



## SC's Reference on Capital Punishment

**For Prelims:** Capital Punishment, Indian Penal Code, Bachan Singh v/s State of Punjab

**For Mains:** Arguments in Favour and Against Death Penalty in India, SC's Reference on Capital Punishment

### Why in News?

Recently, the [Supreme Court \(SC\)](#) has referred to a larger Bench the issues relating to the norms for imposing the [Capital Sentence](#).

### What has the Court Said?

- The current referral of the three-judge [bench](#) of the Supreme Court to a five-judge bench **is based on an argument that the process of same-day sentencing** is hopelessly **tilted against the accused**.
- The Bench said that the **State is given an opportunity to present aggravating circumstances** against the accused throughout the duration of a trial.
- The accused, on the other hand, **is able to produce evidence showing mitigating circumstances** in their favour, only after their conviction.

### What are the Issues?

- There are **conflicting judgments on when and how the sentencing hearing must take place** mainly on whether it is necessary to hold the hearing on sentencing on a **subsequent day and not on the day of the conviction**.
- The issue pertains to giving **meaningful opportunity to those found guilty of a capital offence** to present mitigating factors and circumstances so that **they can better plead for a life term instead** of a death sentence.
- The issue arises from the legal requirement that whenever a court records a conviction, **it has to hold a separate hearing on the quantum** of sentence.

### What are the Legalities and Judgements?

- **Section 235** of the [Code of Criminal Procedure \(CrPC\)](#) says if the **accused is convicted**, the judge will hear the **accused on the question of sentence and then pass sentence**.
  - This process is significant **if the conviction is for an offence that entails either death or life imprisonment**.
- **Section 354(3)** says that when there is **death Punishment or imprisonment for life**, the judgment will have to state the reason for why the sentence was awarded.
- If the **sentence is death**, **"special reasons"** will have to be provided in the judgment.
- **In 1980**, the Supreme Court upheld the constitutionality of capital punishment in '[Bachan Singh v State of Punjab](#)' on the condition that the **punishment will be awarded in the "rarest of the rare" cases**.

- Crucially, the ruling also stressed that a separate sentencing hearing would be held, where a judge would be persuaded on why the death sentence need not be awarded.
- This position was reiterated in several subsequent rulings of the court, including in '**Mithu v State of Punjab**', a 1982 ruling by a five-judge Bench **that struck down mandatory death sentence** as it falls foul of the right of an accused to be heard before sentencing.

## What are the Views on Same-Day Sentencing?

- Even though a separate hearing on sentencing is practiced in all trials, **most judges do not adjourn the case to a future date** to go through this.
- As soon as the verdict of 'guilty' is pronounced, they ask counsel on both sides to argue on sentencing.
- There is a view that **such 'same-day' sentencing is inadequate and violates natural justice** as convicts do not get enough time to gather mitigating factors.
- In a series of judgments, the Supreme Court **has advocated that the sentencing hearing be done separately**, that is, at a future date after conviction.
- However, in a contradiction of sorts, several judgments have upheld the practice of 'same-day' sentencing.

## What is the likely Outcome?

- The Constitution Bench may lay down **comprehensive guidelines** on the manner in which sentencing **decisions can be arrived at**.
- The SC may make it **necessary for the trial court to get to know the accused better** before passing the sentence.
- The courts may **draft the help of psychologists and psychoanalytical experts**.
  - A study into the childhood experiences and upbringing of the accused, mental health history in the family and the likelihood of traumatic past experiences and other social and cultural factors **may be mandated to be part of the sentencing process**.
- This may mean that **trial courts will be better informed than now**, when only basic data such as educational and economic status are ascertained before a sentence is imposed.

## What is Capital Punishment?

- Capital Punishment stands for **the most severe form of punishment**. It is the punishment which is awarded for the **most heinous and grievous crimes against humanity**.
  - Certain offences under [Indian Penal Code](#), for which the offenders can be sentenced to punishment of death are:
    - Murder (Section 302)
    - Dacoity with murder (Section 396)
    - Criminal Conspiracy (Section 120B)
    - Waging war against the Government of India or attempting to do so (Section 121)
    - Abatement of mutiny (Section 132) and others.
- The term death penalty is sometimes **used interchangeably with capital punishment**, though imposition of the penalty is not always followed by execution, it can be [commuted into life imprisonment](#) or [pardoned by the President under Article 72 of Indian Constitution](#).

## Way Forward

- The hearings will effectively settle the debate on whether the fast-tracked hearings by trial courts awarding death sentences — in a matter of days in some cases — is legally tenable.
- The ruling could also **be a crucial step in raising the bar further in awarding** the death sentence.
- The focus should not only be on eliminating the criminal but also on elimination of the crime. The purpose of punishment in criminal law, if looked at from a wider angle and a broader perspective,

is to achieve the goals of an orderly society. There is a need to ensure the restoration of peace and prevent future occurrences of crimes by balancing the competing rights of the criminal and the victim.

### **UPSC Civil Services Examination Previous Year Question (PYQ)**

**Q.** Instances of President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time limit specified for the President to accept/reject such petitions? Analyse. **(2014)**

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