

RMM LAW COLLEGE SAHARSA

JURISPRUDENCE

Part I

Paper -1

Topic- Administration of Justice

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Views of Theorists on the 'Importance of Justice'-

a. **Salmond**- Salmond said that the *'Definition of law itself reflects that Administration of Justice has to be done by the state on the basis of rules and principles recognized'*.

b. **Roscoe Pound**- He believed that it is the court who has to administer justice in a state. Both, Roscoe Pound and Salmond emphasized upon the Courts in propounding law. However, Roscoe Pound stressed more on the role of courts whereas Salmond stressed more on the role of the State.

B. Administration of Justice- There are two essential functions of every State:

a. War

b. Administration of Justice

Theorists have said that that if a state is not capable of performing the above mentioned functions, it is not a state.

Salmond said that the Administration of Justice implies **maintenance of rights within a political community by means of the physical force of the state**. However orderly society may be, the element of force is always present and operative. It becomes latent but it still exists.

Also, in a society, social sanction is an effective instrument only if it is associated with and supplemented by concentrated and irresistible force of the community. Social Sanction cannot be a substitute for the physical force of the state.

Origin and Growth of the concept of Administration of Justice

It is the social nature of men that inspires him to live in a community. This social nature of men demands that he must reside in a society. However, living in a society leads to conflict of interests and gives rise to the need for Administration of Justice. This is considered to be the historical basis for the growth of administration of justice.

Once the need for Administration of Justice was recognized, the State came into being. Initially, the so called State was not strong enough to regulate crime and impart punishment to the criminals. During that point of time, the law was one of Private Vengeance and Self-Help.

In the next phase of the development of Administration of Justice, the State came into full-fledged existence. With the growth in the power of the state, the state began to act like a judge to assess liability and impose penalty on the individuals. The concept of Public Enquiry and Punishment became a reality.

Thus, the modern Administration of Justice is a natural corollary to the growth in the power of the political state.

C. Advantages and Disadvantages of Legal Justice

a. Advantages of Legal Justice

i. **Uniformity and Certainty**- Legal Justice made sure that there is no scope of arbitrary action and even the judges had to decide according to the declared law of the State. As law is certain, people could shape their conduct accordingly.

ii. Legal Justice also made sure that the law is not for the convenience of a particular special class. Judges must act according to the law. It is through this that impartiality has been secured

in the Administration of Justice. Sir Edward Coke said that **the wisdom of law is wiser than any man's wisdom** and Justice represents wisdom of the community.

b. Disadvantages of Legal Justice

i. It is rigid. The rate of change in the society is always more rapid than the rate of change in the Legal Justice.

ii. Legal Justice is full of technicalities and formalities.

iii. Legal Justice is complex. Our society is complex too. Thus, to meet the needs of the society, we need complex laws.

iv. Salmond said that '*law is without doubt a remedy for greater evils yet it brings with it evils of its own*'.

D. Classification of Justice- It can be divided into two parts

a. **Private Justice**- This is considered to be the justice between individuals. Private Justice is a relationship between individuals. It is an end for which the court exists. Private persons are not allowed to take the law in their own hands. It reflects the ethical justice that ought to exist between the individuals.

b. **Public Justice**- Public Justice administered by the state through its own tribunals and courts. It regulates the relationship between the courts and individuals. **Public Justice is the means by which courts fulfil that ends of Private Justice.**

E. Concept of Justice According to Law

Justice is rendered to the people by the courts. Justice rendered must always be in accordance with the law. However, it is not always justice that is rendered by the courts. This is because the judges are not legislators, they are merely the interpreters of law. It is not the duty of the court to correct the defects in law. The only function of the judges is to administer the law as made by the legislature. Hence, in the modern state, the administration of justice according to law is commonly considered as '**implying recognition of fixed rules**'.

F. Civil and Criminal Justice

Civil Justice and Criminal follow from Public Justice and Private Justice. Looking from a practical standpoint, important distinctions lie in the legal consequences of the two. Civil Justice and Criminal Justice are administered by a different set of courts.

A Civil Proceeding usually results in a judgment for damages or injunction or restitution or specific decree or other such civil reliefs. However, a Criminal Proceeding usually results in punishment. There are myriad number of punishments ranging from hanging to fine to probation. Therefore, Salmond said that *'the basic objective of a criminal proceeding is punishment and the usual goal of a civil proceeding is not punitive'*.

G. Theories of Punishment

a. **Deterrent Theory**- Salmond said that the deterrent aspect of punishment is extremely important. The object of punishment is not only to prevent the wrongdoer from committing the crime again but also to make him an example in front of the other such persons who have similar criminal tendencies.

The aim of this theory is not to seek revenge but terrorize people. As per this theory, an exemplary punishment should be given to the criminal so that others may take a lesson from his experience.

Even in Manu Smriti, the Deterrent Theory is mentioned. Manu said *"Penalty keeps the people under control, penalty protects them, and penalty remains awake when people are asleep, so the wise have regarded punishment as the source of righteousness"*. However, critics believe that deterrent effect not always leads to a decrease in crime.

b. **Preventive Theory**- This theory believes that the object of punishment is to prevent or disable the wrongdoer from committing the crime again. Deterrent theory aims at giving a warning to the society at large whereas under Preventive Theory, the main aim is to disable the wrongdoer from repeating the criminal activity by disabling his physical power to commit crime.

c. **Reformative Theory**- This theory believes that Punishment should exist to reform the criminal. Even if an offender commits a crime, he does not cease to be a human being. He might have committed the crime under circumstances which might never occur again. Thus, the main object of Punishment under Reformative theory is to bring about a moral reform in the offender. Certain guidelines have been prescribed under this theory.

i. While awarding punishment, the judge should study the characteristics and the age of the offender, his early breeding, the circumstances under which he has committed the offence and the object with which he has committed the offence.

ii. The object of the above mentioned exercise is to acquaint the judge with the exact nature of the circumstances so that he may give a punishment which suits those circumstances.

iii. Advocates of this theory say that by sympathetic, tactful and loving treatment of the offenders, a revolutionary change may be brought about in their character. However, the Critics say that Reformative Theory alone is not sufficient, there must be a mix of Deterrent Theory and Reformative Theory in order to be successful. Critics believe that in a situation of deadlock between the two theories, the Deterrent Theory must prevail.

Distinction between Deterrent Theory and Reformatory Theory

1. Reformatory Theory stands for the reformation of the convict but the Deterrent Theory aims at giving exemplary punishment so that the others are deterred from following the same course of action.

2. Deterrent Theory does not lead to a reformation of the criminal as it imposes harsh punishments. Whereas, Reformatory Theory believes that if harsh punishment is inflicted on the criminals, there will be no scope for reform.

3. Deterrent Theory believes that the punishment should be determined by the character of the crime. Thus, too much emphasis is given on the crime and too little on the criminal. However, Reformatory Theory takes into consideration the circumstances under which an offence was committed. Reformatory Theory further believes that every effort should be made to give a chance to the criminal to improve his conduct in the future.

d. **Retributive Theory**- In primitive societies, the punishment was mostly retributive in nature and the person wronged was allowed to have his revenge against the wrongdoer. The principle was “**an eye for an eye**”. This principle was recognized and followed for a long time. Retributive theory believes that it is an end in itself, apart from a gain to the society and the victim, the criminal should meet his reward in equivalent suffering.

e. **Theory of Compensation**- This theory believes that punishment should not only be to prevent further crime but it should also exist to compensate the victim who has suffered at the hands of the wrongdoer. However, critics say that this theory is not effective in checking the

rate of crime. This is because the purpose behind committing a crime is always economic in nature. Asking the wrongdoer to compensate the victim will not always lower the rate of crime though it might prove beneficial to the victim. Under this theory, the compensation is also paid to the persons who have suffered from the wrongdoing of the government.

H. Kinds of Punishment

a. **Capital Punishment**- This is one of the oldest form of punishments. Even our IPC prescribes this punishment for certain crimes. A lot of countries have either abolished this punishment or are on their way to abolish it. Indian Judiciary has vacillating and indecisive stand on this punishment. There have been plethora of cases where heinous and treacherous crime was committed yet Capital Punishment was not awarded to the criminal.

b. **Deportation or Transportation**- This is also a very old form of punishment. It was practised in India during the British Rule. The criminal is put in a secluded place or in a different society. Critics of this punishment believe that the person will still cause trouble in the society where he is being deported.

c. **Corporal Punishment**- Corporal punishment is a form of physical punishment that involves the deliberate infliction of pain on the wrongdoer. This punishment is abolished in our country but it exists in some Middle Eastern Countries. Critics say that it is highly inhuman and ineffective.

d. **Imprisonment**- This type of punishment serves the purpose of three theories, Deterrent, Preventive and Reformative.

i. Under Deterrent Theory, it helps in setting an example.

ii. It disables the offender from moving outside, thus serving the purpose of Preventive Theory.

iii. If the government wishes to reform the prisoner, it can do so while the person is serving his imprisonment, thus serving the purpose of Reformatory Theory.

e. **Solitary Confinement**- Solitary confinement is a form of imprisonment in which a prisoner is isolated from any human contact. It is an aggravated form of punishment. It is said that it fully exploits and destroys the sociable nature of men. Critics say that it is inhuman too.

f. **Indeterminate Sentence**- In such a sentence, the accused is not sentenced for any fixed period. The period is left indeterminate while awarding and when the accused shows improvement, the sentence may be terminated. It is also reformatory in nature.