



SC on Death Penalty

For Prelims: Important Cases Related to Death Penalty, Provisions for Death Penalty, Article 21.

For Mains: Judiciary, Government Policies & Interventions, Issues Arising Out of Design & Implementation of Policies, Death penalty and Arguments Related to It.

Why 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.

- The judgment may **become a significant precedent to the anti-[death penalty](#) cause.**

What was SC's Ruling in the Current Case?

- SC commuted the death sentence to life imprisonment, with the rider that **he shall not be entitled to "premature release or remission** before undergoing actual imprisonment" for a period of 30 years.
- SC advised the trial judges that they **should not be swayed in favour of death penalty** merely because of the dreadful nature of the crime and its harmful impact on the society. They should **equally consider the mitigating factors in favour of life imprisonment.**
- SC referred to the **evolution of the principles of penology** and said that penology had grown to accommodate the philosophy of "preservation of human life".
 - **Penology** is a **sub-component of criminology that deals with the philosophy and practice of various societies** in their attempts to repress criminal activities, and satisfy public opinion via an appropriate treatment regime for persons convicted of criminal offences.
- SC noted that that **though capital punishment serves as a deterrent and a "response to the society's call for appropriate punishment in appropriate cases",**
 - The **principles of penology have "evolved to balance the other obligations of the society,** i.e., of preserving the human life, be it of accused, unless termination thereof is inevitable and is to serve the other societal causes and collective conscience of society".

What is a Death Penalty?

- Capital punishment, also called the death penalty, **is the execution of an offender sentenced to death after conviction by a court of law of a criminal offence.** It is the highest penalty awardable to an accused. Generally, it is awarded in extremely severe cases of murder, rapes, treason etc.
- The death penalty is **seen as the most suitable punishment and effective deterrent for the worst crimes.** Those who oppose it, however, see it as inhumane. Thus, the morality of the death penalty is debatable and many criminologists and socialists all across the globe, have been long demanding abolition of the death penalty.

What are the Arguments in Favour of the Death Penalty?

- **Retribution:** One of the key principles of retribution is that **people should get what they deserve** in proportion to the severity of their crime.
 - This argument states that real justice requires people to suffer for their wrongdoing and to suffer in a way appropriate for the crime.
- **Deterrence:** Capital punishment is often justified with the argument that by executing convicted murderers, we **will deter would-be murderers from killing people**.
 - It is often argued that the **death penalty provides closure for victims' families**.

What are the Arguments Against the Death Penalty?

- **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.
 - Death has been prescribed in rape cases since 2013 (Sec. 376A of IPC), still, rapes continue to happen and in fact, the brutality of rapes has increased manifold. This compels one to think of the death penalty is an effective deterrent to crime.
- **Execution of the Innocent:** The most common argument against capital punishment is that sooner or later, **innocent people may get killed, because of mistakes** or flaws in the justice system.
 - According to Amnesty International: As long as human justice remains fallible, the risk of **executing the innocent can never be eliminated**.
 - Death has been **abolished as a form of punishment in most of the developed countries**.
- **No Rehabilitation:** Capital punishment doesn't rehabilitate the prisoner and return them to society.

What is the Status of Death Penalty in the Indian Context?

- Prior to the [Criminal Procedure \(Amendment\) Act \(Cr PC\) of 1955](#), the death penalty was **the rule and life imprisonment an exception in India**.
 - Further, the courts were bound to give an explanation for awarding a lighter penalty than death for capital offences.
- After the amendment of 1955 **courts were at liberty to grant either death or life imprisonment**.
 - **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 the rule and death penalty an exception** in capital offences.
 - Moreover, despite a global moratorium against the death penalty by the **United Nation, India retains the death penalty**.
 - India is of 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 travesty of justice.
- In concurrence of this, a proposal for the **scrapping of the death penalty was rejected by the Law Commission** in its 35th report 1967.
- 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 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 on the Death Penalty?

- **Jagmohan Singh v. State of UP 1973 case:** SC held that according to [Article 21](#) deprivation of life is constitutionally permissible if that is done according to the **procedure established by law**.
 - Thus the death sentence imposed after a trial in accordance with legally established

procedures under Cr.PC and the **Indian Evidence Act 1872** is not unconstitutional under Article 21.

- **Rajendra Prasad v. State of UP 1979 case:** SC held that, if the murderous operation of a criminal jeopardizes social security in a persistent, planned and perilous fashion then his enjoyment of fundamental rights may be rightly annihilated.
- **Bachan Singh v. the State of Punjab 1980 case:** SC propounded the dictum of '**rarest of rare cases**' according to which death penalty is not to be awarded except in the 'rarest of rare cases' when the alternative option is unquestionably foreclosed.
 - Rarest of Rare Cases can be described:
 - When the murder is committed in an extremely brutal, ridiculous, diabolical, revolting, or reprehensible manner so as to awaken intense and extreme indignation of the community.
 - When total depravity and cruelty are the motives behind a murder.
- **Machhi Singh v. State of Punjab 1983 case:** The Supreme Court laid down certain considerations for determining whether a case falls under the category of rarest of rare cases or not.

What should be the Way Forward in Such Cases?

- Instead of merely enhancing punishment, **tackling crimes against women and children requires broader social reforms**, sustained governance efforts and strengthening investigative and reporting mechanisms.

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