

The challenge of reforming death penalty sentencing

(GS Paper 2, Functioning of Judiciary)

Why in news?

- There has been an intense and persistent crisis in the fairness of administering the death penalty in India for many decades.
- At the heart of that crisis has been the concern that there is an existing arbitrariness in sentencing procedures that impose the death penalty, and a significant concern has been that barely any relevant information about the accused enters the courtroom during the sentencing phase.



Recent Judgement

- The Court's recent judgment in *Manoj and Ors. vs State of MP* seeks to address this long ignored yet critical aspect of death penalty sentencing.
- This specific attempt in Manoj must be seen with the Court's apparent discomfort over the last year with procedural unfairness in sentencing being carried out by the lower courts.

Individualised sentencing:

- The **constitutionality of the death penalty was upheld in 1980** in *Bachan Singh vs State of Punjab*, which greatly emphasised 'individualised sentencing' and called upon courts to consider the 'crime' and the circumstances of the accused.
- However, since Bachan Singh there have been disagreements on which cases warrant the imposition of the death penalty and the nature of information about the accused relevant for sentencing.
- With a vast majority of prisoners being poor, quality legal representation has always been a concern. As a result, **very little attempt is made to collect sentencing information**, and very little is known about the accused while sentencing.

Issue of lack of adequate information about the accused in 2021:

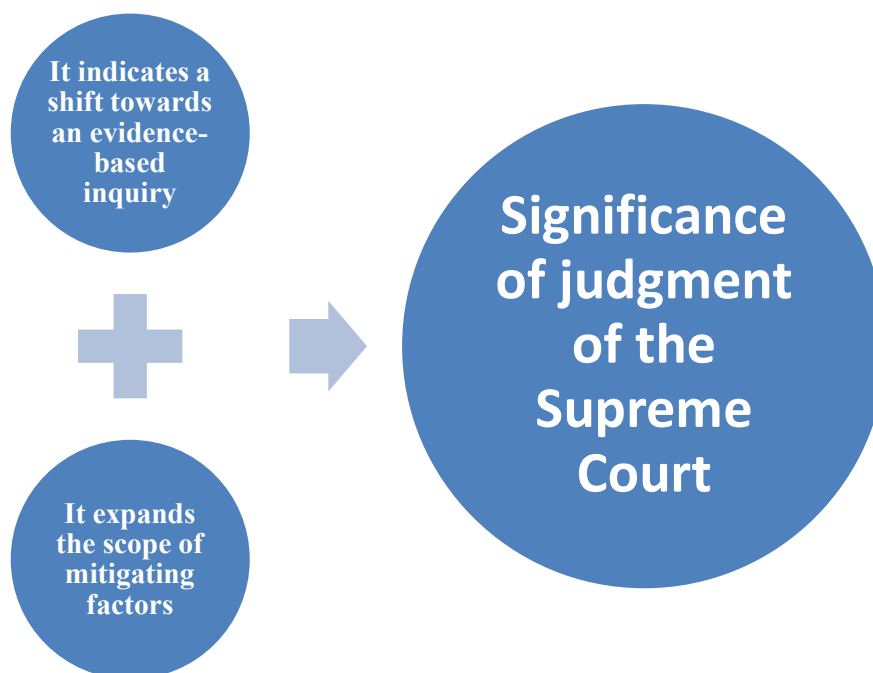
- Since September 2021, during Justice N.V. Ramana’s tenure as the Chief Justice of India, three Benches of the Supreme Court heard arguments in 13 death penalty appeals and delivered judgments in 10 of these cases, resulting in three acquittals in one case and commutations in the rest.
- In these decisions, there is a deep and acute concern surrounding the procedural fairness on the imposition of the death penalty and the lack of adequate information about the accused.
- The Bench headed by Justice U.U. Lalit has been particularly concerned over the lack of information about the accused.
- Recognising the **centrality of such information for a fair sentencing process**, the Bench passed an order in Manoj in September 2021 calling for reports of the probation officers, prison officers and mental health professionals.
- In the final judgment delivered recently, the Supreme Court took important steps towards realising an ‘individualised sentencing enquiry’ as envisaged by the court in Bachan Singh 42 years ago.

Role of criminogenic factors:

- Sentencing happens after an accused has been found guilty of the crime. Here, the circumstances of the accused are considered.
- This requires a broad-based inquiry as scientific theories no longer see the accused as individuals who, out of their free-will, make “bad choices” unhindered by their past or present circumstances.
- Contemporary understanding of criminogenic factors among scholars and researchers focuses on analysing past social histories, behaviours and life circumstances of the accused as human behaviour is a product of a complex interplay of personal and environmental factors.

Significance of judgment of the Supreme Court in Manoj:

- There have been important efforts by courts to bring forth such information. However, the judgment of the Supreme Court in Manoj is significant for two reasons:
 - a) It **indicates a shift towards an evidence-based inquiry** to sentencing that invites expert opinions and reports from a wide range of disciplines.
 - b) It **expands the scope of mitigating factors** by calling for reports that bring forth pre-offence details such as socio-economic status, education, family background and also post-offence details such as the conduct of the prisoner in prison.
- Mitigating factors pertain to life circumstances of an individual that can help determine punishment.



Life-history approach:

- The life-history approach provides one such framework that enables a view of life circumstances of an individual as interconnected to each other.
- **Socio-economic circumstances**, for instance, have been recognised as a mitigating factor by courts in various death penalty cases. What makes it compelling is when it is seen as interconnected to other factors, i.e. to see how poverty impacts a particular individual's access to housing, education and health care, which subsequently impacts and shapes their life choices.
- It is a first for the Supreme Court to have laid down that information such as **early family background** that brings out any history of violence or neglect (also known as remote factors or experiences) is a relevant mitigating factor.
- Such negative experiences usually accumulate over time and therefore, the life-history approach is uniquely suited to such an inquiry. It provides insights into how early life circumstances shape an individual's character and affect their actions as adults.

Procedural Challenges:

- While one hopes that the procedure adopted by the Supreme Court in nuancing sentencing in death penalty cases would be followed by lower courts, the real challenge would emerge with equipping courts to understand such rich information.
- The traditional checklist-based approach of presenting mitigation severely deviates from the requirements of individualised sentencing which is the most fundamental principle of the criminal justice system.
- Further, keeping in mind the **introduction of non-legal expertise into courtrooms**, courts will need to equip themselves to appreciate the evidence so presented.
- Questions on conflicting findings in reports and opinions presented to the court during sentencing would also need to be addressed keeping in mind existing evidentiary standards and judicial dicta, which suggests courts must not be constrained by confines of the evidence act in capital sentencing.

Way Forward:

- The decision in Manoj is indeed a **positive step towards a more meaningful and informed sentencing inquiry**. However, further inquiry into the complex questions around sentencing will be inevitable to ensure procedural fairness for those under the sentence of death.