

Death penalty in India

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Manifest Pedagogy:

Death Penalty has been an issue in news for a long time now. The case related to assassins of Rajiv Gandhi made the issue prominent. It needs to be studied from three dimensions

1. Polity aspects of Death Penalty Mercy petition and Clemency powers
2. Social aspects analysis pros and cons
3. Ethical issues involved in it.

In news

The Supreme Court ruling on the death penalty

Placing it in the syllabus

Society

Static dimensions

- What is the Death penalty / Capital punishment?
- Pros and cons of the Death penalty

Current dimension

- Key Highlights of the Supreme Court verdict on the death penalty

Content

What is the Death penalty / Capital punishment?

It is the practice of executing someone as punishment for a specific crime after a proper legal trial.

Pros and cons of the Death penalty

Following are the arguments in favor and against of death penalty/capital punishment;

Retribution: The real justice requires people to suffer for their wrongdoing, and to suffer in a way appropriate for the crime. Each criminal should get what their crime deserves and in the case of a murderer what their crime deserves is death.

According to Justice A.S Anand and N.P Singh, the measure of punishment in a given case must deepen upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. The imposition of appropriate punishment is the manner in which the courts respond to the country's cry for justice against the criminals. Justice demands that courts should impose punishment benefiting the crime so that the courts reflect public adherence of the crime.

Against: But it is said that **Capital punishment is vengeance rather than retribution** and, as such, is a morally dubious concept. And the anticipatory suffering of the criminal, who may be kept on death row for many years, makes the punishment more severe than just depriving the life of the criminal

Deterrence: Deterrence is most effective when the punishment happens soon after the crime – to make an analogy, a child learns not to put their finger in the fire, because the consequence is instant pain.

But some argue against deterrence in the following ways;

Against: The statistical evidence doesn't confirm that deterrence works in preventing crimes. Some of those executed may not have been capable of being deterred because of mental illness or defect.

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deterred because of mental illness or defect. No-one knows whether the death penalty deters more than life imprisonment

Rehabilitation: Capital punishment, of course, does not rehabilitate the prisoner and bring them back to society. But there are many examples of people condemned to death taking the opportunity to repent, express remorse, and very often experience deep spiritual rehabilitation from time to time before execution. Thomas Aquinas noted that by accepting the punishment of death, the offender was able to expiate his evil deeds and so escape punishment in the next life.

Against: Prevention of re-offending. There is no doubt that those who are executed are unable to commit additional crimes. Many people do not believe that this is sufficient justification for taking human life and argue that there are other ways of ensuring that offenders do not re-offend, such as life imprisonment without parole. Although there have been cases of persons escaping from prison and killing again, these are extremely rare.

But some people don't believe that life imprisonment without parole protects society adequately. The offender may no longer be a danger to the public, but he remains a danger to prison staff and other inmates. The execution would remove that danger.

Closure and vindication: It is often argued that the death penalty provides the family of victims with closure.

Against: This is a rather narrow argument, as each family reacts differently. Since some families do not feel that another death will bring closure, there is no justification for the death penalty as a whole in the argument.

The incentive to help Police: In most countries, plea bargaining is used. It is the process by which a criminal receives a reduced sentence in exchange for providing assistance to police. Where the possible sentence is death,

the prisoner has the strongest possible incentive to try to reduce his sentence, even to life imprisonment without the possibility of parole, thus giving the police a useful tool.

Against: This is a very weak justification for the death penalty and is rather similar to arguments that torture is justified as it would be a useful tool for the police.

Key Highlights of Supreme Court verdict on the death penalty(for Mentally ill)

The judgment came in a case of a double murder of minor girls, both aged below nine, by their neighbour in 1999.

- The Supreme Court held that Severe mental illness in a condemned person post his conviction is a factor for commuting the death penalty. The convict from Maharashtra had raised the plea of post-conviction illness. The court commuted his death penalty to life without remission, saying he was still a threat to society.
- The supreme court held that mental illness formed post-conviction deprived the death row prisoner of his ability to understand the implications of his actions and the consequences. It said in this situation, the execution of such a person would lower the majesty of the law.
- A bench of justices N.V. Ramana, Mohan M. Shantanagoudar and Indira Banerjee reasoned their judgment and said if the accused is not able to understand the impact and purpose of his execution because of his disability, the *raison d'être* for the execution itself collapses.
- The court issued guidelines for determining post-conviction mental illness. It did not want convicts to exploit the relief as a loophole to cheat the hangman.
- The court said that the assessment of the disability should be done by a multidisciplinary team of qualified professionals (medical practitioners and

criminologists), including professionals with expertise in the particular mental illness of an accused.

- The court even stated that it would be up to the convict to prove with clear evidence that he suffered from severe mental illness. He had to demonstrate active, residual or prodromal symptoms. The state could also offer evidence to rebut the claim.
- The court said that in appropriate cases, the court could set up panels of experts.