



Mitigating and Aggravating Circumstances in Death Penalty

For Prelims: [CBI](#), [Bachan Singh vs. State of Punjab Case, 1980](#), [Supreme Court, Law Commission](#), [Bharatiya Nyay Sanhita, 2023](#), [Bhartiya Nagrik Suraksha Sanhita, 2023](#), [UAPA, 1967](#), [NDPS Act, 1985](#).

For Mains: Mitigating and aggravating circumstances in death penalty, Evolution of death penalty in India, Role of judiciary and law commission on death penalty.

[Source: IE](#)

Why in News?

A Kolkata court sentenced a convict to **life imprisonment** for the **rape and murder** of a doctor at [RG Kar Medical College and Hospital](#), despite the [CBI](#)'s strong argument for the **death penalty**.

- In [Bachan Singh vs. State of Punjab Case, 1980](#), the [Supreme Court \(SC\)](#) upheld the death penalty **as constitutional** but should be awarded in the "**rarest of rare**" cases after considering both **aggravating and mitigating circumstances**.

What are Aggravating and Mitigating Circumstances?

- **About: Aggravating (increasing) and mitigating (reducing)** circumstances are factors courts consider when deciding the **severity of a sentence**, especially in the death penalty.
 - Aggravating circumstances could **tilt the court towards the death penalty**, while mitigating circumstances could **lead it away from the death penalty**.
- **Guiding Factors:** The SC did **not** provide **specific aggravating and mitigating circumstances** for determining when the death penalty should be applied but provided a **non-exhaustive list** of guiding factors.
 - **Aggravating Circumstances:**
 - If the murder is **pre-planned, calculated**, and involves **extreme brutality**.
 - If the murder involves **"exceptional depravity"**
 - If the accused is found guilty of murdering a **public servant, police officer, or armed forces** member while on duty or for performing their lawful duties.
 - **Mitigating Circumstances:**
 - Whether the accused was experiencing **extreme mental or emotional disturbance** at the time of the offence.
 - Age of the accused; they would not be given death if they are **very young or very old**.
 - Probability of the accused posing a **continued threat to society**.
 - Probability of **reforming** the accused.
 - If the accused was acting on the **directions of another person**.
 - If the accused believed their actions were **morally justified**.

- If the accused **suffers mentally** and is unable to appreciate the criminality of their actions.

How Aggravating and Mitigating Circumstances Evolved After the Bachan Singh Case?

- **Age of the Accused:** In cases like *Ramnaresh vs. State of Chhattisgarh Case, 2012* and *Ramesh vs. State of Rajasthan Case, 2011*, SC considered the **accused's age (below 30)** a strong **mitigating factor**, believing in their potential for reform.
 - In *Shankar Kisanrao Khade vs. State of Maharashtra Case, 2013*, the SC highlighted the **subjective nature** of sentencing by **distinguishing cases where age was a mitigating factor**.
 - The **262nd Law Commission Report 2015** noted that age as a mitigating factor has been used **very inconsistently**.
- **Nature of the Offence:** In *Machhi Singh vs. State of Punjab Case, 1983*, the SC held that death could be given in cases where the **"collective conscience"** of society is so **shocked** that the judiciary is expected to **impose the death penalty**.
 - It marked a shift toward emphasizing the **nature of the crime over the circumstances** of the criminal and the possibility of reform.
- **Possibility of Reform:** In *Santosh Bariyar vs State of Maharashtra Case, 2009*, the SC stated that the court must provide **clear evidence** explaining why the **convict is unfit for reform or rehabilitation**.
 - The **262nd Law Commission Report 2015** called the evidence requirement in Bariyar **"essential" for objectivity** in sentencing.
- **Stage of the Trial:** In *Bachan Singh*, the SC ruled that courts must hold a **separate trial after conviction** to allow a **"real, effective and meaningful hearing"** on why the death sentence should not be imposed.
 - In *Dattaraya vs. State of Maharashtra Case, 2020*, the court ruled that the **lack of a proper hearing** was a valid reason to **commute the death sentence to life imprisonment**.

What is the Death Penalty?

- **About:** The death penalty, also referred to as **capital punishment**, is the **most severe** form of punishment in the Indian judicial system as it **cannot be reversed** after execution like other kinds of punishment.
 - It involves the **state's execution of an individual** as a penalty for serious offenses.
- **Legal Framework:** The death penalty in India is governed by provisions in the **Bharatiya Nyay Sanhita, 2023**, **Bhartiya Nagrik Suraksha Sanhita, 2023**, and other special laws
 - The BNS prescribes the death penalty for crimes such as **rape causing death (Section 66)**, **gang rape of minors (Section 70(2))**, **serial rape (Section 71)**, and others.
 - **Offenses punishable by death include murder (Section 302)**, **terrorism (UAPA, 1967)**, and **certain drug trafficking offenses under the NDPS Act, 1985**.

What are SC Rulings on the Death Penalty?

- **Jagmohan Singh Case, 1972:** The SC **upheld** the constitutionality of **capital punishment**, ruling that it could be **imposed if due process was followed** and constitutional provisions were not violated.
- **Shatrughan Chauhan Case, 2014:** The SC ruled that **prolonged delays in execution** of the death penalty could be a valid ground for **commuting the sentence to life imprisonment**.
- **Manoj vs State of Maharashtra Case, 2022:** The SC mandated a **thorough investigation** into the convict's mitigating circumstances and emphasized a balanced approach to sentencing, considering both **aggravating and mitigating factors**.
- **Suo Motu Writ on Death Penalty, 2022:** In a **suo motu writ**, the SC referred the issue of granting the convict a **"meaningful opportunity"** to argue against the death sentence to a larger five-judge bench for a fair hearing.

What is the Law Commission Stand on Death Penalty?

- **35th Report, 1967:** In 1967, the Law Commission's 35th Report **strongly supported the death penalty**.
- **187th Report, 2003:** In 2003, the Law Commission's 187th Report acknowledged the **procedural flaws** in sentencing though it did not advocate abolition.
- **262nd Report, 2015:** In 2015, the Law Commission's 262nd Report called for **doing away with the death penalty** for all crimes **except terrorism** and related offences.

Status of the Death Penalty Around the World

- As of **2022, 55 countries** had the **death penalty**, with **9 reserving** it for the most serious crimes like **multiple killings or war crimes**.
- **The United States** and **Japan** are the **only advanced industrial democracies** that still practice capital punishment.
- As of 2022, **112 countries** have completely abolished the death penalty, up from **48** in **1991**.
 - In **2022, Kazakhstan, Papua New Guinea, Sierra Leone**, and the Central African Republic abolished the death penalty, while **Equatorial Guinea** and Zambia limited it to the most serious crimes.
- The **five countries** responsible for **91%** of these executions were **China, Iran, Pakistan, Sudan**, and the **United States**.

Conclusion

The Supreme Court's rulings on the death penalty have evolved to **incorporate both the severity of crimes and the possibility of reform**, with significant focus on fairness in sentencing. The Court has emphasized a **balanced approach**, considering **both aggravating and mitigating factors**, and has advocated for procedural safeguards to prevent arbitrary applications.

Drishti Mains Question:

Analyze the evolution of the Supreme Court's stance on the death penalty in India.

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 limit specified for the President to accept/reject such petitions? Analyse. **(2014)**