2025 INSC 1043

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 371 OF 2023

VASANTA SAMPAT DUPARE ...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. The majesty of our Constitution lies not in the might of the State but in its restraint. When the Court contemplates the ultimate punishment, i.e. the Capital Punishment, it enters a domain where justice must be tempered by conscience and guided by the unwavering promises of equality, dignity and fair procedure. A Constitution that proclaims liberty and dignity as its first commitments cannot permit the State to end a human life unless every safeguard of fairness has been honoured and every civilising

impulse of the law has been heard. The question is never only what penalty a crime might merit, it is first whether the machinery of the Republic has honoured every safeguard that makes punishment lawful in a constitutional democracy. In the narrow space between guilt and the gallows, a robust Constitution demands that we pause, look again, and ask whether the process itself has measured up to the high bar that humanity and the rule of law together set.

2. The present writ petition filed under Article 32 of the Constitution of India, assails the continuing validity of the sentence of death affirmed against the Petitioner, and seeks its reconsideration in the light of subsequent legislative and judicial developments, particularly with reference to the guidelines laid down in the case of ***Manoj and others v. State of Madhya Pradesh***[1].

3. The facts giving rise to this writ petition are as follows:

   3.1 The prosecution case in brief is that on 03.04.2008, the Petitioner allegedly lured a four-year-old girl away from her home in

[1] (2023) 2 SCC 353

Wadi, Nagpur, transported her to a secluded spot, thereafter, sexually assaulted and strangled her to death and then attempted to conceal the body among nearby shrubs. An FIR (Crime No. 71 of 2008) was registered at Wadi Police Station the same day. The Petitioner was arrested on 04.04.2008, and a charge-sheet was filed for offences under Sections 363, 367, 376(2)(f), 302 and 201 of the Indian Penal Code, 1860[2].

3.2 On 29.09.2010 the Additional Sessions Judge, Nagpur, in Sessions Trial No. 252 of 2008[3] convicted the Petitioner under Sections 363, 367, 376(2)(f), 302 and 201 of the IPC and, on the same day, imposed the death sentence on him. During the original trial, the Petitioner, who was unable to afford private counsel, was represented by legal-aid counsel whose absence on crucial dates resulted in four material witnesses remaining un-cross-examined.

[2] IPC
[3] Trial Court

3.3 In confirmation proceedings the High Court of Bombay, Nagpur Bench[4], by judgment dated 24.03.2011, set aside the conviction and sentence on the ground that the Petitioner had been denied an effective defence, and remanded the matter for the limited purpose of cross-examining the said witnesses.

3.4 Upon remand, the same legal-aid counsel represented the Petitioner. The four witnesses were cross-examined, but counsel was absent at the hearing on sentence. By judgment dated 23.02.2012, the Trial Court again convicted the Petitioner of the aforesaid offences and re-imposed the sentence of death, recording the Petitioner's age being around 45 years at the time of the incident and family dependants as mitigating circumstances.

3.5 On 27.03.2012, the High Court, in Criminal Appeal No. 112 of 2012 and Confirmation Case No. 1 of 2012, affirmed both conviction and sentence, relying principally on the

[4] High Court

nature and manner of the crime and finding no sufficient mitigating factors.

3.6 This Court, by judgment dated 26.11.2014 in Criminal Appeal Nos. 2486-2487 of 2014, dismissed the Petitioner's appeal, and confirmed the death sentence as the only mitigation circumstances placed before this Court at that time were related to the Petitioner's youth and the probability of reformation.

3.7 Review Petition (Crl.) Nos. 637-638 of 2015 was thereafter filed. Pursuant to order dated 31.08.2016, the Petitioner placed limited additional material regarding his education, prison activities and disciplinary record. By judgment dated 03.05.2017, this Court upheld the earlier decision, observing that the aggravating circumstances outweighed the mitigating circumstances adduced.

3.8 A mercy petition under Article 161 of the Constitution of India was submitted to the Governor of Maharashtra on 26.12.2017 and was rejected on 01.02.2022. The rejection

was communicated to the Petitioner on 30.03.2022.

3.9 It is argued by the Petitioner that while the mercy petition was pending, this Court, on 06.10.2017, admitted in ***Rishi Malhotra v. Union of India***[5] challenge to hanging as the mode of execution which matter remains sub judice.

3.10 It is further argued that on 29.03.2022, in ***Irfan @ Bhayu v. State of Madhya Pradesh***[6], this Court highlighted the necessity of comprehensive mitigation material in death penalty cases and directed registration of Suo Motu Writ Petition (Crl.) No. 1 of 2022 to frame guidelines for sentencing.

3.11 Meanwhile, it is claimed by the Petitioner that detailed medical records obtained from Nagpur Central Jail revealed that the Petitioner was receiving treatment for major depressive disorder, psychotic features, hypertension, chronic frontal-lobe infarct and cervical myelopathy, with repeated

[5] Writ Petition (Crl.) No. 145 of 2017
[6] Criminal Appeal Nos. 1667-1668 of 2021

prescriptions of antidepressant and antipsychotic medication. It is further stated that 3 independent psychiatrists, on the basis of interview transcripts supplied by the Petitioner's legal team in 2017, gave preliminary opinions indicating intellectual disability, psychosis and organic brain pathology.

3.12 It is further argued that on 20.05.2022 this Court delivered its judgment in ***Manoj (supra)***, formulating practical, time-bound guidelines obliging Trial Courts and the State to place extensive mitigation circumstances on record including psychiatric, psychological, social-history and jail-conduct reports. Pursuant to ***Manoj (supra)***, this Court and several High Courts have consistently called for probation-officer reports, psychological assessments by independent institutions, jail-conduct certificates and access for defence mitigation investigators in ongoing death-sentence matters.

3.13 Acting on the ***Manoj (supra)*** protocol, it is argued that the Petitioner's legal team engaged Mr Swapnil Bhopi, Clinical Psychologist, who on 17.06.2022, conducted psychometric testing. The assessment disclosed a Specific Learning Disability (SLD) and low intellectual functioning, together with long-standing trauma and organic brain injury. A second mercy petition under Article 72 of the Constitution of India, enclosing the new medical records, Mr. Bhopi's report, and supplementary submissions referencing ***Manoj (supra)*** and Suo Motu W.P. (Crl.) No. 1 of 2022, was lodged with the President of India on 01.07.2022, and was rejected on 10.04.2023, and the intimation reached the Petitioner on 15.06.2023.

3.14 On 19.09.2022, in Suo Motu W.P. (Crl.) No. 1 of 2022, a Constitution Bench reference was made to evolve a uniform sentencing framework and to delineate modalities for psychological evaluation and collection of mitigating material, the Petitioner's case was

cited as illustrative of inconsistencies in existing practice.

3.15 On 02.05.2023, in ***Rishi Malhotra (Supra)***, the Union of India informed this Court of its proposal to constitute an expert committee on alternate modes of execution. The petition remains pending before this Court.

4. In this backdrop, the Petitioner has approached this Court invoking the extraordinary jurisdiction of this Court under Article 32 of the Constitution of India seeking reconsideration of the death sentence affirmed on 03.05.2017.

5. Mr. Gopal Sankarnarayanan, learned Senior Counsel for the Petitioner, has advanced the following submissions:

5.1 It is primarily submitted that the death sentence was affirmed in 2017 without the benefit of the sentencing protocol subsequently mandated in ***Manoj (supra)***. The judgment in ***Manoj (supra)*** requires Trial Courts and the State to place before the Judge comprehensive mitigation circumstances, including family history, socio-economic background, psychiatric and

psychological evaluation, jail-conduct data, and probation reports and to afford the defence an equal opportunity to rebut. It is submitted that none of this material was elicited or considered either by the Trial Court, the High Court, or this Court in review, and the Petitioner was denied the "principled and individualised" sentencing required by Articles 14 and 21 of the Constitution of India.

5.2 Furthermore, it is contended that the evolution of sentencing law in ***Manoj (supra)*** and the pending Constitution Bench reference in *Suo Motu W.P. (Crl.) No. 1 of 2022* together constitute a "substantial change in law". Applying the settled rule of beneficial construction, those developments must operate retrospectively in favour of a condemned prisoner whose sentence is yet to be executed.

5.3 It is further argued that the prison medical records, 3 independent psychiatric opinions of 2017, and the detailed psychometric evaluation of the Petitioner by Clinical

Psychologist, Mr. Swapnil Bhopi, on 17.06.2022, now demonstrate that the Petitioner suffers from a Specific Learning Disability coupled with low intellectual functioning; chronic frontal-lobe infarct and cervical myelopathy; and major depressive disorder with psychotic features. These conditions attract the protective umbrella of the Rights of Persons with Disabilities Act, 2016[7] and the Mental Healthcare Act, 2017. However, no reasonable accommodation or specialised assistance was provided at any stage of trial or appeal. The absence of such accommodation is claimed to infringe Sections 3, 6 and 12 of the RPwD Act, 2016 (equality, dignity and access to justice) and Section 20 of the Mental Healthcare Act, 2017 (right to equal legal protection). The Petitioner, therefore, was unrepresented at the sentencing hearing and was incapable of articulating mitigating material, with the result that the death sentence was imposed on a procedurally defective foundation.

[7] RPwD Act, 2016

5.4 It is lastly submitted that ***Rishi Malhotra (supra)***, challenging hanging as the mode of execution, remains pending before this Court, and in that matter, the Union has proposed appointment of an expert committee to explore alternate modes of execution. Executing the Petitioner before the conclusion of those proceedings and the Constitution Bench reference would expose the Petitioner to irreversible prejudice.

6. Mr. K.M. Nataraj, learned Additional Solicitor General, appearing for the Union of India and Dr. Birendra Saraf, learned Advocate General for the State of Maharashtra, have rendered the following submissions:

6.1 It is submitted that the present petition under Article 32 of the Constitution of India is an impermissible attempt to reopen the judgment of this Court dated 26.11.2014, which has attained finality after dismissal of Review Petition (Crl.) Nos. 637-638 of 2015, and later rejection of mercy petitions by both the Governor and the President of India. Article 32 of the Constitution of India may be

invoked only to redress a subsisting violation of fundamental rights and a duly pronounced decision of this Court cannot itself be characterised as such a violation.

6.2 It is contended that all aggravating and mitigating factors were exhaustively examined at three judicial tiers. All three Courts, i.e. the Trial Court, the High Court and the Supreme Court, have found that no mitigating circumstance of weight escaped scrutiny. Moreover, the Courts have concluded that the Petitioner being a history-sheeter with multiple pending cases, is devoid of remorse, and poses a continuing menace to society. Those findings were reaffirmed in review after considering the additional material later tendered by the defence.

6.3 It is further submitted that the sentencing guidelines spelt out in ***Manoj (supra)*** are prospective in operation. They are directed to Trial Courts going ahead as can be deduced from reading the judgement, and they do not authorise the wholesale reopening of cases

finally decided years before, especially after rejection of constitutional clemency. To hold otherwise would undermine certainty in criminal justice and flood the system with stale challenges.

6.4 It is argued that the Petitioner seeks to rely on medical records and psychological opinions generated long after conviction. Even assuming their correctness (which is denied), such post-hoc material cannot displace the contemporaneous judicial finding which were made upon expert evidence then adduced. The Courts found that the crime was not committed under mental stress or emotional disturbance and that rehabilitation was improbable.

6.5 It is submitted that the RPwD Act, 2016 and the Mental Healthcare Act, 2017 do not confer a right to nullify a sentence validly imposed and confirmed before their enactment. Nor do they compel retrospective reopening where, as here, the courts have already evaluated mental capacity and rejected it as a mitigating factor.

6.6 It is lastly contended that pendency of ***Rishi Malhotra (supra)*** or of the Constitution Bench reference in *Suo Motu W.P. (Crl.) No. 1 of 2022* does not create any legal impediment on execution of a sentence that has survived every level of scrutiny. Until those proceedings culminate in a binding change in law, the existing framework, including hanging as the prescribed mode, remains operative.

7. Having considered the submissions of both the parties and the material on record before us, the central question before us is whether, in a petition under Article 32 of the Constitution of India, this Court may revisit a death sentence that stands concluded, having been affirmed on appeal, declined in review, and followed by the rejection of mercy petitions, on the strength of the sentencing framework propounded in ***Manoj (supra)***.

8. Before moving ahead, the reason we are primarily focusing on the threshold issue framed above is that the very maintainability of the petition hinges on it. Unless the doorway of Article 32 of

the Constitution of India permits reopening a death sentence that has attained finality, any examination of fresh medical evidence, alleged mitigating factors, or the ramifications of the pending references in Suo Motu W.P. (Crl.) No. 1 of 2022 and ***Rishi Malhotra*** **(supra)** would be premature. Those references will be decided on their own merits in due course and unless and until they culminate in a binding change of law, they do not alter the jurisdictional bar the State is pleading before us. Our task, therefore, is confined to determining whether Article 32 of the Constitution of India itself empowers this Court to revisit a sentence that has attained finality.

9. At the outset, it would be appropriate to reproduce below the pertinent guidelines laid down in ***Manoj (supra)*** which the Petitioner invokes as the fulcrum of his claim. The relevant paras from ***Manoj (supra)*** are as follows:

> *"247. The goal of reformation is ideal, and what society must strive towards — there are many references to it peppered in this Court's jurisprudence across the decades — but what is lacking is a concrete framework that can measure and evaluate it. Unfortunately, this is mirrored*

by the failure to implement prison reforms of a meaningful kind, which has left the process of incarceration and prisons in general, to be a space of limited potential for systemic reformation. The goal of reformative punishment requires systems that actively enable reformation and rehabilitation, as a result of nuanced policy-making. As a small step to correct these skewed results and facilitate better evaluation of whether there is a possibility for the accused to be reformed (beyond vague references to conduct, family background, etc.), this Court deems it necessary to frame practical guidelines for the courts to adopt and implement, till the legislature and executive, formulate a coherent framework through legislation. These guidelines may also offer guidance or ideas, that such a legislative framework could benefit from, to systematically collect and evaluate information on mitigating circumstances.

Practical guidelines to collect mitigating circumstances

248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

249. To do this, the trial court must elicit information from the accused and the

State, both. The State, must—for an offence carrying capital punishment—at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] . Even for the other factors of (3) and (4)—an onus placed squarely on the State—conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

250. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

(a) Age

(b) Early family background (siblings, protection of parents, any history of violence or neglect)

(c) Present family background (surviving family members, whether married, has children, etc.)

(d) Type and level of education

(e) Socio-economic background (including conditions of poverty or deprivation, if any)

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare

Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any."

10. A bare perusal of these guidelines makes it evident that this Court, in ***Manoj (supra)***, sought to implement the reformative ideal underlying capital sentencing by replacing ad-hoc impressions of accused with verifiable data. The directions oblige the State, rather than the accused, to place before the trial court, at the very sentencing stage, a structured dossier covering psychiatric assessment proximate to the offence, socio-economic and family history, educational attainments, prior conduct, and a contemporaneous report on jail behaviour. By doing so, this Court intended to prevent sentencing from defaulting into a purely

retributive response to the brutality of the crime and to supply appellate courts with a baseline against which genuine progress towards reformation can later be measured. These guidelines would serve as an interim, judicially crafted framework pending comprehensive legislative or executive action with respect to capital sentencing. Whether these guidelines can be enforced to disturb a sentence that has attained finality, therefore, depends upon the scope of Article 32 of the Constitution of India, an issue we shall now proceed to examine.

11. Article 32 of the Constitution of India is the constitutional conduit through which this Court may issue "appropriate" writs to secure the enforcement of Fundamental Rights. Described in the Constituent Assembly as the "heart and soul" of the Constitution, it furnishes a direct route for citizen to this Court whenever a protected Fundament Right is said to be under threat. The present petitioner invokes that power on a narrow but grave premise. Although his conviction has long since become final, the State now proposes to end his life through a sentencing

process that the Petitioner claims ignored the safeguards later formalised in **Manoj (Supra)**. According to the Petitioner, that omission offends the twin guarantees of equality and due procedure embodied in Articles 14 and 21 of the Constitution of India. The question that consequently arises, and to which we next turn, is whether Article 32 authorises this Court to reopen a capital sentencing exercise that has otherwise attained finality, solely to cure the procedural lapse the Petitioner identifies.

12. In order to understand the scope of Article 32 of the Constitution of India, in the present case, we must consider four principal lines of enquiry to help shape our determination. Firstly, we must consider the settled place of Article 32 of the Constitution of India as a continuing safeguard where a sentence of death has yet to be carried out. Secondly, we will examine this Court's power and duty to set aside procedural finality when that course alone can avert a breach of the guarantees of equality and life. Thirdly, it becomes necessary to test whether the sentencing framework articulated in ***Manoj***

(supra) has assumed the character of an indispensable procedural safeguard. Finally, we must delineate the form and extent of the corrective relief that may properly be fashioned under Article 32 of the Constitution of India, mindful that any order we make must both protect constitutional rights and preserve the stability of adjudication.

A. Article 32 jurisdiction in capital cases constitutes a special constitutional safeguard

13. The irreversible character of capital punishment has always obliged this Court to scrutinise death-sentence cases through a constitutional lens more gruelling than that applied to any other category of criminal cases. Because an execution, once carried out, forecloses every possibility of correction, Article 32 has been treated as a continuing safeguard that survives the ordinary hierarchy of appeal, review and even mercy.
14. The first clear articulation of this principle is found in ***Harbans Singh v State of Uttar***

Pradesh and others[8]. Therein, this Court was confronted with a situation in which one co-accused had secured commutation while another had already been executed. If the petitioner alone were hanged, the result would have been a blatant disparity. Declining to allow "manifest injustice" to stand, the Court invoked its powers under Articles 32 and 136 of the Constitution of India, and its inherent jurisdiction to commute the sentence, thereby affirming that constitutional relief remains available even after the conventional judicial process has concluded. The relevant paras for the same have been reproduced hereunder:

> *"21. In the facts and circumstances of this case, this Court would have been justified in commuting the death sentence imposed on the petitioner to one of life imprisonment. As, however, the case of the petitioner had earlier been considered by the President of India to whom the petitioner had presented the petition for mercy, I am of the opinion that propriety and decorum require that the matter should be referred back to the President instead of this Court deciding to commute*

[8] (1982) 2 SCC 101

the death sentence of the petitioner to one of life imprisonment.

20. Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice. Having regard to the facts and circumstances of this case, I am of the opinion that this is a fit case where this Court should entertain the present petition of Harbans Singh and this Court should interfere.

19. In the circumstances hereinabove stated, I am of the opinion that it will be manifestly unjust to allow the death sentence imposed on the petitioner to be executed. The question that, however, troubles me is whether this Court retains any power and jurisdiction to entertain and pass any appropriate orders on the question of sentence imposed on the petitioner in view of the fact that not only his special leave petition and review petition have been dismissed by this Court but also the further fact that his

petition for clemency has also been rejected by the President."

15. In **Smt. *Triveniben v State of Gujarat*[9]**, a Constitution Bench carried the doctrine forward by holding that supervening circumstances occurring after conviction, most notably, inordinate delay in carrying out the sentence, may so undermine human dignity as to offend Article 21 of the Constitution of India. The Bench made it explicit that such violations are justiciable in an Article 32 petition of the Constitution of India notwithstanding the finality of the original judgment in the following terms:

> *"22. It was contended that the delay in execution of the sentence will entitle a prisoner to approach this Court as his right under Article 21 is being infringed. It is well settled now that a judgment of court can never be challenged under Article 14 or 21 and therefore the judgment of the court awarding the sentence of death is not open to challenge as violating Article 14 or Article 21 as has been laid down by this Court in Naresh Shridhar Mirajkar v. State of Maharashtra [AIR 1967 SC 1 : (1966) 3 SCR 744] and also in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] , the only*

[9] (1989) 1 SCC 678

jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper. The nature of the offence, circumstances in which the offence was committed will have to be taken as found by the competent court while finally passing the verdict. It may also be open to the court to examine or consider any circumstances after the final verdict was pronounced if it is considered relevant. The question of improvement in the conduct of the prisoner after the final verdict also cannot be considered for coming to the conclusion whether the sentence could be altered on that ground also."

16. In **Navneet Kaur v State (NCT of Delhi) and another**[10], this Court demonstrated that once a safeguard is recognised as integral to Article 21 of the Constitution of India, its benefit must be afforded retrospectively to prisoners whose executions are still pending. This Court accordingly commuted the sentence of accused Devender Pal Singh Bhullar who was convicted of a terror offence, on the combined grounds of inordinate delay and serious mental illness, notwithstanding an earlier contrary precedent. In ***Mohd. Arif alias Ashfaq v Registrar, Supreme Court of India and others***[11], a Constitution Bench ruled that a death-row convict is entitled, as a matter of right by virtue of Article 21 of the Constitution of India, to an oral hearing before a bench of at least three judges at the review stage, describing capital cases as "a distinct category altogether". When a subsequent Constitution Bench revisited the matter in ***Mohd. Arif alias Ashfaq v Registrar, Supreme Court of India and others***[12], it clarified that this procedural

[10] (2014) 7 SCC 264
[11] (2014) 9 SCC 737
[12] (2019) 9 SCC 404

guarantee applies even where a curative petition has been dismissed, the limited grounds of curative jurisdiction being insufficient to extinguish so fundamental a right.

17. From this discussion, we can conclude that death-sentence cases stand apart because the punishment extinguishes the right to life in an irreversible way, and that singular feature obliges this Court to keep the door of constitutional review open even after the ordinary appellate and review avenues have closed. Article 32 of the Constitution of India, therefore, remains available whenever a supervening fact, such as inordinate delay, emergent mental illness, or a parity-based anomaly, or a subsequently recognised procedural guarantee throws the legitimacy of a capital sentence into doubt. The power to intervene under Article 32 of the Constitution of India is meant to prevent the Constitution from being stymied by formal finality when a human life hangs in the balance.

B. Power to do complete justice notwithstanding procedural finality

18. The settled law of this Court is that procedural finality cannot stand in the way of curing a constitutional wrong which implicates life or liberty. In **A.R. Antulay v R.S. Nayak and another**[13], a Constitutional Bench of this Court, speaking through multiple concurring opinions, held that this Court retains an inherent jurisdiction *ex debito justitiae*, to recall or modify its own orders whenever such intervention is necessary to prevent the continuing violation of fundamental rights under Articles 14 and 21 of the Constitution of India. The majority stressed that no litigant should suffer a deprivation "merely because of technical objections or irregularities" and that the constitutional duty to dispense justice must prevail over considerations of formal finality. The relevant para has been reproduced hereunder:

> *"83. This passage was quoted in the Gujarat High Court by D.A. Desai, J., speaking for the Gujarat High Court in Soni Vrajlal v. Soni Jadavji [AIR 1972 Guj 148 : (1972) 13 Guj LR 555] as mentioned before. It appears that in giving directions on 16-2-1984, this Court*

[13] (1988) 2 SCC 602

acted per incuriam inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in Anwar Ali Sarkar case [(1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiac, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."

19. That proposition was reiterated *in* ***S. Nagaraj v State of Karnataka and another***[14]**,** wherein this Court described itself as being under a "constitutional and legal obligation" to set technical barriers aside whenever they obstruct the remedy of a palpable injustice. Subsequent decisions have invoked the maxim *ubi jus ibi*

[14] (1993) Supp (4) SCC 595

remedium to emphasise that the denial of a remedy is itself a denial of the right.

> "*18***.** *Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an*

error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

20. Against that backdrop, a curative petition would offer the petitioner no meaningful recourse. The curative jurisdiction, defined in ***Rupa Ashok Hurra v Ashok Hurra and another***[15], is confined to patent natural-justice violations apparent on the original record and requires that the same grounds were urged in review. The Petitioner's grievance, namely, the absence of the procedural guarantees subsequently crystallised in ***Manoj (supra)*** and the emergence of new medical evidence, could not have formed part of the earlier record and therefore lies outside the curative ambit. It follows that the only efficacious avenue is the inherent corrective power recognised in ***Antulay (Supra)***, exercised through Article 32 of the Constitution of India

[15] (2002) 4 SCC 388

and, where necessary, Article 142 of the Constitution of India, to fashion relief that vindicates Articles 14 and 21 of the Constitution of India notwithstanding the formal finality of prior proceedings.

C. Procedural fairness in capital sentencing as an imperative under Articles 14 and 21

21. The right to be sentenced in a principled and individualized manner flows directly from Articles 14 and 21. In ***Santosh Kumar Satishbhushan Bariyar v State of Maharashtra***[16], this Court underlined that, because death is the "most extreme punishment", the sentencing procedure must strictly adhere to constitutional due-process requirements. This Court further emphasised that in every capital case "the threshold of the rarest-of-rare test is informed by Articles 14 and 21 of the Constitution of India", thereby anchoring the sentencing phase firmly within the fundamental-rights framework first articulated

[16] (2009) 6 SCC 498

in ***Bachan Singh v. State of Punjab***[17],. The relevant paras are hereunder:

> "*79. Whether primacy should be accorded to aggravating circumstances or mitigating circumstances is not the question. Court is duty-bound by virtue of Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] to equally consider both and then to arrive at a conclusion as to respective weights to be accorded. We are also bound by the spirit of Article 14 and Article 21 which forces us to adopt a principled approach to sentencing. This overarching policy flowing from Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] applies to heinous crimes as much as it applies to relatively less brutal murders. The Court in this regard held: (SCC p. 751, para 209)*
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> *"209. … Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency—a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative*

[17] (1980) 2 SCC 684

guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception."

.....

138. At this juncture, it is best to point out that the ensuing discussion, although applicable in constitutionality context, is carried out in the context of sentencing of death punishment. In every capital sentence case, it must be borne in mind that the threshold of the rarest of rare cases is informed by Articles 14 and 21, owing to the inherent nature of death penalty. Post-Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] , capital sentencing has come into the folds of constitutional adjudication. This is by virtue of the safeguards entrenched in Articles 14 and 21 of our Constitution."

22. ***Manoj (supra)*** was delivered against the backdrop of persistent concerns, catalogued, inter alia, in the 262nd Law Commission Report, about the inconsistency and inadequacy of death-penalty sentencing. Taking those concerns seriously, this Court devised a concrete procedural architecture imposing various

obligations on State to protect the Rights of the accused. These requirements are not administrative niceties, but they exist to give substantive content to the constitutional mandate that punishment should be individually tailored and proportionate. Since ***Manoj (supra)***, an institutional practice has emerged whereby this Court routinely calls for the mandated reports before deciding appeals in capital punishment cases. As already noted, this Court has also taken suo-motu cognisance of the absence of a uniform trial-level framework and has referred the question to a Constitution Bench in *Suo Motu W.P. (Crl.) No. 1 of 2022.* These developments confirm that the **Manoj (supra)** protocol has become an indispensable component of a "meaningful, real and effective" sentencing hearing.

23. The relief sought in the present writ is confined to securing the same procedural guarantee. The petitioner does not impugn the finding of guilt recorded in *Criminal Appeal Nos. 2486-2487 of 2014* or the conclusions reached in *Review Petition Nos. 637-638 of 2015*. The petitioner is

seeking a limited remand so that the sentencing Court may consider the reports and material envisaged in ***Manoj (supra)***. Any modification of the earlier judgments will be incidental to, and a necessary consequence of, supplying a constitutionally compliant procedure. In the present case, where the petitioner seeks only the enforcement of a procedural safeguard now recognised as integral to Articles 14 and 21 of the Constitution of India, and where no equally efficacious alternative remedy exists, the invocation of our extraordinary jurisdiction is both appropriate and justified.

D. Plenary power to mould relief under Articles 32 and 142

24. This Court's ability to grant effective relief is not exhausted by the formal confines of appellate review. On several occasions after ***Rupa Ashok Hurra (Supra),*** this Court has, in exercise of its writ jurisdiction, revisited and modified its own final orders when the interests of justice so required. This was apparent in ***Sanjay Singh and another v U.P. Public Service***

Commission, Allahabad and another[18]*,* wherein this Court recalibrated its earlier directions on evaluation methodology, and ***Bilkis Yakub Rasool v Union of India and others***[19], in which this Court set aside a remission order by invoking both Articles 32 and 142 to protect fundamental rights developed after the original conviction. Moreover, in ***Supreme Court Bar Association v Union of India and another***[20], the Constitution Bench explained that the Court's plenary powers are inherent and complementary to those conferred by statute and exist independent of those statutes with a view to do complete justice between the parties. The Bench emphasised that these constitutional powers permit this Court to craft remedies unrestrained by procedural or statutory limitations whenever necessary to uphold justice.

25. Consequently, it may be concluded that Article 32 of the Constitution of India is not restricted to reviewing decisions of subordinate courts or

[18] (2007) 3 SCC 720
[19] (2024) 5 SCC 481
[20] (1998) 4 SCC 409

executive authorities. In exceptional situations it empowers this Court to revisit even its own final orders where doing so is necessary to prevent a continuing breach of fundamental rights. The controlling test is whether such intervention is required to avert manifest injustice under Articles 14 and 21 of the Constitution of India, and technical rules of procedure cannot be permitted to thwart that constitutional mission.

26. Viewed through that lens, the Petitioner's request for a new sentencing hearing which is compliant to ***Manoj (supra)*** falls squarely within Article 32 of the Constitution of India. The relief sought is narrowly tailored as it does not disturb the conviction or reopen evidentiary findings but merely insists that the ultimate penalty be imposed, if at all, through the procedural safeguards now recognised as integral to a fair and individualised sentence. We believe that granting this remedy is therefore a legitimate, and indeed compelling exercise of the Court's plenary power under Article 32 of the Constitution of India to secure the effective enforcement of fundamental rights.

27. In the backdrop of the discussion above, we must also recognise the evolution of our own constitutional culture. Contemporary Indian society no longer conceives criminal punishment purely in retributive terms. It also measures the quantum of a sentence by its capacity to preserve the possibility of human reform. The goal of reformation, repeatedly affirmed in our jurisprudence, presupposes that the legal system will not foreclose the prospect of moral regeneration unless every procedural assurance of accuracy and fairness has first been scrupulously observed.

28. We cannot overlook that the machinery which feeds the death-penalty system is itself fragile. Investigations often rely on confessions extracted in opacity, recoveries whose provenance is contested and forensic material of doubtful rigour. When such evidence is filtered through an overburdened trial process, the possibility of wrongful conviction can never be dismissed as a remote abstraction. An irreversible penalty grafted onto a fallible process endangers the very core of Article 21 of the Constitution of India. At

this juncture, we must state that Punishment in a constitutional democracy must ultimately reflect the moral trajectory of the society it serves. Over time, this Court has come to believe that every person, even one who has done great wrong, still carries a basic human dignity. This belief does not excuse crime but it simply means the State should keep open, wherever possible, the chance for an offender to change. It is our belief that moving from pure retribution to genuine reform is not an act of undue leniency but it is a statement of faith in the human capacity for improvement.

29. Modern penology reinforces that conviction. Empirical literature has yet to establish that the spectacle of an execution deters homicide more effectively than a sentence of incarceration for the natural span of life. What is clear, however, is that a death sentence closes every door as it ends all hope of remorse, of reconciliation with victims' families, and of uncovering mistakes that sometimes emerge only after many years. A just society may protect itself from serious crime, but it must do so with measures that can be clearly

defended as both necessary and fair. Our Constitution therefore sets a very high bar before the State can take a life. We strongly believe that it is not enough to simply point to the horror of an offence. The process leading to a death sentence must itself be beyond reproach as it must also be open, thorough and fair. The safeguards laid down in ***Manoj (supra)*** are meant to ensure exactly that. Until those safeguards are fully applied, carrying out a death sentence would sit contrary to Articles 14 and 21 of the Constitution of India as they promise equality and fair procedure to every person in our society.

30. Accordingly, the Writ Petition is allowed.

31. We therefore hold that Article 32 of the Constitution of India empowers this Court in cases related to capital punishment to reopen the sentencing stage where the accused has been condemned to death penalty without ensuring that the guidelines mandated in ***Manoj (supra)*** were followed. This corrective power is invoked precisely to compel rigorous application of the ***Manoj (supra)*** safeguards in such cases, thereby ensuring that the condemned person is not

deprived of the fundamental rights to equal treatment, individualized sentencing, and fair procedure that Articles 14 and 21 of the Constitution of India secure to every person.

32. We add, however, a word of caution. Article 32 of the Constitution of India is the bedrock of constitutional remedies, but its exceptional scope cannot be permitted to become a routine pathway for reopening concluded matters. Reopening will be reserved only for those cases where there is a clear, specific breach of the new procedural safeguards as these breaches are so serious that, if left uncorrected, they would undermine the accused person's basic rights to life, dignity and fair process.

33. Accordingly, we further clarify that the finding of guilt recorded against the petitioner is left untouched. Nothing in this judgment shall be read as a comment, direct or implied, on the evidence that sustained conviction or on any defence that may have been raised at trial. Our intervention is strictly confined to the issue of sentence.

34. The sentence of death affirmed by this Court on 03 May 2017 is, for the present, set aside, and the matter is remitted to this Court for a fresh hearing on sentence alone, to be conducted in conformity with the directions in ***Manoj (supra).***
35. The Registry is directed to place the matter before the Hon'ble the Chief Justice of India for assignment to an appropriate Bench.
36. All pending application(s), if any, stand disposed of.

SANJAY KAROL, J.

37. I have perused the erudite opinion by my esteemed MyLord, Vikram Nath, J,. The scholarly lucidity with its empathetic and farsighted understanding of the Constitution and the values it espouses has prompted my whole-hearted concurrence. However, considering the peculiarity and the importance of the questions before us, I desire to pen down a few thoughts of my own.

"For the determination of sentences, justice generally requires consideration of more than the particular acts by which the crime was committed, and that there be taken into account the circumstances of the offense, together with the character and propensities of the offender. His past may be taken to indicate his present purposes and tendencies, and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him."

Justice Pierce Butler[21]

38. The crux of the petitioner's case is that post his conviction and confirmation thereof, right up to this Court, meaning thereby that his sentence of being hanged till death was made certain, both judicially and on the part of the executive (with a Review Petition and Clemency Petitions both to the Hon'ble Governor and the Hon'ble President of India, being rejected), there have been judicial developments by way of a three-Judge Bench decision in ***Manoj v. State of M.P.***[22], whereby this Court mandated the calling of certain

[21] Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51 (1937)
[22] (2023) 2 SCC 353

reports, the content whereof has to be duly considered in arriving at a just and proper sentence, of which he claims benefit. In other words, the petitioner seeks directions from this Court to grant him the benefit of revisiting his sentence, in light of the procedure laid down in ***Manoj*** (supra).

39. This Court in ***Byluru Thippaiah v. State of Karnataka***[23] had recently observed that ***Manoj*** (supra) represented a watershed moment in the Indian sentencing regime. By way of the said judgment, this Court shone a path for individualised sentencing. Individualised sentencing, as the name suggests, is a judicial practice where the punishment awarded to an offender is crafted or moulded, acknowledging not just the crime but also the criminal. It may be so that an individual has committed a crime, but in modern penology, the same does not necessarily mean that a sentence can be imposed upon them in disregard of the background which may have led the offender to such a position. This is more so a case where the punishment to

[23] 2025 SCC OnLine SC 1455

be meted out is afflicted by irreversibility, in other words, the death sentence. In doing so, this Court considers the offenders' background – social, economic and psychological; personal history; character; and rehabilitation potential.

40. While ***Manoj*** (supra) is the first time that this Court has mandated calling of these reports in furtherance of the mitigating factors spelt out in ***Bachan Singh v. State of Punjab***[24] the idea of individualised sentencing took root in Western jurisdictions much earlier. At this point, it has to be recognized that most Western countries have outlawed the death penalty, and as one of the, if not the only, notable exceptions, it shall be useful to notice a few decisions of the Supreme Court of the United States of America.

40.1 In ***Lockett v. Ohio***[25], the Court was confronted with a situation where the getaway driver, who was involved in a robbery that resulted in a murder, was found guilty and sentenced to death. The question before the Court was whether the ***Ohio*** statute requiring the death penalty for

[24] (1980) 2 SCC 684
[25] 438 US 586 (1978)

aggravated murder was violative of the Eighth and Fourteenth Amendment of the U.S. Constitution unless anyone of the following three criteria could be found – (i) that the victim had induced the offence; (ii) the same had been committed under duress or coercion; and (iii) the offence was a product of mental deficiencies. The Court held that restricting the mitigating factors only to the above three points did indeed violate the Constitution. It was held as follows :

> "There is no perfect procedure for deciding in which cases Governmental authority should be used to impose death. But a statute that prevents a sentencer in all capital punishment from giving independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offence proffered in mitigation creates a risk that the death penalty would be imposed inspite of factors which may call for a less severe penalty. When the choice is between life and death, the risk is unacceptable and incompatible..."

40.2 The ***Lockett*** doctrine, which is best captured in ***Penry v. Lynaugh***[26] to the effect that punishments must be directly related to the defendant's personal culpability and that a defendant who commits crime(s) attributable to a disadvantaged background or emotional or mental problems may be less culpable than the one who has no such excuse, was furthered in ***Eddings v. Oklahoma***[27]. The Court held the Trial Court to be in error for not having considered *Eddings'* age (16 years) as a mitigating factor given his "violent background". At trial, a State psychologist had also testified to the effect that he suffered from a sociopathic and anti-social personality disorder. The Court found the Trial Court to be in error on this count as well. The majority held as follows :

> "Eddings was not a normal 16-year-old; he had been deprived of the care, concern and parental attention that children deserve. On the contrary, it is not disputed that he was a juvenile with serious emotional problems and

[26] 492 U.S. 302 (1989)
[27] 455 U.S. 104 (1982)

had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case. Rather, it is to say that, just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional disturbance of a youthful defendant be duly considered in sentencing."

40.3 In ***Skipper v. South Carolina***[28], the Court heard an appeal against a concurrently confirmed death sentence, where at the sentencing hearing, the learned Trial Judge denied the admission of mitigating evidence in the form of testimony of the two jailers and a regular visitor - who would have testified to the effect that he had adjusted well under incarceration in the seven and a half months that he had spent in prison between his arrest and trial. Both the Courts below held such

[28] 476 U.S 1 (1986)

evidence to be inadmissible and irrelevant. Such findings were vacated and it was held that it was not open for the sentencer to refuse consideration of any of the "relevant mitigating evidence." In the concurring opinion, it was observed that all relevant factors should be considered at the stage of the Subordinate Courts themselves, as opposed to being considered by the Supreme Court, for it has no special expertise in deciding the appropriateness of factors to be considered or otherwise.

40.3 ***Graham v. Collins***[29] was a case where the Court was dealing with a case of first-degree murder. The sentence of death imposed was confirmed by the Supreme Court, but in doing so, it was observed that the same could be arrived at, as per the guidance given by the Texas statute in question, giving 'constitutionally adequate' considerations to factors such as age.

[29] 506 U.S 461 (1993)

40.4 In ***Tennard v. Dretke***[30], the Court rejected two tests applied by the Fifth Circuit Court of Appeals, where they, in order to consider the factum of his low IQ, applied two tests, i.e., of 'nexus' to the crime and a test for 'uniquely severe permanent handicap', observing thus :

> "Reasonable jurists could conclude that the low IQ evidence Tennard presented was relevant mitigating evidence. Evidence of significantly impaired intellectual functioning is obviously evidence that "might serve 'as a basis for a sentence less than death,'" *Skipper*, 476 U. S., at 5; see also, *e.g.*, *Wiggins* v. *Smith*, 539 U. S. 510, 535 (2003) (observing, with respect to individual with IQ of 79, that "Wiggins['] … diminished mental capacitie[s] further augment his mitigation case"); *Burger* v. *Kemp*, 483 U. S. 776, 779, 789, n. 7 (1987) (noting that petitioner "had an IQ of 82 and functioned at the level of a 12-year-old child," and later that "[i]n light of petitioner's youth at the time of the offense, … testimony that his 'mental and emotional development were at a level several years below his chronological age' could not have

[30] 2004 SCC OnLine US SC 59

been excluded by the state court" (quoting *Eddings*, 455 U. S., at 116)).

Reasonable jurists also could conclude that the Texas Court of Criminal Appeals' application of *Penry* to the facts of *Tennard's case* was unreasonable. The relationship between the special issues and Tennard's low IQ evidence has the same essential features as the relationship between the special issues and Penry's mental retardation evidence. Impaired intellectual functioning has mitigating dimension beyond the impact it has on the individual's ability to act deliberately. See *Penry I*, 492 U. S., at 322. A reasonable jurist could conclude that the jury might well have given Tennard's low IQ evidence aggravating effect in considering his future dangerousness, not only as a matter of probable inference from the evidence but also because the prosecutor told them to do so: "[W]hether he has a low IQ or not is not really the issue. Because the legislature, in asking you to address that question, the reasons why he became a danger are not really relevant. The fact that he is a danger, that the evidence shows he's a danger, is the criteria to use in answering that question." App. 60.

> Indeed, the prosecutor's comments pressed exactly the most problematic interpretation of the special issues, suggesting that Tennard's low IQ was irrelevant in mitigation, but relevant to the question whether he posed a future danger."

40.5 The above discussion by no means is meant to be an extensive deliberation of how the mitigating factors, eventually recognised by this Court in ***Manoj*** (supra), came to be considered in other jurisdictions. It is only meant to be indicative of the processes followed in a developed or developing Country that is retentionist[31] *qua* the death penalty, which in all, are fifty four.

[31] Across the world, there are fifty-four countries that still have capital punishment on their statute books. In Africa- Botswana, Comoros, Democratic Republic of the Congo, Egypt, Ethiopia, Gambia, Lesotho, Libya, Nigeria, Somalia, South Sudan, Sudan, Uganda. In Asia- Afghanistan, Bahrain, Bangladesh, China, India, Indonesia, Iran, Iraq, Japan, Jordan, Kuwait, Lebanon, Malaysia, Myanmar, North Korea, Oman, Pakistan, Palestine, Qatar, Saudi Arabia, Singapore, Syria, Taiwan, Thailand, United Arab Emirates, Vietnam, Yemen. In Europe- Belarus. In North America- Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and Grenadines, Trinidad and Tobago, United States of America. In South America- Guyana. [See: Death Penlty Information Center: https://deathpenaltyinfo.org/policy-issues/policy/international/abolitionist-and-retentionist-countries

41. It is also to be noted that academic discourse[32] argues for principles of individualised sentencing to be extended to non-capital felony convictions, i.e., serious crimes for which punishments other than death have been prescribed. This has been argued, keeping in view the effect that convictions for such serious offences may have on the person so convicted, causing "dehumanizing effects" that extend far beyond release from incarceration, such as the loss of right to vote, housing and employment and most obviously, social stigma. This extension would grant three benefits - I. Grant each defendant an effective opportunity to present circumstances for and against his case; II. Enhance transparency and further proportionality; and III. Restore sentencing discretion to neutral Tribunals and respect for offender dignity.

Academic discourse is the birthplace of nuanced ideas that have great potential to inform and influence legislative policy and judicial action. Examples are aplenty of such influence. Even in the

[32] William W. Berry, Individualized Sentencing, 76 Wash.& Lee L. Rev.13 (2019).

United States, where this discussion is taking shape, concrete steps are yet to be taken in so far as the extension of consideration of the mitigating factors in non-capital felony offences. However, as we have noticed above, the consideration of these factors in offences with capital punishment is well established. If the boundaries of theoretical discussions have extended so far ahead, it would only stand to reason that the judicial fora would at least extend these benefits to cases where the alternative is the State-sanctioned taking away of a person's life. This is more so because the commission of an offence is not a stand-alone incident, but rather the culmination of a sum total of circumstances that would have driven the offender to commit such a crime. For Courts to close their eyes to this possibility is the gravest form of injustice that can be caused by the stroke of a pen.

42. In general perception, the image of convicts on death row is most uncharitable and hostile, and to perceive dignity for them may appear to some as an unjust concession to the most undeserving. The law, however, does not permit such perceptions. The rights available to a free person walking the streets are also to some

extent available to those who are confined behind bars, inasmuch as the same has been recognized, for instance, in cases where, despite the rejection of mercy petitions, the executions of these persons remain pending for years. This, it has been held, is violative of the prisoners' rights under Article 21 of the Constitution of India. Article 21, as we are well aware, provides that no person will be deprived of their life and liberty except in accordance with the procedure established by law. When a person has been sentenced to death, and the same has been confirmed on appeal, the deprivation of liberty is in accordance with law, but even then, some aspects of Article 21 would still be with such a prisoner.

43. Dignity, which is essential to the 'life' and well-recognised to be something more than a mere animal existence, is one such right [See: ***Navtej Singh Johar v. Union of India***[33]]. There may be, on an ideal plane, opposition to this recognition, given that this implies dignity is inherent in even those who have been convicted

[33] (2018) 10 SCC 1

of having committed the most barbaric of acts - but that is true. So long as a person is living, he is entitled to dignity. Immanuel Kant[34], who is recognized as the modern proponent of the understanding of dignity, observed thus :

> "Every human being has a legitimate claim to respect from his fellow human beings and is in turn bound to respect every other. Humanity itself is a dignity; for a human being cannot be used merely as a means by any human being ... but must also be used at the same time as an end. It is just in this that his dignity ... consists, by which he raises himself above all other beings in the world that are not human beings and yet can be used, and so over all things."

44. During the Second World War, one of the ghastliest acts against humanity was perpetrated, where a section of the population was wiped out merely on account of their ethnicity and religious beliefs in an attempt to cleanse a particular race. Fresh out of the war

[34] Kant, I. (2017). Kant: The Metaphysics of Morals. (M. Gregor, Trans., L. Denis, Ed.) (2nd ed.). Cambridge: Cambridge University Press.

when the Member States of the United Nations convened to set down the Universal Declaration of Human Rights, they were aware of the vast differences amongst them and yet found common ground on the idea of dignity[35]. As a result, the first Article of the Declaration itself states that all persons are born equal in rights and dignity.

45. One form of dignity is the "non-instrumentalization of persons", which means viewing offenders as individual human beings. In the realm of punishment, this humane view of offenders entails proportionality and humanness. A detailed exposition is not warranted for the principle of proportionality, save and except to say that the punishment awarded to an offender has to be directly related to the offence committed. The second aspect of humaneness entails that the punishment so awarded should not be outside the bounds of human decency[36]. All these aspects circle back to our constitutional values embodied in Articles 14 and 21. The words of Ramaswamy, J., in

[35] M.Nussbaum, Human Dignity & Political entitlements, in Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics 360 (2008).
[36] M.J.Ryan, Taking Dignity Seriously: Excavating the backdrop of the Eight Amendment, (2016) U.ILL L.REV.2129.

Kartar Singh v. State of Punjab[37], are instructive:

> "The foundation of Indian political and social democracy, as envisioned in the preamble of the Constitution, rests on justice, equality, liberty, and fraternity in secular and socialist republic in which every individual has equal opportunity to strive towards excellence and of his dignity of person in an integrated egalitarian Bharat. Right to justice and equality and stated liberties which include freedom of expression, belief and movement are the means for excellence. The right to life with human dignity of person is a fundamental right of every citizen for pursuit of happiness and excellence. Personal freedom is a basic condition for full development of human personality. Article 21 of the Constitution protects right to life which is the most precious right in a civilised society. The trinity i.e. liberty, equality and fraternity always blossoms and enlivens the flower of human dignity."

The question that is to be considered is whether the rights under Article 21 of the instant petitioner and the other similarly placed convicts, who would be

[37] (1994) 3 SCC 569

benefitted by the retrospective application of ***Manoj*** (supra), would be harmed and their dignity threatened if this particular aspect is seen only from the angle of a subsequent development, as it would defeat the noble purpose of individualized sentencing put forth in ***Manoj*** (supra) and the mitigating factors that could possibly be brought on record by the instant petitioner, will be left untouched and unexplored. There is no constitutional permissibility to give a go-by to the sacrosanct right under Article 21, on the basis that the judgment which benefits the petitioner and other similarly placed persons was delivered after the finality of conviction and sentence of the persons was determined.

46. According to Blackstonian theory[38], the role of the Court is not to create new laws but to uphold and explain existing ones. Judges are seen as discovering or interpreting the correct law rather than making law themselves; the law is considered to have always existed as it is. Therefore, if a later judgment departs from an earlier one, it does not introduce a new law but

[38] 15th Ed. William Blackstone, Commentaries on the Laws of England

rather uncovers the true legal principle, which then applies retrospectively. Salmond echoes this view, explaining that case law operates on the premise that Judges merely declare the law. He wrote :

> "[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision."

To put it otherwise, when a previous decision is overruled, it means the earlier rule was never truly the law, and all actions taken based on that supposed rule are subject to the new, correct legal determination, except in cases that are already finally decided (*res judicata*) or where accounts have already been settled. Thus, overruling a decision has a retrospective effect, clarifying what the law always was, with limited exceptions.

47. The Blackstonian theory has found application by this Court on few occasions. In ***CIT v.***

Saurashtra Kutch Stock Exchange Ltd[39], C.K. Thakker, J. explained the theory in the following terms:

> "35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood."

[See also: ***Directorate of Revenue Intelligence v. Raj Kumar Arora***[40].]

[39] (2008) 14 SCC 171
[40] 2025 SCC Online SC 819

48. Courts in other jurisdictions have also held judgments to have a retrospective effect. The inimitable Justice Holmes in his dissent in ***Barton Kuhn v. Fairmont Coal Co.***[41], observed :

> " "35. ... I know of no authority in this Court to say that, in general, State decisions shall make law only for the future. Judicial decisions have had retrospective operation for near a thousand years."

49. The Supreme Court of Canada in ***Attorney General of Canada v. George Hislop***[42], has held that :

> "**86.** However, this acknowledgement does not require abandoning Blackstone's declaratory approach altogether. The critique of the Blackstonian approach applies only to situations in which judges are fashioning new legal rules or principles and not when they are applying the existing law. In instances where courts apply pre-

[41] 1910 SCC OnLine US SC 2
[42] 2007 SCC OnLine Can SC 10

> existing legal doctrine to a new set of facts, Blackstone's declaratory approach remains appropriate and remedies are necessarily retroactive. Because courts are adjudicative bodies that, in the usual course of things, are called upon to decide the legal consequences of past happenings, they generally grant remedies that are retroactive to the extent necessary to ensure that successful litigants will have the benefit of the ruling..."

50. Building on the Blackstonian theory and Salmond's explanation that the Courts do not create new law but merely declare what the law has always been, so that any overruling by a subsequent decision operates retrospectively, this understanding is directly relevant for the interpretation of ***Manoj*** (supra) with regard to its retrospective or prospective application. The question whether ***Manoj*** (supra) applies prospectively or retrospectively deeply affects the protection of Article 21 rights. If Courts deny petitioners the benefit of new legal developments solely because these emerged from later rulings,

it could jeopardize the fundamental rights. In this vein, the decision in ***Kanishk Sinha & Anr v. State of West Bengal & Anr.***[43] affirms that, while statutes operate prospectively, unless expressly stated, judgments of constitutional Courts are presumed to be retrospective unless the Court expressly limits their effect. This alignment of legal principles bolsters the understanding that judicial declarations usually operate retrospectively, ensuring that the benefits of such rulings generally reach past cases unless specifically restricted. This continuity in judicial philosophy upholds fairness by protecting individual rights regardless of the timing of the judgment.

51. This case has presented two questions for consideration - one, regarding the retrospective application of the principles in ***Manoj*** (supra) which stands answered as above; and second, being the applicability and maintainability of Article 32 of the Constitution of India, the thornier of the afore-mentioned issues after the rejection of the mercy petitions preferred before

[43] 2025 SCC Online SC 443

the Hon'ble President of India and the Hon'ble Governor of Maharashtra.

52. Article 32 of the Constitution of India provides that this Court has the power to issue prerogative writs in favour of the applicant before it, should they succeed in establishing a violation of a right under Part III of the Constitution. The natural corollary that the petitioner would have to show that some or the other right available to him, which is enshrined under Part III stands violated. The case of the petitioner, accordingly, is that the denial of the sentencing procedure as established in ***Manoj*** (supra) violates his rights under Article 21 of the Constitution.

53. What this necessarily implies is that the law declared by this Court in ***Manoj*** (supra) has acquired such a status that the non-availability thereof to the petitioner prejudices him greatly. This Court has, time and again in the interpretation of various legislations, national and international, declared the law as it should be in accordance with Article 141 of the Constitution of India. Similarly, in ***Manoj*** (supra), in my view, all that has been done is that

a streamlined and time-bound process has been laid down, to be necessarily followed by the Courts below, which hitherto had not been done despite postulation in ***Bachan Singh*** (supra).

54. If the law once declared is not followed and the same causes a demonstrable detriment to a person, or in this case, a convict, such person will have a legitimate grievance which the Courts would be then required to remedy. As already observed in the preceding paragraphs, the law declared by the constitutional Courts applies retrospectively. *Ex-consequenti*, the benefit of ***Manoj*** (supra) applies to the petitioner retrospectively and the denial of such benefit, which may eventually have the effect of saving him from the hangman's noose, if it is indeed found that his socio-economic and psychological background as also other mitigating factors as may be procured, did play a sufficient role in the petitioner committing the heinous crime that he did, non-consideration of these factors would constitute a violation of Article 21, since the effect thereof would be that his life would be eventually taken away.

55. The substance of the Union's and the State's opposition to this writ petition was that Article 32 cannot be permitted to be invoked post conclusion of the process as is provided under law, in an effort to disturb findings already made and confirmed. There is also an apprehension that if this Court permits the exercise of powers under Article 32 in this case, it would also give other convicts similarly condemned an avenue for re-agitation, even after dismissal of the review petition. While the apprehension of the Union of India and the State appears somewhat justified, which we will deal with subsequently, the contention regarding the maintainability of Article 32 does not merit acceptance.

56. This is evident from a bare perusal of Part III of the Constitution. The framers have consciously placed a pathway to this Court into the heart and soul of the Constitution, ensuring and guaranteeing that no person, for whatever reason, can be denied an avenue to have their grievance redressed, when some action of the State infringes on the rights guaranteed by Part III of the Constitution of India. The guaranteed

right to approach this Court was considered, and rightly so, fundamental to the protection of the fundamental rights by the framers of the Constitution themselves. Illustratively, certain extracts of the discussion on draft Article 25 are reproduced herein below :

> "***G. Durgabai***- Sir, the right to move the Supreme Court by appropriate proceedings for the enforcement of a person's rights is a very valuable right that is guaranteed under this Constitution. In my view this is a right which is fundamental to all the fundamental rights guaranteed under this Constitution. The main principle of this article is to secure an effective remedy to the fundamental rights guaranteed under this Constitution. As we are all aware, a right without an expeditious and effective remedy serves no purpose at all, nor is it worth the paper on which it is written. Therefore, as I have already stated, this article secures that kind of advantage that it will ensure the effective enforcement of the fundamental rights guaranteed to a person.[44]
>
> ***Jerome D Souza***- Sir, it is because we all believe,–and that is the implication of this

[44] Constituent Assembly Debates, Official Report, Vol. VII (4 November 1948), at 3–5 (India).

> chapter of fundamental Rights,–that man has certain rights that are inalienable, that cannot be questioned by any humanly constituted legislative authority, that these Fundamental Rights are framed in this manner and a sanction and a protection given to them by this provision for appeal to the Supreme Court. Sir, if all our people and their outlook were entirely materialistic, if right and wrong were to be judged by a majority vote, then there is no significance in fundamental rights and the placing of them under the protection of the High Court. It is because we believe that the fullest and the most integral definition of democracy includes and is based upon this sacredness of the individual, of his personality and the claims of his conscience, that we have framed these rights.[45]"

(Emphasis supplied)

The Statement of the Chairman of the Drafting Committee of the Constitution, Dr. B.R. Ambedkar also highlights the high pedestal upon which this Article rests. This Court in ***Fertilizer Corpn. Kamgar Union v. Union of India***[46], speaking

[45] Constituent Assembly Debates, Official Report, Vol. VII (4 November 1948), at 8–10 (India).
[46] (1981) 1 SCC 568

through Y.V. Chandrachud, CJI, noticed this statement as follows :

> "A right without a remedy is a legal conundrum of a most grotesque kind. While the draft Article 25, which corresponds to Article 32, was being discussed in the Constituent Assembly, Dr Ambedkar made a meaningful observation by saying:
>
> > "If I was asked to name any particular article in this Constitution as the most important — an article without which this Constitution would be a nullity — I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance. [Constituent Assembly Debates, December 9, 1948, Vol. VII, p. 953]"

Here itself, to further supplement the indispensability of Article 32, it is reiterated that this Article forms the Basic Structure of the Constitution of India and as a consequence thereof, its essence cannot be taken away even by the exercise of the powers of the Parliament. This Court has also struck down legislation as *ultra vires* the Constitution in cases where this power has been sought to be

circumscribed. Paragraph 99 of ***L. Chandra Kumar v. Union of India***[47] reads as under :

> "The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court ..."
>
> (Emphasis supplied)

As is made evident from the above extract, the framers of the Constitution held a deeply regarded belief that certain rights are inalienable and most precious to a person, and for the enforcement of these rights that the doors of this Court were kept open for all. It is well-established that reference to the

[47] (1997) 3 SCC 261

Constitutional Assembly debates can be made in the interpretation of a constitutional provision. [See: ***S.R. Chaudhuri v. State of Punjab & ors.***[48]; and ***K.S. Puttaswamy v. Union of India***[49]**.**] It becomes but obvious then, that nothing whatsoever under the law can cast a shadow or eclipse this right, whether it be the availability of a substantive alternate remedy or procedural wrangles. In the present case, since this Court has confirmed the petitioner's conviction, and review was also dismissed, he has no other avenue other than this Court where he may seek the benefit of the principles in ***Manoj*** (supra). It is almost impossible to conceive that the remedy under this Article would be foreclosed to the petitioner when Article 21 is the only thing that stands between the petitioner and the rope of death, only in order to underscore and emphasize the finality of a judicial determination, which in all cases apart from such exceptional circumstances, is a cardinal principle to be abided by.

57. As for the argument of the learned Advocate General for the State of Maharashtra that after

[48] (2001) 7 SCC 126
[49] (2019) 1 SCC 1

dismissal of a review petition, the only available path is that of the curative petition, the same is difficult to accept for the Constitution Bench in ***Rupa Ashok Hurra v. Ashok Hurra***[50] itself states that this jurisdiction is to be exercised only in those cases where the circumstances permit the finality of a judicial decision to be altered with. Para 42 reads as under :

> "**42.** The concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. We are faced with competing principles — ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principles of natural justice or giving scope for apprehension of bias due to a Judge who participated in the decision-making process not disclosing his links with a party to the case, or on account of abuse of the process of the court. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Almighty alone is the dispenser of absolute justice — a concept which is not disputed but by a few. We are of the view that though

[50] (2002) 4 SCC 388

> Judges of the highest court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error. After giving our anxious consideration to the question, we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in the public interest that a final judgment of the final court in the country should not be open to challenge, yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be oppressive to judicial conscience and would cause perpetuation of irremediable injustice."
>
> (Emphasis supplied)

58. The upshot of the above discussion is that Article 32 has pride of place - a Jewel on the Crown of the Justice Delivery System - in the Indian Constitutional scheme and is unquestionably available to even those who are serving sentences for the most heinous offences.

Given that ***Manoj*** (supra) was not in operation or did not exist at the time when the present petitioner was sentenced and his review was dismissed, no other recognized way was available to him to approach this Court seeking benefit thereof. It has already been held that judicial pronouncements apply retrospectively and so a right was conferred upon him to have his sentence re-examined in the light of materials gathered under the principles of ***Manoj*** (supra), it is to exercise such a right which has a direct impact on his Article 21 rights that a petition under Article 32 had to be preferred. It, therefore, has to be necessarily held to be maintainable.

59. The end result of this petition being held maintainable is not meant to give a way out to persons convicted under a procedure established by law to approach this Court seeking to reopen the conclusions arrived at properly or simply to hide behind ongoing litigation in order to delay the inevitable carrying out of the sentence. Such a petition has been held to be maintainable in the specific facts of this case, where a subsequent

development in law granted a benefit to a convict, and there was no other avenue available to him. We are informed that in all, there are only 7 such convicts, sentenced to be hanged, seeking the benefit of ***Manoj*** (supra).

.....J.
(VIKRAM NATH)

.....J.
(SANJAY KAROL)

.....J.
(SANDEEP MEHTA)

NEW DELHI
AUGUST 25, 2025