

Abdul Raouf Batch 5
Jurisprudence01

Administration of Justice is the primary functions of the State, is generally divided into administration of Civil Justice and Administration of Criminal Justice. The main purpose of Administration of criminal Justice is to punish the wrongdoer. It is the State which punishes the Criminals. From the ancient times, a number of theories have been given concerning the purpose of punishment.

1) Punishment Meaning :

Punishment is a process by which the state inflicts some pain to the persons or property of person who is found guilty of Crime.

2) Object

The Object of Punishment is to protect society from mischievous and undesirable elements by deterring potential offenders, by preventing the actual offenders from committing further offenses and by reforming and turning them into law abiding citizens.

3) Theories of Punishments :

Theories of Punishment are as follows

i) Deterrent Theory

'To deter' means, " to abstain from action/ doing ".
Deterrent means, "infliction of severe punishments with a view to prevent the offender from committing the crime again."

According to this theory, the object of punishment is not to only prevent the wrongdoer from doing a wrong a second time, but also to make him an example to others who have criminal tendencies. Salmond considers deterrent aspects of criminal justice to be the most important for control of crime.

A Judge once said : "*I don't punish you for stealing the sheep but so that sheep may not be stolen.*" The aim of punishment is not revenge but terror.

According to Manu "penalty keeps the people under control, penalty protects them, penalty remains awake when people are asleep, so the wise have regarded punishment is a source of righteousness"

According to Paton " The deterrent theory emphasizes the necessity of protecting society, by so treating the prisoners that others will be deterred from breaking law.

The deterrent theory was the basis of punishment in England in the Medieval Period. Sever and Inhuman punishments were order of the day and inflicted even for minor offenses like pick pocketing and stealing etc. The culprits were subjected to the sever punishment of death by stoning and whipping.

In India during the Mughal period, the penalty of a death sentence or mutilation of the limbs was imposed even for the petty offenses of forgery and stealing etc. Even today in most of the Muslim countries, Such as Pakistan, Iraq, Iran, Saudi Arabia, the deterrent theory is the basis of Penal Jurisprudence.

Criticism :

There is a lot of criticism of the deterrent theory of punishment in modern times. It has been criticized on the grounds that it has proved ineffective in checking crimes and also that excessive harshness of punishment tends to defeat its own purpose by arousing the sympathy of the public towards those who are given cruel and inhuman punishment. Hardened criminals are not afraid of punishment. Punishment loses its horror once the criminal is punished.

ii) Retributive Theory

'Retributive' means , punitive or payback or make a return to." In Primitive society punishment was mainly retributive. The person wronged was allowed to have revenge against the wrongdoer. The Principle of 'an eye

for an eye', 'a tooth for a tooth ', a nail for nail, limb for limb was the basis of criminal administration.

According to Justice Holmes 'It is commonly known that the early forms of legal procedure were grounded in vengeance.'

According to Sir John Salmond the retributive purpose of punishment consist in avenging the wrong done by the criminal to society.

The idea behind this theory is to make the offender realize the suffering / pain. The advocates of this theory plead that the criminal deserve to suffer. The suffering imposed by the State in its corporate capacity is considered the political counterpart of individual revenge. It is urged that unless the criminal receives the punishment he deserves, one or both of the following effects will result, namely, the victim will seek individual revenge, which may mean lynching (killing or punishing violently), or the victim will refuse to make a complaint or offer testimony and State will therefore be handicapped in dealing with criminals . The modern criminology discards retribution in the sense of vengeance, but in the sense of reprobation, it must always be an essential element in any form of punishment.

Criticism

Critics of retributive theory points out that punishment *per se* is not a remedy for the mischief committed by the offender. It merely aggravates the mischief. Punishment in itself evil and can be justified only on the ground that it yields better result. Revenge is wild justice. Retribution is only a subsidiary purpose served by punishment.

iii) Preventive theory

Preventive theory is also known as 'theory of disablement.' According to this theory, punishment is based on the proposition, "not to avenge crime but to prevent it" The aim of this theory is to disable the criminal. Offenders are disabled from repeating the crime by awarding punishments, such as death, exile or forfeiture of an office. By putting the criminal in jail, he is prevented from committing another crime.

The supporters of this theory recognize imprisonment as the best mode of punishment because it serves as an effective deterrent as also a useful preventive measure. Bentham supported the preventive theory because of its humanizing influence on criminal law.

According to Justice Holmes " There can be no case in which the law-maker makes certain conduct criminal without his thereby showing a wish and purpose to prevent that conduct. Prevention would accordingly seem to be the chief and only universal purpose of punishment. The law threaten certain pains if you do certain things, intending thereby to give you a new motive for not doing them. If you persist in doing them, it has to inflict the pains in order that its threats may continue to be believed."

According to Paton : " The Preventive theory concentrates on the prisoner and seeks to prevent him from offending again in the future. The death penalty and exile serve the same purpose.

Criticism

Critics points out that Preventative Punishment has the undesirable effect of hardening first offenders, or juvenile offenders, when imprisonment is the punishment, by putting them in the association of Harden Criminals.

iv) Reformatory Theory

According to Reformatory theory, the object of punishment is the reformation of criminals. This theory seeks to bring about a change in the attitude of offender so as to rehabilitate him as a law abiding member of society. Even if an offender commits a crime under certain circumstances, he does not cease to be a human being. The circumstances under which he committed the crime may not occur again. Crime is a mental disease, caused by different anti-social elements. Therefore the mental cure of criminals rather than awarding punishment will serve the purpose. If the criminals are educated and trained, they will be competent to behave well in the society.

The object of the punishment should be reform the offender. The criminal must be educated and taught some art or craft or industry during his term of imprisonment, so that they may be able to lead a good life and become a responsible and respectable citizen after release from jail. While awarding punishment judge should study the character and age of the offender, his early breeding, family background, his education and environment, the circumstances under which he or she committed the crime, the motive which prompted him or her indulge in criminal activities, etc. The object of doing so is to acquaint the judge with the circumstances under which the offence was committed so that he could award punishment that could be serve the ends of justice.

Criticism :

Critics of this theory state that if Criminals are sent to prison to be transformed into good citizens, a prison will no longer be a 'prison' but a dwelling house.

This theory has been proved to be successful in case of young offenders.

v) Expiatory Theory

Expiatory theory of Punishment is based on morals. According to this theory repentance or expiation by offender itself is a punishment. If the offender expiates or repents, he must be forgiven. Expiatory theory of punishment was prevalent in ancient Indian criminal law. Expiations were performed by way of uttering mantras, fasting or even burning oneself to death.

vi) Theory of Compensation

According to Theory of Compensation the object of punishment must not be merely to prevent further crimes but also to compensate the victim of the Crime.

Criticism :

Critics points out that it tends to oversimplify the motive to crime.

is that **philosophy** is (uncountable) an academic discipline that seeks truth through reasoning rather than empiricism while **metaphysics** is (uncountable) the study of a supersensual realm or of phenomena which transcend the physical world.

In context|countable|lang=en terms the difference between philosophy and metaphysics

is that **philosophy** is (countable) a general principle (usually moral) while **metaphysics** is (countable) plural of countable senses of metaphysic.

As nouns the difference between philosophy and metaphysics

is that **philosophy** is (uncountable|originally) the love of wisdom while **metaphysics** is (philosophy|uncountable) the branch of philosophy which studies fundamental principles intended to describe or explain all that is, and which are not themselves explained by anything more

fundamental; the study of first principles; the study of being insofar as it is being