

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can*

*bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



**Head & Associate Professor**

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

**Assistant professor of Law**

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*learning.*

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **THE RETRIBUTIVE WAY: A THEORETICAL UNDERSTANDING OF HOW THE MOST OBSOLETE FORM OF PUNISHMENT LINGERS IN THE MODERN PENAL SYSTEM**

Authored By-Soham Banerjee

## **Abstract**

There are five main theories of punishment viz., preventive theory of punishment, deterrent theory of punishment, retributive theory of punishment, the expiatory theory of punishment and reformative theory of punishment. The five theories are separated from each other by their way of representation and the actionable position we have put forward in the legal system. The main motto of the penal system is to deter the criminal and to prevent the commission of the crime either by the criminal or others. Though such an objective is enshrined yet, we fail to understand the practicality of these theories in the modern penal system. Due to its barbaric and inhumane nature, this form of punishment stands neglected in the modern penal system which roots in the form of rehabilitation and reformation.

However, we cannot undermine the fact that even though we declare the truth of not being anarchical or using the most dangerous form of punishment yet, the modern regulations seem incapacitated by the fact that they couldn't eradicate the coaxial retributive nature while trying to find the exact link between the preventive, deterrent and reformative theories of punishment. In reality, we have always seen the failure of the penal system to segregate the forms of punishment through its laws and therefore, the taboo related to the societal hatred towards criminals and their work stands tall even today. Through this article, the author tries to analyze the various laws dealing with punishment and their nature through illustrations and facts thereby, trying to understand the topic in a theoretical way. The author also tries to explore the retributive aspect of punishment and tries to answer the question of its relevance, necessity and importance with respect of the various penal regulations present in the system.

**KEYWORDS:** theories of punishment, retributive theory, penal system, crimes.

## Introduction<sup>1</sup>

Inclinations toward crime and its nature have always been disastrous and unhealthy for society and for the person, to be specific. Such inclinations in the modern era have given rise to the crimes of rape, murder, sexual abuse, cyberbullying, cyber security breach etc. these crimes have influenced many and their punishments have tried to deter many but failed to prevent their recurrence. The quick money and satisfaction of breach of law have been a thrill for many criminals, especially the newer ones and therefore, the initial breach seems to be a heroic act. This again calls for the subsequent occurrence of crime as an act of the influence of thoughts which are pro-criminal and therefore, the dream of a 'crime-free society' still stands as a dream today. We know that the various theories of punishment serve different penal aspects through their way of administration and working, but, these theories even have some shortcomings which are exhibited in the practical field. The basic purpose of punishment is to make the criminal realize his or her mistake and generate a sense of law-abiding nature amongst his or her thought process<sup>2</sup>. But, with the instances of life imprisonment or capital punishment, it seems that the reality is to the extent of understanding 'out of focus', as the more the punishment, the more chances of creating a hardened criminal exists as an expected outcome.

The introduction of various reformative measures is truly a way of moving towards the desired goal of justice. But, the socio-economic conditions or the various other physical and mental processes either through influence or intermingling have brought forward the various facets of crime causation and therefore, these are an antecedent to what we observe as the modern increase in the crime rates. The influx of hatred towards the criminals or the attainment of justice by passive methods has allowed people to be harsher to the offenders than the law itself. The father of the nation, Mohandas Karamchand Gandhi once said, " An eye for an eye will make the whole world blind". I cannot say whether the world has physically turned blind in the process of losing faith in the basic principles of humanity but I can affirm the fact that people have become more self-centred and pro-violence whenever it comes to matters of dealing with criminals. Moral policing can be considered the best example of how the retributive era works in today's forum of society. People believe in instant punishment for the offender no matter of understanding the basic reason or the purpose for which he or she committed a crime. Usually, offences related to petty theft or eve teasing or molestation or any offence related to black magic, witchcraft et.al has seen a violent public response. In the case of K.M.Nanavati v. the State of Maharashtra, 1962 AIR 605, it was surprising to see the public contemplate the issue of the Commandant's wife rather than being interested in the murder committed by the former accused of doing so. Societal norms and practices have always been an influential factor in almost every sector of the world and with the common coronavirus pandemic, it became evident that no matter how much we preach the philosophy of humanity we are always addicted to nothing but self-centred values and ideologies and hardly, a few come up to the extent of breaking the societal boundary to establish the true nature of humanity and create a balance between the good and the bad. Because all criminals have an option of reforming themselves, we need to understand that more than regulations; we need a societal opportunity for the offenders to reform themselves because the lack of proper environment and the lack of proper social awareness are two main reasons for the rise of hardened criminals who prefer to be an outlaw than being a responsible citizen.

---

<sup>1</sup> CRIMINOLOGY & PENOLOGY (INCLUDING VICTIMOLOGY) BY DR. N.V. PARANJAPE, 2019 EDN.

<sup>2</sup> <https://blog.ipleaders.in/theories-of-punishment-a-thorough-study/>

The form of punishment where physical pain, torture or various other punishing methods are used is synonymous with the retributive theory of punishment. We know that there are five main forms of punishment viz., the deterrent form of punishment, the retributive form of punishment, the preventive form of punishment, the expiatory form of punishment and the reformatory form of punishment. These theories have primarily been the main sources of punishment in the ancient, medieval and modern periods. Though these theories are said to be separate from each other, we find that these are interlinked with one another through a thin thread which seems to be difficult to dispose of and therefore, I believe we have continuously failed to incorporate the essence of punishment and even by exploring newer modes of punishment which are commonly reformatory have failed to produce the desired results.

Thus, even in the modern 21<sup>st</sup> century where we note things in digital format, where computers have replaced the age-old calculators and typewriters, in an age where we have witnessed digital court hearings, it is painful to say that, we are still lagging in administering the right way of punishment and lingering with the most obsolete yet the most prevalent theory of punishment or the retributive theory of punishment.

## **Observations**

### **1. A GENERAL PERSPECTIVE<sup>3</sup>**

The retributive theory of punishment is a wrathful form of punishment which shows the presence of revenge in its incorporation. This theory primarily focuses on the pain and the level of torture inflicted on the criminal whosoever he or she is irrespective of the crime committed to control the crime and make the offender realize the nature of the offence committed. This theory can be said to be the most violent of all and therefore, it is a clear indication that it is a punishing system which is philosophically distant from the main objective of punishment which is reformation. As it is expected that punishment prevents the occurrence of crime again and allows the criminal to undergo a process of introspection and search for the reason for the commission of the crime and be sympathetic to other fellow beings and be a law-abiding citizen.

Considering the nature of punishments in the Indian penal system, there are two which are the harshest as compared to other punishments: life imprisonment and capital punishment. While the former is a mentally painstaking punishment, the latter is a physical disruption of the life of the criminal for an offence which is irrevocable and sets a negative example to society. The success rates of these punishments are not very proper because both of them fail to estimate the roughness with which the offence was committed or with which the offence was an outcome of the various influences or the various other factors which influenced the crime of such a grievous nature. If that is the case, then the principle of reformation seems to have a lesser impact on criminals who commit offences of such a sort. Moreover, we need to observe in a country like India, where there is a criminal conspiracy happening in most of the lanes, which may not be of a serious offence like rape or murder but may involve offences like money laundering, fraud, threats etc. it is a matter of concern to whether the penal laws, reformatory in nature can fulfil the purpose of their existence? The necessity of reformation of a criminal is seen as a distant possibility through the administration of capital punishment to a criminal who has committed a serious offence because the penal systems have failed to devise a better

---

<sup>3</sup> <https://www.amnesty.org/en/what-we-do/death-penalty/> ,  
[https://en.wikipedia.org/wiki/List\\_of\\_states\\_and\\_union\\_territories\\_of\\_India\\_by\\_crime\\_rate#:~:text=The%20crime%20rate%20\(crime%20incidence,1%20related%20restrictions%20and%20violations.](https://en.wikipedia.org/wiki/List_of_states_and_union_territories_of_India_by_crime_rate#:~:text=The%20crime%20rate%20(crime%20incidence,1%20related%20restrictions%20and%20violations.)

punishing system than capital punishment, which is again a question mark to the penologists all over the globe. Even though we are motivating students to go to school, acquire proper skills, and develop the spirit of nationality, through the incidents of some of the most heinous crimes taking place, the question persists: whether capital punishment is the much-needed equal punishment for the offender who has stepped down to such a position that he or she could commit such a crime which not only is a harm to the individual or group but the society at large?

This type of incident forces us to look over the textbooks of law and consider the opinion on that whether we can progress amid such a chaotic civil society where everyday crimes are at our breakfast table through the Android/iOS phones or newspapers or the television but what is ignored is our mentality towards crime and criminals. Even in the 21<sup>st</sup> century, we consider a person returning from jail after completing his or her term as an offender, we hate the crime and the criminal. This behaviour from society is a taboo which catalyzes the offenders to turn to the life of crime and eventually, become an outlaw. Therefore, when such behaviour persists it is difficult to place a proper penal system as the main objective is left unfulfilled.

## **2. The Capital Punishment<sup>4</sup> Perspective**

Whenever we witness the terms of capital punishment even for a second or so, we have to pause because a criminal being awarded such a punishment is a thing which forces us to look into the matter and understand the reason for it through our layman's understanding but the big picture is we have ignored both the crime and punishment while searching for the fine prints. As per the report by Project 39A, a criminal law reforms advocacy group based at National Law University, Delhi there are 488 death penalties awarded and this figure is the highest in the last 17 years. This has been a matter of concern because even though the Indian penal system calls for this punishment to be awarded in the 'rarest of the rare cases' yet it is a matter of concern to have around so many rarest of the rare cases that did not call for a better form of punishment. Here, we can see that the criminal is beyond the prospect of reformation and therefore, needs to be awarded a punishment which fully takes away the life of the criminal. Then, the question arises, if we fail to negotiate with the mindset of the criminals that they indulge in such heinous crimes, what is the use of going for punishments which are softer and appear more humane to the penologists?

The word retributive means, "the dispensing or receiving of reward or punishment especially in the hereafter"<sup>5</sup>, that is, this form of punishment believes in the execution of any type of punishment in its harshest form. Scholars of this theory do not consider reformation and believe that through retribution they can put an end to the crime and the criminal together. The Code of Criminal Procedure, 1973<sup>6</sup> through Section 354(5)<sup>7</sup> allows for the execution in the rarest of rare cases. This means that the provision is still a necessity and this is evident through the Law Commission Report of 2015 which calls for more advanced forms of execution systems apart from the conventional hanging as per modern developments. This indicates that even though the penal laws are moulded to work as a system of reformation and the provisions concerning pregnant women prisoners or juveniles in conflict with the law are present yet somewhere we are focusing more on the eradication of the criminal than the crime. Section 235(2) of the Code of Criminal Procedure, 1973 allows for separate proceedings for conviction

---

<sup>4</sup> <https://www.britannica.com/topic/capital-punishment>

<sup>5</sup> <https://www.merriam-webster.com/dictionary/capital%20punishment>

<sup>6</sup> [https://www.indiacode.nic.in/handle/123456789/16225?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/16225?sam_handle=123456789/1362)

<sup>7</sup> <https://www.indiacode.nic.in/show->

[data?actid=AC\\_CEN\\_5\\_23\\_000010\\_197402\\_1517807320555&sectionId=22763&sectionno=354&orderno=397](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_000010_197402_1517807320555&sectionId=22763&sectionno=354&orderno=397)

and sentencing.

Capital punishment seems inevitable for offences against women, children or the nation but then the consequences of such a crime are a matter of concern because only then we can analyze the facts of the crime appropriately. But, some crimes are of such complex nature that we are unable to distinguish between the proper punishment to be awarded to such a criminal who in most cases has lost faith in principles of law and justice, and have turned a blind eye to society and are considered as the anti-social elements who disturb the peace of the society in an unperturbed manner. Therefore, it is difficult to post a plausible explanation for what we call an adept policy of delivering justice to society. Now, these situations force us to contemplate the necessity of capital punishment and this being a tradition for the particular offences mentioned in the Indian Penal Code, 1870 and the Code of Criminal Procedure, 1973 along with some more legislations like the Andhra Pradesh Control of Organised Crime Prevention Act, 2001; the Maharashtra Control of Organised Crime Act, 1999; the Karnataka Control of Organised Crime Act, 2000; Army Act, 1950; Border Security Force Act, 1968; Bombay Prohibition (Gujarat Amendment), 2009; The Defence of India Act, 1971; the Assam Rifles Act, 2006; the Coast Guard Act, 1978; the Geneva Convention Act, 1960; the Explosive Substances Act, 1908; the Indo-Tibetan Border Police Force Act, 1992 etc. these regulations have the provisions for capital punishment concerning some offences which are not in the quota of mercy or the offenders are beyond the concept of reformation. The above-mentioned regulations are quite rigid owing to the nature and scope of the respective acts and the necessity of their existence; however, these are the things which force us to think beyond the necessity of reformation because there are some objectives which cannot be compromised. Here lies another question, whether the nature of crime can be distinguished from punishment or are we lacking a proper penal system? We must find an answer to this question to be able to search for a better dimension.

### **3. The Offence Perspective**

In India and the world, certain offences are beyond the prospect of reformation and in fact, some of these offences are so complex and painful that they are bound to affect society in the long run. These types of offences can never be granted the scope of a relaxed or a diminished proportion of punishment owing to their nature and results. The offences of rape, murder of women or a child or pregnant women, organized crime to murder someone, or any offence against the nation or its allies are such offences which are difficult to be given the scope of a punishment which is rendered to the offences which less severe than these. We need to be very clear with the notion that any offence which harms the nation and its citizens directly or indirectly needs stricter to strictest action in response for national safety and existence. After all, a traitor cannot be allowed to continue his anti-national activities. Bound either by the philosophies of religion or arrogance or any other sociological or psychological factor which provoked him or her to move into such a path can be dangerous for the nation's future and its internal or external safety or both. Again, women are the most important pillar of society, owing to the atrocities which they have faced from time immemorial to the present day, an incident of rape or sexual assault or murder can be considered a grievous offence against society and such a criminal needs punishment. This doesn't mean that the offender shouldn't be given a chance to survive and reform but the gravity of the offence decides this matter. A woman put to a vegetative state after rape allows for serious punishment to the offender and the extent of his movement either out of physical or psychological conditions makes the criminal far from the objective of attaining reformation and that is what calls for a retributive approach in the punishment, which cannot be denied owing to its lack of proper substitute and

the nature of the offence. Herein I discuss a few case laws to seek some clarity.-

**a. MUKESH & ANR VS STATE FOR NCT OF DELHI & ORS ON 5 MAY, 2017<sup>8</sup>**

This is the case which deliberately discusses to what extent human lust can go. The punishment awarded to the criminals affirmed capital punishment and this seemed to be befitting to the offence of rape along with the insertion of an iron rod on the private parts of the victim who succumbed to the injuries in the hospital. An incident which urged for the societal cry for justice and pressed the need for a befitting punishment for such a barbaric or better said, a demonic act done by the criminals upon the innocent upcoming physiotherapist who dreamed to serve the nation through her knowledge and dedication witnessed such an act of criminality which is beyond the description of magnanimity or in general words, mercy. I believe a crime against society requires a befitting punishment and this is the best case where deterrence is established though it may seem retributive as this was necessary. The scope for reformation of these hardened criminals is beyond the practical possibility and therefore, capital punishment serves to deter and prevent such crimes while strongly condemning them (the crime). The 2012 Delhi gang rape case is an example of the maximum brutality that a woman can face owing to her gender and the lust of the males of the society, these criminals disregard the idea of humanity, and have always been keen to exploit and break the laws for personal benefit, have objectified woman and have purposefully brewed the intention of not being a human in the human skin. The punishment, therefore, is justified by way of the nature of the offence and the result of the crime which is feared by all sensible people of the society who have condemned such an issue with stern protests and verbal explanations. However, an offence like this mandates the usage of retribution although this is not present in the Indian legal system and that means the punishments are deterrent in nature and preventive in the outcome because the presence of such a punishment means that we are in a state of accepting modern reformation philosophies when it comes to the penal process. But, some crimes make these punishments far more than necessary, they mandate the extremities of it being administered.

**b. MD.AJMAL AMIR KASAB @ABU ... VS STATE OF MAHARASHTRA ON 29 AUGUST, 2012<sup>9</sup>**

The Mumbai Terrorist Attacks of 2008 is said to be one of the most serious attacks in the history of India with the attack was similar to waging a war against India, accused Kasab, a Lashkar-e-Taiba terrorist had killed around 72 people while injuring many and this can be considered as a serious crime which is against India and her people which can never be considered for mitigation or negotiation with the terms of reformation as the one who has been trained to attack the peace and breach the security of the nation, thereby mercilessly killing people with disregard to humanity and bearing a misconception on religion can very rarely be turned to the path of mercy. The criminal was awarded the death penalty, which was again upheld by the Hon'ble Supreme Court of India is an example of why such severe punishment is necessary when it comes to the question of national security and the citizens of India. This is not an eye for an eye but is a deterrence measure to imply to the nations of the world that India never compromises the security, peace and well-being of its citizens and its well-wishers. The perfect trial by the Trial court in Mumbai is an example of how regulations were maintained while keeping the law over the top and this indicates that sometimes the situations may force befitting punishments which appear retributive but are deterrent or preventive in nature and

---

<sup>8</sup> <https://indiankanoon.org/doc/68696327/>

<sup>9</sup> <https://indiankanoon.org/doc/193792759/>

these situations allow for such befitting punishments to keep the society's call for justice and the need of the law intact and pure.

## Conclusion

The above-mentioned cases and the theoretical observation state the very necessity of the regulations that we have in the country today. With the barbaric form of criminal activities being in the limelight, where one or the other day, cases of murder, rape, and terrorism are on the forefront it is important to deal with such matters with a norm based on the principles of justice and the required necessities. The punishments seek to deter the offender and prevent its occurrence in the long run but sometimes even life imprisonment may seem difficult to observe by the jailed inmate as seclusion has always been a mental agony and physical torture but to maintain befitting punishments to the amount of crime committed these punishments must continue for the benefit of the society at large. Although, the retributive theory of punishment is an obsolete one yet it indirectly surfaces through capital punishment, life imprisonment or solitary confinement.

While the retributive form of punishment is neglected by modern penologists but as I have stated earlier, it means the thin line between the deterrent, the preventive, the retributive, the expiatory and the reformatory form of punishments have been different in approach and appearance but are interlinked through a thin silk thread owing to its various philosophies and the nature of its administration. We know that the scope of the crime can be coupled with the socio-economic status, psychological condition and the influences undertaken by the criminal before the commission of the crime. But when heinous crimes occur that challenge the very basic principle of humanity, it is important to award the criminal with a befitting punishment which balances the call of the society, the purpose of justice and the need of the hour. This, of course, may appear retributive or at times a little revenge-seeking but in reality, is purely deterrent and preventive in nature.

The emblem inscription of the Hon'ble Supreme Court of India reads, "Yato Dharmastato Jayah"<sup>10</sup> which occurs in the Hindu epic the Mahabharata and is understood as "Where there is Dharma, there will be Victory". The ancient Indian penal philosophies pressed upon the principle of upholding the dharma and therefore, whenever punishment is awarded it is based upon this principle that has guided and will guide the Indian legal system for generations establishing the Western concept of a Reformatory punishment though how retributive it may seem. It depends upon the situations and the shreds of evidence present themselves to objectify it through deterrence or prevention. The best for society is ensured in the process. Therefore, though we must update the penal laws to accommodate the best of the befitting laws for the crimes we must ensure that the purpose of the penal laws is upheld through their usage.

---

<sup>10</sup> [https://en.wikipedia.org/wiki/Yato\\_Dharmastato\\_Jayah](https://en.wikipedia.org/wiki/Yato_Dharmastato_Jayah)

## **Bibliography**

1. Studies in Jurisprudence & Legal Theory by DR. N.V. Paranjape, 9<sup>TH</sup> edition, Central Law Agency
2. Jurisprudence & Legal Theory by Dr V.D. Mahajan, 5<sup>TH</sup> edition, Eastern Book Company
3. Jurisprudence & Legal Theory by G.C. Venkata Subbarao, 9<sup>th</sup> edition, Eastern Book Company
4. Criminology & Penology (including Victimology) by Dr N.V. Paranjape, 2019 edition, Central Law Publications
5. The Code of Criminal Procedure, 1973
6. The Indian Penal Code, 1860

