



Mains Marathon

Day 37: "The death penalty is not about whether people deserve to die for the crimes they commit. The real question of capital punishment in this country is, do we deserve to kill?". Give your arguments. (150 words)

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Approach / Explanation / Answer

- Start your answer by giving a brief about the Death penalty and its status in India.
- Discuss the arguments against and in favour of death penalty.
- Conclude your answer by giving a way forward.

Answer:

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**.
- 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.

Arguments 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 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. **Closure:** It is often argued that the death penalty provides closure for victims' families.

Arguments against Death Penalty:

- **Against the 'Theory of Punishment':**
 - 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.
- **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:**
 - A number of recent judgments, like *Lochan Shrivastava v. State of Chhattisgarh* (2011) and *Bhagchandrabai v. State of Madhya Pradesh*, represent an analysis of the rationales that might justify avoiding the death penalty (2011). These may include parenting, socialization, education, mental health, genetics, socioeconomic disadvantage, and others.
- **Discriminatory towards One Section:** The poor, rather than the rich, are often the ones sent to the gallows.

Way Forward

- **Psycho-Social Analysis of the Accused:**
 - 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.
- **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.
- **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 with certainty - the less effective a deterrent the punishment will probably be.

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