

Original Research Article

Sentencing and the Administration of Criminal Justice in Nigeria

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Accepted 30th December, 2017.

At Common Law and in Nigeria, the administration of Criminal Justice embodies a method through which the administration of Criminal law establishes procedures aimed at fair, just and speedy determination of guilt or innocence of any person accused of committing a crime. The Court at the end of trial is empowered to deliver judgment upon the defendant after his conviction and imposed sentence on him usually in form of a fine, imprisonment or other punishments. This paper takes a look at the aims of the criminal punishment. It further examines kinds of punishment available in Nigeria. The discourse also analyses disparity in sentencing and factors affecting them. It ends with recommendations *inter alia* that our courts should no longer focus attention entirely on the punishment of offenders through deterrence and retribution theories but should also have recourse to other punishment theories such as reformatory, preventive and restorative.

Keywords: Trial courts, Criminal justice, Judgment, Sentence, Evidence.

INTRODUCTION

The purpose of civil law generally is to compensate the victim of wrongful conduct for injury he has sustained, while criminal law generally seeks *inter alia* to forbid and prevent conduct that unjustifiably inflicts or threatens substantial harm to individual or public interest. As Karibi-White JSC has put it “the repression of anti-social conduct by means of punishment is the paramount objective of the criminal law¹. Consequently, to talk of compensation within the context of criminal law certainly sounds somewhat odd. Criminal law is therefore essentially concerned with the definition, trial and punishment of those acts and omissions which are known as crimes.

Criminal justice, on the other hand embodies a method through which administration of criminal law, establishes procedures aimed at fair, accurate and expeditious determination of guilt or innocence that do not infringe upon the rights of citizens and aim to provide an enlightened but effective system of punishment for those found guilty. Therefore, the chief aim of the entire criminal justice system comprises deterrence, atonement and retribution through punishment administered at the instance of the State. It is against this background that it is always said that the aim of criminal law is to protect the society and the citizens and to pay the wicked for his wrongdoing. Again, one often hears the view

that crimes are punished to show those who have broken the law and those who might be tempted to break it that the law has teeth that bite. In short, the enterprise of criminal justice system is to make the community safer by identifying and then removing (or at least watching) those who have shown themselves to be dangerous, be it a corporation or an individual.

One distinguishing rule relating to criminal trial is that of the standard of proof; while civil trial rules require that only a person asserting a claim establishes his case on a balance of probabilities, criminal procedure rules require that the prosecution establishes its case beyond reasonable doubt. But probably more relevant to our discussion in this paper is the requirement in a criminal trial that a court finds guilty and upon conviction, it “sentences” the offender to a punishment of one form or another. It is this concept of sentencing that is the concern of this paper.

DEFINITION OF SENTENCE

At all levels of our relationship with God, other human beings and even our domestic animals, we have rules and regulations which we should obey. It is failure to abide by such rules and regulations that attracts sentence and punishment. A sentence is therefore a decree of punishment. In law, a sentence

¹Karibi – Whyte, “ ground work of Nigeria, p.3

generally involves a decree of imprisonment, a fine and other punishments against an accused convicted of a crime².

The author of *Black's Law Dictionary*³ defines a sentence as:

The judgment that a court formally pronounces after finding a criminal defendant guilty; or the punishment imposed on a criminal wrongdoer,

While *Oxford Advanced Learner's Dictionary*⁴ defines a sentence as: the punishment given by a court of law.

In their views, Okonkwo and Naish state that if punishment is the object of criminal law, then sentencing is simply the way in which principles of punishment are applied to individual offenders.

Bob Osamor in his book, *Fundamentals of Criminal Procedure Law in Nigeria*⁵ defines a sentence as:

The pronouncement by the court, upon the accused person after his conviction in criminal prosecution, imposing the punishment to be inflicted

Ekumanka in his book, *Criminal and Penology, a Nigerian Perspective*⁶ defines sentence as:

The act of imposing a penalty by a court on a wrongdoer for a crime or a wrongdoing and goes ahead to emphasize the core relationship between sentencing and punishment because you cannot talk about sentencing without some form of punishment.

His lordship Justice Douglas, in his paper titled *Administration of Criminal Justice: Sentencing Policy*⁷ presented at Conference of All Nigerian Judges, 1988 says:

The term "sentence" or "judgment" in legal parlance may be said to denote the action of a court of criminal jurisdiction formally declaring to an accused the legal consequences of the guilt to which he has confessed or of which he has been convicted. Generally, therefore, a sentence is the punishment inflicted upon a convict at the end of the criminal trial.

It must however, be noted, that Sentence should not be passed in anger or pity. It should be passed with the aim of doing justice. However, the Criminal and Penal Codes as well as other statutes creating offences specify the quantum and nature of sentences. The quantum of sentences is specified with or without judicial discretion. For instance, certain sentences are made mandatory by law, leaving no discretion to the Judge.

Where such is the case, the Judge is not allowed to exceed the prescribed sentence on a person found guilty of that crime, nor should he mete out a sentence less than prescribed by the crime. The case which clearly underscored this principle of the law is to be found in the case of *Dada v. board of customs & excise*.⁸ In this case, the accused was convicted under Section 44 (1) (b) of the Customs and Excise Management Act. The

punishment for the offence of unlawful importation under the subsection is 5 years imprisonment without the option of fine. The trial Judge sentenced the accused to 2 years imprisonment. The accused appealed against the sentence contending that he should have been given an option of fine. His appeal was dismissed. The Court of Appeal maintained that the provisions of the CEMA being specific provisions, override the general powers given to the Court under Section 382 (1) CPA or Section 23 (1) CPC.

Also, where separate offences are charged together, each must receive a separate sentence but if they all form part of the same criminal action, sentences will be concurrent. In the case of *John V. The State*,⁹ it was held that the sentences for house-breaking and stealing should run concurrently. Where however a term of imprisonment in default of fine is ordered, it cannot run concurrently with a sentence of imprisonment imposed at the same time or with default sentence in respect of another offence¹⁰. In sentencing an offender to a fine, it must not be heavy for him to pay and the fines imposed on different counts at the same trial are to be cumulative.

THE AIMS OF CRIMINAL PUNISHMENT

Punishment of an offender, in any form, be it a fine, imprisonment, a death penalty or compensation deprives the individual of his liberty and serves the purpose for which that punishment is meant. The Court is always informed by differing punishment objectives before imposing a sentence upon the accused. The objective and purpose of punishment can be categorized into four main theories, namely: deterrence, incapacitation, retribution and rehabilitation/reformation.

Deterrence

Here pain is inflicted on the offender to deter him or her or others from doing the act or omission in future. It may be general or specific. Specific deterrence aims to discourage crime by punishing offenders for their crime and thereby conveying to them that crime does not pay while general deterrence seeks to dissuade potential offenders by the threat of anticipated punishment from engaging in an unlawful conduct. This was the reasoning of the Supreme Court of New Zealand in the case of *Re Radich*¹¹ when the Apex Court stated that:

In all civilized countries of the world, in all ages, deterrence has been the main purpose of punishment and still continues to be so.

A practical example of general deterrence in Nigeria is the arresting and killing of Bartholomew Owo and two others during Buhari/Idiagbon military regime for drug-related offences, as well as the introduction of Fire Armed Robbery (Misc.) Offences Decree that mandates the killing of convicted armed robbers by firing squad. However, evidence has shown that severe criminal punishment has not reduced the crime rate in Nigeria; hence, there is need to point at a different approach for solution. The distinction between general and specific deterrence is that the latter reflects on the future behaviour of the individual being punished to deter him from committing subsequent criminal act. The above position of law was supported by the Supreme Court in the case of *State v. Kalu*.¹²

² www.encyclopedia.com sourced on 23/10/17

³ Garner, B., *Black's Law Dictionary*, (7th edn, St.Paul Minn: Thompson west, 1999) P. 1367

⁴ Honby, A., *Oxford Advanced Learner's Dictionary* (6th edn. Oxford University Press), P.1072

⁵ Osama B, *Fundamentals of Criminal Procedure Law in Nigeria* (1st edn Dec – sage Nig Ltd Abuja 2004)p. 376

⁶ Ekumankama, D., *Criminology and Penology, a Nigerian Perspective*, (Jos: New World Publishers, 2002), p. 163

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⁸ (1982)2 NCR 79

⁹ (1968)NMLR 122

¹⁰ Sections 389 and 73 of CPA and Penal Code

¹¹ (1954) NZLR 86 at 87

¹² [1998] 1 NWLR pt. 583 at p. 531.

The Supreme Court held that death sentence is still the punishment for armed robbery in Nigeria so as to serve as a specific deterrence to others who may go into armed robbery. The most damaging criticism of deterrence theory is that it has not reduced the incidence of crime in the society. However, whether the impact of deterrence theory is felt in the society or not the general presumption is that it is.

The above belief was the opinion of Court in the English case of *Re Fern*¹³ where the Court per King C.J. held that Courts are obliged to assume that the punishments which parliament authorizes will have a tendency to deter people from committing crime; whether or not this claim is correct is yet to attain general acceptance. In some cases, deterrence as a mode of punishment becomes inevitable as could be seen in the case of *State v. Bolivia Osiegbmhe*¹⁴. The accused person drove up to a motor park in Umuahia in a pick-up van at night and offered to take two stranded girls who had just arrived there, to their sister's address.

The girls were reluctant but the accused person assured them of their safety. They entered the vehicle. Instead of taking them to their destination, the accused person drove them into a bush and at gunpoint raped each of the girls in turn. He then drove around with the girls for some time, stopped at a bush again and repeated the same performance with each of the girls. As he drove away from the scene with the victims, he told them that he was taking them to his house to spend the night and that he would take them to their sisters address the next morning.

The girls refused; annoyed at the accused behaviour and in an attempt to jump out of the pick-up van they sustained some injuries. The suspect was convicted for rape and stealing, he pleaded for leniency saying that his dependents would suffer if he went to prison. His counsel also informed the court that he was a first offender and asked for mercy and option of fine. The court stated as follows:

The behaviour of the accused is outrageous and disgraceful and should be seriously deprecated by any decent society. I will be failing in my duty if the accused is not meant to suffer for his barbaric act. It is obvious that his insatiable appetite for sex made him to commit the offence.

In this particular case, specific deterrence must apply because the use of gun, the infliction of injuries when the girls jumped out of the van, deprivation of liberty for a considerable time, the breach of trust after assuring the girls of their safety and the fact that series of rapes were involved demanded that the convict be properly punished as a deterrent to others who may attempt such crime.

Incapacitation

This theory of punishment aims at restraining an offender personally from repeating a criminal act by incapacitating him by various means such as long-term of imprisonment and even death penalty. In the past, this theory of punishment had a bearing on the nature of the crime and criminal of such an offence used to be incapacitated. Punishments such as amputation, death penalty and exile served the purpose of incapacitating an offender whatever might be the crime during this period. The target of this theory is not on the motive of the offender, but on his physical power which it seeks to disable or

otherwise cripple in order to prevent repetition of the crime¹⁵. However, in modern times the criminal justice system does not approve of barbaric punishments such as amputation¹⁶ and exile, except that death sentence is still within the recognized legislation in jurisdictions of some criminal justice systems in the world. Incapacitation aims to protect and prevent the community, because confining individuals to prison, prevents them from committing further offences in the community during the period of incarceration¹⁷.

In the case of *State v. Sgt Dennis Osoleka and 7 Ors*¹⁸ the High Court of Enugu State even refused bail to suspects of kidnapping and abduction as a result of prevalent nature of the offence of kidnapping in Nigeria, particularly, south-east zone of the country¹⁹. The essence of the refusal of bail as in the above case is to further protect the society. Sentencing Judge in the above instance shall consider whether the offences are a risk to the society which requires a period of secured confinement. Incapacitation is justified because the inmates will not be able to repeat criminal acts while they are under State control and their behaviour strictly controlled.

Retribution

Here the objective is to punish the offender in a manner proportionate to the offence he has committed. In the ancient Greek times, retribution had been regarded as a kind of trade in which good exchanged for good and bad for bad²⁰. Thus, under this theory, an offender is to be punished because he deserves the punishment. The goal of the punishment is to make the offender suffer in order to pay for his crime. It attempts to assign punishment on a proportional basis so that crimes that cause greater harm or are committed with a higher degree of culpability receive severe punishment than lesser criminal activities.

For instance, a criminal who kills human beings must also be made to die because he has committed a terrible crime and only his death would be satisfactory as deserving such crime. In the case of *Adamu V Kano Native Authority*²¹ the Appellant stabbed the deceased twice in the stomach and once at the back. The deceased died two days later. There was no medical evidence of the cause of death but the trial court inferred from the circumstances that the cause of death was the fatal acts of stabbing and sentence the accused to death by hanging. Being aggrieved by his conviction and sentence, the Appellant appealed to Court of Appeal. The Court of Appeal confirmed the death sentence imposed on the Appellant and dismissed the appeal.

It is also permissible for the court to impose a sentence that is dis-proportionate provided the aim of such sentence is to protect the larger society. The above principle of law was demonstrated in the case of *Re Daher*²². The English court convicted the offender (a foreign student) who was 19 years old for smuggling and reselling of drugs for three years. Curiously, the appeal court upheld the sentence even though

¹⁵ Zimring, F., & Hawkins, G. Incapacitation: Penal Confinement and the Restraint of Crime (1st edn. Oxford university press, New York, 1995)

¹⁶ Law and order in Nigeria's sharis states. www.rnw.nl/africa/article/law-and-d last accessed on 13/10/2017

¹⁷ Countries like china, North Korea and Nigeria (particularly Edo state under Adams Oshomole) are effectively carrying out execution of people sentenced to death by their courts.

¹⁸ Suit No E/32/2009 (unreported).

¹⁹ Criminal Procedure Law. Enugu State 2004, s. 92(b) which allows bail to all offences except offences that attract capital punishment

²⁰ Hans, K., "General Theory of Law and State "LQR, (1934) Vol. 50 pp. 168-192

²¹ (1956)1FSC 25

²² (1969) 53, CR A.R. 490

¹³ [1989]51 SASR 273 at 274

¹⁴ HU/47C/71(HCT)Umuahia, Unreported.

inappropriate after weighing all the circumstances, quoting Salmon L.J. as follows:

It is of the greatest importance in the public interest that crime such as this should be severely deterred. The sentence of 3 years is a severe sentence, having regard to the boy's circumstances but this trade of smuggling drugs into the country and peddling them to people is a terrible and dangerous trade and it is the duty of court to do all that it can to stamp it out.

The Court went ahead to describe the sentence as right in principle since it was clearly intended to be a deterrent sentence.

Rehabilitation/Reformation

Despite a variation of views about the various schools of thought under this theory of punishment, one of the most important aims of sentencing is reformation or rehabilitation of the criminal²³. Both words can be used interchangeably in the context of this paper. The word reformation means doing over to bring a better result; to correct, rectify, amend or remodel²⁴. The central aim of this theory is to improve the offender's attitude and character so that he is less inclined to commit offences²⁵.

Here the offenders are provided an opportunity to receive education or treatment that will eliminate criminal tendencies in them so that the offenders become better members of the larger society. The concept of reformation as an important aim in sentencing was demonstrated in the case of *Ekpo v. State*²⁶ where a young man of 18 years was convicted for being in possession of counterfeit bank notes contrary to the law²⁷, and was sentenced to 21 years imprisonment. On appeal, the Supreme Court per Anyagbolu J.S.C. (as he then was) stated thus:

I wish to place it on record that I have much sympathy for the appellant on the severity of sentence passed on him. He is a young man of 18 years of age and a first offender, and if the principle of reformation of criminals had any place in the sentencing policy of our courts, the salvaging of this young man from the direction of crime to the rectitude should be our paramount pre-occupation.

The above case shows that even though Section 5 of the Counterfeit Currency (Special Provision) Act 1974, made 21 years sentence obligatory upon conviction by using the expression 'shall be liable to imprisonment for 21 years', a court's discretion to impose any sentence up to the maximum limit is not restricted by such expression, the best interest of justice, as well as other mitigating factors, demands that a lesser sentence would have been most appropriate sentence to the young man as the learned Justice of the Supreme Court rightly observed; preferably he would have been remanded in reformatory or correctional home and not to serve 21 years term of imprisonment.

From the above, it is submitted that in Nigeria the reformation of the offender deserves serious attention of the sentencing Judge and Magistrate because after the offence had been committed, the deed has been done and not much

can be done; rather effort should be made by the government towards avoiding repeat performance. Logically, the most constructive step to take is to see that the offender does not commit the offence again. The author submits that the aim of every court is to fix a sentence proportionate to the offender's culpability which approach has been loosely described as the tariff system (the facts of the offence, the offenders record and any mitigating circumstances); reformation or rehabilitation of the offender shall be a strong factor on the mind of the sentencing court.

This will be in line with what is happening in other jurisdictions such as England, Canada and New York²⁸ with the existence of healthy prisons, training schools, probation of offender law, indeterminate sentence, suspension of sentence and pardon are all incidents of this theory designed for reforming the criminals.

KINDS OF PUNISHMENT IN NIGERIA

After the trial and conviction of an accused person, the Magistrate, Judge or Jury (depending on the jurisdiction) must pass a sentence on him. The sentence passed must be one prescribed for the offences under the statute creating them²⁹. The sentences provided for under our laws are death penalty, imprisonment, fine, caning and haddi lashing, forfeiture, deportation, probation/suspended sentence, community work and plea bargain. These sentences are discussed below:

Death Penalty

Under Nigerian criminal law, various offences are punishable by death across the federation including murder³⁰, treason³¹, armed robbery³² arson and instigating invasion of Nigeria. More recently, kidnapping has been added to the list in Akwa Ibom State, Imo and Abia States³³ and oil theft and crude oil bunkering in River State and Enugu State. The introduction of sharia-based criminal law in some States in Northern Nigeria has also broadened the number of capital offences to include adultery, sodomy, lesbianism and rape³⁴ where a death sentence is prescribed by the law, same is mandatory and the trial Judge has very little discretion to exercise as far as that is concerned; after an accused has been found guilty of capital offence, the only sentence open to the Court to impose is one of death³⁵.

However, opinions are divided in Nigeria as to whether or not the death sentence is still relevant in modern sentence approach. Thus, in the case of *State V Okoro*,³⁶ Onuoha Kalu was on the 6th day of March 1991, arraigned before the High Court of Lagos State, charged with the offence of murder punishable under Section 319 (1) of the Criminal Code Cap 31, Laws of Lagos State of Nigeria, 1973. At the conclusion of

²⁸ These are some of the Jurisdictions where death penalty has been abolished. See A.J. Ikpong, op Cit at p.58

²⁹ Doherty, O., *Criminal Procedure in Nigeria Law and Practice* (1st edn. Blackstone press limited 1999) p. 317

³⁰ Section 319 of the Criminal Code Act, cap C38, Laws of the Federation of Nigeria, 2004; section 220 of the Penal Law, cap 89, Laws of Northern Nigeria, 1963

³¹ Section 37(1) of the Criminal Code; section 410 of the Penal Code.

³² Section 1 of the Robbery and Firearms (special provisions) Act, Cap R11, Laws of the Federation of Nigeria, 2004

³³ news.com 'Nigerian Governor Supports Death Penalty for Kidnappers', June 10, 2010; Amnesty International press release, 'Nigeria: Imo state Death Penalty decision puts victims at risk', May 07, 2009, see

www.amnestyusa.org.

³⁴ Kano State Sharia Penal Code, 2000

³⁵ Doherty, O., supra

³⁶ (1998)13 NWLR (pt. 509) 531

²³ Uduigwomen, A., *Studies in Philosophical Jurisprudence*, (2nd edn. Calabar Jochrisam Publishers, 2005) p. 330

²⁴ Black Law Dictionary, op.cit p. 1281

²⁵ Walker, N., *Punishing Denouncing or Reducing Crime in PG lacebrook, Reshaping the Criminal Law* (1978) p. 393

²⁶ (1982) 6 SC 120

²⁷ Counterfeit currency (special provisions) Act 1974, s. 5

hearing the trial Court found him guilty as charged. The Appellant was accordingly convicted and sentenced to death. Dissatisfied with the decision of the trial Court, the appellant unsuccessfully appealed to the Court of Appeal. Thereafter, the Appellant further appealed to the Supreme Court. At the Supreme Court the Appellant sought and obtained leave to raise the issue of the constitutionality of the death sentence in Nigeria.

At the end of submission by all parties, the Supreme Court held *inter alia* that under Section 33(1) of the 1999 Constitution (as amended), the right to life although, fully guaranteed, is nevertheless subject to the execution of a death sentence of a court of law in respect of a criminal offence of which one has been found guilty in Nigeria. In contrast in the American case of *Greg v. Georgia*³⁷ the Criminal Appeal Court held that mandatory imposition of death sentence was no longer legally valid. The validity or otherwise of death sentence in American jurisdiction is not absolute, it depends on the nature, facts and circumstances of a particular case. In the case of *Haris v. Alabama*³⁸ where a housewife hired her boyfriend to assist in killing her husband so that they could share her husband's insurance benefit, the Court held that it is permissible for a Judge to ignore a Jury's decision against capital punishment and impose death penalty.

In English jurisdiction, the issue of capital punishment has been grossly subjected to the Courts' discretion while in Nigerian situation it attracts a mandatory sentence. The above view was supported by the case of *Re Roberts*³⁹ where the Court held as follows: "Retribution justice has faded into comparative insignificance in criminal justice system".

Advocates of the death sentence believe that execution serves as a strong deterrent for serious crimes such as murder, armed robbery and kidnapping and that before the brutality of the death sentence is considered, the cruelty with which the victim was treated should not be forgotten.

On the other hand, critics of the death sentence believe that it is wrong for our society to punish criminal by subjecting them to the same acts they committed, for example, rapists are not usually assaulted and arsonist do not have their houses burnt down; why should murderers and armed robbers be killed.

In Nigeria, two sets of persons are exempted from the death sentence⁴⁰. The first is pregnant women: under subsection 368(2) of the Criminal Procedure Act and 270 of the Criminal Procedure Code, a pregnant woman is exempted from the death sentence; in lieu, she shall be sentenced to imprisonment for life. This saves the foetus from punishment for which it is not criminally responsible.⁴¹ The second exception is for young persons: under subsections 368(3) of the Criminal Procedure Act and 270 of the Criminal Procedure Code, where a person below the age of 17 years is convicted of a capital offence he or she shall not be sentenced to death; in lieu, he or she shall be detained, during the pleasure of the Governor.

Imprisonment

This is the commonly imposed type of punishment and may be imposed in almost all cases. What this sentence means is that the convict shall leave his personal residential premises in his community for a new residential accommodation in the prison yard to be provided by the government. Here he will reside in such prison custody until the expiration of the term of imprisonment. Where the law creating an offence prescribes imprisonment as punishment, upper and lower limits are usually set by the same law. Imprisonment is the punishment that is one of the few exceptions to the rule against non-infringement of the right to personal liberty provided for under the Constitution of the Federal Republic of Nigeria 1999, (as amended) in Section 35(1)(a). Section 35(1) states:

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law,

while Section 35(1) (a) of the same law provides an exemption thus:

In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty

It must be understood that because of the restriction or withdrawal of the person's right to personal liberty, the law requires that imprisonment may only be imposed where it is absolutely necessary and must not exceed the maximum limit or fall below the minimum limit set by the law. But where a court imposes a sentence that is in excess of that prescribed by the law, an Appellate Court will set same aside and in its place may impose the maximum sentence for the offence.⁴²

The above proposition must have been the reasoning behind the Court of Appeal's decision in the case of *Ekpo v. State*.⁴³ In this case, the accused person was tried and convicted for rape of an underage girl. The trial court imposed a suspended sentence of three years. On appeal, it was held that suspended sentence was alien to our law, and in its place, the Court of Appeal sentenced the accused to three years imprisonment. Also, in *Olanipekun v. State*,⁴⁴ the accused was convicted of the offence of causing death by dangerous driving contrary to Section 4 of the Federal Highway Act.

By the section, a person who commits an offence under the section "shall be guilty of an offence and liable on conviction to imprisonment for a term of seven years". The trial Judge imposed a sentence of seven years on the accused as according to His Lordship, he had no discretion to reduce the sentence. Overruling the trial Court on this point, the Court of Appeal held that the seven years prescribed in the said section was the maximum and the trial Judge was at liberty to impose less having regard to Section 17 (1) of the Interpretation Act.⁴⁵

It is pertinent to note that where the charge or information against an accused person contains more than one count and the accused is convicted, the sentence passed on the accused may run either concurrently or consecutively. If concurrently, the prison term would be served at the same time but if consecutively, the said prison term passed would be served

³⁷ 428, US, 159, 96 SCR. 2950

³⁸ (1935)11, SC, 1031

³⁹ (1963) 1 CCC 27 at 45

⁴⁰ The defence of insanity is justified on the ground of the notion of responsibility because the offender lacked the freedom and capacity to regulate his or her conduct.

⁴¹ This exception is not recognized in Sudan where Meriam Yehya Ibrahim, a 27 year old pregnant woman was sentenced to death for 'apostasy'.

⁴² Queen V. Eyo & ors (1972) 6 S.C. 28 where in place of the excessive sentence the court imposed one that was within the trial court's jurisdiction.

⁴³ (1982) INCR 34

⁴⁴ (1979) 3 LRN 204

⁴⁵ Ekpo v. state (supra)

severally, separately and distinctly⁴⁶. There are two major drawbacks against imprisonment as a form of punishment: first, imprisonment is inadequate to reform or rehabilitate the offender; secondly, imprisonment does not compensate or provide restitution to the victim of crime.

It must be pointed out that imprisonment cannot be said to be adequate punishment for economic and financial offences. It does not compensate the victim of crime. The victim of crime benefits nothing. For example, if an offender charged with cheating or criminal breach of trust is convicted and sentenced to prison with hard labour, the victim goes home with nothing unless he or she institutes a civil action against the offender. The absence of victim compensation, restitution and reconciliation renders imposition of term of imprisonment inadequate in cases involving economic and financial offences.

Despite the inadequacy of imprisonment as a form of punishment in respect of economic and financial offences, imprisonment is adequate punishment for most serious and violent crimes like terrorism, armed robbery and sexual offences. This is because imprisonment serves as good retribution, deterrence and restraint against offenders. In cases of most serious and violent crimes, emphasis cannot be on restitution; imprisonment of the offender is the best option as punishment to protect the larger society.

Fine

Fine is the twin brother of imprisonment and where fine is provided as an alternative to imprisonment, it is advisable that fines be imposed. In Nigeria, Section 382 of Criminal Procedure Act, Section 316 of Administration of Criminal Justice Law 2011 (Lagos) and Section 23 of the Criminal Procedure Code and Section 422 of Administration of Criminal Justice Act, 2015 provide for the discretionary power of a Court to impose fine in lieu of imprisonment. Furthermore, Section 390(3) of Criminal Procedure Act provides that the fine in Nigerian courts must be appropriate not only to the offence but also to the means of the offender to pay.

In the case of *Goke v police*⁴⁷, the accused persons were charged *inter alia* with the offence of rioting and unlawful damage to property resulting from the riot. They were convicted and sentenced to pay a fine of ₦200 each. The accused persons were all elderly men. The high court held that the Magistrate was not guided by the provisions of Section 391 of the CPA in imposing the fine of ₦200 on the accused who were elderly persons of modest income. It held that the option of a fine was illusory if a convicted person has no means of paying it. It allowed the appeal on sentence and reduced the fine to ₦100, in default of which the appellants would go to prison for four months.

In imposing a sentence of fine, the court is to be guided by the fact that the offender has financial ability to pay the fine⁴⁸. The court has consistently emphasized that fine imposed should be within the means of the offender to pay. On the other hand, it has been pointed out that capacity to pay fine does not carry with it the notion that the rich man should be able to buy himself out of prison with a substantial fine. This proposition was the opinion of court in the case of *R v. Marwick*⁴⁹ where the Appellant who had been convicted of stealing 2s.6d from a fellow golf club member, was fined £500 by the lower court.

On appeal, the sentence was varied to two months imprisonment by the court of appeal without option of fine. Lord Goddard C.J summarized the opinion of the court in the following terms:

A fine of £500 is totally inappropriate in a case of larceny as the present case. Heavy fines are appropriate only where parliament has particularly provided for them, especially in some cases of fraudulent practices where the object is to prevent the offender from obtaining financial benefit for his breach of the law. The sentence of £500 was wrong in principle as any sentence could be and the court shall not provide fine to a person of means as an opportunity to buy himself out of being sent to prison, that the graveness of the offence was not only its essential meanness but also the aura of suspicion which must have thrown over the servant and other members of the club.

The question now is whether fine can be combined with other punishments by a sentencing Judge. The English Magistrate Courts Act of 1952 provides that a convict can be imprisoned and fined at the same time in respect of the same offence.⁵⁰ The above combined punishment is possible where the profit from the offence, the means of the offender and seriousness of the offence and other circumstances are such that a court will be justified in combining such punishments.⁵¹ The above practice is indirectly being employed in Nigeria, whereby the convict suffers some terms of imprisonment, as well as, having the ill-gotten property either confiscated by the government or kind of restitution to the victim.⁵² The provision of Section 17 of Economic and Financial Crimes Commission (Establishment, etc.) Act⁵³ which deals with retention of proceeds of a criminal conduct is better than fine in the Criminal Code and Penal Code. Section 17 of EFCC Act provides that:

.....any person who commits an offence and is liable on conviction to imprisonment for a term not less than three years or to fine equivalent to one hundred percent of the value of the proceeds of the economic or financial crime or to both such imprisonment and fine.

The fine imposed here is to serve as deterrent to offenders; but it still does not address restitution to the victim of the crime.

Probation/Suspended Sentence

Sections 453-459 of Administration of Criminal Justice Act, 2015 and Section 435(1) of Criminal Procedure Act⁵⁴ provides for probation under the Nigerian Law. The inability of our courts to fully impose probation as a form of punishment is as a result of absence of logistics or facilities to supervise probation as practiced in other jurisdictions. Probation or suspended sentence was introduced in Britain in 1967.⁵⁵ The English Court of Appeal in the case of *R v. O'keefe*⁵⁶ laid down a correct procedure to follow before considering probation and suspended sentence, as follows:

The extent the suspect's sentence will fail to protect the public either directly or indirectly by serving as an

⁵⁰ English Magistrate Courts Act, 1952 Section. 19

⁵¹ *R v. Ward* (1960) Crim. LR 43

⁵² Fed Republic of Nigeria v. Ajudua (2006) 1 EFCL

⁵³ Cap E 1, LFN 2004

⁵⁴ Cap C41, Laws of the Federation of Nigeria, 2004

⁵⁵ English Criminal Justice Act, 1973

⁵⁶ (1969) 1 AER 426

⁴⁶ *Willie John V State* (1966) ANLR 211

⁴⁷ (1957) WRNLR R 80

⁴⁸ CPA, section 391, P.C. section 72

⁴⁹ (1953)37 CR. App R 125

inadequate deterrent and the previous good character of the offender will be relevant considerations.

The above principle of the law was demonstrated in the case of *Re bowler*⁵⁷ where the Appeal Court held that the offender should have been on probation considering the fact that the defendant was of good character, a devoted and loyal employee who had sunk to a single act of dishonesty.

The probation order is made particularly, when the offender is unsuitable for custodial punishment either because he has shown an inclination not to repeat his criminal activities or the offence was not serious or dangerous to warrant incarceration. The probation order often releases the offender from custody but requires him to be under supervision of a probation officer for a certain period of time.

Currently, probation order is not effectively exercised in Nigeria since the appropriate facilities to monitor same are not available. The problem of the probation order in Nigeria lies on supervision and other obstacles such as, lack of vehicles to move around, un-coordinated link among court, police and the probation officers, hence the implementation of probation as a type of sentence may continue to be elusive in Nigeria Criminal Justice System.

Compensation and Restitution

Restitution is provided under Section 267 to 270 of the Criminal Procedure Act⁵⁸, in Nigeria. However, the above mode of sentence is given a boost by Section 14(2) of the Economic And Financial Crime Commission Act⁵⁹ 2004 which states that: The commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence. Also, Section 319 of Administration of Criminal Justice Act, 2015 empowers the Court to make compensation orders where necessary.

In Britain compensation or restitution as a type of sentence is governed by Criminal Justice Act. The distinction between Nigerian municipal law and the English law is that the English law allows for confiscation of property or money even when an offender is not convicted, unless the suspect can prove that the property was legally acquired. It is also in accord with legal practice that offenders who derive profits from their criminal activities deserve to have these properties or profits confiscated on the basis of the principle that people should not profit from their own wrong.⁶⁰

Akin to the above is the issue of plea bargaining which is strange to Nigerian law but widely used in International Criminal Courts. There have been some cases of restitution and confiscation of ill-gotten property in Nigeria, particularly the political cases⁶¹. In the case of *Federal Republic of Nigeria v. Ajudua*⁶² the Federal High Court confiscated some of the offenders property and went on to compensate the victim of the fraud. As a result of prison congestion, most sentencing courts are being persuaded to encourage restitution and compensation, unless the offence is so grave that the offender ought to be kept in confinement. Curiously, in the case of *Ubur*

*V. COP*⁶³ a Magistrate Court imposed a term of imprisonment in default of compensation order and further held that there was no statutory provision to pay compensation in Nigeria. The author submits with all due respect that the learned Magistrate erred in law considering the import of Section 270 Criminal Procedure Act which states as follows:

Where any person is convicted of having stolen or having received stolen property, the court convicting him may order that such property or a part thereof be restored to the person who appears to it to be the owner thereof.

Haddi Lashing/Flogging

This type of punishment applies mostly to Muslims in the Northern States of Nigeria. The offence is aimed at disgracing the suspect instead of actual punishment. Certain number of strokes of the cane is administered on the offender as punishment. Most Alkali/Area Courts in the North still apply this kind of punishment but for certain reasons the punishment of Haddi Lashing is not extended to girls either because they are generally considered weaker sex or on moral grounds⁶⁴. The following categories of persons cannot be ordered to be caned: (a) persons above the age of 45 years (b) women (c) in the states of Eastern Nigeria, only a juvenile offender can be caned.

Haddi lashing can be inflicted only where the offender is guilty of any of the following offences: adultery, drinking alcoholic, defamation and injuries falsehood. This sentence is always executed in an enclosed place, and the public is permitted to watch. The person administering the lashing must be moderate; he or she is expected to hold the whip with his or her 3rd, 4th and 5th fingers. He or she cannot use his or her thumb, and cannot raise his or her hand above the shoulder.⁶⁵

Community Service Order

Another type of non-custodial sentence imposed mostly in other jurisdictions such as Britain and the United States of America is community service order. Here offenders are required to perform unpaid work for the community in which offence has been committed for a certain period. Some of these works include collection of trash in the park, sweeping or cleaning of public roads, toilets, and care homes. For instance, on 9 May 2014, the International Press widely reported that Silvio Berlusconi, former Italian Prime Minister started his one-year community service at a Milan Care Home for the elderly and dementia sufferers after he was convicted for tax fraud. The primary aim of probation order and community services is to reform and/or rehabilitate the offender not to inflict punishment *per se*

The introduction of these forms of punishment in Lagos State is another innovation in the Criminal Justice System in the State. Subsection 347(3) of Administration of Criminal Justice Law 2011 (Lagos) provides for community service. It states that: A community service order shall be in the nature of: (a) Environmental sanitation; or (b) Assisting in the care of children and the elderly in Government approved homes; or (c) Any other type of service which in the opinion of the court would have a beneficiary and salutary effect on the character of the offender.

⁵⁷ (1972) 75 CR. APP. 275

⁵⁸ Laws of the Federation of Nigeria, cap C 41, 2004

⁵⁹ Cap E1, *ibid*

⁶⁰ English Confiscation Act 1997, s.29

⁶¹ Fed Republic of Nigeria v. Lucky Igbinedion & Ors suit no.

FHC/EN/M60C/2008 dated 18/12/2008 unreported

⁶² (2006) 1 EFCL (report) 4 ratio 5

⁶³ (1980) 1 NLR 80

⁶⁴ Penal Code, sections 387-404

⁶⁵ The schedule to the criminal procedure (Haddi Lashing) order

The community service officer and the person against whom the order is made shall enter into a written agreement specifying the number of hours of service that would be rendered on a daily or weekly basis. The written agreement is filed in the courts registry by the Community Service Officer.

Disparity in Sentencing and Factors Affecting It

As earlier alluded, when a person is convicted of a crime, many factors are considered by the sentencing Judge, Magistrate or the Jury before sentence is pronounced. These factors may be classified into two, namely: mitigating and aggravating factors. Mitigating factors are those conditions that may weigh on the mind of the sentencing Judge which may persuade him to impose a lesser punishment on the offender after conviction, while the aggravating factors are those considerations that may likely provoke the mind of the sentencing Judge which may cause him to impose a heavier punishment on the offender after conviction⁶⁶. Some of these mitigating factors were carefully highlighted in the Nigerian case of *COP v Buhari*⁶⁷ where His Lordship, M.M. Kolo J. (as he then was) stated as follows:

Some of such considerations include the age of the convict, first offender status, and admission of guilt. Conduct of the offender after commission of crime and also his good work record are also factors for consideration.

For the purpose of this discourse, we shall examine some of these factors as follows:

Previous Record of the Accused

The previous record of the accused is very important. Thus, a hardened criminal who has previously been convicted for the same kind of offence would attract a higher punishment than a mere first offender. The above proposition perhaps influenced the West African Court of Appeal in the often quoted case of *R v Adegbesin*⁶⁸. In this case, the Court reviewed the previous record of the convict who had been involved in various crimes of the same kind and resemblance at different times and had been to prison severally. Consequently, his jail term of 3 years was reviewed to 6 years on appeal. In contrast, in the case of *R v Williams*⁶⁹ a suspect aged 20 years, attempted rape on his victim with whom, he and others had been drinking at a hotel.

The suspect had a good record and impeccable family background. He had no sexually related indictment and was not accustomed to drinking whisky which probably aroused his passion. He was convicted for attempted rape. On the basis of the above facts the court released him on probation and ordered him to pay £75 to his victim for bodily injury done to her by the convict. The above cases point to the fact that previous record of the convict goes a long way to affect the extent of punishment a Court may impose on individual's cases even if the offences are the same.

Nature of the Offences/Crime

Certain offences have been considered as serious in nature, for instance, offences such as armed robbery, arson, murder, kidnapping or sexual offences especially when they involve children as victims. In the American case of *Gregge v*

*Georgia*⁷⁰ the Supreme Court of America went on to uphold death penalty as an appropriate sentence for the offence of murder due to the nature of the offence. Also, in the Nigerian case of *State v Osoelika and 7 ors*,⁷¹ a case of kidnapping and abduction at Enugu, the presiding Judge refused bail application due to prevalent and serious nature of kidnapping in Enugu and particularly South East zone of Nigeria, despite the fact that the said offence could be bailable. Similarly, Courts have taken a very serious view of the offence of assault with intent to maim or disfigure.

Thus, in *R. V. OZULOKE*⁷² the Appellant met a little girl aged about eight years who was related to him on a village road. He covered her eyes with his hand and stuffed bread into her mouth to stop her crying out and took her into a bush, laid her on the ground, stood on her and poured acid over her body and cut off her left ear; he forced her eyes open and poured acid into them. He later ran away leaving the little girl unconscious. A twenty-year jail sentence was considered adequate, the offence being regarded as most revolting.

Similarly, in the case of *R v. Manson*⁷³, the convict was sentenced for life imprisonment for raping a small girl under his care with such violence as to cause the tearing of the virginal wall extending into the urethra and soft tissues of the pelvis, which later led to the death of the small girl after much bleeding. The court while sentencing the convict stated thus: It is difficult to imagine a worst case of manslaughter and the only punishment to be imposed is that of imprisonment with hard labour for life.

The Age of the Offender

Two aspects of the age factor have gained the attention of the Nigerian law and practice. These are youth between 7 to 14 years of age. Generally, a person under 7 years is not criminally responsible for any act or omission allegedly committed and a person under 12 years is not criminally responsible for any act or omission unless it is proved that at the time of doing the act, he had the capacity to know that he ought not to do the act or make the omission.⁷⁴ In the case of *State v. Nwabueze*⁷⁵ the court held that children are not normally kept in prison custody but in remand homes upon conviction and at the pleasure of the Governor.⁷⁶

A person under the age of 17 years in Nigeria shall not be sentenced to death if found guilty of a capital offence.⁷⁷ Furthermore, a young person shall not be imprisoned if he can be suitably dealt with in a less serious way. Age, therefore, is a very serious factor in sentencing and could influence the mind of the sentencing Judge in various ways. In the case of *State v. Obagha*⁷⁸, the defendant aged 70 years, was convicted of manslaughter due to provocation; the court greatly considered his age and sentence him to 3 years imprisonment without hard labour. In the case of *State v. Olowolaiyemo*⁷⁹, the defendant who was a hunter mistakenly shot and killed his victim who was on top of a palm tree taking him for a monkey. Court greatly considered his age of about 70 years and poor health and sentenced him to 12 months imprisonment or fine of 200 pounds for the offence of manslaughter.

⁷⁰ 428 US 153

⁷¹ Suit No E/35c/2009(unreported)

⁷² (1965) NMLR 125

⁷³ (1974) Qd R 191

⁷⁴ Criminal Code Act, section. 30

⁷⁵ (1980) 1 NCLR 41

⁷⁶ See 1999 Federal constitution of Nigeria (as amended). S. 212

⁷⁷ Criminal procedure act, s. 368(2)

⁷⁸ Charge No 0/32c/71 (HCT) Onitsha (unreported)

⁷⁹ Charge no HAD/7C/74 Ado-Ekiti (unreported)

⁶⁶ Per the dictum of Lord Hunt in *Re Lawson* (1997) 98 A Crim R. 463 at 466

⁶⁷ (2000) FWLR (pt.1)

⁶⁸ (1939)6 WACA 179

⁶⁹ (1965) ST. R. ord. 86

Another interesting case is that of *Akambi Balogun v. COP*⁸⁰. The defendant was first offender, aged 75 years; he stole property worth (N100) one hundred naira from Nigerian Ports Authority. Court greatly considered his age and being first offender and made an order under Section 435(1) of the Criminal Procedure Act discharging him on condition that he entered into recognizance with one surety in the sum of N500 (Five Hundred Naira) only to go home and be of good behaviour for 2 years.

First Offender

There are judicial authorities tending to suggest that our courts are reluctant in fully punishing offenders who are committing crimes for the first time. In *Wilson V C.O.P*⁸¹ defendant uprooted an iron stake erected by the complainant on his land to block a footpath. On conviction, defendant was sentenced to prison contrary to section 81 of the Criminal Code Act⁸², for behaving in a manner likely to cause a breach of peace and was imprisoned without option of fine. On appeal, the High Court held that there is no appeal on sentence but to sentence an accused who is first offender to a term of imprisonment without option of fine for merely uprooting iron post on complainant's land completely misconstrued the object of criminal punishment; sentence was accordingly varied to a fine of 10,000 naira or one month imprisonment.

Prevalent Nature of the Offence in a Community

Court usually takes into account the fact that the particular offence is prevalent in the community. While lack of prevalence of offence is a mitigating factor, the prevalence of it aggravates the punishment. Where an offence is prevalent, Courts have always thought that severity of sentences imposed will act as a deterrent and discourage others not to commit similar offence. The case which clearly underscored this principle of the law is that of *State V Nwosu*⁸³. In this case, husband and wife were sentenced to 7 years imprisonment each by Ado Ekiti State High Court for stealing a 7-month-old child because stealing of children was prevalent in that community at that material time. In another case of *Owolabi v Queen*⁸⁴ the Supreme Court of Nigeria expressed its views thus: "Frauds on the customs are shockingly prevalent and the forgery of commercial documents strikes at the root of all credit. We are not disposed to reduce the sentence by one day".

CONCLUSION

From the foregoing discourse, it is clear that one of the challenges facing administration of criminal justice in Nigeria is the area of sentencing. This, of course, is not peculiar to our nation, for every country has its own share of challenges. But, in Nigeria, there is no doubt that sentencing is a difficult area since there are no fixed punishments save in murder cases where the only sentence is death by hanging. As it stands now, sentence is at the personal discretion of the individual Judges and Magistrates. This has led to what some call "judicial discretion" while others call it 'charitable' or an irrational sentencing policy. This lack of uniformity in sentencing policy in Nigeria leaves the Courts to impose an appropriate sentence

as the circumstances warrant. In so doing, a lot of factors come into play on the minds of the Judges and Magistrates who give different sentences to the offenders even on similar offences with similar facts. Whatever considerations the Judge or Magistrate will make, at the conclusion of trial he must approach it with the solemn attitude it deserves as a minister in the secret temple of justice, as a Judge or Magistrate must consider himself or herself as representing the Almighty God when sitting over cases before him/ her to ensure that some factors extraneous to the trial and offence for which punishment is being considered do not have any bearing on the sentencing.

For instance, a chief Magistrate who is my friend and a colleague once confessed to me that the shirt the accused wore during trial and on the day of Judgment with the inscription "a fighter and warrior" had some bearing on the sentence he imposed on the young fellow because he saw him as a troublemaker where he lived. What if the T-shirt he was wearing had the inscription "may God always bless the Judiciary and its staff" or "God is merciful to all"? Perhaps he would have been more lenient with him.

The Judges and Magistrates need to remind themselves that the kind of sentence to be meted out for each offence must be one that is known to the law creating the offence and within the jurisdiction of the Judge or Magistrate. It is equally necessary that the Judge or Magistrate should give his sentence in clear and unambiguous terms and give reasons for the sentence being imposed. He must also do so bearing in mind his powers to try the offence and more importantly to impose the punishment he is about to hand out.

Unlike in Nigeria, in order to ensure uniformity in sentencing, most states in the United States of America have established sentencing commissions who advise on appropriate penalties for a range of criminal offences. One of the most prominent of these commissions is the Minnesota Sentencing Guidelines Commission which consists of eleven members representing the criminal justice system, the public and the victims. In the same vein, in England, a newly established Sentencing Advisory Panel was launched in July, 1999.

The panel's overall objective is to promote consistency in sentencing by providing researched and objective advice to the Court of Appeal which consists of the lower courts in framing or revisiting sentencing guidelines on particular cases or categories of offences. Nigerian Government should borrow ideas from USA and England to amend our laws accordingly. We recommend that introduction of sentencing guidelines in Nigerian Criminal Justice System will greatly assist Nigerian courts towards consistency and uniformity in administration of justice rather than rely entirely on the discretion of the sentencing Judges and Magistrates as it is presently.

It is also part of the findings of this work that the present Nigerian Criminal Justice System has no provision to cater for the needs of the victims of crime. The victims of crime, of course, have a crucial role to play in the Jurisprudence of Criminal Justice System. Not only is he active in reporting the offence to the police, he is also the major agent in detecting the offender.

In offences of violence the victim is the chief prosecution witness, providing evidence of the circumstances of the offence, identification of the offender and injuries sustained. If he does not make a statement to the police, there will be little chance of a guilty plea and probably no prosecution. If he does not give evidence at court in a contested case, the defendant will almost certainly be acquitted. It is rather unfortunate that despite this crucial role which the victim of criminal activities

⁸⁰ (1974) CCHCJ 1581

⁸¹ Suit No LD/16A/71 (HCT)Lagos

⁸² Cap. 77, Laws of the Federation 1990

⁸³ Suit No AD/2C/74 (HCT) Ado-Ekiti(unreported)

⁸⁴ (1959) FSC 94

plays, he is nevertheless relegated to the background. The position of the victim in the Nigerian Criminal Justice System presents a very gory picture. The Nigerian Criminal Justice System over the years is pre-occupied with conviction and sentencing thus ignoring the plight of victims. For instance, in the case of *Re- Osakwe*, the Appellant along with four others were charged for murdering one Anna Nun on a fee of N1000.00 for refusing Owun's sexual advances after having taken N100 from him. The accused and his co-accused were rightly convicted and sentenced to death. Meanwhile the deceased had left behind a number of kids and no compensation was given to them.

Similarly, in the case of *Erim v. State*⁸⁵, the Appellant along with others were validly convicted of defrauding the defunct Mercantile Bank of (Nigeria) Ltd to the sum of N200, 000.00 and were sentenced to seven years imprisonment. In the two cases for example, the State had validly secured convictions, but then what has become of the victims? Nothing, because the primary aim of the State is conviction and sentencing, thus putting the victim in oblivion. It is this apparent lack of recognition of the victim in the administration of criminal Justice System in Nigeria that prompted one of the learned justices of the Supreme Court, Aniagolu J.S.C. (as he then was) in the case of *Okegbu v. State* to say:

It so happens that in murder cases the defence usually talks of justice only in relation to the accused person. Very often justice as it affects the victim of the murder charge is either forgotten or ignored by the defence. But just as it is essential that justice can be done to the deceased who, even in the lonely depths of his grave, cries out loudly for the circumstances of his death to be justly examined and justice meted to him.

Similarly, in *Godwin Josiah v. State*⁸⁶, Mr. Justice Oputa JSC (as he then was) of the Supreme Court had this to say:

Justice is not a one way-traffic. It is not justice for the Appellant only. Justice is not even a two – way traffic. It is really a three-way traffic. Justice for the Appellant/Accused of a heinous crime of murder, justice for the victim, the murdered man, the deceased, 'whose blood is crying to heaven for vengeance' and finally justice for the society at large – the society whose social norms and values had been desecrated and broken by the criminal act

We submit that victim's compensation should be seen as one of the basic aims of punishments and sentencing and as an integral part of Criminal Justice System. In other jurisdictions such as United States of America and England, victims are awarded damages against the accused for pain and suffering sustained as a result of an offence against them⁸⁷. The author calls for amendment of our procedural laws to ensure that the Criminal Justice System is more victim-oriented than offender-centered.

Another area of Nigeria's criminal justice system that needs attention is that of the punishments prescribed in the criminal and penal codes and other statutes which suggests a tendency towards deterrent and retribution as the rationalizing bases of punishment rather than the reformatory and preventive theories, at least in respect of adult criminals⁸⁸. We

submit that the Nigerian courts should no longer focus its attention entirely on the punishment of offenders through deterrent and retribution, but should also have recourse to other punishment theories such as reformatory, preventive and restorative theories which would help strengthen the Criminal Justice System in Nigeria.

We also advocate that practice directions on sentencing be laid down by the Superior Courts, more appropriately either by the Supreme Court or Court of Appeal as the need arises especially with respect to prevalent offences such as kidnapping, terrorism, illegal oil bunkering, oil theft, killing by Fulani herdsmen, abduction and corruption in Nigeria.

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⁸⁵ (1994)5 WWLR (pT 346) 522

⁸⁶ (1985) 1 N.W.L.R. P. 125

⁸⁷ Sentencing Act, 1991 section 56

⁸⁸ Peter, A., sentencing in criminal cases in Nigeria and the case for paradigmatic shifts, NIALS journal of criminal law and justice Vol. 1 (2011) p. 194