

TOPIC 1: SHOULD WE DO AWAY WITH CAPITAL PUNISHMENT?

THE CONTEXT: On 28 November, 2018 Supreme Court upheld the constitutional validity of capital punishment in a Channu Lal Verma case. The decision has again started a debate about capital punishment in India. The article analyses the various aspects of capital punishment in details.

THE JUDGEMENT OF THE SUPREME COURT

ABOUT THE CASE

- Channu Lal Verma was convicted of triple murders (Anand Ram Sahu, his wife Firanteen Bai and raping and murdering their daughter-in-law RatnaSahu in 2011) by courts trial court of Durg in June 2013 and Chhattisgarh High Court in April 2014.

THE JUDGEMENT

- A three-judge bench comprising justices Kurian Joseph, Deepak Gupta and Hemant Gupta commuted the death sentence of a man and awarded him life term for murdering three people including two women.
- The three judges were unanimous in their view that the Chhattisgarh High Court has wrongly confirmed death penalty on Channu Lal Verma without correctly applying the law laid down in Bachan Singh and other cases.
- As per the judges, the decision to impose the highest punishment of death sentence in this case does not fulfil the test of rarest of rare case.

THE VIEW OF THE JUDGES ON CAPITAL PUNISHMENT

Justices Kurian Joseph, Deepak Gupta and Hemant Gupta expressed different opinions about capital punishment.

The views of the judges about capital punishment

Justice Kurian Joseph	Justice Deepak Gupta and Hemant Gupta
<ul style="list-style-type: none"> The constitutional regulation of capital punishment attempted in Bachan Singh versus State of Punjab in 1980 has failed to prevent death sentences from being 'arbitrarily and freakishly imposed' and that capital punishment has failed to achieve any constitutionally valid penological goals" Every death penalty case before the court deals with a human life that enjoys certain constitutional protection and if life is to be taken away, then the process must adhere to the strictest and highest constitutional standards." 	<ul style="list-style-type: none"> They mentioned that a five-judge constitution bench in Bachan Singh case had already held the constitutional validity of death penalty provided in Indian Penal Code. Thus, there is no need to re-examine the same at this stage.

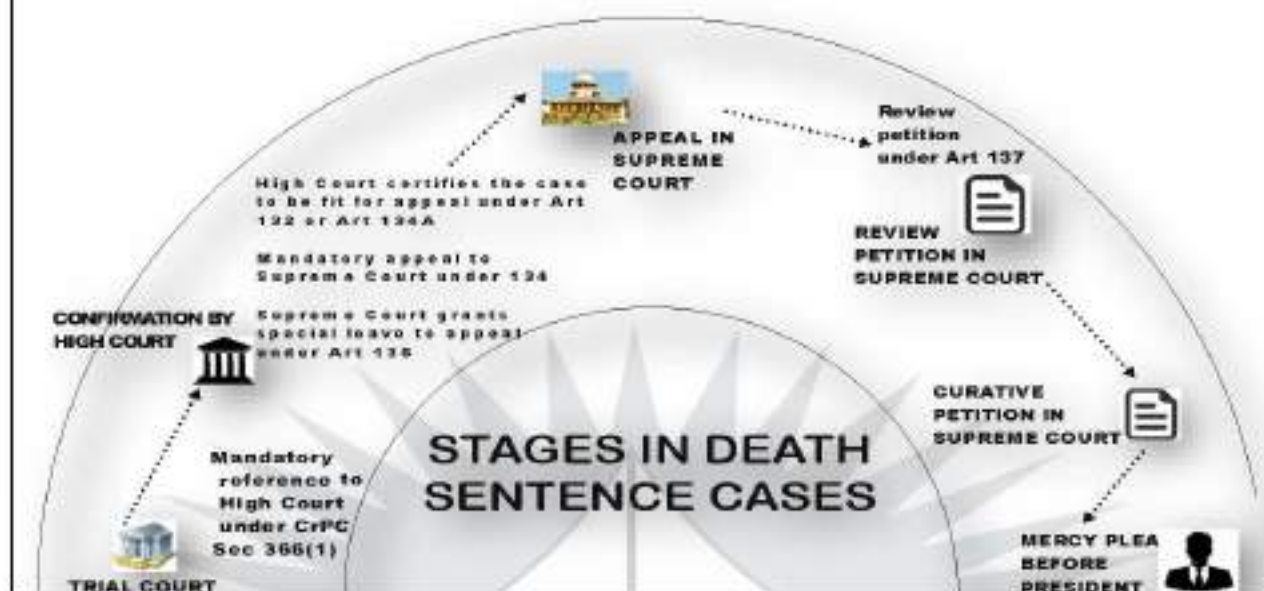
Justices Kurian Joseph views on public discourse on crimes

- Justice Joseph also voiced his views on public discourse on crimes which have an impact on the trial, conviction and sentence. He said that it has almost become a trend for the investigating agency to present their version and blow the collective conscience of the society regarding the crime and criminal.

Point to be noted

- Since 2007 both India and Germany have been negotiating to sign the **Mutual Legal Assistance Treaty** in criminal matters but has not been able to reach a conclusion due to Berlin's strong reservation to the provision of death penalty in Indian law.

- India has been voting against a UN resolution calling for a moratorium on the death penalty. But in effect, there has been a near moratorium on the death penalty in India.
- The Law Commission of India, in its 262nd Report in August 2015, recommended the abolition of the death penalty in phases, beginning with ending it for all offences except those related to terrorism. In its previous major review in 1967, the commission concluded that India couldn't risk the "experiment of abolition of capital punishment."



ANALYSIS OF DEBATE ON CAPITAL PUNISHMENT

<p>Capital punishment and its status in India</p>	<ul style="list-style-type: none"> • Capital punishment is a legal penalty in India. The execution of death sentence in India is carried out by hanging by the neck until death or by shooting. India is one of the 78 countries which have retained death penalty on the ground that it will be awarded only in the 'rarest of rare cases' and for 'special reasons'. • The issue of death penalty has been debated and discussed from time to time in India with no conclusion drawn till now. • There have been diverse and distinct opinions regarding the death penalty in India as some are in the favour while others are against it. • According to Amnesty International 'Death Sentences and Executions' report released in April 2018, the Indian courts gave away 109 death sentences in 2017 but no executions were carried out. Overall, there were 371 people on death row in India in 2017.
<p>Constitutional validity for the capital punishment</p>	<p>Article 21 of the Constitution of India provides Protection of Life and Personal Liberty to every people. And the deprivation of life of anyone is unconstitutional under Article 21. It is also said that No person shall be deprived of his life or personal liberty except according to procedure established by law; it means, if there is a procedure than state can deprived a person from his life.</p> <ul style="list-style-type: none"> • The Indian Penal Code, 1860 awards death sentence as a punishment for various offences. • There is no exhaustive list of offences punishable by death. 59 sections in

	<p>18 central laws, including 12 sections under the Indian Penal Code carry the death penalty.</p> <ul style="list-style-type: none"> ❖ Few such laws: <ul style="list-style-type: none"> ✓ Section 376A of IPC and Criminal Law (Amendment) Act, 2013. ✓ Section 31A of the Narcotic Drugs and Psychotropic Substances Act. • Section 354(3) of the Criminal Procedure Code (CrPC), which was added to the Code in 1973, requires a judge to give "special reasons" for awarding death sentences.
<p>The voices against the capital punishment</p>	<ul style="list-style-type: none"> • In many countries death penalty has been abolished. • In India, there are many social workers who have voiced this demand. Prominent amongst them are Justice Bhagwati and Justice Krishna Iyer both former judges of Supreme Court. • Justice A.K. Ganguly has strongly condemned the provision and said it "barbaric, anti-life, undemocratic and irresponsible". He further said that the doctrine of the crime falling in the 'rarest of rare' category is a "grey" area as its interpretation depended on individual judges. • He also cautioned that before giving death penalty, a judge must be "extremely careful" and weigh "mitigating and aggravating circumstances."
<p>Is the provision against the constitution?</p>	<ul style="list-style-type: none"> • The death punishment challenges as violation of Article 19 and 21 of the Constitution of India and the question of constitutional validity of death penalty has been raised before the Supreme Court of India more than once but apex court also seems to be in the confusion. The judgement of the court reflects this confusion. For example <ol style="list-style-type: none"> 1. Jagmohan Singh v State of UP in 1972, Supreme Court rejected the argument that the death penalty is in violation of Article 19 of the Indian constitution which guarantees "Right to Life". 2. In Rajendra Prasad v State of UP in 1979, Justice Krishna Iyer of the Supreme Court ruled that death penalty violates Articles 14, 19 and 21. 3. In Bachan Singh v State of Punjab case of 1980, the Supreme Court overruled its earlier decision in Rajendra Prasad case. It expressed that death penalty is an alternative punishment for murder and hence not violative of Articles 14, 19 and 21. The court also pronounced the principle of awarding death penalty only in the 'rarest of rare cases'.
<p>The issue of 'rarest of the rare' case</p>	<ul style="list-style-type: none"> • In Machhi Singh v State of Punjab, the apex court laid down the broad outlines of the circumstances when death sentence should be imposed and held that five categories of cases may be regarded as rarest of rare cases: <ol style="list-style-type: none"> 1. Manner of carrying out murder: When the murder is committed in an extremely brutal manner to arouse intense fury in the community. 2. Motive: When the murder is committed for a motive such as a murder by a hired assassin, a cold blooded murder to inherit property, or gain control over property of a ward, or a murder committed for betrayal of the motherland. 3. Anti-social or socially abhorrent nature of the crime: A scheduled caste or minority community person is murdered in circumstances which arouse social wrath; or bride burnt for dowry or for

	<p>remarriage.</p> <p>4. Magnitude of the crime: Crimes of enormous proportion, like multiple murders of a family or persons of a particular caste, community.</p> <p>5. Personality of victim of murder</p> <ul style="list-style-type: none"> • Interpretation and application of this rarest of the rare doctrine is not based on any uniform policy and its interpretation depended on individual Judges, which was clear from the judgement of Nirbhaya and Bilkis Bano case (2017).
Most on death row are poor and backward	<ul style="list-style-type: none"> • Over 80 per cent of prisoners facing capital punishment had not completed school. • Dalits and Adivasis constituted 24.5 per cent among those on death row, while members of religious minorities were over 20 per cent.

The above analyse raised the question about the validity of the capital punishment.

ARGUMENTS FOR AND AGAINST CAPITAL PUNISHMENT

	FOR	AGAINST
SOCIAL VIEW	<ul style="list-style-type: none"> • Act as deterrent and thus creates fear in the minds of people. 	<ul style="list-style-type: none"> • The death penalty does not deter crime effectively.
LEGAL VIEW	<ul style="list-style-type: none"> • Indian Constitution, Various laws, report of law commission and judgements of Indian Courts provide for it. 	<ul style="list-style-type: none"> • The risk of executing innocent people. • The criminal justice system should be reformative. • Capital punishment has become martyrdom for terrorists.
RELIGIOUS VIEW	<ul style="list-style-type: none"> • The Dharmasastras and Arthashastra, Islamic law (Sharia), traditional Catholic position was in support of capital punishment. 	<ul style="list-style-type: none"> • Various Orthodox churches in western world, Interpretations of Buddhist scriptures oppose death penalty.
ETHICAL VIEW	<ul style="list-style-type: none"> • Immanuel kant, Thomas Aquinas, and Utilitarian philosophy favour capital punishment. 	<ul style="list-style-type: none"> • Proponents of Human Rights argue everyone has an inalienable human right to life, even those who commit murder.

The above discuss shows that in India, either capital punishment should be or should not be but there is needs a balance approach about the capital punishment

Way forward

- Internationally this practice has been discarded by majority of the nations today. As a leader of human rights and emerging nations, it does not set a right example. India has been criticized internationally in handling its insurgency in North east and Kashmir. Abolishing capital punishment will augur well for us internationally.
- If India does not want to do away with capital punishment that the approach about the rarest of the rare cases should be clear and the approach of the trail court about such punishment should be improved.

CONCLUSION: The issue needs to be debated and researched in more detail. But, capital punishment should not become a pent-up of society's misplaced anger and sense of judgment. It is also against the reformative purpose of the Criminal Justice System and we must remember the words of Oscar Wilde, "Every saint has a past and every sinner a future."

JUST TO ADD TO YOUR KNOWLEDGE

1. STATUS OF CAPITAL PUNISHMENT ACROSS THE WORLD

- Except Belarus every European country has abolished it (Russia has abolished it in practice, and has not executed anyone since 1996).
- Just four countries considered to be industrialised still execute criminals: the US, Japan, Singapore and Taiwan.
- The most recent countries to abolish all capital punishment are Guinea (2016), Nauru (2016), Congo (2015), Suriname (2015), Fiji (2015), Madagascar (2012), Latvia (2012) and Gabon (2010).
- According to Amnesty International, 25 countries carried out at least 1,630 executions in 2015.

2. WORLD'S TOP FIVE EXECUTIONERS IN 2015

- CHINA (1000+)
- IRAN (977+)
- PAKISTAN (326)
- SAUDI ARABIA (158)
- USA (28)

3. RARITY OF ACTUAL EXECUTION IN INDIA

- The number of convicts actually executed is way less than the number of convicts who were awarded death penalty. This is due to lengthy process.

No. of convicts for capital punishment (2004-13)	1,303
Average No. of convicts for capital punishment per year	130
No. of executed convicts 2004	1 (Dhananjay Chatterjee)
No. of executed convicts in 2012	1(Ajmal Kasab)
No. of executed convicts in 2013	1(Afzal Guru)
No. of executed convicts in 2015	1(Yakub Menon)