Reforming Death Penalty

What is the issue?

The Supreme Court has taken a suo moto cognizance to consider laying down guidelines for assessment of mitigating circumstances in death penalty cases.

What are the legal provisions available regarding death sentence?

- Despite a global moratorium against the death penalty by the UN, India retains the death penalty.
- Death penalty may be awarded under the provisions of criminal procedure.
- Death penalty can be awarded in case of the following offences

1. Waging was against the Government of India (Section 121)
2. Abetting mutiny actually committed (Section 132)
3. Giving or fabricating false evidence upon which an innocent person suffers death (Section 194)
4. Murder which may be punished with death or life imprisonment (Section 302)
5. Abetment of suicide of a minor on insane, or intoxicated person. (Section 305) (6)
6. Dacoity accompanied with murder. (Section 396)
7. Attempt to murder by a person under sentence of imprisonment for life if hurt is caused. (Section 307)

The POCSO Act was amended in August 2019 to introduce the death penalty for the non-homicide offence of penetrative sexual assault on children.

How are judges supposed to choose between life and death sentences?

- A framework was developed by the Supreme Court, after it upheld the constitutional validity of the death penalty in **Bachan Singh's case** in 1980, to decide on factors while choosing between life imprisonment and death sentence.
- The framework states that legislature in the Criminal Procedure Code (CPC) would consider life imprisonment as the default punishment.
- The judges would need to give "special reasons" if they wanted to impose the death sentence which means death penalty can be awarded in "**rarest of rare cases**".
- This framework also stated that the judges must consider both the mitigating and aggravating factors concerning crime and the accused while announcing death penalty.
- **Machhi Singh Vs. State of Punjab case** provided exceptions to the rarest of rare rule and death penalty can be invoked when
    - Murder is committed in extremely brutal manner so as to arouse extreme indignation of the community

    - Murder is committed by a motive which shows total depravity and meanness
    - The crime is enormous in proportion

What are the protections guaranteed under the constitution?

- **Article 21** - The *Maneka Gandhi case* held that Article 21 affords protection not only against executive actions but also against legislations.
- Thus, a person can be deprived of his life under capital punishment, only if there is a law which is just, fair and reasonable.
- **Article 72** - The President can pardon even death sentence, while the governor cannot under Article 161.
- 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.
- **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.

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

- A criminal trial has two stages — the guilt stage and the sentencing stage.
- Sentencing happens after the accused has been found guilty of the crime and this is the stage where punishment is determined.
- Anything presented or said during sentencing cannot be used to reverse or change the finding of guilt.
- After a trial court awards the death penalty, the sentence must be confirmed by a High Court.
- The sentence cannot be executed till the time the High Court confirms it, either after deciding the appeal filed by the convict, or until the period allowed for preferring an appeal has expired.
- If the High Court confirms the death penalty and it is also upheld by the Supreme Court, 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.

What are the concerns?

The 'The Death Penalty in India: Annual Statistics' was published by Project 39A of National Law University (NLU), Delhi.

- Concerns have been raised that the death penalty has been awarded mainly considering the crime factor while overlooking the accused.
- Only the brutality factor of the crime was considered while awarding death sentence without sufficiently bringing in the circumstances of the accused.
- There has been widespread concern that the imposition of death sentences has been arbitrary.
- Similar concerns have been expressed by the Law Commission of India (262nd Report).
- **Reasons**
    - Sentencing information about the accused is very scarce
    - Vast majority of death row prisoners are economically vulnerable and very often receive

poor legal representation
    - No real guidance on how judges must go about assigning weight to aggravating and mitigating factors

What is the Supreme Court's view on this matter?

- The judgments in Santa Singh (1976) and Mohd Mannan (2019) have recognised that it is important to collect this complex interplay of information sentencing.
- It requires professionals other than lawyers to collect such information.
- The criminal justice system needs to ensure that systems are created for procedural fairness.
- The Supreme Court has now looked into setting guidelines for reviewing the procedure of awarding death sentences.

References

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