



SC initiative on Capital Punishment

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What's in News?

The Supreme Court referred to a larger Bench issues relating to **procedural norms for imposing the death sentence**.

Court Order:

- A three-judge Bench said that there are conflicting judgments on when and how the sentencing hearing must take place, and referred the issue to a five-judge Constitution Bench.
- The issue revolves around giving meaningful opportunity to those found guilty of a capital offence to present mitigating factors and circumstances so that they can better plead for a life term instead of a death sentence.
- The reference was made to resolve differences between judgments, mainly on whether it is necessary to hold the hearing on sentencing on a subsequent day and not on the day of the conviction

Death Penalty:

- **Section 354(3) of the Code of Criminal Procedure (CrPC), 1973** says that when an offence is punishable with death or imprisonment for life, the judgment shall state the reasons for the sentence awarded, and if the sentence is death, "special reasons" for the sentence.
- In 1980, the Supreme Court **upheld the constitutionality of capital punishment** in '**Bachan Singh v State of Punjab**' on the condition that the punishment will be awarded in the "**rarest of the rare**" cases.
- Crucially, the ruling also stressed that a separate sentencing hearing would be held, where a judge would be persuaded on why the death sentence need not be awarded.
- Besides the gravity of the crime, the circumstances of the accused also came to be examined to determine the suitability of the death penalty in a given case.
- Trial courts were required to balance '**aggravating circumstances**' and '**mitigating circumstances**' to decide the sentence.

Difference of opinion:

- **Section 235 of the Code of Criminal Procedure (CrPC)** requires a judge to hear the accused after conviction on the question of sentence, and then pass sentence on him according to law.
- The position of Bachan Singh case was reiterated in several subsequent rulings of the court, including in '**Mithu v State of Punjab**', a 1982 ruling by a five-judge Bench that **struck down mandatory death sentence as it falls foul of the right of an accused to be heard before sentencing**.
- However, there are conflicting rulings on when that separate hearing is supposed to take place.
- At least three smaller Bench rulings have held that while a separate sentencing hearing is inviolable, they can be allowed on the same day as the conviction.
- Other more recent three-judge decisions have ruled that **same-day sentencing in capital offences violate the principles of natural justice** as convicts do not get enough time to gather mitigating factors.
- In '**Dattaraya v State of Maharashtra**', a 2020 ruling, a three-judge Bench of the Supreme Court **commuted the death sentence to life imprisonment on the grounds that an adequate sentencing hearing was not held**.

Mitigating circumstances:

- In ‘**Manoj & others v. State of Madhya Pradesh**’, the Supreme Court addressed the **lack of a legal framework or institutional capacity to handle death penalty sentencing**.
- Studies also show that **largely underprivileged, minorities, and scheduled castes and tribes are awarded the death sentence**.
- Death penalty sentence is largely driven by the crime in question and not the circumstances of the accused.
- The SC order referring the issue to a larger bench lists social milieu, the age, educational levels, whether the convict had faced trauma earlier in life, family circumstances, psychological evaluation of a convict and post-conviction conduct, as relevant circumstances that should be accounted for at the sentencing hearing.

Way Forward:

- The Constitution Bench **may lay down comprehensive guidelines** on the manner in which sentencing decisions can be arrived at.
- It may make it necessary for the **trial court to get to know the accused better** before passing the sentence.
- Going beyond the reports of jail authorities or parole officers, the courts may draft **the help of psychologists and behavioural experts**.
- The case is a **crucial opportunity to bring consistency in practice** and, thus, ensure that **those facing capital punishment get a hearing that’s fair, humane — and just**.