

AN EXAMINATION OF THE IMPACT OF ANTI-PROSTITUTION LAWS ON REPRODUCTIVE AND SEXUAL HEALTH AND RIGHTS OF WOMEN IN NIGERIA

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ABSTRACT

There is almost no known civilization, past or present that this social phenomenon called Prostitution has not existed as it exists today. Nevertheless, it is generally disapproved of in many societies, Nigeria not being an exception. While there exists evidence of research that prove that this practice is common in Nigeria, so much that the need to abolish its practice by legislation has arisen, there seems to be a lack of consideration for the health of the practitioner, especially during the period of rehabilitation and reintegration. It is against this backdrop that this paper is conceived. This paper adopts the doctrinal methodology and analyses the extant laws viz-a-viz existing facts and theories with a view to verify and support legal hypothesis. It examines the phenomenon of prostitution, extant legislation regulating or abolishing its practice and the effect of this legislation on the reproductive health of the victim. The paper finds that there is a gap in the existing laws especially in the area of rehabilitation and reintegration mechanisms. It therefore posits recommendations emphasizing the need to safeguard the health of vulnerable girls and women engaged in prostitution, whether voluntarily or otherwise.

Keywords: Prostitution, Anti- Prostitution Laws, Reproductive health, Reproductive rights.

1.0 INTRODUCTION

Anthropologists suggest prostitution did not actually seem to exist at all in what were once called primitive societies. There was no sex for sale among the Aborigines of Australia before the white man arrived. Nor, apparently, were there brothels in societies ranging from the ancient Cymric people in Wales to recently discovered tribes in the jungles of Burma.¹ The first recorded instances of women selling themselves for sex seem to be not in brothels but in temples.² In Sumerian³, Babylonia and among the Phoenicians, prostitutes were those

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¹P Valley "A Brief History of Brothels 2006"; <https://www.independent.co.uk/news/uk/this-britain/a-brief-history-of-brothels-5336946.html> accessed on 26th July,2020.

² Ibid

³ Sumer was a city in old Babylonia located between the Tigris and Euphrates rivers. It is the site of the earliest known civilisation

who had sex, not for gain, but as a religious ritual.⁴ Sex in the temple was supposed to confer special blessings on men and women alike. But that was very different to just doing it for money⁵. There is however, evidence from the scriptures, Jewish and Christians, that commercial prostitution existed alongside ritual prostitution in their ancient society.⁶

It is interesting to note that throughout history, prostitutes have not exclusively been women. For example, in the Turkish bathhouses of the Ottoman Empire, in the 15th century, young boys known as *tellaks* were recruited from the ranks of non-Muslim subjects of the Empire. Their services were blatantly sexual.⁷ While sodomy was forbidden by Islam, other types of homoerotic acts were not. They were not slaves.⁸ They were well compensated for any services they provided and were tax exempt.⁹ Many of them formed close relationships and attachments to their customers.¹⁰

The medieval brothels of Europe were under the authority of the state, city or prince. While technically a sin (because it hinged on the act of fornication), prostitution was recognized by the church and others as a necessary, or "lesser evil"¹¹. It was accepted as fact that young men would seek out sexual relations regardless of their options, and thus prostitution served to protect "respectable" townswomen from seduction and even rape. In 1358, the Grand Council of Venice declared that prostitution was "absolutely indispensable to the world"¹². Prostitution was acceptable in the early days of the United States of America. *Plaçage*, a formalized system of concubinage among slave women or free people of colour developed in Louisiana and particularly New Orleans by the 18th Century.¹³

Before the imposition of colonialism over much of Africa from the 1880s, diverse forms of sexual behavior existed across time and space. However, these forms of multiple sexual

⁴ Ibid

⁵ Ibid.

⁶ For example, Tamar, the daughter-in-law of Judah, disguised herself as a prostitute and had carnal relations with her father-in-law after a bargain for a goat which she secured by his staff, seal and cord in Genesis 38:12-23. Also, in Joshua 2:1-8, there is a narrative of Rahab, the prostitute who hid the twelve spies. The book of Jeremiah also uses the allegory of prostitution to describe Israel's apostasy.

⁷ Bright Hub Education: History of the Turkish Hamam or Bathhouse, 2008, <https://www.brighthubeducation.com/history-homework-help/14399-history-of-the-turkish-bathhouse/#:~:text=At%20the%20time%20of%20the,male%20customers%20in%20various%20ways.>> (accessed July 22, 2020)

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Prostitution in the Middle Ages: Prostitution and Canon Law, <www.brown.edu/Departments/Italian_studies/dweb/society/sex/prostitution.php#> (accessed July 22, 2020)

¹² ibid

¹³ VN Mellick 'It's no disgrace to a colored girl to placer': Sexual Commodification and Negotiation among Louisiana's "Quadroons," 1805-1860; <http://www.mixedracestudies.org/wordpress/?tag=quadroon-balls> accessed August 01, 2020. In 1805, a New Orleans newspaper advertisement formally defined a new social institution, the infamous Quadroon Ball, in which prostitution and *plaçage*, a system of concubinage, converged. These balls, limited to white men and light-skinned, free "Quadroon" women, became an interracial rendezvous that provided evening entertainment and the possibility of forming sexual liaisons in exchange for financial "sponsorship." At these balls, money and other forms of payment were exchanged for the connubial placement of free women of color with wealthy white men.

behaviors which included concubinage and ritual sex, rarely involved direct payment for sexual service¹⁴. This paper studies the history of prostitution and its operations in a bid to find a nexus between the concept and its impact on the reproductive health of the female practitioner. It studies also the influence of legislation in access to medical care in this regard. It finds that there is not enough legislation to safeguard the reproductive health rights of the woman, the practitioner. It concludes and recommends that extant legislation be reviewed.

2.0 CONCEPTUAL DEFINITIONS

2.1 Prostitution

According to Black's Law Dictionary, Prostitution is the 'act or practice of engaging in sexual activity for money or its equivalent; commercialized sex'¹⁵. The United Nations (UN), when adopting special measures pertaining to all peace keeping missions operating under UN Command and control and to all UN staff, deemed the term to refer to any "exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour"¹⁶.

Feminist theorists define the term as referring to the exchange of sex or sexual services for money or other material benefits usually occurring within unequal gendered power relations.¹⁷ Neoliberals define women in prostitution as freely choosing agents in a free market responding to a market demand for sex.¹⁸

From the above, one can infer that the act of prostitution can either be voluntarily engaged in by the practitioner or may possess some elements of exploitation to the disadvantage of the unwilling party.

2.2 Rehabilitation

¹⁴S Aderinto : Pleasure for Sale: Prostitution in Colonial Africa, 1880s-1960s; <https://www.academia.edu/26908418/Saheed_Aderinto_Pleasure_for_Sale_Prostitution_in_Colonial_Africa_1880s-1960s_in_Frank_Jacob_ed._Prostitution_A_Companion_to_Mankind_Frankfurt_am_Main_Peter_Lang_2016_469-480> (accessed 24th September, 2019) This paper is unable to find any evidence that prostitution for commercial benefit existed in pre-colonial Nigeria.

¹⁵ Garner, *Black's Law Dictionary*, 8th Ed., West Publishing Co. ISBN 0-314-15234-2, at 1259

¹⁶ CAP Intl: Prostitution under International Human Rights Law: An Analysis of States Obligations and the best way to Implement them; <http://www.cap-international.org/wp-content/uploads/2016/11/ProstitutionUnderIntlHumanRightsLawEN.pdf> accessed 30th July, 2020

¹⁷J Outshoorn "The Political Debates on Prostitution and Trafficking of Women." *Social Politics: International Studies in Gender, State and Society* 12, no. 1 (2005): 141-155. muse.jhu.edu/article/180899 (accessed November, 02, 2020)

¹⁸ A Mathieson, E Branam et al Prostitution Policy: Legalization, Decriminalization and the Nordic Model" *Seattle Journal for Social Justice* Vol. 14 Issue 2 (Fall 2015) Article 10 4-27-2016 <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1814&context=sjsj>, accessed on 30th July, 2020

This can refer to the process of helping a person who has suffered an illness or injury restore lost skills and so regain maximum self-sufficiency.¹⁹

In relation to crime, rehabilitation is the process of re-educating and retraining those who commit crime. It generally involves psychological approaches which target the cognitive distortions associated with specific kinds of crime committed by particular offenders, but may also involve more general education such as literacy skills and work training. The goal is to re-integrate offenders back into society.²⁰

The process seeks to improve a criminal's character and outlook so that he or she can function in society without committing other crimes²¹. It is the restoration of former rights, authority or abilities²².

In summary, it is the conversion of an individual from a deviant to a non- deviant state in speech and behavior.

2.3 Reintegration

The action or process of restoring elements regarded as disparate to unity to integrate someone back into society.²³

2.4 Reproductive Health

The International Conference on Population and Development (ICPD) defines reproductive health as "a state of complete physical mental and social well-being... In all matters related to the reproductive system...."²⁴

2.5 Reproductive Rights

The term reproductive rights focuses on the legal entitlement to access health services and information in general and long disputed rights over reproductive choices like contraception and abortion in particular. ²⁵

2.6 Sexual Health

¹⁹WC Shiel Jr; Medical Definition of Rehabilitation;<<https://www.medicinenet.com/script/main/art.asp?articlekey=5288> > (accessed August 01,2020)

²⁰ Rehabilitation (Penology)<[https://en.wikipedia.org/wiki/Rehabilitation_\(penology\)](https://en.wikipedia.org/wiki/Rehabilitation_(penology)) > (accessed August 01,2020)

²¹ Ibid at 1311

²² The Free Dictionary;<<https://legal-dictionary.thefreedictionary.com/Rehabilitation>

²³ Oxford Dictionary; Reintegration: <https://www.lexico.com/definition/reintegration> accessed 20 March,2020

²⁴ Paragraph 7.2 ICPD Program of Action. cited in S Carmel "Right to Sexual and Reproductive Health -the ICPD and the Convention on the Elimination of All Forms of Discrimination against Women" <https://www.un.org/CISE/Shalev> (accessed 27June 2024)

²⁵ C Schurr, E Miltz, "Reproductive Rights", *International Encyclopedia of Human Geography (Second Edition)* (2020) pp.435-442, <<https://www.sciencedirect.com/science/article/abs/pii>> (accessed September 30, 2024)

Sexual health is a state of physical, emotional, mental and social well-being related to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.²⁶

2.7 Sexual rights

This refers to the rights of women to personal reproductive autonomy and to collective gender equality.²⁷

3.0 HISTORICAL EVOLUTION OF LEGISLATION AGAINST PROSTITUTION

Prostitution in the Middle Ages was, much as it is today, primarily an urban institution. Many cities tried to solve the problem by banishing prostitutes to certain areas of town.²⁸ Rules were set in place; brothels were situated in special streets; ecclesiastics and married men were not allowed to visit.²⁹ Prostitutes, who had to wear distinctive dress, were allowed to ply their trade just outside the town walls but not within. Prostitution was so widespread in Europe that municipalities like Vienna in Austria, Paris in France and Hamburg in Germany built public brothels³⁰

By the early 16th century; attitudes began to harden against prostitution in Europe. The association between prostitutes, plague and contagion emerged, causing brothels and prostitution to be outlawed by secular authority.³¹ Furthermore, outlawing brothels and prostitution was used to "strengthen the criminal law" system of the 16th-century secular rulers³².

The outbreak of the World Wars saw a great increase in prostitution around countries of the world. In the United States, prostitution was at best sporadically controlled until passage of the Federal Mann Act, 1910, which prohibited interstate transportation of women for "immoral purposes."³³ By 1915 nearly all states had passed laws that banned brothels or regulated the profits of prostitution.³⁴

After World War II, prostitution remained prohibited in most Western countries. Many law enforcement agencies became more concerned with regulating the crimes associated with the practice, especially acts of theft and robbery committed against clients. Authorities also

²⁶ World Health Organisation (WHO), "Definition of Sexual Health, Minnesota Department of Health <<https://www.health.state.mn.us/people/sexualhealth/definitions.html#:~:text=Sexual%20health%20involves%20an%20ability,to%20set%20appropriate%20sexual%20boundaries.>> (accessed October 2, 2024)

²⁷ S Carmel "Right to Sexual and Reproductive Health -the ICPD and the Convention on the Elimination of All Forms of Discrimination against Women, n.23

²⁸ Prostitution in the Middle Ages: Prostitution and Canon Law, n.10

²⁹ Ibid

³⁰ Ibid

³¹ LL Otis, *Prostitution in Medieval Society: The History of an Urban Institution in Languedoc.*(1985) Chicago: University of Chicago Press. ISBN 978-0-226-64033-4

³² Ibid

³³ JP Jenkins "Prostitution" <<https://www.britannica.com/topic/prostitution>> [accessed July 26,2020].

³⁴ Ibid

intervened to prevent girls from being coerced into prostitution (white slavery³⁵). Thus began opposition to tolerated prostitution which has continued till date.³⁶

3.1 Types of Prostitution and the root causes of prostitution

In contrast to popular thinking, female sex workers are an extremely heterogeneous population. They are situated in a myriad of social and environmental contexts. Past and current studies suggest that there are many different types of female sex workers, including ‘call girls’ and escorts working in the upper echelons of the sex industry, ‘in-house’ sex workers working in parlors or brothels, ‘street-walkers’ who sell sex for money through sidewalk solicitations, part-timers who supplement their incomes with sex-for-pay, and drug-involved street-based sex workers, the majority of whom shift between sex-for-money and sex-for-drug exchanges as circumstances require.”³⁷

According to Christine Harcourt, there are at least 25 types of sex work which have been identified according to worksite, principal mode of soliciting clients, or sexual practices. These types of work are often grouped under the headings of ‘direct’ and ‘indirect’ prostitution, with the latter group less likely to be perceived or to perceive themselves as sex workers.³⁸ Direct Prostitution include street or other public place sex work and is probably the most widespread type of prostitution globally. Others are brothel, escort, private clients, clubs, bars and other methods of solicitation like sex worker catalogues.³⁹ Indirect forms of prostitution include bondage and discipline, lap dancing, massage parlour, travelling

entertainers, sex for drugs, kept women or men. Indeed, the arrangements are vast.⁴⁰

Several reasons have been adduced for the practice of prostitution in Nigeria. They include *poor family background, peer group pressure, unemployment; lack of sexual education, brain drain and poor academic performance among others.* ⁴¹ *It has also been observed that prostitution has very serious consequences which among others include public health issues (issues bordering on contraction of sexually transmitted disease), human trafficking and sexual violence (rape)*⁴²

³⁵ The White slavery discourse arose when foreign men would take advantage of innocent white women in England and traffic them for the purpose of prostitution both within domestic and international borders. The Criminal Law Amendment Act (CLAA) 1885 was the first adopted measure to abolish white slavery.

³⁶JP Jenkins “Prostitution” n.28

³⁷H Surrat PhD: “The Connections of Mental Health Problems, Violent Life Experiences, and the Social Milieu of the ‘Stroll’ with the HIV Risk Behaviors of Female Street Sex Workers”,2005,Journal of Psychology and Human Sexuality cited in Britannica ProCon: What are the different types of Prostitution?<<https://prostitution.procon.org/questions/what-are-the-different-types-of-prostitution/>> [accessed August 03,2020]

³⁸C Harcourt PhD, B Donovan, MD, “The Many Faces of Sex Work” (2005) BMJ Journals (81) (3) <<https://sti.bmj.com/content/81/3/201>> (accessed August 03,2023)

³⁹ Ibid

⁴⁰ Ibid

⁴¹ CC Obi, E Uzoh,” Socio-Cultural Factors Influencing Prostitution in Awka”(2021) IJALBS (7) <http://ijalbs.gojamss.net/index.php/IJALBS/article/view/146#> [accessed August 03,2023]

⁴² Ibid

4.0 LEGISLATIVE INTERVENTION AND REGULATION OF PROSTITUTION IN NIGERIA

4.1 The Criminal Code Act⁴³

The Criminal Code Act in its Interpretation section defines Prostitution to include “the offering by a female of her body commonly for acts of lewdness (this simply means an act of the flesh) for payment although there is no act or offer of an act or ordinary sexual connection”

This paper is of the opinion that this definition is too narrow and may not effectively serve present realities of the society. This is because it is possible for men to be involved in lewd acts for payment as practitioners themselves and not as sponsors or enablers of such acts. It would therefore be an imbalance for the society to continue to focus on one gender of the society, to the possible exposure and detriment of the other gender.

By S.222A of the Act, anyone who having the custody, charge or care of a girl under the age of sixteen years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon, such a girl, shall be liable to imprisonment for two years.

Such a person shall be deemed liable, if he has knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character⁴⁴. Such a person shall also be liable to a fine of One Hundred Naira or to imprisonment for six months, or both, except the accused person can prove that he believed, on reasonable grounds, that the girl was of or above the age of sixteen years if the accused person was under the age of twenty-one years at the time when the offence is alleged to have been committed and has not previously been charged with any of such offences⁴⁵.

S. 223 of the Act makes it an offence for a person to procure a girl under the age of Eighteen for the purpose of becoming a prostitute or an inmate of a hotel either within or outside Nigeria and the person who procured the young girl is guilty of a “Misdemeanour” and is liable to imprisonment for two years.

S. 224 of the Act makes it an offence for a person to procure a woman to have “unlawful carnal knowledge” with a man either by threat, intimidation, false pretense or causes the woman to take any drug that would arouse her or cause the man to overpower her and is guilty of a Misdemeanor and is liable to imprisonment for two years.

S. 225 of the Act makes it an offence for a person to abduct an unmarried girl under the age of 18 with the intent that she would be “carnally known by a man”.

⁴³ Cap C38, Laws of the Federation (LFN) 2004, hereinafter called the Act.

⁴⁴ S.222A (2)

⁴⁵ S.222C. the writers digresses a bit to state that it is unfortunate to note that this sum specified as the fine for such an act remains One Hundred Naira even in the face of present economic realities including the need for an amendment or repeal of sections of the Act that no longer serve the intended purpose effectively.

S. 225(A) of the Act provides that every male person who, knowingly lives wholly or in part on the earnings of prostitution or in any public place, persistently solicits or importunes for immoral purposes is liable to imprisonment for two years.

S. 225(A)(2) of the Act goes further to state that any magistrate who is satisfied by the evidence upon oath, that there is a reason to suspect that any premises or any part of any premises are used by a female for purposes of prostitution and that any male person residing in or frequenting the premises is living wholly or in part on the earnings of the prostitute, may issue a warrant under his hand authorizing any constable to enter and search the premises and to arrest that male person.

S. 225B of the Act makes it an offence to manage, assist in the management of a brothel, lease or be the landlord of a brothel. Anyone caught is liable to a fine of N100 or to imprisonment for 6 months⁴⁶.

From the foregoing, it is clear that the Act does not in any manner criminalize prostitution. It merely defines the word and states the offences and penalties for solicitation, recruitment and harbouring of prostitutes. This means that under the Criminal Code Act, a woman who prostitutes herself has not committed an offence. It is therefore fascinating that despite this fact, women are continually harassed and stigmatized for this practice when indeed; it should be all who recruit, accommodate and patronize prostitutes that should be stigmatized and apprehended. Further, the Act is silent on what should happen to the prostitute who has been released from the brothel or the person who procures her. There are no provisions for the protection of the Prostitute as a witness; neither does the Law consider her as a victim of violence in need of protection and in many instances, medical aid. The Act is silent about the fate of the prostitute and her subsequent interaction with the society by rehabilitation and reintegration. This may well be because she has not breached any provisions of the law in the first instance.⁴⁷

4.2 Criminal Code Law, Edo State

In 2000, Edo State amended its Criminal Code Law to criminalise prostitution and punish those who aid and abet overseas travel for potential prostitutes⁴⁸.

S.222 (A) extended the ambit of the offence of causing or encouraging the seduction or prostitution of a girl to cover every female person in place of only “girls under the age of thirteen years”, and increased the sentence from two years to imprisonment for seven years or to a fine of N50,000.00.

⁴⁶These penalties should be compared and contrasted with the provisions of the same Act in ss. 214 to 217 where the Act expressly elevates acts of indecency against a male to a felony, liable with imprisonment for 7 years but relegates acts of ‘slavery’ meted on the female to mere misdemeanours. The writers believe that provisions of the Law like these encourage exploitation of women as it portrays them to be of lesser value to society. It also is a sublime reflection of the patriarchal society in which we live.

⁴⁷ The Criminal Code Act is applicable to the southern part of Nigeria.

⁴⁸Edo State Law against Human Trafficking The Law to amend some of the provisions of the Criminal Code Cap 48 Laws of Bendel State 1976 as applicable to Edo State, 2000 (the Edo State Law). In 2000, the Edo State House of Assembly passed a law to amend the existing Criminal Code to specifically address the menace of human trafficking for sexual exploitation (prostitution) that had reached alarming heights at that time

By Section 222 (A)(2) the Law introduces compulsory medical examination for the purpose of determining sexually transmitted diseases (STDs) for those deported from foreign countries.

The paper observes that while the amendment may have appeared laudable at the time it was made, bearing in mind the social upheaval in the state at that time, it appears to neglect the fact that not all prostitutes are unwilling practitioners. In fact, there exists a group of people who believe that prostitutes render a social service and should be treated like any other social worker.⁴⁹ It also neglects the right of an adult to offer sexual services voluntarily, if that is her choice. In addition, it is observed that there is no corresponding provision that criminalizes a male who engages in prostitution even though at that time, there was the possibility that young males were also recruited for trafficking for sexual exploitation. These stereotype the law and make it discriminatory against women.

While the Law appears to take into cognizance the possibility of persons deported from foreign countries returning in poor health and makes provisions for the medical assessment of the state of their sexual health, it provides no more than that. It neglects the need for local practitioners to maintain good health as well. This paper believes that this is a great lacuna in the law. Information in the public domain confirms that many persons, whether deported for prostitution in foreign countries or who are practitioners in the domestic realm, do not only suffer sexual illnesses but physical and psychological trauma as well. Further, the Law takes no cognizance of the fact that intra-national trafficking for the purpose of prostitution is as rampant as international trafficking for prostitution.

Again, by the letter of this amendment therefore, one could surmise that the prostitute, if apprehended, is deemed a criminal, even where she is an unwilling party and indeed a victim without recourse to the fact that there exist requisite reproductive right and health guarantees they are entitled to as women especially where they are vulnerable innocent victim. Like its national counterpart, the Criminal Code Law makes no provisions for the rehabilitation and reintegration of the prostitute, even though unlike the Act, it criminalizes the practice.

4.3 The Penal Code⁵⁰

⁴⁹ SK Marugonda, "Understanding Prostitution: Respect the Workers", LinkedIn (2023) <<https://www.linkedin.com/pulse/understanding-prostitution-respect-workers-sravana-kathyaini>> (accessed October 1, 2024)

⁵⁰ The Penal Code, promulgated on 30th September 1960, is the criminal law applicable in the Northern part of Nigeria. Hereinafter called the Code, It was fashioned after the Sudan Criminal Code, which in turn was based on the Indian Penal Code. Sudan and Northern Nigeria have *Shari'a* law. Trafficking in women has been recognized as an offence in the Penal Code with special provisions according to the age of the victim. Trafficking in women has been recognized as an offence in the Penal Code with special provisions according to the age of the victim.

In general, there are stronger provisions against prostitution related offences in the Penal Code than the Criminal Code, and while the Criminal Code treats some of these offences as mere misdemeanour, the Penal code categorizes them as felonies and provides stricter punishments. S.276 prescribes a maximum penalty of 10 years in prison and a fine for anyone convicted of encouraging the prostitution of women and children and it is an offence to import into Northern Nigeria a girl under the age of 21 for prostitution.

S.275 provides as follows:

“Whoever by any means whatsoever induces any girl under the age of 18 years to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to 10 years and shall also be liable to fine”.

While both sections above prescribe the maximum penalty in addition to a fine but do not have a minimum penalty. This is a shortcoming as it is left to the discretion of the judge to impose any minimum, which may prove to be inadequate considering the gravity of the offence⁵¹.

It is observed again that just like the Criminal Code, the Penal Code makes no provisions for the restoration of the prostitute to good standing in the society as well as guaranteeing the protection of their reproductive health and rights.

4.4 Penal Code Act of Federal Capital Territory, 1990

This Act defines prostitutes as vagabonds and criminalizes prostitution and solicitation of prostitutes.⁵² By the Act, whoever is convicted, has been found guilty of this offence, will be imprisoned for one month or a fine or both,⁵³

The law states in section 405 (d) that:

⁵¹B Olateru-Olagbeg; A Ikpeme: “Review of legislation and policies in Nigeria on Human Trafficking and Forced Labour” <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_083149.pdf> (accessed July 02,2020)

⁵² Cap 532

⁵³N Adebawale “Arrest of Women in Abuja: what Nigerian Law says about Prostitution” <<https://www.premiumtimesng.com/news/headlines/329180-arrest-of-women-in-abuja-what-nigerian-law-says-about-prostitution.html> > (accessed July,23 2020). In that article, it was reported thus:An Assistant Commissioner of Police, Abayomi Shogunle, however, said prostitution is a crime under the law. He also said prostitution is a sin under the two main religions practised by residents of the Federal Capital Territory. He wrote on his Twitter page @YomiShogunle "Those making noise on the clampdown on prostitutes in #Abuja; - Prostitution is a crime under the law -P is a sin under the 2 main religions of FCT residents -Medicine says P is spreading HIV & STD, P is lifeline of violent criminals, P don't pay tax, Nigeria culture frowns at P."It is surprising to note that this level of misconception of prostitution and the law is the reasoning of a senior police officer who should know better. It is trite that the fact that an act is moral or immoral does not make it a good law or a bad law. Law is law only as made by a sovereign and binding on the subjects and not by the moral inclinations of an individual

“An ‘Idle person’ shall include a common prostitute behaving in a disorderly or indecent manner in a public place or persistently importuning or soliciting persons for the purpose of prostitution.

“The term vagabond shall include any male person who knowingly lives wholly or in part on the earning of a prostitute or in any public place solicits or importunes for immoral purposes; and

“Whoever is convicted as a vagabond shall be punished with imprisonment which may extend to two years or with fine which may extend to Four Hundred and Fifty Naira or both. The definition of the Prostitute is erroneous in the writers’ belief. This is because the writers think that prostitution requires very good marketing skills which will demand of the prostitute, time and finances, both of which will not be available to an idle person. Also, studies have revealed that the practice occurs at all strata of society. This definition would therefore presuppose that the prostitute is a base fellow at the lowest rung of the ladder in society. Again, this is a misconception of the reality. Were the writers to concur with this assumption of the social standing of the prostitute, the law makes no provisions to rehabilitate such a person of low estate who has to live a base life for sustenance.

4.5 The Constitution⁵⁴

There is no express legislation on Prostitution in the Nigerian Constitution. S.34 guarantees the right to the dignity of the human person thus prohibiting the subjection of any person to slavery or servitude. It provides to the effect that every person is entitled to respect for dignity and no person should be subjected to inhuman or degrading treatment.

4.6 Edo State Law against Human Trafficking and Prostitution⁵⁵

In May 2018, the Edo State government approved a state-level anti-trafficking law that criminalized sex trafficking and labour trafficking and prescribed a minimum penalty of five years’ imprisonment and a fine of One Million Naira fine for both sex and labour trafficking; the minimum penalty for sex trafficking increased to seven years’ imprisonment and a fine of One Million Naira if the case involved a child victim. These penalties were sufficiently stringent and, with regard to sex trafficking, commensurate with those prescribed for other serious crimes like kidnapping⁵⁶

However, like its predecessors, the Law is silent on the reproductive health of the practitioner

4.7 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003⁵⁷

The Act, though specific to trafficking and one of the first such laws in Sub-Saharan Africa, it is not a model, but rather a mixed bag of innovative provisions in some parts and lacunae in others.

⁵⁴ The Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended in 2010.

⁵⁵ Signed into Law on May 18,2018.

⁵⁶ US Department of State:2019 Trafficking in Persons Report: Nigeria <<https://www.state.gov/reports/2019-trafficking-in-persons-report-2/nigeria/#:~:text=In%20May%202018%2C%20the%20Edo,minimum%20penalty%20for%20sex%20traffickin g≥> (accessed June 15,2020)

⁵⁷ Hereinafter called the NAPTIP Act

The Act defines “trafficking” as follows:

Trafficking includes all acts and attempted acts involve in the recruitment, transportation within or across Nigerian borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person, whether for or not in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions.

Like the Edo State Law that criminalizes the acts of accessories after the fact, the NAPTIP Act also takes an innovative step in criminalizing commercial carriers who transport potential trafficked victims with knowledge of the trafficking transaction. However, unlike the Edo State Law, the Act recognizes that there are trafficking transactions involving transportation within and across the Nigerian Borders thus recognizing internal trafficking as well⁵⁸.

The objective of the Act appears in summary to be to bring traffickers of innocent persons to book and not so much on the protection and reformation of the victim. Nonetheless, it remains the only legislation that provides for the Rehabilitation and Reintegration of victims. The NAPTIP Act provides for the treatment of trafficked persons. It essentially prohibits discrimination against trafficked persons on the basis of sex, race, cultural or social standing and restriction of the movements of such persons on account of having being trafficked. The Act also provides for access to social services and guarantees the protection of the identity of the trafficked person. The provisions are in some respect similar to those contained in the Human Rights Standards for the treatment of trafficked persons.

4.8 The Violence against Persons (Prohibition) (VAPP) Act 2015:

VAPP Act 2015 prohibits all forms of violence persons, including women and children, in both private and public life, and provides for maximum protection, effective remedies for victims and punishment of offenders. Even though the Act applies at the Federal level/FCT Abuja only, yet it is a major step/signal to the States in the right direction.⁵⁹

5.0 SEXUAL RIGHTS AND FREEDOMS

Sexual rights have been accepted as among human rights already recognized in national laws, international human rights documents and other consensus documents.⁶⁰ It includes the right of all persons, free of coercion, discrimination and violence, to the highest attainable standard

⁵⁸ Ibid

⁵⁹ CEDAW: List of Issues and Questions in Relation to the Combined 7th and 8th Periodic Reports Of Nigeria Addendum Replies Of Nigeria, June 27,2017<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NGA/CEDAW_C_NGA_Q_7-8_Add-1_25131_E.pdf> (accessed August 01,2020)

⁶⁰ World Health Organisation (WHO),” Sexual Rights”< https://eige.europa.eu/publications-resources/thesaurus/terms/1393?language_content_entity=en accessed October 04, 2024

of health in relation to sexuality, including access to sexual and reproductive healthcare services; the capacity to seek, receive and impart information in relation to sexuality; access to sexuality education; respect for bodily integrity; free choice of partner; the right to decide to be sexually active or not; the right to consensual sexual relations, the right to consensual marriage; the right to decide whether or not, and when, to have children; and the right to pursue a satisfying, safe and pleasurable sexual life.⁶¹ The application of existing human rights to sexuality and sexual health constitute sexual rights.⁶² By the WHO definition, sexual health is not merely the absence of disease but includes the respect for the individual, free from discrimination, expressed through diverse sexualities, critically influenced by gender norms, roles, expectations and power dynamics. It is a concept that needs to be understood within specific social, economic and political contexts.⁶³

Social impact on sexual health can be far reaching due to the influence of factors such as cultural norms and beliefs, religion, gender dynamics, stigma and discrimination among others which result in practices like female genital mutilation, child marriages and transactional sexual intercourse and the transmission of sexually transmitted infections/diseases (STIs/STDs).⁶⁴

The fulfilment and enjoyment of sexual rights cannot be attained without economic parity of some sort. Economic parity in emoluments and payment for work done, equal opportunities and access to resources, social protection systems and the right to peaceful assembly are some of the components required for the beneficial economic impact on sexual rights and health.⁶⁵

Political decisions have far reaching effects as decisions made in political spheres carry very real implications for the lives and health of individuals in the society.⁶⁶ It is the bodies and lives of women and girls that are most often impacted by domestic and international political decisions related to sexual and reproductive rights.⁶⁷ Where laws and policies impede the enjoyment of sexual rights, this paper believes that it contributes to international trafficking, especially of women for prostitution. Prostitution is illegal in Nigeria and the underground nature of the practice makes it very difficult to harness information that can accurately reflect the damage the practice has done to the economy and international reputation of the country. The fulfilment of sexual rights can be said to lie in the fulfilment of human rights.

⁶¹ Ibid

⁶² WHO, Sexual and Reproductive Health Research <https://www.who.int/teams/sexual-and-reproductive-health-and-research/key-areas-of-work/sexual-health/defining-sexual-health#> (accessed October 09, 2024)

⁶³ Ibid

⁶⁴ ISSM, "How do Cultural or Societal Factors Impact Sexual Health? (2024) < <https://www.issm.info/sexual-health-qa/how-do-cultural-or-societal-factors-impact-sexual-health>> (accessed October 12, 2024)

⁶⁵ Countdown 2030 Europe, "Economic empowerment goes hand in hand with sexual and reproductive health and rights" (2021) < <https://www.countdown2030europe.org/resources/economic-empowerment-goes-hand-in-hand-sexual-and-reproductive-health-and-rights/>> (accessed October 07, 2024)

⁶⁶ S Pugh, "Politics, power, and sexual and reproductive health and rights: impacts and opportunities" (2019) (27)(2) Sexual and Reproductive Health Matters <<https://www.tandfonline.com/doi/full/10.1080/26410397.2019.1662616#d1e89>> (accessed October 10, 2024)

⁶⁷

Sexual freedom is the license to lawfully live with and love whom you want, when you want, and how you want without social, political, medical or cultural persecution. Sexual freedom flows from the belief that human sexuality cannot be prescribed or legislated, and is a natural, fundamental and precious aspect of life.⁶⁸

5.1 Right to reproductive health and rights of prostitutes

The new paradigm in addressing women reproductive rights was birthed in Cairo in 1994 by the International Conference on Population and Development (ICPD). Women's reproductive capacity was transformed from an object of population control to a matter of women empowerment to exercise personal autonomy in relation to the sexual and reproductive health within their social, economy and political context.⁶⁹

The ICPD define reproductive health as "a state of complete physical mental and social well-being... In all matters related to the reproductive system...."⁷⁰

It also referred to the term reproductive right "as embracing certain human Rights that are already recognized ...in international human rights documents and other consensus documents."⁷¹ According to the ICPD Reproductive Rights rest on amongst other factors the right to attain the highest standard of sexual and reproductive health.

Subsequent International documents reiterated the paradigm shift of the ICPD on women's reproductive health and right⁷² The Beijing declaration⁷³ stated the explicit recognition of the rights of women to control all aspects of their health as basic to their empowerment and equality. Struggle over women's rights to sexual and reproductive health have been Central in advancing women's human rights including women in vulnerable situations particularly prostitutes.⁷⁴ Prostitutes are entitled to the full spectrum of reproductive health and right just like every other individual. They experience a multitude of overlapping structural barriers that impede their fundamental sexual and Reproductive health rights.⁷⁵ These sexual and Reproductive health rights compass a range of services such as:

- i. Family planning services e.g. contraceptives, Fertility Services and safe abortion.
- ii. Services that address HIV/ STI's, HPV related cancer prevention and other reproductive track morbidities.

⁶⁸ PDEES, "Sexual Freedom".(2019) The WellProject < <https://www.thewellproject.org/a-girl-like-me/aglmblogs/sexual-freedom#:~:text=Sexual%20freedom%20is%20the%20license,and%20precious%20aspe>> (accessed October 01, 2024)

⁶⁹S Carmel "Right to Sexual and Reproductive Health -the ICPD and the Convention on the Elimination of All Forms of Discrimination against Women" <https://www.un.org/CSE/Shalev> accessed 27June 2024.

⁷⁰ Paragraph 7.2 ICPD Program of action.

⁷¹ Ibid

⁷² Platform for Action of the Fourth World Conference on Women (FWCW) Beijing 1995.

⁷³ Ibid

⁷⁴ Ibid

⁷⁵A Shapiro and P Duff, "Sexual and Reproductive Health and Right Inequality Among Sex Workers Across the Life Course". National Library of Medicine. National center for Biotechnology information <www.ncbi.nlm.gov>(accessed June 27, 2024)

iii. Maternal and newborn care e.g. (antenatal, perinatal and postnatal care.)⁷⁶

5.2 Impediments to the enjoyment of sexual and reproductive rights of prostitutes

Research in recent years has increasingly demonstrated that gender-based attitudes and practices of health providers and gender dynamics in health facilities contribute to issues of access and quality of reproductive, maternal, new-born, child and adolescent health care. Gender norms and biases reflect in the perceived sub-ordinate role of women in the home. This implies that her control over decisions, including health-seeking decisions, autonomy and mobility outside her home without a male chaperone are generally met with disapproval. Where women lack autonomy and mobility outside the home, their access to safe, adequate, timely, and affordable health services, particularly emergency obstetric care, is undermined.

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Mistreatment and abuse of mothers and new-born babies include failure to meet professional standards of care, poor rapport between women and providers, physical abuse, non-consented clinical care, non-confidential care, non-dignified care (including verbal abuse), discrimination based on specific patient attributes, abandonment or denial of care and detention in facilities. Verbal abuse, including shouting, insulting, or threatening a woman or her new-born as well as physical abuse, such as slapping a woman or her new-born, remain antiquated practices that violate the rights of patients and compromise the quality of care⁷⁸

Untreated sexually transmitted infections may lead to serious consequences for long-term health. One such implication, pelvic inflammatory disease, may result in infertility, ectopic pregnancy, chronic pelvic pain, and an increased risk of hysterectomy. Research carried out by Brian M. Willis and Barry Levy reveals that of the millions of women and girls forced into prostitution each year, approximately 45% are infected with the human papillomavirus (HPV).

The National Cancer Institute has confirmed that HPV infection causes cervical cancer. Prostituted girls are left more susceptible to developing the disease since cervical cancer is associated with a high number of sexual partners and with young age at first intercourse.⁷⁹

Medical health practitioners are expected to offer best practices to their patients on the basis of their humanity but more essentially for the victims of prostitution and trafficking. However stigmatization of prostitutes (both the willing and the victims inclusive), influences community perception of prostitutes, reinforcing stigma and discrimination both in healthcare settings and day-to-day life.⁸⁰ The risk factor of unintended pregnancy, many months without antenatal and postpartum health care which is essential for maternal health and infant development for prostitutes especially the very vulnerable ones who are usually

⁷⁶ Ibid.

⁷⁷C Oduenyi, J Banerjee, O Adetiloye. et al, "Gender Discrimination as a Barrier to High-Quality Maternal and Newborn Health Care in Nigeria: Findings from a Cross-Sectional Quality of Care Assessment", BMC Health Serv

Res 21,198 (2021), <https://bmchealthservres.biomedcentral.com/articles> (Accessed March 01,2023).

⁷⁸ Ibid

⁷⁹ Office to Monitor and Combat Trafficking in Persons

Washington, DC August 8, 2007< <https://2001-2009.state.gov/g/tip/rls/fs/07/91418.htm> > (accessed July 19, 2024

⁸⁰ A Shapiro and P Duff, "Sexual and Reproductive Health and Right Inequality Among Sex Workers Across the Life Course" n.64

victims of traffickers requires legislative decisiveness. Despite the increased risk factor, very little is known about support services and interventions.⁸¹

Due to the fact some women engage in prostitution unwillingly, it is important that adequate information and access to legal services are available to them. In reality, the women and girls who become victims of prostitution have difficulty escaping their perpetrators. Victims many times encounter legal impediments often times due to limited knowledge and financial inadequacy.⁸² Stigmatization of prostitutes (both the willing and the victims inclusive), influences community perception of prostitutes, reinforcing stigma and discrimination both in healthcare setting and day-to-day life.⁸³ The risk factor of unintended pregnancy, many months without antenatal and postpartum health care which is essential for maternal health and infant development for prostitutes especially the very vulnerable ones who are usually victims of traffickers requires legislative decisiveness. Despite the increased risk factor, very little is known about support services and interventions.

Restrictive state laws that criminalize and punish prostitutes as well as those who aid same exist in Nigeria both at National and state levels but these laws address the issue of prostitution with strict punitive measures without recourse to the facts that a strong nexus exist between criminalizing an action, ensuring fundamental rights and rehabilitating victims as a further deterrent step and public safety measure. The situation of many prostitutes are precarious, both societal and legislative approach to them portrays the effort to stamp out their activities with legislations that does not lift the Veil to view the human vulnerability behind the curtain of prostitution and their relatively neglected needs of access to proper reproductive health and right when or if they emerge as survivors. Legislative actions that will accommodate their needs are recommended as well as policies and services as a follow-up to ensure enforcement and re-integration into normal human existence especially for the victims of prostitution.

6.0 CONCLUSION AND RECOMMENDATION

Law is a dynamic instrument that adjusts human relations in a society, eliminate tension and promote healthy practices as well as healthy expectations in a society. It serves as a mechanism for delivering justice in an ever-changing society. Nigeria has plethora of laws on prostitution and trafficking penalization and prevention and this is very laudable. However, criminalizing prostitution and prostituting activities as an effective prevention measure against escalation of these nefarious acts without adequate provision in the law for the safeguarding of reproductive rights of prostitutes, especially the vulnerable ones who are usually victims of trafficking is a dimension the legislators should harness.

Behind the curtains of prostitution are vulnerable women and girls who needed protection more than punishment, leaving them at the mercy of laws that are more poised to punish and stigmatize rather than protect their reproductive uniqueness which exposed them *ab initio* to

⁸¹ Ibid

⁸² NA Deshpande, NM Nour, "Sex Trafficking of Women and Girls"<https://www.ncbi.nlm.nih.gov/pmc/articles> (accessed January 17,2023).

⁸³ Ibid.

the precarious situation is not a true spirit of the law. Hence it is strongly recommended that existing legislations be amended and new laws enacted to accommodate this dimension of concern. The ever-changing nature of society necessitates changes in law and this can be achieved through amendment to statutes and Acts.