Abolishing capital punishment in India – II

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What are the reasons provided for its retention in India?

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- The usefulness of a capital punishment lies in – serving as potential deterrent and achieving retributive justice.
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- Retributive justice holds that the best response to a crime is a punishment proportional to the offense inflicted, because the offender deserves the punishment rather than rehabilitation.
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- However, with its raising usage, the UN General Assembly passed a resolution in 2007 calling for a moratorium on the administration of the death penalty by the 59 countries that still retained it.
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- India is one of them, even if it does not employ it as frequently as countries such as Iran, China, Pakistan, Saudi Arabia, and the U.S.
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- The Law Commission of India in its 35th Report called for the retention of death penalty, which was subsequently expressed in its recent 262nd Report.
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- The commission did not go for its absolute abolition and the major reason for an exception to abolition was attributed to the cases of terror.
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- It noted that cases of violent terror are constant reminders of the need to protect national stability by ensuring appropriate responses to such actions.
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- Hence the death penalty forms part of the national response.
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- However, in 1980, the SC articulated the "rarest of rare" threshold stating that death must only be imposed where the alternative option is unquestionably foreclosed in **Bachan Singh v. State of Punjab** case.
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What are the problems in its implementation?

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- The recent Death Penalty India Report indicates that the structural flaws in our criminal procedure and criminal justice system are most pronounced in death penalty cases.
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- Between January 1, 2000 and June 31, 2015, the Supreme Court imposed 60 death sentences and it subsequently admitted that it had erred in 15 of them (25%).
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- Due to biases in criminal investigations, the marginalised people are disproportionately subject to the death penalty.
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- India also retains the death penalty as an option for **non-homicide offences**, where the offence doesn't involve killing another human being or an action that leads to the death of a person.
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- For example, the SC in 2015 upheld constitutional validity of Section 364A of IPC making kidnapping for ransom an offence punishable by even death sentence in **Vikram Singh @ Vicky & Anr vs Union of India** case.
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- The criminal law(Amendment) Bill, 2018 also provides for death penalty as maximum punishment for those who rape minor girls under age 12.
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- Also, the punishment itself is seen to be a reflection of societal mores.
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- Only certain cases which shook the conscience of the entire society get higher demand for capital punishment, even when there are such similar cases happening at the same time.
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- This is reflective in the fact that in the last 13 years, only four people have been executed.
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- Finally, there is no study to show that the death penalty deters murder more than life imprisonment.
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What should be done?

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- India’s murder rate has declined continuously since 1991 and is at present the lowest in our recorded history except for 1963.
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- Studies show that a more equal sex ratio paved the way for declining murder rates than capital punishments.
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- Though Law Commission called for abolition of the death penalty for ordinary crimes, activists continue to argue for abolishing it altogether.
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- Abolishing the death penalty will also save on the protracted litigation that death cases involve.
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- Thus, it is time for the Supreme Court to decide whether the absence of political will for the abolition is sufficient ground to override the right to life guaranteed under Article 21.
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Source: The Hindu

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