

**THE EXISTENCE OF EFFECTIVE LAWS AND SANCTIONS AGAINST
DOMESTIC VIOLENCE IN NIGERIA: A FACT OR FICTION**

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**BEING A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW,
UNIVERSITY OF BENIN IN PARTIAL FULFILLMENT OF THE REQUIREMENT
FOR THE AWARD OF A BACHELOR OF LAWS (LL.B HONS) DEGREE OF THE
UNIVERSITY OF BENIN, BENINI CITY, NIGERIA.**

MAY, 2021

CERTIFICATION

I, Veronica Nkechi ADUKWULU with Matriculation **LAW1504251**, hereby certify that apart from reference to other people's work which have been duly acknowledged, the entire study is a product of my personal research and that this project has neither in whole nor in part been presented for another degree elsewhere.

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DEDICATION

This work is dedicated to God Almighty for giving the strength and courage through the course of this work.

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TABLE OF ABBREVIATIONS

CFRN	-	Constitution of the Federal Republic of Nigeria
CEDAW	-	Convention on the Elimination of all forms of violence of Discrimination Against Women
VAPPA	-	Violence Against Persons (Prohibition) Act
P.O	-	Protection Order
IPO	-	Interim Protection Order
VAW	-	Violence Against Women
WHO	-	World Health Organisation
WAPA	-	Women Affairs and Poverty Alleviation
PSTD	-	Posttraumatic Stress Disorder

ABSTRACT

Domestic violence is a predominant issue in today's society and laws are known to be enforced to sanction its perpetrators such as the Criminal Code, the VAPPA 2015, etc. However the effectiveness of these laws are being questioned in even today's society as domestic violence is seen as "family issue" that is supposed to be settled within the family and not an external body or law. Thus the essence of this work is to evaluate the extant laws concerning domestic violence in Nigeria and see if these extant laws regarding it have been to ameliorate the unpleasant trend not because the laws are inadequate per se but that the enforcement is weak.

Domestic violence has a lot of issues and is to be tackled adequately, it is also known as Intimate Partner Violence/abuse, spousal abuse and family violence.

Although there has not been any National Legislation on domestic violence in Nigeria sadly, however there are laws which punish these various offences ranging from rape, battery, molestation, etc. Similarly there has been laws passed as a result of agitation by individuals which tackles domestic violence directly which include; VAPPA (2015), some states have state-level domestic violence legislations, similarly even in abide to effectively enforce these laws and to respond positively to the claim by the public that the police "characteristically exhibit bias and discriminatory attitudes in their treatment of female victims of violence" which is "informed by cultural beliefs and notions which devalue and subjugate women and often blame the victim, the police is said to see domestic violence as family issue and victims are often told to settle the problem themselves or involve other family member.

However some provisions of these laws encourage subtle chastisement like Section 55 of the Penal Code and thus call for the repeal of such provisions. The essence of this work, is to tackle the nonchalance and negligence by the body who are expected to enforce these plethora of laws put in place to deter domestic violence has increased the rate of spousal killing, recently it is of commonplace where husband kill wife and wife kill husband, this is as a result of neglecting domestic violence which eventually results to death of either of the spouse. Hence the aim of this work is to evaluate the existing and extant laws concerning domestic violence in Nigeria and see if these extant laws have been to ameliorate the unpleasant trend not because the laws are inadequate per se but that the enforcement is weak, also to criticize laws that encourage domestic violence in any form and to call for its repeal an instance is section 55 of the penal code and finally would offer recommendations that will assist to build up and facilitate the effective enforcement of laws against domestic violence.

CHAPTER ONE

INTRODUCTION

1.1 Introduction

According to the violence Against person (Prohibition) Act 2015 “violence” means any act or attempted act, which causes any person physical, sexual, psychological, verbal, emotional or economic harm, whether this occurs in private or public life, in peace time and in conflict situations.¹ Domestic violence is defined to mean any act perpetrated on any person in a domestic relationship where such act causes harm or may causes imminent harm to the safety, health or well-being of any person²

Traditionally, domestic violence was mostly associated with physical violence. For instance, according to the Merriam-webster dictionary, domestic violence is defined as the inflicting of physical injury by one family or household member on another. It is also defined as a repeated or habitual pattern of such behavior.³ Domestic violence is now broadly defined.⁴ However it does not always include “all acts of physical, sexual, psychological or economic violence that may be committed by a person who is a family member or a person that has an intimate partner or spouse irrespective of whether they lived together or not”

Domestic violence has a lot of issues and is to be tackled adequately, it is also known as intimate partner violence and abuse, spousal abuse and family violence, is often defined as the physical and /or psychological abuse of an intimate partner. It has been observed that domestic violence can be done against both partners whether husband or wife, for instance, it can be committed against female counterpart through emotional abuse, rape, battery, physical abuse, verbal abuse and even unwanted communication. It could be committed against the

¹ Violence Against persons (prohibition) Act, 2015, section 46

² Section 45 VAPPA

³ Merriam-Webster Dictionary 150th Anniversary edition,

⁴ Merriam-webster Dictionary 150th Anniversary edition, ed. Merriam- Webster (Merriam-Webster,1981)

male through emotional abuse, verbal abuse and even physical abuse by their spouse.⁵ Whatever form domestic violence takes, it is rarely a one-off incident as it is a pattern of abusive and controlling behavior through which the abuser seeks power over their victim.⁶

Domestic abuse occurs all over the world, regardless of the gender, race, sexuality, wealth and geography.⁷ Nevertheless, it consists mainly of violence by men against women. It is noteworthy to mention that domestic violence is not due to abuser's loss of control over his behavior; rather it is a deliberate choice made by the abuser.⁸ Children are also affected both directly and indirectly. They can witness domestic violence in variety of ways. For instance they may be in the same room and may get caught in the midst of the incident, maybe in an effort to stop the chaos. They may be in another room but be able to hear the abuse or see their mother's physical bruises following an incident of violence; or they may be forced to take part in verbally abusing the victim.⁹ Children of any age are affected by domestic violence. At no age will they not be affected by what is happening even when they are in the womb.¹⁰ Children who witness domestic violence are emotionally abused because the whole chaos tend to affect their mental health. The effects of domestic violence on children cannot be overemphasized. Ranging from temper tantrums, aggressiveness, low-sense of self-worth amongst others.¹¹(However this work focuses mainly on spousal abuse and its overall effect in the victim and the society at large).

⁵ [Http://www.who.int/violenceprevention/approach/definition/](http://www.who.int/violenceprevention/approach/definition/). Accessed may 28th 2021

⁶ *ibid*

⁷ Domestic violence London, "what is domestic violence?" www.domesticviolence.nhs.uk/i-what-is-domestic-violence-/i-definition.html

⁸ Women's Aid, "children and Domestic Violence," www.womensaid.org.uk/domestic-violence-survivors-handbook

⁹ *ibid*

¹⁰ Royal College of Psychiatrists, "Domestic Violence and Abuse: Its Effects on Children," www.repsych.ac.uk/healthadvice/parents and youthinfo/parentscarers

¹¹ *ibid*

Similarly, Domestic violence can occur against the male folks.¹² However the society does not take domestic violence against men seriously. Such violence may range from emotional abuse, verbal abuse and even physical abuse by their spouse.¹³ Such men are often treated as “weaklings” whereas the females who encounter domestic violence are encouraged to enforce the law and are encouraged to take action.¹⁴ Generally this is rare in the case of the male counterpart who are pressured against reporting such violence, for the fear of stigma regarding their perceived lack of manliness and other degrade their masculinity.¹⁵ This is because men are seen as physically stronger than women but this does not necessarily make it easier for them to escape the violence in the relationship. It is important that each victim should be seen as an individual and assisted accordingly where necessary.

Domestic violence as early stated emanates from threats and verbal abuse to violence. It can result in physical injury psychological trauma and in severe cases even death.¹⁶ The devastating physical emotional and psychological consequences of domestic violence can cross generations and last a lifetime as it affects all aspects of the victim’s life.¹⁷ However it is rarely reported for several reasons ranging from the society’s attitude toward it, the victims mentality of what the society would say, in the name of saving the marriage or the family’s pressure to keep mute about the abuse, religious belief, cultural or ethnic background, fear of losing the children or being a single parent amongst others.¹⁸ There are insufficient data on

¹² Denis Campbell, “More than 40% of domestic violence are male,” the Guardian, september 5, 2010

¹³ *ibid*

¹⁴*ibid*

¹⁵ *ibid*

¹⁶ Helen Hendy et al, ed. “Decision to Leave Scale: perceived Persons to Stay in or Leave Violent Relationship,” psychology of Women Quarterly 27, no.2 (2003): 162-173, quoted in Adeyemo olatian O. and Bamidele Ifeoluwayimika, the Menace of Domestic Violence: Improving the Lives of Women in Nigeria, university of Benin Law Journal 15, no. 1 (2014): 198-199

¹⁷ *ibid*

¹⁸ *ibid*

domestic violence in Nigeria, this is mainly due to the stigma and culture of keeping silent concerning the issue of domestic violence.¹⁹

Violence against women particularly intimate partner violence and sexual violence is a major public health problem and a violation of women's human rights.

Estimates published by WHO²⁰ indicate that globally about 1 in 3 (30%) of women worldwide have been subjected to either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.²¹

Most of this violence is intimate partner violence. Worldwide, almost one third (27%) of women aged 15-49 years who have been in a relationship report that they have been subjected to some form of physical and/or sexual violence by their intimate partner.²²

Violence can negatively affect women's physical, mental, sexual, and reproductive health, and may increase the risk of acquiring HIV in some settings. Population-level surveys based on reports from survivors provide the most accurate estimates of the prevalence of intimate partner violence and sexual violence.²³ A 2018 analysis of prevalence data from 2000-2018 across 161 countries and areas, conducted by WHO on behalf of the UN Interagency working group on violence against women, found that worldwide, nearly 1 in 3, or 30%, of women have been subjected to physical and/or sexual violence by an intimate partner or non-partner sexual violence or both Globally as many as 38% of all murders of women are committed by intimate partners.²⁴ In addition to intimate partner violence, globally 6% of women report having been sexually assaulted by someone other than a partner, although data for non-partner sexual violence are more limited.

¹⁹ Domestic Violence and Abuse Resource centre, "Research and Statistics,"

²⁰ A 2018 analysis of prevalence data from 2000-2018 across 161 countries and areas. Published 9 March 2021

²¹ <https://www.who.int/news-rooms/fact-sheets/detail/violence-against-women> accessed 4/19/21

²² *ibid*

²³ *ibid*

²⁴ *ibid*

Lockdowns during the COVID-19 pandemic and its social and economic impacts have increased the exposure of women to abusive partners and known risk factors, while limiting their access to services.²⁵ Situations of humanitarian crises and displacement may exacerbate existing violence, such as by intimate partners, as well as non-partner sexual violence. it may also lead to new forms of violence against women. Globally, as many as 38% of all murders of women are committed by intimate partners.²⁶ The study showed that domestic violence cuts across all socio-economic and cultural background. 28% of all women, almost a third of all women in Nigeria have experienced physical violence which is a significant number in a country of almost 160million approximately where almost half of the population are women.²⁷ About 43% of women justified wife beating on grounds such as silent treatment, burning the food, arguing with the husband, going out without asking permission, neglecting the children and sexual starvation of the abuser.²⁸ The research also showed that women from the North East were more likely to justify wife beating while women from the south East are less likely to justify wife beating.²⁹ However there is no justification for domestic violence even though some women believe that there is and this is quite unfortunate.

Despite the awareness against domestic violence, it has been observed that at the end it not close as records of increase of domestic violence in Nigeria,(that is the unreported cases of domestic violence is higher than those reported). The fact that domestic violence has grown alarmingly to the extent that the socioeconomic growth of our society is being threatened globally has been observed by scholars. For instance, it has been noted that domestic violence had attracted much attention within the past three decades. According to them, though it

²⁵ (<https://www.who.int/publications/i/item/covid-19-and-violence-against-women>)

²⁶ *ibid*

²⁷ Domestic violence and Abuse Resource Centre, “Research and Statistics” domesticviolence.com.ng/research-statistics/. (date accessed 1st April 20, 2021)

²⁸ *ibid*

²⁹ <http://www.nationalmirror.net>

(domestic violence) has always been there, but the enormity of its prevalence has reached a disturbing degree³⁰. In the same way, Holt and Devany concluded that whilst domestic violence is not a new phenomenon, the past thirty years have seen increasing public awareness and a growing political consensus that something needs to be done.³¹

Domestic violence can happen to anyone irrespective of age, race, sex, religion, or gender, but most often, women and children are the victims of such violence as it is common in male dominated cultures such as patriarchal and patrilineal cultures. For instance, in the United States of America, women experience about 4.8 million intimate partner-related physical assaults and rapes. 56%³² of Indian women experience beating due to bad cook, disrespectful to in-laws, giving birth to more girls, going out without informing the husband, and so on 60% of women in Senegal are subjected to physical violence from their partners ; and in Nigeria, two-thirds of women are believed to have experienced physical, sexual, and psychological violence perpetrated primarily by their husbands, partners, and fathers while girls are often forced into early marriage and risk being punished if they attempt to escape from their husbands (Amnesty International, 2007).³³ These societies are predominantly patriarchal where women are regarded as subordinates and in this manner, subject to husband's control like in other parts of the world, women in Africa suffer domestic violence irrespective of age, class, religion, or social status.³⁴ In other words, in most African societies including Nigeria, domestic violence is culturally acceptable and where it is condemned, women are often blamed for provoking men to engage in it.³⁵

³⁰ Godiya and Bala (2010)

³¹ 2015

³² Tjaden and Thoennes (2002)

³³ Akinleke. W. Olaitan "incidence of Domestic Violence Among Married Women in Yewa South Local Government of Area of Ogun State, Nigeria" published by European Centre for Research Training and Development Uk(www.ejournals.org)

³⁴ *ibid*

³⁵ *ibid*

In Nigeria, domestic violence is a serious problem that transcends social, geographical, and ethnic divide as significant proportions of women are physically and sexually abused³⁶, and this really endangers their health and well-being.

In a study that was conducted in the eastern part of Nigeria, it was found that three-fifths of women experienced battering during pregnancy while one in five reported having been forced to have sexual intercourse³⁷. It has been reported that one in every three respondents of the study in Nigeria admitted to being a victim of domestic violence and that this has been on the increase in the past three years from 21% in 2011 to 30%³⁸. A similar study that was carried out by Aihie³⁹ reveals that rape, sexual insult and assault, brutalization and victimization, domestic violence on girls and women have been on the increase in Nigeria with victims ashamed to report such incidences to the appropriate agencies for justice.⁴⁰ According to Aihie, 50% and two-thirds of Nigerian women are subjected to domestic violence. Worse still, he finds that 65% or more educated women are also in this horrible situation.⁴¹ An investigation that was carried out by Project Alert in 2001 among women in universities, secondary schools, and markets in Lagos, reveals that 64.4% of the 45 women working in the schools and 56.6% of the 48 market women claimed to have experienced domestic violence from their male partner. In a related study that was conducted in the South-Eastern part of Nigeria, it has been reported that 70% of the respondents had experienced domestic abuse from members of their family.⁴² The Centre for Disease Control in Nigeria⁴³ identified three risk factors for domestic violence:

³⁶ (Yusuff, Arulogun, Oladepo & Olowokeere, 2011; Oyediran & Cumingham, 2014)

³⁷ Okemgbo, Omideyi and Odimegwu (2002)

³⁸ The Centre for Law Enforcement Education Foundation (2013)

³⁹ (2009)

⁴⁰ *ibid*

⁴¹ *ibid*

⁴² *ibid*

⁴³ (CDC, 2006)

- (a) Use of drugs or alcohol;
- (b) Witnessing or being a victim of violence as a child; and
- (c) Not having a job (especially, male partner).⁴⁴

In the same way, it has been discovered that rise in unemployment increases the incidence of domestic violence. This is because the unemployed feels frustrated, angry, and then gets provoked quickly.⁴⁵ Also, the difference in socioeconomic status (for example, finance, education etc.) between couples can promote domestic violence, especially if the disparity is in favour of the female. Basically these are some of the factors that causes domestic violence (which will be discussed properly in the subsequent chapter).

The Violence against Persons (Prohibition) Act was signed into law on the 25th of May 2015.⁴⁶ The VAPP Act provides a legislative and legal framework for the prevention of all forms of violence against vulnerable persons, especially women and girls that are often overlooked underrated and unacknowledged. Hopefully the VAPP Act would be a great step in achieving a just and equitable society in terms of protecting the citizens of Nigeria.

Domestic violence has eaten deep into the root of the society creating an uneven balance with the female being the greater victim.⁴⁷ Violence against women is one of the major threat to social and economic development. This was recognized in the United Nations Millennium Declaration in which the General Assembly resolved to combat all forms of violence against women and to implement the convention on the elimination of all forms of violence against women and to implement the Convention on the Elimination of all forms of Discrimination against woman (CEDAW).⁴⁸ Domestic violence is a major health problem that drains

⁴⁴ *ibid*

⁴⁵ *ibid*

⁴⁶ Hereinafter is referred to as VAPP Act

⁴⁷ Adeyemo Olatian O abd Bamidele Ife Oluwayunika “The Menance of domestic violence improving in the lives of Women in Nigeria”

⁴⁸ World health Organization “world report on violence and health” (2002)

women's energy, compromises their physical and mental health and affect their self-esteem.⁴⁹ Abuse against women by partners is not only criminal assault in the home but is best understood as a chronic syndrome characterized, not merely by occurrence of violence but also by the emotional and psychological abuse used by men to control their female partners.⁵⁰

As stated earlier, laws has been made to curb violence against women in Nigeria, such laws include the VAPP Act, the Constitution of the Federal Republic of Nigeria ⁵¹ the Criminal Code, etc.

This is an important issue in Nigeria, as every human society is governed by a code of conduct which is expected to serve as a means of social control and overall development of the society. The existence of a law dealing with an important issue such as the protection of women against domestic violence is therefore very crucial and will serve as step in curbing the menace which has spread all over the society.

Conclusively it has clearly been observed that domestic violence is a cankerworm that has eaten deep into the root of the society. It is pertinent to state here again that there is no justification for domestic violence. This is why laws has been enacted to punish perpetrators and awareness are being created to encourage victims to speak up, in view of the fact that societal attitude to domestic violence offences is not encouraging, there is need for change of societal attitude towards domestic violence. And the existence of laws on domestic violence is a fiction than a fact since the laws those not effectively curb the menace.

1.2 Aim and Objectives

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ 1999

The focus of this study is to examine the menace of domestic violence in Nigeria. The objectives of this study are:

- i. To examine the definition of domestic violence, its history and the different types of domestic violence.
- ii. To examine the various causes of domestic violence, its social, physical, psychological, and emotional effects on victims, and the society as well as the justification for domestic violence.
- iii. To examine the perspectives of domestic violence against men and women in Nigeria.
- iv. To analyse the legal framework for the protection of women against domestic violence in Nigeria.
- v. To examine the effectiveness or otherwise of the strategies laid down for curbing domestic violence and providing remedies available to victims in Nigeria.

1.3 Scope of Study

The scope of this work is to critically examine the law on domestic violence in Nigeria and all the laws and their effectiveness or otherwise in curbing domestic violence in Nigeria.

1.4 Methodology

The expository and analytical methods will be used in this long essay. Additionally, statutes, judicial authorities, articles, textbooks and internet materials will be used in this work. Such other necessary materials that will be relevant to making this work complete will be referred to.

1.5 Contribution to Knowledge

To ensure that Nigeria fulfills her international commitment to prevent violence against men and women and suggest how laws on domestic violence in Nigeria would be more effective.

CHAPTER TWO

MEANING AND FORMS OF DOMESTIC VIOLENCE

2.1 Introduction

This chapter intends to deal with the definition of domestic violence, as well as the history of domestic violence since it has been observed that domestic violence is as old as the time of the cave men. Also, the types of domestic violence will be discussed in this chapter. The chapter also discusses the effects on its victims, it causes and finally its justification. The overall impact of domestic violence on the victims and the society generally shall be analyzed.

2.2 Definition of Domestic Violence

Domestic violence is often defined in varied and broad terms, depending on person or organization, the term domestic violence consists of two terms “domestic” and “violence”. Understanding these words separately here is pertinent in order to get a clear understanding of what domestic violence means.⁵² The word domestic is gotten from the French word “*domestique*” and the Latin word “*domesticus*” from *domus*, meaning house in relation to person it means fond to family life and running a home.

Violence on the other hand has a strong connotation in ideological terms and its meaning is constantly changing. It covers a wide range of problems that must be put into context in order to better understand their structure. Violence is not gender selective as both men and women are victims of violence.

Violence has been defined as the use of physical force accompanied by fury, vehemence, outrage, especially physical force unlawfully exercised with the intention to harm.⁵³ Violence can also be defined as the application of brutal force to another person in a situation where it is absolutely uncalled for. If it occurs within the privacy of the home it becomes domestic

⁵² Oxford university press

⁵³ Black Laws Dictionary 9th Edition, ed. Bryan A. Garner (New York: Simon & Macmillan 1996)

violence.⁵⁴ Violence can also be the unlawful use of force on a fellow human being. It is any action, behavior, attitude, against people based on anger, frustration, stress, power ego or even ignorance which could lead to injury harm disability or even death.⁵⁵ Furthermore violence maybe defined as the intention of physical force or power threatened or actual against oneself, another person or against a group or community that either result in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation.⁵⁶

Domestic violence defined as any or all of the many different forms of abuse and mistreatment that people may experience in their intimate domestic relationships.⁵⁷ Similarly it has been said that any abusive, violent, coercive, forceful, or threatening act or word inflicted by one member of a family or household on another can constitute domestic violence. ⁵⁸Domestic violence, once considered as one of the most underreported crimes, became more widely recognized during the 1980s and 1990s. Various individuals and groups have defined domestic violence to include everything from saying unkind or demeaning words, to grabbing a person's arm, to hitting, kicking, choking, or even murdering. Domestic violence most often refers to violence between married or cohabiting couples, although it sometimes refers to violence against other members of a household, such as children or elderly relatives.⁵⁹ It occurs in every racial, socioeconomic, ethnic, and religious group, although conditions such as poverty, drug or alcohol abuse, and mental illness increase its

⁵⁴ Uzodike, E.N.U and I. Agbedeed, “protection against violence” current Legal Themes in Law (1997) 338-340

⁵⁵ The oxford Advanced Learners Dictionary of current English 5th edition, ed. Horney. S.(United kingdom oxford university press,1997)

⁵⁶ “WHO :Definition and typology of violence” Available at <http://www.who.int/violenceprevention/approach/defintion/en/>. Accessed 2nd April 2021

⁵⁷ Law dictionary offline

⁵⁸ (<https://legal-dictionary.thefreedictionary.com/Domestic+Violence/>Accessedon10thapril2021)

⁵⁹ *ibid*

likelihood. Studies indicate that the incidence of domestic violence among homosexual couples is approximately equivalent to that found among heterosexual couples.⁶⁰

According to the United States Department of Justice Office on Violence against Women, the definition of domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain control over another intimate partner.⁶¹

The prevalence of domestic violence is arguably one of the top health concerns in the country Nigeria.⁶² Understanding its definition can help you to take more effective action against its many manifestations of abuse. In some cases, abusers may not even realize that they're inflicting domestic violence on someone else. On the flipside, victims may not take action against their abusers if they don't realize that the behavior they're experiencing is indeed domestic violence.⁶³

Also important is that friends and loved ones of victims are in a better place to help if they understand what domestic violence looks like. Therefore, it is important that people understand the definition of domestic violence and the many forms it can take.

Violence against women takes a variety of forms, all which are violations of the fundamental right of women as in most cases it debase the women.⁶⁴ However, the most common violence experienced by women and girls globally and particularly in Nigeria from birth is domestic violence. This form of violence involves battering and other aspect of intimate partner violence like marital rape, sexual violence, violence, etc. Domestic violence is an abused in the family or home perpetrated by a husband, a boyfriend or economic abuse intended to

⁶⁰ <https://www.freethesaurus.com/relationship+violence>

⁶¹ (<https://www.findlaw.com/family/domestic-violence/what-is-domestic-violence.html>/accessedon10thapril2021)

⁶² *ibid*

⁶³ *ibid*

⁶⁴ *ibid*

harm, intimidate or coerce the woman to submission.⁶⁵ Furthermore domestic violence has been defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.⁶⁶ The oxford dictionary defines domestic violence as violent or aggressive behavior within the home typically involving the violent abuse of spouse or partner. Domestic violence has also been defined as a pattern of abusive behavior in a relationship that is used by one partner to gain control over or maintain control over another intimate partner.⁶⁷ Similarly under Article 2(a) of the united Nation Declaration on the Elimination of violence Against women (DEVAW) which was adopted by the united nation General Assembly in 1994, defines domestic violence as “an act of physical, sexual, and psychological violence whether they are in the family or the community, the act of violence specified in this article include spousal battering, sexual abuse of female children, dowry related violence....”

In Nigeria domestic violence has been defined by various authors and sections of various laws, for instance Section 45 VAPP ⁶⁸ which is the interpretation section defined domestic violence as an act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to the safety, health or wellbeing of any person. Also in Lagos, Section18 of the Lagos state protection Against Domestic Violence Law defined domestic violence to mean “ acts against any person physically abuse, sexual abuse, exploitation including but not limited to rape, incest and sexual assault starvation, emotional , verbal and psychological abuse, economic abuse, denial of basic education, intimidation, harassment, stalking, hazardous attack including acid bath with offensive or poisonous substance, damage to property entry into the complaints resident without consent where the

⁶⁵ *ibid*

⁶⁶ What is Domestic Violence, <http://www.justice.gov/ovw/domestic-violence>. Accessed 10th April 2021

⁶⁷ United States Department of Justice Office on violence against Women.

⁶⁸ (2015)

parties do not share the same residence or any other controlling or abusive behavior towards a complaint where such conduct harms or may cause imminent harm to the safety health or well-being of the complaint.”

2.3 History/Evolution of Domestic Violence

Domestic violence is not a new epidemic even though we have been writing on it for a long time it is probably as old as mankind when we think of cave men with their clothes dragging women by their hair from the cave.⁶⁹ Domestic violence and its effect have existed throughout history.

In 753 BC, wife beating was accepted and condoned under the laws of chastisement.⁷⁰ This was followed by the Rule of Thumb which says that it is right and legal thus generally acceptable for a man to batter or beat his wife as long as the stick he uses is not thicker than his thumb. In 202 BC, women got more freedoms including property rights and the right to sue their spouses for unjustified beatings.⁷¹ In 300 A D husband’s patriarchal authority and values of Roman and Jewish laws were re-established by church fathers

In 1800 BC, the code of Hammurabi decreed that a wife was subservient to her husband and that he could inflict punishment on any member of his household for any transgression.⁷² The Roman code of paterfamilias reads, “if you should discover your wife in adultery you may with impunity out her to death without a trail, but if you should commit adultery or indecency, she must not presume to lay a finger on you, nor does the law allow it.” Some other offences punishable by death were walking outside with her face uncovered or attending a public event

⁶⁹ Lee E., “Setting the Agenda Perceptive on Domestic violence. In Lepad (ed)Domestic Violence, Zero Tolerance Report on Network of Nigerian amen against Domestic violence, Lagos (2003)1-6

⁷⁰ St Martha’s Hall, “History Of Battered women Movement,” saintmarthas.org/resources/history-of-battered-women-movement/ Date accessed 12th April 2021

⁷¹ *ibid*

⁷² Joomla counseling Therapist Template by JTS. “o

without permission.⁷³ Medieval canon law encouraged that wifely disobedience be punished publicly by using objects like iron muzzles with spikes which depressed the tongue in Renaissance France when it became clear that many women and children were being beaten to death and their economic contribution lost, law makers acted to moderate the effect of domestic violence. One statute considered in its time to be progressive, restricted the chastiment to blow, slaps, kicks etc on the back which do not leave any marks, and added “the man who is not master of his wife is not worthy of being a man.”⁷⁴ Some laws even stated that all the inhabitant have the right to beat their wife so long as death did not follow.⁷⁵ During the middle Ages (900-1300), church continued to sanction the subjection of women. Man is given approval to “castigate his wife and beat her for correction... “ The Rules of Marriage” “ when you see your wife commit an offence...scold her sharply, caution her and terrify her, if this does not work then take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body.”⁷⁶ In the early 1400s Christian church vacillates between support of wife beatings and encouraging husbands to be more compassionate and use moderation in punishment of wives.⁷⁷ Christine de pizan wrote in his book the city of Ladies about women’s basic humanity and better treatment in marriage accusing men of cruelty and beating of wives. In 1500’s British common Law Hale, an English jurist established the tradition of non-recognition of marital rape on the ground of marital contract, according to him marriage implies consent for sexual intercourse therefore it is described as husband’s legal right.⁷⁸ In 1824, Mississippi Supreme Court in a case allowed to administer only “modern chastisement in case of emergency...” in

⁷³ *Ibid*

⁷⁴ *ibid*

⁷⁵ *ibid*

⁷⁶ *ibid*

⁷⁷ Women’s Aid until women and children are safe “Domestic violence and Abuse: A Historical Perspective, 13 April 2021, www.womensaid.org.uk/domestic-violence-articles.

⁷⁸*ibid*

1829, a husband's absolute power of chastisement was abolished in England. In 1861 John and Mill wrote the *Subjection of Women* in which he pleaded that parliament should reform the divorce laws to allow women to divorce on the grounds of violence and correctly.

In 1871, Alabama was the first state in the United States of America to rescind the legal right of men to beat their wives; Massachusetts followed.⁷⁹ In 1874, the supreme court of North Carolina ruled that "the husband has no right to chastise his wife under any circumstances, "but goes on to say: "if no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze and leave the parties to forget and forgive."⁸⁰ Upon marriage, husband becomes legally responsible for the actions of both his wife and children.⁸¹ Therefore, he can physically and verbally chastise them in order to control their behavior. This is known as the Law of Coveture in 1860. In 1882 and late 1800's Maryland was the first state to make wife beating a crime. Courts began to show signs that they might hold husbands liable and found guilty of marital rape. Before the 1970s, judges and police officers still saw wife beating as a trivial offense—policemen would tell husbands to calm down and wives to stop annoying them, and cases rarely came to court. Popular culture depicted wife beating as a joke, and psychiatrists saw it as a pathology of the underclass or of individual women. In general, the problem was denied or explained away. Survives, which involves two prominent families.⁸²

Domestic violence or violence that is expressed using intimate acts is unfortunately as timeless as history.⁸³ Rape and other forms of sexual assault and sexual exploitation have historically been used to demoralize groups of people as in German concentration camps, on

⁷⁹ *ibid*

⁸⁰ *ibid*

⁸¹ St Martha's Hall "History of Battered women's movement"

⁸² *ibid*

⁸³ *ibid*

North America-bound slave ships, and in World War II Japanese brothels filled with "comfort women." Society-sanctioned forms of violence against women include infibulation (fastening or buckling together, as in binding of feet, or of the female genitalia in an effort to render less able to walk or render unable to have sexual intercourse, respectively) and female genital cutting or excision, also known as female circumcision. Virtually all the world's societies view or have viewed women as less valuable than men. From assaults of women for attending school, "honor" killings of women for being victims or rape or other sexual violence or having premarital sex in some countries, to women being omitted from serving on juries in the United States until 1701 and prevented from voting until 1920, the view that women are somehow second-class citizens encourages mistreatment of women.

In the past, domestic violence was often seen as a way husbands could legitimately 'correct' their wives. At the same time, male violence posed problems for patriarchy, which I define as the power of husbands and fathers over wives and children (a specific form of male domination). Excessive force threatened the integrity of the family if the husband killed or seriously injured the wife. Wives' kin also had an interest in protecting them from injury. Furthermore, violence threatened the notion that marriage was based on love or at least partnership and companionship. The ideal patriarch was able to control his wife without losing his temper. Within the household, wives could be both subordinate to their husbands and dominant over servants and children. In some cultures and eras, they had power and property in their own right. Women's ability to get help for wife beating therefore varied by rank, class, and region. At the same time, the books under review make it clear that when historians assess women's status and power in different areas and eras, we must take into account their vulnerability to violent husbands as well as their control over property.

Wife beating was apparently quite common in the ancient world, as Sarah Pomeroy recounts.⁸⁴ Saint Augustine remembered that wives often bore the marks of blows, and his mother, Monica, patiently tolerated her husband's violence.⁸⁵ But it is very difficult to go beyond these anecdotal sources because wife beating was not subject to legal jurisdiction and, in any case, very few court records survive. Pomeroy is only able to address the issue because a case of wife murder survives, which involves two prominent families.

During the late 1960's and early 70's, the women liberation movement for battered women started creating shelters for them and education on domestic violence.⁸⁶ Police departments began training on domestic violence, in 1973 the first battered women's shelter in US was opened in St Paul, Minnesota, by the women's advocates.⁸⁷ Domestic violence Act, 1976 which allowed for limited temporary restraining orders was enacted. In 1993, the United Nations recognized domestic violence as an International Human Rights issue and issued a Declaration on the Elimination of violence against women Act, part of the federal crime victims Act, which funds services for victims of rape and domestic violence, women were allowed to seek civil right remedies for gender related crimes and provided training to increase police and court officials sensitivity.⁸⁸ In the 1970s, feminists documented the widespread incidence of wife beating and asserted that it was not just working-class husbands who assaulted their wives, but all classes of men. They defined wife beating as one extreme in a spectrum of male efforts to dominate women, and argued that rape was a crime of

⁸⁴ Anna Clark, Domestic violence, past and present "Journal of Women's History, 23(3);193-202

⁸⁵ *ibid*

⁸⁶ *ibid*

⁸⁷ St Martha's Hall, "History of Battered Women's movement."

⁸⁸ MINCAVA, "The Federal Domestic Violence Laws and the Enforcement of These Laws," www.mincava.unn.org/documentsffc//chapter5.html. Date accessed 12th April 2021

violence, not sex. Feminists founded shelters where women could take refuge, demanded that the police do more to protect women, and advocated for battered women in the courts.⁸⁹

The related analyses of male domination and female victimization have become more complex. Feminists started calling battered women "survivors" to emphasize that they were not just passive victims.⁹⁰ However, social scientists also started to study domestic violence, and some researchers came up with the idea that women committed domestic assaults in the same numbers as men (although the severity of the assaults was not measured). Psychologists argued that battered women needed therapeutic treatment. At the same time, the diagnosis of "battered woman syndrome" could also be used to defend women who had killed violent husbands.⁹¹ Today, wife beating is once again seen as a pathology or a tragedy. The feminist critique has been taken up by mainstream culture but also muted.⁹²

All states made "wife beating" illegal by 1920.⁹³ However, only since the 1970s has the criminal justice system begun to treat domestic violence as a serious crime, not as a private family matter.⁹⁴ Domestic violence is any physical, sexual, or psychological abuse that people use against a former or current intimate partner. It refers to a number of criminal behaviors: assault and battery; sexual assault; stalking; harassment; violation of a civil restraining order; homicide; and other offenses that occur in the course of a domestic violence incident, such as arson, robbery, malicious destruction of property, and endangering a minor.⁹⁵ No person can validly consent to a breach of the peace or a battery that may result in serious injury or

⁸⁹ *ibid*

⁹⁰ *ibid*

⁹¹ *ibid*

⁹² *ibid*

⁹³ Domestic violence/Encyclopedia.com; <https://www.encyclopedia.com/social-sciences-and-law/law/crime-and-law-enforcement>. Accessed may, 12th 2021

⁹⁴ *ibid*

⁹⁵ *ibid*

death.⁹⁶ Furthermore, most states have abolished the marital rape exemption in toto; this exemption precluded husbands from being prosecuted for raping their wives.⁹⁷ Thus, in general, there is no legal distinction between crimes committed against intimate partners and those committed against strangers. Police, prosecutors, and judges are routinely trained in domestic violence, and aggressive interventions are continually implemented. Individuals across the political spectrum have generally supported these changes, although there is ongoing debate as to which interventions work best. Furthermore, some fear that the pendulum has swung too far, and that those who are accused of domestic violence, particularly men, are presumed guilty rather than innocent. Advocates are concerned that the needs of victims are being sacrificed for higher conviction rates.⁹⁸ Indeed, the ongoing challenge for the criminal justice system is to protect the rights of both defendants and victims while at the same time treating domestic violence as a serious social problem. Even though the criminal justice system has come a long way since 1920, it still has a long way to go.⁹⁹

2.4 Types/Forms of Domestic Violence

There are different types of domestic violence /abuse including emotional, psychological, physical, sexual and financial abuse. Many abusers behave in ways that include more than one type of domestic violence, and the boundaries between some of these behaviors are often quite not clear.¹⁰⁰ The abusers of this crime however have one reason; to gain and keep control over its victim.¹⁰¹ Violence in the home affects everyone in the family especially the

⁹⁶<https://law.jrank.org/pages/1009/Domestic-violence.html> accessed may 13th 2021

⁹⁷ *ibid*

⁹⁸ *ibid*

⁹⁹ *ibid*

¹⁰⁰ Domestic violence London “Forms of Domestic Violence” www.domesticviolence-london.nhs.uk

¹⁰¹ Epiphany Azinge Lilian and Yinyechi Lilian Uche “Laws of domestic violence in Nigeria” institute of Advanced Legal studies Lagos 2012 124-125

vulnerable. Abusive attitude affects the society at large especially the neighborhood, ethnic background and economic class.¹⁰² Although no family is immune to this vice no family should however be victimized by violence. However the most common form of violence is wife battery ranging from slapping, kicking, verbal abuse, denial of financial resources, rape, and death.¹⁰³ As a result of the insufficient official statistics, it is hard to establish the extent of domestic abuse, albeit it is believed that gender based violence is of “epidemic proportions” and is “seldom reported because of fear of retaliation and lack of appropriate response from law enforcement officials statistics relating to this problem would not be available until victims are encouraged to report domestic abuse.¹⁰⁴ Non-governmental organization rely on media reports and the numbers of victims who open up and report for statistics, which covers all forms of domestic violence which include;

D) Physical Abuse

This can be defined as the act or threatened acts of physical aggression towards any individual which includes slapping, kicking, hitting and beating (generally).¹⁰⁵ Physical abuse may also involve shaking, throwing, poisoning, drowning, suffocating, burning or scalding a person.¹⁰⁶ Physical abuse is intended to enhance the power and control of the abuser, over the partner.¹⁰⁷ If the partner is fearful of the abuser, if the partner changes his attitude in response to the assault or potential assault, or if the partner intentionally maintains a particular routine of behavior in an effort to avoid abuse despite his desire not to do so, then this is partner

¹⁰² *ibid*

¹⁰³ Itoro EzeAnaba “Domestic Violence and Legal Reform in Nigeria: prospects and Challenges” *Cardozo Journal of Law & Gender* 14,(21)(2007):25.

¹⁰⁴ *ibid*

¹⁰⁵ VAPP Act 2015

¹⁰⁶ The Advocates For Human Rights, “Forms of Domestic Violence,” www.stopvaw.org/forms_of_domestic_violence.

¹⁰⁷ Understanding the Nature and Dynamics of Domestic Violence published march 21st.

abuse.¹⁰⁸ Physical abuse also includes the threat to harm or any forceful physical behavior that deliberately or accidentally causes bodily harm or property destruction, including the following; choking, slapping, kicking, pulling, pushing, punching, etc.¹⁰⁹ A practical instance was in the case of Mfon Friday who married a soldier in 1998 at age 22, the first of their three kids came in 1999 and the second in 2000. She never enjoyed marriage. In 2004 he called her into their room in the barrack and demanded to know why she had been defaming him, when she claimed innocence, he dealt with her several with machete on her hips, hand and leg covered with blood, she complained to his employer to no avail. He finally deserted her, taking her two older children away.¹¹⁰

Similarly it also includes willfully causing or inflicting of physical injury on a person is so provided for by Section 2(1)¹¹¹. The means of inflicting such injury by any weapon, substance or object. ¹¹²The section broadens the crime of infliction of injury on another as opposed to what is obtainable in the other penal laws.¹¹³ The interpretation section defines “dangerous weapon” to mean, “any instrument or machine directed toward a person with the intention of inflicting bodily harm on such person and includes a gun, knife, stick, whip or other household appliances capable of inflicting bodily harm on such person. Coercing a person to engage in any act to the detriment of that other person’s physical or psychological well-being is also punishable under the VAPPA.¹¹⁴ The same is obtainable in cases where a person willfully or knowingly places another person in fear of physical injury.¹¹⁵ This may be

¹⁰⁸ “Types of domestic abuse” <http://gmdvp.org/violence/types-domestic-abuse>. 12 April 2021.

¹⁰⁹ *ibid*

¹¹⁰ Okonkwo and Naish “Criminal Law in Nigeria: 2nd ed (Ibadan spectrum publishing. (1989) pg. 25.

¹¹¹ VAPPA

¹¹² Micheal Attah, Family Welfare in Nigeria,

¹¹³ *ibid*

¹¹⁴ section.3

¹¹⁵ VAPPA section 4

relevant where abductors harass their victims with threats of death and other form of violence where the moneys demanded by them are not paid.¹¹⁶ Even though this offence is more psychological than physical. It has been placed here and appropriately so because of its connection or relationship with physical injury. This is also akin to the offence under Section 5 of the VAPPA of compelling another by force or threat to engage in any the victim's physical or psychological well-being. This is regarded as offensive conduct and may capture situations where victims are compelled to engage in shocking lewd activities recorded for commercial dissemination or the "entertainment" of their captors. A related but peculiar kind of physical violence which is becoming very common is that provided for in Section 21(1) of the VAPPA. Any person who uses chemical biological or any other harmful liquid on another commits an offence.¹¹⁷ The same goes for any person with the intentionally administers a substance to or causes a substance to be administered to or taken by another person with the intention of stupefying or overpowering that person so as to enable any person to engage in a sexual activity with that person. "substance attack" is described to mean the exposure of any person to any form of chemical, biological or any other harmful liquid with the intention to cause grievous bodily harm; this includes but is not limited to acid attack, hot water, hot oil.¹¹⁸

2) Verbal Abuse

Domestic violence is about the control of one human being by another. This control begins with verbal abuse and as similar to mind control.¹¹⁹ This is done by using degrading language,

¹¹⁶ *ibid*

¹¹⁷ *ibid*

¹¹⁸ VAPPA, section 22, 46

¹¹⁹ Patricia Evans "The verbal Abuse Site". Available at www.verbalabuse.com/pg2/pg2/html accessed 14th April 2021

criticism or name-calling, screaming, harassing, and refuse to talk.¹²⁰ Verbal abuse attack's ones spirit and sense of self. It attempts to create self-doubt because it usually attacks the victims self-worth words like "you don't know what you are talking about", "you don't have a sense of humor" "what do you know? Shut up!" etc. Verbal abuse is suffered by both the male and female, it occurs when someone uses language, whether spoken or written to cause harm to an individual.¹²¹ It may be swearing and continual humiliation in public or private, attacks on intelligence, sexuality, body, image and capacity as a parent and spouse, ridiculing religious beliefs or ethnic background screaming, shouting, naming-calling, putdowns, verbal abuse can be difficult to identify, and regrettably can also be a common type of abuse in some marriages. Not all words that are meant to hurt are "ugly words".¹²² A master of verbal abuse can damage your self-esteem while simultaneously appearing to care deeply for you. The use of words to punish is a very covert attempt to control, and regardless of how loving your spouse may appear to be, verbal abuse is wrong- and can be as harmful as physical abuse.¹²³ Physical abuse is easily identified. There is no doubt that if you have been hit or injured by your partner, you have been abused. With physical abuse, you don't second-guess yourself: there is often visible proof on your body that abuse has taken place. Verbal abuse is different. The damage is internal, and there are no physical bruises or scars- just a wounded spirit. While both can have long term effects like low self-esteem, depression, anxiety, and more, emotional abuse can be difficult to define without knowing the signs.¹²⁴

3) Psychological abuse:

¹²⁰ H. Lien Bragg "Child Protection in Families Experiencing Domestic Violence." (U.S Department of Health and Human Service 2003) 22

¹²¹ *ibid*

¹²² Cathy meyer, How to Identify and Respond to Verbal Abuse in Your Relationship;
<https://www.brides.com/how-can-someone-identify-and-respond-to-verbal-abuse-1102424>

¹²³ *ibid*

¹²⁴ <https://www.brides.com/how-can-someone-identify-and-reponse-to-verbal-abuse-1102424> date accessed 14th April 2021

This is also referred to as emotional abuse or marital abuse. It is a form of abuse characterized by a person subjecting or exposing another to behavior that may result in psychological trauma, including anxiety, chronic depression, or post-traumatic stress disorder.¹²⁵ This form of abuse could also include neglect, lack of proper care, verbal insults humiliation, degradation, discounting negating, judging, criticizing and any behavior that undermines a victim self-worth or self-esteem.¹²⁶ it also means yelling, name calling, threatening to take away something that is important to them swearing, ignoring, isolating, excluding them from meaningful events or activities.¹²⁷ Perpetrator will often use children to engage in emotional abuse by teaching them to harshly criticize the victim as well (this method is often used by women when inflicting emotional abuse on their husband, men rarely use children against their mother when abusing them) and threaten to take away children. This is a form of abuse which does not directly result in some physical harm or injury even though this may not be ruled out. Instead they attack the emotions and psychology of the victims. Section 14(1)¹²⁸ punishes any person who causes emotional, verbal and psychological abuse on another. This means a pattern of degrading or humiliating conduct towards any person, including repeated insults, ridicule or name calling, repeated threats to cause emotional pain; or the repeated exhibition of obsessive possessiveness, which is of such a nature as to constitute a serious invasion of such person's privacy, liberty, integrity or security. Section 18 contains the next level of psychological abuse namely; intimidation, which means the uttering or conveying of a threat or causing any person to receive a threat, which includes fear, anxiety or discomfort. To these may be added the offence of depriving another of his or her

¹²⁵ Adanna Chinedu Madu, "women Empowerment." 14.

¹²⁶ Adeyemo and Bamidele, "Domestic Violence" 201.

¹²⁷ *ibid*

¹²⁸ VAPPA 2015

liberty¹²⁹ and stalking. Stalking means repeatedly watching or loitering outside of or near the building or place where the target resides, works, carries on business, studies or happen to be; or following, pursuing or accosting any person in a manner which induces fear or anxiety.¹³⁰

4) Sexual Abuse

This means any conduct which violates, humiliates or degrades the sexual integrity of any person.¹³¹ Forced sex, even by a spouse or intimate partner with whom you also have consensual sex, is an act of aggression of violence. The term sexual abuse encompasses a wide variety of abuses that include punching, kicking, showing, vertical attacks, sexual threats, exploitation, humiliation, indecent assault, molestation, incest, involuntary prostitution (sexual bartering), torture, insertion of objects into genital opening and attempted rape.¹³²

Marital rape also known as spousal rape and rape in marriage is also a form of sexual abuse, it is a non-consensual activity in which the perpetrator is the victim's spouse. In *R v. Miller*¹³³, the defendant's wife had left in 1952, the following year she petitioned for divorce. Before the hearing for the petition the defendant had sexual intercourse with her against her will. He had thrown her on the ground on three occasions and she was in hysterical and nervous condition as a result of his actions. He was charged with rape and assault occasioning actual bodily injury contrary to section 47 of the offences against the person Act 1861. The defendant relied on the marital consent exception to rape and the nervous shock does not amount to a bodily injury. It was held that the petition for divorce did not revoke the marital consent to sexual intercourse thus no charge for rape could result. This is illustrated most vividly by Sir

¹²⁹ VAPPA, section 10

¹³⁰ VAPPA, section 46

¹³¹ *ibid*

¹³² Olaide Gbadamosi Esq, "Reproductive Health and Rights" African Perspectives and Legal race in Nigeria (Benin City: Ethiope Publishing Corporation, 2007), 266

¹³³ (1983) 2 AC 161, 1 All ER, 978

Matthew Hale, in his 1736 legal treatise *Historical plactorum coronae* or *History of the pleas of the crown*, where he wrote that such a rape could not be recognized since the wife “hath given up herself in this kind unto her husband, which cannot retract”¹³⁴ However with the coming of the 20th century, societal norms and attitude towards women changed for the better as the laws and the society witnessed dramatic change. Marital rape was made illegal in the Netherlands in 1991. Cyprus criminalized marital rape in 1994 and Macedonia in 1996. In England and Wales, marital rape exception was abolished in 1991 by the Appellate committee of the House of Lords in the case of *Rv.R*. In this case Lord Lane stated that the law should declare that a rapist remains subject to the criminal law irrespective of his relation to the victim. This ended the reign of Hale’s infamous postulation.

5) Financial or Economic Abuse

This form of abuse is the use or misuse without the partner freely given consent of the financial or other monetary resources of the partnership. Common examples of financial abuse include: forbidding the partner from working, jeopardizing the spouse’s employment by such tactics as excessive calls to work, creating conflict with co-workers, supervisor or clients, creating scene with co-workers, forcing the partner to miss work, threat, injury or coerced substance use refusing to work, yet contributing to expenses. Controlling shared resources, including bank accounts and common property, demanding the partner sign over paychecks or denying them access to liquid assets, like mutual funds. Demanding the partner account for all the money she spent, coercing the partner to pay for all expenses including rent, food and utilities. Stealing the partner’s property such as valuables or assets; destroying or threatening to destroy the partner’s property as a means of affecting his financial situation;

¹³⁴ Conservapedia, “Marital Rape,” last modified October 29, 2014, www.conservapedia.com/marital-rape.

using the partner's identity to charge expenditure to them; taking credit card, money or check book and forging the partner's signature on financial documents.¹³⁵

2.5 Causes of Domestic Violence

In order to effectively curb domestic violence in Nigeria it is pertinent to know its causes. Abusers are said to behave violently to get what they want and gain control over the victim, believing it is their entitlement,¹³⁶ as allowed by our patriarchal tradition. Apart from tradition and cultural factors, many other factors may cause domestic violence to take place, though the fact that such factor sexist does not mean that domestic violence must take place. The following have been identified: use of drugs or alcohol (a drunk or a person who is high can hardly control himself at the slightest perceived provocation by the wife), infertility, couple's age difference, witnessing or being a victim of domestic violence as a child, unemployment, particularly of the male partner. This is worse where a wife has a job as against her husband, who would become frustrated and angry and unleash his anger on the wife and invariably his children. Other situations are where the woman earns more than the husband, or has influential and rich parents, is educated/more educated and/ or is in the same age bracket with her husband. Dr. Lola Akande, Lagos Commissioner for Women Affairs and Poverty Alleviation(WAPA) at a program on Management of Domestic Violence organized by the Ministry in Lagos, laid blame on women when she stated that ' negligence, sophistication, misguided utterances, infidelity, use of abusive words and gullibility on the part of the women, are factors that drive domestic violence 'She further stated that, ' the more we try to put the blame on the men folk, the more we continue to blind our eyes to the fact that many women are the cause of domestic violence we see today.' This view is not only totally unacceptable but incorrect. In reality, only very few cases may fall under the category

¹³⁵ *Ibid*

¹³⁶ Women's Aid: What is the cause of domestic violence? www.womensaid.org.uk/domestic-violence-articles.asp? Accessed 14th April 2021 IP Enemo

mentioned by the Commissioner; majority of the cases fall under other causes listed above. It is obvious that the Commissioner does not really know the actual causes of domestic violence. However she quickly added that a ‘man who beats a woman is a beast and does not deserve to live with humans no matter how provoked the man may be.’ The truth is that, no spouse has the right or justification to batter the other.¹³⁷

Again domestic violence maybe caused by violence in family of origin, most times men unconsciously follow in the footsteps of their fathers. Men who come from abusive homes and who have watched their mothers being mercilessly beaten by their fathers have the tendency to do the same to their spouses, while still in a relationship and thereafter to their wives, after they are married.¹³⁸ This is the “learned behavior” theory of violence.¹³⁹ When kids witnesses domestic abuse it destroys his/her ability to trust others and undermines his or her ability to control emotions. This produces aggressive, hostile and emotionally insecure people with a deeply impaired ability to develop and maintain healthy relationships.

Poverty is another major reason that causes domestic violence. This is in line with the popular saying “an hungry man is an angry man.” Hence he passes/transfers his aggression on his spouse at the slightest opportunity. Poverty causes educational disadvantage and gender discrimination and these potent factors could force people to engage in domestic abuse.¹⁴⁰ The worsening economic situation in Nigeria is another major excuse used for domestic abuse, as a man becomes unable to provide for the family, the woman is left to support the family economically. In order to compensate for their own feelings of weakness or insecurity,

¹³⁷ ENEMO: Effectiveness of Nigeria’s International Obligation in Curbing Domestic Violence

¹³⁸ J.A Schumacher et al., “Risk Factor For Male-to-Female Partner Physical Abuse” *Aggression and violent Behaviour* 6, (2001): 231-254, quoted in Adeyemo and Bamidele, *Domestic Violence*,200

¹³⁹ Minnestosa Advocates for Human Rights, “Domestic Violence: Explore the issue,” www.1.umn.edu/humanrts/svan/domestic/link/theories.html.

¹⁴⁰ *Ibid*

many men could resort to domestic abuse.¹⁴¹ Also poverty hinders battered women from safety planning strategies which requires significant life changes like moving, separation or divorce, women must be able to financially support herself and her children after she leaves her abusive spouse. As a result some battered women simply cannot leave their partner because they are not financially stable/capable and without government support.¹⁴²

Religion is another major cause of domestic abuse. Religious people across all dominations are not exempted from domestic abuse. Nigeria is a very religious nation, typically the main religions embraces male-domination and show history of how a “good” wife should behave and be “submissive”. Many women in abusive relationship feel they ought to submit to their husbands out of duty, that they have no right over their own body, life or opinions.¹⁴³ This misconceptions is further advise by leaders and heads of these religions.¹⁴⁴ It this advise and bible/ quoran verses are usually misunderstood. This religion has helped to justify women’s oppression and abuse.¹⁴⁵ Therefore women who are more religious are most likely to hold firmly and rigid these beliefs that may encourage abuse. These amongst others are the major causes of domestic violence in Nigeria.¹⁴⁶

2.6 Effects of Domestic Violence

Generally the effect of domestic violence is usually negative. The long-term effects of domestic violence are far reaching and often devastating for victims who are mostly women and children. The ugly scar of domestic violence lingers for life, victims often find it difficult to move on with their lives, trust people or allow people get close to them. The most affected

¹⁴¹ E.W, “ what’s Holding Women back?” economist.com(blog), April 16th 2021

¹⁴² *ibid*

¹⁴³ Hidden Hurt “Religion and domestic violence,” www.hiddenhurt.co.uk/religion-and-domesticviolence-html

¹⁴⁴ *ibid*

¹⁴⁵ *ibid*

¹⁴⁶ *ibid*

of these victims are children. It is estimated that 3.3million children witness domestic in the united -state alone. It has also been acknowledge that a child who is exposed to domestic abuse during upbringing will suffer in their development and psychological welfare. The effects of domestic violence on victims, and on the society generally shall be discussed subsequently.

i) Effects on victims:

National Resource Center on Domestic Violence (2019) Provides information on the impacts of domestic violence on victims' physical, mental, and reproductive health.¹⁴⁷ The long-term effects of domestic violence are far-reaching and often devastating for victims – most often women and children.¹⁴⁸ Women and children, who live in an environment where domestic violence commonly occurs, face increased risks because of the tumultuous atmosphere in their lives.¹⁴⁹ Women may develop an impaired ability to nurture their children and contribute to their positive development. Children, whether victims themselves or just witnesses, may withdraw from their parental relationship, suffer seriously delayed or distorted development, and emotional problems.¹⁵⁰ Domestic violence can trigger many kinds responses in victim, all of which are very relevant for a professional working with victim. Major consequences of domestic violence victimization include psychological/mental health issues and chronic physical health problems.¹⁵¹

(a) Effects of Domestic Violence on Women

The effects of domestic violence on women go beyond the immediate physical injuries they suffer at the hands of their abusers.¹⁵² Frequently, domestic violence survivors suffer from an array of psychosomatic illnesses, eating disorders, insomnia, gastrointestinal disturbances, generalized chronic pain, and devastating mental health problems like posttraumatic stress disorder (PTSD).¹⁵³

¹⁴⁷ <https://www.childwelfare.gov/topics/systemwide/domviolence/impact/impact-victims/>

¹⁴⁸ *ibid*

¹⁴⁹ *ibid*

¹⁵⁰ *ibid*

¹⁵¹ *ibid*

¹⁵² <https://www.healthplace.com/abuse/domestic-violence/effects-of-domestic-violence-domestic-abuse-on-women-and-children> date accessed may 4th 2021

¹⁵³ *ibid*

Many abused women find it difficult to function in their daily lives because of the effects of domestic violence.¹⁵⁴ Absences from work, due to injuries or visits to the doctor, often cause them to lose their jobs, making them less able to leave their abusive situations. They may feel ashamed that their partners abuse them, see themselves as unworthy of love, and suffer from a significantly diminished self-perception. Because of their feelings of low self-worth, these women become isolated from friends and family and do not participate in social activities common to others in their demographic.¹⁵⁵

Among victims who are still living with their perpetrators, high amount of stress, fear and anxiety are commonly reported.¹⁵⁶ Depression is also common, as victims are made to feel guilty for “provoking” the abuse and are frequently subjected to intense criticism.¹⁵⁷ It is reported that 60% of victims meet the diagnostic criteria for depression, either during or after termination of the relation and have greatly increased risk of suicide.¹⁵⁸

Wife abuse can be a significant cause of female morbidity and mortality and represents a hidden obstacle to economic and social development, by sapping women’s energy and confidence and this can deprive society of their full participation.¹⁵⁹ Abuse may also have a serious impact on pregnancy outcomes. It has been linked with increased risk of miscarriages and abortions due to premature labour and fetal distress.¹⁶⁰ Extreme stress and anxiety provoked by abuse in pregnancy also may lead to pre-term delivery or fetal growth retardation by increasing stress hormone levels or immunological changes.

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*

¹⁵⁶ <https://courses.lumenlearning.com/boundless-sociology/chapter/family-violence/> accessed may 6th 2021

¹⁵⁷ *ibid*

¹⁵⁸ Barnett, O., why Battered Women Do not leave, part 2: External inhibiting factors, social support and internal inhibiting factors, *Trauma, Violence and Abuse* 2(1), (2001)3-35.

¹⁵⁹ John Ademola Yakubu, Olawale, A. Moronkola, Grace, O. Sokoya, *The abused and the society*

¹⁶⁰ *ibid*

(b) Effects of Domestic Violence on Children

When most people hear or see the phrase 'domestic violence and children' they see images of bruised, beaten, burned children in their mind's eye.¹⁶¹ Certainly, these physical injuries represent immediately visible effects of domestic abuse. But children who only witness domestic violence suffer consequences just as far-reaching and devastating as those seen in physically battered children.¹⁶² Studies indicate that children from violent homes, who witness the abuse of their mothers at the hands of their fathers, experience mental health issues similar in intensity and magnitude to those experienced by physically battered children.¹⁶³ Similar research shows children, who both witness their fathers abusing their mothers and are themselves battered, suffer the most profound behavioral and emotional distress. Children who grow up in violent households may exhibit a host of adverse behaviors and emotions, including:

- Become violent themselves in response to threats (in school or at home)
- Attempt suicide
- Use drugs and abuse alcohol
- Develop eating disorders
- Abuse themselves (i.e. cutting)
- Anxiety and depression
- Poor social skills
- Enter into an abusive relationship later

Children are often principal victims of domestic violence. Witnessing abuse and living in an environment where someone else, usually a care giver is a victim of abuse, can be

¹⁶¹ <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children> dated accessed may 7th 2021

¹⁶² *ibid*

¹⁶³ *ibid*

psychologically devastating for a child.¹⁶⁴ Straus¹⁶⁵ reports that children who are hit by parents have higher rates of depression than those whose parents disciplined in other ways and are more likely to think about suicides. Some researchers have also found that children whose mothers were abused by their partners have intelligence quotients (IQs) lower than usual.¹⁶⁶ Violent punishments such as corporal punishment have been found to lead to delinquency in adolescent and subsequently violent crimes. Anikweze¹⁶⁷ identified violence as a threat to adolescents' well-being. The adolescent may become socialized in violent behavior. He or she may become confused and angry. The anger may become directed towards either parents or other children. They may become aggressive, becoming troublesome at home and at school. They may also become withdrawn, isolating themselves from others and may underachieve, academically. Victims of domestic violence (whether children or adults) may suffer physical injuries such as minor cuts, scratches and bruises. Others may be more serious and cause lasting disabilities such as broken bones, internal bleeding and head trauma, among others.¹⁶⁸ Some injuries are not physical but emotional. Victims often have low self-esteem, finding it difficult to trust others. The anger and stress experienced by victims may lead to depression and other emotional disorders sometimes leading to suicide. Victims may also exhibit harmful health behavior like excessive smoking, alcohol abuse, use of drugs and engaging in risky sexual activity. An abused child, for instance, may grow up not to trust other people, may go into relationships with an aggressive mode or may become withdrawn, afraid to go into intimate relationship. This usually results in involvement in risky sexual behavior. Growing up in an abusive environment is what makes a person find the sight of a suspect being beaten or burnt to death, entertaining and

¹⁶⁴ Aihie "prevalence of Domestic Violence in Nigeria: Implication for counseling Edo Journal. Vol.2;2009

¹⁶⁵ (1994)

¹⁶⁶ (BBC. New Education, 2003).

¹⁶⁷ 1998

¹⁶⁸ (Dobson, 1984; CDC, 2006).

enjoyable. It is what makes the youth happy and excited about being thugs for wicked politicians. Domestic violence gives rise to a violent society because ‘charity begins at home’.

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(c) Effects of Domestic Violence on Men

Domestic violence may also be suffered by men and also has adverse effect on the too.

Domestic violence against men is rare in Nigeria. It can take many forms including emotional, sexual and physical abuse or threats of abuse.

Emotionally a victim may have trust issues in relationships and suffer from depressions. The act of domestic violence can also have mental effect such as anxiety and panic attacks health risks factor of domestic violence include; alcohol abuse, chronic pains and attempted suicide some effect such as brain damage and sexually transmitted disease are long term. Even though it is rare for men to be victims of domestic violence however domestic violence against men is a reality even though it remains largely unreported.¹⁷⁰ Most of men prefer to suffer in silent to the point of death. An instance is that of Israel obi who was a victim of hot vegetable oil bath by his wife. In his words; “I got married to Victoria in May 2005 and settled in odorasanya in ijebulgbo of Ogun state, Nigeria. It all started when my wife influenced me about our relocation to Lagos and I did not know it was the beginning of my trauma. Victoria was influenced by our new environment and she started coming home late from her shop. And anytime I cautioned her she turned the situation into a fight. She changed from my loving wife to an abusive spouse calling me different names. On that fateful night, we had an intense argument and around 1:00am. Victoria came into my room and poured hot boiling vegetable oil on me. It was our neighbors from the other flats that took me to the

¹⁶⁹ Stanley N. “Children Experiencing Domestic Violence: A Research (Review. London Dartington Hall,20(1)

¹⁷⁰ Watt C. and Zummerman C, “Violence against women Global Scope and Magnitude, (lancet factor 25(22) (2002).vol.10.1016/SO140736(2)08221-1

hospital and I was there for a whole month. After my discharge from the hospital, she begged for forgiveness and we came together again as husband and wife. But barely two weeks after, I was receiving a phone call from a distant aunt but she thought it was a conversation with an unknown mistress. She smashed my phone on the ground and stabbed me with a knife” In a study conducted at the General Outpatient Department of the University of Port Harcourt Teaching Hospital, out of a total of 48 victims of domestic violence were identified of which 5 (10.4%) were males.

(d) Effects on the society

Domestic violence affects all of society and not just victims. The cost of health care services consumed as a result of domestic violence including emergency rooms and clinic visits, hospital stays, mental health care services, medication, and physical health therapy is one of the most important cost components of domestic abuse. Reduced earnings and lower productivity are among the most prominent indirect costs of domestic violence.¹⁷¹ Domestic violence often causes victims to miss days of work due to injuries, mental health issues which result to deprivation of the country of women’s full potential in development as businesses lose money due to their absenteeism from work.¹⁷² Domestic violence also reduces victims productivity at work thereby depriving the society of such productivity. The chaos and unrest that may occur during domestic violence in the neighborhood which sometimes death may occur is another major effect of domestic violence in the society.¹⁷³ Conclusively, domestic violence has adverse effect on the society both economically and otherwise.

2.7 Justification of Domestic Violence

¹⁷¹ The Advocates for Human Rights, “Stop violence Against Women”, www.stopvaw.org/community-costs-of-domestic-violence.

¹⁷² *ibid*

¹⁷³ *ibid*

There has been several attempts to justify domestic abuse in Nigeria. Some of these justifications are: disrespect for husband and/or in-laws, lateness in preparing husband's meal and manner of presentation, refusal to have sex, complain by wife of insufficient allowances, failure to do laundry, being drunk, argument, leaving the house without permission, etc.¹⁷⁴ It has been stated that beatings were also justified when a woman's behavior towards her husband was deemed offensive.¹⁷⁵ Laws are the product of patriarchal society hence laws in Nigeria have indirectly justified domestic violence by authorizing reasonable chastisement of the wife by the husband.¹⁷⁶ For instance, Section 55 of the penal code of Northern Nigeria allows husbands to "correct" their wives using physical punishment, so long as the woman is not seriously harmed. Domestic violence against women is considered to be justifiable under religious and customary practices. However, as early stated, there is no justification whatsoever for domestic violence and perpetrators should face the law as it is and laws that justify domestic violence should be repealed. Irakli Gharibashvili, prime Minister of Georgia is of the view that the entire community and the government should unite against violence. He stated that:

"I strongly reject the idea of a public inquiring into possible provocation on the part of victims in violent crimes cases. Violence cannot be justified. Violent perpetrators should be made liable before the law."¹⁷⁷

2.8 Summary

From the above analysis of domestic violence, it can be categorically stated that domestic abuse has been a problem in the society for ages, and it has huge adverse effect on the overall

¹⁷⁴ Antai Diddy, "Controlling behavior power relations within relationships and intimate partner physical and sexual violence against women Nigeria" BMC public Health intimate 11, no.3 (2011) 111

¹⁷⁵ *ibid*

¹⁷⁶ *ibid*

¹⁷⁷ IPN interpressnews, "Irakli Gharibashvili," www.interpressnews.ge/en/politics.

welfare of an individual and the society. Both genders have been killed as a result of domestic violence hence all available resource and ideas should be used to combat domestic abuse to its barest minimum.

CHAPTER THREE

ADDRESSING DOMESTIC VIOLENCE IN NIGERIA

3.1 Introduction

This chapter intends to address domestic violence in Nigeria in view of the impact of on Domestic Violence on societal norms, and how culture and customs in Nigeria has influenced the society's subtle approval of (moderate) domestic violence in Nigeria. It will also address how religion, mainly Islam and Christianity, has affected domestic abuse practice in Nigeria.

3.2 The Impact of Societal Norms and Customs on Domestic Violence in Nigeria; Cultural Practices that Encourage Domestic Violence

The natives of the several territories that now constitute the area known as Nigeria, had their own rules, norms, habits and cultures that regulated their conducts and activities depending on their tribes or ethnic groups.¹⁷⁸

Domestic violence is a global phenomenon, a human rights violation and an important public health problem that has negative effects on women's physical, mental, sexual, and reproductive well-being. It is a social illness that cuts across all races, religions and class status. Many societies including Nigeria have accepted domestic violence as normal and a part of women's life. Culture on the other hand has shaped people's perceptions towards the menace of domestic violence. The rate of violence against women in Nigeria is alarming, and it needs to be addressed.¹⁷⁹

Traditionally, in Nigeria, as in many other African countries, the beating of wives and children is widely sanctioned as a form of discipline.¹⁸⁰ Consequently, by beating their children, parents believe that they are instilling discipline in them, much the same way as

¹⁷⁸ A. Ojo, constitutional law and military ruling in Nigeria (Ibadan Evans 1987);82

¹⁷⁹ *ibid*

¹⁸⁰ (Adomako &Prah, 2009; Qayum & Ray, 2010).

husbands beat their wives—who are also regarded as children and as such prone to indiscipline.¹⁸¹ The society is basically patriarchal, and women’s place within the scheme is absolutely subordinate. Intimate partner violence functions as a means of enforcing conformity with the role of a woman within customary society. It does not matter if the woman is economically dependent or not; her position, like that of the children, is subordinate¹⁸² . Several women are believed to have been subjected to physical, sexual, and psychological violence carried out primarily by husbands, partners, and fathers.

Customary practices (customs and religion) across Nigeria generally hold that the man is the head of the house and has the marriages; the man is generally expected to pay a bride price to the family of the bride, this payment of bride price to the family of the bride being evidence of a commercial transaction.¹⁸³ According to Akande:

“The institution of bride price in traditional times is not conceived as a sale of the girl but was a proof of the girl’s importance to both families. Her family must be compensated for her loss and it ensures that the husbands intentions are serious and not just a desire or frivolous associated.”

In modern times however the bride price symbolizes the sales of the girl and ownership by her husband and his family.¹⁸⁴ As a result of the misinterpretation of customary law; the woman is regarded as the property of the man and he is therefore entitled to discipline her as he sees it fit. The notion of subjugation of women is entrenched that all in Nigeria society tends to accept violence against a woman as justified.¹⁸⁵ Even the victim herself often

¹⁸¹ *ibid*

¹⁸² (Katembo, 2015).

¹⁸³ Jade Sola Akande, Akintunde O. Obalade(ed),”Women in the law in women Law”, 1993

¹⁸⁴ *ibid*

¹⁸⁵ Kerri L. Ritz, soft Enforcement: inadequacies of protocol as a remedy for the conviction on the Elimination of all forms of discrimination against women,25 (Suffolk transnat LiRev.191(2001).

condones the violence and tries to enforce it on others. For instance the ‘Umuadas’¹⁸⁶ in the eastern part of the country have become notorious for their role in enforcing degrading and inhuman treatment on woman married into their families. A woman who tries to challenge or defy such cultural norm is usually punished and ostracized by the community. Moreover, when a victim is courageous enough to report incident of domestic violence to law enforcement agencies, it is trivialized and termed a “private matter”. The victim is usually blamed for the incident and told to “go home and be a good wife”. Among the educated elites domestic violence is accepted as a way of life and effort to combat it are considered western and foreign.¹⁸⁷

It is not surprising that older people were more likely to hold poorer gender beliefs, since they are also more likely to have been exposed to violence over a longer period and have had more time to entrench poor attitudes and views that are socially acceptable in their communities.¹⁸⁸ If violence against women is normalized and accepted as a part of marriage and life as has been articulated in various studies then older boys are more likely to replicate these socialized beliefs and behaviors.¹⁸⁹ Furthermore, older boys have the tendency to be in relationships and to be sexually active, which means that they will have more opportunities to re-enact violence in their own relationships and perform traditionally oppressive roles and behaviors against women that they have learned from their role models.¹⁹⁰

¹⁸⁶ These are daughters of the families who act as custodians of culture in the community.

¹⁸⁷ *ibid*

¹⁸⁸ Overcoming cultural, traditional and religious beliefs and practices in understanding and combating domestic violence in Nigeria. <https://www.eldis.org/document/A101381>.

¹⁸⁹ *ibid*

¹⁹⁰ *ibid*

In 2012, a study in Nigeria showed that 64.4% of married women and 50.4% of unmarried women expressed consent for wife beating, such is the prevalence and normalization of domestic abuse in the country.¹⁹¹

A qualitative study in a rural area in the east showed that women of childbearing age who were selected from the various women age grades in Ozubulu, Anambra state Nigeria, revealed that the women generally condone and are complacent with intimate partner violence, perceiving it as cultural and religious norms.¹⁹² The women felt that reprimands, beating and forced sex affecting their physical, mental and reproductive wellbeing are normal in marriage. They did not support reporting such cases to the police or divorcing the man, they would rather prefer reporting to family members. They felt that exiting the marriage would not gain the support of family members. They also expressed fear for the uncertainty in re-marriage, social stigmatization, and concern for their children.

Socio-cultural norms and structures favour partner violence in Anambra state of Nigeria. There is a need for advocacy and concerted action that will involve the educational, health¹⁹³ civil and religious sectors of the society to evolve sustainable structures that will empower women and provide support to enable victims to react appropriately to violence.

Again Nigeria culture has a strong, and marriage ideology which socialize women to marry and remain in the marriage forever and stigma from the society and pressure from parents make women to endure and stay in their abusive relationships.¹⁹⁴ Bowman,¹⁹⁵ noted that the exorbitant expenses during the wedding appear to have equated her to a property being

¹⁹¹ Overcoming cultural, traditional and religious beliefs and practices in understanding and combating domestic violence in Nigeria. <https://www.eldis.org/document/A101381>.

¹⁹² Women's perception of partner violence, www.ncbi.nlm.nih.gov

¹⁹³ *ibid*

¹⁹⁴ Umar Abdullahi, Rafidah Binti Mohammed Cusarri, Syannul Faitzaz Binti Abdullahi, "The influence of culture in domestic violence Against Women in Nigeria," published, 15 Jan 2018 Journal of Islamic, Social, Economic and Development.

¹⁹⁵ (2013)

sold.¹⁹⁶ Similarly studies have shown that marriage in African cultures, a woman is being traded away by the reception of bride price and other gift items by the family.¹⁹⁷ These items include cattle, goats, yams, and the like; which symbolically demonstrate the transfer of her right and authority to the husband.¹⁹⁸ As a result the man not only exerts power and authority over the wife because of her weakness but also because her family may be either unable or unwilling to pay back the price in the event of divorce or separation.¹⁹⁹

The cultural practice of early marriage and forced marriage is also influence domestic abuse in Nigeria. This form of marriage is still practiced in some cultures in Nigeria especially in the Northern part, where young girls are given out in marriage to wealthy individuals or close friends; to strengthen the existing relationships. Studies on gender and marriage institutions in Nigeria confirmed that ideas about marriage are almost the same across all the ethnic groups in Nigeria,²⁰⁰and any woman who refuses to marry her father's approved choice is usually tagged as a social evil and a disgraced to the family. Thus these girls are often forced into early marriages and are at risk of punishment if they attempt to escape from their husbands. More pathetic is the revelation of gross underreporting and non-documentation of domestic violence due to cultural factors. A culture of silence reinforces the stigma attached to the victim rather than condemn the perpetrator of such crimes²⁰¹ .Several incidences of intimate partner violence are reported to the police, who themselves could be judgmental in cases of this nature. The police may also feel that issues on domestic violence are better settled within the confines of the family, with the elders involved. In some cases, they may even collect bribes and dismiss cases that should have been thoroughly investigated. This

¹⁹⁶ *ibid*

¹⁹⁷ *ibid*

¹⁹⁸ *ibid*

¹⁹⁹ *ibid*

²⁰⁰ Ishola, 2016; Ntoimo & Isiugo-Abanihe,(2014)

²⁰¹ (Muhammad-Farooq, Saeed-Ali, Parpio1, Lalani, &Marjorie, 2017).

contributes largely to the problem of estimation and culture of silence on domestic violence. Hence, many experts believe that the true magnitude of the problem is hard to estimate and Arisukwu, Igbolekwu, Efugha, Nwogu, Osuke, and Oyeyipo²⁰² as a tool used in justifying domestic violence against women through claims that such practices are part of “culture”. Yet, culture is not static or homogeneous—it evolves and can change.²⁰³ However, Women not only suffer from negative aspects of culture but also benefit from it. Other cultural factors include gender-specific socialization, cultural definitions of appropriate sex roles, expectations of roles within relationships, belief in the inherent superiority of males, values that give men proprietary rights over women and girls, notion of the family as the private sphere and under male control, customs of marriage (bride price/dowry), and acceptability of violence as a means to resolve conflict.²⁰⁴

Hence, cultural factors have been considered as very important to the prevalence of domestic violence in a society.²⁰⁵ Moreover, the prevailing strong attachment to cultural practices that are discriminatory and obnoxious toward women and inherent in rural communities constitute a major concern that should be addressed, especially considering the fact that some of these rural areas are very remote and may lack viable government and advocacy interventions; hence, there is need for studies that will address the specifics of domestic violence particularly in these rural areas where several of such inhuman practices go unnoticed.²⁰⁶ Furthermore, most advocacy groups for domestic violence against women in rural areas are not functional, and the functional ones seem not to utilize the appropriate and intentional mechanism to get through to the people. The advocacy approach used in the urban areas

²⁰² (2019)

²⁰³ *ibid*

²⁰⁴ *ibid*

²⁰⁵ (Naved& Persson, 2005; Igbolekwu, Arisukwu, Nwogu &Asamu 201

²⁰⁶ Eric Y Tenenay, Collins Nwabewe pearl sediaefe, Domestic and Maritia Violence Among three Ethnic Group in Nigeria. <https://paq2014.princeton.edu/papers/140023>

cannot be replicated in the rural areas without certain adjustments, which must incorporate their local realities.²⁰⁷ This could account for one of the reasons behind the increased prevalence of domestic violence among women.²⁰⁸

Overall, these are some of the cultural practices in Nigeria that contributed to the persuasive incidences of domestic violence in matrimonial homes. It is worthy to mention that these practices still exist, however, the influence of religions, education and exposure have somehow reduced its operations.

3.3 The Effect of Religion on Domestic Violence;

Nigeria, though a secular state, is known for its religious nature and religion has a major role to play in influencing the actions of the people. For a pastor, priest, rabbi, imam or others approaching domestic violence from a religious perspective, there is little question about the relevance of religious concerns which are paramount for them. They may however doubt the importance of dealing with concerns of shelter, safety, intervention, etc. “These people just need to get right with God and everything will be fine.” Such a perspective overlooks the seemingly mundane concerns represent immediate and critical needs.

When confronted personally by domestic violence, most people also experience a crisis of meaning in their lives, as occurs with all other crises, whether chronic or unexpected.²⁰⁹ Very basic life questions arise, often expressed in religious and/or philosophical terms. Questions like, ‘Why is this happening to me and my family?’ or ‘Why did God let this happen?’ or ‘What meaning does this have for my life?’ all indicate people’s efforts to understand, to make sense out of experiences of suffering and to place the experiences in a context of

²⁰⁷ *ibid*

²⁰⁸ *ibid*

²⁰⁹ A commentary on Religion and Domestic Violence, www.fathtrustinstitute.org.

meaning for their lives.²¹⁰ We recognize these questions to signal health, because they represent an effort to comprehend and contextualize the experience of domestic violence, allowing the individual to regain some control over their lives in the midst of crisis.²¹¹ Many individuals and families in crisis express the questions of meaning in religious terms, and more specifically, in terms of Islam, or Christianity, since the vast majority of people in the Nigeria today grew up with some association with these traditions. Many continue their involvement with a church, mosque or synagogue into adulthood. In addition, religious values overlap with a majority of Nigerian culture's values.²¹² (Most Nigerians carry a set of cultural values, consciously or not, which are primarily religious in nature.)

Religious concerns can become roadblocks or resources for those dealing with experiences of domestic violence because these concerns are central to many people's lives.²¹³ The outcome depends on how they are handled. Misinterpretation and misuse of religious texts and traditions have often had a detrimental effect on individuals and families dealing with domestic violence. Misinterpretation or misuse can contribute substantially to guilt, self-blame, and suffering among victims. Likewise, they can contribute to rationalizations used by those who abuse. For example, 'But the Bible says...' is frequently used to explain, excuse, or justify abuse by one family member to another. This need not be the case. Re-examining and analyzing those sacred texts can result in reclaiming the traditions in ways that support victims and abusers, while confronting and challenging abuse in the family.²¹⁴

A careful study of sacred texts makes it very clear that while it is possible to misuse texts to justify abuse of persons in the family, the texts do not in fact serve to justify abuse. Misuse is

²¹⁰ *ibid*

²¹¹ *ibid*

²¹² *ibid*

²¹³ *ibid*

²¹⁴ *ibid*

a frequent practice. Teaching people simple answers to the very complex issues faced by many is another potential roadblock within contemporary teachings of some faith groups. Thus, religious groups often have not adequately prepared people for the traumas that they will face at some point in their lives: illness, death, abuse, divorce, and so on.

- Keep the commandments and everything will be fine.’
- Keep praying.’
- Just accept Jesus Christ as your Lord and Savior and you will be healthy, prosperous, popular, and happy.’
- Get closer to God.’
- Be patient, and you will be rewarded.’
- Go to services each week.’
- Pray harder.’

Although these teachings may be fundamental to many religious faiths, alone they are inadequate to deal with the complexity of such an experience of human suffering as domestic violence. When offered as simple and complete answers to life’s questions, they may create illusions of simplicity that leave adherents vulnerable to becoming overwhelmed by suffering. Furthermore, the teachings may set up a dynamic that blames the victims for their suffering. ,If you are a good Christian, a good Jew, or a good Muslim, God will treat you kindly, or take care of you, or make you prosper as a reward for your goodness. If you suffer, it is a sign that you must not be a good Muslim, a good Christian or a good Jew and God is displeased with you.²¹⁵

If one accepts this simple formula (which makes a theological assumption about God’s unconditional love being conditional), then suffering can be interpreted as punishment or

²¹⁵ A Commentary on Religion and Domestic Violence, www.faithtrustinstitute.org date accessed 1st may 2021

abandonment by God.²¹⁶ The simple answer alone cannot withstand significant personal or familial suffering. When people use simple answers that prove insufficient, they can feel that their faith has failed them or that God has abandoned them. Jewish, Muslim and Christian religious teachings have the depth to adequately address the experiences of contemporary persons, but only when they are allowed to acknowledge the complexity, the paradox, and sometimes the incomprehensible nature of suffering. The most important resource which the synagogue, church or mosque can provide is to be available to support those who are suffering, to be a sign of God's presence, and to be willing to struggle with the questions which any crisis may raise. Offering sweet words of advice to 'solve' life's problems reduces the experience of the one who suffers to a mere slogan, and denies the depth of the pain and the potential for healing and new life. One's faith tradition can offer spiritual resources as well as material resources to victim/survivors and their children as well as to repentant perpetrators. Whether it is the Psalms from the Hebrew Bible or teachings from the Qur'an or the life of Muhammad, or the Christian Gospels, religious teachings can comfort, reassure, and strengthen. Congregations also can provide material support in times of crisis.²¹⁷

Sometimes, people try to explain suffering by saying that it is 'God's will' or 'part of God's plan for my life' or 'God's way of teaching me a lesson.' These explanations assume God to be stern, harsh, even cruel and arbitrary. This image of God runs counter to a Biblical image (and a Qur'anic image) of a kind, merciful and loving God. The God of this Biblical teaching does not single out anyone to suffer for the sake of suffering, because suffering is not pleasing to God.²¹⁸

Christianity

²¹⁶ *ibid*

²¹⁷ *ibid*

²¹⁸ *ibid*

For some Christians, a strong doctrinal position against divorce may inhibit them from exercising this means of dealing with domestic violence. For others, a position against divorce is a personally held belief often supported by family and church. In either case, there is a common assumption that any marriage is better than no marriage at all and, therefore, should be maintained at any cost.²¹⁹ This assumption arises from a superficial view of marriage is concerned only with appearances and not with substance. In other words, as long as marriage and family relationships maintain a facade of normalcy, there is a refusal by church and community to look any closer for fear of seeing abuse or violence in the home.

Another issue is the misinterpretation of the scripture to justify their actions and continue the abuse for instance; Christian teaching about the model of the marriage relationship has traditionally focused heavily on.²²⁰

Paul's letters to the Ephesians, Corinthians, and Colossians. Misinterpretations and misplaced emphasis on these texts create substantial problems for many heterosexual married couples. Most commonly directives on marriage, based on scripture, are given to women by clergy but not so often to men, and state that wives must 'submit' to their husbands, a directive interpreted to elevate the husband/father as the absolute head of the household whom wife and children must obey without question. Unfortunately, this idea has also been misinterpreted to mean that wives and children must submit to abuse from husbands and fathers as well.²²¹ Those who abuse their families rationalize their misdeeds through such interpretations, as do counselors, clergy, and the victims of the abuse themselves.²²²

²¹⁹ *ibid*

²²⁰ *ibid*

²²¹ *ibid*

²²² *ibid*

A closer look at the actual scriptural references reveals a different picture. For example, Ephesians 5:21: ‚Be subject to one another out of reverence for Christ.‘ (RSV, emphasis added)

This is the first and most important verse in the Ephesians passage on marriage and also the one most often overlooked. It clearly indicates that all Christians - husbands and wives - are to be mutually subject to one another. The word that is translated ‚be subject to‘ can more appropriately be translated as ‚defer‘ or ‚accommodate. ‘ ‚Wives accommodate to your husbands, as to the Lord.‘ (Ephesians 5:22)²²³

This teaching implies sensitivity, flexibility, and responsiveness to the husband. In no way can this verse be taken to mean that a wife must submit to abuse from her husband. ‚For the husband is the head of the wife as Christ is the head of the Church, his body, and is himself its savior. As the church is subject to Christ, so let wives also be subject in everything to their husbands.‘ (Ephesians 5:23-24, RSV)²²⁴

The model suggested here of husband-wife relationship is based on the Christ-Church relationship. It is clear from Jesus’ teaching and ministry that his relationship to his followers was not one of dominance or authoritarianism, but rather one of servant hood. For example, Jesus washed his disciples’ feet in an act of serving. He taught them that those who would be first must in fact be last. Therefore, a good husband would not seek to dominate or control his wife, but would serve and care for her, according to Ephesians.

Even so husbands should love their wives as their own bodies. He who loves his wife loves himself²²⁵.

²²³ The Bible

²²⁴ *ibid*

²²⁵ *ibid*

For no man ever hates his own flesh, but nourishes it and cherishes it, as Christ does the Church, because we are members of his body.’ (Ephesians 5:28-29, RSV)

This instruction to husbands is very clear and concrete. A husband is to nourish and cherish his own body and that of his wife. Physically battering one’s spouse is probably the most blatant violation of this teaching and a clear reflection of the self-hatred within the abuser. It is interesting that the passages quoted above from Ephesians (5:21-29) which are commonly used as instruction for marriage, are instruction primarily for husbands. Nine of the verses address husbands’ responsibilities in marriage; three of the verses refer to wives’ responsibilities, and only one addresses both parties. Contemporary interpretation, however, often focuses solely on the wives, misusing passages to justify wife-abuse. While spouse abuse may be a common pattern in a number of Christian marriages, it certainly cannot be legitimated by scripture.

In terms of sexuality in marriage, again this passage from Ephesians (Colossians 3:18-21) has been used to establish a relationship in which the husband has conjugal rights and the wife has conjugal duties. In fact, other scriptural passages are explicit on this issue: ,The husband should give to his wife her conjugal rights, and likewise the wife to the husband. For the wife does not rule over her own body, but the husband does: likewise, the husband does not rule over his own body, but the wife does.’ (I Corinthians 7:3-4, RSV)

The rights and expectations between husband and wife in regard to sexual matters are explicitly equal and parallel, and include the right to refuse sexual contact. The expectation of equality of conjugal rights and sexual access and the need for mutual consideration in sexual activity is clear. The suggestion that both wife and husband ,rule over the other’s body and not their own refers to the need for joint, mutual decisions about sexual activity rather than arbitrary, independent decisions. A husband does not have the right to act out of his own

sexual needs without agreement from the wife; likewise, the wife. This particular passage directly challenges incidents of sexual abuse (rape) in marriage that physically abused wives frequently report.

Islam

The first verse in a chapter entitled 'The Women' establishes the equal nature of men and women and reminds each gender that God is a witness to their fulfillment of their mutual rights. The verse states: 'O mankind! Reverence your Guardian-Lord, who created you from a single soul, created of like nature its mate, and from them both scattered (like seeds) countless men and women—Fear God through Whom you demand your mutual rights. And (reverence) the wombs (that bore you) for God ever watches over you. The Qur'an provides guidance for male/female relations, and describes believing men and women as 'friends and protectors' of one another. Needless to say, this relationship is expected to carry into the marriage. Marriage is described in the Qur'an as a 'solemn covenant';¹⁴ it is a contract witnessed by God between two consenting adults who agree to live together in accordance to His laws. The Qur'an says that 'He created for you mates from among yourselves that you may dwell in tranquility with them, and He has put love and mercy between your (hearts)....' (30:21).²²⁶

The mutuality of the marital relationship is described in many teachings. One example is the Qur'anic reference to spouses as garments for one another. This verse specifically refers to the sexual relationship between spouses, highlighting the accommodation that each spouse should make for the other, and the comfort that each should find in the other.

The Qur'anic teachings are exemplified and reinforced by the teachings of the Prophet Muhammad who said, 'The best among you is the one who is best to his family, and I am the best to my family.'

²²⁶ *ibid*

According to his example, husbands and wives are partners; they should encourage each other to live in accordance with divine laws, consult one another in decision-making, support one another emotionally, and accommodate each other's needs.

Within this partnership, Islam recognizes that each partner may be better suited to particular areas in the relationship. For example, men have been given a leadership role, with the responsibility of providing financially for their families. Women, by virtue of their biological design, are obviously the only partner who can bear and nurse children. The roles of husband and wife are interdependent and complementary, perfectly manifesting the Arabic word for spouse (*zawj*), which means pair. In his role as leader, a husband must remember his accountability to God and his responsibility to lead his family in accordance to Islamic values, which include justice, compassion, and equity. A wife should accept her husband's leadership as long as he is living according to God's teachings. She should never obey him or follow his lead in any matter that is contrary to these teachings.²²⁷

In the case of domestic violence, abusers often distort or manipulate teachings to rationalize or justify their behavior. The same verse that holds men responsible for protecting and maintaining women financially also prescribes a process for men to use with a wife that has behaved in some immoral manner that compromises the integrity of the relationship (*nushuz*). In a situation where there has been a serious breach, he is advised to talk to her first, then to sleep separately from her, and finally to chastise her if she does not change her behavior. This chastisement has been the subject of great controversy, with interpretations about its execution that range from a symbolic beating (using a handkerchief or something similar that would not cause injury) to abandonment. The goal of this verse is to preserve the marriage by bringing a wife back to the right path, not to give the husband a permission to be violent or

²²⁷ *ibid*

abusive. In fact, there is a parallel verse that addresses how a woman can respond if her husband is guilty of the unacceptable behavior ²²⁸

What is most important when considering the Islamic perspective on marriage is that teachings cannot be taken in isolation, rather the Islamic paradigm must be considered as a whole. Using a holistic approach, the teachings provide a model for healthy relationships, with guidance that prevents any kind of abuse or oppression. An important juristic maxim that guides legal rulings is, 'Do not commit harm or allow reciprocation of harm.' In addition, the teachings that reference equitable and just relations, mutuality, love, compassion and tranquility between spouse, all lead to the conclusion that violence has no place in a relationship between two God-fearing partners.

Although marriage is highly encouraged, and the preservation of a marriage is extremely important, the Qur'an also recognizes that not all marriages are sustainable. Couples are encouraged to either live together in kindness, or to separate in kindness if they are unable to live according to God's teachings.

Divorce is provided as an option of last resort to protect individuals from experiencing any harm or from finding themselves in a situation where they may commit sins against the other out of their own misery.

Unfortunately, in many cultures that are predominantly Muslim, divorce is surrounded by so much stigma that women may not even know it exists as an option. However, both the Qur'an and the teachings of Prophet Muhammad provide detailed instruction on the process of divorce, which can be initiated by either the husband or the wife.²²⁹

²²⁸ *ibid*

²²⁹ Natisch Ghaforia (PhD), "Muslim women and domestic violence developing a framework for social work practice" journal of religion and spirituality in social work: social thought, 2017, vol, 36,

Thus misinterpretation or misunderstanding of the Qur'an is also a roadblock to effect curbing domestic violence via religion. It is the issue of male monopoly of interpretation of Islamic sources.²³⁰

However Muslim responses to incidents of domestic violence are as varied as the community is diverse, at one end of the spectrum, a victim may find her community to be completely invalidating of her experience, and even blame her for angering her husband. An imam might insist that she be patient, return to her husband and try harder to please him.

Thus it is seen that the negative role of religious leader can greatly influence or affect the fight against domestic violence, the idea that a good wife builds a home and has to endure suffering and abuse in order to save her home has affected many women from speaking up against domestic abuse. And the religious belief that forgiveness of an unrepentant abuser has made many women lose their lives to domestic abuse.

3.4 Summary

It is evident that religion and culture has a vital role to play in curb domestic abuse in Nigeria, as this is the root of the menace and unless some ideology in religion and culture is change domestic violence cannot be completely combated in the country. The nature of the relationship between culture and religion can be ambiguous,²³¹ as some religious beliefs

²³⁰ *ibid*

²³¹ Sinha (2008)

CHAPTER FOUR

EFFECTIVENESS OF LAWS FOR ADDRESSING DOMESTIC VIOLENCE

IN NIGERIA

4.1 Introduction

Before 2003 no National laws existed to expressly or specifically protect women or persons against violence. Existing laws were inadequate, discriminatory or limited in scope and depth. Even where some laws existed, they were marred by the undue burden of proof placed on the victim as well as herculean procedural requirements.

This chapter intends to evaluate and analyze the laws that concerns domestic violence, as there is no single parent law criminalizing domestic violence in Nigeria, or statute which could be termed as federal laws on domestic violence in Nigeria. However, the laws that are in place and could be applied to curb the menace would be discussed and the effectiveness of the laws will be discussed. The chapter will also discuss international instruments against domestic violence. These international instruments recognize domestic violence against women as an important issue and emphasis the need to enact laws to protect women from such violence.

4.2 The Constitution

The 1999 Constitution of the Federal Republic of Nigeria being the grund norm came into being after much deliberation by selected citizens of Nigeria both at home and abroad in a constitutional conference where majority of participate advocated a replica of the 1979 constitution.

Section 34(1) of the constitution provides that;

“Every individual is entitled for the dignity of his person and accordingly,”

- a) No person shall be subjected to torture or to inhumane treatment
- b) No person shall be held in slavery or servitude; and
- c) No person shall be required be required to perform forced or compulsory labor.

The above provision is under the Fundamental human rights chapter of the constitution which shows that it is a basic right of every individual citizen of Nigeria. The right to dignity of every person is so fundamental that a violation of this vital right is tantamount to desecrating a sacred shrine. Thus, any form of violence against a person is for whatever reason is an outright violation of that person's right embodied under Section 34 of the constitution. Also every individual is entitled to respect the dignity of his person, and accordingly no person shall be subjected to torture or to inhuman or degrading treatment. Thus in the case of *Uzoukwu v. Ezeonu*, the court of Appeal construed the terms "torture", inhuman or degrading treatment" in Section 34(1)(a) of the 1979 constitution and Section 34(1)(a) of the 1999 constitution to mean:

"Some forms of pain, which could be extreme. It also means to put a person to some form of anguish for excessive pain it could be physical brutalization of the human person, it could also be a mental torture in the sense of mental agony or mental worry. It covers situations where the person's mental orientation is very much disturbed that he cannot think and do things rationally....."

The court also defined "inhuman treatment" as a barbarous, uncouth and cruel treatment, which has no human feeling on the part of the person inflicting the barbarity or cruelty. Hence, domestic violence is inhuman, degrading and a torture as it not only degrades the dignity of the victims, but also amounts to a sheer physical and mental brutalization of the victims.

In the same vein, Section 42 of the 1999 constitution under the chapter iv, guarantees the right to freedom from discrimination. The section states thus:

"(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-

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- a) Be subjected either expressly by or in the practical application of any law in force in Nigeria or any exclusive or restrictive action of the government, to disabilities or restriction to which citizens on Nigeria of other communities, ethnic groups, place of origin, sex, religion or political opinions are not made subject; or
 - b) Be accorded either expressly by or in the practical application of any laws in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizen of Nigeria of other communities, ethnic groups, and place of origin, sex, religion, or political opinion.

2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

The constitution prohibits discrimination on a general note but in a gender blind fashion, it is evidently gender insensitive as it uses the masculine gender pronoun to represent Nigerian citizens of both sexes. Although it generally prohibits discrimination against Nigeria citizens based on membership of a particular ethnic group, place of origin, sex, religion or political opinion nowhere in the constitution is discrimination defined. However, notwithstanding the above provisions Nigeria still fall short of giving male and female equal opportunities and equal access to opportunities to advance socially, economically and political.

The equality of every Nigeria irrespective of sex is further guaranteed by chapter two of the constitution which deals with the fundamental objectives and directive principles of state policy.

Specifically the chapter in Section15 states:

- 1) The motto of the Federal Republic of Nigeria shall be Unity faith, peace and progress.
- 2) Accordingly, national integration shall be actively encouraged, while discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.”

Furthermore section 16(1) states that:

“The state shall within the context of the ideals and objectives for which provisions are made in this constitution”.

- a) Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity”.

One area where the Nigerian constitution appears discriminatory against women is in the area of citizenship by marriage. The 1999 constitution provides for three categories of citizenship; namely: Citizenship by birth, Registration and Naturalization. Which is provided for in Section 26 of the Constitution, Our grouse with Section 26 has to do with subsection 2(a) paragraph (a) invests foreign women married to Nigerian men the ability to become citizens of Nigerian through registration; no similar ability is given to foreign men married to Nigerian women. Accordingly, subsection (2)(a) discriminates against Nigerian women. However subsection (2)(a) may not be unconstitutional under section 42(1) of the 1999 constitution, since sex may not be the only reason for according alien wives married to Nigerian men a legal ability denied to alien husbands of Nigerian women. As Oluyede has observed, in relation to S.24(2)(a) of the 1979 constitution, which provisions are identical to section 26(2)(a):

“Section 24(2)(a) no doubt covers only women, it discriminates against alien husbands married to Nigerian women. This may be justified on the ground that in Nigeria customary law demands that a married woman follows the husband rather than the other way round.....”

Even though the domicile of married women, generally, follows that of their husbands, this still, does not justify Section 26 (2) (a) of the 1999 constitution. As far as citizenship by registration is concerned, no harm would have been done to anybody if section 26(2)(a) has

negative implications not just on the foreign husbands but also on their Nigerian wives. Constitutionally, the position, now, is that a foreigner who desires to become domiciled in Nigeria, with his Nigerian wife, as a citizen of Nigeria, can only do so through the much more rigorous process of naturalization. A process which demands, inter alia, that a foreigner should have, immediately preceding the date of his application for naturalization.

Clearly, on the basis of equality of men and women, section 26 (2) (a) discriminates against Nigerian women and, accordingly, its voluntary of Nigeria's obligations under CEDAW, This Convention provides in article 2(a) that state parties should "embody the principle of the equality of men and women in their national constitutions..."

In spite of the elaborate constitutional entrenchment of human right provisions in successive Nigerian constitutions, the situation of human right observance, safeguards and promotion have not been encouraging. A number of factors have combined to undermine the promotion and protection of human rights in the country. Prominent among these factors include the limited public awareness of the various provisions on fundamental human rights to be able to avails themselves of such rights and to seek remedies when they are infringed.

4.3 Criminal Code Act 2004 LFN 2004/ Penal Code

Under the criminal code any form of violence against all categories of person is prohibited. Violence is categorized as assault under section 252 and 253 of the code. According to section 252 of the code, a person who strikes, touches or moves or otherwise applies force of any kind to, the person of another, either directly, without his consent, or with his consent, if the consent is obtained before fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another making the attempt or threat has actual or apparently a present ability to effect his purpose is said to be assault on the other person and the act is called an assault.

An assault is unlawful and constitute a crime or an offence for which the offender if found guilty will be held liable unless it is justified or authorized or excused by law.

Looking at the express provision of section 252 and 253 of the code. It is clear that every aspect of violence against a person is prohibited and criminalized. It is left for a victim to avail his or herself of these provisions. It is sometimes usual to use the word “assault” to cover the meanings of both assault and battery and that is the sense in which the word is used in section 252. This section requires that where a person attempts or threatens to apply force on another person, he should also have actually or apparently a present ability to effect his purpose. For example of A points a loaded gun at B this is an assault because A has actually a present ability to effect his purpose. If unknown to B the gun is not loaded, but A purports it to be loaded, this is also an assault because A has apparently a present liability to effect his purpose on principle, it would seem that the test should be, not whether this plaintiff apprehends impact, but whether a reasonable person would so do (at least if the defendant does not know of this plaintiff’s humidity. Thus the criminal code has criminalized assault and battery thus this could be used as protection of women against domestic violence although the code provided for various defenses for assault which may include provocation, prevention of repetition of insults, it provides that “it is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an at or insult of such a nature as to be provocation to him for an assault”. The proviso is that the force used is not intended and is not such as is likely to cause death or grievous harm.

Some form of violence is protection where it occurs in family relationship for correction of person over whom the person using force has control over. Section 295 provides for correction of a child, servant and others. The section is to the effect that a blow or other force may be justified provided that it do not in any case lead to a wound or grievous harm: for the

sole purpose of correction. The category of person allowed to dispense such correction includes;

- i) Father, mother or any person allowed to dispense such correction includes:
- ii) A master (master & servant relationship)
- iii) A master of a ship
- iv) Any person been delegated with the responsibility of the correction of a child by his parents or guardian.

Such force is excused and serves as a defence.

The criminal code provides for some form of economic neglect. This economic neglect is strictly prohibited by the new Act. It holds the head of family to the duty to provide necessaries. It specifies that it is the responsibility of every person who, as head of a family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessaries of life for such child; and he is held to have caused my consequences which result to the life or health of the child by reason of any omission to perform that duty. Section 351 provides for the punishment of unlawful assaults. Section 354 gives a more legally definition, more comprehensive than that of the penal code in defining force as it relates to criminal force, it incorporates in it provisions for the benefit of law enforcement agents, persons whose job is to work with ships. The section provides thus; “any person who unlawfully assaults and uses actual violence to a peace officer or any other person while action in the execution of his duty in or concerning the preservation of a vessel in distress, or of any vessel of goods wrecked, or stranded or lying under water, is guilty of a felony, and is liable to imprisonment for seven years.” Chapter 30 of the criminal code provides for assaults on females. The offences of rape is defined as unlawful carnal knowledge of a woman 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. The punishment for rape is life imprisonment, with or without caring. The provision did not cover marital rape as a man cannot be guilty of raping his wife. Thus the code does not sufficiently cover for domestic sexual abuse, the fact that existing rape law allows spousal exclusion makes one wonder who is actually protected?

Although a husband may not be criminally liable for rape, the court recognizes assault in marriages. According to the court's ruling in *Alawusa v. Odusote*, a man can commit common assault on his wife. In the case, in accordance with his native law and custom, the appellant shaved his wife's pubic hair. Consequently the husband/appellant was charged with indecent assault-, the charge was based on Section 360 of the criminal code "Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanor, and is liable to imprisonment of two years." The trial court held the accused guilty of the charge for indecent assault brought against him. On appeal the high court upheld the ruling of the magistrate court but slightly amended the statement of charge to be "indecent assault on a female" instead of just "indecent assault". On further appeal, the west African court of appeal held that an assault between husband and wife cannot really be characterized as 'indecent' consequently, the west African court of appeal quashed the charge of indecent assault contrary to the provisions of section 351 of the criminal code "Any person who unlawfully assaults another is guilty of a misdemeanor and is liable if no greater punishment is provided to imprisonment for one year." The above case showed that even the courts do have a one stand on spousal abuse or assault. Previous court rulings have been silent on the issue of forceful restraint, however in *Resse v. Jackson*, the court ruled that it was illegal for a man to physically restrain his wife in order to have sexual relations with her. Consequent on this

decision, forceful sexual relations with a wife while living apart, without her consent, constitutes an offence of assault on her.

It is clear from the criminal code on rape that the common law rule that a husband cannot rape his wife has been imported into Nigeria. It is presumed that a wife has concurred to having sexual relations with her partner through marriage, and such acquiescence can only be removed or aborted by a separation agreement or divorce. The theory that the husband and wife are one person in law connotes that the very being or legal existence of the woman is suspended during the marriage or at least is incorporated and consolidated into her husband

By law, rape falls under assault. Rape is the most serious kind of sexual assault. Rape is criminalized in the sharia penal laws introduced from 1999-12 northern states insufficient protection or redress for women who have been raped and discriminates against married women. Definition of Rape falls short of the principle underlying the Rome statute definition. Sexual intercourse by a man with his wife is not rape under the penal code. Under the kano sharia penal code rape carries different penalties according to marital status of perpetrator. Punishable with death by stoning of the perpetrator if married, caning and up to life imprisonment of the perpetrator is unmarried. Under the sharia legal code a woman alleging rape must produce a witness or go to imprisonment for one year or up to 100 lashes.

The penal code enlisted, hurt, criminal force, Rape and unnatural and indecent offences against person etc. as various forms of assault against persons.

The penal code provides for grievous hurt defined by section 241 of the penal code. By that section, the following kinds of hurts only are designated as grievous-

- a) Emasculation

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- b) Permanent deprivation of the sight of an eye, of the hearing of an ear or the power of speech;
 - c) Deprivation of any member or joint;
 - d) Destruction or permanent impairing of the powers of any member or joint;
 - e) Permanent disfiguration of the head or face;
 - f) Fracture or dislocation of a bone or tooth;
 - g) Any hurt which endangers life or which causes the sufferer to be diving the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits.

A person is not said to voluntarily cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said to voluntarily cause grievous hurt if intending or knowing himself to be likely to cause grievous hurt of one kind he causes grievous hurt of another kind. Voluntarily causing hurt defined by section 242 as follows:

“whoever does any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person and does thereby cause hurt to any person, is said voluntarily to cause hurt.”

Voluntarily causing harm by a person on another is provided for by this code. Furthermore, section 243 of the penal code provides that:

“whoever voluntarily causes hurt, if the hurt which he intends to causes or knows himself to be likely to cause of grievous hurt and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt.”

If an act done by a person against another is grievous and it is done intentionally the law provides for such offence, this is provided by this section.

Section 244 deals with voluntarily causing hurt on provocation. However sudden provocation is punished by fine or imprisonment of one month. Elaborating on the scope of voluntary causing grievous hurt on provocation section 245 of the penal code states that ; “whoever voluntarily causes grievous hurt on grave and sudden provocation if the neither intends nor know himself to be likely to causes grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment for a term which may extend to four years or with fine which may extend to forty naira or with both.”

Even for purposes of assuagement only, it is discernible that the punishments in the nature of fines have been overtaken by time and economic realities. Yet they remains the law in Nigeria.

Similar to the criminal code, the penal code covers cases of threat to use force in its definition of assault. Section 264 of the penal code defines assault from the stage of preparation and intent to and to the use of actual force

“whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault”

The punishment for assault without provocation is provided for in section 265 of the penal code. It provides that whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished,

- a) With imprisonment for a term which may extend to one year or with fine or with both
- b) If grievous hurt is caused to any person by such assault or criminal force with imprisonment which may extend to three years or with fine or with both.

This aspect of the penal code covers for the punishment regime of punishment for assault or criminal force without provocation. Section 266 of the penal code:

“whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with imprisonment for a term, which may extend to three months or with fine which may extend to forty naira or with both.”

Since provocation is a defence for assault, however the punishment for such criminal force does not measure the crime. The punishment regime for assault upon provocation is minute

Section 268 of the penal code:

“whoever assaults or uses criminal force to any person in attempting to commit theft of any property which that person is then wearing or carrying, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.”

This section deal with assault or criminal force to woman with intent to outrage modesty

Section 270 of the penal code:

“Whoever assaults or uses criminal force for any person in attempting wrongfully to confine that person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both”

This punishment complement the crime of deprivation of a person liberty of fundamental rights. The ambit of this section provides for Assault or criminal force in attempt wrongfully to confine a person.

The provision that cover the punishment of accomplice to sexual assault and deals with procurement of minor girl. The section is to the effect that “whoever by any means whoever, induces any girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to

illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.”

Section 283(1) defined rape that a man is said to commit rape who save in the case referred to in subsection(2) 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 of unsound mind.

Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. And when consent is obtained when she is under fourteen years or of unsound mind is regarded as rape.

Section 283 of the penal code provides for the punishment for rape which may extend to fourteen years of imprisonment and shall also be liable to fine.

The punishment regime for both same sex intercourse and that of rape is fourteen years, section 284 provides that whoever has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine. Mere penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Generally assault is provided for in the penal code, with its punishment regime and crime regime so provided for by it. Like its counterpart the criminal code its provisions are similar to

it voluntarily causing grievous hurt without provocation. Section 247 of the penal code provides that whoever, except in the case provided for by section 245, voluntarily causes grievous hurt shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine. Section 248 provides for grievous hurt without provocation and the punishment of 3 years or with fine or both.

Thus the penal code and criminal code has the same position on marital rape and by implication the court has interpreted it to mean that rape can be done without marriage and that by marriage consent is given to engage in sexual intercourse with the spouse. According to Nwogugu in “Family Law in Nigeria”, “the parties to a marriage owe each other a duty to consummate it.”

Similarly section 55(1)(d) of the penal code provides that an assault by a man on a woman is not offense if they are married, if native law or custom recognizes such “correction” as lawful, and if there is no grievous hurt. This section simply legalizes subtle abuse which is contradictory to the constitution. It can be seen as stated earlier that our customs and culture encourages subtle domestic abuse and this should be tackled to curb domestic violence to its barest minimum.

However, the Matrimonial Causes Act 1970 provides the remedy of dissolution of marriage to a victim of domestic violence.

But the remedy does not apply to all victims of domestic as it is restricted to couples married under the Act. Accordingly, section 15(2)(c) of the MCA 1970 enables a court to conclude that a marriage has broken down irretrievably where the respondent behaves in such a way that the petitioner cannot reasonably be expected to live with. The conduct of the respondent in question must have occurred since the celebration of the marriage. In order to satisfy this requirement, the petitioner must establish, first, that the respondent has behaved in a particular way that the petitioner cannot reasonably be expected to live with the respondent.

In the case of *Olagundoye v. Olagundoye*, physical violence was considered as a behavior which comes under section 15(2)(c). others includes the use of insulting and annoying words on the petitioner and his family. Refusal of sexual intercourse with the petitioner, and ungovernable temper and intemperate drinking.

4.4 The Violence against Persons (Prohibition) Act 2015 (VAPPA):

While the criminal code and penal code capture a good deal of these forms of violence, they are restricted in their application because of definitional limitations and an unattractive relief system: that system consists mainly in a punishment code without any restitution for victims of violence. Besides it is not all-embracing considering modern forms of psychological violence and violence occurring in domestic relations. The VAPPA provides for a broader protection of persons against abuse and violence. However it would have been a very significant development had it been a federal law. This is because of the previously patch work nature of law against violence, particularly gender-based violence. For instance, only a few states have specifically legislated against domestic violence in the past. While only Ekiti state has developed legislation prohibiting all gender-based violence.

It will take too much space to exhaustively discuss the ingredients of all the crimes captured by VAPPA are also offences in most cases under the law. Furthermore, receiving or assisting a person who has committed an offence under the Act is also punishable. These are common refrains throughout the Act.

The expanded definition of raped occupies the first section of the VAPPA. Section 1(1) provides that a person commits the offence of rape if-

- a) He or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else;
- b) The other person does not consent of the penetration; or

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- 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 and 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.

Willfully causing or inflicting of physical injury on a person is so provided for by section 2(1). The means of inflicting such injury may be by any weapon, Substance or object. The section broadens the crime of infliction of injury on another. As oppose to what was obtainable in the other penal laws. The interpretation section defines “dangerous weapon” to mean, “any instrument or machine directed toward a person with the Intention of inflicting bodily harm on such person and includes a gun, knife, stick, whip or other household appliance capable of inflicting bodily harm on a person. Coercing a person to engage in any act to the detriment of that other person’s physical or psychological well-being is also punishable under the VAPPA. The same is obtainable in cases where a person willfully or knowingly places another person in fear of physical injury. This may be relevant where abductors harass their victims with threats of death and other form of violence where the moneys demanded by them are not paid. Even though this offence is more psychological than physical, it has been placed here and appropriately so because of its connection or relationship with physical injury. This is also akin to the offence under section 5 of the Act of compelling another by force or threat to engage in any conduct or act whether sexual or otherwise to the detriment of the victim’s physical or psychological well-being. This is regarded as offensive conduct and may capture situations where victims are compelled to engage in shocking lewd activities recorded for commercial dissemination or the “entertainment” of their captors. A related but peculiar kind of physical violence which is becoming very common is that provided for in section 21(1) of the VAPPA. Any person who uses chemical, biological or causes a substance to be administered to or taken by another

person with the intention of stupefying or overpowering that person so as to enable any person to engage in a sexual activity with that person. “substance attack” is described to mean the exposure of any person to any form of chemical, biological or any other harmful liquid with the intention to cause grievous bodily harm which include but is not limited to acid attack, hot water, hot oil.

Physical violence may not always relate to the bodily integrity of an individual. It may include an attack on property. Therefore, the VAPPA criminalizes causing mischief or destruction or damage to property of another with intent to cause or knowing that it is likely to cause distress or annoyance to the victim. It may even be that the affected property maybe just one in which the victim has a vested interest only and not direct ownership.

Forcefully ejecting a spouse from the home and refusing him/her access is an offence. Section 12(1) criminalizes forced financial dependence or economic abuse. This means forced financial dependence; denial of inheritance or succession rights, the unreasonable deprivation of economic or financial resources to which any person is entitled or which any person requires out of necessity, including household necessities, mortgage bond repayments or payment of rent in respect of a shared residence; the unreasonable disposal or destruction of household effects or other property in which any person has an interest.

Forced isolation or separation from family and friends by, for instance preventing a person from leaving the home or from having contact with family, friends or the outside community is also an offence under section 13(1) of the VAPPA. Abandonment of spouse and children and other dependents without subsistence is prohibited by section 16 of the Act. This involves deliberately leaving women, children and other persons under the perpetrator’s care, destitute and without any means of subsistence.

Spousal battery is punished by section 19 of the Act. By virtue of the Act, this offence may not now always result in visible physical injury or harm to qualify as battery. This is so because even unlawful touching is proscribed of course, other intentional and unlawful use of force or violence including beating or striking against that spouse's will with the intention of causing bodily harm are captured.

Similarly the Act equally criminalizes psychological abuse. Thus by virtue of section 14(1) punishes any person who causes emotional, verbal and psychological abuse on another. This means a pattern of degrading or humiliating conduct towards any person, including repeated exhibition of obsessive possessiveness which is of such a nature as to constitute a serious invasion of such person's privacy, liberty, integrity or security. Section 18(1) contains the next level of psychological abuse namely, intimidation. Intimidation means the uttering or conveying of a threat or causing any person to receive a threat, which includes fear, anxiety or discomfort. To these may be added the offence of depriving another of his or her liberty and stalking. Stalking means repeatedly watching or loitering outside of or near the building or place where the target resides, works, carries on business, studies or happens to be; or following, pursuing or accosting any person in a manner which induces fear or anxiety. Finally, indecent exposure is equally captured. Any person who intentionally exposes his or her genital organs or a substantial part thereof, with the intention of causing distress to the other party, or that another person seeing it may be tempted to commit an offence under any other provision of the Act commits an offence.

Legal violence may conveniently be subsumed under this head. This means using the legal system or machinery to hurt or disrupting the justice system to the emotional hurt of another. Under section 7 for instance, destroying, altering, mutilating or falsifying any book or document, dress or clothing which could serve as evidence or exhibits in the investigation or

prosecution of offenders under the Act or omits or is privy to the omission of any material particular from any such document, book, dress or clothing with the intent to defraud or conceal an offence or frustrate the investigation and prosecution of offenders under the Act are offences. When any of these happens, the psychological and emotional harm to a victim may be heightened due to the fact that the closure which the victim seeks may be unduly postponed or may never be realized. The psychology of an innocent person may be affected negative where the judicial system is ignited against him on false information whether oral or documentary. This is akin to malicious prosecution in tort. However, the ingredients and focus here are less onerous than those of malicious prosecution. Under section 8 of the VAPPA, the aim of such false information is to initiate investigation or criminal prosecution of the victim. Therefore prosecution needs not to have started in this case. However, the statements must be made with such intent.

What has been discussed above shows that the Act captures a good deal of the modern forms of violence. However, it is also observed that the Act touts the pact of the penal legislations in defining these offences. This is to say that in defining the offences, it utilizes the traditional principles of criminal law which indicate that there can be no criminal liability without fault. This will make proof difficult especially when prospective offenders will be protected by the constitution with regards to the principle of *prima facie* innocence of accused person. Moreover, since these are offences, the burden of proof on prosecutors will still be heavy; beyond reasonable doubt. These will continue to give accused person or perpetrators loopholes to escape conviction.

One of the most important feature of the Act is the prohibitory punishment regime. Both in terms of imprisonment and fine the Act is to be commended. The minimum term of imprisonment under the Act is three months while the minimum fine is #100,000.00. In

many instances, a convicted perpetrator may be sentenced to both imprisonment and fine. Below, we take a sample of some of the punishment regime in relation to some of the offences.

Section 1(2) of VAPPA provides that a person convicted of rape is liable to imprisonment for life. However, where the victim is less than 14 years of age, the offender shall be liable to maximum of 14years imprisonment and in all other cases to a minimum of 12 years imprisonment without an option of fine. However, while section 358 of the criminal code the same life imprisonment for rape it does not recognize any amelioration with regards to persons of certain age as the VAPPA, which is not provided for in the criminal code broadens its punishment regime as it relates to rape than the criminal code. Interestingly, section 1(4) of the VAPPA commands the maintenance of a register of convicted sexual offenders which shall be accessible to members of the public.

As stated above, the VAPPA is more than a penal legislation. It provides a scheme of functional and beneficial remedies which are effect-oriented beyond the conviction of perpetrators and placing of sanction. Victims of violence are entitled to receive necessary material, medical, psychological, social and legal assistance through governmental agencies and/or non-governmental agencies which provide such assistance. Thus they are entitled to be readily afforded access to these services. They are entitled to be readily afforded access to these services. They are entitled to rehabilitation and re-integration to enable them acquire pre-requisite skills in vocations of the victim's choice and even access to micro credit facilities. Furthermore, they are entitled to have the offences committed against them reported and any rules or regulations made by any institution or organization prohibiting or restraining such is void. No head of any institution has the power to expel, disengage, suspend or punish a complainant in any form only because he/she made the complaint. Pertinently, the VAPPA

assures complaints/victims of privacy should any proceedings be brought as a result of such complaint.

On the basis of these rights, the High court is empowered to make a protection Order (PO) which is effective throughout the Federation. Such order would usually be a precursor to the issuance of a warrant for the arrest of an offender. Interestingly, there is no limitation in time within which an application for a PO could be sought. Again, an application for a PO can be made personally by the victim and can be made by proxy. Police officers, accredited service providers, counselors, health service providers, social workers and teachers are all competent to apply for a PO on behalf of a victim with his/her consent where the victim can give consent.

Under section 31(1) and (2) VAPPA, the PO is a wide-ranging order and operates not only to prevent further violence or forestall imminent violence but to cater to the overall welfare of the victim. Such order may, depending on the circumstances,

- a) Prohibit the spouse-offender from committing any act of domestic violence or entering a shared household or a specified part thereof; or from entering the spouse's place of employment;
- b) Prohibit the spouse-offender from alienating or disposing of the shared house or encumbering same;
- c) Command the seizure of any arm or dangerous weapon in possession or under the control of the respondent;
- d) Allow the spouse-victim, in the company of a police officer to collect his/her personal belongings in any place where they may be;
- e) Direct the spouse-offender to secure alternative accommodation whether by way of temporary relocation or otherwise;

f) Where the spouse-victim agrees, approve a mediation channel for the parties.

In domestic violence situations, the court can make an interim PO (IPO) where; upon an *ex parte* application there is prima facie evidence that the respondent is committing, has committed or that there is imminent likelihood that he may commit an act of domestic violence. Domestic violence is any act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to safety, health or well-being of any person. where spousal battery results in the infliction of physical injury it may result to an offence and the court would award appropriate compensation to the spouse-victim. The fact that an application for a PO is brought by a spouse against his partner sends a message that such conduct is not tolerated; it however does not mean that the marriage is at an end. The VAPPA acknowledges that such marriage so affected could continue. One of the orders which the court may make under a PO is giving approval to a mediation channel where the spouse-victim to such a process.

Despite the elaborate and attractive institutional, crime, punishment and relief regime which the VAPPA enables, its greatest limitation lies in the territorial application of its provision. Section 47 states that the Act applies only to the Federal Capital Territory, Abuja.

The Act is commendable and it will indeed be worthwhile where the provisions of the VAPPA to be replicated and domesticated by all states legislature in Nigeria.

Some states has also made states laws to protect women against domestic violence, for instant is Cross River State domestic violence and maltreatment of widows (prohibition) Law, which prohibits all inhumane treatment to widows in the name of custom. However the existence of these laws did not prevent abuse against women. The government has passed a number of laws all in the name of protecting women against violence.

In the same vein the Lagos state enacted the Lagos state protection against Domestic Violence Law and this law covers domestic violence against both men and women and children. Section 1 provides that “no person shall commit any act of domestic violence against any person.” It is significant to observe that domestic that domestic violence is not restricted to situations involving only persons who are married or to spouse only. The law cover broad aspect of domestic violence like VAPPA.

4.5 International Treaties

Convention of the Elimination of all Forms of Discrimination against Women 1981 (CEDAW)(Adopted)

As a member of the United Nation, Nigeria was signed and ratified several of the human rights instruments. Some are the general human right instruments that specifically recognize the right to non-discrimination. Such general instruments that provide protection against non-discrimination with Nigeria has signed and ratified include Declaration on the elimination of discrimination against women (CEDAW). Nigeria signed and ratified CEDAW on June 13 1983 without any reservation. It urges state parties to condemn discrimination against women in all its form and pursue without delay a policy of elimination discrimination against women by embodying the principles of equality of men and women in the constitution consisting of a preamble and 30 articles.

CEDAW Articles 16 provides that states parties shall use all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.

By ratifying CEDAW, Nigeria will eliminate discriminatory law and practices against women but the Nigeria government is yet domesticate CEDAW in accordance with the constitution of Federal Republic of Nigeria

The African charter on Human and Peoples' Rights (The African Charter) was entered into force on Oct. 21, 1986. Women rights were recognized in Article 2,3 and 18(3) respectively.

Article 2 CEDAW states that "Every individual shall be entitled to the enjoyment of the rights and freedom recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, color, sex language, religion, political or any other opinion, national and social origin, fortune, birth or other status" CEDAW provide for equality before the law and equal protection before the law.

Article 18(3) of CEDAW provides "the states shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in the international declarations and conventions."

However, this article has its lacuna as it is inadequate in protecting women rights in Africa.

Nigeria also ratified the protocol to the African charter on Human and peoples' Rights in 2005. Article 1 of the African charter as earlier stated defines violence against women and marital rape was included in the definition. The prohibition of marital rape was retreated in Article 4 which states that "states parties shall take appropriate and effective measures against women including unwanted or forced sex whether the violence takes place in private or public"

Article 3(1) states that every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights....."

Nigeria has ratified this instrument and is therefore bound to implement its provisions once domesticated. The consequence of failing to get ratification of an Act or treaty by majority of the various states Houses of Assembly in Nigeria- where a matter to be legislated upon falls outside the purview of the exclusive legislative list—such law enacted by the National Assembly will be made to govern only the FCT, Abuja.

4.6 Is the Effectiveness of these Laws a Fact or Fiction? What are the Challenges of these Laws?

As it is seen above there are various provisions against domestic abuse, however the pertinent question is, are they effective enough to combat this menace or are they just existing?

For instance, despite the elaborate and attractive institutional, crime, punishment and relief regime which the VAPPA enables, its greatest limitation lies in the territorial application of its provision. Section 47 states that the Act applies only to the FCT Abuja. There is no doubt however that the VAPPA provides a model legal framework on violence. This restriction is a great limitation to the effectiveness of this Act in curbing domestic violence in all parts of the states in Nigeria.

Some provisions of the law, rather than protecting women from domestic violence, encourage incidents of domestic violence and give the accused person wide room to escape any punishment. For instance, in section 55(1) (d) of the penal code a man is empowered to correct an erring child, pupil, servant or wife. This section provides Nothing is an offence which does not amount to infliction of grievous hurt upon any person which is done.... By a husband for the purpose of correcting his wife, such husband and wife being subject to any native law and custom under which such correction is lawful. Assuming without conceding that the section does not promote domestic violence, the fact it is gender-based since it only refers to correction of women and not mutual correction, implying that men do not need to be corrected, shows clearly that its existence in our penal code encourages inequalities and discrimination on the ground of sex which is prohibited by section 42 of the constitution. And also the code only designates serious that can lead to loss of life as grievous hurt which can be considered an offence this is why domestic violence is not taken serious until death has

occurred or nearly occurred, and this is not an effect way to curb such menace that has eaten deep in our society today.

Another provision states nothing is an offence by reason that it causes or that it is intended to cause or that it is likely to cause any injury is so slight that no person of ordinary sense and temper would complain of such injury.

Since there is no law against domestic violence in Nigeria, at best a victim who seeks protection under the law will rely on the provisions of the criminal code on common assault. The criminal code considers assault on a woman as a misdemeanor while assault on a man is a felony. This lower sentence of 2years means that assault on a woman is not as serious as assault on a man. Victims of domestic violence are reluctant to use these laws as the justice system is not victim friendly. In some cases the judges openly blame the victims for the violations of their rights. Prosecutors and judges ask patronizing and intimidating questions during investigation and trial and the fear of intrusive questions about their private lives prevent victims from reporting rape and using the legal system.

Again the punishment for rape is life imprisonment with or without whipping. However a man cannot be guilty of raping his wife because under the common law which gave rise to the criminal code, there is mutual consent and contract between a man and his wife. Thus the wife had given up herself unto her husband which she cannot retract.

Sharia law is said to forbid marital rape generally. However, the husband may withdraw maintenance to his wife if she refuses him sexual intercourse. In establishing the offence of rape, the state must prove that the victim did not give her consent. At the same time, the accused in defending himself is allowed to give evidence of prior sexual history of the victim, the partner notwithstanding.

Under the present legal frame work, it is most likely that a victim of domestic violence who lays complaint and pursues legal remedy against the perpetrator will break up her home or create more insecurity problems for herself and her children. It is likely that she will lose the economic support of the male perpetrator. She may be forced out of her matrimonial home and if she returns to her father's house might be driven back to her husband's house of horror. As she cannot support herself and the children, they may end up on the streets or become victims of other forms of abuse. Or she may return to the violent home to face a more aggressive and more arrogant husband. This vulnerability of women discourages them from reporting cases of domestic violence or abuses against them at home, or to seek legal redress. There are no provisions of shelter or other victim rehabilitative services. Hence the essence of the law has failed in its entirety.

The Nigeria legal system is more adversarial than reconciliatory. The indirect outcome of most judicial proceedings is usually the termination or straining of the relationship of the litigants, and this is true of a domestic violence victim who takes the perpetrator to the police station or the court for redress under the present law. Many victims of domestic violence, who lay complaints at police stations usually get taunted, humiliated or their complaints trivialized. In this way the victim suffers more emotional and psychological violence. This is because law enforcement officials of other male dominated institutions, are not sensitized on the issue of domestic violence or trained on how to respond to such complaints. They also operate from the prejudices and stereotypes of the male dominated customs and traditions in the society. Without any effective remedy that would protect her and her children without their leaving the home, she remains silent and sometimes dies from the continued violence or she decides to kill the perpetrator like the case of *The State v. Maryam Sanda* where the accused was sentenced to death for murder of her husband as a result of domestic violence that has been occurring in their marriage leaving the children orphans. Similarly the recent

Makoduchukwu Ndubisi's casewhere a house wife in Nsugbe Anambra stabbed her husband as a result of domestic abuse by her husband and she was subsequently arrested. Thus the question raised from these cases is why can't the laws on domestic violence be enforced strictly the same way the law which criminalizes spousal killing is enforced, this would reduce drastically the killings occurring between spouse as it has been recorded recently. The police attitude towards enforce laws on domestic violence is also a major problem on the effectiveness of laws on domestic violence the idea that domestic violence is a family matter and does not require interference of law thus there is nonchalance by the enforcement agents thus making the law to just exist without effectiveness.

Again, relations, neighbors, and the community who witness the violence in the home may be willing to help, but cannot directly do so under the present legal system, because the victim needs to initiate the complaint as there is no provision for third party complaint.

Under the current legal framework, there is no confidentiality of proceedings nor are there specially designated family courts. The result is that domestic violence cases, especially of sexual abuse, become a public affair and the victims are further traumatized by the disclosure of private matters. The legal system does not take into consideration the specific needs of a domestic violence victim neither does it offer any specific protection.

The current laws do not make adequate provisions for the protection of victims of domestic violence. The victims are usually women and children, and the combination of inadequate laws and male dominated customary religions practices make the victims more vulnerable, without legal or social remedy, there is need for a complete overhaul of the criminal justice system in Nigeria using a victim friendly human rights approach.

The constitution itself contains provision that discriminate against women. More so, it can be argued that the constitution is interpreted as prohibiting discriminating in the public sphere,

or by state agent. Thus leaving no room for redress where discrimination is perpetuated by non-stated actors. There is no known case where violations of women by a private person. the constitution provides in section 26(2) that a woman who is or has been married to a citizen of Nigeria but the silence as to whether a woman married to a foreign national can confer Nigerian citizenship on her foreign husband and thus provision exist despite the fact that such provision has been identified and repealed as discriminatory in other parts of African Nation such as south Africa and Botswana, to mention but a few. Also the constitution is not gender sensitive in so many ways not all it provision are enforceable. A case in point is chapter ii of the constitution, consequently economic social and cultural rights which are also of importance too women are not guaranteed despite the fact that these rights are crucial to the promotion and protection of women human rights and will further aid the full advancement of women the language of the constitution is also gender sensitive as the pronoun “he’ is used in all places where women and men referred to.

Again most of the international instruments ratified and signed by Nigeria against discrimination and abuse of women has not been domesticated thus by implication cannot be enforceable in Nigeria. For instance the CEDAW that provides for broad provisions against discrimination of women has not been domesticated as law in Nigeria.

4.7 Summary

An attempt has been made to recognize the laws on domestic violence in Nigeria. It is evident from the foregoing that although there are laws with covers domestic violence however the effectiveness of these laws is only but a fiction as a result of various challenges stated above. It is submitted that since the issues has been identified that impend the effectiveness of the laws it should be tackled as this will bring significant step in bringing domestic violence to an

end as it enables the public to be conscious of the fact that laws on domestic violence are also applied in practice.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1 Recommendations

In view of the discussion in the proceeding chapters, there seem to be lot of work to be done towards actualizing a domestic violence free society. This can only be achieved when all

hands come on board with serious unpretentious commitment towards realizing these goals.

In view of this, the following recommendations are suggested;

- i) There is a need for government, stakeholders, private and non-governmental organization to embark on sensitization campaign of every individual on the dangers and effect of domestic violence.
- ii) Laws like the VAPPA, CEDAW amongst others that provides against domestic violence should be adopted and domesticated in all thirty-six states of the Federation, in order to guarantee Elimination of all forms of discrimination against women since domesticating this law will provide necessary backing for promotion and protection of women's human rights.
- iii) And also laws that foster or encourage subtle domestic violence should be repealed, for instance section 55 of the penal code and also any law that seems discriminatory should all be amended.
- iv) Proper forum for awareness on the dangers of domestic violence; Nigeria is a country with large number of churches and mosques with many followers; the responsibility thus also falls on the religious leader to embark on a rigorous wide spread enlightenment of adherent on the danger that domestic violence presents for the wholesome psychological development of especially the children in the Nigerian society. Also awareness for the women that domestic violence is not a necessary part in a home and that there is no justification for domestic violence and as early stated religious bodies should also give such awareness that submission does not entail abuse by their partner and beating or violence can never be a means of correction.
- v) Perpetrator should be punished and such punishment made public by publishing the electronics media and newspapers do as to serve as a deterrence to others who may have such tendencies.

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- vi) The Nigeria Police which is the principle law enforcement agency in Nigeria judicial system for ought to be sensitized and trained on how to attend to and treat issues of domestic abuse as a grave National concern and fill report of complaints made without trivializing it as a “family matter.”
 - vii) There is a need for a radical advocacy and legislation on the abolition of all customary practices that limits women’s access to credit, economic resources, property rights and right to inheritance, for only when it is done will the Nigerian society be free from the stereotypes and partriarchy system that tends to give the man absolute power of life and death over the woman which continually serve as catalysis for domestic violence.
 - viii) Also important is the need for constitutional amendments which should include the following:
 - a) Insert an express provision on prohibition of discriminatory customary practices against women in place of the sweeping definition of discrimination.
 - b) The incorporation of the provision of CEDAW on gender equality particularly those on prohibiting discrimination based on sex.
 - c) Section 42(3) and 29(4)(b) of the constitution should be reviewed to accommodate affirmative action provision.
 - d) The language, content and structure of the constitution should reflect gender sensitivity. This will entail changing the masculine gender “He” which is patriarchal in nature to “She/He” to accommodate the female gender.
 - e) Make chapter II of the constitution justiciable.

5.2 Conclusion

In my opinion a home is an apartment or other shelter that is the place of residence of a person and thus a place of love, peace and security. Domestic violence at home creates fear

and can destroy normal family functioning. Living with domestic violence can cause physical and emotional harm to the children too.

Domestic violence must be dealt with, with all seriousness and promptly because of its adverse effects on the victims. Women are majorly the victims and are subjected to physical, psychological and sexual abuse in their home by partners and their in-laws. It is necessary for both men and women to feel safe in their homes without any fear from the people they love the most.

We might not be able to totally eradicate domestic violence from Nigeria however, it can be reduced to the barest minimum.

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religion. Culture and religion are thus inseparable, “just as there is no such thing as a society without a culture, there exists no culture without some form of religion.”

Thus the role of culture and religion has to be channel to combat domestic violence to effectively combat the menace that has eaten deep like a canker worm in the society.