



AN APPRAISAL OF THE CONCEPT OF SENTENCING UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM

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Abstract: *This position paper discusses the division of Nigerian Criminal Justice System which commences with an arrest, arraignment, trial; processes which lead to sentencing by the court may lead to imprisonment with or without option of fine or acquittal. The article defines sentencing as a concept, discusses the principles behind sentencing, lists the rules governing sentencing, and it goes further to discuss the forms or types of sentencing which are death, fine, caning or whipping, forfeiture and others. It also explains crime and its environmental impact before finally concludes and makes some recommendations which includes taking into account the Nigerian prison conditions, institution of restorative justice, getting more information about offenders, teaching of phenology in our schools among others.*

Key words: Appraisal, Sentencing, Criminal, Justice, System.

Introduction

In Nigeria, the criminal justice system usually begins with the charge of a crime and straddles subsequent interventions by agencies of the system such as arrest, arraignment, trial, sentencing and punishment of the offender¹. Based on the fact that the country operates federal system of government, the legal procedures are founded in both federal and state legislations. The Criminal Code Act² and the Criminal Procedure Act (CPA)³ as well as Criminal Laws and Criminal Procedure Laws (CLCPLs) operate in the Southern States of Nigeria except Lagos State while the Penal Code (Federal Provisions) Act⁴ and the Criminal Procedure Code⁵ apply as federal legislation in the Federal capital territory, Abuja and the Penal Code Laws of the state and Criminal Procedure Codes apply as state legislation in the Northern States of the country. The provisions of the code are similar in many features with some noteworthy differences with respect to the legislation, reflecting some peculiarities like religion and traditional cultures of the different peoples in different part of the country.

It is noteworthy that Lagos State Government passed the Administration of Criminal Justice Law, 2007 by which it repealed the previous Criminal Procedure law (CPL) of Lagos State, 1994 and that this law radically

diverges from CPA and CPL in many aspects including sentencing^{6,1}.

Sentencing

The term ‘sentencing’ is a very wide field accommodating different systems and thoughts. A sentence of the court can be as a definite disposition order issued by a court or other competent tribunal against a person standing trial, at the conclusion of a criminal trial; subsequent to the finding of guilt against him and must be an order⁷ which is definite in its nature, type and quantum. On the other hand, it can also be refers to as “the pronouncement by the court upon the accused person after his conviction in a criminal

¹ 1. Aniyebi, P. A. (2011). Sentencing in Criminal Cases in Nigeria and the Case for Paradigmatic Shifts NIALS Journal of Criminal Law and Justice, Vol. 1

2. Cap C38, Laws of the Federation of Nigeria (LFN), 2004; The Criminal Code Act and the CPA are Federal Legislation while the Criminal Code Law and CPL are States Legislations

3. Cap C41, LFN 2004

4. Cap P3, LFN 2004

5. Cap 491, Laws of the Federation, 1990

6. Afolabi S.A., Adeleke K.O., Oyewola A.A., Oloso S.O. (2014). ‘The Concept of Sentencing’; An Unpublished LL.M Seminar Paper on Comparative Criminal Law, University of Ibadan 2012/2013 Session.



prosecution, imposing the punishment to be inflicted⁸. The Criminal Code and the Penal Code as well as other offence – creating statute⁹ specify the quantum of sentences while the sentences themselves find their legitimacy in the Criminal Procedure legislation applicable at the states and federal levels as well as the Probation of Offenders Law¹⁰ in the case of probation orders made in the Northern States.

The extent of the sentences are usually specified in the laws creating the offence, sometime with or without courts discretion. For instance, some sentences are made mandatory by law leaving no judicial discretion; this is the case of death penalty for all the offences for which it is stipulated or with specified terms of imprisonment¹¹. Furthermore, a number of sentences are provided with specification of a range in each instance of a minimum term and a maximum term of imprisonment¹² while others just specify a statutory minimum punishment¹³ or a statutory maximum punishment¹⁴.

Apart from the little instances in which the above mentioned approaches are taken by the law to stipulating the sentence for an offence the general principle is that the separate laws simply prescribe terms of sentence (in terms of imprisonment and/or amounts of fine) which are not statutorily expressed as being a mandatory, minimum or maximum¹⁵. However; the interpretation Act has stated that these prescriptions shall be regarded as the statutory maximum penalties¹⁶. There are some instances where the sentence particularly fines the quantum of which are not specified, the approach is that the sentence, in each case is limited but that it shall not exceed the jurisdiction^{17, 2} of the court imposing it and it shall not be excessive^{17, 2}.

Generally, sentencing has some elements of exercising discretionary power, where the court has very wide playing field power as well as mandatory by law. The discretionary power aspect could contain individual preferences and different approaches of solving the same problem. This presents some challenges as people often criticize both the sentencing legislation and sentencing practice as well the philosophies upon which these rest¹⁸.

Objectives and Principles of Sentencing

Commonly, sentencing aims at the protection of the society through prevention of crime and or reformation of offenders which can be achieved amidst deterrence, elimination, or rehabilitation of the offender¹⁹. This is premised on the idea that enforcing the penalty will reduce the future frequency of such offences, by preventing the offender from re-offending or correcting the offender so that the criminal predisposition is eradicated by discouraging other potential offenders. These are known as reductive reasoning²⁰. Sentencing guidelines are devised to, signify to the courts the normal sanction for particular types of offenders; this is meant to reduce judicial discretion and disparity among sentences given for similar offences. As discussed before, different laws provide various sentencing options for specific crimes; these guidelines points to the courts specific actions that should be taken.

The Supreme Court in Nigeria has laid down some basic principles to guide the sentencing functions of the Appellate Courts. The principles are as enumerated below:

- (i) An Appeal Court should not interfere with a sentence which is the subject of an appeal merely because the judges of the court of Appeal might have passed a different sentence if they had tried the case in the first instance²¹
- (ii) To consider the facts of the particular case and

² 15. For instance, the tariff of punishment prescribed in the Criminal Code where the punishment provision reads as follows “. . . is liable to imprisonment for . . . years or to a fine of . . . naira” although the punishment of imprisonment and fine are usually combined.

16. Section 17 Cap 123, Laws of the Federation, 2004

17. Section 72 of the Penal Code.

18. Adeyemi, A. A: The Challenge of Criminology in a Developing Country: A Case Study of Nigeria in International Annals of Criminology, Special Number on Non Institutional Treatment of Offenders, 1971 Vol. 10, No 1, pp149 – 184 at pp 172 – 174.

19. Hon. Justice M. A. Owoade “Sentencing: Guiding Principles and Current Trends”, NJI Law Journal (2009) Vol 2 pg 1.

20. Nigel Walker: Sentencing – Theory, Law and Practice. Butterworths, London, 1985, pg 107.

21. Per Ademola CJN in Adeyeye & Anor V The State (1968) N. M. L. R 87.

22. See The State V Hassan Audu (1972) 1 All N. L.R (pt 2) 197.



(iii) To review only a sentence that is manifestly excessive or inadequate or wrong in law²²

The principle enunciated above have been analysed as follows: The first of these principles has been said to establish that mere difference of opinion does not suffice for an appeal court to reverse the sentence of a lower court. The second principle proposes a form of “individualization of treatment, namely, that a court does not necessarily have to adopt a sentencing that has been adopted in earlier on case.

The third principle is positively operative and some of the applying factors which have been enunciated by the courts are the nature of the offenses; the character and record of the offender the position of the offender amongst has confederates, and rampancy of the offence.

Basic Rules Governing Sentencing

The followings are some of the basic rules governing sentencing

(i) Separate offences charged together must each receive a separate sentence but if they all form part of the same criminal action, the sentence will be concurrent²³.

(ii) Where 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 fine²⁴.

(iii) A fine must not be too heavy for the offender to pay²⁵.

(iv) Separate fines imposed on different counts at the same trial are to be cumulative. But the aggregate must be within the court’s jurisdiction²⁶.

(v) While the age of the offender²⁷ being a first offender, pleading guilty to the charge²⁸, the prevalence of the offence²⁹, the seriousness of the offence³⁰, the non-repentant attitude of the offender³¹ and the adverse effect of the offence on the victim are all factors that aggravate sentence³².

Sentencing Types

Death

Under the Nigerian Criminal Law the underlisted offences are punishable by death. These offences are otherwise ³called capital offences: the offences are

murder³³, treason³⁴ and treachery³⁵, conspiracy to commit treason³⁶, directing and controlling or presiding at on unlawful trial by ordeal which results in death³⁷, and armed robbery³⁸. Most recently, kidnapping has been added to the list in Abia, Imo and Akwa-Ibom States and oil theft and crude oil bunkering in rivers and Enugu States. The introduction of Sharia-based Criminal Law in some states in Northern Nigeria has also widened the number of capital offences to include adultery, sodomy, lesbianism and rape³⁹.

Where the death sentence is specified for an offence in Nigeria, it is a mandatory and not merely a permitted punishment upon a finding of guilt. The judge has no discretion in the matter, after an accused has been found guilty of a capital offence; the only sentence open to the court to impose is one of death⁴⁰. It is the highest punishment that can be passed on a convicted person for the capital offences listed above.

Imprisonment

Imprisonment is a term of judicial sentence available for a convicted offender of adult age, involving incarceration in prison for either life or a specified period of time. Imprisonment may be imposed with or without hard labour. Where no specific order is made, it is deemed to be with hard labour. The term of imprisonment imposed by the court must not exceed the maximum prescribed for the offence and it must not exceed the maximum which the court has jurisdiction to impose. These are particularly important qualifications to the sentencing powers of the court. The court has the discretion to impose a sentence of imprisonment for less than the maximum prescribed for the offence, unless the statute creating the offence prescribes a minimum punishment for the offence.

In the latter instances, the court has no discretion in the imposition of sentence. It cannot impose a sentence of imprisonment lower than the minimum sentence prescribed⁴¹.

Similarly, where a court has jurisdictional limits in the sense that it has limits on its powers to sentence, which is typically the case for magistrates, it

³ 23. See Anowe V The State (1965) All NLR, 100

24. Section 389, CPA and Section 73 Penal Code

25. Akite Gbila V C. O. P (1965) N. N. L. R 67

26. Fashusi V Police (1953) 2 N. L. R 126

27. Odidika V State (1977) 2 SC 1

28. Kuriakos V Board of Customs and Excise (1967) F. N. L. R. I.

29. R. V Enahoro, R.V 12 W. A. C. A. 194

30. R. V Olagbaiye 1956, 3 W. A. C. A 81

31. R V Okeke 1936 3 A. A. A. A 1

32. Adeyeye V The State (Supra)



cannot exceed its jurisdictional limits in sentences. A sentence can be imposed on an accused person already serving a prison term. Such a sentence would commence at the expiration of the subsisting sentence. Where several sentences of imprisonment are passed, in computing the sentences, only the longest of the subsequent sentences would be served by the convict, and not the aggregate of the entire subsequent sentence. When a person is sentenced to life imprisonment, in practice, the sentence is equivalent to a sentence of imprisonment for 20 years⁴². A sentence of imprisonment takes effect from and includes the whole of the day of the date in which it was pronounced⁴³. Where a sentence of imprisonment is passed on a convict, the court must issue a warrant of commitment, committing him to prison. A term of imprisonment imposed by a court must be served in an officially designated prison or other place of safe custody⁴⁴.

Fine

Fine is a payment of money ordered by a court from a person who has been found guilty of violating law. It may be specified as the punishment for an offence, usually for an offence, usually a minor offence, but could also be specified and used as an option to imprisonment for major crimes or a compliment to other punishments specified for such crimes. The offences for which fine only are imposed as sentence under the criminal code are;

- (i) Advertising a reward for the return of stolen or lost property⁴⁵
- (ii) Uttering defaced coin;
- (iii) Unlawful franking of letters;
- (iv) Obstructing mails;
- (v) Loitering and carelessness in delivery of mails;
- (vi) Fraudulently removing stamps;
- (vii) Fraudulently evasion of postal laws;
- (viii) Carrying letters otherwise than by post.
- (ix) Illegally making postal envelopes
- (x) Traffic offences etc.

Some of the offences for which only fine is prescribed as sentence under the Penal Code include selling foo^{4d}

or drink not corresponding to description; offences relating to ships; fraudulent evasion of postal laws; illegally setting up a post office etc. The sentence prescribed for an offence may be a fine, or imprisonment or both. The courts may also impose a sentence of a fine in lieu of imprisonment, where a sentence of imprisonment is prescribed for the offence. Where only sentence of fine is prescribed for an offence, it is imperative that is the sentence imposed by the court for the offence.

Fine as a means of punishment is economical both in terms of the cost and its enforcement. It requires much less funds and human resources for its enforcement when compared to alternative form of punishment. Another advantage of it is that it does minimal social damage to the offender and his family, because it mostly does not interrupt his job, leisure or family ties. However, some observations have been made in respect of the imposition and administration of fine. These include that:

- (a) Unless fines are closely related to the means of those ordered to pay them, they are unjust as between individuals, and the injustice increases with the scale of fines.
- (b) Fines are not always practical alternatives; because the offender may not be able to pay, therefore, end up in prison;
- (c) Some people may regard fines as no more than occupational risks, virtually giving them the licences to carry on with their illegal activities, since it is minor tax for huge profits;
- (d) Enforcement is all too often haphazard and the prompt identification and pursuit of defaulters is a more

36. Section 37(2) of the Criminal Code; Section 411 of the Penal Code.

37. Section 208 of the Criminal Code

38. Section 1 of the Robbery and Firearms (Special Provisions) Act, Cap R11 Laws of the Federation of Nigeria.

39. Kano State Sharia Penal Code 2000

41. Oluwatoyin Doherty (1999) Criminal Procedure in Nigeria: Law and Practice, Reprinted by Ashford Colour Press, Gosport, Hants p. 317 See footnote 40.

42. P. C Section 70; Osuluke V The State (1965) N M L R 125

43. C. P. A Ss 381 and 395

44. C. P. A S 239. Section 129 CPA

⁴ 33. 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

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

35. Section 49A of the Criminal Code



critical elements in enforcement than the particular measures, which are employed;

(e) Recourse to imprisonment is neither necessary nor inevitable, and manifestly unjust in its consequences.

Caning or Whipping

Caning is another form of punishment which courts are empowered to impose although it is important to note that as a form of sentence, it has generally fallen into disuse. Caning may be considered for use as a punishment, or it may be in lieu of any punishment or it may be in addition to other punishment. The courts may pass a sentence of caning of up to twelve (12) strokes⁴⁷. Where a person is convicted of one or more offences at one trial, the total number strokes awarded must not exceed 12. the number of strokes passed must be specified in the sentence. Females and old men are excluded from this type of punishment especially in the Eastern part of Nigeria. Caning is applied with a light rod or cane or both and should be inflicted in the presence of an administrative or person prescribed by the secretary to the Local Government⁴⁸. No sentence of caning can be executed in installments. If before the execution of sentence of caning, it appears to the administrative officer that the convict is not in a state of health to undergo the sentence, he can stay the execution, and the court which passed the sentence may either, after taking a medical opinion, again order the execution of the sentence or substitute for it any other sentence which it could have passed at the trial⁴⁹. If during the execution of a sentence of caning, it appears to the administrative officer that the convict is not in a state of health to undergo the remainder of the sentence remitted.

A sentence of caning should be carried out as soon as practicable, unless the person convicted gives notice of appeal of his intention to apply for leave to appeal, as the case may be, in which case such punishment must not be carried out until the determination of the appeal or of the application for leave to appeal. The convict may be released on bail or kept in custody pending the determination or of the leave to appeal. Where the sentence is affirmed or varied on appeal, the sentence as confirmed or varied should be carried out as practicable⁵⁰.

Forfeiture⁵

Forfeiture may be more in the nature of an ancillary order made after conviction than a substance sentence. It is usually imposed in the case of offences involving bribe, where, the property which has changed hands in the course of commission of such an offence may be ordered to be forfeited to the state. Some of the offences for which forfeiture is prescribed as a sentence under criminal code are as follows:

- (i) Importation of prohibited publication;
- (ii) Unlawful society;
- (iii) Going armed so as to cause fear;
- (iv) Possession of instruments and materials for forgery; and
- (v) Corruption.

Also, some of the offences for which forfeiture as a sentence is prescribed under the Penal Code are as listed below:

- (i) Wearing and carrying of emblem or flag contrary to any law⁵¹
- (ii) Sale of obscene books
- (iii) Adulteration of food and drink;
- (iv) Adulteration of drugs; and
- (v) Sale of adulterated drugs.

The Economic and Financial Crimes Commission Act provide for forfeiture, conviction in certain cases of the proceeds acquired from illegal act to the Federal Government.

The discussion above on the various means of punishment is usually based on the traditional purpose of deterrence, incapacitation, rehabilitation and restitution. But a new idea of restorative justice has emerged recently and it refers to range of informal justice practices designed to require offenders to take responsibility for their wrongdoings and to meet the needs of affected victims and communities. It is significant from the primal focus given the criminal trial within the criminal justice system and calls also for a radical shift within the system that enables the focus to shift from sentencing and punishment to restoration balance to all parties affected by the commission of the crime. It has been acknowledged that the idea of

⁵ 47. Section 386(1) CPA; S 77 PC

48. Section 308(2) CPC

49. Section 309(1) CPC

50. Section 388(2) CPA



restorative justice offers a very different way of thinking about deterrence, rehabilitation, incapacitation and crime prevention and offers also transformed foundations for our criminal jurisprudence and for our nations of freedom, democracy and community. This system has been practiced by different countries of the world.

The Concept of Punishment and the Unmet Promise of its Alternatives⁵²

The idea of preventing crime should be translated to expedite action aimed at stemming the tide of crime when it is still controllable. This invariably borders in punishment, the concept which according to Nietzsche 1887, 1989: 80 81 like law and crime possesses not one meaning but a whole syntheses of meanings⁵³. Therefore, punishment is the act of a legitimate authority depriving an offender of a good of which he is no longer worthy. Why punish? Four purposes traditionally justify any punishment, not just capital punishment, they include protection from the criminal deterrence, rehabilitation and retributive justice. According H. L. A Hart (1968: 4 – 8)⁵⁴ the first three purposes are widely accepted. Almost everyone agrees that the society must be able to defend itself against convicted murderers, rapists, thieves and the like. The protection of the common good justifies removing criminals from situations in which they pose threat. That such punishment defers others who may be tempted to act criminally likewise helps preserve and protect the tranquility of society. Criminals serving their sentences should also be provided opportunities, or may even be forced to take advantage of opportunities for rehabilitation so that they may re-enter the society as productive citizens.

Thus, in assessing the crime rate in Nigeria, one posits the views of the generality of Nigerians that our prisons have been turned to into country clubs for offenders and that correctional bodies have been restrained by the supreme court's relying on the technicality of law and extreme interpretation of citizens' constitutional rights⁵⁵.

Crime and Environmental Impact

The totality of criminality, the level and trend of criminal activities are the expressions of a people's environmental and social orientation of the level and circumstances of their moral rectitude, attitude of mind towards the law and legal justification. This shows how

much they accept the law as binding on them. Self discipline, sense and proper identification of values at the internal time. In a system where government has either or covertly until recently legalized illegal acquisition of wealth in terms of its silence and double standard approach in the prosecution of those who corruptly enriched themselves or misappropriated public funds. This attitude gives a wrong impression in the minds of the public and the youth in particular – that acquisition of wealth is an end in itself. Such a situation portends danger to the sustainability of accountability, probity and transparency in Public Service and Administration. Presently, the means of enforcing white collar crimes in Nigeria have proved inadequate and where available they are congested and not well funded⁵⁶. The reformatory role of the prison is neglected, while rehabilitation of discharged prisoners is nobody's business. The system has made hardened criminals out of otherwise small-time scoundrels. A good number of the violent criminals become so in the prisons⁵⁶.

56. Supra see footnote 55

Conclusion and Recommendations

The present system focuses more on punishment for the offenders and possibly, the need to satisfy the society that the wrong doer has been punished. The assumptions do not derive from any empirical evidence, it has been suggested that much more needs to be done to debrief judicial system of these erroneous beliefs about the validity or efficacy of some of the measures that have been adopted hitherto. In this regard, it is humbly suggested that sentencing will be more rational and articulate if some of the measures discussed hereunder are adopted:

(a) Sentences should be familiar with conditions in our prisons and should visit them from time to time. This will give them first hand knowledge of what a sentence of imprisonment involves.

(b) The restorative justice system should be instituted and other non – custodial sentences such as community⁶ service orders and suspended sentence

⁶ 52. A. I. Olatunbosun (2014). Tough On Crime But Soft On Justice, Ibadan University Press: An Inaugural Lecture Delivered at the University of Ibadan on Thursday 6th November, 2014.

53. A. I. Olatunbosun (2014). Footnote 52 Supra (pages 34 – 35)



should be introduced. These will widen the sentencing options and facilitate choice of appropriate sentence for offenders.

(c) Specialized sentencing trainings are important. There is no training to equip a lawyer appointed to the bench with sentencing knowledge. Continuing legal education programmes such as seminars should be organized from time to time for magistrates and judges to deliberate on sentencing practices.

(d) More information than is presently the case should be obtained about offenders before sentence is passed.

(e) Statistics of reports of after – effect of particular sentences should be kept. This may form the bases of useful discussions at sentencing seminars.

(f) Penology should be taught in all Nigeria law schools.

(g) Guidance counseling units of our schools should be made functional in educating our youths on why they should desist from crimes and criminalities. It is hoped that the above recommendation would go a long way in improving our sentencing practices in Nigeria

54. A. I. Olatunbosun (2014). Quoting H. L. A. Hart In Punishment and Responsibility (Essay in the Philosophy of Law; (Clarendon Press, Oxford 1968) at pg 4 – 8.

55. Supra see footnote 54.

