

# Supreme Court on Capital Punishment

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## Topic- Judiciary [GS Paper-2]

**Context-** Recently a three-judge Bench of the Supreme Court has referred to a higher Constitution Bench the issue of giving meaningful opportunity to those found guilty of a capital offense to present mitigating factors and circumstances so that they can better plead for a life term instead of a death sentence.

### Key Highlights

- The referral is based on an argument that the process of same-day sentencing is hopelessly tilted against the accused.
- The Bench said that the State is provided with an opportunity to present aggravating circumstances against the accused throughout the duration of a trial.
- In this case the accused is able to produce evidence showing mitigating circumstances in their favour, only after their conviction.
- However it was necessitated due to a difference of opinion and approach amongst various judgments, on the question of whether, after recording conviction for a capital offence, under law, the court is obligated to conduct a separate hearing on the issue of sentence.
- There are also contradictory judgments on when and how the sentencing hearing must take place mainly on whether it is necessary to hold the hearing on sentencing on a subsequent day and not on the day of the conviction.

- The issue is concerned with 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 matter in the court mainly arises from the legal requirement that whenever a court records a conviction, it has to hold a separate hearing on the quantum of sentence.

## Judgments of the Court

- Section 235 of the Code of Criminal Procedure (CrPC) provides that in case the accused is convicted, the judge will hear the accused on the question of sentence and then pass sentence. This process is crucial if the conviction for an offence is related to either death or life imprisonment.
- Similarly Section 354(3) of the CrPC says that when there is death Penalty or imprisonment for life, the judgment will have to state the reason for why the sentence was awarded. And for death sentences, “special reasons” will have to be provided in the judgment.
- In ‘Bachan Singh v State of Punjab’, 1980, the Supreme Court upheld the constitutionality of capital punishment on the condition that the punishment will be awarded in the “rarest of the rare” cases.
- Crucially, the judgement 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.
- In ‘Mithu v State of Punjab’, a 1982 ruling by a five-judge Bench made mandatory death sentence as it falls foul of the right of an accused to be heard before sentencing.

## Capital Punishment

- Capital Punishment is the most severe form of punishment or legal death penalty which is awarded for the most heinous and grievous crimes against humanity.
- There are certain offences under Indian Penal Code, for which the delinquents can be sentenced to capital punishment such as
  - For committing Murder under Section 302
  - Dacoity with murder under Section 396
  - Involvement in Criminal Conspiracy under Section 120B
  - Waging war against the Government of India or attempting to do so under Section 121
  - Abatement of mutiny under Section 132 etc
- The term capital punishment is sometimes used interchangeably with death penalty, though imposition of the penalty is not always followed by execution, sometimes capital punishment can be commuted into life imprisonment or pardoned by the President under Article 72 of Indian Constitution.

## Way Forward

- Further judgments of the court will effectively settle the debate on whether the fast-tracked hearings by trial courts awarding death sentences in a matter of days in some cases is legally tenable.

- The ruling could also act as a significant step in raising the bar further in awarding the death sentence.
- The focus is not only on eliminating the criminal but also on elimination of the crime.

The purpose of punishment in criminal law, in a broader perspective, is to achieve the goals of an orderly society. Hence there is a need to ensure the restoration of peace and prevent future occurrences of crimes by balancing the competing rights of the criminal and the victim.