

Abstract

The intractable social menace of crime has remained perennial infliction on humanity. In spite of variously evolved measures to combat crime in society either by reducing it or completely weeding it out, crime wave has been on the increase. Similarly, different penological endeavours or punishment modes have been experimented upon to stem the ever-increasing tide of crime but to no avail. Again, the continuous application of prison-based punishment to all types of offences has proved to be a mistaken penological policy. This research mainly appraised the penological value of community sanction to less violent offenders as alternative to prison-based punishment. It is shown that the application of various community sanction modes to less-violent offenders has multi-value content. Doctrinal method was used in carrying out the study, hence statutes, case laws, several books, newspapers, internet sources, magazines, were explored to assemble data/information to deeply elucidate and guide the work. In the course of the work it was found, inter alia, that: Prison-based punishment doesn't deter, severity of punishment doesn't accentuate the supposed deterrent value of prison-based punishments, Community service, an aspect of community sanction, is beneficial to the society as well as to the offenders themselves. Other alternatives to prison strategy such as restitution, probation, intensive supervision, etc, should be used as an alternative to prison-based punishment in sanctioning less violent offenders. The study recommended as follows: Community sanction should be adopted in Nigeria legal system as part of her penological policy. Less violent offenders should not be sanctioned to prison sentences to mix with offenders that committed heinous offences; religiously obsessed or religious fanatics should be exposed to a programme of re-orientation to disabuse their minds of the misguided religious indoctrinations that induce them into criminality, etc. Finally, it was concluded that application of Community Sanction as an alternative to incarceration in certain crimes will go a long way in curbing criminality and recidivism in Nigeria criminal justice system and the society.

Keywords: Community Sanction, Incarceration, Crime Reduction, Nigeria

1. Introduction

The existence of crime and punishment is a reality of human existence. Just as crime and criminal activities are co-val with man breeding disharmony in his society and the natural order in general, punishment is equally co-existent with man from time immemorial making it, as it were, the tool for prevention of crime and for other reasons.¹ The traditional notion and shared perception worldwide is that punishment has unbreakable correlation in symbiotic relationship with crime. Both concepts will therefore be recurrent in this intellectual enterprise. Punishments exist in multiplicity of forms and variously expressed through various modes. Prison-based punishment has dominated the punishment landscape in penology. The effectiveness or otherwise of its application in crime reduction in the society *vis-a-vis* alternatives to prison-based punishment as encapsulated in Community Sanction mode of punishment shall receive sufficient appraisal in this research work. However, the pursuit of Community Sanction as an alternative prison-based punishment/incarceration does not apply to all crimes across board. Oxford Advanced Dictionary² defines a crime as an activity that involves breaking of the law, an illegal act or activity that can be punished by law, or an act that is immoral or a big mistake. Man's first experience of deadly violence was first recorded in the Garden of Eden³ which was freely bequeathed to him (man) to freely, tend, explore, enjoy and occupy.⁴ The legal regime entrenched by God Almighty was violated by Adam and his wife (Eve) rendering them susceptible to instant divine sanction, thereby instituting on earth the process of crime commission and the attendant punishment.⁵ Since then crime has become an extraordinary violence against societal order and therefore seemingly intractable social malaise with ramified adverse implications.

Crime phenomenon in the form of homicide case was first noticed in the horrendous killing of Abel by Cain.⁶ Since the incident, the world has been restlessly buffed by one crime pattern or the other. Happenings all over the world today tend to endorse the fact that crime and criminal involvements still remain permanent features of our human society. The task of dis-infesting the society of criminality has continued to be a complex endeavor from time immemorial. Man has been pre-occupied with the onerous task of finding the most effective means of countering the menace of crime and criminals. It is tenable to reason that owing to the pervasive nature of crime and their evil effects on humanity, the divine ordinance of Ten Commandments⁷ were entrenched to regulate the social conducts of the Israelites. The Ten Commandments could not stem vicious wave of crime as the world was immersed deeply in different brands of crime. Here in Nigeria, especially from

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¹ J.M. Elegido, *Jurisprudence*, Ibadan, (Spectrum Books: 1994)

² *Oxford Advanced Learner's Dictionary*, (8th Edn, Oxford University Press 2010)

³ *Dakes Annotated Reference Bible: The Holy Bible* (Finis Jennings Dake: 2013). Garden of Eden was the original home of the first couple on earth. God Almighty kept them there in splendor.

⁴ Genesis 1:28; In the Garden of Eden, Adam and his lovely dear wife, Eve, were handed the divine statues of eating every fruit except the fruits of the tree in the midst of the Garden. They violated the divine decree by eating the fruits they were forbidden from eating. Consequently, they were cast out of the Garden.

⁵ *The Holy Bible*, (Thomas Nelson Inc. 1994) Genesis Chapter 3: 14-18

⁶ *The Holy Bible*, Genesis Chapter 4:8

⁷ In Exodus 20:1-10, God handed down codes of conduct to the Israelites to regulate their social conducts and their relationship with Him, their creator and supreme Authority.

post Nigerian civil war as early as 1970s, there was evident upsurge of grievous crimes: the crimes were committed with dangerous weapons and killing. By 1970, Decree No. 47⁸, the First Armed Robbery Decree was promulgated. It resulted in public execution of some convicted armed robbers. By July, 1984, General Muhammadu Buhari had issued twenty-two Decrees, including two retroactive⁹ to December 31, 1983 prescribing the death penalty for arson, drug trafficking, oil smuggling, currency counterfeiting. Consequent to the foregoing statutory effort, abysmally condemnable in law, Lawal Ojulape (30), Bernard Ogedemgbe (29), and Bartholomew Owo (26) were executed by firing squad for drug trafficking¹⁰. Despite the harsher sentences under the regime of General Buhari against the background of common belief that stiffer punishments deter criminals/people from criminality, crime still soared astronomically high in the face of threat of life-threatening sentences. Consequently, related violent crimes such as murder, rape, kidnapping, sea piracy, cultism, militancy, dominated Nigerian social landscape. Our Criminal Code¹¹ catalogues elaborate range of crimes and their associated punishments, basically incarceration-based, signifying societal deprecation of crime. Even former President Goodluck Ebele Jonathan, the then Executive President of Nigeria, at a special church service to mark the 2013 Fathers' Day, called for full implementation of death penalty in Nigeria. In the same vein, two governors signed death warrants, former Governor of Kano State, Ibrahim Shekarau, in 2006 and Governor Adams Oshiomole of Edo State sanctioned the execution of two condemned criminals in 2013.¹² These incidences affirm the general and unsubstantiated faith in stiff penalty as panacea to increased criminality in the polity. Implementation of tough sentences as provided in the criminal code¹³ and other legislations has not availed Nigerian society and other Nigeria states, Students' related offences like cultism is punishable by incarceration-based punishment and death.¹⁴ Unarguably, crime has not abated, rather, it is frustrating that the crime-tornado is still sweeping across the Nigerian landscape in the face of varying incarceration-based punishment regimes employed to deter criminal offenders from crime perpetration in Nigeria. Most recently, the Boko Haram Islamic fundamentalist group has stepped into Nigerian arena, unleashing violent criminality against the citizenry. According to Igbo,¹⁵ violence appears to be norm rather than the exception to armed robbery in Nigeria even against the background of severe incarceration-based sanctions authorized by our statutes and pursued by Nigerian criminal justice system. Abolitionists of death penalty have argued that death penalty does not serve a more effective role as a deterrent than other forms of incarceration-based punishment.¹⁶ Criminological theory strongly suggests that law abidingness is basically explained by internalized motives, not fear; most people retrain from crime not because of fear of punishment, but because the behavior itself is regarded as morally blameworthy, or simply because of habit. The most basic and often expressed motive for sentencing is deterrence. It has been explained as the employment or threat of legal punishment to stop criminal behavior. Under this punitive theory, it is presumed that people would stop committing crimes or a particular crime when they learn either that the likelihood of detection, arrest and conviction were highly probable or that the punishment for that crime is sufficiently harsh. However, the shared view among experts is that empirical evidence on deterrence is not sufficiently definitive to provide a sound basis for sentencing policy. In traditional African society, the phenomenon of crime constituted a social challenge ravaging the effort of the people to contain. The traditional society had no legal documents codifying offences and laws. Nevertheless, they had a code of conduct which they all know and understood.¹⁷ The code constrained people to live harmoniously with other people for well-being of the society. The codes were transmitted conventionally from one generation to another. In the society, the sacred and the secular were inseparable; there was no compartmentalization of life. What religion forbade or condemned the society also forbade such behavior or thing. Too, whatever religion approved, the society accepted as socially acceptable and gave seal of approval. Offences against man were also considered against God. Such offences were considered as being criminal offences.¹⁸

Countless penological strategies and justifications have been evolved and strongly canvassed to sustain traditional forms of punishment as a means of crime reduction across all forms of crime. The seemingly intractable and ever expansive incidence of crime phenomenon accounts for this effort-making endeavor. Such justifications for retaining all forms of punishment as a means of crime reduction include deterrence, incapacitation, retribution, just desert, reformation, rehabilitation, renunciation, etc. The entrenched employment of traditional forms of punishment, albeit strident argument supportive of the perspective, has not satisfactorily ushered in the expected reduction of crime in every society. The problem therefore is the failure of such punishment-policy to reduce crime in the society. In the course of this work, we formulated these research questions: What are the various justifications of punishment? How effective has traditional punishment been in crime control? The main purpose of this study is to appraise Community Sanction as an alternative to traditional punishment in crime reduction. The scope of this work shall cover certain category of offenders ordinarily referred to as less offending criminals. The study has great benefits to various groups/sectors in the society. Due to the conceptual nature of this topic, doctrinal method of legal research was adopted. However, our major sources were purely secondary-based materials. We

⁸*Nairaland Forum*, 'General Buhari's Military Government-Politics-Nairaland' <http://www.nairaland.com/2130000/general-buharis-military-government> accessed 23/3/2015

⁹Ibid

¹⁰Ibid

¹¹*Criminal Code Law*, Cap 33, vol. 1 Laws of Ebonyi State of Nigeria, 2009

¹² <http://www.ngrguardiannews.com/2015/03/on-the-death-penalty/> accessed 1/04/2015.

¹³ *Criminal Code Law*, Cap. 33, Laws of Ebonyi State of Nigeria, 2009

¹⁴ Ss. 3, 4 & 5 of Laws Prohibiting Secret Cult Activities and carrying of offensive weapons. Cap. 12, vol.1, Laws of Ebonyi State of Nigeria 2009

¹⁵ E.U.M Igbo, *Introduction to Criminology*, Nsukka, (University of Nigeria Press Limited: 2007)

¹⁶ Udo Jude Ilo Oluwasaye Ajayi, *On the Gallows*, Lagos, (Hurilaw:2005)

¹⁷ S.A. Adewale, *Crime and African Traditional Religion*, <http://www.afrikworld.net/afrel/atr-crime.htm> accessed 13/03/2015

¹⁸ Ibid

resorted to statues, case laws, text books, journals, newspapers, speeches from learned and seasoned authors, oral interviewers, etc. We also took our research efforts to seminar papers, internets, conference materials, etc. We also consulted foreign authors including legal foreign materials as well as the Holy Bible.

2. Conceptual Clarifications

Crime

The broadest definitions of crime are constructed from social perspectives. A typical socially defined meaning of crime is behavior that is in violation of the norms¹⁹ of society; or more simply put, an antisocial behaviour²⁰ which is socially condemnable and reprehensible in a particular society. Robert and Keith defined crime, too, in a legal sense as an international breach of the criminal law or penal code, committed but wholly without defense or execute and punished by the state. They posit that the major advantage of legal definition of crime, at least on the surface, is that it is narrow, restrictive and less ambiguous than a social definition of crime.

Punishment

Punishment is defined by the Black Law Dictionary²¹ as any fine, penalty or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court for some crime or offence committed by him or his omission of duty enjoined by law.

3. Theories of Punishment

Punishment from the baseline of earth's emergence have been applied since the emergence of crime/non-normative behaviours of mankind. Subscriptions to punishment had and still have some philosophical basis bearing out why they should be adopted and practiced. These reasoning behind the application of punishment to crimes are referred to as Theories of Punishment. They could be referred to as perceived utilities intended to be gained from the practice of such programmes. In this sub-chapter, we shall verify the various theories of punishment. However, before treating the various theories of punishment, it is important to note that the concept of punishment can be broken down into two main philosophies, Utilitarian Philosophy and Retributive Philosophy. These represent the broad philosophical basis for operating punishment in our different societies.

Utilitarian Philosophy: The core reasoning underlying utilitarian philosophy is that when an offending criminal is punished for committing crime, the good derived from the punishment should be greater than the total bad of the crime committed. In addition, that punishment should not be unlimited.²²

Retributive Philosophy: Under this philosophy, offenders are considered rightly to deserve punishment because they offended the society by infracting their collectively agreed standard which maintains the society's balance²³. Punishments are looked upon as restorative of the disturbed societal balance.

4. Review of the Situation

The scourge of crime in our society is increasingly witnessing a consistent upsurge; this retrogressive development is even against the background of our incarceration-based policy. The punishment of incarceration predominantly the practice of treating offenders in Nigeria has its immeasurable contributions in pushing up the crime rate. Agbakoba²⁴ noted that, this days, Nigerian prisons instead of serving as correction institutions are now breeding greater number of heinous criminals which have made up their minds to wreak vengeance on the Nigerian society and that Nigerian society's attitude towards inmates of prisons together with the prison system add greatly to the high incidence of crime noticeable in criminal recidivism in our society as confirmed from the perspective of Olisa Agbakaoba. Experiences are common where simple offenders who become socialized into concepts and ideologies of hardened criminal in prisons become sophisticated in criminality when they are released. Prisons are more like institutions for cross-breeding (sharing) of criminal intelligence among the inmates. They graduate from one level of criminality to a higher level of crime-mindedness. A typical instance of this devastating social realization is seen in an accused person giving evidence in a witness box. In attempt to deny the allegation, he weaves plausible tissues of lie at variance with the text of his extra-judicial statement. Experience has shown that such culture packaged lie is taught in prison yards by co-inmates of the same prison yards. Agbakoba²⁵ is therefore re-emphasizing that punishment (incarceration) is not working at all. The high percentage (60%) failure of incarceration in crime prevention/reduction points vividly to its non-workability as policy initiative. The society therefore should redirect its attention and efforts towards a workable policy of crime reduction programme to drive her efforts to fruition. A civil liberties organization's report shows that Nigerian prison system is principally punitive in nature, somewhat reformatory on a slight

¹⁹ A norm is any standard or rule regarding what human beings should or should not say, think about, or do under given circumstances.

²⁰ Robert M. Bohm and Keith N. Haley, *Introduction to Criminal Justice*, 4th ed., New York, (The Mc-Graw-Hill companies, Inc: 2005), Frank Schmaller, Rebecca Volk, *Canadian Criminology Today: Theories and Applications*, (Pearson Prentice Hall: 2005) (2nd edn.) Toronto Ontario, Canada.

²¹ Bryan A. Garner, *Black's Law Dictionary*, (9th Edn), United States of America Thompson Reuters:2009)

²² The Basics of Philosophy <www.philosophybasics.com/branch-utilitarianism.html> 25/07/2015

²³ Rachels, James, 'Punishment and Desert.' In *Ethics in practice*, (ed. Hugh LaFollete), (Malden, Massachusetts: Blackwell publishers, 1997), <http://www.jamesrachels.org/punanddes.pdf> 15/5/2015

²⁴ Olisa Agbakoba and Obiora, p 15

²⁵ Olisa Agbakoba p.4

skill and it is exclusively not rehabilitative.²⁶ Criminal justice system aims at the profound aim of rehabilitating criminals through prison-based punishments and other means conceivable. Non-rehabilitation of a criminal inclines him to recidivism. Nigerian prisons which are not all rehabilitative in nature, therefore do not contribute to crime reduction. The big question is 'should we go ahead adopting the culture of punishment across board in our criminal justice system.

From the conceptual analysis, it is gleaned that punishment dates back to the root of humanity and therefore pre dates modern civilization. It is noted that at every stage of human civilization there were contrived stratagems for dealing with criminals who violated social norms, rules and regulations. There were no similar, in all respects, strategies of punishing offenders in different societies in all ages of mankind. Originally, patterns of punishments were reprehensively crude. At those early periods, punishments were not humane but had the elements of extreme severity, harshness, etc. Such nature of punishments were conceived as being the best in the treatment of criminals for breaching the societal agreement to keep the agreed standards of societal regulations. However, by the passage of time, there were improved methods of punishing offenders assessed better than the preceding year's methods. The different punishment policies were employed for various social functions. Traditionally, even with biblical endorsement, punishment has a promise of societal values in all ages. The societal values have been variously posited by social scientists who spurned supportive rhetoric to anchor punishment's claimed societal functions throughout the existed ages of mankind.

The entrenched penological practice of sentencing all manner of convicts to prison terms in incarceration remains deep-rooted in our criminal justice system. No discrimination is made between convicts that committed heinous crimes such as murder, manslaughter, arson, rape, etc and offenders that were convicted of less violent offenders such as offenders convicted of traffic offences (eg disobeying traffic lights), juvenile drug abusers, vagabonds, juveniles engaging in games and lotteries, etc devoid of adequate reformation or rehabilitation facilities or programmes is area of grave concern to us. Our background of expert observation revealing emergent research results/outputs reveal that incarceration or jail term doesn't deter convicts; rather it leads to high rate of criminal recidivism. Our fears and concern are worsened when our practical experience recalls concrete incidences of prison inmates with dangerous criminal knowledge share contiguity of space, discussion and ideas while in prison. The contagion of criminal knowledge of juvenile offenders who co-habit with much more hardened criminals is assured in such criminal social milieu. In the light of such cruel reminder, our fears are heightened at the national stubbornness of continued exclusion of alternative to incarceration programmes in our criminal justice system.

5. Overview of Crime and Punishment

Causes of Crime

There is almost consensus opinion that criminal behaviour cannot be caused by a single cause. The perception arose from the basic knowledge that human behaviour is a product of complex interaction between psychological, environmental, genetic, social, and cultural factors. Researchers have established that crime is caused by many factors and could be linked to bio-genetic factors like genetic mutation and heredity²⁷. It is also caused by sociological factors like learning and environment.²⁸ Too, it is noted to be caused by psychological factors such as personality disorders.²⁹ Other causes have been traced childhood accidents, exposure to some harmful chemicals, etc. However, there are some conspicuous causes of crime that are pedestrian in large number of the crimes committed in our society; they are as follows:

Unemployment – Unemployment is defined as a state of joblessness. Advanced English Dictionary³⁰ defines unemployment as the situation of great number of individuals not having a job. Unemployment is a palpable condition on Nigerian society today. A lot of evidences are associated with it. It instils feelings of rejection, deprivation, personal failure, worthlessness, helplessness etc, in the people faced with it. Worse still, it could force a person into the condition of mental stress.

Poverty and Affluence: Poverty is seen as a multidimensional condition of life where basic necessities of life are lacking thereby rendering a person incapable of shouldering his fundamental needs in life. This situation of lack induces people into crime. The indices of poverty include lack of education, absence of requisite skills, poor health conditions and lack of safe and clean water, malnutrition, poor sanitary environment and habit. In the words of Tabo Mbeki,³¹ poverty is not only expressed in shortage of foods, shelter and clothing. It is also expressed in high levels of crime, including violence among the poor themselves, especially against women and children, in many instances accompanied by substance abuse.

²⁶ Annual Report 1998, A CLO Reports on the State of Human Right Nature in Nigeria, P. 100

²⁷ E. Hooten, *The American Criminal*, Cambridge, Mass, (Harvard University Press: 1939); L. Taylor, *Born to Crime: The Genetic Causes of Criminal Behaviour*, London, (Greenwood Press: 1984)

²⁸ E.H. Sutherland and D.R. Cressey, *Criminology, Philadelphia*, (P. A. Lippincott: 1984); Weuve J. Karick, S.A. Weisskopf M.A., Ryan L.M. and others, *Cumulative Exposure to Lead in Relation to Cognitive Function in Older Women, Environmental Health Prospect*, 2009; 117; 574-80; Bartol Court R. & Anne M. Bartol, *Current Perspectives in Forensic Psychology and Criminal Justice*. (Sage Publications: 2006); *Environmental Criminology*, 2005 <wiki/Environment>20/07/2015

²⁹ D. Abramson, *Crime and The Human Mind*, (Columbia University Press: 1944); Ishita Aggarwal, *The Role of Antisocial Personality Disorder and Antisocial Behaviour in crime*, 2013 www.studentpulse.com/articles/759/3/the-role-of-antisocial-behaviour-in-crime#header9page317/08/2015 Oxford Advanced Dictionary (Joanna Turnbull & co.8th edn.) (Oxford University Press: 2015)

³⁰ *Ibid*

³¹ Response of President Thabo Mbeki to the Debate on "The State of the Nation Address, National Assembly, Cape Town, Feb. 15, 2001, quoted in Crime and Development in Africa, UNODC, June 2005, p.2

Drug abuse and Crime: Drug Abuse is a negative habit with various/numerous adverse effects not only on addicted person himself but with multifarious social implications. It is the excessive, maladaptive use of drugs for non-medical purposes³². Condition of drug abuse leads to physical and psychological reliance on the drugs, and the addiction drives one to vegetable life-circumstances such as paranoia, illusions, excitement, euphoria and hallucinations, etc. It has been argued that drug use boost criminal behaviour through foisting of false boldness, erroneous perceptions of events, etc. Under the influence of alcoholism and other hard drugs, an addict can undertake most hazardous and daring criminal adventure.

Types of Punishment in Nigeria

Punishment correlates directly with crime expressing various societal messages and employed to serve a wide spectrum of purposes. The effectiveness or otherwise of punishment is another consideration to be given strong attention in another chapter of this intellectual discourse. It is certain that punishments are in different modes, varying intensities, styles and extent. Punishment is not just given indiscriminately without guiding considerations that determine the type of punishment to be given, including the nature of the crime committed, the nature/type of the victim, the degree of victimization of the victim, and societal impression towards the particular crime committed by the offender. Our criminal and penal codes³³ provide all manners of punishments against all criminalized behaviour contained in our criminal justice system. In sentencing, the considerations that determine the type of punishment to be given to a particular offender are always crucial either in isolation of one another or in combination of two or more of the considerations. Some of the punishments under our legal system as contained in the criminal code and penal code are as follows:

Death Penalty: The historical journey of death penalty dates back to the doctrine of ‘eye for an eye’ (*lex talionis* doctrine). It started as a crude, insensitive and unconscionable practice that took procedures graduated to inflict lethal pains on the victim –offender. Death penalty in eighteen-century Europe was offered by Foucault as recorded by Dambazau³⁴ when he descriptively rendered a narration of a sorrowful account of the execution of a criminal in 1854. He said that on the first day of the execution, the very criminal was conveyed to the execution ground where he would be ruthlessly executed, there was pot-like utensil filled with boiling water. In the boiling water was out the very arm he used to commit the crime he was punished for. The day after, the very arm which was submerged in the boiling water was severed from the body; as it dropped at his feet, he was consistently kicking the cut off arm up and down the hanging pole. Subsequently, on the third day, pincers that were very hot were placed on his breasts and also on the upper part of his arm, below his arm and buttocks. Systematically, he was brutally put to severe torture for eighteen days. Finally, he was placed on the wheel and malate and harshly thrashed with a wooden club. For about six hours, he reported to have repeatedly asked for water, and it was not given to him. Eventually, the police magistrate was entreated to put an end to the suffering of the gradually dying man by strangling so as to enable his soul undertake a peaceful transition to eternal abode.

Imprisonment: This is a sentence of court directing a convict of adult status to a life of imprisonment/incarceration for a specified period of time or for life in prison. It has several forms of execution. The severest form of imprisonment is life imprisonment which confines a convict in prison throughout the remaining part of his life. However, Executive fiat from the Executive arm of government of a state can abruptly terminate life imprisonment through laid down procedural requirements. Whether it is life imprisonment or a fixed period of imprisonment depends on the nature of crime committed and the outcome of the trial. Too, it also depends on judge’s pronouncement at the conclusion of the trial, though however, regulated by the statutes. For instance, under our Criminal Code, a convicted person under that section shall be sentenced to life imprisonment by a judge that pronounces that judgment.³⁵ The section of the cited statutes leaves no discretion to a presiding judge who makes a finding to attempt to murder. It is revealing to note that modern imprisonment did not begin with its current administrative status.

Fine: Is one of the recognized forms of punishment. Dambazau defines it as ‘a payment of money ordered by a court from a person who has been found guilty of violating a law.’³⁶ This in practice started in England following the decision of English courts to release convicts from prisons upon payment of certain amounts directed by the judge(s). Both simple offences and felonies could be punished by awarding fines to the offenders. It could as well be a compliment to major crimes.

6. Conclusion and Recommendations

It should be grasped that crime is social phenomenon that has its rot in the cradle of humanity. Crime, seen partly as a violation of social order, was first experienced on earth in the Garden of Eden where the divinely established social order was breached /violated by Adam and Eve, the first man and woman.³⁷ Crime plague has since then traversed all forms of society, affecting individual families, etc. in the pre-modern era, crime was not as complicated as they are in contemporary period. March of civilization carried with it newly evolved forms of crime; the mode of crime commission also took different forms. Punishment was direct response of the society to crime commission. Grievous punishments were employed which

³² Dambazau (ibid)

³³ Criminal Code is the statute book that codifies the criminal law of the Eastern States of Nigeria, while the Penal Code codifies the criminal law of Northern Nigeria.

³⁴ Dambazau ibid

³⁵ Section 320 of the Criminal Code Law, Laws of Ebonyi State, Nigeria, 2009

³⁶ A. B. Dambazau, Ibid)

³⁷ The Holy Bible.....

expressed scalding societal aversion to the ever evolving crime patterns. The blood cuddling punishments applied to confront societal criminality involved: burning, burying, flaying offenders a life, blowing criminal a life with cannon guns by first of all using offender to close the mouth of the canon before firing. Others were crucifixion, death by firing squad, imprisonment by isolation where no contacts were allowed but only selected few were allowed access to the prisoners like the clergymen etc. In spite of the harshness of punishments, crime commission was not abated, at times; at the scene of punishment of offender's crimes would still be committed.³⁸ Sentencing of criminal to any types of punishment is contingent on specific factors. Court doesn't as a practice order any types of sanction to a convicted person. Their regular jurisdiction is influenced by known factors such as prevalence of the offence, the role played by the accused offender in the commission of the offence, circumstances surrounding the crime, guilty plea by accused or admission of commission of the offence.

Though punishment was infliction of pain on the offender but it was found on certain rational basis which included rehabilitation, reformation, incapacitation, deterrence, vengeance, e t c. These were some of the perceived reasons/objectives for employing punishment as a social instrument. The prevalent social realities of a particular time in a society determined skewed social emphasis on some of the sentencing modes. Despite the severe nature of punishment employed to impede social crime, the purpose of deterrence, rehabilitation have never been attained as amply demonstrated by exponential rate of crime incidence and prison overcrowding in our federal prisons across the nation and in the world at large. An apt illustration of this truth is seen in the Draconian Laws of around 621 BC³⁹ enacted by Draco the ruler of Athens in ancient Athens which made every offence punishable with death sentence; even small offence as stealing a cabbage was punishable with death sentence. History has ample information confirming that crime/ offences did not stop because of the draconian harshness of the laws of Ruler Draco.

A tragic contributory factor in the menace of societal crime rate is the historic non- discriminatory application of punishments to all nature of offence. There was no differentiation of offence on the basis of punishment meted out to offenders notwithstanding the nature of such offences (i.e., simple or heinous) offence. The menace is heightened in the case of prison sentence where all types or grades of convicts are hoarded into same prison yard. The inherent risk of criminal idea cross-breeding or criminal contagion cannot be downplayed in such prison condition. In some society, a person stealing was punished severely just like somebody who murdered a fellow human being⁴⁰. The philosophical basis was pursuit of deterrence built on the erroneous belief that severer punishment is comparatively deterrent in nature than mild punishments. Offenders were therefore exposed to harsh or wide spectrum of punishments to vent societal vengeance. Resort to severe punishment, even death penalty from ancient to contemporary society did not and has not reduced crime recidivism nor deterred prospective offenders from criminality. Statistical evidence has failed to lend credence to the severe punishment theory.

This study work seeks to establish that Community Sanction which has been practiced in other countries is adapted as correctional remedy to the crusted problems of overcrowding. Failure of prison-punishment to rehabilitate or reform in practice. However, Community Sanction is only effective when it is applied to less violent offences, simple offences and some felonies. The appraisal of prison-based punishment vis-a-vis various types of alternatives to that genre of punishment with particular emphasis to Community Sanction is revealing as well as instructive. The following recommendations are made for quality enhancement of Nigerian penological system: The various criminal codes of the various states of the federation should be reviewed. The reviewed codes should, in the main, make a clear classification of offences based on the seriousness or the intensity of the violence of offences. Less-violent offences whether committed by a minor or by an adult offender should be in the same criminal genus while offenders culpable of violent offences shall be treated differently. Offenders that committed less-violent offences should not, in the first instance, sentenced to a prison term rather they should be sentenced to any term of community sanction of any type. Probation should be in the mainstream of treating less-violent offenders, especially ones with special cases such as minors, drug-related cases, cases involving any type of distorted orientation, etc. Politically related offences that involve embezzlement or plunder of public funds should not be punished with prison sentence alone. Rather prison sentences should be in addition to confiscation/restitution of the embezzled public fund. All wealth acquired with the corrupt money or any property related to the corrupt practice should be confiscated by the government for public interest alone. Corrective labour can be used as a sanction.

³⁸ Godfrey, Barry and Paul Lawrence, *Crime and Justice 1750-1950* (2005: Cullompton: Willan Publishing)

³⁹ Debra Kelly, *Ancient Punishments That didn't Fit the crime* <http://listverse.com/2014/02/03/10-ancient-punishments-that-didn't-fit-the-crime/> accessed on 3/11/2015.

⁴⁰ Ibid