

## **The Theoretical Exploration of Punishment and Incarceration in Nigeria?**

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### **ABSTRACT**

*Punishment is as old as the history of mankind in the society. People punish for the purpose of discipline and to install moral values on the future generation. Different societies from ancient to modern adopted punishment in order to discipline the bad element of society. It is a notable fact that the majority of inmates in Nigeria prisons today are those who are awaiting trial. Punishment which is seen as a philosophy that will serve as deterrence to criminal inmates who has served the expected jail term has not yielded the expected results. Why is it that the majority of prison inmates in Nigeria today are those awaiting trial? Why punishment in Nigeria fails to yield the desired results? These questions will serve as a guide in understanding the theoretical exposition of punishment and incarceration in Nigeria.*

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**Keywords:** *theory, punishment, incarceration.*

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### **INTRODUCTION**

The penal system today in Nigeria dates back to the colonial era and modelled on the British system, it is a system with emphasis on punishment and deterrence. Prison is the only formal institution recognised worldwide with the sole aim of punishing and incarcerating offenders or those who are found guilty by the criminal law of the society. It is a notable fact today that the majority of inmates in Nigerian prisons are those who are awaiting trial. Punishment which is seen as a philosophy that will result into deterrence of a criminal inmate who has served the expected jail terms has not yielded the expected result. Punishment as in form of incarceration has undergone so many reform and review in Nigeria, as a result of which today to incarcerate inmates is no longer seen as punishment but rather a process of rehabilitation back to the society.

It is on this note that the then president of Nigeria Alhaji Umaru Yar'adua is on a special campaign to restore the vitality of the country through the instrumentality of a 7-point

Agenda designed to reawaken all dead institutions and practices so as to place Nigeria as one of the leading 20 nations of the world in the year 2020. During this period Nigeria government has adopted and embraced the whole idea of inmate's correction instead of serving jail term as punishment. (Ogundepe, 2009:1).

However, it is against this backdrop that this paper attempt to look at the theoretical exploration of punishment and incarceration in Nigeria.

## **THEORIES OF PUNISHMENT**

Why do we punish? There are number of punishments one or more of which underpin the administration and practice of penal policy in any society. These ranged from existentialist theory classical theory to Marxist cum critical theories of punishment. A theory of punishment essentially captures the basic objectives and justifications of punishment as well as supplies the guiding rationale by which the Criminal Justice System (CJS) deals with an adjudicated criminal. For our present purposes, the theoretical discussion will be limited to a brief examination of the traditional classical theories of punishment, namely, the retributive, deterrence, rehabilitative and preventive theories of punishment. This is because for the moment these ranging theories captured the philosophy of punishment and incarceration in modern day Nigeria societies.

### **RETRIBUTION THEORY OF PUNISHMENT**

Theory of retribution seeks to exact revenge upon criminals by harming them in exchange for harms caused to their victims. This theory do not necessarily focus on whether or not a particular punishment benefits the community, but are more concerned with ensuring that the punishment causes a sufficient level of misery for the prisoner in proportion to the perceived seriousness of their crimes. This theory is based upon a belief that some kind of moral balance will be achieved by paying back the prisoner for the wrongs they have committed. In defence of retribution advocate of theory advanced, the view that if we were to remove the retributive response from our reaction to the criminal, the label criminal would cease to have the meaning commonly associated with it. Hence, retributivist theories argue that in a very real sense, it is the vengeful, retaliatory response of society that gives meaning to the label "criminal". The essential element in retributive theory of punishment are three folds: (a) The fact that an individual has committed a crime provide enough ground or reason for his punishment (b) that the pain inflicted on the criminal must be in offence committed and (c) that punishment is viewed as an end in itself rather than as a means to an end.

### **DETERRENCE THEORY OF PUNISHMENT**

The deterrence model was developed within the standpoint of classical school of criminology in the 18th and early 19th centuries. The theory claims that by sentencing criminals to extremely harsh penalties, other people who might be considering criminal activities will be so terrified of the consequences that they will chose not to commit crimes out of fear. Deterrence theory argues that deterrence from crime is achieved through the fear of imposition of punishment. It claims that potential offenders in the committing, or indeed an offender who has already been punished will refrain from committing crime in future when they remember that punishment will follow in consequences. These include the conditions of celerity, sufficient severity of punishment and certainty of apprehension and punishment. In the absence of these three conditions, there is the likelihood of deterrence failure.

### **REHABILITATION THEORY OF PUNISHMENT**

The rehabilitation theory of punishment gained ascendancy during the course of the 20th century up to the present time. The trend all over the world seems to be one of growing emphasis on the rehabilitation, reformation of the criminal offender. Both correctional spokesmen and prison reformers lend their professional voices to the growing call for ideal of rehabilitation and correction rather than punishment as such. Under the rehabilitative theory of punishment, the essential element or focus is treatment. Treatment in the sense of working with the individual in such a way that he will be able after a prolonged programme of training or treatment so called to make a satisfactory adjustment to conventional lifestyle once he is released from official custody. In terms of the rehabilitative theory, punishment ideally should be individualised and should produce the effect of promoting the moral education of the person(s) being punished. Punishment, here play a positive function and is justified on the ground that it helps to facilitate the desired moral damage in the criminal. While this view of prisons as centres of rehabilitation was popular during the early development of the modern prison system, it is not widely held anymore and has mostly been replaced by theories of deterrence, incapacitation and retribution.

However, this is not supported by empirical evidence and in practice prisons tend to be ineffective at improving the lives of most prisoners. As Morris and Rothman (1995) point out, it is hard to train for freedom in a cage.

### **PREVENTIVE OR INCAPACITATIVE THEORY OF PUNISHMENT**

The preventive or incapacitated theory of punishment views punishment as a means of keeping away the criminal offender from the society by locking him away in custodial confinement. This means that punishment takes the form of prison incarceration, and the objective is to prevent the criminal from further victimization of society. Punishment under preventive theory serves the function of protecting society by preventing or incapacitating the criminal from carrying on with his criminal activities. The adoption of preventive punishment is justified on the sole ground that society remains safe as long as the criminal remains locked away in solitary confinement.

### **THEORETICAL EXPLORATION OF PUNISHMENT AND INCARCERATION IN NIGERIA**

To start with the theoretical exploration of punishment and incarceration in Nigeria, it will be pertinent to know briefly the historical dealing of punishment and imprisonment in Nigeria. Unlike the historical conditions of punishment and incarceration in the advanced societies of Europe, ranging from the primitive age, the middle and modern forms of punishment and incarceration, the situation is not different with Nigeria.

In Nigeria, the origin of imprisonment dates back to pre-colonial era. Available records showed that various traditional societies in Nigeria had various forms of prison prior to their contact with Europe in the first decade of the second half of nineteenth century. Among the Yoruba, Ogboni house served as a sort of prison for the Edo State the Ewedo building served not only for keeping those to be sold, but also those offenders who had to be put away for sometimes (Awe, 1968:4). In Tiv land, there were indications of an awareness of imprisonment. In this community, offenders were required to concur to a sentence of imprisonment as an admission of guilt.

It is also on record that in 1908 Sir Frederick Lugard recorded the existence of prisons among the Fulani ethnics who used them both for incarcerating offenders and for locking away condemned persons. Among the Ibos, solidly built darkrooms or houses were constructed by

communities, villages, and powerful individuals in society for the purpose of confining offenders and captives. (Igbo,2006:85).

Thus, the concept of imprisonment in Nigeria preceded the arrival of British colonialists in Nigeria. What came at their heel was the specific introduction of the British form of prison system. The first prison in Nigeria, the broad street prison Lagos was established in 1872 by the British colonial administration in Nigeria. As a colony of Lagos extended its sphere of influence into the neighbouring territories more and more British form of prison organization were established in the land. By 1900 many of the settlements along the Southern coastline and the hinterland administered by the British had had prisons established among them. By 1915 there were as many as forty two prisons in the whole of Lagos colony and southern Nigeria provinces. Igbo (2006:85).

Having thus been hooked onto the world system through colonization, the penal system operative in Nigeria became now subject to pressures and development emanating from the western world.

**Punishment:** Jerome Halls defined punishment in six different ways:

“First, punishment is a privation (evil, pain, and disvalue). Second, it is coercive. Third, it is inflicted in the state; it is “authorized”. Fourth, punishment presupposes rules, their violation and a more or less formal determination of that, expressed in a judgement. Fifth, it is inflicted upon an offender who has committed harm, and this presupposes a set of values by reference to which both the harm and the punishment are ethically significant. Sixth, the extent or type of punishment is in some defended way related to the commission of the harm, and aggravated or mitigated by reference to the personality of the offender, his motives and temptation”( Gerber and Mc Anany 1970:351). Halls definition appears to emphasis the principles of loyalty and responsibility in criminal law and punishment. Here what Halls emphasised is that the goal of punishment is to inflict pain on the offender. However, Halls was criticized on the ground that his definition is too narrow because of its inclusion of pain. This is because there are many contemporary forms of punitive sanctions for example some prison rehabilitative programmes that are devoid of pain or that are free of devaluing consequences for the individual. Following this shortcoming in Hall’s definition, some scholars have offered a broad definition to cover the actual practices of prisons and even if these practices are depravity in nature. To fill this gap, (Swart, 1967) has defined punishment as the level of sanction or consequences applicable to the individual upon due determination that he is criminally liable for an offence, and the written and unwritten norms governing their use. (Reid, 2000:64) defined punishment thus: “Any of a series of impositions (such as fine, probation, work service, incarceration, and so on) imposed upon a person by authority of law after that individual has been determined to be a criminal offender.”

These two latter definitions are wide enough in scope to include the many forms and varieties which punishment assumes today penological environment.

**Incarceration:** base on (Rield 2000:64) is a form of punishment.

Punishment has remained a principal instrumentality adopted by society to enforce its law. In pre-modern society of ancient history, punishment of various kinds and descriptions were applied to the criminals of society solely as a retributive hit back against the out-cast who deserved to be paid back in his own coin, but in modern times, the grounds for justifying punishment have shifted emphatically to reflect contemporary wisdom concerning the motivational root of criminal behaviour. The goal of punishment as advocated in

contemporary penological theory and practice have likewise changed to mirror this new advance in social scientific knowledge with these changes and rationalizations have come on board new methods for accomplishing the practical purpose of punishment as agreed upon by the criminal courts of retributive, deterrent, preventive, and reformatory sentence on criminal offenders. In adopting a retributive, deterrent, preventive or reformatory 'method', Criminal courts are in practice essence guided at once by a retributivist purpose, a deterrent purpose, a prevention purpose or a reformatory purpose in sentencing or else by a combination of these purposes as the case may be.( Igbo, 2006:86).

However, with the abolition of native authority prison in 1968, the subsequent introduction of modern prison system in Nigeria laid more emphasis on the treatment of inmates rather than seeing jail term as punishment. In 1917, prison regulation was published to prescribe admission, custody, treatment and classification procedures as well as staffing, dieting and clothing regimes for the prisons. These processes were limited in one very general sense. They were not geared towards any particular type of treatment of inmates. Instead they represent just policies of containment of those who were already in prison. Besides, they were limited in application to those who were convicted or reminded in custody by criminal courts of the British- inspired supreme or provincial types. Those reminded or convicted by the native courts were sent to the native authority prisons. The prison regulation also distinguished between Awaiting Trial and convicted inmates and even stipulated the convict-category to be found in each type of prison. But the limited application of this general rule to the nation prison while the native Authority prison when their own way effectively stultified the appearance of a national prison gaol- orientation in terms of inmate treatment. It was not until 1934 that any meaningful attempt was made to introduce relative modernization into the prison service. It was at this time that colonel v.l. Mabb was appointed director of prison by the then Governor Sir Donald Cameron. Although a military officer, Mabb had an understanding of what prisons should be. And he went on to do his best. Nigeria prison service copy right, (2014). what he seems to have focused his attention on was the formation of a unified prison structure for the whole country but he failed. Yet he succeeded in extending the substantive Director of prisons' supervisory and inspectoral powers over the Native Authority Prison by this time dominant in the North. It was also during his tenure that the prisons Warders welfare Board was formed. His effort were to be continued by successor R.H.Dolan(1946 -55). Mr Dolan was a trained prison officer and when he assumed duties in Nigeria he already had a wealth of experience in prison administration in both Britain and the colonies. Although a scheme for the introduction of vocational training in the National prisons had been introduced in 1917 and it failed except in Kaduna and Lokoja prisons were it was function in 1926, Mr Dolan reintroduce it in 1949 as cardinal part of penal treatment in Nigeria. He also made classification of prisoner mandatory in all prisons and went on to introduce visit by relations to inmate. He also introduce progressive earning scheme for long term first offenders. He also transferred the prison headquarter formerly in Enugu to Lagos to facilitate close cooperation with other department of state. He also introduced moral and adult education classes to be handling by competent ministers and teachers for both Christians and Islam education. Programmes for recreation and relaxation of prisoners were introduced during his tenure as well as the formation of an association for the care and rehabilitation of discharged prisoners. But above all, he initiated a programme for the construction and expansion of even bigger convict prisons to enhance the proper classification and accommodation of prisoners. During this period, to incarcerate inmates is no longer seen as punishment but a process of rehabilitation because of value of human life in the society. There had been massive transformation in the service since 1972. In the last ten years no less than 12 new satellite prisons and 3 prison hospitals have been built. The purpose is to

modernise and create the enabling environment for the proper treatment and training of offenders. There is also no doubt that the special prison reform programme of the federal government in 1999 made a lot of difference to the structure of prison. All these were geared toward inmate rehabilitation and reform so that the society should be a better place for man to live in harmonious co-existence. This is in line with the theory of rehabilitation that seeks to treat and re-oriented inmates rather than punishes them as such.

## CONCLUSION

The theoretical exploration of punishment and incarceration in Nigeria has not yielded the desired goals. This is due to the fact that in practice, most inmates who have completed their jail term inform of incarceration came out from prison into the society and still commit more crime, some had even learned more techniques on how to execute their criminal activities during their jail term. Prison which is supposed to be a rehabilitative and reformation centre has turnout to be a training ground for inmates to further learn how to perpetuate crimes in the society. This is due to a number of factors ranging from lack of qualified prisons personnel, or shortage of man power, lack of adequate funding of the prison, poor infrastructure among others that supposed to be in place to meet up with the desired dreams of retribution, deterrent, prevention and rehabilitation as the philosophy behind the establishment of prison institution in Nigeria. Corruption is also another factor that bedevils our prison system. For the prison to fully perform to its expectation in Nigerian society, government needs to as a matter of urgency put all the facilities that are lacking in prison so that the prison will perform up to expectation in its responsibility of inmates rehabilitation for the purpose of reformation of criminals offender back into the society as non- criminals.

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