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# **CRIMINALIZATION OF POLITICS IN INDIA**

AUTHORED BY - JEEVARTH S GOPI

## **ABSTRACT**

India's the world's largest Democracy and yet, the nation's internal political system is plagued by some of the most basic issues. Democracy must serve as the foundation of society. It is necessary to make an effort to make society democratic. The value system of Indian folks should be Democracy. The burden of ensuring Democracy's existence cannot be placed solely on state institutions. Citizens have an equal role to play in Democracy's healthy functioning. As a result, there is little doubt that election reforms are essential for achieving a viable democratic India. The distillation of general will is the goal of electoral reforms. Criminals must not be allowed to participate in the hallowed democratic process of getting General Will.

Elections are stepping stones toward Democracy. In the electoral system, honesty should not be a deterrent but rather a reward. The immediate necessity for legalizing politics is to eliminate the patronage politicians and political parties supply to criminals. The administration must have a strong political resolve to decriminalize the entire political system by adopting tough measures and enacting the necessary legislation.

The criminal-political relationship must be broken as soon as possible. The citizens of the country won't just lose faith in its politics and their political representatives, but in Democracy itself if immediate action isn't taken. Our republic will be irreparably damaged as a result of this. Electoral reform decisions should be adhered to in the letter. There is a dire need for stringent legislation to regulate party funds, distribution, and expenditure. Political parties should maintain, audit, and publish regular accounts that are open to public examination. There is also a need to establish special courts to hear cases of political criminality.

**Keywords:** *politics, government, criminalisation, Indian Democracy, elections, politicians.*

## INTRODUCTION

India, as a nation, is engaged in a vigorous fight against corruption but with little success. Despite legislation, politicians have evaded corruption charges owing to their parliamentary privileges and assistance from the police. As per the Constitution, to be eligible to serve in Parliament, a person must be an Indian citizen and not be disqualified by any act of Parliament. However, it is amusing that the politicians have been permitted to contest in elections despite having a criminal record. As instructed by the Supreme Court, the Election Commission issued an order under Article 324 in June 2002 requiring each candidate to file an affidavit mentioning in detail their criminal histories, assets, spouses, dependents etc.

The link between politics and crime, which has been ingrained in the political process, makes India's fight against corruption even more difficult. Political parties' unwillingness to reject candidates with criminal histories demonstrates the structural breakdown in upholding moral leadership. Political parties still field candidates with criminal backgrounds in spite of the Election Commission's and the judiciary's repeated interventions; they frequently use "winnability" as an excuse rather than honesty. In addition to undermining public confidence in democratic institutions, this feeds the cycle in which lawbreakers set the rules, making substantive reform difficult to achieve.

On the other hand, political parties cried wolf, claiming that the EC and the Supreme Court had overstepped their authority. A Legislation was passed in 2003 prohibiting felons from being elected to legislative bodies. Still, criminals are allowed to wander the halls of parliament and state legislatures, and the obfuscation of their criminal histories adds to the irony by creating lawmakers out of law-breakers.

## WHAT IS THE CRIMINALISATION OF POLITICS?

"Criminalisation of politics" refers to the participation of criminals in politics, including the ability of criminals to contest in elections and be elected to the Parliament and state legislatures. It occurs primarily as a result of a link between politicians and criminals.

The origins of political criminalisation may be traced back to flaws in socio-political systems. Religion, caste, lack of political accountability, and the influence of various interest groups and money all play a role in influencing the growth of political criminalisation, and this is due

primarily to people's inability to appreciate the power of the vote, which has occurred due to a variety of influencing factors.

## CAUSES OF CRIMINALISATION OF POLITICS

Corruption thrives when there is a disregard for the law, compounded by the criminalisation of politics. Corruption has infiltrated every nook and cranny of India's political structure, which is now blatantly prevalent. Politics has become even more criminalized as a result of this corruption. Indian society is deeply divided into several issues, and politics is often founded on those divides. Taking advantage of such schisms, criminals enter the electoral fray by posing themselves as the defenders of their castes, religions, communities, and so on.

People, in general, do not bother to investigate the criminal backgrounds of candidates, preferring instead to focus on caste, race, religion, community, and linguistic ancestry. Specific ancient political systems, such as hereditary politics and lifelong politics, exacerbate the problem. In Indian politics, there is no such thing as a retirement policy, and some party leaders never retire<sup>1</sup>

Criminals in politics are further emboldened by the lax enforcement of the law and the sluggish judicial system, which enables them to influence the system for their own benefit. Numerous politicians who are facing serious charges nevertheless occupy powerful positions, which causes legal proceedings to be delayed by legal technicalities and bureaucratic snags. Furthermore, the lack of a strong system to stop convicted people from entering politics again emphasizes how ineffective the current election reforms are. The idea of a democracy free from corruption will remain a pipe dream until structural adjustments are made to eliminate the connection between politics and crime.

## RIGHT TO KNOW ABOUT A CANDIDATE

When the public has access to information about a candidate, voters may make an educated decision when voting. This increases election openness and fairness. Based on a suit filed in 1995, the Supreme Court ordered that throughout the nomination process, every candidate seeking elections must reveal the following:

- i. Educational credentials

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<sup>1</sup> Trilochan Sastry, 'Towards the De-Criminalization of Politics,' a talk at IIC, New Delhi ( 2013)



- ii. The candidate's and his or her family's assets and liabilities
- iii. Criminal background

The Right to Information Act falls short of expectations. Despite the Commission's efforts to reduce political criminalisation, it has not achieved the expected consequences.

## STATUTES AND CASE LAWS TO EVALUATE AND ANALYZE

*Those who break the law should not make the law*<sup>2</sup>

The Constitution has no provisions specifically addressing the nature/scope of disqualification; instead, it provides for the Parliament to define the extent of disqualification of a person who isn't a member of the legislature. The absence of statutory prohibitions does not imply that those with criminal or corrupt pasts are excluded.<sup>3</sup>

Articles 102(1)(e) and 191(1)(e) state that if a member of either House of Parliament or House of the State Legislature is disqualified by or under any law made by Parliament, his seat automatically becomes vacant under Articles 101(3)(a) and 193(1)(a) of the Constitution and Parliament cannot make a provision (as was done in Section 8(4) of the Representative of People Act, 1951)

Section 8(4) of the RPA is unconstitutional because it permits MPs and MLAs who are convicted while serving as members to remain in office until their appeal against the conviction is heard vide *Lily Thomas v. Union of India*<sup>4</sup> and *India v. Saka Venkata Rao*<sup>5</sup>

Although Parliament can pass legislation to "decide on disqualification," it cannot "preserve and protect" its members guilty of crimes.

In *Lok Prahari v. Election Commission of India*<sup>6</sup>, The SC, upholding the precedence of the *Ravi Kant Patil* and *Lily Thomas* cases, stated that disqualification under Section 8 will not operate if an appellate court stays a conviction under Section 389 of the CrPC. The Supreme Court upheld the rulings in *Ravi Kant Patil v. Sarvabhouma S. Bagali* and *Lily Thomas v. Union of India* in *Lok Prahari v. Election Commission of India*, highlighting the circumstances

<sup>2</sup> *K Prabhakaran v. P Jayarajan* (2005) 1 SCC 754

<sup>3</sup> *Lily Thomas v. Union of India*, (2013) 7 SCC 653

<sup>4</sup> *Lily Thomas v. Union of India* (2013) 7 SCC 653

<sup>5</sup> *India v. Saka Venkata Rao* AIR 1953 SC 210

<sup>6</sup> *Lok Prahari vs Election Commission Of India* on 26 September, 2018

in which a convicted person may be barred from running for office. The interpretation of Section 8 of the Representation of the People Act, 1951 (RPA) and how it interacts with Section 389 of the Code of Criminal Procedure (CrPC), which addresses sentence suspension and bail issuance while an appeal is pending, were at the centre of the case. The Court ruled that if an appellate court stays the conviction under Section 389 of the CrPC, the disqualification under Section 8 of the RPA will not apply. This means that simply appealing a conviction does not automatically eliminate the disqualification; nevertheless, the candidate will be allowed to run for office if the appellate court specifically pauses the conviction (rather than just the penalty). The ruling emphasized that the authority to stay a conviction should be used carefully, taking into account the impact on governance, the nature of the conduct, and the public interest. The Supreme Court struck a compromise between keeping criminals out of politics and making sure that others aren't unjustly excluded by sustaining this principle.

The Supreme Court reaffirmed the fundamental idea that free and fair elections are a necessary component of a democratic society in *MS Gill v. Chief Election Commissioner*<sup>7</sup>. The Court acknowledged that elections must be held in a way that preserves the democratic process and guarantees that no candidate, particularly one with a criminal history, is given an undue advantage. The decision underlined that a corrupted election process destroys democracy and erodes public confidence in the government. The Election Commission of India (ECI), building on this idea, has suggested more stringent steps to stop the growing tendency of criminality in politics. Politicians accused of egregious crimes should not be allowed to run for office if the case was filed at least a year before to the elections and the Court has framed charges, according to one of the ECI's main recommendations. In order to lessen the influence of criminal elements in politics, this plan seeks to bar those who are facing major criminal accusations from participating in elections. This recommendation is supported by two arguments. First and foremost, it aims to stop the abuse of legislative loopholes that permit accused politicians to run for office again in spite of grave accusations like corruption, rape, murder, or kidnapping. By prohibiting the use of fabricated or politically motivated instances as a means of unfairly disqualifying candidates, it also seeks to achieve a balance. The ECI hopes to prevent cases from being frivolously filed just before elections in an attempt to sway the results by requiring that the case be submitted at least a year beforehand. If put into practice, this suggestion might be a big step toward decriminalizing politics and boosting public trust in the election process.

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<sup>7</sup> *MS Gill v. Chief Election Commissioner* 1978 AIR 851

Its implementation, however, would need robust legal support and judicial supervision to guarantee that it is not abused for political ends while yet successfully barring criminals from running for office.

NOTA was introduced in *PUCL vs Union of India*<sup>8</sup> it allows voters to exercise their “right not to vote while maintaining their right of secrecy”. It gave provisions for voters to cast a vote under “None Of The Above” category if none of the electoral candidates appealed to them. It also stated that if a person was found guilty by the election commission, they would be disqualified.

In *Public Interest Foundation v. Union of India*<sup>9</sup>, PIL was filed, requesting the Supreme Court to establish guidelines or a framework to address the threat of criminalisation of politics and prohibit those charged with serious crimes from contesting elections. In order to preserve the integrity of the electoral process and bolster democracy, the petitioners sought the Court to create a comprehensive framework that would forbid those accused of major crimes from running for office.

Given the gravity of the situation, the Supreme Court ruled that it might establish necessary rules to guarantee increased election transparency even though it could not make laws on the subject because that is the responsibility of Parliament. The Court underlined that voters must fully understand the criminal histories of candidates before making an educated decision and restated that free and fair elections are a fundamental component of the Constitution.

The Supreme Court issued the following required orders in an effort to improve accountability and transparency:

1. **Information Disclosure:** When running for office, candidates must complete nomination forms that contain all pertinent information, especially any outstanding criminal charges. This is to guarantee that voters are not misinformed about any important facts.
2. **Emphasizing Criminal Antecedents:** In the nomination forms, the candidate’s criminal history must be clearly stated in bold characters. This stage ensures clarity and visibility by preventing candidates from hiding such information in fine print.

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<sup>8</sup> *People’s Union for Civil Liberties v Union of India* (2013) 10 SCC 1

<sup>9</sup> *Public Interest Foundation v. Union of India* WP (C) No. 536 of 2011, decided on December 16, 2013

3. Notification to Political Parties: Those who are accused of crimes are required to disclose their criminal records to their respective political parties. This deters political parties from fielding candidates with criminal histories by holding them personally responsible for the people they select.
4. Publication on Party Websites: On their official websites, political parties are required to post the criminal histories of their candidates. This guarantees that the media, civil society organizations, and voters can easily obtain such information.
5. Broad Media Publicity: In order to guarantee that voters are as informed as possible, newspapers, television, and other media outlets must extensively publish candidates' criminal histories as well as the specifics of the political parties that are supporting them. The Court stipulated that following the candidate's nomination filing, this information must be disseminated at least three times. Voters have enough time to evaluate candidates' credibility because of this frequent dissemination, which also guards against last-minute manipulation.

**Importance of the Decision:** This historic ruling sought to provide voters with the knowledge they needed about the histories of candidates and to hold political parties accountable for maintaining moral standards when choosing candidates.<sup>10</sup> However, because it would be against Indian law to disqualify a candidate before conviction, the verdict did not completely bar candidates from facing criminal charges. In order to purge the political system democratically, the Court instead placed a strong emphasis on openness and public accountability in the hopes that voters would reject candidates with criminal histories.

Although the Supreme Court's ruling in this case was a significant step in combating the criminalization of politics,<sup>11</sup> political will and voter understanding will ultimately determine how effective it is. The decision upheld the fundamental idea that voters must actively oppose criminal elements in electoral politics and that political parties must assume accountability for maintaining clean governance.

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<sup>10</sup> Magesan, A., Szabó, A. and Ujhelyi, G., 2024. *Candidate Selection by Parties: Crime and Politics in India*. Working Paper.

<sup>11</sup> Kumar, A., 2014. *Criminalisation of politics*. Delhi: Rawat Publications.

## CONCLUSION

Based on the study, it can be determined that the standards, practices, and announcements of political parties competing in elections have steadily deteriorated. To win elections, money, muscular force, corrupt methods, and unfair means are openly deployed. Parliament and the Election Commission have made several efforts to prevent the criminalisation of Indian politics, but nothing significant has been accomplished. Election misconduct can be addressed by legislative means. Stringent regulations can be passed democratically to aid constitutional institutions such as the Election Commission of India or specifically formed committees to stop this trend.

The media's involvement in reducing the criminalisation of politics is noteworthy. Due to their involvement in informing the general public about political parties, their manifestos, and exposing their electoral malpractices, the function of the media becomes considerably more meaningful and relevant during elections.

However, for various reasons, the media has not been able to carry out its basic responsibilities. As a result, the problem of political criminality and the rapid decline of political ethics is the result of a confluence of several factors, as indicated above. Several committees/commissions, like the Vohra Committee, have been appointed to look into the issue of political criminalization.

The right to information can be used to investigate political parties, candidates, sources of income, election expenditures, and manifesto fulfilment, among other things. The word of the Court must reach the lawmakers' inner conscience. The Supreme Court has ordered the government to establish special tribunals to conduct time-limited trials of lawmakers accused of corruption and criminality. The Election Commission of India (ECI) should have the authority to examine political parties' financial statements, or political parties' funds should be subject to RTI.

On all of these fronts, public opinion must be mobilized. Individual politicians with criminal records must be opposed, but the crisis can only be addressed via more comprehensive institutional reform.