



## Death Penalty

This article is based on [“Does death penalty deter crime?”](#) which was published in The Times of India on 12/02/2020. It talks about the ongoing debate on the 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.

### Arguments: In Favour of the 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.
  - Each criminal should get what their crime deserves and in the case of a murder, criminal deserves death.
- **Deterrence:** Capital punishment is often justified with the argument that by executing convicted murderers, we will deter would-be murderers from killing people.
- It is often argued that the death penalty provides **closure for victims' families.**
- There are many examples of persons condemned to death taking the opportunity of the time before execution to repent, express remorse, and very often experience profound **spiritual rehabilitation.**
  - **Thomas Aquinas** noted that by accepting the punishment of death, the offender was able to expiate his evil deeds and so escape punishment in the next life. It demonstrates that the death penalty can lead to some forms of rehabilitation.

### Arguments: Against the Death Penalty

- The **statistical evidence doesn't confirm that deterrence works.**
  - Some of those executed may not have been capable of being deterred because of mental illness or defect.
  - Some capital crimes are committed in such an emotional state that the perpetrator did not think about the possible consequences.
  - 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 of the death penalty is an effective deterrent to crime.

- **Execution of the Innocent:** The most common argument against capital punishment is that sooner or later, innocent people may get killed, because of mistakes or flaws in the justice system.
  - According to **Amnesty International:** As long as human justice remains fallible, the risk of executing the innocent can never be eliminated.
- People who oppose Capital punishment are of the view that retribution is immoral, and it is just a **sanitised form of vengeance.**
- Death has been abolished as a form of punishment in most of the developed countries.
  - The UN Secretary General's report on the death penalty presented to the Human Rights Council held that "**some 170 States have abolished** or introduced a moratorium on the death penalty either in law or in practice, or have suspended executions for more than 10 years".
- Capital punishment doesn't rehabilitate the prisoner and return them to society.

## 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 UN**, 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 35<sup>th</sup> 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.

## The Indian Penal Code prescribes 'death' for offences such as

- Waging war against the Government of India. (Sec. 121);
- Abetting mutiny actually committed (Sec. 132);
- Giving or fabricating false evidence upon which an innocent person suffers death. (Sec. 194);
- Murder (Sec. 302);

## Some other criminal statutes that provide for the death penalty as a form of punishment.

- Direct or indirect abetment of sati is punishable with Death penalty under the Commission of Sati (Prevention) Act, 1987.
- Under SC and ST (Prevention of Atrocities Act), 1989 giving false evidence leading to the execution of an innocent member belonging to the SC or ST would attract the death penalty.
- Besides these, rape of a minor below 12 years of age is punishable with death under Protection of Children from Sexual Offences (POCSO) Act, 2012.
- Financing, producing, manufacturing as well as the sale of certain drugs attracts the death penalty for repeat offenders under the Narcotic Drugs and Psychotropic Substances Act, 1985.

- Unlawful Activities (Prevention) Act, 1967; Army, Navy and Air Force Acts also provide the death penalty for certain specified offences committed by members of the armed forces.

## Supreme Court on the Death Penalty

- **Jagmohan Singh v. State of UP 1973 case:** 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**.
  - Thus the death sentence imposed after a trial in accordance with legally established procedures under Cr.PC and the Indian Evidence Act is not unconstitutional under Art. 21.
- **Rajendra Prasad v. State of UP 1979 case:** The Supreme Court held that, if the murderous operation of a criminal jeopardizes social security in a persistent, planned and perilous fashion then his enjoyment of fundamental rights may be rightly annihilated.
- **Bachan Singh v. the State of Punjab 1980 case:** A Constitution Bench of the Supreme Court propounded the **dictum of 'rarest of rare cases'** according to which death penalty is not to be awarded except in the **'rarest of rare cases'** when the alternative option is unquestionably foreclosed.
- **Machhi Singh v. State of Punjab 1983 case:** The Supreme Court laid down certain considerations for determining whether a case falls under the category of rarest of rare cases or not.

### Rarest of 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.**

## Conclusion

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.

India is awaiting execution of Nirbhaya's rapists, the inordinate delay in the execution of the death penalty has taken the sting out of the punishment. This is the reason why Hyderabad police encounter in Disha's case was hailed by a large populace.

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.

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

It is not the severity, but the certainty of punishment which can act as deterrent. Discuss.