



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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