



RETHINK ON RESTORATIVE JUSTICE: A RECIPE TO RESTORING PUBLIC CONFIDENCE IN THE NIGERIAN JUDICIARY **

Abstract

Restorative justice is as old as the society and will remain fresh in the mind of every man in perpetuity. In every traditional society whether cephalous or acephalous, restorative justice is mostly employed in all matters resolved under native law and customs. The objective of which is to strengthen human relation and to maintain harmony in a community. This was aimed at ensuring that parties are returned to status quo ante at the end of the proceedings. The scenario appeared to be the order before the British intrusion in traditional governance in Africa. The result was win-win approach. However, with the intrusion of western adjudication methodology in Africa, followed by win-lose scenario antecede to it, Africans appear not to repose much confidence on the judiciary as the outcome of same is always visited with side-comments. This paper became germane in the light of the growing concerns on the need to restore public confidence in the Nigerian judiciary. The paper adopted doctrinal research method. It was discovered among others that lack of public confidence on the judiciary steams on one hand from the technicalities entreated in judicial proceedings, delay in justice delivery, win-lose character of court system and other extraneous factors surrounding justice delivery. On the other hand, adversarial system of judicial jurisprudence contributed to the yawning gap in public confidence in judiciary. It was based on the above that recommendations were made.

Keywords: Restorative, Justice, Judiciary, Confidence, Nigeria.

1. Introduction

Restorative justice is a system of justice that commands a wrong party to replace injury caused to the other party for the purpose of placing him in a position that it would appear that such injury never took place at all. This is a justice model akin to African jurisprudence. In African jurisprudence, the aim of justice system delivery is to ensure the reparation of the loss and to create sanity in the society. Punishments like banishment, excommunication, ostracism among others were employed in severe or abominable cases in addition to making offender or offender's family to retribute the community through cleansing and purification of desecrated norms. The African system of justice delivery was geared towards creating happiness in the greater majority.

Theologically, the book of Leviticus 6: 1-5 gives account of restorative justice as ordered by God almighty through the instructions given to Moses thus:

AND The Lord spoke unto Moses, saying, if a soul sin, and commit a trespass against the LORD, and lie unto his neighbor in that which was delivered him to keep or in fellowship, or in a thing taken away by violence, or hath deceived his neighbor, or have found that which was lost, and lieth concerning it, and sweareth falsely; in any of all these that a man doeth, sinning therein.

Then it shall be, because he hath sinned, and is guilty, that he shall restore that which he took violently away, or the thing which he hath deceitfully gotten, or that which was delivered to him to keep, or the lost thing which he found. Or all that about which he hath sworn falsely, he shall even restore it in the principal, and shall add the fifth part more thereto, and give it unto him to whom it appertaineth in the day of his trespass.¹

*Igwe Onyebuchi Igwe, PhD Senior Lecturer, Faculty of Law Nnamdi Azikiwe University Awka Nigeria. Email: igwelaw2010@gmail.com. Orcid id: 0000-0002-0443-045x Tel: +234 7038846290

**Sylvester Chijioke Odoh, PhD Private Legal Practitioner based in Abakaliki Ebonyi State. Tel: +234 8036014983

¹ The *Holy Bible* King James version (England: Trinitarian Bible Society, nd) 115; Numbers 5:6-7; Matt 5: 23-4; Luke 19:8; 2Cor 2:6-8, 10-11, Gal 6:1 among others.



The practice of *Diyya* among the Islamic faithful is an example of restorative justice. *Diyya* under Islamic criminal justice delivery is the financial compensation paid to the victim or victim's family in case of a violent crime.² The above biblical and quranic injunction produces a cumulative effect to the extent that the best approach to justice especially in minor cases is restorative justice. This is the type of justice system indigenous to most African communities before the British intrusion to African native law and customs. It is in the light of the above that this paper became imperative for the purpose of the juxtaposition of the call to reinvigorate the restorative justice. This if properly integrated in the Nigerian justice system would be a recipe to nurturing public confidence in the Nigerian judiciary.

The paper will do a jurisprudential exposition of its components to *wit*: justice, restorative justice, judiciary and restorative justice: a recipe to restoring confidence in the Nigerian judiciary. The paper will at the end draw a conclusion and provide recommendations for the purpose of straightening Nigerian legal system and create awareness among the victims of crime, offenders and the public on the need to imbibe restorative justice methodology in resolving especially trivial offences.

2. Justice

Justice as a concept has no straitjacket definition. It can be described as the end-product of every given situation. In law, justice flows from the administration of law. Black's Law Dictionary describes justice as 'The fair and proper administration of laws.'³ Accordingly, justice represents fairness, good principle, rightness, quantum *meruit*, giving every member of a system what is due to each, equal distribution of wealth of the nation, infrastructure, merit in competition, equal opportunity to participating in governance, federal character in employment opportunity, among others. Justice represents many things to many people but in this concept, justice is viewed in context of the end-product of administration of law that produces happiness to the greater number of the society.

3. Restorative Justice

Restorative justice is a curative justice. Its aim is healing the injury inflicted on the victim of the wrong by the wrongdoer. Black's Law Dictionary defines restorative justice as 'An alternative delinquency sanction focused on repairing the harm done, meeting the victim's needs, and holding the offender responsible for his or her actions.'⁴ It uses balanced approach by producing less restrictive disposition while holding the offender responsible for the purpose of providing relief to the victim. Crisostomo argues that restorative justice gives opportunity to the people to realize their mistakes and improve on them.⁵ Braithwaite proposes that restorative justice is: 'A process where all stakeholders affected by an injustice have opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm.'⁶ Bohm and Haley submit that restorative justice is the 'process whereby an offender is required to contribute to restoring the health of the community, repairing the harm done, and meeting victims' need.'⁷ Restorative justice is in consonance with the African philosophy of social control. It is homed and breaded in native law and customs of many societies indigenous to Africa. It reposes confidence on parties to crime that at the end of the proceedings, justice must surely serve its right purpose.

² AF Absar, Restorative justice in Islam with special Reference to the Concept of *Diyya* *Journal of victimology and Victim Justice* Vol.3 Issue 1 [www.https://journals.sagepub.com/doi.org](https://journals.sagepub.com/doi.org) accessed on Saturday 25th March 2023.

³ BA Garner, *Black's Law Dictionary Seventh Edition* (USA: West Group St. Paul Minn, 1999) 942.

⁴ BA Garner, *ibid*, p.1428.

⁵ R Crisostomo 'The Effectiveness of Restorative Justice Practices: How to Restore Justice for At-Risk Youth' www.dominican.edu/academics/education.

⁶ J Braithwaite, 'Restorative Justice and De-Professionalization' (2004) 13(1) *The Good Society*, pp. 28-31.

⁷ RM Bohm and KN Haley, *Introduction to Criminal Justice* (4th edn, New York: McGraw-Hills, 2005) p. G7.



The journey towards the reformation of the criminal justice system has led to the introduction of the Administration of Criminal Justice Act (ACJA) in 2015 by the Federal Republic of Nigeria. The ACJA knocked out the Criminal Procedure Act and Criminal Procedure Code hitherto applied to the Southern and Northern Nigeria respectively. Although prior to the birth of ACJA in 2015, some states component to Nigeria had trekked on the fast lane to introducing their Administration of Criminal Justice Law.⁸ The purpose of these laws is to enact criminal law administration in Nigeria with local content and in tune with indigenous practices.

ACJA 2015 appears to have some extent addressed the grey areas which people have been yawning for reforms since the robbery was committed against the African culture of settlement of dispute *via* the intrusion of Criminal Code Act and Penal Code. ACJA made efforts to restructure criminal justice delivery through blending same with African model of criminal justice. In swift response to the yawning of Nigerians, ACJA appears to recognize restorative justice especially in trivial offences.⁹ In justification of this, Section 453 of ACJA, 2015 provides for plea bargain as part of restorative justice focused on the need of the society, a cardinal objective of African criminal justice delivery. Section 270 of the ACJA, 2015 specifically provides that ‘(1) Notwithstanding anything in this Act or in any other law, the prosecutor may: (a) receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; or (b) offer a plea bargain to a defendant charged with an offence.’ The Act requires that an agreement for a plea bargain where an offer for it is made must be concluded before the defendant opens his defence.¹⁰ In this circumstance, the need to serve the interest of justice, the interest of the public, public policy and prevent abuse of legal process play paramount in a condition to offer or acceptance of a plea bargain by the prosecution.¹¹ Plea bargain is a negotiated plea. It is ‘A negotiated agreement between a prosecutor and a criminal defendant who pleads guilty to a lesser offence or to one or more multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of other charges.’¹² Kehinde argues that ‘Although now formalized, the concept of plea bargain has long been in existence in the traditional African society where a person who is accused of an offence would usually receive lesser punishment if they confess to the commission of the crime.’¹³ Plea bargain is often employ in money laundry matters especially when it will be more beneficial to the recovery of the tax payers money and invest it in their priority than sending the culprit to correctional centre where the tax payers’ money would again be spent on his upkeep.

In similar situation, ACJA, 2015 provides for the award of costs, compensation, damages and restitution to the victim of crime. In its specific provision, Section 319 of ACJA, urges the court at any stage or during judgment to ‘order the convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed on the defendant, where substantial compensation is in the opinion of the court recoverable by civil suit.’ ACJA also empowered the court to order the defendant to pay a sum of money to defray expenses incurred in the prosecution or medical treatment of the person injured by the convict as a result of the offence¹⁴ or to pay compensation to the innocent purchaser of property in respect of which the offender has

⁸ States like Anambra and Lagos introduced their Administration of Criminal Justice law in 2010 and 2007 respectively.

⁹ Minor offences are used interchangeably with misdemeanor. Misdemeanor is an offence that is less serious than a felony and it is usually punished by imprisonment for not less than 6months but less than 3years. The Administration of Criminal Justice Act , 2015, Section 494.

¹⁰ of ACJA, 2015, Section 270(2).

¹¹ *Ibid*, Section 319(3).

¹² *Black’s Law Dictionary, op cit*, p.1270.

¹³ A Kehinde ‘A Discourse of the Administration of Criminal Justice Act, 2015’ akehindeandco.com <accessed on Sunday 4th November, 2018>

¹⁴ *Ibid*, Section 319(b).



been committed who has been compelled to forfeit the same.¹⁵ The above awards may be made against the convict in addition to or in lieu of the appropriate punishment prescribed by law.¹⁶

In similar scenario Administration of Criminal Justice Law, Anambra State of Nigeria, (ACJL), 2010 provides for award of cost against the convict in favour of a private prosecutor or to the victim of the crime in addition to any penalty imposed on the convict.¹⁷ Cost may be awarded against a private prosecutor or complainant in favour of an accused person if the accusation against the accused person is false.¹⁸ Akinseye noted that the ACJA, 2015 has addressed the ugly trend where victims of crimes were neglected and left without any form of compensation 'even when the offender has been found guilty and sentenced.'¹⁹ By way of ameliorating and pacifying the community which norms and value was desecrated by the end products of the criminal outing of an offender, Section 460 of the ACJA provides for 'community service in offence that does not involve the use of arms, offensive weapons, sexual offences or for the offence which punishment exceeds imprisonment for a term of three years.'

The journey in reversal to African system of justice delivery began to gather momentum when it became obvious that more resources are injected in the prosecution of some minor crimes which ordinarily would be settled without causing harm to the society. Unfortunately, despite the provisions of ACJA aimed at restorative justice in Nigeria, restorative justice has not taken its rightful place in Nigerian criminal justice proceedings. The intendment of ACJA is to the effect that compensation, cost, parole, suspended sentence or community service should flow from the judge who appears to be a distant third party in the case. In the same vein, plea bargain is a product of negotiation between the prosecution and the defendant. In plea bargain arrangement, the state and offender appear to be the beneficiary of the end product of the negotiation while the crime victim remains silent in his suffering.

It is on this note that it became imperative that a full restructuring of Nigerian criminal justice delivery is carried out in a bid to introduce a legal regime that defines the scope and extent of the operation of restorative justice in Nigeria.

4. Judiciary

Judiciary is synonymous with courts, judges, grand kadis, kadis and magistrates. It is an arm of the government vested with the power to interpret the laws and adjudicate over disputes brought before it. Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that the judicial power of the federation or the state shall be vested in the courts to which the section relates.²⁰ Court is seen as an arm of government that adjudicates on disputes and administers justice.²¹

Chapter VII of the Nigerian constitution provides for the judicature. The hierarchy of courts under the Nigerian legal system includes the Supreme Court, the Court of Appeal, the courts of coordinate jurisdictions (federal and state high courts; Sharia Court of Appeal for federal Capital Territory and State, Customary Court of Appeal for Federal Capital Territory and State). The Supreme Court is the highest court in the Nigerian judiciary. Matters adjudicated at the Supreme Court are mostly appeals arising from the decision of the Court of Appeal except in areas where the constitution confers original jurisdiction on the Supreme Court by virtue of Section 232 (1) (2) of

¹⁵ *Ibid*, Section 321(a).

¹⁶ The Administration of Criminal Justice Act, 2015, Sections 319 to 328. See also Section 454 (3) (4).

¹⁷ The Administration of Criminal Justice Law, Anambra State 2010, Sections 385 and 397.

¹⁸ The Administration of Criminal Justice Law, Anambra State 2010, Sections 386 and 390; section 322(1) of the ACJA, 2015.

¹⁹ Y Akinseye-George 'Summary of the Innovative Provisions of the Administration of Criminal Justice Act, 2015' www.censolegs.org/publications/6 <accessed on Sunday 4th November, 2018>.

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 239 (1).

²¹ B.A Garner, *Black's Law Dictionary Seventh op.cit*, p.405.



the Constitution. Such matters include dispute between the federation and a state or between states as long as the dispute involves any question of law or fact on which the existence or extent of the legal right of a state arises.

Court of Appeal receives appeals from high court of states, federal high court, high court of Federal Capital Territory, Customary Court of Appeal of a State and Federal Capital Territory, Sharia Court of a State and Federal Capital Territory and election tribunal. Court of Appeal exercises original jurisdiction on dispute concerning the office of the President of the Federal Republic of Nigeria and Vice President to the extent of determining the question arising on whether: a person is validly elected into the office of the President or Vice President; the tenure of the President or Vice has elapsed or the office of the President or Vice President has been vacant.²²

High Court of a state is commonly referred to as a court of unlimited jurisdiction. However, the jurisdiction of a state high court is limited to the extent that it has no power to assume jurisdiction on dispute between the federation and a state or between states as long as the dispute involves any question of law or fact on which the existence or extent of the legal right of a state arises,²³ dispute on valid election of a person into the office of the President or Vice President of the Federal Republic of Nigeria, or whether the tenure of the President or Vice has elapsed or the office of the President or Vice President has been vacant.²⁴ A state high court does not have the jurisdiction to determine the validity of the election of a person into the office of the state Governor or Deputy Governor, Senatorial seat, House of Representative seat or House of Assembly seat. A state high court does not have power to entertain dispute arising from the items listed in Section 251 of the Constitution.²⁵

Sharia Court of Appeal is established to exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law.²⁶ In other words, Sharia Court of Appeal determines questions arising from marriage conducted in accordance with Islamic law, wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim. It also exercises jurisdiction on matters relating to infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirmed or where by consent, parties agreed to refer a dispute to the court for determination in accordance with Islamic law.²⁷ Customary Court of Appeal is established to play appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.²⁸ Outside the courts listed in the constitution, Section 6 (4) empowers the National or State Assembly to establish any other court. For this purpose, courts like magistrate courts, district courts, area courts, customary courts, sharia courts among others have being established in various states for the complementing courts of record in the administration of justice.

The above courts in their hierarchy constitute the judicial arm of government. However, the modus operandi of the courts remains a colonial hangover. It is in the bunch of this that the growing cold feet in the public confidence in judiciary today appear to have widened.

²² Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 6(1)(2).

²³ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 232 (1) (2).

²⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 6(1)(2).

²⁵ Such matters include: revenue of Government of the Federation, taxation of companies, customs and exercise duties and export duties, banking, banks, other financial institutions, Companies And Allied Matters Act, copyright, patent, designs, trademarks, passing-off, industrial designs, merchandise marks, business names, commercial and industrial monopolies, combines and trust, standard of goods and commodities and industrial standards, admiralty, diplomatic, consular and trade representation, citizens, bankruptcy and insolvency, aviation and safety of aircraft, arms, ammunition and explosives, drugs and poisons, mines and minerals, weight and measures treason and treasonable felony among others.

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 262(1).

²⁷ Ibid, Section 262(2).

²⁸ Ibid, Section 267.



5. Restorative Justice: A Recipe to Restoring Confidence in the Nigerian Judiciary

It is beyond argument that restorative justice is a recipe to restoring public confidence in the Nigerian judiciary. Adewoye noted that ‘Before the advent of British colonial rule in Nigeria, the traditional legal and judicial systems in operation in the communities that make up the country were largely aimed at reconciling disputants in a conflict and maintaining peace and harmony within the society.’²⁹ The philosophy of African criminal jurisprudence is on restitution. It is believed that crime creates tripartite effects to *wit*: effect on the offender, effect on the victim and effect on the public. Africans believe more on inquiring into the cause of the antisocial behaviour of the offender and the way of healing the wound caused by his criminal activities on the victim and the public. This is the basis of restorative justice.

In scenario like the present, where the collective bond of the society is broken as a result of the introduction of an alien system of justice akin to Whiteman methodology, the confidence had in such system if ever existed is fast eroded. For instance, where lies the confidence of a victim of stolen fowl if he has to spend money on initiating criminal proceeding against the offender and followed it up to the conclusion only for the offender to either be discharged on technical grounds or convicted but ordered to pay fine into the government coffers or serve a prison term. In the case of the later, the victim will indirectly feed the offender in the custody through his payment of tax. Is more confidence not reposed in the court if after conviction, the convict is ordered to pay the cost of the fowl to the victim plus some expenses incurred by the victim in the course of accessing the justice system?

Omale, in his contribution noted that the goal of restorative justice is to enable offender, victim and the community participate in the criminal justice delivery process which will guide them to bringing solution and heal the damage caused by the offence.³⁰ By the nature of this justice model, a win-win approach is the end –product. The hope of happy ending in the system creates confidence in the minds of those who present their dispute for resolution. It is the suggestion of this paper that if a rethink can be had on restorative justice by the judiciary, it will surely be a recipe to restoring public confidence in the system.

6. Conclusion and Recommendations

It is the belief of every patriotic Nigerian that the ‘Labour of our Heroes past shall not be in vain.’ The labour of our forefather through the introduction of a system of criminal justice delivery nurtured under native law and customs appears have been in vain *via* the colonial intrusion in native administrations in Africa. It is in response to the above that this paper laboured to fruitfully call for the reintroduction of restorative justice model in our present day justice delivery as a way of boosting public confidence in the Nigerian judiciary. The paper is not ignorant of the challenges that may flow from the call for the reintroduction of restorative justice in Nigeria.

Challenges must surely spring up from various stakeholders such as the offender, the victim and the public. This flows from the fact that criminal prosecution has permeated through the veins of most Nigerians to the extent that many see punishment model as the bye-product of criminal litigation. The view is not strange because of the current legal regime that makes the state the owner of the offence. In this regard, the victim or the community which its value was desecrated is a mere nominal complaint that may be called to give evidence in court at the discretion of the prosecution. In most cases, technicalities and probably lack of seriousness on the part of the prosecution may lead

²⁹ O Adewoye, *The Legal Profession in Nigeria* referred in ON Ogbu, *Modern Nigerian Legal System* (Enugu: CIDJAP Press, 2002) p.176.

³⁰ DJ Omale, ‘Restore Justice and Alternative Dispute Resolution Model: Opinions of Victim of Crime, and Criminal Justice Professionals in Nigeria’ unpublished Ph.D Thesis submitted to DeMontfort, UK: University of Leicester, 2009) pp. 20-21.



to the victory of a person who ought to be guilty. When this happens, the public blame the court and reduce the confidence reposed on the judiciary. Outside the above, delays in justice delivery have watered-down the previously held confidence the public had on the judiciary. The delays are not only the products of the court but lawyers who rely on flimsy excuses to seek adjournment in court. However, in any delay in justice delivery, the court is usually blamed by the public. Again, the cost effect of training judicial officers to adapt to the methodology of restorative justice is a hurdle that needs to be surmounted.

A call to reintroduce restorative justice is a clarion call. It is a call to restructure the justice system in line with the reality of time and to pave way for enthronement of peace and harmony in the society. It is no longer breaking news that Nigeria is bedeviled with various threats to national security despite numerous efforts of stakeholders in the administration of criminal justice. A close look at the scenario will unearth that time has come when Nigeria needs to think outside the box by overhauling her judicial system and administration of justice in line with our culture and promote friendly relation in case management system. It is in humility of this paper that a call to reinvigorate restorative justice has become a clarion call. This is because of the benefits that flow from restorative justice. For this purpose, restorative justice reduces post traumatic effect of crime on the victim. Some crime especially violent crime creates anxiety, stress or depression on the victim. This may flow from the nature of weapon used by the offender, the attack and sometime verbal intimidations. Sometime a victim of violent crime will remain in perpetual fear of reoccurrence of the incidence but where restorative justice is employed in case management, the victim will have the opportunity to discuss with the offender, ask certain questions and be relieved of his stress.

Restorative justice can reduce recidivism. Where an opportunity is created for the arbiter to find out the reason why offender committed the offence, it will surely bring out the best approach to handle the offender for the purpose rehabilitating him and lead him to be law abiding and self-supporting in the society. On the part of the public, it is hoped that restorative justice will serve the need of the public. This is because, where the community which social value was desecrated is made to participate in the process of solution to the problem, the community will surely be happy. In the above light, the tripartite justice ways will be fulfilled.

The paper commends the effort of the Nigerian Bar Association through her Institute of Continuing Legal Education for taking the bold step in proposing certificate training on Restorative Justice. It is the hope of this paper that the training will open the eyes of the legal practitioners and judicial officers towards the straightening of criminal justice delivery through the integration of restorative justice.