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QUEST FOR THE FUNDAMENTAL RIGHTS OF A CONVICT IN CRIMINAL CAUSES INVOLVING DEATH PENALTY IN NIGERIA

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Abstract

Laws are no doubt backed by sanctions, therefore, any breach of the law attract penalties. In criminal causes convicted and sentenced criminals are made to suffer for the crime they committed. Death penalty is prescribed for capital offences such as murder, armed robbery, terrorism, kidnapping among others. There have been raging arguments across the globe for and against the imposition of death penalty. The protagonists of death penalty posit that there is the need for retribution for a crime committed and that the death penalty deters and prevents other criminals from committing crimes and as such death penalty should be abrogated. On the other hand, the antagonists are of the utmost opinion that death penalty should be abolished sequel to the fact that it is against the right to life; it is inhuman and immoral to kill intentionally; it is demeaning and has not in any way deterred or prevented crimes. The doctrinal research methodology was adopted in this work, and the findings revealed that the arguments canvassed by both the protagonists and the antagonists of death penalty are germane. The authors concluded however, that having regards to the raging confrontations and contestations, it has become pertinent that death penalty should be abrogated and replaced with life imprisonment. The paper therefore maintained that a moratorium be made on death penalty in order to temporarily suspend its implementation for a period of four years in every country where death penalty is practiced before it is finally abolished.

Keywords: Death penalty, criminals, protagonist, antagonist, culpable homicide, rights©Terms & Conditions of access and use can be found at: <<https://www.kblsp.org.ng/index.php/kblsp>>

1. Introduction

Human societies are naturally ordained by God to be a safe haven for the existence of mankind, but by human nature, the societies and environments have become unsafe consequent on the cruelty and criminality perpetrated by humans, thereby occasioning unsafe and unhealthy societies across the globe. Law is made to socially control the societies in order to enthrone order, peace, tranquillity, stability and socio-economic growth. Law is simply:

The regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society; the legal system... the aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action...¹

Flowing from the above, law itself is backed with force and sanction, which means that when a person violates a law, the person would be punished for such violation or breach. Again, law tends to propagate order and tranquillity in the society and it is made by a constituted authority – the legislative body or through the instrumentality of the courts or executive bodies. Law is sometimes associated with transmuting morality, notwithstanding the fact that morality contains no sanctions.²

It is against this background that Hart posited that:

Moral rules impose obligations and withdraw certain areas of conduct from the free option of the individual to do as he likes... not only do law and morals share a vocabulary so that there are both legal and moral obligations, duties and rights; but all municipal legal systems reproduce the substance of certain fundamental moral requirements... These facts suggest the view that law is best understood as a 'branch' of morality or justice and that its congruence with the principles of morality or justice rather than its incorporation of orders and threats is of its 'essence'³

Hart further posited that both those who see law as sanction backed by force and those who interpret law from the angle of morality, all point to the fact that law encompasses a rule. Law cannot be said to exist without any sense of morality being embedded in it. However, an act or omission may be morally wrong whereas it is legally right. What morality is all about is to determine what is actually right or what is wrong. Whatever you think would be unfair, unjust or bad to you if done to you should not be done to another person. Morals may not be backed with sanction or force but it is

¹ B. A. Garner, Black's Law Dictionary 7th edn. (USA: West Group Publishing Co.) 889.

² See generally, A. K. Anya, The Nigerian State in Episcopal frock and consequences of sermon with legislative force, (2015) Journal of Human Rights, University of Pretoria, South Africa; uploaded by author in <Researchgate.com/anyakingsleyanya>

³ H.L.A. Hart, The Concept of Law (Oxford University Press, 1961), 7-8.

maintained that it is part of the law. Criminal law borders on laws which deal with crimes in the societies. These various laws constitute themselves as acts or omissions statutorily defined in the affected laws, specifically with prescribed punishments.⁴ Crimes could be categorized into: felonies, misdemeanours, simple or lesser offences. Some crimes such as kidnapping, murder, armed robbery, terrorism, treasonable felony, drug trafficking and rape in some countries are punishable with death. Depending on the nature of the offence and law, other forms of penalty may be imposed such as imprisonment, fine, manual labour, caning, forfeiture and so on.⁵ Civil law encompasses laws which are akin to civil rights and obligations. It is the law that determines the breach of the rights of individuals such as their fundamental rights, contractual obligations, matrimonial causes and others.

There have been raging arguments for and against the death penalty as a form of punishment across the globe. The proponents of death penalty are of the view that it should be encouraged and legally retained for the purpose of deterrence; prevention from further commission of offences by the offenders; retribution; likely decongesting the prisons and others. Also, the opposing view in the raging argument is of the opinion that death penalty should be abolished or discouraged for the following reasons: it violates the right to life as enshrined in the constitution and other international laws; it is inhuman; it cannot and has never reduced the commission of crimes; it is demeaning; it is discriminatory; it smacks of racism; it is religiously unacceptable; it does not conform with morality as well as other reasons. Many people including Non-governmental and international Organizations have recently called for the abolition of death penalty. It was argued that killing a convict sequel to death penalty or sentencing itself amounts to torture and intentional killing. This is because keeping a convict on a death row before execution and the actual execution are tantamount to cruelty, degradation, inhuman and severe torture.⁶

Death penalty is about pronouncing guilt on an offender and sentencing such offender to death at the conclusion of trial. It is a maximum punishment usually for some heinous and felonious offences. It presupposes that an offender should be killed following the commission of certain offences as

⁴ See, s. 36 (12) Constitution of the Federal Republic of Nigeria 1999 (as Amended). See also *Aoko v Fagbemi* (1961) 1 ANLR 400, where it was held that adultery is not an offence known to law as there is no law that prescribed adultery in writing as a crime.

⁵ See s.17, Chap. IV Criminal Code Law of Delta State, Nigeria, Cap. C. 21.

⁶ UN Human Rights, 'UN Experts Calls For Universal Abolition of the Death Penalty,'

<<https://www.ohchr.org/en/press-releases/2003/10/un-experts-call-universal-abolition-death-penalty>> accessed 5 August, 2024.

prescribed by law. Both the arguments canvassed by the proponents of death penalty and that propagated by those opposing it are all germane and reasonable. However, this work strives to evaluate and weigh the pendulum in order to ascertain where it tilts, with a view to coming up with a conclusion and necessary recommendations.

For purpose of emphasis, death penalty is a maximum punishment usually for some heinous and felonious offences. It presupposes that an offender should be punished by death—that such an offender should be killed for having committed a certain offence as prescribed by law. The arguments canvassed by the proponents of death penalty and that advanced by the opposing group are all germane but this work would weigh and evaluate the arguments with a view coming up with a conclusion and necessary recommendations that would go a long way in putting to rest the imbroglio surrounding death penalty the world over.

2. Nature and scope of crimes and punishment

Crime and offence are often used by the courts and scholars interchangeably. ‘Crime is a kind of defiance, which in turn consists of variation from a social norm that is proscribed by criminal law.’⁷

It is an action or omission that is punishable by the law. The Black’s Law Dictionary defines crime as, ‘a social harm that the law makes punishable; the breach of a legal duty treated as the subject matter of a criminal proceeding.’⁸ It is different from the wrong of tort such as breach of agreement, negligence, misfeasance, duty of care and others. Crimes could be administrative, capital, common, consensual, corporate, against nature, violence, without victims, federal, political, quasi, against humanity, violent, victimless and others.

An offence means, ‘a violation of the law; a crime.’ But crime and offence seem to mean the same thing. They connote the commission or violation of a criminal code law. When a person contravenes the provision of a criminal law through his act or omission, he is said to have committed a crime. When a crime is committed it becomes an offence against the state. The victim therefore, becomes a witness to the state (prosecution). If the offender is found guilty or culpable, he then suffers the penalty of such offence as prescribed by law. An offence is therefore an act or omission that is punishable by law. It follows that any person who commits an offence or crime would be punished in accordance with the penalty prescribed by the law. Law in this context includes both customary

⁷ J. Hagan, *Modern Criminology*, (USA: McGraw-Hill Publishing Company, 1985) 49.

⁸ B. A. Garner, *Black’s Law Dictionary* 7th edn. (USA: West Group Publishing Co.) 889

law and morality which are unwritten, especially in African societies where criminal and civil matters are entertained by various communities till date, through the instrumentality of customary arbitration. However, punishment refers to ‘a sanction, such as a fine, penalty, confinement, or loss of property, right, or privilege which is assessed against a person who has violated the law.’ It is “the infliction or imposition of a penalty as retribution for an offence.”⁹

The primary purpose of punishment is to preserve public order and enthrone decency in the society; to protect the citizens from offensive acts or omissions of individuals; and to safeguard the people against exploitation especially the weak and the downtrodden. It must be noted that without sanctions and penalties or punishments ascribed or attached to crimes, the society would be unsafe, with rancour and acrimonious state of affairs. And this would culminate in unbearable situation where the innocent, poor and the weak would be subjected to oppression and victimization by the most powerful and the rich. So, in order to tame the activities of the transgressors of the law, there have to be penalties for each and every crime committed. The paper take the view that crime is not just committed for the sake of it but the real reason a crime is committed and the mental ability or status of the offender must be considered and investigated before such an offender can be convicted and punished. This can be seen in the categorization of different schools of thought in the study of criminology. The pre-classical school of thought is of the utmost view that there is no one that commits crime except the person is controlled by the spirits or devil to do so. To them, human beings are subject to spiritual powers which controls and determine the fate of humans in crime commission. It is believed that there is divine and superfluous power that leads a criminal towards committing crime and nothing else. However, it is not clear whether this spirit actually exists as such reasoning cannot be subjected to scientific proof especially now that the study of crime and criminology is akin to scientific proof across the globe. This vague and baseless assumption cannot stand the test of time as crimes cannot be said to be committed because of superstitious and spiritual beliefs. Those that believe in this school of thought are likened to some purveyors of African thought process, who believes that nothing goes for nothing, as they continue to attribute every failure as they sojourn in life to witches and wizards. This cannot be true neither can it be substantiated by any means. A man’s misfortune cannot be said to have arisen as a result of the devil’s power or the acts of the witches and wizards or any other spiritual and unfounded means.

⁹ Oxford Languages <<https://languages.oup.com>> accessed 31 July 2024.

Again, consequent upon the inability to prove and the collapse of the pre-classical belief as expatiated above, the classical school of thought came up with the view that crimes are committed on a free-will of the criminal rather than the belief in spiritual or external forces. According to this school of thought, criminals indulge in crime commission on the ground of self-pleasure and to subject victims of such crimes to perpetual pains and absurdity. However, it must be noted that a criminal might commit an offence under the influence of alcohol, depression, drug addiction, peer group influence, anger, revenge, accident and provocation, and economic quagmires. It is therefore, not acceptable to state that crimes are only committed on the free-will of the criminals.

Also, the positivist school of thought posited that the study of crime or criminals is self-consciously scientific standing. One of the foremost criminologists in this school, Lombroso posited that criminals are of three folds: Atavists or what is known as hereditary or born criminals; insane criminals; and criminoids. In his analysis, Lombroso stated that the atavists or hereditary criminals are born criminals who inherited such criminal acts from their forefathers or mothers. He is of the view that since these types of criminals are born, they cannot in any means be rehabilitated. Also, Lombroso posited that the insane criminals are those criminals who perpetrate crimes without knowing the consequences of what they do because of their mental incapacitation and disorder. Again, the criminoids are those criminals who commit crimes in order to overcome their inferiority complex. It is however submitted, that no criminal is beyond rehabilitation or reformation when he is subjected to the appropriate treatment. The postulations of the various schools of thought in crime are all correct to some extent, depending on where the crimes are committed. This notwithstanding, the commission of crimes attracts such penalties and punishments for obvious reasons as stated earlier on in this work.

3. What Constitutes Death Penalty?

Death penalty means “state-imposed death as punishment for a serious crime; a penalty that makes a person or entity ineligible to participate in an activity that the person or entity previously participated in. Death penalty is a capital punishment for a very serious offence or some types of gross misconduct. As canvassed earlier, death penalty is a capital punishment meted on convicts involved in felonious and capital offences such as treasonable felony, armed robbery, kidnapping, murder and other heinous offences. On treason,¹⁰ the law provides thus;

¹⁰ S. 37 Criminal Code Law, Delta State, CAP. 21.

Any person who levies war against the state, in order to intimidate or overawe the President or the Governor of a state, is guilty of treason, and is liable to the punishment of death... Any person conspiring with any person, either within or without Nigeria, to levy war against the state with intent to cause such levying of war as would be treason if committed by a citizen of Nigeria, is guilty of treason and is liable to the punishment of death.¹¹

Again, it is the position of the law that ‘any person who instigates any foreigner to invade Nigeria with an armed force is guilty of treason, and is liable to the punishment of death.’¹² From the foregoing provisions of the law, it is crystal clear that treason is a capital offence punishable with death and anyone who conspires with another whether in Nigeria or not, or whether a Nigerian or foreigner to instigate anyone to invade Nigeria is liable to death, if found guilty. In *R v Boro*, the Supreme Court of Nigeria held that there is no difference between intimidating and overawing the state, to intimidate the Head of State is to intimidate the State.¹³

A person can be sentenced to death for treachery if with intent to help the enemy in any war in which Nigeria may be engaged.¹⁴ A person who commits the offence of murder shall be sentenced to death except where the person is a juvenile, under the age of 17 years, in that case, he shall be ordered to be detained at the pleasure of the governor.¹⁵ Armed robbery, kidnapping, terrorism acts and other capital offences also attracts death sentences. Executioners are authorized by law to execute or kill convicted and sentenced criminals where such criminals are sentenced to death as prescribed by law. Execution of the convicted offender may be by firing squad, hanging, electrocution, stoning or by the use of lethal injection-application of drugs to enhance death. In Nigeria, the President or Governor of the state must approve the execution of the convicted criminal depending on the offence, whether a federal or state offence. A convicted criminal remains in a death row until the President of the country or the governor of a state approves his or her execution. The President or governor may as well commute a death sentence of a convict to life imprisonment in exercise of their constitutional powers under the prerogative of mercy.¹⁶

¹¹ S. 37 (2) Criminal Code Law, Delta State, CAP. 21. It should be noted that treason is a capital offence.

¹² See, s. 38 Criminal Code Law of Delta State, CAP. C 21

¹³ (1966) 1 ALL N.L.R. 266

¹⁴ See, s. 49(A) Criminal Code Law of Delta State CAP. C. 21

¹⁵ See, s. 254.

¹⁶ See, Ss. 175 and 212 CFRN 1999 (as Amended).

Death penalty is ahistorical in nature.¹⁷ What it reflects is that if a person kills, he too should be killed.¹⁸ It is on record that the first death penalty was witnessed in Egypt in the 16th century. During the 14th century BC, however, the Hittite law equally made provisions for death penalty. Similarly, in the 7th century, the Athens' laws which were draconian in nature prescribed death penalty for virtually all offences.¹⁹ Offences such as murder, libel, damages to crops, arson, stealing, and other offences were punished by death. Execution was done by way of sea drowning, forceful burial alive, stoning, killing, by way of beating and other means. In 29 AD, Jesus Christ was crucified for presenting himself as the king of the Jews, an offence deemed punishable with death. The code of Theophilus also made so many crimes a subject of death penalty. It got to a stage where William decided to stop the death penalty. Before then, some convicts were burned, hanged, beheaded, stoned, and by other means.²⁰ Thus, the Court held in *Wilkerson v Utah*,²¹ that execution by firing squad is lawful but further stated that beheading, burning alive, emboweling alive, and such other means of execution are against the law and amounts to cruelty. However, in *Gregg v Georgia*,²² it was held by the U.S Supreme Court that Georgia's death penalty was not cruel and a new penalty. Again, in *Furman v Georgia*,²³ the U.S Supreme Court was of the opinion that the capital punishment was indeed cruel and unusual in as much as it violated the 8th and 14th amendments to the U.S Constitutional amendments.

However, sometime in the 1960s, opposition and criticisms mounted on the practice of death penalty premised on morality, legalism and socio-political reasons.

It is not in doubt that there are controversies surrounding death penalty in every society. There are those in support of death penalty and there exists those who are against the penalty. As stated previously, the proponents of death penalty argue that death penalty should be retained because it has helped to reduce crime; it deters other offenders; it prevents crimes; it reduces the financial burden associated with feeding prisoners on life imprisonment; it is retributive and other reasons behind their postulations.

¹⁷ In fact the Holy Bible has an account of death penalty. For instance, 'whoever kills any man shall surely be put to death.' The code of King Hammurabi of Babylon also codified death sentence or penalty, by relying on 'an eye for an eye and tooth for a tooth.'

¹⁸ See for instance, Leviticus 24:17

¹⁹ M.H. Reggio, 'History of the Death Penalty' <<https://www.pbs.org/wgbh/frontline/article/history-of-the-deathpenalty/#:~:text=As%20far%20as%20the,was%20not%20one%20of%20them%20the,m.>> accessed 23 July, 2024

²⁰ *ibid.*

²¹ 99 US 130 (1878).

²² 428 US 153 (1976).

²³ 408 US 238 (1972).

One of the reasons for the support of death penalty is justice. Justice is fairness and fairness means that the law should be applied *strictu sensu*. Justice is therefore, ‘the fair and proper administration of the laws.’ Justice presupposes that the people should be treated impartially and the law must take its cause at all times. Justice connotes the idea of treating like cases alike and different cases differently.²⁴ The rule of law must as well take its cause as no one is above the law and everyone is equal before, just as the rule of law encompasses the fundamental rights and the liberty of the people. The cause of justice is to the effect that where there is a right, there is remedy (*ubi jus ibi remedium*). The proponents of death penalty are of the opinion that the cause of justice demands that since there are laws stipulating death penalty for some capital and felonious offences such as murder, kidnapping, armed robbery, terrorism and so on, anyone who violates such laws by committing the offences should be made to face the consequences or penalty as the laws stipulate. The truth is that justice is a three-way traffic thing. As it is to the victim of an offence, the same way it is to the state and the defendant. So, when people talk about the safety of the defendant, they should also remember the state (prosecutor) and the victim who was wilfully murdered or kidnapped for no just cause. What about the family members of the deceased? Often times the family get respite when a convicted murderer is handed death penalty and subsequently executed for murdering their relation or family member. It therefore, goes a long way to alleviate their pains as they are tormented by the dastard act of the convict. When justice is done it would herald succour and relief to friends and relatives of the deceased who are always in pains and anguish orchestrated by the killing of a relation or loved ones. Lord Denning stated that ‘Justice has no place in darkness and secrecy; when a judge sits on a case, he himself is on trial, if there is any misconduct on his part, any bias or prejudice, there is a reporter to keep an eye on him.’²⁵ The implication is that justice should not only be done but must be seen to have been done as what is good for the goose is also good for the gander. Justice and the rule of law must be applied to the poor and the rich. Thus, in *Morakinyo v Governor, Oyo State*, it was held that;

²⁴ Professor A. O. Obilade., Law Justice and Society, in Contemporary Issues in the Administration of Justice. quoted in A. K. Anya, Corollaries of Administrative Justice in Statutory Bodies in Nigeria In Philosophical Legacy on issues in Nigerian Public Law (ed. Dr. Suleman Oji) A Publication of the Dept. of Public Law/Jurisprudence (2008), Faculty of Law-Usman Dan Fodio University Sokoto, Chapter 8.

²⁵ Lord Denning, (Address Before High Court Journalists Association, 3 December 1964) cited in C.J. Okongwu, S. Ugbo and C.B. Nwakoby, ‘Examining the Concept of Justice and its Applicability by the Courts in Nigeria’ (Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law Journal (COOUJCPL) vol. 4 No. 1, 2022/2023), 115.

Justice is noted in the fundamental principles of law, if we fail to apply the law as it is, greater injustice could occur. This is why discretion is not tied to a particular decision but to the sacred principles of judicious and judicial elements as exist in the peculiar situation of each set of facts placed before a court at the time in question..²⁶

It follows that the law must be applied as it ought to and not to be bent in any way. If this is done, the sanctity of the judiciary as the last hope of an ordinary man would have been achieved.

Another reason for supporting the argument in favour of death penalty is that death penalty prevents crime commission.²⁷ The proponents of death penalty argue that death penalty or capital punishment goes a long way to preventing further commission of crimes in the society. It acts as deterrent to others who may wish to commit similar crimes in the society or deters or prevents those who are convicted and sentenced to death from returning to the same crimes(s) after execution.

In Nigeria, death sentence was applauded when a former dreaded criminal, Lawrence Anini and his gang members were executed on 29 March, 1987. Anini alongside Monday Osubor and other members of the gang terrorized the defunct Bendel State now Edo and Delta States, Nigeria, until they were arrested, arraigned, convicted and sentenced to death by firing squad. They were eventually executed and this brought respite to the citizens of the defunct Bendel State and other neighbouring towns and cities. Despite executing Anini and his gangsters, robbery and armed robbery incidences did not stop in the area. Also, when the U.S. Supreme Court held that death penalty is not in tandem with the provisions of the constitution, Macduff was found committing crimes after three days of his release sequel to the decision in *Furman v Georgia*. It is submitted by the protagonists of death penalty that if death penalty is legalized and retained, it would rid the societies of murderers, kidnappers, armed robbers and other hardened criminals who may wish to commit such heinous and other crimes, and this would make innocent citizens feel safe and free. Despite these postulations by the protagonists of death penalty, it is submitted that there are no overwhelming evidences suggesting that death penalty has actually prevented the commission of crimes. Even with death penalty, armed robbery, kidnapping, wilful murder or homicide, terrorism and other capital and simple offences are still being committed and has remained on the prowl the world over.

²⁶ (2013) 51 W.R.N

²⁷ Procon.org, 'Should the Death Penalty be Legal?' <<https://deathpenalty.procon.org/>> accessed 23 July, 2024.

Again, death penalty is supported for the purpose of retribution. Morally, it makes a lot of sense when an offender or convicted criminal is reasonably and adequately punished for the offence he committed. Retribution which in Latin means '*ret tribuo*' or "payback" refers to a situation where people who commit crimes are made to suffer or pay dearly for the commission of such crime. A murderer or kidnapper who after collecting ransom from innocent persons held in captivity decided to murder the same person (s) should be made to die in order to pay for his or her crime. It must be noted that retribution is not revenge of the murder or any offence committed but it serves as an avenue of making a perpetrator of crime pay for his sin or debt. Retribution does not encourage excessive punishment but such punishment must be in tandem with the sin or offence committed by a criminal. It is argued that if a criminal is allowed to go scot free after the commission of an offence, the criminal would be spurred to do more and portends danger to the society and other criminals are likely to emulate such criminal. This is not good enough for the society as it would make the society unsafe and unbearable. It follows therefore, that it is not out of place for a kidnapper for example, who wilfully murder or a terrorist and a serial rapist to be given a severe punishment such as death penalty or life imprisonment in order to adequately and sufficiently punish such an offender for his felonious offences.

Also, the tendency to reduce crime commission and to manage cost effectiveness of inmates who are imprisoned for life while they remain in prison or correctional centres are other reasons why death penalty is supported by its proponents. They argue that death penalty reduces criminal activities and it also helps to minimize the cost of taking care of the prisoners, in terms of feeding, shelter, treatment, reformation and other responsibilities of the government towards the prisoners. However, as stated earlier, this postulation has not been substantiated and proved as death penalty has not been shown to have reduced crime in any society. It is submitted that some criminals would not be deterred rather, they would engage in criminal activities even if others are subjected to die by hanging or firing squad. Again, it must be noted that convicted criminals who are sentenced to prison for life or certain years are made to be reformed and not necessarily to suffer or punished.

Other grounds for the support of death penalty include the safety of the general public and religious grounds. It is argued that death penalty ensures the safety of the people in the society. When the criminals are sentenced to death, the society is rid of the dare devil criminals as they are kept incommunicado, therefore, there is every tendency that harm from the criminals are reduced if not

stamped out. Again, religious belief is another ground for supporting death penalty in that both the Christians and Muslims condemn killing and other heinous crimes.²⁸ Death penalty is equally supported on moral grounds because it is morally wrong in any given society to kill a human being no matter the magnitude of the offence committed by a prisoner. From the foregoing, one would venture to emphasize that the above reasons for the support of death penalty varies from one society to another. The legal norm in a country may permit death penalty, it all depend on the constitution and local and prevailing circumstances in that society. However, the question that comes to mind at this juncture is whether from the analysis above, death penalty has in the actual sense reduced or rid the society of crime commission across the globe? The answer is emphatically not in the affirmative. This is sequel to the fact that crimes continue to trend and increase in the societies despite the imposition of death penalty and other control measures put in place by the government.

Notwithstanding the reasons canvassed by the proponents of death penalty, there is also an opposing view to death penalty. The cardinal view of the antagonists to the legalization of death penalty is that death penalty should be abolished across the universe consequent upon some obvious reasons as would be adumbrated below. Disparaging the arguments canvassed by the supporters of death penalty, those opposed to it strongly maintained that death penalty is against the Fundamental Human Rights of an individual; that the reasons advanced by the proponents of death penalty such as deterrence, retribution, justice, religious ground and others are no longer tenable, ruse and an aberration, and as such cannot stand the test of time. The antagonists are of the utmost view that death penalty cannot deter criminals from the commission of crimes neither can it reduce nor prevent the perpetration or commission of heinous crimes. The Fundamental human rights of the convicts are sacrosanct and should not be violated. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that: 'Every person has right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a Court in respect of a criminal offence of which he has been found guilty in Nigeria.'²⁹

From the above provision of the constitution, an individual has right to life constitutionally guaranteed but subject to the implementation or execution of any Court order or judgment in a criminal sentence such as death sentence by hanging or firing squad as the case may be. What this

²⁸ See for instance, Exodus 20:13 of the Holy Bible, and the Q'uran 5:32.

²⁹ See s. 33 (1) thereof.

implies is that the right to life is not absolute. But it must be noted too that the same constitution provides that “every individual is entitled to respect for the dignity of his person” and accordingly, an individual shall not be subjected to torture neither should an individual be subjected to inhuman and degrading treatment.³⁰

It is against this background that the Court held in *Ajulu & Ors v A.G. Lagos State* that an individual may be convicted and sentenced to death but that it is illegal and unconstitutional to execute an individual by hanging or firing squad or any such means thereof.³¹ This according to the Court would lead to a breach of his fundamental rights as provided for in the constitution. It follows from this judgment that death sentence in Lagos State, Nigeria, is to be commuted to life imprisonment as the Court has held death penalty unlawful and unconstitutional. Recently, the United Nations Organization (UNO) urged Nigeria to abolish death penalty and canvassed for a moratorium concerning death penalty before its final abrogation. The UN stated that death penalty is against the rights of individuals such as right against torture and inhuman treatment.³² The report of the UN on the status of death penalty in the country added that about 3,413 condemned inmates are on death row in Nigeria as at January, 2024.

Human rights have been defined as ‘something of which no one may be deprived without a great affront to justice’. There are certain acts that should never be done; certain freedoms which should never be invaded; some things which are suppressive and sacred.³³ Death is one of those things because it is inhuman to cause the death of another wilfully. It does not matter whether the purpose is for the execution of a judgment or not or whether the person has committed a heinous offence or not, what matters is that the life of an individual is at stake and such an individual should not be killed because he too had killed. The view of the antagonists is that there should be a paradigm shift from death penalty to other punishments.

³⁰ S. 34(1) (a) CFRN 1999 (as Amended).

³¹ S. 34(1) (a) CFRN 1999 (as Amended)

³² A. Ejekwonyilo, ‘UN Asks Nigeria to End Death Penalty, Rights Violations’

<<https://www.premiumtimesng.com/news/top-news/661649-un-asks-nigeria-to-end-death-penalty-rights-violations.html>> accessed 26 July, 2024.

³³ M. Cranston, *Human Rights: Real and Supposed* in Raphael (eds) *Political Theory and the Rights of a Man* (Blooming 1967) 52, cited in Y. Olomjobi, *Medical & Health Law* (Princeton & Associates Publishing Co. Ltd) 2019) 3.

Internationally, the right to life is guaranteed by various international laws and treaties. Some international laws and instruments such as the Universal Declaration on Human Rights, International Covenant on Civil and Political Rights, European Union Agency for fundamental Rights, African Charter on Human and Peoples' Rights, recognized the right to life. The charter provides that no person shall be deprived of his right to "the dignity or degradation inherent in a human being and to the recognition of his legal status." Apart from the provisions for the right to life in the constitutions of various countries, some countries are signatories to the various international treaties and instruments and by virtue of their membership of such organizations they are bound by the provisions of such international treaties and instruments. Thus, in *Ubani v Director, SSS*, it was held by the Nigerian Court that:

... the African Charter is applicable in this country. The charter entrenched the socio-economic rights of persons. The Court is enjoined to ensure the observation of these. A dispute concerning socio-economic rights such as right to medical attention requires the court to evaluate state policies and give judgment consistent with the constitution.³⁴

The Court further stated that the applicants in this case have a right to life and that they must be allowed to go for their medical treatment. In India, the Supreme Court stated that:

The fundamental right to life, which is the most precious human right... must be interpreted in a broad and expensive spirit so as to invest it with significance and validity which may endure for years to come and enhance the dignity of the individual and the worth of the human person...³⁵

Also, in *Bello v A.G. Oyo State*, it was held that the act carried out by Oyo State Government of Nigeria by executing the convict while his appeal was pending amounted to executive recklessness in disregard of the right to life and liberty of the citizenry.³⁶ The Court further condemned the state government for taking laws into their hands stating that an appellant has the constitutional right of appeal. Again, in the United States of America (USA), death penalty is opposed consequent upon the 8th amendments to the constitution of the United States. Despite the fact that death penalty is carried out by different states in the U.S as embedded in their laws, it has been a subject of debate as to whether to be or not to be. However, the 8th Amendment is to the effect that cruel and unusual punishment, excessive bail and outrageous fines should not be imposed on individuals. The

³⁴ (1999) 11 NWLR (Pt. 129)

³⁵ AIR 1981 SC 746, 753

³⁶ (1986) CLR 12 (b) (SC)

antagonists of death penalty argue that death punishment is a cruel and unusual punishment and therefore, should be discouraged.³⁷

Another reason put forward by the antagonists to death penalty is that it has some elements of erroneous execution and bias. It is opined that abolishing death penalty would erase the erroneous belief in executing convicts who may not have committed a capital offence and the bias that would have occurred in convicting an individual. Also, in some countries today, racism thrives. A white man might not like a black man and vice versa for the reason of colour or religion. Some persons are real racists and so many of these racists are judges and juries who sit as arbiters. It goes a long way to adversely affecting the determination of the fate of a convict. Therefore, it is thought that erroneous belief that a person has committed an offence whereas he has not and racism could lead to the conviction and sentencing of an innocent person to death.

Again, irreversibility of judgment upon conviction and sentencing to death of an individual is another ground for the support of the abolition of death penalty. It is argued that it would become impracticable to reverse the judgment of a court already pronounced against a person especially when it is mistakenly carried out or on the ground of bias. When a person who is sentenced to death had been executed it becomes practically impossible to reverse such judgment after the judgment had been delivered and probably after the judgment had been executed. Of course, the Court becomes *functus officio* after delivering a judgment on a subject matter.³⁸

Also, death penalty is opposed because it is against the tenets of humanity, thereby inflicting immeasurable psychological trauma on the victim's associates and family members. It amounts to inhumane treatment against the individual. In *Furman v Georgia*,³⁹ the Court rejected the death penalty of some states of the U.S and provided a standard for consideration for "Cruel and unusual" as follows: when it is too harsh; arbitrary – why would some convicts be given such punishment and others would not be given?; justification of the sentence; where the punishment is not better than a less penalty.⁴⁰ 'Cruel and unusual' is however subject of interpretation by the Courts.⁴¹ And it has been held that even if the Court upholds the execution of a convict by firing squad, torturing which

³⁷ See, 8th Amendment to the Constitution of the United States of America

³⁸ See, *Oboroh v Oghuvwu* (2000) 3 NWLR (Pt. 647) 120, 127–128

³⁹ 408 U.S. 238 (1972)

⁴⁰ 408 US 238 (1972).

⁴¹ See, *Weems v U.S* 217 U.S 349 (1910)

includes burning alive, beheading and other forms of inhuman and degrading acts purportedly used as a means of execution of convicts amounts to cruelty and therefore, forbidden by law.⁴²

Death penalty has equally been opposed for the sake of poverty. So many individuals who perpetrate crimes are poor. When arrested, they find it difficult to consult lawyers to represent them thereby relying on lawyers from government sponsored legal aids who might not put in their very best as a result of the little or no remuneration and financial support from the accused and his family members. A poor man who does not have the wherewithal to procure facilities to defend himself including having a good counsel for his defence in a criminal trial is likely to be convicted. Oftentimes, many poor people are incarcerated in police cells and prisons for offences which they would have ordinarily been saved. Those who are opposed to death penalty are of the opinion that poverty is one reason that death penalty should be abrogated.

It is equally argued that death penalty does not pave way for reformation and repentance. One of the reasons for punishment is for reformation. Imprisonment of convicts is not only to punish the convicts but it is on the other hand to rehabilitation and makes such convicts better. Through reformation mechanism, convicted persons could mend their ways and repent of their sins and probably return to the society as better persons. When a person is sentenced to death and he is eventually executed by firing squad or hanging or by any other means, such a person would not have the ample opportunity of mending his ways. Death penalty is therefore condemned for being harsh, final and robs individuals the opportunity of changing from bad to good.⁴³

It is again stated by the antagonists of death penalty that many of the executions in some countries are carried out by the leaders of such countries sequel to authoritarianism. Death penalty is propagated indiscriminately and arbitrarily by authoritarian or autocratic leaders who do not accommodate opposition and justice in their scheme of things. In China, Malaysia, Indonesia, Thailand and other countries, death penalty is imposed on drug related offences and many people have been executed for such drug related offences. It can be used against government and political

⁴² Wilkerson v Utah 130 (1878).

⁴³ See generally, Amnesty International Index: AFR01/013/2004, '10 Reasons to Abolish the Death Penalty' <https://www.amnesty.org/en/wp-content/uploads/2021/08/afr010132004en.pdf> accessed 28 July, 2024; R. Marshal, J. Schubert, 'Death Penalty History, Pros & Cons', <https://study.com/learn/lesson/death-penalty-history-pros-cons.html> accessed 26 July, 2024.

oppositions. It is not clear why Ghadaffi of Libya and Saddam Hussein of Iraq were killed. One would safely argue that it might not be unconnected with political and economic reasons even though the duos were extra-judicially murdered.

5. Execution of Convicts

Recall the fact that convicted criminals sentenced to death were executed in any of the following ways: firing squad, hanging, lethal injection, electrocution, stoning and other such methods.⁴⁴ Execution refers to carrying out the order of court sentencing a convict to death. It is the actual killing of the convict as ordered by the Court of law. It is different from assassination and extra-judicial killing orchestrated by the police and other security agents.

Firing squad connotes the pronouncement of sentence of death by 'firing squad' by the Court. It means that the convict will be killed by firing gun shots at him until he has been confirmed dead by a medical expert. In Nigeria, the defunct Robbery and Fire Arms Tribunal sentenced so many armed robbers including Lawrence Anini and his gang to death by firing squad and they were all killed by firing squad.⁴⁵ Death by hanging is a situation where a convict is hanged using a rope on the convict's neck and leave the convict to dangle to death. The hangman carries out the job of hanging. Also, lethal injection involves injecting the convicted criminal with a lethal dose of injection in order to cause his immediate death. In this circumstance, the condemned criminal is injected with overdose drugs which would quicken his death. Again, electrocution is mostly used to shock a person who is sentenced to death in order to hasten the death of such person. The convict is therefore, shocked by means of electricity in order get him electrocuted so as to cause his immediate death. It could be by way of seating the convict down on an 'electric-chair.' There is equally lethal gas method of execution which presupposes a stethoscope which would be affixed to the convict and when an executioner releases crystal, it would cause the death of the convict or prisoner.⁴⁶ No matter the method or means of execution, what it tends to achieve is basically to hasten the death of a convicted criminal who has been handed death penalty.

⁴⁴DPIC, 'Methods of Execution' <<https://deathpenaltyinfo.org/executions/methods-of-execution>> accessed 28 July, 2024.

⁴⁵ It should be noted that Anini and his gang were a terrible armed robbery gang.

⁴⁶ <<https://deathpenaltyinfo.org>>, accessed 28 July, 2024.

In the US, each and every state has its methods of execution especially as it concerns state laws. It was reported that 18 men were executed in U.S. in 2022. In Nigeria, the last death penalty execution was in Edo State during the administration of Adams Oshiomole in 2016. It has equally been observed that the absence of the hangmen in various states has been a serious issue. It appears that not many people would like to engage in the role of a hangman especially on the ground of religious belief and morality. It is submitted that no known execution has been recorded or carried out in the UK since 13th August, 1964 when the death penalty Act was abolished. The last time execution took place in U.S was in January 2021 and lethal injection was used. It was in 2022 in Japan and February 2024 in Singapore. In Malaysia, the last execution was conducted in 2017. In South Africa, the last execution was in 1989. And in Libya and Ghana it was in 2010 and 2020 respectively. Some countries have towed the line of abolishing death penalty while others use death penalty only for some heinous offences such as murder, kidnapping, armed robbery, terrorism and others. In Africa, such as Ghana, New Guinea, Sierra Leone, Central African Republic and others have totally abolished death penalty. Amnesty International reported that 55 countries of the world were involved in death penalty. And nine of the countries retained death penalty for heinous or capital offences. Also, 23 countries are yet to use the death penalty for over ten years. The report further stated that China is world leading country in terms of death penalty execution. About 883 death penalty executions were recorded in the year 2022 across the globe. Iran, Egypt, Saudi Arabia, U.S are other countries with high number of executions in the world, apart from China according to Amnesty International. In addition to the above countries, Vietnam, Iraq and Yemen are other countries where death penalty execution has been on the rise.⁴⁷ It is apparently becoming clear that death penalty is losing grip in most part of the globe as the reasoning of stakeholders is tilting towards a paradigm shift.

6. The Way Forward

Having adumbrated on the pros and cons of death penalty above, it is appears right to state that death penalty may have over stayed its usefulness as it is obvious that it cannot be shown to have deterred offenders or prevent the commission of crimes. It is against this background that it is submitted that a moratorium period should suffice in every country where death penalty still holds sway. A moratorium is a period of a temporary inactivity of a law or suspension of such law to

⁴⁷ See, generally, BBC News, 'How Many Countries Still Have the Death Penalty, and How Many People Are executed?' <<https://www.bbc.com/news/world-45835584>> , accessed 28 July, 2024.

enable the legislature and stakeholders study the situation with a view to advising on it. It is not in doubt that the raging debate on death penalty across the universe has been controversial suffice to state that each country should study and brainstorm on the situation while adhering the moratorium, the rule of law and constitutionalism. The world is already a global village, despite the sovereignty of a state and local circumstances of any nation, it is submitted that no country can succeed in isolation of others. Therefore, a country must strive to be reckoned with in the comity of nations. It is strongly believed that the way forward is for a moratorium to enable the legislature and all stakeholders think on the arguments for and against death penalty in order to make a decisive conclusion that would foster peace and tranquillity in every nation. No matter how good or bad the arguments for or against are, it is good to dialogue and forge ahead in order to encourage a departure from the current trend with a view to moving forward to accommodate a new order.

7. Conclusion

We have demonstrated the pros and cons of death penalty as a capital punishment for serious offences such as murder, kidnapping, terrorism, treasonable felony, and in some countries, drug related offences, rape and other capital offences. It was observed the presence of two opposing views as to death penalty, and they include the protagonists and the antagonists. Whereas the protagonists are of the view that death penalty should be retained and encouraged for the reasons of retribution, deterrence, justice, public safety, reduction in crimes, on the other one hand, the antagonists of death penalty are opposed to death penalty because of its irreversibility, racism, execution of persons who might be innocent, cruel and unusual, lack of deterrence, fundamental human rights, inhumane and degrading reasons. The antagonist maintained that death penalty and its consequent execution has not in any way deterred other criminals as well as reduced or prevented crime perpetration anywhere in the world. Nevertheless, it is submitted that if the purpose of supporting death penalty is mainly prevention, deterrence, retribution and reduction in crimes, it follows that the aim is defeated as death penalty has not been seen to have achieved this purpose.

It is not in doubt that criminal activities have been on the increase nowadays across the globe. However, it must be noted that so many crimes have been committed as a result of some circumstances such as anger, hunger, depression, economic quagmire, poverty and other psychosocial problems associated with the commission of crime. In some circumstances, mistakes and accidents occur and might not be proved in a trial Court. It was stated earlier that killing of any kind is morally wrong whether such killing is perpetrated or orchestrated by an individual or the state. This is because when a victim is killed, his demise becomes psychologically traumatic to his close

relatives and well-wishers. Therefore, killing of any kind is absurd, abhorred, inhumane and condemned in all its ramifications. It is submitted that it is not the view of this work to in any way support or exonerated criminals involved in dastardly and heinous crimes but to proclaim the sanctity of human life and the Godly ordained love for mankind.

It is further submitted that this work having weighed the arguments of the protagonists and that of the antagonists to death penalty concludes that death penalty no matter the credible views of the protagonists should be abolished across the globe with a view to replacing same with life imprisonment as this would equally serve as a deterrence to other would be criminals. Again, apart from acting as deterrent to others, it would also serve as an avenue for a convict to mend his ways as the purpose of punishment is not always to make a convict suffer parse but for reformation and thereby make such convicted criminal useful to the society again. Overall, both the arguments of the proponents of death penalty and the opposing view are very germane but the reasoning of this work and the pendulum tilts to the view that death penalty should be abrogated the world over.

The merits and demerits of capital punishment of death penalty having been demonstrated, it is therefore not in doubt as stated earlier that both the arguments canvassed by the proponents of death penalty and that of the opponents are very reasonable. However, the following recommendations are made to assist various nations in decision making regarding death penalty.

As stated in the way forward, there should be moratorium to temporarily suspend or prohibit death penalty for four years to enable countries practicing death penalty brainstorm on its propagation.

Death penalty should be abolished across the globe and in the alternative, replaced with life imprisonment.

The Courts must ensure that all indices tilt to the fact that the defendant actually and intentionally committed the heinous crime to warrant death penalty.

In essence, internationally recognized principles of justice delivery must be adopted in every nation.

It is not in doubt that many people are living under the influence of alcohol, dementia, anger, hunger, socio-economic stresses and other psychological trauma therefore, it is pertinent that clinical and psychological examination should be carried out on suspected individuals from time to time in order to ascertain the mental health status of the criminals.

The purpose of punishment should be geared towards reformation and rehabilitation of the convicted criminals and not necessarily to punish or condemn them.

The security agencies saddled with the responsibility of crime detection and prevention should be up and doing and rise to the duty and challenge in carrying out their duties diligently in order to always nip the perpetration of heinous crimes in the bud.

Governments across the globe should endeavour to provide some scientific mechanisms that would assist in the reformation and correction of the inmates in the prison or correction facilities.

Finally, there should be enquiry as to whether the convicted criminal was actually given fair hearing during the trial.



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