Delhi Gang rape Case

What is the issue?

- The horrific 2012 Delhi bus gang rape case is rapidly moving towards its final conclusion.
- The four convicts in the case may be awarded with death sentence, which if awarded will be executed Tihar jail.

What is happening now?

- The Union Home Ministry sent the Delhi government's recommendation to reject the mercy plea of one of the four convicts to the President.
- On December 18, a Delhi Additional Sessions Judge will hear the convicts before deciding whether they should be executed.
- The SC has already dismissed, more than a year ago, the review pleas filed by three convicts.
- A fifth accused hanged himself in the jail, while the sixth, who was a juvenile at the time of the crime, was sent to a reform facility.
- The death penalty in India is reserved for the "rarest of rare" cases.
- Even so, the law provides for a long process before the execution of the convicts actually takes place.

What are the avenues available to a death-row convict?

- After a trial court awards the death penalty, the sentence must be confirmed by a High Court (HC).
- The sentence cannot be executed till the time the HC confirms it, either after deciding the appeal filed by the convict, or until the period allowed for preferring an appeal has expired.
- If the HC confirms the death penalty and it is also upheld by the SC, a convict can file a review petition.
- If the review petition is rejected, the convict can file a curative petition for reconsideration of the judgment.
- In 2014, a Constitution Bench of the SC ruled that a review petition by a death-row convict will be heard by a three-judge Bench in open court.
- The SC ruled that unexplained delay in execution was a ground for commutation of death penalty; anybody could file a writ petition seeking such commutation.

How has the SC historically seen the death penalty?

- The SC has always said that the death sentence should be given rarely.
- **State of Punjab vs Mithu case 1983** - In this case, the SC ruled that the mandatory death penalty is unconstitutional.
- It struck down the IPC Section 303 that entailed a mandatory death sentence for a person who commits murder while serving a life term in another case.
- The SC ruled Section 303 violated Articles 14 (right to equality) and 21 (right to life) since an unreasonable distinction was sought to be made between two classes of murders.
- It said that all murders would come under the ambit of Section 302, where a court would have the discretion to award life term or death sentence.
- **State of Punjab vs Dalbir Singh 2012 -** In this case, the SC ruled that mandatory death penalty as punishment for crimes under Section 27 (3) of the Arms Act, 1959, was unconstitutional.
- Article 21 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 fair and valid procedure, the state by framing a law can deprive a person of his life.

What is the government and SC's stance?

- The central government has consistently maintained it would keep the death penalty in the statute books to act as a deterrent, and for those who are a threat to society.
- The SC too has upheld the constitutional validity of capital punishment in "rarest of rare" cases and the courts should render "special reasons" while sending a person to the gallows.
- It said that if capital punishment is provided in the law and the procedure is a fair, just and reasonable one, the death sentence can be awarded to a convict.

What is a "rarest of rare" case?

- The principles of what would constitute the "rarest of rare" were laid down by the SC in the landmark **judgment in 'Bachan Singh'**.
- It formulated certain broad illustrative guidelines.
- It said that death penalty should be given only when the option of awarding the sentence of life imprisonment is unquestionably foreclosed.
- While it was left completely to the court's discretion to reach this conclusion, the SC did lay down the principle of weighing aggravating and mitigating circumstances.
- A balance-sheet of aggravating and mitigating circumstances in a particular

case has to be drawn up to ascertain whether justice will not be done if any punishment less than the death sentence is awarded.

What are the prime questions the SC held?

- The below two questions should be asked and answered before awarding death sentence to a person.
- Is there something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for a death sentence?
- Are there circumstances of the crime such that there is no alternative but to impose the death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offenders?
- Courts have agreed that the Delhi gang rape case meets the test of rarest of rare.

Source: The Indian Express

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