

STATUTORY PUNISHMENTS IN NIGERIAN CRIMINAL JUSTICE SYSTEM: LEGISLATIVE INTENT VS JUDICIAL PRACTICE

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Abstract

The jurisprudence of criminal law across legal systems demonstrates that punishment occupies a fundamental place in the quest to achieve order, peace and justice. In the Nigerian criminal justice system, punishment represents the legislature's formal expression of penal philosophy as accommodated in the Constitution and reflected in the maxim nulla poena sine lege. It is through the prescription of punishments for proscribed acts that the legislature seeks to achieve the objectives of punishment. Accordingly, statutory punishments, whether mandatory or discretionary in application, are provided in penal provisions for use during sentencing. In recent times, however, the application of some statutory punishments by courts during sentencing has witnessed judicial practices that depart from legislative intent. This paper examines the jurisprudence of statutory punishment in the Nigerian criminal justice system to demonstrate the conflict between legislative intent and judicial practice, together with attendant consequences. The paper adopts a doctrinal methodology with analytical and descriptive approaches. Findings reveal that courts have departed from the strict application of some statutory punishments due to concerns arising from international human rights law, crime victims' interests, and the perceived ineffectiveness of certain punishments. The study recommends the strict application of statutory punishments

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by courts during sentencing until clear legislative amendments accommodating international human rights standards and the interests of crime victims are enacted among others.

Keywords: Judicial Discretion, Judicial Practice, Legislative Intent, Penal Objectives. Sentencing, Statutory Punishment.

1. INTRODUCTION

Penal punishments occupy a central place in criminal jurisprudence and have long been regarded as part of the principal mechanisms through which the State maintains social order and enforces compliance with the law.¹ Across legal systems, criminal law attaches punishments to proscribed conduct as a means of expressing societal condemnation and securing the objectives of justice.² To this end, criminal punishments perform several established functions including retribution, deterrence, incapacitation and rehabilitation.³ These penal objectives highlight the central role of punishments within the criminal justice system and the normative foundation of the purpose of criminal law upon which criminal sanctions are justified.⁴ The promulgation of relevant punishments for corresponding crimes is often an exclusive preserve of the State, typically exercised through the legislative authority.⁵ This is usually reflected in the legal framework on punishment of various countries of the world. In Nigeria, the legal frameworks for punishment are largely determined through statutory

¹ BE Harcourt, 'Beccaria, *On Crimes and Punishments*: A Mirror on the History of the Foundations of Modern Criminal Law' in Markus Dubber, *Foundational Texts in Modern Criminal Law* (Oxford University Press, 2014) Ch. 2, 39

² M Twardawski and Others, 'Is It All About Retribution? The Flexibility of Punishment Goals' [2020] 33 S JR 195

³ A Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 72

⁴ MD Hanson, 'The Jurisprudence of Punishment in Nigerian Criminal Law System: A Need for a Shift in Paradigm' (2016) 4, [UBJ] 58,70

⁵ HLA Hart, *Punishment and Responsibility* (2nd edn, Oxford University Press 2008) 4

provisions enacted by the legislature.⁶ They prescribe specific punishments for defined criminal offences, thereby showing the legislative assessment of the gravity of particular criminal conduct and the appropriate societal response to such conduct. In this regard, statutory punishment embodies, the well-established legal principle expressed in Latin - *nulla poena sine lege* (punishment must be founded upon law).⁷ Guided by this, the legislature communicates the State's penal philosophy and establishes the parameters within which courts are expected to operate when imposing statutory punishments during sentencing.

The imposition of statutory punishments by courts in Nigeria generally manifests in two principal forms. The first consists of punishments that carry mandatory requirements of application, leaving little or no room for judicial discretion once guilt has been established. The second category comprises punishments that permit the exercise of judicial discretion within limits prescribed by statute, thereby allowing courts to determine appropriate sentences based on the circumstances of each case.⁸ Both forms are intended to guide courts in determining appropriate punishment for convicts while ensuring that sentencing practices remain predictable, uniform and consistent with legislative intent underlying criminalisation. It is to this extent that the legislature in Nigerian has enacted several laws on crimes such as terrorism and armed robbery and prescribed mandatory minimum punishments for them. However, judicial practice in recent times reveals a persistent pattern of departure from these legislative demands, where courts now impose punishments below the statutory minimum or fail to apply the

⁶ Constitution of the Federal Republic of Nigeria 1999, s 4

⁷ BA Garner (ed), *Black's Law Dictionary* (9th edn Thomson Reuters, 2009) 1173; see also CFRN 1999, s 6(12)

⁸ E Luna, 'Mandatory Minimums' in Erik Luna (ed), *Reforming Criminal Justice: Volume 4 – Punishment, Incarceration, and Release* (Arizona State University Press, 2017)117-145

mandatory provisions altogether as intended by the legislature, even though the conditions for their application are satisfied.⁹ This practice creates a direct conflict between legislative intent as expressed in statutes and judicial practice during sentencing and raises important jurisprudential questions concerning the limits of judicial discretion in sentencing in Nigeria.

This paper aims at examining the jurisprudence of statutory punishment in the Nigerian criminal justice system, with particular focus on showing the conflicts between sentencing practices by courts, which reveal a departure from prescribed statutory punishments as intended by the legislature. To achieve this, the paper is structured into five parts. Part I provides the introduction. Part II undertakes the conceptual and theoretical analysis of punishment in criminal law. Part III provides the legal framework governing punishment within the Nigerian criminal justice system, while Part IV concerns itself with the application of punishment by the courts during sentencing and the implications, while Part V presents the conclusion and recommendations.

2. CONCEPTUAL AND THEORETICAL ANALYSIS OF PUNISHMENT

Punishment is commonly understood as the unpleasant consequences imposed on an individual for violating the law such as a fine, imprisonment, or loss of property, rights, or privileges. It constitutes a formal response by the State to criminal wrongdoing and serves as an instrument for maintaining social order and enforcing legal compliance.¹⁰ Hart defines punishment as an intentional and authorised imposition of suffering or loss by the State in response to a

⁹ The cases of such departure include; *Joseph Amoshima v State* (2011) LPELR-SC.283/2009; *Dangabar v Federal Republic of Nigeria* (2012) JELR 40322 (CA); *Esai Dangabar v FRN* (2014) 12 NWLR (Pt. 1422) 575

¹⁰ *Garner* (n 7) 1353

legal breach.¹¹ Punishment manifests in various forms including fines, imprisonment, probation, forfeiture, caution, discharge, return of loots,¹² and death. It also involves the infliction of pains, particularly, where caning is involved.¹³ Some punishments are statutorily mandatory while others are discretionary. Contextually, statutory punishments are penalties imposed by statutes for statutory violations.¹⁴ A mandatory statutory punishment is a penalty fixed by statute, leaving no discretion to courts to impose an alternative.¹⁵

Theoretically, punishment has been viewed by Cesare Beccaria, Jeremy Bentham, H.L.A. Hart, and Andrew von Hirsch.¹⁶ Beccaria's classical work emphasises legality, certainty, and proportionality as safeguards against arbitrary punishment.¹⁷ Bentham, adopting a utilitarian approach, conceives punishment as justified only where it prevents greater social harm.¹⁸ Hart advances a "mixed theory," distinguishing between the general justifying aim of punishment (utilitarian reduction of crime) and the principles governing its distribution (retributive constraints).¹⁹ Von Hirsch, on the other hand, develops modern retributivism anchored on proportionality and "just deserts," insisting that punishment must correspond to the seriousness

¹¹ HLA Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford University Press, 1968) 4-5

¹² On return of loots as part of punishment, see ss. 20-26 of The Economic and Financial Crimes Commission (Establishment, etc.) Act, CAP. E1 Laws of the Federation of Nigeria (LFN), 2004

¹³ Penal Code Act, s 77

¹⁴ *Garner* (n 7) 1247; US Legal, 'Statutory Penalty Law and Legal Definition' (Legal Definition List) <<https://definitions.uslegal.com/s/statutory-penalty/>> accessed 23 July 2026

¹⁵ *Garner* (n 7) 1485

¹⁶ *Hart* (n 5)

¹⁷ *Harcourt* (n 1)

¹⁸ J Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford University Press 1996) 158

¹⁹ AV Hirsch, *Doing Justice: The Choice of Punishments* (Hill and Wang 1976) 44

of the offence.²⁰ Howbeit, criminal law exists not only to punish offenders of crimes, but also to achieve the established objectives of punishment while punishing them, as accommodated in the various theories of punishment to wit; retribution, deterrence incapacitation, rehabilitation and restorative theory.²¹

Under retributive theory of punishment, punishing an offender is justified as morally deserved in response to the wrongdoing of such offender, to reflect the principle of “just deserts.” It is punishment inflicted on an offender as a response to a wrongful or criminal act,²² premised on the idea that the offender ought to suffer harm or pains.²³ The theory asserts that the severity of punishment should correspond proportionally to the seriousness of the crime, which undermines the fabric of society, while acknowledging societal outrage and restoring moral balance.²⁴ Its roots has been shown to lie in the Old Testament concept of *lex talionis* 'an eye for an eye.'²⁵ The modern articulation of retributive theory of punishment (retributivism) has been significantly developed by Andrew von Hirsch, who emphasises proportionality and desert as central to just punishment.²⁶ Thus, under this theory, punishment is justified not primarily by its social utility but by the moral culpability of the offender. The principle of proportionality is

²⁰ I Kant, *The Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1996) 105

²¹ MD Hanson and EE Ntekim, ‘Philosophy of Criminal Law and the Implications of Ransom Payment on Criminality in Nigeria’ [2023] 1(1) NJLD 1 – 13

²² The Law Institute, ‘The Enduring Relevance of the Punitive Approach to Crime’ (*Criminal Justice System*, 9 November 2023) <<https://thelaw.institute/criminal-justice-system/>> accessed 23 July 2026

²³ D Cole and C Muscato, ‘Theories of Punishment | Utilitarian, Retributive & Restorative’ <<https://study.com/learn/lesson/>> accessed 26 July 2026

²⁴ J Ryberg, ‘Retributivism and the Dynamic Desert Model: Three Challenges to Dagan and Roberts’ [2021] 40(1) CJE 56

²⁵ Deuteronomy 19:17-21; Exodus 21:23-27

²⁶ AV Hirsch, *Doing Justice: The Choice of Punishments* (Hill and Wang, 1976) 44

therefore central to this theory, which insists on the correspondence of sanctions with the gravity of the offence committed.²⁷

Deterrence theory of punishment is considered as a mechanism designed for preventing crime by discouraging both the offender and members of the wider community from engaging in unlawful conduct. The fear or experience of punishment is expected to discourage future violations of the law. Some scholars²⁸ regard it as forward-looking, in that it operates to prevent further commission of the crime punished. This is consistent with Plato's assertion that the rationale for punishment should not be limited to past actions, but should also aim at shaping future conduct so that people may either completely detest crime or at least alter their behaviour.²⁹ Scholars typically distinguish between 'specific deterrence', which seeks to prevent the individual offender from reoffending, and 'general deterrence', which aims to discourage potential offenders within the society.³⁰ The utilitarian foundation of deterrence is most closely associated with Jeremy Bentham, who argued that punishment is justified only insofar as it prevents greater harm.³¹

Incapacitation theory of punishment emphasises the protective function of criminal sanctions, which operates to restrain offenders in order to prevent or incapacitate them from committing further crimes.

²⁷ I Kant, *The Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1996) 105

²⁸ AF Uduigwomen, *Studies in Philosophical Jurisprudence* (2nd edn Jochrisam Publishers, 2005) 330

²⁹ MJG Bun and others, 'Crime, Deterrence and Punishment Revisited' [2020] 59 EE 2303

³⁰ J Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford University Press 1996) 158

³¹ AN Allott, DC Clarke, and DA Thomas, 'Punishment: General Deterrence' (*Encyclopædia Britannica*)
<<https://www.britannica.com/topic/punishment/General-deterrence>> accessed 6 August 2026

Punishments such as imprisonment and in some jurisdictions the death penalty, serve to protect society by temporarily or permanently removing dangerous individuals from the community.³² In some legal cultures, such as Sharia law, amputation of limbs functions as incapacitation for lesser crimes like theft.³³ The overall aim of this theory is to disable and restrict the offender's ability to commit future crimes. Its concern is not on the motive of the offender, but on his physical power which it seeks to disable or otherwise cripple in order to prevent repetition of the crime.³⁴ However, in modern times the criminal justice system does not approve of barbaric punishments such as amputation,³⁵ except that death penalty is still within the recognised legislations in some countries of the world.³⁶ With this theory, punishment is shown to be necessary to protect the society from crime. Thus, by elimination of offenders such as keeping them behind bars, this theory argues that such punishment incapacitated them from repeating the crime in the society. Thus, punishments of life or long-term imprisonment which deprives offenders of any opportunity of remaining in the society to commit such offence again is an example.

Rehabilitative (reformative) theory of punishment. This theory focuses on the reform of offenders. Rather than concentrating solely on punitive measures, rehabilitation seeks to address the underlying causes of criminal behaviour such as psychological, educational, and

³² *Hirsch* (n 26) 44

³³ *Hanson* (n 4) 151

³⁴ FE Zimring and G Hawkins, *Incapacitation: Penal Confinement and the Restraint of Crime* (Oxford University Press, 1995) 3–5, 42–59

³⁵ On the condemnation of amputation of convicts under Sharia Law in Nigeria, see - 'Political Shari'a?

Human Rights and Islamic Law in Northern Nigeria' <<https://www.hrw.org/report/2004/09/21/political-and-islamic-law-northern-nigeria>> accessed 16 July 2026

³⁶ Countries like China, North Korea and Nigeria are still carrying out executions of people sentenced to death by their Courts.

social deficiencies, including poverty, addiction, and adverse environments, and to transform offenders into law-abiding members of society.³⁷ The central concern of this theory is aimed at making the criminal, as far as possible, a better citizen by means of physical, mental, moral and ethical training. Its basic argument is that crime is not the result of an inherent tendency in a criminal but is much more a product of its environment, his lack of opportunity and training, social pressures, psychological factors and situational problems.³⁸ This theory holds that reformation of a criminal would occur if enough pains are inflicted on the criminal and opportunity given for the criminal to change. Therefore, imprisonment with hard labour, meditation, moralising by sermons, caution of the criminal to live a law-abiding life and training and empowering the criminal to live a law-abiding life³⁹ and other punitive regimes constitute the methods used in achieving the objective of this theory. The focus of this theory is on reforming the criminals more than punishing them. It places much emphasis on rehabilitation of the criminal through peno-correctional institutions in order to secure the transformation of criminals into good citizens.⁴⁰ Correctional programmes, education and treatment initiatives are therefore regarded as essential components of this approach to punishment.⁴¹ Consequently, in most

³⁷ --'Theories of Punishment in Criminal Justice: Definitions, Examples and Case Law' (*The Law Studies*, January 2023) <<https://www.thelawstudies.com/2023/01/theories-of-punishment-in-criminal-justice.html>> accessed 20 July 2026

³⁸ A Ashworth, 'Sentencing' in M Maguire, R Morgan and R Reiner (eds), *The Oxford Handbook of Criminology* (4th edn, Oxford University Press, 2007), cited in UNODC, 'Justifying Punishment in the Community' (*Crime Prevention & Criminal Justice Module 6 Key Issues*) <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-6/key-issues.html>> accessed 20 July 2026.

³⁹ See SL Sanusi, 'Niger Delta Amnesty Programme and FG's \$1b Expenditure' *Daily Independence* (Lagos, 23 July 2014)

⁴⁰ *ibid*

⁴¹ N Walker, *Why Punish?* (Oxford University Press, 1991) 5-10 <<https://archive.org/details/whypunish0000walk/>> accessed 26 July 2026

jurisdictions such as United Kingdom, Canada and some states in the United States of America like New York,⁴² the existence of healthy prisons, training schools, probation of offenders' law, indeterminate sentences, suspension of sentence and pardon are all incidents of this theory.⁴³ They are designed for reforming and rehabilitating offenders in line with the civilised goal of modern criminal justice system and not to torture them or undo their crimes. Accordingly, death penalty means abandonment of this goal for those who suffer it.⁴⁴ It runs contrary to this theory and cannot serve its goal, because it extinguishes life and terminates any possibility of reformation of the criminal.⁴⁵ It spells the defeat of the reformatory end of punishment. Notwithstanding these fallouts, the wind of change has blown for a long time in favour of reformatory or rehabilitative theory of punishment as a result of progressive changes in the penal laws of many countries and the overwhelming concerns of human rights. These have therefore resulted in the shift from the effort to use punishment to reform and rehabilitate the criminal instead of retribution, where criminals could be sentenced to a prolonged period of imprisonment.⁴⁶

More recently restorative justice has emerged as a significant theory within contemporary criminal justice discourse.⁴⁷ This approach emphasises the repair of harm caused by criminal conduct through

⁴² These are some of the jurisdictions where death penalty has been abolished.

⁴³ K Burton, 'Taming the Unruly Criminal Law: Where Do You Draw the Boundaries of Criminal Conduct?' (62nd Australasian Law Teachers Association Conference, Perth, 23–26 September 2007) <<https://eprints.qut.edu.au/13279>> accessed 26 July 2026

⁴⁴ SM Mool, 'Rethinking in terms of Abolition of Capital Punishment' [1989] CLJ 128

⁴⁵ *Singh vs. State of Punjab* AIR 1982 SC 1357-58

⁴⁶ See generally the EFCC Act, CAP. E1, Laws of the Federation of Nigeria, 2010.

⁴⁷ UNODCCP *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (United Nations, New York 1999) 46

processes that involve offenders, victims and the community. It seeks to promote accountability, reconciliation and the restoration of social relationships rather than relying exclusively on punitive sanctions.⁴⁸ The central idea is that restitution and compensation should form the primary objective of criminal justice, through the return of property, reimbursement of expenses, financial compensation for harm, or even restoration of rights of the victims.⁴⁹

These theories collectively influence the formulation and application of punishment within modern legal systems. Legislatures frequently draw upon these philosophical foundations when prescribing statutory punishments for criminal offences, while courts interpret and apply such punishments in light of broader considerations of these theories to do justice in every case before it.

3. LEGAL FRAMEWORK ON PUNISHMENT

Punishment within the Nigerian criminal justice system is primarily governed by the Constitution and statutory provisions enacted by the legislature.⁵⁰ The legal framework governing punishment in Nigerian Criminal Law are to be found in the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) together with the general offences legislation and the technical offences legislation. The general offences legislation include; the Criminal Code Act ⁵¹ and the Penal Code Act.⁵² The technical offences legislation include; Armed Forces

⁴⁸ J Maffly-Kipp and others, 'The Effect of True Self-Attributions on the Endorsement of Retributive and Restorative Justice' (2022) 48(10) PSPB<<https://journals.sagepub.com/doi/10.1177/01461672211044434>> accessed 23 July 2026

⁴⁹ UN, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (GA Resolution 40/34), art 8

⁵⁰ CFRN 1999, s 4

⁵¹ Cap C38 Laws of the Federation of Nigeria (LFN) 2004 (applicable in the southern states).

⁵² Cap P3 LFN 2004 (applicable in the northern states)

Act,⁵³ Robbery and Firearms (Special Provisions) Act,⁵⁴ Terrorism (Prevention and Prohibition) Act 2022, Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, the Firearms Act,⁵⁵ the Violence Against Persons (Prohibition) Act 2015, the Money Laundering (Prevention and Prohibition) Act 2022, Advance Fee Fraud and Other Fraud Related Offences Act 2006, Economic and Financial Commission and other related offences Act, 2004, Administration of Criminal Justice Act 2015, Evidence Act 2011, Police Act 2020 and others. These legal frameworks define criminal conduct and prescribe corresponding sanctions as well as required procedures to be followed in administering criminal justice in Nigeria, thus reflecting the State's assessment of the gravity of offences and the appropriate quantum of punishment necessary. They regulate the nature, scope and application of punishment within the Nigerian legal system and establish the legal basis upon which courts impose sanctions on convicts during sentencing.⁵⁶ Notably, the Constitution provides for the right to life, State power to deprive a person of life,⁵⁷ lays down binding norms that shape criminalisation, prosecution, trial, sentencing and punishment⁵⁸ as well as safeguards for offenders.⁵⁹

Under the Criminal Code Act, punishment is prescribed for a wide range of offences, including murder and manslaughter, which attract death penalty and life imprisonment respectively.⁶⁰ Similarly, the Penal Code Act provides for various punishments, including imprisonment, fines and death, depending on the nature and severity of

⁵³ Cap A20 LFN 2004

⁵⁴ Cap R11 LFN 2004

⁵⁵ Cap F28 LFN 2004

⁵⁶ *Hart* (n 5)

⁵⁷ CFRN 1999, s 33

⁵⁸ *ibid* s 36(1), (6)

⁵⁹ *Kalu v State* (1998) 13 NWLR (Pt 583) 531 (SC); *Okoro v State* (1988) 12 SC 191

⁶⁰ Criminal Code Act, Cap C38 LFN 2004, s 319, 325

the offence.⁶¹ The Armed Forces Act creates service offences,⁶² which attract punishment ranging from life imprisonment to death.⁶³ The Robbery and Firearms (Special Provisions) Act, criminalises robbery and related offences and prescribes punishment of imprisonment and death.⁶⁴ The Terrorism (Prevention and Prohibition) Act 2022 proscribes offences of terrorism and related offences, with corresponding punishments of prolonged period of imprisonment or death. Importantly, the Act provides for structured sentencing provisions in which certain offences attract mandatory penalties, while others permit limited judicial discretion within prescribed statutory ranges.⁶⁵

Punishment regimes provided by statutes such as Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 establishes specific punishment for human trafficking offences. These offences carry mandatory or minimum sentencing requirements. Similarly, Money Laundering (Prevention and Prohibition) Act 2022 provides a range of penalties within defined statutory limits, which are not mandatory thereby permitting judicial discretion within a structured framework. These statutory regimes illustrate the varying degrees to which the legislature intent to impose sanctions that correspond with the seriousness of criminal conduct, while either constraining or accommodating judicial discretion in the application of punishment. Existing procedural legislation, such as Administration of Criminal Justice Act 2015, CFRN 1999 and others play significant roles in the application of statutory punishments by the courts in Nigeria. They establish procedural mechanisms designed to enhance

⁶¹ Penal Code Act, Cap P3 LFN 2004, ss 221–222

⁶² Armed Forces Act, Cap A20 LFN 2004 ss 114–118

⁶³ *ibid* ss 114, 115, 116

⁶⁴ Robbery and Firearms (Special Provisions) Act, Cap R11 LFN 2004 s 1(2)(a); *Akinsanya v State* (2019) LPELR-47889(CA)

⁶⁵ Terrorism (Prevention and Prohibition) Act 2022 ss 2, 3(2)

efficiency, fairness and consistency in criminal trials, including provisions relating to arrest, detention, bail, arraignment, trial, rights of defendants, including plea bargain, sentencing discretion and non-custodial measures.⁶⁶ These provisions have, in practice, influenced the manner in which courts apply statutory punishments, particularly in cases where negotiated outcomes or alternative sentencing options are considered.⁶⁷

A significant feature of the legal framework on punishment in Nigeria is the distinction between discretionary and mandatory statutory punishments. Many provisions of these legal framework confer discretion on courts to determine appropriate sentences within prescribed limits.⁶⁸ The exercise of such discretion is an essential feature of sentencing, as it allows for individualised justice and proportionality in the imposition of sanctions in tandem with the aims of punishments enumerated in section 401 of the Administration of Criminal Justice Act 2015.⁶⁹ However, sentencing practice occasionally reveals situations in which courts place reliance on broader policies, humanitarian, religious or other extraneous considerations that are not expressly contemplated in applicable statutory sentencing framework. In the most recent case of *FRN v Nnamdi Kanu*, the trial court convicted the defendant, on multiple terrorism-related charges.⁷⁰ Although the prosecution sought the maximum punishment of death under section 1(2)(h) of the Terrorism (Prevention) (Amendment) Act 2013, the court exercised its sentencing discretion and imposed life imprisonment citing contextual

⁶⁶ Administration of Criminal Justice Act 2015, ss 270–277

⁶⁷ *FRN v Nwobike* (2018) 5 NWLR (Pt 1612) 350 (SC)

⁶⁸ Advance Fee Fraud Act, 2006, ss 6,8

⁶⁹ A Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press, 2015)72-80

⁷⁰ *FRN v Nnamdi Kanu* (FHC/ABJ/CR/383/2015 Federal High Court Abuja Judicial Division, 20 November 2025)

considerations such as the global trend against capital punishment, mercy, and the sanctity of human life as relevant factors.⁷¹ The court itself acknowledged that the convict merited the death penalty but refrained from imposing it on grounds of mercy and the unpopular nature of death penalty worldwide.⁷² Remarkably, while the exercise of mercy is not alien to sentencing, its reliance is required to remain within legally recognised parameters, since courts are to be guided by hard fact and law rather than sentiment and emotions.⁷³

Conversely, certain offences attract mandatory punishments, which leave little or no room for judicial discretion once guilt has been established. For example, the offence of murder attracts a mandatory sentence of death upon conviction.⁷⁴ In such cases, the role of the court is largely limited to the application of the prescribed punishment without more. Thus, the manner in which courts interpret and apply these statutory punishments as prescribed by law during sentencing ultimately determines whether legislative intent is realised or not.

4. APPLICATION OF PUNISHMENT BY THE COURTS DURING SENTENCING

The application of punishment by courts on convicts during sentencing constitutes an important part of criminal justice administration in all parts of the world. It is at this stage that punishment is pronounced

⁷¹ E Okudaje, 'The Life Sentence of Nnamdi Kanu: Legal and Human Rights Perspectives' (*Mondaq*, 10 December 2025) <<https://www.mondaq.com/nigeria/human-rights/1716342/the-life-sentence-of-nnamdi-kanu-legal-and-human-rights-perspectives>> accessed 16 July 2026

⁷² Premium Times 'UPDATED: Court sentences Nnamdi Kanu to life imprisonment for terrorism' *Premium Times* (Online, 20 November 2025) <<https://www.premiumtimesng.com/news/headlines/837002-updated-court-sentences-nnamdi-kanu-to-life-imprisonment-for-terrorism>> accessed 16 July 2026

⁷³ *Agbi v Ogbeh* (2006) 11 NWLR (PT. 990)

⁷⁴ Criminal Code Act, s 319; see also Penal Code Act, s 221

upon convicts as provided by law. In the United Kingdom, sentencing is guided by both statutory provisions prescribing punishments and structured sentencing guidelines issued by the Sentencing Council.⁷⁵ These significantly restrain trial courts from deviating from legislative intent, subject to appellate scrutiny and human rights-based challenges.⁷⁶ In the United States of America federal system, although the guidelines applied by the United States Sentencing Commission are advisory,⁷⁷ sentencing courts are required to calculate guidelines ranges subject to appellate review.⁷⁸ These systems show a more regulated sentencing regimes where judicial discretion is made to operate within clearer institutional limits, hence ensuring a closer alignment between legislative intent and judicial application.⁷⁹

In Nigerian, the law on the application of statutory punishments, especially where mandatory sentences are prescribed, is well settled. In *Joseph Amoshima v State*⁸⁰ the Supreme Court held that where a statute prescribes mandatory sentence in clear terms, the courts are devoid of jurisdiction to impose any lesser sentence, as no discretion

⁷⁵ See Sentencing Council, 'Terrorism Offences Sentencing Guidelines Published' (27 July 2022) <<https://www.sentencingcouncil.org.uk/news/item/terrorism-offences-sentencing-guidelines-published/>> accessed 23 July 2026

⁷⁶ *Morgan v Ministry of Justice* [2023] UKSC 27; *R v Kelly* [2000] QB 198; *R v Offen* [2001] 1 WLR 253

⁷⁷ United States Sentencing Commission, '2025 Guidelines Manual' <<https://www.ussc.gov/guidelines/2025-guidelines-manual>> accessed 3 June 2026; see also *United States v Booker*, 543 U.S. 220 (2005)

⁷⁸ *Peugh v United States* 569 U.S. 530 (2013); *Gall v United States*, 552 U.S. 38 (2007)

⁷⁹ R Henham, 'Re-thinking Notions of Evidence and Proof for Sentencing: Towards a More Communitarian Model' (2023) 27(3) *International Journal of Evidence and Proof* <<https://journals.sagepub.com/doi/full/10.1177/13657127231172207>> accessed 26 July 2026

⁸⁰ (2011) LPELR-SC.283/2009

exists to be exercised in such circumstances.⁸¹ This position has been consistently reaffirmed in subsequent decisions of the courts, thereby emphasising the binding nature of legislative prescriptions in sentencing.⁸² This implies that the courts are required to give full effect to such statutory punishment as enacted, without recourse to mitigating considerations. However, notwithstanding this strict position, judicial practice, especially at the trial level, reveals a more complex reality. Thus, there have been instances where trial courts employ extraneous considerations in sentencing practice, which leads to the imposition of sentences that are inconsistent with mandatory statutory provisions. In *Richard v State*⁸³, where in a murder case, imprisonment was imposed instead of death sentence, the appellate court unequivocally held that the offence of murder under section 319(1) of the Criminal Code Act attracted a mandatory sentence of death and that the trial court erred in law by imposing a term of imprisonment instead. Once an accused person is validly convicted of murder, the court is bound to impose the prescribed punishment, “no more, no less.”⁸⁴ In *State v. Ali*⁸⁵ where the defendant was not sentenced to death for culpable homicide under section 221 of the Penal Code, the Appellate court set aside the decision and held that no further discretion existed aside from passing the mandatory sentence of death as prescribed by law.⁸⁶ A Similar position was adopted in *State v. Wadari* where the court insisted on imposition of the prescribed

⁸¹ *Okoro v State* (1988)14 NWLR (Pt. 184) 181. See generally, SI. Akpan, ‘An Appraisal of Order 6 Rules 2(3) of the Akwa Ibom State High Court (Civil Procedure) Rules 2009 on the Judicial Process’ (2018) 78

JLPG 119 <<https://iiste.org/Journals/index.php/JLPG/article/view/44779>> accessed 26 July 2026

⁸² *Ibrahim v FRN* (2026) LPELR-83065(SC) 31; *Ayuba v State* (2024) LPELR-62527(SC)

⁸³ (2025) LPELR-81938(CA)

⁸⁴ *ibid* at 54

⁸⁵ (2020) LPELR-50039(CA)

⁸⁶ *State v Isah* (2024) LPELR-61699(CA).

statutory punishment.⁸⁷ In *Paul v State*⁸⁸ the appellate court stated that, ‘the punishment for the offence of murder ... is a mandatory statutory sentence of death which cannot be varied or substituted with a lesser punishment by any Court of law...’.⁸⁹ Notably, the requirement for imposition of mandatory statutory punishment applies to all offences wherever provided. Thus, in *Yusuf v. FRN*⁹⁰ the appellate Court held that section 1(3) of the Advance Fee Fraud and other Related Offences Act 2006 does not give the Court any discretion to impose a sentence outside the mandatory maximum provided. Also, just as a court cannot impose a lesser sentence than that prescribed by statute, it cannot impose a higher sentence than the statutory maximum.⁹¹

The importance of adherence to statutory punishments as prescribed by law in sentencing while recognising the role of judicial evaluation of the facts is sacrosanct. This was reiterated in *Esai Dangabar v FRN*.⁹² Thus a court lacks discretion to substitute a lesser or higher sentence where the legislature has imposed a fixed and mandatory penalty.⁹³ This highlights the balance between statutory prescription and judicial discretion in sentencing. Notwithstanding this established position, some trial courts still impose sentences incompatible with the mandatory statutory provisions where there is no discretion to do so. This illustrates the practical inconsistency that continues to exist in the application of statutory punishments by courts within Nigeria Criminal justice system, which pitches the judiciary against the legislature.

⁸⁷ (2023) LPELR-61564(CA)

⁸⁸ (2019) LPELR-47599(CA)

⁸⁹ *ibid*

⁹⁰ (2017) LPELR-43830(SC)

⁹¹ *Ibrahim v FRN* (2026) LPELR-83065(SC)

⁹² *FRN* (2014) 12 NWLR (Pt 1422) 575 (SC)

⁹³ *Mohammed v. A-g, Fed* (2020) LPELR-52526(SC); *Abiodun v State* (2025) LPELR-82524(CA)

Although, there is a growing concern that judicial application of statutory punishments should align with evolving modern world considerations on prohibition of death penalty, human rights concerns, fairness and the effectiveness of punishment, the same should be done in a manner which aligns strictly with legislative intent. This is to ensure the prevalence of a situation where judicial discretion is exercised without undermining legislative authority in achieving the fundamental objectives of punishment as intended by the legislature in Nigeria.

The practice of not imposing the mandatory statutory punishments by courts as provided by law has enormous adverse effects on the Nigerian criminal justice system. Firstly, it represents a violation of the rule of law and the doctrine of separation of powers as enshrined in the CFRN 1999.⁹⁴ Such non-application of the punishment as prescribed by the legislature undermines legislative powers recognised by law.⁹⁵ Secondly, it births legal uncertainty, unpredictability and inconsistency in sentencing. This is so because mandatory punishment provisions exist to ensure the goals of uniformity, predictability and consistency during sentencing by courts when applied as prescribed by the legislature. Variations of the application of statutory punishment by the courts defeat these goals, breed sentencing disparity and open the floodgate for the destruction of the principle of equality before the law.⁹⁶ Thirdly is the loss of the potency of statutes in Nigerian criminal justice system. The continuous practice by courts in non-application of the mandatory punishment as prescribed by statute makes the statutes a living dead or otherwise exist as advisory. Fourthly, it undermines the deterrence objective of punishment in Nigeria. The mandatory statutory punishment reflects a policy choice by the State through its

⁹⁴ See CFRN 1999, ss 4, 5, 6

⁹⁵ CFRN 1999, s 4

⁹⁶ *ibid*, s.17

legislature aimed at setting a severe minimum punishment for crimes such as terrorism, kidnapping, armed robbery and others to deter the commission of such crimes. The practice of application of less punishment than prescribed undoubtedly represents a clear deviation from what was intended thereby weakening the deterrent effectiveness of punishment. Fifthly, it undermines public confidence in the judicial system. Usually, where punishment on a particular crime is applied more than or less than what is prescribed by law and different from what has been applied in similar cases, such punishment is considered as occasioning injustice on the state and victims.

5. CONCLUSION AND RECOMMENDATIONS

Punishment remains a central instrument through which criminal law maintains social order, protects societal interests and reinforces legal norms. In Nigeria, the legislature defines criminal conducts and prescribes corresponding punishments, while the courts are responsible for their application, particularly where such punishments are mandatory. This study has shown that the non-application of mandatory statutory punishments by courts is often inconsistent with legislative intent and is influenced by contemporary concerns such as the abolition of the death penalty in some jurisdictions, human rights considerations, fairness and justice. While judicial discretion remains essential in discretionary sentencing regimes, it is required to operate within statutory limits to avoid conflict between legislative intent and judicial practice. Consequently, where no discretion is permitted by law, courts are required to apply mandatory statutory punishments as prescribed in order to give effect to the objectives of punishment intended by the legislature.

Accordingly, this study recommends strict compliance by courts to the application of mandatory statutory punishments during sentencing as prescribed by law. This would strengthen legislative policy on

deterrence, promote consistency, uniformity and predictability in criminal justice administration, enhance public confidence in the judiciary and reduce sentencing disparity. Considerations relating to international human rights law and the interests of crime victims should not influence the application of mandatory statutory punishments where such considerations are not contemplated by the statute. Their relevance is more appropriately reflected in discretionary sentencing regimes, where courts are permitted by law to adjust sentences within prescribed limits. Doing otherwise, would be antithetical to the letters and spirits of the legislative provisions governing mandatory statutory punishments. It would also undermine the legislature and its function, thereby creating avoidable institutional tension between it and the judiciary. Therefore, the courts should only exercise sentencing discretion both judiciously and judicially and, only in cases not requiring mandatory statutory punishments.

Finally, where a particular statutory punishment is found ineffective in achieving its intended objectives or not aligned with evolving global standards, same should be changed through legislative amendment. This could be done through periodic reviews of criminal sanctions to ensure that existing punishments remain effective, constitutionally compatible and responsive to contemporary realities within the criminal justice system. Accordingly, statutory punishments that have become obsolete, anachronistic or ineffective should be reviewed, amended or repealed as appropriate. Until such amendments are made, mandatory statutory punishments should be applied by courts during sentencing as prescribed by law and without variation. This would help eliminate existing conflicts between the legislature and the judiciary within the criminal justice administration in Nigeria.