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THE UNKNOWN WOMAN: PROTECTING HER WOMANITY AS A *SINE QUA NON* TO PRESERVING THE FAMILY UNIT IN NIGERIA

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ABSTRACT: *The family unit is the basic unit of society and same cannot (literally speaking) be birthed without the woman or its foundation concretized without her nurture. However, it seems from happenings in the Nigerian society that the Nigerian woman is faced with some challenges that endangers her well-being, her role as a vessel of demographic growth and her indispensable nurturing function in the home. Many of these challenges appear to be caused by the masculine gender. Though and sadly so in some cases as would be shown anon, women themselves are the harbinger of some of these problems. Canvassing the emancipation of the woman has been the focus of many female gender rights activists and this paper aims to contribute to same vide an examination of the challenges that face the female folk in Nigeria and in extension the family unit with its negative effects on the larger society from a social cum legal perspective or discourse. The spectrum of this discourse will traverse issues like abandonment, effects of superstitious belief in witchcraft, death in the course of earning a living, break-up of the family unit due to meddlesomeness of third parties, sexual violence against women and alleged complicity of law enforcement agents in shielding its perpetrators and a host of other varied issues.*

KEYWORDS: The Unknown Woman, Womanity, Sine Qua Non, Family Unit, Nigeria

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INTRODUCTION

The family unit is the basic unit of society and same cannot (literally speaking) be birthed without the woman or its foundation concretized without her nurture.

However, it seems from happenings in the Nigerian society that the Nigerian woman is faced with some challenges that endangers her well-being, her role as a vessel of demographic growth and her indispensable nurturing function in the home front. Achi-Kanu J. sums up the foregoing when his lordship stated in *State v Anolue*[1] that 'Indeed, society recks with violence, and often the weaker sex as well as other unprotected members of the society are targets.' This view of his Lordship is fortified by that of his brother judge Nzeako, JCA in *Upahar v State*[2] where his Lordship of the Court of Appeal said: 'Befitting punishment must be meted out to persons who seek to defile and degrade woman-hood and in particular the ever helpless girl-child. This will act as a deterrent to others.'

Many of these challenges appear to be caused by the menfolk. Though and sadly so in some cases as would be shown anon, women themselves are the harbinger of some of these problems.

The spectrum of this discourse will traverse issues like abandonment, effects of superstitious belief in witchcraft, death in the course of earning a living, break-up of the family unit due to meddlesomeness of third parties, sexual violence against women and alleged complicity of law enforcement agencies in shielding its perpetrators and a host of other varied issues.

Agitating the woman's *maumissio*[3] has been the focus of many female gender rights activists and this paper aims to contribute to the same video an examination of the challenges that face the female folk and in extension the family unit with its negative effects on the larger society from a social cum legal perspective or discourse.

The spectrum of this discourse will traverse issues like abandonment, effects of superstitious belief in witchcraft, death in the course of earning a living, break-up of the family unit due to meddlesomeness of third parties, sexual violence against women and alleged complicity of law enforcement agents in shielding its perpetrators and a host of other varied issues. The above itemized issues would form the subject of our next discourse.

Abandonment

Nigeria like most other societies of the world is replete with cases of dysfunctional families or broken homes. While some that seem intact are in reality irretrievably broken.

Each spouse in a union has a complementary role to play in raising the family and the neglect by one or the other of his or her roles will negatively affect the family. There are many instances where men for various reasons have abandoned their wives or women by whom they have borne children only for them to start another family with another woman in another location afresh. Men in this clime sometimes take shield behind the non-formalization of the marriage to commit this act. This could arise due to lack of financial wherewithal to perform the marriage ceremony which includes the payment of the dowry and which in some Nigerian societies is

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[1] (1983)1 NCR 85.
[2] (2003) 6 NWLR (pt. 816) 230.
[3] [Roman Law] The giving of his freedom to a slave; setting him free from the 'hand' or *potestas* of his master. See *Osborn's Concise Law Dictionary* (Eighth Edition, Sweet & Maxwell 1993) 212.

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quite expensive or from the woman becoming pregnant at a time when the couple were financially unprepared to bear the burden of a wedding ceremony. In such cases, the parties would have to be content with an introduction ceremony where they and their family members would be introduced to each other. After which they start living under the same roof as a couple. It happens that some men during the pendency of this premarital cohabitation or union meet other women and may decide to abandon the present woman in their lives who may even at that time have borne them a child or children in order to marry their new love. And in order to reassure this new flame of their commitment they may decide to marry her under the Marriage Act under the pretext that there is no subsisting valid marriage preventing them from so doing.

Such occurrences have formed the subject matter of litigation especially where the man seeks to contract another marriage under the Marriage Act while his previous union still subsists. Caveats have been filed to such proposed marriages but in some cases the courts have discharged such caveats and have held that the union between the parties was nothing more than an introduction of the couple to each other's families and same does not constitute a valid marriage that could prevent the man from contracting a marriage under the Marriage Act thus abandoning the woman with a child or children with the consequent burden of playing the role of both parents to them.

Two decided authorities illustrate this situation. The first is *Ogunremi v Ogunremi & Anor*[4] which ratio revolves around the duty of a caveatrix to establish affirmatively a pre-existing marriage. The court was therefore called upon to decide whether an *Idana* (payment of dowry) ceremony not followed by a marriage ceremony amounts to a customary marriage. The court held that while a party to a subsisting customary marriage is precluded from marrying another person under the Marriage Act during the subsistence of a customary marriage, the customary marriage must be satisfactorily established by the caveatrix. Also that the requirements of a customary marriage under the Ado-Ekiti[5] customary law are: (a) agreement between the parties, (b) formal introduction of the two families, (c) the Idana (payment of dowry) ceremony and (d) the wedding ceremony; and that while the first three are *sine qua non*, the last (i.e the wedding ceremony) is not and that in that case the caveatrix had not established satisfactorily a customary marriage between herself and the 1st respondent.

Similarly, In the matter of *An intended marriage between E.O Beckley v Christiana O. Abiodun re a caveat entered by Kusimo Soluade & Beckley*[6], the court per Ames, J. held that 'the

[4] U.I.L.R Vol. 2 (pt. IV) 466 at 470-471

[5] A town of the Yoruba tribe of Nigeria.

[6] 17 N.L.R 59. E.O. Beckley, a Lagosian, while living in Lagos became engaged to be married to Miss Alade of Lagos. His employment caused him to leave Lagos and reside in Jos. While residing in Jos he authorized his father, E.B Beckley, who lived in Lagos, to carry out on his behalf the ceremony of Idana (also called Ana). This a ceremony which has to be performed by parties to a marriage by Yoruba (Lagos) law and custom, and it can be done in a party's absence by an authorized proxy. The ceremony was duly performed by the father on behalf of his son, who paid the cost. Miss Alade continued to live with her family in Lagos, and E.O. Beckley remained in Jos, where he subsequently met Miss Abiodun. He made a proposal of marriage to her, which she accepted, and they decided to contract a marriage under the provisions of the Marriage Ordinance, Chapter 68, and so he gave notice of their intended marriage to the registrar of marriages at Jos. Kusimo Soluade, a legal practitioner of Jos, entered a caveat on the instructions of E.B. Beckley, who was subsequently joined as a co-caveator by order of court. The ground of the caveat was the Idana ceremony, which had been performed with Miss Alade in Lagos, and the caveators argued that this ceremony effected a marriage by Yoruba law and custom so as to preclude a party from affecting a marriage with any other person under the provisions of the Marriage Ordinance.

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performance of the Idana ceremony without a subsequent taking of the girl to the intended husband's house did not effect a marriage by Yoruba (Lagos) law and custom so as to preclude the intended husband from making a marriage with another person under the provisions of the Marriage Ordinance.'

Cases of abandonment become more worrisome where the woman is restrained from moving on with her life as the erstwhile husband or fiancé may resurface with the intention of reclaiming his wife or prevent other men from having any form of matrimonial relationship with her. Such instance is illustrated by the case of *Halilu Mohamman v Government Police*[7] where Jones S.P.J. held that a husband cannot abduct his lawful wife under S.273 of the Penal Code since he has a legal right to take her from where she is and by force if necessary. The case of *Umaru San v The State*[8] also illustrates this situation. Here the appellant was arraigned and charged before the Kaduna State High Court on a one count charge of culpable homicide punishable with death. He was alleged to have stabbed one Ibrahim Yusuf on the neck when he broke into his ex-wife's room in the night and found the deceased with his ex-wife. The accused was convicted and sentenced to death and his appeal to the Supreme Court of Nigeria was dismissed.

Witchcraft

Many African societies to which the Nigerian heterogeneous society belong are bedeviled with superstitious beliefs one of which is witchcraft. An unwritten 'customary crime'[9] which is commonly alleged against women (Wizardry not being so common an allegation).

It is a pervasive African belief that a man's fortune may improve or decline depending on the woman he marries. Many women have been accused of being the reason for the downturn of her husband's fortune or to be the cause of a problem in the home or community through the instrumentality of witchcraft and some women because of this have had their lives forfeit. *Muhammedu Gadam v The Queen*[10] is a case in point. The court on an appeal to it by the Appellant against his conviction by the lower court held that though prevalent, the belief in witchcraft is unreasonable, being fraught as it is with such terrible results. The court here quoted a passage from *R v Isekwe Ifereonwe*[11]and held thus:

[7](1970) N.N.L.R 98 at 99. The undisputed facts are that on the material day Appellant, who was a soldier, returned from the war-front and went to the house of one, Sa'idu and threateningly demanded back his wife Faji, 2 P.W who was then living with Sa'idu. Sa'idu ran away. Appellant then entered the house and forced Faji to go away with him. The prosecution case is that Faji divorced Appellant before marrying Sa'idu. The crux of this case is whether the alleged divorce did in fact take place.

[8] (2018) All FWLR (pt.950) 1622

[9] See the case of *Aoko v Fagbemi* (1961) 1 ALL NLR 400 which interprets Section 36(12) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999. The section provides that 'Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.'

[10] 14 W.A.C.A 442. Appellant's wife had a miscarriage and was mortally ill; this he bona fide attributed to her having been bewitched by two women, and he struck one of them on the head with a hole-handle in the belief that striking her would destroy the spell, of which blows she died.

[11] 1950 W.A.C.A.79

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> I have no doubt that a belief in witchcraft such as the accused obviously has is shared by the ordinary members of his community. It would however, in my opinion be a dangerous precedent to recognize that because of a superstition, which may lead to such a terrible result as is disclosed by the facts of this case, is generally prevalent among a community, it is therefore reasonable. The Courts must, I think, regard the holding of such beliefs as unreasonable and leave it to those who exercise the Royal Prerogative of mercy to say whether the sentence prescribed by law should be mitigated.' We wish to say we entirely agree with those observations, and do not doubt that the circumstances of this case will be carefully considered by the proper authority.

Assault

Some men have been known to 'rape' their wives under the shield that a man cannot be legally said to have raped his wife during the subsistence of that marriage while some assault their wives in the presence of their children and even total strangers. In *A.L.E. Alawusa v Lydia Ade Odusote*[12], the facts proved were that appellant shaved the pubic hairs of the complainant whom he had married in accordance with Native law and custom and the only point to be decided upon was whether a conviction of a man for indecent assault on his wife can stand. The court in so deciding held:

> In the present case the appellant undoubtedly committed as assault the enormity of which a very slight acquaintance with native ideas will suffice to make apparent, but we do not think that as between husband and wife it could properly be characterized as indecent. It is, however, clear that the Magistrate could have found the appellant guilty of a common assault contra. Sec.351 under the provisions of section 58(1) Chapter 20, and we accordingly, in exercise of our power under section 11(2) of the West African Court of Appeal Ordinance substitute for the verdict of guilty of indecent assault contra.sec.360 a verdict of guilty of assault contra. section 351 of the Criminal Code and pass sentence of six weeks imprisonment with hard labour.

Meddling by Third Parties in Matrimonial Squabbles

Many women have had their marriages truncated by the meddlesomeness of their own relatives or in-laws. While counselling may be desirable intermittently in marriages, intrusion by third parties is unwelcome and could lead to the termination of the marriage and its consequent effect on the family unit. In *Rex v. Zaalim Frafra*[13] the court held that:

> There is undoubted evidence in this case to show that an assault and battery were committed in the prisoner's presence upon his wife, and the question is, was such assault and battery sufficiently violent to reduce the crime to manslaughter? Violence is a question of

[12] 7 W.A.C.A 140
[13] 4 W.A.C.A 61

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> degree. The evidence here is slight but it must be considered, and it is to the effect that the assailants caught hold of the prisoner's wife in order to take her to her father- out of the custody and control of her husband in order that the marriage between them might be dissolved, because the prisoner's father had incurred the debt of a cow which it was said the prisoner should have redeemed. The wife not unnaturally resented this and did not want to part from her husband and had the prisoner not shot his arrow when he did, it is impossible to say to what lengths the assault and battery upon the wife would not have gone.

Likewise, in *Racheal Omosebi v Rufus Omosebi*[14] which is a divorce petition and cross-petition brought by the parties against each other at the Ondo State High Court. The couple were married on the 27th of June 1970 at St. Thomas's Anglican Church Isikan, Akure. They lived together for about four years from the date of marriage until the 15th of February 1973 when the wife started to live on her own. The marriage was blessed with three children. Adeloye J. after reviewing the facts of the case expressed his verdict thus:

> The mother of the Petitioner who was not available to give evidence put her full weight behind the petitioner in disobeying the Respondent and embracing the Jehovah Witness Sect. The mother herself belongs to that sect. She contributed in no small measure to the disintegration of her daughter's home, first, by persuading the petitioner to embrace her own 'God' rather than the 'God' of the Respondent; secondly, by giving the petitioner and the children of the marriage refuge against lawful injunctions of the Respondent; and thirdly, by providing the financial comfort for the petitioner whereby she could shun her dependence on the Respondent. It is my finding that immediately the petitioner embraced a sect different from the one into which she was married, without the consent of and against stiff opposition from her husband, she was in breach of the promise 'to obey' to which she answered "I WILL" on the 27th of June 1970, at the St. Thomas's Church Akure. By her persistence in the disobedience, she would not take part in the naming ceremony of her children, she refused also to be party to their baptism in the church to which she was married. The disobedience was followed immediately by her packing away from the matrimonial home on 15th February 1973 to her mother's house where she has lived ever since. I hold that as from the said 15th February 1973 the petitioner was in desertion contrary to s.15 (2) (d) of the Matrimonial Causes Act. I further hold that in consequence of the desertion of the Respondent by the Petitioner, the marriage celebrated between the couple, Viz: Rufus Akinwummi Omosebi at St.Thomas's Anglican Church Isikan Akure, on the 27th day of June 1970 has broken down irretrievably and I hereby pronounce a Decree Nisi of its dissolution.

[14] (1985) HCNLR 667 at 672 – 674.

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In the same vein, in *Turton v Turton*[15], the petitioner admitted his own adultery. The respondent persistently and unreasonably refused to form a proper home with the petitioner in his house. The petitioner in consequence set up an establishment with a woman with whom he lived happily up to his bringing these proceedings when on legal advice he discontinued living with the woman. The petitioner brought these proceedings to enable him to marry the woman with whom he had been living. She was willing to marry the petitioner if and when he obtained a final decree of divorce.

Graham Paul, J. in this case held *inter-alia*:

> The evidence I have heard suggests that the respondent's own mother was partly to blame for her daughter's contumacious attitude to her husband. The respondent is an illegitimate daughter. Her mother married after the respondent's birth. The petitioner, the year after his marriage had to bring proceedings in Court against the respondent's mother and her husband for harbouring his wife. However that attitude of the respondent's arose, it is not surprising to learn that after fifteen years of such travesty of married life the petitioner in 1927 set up an establishment with one Mrs. Anthony; and it appears that they lived together a contented and happy life from 1927 until, bringing these proceedings to enable him to marry Mrs. Anthony, the petitioner took his solicitor's advice that he ought to discontinue his relations with Mrs. Anthony until decree absolute should be obtained in these proceedings. If this petition is granted the petitioner intends to marry Mrs. Anthony and Mrs. Anthony is both free and willing to marry him.

Problems of Co-wives, Concubines and *Side-chicks*

The average African man is polygamous by nature and this innate trait if not properly husbanded could ruin the home front. Instances abound where it was at the grave side that some women discovered that their husbands had other wives and children before and/or after them. The ones that knew their rivals during the lifetime of their husbands did not suffer less. In some cases, such situations led to psychological trauma occasioned by bickering, taunts and in some cases fights and name calling.

In *Grace Ayinuola v Olayimide*[16], the Plaintiff sued the Defendant in the Customary Court for damages suffered when the latter called the former a harlot, in the course of a quarrel. The Court awarded Plaintiff N250.00 damages. The Defendant appealed to the High Court contending that in Yoruba Customary Law calling a woman a harlot constituted mere vulgar abuse, and not regarded as injurious to reputation.

On the evidence of the plaintiff in the present case, the defendant after both of them had been wives to the same husband and they had both divorced themselves of association with the man, met in public and quarreled. In the heat of passion, as they exchanged abusive words the

[15] 11 N.L.R 148 at 149 - 150
[16] (1985) HCNLR 151 at 153 to 154

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defendant called the plaintiff a harlot and other names. The plaintiff sued and Adeloye J. dismissed his claim. A part of his Lordship's judgment reads:

> In the present case except the plaintiff could show that the defendant connected her alleged immoral sexual behavior with some defined men and probably at some time and place, merely to call her a harlot would not constitute such injurious imputation as could make people around shun her or look down on her as a mean character. At best such words would constitute vulgar abuse in the circumstance in which they were uttered.
>
> I hold that the word allegedly spoken by the defendant is not actionable as it does not constitute an injury to the character or reputation of the plaintiff.

A case similar to the immediate preceding one is the case of *Ajala v Adelagun*[17]. Here the plaintiff claimed that she was the lawful wife of one Oyeniyi Ajala. Pursuant to an action for maintenance by the plaintiff against him, an order was made in favour of the plaintiff by the High Court, Ikeja on 14th February 1975. On the same date a writ of *fieri facias* was issued against Oyeniyi Ajala, to recover an amount of N1,050, due under the order of court for maintenance.

The bailiff of the High Court, Ikeja, a police constable and the plaintiff, on the 9th June 1976, went to 102 Brickfield Road, Ebute Metta, where Mr. Ajala was living with the defendant in this case to levy execution on the personal property of Mr. Ajala to satisfy the amount due on the writ of *fieri facias.*

The plaintiff averred that on that date and at the stated address, the defendant falsely and maliciously spoke and published of and concerning her, to the bailiff and the police constable and other persons whose names are unknown to her, the following words:

'You are an ex-convict',

'You are not the legal wife of Mr. Oyeniyi Ajala',

'You are an imposter.'

It was held by Desalu J that:

> The words complained of by the plaintiff were spoken while the parties were exchanging words of abuse. It is a matter of common knowledge of which I take judicial notice, that people, in this country, particularly women, call each other 'ex-convict', prostitute', in their heated arguments, quarrels and altercations, which often lead to blows or fights and which words no-one takes seriously as they were words of anger.

[17] (1979) 3 LRN 28 at 34.

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Women of Low Morals

Women are occasionally the reason why they are treated shabbily because it is generally accepted that a person is perceived the way he portrays him or herself. The fact that some women have by their conduct debased their womanhood and cast their dignity to the dogs due to the lure of and lust for lucre or their penchant for 'bed hopping' is clearly evident in our society and this has in no small way affected the family unit and the children who are products of same. Many children have grown up without the required influence and guidance of either or both parents solely because of the less than dignifying conduct of their mothers. Three decided cases illustrate this point. First is the case of *Omosule Omoge v Olafede Badejo*[18]. Here the Plaintiff sued the defendant at Owo Grade II Customary Court claiming damages against the Defendant for enticing and harbouring the plaintiff's wife.

Plaintiff stated that he got married to the woman one Mary Omosule at Ipele about 2 years preceding the commencement of the action and that the woman had been living with him until the action was filed. Plaintiff further claimed that he married the woman from her family. He did not state how the marriage ceremony was performed. He further stated that the said Mary Omosule told him that she was going to see her people at Igbira. She was then with a five months old pregnancy. She failed to return on the day she promised and when he started looking for her, she was traced to the custody of the defendant.

The Defendant denies the claim of the Plaintiff and maintained that the same woman Mary Omosule was his wife; and that the five month old pregnancy belonged to him. The woman testified for the defence and admitted that she knew the Plaintiff for about 4 months before the action was instituted, that she lived with him for about four months at the plaintiff's farm along with her daughter whom she took for medical care. She denied that she was ever married to the Plaintiff. The trial Court gave judgment to the Plaintiff. On appeal to the High Court, it was contended that there was no cause of action because 'enticement and habouring' are unknown to Customary Law of Ipele in Owo Local Government Area where the cause of action arose.

It was decided by the court in this case that:

Under Yoruba Customary Law, one who induces a wife to separate from her husband or not return to him after she has separated from him without refund of the dowry, is liable to the husband in an action for the damage suffered by him. Also it is settled law that before a man can claim damages for enticement and or harbouring of his wife under customary law or any law whatever, there must be in existence a valid marriage between the claimant and the enticed and or harboured woman; this is because the amount of damages is meant to compensate the husband for the suffering encountered by him as a result of the wrongful loss of his wife's consortium. Likewise, the court opined that the Law will presume strongly in favour of the validity of a marriage where a great length of time has elapsed since its celebration; and such a presumption can only be rebutted by strong satisfactory and conclusive evidence. And that the claim for damages for enticing or harbouring a wife by a plaintiff must fail once the existence of such marriage was not proved as required by law.

Second is the case of *Apena v Apena*[19]. Here the respondent was married to the co-respondent under customary law and whilst still married to him and nursing a child she met the petitioner.

[18] (1985) HCNLR 1075 at 1080 at 1081
[19] (1978) 1 LRN 123 at 128-129.

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The petitioner gave money to the respondent, had sexual intercourse with her and had a child with her even though he knew that she was already married. The respondent's and co-respondent's marriage was dissolved by a customary court and in June 1971 she married the petitioner. In 1973 the respondent left the petitioner and went to live with the co-respondent by whom she subsequently had three children. The petitioner filed a petition for divorce on 28th August 1976 under the Matrimonial Causes Decree 1970 alleging that the marriage had irretrievably broken down by reason of the fact that the respondent had committed adultery and that he and the respondent had lived apart for a continuous period of three years immediately preceding the presentation of the petition. The petitioner also claimed N500 as damages from the co-respondent. The respondent and co-respondent contended that their customary marriage had not been validly dissolved. The co-respondent further claimed that he was not aware that the respondent had married the petitioner. On the assessment of damages for adultery.

The court per Adio J. held thus:

> The petitioner claimed the sum of N500 as damages for the adultery. The petitioner did not tell the court the assistance or services which the respondent was rendering to him as a wife. Indeed, the respondent was merely a petty trader who, during the relevant period, was not making much profit from her trade. One should not overlook the circumstances in which the petitioner met the respondent. The respondent was nursing a child and she told the petitioner that the child belonged to her husband. The petitioner started to give money to the respondent and as a result the respondent could no longer resist. Thereafter, other things followed. She had sexual intercourse with the petitioner and had a child with him; obtained the dissolution of her marriage with the co-respondent; and married the petitioner. While all this was taking place the respondent maintained regular correspondence with the co-respondent who was also sending money to her regularly. Immediately the co-respondent returned from the North, the respondent visited him on three occasions before she finally left the matrimonial home. It should be noted that she was still living with the petitioner while she was visiting the co-respondent even in Lagos. The inference that one can draw from the conduct of the respondent is, to put it mildly, that she did not put any premium on marital obligations. The law makes a distinction between the values of different wives. If a husband has a virtuous or devoted wife taken from him by the contrivance of another man, he is entitled to damages commensurate with the loss of such a woman. If the wife is, however, of a different character – a woman who readily and without any form of resistance commits a breach of her marital obligations, her value is not the same as that of a virtuous or devoted wife.

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Third is the case of *Chawere v Aihenu & Anor*[20]. the first defendant in this case was originally the wife under Yoruba native law and custom of one Algbohandi from whom she was seduced by the plaintiff. The plaintiff thereupon paid £20 to the husband which the husband says was "dowry". Later the first defendant left the plaintiff and went to live with the second defendant. The plaintiff claims that the first defendant is now the wife of the second defendant. The plaintiff claimed £24 10s "being dowry paid on first defendant to her first husband and also for the purchase price of a sewing machine given by the plaintiff to the first defendant."

In its judgment, the court per Graham Paul, J. held that:

> The Court below was wrong in holding that *ipsis factis* of a woman leaving her husband and living in adultery with another man, the woman became the wife of the adulterer under native law and custom and that in any event the claim of the plaintiff could be only against the second defendant by way of damages for adultery and upon the evidence the Court below was right in holding that such a claim was not made out.

Sexual Violence

Sexual violence has become a rampant occurrence in the Nigerian society with its attendant trauma on the woman and girl-child.[21]

The commonest example of sexual violence against women is rape. Its perpetrators are usually reluctant to leave behind incriminating evidence because of the punishment the crime attracts and may murder the victim to cover their tracks. Rape is a violation of the woman's body and soul. The probability of unwanted pregnancies and venereal diseases is quite high and many victims in order to avoid negative publicity or because of lack of funds patronize quacks for medical attention and illegal abortions. Illegal abortions handled by quacks may result in women not being able to conceive later in life and this brings about a lot of unhappiness to

[20] 12 N.L.R 4

[21] Bertram Nwannekanma, 'Lagos inaugurates committee to tackle domestic, sexual violence', *The Guardian Newspaper* (Lagos, Tuesday, September 16, 2014) 12 reports that: 'As part of efforts to stem the tide of domestic and sexual violence in Lagos State, the government has through the State's Attorney General and Commissioner of Justice, Ade Ipaye, inaugurated the Domestic and Sexual Violence Response Team (DSVRT)….The team, which comprises the Media, the Police, officials of the State's Youth and Social Development, Civil Society Organizations (CSOs), Director of Citizens Rights, Director, office of Public Defender (OPD), Director, Public Prosecution, the office of the Attorney-General, officials of Ministry of Women Affairs and Poverty Alleviation (WAPA), Sexual Assault Referral Centre (SARC) and health officers are to coordinate and synergize all efforts towards mitigating cases of domestic and sexual violence in the state…According to him, the purpose of establishing the team is to increase victims' safety and offender responsibility by providing a cross jurisdictional response that is uniform in approach in domestic violence cases across Lagos State….DSVRT, he said, is a specialist team that would coordinate partnership work to develop a community response to prevent violence, protect and support victims and bring perpetrators to justice….Prosecutors must, therefore, ensure prosecution and conviction of offenders so as to serve as deterrent to future occurrence, since impunity seemed to have driven the crime, he added…Regretting that the victims are always less privilege and often children, who are not aware of what is going on and so are not in position to complain…Women, as victims of these crimes are often dependents, who have incentives to keep quiet and will not want to rock the boat, being a group that ordinarily, will not voice out their problems unless the team intervenes.'

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many families as children are deemed in the African societies to be the icing on the cake of a happy marriage.[22]

The spate of sexual violence in the Nigerian society has been partly due to the lackadaisical attitude of law enforcement agents in the prompt investigation of incidents of rape, reluctance of the victims to report the crime due to the fear of stigmatization, inadequate awareness about the legislative, structural and other provisions put in place to tackle the crime of rape, allegation of connivance of law enforcements agents with alleged culprits of the crime to pervert the course of justice among other reasons.[23]

The case of *Jegede v State*[24] illustrates the consequences of the anathema of victims of rape to promptly report the crime and the shoddy attitude of the Police in conducting proper and prompt investigation when such cases are reported to them. The Court of Appeal of Nigeria in this case opined that:

> Whether by dilatoriness of the police or of the father of the prosecutrix, the prosecutrix was not taken for medical examination not until 26th May, 1989, more than 48 hours after the alleged attack. The opinion of the pathologist has been scientifically conclusive as to rape. As the written record of proceedings stands, the evidence that the accused had any carnal knowledge of the prosecutrix is superficial and therefore inconclusive. The medical evidence has left many holes uncovered."

Reports of the alleged connivance with culprits of rape purportedly induced by corruption on the part of law enforcement agents abound in the electronic and print media. For example, the Saturday Punch Newspaper[25] reports that:

> Sola Adebisi also had a bitter story to tell about police handling of the rape of her eight year old daughter, Lola (not real name), by a security guard in Ikorodu area of Lagos in January 2015…The mother later reported the case at the Ikorodu Police Division, where policemen were drafted to arrest Benjamin but the case was drawn out under different excuses by the police till they finally released Benjamin…now when Benjamin sees my daughter, he winks and laughs at her. She always tells me when that happens. The police have told me to forget about the issue and settle with the man. When I remained adamant, they started abusing me, blaming me for what happened. One of the policemen in charge of the case even blamed me for letting him (Benjamin) waste money he should have paid me as settlement on getting a lawyer. Adebisi told our correspondent at the time. The police rearrested Benjamin after a report by *Saturday*

[22] See Joseph Onyekwere, 'Sexual offences bill and life sentence for rapists', *The Guardian Newspaper* (Lagos, Tuesday, November 4, 2014) 60
[23] See Beta Nwaosu, 'Fresh push for passage of Violence Against Persons Bill', *The Guardian Newspaper* (Lagos, Tuesday, February 17, 2015) 19
[24] Jide Olakanmi & Co., *Rape & Sexual Offences, Locus Classicus* (Jide Olakanmi & Co. 2015) 75 at 77.
[25] Kunle Falayi, 'How Nigerian policemen aid pedophiles to escape justice' *Saturday Punch Newspaper* (Lagos, Saturday June 20, 2015) 22, 23 & 30.

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> *PUNCH.* These and many other cases indict men of the Nigeria Police and give a sense of lacking understanding of the enormity of sexual offences.

This alleged practice of the police trying to settle the matter by asking suspect/accused to beg the victim or her relatives sometimes with an offer of money to placate them could be fatal to the accused's trial if eventually he is charged and tried for rape because that would amount to an admission of the crime. The Supreme Court in *Edwin Ezeigbo v The State*[26] held that it is settled that corroborative evidence must in itself be a completely credible evidence. Specifically, Nwali Sylvester Ngwuta, JSC (as he then was) posited on this principle of law that:

> Though the evidence of the PW5 and Exhibit 2 fell short of corroborating the evidence of the PW5 and Exhibit 2 fell short of corroborating the evidence of PW2 that she was raped by the appellant, the appellant himself provided the missing link between himself and the crime with which he was charged. He did so when he approached the parents of the PW2 and pleaded with them for forgiveness for what he had done to their daughter the PW2. In my view, this plea amounted to a voluntary and unsolicited confession to the commission of the crime and corroborates the evidence of the PW2. By his plea to the parents of the PW2 (his victim) appellant gave himself up to the law and became his own accuser.

In reaction, the Nigerian Police has stated that a lot of these allegations are unfounded and based on misinformation and lack of awareness of the structures put in place by the police in dealing with sexual violence in the country and hence their non-utilization by some victims and their families. Another factor that has fueled these allegations according to the police is the preference by members of the public for rumour mongering instead of asking victims of the crime whether they pursued their complaint of rape to a logical conclusion and made themselves available to testify as witnesses for the prosecution when suspects are charged to court. Precisely the Force Public Relations Officer in an interview says:

> …many of such allegations are based on misinformation. The police have always had the juvenile welfare unit and since the Child Rights Act came into existence, we have been having child welfare units in police formations. We have the anti-human trafficking units at the headquarters and in every other police command. We have family units in police zones across the federation manned by trained women and some trained men. We have a family gender advisor, an internationally acclaimed officer, who deals with women issues in the Nigeria Police. Anybody saying the contrary is not well informed. Ojukwu said 'any allegations of corruption against any policeman should be followed through and that the culprits would be dealt with in line with regulations.' Speaking on why many child sexual abuse cases end up not going to court, he said, "When we

[26] Jide Olakanmi & Co., *Rape & Sexual Offences, Locus Classicus* (Jide Olakanmi & Co. 2015) *supra* 247 at 262

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> begin an investigation, we need to complete it by going to court. Many parents want to avoid the stigma that comes with sexual assault and refuse to go to court and go around telling people police are not ready to prosecute. If you take a case to court and you don't follow it up, the court would strike it out for lack of diligent prosecution. But what about cases when policemen ask victims' and suspects' families for money? Ojukwu said, "People always accuse the police of everything. If you have a case and someone asks you for money, make a report. Don't go somewhere else and grumble. Every police officer has a boss. If you notice your case is not being properly investigated, go to a higher authority. There are the divisions, the area commands and the command headquarters."[27]

At this juncture it will be apposite to illuminate the attitude of the courts in Nigeria on the rape of under-age girls. In *The State v Mustapha Oseni*[28], the accused was charged with the offences of rape contrary to Section 358 of the Criminal Code. His defence was a complete denial of the charge. However, there was the evidence of his wife and mother-in-law that the accused had admitted to them that he in fact committed the offence. The complainant, a girl of 12 years of age, also confirmed that the accused had sexual intercourse with her. She was the daughter of the wife of the accused by her previous marriage and at the time was living with the accused and her own mother. Accused was alleged to have invited the complainant to bed in the absence of her mother, and had sexual intercourse with her. The complainant had at all times regarded the accused as her own father and used to call him "Daddy". When, therefore, "Daddy" asked her to come on to bed, she obeyed him and sat on the bed and accused then laid her down on the bed and had sexual intercourse with her.

The court had to consider whether there was the element of consent by the complainant and whether the evidence of the complainant was corroborated.

The court held that mere submission to sexual intercourse does not amount to consent and in any case submission by a person who is too young to understand the nature of the act done cannot amount to consent; for consent must be real. The complainant was of such an age at the material time that she was incapable of deciding whether to resist or not.

However, in the *State v Adio Agiri*[29], the accused was charged with rape upon a girl of 9 contrary to s.358 of the Criminal Code. Medical examination disclosed that while someone had had carnal knowledge of her there was no physical evidence of resistance. But it was established that she cried during the act. The court held that if a girl under the age of 16 consents to sexual intercourse with a man, he cannot be convicted of rape, but of unlawful carnal knowledge.

[27] Kunle Falayi, 'How Nigerian policemen aid pedophiles to escape justice' *Saturday Punch Newspaper* (Lagos, Saturday June 20, 2015) *supra* at 22, 23 & 30.
[28] (1975) 8 CCHCJ 1231
[29] (U.I.L.R) Vol. 2 (pt. IV) 503 at 507.

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In *Okem Benjamin v The State*[30] The Supreme Court of Nigeria gave its judicial nod to the illegality of sexual intercourse with minors when it held that 'by the provisions of section 31(1) & (2), Child Rights Act, 2003, no person shall have sexual intercourse with a child. A person who contravenes this provision commits an offence of rape. In the instant case, where the victim of the offence is a child of less than 14 years, the lower court properly upheld appellant's conviction for rape.'

Some may believe that there is a direct nexus between prostitution and rape. In the sense that the availability of scarlet women to satisfy the sexual urges of men may reduce incidents of rape. However this may not necessarily be so. The lie is put to the veracity of this assumed belief by Gerry Spence[31] thus:

> …The proprietors of the house in Hudson and the "Little Yellow House" in Riverton, both of which claimed grandfather rights for their operations, also warned me that rape by the randy cowboys and horny miners would become epidemic if their services were withdrawn. Nevertheless, at my similar urging, both houses soon closed their doors…I tried to combat the growing sentiment in support of the town's Little Yellow House. I gave a speech at the Kiwanis Club quoting statistics from the National Prosecutors Association to the effect that rape and prostitution were as irrelevant, one to the other, as robbery and bingo. I tried to explain that men rape, not out of uncontrollable passion, but out of a need to rape. The town folk didn't understand the pathology of rape – that rape was acted-out hostility of certain males of the species expressing their compulsive need, not for sex, but to injure females of their own species. People didn't understand such subtle arguments then. Men were men, concupiscent beasts that were likely to immediately attack anything female, from sheep to little girls, if they couldn't find a place to douse their passions in living adult female flesh…

Another aspect of the discourse relates to cases of women who in the course of trying to earn a living to provide upkeep for their families met their untimely deaths. The discourse of the following cases seek to illustrate the point. In *Ojo Esseyin v The State*[32] , the appellant was alleged to have lured the deceased, a young Fulani girl, under the pretext of buying fresh cow milk from her and had raped and subsequently killed her. He was thereafter arrested and arraigned in the High Court of Kogi State on a two count charge of rape and culpable homicide punishable with death contrary to sections 283 and 221(a) of the Penal Code. The trial court

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[30] (2020) All FWLR 260 at 274. The appellant was alleged to have raped 12 years old Arita Rebbeca Odu, and was subsequently arrested and arraigned in the High Court of Cross River State for rape contrary to section 358, Criminal Code. The confessional statement made by him was tendered and admitted in evidence. The trial court found him guilty and sentenced him to life imprisonment. Dissatisfied, the appellant appealed to the Court of Appeal where his appeal was allowed in part, with a reduction of his sentence to ten years imprisonment. Yet dissatisfied, the appellant appealed to the Supreme Court contending that the lower court erred in upholding his conviction where the prosecution failed to prove the charge against him beyond reasonable doubt.

[31] Gerry Spence, *'The Making of a Country Lawyer'*, (St. Martin's Press 1996) 301, 302 & 303.

[32] (2019) All FWLR (pt.985) 378 at 398.

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found the appellant guilty and sentenced him accordingly. The appellant did not call any evidence and rested his case on that of the prosecution. Dissatisfied, the appellant appealed to the Court of Appeal where his conviction was affirmed. Dissatisfied still, the appellant appealed to the Supreme Court contending that the lower court erred in affirming his conviction not supported by credible circumstantial evidence.

The Supreme Court among other issues gave an exposition on the doctrine of last seen thus:

> Where an accused was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusions, there is no room for acquittal. It is the duty of the accused to give an explanation relating to how the deceased met his/her death. In the absence of an explanation, a trial court, even an appellate court will be justified in drawing the inference that the accused killed the deceased. In the instant case, where the appellant was the last person seen with the deceased, the lower court properly held that the doctrine of last seen was rightly applied by the trial to convict the appellant.

The court in *Ayodele Ikumonihan v State*[33] adumbrated on the defence of alibi within the context of our discourse. Here the appellant was alleged to have lured the deceased to the house of the 2nd accused under the pretext of selling palm oil to her until and he had connived with the other accused persons to rape her until she died and the body was dumped in a pit latrine behind the 2nd accused's person house. Upon arrest, the appellant was arraigned in the High Court of Ondo State on a one-count charge of murder. The confessional statement made by the appellant was admitted in evidence after a trial-within-trial. In his defence, the appellant who was the 1st accused, retracted the confession and raised the defence of *alibi.* The trial court found the accused persons guilty and sentenced them accordingly. Dissatisfied, the appellant appealed to the Court of Appeal where his appeal was dismissed. Yet dissatisfied, the appellant appealed to the Supreme Court contending that the lower erred in holding *inter-alia* that the confessional statement was properly admitted and relied on by the trial court.

The Supreme Court of Nigeria on the defence of alibi says:

> The defence of *alibi* is based on the physical impossibility of the accused being guilty by placing him in another location at the relevant time, and it is trite that once the defence is properly raised by the accused during investigations, it is the duty of the Police to investigate it. However, it is the duty of an accused, who relies on an *alibi*, to give details thereof to enable the Police investigate it. His duty involves letting the Police know at the earliest opportunity, where he was at the material time. The defence is complete, once the accused person discloses to the Police his whereabouts, without more, at the time of the commission of the crime. It is not in all cases that the failure to investigate an *alibi* will be fatal. Once there is evidence that the accused committed the offence, this raises the question of credibility to wit; whether the evidence "is believable

[33] (2019) All FWLR (pt. 1020) 122 at 158-159.

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> and if believed, the *alibi* is logically demolished or fizzles into thin air and so doomed. To be worthy of investigation, the defence of *alibi* must be precise and specific in terms of the place that the accused was and the person(s) that he was with and possibly what he was doing at the material time. In the instant case, where the appellant raised his defence of *alibi* 11 years after his arrest, the lower courts rightly held the same did not avail him.

On when is the earliest time to raise the defence of alibi and the irrelevance of where it is raised at the trial and stronger evidence exists, the court held that:

> The earliest opportunity to put forward a defence of *alibi* is when the accused is making his statement to the Police. Although the prosecution can ask for an adjournment to investigate it when he raises it at trial, where there is enough credible evidence outside the defence, the prosecution does not have to ask for an adjournment to investigate an alibi. But the accused is perfectly at liberty to call his witnesses to establish his alibi. In the instant case, where the appellant failed to raise his defence of alibi at the earliest possible time, this defence was rightly held discountenanced by the lower court.

Akinsuwa v State[34] deals with the issue of confessional statements. Here the appellant and two other persons were alleged to have lured the deceased to a farm, where they raped her which act led to her death. They were subsequently arrested and arraigned in the High Court of Ondo State on 2-count charge of conspiracy and murder, contrary to sections 516 and 319(1) Criminal Code. The prosecution tendered in evidence confessional statements made by accused persons. The appellant raised the defence of *alibi*. The trial court discountenanced the defence and convicted the appellant. Dissatisfied, the appellant appealed to the Court of Appeal where the appeal was dismissed.

Yet dissatisfied, the appellant appealed to the Supreme Court contending that the lower court erred in affirming his conviction when the charge against him was not proved beyond reasonable doubt.

The court held that a confessional statement so long as it is free, direct, positive and voluntary is enough to ground conviction.

CONCLUSION

In conclusion, it is opined that if the narrative of the challenges facing the Nigerian woman and its consequent negative effect on the family unit is to be changed then a lot needs to be done on the part of the government, the populace, law enforcement agents and other stakeholders.

Measures that could be put in place in pursuance of the above include but not limited to the enactment and enforcement of pro-active legislation tailored to safeguard the Nigerian woman

[34] (2020) All FWLR (pt.1033) 710 at 726.

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from the buffetings of life caused by social and economic reasons. Also, there is a need for intensive public enlightenment of the populace on the need to preserve the family unit as a means of ensuring a cohesive and safe society. Likewise, law enforcement agents should be trained and re-trained periodically on how to handle gender related crimes and any law enforcement personnel found culpable of comprising the functions of his office should be dealt with in accordance with law among other measures.

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