

SC Judgment on the death penalty

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In News: Recently, the Supreme Court (SC) commuted the death sentence of a man, convicted of the rape and murder of a seven-year-old girl, to life imprisonment.

Placing it in the syllabus: Polity

Static dimensions:

- What is it about?
- Evolution of death Penalty
- Present Status of Death Penalty in India
- Previous SC judgments Related to Death Penalty

Current Dimensions:

- Recent Supreme Court Observation
- Arguments For and Against Death Penalty
- Law Commission Recommendations
- Way Forward

Content:

What is Death Penalty ?

- **Death penalty or capital punishment** is the **highest degree of punishment** that **can be awarded** to an **individual under specified penal law** in force.
- It is a **legally backed instrument** used by the state to take an **individual's life**.
- It has been in existence since the inception of the State itself.

How did the death penalty evolve?

- India retained the 1861 Penal Code at independence in 1947, which provided for the death penalty for murder

- During the first five years after the Constitution was made, the death penalty remained as the normal punishment for murder.
- It was changed in 1955 when discretion was conferred on sessions judges to award either of the two sentences prescribed for murder, capital punishment, or life imprisonment.
- Accordingly, Cr. P.C. was amended in 1973 by which Parliament directed that special reasons shall be shown if the Sessions Judge imposed the death penalty on the convicted person.
- All the death penalties in India are carried out by hanging.
- Under the 1950 Army Act, both hanging and shooting are listed in the military court-martial system as official methods of execution.

Status of Death Penalty in the Indian Context-

- As **per Section 354 (3) of the Cr PC, 1973** the courts are required to state reasons in writing for awarding the maximum penalty.
- The situation has been reversed and a life sentence is a rule and the death penalty an exception in capital offenses.
- Moreover, despite a global moratorium against the death penalty by the United Nation, India retains it.
- India is of the view that allowing criminals guilty of having committed intentional, cold-blooded, deliberate, and brutal murders to escape with a lesser punishment will deprive the law of its effectiveness and result in a travesty of justice.
- In India as per official statistics, 720 executions have taken place in India after it became independent in the year 1947, which is a minuscule fraction of the people who were awarded the death penalty by the trial courts.
- In the majority of the cases, death was commuted to life

imprisonment and some were acquitted by the higher courts.

What are the SC's Previous Rulings on the Death Penalty?

- **Bachan Singh case (1980)**– The SC ruled that the death penalty could be imposed only in the **rarest of rare cases** in which the alternative sentence of life is unquestionably foreclosed. The trial courts shall not only examine the gravity of the offense but also the condition and the reformability of the accused. However, the Court **refused to declare the death penalty as unconstitutional.**
- **Ravji vs State of Rajasthan (1995)**- The Supreme Court said that it is the nature of the crime and not the criminal which is germane for deciding the punishment which is diametrically opposite to what was laid down in *Bachan Singh*.
- **Machhi Singh Vs. State of Punjab (1983)** -It provided exceptions to the rarest of rare rule and death penalty can be invoked when
 - Murder is committed in extremely brutal manner so as to arouse extreme indignation of the community
 - Murder is committed by a motive which evinces total depravity and meanness
 - The crime is enormous in proportion.
- An analysis of the possible reasons to avert the death penalty is reflected in a series of recent verdicts such as *Lochan Shrivastava vs State of Chhattisgarh* (2021) and *Bhagchandra vs State of Madhya Pradesh* (2021). These reasons might include socio-economic backwardness, mental health, heredity, parenting, socialization, education, etc.

What are the arguments for capital punishment?

- **Retribution**
 - o One of the key ideas of retribution is that people should

get what they deserve in proportion to the severity of their crime.

o According to this argument, real justice requires people to suffer for their wrongdoing and to suffer in a manner appropriate to the crime.

- **Deterrence**

o The argument that executing convicted murderers will deter would-be murderers from killing people is often used to support capital punishment.

o It is often argued that the death sentence provides closure for the families of victims.

What is the need for revisiting the provision of capital punishment?

- **Overuse and misuse**– Whenever the Court tries to dilute the harshness of penal provisions, the instrumentalities of the state (including the police and court) continue to overuse or misuse the provisions. The SC endorsed the validity of the sedition law (Section 124A of IPC) that it could be invoked only when there is an incitement to violence but many were booked for mere words, innocent tweets or harmless jokes.
- **Deterrence Ineffective**: The **statistical evidence doesn't confirm that deterrence works**. Some of those executed may not have been capable of being deterred because of mental illness or defect.
- **Affects the poor**– The numbers of the uneducated and the illiterate sentenced to death outweigh those who are educated and literate. In the Indian scenario, the unsatisfactory legal assistance and the lack of proper defense results in a conviction.
- **No Rehabilitation**: Capital punishment doesn't rehabilitate the prisoner and return them to society.
- **Right to life**– The Court may have to revisit Bachan

Singh itself as it refused to declare the death penalty as violative of the right to life envisaged under Article 21 of the Constitution.

- **Global practice**– According to the **Amnesty Report of 2021**, 108 nations across the world have abolished the death penalty in law.
- **Judgmental error**– Death penalty needs to be abolished as judgmental error is quite frequent in India and the quality of adjudication is not ensured.
- **Difference in opinion of judges**– Executions depend overwhelmingly on the adjudicator's personal beliefs.

Recommendations by Law commission:

- A proposal for the scrapping of the death penalty was rejected by the Law Commission in its 35th report 1967.
- However, the Law Commission 2015, headed by **Justice A P Shah** proposed abolishing capital punishments. but made the proposal only to non-terrorism cases.
- According to the commission, India is one among few countries that still carry out executions. The other countries that practice executions include Iran, Iraq, Saudi Arabia, China. By the end of 2014, 98 countries had abolished death penalty.

Way Forward

Trial judges should not be swayed in favor of death penalty merely because of the **dreadful nature of the crime** and its harmful impact on society. They **should equally consider** the mitigating factors mitigating factors before arriving at a conclusion that the option of any other punishment than the capital one was foreclosed

Other options-

- These could include life imprisonment without remission or premature release, particularly while dealing with heinous crimes. These are midway approaches devised

through the delicate balancing of the judicial process in cases involving heinous crimes.

- The Supreme Court will have to **evolve a legal device for procurement** of a **comprehensive report** dealing with the **socio-economic and hereditary** backgrounds of the accused from experts in the fields of **social work, psychiatry, psychology, anthropology, etc.**
- There is a need to shift the focus from a **punishment-centric approach to a reform-centric approach** so that instead of being hardened, there is hope for a criminal to return and get absorbed in society.
- The Bench indicated the **need for mitigation experts** to assist trial courts in **reaching a correct conclusion** on whether one should be sent to the gallows or not.

Mould Your Thought

1. Capital punishment is a form of retributive justice, and its efficacy in reducing crime is debatable. Examine the need for capital punishment to be continued in India in this light.

Approach to the answer

- Write about capital punishment and retributive justice.
- Pros of Capital punishment
- Cons of Capital punishment (Is it really effective)
- Way forward