

MEDICO-LEGAL EXAMINATION OF BIOLOGICAL RESPONSES TO SEXUAL STIMULATION AND THE LAW ON RAPE IN NIGERIA*

Abstract

Rape is one of the most heinous sexual offences against a person. There has been a persistent rise in rape incidence in Nigeria in recent years. Thus, the criminal justice system should be well-equipped to provide necessary protection for the victim while not ignoring the rights of the accused. There is no doubt, that at times, the victim in one way or another played a part contributing to the rape by sexually arousing the victim. Such aspect of the rape should not be ignored by the law. A good understanding of what triggers sexual arousal and the responses of both male and female to sexual arousal will help the law to adequately address cases of rape and sexual offences, particularly false allegations of rape. This paper examined biological responses to sexual stimulation as well as sexual arousal and its potential impact on sexual decision-making. The paper further examined sexual arousal and the defence of provocation, provocation in the context of rape and the possible application of the rules of provocation to rape cases under the law in Nigeria. The paper relied on primary and secondary sources of information and data obtained from these sources will be subjected to content analysis. The paper found that sexual arousal has the ability to impair self-control and decision making at the time of sexual arousal and recommends that the defence of provocation should be broadened to include situations where the victim of rape caused the sexual arousal, making the defence of provocation available to such situations and serving as a mitigating factor. Also the paper recommends that the victim of rape should also be punished for causing the accused to commit an offence.

Keywords: *Biological responses, Sexual Stimulation, Rape, Defence of Provocation, Criminal Law, Nigeria.*

1. Introduction

Rape is a significant social and health problem and one of the worst forms of possible assaults on the physical, psychological and sexual integrity of victims. Rape is an offence with a long history and one of the most horrific crimes humans know of. It not only causes physical degradation and mental trauma but also social death.¹ Social death is when a person no longer has the consciousness to communicate with others as a result of an ailment or traumatic experience. Orlando Patterson describes social death on an individual level as one who is no longer capable of relating or operating in 'normal' society.² Rape is a serious violation both of the victim's physical and psychological integrity and also of the right to freedom, safety and dignity enjoyed by all human beings. The severity of the offence of rape cannot be over emphasized. It is a heinous, despicable and a severe offence. It is a sexual offence that arises out of non-consent with the victim to sexual intercourse. Depending on the jurisdiction, the definitions of 'rape' vary. In the case of *Edwin Ezigbo v. The State*³, the Supreme Court had this view about rape that: '...for an adult man like the appellant to have carnal knowledge of underage girls such as the

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¹ Advmukherjee, (2014) 'Rape Law-Gender Neutrality' <<http://advmukherjee.wordpress.com/2013/04/29/rape-law-gender-neutrality/>> accessed on 4 November 2014

² SR Benner, 'Soul Murder, Social Death, and Humiliation: Consequences of State sponsored Rape' (2010) 4 *The New York Sociologist*, 1-10 at 7 <<http://newyorksociologist.org/09/Benner09.pdf>> accessed on 2 February 2016

³ [2012] 16NWLR (pt 1326) 318 at 331

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.⁷

In Nigeria, the provisions of the Laws on rape is gender-specific, it restricts the category of victims of rape as well as the perpetrators in terms of gender.⁴ Only a woman can be raped and only a man can be a perpetrator, except in the Federal Capital Territory (FCT), Abuja where a gender neutral law on rape was passed in 2015.⁵ However, there has been a clamour in the last few decades from scholars suggesting necessary changes in the Nigerian rape law towards gender neutrality to bring it in conformity with global development in this area as well as to take care of the changing realities in human sexuality. The issue of gender neutrality in rape law is another salient issue worthy of discussion. Though a relevant approach, however, it is an aspect that is beyond the scope of this paper to examine. Rather, it is a paper intended to look into the possibility of a nexus between the sexual reactions of a person to sexual stimulations and how it affects their reasoning and sexual decision-making particularly where the stimulation comes from the victim of rape on one hand, and how the law should see rape in such context on the other hand.

Stereotypes and misunderstandings are common in discussions of rape. The problem with stereotypes is not that they are untrue but that they are incomplete. They make one story become the only story.⁶ Stereotypes interfere with justice. These gender norms and values pertain to the perception of norms for men and women's sexual behaviour. This means that both men and women's right to justice and equality before the law risks being hampered by discriminatory attitudes about male and female sexuality.

There are many stereotypical beliefs regarding differences between the sexual behaviour, responses and attitudes of people based on their gender. Scientific evidence, however, suggests that although some of these beliefs are true, many others are clearly false.⁷ A good understanding of what triggers sexual arousal and the responses of both male and female to sexual intercourse will help the law to adequately address cases of rape and sexual offences.

The medico-legal aspect of the offence of rape in this area gives a clearer picture of sexual reactions to sexual stimulations and how it affects sexual decision-making.

2. Medico-Legal Aspect of Rape

Medico-legal is something that involves both medical and legal aspects, mainly, medical jurisprudence—a branch of medicine and medical law – a branch of law. It is an aspect relating to both medicine and law. Medical jurisprudence often intersects with the law in the area of rape. Sexuality has different aspect to it, there is the physical and psychological aspects of sexuality. This paper will focus on the physical and psychological aspect of humans to sexual stimulations and how it affects sexual decision-making.

⁴ Criminal Code Act LFN 2004 s. 357, Penal Code of the Northern States s. 282 and Sharia Penal Code Law of Zamfara 2000 s. 128

⁵ Violence Against Person (Prohibition) Act (VAPP) 2015 s. 1

⁶ Chimamanda Ngozi Adichie, (2015) Quotes.

<www.goodreads.com/author/quotes/11291.Chimamanda_Ngozi_Adichie> accessed on 8 January 8 2015

⁷ Society for the Scientific Study of Sexuality (2016) 'Gender Differences and Similarities in Sexuality'

<<http://www.sexscience.org/PDFs/Gender%20Difference%20and%20Similiarities%20in%20Sexuality%20Final.pdf>> accessed on 19 January 2016

Sexual Stimulation

According to Oxford Advanced Learner's Dictionary, sexual is to be connected to physical activity of sex and stimulation is to make somebody interested and excited about something.⁸ Sexual stimulation is any stimulus (including bodily contact) that leads to, enhances and maintains sexual arousal, and may lead to orgasm. Sexual arousal may arise without physical stimulation. Depending on the situation, a person can be sexually aroused by a variety of factors, both physical and mental. A person may be sexually aroused by another person or by particular aspects of that person, or by a non-human object. The term sexual stimulation often implies stimulation of the genitals, but may also include stimulation of other areas of the body, stimulation of the senses (such as sight or hearing) and mental stimulation (that is, from reading or fantasizing). Sexual stimulation can be physical, or psychological.

Sexual Arousal and its Potential Impact on Sexual Decision-Making

Sexual arousal is to be excited sexually. It is the autonomic physiological processes that prepare the body for sexual activity.⁹ The sexual response cycle refers to the sequence of physical and emotional changes that occur as a person becomes sexually aroused and participates in sexually stimulating activities, including sexual intercourse.¹⁰ Knowing how each biological body responds during each phase of the cycle can enhance the perception of various sexual offences. The sexual response cycle has four phases: excitement, plateau, orgasm, and resolution. Both men and women experience these phases, although the timing usually is different. The focus will be on the excitement phase which sets off the whole process.

Excitement Phase: This is the phase in which a person responds to sexual stimuli visual, mental or physical. The stage is the processing stage of responding to sexual stimuli. The characteristics of the excitement phase, can last from a few minutes to several hours. The physiological component of sexual arousal includes changes in cardiovascular function such as heart rate, blood pressure, respiration, and genital response – erection in men and vasocongestion (in context of sexual arousal and sexual response is the swelling of the genital tissues with blood¹¹) in women. The presumption is that men respond more strongly to visual stimuli than women do.¹² It is generally believed that women react more to physical stimuli and touch.

Sexual arousal in the excitement phase, affects predictions of the individual's own judgments and behaviour which influences decision making, but people have little insight into these effects.¹³ Sexual arousal seems to narrow the focus of motivation, creating a kind of tunnel-vision where goals other than sexual fulfillment become eclipsed by the motivation to have sex.¹⁴ Studies have shown that the increase

⁸ J Turnbull, *Oxford Advanced Learner's Dictionary, International Student's Edition*. (8th Ed, Oxford, United Kingdom: Oxford University Press, 2010) pp. 1353 and 1466.

⁹ R Toledano, & J Pfau, 'The Second Arousal and Desire Inventory (SAID): A Multidimensional Scale to Assess Subjective Sexual Arousal and Desire' (2011) 3 *Journal of Sexual Medicine*, 853-877

¹⁰ Your Guide to Sexual Response Cycle (2015) < <http://www.webmd.com/sex-relationships/guide/sexual-health-your-guide-to-sexual-response-cycle>> accessed on 21 January 2015

¹¹ Vasocongestion. (2015) < <http://www.sexuality.about.com/od/glossary/g/vasocongestion.htm>> accessed on 23 January 2016

¹² HA Rupp, & K Wallen, 'Sex Differences in Response to Visual Sexual Stimuli: A Review' (2016) <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2739403/>> accessed on 21 January 2016

¹³ D Ariely & G Loewenstein, (2006). 'The Heat of the Moment: The Effect of Sexual Arousal on Sexual Decision Making' (2006) 19 *Journal of Behavioral Decision Making*, 87-98 at 88 <http://www.contrib.andrew.cmu.edu/gll20/GeorgeLoewenstein/Papers_files/pdf/HeatMoment.pdf> accessed on 21 January 2016

¹⁴ D Ariely & G Loewenstein (n.13) p.95

in motivation to have sex when aroused seems to decrease the relative importance of the other considerations such as behaving ethically toward a potential sexual partner or protecting oneself against unwanted pregnancy or sexually transmitted disease.¹⁵ Findings suggest that, in situations where there are strong sexually visceral cues, (coming from strong emotions and not from logic or reason¹⁶) both men and women experiencing strong arousal may have lower inhibitions and may experience impaired decision-making.¹⁷ In a study on the impact of sexual arousal on decision making carried out in 2006, it was demonstrated that in the of the moment caused by sexual arousal, humans are able to minimize or ignore complications that may arise from sex until after the act occurs. Sexual arousal seems to narrow the focus of motivation, creating a kind of tunnel-vision where goals other than sexual fulfillment become eclipsed by the motivation to have sex.¹⁸ So when there is sexual arousal, individuals are usually motivated to fulfil the drive and can experience ‘sexual myopia’ whereby the short term aim of achieving sexual gratification seems to eclipse other long term goals.¹⁹

Thus, sexual arousal in summary hijacks the brain leading to a focus on immediate pleasure and gratification. Often, in the heat of the moment, complications that may arise from sexual intercourse are ignored or minimized until after the act is over.²⁰ Some study even found out that sexual arousal may influence judgment in similar way as alcohol. Attention is focused on the object of desire (sexual gratification) and on the self (i.e. one’s own enjoyment/pleasure) rather than being placed on others or on past and future considerations like safer-sex behavior, sexual risk-taking intentions. As described above, individuals are motivated to fulfil this drive and they experience ‘sexual myopia’ whereby the short-term aim of achieving sexual gratification seems to eclipse other long-term goals.²¹ Also, results of studies suggest that both men and women are likely to have difficulty making safer sexual decisions when they are caught up in a passionate encounter though men are likely to be affected more than women. The impact of visceral factors on decision-making does not suggest that the effects differ by sex, but rather are a universal phenomenon.²² In other words, sexual arousal has effect on subsequent behaviours. Therefore, sexual arousal as a situational factor plays a role in rape situations. The decision to engage in rape especially date rape is often made in the heat of the moment which results in impulsive and sexually coercive behaviours.

3. Sexual Arousal and the Defence of Provocation

Human beings generally make poorer decisions under the influence of strong emotions. When one is emotionally upset, angry, joyous or aroused, we do not always make the best decisions. Sexual arousal is an example of such strong emotions. There is a likelihood of a nexus between sexual arousal and sexual coercion among males and females. Thus, sexual arousal may increase the likelihood of sexually

¹⁵ D Ariely & G Loewenstein (n.13) p.95

¹⁶ Merriam-Webster Dictionary, Visceral < www.merriam-webster.com/dictionary/visceral> accessed 23 January 2016

¹⁷ D Ariely & G Loewenstein (n.13) p.88

¹⁸ D Ariely & G Loewenstein (n.13) p. 95

¹⁹ S Skakoon-Sparling, (2011), The Effect of Sexual Arousal on Risk-Taking and Decision Making. Electronic Thesis and Dissertations. Paper 234. 1-69 at 4 < <http://scholar.uwindsor.ca/etd> > accessed 22 January 2016

²⁰ M Shelton, ‘Poor Judgment? Decision-Making and Sexual Arousal’ (2013)

<<https://www.psychologytoday.com/blog/sex-life-the-american-male/201301/poor-judgment-decision-making-and-sexual-arousal> > accessed 22 January 2016

²¹ S Skakoon-Sparling, (n.19), p 4

²² Jean-Louis van Gelder et.al, ‘Affect and cognition in Criminal Decision Making’ 81 <<http://books.google.com.ng> > accessed 18 January 2016

coercive behaviours.²³ Sexual coercion could result from sexual arousal done in the heat of the moment especially for men. Biologically, both genders react to stimuli and that should not be overlooked. Yet, the law on rape recognizes the fact that a man should control himself. There should, as a matter of fact and proven examples, be a hybrid between a gender imposed and biologically imposed responses to sexual stimulations. This hybrid can be achieved by providing for mitigating and aggravating factors to the offence of rape.

In a scenario, a girl (X) went to visit her male friend (Y) in his house. On getting there Y started kissing her and she kissed him back. Y went to shower and invited her to join him. She did and they started kissing and they had sexual intercourse right in the bath. X claimed she was raped. Applying the discussion on sexual arousal, even if X had said no, Y had been stimulated to a point of strong arousal by X's conduct which might have resulted to the sexual coercive behaviour of Y done in the heat of the moment. Her conduct in this instance contributed to the sexual coercion if truly there was any. It could be said that the man was provoked by some external factors to the point of sexual arousal. Situations as this should be a mitigating factor in the offence of rape.

The defence of provocation in such situations should be applicable. The rationale behind the defence of provocation is based on the law's compassion to human infirmity.²⁴ In Nigeria, under the Criminal Code and Penal Code, the defence of provocation is only available to the accused in the cases of murder and assault.²⁵ Provocation is a complete defence to assault under the Criminal Code but not under the Penal Code, while in murder cases it only reduces the offence to manslaughter under both codes.²⁶ Thus, in murder cases, provocation is a partial defence.

In sharp contrast to Section 284 of the Criminal Code which grants complete exemption in cases of assaults, the Penal Code does not regard provocation as a ground for complete exculpation even if one's assault is in retaliation to the victim's provocation. The provocation only reduces the punishment.²⁷ In other words, the provocation serves as a mitigating factor. In *Galadinma v. State*,²⁸ the Supreme court held that provocation is a mitigating factor which only avails an accused and it must be established not only that the act was done under the influence of some feeling which took away from the person doing it all control over his emotions and action but also that, that feeling had an adequate spontaneous cause and control over him. In *Sheidu v. State*,²⁹ the Supreme court held that for a charge, successful defence of provocation has the effect of reducing the charge to manslaughter and once the accused person is convicted of manslaughter, the trial judge has discretion on sentence. The court further stated that sentence can be custodial sentence ranging from one day to life imprisonment.

Provocation in the Context of Rape

According to the Criminal Code³⁰, provocation is an act or insult that deprives one of self-control and induces the latter to assault the person giving the provocation. Section 284 of the Criminal Code provides that the provocation must have deprived the accused of self-control and acts upon it on the

²³ Jean-Louis van Gelder et.al (no. 22), p.82.

²⁴ K S Chukkol, *The Law of Crimes in Nigeria*. (Revised ed. Zaria, Ahmadu Bello University Press Limited, 2010) p.200.

²⁵ ss.318 and 283 of Criminal Code and ss. 222(1) and 266 of the Penal Code.

²⁶ *Ibid*.

²⁷ KS Chukkol, (n.24) p.201; s.266 of the Penal Code. Ordinarily, assault without provocation is imprisonment for one year while assault as a result of provocation reduces the sentence to three months imprisonment

²⁸ [2012] 18NWLR (pt 1333) 610 at 632

²⁹ [2014] 15NWLR (pt 1429) 33

³⁰ s. 283 of the Criminal code.

sudden and before there is time for his passion to cool. There must be an act spoken or done to make the defendant lose his self-control and a reasonable person would have done the same thing. The question will be whether a reasonable man would have acted in the way the accused acted. Thus, whether any particular act or insult is likely to deprive an ordinary person of the power of self-control which induced him to act that way and whether the person provoked was actually deprived of such power of self-control and whether the force used is not disproportionate to provocation are questions of fact.³¹ In other words, the provocation must be such that will cause a reasonable man to lose his self-control and also that the accused did in fact lose his self-control as a result of the provocation. It is not enough to just show that the accused lost his self-control, he must show he was provoked by something into losing his self-control and the provocative trigger must be something said or done. In *R v. Acott*,³² the defendant killed his mother in a frenzied attack. There was clear evidence that he lost his self-control and killed but there was no evidence of why that had happened. It appears he had just suddenly 'flipped'. It was held that as there was no evidence of a provoking incident, the judge was right not to leave the defence of provocation to the jury.³³

In *Musa v. State*,³⁴ the Supreme Court held that there must be an act or word that provoked the accused. In this case, the appellant relied on the defence of provocation claiming the deceased insulted him which provoked him but the court found that the appellant did not mention the actual insulting words uttered by the deceased and thus the defence could not avail him.

There are numerous judicial decisions that have defined the defence of provocation. In *Galadinma v. State*³⁵, the Supreme court stated that provocation by nature involves some acts or series of acts done by the deceased person to the accused which would cause in a reasonable person and actually caused in the accused a sudden and temporary loss of self-control, rendering the accused to be subject or under such violent rage as to make him or her at the moment not to be in control and master of himself/herself. In *Sheidu v. State*,³⁶ the court stated that provocation may be acts or words and that provocation is any act or series of acts done by the deceased when alive, to the accused person which would cause a reasonable person a sudden and temporary loss of self-control rendering the accused person so subject to passion as to make him for the moment not master of his mind. A reasonable man in this context has been held to mean a reasonable man in the accused person's station in life and standard of civilization.³⁷ In *Musa v. State*,³⁸ the court defined provocation as the act of inciting another to do a particular deed. It is that which arouses, moves, calls forth, causes or occasions. It is some act or series of act which will cause in a reasonable person and actually causes in the accused a sudden and temporary loss of self-control rendering him so subject to passion as to make him for the moment not master of the mind. Thus, the act must have provoked the accused so much that he was unable to restrain himself. The act or words must be of such a character that will obscure reason and lead to action from passion rather than judgment. The act which the accused did must be done in the heat of passion and before there is time for passion to cool. Thus, there must be a state of passion without time to cool placing the defendant

³¹ s. 284 of the Criminal code.

³² [1997] 1 All ER 706

³³ J Herring, *Criminal Law Text, Cases, and Materials* (3rd Ed, New York: Oxford University Press, 2008) p. 240

³⁴ [2009]15NWLR (pt 1165) 467 at 490-491.

³⁵ (n.28) p. 633.

³⁶ (n. 29) p. 33.

³⁷ CO Okonkwo, & ME Naish, *Okonkwo and Naish: Criminal Law in Nigeria*, (2nd Ed, Ibadan: Spectrum Law Series, 1990) p. 241.

³⁸ (n.34) pp. 503-504.

beyond control of his reason.³⁹ If between the provocative act and the killing enough time has elapsed for passion to cool, a plea of provocation will fail.⁴⁰ The act of the accused must be proportionate to the provocation. In other words, mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter.⁴¹

Application of the Rules of Provocation to Rape Cases

There are some conducts that may be termed sexual provocation or provocation of a sexual nature, for example, nudity together, that is, male and female; heavy petting and kissing, caressing, smooching, dresses exposing breasts, thighs, pubic area, watching porn together, sexting or exchange of sexual content, phone sex or too much discussion relating to sex to the point of arousal, etc. However, all these would not mitigate or excuse coercive sex generally except in certain circumstances. For provocation in relation to rape cases to be plausible or acceptable to whatever extent possible:-

- a) The provocation must be in a sex related context;
- b) The allegedly provoking conduct must be by or from the victim of rape;
- c) The provocation must connect the accused and alleged victim;
- d) The victim must be proven to intend to, deliberately provoke and/or trying to achieve a particular arousal of the accused. In other words, there cannot be group provocation in this context.

Looking at these scenarios;

1. A lady dancing naked in front of a man up to the point of not being able to control himself, passion would have been aroused in him and before the passion cools down he had sexual intercourse with her. She claims she was raped.
2. A woman agrees to oral sex with a man or a hand sex and in the course of it the man insists on or forcibly had vaginal intercourse with the woman.
3. A man paid for full body massage by a woman who subsequently performed oral sex leading to climax on him or indeed sit on him performing vaginal sex.

In scenario one, there is provocation of a sexual nature and the provoking conduct came from the victim which connects the perpetrator and the victim. In scenario two, there was consent to some act by the victim, but the extent to which she consented sexually aroused the alleged perpetrator to the point of not being able to control himself. In scenario three, like earlier discussed both gender respond to sexual stimuli, either physical, visual or mentally. The alleged perpetrator could be sexually aroused in the process of massaging and might not be able to control herself.

Provocation should be a mitigating factor that can be relevant in all the scenarios. There should be certain instances in rape cases where some external factors will be considered as a mitigating factor. In one of the scenarios above, seduction as an act was involved which sexually stimulated and aroused the man. As discussed above, it is evident that sexual arousal can impair the judgment of the aroused and the process of decision-making doing what he/she ordinarily wouldn't have done. It is a biological reaction which should not be overlooked. If not, it means that the law attributes superhuman power to such a person.

³⁹ *Musa v. State* (n.34) p. 504.

⁴⁰ *Kaza v. State* [2008] 7NWLR (pt 1085) 125 at 181-182.

⁴¹ *Kaza v. State* (n.40) p. 182, *Musa v. State* (n.34) p.504

The defence of provocation should be widened under the extant law to accommodate instances where the victim was responsible for the act of arousal which made the accused while in the heat of passion to commit forcible rape. It should be a mitigating factor and the force and coercive behaviour of the accused used must be proportionate to the act.

Self-induced arousal would not come under the mitigating factors, for instance, where an accused watched pornography and was sexually aroused and a female friend walked in and he forcibly had sexual intercourse with her, this will not fall under the mitigating factors and the defence of provocation will not avail him. If they had watched it together or the female friend even showed the guy from her own mobile device provocation could be a mitigating factor. Thus, the law should assume a hybrid position to take care of issues in these categories. It will resolve a lot of false rape allegation cases too. Section 26(1) of Violence against Persons (Prohibition) Act (VAPP) provides that; ‘A person who intentionally exposes his or her genitals, or substantial part thereof, with the intention of causing distress to the other party, or that another person seeing it may be tempted or induced to commit an offence under this Act, commits an offence termed ‘indecent exposure.’

This provision will conveniently address issues of willful sexual stimulation from the victim directed at the accused causing the latter to commit an offence. It makes the victim’s act or contribution to the accused’s unlawful act an offence itself and also a mitigating factor. It is germane to note that VAPP applies only to the Federal Capital Territory, Abuja.⁴² In other words, the Act does not apply in all the 36 states of the Federation. The Criminal Code, Penal Code and Sharia Penal Code still apply in the territories they were enacted for. The Act is limited in its application, except it is passed by the State Houses of Assembly as a State Law.

4. Comparative Analysis

In the United Kingdom up till 2010 provocation was a defence only to the offence of murder sufficient to convert what would otherwise have been murder into manslaughter. It was abolished on 4th October, 2010 by *Section 56(1)* of the *Coroners and Justice Act*⁴³ but replaced by a relatively similar defence of ‘loss of control’ in *Sections 54 and 55* which is still applicable as a partial defence to murder. Indecent exposure is also a sexual offence in the United Kingdom under the Sexual Offences Act 2003⁴⁴ but does not include as a requirement its effect to induce another to commit a sexual crime like in the VAPP in Nigeria. In Canada, provocation is also a partial defence to the charge of murder⁴⁵ and can only be used to reduce a charge of murder to manslaughter where successfully pleaded. *Section 173* of the Canadian Criminal Code prohibits indecent acts but is silent on the effect of it on another to commit a sexual crime like in Nigeria under VAPP. In Ghana, provocation is also only a partial defence to murder by virtue of *Sections 53 and 54* of the *Criminal Offences Act*.⁴⁶ Indecent exposure is also a criminal offence in Ghana by virtue of *Section 278* of the Criminal Offences Act but whether it is capable of inducing

⁴² VAPP (n.5) s. 47

⁴³ Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) Order 2010 <<http://www.legislation.gov.uk/ukpga/2009/25/contents>> accessed on 26 October 2016

⁴⁴ Sexual Offences Act 2003 s. 66 < http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/sexual_offences_act_2003_uk_en_1.pdf > accessed on 25 August 2016

⁴⁵ Canadian Criminal Code s.232 < <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-53.html#docCont> > accessed on 26 October 2016

⁴⁶ Criminal Offences Act of Ghana <http://laws.ghanalegal.com/acts/id/19/section/53/Matters_Which_Amount_To_Provocation > accessed 26 October 2016

another to commit an offence is not mentioned. A Ghanaian artist was recently charged in 2015 for indecently exposing his genitals while performing on stage.⁴⁷

5. Conclusion and Recommendations

From the foregoing, the paper examined the effect of sexual arousal induced by sexual stimulation on judgment and sexual decision making and it can be concluded that sexual arousal has a strong impact on sexual decision-making and that though there are gender differences; there are also biological similarities in sexuality. Also that, the effect of sexual arousal on decision making is very glaring and the law should address it. In cases where the victim contributed to the sexual stimulation of the perpetrator, it should be listed as a mitigating factor and the defence of provocation should avail such perpetrator. The victim, if proved should also be liable for his/her act leading to the perpetrator's unlawful act as provided in VAPP. These will help the criminal justice system to adequately address cases of rape and sexual offences especially cases of false allegations in Nigeria.

⁴⁷E E Hawkson, 'Wisa Charged with Indecent Exposure' 2015
<<http://www.graphic.com.gh/entertainment/music/wisa-charged-with-indecent-exposure.html>> accessed 20 March 2016