

UNIT – 8 – UPSC - Administration of Justice (Theories of Punishment)

Punishment according to dictionary- involves the infliction of pain or forfeiture, it is infliction of penalty. chastisement or castigation by the judicial arm of the state. If the sole purpose behind punishment is to cause physical pain to the wrongdoer, it serves little purpose. However, if punishment is such as leads him to realize the gravity of the offence committed by him, and to repent at once for it, it may be said to have achieved its desired effect.

There are many theories of concerning the justification of punishment. It is clear that the philosophy of punishment will affect the actual standards of liability laid down by the law.

As SALMON observes, the ends of criminal justice are four in number, and in respect of the purpose so served by it, punishment may be distinguished as

1. - **Deterrents**
2. - **preventive**
3. - **reformative**
4. - **retributive**

1. Deterrent theory-

punishment is before all things deterrent and the chief end of the law of crime is to make the evil-doer an example and warning to all who are like minded with him. According to this theory, offences are result of a conflict between the interests of the wrong-doer and those of society. The aim of punishment is to dissolve the conflict of interests by making every offence. "Avail has vargain to the offender" (famous words of Corne).

This theory has been criticed on the ground that it is ineffective in cases where crime is committed under severe mental stress. In such cases to punish the wrongdoer to deter him is meaningless.

2. Preventive theory-

punishment is, preventive or disabling. Its primary and general purpose being to deter by fear, its secondary and special purpose is wherever possible and expedient, to prevent a repetition by wrongdoer by the disablement of the offender. The most effective mode of disablement is the death penalty, which in practice, in time of peace, is confined to the crime of murder, though it is legally possible for treason and certain form of piracy and arson.

A similar secondary purpose exists in sub penalties as imprisonment and forfeiture of office, the suspension of driving licenses and in the old penalty of exile. The aim of this theory is not to repeat the crime the crime but this theory takes no note of criminal. It prefers to disable the wrong-doer from committing any more crime but it ignores one of the basic object of the criminal law, i.e. to reform the criminal.

3. Reformatory theory.

A crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because the temptation of the motive is stronger or because the restraint imposed by character is weaker.

The deterrent theory by showing that crime never pays separate the motive., while the reformatory theory seems to strengthen the character of the man so that he may not become victim of his own temptation. This theory would consider punishment to be curative or to perform the function of medicine.

According to this theory crime is like a disease. . This theory maintains that you can cure by killing.

The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender, so as to make him a useful member of society.

4. Retributive theory-

retributive punishment, in the only sense in which it is admissible in any rational system of administering justice, is that which serves for the satisfaction of that emotion of retributive indignation which in all healthy communities is strived up by injustice. This was formerly based on theory of revenge.-"tooth for tooth" and "eye for eye".

Today, on the other hand, this theory is based on the idea that punishment is the necessary alkali to neutralize the evil effects of crime. The idea behind the retributive punishment is that of the restoration of the moral character, the appraisalment of the disturbed conscience of society itself and the maintenance of the sovereign power of the state which becomes aggrieved when a crime is committed and inflicts punishment to set matters of right. Though the system of private revenge has been suppressed, the instincts and emotion that lay at the root of these feelings are yet present in human nature. Therefore, according to this moral satisfaction that the society obtains from punishment can not be ignored.

On the other hand, if the criminal is treated very leniently or even in the midst of luxury, as the reformatory theory would have it, the spirit of vengeance would not be satisfied and it might find its way through private vengeance. According to this theory eye for eye and tooth for tooth is deemed to be a complete and really sufficient rule of natural justice.

In the last, we can easily say that the only logical inference from the reformatory theory, if taken itself, is that they should be abandoned in despairs as no fit subject for penal discipline. The deterrent and disabling theories on the other hand, regard such offenders as being pre-eminently those with whom the criminal law is called upon to deal.

The application of purely reformatory theory, therefore would lead to astonishing and inadmissible results. The perfect idea of criminal justice is based on neither reformatory nor the deterrent principle exclusively, but the result of compromise between them.

In this it is the deterrent principal which possesses predominant influence. It will not be out of place to mention here that Gandhi ji "hate the sin and not the sinner", is merely a philosophical assertion and can not furnish a practical guide in the administration of justice.

