



## Raising the Bar on Capital Punishment

This editorial is based on [“Life and death: The Supreme Court’s initiative to raise the bar on capital punishment is welcome”](#) which was published in The Indian Express on 21/09/2022. It talks about scope of Capital Punishment in Indian Justice System and recent stand of Supreme Court of India on the same.

**For Prelims:** Capital Punishment, Indian Penal Code, Pardoning Power of President, Retribution, Deterrence, Bachan Singh v/s State of Punjab

**For Mains:** Arguments in Favour and Against Death Penalty in India, Major Cases Related to Capital Punishment in India

**Capital punishment**, is a **legal penalty** ordered by the Court against the person who has committed a certain crime that is prohibited by the law. In India, it is only given in the **rarest of the rare** cases as per the [Indian Penal Code](#) and [Code of Criminal Procedure](#).

Capital punishment is the most controversial penal practise debated highly all over the world and the word **‘Abolition of Death Penalty’** is one of the most discussed topics in [United Nation \(UN\)](#) where Death Penalty is considered as a violation of [Human Rights](#).

### What is Capital Punishment?

- **Capital Punishment** stands for 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](#).

### What are the Arguments in Favour of Death Penalty in India?

- **Retribution:** [Retribution](#) refers to the idea that **punishment is imposed because it is**

**deserved** and that the death penalty is necessary to ensure justice for the victims, their families, and/or society at large.

- In arguing for the death penalty, supporters sometimes mention that "**an eye for an eye**" is appropriate, the punishment should match the crime, and the penalty should be a moral response to the crime.
- **Procedure Established By Law:** [Article 21](#) of the Indian Constitution ensures the **Fundamental Right to life and liberty for all persons**.
  - It adds no person shall be deprived of his life or personal liberty **except according to procedure established by law**.
  - This has been legally construed to mean if there is a procedure, which is fair and valid, then the **state by framing a law can deprive a person of his life**.
- **Deterrence:** [Deterrence](#) is the most commonly expressed rationale for the death penalty. The essence of the theory is that "**when there are executions, violent crime decreases**".
  - That means, the **threat of being executed** in the future will be sufficient to cause a significant number of **people to refrain from committing a heinous crime** they may otherwise commit.
- **Safety and Welfare the Citizens:** A democratic nation like India relies on the state as a means of safety, security, and **enforcement of the faith of the public in the legal system**.
  - The [Preamble of the Indian Constitution](#) also refers to **Social justice**, so capital punishment is often defended on the ground that state has the moral obligation to safeguard its citizens' welfare and safety.

## What are the Arguments Against Death Penalty in India?

- **Deflecting From Purpose of Punishment:** Capital punishment **does not rehabilitate prisoners**, which is the **very purpose of punishment**.
  - The accused is given punishment with the vision of making him capable of **returning to society** and function as a law abiding member of the community.
- **Immorality Associated With Retribution:** People who oppose Capital punishment are of the view that **retribution is immoral**, and it is just a **sanitized form of vengeance**.
  - Further, the data from across the world could not conclusively prove that the death penalty does reduce the crime rate, **especially rape**.
    - 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 whether the death penalty is an effective deterrent to crime or not.
- **Reciprocation of Cultural Violence:** The ones who oppose death penalty argue that it reciprocates the existing cultural violence in society and does not offer a solution.
- **Blind Eye on Societal Failure:** Hang till death only accounts for the **'individual failure' of the rapist and turns a blind eye on the 'societal failures'**.
  - People who oppose Capital punishment are of the view that through the political will of executing a rapist, the **onus of making society safer for women is shifted upon individuals, and society is let free of its responsibilities**.
    - According to the national figures, **74.1%** of the prisoners sentenced to death in India are **economically vulnerable** according to their occupation and landholding and most death row prisoners belong to the **lower strata of society**.
- **Execution of the Innocent:** One argument against capital punishment is the notion that **mistakes or flaws in the justice system** can lead to innocent people being killed.

## What are the Major Cases Related to Capital Punishment in India?

- **Jagmohan Singh V/s State of UP 1973:** The **Supreme Court** held that according to **Article 21** deprivation of life is constitutionally permissible if that is done according to the procedure established by law.
- **Bachan Singh V/s State of Punjab 1979:** In this case the Supreme Court held that capital punishment should only be given in rarest of rare cases.
- **Machhi Singh V/s State of Punjab 1983:** The Supreme Court outlined certain factors that determine whether a case should be considered rarest of rares.
  - The **Supreme Court listed the two questions that need to be answered** prior to the

imposition of the death sentence on individual cases.

- Firstly, is the offence committed so exceptional that there is **no scope for awarding any other sentence**.
- Secondly, even when weightage is accorded to the mitigating circumstances **does the circumstances still warrant death penalty**.

## What is the Recent Stand of the SC on Capital Punishment?

- In response to concerns about the way courts award the death penalty, the **Supreme Court has suo motu started a review of the process**. The apex court will consider laying down guidelines for determining **mitigating circumstances in death penalty cases**.
- The SC stated that the accused **must have a meaningful, real and effective hearing**, along with the chance to introduce evidence relevant to the sentence question.
- Supreme Court also suggested that while delivering judgement in case related to death penalty the convict's **social background, age, educational levels** should be taken into account.
  - Additionally, considerations should be made regarding the convict's **psychological experiences and post-conviction behavior**, before deciding whether the death penalty should be imposed or not.

## Conclusion

- **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**.

### ***Drishti Mains Question***

Examine the rationality of Capital Punishment in India in the light of recent judgements of Supreme Court.

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

### **Mains**

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