REDUCING THE SCOPE OF THE DEATH PENALTY

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• Death Penalty is the only exception to ‘Right to Life’ recognised under Article 6 of ICCPR

• The scope of the death penalty has been restricted on three counts:
  • Crimes that may be punishable by death
  • Persons who cannot be sentenced to death
  • Procedure for imposition of the death sentence
Crimes eligible for death penalty

- Article 6 (2) ICCPR – Death penalty may be imposed only for “the most serious crimes.”

- “Progressively restrict” the number of offences for which capital punishment may be imposed, with a view towards abolition (UNGA Res 2857, 1971)

- “Intentional crimes with lethal or other extremely grave consequences.” (ECOSOC 1984/50)

- “Offences should be life threatening, in the sense that this is a very likely consequence of the action.” (UN Secretary General Report E/2000/3)

Most Serious Crimes

• “Most serious crimes” should be restricted to
  (1) Crimes directly resulting in a loss of life and;
  (2) Crimes committed with an intention to kill

• Cannot include crimes which evoke moral outrage or may be deterred with the death penalty which do not satisfy the above requirement
Persons who cannot be sentenced to death

Article 6(5) ICCPR states that following persons shall not be sentenced to death:

• **Persons below age of 18** at the time of the offence; and

• **Pregnant women**
Persons who cannot be sentenced to death

List expanded in General Comment 36 (2018) to include:

- Persons with **serious psycho-social and intellectual disabilities**;
- Persons with **diminished ability to understand** the reasons for their sentence;
- Persons at an **advanced age**;
- Persons who have **suffered human rights violations** in the past;
- Persons with families such as **parents and children dependent** on them;
- Persons, with or without disability, that have **reduced moral culpability**
Procedure for imposition of death sentence

Crimes which may be punishable with death

• Only for crimes punishable by death at the *time of commission*;

• *Cannot be reintroduced* for a crime for which it was abolished;

• *Retroactive application of abolition* to those on death row;

• Cannot be imposed for crimes which are *vaguely defined*;
Procedure for imposition of death sentence

Procedure during conviction and sentencing proceedings

• Guilt must be based on *clear and convincing evidence* leaving no room for an alternative explanation of facts;

• Cannot be imposed if *fair trial rights* are violated. For example:
  • Use of forced confessions,
  • Non-examination of relevant witnesses,
  • Lack of adequate time, facilities or documents necessary for defence,
  • Failure of presumption of innocence,
  • Lack of independence or impartiality of judiciary
Procedure for imposition of death sentence

Procedure during conviction and sentencing proceedings

• Cannot be *mandatorily imposed* for any crime;

• *Circumstances of the crime and the offender* must be considered;

• Re-evaluation of conviction based on *new evidence* or *scientific studies questioning validity and reliability of evidence*;

• *Families of victims should not have a preponderant role* in determining imposition of death sentence;
Procedure for imposition of death sentence

Rights of those suspected, charged or convicted of capital offence

• *Adequate legal assistance at all stages* of the proceedings, starting from interrogation;

• *Appeal* to a court of higher jurisdiction;

• Seek *pardon or commutation* of the death sentence;
Procedure for imposition of death sentence

Safeguards before execution of death sentence

• *Timely notification* of date of execution

• Cannot be executed if:
  • *Extreme delay* in the implementation of the death penalty;
  • Judicial or executive proceedings are *pending*;
  • Incarcerated in *harsh conditions* such as solitary confinement;

• Mode of execution should inflict *minimum possible suffering*
Emerging challenges

• **Widening scope** of “most serious crimes” by different jurisdictions
  • For example: Surge of death sentences imposed in India as death penalty introduced for rape of a minor girl in 2018

• **Exceptionalism** around death penalty – harder to challenge imposition of death sentences in certain cases

• **Lack of framework and resources** to follow the rigorous safeguards for the imposition of death sentence by all courts and authorities