

AN APPRAISAL OF THE CRIME OF ARMED ROBBERY UNDER THE COMMON AND ISLAMIC LAW

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Abstract

This Paper examines the crime of armed robbery under the common law and Islamic law. It uses doctrinal method of research in gathering and critically analyzing judicial and statutory authorities, the Holy Quran and the Hadith, among other sources, to highlight the similarities and differences of the crime under the two laws. It concludes that armed robbery is a serious offence deserving of the punishment prescribed for it. The Paper recommends, inter alia, that no armed robber should be allowed to retain the proceeds of the crime. This will greatly reduce the incidence of armed robbery in the society.

1.1 Introduction

Crime is a deliberate act that causes physical or psychological harm, damage to or loss of property, and is against the law. There are different types of crime, and nearly everyone will experience a crime at some point in their lives. Crime affects people from all backgrounds, location and ages.¹ Crime under Islamic law consists of any disobedience to God's commandments, which is punishable in this world and in the hereafter.² Islamic law lays emphasis on a crime-free society or

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¹ www.ojo.gov.virtual- library, accessed on 30 April 2024.

² [www.ojo.gov. virtual-library-abstract](http://www.ojo.gov.virtual-library-abstract), accessed on 30 April 2024.

environment as it was known that all human society by ancient tradition prohibited crimes.³

Armed robbery is a violent offence that involves the use of force or dangerous weapons to dispossess persons of their material things. Due to its violent nature, human lives are usually lost alongside the loss of material possessions. It is so serious a crime that death sentence is prescribed for it. Again, armed robbery is an offence where those who conspire to commit it are treated as principal offenders even where they do not actually take part in committing the main offence of armed robbery.⁴

This Paper is divided into eight segments, viz: introduction, meaning and prohibition of armed robbery under the common and Islamic law, distinction between armed robbery and theft under common and Islamic law, capacity of culprit under the common and Islamic law, proof of armed robbery under the common and Islamic law, punishment for armed robbery under the common and Islamic law, causes and effects of armed robbery in Nigeria, and conclusion and recommendations.

2.1 Meaning and Prohibition of Armed Robbery Under Common Law

Generally, robbery means the illegal taking of property from the person of another or in the person's presence by violence or intimidation. On the other hand, armed robbery is robbery committed by a person carrying a dangerous weapon or being in the company of a person so carrying the dangerous weapon regardless of whether the weapon is revealed or used.⁵ The Supreme Court of Nigeria in the case of *Ahmed Mohammed v State*⁶ defined armed robbery as the act of stealing with violence used or threatened. Robbery is the illegal taking of property from the person of another by force or intimidation. Armed robbery is robbery committed by a person carrying a dangerous weapon regardless of whether the weapon is revealed or Any used.

³ Ibid

⁴ Robbery and Firearms (Special Provisions) Act 1984 Cap R11, LFN 2004, s 6; Criminal Code, s 403A.

⁵ *Ibrahim v State* (2013) LPELR-21883 (SC).

⁶ [2023] 3 NWLR (Pt 1870) 157,168

The Robbery and Firearms (Special Provisions) Act prohibits the offence of armed robbery. It provides as follows:

person who-

- a. aids, counsels, abets or procures any person to commit an offence under sections 1, 2, 3, or 4 of this Act; or
- b. conspires with any person to commit such an offence; or
- c. supplies, procures or provides any person with firearms for use to commit an offence under section 1 or 2 of this Act,

Whether or not he is present when the offence is committed or attempted to be committed, shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under this Act.⁷

Armed robbery is also prohibited under the Criminal Code Act and the Criminal Code Laws of the various States in southern Nigeria. Section 401 of the Criminal Code provides that any person who steals anything, and at or immediately before or immediately after the time of stealing it, uses or threatens the use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is said to be guilty of robbery. It is armed robbery if the person is armed with any firearms, offensive weapon, obnoxious or chemical materials or is in the company of any person so armed, or at or immediately before or immediately after the time of the robbery, the said offender wounds any person.⁸ Similarly, the Penal Code Act or the Penal Code Laws of the various States in northern Nigeria prohibits armed robbery. Section 296 (2) of the Penal Code provides that theft is robbery if in order to the theft or in committing the theft or in carrying away or attempting to carry away property obtained by the theft, the offender to that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or instant hurt or of instant wrongful restraint.

⁷ Robbery and Firearms (Special Provisions) Act, s 6.

⁸ Criminal Code, s 402 (2), (a), (b).

2.2 Meaning and Prohibition of Armed Robbery under Islamic Law

Armed robbery under Islamic Law is known as *hiraba*. *Hiraba* is regarded as the great theft or armed robbery or highway robbery. These three terms are used interchangeably by the jurists and in the book of Fiqh.⁹ *Hiraba* is an Arabic word which means to quarrel, to fight. But technically it means to take away property from a person openly by using or threatening to use force. According to contemporary jurists, Imam Malik, he defines *Hiraba* as “a criminal act by a person or persons who obstruct(s) the highway or any other places by causing disorder among the community or by attacking people with the intention of appropriating their properties by the use of force in a situation where the victim(s) is/are unable to defend themselves or get immediate help. It makes no difference whether such person has killed people or not and whether he is known for that same act or not”.¹⁰

In the glorious Quran, armed robbery is one of the atrocious crimes that is highly condemned by the Almighty Allah.

Quran Chapter 5 Verse 33-34 says:

The punishment of those who wage war against Allah and His Messenger in respect of endangering the security of the state established under the Divine Law and strive with might and maim for mischief through the land, is execution or crucifixion or the cutting off their hands and feet from opposite sides, or exile, from the land. That is their disgrace in this world, and a heavy punishment is there in the hereafter.

⁹ YY Bambele, *Crimes and Punishments Under Islamic Law* (2nd edn, Malthouse Press Limited 2003) 69.

¹⁰ A Chowdhury, *The Criminal Law of Islam*.

2.3 Prohibition of Armed Robbery Under Prophetic Tradition

The Prophet of Islam, Mohammed (S.A.W.) was reported to have said that “he who levels weapon against my community is not of us”.¹¹ In another prophetic tradition, He says that

“whosoever disobeys the community and goes out against them dies as a rebellion¹²”

The crime of *hiraba* includes armed robbery, forcible entry into houses, or business premises with weapons and harassing innocent people with weapons or taking another person's property unlawfully by force or threat of force.¹³ The term *hiraba* is variously defined. According to a contemporary jurist Sayyid Sabiq,¹⁴ *hiraba* is defined “as an act of robbery by a group of armed men within the territory of the Islamic State so as to create anarchy under which the property, privacy, safety, dignity and religious values of the people would be violated”

2.4 Distinction Between Armed Robbery and Theft Under Common and Islamic Laws

Theft or stealing does not involve the use of force, weapons, or obnoxious chemical materials. Secondly, it might be argued that just being in company of a thief without participating in the stealing would not make a suspect liable to the stealing. On the other hand, a suspect who is in the company of an armed robber may be liable for the offence for just being there. Thirdly, a defendant convicted of theft can only be sentenced to a term of imprisonment or fine or both but a defendant convicted for armed robbery is sentenced to death.¹⁵ It must, however, be stated that robbery under the Penal Code Law is not a capital offence, and does not attract death sentence.¹⁶

¹¹ Bukhari and Muslim, quoted by Yusuf al- Qaradawi (1984), cited in Bambale (n 9) 64

¹² Ibid

¹³ www.myislamicdream.com-armed-rob, accessed 9 May 2024.

¹⁴ Bambele, (n 8).

¹⁵ Robbery and Firearms (Special Provisions) Act, s 1 (2).

¹⁶ Penal Code Law, s 298.

The distinction between the crime of armed robbery (*Hiraba*) and theft (*al-Sariqah*) is the basic element of each crime.¹⁷ Armed Robbery is regarded as the great theft or armed robbery or highway robbery. These three terms are used inter-changeably by Imam Maliki, Shafi and Hanbali and in the books of Fiqh (jurisprudence). But armed robbery expresses the spirit of the crime as mentioned in the relevant verses of the glorious Quran.¹⁸

In *al-Sariqah* (theft), the basic element is the taking of someone else's property by stealing in secret, while in *hiraba*, the basic element is the intention to take someone else's property by the use of force.¹⁹ In *hiraba* even if the intended crime is not completed, the culprit is liable to punishment. For example, to lie in wait on travelled highways with the intention of committing the crime constitutes a complete crime in itself.²⁰

4.1 Condition/Capacity of Defendant in Armed Robbery Under Common Law

If the person who has been arraigned before the court is an infant or a child, the court is usually faced with no difficulty because the visual appearance of the defendant would put the trial Judge on enquiry as to the defendant's age. In such a case, even if neither the prosecution nor the defence raises the issue of age in their evidence, the court on its own motion would want to ascertain the age of the defendant. Because of the advancement which has been recorded in Science and Medicine, the trial Judge need not base the age of the defendant on presumption but could order that a DNA test be carried out. In such a way, the result of the test will give an accurate age of the defendant.²¹

¹⁷ Ibn Rushd (1966); Bidayat al-Mujtahid, (Vol. 11, Cairo) 493; ND al- Sarakhsi; al-Mabsout, (Vol. 1X) 195.

¹⁸ See also generally, MS El-Awal, *Punishment in Islamic Law* (American Trust Publications 1982) 7-9.

¹⁹ Ibid, 7-9.

²⁰ Awdah.(Vol. 11 1985) 638.

²¹ PA Onamade, *Cases and Materials on Criminal Law* (Philade Co. Ltd. 2008) 42-43.

4.2 The Procedure to be Adopted by the Court where the Defendant is a Juvenile

A juvenile offender is simply an offender who is too young to be tried as an adult.²² When a Juvenile is charged with a criminal offence the aim is not only on the punishment that will be meted upon conviction like an adult under retributive justice system.²³ Rather, the focus is on the rehabilitation of offender; this is the reason why the offender is said to have committed a delinquent act instead of a criminal offence.²⁴ The proceedings before a Juvenile court is not the same way the regular court conducted there proceedings.²⁵ However, all criminal trials are to be held in public in accordance with the provision of the constitution of the Federal Republic of Nigeria 1999.

Section 36 (4) provides;

Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair trial in public within a reasonable time by a court or tribunal.

Provided that:

(a) a Court or such tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of 18 years the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;²⁶

²² Children and Young Persons Act cap 485 Laws of the Federation of Nigeria 1990; Children and Young Persons Law cap C10 Laws of Lagos State, 2004 (CYPL).

²³ JA Agaba, Practical Approach to Criminal Litigation in Nigeria, (Renaissance Law Publication 2022) 233.

²⁴ Agaba (n233).

²⁵ S. 6(5) CYPL, cited in J A Agaba, (n233).

²⁶ CFRN 1999, ss.36(4)

The proceedings in the Juvenile Court are open to all the members and officers of the said court, the parties to that proceedings, the legal practitioners engaged by the parties, their witnesses and accredited members of the press.²⁷

The law also allow the parents or the guardians of the child who has been arraigned before a Juvenile Court or any Court for an offence he is suspected to have committed to attend the hearing of the Court if they can be located.²⁸

Jurisdiction of the Juvenile Court over Offences

The Court has jurisdiction to entertain any offence committed by a child or a young person except in the following circumstances:

- a. where the nature of the offence committed by a Child or a Young Person is homicide²⁹
- b. where an adult is charged along with a Child or a Young Person³⁰

4.3 Punishment under the Children and Young Persons Act

Under the Act and the Laws of various State of the federation is that:

No child shall be ordered to be imprisoned,³¹ even when the court find him guilty of the charge against him.³²

No capital punishment for Juvenile,³³ even where a Juvenile is convicted for a capital offence, death sentence shall not be pronounced or recorded, but same shall be replaced with life imprisonment or to such other term as the court may think appropriate.³⁴ The law is also explicit that a charge shall be inquired in to where a child or young

²⁷ Children and Young Persons Act Cap 485 Laws of the Federation of Nigeria 1990, s.6(5)

²⁸ YDU Hambali, Practice and Procedure of Criminal Litigation in Nigeria, (Feat Print and Publish Limited 2013) 71

²⁹ CYPL, Lagos State, s.8(2), cited in Hambali (n70).

³⁰ CYPL, Lagos State, s.6(2), cited in Hambali (n71).

³¹ CYPL, Lagos State, s.12(1)

³² Evidence Act 2011, s.209(1).

³³ CYPL, Lagos State, s.12(3).

³⁴ CYPL Lagos State, s.401; 302(3) ACJL, Lagos

person committed an offence and he or she is to be arraigned before the High Court or a Magistrate Court, the charge shall be inquired in to in accordance with the children and young person's law and not any other law.³⁵

It should be noted that the relevant age is the age of the defendant at the time the alleged offence is committed, and not the age at trial. A child of twelve years who has the capacity to know that he ought not to do an act or make an omission constituting a crime at the relevant time can be criminally responsible for any offence committed by him.³⁶ The gender of a defendant is immaterial in the trial, conviction, and sentencing processes.

4.4 Defence of Insanity under Common Law

Where the defendant pleads not guilty in the course of trial and rely on insanity as his defence for committing the offence during his lucid period, in this situation, the court is required to determine the followings:

- i. Whether or not the offence was committed; and
- ii. Whether or not the defendant was insane at the time of committing the offence.³⁷ If the court find out that the offence was not committed by the defendant, the defendant shall be acquitted without investigating the defendant state of mental health.³⁸ But where the court finds that the defendant committed the offence, the court will decide by means of evidence, his mental state at that material time the offence was committed.³⁹ And where it is evidenced that he was actually insane at the material time when the said offence was committed, the defendant shall be acquitted; as

³⁵ Ss.340 ACJL, Lagos

³⁶ See generally Criminal Code, ss 7, 8, 30

³⁷ YDU Hambali, Practice and Procedure of Criminal Litigation in Nigeria, (Feat Print and Publish Limited 2013) 525.

³⁸ Hambali, (n525).

³⁹ Ss.222 & 229 CPA, 222 ACJ(R&R)L,2011;s325CPC, cited in Hambali (n525).

an insane person cannot be criminally liable, except, same was caused by intoxication.⁴⁰

4.5 Condition/Capacity of Defendant in Armed Robbery Under Islamic Law

Legal Capacity of the Defendant: The “notable Islamic jurists” are unanimous that the defendant should be an adult and a sane person, as minors and persons of unsound mind are not strictly responsible for committing *hiraba* (armed robbery). This is based on the prophetic tradition thus:

Three categories of people are exempted from punishment and religious accountability: an infant, or minor until he attains majority; and insane person until he regains sanity and a person who is asleep until he wakes up.⁴¹

However, some jurists are divided as to the position where minor or persons of unsound mind takes part in a robbery together with other robbers who are adults and of sane minds. The Maliki, Shafi'i and Zahiri Schools of Islamic Law are of the view that minors and persons of unsound mind are exonerated and may be punished by *ta'azir* (lesser offence) but the adult and sane robbers are criminally liable and punished by *hadd* (capital punishment).⁴² The Hanafi School, on the other hand, holds that the exoneration should cover both the categories of robbers. Islamic jurists are also divided as to the position of female robbers taking part with male robbers. The Maliki, Shafi'i and Zahiri Schools do not differentiate between male and female robbers, only that the female robbers are not crucified or exiled as the male robbers, but may be killed or amputated.⁴³ Hannafi School, on their part, hold that female robbers are not liable to *hadd* (capital punishment) for *hiraba* and the male robbers who take part with the female robbers are to be treated the same way.⁴⁴

⁴⁰ Ss. 28&29CC;ss.228&229CPA;s.222ACJ(R&R)L,2011;ss.325&326CPC. Cited in Hambali(n525).

⁴¹ MM Khan (ND); Sahih al-Bukhari, *Arabic-English* (Vol. V111), 528.

⁴² S Sabiq, (ND), 466.

⁴³ Ibid, 466.

⁴⁴ Ibid, 466.

5.1 Proof of Armed Robbery Under Common Law

The Supreme Court of Nigeria in the case of *State v Hassan Jimoh*⁴⁵ held that to prove armed robbery, the prosecution must adduce evidence:

- a. that there was robbery,
- b. that the robbery was committed while the accused person was armed with offensive weapons or was in the company of those who were so armed; and
- c. that the accused person participated in the robbery.⁴⁶

The evidence in proof of armed robbery could come from direct oral evidence of witnesses, including those of the victims who are able to identify the armed robber(s), voluntary confessions by the armed robber(s), or by circumstantial evidence. Weapons used to commit armed robbery need not be tendered in evidence to prove the crime of armed robbery.⁴⁷ In *Olayinka v State*⁴⁸, the question that fell for determination by the Supreme Court of Nigeria was whether or not the prosecution needed to tender the weapons with which the appellant allegedly committed the robbery. The Court held that it depends by and large on the character and circumstances. This is because of the possibility of the accused person doing away with the offensive weapon after the commission of the offence in order to exculpate himself from criminal responsibility. Nothing stops an accused person from throwing away or holding the offensive weapon completely outside the investigative eyes of the police. If there is compelling evidence that the accused person committed the armed robbery, failure to tender the offensive weapon in the circumstance cannot, therefore, be the basis of an acquittal. In the instant case, the appellant was arrested a little over a year after the offence was said to have been committed. Therefore,

⁴⁵ [2022] 7 NWLR (Pt 1828) SC 101.

⁴⁶ *John v State* [2019] 9 NWLR (Pt 1676) 160; *Udo v State* [2023] 9 NWLR (Pt 1888) 181 SC; *State v Sani* [2018] 9 NWLR (Pt 1624) 278; *Ameh v State* [2018] 12 NWLR (Pt 1632) 99.

⁴⁷ *Simon v State* (2017) LPELR-41988(SC); *Olayinka v State* (2008) 6 ACLR 194 SC, [2007] 9 NWLR (Pt 1040) 561.

⁴⁸ (2008) 6 ACLR 194 SC, [2007] 9 NWLR (Pt 1040) 561-

there was ample time and opportunity to have disposed of or done away with the alleged offensive weapon.⁴⁹

It is the law that the victim or complainant of armed robbery must be called as a witness.⁵⁰

In *State v Isah*⁵¹, the two witnesses for prosecution were the investigating police officers. The victim of the armed robbery was not called as a witness even when the defendant denied his confessional statement. The Supreme Court of Nigeria in upholding the appeal held that the following persons or evidence are material:

The victim of the crime, the investigating police officer who arrested the defendants, evidence of circumstances in which the defendants were arrested, eyewitnesses or any witness to give credible evidence of the armed robbery, and if reliance is placed on circumstantial evidence, it must be compelling and lead only to one conclusion that the defendants were responsible for the armed robbery.

5.2 Proof of Armed Robbery Under Islamic Law

There is consensus among the jurists that as a general rule, *al hudud* offences (capital offences) are proved either by confession of the accused or the testimony or evidence of two reliable witnesses. *Hiraba* (armed robbery) is a kind of offence which takes place mostly in the absence of people and victim(s) may not readily find people who witness the incident. In this situation, the witnesses may have to come from the victims themselves. There are divided opinions as to whether the victims may give evidence against the robbers.⁵² One opinion is the victims may give evidence against the robbers.⁵³ However, the other opinion (which is preferable) is of the view that the victims should not give evidence against the robbers, because as a direct victim,

⁴⁹ *Tajudeen v State* (2022) LPELR-58142 (CA); *Osho v State* (2019) LPELR-47491 (CA); *State v Fadezi* (2018) LPELR-44731 (SC), *Abdulkabir v State* (2015) LPELR-41841 (CA), *Aliyu v State* (2016) LPELR-41202 (CA).

⁵⁰ *Musa v State* (2023) LPELR- 60670 (CA).

⁵¹ (2012) LPELR-15519 (SC)-

⁵² *State v Hassan Jimoh*, (n 25).

⁵³ Awdah, (1985), cited in Bambale(n72).

the position is that there exists a kind of enmity between him and the accused. Since there exists that enmity between them, the competence of the victim to give a valid testimony against the robbers becomes doubtful.⁵⁴

6.1 Punishment for Armed Robbery Under Common Law

Section 1(1) of the Robbery and Firearms (Special Provisions) Act provides that any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than 21 years. Section 1 (2) provides that if

any offender mentioned in sub-section (1) of this section is armed with any firearms or any offensive weapon or is in company with any person so armed; or at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be liable upon conviction under this Act to be sentenced to death.

The death sentenced is carried out by firing squad or by any other mode sanctioned by the Governor.⁵⁵ Similarly, under section 402 (2) of the Criminal Code, a person convicted of armed robbery is sentenced to death. However, under the Penal Code, armed robbery is punished with imprisonment for life with or without caning.⁵⁶ In *Balogun v A.-G, Ogun State*⁵⁷, the Supreme Court held that a defendant convicted for attempted armed robbery under section 2 (1) of the Robbery and Firearms (Special Provisions) Act must be sentenced to life imprisonment, and not any other term as the Court of Appeal did sentence the defendant to 25 years imprisonment in this case. It should be stated that the Criminal Code, also, punishes attempted armed robbery with life imprisonment with or without whipping.⁵⁸

However, unlike the punishment for attempted robbery under the Robbery and Firearms (Special Provisions) Act, which is a mandatory

⁵⁴ Ibid, (n 32).

⁵⁵ Robbery and Firearms (Special Provisions) Act, s 1(2), (a), (b). Generally, a capital sentence can be carried out by hanging on the neck, lethal injection or by any mode pronounced by the trial court. See ss 301 ACJL, Lagos; 396 ACJL, Kano; 402 ACJA.

⁵⁶ Penal Code, s 298 (b). Section 299 of the Code punishes attempted robbery with fourteen years imprisonment with or without fine or caning.

⁵⁷ [2002] 6 NWLR (Pt 763) 512, 537-538, paras. G-E, SC.

⁵⁸ Criminal Code, s 403 (2).

sentence, the life imprisonment under the Penal Code is the maximum punishment a trial court can inflict on a convict for armed robbery. A court has discretion to inflict a lesser term of imprisonment under the Penal Code whereas he does not have any discretion to reduce the mandatory sentence of life imprisonment under section 2 (1) of the Robbery and Firearms (Special Provisions) Act.

Therefore, the punishments prescribed for the offence of armed robbery be strictly adhere to in accordance with the extant laws which created the offence; the sentence of the court must be the sentence prescribed for the offence by the law.⁵⁹ Under the Nigeria Criminal Justice System, capital offences attract death penalty upon conviction.⁶⁰ In *Kalu v The State*, the Supreme Court held that: “the punishment for capital offences is death penalty for offences such as murder, culpable homicide punishable with death, treason and armed robbery.” The court also held in the same case that: “death penalty is lawful in Nigeria and cannot be regarded as a degrading or an in human treatment.”⁶¹

2. There should be constant awareness and enlightenment campaign on the retribution in punishment which follows the doctrine of eye for an eye; tooth for a tooth;⁶² if a person is found guilty of an offence, he must be given the exact punishment prescribed by law;⁶³ the retributive theory of punishment is a particular application of a general principle of justice.⁶⁴

3. Execution by Firing Squad should be rejuvenate and fully implemented as a method of execution as it were in 1971 when Eight Convicted Criminals/ Robbers were executed by Firing Squad in accordance with the provision of Robbery and Firearms (Special Provisions) Decree of 1970.

4. The discretion to sign or not to sign the death sentence by the Governors in Nigeria be amended to compel the Governors to approve

⁵⁹ Criminal Procedure Act, s.377 cited in B Osamor, *Fundamentals of Criminal Procedure Law in Nigeria* (Dee- Sage Nigeria Limited 2004) 376

⁶⁰ YDU Hambali, *Procedure of Criminal Litigation in Nigeria*, (Feat Print and Publish Limited 2013) 660.

⁶¹ (1998) 11 -12 SC 14 at 49; (1998) 13 NWLR (Pt.583) 531 cited in B Osamor 380.

⁶² A B Dambazau, *Criminology and criminal Justice*, (Spectrum Books Limited 2011) 302; Quran Chapter 5 verse 45; Bible Exodus 21 verse 23-25

⁶³ Ibid (n302).

⁶⁴ Ibid (n303).

death sentences of inmates on death row. Nigeria prisons are overrunning with inmates on death row.⁶⁵ It was said that as at July 2022, the number of inmates on death row in Nigerian prisons across the country was approximated at 3,145.⁶⁶

6.2 Punishment for Armed Robbery under Islamic Law

In *hiraba*, there are many alternative punishments: execution, crucifixion, amputation of hand and foot and exile. Therefore, it is open to the Judge to pass any of these sentences which he thinks fit under the circumstances of each case.⁶⁷ Some notable jurists have suggested the following punishments under the following circumstances:⁶⁸

- a. where murder is committed and property robbed, the punishment is crucifixion.
- b. where murder is committed but no property is robbed, the punishment is death sentence.
- c. where murder is not committed but property is robbed, the punishment is cutting off a hand and a foot.
- d. where murder is not committed, and the property is not robbed but the road is made unsafe, the punishment is exile or imprisonment.

The death sentence to be inflicted is by the sword.⁶⁹ There is consensus or *Ijma* on this method of execution. But this method may seem outmoded and insistence on this means may not be in the public interest. Death sentence by the sword then, is the common method of execution or inflicting the capital punishment. This is not the case today and the method should be changed since the circumstances have changed. Death sentence may be inflicted now by the gun, lethal injection and electrocution etc.

As to the method of crucifixion, jurists are divided on it. Hannafi School and Ibn al-Qasim of Malik School are of the view that the convict should first be crucified alive and then be thrust by a javelin.⁷⁰ The second view is canvassed by the Shafi'i and Hambali Schools and

⁶⁵ Punch News Paper of 1st February 2023

⁶⁶ Ibid

⁶⁷ AMA Al-amin (1989) 155.

⁶⁸ M Waliullah, *Muslim Jurisprudence and the Quranic Law* (Taj Company 1989) 159.

⁶⁹ Ibn Hazm (ND), *Al-Muhalla* (Vol. X1) 318.

⁷⁰ El- Awal, 10-12 (n 16).

by some of the jurists of the Maliki School, that is, the convict should first be executed in the usual manner and his body should subsequently be crucified on the gibbet for three days as warning and deterrent to others.⁷¹

The punishments prescribed by the shaffii, Hambali and Hannafi jurisprudential school of thought on crucifixion, cutting of hands and legs be applicable in the appropriate society and where necessary, as applying same punishment will drastically reduce if not completely wipe out the crime of armed robbery in that society. The scholar's submissions are in line with the commandment of the noble Quran Chapter 5 verse 33 and Chapter 33 verse 36. In Chapter 33 verse 36 Allah says: "It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed in to a plain error".

7.1 Conclusion

The paper has discussed the crime of armed robbery under the common and Islamic law. The lives and properties of Nigerians must be protected. The constitution of the Federal Republic of Nigeria guarantees citizens' rights to life, freedom of movement, and to acquire and own property anywhere in Nigeria.⁷²

It is, therefore, the finding of this paper that both Common and Islamic law provisions for the prevention and control of the crime of armed robbery tend to achieve similar goals of protecting lives and properties of the citizens. It concludes that the crime is regarded as a serious one under both laws deserving of death as a punishment. It, however, notes that under Islamic law, exile and amputation of hands or feet are alternatives to death sentence. Again, the gender or sex of a defendant determines whether or not capital punishment will be imposed on an armed robber under Islamic law. Time has come for all those saddled with the responsibility of protecting the lives and property of Nigerians to take the task seriously as the rate of crimes, particularly armed robbery, is on the increase on daily basis.

⁷¹ Ibid, 12.

⁷² CFRN 1999, ss 33 (1), 41(1) and 43.

7.2 Recommendations

To address the problems and challenges of armed robbery in Nigeria, the following suggestions are proffered towards effectively combating the heinous crime. The criminal justice system should be holistically reformed. The Nigeria Police is the foremost law enforcement agency in Nigeria established under the CFRN 1999.⁷³ Her mandate covers in general terms all the other roles specifically assigned to other agencies.⁷⁴ The reformation of the criminal justice system should include specialized training for officers of the Nigeria Police Force in tackling armed robbery and allied emerging crimes such as kidnapping. The men and officers of the Nigeria Police Force will also benefit immensely if they are mentored by experienced operatives. Corruption, which has become the order of the day in the Force should be eliminated by monitoring the officers closely and enhancing their salaries, allowances, and general welfare.

The trained personnel should be provided with modern security equipment to detect and investigate sophisticated crimes such as armed robbery. Equipment like x-ray machines and scanners should be provided for examining vehicles and containers with heavy duty trucks that criminals may use to conceal firearms and other banned items.⁷⁵ Modern communication gadgets should be provided for the officers of the Nigeria Police and its sister agencies for seamless synergies in combating armed robbery and allied offences. Specialised enforcement agencies with investigation and prosecution powers should be established to detect, investigate, and prosecute armed robbery suspects or armed robbers.⁷⁶

The government is to provide jobs and skills for the teeming youths, and make the environment conducive for startups to keep youths busy with income-generating ventures. This would help to address the hardship and hunger in the land. This is because youth unemployment poses a great threat to the country's stability and developments, and if

⁷³ CFRN 1999, s 214 (1), (2), (a), (b), (c).

⁷⁴ DOE Abuo, 'Investigation, Criminal Procedure and Evidence: Dealing with Cross-border Crimes' in JB Daudu and D Adekunle (eds), *Reforming Criminal Law in Nigeria* (Nigerian Bar Association 2012) 4.

⁷⁵ Ibid 8, 9.

⁷⁶ D Adekunle and G Adeyemi, 'Reforming the Substantive Content of Criminal Law; Some Recurring Themes' in JB Daudu and D Adekunle (eds), *Reforming Criminal Law in Nigeria* (Nigerian Bar Association 2012) 17.

not checkmated in time, it may lead to disastrous consequences for the nation. An idle mind is the devil's workshop.

Finally, the Paper recommends that no armed robber should be allowed to retain the proceeds of armed robbery. This will help to reduce the incidence of armed robbery in the society because keeping and enjoying the proceeds of the crime induce the commission of armed robbery.