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**1) What motivates the ‘just desert’ principle of punishment? Discuss.**

The just desert principle of punishment is a concept of the retributive theory of punishment also known as the proportionalism principle. This principle attempts to address the issue of how much punishment should be inflicted on an offender and it answers that the measure of punishment must be equal in proportion to the seriousness of the crime and it should be no more, no less. It represents the idea of a fair and appropriate punishment related to the severity of the crime committed.

The philosophy of the principle is best described in the old testament of the Bible using the quote an “eye for an eye” and “a tooth for a tooth”. This approach to punishment rests on the idea that anyone whose conduct appears to cause social harm would be held responsible and be punished.

In earlier times, penal law allows the infliction of greater injury on an offender than that which he inflicted on a victim such as branding, banishment, stoning to death and other various forms of torture.

In Modern times, the application of the ‘just deserts’ principle of punishment acts as a sentencing guideline which advocates that punishment should be proportionate to the seriousness of the offense committed. Penologist have called for a more humane treatment of offenders and the older and more severe approaches of punishment such as banishment, whipping and death have been replaced. When an individual commits a crime, he must be given the exact punishment prescribed by law or the statute provided for the crime committed.

In reaching a reasonable just and fair sentence the Supreme Court of Nigeria has set out six basic guidelines. They are:

1) Nature of the offence

2) Characters or Record of the offender

3) The position of the offender amongst his confederates

4) The rampancy of the offence

5) Statutory limitation

6) Concurrency of the sentence

Advocates of the just deserts philosophy emphasizes that the importance of due process, determine sentences and the removal of unfair judgment.

Ultimately, the motivation behind the just desert principle rests on the need for the administration of justice and fairness in delivering sentences by the courts. The reason behind this principle is for well deserved punishment to meted out to offenders so as to bring about greater equality as it is said that crime “upsets the scales of justice’ and the punishing “restores balance”

**2) As a criminology student, what do you think is the most effective way of punishing and treating capital offenders? Give reasons for your answers.**

I believe the most effective method of dealing with capital offenders who commit capital offences such as murder, treason and armed robbery is by applying utilitarian justice.

The utilitarian approach presupposes that punishment being awarded to an offender is justified only if that amount of punishment best promotes the total happiness, protection or well-being of the society.

This approach believes in deterrence and incapacitation of offenders as a way of preventing future crimes. It supports that the justification of the punishment of incapacitation of offenders is founded on the assumption that the isolation of an offender renders him incapable of committing crime and rids the society of evil. An individual can be incapacitated temporarily or permanently depending on the gravity of the gravity of the capital offence. Permanent incapacitation is the sentencing of life imprisonment terms to capital offenders such as rapists and other chronic, violent or habitual offenders or the death penalty for an capital offenders such as murderers, in some circumstances, life-long incarceration is given as a penal response as its alternative.

In justifying this, I believe that we should bear in mind that the very destructive and heartless attitude of robbers, ritual killers, kidnappers, terrorists group like the dreaded Boko Haram, who takes delight in perpetuating hideous crimes, destroying innocent lives, including children, pregnant women and properties should be brought to answer the consequences. Faced with a situation like this, the death penalty and in some lenient cases, life imprisonment is an acceptable, justifiable and most rational above every other forms of punishment in order to serve as a deterrence to others and proper atonement on the part of the victims, dead or alive.

A utilitarian approach to capital punishment essentially advocates that the offender suffers the consequences of such capital offence being committed as it is the best for the total happiness of the society. And such punishment would serve as a tool for crime prevention through deterrence and incapacitation.

The reasons for the utilitarian approach are as follows:

1. To denounce unlawful conduct with the idea to prevent the possibility of future capital offences by those convicted of the crimes.
2. To deter and discourage the offender and other potential persons from committing the capital offences in the future.
3. To separate offenders from good citizens by permanently incapacitating them to remove perceived dangers in the society.
4. To assist in rehabilitating the offenders by instilling fear and the believe that the pain of punishment must outweigh the benefit of crime.
5. To promote a sense of responsibility among offenders and acknowledgment of the harm done on the community and to the victims.

**2b) Will your answer be the same if the accused was charged for a simple offence?**

My answer would notvary as it is also fair and just to pay attention in giving the adequate punishment of the crime in the case of minor offences as this is the best interest of the total happiness of the society.

The utilitarian philosophy is also reflected in the assignment of different punishments for different crimes and in the notion that the amount of punishment a convicted criminal receives be proportionate to the harm caused by the crime. For example, murder calls for imprisonment or even death penalty. However, a simple assault and battery with no serious injuries is usually punished with a short jail sentence or probation and a fine.

Our legal system shows its adherence to utilitarian ideals in the creation of systems such as pretrial diversion programs and probation and parole. These systems seek to limit the dispensation of severe punishment to the extent necessary for the rehabilitation and protection of the society. Therefore, the expression of the utilitarian tenets is seen subject to ***Rules 8.1 and 8.2 of the Tokyo’s Rule*** where the judicial authorities having at its disposal non- custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of the society and the interests of the victim, who should be consulted whenever appropriate.

Such alternative sentences prescribed in this rule are as follows:

1. Verbal sanction such as reprimand and warning
2. Conditional discharge
3. Status penalties
4. Economic sanctions such as fines
5. Confiscation or an expropriation
6. Restitution to the victim or a compensation order
7. Suspended sentence
8. Probation and judicial supervision
9. Community service order
10. Referral to an attendance order
11. House arrest
12. Any other mode of non-institutional treatment.
13. Some combination of the measures listed above.

In the case of Simple Offences, a minimum prison term may be imposed as well as fines, victim compensation, probations; community service orders may be awarded according to the rehabilitative needs of the defendant, the interest of the victim and the protection of the society.

From the above, it is clear that the retributive approach to punishment is rigid compared to the utilitarian approach as it abides strictly by the statutes requiring judges to impose life long prison sentence or death penalty on a capital offender, thereby limiting the judicial discretion of the courts in certain grave offences. Whilst, in administering minor offence, the judicial authority can dispense alternative sentences to incarceration for the rehabilitative needs of the offender. The utilitarian approach seeks to protect both the interest of the offender and the society by rehabilitating offenders and being careful to prevent recidivism in the case of minor offences such as drunk driving or disobedience of traffic regulations.