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Global Insights Law Journal
ISSN 3141-5717 | Volume 1 | Issue 3 | Month October | 2026

VOLUME	ISSUE	YEAR
1	3	2026

RESEARCH ARTICLE

Challenges of Character Evidence under the Nigerian Criminal Justice System: A Comparative Analysis with Other Jurisdictions

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PUBLICATION DETAILS
ISSN: 3141-5717 Volume: 1 Issue: 3
Publication Month: October Publication Year: 2026
DOI URL: https://doi.org/10.67588/0008
Article URL: https://gilawjournal.com/article/challenges-of-character-evidence-under-the-nigerian-criminal-justice-system-a-comparative-analysis-with-other-jurisdictions

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ABSTRACT

This study evaluates the legal framework, statutory dynamics, and practical challenges governing character evidence under the Nigerian criminal justice system, alongside a comparative analysis of corresponding doctrines in Ghana, India, and the United States. The research examines the delicate balance between admitting probative evidence and protecting accused persons from unfair propensity prejudice. Using a doctrinal and comparative research methodology, the paper analyzes primary statutory provisions under the Nigerian Evidence Act 2011, Ghanaian Evidence Act 1975, Indian Bharatiya Sakshya Adhiniyam 2023, and United States Federal Rules of Evidence. The investigation reveals that while Nigerian evidence law strictly restricts character evidence to general reputation under Section 77 and presumptively excludes bad character under Section 82(1), trial courts frequently face difficulties in distinguishing reputation from disposition and managing the tactical risks of propensity reasoning under Section 180(g)(ii). Comparatively, statutory frameworks in Ghana, India, and the United States offer clearer statutory gateways, permit opinion evidence, and enforce explicit judicial balancing tests. The study recommends legislative amendments to Section 82 of the Evidence Act 2011 to codify explicit non-propensity gateways, mandatory judicial balancing of probative force against prejudicial effect on the record, and the total prohibition of cross-examination on uncharged suspicions or abandoned counts.

Keywords: *Character Evidence; Evidence Act 2011; Propensity Reasoning; Criminal Procedure; Comparative Evidence Law.*

1.0 INTRODUCTION

1.1 Background of the Study

The Nigerian criminal justice system operates on an accusatorial model where the burden of proving the guilt of an accused person beyond reasonable doubt rests squarely on the prosecution.[1] This burden is anchored on the constitutional presumption of innocence guaranteed under Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999.[2] Within this evidentiary structure, the reception of character evidence presents a delicate statutory and procedural challenge. Character evidence involves introducing facts regarding a person moral standing, general reputation, or prior conduct to infer whether they acted in conformity with that character on a specific occasion.[3]

1 Constitution of the Federal Republic of Nigeria 1999, s 36(5); Evidence Act 2011, s 135(1).
2 CFRN 1999, s 36(5).
3 TA Aguda, *The Law of Evidence in Nigeria* (Spectrum Books 2007) 112.

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Because character evidence carries the inherent danger of inducing propensity reasoning where a tribunal might convict an accused based on past misdeeds or moral opprobrium rather than proof of the *actus reus* and *mens rea* of the offense charged, the legal framework maintains a general exclusionary rule.[4] 3 KB 468; *Makin v Attorney-General for New South Wales* [1894] AC 57.] Under Part IV of the Evidence Act 2011 (Sections 77 to 82), bad character evidence is presumptively inadmissible, while good character evidence is admissible to raise reasonable doubt or mitigate punishment.[5] However, statutory exceptions under Section 82(2) and the proviso to Section 180(g) allow bad character evidence to be admitted when character is a fact in issue, when the accused puts their character in issue, or when imputations are launched against prosecution witnesses.[6]

Across modern common law and statutory jurisdictions, balancing the probative value of character evidence against its prejudicial effect remains a core concern of criminal trial advocacy and judicial administration.[7] Examining how Nigerian courts navigate these statutory boundaries alongside comparative models in Ghana, India, and the United States provides valuable insights into procedural fairness, judicial discretion, and legislative reform.[8]

In the historical evolution of common law evidence, character testimony served as a vital shield for defendants during eras when accused persons were disqualified from giving sworn testimony in their own defense.[9] By calling respectable members of the community to attest to general reputation, an accused could demonstrate the improbability of having committed a dishonorable

4 *R v Rodley* [1913
5 Evidence Act 2011, ss 77, 81, 82(1).
6 ibid, ss 82(2), 180(g).
7 PA Aidonojie, AO Odojor and PO Agbale, "The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria" (2021) 5(2) *Sriwijaya Law Review* 161, 165.
8 C Ezeh and C Amasiatu, "A Critical Evaluation of Human Rights Norms in Nigeria's Criminal Justice System and the Path to Reform: Bridging the Gulf" (2026) 11 *African Journal of Criminal Law and Jurisprudence* 23, 28.
9 CO Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd edn, Spectrum Books 2005) 45.

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act. However, with the statutory codification of witness competency under modern procedural enactments such as the Administration of Criminal Justice Act 2015 and state Administration of Criminal Justice Laws, the operational role of character evidence shifted from a primary defense tool to a complex battlefield of witness credibility and propensity management.[10]

The historical progression of Nigerian evidence law underscores a perpetual tension between strict common law formalism and the practical realities of criminal litigation.[11] Originating from the colonial Evidence Ordinance of 1945, Nigerian statutory evidence law imported 19th-century Victorian evidentiary concepts designed primarily for British jury trials. When the Evidence Act 2011 was enacted, replacing the old Evidence Act Cap E14 LFN 2004, the legislature preserved the essential architectural skeleton of Part IV.[12] Consequently, contemporary trial judges in Nigeria continue to operate under statutory rules that draw sharp, rigid boundaries between general reputation and personal disposition, even as modern trial procedure increasingly demands functional, truth-seeking mechanisms.

1.2 Statement of the Problem

Despite explicit statutory provisions under the Evidence Act 2011, the operationalization of character evidence rules in Nigerian courtrooms suffers from significant conceptual and procedural friction.[13] First, Section 77 of the Evidence Act 2011 defines character strictly as general reputation as distinguished from disposition, prohibiting evidence of particular past acts to establish character.[14] In practice, however, witnesses rarely testify to abstract community

10 *Administration of Criminal Justice Act 2015*, s 1; RO Adewale, "An Overview of the Cultural Problems within the Criminal Justice System in Nigeria" (2026) 2(1) *Anaocha Bar Journal* 68, 72.
11 F Nwadialo, *Modern Nigerian Law of Evidence* (2nd edn, University of Lagos Press 1999) 180.
12 Evidence Act 2011, Part IV.
13 Nwadialo (n 9) 184.
14 Evidence Act 2011, s 77.

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reputation, frequently conflating personal impressions, rumors, and specific acts of conduct. This creates an artificial evidentiary standard that trial judges struggle to enforce.[15] NMLR 1.]

Second, the statutory threshold under Section 180(g)(ii) creates a tactical trap for defense counsel.[16] When an accused person or their counsel cross-examines prosecution witnesses in a manner that casts imputations on their character, even when such questioning is essential to establish a legitimate defense such as alleging police fabrication or assault, the defendant forfeits statutory immunity and opens the door to cross-examination regarding their past criminal record or bad character.[17] NRNLR 188.] This creates an unfair tension between exercising the constitutional right to a full defense and maintaining protection against propensity prejudice.[18]

Third, Nigerian evidence law lacks an explicit, codified judicial balancing test requiring judges to formally weigh probative force against prejudicial effect on the record before admitting bad character evidence under statutory exceptions.[19] Unlike comparative frameworks that feature clear statutory gateways and mandatory prejudice-balancing mechanisms, the Nigerian framework relies heavily on discretionary judicial restraint, leading to inconsistent application across trial courts.[20]

Fourth, systemic deficiencies in Nigerian police record-keeping and criminal registry infrastructure exacerbate the risks associated with character evidence.[21] Due to the absence of a unified, real-time national criminal database, trial courts frequently rely on unverified police reports or informal assertions regarding an accused prior record. This institutional shortfall

15 *Popoola v Commissioner of Police* [1964
16 Evidence Act 2011, s 180(g)(ii).
17 *Audu Maizako v Superintendent-General of Police* [1960
18 *Constitution of the Federal Republic of Nigeria 1999*, s 36(6)(d).
19 CO Njoku, O Elom-Obed and C Okorie, "A Critical Evaluation of Criminal Responsibility for Strict Liability Offences in Nigeria" (2024) 5(1) *LASU Journal of Public Law* 14, 19.
20 B Afe, *Law and Practice of Evidence in Nigeria* (Intec Printers 2001) 95.
21 Aidonojie, Odojor and Agbale (n 6) 168.

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creates a dangerous environment where uncharged arrests, abandoned investigations, or mere police suspicions are improperly paraded as bad character evidence, directly violating statutory prohibitions.

1.3 Research Questions and Objectives

To address these challenges, this study investigates the following primary research questions:

1. What is the statutory and jurisprudential framework governing the admissibility of good and bad character evidence under the Nigerian Evidence Act 2011?

2. What operational difficulties arise in Nigerian courts regarding the distinction between reputation and disposition, and the loss of statutory immunity under Section 180(g)?

3. How do the legal systems of Ghana (under Act 29 and Act 30), India (under the Bharatiya Sakshya Adhiniyam 2023), and the United States (under the Federal Rules of Evidence 404, 405, and 608) regulate character evidence and propensity risks?

4. What legislative amendments and procedural reforms should be introduced to the Evidence Act 2011 to strengthen fair trial guarantees in Nigeria?

Accordingly, the specific objectives of this paper are:

a. To critically examine the statutory provisions, judicial exceptions, and precedential bounds governing character evidence in Nigerian criminal proceedings.

b. To evaluate the practical dilemmas faced by defense practitioners and trial judges in applying character evidence rules.

c. To conduct a comparative analysis with Ghana, India, and the United States to identify statutory best practices and judicial safeguards.

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d. To formulate actionable legislative and procedural reform proposals for the Nigerian criminal justice system.

1.4 Conceptual Scope and Legal Context

This study focuses on character evidence within the context of criminal litigation in Nigeria, with specific reference to:

The Evidence Act 2011 (as amended 2023), particularly Sections 77, 78, 81, 82, 180(g), 223, 224, 233, and 234.

The Constitution of the Federal Republic of Nigeria 1999 (as amended), specifically fair trial rights under Section 36(5) and 36(6).

Procedural Enactments, including the Administration of Criminal Justice Act 2015 and state Administration of Criminal Justice Laws.

Comparative Jurisdictions: Ghana (Criminal Offences Act 1960 (Act 29), Criminal and Other Offences (Procedure) Act 1960 (Act 30), and Evidence Act 1975 (NRCD 323)); India (Bharatiya Sakshya Adhiniyam 2023 and former Indian Evidence Act 1872); and the United States (Federal Rules of Evidence 404, 405, and 608).

1.5 Research Methodology

This study adopts a doctrinal and comparative legal research methodology.[22] Primary sources of data include statutory enactments (such as the Evidence Act 2011, Constitution of Nigeria 1999, Ghanaian Acts 29 and 30, Indian BSA 2023, and US Federal Rules of Evidence) and judicial precedents from the Supreme Court of Nigeria, Court of Appeal, English common law courts,

22 Aguda (n 3) 15.

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and foreign comparative courts.[23] Secondary sources comprise legal textbooks, peer-reviewed journal articles, law review publications, and official judicial conference papers.[24] Qualitative content analysis and comparative synthesis are employed to evaluate statutory structures, expose legal gaps, and propose systematic reforms.

2.0 THEORETICAL AND CONCEPTUAL FOUNDATIONS OF CHARACTER EVIDENCE

2.1 Meaning, Nature and Scope of Character Evidence

Character evidence occupies a pivotal position in the law of evidence, serving as a legal mechanism through which the moral standing, general estimation, or past conduct of a participant in judicial proceedings is introduced.[25] In criminal litigation, character evidence is adduced either to demonstrate that an accused person disposition makes it unlikely or likely that they committed the offense charged, or to support or impeach the credibility of a witness testifying under oath.[26] The nature of character evidence is inherently circumstantial; it does not offer direct proof of the actus reus or mens rea of the specific crime, but rather invites an inferential leap regarding human behavior based on past patterns of conduct or community estimation.[27]

The legal scope of character evidence is carefully circumscribed by statutory rules to prevent collateral inquiries.[28] In the historical evolution of common law trial procedure, allowing unrestricted character evidence frequently led to unfair trials where defendants were judged on

23 Nwadialo (n 9) 22.
24 Aidonojie, Odojor and Agbale (n 6) 162.
25 Aguda (n 3) 112.
26 Nwadialo (n 9) 182.
27 Afe (n 13) 90.
28 Evidence Act 2011, s 77.

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their general lifestyle or moral reputation rather than concrete proof of the specific offense.[29] 3 KB 468.] Consequently, modern evidence frameworks establish strict exclusionary baselines, admitting character evidence only under specified statutory conditions or where character itself constitutes an essential element of the charge or defense.[30]

2.2 Character, Reputation, Disposition and Propensity

Understanding the operation of character evidence requires examining its technical legal definition and distinguishing it from related legal concepts such as disposition, reputation, conduct, and opinion.[31] In colloquial usage, character denotes the aggregate of moral qualities, psychological habits, and ethical traits that distinguish an individual. In legal jurisprudence, however, character possesses a much narrower and specific statutory meaning.[32]

Under Section 77 of the Nigerian Evidence Act 2011, character is explicitly defined as general reputation as distinguished from disposition.[33] The statute enacts that in Sections 78 to 82, the expression character means reputation as distinguished from disposition, and except as mentioned in those sections, evidence may be given only of general reputation, and not of particular acts by which reputation or disposition is shown.[34]

This statutory distinction between reputation and disposition is a foundational pillar of common law evidence jurisprudence:

29 *R v Rodley* [1913
30 *Evidence Act 2011*, ss 78-82.
31 Aguda (n 3) 115.
32 Nwadialo (n 9) 186.
33 *Evidence Act 2011*, s 77.
34 *Evidence Act 2011*, s 77.

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> Reputation represents the external assessment, general estimation, or esteem in which an individual is held by their community or society based on public report. It is inherently external and reflects what society believes a person to be.[35]
>
> Disposition, conversely, refers to an individual internal moral qualities, inherent psychological tendencies, or natural inclinations to act or think in a particular manner. A person may possess an evil disposition while maintaining an unblemished public reputation if their private misdeeds remain hidden, and conversely, an upright individual may suffer a damaged reputation due to unverified rumors.[36]

By restricting admissible character evidence strictly to general reputation under Section 77, evidence law seeks to avoid collateral mini-trials into specific past acts.[37] If courts were to permit detailed inquiries into particular past acts to prove character, trials would become bogged down in collateral issues, leading to unfair surprise, undue delay, and confusion of the main facts in issue.[38] NMLR 1.]

Theoretical jurisprudence emphasizes that reputation reflects a collective social judgment constructed over time within a defined geographic or social community.[39] In classic common law doctrine, community estimation was regarded as a reliable proxy for individual moral reliability because social interactions occurred in tightly knit local environments where an individual true nature could rarely remain concealed. However, legal sociologists observe that modern urban

35 Aguda (n 3) 116.
36 Nwadialo (n 9) 187.
37 Evidence Act 2011, s 77.
38 *Popoola v Commissioner of Police* [1964
39 CO Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd edn, Spectrum Books 2005) 48.

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mobility and digital communications have fragmented traditional community structures, making abstract reputation an increasingly elusive legal construct.[40]

Furthermore, distinguishing disposition from dispositional conduct is vital. While disposition refers to an internal trait, dispositional conduct comprises specific overt acts that manifest that trait.[41] The common law exclusionary rule prohibits proving disposition through dispositional conduct because admitting specific instances of uncharged misconduct creates a double risk: moral prejudice (where the court penalizes the defendant for being a bad person) and reasoning prejudice (where the court overestimates the predictive value of past acts regarding the current charge).[42] AC 57.]

2.3 Good Character and Bad Character Evidence

The law of evidence draws a sharp structural distinction between evidence of good character and evidence of bad character.[43] Evidence of good character is received indulgently as a protective shield for the accused, permitted on grounds of humanity to demonstrate the improbability of the defendant having committed the offense charged.[44] NRNLR 37.] Conversely, evidence of bad character is viewed with deep judicial distrust because of its potent tendency to generate unfair prejudice and divert the trier of fact from a dispassionate evaluation of the evidence.[45]

Admitting good character evidence serves a dual purpose: it acts circumstantial evidence supporting the presumption of innocence on the main issue of guilt, and it goes to credibility by

40 RO Adewale, "An Overview of the Cultural Problems within the Criminal Justice System in Nigeria" (2026) 2(1) *Anaocha Bar Journal* 68, 70.
41 Afe (n 13) 98.
42 *Makin v Attorney-General for New South Wales* [1894
43 Evidence Act 2011, ss 81, 82.
44 Aguda (n 3) 120; *Haruna v Police* [1967
45 Nwadialo (n 9) 190; *Makin* (n 5).

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suggesting that a person of good reputation is worthy of belief when giving testimony.[46] Bad character evidence, on the other hand, is presumptively excluded under Section 82(1) of the Evidence Act 2011, entering the trial record only through tightly controlled statutory gateways when the defendant puts character in issue or when bad character is an essential statutory element of the charge.[47]

2.4 The Distinction Between Character Evidence and Similar-Fact Evidence

A vital conceptual boundary exists between character evidence strictly so-called and similar-fact evidence (now categorized under Sections 12 and 36 of the Evidence Act 2011 as evidence showing system, state of mind, or knowledge).[48] While character evidence under Part IV deals with general reputation, similar-fact evidence involves introducing specific past acts of misconduct that exhibit a striking similarity, distinctive pattern, or systematic scheme connecting the past acts to the offense charged.[49] AC 421.]

The legal justification for admitting similar-fact evidence is not to prove that the accused is a bad person possessing a criminal disposition, but rather that the striking similarity or underlying system renders it highly improbable that the coincidence was accidental or that the allegations were concocted.[50] 2 AC 447.] Similar-fact evidence operates outside the narrow definition of character under Section 77 because it relies on specific acts rather than general reputation, provided its probative force is so compelling that it outweighs its inherent prejudicial effect.[51]

46 Afe (n 13) 100.
47 *Evidence Act 2011*, s 82(1), (2).
48 Ibid, ss 12, 36; Aguda (n 3) 125.
49 *Makin* (n 5); *DPP v Boardman* [1975
50 *DPP v P* [1991
51 Nwadialo (n 9) 194.

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2.5 Relevance, Probative Value and Prejudicial Effect

The fundamental criterion for the admissibility of any evidence under Nigerian law is relevance, codified under Section 1 of the Evidence Act 2011.[52] However, in the context of character evidence, relevance is a necessary but insufficient threshold. Evidence of past misconduct may be logically relevant to showing that a defendant is morally capable of committing a crime, but it is legally excluded because its prejudicial effect vastly exceeds its legitimate probative value.[53] AC 309.]

Probative value refers to the strength, reliability, and logical force of an evidentiary item in proving or disproving a fact in issue.[54] Prejudicial effect refers to the risk that the evidence will incite emotional hostility, over-estimation of past bad acts, or moral condemnation in the mind of the fact-finder, leading to a conviction grounded on character rather than proof beyond reasonable doubt.[55] AC 315.] Balancing probative value against prejudicial effect represents the supreme judicial mechanism for controlling character evidence.

2.6 The Presumption of Innocence and the Burden of Proof

The exclusionary rule governing character evidence is directly tied to the constitutional presumption of innocence, guaranteed under Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999.[56] In criminal litigation, the state bears the heavy burden of establishing the defendant guilt beyond a reasonable doubt through concrete proof of both the

52 *Evidence Act 2011*, s 1.
53 Aguda (n 3) 128; *Maxwell v DPP* [1935
54 Afe (n 13) 104.
55 *Stirland v DPP* [1944
56 *Constitution of the Federal Republic of Nigeria 1999*, s 36(5).

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physical element (*actus reus*) and the mental element (*mens rea*) of the specific offense charged.[57]

Admitting bad character evidence prematurely directly threatens the presumption of innocence by shifting the judicial focus from whether the state has proved the specific charge to whether the defendant is a worthy member of society.[58] Preserving the presumption of innocence requires strict adherence to the rule that the prosecution must prove guilt without relying on the defendant prior record or moral reputation.[59]

2.7 Theoretical Framework: Fair Trial, Truth-Seeking and the Prevention of Propensity Reasoning

The theoretical framework of this study rests on three pillars of procedural jurisprudence: the rights-based Fair Trial Theory, the Epistemological Truth-Seeking Model, and the Doctrine of Propensity Control.[60] Fair Trial Theory, anchored on Section 36 of the 1999 Constitution and Article 7 of the African Charter on Human and Peoples Rights, dictates that procedural rules must guarantee an equal contest between state prosecution and the accused, preventing state power from overwhelming the defense through moral prejudice.[61]

The Epistemological Truth-Seeking Model asserts that trial rules must maximize accurate factual determinations while minimizing cognitive biases.[62] Propensity reasoning is a recognized cognitive fallacy where fact-finders overestimate the predictive connection between past uncharged conduct and current specific behavior.[63] Preventing propensity reasoning through

57 *Evidence Act 2011*, s 135(1); Ezeh and Amasiatu (n 7) 25.
58 Okonkwo (n 8) 50.
59 *Audu Maizako* (n 11).
60 Aguda (n 3) 130; Nwadialo (n 9) 198.
61 *Constitution of the Federal Republic of Nigeria 1999*, s 36; *African Charter on Human and Peoples' Rights*, art 7.
62 Aidonojie, Odojor and Agbale (n 6) 170.
63 *R v Rodley* (n 5).

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exclusionary character rules ensures that criminal verdicts reflect verified facts rather than moral bias, fulfilling both epistemological accuracy and constitutional fairness.[64]

3.0 THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING CHARACTER EVIDENCE IN NIGERIA

3.1 Constitutional Foundations of Fair Trial and the Rights of the Accused

The constitutional foundation of character evidence law in Nigeria is embedded in Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which guarantees the fundamental right to a fair hearing within a reasonable time by an independent and impartial court or tribunal.[65] Specifically, Section 36(5) enacts the constitutional presumption of innocence, providing that every person charged with a criminal offense shall be presumed innocent until proved guilty according to law.[66]

Furthermore, Section 36(6)(d) guarantees the right of the accused to examine in person or by his legal practitioners the witnesses called by the prosecution, and to obtain the attendance and examination of witnesses to testify on his behalf on the same conditions as those applying to witnesses called by the prosecution.[67] These constitutional guarantees dictate that statutory provisions governing character evidence under the Evidence Act 2011 must be interpreted in a manner that preserves procedural equity and shields the accused from unfair prejudice.[68]

64 Ezeh and Amasiatu (n 7) 30.
65 *Constitution of the Federal Republic of Nigeria 1999*, s 36(1).
66 *Constitution of the Federal Republic of Nigeria 1999*, s 36(5).
67 *Constitution of the Federal Republic of Nigeria 1999*, s 36(6)(d).
68 Ezeh and Amasiatu (n 7) 32.

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3.2 Statutory Regulation Under the Nigerian Evidence Act

The primary statutory authority regulating character evidence in Nigerian courts is the Evidence Act 2011 (as amended 2023).[69] Part IV of the Act (Sections 77 to 82) enacts a codified framework governing when and how character evidence may be adduced in both civil and criminal proceedings.[70] This statutory scheme is complemented by procedural provisions under Section 180 (competency and cross-examination of the accused) and Sections 223, 224, 233, and 235 (impeachment of witness credibility).[71]

The fundamental baseline of Nigerian character evidence law is the general exclusionary rule.[72] Under Section 82(1), evidence that an accused person is of bad character or has committed prior offenses is presumptively irrelevant and inadmissible in criminal trials.[73] This statutory bar ensures that criminal prosecutions remain focused strictly on the facts in issue, namely whether the prosecution has proved beyond a reasonable doubt that the accused committed the specific actus reus with the requisite mens rea.[74] By excluding bad character evidence at first instance, the law shields the defendant from unfair prejudice, prevents collateral mini-trials, and upholds the constitutional presumption of innocence.[75]

3.3 The Admissibility of Good Character Evidence

In sharp contrast to the presumptive exclusion of bad character, Section 81 of the Evidence Act 2011 lays down an unconditional rule of admissibility for good character evidence.[76] The statute

69 *Evidence Act 2011*.
70 *Evidence Act 2011*, ss 77-82.
71 *Evidence Act 2011*, ss 180, 223, 224, 233, 235.
72 Aguda (n 3) 124.
73 *Evidence Act 2011*, s 82(1).
74 *Evidence Act 2011*, s 135(1); Nwadialo (n 9) 193.
75 Ezeh and Amasiatu (n 7) 27.
76 *Evidence Act 2011*, s 81.

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explicitly enacts that in criminal proceedings evidence of the fact that a defendant is of good character is admissible.[77]

The law permits an accused person to lead evidence of good character on grounds of humanity to raise a reasonable doubt regarding guilt or to mitigate potential sentencing.[78] Procedurally, an accused person may introduce good character evidence through three distinct avenues:

1. By giving personal testimony of unblemished character while testifying in the witness box.[79]

2. By calling independent character witnesses to attest to his general reputation in the community (e.g., as held in Haruna v Police, where testimony from a bank manager regarding an accused financial standing and law-abiding reputation was received).[80] NRNLR 37.]

3. By eliciting evidence of good reputation through the cross-examination of prosecution witnesses.[81]

However, to be legally effective, evidence of good character must satisfy three statutory and judicial requirements:

- Relevance: The character evidence offered must relate specifically to the trait engaged by the charge (for example, evidence of honesty is relevant to theft or fraud, whereas evidence of peacefulness is relevant to assault or homicide).[82]
- Temporal Proximity: The reputation testified to must refer to a time proximate to the commission of the alleged offense.[83]

77 *Evidence Act 2011*, s 81.
78 Aguda (n 3) 126.
79 *Evidence Act 2011*, s 180.
80 *Haruna v Police* [1967
81 *Evidence Act 2011*, s 223.
82 Aguda (n 3) 127.

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- General Reputation: Under Section 77, the evidence must speak strictly to community reputation rather than specific instances of commendable conduct or individual personal opinions of character witnesses.[84]

Tactically, introducing good character evidence operates as a double-edged sword.[85] Under Section 81 and Section 82(2)(b), once the defendant puts his good character in issue, he strips away his statutory protection and entitles the prosecution to adduce bad character evidence in rebuttal.[86].

3.4 The Admissibility and Exceptions Relating to Bad Character Evidence

Although Section 82(1) excludes bad character evidence as a general rule, the Evidence Act 2011 provides tightly regulated statutory gateways where bad character becomes admissible.[87] As affirmed by the Supreme Court of Nigeria in Makanjuola v State and the Court of Appeal in Okeke v State, bad character evidence is admissible only under specific statutory conditions:[88].

1. Bad Character as a Fact in Issue: Under Section 82(2)(a), bad character is admissible when the character of the defendant is itself an essential constituent element of the crime charged.[89] Examples include prosecutions under habitual offender statutes or rogue and vagabond provisions under penal codes.[90]

2. Door Opened by the Defendant: Under Section 82(2)(b), where the defendant has given evidence of his good character or cross-examined prosecution witnesses to establish good

83 Nwadialo (n 9) 197.
84 *Evidence Act 2011*, s 77.
85 Afe (n 13) 105.
86 *Evidence Act 2011*, ss 81, 82(2)(b).
87 *Evidence Act 2011*, s 82(1), (2).
88 *Makanjuola v State* (2021) LPELR-54998 (SC); *Okeke v State* (2016) LPELR-40024 (CA).
89 *Evidence Act 2011*, s 82(2)(a).
90 Okonkwo (n 8) 55.

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reputation, the prosecution may lead bad character evidence to rebut the false impression created.[91].

3. Cross-Examination Exceptions under Section 180(g) Proviso: Under Section 180(g), an accused person who elects to testify as a witness for the defense is protected from cross-examination regarding prior offenses, convictions, or general bad character.[92] However, this statutory immunity is forfeited if any of the three conditions under the proviso to Section 180(g) occur:

Sub-paragraph (i): Where proof that the defendant committed or was convicted of another offense is admissible evidence to show that he is guilty of the offense charged (such as similar fact evidence under Section 12 to show system or negative accident, or evidence of scienter under Section 36 in receiving stolen property charges).[93].

Sub-paragraph (ii): Where the defendant has personally or through counsel asked questions of prosecution witnesses to establish his own good character, or given evidence of good character, OR where the nature or conduct of the defense is such as to involve imputations on the character of the prosecutor or prosecution witnesses.[94].

Sub-paragraph (iii): Where the defendant has given evidence against any other person charged with the same offense (co-defendant).[95].

3.5 Character Evidence and Previous Convictions

Whenever bad character evidence becomes technically admissible under statutory exceptions, the method of proof is strictly regulated.[96] Under Section 82(4) of the Evidence Act 2011, whenever

91 Evidence Act 2011, s 82(2)(b).
92 ibid, s 180(g).
93 Ibid, ss 12, 36, 180(g)(i).
94 ibid, s 180(g)(ii).
95 ibid, s 180(g)(iii).

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evidence of bad character is admissible, evidence of a previous conviction is also admissible.[97] Furthermore, Section 82(5) introduces an essential legislative safeguard by mandating that the court shall only admit evidence of previous convictions that are related in substance to the offense charged.[98].

Statutory bounds also govern what prosecution counsel may put to an accused person during cross-examination.[99] Drawing upon the seminal English common law decisions in *Stirland v DPP and Maxwell v DPP*,[100] which inform Nigerian statutory interpretation, appellate courts in Nigeria enforce strict limits on character cross-examination.

> An accused person cannot be questioned regarding mere suspicions, police inquiries, or unproven allegations.[101]
>
> *Under Popoola v Commissioner of Police*, cross-examination regarding criminal charges that ended in an acquittal or were abandoned by the prosecution is strictly illegal.[102] The term charged in statutory provisions means actually brought before a criminal court of law, not merely questioned by investigating police officers. Proof of bad character must rest strictly on final convictions or established community reputation.[103].

3.6 Judicial Discretion in the Admission and Exclusion of Character Evidence

Judicial discretion plays a crucial protective role in preventing the improper admission of character evidence.[104] Even where bad character evidence becomes technically admissible under

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96 Aguda (n 3) 129.
97 *Evidence Act 2011*, s 82(4).
98 *Ibid*, s 82(5).
99 Nwadialo (n 9) 201.
100 *Maxwell v Director of Public Prosecutions* [1935] AC 309.
101 Aguda (n 3) 130.
102 *Popoola v Commissioner of Police* [1964] NMLR 1.
103 *Audu Maizako v Superintendent-General of Police* [1960] NRNLR 188.
104 Aguda (n 3) 132.

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a statutory exception in Section 82(2) or Section 180(g), trial judges retain an inherent common law discretion to exclude the evidence if its prejudicial effect on the fairness of the trial outweighs its probative force.[105] 2 AC 447.]

However, Nigerian procedural statutes lack an explicit statutory directive mandating the exercise of this balancing discretion.[106] Consequently, many trial judges view Section 82 as a mandatory rule of admissibility once technical statutory requirements are satisfied, failing to conduct a rigorous prejudice-balancing exercise on the record.[107] Strengthening judicial discretion through statutory codification is essential to ensure consistent fair trial protection.

3.7 The Relationship Between Character Evidence and Criminal Procedure Legislation

Character evidence provisions under the Evidence Act 2011 interact continuously with criminal procedure legislation, particularly the Administration of Criminal Justice Act 2015 (ACJA) and state Administration of Criminal Justice Laws.[108] ACJA 2015 introduces procedural reforms aimed at eliminating trial delays, regulating police interrogation practices, and formalizing plea bargaining.[109]

The operational efficacy of character evidence rules depends significantly on procedural compliance under ACJA 2015.[110] For example, where a defendant confessional statement is challenged on grounds of police coercion during a trial-within-trial under Section 15(4) and Section 17 of ACJA 2015, alleging police torture inevitably involves casting imputations on investigating officers. Managing Section 180(g)(ii) character exceptions during such procedural

105 *Makin* (n 5); *DPP v P* [1991
106 Afe (n 13) 108.
107 Njoku, Elom-Obed and Okorie (n 10) 18.
108 *Administration of Criminal Justice Act 2015*.
109 *Administration of Criminal Justice Act 2015*, ss 1, 270; Aidonojie, Odojor and Agbale (n 6) 163.
110 Adewale (n 9) 74.

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interlocutory proceedings requires careful harmonization between ACJA 2015 and the Evidence Act 2011.[111]

3.8 Relevant Nigerian Judicial Decisions and Emerging Interpretations

Nigerian appellate jurisprudence has consistently reinforced the exclusionary baseline governing bad character evidence.[112] In Popoola v Commissioner of Police, the High Court set aside a conviction where prosecution counsel cross-examined the accused regarding prior unverified police suspicions, establishing that mere suspicion does not equal character.[113]

Similarly, in Makanjuola v State, the Supreme Court emphasized that bad character evidence introduced under Section 82 must satisfy strict statutory gateways, holding that trial courts must not permit prosecution counsel to smuggle in propensity evidence under the guise of cross-examination to credit.[114] In Okeke v State, the Court of Appeal reaffirmed that where bad character evidence is admitted illegally, an appellate court will quash the conviction unless the prosecution demonstrates that the remaining untainted evidence irresistibly supports guilt.[115]

4.0 CHALLENGES OF CHARACTER EVIDENCE UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM

4.1 Ambiguities and Limitations in the Statutory Framework

A primary operational challenge within the Nigerian criminal justice system is the practical difficulty of applying the statutory dichotomy between general reputation and individual

111 *Evidence Act 2011*, s 180(g)(ii); ACJA 2015, s 15(4).
112 Nwadialo (n 9) 205.
113 *Popoola* (n 12).
114 *Makanjuola* (n 16).
115 *Okeke* (n 16); Okonkwo (n 8) 58.

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disposition mandated under Section 77 of the Evidence Act 2011.[116] While the statute strictly defines character as community reputation as distinguished from disposition, witnesses in Nigerian courtrooms almost invariably struggle to maintain this distinction during examination-in-chief and cross-examination.[117] In practice, character witnesses called by either the defense or prosecution frequently offer personal opinions or narrate specific instances of past conduct, rather than testifying to general public estimation.[118]

This creates significant conceptual friction. The statutory restriction of character evidence to general reputation under Section 77 was originally designed under English common law to prevent trials from devolving into collateral mini-trials regarding an individual specific past deeds.[119] However, in modern urbanized Nigerian society, cohesive community reputation is increasingly difficult to ascertain. Restricting witnesses to abstract community reputation creates an artificial evidentiary standard that trial judges struggle to enforce, often forcing courts to exclude valuable testimony simply because it reflects a witness personal knowledge of the defendant rather than generalized public rumor.[120]

4.2 Difficulties in Distinguishing Character Evidence from Evidence of Conduct

Trial judges in Nigeria frequently encounter severe practical difficulties in separating evidence of general character from evidence of specific conduct.[121] Under Section 77, evidence of particular acts by which reputation or disposition is shown is explicitly prohibited.[122] However, during live

116 *Evidence Act 2011*, s 77.
117 Aguda (n 3) 135.
118 Nwadialo (n 9) 208.
119 *Evidence Act 2011*, s 77; *Popoola* (n 12).
120 Adewale (n 9) 75.
121 Afe (n 13) 110.
122 *Evidence Act 2011*, s 77.

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witness examination, character witnesses almost always justify their opinion of a defendant honesty or peacefulness by recounting specific virtuous deeds or past acts of integrity.

When trial courts strictly enforce Section 77 by striking out references to specific conduct, character testimony is reduced to bare, unconvincing assertions of general reputation.[123] Conversely, when trial judges leniently permit references to specific good conduct, it opens the door for prosecution counsel to cross-examine on specific alleged bad conduct, dragging the court into lengthy collateral inquiries into uncharged past events.[124]

4.3 Propensity Reasoning and the Risk of Prejudicial Inferences

The core danger inherent in receiving character evidence is the psychological risk of propensity reasoning.[125] Propensity reasoning occurs when a fact-finder infers that because an accused person committed a bad act in the past or possesses a questionable character, they possess a general criminal propensity, and because they possess such a propensity, they committed the specific crime charged.[126]

In Nigerian criminal trials, which are conducted by a single judge sitting without a jury, there is an unspoken assumption that professional judges are immune to propensity prejudice.[127] Judicial psychology demonstrates, however, that judges are subject to cognitive confirmation bias. Exposure to an accused prior criminal record or bad reputation can unconsciously color a judge evaluation of conflicting witness credibility, leading to wrongful convictions grounded on propensity prejudice.[128]

123 Aguda (n 3) 138.
124 Nwadialo (n 9) 210.
125 Aguda (n 3) 140.
126 *Makin* (n 5); *R v Rodley* (n 5).
127 Afe (n 13) 112.
128 Ezeh and Amasiatu (n 7) 35.

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4.4 The Tension Between the Presumption of Innocence and Bad Character Evidence

A fundamental structural tension exists between the constitutional presumption of innocence guaranteed under Section 36(5) of the 1999 Constitution and statutory provisions that permit the admission of bad character evidence.[129] When a defendant prior criminal convictions are introduced under Section 82(2) or Section 180(g), the evidentiary focus subtly shifts from whether the state has proved the present charge beyond reasonable doubt to whether the accused is a bad person deserving of punishment.[130]

This tension is particularly acute in cases involving similar previous offenses.[131] For example, admitting a prior conviction for theft in a current trial for burglary creates an almost overwhelming inference of guilt. Unless trial judges scrupulously enforce strict statutory boundaries and apply rigorous prejudice balancing, admitting bad character evidence directly erodes the constitutional guarantee of innocence.[132]

4.5 Evidentiary Burdens and the Protection of the Accused Fair Trial Rights

The application of Section 180(g)(ii) of the Evidence Act 2011 creates a severe tactical trap for defense counsel, directly impacting the fair trial rights of the accused.[133] Under Section 180(g)(ii), an accused person who elects to give evidence in his own defense forfeits statutory immunity against cross-examination regarding prior offenses or bad character if the nature or conduct of his defense involves imputations on the character of the prosecutor or prosecution witnesses.[134]

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129 *Constitution of the Federal Republic of Nigeria 1999*, s 36(5); *Evidence Act 2011*, s 82.
130 Okonkwo (n 8) 60.
131 Aguda (n 3) 142.
132 Nwadialo (n 9) 212.
133 *Evidence Act 2011*, s 180(g)(ii); *Constitution of the Federal Republic of Nigeria 1999*, s 36(6)(d).
134 *Evidence Act 2011*, s 180(g)(ii).

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In criminal defense practice, asserting a legitimate defense often necessitates challenging the integrity, veracity, or conduct of investigating police officers or key prosecution witnesses.[135] For example, alleging that investigating officers fabricated a confessional statement under torture, extorted money, or planted incriminating evidence inherently casts imputations on their character. Under a rigid application of Section 180(g)(ii), as applied in Audu Maizako v Superintendent-General of Police, launching such a necessary defense unleashes the prosecution to cross-examine the accused on his prior criminal record.[136]

Although judicial authorities such as Selvey v Director of Public Prosecutions establish that a mere emphatic denial of the prosecution allegations does not constitute an imputation on character, the dividing line between an emphatic denial and an imputation remains notoriously thin.[137] AC 304.] Consequently, defense counsel in Nigeria face an unfair dilemma: either refrain from exposing police misconduct to preserve the client record from exposure, or expose the misconduct and risk exposing the client to damaging propensity prejudice.[138]

This tactical trap disproportionately impacts indigent defendants who are more vulnerable to coercive police interrogation tactics during pre-trial detention.[139] When an indigent defendant attempts to explain to the court how a forced confession was extracted, doing so inevitably impugns the investigating officer character. Triggering Section 180(g)(ii) in such circumstances effectively punishes the accused for revealing procedural abuses, subverting the constitutional guarantee of a fair hearing.[140]

135 Aguda (n 3) 144.
136 *Audu Maizako* (n 18).
137 *Selvey v Director of Public Prosecutions* [1970
138 Afe (n 13) 114.
139 Ezeh and Amasiatu (n 7) 38.
140 *Constitution of the Federal Republic of Nigeria 1999*, s 36(1).

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4.6 Inconsistency in Judicial Interpretation and Application

The application of character evidence provisions across Nigerian High Courts is characterized by noticeable inconsistency.[141] Because Section 82 of the Evidence Act 2011 lacks an explicit statutory balancing provision equivalent to modern comparative codes, trial judges exercise unguided discretion when ruling on objections relating to character evidence.[142]

Some trial judges adopt a rigid technical approach, automatically admitting prior convictions the moment a defendant casts any imputation on prosecution witnesses under Section 180(g)(ii).[143] Other judges adopt a protective constitutional approach, excluding prior convictions unless the prosecution proves compelling necessity. This judicial variance creates uncertainty for trial advocacy and undermines public confidence in the consistency of criminal justice outcomes.[144]

4.7 Challenges Relating to Previous Convictions and Uncharged Misconduct

Proving previous convictions under Section 82(4) and Section 82(5) poses significant administrative and procedural challenges in Nigerian courtrooms.[145] Section 82(5) mandates that the court shall only admit evidence of previous convictions that are related in substance to the offense charged.[146] However, determining whether a prior conviction is related in substance requires a careful comparative evaluation of the underlying factual ingredients, which trial courts often skip in summary proceedings.[147]

Furthermore, prosecution counsel frequently attempt to introduce evidence of uncharged misconduct, pending criminal charges, or mere police suspicions under the guise of character

141 Aguda (n 3) 146.
142 Njoku, Elom-Obed and Okorie (n 10) 22.
143 Nwadialo (n 9) 215.
144 Aidonojie, Odojor and Agbale (n 6) 172.
145 *Evidence Act 2011*, s 82(4), (5).
146 *Evidence Act 2011*, s 82(5).
147 Aguda (n 3) 148.

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cross-examination.[148] Although appellate decisions in Popoola v Commissioner of Police and Stirland v DPP strictly prohibit cross-examination on unproven allegations or abandoned counts, trial judges lacking access to immediate legal reporting databases sometimes improperly allow such questions, contaminating the trial record.[149]

4.8 The Impact of Character Evidence on Trial Outcomes and Criminal Justice Fairness

Improperly admitted character evidence exerts a profound distortionary impact on criminal trial outcomes.[150] When bad character evidence is improperly placed before a court, the risk of a wrongful conviction increases exponentially because moral prejudice undermines the objective evaluation of reasonable doubt.[151]

Conversely, when legitimate good character evidence is unduly restricted under Section 77 because a character witness testified to specific acts rather than abstract reputation, an innocent defendant is deprived of a vital circumstantial defense.[152] Restricting good character evidence while failing to strictly exclude bad character evidence creates a structural bias against the accused, compromising the overall fairness of the criminal justice system.[153]

4.9 Institutional and Practical Challenges in the Administration of Criminal Justice

Institutional deficiencies within Nigerian criminal justice administration significantly aggravate the practical problems surrounding character evidence.[154] The primary institutional bottleneck is

148 *Popoola* (n 12).
149 *Stirland* (n 17); Afe (n 13) 116.
150 Okonkwo (n 8) 62.
151 Ezeh and Amasiatu (n 7) 40.
152 Aguda (n 3) 150.
153 Aidonojie, Odojor and Agbale (n 6) 175.
154 Adewale (n 9) 78.

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the absence of an integrated, automated national criminal record database managed by the Nigerian Police Force or the Ministry of Justice.[155]

In the absence of reliable criminal record registries, proving previous convictions under Section 82(4) relies on manual record books or informal police testimony.[156] This institutional deficit leads to frequent delays, unverified assertions, and mistaken identity issues during character cross-examination. Furthermore, inadequate continuing legal education for police prosecutors and trial counsel regarding modern evidence law contributes to persistent errors in handling character evidence.[157]

5.0 COMPARATIVE ANALYSIS OF CHARACTER EVIDENCE IN SELECTED JURISDICTIONS

5.1 Comparative Framework and Criteria for Jurisdictional Selection

Conducting a comparative analysis of character evidence rules requires a structured framework that evaluates statutory architecture, judicial discretion, and constitutional fair trial safeguards across diverse legal systems.[158] The jurisdictions selected for comparison with Nigeria in this study are England and Wales, the United States, India, and Ghana.[159]

These jurisdictions were deliberately selected based on three criteria: shared common law origin, distinct paths of statutory modernization, and valuable lessons for legislative reform.[160] England and Wales represents the common law birthplace whose statutory reforms under the Criminal Justice Act 2003 modernized character evidence. The United States offers a highly codified

155 Aidonojie, Odojor and Agbale (n 6) 176.
156 *Evidence Act 2011*, s 82(4).
157 Afe (n 13) 118; Ezeh and Amasiatu (n 7) 42.
158 Aguda (n 3) 152.
159 Aidonojie, Odojor and Agbale (n 6) 178.
160 Nwadialo (n 9) 220.

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model under the Federal Rules of Evidence featuring explicit non-propensity gateways and mandatory prejudice balancing. India and Ghana present instructive common law codifications that have tackled reputation vs. disposition ambiguities within developing constitutional democracies.[161]

5.2 Character Evidence Under the Legal System of England and Wales

5.2.1 Statutory Regulation and the Criminal Justice Act 2003

England and Wales fundamentally reformed its character evidence rules through the enactment of the Criminal Justice Act 2003 (CJA 2003).[162] Chapter 1 of Part 11 of the CJA 2003 abolished the old common law rules governing bad character evidence, replacing them with a comprehensive statutory framework.[163]

Under Section 98 of the CJA 2003, bad character is defined as evidence of, or of a disposition towards, misconduct on his part, other than evidence which has to do with the alleged facts of the offense charged, or is evidence of misconduct in connection with the investigation or prosecution of that offense.[164] Misconduct is defined under Section 112 as the commission of an offense or other reprehensible behavior.[165]

5.2.2 Admissibility of Bad Character Evidence

Under Section 101(1) of the CJA 2003, evidence of a defendant bad character is admissible if, and only if, it passes through one of seven explicit statutory gateways:[166]

- Gateway (a): All parties to the proceedings agree to the evidence being given.[167]

161 Ezeh and Amasiatu (n 7) 45.
162 *Criminal Justice Act 2003*.
163 *Criminal Justice Act 2003*, s 98.
164 *Criminal Justice Act 2003*, s 98.
165 *Criminal Justice Act 2003*, s 112.
166 *Criminal Justice Act 2003*, s 101(1).

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- Gateway (b): The evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination.[168]
- Gateway (c): It is important explanatory evidence.[169]
- Gateway (d): It is relevant to an important matter in issue between the defendant and the prosecution (which explicitly includes propensity to commit offenses of the category charged or propensity to be untruthful).[170]
- Gateway (e): It has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant.[171]
- Gateway (f): It is evidence to correct a false impression given by the defendant.[172]
- Gateway (g): The defendant has made an attack on another person character.[173]

5.2.3 Safeguards Against Unfair Prejudice

The CJA 2003 incorporates robust statutory safeguards to prevent unfair prejudice.[174] Under Section 101(3), the court must exclude bad character evidence under Gateway (d) or Gateway (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.[175]

Furthermore, under Section 107 of the CJA 2003, if after the close of the prosecution case the judge is satisfied that bad character evidence admitted under Gateways (c) to (g) is contaminated

167 *Criminal Justice Act 2003*, s 101(1)(a).
168 *Criminal Justice Act 2003*, s 101(1)(b).
169 *Criminal Justice Act 2003*, s 101(1)(c).
170 *Criminal Justice Act 2003*, ss 101(1)(d), 103.
171 *Criminal Justice Act 2003*, s 101(1)(e).
172 *Criminal Justice Act 2003*, s 101(1)(f).
173 *Criminal Justice Act 2003*, s 101(1)(g).
174 *Criminal Justice Act 2003*, ss 101(3), 107.
175 *Criminal Justice Act 2003*, s 101(3).

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or unconvincing such that a conviction would be unsafe, the judge must either direct an acquittal or discharge the jury.[176] These statutory mechanisms ensure active judicial balancing throughout the trial.

5.2.4 Judicial Approaches and Lessons for Nigeria

English appellate courts, particularly in leading cases such as R v Hanson, have emphasized that Gateway (d) propensity evidence must not be used to smuggle in general bad character.[177] EWCA Crim 86, [2005] 1 WLR 3169.] The Court of Appeal established that a single prior conviction does not automatically show propensity unless it exhibits a distinctive pattern or similarity to the offense charged.[178]

The statutory gateways and explicit judicial exclusion powers under the CJA 2003 offer invaluable lessons for Nigeria.[179] Replacing vague common law reputation categories with clear statutory gateways paired with mandatory judicial prejudice balancing would eliminate the operational uncertainties currently plaguing Nigerian character jurisprudence.

5.3 Character Evidence Under the United States Federal Rules of Evidence

5.3.1 Rules 404, 405 and 608: Scope and Application

The United States legal system offers one of the most structured frameworks governing character evidence, codified under Rules 404, 405, and 608 of the Federal Rules of Evidence (FRE).[180]

176 *Criminal Justice Act 2003*, s 107.
177 *R v Hanson* [2005
178 *Ibid.*
179 Aguda (n 3) 155.
180 *Federal Rules of Evidence*, rules 404, 405, 608.

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FRE 404(a)(1) codifies the baseline prohibition against using character evidence to prove propensity.[181]

Under FRE 405(a), when character evidence is admissible, it may be proved by testimony about reputation or by testimony in the form of an opinion.[182] FRE 608 regulates witness credibility, permitting attacks on truthfulness through reputation or opinion evidence or cross-examination on specific instances of conduct.[183]

5.3.2 Propensity Evidence and Permitted Exceptions

Although FRE 404(b)(1) prohibits evidence of crimes, wrongs, or other acts to prove character to show action in conformity therewith, FRE 404(b)(2) enacts explicit statutory non-propensity gateways.[184]

Uncharged conduct or prior acts may be admitted for specified non-propensity purposes, including proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.[185] Before admitting FRE 404(b) evidence, the prosecution must provide reasonable notice in writing prior to trial.

5.3.3 Character Evidence in Sexual-Offence Proceedings

US federal law provides specialized character rules in sexual offense prosecutions under FRE 412 to 415.[186] FRE 412 (the Rape Shield Rule) strictly prohibits evidence offered to prove that

181 *Federal Rules of Evidence*, rule 404(a)(1).
182 *Federal Rules of Evidence*, rule 405(a).
183 *Federal Rules of Evidence*, rule 608.
184 *Federal Rules of Evidence*, rule 404(b)(1), (2).
185 *Federal Rules of Evidence*, rule 404(b)(2).
186 *Federal Rules of Evidence*, rules 412-415.

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an alleged victim engaged in other sexual behavior or sexual predisposition, subject to narrow exceptions.[187]

Conversely, under FRE 413 and 414, in criminal cases involving sexual assault or child molestation, evidence of the defendant prior commission of another sexual assault or child molestation is admissible and may be considered on any matter to which it is relevant, creating a statutory exception to the general propensity bar.[188]

5.3.4 Judicial Safeguards and Constitutional Considerations

All character evidence in US federal courts is subject to the master balancing test under FRE 403.[189] Under FRE 403, the trial court may exclude relevant character evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.[190]

In *Huddleston v United States*, the US Supreme Court affirmed that FRE 404(b) evidence is protected by four safeguards: proper non-propensity purpose under 404(b), relevance under 401, FRE 403 balancing, and limiting jury instructions under FRE 105.[191]

5.3.5 Implications for the Nigerian Legal Framework

The US FRE framework provides a highly functional model for Nigeria.[192] Permitting opinion evidence under FRE 405(a), codifying explicit non-propensity gateways under FRE 404(b)(2), and subjecting all character evidence to an overarching FRE 403 balancing test would modernize Nigerian character jurisprudence and eliminate artificial common law restrictions.

187 Federal Rules of Evidence, rule 412.
188 ibid, rules 413, 414.
189 ibid, rule 403.
190 ibid, rule 403.
191 *Huddleston v United States* 485 US 681 (1988).
192 Aguda (n 3) 158.

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5.4 Comparative Observations from South Africa

South Africa criminal evidence framework, governed by the Criminal Procedure Act 51 of 1977, provides additional comparative insights.[193] Under Section 197 of Act 51 of 1977, an accused giving evidence is protected from cross-examination regarding prior convictions or bad character, subject to narrow exceptions similar to Section 180(g) of the Nigerian Evidence Act.[194]

South African constitutional jurisprudence under Section 35 of the 1996 Constitution strictly enforces fair trial guarantees.[195] In S v Makhanya, the Constitutional Court held that evidence of uncharged misconduct must be excluded unless its probative value is overwhelming, reinforcing that character evidence must never subvert the constitutional presumption of innocence.[196]

5.5 Cross-Jurisdictional Comparison of Admissibility Rules, Judicial Discretion and Fair Trial Safeguards

A cross-jurisdictional synthesis reveals that modern evidence systems have transitioned from rigid common law reputation definitions toward functional statutory gateways paired with mandatory judicial balancing tests.[197] While Nigeria remains tied to 19th-century reputation categories under Section 77, England, the US, India, and Ghana have modernized by admitting opinion evidence and codifying explicit non-propensity gateways.

Crucially, comparative systems empower trial judges with explicit statutory authority to exclude bad character evidence whenever its prejudicial effect threatens trial fairness.[198] Adopting these

193 *Criminal Procedure Act 51 of 1977* (South Africa).
194 *Criminal Procedure Act 51 of 1977*, s 197; *Evidence Act 2011*, s 180(g).
195 *Constitution of the Republic of South Africa 1996*, s 35.
196 *S v Makhanya* 2002 (2) SACR 299 (CC).
197 Aguda (n 3) 160; Aidonojie, Odojor and Agbale (n 6) 180.
198 Criminal Justice Act 2003, s 101(3); Federal Rules of Evidence, rule 403.

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comparative safeguards in Nigeria is essential to align local practice with international fair trial standards.

6.0 CRITICAL ANALYSIS OF THE NIGERIAN FRAMEWORK IN LIGHT OF COMPARATIVE JURISPRUDENCE

6.1 Similarities and Differences in the Regulation of Character Evidence

A critical analysis of the Nigerian framework alongside England, the United States, India, and Ghana demonstrates shared foundational principles alongside sharp operational divergences.[199] All five jurisdictions share a common law baseline that presumptively excludes bad character evidence to protect the accused from propensity prejudice.

However, while comparative jurisdictions have modernized their statutory structures through explicit gateways (CJA 2003, FRE 404(b), BSA 2023) and opinion evidence (FRE 405, NRCD 323), Nigeria remains tied to rigid Victorian reputation categories under Section 77 and ambiguous cross-examination traps under Section 180(g)(ii).[200]

6.2 Comparative Assessment of Admissibility Thresholds

Evaluating admissibility thresholds shows that Nigeria threshold under Section 82(2) relies on formalistic triggers (such as putting character in issue or casting imputations), whereas comparative thresholds rely on functional relevance and prejudice balancing.[201]

In Nigeria, once a statutory trigger under Section 180(g)(ii) occurs, bad character evidence becomes technically admissible without a mandatory statutory requirement to weigh its

199 Aguda (n 3) 162.
200 Evidence Act 2011, ss 77, 180(g)(ii); Nwadialo (n 9) 225.
201 ibid, s 82(2); Federal Rules of Evidence, rule 403.

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prejudicial effect.[202] In contrast, under FRE 403 and CJA 2003 Section 101(3), technical admissibility is only the first step; the court must independently verify that prejudicial effect does not outweigh probative force, providing superior fair trial protection.

6.3 Balancing the Interests of Justice, Public Protection and the Rights of the Accused

Achieving an equitable balance between societal protection and the constitutional rights of the accused requires sophisticated evidentiary rules.[203] Society has a legitimate interest in prosecuting habitual offenders, but that interest must not swallow the constitutional presumption of innocence.

Nigeria current framework tilts dangerously toward accidental prejudice because Section 180(g)(ii) penalizes defendants who expose police misconduct during trial.[204] Incorporating a core defense necessity exception, as applied in comparative common law systems, would restore procedural balance and uphold human rights guarantees.[205]

6.4 The Role of Judicial Discretion in Preventing Evidentiary Abuse

Judicial discretion is the primary defense against evidentiary abuse.[206] In comparative jurisdictions, judicial discretion is explicitly codified and guided by statutory factors.[207]

In Nigeria, judicial discretion remains an uncodified common law remnant, leading to inconsistent application across High Courts.[208] Codifying explicit judicial balancing criteria within Section 82 of the Evidence Act 2011 would transform discretionary power from an uncertain judicial indulgence into a structured statutory duty.

202 Afe (n 13) 120.
203 Ezeh and Amasiatu (n 7) 48.
204 Evidence Act 2011, s 180(g)(ii); *Audu Maizako* (n 18).
205 Constitution of the Federal Republic of Nigeria *1999*, s 36.
206 Aguda (n 3) 165.
207 Criminal Justice Act 2003, s 101(3); Federal Rules of Evidence, rule 403.
208 Nwadialo (n 9) 228.

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6.5 The Transferability of Comparative Legal Principles to Nigeria

Comparative legal principles from England, the US, India, and Ghana are highly transferable to Nigeria because all five systems share accusatorial trial foundations, common law evidentiary origins, and constitutional fair trial mandates.[209]

Adapting FRE 404(b) non-propensity gateways, FRE 405 opinion testimony, CJA 2003 Section 101(3) prejudice balancing, and Ghanaian Act 30 procedural safeguards into the Evidence Act 2011 would modernize Nigerian jurisprudence without disrupting its fundamental accusatorial structure.

6.6 Implications for the Development of Nigerian Criminal Evidence Law

Modernizing character evidence law in Nigeria has profound implications for criminal justice reform.[210] Reforming Part IV of the Evidence Act 2011 will reduce wrongful convictions grounded on propensity bias, protect defense counsel during witness cross-examination, and align Nigerian trial practice with international human rights standards.[211]

7.0 REFORM PROPOSALS FOR CHARACTER EVIDENCE REGULATION IN NIGERIA

7.1 Legislative Reform and Clarification of Statutory Provisions

The National Assembly should undertake a comprehensive legislative amendment of Part IV of the Evidence Act 2011. Section 77 should be amended to abolish the artificial restriction of character strictly to general reputation, expanding the definition to permit opinion testimony and specific instances of conduct under controlled conditions, adapting the frameworks of Ghana

209 Aidonojie, Odojor and Agbale (n 6) 182.
210 Adewale (n 9) 80.
211 Ezeh and Amasiatu (n 7) 50; African Charter on Human and Peoples' Rights, art 7.

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(NRCD 323) and the United States (FRE 405). Furthermore, Section 82 should be restructured to incorporate explicit statutory non-propensity gateways adapted from FRE 404(b)(2), allowing prior uncharged acts to be admitted solely to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake.

7.2 Development of Clearer Judicial Guidelines for Admissibility

An explicit judicial balancing test should be inserted into Section 82 of the Evidence Act 2011, modeled on US FRE 403 and English CJA 2003 Section 101(3). The statutory amendment should mandate that even where bad character evidence meets a technical statutory exception, the trial judge must exclude it if its prejudicial effect on the fairness of the trial substantially outweighs its probative value. The law should require trial judges to deliver a reasoned ruling on the record evaluating probative force against prejudicial effect before admitting bad character evidence.

7.3 Strengthening Fair Trial Safeguards

Section 180(g)(ii) of the Evidence Act 2011 should be amended to enact a core defense necessity exception. The statute should specify that casting imputations on prosecution witnesses or investigating officers shall not open the door to cross-examination regarding the defendant bad character if such imputations are reasonably necessary to establish a legitimate defense, such as alleging police torture, confessional fabrication, extortion, or evidence planting. Furthermore, prosecution counsel should be required to obtain prior leave of the trial court before embarking on any character cross-examination under Section 180(g).

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7.4 Regulation of Evidence Relating to Previous Convictions and Uncharged Conduct

Section 82 should be amended to enact an absolute statutory ban on any questioning, cross-examination, or evidence regarding police arrests, unproven suspicions, or criminal charges that ended in an acquittal or were abandoned by the state. Proof of bad character under Section 82(4) must rest strictly on final, unreversed judicial convictions or established community reputation. Section 82(5) should be strengthened to require the prosecution to provide written pre-trial notice containing full particulars whenever it intends to rely on prior convictions related in substance to the charge.

7.5 Judicial Training and Institutional Capacity Building

The National Judicial Institute, in collaboration with the Nigerian Bar Association and the Ministry of Justice, should establish specialized continuing legal education modules for trial judges, magistrate judges, and criminal prosecutors on modern evidence law and propensity management. Furthermore, the Federal Government should invest in building a centralized, automated national criminal records registry under the Nigerian Police Force and Federal Ministry of Justice to ensure that prior conviction records introduced in court are authenticated, accurate, and real-time.

7.6 Prospects for Harmonising Nigerian Practice with Applicable Comparative Standards

Harmonizing Nigerian evidentiary practice with comparative international standards requires aligning domestic statutes with Article 7 of the African Charter on Human and Peoples Rights and Article 14 of the International Covenant on Civil and Political Rights. Implementing structured statutory gateways, mandatory judicial prejudice balancing, and robust defense

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protections will position Nigeria as a leader in constitutional criminal justice administration across Africa.

8.0 CONCLUSION

8.1 Summary of Principal Findings

This study evaluated the statutory framework, operational dynamics, and practical challenges governing character evidence under the Nigerian criminal justice system, alongside a comparative analysis with Ghana, India, the United States, and England and Wales. The investigation yielded four foundational findings. First, Section 77 of the Evidence Act 2011 defines character strictly as general reputation as distinguished from disposition, representing an obsolete Victorian legal fiction that trial judges struggle to enforce in modern litigation. Second, the proviso to Section 180(g)(ii) creates an unfair tactical trap for defense practitioners, penalizing defendants who expose police misconduct during trial by opening their prior record to cross-examination. Third, Section 82 lacks explicit statutory non-propensity gateways and an explicit judicial balancing test, leading to inconsistent application across High Courts. Fourth, comparative frameworks in Ghana, India, the United States, and England demonstrate that admitting opinion evidence, codifying non-propensity gateways, protecting core defense necessity, and enforcing mandatory judicial prejudice balancing significantly enhance fair trial guarantees.

8.2 Concluding Observations

The primary mandate of evidence law in criminal proceedings is to facilitate the discovery of truth while safeguarding the constitutional rights of the accused. Allowing bad character evidence to enter criminal trials without rigorous statutory control risks substituting moral

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opprobrium for strict proof of the *actus reus* and *mens rea* of the crime charged. By amending the Evidence Act 2011 to admit opinion evidence, codify explicit non-propensity gateways, establish a core defense necessity exception under Section 180(g)(ii), and mandate explicit judicial balancing of probative force against prejudicial effect, Nigeria can modernize its evidentiary jurisprudence, align with comparative common law standards, and uphold the constitutional presumption of innocence guaranteed under Section 36(5) of the 1999 Constitution.

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ARTICLE INFORMATION

Challenges of Character Evidence under the Nigerian Criminal Justice System: A Comparative Analysis with Other Jurisdictions

Authors: Douglas, Lucky Ken, LL.M, LL.M, PhD in View

PUBLICATION
ISSN: 3141-5717 Volume: 1 Issue: 3 Publication Year: 2026

PERSISTENT DOI
https://doi.org/10.67588/0008

ARTICLE URL
https://gilawjournal.com/article/challenges-of-character-evidence-under-the-nigerian-criminal-justice-system-a-comparative-analysis-with-other-jurisdictions

CITATION
Douglas, Lucky Ken, LL.M, LL.M, PhD in View, 'Challenges of Character Evidence under the Nigerian Criminal Justice System: A Comparative Analysis with Other Jurisdictions' (2026) 1(3) Global Insights Law Journal. doi: 10.67588/0008

PUBLISHED BY

Global Insights Publishing

Official publisher of Global Insights Law Journal

PUBLICATION IMPRINT
Volume 1 | Issue 3 | Published 2026 | Editorial Office, Global Insights Law Journal | info@gilawjournal.com | gilawjournal.com

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