

JOURNAL OF SOCIAL THEORY AND RESEARCH



(JOSTAR)

ISSN 2705-3105

VOLUME 2, NO. 1, JUNE 2019

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CONTENTS

Editorial	...	...	...	...	...	...	...	viii
Entrepreneurship Education: A Tool for Youth Transition into The World of Work								
<i>Dr. (Mrs.) Tracy B.E. Omorogiuwa & Kelly A. Imafidon</i>	...	...						1
The Sociological Analysis of Glo-Kyu Festival Among The Mada People of Central Nigeria								
<i>Ayuba D. Mgbegah (Ph.D), Jacho David Sunday (Ph.D) & Mrs. Abigal Dingba</i>								13
Constraints to Students Performance in Computer Based Test in Tai Solarin University of Education, Ijebu-Ode, Ogun State								
<i>Soluade, Zabur Olayiwola & Ibitoye, Bisola Fatimoh</i>	...	...	...	...	...	...	...	21
Restorative Justice in the Criminal Justice System: A Panacea to Prison Congestion and Recidivism								
<i>Monsurat Isiaka (Ph.D) & Barr. Emmanuel Imuetinyan Obarisiagbon (Ph.D)</i>								28
Police Discretion and Policing in Nigeria								
<i>Ene, Warikiente Robert</i>	...	...	...	...	...	...	...	49
Ethnography of Human Resource Management Practice in Nigeria								
<i>Prof. Augustine O. Dokpesi & Ebube Esther Ogie (Mrs.)</i>	...	...						61
Growth and Poverty in The Era of Development – The Nigerian Perspective								
<i>Ajayi, Olatunde O. Ph.D.</i>	...	...	...	...	...	...	...	75
Effect of Work-Family Conflict on Job Satisfaction Among Employees of Selected Banks in Benin City								
<i>Dr. Ikponmwosa Osifo & Lugard Ibhafidon Sadoh, PhD</i>	...	...	...	...	...	...	...	87
International Human Trafficking in the Nigeria-Mali Corridor and Challenges of Implementing ECOWAS Instruments								
<i>Eddy Akpomera, Ph.D & Kingsley Omoyibo, Ph.D</i>	...	...	...	...	...	...	...	98
Corruption and Under-Development: Nigeria's Dilemma								
<i>Iduemre, Ochuko Ph.D; Ohonba Rita (M.Sc) & Omoyibo Kingsley Ufuoma (Prof.)</i>								110

RESTORATIVE JUSTICE IN THE CRIMINAL JUSTICE SYSTEM: A PANACEA TO PRISON CONGESTION AND RECIDIVISM

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Abstract

The sorry state of the Nigeria prisons and the increasing rate of recidivism have been connected with its overreliance on custodian measures in the criminal justice system. Imprisonment has always been the only major punishment for minor and serious offences. The prisons are also overcrowded with inmates awaiting trials and first-time offenders. The poor prison classification system and stigmatization of offenders are also functions of the increasing rate of recidivism in the country. Victims are usually shut out of the prosecution of their own cases. Based on these reasons, the study aims at determining the adoption of restorative justice to compliment the retributive penal policy of the system. The study was guided by re-integrative shaming theory. Both quantitative and qualitative methods were used to generate data from Respondents who were sampled via simple random sampling from Ministry of Justice and the Prison Service Ilorin, Kwara State. Respondents were stratified by sex and designation. The quantitative data were analyzed through simple frequency distribution and bar charts while qualitative data were analyzed via open content analysis. Results indicate majority of criminal justice professionals advocating for the adoption of restorative justice. This study, therefore, demand for swift implementation of restorative justice to solve the problems of prison congestion and recidivism among others.

Keywords: Restorative Justice; Criminal Justice System; Retributive Model; Prison Congestion; Recidivism; Imprisonment.

Introduction

Many countries in their best capacity try as much as possible to enhance the efficiency, effectiveness, and productivity of the criminal justice system (Ugwuonye (2011). Any country running an 'ideal' criminal justice system is indeed a leading edge for national peace and security, economic advancement, justice, social equality as well as political

stability. On the contrary, are countries where foreign and domestic investors swallow a handful of saliva and contemplate about the possibility of their investment in the nearest future (Ayorinde, 2014). In any civilized state that claims to acknowledge human privileges and specifically, a democratic nation like Nigeria must be up to the expected standard when it comes to international measures for governance. Hence, criminal justice is considered as one of the key elements a developing nation seeks to achieve for it to be regarded as a responsible government (Ugwuonye, 2011). The criminal justice system includes the police, court and correctional institutions or prisons. These components are regarded as a system of which the input of one determines the actions of another.

Nigeria adopts a three-way system of criminal law and justice; the Criminal Code centred on the English Common Law, Penal Code centred on Islamic or Sharia law (in Northern states), and the Traditional Law centred on the customs and traditions of people. The aforementioned systems are adopted in different ways and/or places. For instance, the customary courts run its system in line with the traditional law (Omale, 2009). Even with the presence of a full-bodied law in the justice system, the perception of the society towards criminal justice is to punish and rehabilitate offenders who are found guilty of crimes (Ayorinde, 2014). This punishment and rehabilitation have been seen as part of the aims of the system alongside other principles like the principle of deterrence and incarceration. According to Ayorinde (2014), meting out punishment to offenders who commit crime as contrary to the system of restorative justice has been a routine occurrence in the Nigerian Criminal Justice system. This event has led to arguments amongst theorists as to which of the aims is more efficient and effective. Is it Rehabilitation or Restorative Justice?

Restorative justice is a system of criminal justice which focuses on rehabilitation of offenders through reconciliation with victims and the community at large. Restorative justice is an approach to justice in which the response to a crime is to organise mediation between the victims and the offenders and sometimes with representatives of the wider community. The aim of restorative is to negotiate for a resolution to the satisfaction of all participants. To the offender, is to take responsibility for his/her action, to understand the harm caused to the victim and the opportunity to change and discourage him/her from causing further harm. For victims, is to give them an active role in the process of the reconciliation. Restorative Justice is a process of using a more human centred approach, non-retributive, and punitive strategies to restore and ensure social re-integration (Siegel, 2008). Objectively, corruption is endemic and indeed a cankerworm that has devoured the fabrics of the Nigeria criminal justice system. This system has been criticized for its anomalies, favouritism, incapacities and ways of administering justice unfairly. Justice is perceived by the poor as a commodity in the market that could only be purchased by the rich as justice is expensive to buy. Several researches have been conducted to know the stand of the Nigeria Criminal Justice System in administering justice to its people. Results however showed that the Criminal Justice System only favours the rich thereby making the poor feel inferior. Consequently, the aftermath has in time led to various atrocities and illegal activities such as jungle justice, murder among other crimes perpetrated by the poor and vulnerable individuals in the country. In Nigeria, jungle justice has been one of the contemporary challenges bedevilling the country; a result of the fact that the society feels insecure and has a great distrust in the whole criminal justice system.

Supposedly, the criminal justice process should be in sequence i.e. from the first encounter, investigation, arrest, arraignment down to the disposal of the case. Unfortunately, the processes have not been sequentially followed in Nigeria. Often, arrest is made prior before making investigation thereby giving room for custodial system and violating individual rights to personal liberty. The police handle minor cases with extreme seriousness because people who have stake in such issues probably could not make provision monetarily or other demands while serious offenses are taken with levity as a result of some corrupt practices in the system. More so, minor cases that ought to have been resolved in the police unit are being referred to magistrate courts. The police and its ways of policing have given rise to the budding of various problems that also transcend the court and the prison systems. The court is overwhelmed with different unsolved cases that involve both minor and serious offenses which has increased the rate of awaiting trial inmates in the prison. Hence, the police failure (of not resolving minor cases in the police unit) and court's ineffectiveness resulted to the massive overcrowding of the prison system.

The goal of offenders' rehabilitation is actually realistic but attaining such goal is implausible. The condition of Nigerian prisons being overcrowded and the lack of prison classification system have immensely undermine the rehabilitation of offenders particularly when hardened criminals are allowed to mix freely with the minor or first-time offenders who may become as hardened as the hardened criminals. Such situation and related circumstances are likely to increase the rate of recidivism. Similarly, the society can make re-integration of an offender more difficult probably after a prisoner has been discharged and they hold a constant and shameful view of the ex-prisoner as a contaminated person who should not be associated with. The public stigma 'ex-prisoner' attributed to a just discharged prisoner appears to have added to the problems of recidivism. Once a person is known to have been in and out of the prison, such an ex-prisoner automatically becomes a pariah (Ogwezzy et al, 2016). This situation can create pathways to crimes, and ultimately increase the chances of a first-time offender to become a recidivist.

The police are expected to ensure peaceful coexistence among the people and most importantly the protection of lives and properties. They are perceived as government representatives who should automatically earn peoples' respect and trust. However, the public view them as threat because of what they might have heard or seen them doing. They withdrew their support for them. Trivial cases that ought to have been resolved right in the police station are referred to the court for trials. Minor cases such as bullying, default in payment to landlord or of money borrowed, stealing of phones, etc. that ought to have been resolved right away are filed at magistrate courts for trials. Consequently, there will be less focus on finding the causes of crimes, the offender and the victim's needs, interest, expectations, reformation and reintegration of offender when the criminal justice system focuses more on ways of punishing offenders through harsh legislation, tough policing, criminal trial and incarceration (Ogwezzy, et al, 2016).

Victim's roles in the criminal justice system are undermined as they are neglected and treated as strangers in matters that concern them. They are given little or no say in cases that get to courts for resolution. The state where the crime was committed automatically becomes 'the victim' thereby subjecting the real victim in a passive state

from the trial stage down to the disposal of the case. In such situation, offenders are not given the opportunity to know the gravity of harms caused on their victim(s), the families of the victim and the society at large. The state coming in between the stakeholders undermines the probability of the offender getting restored and re-integrated. As a result, offenders become more hardened and ultimately recidivists. Hatred and conflict are given chances to prevail amongst the crime stakeholders.

The expected responsibility of the court is to deliver justice speedily and timely as expressed in the constitution. Unfortunately, the achievement of the above is improbable. The shortfall of the court comes to the fore when a case is brought before them through the right channel. The court turns the right channel into a balderdash wherein, unnecessary delay of court process, deceptive acts put forward by legal practitioners and likewise the erratic behaviours of presiding judges or magistrates. When a simple case of theft or assault is lodged in the court for trial, such case could last for 5 years or more before it could be resolved. Meanwhile, the offender in this case is been remanded in the prison for the above-stated years awaiting trial, consequently adding to the numbers of inmates awaiting trial in prison and also causing overcrowding of prisons. Some lawyers are fond of seeking unnecessary adjournment from the court handling the case because of his unpreparedness to go for the case or his clients are yet to balance up his pay (Ojukwu, 1997). Sometimes, decisions reached by the court may also not please the parties concerned compared to if they had come together to arrive at a favourable conclusion (Zehr, 1990).

The police failure and court incapability results in prison overcrowding. Prison inmates breathe in awful and degrading conditions (Ogwezzy, 2014); they are overcrowded into small cells. Aggression from other inmates and at times prison official is what inmates experience, they also scuffle for food and are been deprived of their rights and privileges (George, 2009). Inmates with communicable diseases easily transmits various kind of diseases to other healthy inmates thereby reducing their life span and slow response to rehabilitation programmes that could help them become better persons after their release. Several initiatives have been put in place to relieve the overcrowding of prisons, specifically the awaiting trial inmates in the prison system, however, all seems to no avail as the figure remains the same (Awopetu, 2014) going through statistical records (Nigeria Prison Service, 2014). Thus, one of the factors identified as a major reason for prison overcrowding is the fast replacement of offender in the prison or high rate of recidivism.

In essence, it can be inferred from the above that the criminal justice system has not been effective and efficient in its operations. The justice agents have deviated from their professional ethics, principles, missions, goals and objectives. Incarceration has been the only option for a considerable number of offenses committed in Nigeria and has since become the only goal of the criminal justice system that has been achieved even in excess. The conventional criminal justice system has not helped in decongesting the prison, rehabilitating and reintegrating offenders as well as reducing the rate of crime and recidivism. Hence, the objective of the study is to determine the adoption of restorative justice in criminal justice system to prevent prison congestion and recidivism.

Empirical Literatures

Restorative Justice has been evident as a medium of conflict resolution ever since the existence of man. Circumstances led to the adoption of the conventional ways of conflict resolution in modern time. There have been several arguments by theorists as to the 'shift' from the restorative justice to the retributive paradigm, but none has succeeded in bringing up a theory that explains the circumstances that bred the change. In many centuries, the system of restorative justice, reparation and settlement of disputes lasted amenable (Bianchi, 1994). According to historical records, the conventional penal system allowed the courts to take up the responsibility of settling disputes, prosecution and taking charge of cases (Zehr, 1990). Under the conventional criminal justice, crime victims have less or no say in their own cause and are being deprived of their own disputes since they cannot take up actions without the consent of the state (Christie, 1977).

Restorative justice is considered as an essential development of the human belief system which evolved in the traditional justice of the Ancient Arab, Greek, and Roman civilization and could be applicable even to homicide (Braithwaite, 2002). Its formation could be said to have evolved from the Western and Non-western traditions, hence, Llewellyn & Howse (2002) argues that the adoption of the restorative justice model is considered as the real orientation of justice not the contemporary justice modelled alongside strengthening the criminal justice system. As a result, Braithwaite (2002) reported the prevalence of restorative justice model throughout the majority of human societies, including many African and Non-western societies (Mbiti, 1970) where it has been adopted in conflict resolution and settlement of disputes.

Whatever the condition that could have led to the full grown of the African justice system, the primary determination of informal dispute resolution in Africa is to reinstate social coordination and reunite parties (Merry, 1982) in order to create an avenue where the victims, offenders, and the community come together to rob minds and reach a consensus on crime matters compared to the conventional criminal justice where there must be a subjugator and the subjugate (Lederack, 1975). As such, penalties customarily focus on restitution (compensation) rather than retribution (Adeyemi, 1994). Thus, administration of justice, law and order is dependent on the complex of relationship (Robert, 1979), the objective of which is to settle disputes and reintegrate offender back to the society without hatred.

The criminal justice system has hitherto been known with the adoption of retributive philosophy as measures in the administration of justice which has given rise to a number of contemporary challenges. The present state of the system has resulted in the congestion of the Nigeria Prison System as well as the increase in the rate of recidivism in penal institutions. At this point, it is high time the Nigerian Penology changed focus from its custodial measure of punishment to a non-custodian procedure with the mind-set of decreasing the snowballing populations in the prison (Nnam, 2016). In like manners, Wilson & Herrnstein (1986) and Yekini & Salisu (2013) made a suggestion that a considerable number of countries have shifted to the non-custodian measure of punishment in dealing with offenders because of the unbearable increase rate in recidivism and thus, overcrowding of the prison system. This is an action against the failing retributive and deterrence philosophy in sentencing that has dominated the contemporary criminal justice system globally (Nnam, 2016).

The conventional criminal justice is built and developed on the foundation of retributive and punitive philosophy and on the receiving side is the correctional institution where on a daily basis, large numbers of offenders, accused and awaiting trial inmates, are remanded. Suggesting the fact that it has not occurred to Nigeria, Restorative Justice is an alternative to imprisonment and an approach to decongesting the prison system. Its application on timely basis would help mitigate the overcrowding nature of the Nigeria prison system. Rather than sticking to the retributive system and the courts ways of increasing hatred amongst the victim and offender (Nnam, 2016). It is imperative that the Criminal Justice System looks into the opportunities restorative justice could offer in decreasing the daily number of inmates being remanded in the prison. Accordingly, Siegel (2008) describes restorative justice as a process of using a more human centred approach, non- retributive and punitive strategies to restore and ensure social re-integration. Inversely, the ways at which the conventional justice administers justice against crime and wrongdoings does not create room for the community to participate. Therefore, the system is perceived as a bureaucratic one administering harsh and coercive punishment which in turn hurts the offender. Thus, increases the rate of recidivism (Nnam, 2016).

Restorative Justice helps prison reformers and penologists in the application of a range of opportunities to combat prison overcrowding in a particular country. When adopted, restorative justice will come to the presiding officer's knowledge and conviction to look at the offenders or accused as human, reconsidering them by dwelling deep into their case, remorseful state and their sincere apology. Consequently, this approach would bring about leniency in punishment and recommendation rather than the traditionally known incarceration and/or remanding of offenders in the prison (Nnam, 2016). Bradshaw (1988) also argues that the reason behind the adoption of restorative justice is as a result of the fact that judgement and adjudications made by criminal justice professionals or adjudicators sometimes prove disobliging and fails to meet with the needs of crime stakeholders. Remarkably, seeking the input of families who knows much about the misconduct will create a path for a satisfactory conflict resolution among stakeholders.

Restorative justice is seen as a mother as it encompasses and touches nearly all the aspects regarding alternatives to incarceration. Assertively, the implementation of community policing and out-of-court settlement i.e. mediation in Nigeria are evolving forms of restorative justice. Community policing without mediation is baseless as mediation is regarded as an important aspect of community policing. However, mediation taking place unofficially and outside the conventional criminal justice is part of the initiatives of restorative justice. In this kind of system, issues relating to an offender or accused are preferably treated in the community and consequently, reducing the number of people going into the prison. The community makes convincing and defensible alternative provisions to restore the distorted justice and the breached security affected by crime and criminals (Nnam, 2016). Absolutely, Cooper (1997) argues that the police ability to serve as mediators in dispute resolution rather than making a formal arrest has longed been evident and which could be regarded as a core aspect of community policing, hence, gearing towards the standard of restorative justice (Siegel, 2008).

Some researchers regard conflict resolution and mediation outter the traditional justice system as a usual approach to settling cases of domestic violence and hate crimes (Coates, Umbreit & Vos, 2006). The customary criminal justice is found guilty of various

anomalies such as slowness in the dispensation of justice, nepotism, expensive and technical procedures, etc which has made justice an expensive commodity that can only be afforded by the rich; an occurrence that has led to the congestion of prison in the country (Okwendi & Nwankwoala, 2014). In this regard, the restorative justice aims to strike a balance among the stakeholders of crime (the victim, offender, community and the government). The justice model also supplements and fortifies the police in policing and law enforcement, the court in the administration of justice to ensure equal right to justice and peaceful coexistence in the community and finally, reduces the number of offenders, accused or inmates awaiting trial in the prison institution (Nnam, 2016).

Restorative Justice has recorded a great and remarkable result in the adoption of its non-custodian initiatives of delivering justice. The system strongly detests any form of partiality whenever a case involving the victim and offender are brought before the community for resolution. In this way, reducing the overwhelming state of the prison system because offenders found guilty are preferably meted with treatment centred alternatively compared to imprisonment as punishment. The treatment is done in such a way that the parties in conflict including their respective families are given due audience, fair hearing, and certain opportunities for full input in the resolution of conflicts. However, in some cases where restorative mediators or facilitators could not handle probably in some cases of serious offences, such cases are transferred to the police or the court for reconsideration and resolution (Nnam, 2016). Bradshaw & Roseborough (2005) criticized the initiatives of restorative justice as an alternative to imprisonment prosecution because it is regarded as a way of holding an offender responsible which is in line with the offender, victim and societal needs. According to Elias (1969), there was nothing like imprisonment in the traditional system of conflict resolution. Only different forms of corporal punishment existed and sometimes fines, usually twice the number of stolen items.

Remarkably, Nigeria is at the verge of confronting the challenges of prison congestion through what could be regarded as official adoption and establishment of restorative justice programmes in some correctional institutions in the country having embarked into a profound research on the essential impacts of restorative justice in decongesting the prison system (Nnam, 2016). Roy & Randel (2013) explained that Nigeria is conducting a 'Front Loading' restorative programme in Lagos and Enugu prisons wherein authorities in charge of prison authorities extract cases that have long been awaiting trial and direct such cases to the Director of Public Prosecution (DPP). The DPP analyses the case files and are automatically aligned for front loading. Subsequently, both the victim and offender are contacted and transferred to the mediation centre for restoration and re-integration where there are certified and professional mediators whose duty is to bring both parties to a consensus regarding restitution and reconciliation. After this has been done, the next procedure is to make an agreement in written form which is duly signed and forwarded to the magistrate court for authentication in order release the offender in the custody (Nnam, 2016). These procedures would create sufficient time for the court to focus on more serious cases and the overwhelming state of the prison would as well be minimized. The rate of recidivism of offenders would also be reduced since their needs have been met (Roy & Randel, 2013).

Theoretical Framework

This study employed the Re-integrative shaming theory to argue for the adoption of restorative justice in the criminal justice system. This theory was founded by John Braithwaite who happens to be a pundit in the field of restorative justice. Braithwaite's re-integrative shaming model is just one of the theories of restorative justice that could be used to buttress the need for the adoption of the re-integrative model. Braithwaite (1989) argues that the reviews on literatures concerning deterrence has indeed made essential provisions which in turn triggered the shift from formal to informal methods of social control. As such, re-integrative shaming should be a means of achieving full crime prevention and control. Re-integrative shaming theory involves important people in the society and/or the family concerned in the conference as a way of showing censure on the offender's misconduct and at the same time re-integrates him/her back into the society and into his family. The conference impacts positively on the offender and the society as a whole.

According to the theory, offenders are seen as individuals who have gone contrary to the social norms and not perceived to be malicious or a wicked person who should not be associated with. Hence, being remorseful and displeasure for violating societal norms, there is higher probability that such society would receive back such an offender wholeheartedly (Braithwaite, 1989). The individual ethics and morals could be restated by shaming the offender's misconducts thereby builds positive consciousness in such an offender i.e. the educational moral side of shaming (Takahashi, 2005). In essence, shaming would make an offender cautious of engaging in one more misconduct. Shaming also works to deter individuals in situations where their awareness fails to go in line with the established rules and regulations of the society.

Societies where there is low crime rate tend to put problems associated with crimes in the hands of the community concerned and not in the hands of professionals in the criminal justice system. According to him, the most effective agent of social control in many societies is the family. In Nigeria, for instance, where there are both nuclear and extended families, whatever the structure a family appears to be, everyone will despise soiling the family image or disappointing them in anyway because individual conduct is contingent on cultural values. Practically, cultural role has been examined in ensuring restoration and re-integration (Braithwaite, 1989). In extension, the theory of interaction ritual by Collins (2004) assumes that people's interaction with one other strengthens the bond between them physically and emotionally and as such, members in the society tend to be committed to shared values, principles and morality. In essence, Braithwaite's argument focuses primarily on putting a stop to the legalization of sanctions in order to reduce stigmatization and compulsion that could be found in our contemporary criminal justice system.

The psychological affect theory by Nathanson (1992) argues that shame serves as a watchdog in the society that oversees individual social interaction which encompasses the need to be pleased with one's self and to be an important part of social existence. According to Nathanson, there is a sense of social isolation when an individual is being shamed because a shame that degrades or labels is more likely to humiliate and bring about negative feelings that could result to negative reactions such as hurting oneself, hurting others, and complete abstinence or withdrawal. In order to avoid any form of

misinterpretation or misapplication, Braithwaite (1989) made crystal clear the difference between 'de-integration' and 'reintegration'. The former is when the offender is stigmatized, degraded or humiliated for the offence they committed while the latter is a situation where the offender's misconduct is overlooked as a result of his/her remorseful state, willingness to be forgiven, re-acceptance back to the society and other positive comments and observations as these are fundamentals to restoring and re-integrating the offender. Thus, the latter qualifies as the position of the re-integrative shaming theory.

The re-integrative shaming theory asserts that the criminal justice system established on a retributive and punitive structure. This structure adopts a bureaucratic and adversarial process. Until now, this process has been known with various anomalies in their implementations, particularly on the major stakeholders of crime i.e. the offender and the victim. Usually, when a crime is committed, the state automatically becomes the victor while the real victim is subjected into a passive state. As such, some final verdicts meted by the state in court might not go well by the victim or other stakeholders concerned. Moreover, so, the criminal justice system lacks an in-depth investigation as to what led the offender to commit the crime and what are the necessary steps to stop such occurrence. In Nigeria, there is no news that stigmatization of offenders as ex-convicts or ex-prisoners has become a norm which has in time exacerbated the occurrence and incessant increase in the rate of recidivists. Apart from the increase in recidivism, prison congestion is another challenge faced by the criminal justice system. In short, the criminal justice system lacks the integrative orientations and has disappointed the principle of deterrence and rehabilitation.

The criminal justice system is de-integrating rather than re-integrating offenders. The system established the police institution with the aim of bringing security closer to the people, yet it has been ineffective in ensuring the expected social control while crime is on the rise (Braithwaite, 1989) and the number of prison inmates keeps swelling. In essence, to solve the problem of prison congestion and increase in the rate of recidivism, re-integrative shaming theory explains that the offender, victim and community should be given a say in cases that concern them and at the same time their respective needs should be prioritised. In the quest to achieve deterrence, crime control and prevention, the community/family should be regarded as the most effective agent of social control. It is believed that sanctions imposed by family, friends, and the community have more positive impact on a person's behaviour. Because family and community members are bound physically and emotionally, shaming or sanctions carried out by them would prove more effective than those carried out by the court or police. For instance, Japan practices a Family Justice system where families take it as a responsibility in controlling and preventing crimes and has experienced a drastic reduction in crimes and recidivism.

Shaming an offender brings about both specific and general deterrence. The former deters the offender specifically from committing further crime while the latter deters the general public from committing that same crime. Moreover, in achieving deterrence, punishments meted to offenders should be done in the public just like a public shaming. "Justice is not done until it is seen to be done". Moreover, offenders who have been shamed should not be perceived as malicious or someone who should not be associated with. They should be seen as someone who has gone in contrary to the societal norms. This shaming neutralizes stigmatization preached by the conventional criminal justice as necessary steps are taken to re-integrate the offender back into the family and the community as a

Re-integration makes the offender feel accepted among the people while isolation is far beyond manifestation.

Material and Methods

This is a descriptive research that adopted triangulation method i.e. both qualitative and quantitative methods for data collection. The research targeted lawyers as well as other criminal justice professionals such as the prison officials in *Ilorin, Kwara State*. The respondents were selected from two departments in the Ministry of Justice: the Department of Public Prosecution and the Department of Alternative Dispute Resolution. While the former deals with cases within the court, the latter deals with cases outside the court. Stratified random sampling technique was used to classified respondents by sex and rank and designation. Table of simple random sampling was used to select respondents for a self-administered questionnaire. An in-depth interview was conducted with prison officials who were purposely selected considering the nature of the research. Precisely, six (6) prison officials were sampled for an in-depth interview while 50 respondents were randomly selected across the two departments in the Ministry of Justice for questionnaire administration. While qualitative data were analysed via content analyses, quantitative data generated were analysed via table of frequency, percentage and through bar chart for easy comprehension.

Table 1: Population and sample size of respondents from Ministry of Justice

Department	Total Population	Sample Population	Percentage %
Public Prosecution	40	25	(62.5%)
Alternative Dispute Resolution	45	25	(55.6%)
Total	85	50	100%

Researchers' Survey (2018)

Instruments for Data Collection

Two major instruments were used: questionnaire and interview schedule/checklist. Questionnaire was the primary instrument that was used in eliciting information from the respondents. It was self-administered on the respondents to allow for conveniences. The questionnaire consisted of both open-ended and close-ended questions. The open-ended questions allows for a deep perception of the respondents on the study. Interview was conducted with prison officers because of their status as the last custodian of the criminal justice system. These groups (Ministry of Justice and the Prison) were targeted simply because they must have gathered different experiences during or after their stay in the system which would enable them talk extensively about challenges and experiences regarding the problem. Hand-written report was used to complement the audio recording of data. Data were recorded with the help of two research assistants. The interview schedule checklist consisted of questions derived from the research objective which were probed further.

Findings and Discussion

Socio-demographic Characteristics of the Respondents

Findings from table 2 reveals that 64% of the respondents are males while 36% represented the female population implying that the male respondents constitute majority of lawyers and criminal justice professionals. This revelation might not be unconnected with the patriarchal culture that places men above women virtually in most profession specifically those that deals with legal professionalism. On the basis of religious affiliation, the table reveals that majority of the respondents (56%) are Muslims while those of the Christian faith are 44%. The implication is not far-fetched in that the state in which the research was conducted is dominated by Muslims. Nonetheless, it is insufficient to say that the Christians are not without a significant number.

Table 2: Distribution of Respondents by Socio-demographic Characteristics

Characteristics	Category	Frequency	Percentage (%)
Gender	Male	32	64
	Female	18	36
	Total	50	100
Religion	Christianity	22	44
	Islam	28	56
	Total	50	100
Occupation	Judges/Lawyers	37	74
	Others	13	26
	Total	50	100
Age	25-34yrs	23	46
	35yrs and above	27	54
	Total	50	100
Marital Status	Single	23	46
	Married	27	54
	Total	50	100

Researcher's Survey (2018)

The data on occupation indicate that majority of the respondents in the two departments in the Ministry are either a judge or a lawyer while 26% of the respondents are neither lawyers nor judges but of some other occupation. This revelation is likely to assist in the validity, reliability and dependability of this study. On age-range, 23% of the respondents fall between ages 25–34 while the remaining percentage of respondents were within the age-range of 35 and above. This revelation is in consonance with the data revealed on marital status that disclosed the same percentage of respondents. While majority (54%) of the respondents are married, 46% are still single. This is a revelation that is likely going to match the ages of the respondents with their marital status. The table may reveal that most respondents that fall within the age distribution of 25-34 years are still single while those of 35 years and above are mostly married.

Retributive and Punitive Philosophy

The table 3 and figure 1 presents the responses of respondents on whether the retributive model has been able to reduce the congestion of prisons and/or rate of recidivism. From the results as indicated in the table, 62% of the respondents attest that the retributive and punitive philosophy has not helped reduce the rate of prison congestion and recidivism while 36% agreed that the model has helped reduce prison congestion and the rate of recidivism.

According to the table and the bar chart representation, 62% of the respondents attested to the fact that the punitive and retributive philosophy of imprisonment has not been effective in reducing the prison overcrowding and the rate of recidivism. The result apparently shows the challenges facing the criminal justice system. More so, some scholars have been clamouring for changes. Nnam (2016) emphasized that the criminal justice system has hitherto been known with the adoption of retributive philosophy as a yardstick in the administration of justice which has particularly affected the prison system in an unhealthy way. The present state of the system has resulted to the congestion of the Nigeria Prison System and as well increases the rate of recidivism in the penal institution. In essence, it is high time the Nigeria Penology changed focus from its custodian measure of punishment to a non-custodian procedural measure with the mind-set of decreasing the snowballing populations in the prison.

Table 3: Retributive and punitive imprisonment model reduce prison congestion and recidivism

Retributive and Punitive Philosophy				
Responses	Frequency	Percent	Valid Percent	Cumulative Percent
No	31	62.0	62.0	62.0
Yes	18	36.0	36.0	98.0
4.00	1	2.0	2.0	100.0
Total	50	100.0	100.0	

Researcher's Survey (2018)

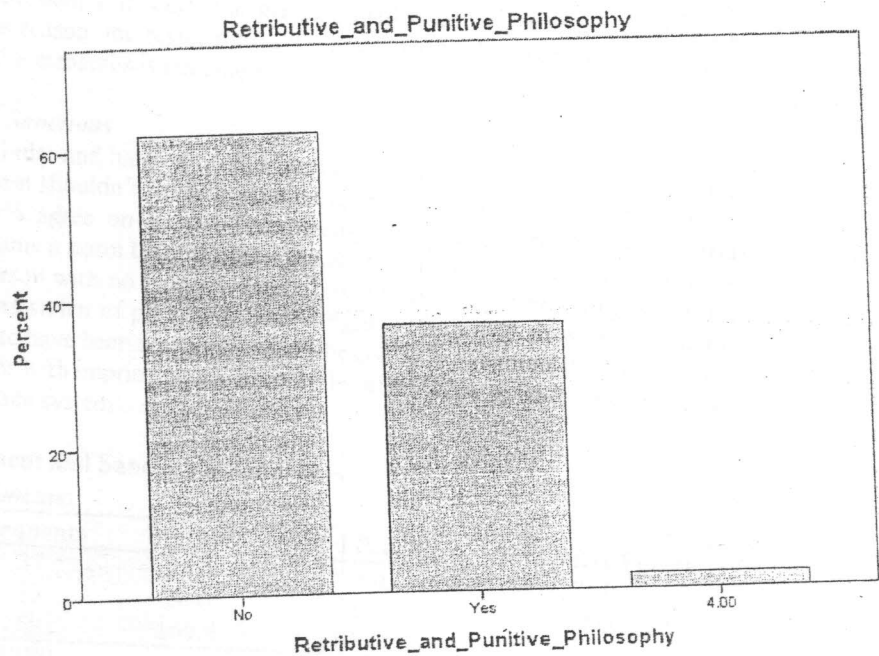


Fig 1: Bar chart showing the responses of respondents on retributive and punitive philosophy

Similarly, Wilson & Herrnstein (1986) and Yekini & Salisu (2013) stated that a considerable number of countries have shifted to the non-custodian measures of punishment in dealing with offenders because of the unbearable increase rate in recidivism alongside the overcrowding of the prison system. This is an action against the failing retributive and deterrence philosophy in sentencing that has dominated the contemporary criminal justice system globally (Nnam, 2016). Even if it has not occurred to Nigeria that the restorative justice model is an alternative to retribution and imprisonment and an approach to decongesting the prison system, its application however on timely basis would help mitigate the overcrowding nature of the Nigeria prison system rather than sticking to the retributive system and the courts' ways of increasing hatred amongst victims and offenders (Nnam, 2016). It is imperative that the criminal justice looks into the opportunities restorative justice could offer in decreasing the daily numbers of inmates being remanded in prisons. According to Siegel (2008), the system employs a more human-centred approach, non-retributive and punitive strategies to restore and ensure social re-integration. The above result, therefore, preaches the need to devise measures in combating this problem.

On the other end, 36% of the respondents being the least outcome are of the opinion that the punitive and retributive philosophy of imprisonment has been effective in reducing the rate of prison congestion and recidivism. To infer from this outcome, it is believed that the respondents viewed it from another perspective wherein there have been

construction of prisons alongside rehabilitation facilities geared towards finding solutions to contemporary challenges. The evaluation of such effectiveness should be judged in accordance with the ability to curb the present challenges of prison congestion and recidivism. For this reason, the result shows the relevance of this study and the need to devise other effective measures is tantamount.

Imprisonment and Sanctions

According to the tabular and bar chart representation, 74% of the respondents negate the fact that imprisonment shouldn't be the least punishment meted to both minor and serious offenders while 26% agree on imprisonment being the least punishment. In Nigeria however, it has become a norm that once an accused is found guilty of an offence (minor or serious), such person with no atom of uncertainty will be sentenced to imprisonment. Trivial issues such as stolen of phones, domestic fight, default in the payment of house rents, etc that ought to have been resolved outside the court are rather resolved in the court which ultimately ends with imprisonment. In short, imprisonment has been a routine in the Nigeria criminal justice system.

Table 4: Imprisonment and Sanction of Offenders

<i>Imprisonment and Sanction</i>				
Responses	Frequency	Percent	Valid Percent	Cumulative Percent
No	37	74.0	74.0	74.0
Yes	13	26.0	26.0	100.0
Total	50	100.0	100.0	

Researcher's Survey (2019)

In line with the majority, mediation taking place unofficially out of the conventional criminal justice is part of the initiatives of restorative justice. In this kind of system, issues relating to an offender or accused are preferably treated in the community consequently, reducing the number of people going into the prison. The community makes convincing and defensible alternative provisions to restore the distorted justice and the breached security affected by crimes and criminals (Nnam, 2016). In the case of minor crimes and sometimes serious offenses, offenders in these categories could be subjected under various restorative justice models that have been modified to suit the conventional way of life such as victim-offender mediation, family conferencing, panels etc. Also, in the course of this research, respondents also opined some other alternative to imprisonment such as community service, parole, fines, among other non-custodian measures. Some of the respondents in this category emphasized that cases of serious offences should be meted with imprisonment or capital punishment.

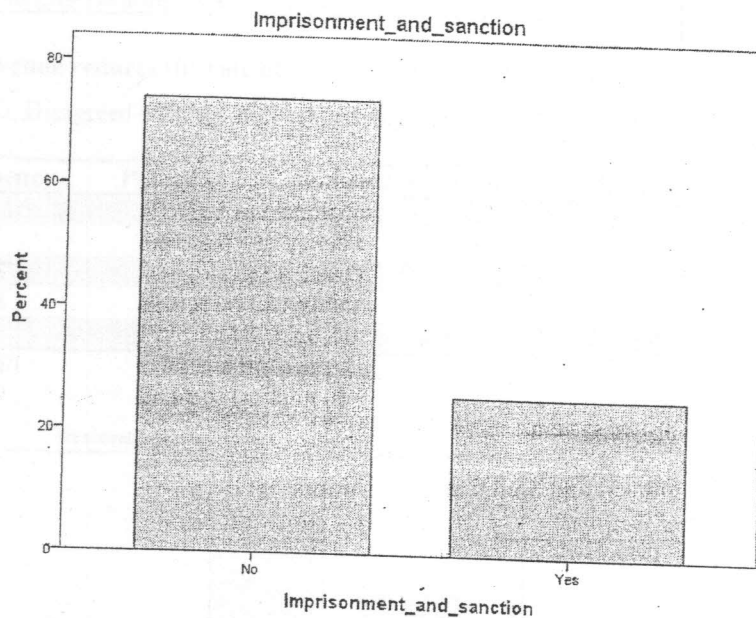


Fig 2: Bar chart showing the responses of respondents on imprisonment and sanction

Conversely, 26% of the respondents uphold to the fact that imprisonment should remain the least punishment for offenders. In addition, Bradshaw & Roseborough (2005) criticized the initiatives of restorative justice as an alternative to imprisonment prosecution because it is regarded as a way of holding an offender responsible for victim and societal needs. The repercussion of this however is that, if imprisonment should remain the only sanction for punishing offenders, the court system will be overwhelmed with unresolved cases and the prison will be overcrowded. This may results to higher rate of recidivism due to poor prison classification system and failing rehabilitation processes.

Restorative Justice, Prison Congestion and Recidivism

From the results in table 5 and figure 3, 48% of the respondents agreed that an avenue where resolution is conducted outside the court, in the presence of the parties (victim, offender and community) and allows for their active participation will reduce the rate of recidivism and at the same time prisons overcrowdings. 36% of the respondents also agreed strongly to this assertion. On the other end of the spectrum, 6% of the respondents strongly disagreed while 10% of the respondents disagreed.

Table 5: Restorative Avenue reduces the rate of prison congestion and recidivism.

Strongly Disagreed = SD; Disagreed = D; Agreed = A; Strongly Agreed = SA

Restorative Resolution

	Frequency	Percent	Valid Percent	Cumulative Percent
SD	3	6.0	6.0	6.0
D	5	10.0	10.0	16.0
A	24	48.0	48.0	64.0
SA	18	36.0	36.0	100.0
Total	50	100.0	100.0	

Researcher's Survey (2018)

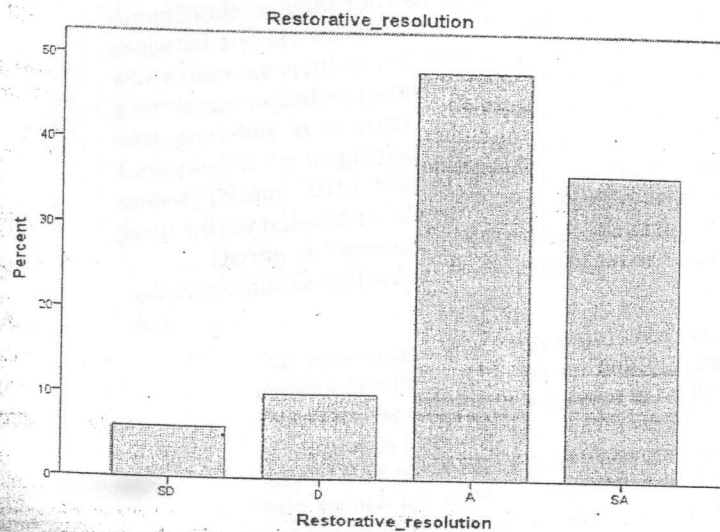


Fig 3: Bar chart showing the responses of respondents on restorative resolution.

In addendum to the majority result above, Nnam (2016) argued that restorative justice has recorded great and remarkable results in the adoption of its non-custodian initiative of delivering justice. The system strongly detests any form of partiality whenever a case involving the victim and offender are brought before the community for resolution. In this way, reducing the overwhelming state of the prison system because offenders found guilty are preferably meted with treatment centred alternative compared to imprisonment as punishment. The treatment is done in such a way that the parties in conflict including their respective families are given due audience, fair hearing, and certain opportunities for full input in the resolution of conflicts.

Moreover, the primary determination of informal dispute resolution in Africa, according to Merry (1982) is to reinstate social coordination and reunite parties. Also, according to Lederack (1975), the reason behind reuniting the parties in the African Restorative Justice is to create an avenue where the victims, offenders and the community

get together to rob minds and reach a consensus on the issue on ground compared to the conventional criminal justice where there must be a subjugator and the subjugate. The implication of the above literature as reference in this wise is that an avenue that reunites parties concerned to a particular crime to tell the gravity of harm done, the extent at which the victim was victimized and making preparations on how to re-integrate such offender will consequently make them less offending and peaceful co-existence, among the stakeholders will be guaranteed. In line with the majority, a one-sided implementation of restorative justice in Nigeria has proven effective.

Roy & Randel (2013) made it known that Nigeria is conducting a 'Front Loading' restorative programmes in Lagos and Enugu prisons. Wherein, authorities in charge of prison authorities extract cases that have long been awaiting trial and direct such cases to the Director of Public Prosecution (DPP). The DPP in turn analyse the case files, they are automatically aligned for front loading. Then after, both the victim and the offender are contacted and are transferred to the mediation centre for restoration and re-integration where there are certified and professional mediators whose duty is to bring both parties to a consensus regarding restitution and reconciliation. After this has been ascertained, the next procedure is to make an agreement in written form which is duly signed and forwarded to the magistrate court for authentication in order release the offender in the custody (Nnam, 2016). When this kind of initiative is adopted in all states in Nigeria, the court will be relieved and the same time the prison will be decongested.

During an interview with prison officials, it was revealed that the adoption of restorative justice will reduce prison congestion and recidivism. One of them narrated as thus:

The sorry state of the court system has resulted to the increase of inmates awaiting trial in prison thereby causing prison congestion. Moreover, the rehabilitation process has failed to change the mind-set of inmates as a result of poor facilities and implementation. As such, they become recidivists. I think if restorative system is adopted, it will help reduce the number of awaiting trial inmates and this would consequently get the prison decongested. Accordingly, Restorative justice comes with correction and reintegration of offender as this would in turn make them less re-offending (IDI/Prison Official/2018).

Another prison official is of the perception that to further reduce prison congestion and the rate of recidivism, inmates of good behaviour in the prison should be restoratively reintegrated back into the society by helping he/she secure a job or handiwork.

.....From experienced. I would suggest inmates that are of good behaviour should be released back into the society. However, the government should try as much to provide them job or handiwork in order to prevent them from going back to their criminal lifestyles (IDI/Prison Official/ 2018).

Sanctions to Non-Violent Offenders

From the analyses below, it is apparently revealed that community service is selected majorly by the respondents with 44% followed by fine 40%, restitution with 8%, probation with 6% and lastly imprisonment 2%. The bar chart result also indicates that there should be a shift in the punishment meted out to non-violent offenders. Thus, instead of resorting to imprisonment, other measures such as community service or fine should be alternated sanction for non-violent offenders.

According to Adeyemi (1994), penalties customarily focus on restitution or compensation for reparation of the status quo, rather than retribution. In fact, restitution is traditionally known as justice that must be witnessed by the public. There is a saying that 'Justice is not done until it is seen to be done'. Accordingly, there was nothing like imprisonment in the traditional system of conflict resolution. However, in the traditional system, several forms of corporal punishment have been meted out on juveniles and sometimes fine, usually twice the number of stolen items (Elias, 1969).

Table 6: The sanctions to be meted to non-violent offenders

Sanctions	Frequency	Percent	Valid Percent	Cumulative Percent
Fine	20	40.0	40.0	40.0
Restitution	4	8.0	8.0	48.0
Community service	22	44.0	44.0	92.0
Probation	3	6.0	6.0	98.0
Imprisonment	1	2.0	2.0	100.0
Total	50	100.0	100.0	

Researcher's Survey (2018)

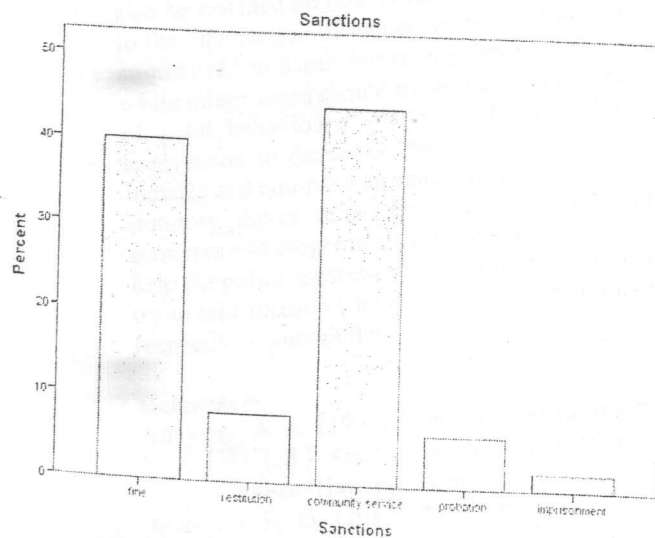


Fig 4: Bar chart showing the responses on the types of sanctions meted out to offenders

Imprisonment, being the least selected with 2%, automatically pinpoints that the dependence on imprisonment has hitherto not been helping matters. Hence, instead of focusing and meting both minor and serious offenders with imprisonment, the above result indicates that minor offenders' punishment should be alternated with community service, fine, restitution, probation, among other alternatives to imprisonments.

Conclusion

The custodian measures of criminal justice have been taken as a routine for sanctioning offenders in the country but it has hitherto been proven ineffective. The overreliance on punishment and retribution by the justice system has not only congested the prisons but has also increased the rate of recidivism. Imprisonment has been the only major sanction meted out to both minor and serious offences. Awaiting trial inmates in the prison system has exacerbated the negative status of the prison system. The overcrowding of the prison system has also hindered the effective implementation of the rehabilitation process. Many developed countries like Japan have shifted away from the retributive model to restorative justice. Japan has witnessed a remarkable decrease in the rate of crime and recidivism. Consequently, majority of the criminal justice professionals have also advocated for the adoption of restorative justice system because of its capability of ensuring the required justice and speedy trials, police-community relationship, prison decongestion, reduction of recidivism and also in giving the stakeholders of crime a say in cases that concern them. Thus, it is high time Nigeria compliments restorative justice model with the retributive penal policy.

The police should work in conformity with the law, make use of their discretion wisely and try to seek the input of people in their missions of crime control. They should also be oriented on how to mediate dispute particularly trivial issues amongst the people to the satisfaction of justice, of the victim and the community. Offenders shouldn't be stigmatized to avoid further reoffending. The court should focus more on serious cases while minor cases should be settled via restorative programmes. Inmates exhibiting signs of good behaviours should be discharged restoratively and placed under stringent supervision to decongest the prisons. Government should provide jobs for discharged inmates and equip the criminal justice agencies with necessary facilities to discharge their statutory duties efficiently and effectively. They should also establish educational seminars and programmes to orientate people on restorative justice. The public should also help the police most especially with relevant information that can help combat crimes and try to take measures by establishing community vigilantes to fight against crimes in their respective communities.

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