believe the truth of the statement he made. The accused must prove by preponderance of probability that there was good faith on his part. The accused also should show that there was no malice on his part, that is to say, that there was no ill-will or spite towards the person against whom he made the imputation. What must ultimately be decided is the honesty of the accused in publishing the words complained of. So also the accused are not entitled to exception 9 of section 499, IPC, 1860 merely on the reason that the publications were not made in good faith.[335.]

Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code emphasizes due care and attention in relation to the good faith. In the General Clauses Act emphasis is laid on honesty.[336.] The meaning of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. So, before a person proposes to make an imputation, he must first make an enquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make believe show for an enquiry. The enquiry expected of him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real truth of the imputation. If he does not do so he cannot claim that what he did was bona fide i.e. done in good faith. Thus, a contemner, if he is to establish "good faith" has to say that he conducted a reasonable and proper enquiry before making an imputation.[337.] The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. 'Good faith' requires not logical infallibility but due care and attention.[338.]

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331. *Re: SK Sundaram*, AIR 2001 SC 2374 [LNIND 2000 KER 575] : (2001) 2 SCC 171 [LNIND 2000 SC 1889] .

332. *Harbhajan Singh v State of Punjab*, AIR 1966 SC 97 [LNIND 1965 SC 65] : 1966 Cr LJ 82 .

333. Section 79 IPC, 1860.

334. *Dogar Singh v Shobha Gupta*, 1998 Cr LJ 1541 (P&H).

335. *Damodra Shenoi v Public Prosecutor, Ernakulam*, 1989 Cr LJ 2398 at 2400 (Ker). A declaration in newspapers 2½ months; after selling land by registered sale deed that the sale was under compulsion was held to be not made in good faith. The defence of exception 9 to section 499 (defamation) was not available. *P Swaminathan v Lakshmanan*, 1992 Cr LJ 990 (Mad).

336. *R K Mohammed Ubaidullah v Hajee C Abdul Wahab*, AIR 2001 SC 1658 [LNIND 2000 SC 924] : (2000) 6 SCC 402 [LNIND 2000 SC 924] See *Assistant Commissioner Anti Evasion Commercial Taxes Bharatpur v Amtek India Ltd*, (2007) 11 SCC 407 [LNIND 2007 SC 210] : JT 2007 (4) SC 297 [LNIND 2007 SC 210] for definition of "good faith" in various enactments.

337. *In the matter of RKaruppan*, 2004 Cr LJ 4284 (Mad)(FB).

338. *State of Orissa v Bhagaban Barik*, AIR 1987 SC 1265 [LNIND 1987 SC 366] : (1987) 2 SCC 498 [LNIND 1987 SC 366] ; *Chaman Lal v State of Punjab*, AIR 1970 SC 1372 [LNIND 1970 SC 106] : 1970 Cr LJ 1266 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

339.[[s 52A] "Harbour."

Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]

COMMENT—

There are two hurdles in the way to adopt the IPC, 1860 definition of the word "harbour" as for TADA. First is that TADA permits reliance to be made only on the definitions included in the Procedure Code and not on the definitions in the IPC, 1860. Second is, the word "harbour" as such has not been used in the Procedure Code and hence, the question of side-stepping to Penal Code definitions does not arise. Sections 136 and 312 of IPC, 1860 are the provisions incorporating two of the offences involving "harbour" in which the common words used are "whoever knowing or having reason to believe. Another offence in the Penal Code involving "harbour" is section 157 wherein also the words "whoever harbours knowing that such person etc." are available. It was contended that *mens rea* is explicitly indicated in the said provisions in the Penal Code whereas no such indication is made in section 3(4) of TADA and therefore, the element of *mens rea* must be deemed to have been excluded from the scope of section 3(4) of TADA. The word "harbours" used in TADA must be understood in its ordinary meaning as for penal provisions.[340.]

339. Ins. by Act 8 of 1942, section 2 (w.e.f. 14-2-1942).

340. *Kalpnath Rai v State*, AIR 1998 SC 201 [LNIND 1997 SC 1396] : (1997) 8 SCC 732 .

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THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 53] "Punishments.".

The punishments to which offenders are liable under the provisions of this Code are—

First.—Death;

[1] **[Secondly.—Imprisonment for life;]**

[2] **[***]**

Fourthly.—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly.—Forfeiture of property;

Sixthly.—Fine.

COMMENT—

The object of punishment in the scheme of modern social defence is correction of the wrongdoer and not wrecking gratuitous punitive vengeance on the criminal. Some attempts have been made to modernise our penal system through piecemeal legislation at best for the first offenders, the children and the juvenile delinquents example the Probation of Offenders Act 1958, the Juvenile Justice (Care and Protection of Children) Act 2000, Juvenile Justice (Care and Protection of Children) Act, 2015 etc. In the Indian Penal Code, there is no scope for individualising the punishment; rather these five forms of punishment have to be doled out to the offenders irrespective of their psycho-social problems and needs of individual offenders. Commenting on this unhappy aspect of our penal system *Krishna iyer, J,* observed in *Shivaji's* case'.[3]

> Two men in their twenties thus stand convicted of murder and have to suffer imprisonment for life because the punitive strategy of our Penal Code does not sufficiently reflect the modern trends in correctional treatment and personalised sentencing. When accused persons are of tender age then even in a murder case it is not desirable to send them beyond the high prison walls and forget all about their correction and eventual reformation.

In *Inder Singh's* case[4] the Supreme Court issued directions to the State Government to see that the young accused of the case are not given any degrading work and they are given the benefit of liberal parole every year if their behaviour shows responsibility and trustworthiness. Moreover, the Sessions Judge was directed to make jail visits to ensure compliance with these directions.

[s 53.1] Object of Punishment.—

One of the prime objectives of criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and

the manner in which the crime is done.[5.] Undue sympathy by means of imposing inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law.[6.] The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.[7.] The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal.[8.]

[s 53.2] Different Approaches.—

Punishment in criminal cases is both punitive and reformative. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. On the commission of crime, three types of reactions may generate; the traditional reaction of universal nature which is termed as punitive approach. It regards the criminal as a notoriously dangerous person who must be inflicted severe punishment to protect the society from his criminal assaults. The other approach is the therapeutic approach. It regards the criminal as a sick person requiring treatment, while the third is the preventive approach, which seeks to eliminate those conditions from the society, which were responsible for crime causation. Under the punitive approach, the rationalisation of punishment is based on retributive and utilitarian theories. Deterrent theory, which is also part of the punitive approach, proceeds on the basis that the punishment should act as a deterrent not only to the offender, but also to others in the community. The therapeutic approach aims at curing the criminal tendencies, which were the product of a diseased psychology. Therapeutic approach has since been treated as an effective method of punishment, which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that in spite of having committed a crime, may be a heinous crime, he should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was under this theory that this Court in a stream of decisions, projected the need for prison reforms, the need to acknowledge the vital fact that the prisoner, after being lodged in jail, does not lose his fundamental rights or basic human rights and that he must be treated with compassion and sympathy.[9.] Imposing a hard punishment on the accused serves a limited purpose, but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard.[10.] In *Dhannajoy Chatterjee v State of WB,*[11.] the Supreme Court has observed that shockingly large number of criminals go unpunished, thereby increasingly encouraging the criminals and ultimately making justice suffer by weakening the system's credibility. Realising that it is not the brutality of punishment but its surety that serves as a greater deterrent, our Supreme Court held

that a barbaric crime does not have to be visited with a barbaric penalty such as public hanging which will be clearly violative of Article 21 of the Constitution.[12.] With regards the question of punishment, it should be noted that punishment in one matter cannot be the guiding factor for punishment in another. Punishment has a co-relation with facts and in each case where punishment is imposed, the same must be the resultant effect of the acts complained of. More serious the violation, more severe is the punishment and that has been the accepted norm, in matters though, however, within the prescribed limits.[13.]

[s 53.3] Reformation Theory.—

The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being.[14.] Theory of reformation through punishment is grounded on the sublime philosophy that every man is born good but circumstances transform him into a criminal. The aphorism that "if every saint has a past every sinner has a future" is a tested philosophy concerning human life. *VR Krishna Iyer, J,* has taken pains to ornately fresco the reformative profile of the principles of sentencing in *Mohammad Giasuddin v State of AP*.[15.] Reformation should hence be the dominant objective of a punishment and during incarceration, every effort should be made to recreate the good man out of convicted prisoner. An assurance to him that his hard labour would eventually snowball into a handsome saving for his own rehabilitation would help him to get stripped of the moroseness and desperation in his mind while toiling with the rigours of hard labour during the period of his jail life. Thus, reformation and rehabilitation of a prisoner are of great public policy. Hence, they serve a public purpose.[16.] Punishment is also to reform such wrongdoers not to commit such offence in future.[17.]

[s 53.4] Deterrence.—

Deterrence is one of the vital considerations of punishment. Law demands that the offender should be adequately punished for the crime, so that it can deter the offender and other persons from committing similar offences. Nature and circumstances of the offence; the need for the sentence imposed to reflect the seriousness of the offence; to afford adequate deterrence to the conduct and to protect the public from such crimes are certain factors to be considered while imposing the sentence.[18.] Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence built in the sentencing system.[19.] For instance, a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. However, an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence.[20.] Protection of society and deterring the criminal is the avowed object of law and is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crimes like rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. To show mercy in the case of such a heinous crime would be a travesty of justice.[21.] To give a lesser punishment to the appellants would be to render the justice system of this country suspect. The common man will lose

faith in the Courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon.[22.] Punishment to an accused in criminal jurisprudence is not merely to punish the wrongdoer but also to strike warning to those who are in the same sphere of crime or to those intending to join in such crime.[23.]

[s 53.5] Principles of sentencing.—

Sentencing is an important task in the matters of crime. There is no straitjacket formula for sentencing an accused on proof of crime. In practice, there is much variance in the matter of sentencing. In many countries, there are laws prescribing sentencing guidelines, but there is no statutory sentencing policy in India.[24.] The Indian Penal Code provides discretion to Indian Judges while awarding the sentence.[25.] Courts have wide discretion in awarding sentence within the statutory limits.[26.] The Courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction.[27.] There are many philosophies behind sentencing justifying penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Anyone or a combination thereof can be the goal of sentencing. However, when it comes to sentencing a person for committing a heinous crime, the deterrence theory as a rationale for punishing the offender becomes more relevant. In such cases, the role of mercy, forgiveness and compassion becomes secondary and while determining the quantum of sentence, discretion lies with the Court. While exercising such a discretion, the Court has to govern itself by reason and fair play, and discretion is not to be exercised according to whim and caprice. It is the duty of the Court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. While considering as to what would be the appropriate quantum of imprisonment, the Court is empowered to take into consideration mitigating circumstances, as well as aggravating circumstances.[28.] What sentence would meet the ends of justice depends on the facts and circumstances of each case and the Court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.[29.] The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice, sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.[30.] Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.[31.] The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence.

As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The Court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.[32.] Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.[33.] Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every Court to award proper sentence keeping in mind the nature of the offence and the manner in which it was executed or committed etc. Thus, it is evident that Criminal Law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society.[34.] An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging 'potential criminals'. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court.[35.]

[s 53.6] Factors to be considered.—

These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

(a) Motive or previous enmity;

(b) Whether the incident had taken place on the spur of the moment;

(c) The intention/knowledge of the accused while inflicting the blow or injury;

(d) Whether the death ensued instantaneously or the victim died after several days;

(e) The gravity, dimension and nature of injury;

(f) The age and general health condition of the accused;

(g) Whether the injury was caused without pre-meditation in a sudden fight;

(h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;

(i) The criminal background and adverse history of the accused;

(j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

(k) Number of other criminal cases pending against the accused;

(l) Incident occurred within the family members or close relations;

(m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the Court. The endeavour of the Court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.[36.] The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.[37.]

[s 53.7] Judicial Discretion:[38.] Cases.—

A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences, only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly.[39.] In case where for an offence, maximum imprisonment is prescribed and there is no provision for minimum imprisonment, the Court can exercise wide discretion imposing any imprisonment which may be from one day (or even till the rising of the court) to ten years/life.[40.] However, the Courts will have to take into account certain principles while exercising their 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.[41.] Though punishment is the discretion of the Court, yet it must be exercised judicially and where circumstances call for a deterrent punishment, it ought to be awarded in an appropriate case.[42.] Thus where the accused, a young man of 22 committed multiple murders for sheer gain in a most cruel, callous and fiendish fashion, there was no way to show him any mercy as it was rarest of the rare cases where a sentence of death was fully justified.[43.] In exercising this discretion, the Court must consider the gravity of the offence, the mitigating or the extenuating circumstances of the case which may justify the award of the lesser or maximum sentence.[44.] Where the accused was a youth of 19, the Supreme Court while upholding conviction under section 304-Part I, Indian Penal Code, 1860, (IPC, 1860) reduced his sentence to the period already undergone which was 18 and a half months in the instant case. The accused, a Government servant, who will lose pensionary benefits due to conviction, deserves to be treated leniently.

The Supreme Court has laid down that in cases of death in custody on account of third degree methods, deterrent punishment should be awarded.[45.] Where certain police officials, who took a man illegally in their custody and gave him beating due to which he

died, were convicted under section 342, it was held that the facts that one of the accused was recipient of a medal from the President for saving a life, was awarded Rs. 5,000 by the State Government also and was suffering from T.B. and the other accused had acted on the direction of his superior, were not mitigating circumstances and the accused were liable to be punished with the maximum sentence.[46.]

Where due to dire poverty the accused killed his ailing wife, as he could not provide money for her operation and thereafter killed his two children, as they would be neglected after their mother's death, it was held the accused deserved to be awarded life imprisonment and not capital punishment.[47.] Where the murder in question showed signs of ruthless, unrelenting and determined vindictiveness and though the accused was 55 at the time of occurrence and 70 at the time of this appeal, the Supreme Court did not think it necessary to modify his sentence of life imprisonment.[48.] Similarly, where murders were committed for gain, the Supreme Court refused to interfere with death sentence only because the condemned prisoners were very young and their wives and children and aged parents were dependent on them. Such considerations, the Court said, are present in most cases.[49.] Where, for the offence of dacoity under section 395, the trial Court awarded three years' R.I., the High Court acquitted the offenders, but the Supreme Court restored the conviction after a long gap during which they got married and had resumed normal life, the period already undergone was considered to be sufficient, but a fine of Rs. 3,000 was imposed on each of them.[50.]

Where a conviction under section 16I, IPC, 1860 read with section 5(2) of the Prevention of Corruption Act, 1988 was confirmed, the Gujarat High Court modified the sentence of R.I. for one year and ordered that the appellant shall undergo sentence of R.I. for six months only. This was done in view of his age of 60 years and a number of illnesses he was suffering from.[51.] The accused had been out of job for nearly 16 years and had undergone the trial for a number of years. He was 65 years old but had received no pension and had a large family to maintain. Hence, the Supreme Court while confirming the conviction, reduced the sentence of one year R.I. each under section 161 and the Prevention of Corruption Act to 15 days R.I. on each count. The sentence of fine was however confirmed.[52.] Where the accused had accepted a very small amount of Rs. 30 as bribe about 16 years back and underwent the agony of trial for a long time and had to support his family, he had been in jail for some time during trial, considering these facts his sentence of imprisonment was reduced from three months R.I. to the period already undergone.[53.]

Imposition of proper and appropriate sentence is bounded obligation and duty of the Court. The endeavour of the Court must be to ensure that the accused received appropriate sentence. The sentence must be accorded to the gravity of the offence.[54.]

[s 53.8] Minimum Sentence.—

In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record "adequate and special reasons" in the judgment and not fanciful reasons, which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated.[55.] Mere absence of provisions for minimum sentence is no reason or justification to treat the offence under the Act (NDPS) as any less serious.[56.]

For the offence of murder, minimum sentence is 'life imprisonment'. Thus, the High Court cannot modify the sentence of life imprisonment awarded by the Trial Court to the one already undergone.[57.]