

NEXT IAS

**DAILY EDITORIAL
ANALYSIS**

TOPIC

**India's Burgeoning Death
Penalty Crisis**

www.nextias.com

INDIA'S BURGEONING DEATH PENALTY CRISIS

Context

- Recently, it was found that India's death row population has been on a steady rise, reaching its highest-ever numbers at the end of 2023.

About the Death Penalty Crisis in India

- India is currently grappling with a burgeoning crisis related to the death penalty. The country's death row population has been on a steady rise, reaching its highest numbers since 2004.
- As of the end of 2023, there were 561 prisoners on death row. This increase is attributed to the exaggerated and unjustifiable use of the death penalty by trial courts.

High Rate of Acquittals:

- The high rate of acquittals with a skyrocketing death row population must compel the Court to consider whether **India's death penalty reform** can ever be limited to the question of sentencing.
- Despite comprising a smaller proportion of death cases at the Court in previous years, these decisions **underscore systemic failures by the police, prosecution, and trial courts.**
- **Supreme Court Acquittals:** The Supreme Court of India plays a pivotal role in the ongoing death penalty crisis in the country.
 - ◆ In an unprecedented trend, the Supreme Court of India acquitted nearly 55% of the death row prisoners in the cases it heard in 2023.

Supreme Court's Judgments:

- The Supreme Court earlier acknowledged an intense and persistent crisis in the fairness of administering the **death penalty in India** for many decades now.
- The Court's recent judgement in **Manoj and Ors. vs State of Madhya Pradesh (2022)** seeks to address this **long-ignored yet critical aspect of death penalty sentencing.**
- **In September 2022, the Supreme Court convened a Constitution Bench to reform death penalty sentencing,** in response to the increasing number of death sentences imposed by trial courts, reaching its highest in a single year since 2000.
 - ◆ These reforms have **failed to trickle down to trial courts** for the second year in a row.
- However, given the continued evidence of the broken state of sentencing in India's courts, the potential of this Bench to truly turn things around appears uncertain.

Project 39A:

- It is inspired by **Article 39-A of the Indian Constitution**, a provision that furthers the intertwined value of **equal justice and equal opportunity** by removing economic and social barriers.

Role of Lower Courts:

- Data from **Project 39A's 2023 annual statistics** on the death penalty show that the Court's attempts to reform sentencing through its directions in Manoj vs The State Of Madhya Pradesh have failed to trickle down to trial courts for the second year in a row.
- In 2023, **trial courts imposed 86.96%** of death sentences in the absence of information pertaining to the accused that was mandated in the Judgement of 2022.
- Additionally, the High Courts continued their reluctance in confirming death sentences in 2023.

Arguments Favouring Death Penalty

- 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.
- **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.

Impacts of Death Penalty in India

- **The Socio-Economic Impact:** The death penalty in India disproportionately affects the poorer, less educated, and socially backward sections of society.
 - ♦ A 2016 study found that 76% of death row prisoners belonged to scheduled castes and scheduled tribes, other backward classes, or religious minorities.
 - ♦ Two-thirds of the convicts facing death belonged to the economically vulnerable sections and over 80% of them had not completed school.
- **Impact on the Justice System:** The death penalty has revealed major structural anomalies in the legal system, which could be causing the miscarriage of justice.
 - ♦ Less than five percent of the death sentences given by lower courts were confirmed by the Supreme Court.
 - ♦ This stokes the suspicion that the lower judiciary is not sufficiently diligent in following the principle of pronouncing death only in the rarest of the rare cases.
- **Psychological Impact:** The death row experience comes with life-long psychological ramifications, which continue well after a prisoner has been acquitted or commuted.
 - ♦ Yet, the death row population continues to increase every year due to the exaggerated and unjustifiable use of the death penalty by the trial courts.
- **Impact on Crime Deterrence:** There is insufficient evidence that supports the efficacy of the death penalty in preventing heinous crime.
 - ♦ Jurisprudence the world over is moving towards a more humanistic view of justice that focuses on reformation.

The Need for Reform

- The Supreme Court’s high rate of acquittals and the skyrocketing death row population compel the Court to consider whether India’s death penalty reform can ever be limited to the question of sentencing.
- The finality of **capital punishment** is one reason why **at least 120 countries have done away with it**.
 - ♦ Moreover, there is insufficient evidence that supports the efficacy of the death penalty in preventing heinous crime.

Suggested Reforms

- **Uniform Approach in Sentencing:** The Supreme Court of India has called for a uniform approach in granting real and meaningful opportunity to convicts on Death Row.

- ◆ It includes considering all possible alternatives to the death penalty before imposing it.
- **Rigorous Compliance with Supreme Court's Decision:** Lower courts must rigorously comply with the Supreme Court of India's decision in the **Manoj and Ors. vs State of Madhya Pradesh (2022)** enabling an informed sentencing inquiry.
 - ◆ It aims to ensure that those facing capital punishment get a hearing that's fair, humane, and just.
- **Abolition of Death Sentence:** The **Law Commission Report of 2015 on Death Penalty** recommended the abolition of the death sentence except in terror-related cases.
 - ◆ The report noted the global trend to be a continuous drop in "active retentionist" countries — over 144 countries have either in law or practice abolished the death sentence.
- **Addressing Structural Discrimination:** The death row debate in India cannot ignore the reality of the structural discrimination against those from a certain caste, class, and religion.
 - ◆ A 2016 study found that 76% of death row prisoners belonged to scheduled castes and scheduled tribes, other backward classes, or religious minorities.
- **Repealing Outdated Laws:** These with the focus to protect all the rights given to Indian citizens by the constitution, and their purpose should not be to punish but give justice.
 - ◆ Recently, the Government **cleared the Bills to replace** the Indian Penal Code (1860) with the Bharatiya Nyaya Sanhita Bill, the Code of Criminal Procedure (1973) with the Bharatiya Nagarik Suraksha Sanhita Bill, and the Indian Evidence Act (1872) with the Bharatiya Sakshya Bill are considered as significant for this.

Conclusion and Way Forward

- The death penalty in India has been a subject of intense debate and scrutiny, with calls for reform growing louder in recent years.
 - ◆ The death penalty crisis in India is a complex issue that requires immediate attention and reform.
- The high rate of acquittals with a skyrocketing death row population must compel the Court to consider whether India's death penalty reform can ever be limited to the question of sentencing.
- The current state of the death penalty in India calls for urgent reform.
 - ◆ The current system, with its biases and inconsistencies, is not serving justice.
- The Supreme Court's role in this crisis is crucial and its decisions will significantly impact the future of the death penalty in India.
- It is time for India to reconsider its stance on the death penalty and move towards a more humanistic view of justice that focuses on reformation rather than retribution.

DAILY MAINS QUESTION

What are the implications of the death penalty crisis in India, and how do you think it affects the socio-economic fabric of the country?

