



## ABOLITION OF DEATH PENALTY – POLITY (MAINS)

Q. 'The death punishment is unnecessary, cruel, inhumane and degrading treatment and the punishment of the death sentence does not serve the purpose of deterrence'. Discuss the statement in the light of rising demands of abolishing the death penalty in India. (15 marks, 250 words)

**News:** *Parliamentary panel on criminal law Bill leaves decision on death penalty to Centre*

### What's in the news?

- The proposed Bharatiya Nyaya Sanhita (BNS) Bill, 2023 that seeks to replace the British-era Indian Penal Code has increased the number of crimes which can attract the death penalty from 11 to 15, according to a parliamentary panel report published last week.

### Capital punishment or Death Penalty:

- Capital punishment, also called death penalty, is execution of an offender sentenced to death by hanging after conviction by a court of law of a criminal offense.

### Status - Death Penalty in India:

- **Annual Statistics 2022 is a report of Project 39A of National Law University (NLU) Delhi.**
- The project is inspired by Article 39A of the Indian constitution, which says the state should further the values of equal justice and equal opportunity by removing economic and social barriers.
- In 2022, Sessions Courts in India imposed 165 death sentence penalties
- The **State of Uttar Pradesh** had the highest number of convicts on death row, of which 32 sentences were imposed in 2022.
- This was followed by Gujarat (61) and Jharkhand (46)
- Cases involving sexual offences constituting the majority (51.28%) of cases in which the death penalty was imposed by trial courts in 2022

### Judicial view on Death Penalty:

1. *Ediga Anamma v. the State of Andhra Pradesh, (1974)*: The Supreme Court (SC) laid down the principle that life imprisonment for the offence of murder is the rule and capital punishment is the exception in certain cases.
2. *Bachan Singh v. the State of Punjab, (1980)*: The SC stated that the **death penalty should be awarded only in "rarest of rare" cases**. A case becomes rarest of rare when



there is extreme culpability of the offender in committing the offence of murder and an extreme cause of the offender in committing the offence of murder.

3. The Supreme Court stated that it should be **issued only when the alternative of a life sentence is 'unquestionably foreclosed'**.
4. The death penalty should be awarded after seeing the aggravating and mitigating factors and balance of the same.

## Time to Abolish the Death Penalty?

- Most of the civilized world has abolished it. India certainly does not need it as it doesn't serve any purpose.
- No study has shown that the death penalty deters murder more than life imprisonment. The evidence is all to the contrary. For deterrence to work, the severity of the punishment has to coexist with the certainty and swiftness of the punishment. The death penalty has not deterred terrorism, murder or even theft.
- Based on the evidence collected, the legal system cannot be trusted to take one's life. For example, between January 1, 2000 and June 31, 2015, the Supreme Court imposed 60 death sentences. It subsequently admitted that it had erred in 15 of them (25%).
- Those without 'capital' get the punishment. Poor prisoners on legal aid won't get good lawyers to defend them. Hence, the death penalty unfairly targets the poor and marginalized.
- The death penalty is impossible to administer fairly or rationally. The Supreme Court has repeatedly admitted that it has arbitrarily imposed this most extreme punishment. It depends overwhelmingly on the adjudicator's personal beliefs. Judges opposed to it never gave a death sentence; those in favour doled it out.

## Supportive arguments for Death Penalty:

- Its constitutionality has not only been upheld in India but also in liberal democracies like that of the U.S. Therefore, the retention of the death penalty is not a reflection of "uncivilized" polity in theocratic states [a political unit governed by a deity or by officials thought to be divinely guided] that have come to be defined by violence but also by a creation of the individual geopolitical circumstances of each state.
- While the 35th Report (Law Commission) correctly called for its retention in order to see its impact on a new republic, the more recent 262nd Report could not recommend the punishment's absolute abolition despite a rather desperate attempt to do the same.
- The exception to abolition in cases of terror will also not work. Unlike Scandinavia, India's neighbourhood is not peaceful and, it does not form the group of nations that facilitate common growth, unlike the European Union. On the contrary, every day, vested interests attempt to destabilize the very idea of our nation from across every border it shares, which makes it difficult to abolish this deterrent named death penalty.
- As noted by the Law Commission itself, cases of violent terror are constant reminders of the need to protect national stability by ensuring appropriate responses to such actions, and the death penalty forms part of the national response.



- A punishment cannot be judged by its impact on criminals but by its impact on those who are still innocent.
- Those who defend the death penalty often do it on the basis of retributive justice (a system of criminal justice based on the punishment of offenders rather than on rehabilitation).
- It determines that there are certain acts which the society so essentially detest that they justify the taking of the most crucial of rights – the right to life. For, the state acknowledges that the sacredness of life can only be seen to be protected if those who take it away are proportionately punished. The hanging of Ajmal Kasab and Yakub Memon strongly affirms India's commitment to the protection of life.

## WAY FORWARD:

1. The Supreme Court can step in and commute Balwant Singh's death sentence on account of undue delay in disposal of the mercy petition that has violated his right to life under Article 21 of the Indian Constitution.
2. The SC should release updated guidelines on how to balance the aggravating and mitigating factors in cases.
3. The Courts can evolve innovative ways for giving stricter punishment in place of the death penalty. For instance, giving minimum 25-30 years rigorous imprisonment that can't be reduced or reviewed.
4. The focus should be on ensuring certainty of punishment rather than quantum of punishment that will act as a better deterrent for criminals.
5. The Union Government should also act swiftly on mercy petitions based on merits and not on political advantage/disadvantage it may get from the petition.

The Law Commission in its 262nd report proposed that the death penalty should be abolished for all crimes excluding terrorism-related offences and war. The **experience of the Scandinavian countries** also supports this view. However, till the time it happens, there should be proper implementation of the Bachan Singh Judgment by the Indian Courts.