

To the five kinds of punishments in the section, two more were added by subsequent enactments, viz., whipping (now abolished) and detention in reformatories.

1. Death.—Death punishment is awarded for murder in rarest of the rare cases.⁵⁸ It may be awarded as punishment for the following offences:—

- (1) Waging war against the Government of India (section 121).
- (2) Abetting mutiny actually committed (section 132).
- (3) Giving or fabricating false evidence upon which an innocent person suffers death (section 194).
- (4) Threatening or inducing any person to give false evidence- if innocent person is convicted and sentenced in consequence of such false evidence, with death (195A-Part II)
- (5) Murder (section 302).
- (6) Abetment of suicide of a minor, or an insane or an intoxicated person (section 305).
- (7) Attempt to murder by life convicts (section 307-Part II)
- (8) Kidnapping for ransom, etc. (section 364A)
- (9) Causing death or resulting in persistent vegetative state of rape victim (section 376A)
- (10) Repeat offenders of offences punishable under section 376 or section 376A or section 376D (section 376E)
- (11) Dacoity accompanied with murder (section 396).
- (12) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (section 307). [For the detailed discussion on Death Penalty See Comments under [section 302 IPC](#)].

In addition to this, Death penalty can be imposed by virtue of [section 34](#), [149](#),¹⁰⁹ and [120B](#) of [IPC](#).

2. Imprisonment for life is now substituted for transportation. "Imprisonment for life" in the Code means "rigorous imprisonment for life" and not "simple imprisonment for life".⁵⁹

3. Imprisonment.—Imprisonment is of two kinds: (a) rigorous and (b) simple. In the case of rigorous imprisonment, the offender is put to hard labour such as grinding corn, digging earth, drawing water, cutting firewood, bowing wool, etc. In the case of simple imprisonment, the offender is confined to jail and is not put to any kind of work. Imposition of hard labour on prisoners undergoing rigorous imprisonment has been held to be legal.⁶⁰

The minimum term of imprisonment, however, is fixed in the following two cases: (1) If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, he is punished with imprisonment of not less than seven years (section 397).

(2) If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, he is punished with imprisonment of not less than seven years (section 398).

The [Criminal Law \(Amendment\) Act 2013](#) [Act No. 13 of 2013 w.e.f 2 April 2013] provides minimum punishment for the following offences:

- (1) Public servant disobeying direction under law- Imprisonment for a term, which shall not be less than six months. (section 166A)
- (2) Voluntarily causing grievous hurt by use of acid, etc.- Imprisonment for not less than ten years. (section 326A)
- (3) Outraging the modesty of a woman- Imprisonment of either description for a term which shall not be less than one year (section 354)
- (4) Assault or use of criminal force to woman with intent to disrobe- Imprisonment of not less than three years. (section 354B)
- (5) Voyeurism- Imprisonment of not less than one year. (section 354C)
- (6) Trafficking of person- Seven years [section 370(2)], ten years [sections 370(3), (4)], 14 years [section 370(5)],
- (7) Exploitation of a trafficked child- Imprisonment of not less than five years but which may extend to seven years and with fine. (section 370A)
- (8) Rape- Seven years [section 376(1)], ten years [section 376(2)].
- (9) Causing death or resulting in persistent vegetative state of victim- Imprisonment for a term which shall not be less than 20 years (section 376A)
- (10) Sexual intercourse by husband upon his wife during separation- Imprisonment of either description for a term which shall not be less than two years (section 376B)
- (11) Sexual intercourse by a person in authority- Imprisonment of either description for a term which shall not be less than five years. (section 376C)
- (12) Gang rape- Imprisonment for a term, which shall not be less than 20 years. (section 376D).

The Criminal Law (Amendment) Act, 2018 has further amended the [Indian Penal Code 1860](#). The Criminal Law (Amendment) Act, 2018 has increased the minimum sentence in section 376(1) from seven years to ten years. The 2018 Amendment Act has inserted sections 376AB, 376DA and 376DB which provide for enhanced punishment in certain aggravated forms of rape. Refer Chapter XVI *infra*.

An offender is punished with rigorous imprisonment without the alternative of simple imprisonment, in the cases of—

- (1) Giving or fabricating false evidence with intent to procure conviction of an offence, which is capital by this Code (section 194).
- (2) Rape (sections 376, 376A, 376AB, 376C, 376D, 376DA, 376DB and 376E)
- (3) House-trespass in order to the commission of an offence punishable with death (section 449).

The following offences are punishable with simple imprisonment only:—

- (1) Public servant unlawfully engaging in trade; or unlawfully buying or bidding for property (sections 168, 169).
- (2) A person absconding to avoid service of summons or other proceedings from a public servant or preventing service of summons or other proceedings, or preventing

publication thereof; or not attending in obedience to an order from a public servant (sections 172, 173, 174).

(3) Intentional omission to produce a document to a public servant by a person legally bound to produce such document; or intentional omission to give notice or information to a public servant by a person legally bound to give; or intentional omission to assist a public servant when bound by law to give assistance (sections 175, 176, 187).

(4) Refusing oath when duly required to take oath by a public servant; or refusing to answer a public servant authorised to question or refusing to sign any statement made by a person himself before a public servant (sections 178, 179, 180).

(5) Disobedience to an order duly promulgated by a public servant if such disobedience causes obstruction, annoyance, or injury (section 188).

(6) Escape from confinement negligently suffered by a public servant; or negligent omission to apprehend, or negligent sufferance of escape, on the part of a public servant in cases not otherwise provided for (sections 223, 225-A).

(7) Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (section 228).

(8) Continuance of nuisance after injunction to discontinue (section 291).

(9) Wrongful restraint (section 341).

(10) Defamation: printing or selling defamatory matter known to be so (sections 500, 501, 502).

(11) Uttering any word, or making any sound or gesture, with an intention to insult the modesty of a woman (section 509).

(12) Misconduct in a public place by a drunken person (section 510).^{61.}

[s 53.9] Imprisonment for the remainder of the Accused's natural life.—

As per the [Criminal Law \(Amendment\) Act, 2013](#),^{62.} the punishment for rape (section 376) is rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, *which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine*. In sections 370, 376(A), 376(D), 376(E) it is also specifically mentioned that 'Life' shall mean imprisonment for the remainder of that person's natural life. The Criminal Law (Amendment) Act, 2018 has increased the minimum sentence in section 376(1) from seven years to ten years as well as inserted sections 376AB, 376DA and 376DB which provide for enhanced punishment in certain aggravated forms of rape. Refer Chapter XVI *infra*.

Spending 13 and half years in jail does not mean that the petitioner has undergone a sentence for life.^{63.}

4. Forfeiture.—The punishment of absolute forfeiture of all property of the offender is now abolished. [Sections 61](#) and [62](#) of the [IPC, 1860](#) dealing with such forfeiture are repealed by Act XVI of 1921.

There are, however, three offences in which the offender is liable to forfeiture of specific property. They are sections 126, 127 and 169 of the Code.^{64.}

5. Fine.—Fine is the only punishment in the following cases:—

- (1) A person in charge of a merchant vessel, negligently allowing a deserter from the Army or Navy or Air Force to obtain concealment in such vessel, is liable to a fine not exceeding Rs. 500 (section 137).
- (2) The owner or occupier of land on which a riot is committed or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with a fine not exceeding Rs. 1,000 (section 154).
- (3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (section 155).
- (4) The agent or manager of such person under like circumstances (section 156).
- (5) False statements in connection with an election (section 171-G).
- (6) Illegal payments in connection with an election (section 171-H).
- (7) Failure to keep election accounts (section 171-I).
- (8) Voluntarily vitiating the atmosphere so as to render it noxious to the public health, is punishable with a fine up to Rs. 500 (section 278).
- (9) Obstructing a public way or line of navigation, is punishable with a fine not exceeding Rs. 200 (section 283).
- (10) Committing of a public nuisance not otherwise punishable is punishable with a fine not exceeding Rs. 200 (section 290).
- (11) Publication of a proposal regarding a lottery, is punishable with a fine not exceeding Rs. 1,000 (section 294-A).

Where the accused partners of a firm were acquitted on a charge under section 420 of making substantial gains for themselves and an appeal against their acquittal was decided against them 15 years after the acquittal, fine and not imprisonment was considered proper punishment.⁶⁵ Where the murder accused remained in prison for sometime and was on bail for 13 years, he was not committed to prison; a fine of Rs. 50,000 in addition to the imprisonment already undergone was imposed, he being a young man.⁶⁶ Where the accused along with others convicted under section 323 for six months' imprisonment had already undergone an imprisonment of one year and, looking at his good conduct inside jail and lest he should lose his service, he was given the benefit of [section 3 of the Probation of Offenders Act 1958](#) so to assure that his conviction should not affect his service.⁶⁷

[s 53.10] Rigorous and Simple imprisonment.—

[Section 53 of the IPC, 1860](#) defines five kinds of punishment which includes punishment for life and two other kinds of imprisonment, i.e., rigorous and simple imprisonment. Rigorous imprisonment is one which is required by law to be completed with hard labour. There are principally two categories of prisoners: (1) under trial prisoners and (2) convicted prisoners (Besides them there are those detained as preventive measure, and those undergoing detention for default of payment of fine). A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. However, the Jail officer who requires a prisoner

sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the Court.⁶⁸ Thus, while a person sentenced to simple imprisonment has the option of choosing to work, a person sentenced to rigorous imprisonment is required by law to undergo hard labour. The under trials are not required to work in Jail.⁶⁹ [Section 60 of the Indian Penal Code](#) confers power on a sentencing Court to direct that "such imprisonment shall be wholly rigorous or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple." The sentence of "imprisonment for life" tagged along with a number of offences delineated in the [IPC, 1860](#) is interpreted as "rigorous imprisonment for life" and not simple imprisonment.⁷⁰

Supreme Court Guidelines regarding employment of prisoners and wages.—

(1) It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.

(2) It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose.

(3) It is imperative that the prisoner should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. We direct each State to do so as early as possible.

(4) Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose we direct all the State Governments to fix the rate of such interim wages within six weeks from today and report to this Court of compliance of this direction.

(5) We recommend to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

[*State of Gujarat v Hon'ble High Court of Gujarat*.⁷¹]

[s 53.11] Rights of Convicts.—

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practise" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the [Constitution](#) guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment, likewise, even a convict is entitled to the precious right guaranteed by [Article 21 of the Constitution](#) that he shall not be deprived of his life or personal liberty except according to procedure established by law.⁷²

[s 53.12] Cases of Leniency.—

In a given situation, where it is demonstrated that during the pendency of the proceedings the accused has undergone a lot of suffering such as where the accused was in custody or for that matter, in situations where the accused is suspended and is on a subsistence allowance or where as a result of the prosecution the consequences have been so disastrous that the accused has suffered virtual ruination, these aspects alone would be valid justification on which a plea for leniency could be based. On the other hand, one needs to bear in mind that the consequences of criminal acts catch up with the accused particularly when the crimes are against the society the ethical concept of forgive and forget merely because the incident took place in the distant past will not hold good in a Court of Law.⁷³ Where there was acquittal in the same year in which the crime was committed but the acquittal was reversed after eight years and conviction and jail terms were awarded and appeal against this order was disposed of in the 20th year of the crime, the Supreme Court reduced the sentence to the period already undergone and imposed a fine which if not paid, the original sentence was to be restored.⁷⁴ Where the guilt of the accused under sections 406 and 120-B were established beyond all reasonable doubt, the Supreme Court did not interfere with their conviction. However, in view of the fact that the accused had undergone proceedings for a period of two decades, their sentence was reduced to one already undergone.⁷⁵ Where the accused was convicted for criminal conspiracy and breach of trust and about 48 years had elapsed since the accused was charged for the offences, keeping in view his advanced age he was sentenced to imprisonment till rising of the Court with a fine of Rs. 5,000.⁷⁶ Where a man of 20 was convicted under section 324 and sentenced to undergo imprisonment for four months whereas he had already undergone imprisonment of one year and two months, his sentence was reduced to one already undergone.⁷⁷ Where the accused were convicted under section 326 for causing grievous hurt to the victim, considering the lapse of about six years from the incident, accused not being habitual criminals or previous convicts and there being no misuse of liberty during bail, the sentence was reduced to the period already undergone with a fine of Rs. 5,000 each.⁷⁸ Where the accused convicted and sentenced under sections 379 and 411, were found to be the sole earning member of their families and they had no past criminal records, the Court directed that one year's rigorous imprisonment instead of two would meet the ends of justice.⁷⁹ Where the accused seeing his wife in a compromising position with a man assaulted both of them as a result of grave and sudden provocation resulting in the death of both, his conviction under section 304, Part II was upheld but the sentence of five years' R.I. was reduced to one years' R.I. with the recommendation that the State Government might remit such a portion of sentence as it deemed fit and proper.⁸⁰

[s 53.13] Offences against women.—

Where the accused had outraged the modesty of a woman, his conviction under section 354 was upheld but considering the lapse of eight years, it was not found desirable to send him back to jail to be in midst of hardened criminals. He was sentenced to sit in the Court of Judicial Magistrate First Class for five days continuously, during the entire working hours.⁸¹ Where the accused, in his late fifties, betraying the confidence of the prosecutrix committed rape on her, it was held that he deserved no sympathy. However, as the accused remained in jail for eight years, the Court took a liberal view and considering his age and helplessness sentenced him to the period for which he had already been in jail.⁸² Where the victim of rape belonged to a tribal (Bhilla) community and the act of the accused did not cast any serious stigma on the girl and she was married to a different person sometime after the incident by her father, it was held that sentence much below the minimum sentence prescribed could be inflicted on the accused.⁸³ Where the conviction and sentence of the accused

husband to rigorous imprisonment for six months under section 498-A was substituted with a fine of Rs. 6,000, taking into consideration the age, occupation and family conditions of the husband, it was held that though the appellate Court was justified in substituting the jail sentence, the Court ought not have awarded a modest fine. The fine was raised to Rs. 30,000.⁸⁴ Where a person was married in childhood and was subjected to a second marriage under the pressure exerted by his parents as well as the woman who became his second wife, it was held that a lesser sentence of six months instead two years' R.I. and a fine of Rs. 2,000 to the accused husband and imprisonment till the rising of the Court and a fine of Rs. 1,500 to the accused parents and the second wife in place of the original sentence of six months' R.I. and a fine of Rs. 1,000 would meet the ends of justice.⁸⁵

[s 53.14] Conversion of death sentence into life imprisonment.—

Where the accused, being dissatisfied with the partition of family property, committed ghastly murders of four members of his family and there was no evidence that the crime was pre-planned and the circumstances indicated that he was under the influence of some kind of extreme mental or emotional disturbance which impaired his capacity to appreciate criminality of his conduct, death sentence awarded to him was converted into imprisonment for life.⁸⁶ Where three accused persons conspired to kill the wife and two minor children of one of the accused but one of the accused was not a party to actual commission of murder and the part played by the other accused was not definitely proved, the sentence of death imposed on both the accused was commuted to that of life imprisonment. The death sentence of the main accused, the father, was not interfered with.⁸⁷ Where the accused shot his two younger brothers dead on a petty quarrel, as there was no pre-plan to commit murder, the death sentence awarded to the accused was altered into life imprisonment with a fine of Rs. 30,000.⁸⁸

[s 53.15] Award of compensation.—

Power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system.⁸⁹ The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other.⁹⁰

In the BMW Case, the Supreme Court directed the accused to pay an amount of Rs. 50 lakh to the Union of India which will be utilized within for providing compensation to the victims of motor accidents, where the vehicles owner, driver etc. could not be traced, like victims of hit and run cases.⁹¹ Where a doctor was convicted for an attempt to cause miscarriage and sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs. 5,000, the sentence of imprisonment was found to be excessive and was set aside but the fine was enhanced to Rs. 15,000 out of which, if realised Rs. 10,000 was to be paid to the mother of the deceased for the maintenance of the children of the deceased shown to be living with her.⁹² The accused, an agriculturist, assaulted his sister's husband with a knife giving a blow in his abdomen resulting in death. The accused was convicted and sentenced to imprisonment for life under section 302. However, on overall appraisal of material on record and the accused having no criminal antecedents, his conviction under section 302 was set aside and he

was convicted under section 304 and directed to undergo 10 years' R.I. But on special facts of the case an option was given to the accused to pay a fine of Rs. 40,000 in all and in default to undergo R.I. for seven years and, if the fine was paid within 12 weeks, jail sentence was to be reduced to three years' R.I. Out of the fine, if paid, Rs. 10,000 were to be given to the mother of the deceased and Rs. 30,000 utilised for the benefit of the three minor children of the deceased in sum of Rs. 10,000 each.⁹³ Where the accused caused a serious injury in the abdomen of a man and was convicted under section 307 but considering that he had a widowed mother and two children and was willing to compensate the victim substantially, sentence imposed upon him was modified into one of fine in the way of compensation of Rs. One lakh.⁹⁴ Where in a case under section 304, Part II the accused remained in custody for over a year after conviction by the High Court and also for sometime during investigation, the Apex Court reduced the sentence to the period already undergone but imposed a fine of Rs. 20,000 payable to the widow of the deceased as compensation.⁹⁵

[s 53.16] Reform and rehabilitation.—

Where the accused caused several incised injuries to a man, he was convicted under section 326 but as there was no previous enmity between the accused and the injured person and it was the first offence committed by him, besides 14 years had lapsed since the commission of the offence, he was given an opportunity to reform and rehabilitate in society and his sentence was reduced to the period already undergone.⁹⁶ Where the accused convicted under section 302 was only 15 years old at the time of offence and at the time of appeal he was over 30, he could not be sent to approved school or jail. His conviction was upheld but the sentence was quashed.⁹⁷

[s 53.17] Separate trial for child offender.—

One of the members of an unlawful assembly was of 13 years at the time of the incident. His trial was conducted along with other members who were not children. This was held to be illegal. The plea of child offender was not raised before the trial court or the High Court. The Supreme Court, therefore, confirmed the conviction but set aside the sentence imposed on him.⁹⁸

[s 53.18] Cases of no leniency.—

In a multiple murder case, it was argued that the accused had donated to the social organisations and that he was not a hardened criminal and not a menace to the society and at any rate by wiping him out the crime cannot be wiped out. The Supreme Court observed that the accused was involved in "organised criminal activity" and he had acquired social status through crime. The accused had no regard for the value of human life. It was held that there were no mitigating circumstances. The main cause of his conviction was illicit arrack business and brothel. The fact that for this reason he became the victim of police cruelty was also considered to be not a mitigating circumstance.⁹⁹ In a double murder case, the accused was awarded death sentence but the execution was postponed. It was held that pain, agony and horror suffered by the prisoner after he was informed about execution was no ground for substituting death sentence.¹⁰⁰ Where the accused constructed a water tank which collapsed due to use of low quality material resulting in the death of several persons and the accused was sentenced to the maximum of two years of R.I. provided under section 304A, it

was held that the sentence could not be reduced merely because the matter was more than seven years old and that it would also be a grave injustice to the victims of the crime.¹⁰¹ Where the accused formed an unlawful assembly with the common object of killing three members of a family and one of the accused killed all the three on the spot one after the other in few minutes while others caught hold of the victims, the sentence of life imprisonment awarded to them under sections 302/149 was confirmed but the High Court observed that it was a fit case to award the maximum penalty of death sentence as the accused had acted like a butcher in a slaughter house.¹⁰² Where the accused were convicted under section 328 r/w. section 34 for robbing a simple innocent lady of 50 years by administering a stupefying drug through sugarcane juice, the Court refused to take a lenient view and reduce the sentence.¹⁰³ Where the accused committed a high-handed and broad daylight robbery on a public road, the Court declined to take a lenient view.¹⁰⁴ Voluntary intoxication by itself neither absolves the offender of the consequences of his act nor does it makes him liable for lesser offence.¹⁰⁵ The mere fact that the accused inflicted a single injury resulting in death is not sufficient in itself to convert the offence from one under sections 300–304, Part II.¹⁰⁶ When the victim has sustained a grievous injury on a vital portion of the body and the injury is life-threatening imposition of sentence of six days only which was the period already undergone by the accused in confinement is too lenient. However, as the parties have forgotten their differences and are living peacefully since 25 years, the Court taking into consideration the aggravating as well as mitigating factors under the facts of this case, imposed a sentence of six months' R.I. and a fine of Rs. 25,000/- against the accused.¹⁰⁷

[s 53.19] No leniency—Offences against women.—

Where the accused committed rape on a woman and killed her and it was found that he had behaved like an animal, it was held that it was not a fit case for showing leniency.¹⁰⁸ Where in a case of bride burning, the mother-in-law of the victim was sentenced to life imprisonment, the Supreme Court refused to show any leniency on the ground that the accused mother-in-law had remained in jail for more than a decade. The Court observed that it would be a travesty of justice if sympathy was shown when a cruel act like bride burning is committed. It is rather strange that the mother-in-law who herself is a woman should resort to killing another woman. Undue sympathy would be harmful to the cause of justice.¹⁰⁹ Where the accused himself killed his wife by burning and made his two children motherless, no lenient view could be taken on the ground that he had two children.¹¹⁰

[s 53.20] Enhancement of sentence.—

Where in a group clash due to old enmity, the accused killed ten persons of a community indiscriminately within a span of two hours and accused took the leading part, sentence of life imprisonment imposed upon him was enhanced to death penalty in the facts and circumstances of the case but life imprisonment awarded to the co-accused under sections 302/149 was confirmed.¹¹¹

[s 53.21] Guidelines for sentencing policy.—

Currently, India does not have a structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the Courts have framed certain guidelines in the matter of imposition of sentence. The Courts will have to take into account certain principles while exercising their wide discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender.¹¹² Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime.¹¹³ Law regulates social interests, arbitrates conflicting claims and demand. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the Courts are required to mould the sentencing system to meet the challenges.¹¹⁴

The principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence.¹¹⁵ An offence, which affects the morale of the society, should be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused and the victim although may not be wholly irrelevant, should be eschewed in a case of this nature (abduction and rape of minor), particularly when Parliament itself has laid down minimum sentence.

One of the principles that the judiciary had all along kept in its mind that rape being a violation with violence of the private person of a woman causes mental scar, thus, not only a physical injury but also a deep sense of some deathless shame is also inflicted.¹¹⁶

The Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The Courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance.¹¹⁷

6. Whipping.—This form of punishment is now abolished.

7. Detention in reformatories.—Juvenile offenders sentenced to imprisonment may be sentenced to, and detained in, a Reformatory School for a period of three–seven years.¹¹⁸

[s 53.22] Detention during trial.—

Every confinement of a person and every restraint of the liberty of a free man is imprisonment. Thus, "imprisonment" would include under trial detention. "Under trial detention of a prisoner is undoubtedly an imprisonment."¹¹⁹

[s 53.23] Postponement of sentence.—

Where all the members of the family of the deceased were convicted and nobody was left to take care of his daughter, the Court upheld the sentence of the daughter's