

***Crime and Punishment – Fiction (19<sup>th</sup> Century)*** (Russian: Преступление и наказание, *Prestupleniye i nakazaniye*) is a novel by the Russian author Fyodor Dostoyevsky. It was first published in the literary journal *The Russian Messenger* in twelve monthly installments during 1866.<sup>[1]</sup> It was later published in a single volume. It is the second of Dostoyevsky's full-length novels following his return from ten years of exile in Siberia. *Crime and Punishment* is the first great novel of his "mature" period of writing.<sup>[2]</sup>

*Crime and Punishment* focuses on the mental anguish and moral dilemmas of Rodion Raskolnikov, an impoverished ex-student in St. Petersburg who formulates and executes a plan to kill an unscrupulous pawnbroker for her cash. Raskolnikov argues that with the pawnbroker's money he can perform good deeds to counterbalance the crime, while ridding the world of a worthless vermin. He also commits this murder to test his own hypothesis that some people are naturally capable of such things, and even *have the right* to do them. Several times throughout the novel, Raskolnikov justifies his actions by connecting himself mentally with Napoleon Bonaparte, believing that murder is permissible in pursuit of a higher purpose.

Raskolnikov, a conflicted former student, lives in a tiny, rented room in Saint Petersburg. He refuses all help, even from his friend Razumikhin, and devises a plan to murder and to rob an unpleasant elderly pawn-broker and money-lender, Alyona Ivanovna. His motivation comes from the overwhelming sense that he is predetermined to kill the old woman by some power outside of himself. While still considering the plan, Raskolnikov makes the acquaintance of Semyon Zakharovich Marmeladov, a drunkard who recently squandered his family's little wealth. He also receives a letter from his sister and mother, speaking of their coming visit to Saint Petersburg, and his sister's sudden marriage plans which they plan to discuss upon their arrival.

After much deliberation, Raskolnikov sneaks into Alyona Ivanovna's apartment, where he murders her with an axe. He also kills her half-sister, Lizaveta, who happens to stumble upon the scene of the crime. Shaken by his actions, Raskolnikov manages to steal only a handful of items and a small purse, leaving much of the pawn-broker's wealth untouched. Raskolnikov then flees and, due to a series of coincidences, manages to leave unseen and undetected.

After the bungled murder, Raskolnikov falls into a feverish state and begins to worry obsessively over the murder. He hides the stolen items and purse under a rock, and tries desperately to clean his clothing of any blood or evidence. He falls into a fever later that day, though not before calling briefly on his old friend Razumikhin. As the fever comes and goes in the following days, Raskolnikov behaves as though he wishes to betray himself. He shows strange reactions to whoever mentions the murder of the pawn-broker, which is now known about and talked of in the city. In his delirium, Raskolnikov wanders Saint Petersburg, drawing more and more attention to himself and his relation to the crime. In one of his walks through the city, he sees Marmeladov, who has been struck mortally by a carriage in the streets. Rushing to help him, Raskolnikov gives the remainder of his money to the man's family, which includes his teenage daughter, Sonya, who has been forced to become a prostitute to support her family.

In the meantime, Raskolnikov's mother, Pulkheria Alexandrovna, and his sister, Avdotya Romanovna (or Dounia) have arrived in the city. Avdotya had been working as a governess for

the Svidrigaïlov family until this point, but was forced out of the position by the head of the family, Arkady Ivanovich Svidrigaïlov. Svidrigaïlov, a married man, was attracted to Avdotya's physical beauty and her feminine qualities, and offered her riches and elopement. Avdotya, having none of this, fled the family and lost her source of income, only to meet Pyotr Petrovich Luzhin, a man of modest income and rank. Luzhin proposes to marry Avdotya, thereby securing her and her mother's financial safety, provided she accept him quickly and without question. It is for these very reasons that the two of them come to Saint Petersburg, both to meet Luzhin there and to obtain Raskolnikov's approval. Luzhin, however, calls on Raskolnikov while he is in a delirious state and presents himself as a foolish, self-righteous and presuming man. Raskolnikov dismisses him immediately as a potential husband for his sister, and realizes that she only accepted him to help her family.

As the novel progresses, Raskolnikov is introduced to the detective Porfiry, who begins to suspect him for the murder purely on psychological grounds. At the same time, a chaste relationship develops between Raskolnikov and Sonya. Sonya, though a prostitute, is full of Christian virtue and is only driven into the profession by her family's poverty. Meanwhile, Razumikhin and Raskolnikov manage to keep Avdotya from continuing her relationship with Luzhin, whose true character is exposed to be conniving and base. At this point, Svidrigaïlov appears on the scene, having come from the province to Petersburg, almost solely to seek out Avdotya. He reveals that his wife is dead, and that he is willing to pay Avdotya a vast sum of money in exchange for nothing. She, upon hearing the news, refuses flat out, suspecting him of treachery.

As Raskolnikov and Porfiry continue to meet, Raskolnikov's motives for the crime become exposed. Porfiry becomes increasingly certain of the man's guilt, but has no concrete evidence or witnesses with which to back up this suspicion. Furthermore, another man admits to committing the crime under questioning and arrest. However, Raskolnikov's nerves continue to wear thin, and he is constantly struggling with the idea of confessing, though he knows that he can never be truly convicted. He turns to Sonya for support and confesses his crime to her. By coincidence, Svidrigaïlov has taken up residence in a room next to Sonya's and overhears the entire confession. When the two men meet face to face, Svidrigaïlov acknowledges this fact, and suggests that he may use it against him, should he need to. Svidrigaïlov also speaks of his own past, and Raskolnikov grows to suspect that the rumors about his having committed several murders are true. In a later conversation with Dounia, Svidrigaïlov denies that he had a hand in the death of his wife.

Raskolnikov is at this point completely torn; he is urged by Sonya to confess, and Svidrigaïlov's testimony could potentially convict him. Furthermore, Porfiry confronts Raskolnikov with his suspicions and assures him confession would substantially lighten his sentence. Meantime, Svidrigaïlov attempts to seduce Avdotya, but when he realizes that she will never love him, he lets her go. He then spends a night in confusion and in the morning shoots himself. This same morning, Raskolnikov goes again to Sonya, who again urges him to confess and to clear his conscience. He makes his way to the police station, where he is met by the news of Svidrigaïlov's suicide. He hesitates a moment, thinking again that he might get away with a perfect crime, but is persuaded by Sonya to confess.

The epilogue tells of how Raskolnikov is sentenced to eight years of penal servitude in Siberia, where Sonya follows him. Avdotya and Razumikhin marry and are left in a happy position by the end of the novel, while Pulkheria, Raskolnikov's mother, falls ill and dies, unable to cope with her son's situation. Raskolnikov himself struggles in Siberia. It is only after some time in prison that his redemption and moral regeneration begin under Sonya's loving influence.<sup>[20]</sup>

[http://en.wikipedia.org/wiki/Crime\\_and\\_Punishment](http://en.wikipedia.org/wiki/Crime_and_Punishment)

## ***Indian Judicial System***

The **Indian Judiciary** is partly a continuation of the British legal system established by the English in the mid-19th century based on a typical hybrid legal system known as the *Common Law System*, in which customs, precedents and legislative are all components of the law. The Constitution of India is the supreme legal document of the country. There are various levels of judiciary in India – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. Courts hear criminal and civil cases, including disputes between individuals and the government. The Indian judiciary is independent of the executive and legislative branches of government according to the Constitution.

## **Issues**

According to the World Bank, "although India's courts are **notoriously inefficient**, they at least comprise a functioning independent judiciary"<sup>[6]</sup> A functioning judiciary is the guarantor of fairness and a powerful weapon against corruption. But people's experiences in fall far short of this ideal. Corruption in the judiciary goes beyond the bribing of judges. Court personnel are paid off to slow down or speed up a trial, or to make a complaint go away. Judges are also subject to pressure from above, with legislators or the executive using their power to influence the judiciary, starting with skewed appointment processes. Citizens are often unaware of their rights, or resigned, after so many negative experiences, to their fate before a corrupt court. Court efficiency is also crucial, as a serious backlog of cases creates opportunities for demanding unscheduled payments to fast-track a case.<sup>[7]</sup>

## **Judicial backlog**

Indian courts have large backlogs. For instance, the Delhi High Court has a backlog of 466 years according to its chief justice.<sup>[8]</sup> This is despite the average processing time of 4 minutes and 55 seconds in the court.<sup>[8]</sup> In Uttam Nakate case, it took two decades to solve a simple employment dispute. However it need to be mentioned that the concept of backlogs doesn't describe the actual reason for so many cases lying in the courts. Rather the term "backlog" has been misused and the term "pendency" is the right word for describing the large number of cases pending in the courts today. As could be understood, the largest number of cases that are actually pending in the Indian Courts are that of minor Motor Vehicle Cases, petty crimes such as stealing, abusing, insult, slap,

etc. It is an established fact which the Govt. of India accepts that there is 40% shortage of judicial staff. Opposition and ruling party's corrupt politicians profit from the delays in the system.

On 12 January 2012, a Supreme Court bench said that people's faith in judiciary was decreasing at an alarming rate, posing a grave threat to constitutional and democratic governance of the country. It acknowledged some of the serious problems such as –

1. Large number of vacancies in trial courts,
2. Unwillingness of lawyers to become judges,
3. Failure of the apex judiciary in filling vacant HC judges posts.

It wanted to seek answers from the government on amicus curiae's suggestion that access to justice must be made a constitutional right and consequently the executive must provide necessary infrastructure for ensuring every citizen enjoyed this right. It also wanted the Government of India to detail the work being done by the National Mission for Justice Delivery and Legal Reforms.<sup>[9][10][11]</sup>

In October 2012 the BBC reported on the case of Mohammed Idrees, a Pakistani who was held under Indian police control for approximately 13 years for overstaying his 15-day visa by 2–3 days after seeing his ill parents in 1999. Much of the 13 years was spent in prison waiting for a hearing, and more time was spent homeless or living with generous families. Both states denied him citizenship, leaving him stateless. The BBC linked these problems to the political atmosphere caused by the Kashmir conflict. There were many similar cases where espionage had been charged against non-spies for trivial crimes like overstaying visas or minor trespass, and hundreds of ordinary citizens held in prison by both India and Pakistan. The Indian People's Union for Civil Liberties decried his mistreatment. The Indian Human Rights Law Network told the BBC that the cause was "officials in the home department", including the slow court system, and called the case a "miscarriage of justice, a shocking case".<sup>[12]</sup>

## Judicial corruption

Corruption is rampant in India's courts. According to Transparency International, judicial corruption in India is attributable to factors such as "delays in the disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a preponderance of new laws".<sup>[13]</sup> Most disturbing is the fact that corruption has reached the highest judicial forum i.e. Supreme Court of India. Some notable cases include:

1. In December 2009, noted social activist, campaigner for judicial accountability and a Supreme Court lawyer Prashant Bhushan in response to the notice of contempt issued by the Supreme Court (for his interview to a news magazine in which he had said, "out of the last 16 to 17 Chief Justices, half have been corrupt"), filed an affidavit standing by his earlier comments saying: "It is My Honest And Bonafide Perception".<sup>[14]</sup> Later in September 2010, he submitted a supplementary affidavit in which he submitted evidence to back his allegations.<sup>[15]</sup> In November 2010, former Law Minister, Shanti Bhushan echoed Prashant Bhushan's claim saying: "It is my firm belief that there is a lot of corruption in judiciary. I am saying the same thing which

Prashant Bhushan had said. The question of apology does not arise. I will rather prefer to go to jail. The judiciary cannot be cleansed unless the matter is brought into the public domain".<sup>[16]</sup>

2. In June 2011, a very widely respected former Chief Justice of India J. S. Verma echoed these views saying that "certain individuals with doubtful integrity were elevated within the higher judiciary" He cited the case of Justice M. M. Punchhi, whose impeachment had been sought by the campaign for judicial accountability. Justice Verma said he was willing to permit the allegations to be probed but the political executive refused to allow this. Justice Verma further explained, "Because the allegations, if proved, were serious and therefore they required to be investigated, so that one could know whether they were true or not." He acknowledged that Justice Punchhi was later elevated to CJI despite facing "serious allegations". Justice Verma also talked about another former CJI K G Balakrishnan's continuance as National Human Rights Commission chairman. Justice Verma said, "He should have demitted long back and if he doesn't do it voluntarily, the government should persuade him to do that, otherwise, proceed to do whatever can be done to see that he demits office."<sup>[17]</sup>
3. In November 2011, a former Supreme Court Justice Ruma Pal slammed the higher judiciary for what she called the seven sins. She listed the sins as:
  1. Turning a blind eye to the injudicious conduct of a colleague
  2. Hypocrisy – the complete distortion of the norm of judicial independence
  3. Secrecy – the fact that no aspect of judicial conduct including the appointment of judges to the High and Supreme Court is transparent
  4. Plagiarism and prolixity – meaning that very often SC judges lift whole passages from earlier decisions by their predecessors and do not acknowledge this – and use long-winded, verbose language
  5. Self Arrogance – wherein the higher judiciary has claimed crass superiority and independence to mask their own indiscipline and transgression of norms and procedures
  6. Professional arrogance – whereby judges do not do their homework and arrive at decisions of grave importance ignoring precedent or judicial principle
  7. Nepotism – wherein favors are sought and dispensed by some judges for gratification of varying manner.<sup>[18]</sup>

## **Reforms:**

### **E-Courts Mission Mode Project**

The E-courts project was established in the year 2005.<sup>[19]</sup> According to the project, all the courts including taluk courts will get computerised. As per the project in 2008, all the District courts were initialised under the project. In 2010, all the District court were computerised. The entry of back log case has started. The IT department had one system officer and two system assistants in each court. They initiated the services in the Supreme Court in June 2011. The case lists and the judgements of most district courts are available in <http://lobis.nic.in>. in <http://judis.nic.in> is used to connect all High Courts and Supreme Court judgements and cause list. These websites are updated daily by a technical team. Now the establishment work is going on taluk courts.

The project also includes producing witnesses through video conferencing. Filing cases, proceedings, and all other details will be in computers. Each district court contains 1 system

officer and 2 system assistants. This technical manpower is involved in training the staff, updating web sites.

### ***Judicial Service Centre***

This is a part of e-court project. The judicial service centres are available in all court campus. The Public as well as the advocates can walk in directly and ask for the case status, stage and next hearing dates. This service is provided for free. So that the public can know their case status for free.

[http://en.wikipedia.org/wiki/Judiciary\\_of\\_India](http://en.wikipedia.org/wiki/Judiciary_of_India)

### ***Crime and Punishment – Real Life (20<sup>th</sup> Century)***

**Sanjay Dutt** (born 29 July 1959) is an Indian film actor and producer known for his work in Hindi cinema. He was briefly associated with politics and is also infamous for felonies committed during 1993 Mumbai blasts. Dutt, son of film actors Sunil Dutt and Nargis Dutt, made his acting debut in 1981. Since then he has acted in some of the most popular Hindi language films. Although Dutt has enjoyed major success in movie genres ranging from romance to comedy, it has been the roles of gangsters, thugs and police officers in films that have won Dutt unprecedented adulation, with fans and Indian film critics alike referring to him as the "Deadly Dutt," for his larger-than-life portrayals of such characters.

Dutt was arrested under the Terrorist and Disruptive Activities Act (TADA) in April 1993, due to terrorist interactions, and illegal possession of a 9mm pistol and an AK-56 assault rifle. After spending 18 months in jail, he was granted bail in April 1995. In July 2007 he was sentenced to six years rigorous imprisonment. Supreme Court of India, in a judgement on 21 March 2013, convicted Dutt in the illegal possession of arms relating to the 1993 Mumbai blasts case and sentenced him to 5 years imprisonment. He was asked to surrender within 4 weeks which has been extended by another 4 weeks on appeal. Earlier he had been sentenced to 5 years imprisonment by a TADA court.<sup>[1]</sup>

[http://en.wikipedia.org/wiki/Sanjay\\_Dutt](http://en.wikipedia.org/wiki/Sanjay_Dutt)

**Salman Khan** (pronunciation : [səlˈmaːn ˈxɑːn]; born **Abdul Rashid Salim Salman Khan** on 27 December 1965)<sup>[3]</sup> is an Indian film actor, producer, television presenter, and philanthropist. The son of actor and screenwriter Salim Khan, Khan began his acting career with *Biwi Ho To Aisi* but it was his second film *Maine Pyar Kiya* in which he acted in a lead role that garnered him the Filmfare Award for Best Male Debut. Khan has starred in several commercially successful films, such as *Saajan* (1991), *Hum Aapke Hain Koun..!* (1994), *Karan Arjun* (1995), *Judwaa* (1997), *Pyar Kiya To Darna Kya* (1998), *Biwi No.1* (1999), and *Hum Saath Saath Hain* (1999), having appeared in the highest grossing film nine separate years during his career, a record that remains unbroken.<sup>[4]</sup>

In 1999, Khan won the Filmfare Award for Best Supporting Actor for his extended guest appearance in *Kuch Kuch Hota Hai* (1998). In 2011, he won the Screen Award for Best Actor for



his performance in *Dabangg* and in 2013, he won the Best Actor Popular Choice for his performances in *Ek Tha Tiger* and *Dabangg 2*. Eight of the films he has acted in, have accumulated gross earnings of over ₹100 crore (US\$15 million) worldwide.<sup>[5][6]</sup> He played leading roles in five consecutive blockbusters namely *Dabangg*, *Ready*, *Bodyguard*, *Ek Tha Tiger*, and *Dabangg 2*. He has starred in more than 80 Hindi films and thus far<sup>[7]</sup> has established himself as a leading actor of Hindi cinema.<sup>[1]</sup>

Khan has been involved in several charities during his career.<sup>[79]</sup> He has started an NGO called *Being Human* which will sell T-shirts and other products online and in stores. A portion of the sales will go to a worthy cause supporting the underprivileged.<sup>[80]</sup> Being Human Foundation is a registered charitable trust set up by Salman Khan for helping the cause of the underprivileged. In its early days, Salman Khan set up and funded the Foundation using his own money. The Foundation has two focus areas: Education and Healthcare. To increase the reach and corpus of the Foundation, Salman Khan has undertaken initiatives such as Being Human Art; Being Human merchandise; and Being Human Gitanjali Gold Coins.<sup>[81]</sup>

In 2011, he launched his own production company called SKBH Productions (Salman Khan Being Human Productions). Money which will be generated from film productions will be donated to *Being Human*. First film made under the banner was kids entertainer *Chillar Party*, which went on to win 3 National Awards, for Best Children's film, best original screenplay and Child Artist's Award.<sup>[82][83]</sup>

In January 2012, Khan has offered to pay ₹40 lakh (US\$61,000) for releasing around 400 prisoners from around 63 prisons in the state of Uttar Pradesh via his NGO. The prisoners had completed their term but due to economical reasons, they were unable to pay a legal fine for their charges.<sup>[1]</sup>

## Personal life

He lives in Galaxy Apartments, Bandra, Mumbai.<sup>[1]</sup> He also has a 150 acre plot in Panvel, which has 3 bungalows, swimming pool and gym.<sup>[1]</sup> Khan is a dedicated bodybuilder. He has a 42-inch chest, 17-inch biceps and a 30-inch waist.<sup>[1]</sup>

Khan has never married. In 1999, he began dating Bollywood actress Aishwarya Rai; their relationship was often reported in the media until the couple separated in 2001. Khan started dating actress Katrina Kaif but after years of speculations, Kaif admitted in an interview in 2011 that she was in a serious relationship with Salman Khan for several years, which ended in 2010.<sup>[85]</sup>

In August 2011 he admitted he suffers from trigeminal neuralgia, a facial nerve disorder commonly known as the suicide disease. In an interview he said that he has been quietly suffering it for the past seven years, but now the pain's become unbearable. It has even affected his voice, making it much harsher.<sup>[86]</sup>

## Controversies

Khan has been the subject of several controversies, including certain legal troubles.

### **Hit-and-run case**

On 28 September 2002, Khan was arrested for rash and negligent driving. His car had run into a bakery in Mumbai; one person who was sleeping on the pavement outside the bakery died and three others were injured in the mishap.<sup>[87]</sup> Charges of culpable homicide were laid against him, but later dropped.<sup>[88]</sup> On 24 July 2013, he was formally charged with culpable homicide in the case, to which he pleaded not guilty. The trial is scheduled to begin on 19 August.<sup>[89]</sup>

### **Relationship with Aishwarya Rai**

His relationship with actress Aishwarya Rai was a well publicised topic in the Indian media.<sup>[90]</sup> After their break-up in March 2002, Rai accused him of harassing her. She claimed that Khan had not been able to come to terms with their break-up and was hounding her; her parents lodged a complaint against him.<sup>[91]</sup> In 2005, news outlets released what was said to be an illicit copy of a mobile phone call recorded in 2001 by the Mumbai police. It appeared to be a call in which he threatened Rai, in an effort to force her to appear at social events held by Mumbai crime figures. The call featured boasts of connections to organised crime and derogatory comments about other actors. However, the alleged tape was tested in the government's Forensic lab in Chandigarh, which concluded that it was fake.<sup>[92][93]</sup>

### **Black Buck hunting case**

On 17 February 2006, Khan was sentenced to one year in prison for hunting the Chinkara, an endangered species. The sentence was stayed by a higher court during appeal.<sup>[94]</sup> On 10 April 2006, he was handed a five-year jail term and remanded to Jodhpur jail until 13 April when he was granted bail.<sup>[95]</sup> On 24 July 2012, Rajasthan High Court finalised charges against Salman Khan and his other colleagues in the endangered black buck killing case, paving way for start of the trial.<sup>[96]</sup>

### **Remarks about 26/11 attacks**

On September 2010, Khan was reported to have claimed during an interview to a Pakistani channel that the 26/11 attacks got a lot of attention because the "elite" were targeted.<sup>[97][98]</sup> During the interview the actor had said – *"It was the elite that was targeted this time. Five star hotels and stuff. So they panicked. Then they got up and spoke about it. My question is why not before. Attacks have happened in trains and small towns too, but no one talked about it so much."*<sup>[97][98]</sup> Khan also said that Pakistan was not to be blamed for it, and that the Indian security forces had failed.<sup>[99]</sup> Khan's comments had drawn strong reactions from Deputy Chief Minister of Maharashtra Chagan Bhujbal, Shiv Sena, BJP and other political parties.<sup>[100]</sup> The comments were also condemned by Ujwal Nikam, Special Prosecutor in the 26/11 trial.<sup>[100]</sup> Khan later apologised for his comments.<sup>[9]</sup>

[http://en.wikipedia.org/wiki/Salman\\_Khan](http://en.wikipedia.org/wiki/Salman_Khan)



## **The Hindu: Opinion - Crimes death can't wish away; September 14, 2013**

In 1988, Paramount Pictures released a powerful, moving courtroom drama based on the trial, held five years earlier, for the brutal gang rape of an American woman, Cheryl Araujo. "The first scream was for help. The second is for justice," went the movie's tagline. That call for justice was never fully answered in Araujo's case, since most of the six men initially charged with raping her were either acquitted or served just a few years in prison. But the sheer savagery of the act jolted the United States at a time the country was getting wealthier, and its elites showed little interest in attending to the proliferation of sexual violence, especially among the underclass and the marginalised in society. For people in India, the 2012 Delhi gang rape case has served this purpose, while sparing us the travesty of justice that was the Araujo trial. There is no question we have come a full circle since the gruesome act of rape and murder in December last year shook us to the bone: justice has been done, with all the accused, including the juvenile offender, having been found guilty before a court of law after expeditious trial. In the interim, the laws dealing with sexual crimes have been strengthened, and we have had, and continue to have, a robust national conversation on ways to tackle India's alarming rates of rape and sexual assault. But amid these progressive efforts, the Sessions Court's decision to hang all four adult accused to death marks a step back — since it will have the effect of substituting the need for greater social, legal and even political efforts to tackle the epidemic of crimes against women with the false comfort of retribution.

The feeble link between the death penalty and its purported aim of deterrence should serve caution to the many among us who have welcomed the Sessions Court sentence with comfort, even alacrity. Handing down death to the Delhi gang rape accused is not likely to reduce the incidence of sexual crimes in India. In meting out the hangman's justice — as opposed to putting the four away for life — the Sessions Court has regrettably missed an opportunity to turn the discourse away from retributive punishment to constructive dialogue on policing and legal reforms. How are we going to convince ourselves that this was a criminal act among the "rarest of the rare" when several instances of rape and murder of varying brutality have been reported since December 2012? To hang rapists and suggest they are "exceptional" anti-social elements goes against every effort to spread the message that rape is only too commonplace in India. Tough as it may be to find a solution to this grave problem, death to sexual offenders is not the answer. Appellate courts must now swiftly intervene, reverse the trial court's judgment and sentence all four convicts in the case to an actual lifetime in prison.

<http://www.thehindu.com/opinion/editorial/crimes-death-cant-wish-away/article5125321.ece>

## **The Hindu: September 14, 2013 – Poverty can be ground for commuting death, says SC, J. Venkatesan**

**New Delhi:** ‘Life imprisonment for murder, and death is an exception’. Reiterating this rule, the Supreme Court on Tuesday commuted the death sentence awarded to a tailor for multiple murders to life sentence on the ground that he was suffering from extreme poverty.

A Bench of Justices S.J. Mukhopadaya and Kurian Joseph said: “Poverty, socio-economic, psychic compulsions, undeserved adversities in life are some of the mitigating factors to be considered.” Writing the judgment, Justice Joseph said: “Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible.”

Sunil Damodar Gaikwad was awarded the death sentence for causing the murder of his wife and two sons. Though he inflicted knife injuries on his daughter and tried to kill her, she survived. A sessions court in Maharashtra convicted him under Sections 302 (murder) and 307 (attempt to murder) of the Indian Penal Code. The Bombay High Court confirmed the death sentence.

The Supreme Court said: “It has come in evidence that the appellant suffered from economic and psychic compulsions. The possibility of reforming and rehabilitating the accused cannot be ruled out. The accused had no prior criminal record. On the facts available to the court, it can be safely said the accused is not likely to be menace or threat or danger to society... The appellant had in fact intended to wipe out the whole family including himself on account of abject poverty. This aspect of the matter has not been properly appreciated by both the sessions court and the High Court, which held that the appellant had the intention to only wipe out others and had not even attempted, and he was not prepared either, for suicide. We are afraid the courts have not appreciated the evidence properly. Had his daughter not interrupted him asking... why he was killing her, his intended conduct would have followed, as is evident from his response that all of them needed to go from the world.”

The Bench said the case did not fall under the category of rarest of rare cases so as to warrant the punishment of death. “The ‘individually inconclusive and cumulatively marginal facts and circumstances’ tend towards awarding a lesser sentence of life imprisonment. Imprisonment for life of a convict is till the end of his biological life. However, in case the sentence of imprisonment for life is remitted or commuted to any specified period (in any case, not less than 14 years in view of Section 433A of the Cr.PC.), the sentence of seven years imprisonment under Section 307 of IPC shall commence thereafter.”

## **Justice Delayed is Justice Denied**

**Justice delayed is justice denied**" is a legal maxim meaning that if legal redress is available for a party that has suffered some injury, but is not forthcoming in a timely fashion, it is effectively the same as having no redress at all. This principle is the basis for the right to a speedy trial and similar rights which are meant to expedite the legal system, because it is unfair for the injured party to have to sustain the injury with little hope for resolution. The phrase has become a rallying cry for legal reformers who view courts or governments as acting too slowly in resolving legal issues either because the existing system is too complex or overburdened, or because the issue or party in question lacks political favour.

As Chief Justice of the United States Warren E. Burger noted in an address to the American Bar Association in 1970: "A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets."<sup>[3]</sup>

[http://en.wikipedia.org/wiki/Justice\\_delayed\\_is\\_justice\\_denied](http://en.wikipedia.org/wiki/Justice_delayed_is_justice_denied)

## **Right to be Considered Innocent until Proven Guilty**

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

**PLAIN LANGUAGE VERSION:** You should be considered innocent until it can be proved that you are guilty. If you are accused of a crime, you should always have the right to defend yourself. Nobody has the right to condemn you and punish you for something you have not done.

**NOTES:** The *presumption of innocence* and the *right to a defence* are the two important principles articulated in the first part of this article. The *right to a public hearing* was presented in the previous article. The principle covered in the second part of the article is the *non-retroactivity of law*.

**DEFINITIONS:** *non-retroactivity of law* means that a person should not be punished for acts which were legal when they were committed, though later changes in the law may consider those same acts illegal.

<http://www.un.org/cyberschoolbus/humanrights/declaration/11.asp>

### **The Hindu: July 11, 2013 - Persons in lawful custody cannot contest polls: Supreme Court; J. Venkatesan**

The Supreme Court has held that persons in lawful custody — whether convicted in a criminal case or otherwise — cannot contest elections. The ruling, however, does not apply to those on bail. A Bench of Justices A.K. Patnaik and S.J. Mukhopadhaya dismissed appeals filed by the Chief Election Commissioner and others against a Patna High Court judgment that in 2004 had held that when a person in custody is disqualified from voting he or she must be disqualified from contesting in elections too.

In its order, the Bench said: “We have heard counsel for the [political] parties and we do not find any infirmity in the findings of the High Court in the impugned common order that a person who has no right to vote by virtue of the provisions of Section 62 (5) of the Representation of the People Act 1951 is not an elector and is therefore not qualified to contest the election to the House of the People or the Legislative Assembly of a State.”

Jan Chaukidar (Peoples Watch) and others filed petitions in the Patna High Court contending that a person, who was confined in prison, whether under a sentence of imprisonment, transportation or otherwise, or was in the lawful custody of the police was not entitled to vote by virtue of Section 62 (5) of the RP Act and accordingly was not an “elector” and was, therefore, not qualified to contest elections to the House of People or the Legislative Assembly of a State.

The High Court accepted this contention and held: “A right to vote is a statutory right, the Law gives it, the Law takes it away. Persons convicted of crime are kept away from elections to the Legislature, whether to State Legislature or Parliament and all other public elections. The Court has no hesitation in interpreting the Constitution and the Laws framed under it, read together, that persons in the lawful custody of the Police also will not be voters, in which case, they will neither be electors. The Law temporarily takes away the power of such persons to go anywhere near the election scene. To vote is a statutory right. It is [a] privilege to vote, which privilege may be taken away. In that case, the elector would not be qualified, even if his name is on the electoral rolls.” Aggrieved by the findings of the High Court, the appellants filed the appeals and the Bench dismissed them and upheld the findings rendered by the High Court.

<http://www.thehindu.com/news/national/persons-in-lawful-custody-cannot-contest-polls-court/article4905516.ece>

## **Govt to challenge SC order disqualifying convicted MPs, MLAs**

Pallavi Ghosh, CNN-IBN | *Updated Aug 20, 2013 at 04:02pm IST*

**New Delhi:** The government on Tuesday decided to challenge the Supreme Court judgement on disqualifying convicted MPs and MLAs from contesting elections. The Cabinet will discuss amendments in the Representation of People's Act on Thursday to overturn the ruling so that convicted MPs can participate in House proceedings but cannot vote or get allowances.

At an all-party, which took place a few days before the Monsoon Session of Parliament, leaders had expressed their dissent over the Supreme Court's ruling. Concerns were expressed by parties that the supremacy of Parliament must be maintained and if required amendments must be brought in the constitution, Parliamentary Affairs Kamal Nath had said after the meeting. There is already a consensus to amend the Act.

In a landmark ruling that can cleanse Indian politics of criminal elements, the Supreme Court had struck down the legal provision that protects a lawmaker from disqualification even after conviction in a criminal case. The Supreme Court had ruled that MPs or MLAs shall stand disqualified from holding the membership of the House from the date of conviction in a trial court.

The court held Section 8(4) of the Representation of the Peoples Act as ultra vires. The section allows a convicted lawmaker to remain in office till the pendency of appeal. This ruling could see several lawmakers in both Parliament and state assemblies lose their seats.

As many as 31 per cent Members of Parliament (MPs), legislators (MLAs/MLCs) have criminal cases pending against them in police record, according to study done by the National Election Watch and Association of Democratic Reforms (ADR).

According to a report out of the 4,835 MPs and MLAs in the country, 1,448 are facing criminal cases.

Out of 543 Lok Sabha MPs, 162 have criminal cases pending against them with 75 facing serious criminal charges. Out of these 1448 members who have declared criminal cases, 641 have declared serious criminal cases like rape, murder, attempt to murder, kidnapping, robbery, extortion etc. Six MPs/MLAs/MLCs have declared rape charges in their affidavits.

<http://ibnlive.in.com/news/govt-to-challenge-sc-order-disqualifying-convicted-mps-mlas/415774-37-64.html>