Abolishing capital punishment in India

What is the issue?

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There are increasing views on abolishing capital punishment in India and it requires serious consideration.

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What is the evolution?

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- During the first five years after the Constitution was made, death penalty remained as the normal punishment for murder.
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- It was changed in 1955 when a discretion was conferred on sessions judges to award either of the two sentences prescribed for murder, capital punishment or life imprisonment.
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- Accordingly, **Cr. P.C.** was amended in 1973 by which Parliament directed that special reasons shall be shown if the Sessions Judge imposed death penalty on the convicted person.
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- Later on in the **Bachan Singh case**, SC ruled that death penalty could be imposed only in rarest of rare cases in which the alternative sentence of life is unquestionably foreclosed.
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- However, **Machhi Singh Vs. State of Punjab case** provided exceptions to the rarest of rare rule and death penalty can be invoked when –
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1. Murder is committed in extremely brutal manner so as to arouse extreme indignation of the community
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2. Murder is committed by a motive which evinces total depravity and meanness

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3. The crime is enormous in proportion.
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What are the protections guaranteed under the constitution?

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- The **Maneka Gandhi case** held that Article 21 affords protection not only against executive actions but also against legislations.
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- Thus, a person can be deprived of his life, even under capital punishment, only if there is a law which is just, fair and reasonable.
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- Under Article 72 of the constitution, the President can pardon even death sentence, while the governor cannot under Article 161.
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- However, even when the pardon was denied to a death row convict, there is scope for judicial review if the presidential decision is arbitrary, irrational and discriminatory.
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- Also under Article 134, right of appeal was provided from the High Court verdict to Supreme Court in any case where capital punishment was imposed on an accused in reversal of acquittal order.
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- Thus the treatment of death row prisoners has been humanised under the constitution itself.
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What should be done?

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- There are three main objectives for punishment - **retribution, reformation and deterrence**.
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- The theory of reformation is based on the obligation of the society to reform a convicted person.
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- However, the object of reformation will be totally defeated in the case of capital punishment, as the offender does not continue to live.
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- Also, there is no sufficient proof to show that the death penalty operates as a greater deterrent than the life imprisonment.
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- Death penalty is also unrectifiable if on a subsequent occasion it is discovered that the judgment was passed by a mistaken conclusion.
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- The Law Commission of 2015 said the constitutional regulation of capital punishment has failed to prevent death sentences from being arbitrarily and freakishly imposed.
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- The Commission further asserted that there exists no principled method to remove such arbitrariness from capital sentencing.
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- Thus, if there still prevails a perception of arbitrariness in the way death sentences are awarded, the only lasting solution is their abolition.
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Source: The Hindu

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