

# The Poverty of Imprisonment as a Correctional Measure in Nigeria

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## Abstract

The Prison system in Nigeria as elsewhere is supposed to be a correctional institution. It is intended to mould the life of those involved in criminal activities into non-criminal ventures. However, the handling of prisoners in various prisons across the nation has called to question the philosophy upon which the institution is established. This paper makes a modest attempt in assessing the philosophical assumptions underlying the establishment of the prison institution as an effective tool of offender correction in Nigeria against the background of actual handling of convicts in various prisons across the nation. To achieve this, the paper relies on the analysis of secondary data obtained from the works of various scholars on the subject matter across the country, with a view to juxtaposing and cross validating the philosophy with the practice. From the analysis, it is evident that the prison has failed to realize the objectives for which it was founded. This apparent failure is traceable to the: inconsistent policies of the criminal justice system; the absence of therapeutic and reformation techniques; mishandling/dehumanization of inmates; and the various forms of deprivations that the inmates are subjected to. We are of the opinion that it is not possible, simultaneously, to 'punish' an offender through deprivations and inhuman conditions in prison and 'reform' through therapy and vocational/educational training. The paper therefore considers other alternatives to imprisonment which include: community based programmes; employment of semi-skilled and skilled convicts in formal organizations and deduction of their emoluments to carter for victims of crimes; and the hospitalization of the mentally deranged in mental hospitals with adequate therapeutic treatment.

**Keywords:** Prison system, imprisonment, correctional measure, reformation, deterrence.

## 1. Introduction

After a solemn public ceremony we pronounce prisoners enemies of the people, and consign them for arbitrary periods of institutional confinements on the basis of laws written many years ago.... Then with the planlessness and stupidity only surpassed by that of their original incarceration, they are dumped back into society, regardless of whether any change has taken place in them for the better, and with every assurance that changes have taken place in them for the worse. Once more, they enter the unequal tussle with society. Proscribed by most concerns, they are expected to invent a new way to make a living and to survive without any further help from society (Karl Meninger, cited in Nair, 2002:20)

The above statement is true today, as it was 212 years ago when it was first made by Karl Meninger in 1806. The idea of imprisonment as a means of punishing offenders was in existence in pre-colonial societies. For instance, in Tiv society, the offender was expected to concur to a sentence of imprisonment as an admission of guilt (Elias, 1968). There were other traditional institutions that served as prisons prior to colonial rule, like the Ewedo of Edo group and the Ogboni of Yoruba etc (Aboki, 2007). In contemporary societies, especially capitalist and dependent capitalist ones, various ways have been evolved in dealing with the offender.

However, the dominant one remains confinement of an offender in a restricted area over a period of time called a prison. The establishment of the modern prison in Nigeria is traceable to 1872 when the Broad Street Prison was opened in Lagos (Awe, 1968). The system owed nothing to indigenous institutions; rather, it was modeled on the British system. Colonial prisons in Nigeria were not designed for reformation or rehabilitation; rather prisons were intended to serve as a reservoir of labour force for the colonialists and a punitive measure for those opposed to colonial rule. Initially, there were no gaols and so prisoners lived in villages and reported themselves for work each morning. The need to have cheap prison labour for public works, railways and coal fields made the colonial government to unify the prison system throughout the whole country through the 1916 prisons Ordinance and 1917 prison Regulations (Awe, 1968).

Other than the attempt to get cheap labour and contain local resistance to colonial exploitation, the aim of imprisonment under colonial rule was not clear-cut, at best; it was not to stop crime. After independence, the prison system was unified under a Federal structure by the Gobir report of 1966. Since then, other reforms and re-organizations have been carried out to make the prison system relevant to our social milieu. Despite these reforms and re-organizations the dominant way of dealing with criminal offenders in contemporary Nigeria has remained essentially through imprisonment.

Modern prison system in Nigeria was established on a tripod legal framework, namely: the penal code and the accompanying criminal procedure Code Cap 81 laws of the federation 1990 (CPC); the criminal code

accompanying criminal procedure Act Cap 80 laws of the federation (CPA); and the Sharia penal legislation in 12 Northern States which is only applicable to Muslims.

All prisons in Nigeria are run by Nigeria Prison Service (NPS) which is a parastatal under the Ministry of Interior, headed by a Comptroller General of Prison, who presides over the administration of all prison facilities (Opafunso and Adepoju, 2016). Under Cap 366 Laws of the Federation of Nigeria 1990, the prison is saddled with the following responsibilities:

- a. To take into lawful custody all those certified to be so kept by courts of competent jurisdiction.
- b. To produce suspects in courts as at when due.
- c. To identify the causes of anti-social behavior,
- d. To set in motion mechanisms for their treatment
- e. To train inmates for eventual reintegration into society as normal law abiding citizens on discharge and;
- f. To administer prisons farms and industries for this purpose; and in the process generate revenue for the government.

All these functions are premised on the philosophy of the Nigeria Prison Service that the treatment and rehabilitation of offenders can be achieved through carefully designed and well articulated administrative, reformative, rehabilitative programmes aimed at inculcating discipline, respect for the law and order and regard for the dignity of honest labour (Uche, Uche, Ezumah, Ebue, Okafor and Ezegebe, 2015).

At this juncture, it is imperative to examine the following issues: How far has the prison achieved the philosophy upon which it was founded? Is reformation and rehabilitation possible under the present conditions in Nigerian prisons? What are the most preponderant correctional measures adopted by the prison in its activities? Will imprisonment actually ameliorate the crime problem in Nigeria?

In this paper we shall examine the rationale for the dominance of imprisonment as a corrective measure and show its efficacy or otherwise, in resolving the crime problem confronting Nigeria. The paper is in five parts. The first is the introduction which is on-going. The second part examines the key concepts and reviews related literature while the third section assesses the philosophical assumptions underlying criminal punishment through imprisonment. The fourth part considers the poverty of criminal punishment as it relates to imprisonment and the fifth section proffers some alternatives for offender correction and finally a conclusion is drawn.

## **2. Conceptual/Literature Review**

This section examines key concepts like prison system and imprisonment to aid our understanding of the issue under discussion. The remainder of the section discusses the empirical studies of other scholars as they relate to the handling of inmates in various prisons across the country.

### *2.1. Prison System*

The prison is a formal institution of social control created by the legal authority of the state to confine those who have violated or suspected to have violated the legal norms of the society and have been found guilty by a court of competent jurisdiction or pending trial in a law court. In other words, prisons are public institutions established by government for the reformation and rehabilitation of individual offenders who breached the law. Thus, the prison is viewed as a physical structure within a specific geographical location which affords a unique kind of social environment that is different from the larger society where people live according to specialized conditions.

The prison system therefore is a set of inter-related structures and processes involving personnel, norms, rules and values which are intended to re-orient erring members of the society into conformity through well articulated policies and procedures. The system is the last component of the Criminal Justice System (CJS) that re-socialises those who violated the fundamental norms of the society. In Nigeria, the norms that form the bedrock of the system include the penal code/criminal procedure code; the criminal code/criminal procedure act; and the sharia penal legislation. The system is arranged in a structural hierarchy under the umbrella of Nigeria Prison Service, with the comptroller General of Prison as the overall boss.

### *2.3 Imprisonment*

Imprisonment here refers to any sentence involving confinement in a prison. It is the lawful confinement of an individual into a prison when such a person is convicted of an offence in a law court. Though not the only dispositional method available to our judges, it is the most often used (Odekunle, 1983). This method was introduced into our social control policies by the colonial masters via the criminal penal code. This code was based on the philosophy of retribution and deterrence aimed at subjugating and containing indigenous resistance against European rule. By so doing, the code subjugated, through prison, those who were opposed to colonial activities, and deterred those who intended to oppose colonial policies.

Within the context of this paper therefore, imprisonment refers to the employment of the prison system as a way of containing and correcting convicted offenders. It has to do with the confinement of an offender or patient

in an enclosed area, which is designated to restrict his power of locomotion against his wish. The enclosed area could be a prison, mental asylum or a borstal home. These institutions abound in contemporary Nigeria. For instance, according to National Bureau of Statistics (NBS), there are 240 prison facilities comprising the following: maximum prisons; medium prisons; satellite prisons; borstal institutions; farm centres; open prison camp; and female prisons across the country with an inmate population of about 80,000 ([www.nairaland.com/3140034/state-state-distribution-prison-facilities/](http://www.nairaland.com/3140034/state-state-distribution-prison-facilities/)).

### **3. The Handling/Treatment of inmates in Nigerian Prisons.**

The philosophical assumption of the prison system is to re-orient the character of the convict so that he/she will refrain from further criminal activities. However, data emanating from studies across the country suggest the contrary. The extent of rot in the prison as an institution of reformation led the vice President of Nigeria, Prof. Osibanjo (Guardian, 2018) to assert that there is no room for prisoners or anybody who goes into the place as a human being to come out as a normal being.

All kinds of dehumanizing activities go on in prison such that it becomes impossible for the convict to live a normal life even after release. For instance, the United States Country Report on Human Rights Practices (Daily Trust, 2016) for 2015 on Nigeria, maintained that conditions in prison remain harsh and life threatening. The report went further to suggest that prisoners are:

Subjected to extra judicial execution, torture, gross overcrowding, food and water shortages, inadequate medical treatment, deliberate and incidental exposure to heat and sun, and infrastructure deficiencies that led to wholly inadequate sanitary conditions that could result in death.

The conditions in prisons are not accidental. They are there by design because the ruling elites in Nigeria have pre-determined in advance, who will make it to prison and who will not. This explains why most of those convicted are for such offences as theft of goat, rice and other petty offences as suggested by data from surveys by Prisons Rehabilitation and Welfare Action (PRAWA) (Guardian, 2018). Those who are currently alleged to have stolen 'billions from the country's collective coffers are however, at large and living large' (Guardian, 2018). For instance, recently, the Economic and Financial Crime Commission (EFCC) recently released the list of 103 high profile cases involving top government functionaries who have looted the national treasury, some of whom are still serving as ministers, senators, justices (Punch Newspapers, Sept., 3<sup>rd</sup>, 2017; Daily Post, Sept., 3<sup>rd</sup> 2017). None of them has been sent to prison to be reformed

While in prison, convicts are expected to be engaged in one training activity or the other. However some studies (Ayodele, 1993; Civil Liberty Organisation, 1993; and Uche, et. Al. 2009) have noted that training facilities are lacking or near absence, hence convicts who are left unoccupied with constructive and positive activities are likely to perfect their criminal activities through the learning of new tricks from other inmates. It is in this regard that the prison is seen as a training ground for a new category of criminals and patterns of crime unknown to society, but also where one learns one or two mistakes that led to one being arrested.

An empirical review of some studies in some prisons across Nigeria show that reformation or correction hardly takes place in them. For instance, a study of the perception of inmates on effectiveness of rehabilitation programmes in Enugu prison (Uche, Uche, Ezumah, Ebue, Okafor and Ezegebe, 2015) revealed that rehabilitation programmes in the prison have not achieved much. The researchers maintained that:

Rehabilitation programmes were not very successful due to lack of fund, inadequacy of rehabilitation equipment, lack of trained personnel, and lack of manpower and poor management of rehabilitation programmes among others.

Another study on the welfare of inmates in Ado Ekiti and Olokuta prisons by Opafunso and Adepoju (2016) revealed that the state of the prisons' conditions cannot guarantee the reformation process of the inmates. This failure is attributed to the disregard for the welfare of inmates and the inability to implement the prison reforms recommendations. Another factor identified as a hindrance to good welfare and positive rehabilitation is congestion in the two prisons. In view of the foregoing shortcomings, the authors conclude, the prison has failed to achieve its major role of reformation and rehabilitation of inmates, but rather the scenario has been that of dehumanizing situation and hardening of inmates (Opafunso and Adepoju, 2016).

A study of the welfare condition of inmates in Abakiliki prison by Ndukwe and Nwuzor (2014) also produced a similar result as the previous studies. The findings revealed that the convicts were never exposed to any kind of skill or training, making them perpetually handicapped even after their release. The study further revealed that in most cases, funds and welfare packages meant for the inmates are more often than not, hijacked by prison officials; inmates were malnourished and no bedding spaces for most of them. Finally, the structures in the prison were inadequate and mostly dilapidated.

A study of the handling of inmates in four prisons across Nigeria (Port Harcourt, Ahoada, Kaduna, and Zaria) by Yecho (2010) revealed a similar pattern in all the prisons studied. Inmates were mistreated by prison officials; not properly fed; no proper medical attention when sick; privacy violated by prying into correspondences; and above all, no meaningful training (formal or informal) was undertaken by inmates as a

result of lack of facilities/equipment. The above scenario suggests that no meaningful reformation can take place in such a hostile environment.

The pertinent issues here are: What correctional philosophy is in tandem with the foregoing activities in contemporary prisons in Nigeria? Is it reformatory, retributive, incapacitative or what? Can the convict in Nigerian prison be really corrected as a result of prison measures? The answer to these questions will expose the myth or reality of the prison system as a correctional institution in Nigeria.

#### **4. Philosophical Justifications Underlying Criminal Punishment**

Different penologists seek different justifications for criminal punishment. However, for the purpose of this paper, we shall consider the two dominant perspectives: the utilitarian (positivism); and non-utilitarian (classicism) perspectives.

##### *4.1 Utilitarian Justifications*

The utilitarian approach starts off with the assumption that punishment is beneficial to the society because it reduces further offences through deterrence, reformation, incapacitation and education. Deterrence is a rationale that requires the imposition of criminal sanctions on violators of the law in order to prevent them or other potential offenders from committing crime in the future (Conklin, 1981: 425). According to utilitarian scholars, deterrence reduces crime through the threat of harm or actual 'harm' for the purpose of discouraging specific types of conducts. It presupposes that once someone is punished, he will be deterred from committing crimes in the future (specific or individual deterrence). Thus, from his punishment, other members of the public are also deterred from following his footsteps (general deterrence). However, to be effective, deterrence depends on severity, swiftness and certainty. That is, it presupposes that at any point in time where crime occurs, it must be certain that the culprit is apprehended and punished. The punishment must be swift (immediate); and finally, it must be severe.

The deterrence model assumes that people engage in specific types of behaviour only after careful and rational consideration of the costs (risks) and the benefits (rewards) of particular courses of action (Conklin, 1981:392). This suggests that people choose their own behaviour even if they are limited in their choices by social, economic, psychological and biological factors. Thus inflicting punishment on them would serve as deterrence and therefore reduce the occurrence of crime.

Punishment also educates and socializes people into the norms and values of the society. Andenaes (1974: 110-28) rightly observes that, punishment has a didactic or educative effect by associating certain types of behaviour with punishment. It indicates a social and moral condemnation of the behaviour and a corresponding support for certain values. If people regard government and other social institutions as legitimate and deserving of respect, behaviour that is condemned by these institutions will be regarded as wrong by the people. It therefore follows that through punishment; the public is enlightened or educated on the 'Dos' and 'Don'ts' of the society in advance. The infraction of the norms and identification of the subsequent offender makes it clear to those who did not know that such acts constitute offences.

The reformation justification for punishment seeks to change convicted offenders so that they will not commit additional offences in the future. Reformation here refers to an end in improvement in the character of an offender towards criminality so that he will continue to conform to the norms of the society in future without fear of sanctions. Reformatory philosophy was part of a movement to reduce severity of penalties for criminal offenders and to improve the conditions of jails and prisons (Conklin, 1981: 447). This philosophy is premised on the grounds that human behaviour is the product of antecedent causes which can be identified and described with all possible exactitude. Consequently, scientific control of behaviour through therapeutic measures is possible. Such measures should be designed to effect changes in the behaviour of the convicted person in the interest of his own happiness, health and satisfactions and in the interest of social defense (Allen 1971: 318).

The position assumes that the convicted offender can be changed by treatment, even though the primary emphasis in prisons is custody rather than cure. These treatment programs include psychological treatment methods, vocational skills, and educational programs. These programs are intended to return "the offenders to society not with the negative vacuum of punishment – indeed fear not but with the affirmative and constructive equipment – physical, mental and moral – for law abidingness" (Wiehoben, 1971:261). It is however worth noting that trial judges often sentence offenders to "serve as deterrence" and yet hope that the offenders be "reformed in prison". However, people who are deterred are not necessarily reformed.

Utilitarianism also believes that punishment incapacitates the offender and reduces crime by removing him from society and keeping him under confinement. Incapacitation is "the custodial control of an offender for a protracted term during which he will be unable to commit a crime affecting the general public" (Greenberg, 1975: 541). It is based on the idea that a given offender will commit a particular number of crimes if he remains in society and those crimes can be prevented by placing him in a prison for a period of time. Whether he reforms during the time in prison is not the issue; what is important is that the offender cannot commit crimes while he is

in prison.

Predictive restraint or selective incapacitation is a more refined option of incapacitation. It posits that instead of holding all offenders for a specific period of time, only offenders who are likely to commit more crimes if they are released are held (Hirsch, 1976: 19 – 26). This strand tries to separate the high risk criminals from the low risk offenders and hold only those who are likely to be dangerous if released from custody. Utilitarian scholars aver that the prison serves as a crime reducing organ through the incapacitation of offenders. This philosophy seeks to predict future “dangerousness” and proceed to mete out punishment in advance. The assumption is that certain categories of offenders who are deemed to be sufficiently dangerous and undesirable, warrant containment through imprisonment.

#### *4.2. Non- Utilitarian Justifications*

In opposition to the utilitarian view is the classical (non-utilitarian) justification for punishment which is premised on retributive justice. Retribution is based on the idea that offenders should be punished because they deserve to suffer for the harm they have inflicted on others. It maintains that the criminal justice system should not bother as to whether punishment should be beneficial to society. For it, law violators should be punished because they simply deserve it by their very act. Retributive justice is also called ‘just desert’. That is, punishment should be in commensuration with the act, no more, no less. This justification for punishment is oriented towards the future conduct of the offender or other potential offenders. Retributive rationale is generally associated with the theory of “an eye for an eye and a tooth for a tooth” philosophy expressed in the code of Hammurabi.

The idea of retribution assumes that offenders are responsible and rational individuals who have freely chosen to violate the law. It is the contention of retributivists that punishing offenders solely because they deserve to suffer for inflicting harm on others, treats these offenders with dignity by assuming that they have the right to deviate from the law if they can pay the price in terms of punishment. It is therefore evident that unlike the utilitarian principles of deterrence, incapacitation and reformation, the principle of retribution does not require that punishment serves the social function of crime reduction.

### **5. The Poverty of Imprisonment as a correctional measure.**

The prison is one of the dominant ways through which our criminal justice system employs to curtail crime. In sentencing the offender to prison term, the law defines the aims to be pursued as deterrence, incapacitation, reformation and even retribution! Every convicted offender is required to be given at least one of these. But do our prisons reduce crime through any of the aforementioned justifications? The more probable answer seems to be a resounding ‘NO’ as evidence from the reviews and succeeding analysis would seem to suggest.

In the first place, for our prisons to serve as a tool of deterrence for convicted offenders, they must satisfy all the conditions associated with deterrence i.e. certainty, swiftness and severity. That is, it should be certain that all those who committed criminal offences must be in prison! Similarly, the prison term should be immediate and severe enough to deter offenders. However, the prisons seem to have failed in all these criteria. Firstly, it has been unable to admit all criminals, but at the same time admitted those who are not criminals. For instance, when Salisu Buhari, former Speaker of the House of Representatives, committed perjury and age falsification, he was given an option of fine which he promptly paid and avoided prison. Again, a report from the Economic and Financial Crimes Commission (EFCC) (Onourha, 2003), shows that in spite of the arrests of 419 kingpins in Nigeria, none has been sent to prison. Finally, recent media reports (The insider, 29 Sep., 2003; News Watch, 1<sup>st</sup> March, 2004; and the Week, 10 Nov., 2004) reveal that some top government functionaries were investigated and found guilty of looting state treasury, yet none has been sentenced to prison.

On the contrary, those who never committed offences were sent to prison. The late Fela Anikulapo Kuti was unjustifiably sentenced to a jail term in 1984 for currency trafficking without an option of fine even when he did not commit the offence. This became evident when the trial judge later begged him, insisting that he (the judge) was ‘ordered from above to jail him. Again, of equal note is the fact that General Obasanjo and others were sent to prison for coup plotting but were later found to be innocent of the allegation. Relatedly, one Michael Orji spent six years in Abakaliki Prison for armed robbery, an offence which he did not commit. He was later vindicated and freed by Justice Alloy Nwankwo (THE Daily Sun, Feb. 19, 2004). Secondly, imprisonment should seem so severe that all offenders should be scared of going there. However, available evidence suggests that some criminals are eager to go to prison. For instance, an offender was so eager to go to prison that he requested the trial judge to hurry up and send him to jail so that he will not miss his lunch in prison (Odekunle, 1983). Another unrepentant career thief, David Ehikeme, who was on his eleventh trip to prison insisted that no amount of prison terms would deter him from stealing until all categories of thieves are sent to prison (Daily Sun, 19 Feb., 2004). Finally, statistics (The Week, 23 Feb., 2004) from Murtala Muhammad Airport, Ikeja shows that 60% (15) of the 25 touts arrested at the airport in early 2004 have served one or more jail terms for the same offence. From the foregoing, it is evident that the prison has lost its steam as a tool of

deterrence. Thirdly, the processes leading to trial, conviction and imprisonment is so lengthy and delayed that the element of 'swiftness' which is an important ingredient of deterrence is lost.

Apart from the above factors, putting people into prison to serve as deterrence to would-be-offenders is unjustifiable because it amounts to giving punishment to people who do not deserve it just for the sake of using them as example for others to see. This amounts to 'human sacrifice'. But at what price? Finally, no research has conclusively shown that specific deterrent effect (or general deterrent effect) of imprisonment has shown any reduction in criminality. The prison, therefore, does not serve as a useful instrument of deterrence in reducing crime in Nigeria.

But has the prison served as a reformatory instrument in reducing crime in our society? The reformatory justification maintains that the prison should serve a therapeutic value. In other words, it should be calculated to impact moral improvements in the person's character so that he will be less inclined to commit offences in future after release. However, if happenings in our contemporary prisons are anything to go by as shown by some recent studies (NLR, 1983, Ehonwa, 1996), then the prison system is far from achieving these objectives. Rather than reduce crime, the prison is seen as an incubating haven where criminals are trained and sent into the society to cause havoc. The accommodation system characterized by overcrowding, inadequate feeding and inhuman treatment of prisoners do not provide any breeding ground for moral rejuvenation (Ehonwa, 1996). Relatedly, some prisoners are forced to take up certain vocations against their volition. Such tendencies can hardly reform someone.

The common features in our prison are: solitary confinement; denial/reduction of diet; inhuman treatment through the use of violence on inmates and denial of access to social amenities. All these have adverse effect on reformation and subsequent reduction in criminality. For instance, solitary confinement may only provide an opportunity for the idle prisoner to think of the next crime after release from prison. Relatedly, reduction/deprivation of meal does not serve any positive effect on rehabilitation. Rather, it makes the prisoner to become more alienated and hostile to the prison authorities and the society in general. In the same vein, ill-treatment through whipping, forced labour and other acts of violence play no positive part at all in making the prisoner lead a good and useful life at the end of his imprisonment. Rather, they make him hostile to society after release. As a result of his dehumanization in prison, the prisoner is more likely to have no human sympathy in his subsequent interactions after release.

The pervasive atmosphere of non-cordiality which characterizes the relationship between the prisoner and the warder is counterproductive to reformation. When prisoners are denied visitors, medical facilities, social, educational and vocational training and are subjected to hostile supervision, they are rendered permanently dependent and without initiative throughout their stay in prison. When finally released, they are bereft of skills and initiative to lead a non-criminal life. The logical path is to relapse into criminality to make a living. Odekunle (1983:36) puts this more succinctly:

...It has repeatedly been impossible to train a man for freedom under conditions of captivity; to re-socialize a man for normal citizenship in the open society in an abnormal' and 'closed' community; or to train him towards responsible living by giving him no responsibility whatsoever.

One wishes to add here that no meaningful reformation can take place in an oppressive system of power in prison based on ideas of the subordination of guilty people by seeing them as sub-humans and inferior. It is impossible to train men for freedom in captivity.

Finally, reformation cannot be feasible under the condition of short or long prison terms. For the former, it would be too short for any meaningful reformation to take place. For the latter, the optimum point of reformation may have been reached well before the end of the prisoner's sentence. Consequently, the rest of the prison term after the optimum point will be counterproductive as deterioration and possible prisonation will set in.

The survival of the prison system seems to lie on the incapacitate philosophy. However, if the idea of imprisoning the offender is informed by the punitive aim of incapacitating him from committing future crimes or protecting society, then that aim cannot be fully realized. This is in view of the fact that only life sentence works, because the individual offender is permanently put out of circulation for the rest of his life. However, its cost implication on the economy, if all offenders were to serve life sentence, would make other alternatives more plausible. Other than life jail, other prison terms are temporal i.e. the offender is temporarily displaced. The issue therefore is how long will the general public be protected? The answer lay in the duration of his prison term. Once he is released, he will continue with his trademarks, particularly if he is a professional criminal. For instance, a professional thief like David Ehikeme maintained that he would not stop stealing no matter the number of times he is sent to prison. He further averred that "as I am on my way to prison, I am happy that the boys I have trained would continue from where I stopped" (Daily Sun, 19 Feb., 2004). More ever, even in prison, he may commit further offences. For instance, a person sentenced for assault may again in prison, assault a prison staff. Can we then argue that the society is really being protected by his incarceration when the warder

himself is a member of the total outside community and was probably assaulted because he represents in prison the community's value? (Adeyemi, 1986).

Another problem associated with incapacitation is that, it is based on the "most dangerous" concept. But what are the criteria used in determining "dangerousness" when the most dangerous criminal in terms of loss of both material and human resources (white collar crimes, corporate crimes and crimes of political elites) are outside prison, while the less dangerous ones (petty theft and other conventional offences) are almost always found in prison? In the third instance, the effect of incapacitation on crime rates is difficult to estimate because we lack data on criminal careers. For instance, it is difficult to determine how much crime is prevented by locking up an offender for a period of time. If the offender is at the end of his criminal career, he might have stopped committing crime even if he had not been imprisoned. The incapacitation effect on crime rates of such a sentence would thus be limited (Conklin, 1981: 416).

Again, the philosophy of incapacitation is based on predictive recidivism which has a number of erroneous predictions. Firstly, Conklin (1981: 417) argues that a significant number of offenders will be predicted to be potentially dangerous and thus candidates for incapacitation, even though they would not have committed a crime if they had been released. Secondly, to incapacitate most offenders who would commit another crime if released, prediction methods require the incapacitation of a large number of offenders who would not commit another crime if released. Thus, even selective incapacitation entails social costs. Incapacitating offenders who would commit another crime punishes them for something they might do in the future, not for what they have done in the past. This is against the philosophy of criminal punishment and therefore unjustifiable. Finally, in terms of cost-benefit analysis, incapacitating the offender entails a lot of expenses. As Packer (1968:365) maintains that, the less threatening the conduct which the prison is called to incapacitate, the greater the social costs the society incurs through imprisonment.

The foregoing discourse exposes the poverty of the utilitarian rationale, as it relates to prison, of deterrence, reformation and incapacitation. For instance, a million jail terms in prison would not deter a poverty-stricken, psychologically destitute slum dweller (Packer, 1968:339); neither would it reform him, given the nature of our prisons. His life is the life of today, not tomorrow. Again, of what use is prison term to 'drunks'? Sending them to jail serves only the dubious social purpose of getting them out of sight for a while. It does nothing toward rehabilitation of those subjected to imprisonment.

We shall now examine the non-utilitarian philosophy of retribution. One of the principles of retribution requires that the severity of a penalty be proportional to the seriousness of the offence. Now, what constitutes a proportional prison term for, say, an armed robber, a petty thief, a rapist, an embezzler or a fraudster? How is this determined? The poverty of prison as a tool of retributive justice is reflected in disparate prison sentences awarded by different courts or even within the same court to offenders of similar backgrounds who committed similar offences under similar circumstances. Retribution is based on 'just desert'. It measures punishment to be commensurate with the offence. The related issue is: if somebody steals a goat, what constitutes 'just desert'? In other words, how long would the offender stay in prison to have his 'just desert'? Is it five, six, ten years or what? How would this be determined? Again, would it be applicable to all those who steal goats?

Another principle of retribution suggests that people who violate the law are deserving of moral disapproval for their acts. Such reprobation is seen as the basis for punishing offenders, whether or not that punishment serves any social function such as deterring potential offenders or rehabilitating them is inconsequential. Given this view, one would assert that sending offenders to prison as a retaliation for their offences is inappropriate and unjust. This is because; it adds an unnecessary and unjustifiable burden on societal resources in terms of their upkeep in prison. Prisons only help to impoverish the innocent and the victims of crime by the additional burden of having to pay tax for the upkeep of prisoners. Finally, retributive imprisonment does not deal with the problem of crime and community safety. It just exacerbates the problem of security as it does nothing to reduce crime rates. Rather, as Nair (2002:5) remarks, it produces inhuman and abusive social identities by demanding the use of excessive power and authority by correctional institutions. Retribution is therefore not a sufficient condition for imprisonment. Other rationales for imprisonment, other than retribution, could therefore be explored.

## **6. Towards an Effective Offender Correction**

The action taken against law breakers is designed to serve three purposes beyond the immediate punitive one. It removes dangerous people from the community; it deters others from criminal behaviour; and it gives society an opportunity to attempt to transform law breakers into law abiding citizens (Johnson, 1974; 296). The prisons are expected to carry out the above functions as decided by the courts.

However, in the quest to reform the offender, the various objectives pursued under imprisonment have never been achieved in the way so defined. Rather, imprison responses end up being about the worst solutions devised to solve the problem of what to do with the criminal. The prisons as we know them today, teach crime, inure men to it, and trap men in it as a way of life (Mill, 1975: 3). The prison only further criminalizes the

imprisoned offender. In terms of cost and benefit analysis, imprisonment is costly and wasteful of resources, especially human social resources (Odekunle, 1983:36). The high rate of recidivists especially amongst the ex-prisoners attests to the fact that imprisonment is an inappropriate strategy for offender correction or crime control for that matter.

In as much as one acknowledges the prevalence and high rate of criminality in our society, our indiscriminate resort to the prison system is weakening some of the important basis upon which its efficacy rests, and threatening social values that far transcend the prevention of crime. While imprisonment seems to hold greater promises in principles, it is disaster in practice. There is therefore the need for exploring other measures because imprisonment in all its practical ramifications is ineffective in crime control and offender correction. Offenders of all sorts should be spared the hardship; abuses and indignities of prison sentence. They should, instead be dealt with more effectively and more humanely in community based programs. Community based activities like vocational training centers could be operated to cater for the training of unskilled offenders. Such training should be voluntary. Offenders could also under strict supervision, be made to avail their services to community development projects like the construction of feeder roads, bridges/culverts etc. as is currently being done by some members of the National Youth Service Corps (NYSC). Similarly, some skilled offenders could be given employment in sectors where their services are needed. Part of their emoluments could be deducted to carter for the needs of victims of crime within their environment; they would consciously be made to share part of the responsibility of their misdeeds to society. This would provide a basis for sober reflection and atonement for their criminality.

For most of those incarcerated, imprisonment constitutes inappropriate and dysfunctional socio legal responses to their correctional needs in particular, and the safety of the public in general. For reformation and rehabilitation to take place in prison, individualization of treatment must be given attention. This is in view of the fact that the same kind of treatment cannot be successfully administered to all prisoners in all circumstances. For instance, to treat an offender whose criminality arises largely from economic factors exactly like one whose criminality arises from personality factors would not be rational and fruitful. Any attempt therefore to reform prisoners should start with the classification of prisoners and classification of treatment as well as the accurate matching of each type of prisoner with each type of treatment.

Retribution, through imprisonment should be completely abandoned because it is anachronistic and irrelevant in curtailing crime and protecting society. This is because it is neither concerned with reforming the offender nor prevention of crime. But if it must be used as a necessary evil, then there is the need to develop scales of seriousness of crime and the severity of prison terms. The development of a system of 'just desert' would then require that those scales be linked so that crimes of specific seriousness would be tied to prison terms of specific severity. In order to arrive at the seriousness of a given offence, one must measure the amount of harm inflicted and the degree of culpability of the offender. To arrive at the severity of the prison term, the individual personality traits of the offender must be assessed, i.e. knowledge of unpleasantness of prison sentence to the individual offender must be assessed.

Incapacitation should be minimally and sparingly used and should be reserved only for violent crimes (expressive crimes) of the mentally deranged. Such offenders could be confined to only mental homes and be given the needed therapeutic treatment. Imprisonment and restoration are not compatible; prison is a structure of restraint while restoration is to bring back to a good or desirable state, especially of non-criminal life. It is therefore our considered opinion that alternative to criminal sanction, other than imprisonment should be employed, if we ever hope to reform the offender and win the war against crime. Such alternative measures include community-based programs which would compel convicted offenders to offer their services to the community under strict supervision; offer of employment to semi-skilled and skilled convicts and subsequent deduction of their emoluments to carter for the victims of their crimes; and finally, those whose crimes are due to mental derangement should be confined to mental hospitals and given the necessary therapy rather than sent to prison.

## **7. Conclusion**

In this paper, we have attempted to examine the origin of the modern prison system in Nigeria, as well as the philosophy underlying criminal sanction in general and imprisonment in particular. Having exhaustively examined the four major aims of imprisonment, this paper is of the view that retribution which is based on the idea that criminals deserve to suffer for their crimes is crude and cannot appropriately be achieved in prison. Similarly, the prison does not serve as a good antidote for deterrence as can be attested to by the rate of recidivism in our society. Relatedly, the prisons cannot serve as an institution for reforming and rehabilitation, given the deforming and dehumanizing conditions in the system. Finally, incapacitation does not work as it is a temporal measure where only a few harmless offenders are incarcerated while the most heinous criminals are outside prison.

Given the poverty of prison as a tool of reformation and crime control, it is suggested that a massive



deinstitutionalization process be embarked upon. Other measures of reforming the offender and combating crime should be initiated so that society is better protected. Such measures as community based programmes; supervised training and employment outside prison; and mental hospitals for the deranged offender are suggested.

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