



EDITORIAL ANALYSIS

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Criminal Law Bill & Death Penalty

Syllabus: GS2/ Government Policies & Interventions

In Context

- The proposed Bharatiya Nyaya Sanhita (BNS) Bill, 2023 that seeks to replace the British-era Indian Penal Code has increased the number of crimes which can attract the death penalty.

Death penalty

- **About:**
 - It is the highest degree of punishment that can be awarded to an individual under a specified penal law in force.
 - It is a legally backed instrument used by the state to take an individual's life.
- **Evolution in India:**
 - During the British raj, there were **countless instances** of Indians being hanged after trial or even before it.
 - Post Independence, **India became a democratic state**, and the **system of awarding death penalties** too changed drastically.
- **Current status:**
 - India has in the past voted against a United Nations General Assembly's draft resolution on the abolition of the death penalty.
 - According to a study conducted by the National Law University Delhi – the Annual Statistics Report 2022, published by Project 39A – till December 31, 2022, as many as 539 prisoners were on death row in India, the highest since at least 2016.

Bharatiya Nyaya Sanhita Bill, 2023

- The Bharatiya Nyaya Sanhita Bill, 2023 which will repeal and replace the more than 160-year-old Indian Penal Code (IPC), has been introduced in Lok Sabha. The Bill proposes the following changes.
 - **IPC Section 420: Cheating**
 - IPC Section 420 deals with Cheating and dishonestly inducing delivery of property.

- In proposed Bill, 2023: There is no Section 420 and the offense of cheating is covered under Section 316.
- **IPC Section 124A: Sedition**
 - IPC Section 124A deals with Sedition.
 - In proposed Bill,2023: Section 124 in the proposed Sanhita relates to the offense of wrongful restraint.
 - The word sedition does not exist in the proposed Sanhita. Offenses of the nature described as “sedition” in the IPC are covered in Section 150 of the proposed Sanhita, as “Acts endangering sovereignty, unity and integrity of India”.It is a more detailed provision than IPC Section 124A.
- **IPC Section 302: Murder**
- **IPC Section 307: Attempt to murder**
- **IPC Sections 375 and 376: Rape**
- **IPC Section 120B: Criminal conspiracy, etc.**
- **Death penalty:**
 - The proposed Bharatiya Nyaya Sanhita (BNS) Bill, 2023 has increased the number of crimes which can attract the death penalty from 11 to 15, according to a **parliamentary panel report** published recently.
 - The death penalty has been added for at least four new crimes such as mob lynching, organised crime, terrorism and rape of a minor.
 - For example, **Death penalty for gang rape of minor:** IPC allows death penalty for gang rape of women below 12 years of age. The Bill allows death penalty for gang rape of women below 18 years of age.

Parliamentary panel report recommendation

- The parliamentary panel recommended that the matter be left for the Government to consider.
 - According to the panel’s report, the domain experts consulted by the committee “deliberated at great length about the **need to abolish the death penalty**”.
- The Committee after considering the submissions regarding the death penalty has understood that the reason for a passionate **argument against death penalty** is that the **judicial system can be fallible** and to prevent an innocent person from being wrongly sentenced to death.
- The domain experts submitted before the Committee that **the “rarest of rare case” doctrine should be defined** in more objective terms, if the death penalty has to be retained.

Arguments in favor of Death Penalty

- **Favoured by various agencies:**

- In the **35th Report of Law Commission of India (1962)**, which was presented in 1967, the Law Commission favoured retaining the death penalty in the Indian Judicial System.
- **Maintenance of law and order:**
 - It said that **maintenance of law and order**, absence of any empirical research and other similar factors, “India cannot risk the experiment of abolition of capital punishment”.
- **Acting as a deterrent:**
 - Death punishment serves as a **deterrent** and a “response to the society’s call for appropriate punishment in appropriate cases”.

Arguments against Death Penalty

- **Against the global trend:**
 - According to the Amnesty Report, at the end of 2021 more than two thirds of the world’s countries had abolished the death penalty in law or practice.
- **The poor are most affected:**
 - In India, the poor are more affected than the rich.
 - The numbers of the uneducated and the illiterate sentenced to death outweigh those who are educated and literate.
 - It can be observed that 74.1% of individuals on death row in India come from economically disadvantaged backgrounds.
- **No reduction of pain:**
 - Neither of these options (hanging or lethal injection) are really concerned with reducing pain for the prisoner and neither can they really achieve that reduction of pain.
 - Society, as a consumer and supporter of the death penalty, does not want to see the immense suffering that is inflicted in killing the death row prisoner.
- **Low imposition of death penalty:**
 - According to the data, the Supreme Court has affirmed the death penalty in only 7 cases in the last 6 years.
 - While the imposition of the penalty itself causes distress and trauma, the wait before the sentence is set aside or confirmed causes distress many times more.
 - An imprisonment for the remainder of natural life without parole is, in fact, a more rigorous punishment according to critics and also opens a window of opportunity for the convict to reform.

Suggestions & Way ahead

- The Government has hailed the Bills as a move towards shedding the colonial nature of criminal laws, the Bills still retain the colonial spirit of the current laws and punishments for some offences have been made harsher.

- The issues that need to be addressed are
 - the arbitrariness in death penalty sentencing,
 - the discriminatory and disparate impact of the death penalty on marginalised groups,
 - the brutal realities of life on death row, and
 - the mental health consequences of being on death row, etc.
- The experts opined that the quasi-judicial boards should be made to exercise **probation, commutation and remission** to provide greater scope for victims to have a say; and timelines should be indicated for mercy petitions to be heard and disposed.

Pardoning Powers defined in the Constitution

- **Pardon:** This means completely absolving the person of the crime and letting him go free. The pardoned criminal will be like a normal citizen.
- **Commutation:** It means changing the type of punishment given to the guilty into a less harsh one, for example, a death penalty commuted to a life sentence.
- **Reprieve:** It means a delay allowed in executing a sentence, usually a death sentence, for a guilty person to allow him some time to apply for a Presidential Pardon or some other legal remedy to prove his innocence or successful rehabilitation.
- **Respite:** It means reducing the quantum or degree of the punishment to a criminal given some special circumstances, like pregnancy, mental condition etc.
- **Remission:** It means changing the quantum of the punishment without changing its nature, for example reducing twenty-year rigorous imprisonment to ten years.

Daily Mains Question

[Q] The proposed Bills to reform the criminal justice system still retain the colonial spirit of the current laws. Examine. Highlight the issues that need to be addressed