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Reopening Final Death Sentences under Article 32: A Critical Analysis of Judicial Review and Constitutional Safeguards

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Abstract

The final death sentence represents a real clash of the Constitution on one hand – the finality of adjudication – and the State's ongoing responsibility, on the other, to protect life and equality. In India, the Supreme Court's grant of exceptional sentencing-stage reopening under Article 32 alters the remedial landscape, but does not transform constitutional jurisdiction into an unlimited second appeal. The methodology used in this study is doctrinal analysis, which is supported by statistics on the number of deaths at the institution and literature on the death penalty, including constitutional provisions, laws and recent and landmark judgments in criminal proceedings. It separates the concepts of conviction review, curative jurisdiction, executive clemency, challenges to execution and a very specific argument that the original capital sentencing mechanism was lacking in a number of constitutionally indispensable safeguards. One of the core conclusions is that finality is important but does not justify an impending execution based on a clearly flawed individualised sentencing hearing. A case like *Vasanta Sampat Dupare* (2025) points towards a specific path of correction, whereas the October 2026 clarification in Aman Singh, indicates the significance of pragmatic institutional obligations. Extensive evidence demonstrates the lack of compliance at the trial level which suggests that there is a need for more preventive strengthening in the investigation of mitigations as opposed to generic reopening. The authors suggest a disciplined threshold characterised by a specific constitutional defect, the materiality of the defect to the sentence, the diligence of the procedure and the proportionality of the relief, which must be circumscribed to the issue. This system would retain the regularity of criminal proceedings and allow for punishment only after criminal determination that has been made through a constitutional process, thus preventing irrevocable punishment on the basis of an unconstitutional system of criminal determination.

Keywords: Article 32; Capital Sentencing; Judicial Finality; Mitigating Circumstances; Constitutional Remedies

1. INTRODUCTION

Capital punishment is exceptional not only by reason of its severity, but because execution is such that the culprit cannot be corrected. With the above background, Indian criminal procedure requires special reasons for the death and confirmation by the High Court of a Sessions Court's decision. Constitutional protections also apply to the person after conviction. A death sentence upheld on appeal also may have

stemmed from an inadequate opportunity to present social-history evidence, clinical evaluation or evidence of rehabilitation. The very existence of the problem can itself not be solved by finality: a judgment could be final, but the execution, sought to be given to it, could be subject of a present constitutional objection. Thus the concept of a fair sentence and the validity of a conviction is quite different.[1]

The Supreme Court has gradually evolved the concept of individualised capital sentencing, open court review, curative relief and review of supervening circumstances of execution.[2] These safeguards have not always worked harmoniously. In 2025, the Court itself has expressly recognised an exceptional route to reopen a final death sentence when the safeguards that the law eventually came to set out in sentences that followed were lacking. In 2026, additional guidance on mitigation reporting was also adjusted, as there were concerns related to administrative practicality. The consequences clearly raise a precise controversy: when should a later constitutional rule override the ordinary finality of an earlier capital sentencing decision and what proper limits should there be on corrective judicial authority?

In this context, the present study looks at the controversy in Indian Constitutional and Procedural background with regard to historic legislation and Bharatiya Nagarik Suraksha Sanhita, 2023. It distinguishes between judicial decisions of today and treats them on their own terms rather than taking every judicial development to be a new rule of general application. It also considers a decade of data and the compliance findings of the trial courts, and acknowledges that no single prosecution can be proved unconstitutional based on overall statistics.[3] The premise is that the constitutional materiality of the claimed procedural failure and evidence must support it and that there can be a narrow, rights-based reopening of sentencing where this is so and a remedy can be effected without upsetting a final conviction.

2. CONSTITUTIONAL AND STATUTORY FRAMEWORK

The capital sentencing system consists of substantive constitutional protections and procedural safeguards against sentencing, appeals, confirmations and reviews. It is purposefully multi-tiered; the State must provide a basis for the violation to be considered an offence for which it wishes to seek punishment, a basis for determining the most serious punishment, and there must remain avenues to correct fundamental violations. The finality principle – its legal significance – has to be situated at that level, not above.[4]

2.1 Constitutional Guarantees

State action which takes life must be based on non-arbitrary and fair procedures according to Articles 14 and 21 of the Constitution of India.[5] The Supreme Court in *Maneka Gandhi v. Union of India*[6] made it imperative that procedure which takes away the rights and liberty enshrined in Article 19 must be just, fair and reasonable. The principle has special significance where a punishment is final, such as a faulty hearing, in which case the defect in the main hearing cannot be made good by a separate hearing which is legally

1 Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* 215 (Oxford University Press, Oxford, 4th edn., 2008).
2 Sanjeev P. Sahni and Mohita Junnarkar, *The Death Penalty: Perspectives from India and Beyond* 17 (Springer, Singapore, 1st edn., 2020).
3 The Square Circle Clinic, NALSAR University of Law, *"Death Penalty in India: Annual Statistics Report 2025"* (February 2026).
4 Roger Hood and Surya Deva (eds.), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* 123 (Oxford University Press, Oxford, 1st edn., 2013).
5 The Constitution of India, arts. 14, 21, 32.
6 (1978) 1 SCC 248.

sufficient. Article 32 does provide a direct jurisdiction to enforce fundamental rights but it is not a substitute for an appeal on legality or disagreement on facts.

A prisoner's life guarantee does not run out when he or she has only ordinary remedies left. A state action to do such a thing is still state action and must be justified under the constitution. The analysis is tricky to avoid a new case law being a consequence of which earlier sentences are rendered unlawful. A disciplined Article 32 analysis can be used to determine whether the failure to incorporate such a safeguard represented a genuinely indispensable procedural safeguard or merely a preferred method of reasoning, and to consider whether the condemned person was denied a meaningful opportunity to avoid his execution if it was a genuine indispensable procedural safeguard.[7]

2.2 Statutory Safeguards

The historic judgments explored here were governed by the Code of Criminal Procedure, 1973.[8] There had to be a hearing on sentence under Section 235(2), special reasons for death under Section 354(3) and confirmation by the High Court under Section 366. The Bharatiya Nagarik Suraksha Sanhita, 2023 now considers the related functions in Sections 258(2), 393(3) and 407.[9] These provisions allow for reasonable individual assessments, and do not simply provide for formalities, such as asking the convicted person if they want to speak. All these safeguards continue to apply to capital offences under Bharatiya Nyaya Sanhita, 2023.

The requirement of confirmation of the High Court is also an important check with regard to the execution of the sentence as the sentence cannot be given on the order of a Sessions Court alone. However, there is no guarantee of collecting and considering the proper material, based on institutional hierarchy. A confirming court can be a confirmation of the evidentiary omission or can focus on the brutality of the crime and ignore the situation of the accused. That is why when there is an identified failure a sentencing stage can withstand a number of appellate judgments.[10]

2.3 Finality and Remedial Distinctions

The appellate and review jurisdiction is dealt with under Articles 134, 136 and 137 and extremely exceptional cases of miscarriage of justice, after review, are handled through the Court's curative procedure. Executive clemency is not an ordinary appeal, but another constitutional institution as per Articles 72 and 161 of the Constitution.[11] An Article 32 petition may challenge legality of execution following a mercy order but one must state a fundamental right which is available for enforcement rather than seek preferential sentencing over all.

3. JUDICIAL EVOLUTION OF POST-FINALITY REVIEW

There were two concurrent progressive trends in other Indian approaches to the death penalty. The first limited the substantive basis for death to its being reasoned in comparison to life imprisonment. The second established greater procedural safeguards to bring individual circumstances before the courts, to review exceptional errors and to respond to new developments which may have arisen after a sentence was final. Together, they give meaning and delineate the boundaries of Article 32 relief.

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7 2025 INSC 1043.

8 The Code of Criminal Procedure, 1973 (Act 2 of 1974), ss. 235(2), 354(3), 366.

9 The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss. 258(2), 393(3), 407.

10 Carolyn Hoyle and Saul Lehrfreund, "Contradictions in Judicial Support for Capital Punishment in India and Bangladesh: Utilitarian Rationales", 15 *Asian Journal of Criminology* 141 (2020).

11 Gopalkrishna Gandhi, *Abolishing the Death Penalty: Why India Should Say No to Capital Punishment* 47 (Aleph Book Company, New Delhi, 1st edn., 2016).

3.1 The Rarest of Rare Standard

The Constitution Bench in *Bachan Singh v. State of Punjab*[12], reiterated the validity of death penalty, but mandated consideration of the crime and criminal and limiting the imposition of death sentence to exceptionally grave circumstances. The rule of life imprisonment is the normal rule and death has to be justified. The Court refused to allow a categorisation of crimes under which some offences are automatically deemed worthy of execution. The question is personal: would it be just to deny the "merciless" mitigated sentence where the State has held the petitioner accountable for his crime and has genuinely taken into account information that tends to reduce his personal guilt or the prospects of his amending his ways?

The Court, in *Machhi Singh v. State of Punjab*[13], provided illustrations of circumstances which underlie exceptional crimes. This categorisation helped in the judicial application of it but also posed the danger of focusing on scenarios of brutality, social outrage or the nature of the victim rather than on mitigating factors. Later, *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*[14] reiterated the need to take a case-by-case approach and drew objections against the ruling, which removed the offender's potential for rehabilitation from consideration of aggravating aspects of the crime. There is a deep institutional conflict between the two strands. Factual material and transparent reasons are necessary and an indispensable part of demonstrating that reasonable alternatives have been taken into account; they cannot be substituted for a judicial label like 'rarest of rare'.

3.2 The Emergence of Mitigation Duties

The shift from an abstract balancing formula to a duty of evidence was made more obvious in *Manoj v. State of Madhya Pradesh*[15]. The Supreme Court requested documents concerning prison discipline, psychological and psychiatric factors, upbringing, schooling, deprivation and other individual factors. It is the duty of the State and the defence to be given an opportunity to come into contact with the record. The constitutional argument is that mitigation should not be looked upon as a discretionary largesse. The alleged finding that life imprisonment is inadequate may be based on a lack of prior mitigation evidence rather than being the result of a proper sentencing process.

3.3 Review, Curative Relief and Supervening Conditions

Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India[16] introduced the concept of conducting the proceedings of a review petition in death cases under the open court principle due to greater possibility of irreparable error. The curative jurisdiction has been introduced in the case of *Rupa Ashok Hurra v. Ashok Hurra*[17] in extraordinary circumstances after the review is dismissed. These remedies provide for different potential sources of injustice, but neither can be considered a reopening remedy, as a general matter. Their strict standards help prevent a backlog of reconsiderations by the Court while also ensuring that judicial process is preserved when there are defects. Thus, a curative remedy does not dispose of each and every complaint based on a later and ongoing violation of a basic right.

A separate line will be related to execution and not to the original record of sentence. The Supreme Court of India has discussed supervening circumstances like undue delay, mental illness etc. in *Shatrughan*

[12] (1980) 2 SCC 684.
[13] (1983) 3 SCC 470.
[14] (2009) 6 SCC 498.
[15] (2023) 2 SCC 353.
[16] (2014) 9 SCC 737.
[17] (2002) 4 SCC 388.

Chauhan v. Union of India[18] that not all Article 21 safeguards are lost when the capital punishment is given as final punishment. Those assertions are both chronologically and in concept distinct from a lack of mitigation material at the initial sentencing hearing. The former is the constitutionality of the punishment when they are executed, the latter is how the final punishment was chosen. Both maintain judicial finality up to a certain extent that no conviction shall be reopened.

3.4 The 2025 Constitutional Turning Point

In the case of *Vasanta Sampat Dupare v. Union of India*[19] the petitioner who was condemned to death after completion of judicial and mercy process engaged the constitutional remedy under Article 32 seeking the benefit of the later crystallised mitigation safeguards. The Supreme Court ruled that Article 32 can be used to reinvigorate the sentencing phase where there is a manifest, clear and specific violation of the equality, individualisation or due process safeguards, and can therefore be used to seek a retrial of the sentence. It suspended the death sentence and ordered a re-sentencing trial, without commenting on the conviction. That is very important: the Court neither acquitted the petitioner, nor brought about an automatic commutation rule.

The principal opinion wrote that the constitutional right to life cannot be set aside by procedural finality when the imposition of the death sentence would only perpetuate a serious violation of a right. Justice Sanjay Karol's concurring opinion highlighted the generally retrospective effect of judicial pronouncements and, in the case of the petitioner, the means of protection was not in existence at the time the Petitioner could have first sought it. However, the court's ruling warned that the way is outside the ordinary, a way that is not the ordinary way of appealing or reviewing. It can only be formed if there is an actual missing safeguard and a readily apparent relationship between the missing safeguard and the reliability of the sentencing decision.

There is always a grey area of central problem. The retrospective recognition of a legal principle does not mean that all previous capital proceedings lacked adequate mitigation, and the absence of one of the reports does not necessarily render an entire proceeding unfair. The rationale behind the decision can be best understood to involve the imposition of the required minimum substantive level of a capital sentencing hearing and the remedy is proportionate to the defect. The new judicial framework does not necessarily imply that all sentences up to the year 2022 are null and void.

3.5 Procedural Developments in 2026

The Supreme Court in *Aman Singh v. State of Bihar*[20], pointed out the common issue which has been found that the records of sentences are added on after the case reaches the Supreme Court. Its April 2026 directions also made for earlier production of aggravating and mitigating reports – both at the trial and High Court stages. It was an order that followed a grant of leave and a stay of execution and was not a final decision on the merits of the capital appeals. The idea behind the institution was sound: Gathering evidence at the last minute risks delays, loss of context, and compromise of a good defence.

A clarification application in *Aman Singh v. State of Bihar*[21] was heard on 7 October 2026. The Court deleted paragraph 13(A) of the April order, which had directed trial courts to obtain aggravating and mitigating reports in every prosecution for an offence punishable by death. The worry was that these would not likely lead to real deliberation about sentencing to death and that there were no standard resources for

[18] (2014) 3 SCC 1.
[19] 2025 INSC 1043.
[20] 2026 INSC 424.
[21] Criminal Appeal Nos. 2351–2352 of 2026, order dated October 7, 2026.

trial courts. This order did not delete the other directions including the High Court death referrals direction. The change was administrative; it was not an overruling of the entitlement to constitutionally meaningful sentencing.

4. JUDICIAL REVIEW AND CONSTITUTIONAL SAFEGUARDS

The constitutional question is not whether a death sentence can be litigated indefinitely, but whether a final decision remains executable despite an established defect in the process determining punishment. The worthy response must adhere to the standards of maintainability, evidence, materiality, relief and judicial restraint. The emergent model needs to balance the rights to the condemned and the vested interests of settled judgments.[22]

4.1 Distinguishing Remedies

Article 32 is an original jurisdiction that is a jurisdiction for the enforcement of fundamental rights. Appeal is the natural first test on the question whether the impugned decision is legally or factually tenable, review is a test on identified basis for reconsideration of the Court's decision, and curative is a narrow corrective test. Merit and discretion are within the bounds of the constitution. Grounds rejected on appeal cannot simply be recast as equality claims and reconsidered under Article 32. The petitioner must demonstrate that the continuing threat to life violates the Constitution because of a distinct defect that ordinary remedies failed to address.[23]

4.2 A Defined Maintainability Threshold

In the present study, four thresholds are proposed: The petitioner is required to identify in the first instance a constitutional guarantee which is enforceable and not simply a preferred future procedure. Secondly, the supposed defect or defects must be specific and there must be a record or reliable material to establish that there was a real opportunity lost. Third, that the omission must be material as opposed to harmless in the specific cases. Fourth, petitioner should indicate why ordinary remedies were ineffective or could not be effective in remedying the constitutional injury. The following are suggested organising criteria, rather than a test which has been already laid down by the Parliament.[24]

Particularly with regard to materiality, resentencing does not necessarily result in a commutation. What is relevant is whether there was evidence which could reasonably have affected the balance between death and lawful alternatives, and that evidence was not considered by the decision-maker. Opening may be warranted even if it is not possible for a court to predict the ultimate sentence, because the right to procedural fairness will preserve the right to make a properly informed decision. On the other hand a purely technical lack of skill which is not accompanied by a plausible relationship to the individualisation, will not necessarily prove to be an adequate basis of an exceptional reopening.[25]

4.3 Equality and Temporal Application

Obviously, there is an equality argument for a retrospective effect of a judicial articulation of fair procedure: Two similarly situated condemned persons should not have totally different constitutional protection simply because their sentences were issued before or after the clarification. But that statement does not imply that historical trials need to be an exact replica of subsequent operational instructions. Thus

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[22] 2025 INSC 1043.

[23] The Constitution of India, art. 32.

[24] Cyrus Tata, *Sentencing: A Social Process: Re-Thinking Research and Policy* 51 (Palgrave Macmillan, Cham, 1st edn., 2020).

[25] Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* 215 (Oxford University Press, Oxford, 4th edn., 2008).

a petitioner after finality must somehow show that the denial constituted a failure to provide a specific safeguard but not necessarily just chronology.[26]

4.4 Minimum Standards for a Fresh Hearing

The new sentencing hearing should be a true adversarial process. Defence lawyers must be given sufficient time and resources to determine the background of the defendant, as well as their psychological problems, financial conditions, schooling and education, traumatic experiences, prison life and signs of rehabilitation. Clinical commentaries should discover their approach and the extent of their validity, and status reports in prisons should not be interpreted as necessarily definitive of personality and future behaviour. There has to be a reasonable chance for the prosecution to attempt to question the disputed material. But aggravation and mitigation must then be dealt with in the judgement and the reasons given why a less severe punishment available is or is not satisfactory.[27]

A new hearing is not a new trial on the question of guilt. The current conviction will continue to stand unless separately set aside through a competent remedy. Mitigation evidence cannot be used as a means of trying to overturn the verdict of the trial, but is for the sentencing option. Relief should be commensurate with the failure of rights found, and may be either a structured report, direct further information or a disposition to an appropriate bench.

4.5 Critical Evaluation of Institutional Design

The main concerns with post-finality reopening are that it can lead to delay, inequality of access to elite lawyers and uncertainty for families of the victims.[28] Those interests must not be ignored in a constitutional framework. Indeed, a rule of procedural finality as a rule would have the effect of rendering the quality of fundamental-rights protection dependent upon the time of discovery of an error. The principled answer is an open entry threshold, swift initial review, case handling, and a denial of retrial of points already decided based upon nothing new on the constitutional issues. It has such restrictions on access and constitutional protection for serious injustice.

The second is the lack of institutional capacity. Independent mitigation is dependent upon the availability of trained staff, funding, clinically competent assessments and records of inmates.[29] The October 2026 clarification clarifies that for every prosecution that could result in a death sentence, an information-gathering requirement may be a burden on resources and may not serve a legitimate purpose in the sentencing process. But a court would not be justified in considering death on a thin record if it had a universal early stage duty to record. As to the institutional distinction, the baseline distinction is that of routine investigation in each eligible prosecution, and enhanced investigation when the threat of capital punishment is a real and consequential threat.

The other challenge is in the alternative to death. Sentencing to imprisonment for the rest of natural life without remission can significantly diminish the chances for rehabilitation. *Ramasrey alias Fakkad v. State of Uttar Pradesh*[30] is an example of the continuing boundaries of challenging such sentences and such clemency decisions. If the resentencing process is simply the circle of death then arbitrariness may only

[26] 2025 INSC 1043.
[27] Cyrus Tata, *Sentencing: A Social Process: Re-Thinking Research and Policy* 93 (Palgrave Macmillan, Cham, 1st edn., 2020).
[28] Eric G. Lambert, Sudershan Pasupuleti, et.al., "Views on the Death Penalty among College Students in India", 10 *Punishment & Society* 207 (2008).
[29] Sanjeev P. Sahni and Mohita Junnarkar, *The Death Penalty: Perspectives from India and Beyond* 31 (Springer, Singapore, 1st edn., 2020).
[30] 2026 INSC 764.

move from one extreme punishment to another. The court is thus required to provide a justification for the decision on the chosen lawful alternative on their own terms. The doctrinal assertion here is less forceful, that what is called for is "fair reasoning" in regard to available sentencing options and not a blanket constitutional right to remission.

4.6 Proposed Constitutional Review Sequence

The functioning system of the constitutional appeal starts by the classification of the constitutional complaint, and initial scrutiny of finality and previous remedies. The Court should then determine which safeguard is missing and whether its absence amounts to a material constitutional injury. If such an injury is established, the Court may conduct a focused mitigation investigation and hold an adversarial sentencing hearing. It is important to clearly distinguish the conclusions that are still valid and that have been reconsidered in the final order. This conditional sequence is presented in Figure 1. It is not a separate procedure that is legislated for, but is proposed as an analytical structure.

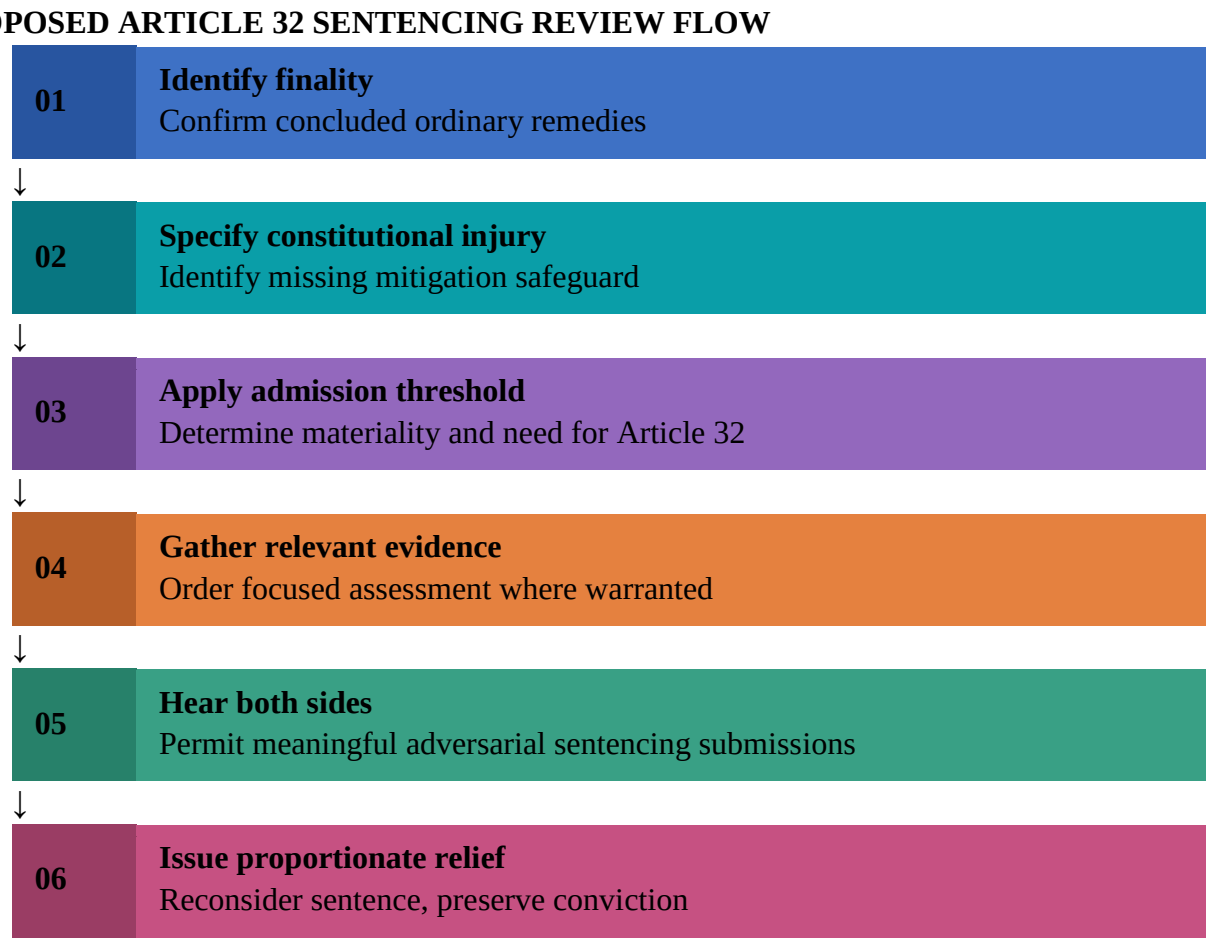

Figure 1: Proposed Sequence for Exceptional Sentencing Review

5. EMPIRICAL ASSESSMENT AND INSTITUTIONAL REFORM

While death penalty statistics may be relevant from a practical perspective in constitutional review, it is not determinative in relation to entitlement to relief for a particular individual. Various trends within the trial court sentencing system, death row population, appellate correction and mitigation compliance, provide an insight into the potential consequences of procedural failures. The analysis is based on a known

set of institutional information, separating the number of cases from the number of persons and separating findings regarding practice, or aggregate practice, from findings in individual prosecutions.

5.1 Death Row and Annual Sentencing

According to the statistics report of the Square Circle Clinic, 128 persons were sentenced to death in 94 cases by Sessions Courts in 2025, and at the end of 2025, there were 574 persons on death row (31 December 2025).[31] Death sentences recorded at the year-end and the number of death sentences recorded during the year are different—one records the flow of new death sentences on trial courts and the other records the stock that has actually been impacted upon by appeals, commutations, acquittals, etc. To take one to be the direct cause of the other is statistically unstable. Figure 2, on the other hand, illustrates how these two observations evolve over the 10 years using the same measurements for each one.

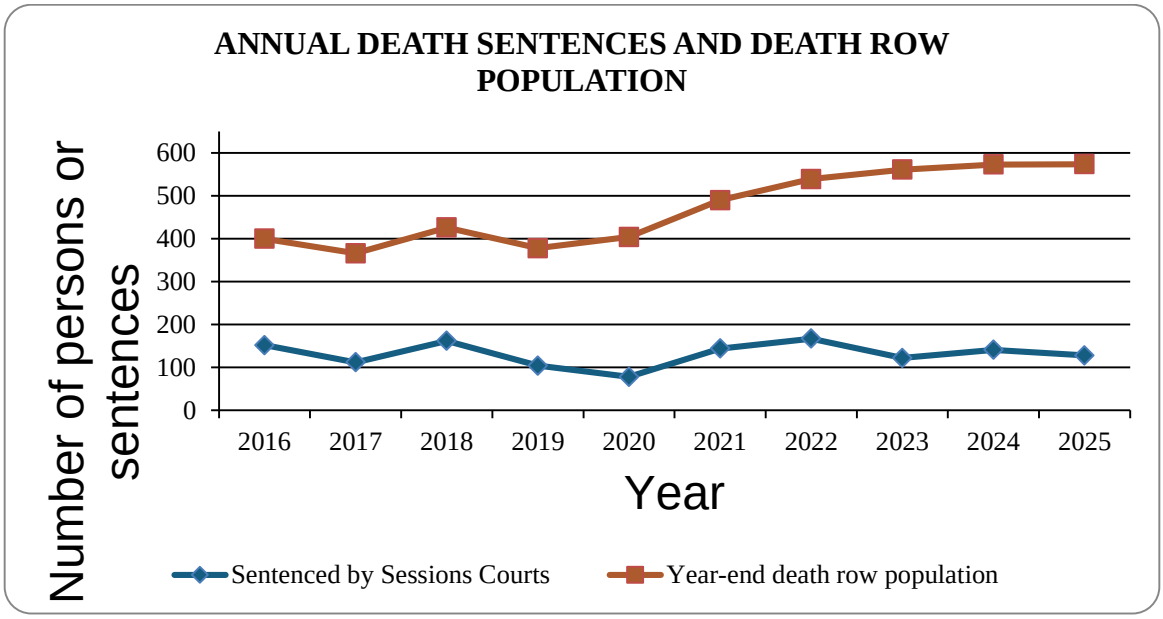

Figure 2: Annual Death Sentences and Year-End Death Row Population, 2016-2025

5.2 Compliance with Individualised Sentencing

A more on-point measure is related to the observation of the court-ordered mitigation investigations.[32] The institutional report found 208 of 216 cases that could be assessed to be non-compliant for the 2023-2025 period with the cases in the Sessions Court. Only 8 met the full benchmark, in 35 cases at least one, but not all, of the required reports were called for and in 173 cases none of the required ones was called for. These are mutually exclusive classifications and can be seen in Figure 3. The figures reflect a significant gap in the implementation, dependent on how implemented is measured and how this is classified within the report.

[31] The Square Circle Clinic, NALSAR University of Law, *"Death Penalty in India: Annual Statistics Report 2025"* 66 (February 2026).

[32] The Square Circle Clinic, NALSAR University of Law, *"Death Penalty in India: Annual Statistics Report 2025"* 73 (February 2026).

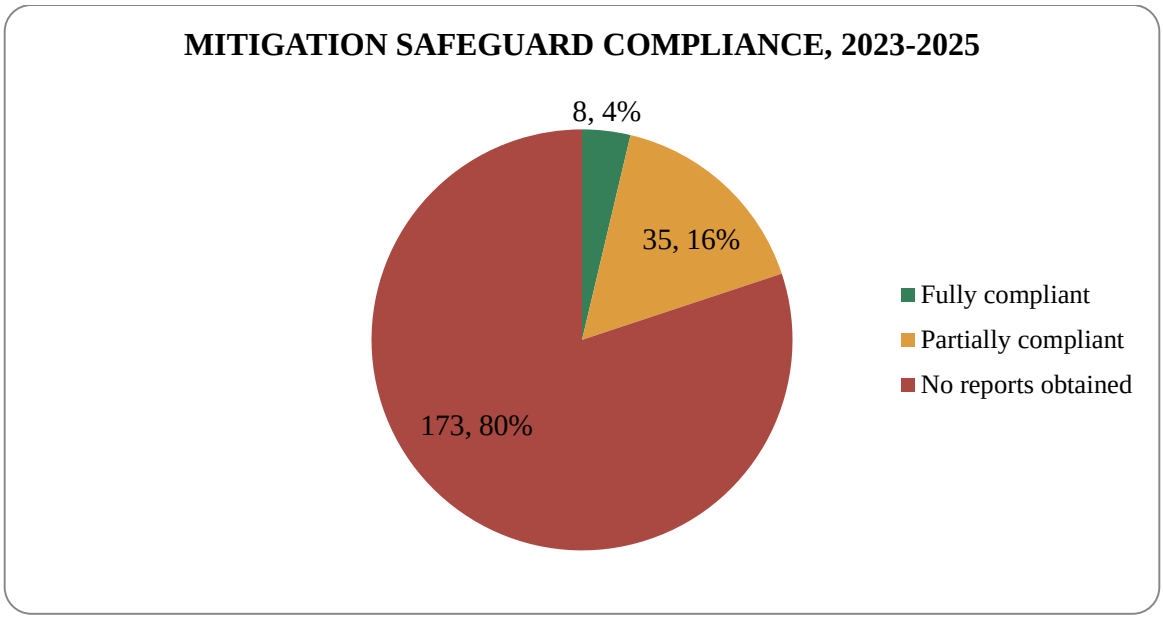

Figure 3: Trial-Court Compliance with Capital Sentencing Safeguards, 2023-2025

This finding reinforces the argument for the prevention of "betterment" at the trial and confirmation stages. Not all 208 cases that have been filed are eligible for post-finality reopening as not all of them are yet final and an Article 32 petition requires an individual constitutional defect. The difference counts: institutional non-compliance can spur system-wide reform without taking the place of the Court's role in imposing a high hurdle for admittance to every petition.[33]

5.3 Appellate Outcomes

The same report showed 842 death sentences with High Court outcomes decided between 2016 and 2025 with 70 confirmed, 411 commuted, 285 acquitted, 74 other outcomes and two unknown. These outcomes concern cohorts, not dispositions in a single calendar year. A comparison of these numbers to those of confirmations shows that, while the numbers of acquittal and commutations are much higher than the numbers of confirmations, it is not a simple causal inference from these proportions, because of selection and pending cases.[34]

High Court outcome	Death sentences	Share of decided sentences
Confirmed	70	8.31%
Commuted	411	48.81%
Acquittal outcome	285	33.85%
Other recorded outcomes	74	8.79%
Outcome unknown	2	0.24%
Total decided	842	100%

Table 1: High Court Outcomes for the 2016-2025 Trial-Court Death-Sentence Cohort

[33] Carolyn Hoyle and Saul Lehrfreund, "Contradictions in Judicial Support for Capital Punishment in India and Bangladesh: Utilitarian Rationales", 15 *Asian Journal of Criminology* 141 (2020).

[34] The Square Circle Clinic, NALSAR University of Law, *"Death Penalty in India: Annual Statistics Report 2025"* (February 2026).

5.4 Feasible Institutional Reforms

The institutional response must involve: early identification of situations where death is being considered, availability of trained mitigation professionals, standardised requests for relevant prison and clinical records, and documented opportunity for challenging the records. It is at the High Court level where references to death occur that these omissions can most easily be noticed and supplementation made in a timely manner. Standardised forms can help to make the responses more comprehensive, without turning into a 'mitigation checklist'. But it is still evaluative: the court must consider the effect of each item of material on proportionality, rehabilitation and whether life imprisonment is adequate.[35]

Another issue in collecting data is the need for definition safeguards and publication safeguards. Authorities should report separately the number of persons sentenced, number of cases, confirmation results, completed review proceedings, reports on mitigation obtained and time spent in post-finality litigation.[36] These medical data would be anonymised and aggregated and made available for more informed resource allocation without revealing medical data. Institutional information would help to assess if the October 2026 procedural change is feasible from an administrative perspective and the extent to which the individualised protection required in capital cases is maintained.

6. FINDINGS

The analysis and institutional evidence establish the following findings.

1. Constitutional Finality Is Qualified: Whilst a final determination by a court has great weight, it cannot in itself be the source of the continued infringement of Articles 14 and 21. In 2025, the precedent notes that a targeted sentencing remedy, for a small group of people, under Article 32 is recognised.
2. Conviction and Sentence Are Legally Distinct: There is an accepted reopening remedy which involves the sentencing stage, but does not affect the finding of guilt. Hence, its grounds of jurisdiction are different than an appeal seeking the set aside of a conviction.
3. Mitigation Is a Constitutional Safeguard: Individualised sentencing should provide sufficient time to produce and test relevant personal evidence. A sentence based primarily on gravity of the offence runs the danger of a finding that it is not well informed and therefore life imprisonment is not appropriate.
4. Retrospectivity Does Not Imply Automatic Relief: While the judicial statement of a safeguard can have positive impact on subsequent cases, the concepts of reopening eligibility are fact specific. The applicant must demonstrate a serious and material failure of procedure and cannot just point to the date of judgment.
5. Ordinary Remedies Remain Distinct: Appeal, review, curative jurisdiction, clemency and Article 32 addresses various issues related to law. Their coexistence does not result in an unlimited successive appeal.
6. Implementation Deficits Are Extensive: 208 out of 216 analysed trial-court cases from 2023 to 2025 were found to be non-compliant to the benchmark in the institutional assessment. The overall assessment establishes systemic risk, but not individual Article 32 entitlement.

[35] Cyrus Tata, *Sentencing: A Social Process: Re-Thinking Research and Policy* 75 (Palgrave Macmillan, Cham, 1st edn., 2020).

[36] Cyrus Tata, *Sentencing: A Social Process: Re-Thinking Research and Policy* 145 (Palgrave Macmillan, Cham, 1st edn., 2020).

7. The 2026 Adjustment Is Institutional: In October 2026, the order lifted an across-the-board directive to trial courts to do reporting due to feasibility concerns. It did not remove one's duty to consider legitimate mitigation, if a death sentence is considered.
8. Alternative Sentences Require Reasons: Declining to apply capital punishment is not necessarily the solution to proportionality. Sentences without remissions can be reiteration of the discretionary incongruity if they are handed out without a reasoned evaluation of rehabilitation and alternative measures.

7. CONCLUSION

Article 32 works as a constitutional guarantee against final death sentence based on a denial of fair and individualised sentencing which is clear and material. In 2025, it was the Supreme Court that extended the right to reopen the case at the sentence stage, thereby offering a justifiable solution to the crux of the matter: judicial finality is a presumption rather than an absolute rule, and the right to life is an ongoing guarantee. The conviction is left un-impugned and limited corrective relief is in the form of the constitutionally faulty order of punishment. This has not been granted as a general right to a second appeal, nor as an automatic right to commutation where there are decisions following the initial one which help to explain sentencing principles.

The doctrinal basis is the triad of equality, of dignity and of meaningful procedure. There is significant recorded non-enforcement of sentencing conditions, and important trial versus appellate disparities, that substantiate the necessity for vigilance. The patterns do not rule on any given petition, but they do reveal a set of institutional conditions that can lead to serious flaws. It is essential that judicial directives should be operationally possible but the requirement for operationally possible procedures should not detract from the rights the procedures are safeguarding, as was emphasised in the October 2026 clarification. Thus, a coherent approach needs to have a specific rights claim, a materiality threshold, credible evidence, prompt case management, and relief not broader than the violation. Thus, used in this disciplined fashion Article 32 does not contend with the fact of the finality of judgments, but the doctrine of the irretrievability of punishment for a seriously flawed process of reaching that penalty, which is rejected by the Constitution.

8. SUGGESTIONS

The identified doctrinal and institutional deficiencies support the following targeted recommendations.

1. Adopt a Four-Part Admission Test: The Supreme Court should articulate a clear four-part standard that includes an enforceable right, a procedural defect, sentencing materiality, and an insufficient prior remedy. Brief reasoned orders of admission would help to differentiate between true constitutional issues and the same points being raised on appeal.
2. Require Early Death-Sentence Identification: Sessions Courts should note that death is seriously considered after conviction, instead of having detailed reports produced for all death eligible offences. That recorded trigger would prioritise resources on cases where mitigation has constitutional implications.
3. Fund Specialist Mitigation Services: There should be a trained panel of social workers, investigators and mental health experts in capital cases by State Legal Services Authorities. Funding and timelines have to be tied to actual need of each case.

4. Standardise Report Quality: Minimum questions should be set out by the High Courts relating to social history, behaviour in prison, health and rehabilitation, but without being a conclusive checklist. Reports should give details of the sources, the methods, the limitations and challenged claims.
5. Strengthen Confirmation Scrutiny: High Courts should be sensitive to the points which are missing from the sentencing record before taking a decision to confirm death reference and should make a record thereof at the input of each death reference. They must make judgements very explicitly about the sufficiency of the opportunity for mitigation.
6. Protect Adversarial Participation: New sentencing hearings ought to allow for real time for counsel to prepare, present, access disclosures, and to challenge clinical and institutional reports. Findings should differentiate between proven facts and experts' predictions.
7. Limit Relief to the Identified Injury: A successful Article 32 petition should, ordinarily, lead to a fresh sentencing determination, which is more focused and does not impact the conviction. This should not be exceeded without a specific legally cognisable reason.
8. Introduce Time-Bound Case Management: A reasonable procedure time frame from the Supreme Court should be observed in the preparation of the report by the Advocate-General, responses and sentencing rehearing following the granting of exceptional relief. The judicial system should strive to avoid unnecessary delay while ensuring evidence collection is fair.
9. Publish Comparable Judicial Data: Judicial administrations will publish anonymised aggregate data for each year broken down by the number of persons, cases, confirmation results, compliance with mitigation and review disposition. More uniform definitions would enable more effective trend analysis, but not imply that population statistics are a measure of rights violations.
10. Review Substitute Sentence Reasoning: Where the death penalty is not accepted courts should outline the reasons for ordinary or restricted life imprisonment being commensurate for the person in the particular circumstances. Reasons should discuss the possibilities for rehabilitation and that arbitrariness is not just transferred to another harsh form of punishment.

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