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**COURSE TITLE: CRIMINOLOGY II**

QUESTION

1) What motivates the 'just desert' principle of punishment? Discuss

2a) as a criminology student, what do you think is the most effective way of punishing and treating capital offenders. Give reason(s) for your answer

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

**ANSWER**

1. THE JUST DESERT PRINCIPLE OF PUNISHMENT

Under the retributive theory, there is a concept of ‘just desert” principle also known as the proportionality principle. This attempts to address the issue of how much punishment should be inflicted and it answers that the measure of punishment given must be equal in proportion to the seriousness of the crime and it should be **NO MORE, NO LESS.**

The philosophy 'let the punishment fit the crime' is the basic philosophy behind the **just deserts** model of justice. The phrase represents the idea of a fair and appropriate punishment related to the severity of the crime that was committed. The Just deserts model is often times referred to as the 'retribution' type of sentencing. In other words, one should be punished simply because one committed a crime. The motivation behind this principle is the desire to ensure that the criminal gets a punishment that is within proportion to what he had done. The just desert principle refers to that in conduct or character which deserves reward or punishment. In this content, we would be considering the just desert principle of punishment. It is sometimes referred to as the retribution type of sentencing that is one should be punished simply because one committed a crime. The theory of just deserts is retrospective rather than prospective. The punisher need not be concerned with future outcomes, only with providing punishment appropriate to the given harm. Although it is certainly preferable that the punishment serves as a secondary function of inhibiting future harm doing, its justification lies in righting a wrong not in achieving some future benefit. The central precept of just deserts theory is that the punishment be proportionate to the harm. The task of a just desert’s theorist is to assess the magnitude of the harm and to devise a punishment that is proportionate in severity if not in kind.

The just desert is a theory which is designed to promote equality and fairness of sentencing for the imposition of a sentence. It is a philosophy of punishment that argues that criminal sanctions should be commensurate with the seriousness of the offense. The principle behind just deserts is that the punishment should fit the crime. When such an instance occurs, it is said that the offender has received their “**just deserts**”. There are several core components of an offense that determine moral outrage and the magnitude of punishment according to just deserts theory. It is these factors that should then trigger the motive to punish if people adhere to a just desert’s theory of punishment. The factors then include

1. Magnitude of harm:

First and perhaps the most important is the magnitude of intended harm. This is indexed most typically by the type of crime e.g. petty theft, felonious assault, the degree to which it offends the sensibilities of citizens

1. Extenuating circumstances:

Secondly, mitigating circumstances can affect the moral outrage felt by citizens and hence the magnitude of punishment that is called for under the just desert theory. A person who embezzles to maintain a lavish lifestyle is judged more harshly than one who embezzles the same amount for the relatively noble purpose of subsidizing the company’s underpaid and exploited overseas workers. Although the amount of harm is constant in this example, the punishment is not. Just desert theory is highly sensitive to such contextual factors that mitigate the degree to which a perpetrator deserves punishment.

A fully developed theory of just desert is concerned with more than just these factors. For example, an expression of remorse speaks directly to the moral outrage evoked in a victim. Also, remorse also signals that the outcome may have been accidental and may raise questions of the perpetrator’s responsibility for the harm. Remorse is associated with numerous justifications of punishment and thus does not uniquely differentiate one motive from another. Magnitude of harm and extenuating circumstances are notable factors because they are the component of just desert theory that differentiates it from utilitarian theories.

1. By virtue of **SECTION 17 OF THE CRIMINAL CODE 2004,** different forms of punishment include death, imprisonment, caning, fining etc. However for capital offences such as murder, treason, armed robbery is usually sentenced to life imprisonment or death penalty. As a criminology student, I think that the punishment which would be most effective in treating capital offenders will be imprisonment.

Imprisonment can be defined as a term of judicial sentence available for a convicted offender of adult age involving incarnation in prison for either a life time or a specified time. It could run consecutively or concurrently. The punishment of imprisonment can be found under the deterrence theory. The deterrence theory simply means that punishments are inflicted on offenders to prevent future crime or reoccurrence of such crimes. The supreme importance of this theory is that **Punishment prevents crime.**

Under this theory, thedeterrence could either be general, meaning that the punishment is made to be swift and severe enough or special meaning punishment should be severe enough to make the offender not have the desire to commit crime. In special deterrence it tries hard to make the offender weigh the advantages and disadvantages of committing another crime when released.

Capital offenders are expected to receive capital punishments. Capital punishment which includes life imprisonment or death penalty are methods of punishing capital offenders***.*** Inmy opinion as a criminology student, the most effective method of punishing a capital offender is the use of death penalty. It is a well-known, controversial and universal concept. It is the execution of a criminal pursuant to a sentence of a death imposed by competent courts. The oxford reference concise dictionary of law defines capital punishment as death imposed as a punishment for crime. It has also been defined as execution of as a punishment for a person convicted of committing a crime or a legal infliction of death as a penalty for violating criminal law. It refers to the execution of a criminal under sentence imposed by competent public authority. In other words, it is the legal infliction of death penalty by the state on a convicted criminal for an injurious crime after due process of law. Capital punishment has also been described as the prescribed treatment meted to an offender who has been adjudged guilty of a capital offence by a court of competent jurisdiction. Death penalty is a sentence of death mostly for the commission of serious offences. It is a non-institutional disposition method of treating an offender and it is principally premised on the penological theories of deterrence, elimination retribution. Lastly, capital punishment is the most extreme form of punishment. It is the also one of the most effective because the death penalty has been used from earliest times, and by different societies the world over, as a means of punishing various types of proscribed conduct. Capital punishment for heinous crimes has existed all through the history of mankind long before the creation of court systems. As civilization progressed, different societies incorporated capital punishment into their legal codes. The Nigeria customary laws traditionally recognized the death penalty as an appropriate way of eliminating offenders who were dangerous to the community. Offences warning the death penalty included murder, witchcraft, adultery and profaning of the gods. With the advent of the British rule, the consequent abolition of customary criminal and penal codes, capital crimes were reduced to include murder, treachery, treason and participating in a trial resulting in death. Today, Nigerian federal law prescribes the death penalty only for treason, homicide and armed robbery. Particularly, under Nigerian criminal law various offences are punishable by death across the Federation including murder, treason and treachery, conspiracy to commit treason, directing and controlling or presiding at an unlawful trial by ordeal which results in death. The introduction of sharia-based criminal law in some states in Northern Nigeria has also widened the number of capital offences to include adultery, sodomy, lesbianism and rape.

There are however different modes of executing capital punishment in Nigeria which includes:

1. Hanging

This is the prescribed mode of execution in Nigeria by ***SECTION 37(2) and 376 of criminal procedure act and SECTION 273 of the criminal procedure code.*** Before the execution, the prisoner’s hands and legs are secured, he is blindfolded, and the noose is placed around the neck with a knot behind the left ear. The execution takes place when a tap door is opened and the prisoner falls through. The prisoner’s weight causes a rapid fracture dislocation of the neck however instant death hardly comes.

1. Shooting of firing squad

This method was very much use in Nigeria especially during military rule. This execution is mainly used for the execution of armed robbers. At least one doctor is usually present to examine the convict and be sure of his death. A pastor or Imam is usually permitted to pray with the convicts before their execution.

The capital punishment is constitutional. It is generally admitted that the constitution guarantee of the right to life is subject to an express saving provision in favour of a death sentence ordered by a court as punishment following the conviction of a capital offender found guilty in Nigeria. Also, the overall rationale of Nigeria cases upholding the death penalty is the value of the punishment in deterrence. In Akinyemi v State, it was held per Fabiyi J. C. A on the propriety, justification of death sentence that the sentence was well pronounced for the capital offence. It has the semblance of the Law of Moses (an eye to an eye). It is good law to serve as deterrence in a mundane society where heartless and dangerous citizens abound in plenty.

In conclusion, where the death sentence is specified for an offence in Nigeria, it is a mandatory and not merely a permitted punishment upon a finding of guilt. The judge has no discretion in the matter, after an accused has been found guilty of a capital offence; the only sentence open to the court to impose is one of death. It is the highest punishment that can be passed on a convicted person for the capital offence.

In my own opinion as a criminology student, I feel that the deterrence theory of punishment along with the imprisonment mode of punishment would be the perfect way to punish and as well treat an offender.

1. In the case of a simple offence, the answer would definitely be different as simple offences are considered litter in nature by the law hence the name simple. The method here would be much lighter and calmly in order to drive home the idea to the offenders.

Simple offences are those offences other than felony and misdemeanor. They are often punished with an imprisonment of less than 6 months. Bail is normally granted except if the court feels otherwise. They usually include disorderly conduct, minor criminal damage to property, driving under the influence of alcohol and drugs, etc. It is an offence either indictable or not punishable on summary conviction before a magistrate court by a fine, imprisonment or otherwise.

The reason why simple offences cannot have the same punishment with that of capital offences is because capital offences are more serious than simple offences and they carry higher penalties. A simple offender can’t be punished the same way with a capital offender because the weights of offences vary. The offence committed by a young man who woke up in the morning, dressed up, and walked out to steal a cup sold by a retailer is not the same as that of a professional who robbed on the highway and paints the road with blood of the innocent. Offences are categorized based on what is contained.

Simple offences are usually punished with imprisonments of less than 6 months unlike capital offences which are punishable by death. According to the criminal code act of the Federal Republic of Nigeria, simple offences are ones other than felonies and misdemeanor.

In my opinion, an individual charged for a simple offence isn’t expected to get the same punishment with that of a capital offender.