International Journal of Humanities and Social Science Invention (IJHSSI)
ISSN (Online): 2319 – 7722, ISSN (Print): 2319 – 7714
www.ijhssi.org ||Volume 8 Issue 11 Ser. II || November 2019 || PP 47-62

A Critical Appraisal of Capital punishment in Nigeria Judicial system

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ABSTRACT*: The essence of law is for the favor of societal control. This is properly captured in the Latin maxim "ubi societal ubi jus 'which indicates that in every civilized society, there exist a law. To actualize this goal, a penal method technically called criminal justice system has been introduced to secure public order through the instrumentality of punishment under the principles of "nullum crimen, nulla poena sine lege"- nothing is crime unless it is written and its punishment stated. The presumption is that any person outside this system is innocent. However, in time with the adversary legal system in Nigeria, an accused person who has just entered the system is also presumed innocent until convicted by a court of competent jurisdiction. This principle of legality -is a core value, a human right-captured under many international treaties like the Article 11 of the Universal Declaration of Human Right (UDHR) 1948, European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) 1950 et al. actually, it The law legal maxim "nemo dat guod non habet" should appropriately apply here that "no one can take what he does not give, as one cannot give what he does not have as encapsulated in the common law rule. Thus, my introductory chapter-contains the definitions of law and its essence, the nature of our criminal justice system, the concepts of crime, concept and theories of punishment, capital punishment, its genesis and main many of execution. Then in chapter 11, I will discuss the constitutionality of capital punishment in other common law countries, while in chapter III, I will focus in chapter IV, I will proffer arguments against its practice and in chapter V. I will make recommendations and draw a conclusion.*

Keywords: *Critical Appraisal, Capital punishment, Nigeria, Judicial system and Human Right*

Date of Submission: 30-10-2019 Date of acceptance: 19-11-2019

I. INTRODUCTION

Law and its Essence: This is crystal clear, as it can be found in every work that bothers on legal jurisprudence, that there is no universally acceptable definition or precise gearing of laws. This is essentially not unconnected to a researchable fact that every rendered definition of law is in any case, either broad or restricted. The question of unanimity in the area of law definition is for now, not achieved. Therefore, it is reasonable in this research work, to bring to bear, instance definitions of law by different scholars and jurists coming up from their backgrounds of understanding. Hence, the need to access the below definitions of two background groups of academics, in which group are philosophers, and jurists.

The Early Philosophers like

(1) St. Thomas Aquinas as one of the greatest catholic theologians defined law as, "an ordinance for the common good[1] (Odike & Ajanwachuku, 2008)

(2) Cicero: is another great Greek philosopher who came up with the definition that law is "the highest reason imbedded in nature, which commands what should be done, and forbids the contrary (Ibid, p. 8)

(3) Plato, a Greek philosopher defined law as: "a form of social contract, as instrument of good life"(Opcit,p. 8).

Jurists such as

Justice Holmes defined law as "the prophecies of what the courts will do in fact, and nothing more pretentious, are what T mean by law" (Akanuro, 1997 p.3).

Also, in the context of purpose, J. W Salmon defined law as "the body of principles recognized and applied by the state in the administration of justice; that is to say, that law is the rules recognized and acted on by the court of justice"(Ibid, p. 4).

Law is also defined as the rules and regulations binding each members of the society to keep in his place and prevent him from getting in the way of others. Law is essentially an instrument of social control which is instrumental to the maintenance of social order in a number of ways i.e. a means to effective control of human conduct in every society keeping the several members of the society in their place; and at the same time

preventing them from getting in the way of others so as to produce an ordered relationship among the members of the society.

More so, the presence of law in the society is a basic necessity that regulates an ordered live among other things so that there would be no upsetting of the legally accepted order of things in the society caused by the acts of another man, avoidance of conflict of any type and no breach of agreement and many more. The necessity of law is such that where more than one life exists; law becomes a basic necessary for the regulation of such lives more than one life.

According to Farrar "a solitary individual i.e. a hermit living on complete isolation from other human being probably requires nothing more than habit"(Farrar, 1977). While order, morality and justice are basic components of law, they go in the same track in promoting social order. However, the functional existence of law regarding its noble duties depends on its timely fraternity with the government, for the purpose of law making, execution and interpretation of law. It also comes up with the equipment of penal techniques of law enforcement called Criminal Justice System in line with John Austin's assertion that "law has the triology of command, obedience and sanction"(Okere) It is therefore not unreasonable to hold that the several divergent views, definitions standard, and approaches to the definition of law which is yet to reach a universally accepted .is to the reason that law" changes in line with the changing state of affairs in all areas of life which it is subject to, and are also subject to it. This severally according to Salmon is to the extent that:

"A conservative minded judge, with religious learning and aristocratic background will obviously differ in outlook and therefore in decisions from one of radical middle class make up and this will not only affect his decisions on point of law but also on questions of fact"(Salmon, 1966, p.40)

Nature of Criminal Justice System

The criminal justice system involves two issues of (1) **the determination** of guilt,

(2) Sentence and punishment established for the purpose of reaching its subjects with justice, by convicting and punishing the guilty and helping them to stop offending while protecting the innocent.

It is therefore timely to clarify the understanding of justice as a concept, a concept of moral Tightness based on ethics, rationality, law or religion along with the punishment of the breaches of these. "It is the act of being just and fair"(Wikipedia, 2016). Justice is upheld and maintained by the coexistence of the criminal justice system and the ministry of justice. The criminal justice system provides support to the public, through a justice system which effectively brings offenders to justice. The ministry of justice, in turn, oversees the work of the criminal justice system, working to strengthen democracy, addressing crimes by developing laws that help contribute towards a better justice system through the instrumentality of police whose duty in line with the Police Act provides that:

"The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and properly and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within and without (sic) Ngene as may be required of them, by or under the authority of this country or any other act"(police act, capp.19)

Concept of Crime

There is much deliberation on the definition of crime, because it is viewed differently in every culture. However, WIvins offers an excellent starting point in defining the root meaning of the word. He stated, "we start with the fundamental fact that crime is the point of conflict between the individual intense with their complexity of social relations and of human nature". But contemporary psychologists have been able to establish three common view, and international view. Looking at the consensus view, which stems from the sociological theories of shepherd (1981), we can see that it defines crime as how society functions as an integrated structure,' the stability of which is dependent on the consensus or agreement of all its members, therefore rules an approval of the legal law maxim, "nullum crimens nulla poena sine lege ", which has a constitutional domain (Constitution of 1999).

The conflict view, by compassion, is the direct opposite of consensus view because it argues that society is a collection of diverse groups not one integrated structure. This theory claims that within society, there are different groups of people who are in conflict with each other because of the disparate distribution of wealth and power which leads to the promotion of crime.

It is good at this point, to bring the erudite contribution of Lord Atkin to bear when he said-"The domain of criminal jurisprudence can only ascertain by examining what acts at any particular period are declared by the stale to be crimes and only common nature they will for be and to possess is that they are prohibited by (he state and that those who commit them are punished"(Proprietary Articles LtdvA.G of Canada,1931).

The interactionist view is based on a number of assumption which fall between the two previously discussed points, because it maintains that there is no moral right or wrong, but rather changes in moral standards which affect the legal constraints of society.

As seen in these three views, crime can be defined in a multitude of ways depending on individual perspectives, society, culture, limes and social cultural background. One thing most psychologists agree upon is the belief that before an actual crime occurs, it has to be committed, so without an action there is no crime. Crime according to Bryan A. Garner, is, "an act that the law makes punishable: that breach of a legal duty treated as the subject-mater of a criminal proceeding- also termed criminal wrong"(Gancr; Black's LAW dictionary 1999 & 2004).

The view of Bryan A. Garner seems to be in line with our Nigerian Criminal Code which uses the term offence to define it as an act or omission which renders the person doing the act or making the omission liable to punishment under this code, or under any Act or law is called an offence (Criminal Code Cap 77 LFN 1990). Also, the Act provides "offence means an offence against any enactment in force in a state".

It is therefore, very reasonable to say that crime and concept of crime, falls within those things that are chastised and frowned at, by the people's conventional lifestyle, laws and custom. Those things are viewed as crime, punishable as crime, and described as crime by the social altitudes, and written laws of a place.

Meanwhile, for the purpose of criminal responsibility, a crime is committed when the two elements of intent and act compel any human act prohibited by criminal legislation. At common law, the doctrine is actus non facet reun nisi mems- rea i.e. - the act itself doesn't constitute guilt unless done with a guilty intent (Ibid S.23).

II. Literature Review

Conceptual Review

Concept of Punishment

Punishment is the imposition of hardship no response to misconduct (legal-dictionary, 2016). Human transgressions have been punished in various ways throughout history. The standard punishment in ancient Greek and Roman societies were death, slavery, mutilation (corporal punishment) imprisonment, or banishment. Some punishments were especially creative. In ancient Rome, for example, a person who murdered a close relative was enclosed in a sack with a cock, a viper, a dog and a monkey, and then cast into the sea (Ibid S.24).

Hobbes, for example defines punishment by reference to imposing pain rather than to deprivation. The essential points of Hobbes definition is that firstly, it acknowledge punishment as an authorized act, not an incidental or accidental harm it also acknowledge the fact that punishment is an act of political authority having jurisdiction in the community where the harmful wrong occurred.

Furthermore, punishment is constituted by imposing some burden or by some form of deprivation, or by withholding some benefit specifying the deprivation as a deprivation of rights (which right is controversial but that controversy does not affect the main point) is a helpful reminder that a crime is (among other things) a violation of the victim's rights, and the harm thus done is akin to the kind of harm a punishment does. Deprivation has no covert or subjective reference; punishment is an objectively judged loss or burden imposing on convicted offender.

It is reasonable at this point, to point out that punishment is not a national event but a human institution with human purposes, intentions, and acts its practice requires persons to be cast in various socially defined roles according to public rules. Harms of various sorts may be falling doer, but they do not count as punishment except in an extended sense unless they are inflicted by personal agency. Punishment is imposed to those who are believed to have acted wrongly (the basis and adequacy of such belief in any given case may be open to dispute). Being found guilty by persons authorized to make such a finding, and based on their belief in the person's guilt, is a necessary condition of justified punishment.

The ancient punishments were brought to England. Until the nineteenth century, the death penalty, or capital punishment, was imposed in England for more than 200 different crimes. Most of these crimes were petty violation such as pick-pocketing or swindling. A defense could be hanged, burned at the stake, or beheaded. In some cases, the process of death was drawn out. A person found guilty of treason, for example, was placed on a rack and stretched, hanged until not quite dead, then disemboweled, beheaded and quartered (out into four pieces)" (Op. cit).

Constitutionality of Capital Punishment in Nigeria

It is traceably true, that all the Nigerian constitutions have reiterated that every person has the right to life in the various era of constitution. Section 33(1) of the 1999 constitution provides that 'every person has a right to life, and no one shall be deprived intentionally of his life (1999 constitution). Section 34(1) of the constitution provides that every individual is entitled to respect for the dignity of his person and accordingly-

(a) No person shall be subjected to fortune or to inhuman or degrading treatment;
(b) No person shall be held in slavery or servitude: and
(c) No person shall be required to perform forced or compulsory labor (Ibid, S. 31).

Despite this broad section of the right of life, the final clause of previously quoted section 33(1) says " ...save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria".

The power of the state to prescribe death as a punishment for a criminal offence needs to be considered in the light of the constitutional right to the dignity of the human person.

Admittedly, the constitutional guarantee of the right to life is subject to a provision in favour of a death sentence ordered by a court as punishment following on a conviction for criminal offence on the constitutional validity of law authorizing killing as punishment for crime, which in turn depends on whether, or in what circumstances the death penalty may be an inhuman or degrading treatment (Nwabueze,1982) p.411). It is true that some known authors have persisted in the argument that death penalty is inhuman and degrading punishment, and therefore, unconstitutional, the Nigerian courts in a plethora of cases have held otherwise (2002). The Nigerian Court of Appeal in Adeniji v Slate has also held that the death penalty as per section 33(1), 233(2) (d), and 243 of the constitutions is expressly recognized by the said constitution (Adeniji v State (2000). The Supreme Court in Okoro v .S'/c//c[j] stated that the death penalty and its method of execution is lawful and valid as same is sanctioned by both sections 33(1) and 34(1) of the 1999 constitution as amended (Okoro v State, 1998).

Meanwhile, in Kalu v State$_t$ the Supreme Court aptly stated the Nigerian position as it held that "...under the S. 33(2) of the 1999 Constitution as amended, the death penalty can by no stretch of the imagination be said to be outlawed or have been

proscribed, nor outlawed the penalty (Kalu v State (1998)). As further expressed by Kutugi JSC that " ...it is clear thai death penalty per se which is prescribed by S. 319(1) of **the Criminal Code** cannot under any circumstance amount to torture or inhuman or degrading treatment which is what is prohibited under **S. 34(l)(a)** of the constitution. What I think will amount to torture or equal to inhuman treatment will be method or procedure or manner or way under which the prisoner (i.e. a condemned prisoner) is kept or executed (Nwabueze, 1982).

B.O, Nwabueze however, opines that the general principle is that a punishment that denies a person status as a human being or which degrades his personality as a human the death penalty as crime and inhuman punishment before the Singapore High Court; Customary Human Rights Norms, constitutional formaiism and the supremacy of Common Wealth. L. J. 213 (2004) among several others.

III. Theoretical Review

Theories of Punishment

Governments have several theories to support the use of punishment to maintain order in society. Theories of punishment can be divided into two general philosophies; utilitarian and retributive.

The utilitarian theory of punishment serves to punish offenders to discourse, or deter future wrongdoing. The retributive theory seeks theory seeks to punish offenders because they deserve to be punished. Under the utilitarian philosophy, laws should be used to maximize the happiness of society. Utilitarians understand that a crime free society does not exist, but they endeavour to inflict only as much punishment as is required to prevent future crimes. The utilitarian theory is "consequentially" in nature. It reorganizes that punishment has consequences for both the offender and society and holds that the total good produced by the punishment should exceed the total evil. In other words, punishment should not be limited. One illustration of consequentialism in punishment is the release of a prison inmate suffering from a debilitating illness.

If the prisoner's death is imminent, society is not served by its continued conferment because he is no longer capable of committing crimes. Also the utilitarian philosophy, laws that specify punishment for criminal conduct should be designed to deter future criminals conduct. Deterrence operates on a specific and a general level. General deterrence means that the punishment should prevent other people from committing criminal acts. The punishment serves as an example to the rest of the society, and it puts others on notice that criminal behaviour will be punished. Specific deterrence means that the punishment should prevent the same person from committing crimes. This specific deterrence works in two ways, first, an offender may be put in jail or prison to physically prevent him from committing another crime for a specified period. Second, this incapacitation is designed to be so unpleasant that it will discourage the offender from repeating such criminal behaviour.

Rehabilitation is another utilitarian rationale for punishment. The goal of rehabilitation is to prevent future crime by giving offenders the ability to succeed within the confines of the law. Rehabilitative measure for criminal offenders usually includes the use of educational programs that give offenders the knowledge and skills needed to compete in the job market.

The counterpart to the utilitarian theory of punishment is the retributive theory. Under this theory, offenders are punished for criminal behaviour because they deserve punishment. Criminal behaviour upsets the peaceful balance of society, and punishment helps to restore balance.

The retributive theory focuses on the crime itself as the reason for imposing punishment. While the utilitarian theory looks forward by basing punishment on social

benefits, the retributive theory looks basing at the transgression as the basis for punishment. According to the retributivists, human beings have free will and are capable of makingrationale decisions. An offender who is in one or otherwise incompetent should not be punished. However, a person who makes a conscious choice to upset the balance of society should be punished. There are different moral bases for retribution. To many retribitivists, punishment is justified as a form of vengeance: wrongdoers should be forced to suffer because they have forced others to suffer. This ancient principle was expressed succinctly in the old testament of the Judeo-Christian Bible: when a man causes a disfigurement in his neighbor...it shall be done to him, fracture for fracture, eye for eye, tooth for tooth. A third major rationale for punishment is denunciation. Under the denunciation theory, punishment should be an expression of societal condemnation. The denunciation theory is a hybrid of utilitarianism and retribution. It is utilitarian because the prospect of being publicly denounced serves as a deterrent. Denunciation is likewise retributive because it promotes the idea that offenders deserve to be punished. A sentence may, however, combine utilitarian ideals with retribution.

A sentence may, however, combine utilitarian ideals with retribution. For example, a defendant sentenced to prison for several years is sent there to quench the public's thirst for vengeance. At the same time, educational programs inside the prison reflect the utilitarian goal of rehabilitation.

Consequently, all approach, theorist and school of thought is approximate to crime reduction, as total elimination of crime in the society is forcibly impossible.

Capital Punishment

Capital punishment, death penalty or execution is government sanctioned punishment by death. The sentence is referred to as a death sentence. Crimes that can result in a death penalty are known as capital crimes or capital offences. The term capital is derived from the Latin capitals ("of the head"), referring to execution by beheading (Wikipedia, 2016).

Out of 195 officially recognized countries of the world, thirty-six countries actively practice capital punishment, 103 countries have completely abolished it dejure for all crimes. 6 have abolished it for ordinary crimes (while maintaining it for special circumstances such as war crime) where as 50 have abolished it de facto, they have neither used it for up to ten years or are under moratorium.

Capital punishment is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. Admittedly, capital punishment in Nigeria is recognized by criminal law at both federal and state levels and also, constitutionally ordained, (S. 33(1) of the 1999 constitution). Mode of administering Capital Punishment is aptly captured in the Administration of Criminal Justice Act 2015 (Proviso to S. 402(2). Judging from the statutory given of the Nigerian statutes and constitution, I can say that capital punishment is the legal withdrawal of one's right to life or an intentional deprivation of one's right to life in execution of the sentence of a court in respect of a capital crime offence of which one has been found guilty in Nigeria, and the method of administering same, in line with the method of its administration, as stipulated in the

Nigerian statute books.

Genesis of Capital Punishment

In so far as what I am discussing in this project work is based on law, I must base my research evidence on laws that invented the targeted subject matter of this sub topic by saying that the first established death penalty laws dates as far back as the eighteenth century B.C in the code of King Hammaurabi of Babylon, which codified the death penalty for 25 different crimes (29WWW.death penaltyinfo.org, 2016). The death penalty was also part of the fourteenth century B.C's Draconian code of Athens, which made death the only punishment for all crimes, and in the fifth century B.C's Roman land of the Twelve Tablets. Death sentence were carried out by such means a crucifixion, drowning, beating to death, burning alive and impalement.

'In Africa, in certain circumstances where a crime had already been committed, there were instances of the ken-group accepting the responsibility of an offence to the extent that would execute him (the offender) themselves usually by hanging (Quashigeh, 1990, p.13).

He also opines that Nigeria's customary laws, traditionally recognized capital punishment as an appropriate way of eliminating offenders who were dangerous to the community (Alan Miller, 1972), p. 315). In the light of the above, it is clear evidence that several ethnic groups that constitutes Nigerian state, sentenced victims of capital offence to death punishments. It was captured also in the constitution of Nigeria, (S. 33(1) 1999 Constitution) and the various codes that administrates criminal offences in the Nigerian states (S. 306 of

the Criminal Code Cap 77 LFN,1990). Meanwhile, the historical genesis of capital punishment can be justifiably said to be of a divine origin, and as old as mankind. This historical genesis which is of divine origin is traceable to the book of Genesis 2:17 where the ALMIGHTY GOD DECREED thus "Bui you must not eat from the tree of the knowledge of God and evil, for when you eat from it, you will certainly die. "
This stands the final point that administration of capital punishments is with regard to capital offences, and the subject of which, are humans, in line with the laid historical genesis of same.

Machinery for Execution

Historically, there were several ways of execution those who death sentences were passed on, this greatly depends on the practice that was acceptably used by a particular race. We have the method of crushing by elephant. Devouring by animals, as in damnatio ad bestia- i.e. 'being thrown to the lions', as was as by alligators, crocodiles piranha and sharks (Ibid S.23). There was also this method of learning apart by horses, back breaking which was a Mongolian method of execution that avoided the spilling of blood on the ground (example: the Mongolian leader- Jumukha was executed this way in 1206) (The secret history of the Mongols, book). There was also this method of blowing from a gun. Blood Eagle, cutting the skin of the victim by the spine. There was also the boiling to death method- this penalty was carried out using a large cauldron filled with water, oil, tar, talon, or even molten lead, burnt alive- traditional punishment for vestal virgins who had broken their vows. The burning execution methods for heretics and witches- a slower method of applying single pieces of burning wood was also used by Native Americans in torturing captives to death (Ibid S. 24). There was also this method called "FALLING"[1]- the victim is thrown off a height or into a hollow (example: the Barathron in Athens, condemned for their part in the battle of Arginusae were cast). In Argentina during the Dirty war, those secretly abducted were later drugged and thrown from an airplane into the ocean. There was also this skin flaying method, which the skin is removed from the body, the garrote method- used commonly by Spain- a former Spanish colonies (e.g. Philippines) used to strangle or choke someone, and the pendulum method- a machine with an axe head for a weight that slices closer to the victims' torso overtime (of disputed history), suffocation method, strangulation, storming, starvation, slow slicing, shorting, scaphism and sewing methods were all several methods of execution in several states of the world (Melville, 1905).

In the Nigeria's case, before the European advent, the known customary style if execution include- stoning, hanging, burning, beheading, drowning etc. Hence, different methods were used by different Nigerian ethnic groups. The Ibos and Yoruba's applied same method of throwing inside bush- sacrificing such humans, sentenced to death, or to their gods which they vested some land mass for in the bush. Borno used haying methods, Hausas and Fulanis used decapitation method. All these methods were abrogated by the advert of the colonial masters, drowning and hanging reigned till 1930s. Today, death sentence in Nigeria is inflicted by hanging the convict by the neck till he is dead or by, lethal injection (Administration of Criminal Justice Act, 2015).

Comparative Analysis of Positions capital punishement in other Common Law Countries

The comparison is to the extent of revealing the positions of several different states, through their constitution in accepting or reproving the practices of capital punishment regarding those offences that are described by law as capital offences- The cooperation will focus mostly on the common law countries gleaning their constitutional provisions in the area it connects the subject matter. I will like to make these comparisons, dwelling on the premise that in every civilized society, there exist a law. and that such law is codified especially in common law countries. That similar apparent criminal justice system with respect to death penalty or its sophisticated name capital punishment is a cannon practice to them and finally that right to life being a natural right is universal. It is timely at this point, to say here that the parameter of constitutionality or otherwise of capital punishment is a matter of whether or not the constitutional provision with respect to right to life, is qualified or absolute, save in exceptional circumstances.

The constitutional position of Jamaica and Nigeria is in part material with each other on this issue. The section 14(1) of the Jamaica and the S. 33(1) of the 1999 constitution of FRN (as amended) runs thus: No person shall intentionally be deprived of his life save in execution of the sentence of court in respect of a criminal offence of which he has been found guilty (1999 constitution). Lord Griffiths, in Earl Pralh and Anor v. A.G for Jamaica & Anor, (1994)2ACI) in his astute observation of the provision of S. 17(2) of the Jamaican Constitution dealing on dignity of man, held among other things 'That the death sentence for murder cannot be held to be inhuman in the ascription of punishment for murder".

But the position of the USA's legal system in support or against capital offence seems controversial, as some states of USA accept and make use of the death penalty provision of the constitution while others in the same country do not. This does not in any way suggest that Americans are against the death penalty, as opinion polls show that the majority of American citizens are in support of capital punishment, public opinions in the U.S has been overwhelmingly supportive of death penalty in recent years, a 2030 Gallop Poll shows that 64% of

Americans supported it in cases of murder, and 29% opposed it (http:/:www.gallup, co m, 2016). The highest level of support recorded was 42% in 1966 (47% opposed).

When given a choice between the death penalty and life imprisonment without parole in 2010 poll,49% supported death penalty while 46% supported life imprisonment (Ibid, 23). Nigeria on the hand have highly opposed the use of capital punishment, from a survey on the abolition of capital punishment for murder and armed robbery about 70% of the people interviewed favoured the retention of death penalty for murder, only about 2% of them declined capital punishment for the offence of armed robbery. This survey was done by Owoade M.A with the help of two research assistants under the auspices of Law Revision Commission- Oyo State of Nigerian in the year 1983 (Owoade). Meanwhile, Nigeria-unlike America, has halted or suspended its use of capital punishment, but capital punishment was suspended in USA from 1972 to 1976 primarily as a result of the Supreme Court's decision in **Furman v** George (US 238, 1972). In this case, the court found the imposition of death penalty in a consolidated group of cases to be unconstitutional, on the grounds of cruel and unusual punishment in violation of the Fight. Amendment to the United States constitution, Thurgood J Breman. Jr. expressed the opinion that the death penalty was prescribed absolutely by the Eight Amendment as "cruel and unusual" punishment.

Though many observers expected few, if any, states to readopt the death penalty after Furman's case, 37 states did not in fact*enact new death penalty statutes which attempted to address the concerns of white and Stewart. Some of the states in USA responded by enacting "mandatory" death penalty statutes which prescribed a sentence of death for am one convicted of certain forms of murder. Other states adopted "bifurcated" trial and sentence procedure, with various procedural limitations on the jury's ability to pronounce a death sentence designed to limit junior discretion. The court clarified Furman in Woodson v North Carolina, (U.S280, 1976) and Robert v Lousana (U.S 633, 1976) which explicitly forbade any country from punishing a specific form of murder (such as that of a police officer) with a mandatory death penalty.The Nigeria position over death punishment is in antithesis with the Australian position. Ronald Ryan was the last of 114 executed in Australia in the 20 **century** and prior to this execution Queens land and New South Wales had already abolished the death penalty for murder. Brenda Hodge became the last person sentenced to death in August 1984. Her sentence was committed to life imprisonment and she was paroled in 1995 (abchitp://www.msah.uq.edu.au.'awsr). It was removed as a punishment for murder in all stales in 1984 when the state of Australia abolished the death penalty for all crimes, and the next year now removed deaths sentence as a possible punishment for treason, piracy and arson of naval dockyards.

Capital Punishment and Human Right

The nature of human rights is complicated even beyond the controversy over their source or who may hold them. A critical debate continues over what is meant by human right depends to a large extent on the character of the right involved.

Professor Nwazuoke A.N (An unpublished Lecture Note, 2016), a Lecturer of Ebonyi State University, in one of his lectures, expanded to the fact that rights are traditionally constructed on the bases of morals, but that it is not always the case, even if it is usually the case.

The term "right" is derived from the Latin- word "'Rectus"' which means something that is correct or straight.

Professor Nwazuoke A.N (Ibid, 23), also said that the word' right' legally refers to the freedom from acting conversely, that it is the capacity of a person to compel another to do something or abstain from doing something, He maintained that the presence of a right presupposes the existence of the right holder, the subject of the right, and a duty bearer -that is a person who imposed with a corresponding obligation to respect the object of the right.

Re-Appraisal of Capital Punishment

The Recovery and Refutability of Capital Punishment

There are logical and legal reasons in favour and against the enforcement of capital punishment, the man arguments for capital punishment arc just punishment, deterrence, and incapacitation.

Perhaps the most important goal of criminal justice system is to impose just punishment. A punishment is just if it recognizes the seriously of the crime, "'let the punishment fit the crime" it is a generally accepted and sound precept. In structuring criminal sentences, society must determine what punishment fits the premeditated taking of innocent human life. To be proportionate to the offence of coldblooded murder, the penalty for such an offence must acknowledge- the inviolability of human life. Murder differs from other crimes not merely in degree, it also differs in kind (Paul G Casell, 1957).

Only by allowing for the possibility of capital sentence can society fully recognize the seriousness of homicide, indeed, to restrict the punishment of the most murders to imprisonment conveys a deplorable message. Thus, some criminolegists and sociologists argue that capital punishment is an important penological mechanism by which society retain its moral equilibrium by dishing out fair dessert to those who do not respect

the rights and dignity of others. To this end, Helbury, J. asserts in R v Bull that the criminal law is publicly enforced not only with the object of punishing crime but also in hope of preventing it, ((1957)35 CrR).This position was epigrammatically stated by an 18th century judge who told an accused "you are to be hanged not because you have stolen a sheep but in order that others may not steal (Kadish K.S. and Paulson, 1967) p.85). Also a commentator for once said that "no other punishment defers man so effectively from committing crime as the punishment of death". Those who would abolish the death penalty sometimes caricature the argument against death sentence and portray capital sentences as nothing more than revenge. But this view misunderstands the way in which criminal sentence operate. Revenge means that private individuals have taken the law in their own hands and exacted their own penalty. Capital sentences are not imposed by private individuals, but rather by the state through a criminal justice established by the people's elected representatives. In most of the countries, there is a strong consensus that for some of the most heinous murders, the only proportionate sentence is a capital sentence. Some members of the public are of the opinion that- it is cheaper to kill offenders, than to maintain them in prison on religious ground, it was argued that, since a number of some religious (Islamic) faith allowed it, abolishing it would totally be an affront to such religious faith (Stephen, 1864). For the political class, capital punishment is the best punishment for political violence. In the opinion of Islamic- our society has not grown to the level where we would abolish capital punishment (Unaine, 2003), while Prof Oluwole opined that "it will also affect our value system because by the time you abolish death penalty, you are sending signals to those who are criminally minded that life will not longer man anything that you can kill and get away with it…"(Oluwole,2003)

More so, the protagonists of capital punishment are of the view that certain of the society are best achieved by the execution of the criminal.

1 would consider any point in this project work a shallow one. if not narrowed down to local premise, by way of reference to legislated laws of the country (Nigeria). Having said that, it is good to point out that Nigeria is one of the retentionist countries. The Nigerian constitution (constitution, 1999), prescribes capital punishment as a legal form of punishment when it is carried out in the execution of a sentence of a court in respect of capital offence, for which a person has been found guilty. The criminal code (Criminal Code Act, 2004) and the penal code (penal Code, 1960) which apply in the Southern and Northern States respectively prescribe capital punishment for the offences of murder, treason and armed robbery inter alia. The sharia penal code and applicable in some states of the Northern Nigeria, further prescribes capital punishment for sex related offences ranging from rape, adultery and armed robbery (penal Code, 1999). Conversely, there have been global moves towards the abolition of capital punishment which had resulted in a great decline in its use across the globe. Since the emergence of Nigeria's fourth Republic in Nigeria, there have been very few executions of condemned offenders, as state Governors have largely declined to sign death warrants (Agbakoba, & Obeagu,) The desirability of vanguards, for the abolition of death sentence in Nigeria has engendered a pending bill before the National House of Assembly, for moratorium pending abolition of capital punishment.

The National Study Group, which was inaugurated by the Federal Government of Nigeria in 2003 to conduct a study on the use of capital punishment and make appropriate recommendations, submitted its report to the Federal Government in 2004, recommending an out right abolition and a moratorium in the interim, pending the abolition.

A number of restrictions have been placed on the imposition of death penalty globally, in that it has to be imposed in accordance with the law. All is geared towards reducing hardships that it meets its victims with. Joining on doctrines of Christianity, the philosophy of retributive punishment of an eye for an eye, rooted in mosaic law. is an import of an animalistic instinct for revenge that only gratifies the desire for retaliation which the crime arose, is a relic of barbarian which has no place in the assessment of punishment. It is so anachronistic in nature and amount to raw brutality which defect justice it set to uphold. More so it lacks qualification (Agbu, 1989) and fact in practicable in certain offences. Again, it has been also abrogated or amended by the New Testament as encapsulated in the teaching of Jesus Christ through the philosophy of love and forgiveness exemplified during his crucification. This is as echoed by Prof. Okonkwo- the doyen of criminal law in Africa, when he stated that "to allow a feeling of hatred and revenge of what is just punishment is to substitute passion to reason.

More so, the philosophy of retributive punishment (capital punishment) lack reformative, rehabilitative and educative quality of punishment in contemporary society because there is no repentance in grave. This in fact, produces a poor harvest of intellectual ideas because the effectiveness of criminal justice depends largely on the certainty and swiftness of punishment rather than on its severity and brutality. With respect to deterrence, it could be affirmed to the extent that offender, having been executed, is disabled and incapacitated (specific deterrence) but as regards to general deterrence, Albert Camus maintained that:

Capital punishment has no deterrence value. In France, while thieves were publicly executed, picked pockets were busy working through the assembled on looking; that about 170 out of 250 criminals executed had personally assisted in one or two other execution

Throughout history, many nations have sanctioned the use of capital punishment. In the late 20 century, some countries abolished the death penalty, imposing life sentences

On September 23, 1998, Anthony Porter sat in his ceil on death row in an Illinois prison while the hours ticked away towards his school execution. In two days. Porter \vas scheduled to be injected with lethal poison as punishment for the 1982 murder of a man and a woman in a Chicago park. Just 48 hours before the execution, a stay (a temporary suspension of the sentence) was granted based on questions about Porter's mental competency. While the lawyers were arguing about the issue, a team of journalism students from North-Western University began to examine the case against Porter and to interview various witnesses who had testified against Porter or otherwise might know information about the murders. After several months of investigation, a chilling truth emerged: Anthony Porter was completely innocent and had nothing to do with the killings. Rather, the students discovered the real killer was a man named Alston' Simon, who confessed on video tape after his wife admitted that she was with him when he killed the victims. In addition, the key witness- who had testified against Porter in 1982 now admitted that he had not seen the face of the shooter and had fertilized against Porter because the police pressured him to do so (Lawrence, 2009)

In February 1999, based on the new facts, which took more than 16 years to emerge, Anthony Porter was released and Alstory Simon was charged with murder Illinois came within 48 hours of killing an innocent man. Porter escaped death only because he was lucky enough to obtain a last-minute stay for an assessment of his mental competence, giving stay for an assessment of his mental competence, giving the students time to discover the evidence that declared in. Looking at cases such Anthony Porter's is critical in assessing the death penalty because it allows us to move beyond the theoretical debate, which all never be resolved. The general moral question of whether people forfeit their right to life when they commit murder? My answer to that question is no because capital punishment has been seen as a waste of human resources[31] coupled with its failure to stem the tide of criminal activities in the country for the years it has been in operation. An age when the prerogative of mercy pursuant to S. 212(l)(a)-(d) of 1999 constitution- a historic remedy for preventing miscarriage of justice where judicial process has been exhausted, is in sudden decline or is exercised in biased manner, if not employed as a political nepotic gimmick. A period when the court is no longer a temple of justice, when the judiciary refuse to be last hope of common man and is flawed to the extent that money and status make a difference in the outcome of capital crime cases. A time, when capital punishment- a punitive instrument of crime control, is a political weapon applied in discriminatory manner to either silence the poor masses, the innocent citizens, ideological and political rivals. Ken Saro wiwa and his eight kinsman (the ogoni-nine).

It is still a big question, whether capital punishment achieves its deterrent or crime control effect by punishing the innocent? Thus, Prof. Okonkwo asserts of justice "over severe punishment offend most people's sense of justice (Okonkwo and Nash op cit p. 33). For no matter what one believes about the abstract question of whether capital punishment is appropriate, the concrete realizes show conclusively that the death penalty as administered in countries, these days is inconsistent with any reasonable view of justice and morality.

Exemption from Capital Punishment

It is certain than in Nigeria Criminal Justice System, certain classes of people cannot by law, be sentenced to death even though they committed the offence which would ordinarily be capital, they are still exempted from capital punishment because of their vulnerability.

The Pregnant Women

The exemption of pregnant woman from death penalty is consistent with the jurisprudence that forbearance of a sentence of death on her is for the benefit of the unborn child (Akmgbehin, 2012). The Article 6(5) of the International Covenant on Civil and Political Right (ICCPR) exclude the death penalty for crimes committed by persons below 18 years of age, it further provides that the death penalty shall not be executed on pregnant women (ECOSOC safeguard 3). Also, **Administration of Criminal Justice Act (**Ibid, 23**)** provides that:

"Where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned".

The above provision of the most recent Nigerian Criminal Act that administrates Criminal Justice in Nigeria, is to the effect that such pregnant woman is exempted from immediate execution, pending her delivery of the child and weaning. The Criminal Procedure Act (2015) and the Criminal procedure Code (S. 415) also prohibit the imposition of the sentence of death on pregnant women, but the prohibition clause and its qualification is now gleaned at the appropriate of S. 404 of the "Administration of Criminal Justice Act 2015. The reason for the abolition also, is based upon the believe that it would be unjust to take away not only the offender's life but also that of her unborn child. So it is immaterial whether the condition arises before or after

her offence. Again, the issue of diminished responsibility thought it could be envisaged, is out because what is material is her condition at the time of conviction and sentence.

However, there is a statutory presumption that a woman is not pregnant. So, where she alleges (i.e. the woman defendant) that she is pregnant, or in any case in which the court thinks it fit to do so, may suo motu order for the determination of the pregnancy. This is the summary of the contemplations of the provisions of the Administration of Criminal Justice Act, 2015 (S. 415). The reasonability of these provisions of the law is not vague, as one (a child) is not suppose to take part in the punishment of parent over an act which is unaware of.

Mentally/Deranged Person(s)

If a man, non sanae memoriae, kills, he has broken the word of the law, yet he has not broken the law because he has no memory or understanding, but mere ignorance which came to him by hand of God (Per Sergeant Pollard in Reninger v Forgossa ,1552).

The above quotation corroborates the point of law that a successful plea of the defence of insanity results in simple acquittal (Smith and Hogatv). This is because insanity negates the metis reu requirement of an offence which is the mental element. It also, attunes with the time tested criminal law principle of "no liability without fault"- which connotes that no one should be held criminally responsible unless he is some extent, at fault. The provisions of the Nigerian criminal code and penal codes exempt insane offenders including capital offenders from criminal liability as a result of the negation of their mental guilt (International edition,) p.500).

According to the New Webster's Dictionary of the English language (1990) p.794) - insanity has been defined as the state of where an accused lacks a mental health/capacity so as to justify being exempted from legal responsibility. More so, in legal parlance, it is defined as a condition, which renders the affected person unfit to enjoy liberty of action because of the unreliability of his behaviour with concomitant danger to himself ad others (See the M'Naghten's case, 1843).

The test for determining the degree of mental disorder requisite for relieving an accused person of criminal responsibility was first seriously propounded in England in the famous M'Naghten Rule, formulated in 1843 by the judges as advice given to the House of Lords after M'Naghten's case (Administration of Criminal Justice Act, 2015).

In Nigeria condition particularly, "where in the course of a criminal trial, the court has reason to suspect the mental capacity or soundness of mind of a defendant by virtue of which he is unable to stand trial or defend himself, the court shall order the medical examination of the defendant's mental state or of soundness of mind (Ibid, 23). Where the medical officer certifies that the defendant is of-sound-mind and capable of making his defense, the court shall unless it is satisfied by the defense that the defendant is of

Unsound mind, proceed with the trial (. 280 (a) ibid) or unsound mind and incapable of making his defense, the court shall where it is satisfied of the fact, postpone the proceeding (S. 280(b) op ci).

The above provisions of the Act, gives the legal adjective procedures on ways of ascertaining the state of mentality of the defendant, and the necessary subsequent step totake consequent upon its ascertained mental status.

Young Offenders

Persons below 17 years of age are to be excused from criminal responsibility or capital punishment for reason of public policy (Odinaka v State, 1977).

Status that are parties to the International Convention on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR) were prohibited from imposing capital punishment for offences committed by persons below 18 years of age (Article 6(5) ICCPR). This prohibition is also contained in the international convention on the rights of the child which came into effect on September 1990 and has been ratified by every country except the United States of America and Somalia (Article 37(a) ICCPR). It is also forbidden by the African Charter on the Rights and Welfare of the Child (African Union, 2000).

At the beginning of the 21st century, both the UN sub-commission on Human Rights Promotion and protection (Resolution, 2000) and the Inter-American Commission on Human Rights in 2002 (Amnesty International, 2003) were able to adopt a principle that the death penalty should not apply to persons who committed capital offences when under the age of 18 years, as part of customary law.

However, several countries which are parties to the convention on the Rights of the Child have not yet formally abolished the powers to sentence juveniles to death. There is no doubt that the advocacy that juveniles should be exempted from capital punishment is premised on their diminished culpability arising from their susceptibility to immature and irresponsible behaviours. It has also been contended that their vulnerability and lack of control over their immediate surroundings give them a greater clan than adults to be forgiven for failing to escape negative influences, as they were still struggling to define their identities (Roper v Simmons, 1998)

ARGUMENTS AGAINST CAPITAL PUNISHMENT

Uncovered Crime

Criminologists, writers and retentionists of capita] punishment have a broad and sweeping clan of its deterrent notice (the dark-number crime or secrete crime). Even when the crime is noticed, the offenders may still be at large. Such cases are too rampant in Nigeria, for instance. Boko Haram insurgency, Fulani Herdsmen attack, ritualistic killings, as well as more common forms of criminal depravity like rape, murder and thievery, can make our land seem a dangerous place. What of the killers of the former Attorney General of the Federation- late Chief Bola Ige, Baguada Kaltho- a journalist killed in 1991; Dele Giwa (journalist) Moshood Fayemiwo of Razor News papers editor who was declared missing in 1997 and later said to have fell victim to armed robbers while traveling etc. The present is the alleged killing of unnamed civilians in the South East on May 30th 2016 (civilian protesters in Onitsha Anambra State) which engendered a motion under matters of urgent public importance by the Deputy Minority Leader- Rep. Chukwuma (PDF-Anambra). The question is- who are the perpetrators of these crimes?

PROOF OF MENSREA

A person cannot usually be found guilty of a criminal offence unless two elements are present: an actus reus, (guilty act), and mens rea (guilty mind). These terms actually refer to more than just moral guilty, and each has a very specific meaning, which varies according to the crime, but the important thing to remember is that to be guilty of an offence, an accused must not only have behaved in a particular way, but must also usually have had a particular mental attitude to that behaviour. The exception to this rule is a small group of offences known as crimes.

The issue here is supposing the offenders were caught and prosecuted, what is the test or parameter of establishing their guilt or innocence? Our criminal justice system is adversary in nature (i.e. presumption of innocence until proved guilty) (Ibid, at 10) and in establishing guilt of an accused in criminal proceedings, the prosecutor-on who lies the onus, must prove his case beyond every reasonable doubt that the accused committed the offence as charged. In murder cases for instance, the essential element of the offence is embodied in the common law principles of actus non facit reun, nisi-mens sit (i.e. shortened into actus reus). Actus reus- is the physical element of the offence, whereas mens rea- is the guilty mind. Thus, it is only when these two basic elements of intent and act compel any human act prohibited by criminal legislation that a crime is said to have been committed. This was aptly illustrated in locus classicus case of Timbu Ko/im v State (1968)119 CLR ()- which also shows that there is no liability without fault.

According to Okonkwo C. 0;

In our legal jurisprudence. S. 24 of the Criminal Code is without doubt, a far-reaching provision as far as the general principles are concerned. Together with S. 25. It serve for us the purpose which it's doctrine mean rea serves in English law and is similar to S. 23 of the queens lands criminal code from which our code derives (Okonkwo).

So, the mens rea or S. 24 of criminal code is the guiding principle in determining the criminal responsibility of a person charged of an offence. The effect of the doctrine of mens rea or S. 24 C.C. is that the prosecution on whom lies the burden of proof, in establishing the guilt of an accused, must show that an accused act was either voluntary (done intentionally) or that event charged did not occur by accident.

At this juncture, one has to pause and ask, what is the feasibility of ascertaining the intention of the accused in this situation since intention is a thing of the mind? It was Shakespeare in one of his numerous avalanches of literary works that declared that- "there is no act to find the construction of a man's mind in his face (Shakespeare). Also in a medieval English case, per Brian C.J, asserts;

"It is a common knowledge that the thought of man shall not be fried, for the devil himself knoveth not the intention of a man" (Year Book Pasch 17ed. 1998).

This was re-echoed by per Bowen, C.J in 1885 that "the state of a man's mind is as much a fact as the state of his digestion" (Edginton v Fitzmaurice, 1985).

Realizing this dilemma- in proving intention, the court sort reliance on inference from man's conduct. As such, an intention to kill, it is said, can be inferred from the severity with which a matchet blow is struck (R vOnoro (1961)). In other words, intention is deducible on a hypothetical reasonable average or ordinary man in the same circumstances. This is what is zeroed down to the presumption that; "A man intends the natural consequences of his act".

This has received judicial pronouncement in a plethora of cases including the famous case of Hyman v DPP ((1974)2 All ER 41). However, this parlous situation calls for jurisprudential question of whether such presumption is sufficient in establishing guilt as to warrant sentence of death on an accused (Vanguard, 11 June, 2011). Considering human fallibility, does such presumption not leads to the conviction of an innocent persons? The answer as always indicated by science and technology, is always in the affirmative as indicated by science and technology via the DNA test.

Development in Science and Technology (DNA Test)

The advent of DNA analysis has become the most important development in the field of science and technology in relation to the establishment of guilt or innocence in criminal justice system, over the last generation (DNA FINGER-printing). DNA is an acronym which stands for deoxyribonucleic acid. It is called the genetic building blocks of life. It has been

At this period according to Wale A Adedike "the abuse of the arrest detention and investigatory powers by the police is such that no one with the brain of an art couid support imposition of death penalty under our system". Adewaleke Wale "the penalty of Death for and Against'", Vanguard Friday, June 11, 2004 at 23 confirmed that everybody- has a unique DNA pattern except for identical twins. The scientific community has, through analysis, confirmed the DNA coding as a reliable way to test blood to determine if that blood came from that particular individual or actually could not have been from him.

The obvious and most recent development in the death penalty issue and a forensic tool for assessing the accuracy of our adversary system connects the truth of its helpfulness in determining guilt or innocence when evidence has been kept with blood stain on it. Even if the blood is old, the DNA code is still present or other fluids. Its result has been the exoneration of literary hundred of convicts who were wrongly convicted of serious crimes and sentenced to lengthy prison terms and even death.

Meanwhile, my observation here is that, despite the high standard of proof and the numerous procedural safeguards in criminal cases, coupled with judicial review, post conviction remedies and executive clemency, innocent people are still convicted of capital crimes they never committed, their convictions affirmed, and their collateral remedies derived with a frequency far greater than previously supposed. In other words, with DNA testing or profiting, we now know to a scientific certainty that the police, prosecutors and jurists, make conflicting mistakes especially when they exceedingly rely on such inherently problematic evidences as jail house information, hairs samples and even eyewitness to testimony which turns out to be surprisingly unreliable (1999 constitution). Considering the fallibility of our criminal justice system, should capital punishment not be made unconstitutional? I am of the view that it should for reasons, by being put to death before the emergency of the techniques or evidence that will establish their innocence are thereby effectively deprived of vindicating their innocence -a process that is reasonably due to them constitutionally (1999 constitution), an event difficult to square with basic constitutional guarantee, let alone simple justice. Thus, in one American case, Justice O' Connor, occurring along with Justice Kennedy in Herrera v Collins 5Ob US. 390 (1993) said:

I cannot disagree with the fundamental legal principles that executing the innocent is inconsistent with the constitution. Regardless of the verbal formula employed contrary to contemporary standards of decency, shocking to the conscience, or offensive to a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental to the execution of a legally and factually innocent person would be a constitutionally intolerable event (USA v Alan Quinones, 2002).

Capital punishment is an evil wind that blows no one good. It does not give room for the correction of injustice because there is no way the dead would be received back to life. Ken Saro Wiwa and his kinsman still lying; Allien Nasiru Bello was executed while his appeal filled by Hurilaw (Ousa Agbakoba et al) was still pending at the Supreme Court (Bello vA.G Oyo State, 1986), and many more others. All these are clear case ot the use ot the death penalty to execute the innocent. Would justice- the primary aim of law and criminal justice system, said to have been to those people considering the assertion of Lord Atkin. L.J in the celebrated case of R v Sussex Justice Exparte Macthy that "'justice should not only be done, but should manifestly and undoubtedly seen to be done" ((1924)1 KB 2 59). Where such innocent people not denied justice and so declared worthless? As justice Chukwudifu Oputa (as he then was) opines:

If we accept the intrinsic worth of every human being, as we ought to do, then justice isjhe minimum debt we owe him. For if we deny him justice, we have declared this worthless" (Oputa Chukwudifu).

In fact, to allow capital punishment to stay, amounts to a state sponsored death or killing of innocent people even on the weight of public opinion- especially in this present time when most persons charged with capital crimes are unable to afford legal representation because of economic crunch, and are then defended by court appointed counsel, most of whom are junior lawyers when the deprived, the disadvantaged, social out casts and persons of low caste or class, the products of unemployed, and the like fall victims of capital punishment on slightest opportunity. What happened to Ken Sarowiwa and his kinsmen, the Zango Kataf and the cases of the cocaine men- Owoh Ogedemgbe and Lawal, should not repeat itself because they are still a sour history of the unfairness in the application of the death penalty- a social and legal, if not cultural cum religious anathema. No wonder Wale Adewale A., cried out:

"In my view, any society that celebrates mediocrity the uay we do should refrain completely from implementing the death penalty or even go a step further by exercising capital crimes from its law books" (Wale-Adewale Adeleke)

IV. Recommendations

Crime wave, like its twin sister corruption, is at a peak ravaging our society at an alarming speed notwithstanding the psychological effects of death penalty and its horrific manner of execution in our criminal justice system. Resultantly. Security of life and property is constantly in extreme danger. To sanitize this impaired state of affairs, both the government (the executive, legislature and judiciary) and the governed society should join hands to reduce the crime tide for peaceful and harmonious co-existence necessary for societal growth and development. In doing this, state killing of offenders should not apply, as it might endanger innocent lives during the reflection of undoubted infallibility of man, no matter how learned or careful. Rather, alternative measures like executive, legislative and judicial influence should apply;

Executive Measures

The executive arm, as an important organ in the tripartite classification of powers and the second in the tripod of legislative, executive and judicial powers, should reduce crime rate in our society through active instruments of increased social amenities of life such as lights, water, motorable roads, free education, employment, capacity building, government sponsored housing projects for the accommodation of the internally displaced persons (IDP's). improved internal external security standard and every other necessaries. These suffice to say that the executive should give democratic dividends to people to ameliorate their sufferings and economic red seas standing between the devil and the deep sea. If all these were put in place, the tide of criminality in our society will be drastically reduced to minimum because many people if not all, commit crime as a result of frustration resulting from economic hardship caused by poverty, illiteracy and unemployment. Furthermore, the executive body should not compromise in human rights postures, i.e. human right must go beyond the level of fundamental human rights into the arena of fundamental freedoms such as economic, social and cultural rights of its citizens. These rights (which is said not to be justiciable) should be enforceable.

More so, they should give the judicial sector , every financial resources it needed to achieve the objectives for which it was created. Also, judiciary should not only be well-paid but also be paid promptly on due times to enable them work devotedly with high moral in delivering quality judicial services. This means, making them more efficient, effective and economically independent, because if judiciary is inefficient, the society will collapse. For society without justice, is a society found on injustice- a main spring to crime high waves.

A sentencing panel or court appointed masters should be set-up as a sub judicial body to be responsible for the sentencing guidelines such as the seriousness of the offence, harm to the victim or society, need to deter others, to protect the society and to maintain supervision over the offender the possibility of rehabilitation and past criminal record. This will provide certainty and farmers in sentencing practice by curtailing unwarranted sentencing or better still, preventing sentencing disparities among offenders with similar characteristics convicted of similar conduct while permitting sufficient judicial flexibility to take into account relevant aggravating or mitigating factors and reflect to the extent practicable, advancement in knowledge of human behavior as related to the criminal justice process.

Additionally, the police should avoid hasty institution of criminal proceedings, indiscriminate arrest without trial, future and degrading treatment that assail human dignity as a means of obtaining evidence, but show humane practices that are similar to first world policing standards.

Finally, there should be prison reforms, geared towards the rehabilitation or reformation of offenders because penolegists and criminologists after centuries of exploiting and punishing criminals concluded that criminals where imperfect like every other human and therefore needed correction more than punishment. These could be achieved by establishing of a prison community like the old Tuluca town in Mexico or Goree in Senegal (formally used as a slave-camp). I do not mean a prison house, but a community like the EBSU permanent site community, decorating it with prisoner hostels and such good offices for prison officers, to be located far from habited places, with high walls and adequate security network and military camp very close to it. Males and females must be separated into different prison communities. There should be there, an enabling environment for proper reformation furnished with such providence as vocational centers (for vocational skills), religious teaching centers, where they can learn good moral attitudes that could disdain future criminal habits.
Also, there should be education and training, to help them form a changed heart (i.e. from evil to good). The problem of over-crowding, violence, sexual abuse, health and hygiene will be taken care of by prison officials or dedicated prison board which shall handle the management and control of the activities of prisoners in the prison community. In other words, a standard pattern of handling of complaints, hygiene, religious freedom, contact with the outside world, treatment, education, legal assistance, recreational activities ,medical treatment, discipline, etc should be granted to those in the prison community. People with deep understanding of the job routine and having also, sacrificial tendencies should be employed to serve and they should be trained to change their orientation on personal pride, self worth and personal philosophy. The public should be made to show interest in the affairs of the prison institution regarding the welfare of prisoners.

If all these reformatory measures are properly utilized, Nigeria, will see the preferred value there from than killing of offenders, our oil mone) should be channeled towards this project because apart from abstinence from killing, it will be a source of revenue to the nation, as their farming duties could earn the government more financial gains, serving also, as an adequate compensation to the society at large, owing to the wrongful deeds of the convicted offenders to the public, coupled with its room for slate killing, loss of human resources, judicial killing of innocent citizens, increase in more various acts, sensational trial, distortion of the administration of criminal law- and diversion of governmental attention to ecology and the solution to causes of crime in Nigeria.

Legislative Measure

There is need to review the constitution by the National Assembly to remove all the controversial sections therein most particularly, the section 33(1) of the 1999 constitution of the Federal Republic of Nigeria- as amended. This suggested review is to remove the saving clause to make the right to life- an absolute right as it is in South African Constitution. So that the section should read;

"Every person has a right to life, and no one shall be deprived intentionally of his life". This is suggestive to the fact that right to life is sacrosanct. Also, the Criminal Justice Act, should be amended to repeal every section that recognizes the deprivation of human life in any circumstance especially S. 30 of (he Criminal Code Act. S:2llof Penal ('otic. and S. 402 of the Administration of Criminal Justice Act 2015.

Again the Robbery and Firearms (Special Provision) Decree 1970 should be repealed because its provisions are no more in conformity with the contemporary realities of our society. A review of the Police Act Cap 154 1943 S. 20 and S. 10 Criminal procedure Act is necessary to avoid indiscriminate arrest and prosecution of innocent citizens because the sections give the police wide powers in the arrest and prosecution, which in addition to endemic corruption in force, promote a culture of criminal justice impunity by the police. Such review should be done with reforms that will put in place institutional and regulatory framework to monitor police performance. The same \\iih criminal procedural rules of courts, it should be reviewed and amended because it is clumsy and encourage slow pace of judicial process which result in delay in the trial of criminal cases. This suggested amendment should fashion out new procedures that will enhance speedy administration of justice.

Most importantly, the death penalty moratorium bill that is still pending at the National Assembly, should critically be examined forthwith, and death penalty abolished in our criminal justice system but with alternative of life imprisonment with labour-farming for the state to enhance more agricultural production. This will achieve the same effect of deterrence and reduction in crime-rate as what the court shall have in mind, in persuading the convict to give up committing crimes in the future, contemplating section 401 (a) and (d) of the Administration of Criminal Justice Act 2015 which is valid in this regard. It is without bias that I say it. that denial of freedom during incarceration, how much more to the tone of life denial- resulting from criminal activities that could bestow on convict the punishment of life imprisonment, is enough to deter future offenders who may want to commit capital offences, and as well, reduce crime-rate because if people know that when once they were caught committing crime, they will be jailed for life and will never again enjoy the company of their families and other consortiums, but will be incarcerated for life, they will not commit crime. Also, the law should be such that once a criminal is convicted, his/her properties (assets) will be seized and converted into stale property to further discourage future offenders of how incapacitated they would be made to look in event any such crime of such nature committed by them. However, the victims or their relations should be compensated if known or identifiable.

Furthermore, there should be a legislation on the protection of innocent citizens, as Innocence protection Act, when suggested as a Bill, should be enacted by the National Assembly. This "'Bill" will ensure that an accused person is afforded an opportunity to prove innocence through government sponsored legal aid. which would cover the scope of the indigent members of the society who would have ordinarily, been limited access to justice on grounds of social factors . There should be established at every stage of capital crime prosecution, an up to date technological test (DNA Test) in criminal science test investigation.

Judicial Measures

To improve the machinery of criminal justice, the judiciary should give strict interpretation to any provision which seek to deprive an individual any of his Fundamental Human Rights and in particular, weight should be accorded to African

Charter on People's (Ratification and Enforcement) Act, Cap 10 LFN, 1990 by our constitution alongside with S. 36(1) of the 1999 constitution dealing on fair hearing.

Also judges (the bench) and lawyers both at bar and in the Human Rights Community should be stead fast in carrying good research works, for it is not yet Uhuru as there is still dictatorship in a democracy. They should be hopeful for brighter and greater Nigeria for it is not yet over in the battle for justice to the common man. This suggests that judiciary should be free from every spelling of corruption. The adjective rules of court

should be fashioned in a way that justice must not be made-the sacrificial lamb to corruption, sacrificing justice at the Alter of judicial adjectival technicalities. This will help to shield every possible unguarded punishment that would miscarriage justice of innocent citizens.

Finally, the judiciary must intertwine circumspection with their legal duties in handling of cases, least there should be judicial killing because on their decision lies the hope of the accused, the victim and the society- in the tripartite culture of justice so why trying to be just to both parties, there is still need to enhance public confidence in criminal justice system as a whole, since the undertaken and outcome of criminal proceeding are usually of much greater consequence to the public than in civil proceeding.

Measure

There should be government sponsored crusades on the need that society (the people) shun every underserved material quest that could lead to criminality vis-a-vis criminal tendencies. Rather, they should appreciate need to live a good life, apply caution and avoid every form of moral and legal misfit, examining their lives to the extent of approved legal and moral conduct regarding the appropriate philosophy of Socrates that "unexamined life is not worth living".

The essentials of life is mostly dependent on the providence of the Almighty God in Heaven who can as well, through moral statutes (Bible) implant the due spirit of satisfaction and contentment no matter one's average income. Again, God fearing and honest standing men and women be selected to serve as judges, wardens and other positions that operate our judicial and penal systems, so that people will not be wrongfully charged as a result of corrupt influences, nor convicted and sentenced wrongly.

V. Conclusion

It may mean an act of bias, if I wholly maintain the ground that capital punishment may have not deterred future offenders, but it must be judged on its success in promoting human autonomy and the capacity for individual growth and development anchored on societal moral values. Even though crime prevention through capital punishment helps to create an environment in which autonomy can flourish; if the crime prevention objectives were pursued with single minded zeal (retribution), the resulting policies would be repressive and would therefore reduce than enlarge human autonomy, always resulting in a situation appropriate to be described with a cliche "all are safe hut none is free".Justification for punishment therefore, is that the state powers of protection should be kept at a decent remove from the lives of its citizens. Hence, punishment and criminal law can only be judged as being justifiable when it functions to control crime. But it must not be achieved through capital punishments, as it rocks the fundamental objective- the expansion of human autonomy.Therefore, there is a compelling need to review capital punishment and sentencing out from our criminal justice system by the government at the sphere of in line with our value system ,because it has truly over stayed its welcome and has from time long,visited the innocent and poor citizens with excruciating injuries and unacceptable disadvantages that ends in taking of life. More so, credence on grounds that whether lawful or unlawful, the act of killing is sacrilegious and an attack on humanity. After all, in countries where there is either corporal nor even capital punishment can not be said to lest high, when compared with countries in antithesis position on violent crime rate. The word of preachers that secures people into repentance is not effected by any form of physical maltreatment, but by moral convictions and education that is moral-based (Bible teaching). Moral education, laced with the principle "'lex esi recta imperendi algue prohibendi", remedies a mind that is lost into moral deficiency, to moral remedy,

The infallibility of man must not be overlooked at any point of human discretion vis-a-vis jurists whom their words of judgment meet the people as laws (through judicial precedents). The clarion call for the elimination of capital punishment should be embraced by all concerned, for if citizens are allowed to be killed via capital punishment, the question that is asked is- who will guard the guards themselves? This is properly captured in a law Latin maxim quis custodict ipso custodict. Let me rest the onerous burden of my case, believing God that the best is the result.

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Njoku" A Critical Appraisal of Capital punishment in Nigeria Judicial system' International Journal of Humanities and Social Science Invention (IJHSSI), vol. 08, no. 11, 2019, pp. 47-62