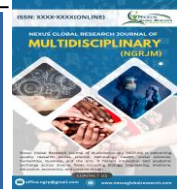




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Research Article

The Death Penalty in Nigeria: A Justifiable Punishment or A Violation of Human Rights?

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ABSTRACT

The right to life is widely acknowledged as a fundamental right in every legal system. In certain jurisdictions, this right is absolute, while in others, including Nigeria, it is subject to limitations. One such restriction to the right to life in Nigeria is the death penalty, which has been the focus of much discussion among academics, jurists, lawyers, criminologists, and sociologists over the years. The death penalty is the punishment that a court of competent jurisdiction can impose on a convicted felon. Over the past forty years, international criminal law has been shifting against the death penalty in the fields of criminal justice and human rights worldwide. The legal and judicial framework for the administration of criminal justice in Nigeria still recognizes and imposes the death penalty, despite the fact that this practice has been abolished in many industrialized and developing nations worldwide. However, the death penalty is controversial in Nigeria, as it is in various other nations, even if it is recognized under Nigerian law. While some groups in Nigeria are advocating for the abolition of the death penalty as a form of punishment for certain capital offences, such as treason, armed robbery, and murder, others support its use for the same reasons. In light of the current controversy over the death penalty's repeal or continuation in Nigeria, this work explores the concept, weighs the arguments for and against its use, and concludes by suggesting a workable course of action.

Key words: Human rights, Deterrence, Death penalty, Capital offence, and Capital punishment.

1.0. INTRODUCTION

The death penalty, also known as the capital punishment, is the process of ending the life of an individual who has been found guilty of a capital offence in accordance with the decision of a court of competent jurisdiction. It is the imposition of the penalty of death as a punishment for crime through the proper legal process. An offender whose offence is deemed to be capital in nature typically receives this punishment. On the international scene, the death penalty and the capital punishment have drawn almost endless criticism. In Nigeria, certain capital offences are punishable by death; in these cases, the judge's discretion is limited, and the

offender's only recourse is to be executed.

The first apparent divine decree endorsing the death penalty can be found in the Holy Bible, and it provides thus:

“If anyone takes a human life, that person's life will also be taken by human hands. For God made human beings in his own image” (Genesis 9:6, New Living Translation).

Different viewpoints and arguments have been raised in response to the death penalty's continuous use as a criminal punishment in the modern world. These arguments can be divided into two major schools of thought: abolitionists and retentionists. Although abolitionists have

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been gaining ground on the current international scene, a significant number of countries support the retentionist school of thought, which is seen as traditional and conservative. Research indicates that over two-thirds of the world's nations have formally abolished the death penalty. Nigeria is one of the few nations with a criminal justice system that still uses the death penalty (Amnesty International, 2018; Bienen, 2011). A confluence of extenuating circumstances ranging from political, social, religious, and cultural roots accounts for Nigeria's situation. The numerous and culturally diverse ethnic groups and tribes that now comprise modern-day Nigeria had customary criminal laws that recognized the death penalty for a number of offences before British colonialists arrived on Nigerian soil. In *KALU V. STATE*, the court concluded that the death sentence is not unconstitutional, and remains legal in Nigeria. Also, the case of *ADEDARA V. STATE* is highly enlightening regarding the death penalty's application in Nigeria. The court's ruling in the matter was as follows:

“...the passing of the death sentence is an exception to the general rule that no man should be deprived of his life... the position in Nigeria is very clear; death sentence is a reality. It is provided for in our Criminal Law including Section 319(1) of the Criminal Code of Lagos State. Our Constitution also recognizes the death sentence....”

Also, in the case of *ADENIJI V. STATE*, the court held that the death penalty is clearly and expressly provided for by the Constitution.

2.0. LEGAL FRAMEWORK

The Nigerian penal legislation has experienced remarkable progress in recent years. Nigeria, as one of the few countries that still upholds the death penalty, has applicable laws that provide for it. Section 33(1) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended, provides the fundamental foundation for the death penalty's implementation in Nigeria. It states that:

“Every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.”

According to the aforementioned constitutional provision, a person's life may be lawfully ended if they are found guilty of a crime for which they are subject to the death penalty by a court order. This provision implies that the death penalty is a legitimate form of punishment when it is applied in the execution of a sentence imposed by a court of competent jurisdiction regarding a crime for which a person has been found guilty in Nigeria.

3.1. OFFENCES THAT ATTRACT DEATH PENALTY IN NIGERIA

For a variety of offences, the death penalty is mandatory under Nigerian law and statutes, including Sharia law. This implies that the judge's options are limited as soon as the accused is found guilty of a capital charge, and that the judge's only choice is to sentence the suspect to death. Under the Criminal Code Act, The following are some of the offences for which the death penalty is applicable:

- a. Offence of murder
- a. Treason

- b. Instigating the invasion of Nigeria
- c. Armed robbery under Robbery and Firearms (Miscellaneous Provisions) Act 1984, among others

The following capital offences are punishable by death under the Penal Code, which is in effect in Northern Nigeria:

- a) Culpable Homicide punishable with death
- b) Giving false evidence in a trial which leads to the execution of an innocent person
- c) Abetting the suicide of a minor, a mentally abnormal or drunken person
- d) Adultery (zira)
- e) Apostasy (rida)
- f) Hiraba, translated as highway robbery

Recently, in Nigeria, the offence of kidnapping was designated a capital offence by several states with death as penalty on conviction. The states include States like as Gombe, Imo, Kano, Katsina, Nasarawa, and Osun have altered their laws to provide the death penalty for the offence of abduction. Since the numerous laws require the administration of the death penalty without offering an alternative form of punishment, the death penalty as a punishment for capital offences under all of the aforementioned statutes limits the possibility of judicial discretion under any circumstances.

3.1. EXCEPTIONS

The Nigerian law recognises and exempts some categories of offenders from death penalty in Nigeria. These offenders include:

3.1.1. PREGNANT WOMEN

Nigerian pregnant women's exemption from the death penalty has mostly been safeguarded by the law and sufficiently

covered by a number of national and international legal instruments. This exemption aligns with the legal precedent that a pregnant woman's death sentence should be postponed for the benefit of the unborn child. According to the International Covenant on Civil and Political Rights (1966), a person under the age of eighteen cannot be sentenced to death for their crimes, and pregnant women cannot be executed (Article 6(5)). In the same light, Section 221(2 and (3) of the Child Right Act 2003 provides thus:

“No expectant mother or nursing mother shall be subjected to the death penalty or have the death penalty recorded against her. A court shall on sentencing an expectant or a nursing mother consider the imposition of a non-institutional sentence as an alternative measure to imprisonment”.

Similar provisions are also found in Section 300(3) of the Criminal Procedure Code, which is applicable throughout Northern Nigeria. One contentious aspect of this type of exemption is the choice of whether or not a pregnancy should occur at the time of the offence, conviction, or execution. Either at the moment of conviction or death, the pregnancy occurred. Therefore, a woman's death sentence will be converted to life in prison if she is found pregnant before her death sentence is carried out. This means that if a woman is found guilty of a crime that carries a death sentence and she claims to be pregnant, the court will have to decide whether or not she is actually pregnant. If, during the trial, it finds that she is not, the court will sentence her to death. Therefore, if a woman is found guilty of a crime that carries a death sentence, the rights granted

by this section will take the place of her ability to claim in a stay of execution that she is pregnant, as the latter right is no longer available.

3.1.2. INSANE PERSONS

The state in which an accused person lacks the mental capacity or health to support their exemption from legal responsibility is known as insanity. It is a condition that makes the affected individual unfit to exercise his or her right to liberty due to the unreliability of his or her behaviour and the resulting threat to others or to himself. Because their mental guilt has been denied, the Nigerian Criminal Code exempts crazy offenders, even capital offenders, from criminal liability. According to Section 28 of the aforementioned Criminal Code Act:

“A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to control his actions or capacity to know that he ought not to do the act or make the omission.”

However, before an insane offender benefits from this provision of the law, such offender must establish:

- a. That he/she was suffering from a mental illness or a natural mental impairment at the time of the offence.
- b. Then, it must be demonstrated that the illness or condition impaired his/her ability to comprehend what he/she was doing, to recognize that he/she shouldn't have done the act or omitted the thing, or to regulate his/her behaviour.

3.1.3. JUVENILE OFFENDERS

If a person is found guilty of a capital offence and the court determines that the offender was under the age of eighteen at the time of the offence, the death penalty will not be imposed or documented. For federal and state offences respectively, the court is instead required to order the custody of such a convict for as long as the president or state governor deems appropriate. According to Section 221 of the Child Rights Act of 2003:

- (1) No child shall be ordered to be -*
- a. Imprisoned; or*
 - a. Subjected to corporal punishment or*
 - b. Subjected to the death penalty or, have the death penalty recorded against them*
 - c.*

Also, The Supreme Court in the case of *AMINAMUSA V. THE STATE* held that a minor is regarded as having diminished ability, that the court's authority to sentence a minor is restricted, and that no juvenile who has not reached the age of seventeen may be given the death penalty.

4.0. ARGUMENT FOR AND IN SUPPORT OF THE DEATH PENALTY IN NIGERIA

4.1. ARGUMENT IN SUPPORT OF THE DEATH PENALTY

The death penalty's supporters contend that it is both constitutional and lawful in Nigeria. The retributive value of the death sentence is one of the main arguments made in favour of its continuation. For capital offences, the death penalty is used as a method of punishment. Therefore, those who commit a crime so serious that it

carries the death penalty ought to be punished. According to Bentham (n.d.), most people believe that death is the worst kind of evil and that it is a more effective kind of punishment than any other. When such a horrible crime occurs, the state's first duty is to provide the victim with reparation and direct justice. According to this viewpoint, the death penalty is occasionally necessary for justice. Only death is equal to death, and justice demands that offence and punishment be equal. The state is merely putting the killer's own maxim into practice by executing the killer, who has dedicated his life to the maxim of murdering. Death penalty proponents contend that murderers have forfeited their own right to life because they have taken another person's life. Additionally, they think that the death penalty is a fair kind of retaliation that expresses and upholds the moral outrage of law-abiding persons generally as well as the victim's family. Additionally, proponents of the death penalty contend that the brutality of the death penalty should not be overlooked. They also contend that execution is a powerful deterrent for heinous crimes like murder, armed robbery, and kidnapping. In a sense, this can make society more holy and orderly. In the majority of states, the government has long employed punishment as a deterrent to potential criminal activity. The Robbery and Fire Arms (Miscellaneous) Offences Decree 1984, which required the execution of convicted armed robbers by firing squad, is a concrete illustration of general deterrence in Nigeria. This was done in an effort to discourage armed robbery. According to the argument on the death penalty's deterrent effect, if murderers are found guilty and put to death, it is thought that they will reconsider their actions out of fear of dying themselves. Speaking about

the death penalty's deterrent impact in 1864, James Fitzjames Stephen stated that "no other punishment deters men from committing crimes so effectively as the punishment of death."

In *AKINYEMI V. STATE*, The death penalty is a beneficial law that serves as a deterrent in society, according to Fabiyi J.C.A., who also discussed the death penalty's deterrent qualities. According to the retentionist school of thinking, the death penalty is supported by the Nigerian population. A survey conducted by Professor Owoade found that the vast majority of Nigerians support the death penalty, particularly in light of the country's high rate of horrible crimes like armed robbery and murder (p. 339). Therefore, in order to prevent members of society from becoming enraged and lynching capital offenders, the retentionists contend that the death penalty ought to continue to be a part of Nigeria's criminal justice system. Additionally, the state strives to avoid unnecessary expenses when the death penalty is applied. In this sense, the death penalty is justified as a way not to keep murderers alive by providing them with housing, healthcare, food, and other necessities, while also saving taxpayer funds that would have been used to maintain the overcrowding in the government's correctional facilities. Retentionists believe these revenues ought to be used to raise the general standard of living for society's citizens. Furthermore, the death penalty has been defended on the grounds that it shields the general population from those who want to or may threaten to harm others. Therefore, it is implemented to guarantee the public's safety and well-being. India, Japan, America, Zimbabwe, Libya, Thailand,

Guyana, Uganda, China, North Korea, Jamaica, Singapore, Egypt, Barbados, Malaysia, Chad, Indonesia, Botswana, Bahamas, Cuba, Belarus, and Yemen are among the nations that have legalized the death penalty in addition to Nigeria.

4.2. ARGUMENT AGAINST DEATH PENALTY

Proponents of abolishing the death penalty in Nigeria contend that war crimes and crimes against humanity are two of the most serious and violent crimes that aim to tear apart communities. However, the death sentence has been rejected as a sanction by every international institution that has been set up to decide these crimes, including the International Criminal Court and the Special Court for Sierra Leone. This begs the question: How can the death penalty be justified for less serious crimes if it isn't available for the most heinous crimes against humanity? Therefore, the most common defences of the death penalty are rejected by the human rights perspective. The idea that the death penalty is a political necessity because the majority of people want it or that the government and criminal justice system would lose credibility if public opinion wasn't satisfied is also contested. The argument that the death sentence must be kept in place as a vital tool of criminal justice, without which major crimes would be more common, is also contested by abolitionists.

The proponents of abolishing the death penalty also argue that the fact that there are occasionally delays in the execution of convicted individuals who are awaiting the death punishment is one of the arguments made in favour of abolishing the death penalty in Nigeria. Generally speaking,

"death row" refers to the location where condemned inmates are housed in the majority of jurisdictions. The section of a jail where the prisoners awaiting execution are kept is known as death row. A convicted death row inmate frequently faces years of waiting following the issuance of their sentence because of the delays on the death row.

The case of *PETER NEMI & OTHERS V. THE STATE* (1990) is an illustration of an execution that is postponed. The appellant in this case had spent eight years on death row. The court disapproved of the delay in death row executions. In *OGUGU V. THE STATE*, the Supreme Court ruled that the judicial and executive branches must take responsibility for making sure that execution occurs as soon as possible after sentencing, giving a fair amount of time for appeal and reprieve consideration. There have been and will continue to be instances of innocent individuals being executed, according to opponents of the death sentence. A justice system will always be vulnerable to human error, regardless of how advanced it is. Additionally, they contend that members of racial, ethnic, political, and religious groups, minorities, and the impoverished are frequently disproportionately targeted by the death sentence. The right to life, which is the most fundamental of all human rights, is also violated by the death sentence, as is the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.

Furthermore, they argue that a nation that cares about human rights shouldn't use public opinion which is frequently predicated on false beliefs about the death penalty's presumed deterrent effect, the

safety and fairness of its application, the absence of error, and other human rights considerations to defend its continued use. They disagree that the death sentence has the deterrent effect that its proponents usually assert. The death penalty has drawn widespread international condemnation, this is because, in contrast to the recommendations of the various international instruments, the more traditional techniques of execution such as shooting, hanging, beheading, and crucifixion cause the dying criminals to endure severe agony. Additionally, because the death sentence cannot be reversed, it would be unfair in cases where the execution was hurried or influenced by bribery and corruption. In effect, an erroneous judgment can lead to the execution of an innocent person. This was the case in *NAFIU BELLO V. ATTORNEY GENERAL OYO STATE* where the appellant was erroneously executed while his appeal was still pending in court. The death penalty's irreversibility, according to its opponents, runs counter to the notion that offenders can be changed. Proponents of abolishing the death sentence also argue that the development of international law favours doing away with the death penalty. The death penalty has been abolished in Australia, Canada, South Africa, the United Kingdom, Switzerland, Italy, Germany, and France, although it is still in use in Nigeria. Nigeria is not a signatory to the United Nations' second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which aims to abolish the death sentence.

5.0. SUGGESTION AND WAY FORWARD

It is recommended that the death penalty be eliminated for all offences other than murder or culpable homicide in order to conform to international criminal law norms. Instead, life in prison should be the punishment for capital crimes like treason, kidnapping, armed robbery, etc. However, the criminal should be given the death penalty if any of these offences cause someone to lose their life. Additionally, since a significant portion of the jail population is condemned to death row, the government must work to reduce the population. It is more detrimental and less advantageous to Nigeria's criminal justice system for the president and governors to delay approving the execution of death penalties or pardoning these condemned individuals. The sentence guidelines established by Nigerian criminal jurisprudence also require revision. The rehabilitative philosophy ought to be promoted in place of the current retributive strategy. This approach is distinctive and offender-oriented features make it desirable to adopt instead of the retributive principle's offence-oriented style. As a result, criminals with mental illnesses or other deformities ought to be sent to institutions for treatment and rehabilitation rather than prisons. Recidivism is high in Nigeria, which suggests that the country's penal facilities require improvement. Additionally, it is recommended that the current penal laws be changed to make the death penalty optional rather than required for capital offences. Therefore, as a matter of law, the courts should have a great deal of discretion when it comes to punishing accused individuals for capital charges, taking into account the individual's

personality, criminal history, character, and the circumstances surrounding the offence.

CONCLUSION

The discussion surrounding Nigeria's use of the death penalty has been reignited by this research. Throughout this research, the ongoing dispute between the abolitionists and retentionists has been explored, along with their arguments. It has been suggested that, considering the associated

repercussions, it is not practical to completely abolish the death sentence in Nigeria after analyzing the numerous arguments made by each side and taking into account current international law and practice on the subject. To bring Nigeria's criminal justice system administration into compliance with global best practices, however, a few suggestions have been put up. The majority of the work in putting these suggestions into practice falls on the government. There has never been a better moment to put these reforms into effect.

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