

## **Death Penalty in India**

### **Why in news?**

The Supreme Court has recalled its own 2009 order sentencing 6 convicts to death, and acquitted them.

### **What is the case on?**

- The case involved the murder of five persons.
- Between 2003 and 2009, three courts - the Nashik Sessions Court, the Bombay High Court and the Supreme Court - had found them guilty and sentenced them to death.
- However, now in 2019, the SC has taken a closer look at the evidence and set them free.
- It also ordered an inquiry against the investigating officer for framing the six men.
- After having spent most of their 16 years of incarceration, the convicts were acquitted and ordered to be released.

### **How has death penalty been viewed in India?**

- India has the death penalty in 46 provisions under various laws.
- Worryingly, it is marked by the possibility of judicial error.
- B R Ambedkar argued for abolition of the death penalty but the Constituent Assembly left the issue to the Supreme Court and Parliament.
- Eventually, Parliament and the judiciary could not abolish the death penalty that is in existence since colonial times.
- The 35th report of the Law Commission (1967) recommended retention of the provision.
- The new Code of Criminal Procedure (1973) required “special reasons” to be given if death was preferred over a life sentence.
- Under the old CrPC (1898), reasons were to be given if the death penalty was not imposed. This requirement was removed in 1955.
- The 187th report of the Law Commission (2003) recommended use of a lethal injection in addition of hanging.

### **How has the court's stance evolved?**

- In 1972, the Supreme Court upheld the constitutionality of the death penalty.

- It stated that Article 14 on Right to Equality was not violated by the wide judicial discretion given to judges.
- But in another case in 1974, the court said the question of life and death cannot be left to “ad hoc mood or individual predilection”.
- In 1979, the court rejected retribution (revenge, vengeance) as the purpose of punishment.
- It said that the “special reasons” for award of death penalty should relate to the criminal, and not the crime.
- In Bachan Singh (1980), the matter was referred to a Constitution Bench that upheld the constitutionality by a 4-1 majority.
- It said “special reasons” should relate to exceptional circumstances of a case in terms of both “crime” and “criminal”.
- The court did not agree that wide discretion given to judges is arbitrary, but said that death penalty should be given only in “rarest of rare” cases when there is no alternative option.
- Justice P Bhagwati, in a minority opinion, observed that death penalty being arbitrary and discriminatory is unconstitutional.
- In 1983, the court upheld death by hanging as constitutional as it did not involve humiliation or torture.
- But in a case in 1995, the court held hanging beyond the point of death by half an hour, as per the Punjab Jail Manual, to be unconstitutional.
- Nevertheless, the court itself has also observed that the death penalty is imposed “arbitrarily or freakishly”.
- There is no uniformity of precedents in terms of awarding death penalty and also, the death sentencing has become “judge-centric”.

### **What are the established standards?**

- In Machi Singh (1983), a three-judge Bench listed some parameters to decide whether a case falls within “rarest of rare”.
- They include the manner of commission of crime (brutality, motive, antisocial or abhorrent nature) and magnitude of crime and personality of victim (child, woman or popular leader), etc.
- These categories put much emphasis on the “crime” and ignored the “criminal” and the “mitigating factors”.
- However, in later cases the court equally emphasised the latter two aspects and said the circumstance of the crime should also be considered.
- Moreover, the ruling in Bachan Singh case (1980) denied judges the role of being spokespersons for public opinion demanding death penalty in certain cases.
- It said a “conscience of society” test undermines the judicial discretion and this is irrelevant for the “rarest of rare” doctrine.

- Now, modern jurisprudence acknowledges that prolonged delay in executing a death sentence can make the eventual punishment inhuman and demeaning.

### **What does the recent case imply?**

- In the present case, all the 3 courts were unable to spot the illegalities perpetrated by the investigating authorities in framing six innocent men.
- So there is clearly no reasonable way to hold that India has a criminal justice system capable of having the death penalty.
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- As, it is terrible if a person has been hanged for a crime which s/he has not committed.
- No criminal justice system can maintain its integrity if the rights of the accused are determined and influenced by the brutality of the crime.
- Certainly, the rights of the victims cannot be secured by sacrificing the rights of the accused.

**Source: Indian Express**