

## Constituent Assembly Debate on Abolition of Death Penalty

Constituent Assembly debates are very important sources of material for the UPSC exam. In this article, we bring you the highlights of the Constituent Assembly debates on the topic of the death penalty and its abolition for the [IAS exam](#) polity, governance, and social issues segments.

### CA Debate on Abolition of Death Penalty

Between 1947 and 1949, the Constituent Assembly debated the Death Penalty. The question was asked because of its judge-centric nature, possible uncertainty in its enforcement, its discriminatory impact on the poor and the marginalised sections, and the possibility of error in the final judgment.

During the [debates in the Constituent Assembly](#), **Mr. Z.H. Lari** proposed for the insertion of Article 11-B in which he proposed the abolition of capital punishment except for sedition involving the use of violence.

- He stated that capital punishment is abolished in various countries of the world.
- He proposed so, because, once the said punishment is pronounced, the offender remains no more alive. Later on, if the court or tribunal comes to know that it had committed a mistake i.e. the person on whom such sentence is pronounced is not guilty then such a mistake cannot be rectified.
- He was of the opinion that human life is sacred. The life of a man can be taken only when such a man is harmful to the lives of others in society.
- He gave examples of thirty countries of the world where society is protected at large without such punishment.
- He also admitted that capital punishment is brutal in nature and sentiments of brutality do not prevail in the present century.
- He quoted the example of Dickens that - many decades ago, Dickens stated that capital punishment encourages that section of the population which is determined on committing murders, to commit murders because that is accompanied by a sort of martyrdom.
- He then proposed that for habitual murderers, capital punishment is proper but for those murderers that have committed the crime occasionally, for them life imprisonment is proper instead of capital punishment.
- He then proposed the introduction of a reformatory element in the punishment. He demanded to give prime consideration to reformation in punishment.
- He demanded the abolition of capital punishment under three grounds viz. human judgement, the sanctity of human life and the purpose of punishment.
- He also admitted that if there exists a situation in which the state is put into danger and where there is a risk of loss of lives of many people then such punishment may be inflicted.
- He also expected the Parliament to abolish the said punishment permanently within two or three years.

Thereafter, **Shri Amiyo Kumar Ghosh** expressed his views.

- According to him, the said punishment is inhuman and there are probable chances for judges to make mistakes.
- He admitted that society consists of not only good elements but there are evil elements too and to keep a check on such anti-social elements from usurping the society, the State may require such penalties to be imposed on persons who want to terrorize the society.
- He further goes on to say that India is passing through a transitional period, where serious problems might confront the State and the Society which may require the state to impose grave penalties.

- So according to him, capital punishment should be abolished, but the proper place for doing such a thing is not to provide a clause to that effect in the Constitution and tie the hands of the State, but it should be done by amending the [Indian Penal Code](#) or such other laws which impose such penalty.
- This is keeping in view that if such a clause is provided in the Constitution, the State will be unable to prescribe such a punishment without amending the [Constitution](#), which is a difficult matter.

Thereafter, **Shri. K. Hanumanthaiya** expressed that instead of capital punishment, life imprisonment must be given to the convict.

- He admitted that from the State's point of view, the fear principle is necessary.
- He informed that if reformation is practised then naturally, deterrent will lose its value. Under reformation, a convict who is convicted of life is released soon by giving him various concessions.
- If the convict is assured that if he takes away the life of anybody then for a long time he has to remain in a prison, he will not do so.
- Therefore, he recommended that for the safety of the State, the said punishment must not be abolished.

The said suggestion regarding Article 11-B to abolish the death penalty was negated.

### Conclusion

The intention of the framers behind moving Article 11-B was to partly abolish capital punishment. They wanted that the State must not be put into a helpless condition by completely abolishing capital punishment. They believed that only reformation cannot serve the purpose. According to them, deterrence was necessary. They also expressed their views that capital punishment can be removed after the development of the society up to a certain extent. Most of the framers were against the complete abolition of capital punishment. Article 11-B did not become part of the Indian Constitution as the motion regarding it was negated. But their intention regarding the abolition of the death sentence has become very clear.

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