

CONSENT WITHIN MARRIAGE: AUTONOMY, CULTURE, AND THE JURISPRUDENCE OF MARITAL RAPE IN NIGERIA*

Abstract

Marriage is among the few institutions thought to carry an enduring expectation of sexual intimacy, and law has long given that expectation force. The modern constitutional order begins elsewhere, from the principle that authority over one's own body belongs to the person and is not surrendered by entering a status. Marriage creates genuine obligations, autonomy limits what any obligation can demand, and consent is not a fixed grant but a dynamic and revocable act. Nigerian law sits uneasily across this tension. Its inherited Criminal Code and Penal Code preserve a marital exemption, while the Violence Against Persons (Prohibition) Act 2015 defines rape by consent and asserts its own supremacy, leaving a single legal system internally inconsistent and unresolved. Drawing on doctrinal analysis, moral and African philosophy, comparative constitutional law, and international human rights jurisprudence, the article argues that neither the philosophy of marriage nor the resources of African thought support the exemption, and that Nigerian law already contains the materials for criminalisation but lacks the account of consent needed to activate them. It supplies that account, holding that consent within marriage is continuous, revocable, and incapable of being surrendered, that marriage creates obligation but never ownership, and that the law, read in its best light, already requires as much.

Keywords: Marital Rape, Consent, African Philosophy Of Personhood, VAPP Act 2015, Sexual Autonomy, Human Dignity

1. Introduction

Marriage is one of the oldest human institutions, long carrying a presumed expectation of sexual intimacy that the law once enforced. Modern constitutional orders, however, begin from a different premise, that individuals retain authority over their own body even within marriage. Two conflicting propositions therefore arise. One treats marriage as creating lasting sexual expectations; the other protects bodily autonomy, including the right to refuse intimacy, on the ground that such autonomy is not surrendered by entering a legal relationship or gaining a social status. The central question is whether the two propositions can coexist, and if not, which should yield. For a long time, it was generally believed that a husband could not rape his wife, a rule that placed non-consensual sexual conduct between married couples outside the offence of rape. The Criminal Code in force in southern Nigeria defines rape as 'an unlawful carnal knowledge' between people who are not husband and wife.¹ The Penal Code used in northern Nigeria provides that sexual intercourse by a man with his wife does not amount to rape once she has reached puberty regardless of consent.² Neither provision was developed through the jurisprudence of domestic courts; both were imported through colonial codification. The southern rule was derived from English common law, and the northern rule from the Indian Penal Code. England abandoned its rule in 1991, and India retains the exception only while awaiting the Indian Supreme Court's pronouncement on it. In Nigeria, by contrast, the provisions remain unchanged even though they have since been amended in the jurisdictions from which they came.³

With the enactment of the Violence Against Persons (Prohibition) Act (VAPPA),⁴ Nigeria not only adopted a consent-based and gender-neutral definition of rape,⁵ but declared its supremacy over earlier adopted legislations.⁶ The Act presently operates in the Federal Capital Territory and, thirty-five of the thirty-six states following domestication by the various state legislatures.⁷

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¹Secs 6 & 357 Criminal Code Act, Cap C38, LFN 2004.

²Sec 282(2), Penal Code Act, Cap P3, LFN 2004.

³M Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown* (first published 1736, Professional Books 1971) 629. The English rule was abolished in *R v R* [1992] 1 AC 599 (HL). The Indian exception, from which the Penal Code proviso descends, survives as Exception 2 to sec 63 Bharatiya Nyaya Sanhita 2023 and is presently under constitutional challenge. See Sections 2 and 7 below.

⁴Violence Against Persons (Prohibition) Act (VAPP Act) 2015.

⁵Sec 1(1) VAPP Act 2015. The Act extended the definition of rape to include anal and oral penetration and penetration by objects, and is the first Nigerian law to recognise male victims.

⁶Secs 1 & 45(2) VAPP Act 2015.

⁷Kano is the only state yet to domesticate the Act, so the Penal Code position still holds there; the Child Rights Act has been domesticated in all thirty-six states. See FMWA, 'FG Reviews Child Rights Act, VAPP Law, Unveils 40 New Social Protection Policies' (*ThisDay*, 20 June 2026). The position stated is as at July 2026.

Widespread domestication makes the VAPPA framework appear decisive, as though the marital exemption had been abolished. The reality is otherwise. Domestic courts continue to apply the older statutory definitions, and the reforms the Act seeks to secure have not been realised.⁸ Consequently, although Nigeria has legislation that supports criminalising marital rape, this has yet to translate into meaningful gains, and the gap between written law and judicial practice remains wide.⁹ The courts' indecision did not arise from poor draftsmanship. It reflects a deeper question about personhood, namely whether consent can survive marriage, whether it becomes irrevocable once given, whether culture can redefine the limits of bodily autonomy, and whether the criminal law should reach into marriage. These questions cannot be settled by statutory interpretation alone. They require an account of what consent means, what marriage does to those who enter it, and what it is to treat a spouse as a person rather than an object of entitlement.

To adequately answer the questions, the article draws on several disciplines, each serving a distinct purpose, in a method of constructive moral jurisprudence. Doctrinal legal analysis shows what Nigerian law currently provides and where its contradictions lie. Analytical philosophy clarifies the concept of consent, distinguishing permission from agreement and the momentary from the continuing.¹⁰ Moral and political philosophy provide competing theories of autonomy, from the liberal claims of individual sovereignty to accounts that situate the self within its commitments.¹¹ African philosophy interrogates what personhood and community genuinely require of spouses rather than assuming culture speaks with one voice in favour of obligation.¹² Comparative constitutional analysis examines how other jurisdictions settle similar issues. International human rights jurisprudence identifies the obligations that bind Nigeria, and a final reconstructive step translates those obligations into a framework to guide implementation.¹³

The article addresses three connected research questions. The first is conceptual. Can a coherent theory of consent accommodate both the reality that marriage creates genuine relational obligations and the principle that a spouse does not forfeit the right to refuse sexual relations by virtue of marriage? The second is interpretive. Do Nigeria's constitutional and statutory provisions, read together with the theory of consent and with Nigeria's obligations under the relevant international and regional human-rights treaties, suffice to establish criminal liability for marital rape without further legislation?¹⁴ The third is reconstructive. What would a distinctly Nigerian theory of marital consent look like, and would it be one that honours the moral seriousness of marriage and draws on African philosophical resources while anchoring consent in individual agency, so that the person is not wholly subsumed by the collective? Answering them requires a layered rather than a linear approach, tracing the colonial origins of the present law, examining consent and the nature of marriage, turning to African philosophy and constitutional theory, and finally returning to Nigerian doctrine and comparative jurisdictions.

The contribution this article offers is twofold. First, a theory of marital consent that is grounded in but not confined to Nigerian law, and second, a demonstration that African philosophical traditions support mutual respect by couples within marriage rather than the subordination of one by the other.¹⁵

⁸ A review of the VAPP Act is underway. See 'FG Reviews Child Rights Act, VAPP Law, Unveils 40 New Social Protection Policies' (*ThisDay*, 20 June 2026).

⁹ C Arinze-Umobi and C N Dinwoke, 'A Case for the Criminalization of Spousal Rape in Nigeria' (2021) 2(1) *Law and Social Justice Review* 155, 155-160.

¹⁰ H M Hurd, 'The Moral Magic of Consent' (1996) 2 *Legal Theory* 121; A Wertheimer, *Consent to Sexual Relations* (Cambridge University Press 2003) 143-173.

¹¹ J Raz, *The Morality of Freedom* (Clarendon Press 1986) 369-378; J Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford University Press 2011) 138.

¹² I A Menkiti, 'Person and Community in African Traditional Thought' in R A Wright (ed), *African Philosophy: An Introduction* (University Press of America 1984) 171.

¹³ On the comparative method adopted here, see Section 7 below. On Nigeria's treaty obligations, see n 15 below. On the reconstructive method, see R Dworkin, *Law's Empire* (Harvard University Press 1986) 225-227.

¹⁴ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) OAU Doc CAB/LEG/66.6 (Women Protocol); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

¹⁵ The Nigerian literature on marital rape is predominantly doctrinal and reformist, arguing for amendment of the codes rather than for a reinterpretation of the law as it stands. See S C Ifemeje, 'Legalisation of Marital Rape in Nigeria: A Gross Violation of Women's Health and Reproductive Rights' (2011) 33(1) *Journal of Social Welfare and Family Law* 39; Arinze-Umobi and Dinwoke (n 9). The empirical work lies largely in public health rather than in law: see A O Ogunwale and R F Afolabi, 'Prevalence, Determinants and Coercive Strategies Relating to Marital Rape among Women in Oyo State, Nigeria' (2022) 56(2) *Ghana Medical Journal* 117, reporting a prevalence of 15.3 per cent among 1,200 ever-married women, with physical force and threat the most frequent coercive strategies; and Amnesty International, *Nigeria: A Harrowing Journey: Access to Justice for Women and Girls Survivors of Rape in*

2. Historical Evolution of Marital Consent

The marital exemption in Nigeria was inherited from the English common law, which was itself shaped by Roman Catholic conceptions of marriage. As part of the received common law, a position neither debated nor judicially reasoned by Nigerian courts was adopted automatically into the country's criminal legislation. As historical background, the English common law position introduced to Nigeria derived from Roman law.¹⁶ Under this framework, a wife was assumed to have no choice but to be sexually available to her husband, and a husband could not commit a sexual wrong against her. Sexual offences were framed as injuries to male honour and family standing rather than as violations of a woman's will. Although these assumptions did not pass directly into English law, they shaped the reasoning that a wife's consent to intercourse was a feature of her status rather than an ongoing personal choice.¹⁷

Apart from Roman law, canon law is a more direct source. Building on the first letter of Paul to the Corinthians, medieval canonists developed the concept of the conjugal debt, the obligation of spouses to meet each other's sexual demands on request.¹⁸ According to Gratian, the conjugal obligation was a mutual and enforceable incident of marriage.¹⁹ This obligation was mutual, owed by each spouse to the other, but over time it was transformed into a one-sided immunity that preserved the husband's entitlement and erased its reciprocal character. The conversion into a one-sided immunity was famously articulated by Hale, who held that a husband could not be guilty of rape upon his lawful wife because, by consenting to marriage, she had given herself to him and could not retract it.²⁰ Two ideas support the proposition. First, marriage was treated as carrying an implied and irrevocable consent to intercourse. Secondly, under coverture, husband and wife were regarded as one in law, the wife's separate legal existence suspended so that she could neither withhold from nor complain of her husband.²¹ Although Hale cited no authority and his proposition was never judicially tested, it became settled doctrine in England and remained so until its abolition in 1991.²²

The same untested doctrine which confined rape to unlawful carnal knowledge between persons other than husband and wife was transplanted to Nigeria through the Criminal Code which was derived from the Queensland Criminal Code of 1899, itself a colonial codification of English common law.²³ The Penal Code's position came through the Sudan Penal Code from the Indian Penal Code, which contained the exception that a man could not be guilty of rape even where intercourse was without the wife's consent, so long as she was above fifteen. Nigeria's Penal Code differs only in replacing that age threshold with the attainment of puberty.²⁴ Thus two codes of distinct ancestry continue to preserve a proposition that no legislature or court adopted on its merits.

3. Conceptualising Consent

The previous section set out the *raison d'être* for why the law treats marriage as extinguishing the possibility of rape, but not whether that treatment rests on a defensible understanding of consent. The proper starting point is therefore not the definition of marital rape but the nature of consent itself. The marital exemption is, at bottom, a claim that consent once given upon marriage endures and cannot be withdrawn. Whether that claim can survive scrutiny depends on what consent actually is.

Consent is best understood as a moral transformer that changes the normative status of an act which would otherwise be wrong. A surgeon who cuts into a patient commits a battery, unless the patient has consented, in which case the same incision is lawful treatment. Intercourse without consent is a grave violation, while the identical act with consent is an ordinary part of human life.²⁵ While consent does not alter the physical reality of

Nigeria (Index AFR 44/4959/2021, 2021). None of these treatments engages African philosophical accounts of personhood as a source of argument rather than as an obstacle to be overcome, and none asks whether the materials already in force are sufficient to ground liability.

¹⁶ K.O. Akanbi, 'Views on the Echoing Influence of the Common Law on the Nigerian Legal System' (2022) 3 *International Journal of Law and Clinical Legal Education* 25-31.

¹⁷ N. P. Swatz *et al*, 'Is a husband criminally liable for raping his wife? A comparative analysis' (2015) 3 *International Journal of Academic Research and Reflection* 8-25.

¹⁸ 1 Corinthians 7:3-4 (New King James Version).

¹⁹ Brundage (n 17) 235-242, 358-360.

²⁰ Hale (n 3) 629.

²¹ W Blackstone, *Commentaries on the Laws of England*, vol 1 (Clarendon Press 1765) 430.

²² *R v R* (n 3).

²³ C O Okonkwo and M E Naish, *Criminal Law in Nigeria* (2nd edn, Sweet & Maxwell 1980); secs 6 & 357 Criminal Code Act, Cap C38, LFN 2004. The Code reached the southern provinces through the Queensland Criminal Code 1899, the codification prepared by Sir Samuel Griffith.

²⁴ S S Richardson, *Notes on the Penal Code Law* (Gaskiya Corporation 1967) 1-3; A Gledhill, *The Penal Codes of Northern Nigeria and the Sudan* (Sweet & Maxwell 1963); sec 375 Indian Penal Code 1860; sec 282(2) Penal Code Act LFN 2004.

²⁵ J Lewis, 'Respect for autonomy: Consent doesn't cut it' (2023) 18(2) *Clinical Ethics* 139-141.

an action, it acts like a switch which rewrites the moral and legal obligations of the parties involved. This power to transform how actions are viewed is why consent occupies the centre of arguments about sexual wrongdoing, namely the capacity of a single act of will to render permissible what would otherwise be forbidden.²⁶ The transformative power of consent connects directly to a deeper idea about personhood. Kant argued that human beings must always be treated as ends in themselves and never merely as means to an end.²⁷ Consent is the mechanism by which a person authorises another to act in ways that affect them, turning what would otherwise be wrong into a shared activity. Mill captured the same thought, insisting that over their own body and mind the individual is sovereign.²⁸ Sexual autonomy applies that sovereignty, and it is the one most directly at stake here.

For consent to be transformative, it must be understood rightly. It can be seen as permission that lifts a constraint, as authorisation that confers a right to act, or as voluntary agreement, the meeting of two wills. Each captures part of the truth, but none is complete without attention to how consent is given and sustained. As Wertheimer notes in his study of sexual consent, consent as a mental state must be distinguished from consent as an act of communication that signals agreement to another.²⁹ A private willingness that is unexpressed cannot guide another's conduct, while an outward sign reflecting no real willingness is consent in form alone. Flowing from the above, true consent is a communicative act that genuinely expresses the will of the person consenting. It cannot be reduced to a silent, unspoken attitude that leaves others guessing, nor inflated into a hollow ritual of words that lacks real intention.

The most important feature of consent is its relation to time. The marital exemption assumes that consent is static, a single grant that fixes the parties' positions once and for all. That assumption cannot withstand scrutiny, for consent is dynamic. It may be given for a particular occasion, present on one occasion and absent the next, and withdrawn at any point before or during the act to which it relates. A person who agrees to an act and then changes his mind has withdrawn consent, and to proceed thereafter is to proceed without it. As O'Neill notes, consent attaches to specific descriptions of what is proposed and cannot be stretched to cover what another person may later wish to do.³⁰ Consent to marriage is consent to marriage, not an open cheque covering every act of intercourse a party to the union may demand, however unreasonable. A conception that allows a past agreement to bind every act in the future would not be consent at all, but surrender.³¹

For consent to be legally effective, it must meet conditions of validity. The first is capacity, the ability to comprehend what is proposed and make a reasonable choice about it. The second is voluntariness. As Feinberg observes, autonomy is a form of sovereignty over one's life, and any agreement not freely made is empty.³² Voluntariness may be undermined in several ways. Coercion nullifies choice directly, since submission obtained under threat is not genuine consent.³³ Manipulation, as Raz explains, compromises autonomy by distorting the decision-making process rather than confronting the agent with penalties, and is therefore as corrosive as force, if less visible. Power imbalances and vulnerability, whether economic, physical, or social, further complicate matters, since the weaker party's agreement may flow from dependence rather than authentic will.³⁴ A power imbalance does not automatically foreclose genuine consent in an unequal relationship. It means only that the source of the inequality must be carefully managed so that it does not hollow out a consent that looks complete on the surface.³⁵

The conditions distinguishing genuine consent from coercion are not satisfied merely by the existence of a relationship. A relationship may provide the context in which consent is given, and may even make its expression easier, more routine, or less formal, but it does not substitute for consent itself nor render it unnecessary.

Consent, then, is the continuing and revocable act of an agent who is sovereign over their own body. It is valid only when given freely and with capacity, and it is defeated by coercion, manipulation, or the exploitation of

²⁶ Hurd (n 11) 121.

²⁷ I Kant, *Groundwork of the Metaphysics of Morals* (Mary Gregor tr and ed, Cambridge University Press 1998) 38 (Ak 4:429).

²⁸ J S Mill, *On Liberty* (first published 1859, Dover Publications 2002) ch 1.

²⁹ Wertheimer (n 11) 143-173.

³⁰ O O'Neill, 'Between Consenting Adults' in *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge University Press 1990) 105-125; O O'Neill, *Autonomy and Trust in Bioethics* (Cambridge University Press 2002).

³¹ U. Nzube, 'The Unjustness or Otherwise of Marital Rape Exception' (2024) Available at

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4900973 accessed 15 May 2026.

³² J Feinberg, *The Moral Limits of the Criminal Law: Harm to Self* (Oxford University Press 1986) 27-52.

³³ Raz (n 12) 377-378.

³⁴ P. Alderson & C. Goodey, 'Theories of Consent' (1998) 317*BMJ* 1313-1315.

³⁵ S. Vyas & H.A.F.M. Jansen, 'Unequal power relations and partner violence against women in Tanzania: a cross-sectional analysis' (2018) 18 *BMC Women's Health* 1-12.

vulnerability. A marriage that purports to extinguish the right to refuse does not redefine consent but abolishes it. The next question is whether marriage vitiates consent.

4. Marriage as an Institution

Having established the nature of consent, the task now is to examine what marriage does to it, and specifically whether marriage merges spouses into a single will or transfers the wife's autonomy entirely to her husband, granting him total control over her body. Consent as developed above does not collapse within marriage, and the exemption can be justified only by a defensible theory of the institution. No such theory exists. Marriage alters the relationship between two persons, but it does not alter their standing as persons, nor does it transform the body of one into the property of the other. Marriage has been described in several ways, each with different implications for the question at hand. As a social contract, it is an agreement of mutual commitments; as a religious covenant, it is a sacred bond ordained beyond the will of the parties; as a legal status, it is a condition recognised by the state with fixed rights and duties; and as an ethical partnership, a shared life directed toward a common good. These descriptions are not mutually exclusive, since most marriages combine two or more of them. What matters is that none requires the surrender of bodily autonomy. As Hegel argues, marriage is misdescribed when reduced to a contract of mutual use, for it is an ethical union in which two people form a common life while remaining persons in their own right.³⁶ Whilst the contractual picture may suggest the parties have exchanged enforceable entitlements over each other's bodies, the ethical picture says otherwise. A shared life is sustained by continuing mutual regard, and not the right of one party to command the body of the other.

Does Marriage Transfer Sexual Rights?

The marital exemption is based on the premise that marriage transfers sexual rights. An immediate implication is that sexual relations become a mechanical affair in which one spouse demands sex whenever he desires and the other has no choice but to accede, however she feels at the time. This claim is expressed through the language of conjugal rights, marital obligation, and mutual availability, each of which warrants examination. Properly understood, conjugal right refers to the consortium of the other spouse, the shared life and companionship of marriage. It has never been a right to compel intercourse, and orders for restitution of conjugal rights were never understood as authorising force to compel sexual activity. Even under the Matrimonial Causes Act,³⁷ such orders are directed toward the resumption of cohabitation, not the licensing of compelled intimacy.³⁸

Spouses rightly owe each other obligations arising from marriage, but those obligations are limited. Intimacy is an important part of this duty, and a persistent, unexplained refusal may wrong the other spouse and even affect the future of the marriage. Even so, such an obligation can be discharged only willingly. It is not a debt enforceable by force. Similarly, mutual availability expresses an expectation rather than a power. The crucial question is whether one spouse can possess sexual access to the other as one possesses a thing. This is impossible, for it would amount to a property interest in a human being, a notion that both morality and law reject. Whatever else marriage confers, it does not confer ownership.

The Kantian Argument

Kant provides the clearest explanation of why marriage cannot confer sexual rights of compulsion. In his Formula of Humanity, he insists that persons must always be treated as ends in themselves, never merely as means. Sexual desire, he argued, is morally hazardous because it tempts individuals to strip away others' rational agency and reduce them to instruments of gratification. For Kant, marriage is the institution that renders sexual relations permissible, but only on the basis of reciprocity and mutual willingness, not compelled intercourse.³⁹ Far from supporting the exemption, the Kantian framework furnishes one of the strongest arguments against it, for a husband who forces sex upon his wife treats her precisely as the object Kant believed marriage was designed to prevent her from becoming.⁴⁰

Liberal Autonomy

The liberal tradition arrives at the same conclusion, though by a different route. Its reasoning is premised on the principle that every person is sovereign over their own body and life. Mill's principle of sovereignty places the body beyond the rightful control of others. Feinberg extended this into a theory of personal sovereignty, under

³⁶ G W F Hegel, *Elements of the Philosophy of Right* (Allen W Wood ed, H B Nisbet tr, Cambridge University Press 1991) paras 75, 161-169.

³⁷ The Matrimonial Causes Act (MCA) Cap M7, Laws of the Federation of Nigeria (LFN) 2004.

³⁸ Matrimonial Causes Act, Cap M7, LFN 2004. On the abolition of the remedy in England, see sec 20 Matrimonial Proceedings and Property Act 1970.

³⁹ F. K. Sitorus, 'Kant's Views on Sex and Marriage and Their Significance for Contemporary Ethics' (2025) 24 *Jurnal Ledalero* 103; Kant, *Lectures on Ethics* (Peter Heath and J B Schneewind eds, Peter Heath tr, Cambridge University Press 1997) 156 (Ak 27:384-385).

⁴⁰ *ibid.*

which decisions about one's body belong exclusively to the person whose body it is. Raz added the ideal of self-authorship, emphasising that autonomy entails being, in part, the author of one's own life and shaping it through successive choices.⁴¹ Each of these statements is directly engaged by the marital exemption. Bodily integrity means the body may not be used without the agreement of the person whose it is, and self-authorship means intimate life is among the domains a person creates rather than has dictated to them. A rule permitting one spouse to use the other's body without consent denies both at once. On the liberal account, the wrong of compelled marital intercourse lies not only in the injury it inflicts but also in its overriding of the sovereignty that makes a person a free agent.

Relational Autonomy

A familiar objection to the liberal account is that it is overly individualistic, portraying the person as solitary while neglecting the relationships that give life meaning. Marriage, critics argue, is precisely the kind of relationship in which strict individual autonomy yields to shared decision-making and mutual accommodation.⁴² This objection has force, but the appropriate response is not to deny the relational character of the self; rather, it is to understand it correctly. Relational accounts of autonomy emphasise that persons are formed and sustained within relationships, and that the capacity for autonomous choice develops through connection with others rather than in isolation.⁴³ Far from undermining autonomy, this view deepens the argument. Relationships generate obligations, and spouses constantly accommodate one another to sustain a shared life. But obligation and accommodation are themselves exercises of agency, not substitutes for it. As Friedman explains, autonomy and deep commitment are compatible, since voluntarily binding oneself to another is an autonomous act grounded in commitment and renewed choice.⁴⁴ A relationship that genuinely supports autonomy is one in which each party keeps the right to decide about their own body. One that extinguishes a party's right to refuse is not relational autonomy but its negation, the very pattern of oppression relational theorists identify as destructive of agency. The relational view therefore does not rescue the exemption; it exposes it. A marriage that silences refusal ceases to support the agency of the silenced spouse and instead consumes it.⁴⁵

The section's conclusion converges from four directions. Marriage properly understood joins lives without merging persons; the supposed transfer of sexual rights is an expectation, not a power, and never ownership; Kantian ethics condemns compelled intercourse as treating a person merely as a means; and liberal and relational philosophers alike hold that the capacity to refuse is essential to personhood and is not surrendered by marriage. The exemption therefore finds no support in the nature of the institution it invokes. What remains is whether cultural and communal traditions, often cited in its defence, can supply what the philosophy of marriage does not.

5. African Philosophy, Culture, and Marriage

Appeals to culture are often invoked to justify the marital exemption, with claims that it reflects African tradition, community values, and the proper ordering of family life. Yet such defences are rarely articulated with precision. A diverse and contested body of thought is treated as if it were a settled belief that automatically subordinates the wife upon marriage. The proper test, however, is to ask what African conceptions of personhood actually affirm, rather than what they are casually assumed to affirm. When framed in this way, the very traditions cited in defence of the exemption reveal themselves as arguments against it.

African philosophical reflection begins from the premise that personhood is constituted through community. Mbiti captures this viewpoint in his well-known formulation that the individual exists because the community exists, and thus to be a person is to belong.⁴⁶ Menkiti develops this position by arguing that personhood is not automatically conferred at birth but acquired over time, bestowed by the community as the individual grows into the duties and relationships of a moral life.⁴⁷ The self is thus not the solitary chooser of liberal theory but a being whose identity is woven from obligations to others. At first glance, this might appear to license the subordination of the individual to the collective, or of the wife to her husband and his family, but properly understood, this is not so.

⁴¹ J. Raz, *Autonomy and Pluralism in the Morality of Freedom* (Oxford University Press, 1986); Mill (n 27) ch 1; Feinberg (n 30) 27-52.

⁴² J Christman, 'Autonomy and Liberalism: A Troubled Marriage?' in *The Cambridge Companion to Liberalism*, ed. Steven Wall (Cambridge: Cambridge University Press, 2015) 141-162.

⁴³ C Mackenzie and N Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford University Press 2000) 4; M Friedman, *Autonomy, Gender, Politics* (Oxford University Press 2003) 81-115.

⁴⁴ Nedelsky (n 12) 138.

⁴⁵ E.C Lubaale, 'Relational Autonomy and Consent in Cases of Serious Harm' (2026) 85 *International Journal of Law, Crime and Justice* 100857.

⁴⁶ J S Mbiti, *African Religions and Philosophy* (Heinemann 1969) 108-109.

⁴⁷ Menkiti (n 13) 171-181.

A communal conception of personhood explains how the self is constituted, but it does not imply that the self, once formed, may be used without restraint. The obligations through which personhood is acquired are obligations of care, respect, and reciprocal duty, owed by the community to the individual as much as by the individual to the community.⁴⁸ The purpose of communal life is the flourishing of all its members in relationships of harmony, not the domination of some by others. A tradition that constitutes persons through mutual obligation cannot, without contradiction, treat one of them as a mere instrument of another's appetite. The communal self is embedded in duties, and a wife within such a tradition remains a person to whom duties are owed, foremost among them the duty to respect her refusal. To invoke community in order to silence her is to keep the language of communal personhood while abandoning its substance.

The strong communitarian reading is not the only African account, and it has been resisted from within. Gyekye argues for a moderate communitarianism that recognises both the communal and the individual dimensions of the person, and affirms individual rights, dignity, and a measure of autonomy as features of African thought rather than imports alien to it.⁴⁹ Wiredu grounds African ethics in a humane concern for the welfare of persons and in decision by consensus, which presupposes the standing of each person whose agreement is sought.⁵⁰ These are not marginal figures importing foreign ideas but central interpreters of African philosophy, who find in its own resources an affirmation of the dignity of the individual that the coercive reading overlooks.

The same lesson emerges from Ubuntu, the southern African ethic captured in the saying that a person is a person through other persons. Ramose has shown that Ubuntu is not a sentiment but a developed account of how people ought to live together.⁵¹ In the moral theory Metz has built upon it, an action is right insofar as it honours relationships of friendliness and care, and wrong insofar as it expresses ill will, division, or the treatment of others as tools.⁵² On this account domination is the paradigm wrong, and the dignity Ubuntu accords each person rests on that person's capacity to share in community as a participant rather than a possession. A husband who coerces his wife does precisely what Ubuntu condemns. Far from grounding the exemption, the most influential ethical theory in African thought identifies the conduct it protects as a central instance of wrongdoing.

African traditions are not uniformly patriarchal in the way the cultural defence assumes. Oluwole devoted her work to recovering Yoruba philosophy as a rigorous body of thought, reading its traditions as affirming the rationality and standing of women rather than denying them.⁵³ Oyewumi has argued that gender was not the rigid organising principle of precolonial Yoruba society that later readings assume, and that much of the hierarchy now presented as timeless tradition was consolidated under colonial influence.⁵⁴ These accounts show that the patriarchal reading of African culture is a reading, and a contested one, not the tradition's unmediated voice. Marriage in many African settings rests on reciprocal obligation between two families and two persons, and bridewealth marks an alliance and a duty of mutual regard rather than the purchase of a woman. To read it as a price paid for compliance distorts a practice its own logic of reciprocity rejects.

Field evidence from northern Nigeria confirms that the distortion is real, and that communities resist it. In a qualitative study across ten northern states, some participants invoked a culturally conferred male superiority, and the payment of bridewealth, to rationalise a husband's control over his wife and at times his use of force.⁵⁵ Yet the same study records participants distinguishing authentic teaching from its misapplication, observing that injunctions to wifely submission are taken out of context when severed from the mutual respect the teaching itself requires. The coercive reading of culture is thus challenged not only by philosophers but by members of the very communities in whose name it is asserted. The evidence comes from a purposive northern sample, offered not as a measure of the country as a whole but as a record of how the cultural argument is made and contested where it is most often heard.

The framework's questions can now be answered. Community cannot override bodily autonomy, because its conception of personhood is one of persons bound by reciprocal duty, not persons available for use. African philosophy does not justify coercion; it demands mutual respect. Its communal account of the self, its Ubuntu

⁴⁸ Menkiti (n 13) 176-179.

⁴⁹ K Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press 1997) 35-62; K Gyekye, *An Essay on African Philosophical Thought: The Akan Conceptual Scheme* (rev edn, Temple University Press 1995).

⁵⁰ K Wiredu, *Cultural Universals and Particulars: An African Perspective* (Indiana University Press 1996) 182-186.

⁵¹ M B Ramose, *African Philosophy through Ubuntu* (Mond Books 1999) 50.

⁵² T Metz, 'Toward an African Moral Theory' (2007) 15 *Journal of Political Philosophy* 321.

⁵³ S B Oluwole, *Philosophy and Oral Tradition* (ARK Publications 1999) 53-54.

⁵⁴ O Oyewumi, *The Invention of Women: Making an African Sense of Western Gender Discourses* (University of Minnesota Press 1997) 121-156.

⁵⁵ WRAPA, *Violence Against Women and Girls Prevention Baseline Study* (2025) <<https://www.wrapanigeria.org/vawg-prevention-baseline-study/>> accessed 13 July 2026. The findings are qualitative and drawn from a purposive sample across ten northern states.

ethic, and its internal voices affirming individual dignity all converge with the conclusion reached on independent grounds in the previous section. The cultural defence of the exemption rests not on African philosophy but on a caricature of it, refuted by the traditions it claims to honour. What culture genuinely supports, when it is studied rather than invoked, is the dignity of the wife as a person whose consent retains its meaning within marriage.

6. Nigerian Law and the Marital Rape Problem

The argument has shown that neither the philosophy of marriage nor the philosophy of African personhood supports the marital rape exemption. The task now is to set that conclusion against Nigerian law as it stands, in order to reveal that the law is not a settled barrier to criminalisation but a field of unresolved contradiction. As explained in Section 2, the marital rape exemption entered Nigerian law through two distinct routes, the Criminal Code in the south and the Penal Code in the north. Both provisions remain operative, yet a third legislative instrument has since been enacted, and the relationship among these three sources of law has not been authoritatively clarified. The inherited position is straightforward. The Criminal Code makes rape an offence but confines it to unlawful carnal knowledge of a woman without her consent by a person other than her husband,⁵⁶ placing him outside the offence by definition rather than by any inquiry into what occurred between the parties. The Penal Code reaches the same result more openly, providing that intercourse by a man with his own wife is not rape if she has attained puberty.⁵⁷ In Kano, the one state that has not adopted the Violence Against Persons (Prohibition) Act, this proviso governs without qualification, and the reform under consideration, the Kano State Penal Code Amendment Bill, remains before the State House of Assembly and has not become law.⁵⁸ The third instrument is the VAPPA 2015 which defines rape without reference to marriage, in consent-based and gender-neutral terms, so that the offence is committed by intentional penetration without consent or with a consent obtained under duress, threat, or other vitiating means.⁵⁹ It further provides that, where its provisions cover conduct also addressed by other laws, the position in the Act prevails.⁶⁰ The VAPPA presently applies in the Federal Capital Territory and, through domestication, in thirty-five of the thirty-six states.

Two competing readings of the law are possible, and both are currently maintained. On the first, the consent-based definition, together with the supremacy clause, displaces the inherited exemption wherever the Act applies, so that marital rape is already an offence across most of the federation. On the second, the older definitions continue to operate alongside the Act, so that the exemption survives in substance. As at present, Nigerian courts are yet to resolve this conflict, and in the absence of authoritative guidance, the police and prosecutors typically revert to the codes they have always applied.

Two statutes deepen the difficulty rather than resolve it. The Child Rights Act sets eighteen as the minimum age of marriage and classifies anyone below it as a child.⁶¹ This stands in direct opposition to the Penal Code proviso, which withdraws protection from a wife once she has attained puberty.⁶² Where the proviso still operates, the law produces a troubling paradox, appearing to permit against a child what it forbids against an adult stranger. The Evidence Act further compounds this imbalance. Although the long-standing requirement of corroboration in sexual cases has now been relaxed, its history imposed a distinctive evidential burden on complainants in precisely the circumstances where a marital complaint was already the hardest to prove.⁶³

The claim that the Constitution itself sanctions the marital exemption is untrue. The exemption derives from the criminal codes, and the Constitution contains no provision permitting a husband to force sex upon his wife. On the contrary, the constitutional guarantees point the other way. The Constitution affirms the dignity of the human person, prohibits inhuman or degrading treatment, and forbids discrimination on the ground of sex.⁶⁴ Nigerian courts have given these guarantees real effect against discriminatory customs, striking down rules that deny daughters inheritance rights, invalidating customs that disinherited widows, and rejecting practices repugnant to

⁵⁶ Secs 6, 357-358 Criminal Code Act, Cap C38, LFN 2004.

⁵⁷ Sec 282(1) & (2) Penal Code Act, Cap P3, LFN 2004.

⁵⁸ Lift Africa Foundation Pushes for Stronger Gender Protection Systems in Kano' (*The Nation*, 19 December 2025); 'Kano Govt Urged to Domestic Violence Against Women Law' (*Leadership*, 15 December 2025). The Bill remained before the State House of Assembly as at July 2026.

⁵⁹ Sec 1 VAPP Act 2015.

⁶⁰ *ibid*, sec 45(2). Nigerian commentary divides on the effect of these provisions. With some treating the Act as displacing the inherited exemption and others as leaving it intact in substance. The appellate court is yet resolved the question.

⁶¹ Secs 21 & 277 Child Rights Act 2003.

⁶² Sec 282(2) Penal Code Act LFN 2004.

⁶³ Evidence Act 2011. On the former practice of requiring corroboration in sexual offences, and its relaxation, see *Iko v State* (2001) 14 NWLR (Pt 732) 221 (SC); *Posu v State* (2011) 2 NWLR (Pt 1234) 393 (SC).

⁶⁴ Secs 34, 37 & 42 Constitution of the Federal Republic of Nigeria 1999 (as amended).

natural justice, equity, and good conscience.⁶⁵ A rule that denies a wife the protection of the criminal law on the basis of her sex and marital status is open to challenge on the same principles, for it segregates married women and exposes them to treatment the Constitution expressly forbids.

Nigeria's international commitments reinforce the conclusion. The CEDAW⁶⁶ requires equality within marriage and, as its monitoring body has confirmed, treats gender-based violence as prohibited discrimination. It recommends that sexual offences, including marital rape, be defined by the absence of freely given consent, with attention to coercive circumstances. The Women's Protocol guarantees women's dignity, security, and bodily integrity,⁶⁷ while the ICCPR prohibits both inhuman treatment and discrimination.⁶⁸ These instruments are not directly enforceable by ratification alone, since the Constitution requires domestication of ratified treaties and the Supreme Court has held that an unincorporated treaty creates no enforceable domestic rights.⁶⁹ The African Charter, however, has been domesticated, and its guarantees of dignity and equality before the law are enforceable in Nigerian courts as part of domestic law.⁷⁰ At least one body of international human rights law condemning the exemption is therefore already among the materials Nigerian courts must apply.

The contradictions are now fully visible. A consent-based federal statute sits unreconciled with two inherited codes that define the offence around marriage. The same conduct may be criminal in thirty-five states and the Capital Territory, yet not in the thirty-sixth, where a child wife may be denied protections the Child Rights Act extends to every other child. The dignity and equality guaranteed by the Constitution and the domesticated African Charter coexist with rules that withhold both from married women. These are direct conflicts within a single legal system, unresolved because no court has been required to resolve them and no settled understanding of consent has been applied.

Nigerian law thus already contains the materials for criminalisation without having reached it. The consent-based definition, the supremacy provision, the constitutional guarantees of dignity and equality, and the domesticated Charter are each available, and together they can ground liability for marital rape. What has been missing is the interpretive key, an account of consent firm enough to guide courts in choosing between competing statutory readings and in recognising that the inherited exemption cannot survive. Other jurisdictions faced the same inheritance and the same choice, and their courts have shown how that key can be turned.

7. Comparative Jurisprudence

Nigeria is not the first jurisdiction to confront the inherited exemption, and the experience of others is instructive less for the fact of reform than for the reasoning behind it. Two patterns emerge. In one group of jurisdictions the exemption has been abolished, by courts or legislatures, and the reasoning reveals what conception of consent replaced it. In another the question remains live, and the terms of the continuing argument are themselves revealing. The value of the comparison lies in the reasons, not the count of countries. The clearest judicial abolition is the decision of the House of Lords in *R v R*, which held that the exemption was no longer part of English law.⁷¹ The court declined to treat Hale's proposition as a fixed rule, reasoning that the common law was capable of development and that the conception of marriage and of the status of women on which the fiction rested had been wholly rejected by the modern law. Marriage was now a partnership of equals, and a wife no longer the subordinate the fiction had assumed. The High Court of Australia reached the same conclusion the same year, holding that if a rule of irrevocable consent had ever existed it was no longer part of Australian law, since it could not stand with the status of a married woman as an equal person.⁷² In both courts the abolition followed from the rejection of the two pillars identified earlier, the fiction of irrevocable consent and the doctrine that had submerged the wife's legal personality in her husband's.

Where reform came by statute, the replacement conception of consent is often stated more fully. Canada removed the spousal immunity in 1983 and built its law of sexual assault around consent, which its Supreme Court later defined as a present and communicated agreement, so that a failure to resist does not amount to consent and a

⁶⁵ *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384 (SC); *Anekwe v Nweke* (2014) 9 NWLR (Pt 1412) 393 (SC); *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt 512) 283 (CA), on which see *Mojekwu v Iwuchukwu* (2004) 11 NWLR (Pt 883) 196 (SC), where the Supreme Court disapproved the breadth of the Court of Appeal's reasoning while leaving the outcome undisturbed.

⁶⁶ Art 16 CEDAW (n 15); CEDAW Committee, General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19 (26 July 2017) UN Doc CEDAW/C/GC/35, paras 1 and 33.

⁶⁷ Arts 3 & 4 Women Protocol (n 15).

⁶⁸ Arts 7 & 26 ICCPR (n 15).

⁶⁹ Sec 12 Constitution of the Federal Republic of Nigeria 1999 (as amended); *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC).

⁷⁰ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004.

⁷¹ *R v R* (n 3).

⁷² *R v L* (1991) 174 CLR 379 (HCA).

consent once given may be withdrawn at any time.⁷³ South Africa abolished the exemption first by the Prevention of Family Violence Act and then by its consolidated sexual offences statute, which provides that marriage is no defence to a charge of rape, set against a Constitution that places dignity, equality, and bodily integrity at its centre.⁷⁴ Namibia was more explicit still, enacting that no marriage or other relationship shall constitute a defence to a charge of rape.⁷⁵ In each of these systems the conception of consent that replaced the exemption is the one defended in Section 3, present, revocable, and belonging to the person whose body is at stake.

Not every jurisdiction has reached this point, and two show the argument still in motion. In India the exemption survives in the recodified penal law, although the Supreme Court has read it down so that it no longer applies to a wife below eighteen, and a constitutional challenge to what remains is now before the court after the High Court of Delhi divided upon it.⁷⁶ In Kenya the exemption is preserved by statute, the sexual offences law expressly excluding acts between persons married to each other.⁷⁷ The striking point is that the dispute is no longer about whether consent can be given once and for all, a proposition few now defend, but about the role of the courts, the anxieties of proof, and the standing of the family, precisely the concerns the final sections take up. The conception of consent has ceased to be the battleground; what is contested is the willingness to act upon it.

The comparative picture yields a single lesson. Wherever the exemption has fallen, it fell because the conception of consent on which it depended gave way to one that treats consent as the present and revocable choice of an equal person. Nigeria already possesses that conception in the VAPP Act, together with the guarantees of dignity and equality on which the South African and common law reforms drew. The comparison shows that the inherited fiction is severable, that its removal leaves a coherent body of doctrine, and that the reasons for removing it are ones Nigerian law already recognises. What remains is to reconcile culture, religion, and the Constitution in giving effect to that conclusion, and then to state the theory of consent that should guide it.

8. Reconciling Culture, Religion, and Constitutionalism

The argument to this point may seem to set rights against culture and the Constitution against tradition, as though one had to triumph and the other fall. That framing is inaccurate. A constitutional democracy does not face a choice between honouring its culture and honouring its Constitution. It faces the more demanding task of deciding how the two are held together, which practices the constitutional order can accommodate and which it cannot, and on what principle the line is drawn. The answer lies neither in a relativism that allows culture to override every right nor in an absolutism that dismisses culture as an obstacle. It lies in a set of principles for engagement that, once stated, settle the place of the exemption.

Nigeria is a plural legal order in which statute, common law, customary law, and religious law all operate under a supreme Constitution, and any law inconsistent with it is void to the extent of the inconsistency.⁷⁸ This supremacy does not abolish custom or religion but sets the boundary within which they function, and within that boundary they keep their authority over the life of the community. Customary and religious rules have long been recognised in Nigeria subject to their consistency with constitutional standards and with natural justice, equity, and good conscience, so the principle that culture operates within a constitutional limit is settled. The organising value at that limit is human dignity, which, as Section 5 showed, is not imported from outside the traditions but affirmed within African thought itself and within religious teaching read in context. Because dignity is shared ground, the reconciliation can proceed from within the traditions rather than against them.

Where a genuine cultural or religious interest comes into tension with a constitutional right, the proper response is not automatic override but a proportionate assessment. The Constitution permits restricting a right only where the restriction is reasonably justifiable in a democratic society, which calls for a legitimate aim, a rational connection to it, and a fair balance between the interest served and the right curtailed.⁷⁹ A constitutional order

⁷³ Sec 278 Criminal Code, RSC 1985, c C-46 (Canada), enacted by the Criminal Law Amendment Act 1980-81-82-83, c 125; *R v Ewanchuk* [1999] 1 SCR 330.

⁷⁴ The exemption was first abolished in South Africa by sec 5 Prevention of Family Violence Act 1993, later repealed by sec 21(1) Domestic Violence Act 1998. The present position is that marriage or any other relationship is no defence to a charge of rape: sec 56(1) Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007; *S v Masiya* 2007 (5) SA 30 (CC).

⁷⁵ Combating of Rape Act 8 of 2000 (Namibia), sec 2(3).

⁷⁶ Exception 2 to sec 63 Bharatiya Nyaya Sanhita 2023; *Independent Thought v Union of India* (2017) 10 SCC 800; *RIT Foundation v Union of India* 2022 SCC OnLine Del 1404 (split verdict). The clubbed constitutional challenge, *Hrishikesh Sahoo v State of Karnataka*, was heard from January 2024 and remained undecided as at July 2026.

⁷⁷ Sec 43(5) Sexual Offences Act 2006 (Kenya).

⁷⁸ Secs 1(1) & (3) Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁷⁹ Sec 45(1) Constitution of the Federal Republic of Nigeria 1999 (as amended). The subsection permits restrictions only where reasonably justifiable in a democratic society; the structured proportionality approach is drawn from comparative constitutional practice. See sec 36 Constitution of the Republic of South Africa 1996; *S v Makwanyane* 1995 (3) SA 391 (CC).

should accommodate cultural and religious practice as far as it can, in marriage, ceremony, worship, and family life, and reaches the limit of accommodation only where a practice subordinates or harms a person who has not consented to it. The exemption fails this assessment at the first step, for no legitimate aim is served by permitting one spouse to compel the other. Family stability is not advanced by coercion but corroded by it, and cultural continuity is not preserved by shielding a fiction the traditions themselves disown. Accommodation that reaches the dignity of a non-consenting spouse is not accommodation but abandonment.

Religion requires particular care, since the exemption is often defended in religious terms. Freedom of religion is guaranteed and protects belief, worship, and the practice of faith.⁸⁰ It is a shield for the believer, not a sword against another person. It does not entitle one spouse to use the body of the other, and it cannot, because the wife is herself a bearer of the same freedom and dignity the husband invokes. To allow a religious claim to extinguish her standing would grant one believer a power over another that no system of equal religious liberty could sanction; a state that protects religious liberty even-handedly must protect hers as fully as his. The point is reinforced by the distinction drawn in Section 5 between authentic teaching and its distortion, and by the African human rights system, which affirms the right of women to live in a positive cultural context while requiring states to eliminate the practices that harm them.⁸¹ The tradition, properly read, and the law that protects it point the same way.

The principles rest on an understanding of the Constitution as a living instrument rather than a frozen text. Its guarantees of dignity and equality are to be read in light of what they now require, as the courts that abolished the exemption elsewhere read their own law, and as a transformative constitutionalism aimed at remaking an unjust inheritance demands.⁸² Read that way, the Constitution does not stand opposed to culture and religion but meets them on the common ground of dignity, and on that ground the exemption cannot stand, not because culture has been defeated by rights, but because culture, religion, and the Constitution, each properly understood, converge on the dignity of the person. What remains is to draw the threads together into a theory of marital consent fit for Nigerian law.

9. Towards a Nigerian Theory of Marital Consent

The argument has cleared the ground for a theory, and its form matters as much as its content. The task is not to recommend that Nigeria criminalise marital rape, which would present the question as a choice among policies settled by preference or the counting of votes. It is to state what Nigerian law already is when read in its best light, by identifying the principles that both fit its materials and justify them, and reading the law as their coherent expression.⁸³ Built this way, the theory is not imposed on Nigerian law from outside but drawn from within, claiming not that the law ought to change but that, understood with integrity, it already speaks.

The first principle is that consent is continuous and revocable. It is an exercise of the will that lives in the present, given act by act and open to withdrawal at any moment before or during the act to which it relates. Marriage is a standing relationship, but consent is not a standing condition it installs once and leaves in place. This is the principle section 3 established, and the principle the VAPP Act already presupposes, for a definition of rape built on consent to the particular act cannot coherently treat the single past act of marrying as consent to every act of intercourse that follows. The continuity and revocability of consent is therefore not a reform proposed for the Act but the Act read correctly.

The second principle is that marriage creates obligations but not ownership, and that sexual autonomy survives marriage entirely. It generates genuine obligations of fidelity, care, shared life, and intimacy freely given, but an obligation dischargeable only willingly is not a right enforceable by compulsion. Nothing in marriage transfers the body of one spouse to the other, and the wife who marries does not cease to be the author of her own intimate life. This follows from Section 4, where marriage was shown to join lives without merging persons, and it is the principle that cuts the inherited fiction away from the law and leaves the rest intact. A spouse remains a person, and a person is never owned.

The third principle is that culture and religion inform marriage but cannot extinguish dignity. They shape what marriage means and are entitled to respect, yet they operate within the limit of the dignity that, as Section 5 showed, they themselves affirm. This keeps the theory Nigerian rather than borrowed. It does not graft a liberal conclusion onto African soil but rests at once on the liberal account of the sovereign person and the African account of the person constituted in community, two traditions that Sections 4 and 5 showed converging on a

⁸⁰ Sec 38 Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁸¹ Arts 2(2), 5 & 17 Women Protocol (n 15).

⁸² K Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal on Human Rights* 146; *R v R* (n 3).

⁸³ Dworkin (n 14) 226.

single demand for mutual respect. The dignity it protects is not that of the individual set against the community but of a person within it, the only dignity either tradition recognises.

The principles resolve the question Section 6 left open. Confronted with the two readings of the VAPP Act and the inherited codes, a court reasoning with integrity must prefer the reading that coheres with the consent-based definition, with the constitutional guarantees of dignity and equality, and with the domesticated African Charter. It must therefore treat the exemption as displaced wherever the Act applies and as constitutionally vulnerable wherever it survives.⁸⁴ The exemption is not simply unwise. It is inconsistent with the principles that give the surrounding law its purpose, and a rule that contradicts the point of the system it belongs to cannot be the law that system truly contains. A final principle concerns the state. The criminal law enters marriage not to govern intimacy but to protect the person, on the same terms as it protects everyone else. This respects the integrity of the family rather than threatening it, for a family resting on the dignity of both spouses is strengthened by the law's refusal to shield coercion. The state protects autonomy while honouring the family by intervening at the single point where consent is absent.

One objection remains, and it survives longest once the argument about consent has been conceded. Rape within marriage, it is said, cannot be proved. The parties live together, intercourse is admitted, and the case comes down to one account against the other. The objection proves too much. It holds with equal force of rape between former partners and of rape between people intimate before the act complained of, and the law withdraws its protection in neither case. The difficulty is evidential, not conceptual, and it belongs where evidential difficulties belong, to the trial and the standard of proof beyond reasonable doubt. The old practice of requiring corroboration in sexual cases has in any event been relaxed. Difficulty of proof is a reason to investigate with care, prosecute with judgement, and attend closely to the rules that govern a spouse as a witness. It is not a reason to settle the question before any evidence has been heard.

10. Conclusion

This article began with a paradox. Marriage is widely understood to create enduring sexual expectations, while the modern constitutional order holds that authority over one's own body is not surrendered by entering a status. Both propositions can stand, but only when the second is given its proper weight and the first understood for what it is. Marriage creates expectations and real obligations of intimacy, fidelity, and shared life, but not a right in one spouse to the body of the other irrespective of wish. The expectation is genuine; the entitlement is a fiction. Reaching this conclusion has required close scrutiny. The marital exemption was never genuinely adjudicated before the domestic courts but accepted wholesale as part of the inherited common law. The analysis of consent has shown that, to be valid, it must be a continuing and revocable act, incapable of being given once and for all. The philosophy of marriage shows that the institution joins lives without merging persons, and that neither the Kantian nor the liberal nor the relational account of autonomy supports one spouse holding full power over the other.

African philosophy demands mutual respect and rejects the domination that cultural defences ascribe to it. Nigerian law already contains the doctrinal materials for criminalisation, even if it remains internally contradictory. Comparative experience confirms that the exemption is severable, and that culture, religion, and the Constitution converge on the common ground of human dignity. From these strands the article builds a theory that can be stated simply. Consent within marriage is continuous, revocable, and incapable of surrender. Marriage confers obligation but never ownership, and the law, read in its best light, already requires as much. The theory does not ask Nigerian law to break with itself, but to be consistent with its own commitments. The argument ends where it began, with the person. Consent in marriage is not a gift that can be surrendered, but a continuing act of choice that preserves dignity. A wife remains a person, never an object, and a husband gains a partner, never a possession. Consent is the line between union and domination, and it keeps its meaning only when refusal is heard. Nigeria's law, its philosophy, and its international commitments already converge on this truth. What is required now is not invention but integrity; the courage to read the law in light of its own promises and to let dignity speak where silence has previously been imposed. To protect refusal is to protect marriage itself, for a union without autonomy is no union at all. To honour that dignity is to honour marriage, and to hear refusal is to hear the law at its most human.

⁸⁴ Secs 1 & 45(2) VAPP Act 2015; secs 34 & 42 Constitution of the Federal Republic of Nigeria 1999 (as amended); African Charter (Ratification and Enforcement) Act (n 62).