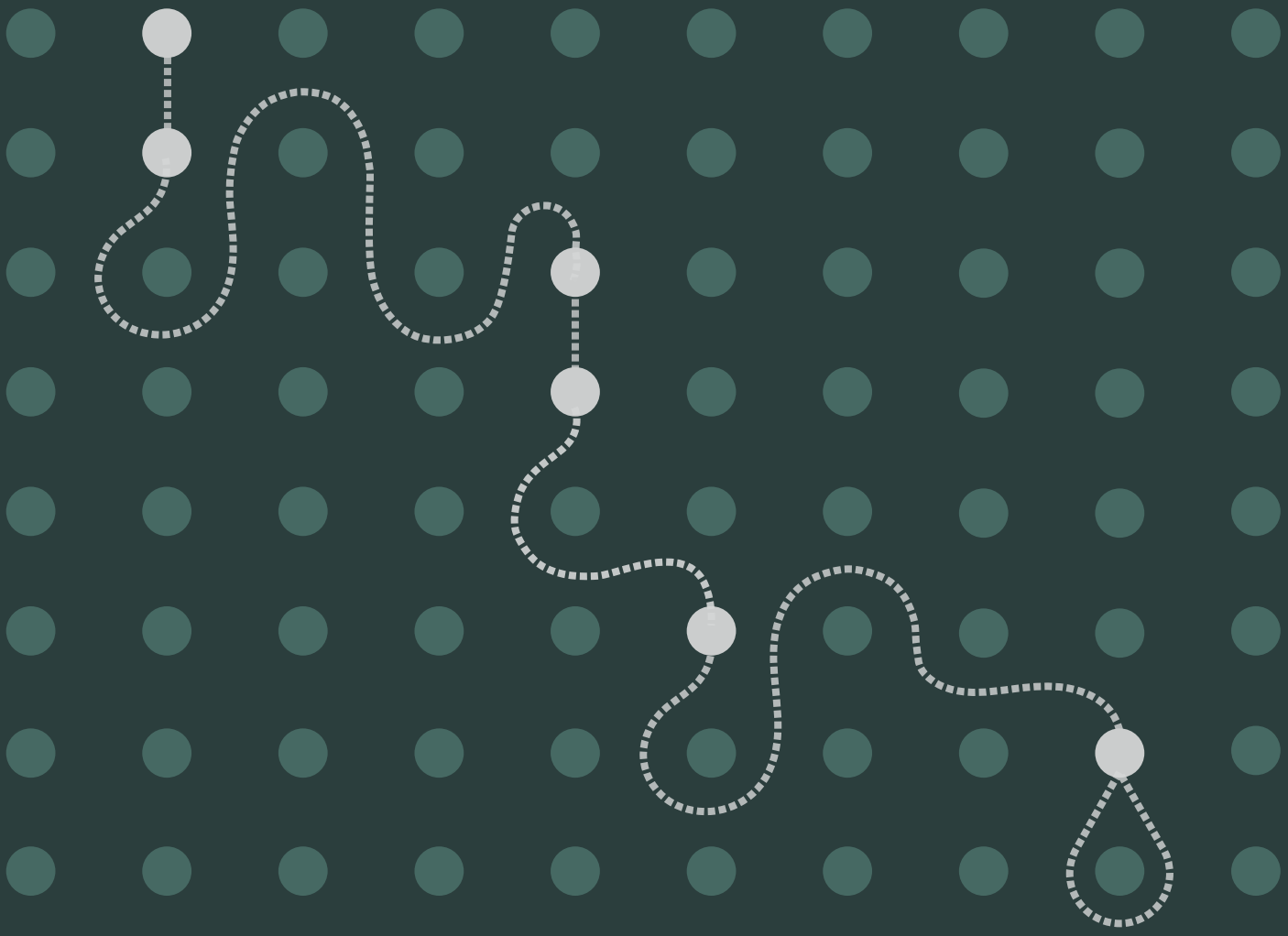
Death Penalty Sentencing In India's Trial Courts

(2018-2020)



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NLU DELHI

PROJECT 39A
EQUAL JUSTICE
EQUAL OPPORTUNITY

Death Penalty Sentencing In India's Trial Courts

(2018-2020)

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Introduction

In 1980, the Supreme Court repelled a challenge to the constitutionality of the death penalty and laid down a framework for the exercise of sentencing discretion in capital cases. This framework, formulated in *Bachan Singh*, sought to exclude the capricious and arbitrary imposition of the death sentence, and is therefore key to the Court's decision on its constitutionality. However, the 'rarest of rare' framework, as it has come to be known, has itself occasioned significant concerns over the years, particularly in relation to the ambiguity of its normative foundations and its potential for arbitrary application.

Over the decades, numerous studies have assessed *Bachan Singh*'s doctrinal trajectory, its subsequent application by the Court, and its effectiveness in curtailing the arbitrariness of capital sentencing. However, for a long period, trial courts had not been a popular site for this inquiry. Project 39A considered this gap critical for two reasons.

One, Bachan Singh's framework of individualised sentencing is fundamentally reliant on robust and elaborate sentencing hearings and other processes irreplicable outside the trial setting. The trial judge and counsels are the best placed to inquire into the circumstances of 'the crime as well as the criminal',[1] as required by *Bachan Singh*. Thus, relevant information not collected at this stage often falls through the cracks and is lost to the sentencing process.

Two, Project 39A's empirical research had revealed that fewer than 5% of the death sentences imposed by trial courts between 2000-15 were confirmed up the judicial ladder, and around 30% ended in acquittals upon appeal.[2] Therefore, most persons sentenced to death by trial courts could not have been so sentenced at all in the first place. And though most of the death sentences were reversed in appellate proceedings, the psychological experience of death row and the stigma that follows a death row prisoner both outside and in prison from the moment the sentence is imposed, could not have been. Further, though *Bachan Singh*'s stipulation that the death sentence only be given in the rarest of rare cases did not seem to reflect in trial court practice, it had largely been left unexamined.

These reasons provided the impetus for the publication by Project 39A of 'Death Penalty Sentencing in Trial Courts' that studied all death sentences imposed by trial courts in Madhya Pradesh, Maharashtra, and Delhi between 2000 and 2015.[3] Besides shifting the site of inquiry from appellate to trial courts, this work also deviated from previous empirical work in another critical way. Earlier work had framed the question of sentencing arbitrariness solely from a 'similar case-similar outcome' lens; arbitrariness based in processes, as opposed to outcomes, had heretofore been unexplored. Since the findings revealed significant issues in the way the *Bachan Singh* process played out in trial courts, we were prompted to further explore it as a site of inquiry.

This report is a product of that decision. It expands upon our previous work in two ways. *One*, we have widened our scope of inquiry to all death sentences imposed by trial courts across India in the three years between 2018 and 2020. *Two*, we have expanded the parameters for assessing the consistency of processes used in imposing these sentences. With this widened lens, the report presents quantitative data about capital sentencing processes used in trial courts, with the aim of generating evidence-based conversations about the fairness and constitutionality of the capital sentencing system in India.

The report is divided into six chapters. **Chapters I** and **II** present data relating to duration of the trials included in the study and the time provided to parties before sentencing hearings, respectively. **Chapter III** highlights some exceptional instances of procedural violations by trial courts in sentencing persons to death. **Chapters IV** and **V**, on the other hand, present more systematic processual inconsistencies and inequalities in the way trial courts reasoned their sentencing orders. **Chapter IV** asks and answers questions about the bases on which sentencing outcomes stood on - the use of sentencing materials, the role of circumstances about the crime and the criminal, the penological goals cited including reformation, and the manner in which precedents were used. **Chapter V** investigates into and quantifies understandings of the sentencing outcomes themselves at the trial courts - how judges conceptualised the 'rarest of rare' category, and the way they dismissed the default sentence of life imprisonment. Finally, **Chapter VI** is about a specific class of capital defendants - those convicted for offences involving sexual violence on minors - and presents data on the processes used in sentencing them to death.

In assessing the findings of this report, it would be useful to question not just the trial courts' failure to comply with *Bachan Singh*, but also the impact on trial court sentencing of the questions *Bachan Singh* itself leaves open and the competing sentencing frameworks that have emerged at the Supreme Court as a result. A forthcoming law review article based on the empirical work captured in this report will further explore the interaction of trial court practices with the normative incoherence of *Bachan Singh*.

Scope and Methodology

This report studies and presents quantitative data about capital sentencing over the span of three years from 2018 to 2020 in trial courts across the country. The sources for the empirical study were the trial court judgements themselves and the case status pages on the relevant e-district courts' websites.

The pool of sentences for the report was derived from Project 39A's database of death penalty cases in India that tracks trial court death sentences as they progress up the judicial and executive ladder. To ensure that the database is comprehensive, we rely on three different sources - High Court websites,[4] a daily scraping of news online using predetermined keywords, and applications under the Right to Information Act, 2005. For the purposes of this report, we began with collating an exhaustive list of death sentences imposed by trial courts between 2018 and 2020. At the end of this exercise, we had a list of 343 death sentences across 256 cases that were imposed in the three-year period. Of these, trial court judgements were available for 306 death sentences imposed across 221 cases. Trial courts in a few States like Rajasthan which imposed the death sentence frequently had not uploaded a significant proportion of judgements online. The findings in this report, therefore, are limited to the 306 death sentences for which judgements could be procured ('the Dataset'). Of these, 151 were imposed in 2018, 92 in 2019, and 63 in 2020.

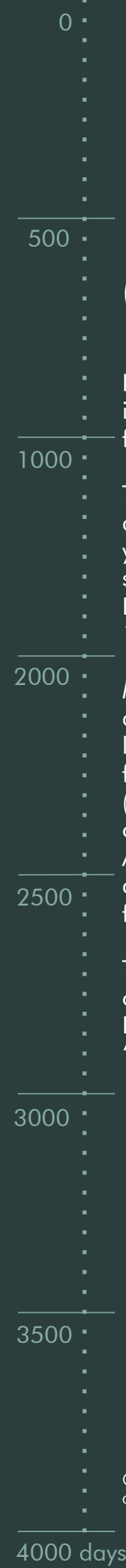
In the data presented in this report, unless expressly stated otherwise, each death sentence has been counted separately as a distinct value; that is, if a judge imposed the death sentence on 2 persons through a single case and judgement, it is counted twice. Where relevant towards assessing the data more fully, case-wise numbers are also provided.

The table below provides a State-wise breakdown of the total number of death sentences imposed by trial courts between 2018 and 2020, the number of them that were excluded due to the unavailability of judgements, and the remaining 306 death sentences that finally constituted the Dataset of this report.

State	Number of death sentences imposed in 2018-2020	Judgement unavailability		Number of death sentences in the Dataset	Proportion of State in the overall Dataset (%)
		Number	%		
Uttar Pradesh	40	0	0%	40	13.07%
Madhya Pradesh	39	2	5.1%	37	12.09%
Karnataka	31	3	9.7%	28	9.15%
Maharashtra	27	0	0%	27	8.82%
Rajasthan	32	11	34.4%	21	6.86%
Jharkhand	22	1	4.5%	21	6.86%
Tamil Nadu	21	1	4.8%	20	6.54%
West Bengal	22	5	22.7%	17	5.56%
Odisha	14	0	0%	14	4.58%
Bihar	15	2	13.3%	13	4.25%
Assam	13	1	7.7%	12	3.92%
Telangana	9	0	0%	9	2.94%
Kerala	9	0	0%	9	2.94%
Gujarat	8	0	0%	8	2.61%
Uttarakhand	9	2	22.2%	7	2.29%
Punjab	8	2	25%	6	1.96%
Andhra Pradesh	7	2	28.6%	5	1.63%
Manipur	3	0	0%	3	0.98%
Himachal Pradesh	3	0	0%	3	0.98%
Haryana	4	1	25%	3	0.98%
Delhi (NCT)	2	0	0%	2	0.65%
Chhattisgarh	4	3	75%	1	0.33%
Tripura	3	3	100%	0	0%
Grand Total				**306**	**100.00%**

The table below provides a detailed breakdown of death sentences in the Dataset on the basis of the nature of offences they were imposed for.

State	Number of death sentences	Proportion of overall Dataset (%)
Murder simpliciter	127	41.50%
Murder involving Sexual Violence with Minor	107	34.97%
Murder involving Sexual Violence with Adult	23	7.52%
Kidnapping with Murder	21	6.86%
Non-homicidal Sexual Violence with Minor	18	5.88%
Terror Offences	8	2.62%
Dacoity with Murder	2	0.65%
Grand Total	**306**	**100.00%**



I. Durations of Trials

Discourse on speedy justice has largely focused on lengthy trials and their impact on undertrial detainees as well as victims' rights. Issues stemming from compacted trials have received relatively little attention.

To address the problem of lengthy trials, the Supreme Court in 2017 directed that all sessions trials, as far as possible, be concluded within a 2-year timeframe.[5] Various special legislations have also attempted to set similar limits for trials of specific categories of offences. For example, the Protection of Children from Sexual Offences Act, 2012 ('POCSO') sets it at 1 year.[6]

More recent legislative efforts, however, have approached speedy justice as a solely crime control value requiring swift delivery of punishment. These legislative measures have, thus, prescribed significantly shorter timeframes for completing trials. In 2013, the Code of Criminal Procedure, 1973 ('CrPC') was amended to stipulate that trials for offences involving rape be completed in 2 months;[7] recent Bills introduced in Maharashtra[8] and Andhra Pradesh[9] have sought to further reduce this timeframe to 1 month and 14 days respectively. All of these provisions applied to, *inter alia*, trials for offences punishable by death.

This evolution in institutional approaches to speedy justice prompted us to collect data on the durations of trials that led to the death sentences in the Dataset. The duration of each trial was computed as the time between the 'date of first hearing'[10] and the 'date of the sentencing judgement'.[11]

Of the 306 death sentences that form the Dataset, information for the 'date of first hearing' was not available for 1. Therefore, this section represents information for 305 death sentences.

FIGURE 1A

Durations of Trials

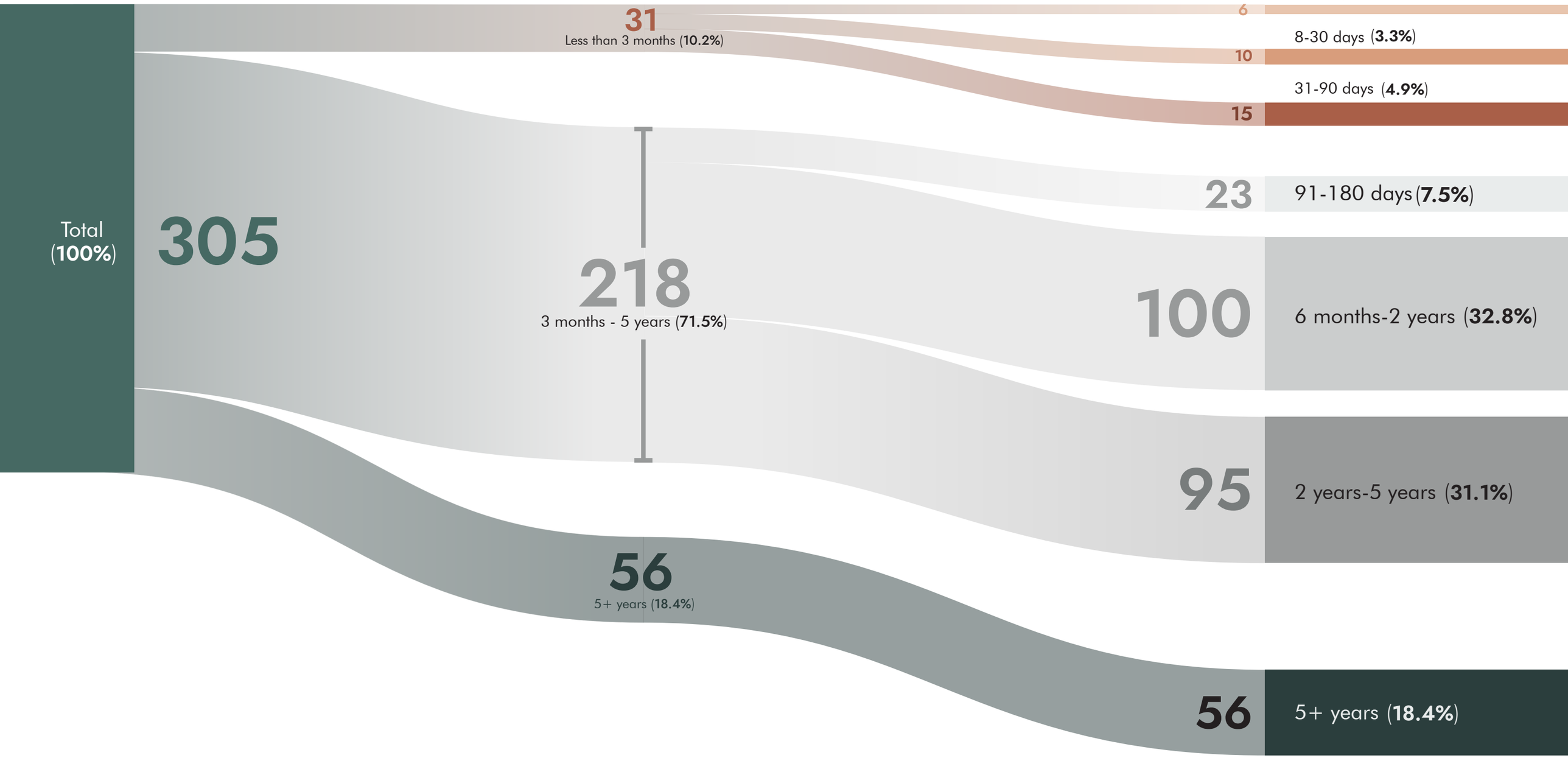


FIGURE 1B

Durations of Trials

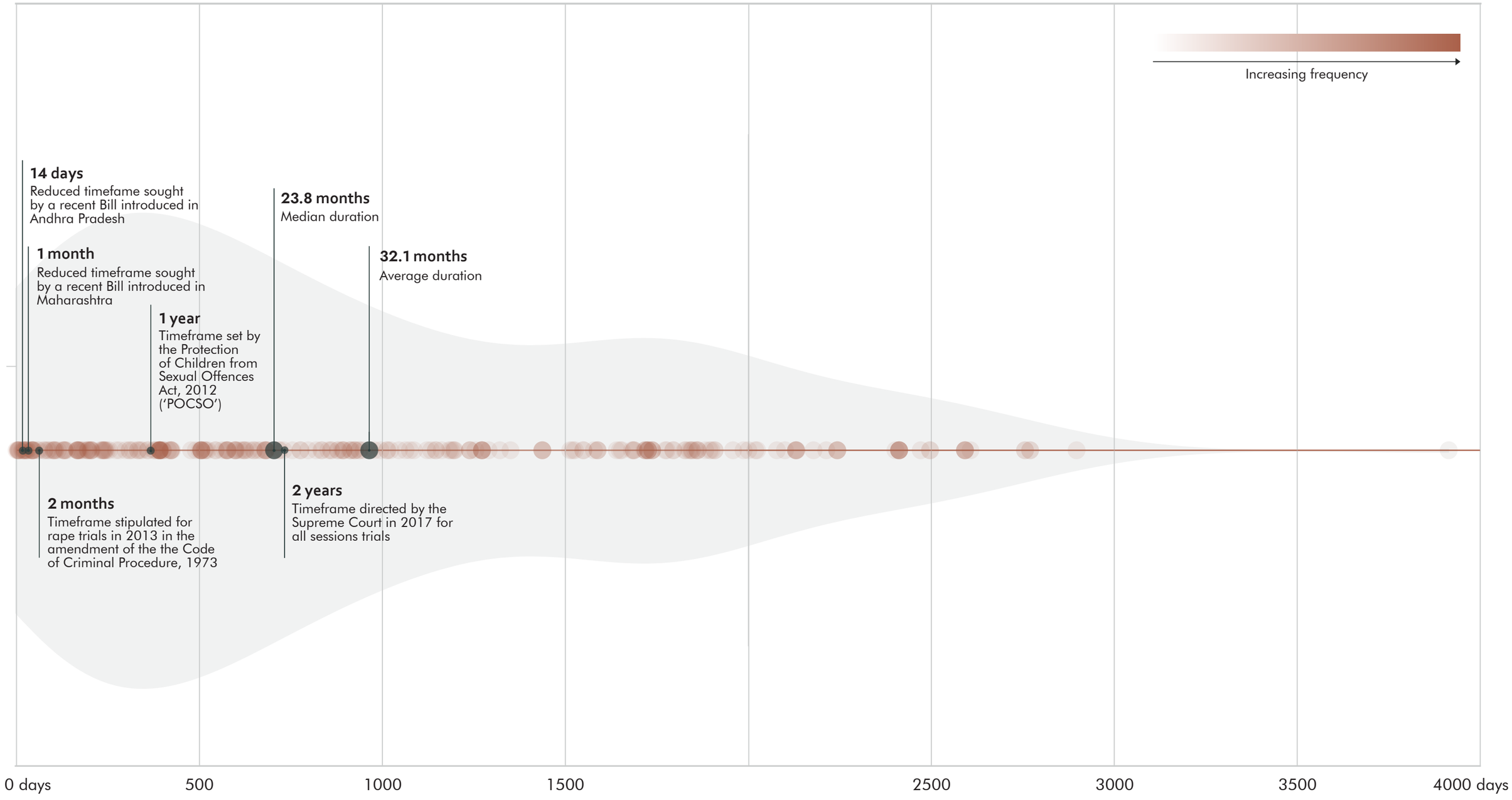
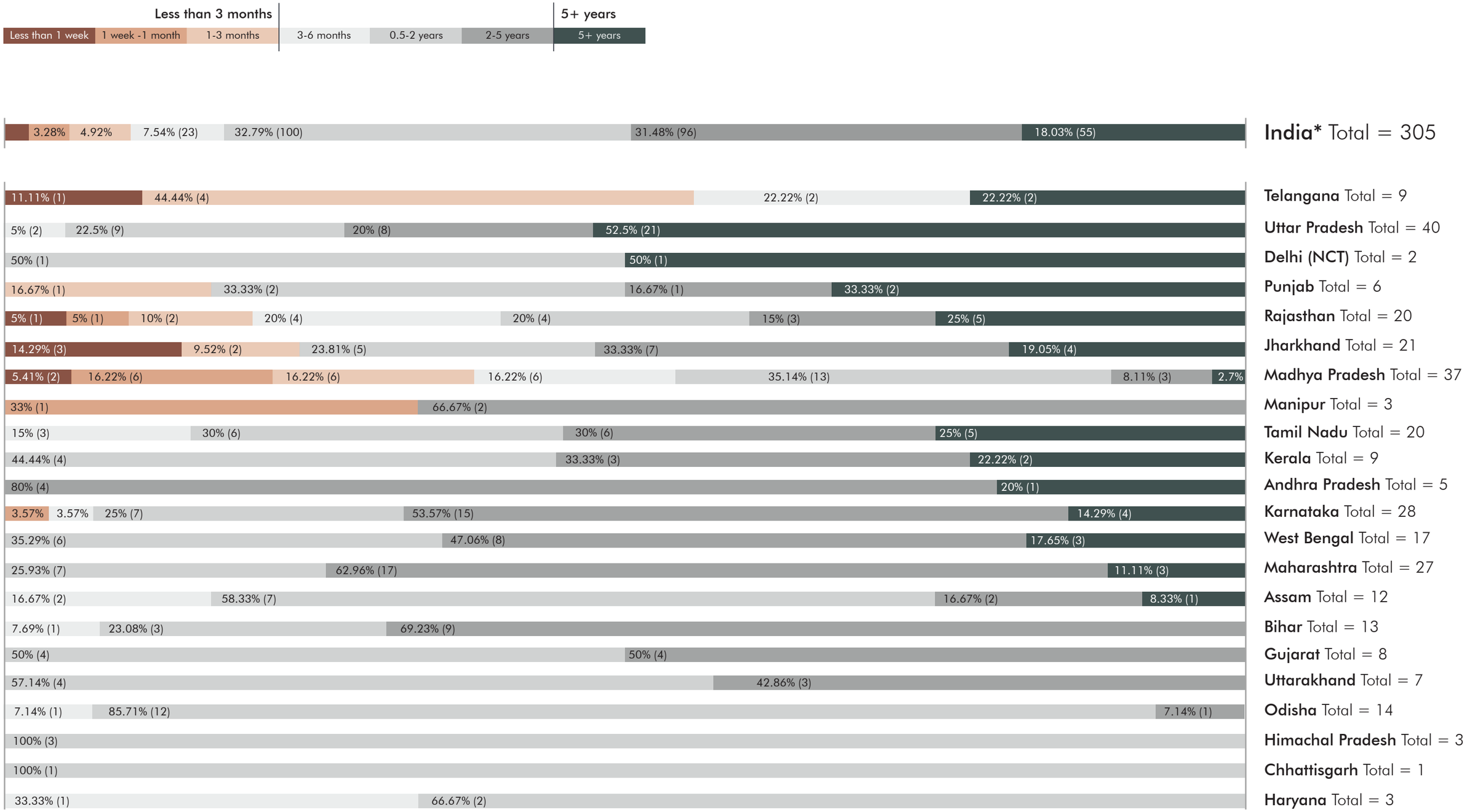


FIGURE 2

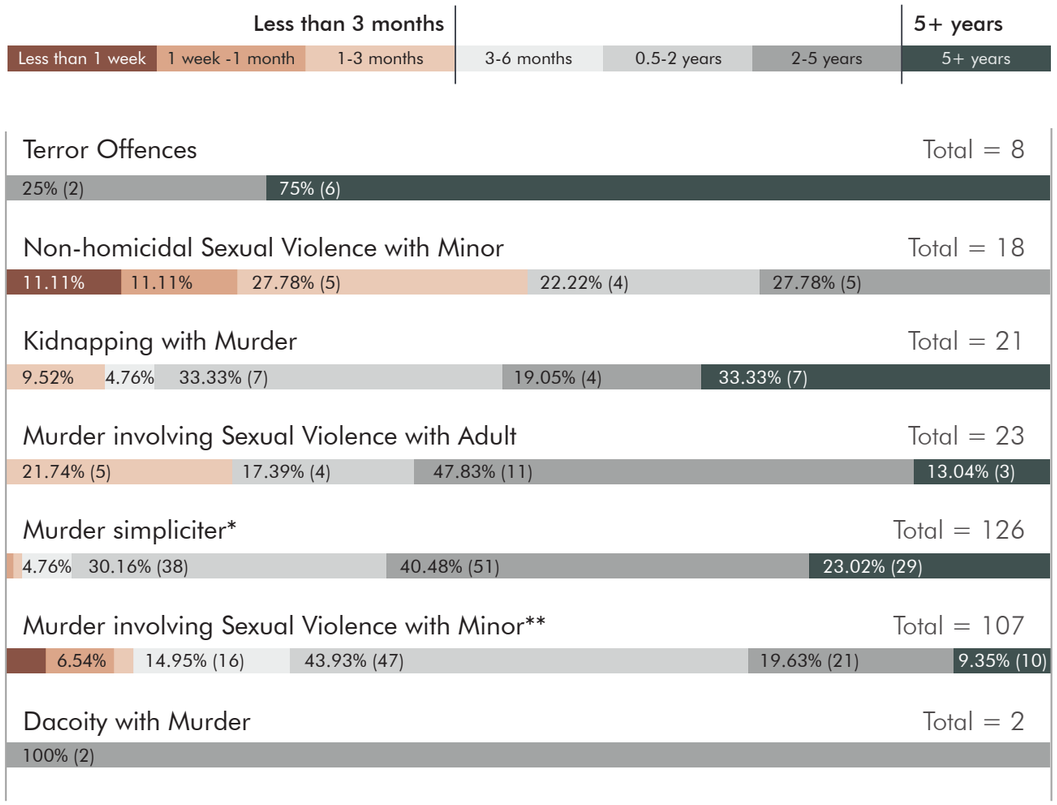
State-Wise Breakdown of Trial Durations



*The value for 'Less than a week' is 1.97% (6)

FIGURE 3

Nature of Offence-Wise Breakdown of Trial Durations



The fact that the causes of judicial delay are often structural[12] raises important concerns about the quality of processes followed in compacted trials. These concerns are only compounded by the fact that the data reveals significant disparities in lengths of trials across states and types of offences. For example, Figure 2 shows that over 20% of the death sentences in Madhya Pradesh had trials that lasted no more than a month. As per Figure 3, those sentenced to death for terror offences largely had protracted trials; while 50% of those sentenced to death for non-homicidal sexual violence on minors were tried with concerning swiftness. These disparities also pose questions about the equality of processes followed in sentencing persons to death.

*The value for '1 week - 1 month' and '1 - 3 months' is 0.79% (1).
**The values for 'Less than a week' and '1-3 months' are 3.74% (4) and 1.87%(2) respectively.

II. Conduct of Sentencing Hearings

The practice of conducting sentencing hearings on the same day as or without providing substantial time after the date of conviction has been criticised for rendering the *Bachan Singh* framework of sentencing completely unworkable.[13]

The provision of bifurcated hearings for guilt and sentence in Section 235(2) of the CrPC is aimed at individualising sentences by facilitating the consideration of "social and personal data of the offender".[14] In accordance, the Supreme Court in *Bachan Singh* formulated a framework for individualising the choice between death and life sentences in capital cases. *Inter alia*, it required judges to weigh aggravating and mitigating circumstances relating to both the crime and the criminal before determining the appropriate sentence.

The non-provision of sufficient time to parties before sentencing hearings, despite its superficial neutrality, does not prejudice the defence and the prosecution equally. Circumstances related to the crime are typically brought on record by the State in the process of proving the accused's guilt. Circumstances related to the criminal, however, are not. Therefore, the non-provision of substantial time before the sentencing hearing has a disparate impact on the defence's ability to argue its case on sentencing and present the accused in mitigating contexts outside the crime. By depriving the defence of the opportunity to meaningfully investigate and prepare its case on mitigation, it virtually erases any opportunity for the court to individualise its sentencing decision and centres the sentencing exercise around crime-related circumstances.

In this Chapter, we present data about the time given to parties to prepare for the sentencing hearing after the date of conviction. In computing the gap between the date of conviction and the date of sentencing hearing, in instances where multiple dates were fixed for the hearing on sentence, the last such date was considered.

Of the 306 death sentences that form the Dataset, information on the date of sentencing hearing was not available for 2. Therefore, this section represents information for 304 death sentences.

FIGURE 4

Gap between the Date of Conviction and the Date of Sentencing Hearing

As shown in Figure 4, over a majority of the death sentences in the Dataset were outcomes of same- or next-day sentencing hearings. While this number is concerning by itself, it also hides meaningful inequalities in the processes followed for capital defendants across states and types of offences.

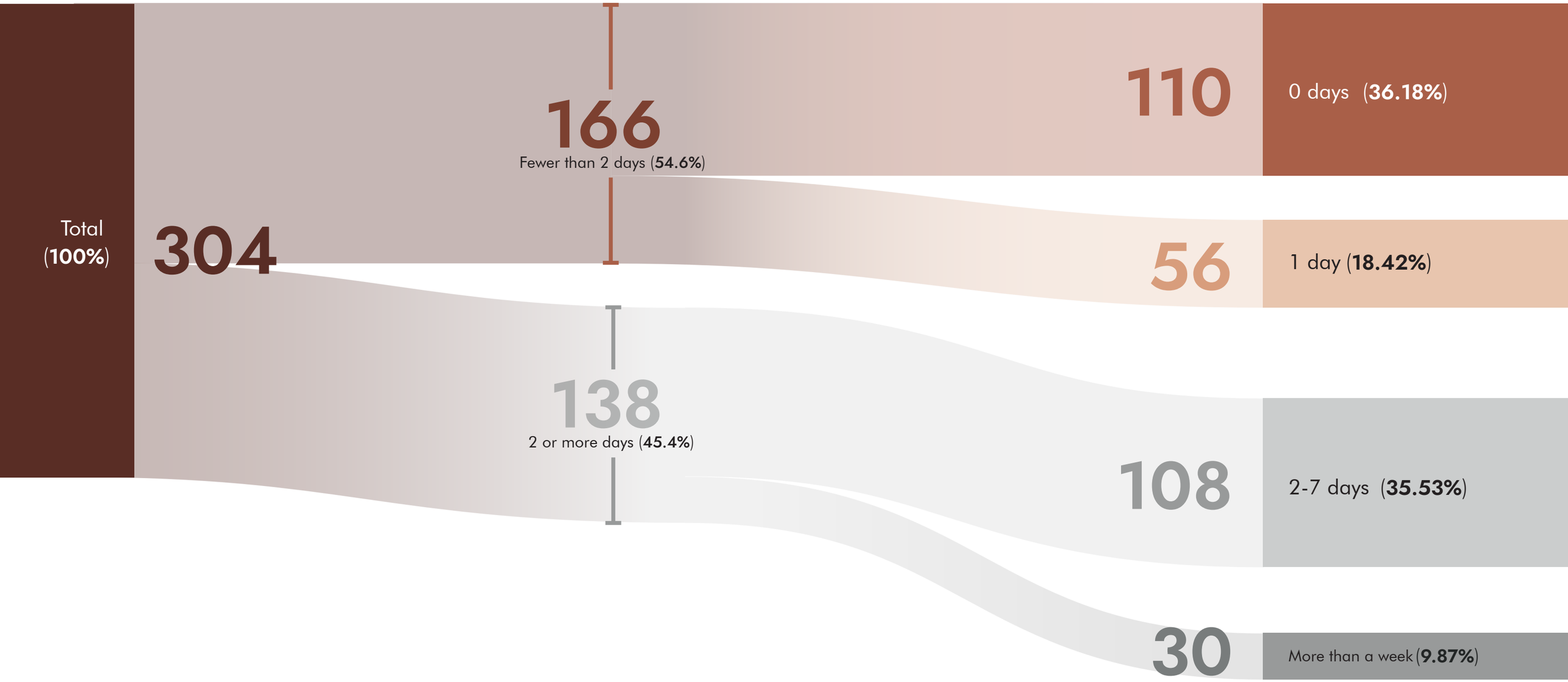
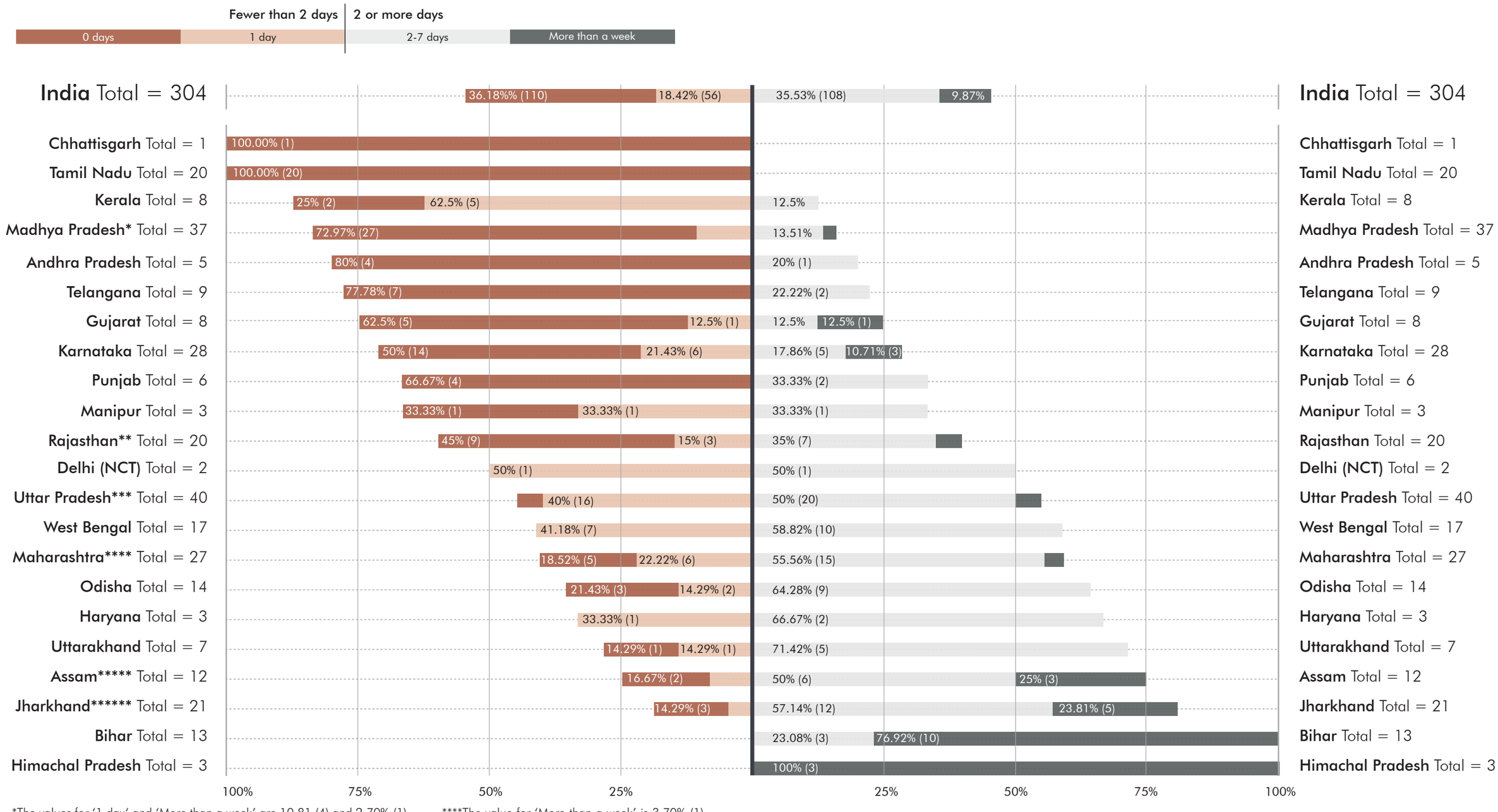


FIGURE 5

State-Wise Breakdown of the Gap between the Date of Conviction and the Date of Sentencing Hearing

Figure 5 reflects that, among states imposing death sentences most frequently, Tamil Nadu and Madhya Pradesh largely did so after same- or next-day hearings. Bihar, on the other hand, conducted no sentencing hearings on the same day as or the day after conviction. A superficial look at Figure 5 would reveal that the proportion of capital defendants who were sentenced to death in a hearing conducted with little to no time after conviction, varied widely from state to state.

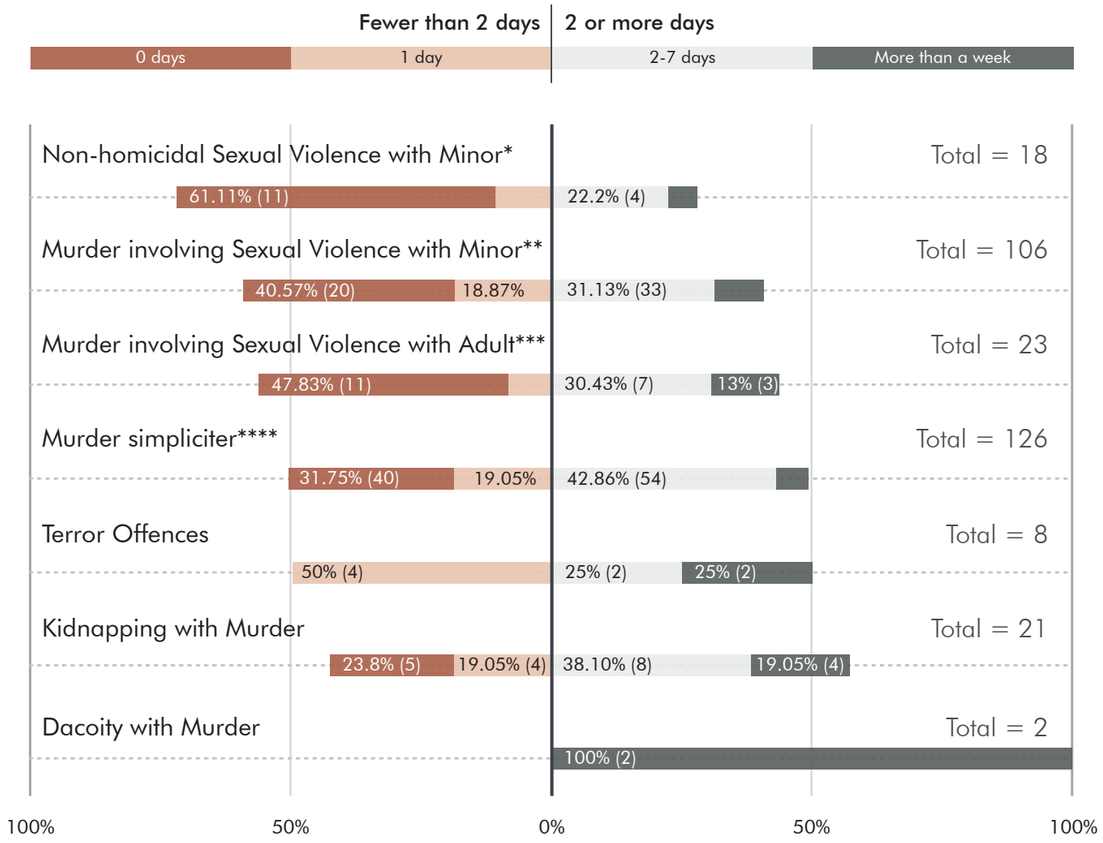


*The values for '1 day' and 'More than a week' are 10.81 (4) and 2.70% (1).
**The value for 'More than a week' is 5.00% (1).
***The value for '0 days' and 'More than a week' is 5.00% (2).
****The value for 'More than a week' is 3.70% (1).
*****The value for '1 day' is 8.33% (1).
******The value for '1 day' is 4.76% (1).

FIGURE 6

Nature of Offence-Wise Breakdown of the Gap between the Date of Conviction and the Date of Sentencing Hearing

As per Figure 6, the proportion of same- or next-day sentencing hearings was highest for death sentences imposed for non-homicidal sexual violence on minors, mirroring the haste that also characterised trial durations for this group of capital defendants.



*The values for '1 day' and 'More than a week' are 11.11% (2) and 5.56% (1) respectively.
**The value for 'More than a week' is 9.43% (10).
***The value for '1 day' is 8.70% (2).
****The value for 'More than a week' is 6.35% (8).

III. Other Procedural Improprieties in Capital Trials

11

death sentences were imposed for an offence that was not a capital offence as on the date of offence.

These sentences were imposed for offences that were either never capital offences or were designated as such only after the date on which the crime was committed. Of the 11 death sentences imposed in this way, 5 were imposed by the same trial judge. The 11 sentences pertained to 8 distinct cases; the confirmation proceedings for 5 cases are **pending**, while 3 of them were **remanded** by the High Courts for retrial.

3

persons were convicted of a capital offence with which they were not charged.

Section 222 of the CrPC, in providing that a person may not be convicted of an offence they were not charged with, captures a crucial principle of fair trial - that an accused may not be asked to defend themself against allegations they were not put on notice for. 3 death row prisoners in the Dataset were convicted by the trial court for at least one capital offence in violation of this requirement. One of their convictions and sentences were **confirmed** by the High Court without discussing the procedural violation. Another was **acquitted**, while the remaining prisoner's confirmation proceeding is **pending**.

Some of these procedural violations were reversed by orders of acquittal or remand at the High Court; some others remain pending consideration in confirmation proceedings. However, the psychological impact of being on death row and the isolating treatment meted out to death row prisoners highlight the irreversibility of the harm caused and bring the gravity of such procedural violations into sharper relief.

IV. Bases of Sentencing

A. Consideration of Sentencing Materials

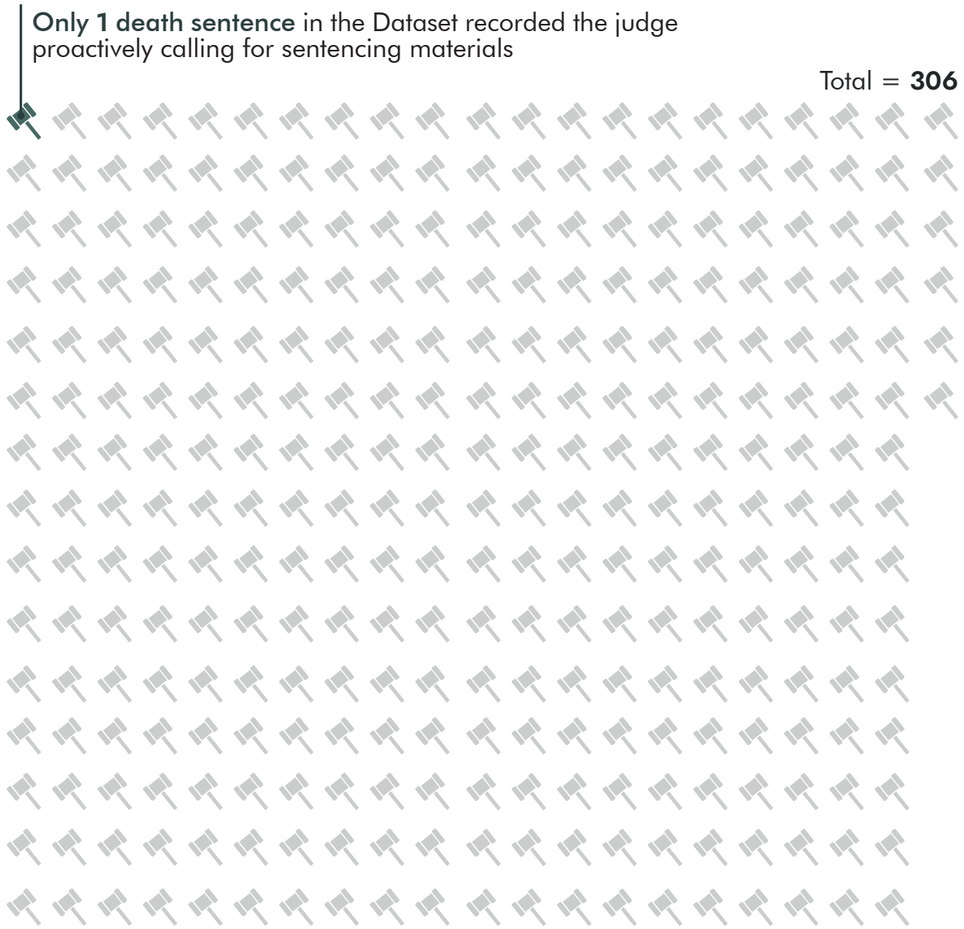
Individualised sentencing within *Bachan Singh*'s framework, necessitates the consideration of a wealth of social, personal, and psychological materials that require inputs from counsels, mental health professionals, and social workers alike. An inquiry of this breadth and depth requires resources beyond those available to most capital defendants or their counsels. Therefore, the Supreme Court has, in recognition of the expanse of the sentencing inquiry and the role of sentencing materials in it, repeatedly emphasised the role of judges and the State in sentencing.

Thus, *Bachan Singh* specifically put the onus on the State to prove the improbability of the accused's reformation.[15] In a similar vein, the Court has, through multiple decisions, required that judges take a proactive part in eliciting sentencing information, even if the defence or accused chooses to remain silent on the point of sentence.[16] Recently, the Supreme Court has further expanded both the rights of the defence and the responsibility of the State and judges in eliciting sentencing materials. In 2017, the Court emphasised providing defence counsels with access to the accused during appellate proceedings;[17] in the following years, this access was expanded to include mental health professionals,[18] and mitigation investigators on the defence team.[19] In 2021, the Supreme Court not only consistently and proactively elicited sentencing materials, but also required the State to produce a variety of materials speaking to the question of mitigation generally, above and beyond reformation.[20]

The task of ensuring that evidence and other materials in mitigation of the sentence is present before the judge is, thus, a collective one and casts a duty on the defence counsel, the State, as well as the judge themself. In this Chapter, we present data on the frequency with which these participants in the capital trial actually fulfilled their duty to produce or elicit sentencing materials, as well as on the nature of materials when produced.

FIGURE 7

Whether the Judge Mentioned Taking Any Steps to Elicit Sentencing Materials?[21]

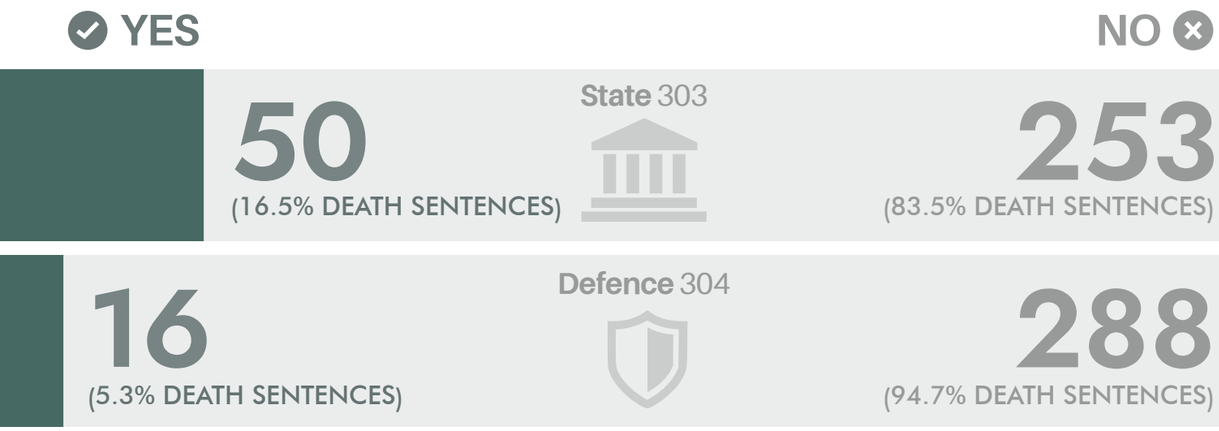


The sentence was imposed by a trial court in Delhi on a person convicted for a kidnapping involving murder. After conviction, the judge had called for the Station House Officer's ('SHO') report on the accused's family and dependents. However, after initially summarising the SHO's findings, the judge failed to refer to them while reasoning the sentencing outcome.

FIGURE 8

Whether either Party Adduced Any Sentencing Materials?

The proportion of death sentences where either parties produced any sentencing materials was generally low, 17.4% on the whole as per Figure 8. However, the same Figure would also show that the State produced sentencing materials for 3 times as many sentences as the defence did.

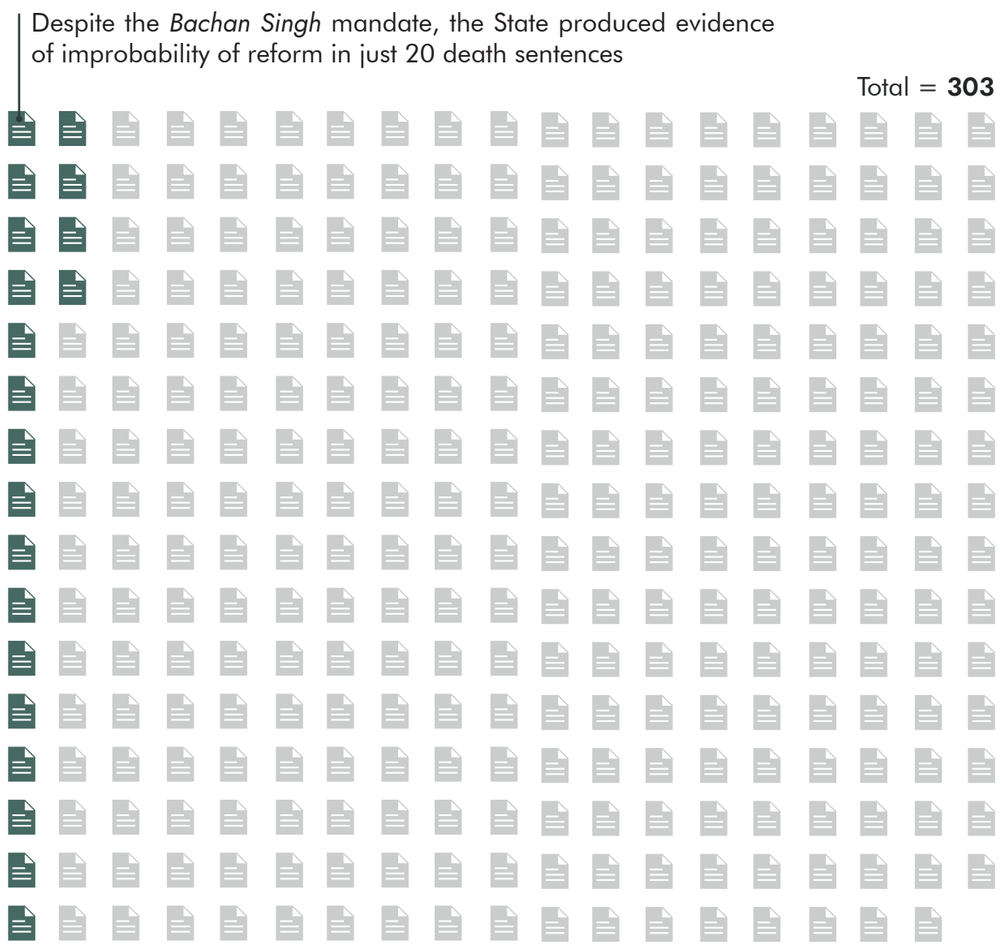


It may be kept in mind that the sources used for the study were the judgements themselves and the case status page on the e-district courts' websites. Our assessment of whether any materials were produced by either party was restricted to whether the judge mentioned such materials in the judgement, either in the reasoning or in an appendix listing materials produced.

Information on State's submissions on sentencing was not available for 3 sentences out of the 306 sentences in the Dataset. Therefore, data pertaining to materials led by the State represents information for 303 death sentences. Information on defence submissions on sentencing was not available for 2 sentences out of the 306 sentences in the Dataset. Therefore, data pertaining to defence submissions represents information for 304 death sentences.

FIGURE 8.1

Whether the State Led Any Materials Addressing the Question of Reform?



Bachan Singh's mandate that the State produce evidence of improbability of reformation was the exception, not the norm, in trial courts. Where the State did produce materials to demonstrate improbability of reformation, such material uniformly pertained to criminal antecedents of the accused; psychiatric assessments or evidence of the accused's conduct in prison were never brought up.

Materials led by the State were classified as addressing the question of reform where either the prosecutor or the judge linked the material to the (im)probability of the accused's reform.

FIGURE 9

What Did the Materials Produced by the Prosecution Relate To?

Despite Supreme Court jurisprudence placing the burden of mitigation collectively on the State, the defence and the judge, it is notable that where the State produced sentencing materials, it was uniformly in aggravation of the sentence.

The most frequently led materials were information on criminal antecedents of the accused and victim impact statements. Criminal antecedents were the only materials the State produced to prove the improbability of the accused's reformation. The use of victim impact statements in 11 sentences across 2 cases is also of significant concern. In jurisdictions where such statements have been allowed in capital sentencing, their use has been controversial. Specifically, they have been considered to stigmatise certain kinds of victims and accused and introduce irrelevant factors into sentencing.[22]

Total = **50**

37 Criminal antecedents (74%)

11 Victim impact statement (22%)

2 Proof of accused's age (4%)

1 Proof of shock to collective conscience (2%)

1 Lack of jail visits from family (2%)

1 Proof of physical and mental fitness of the accused (2%)

The State led materials for a total of 50 death sentences. More than one kind of material was led for some of them; the categories, therefore, are not mutually exclusive.

FIGURE 10

What Did the Materials Produced by the Defence Speak To?

The defence led materials in mitigation of the sentence in a small fraction of the sentences in the Dataset, as per Figure 8.

However, even where such materials were produced by the defence, the judge failed to engage meaningfully with them. For instance, where the defence led materials on the accused's potential for reformation, the judge either imposed the death sentence without engaging on the question of reformation, or simply dismissed the materials as 'not credible'. Other materials on family dependence were similarly dealt with.

Total = **16 (6)**

Proof of dependents (93.75%) 15 (5)

Socio-economic/other personal adversity (62.5%) 10 (2)

Dependents' medical condition (31.25%) 5 (3)

Jail report (as proof of probability of reformation) (5.88%) 1

Good character and merit (as proof of probability of reformation) (5.88%) 1

Young age of the accused (5.88%) 1

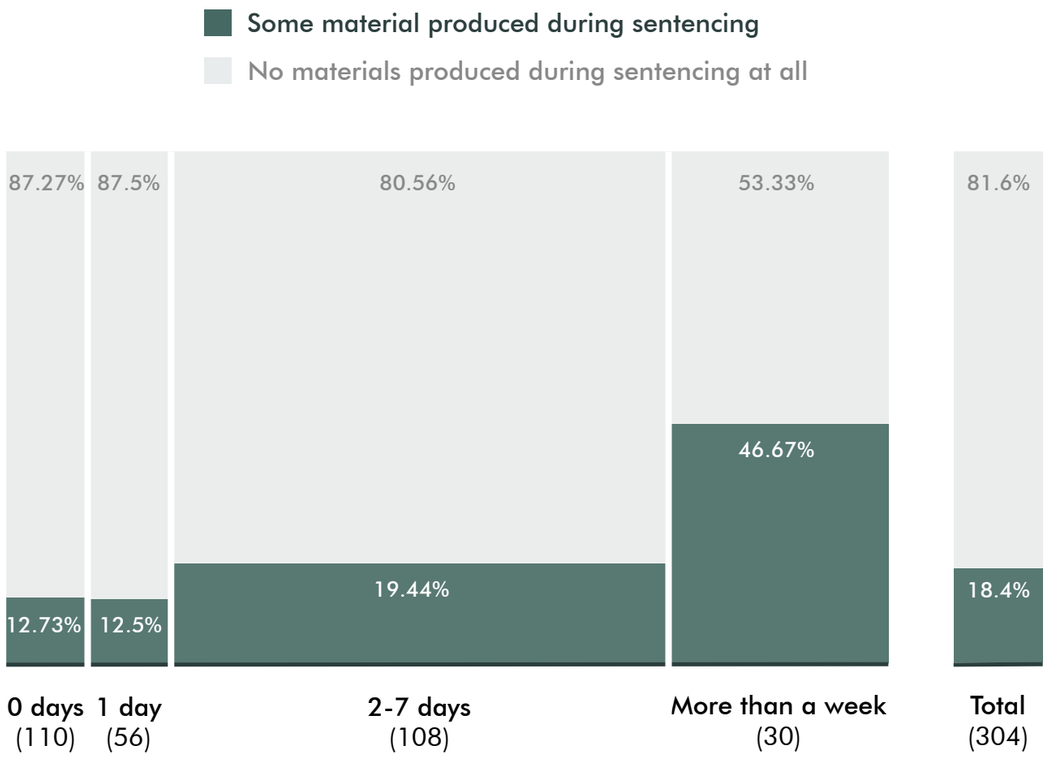
The defence led materials for a total of 16 death sentences. More than one kind of material was led for some of them; the categories, therefore, are not mutually exclusive.

Since the overall numbers are small, distinguishing between death sentences and death cases becomes significant here. Hence, the format followed in the data representation is as follows: Number of distinct death sentences (number of distinct cases).

FIGURE 11

Correlation between Production of Materials and the Gap between the Date of Conviction and the Sentencing Hearing

Over 80% of the death sentences imposed referred to no sentencing materials at all. As discussed above,[23] the non-provision of substantial time before the conduct of sentencing hearings impacts parties' ability to produce sentencing materials.



Gap Between the Date of Conviction and the Sentencing Hearing

However, the above figure demonstrates that the frequency with which parties produced sentencing materials did not improve significantly between sentencing hearings conducted on the same day as, the next day, or within a week after conviction. In fact, even where more than a week's time was provided before the sentencing hearing, the parties did not produce sentencing materials over 50% of the time.

Of the 306 death sentences that form the Dataset, information for the date of sentencing hearing was not available for 2. Therefore, this figure represents information for 304 death sentences.

The previous figures demonstrate that sentencing in trial courts was overwhelmingly based on little to no material, both on account of parties' failure to produce as well as judges' failure to elicit sentencing materials. Trial courts' selective and inconsistent engagement with sentencing materials, where these were produced, further fed into the apparent baselessness of the sentencing process. The infrequency with which parties produced sentencing materials - even where, as Figure 11 shows, time was provided before the sentencing hearing - reflects upon legal practitioners' lack of training in collecting and presenting complex psycho-social information. In that sense, the data above raises important questions about the adequacy of legal representation in capital trials where mitigation investigators are not available.

B. Individualising Sentencing

The Supreme Court in *Bachan Singh*, and in *Jagmohan* before it, ruled in favour of vast judicial discretion in sentencing on grounds that it would allow judges to individualise sentences in a way that would account for the "*variable, unpredictable circumstances of the individual cases*".[24] The requirement of 'special reasons' for imposing the death sentence, the provision of bifurcated hearings, and the weighing of aggravating and mitigating circumstances as stipulated in *Bachan Singh* are all geared towards achieving this norm of individualised justice. This ideal of individualising sentences has been repeatedly endorsed by the Supreme Court post-*Bachan Singh*, and the Court has required that each sentence be tailored to the unique circumstances of the crime and the criminal in each case.[25]

This Chapter presents data on the frequency with which trial court judges individualised their reasons for imposing a death sentence. In doing so, we have only considered those sentences where at least one more person was convicted of a capital offence, regardless of whether the other persons were also sentenced to death or not. These sentences offered a direct insight into whether the sentences imposed on the persons convicted of capital offences were individualised.

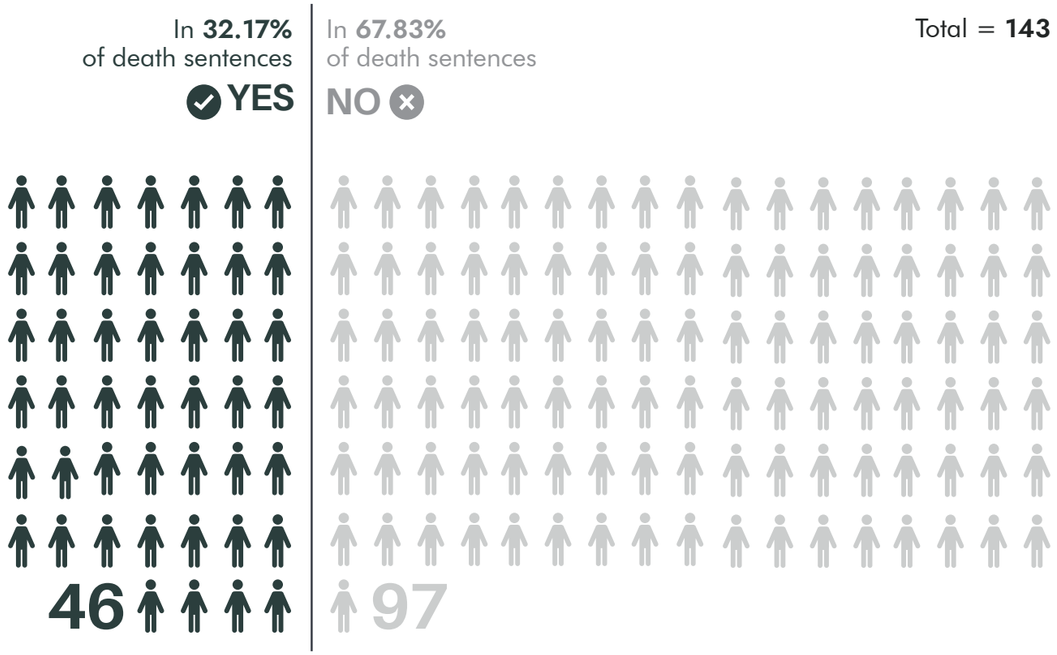
In its true sense, individualised sentencing requires parties to present and courts to consider the unique psycho-social context of each individual and assess the crime and its circumstances in their interaction with that context. We did not come across such reasoning in any of the death sentences in the Dataset. For the purposes of this Chapter, therefore, a sentence was considered 'individualised' if it complied with a significantly lower threshold - if the judge provided one or more reasons for imposing death that were capable of being unique to a participant in the capital offence on trial. Therefore, for example, if 'young age' was considered for all the capital convicts, the sentence was considered to be 'individualised', since youth is *capable* of being a factor applicable uniquely to an individual participant. The same is not true for, for example, 'brutality of the crime', since that would necessarily be common to all participants in a particular crime.

Of the 306 death sentences in the Dataset, 143 sentences were imposed in cases where at least one more person was convicted of a capital offence.

FIGURE 12

In Cases with Multiple Persons Convicted of a Capital Offence, Whether the Judge Provided 'Individualised' Reasons for Sentencing a Convicted Person to Death?

As per Figure 12, over 66% of the death sentences imposed by trial courts in cases where multiple persons stood convicted of a capital offence, failed to meet the low standard of 'individualisation' set out above.



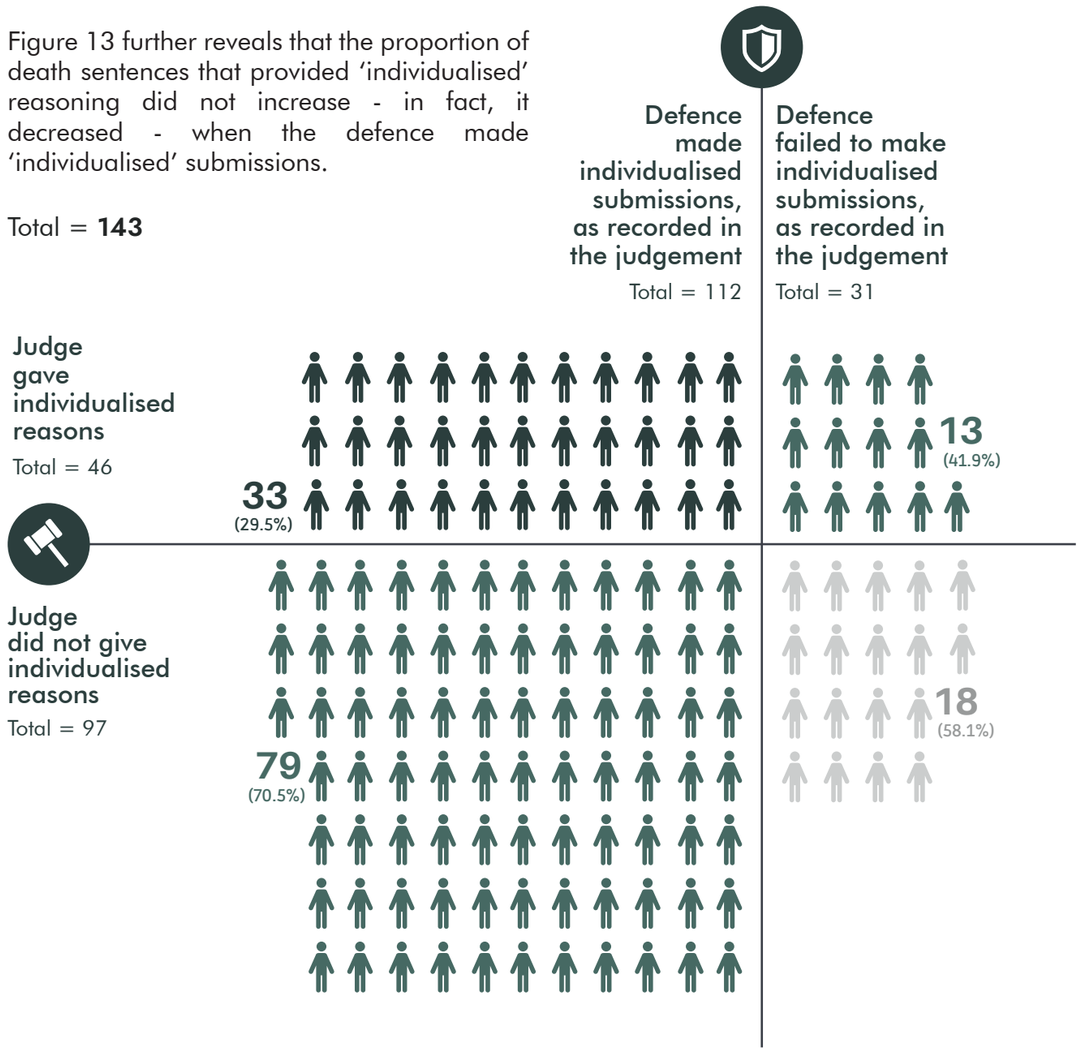
All reasons given in justification of these death sentences, thus, were reasons that were necessarily common to all participants in the capital offence, without regard to their unique circumstances.

FIGURE 13

Correlation between
Whether the Judge Provided Individualised Reasons and Whether the Defence Submissions Recorded in the Judgement Were Individualised[26]

Figure 13 further reveals that the proportion of death sentences that provided 'individualised' reasoning did not increase - in fact, it decreased - when the defence made 'individualised' submissions.

Total = **143**



The absence of individualised sentencing in trial courts, therefore, does not seem to simply be a product of inadequate legal representation and the lack of access to relevant information. Instead, the data reflects a deeper institutional discomfort with, or even rejection of, the idea of individualised sentencing as such.

C. Penological Justifications in Sentencing

In *Bachan Singh*, the Supreme Court committed itself to individualised sentencing, allowing a death sentence to be imposed only if aggravating circumstances outweighed mitigating circumstances, and the alternative of life imprisonment was unquestionably foreclosed. In laying down these requirements, the Supreme Court built two distinct penological goals into the framework governing sentencing discretion in capital cases; proportionality (not to the crime alone but to the offender as well) and reformation, were both incorporated into the *Bachan Singh* framework.[27] Before outlining this framework, the Court had repelled a challenge to the constitutionality of the death penalty, while holding that the penological goals of retribution and deterrence justified its retention. The Court, in a significant lapse, did not expressly distinguish the penological foundations for the retention of the death penalty as an alternative to life imprisonment, from the penological foundations for exercising discretion between the two sentences.[28]

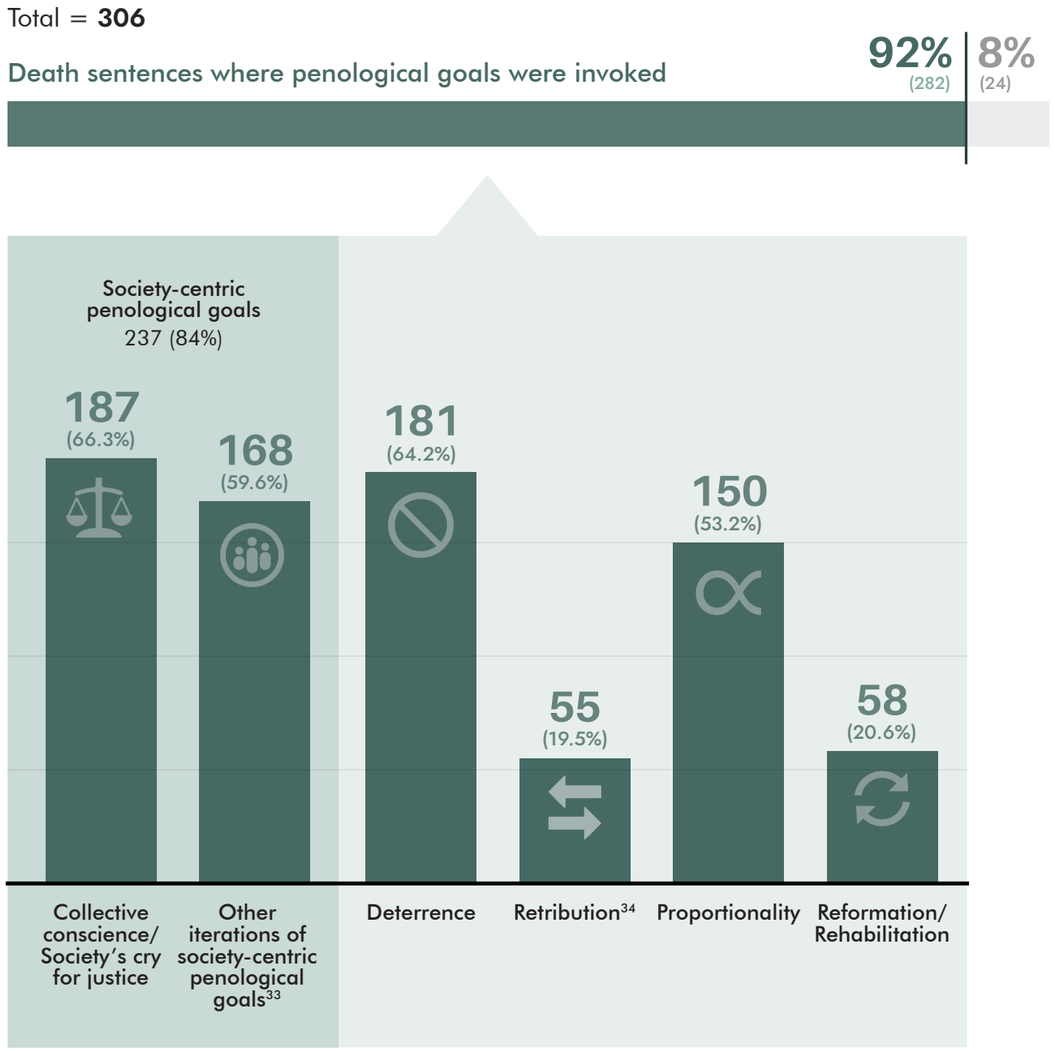
This rendered ambiguous the penological basis of the framework governing sentencing discretion. Subsequent decisions have, as a result, centred other penologies. *Machhi Singh* and *Dhananjay Chatterjee* held 'collective conscience' or 'society's cry for justice' to be valid penological justifications for imposing the death sentence.[29] These decisions hinged sentencing discretion on public opinion, shifting its penological base from just deserts to *lex talionis* or vengeance.[30] In another line of decisions, the Court favoured deterrence over 'reformative jargon', fearing that, otherwise, the "common man will lose faith in courts".[31] Yet another line of decisions have emphasised proportionality as a significant penological goal, but understood it as relating only to the crime.[32]

This *ad hoc* invocation of goals fundamentally inconsistent with the penological foundations of the *Bachan Singh* framework, constitutes the creation and adoption of altogether new frameworks for governing sentencing discretion in capital cases. This penological confusion not only renders capital sentencing arbitrary and inconsistent, but also weakens the normative foundations of *Bachan Singh*, increases crime-centrism, and diminishes the role of mitigation in capital sentencing approaches. In this Chapter, we will present data on the mention of various penological goals by trial courts in their reasoning for imposing the death sentences in this Dataset.

FIGURE 14

Penological Justifications Mentioned by Trial Courts

Trial courts routinely invoked a variety of penological goals in exercising their sentencing discretion to choose between life and death sentences. One or more penological goals were invoked in 282 death sentences studied, constituting over 92% of the Dataset. The figure below represents the frequency with which specific penological justifications were mentioned by trial courts.



Since the same sentencing judgement often mentioned multiple penological justifications, these categories are not mutually exclusive.

Proportionality was cited in nearly 50% of the death sentences in the Dataset. However, it was almost uniformly understood as proportionality to the crime alone, bearing no relationship to notions of culpability or deservedness informing the proportionality imagined in *Bachan Singh*. Reformation, on the other hand, was infrequently cited. When cited, most frequently it was to dismiss it in favour of other goals;[35] most instances where it was not expressly dismissed, it was mentioned only by way of lip service often along with other goals incompatible with *Bachan Singh*.[36]

All other penological goals invoked were fundamentally inconsistent with *Bachan Singh*, and presented alternative *ad hoc* frameworks for governing sentencing discretion. The most frequent among these, cited in over 77% of the sentences, were society-centric goals that required trial court judges to be "*oracles or spokesmen of public opinion*",[37] despite the cautionary note sounded in *Bachan Singh* against the same. The frequency with which deterrence and retribution were cited reflects the penological confusion caused by *Bachan Singh*'s failure to distinguish the goals that govern sentencing discretion in individual cases from those that justified the retention of the death penalty as an alternative sentence.

Such *ad hoc* use of penological goals as sentencing factors constitutes creation of alternative capital sentencing frameworks by trial courts, and contributes to the arbitrariness of capital sentencing in India.

D. Role of Reformation: Doctrinal Understandings and Assessments of the Probability of Reform

The Supreme Court's capital sentencing jurisprudence has shown a shifting relationship to the penological goal of reformation. The relationship between reformation and the sentencing outcome, the manner in which courts assess likelihood of reform, and the onus for (dis)proving it are important determinants of its role.

Rajendra Prasad placed reformation at the centre of the capital sentencing framework, holding that the death sentence is justifiable only where the convict is found 'irredeemable in the reasonable run of time'.[38] Subsequently, *Bachan Singh* incorporated reformation in its sentencing framework, but introduced some ambiguity by enlisting it as one of many circumstances that may mitigate a sentence. Subsequent jurisprudence has taken this ambiguity into divergent directions. In one line of decisions, the Supreme Court centred reformation again,[39] holding that the alternative of life imprisonment may be 'unquestionably foreclosed' only 'when the sentencing aim of reformation can be said to be unachievable'.[40] In other decisions, the Court prioritised deterrence over 'reformative jargon'.[41]

Regardless of how this uncertainty in the relationship of reformation to sentencing outcomes is resolved, the manner in which courts assess the probability of reformation impacts its importance in the sentencing process. A significant line of decisions have demonstrated an expansive understanding of reformation, considering the accused's post-conviction conduct in prison and outside, their efforts to educate themself, and medical evidence about their mental make up, as relevant to their reformative potential.[42] However, this has been the exception, not the norm. The Court has often made this assessment in a 'backward-facing' manner, by referring to the crime or the accused's criminal record.[43] The stage for this was set in *Bachan Singh* itself, when the Court held that the brutality of a crime by itself can be an 'index of the depraved character of the perpetrator'.[44] However, the manner in which *Bachan Singh* understood the proof of likelihood of reform would reveal this as only a selective reading of its understanding of the accused's character.

The final determinant of the role of reformation is how courts understand the onus of (dis)proving the likelihood of reform. The Court in *Bachan Singh* had placed this onus on the State,[45] creating a presumption of every individual's potential to reform.[46] In 2021, the Court systematically implemented this onus, requiring the State to produce various materials speaking to the question of reformation.[47] However, this has not been consistent practice at the Supreme Court,[48] despite the presumption in favour of the probability of reform created in *Bachan Singh*.

In this Chapter, we present data on how the shifting role of reformation in sentencing played out in the trial courts sentencing persons to death. Specifically, the figures reflect the frequency with and the extent to which trial courts considered reformation and its assessment relevant, the basis on which the assessments were made, and the relationship of these outcomes with the State leading evidence of improbability of reform.

This confusion in the doctrinal understandings of reformation, the manner of its assessment, and the onus of making such an assessment, reflects with even greater force in trial court practice.

FIGURE 15

Mentioning and Assessing Reform[49]

Over 40% of the sentences in the Dataset did not even mention reformation in the sentencing reasoning. Of the sentences that mentioned reformation, a small but significant portion did not actually assess the probability of reform, only mentioning reformation either by way of lip service or to dismiss it as irrelevant.

Ultimately, the potential of the accused to reform was treated as relevant in a little below 50% of the sentences where the judges not only mentioned reform, but also actually assessed its probability.

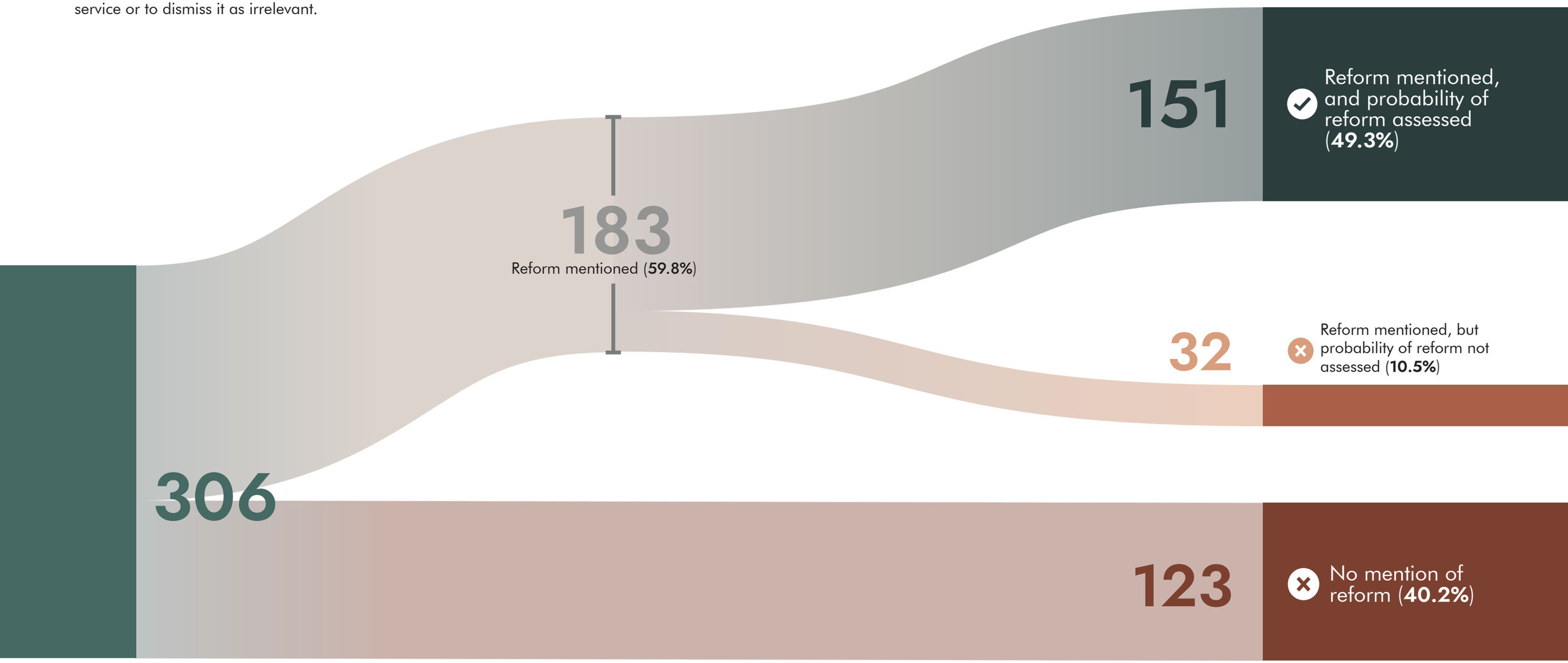


FIGURE 16

Mentioning and Dismissing Reform

There were a total of 183 death sentences that mentioned reformation, constituting less than 60% of the whole Dataset, as reflected in Figure 15. Among these sentences also, it was mentioned in over 20% only to be expressly disavowed in favour of other penological goals. While some sentences in this category also went on to determine that the accused was unlikely to reform, it is concerning that such assessments were made after the judge had determined reformation itself to be irrelevant.

40.2%
No mention of reform (**123**)

Mentioned reformation (**183**)
59.8%

Mentioned reformation, but dismissed its relevance in light of other penological goals (**40**)
13%

FIGURE 17

Relationship between Reformation and Sentencing Outcomes, Where the Probability of Reform Was Assessed

There were a total of 151 sentences where the likelihood of the accused's reform was assessed, constituting a little under 50% of the Dataset. Among these sentences, a large majority (over 70%) left the relationship between the likelihood of reform and the sentencing outcome ambiguous. Where such clarity was forthcoming, reformation was overwhelmingly treated as a single mitigating factor in a larger sentencing calculus, not as dispositive of whether life imprisonment could be foreclosed. Reflecting the doctrinal confusion at the Supreme Court itself, trial courts showed no consistent understanding of the centrality of reformation's role in sentencing.

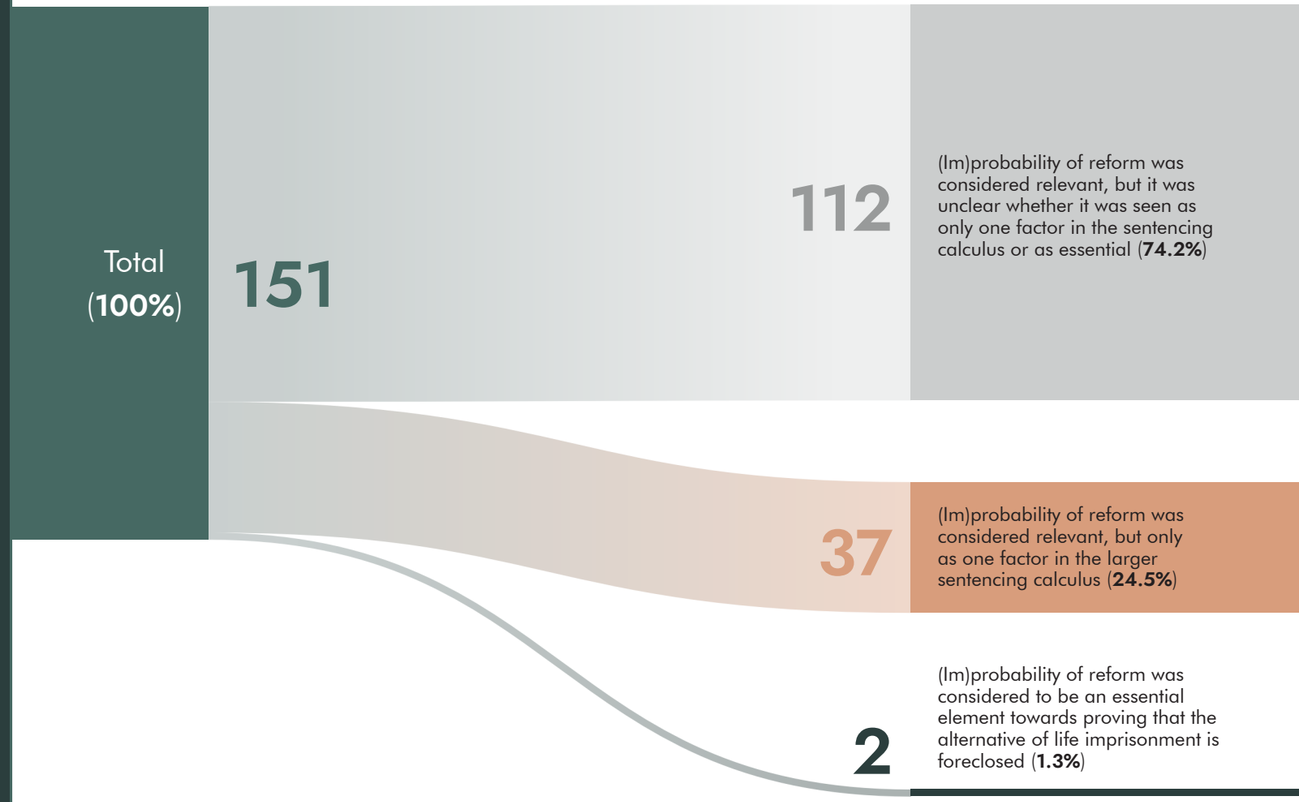
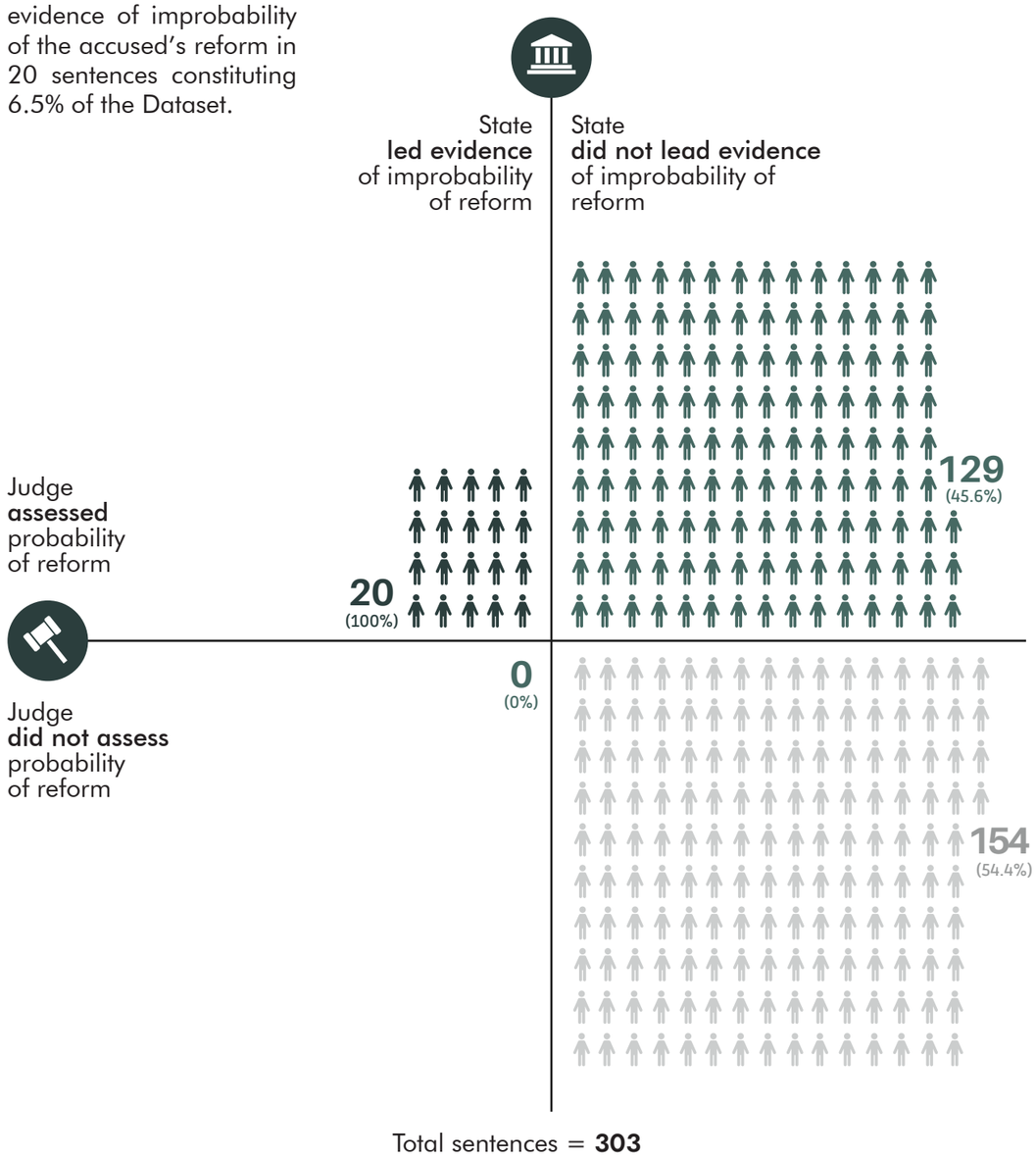


FIGURE 18

Onus of (Dis)proving Probability of Reform

Correlation between whether the State led evidence of reform, and whether the judge assessed probability of reform[50]

In an earlier Chapter,[51] we noted that the State led evidence of improbability of the accused's reform in 20 sentences constituting 6.5% of the Dataset.



Information on State submissions was not available for 3 sentences. Therefore, this figure represents data for 303 sentences.

The evidence, if any, led by the State about the accused's potential to reform uniformly pertained to the criminal antecedents of the accused. As per the above Figure, the judge made an assessment of the accused's (im)probability to reform in *every* instance where the State led evidence demonstrating its improbability. In contrast, if the State did not lead such evidence, judges independently assessed the probability of the accused's reform only 45% of the time. Therefore, it would appear that whether judges considered the assessment of reformation to be relevant at all was determined in part by whether the State considered it relevant and led evidence to that effect. This is in stark contrast to where the defence led materials demonstrating potential for reformation; in such instances, as observed above,[52] the judge either ignored the question of reformation altogether or dismissed its likelihood without engaging with the materials led.

FIGURE 19

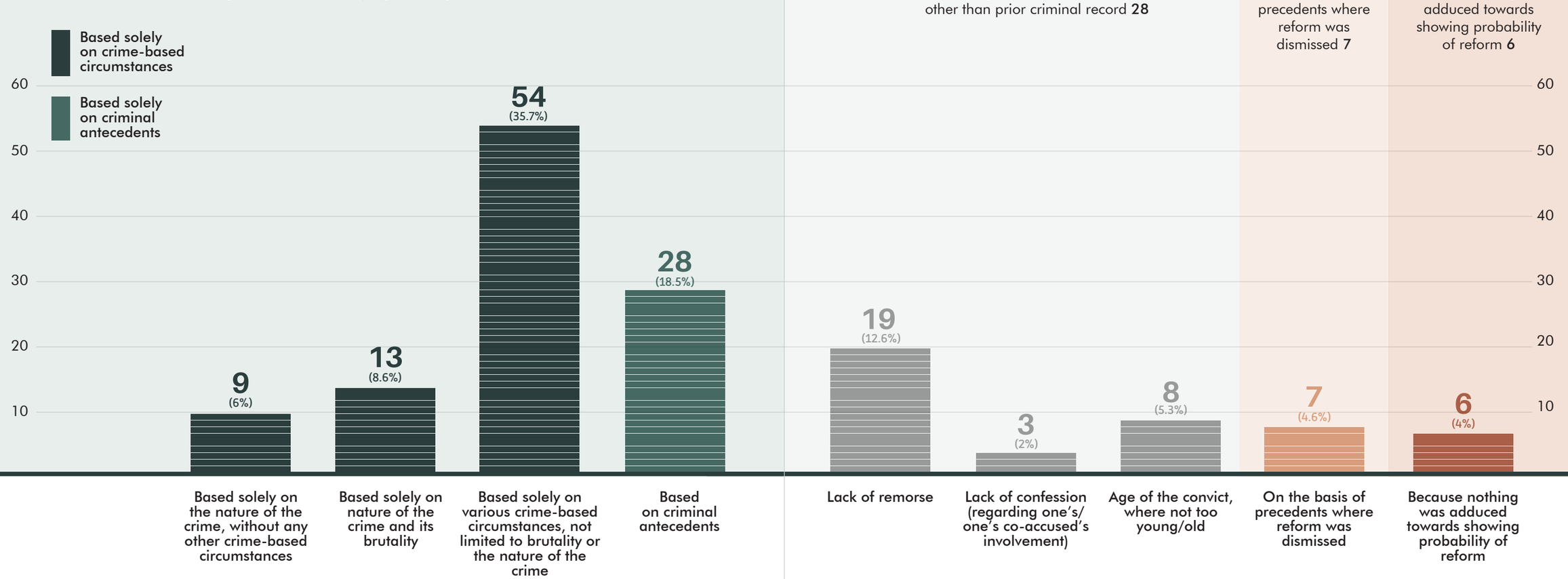
Bases for Judges' Assessments of the Probability of Reform

Assessment of a person's ability to reform is necessarily an exercise looking forward into their future and projecting its course. No sentence in the Dataset relied on any bases even remotely related to such prediction.

Over 66% of the sentences that made such an assessment relied only on backward-facing parameters, referencing details of the crime on trial or prior crimes. In some instances, the judges even relied on precedents involving similar crimes where reform was found to be improbable. By importing assessments made for other individuals accused of similar crimes, trial courts both centred crime in sentencing and failed to assess the accused's potential for reformation as a unique individual.

Where factors about the accused beyond their past were considered, they posed their own problems. Some judges relied on the absence of remorse. However, remorse itself was understood in dubious ways; its absence was often found without providing any reasons, or from the circumstances of the crime itself, or even from the fact that the accused exercised his constitutional right to claim innocence. Other judges treated the absence of youth or old age to, *by itself*, mean the presence of a risk of reoffending. Reasoning such as this not only treats the absence of mitigation itself as evidence of aggravation, but also fails to uphold the presumption of every individual's potential to reform set up by *Bachan Singh* and subsequent jurisprudence.[53] This stipulation was even more expressly disregarded in other instances where judges dismissed the probability of reform simply because the defence adduced no material towards showing that the accused is capable of it.

Total [sentences where probability of reform was assessed] = **151**



Since the same sentencing order could have relied on multiple bases for assessing the probability of reform, these categories are not all mutually exclusive. However, where the category mentions that the bases were 'solely' relied on, it represents reliance on that factor to the exclusion of other factors.

E. Approaches to and Consideration of Mitigation

The Supreme Court in *Bachan Singh* laid special emphasis on mitigating circumstances, stating that they must be given a 'liberal and expansive construction',[54] in line with the strong preference for life imprisonment in death-eligible cases. Numerous subsequent decisions of the Court have endorsed the three-step Crime, Criminal, R-R Test requiring that there be *no* mitigating circumstances at all for the death sentence to be imposed.[55] The Supreme Court has also reiterated the proactive role of the State and the sentencing courts in ensuring that relevant mitigation is considered.[56]

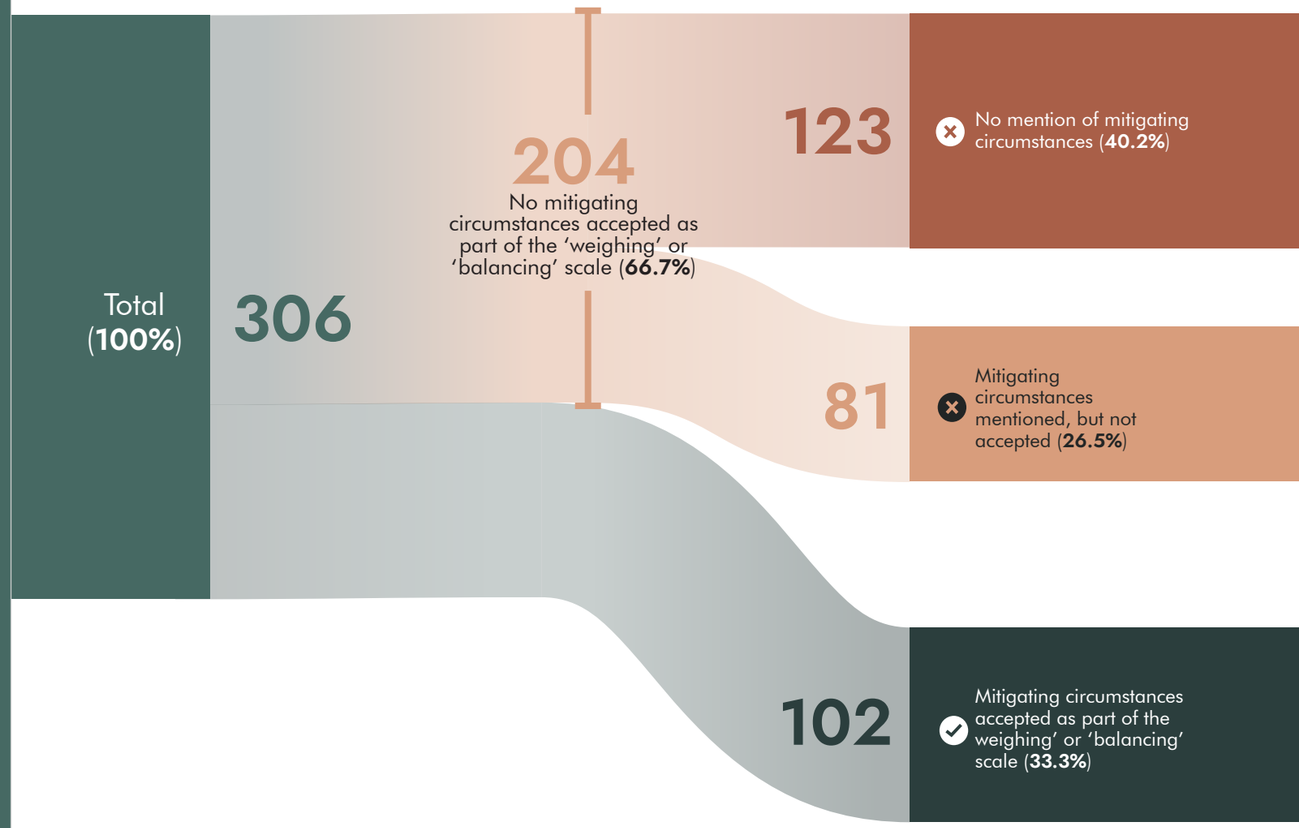
However, other decisions have sought to diminish the role of mitigation in sentencing in ways that significantly reverse the *Bachan Singh* framework. The first such set of precedents have dismissed as irrelevant either all criminal-related mitigating circumstances,[57] or specific ones like the socio-economic context of the offender.[58] The second set of precedents have formulated certain 'categories' of crimes as by themselves warranting the imposition of the death sentence, regardless of mitigating circumstances present.[59] Foremost among these is *Machhi Singh*'s formulation of 5 crime categories that shock collective conscience and therefore merit the death sentence. The third way in which Supreme Court doctrine has diluted the role of mitigation is through a subtle shift in language from the 'weighing' of circumstances envisaged in *Bachan Singh*, to 'balancing' them in a balance sheet as stipulated in *Machhi Singh*.[60] This shift does away with any need to assign reasons for the weight apportioned to each circumstance in sentencing, and has even led judges to numerically compare aggravating and mitigating circumstances to determine the sentence.[61] Since aggravating circumstances are usually part of the record at the stage of conviction and mitigating circumstances need further inquiry at the sentencing stage, an unweighted numerical comparison tends to favour aggravation of the sentence.[62]

In this Chapter, we present data on trial courts' treatment of mitigation while imposing the death sentences in the Dataset. Specifically, the figures below represent information about the frequency with which trial courts mentioned as well as accepted mitigating circumstances in the sentencing calculus, and its relationship to the time provided to the parties to prepare for the sentencing hearing. We also attempt to capture concerning patterns in the way mitigation was approached by and distorted in trial courts.

FIGURE 20

Mention and Acceptance of Mitigating Circumstances in the Sentencing Reasoning

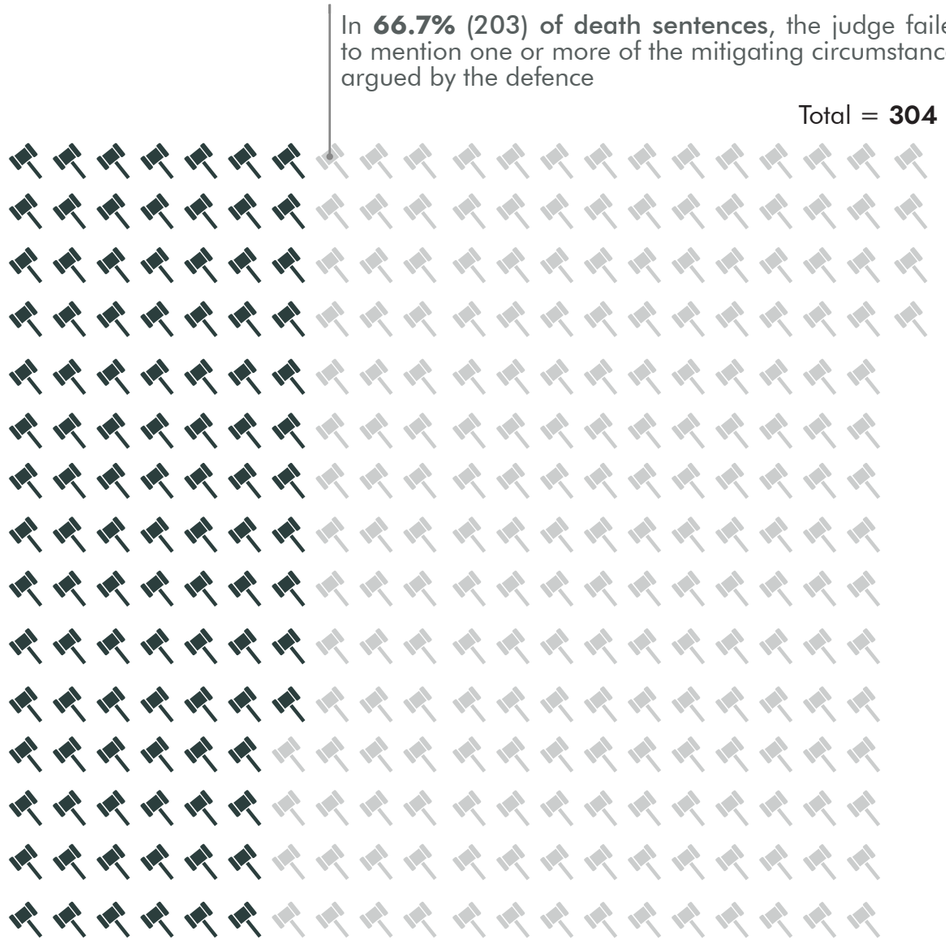
Over 66% of the death sentences in the Dataset were imposed without accepting any mitigating circumstance as a relevant factor in the sentencing calculus. Within these sentences, a significant portion did not even mention any mitigating circumstance. The remaining sentences mentioned mitigating circumstances, but dismissed and kept them out of the sentencing calculus as irrelevant.



The reasons for this were varied. Some judges misunderstood mitigation to be a mere 'excuse' for the crime, others considered certain crimes to be beyond mitigation, and yet others considered the specific mitigating circumstances present to be irrelevant. In all these sentences, constituting 66% of the entire Dataset, regardless of whether mitigating circumstances were not mentioned or mentioned only to be dismissed, there was no 'weighing' or 'balancing' conducted at all to determine the sentencing outcome.

FIGURE 21

Whether the Judge Failed to Mention in the Sentencing Reasoning One or More of the Mitigating Circumstances Argued by the Defence?



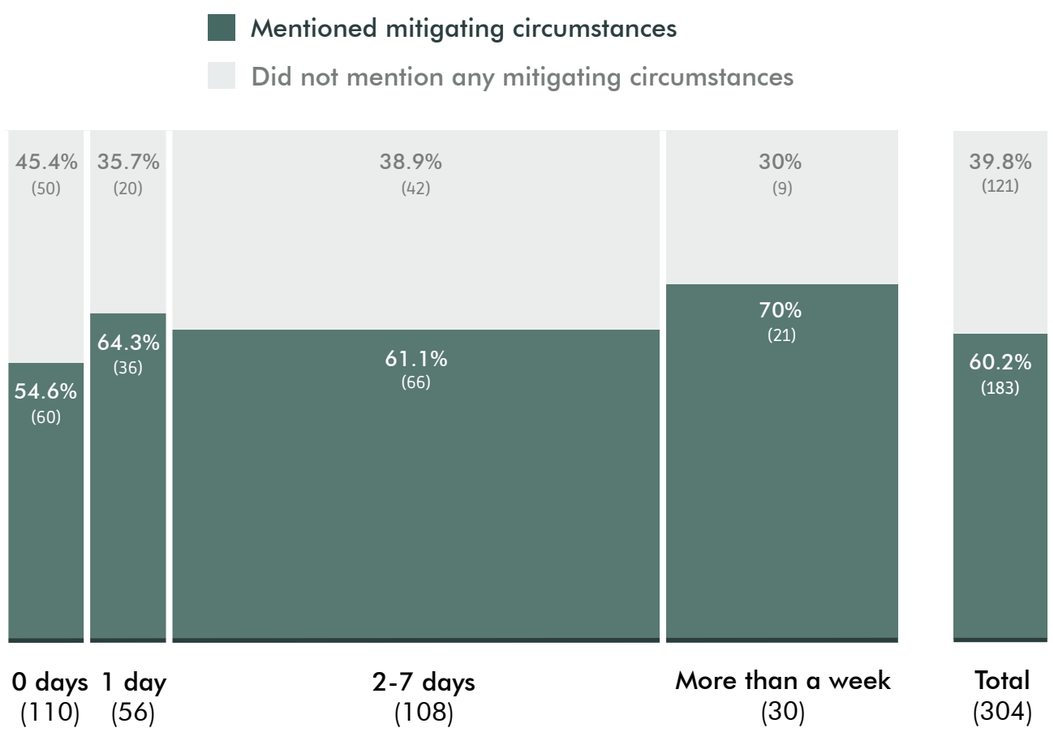
We noted earlier the selective manner in which trial courts engaged with materials produced in mitigation of the sentence.[63] Figure 21 further reflects a similar non-engagement with submissions in mitigation of the sentence in a large proportion of sentences in the Dataset. In over 66% of these sentences, there were one or more mitigating circumstances that were recorded in the summary as being a part of the defence submissions, but were completely ignored thereafter in the judge's reasoning for imposing the death sentence.

Information on defence counsel's submissions for 2 sentences is unavailable. Therefore, this figure captures information relating to the remaining 304 sentences in the Dataset.

FIGURE 22

Correlation between whether Judges Mentioned Any Mitigating Circumstances at All, and the Gap between Date of Conviction and Sentencing Hearing

As discussed above, the non-provision of substantial time before the sentencing hearing impacts parties' ability to present mitigating circumstances for the judges' consideration.[64] However, Figure 22 demonstrates that the frequency with which judges mentioned mitigating circumstances did not consistently increase between sentencing hearings conducted on the same day as, the next day, or within a week after conviction. In fact, even where sentencing hearings were conducted a week after conviction, 30% of the sentences mentioned no mitigating circumstances.



For 2 of the 306 sentences in the Dataset, information on the gap between sentencing hearing and the date of conviction was unavailable. Therefore, this figure presents information relating to 304 sentences. As shown in Figure 20, a total of 123 sentences in the Dataset did not mention any mitigating circumstances. 2 of these 123 sentences were ones where information on the gap between sentencing hearing and the date of conviction was unavailable; those 2 sentences have not been represented in this figure. Therefore, the total sentences that did not mention any mitigating circumstances, as represented in this Figure, is 121 sentences.

Mere compliance with procedures designed to ensure the collection and receipt of mitigation information was demonstrably insufficient to remedy the problem of trial courts' neglect of mitigation. This conclusion is further strengthened by the finding represented in Figure 21, that trial courts routinely ignored mitigating circumstances brought before them by the defence. The explanation for this neglect must, therefore, lie in a deeper confusion about the normative underpinnings of mitigation, its role in sentencing, and the manner in which it is to be approached. In the figures below, we capture information about the various ways in which trial courts approached and distorted mitigation when they mentioned it, reflecting more expressly some of the confusion that explains their total neglect of mitigation in other instances.

FIGURE 23

Approaches to Mitigation Where Mitigating Circumstances Were Accepted as Part of the Sentencing Calculus

A total of 102 death sentences, constituting 33% of the Dataset, accepted mitigating circumstances as part of the sentencing calculus and 'weighed' or 'balanced' them against aggravating circumstances. We further classified these 102 sentences as involving either the 'balancing' or the 'weighing' of circumstances, on the basis solely of judges' own characterisation of their approach. The sentences classified as 'Unclear' represent those where the judges used 'weighing' and 'balancing' interchangeably or used neither to characterise the manner in which they treated mitigating and aggravating circumstances. Since the basis for classification was only the judges' own description of their reasoning, a large proportion of the sentences classified under 'weighing' did not actually clarify what weights, if any, were apportioned to various circumstances or the reasons for the same. This, and the large proportion of death sentences classified as 'Unclear', demonstrate the doctrinal conflation of 'weighing' with 'balancing' at the trial courts. The subtle shift between *Bachan Singh* and *Machhi Singh* has largely gone unrecognised despite its impact on the role of mitigation in sentencing.

Total = **102**

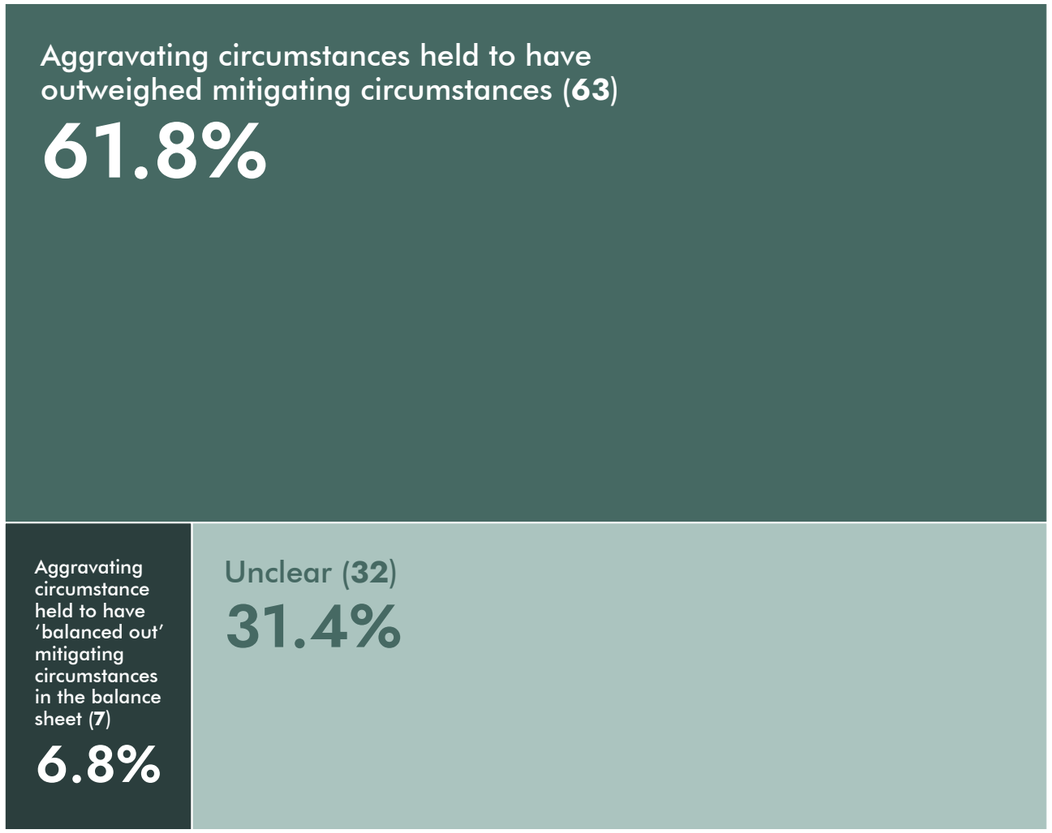
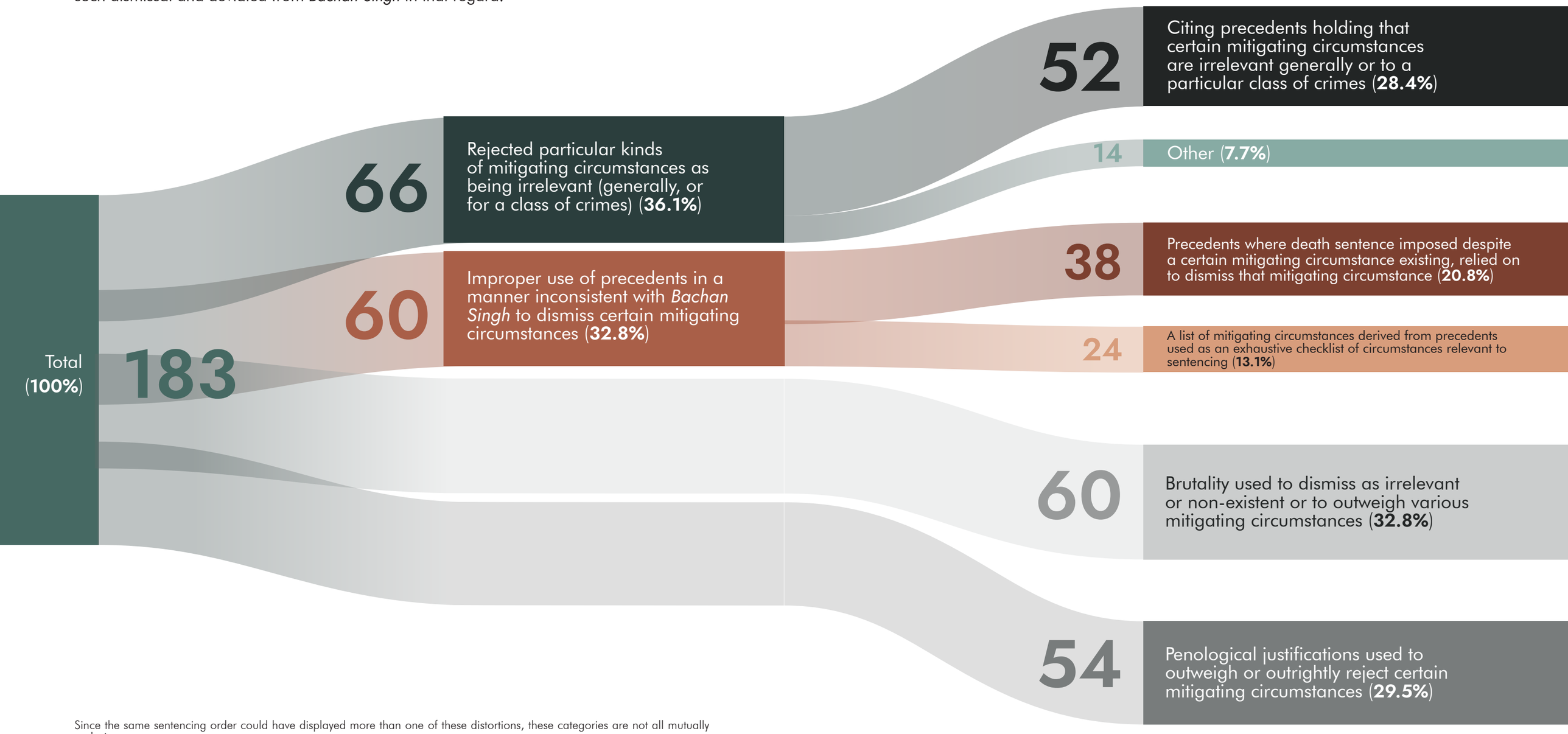


FIGURE 24

Distortions in the Role of Mitigation, Where Mitigating Circumstances Were Mentioned

The patterns of reasoning captured in the above figure suggest the diminishing role of mitigation in determining the sentencing outcome. The relevance of certain mitigating circumstances was outrightly dismissed in 36% of the sentences that mentioned mitigating circumstances at all; this was often done by relying on precedents that themselves endorsed such dismissal and deviated from *Bachan Singh* in that regard.

Penological goals incompatible with the *Bachan Singh* framework were cited to dismiss other mitigating circumstances in nearly 30% of the sentences that mentioned any mitigation. Equally frequently, brutality of the crime was invoked to achieve a similar outcome, typically without establishing the circumstances that elevate the crime to an 'aggravated' level of brutality above and beyond that which is inherent to any death-eligible offence. Finally, trial courts in over 30% of the sentences that mentioned mitigation also improperly used precedents in a manner that diminished the role of mitigation and ignored individualisation. In some sentences, the sentencing outcome of precedents were mapped onto similarities in crimes in isolation, ignoring the individualised exercise of weighing that underlied the outcome. In others, precedents were treated as providing exhaustive checklists of mitigating circumstances.



Since the same sentencing order could have displayed more than one of these distortions, these categories are not all mutually exclusive.

Figures 23 and 24 demonstrate the state of confusion that the practice of mitigation is in, at the trial courts. There seems to be no consistent understanding of the manner in which mitigation and aggravation are to be approached in determining the sentencing outcome, or of the normative foundations that make mitigation crucial to sentencing. This deeper conceptual confusion, therefore, also explains the total neglect of mitigating circumstances - their mention as well as their acceptance in the sentencing calculus - frequently noticed in Figures 20 to 22.

F. Role of 'Crime' and 'Criminal' Related Circumstances

The language of aggravating and mitigating circumstances in capital sentencing was introduced in *Jagmohan*.[65] However, it was *Ediga Anamma* which expressly held that such circumstances must pertain to "*not only the crime, but also the criminal.*"[66]

This remains the position of law, with *Bachan Singh* adopting the theory of just deserts and holding that each sentence must be individualised to both the crime and the criminal. However, while doing so, it held 'crime' and 'criminal' to not be water-tight compartments, in that the features of the crime could themselves be an index of the traits of the criminal.[67] This vague qualification diluted the strength of the requirement that a judge must consider circumstances of both the crime and the criminal, by allowing the latter to be deduced from the former.

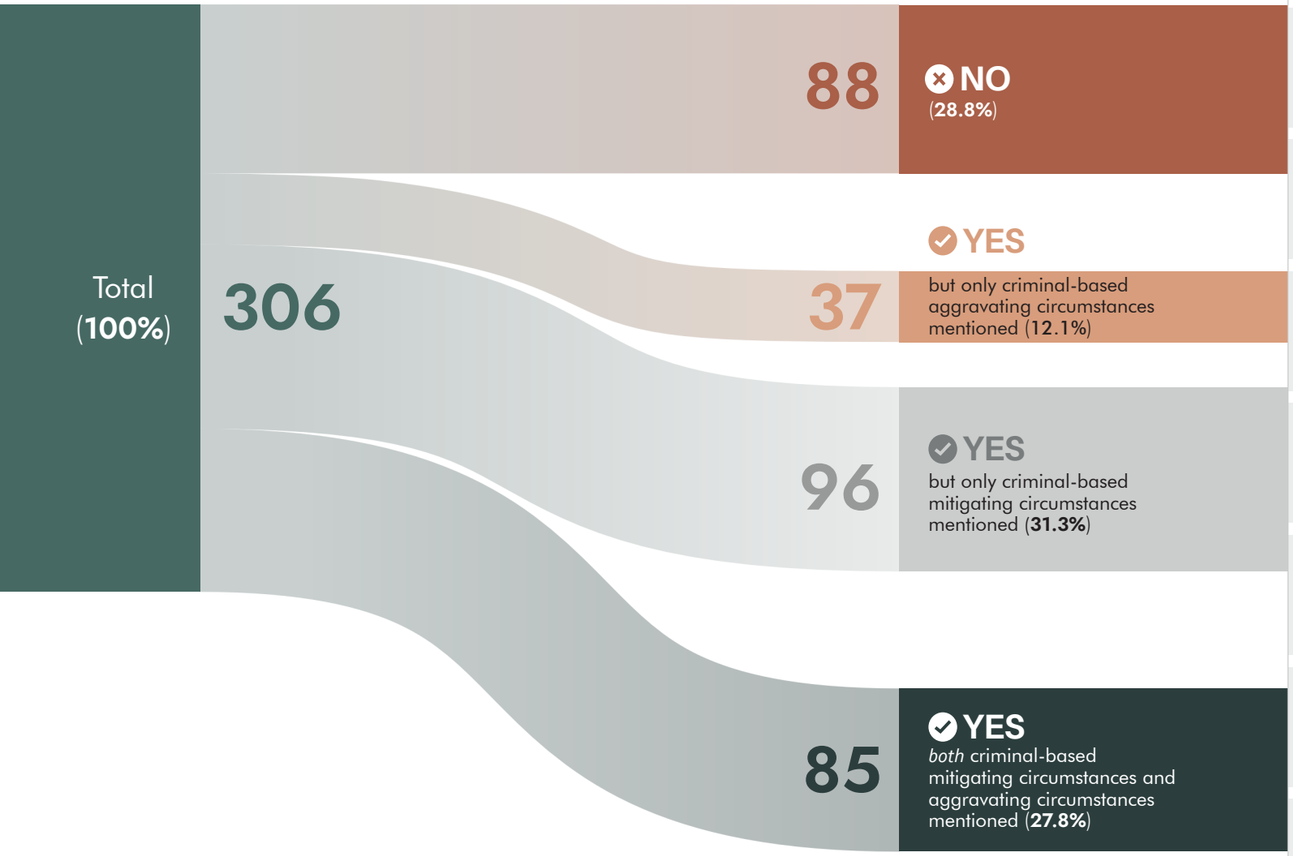
The decision in *Gurvail Singh* reformulated the sentencing framework into the three-step Crime, Criminal, Rarest of Rare Test,[68] drawing attention back to the requirement of considering both the crime and the criminal separately while sentencing.[69] However, aided by *Bachan Singh*'s ambiguity, other decisions have chipped away at the role of criminal-related circumstances in the sentencing exercise and introduced alternative, crime-centric frameworks governing capital sentencing. A set of precedents has dismissed the relevance of all or certain criminal-related circumstances to sentencing;[70] while another set has formulated crime categories that by themselves warrant imposition of the death sentence, regardless of criminal-related circumstances.[71]

This doctrinal confusion, aided by the general discomfort with individualised sentencing observed above, has had clear repercussions on the treatment of circumstances relating to the crime and the criminal at trial courts. In this Chapter, we present data in this regard; specifically, the frequency with which trial courts mentioned criminal-related circumstances in their sentencing reasons, as well as the manner in which they treated certain circumstances relating to the crime and the criminal where these were mentioned.

FIGURE 25

Whether Reasons Given for Imposing the Death Sentence Mentioned Any Criminal-Related Circumstances?

In reading the below Figure, it is relevant to note that it merely reflects whether the sentencing reasoning mentioned any criminal-based circumstances. It does not distinguish between sentences where such circumstances actually featured in the sentencing calculus and others where such circumstances were mentioned only to be dismissed as irrelevant and kept out of the sentencing scale. Even by that standard, nearly 30% of the death sentences in the Dataset did not mention any circumstances relating to the criminal at all. Another 12% mentioned criminal-based circumstances in aggravation of the sentence, but none in mitigation.



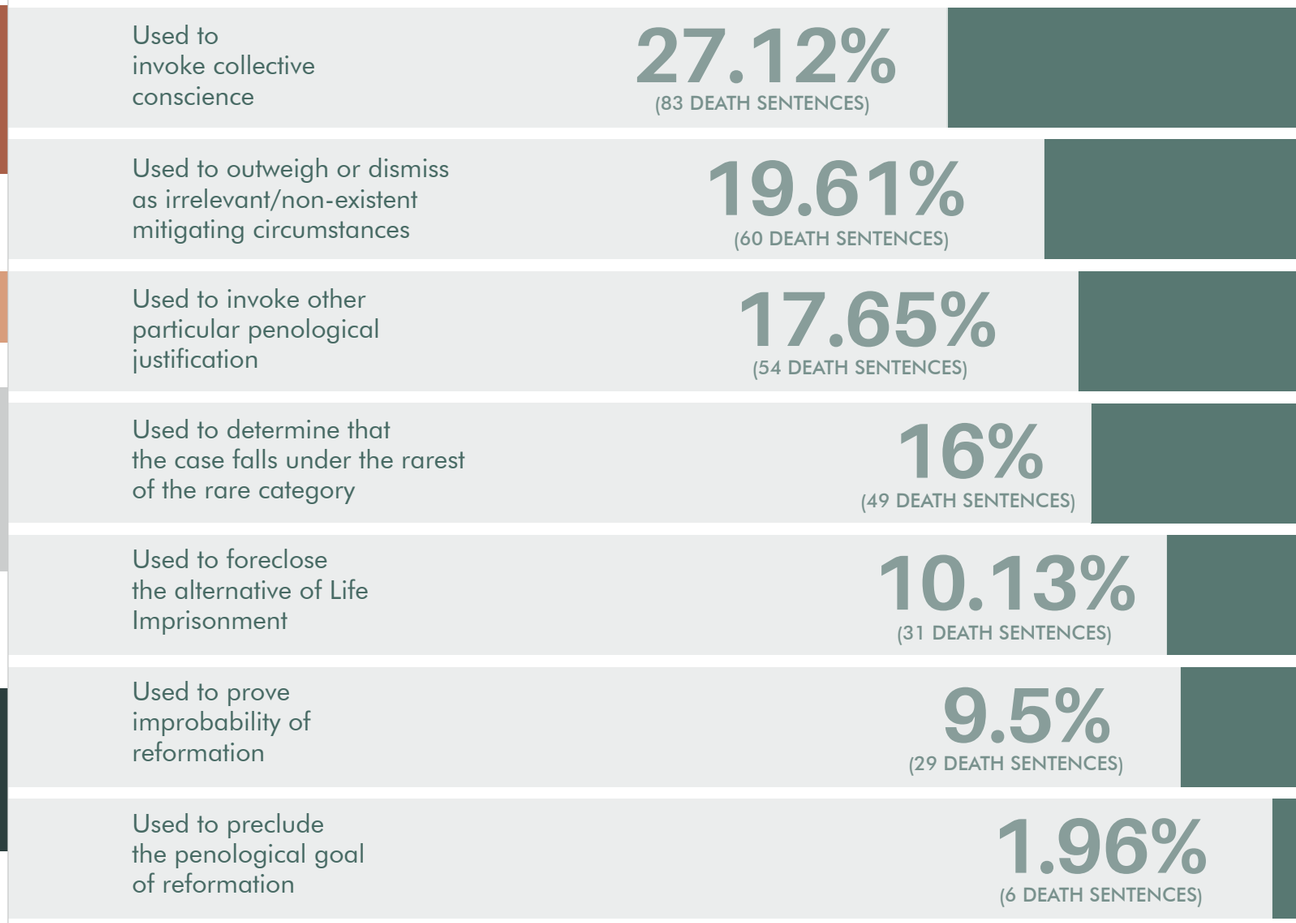
The figures below explore in greater detail the manner in which certain crime- and criminal-related circumstances were treated, where they were mentioned.

FIGURE 26

Consideration of Brutality as a Sentencing Factor

It is well-settled that for a circumstance to aggravate a sentence, it must be above and beyond what is inherent to the given death-eligible offence; in other words, it must be of an 'abnormal or special degree'.[72] 274 death sentences, forming nearly 90% of the sentences in the Dataset, cited the brutality of the crime as an aggravating circumstance for imposing the death sentence. While the crime was often described in extensive detail, substantial reasons for why the manner in which the crime was committed was abnormally or especially brutal were rarely provided. Nevertheless, brutality often played a disproportionate role in the sentencing calculus.

Total = **306**



Since the same sentencing order could have used brutality as a sentencing factor in one or more of these ways, the categories represented in Figure 26 are not mutually exclusive.

The pervasive use of brutality in reasoning ranging from dismissing mitigating circumstances to foreclosing the alternative of life imprisonment itself - reflects the predominant role that crime and the manner of its commission has come to play in sentencing. This is traceable to the influence of *Machhi Singh*'s crime categories that highlighted the 'manner of commission of the crime' as an important marker of death-worthiness. Furthermore, the frequent absence of reasons for why a particular crime was characterised by brutality of an 'abnormal or special degree' seems to indicate the use of brutality, not as an aggravating circumstance, but as a placeholder for crime-centric sentencing.

FIGURE 27

Consideration of Age as a Sentencing Factor

Young age has been recognised as a mitigating circumstance of 'compelling importance', in view of its impact on a person's judgement and susceptibility to peer pressure as well as its link to the accused's potential for reformation. Similarly, old age has been considered an important mitigating circumstance as it heightens the accused's vulnerability to the physical and mental stress of incarceration, and its natural incapacitating effect lowers the risk of reoffending.

Even so, in over 40% of the sentences **where defence counsel argued age-based mitigation**, the judge either failed to mention age or dismissed it as irrelevant in the sentencing reasoning.

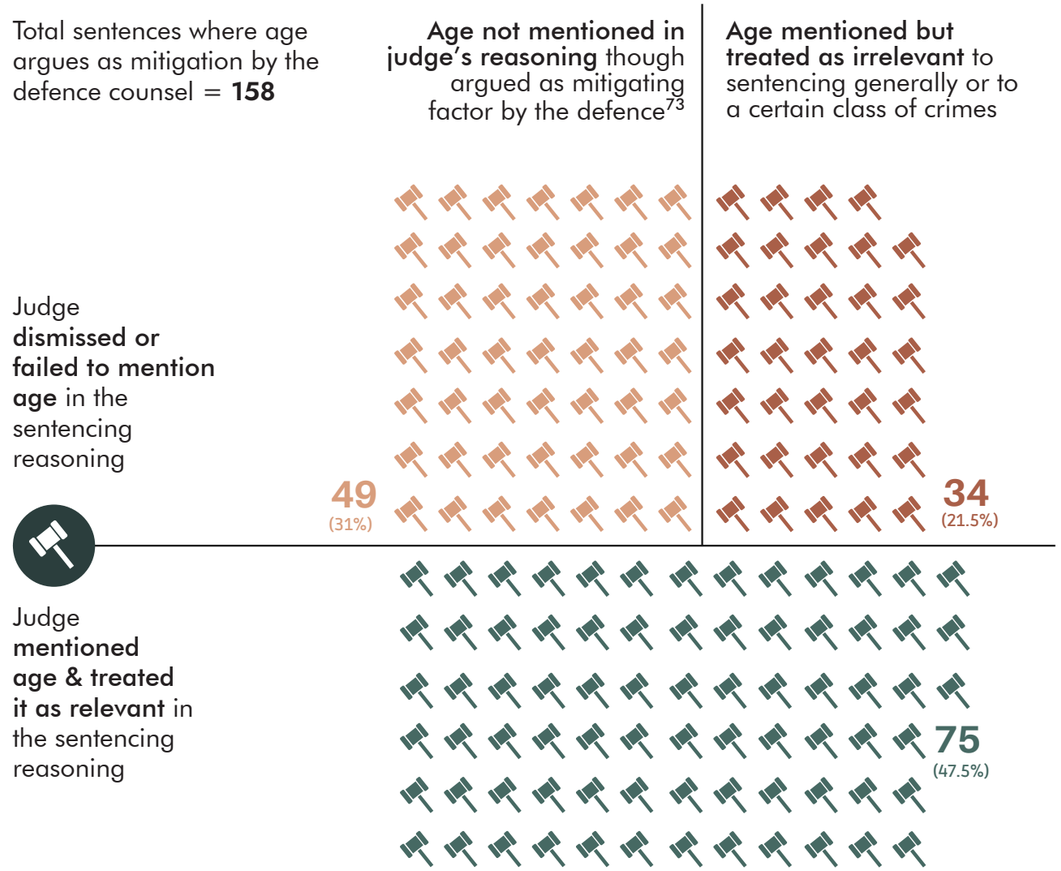
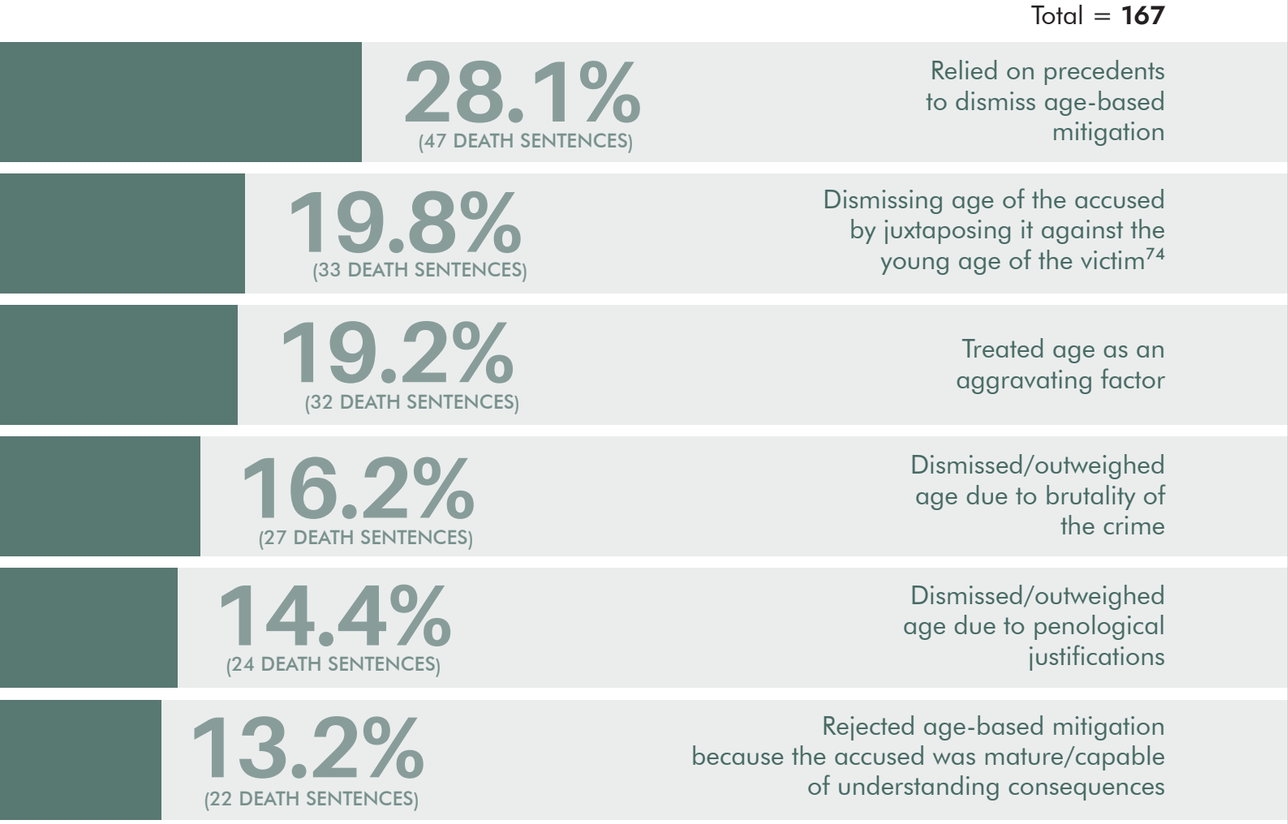


FIGURE 28

There were a total of 167 sentences in the Dataset where age was mentioned in the sentencing judgement. These sentences demonstrated a variety of approaches to age-based mitigation.



In nearly 20% of the sentences where age was mentioned, judges treated the absence of young or old age as, by itself, aggravating the sentence - in effect, treating the very absence of mitigation as an aggravating factor. The potential of such reasoning to subvert the 'special reasons' framework is apparent.

Where age was mentioned as a mitigating factor, the manner of its treatment deviated from the *Bachan Singh* framework in significant ways. Judges in nearly 15% of the sentences that mentioned age used penological goals inconsistent with *Bachan Singh* to dismiss age altogether.

Since the same sentencing order could have treated age as a sentencing factor in one or more of these ways, the categories represented in Figure 28 are not mutually exclusive.

Trial courts also improperly used precedents that confirmed the death sentence on a similarly aged person, to hold age to be irrelevant to sentencing, neglecting the individualised reasons for the precedents' outcome. Further arbitrariness was introduced by divergences within the doctrinal framework itself; this reflected in trial courts' frequent reliance on precedents that deviated from *Bachan Singh* by rejecting the relevance of age to sentencing.

The manner in which age-based mitigation was treated in trial courts also frequently belied the compelling reasons underlying it. Judges often dismissed age because the accused was mature enough to understand the consequences of his actions, or because the victim was young, or the crime brutal. However, none of these circumstances take away from the way young age compromises decision-making faculties, or old age lowers the risk of reoffending; each is independent of the other. The use of brutality in particular, especially in the absence of substantial reasons for why the crime was brutal to an 'abnormal or special' degree in the first place, represents the crime-centric approaches that underlie the neglect or casual dismissal of age-based mitigation.

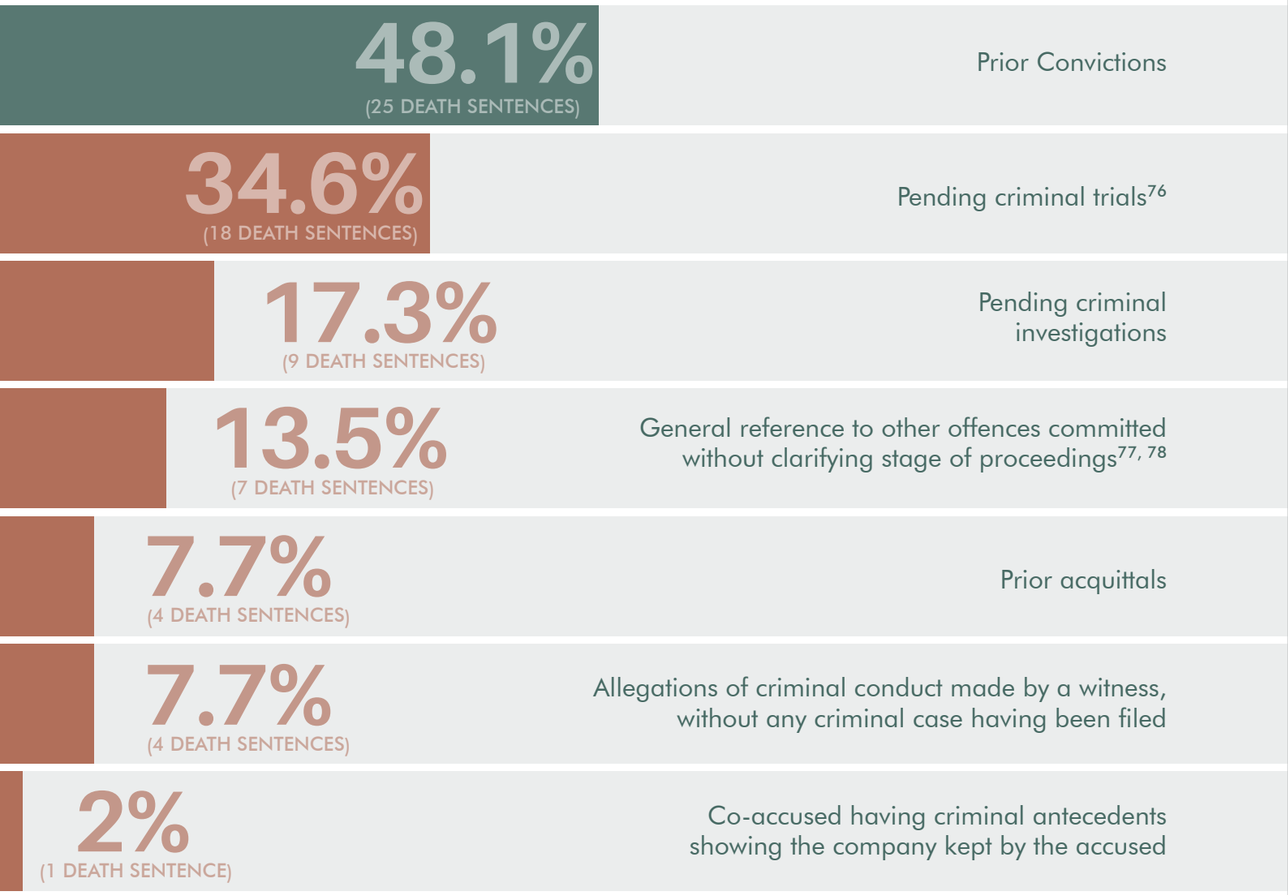
FIGURE 29

Consideration of Criminal Antecedents as a Sentencing Factor

A total of 52 sentences in the Dataset cited criminal antecedents of the accused as an aggravating circumstance. However, the materials relied on to conclude that the accused had prior criminal history varied widely between sentences.

The Supreme Court has criticised courts for accepting criminal antecedents as an aggravating factor in the absence of prior convictions.[75] Yet, less than half of the sentences in the Dataset that cited criminal antecedents actually relied on prior convictions.

Total = **52**



Since the same sentencing order could have relied on one or more of these iterations of 'criminal antecedents', these categories are not mutually exclusive.

All other sentences relied on a disparate range of materials from pending trials to prior acquittals. This does not only violate the fundamental presumption of innocence, as held in *Wasnik*,[79] but also raises serious concerns of unequal treatment in light of the inconsistent definitions of 'criminal antecedents' used by trial courts.

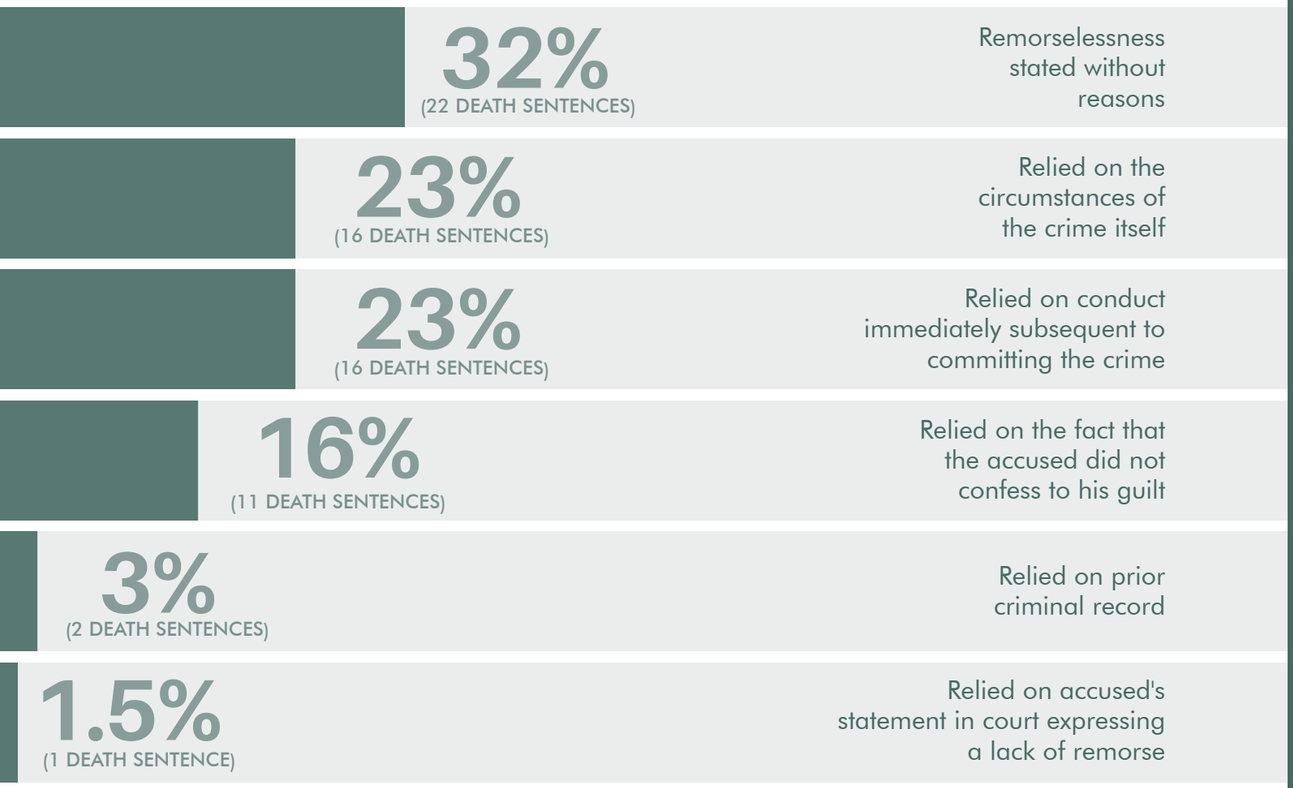
FIGURE 30

Consideration of Remorse as a Sentencing Factor

Though 3 judges imposed 3 sentences in the Dataset despite finding that the accused showed remorse, in most instances where remorse was mentioned, it was to treat its absence as an aggravating factor (67 sentences). The below figure captures the manner in which the finding of absence of remorse was arrived at in these 67 sentences.

Barring in 1 instance, trial courts uniformly established the remorselessness of the accused without actually referring to any statements or even demeanour of the accused expressing such remorselessness. In fact, most frequently, no reasons were provided at all. Where reasons were given, they were dominantly backward-facing, referring to prior criminal record, circumstances of the crime or in the immediate aftermath of it. In other instances, trial court judges concluded that the accused was remorseless on grounds that the accused claimed to be innocent of the crime alleged, considering aggravating their choice to exercise a constitutional right.

Total = **67**



Since the same sentencing order could have displayed one or more of these patterns of reasoning for establishing lack of remorse, the categories represented in Figure 30 are not mutually exclusive.

G. Use of Precedents in Sentencing

Decisions subsequent to *Bachan Singh* claiming to clarify or interpret it have evolved multiple, divergent frameworks for guiding the exercise of sentencing discretion in capital cases. The general trajectory of these decisions has been to revert capital sentencing towards crime-centric approaches.

These include decisions that reject the relevance of all or certain mitigating circumstances,[80] as well as decisions that formulate certain crime categories as being, by themselves, death-worthy.[81] Precedents endorsing alternative penological theories - primarily, collective conscience[82] and deterrence[83] - have achieved a similar outcome by decentring criminal-related circumstances from sentencing.

By displacing the penological goals of reformation and just deserts built into *Bachan Singh*'s framework, these precedents have created alternative crime-centric frameworks governing capital sentencing. The Supreme Court itself, in its decisions in *Bariyar*,[84] *Sangeet*,[85] and *Khade*,[86] has recognised many of these decisions as doctrinally deviating from *Bachan Singh*, and declared certain precedents per *incuriam* and cast doubt on others (*See* **Appendix-I**). Other decisions of the Supreme Court confirming the death sentence have been subsequently overruled by the Supreme Court itself as part of its review jurisdiction, though not declared *per incuriam*. (*See* **Appendix-II**).

In this Chapter, we represent data about the manner in which trial courts used precedents in imposing persons to death. Specifically, we track the frequency with which the lower courts relied on decisions that were *per incuriam* or subsequently overruled by the Supreme Court, as well as precedents that, though not overruled, present doctrinal inconsistencies with *Bachan Singh*. In the latter category, we particularly study the influence of *Machhi Singh* on trial court capital sentencing. Lastly, we present data on trial courts' reliance on precedents which were otherwise consistent with *Bachan Singh* but used in ways that reflected trial courts' fundamental discomfort with individualised sentencing.

FIGURE 31

Precedents were used in the sentencing reasoning for 225 death sentences (73.5% of the Dataset). The figures below capture trial courts' use of precedents that were incompatible with individualised sentencing under the *Bachan Singh* framework.

Over 18% of the sentences in the Dataset relied on precedents that had previously been doubted or declared *per incuriam*, most of them for their inconsistency with the *Bachan Singh* framework. Another 9% of the sentences relied on precedents that had been, at the time of reliance, overruled by the Supreme Court itself in its review jurisdiction.

Total = **306**

18.6% (57 DEATH SENTENCES) — Relying on *per incuriam* or doubted precedents

9.2% (28 DEATH SENTENCES) — Relying on Supreme Court precedents that had been overruled at the time of reliance[87]

41.0% (126 DEATH SENTENCES) — Citing precedents endorsing certain penological goals to prioritise them

33.6% (103 DEATH SENTENCES) — Relying on precedents that held that crimes or criminals with certain features are, by themselves, fit for the higher sentence

17% (52 DEATH SENTENCES) — Citing precedents saying certain mitigating circumstances are inherently irrelevant to sentencing (like social status, caste, etc.) or to sentencing in certain kinds of crimes

However, not all precedents that diverged from *Bachan Singh* have been doubted or declared *per incuriam* or even overruled on review. Some of these held certain mitigating circumstances to be completely irrelevant; others elevated specific penological goals, or certain crime- or criminal-related aggravating circumstances to an almost dispositive position in sentencing. All of them had the result of diminishing the role of mitigation and creating an alternative framework of sentencing, incompatible with *Bachan Singh*; even so, as the Figure above shows, these were routinely relied on by trial courts.

Since one or more of these patterns could be true for the same sentencing order, the categories represented in Figure 31 are not mutually exclusive.

FIGURE 32

Use of Machhi Singh's Crime Categories

The decision in *Machhi Singh* is foremost among the precedents that deviated from *Bachan Singh* and vastly influenced the reversion of capital sentencing to crime-centric approaches.[88] The Court in *Machhi Singh* formulated 5 categories of crimes that, in its opinion, shook the collective conscience and by themselves merited the death sentence.[89]

Though it claimed to streamline the *Bachan Singh* framework, *Machhi Singh* has been criticised for replacing it altogether with a distinct crime-centric one. Crime-centric approaches have found great purchase at the trial courts, and their doctrinal inconsistency with *Bachan Singh* has gone unrecognised. Over 40% of the death sentences in the Dataset referred to *Machhi Singh*'s crime categories. Around 20% of the sentences relied on the crime categories as at least a part of the 'special reasons' given for imposing the death sentence; in 4 sentences, that was the sole reason provided.

59.8%
Did not refer to them at all (**183**)

Referred to the categories (**66**)
21.6%

Relied completely on *Machhi Singh*'s categories to justify the death sentence (**4**) **1.3%**

Relied partly on *Machhi Singh*'s categories to justify the death sentence (**53**)
17.3%

FIGURE 33

The internal incoherence of precedents governing capital sentencing has not only contributed significantly to arbitrariness in the implementation of the death sentence, but has also negated *Bachan Singh*'s efforts to individualise sentencing. However, doctrinally inconsistent precedents are not the only source of confusion in trial court practice. Four decades since *Bachan Singh*, trial courts continue to rely on precedents consistent with individualised sentencing, and use them improperly in ways that deviate significantly from it.

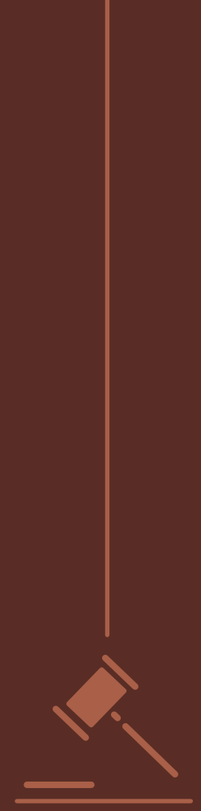
Total = **306**

42.8% (131 DEATH SENTENCES)	Relying on a prior case with a similar crime in which the death penalty was imposed
12.4% (38 DEATH SENTENCES)	Relying on a prior case in which death penalty was awarded despite a mitigating circumstance - used to dismiss that mitigating circumstance
7.8% (24 DEATH SENTENCES)	Relying on a precedent for a list of mitigating circumstances, and using that list as an exhaustive checklist
2.2% (7 DEATH SENTENCES)	Relying on a precedent where probability of reform was dismissed to dismiss probability of reform

Trial courts frequently misunderstood the manner in which precedents may be used in the exercise of sentencing discretion. Nearly 50% of the death sentences reduced the individualised sentencing outcome in precedents, to isolated points of similarity with the crime on trial, and blindly applied the precedents' outcome on that basis. In a similar vein, trial courts in 7 death sentences answered a question as unique and individual as whether a person is capable of reformation by reference to precedents. In other instances, precedents noting an indicative list of mitigating circumstances were used as simplistic, exhaustive checklists by trial court judges, betraying a lack of understanding of mitigation and its purpose in sentencing.

Since one or more of these patterns could be true for the same sentencing order, the categories represented in Figure 33 are not mutually exclusive.

V. Outcomes of Sentencing



A. Determining the 'Rarest of Rare' Category

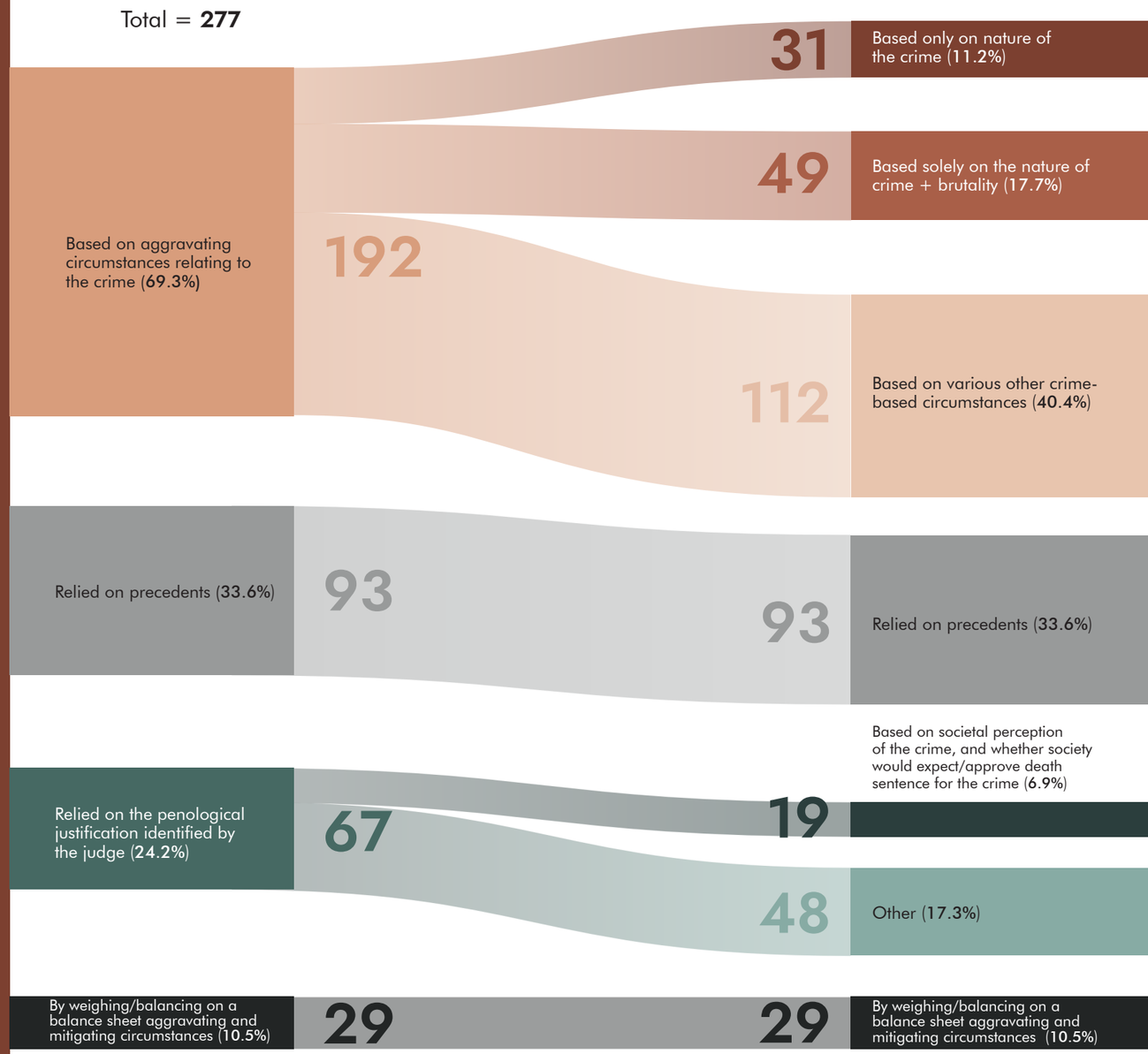
The framework laid down in *Bachan Singh* for governing the exercise of sentencing discretion in death-eligible cases has come to be known as the 'rarest of rare' doctrine. It is surprising, then, that the judgement itself mentions the phrase only once, merely stating that the death sentence be imposed only in the '*rarest of rare cases when the alternative option is unquestionably foreclosed*'.[90] Subsequent decisions, however, have added meaning and content to it where *Bachan Singh* failed to.

While it is generally accepted that the 'rarest of the rare' requirement acts as a limitation on the use of the death penalty,[91] the content of the limitation is unclear. *Gurvail Singh* and *Machhi Singh* have linked it to public opinion on the desirability of the death sentence in a particular case.[92] The Court in *Bariyar*, in contrast, stated that '*rarest of rare policy...may not be essentially tuned to public opinion.*'[93] Instead, it held that the 'rarest of rare' test entailed weighing mitigating and aggravating circumstances to identify the exceptional or special reasons for imposing the sentence of death. To introduce consistency in its application, the Court proposed that a pool of 'similar' capital cases be identified, based on gravity, nature and motive of the crime; then, the aggravating and mitigating circumstances appearing from this pool of cases be compared, after appropriately adjusting for their weight in individual cases.

There is evident disagreement in jurisprudence about the content and application of the 'rarest of rare' formulation. This has been recognised by the Court itself to lead to arbitrariness in the process through which the death sentence is imposed.[94] In this Chapter, we present data on the divergent ways in which trial courts understood the 'rarest of rare' limitation while sentencing persons to death. We also represent nature of offence-wise information on specific crime-centric approaches adopted by trial courts in determining the 'rarest of rare' category.

FIGURE 34

A total of 29 death sentences, nearly 10% of the Dataset, did not address what made the circumstances of the case fall into the 'rarest of rare' category at all. The remaining sentences reflected a variety of patterns in the understanding and implementation of the 'rarest of rare' requirement.

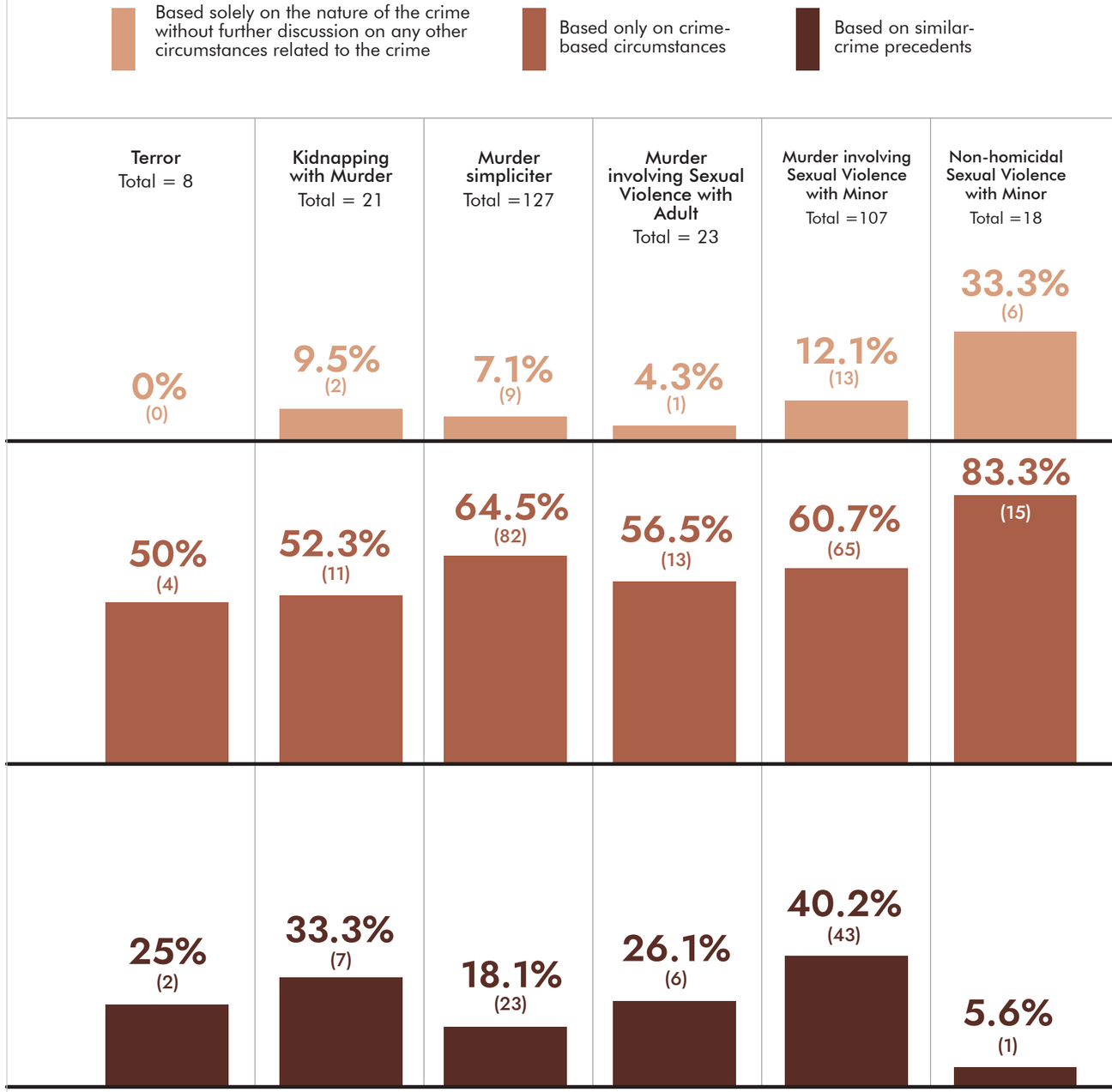


Since the same sentencing order could have relied on one or more of these iterations of the 'rarest of rare' limitation, these categories are not mutually exclusive. However, categories that state that the limitation was based 'solely' on a certain factor(s), are meant to imply that that factor(s) operated to the exclusion of others.

Only around 10% of the sentences that addressed the 'rarest of rare' requirement did so by weighing or balancing aggravating and mitigating circumstances, as prescribed in *Bariyar*. In fact, nearly 70% of these sentences classified the case as a 'rarest of rare' one solely on the basis of aggravating circumstances relating to the crime. Within this category, a significant proportion of sentences held the case to fall into the 'rarest of rare' category merely by virtue of the nature of offence itself, without further reference to the manner of its commission or any other circumstances surrounding it. In effect, the commission of any offence falling in that broad type *by itself* was considered to be a 'rarest of rare' case, despite such construction of the 'rarest of rare' limitation being evidently incapable of serving as a limitation at all. Nearly 25% of the sentences that addressed the 'rarest of rare' requirement did so by relying, *inter alia*, on penological justifications inconsistent with *Bachan Singh*; many of these invoked societal demand for the death sentence as justification, reflecting the legacy of *Machhi Singh*. Finally, over 33% of these sentences classified the case as 'rarest of rare' either by relying on precedents in ways that were inconsistent with individualised sentencing or by relying on precedents that themselves were inconsistent with it.

FIGURE 35

Nature of Offence-Wise Breakdown of Select Crime-Centric Patterns in Determining 'Rarest of Rare' Category



2 sentences falling into the category where rarest of rare test was assessed based only on crime-based circumstances, are not represented here. These sentences pertained to the category of dacoity, which has not been represented in the Figure, due to its small numbers.

For this Figure, we selected these three approaches adopted by trial courts, due to their exclusive focus on the crime itself and circumstances surrounding it.

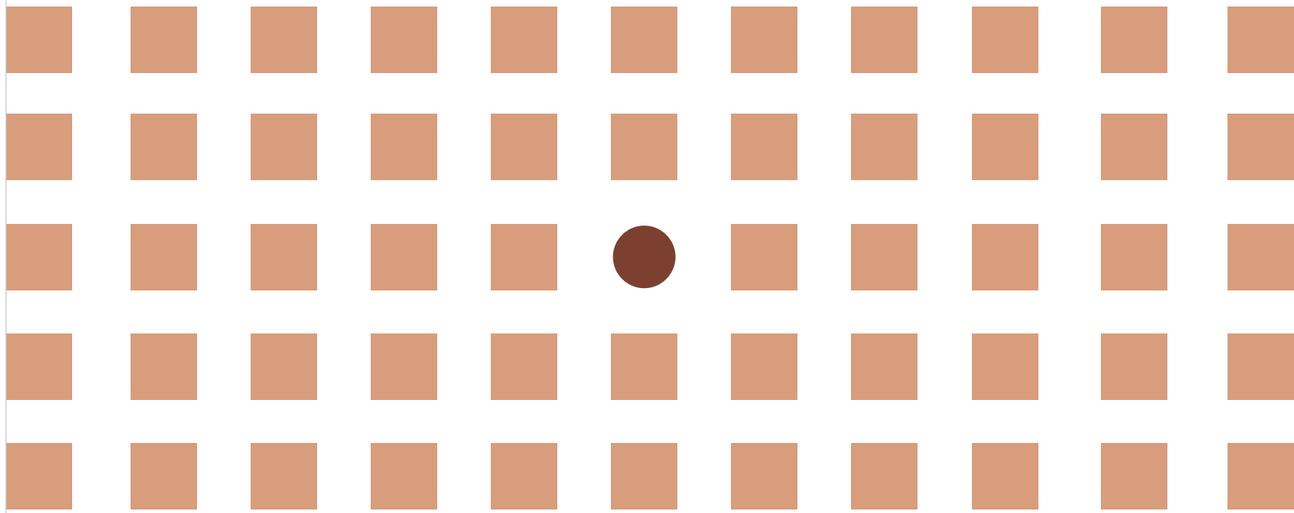
When the frequency with which these patterns appeared in trial court sentencing was broken down by the types of offences they appeared for, it was evident that these patterns were particularly pronounced in trials for a specific category of offences, that is, sexual offences against minors. In other words, capital defendants accused of sexual offences against minors were the most vulnerable to sentencing reasoning classifying their case as 'rarest of rare' without consideration of their individual circumstances. More starkly, such offences had the highest proportion of sentences which classified the case as 'rarest of rare' *only* on grounds that the offence on trial was non-homicidal sexual violence on minor.

Case classified as 'rarest of the rare'

because the crime committed was numerically rare

"In the opinion of this Court this crime is first of its kind in India. This Court is not in the knowledge of any case in which a crime of such a nature has been committed and the accused has been sentenced till death. The incident of double murder is beyond imagination and horrifying and stunning incident. Hence, there is no doubt that the case falls in the category of rarest of rare cases."

(State of Maharashtra v. Guddu Krish Yadav, Sessions Case no. 03/2016, Thane)

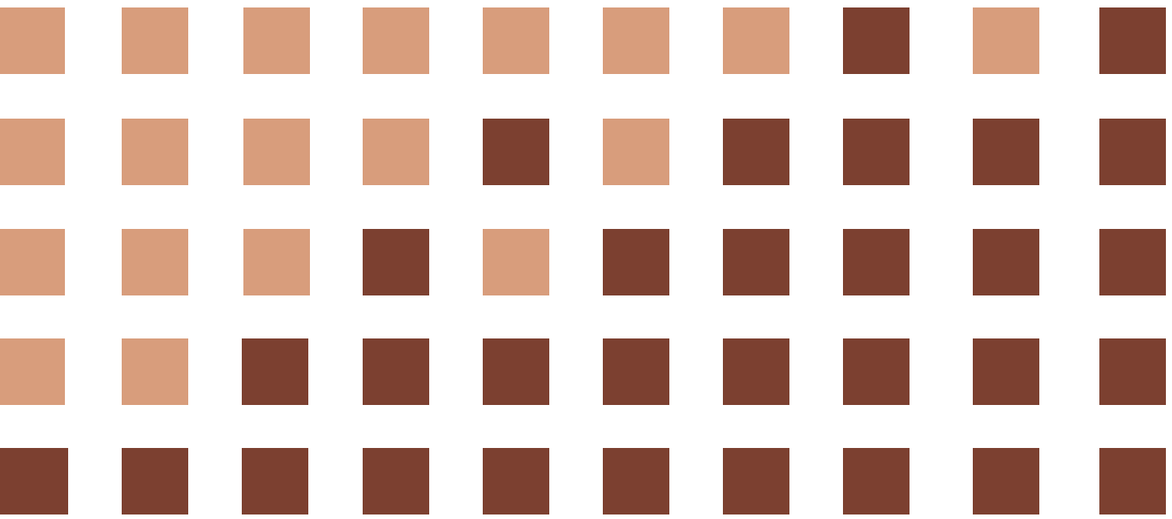


Case classified as 'rarest of the rare'

because of the increasing incidence of that kind of crime

"The number of such cases is increasing day by day along with the type of injuries inflicted on the body of the victim and especially innocent children are victimized by a person with a criminal mind or such elements. Thus, this case falls into the rarest of rare cases."

(State v. Deva Dhana Koli,
Sessions Case No. 88/2015, Kachchh, translated)



B. Addressing the Alternative of Life Imprisonment

Bachan Singh, in line with Section 354(3), CrPC, stipulated life imprisonment to be the default punishment for death-eligible offences, holding that the death sentence may only be imposed when the alternative of life imprisonment is '*unquestionably foreclosed*'.[95] No further guidance was provided. In *Bariyar,* the Court clarified that life imprisonment may only be unquestionably foreclosed 'when the sentencing aim of reformation can be said to be unachievable'.[96]

However, the fact that *Bachan Singh* itself did not elaborate on when life imprisonment may be said to be unquestionably foreclosed, inevitably meant that any further content supplied by *Bariyar* has only been inconsistently adopted. In *Machhi Singh*, for example, the Court adopted a completely different threshold, holding that the death sentence may be imposed where life imprisonment was '*altogether inadequate*'.[97] The test of 'inadequacy' or 'insufficiency' seems to set a lower threshold for dismissing life imprisonment, than the stipulation that it must be unquestionably foreclosed.

Regardless of the standard that is used to assess the alternative of life imprisonment, the kind of reasons that may be provided for why that standard is met is equally important towards preserving a real and substantial role for the additional requirement that life imprisonment must be unquestionably foreclosed before a death sentence is imposed. The reasons provided for meeting the standard must state, not only why simple life imprisonment fails to meet the standard, but also why life imprisonment without the possibility of remission does. The legal validity of the latter category of sentences was upheld in *Sriharan*[98] and, by expanding the range of alternative sentences available to judges, has heightened the standard that must be met to hold that non-death sentences are foreclosed or inadequate.

In this Chapter, we present data about trial courts' treatment of the 'default' sentence of life imprisonment - the frequency with which the alternative was mentioned, and the frequency with which it was dismissed with reasons, along with the substance of those reasons. Since the ruling in *Sriharan* did not allow trial courts to impose life imprisonment without the possibility of remission, the data does not engage with whether trial courts appropriately considered that alternative. Finally, we also represent nature of offence-wise information on specific crime-centric approaches adopted by trial courts in considering and dismissing the alternative of life imprisonment.

FIGURE 36

Mentioning and Addressing the Alternative of Life Imprisonment

Over 37% of the death sentences in the Dataset were imposed either without mentioning the default sentence of life imprisonment at all, or without providing any reasons for its dismissal. The systematic non-consideration by trial courts of the default sentence before imposing the death sentence is in violation of the 'special reasons' framework that constituted death as an exceptional punishment.

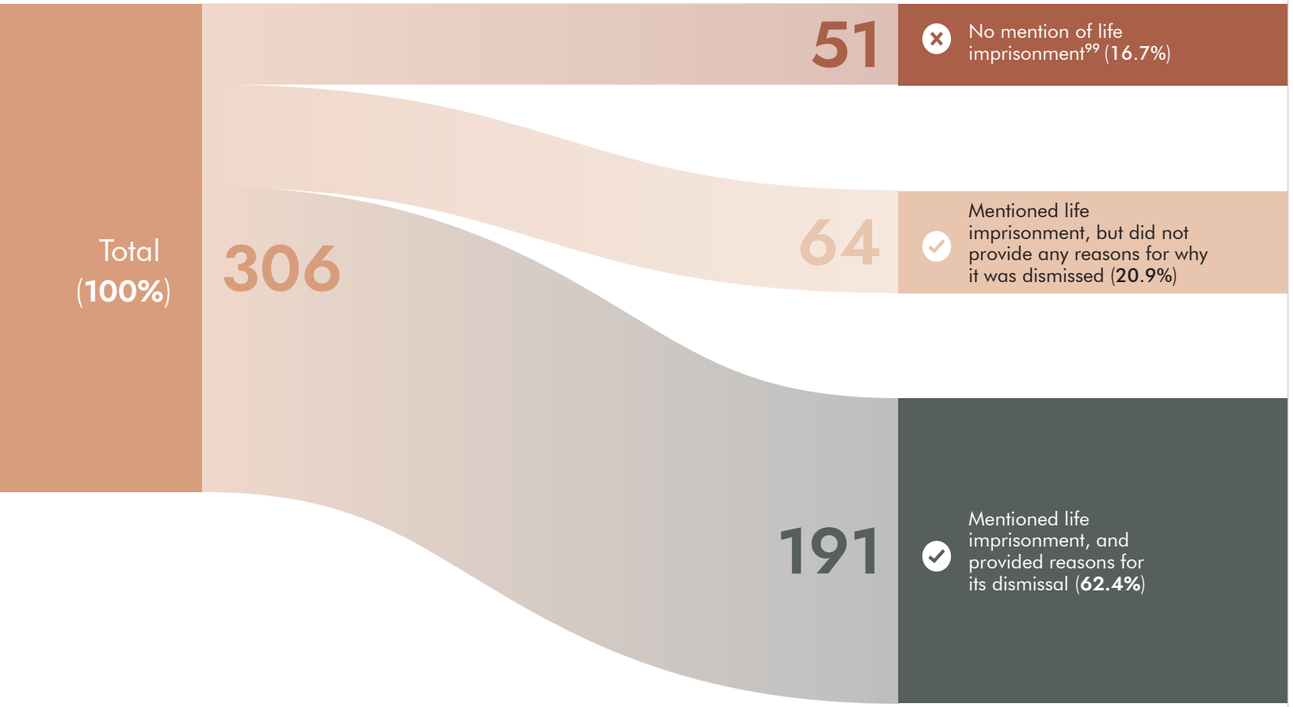


FIGURE 37

Standards Mentioned for Assessing the Alternative of Life Imprisonment

There were a total of 255 sentences in the Dataset that mentioned life imprisonment. Among these, there was no consistency in the standards mentioned for assessing the alternative.

Revealing the extent of *Machhi Singh*'s influence, the 'inadequacy' of life imprisonment was the most frequently cited standard for assessing whether it could be dismissed. *Bachan Singh*'s stricter stipulation requiring that life imprisonment be 'unquestionably foreclosed' appeared far fewer times. More concerningly, in nearly 10% of sentences that mentioned life imprisonment at all, the 'standard' used to assess it was, simply, whether there was any reason to impose life imprisonment instead of the death sentence. This reasoning treats the death sentence as the default punishment, further reflecting the breakdown of the 'special reasons' framework in trial court practice.

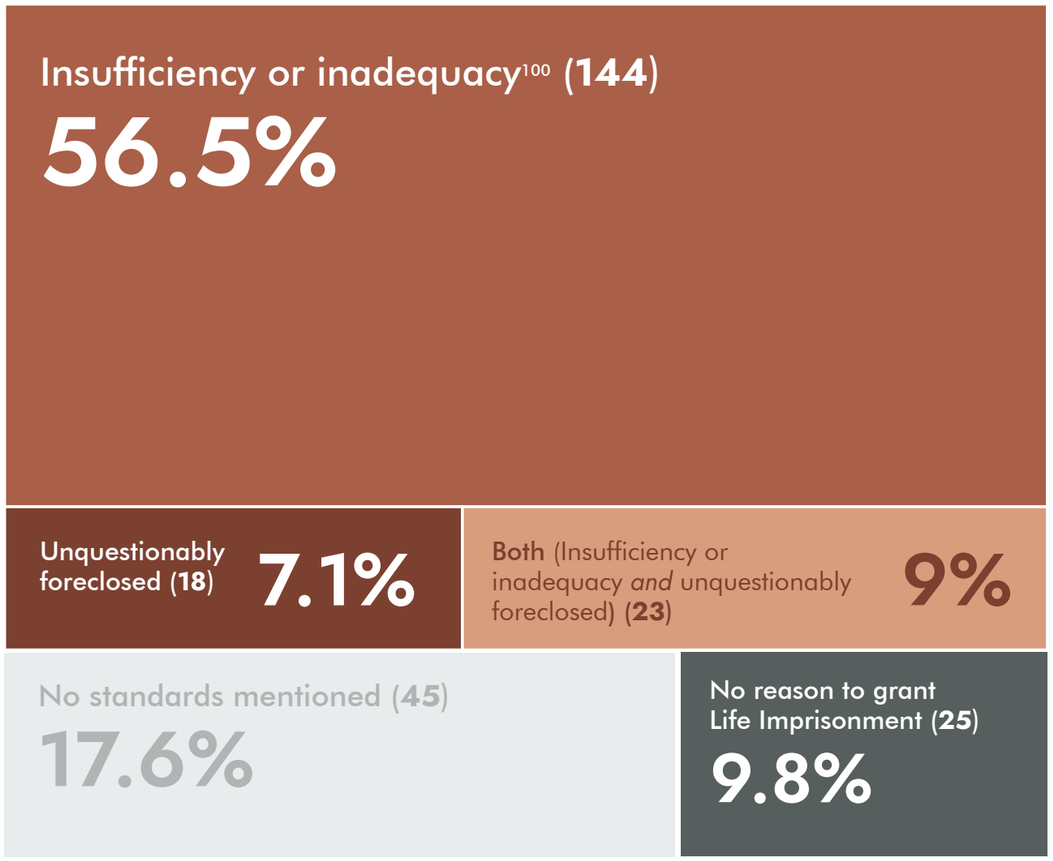
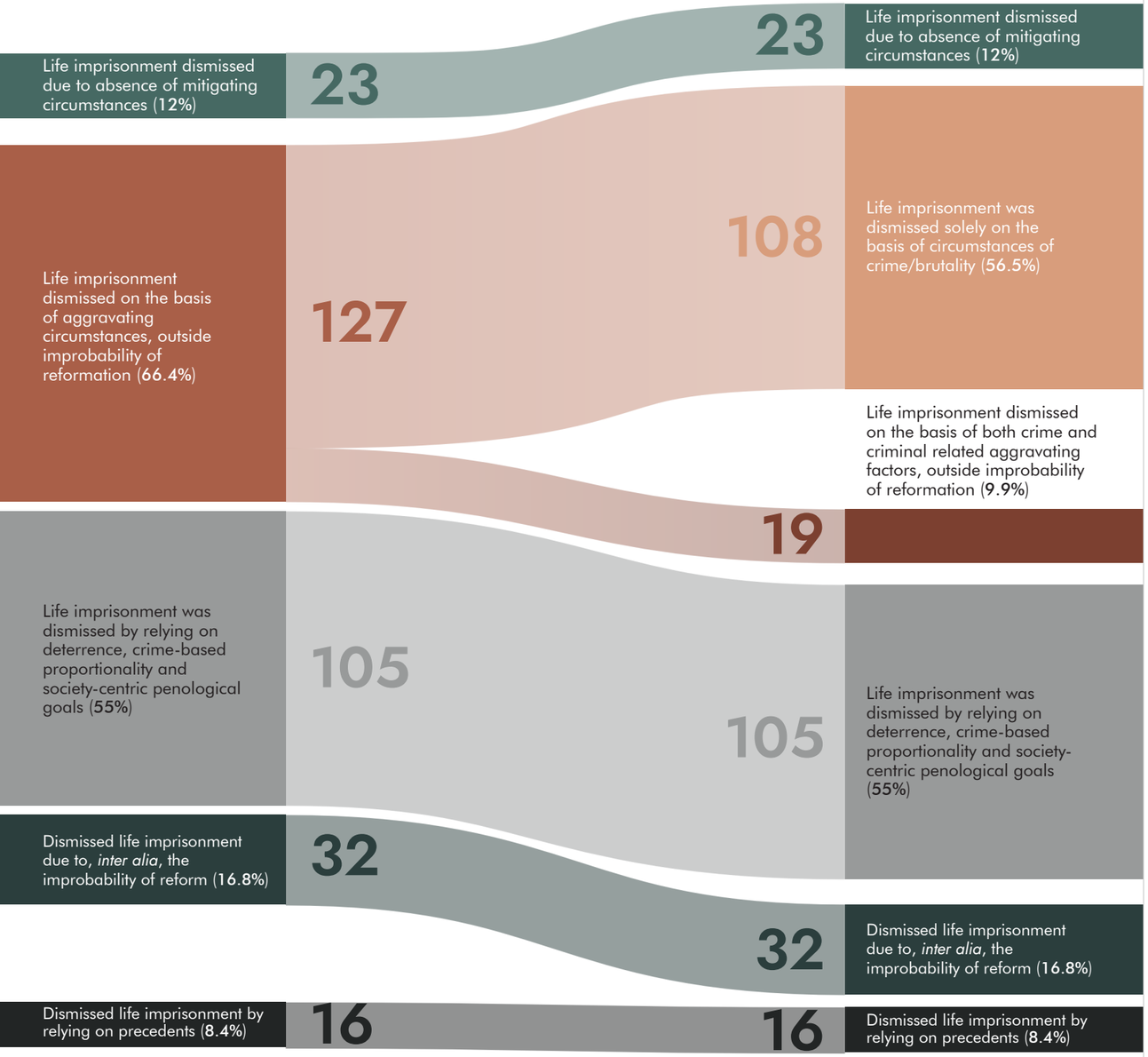


FIGURE 38

Reasons for Dismissing the Alternative of Life Imprisonment

Total [sentences that mentioned life imprisonment and provided reasons for its dismissal] = **191**



Since one or more of these patterns could be true for the same sentencing order, the categories represented in Figure 38 are not mutually exclusive. However, categories that state that the limitation was based 'solely' on a certain factor(s), are meant to imply that that factor(s) operated to the exclusion of others.

Over 12% of the sentences that provided any reasons for dismissing life imprisonment, dismissed it simply because there were no mitigating circumstances to warrant the default sentence. In essence, thus, over 1 in 10 sentences inverted the 'special reasons' framework and implicitly treated the death sentence as the default sentence.

Nearly 70% of the reasons given for dismissing life imprisonment related solely to various crime- and criminal- related aggravating circumstances other than improbability of reform. In this group, there were also instances of judges outsourcing their duty to individualise sentences, by relying on precedents that confirmed the death sentence for similar crimes, disregarding the individualised reasoning that led to the precedents' outcomes. Precedents that themselves held that certain kinds of crimes automatically warrant the death sentence, were also relied upon. Penological justifications completely inconsistent with *Bachan Singh*'s framework were routinely invoked to dismiss the default sentencing outcome. The essence of each of these patterns was that the determination of whether life imprisonment was foreclosed, when made at all, was frequently both crime-centric and non-individualised at the lower courts.

Around 16% of the sentences that provided reasons for dismissing life imprisonment, constituting little over 10% of the Dataset, relied on the improbability of the accused's reform to foreclose life imprisonment. Therefore, despite the Supreme Court's doctrine, the question of life imprisonment was linked to reformation as an exception, not the norm. Further, notably, even where this link was drawn, the assessment of reformation itself was mostly backward-facing, using circumstances of the crime or the accused's criminal record.

FIGURE 39

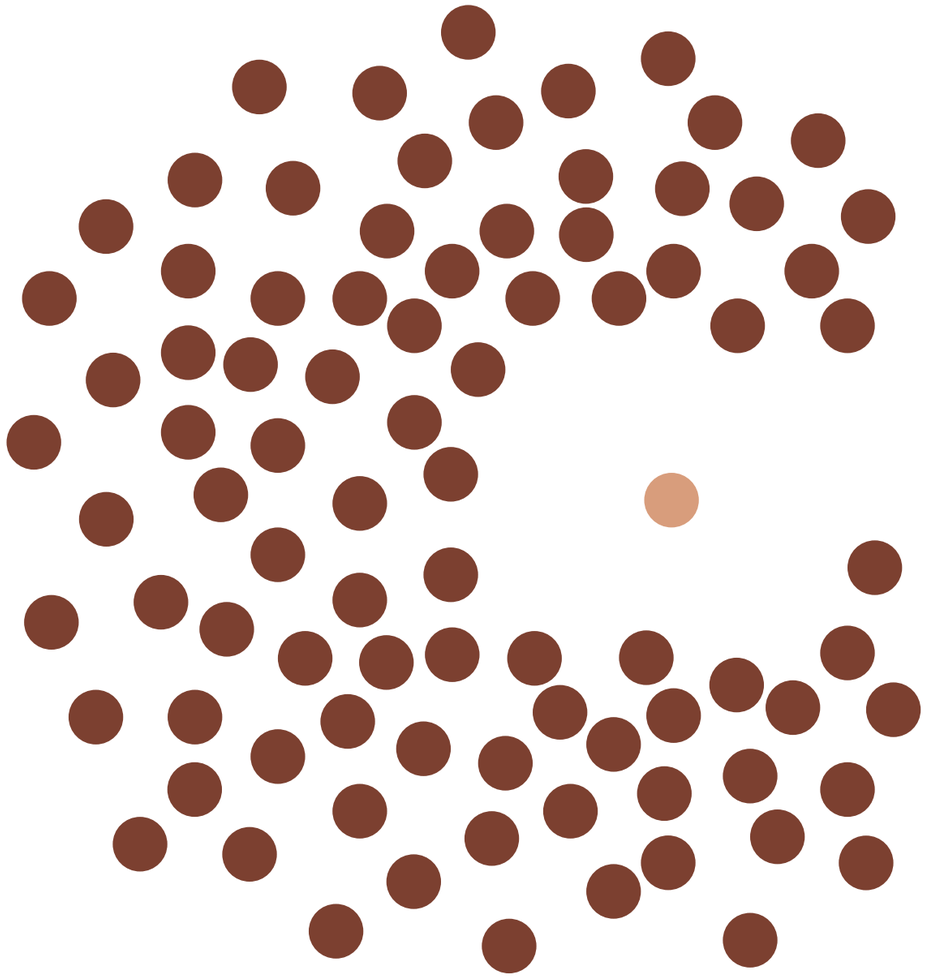
Nature of Offence-Wise Breakdown for Improper Treatment of the Alternative of Life Imprisonment

For this Figure, we selected two approaches adopted by trial courts in dismissing life imprisonment, that in our opinion most egregiously departed from the 'special reasons' framework.

While the first of them reduces the consideration of life imprisonment to crime-based circumstances alone, the second treats the death sentence as the default for the particular case. When these patterns were broken down by the types of offences they appeared in, it was evident that these patterns were particularly pronounced in trials for a specific category of offences, that is, non-homicidal sexual violence against minor. In other words, capital defendants convicted of this type of offence were the most vulnerable to being sentenced to death 'by default', or being precluded from life imprisonment on circumstances to do with their offence itself.

Life imprisonment dismissed

because the mob wanted to kill the accused but agreed to hand him over to the law



"The public gathered at the place of occurrence have intended to do away with the life of accused as there was a commotion shocking the conscious of everybody. But, the timely arrival of police, the accused and juveniles were protected from the hands of mob.

If the conduct of the accused is taken with lighter wane by imposing imprisonment for life, consequently, the competent authority may come forward to give some remission on several reasons and in the life time of the accused, the competent authority may release from jail and ultimately it would not impress upon the minds of the common man and they may think that they have left the accused at the instance of police without killing him at the place of occurrence itself and through process of law the accused was honourably let out from capital punishment."

(State v. Shaik Inthiyaz,
Sessions Case No. 59/2014, Sri Potti Sriramulu Nellore)

Life imprisonment dismissed

due to the old age of the accused

"With respect to awarding of death penalty is concerned, in this case, the accused is already a aged person and awarding 20 years imprisonment is of no use."

(State by Vemagal Police v. Venkateshappa,
Sessions Case No. 92/2018, Kolar)

VI. Sentencing in Cases of Sexual Violence involving Minors

From 2018, the scope of death penalty for offences of sexual violence has consistently expanded. The Criminal Law (Amendment) Act, 2018 introduced the death penalty for rape or gang rape of minor below 12 years of age, and for causing death or persistent vegetative state of victim in the course of commission of rape.[101] In 2019, POCSO was amended to introduce the death penalty as an alternative punishment for all aggravated penetrative sexual assaults on minors below 18 years of age.[102]

This legislative expansion of death-eligible sexual offences coincided with a significant rise in the imposition of the death sentence for crimes involving sexual violence by trial courts. In 2018, cases involving sexual offences overtook murder simpliciter to constitute the highest proportion among cases where trial courts imposed the death sentence. This trend continued in 2019, 2020 and 2021.[103] The death sentence for crimes involving sexual violence was imposed most frequently where the victim was a minor.[104]

The legislative and judicial expansion of the death penalty for sexual violence have both focused on offences committed against minor victims. Discourse on sexual violence against minors has come to occupy a dominant place in the machinery of capital sentencing and its expansion.

At the same time, previous Chapters revealed that persons accused of sexual violence, both homicidal and non-homicidal, against minor victims were also the most vulnerable to compacted, summary justice, and non-individualised, crime-centric sentencing.[105] In this Chapter, we highlight 4 distinct points of data about the processes followed in trying and sentencing this group of capital defendants - trial durations, time provided to parties after conviction and before the sentencing hearing, crime-centrism in the 'rarest of rare' analysis and in dismissing life imprisonment, and approaches to assessing life imprisonment that inverted the special reasons framework.

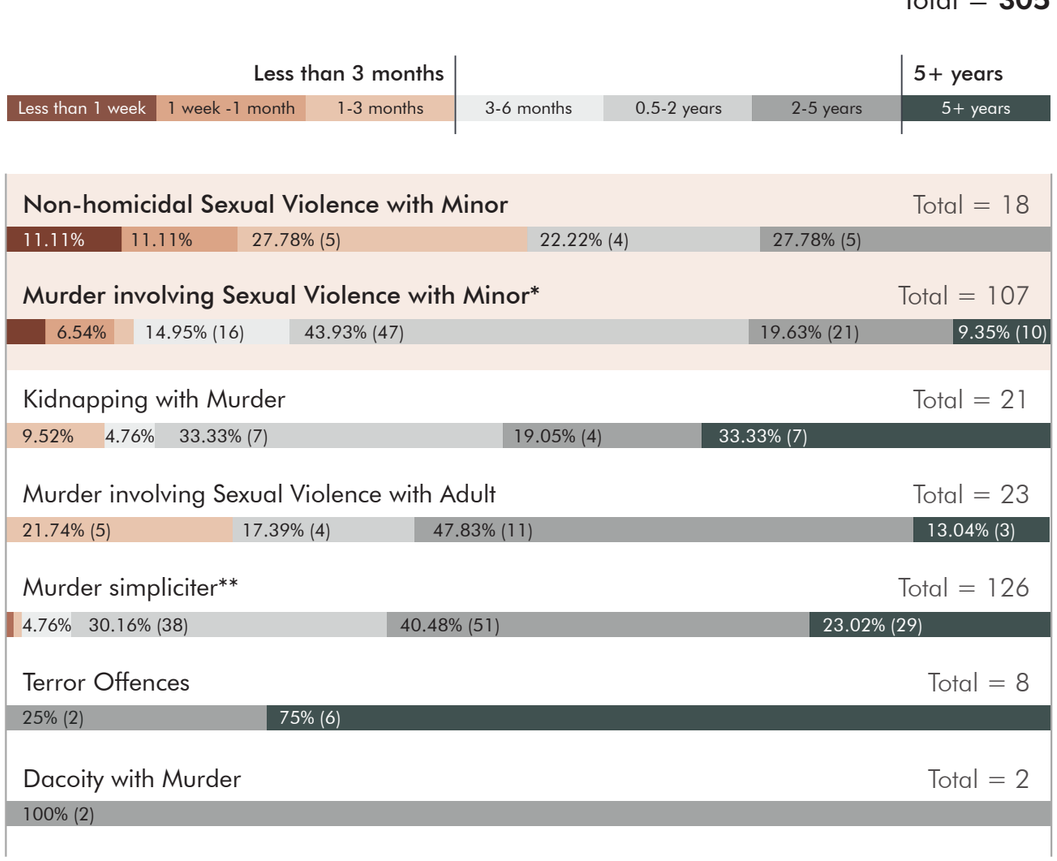
The Dataset for the report constituted 306 death sentences across 221 cases. While murder simpliciter accounted for the highest proportion of death sentences, offences involving sexual violence on minors accounted for the highest proportion of distinct cases that led to a death sentence. This means there were fewer cases of murder simpliciter that resulted in death sentences, but these had multiple accused sentenced to death resulting in a greater number of death sentences in this category.

This is a combination of two categories - Murder involving Sexual Violence with Minor, and Non-homicidal Sexual Violence involving Minor.

FIGURE 40

Trial Durations, Broken Down by Nature of Offence

A high proportion of trials for this group of offences were unusually compacted, as shown in Figure 40.



*The values for 'Less than a week' and '1-3 months' are 3.74% (4) and 1.87%(2) respectively.
**The value for '1 week - 1 month' and '1 - 3 months' is 0.79% (1).

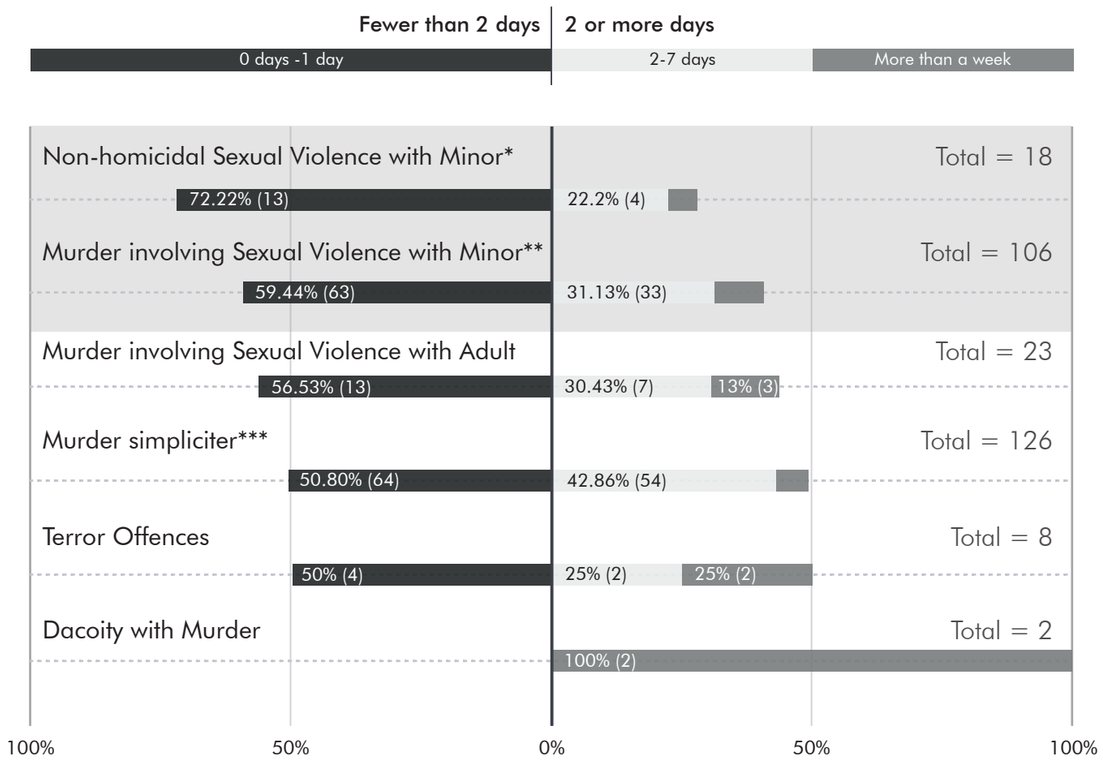
Data on 'date of first hearing' is not available for 1 of the 306 death sentences studied as part of this report. Therefore, the above Figure represents data on 305 sentences.

FIGURE 41

Gap between the Date of Conviction and the Date of Sentencing Hearing, Broken Down by Nature of Offence

Further, as per Figure 41, this group of offences had the highest proportion of sentencing hearings that were conducted in little to no time after the date of conviction, effectively preventing parties from gathering materials and information on circumstances of the accused.

Total = **304**

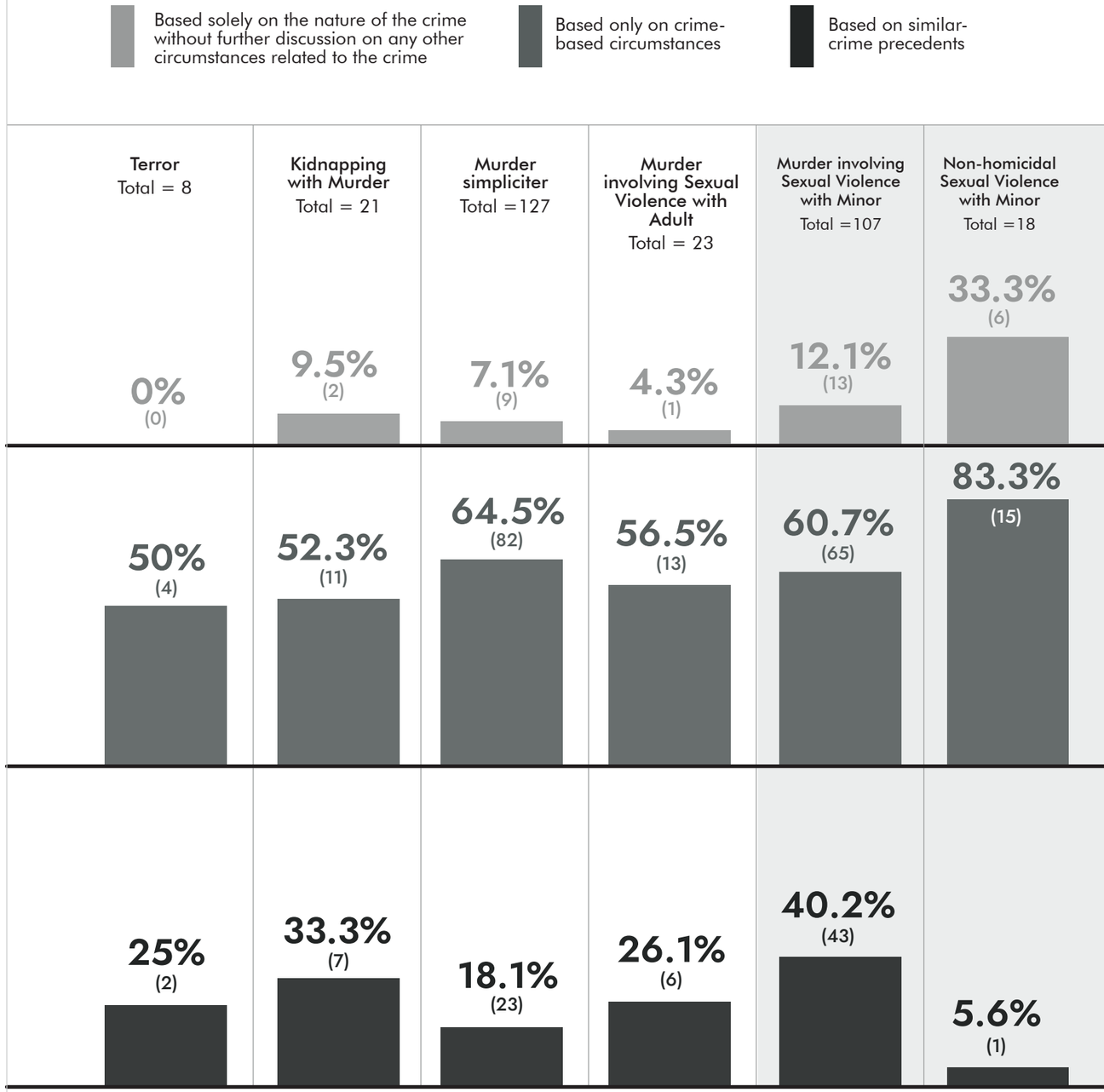


*The value for 'More than a week' is 5.56% (1).
**The value for 'More than a week' is 9.43% (10).
***The value for '1 day' is 6.35% (8).

Of the 306 death sentences that form the Dataset, information on the date of sentencing hearing was not available for 2. Therefore, this section represents information for 304 death sentences.

FIGURE 42

Determination of the 'Rarest of the Rare' Class



2 sentences falling into the category where rarest of rare test was assessed based only on crime-based circumstances, are not represented here. These sentences pertained to the category of dacoity, which has not been represented in the Figure, due to its small numbers.

FIGURE 43

Dismissing the Alternative of Life Imprisonment

As demonstrated in Figures 42 and 43, assessments of whether life imprisonment could be foreclosed and whether the case was a 'rarest of rare' one were also dominantly governed by the nature of the crime itself and circumstances surrounding it, more than for any other type of offence.

Lastly, as shown in Figure 43, judges dismissed the alternative of life imprisonment merely because there was no reason to provide life in nearly 30% of the sentences involving non-homicidal sexual violence on minors; therefore, capital defendants accused of these crimes were also the most vulnerable to being sentenced to death 'by default'.

While this report has revealed significant inconsistencies and inequalities in the processes by which capital defendants were sentenced to death between 2018 and 2020, these inequalities seem to be the most pronounced in trials of those accused of homicidal or non-homicidal sexual violence against minors. Even as the legislature expands the ambit of sexual offences eligible for the death sentence, and as sexual offences dominate death sentences imposed by trial courts year on year, the processes for which death sentences are imposed for these offences appear to be disproportionately arbitrary. Between 2018 and 2020, not only did cases involving sexual offences on minors most frequently culminate in the death sentence, they also most frequently involved irresponsible sentencing practices at the trial courts.

VII. Conclusion

Project 39A's earlier study of trial court death sentences imposed in Delhi, Madhya Pradesh and Maharashtra over a 16-year period had yielded two distinct but interrelated narratives of the crisis of capital sentencing in trial courts. To begin with, trial courts routinely failed to correctly apply the *Bachan Singh* framework and the procedures enabling it. Moreover, the study located multiple points of doctrinal confusion at the Supreme Court itself, which was then observed to trickle down and inform the arbitrariness in trial court practice. The current study set out to verify whether these conclusions would hold up once the frame was widened to include both a larger set of parameters and death sentences imposed in trial courts across the country. Our findings establish that they do.

First, there was a routine, even pervasive, failure to comply with the bright-line and unambiguous procedural norms on capital sentencing laid down by the Supreme Court. Thus, for example, we found that same- or next-day sentencing was the norm, not the exception; that judges almost never took steps to elicit materials relevant to sentencing; that the prosecution rarely fulfilled its responsibility to bring evidence towards the accused's potential for reform; and that cases involving multiple persons convicted of capital offences routinely failed to separately reason each of their sentencing outcomes. The bright-line rules are integral towards making individualised sentencing possible. Their non-compliance, therefore, goes quite some way in explaining the crisis of capital sentencing we have been observing in trial courts.

However, the *second* story that emerges from the data complicates this narrative. Even where these bright-line procedures were complied with, they rarely resulted in the kind of sentencing processes they were designed to accomplish. Not even one of the sentences in the dataset was individualised to the unique context of the offence and the offender. Pervasive penological confusion, distorted approaches to mitigation, and the reduction of circumstances of the criminal to the crime itself characterised sentencing judgments across the board, regardless of whether the more bright-line norms were followed. Similarly, sentences across the dataset revealed inconsistent understandings of the meaning of the 'rarest of rare' requirement and of the circumstances in which life imprisonment may be foreclosed.

A more granular look at the patterns that such sentences exhibited revealed multiple sources of this crisis, many inherent to the doctrinal framework itself, providing further strength to the conclusions of Project 39A's earlier study of trial court sentences. While concerns of institutional incapacity of the legal profession in dealing with complex psycho-social narratives of human lives significantly influenced what judges and lawyers

could do within the sentencing framework, the data also revealed a fundamental absence of normative clarity about what the framework required of them.

The genesis of this is to be found in *Bachan Singh* itself, which while requiring that death sentences be exceptionalised and capital sentencing be individualised, failed to provide normative underpinnings to its requirements. This gap generated considerable ambiguity around the content of the framework, resulting in the emergence of multiple, competing frameworks purporting to 'interpret' or 'clarify' *Bachan Singh*. Almost invariably, these frameworks have been superimpositions inconsistent with what they sought to interpret. Slowly, the sentencing framework governing capital sentencing in India became a mélange of competing penological priorities, inconsistent understandings of mitigation and the role of crime vis-à-vis the criminal, and divergent views on the potential for standardisation of offences. This confusion, naturally, made its way to trial courts, leaving judges to speculate on the applicable framework, its contents, and even the manner in which different frameworks deviated from each other. Reflecting the pervasiveness of this confusion, over 94% of the sentences in the dataset were unclear about their choice of framework, and many judges routinely attributed doctrinal innovations brought out by *Machhi Singh* to *Bachan Singh*, despite their irreconcilability with each other.

The confusion over the framework that governs capital sentencing, its content, and what spaces the framework leaves for trial court discretion, has effectively mired trial court sentencing in an inescapable arbitrariness. The Dataset revealed significant disparities between sentencing processes followed across different States and different types of offences. Sentences imposed in Madhya Pradesh, for example, were overrepresented in the category of sentences imposed after compacted trials and same- or next-day sentencing hearings. Similarly, capital defendants convicted for sexual violence against minors faced, in greater proportions, crime-centric sentencing processes and non-compliance with bright-line norms. However, even within these categories, the sentencing processes followed for sentencing the 300 persons in the Dataset varied significantly from trial to trial, lacking any discernible common principle or framework. In short, sentencing in capital cases at the trial courts was ridden with manifest arbitrariness, the inevitable outcome of the absence of a consistently interpretable framework that could be equally applied across defendants.

In the past few years, the Supreme Court has shown increasing concern for this state of affairs in trial court capital sentencing, attempting to address it by, primarily, emphasising on compliance with bright line norms. In 2022, however, the Supreme Court instituted the *suo motu* writ for exploring possibilities of deeper reform, particularly, in building institutional capacity for gathering and understanding mitigation. By an order dated 19.09.2022, the Supreme Court has referred the matter to a Constitution Bench, for the purposes of outlining a uniform framework for ensuring that the accused is given a meaningful and effective hearing on sentence. However, this Report's findings suggest that guaranteeing an effective hearing by itself may not remove arbitrariness from sentencing, in the absence of larger normative clarity on the framework within which materials brought forth by such a hearing must be considered. In a sense, the findings of this Report challenge the assumption that the key to fixing sentencing in the trial courts is to adequately *enforce* the sentencing framework laid down in *Bachan Singh*. As important as those efforts are in curing some of what plagues capital sentencing in India, this Report's findings lead us to a different set of questions; not ones of enforcing the *Bachan Singh* framework, but its inherent *enforceability* itself.

ENDNOTES

1 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, para 164.

2 National Law University, Delhi, Death Penalty India Report (NLU Delhi Press 2016) Volume II, page 190.

3 National Law University, Delhi, Death Penalty Sentencing in Trial Courts: Delhi, Madhya Pradesh & Maharashtra (2000-2015) (NLU Delhi Press 2020).

4 Since all death sentences by trial courts have to be confirmed by the High Court, the High Court websites can be used to confirm the numbers and details of trial court death sentences.

5 *Hussain & anr. v. Union of India* Crl. Appeal No. 509 of 2017 (Supreme Court), dt. 09.30.2017, para 27.

6 Section 35, Protection of Children from Sexual Offences Act, 2012.

7 Section 309(1), The Code of Criminal Procedure, 1973.

8 Section 17, SHAKTI Criminal Laws (Maharashtra Amendment) Act, 2021.

9 Chapter III(iii), Andhra Pradesh Disha Act - Criminal Law (Andhra Pradesh Amendment) Bill, 2019. This provision was dropped in a subsequent version of the Bill.

10 This information was taken from the Case Status page for a given trial on the e-district courts website.

11 This information was taken from the judgement.

12 Law Commission of India, *Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities* (Law Commission No. 239, 2012), pages 9-10; Tata Trusts, India Justice Report (2019).

13 *Allauddin Mian v State of Bihar* AIR 1989 SC 1456; *Malkiat Singh v State of Punjab* (1991) 4 SC 341; *Channulal Verma v State of Chattisgarh* AIR 2019 SC 243. *But see Accused X v State of Maharashtra* 2019 SCC Online SC 543.

14 *Ediga Anamma v. State of Andhra Pradesh* (1974) 4 SCC 443.

15 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, para 206.

16 *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498, para 56; *Muniappan v. State of Tamil Nadu* (1981) 3 SCC 11, para 2; *Ajay Pandit @ Jagdish Dayabhai Patel v. State of Maharashtra* (2012) 8 SCC 43, para 38; *Md. Mannan v. State of Bihar* (2019) 16 SCC 584, para 74; *Mofil Khan v. State of Jharkhand* (2021) SCC OnLine SC 1136, para 9; *Dattatraya v. State of Maharashtra* (2020) 14 SCC 290, paras 130-131.

17 *Mukesh v. State for NCT of Delhi*, SLP (Crl). 3119-3120/2014 (Supreme Court), order dt. 03.02.2017, p.8.

18 *Re Inhuman Conditions in 1382 Prisons*, W.P. (Civil) No. 406/2013 (Supreme Court), order dt. 13.12.2018, p.10.

19 *Ramanand @ Nandlal Bharti v. State of Uttar Pradesh*, Crl. Appeal 64-65/2022 (Supreme Court), order dt. 10.01.2022; Irfan @ Bhayu Mevati v. State of Madhya Pradesh (Supreme Court), Crl. Appeal No. 1667-1668/2021, order dt. 15.12.2021; *Rajesh & anr. V. State of Madhya Pradesh* (Supreme Court), SLP (Crl.) No. 3173/2018, order dt. 06.05.2022.

20 *Mofil Khan & anr. v. State of Jharkhand*, Review Petition (Criminal) No. 641 of 2015 (Supreme Court), judgement dt. 26.11.2021; *Manoj & Ors. v. State of Madhya Pradesh*, Criminal Appeal Nos. 248-250/2015 (Supreme Court), order dt. 29.09.2021; *Mohd. Firoz v. State of Madhya Pradesh*, Criminal Appeal No. 612/2019 (Supreme Court), order dt. 25.11.2021; *Rahul v. State of Delhi Ministry of Home Affairs & Anr.*, SLP (Crl.) No. 2264/2015 (Supreme Court), order dt. 25.11.2021; *Irfan @ Bhayu Mevati v. State of Madhya Pradesh*, SLP (Crl.) Nos. 9692-9693/2021 (Supreme Court), order dt. 15.11.2021.

21 It may be kept in mind that the sources used for the study were the judgements themselves and the case status page on the e-district courts' websites. Our assessment of whether any materials were elicited by the trial judge was restricted to whether the judge mentioned eliciting such materials in the judgement, either in the reasoning or in an appendix listing materials produced.

22 Myers, B., & Greene, E. (2004). The prejudicial nature of victim impact statements: Implications for capital sentencing policy. Psychology, Public Policy, and Law, 10(4), 492–515.

23 *Infra* pg. 21.

24 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, para 175.

25 *Mithu v. State of Punjab* (1983) 2 SCC 277, para 16; *MA Antony @ Antappan v. State of Kerala*, 2018 SCC OnLine SC 2800, para 19; *Sangeet v. State of Haryana* (2013) 2 SCC 452, para 77; *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498, para 56; *Md. Mannan v. State of Bihar* (2019) 16 SCC 584 para 74.

26 It may be kept in mind that the sources used for the study were the judgements themselves and the case status page on the e-district courts' websites. Therefore, our assessment of whether the defence made individualised submissions was limited to the defence submissions recorded in the judgement by the judge.

27 *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498; *Mofil Khan v. State of Jharkhand*, (2015) 1 SCC 67.

28 Surendranath, A. et al. (2021). Penological Justifications as Sentencing Factors in Death Penalty Sentencing. Journal of National Law University Delhi, 6(2), 107-125.

29 *Machhi Singh & ors. v. State of Punjab* (1983) 3 SCC 470; Dhananjoy Chatterjee v. State of West Bengal (1994) 2 SCC 220.

30 Surendranath, A. et al. (2021). Penological Justifications as Sentencing Factors in Death Penalty Sentencing. Journal of National Law University Delhi, 6(2), 107-125.

31 *Mahesh v. State of Madhya Pradesh* (1987) 3 SCC 80; *State of Madhya Pradesh v. Sheikh Shahid* (2009) 12 SCC 715.

32 *Shivu & anr. v. Registrar General* (2007) 4 SCC 713; *Accused X v. State of Maharashtra* (2008) 7 SCC 561; *State of Uttar Pradesh v. Satish* (2005) 3 SCC 114.

33 These included, largely, three distinct penological justifications for imposing the death sentence that centred around public opinion. These were: avoiding undermining public confidence in the law, communicating the social abhorrence for the crime, and vague references to social necessity or public order.

34 In 2 of these death sentences, retribution was couched as 'legal vengeance'.

35 In 40 of the 58 times reformation was cited as a penological goal (nearly 70%), it was cited only to hold that it was outweighed by another penological goal.

36 In 10 of the 58 times reformation was cited as a penological goal (17.2%), it was completely ignored in the sentencing calculus.

37 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, para 176.

38 *Rajendra Prasad v. State of Uttar Pradesh* (1979) 3 SCC 646, para 66.

39 *Md. Mannan v. State of Bihar* (2019) 16 SCC 584; *Mofil Khan & anr. v. State of Jharkhand*, Review Petition (Criminal) No. 641/2015 (Supreme Court); *Rajendra Prahlad Rao Wasnik v. State of Maharashtra* (2019) 12 SCC 460, para 43-45; *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498; *Bhagwani v. State of Madhya Pradesh*, Crl. Appeal Nos. 101-102/2022 (Supreme Court).

40 *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498.

41 *Mahesh v. State of Madhya Pradesh* (1987) 3 SCC 80; *State of Madhya Pradesh v. Sheikh Shahid* (2009) 12 SCC 715.

42 *Dnyaneshwar Suresh Borkar v. The State Of Maharashtra*, Crl. Appeal No. 1411/2018 (Supreme Court); *Rajendra Prahlad Rao Wasnik v. State of Maharashtra* (2019) 12 SCC 460; *Chhannu Lal Verma v. State of Chhattisgarh*, Crl. Appeal Nos. 1482-1483/2018 (Supreme Court).

43 National Law University, Delhi, Death Penalty Sentencing in the Indian Supreme Court (NLU Delhi Press 2022).

44 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684.

45 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, para 206.

46 *Rajesh Kumar v. Govt. of NCT of Delhi*, Crl. Appeal Nos. 1871-1872/2011.

47 *Mofil Khan & anr. v. State of Jharkhand*, Review Petition (Criminal) No. 641 of 2015 (Supreme Court), judgement dt. 26.11.2021; *Manoj & Ors. v. State of Madhya Pradesh*, Criminal Appeal Nos. 248-250/2015 (Supreme Court), order dt. 29.09.2021; *Mohd. Firoz v. State of Madhya Pradesh*, Criminal Appeal No. 612/2019 (Supreme Court), order dt. 25.11.2021; *Rahul v. State of Delhi Ministry of Home Affairs & Anr.*, SLP (Crl.) No. 2264/2015 (Supreme Court), order dt. 25.11.2021; *Irfan @ Bhayu Mevati v. State of Madhya Pradesh*, SLP (Crl.) Nos. 9692-9693/2021 (Supreme Court), order dt. 15.11.2021.

48 National Law University, Delhi, Death Penalty Sentencing in the Indian Supreme Court (NLU Delhi Press 2022).

49 Data about the manner in which the assessment was made and the basis on which it was made is presented *infra* pg. 52.

50 It may be kept in mind that the sources used for the study were the judgements themselves and the case status page on the e-district courts' websites. Our assessment of whether the State led any evidence towards reform was limited by whether the judge mentioned it in the judgement, either in the reasoning or in an appendix listing evidence/other materials produced.

51 *Infra* pg. 33.

52 *Infra* observations on pg. 35.

53 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, para 206; *Rajesh Kumar v. Govt. of NCT of Delhi*, Crl. Appeal Nos. 1871-1872/2011."

54 *Bachan Singh v. State of Punjab* (1980) 2 SCC

684, para 209.

55 *Shankar Kisanrao Khade v. State of Maharashtra* (2013) 5 SCC 546, para 52; *Gurvail Singh v. State of Punjab* (2013) 2 SCC 713, paras 15-19.

56 *Infra* pg. 30.

57 *Ravji v. State of Rajasthan* (1996) 2 SCC 175 (held *per incuriam* in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498); *Sevaka Perumal v. State of Tamilnadu* AIR 1991 SC 1463.

58 *Krishnappa v. State of Karnataka* (2000) 4 SCC 75; *Shimbhu v. State of Haryana* (2014) 13 SCC 318.

59 *Bhagwan Dass v State of NCT of Delhi* (2011) 6 SCC 396; *Mehboob Batcha v State* (2011) 7 SCC 45; *Machhi Singh v State of Punjab* (1983) 3 SCC 470.

60 *Machhi Singh v State of Punjab* (1983) 3 SCC 470.

61 *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498; National Law University, Delhi, Death Penalty Sentencing in the Indian Supreme Court (NLU Delhi Press 2022).

62 National Law University, Delhi, Death Penalty Sentencing in Trial Courts: Delhi, Madhya Pradesh & Maharashtra (2000-2015) (NLU Delhi Press 2020), p.18.

63 *Infra* pg. 30.

64 *Infra* pg. 21.

65 *Jagmohan Singh v. State of Uttar Pradesh* (1973) 1 SCC 20.

66 *Ediga Anamma v. State of Andhra Pradesh* (1974) 4 SCC 443.

67 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684.

68 *Gurvail Singh v. State of Punjab* (2013) 2 SCC 713.

69 *Also see Sangeet v. State of Haryana* (2013) 2 SCC 452, para 29.

70 *Ravji v. State of Rajasthan* (1996) 2 SCC 175 (held *per incuriam* in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498); *Sevaka Perumal v. State of Tamilnadu* AIR 1991 SC 1463; *Shimbhu v. State of Haryana* (2014) 13 SCC 318; *Krishnappa v. State of Karnataka* (2000) 4 SCC 75.

71 *Bhagwan Dass v State of NCT of Delhi* (2011) 6 SCC 396; *Mehboob Batcha v State* (2011) 7 SCC 45; *Machhi Singh v State of Punjab* (1983) 3 SCC 470.

72 *Bachan Singh v. State of Punjab* 1980) 2 SCC 684.

73 This includes 5 sentences where the death sentencee's co-accused's age was mentioned and considered towards imposing on him the lesser sentence of life imprisonment, but the same mitigation was not extended to or even mentioned for the death sentencee, though argued by his defence counsel.

74 This includes the 5 sentences where age was treated as an aggravating factor.

75 *Sangeet v. State of Haryana* (2013) 2 SCC 452; *Rajendra Prahlad Rao Wasnik v. State of Maharashtra* (2019) 12 SCC 460.

76 This category includes cases where a charge sheet had been filed, but subsequent proceedings were pending.

77 This category includes cases where it has not been clarified whether proceedings were initiated at all.

78 One of these involves general reference to prior offences committed when the prisoner was a juvenile without clarifying the stage of such proceedings.

79 *Rajendra Prahlad Rao Wasnik v. State of Maharashtra* (2019) 12 SCC 460.

80 *Ravji v. State of Rajasthan* (1996) 2 SCC 175 (held *per incuriam* in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498); *Sevaka Perumal v. State of Tamilnadu* AIR 1991 SC 1463; *Krishnappa v. State of Karnataka* (2000) 4 SCC 75; *Shimbhu v. State of Haryana* (2014) 13 SCC 318.

81 *Bhagwan Dass v State of NCT of Delhi* (2011) 6 SCC 396; *Mehboob Batcha v State* (2011) 7 SCC 45; *Machhi Singh v State of Punjab* (1983) 3 SCC 470.

82 *Machhi Singh & ors. v. State of Punjab* (1983) 3 SCC 470; *Dhananjoy Chatterjee v. State of West Bengal* (1994) 2 SCC 220.

83 *Mahesh v. State of Madhya Pradesh* (1987) 3 SCC 80; *State of Madhya Pradesh v. Sheikh Shahid* (2009) 12 SCC 715.

84 *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498).

85 *Sangeet v. State of Haryana* (2013) 2 SCC 452.

86 *Shankar Kisanrao Khade v. State of Maharashtra* (2013) 5 SCC 546.

87 This figure does not capture data on the frequency with which trial courts relied on High Court precedents which had been subsequently overruled by the Supreme Court at the time of reliance

88 National Law University, Delhi, Death Penalty Sentencing in Trial Courts: Delhi, Madhya Pradesh & Maharashtra (2000-2015) (NLU Delhi Press 2020).

89 The categories were formulated on 5 metrics: the manner in which the murder was committed, the motive for its commission, the anti-social or abhorrent nature of the crime, the magnitude of the crime, and the personality of its victim(s).

90 *Bachan Singh v. State of Punjab* 1980) 2 SCC 684.

91 *Rameshbhai Chandubhai Rathod v. State Of Gujarat* (2009) 5 SCC 740, para 110-111; *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498, paras 58-59.

92 *Gurvail Singh v. State of Punjab* (2013) 2 SCC 713; *Machhi Singh v State of Punjab* (1983) 3 SCC 470.

93 *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498, para 81.

94 *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498, para 109.

95 *Bachan Singh v. State of Punjab* 1980) 2 SCC 684.

96 *Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498.

97 *Machhi Singh v State of Punjab* (1983) 3 SCC 470.

98 *Union of India v. Sriharan and Ors.* (2014) 4 SCC 242.

99 The number for this category includes 2 sentences where life imprisonment was mentioned, but only in the context of sentencing the co-accused to life imprisonment.

100 In 2 of these, the 'inadequacy' was assessed specifically with respect to 'simple life' of 14 years.

101 Ss 5-6, The Criminal Law (Amendment) Act, 2018.

102 National Law University, Delhi, Death Penalty in India: Annual Statistics Report 2021 (NLU Delhi Press 2021).

103 Section 5, The Protection of Children From Sexual Offences (Amendment) Act, 2019.

104 National Law University, Delhi, Death Penalty in India: Annual Statistics Report 2021 (NLU Delhi Press 2022); National Law University, Delhi, Death Penalty in India: Annual Statistics Report 2020 (NLU Delhi Press 2021).

105 *Infra* pgs. 20, 26, 81, 90.

Appendix-I

List of *Per Incuriam* or Doubted Judgements

Cause Title	Citation
Ravji v. State of Rajasthan	AIR 1996 SC 787
Saibanna v. State of Karnataka	(2005) 4 SCC 165
Devender Pal Singh Bhullar v. State	(2013) 6 SCC 195
Bantu v. State of Uttar Pradesh	(2008) 11 SCC 113
Shivaji Shankar Alhat v. State of Maharashtra	AIR 2009 SC 56
Mohan Anna Chavan v. State of Maharashtra	(2008) 11 SCC 113
Surja Ram v. State of Rajasthan	1997 CriLJ 51
Dayanidhi Bisoi v. State of Orissa	2003 CriLJ 3697
State of Uttar Pradesh v. Sattan	(2009) 4 SCC 736
Shivu v. State of Karnataka	(2007) 4 SCC 713
Rajendra Pralhadrao Wasnik v. State of Maharashtra	(2012) 4 SCC 37
Md Mannan @ Abdul Mannan v. State of Bihar	(2011) 5 SCC 317
Dhananjoy Chatterjee v. State of West Bengal	(1994) 2 SCC 220
Kamta Tiwari v. State of Madhya Pradesh	(1996) 6 SCC 250
BA Umesh v. Registrar General High Court of Karnataka	(2011) 3 SCC 85
Sushil Murmu v. State of Jharkhand	(2004) 2 SCC 338
Gurmukh Singh v. State of Haryana	(2009) 15 SCC 635

Appendix-II

Supreme Court Judgements on Review Overruling Confirmation of Death Sentence in Criminal Appeal*

Cause Title	Citation	Date of Judgement on Review
Accused X v. State of Maharashtra	Review Petition (Criminal) No. 301 of 2008 (2019) 7 SCC 1	12/04/2019
Sudam @ Rahul Kaniram Jadhav v. State of Maharashtra	Review Petition No. 401 of 2012 (2019) 9 SCC 388	1/10/2019
Md. Mannan v. State of Bihar	Review Petition No. 308 of 2011 (2019) 16 SCC 584	14/02/2019
Jitendra @ Jeetu v. State of Madhya Pradesh & Ors	Review Petition (Criminal) No. 324 of 2015	01/11/2018
M.A. Antony @ Antappan v. State of Kerala	Review Petition (Criminal) No. 245 of 2010 (2020) 17 SCC 751	12/12/2018
Rajendra Pralhadrao Wasnik v. State of Maharashtra	Review Petition (Criminal) No. 306 of 2013 (2019) 12 SCC 460	12/12/2018
C. Muniappan and Ors. v. State of Tamil Nadu	Review Petition (Criminal) No. 201 of 2016 (2016) 12 SCC 325	11/3/2016
Babasaheb Maruti Kamble v. State of Maharashtra	Review Petition (Criminal) No. 388 of 2015 (2019) 13 SCC 640	01/11/2018

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