Revisiting Death Penalty Jurisprudence

Why in news?

A Bench of the Supreme Court of India decided to critically examine the routine and abrupt way in which trial judges often impose the death penalty on convicts.

What is the Court's view?

- The challenge before the Court in the case of *Irfan vs State of Madhya Pradesh* was to identify the mitigating circumstances and to ensure a convict-centric approach so that the imposition of capital punishment becomes rarer, fairer, and principled.
- According to the Court, a 'one size fit for all' approach should end and an individualistic approach that examines the social, economic, emotional, and genetic components should be constituted.
- The Bench indicated the need for mitigation experts to assist trial courts in reaching a correct conclusion.

How did the death penalty evolve?

- India retained the 1861 Penal Code at independence in 1947, which provided for the death penalty for murder.
- During the first five years after the Constitution was made, death penalty remained as the normal punishment for murder.
- 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.
- 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.
- **Methods of execution**- All the death penalties in India are carried out by hanging.
- Under the 1950 Army Act, both hanging and shooting are listed in the military court-martial system as official methods of execution.

What judgments were pronounced regarding death penalty?

- **Bachan Singh case (1980)**- The SC ruled that death penalty could be imposed only in **rarest of rare cases** in which the alternative sentence of life is unquestionably foreclosed.
- The trial courts shall not only examine the gravity of the offence but also the condition and the reformability of the accused.
- However, the Court refused to declare the death penalty as unconstitutional.
- **Ravji vs State of Rajasthan (1995)-** The Supreme Court said that it is the nature of the crime and not the criminal which is germane for deciding the punishment which is diametrically opposite to what was laid down in *Bachan Singh*.
- **Machhi Singh Vs. State of Punjab (1983)** -It 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 evinces total depravity and meanness
    - The crime is enormous in proportion.
- An analysis of the possible reasons to avert the death penalty is reflected in a series of recent verdicts such as *Lochan Shrivas vs State of Chhattisgarh* (2021) and *Bhagchandra vs State of Madhya Pradesh* (2021).
    - These reasons might include socio-economic backwardness, mental health, heredity, parenting, socialisation, education, etc.

What arguments were made to support the death penalty?

- **National stability**- India's neighbourhood is not peaceful and it does not form a supranational conglomerate of nations that facilitate common growth.
- The need to protect national stability ensures appropriate responses to such actions, and the death penalty forms part of the national response.
- **Impact on innocents**- Those who defend the death penalty often do it on the basis of retributive justice i.e. response to criminal behaviour that focuses on the punishment of lawbreakers and the compensation of victims.
- **Protection of life**- The hanging of Ajmal Kasab and Yakub Memon strongly affirms India's commitment to the protection of life.

What protections were conferred under the constitution?

- **Article 21** says that no person shall be deprived of 'right to life' which is promised to every citizen in India.
- 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, even under capital punishment, only if there is a law which is just, fair and reasonable.
- Under **Article 72** of the constitution, the President can pardon even death sentence, while the governor cannot under Article 161.
- 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.
- 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.

What is the need for revisiting the provision of capital punishment?

- **Overuse and misuse-** Whenever the Court tries to dilute the harshness of penal provisions, the instrumentalities of the state (including the police and court) continue to overuse or misuse the provisions.
    - The SC endorsed the validity of the sedition law (Section 124A of IPC) that it could be invoked only when there is an incitement to violence but many were booked for for mere words, innocent tweets or harmless jokes.
- **Affects the poor**- The numbers of the uneducated and the illiterate sentenced to death outweigh those who are educated and literate.
- In the Indian scenario, the unsatisfactory legal assistance and the lack of proper defence results in conviction.

- **Right to life**- The Court may have to revisit *Bachan Singh* itself as it refused to declare the death penalty as violative of the right to life envisaged under Article 21 of the Constitution.
- **Global practice**- According to the Amnesty Report of 2021, 108 nations across the world have abolished death penalty in law.
- **Judgmental error**- Death penalty needs to be abolished as judgmental error is quite frequent in India and the quality of adjudication is not ensured.
- **Difference in opinion of judges**- Executions depends overwhelmingly on the adjudicator's personal beliefs.
- Executions occurred in 5.2 cases for every 1 lakh murders.
- **Ease in tax-payer's burden-** Abolishing the death penalty will ease the tax-payer's burden.
- The hangman is paid more, and we also save on the protracted litigation that death cases involve.

In 1962, the Law Commission supported the death penalty whereas in 2015, the Commission called for abolition of the death penalty for ordinary crimes.

References

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