



Preventing Death Penalty

This editorial is based on “[A New Track for Capital Punishment Jurisprudence](#)” which was published in The Hindu on 07/05/2022. It talks about the need to avert death penalty and the current stand of Indian Judiciary on the same.

For Prelims: Important Cases Related to Death Penalty, Provisions for Death Penalty, IPC, CrPC,

For Mains: Death penalty and Arguments Related to it, Need to avert death penalty

A recent trend in the evolution of jurisprudence around the [death penalty \(capital punishment\) in India](#) may reset judicial thinking around sentencing and have long-term ramifications in the awarding of capital punishment.

Recently while dealing with appeals against confirmation of the death sentence, the [Supreme Court \(SC\) of India](#) has examined sentencing methodology from the perspective of mitigating circumstances more closely.

The [SC has also initiated a suo motu writ petition \(criminal\)](#) to delve deep into these issues on key aspects surrounding our understanding of death penalty sentencing.

This present trajectory of judicial thinking will reaffirm the fundamentals of the rarest of rare principle and lead a **new wave of thinking in the jurisprudence around capital punishment.**

What is a Death Penalty?

- A 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.
- Capital punishment in India has been limited to the **rarest of rare cases**- like **Section 121** (taking up arms against the state) and **Section 302** (murder) of the [Indian Penal Code 1860](#).
- The death penalty is seen as the most suitable punishment and effective deterrent for the worst crimes.

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.
- After the **amendment of 1955** courts were at **liberty to grant either death or life imprisonment.**
 - As per Section 354 (3) of the CrPC, 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.
- Capital punishment once delivered by the court of sessions (“sentencing court”) is required under law (CrPC) to be confirmed by the **jurisdictional High Court (“confirming court”)**.
- No death sentence imposed by a trial court can be executed unless the punishment is confirmed by the High Court too.

What are Rarest of the Rare Cases?

- 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.

Where does the Judiciary Stand in terms of Awarding Death Penalty?

What has the SC Held Regarding the Death Penalty?

- In the ***Bachan Singh vs State of Punjab (1980)*** the SC called for mitigating and aggravating circumstances to be balanced against each other and laid down the principle that the death penalty ought not to be awarded unless the alternative of life imprisonment is **“unquestionably foreclosed”**.
- In the case ***Mofil Khan vs State of Jharkhand (2021)***, SC held that the **“the State is under a duty to procure evidence to establish that there is no possibility of reformation and rehabilitation of the accused”**.

What are the Other Views?

- A report by the **National Law University, Delhi’s Project 39A** (earlier known as the “Centre on the Death Penalty”) titled **National Law University Delhi’s Project 39A found that there is no judicial uniformity or consistency when it comes to awarding the death sentence.**
- In the report titled **‘Death Penalty Sentencing in Trial Courts’** (authored by Project 39A), findings reported from a study of cases involving **death sentencing between 2000 and 2015** in Delhi, Maharashtra and Madhya Pradesh have showed that **courts have been lax in assessing the aspect of reformation** while undertaking the sentencing exercise.
- In ***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. This is **diametrically opposite to what was laid down in the Bachan Singh case.**
- In ***Machhi Singh vs State of Punjab (1983)***, the Court indicated that **inadequacy of other punishments could justify the death penalty.**

What Arguments have been Given in Favour of 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 wrong doing** 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.**
- **Closure:** It is often argued that the death penalty provides closure **for victims' families.**

Why is there a Need to Avert Death Penalty?

- **Against the ‘Theory of Punishment’:** In the system of criminal justice worldwide, underpinning the element of sentencing is the ‘Theory of Punishment’.

- It stipulates that there should be four elements of a systematic punishment imposed by the state:
 - The **protection** of society
 - The **deterrence** of criminality
 - The **rehabilitation** and reform of the criminal
 - The **retributive effect** for the victims and society.
- Capital punishment, in its very essence, **goes against the spirit of the 'Theory of Punishment'**, and by extension, natural justice.
 - People who oppose Capital punishment are of the view that **retribution is immoral**, and it is just a **sanitised form of vengeance**.
 - Capital punishment **doesn't rehabilitate the prisoner** and return them to society.
 - Some of those executed may **not have been capable of being deterred** because of mental illness or defect.
- **Preservation of Human Life:** Though capital punishment serves as 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.
- **Social Factors Against Capital Punishment:** 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 *Bhagchandrarao vs State of Madhya Pradesh (2021)***.
 - These reasons might include **socio-economic backwardness, mental health, heredity, parenting, socialisation, education**, etc.
- **Discriminatory towards One Section:** The **poor, rather than the rich, are often the ones sent to the gallows**.
 - The numbers of the uneducated and the **illiterate sentenced to death outweigh those who are educated** and literate.
 - Also, the **failure of the defence lawyer in highlighting the mitigating factors** that could lead to avoidance of capital punishment makes the legal assistance ineffective.
 - In India, the **legal assistance received by the poor** facing serious charges is **far from satisfactory**.

What can be the Way Forward?

- **Psycho-Social Analysis of the Accused:** It wouldn't be wrong to consider the domain of death sentencing underexplored in India.
 - The intervention of the Supreme Court in **framing guidelines around incorporation of a mitigation analysis and consideration of psycho-social reports** of the prisoner at the time of sentencing is timely and necessary.
 - The Indian Judiciary, in this context, also needs 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.

Strengthen the Doctrine of the Rarest of Rare: It is important to **strengthen the doctrine of the rarest of rare**, as laid down in the Bachan Singh case and reinstate fairness in the death penalty sentencing exercise.

- The Court, in Bachan Singh case abundantly implied that **no person is indubitably 'irreformable'**.
- **Ensuring Deterrence in its True Sense:** Deterrence is most effective when the punishment happens soon after the crime. The more the legal process distances the punishment from the crime - either in time, or certainty - the less effective a deterrent the punishment will probably be.
 - In this context, there is a need to **expedite investigations at the hands of a well trained and equipped police system** ably supported by **fast track trials** to reinforce the faith of the public in our legal system.
- **Bringing Social Reforms:** Instead of merely enhancing punishment, tackling crimes against women and children requires **broader social reforms, sustained governance efforts and strengthening investigative and reporting mechanisms**.

Drishti Mains Question

“In the Indian context, where judgmental error is quite frequent, what is required is a judicial abolition of death penalty”. Critically discuss.

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