



Reforming 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, a Bench of [Supreme Court \(SC\)](#) has agreed to **comprehensively examine procedures in death penalty cases** to ensure that judges who have to choose between life imprisonment and the death sentence have comprehensive sentencing information.

- Earlier, the SC had **raised concerns in the process of assessments of mitigating information** in death penalty cases.
- The court is undertaking an exercise to reform the procedures by which information necessary in a death penalty case is brought before courts. In doing so, the **Supreme Court is acknowledging concerns with the manner in which death penalty sentencing is being carried out.**
 - While the death penalty has been held to be constitutional, **the manner in which it has been administered has triggered accusations of unfairness and arbitrariness.**

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.

How are judges supposed to choose between life and death sentences?

- In **May 1980**, when the Supreme Court upheld the constitutional validity of the death penalty in **Bachan Singh's case**, **a framework was developed for future judges to follow when they had to choose** between life imprisonment and the death penalty.
- At the heart of that framework was the recognition that the legislature in the Criminal Procedure Code had made it clear that **life imprisonment would be the default punishment and judges would need to give "special reasons" if they wanted to impose the death sentence.**
- Through the 1980 framework — popularly but inaccurately known as the **"rarest of rare" framework** — the Supreme Court said that judges must consider both aggravating and mitigating factors concerning the crime and the accused when deciding if the death penalty is to be imposed.
- The judgment also made it clear that **life imprisonment as a sentence would have to be**

“unquestionably foreclosed” before judges imposed the death sentence.

- There was an indicative list of factors that the judgment identified as being relevant, but it was clear that it was not meant to be an exhaustive list.
- The Supreme Court has **repeatedly lamented the inconsistency in application of the Bachan Singh framework**. Similar concerns have been **expressed by the Law Commission of India (262nd Report)**.

What is Mitigation in Capital Cases?

- A criminal trial has two stages — **the guilt stage and the sentencing stage**.
 - Sentencing happens after the accused has been found guilty of the crime; this is the stage where punishment is determined. Therefore, anything presented or said during sentencing cannot be used to reverse or change the finding of guilt.
- It is a **fundamental tenet of criminal law that sentencing must be individualized**, i.e, in the process of determining punishment, the **judge must take into account individual circumstances of the accused**.
- Mitigation, also referred to as "mitigating factors" or "mitigating evidence," is evidence (information) the defense can present in the sentencing phase of a capital trial to provide reasons why the defendant should not receive a death sentence.
- The task of collecting such is not something lawyers are trained to do — that is the reason the American Bar Association's 2003 Guidelines for the Appointment and Performance of Defence Counsel in Death Penalty recognises the role of a mitigation specialist with a clearly defined role that goes beyond what lawyers can do.
- The SC judgments in *Santa Singh* (1976) and *Mohd Mannan* (2019) have recognised the interdisciplinary nature of such an exercise, and that **it requires professionals other than lawyers to collect such information**.

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.

Way Forward

- There must be a very high degree of fairness in a system that is interested in subjecting individuals to the experience of death row, and ultimately taking lives through the instrumentality of law. With that as the starting point, the criminal justice system needs to do all it can to ensure that systems

are created for procedural fairness.

- The **paths of reforming the death penalty on the one hand and abolishing it on the other, go alongside each other for a very long distance.** Every instance of engagement on reforming the death penalty throws light on the inherent unfairness of using the death penalty, especially in a system like ours.
- In India, the current position regarding death sentences is quite a balanced one. But the broad judicial discretion given to the court has resulted in an extremely uneven judgment in similar cases; this does not represent a good picture of the Indian Judiciary.
- The principle laid down in cases like Bachan Singh or Machhi Singh has to be strictly followed so that the person convicted for an offence of identical nature is awarded a punishment of an identical degree.

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