THE JUSTIFICATION OF PUNISHMENT IN CRIMINAL LAW: RETRIBUTION VS REHABILITATION

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Abstract

Punishment remains one of the central instruments through which criminal law responds to wrongdoing, protects social order, and expresses the authority of the state. Its justification, however, has remained deeply contested. Two of the most influential approaches are retribution and rehabilitation. The paper explains both concepts. This article examines the justification of punishment in criminal law by analysing the theoretical foundations, strengths, and limitations of retributive and rehabilitative punishment, with particular attention to Nigerian criminal justice. The article adopts a doctrinal research method, drawing on statutes, case law, textbooks, journal articles, and policy materials. It argues that neither retribution nor rehabilitation, standing alone, is sufficient to meet the complex objectives of punishment in a modern society. Retribution is necessary because it sustains moral accountability, proportionality, public confidence, and respect for victims. Rehabilitation is equally necessary because it addresses criminogenic needs, reduces recidivism, and promotes the offender's return as a productive member of society. The article concludes that

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Nigerian criminal justice should adopt a balanced penal philosophy that combines proportionate punishment with credible rehabilitation. It recommends stronger implementation of the Administration of Criminal Justice Act 2015, among others.

Keywords: Criminal Justice System, Criminal Law, Human Rights, Nigeria, Punishment, Rehabilitation, Retribution, Sentencing.

1.0 INTRODUCTION

The existence of criminal law is rooted in the need to maintain public order, protect persons and property, restrain harmful conduct and preserve confidence in the legal system. Every organised society identifies certain acts as offences because such acts threaten the safety, morality or stability of the community. Punishment is therefore the formal legal response to criminal misconduct after guilt has been established by due process. In Nigeria, this response must be anchored in written law. The Constitution forbids conviction or punishment for an act unless the offence and its punishment are defined in a written law.[1] This principle gives punishment its legal foundation and distinguishes criminal sanction from private vengeance.

Punishment performs several functions in criminal justice. It may deter the offender and the public, incapacitate dangerous persons, restore victims, reform offenders or express society's condemnation of

[1] Constitution of the Federal Republic of Nigeria 1999, s. 36(12); Aoko v. Fagbemi (1961) 1 All NLR 400; Nyame v. FRN; Paulson v. State (2012) 6 NWLR (Pt. 1297) 456; Ogbomor v. State (1985) 1 NWLR (Pt. 2) 223.

wrongdoing.[2] These goals do not always move in the same direction. A punishment that satisfies public anger may do little to reform the offender. A rehabilitative sentence may reduce future offending but may appear too lenient to victims and members of the public. The central question is therefore not merely whether offenders should be punished, but why they should be punished and what punishment should reasonably seek to achieve.

The theories of punishment were developed to answer this question. Retributive theory holds that punishment is justified because the offender deserves it. The offender, being a responsible moral agent, has violated the law and disturbed the moral order of society. Punishment is therefore a deserved consequence of wrongdoing. Rehabilitative theory takes a different starting point. It accepts that crime is wrongful, but insists that punishment should also address the conditions that produce criminal conduct. It seeks treatment, correction, education, and social reintegration rather than the mere infliction of pain.

The tension between these theories remains visible in Nigerian criminal justice. Traditional sentencing practices often reflect retribution, deterrence and incapacitation through imprisonment, fines, the death penalty, and other penalties. Recent reforms, especially the Administration of Criminal Justice Act 2015 and the Nigerian Correctional Service Act 2019, show a gradual movement toward rehabilitation, restorative justice, and non-custodial sentencing.[3] The problem is that law and practice still diverge. Correctional centres remain overcrowded, underfunded, and often

[2] Terance D. Miethe and Hong Lu, Punishment: A Comparative Historical Perspective (Cambridge University Press, 2005); Lisa M. Storm, Introduction to Criminal Law.
[3] Administration of Criminal Justice Act 2015; Nigerian Correctional Service Act 2019.

unable to deliver meaningful rehabilitation. At the same time, public pressure for harsh punishment remains strong in serious offences. This article therefore, examines retribution and rehabilitation as competing and complementary justifications of punishment and argues for an integrated model suitable for Nigeria. Methodologically, the article is doctrinal. It analyses primary legal materials such as constitutional provisions, statutes, and judicial decisions, and it uses secondary materials such as textbooks, journal articles, and policy commentary to explain the penal philosophies that shape sentencing. The doctrinal method is appropriate because the issue is not merely empirical; it concerns the legal meaning, moral justification, and institutional application of punishment. The article, therefore, evaluates how punishment is justified in principle and how those principles are reflected in Nigerian criminal law and correctional policy.

2.0 MEANING OF PUNISHMENT IN CRIMINAL LAW

Punishment is difficult to define with absolute precision because it operates in moral, social, political, and legal contexts. In the criminal law sense, however, punishment refers to a sanction imposed by lawful authority on a person who has been found guilty of violating a criminal rule. Black's Law Dictionary describes punishment as a sanction, including fine, penalty, confinement or loss of property, right, or privilege, imposed on a person who has violated the law.[4] In Cummings v. Missouri, punishment was described as pain, penalty, suffering, or confinement inflicted by the authority of law.[5]

[4] Bryan A. Garner (ed.), Black's Law Dictionary (7th edn, West Group, 1999) 1247.
[5] Cummings v. Missouri, 71 U.S. 277 (1867); see also Onuoha Kalu v. The State (1998) All NLR 407; Nwude v. FRN (2016) 5 NWLR (Pt. 1506) 471.

Scholarly definitions emphasise similar elements. Garland defines punishment as the legal process by which violators of criminal law are condemned and sanctioned according to specified categories and procedures.[6] The Hart, Benn, and Flew model identifies five features of punishment: it must involve unpleasant consequences; it must be imposed for breach of a rule; it must be directed at a particular offender; it must be intentionally imposed by another person; and it must be imposed by an authority acting within the legal system.[7] These elements are useful because they distinguish punishment from accidental suffering, social criticism or private retaliation. They also show why punishment requires procedural safeguards. Since punishment deliberately imposes hardship, it must be preceded by proof of guilt, lawful conviction and sentencing by a competent authority. Without these safeguards, the state's power to punish would become arbitrary. This is why legality, fair hearing, proportionality, and judicial control are essential parts of any valid penal system.

For the purpose of this article, punishment means a legally authorised sanction imposed after criminal conviction, intended to respond to wrongdoing and serve one or more goals of criminal justice. This meaning is important because it confines the discussion to punishment administered through criminal law, rather than informal social sanctions or moral blame outside the court system.

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[6] David Garland, Punishment and Modern Society: A Study in Social Theory (University of Chicago Press, 1990).

[7] H. L. A. Hart, "The Presidential Address: I, Prolegomenon to the Principles of Punishment" (1960) 60(1) Proceedings of the Aristotelian Society 1; Esther van Ginneken and D. J. Hayes, "'Just' Punishment? Offenders' Views on the Meaning and Severity of Punishment" (2016) 17(1) Criminology and Criminal Justice 1.

2.1. Overview of Theories of Punishment

Theories of punishment justify why the state may intentionally impose hardship on an offender. The major theories include retribution, deterrence, prevention or incapacitation, rehabilitation and restitution. The retributive theory belongs to the traditional approach. It views the offender as a responsible actor who deserves punishment because he has violated the law. The deterrence theory punishes the offender to discourage him and others from committing future offences. The preventive or incapacitated theory seeks to disable the offender from committing further crime, either through imprisonment or, in extreme cases, the death penalty. The rehabilitative theory treats the offender as a person capable of reform and seeks to correct the causes of criminal behaviour. Restitution and restorative justice focus on repairing harm done to victims and communities.[8]

These theories are not mutually exclusive in actual sentencing. A single sentence may contain retributive, deterrent, and rehabilitative elements. For example, imprisonment may express condemnation, deter others, incapacitate the offender, and provide an opportunity for correctional training. The difficulty lies in determining which goal should dominate. Where retribution dominates, punishment looks backward to the offence. Where rehabilitation dominates, punishment looks forward to the offender's reform and future conduct.

[8] Jaan Sootak, "Theories of Punishment and Reform of Criminal Law" (2000) *Juridica International* 68; Shikha Mishra, "Theories of Punishment: A Philosophical Aspect" (2016) 2(8) *Imperial Journal of Interdisciplinary Research* 74.

3.0 THE RETRIBUTIVE THEORY OF PUNISHMENT

Retribution is grounded in the idea that wrongdoing deserves punishment. Its classical expression is the principle of lex talionis, commonly stated as "an eye for an eye."[9] The theory is associated with thinkers such as Immanuel Kant, Hegel, Hart and Herbert Morris. For Kant, punishment should not be imposed merely as a means to social utility; it is justified because the offender has committed a culpable wrong. Hegel similarly viewed punishment as a cancellation or annulment of the wrong committed by the offender.[10]

Retribution is often misunderstood as revenge. The two are related by their concern with wrong and response, but they are not the same. Revenge is personal, emotional and often excessive. Retribution is public, legal and governed by rules of proportionality, culpability and due process. It is administered by the state, not by the victim or private actors. Its purpose is not uncontrolled retaliation but the restoration of moral balance through deserved punishment. In this sense, retribution performs a communicative function. It tells the offender, the victim and the public that the law regards the offence as blameworthy and that such conduct attracts consequences. The communicative value of punishment is particularly important in serious offences where public silence or leniency may be interpreted as official indifference to wrongdoing.

The appeal of retribution lies in its respect for moral agency. It treats the offender as a person capable of choice and responsibility. It also takes victims seriously by affirming that the wrong done to them is not trivial. A

[9] Jeremy Waldron, "Lex Talionis" (1992) 34 Arizona Law Review.
[10] Thom Brooks, "Is Hegel a Retributivist?" (2004) 25(1–2) Hegel Bulletin 113; Guus Duindam, "How Can Punishment Be Justified? On Kant's Retributivism."

criminal justice system that refuses to punish serious wrongdoing risks appearing indifferent to victims and permissive toward offenders. Retribution therefore sustains public confidence in the law by demonstrating that legal norms have consequences.

3.1. Core Principles of Retribution

The first principle is just deserts. This means that an offender should be punished because he deserves punishment for a culpable violation of the law. The offender has gained an unfair advantage over law-abiding citizens by refusing the restraint that others accept. Punishment removes that unfair advantage and affirms the obligation of all citizens to obey the law.[11]

The second principle is proportionality. Retribution does not justify any punishment simply because a crime has occurred. The severity of punishment must correspond to the gravity of the offence and the blameworthiness of the offender. A minor offence should not attract a punishment fit for a grave offence. Proportionality is essential to fairness because punishment that is excessive becomes oppression rather than justice.[12]

The third principle is moral blameworthiness. Punishment is justified only where the offender can be fairly blamed. This explains why criminal law pays attention to intention, knowledge, recklessness, negligence, defences,

[11] Jeffrie G. Murphy, Retribution Reconsidered (PSSP, 1992); David A. Starkweather, "The Retributive Theory of Just Deserts and Victim Participation in Plea Bargaining" (1992) 67(3) Indiana Law Journal.

[12] Andrew von Hirsch, "Proportionality in the Philosophy of Punishment" (1992) 16 Crime and Justice 55; Joel Goh, "Proportionality: An Unattainable Ideal in the Criminal Justice System" (2013) 2 Manchester Student Law Review 41.

age, mental capacity and other factors that affect culpability. A person who acts without fault, or under circumstances that excuse or reduce responsibility, should not be punished in the same way as a deliberate offender.[13]

3.2. Criticisms of Retributive Punishment

Retribution faces important criticisms. First, its reliance on moral desert can be difficult to apply in plural societies where moral views differ. What one group considers deeply immoral may be seen differently by another. Criminal law must therefore avoid reducing punishment to the moral emotions of the majority.

Second, proportionality is easier to state than to measure. It is difficult to determine the precise punishment that matches offences such as perjury, cybercrime, corruption, drug offences or environmental crimes. Unlike simple physical retaliation, modern offences often involve complex harms that cannot be neatly matched with equivalent punishment.[14]

Third, retribution may neglect the social and personal conditions that contribute to criminal conduct. Poverty, addiction, family breakdown, unemployment, peer pressure, trauma and mental health challenges do not excuse all crimes, but they may help explain why crimes occur. A system that punishes without addressing these causes may satisfy moral anger while failing to reduce future offending. This is a major weakness of a purely retributive model. A sentencing system that is controlled only by

[13] Ambrose Lee, "Blameworthiness and the Outcomes of One's Actions" (2021) 17(2) Criminal Law and Philosophy 271.
[14] C. L. Ten, Crime, Guilt, and Punishment: A Philosophical Introduction (Oxford University Press, 1987); B. A. Hudson, Understanding Justice: An Introduction to Ideas, Perspectives and Controversies in Modern Penal Theory (Open University Press, 2003).

desert may also overuse imprisonment because custody appears to be the clearest way to express condemnation. In countries with overcrowded prisons, such as Nigeria, this approach creates further social costs. It increases public expenditure, exposes minor offenders to hardened offenders, and may return people to society more damaged than when they entered custody.

4.0 THE REHABILITATIVE THEORY OF PUNISHMENT

Rehabilitation emerged as a major alternative to punitive theories of punishment. Its central idea is that criminal justice should not merely inflict suffering on offenders; it should seek to reform them. The offender is not treated only as a wrongdoer but also as a person capable of change. Rehabilitation, therefore, aims at treatment, correction, education, skill acquisition, counselling, and reintegration.

The rehabilitative ideal became prominent as criminology increasingly recognised that crime may be influenced by biological, psychological, social and economic factors. The work of Cesare Lombroso, though now heavily criticised in its biological determinism, helped move criminal thought away from the simple assumption that all crime is merely a product of free choice.[15] Later criminological thought gave greater attention to social conditions, mental health, substance abuse and economic marginalisation.

Rehabilitation does not necessarily deny responsibility. Properly understood, it accepts that the offender has done wrong, but insists that

[15] Charles A. Ellwood, "Lombroso's Theory of Crime" (1912) 2(5) Journal of Criminal Law and Criminology; Christian Wickert, "Lombroso's Criminal Anthropology" (2019).

punishment should reduce the risk of future harm. The goal is not to erase the past. It is to transform the offender's behaviour and equip him to live lawfully after release. This makes rehabilitation especially important in societies where many offenders eventually return to the community. The practical argument is straightforward. If the law punishes without reforming, the offender may complete the sentence while retaining the same habits, addictions, associations and economic desperation that led to the offence. Society then receives back a person who has been confined but not corrected. Rehabilitation attempts to prevent that cycle by making the period of punishment an opportunity for structured change.

4.1. Historical Development of Rehabilitative Punishment

In ancient and early legal systems, punishment was largely retaliatory and deterrent. Offenders were punished to avenge wrongs, display authority and frighten others. The writings of Beccaria and Bentham later challenged excessive cruelty and insisted that punishment should serve rational social purposes.[16] Their utilitarian approach did not amount to rehabilitation in the modern sense, but it created space for the idea that punishment should produce beneficial outcomes rather than merely satisfy anger.

By the nineteenth and twentieth centuries, prison reform and criminological research encouraged a stronger rehabilitative approach. Correctional institutions began to claim a reformative purpose. The offender was increasingly viewed as someone who could be changed

[16] Bernard E. Harcourt, Beccaria's On Crimes and Punishments: A Mirror on the History of the Foundations of Modern Criminal Law (OUP, 2014); Tony Draper, "An Introduction to Jeremy Bentham's Theory of Punishment" (2002) 5 Journal of Bentham Studies.

through discipline, education, work, therapy, and structured supervision. Contemporary criminal justice systems continue to reflect this shift, especially through probation, parole, community service, drug treatment programmes, restorative justice, and correctional education.

4.2. Rehabilitation and Offender Reform

Rehabilitation targets the causes of offending. These may include substance abuse, antisocial thinking, lack of education, unemployment, poor impulse control, trauma, family instability or negative peer association. Programmes such as cognitive behavioural therapy, vocational training, literacy education, counselling and substance abuse treatment attempt to reduce criminogenic risks and support lawful behaviour.[17]

The rehabilitative theory is particularly strong where the offender's crime is linked to correctable conditions. A young offender with poor education and no skills may be better served by structured training and supervision than by a purely punitive sentence. A drug-dependent offender may require treatment to prevent repeated offending. A first offender may benefit from probation, restitution or community service, preserving family and employment ties while still imposing accountability.

The strength of rehabilitation is therefore practical as well as moral. If punishment does not reduce the likelihood of future crime, society remains unsafe. Rehabilitation seeks to make punishment socially useful by changing the offender rather than merely warehousing him.

[17] D. A. Andrews and James Bonta, The Psychology of Criminal Conduct (5th edn, LexisNexis, 2010); Bonita M. Veysey, "Offender Rehabilitation and Reform," 159th International Senior Seminar Visiting Experts' Papers.

4.3. Methods of Rehabilitation

Educational and vocational training are key rehabilitative tools. They equip offenders with literacy, technical skills and employability, thereby reducing the economic pressures that may lead to reoffending. Skills such as tailoring, carpentry, welding, agriculture, computing, and entrepreneurship can help former inmates survive outside crime. Empirical studies on correctional education generally associate meaningful training with lower recidivism and better reintegration outcomes.[18]

Counselling and therapy are equally important. Correctional counselling assesses the offender's mental health, behavioural patterns, and personal circumstances. Therapy may address anger, trauma, addiction, poor decision-making and family conflict. These interventions are particularly useful because many offenders return to the same communities and pressures that contributed to their offending. Without psychological and social support, release from custody may simply become a return to old patterns. Effective rehabilitation also requires classification. High-risk offenders should not receive the same intervention as low-risk offenders, and offenders with addiction problems should not be treated as if their needs are identical to those of offenders whose major problem is

[18] Lucky Ikahokhuele, Isaac Omojiade Oboh and Ogbu Uduma Michael, "Correctional Inmates' Vocational Training and Crime Control Measures in Calabar and Obubra Custodial Centers, Nigeria" (2025) 5(1) Social Facts; Clement Muinde Mbatha et al., "How Effective is Vocational Education and Training for Rehabilitation in Kenyan Prisons?" (2019) 7(10) American Journal of Educational Research.

unemployment. Risk assessment, individual case planning, and aftercare are therefore necessary if rehabilitation is to produce measurable results.[19]

Probation, parole, community service, and restorative processes also support rehabilitation. They allow offenders to remain under supervision while repairing harm, maintaining employment, supporting family and receiving structured guidance. In suitable cases, these alternatives are more constructive than short custodial sentences, which may expose low risk offenders to hardened criminal networks.

4.4. Rehabilitation in Modern Criminal Justice Systems

Modern criminal justice increasingly recognises that correctional institutions should not be mere places of confinement. The terminology has changed in many jurisdictions from prisons to correctional facilities or correctional centres, reflecting the idea that custody should include programmes for change.[20] This shift is also visible in Nigeria through the Nigerian Correctional Service Act 2019, which formally replaced the old prison orientation with a correctional framework.

Courts have also recognised the relevance of rehabilitation in sentencing. In Nigeria, the Supreme Court decision in State v. Hassan Audu demonstrates the tension between rehabilitation and statutory limits on sentencing discretion.[21] In *South Africa, S v. Nkomo* illustrates how

[19] Michael Braswell, "Purpose of Correctional Counseling and Treatment" in Correctional Counseling and Rehabilitation (2000); Indian Vision Foundation, "Breaking the Cycle: How Counselling Empowers Released Inmates" (2024).
[20] Christy Visher and John Eason, "A Better Path Forward for Criminal Justice: Changing Prisons to Help People Change" (Brookings, 2021); Lisa Forsberg and Thomas Douglas, "What is Criminal Rehabilitation?" (2020).
[21] State v. Hassan Audu (1972) JELR 33870 (SC).

prospects of rehabilitation may justify a less severe sentence in appropriate circumstances.[22] These cases show that rehabilitation may influence sentencing, but only within the boundaries of law, proportionality, and public interest.

4.5. Criticisms of Rehabilitative Theory

Rehabilitation is not without weaknesses. First, it may understate moral responsibility by treating criminality as a condition to be cured rather than a wrong to be condemned. If the offender is viewed only as a patient, the victim's suffering and society's moral judgment may be diminished.

Second, rehabilitation can create uncertainty in sentencing. If release depends on whether an offender is considered reformed, punishment may become indefinite or uneven. Two offenders who commit similar crimes may receive different outcomes based on subjective assessments of reform.

Third, rehabilitation is expensive and institutionally demanding. It requires trained personnel, facilities, funding, monitoring, and post-release support. In Nigeria, overcrowding, inadequate funding, poor infrastructure, and a shortage of professional services make rehabilitation difficult to implement effectively.[23] A rehabilitative policy without resources may become rhetoric rather than reform.

[22] S v. Nkomo (SH26/2018) [2024] ZANWHC 69.
[23] E. E. O. Alemika, Criminal Justice Administration in Nigeria: Sisyphus's Journey (CLEEN Foundation, 2016); Aaron Pycroft, "The Punishment Delusion and the Myth of Rehabilitation" (2022).

5.0 RETRIBUTION VS REHABILITATION: A COMPARATIVE ANALYSIS

Retribution and rehabilitation differ in philosophy, focus, and practical effect. Retribution is backward-looking because it focuses on the offence already committed. Rehabilitation is forward-looking because it focuses on future behaviour. Retribution asks what the offender deserves; rehabilitation asks what intervention will reduce future crime and restore the offender to lawful life.

5.1. Philosophical Differences Between the Two Theories

Retribution is grounded in desert, moral agency, and proportionality. It insists that the offender must be punished because he chose to violate the law. Rehabilitation is grounded in utility, reform, and social protection. It insists that the offender should be changed because society gains little if punishment produces bitterness, idleness, and repeated offending. The former protects the moral authority of law; the latter protects society by addressing the causes of crime.

The philosophical tension is real, but it should not be overstated. A sentence can hold an offender responsible and still provide treatment or training. A court can impose proportionate punishment and still recognise that the offender's background, age, remorse, addiction or prospects of reform are relevant. The most defensible approach is not to abolish one theory in favour of the other, but to organise them in a balanced sentencing framework. Such a framework begins with retribution as a limiting principle: punishment should not exceed what is deserved. It then uses rehabilitation as a constructive principle: within the range of proportionate punishment, the court should choose the sentence most likely to prevent future crime and support reintegration. This avoids the

cruelty of unlimited punishment and the weakness of unaccountable leniency.

5.2. Focus on the Offender versus Focus on the Offence

Retribution focuses mainly on the offence. The seriousness of the crime and the offender's culpability determine punishment. This is important because criminal justice must not ignore the harm suffered by victims. Rehabilitation focuses mainly on the offender. It asks why the person offended, what risks remain, and what intervention may reduce those risks.

An offence-centred approach promotes equality, proportionality and public confidence, but it may become rigid. An offender-centred approach promotes individualised justice, but it may appear inconsistent or too lenient if not controlled by proportionality. Nigerian courts, therefore, need a structured approach that weighs both the offence and the offender.

5.3. Impact on Victims, Offenders, and Society

For victims, retribution may provide recognition that the wrong done to them matters. It can affirm dignity and restore confidence in the legal system. However, if punishment is reduced to severity alone, victims may remain without restitution, apology, healing or practical support. Rehabilitation may indirectly protect victims and the public by reducing reoffending, but it may be criticised if victims perceive it as prioritising offenders over those harmed.

For offenders, retribution imposes responsibility but may harden criminal identity when administered through harsh and unproductive custody. Rehabilitation offers a path to change, but it must not remove accountability. For society, the best outcome is a system that condemns

wrongdoing, protects victims, reforms offenders where possible and reduces future crime. This requires integration, not ideology. A rape, homicide or armed robbery case will naturally demand a stronger retributive and protective response than a first minor theft or public order offence. Yet even serious offenders may require rehabilitation because they will either return to society or live for many years in custody. Likewise, minor offenders still require accountability because rehabilitation without responsibility may trivialise the offence. The proper question is therefore not which theory should defeat the other, but how each theory should operate according to the seriousness of the offence, the risk posed by the offender, and the needs of the victim.

6.0 PUNISHMENT UNDER NIGERIAN CRIMINAL LAW

Nigerian criminal law recognises various punishments, including death, imprisonment, fines, restitution, compensation, corporal punishment in limited contexts and non-custodial sanctions. Substantive offences are primarily contained in the Criminal Code for Southern Nigeria and the Penal Code for Northern Nigeria, while criminal procedure is now strongly influenced by the Administration of Criminal Justice Act 2015 and corresponding state laws.[24]

Historically, Nigerian sentencing has been heavily custodial and punitive. Imprisonment has often been the default response, even where alternatives may be more effective. This has contributed to overcrowding and poor rehabilitation. The ACJA 2015 and the Nigerian Correctional Service Act

[24] Criminal Code Act; Penal Code Act; Administration of Criminal Justice Act 2015.

2019 seek to correct this by encouraging restorative justice, non-custodial measures, and rehabilitation.[25]

6.1. Statutory Framework on Sentencing and Punishment

The ACJA 2015 represents a major shift in Nigerian criminal procedure. It aims to promote efficient justice, protect society, protect the rights and interests of suspects, defendants, and victims, and reduce unnecessary delay. It also provides for sentencing objectives and non-custodial options. Courts may consider deterrence, rehabilitation, restitution, restoration, prevention, and public protection when sentencing.[26]

The Act recognises alternatives such as probation, community service, parole, suspended sentence, and compensation. These options are important because not every offender requires imprisonment. Where properly supervised, non-custodial sentencing can punish, reform, and restore without exposing offenders to the damaging effects of overcrowded custody. The Nigerian context makes this especially important because many inmates are awaiting trial, facilities are congested and rehabilitation resources are thinly spread. If low risk offenders are diverted from custody, correctional institutions can concentrate resources on offenders who genuinely require confinement. This would make punishment more rational and correctional administration more manageable.

[25] Gloria D. Shajobi Ibikunle, "Challenges of Imprisonment in the Nigerian Penal System: The Way Forward" (2014) 2 American Journal of Humanities and Social Sciences; Muhammad Ribadu Ayuba, "Justice Delayed is Justice Denied" (2019).
[26] Administration of Criminal Justice Act 2015, ss. 401 and 453–460.

6.2. Role of Courts in Balancing Punishment Objectives

Courts translate penal theory into concrete sentences. A judge must consider the gravity of the offence, the offender's culpability, aggravating and mitigating factors, the interests of victims, public safety, and the possibility of reform. This task requires discretion, but discretion must be principled. Excessive severity undermines justice; excessive leniency undermines public confidence.

The ACJA gives judges wider tools for balancing punishment objectives. A proportionate sentence may include imprisonment in serious cases, but it may also include restitution, compensation, treatment, community service or probation in appropriate cases. The challenge is consistent application. Judges require reliable pre-sentence information, functional probation services and confidence that non-custodial orders will be monitored. Sentencing should therefore be supported by reports on the offender's age, criminal history, employment, family circumstances, mental condition, substance use, risk level and willingness to make restitution. These facts do not erase culpability, but they assist the court in choosing a sentence that is firm, fair and useful. Without such information, judicial discretion may depend too heavily on instinct or public pressure.

6.3. Rehabilitation Within Nigerian Correctional Institutions

The Nigerian Correctional Service Act 2019 is central to rehabilitation in Nigeria. It divides correctional administration into custodial and non-custodial services and requires humane custody, educational programmes, vocational training, psychological support and reintegration measures.[27]

[27] Nigerian Correctional Service Act 2019, s. 10(1).

This statutory language reflects a clear movement from punishment as mere confinement to punishment as correction.

In practice, rehabilitation is pursued through skills acquisition, academic programmes and partnerships such as study opportunities through the National Open University of Nigeria. These initiatives are valuable because they allow inmates to gain qualifications and practical skills while serving sentences. [28] However, their impact is limited by overcrowding, shortage of instructors, poor facilities, weak aftercare and inadequate funding. Rehabilitation cannot succeed if correctional centres lack the resources to deliver it. Post release support is also essential. An inmate who learns a skill in custody but leaves without tools, documentation, accommodation, family support or employment opportunities may still return to crime. Correctional reform must therefore connect prison-based programmes with community reintegration, employers, religious bodies, civil society, and local government support.

7.0 EMERGING TRENDS AND THE WAY FORWARD

Modern criminal justice increasingly rejects the idea that imprisonment alone can solve crime. Many jurisdictions now combine punishment with restorative justice, community supervision, treatment, and reintegration. This trend is relevant to Nigeria because the country faces prison overcrowding, delayed trials, poverty-linked offending, and limited correctional resources.

[28] The Nation, "NOUN Opens Study Centre for Gombe Prison Inmates" (2016); Ijeoma Blessing Uche, "Effectiveness of Rehabilitation Programmes in the Nigerian Prisons" (2015) Mediterranean Journal of Social Sciences.

7.1. Shift Toward Restorative and Rehabilitative Justice

Restorative justice treats crime not only as a breach of state authority but also as harm done to victims, relationships and communities. It uses processes such as dialogue, apology, restitution, compensation and community participation. It does not eliminate punishment, but it seeks to repair harm alongside accountability.[29]

Nigeria should deepen restorative practices, especially for juveniles, minor offences, first offenders, and cases where victims can be compensated. This would reduce unnecessary custody, improve victim participation and make justice more practical.

7.2. Expansion of Non-Custodial Sentencing

Non-custodial sentencing is one of the most important reforms for Nigeria. Properly designed community service, probation, parole, compensation and suspended sentences can punish offenders while preserving employment, family bonds and community ties. They can also reduce the cost and overcrowding associated with imprisonment.[30]

For these measures to work, Nigeria must invest in probation officers, risk assessment tools, monitoring systems, community service structures, and judicial training. Without implementation capacity, non-custodial sentencing will remain underused.

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[29] John Braithwaite, Crime, Shame and Reintegration (Cambridge University Press, 1989); R. A. Duff, Punishment, Communication and Community (Oxford University Press, 2001).

[30] Francis T. Cullen and Paul Gendreau, "Assessing Correctional Rehabilitation: Policy, Practice, and Prospects" (2000); Francis T. Cullen, "Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science" (2011) 91(3) The Prison Journal.

7.3. Prison Reform and Correctional Transformation

The transformation from prisons to correctional services must be made real. Correctional centres should provide education, vocational training, therapy, health care, religious and moral instruction, family contact and structured pre-release planning. These reforms align with the United Nations Nelson Mandela Rules, which emphasise humane treatment and rehabilitation.[31]

The way forward is a balanced criminal justice model. Serious offences should attract firm and proportionate punishment. Minor and moderate offences should be assessed for alternatives where public safety permits. Custody should be used where necessary, but custody should be rehabilitative, not merely punitive.

A practical Nigerian model should therefore operate at three levels. At the sentencing level, courts should reserve long custodial terms for serious, violent and high-risk offences, while using fines, compensation, community service, probation and suspended sentences for suitable low-risk offenders. At the correctional level, every custodial sentence should be linked to an individual rehabilitation plan that identifies the offender's risks and needs, the training or therapy to be provided and the support required before release. At the community level, reintegration should involve families, local employers, faith-based organisations, social workers, and civil society groups so that release does not become abandonment. This structure would make retribution and rehabilitation work together rather than compete. The offender receives a deserved legal

[31] United Nations, United Nations Standard Minimum Rules for the Treatment of Prisoners: The Nelson Mandela Rules (2015).

consequence, but the system also uses that consequence to reduce future harm.

8.0 CONCLUSION

Punishment is indispensable to criminal law, but its justification cannot rest on one theory alone. Retribution is necessary because it affirms responsibility, proportionality, victims' dignity and the moral authority of law. Rehabilitation is necessary because most offenders eventually return to society, and a system that releases them without reform only postpones future crime.

The Nigerian criminal justice system already contains the legal foundation for a balanced approach. The Constitution requires legality. The ACJA 2015 recognises sentencing objectives and non-custodial measures. The Nigerian Correctional Service Act 2019 adopts correction, rehabilitation, and reintegration. The weakness lies in implementation. Courts, correctional institutions, and policymakers must therefore move beyond formal reform to practical delivery.

A just system should punish offenders because wrongdoing matters. A wise system should also ask how punishment can reduce future wrongdoing. Nigeria needs both justice and correction: punishment that is proportionate, humane, victim-conscious, reformative, and socially useful. This balanced approach does not weaken criminal law. It strengthens it by ensuring that punishment is not driven by anger alone, and that rehabilitation is not pursued at the expense of accountability. A criminal justice system that can condemn wrong, repair harm, transform offenders, and protect the public is closer to the true purpose of punishment in a constitutional society.