greeks had no explicit term for 'rape' in the sense of forceful sexual copulation. *Bia*, force, is one of several Greek expressions which could be interpreted as rape, if used

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with an objective genitive meaning ‘girl’ or ‘woman’.

In antiquity, the crime of adultery was defined by the woman’s status. A married man who carried an inappropriate sexual relationships with other women was behaving churlishly, but he was not considered an adulterer unless the woman was another free man’s wife; and this meant that a married man looking for extra-marital pleasures found them much more easily and safely than a married woman would. *Moicheia* is the Greek word for adultery. However, this term is also unsatisfactory because *moicheia* encompasses more than adultery. It covers a whole range of other sexual vices, including seduction and illicit, but consensual, sex with relatives other than a man’s wife, while adultery requires the participation of two willing adults in the game of concealment and secrecy and where one of them, at least, is married.

Laws on Adultery, Homicide and Rape

There were laws regulating sexual behaviour in Athens and environs. Adultery was considered a crime against the *kyrios* or family-head, because it constituted a threat to the purity of the descent group (Hansen, 1991:214). It was regarded as an affront to the whole community. But, the laws concerning adultery and rape were intertwined.

The law says, if anyone forcibly debauches a free adult or child, he shall be liable to double damages; while if he so debauches a woman, in any of the cases where it is permitted to kill him, he is subject to the same rule. Thus, the lawgiver considered that those who use force deserve a less penalty than those who use persuasion; for the latter he condemned to death, whereas for the former he doubled the damages, considering that those who achieve their ends by force are hated by the persons forced; while those who used persuasion corrupted their victims' souls, thus making the wives of others more closely attached to themselves than to their

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husbands, and got the whole house into their hands, and caused uncertainty as to whose the children really were, the husbands' or the adulterers'. In view of all this the author of the law made death their penalty (Lysias 1.30-33).

Based on the foregoing, certain scholars have said that Athenian laws and customs distinguished between rape and *moicheia*, (adultery), and considered the latter a more heinous crime than rape; hence, a heavier penalty was attached to the crimes of adultery and seduction in the ancient world. Some other scholars however are of the view that the two offences were of the same magnitude, although the penalties were different. Moreover, rape was presumed to be unpremeditated, hence the pecuniary fine.

'Hybris' as a legal term is not strictly defined. Scholars, such as Cohen and Harris, have also described rape as an act of hybris, which implies that it could be

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prosecuted by means of a public prosecution known as *graphehybreos*, which was similarly an *agontimetos*. In other words, it was open to the prosecutor to propose death penalty and if he could convince the jurors, the perpetrators would be killed. Cole informs us that *hybris* involved an arrogant attitude accompanying excessively violent acts meant to bring shame and dishonour to the victim. This was an action where the successful prosecutor could propose any kind of penalty he wished, including capital punishment, for the convicted criminal or both of them could reach a compromise. The foregoing can be compared with the treatment of adultery in Old Benin Kingdom in south-western Nigeria. A significant remark made by Roth (1903) is pertinent in this context; he asserts that, adultery is here punished in this manner:

If any man is suspicious of the levity of his wives, he tries all possible means to surprise her in the act, without which

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evidence he cannot punish her; but if he succeed in his endeavours he is thereby lawfully entitled to all the effects of her paramour, whether consisting in slaves, cowries, tusks, or any mercantile commodity: all which he may immediately seize, make full use of, occupy and enjoy as his own. The offending wife is very soundly cudgelled and driven out of his house to seek her fortune; but no person being very fond of marrying her after this, she retires to another place, where she passes for a widow by way of obtaining another husband.

Lysias and Plutarch record the severity with which *moicheia* was dealt with in Athens. Both state that the penalty for *moicheia* exceeded the penalty for sexual assault. However, Plutarch believes that rape was a more horrendous crime, but that the punishment for *moicheia* in Athens exceeded that of sexual assault. Plutarch records that Solon gave “to the one who catches a *moichos*, an adulterer, the right to kill him, but if anyone

seizes a free woman and forces her, he assigned the penalty of one hundred drachmas (Plutarch, Solon 23). It is this pecuniary fine that has led some commentators to conclude that rape was a crime of less magnitude. In the classical period, offences in the area of adultery, seduction and rape were further covered by three categories of prosecution: *graphemoicheias*, public prosecution for adultery and seduction; *graphehybreos*, public prosecution for hybris; and *dike biaion*, private prosecution for violence.

In this section of the paper, *Lysias 1, On the Murder of Eratosthenes*, is analysed in order to determine if the punishment the law prescribed for adultery was justified. Euphiletus was accused of premeditated murder by the relatives of Eratosthenes, the man whom he caught in *flagrante delicto*, in the act of sexual intercourse, with his wife. Euphiletus says in his response: “gentlemen, my job is to demonstrate the

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following; that Eratosthenes committed adultery with my wife; that he corrupted her, disgraced my children, and humiliated me by entering my house; that there was no prior hostility between us except for this; and that I did not do what I did for the sake of money or for any other reward except for the vengeance permitted by law” (Lysias, 11). It has been suggested that Euphiletus misinterpreted the above law because he refused to explore the other options that were available to him before killing Eratosthenes, the adulterer. In Lysias’ defence of Euphiletus, he claims that the laws of Athens treated seduction with greater severity than rape, but this is not so because this law did not apply to adultery alone and Solon, the law-giver, did not rate adultery as a crime worse than rape as Euphiletus tries to make us believe.

The law stipulates that a husband could kill an adulterer with impunity if caught in the act in his home or the residence of his father-in-law. However, this did

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not restrain the husband from seeking justification through other means. He could bring the adulterer to court, subject him to physical abuse (this brought shame and dishonour), or even accept from him a financial penalty (Harris, 1990:374). But Euphiletus killed the adulterer without recourse to other available punishment of lesser degree and also fails to mention that this law accorded the same exemption from condemnation to the husband who caught a man raping his wife, daughter, mother, or courtesan. Euphiletus made the law seem relevant to only adulterers caught in *flagranti*. He suppressed the information on the legal procedure for redress available for prosecuting a rapist on a *graphehybreos*, a public suit for trying hybris, a procedure that regulated improper conduct that could bring disgrace. This suit permitted the successful prosecutor to demand the death penalty as a last resort (Harris:374).

The man that killed an adulterer risked being prosecuted for murder if he did not provide witnesses to the circumstances of the killing. Since Euphiletus has already been accused of intentional homicide, his pleadings were made toward exoneration. He had witnesses, and it became imperative for Lysias to make adultery seem a more heinous crime than rape, in order to deliver the defendant from the clutches of the law. In Athenian law, the Council of Areopagus, made up of eleven members, could summarily execute an adulterer who confessed to the crime and the courts could also sentence him to death at trial.

Rape and Sexual Misdemeanour in Classical Athens

Adultery requires the cooperation of the woman, just as the nameless wife of Euphiletus in Lysia 1 encouraged her adulterous affair. Women were not referred to by their first names in antiquity, especially in ancient Rome.

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They were given the feminine version of their father's name. This was in consonance with the fact that they had no identity of their own, but were seen in the light of the men in their lives. As a result, the crime against her was regarded as a crime against the *kyrios*, not the victim. So, whatever punishment the *kyrios* recommended was deemed justified.

There were sharp contrasts between the perception of adultery and that of rape in antiquity. The distinctions were in the location and nature of the crime. *Moicheia* could only be so called if it involved a free Athenian woman who was also another free man's wife and it would naturally be conducted in the residence of the woman, as it happened in the home of Euphiletus. Conversely, rape was considered as an evil perpetuated outside the home. Menander, in his *Epitrepontes*, cites the case of a young woman who was assaulted on her way home from a religious festival. Habrotonon, the

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courtesan describes a rape victim she encountered at the Tauropolia, the year before:

She was there with us, and wandered off.
Then all at once she ran up by herself,
tearing her hair and sobbing. Gods! Her
cloak, so filmy and so lovely, was quite
ruined, all torn to rags.

The above showed there was little sympathy for rape victims in antiquity. There are a few illustrations of their distress at the time of rape, which are usually given by female characters in comedy but after that, the state of their mind and their emotions are not portrayed. The portrayal of rape in Greek and Roman New Comedy seems to be little more than an incidental occurrence or convenient plot device. Rape in the extant comedies of Menander, Plautus and Terence tends to conform to the following pattern: A young virgin female is raped before she is married; this happens at a religious festival. Consequently, she bears a child before the consummation of the marriage with her husband or the

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child is born within a couple of months after the marriage, and therefore, cannot legitimately be the offspring of her husband. The arrival of the child disrupts the marriage, but all is resolved, when it is revealed that the woman was raped by the man who is now her husband, though neither of them had previously recognised the other. A happy reconciliation ensues. This pattern is noticeable in Menander's *Epitrepontes*. Charisios leaves his wife, Pamphile, when she bears a child after five months of marriage. In the play, it is revealed that she was raped at the Tauropolia festival, and that it was Charisios who raped her, though neither was aware of the other's identity. After the truth has been revealed to both of them, they are happily reconciled. The revelation is made possible by the slave Onesimos who tells how his master lost the ring which is now the identifying trinket belonging to the girl.

**The Role of Women and Penalties for Sexual
Misconduct in Classical Athens**

The Athenian society offered her women a significant degree of autonomy. There was clear demarcation between the spheres of men and women. Male and female had anatomically distinguished roles in which they needed to complement each other to function optimally as was the situation in Yorubaland before European contact. In Athens, the man reposed his trust and confidence in the woman whom he married, because she was the mother of his children, the keeper and manager of his home. Hence, making them responsible for the discipline and socialization of female children, and men, in turn, relied on women to find out what happened in their absence. They were not *confined*, *supervised*, or *guarded* by men, but rather by other women. Thus, women helped enforce the divisions that existed between men and women (Wolpert 2001:417).

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The Athenian state was interested in the purity of the lineage. The law of adultery specifies that:

Whenever one catches an adulterer, let it not be allowed for the man that has caught him to live with (*synoikein*) his wife. And if he does live with her, let him be without civic rights. And let it not be allowed for the woman to attend public sacrifices, if an adulterer has been caught on top of her. And if she does attend, she is to suffer with impunity whatever she suffers, apart from death. (Demosthenes 59.87)

Whereas a woman's status was not derived from kinship with males, her status tended to be defined in terms of ritual function, because that was the only sphere in which she functioned outside the *oikos*. The participation of women was indispensable to Greek religious worship. The exclusion of an adulteress from religious participation and marriage would have been devastating on any Greek woman because they played a prominent role in religious matters. Women led the Panathenaic

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procession from the entrance of the western city-gate. Clearly, the state's motive in inflicting such a requirement was the desire to protect itself from surreptitious imposition of bastards on its bloodiness, whether produced from the adulterous liaison that had now been detected and curbed or from any future adulterous liaison that a wife of proven corruptibility might be felt all too liable to make (Ogden 2002:26).

It is also important to note the different treatments of women in cases of *moicheia* and rape. In some cultures, rape and adultery are regarded as equally traumatic for the woman involved. Carey, working with Athenian culture, claims that “a woman who is penetrated by a male outside marriage is unclean, whether she consented to the penetration or not” (Carey, 1995:414). It may have been felt that a woman who experienced sex with any man other than her husband was liable to acquire a taste for extra-marital adventures

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in the future, thus vitiating her reliability as a wife (Ogden 2002:26). It could have been this concern that led the guardians of unmarried women to negotiate marriage of the victims to their seducers. The consequences of *moicheia* for a female victim were considered more important to the family of the woman than to the woman herself because the father, as *kyrios*, would have been fooled, his property damaged and the girl would no longer be marriageable unless the rapist married her. As a result of this, Athenian law provided that only male relatives could prosecute crimes against women.

According to Pomeroy, the husband of a raped or adulterous woman was legally compelled to divorce her, but Carey says there was no evidence of this or other type of sanction against the victim. The accused woman had no opportunity to proclaim her innocence, though, with difficulty, her guardian might do so on her behalf.

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She would be a social outcast and would never find another husband. It was in order to avoid this predicament, that the ancients encouraged early marriage of their girls.

Women, children and slaves were classified together under ancient and modern laws. They were regarded as chattels. Women were treated legally as perpetual minors and in certain respects held not to be responsible for their own actions or decisions. As a result, “the adulterer that *persuades* a woman, a person held to be of constitutionally and categorically feebler intellect, to have sex with him is committing an offence that is morally indistinguishable from a man that *forces* a woman, a person of constitutionally and categorically feebler strength, to have sex with him” (Ogden 2002:31). Therefore, the punishment for rape of a child or a woman was a monetary fine.

In sum, rape in the Greek context involved shame

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and loss of honour, since it involved humiliation. The inequality in the social status of men and women could be seen in penalties laid down for adultery. The punishment for the male caught in adultery with a free woman was not as severe as those meted out to the woman. He was merely required to pay a monetary fine, but he could be killed by the aggrieved *kyrios*, if he refused to accept the stipulated fine. On the other hand, the penalties for a woman caught in adultery were severe. As noted above, she was barred from the State temples so as to protect sanctuaries from pollution. Since religion was the only area of Greek life in which a woman could approach anything similar to the status of a man, this was a very severe sanction. Indeed, if she disregarded the bar, she could be beaten by anyone with impunity. She was also forbidden from wearing any kind of ornament. Thus, leading a miserable life.

**Social behaviour among Yoruba Women of
Southwestern Nigeria**

In Pre-colonial Yorubaland, the indigenes were very virtuous, loving and kind. Traditionally, everyone including the naturally impotent must marry. Polygyny was socially approved. So, the gratification of illicit sexual desire, except in a state of wedlock, was against the mores of the people, though, no doubt, carried on clandestinely, in some cases overtly (Fadipe 1970:65). Theft was rare; so also was fornication, in spite of the scantiness, or often times, complete absence of clothing to which they were accustomed. Licentiousness was abhorred. An erring family member would be condemned to slavery by a unanimous vote of all the relations when he had brought disgrace on the family. Strict chastity was the rule, not the exception (Johnson, 2001:101-103). Any man who commits adultery with the wife of another is liable to a heavy fine with flogging.

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To beat, flog, or wound a man found committing adultery or attempting, to entice one's own wife or the wife of one's own relative or intimate friend to commit adultery. It is immaterial whether the man is acting on his own behalf or on behalf of others. Adultery is a crime in which both the man and the woman are liable to severe punishment. The woman shall be punished by her husband, conjointly with her parents, the man by the judicial authorities. But if the woman is forced against her will and immediately after the incident makes a complaint to her husband or relatives, she is free from punishment (Ajisafe, 1924:35).

In the colonial era, the philanderer who remains unmarried, taking advantage of young girls, betrothed and unbetrothed, as well as the wives of others and widows is a phenomenon arising from western impact and is even so confined to the ranks of literate Christian young men. The social system is tolerant enough to

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absorb these women sooner or later into the ranks of the married, even though this form of marriage is of a lower status than that which the great majority have to go through. If an *iwofa*, service woman, was violated by the master, the money is thereby considered absolutely paid, and the debt discharged. If forced against her will, not only was the debt cancelled, but he was also liable to prosecution and heavy fines to be paid both the woman's husband as damages and to the town authorities as court fees. If a young unmarried woman was tampered with, not only was the debt *ipso facto* discharged, but the master also had to repay the fiancé all the money he had spent on her and also the betrothal dowry to the parents (Johnson 2001:128). Rape was considered a heinous crime and rapists were severely punished. Repeated violence against a woman was decried and was sufficient ground for divorce and the return of bridewealth.

However, changing social practices, particularly

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the demise of arranged marriage, have contributed to changes in pre-marital sexuality in much of Southwestern Nigeria. In the early part of the century, young women's activities were closely watched, virginity was prescribed and their marriages arranged. With the introduction of a colonial court system and procedures for divorce (through repayment of bridewealth) in the first part of the twentieth century as well as other changes in the political economy of colonial Nigeria, the system of arranged marriage was undermined (Renne 1992:222).

A different method of establishing marital relations emerged, with important consequences for premarital sexuality and fertility. Instead of being thought of as enhancing her fertility through socially correct behaviour, a virgin came to be perceived by many as socially backward, *oluukoor out* – because virginity was associated with arranged marriage – and as

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anti-social, *suegbe*, because young women's attendance at social events and subsequent sexual forays were one way of finding a husband. Recently, some have even had to associate virginity with certain diseases and conditions identified with infertility, such as gonorrhoea (*atosi*), epilepsy, (*warapa*) and amenorrhoea. Thus, changes in marital arrangement have led to a reversal of the moral evaluation of virginity by many women from a virtuous ideal to a social ill, a reversal that may be expressed in terms of health and fertility (Renne, 2003:71-72).

According to the law of modern Nigeria, rape of a female can be defined as unlawful sexual contact, that is, intercourse without the consent of the victim. According to section 357 of the Criminal Code, which operates in the Southern part of Nigeria, "Any person who has unlawful carnal knowledge of a woman or girl without her consent, or with her consent, if the consent is

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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 case of a married woman, by impersonating her husband is guilty of an offence which is called rape”. Intercourse with a girl too young to give legal consent is also seen as rape.

Under Section 282 of the Penal Code, which is in operation in the northern part of Nigeria, a man is said to commit rape when he has sexual intercourse with a woman against her will, or without her consent or with her consent when it has been obtained by fraud or by putting her in fear of death, or with her consent when the man knows he is not her husband or with her consent when she is under fourteen years of age or is of unsound mind. In this instance, “unlawful carnal knowledge” means penetration of the vagina by the man’s penis. It does not matter whether there was ejaculation or not.

Section 6 of the Criminal Code states that unlawful carnal knowledge becomes an offence once there is complete penetration.

Who Are the Victims of Rape?

Women and girls are the victims that are widely known. But, recently, men have been known to be victims too. In fact, the definitions given by our Criminal and Penal Codes limit the offence. According to these definitions,

- i. Only a man can be accused of rape.
- ii. Only a woman/girl can be the victim, and
- iii. There can be no marital rape.

Rape can be committed on anyone irrespective of the person's age or social group, whether illiterate or literate. Age is not a barrier when it comes to sex, therefore, rape victims are not limited to a certain age group. However, rape is different from indecent assault. The latter occurs when a man touches a woman against her will in any

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way which does not involve his penis entering the vagina. We find men indecently assaulting young girls and boys; children, too, are not spared in this ordeal. In fact, in 1990, when a girl who was raped was recounting her ordeal in a Nigerian magazine, she said she used to think that rape was an exclusive pastime of the bestial dregs of the society.

There are certain victims of rape that are not usually recognised. These are the insane and the imbeciles. This is because they are deemed incapable of giving any consent at the time of intercourse. These two categories of people are usually seen around pregnant. If one goes by the definition of rape in Section 357 of the Criminal Code: "...with her consent if the consent is obtained by ... fraudulent representation as to the nature of the act...", one would see that the intercourse that led to the pregnancy actually amounts to rape, as these people do not actually know what is going on when the

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man is having sex with them.

Other victims to be considered are wives. According to the law, as long as a man and a woman are married, the man cannot rape his wife. In Volume 1, 1736:29 of History of the Pleas of The Crown, “the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract”. However, if the marriage has been dissolved or if a competent court has made a separation order containing a clause that the wife is no longer bound to cohabit with her husband, then the implied consent to intercourse given by the wife at marriage is thereby revoked. In this situation, if the husband has sexual intercourse with his ex-wife without her consent, it will be rape. In the case of R v CLARKE (1949) 33 CAR 216, the accused was charged for rape by the prosecutor who was his wife.

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Ten days before the alleged offence, the wife had obtained, in the magistrate's court, a separation order on the ground of persistent cruelty. This order contained a clause that she was no longer bound to have intercourse with the husband. Notwithstanding this, the accused forced her to have intercourse with him. As a result of this forceful act, he was convicted of rape.

A mere presentation of a divorce petition does not amount to divorce or separation. In such a case, a husband using force or violence to have intercourse with his wife will not be guilty of rape, but of sexual assault on his wife, as was held in *R v MILLER* (1954) 2ceB 282.

Societal Attitudes toward Rape Victims

Our society still views the victim of rape with disgust and lack of credibility. Despite the fact that many people no longer attach so much importance to virginity of the

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lady before marriage, unlike in the olden days, it is still very scandalising for a young unmarried lady to come out openly and confess that she has been violated.

Rape can be the most terrifying event in a woman's life. In many instances, the victim's hope is to save her life from disrepute and disgrace, and not her chastity. Years afterwards, she may distrust others, change residence frequently and sleep poorly. Her friends and family may blame or reject her. If she is involved in a relationship, her partner may put an end to the relationship. If, unfortunately, she is a virgin, she may never get over the psychological trauma. If she chooses to report to the appropriate authorities, she may suffer further trauma, as she must relate her ordeals to officers, like detectives, medical personnel and prosecutors. If the suspect is arrested, she might be subjected to direct cross-examination at a preliminary hearing and trial. Her testimony may not be protected

against incursions into her previous sexual relationships with other men or with the accused. The court could come to judgement on the basis of lack of evidence and by making presumptions about the victim's sexual promiscuity. Thus, her private life will be exposed to the public. In order to avoid this predicament, the victims usually keep silent and withstand the possible effects of the ordeal, some of which are as follows:

- A) Pregnancy may occur. She may decide to abort the pregnancy, have the child or abandon the child later. The abortion may lead to destruction of the womb or ovary and thereby result in infertility in the future;
- B) or a sexually transmitted disease passed to her may lead to infertility or death in the case of HIV/AIDS.
- C) There could be psychological effects – anxiety, anger, frigidity, insomnia, loss of self-esteem and

confidence, flashback syndrome, sexual dysfunction, shame, and distrust.

The aftermath is what actually destroys such victims. They cannot reveal their secrets because of the fear of being neglected, stigmatised or isolated by the public. Even the church which is supposed to offer succour to the victims may spurn them. People accuse openly. They blame. They do everything but help the victims.

Legal Redress Available

For a victim of rape to be successful in prosecuting a case of rape, the most important thing she has to prove is LACK OF CONSENT, that is, that the accused had unlawful carnal knowledge of her without her consent. Also, for an offence of rape to be successfully established, it has to be brought to the notice of the law enforcement agents within a certain time-limit. Sections

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218 and 221 of the Nigerian Criminal Code, providing for offences of unlawful carnal knowledge of girls under 13years, between 13 and 16years, and women or girls who are idiots or imbeciles, stipulate that the prosecution for the offence must be initiated within 2months of the alleged violation.

Further, there must be proof of penetration. Section 6 of the Criminal Code provides that unlawful carnal knowledge is complete upon penetration. As long as there is evidence of penetration, the offence has been committed. In the case of *R v KUFU* (1960) WNLR 1, penetration was proved, but not of such depth as to injure the hymen. This was still held to have amounted to rape. It should be pointed out at this stage that, under the Penal Code, Section 39, the age-limit under which the girl is deemed incapable of giving any legal consent is eleven years. In most cases involving a child as a victim of rape, the rationale behind the rule seems to be

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that she is too young to understand the nature of the deed done to her, let alone understand the concept of consent. For instance, where the victim is a minor, it is the duty of the court to hold that there was no consent if it is of the opinion that the victim was incapable of determining whether to resist or not and where the surrounding evidence justifies such a decision on the part of the court. In *R v HOWARD* (1966) 50 Car 506 on a charge of rape, the final judge said that the question of consent did not come into the case of a child of 6years because, as a matter of law, a child of that age cannot give consent to such an act.

Still on the issue of consent, if it is proved that consent was given, then, the accused will not be guilty of rape. In *OGABI v R* (1965) NMLR 364 p. 257, a conviction of rape was quashed on appeal because it was held that the evidence of the medical report on injuries on the victim did not necessarily indicate the absence of

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consent.

Consent obtained by fraud, intimidation, threats, fear of harm, false representation is no consent at all. In *R v CASE* (1923) 1 KB 340, a quack doctor had sexual intercourse with a girl of 19 years on the pretence of performing a surgical operation. It was held to have amounted to rape because consent was obtained by fraud.

The burden of proof of whether there was consent or not and whether there was penetration or not rests on the prosecution and it must be proved beyond reasonable doubt. In *BUHARI v A.G. (WESTERN REGION)* Unreported Sc 636/1964, it was stated that in a charge of rape, the prosecution must prove beyond reasonable doubt that the victim did not consent. According to Section 356 of the Criminal Code, any person guilty of rape is liable to imprisonment for life. Section 359 of the code provides that anyone guilty of

the offence is liable to imprisonment for 14years.

What to do if raped?

1. Let someone know you have been raped.
2. Do not take a bath so as to retain the evidence.
However, you may change your clothes. Wrap the clothes with paper, not a plastic bag.
3. Ask a friend to accompany you to the police station to report the matter, and do not leave the police station until you have written a statement of what happened.
4. Go to a hospital or a health-centre for physical examination. Ask the doctor about the medical treatment available. You may inquire about the following:
 - a. The risk of pregnancy and what to do about it;
 - b. Sexually transmitted diseases; and

- c. Internal injuries that you might not be able to see.

Conclusion

This paper has established that, just as the ancients did, modern Nigerian society also condemns sexual crimes, especially if committed by women, whether willingly or otherwise, and has found adultery to be a more grievous crime than rape. To the ancients, modesty was the hallmark of a free woman. The abuse of a free married woman by a free man was more scandalous than unabashed patronage of a prostitute. They condemned adultery because it meant that the *kyrios* did not control his household well, thereby enabling the perpetrator to gain access into his most treasured possession.

In Athens, it is preferable for a ‘respectable’ woman to be raped than seduced, because, physically, her honour may have been defiled, but mentally she remained pure. Moreover, the Athenians believed that,

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although her body might have been violated, her mind would have remained with her husband, and, therefore, his power had not been reduced. From all indications, the ancient Greeks would rather have their wives raped than the wives commit adultery. This would be easier for their over-inflated ego to bear. The Greeks were concerned primarily with the status of the victim and the perpetrator, the desire to avoid polluting the all-important institution of the *oikos* with illegitimate children; hence, the desire to protect bloodlines.

Adultery employs persuasion and deceit, while rape involves the use of force and evidence. The law may seem to have penalised an adulterer more than a rapist, because the ancients believed that the adulterer engaged the art of persuasion to weaken the defences of his victim, thus corrupting the woman's sense of sound judgement and casting doubt on the paternity of her children. But it was the deceitful consent of the woman

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in an adulterous relationship that undermined the *oikos* by making patrimony and descent uncertain. Conversely, the rapist employed force and violated the body of the woman. The violation of the woman was inconsequential in Athenian law because it was the personal dignity of the man in her life, as *kyrios* that was of utmost concern and not the emotions of the woman. She had no personality and existed only as an appendage of her *kyrios*. Hence, adultery was regarded as betrayal of the *kyrios*. It was the *kyrios* who determined whom the woman would marry in order to preserve an undiluted lineage and the production of legitimate children. The *kyrios* would ensure that bastard children resulting from the act of rape were not foisted on the family. The consequences of sexual assault for a female victim were not a consideration in Attic law. The woman and her chastity were hardly protected in her own right by Athenian laws of adultery, seduction and rape, but only

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because she was the humble but necessary vehicle for carrying on the *oikos* (Harrison, 1968:71). Her principal duty as citizen was the production of legitimate heirs to the *oikoi* whose aggregate comprised the citizenry (Pomeroy, 1975:60).

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