



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)