OBSERVANCE OF SENTENCING PRINCIPLES AND OBJECTIVES IN CRIMINAL JUSTICE DISPENSATION IN NIGERIA: A CRITICAL EVALUATION

Akingbehin Emmanuel Olugbenga[1]

Abstract

Upon the conviction of an accused person by a judge or a magistrate, the next stage in a criminal trial is sentencing, which is the imposition of a particular disposition measure on the convict, whether custodial or non-custodial. Sentencing objectives abound to serve as the rationales for specific sentences and a judge or magistrate is expected to identify a specific objective that has influenced his choice of sentence. Besides, there are also sentencing principles and rules which a judge or magistrate is expected to evaluate and adhere to before passing his sentence, just as the judge or magistrate is expected to predicate the exercise of his judicial discretion on certain aggravating or mitigating factors inter alia. However, many sentences have been found to be irrational, unfounded and unjust, due to the fact that the judge or magistrate ignored to consider any of the indicated factors and objectives before arriving at a decision on sentencing, thereby failing to state the reason for the sentence. This paper therefore conducts a critical evaluation of the observance of the objectives and principles of sentencing and interrogates whether such observance enhances criminal justice dispensation. The paper appraises the sentencing objectives of deterrence, retribution, elimination/incapacitation and reformation/rehabilitation. We also embarked on the appraisal of the rules/principles of sentencing, together with the various interventions in form of sentencing guidelines and practice directions. The author thereafter proffered some recommendations towards the improvement of Nigeria's sentencing practices and the actualization of effective criminal justice dispensation in Nigeria.

Keywords: Sentencing, Retribution, Deterrence, Rehabilitation

[1] LL.B (Hons) Ife, BL, LL.M, Ph.D (Lagos) FCIArb, FISN, Associate Professor, Department of Public Law, University of Lagos, Nigeria. Sirgb2001@yahoo.com +2348034123968.

1. INTRODUCTION

The Sentencing powers of the judiciary have remained unfettered and unquestioned for a very long time. This was mainly because sentencing was regarded as an exercise of a discretionary power, and as such, it was difficult to make it subject to scrutiny without generating concerns about "fettering" judicial discretion. This gave the judges very wide playing field when exercising their judicial discretions, especially, in the area of sentencing, thus giving room for different approaches to sentencing and portraying the criminal justice system as unpredictable, irrational, inconsistent and unjust.[2] However, over the years, policy makers have started seeing the importance of questioning sentencing patterns and philosophies and have been clamouring for a change in sentencing practices. Consequently, the modern sentencing reform movement began in the mid Seventies and since then, much has been said about the issue of structuring sentencing and regulating sentencing discretion.[3] While some of the government policies have failed in their objectives, different innovations have inherently been introduced to structure sentencing patterns in the world. These efforts have either been in the form of introduction of sentencing laws, voluntary sentencing guidelines or appellate review of sentencing practices. In Nigeria, these efforts have consistently been of little effect on sentences and the judicial system has continued to generate more inconsistencies and sentencing disparities.

The enactment of the Administration of Criminal Justice Act[4] marked a milestone in the reformation of the criminal justice administration and sentencing practices in Nigeria. The Act drastically addressed many lingering challenges in the administration of criminal justice

---

[2] P.AAnyebe, "Sentencing in Criminal Cases in Nigeria and the Case for Paradigmatic Shifts" *Journal of Criminal Law and Justice* [2011] vol. 1 p.151.

[3] M. Tonry, "Structuring Sentencing" *University of Chicago Journal on Crime and Justice* [1988] vol. 10 pp.267.337.

[4] Enacted on 14th May 2015. It is noteworthy that over 30 states in Nigeria have passed their versions of the ACJA in their various jurisdiction. These include Lagos (2007, 2011, 2015 and 2021), Anambra [2010], Ekiti [2014], FCT and Ondo (2015), Edo and Rivers [2016], Oyo, Kaduna, Enugu, Cross River, Delta, Kogi, Akwa Ibom and Abia [2017], Pleateau, Osun, Kwara, Bauchi and Adamawa (2018), Bayelsa, Kano, Nasarawa, Benue, Jigawa, Ebonyi and Sokoto (2019), Katsina & Imo (2020). See <https://www.partnersnigeria.org/acjl-tracker> Last accessed 13th July 2021.

and it marked a radical departure from the C.P.A and the C.P.C[5] in many aspects including sentencing. Nonetheless it is observed that the major policy initiatives which have been introduced, are yet to address or evaluate the major development of guidelines for custodial and non-custodial sentences and so many other evolving sentencing patterns in other developed countries.

1.1 Sentencing Defined

The word "sentencing" is often used interchangeably with "judgment". However, the word "judgment" is wider in scope than the word "sentence". According to the Black's Law Dictionary, a sentence is a judgment which a court formally pronounces after finding a criminal defendant guilty, or the punishment imposed on a criminal wrongdoer, while judgment is defined as a court's final determination of the rights and obligations of the parties in a case[6]. A sentence has also been defined 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 a finding of guilt.[7] A sentence has been stated to be the pronouncement or judgment by the court upon an accused person, after his conviction in a criminal prosecution, imposing punishment to be inflicted.[8]

A sentence has also been defined as a punishment given by a court of law.[9] While Osamor defines a sentence as the pronouncement by the court, upon the accused person after his conviction in criminal prosecution, imposing punishment to be inflicted,[10] Ekumakama defines a sentence to be the act of imposing a penalty by a court on a

[5] Criminal Procedure Act and Criminal Procedure Code.

[6] H.C Black, *Black's Law Dictionary*, 10th Ed. Bryan A.Garner (ed.) West Publishing Co., (2014) pp. 970, 1569.

[7] <http://www.thelawyerschronicle.com/category/internetlaw> accessed on the 24th June 2020. The sentence must be an order which is definite in its nature, type and quantum.

[8] P.A Anyebe, op cit (note 1 above) p.153.

[9] A.S Hornby, *Oxford Advanced Learner's Dictionary*, 6th Ed. (Oxford University Press, 2000) p.1072.

[10] B .Osamor, *Fundamentals of Criminal Procedure in Nigeria*, 1st Ed. (Abuja: Sage Nigeria Ltd, 2004) p.376.

wrongdoer for a crime or a wrongdoing.[11] On their part, 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.[12] A sentence can therefore be said to be the disposition method for treating an offender upon his conviction by a court of competent jurisdiction. The distinction between sentence and judgment is a thin but spectacular one because while there may be a judgment without a sentence in certain circumstances,[13] there cannot be a sentence without a court's judgment. Thus where an accused has been found guilty by the court, the judgment must encompass the conviction and the punishment to be imposed.

1.2 Sources of Sentencing Powers in Nigeria

The provisions of the laws that criminalize certain acts also provide sanctions for breach of such laws. The sanctions are defined and stipulated and the judge is expected to comply with the injunctions spelt out in both the descriptive aspect and the punishment part of the provision. However, it is apposite at this juncture to beam a search light on the sources of the sentencing powers of the judges. The powers are derived from variegated sources which include but are not limited to the Interpretation Act, the Constitution of the Federal Republic of Nigeria 1999, the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code, Economic and Financial Crimes Commission Act, Independent Corrupt Practices Commission Act, Electoral Act, Anti Money Laundering Act, Shariah Penal Code, Anti-Kidnapping Act, Robbery and Firearms, (Special Provisions) Act, Terrorism (Prevention) Act 2011, Child Rights Act, Federal High Court (Corruption and Other Related Offences) Sentencing Guidelines and Practice Direction 2015 and the Administration of Criminal Justice Act 2015.

[11] D.Ekumakama, *Criminology and Penology: A Nigerian Perspective* (Jos: New World Publisher, 2002) p.163.

[12] C.O Okonkwo & M.E Naish, *Criminal Law in Nigeria* (London: Sweet & Maxwell, 1980) p.52.

[13] For example, where the accused is found guilty but is cautioned and discharged.

The Interpretation Act[14] empowers the High Courts to apply the common law of England, the doctrine of equity together with the statutes of general application in the resolution of disputes. The Act also provides that where a penal statute specifies a term of year imprisonment without any indication as to whether it is a minimum term or maximum term, it shall be construed as the maximum, and as such, the judge will be at liberty to impose a lesser term.[15] The Constitution of the Federal Republic of Nigeria[16] is another veritable source of sentencing powers. Section 6 thereof vest judicial powers in the courts.

The Constitution specifically states that the powers vested in the courts shall extend to all inherent powers and sanctions of a court of law,[17] which includes the exercise of sentencing powers. The Constitution also provides that no one can be punished for an offence unless it is contained in a written law.[18] There is also the supervening powers of the executive requiring confirmation of the sentence by the President or the Governor before a capital punishment is executed. The convict shall not be executed until he has exhausted all his legal appellate rights against conviction and sentence.[19] The Constitution also vests the executive with power to grant pardon to an accused or convicted person, commutation of sentence, prerogative of mercy and clemency[20].

The provisions of the Criminal Code Act, the Penal Code and the Shariah Penal Code criminalize certain acts and prescribe the sanctions for their breaches.[21] Prior to the enactment of the

[14] Section 45(1) of the Interpretation Act, Cap 123, Laws of the Federation of Nigeria 2004.
[15] See Section 17(1) Ibid.
[16] See The Constitution of the Federal Republic of Nigeria 1999 (Promulgation Act) Cap C.23, Laws of the Federation of Nigeria 2004 (as amended in 2011).
[17] Section 6 (6) (a) of CFRN 1999, Ibid.
[18] Section 36(12) Ibid. See also Aoko v. Fagbemi [1961] 1 ANLR 490.
[19] Nasiru Bello v. A.G Oyo State [1986] 5 NWLR (pt.45) p. 828.
[20] Sections 175 and 212 of the CFRN 1999 (Ibid), provides that the President or the Governor may grant any person concerned with or convicted of an offence, pardon, respite, commutation and remission respectively.
[21] See for example section 319 of the Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria 2004 which prescribes death penalty for the offence of murder. Also, section 214 of the Penal Code, Cap. P3 LFN 2004 prescribes the punishment of death penalty for witchcraft or juju that results in death. Adultery,

Administration of Criminal Justice Act in 2015, the Criminal Procedure Act and Criminal Procedure Code were veritable sources of sentencing laws in the Northern and Southern parts of Nigeria.[22] These two laws regulate the procedural aspects of sentencing practices. The Economic and Financial Crimes (Establishment) Act 2004 also provides that the penalty for the offence relating to economic and financial crimes shall be imprisonment for a term not less than 2years and not exceeding 3years.[23] The Robbery and Firearms Act and the Anti-Kidnapping Laws of the States also prescribe death penalty for armed robbery and for kidnapping, where the victim dies.[24] The Administration of Criminal Justice Act 2015 also introduced new form of sentences and it prescribed punishments ranging from detention, imprisonment, confinement, death penalty, community service to deportation.[25] The judges also defer to judicial precedents in sentencing through the operation of *stare decisis*. Thus, case law is another potent source of sentencing law.

It is therefore the aim of this paper to evaluate the sentencing practices and attitudes in Nigeria with a view of identifying the factors militating against the attainment of criminal justice in sentencing. The writer has therefore proffered recommendations towards the attainment of consistency, coherence and rationality in sentencing. The paper is divided into four parts. The first part

sodomy, incest, apostasy, and blasphemy are also capitalized under the Shariah Penal Code. See section 129 of the Shariah Penal Code of Zamfara State 2000. Some states have enacted their respective criminal laws. See for example, Criminal Law of Lagos State 2011.

[22] See the Criminal Procedure Act Cap C.41, Laws of federation 2004 and the Criminal Procedure Code, Cap 491 LFN 1990.

[23] See the EFCC, (Establishment) Act 2004, Section 18(2), see also Section 11(d) of the National Drugs Law Enforcement Agency Act, Cap N30 LFN 2004 which provides that any person who possesses or uses the drug known as cocaine or heroine shall be liable to between 15 and 25years imprisonment.

[24] See Robbery and Firearms (Special Provisions) Decree No.5 of 1984, Cap. R11 LFN 2004 and Anti-Kidnapping Laws of Enugu, Bayelsa and Lagos States of 2009, 2013 and 2017 respectively. Other sources of sentencing powers include the Child Rights Act 2003, which relates to children offences, Nigerian Correctional Services Act 2019, the Anti-Money Laundering Act 1995 and the Electoral Act 2011. Electoral offences and punishments are contained in sections 117-132 of the Act.

[25] The new sentences include, community service, see section 460 ACJA, rehabilitation in the correctional centres, See section 467 ACJA and deportation *inter alia.* See sections 440-449 of the ACJA.

introduces the paper and clarifies the concept of sentencing and appraises the various sources of sentencing law in Nigeria. In the second part, the writer delves on the sentencing practices and attitudes of the Nigerian courts, thereby dwelling on the rules and the significance of sentencing. The third part is devoted to a critical appraisal of the various sentencing objectives, together with various interventions in form of sentencing guidelines and practice directions. The paper concludes in the fourth part with proffered recommendations.

2. SENTENCING POLICIES AND PRACTICES OF THE NIGERIAN COURTS

Sentencing policies and practices of the Nigeria courts include the whole gamut of punishments,[26] selecting the proper sentence,[27] adhering to the legislative provision for sentencing processes and giving reasoned (not arbitrary) decisions. The sentencing attitudes of judges have been shaped by the practices which have overtime, been adopted by the apex court as the basic principles to guide the sentencing functions of the lower courts. Some of these principles have been expressed thus:[28]

a) A court must consider the facts of the particular case before sentencing an offender

b) A court (appellate) must review only a sentence that is manifestly excessive or inadequate or wrong in law.[29]

c) A court does not necessarily have to adopt a sentencing approach that has been adopted in an earlier case. This principle proposes a form of individualization of sentence.

[26] For example, death penalty, imprisonment, fine, probation, forfeiture and confiscation, community service and deportation *inter alia.*

[27] This should be a rational process, passed with a specific principle in mind, retribution, deterrence, reformation; or a combination of any of them, with the hope that the type selected will put the particular preferred principle into effect and thus, achieve the ultimate aim of the prevention of the crime.

[28] A good sentence should be based on sound and reasoned coherent policy.

[29] See State v. Hassan [1972] 1 All N.L.R (pt.2) 197.

d) It has been established that mere difference in the opinion of judges does not suffice for an appeal court to reverse the sentence of a lower court.

e) 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 instance.[30]

f) Some of the determining factors which must be considered by the courts are the nature of the offence, the character and record of the offender, the position of the offender amongst his confederates and the prevalence of the offence in the locality.[31]

The above principles, coupled with the rules of sentencing, though not comprehensively codified as a single legal document, have been adopted as the sentencing practices and principles of judges in criminal justice adjudication. However, the judges are not bound to follow this procedure because the penal statutes give sentencers wide discretion in the choice of measure, quantum and degree of severity of sentence, which in turn results in sentencing inconsistency.[32]Anyebe aptly captured the above position when he said:

> "Sentencing is an exercise of a discretionary power that is little guided in a country such as Nigeria. Hence, the power presents a sentencer with a very wide playing field and accommodates individual inclinations and approaches or solutions to the same problem. The differences in approaches, however, became a problem in the society when it presents the criminal justice system as irrational, inconsistent and unjust."[33]

[30] Per Ademola C.J.N in Adeyeye & Anor. v. The State [1968] NMLR, 87.
[31] M.A Owoade, "Sentencing: Guiding Principles and Current Trends,"*NJI Law Journal* [2009] vol.2, p.1.
[32] Nigel Walker, *Sentencing Theory, Law and Practice*, (Butterworths, London: 1985) p.43.
[33]Anyebe, op cit (note 1 above) p.16.

Mutunga has also stated that:

> "Sentencing has been a problematic area in the administration of justice. It is one of those issues that have constantly given the judiciary a bad name, and deservedly so. Sometimes outrightly absurd, disproportionate and inconsistent sentences have been handed down in criminal cases. This has fueled public perception that the exercise of judicial discretion in sentencing is a whimsical exercise by judicial officer."[34]

Consequently, due to the incoherence and the inconsistencies of sentencing policies, the importance of questioning both the sentencing legislations and the sentencing practices as well as the philosophies or logic upon which sentencing rest, has come to the fore necessitating a formal response with sentences specific guidelines.[35]

2.1 Significance of Sentencing

No aspect of criminal law has been given as little attention as sentencing and yet no aspect is as important as sentencing because over fifty percent of all criminal matters end with sentencing. It is indeed the most integral part of a trial. According to Jackson, "It takes far less time and enquiry to settle a man's prospect in life than it has taken to find out whether he took a suit case out of a parked motor car."[36]

Jackson's concern can be construed to mean that the process of sentencing, which is the most important aspect of criminal process, takes less time and involves less effort and attention of the judges than the trial process itself. Quite agreeing with the learned author, it is observed that the trial process really takes longer time than it takes the judge to pass judgment and determine the punishment of the offender. There is therefore a need to adjourn a criminal matter after

[34] Hon. Justice Willy Mutunga, Chief Justice of the Republic of Kenya, in his Report of the judicial task force on sentencing. Available at <www.judiciary.go..ke> last accessed 30th December 2019.

[35] Owoade, op cit, (note 30 above)

[36] R.M Jackson, *The Machinery of Justice in England*, 4th ed. (Cambridge University Press, 1964) P. 228.

the conclusion of evidence to allow much time to be given to the judgment, especially, the sentence. In the United States of America and the United Kingdom, social workers and probation officers are availed the opportunity of writing pre-sentence reports about the convict with the aim of guiding the judge about the appropriate sentence to be imposed, bearing in mind the likely mitigating factors.[37] Admittedly, the importance of sentencing to a criminal trial cannot be undermined because it is the sentence that determines the disposition method for the offender at the end of the trial. Little wonder, therefore, when Sir Stephens said "Sentencing is the gist of any criminal proceeding, it is to the trial what the bullet is to the gun."[38] The writer cannot agree less with this submission. A sentence is therefore very important because it is the sentence that performs the function of deterrence. This was stated in the case of *Odunlami v Nigerian Navy*[39] where the court pronounced on the importance and purpose of sentencing. The court stated that the imposition of appropriate sentence for a crime serves as deterrence to other would be offenders.

2.2 Rules/Principles of Sentencing

At the conclusion of a criminal trial, the judges have two critical decisions to make. One is the decision whether a convict should be imprisoned and if so, the second decision is for how long he should be so imprisoned. After deciding to impose prison term, the judge has to make decisions concerning both minimum and maximum sentence. This is essentially because there is no substantive sentencing law and most penal statutes only state the authorized maximum lawful sentence.[40] The provisions of the penal statutes are such that it may be couched in such terms as to allow judicial discretion and it may be couched to disallow it. While many sentences provide for range between the minimum term of imprisonment or fines, some sentences merely specify a statutory minimum or maximum punishment and others only specify a term of

[37] Alarid and Montemayor, "Attorney's Perspectives on the Pre-sentence Reports: A Research Note" *Criminal Justice Policy Review* [2010] vol. 21, p.121.
[38] Sir J.F Stephens QC, "Sentencing" *7 Corn Bill Magazine* [1863] p.189.
[39] [2013] 12 NWLR (pt. 1367) p. 20 @ 60.
[40] For example, the maximum punishment for stealing is 3years imprisonment. See Section 390 Criminal Code.

years without any indication as to whether it is the minimum or maximum. In this situation the sentence shall be regarded as the statutory maximum.[41]

There is no composite legal framework or law of sentencing in Nigeria. However, there have been established rules of sentencing which have over time, been developed by judges and judicial authorities in Nigeria. The basic rules of sentencing are as follows:

a) Where the law which creates an offence prescribes a maximum sentence for the offence, the court cannot impose a sentence that is above the maximum penalty but the court can impose a sentence that is lesser than the maximum

b) Where the law prescribes a minimum penalty, the court cannot impose a penalty lesser than the minimum or an alternative penalty but the court can impose a penalty prescribed by law in term of years, the court cannot impose a fine in lieu of imprisonment.

c) Where the law prescribes a mandatory sentence for an offence, like death penalty for capital offences, the court cannot impose a sentence lesser than or different from the mandatory sentence. Thus, in the case of *State v. John*,[42] the court stated, per Rhodes Vivour JSC thus:

> "Once a judge finds an accused person guilty of culpable homicide under Section 221 of the Penal Code, the only sentence he can pronounce is death sentence. A judge has no jurisdiction to listen to allocutus or discretion to reduce the death sentence to a term of years … in this instant case, the sentence of 14years imprisonment after finding the respondent guilty of culpable homicide was wrong"

[41] See Section 17(1) of the Interpretation Act, Cap 123 LFN 2004.
[42] [2013] 12 NWLR (pt.1368) P.337.

In *Usman v. State*,[43] the court held that once the charge under section 221(a) of the Penal Code was established to the satisfaction of the court, the court does not have the discretion when pronouncing sentence. The only sentence that could be passed for a finding of guilt under the section is death.

Where the law provides for a statutory minimum threshold and maximum threshold,[44] the trial judge has the discretion only to impose a sentence which is between the minimum and the maximum and cannot sentence to a lesser term than the minimum. Neither can he exceed the upper limit of the prescribed sentence. Thus, in *Odunlami v. Nigerian Navy*[45] where the appellant was sentenced by a court martial to life imprisonment on a conviction for manslaughter, the court distinguished between cases where the statute leaves room for discretion and where it does not.

The court held that the maximum sentence for the offence of manslaughter under sections 317 and 325 of Criminal Code and sections 222 and 224 of the Penal Code, if the accused person was tried by the regular court is life imprisonment but that the trial court has the discretion to sentence a convict to a lesser term of years or fine. However, under section 105 of the Armed Forces Act, the sentence for manslaughter is also life imprisonment, but the section does not leave the sentence to the discretion of the court martial. The court held that the correct sentence was imposed on the appellant.

Where the law creating the offence does not stipulate a minimum or maximum threshold, but prescribes a fixed sentence without discretion, the court must impose the fixed sentence.[46] However, where the law simply provides a penalty and is silent as to whether the prescribed punishment is the maximum, such penalties are

[43] [2014] 12 NWLR (pt.1421) P.207 @ 242. Also in Afolabi v. State [2013] 13 NWLR (pt. 1371) p.292, the court held that a mandatory sentence does not admit of the discretion of the court to reduce the sentence.

[44] For example, Section 18(2) of the EFCC (Establishment) Act 2004 provides that the penalty for the offence relating to economic and financial crimes shall be imprisonment for a term not less than 2years and not exceeding 3years imprisonment.

[45] Supra (note 38 above) p.20.

[46] Odunlami v. Nigerian Navy Supra, (note 38 above)

regarded as the statutory maxima[47] and the courts have discretion on the quantum of sentence, such that the sentence imposed, may be lesser but not higher.

Some laws provide for imprisonment and fine or both[48] or imprisonment or forfeiture or both.[49] In these cases, the court has a wide discretion to impose a sentence lesser or lighter than the prescribed sentence (not mandatory) or fine in lieu of a sentence of imprisonment. However, where the law prescribes a penalty and it is silent on the option of fine, the court has the discretion to impose a fine in lieu of or as an option to the prescribed penalty.[50]

Where the law creating the offence prescribes a minimum penalty without an option of fine upon conviction, the court does not have the discretion to impose a fine in lieu of the prescribed penalty.[51]

The unfettered discretion of the court may be restricted to a certain extent where there is a mandatory sentence or where the provision of the law is clear on the exact punishment to be imposed for the offence. Thus, in the case of *State of Lagos v. Ibinabo Fiberesima*,[52]it was held that when a term of imprisonment is mandatory, the court cannot and should not give an option of fine. In a unanimous decision of the Court of Appeal, the court held that the trial magistrate lacked the discretion to grant the defendant an option of fine, having been convicted for an offence for which the law does not allow an option of fine. 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 concurrent.

[47] See Section 17(1) of the Interpretation Act. op cit, (note 13 above)
[48] For example, Section 51 Criminal Code.
[49] See Section 58 Criminal Code.
[50] Nigel Walker op cit (note 31 above) p. 125. See also Apamadari v. State [1997] 3 NWLR (pt. 493) 289 and Lortimi v. State [1997] 2 NWLR (pt.490) 711.
[51] See Barewa Pharmaceutical Limited v. FRN [2016] 17 NWLR (pt.1540) P.63. Also see Nwude v. FRN [2016] 5 NWLR (pt. 1506) 471.
[52] (Unreported) Appeal No CA/L/485/2009 before justices of Court of Appeal Justices Tijani Abubakar (JCA) Uzo Ndukwe – Anyanwu (JCA) and JamiluYammama Tukur JCA.

3. OBJECTIVES OF SENTENCING

The fundamental purpose of sentencing is to contribute along with other crime prevention initiatives, to the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate offenders from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community, and to promote a sense of responsibility in offenders and acknowledgement of harm done to the victims and the community. A sentence must therefore be proportionate to the gravity of the offence and the degree of responsibility of the offender.[53] Punishing what the society deems to be wrong or unwise seems to be an integral part of any civilization. Specific guidelines for punishment date back to Hammurabi's Code[54] while theoretical and philosophical justifications for punishment can be seen as early as the days of Aristotle.[55] The court is always guided by the several punishment objectives before imposing a sentence upon the accused. The objectives and purposes of sentencing can be subsumed under four main theories viz: Deterrence, Retribution, Incapacitation and Reformation/Rehabilitation.[56]

3.1 Deterrence

The modern deterrence theories have their foundation in classical criminology theory derived from an Italian economic philosopher, Cesare Beccaria[57] and an English philosopher, jurist and social reformer, Jeremy Bentham. The central essence of deterrence theory is captured by Bentham in his law of felicitic calculus. Expressing the utilitarian nature of offence and the necessity of deterrence, he said:

---

[53] See Garba v. C.O.P [2007] 16 NWLR (pt.1060) 378 @ 407-408.

[54] Hammurabi's Code of Laws (C.1780 BCE) L.W king trans.) Available at <http://www.fordham.edu/halsall/ancient/hamcodehtml> (accessed on 27th June 2020).

[55] Aristotle, *Nichomachean Ethics* 200-01 (Roger Crisp trans, Cambridge University Press, 2000).

[56] U.I Idem & N.E Udofia, "Sentencing and Administration of Criminal Justice in Nigeria" *Donnish Journal of Law and Conflict Resolution* [2018] vol 4(1) pp.1-10.

[57] C.Baccaria, *An Essay on Crimes and Punishments* [1764] (Indianapolis, IN: Hacket Publishing Company, Inc. 1986) p.94.

"... an offender conducts himself, albeit unknowingly, according to a well or ill-made calculus of pleasures and pains. Should he foresee that pain would be the consequence of an act which pleases him, he would act with a certain force so as to divert him from that action. If the total value of the pleasure, the repulsive force would be greater, the act would not occur".[58] The belief of the proponents of this theory is that the more severe a punishment is, for a particular offence, is the greater its deterrence effect on the accused and other potential offenders. It is therefore conceived that the object of punishment is to prevent the offender from repeating the same course of conduct so that other persons and their properties may not be harmed.[59] Deterrence theory was revived in the 1970s when various economists and criminologists began to speculate about the topic again, not only as an explanation for why people commit crime but as a solution to crime.[60]

The deterrence purpose can either be specific or general. Specific deterrence occurs when the threat of the punishment prevents an individual from committing an offence whereas, general deterrence assumes that by sentencing an offender to serve a punishment, others will be discouraged from committing the same offence. Ernest van den Haag, buttressing this position has posited that:

> "The mere risk of injury often refrains us from doing what is otherwise attractive …… we refrain even when we have no direct experience, and usually without explicit computation of probabilities, let alone conscious weighing of expected pleasure against possible pain. One abstains from dangerous act, because of vague,

[58]J.Bentham, *An Introduction to the Principles of Morals and Legislation*, reprinted in 1970 in Burns J.H and Hart H.L.A (eds.) (Mathuen,1780) p.167

[59]S.Mishra, "Theories of Punishment: A Philosophical Approach" in *Imperial Journal of Interdisciplinary Research* [2016] vol.2(8) p.76.

[60] T.C Pratt *et al*, "The Empirical Status of Deterrence Theory: A Meta-Analysis" in F.T Cullen *et al* (eds) *Taking Stock: The Status of Criminological Theory* (New Brunswick, NJ: 2006) p. 76.

> inchoate, habitual and above all, pre-conscious fears"[61]

Adeyemi, in corroborating the account of den Haag, has also contended that deterrence appears to be the only significant vehicle employed by our courts for achieving the aim of criminal process,[62] and it must have been against the backdrop of general deterrence that propelled Durkheim to analogically posit that:

> "..... we punish Peter not because we believe that we can change the probable future course of Peter's conduct ……. but because we think that by doing so, we can keep Paul honest."[63]

In the Nigerian case of *State v. Bolivia Osiegbehe*,[64] the court relied heavily on deterrence theory in refusing the Defendant's counsel plea for an option of fine in a rape case, an offence which was committed at gun point. In imposing an imprisonment term on the accused, the court said:

> "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"

[61]Evan den Haag, "On Deterrence and the Death Penalty*" Journal of Criminal Law, Criminology and Political Science.* [1969] vol.60, p.308.

[62] A.A Adeyemi, "Administration of Criminal Justice in Nigeria: Sentencing Practices and Attitudes" in *The Criminal Process*" (University of Lagos Press, 1975) p. 67. The Supreme court of New Zealand also stated the above Adeyemi's sentiment in the case of Re-Radich [1954] NZLR, p.86 @ 87, when the apex court shared thus. "In all civilized countries of the world, in all age, deterrence has been the main purpose of punishment and still continues to be so." See also the English case of Re-Fern [1989] 51 SASR 273 @ 274 where the court, per King J held that the punishment authorized by the parliament will have tendency to deter people from committing crime.

[63]E.Durkheim, *The Division of Labour in the Society* (Free Press, 1933) p.307.

[64] (Unreported) Charge No – HU/47C/71 (High Court of Umuahia) See also State v. Okechukwu [1994] 9 NWLR (pt. 368) P. 273 and Adonike v. State [2015] LPELR 24281 (SC)

However, the deterrence theory has been criticized on the ground that existing evidence does not support any significant public safety benefit of the practice of increasing the severity of sentences by imposing longer prison terms. It has been found that offenders serving long sentences may likely become institutionalized, lose pro-social contacts in the community and become removed from legitimate opportunities, with the resultant effect of engendering recidivism and prisonization.[65] Adeyemi also examined the impact of death penalty as a deterrence on the commission of the offences of murder and armed robbery between 1967 and 1986 and found no consistent pattern in the relationship between the average number of executions carried out and the incidence of either murder or armed robbery. He contended that the introduction of the death penalty for armed robbery in 1970 was followed by an increase rather than decrease in armed robbery.[66]

3.2 Retribution

Herbert Hart defined retribution as the application of the pain of punishment to an offender who is morally guilty.[67]It has also been contended that retributivism is seen as making some appeal to "moral desirability."[68] The retributivists see punishment as a form of payback for the crimes one has committed.[69] The proponents of retributive philosophy also see punishment as a way of removing unlawful and unfair advantage[70] while others contend that the punishment wipes out the unfair advantage.[71]

---

[65] E.O Akingbehin, "Imprisonment as a Penal Policy: Quest for the De-institutionalization of Nigeria's Penal System" in *Maiduguri Law Journal*, [2019] vol.17, p.231. Recidivism is the tendency to relapse into a habit of criminal activity or behaviour. See H.C Black, op cit (note 5 above)

[66] A.A Adeyemi, "Death Penalty in Nigeria: Criminological Perspective" *Nigerian Current Law Review* 1988/1991 NIALS 1993, pp. 10-35.

[67] R.A Duff & S.P Green, "Introduction: The Special Part and its Problems in Defining Crimes," *Essays on the Special Part of the Criminal Law* (Oxford University Press, 2005) pp. 1-20.

[68] T.M Scanlon, What We Owe to Each Other (Cambridge University Press, 1998) p. 266.

[69] John Cottingham, "Varieties of Retribution" *Philosophical Quarterly* [1979] vol. 29, pp. 238-246.

[70] Herbert Hart, *Persons and Punishment*. (New york: Cambridge, 1988) p.58

[71]J.Deigh & D.Dolinko, *The Oxford Handwork of Philosophy of Criminal Law* (Oxford University Press, 2012) p.34.

To Hegel,[72] the idea of punishment is to cancel, negate or annul the offender's crime while Levy contends that the punishment of wrongs is right in itself because the moral order requires its imposition.[73] Classical Retributivism dates back to the Biblical times where the law of retaliation (Les talionis), held sway.[74] Retribution entails the punishment of the offender in such a way that authoritative expression is given to moral indignation for the moral wickedness of the offence.[75] The proponents of this theory argue that the element of retribution is necessary in order to give vent to public feelings of reprobation towards the criminal, otherwise citizens will take laws into their hands to express their moral indignation.[76] It has also been contended that in seeking to impose what is just and fair, retributive justice requires that the punishment must fit the crime and that the severity of the penalty must be proportionate to the gravity of the offence committed.[77]

The retributivist theory has been widely criticized as flawed, on various grounds and for various reasons. The issue of relativity of severity of punishment and the difficulty of determining what factors should define severity have been at the front burner of the concerns.[78] There is also a serious problem of commensurability. It is difficult to determine what punishment will be proportional to the offence committed. For example, in the United States of America, Timothy Mcveigh's life was ended by lethal injection for the infamous Oklahoma bombing of the federal building with the loss of 168 lives.[79] It sounds doubtful if Mcveigh's execution would pass

[72] G.W Hegel, *Philosophy of Rights* (Dyde Press, 1952) p.100.

[73] S.Levy, "Retribution as a Sentencing Goal in International Criminal Justice" *Centre for International Criminal Justice Journal,* April 2014. p.15.

[74] Holy Bible K.J.V. Exodus 21: 24.

[75] E.O. Akingbehin, "Jurisprudential Aspects of Capital Punishment: Perspectives on the Retribution Theory" *EBSU Journal of International Law and Juridical Review*, [2014] vol.3, p.63.

[76] E. Armstrong, "The Retributionist Hits Back" Grupp. A (ed) *Theories of Punishment,* Acta Juridica [1975] pp.226-227.

[77] A.B Dambazau, *Criminology and Criminal Justice*, (Spectrum Books, 1999) p.326.

[78] For example, adultery is viewed as a serious offence deserving of a severe punishment of death penalty under the Shariah Law in Northern Nigeria, whereas, it is not criminalized at all, in the Southern Nigeria.

[79] R. Hood & C. Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2008) p.114.

the proportionality test, because it is only a loss of a life against 168 lives.[80] Many of the critics of retribution also argue that the philosophy is outdated. As societies become more civilized, they should out-grow the need for requital. Emile Durkheim noted that it is a primitive and instinctual response of human kind to punish wrong doers.[81] It is submitted that the retributivist theory is retrogressive and as such, the sentencers should not predicate the purposes of their sentences on its consideration.

3.3 Elimination/Incapacitation

Elimination and incapacitation are being used interchangeably, yet incapacitation is a specie of which elimination is a genre. Since the 1970s, upon the failure of deterrence and retribution to reduce crime in the society, incapacitation has become a significant aim of penal systems in both the United States of American and the United Kingdom.[82] The proponents of the incapacitation theory of punishment advocate that offenders should be prevented from committing further crimes either by their temporary or permanent removal from the society or by some other methods that restrict their physical abilities to commit the same offence or other offences in future.

The traditional forms of incapacitation include dismemberment, banishment and capital punishment, while the most contemporary form is the physical removal of the offender from the society by confinement or imprisonment. Adeyemi[83] has identified three types of elimination thus: death sentence (which he described as permanent elimination), deportation and imprisonment (which are species of temporary elimination) According to him, death penalty is the most efficacious of the three species. He contended that imprisonment merely prevents the offender from committing further

[80] The question has been asked on several occasions whether rapists should be raped in return to attain the *Les talionis* goal of "an eye for an eye".

[81] MichaelTonry, "The Functions of Sentencing and Sentencing Reforms" *University of Minnesota Law School*, 2005. p.37.

[82] Tonry, Op cit (n. 80 above).

[83] [1975] 60 Crim. APP.R.74. In the case of State v. Sgt Dennis Osoleka and 7 Ors, (Unreported), No. E/32/2009, the High Court of Enugu refused the bail application of the accused facing a charge of kidnapping, because he would constitute a menace to the society if released.

offence during incarceration. Justifying imprisonment as a necessary implementation of incapacitation, Lawton L.J stated, in the case of *Regina v. Sergeant*[84] thus:

> "There are some offenders for whom neither deterrence nor rehabilitation works. They will go on committing crimes as long as they are able to do so. In those cases, the only protection which the public has is that such persons should be locked up for a long period"

Incapacitation is underpinned by utilitarian justification for punishment which postulates that punishment is justifiable and reasonable if its overall effect is for the greater good of the highest number of the people and that the pain or suffering imposed on an offender through punishment is only justified if it reduces or prevents the further harm that the offender would have caused to the rest of the society by committing future crimes. This theory postulates that punishment is not concerned with the nature of the offender, as it is the case with rehabilitation, or with the nature of the offence, as it is the case with retribution but the punishment is justified by the risk that the offender is believed to pose to the society in the future.

The punishment for the purpose of incapacitation is usually realized through the use of imprisonment, capital punishment and banishment. Some forms of punishment permitted by the Shariah based criminal law in northern parts of Nigeria include physical dismemberment like amputation of the limbs and mutilation. However, the efficacy of incapacitation theory has attracted a barrage of criticisms as it has been contended that in the event of imprisonment, such offender, while in prison can commit the offence that caused him to be incarcerated. According to Adeyemi,[85]

> "… a prisoner sentenced to term of imprisonment for assaulting another citizen may again, in prison,

[84]A.D Leipold, "Recidivism, Incapacitation and Criminal Sentencing Policy,"*University of St. Thomas Law Journal*, [2006] pp.542-543.
[85] A.A Adeyemi ,*The Criminal Process* op cit (note 61 above)

> assault a prison officer. Can we seriously argue that the society has really been protected by his incarceration when the warder is a member of the total outside community……"

Incapacitation theory has also been criticized against the backdrop of the increasing rise of organized crimes and offences committed in prison against inmates and prison warders.[86] The question has also been asked whether it is reasonably justifiable for a modern criminal justice system to resort to the barbaric form of punishment such as castration and amputation of offenders[87] in the face of humanitarian arguments against the irreversible penal measures. It has been contended that punishments like amputation will foist on the society an additional burden of catering for an increasing number of disabled persons.[88] Incidents of jail breaks also constitute another challenge of the efficacy of incapacitation through imprisonment. There have been cases of jail breaks within the prison where inmates have actually escaped from the facilities.[89]Sequel to the foregoing highlighted flaws, the incapacitation theory has failed both the victim of crime, the offender and the society at large in ensuring a safe society for people to live in.[90]

[86] For example, Fred Ajudua, who was detained in Kirikiri Prison duped General Bamaiyi, another inmate, of a humungous millions of Naira, while both of them were being detained there.

[87] Valerie Wright, Deterrence in Criminal Justice: Evaluating Certainty Versus Severity of Punishment" 2020. Available on<www.sentencingproject.org>. Last accessed 10th May 2020.

[88]Anyebe, op cit, (note 1 above) p. 188.

[89] For example, on the 3rd of June 2018, there was a jail break at Minna medium Security Prison, located at Tunga area of Minna Metropolis in Niger State, leaving at least two prison officers dead. see The *Vanguard Newspaper* of 5th June 2018. p.9. See also H.Nwaechefu, O.Okunowo& J.O Adedeji, "Stemming the Tide of Prison Breaks and the Breach of Statutory Rights of Prisoners in Nigeria", *University of Ibadan Journal of Public and International Law* [2018] vol.8, pp.51-52.

[90] As regards incapacitation by deportation, the theory is not also effective as our borders are admittedly porous. Deported felons may easily find their ways back into the country.

3.4 Reformation/Rehabilitation

One of the most important aims of sentencing is reformation cum rehabilitation of the criminal.[91] Towards attaining the aim of reformation, prisoners are exposed to intellectual and vocational educators, counselors, psychologists and religious clerics for moral instructions. The word "reformation" denotes doing over to bring a better result, to correct, rectify, amend or remodel,[92] and the central objective of this theory is to improve the offender's attitude and character, so that he is less inclined to commit offence.[93] One of the best attempts at reformation is solitary confinement in a penitentiary, such that, when the convict is in solitude, he cannot be injured by evil example or corrupt communication and he will have time to reflect.

The theory of reformation as an important aim in sentencing was amply demonstrated in the case of *Ekpo v. State*,[94] where a young man of 18 years was convicted for being in possession of counterfeit bank notes contrary to the law,[95] and was sentenced to 21 years imprisonment. On appeal, the Supreme court, per Aniagolu JSC (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 the 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 despite the stipulation of 21 years imprisonment in the statute, a court's discretion to impose a lesser sentence is not restricted. As rightly observed by the learned justice of

[91] A.Uduigwomen, *Studies in Philosophical Jurisprudence*. 2nd ed. (Calabar: Jochrisam Publishers, 2005) p. 330.
[92] H.C Black, op cit (note 5 above) P. 1281.
[93] N. Walker, "Punishing: Denouncing or Reducing Crime?" in *P.G Lacebrook, Reshaping the Criminal Law* [1978] p.393.
[94] [1982] 6 S.C. 120.
[95] Counterfeit Currency (Special Provisions) Act 1974, Section 5.

the Supreme Court, the best interest of justice, as well as other mitigating factors, demand that a lesser sentence would have been more appropriate. It is submitted from the foregoing, that the reformation of the offender deserves serious attention of the sentencing judge and magistrate, after all, the deed has been done. The courts should, therefore, be more interested in how to avoid repeat performance.

Rehabilitation has been defined as the process of seeking to improve a criminal's character so that he can function in the society without committing other crimes.[96] Unlike the deterrence theory, the concept of rehabilitation rests on the assumption that the decision to commit a crime or criminal behaviour is determined by some social, psychological or biological factors and not merely freewill. According to Parker, rehabilitation theory posits that we must treat each offender as individual whose special needs and problems must be known in order to enable us deal effectively with him.[97]Analysing rehabilitation as a justification for sentencing objective, he further noted that the rehabilitative ideal may be used to prevent crime by changing the personality of the offender by inquiring into not how dangerous the offender is but how amenable to treatment he is.[98]

The penology of rehabilitation of offenders is more disposed to sentences like community service, probation, individualized treatment models and certain institutional treatment methods such as correctional institutions and borstal homes. The real aim of prison discipline is therefore the rehabilitation of criminals and not the infliction of vindictive suffering.[99] Rehabilitation, as a penal objective, came into the Nigerian Prison System vide the recommendation of the Gladstone Committee on the state of prisoners.[100] The theory, perforce, aims at restoring the offender to an

[96]H.C Black, op cit (note 5 above) p. 1476.

[97] H. Parker, *The Limits of Criminal Sanctions* (Stanford: Stanford University Press, 1986) p.50.

[98]Ibid.

[99]T. L Dorpat, *Crimes of Punishment: America's Culture of Violence*. (New York: Algora Publishing, 2007) p.109.

[100] The Committee was set up in England in 1895 and the recommendation was subsequently adopted in Nigeria.

upright person when he or she is eventually released into the society.[101]

Rehabilitation encourages an offender to abstain from criminal behaviour by providing him with social, educational or vocational facilities to such extent as to enable him conform to the social pattern of life outside the prison world.[102] Stressing the imperative of rehabilitation theory as a sentencing objective, Ogunleye observed that rehabilitation broadens the mindset of the prisoners and helps them in making better decisions in future. He also posited that education helps the offender to be able to think by himself and makes him employable, even after release, thereby equipping his minds to be productive. [103]

According to Ogundipe,[104] there are Vocational Skills Development Programmes (VSDP) which are aimed at empowering the prisoners with the needed skills for self-sustenance and actualization and the adult education programme designed to help prisoners who were pursuing one academic programme or the other, before their incarceration. He posited that VSDP enables prison inmates to learn skills in vocations such as tailoring, plumbing and carpentry, amongst others. However, Adeyemi has sounded caution against long and short imprisonment terms in the attainment of rehabilitation objective of sentencing. According to him: ….. an extremely short sentence and extremely long sentence are both not conducive to reformation. The former is too short for any reformative work to be done, while the latter may be too long to be of any benefit in the ultimate analysis because of the possibility that the optimum point of the treatment or reformation may have been reached well before the end of the

[101] U. Ugwuoke& A.S Ojonugwa, "Rehabilitation of Convict in Nigerian Prison: A Case Study of Federal Prisons in Kogi State" *Research in Humanities and Social Sciences* [2014] vol. (6) p. 35.

[102] T.O Elias, "The Prison System in Nigeria" Being a paper presented at the National Conference on the Prison System, held at the University of Lagos from 1st to 5th August 1968. p.153.

[103]T.Ogunleye, "Perceived Contributions of Vocational Skills Acquisition to Prison Inmates Reintegration into Society" *American Journal of Social Science* [2014] vol. 3(2) p.242.

[104]O.A Ogundipe, "Education Behind Bars: The Nigeria's Experience" Being a paper presented by the Comptroller General of Prisons at the ICPA 10th Annual Meeting and Conference at Prague in Czech Republic on the 26th – 30th October, 2008.

prisoner's sentence. The rest of the sentence after the optimum point will result in deterioration and possible prisonization.[105]

Another imperative of rehabilitation is the prisoner's After Care, which the provision is made available to inmates after their release from prison. This is aimed at re-integrating them into the society and ensuring that an ex-prisoner does not fall back into crime.[106] It can be seen that the theories of reformation and rehabilitation as sentencing objectives are not devoid of flaws. Imprisonment, which is one of the major vehicles of rehabilitation, has failed to live up to the ideals of rehabilitation due to the failure of the Nigerian prison system. It is observed that the equipment for training prisoners are moribund, there are no instructors and there is lack of fund to actualize the reformatory goals. These constraints have largely resulted in high rate of recidivism amongst ex-prisoners.

3.5 The Intervention of Sentencing Guidelines

Against the backdrop of inconsistent and irrational sentencing policies and practices of the lower courts, there have been some interventions through the prescription of sentencing guidelines. The Supreme Court of Nigeria made the first attempt at regulating sentencing practices[107] and such intervention is premised on the fact that every individual is different with various idiosyncrasies and that they are faced with the attendant possibility such that two judges or magistrates deciding the same cases, given the same facts, would come to different conclusions and therefore, pass different

[105] A.A Adeyemi, *The Criminal Process,* op cit (note 61 above) Adeyemi's view has been corroborated by Latessa and Allen. They stated that the inmate who has served a longer amount of time in prison has had his tendencies towards criminality strengthened and is therefore more likely to recidivate than the inmate who has served for a lesser duration. They further argued that prisons are seminaries of crime where one learns more crime from the peers and also learns smarter ways of avoiding being caught. See E. Latessa & H.E Allen, *Corrections in the Community* (Anderson Publishing Co., 1999) p. 56.

[106] See Section 468 (3) of the Administration of Criminal Justice Act 2015 which made provision for budgetary arrangement for released prisoners on parole. It is observed that the Non-Governmental Organizations have been collaborating with the custodial services centres by providing tools of trade and implements for prisoners who have completed their terms and have acquired skills while in prison.

[107] These Guidelines include previous record of the accused, nature of the offence, age of the offender, position of the offender amongst his confederates, rampancy of the offence in the community and the period already spent in custody.

sentences.[108] There was also the introduction of the Federal High Court (Corruption and Other Related Offences) Sentencing Guidelines and Practice Direction in 2015.[109] The explanatory note of the Guidelines explains the purpose of the Guidelines thus:

> "The guidelines and practice directions set out the procedure for sentencing of corruption and other related offences for the purpose of ensuring uniformity in sentencing without derogating from the statutory and inherent discretion conferred on a judge to determine and impose sentences."[110]

The Chief Judge of the High Court of the Federal Capital Territory has also, recently signed into law the Sentencing Guidelines and Practice Directions for Judges in the FCT, which are to assist and guide the judges in handing down sentences in criminal matters. The FCT guidelines are similar to the Federal High Court guidelines but with some differences on the issues of appeals.[111]

Lagos State was the first state in the federation to introduce Sentencing Guidelines and Practice Direction.[112] The Guidelines contain nine steps of what a court must consider before imposing a sentence on a convict.[113] However, despite the avalanche of guidelines and regulations geared towards attaining uniformity in sentencing and effective justice dispensation, it is perturbing that the judges and magistrates still place over-reliance on custodial disposition methods with the mindset that the more severe a punishment is, the more effective it is, to deter crime commission.

---

[108] A.R Bakare, "Sentencing" *Law Development and Administration in Nigeria*, p.192.

[109] The Federal High Court Guidelines were introduced by the Chief Judge of the Federal High Court pursuant to Section 254 of the CFRN 1999.

[110] It is however observed that the guidelines do not have general application as they apply to corruption related cases only. There lies the limitation.

[111] Under the FCT Guidelines, some of the challenges in the execution of judgment and orders of the courts and appeals deliberately filed to stall the execution of judgment have been addressed. Hence, mere filing an appeal will no longer stop the execution of court orders. See <https://lawcarenigeria.com/author/admin> Last accessed 14th July 2021.

[112] See Lagos State Judiciary (Sentencing Guidelines) Practice Directions 2018.

[113] See <https://lawnigeria.com/2019/10/sentencing-guidelines-of-lagos-state> Last accessed 14th July 2021

4. CONCLUSION AND RECOMMENDATIONS

This paper has embarked on the critical evaluation of the various sentencing principles and objectives geared towards the attainment of criminal justice in the sentencing practices of judges and magistrates in Nigeria. The Sentencing rules, principles and the objectives of retribution, deterrence, incapacitation and reformation/rehabilitation have been distilled and appraised.

However, in the course of the research work, it was discovered that judges and magistrates have been handing down sentences on convicts without stating reasons for their decision which had led to the incidence of arbitrariness, incoherence, inconsistency and irrationality in our sentencing policy in Nigeria. Sequel to the foregoing, the following recommendations are hereby proffered:

i) Judges and Magistrates should get acquainted with the various sentencing rules and principles so that they can be guided in their sentencing practices. In the course of this research work, it was discovered that a lot of sentences were passed without recourse to the consideration of the sentencing rules and principles thereby culminating in arbitrary and irrational sentences.

ii) Due to the avalanche of constraints faced by our correctional facilities in the implementation of the reformatory/rehabilitative ideals of imprisonment, it is recommended that judges and magistrates should imbibe in the imposition of non-custodial sentences like community service, fine and probation as much as possible, save for egregious offences.

iii) There is a bounden duty on the judges and magistrates to always indicate the reasons for their choice of sentences. This will reflect the extent of their consideration of the sentencing rules, principles and objectives before dispensing justice.

iv) Judges and Magistrates should also be guided by the sentencing reforms contained in the Administration of Criminal Justice Act, some of which ventured to address the lingering sentencing problems.

v) There is need for the Chief Judges of other states to pass the Sentencing Guidelines and Practice Direction for their respective states. This will go a long way in guiding the judges and magistrates in their sentencing duties.[114]

vi) There is a dire need for states that are yet to domesticate the Administration of Justice Act to do so and[115] also embrace series of robust legislative and executive interventions vide sentencing guidelines and practice directions. It is submitted that these will go a long way in regulating the sentencing practices of our judges and magistrates towards attaining consistency, coherence, rationality and uniformity in sentencing.

[114] Lagos State Chief Judge passed Sentencing Guidelines for Lagos State in 2018.

[115] Lagos State has always been a trail blazer in this regard. It was the first state to enact the Administration of Criminal Justice Law in 2007 which was re-enacted in 2011, 2015 and 2021 respectively.