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THE RIGHT TO SEXUAL INTERCOURSE IN NIGERIA:

A PARADISE OR A BOOBY TRAP

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Abstract

In some societies, like the Nigerian society, the public use of the phrase, 'sexual intercourse' sends discordant tunes to an audience in a way that the speaker or writer could easily be misunderstood to be indiscreet. This sensitivity to a discourse on sexual intercourse appears to have veiled a productive research and understanding of the subject matter from generation to generation with the attendant negative effects on the law, health, economy, religion, culture and socio-political life of the country as a whole. This paper is an exegesis of the legal issues that arise from sexual intercourse with the aim of enlightening the relevant stakeholders and guiding policymakers in Nigeria on pragmatic ways to handle this sensitive issue. The paper argues strongly that whereas sexual intercourse, which could be a pleasant or bitter experience, is largely a private affair; there are instances where public authorities must firmly regulate this activity for the preservation of individual lives and societal values. The approach is largely doctrinal with an admixture of analytical and comparative methods where suitable.

Introduction

Sexual intercourse can be likened to a roller coaster ride which, though regarded by some as a fun-filled activity, is fraught with a lot of dangers that may not be manifest when the rider embarks on the journey. There are several legal consequences that go with sexual intercourse and some scholars have described it as a booby trap. A booby trap is a trick or arrangement for the unwary or unsuspecting.¹ Marborough reported as follows:

Former Missouri House Speaker Rod Jetton says the woman he beat during sex consented to it. Now he's charged with a felony—and perhaps a classic casualty of BDSM's legal booby trap....A sexual encounter that lands one person in the hospital (or the morgue) and the other in prison is the ultimate nightmare for people who engage in sex that tests the limits of physical pain.²

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¹"Booby Trap", *Merriam Webster Dictionary*, available at <https://www.merriam-webster.com/dictionary/boobytrap>, accessed on May 26, 2018. It has also been defined as "something

The issue of sexual intercourse has been pushed aggressively at the national and international circles for recognition as a human right.³ On the other hand, sexual intercourse has been viewed as a mere exercise of private emotions that should not in any way be regarded as a human right.⁴ Nigeria, being the largest nation in the African continent has in recent years been on the international news for her stand in relation to issues bordering on criminalization of sexual behavior and the polemics of same sex marriage.⁵ This paper examines the idea of sexual intercourse as a human right in relation to Nigeria. In particular, the paper examines the global conception or debate towards the recognition of sexual intercourse as a human right, the laws in Nigeria regulating permissible and forbidden sexual intercourse and proceeds to review some of the impact of sexual intercourse on other non-legal sectors of society before making recommendations that will guide policymakers. In order to have an informed discourse of the subject of sexual intercourse, it is pertinent to review some of the core concepts involved in the title of this paper.

What amounts to Sexual Intercourse

Sexual intercourse has been viewed from diverse perspectives. The traditional definition has it that “It is sexual union between a male and a female involving insertion of the penis into the vagina”.⁶ This definition appears restrictive as a lot of activities have over time come to be associated with sexual intercourse. According to Merriam Webster Dictionary, “sexual intercourse is sexual activity between two people.”⁷ This definition is broader and accommodates the views expressed by those who see sexual intercourse

dangerous” which “may appear safe” or innocuous. See “Booby Trap” *Cambridge English Dictionary*, available at <https://dictionary.cambridge.org/dictionary/english/booby-trap>, accessed on May 26, 2018.

² L. Marborough, “The Legal Dangers of Rough Sex”, available at <http://www.thedailybeast.com/articles/2009/12/13/the-legal-dangers-of-rough-sex.html>, accessed April 20, 2018.

³ T. K. Raj, “This Too Is a Right: The Right to Sexual Privacy”, available at <http://www.thehindu.com/opinion/op-ed/this-too-is-a-right/article22378799.ece>, accessed on May 26, 2018. Where the author observed that, “The right to engage in sexual intercourse is an intrinsic part of the right to privacy. Privacy has to invariably contain the right to bodily integrity, self-determination and sexual autonomy. By criminalising adultery, the state is in fact showing a paternalistic attitude by telling individuals how to lead their lives and what behaviour to adopt. It carries moralistic undertones of imposing what living an ideal life means for the state. Such an approach seriously undermines the underlying values of personal liberty.”

⁴ See generally, International Women’s Health Coalition, “Sexual Rights are Human Rights”, available at <https://iwhe.org/articles/sexual-rights-human-rights/>, accessed on May 26, 2018.

⁵ S. Eyoboka, J. Agbakwuru & L. Jannamike, “Have rethink on law against Same Sex Marriage. PM May tells Nigeria, others”, available at <https://www.vanguardngr.com/2018/04/rethink-law-sex-marriage-pm-may-tells-nigeria-others/>, accessed on May 26, 2018.

⁶ “Sexual intercourse” *The Free Dictionary by Farlex*, available at <https://www.thefreedictionary.com/sexual+intercourse>, accessed on May 26, 2018.

⁷ “Sexual intercourse” *Merriam Webster Dictionary* available at <https://www.merriam-webster.com/dictionary/sexual%20intercourse>, accessed on May 26, 2018.

beyond the traditional conception; but it may not be suitable for some purposes since sexual activity could involve a variety of actions that may not legally be regarded strictly as amounting to sexual intercourse. For instance, to constitute sexual intercourse under the Nigerian law on rape, there must be a penetration of the vagina with the penis. Thus, the Nigerian Supreme Court has held as follows:

The essential ingredients of the offence of rape are penetration and lack of consent. Sexual intercourse is deemed complete upon proof of penetration of the penis into the vagina. Emission is not a necessary requirement. Any or even the slightest penetration will be sufficient to constitute the act of sexual intercourse. Thus, where penetration is proved but not of such a depth as to injure the hymen, it will be sufficient to constitute the crime of rape.⁸

The approach adopted by the United States in the definition of Sexual intercourse is a bit wider and it covers other sexual activities that may not strictly be regarded as sexual intercourse as stated above by the Nigerian Supreme Court in the rape case. In the case of *Government of the V.I. v Vicars*⁹ it was stated that sexual intercourse is defined as “vaginal intercourse or any insertion, however slight, of hand, finger, or object into the vagina, vulva, or labia, excluding such insertion for medical treatment or examination.” However, some schools of thought, especially the lesbians, gays, bisexuals and transgender community also argue that sexual intercourse is not restricted to the penis and vagina and others see it as extending sometimes to more than two persons.¹⁰

The Nigerian Legislature has in recent times widened the legal conception of acts that can amount to sexual intercourse. Thus, in the *Violence Against Persons (Prohibition) Act*¹¹ it is stated that:

A person commits the offence of rape if-

⁸ *Ogunbayo v The State*(2007) 8 NWLR (Pt.1035) 1572.

⁹ 2009, U.S App. LEXIS 17633(3d Cir.V.1.) Aug.7, 2009.

¹⁰ B. Cotterell, “Florida Court Asked to decide if Gay Sex Constitutes ‘Intercourse’”, available at <https://www.reuters.com/article/us-usa-florida-hiv/florida-court-asked-to-decide-if-gay-sex-constitutes-intercourse-idUSKBN0L80V620150204>, accessed April 27, 2018.

¹¹ Enacted on 23rd May, 2015.

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

For the purpose of this paper, the various acts that are currently recognized under Nigerian Statutes and case law as constituting sexual intercourse will be employed so as not to restrict meaning of sexual intercourse.

What is a Right in Law?

The word “right” is used in various senses and it is the subject of ancient and modern jurisprudential analysis.¹² There is generally no clear cut and acceptable definition of the term and it is applied in a lot of ways by scholars and jurists. In the case of *American Bank & Trust Co. v Federal Reserve Bank of Atlanta*¹³, Justice Holmes observed that, “the word right is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in conclusion. Most rights are qualified.” From the standpoint of law, a right may be defined as “[t]hat which is proper under law, morality or ethics; something that is due to a person by just claim, legal guarantee, or moral principle; it is a power, privilege, or immunity secured to a person by law; a legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong...”¹⁴

This paper focuses directly on the idea of sexual intercourse being regarded as a human right. Whereas there are myriads of definitions of human rights, it is apropos, for the sake of the current discourse to go straight to examine the conception of human rights by the United Nations:

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.¹⁵

From the above, it is manifest that the United Nations from its definition just goes ahead to deal with the importance of right and when a right can be recognized as one but there is no clear definition at all of what the word “rights” actually means. A more functional meaning of human rights is that the phrase means: “The freedoms, immunities, and benefits that, according to modern values (esp. at an international level), all human beings should be able to claim as a matter of right in the society in which they live.”¹⁶ The sum total of the above, is that human rights refer to those species of legitimate, recognized and accepted claims, demands and expectations which persons under a political community are allowed under the law to make and enforce for their benefit or the benefit of others by virtue of being human beings.

An Individual’s Sex life: A Private or a Public Affair

There are diverse opinions on whether the sex life of a person is a private or public affair. Before stretching the issue it is important to note that “Sexual rights like reproductive rights includes rights surrounding homosexuality (as well as bisexuality and transgender issues), infertility, family planning, domestic gender-based violence and so on.”¹⁷ The sex life of persons, which is largely done or demonstrated in private has been the subject of international discourse. In discussing the 1994 International Conference on Population and Development (ICPD), Knudsen¹⁸ made reference to The Cairo Program of Action (a policy document which defines reproductive health) to the effect that “reproductive health implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide

¹² A. Chroust “Some German Definitions of Law and Legal Philosophy from Kant to Kelsen”, 22 *Notre Dame Law Review* 365 (1947) available at <http://scholarship.law.nd.edu/ndlr/vol22/iss4/1>, accessed on June 15, 2018. Where the author made an exegesis of the term right from series of philosophers and schools of jurisprudence.

¹³ 256 U.S 350, 358, 41 S. Ct. 499, 500 (1921).

¹⁴ B.A Garner, *Black’s Law Dictionary* Seventh Edition (USA: West Group:1999) p.1322

¹⁵ United Nations. “What are Human Rights”, available at <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>, accessed on April 28, 2018.

¹⁶ B.A Garner, Op. cit atp.745.

¹⁷ L. M. Knudsen. *Reproductive rights in a Global Context* (Vanderbilt University Press: Nashville, 2006)xvii.

¹⁸ *Ibid* p. 6

if, when and how often to do so...” Marborough discussed the issue of the private or public nature of one's sexuality as follows:

Section 1(2) of the Sexual Offences Act 1967 states that a homosexual act in private between consenting adult men is not an offence. Section 1(2) provides that an act is not done in private if, inter alia, more than two persons take part or are present. There are no provisions for the regulation of private homosexual acts between consenting adult women or for private acts between consenting heterosexual adults. Section 1(2) was successfully challenged under Articles 8 and 14 in *ADT v UK* (2001) 31 E.H.R.R. 803. The acts, which took place at the home of one of the defendants, came to light when the police found video recordings on a search of the home. The charge related to the acts rather than the making of the videotapes. The Court considered that the sole element which could give rise to doubt about whether the applicant's private life was involved was the video recording of the acts. The Court found it unlikely that the applicant, who had hidden his sexual orientation and had requested anonymity, would knowingly be involved in publication of the tapes.¹⁹

In the words of Dorothy Roberts,²⁰ “reproductive freedom is a matter of social justice, not individual choice”. Sullivan noted that both the duty to protect the family and privacy rights discourage direct state intervention in the life of the family. She however explained that “the family is the site of many of the most egregious violations of women's physical and mental integrity, any blanket defence to the institution of the family or privacy rights within the family has disastrous consequences for women.”²¹ One cannot agree less when Sullivan states further that, “although the declaration of public and private realm is a gendered process, gender does not operate in isolation from other factors in the construction of public and private life. The parameters of “public life” are not uniform even within a single national setting.”²²

¹⁹ L. Marborough, “The Legal Dangers of Rough Sex”, available at <http://www.thedailybeast.com/articles/2009/12/13/the-legal-dangers-of-rough-sex.html>, accessed on June 1, 2018.

²⁰ D. Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage Books, 1997)6.

²¹ D. Sullivan, “The Public/Private Distinction in International Human Rights Law”, in Julie Peters and Andrea Wolpher (Ed), *Women's Rights Human Rights* (Routledge, New York 1995)127.

²² *Ibid*

One area where the argument on privacy of sexual intercourse plays out is between couples in marriage.²³ The issue is often whether a spouse in a marriage has the right to forcefully have sex with his partner against the other's wish. There are several cases on rape in marriage even though the definition of rape in the criminal laws of some countries do not recognize marital rape.²⁴ According to the World Health Organization:

An example of the way in which the law has an impact on sexual health is the legal understanding of rape, which has historically been understood as sexual intercourse by a man with a woman who is not his wife, through force and against her will, involving vaginal penetration by a penis. Under such a definition, women who have been raped by their husbands, women who have been raped anally, men and transgender individuals cannot claim, legitimately, to have been raped. International criminal law has evolved to define rape in much broader terms, covering different invasive acts perpetrated by and against people of any sex or gender, and recognizing that rape within marriage is a crime in all circumstances.²⁵

The argument has often been that it is necessary to protect the sanctity and privacy of marriage. This position has been challenged strongly. According to Duncan,²⁶ “one argument offered in favour of maintaining the immunity is that the prosecution for marital rape would destroy every opportunity for reconciliation between the parties while others maintain that prosecution will involve a disclosure of intimate details of the matrimonial relationship, and that this might prove to be a tedious and stressful process for the parties involved.” Duncan further stated that:

Marital rape has extremely serious consequences for victims....Marital rape can lead to suicidal thoughts. More importantly, marital rape is often accompanied by life

²³ Generally speaking the law in some countries is slow, if not against interfering with the intimate relations between a man and his wife. Thus in *Alawusa v. Odusote* (1941) 7 W.A.C.A 83, the accused shaved the public hair on his wife's private part and was charged with indecent assault. The court held that the assault as between husband and wife could not properly be characterized as indecent and he was convicted of an assault under section 351 of the Criminal Code.

²⁴ See for example section 6 of the Criminal Code Act of Nigeria which states that “unlawful carnal knowledge” means carnal connection which takes place otherwise than between husband and wife.”

²⁵ See World Health Organisation, “Sexual Health, Human Rights and the Law”, available at http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=8ED939993CC0A2DEBFAEACFC6E8D86B?sequence=1, accessed on June 5, 2018.

²⁶ B. Duncan, “Marital Rape as a Form of Domestic Violence and the Need for Law Bond (Ed), *Voices of African Women* (Carolina Academy Press, Durham 2005) 151.

threatening violence, including verbal threats; the use of weapons such as guns, knives, belts, and cigarettes; slaps or severe beatings; and other harmful sexual practices. Of fundamental importance there are the negative long-term effects of marital rape on women these include negative feelings towards men in general; lack of confidence in oneself; severe depression; anger; desire to hurt; and a general hatred of sex. Findings suggest that women who are victims of marital rape suffer additional risks of other bodily injury and even murder²⁷

The point to note is that sexual intercourse is an act that is largely done privately and secretly and it is difficult to have state or public regulation without interfering with another fundamental right, which is the right to private and family life. On the other hand to ignore what goes on in the private, may be paying deaf ears to the criminal violations of other competing fundamental rights like the right to human dignity, freedom from torture among others. This therefore calls for a balance in appropriate circumstances. Thus, it is impracticable to totally pigeonhole the issue of sexual intercourse as being a matter for privacy of the individuals since the actions could have variants that affect other rights which the state also owes individuals a duty to protect.

Much Ado about the Right to Sexual Intercourse Globally

There has been a lot of agitations, arguments and proposals that sexual intercourse should be regarded as a human right. The World Health Organization²⁸ reported as follows:

In the past two decades, an important body of human rights standards pertaining to sexuality and sexual health has been developed. This includes: interpretations by United Nations human rights treaty monitoring bodies of the content of human rights provisions; international, regional and national court decisions; International consensus documents; and reports by the United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health, among others. These standards are made operational through the enactment and implementation of laws, regulations and policies at the national level. Laws matter because they set

²⁷ *Ibid* p.150.

²⁸ See World Health Organisation: "Sexual Health, Human Rights and the Law", available at http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=8ED939993CC0A2DEBEAEACCF6E8D86B?sequence=1, accessed on June 5, 2018.

the rules of society and can provide the framework for the implementation of sexual-health-related policies, programmes and services. They can provide human rights guarantees, but they may also create limitations. Either way, laws and regulations have an impact on the enjoyment of the highest attainable standard of sexual health.

The issue of advocacy for the right to sexual intercourse is multi-dimensional and it cuts across the unmarried, the married, same sex persons, the transgendered, prisoners among others. Collins addressed this issue in part from the American perspective as follows:

The sexual revolution was about more than whether women should be able to feel as free to have sex before marriage. It was also about whether women-single or married had as much right to enjoy sex... women began to argue- out loud- that the right to satisfying sexual experience was important, perhaps right up there with equal pay.... The big thought of the 1960s was that sex should become perfectly natural part of everyday life, not much more than dramatic and profound than a handshake.²⁹

Conversely, opponents of the advocacy for the right to sexual intercourse are of the view that it is a matter of private choice and the government should concern itself with rights that literally affect public interest.³⁰ In some countries the right to sexual intercourse is seriously curtailed and any expression of such private activities or proclivities are criminalized and the persons found guilty are punished.³¹ Same sex marriage and the sexual act of sodomy is criminalized under the criminal justice system in India. In *Koushal SK & Anor v NAZ Foundation & Ors*³², the Supreme Court of India issued a ruling reinstating Section 377 of the Indian Penal Code which bans gay sex.³³ In South Africa, a person can exercise his right to have sexual intercourse and this can be exercised from the age of sixteen years and above. The history of the reception of Western-style marriage into South African law can be traced to the Supreme Court of Appeal decision in *Fourie v Minister of Home Affairs*³⁴, where the court pointed out that "the definition of marriage as between one man and one

²⁹ G. Collins, *When Everything Changed, The Amazing Journey of American Women From 1960 to the Present* (Little Brown and Company, New York 2009) 167-175.

³⁰ C.F Stychin, "Faith in the Future: Sexuality, Religion and the Public Sphere", available at <https://academic.oup.com>, accessed on June 15, 2018.

³¹ Example in Nigeria, see Sections 1 & 2 of the *Same Sex Marriage (Prohibition) Act, 2014*, Civil Appeal No. 10972 of 2013.

³² T.S Sathyanarayana, K.S Jacob, "The reversal on Gay Rights in India", available at <https://www.ncbi.nlm.nih.gov>, accessed on June 15, 2018.

³⁴ 2005 (3) SA 429.

woman is a colonial imposition, imported via the Roman-Dutch law into our legal system.”³⁵

It is the clamour for the right to sexual intercourse in some countries that gave rise to the legalization of “sex work” in some countries. As Olomjobi noted: “Sexual Liberalism may be defined as the belief that sex is positive, therefore society should not restrict sexual freedom, sexual activities and sexual expression as long as it is between two consenting parties. This theory forms the basis for legalized prostitution in countries such as Italy and Holland.”³⁶ Far back in the year 2004, Paul Hunt, Special Rapporteur to the United Nations Commission on Human Rights had opined, *inter alia*, “that the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads, ineluctably to the recognition of sexual rights as human rights.”³⁷ Whether the submission of Paul Hunt was right or wrong could be made a subject matter of jurisprudential debate, but it essentially corroborates the fact that the issue of sexual intercourse being or not being a human right has attained such prominence at a global level.

The Law and Sexual Intercourse in Nigeria

There are several laws in Nigeria regulating sexual intercourse and a proper understanding of these laws is crucial to appreciating whether the act of sexual intercourse is a paradise or a booby trap. Some of the areas where the law addresses issues bordering on sexual intercourse are considered below. It is vital to stress from the onset that there are circumstances where sexual intercourse is permissible and there are circumstances where the law expressly forbids it.

Permissible Sexual Intercourse

Some of the circumstances where sexual intercourse is allowed by the law are:

Sexual intercourse within marriage

Sexual intercourse between persons duly married to each other is generally permissible, except in instances discussed under forbidden sexual intercourse. It is worthy to note as discussed below that permissible sexual intercourse between consenting adults does not extend to persons of the same sex in Nigeria

³⁵ P.D Vos & J. Barnard, “Same-Sex Marriage, Civil unions and domestic partnerships in South Africa: Critical Reflections on an Ongoing Saga”, available at <https://constitutionallyspeaking.co.za>, accessed on June 15, 2018.

³⁶ Y. Olomjobi, *Human Rights on Gender, Sex and the Law in Nigeria* (Princeton Publishing Co., Lagos 2013), 81.

³⁷ *Ibid*, where the author provided the extract of the report by Paul Hunt.

or persons in a union that may amount to Bigamy.³⁸ Under the *Matrimonial Causes Act*,³⁹ a denial of sexual intercourse, which is an integral part of the rights of consortium is a valid ground for divorce.⁴⁰ On the other hand, it is important to add that the *Protocol to the African Charter on the rights of Women in Africa*,⁴¹ allows women the right to their sexual and reproductive health and it is possible for women to decline to have sexual intercourse in pursuance of some of the ancillary rights contained under the rights to their sexual and reproductive health. Sexual intercourse, among other benefits, has its fundamental role in creating new human life, sometimes called the procreative dimension of sexuality and also, sexual union expresses and deepens the love between a husband and a wife. This is called the unitive, or relational, aspect of sexuality.⁴²

Sexual intercourse between consenting adults

Under the Nigerian law, sexual intercourse between two unmarried adults of the opposite sex, who consent to the act is generally not regarded as an offence, although the behaviour may be frowned at under religious or cultural circles⁴³. However, where the action amounts to prostitution under the Criminal Code Act of Nigeria, it may be regarded as an offence punishable with imprisonment.⁴⁴ In India, consensual heterosexual intercourse between adults, including pre-marital sex, is not an offence except in cases where the partners are liable to be charged for adultery⁴⁵. According to Assumi⁴⁶, “While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital settings, with the exception of adultery”. It is also worthy to note that, although the Criminal Code generally gives varying ages for consent to have carnal knowledge for some of the

³⁸ See Section 370 of the Criminal Code Act of Nigeria.

³⁹ Laws of the Federation of Nigeria, 2004, CAP M7. Section 15 (2)(a).

⁴⁰ A. Onibokun, “Refusing to Consummate; Ground For divorce”, available at www.legalnaija.com/2014/09/refusing-to-consummate-ground-for.html?m=1, accessed on June 20, 2018.

⁴¹ Adopted by the Assembly of the African Union in Maputo on 11th July, 2003, CAB/LEG/666.

⁴² For Your Marriage: “Marital Sexuality”, available at <http://www.foryourmarriage.org/marital-sexuality/>, accessed on June 4, 2018.

⁴³ Y. Olomjobi, *Op.cit* at 179-180 where the author cites portions of the Bible and Quran that forbid such actions including some cultural reservations.

⁴⁴ Section 225A. The law seems to lay more emphasis on male prostitution.

⁴⁵ D. Mahapatra, “The Times of India: Except Adultery, Consensual Sex No Offence, Says Supreme Court”, available at <https://timesofindia.indiatimes.com/india/Except-adultery-consensual-sex-no-offence-says-SC/articleshow/5873672.cms>, accessed on June 4, 2018.

⁴⁶ N.K Assumi, “Sex among Consenting Adults No Statutory Offence”, 2010 available at <http://www.lawyersclubindia.com/forum/SEX-BY-CONSENTING-ADULTS-19583.asp>, accessed on June 4, 2018.

offences, the Childs Right Act which is a latter legislation defines an adult to be a person that has attained the age of 18 years.⁴⁷

Forbidden Sexual Intercourse

There are instances where the law clearly forbids sexual intercourse and engaging in such acts attract legal consequences. Some of these forbidden acts are highlighted below:

Sexual intercourse between adults and underage persons:

In 2003, Nigeria adopted the *Childs Rights Act* to domesticate the Convention on the Rights of the Child. With regard to sexual intercourse with children, the Act provides in Section 31, that-

- (1) No person, shall have sexual intercourse with a child.
- (2) A person who contravenes the provision of Subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.
- (3) Where a person is charged with an offence under this section, it is immaterial that—
 - (a) the offender believed the person to be of or above the age of eighteen years ; or
 - (b) the sexual intercourse was with the consent of the child.

The above provisions simply mean that sexual intercourse between an adult and a minor in whatever form is prohibited and such adult cannot claim that he or she believed the minor to be 18 or the intercourse was with the consent of the child. Sexual intercourse between an adult and a child can give rise to various offences such as rape, defilement, indecent treatment or indecent assault among others.⁴⁸ In the Nigerian Supreme Court case of *Edwin Ezeigbo v The State*⁴⁹ Ibrahim Tanko Muhammad, JSC in his concurring judgment frowned at sexual intercourse with children as follows:

The facts revealed in this appeal are sordid and can lead to a conclusion that a man can turn into a barbaric animal. When the appellant was alleged to have committed the offence of rape, he was 32 years. His two young victims: Ogechi Kelechi 8 years old and Chioma Kelechi 6 years, were, by all

⁴⁷ For instance Sections 218, 221 and 222 of the Criminal Code deals with ages 13-16. See specifically the Article II of the African Charter on the Rights and Welfare of the Child (OAU Doc. CAB/LEG/24.9/49 (1990) and the Childs Right Act of Nigeria 2003 which all provide for 18 years).

⁴⁸ See generally Sections 216, 218,221,222, 352 and 357.

⁴⁹ (2012) 212 LRCN 54.

standard, under aged. What did the appellant want to get out of these under aged girls? Perhaps the appellant forgot that by nature, children, generally are like animals. They follow anyone who offers them food. That was why the appellant, tactfully induced the young girls with ice cream and zobo drinks in order to translate his hidden criminal intention to reality, damning the consequences. Honestly, for an adult man like the appellant to have carnal knowledge of under aged girls such as appellant's victims is very callous and animalistic. It is against the laws of all human beings and it is against God and the state. Such small (under aged) girls and indeed all females of whatever age need to be protected against callous acts of criminally like-minded people of the appellant's class. I wish the punishment was heavier so as to serve as deterrent.

Rape

The Nigerian Criminal Code and the Penal Code all prohibit sexual intercourse that is devoid of consent or where the consent is obtained forcefully or by some other means.⁵⁰ Rape occurs when any person has sexual intercourse with a woman or girl, without her consent or against her will. The Violence Against Persons (Prohibition) Act (VAPPA) 2015, has expanded the frontiers of the offence of rape, to cover novel ways and methods of sexual gratifications and may be committed by both sexes. Section 1 of the Act defines rape as when a person intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else without consent, or with incorrectly obtained consent. The Child's Right Act 2003 which is a law promulgated for the protection of the Nigerian Child also expands the scope of the offence of rape. Under this law, the crime of rape accommodates both male and female offenders and on any child (male and female).⁵¹ Consent is also not a defence thus making liability for the crime very strict so as to protect innocent minors.⁵²

Adultery in some parts of Nigeria

Adultery is a matrimonial wrong committed by one partner in a marriage having sexual intercourse with someone other than his spouse. Merriam-Webster Dictionary defines the term 'adultery' to mean "voluntary sexual intercourse

⁵⁰ See section 357 of the *Criminal Code Act* and Section 282 of the *Penal Code Act*.

⁵¹ D. Abayomi, "Nigerian Laws on Rape", available at <https://www.alpsedge.ng/2017/08/08/rape-in-nigeria-forced-penetration/>, accessed on June 13, 2018.

⁵² See Section 31(3)(b) of the Act.

between- a) a married man and someone other than his wife; or b) a married woman and someone other than her husband".⁵³

In the Northern parts of Nigeria, adultery is a crime under the Penal Code while the laws of the other parts of the country does not criminalize adultery. Section 387 of the Penal Code provides for adultery in the following words:

Whoever, being a man subject to any customary law in which extra-marital sexual intercourse is recognized as a criminal offence, has sexual intercourse with a person who is not and whom he knows or has reason to believe is not his wife, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery...

The law requires the prosecution to prove the fact that the accused is subject to a customary law in which adultery is a criminal offence. The need for the prosecution to prove this essential ingredient of the offence of adultery is germane because failure to prove same is detrimental to the case of the prosecution.⁵⁴ For instance, in the case of *Alhaji Ibrahim-Farashi V. Sheru Yakubu*⁵⁵ a charge of adultery failed because of the inability of the prosecution to prove this essential ingredient.

Bigamy

The word bigamy is defined as "the act of marrying one person while legally married to another."⁵⁶ This definition is similar to the provision of Section 370 of the Criminal Code Act which defines bigamy as: "Any person who having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life time of such husband or wife, is guilty of a felony and is liable to imprisonment for seven years". Bigamy is an offence in some parts of Nigeria. A good example is the decision of the court in the popular case of *Aoko v. Fagbemi*⁵⁷ where it was held that adultery is not a crime in Southern Nigeria, since it is not provided for anywhere in the laws of

⁵³ Merriam Webster Dictionary available at <https://www.merriam-webster.com/dictionary/sexual%20intercourse> accessed on May 26, 2018.

⁵⁴ E. Aghedo, "Reflections on the Offence of Adultery under the Northern-Nigeria Penal Code: Common Evidential Issues Ignored", available at http://www.academia.edu/36209118/REFLECTIONS_ON_THE_OFFENCE_OF_ADULTERY_UNDER_THE_NORTHERN-NIGERIA_PENAL_CODE_COMMON_EVIDENTIAL_ISSUES_IGNORED, accessed on June 2, 2018.

⁵⁵ (1970) NNLR 17.

⁵⁶ B.A Garner, *Black's Law Dictionary* Seventh Edition (USA: West Group:1999) p.154

⁵⁷ (1961) ANLR 400. See Section 36(8) & (12) 1999 Constitution.

Southern Nigeria but in the Northern part of Nigeria, adultery is a crime as provided in the Penal Code Laws of the various states.

Bestiality

Bestiality simply is copulation by a human with an animal⁵⁸. In Nigeria, bestiality is an offence.⁵⁹ In some Western societies it is not an offence to have sexual intercourse with animals, for instance, in Canada sex acts with animals may be legal provided no penetration is involved.⁶⁰

Sexual intercourse with Idiots and persons of unsound mind

Section 221 of the Criminal Code prohibits sexual intercourse with girls under sixteen and of idiots or imbeciles. As Okonkwo states:

Any person who (a) has or attempts to have unlawful carnal knowledge of a girl being of or above 13 years and under 16 years of age; or (b) knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her; is guilty of a misdemeanor, and is liable to imprisonment for two years, with or without whipping.⁶¹

The reason why the law frowns at sexual intercourse with these categories of persons is that they, among other factors, lack the requisite mental capacity to give informed consent.⁶²

Sexual intercourse with persons of the same sex

The Criminal Code prohibits sexual intercourse between persons of same gender. Section 5(2) of the *Same Sex (Prohibition) Act* 2014 makes the direct or indirect public show of same sex amorous relationship in Nigeria an offence punishable with 10 years imprisonment.⁶³ As Okonkwo further observed: "The term unnatural offence includes sodomy or buggery or bestiality. Under Section 214 of the Criminal Code any person who has carnal knowledge of an animal; or permits a male person to have carnal knowledge of him or her against the

⁵⁸ "Bestiality" *The Free Dictionary by Farlex*, available at <https://www.thefreedictionary.com/sexual+intercourse>, accessed on June 4, 2018.

⁵⁹ See Section 214(2) of the Criminal Code Act of Nigeria.

⁶⁰ See The Vanguard Newspaper June 10, 2016 Canada: Sex acts with animals are legal, Supreme Court rules available at <https://www.vanguardngr.com/2016/06/canada-sex-acts-animals-legal-supreme-court-rules/>, accessed on June 4, 2018.

⁶¹ C. O Okonkwo, *Okonkwo and Naish: Criminal Law in Nigeria 1980*, (London: Sweet and Maxwell), 276, See also Section 221 of the *Criminal Code Act* CAP 38 Laws of the Federation of Nigeria 2004.

⁶² See generally C.O. Okonkwo, Op.cit at pages 276-277

⁶³ Same Sex (Prohibition) Act 2014 Laws of the Federation 2004.

order of nature; is guilty of a felony and is liable to imprisonment for 14 years.”⁶⁴

Going Beyond the Legal Implications of Sexual Intercourse in Nigeria

Apart from the legal aspects, sexual intercourse, whether permissible or forbidden, has its implications. This section of the paper discusses some of the possible implications such as the health, economics, religious, educational and cultural implications of sexual intercourse. Some of the implications are negative while some are actually positive.

Health Implications

Forced or unguarded sexual intercourse often gives rise to injuries to the sensitive sexual organs of both sexes. In some instances, persons with medical conditions such as fibroid or genital inflammations can experience negative impact from sexual intercourse.⁶⁵ Daru observed in relation to rape that, “physical indicators may be present, such as bruises on the skin, abrasions to wrist and ankle, bruises to genital areas and rectal abnormalities. Hymenal abnormalities may be present from chronic abuse or acute injury”.⁶⁶

Sexual intercourse may have a negative impact on the psychological health of persons in society, especially when the act is unpleasant or the affected party has good reasons not to enjoy same. The resultant effect may be depression, withdrawal, fear and feelings of disgust.⁶⁷

Another common implication of unprotected sex prevalent in the society today is unwanted pregnancy is a pregnancy that is unplanned, untimed or unintended and many women with unwanted pregnancies decide to end them by abortion. This can endanger women’s reproductive health and lead to serious, often life-threatening complications.⁶⁸ Knudsen, in addressing the issue of the implication of sexual intercourse stated that:

⁶⁴ *Ibid* at p. 277. See also Section 214 of the *Criminal Code Act CAP 38* Laws of the Federation of Nigeria 2004.

⁶⁵ O. Babarinsa, “Painful sex maybe early signs of fibroid” *Punch Newspaper* 7 February 2017, available at <https://www.google.com/amp/punchng.com/painful-sex-maybe-early-signs-fibroid-expert/amp/>, accessed on June 18, 2018.

⁶⁶ P.H. Daru, “Analysis of cases of rape as seen at the Jos University Teaching Hospital, Jos, North Central Nigeria”, available at www.njcpnline.com, accessed on June 18, 2018.

⁶⁷ E.C Neilson, J. Norris and C. A Stappenbeck, “Sexual Assault Severity and Depressive Symptoms as Longitudinal Predictors of the Quality of Women’s Sexual Experiences”, available at <https://www.ncbi.nlm.nih.gov>, accessed on June 20, 2018.

⁶⁸ A. Bankole, B. A. Oye-Adeniran, S. Singh, I. F. Adewole, D. Wulf, G. Sedgh, R. Hussain, “Unwanted Pregnancy And Induced Abortion In Nigeria: Causes And Consequences”, available at

A study of secondary school students in Kabale found that 31 percent of girls and 15 percent of boys reported being coerced into having sex. Likewise, a study of fifteen-to nineteen-year-old sexually experienced girls reported that 14 percent were coerced into having sex for the first time. Those girls who reported coerced sex were less likely to be currently using contraception or to have used a condom with their last sexual encounter, and they were more likely to have experienced an unwanted pregnancy and a sexually transmitted infection.⁶⁹

Sexually transmitted infections (STIs), also known as sexually transmitted diseases (STDs) are diseases such as HIV, gonorrhea, trichomoniasis, genital herpes, syphilis, genital warts among others that are passed on from one person to another through sexual contact such as vaginal intercourse, oral sex, and anal sex.⁷⁰ These diseases can also be transmitted through use of unsterilized needles, blood transfusion or breast-feeding. Sexually transmitted infections are more easily passed on during unprotected sex.⁷¹

Irrespective of the negative swipes that have been made against sexual intercourse, it has been said that the act has many benefits to the human system⁷². For example, it is said to improve the immune system, ensure better sleep, boost libido, improve women’s bladder control, lower blood pressure and reduce the likelihood of prostate cancer in men.⁷³ Furthermore, sexual intercourse is regarded as a form of exercise which lowers the risk of having heart attack, reduces stress, calms the mind or reduces anxiety.⁷⁴ Sexual intercourse between two persons of the opposite sex may result in child bearing and it could bring a lot of pleasure to the parties and family members, especially when the child was desired. Thus, the birth of a child in some circumstances is seen as a positive thing even if the initial act of sexual intercourse may have

<https://www.gutmacher.org/sites/default/files/pdfs/pubw/2006/08/08741141/Nigeria-UP-IA.pdf>, accessed on June 5, 2018.

⁶⁹ L. M. Knudsen, *Reproductive rights in a Global Context*, (Vanderbilt University Press: Nashville, 2006) 42-43

⁷⁰ C. Nordqvist, “What You Need To Know About STDs”, available at <https://www.medicalnewstoday.com/articles/246491.php>, accessed on June 5, 2018.

⁷¹ *Ibid*

⁷² S.A Vasilenko, E. S Lefkowitz and J.L Maggs, “Short-term Positive and Negative Consequences of Sex Based on Daily Reports among College Students”, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3394901>, accessed on June 20, 2018.

⁷³ H. Nicholas, “Ten health benefits of sex”, available at <https://www.medicalnewstoday.com/articles/316954.php>, accessed on June 19, 2018.

⁷⁴ *Ibid*.

been unwelcome.⁷⁵ However, technological advances in the field of reproductive biology have enabled couples considered infertile, without sexual intercourse, to conceive and have babies through series of methods such as implantation.⁷⁶ However, sexual intercourse cannot result to procreation where persons of the same sex have sex; either of the individuals does not have the capacity to procreate or where birth control measures were used during sex.⁷⁷

Economic Implications

Sexual intercourse has a great economic impact. Baumeister and Vohs⁷⁸ expounded the theory of sexual economics. The theory treats sex as a resource, for which there exists a marketplace in which women are the sellers and men are the buyers. Although mating is typically a matter of one man and one woman, or in economic terms one buyer and one seller, the main contest is not buyer against seller. Thus, to a large extent, the act could have a positive or negative impact on the economy.⁷⁹ Uncontrolled sexual passion has brought ruination to the finances of many persons.⁸⁰ On the other hand, it has been argued that sex work has its own financial benefits or gains. As Emmanuel stated "...if for nothing, it enables the prostitute make money which she uses to keep body and soul going. Many of the "Italo babes" buy houses and send cars to their parents. This is clearly an economic benefit of prostitution which even the greatest critic of the profession cannot wish away".⁸¹ However, it may be expedient to point out that the financial benefits of sexual intercourse must be weighed side by side with other damning consequences discussed in this paper.

Another factor to consider is that when sexual intercourse results in sexually transmitted diseases like HIV/AIDS, victims are often being stigmatized and the

⁷⁵ A. Karlstrom, A. Nystedt and I. Hildingsson, "The meaning of a very positive birth experience: focus groups discussions with women", available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4600272>, accessed on June 20, 2018.

⁷⁶ Oxford Academic, *Human Reproduction Update* Vol. 16 Issue 1, available at <https://academic.oup.com/humupd/article/16/1/96/705754>, accessed on June 5, 2018.

⁷⁷ M. Castleman, "How Birth Control Pills Affect Women's Sexuality", available at <https://www.psychologytoday.com/us/blog/all-about-sex/201411/how-birth-control-pills-affect-womens-sexuality>, accessed on June 19, 2018.

⁷⁸ R.F. Baumeister, K.D. Vohs "Sexual economics: Sex as female resource for social exchange in heterosexual interactions", available at <http://doi.org/10.1016/j.joep.2017.07.009>, accessed on June 5, 2018.

⁷⁹ R.F Baumeister, "Competing for Love: Applying sexual economics theory to mating contests", available at <https://www.sciencedirect.com/science/article/pii/S016748701630277X?via%3DiHub>, accessed on June 5, 2018.

⁸⁰ E. I. Obarisiagbon, A. I. Obarisiagbon, "Prostitution in Nigeria: A Legal Paradox, Socio-Economic Causes and Effects", available at <http://www.unimaid.edu.ng/oer/Journals-oer/Social/General/Paper%20A%209.pdf>, accessed on June 5, 2018.

⁸¹ *Ibid*

chances of their gaining employment, even when they may be qualified, is reduced.⁸²

Religious Implications

Religious opinions on sexuality vary greatly between faiths depending also on the degree of religious commitment.⁸³ However, most religious institutions disapprove sexual activities outside marriage and same sex marriage.⁸⁴ Knudsen reported that: "The church's public stance on issues like sex education, contraception, and abortion run contrary to women's reproductive rights and public health concerns."⁸⁵ According to Adamczyk and Hayes:

Some cross-national attitudinal studies find that Muslims and Hindus tend to have more conservative sex-related attitudes than do Christians ... Likewise, in the few studies that survey people of different religions within the same nation, Muslims appear less likely than Christians to have premarital sex ... Researchers have also found that Jews tend to have more liberal sex-related attitudes than do Christians ... Finally, in the handful of studies that examine Buddhists, results are inconsistent.⁸⁶

Research has shown that some churches have strict disciplinary measures for persons who participate in forbidden forms of sexual intercourse. This may range from denial or removal from leadership positions to suspension or excommunication.⁸⁷ Furthermore, studies have shown that women attending

⁸² L. Sprague, S. Simon and C. Sprague, "Employment discrimination and HIV Stigma: Survey results from civil society organisations and people living with HIV in Africa", available at <https://unaidspebngo.org>, accessed on June 20, 2018.

⁸³ A.D.M. Abbott, J. E. Harris, D. Mollen, "The Impact of Religious Commitment on Women's Sexual Self-Esteem", available at <https://link.springer.com/article/10.1007/s12119-016-9374-x>, accessed on June 5, 2018.

⁸⁴ F. Hertz and E. Doskow, *A Legal Guide for Lesbian and Gay Couples* 2012 (USA: Bang Printing) 122. Where on the grounds of religious objections, doctors in a fertility clinic refused to treat a California lesbian.

⁸⁵ L. M. Knudsen, *Reproductive rights in a Global Context*, (Vanderbilt University Press: Nashville, 2006) 76.

⁸⁶ A. Adamczyk and B. E. Hayes, "Religion and Sexual Behaviours: Understanding the Influence of Islamic Culture and Religious Affiliation for Explaining Sex Outside Marriage", available at journals.sagepub.com/doi/pdf/10.1177/0003122412458672, accessed on June 6, 2018.

⁸⁷ See HTS Theological Studies, "Handling of pastoral misconduct and discipline: Evidence from the Apostolic Faith Mission in Zimbabwe church", available at http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S0259-94222017000300049, accessed on June 6, 2018 where it was observed that any pastor who commits serious misconduct such as immorality is subjected to disciplinary measures.

church more regularly have greater levels of guilt related to petting, initial sexual experience and current sexual behavior. Women also reported more negative perceptions of non-procreative sexual activities, such as oral-genital sex and anal intercourse.⁸⁸ Some studies show that women are more religious than men and that their religiosity has a stronger impact on their sexual behavior than their male counterparts.⁸⁹

Educational Implications

Sexual intercourse has the potency to adversely impact on individuals and other stakeholders in the educational sector. The impact is multi-faceted and it could be a combination of other implications which directly or indirectly affects education. It has been observed that most young girls with unwanted pregnancies are left with no choice but to drop-out of school to avoid being embarrassed by their schoolmates, teachers and friends. Pregnant university students in some ways too are directly or indirectly forced to quit their studies to stay at home until they give birth.⁹⁰ According to the United Nations Educational, Scientific, Cultural Organization:

For an adolescent girl (aged 10–19 years old), experiencing pregnancy while still at school often means facing harsh social sanctions and difficult choices that have life-long consequences. Becoming pregnant could mean expulsion from home and school; being shamed and stigmatized by family, community members and peers; increased vulnerability to violence and abuse; and greater poverty and economic hardship.⁹¹

Sexual intercourse between students, teachers and students or members of staff have been shown to adversely affect the fiduciary relationship and productivity and the discipline expected in an academic environment.⁹²

⁸⁸ J. K. Davidson, N. B. Moore & K. M. Ullstrup "Religiosity and Sexual Responsibility: Relationships of Choice." *American Journal of Health Behavior*, (2004)28(4), 335–346.

⁸⁹ M.J. McFarland, "The Role of Religion in Shaping Sexual Frequency and Satisfaction: Evidence from Married and Unmarried Older Adults", available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3119480/>, accessed on June 5, 2018.

⁹⁰ See Daily Trust, June 6, 2018 "Effects of Unwanted Pregnancy Among University Students", available at <https://www.dailytrust.com.ng/news/home-front/effects-of-unwanted-pregnancy-among-university-students/28565.html>, accessed on June 6, 2018.

⁹¹ See UNESCO, "Early and Unintended Pregnancy", available at <http://unesdoc.unesco.org/images/0024/002484/248418e.pdf>, accessed on June 6, 2018.

⁹² S.M Plaut, "Boundary Issues in Teacher-Student Relationships", available at <http://www.advocatweb.org/publications/articles-2/educator/boundary-issues-teacher-student-relationships/>, accessed on June 20, 2018. The author dealt with the risk factors involved in crossing boundaries in an educational setting and advocated development of institutional guidelines and policies to define appropriate behaviour.

Social Implications

The act of sexual intercourse may have an outcome that has certain social implications such as social stigma, victimization or loss of social ties. Research has shown that often times, victims of rape, in order to avoid the stigma associated with the act, fail to report their predators to the appropriate authorities to avoid public scrutiny of their lives.⁹³ Furthermore, carriers of unwanted pregnancies who may be victims of rape, more often than not, resort to abortion to avoid rejection, humiliation, intimidation and oppression from their family members and other members of the society.⁹⁴ Persons who have sex or openly declare sexual interest in individuals of the same gender can lose social ties with friends, families or colleagues that are opposed to their sexual orientation.⁹⁵ In the same vein, members of the society may not want to socialize with victims and perpetrators of rape, HIV/AIDS patients or carriers of unwanted pregnancy. This results in loss of social cohesion.⁹⁶ In a situation where, for instance, a clergyman is found guilty of sexual violence, there are possibilities that he will be perceived differently and members of the society may be reluctant in relating with him.⁹⁷

Cultural Implications

There are cultural implications of sexual intercourse and this varies from one cultural group to another. However, there are certain sexual activities that are generally forbidden and have consequences. One of such forbidden sexual relations is that between persons of close relations known as incest. Incest is any form of overt sexual relations between persons related to each other by either blood or marriage like brother and sister, father and daughter.⁹⁸ In some societies, incest is a taboo and it is considered to have grievous side effects such as generational curse on the family and ostracization. In some cultural groups,

⁹³ See International Journal of Women's Health and Wellness, available at <https://clinmedjournals.org/articles/ijwhw/international-journal-of-womens-health-and-wellness-ijwhw-1-004.pdf>, accessed on June 6, 2018.

⁹⁴ See World Health Organization Paper on Sexual Violence, available at www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf, accessed on June 6, 2018.

⁹⁵ Y. White, T. Sandfort and R. Pierre, "International Journal of Sexual Health: Official Journal of the World Association for Sexual Health", available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5325687/>, accessed on June 20, 2018. The author stated that because one's family is usually the primary source of social and economic support, disclosure of sexual identity may be impeded by fear of loss of economic support.

⁹⁶ E. Rehn and E. J. Sirleaf, "Women, War and Peace", available at <https://www.3F71081FF391653DC1256C69003170E9-unicef-WomenWarPeace.pdf>, accessed on June 22, 2018.

⁹⁷ A. Adjamagbo, "Influence of Relationship Situation on Responses to Unintended Pregnancy in Dakar", available at https://www.cairn-int.info/article-E_POPU_1301_0067--influence-of-relationship-situation-on-r.htm, accessed on June 6, 2018.

⁹⁸ L.C Gupta, K. Gupta, *Sex and Sensuality*, (Edo: Beulahland Publications, 2013) 76.

it is the custom that the persons involved undergo spiritual cleansing to prevent evil occurrences such as inexplicable abnormal births, birth defects and diseases.⁹⁹

In most cultures, sexual intercourse with animals is a taboo with heavy sanctions accompanying the perpetrators. Research has shown that sexual activity between mankind and other animals has been an integral part of human life since the dawn of civilization. There was evidence of bestiality in the ancient Near East, ancient Egypt, ancient Greece, and ancient Rome, but with varying legal consequences: Whereas some cultures did not punish bestiality at all, others subjected the bestialist and the animal to death. For instance, ancient Egypt portrayed bestiality on tombs and in their hieroglyphics, while ancient Greece often used themes of bestiality in their mythology (e.g. Leda and the swan.) and the ancient Romans also incorporated bestiality themes into their mythology.¹⁰⁰

A surprising number of countries do not have laws outlawing sex with animals though they have laws prohibiting who one can marry.¹⁰¹ In Nigeria, bestiality is a crime and it is equally frowned at by some cultural groups in the country. In 2014, An Upper Area Court in Kuje Area Council of the Federal Capital Territory (FCT), Abuja sentenced a 20-year-old tailor to one year imprisonment for bestiality (having a sexual intercourse with a she-goat).¹⁰² Where pervasive sexual intercourse is prevalent in a given society, it often generates some alienation from that culture. Indiscreet sexual intercourse could have a way of blacklisting the society, for example a society that encourages incestuous relationships as a culture may attract a stigma that affects interaction with persons from less queer societies.¹⁰³ Thus, while some manifestations of sexual intercourse may be a tea party in some cultures, it could attract serious reprehension and abhorrence from persons from other cultures.

⁹⁹ A.A Emmanuel, "Taboos and the Maintenance of Social Order in the Old Ondo Province", available at <https://www.ajol.info>, accessed on June 22, 2018.

¹⁰⁰ Daisy, "Bestiality in ancient civilizations", available at <http://upperclassmonroe.blogs.wm.edu/2014/08/25/4-bestiality-in-ancient-civilizations/>, accessed on June 6, 2018.

¹⁰¹ J. Glass, "All the countries where bestiality is legal but not same sex marriage", available at <https://www.pinknews.co.uk/2018/03/22/where-is-bestiality-legal-still/>, accessed on June 6, 2018.

¹⁰² See Leadership Newspaper, August 28 2014 "Nigeria: Bestiality - Tailor Bags 12 Months for Having Sex With Goat", by IghoOyoyo available at <http://allafrica.com/stories/201408280214.html>, accessed on June 6, 2018.

¹⁰³ D.F Aberle, U. Bronfenbrenner and E.H Hess, "The Incest Taboo and the Mating Patterns of Animals", available at <https://anthrosource.onlinelibrary.wiley.com/doi/pdf/10.1525/aa.1963.65.2.02a00020>, accessed on June 22, 2018.

Conclusion

The task of this paper was to show that whereas sexual intercourse may be regarded as a paradise, it has actually been seen as a booby trap depending on the perspective of the assessor. The paper found that as a result of the fact that individuals have different sexual orientations, the reactions on the issue of sexual intercourse when raised is often that of quick dismissal. Some persons feel talking about it is 'nasty', 'immoral' or 'unnecessary.' While some people pretend to be shy about the subject, others persons address sex issues tactically. However, as shown in this paper, the awareness on the right to sexual intercourse is fast growing and has reduced the rate of abortions, increased the rate of family planning, reduction of unemployment and prevalence of sexual violence cases in the society.

This paper has brought to fore the implications of sexual intercourse in the society and in particular that the results of uncontrolled sexual escapades can have a catastrophic effect on individuals and society at large. The paper has further brought out the cultural differences in perspectives and in particular the reservations of certain societies about the move to make sexual intercourse a human right. More specifically, the paper has unveiled the fact that sexual intercourse especially within the four walls of marriage, when carried out with sensitivity to the health and emotional status of the other partner, can be very beneficial in strengthening ties of the marriage among other great benefits. In the light of the above, it is pertinent to make the following recommendations:

Need for universal clarification of the issue of sexual intercourse

It is necessary for the United Nations to take out time to deal with the issues pertaining to sexual intercourse and have a uniform definition of what amounts to sexual intercourse. Such definition should state clearly who the beneficiaries of the right are, what is permissible and what is forbidden. The regime where this critical issue is left to chance creates a lot of confusion as one moves across countries and this is not good for posterity.

Early education on sexual intercourse

Considering how little children have been seriously abused, sex education should begin as early as possible. Religious, cultural and educational institutions should encourage people in deconstructing their negative thought patterns on sex. Proper sex education will nurture good values and not leave a bad impression in the minds of kids and adults.¹⁰⁴ People should be educated on their sexual rights and also taught to express their sexual orientation without

¹⁰⁴ See F. Qureshi, "Importance of Sex Education" *Nation News* February 12, 2018, available at <https://nation.com.pk/26-Feb-2018/importance-of-sex-education>, accessed on June 6, 2018.

fear so that they can be guided appropriately. Increasing awareness of sexual violence should be a central component of any sex education program given the prevalence of sexual violence in society.”¹⁰⁵

Sexual assertiveness

Beyond the knowledge about issues of sexual intercourse lies the need for individuals to be sexually assertive. Many types of power come into play in sexual relationships—physical, social, economic, intellectual and even power gained through one's physical attractiveness. It takes a lot of resistance to conquer the battle and stay victorious or sane.¹⁰⁶ Sexual assertiveness means recognizing the warning signs of inappropriate sexual advances or relationships and having the sense of empowerment and the skills to say no!¹⁰⁷

Increased Research on Implications of Sexual Intercourse

Governments, civil societies and financially blessed bodies should sponsor research programs and conferences on sexual rights issues. This would go a long way into bringing to limelight certain areas of sexual rights issues that have not been addressed at all.

Training of Relevant Authorities

Law enforcement agents, lawyers and judges have to be continuously trained on how to monitor, protect, prosecute and adjudicate on sexual abuse cases. Knowledge of emerging trends in the law and proper handling of victims and suspects are critical factors to the attainment of justice since the subject is a very sensitive one.

Sanctioning of perpetrators of sexual abuse

The sanctioning of perpetrators of sexual assault, abusive sexual relationships and domestic violence is a complex task that must be taken into account together with the healing of survivors and ensuring their future safety, the safety of the community.¹⁰⁸ In order to meet these multiple goals, an appropriate mix

¹⁰⁵ L. M. Knudsen, *Reproductive rights in a Global Context*, (Vanderbilt University Press: Nashville, 2006) 42.

¹⁰⁶ R. Korzec, “Viewing North Country: Sexual Harassment Goes to the Movies” *University of Baltimore Law Review* Vol. 36 No. 3 Spring 2007 p.307, where the author observed that, “Sexual harassment is about power. It underscores the workplace reality that men and women are unequal. A woman struggling to establish herself at work can be swept off balance by a reminder that she can be raped, fondled, or subjected to repeated sexual demands.”

¹⁰⁷ P. E. Adams, “Sexual Assertiveness and Adolescents' Sexual Rights”, available at <https://www.guttmacher.org/journals/psthr/2002/07/sexual-assertiveness-and-adolescents-sexual-rights>, accessed on May 30, 2018.

¹⁰⁸ University of Michigan, Sexual Assault Prevention and Awareness Center, available at <https://sapac.umich.edu/article/197>, accessed on June 6, 2018.

of sanctions should be determined for each case; stiff sanctions should be imposed against persons found guilty of sexual violence and abuse of vulnerable persons in society.

Incentives to victims

Provisions should be made available for victims who suffer from sexual abuse to enable them easily report or litigate on the subject. Easy access to justice is critical so as to encourage victims of sexual abuse to voice out their ordeals without hesitation.

Trial of sexual abuse to be in private

Whereas open trial of sexual offences could serve as a deterrent to prospective perpetrators, this could have an adverse impact on victims because of the social stigma this may portend. More so, an accused perpetrator is still presumed to be innocent, until proven guilty. It is therefore appropriate to make provisions for private trials and those found guilty could then have their names well-publicized without publicizing the names of their victims.