ANALYSIS ON ADMISSIBILITY OF SCIENTIFIC AND DNA EVIDENCE IN THE PROSECUTION OF RAPE CASES IN NIGERIA: A SHARI'AH PERSPECTIVE

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Abstract

The prosecution of rape cases in Nigeria faces significant legal, evidentiary and institutional challenges, which are compounded in states operating Shari'ah due to its strict requirement of proof. Despite the enactment of the evidence act, 2023 and the VAPP Act, convictions rate remains low because of inadequate evidence collection, poor understanding of forensic procedures, and the reluctance of victim reporting. This study examines the admissibility and utility of DNA and other scientific evidence in the prosecution of rape in Nigeria through the lens of Shari'ah principles. Using a doctrinal approach, the paper analyses the statutes and contemporary Shari'ah jurisprudence. The objective is to examine the legal and evidentiary challenges in the prosecution of rape cases in Nigeria and to analyze the admissibility and evidential weight of DNA under Shari'ah. Findings reveals that while DNA evidence is admissible under Evidence Act, its status under Shari'ah remain contested, as it is not sufficient evidence to establish zina due to its inability to distinguish between consensual and non-consensual intercourse, but is widely accepted as circumstantial evidence for ta'azir punishment. The paper contributes to knowledge by proposing the first Nigerian framework that admits DNA in rape prosecutions within Shari'ah courts as qarina qawiyya and exoert evidence for ta'azir, grounded in Maqasid al-Shari'ah and sad al-dhari'a, thereby providing an Islamic compliant path to improve convictions.

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1. INTRODUCTION

The incidences of rape are rising and there is a growing concern in the new trends of rape emanating, therefore there is urgent need for the police and the Nigeria's criminal justice to ensure there is maximum crime control and adequate management as well as bring to the perpetrators to book within time and for the victims of the heinous crimes to feel a sense of justice. The efforts of government in the establishment of laws and policies to combat the menace is applauding, however the implementation and supervision of the necessary stakeholders to ensure that these laws and policies are strictly adhered to is lacking. Apart from that, the prosecution of rape cases in Nigerian courts is a herculean task, ranging from the challenges of inadequate evidence, reluctance of victims to report the crime and cooperate in collection of evidence, ignorance of, the victims, the investigation officers and prosecution counsel on the proper procedure to collect and preserve evidence among others has worsened the rape pandemic. Plurality of legal systems and the existence of multiple laws on the offence operating in different states, creates problem of consistency on the requirements, procedures and even the punishment of rape in Nigeria. It operates a tripartite system of criminal law, the common law, customary law and the shari'ah applicable to the 12 northern states in the form of the penal code.

2. CONCEPTUAL FRAMEWORK

In *Arabic* terminology, the word rape is '*ightisab*' meaning illegal seizure, usurpation, extortion, forcible, rape, robbery, coercion and violation.[1] According to Ibn Manzur,[2] both ightisab and ghasaba are interchangeable in Arabic when used to mean rape.

[1] W Hans, Dictionary of Modern Written Arabic (1980, Maktaba Lebanor, Beiruit) 675

Maliki jurist defines Zina as vaginal intercourse by a man who is a baligh (major) and aqil (of sound mind) with a woman who is not under his possession willfully and with her consent.[3] Thus in the case of zina, the parties are consenting male and female who have a sexual relation willfully. The Shafi'I and Hanbali define zina as vaginal or anal intercourse. According to Shafi'I and Hanbali, apart from vaginal intercourse, zina includes anal penetration. Rape is defined in the as having unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or using threats or intimidation of any kind, or by fear of harm, or use of the false act, or, in case of a married woman, by impersonating her husband." This offense is punishable by imprisonment for life, with or without caning.[4] Although rape is known as zina bi al-ikrah, it is different from zina itself, because rape is a physical assault which necessarily causes bodily harm. A rapist in an attempt to force himself on a victim usually uses force and while the victim is trying to resist, there is usually an infliction of pain and this may even include killing the victim. While the rape is going on the penetration also is painful, whereas it is an enjoyable experience for the participants in fornication. Rape is also psychologically destructive, because the victims suffer from severe trauma for a long time.

Therefore, the victim of rape is not regarded as an adulterer in Shari'ah. The distinction between rape and zina is glaring in that zina is regarded as a violation of the right of Allah, whereas rape is regarded as the violation of not only the rights of Allah but also that of the victim and the Muslim's community in general. Scholars agree

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[2] Muhammad ibn Mukram ibn Manzur al-Ifriqi, Egyptian lexicographer (d 711 AH/1311 CE), Lisan al-'Arab, (Beiru

[3] Al'Mudawwana, vol 4 p 396, sharh Al-Zarqini vol 8 p 74-75

[4] Section 357 & 358(6) Criminal Code Act

with applying the had penalty for zina to a convicted rapist that is the convict will receive a similar punishment for the offence of zina that is, being stoned to death for the married or receiving 100 strokes of the whip for the unmarried. The recent whipping of 21 years old Indonesian woman and her lover for violating the Aceh's Islamic criminal code by engaging in sex outside marriage, though generated concerns from around the world for the severity of the punishment and the upregulation of the specific punishment, as well as the right to dignity of the convicts.

Similarly, the definition of rape in the Nigerian laws puts the offender in the status of a violator of both the victim's rights and the states. The Penal Code Act[5] provided that a man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances against her will and without her consent or with her consent, when her consent has been obtained by putting her in fear of death or of hurt, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she believes herself to be lawfully married with or without her consent when she is under fourteen years of age or of unsound mind.

Deoxyribonucleic acid, commonly known as DNA, is the molecule responsible for the storage and transmission of all genetic facts that help in the determination of the growth and operation of an organism. A DNA molecule consists of two strands that are intertwined and also coiling around each other, creating a framework that looks like a twisted ladder, which is called a double helix. The nucleotides that make up the backbone of each strand alternate between phosphate

[5] Section 282 Penal Code Act

groups and deoxyribose sugar. Each sugar is bound to one of four bases: thymine (T), adenine (A), cytosine (C), or guanine (G). Chemical linkages between the bases bind the two strands together; cytosine binds to guanine and adenine to thymine. The bases form complementary pairs (A with T and G with C) and create chemical bonds that function as rungs on a ladder. This structure serves to maintain the cohesion of the two DNA strands. The DNA molecule's blueprint for building proteins and RNA molecules is contained in the sequence of nucleotide bases on the molecule's structural DNA.[6]

The genetic material present in practically every living thing is DNA, which is also called deoxyribonucleic acid. Almost all of a person's cells have the same genetic code. The nucleus of a cell contains the vast majority of its DNA, which is called nuclear DNA. On the other hand, mitochondria also contain a small amount of DNA, which is called mitochondrial DNA (mtDNA).

There exist three distinct forms of DNA:

1. A-DNA: Its shape is quite similar to B-DNA and is a right-handed double helix. In order to protect itself from extreme dryness and other challenging conditions, DNA takes on an A form when it becomes dehydrated. The DNA takes on an A shape when proteins bind to it, which removes solvent.

I. B-DNA: It features a right-handed helical helix and is the most common form of DNA. The majority of DNA takes on a B-type structure under typical physiological conditions.

[6] S. A. Bates, Deoxyribonucleic acid 'National Human Genome Research Institute' 2024 <https://www.genome.gov/genetics-glossary/Deoxyribonucleic Acid#:~:text=Deoxyribonucleic%20acid%20 (abbreviated%20DNA) %20is, known%20as%20a%20double%20helix> accessed on 23rd May, 2025

II. Z-DNA: It is a kind of DNA that exhibits a left-handed helical structure characterized by a zigzag pattern in which the double helix coils to the left. Andres Wang and Alexander Rich made this discovery. It is located upstream of the gene's start site and is therefore thought to have a role in gene regulation.[7]

3. METHODOLOGY

The methodology to be adopted in this study is both doctrinal and empirical. The doctrinal approach will be adopted because the study will be library-oriented which comprises analysis of relevant information from the *Qur'an, hadith*, leading authorities, text books and journal articles on the subject matter, published opinions of experts, specialists and practitioners on aspects of the law relating thereto. It is worthy to adopt doctrinal because the study will identify and discuss the means of proving the offence of rape in Shari'ah and the applicability of DNA and scientific evidence.

The rationale for adopting empirical approach too is that the topic requires observation and first-hand information from experienced personnel. The information and data will be acquired qualitatively and analyzed for the purpose of originality, efficacy and validation. This would be achieved by conducting interviews to the target group consisting of the Judges, lawyers, Imams, Academicians and key stakeholders purposefully selected due to the significance of this study. Selected interviews were conducted for medical practitioners, forensics, experts, and Fiqh scholars in Bauchi, Jigawa, Kano and Borno state Nigeria.

[7] R. N. Sahoo and C. K. Mohapatra, DNA Evidence in Criminal Justice System: Admissibility, Reliability, And Accuracy' Nanotechnology Perceptions (20)(15), 2024 www.nano-ntp.com accessed 20th May, 2025

4. LITERATURE REVIEW

This literature review examines the existing body of research on the admissibility of DNA evidence in Nigerian courts, with a specific focus on its application in rape cases. It explores the challenges, limitations and recommendations on how to properly utilize DNA evidence in securing convictions and ensuring justice for victims.

Sahoo and Mohapatra provided a detailed discussion on the DNA's significance where DNA profiling revolutionized criminal investigations and judicial processes in India. Their study explored the pivotal role of forensic DNA profiling in modern criminal justice. Landmark cases on DNA profiling's were analyzed despite the lack of specific legislation in some regions in India. Their research examines the impact of DNA profiling in forensic science, focusing on its reliability, legal admissibility, and methodological advancements. It also highlighted the stringent protocols essential for maintaining DNA evidence's integrity and the legal frameworks guiding its admissibility. However, even with the legal pluralism in India, their study focuses on the admissibility of DNA in conventional criminal cases while this research is aimed at analyzing the Shari'ah perspective. The findings of Sahoo and Mohapatra emphasized DNA profiling's pivotal role in enhancing the accuracy of criminal investigations and reinforcing public confidence in the justice system, while advocating for continuous advancements and adherence to rigorous standards in forensic science.[8]

Nte[9] and others investigated DNA profiling and crime management in Nigeria. The major objective of their study was to find out whether the Nigeria Police are aware of how to use DNA optimally as a source of evidence in the investigation process. They assert that the Nigeria

[8] Ibid.
[9] Nte, Nte, Kelvin, Enokie and Bienose, (n2)

Police has relied mainly on the traditional (old school) method of criminal investigations based on eye witness testimonies and statements, the investigators sense of judgment and experience. They concluded that the capacity level of the Nigeria Police to collect and preserve the DNA evidence as part of the agency's criminal investigation process and use same for courtroom prosecution has significant effect on the effort it makes to fight crime through DNA profiling, and that the availability or non-availability of sophisticated DNA technology in Nigeria has significant effect on the effort the Nigeria police makes to fight crime through DNA profiling. The availability or non-availability of a central DNA database in Nigeria has significant effect on the efforts of the Nigeria police makes to fight crime through DNA profiling.[10]

The recommendations by Nte and others on the need to train the Nigerian Police on the means of collecting evidence and the proper way of storing and proof of same in court was emphasized by Oshodi in his work the admissibility of forensic evidence and report during criminal trials.[11] He emphasized on the theoretical evolution of DNA as a forensic science and rooted its legal framework to the Evidence Act particularly be categorizing DNA evidence as a real evidence and also a documentary evidence which is admissible. He analyzed various cases where the issue of DNA evidence was in contention; however, these cases are all in relation to paternity disputes. In the paper, he highlighted the United State of American celebrated case on the admissibility of DNA evidence in court and the proper procedure or guidelines to be followed before such evidence will be admissible. Despite his efforts in identifying and recommending the proper

[10] Ibid 12
[11]Honorable Justice Olatunde H. Oshodi 'Admissibility of Forensic Evidence and Report during Criminal Trials' A Paper Delivered on 19th October, 2022 at the 6th Lagos Forensic Symposium

guidelines for collection, investigation and preserving of such evidence, the learned Justice have not discussed the use or admissibility of DNA evidence in profiling and as proof of evidence against an accused person standing trial for rape.

Adegbite[12] in a paper discussed the evolution of DNA as all agents for familial proof under the Nigerian multi legal framework where he accessed the contemporary disposition of the applicable judicial authorities to the use of DNA. His research revealed that while the procedure has become a notorious development within the Nigerian legal system there is no coherent institutional support for the process. The discourse however a bit divergent from the objective of this research focused on the utilization of DNA in respect of contention as to the paternity of a child born in an existing marriage as a means of proof in matrimonial causes. Similar to the objective on the perspective Shari'ah law on the admissibility of DNA evidence, Adegbite highlighted that the contemporary Islamic Family Laws do not object to the use of scientific processes including DNA, to prove paternity so far, such means do not contradict the provisions of the Quaran, Sunnah, ljma and the Qiyas, he concluded by asserting that no major views have evolved on the status of DNA amongst other procedures for proving paternity under Muslim Law. He therefore proffered recommendations for the establishment, renovation and expansion of the appropriate frameworks for the admissibility of DNA evidence as a means of proof.[13]

[12] A. E. Adegbite, The Nigerian Legal Framework on the Use of DNA Tests in Child Paternity Dispute Resolution Lead City University Law Journal (LCULJ) (2) (1) 2016
[13]Ibid

Looking at the Shari'ah perspective, Noor[14] discussed the notion of rape, including a definition of this crime, its punishments and a comparison between rape and zina in Islamic jurisprudence. In her work she dissects that arguments of classifying Zina to ensure the proper punishment under Islamic Law, one segment is arguing that the modern tendency in punishing rape is to consider rape as *hirabah* which requires the penalty of *hadd al-hirabah* where the rapist will be categorized as an outlaw and as a person who is dangerous for the peace and security of society by relying on the Quranic verse in 5:33. Drawing from international religious organizations like the Religious Council of Egypt (Dar al-Ifta al-Misriyyah) which issued a fatwa that the crime of a violent attack which involves forcible sexual intercourse is an act of Hirabah. She asserted that some jurists prefer to classify rape as a Hirabah crime for reasons of prosecution since zina requires a high standard of proof than Hirabah, which does not require four witnesses to prove the offence and recognized the use of modern technological advances such as forensic and DNA testing.

Shari'ah places a high premium on authenticity, reliability and convictions based on conclusive proof of evidence. This emphasis is reflected in the rigorous procedure and standards that governs the testimony, documentation and its admissibility, these procedures are set down to ensure that justice is served and that the rights of all parties involved are protected as against falsehood, injustice and miscarriage of justice. The courts need to address complex issues concerning the authenticity, reliability, and admissibility of DNA evidence during trial.[15]

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[14] A. M. Noor, Punishment For Rape In Islamic Law , Malayan Law Journal Articles (5)2009 < http://irep.iium.edu.my/16877/1/PUNISHMENT_FOR_RAPE_IN_ISLAMIC_LAW.pdf> accessed 27th may, 2025

[15] Gentry E, The Challenges of Integrating AI-Generated Evidence into the Legal System

5. ESSENTIAL INGREDIENTS OF RAPE

Before any person can be convicted for an offence of rape in any part of Nigeria, the prosecution must prove that the alleged rapist had sexual intercourse with the victim of rape (victim), that the act of sexual intercourse was done without consent of the victim or that the consent was obtained by fraud, force, threat, intimidation, deceit or impersonation, that the victim was not the wife of the alleged rapist, that the alleged rapist had the criminal intention to have sexual intercourse with the victim of rape without the victim's consent or that the alleged rapist acted recklessly not caring whether the victim consented or not. Finally, that there was penetration of the penis of the alleged rapist into the vagina of the victim.[16] The state of the law is that the most essential ingredient of the offence of rape is penetration, however slight.[17] It is observed that the condition has been widened, to accommodate cases where females may rape men or where there may be a rape using an object. By the provisions of the Violence Against Persons (Prohibition) Act, 2015[18], rape now includes the penetration of any opening in the body (including mouth and anal) of a person by another person using any part of his/her body or anything. The wider provision now makes it possible for a male to sue a female for rape, unlike when rape was all about women and the penetration of vagina by penis.[19]

June 12, 2024

[16] Ndewenu Posu & Anor v The State (2011) LEPLR, SC 134/2010, Idi v. State (2017) LPELR-42587(SC)

[17] Lucky v. State (2016) LPELR-40541(SC). 20 Ganiyu Ogundipe v Samson Muraina Oduwaiye & Anor (2013) LPELR-20474(CA)

[18] Violence Against Person Prohibition Act, 2015

[19] S. V. Ater, The Law on the Offence of Rape in Nigeria; Challenges and Recommendations' 5TH January,2023 https://www.researchgate.net/publication/366877434

Ibn Qudamah said, “There is no legal punishment upon a rape victim according to the general opinion of the scholars. It has been narrated from Umar, Al-Zuhri, Qatadah, Al-Thawri, Al-Shafi’i, and the people of reasoning. We do not know of any disagreement… There is no difference between rape by force, which is he had overpowered her, or rape by threat of death.”[20]

They base their argument on a hadith of 'Abd al-Jabbar Ibn Wa'il which reports a rape case at the time of the Prophet. The victim was excused while the convicted person who had forcible illegal intercourse with her was sentenced to being stoned to death. However, they disagree on the second part of the penalty, i.e. whether the convicted rapist had to pay a dowry besides being sentenced to the hadd penalty. The majority of the jurists, including Malik, Shafi'i, the Hanbalites and Laith Ibn Sa'ad take the stance of punishing him with both the hadd and sadaq (dowry). The same opinion is reported by 'Ali ibn Abi Talib, Ibn Mas'ud, Sulaiman Ibn Yasar, Rabi'ah and 'Ati'.[21] Malik generalizes the verdict to cover an insane woman and also an unconscious sleeping woman. His argument is based on the fact that rape involves the right of Allah and the right of an individual and these must be dealt with separately. Both respectively deserve different treatment, as is the ruling in the case of stealing.[22] The Malikites make no difference between a victim who is a virgin and one who is not in terms of receiving dowry compensation.[23] They support the notion of imposing a dowry in addition to the hadd penalty with the Íadath:

[20]Al-Mughnī 9/59
[21] Malik Ibn Anas, al-Mudawwanah al-Kubra, Vol 4 at p 401. Ibn FarÍun, Tabsirat al-AÍkam, Vol 2 at p 256.
[22] Ibn Jazy, al-Qawanin al-Fiqhiyyah, at p 285.
[23] Al-Maghrabi, Muhammad ibn Abdul Rahman, Mawahib al-jalil, Beirut, Dar-al-Fikr, 1398H (2nd Ed), Vol 3, at p 518

The Nigerian Supreme Court in Tajudeen Alabi v State[24] held that in discharging the onus of proof on the prosecution, the prosecution is required to establish the essential elements of the offence by producing all vital witnesses to testify during the proceedings.

Furthermore, section 282(1) of the penal code provides that the following must be established:

i. That the accused had sexual intercourse with a woman, the victim
ii. That the act of sexual intercourse was unlawful not being between husband and wife
iii. That in giving the evidence of intercourse, complete penetration is proved
iv. That the accused had requisite men's rea that is, intention to have sexual intercourse with a woman without her consent or that the accused acted recklessly not caring whether the woman consented or not
v. Also, the prosecution must adduce evidence to corroborate the complaint made by the victim, although this is not required as a matter of law, it is required in practice.

Section 383(1) of the Penal code Law, Benue State 2004 provides that; A man is said to commit rape who save in the case referred to in sub-section 2 has sexual intercourse with a woman in any of the following circumstances:

a. Against her will
b. Without her consent
c. With her consent, when her consent has been obtained by putting her in fear of death or hurt

[24] (1993) 9, SCJN 109

d. With her consent when the man knows that he is not her husband and that her consent is given because she believes that is another man to whom she is or believes herself to be lawfully married
e. With or without her consent when she is under fourteen years of age or of unisexual mind.

In the Nigerian law, the punishment of rape is provided under section 358 of the Criminal Code Act provides that: "Any person who commits the offence of rape is liable to imprisonment for life, with or without caning." Conversely, Section 283 of the Penal Code Act provides: "Whoever commits rape shall be punished with imprisonment for life or for any less term and shall also be liable to fine."

6. FINDINGS

Scientists utilize a technique known as DNA testing, or DNA profiling, to examine a lengthy sequence of DNA and determine specific 'loci'. Genomic fingerprinting, often known as DNA profiling, is a forensic technique for positively identifying people. To rephrase, DNA profiling is a method that uses a person's specific DNA nucleotide sequence in certain parts of their molecule to establish their identity.

Because each person's DNA is structured differently, it is a highly effective and trustworthy tool in scientific investigations. DNA profiling is a component of contemporary forensic science that not only aids in civil and criminal investigations but also gives the courts precise data regarding all the relevant aspects of criminal identification. Forensic science goes from being an observer to a significant actor in the judicial system with the advent of DNA sample testing in the modern scientific period.

Major shifts in the science and technology landscape have made the collection and analysis of evidence an increasingly important tool for resolving of crimes as well as the preparation of court cases. The schools of Islamic jurisprudence do not disagree on the admissibility of electronic evidence in Islam, since it is premised on documentary, circumstantial and expert evidence. The basis of divergence is on the vulnerability of such evidence to be manipulated which consequently affects its reliability and authenticity.[25]

The admissibility of DNA evidence in Nigeria is rooted in the Evidence Act 2023,[26] the innovative section on admissibility of electronic document where any information contained in an electronic record that is printed on paper, stored, recorded, or copied in optical or magnetic media or cloud computing or database produced by a computer, without any further proof or production of the original, provided that the conditions stipulated in the section are satisfied in relation to the information and computer in question. The admissibility of such information contained in an electronic record as enumerated above is predicated on the fact that they are now deemed to be documents.[27]

In particular in another section, the Evidence Act recognizes expert testimony on forensic science, that when the court has to form an opinion upon a science, the opinions upon that point of persons especially skilled in such area, are admissible.[28] However the admissibility of same is dependent on the procedure such evidence

[25] A I. Wan-AbdulFattah and others, 'An Appraisal of Digital Documents as Evidence in Islamic Law' (2021) 10(3) Academic Journal of Interdisciplinary Studies, p. 199. Available at: https://doi.org/10.36941/ajis-2021-0076> accessed 7th January, 2025
[26] Sections 68, 84 and 149 Evidence Act, 2023
[27] Section 84b (n29)
[28] Section 68 (n29)

was obtained and processed and this is where the steps recommended by the Federal Bureau of Investigation for collecting and preserving evidence will be invoked. These recommendations include ensuring that the DNA was obtained legally and describing the evidence in detailed notes and such evidence must be accurately and positively processed and packaged properly for identification, storage, or shipment to the laboratory; and establishing and maintaining the chain of custody.[29]

DNA evidence is not independent evidence to warrant conviction in Shari'ah, it cannot independently establish the ḥadd (fixed punishment) for zinā, such as stoning or lashes. Instead, it is admissible only as supporting evidence. The rationale lies in the inability of DNA to distinguish between consensual intercourse and forced intercourse. It is found in this research that factors that limits the utilization of DNA evidence includes limited resources, inadequate training and expertise among forensic personnel, and a lack of awareness and understanding of the technology among law enforcement and judicial officials.

Another important finding is that, the legal friction between the Evidence Act, 2023, the Violence Against Persons (Prohibition) Act, and the Shari'ah penal codes in Nigeria concerning the offence exposes deep systemic fractures in Nigeria's plural legal system. These tensions primary revolve around constitutional supremacy, divergent evidentiary standards and conflicting philosophies on personal autonomy and criminal justice.

[29] Handbook of Forensic Services, Federal Bureau of Investigation (Lulu Press, Incorporated, 2015) < https://books.google.com.ng/books/about/Handbook_of_Forensic_Services.html?id=6W46jwEACAAJ&redir_esc=y#:~:text=The%20Handbook%20of%20Forensic%20Services%20provides%20guidance%20and,forensic%20examinations%20performed%20by%20the%20FBI%27s%20Laboratory%20Division.> accessed 27th May, 2025

In prosecution of rape cases in Nigeria, the prosecution must prove the actus reus and men's rea of the offence and the statements of the eyewitnesses have the highest value as primary evidence like it is highlighted in this work. However, due to the emergence of new crime techniques and also the way crimes are getting committed these days, it is getting challenging to ensure the culpability of the defendant only on the basis of the eyewitnesses or on the basis of circumstantial evidence.

There comes the necessity of certain scientific evidence, such as Forensic DNA profiling. Suppose the procedures are adequately followed in collecting the specimen to be used as evidence and the result of such.[30] From its inception to date, DNA profiling has attracted a good deal of public attention particularly in crime management and control. The practical application of DNA technology to the identification of biological materials has had a significant impact on forensic biology, because it enables much stronger conclusions of the identity of a suspect in trial. Indeed, the development and application of DNA profiling has been widely described as the greatest breakthrough in forensic science since fingerprinting.[31] In DNA profiling and databasing, laboratories directly compare DNA profiles obtained from biological materials left at crime scenes or on the victims with those taken from the suspects or accused person under investigation or already charged with the offence. However, the subsequent ability to construct digital representation of

[30] Y.F. Oluwajobi and A. Y. Emmanuel, 'Admissibility of Electronically Generated Evidence in Nigeria: History, Challenges and Prospects' Redeemers University Law Journal (7), (1) 2024

[31] U. N. Nte, N. D. Nte, B. Kelvin, Enokie and O. Bienose, DNA Profiling and the Challenges of Crime Management in Nigeria: The Case of The Nigeria Police Force, Journal of Indonesian Legal Studies (4) (2) November 2019 https://www.researchgate.net/publication/361518065>

profiles and store them in continuous searchable computerized databases has made possible a vastly expanded role for DNA profiling in many criminal investigations.[32]

Theological tension arises, and poses the question 'can DNA and scientific evidence fulfill the objectives of Shari'ah-Maqadis of protecting life, lineage, and honor while meeting the standards of proof for hadd offences?' Shari'ah in addition to the Quran and Hadith, relies on Ijma (consensus among scholars) and Qiyas (analogical reasoning) to address new issues and adapt to changing circumstances. Some contemporary scholars argue that DNA is a form of Qarina, circumstantial evidence, that can be used for ta'azir even if not sufficient for hadd, others reject it outright, where perpetrators may escape justice due to lack of sufficient evidence. The ta'azir punishment is distinctly different from the Hadd and Qisas as it is left to the discretion of the court. A discretion which in itself is contentious. While the punishment of the two is strictly guided by the Qur'an and Hadith, ta'azir can be utilized by courts where cases are proven on the basis of any kind of credible evidence presented before it. Thus, where there is no sufficient evidence to warrant hudud, but the courts are satisfied that the defendant is guilty-of that-or another offence, may be tried and punished by way of ta'azir.

Comparatively, Pakistan declared that DNA profiling is inadequate as primary evidence for rape crimes and should be supported by other forms of evidence laid out in Islamic law because of the inability of the DNA evidence to distinguish between forced and consensual sex.[33] Conversely, a landmark court ruling in Egypt allows DNA to be utilized in establishing paternity in rape case in Amal Abdelhamid

[32] ibid
[33]

case[34] decided in 2026. In Malaysia, with dual legal systems like Nigeria, uses DNA as Qarinah, signs or things that indicate something, in such it has been used in proving identity of individuals in court. As the Shariah courts are now being more receptive towards such evidence due to its crucial role in determining truth in a trial, as well as potential strength and reliability of the DNA evidence itself.[35] The Saudi Arabia courts and the fiqh of the Muslim world league maintain that DNA cannot autonomously satisfy the high threshold required for hudud executions in sexual crimes.

7. DISCUSSION

One significant tool in the investigation and prosecution of sexual assault cases is forensic DNA analysis. DNA evidence can be collected from a variety of sources, including blood, semen, hair, and skin cells. By analyzing this evidence, forensic scientists can identify suspects and link them to the crime scene. In addition to identifying perpetrators, forensic DNA analysis can also be used to exonerate innocent suspects who have been wrongly accused of sexual assault crimes. DNA evidence can be used to demonstrate that the suspect was not present at the scene of the crime or was not involved in the assault.
However, Nte and others noted out that legislators across the globe have struggled to balance the argument on the establishment and permissible uses of DNA databases in their own respective jurisdictions. In doing so, questions such as under what circumstances should the police obtain, without consent and with force, if necessary, DNA samples from suspects? What range of circumstances and offences should license this sampling? What agencies should be permitted to carry out the analysis of the samples? From which individuals should sample and profiles be retained following the

[34] Appeal No 9829, 2019
[35] A. A. M. Sharif and others 'Analysis of Admissibility of DNA Evidence in Malaysian Courts' 2019 (8) (4) Academic Journal of Interdisciplinary Studies

completion of investigations and for how long should they be held? Who should own, manage, and govern the use of databases accessed by the police? Should access to samples and profiles be permitted to any other organizations? and what systems should be in place for the quality assurance and oversight of the varying scientific and bureaucratic practices that make up sample analysis, profile construction, storage and comparison?[36]

These questions were however answered by the provisions of the Act,[37] particularly on forensic evidence and the testimony of forensic experts. The forensic experts have obligations to the Court and an expert must help the Court to achieve the overriding objective by giving objective, unbiased opinion on matters within their expertise. This duty overrides any obligation to the person from whom he receives instructions or by whom he is paid. In all, despite the fact that forensic evidence is admissible, according to the Law, the weight the Court will ascribe to such evidence will depend on the quality of the witness and their involvement in the gathering of such evidence. It is always best to use the expert who was involved in the investigation that led to the gathering of such evidence as the witness to tender such evidence during trial.[38] Furthermore, such evidence gathered should not be tainted or corrupted in any manner. Once there is any evidence that the evidence is tainted or corrupted, though it may be admissible, may be a worthless piece of evidence. To establish proper chain-of-custody of the evidence, investigators must track the evidence from place to place, documenting who retrieved, handled, transported and received the evidence, specifying all dates and times. It should be stated that without a proper chain-of-custody documentation, a Court

[36] Nte, Nte, Kelvin, Enokie and Bienose, (n2)
[37] Section 68 (n12)
[38] O. H. Oshodi (n14)

may rule the evidence hopelessly compromised and inadmissible at trial.

Some jurists prefer to classify rape as a hirabah crime for reasons of prosecution.[39] According to Asifa, zina requires a high standard of proof. Hirabah does not require four witnesses to prove the offence, unlike zina. Circumstantial evidence and expert testimony, also, presumably form the evidence used to prosecute such crimes. In addition to using eyewitness testimony, medical data and expert testimony, a modern hirabah prosecution of rape would likely take advantage of modern technological advances such as forensic and DNA testing. Finally, the classification of rape as hirabah promotes the principle of honoring a woman's dignity, as is established in the Quranic verses on zina. Rape as hirabah is a separate violent crime which uses sexual intercourse as a weapon. The focus in a hirabah prosecution would be the accused rapist, his intent and physical actions, rather than just guessing the consent of the rape victim, which, as we have seen, is likely to happen if rape is classified as a type of zina. In addition, there is no consideration of marital status in the case of hadd of hirabah.[40]

Taking lessons from Caliphate of Umar ibn Kattab (RA), when a woman was obsessive over a young man who had no interest in her, the woman applied egg white on her garments and thighs before reporting to Umar (RA), claiming that she had been raped by the young man, exhibiting the satins purported to be remains of the man after the act. He then referred her to some women to investigate her privates, where it was concluded that the stains appeared to be from seminal fluid. Upon this, Umar (RA) intended to impose the

[39] Noor, (n17)
[40] Asifa Qureishi, Her Honour: An Islamic Critique of the Rape Provisions in Pakistan's Ordinance on Zina, Kuala Lumpur, Islamic Book Trust, 2002 at p 21.

punishment of rape on the young man, but the man sternly denied such claims and pleaded that the claims and conclusion of the women to be further investigated. Then Umar (RA) called Ali Ibn Abi Talib (RA) to help in further investigation and hot water was poured on the stains, where it turns out to be very similar of an egg white as such cast doubt in their minds as to the authenticity of the claims. It was reported that Ali, even went to the extent of tasting the stain to confirm that it was egg white, the woman was demanded to speak the truth, which she eventually did.[41]

Addressing the earlier tensions highlighted, section 4 of the 1999 constitution of Nigeria, the National Assembly holds the power to make laws for the peace, order and good government of the federation. This federal mandate produced the evidence Act and the VAPP Act. Conversely, several northern states enacted Shari'ah penal codes under their residual legislative powers to govern criminal justice for Muslims. When Shari'ah courts attempt to try suspects for zina, a state level offence, it operates under a district philosophical framework that frequently collides with federal statutes. Because section 1(3) of the constitution declares any law void to the extent of its inconsistency with federal legislation, the enforcement of traditional zina penalties constantly faces challenges regarding its constitutionality and its alignment with federally protected fundamental human rights.

There is blurred line between Zina and Rape when looking at the intersection of the conventional laws and the Shariah, for instance, the VAPP Act is a victim centered law designed to eliminate gender-based violence, protecting bodily autonomy by broadly defining and penalizing non-consensual sexual acts, such as rape. This creates a systemic hazard, as a woman who reports non-consensual sexual acts

[41] Al Turuq-ul-Hukmiyyah fi al-Siyasat al-Shari'ah, Fasl fi suwari lil—hukam bil-firsa, p70

or rape and fails to provide all evidence required, if the proceedings is in the Shria'sh courts may risk having the case treated as Zina.

Finally, where there is difficulty in the establishment of all evidentiary rules and doubt or flaw i.e shubha in the scientific or DNA evidence provided in the context of al-hukm bi-l shubha, whether it is hudud or ta'azir, acquittal is the proper Shria'ah hukm. For the protection of the right of the defendants, loopholes should not be utilized as basis for criminal liability

8. CONCLUSION AND RECOMMENDATIONS

The admissibility of DNA evidence as proof in court appears interesting but it is quite difficult due to the lack of proper mechanism and legal framework providing the specific guidelines on how to take the sample, preserve, process and record the results. Apart from these there is an existing argument as to how the relevant database records will be managed and by whom. It is glaring that the preparedness of the Nigeria's criminal justice system to adopt the admissibility of DNA evidence in court is a shortfall. From the inadequate resources, lack of trained facilitators and adequate laboratory facilities to conduct the testing, sampling and generate an accurate profile. The Islamic ruling that DNA serves only as supporting evidence in rape cases aligns with Shari'ah emphasis on just and conclusive proof. The insistence on four witnesses ensures protection from false accusations and the protection of defendant's rights.

The admissibility of DNA evidence in Nigerian courts lacks a strong legal framework as the Evidence Act itself have not broadly classified Forensic evidence, such admissibility is invoked from the readings of sections 68 and 84 of the Evidence Act. There is a need for the law makers to amend the existing legal frameworks to adequately capture

the admissibility of the DNA evidence and provide admissibility and evidentiary guidelines for such evidence.

To overcome the challenges of proper preservation and conduct of the laboratory testing, it is essential to invest in the development of forensic DNA infrastructure and expertise in Africa. This includes improving laboratory facilities and equipment, increasing the number of trained forensic scientists, and providing ongoing education and training to law enforcement and judicial officials. There is also a need for public education and awareness campaigns to increase understanding and support for the use of DNA evidence in sexual assault investigations.
It is also important to establish mobile DNA laboratories equipped with standard equipment for easier collection of samples and processing of results.

There is a need for compulsory testing of all suspects to register their DNA status in a database for profiling. This will help in tracing suspects and in the investigation of crimes, not necessary the one in question. This will also help in identifying previous offenders. The procedures for collecting and tendering such evidence through expert witnesses should be properly refined with stringent guidelines.

Establishment of national database to be handled by the Nigerian police consisting of all the DNA records of suspects and accused persons which can be accessed when necessary.