



118/12

PORT HARCOURT JOURNAL OF BUSINESS LAW

From Learning to Wisdom



Volume 2 Number 2 September 2016

ISSN: 1595 – 1790

*Published by
Faculty of Law,
Rivers State University of Science and Technology,
Port Harcourt, Nigeria*

PORT HARCOURT JOURNAL OF BUSINESS LAW

*A Publication of the Faculty of Law, Rivers State University
of Science and Technology, Port Harcourt, Nigeria*

Vol. 2 No. 2 September, 2016

ISSN: 1595 - 1790

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ANTI-ECONOMIC AND FINANCIAL CRIME MEASURES OF THE NIGERIAN LEGAL REGIME AND ISLAMIC LAW: A COMPARATIVE ANALYSIS OF DEPTH AND EFFECTIVENESS

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ABSTRACT

Economic and financial crimes, which refer to money or property related abuse, are being perpetrated almost everywhere among the countries of the world today. The danger posed by the menace of these crimes affects the economic stability of all nations and threatens the continuous survival of all and sundry. As a result, a number of anti-economic and financial crime legislations, among other combating measures, are being developed day in day out virtually in all jurisdictions to curb the perpetration of the crimes. Nigeria, just like any of the countries of the world, also has her fair share of these measures but same is yet to contain the growing wings of the said crimes in the country up till now. The resolve to recommend what will take Nigeria out of the problem of economic and financial crimes has necessitated the need to look into the measures in Islamic law against these crimes and compare same to the anti-economic crimes' measures in the Nigerian legal regime. The fact of crime free environments of the Islamic law jurisdictions, both at the early classical periods of the Prophet Muhammad (SAW) down to his caliphs and, to some extent, the contemporary Islamic law ruled states – such as Saudi-Arabia and Iran, has compelled the choice of Islamic law as a possible antidote on the menace of economic and financial crimes.

1. INTRODUCTION

This paper seeks to study the various available measures in the Nigerian legal regime and *Shari'ah* against economic and financial crimes. The objective behind the study of these measures is to establish that Islamic law measures against these crimes are deeper and more effective than what is obtainable under the Nigerian law.

The particular area of importance in the Islamic law measures in this respect revolves around the numerous pre-cautionary policies of the divine legal regime aimed at curbing economic and financial crimes. The major effective area of these precautionary measures is the usual practice of equal distribution of wealth i.e. socio-economic rights of all and sundry in Islamic law environments. Other preventive policies of Islamic law against the same crimes, such as asset declaration, offer and acceptance of gifts and few others, shall also be analyzed in comparison to the workings of similar policies in the Nigerian Legal regime.

This paper intends to trace the very many dimensions of the Islamic law culture of equal distribution and how the effectiveness of this institution has kept economic and

financial crimes at bay both at the early classical Islamic periods and the contemporary Islamic law ruled states. The case study countries to be examined in this respect are Saudi-Arabia and Iran among others.

It shall be stressed in the paper at hand that the Nigerian legal regime, especially the Constitution of the Federal Republic of Nigeria, also parades a number of laudable provisions on the socio-economic rights of the citizens, but non justice ability of same has made rubbish of this good gesture.

The paper shall also dwell on the other aspect of the anti-economic and financial crime measures which cuts across the two legal regimes being considered. This concerns the penal provisions (consequential measures) of the two legal regimes which are inflicted as punishments upon commission of these crimes. The positions of the two laws on the policies of asset declaration as well as offer and acceptance of gift by public officers shall also be discussed for the fact of the bearing they have on the anti-economic crimes' war in Nigeria.

2. CONCEPTS OF ECONOMIC AND FINANCIAL CRIMES IN THE EFCC ACT AND SHARIAH

Economic and financial crimes are considered as one of the major challenges currently facing almost all countries of the world. Though a traditional crime,¹ economic and financial abuse has, in the contemporary times, manifested itself in a manifold of forms and typologies, a big chunk of which was never known at the initial period. Uncurtailed obsession for wealth accumulation and modernity influence are some of the reasons responsible for upsurge of the scourge. In some developing countries like Nigeria, absence of the political will to implement many laudable constitutional provisions on the overall welfarism of the citizenry, among others, have left some jobless people with no other option than to espouse economic and financial crimes.

The frequency and enormity of economic and financial abuse has continued to affect the economic viability and progression of many nations throughout the globe. This is due to the instant inter-territorial connectivity impact amongst the nations.² In Nigeria, in particular, the preponderance of economic and financial crimes like corruption, money laundry, fraud, kidnapping, advance fee fraud and tax evasion, to mention few, has had severe negative consequences on the country.³ Nigeria has always had enormous legislations to tackle this menace.

The Economic and Financial Crimes Act⁴, which this seminar paper centres on, is one of the country's current legislative devices in this respect. It was enacted to address a wide range of crimes of which corruption is just a fraction. To this extent, the Act is

1 Arowosaiye Y.I., *Economic and Financial Crimes and ICT Infrastructure: The Islamic Criminal Law Perspective*: paper presented at the 3rd International Conference on Postgraduate Education at (ICPE - 3'08, Penang - Malaysia, 2008) p. 2

2 Wiener J., *Money Laundering: Transnational Criminals, Globalisation and the Forces of Redomestication* (Journal of Money Laundering Control, Emerald Backfiles 2007). P. 51

3 Yusuf T.O. and Babalola A.R., *A Control of Insurance Fraud in Nigeria: An Exploratory Study* (Journal of Financial Crimes, Vol. 16, No. 4, Emerald Group Publishing Limited, 2009) pp. 418 - 421.

4 Cap. E1, LFN, 2004

different from an earlier one, the ICPC Act⁵ which is primarily aimed and directed at the fight against corruption in public offices. The EFCC Act offers a working definition for economic and financial crimes as:

The non-violent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic waste and prohibited goods, etc.⁶

The definition above seems to treat both economic and financial crimes as one indissoluble crime item. This approach has been supported by the English Dictionary meaning of the adjective 'economic', being portrayed as what relates to 'economics' or 'finance'.⁷ To an extent, similarity of meanings which the Black's Law Dictionary⁸ also ascribes to the words 'economy'⁹ and 'finance'¹⁰ is an additional point in which lies the justification for sameness of meanings of the two terms.

Further, it is observed that the same definition of economic and financial crimes in the EFCC Act has described the crimes as being non-violent. The impression this description gives is that unbecoming acts which should be in the category of economic and financial crimes will not be so classified if their perpetration involves an element of violence. Although this approach is not without its reason, the restrictive notion of the scope of economic and financial crimes it portends makes the approach to be one which leaves much to be desired.

Although, one may locate the reason for the non-violent branding of economic and financial crimes in the EFCC Act in the possibility of non-physical effort exertion by culprit in the commission of some aspects of these crimes. For instance, to carry out the economic crime of Advance Fee Fraud may not require more than a fraudster's deceptive mail being sent to a targeted victim, urging the victim to make some advance payment (usually small sum of money) in anticipation of an unsolicited but huge financial benefit in return. Nevertheless, the fact that other fractional aspects of economic crimes such as Narcotic Drug Trafficking, Illegal Oil Bunkering etc. require some form of violence to be perpetrated raises some reservation on the EFCC Act's non-violent branding of all economic and financial crimes.

On the other hand, economic and financial crimes under *Shari'ah* are found to

5 Cap. C31, LFN, 2004

6 S. 46, EFCC Act.

7 Robert A., The New Penguin English Dictionary (Omnia Books Ltd., Scotland, 2001) p.442.

8 Bryan A.G., Black's Law Dictionary (9th ed., Thompson Reuters Business, U.S.A., 2004) pp. 590 and 706.

9 The Black's Law Dictionary defines economy as "the management or administration of the wealth and resources of a community (such as a city, state or country)". See p. 590 thereof.

10 Finance is defined in the Black's Law Dictionary as "that aspect of business concerned with the management of money, credit, banking and investments." See p. 706 thereof

constitute a number of unlawful acts and commercial dealings which are altogether conscripted under the quranic expression "*Ak1 Amwa-lin-Nas Bil- Batil*" i.e eating up properties of others unjustly. The relevant provision of the glorious Qur'an which contains this expression goes thus:

O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you-by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is most Merciful to you¹¹.

The juristic interpretation of the quranic verse quoted above is clear in the legal exegesis of Al-Imam Fakhr ar-Razi on the verse itself. Razi submits:

The jurists are known with two opinions in their interpretation of 'what is unjust' in the quranic verse where Allah says (O you who believe! Don't eat up one another's property unjustly...). By the first of the two opinions, lying on oath, receiving money on the basis of perjury and willful denial of truth are, among others, the connotations of unjust eating up of people's property. On the other hand, the second opinion, which is on the strength of a saying of the prophet (SAW) transmitted from Ibn Abbas and Hassan (may Allah be pleased with them) interprets 'what is unjust' as whatever is taken from someone with no value in return ... This has been explained to include eating up the property of another unjustly as well as eating up one's own property unjustly ... As for eating up one's own property unjustly, what the expression means is spending one's own money in an offensive manner before Allah. But for eating up the property of another, what the phraseology denotes has already been enumerated...¹²

The juristic interpretation of the quranic verse at hand, as deducible from the above quotation, is that taking something for no value or for no genuine value in exchange is the criterion for indentifying when a crime is said to be economic or financial in nature. This understanding has been stated in Chapter IV of the main work to represent the view points of other jurists of Islamic law on the concept of economic and financial crimes in Islamic legal regime.

3. COMPARING THE EFFECTIVENESS OF THE LEGISLATIONS AGAINST ECONOMIC AND FINANCIAL CRIMES IN THE TWO LEGAL REGIMES.

The consequential measures against economic and financial crimes are the same thing as non-precautionary measures against the same set of crimes. In one phrase, these measures refer to some punitive or disciplinary actions to be visited on anyone convicted of an economic and financial crime. From this explanation, it is clear that the steps under consequential measures are those to be resorted to after commission of a given economic crime.

On the comparison proper, it is instructive to state that the two legal frameworks have adequate provisions for these consequential measures. Court orders of imprisonment, fine and forfeiture constitute the major aspects of the disciplinary actions which cut across the two legal systems upon commission of economic and financial crimes. In

¹¹ Qur'an, Chap.4, Verse 29

¹² Fakhr'din Ar-Razi M.U., Mafaatih al-Ghayb: At-Tafsir al-Kabir (3rd ed., Vol. 9) Dar Ihyah at-Turath al 'Arabi, Beirut, Lebanon, 2009) pp. 173 – 174.

Islamic law, however, there exist some other forms of punitive action, such as sending out an accused on exile,¹³ hand amputation,¹⁴ flogging¹⁵ and crucifixion,¹⁶ which are not popular in the Nigerian legislations on economic and financial crimes.

This notwithstanding, one can say that the generality of the consequential measures against economic crimes in the Nigerian legal regimes are harsher, severer and more strict than what obtains in the Islamic law on the same issue. More often than not, the prescribed punishments to follow economic crimes in the conventional law are already fixed, definite and unbendable. This differs from the approach in the Islamic law where majority of economic and financial crimes have gotten no fixed nor absolute punishments. They are rather subjected to the discretionary punishments of an upright muslim judge on behalf of the Imam in an Islamic State. This point of difference in the consequential measures of the two legal regimes under reference becomes clearer in the analysis of the said consequential measures which follows in some detail in the paragraphs below

4. CONSEQUENTIAL MEASURES IN THE NIGERIAN LEGISLATIONS

By the Nigerian legislations in the context at hand, what is intended are those laws having bearing in one way or the other on how to curb economic and financial crimes. These instruments are numerous. Among them are the Criminal Code¹⁷, Penal Code¹⁸, Money Laundering (Prohibition) Act¹⁹ and Advance Fee Fraud and other Fraud Related Offences Act²⁰. Others are Terrorism (Prevention) Act²¹, Independent Corrupt Practices and Other Related Offences Commission Act²², as well as Economic and Financial Crimes Commission Act²³, to mention but a few. The researcher shall now bring out from each of these legislations some relevant provisions to the said consequential measures. To start with, s.19 of the Criminal Code prescribes that money or property obtained fraudulently must on conviction be forfeited by the fraudster on an order of a competent law court. The forfeiture order in this circumstance shall lie and become due to be pronounced in certain cases²⁴ of official corruption. S.20 of the same Code has equally

13 This occurs where the discretion of a judge tilts towards sending on exile in his application of *Ta'azir* as a platform of disciplinary action in economic and financial crime charges.

14 This is possible in theft cases on the strength of Quran, Chap. 5, Verse 38

15 This is also possible in *Ta'azir* punishment where a Judge may decide on flogging as a form of disciplinary action.

16 This is the punishment fixed in Quran, Chap. 5, Verse 33 to be applied in cases of *Hirabah* where the highway robber snatches his victim's properties and kills the victim as well.

17 Cap. C28, LFN, 2004

18 Cap. P3, LFN, 2004

19 Vol. II, 2011

20 Cap. P A6, LFN, 2006

21 No. 10 of 2011

22 Cap. C31, LFN, 2004

23 Cap E1, LFN, 2004

24 Such as s.98 of Criminal Code which prescribes 7 years' imprisonment in addition to forfeiture order where a public officer invites bribe, and ss. 98A, 98B and 99 which prescribe the same term of imprisonment where bribe is given to and where bribe is invited on behalf of public officials respectively. For s.99 of the Criminal Code, it prescribes between the term of 1 to 3 years' imprisonment for a public

given a list of other instances²⁵ which may lead to forfeiture. Akin to the above on the Criminal Code's provisions for consequential measures against economic and financial crimes are, among many others, the provisions in ss. 99²⁶, 121²⁷ and 390²⁸ of the Code. Further, S.419 of the Code prescribes 3 or 7 years²⁹ imprisonment where a benefit or any other thing capable of being stolen has been obtained through false pretence.³⁰ For receiving stolen property³¹, fraud by trustee³², fraudulent appropriation by Director or Officer of a company³³ and corrupt offering or acceptance of gifts³⁴, imprisonment terms of 7 or 14 years, 7 years, another 7 years and 2 years and/or a fine of ₦1,000 are respectively prescribed. Where false statements about the status of a company are made by a Director, promoter, auditor or officer of such a company with a view to forcing particular persons or general public become members or do something else in favour of the company, a term of 7 years imprisonment awaits any of such persons.³⁵ For copyright related offences, these are punishable by fine and/or destroying the infringing copies or ordering them to be delivered to the owner of the copyright or otherwise dealt with as the court deems fit.³⁶

In fact, S.402 (1) and S.402 (2) of the same Code prescribe as high as a term of 21 years' imprisonment and even death penalty respectively where one engages in stealing by threat of violence³⁷ and where robber is armed with fire arms, weapon or obnoxious chemical materials or where such a robber wounds any person respectively.

As for the Penal Code law, provisions in ss. 115-122 thereof contain prescription of 7 years' imprisonment for each of the offences mentioned therein, all of which bother on official corruption such as public officers taking gratification.

In its own case, the Money Laundering (Prohibition) Act makes it an offence in s.11 (1) for a person or financial institution or designated corporate body to open anonymous accounts and punishes the act with an imprisonment term of not less than 5 years, and for a financial institution or corporate body, with a fine of not less than 10 million naira but not more than 50 million naira. Similarly, the Act under discussion prescribes

officer extortionist. S. 390 (5), (6) and (7) of the same Code also provides for 7 years' imprisonment where public officer steals State's property, clerk or servant steals employer's property and where Director or officer of a company steals a company's property.

25 These are where there is conviction for offences in ss. 170, 175, 177, 179, 180 and 183

26 Which prescribes 3 years' imprisonment for extortion by public officer on conviction

27 Which punishes corrupt witnesses giving false information in court for material gain with 7 years' imprisonment

28 Which prescribes 7 years' imprisonment for a public officer who steals state's property...

29 It is 3 years' imprisonment where the value of what is obtained by force is below ₦1,000 and 7 years' imprisonment where same is ₦1,000 or above.

30 This is now called 'Advance Fee Fraud' under the Advance Fee Fraud and Other Fraud Related Offences Act, 2006

31 S.427 of the Criminal Code

32 S.423, Ibid

33 S.435, Ibid

34 S.494, Ibid

35 S.436, Ibid

36 S.491, Ibid

37 S.401, Ibid

forfeiture of 25% of the undisclosed funds or negotiable instruments or imprisonment of a term of not less than 2 years or both for false declaration to the Nigerian Customs Service pursuant to s.12 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.

For Advance Fee Fraud and Other Fraud Related Offences Act, the act of obtaining money, property or benefit by false pretence is criminalized therein with prescription of maximum term of imprisonment of 20 years and not less than 7 years without option of fine.³⁸

Further, the Terrorism (Prevention) Act in its s. 2(3)(1) prescribes an imprisonment of maximum term of 20 years for belonging to a proscribed organization. The offence of harboring another, known to have committed or to have been convicted of an act of terrorism and the offence of knowingly agreeing to provide training or instruction to a member of terrorist group both carry 10 years imprisonment each.³⁹

In the ICPC Act, S.37(1) empowers the Commission to seize any moveable or immoveable property suspected in the cause of investigation to be subject matter of the offence being investigated or evidence relating to the offence. In the same token, ss.8,9,12 and 16 of the same ICPC Act prescribes an imprisonment term of 7 years each for accepting gratification, giving or accepting gratification through agents, fraudulent acquisition of property and making false statements respectively. For bribing public officers, the Act prescribes 5 years imprisonment as punishment⁴⁰.

As for the EFCC Act, just like other similar legislations already discussed, the Act contains a manifold of provisions on consequential measures. S.13 (1)(a) and (b) of the EFCC Act is one of these provisions. It prescribes 5 years' length of imprisonment for failure or neglect by an officer of a bank or other financial institution to secure compliance with the EFCC Act. Also, s.14(1) of the Act makes it an offence punishable with life imprisonment for someone to provide or collect any money known fully to be used for an act of terrorism. Finally, ss.19-25 of the same Act recommend seizure and forfeiture of looted monies and properties upon conviction.

So far, it has been shown from the above that the Nigerian anti-economic and financial crimes' legislations have numerous provisions here and there for consequential measures against the crimes. What remains now is to see to what extent are the said measures recognized under the Islamic law.

5. THE CONSEQUENTIAL MEASURES OF ISLAMIC LAW AGAINST ECONOMIC AND FINANCIAL CRIMES

It must be stressed that economic and financial crimes are an integral part of the entire crimes in Islamic law. It must also be stated that crimes under this law are generally punished either under *Hudud*, *Qisas* or *Ta'azir*⁴¹. However, certain aspects of *Hudud* punishment (like in the offence of murder) may be forgone on mere consent or

38 S.1 (3), AFFA, 2006

39 ss.5 and 6 respectively of the Terrorism (Prevention) Act, 2011.

40 See s.18 of the ICPC Act

41 El-Awa M.S., Punishment in Islamic Law: A Comparative Study (American Trust Publications, Indianapolis, 1993)p.96

consideration of an alternative settlement like *Diyah*⁴². Also, the fact of *Hudud* or *Ta'azir* punishment in money related crimes like theft etc. does not foreclose court order for restitution which is also a form of *Ta'azir*.

It is instructive to state that *Hudud* offences are in most cases harsher than both *Qisas* and *Ta'azir* offences. In crimes generally, *Hudud* and *Ta'azir* punishments appear to be the most applicable consequences. But in economic and financial crimes, the major applicable punishments follow the *Ta'azir* path.⁴³ This often includes restitution by which the compulsory return of the money or property fraudulently obtained is made to the rightful owner.

Generally speaking, *Ta'azir* implies discretionary punishment of a court of law (being the representative of an Imam in an Islamic State). This punishment is imposed on a criminal in order to get him or her deterred from a similar or different act in future. In most cases, restitution order and any other applicable form of *Ta'azir* punishment do complement each other and are never seen as alternative punishments at the event of any economic and financial crime.

From the totality of the above, the point being established is that though there is recognition of severe consequential order against economic and financial crimes in Islamic law, the said measures in Islam occur sparingly and do not appear as strong as their counterparts in the Common law styled Nigerian legislations on economic crimes. In the Nigerian legislations, the measures are, more often than not, fixed, static and unbendable. Whereas, in Islamic law, very few cases like theft (*Sarqah*) and some aspects of highway robbery (*Hirabah*) only have their consequential measures⁴⁴ fixed in the two major primary sources of the law i.e. *Qur'an* and *Sunnah*. The remaining high volumes of economic and financial crimes are in Islamic law left to the discretionary *Ta'azir* punishment under an upright judge.

Forms of *Ta'azir* punishment include Admonition (*Al-wa'az*)⁴⁵, Reprimand (*At-tawbikh*)⁴⁶, Threat (*At-tahdid*)⁴⁷, Boycott (*Al-hajr*)⁴⁸ and public disclosure (*At-tash'hir*)⁴⁹. Others are fines and seizure of property (*Al-gharamah* and *Al-musadarah*)⁵⁰, Imprisonment (*Al-habs*)⁵¹, Flogging (*Al-jald*)⁵² and Death penalty (*At-ta'azir bil-Qatl*)⁵³. As

42 Al-casqalani A.H., *Bulugh al-Maram Min Adillah al-Ahkam* (2nd ed., Hadith No. 1009, Darussalam Publishers and Distributors, Riyad, Saudi-Arabia, 2002) PP. 378-379

43 Bemelha G., *Tacazir Crimes in the Islamic Criminal Justice System* (Ocean Publication Incorporation, London, 1982) p.219

44 For theft, it is amputation of hands. As for *Hirabah*, where the crime only involves snatching the wayfarer's property, it is amputation of hand and leg at cross lines. But where the wayfarer is killed in addition to the snatching of his property, the punishment is crucifixion.

45 Quran, chap.4, verse 34

46 Siddiqui M.I., *The Penal Law of Islam* (Adam Publishers and Distributors, New-Delhi, India, 2010) P. 144

47 El-Awa M.S., p.101

48 Quran, chap.4, verse 34

49 Siddiqui M.I., P.145

50 El-Awa M.S., pp.103-104

51 Ibid, p.105

52 Ibid,

53 Ibid

it is known, what the judge considers in arriving at any of the above types of punishment under *Ta'azir* is not necessarily the severity or harshness. Rather, the high point of consideration in most cases is any soft device with capacity to deter the criminal.

To cite apposite examples on the above, reference must be necessarily made to the Shariah consequences of a set of unlawful acts such as: Usury (*Ribah*), sale with feature of uncertainty (*Gharar*), Fraud (*Gissh*), Gamble (*Muqamarah*), Usurpation (*Ghasb*), Hoarding (*Ihtikar*), Bribery (*Rishwah*) as well as trading in prohibited and harmful items (*At-Tijarah fi al-mawad al-muharramah wad-Darah*).⁵⁴ The disapproved acts enumerated above are a fraction of economic and financial crimes as earlier discerned from a verse of the Holy Qur'an proscribing eating up of other peoples' properties unjustly.⁵⁵ The Shariah stipulated punishment for all the above is *Ta'azir* based.⁵⁶

Certain other unlawful commercial endeavours such as *Tasriyah* i.e sale of animal in a deceptive manner which presents it bigger than it is, *Talaqqi ar-Rukban* i.e Intercepting the marketers coming from villages and *Tanajush* i.e unlawful auction are punishable under *Ta'azir* for being financial and economic crimes. Other commercial endeavours in the same category with the above listed include *Ba'i 'ala ba'i man sabaq* i.e negotiating for purchase of a bought item, *Muzabanah* i.e exchange of unmeasured fresh ripe dates with measured dry ones, *Munabadha* i.e sale by throwing any of wrapped clothes to the buyer without option of selection, *Mulamasah* i.e purchase by mere touching without option of selection and *Ba'i al-Hasat* i.e sale of piece of land determined by the point of the land on which a thrown stone drops.

As well, the same fate awaits a good number of the modern day branches of economic and financial crimes such as smuggling, forgery of documents, terrorists' financing and money laundering, etc. All these and others alike are considered as economic and financial crimes under Islamic law because in each of them, there is a notion of benefit taken with no value given in exchange.

The point being driven home from the above is susceptibility of a large portion of economic and financial crimes to *Ta'azir* punishments. The *Hadd* offence of theft and some aspects of *Hirabah* only stand out as unique for falling under *Hadd* offences. For theft, it is punishable with restitution and amputation where the value of the stolen object is up to one quarter of a *Dinar* in gold or three *Dirhams* in silver⁵⁷. In the case of *Hirabah*, the relevant aspects thereof requiring harsh punishments of crucifixion and amputation of hand and leg at cross lines are where the victim is both dispossessed of belongings and killed, and where he is only snatched of his belongings respectively⁵⁸.

Evasion of *Zakat* is also punishable under *Ta'azir*. Execution will only set in as punishment here if the defaulting person is denying the obligation of *Zakat* as being among the pillars of Islam. Consequently, the person would be seen as an apostate

54 Such as porks, idols, cocaine and heroin etc.

55 Quran, chap.4, verse 29

56 Subjecting these acts to *Tacazir* punishment is informed by absence of any specific penalty for them in the two prime sources of Islamic law. In the case of *Riba* alone, it is prescribed that the convict shall enter hell-fire on the Last Day. This should be in addition to his *Tacazir* punishment while alive.

57 Ismail M.B., vol.II, p.240

58 Quran, Chap.5, Verse 33

(Murtadd) and he will be executed in the Islamic state upon being given a period of three days for recounting and with no effect. Apart from the above scenarios, virtually all other instances of economic and financial crimes are punishable under *Ta'azir* which in most cases is less cruel and less tormenting.

Even in theft cases, situations where it can be established that certain conditions are not met such as: not reaching *Nisab* of the stolen object or where the said object is not secretly taken away or even where its secret taking is not from a lawful custody (*Hirz*), suspects in these circumstances are to be punished under *Ta'azir*, not *Hadd*. The same *Ta'azir* punishment is also applicable to all unlawful acts with semblance of theft. These are: embezzlement (*Ikhtilas*), looting (*Intihab*), breach of economic trust (*Khiyanah*)⁵⁹ and false denial of borrowing an household material (*Jahd al-^cariyah*)⁶⁰. The only other similar case to theft for which the overwhelming majority opinion favours amputation is exhumation of grave in order to steal a white garment used for shrouding or a component part of a dead body⁶¹. Even here, a minority opinion exists in favour of *Ta'azir* punishment⁶². Abu-Hanifah and few other scholars are the proponents of this opinion⁶³.

From the foregoing, it is understandable that the punitive/consequential measures in the Nigerian legislations against economic and financial crimes are harsher and severer than the Islamic law provisions in the same respect. This notwithstanding, the latter have proved to be more effective than the former in curbing the menace of economic crimes. Apart from the complementary factor of the precautionary measures of Islam, which can be said to influence the higher rate of effectiveness of the consequential measures of Islamic law, the fact of wider scope of economic crime in the Islamic law is another important factor on the rate of effectiveness of these consequential measures in the same law.

The fact that the acts and conducts to be labeled as economic and financial crimes under Islamic law are more numerous than their counterparts under the Nigerian legal regimes explains why the effect of the said consequential measures will be more felt in the Islamic law jurisdictions than elsewhere. This therefore takes us to the imperative of discussing another aspect of the comparative analysis at hand. This concerns the need to explain the varying degrees of depth in the horizon of economic and financial crimes in the two legal regimes.

6. COMPARING THE SCOPE OF ECONOMIC AND FINANCIAL CRIMES IN THE NIGERIAN LEGISLATIONS AND SHARI'AH

It is beyond doubt that Islamic law has a wider scope for economic and financial crimes. This position has been stressed earlier. However, the need to establish the veracity of this assertion by way of adducing cogent points in support thereof brings forth the imminence of comparative analysis having to do with the scope of economic crimes

⁵⁹ Ismail M.B., Vol. II, p.243

⁶⁰ Ibid, p.244

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

in the Nigerian legislations and Shariah.

On the above, a convenient way of starting is to refer to the provision of S.46 of the EFCC Act earlier quoted on the definition of economic and financial crimes. The section describes economic and financial crimes as non-violent and lists some heads of these crimes such as fraud, narcotic drug trafficking, tax evasion...., before ending the list with the latin word 'etcetera'. We have pointed out in chapter II of the main work that the non-violent description of these crimes is a clear restriction of the scope of the crimes. The havoc in this is the creation of escape route for criminals where the alleged economic crimes against them are violent in nature.

On the other hand, the approach of Islamic law is better on the issue at hand. The Islamic law conception of economic and financial crimes as discerned from the earlier quoted verse⁶⁴ of the Holy Qur'an prohibiting "eating up of properties of others unjustly" is so large and elaborate in horizon that one finds it limitless in accommodating any new brand of economic and financial crimes to be known either now or in future. This is because of the limitlessness of the determining factor of what economic and financial crimes are. For the purpose of lucidity, the determining factor is that any benefit derived without willful consent of the owner and without any corresponding value given in exchange makes the benefit derived to be an act of economic crime.

7. COMPARING THE DEPTH AND EFFECTIVENESS OF PRECAUTIONARY MEASURES AGAINST ECONOMIC AND FINANCIAL CRIMES UNDER THE TWO LEGAL FRAMEWORKS

Ordinarily, Islamic law and the EFCC Act stand for the two legal frameworks in this study. These two have been the reference points all along. However, for the purpose of doing justice to the particular sub-heading at hand, especially on the side of the Act, it will be of need to expand the frontiers of the EFCC Act to some provisions in other legislations such as the Constitution of the Federal Republic of Nigeria, etc. This is not without a reason. In terms of the volume of its content, EFCC Act is too concise to compare favourably well with Islamic law which is detailed and all encompassing. Looking beyond this Act to ascertain the depth and effectiveness of the conventional law being the opposite of Islamic law in this context therefore is necessary.

On the comparative analysis proper, a good starting point is to state that Islamic law appears to place more emphasis on the precautionary measures against economic crimes than on the consequential (punitive) measures which are often resorted to in the conventional law upon commission of the crimes. Proliferation of anti-corruption legislations⁶⁵ in Nigeria as discussed in Chapter III of main Doctoral work is a pointer to this hyper punitive or consequential stand of the conventional law. The concern in Islamic law on the other hand is against this situation. This is because of the rightful conviction in Islam that it is better to prevent indulgence in economic crime than to

⁶⁴ Qur'an, Chap. 4, Verse 29

⁶⁵ Such as: the Criminal Code, the Penal Code, Banks and Other Financial Institutions Act, (Cap.B3) LFN, 2004, Code of Conduct Bureau and Tribunal Act, (Cap.C15) LFN, 2004, Advance Fee Fraud and Other Related Offences Act, (Cap. PA6) 2006 and Money Laundering (Prohibition) Act, Vol.II, 2011, among others,

scramble for ways to checkmate same after allowing it to surface. It is instructive to note that a large portion of these economic crimes has gotten no prescribed punishments in the *Shari'ah* other than being subjected to discretionary penalties (*Ta'azir*) of the authority.⁶⁶ This stands to corroborate the platitude that Islamic law places great emphasis on the precautionary measures of combating economic and financial crimes. An offshoot of the above point is perhaps responsible for a number of remarkable differences between the two legal frameworks on the subject of combating economic crimes following the precautionary measures. A convenient phrase to accommodate the bulk of these differences is the imperative of wealth circulation/distribution. Without doubt, this imperative is more emphasized in Islamic law than in the conventional law.

Though there exist laudable provisions in the country's grundnorm⁶⁷ touching the overall welfare of the entire citizenry such as promotion of self-reliant economy which guarantees suitable and adequate shelter, food, national minimum living wage, old age care, employment and sick benefits as well as welfare of the disabled,⁶⁸ it is disheartening to note that these are not more than empty provisions as they are enshrined in the non-justiceable Chapter II of the 1999 Constitution of the Federal Republic of Nigeria. Rather than using the national wealth to serve the interest of the common good as the Constitution dictates, only few individuals or groups who are at the helm of affairs as the leading cabal in the country toil with these resources in most inequitable manner. This is corruption as usual. On this, it is important to read through what the duo of Toyin Falola and Julius Ihonvbere have had to say while capturing the level of corruption witnessed during the second republic. The writers' comment, which can still be taken for a graphic expression of what prevails up till now on the issue, runs thus:

Corruption was not, however, limited to contract inflation. The second republic was notorious for fraud, payment of huge sums of money to ghost workers, importation of fake products (e.g. mud and sand) in order to obtain foreign exchange, outright stealing of government property, illegal transfer of money to private accounts, etc. Those involved tried as much as possible to be clever but when they thought they could be caught, they resorted to large scale destruction of official files and papers and arson. The NET building, Africa's tallest building, the Ministry of External Affairs and the Account Section of the Federal Capital Development Authority, Abuja, were all burnt following the wide spread allegations of fraud in these places. The then President, Shagari, first denied corruption, but later admitted it and set up a whole Ministry late in 1983 to combat it.⁶⁹

In a related development as referred to by Falana,⁷⁰ the Okigbo panel which General

66 Ghaoui B., *Ta'azir Crimes in the Islamic Criminal Justice System*, M. Cherif Bassiouni (ed.) (Ocean Publication Incorporation, London, 1982) p.219

67 Such as ss. 14(2)(b), 15 (3) and 15(5).

68 ss.16(1) (a-d) and S.16(2) (a-d), 1999 Constitution (as amended)

69 Falola T. and Ihonvbere J., *The Rise and Fall of the Second Republic: 1979-1984* (Zed Books Ltd., London, 1985) p.108

70 Falana F., *Corruption, Accountability and Transparency in Governance under the Constitution: Burning issues in the 1999 Constituion: NBA Ikeja Branch Special Publication on the Issues in Controversy in the Constitution of the Federal Republic of Nigeria, 1999, 1st ed., 2000) pt.IV, p.94*

Sanni Abacha once set up to probe the Central bank of Nigeria came up with startling revelation. In particular, the Panel had found out that the Dedication and other Special Account opened to house the proceeds of the sale of crude oil dedicated to special projects and receive the wind fall of oil revenues from the Gulf War had recorded US \$12.4 billion. But in less than six years thereafter, the fat sum could not be accounted for again⁷¹ and it was thus the candid view of the panel that:

*Had these resources of US \$12.4 billion or even only a significant portion thereof, been paid into the external reserves, the impact on the naira/dollar exchange rate today, on the attitude of our external creditors, on the credibility of Nigeria or the environment for foreign investment, etc. would have been incalculable.*⁷²

Without mincing words, the above quotation, among numerous others, are a proof of the ineffective provisions of the Nigerian Constitution on wealth circulation and general welfare of the masses. The situation is however not the same in Islamic law jurisdictions where a number of operative encouraging devices towards wealth circulation or sharing are available. Numerous emphases on voluntary spending⁷³ and condemnation of avarice, stinginess and hoarding⁷⁴ in the *Qur'an* are some of these devices. Both the economic philosophy of Islam and the nature of ownership theory in Islam constitute another line of devices to aid Islamic law's policy of wealth circulation.

As for the economic philosophy of Islam, this implies recognition of the importance and necessity of money as the pillar of man's reasonable material sustenance.⁷⁵ It is for this reason that utmost importance is attached to every lawful productive work in Islam, while in Christianity and Hinduism, working for a living is discouraged for not being compatible with trust in God and for being a distraction from achieving full communion with God respectively.⁷⁶ Secondly, by the ownership theory of Islam, what is meant is that the ultimate ownership of all monies and properties belongs to Allah⁷⁷ Who creates man,⁷⁸ provides for him⁷⁹ and nourishes him⁸⁰. The idea here is to make man submissive to God and follow the divine injunctions on the need to spend out from all acquired monies and properties as enjoined by Allah, the Ultimate Owner. It is in corollary to this that a manifold of money generating policies and institutions are prescribed in Islam to combat economic and financial crimes. *Zakah, Ushr, Kharaj, Jizyah, Sadaqat al-fitr, Inheritance, Ushur, Diah, Hibah, Wasiyyah and Ghanimah* are some of the instances of these policies.

On the practical examples of wealth circulation in the pristine periods of Islam, one

71 Ibid

72 Report of the Pius Okigbo Panel on the Central Bank of Nigeria.

73 *Qur'an*, Chap.2, verses; 177,195,219,254 and 261

74 Ibid., chap.59, verse 7.

75 Ibid., Chap.67, verse 15

76 Ahmad M., *Business Ethics in Islam* (Kitab Bahvan Publishers, New Delhi-India, 1999) p.7

77 *Qur'an*, Chap.57, Verse 7

78 Ibid., chap.96, Verse 2

79 Ibid., chap.67, verse 20

80 Ibid., chap.67, verse 15

may need to recast an interesting episode involving Caliph Umar. The Caliph, during his tenure as the leader of the faithful, offered a sum of four hundred *Dinar* to Abu Ubaydah, being the latter's portion of huge sum of money meant for the entire Muslim community under wealth circulation scheme. In a similar manner, Caliph Umar gave out the share of *Muadh* the son of Jabal and dished out the remnant among other worthy members of the community. After receiving his portion, Abu Ubaydah exhibited a high spirit of magnanimity by voluntarily sharing others around him from it. *Muadh* too did the same.⁸¹ Caliph Umar was informed of this and his instant reaction went thus: "They are very cooperative among themselves as brothers. May Allah be pleased with them all".⁸²

The narration above is an indication of 'get and share' attitude which was common with Muslims of the early period. The origin of the trait could be traced to Prophet Muhammad (S.A.W) whose style was to distribute state revenue (war booty, tax etc. among Muslims upon accrual⁸³. Caliph Abubakr who was the first to succeed the Prophet (S.A.W) also emulated his predecessor in this commendable policy of get and share with others⁸⁴.

Before delving into another issue, it is worthy to note that the initial time when an individual started receiving his annual allowance during the tenure of Umar was upon reaching the two years period of weaning.⁸⁵ It is also noteworthy that an incident towards the tail end of Umar's tenure influenced a change in the commencement time of this benefit. It was an episode involving a group of itinerant merchants who got to Madinah one day at a very late time and had to pass night there at before procession on their business trip the following day.

Umar got wind of the presence of the merchants and in his impressive characteristic responsiveness to emerging issues during his caliphate, he solicited the company of Abdur-Rahman bin 'Awf and the two of them kept vigil that night watching over the safety of the merchants and their properties inside a mosque at which the passers-by had put up. The persistent cry of a baby held by a woman among the merchants displeased Umar who rebuked the mother in harsh words and thereafter sought to know the cause of the cry. Umar was discomforted to discover that the woman deliberately starved the baby to hasten his weaning and have a basis to commence 'receiving allowance on behalf of the baby'.⁸⁶ Consequently, he felt that his stand on the two years' commencement period of paying the allowance caused the unnecessary eagerness. He thus bent the rule immediately after being remorseful and the new order from that time on was that such allowance became payable upon child birth.⁸⁷

It is also on record⁸⁸ that *Umar* never toiled with the treasury under his care for the

81 Zaky A.S., Rajab A., Na'nau A. and Sanbaty A.M., *Al-mutala'ah Al-azhariyyah Lis-saff Al-awwal Ath-thānawī* (Qita'u Al-ma'ahid Al-azhariyyah, Cairo, 2007) pp.12-13

82 Ibid

83 Al-Qurashi G.A., *Awwaliyyat al-Faruq as-Siyasiyyah* (1st ed., Maktabah al-Haramayn, Riyad, Suadi Arabia, 1983 (p. 356)

84 Ibid

85 Al-Qurashi G.A., p.362

86 Ibid., pp362-363

87 Ibid., p.363

88 Ibn al-Jawziy A.A., *Tarikh Umar Ibn al-Khattab* (Dar Ihya Ulum Ad-Din, DAMashq) p.126

unnecessary benefit of his wards. His stand was that each of the matured children should engage in profitable job to take care of himself and his own immediate family. Caliph Umar made this known to his son, *Abdullah*, on one occasion when the latter's daughter manifested noticeable bodily depreciation and *Abdullah* alleged his father (Umar) of being the cause due to his tight-fisted hand on the treasury. Upon hearing this, Caliph Umar replied saying:

Does my decline to allow you access to the treasury in my care prevent you from engagement in a profitable job to satisfy your daughter's needs as others do to actualize the demands of their daughters. I swear by the name of Allah, you are only entitled to your annual share from the treasury just like others. It is not my concern whether that share satisfies you or not. This is Allah's ruling between me and you.⁸⁹

That was the Caliph's firm position on the need to safeguard the treasury of the Muslim Ummah during his tenure. The blood cord between him and his child could not make him derail. He followed the dictates of Islam on prudence to the letter and lived above board as an honorable man who allowed welfare of the people under him to occupy position of primacy in his mind. This possibly explains why his praises, after those of the Prophet (S.A.W) and Caliph Abubakr, continue to be sung till today.

On how these huge successes on the welfare of people were achieved in the early pristine periods of Islam, reference can be made to the introduction of institutional frameworks which Umar championed during his tenure as one of the factors. Umar saw the need to establish national treasury (*Diwan al-'Atah* or *Bayt al-Mal*) where incoming revenues were to be deposited for safe keep before being circulated at the turn of each year among every Muslim individual under the caliphate.⁹⁰ The treasury was established in the 20th year of Hijrah⁹¹ following the advice by a companion under Umar when the latter was contemplating on what to be done on a particular revenue of five hundred thousand *Dirhams* which had come from *Bahrain* through *Abu Hurairah*⁹² who was then overseeing the place on behalf of the Caliph.

It will be observed that establishment of such an outlet was uncalled for during the tenures of both the Prophet (S.A.W)⁹³ and Abubakr⁹⁴ whose practice was to share out whatever revenue realized almost at the time of coming in. Of course, nothing short of that line of action was expected at the periods as the incomes then were very negligible due to low population of the available Muslims. The tenure of Caliph Umar, on the other hand, witnessed a watershed in extending the frontiers of Islam to non-Muslims outside the Arabian Peninsula⁹⁵. It was therefore most convenient for Umar to wage a host of wars for the purpose having seen that Islam had already been solidified within the Peninsula through the concerted efforts of the Prophet (S.A.W) and Abubakr in the early

89 Ibid

90 Al-Qurashi G.A., p.351

91 Abu Yusuf Y.I., p.51

92 Al-Mwardi A.A., p.119

93 Diyahud-Din M.R., *Al-Kharaj Wan-Nuzum Al-Maliyyah* (5th ed., Dar Al-Ansar Printing Press, Cairo-Egypt, 1977) p.137.

94 Al-Baihaqi, *As-Sunan Al-Kubrah* (Vol.6.) p.348

95 Al-Qurashi G.A., p.275.

formative years of Islam.

The treasury system was implemented in such a convenient way that each major area in a city had the presence of satellite office of a treasury. In each of these offices was kept a register of names of all and sundry within the area. At every event of a new child birth, the parents rushed to the treasury centre close to them and had the name and other relevant particulars of the new born baby registered thereat for remittance of the child's annual allowance of two thousand *Dirhams* to commence. This robust welfare scheme under Islamic law really helped throughout those glowing periods as a precautionary measure which brought down the rate of economic crime, and even the entire crime, to near zero level.

It is imperative to add at this juncture that a number of Islamic States in the present modern era are still holding tenaciously to the modern spirit of this impressive Islamic welfare scheme to the betterment of the conditions of living of the citizens in those jurisdictions. Three countries have been chosen as areas of case study requiring some overview for the general economic situations thereat to be unraveled. These countries are: Saudi-Arabia, Kuwait and Iran. The economic situation in each of the states shall be briefly looked into. What drives us to engage in this voyage is the need to prove to the policy makers and other stake holders in Nigeria that our country too can turn around to appear in a better economic outlook (like each of the three case study countries) once our approach to probity and integrity is refined and the government is fully ready to form a strong political will to fight graft.

8. CONCLUSION

We have considered both the consequential and precautionary measures of the Nigerian legal regime and Islamic law against economic and financial crimes. It has been found out that the reason behind the failure of the anti-graft war in Nigeria is traceable to over reliance on consequential measures pertaining to prescribed punishments to be inflicted upon commission of any of economic and financial crimes.

On the other hand, this paper finds out that the much reliance on the culture of equal distribution of wealth (precautionary measures) over and above the consequential measures in Islamic law environments constitutes the secret behind the successful fight against economic and financial crimes in those environments.

Consequently, the paper recommends that for Nigeria to effectively fight and curb economic and financial crimes, more attention needs to be paid to the realization and justiceability of the laudable socio-economic rights of the Nigerian citizens as enshrined in Chapter Two of the 1999 Constitution of the Federal Republic of Nigeria.

The paper also identifies the high spirit of monitoring towards appointees and the strict assessment of the level of wealth acquisition by those appointed in Islamic law states as additional measures which need to be evolved in Nigeria in order to maintain the near zero crimes rate level associated with those environments. The policy makers in Nigeria are implored to borrow leaves from all these impressive measures of Islamic law in fighting economic and financial crimes.