# THE JURISPRUDENCE OF RESTORATIVE JUSTICE FOR VICTIMS OF CRIME IN NIGERIA*

**Abstract**

*In Nigeria, as well as in every other part of the world, crimes of various dimensions are committed daily. Nigeria's laws for a long period of time centred upon prescribing punishments that can be meted out on offenders. Some of such laws had the interest of the victim or compensation and restitution as its main purpose. The paper is aimed at appraising the jurisprudence of restorative justice to victims of crime under the present criminal justice system with a view to ascertain the extent to which restorative justice can be applied to victims of economic and financial crimes in Nigeria. The study adopted doctrinal method of research anchored on appraisal and evaluation of the applicability of the legal framework for bringing restorative justice to victims of economic crimes. It was found that there is dearth of restorative justice aimed at restoring the victims of economic and financial crime to their status quo ante. The principal statutes prohibiting criminal acts in general, to wit: Criminal Code Act and the Penal Code Act focus mainly on punishing the perpetrators of the crime. The paper recommends that these two principal statutes should be reviewed and amended to make provisions enabling traces and recovered scammed fund and its proceeds returned to the victims of such fraud or criminality. This is in keeping with the utilitarian purpose of the law which is not only sought in the interest of the society in general but also to the victims of crime in particular.*

**Keywords**: Criminal, Jurisprudence, Restitution, Reformation, Retribution and Justice

## 1. Introduction

Prior to the British colonization of Nigeria and the introduction of Common Law and Civil Law based enactments on criminal law, there were African systems of criminal justice. In some areas particularly the states in the northern part of Nigeria, Islamic law applied, while in others i.e. the states in the southern part of Nigeria, Customary Law was applicable. In both systems, there were courts and tribunals administering justice, according to the dictates of the law, to the people in their domain.[1]The traditional African legal system is basically conciliatory in character in its approach to dispute settlement.[2] This is unlike the British or European law generally, which makes fine distinction between criminal and civil wrongs. While the purpose of civil law is to compensate the victim of wrongful conduct for the injury he has sustained, criminal law on the other hand, seeks to forbid and prevent conduct that unjustifiably inflicts or threatens substantial harm to individuals or public interest.[3] Nigeria inherited the inherited, by means of the received English law, the English criminal justice system, which is copiously entrenched in our dual criminal law codes, to wit: the Criminal Code Act applicable in the southern states of Nigeria and the Penal Code Act which is applicable in the northern states of Nigeria. The Criminal Code Act[4] and the Penal Code Act[5] prescribe punishments that can be meted out on offenders. None of these punishments listed in the sections of these statutes could be pin pointed to have the interest of the victim as its main purpose. In other words, all our laws have been hitherto, focused on retributive justice. Generally, despite all the disposition methods available, the major concern of a victim in economic and financial crimes cases centres on the return of his property and/or funds fraudulently obtained and diverted; after which he develops cold feet as regards any other invocation of the criminal process if same fails. [6] Victims' remedy is an adjunct of an increasingly popular concept of restorative justice, which has been canvassed severally and is gaining acceptability in so many

***By Ajibolu AFOLABI,** Senior Studies Fellow, Studies Department, National Judicial Institute (NJI), Mohammed Bello Centre, Jabi-Abuja. Email: ajibolabi84@gmail.com, ajibolabi@yahoo.com. Phone: 2348068071900; and

***Eseni Azu UDU, PhD (Nigeria), PhD (NAU),** Senior Lecturer in the Faculty of Law of Ebonyi State University, Abakaliki – Nigeria. P.O. Box 1397, Abakaliki, Ebonyi State, Nigeria. Email: udu.eseni@ebsu.edu.ng. Phone: 2348061397135.

[1] M. Nasir, 'Criminal Justice: Restitution, Compensation and Victims Remedies', *Compensation and Remedies for Victims of Crime* (Lagos: Federal Ministry of Justice, 1990) p. 16.

[2] O. Agbede, 'Modalities for the Enforcement of Financial Compensation for the Victims of Crimes' in *Compensation and Remedies for Victims of Crime*, (Lagos: Federal Ministry of Justice, 1990) p. 23.

[3] *Ibid.*

[4] Cap. C38 Laws of the Federal Republic of Nigeria, 2004. Section 17 of the Criminal Code mentions death, imprisonment, whipping, fine and forfeiture as punishments which may be inflicted under the Code.

[5] Cap. 89, Laws of Northern Nigeria, 1963. The punishments prescribed in section 68 of the Penal Code are similar to those prescribed in the Criminal Code.

[6] The Report on the Review of Administration of Criminal Justice in Ogun State, 1981, para 3.11.2.2.2.1. Professor Femi Odekunle further confirms in his research, that victims of crime in Nigeria prefer restitution and compensation to the sentencing of their victimizers to imprisonment or fine. See also F. Odekunle, in 'Victims of Property Crime in Nigeria: A Preliminary Investigation in Zaria' in *Victimology: An International Journal*, Vol. 4, No. 4, 1979; F. Odekunle, 'Restitution, Compensation and Victims Remedies: Background and Justifications' in S. Adetiba (ed.), *Compensation and Remedies for Victims of Crime*, (Lagos: Federal Ministry of Justice, 1990), p. 157.

countries.[7] Restorative justice has been identified as the process whereby parties with a stake in the particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.[8]

The use of restorative justice in criminal matters as an alternative dispute resolution strategy has a major purpose of healing the wounded victim financially, socially and emotionally.[9] While the offender is expected to rectify the harms he has inflicted, it seeks to reintegrate both parties back into society as contributing, law-abiding citizens. Restorative justice advocates restitution to the victim by the offender, seeking to make people whole, rather than retribution or punishment inflicted by the state against the offender.[10] Notably, the Nigerian Police Force is empowered by statute to enforce restorative justice principles.[11] The applicability of this laudable provision is usually constrained by avarice and corruption prevailing in the police force as such funds and properties are usually appropriated by officers without any official records of their custody.[12] This paper would discuss, among others, the theories of restitution justice; and the concept of victim of crime, compensation and restitution. It will most importantly appraise the jurisprudence of the principle of restorative justice.

**2. Theories of Criminal Justice**

The theories of criminal justice constitute the branch of philosophy of law that deals with criminal justice and in particular punishment. The theories of criminal justice have strong connection to other areas of philosophy, including political philosophy and ethics as well as the practice of criminal justice. Essentially, the life of criminal law begins with criminalisation.[13] Every offence or crime must be defined by a law and the punishment prescribed therein. There are however, three theories of criminal justice which shall be discussed hereunder.

**Theory of Restorative Justice**: is a theory of justice that emphasizes the utility of repairing the harm caused by criminal conduct. In this process, all stakeholders including the law enforcement agencies, the public prosecution unit of government, and the courts, must cooperate in mutually complimentary activities to accomplish the purpose of restorative justice. It is believed that a successful enthronement of restorative justice can lead to transformation of human relationships, communities and a people. In other words, the acts or practices reflective of restoration will respond to crime by taking steps to repair the harm orchestrated by the crime. The process of achieving restorative justice must involve all stakeholders, and the outcome of the process will transform the traditional relationship between communities and the government in preventing future commissions of crime by both instant and prospective offenders.[14] Across jurisdictions, restorative justice has been embraced with unbridled enthusiasm by their respective criminal justice administrators.[15] The efficacy of restorative justice based on the cumulative effect of the shame brought on the perpetrator of the crime and his ultimate restoration of the victim, leading to his reintegration to the society.[16]

**Theory of Retributive Justice**: This theory argues that everyone who commits crime should suffer punishment as a deserving consequence of his condemnable act. This punishment shall be administered by a competent court of jurisdiction and it must be in proportion to the harm occasioned by the crime as prescribed under relevant law proscribed the act. It is, of course, unlawful to administer a punishment that is out of proportion with the harm

[7] Restorative Justice has received favourable reception and acceptance in a number of countries; among which are Canada, Cuba, France, Germany, Italy, Mexico, New Zealand, Poland, the Republic of Korea, the United Kingdom, as well as the United States.

[8] T. Marshall, 'Seeking the Whole Justice Repairing the Damage: Restorative Justice in Action', a Paper Presented at the ISTD Conference, March 1997, in D. Peters, *Alternative Dispute Resolution (ADR) in Nigeria Principles and Practice* (Lagos: Dee-Sage Nigeria Ltd., 2004), p. 95.

[9] Alternative Dispute Resolution (ADR) is a group of flexible approaches to resolving disputes more quickly and at a lower cost than going to court. See D. Peters, *op. cit*.

[10] T. Madigan, 'Mediation in the Criminal System: an Improved Model for Justice', Final Paper, Spring 2005, available at <www.restorativejustice.org>, accessed on 10th October, 2019.

[11] Section 31 of the Police Act provides for the restoration of unclaimed property in the possession of the Police to a person appearing to the court to be the owner. It is suggested that an additional section be included in the Police Act stating that the property used in the commission of the offence should be also be restored to the owner.

[12] United Nations Office on Drugs and Crime, 'Report on Corruption in Nigeria', published by National Bureau of Statistics of Nigeria (2017).

[13] J. Edwards, 'Theories of Criminal Law', available at https://www.plato.stanford.edu, accessed on 19th July, 2020.

[14] Justice Reconciliation, 'Tutorial: Introduction to Restorative Justice', available at https://www.restorativejustice.org> accessed on 19th July, 2020.

[15] T. Gavrielides, 'Restorative Justice Theory and Practice: Addressing the ', available at https://www.peacepalacelibrary.nl, accessed on 19th July, 2020.

[16] J. Braithwaite, 'Restorative Justice: Theories and Worries', available at https://www.pdfs.semanticscholar.org, accessed on 19th July, 2020.

and in conflict with the relevant provision of law criminalising the act. The theory however, submits that punishments should cause enough pain to outweigh the pleasure derived from committing crime. Essentially, the theory of retributive justice is significance because of its inherent value of deterring prospective criminals from committing crimes for fear of punishment. The principle of deterrence rests on the assumption that if punishment is adequate, individuals will weigh the options and choose to refrain from engaging in criminal acts, thereby minimising pain and maximising pleasure. Thus, the theory posits that deterrence provides the foundation for maintaining law and order under the criminal justice system.[17]

**Theory of Transformative Justice**: The theory of transformative justice argues that the criminal justice system is essentially unjust. The theory therefore, impeaches the traditional approach to crime which disconnects victims from offenders by leaving the former to suffer harm from criminal act without restitution. This theory decries the perspective that crime is defined and framed by the state through the criminal justice system. The theory argues that the State control of criminal justice administration based solely on retributive justice perpetuates injustice not only against the victims but also the offender. In effect, transformative justice also referred to as rehabilitative justice considers the offender as an individual in need of treatment on account of his political and socio-economic challenges.[18] Thus, the theory of transformation submits that rather than considering victims and offenders as distinct entities, it should be reasoned that an offender may have caused harm and suffered harm all the same. The structural approach in transformative justice strive to improve the quality of life of not only the victim but also the offender and the community by examining the root causes of crime and the prevailing inequality within the political and socio-economic systems. The theory of transformative justice challenges the focus of the criminal justice system on punishment that upholds retributive justice. It also overreached the offender-victim perspective emphasised and supported by restorative justice regime, and proceed to address the socio-economic and political inequalities as causes of crime in our societies.[19]

**3. The Concepts of Victim of Crime, Compensation and Restitution**

Generally, a victim is any person who individually or collectively has suffered harm including physical or mental injury, emotional suffering, economic loss or substantial impairment of his fundamental rights, through acts or omissions that are in violation of criminal laws.[20] A victim is defined as a person who has suffered physical or emotional harm, property damage, or economic loss as a result of a crime.[21] Thus, a victim is a person harmed, injured, duped or killed as a result of a crime, accident or other event or action to the extent that he feels helpless or passive in the face ill-treatment or misfortune.[22] It also includes where appropriate the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. This is regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim.[23] Essentially, victims of crime are, no doubt, not parties to criminal proceedings. However, they play key role in criminal justice process by means of giving evidence, which constitute an important part of the prosecution's case against the defence. In criminal law, a victim of crime is an identifiable person who has been harmed individually and directly by the perpetrator of the crime. In *Payne v. Tennesse*,[24] the Supreme Court of the United States first recognised the right of crime victims to make a victim impact statement during the sentencing phase of a criminal trial. At any rate, victims of crime can exercise their rights while an offence is being investigated or prosecuted, and while the offender is going through the corrections process.

Compensation connotes something, especially money, which somebody gives you because he or she has hurt you, or damaged something that you own.[25] It is a form of personal reparation disbursed to the victim of crime by the offender upon the order of the court after conviction of the offender with a view to preventing the unjust enrichment of the offender as well as effectively ensuring that the victim is restored as far as possible to the *status*

[17] Criminal Justice, 'The Three Theories of Criminal Justice: Retributive Justice', available at https://www.criminal justice.com, accessed on 19th July, 2020.
[18] DALTON STATE, 'Criminal Justice: Criminal Justice Theories', available at https://www.libguides.daltonstate.edu, accessed on 19th July, 2020.
[19] *Ibid.*
[20] See the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*; U.N. Department of Public Information DP1/895- August 1986, General Assembly Resolution 40/34 of 29 November 1985.
[21] Canadian Department of Justice, 'Definition of a Victim', available at https://www.justice.gc.ca, accessed on 17th July, 2020.
[22] *Ibid.*
[23] *Ibid.*
[24] U.S. 808 (1991).
[25] S. Wehmeier (ed.), *Oxford Advanced Learner's Dictionary*, 6th Edition (Oxford: Oxford University Press, 2001), p. 227.

*quo ante criminem*.[26]Compensation is typically money awarded to someone in recognition of loss, suffering or injury. It is the act of rewarding someone for his loss, damage or injury by giving the injured party an appropriate benefit. Compensation is given as an equivalent for loss, injury or suffering occasioned by the person giving compensation.[27] It is a pecuniary remedy that is awarded to an individual who has sustained an injury, such as workers' compensation in order to replace the loss caused by the said injury. Compensation may also be in the form of payment a landowner is given to make up for the injury suffered as a result of the seizure when his or her land is taken by the government through doctrine of eminent domain i.e. compulsory acquisition. It may also be in the form of payment received to make one whole or at least better after for an injury or loss, particularly that paid by an insurance company either of the party causing the damage or by one's own insurer.[28] Victim compensation is therefore, a direct financial reimbursement to a victim for an expense that resulted from a crime.[29]

Restitution is the act of giving back to a rightful owner. A giving of something as an equivalent for what has been lost, damaged, etc.[30] By virtue of section 270(2)(b), of the Administration of Criminal Justice Act, 2015, the prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence. This can only apply on the premise that the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative. The law of restitution is the law of gains-based recovery, and it is to be contrasted with the law of compensation, which is the law of loss-based recovery. Whereas court orders compensation to mandate the defendant to pay the claimant for his loss, it orders restitution mandating the defendant to give up his gains to the claimant with a view to realizing *restitutio in integrum* in relation to the claimant. In the common law regime, the word, restitution was used to denote the return or restoration of a specific thing or condition. In the contemporary legal regime, the connotation of the word, restitution, has frequently been extended to include not only the restoration or giving back of something to its rightful owner and returning to status quo, but also compensation, reimbursement, indemnification or reparation for loss or injury caused to another. Thus, restitution connotes the relinquishment of a benefit or the return of money or other property obtained through an improper means to the person from whom the property was taken. Traditionally, the law of restitution is dependent on the principle of unjust enrichment. However, in modern approach, restitution can be occasioned by any of causative events which normally trigger legal responses. Accordingly, unjust enrichment and wrongs can occasion an obligation to make restitution. There are other types of causative events e.g. the vindication of property rights with which the defendant has interfered, which can create an obligation to bring about *restitutio in integrum.* In criminal law, judges occasionally order restitution to be paid in cases where victims suffered some kind of financial setback as a result of a crime. The payment made to the victims is to make them whole and restore them financially to the position they were prior to the commission of the crime. Typically, a judge orders restitution as a condition of another sentence such as probation or incarceration, even though it is possible to receive a sentence of restitution on its own as an alternative sentence. Restitution can be differentiated from fine in the sense that restitution is paid to victims of crime to compensate them for the injuries they suffered as a result of the crime. On the other part, a fine is paid to the government strictly as a punitive measure against the offender. Essentially, a fine is meant to punish an offender and deter the offender's future criminal behaviour as well as that of prospective criminal.[31] Restitution operates when an accused person has been convicted, the court then incorporate a cash award to the victim as part of the sentencing process, hence restitution does not wholly constitute the sentencing process as punishment remain a different and indispensable constituent of sentencing.

**4. The Jurisprudence of Restorative Justice for Victims of Crime**

In Nigeria, section 14(2) of the Economic and Financial Crimes Commission Act copiously provides that, subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), relating to the power of the Attorney-General of the Federation to institute, continue, take over or discontinue criminal proceedings against any person in any court of law, the Commission may compound an offence. This is to the end that monetary consideration thereof would serve as compensation to the victim of crime in order to restore him to *status quo ante*. The Administration of Criminal Justice Act (ACJA) 2015 has made innovative provisions over

[26] Section 6 of the South African Service Charter for Victims of Crime provides that 'Compensation' refers to an amount of money that a criminal court awards the victim who has suffered loss or damage to property, including money, as a result of a criminal act or omission by the person convicted of committing the crime.

[27] 'Definition of Compensation', available at <https://www.dictionary.com>, accessed on 18th July, 2020.

[28]The Free Dictionary, 'Definition of Compensation', available at <https://www.legal-dictionary.thefreedictionary.com>, accessed on 18th July, 2020.

[29] RAINN, 'Crime Victim Compensation', available at https://www.rainn.org, accessed on 17th July, 2020.

[30] The New Webster's Dictionary of the English Language, International Edition (New York: Lexicon International – Publishers Guild Group New York, 1995) p. 848.

[31] FindLaw, 'Restitution', available at https://www.criminal.findlaw.com, accessed on 17th July, 2020.

and above the preceding Criminal Procedure Act. The ACJA provides for compensation for loss or injury and of costs. Accordingly, section 454 (3) provides that the court may, in addition to any order under subsection (2) of this section, order the defendant to pay such damages for injury or compensation for any loss suffered by a person by reason of the conduct or omission of the defendant, and to pay such costs of the proceedings as the court thinks reasonable. However, where the defendant has not attained the age of 18 years and it appears to the court that the parent or guardian of the defendant conduces to the commission of the offence, the parent or guardian of the defendant shall pay the damages and costs.

Another significant innovation made by the Administration of Criminal Justice Act is the introduction of the concept of plea bargain into the Nigerian criminal justice system. Plea bargain is expressly authorised in statutes and court rules. Plea bargain has hitherto, remained a strange concept in the administration of criminal justice system, hence the paucity of judicial authorities in its jurisprudence. It was the Administration of Criminal Justice Law of Lagos State, 2015 that first localised the concept of plea bargain agreement into Nigeria's criminal jurisprudence. The court in *Gava Corp. Ltd. v. F.R.N.*[32] held that by virtue of section s 75 and 76(4) of the law, notwithstanding in any contrary provision in the law, the Attorney-General of the State shall have the power to conceder and accept a plea bargain from a person charged with any offence where the Attorney-General is of the view that the acceptance of such plea bargain is in the public interest, in the interest if justice (*ex debitio justicia*) and the need to prevent abuse of legal process. The plea bargain agreement between the parties shall be in writing and shall be signed.[33] The procedure for the application of plea bargain in Nigerian courts is as contained in section 70 of the Administration of Criminal Justice Act, 2015. The essence of plea bargain is not just to conclude a trial, but there must be an agreement between prosecution and accused., whereby the accused agree to plead guilty to a lesser offence or to one of multiple charges in exchange for some concession. The plea bargain agreement is personal in any criminal proceeding is personal and cannot inherited by a successive claimant. The close relationship between the person who took the plea and the new claimant is of no consequence. Plea bargain is the process whereby a criminal defendant and prosecutor reach a mutually satisfactory disposition of a criminal case, subject to court approval. In *Gava Corp. Ltd. v. F.R.N.,*[34] the court held that when plea bargaining is successful, it results in a plea agreement between the prosecutor and defendant whereby the prosecutor agrees to dismiss certain charges or make favourable sentence recommendations to the court. Accordingly, plea bargain can conclude a criminal case without a trial. It is as a negotiated agreement between a prosecutor and criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually, a more lenient sentence or a dismissal of the other charges. In elucidating on the concept of plea bargain, the court in *PML (Securities) Co. Ltd. v. F.R.N.,*[35] plea bargain involves a negotiation between an accused and the prosecution, in which an accused agrees to plead guilty to some crimes in return for reduction of severity of charges, dismissal of some charges, and prosecutor's willingness to recommend a particular sentence or other benefit to him.

It is pertinent to stress that plea bargain cannot be stretched to amount to compounding a crime or compounding of offences, neither can plea bargain amount to condonation of offence. The court has drawn, albeit a thin line between and amongst these concepts, and their appreciation in this paper is invaluable. Compounding a crime, which is an offence itself is different from compounding an offence in criminal proceedings. The agreement not to prosecute a crime that one knows has been committed or to hamper the prosecution constitutes compounding an offence. In *PML (Securities) Co. Ltd. v. F.R.N.,*[36] the court held that compounding a crime is a crime in which a person agrees not to report the occurrence of a crime or not to prosecute a criminal offender in exchange for money or other consideration. It consists of three basic elements which must be established, to *wit*: knowledge of the crime; the agreement not to prosecute; and the receipt of consideration. However, compounding of offences is an act on the part of the victim, who decides to pardon the offence committed by the accused and request the court to exonerate him. Whereas compounding a crime is an offence, the effect of compounding of offences is that it terminates the legal proceeding against the offender, who shall thereof be entitled to an acquittal. On the other part, plea bargain does not amount to condonation. The term condonation refers to the voluntary overlooking or pardon of an offence. It is an implied pardon of an offence by treating the offender as if the offence had not been committed. The court in *Gava Corp. Ltd. v. F.R.N.,*[37] made a succinct distinction between condonation and compounding. According to the court the two principles of condonation and compounding cannot be used interchangeably, as they remain two different principles with two different consequences. So, while compounding of an offence does not mean the offence had not been committed; by condoning an offence, the offender is treated

[32] (2019) 10 N.W.L.R. (Pt. 1679) p. 139 at 143.
[33] Administration of Criminal Justice Law of Lagos State, 2015, section 75(1).
[34] (2019) 10 N.W.L.R. (Pt. 1679) p. 139 at 143.
[35] (2018) 13 N.W.L.R. (Pt. 1635) p. 157 at 161.
[36] *Supra*, at 163.
[37] (2019) 10 N.W.L.R. (Pt. 1679) p. 139 at 147.

as the offence had not been committed. Although condonation is a victim's express or implied forgiveness of an offence especially by treating the offender as if there has been no offence, it is all the same not usually a valid defence to a crime.

Compensatory damages cover the loss the innocent party incurred as a result of the breach of contract and the amount awarded is intended to make good or replace the loss caused by the breach. This is based on the principle of *restitutio in integrum*. Thus, compensatory damages provide a plaintiff with the amount necessary to replace what was lost, and nothing more. It is imperative espouse the nature of compensatory damages awarded by courts i.e. general and special damages. General damages are monetary recovery in a law suit for injuries suffered such as pain, suffering, opportunity cost and inability to perform certain functions, or breach of contract for which there is no exact monetary value which can be calculated. They are compensatory damages for harm that results from the wrong for which a party has sued. Usually, the harm is reasonably expected and need not be alleged or proved. The court has held in *Mekwunye v. Emirates Airlines*[38]that general damages are damages that the law presumes and they flow from the type of wrong complained about by the victim, i.e. the plaintiff. General damages are distinct from special damages which are specific cost. Special damages, on the other part, are pecuniary compensation for injuries that follow the initial injury for which compensation is sought. They are specific cost, which involves economic losses such as loss of earnings, property damage and medical expenses. Both special damages and general damages constitute compensatory damages as distinct from pecuniary (exemplary damages). The court has however held in *Mekwunye v. Emirates Airlines*[39] that though the law guards against double compensation, it does not bar the award of both general and special damages in a deserving situation. Such situations occur where a party is able to show or where it is glaring from the surrounding circumstances of the case and the nature of injury suffered by the party that special damages would not adequately compensate for all loss. However, in *Nwude v. FRN & Ors*,[40] the appellant argued the having been sentenced to a term of imprisonment, it would be absurd to award compensatory damages to the respondent as that will tantamount to subjecting him to double jeopardy. In this matter, the appellant was sentenced to five years' imprisonment and forfeiture of $110 million to the victims of the fraud. Dissatisfied with the judgment of the lower court, the appellant appealed the decision, claiming that since he had agreed to plead guilty, an order of forfeiture against him would amount to double jeopardy. The Court of Appeal held *inter alia* that a sentencing to a term of years and/or with an order of forfeiture does not amount to double jeopardy because section 11 of the Advanced Fee Fraud Act provides that in addition to any other penalty prescribed under this Act, the High Court shall order a person convicted of an offence under this Act to make restitution to the victim of the false pretence or fraud by directing that person to pay to the victim an amount equivalent to the loss sustained by the victim. This section not only talks about forfeiture, but also talks about compensation to the victim other than the Federal Government. Thus, the appellant rather had a misconception and misgiving of the nuances of double jeopardy.

It is therefore pertinent to state that double jeopardy is a procedural defence, which prevents an accused person from being tried again on same or similar charges and on the same facts, following a valid acquittal or conviction. In the case of *Gava Corp. Ltd. v. F.R.N.*,[41]the court clearly stated that the doctrine of double jeopardy prohibits a person from being tried or punished twice for the same offence with same set of facts. This principle is given a statutory recognition as a fundamental right under section 36(9) and (10) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Once a criminal charge has been adjudicated upon by a court of competent jurisdiction, that adjudication is accepted as final. The principle applies whether the adjudication ends with acquittal or conviction. Thus, no person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court. Nevertheless, no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

Suffice it to state that exemplary damages, otherwise referred to as punitive or vindictive damages apply only where the conduct of the defendant merits punishment, especially where the conduct is wanton. In *Mekwunye v. Emirates Airlines*,[42]the court held that the defendant's conduct is considered to be wanton where it discloses fraud, malice, cruelty, insolence or the like, or where the conduct is a contumelious disregard of the plaintiff's rights. Accordingly, in *Alamieyeseigha v. FRN & Ors*,[43]the appellant who had been impeached challenged his impeachment, subsequent arrest and arraignment by the Economic and Financial Crimes Commission at the lower

[38] (2019) 9 N.W.L.R. (Pt. 1677) p. 191 at 201.
[39] (2019) 9 N.W.L.R. (Pt. 1677) p. 191 at 203.
[40] (2015) LPELR-25858 (CA)
[41] (2019) 10 N.W.L.R. (Pt. 1679) p. 139 at 151.
[42] (2019) 9 N.W.L.R. (Pt. 1677) p. 191 at 202.
[43] (2006) LPELR-11670 (CA)

court and lost. On appeal, the Court of Appeal, held *inter alia* that the immunity enjoyed by the Executive heads of government at the State and Federal levels by virtue of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is not intended to foster corruption or make the beneficiaries of such immunity impudent and above the law. It is certainly not the purport of that provision, for the beneficiaries of the said immunity to hide behind the Constitution and offend the law. To the contrary, it is intended to protect the beneficiaries from the hindrance of frivolous Court actions and from litigation aimed to victimize them for actions taken in public interest against any individual interest. It is to allow the executives function without fear or favour in the discharge of their duties. In the furtherance of the independence of the executive arm of government from the caprice and unrestrained control of the judiciary and legislature, the court wonder how the law allowed such immunity to elude the members of the legislative houses who made the laws. Hence, the court accordingly, maintained that to whom much is given much is expected.

Essentially, the executive arm of government should strive to fulfil the intention of the immunity clause rather than unduly exploit it, whilst its beneficiaries should also not abuse it by hiding under the cloak of immunity to commit heinous crimes in our society. Indeed, there seems to be some sacred cows amongst the governors who hide behind the cloak of immunity to commit atrocities. The court therefore warned that, devoid of any political interest, governors and other executive officials, especially the elected politicians should desist from such acts. The superior courts have persistently held that litigation is not like a game of chess, and so does not depend on the dexterity of advocacy, to achieve justice. Instead it is the sincere presentation of facts and the application of the law thereto which attains substantial justice. This judgment showed the attitude of the Court of Appeal to the reckless attitude of the Executive and emphasized the fact that there must be some form of compensation to the public for reckless spending of public funds. The application of plea bargain in furtherance of section 270 of the Administration of Criminal Justice Act supports the operation of the principle of compounding of offence. The Economic and Financial Crimes Commission therefore has power to compound offences, and the power to compound offences is different from condonation. Usually under plea bargain, the accused makes monetary compensation and offers apology to the alleged victim. Upon the compounding of the offence, the accused is effectively acquitted of the crime. In Nigeria, section 14(2) of the Economic and Financial Crimes Commission Act confers on the Commission the power to compound offences. Accordingly, subject to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law in furtherance of section 174 of the Constitution, the Commission may compound any offence punishable under the Act by accepting such sum of money as it thinks fit. However, such sum of money shall not exceed the maximum amount to which such person would have been liable if he was convicted of that offence. It must be emphasised that the power conferred on the Economic and Financial Crimes Commission (EFCC) under section 14(2) of the EFCC Act is that of compounding of offences and not compounding a crime.

The principle of compounding offences is applicable in other jurisdictions. In Singapore for instance, compounding of an offence, otherwise known as composition of an offence, refers to the settlement of a charge without entering a conviction between the alleged victim and the accused. The law of Singapore is unambiguous as it makes it clear that where police investigations have commenced or where an accused has been charged in court, the offence may only be compounded with the consent of the Public prosecutor, who has power to compound an offence by collecting a sum of money, as specified therein, from the accused. In Nigeria however, it is a misconception that the provision of section 14(2) of the EFCC Act is intended to apply to offences not yet before a court and that it applies during investigations. In *Gava Corp. Ltd. v. F.R.N.*,[44] the court held that the EFCC (Commission) rather has the power to compound an offence that is already before the court. However, the Commission merely investigate, compound an offence or prosecute the offender, but has no power to acquit. Compounding an offence terminates legal proceedings and leads to acquittal of the accused. It is only the court that has exclusive power to acquit. Thus, if the Commission only investigates but has the power to compound an offence, and it is the court that can acquit a n accused, then the Commission has power compound an offence that is already before the court. At any rate, the Commission's power is subject to the power of the Attorney-General of the Federation to institute, continue, take over or discontinue criminal proceedings. Thus, forfeiture of objects of crime and sentencing do not constitute double jeopardy. It would have been different if the court had awarded exemplary (punitive) damage against the criminal defendant in addition to sentencing. That will clearly amount to double jeopardy. In *Ajiboye v. F.R.N.*,[45] the court held that when a court directs a property to be forfeited to government, it is intended to debar the convict from deriving benefit from the proceeds of crime for which he was convicted. That cannot be treated as double jeopardy as it is geared towards deterring others who are so minded to know that no benefit would properly inure to the person who brazenly acquires what belongs to another or the

[44] (2019) 10 N.W.L.R. (Pt. 1679) p. 139 at 149.
[45] (2018) 13 N.W.L.R. (Pt. 1637) p. 430 at 437.

Government. This paper argues that the forfeiture of the proceeds of crime is merely a compensatory damage, hitherto peculiar to civil adjudication, which is now accommodated in criminal justice system as a means of restoring the victim of crime to his position before the crime was perpetuated. On the other part, sentencing of a convicted person is the established punitive mechanism provided by the law criminalising the conduct of the accused to punish him for his criminal conduct, and to deter prospective criminals from committing the offence.

**4. Conclusion**

Compensation, restitution and restoration remains a clear-cut policy which should be preferred above imprisonment and other punishments as far as providing succour to the victim of crime is concerned. It was found that there is dearth of restorative justice aimed at restoring the victims of economic and financial crime to their *status quo ante*. The principal statutes prohibiting criminal acts in general, to *wit*: Criminal Code Act and the Penal Code Act focus mainly on punishing the perpetrators of the crime. There should be regular revision and review of our laws generally to take care of new situations. Thus, the paper recommends that the two principal statutes should be reviewed and amended to make provisions enabling traces and recovered scammed fund and its proceeds returned to the victims of such fraud or criminality. The provision of section 14(2) of the Economic and Financial Crimes Commission (EFCC) Act regarding compensation and section 270 of the Administration of Criminal Justice Act regarding plea bargain are salutary as they operate to entrench and advance restorative justice to victims of crime in Nigeria. A similar provision to section 14(2) of the EFCC Act should be introduced in both the Criminal Code Act and the Penal Code Act, which are the principal laws that define and penalize criminal conducts. Interestingly, most jurisdictions of the world are moving towards enthroning restorative justice in the administration of criminal justice system, and Nigeria should not be left behind in this laudable cause.