

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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DEMOCRATIC INTEGRITY AND ELECTORAL REPRESENTATION: DO CRIMINALLY CHARGED CANDIDATES UNDERMINE DEMOCRACY IN INDIA?

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ABSTRACT

This paper examines the growing phenomenon of the criminalization of politics in India and its implications for democratic integrity and electoral representation. While India maintains a robust procedural democracy, the increasing presence of criminally charged candidates in legislatures raises concerns about the erosion of constitutional morality and the rule of law. The study argues that this trend is not merely incidental but systemic, rooted in political party strategies, institutional inefficiencies, and voter behaviour shaped by socio-economic constraints. Legal frameworks such as the Representation of the People Act, 1951, and judicial interventions have attempted to address the issue, yet their effectiveness remains limited due to procedural delays and structural loopholes. The paper concludes that meaningful reform requires a multi-dimensional approach targeting political incentives, institutional accountability, and electoral transparency to restore the normative foundations of Indian democracy.

KEYWORDS

- Criminalization of Politics
- Electoral Integrity
- Democratic Representation
- Political Parties
- Rule of Law

RESEARCH QUESTIONS

1. To what extent do criminally charged candidates affect the integrity and quality of democratic representation in India?
2. How do political parties, as gatekeepers of electoral politics, contribute to the nomination and success of candidates with criminal backgrounds?
3. Why has the existing legal and institutional framework, particularly disqualification

- based on conviction, failed to effectively curb the criminalization of politics in India?
4. How do voter behaviour and socio-economic conditions influence the electoral success of criminally charged candidates?

INTRODUCTION

Recently, a don turned politician in Bihar sworn as MLA in well-established big party who is charged of almost 30+ criminal cases. This is not the only or last case where criminal became representative of people upon whom people have to rely. The main goal of electoral democracy is not about accumulation of votes but is about refining of the “General will”- as envisioned by Jean-Jacques Rousseau who stated this as a collective expression of the people’s sovereign objective for a single goal of common good. In that respect, elections are not just mechanical operation of ballot/EVM tallying but is a normative organization that are given legitimacy by virtue of their constitutional morality, ethical governance and rule of law. In this context, an infusion of criminally charged candidates in election politics will bring a complete contradiction as those who misdemeanors are considered serious crimes, such as violent crimes of murder, rape, etc. are given the powers of the legislature, then the very fabric of the democratic process regarding representation is instituted with serious loopholes. The question is thus not just whether such candidates can be elected but whether a system that makes such candidates successful can still boast of having been elected into office in any sense of normativity that is meaningful.

The problem of this tension is especially interesting in the case of India, which is generally considered the largest democracy in the world. Its electoral apparatus is extensive, participatory, and procedural, but it exists in coexistence with a disturbing and endemic trend, criminalization of politics. In the recent decades, the trend has been towards an increment of the number of candidates with pending criminal cases who contend with elections which result in many assuming elective office. Not only does this trend cast the legitimacy of democratic representation in question due to the character of candidates involved in the process, but it also indicates what the very nature of the process that has been revealed by the trend demonstrates about the underlying nature of electoral competition. The problem cannot be simplified to a legal anomaly, an incidental malfunction but it represents a more problematic issue at a broader systemic level with regard to political party and criminal element and institutional weaknesses. India has a normative procedure ensuring integrity in the legal and constitutional system of organization in which the elections are conducted. The Representation of the People Act, 1951

provides the statutory foundations of disqualification of candidates, especially when the candidate is convicted of certain types of offences, as stated in Section 8. Likewise, there are constitutional requirements by Articles 84 and 173 on membership in Parliament and State Legislatures including disqualification provisions by Articles 102 and 191. These are augmented by general statutory regulations, including Indian Penal Code, 1860, Prevention of Corruption Act, 1988, and other transparency-enabling provisions of the Right to Information Act, 2005. However, still within the context of this elaborate framework is a crucial constraint, which includes the fact that disqualification is only elicited upon conviction, rather than due to the mere framing of charges. Seeing the habitual delays in the criminal justice system, this enables those that have had a grave allegation to challenge elections on several occasions over a long time. Ineffectively, therefore, the law is normatively viable but procedurally unsophisticated to tackle the facts of electoral politics. Judiciary appreciating this absence has come in to bolster transparency and accountability. In *Union of India vs Association of Democratic Reforms*, the Supreme Court ordered disclosure of criminal antecedents, assets of candidate as well as educational qualification thus giving the powers to the voters with information. This was further affirmed in *Lily Thomas v Union of India* where the Court believed that convicted legislators would be disqualified immediately, removing the previous immunity given to them to serve in office as they await appeals. What happened more recently was in *Public Interest Foundation v Union of India* when the Court ordered political parties to publicize criminal record of their candidates and give reasons why they chose them.

The nexus of this problem is a complicated one. Political parties with the urge to play games in elections tend to favour the candidate who has got financial capacity, influence in the area, and ability to influence the electorate. They can fund costly campaigns, stack power by using patronage or coercion networks, and manoeuvre the informal power brokers that tend to determine the outcomes of an election. In their turn, they promise political legitimacy and shield against the law to these candidates. This symbiotic relationship dilutes the distinction between law and lawlessness, and the very fabric of political contestation, incorporates criminality and its intrusion into the fabric of political competition. This phenomenon continues to imply a disastrous paradox of Indian democracy. On the one hand, electoral activities remain almost as regular as ever. The elections are normally free and competitive, voter turnout is high and peaceful handovers of power is a norm. Conversely, the substantive integrity of such processes is more and more undermined. The result of this dynamic has been the evocative description of the system as having been a government of criminals, by criminals, to criminals

It is not only that criminals are entering politics, but that it is becoming an established trend, even a calculated strategy. With time, this nomination and subsequent electoral victory by such candidates becomes a feedback loop: these candidates are nominated due to their subsequent re-election, and subsequent re-election occurs due to them being nominated. This process imbeds criminalization as a systemic characteristic as opposed to an anomaly.

In this paper, a more subtle argument is henceforth promoted. It argues that charged candidates with criminal records, not solely due to their personal behaviour but because of what the high numbers of them represent about the system generally, do pose a threat to the integrity of democracy. More importantly, it suggests that political parties, with their choices on candidates, are the main contributors to this phenomenon as their strategy influences the electoral landscape. It is only through the enduring solution of these underlying system problems that Electoral Democracy in India can become closer to its normative ideal; the real representation of the General Will.

1. Historical Evolution, Political-Criminal Nexus, and Empirical Realities:

From Idealism to Institutional Crisis

Indian democracy has evolved over the years and has shown a progressive and yet substantial reversal of the principles underpinning the Indian democratic principles into a system where the principles have increasingly come to be heavily effected by structural distortions. At the time of independence, the framers of the Constitution envisioned a polity grounded in justice, equality, and the rule of law, where public office would be occupied by individuals guided by constitutional morality¹. It was the pre-electoral period and the initial general elections of 1952, reflected this aspiration. Yet all the way up to this point, issues were brought up regarding the weakness of election mechanisms to coercion, local power structures, and abuse of influence. These initial fears however local in their scope, presaged a greater and more comprehensive fear more systemic challenge that would arise with time. The post-independence decades was the eye-witness of a revolution in the character of a contest in politics. From the late 1960s, particularly after 1967, Indian politics entered a phase marked by the decline of Congress dominance, rising opposition, political instability, and eventual fragmentation of the party system². Elections were made more and more competitive and resource-rich, thus necessitating significant investments of finances and institutional structures.

¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–57, 75–83 (1966).

² Pushpa Singh, *Changing Trends in Party System in India*, pp. 63–87).

1.1 Rise of Competitive Politics and the Political-Criminal Nexus

In this evolving environment, the recommendations of the National Police Commission, whose chairman was Dharma Vira emphasized an increasingly nexal relationship between politicians and criminal elements. The Commission observed that coercive power and illicit finance were being systematically integrated into electoral processes, enabling criminal actors to play a more central role in political mobilization³. The point was a start of the structural change, in which criminal aspects shifted out of the to the periphery, the core of political activity. They were originally actors who served as it gave them support fundings, establishing a rule of political dominance and making voters participate. However, in the course of time, this relationship changed to direct participation. Towards the end of the twentieth century, people with criminal backgrounds were increasingly entering into elections, frequently with a substantial success. As Milan Vaishnav notes, candidates with criminal charges not only contest elections but ‘win so often,’ with empirical evidence suggesting they are significantly more likely to secure electoral victory⁴. Figures such as Mohammad Shahabuddin, Mukhtar Ansari, and Atiq Ahmed exemplify this transformation. Their repeated electoral victories, despite facing serious criminal charges, illustrate the normalization of criminality within the political system⁵. At the core of this transformation lies a deeply embedded political-criminal nexus, which operates as a mutually reinforcing relationship. Criminals contesting elections, many aligning with political parties rather than remaining independents, leveraging party networks, symbols, and historical loyalties to broaden their voter appeal and legitimize their political status⁶. This meeting of interests gives rise to a symbiotic sorting that gives existence to the existence of criminal elements in politics. This nexus takes place in two major forms. First, politicians using criminal actors as an instrument to gain electoral advantage. Criminal networks are frequently used to excite voters, scare off foes, and manipulate the results in a manner that act outside of the limits of formal legality. Their ability to operate in informal power structures give an upper hand in competitive elections. Second, in exchange for their support, criminal actors receive political protection⁷. This can include interventions, delays in judicial process or even the exploitation of the political officer and shield against accountability. This mutual arrangement

³ National Police Commission, *Second Report* (1979); *Third Report* (1980).

⁴ Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics* (2017).

⁵ Ajay Krishan Tiwari, *A Thoughtful Analytical Study on the Criminalization of Politics and Corruption in the Administration*, Int'l J. Human. & Soc. Sci.: Insights & Transformations (2022).

⁶ Milan Vaishnav, *Money and Muscle in Indian Politics: Book Excerpt from 'When Crime Pays'*, Outlook India (Nov. 11, 2025), updated Nov. 12, 2025.

⁷ Arryan Mohanty, “All About Criminalisation of Politics: Challenge to Indian Democracy,” *Law Audience Journal*, Vol. 4, Issue 5, pp. 119–145 (2023).

has over time, enabled a shift where criminals, themselves, join electoral politics, changing into extrinsic causes of influence into holders of political power.

1.2 Institutionalization and Empirical Evidence of Criminalization

The empirical evidence reinforces the structural nature of this phenomenon. Data from the Association for Democratic Reforms indicates that approximately 45% of Members of Legislative Assemblies (MLAs) in India have declared criminal cases. Of these, over 1,200 face serious charges, including offences such as murder, kidnapping, and crimes against women⁸. At the national level, nearly 46% of Members of Parliament in the Lok Sabha⁹ and around 36% of members in the Rajya Sabha have criminal backgrounds¹⁰. These figures demonstrate that criminalization is not confined to specific regions or levels of governance; it is a pervasive feature of the political system. As a result, political parties, driven by the imperative of maximizing electoral success, are incentivized to nominate such candidates repeatedly. The increasing participation of persons with serious criminal charges in politics undermines the rule of law and vitiates the electoral process¹¹.

In conclusion, a closer look into the development of the constitutional idealism to systemic compromise shall reflect a deeper insight of institutional crisis. The institutionalization of the political-criminal nexus, backed by empirical evidence, displays the political system wherein the lines in between crime and government are crossed. To overcome this difficulty, it is necessary not only to change the law but an essential rethinking of the incentives and frameworks that shapes electoral politics in India.

2. Laws and Constitutional Structures and court intervention: Strength in theory, Weakness in practice.

The electoral process in India, an effective and detailed legal and constitutional framework has ensured the democratic integrity, fair representation and the rule of law in the electoral process. This framework suggests a high level of integrity both in terms of ethics and accountability at a normative level. But in reality, it demonstrates great shortcomings that have enabled the continuation, even sanctioning, of criminal aspects in electoral politics. The conflict between

⁸ 45% of 4,092 MLAs in 28 states, 3 UTs face criminal charges: ADR analysis, Business Standard (Press Trust of India, Mar. 17, 2025).

⁹ Press Trust of India, 46 per cent of newly elected MPs face criminal cases: ADR, The Economic Times (June 6, 2024).

¹⁰ 31 Rajya Sabha MPs billionaires, 73 face criminal cases: ADR analysis, The Times of India (Mar. 20, 2026).

¹¹ Law Commission of India, Report No. 244: Electoral Disqualifications (Feb. 2014).

normative power and practical infirmity is especially apparent to the analysis of the interaction of statutory and constitutional protection with judicial intervention.

2.1 Structural Limitations and the Conviction-Based Disqualification Model

In terms of law, the Representative of the people Act, 1951, is the foundation of electoral control in India. It establishes the qualification and disqualification of candidates, the latter being in Section 8¹² which disqualifies the candidate upon conviction of particular offences. Additional legal tools that complement these include the Indian Penal Code, 1860¹³, giving meaning to criminal behaviour and criminalizing it; the Prevention of Corruption Act, 1988¹⁴, aimed at preventing corruption in high office; and finally, the *Right to Information Act, 2005*¹⁵, trying to add more transparency and accountability to the realm of the state. Combined, these laws form such a thick legal network of regulations that it seeks to control the actions of candidates and the activity of state institutions. These principles are further supported by the constitutional framework. Articles 84 and 173 of the Constitution¹⁶ give qualifications to membership of Parliament and State Legislatures respectively, whilst Articles 102 and 191¹⁷ have disqualification on a variety of grounds, including office of profit, unsoundness of mind, insolvency and conviction of certain crimes. All these are part of a normative floor of political composition, which underlines that individuals wishing to represent the people ought to have attained minimum levels of integrity and competence.

Despite this convoluted outlay, there is still one fatal flaw in that, it is ineffective because disqualification can only be effected on conviction contrary to the existence of criminal charges and even the filling of charges by a competent court. The essence of the principle criminal jurisprudence, innocent until proven guilty whose role is to protect individuals against punishment without due process. Although this principle is a necessary one in the defence of individual rights, its promotion in the electoral environment has its side effects. With the delays in the criminal justice system being well documented in India, trials can take years meaning that candidates with gross unresolved charges have the right to run several elections without being disqualified. This makes an absent structural paradox. A legal system that can be used to enhance fairness and guard the liberties of individuals unpredictably results in the further

¹² Representation of the People Act, 1951, No. 43 of 1951, § 8, India Code.

¹³ Indian Penal Code, 1860, No. 45 of 1860, India Code.

¹⁴ Prevention of Corruption Act, 1988, No. 49 of 1988, India Code.

¹⁵ Right to Information Act, 2005, No. 22 of 2005, India Code.

¹⁶ INDIA CONST. arts. 84, 173.

¹⁷ INDIA CONST. arts. 102, 191.

inclusion of those persons who have committed serious offences into the political arena. The electoral system has failed to effectively prevent persons with criminal antecedents from entering legislatures, particularly due to delays in investigation and prosecution of criminal cases¹⁸.

2.2 Judicial Interventions and Electoral Transparency

With awareness of these shortcomings, the judiciary has actively been involved in trying to enhance transparency and accountability in the electoral system. The Supreme Court has tried to solve the information asymmetry between voters and candidates, through a number of landmark decisions, which have empowered voters to make more informed decisions on election.

The Court literally reinvented the process of electoral transparency in *Union of India v Association for Democratic Reforms*¹⁹ and required that the criminal antecedents, assets and liabilities of any candidate and their educational qualification was revealed. This ruling represented a major move towards no longer having an entirely procedural concept of elections but has more substantive undertones of informed consent and voter knowledge. Embracing the right of voters to the background of the candidates, the Court aimed at making the election powerful as a means of considering any criminal aspect expressed by the candidates into the political world. This strategy was reinforced in *Lily Thomas v Union of India*²⁰ when it was decided that the Parliamentary members found guilty of the offence punishable by a sentence of two years or above would be immediately disqualified. This ruling struck out the previous provision, which gave convicted officials permission to remain in office pending their appeal, and thus, renewed the belief that persons convicted of serious crimes should not serve any legislative role. In *Public Interest Foundation v Union of India*²¹, more recently, the Court was dealing with the longstanding problem of having political parties nominate criminals. It pressured political parties to publicly reveal the criminal records of their candidates and reason why they are chosen, with an effort to bring some measure of responsibility to the level of party decision making. The Court also highlighted the necessity to have broad publicity on such disclosures to make sure that voters receive the information they require.

¹⁸ National Commission to Review the Working of the Constitution, *Report of the National Commission to Review the Working of the Constitution*, vol. I, ch. 4 (2002) (India).

¹⁹ *Union of India v. Association for Democratic Reforms*, (2002) 5 S.C.C. 294 (India).

²⁰ *Lily Thomas v. Union of India*, (2013) 7 S.C.C. 653 (India).

²¹ *Public Interest Foundation v. Union of India*, (2019) 3 S.C.C. 224 (India).

2.3 Limits of Judicial Action and Structural Constraints

Although such judicial interventions are significant steps to transparency, they have the intrinsic narrow effect. The focus on disclosure is based on the assumption that well-informed voters will not elect candidates with a record of crime. Nevertheless, it has been shown that this kind of candidate would not only remain highly electorally successful, but data would show that only information can work wonders to change deeply-established political behavioural trends. Additionally, the courts have always avoided the stricter disqualification rules at the pre conviction level, mentioning that it would be a dangerous trend to disqualify criminals on the basis of political revenge and that it would also be unjust to deny the presumption of innocence. This judicial reservation indicates a greater apprehension of constitutional equilibrium. Nonetheless, this restraint, in turn, points to the constraints of judicial action in the lack of a comprehensive legislative change. The court is also able to improve transparency and apply the status quo, but they are not able to change the incentives that lead political parties to nominate criminals. The very problem, however, is not just in the legal system or the way it is understood in courts, but it is the political economy of electing candidates. Political parties are conducted in an environment of competition with winning position usually accredited to the impoverished and local sway, and the power of organizing structure-qualities that have been often linked with criminal figures. Unless there is any change in these incentives, legal and judicial actions will not be effective.

3. The Prime Movers and Voter Choice: Rationally Bounded

The combination of the muscle power of criminal gangs coupled with the money power of political parties and vested interest lobbies creates an atmosphere of fear and threat, and bribery, which has become a point of concern for everyone in India from the first day of filing the nomination till the day of counting and more preciously on the day of the poll²².

3.1 Political Parties as Primary Drivers of Criminalization

The reality is the decision-making processes of political parties, which determine the electoral landscape well before voters cast their ballots. Political parties are gatekeepers of democracy²³. They are responsible for deciding who will appear on the electoral stage, and thus shape the candidate pool. In a perfect democracy, this gatekeeping role would be undertaken guided by

²² Parindu K. Bhagat, *The Criminalization of Politics in India and the Indian Judiciary* (Apr. 2023) (unpublished manuscript), available at <https://www.researchgate.net/publication/370375636>.

²³ B. S. Ajaikumar, Political Parties: Gatekeepers of Democracy, Deccan Herald (May 2, 2023), <https://www.deccanherald.com/opinion/political-parties-gatekeepers-of-democracy-1217302.html>.

constitutional morality and public interest. But in reality, candidate nomination is guided by a more pragmatic attribute: winnability. Winnability, in turn, is often linked to the attributes of financial resources, local power, organisational skill and, in some cases, muscle power. Criminal candidates are by no means lacking in these attributes, and are therefore preferred by parties with a desire to win. Criminally charged candidates enjoy a greater likelihood of success than others. Individuals with declared criminal cases have a win rate of approximately 15.3%, compared to just 4.4% for candidates without such records²⁴. This fosters a powerful indignity for political parties to continually field such candidates, criminalising the electoral process. The consequence is a self-fulfilling prophecy: public parties select candidates tainted by criminality because they tend to win elections, which in turn affirms their use. Ultimately, criminality becomes a resource of electoral politics, rather than a liability.

Crucially, this phenomenon is neither party specific, nor region specific, nor ideologically specific. It is endemic to competitive electoral politics in India, irrespective of whether it is a national or regional party. The homogeneity of behaviour amongst different political actors suggests the problem is not normative, driven by party ideology, but is systemic in nature. In a situation where electoral success is crucial, normative considerations take a back seat. As rational actors, political parties adapt to these incentives in search of strategies that increase their odds of success, even if these approaches run against the normative grain of democracy. This systems view transforms the concept of responsibility. If political parties function as gatekeepers to the political process, selecting candidates for office based primarily on the criteria of winnability, then the actions of voters must be understood in this context. The oftentimes used argument that "voters are responsible for electing criminal candidates" is based on the assumption that they exercise their choices in a free and unfettered manner. But this is not always the case.

3.2 Voter Rationality and the Self-Reinforcing Electoral Equilibrium

In India, voters' choices are influenced by a myriad of socio-economic, cultural and institutional factors. In many electoral settings the state has failed to keep up with its voters' expectations and that failure of the rule of law along with many basic services has allowed criminal politicians to serve in lieu of the state: providing protection, social welfare of a sort²⁵ which means voters are more concerned with pragmatic "noise" rather than normative "substance".

²⁴ Press Trust of India, *46 per cent of newly elected MPs face criminal cases: ADR*, The Economic Times (June 6, 2024).

²⁵ Alex Tabarrok, *Criminal Politicians, Marginal Revolution* (Jan. 26, 2017).

Voters assess candidates not just by their legal and moral uprightness, but by their perceived capacity to secure resources, help in times of distress, and access government resources. In this environment, those with a criminal background can be seen as efficient intermediaries to access resources, solve problems and provide security. This voting behaviour can be attributed to a number of factors. First, local influence and effectiveness play a crucial role. Voters view those with strong connections and organisational skills as better equipped to represent them and their local concerns. Second, caste and community loyalties play a crucial role. Electors might place greater weight on candidates from their social group, even if the candidates are criminals, given the ability to represent their group. Third, the promise of tangible goods and services, such as patronage, access to welfare schemes or resolution of conflicts, may trump other more abstractly appreciated symbols of law and morality. This is particularly true in areas where the state is inefficient or ineffective. Criminal candidates may serve as unofficial "speed bumps" to state corruption. This function is normatively undesirable, but is seen to work by voters. Thus, voting for such candidates is not necessarily an endorsement of crime, but rather a reaction to the shortcomings of the system.

This view complicates the simplistic view that voters are blind or accomplices in the criminalisation of politics. On the contrary, decision to vote is the result of a personal cost–benefit calculation in which the expected benefits of voting should outweigh its costs²⁶. When the candidate pool is filled with candidates from a criminal background, and when they are seen as more effective politicians, voters may have little reason - or little choice - in voting for "clean" candidates. The relationship between political parties and voters creates a self-reinforcing equilibrium wherein parties nominate candidates based on perceived winnability and voters, constrained by available choices, often validate these selections.²⁷ Parties anticipate the voter preferences in light of local circumstances and field candidates accordingly. In turn, voters respond to the candidate pool, often voting for the candidate most likely to meet their needs. This perpetuates the role of criminals in politics and makes it hard for voters to change course. Although voters participate in the electoral process, their voting decisions are limited by their choices. Continued criminalization is a product of an incentive structure that favours candidates who have financial and coercive power, rather than moral standing. To find a solution to this problem it is essential to shift attention from blaming voters to strengthening mechanisms to hold political institutions, particularly political parties and candidate

²⁶ Plescia, Carolina, and others, 'The Meanings of Voting: A conceptual framework', *The Meanings of Voting for Citizens: A Scientific Challenge, a Portrait, and Implications*, Comparative Politics (Oxford, 2025; online edn, Oxford Academic, 12 May 2025), <https://doi.org/10.1093/9780198946335.003.0002>.

²⁷ Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics* 157, 281 (2017).

nominations, accountable. The creation of public goods is a basic responsibility of the State, and should not require the intervention of pressure or political force²⁸.

4. Normative Crisis, Reform and a Way Ahead

India's political criminalisation is not just a phenomenon affecting elections; it has significant ramifications that skew governance, undermine the rule of law and solidify social divisions. The repercussions are more than just the makeup of parliaments, as it influences power dynamics, resource allocation, and justice delivery. Overall, it results in the erosion of democracy and trust in the polity.

4.1. Ramifications for Governance and Society

On the governance front, the involvement of criminally indicted representatives in politics has the effect of policy capture by the elite. With legislators themselves being investigated for serious crimes, their focus might be diverted from public interest. The focus of policy and decision-making shifts from long-term growth and development, to serving personal or factional interests through the defence of networks, maintenance of clientelism, and capture of bureaucratic processes. Public resource allocation is frequently distorted as political actors direct funds toward electorally advantageous constituencies rather than broader socio-economic priorities²⁹. Figures from the Association for Democratic Reforms suggest a large number of representatives are involved in serious criminal cases, and risk governance by those with vested interests in place. Research has also demonstrated that districts with candidates with high financial and criminal backgrounds exhibit greater discretionary expenditure, but less accountability, implying that financial resources might be spread based more on political considerations than genuine need.

The rule of law is also not spared. Politicians' allegations of prosecutorial misconduct threaten institutions' legitimacy. This may result in targeted enforcement, where prosecutions are being politicised, or justice delayed and denied. Notable political cases typically demonstrate delays, dismissed charges or legal intricacies that erode the public's trust in the legal process. Criminalization often excludes marginalised groups as politics shifts towards groups that can mobilise money and muscle. This reinforces disparities, given that marginalised groups are less able to participate in this game. Political machines (or clientelist parties) mobilize electoral

²⁸ Indian Democracy: Including the Excluded and Excluding the Included, Brookings Inst. (Mar. 14–16, 2014).

²⁹ Torsten Persson & Guido Tabellini, *Political Economics: Explaining Economic Policy* 28–30 (2000).

support by trading particularistic benefits to voters in exchange for their votes³⁰ this focus on short-term clientelism rather than long-term reform perpetuates inequalities in education, health care and economic opportunities. Further, the criminalisation of politics undermines public trust. If society views people accused of major offences as being able to become elected officials and even ministers, it undermines trust in democracy. Democracy as political equality entails impartial government institutions in the regulation of the access to political power³¹.

4.2. Normative Implication: Democracy vs Constitutional Morality

The presence of electoral legitimacy and criminal participation leads to a normative crisis in Indian democracy. On the one hand, elections are taking place regularly, with high voter turnout and peaceful transfers of government. But democracy cannot simply rely on the smooth functioning of elections. Democracy is not confined to electoral processes but must be guided by constitutional morality and the rule of law³². The philosophical legacy of democracy and in particular, the idea of the General Will, means that a representative government must be not only responsive to the will of the people but also normatively justified because “law is legitimate only when it is normatively correct³³”. The presence of legislators facing serious criminal charges undermines this normative argument. The political legitimacy of democratic institutions depends not only on the manner in which representatives are elected but also on the representatives themselves and how they govern. This dilemma between democratic elections and good governance presents a paradox. On one hand, it upholds the autonomy of the voters and political equality. On the other hand, it allows for the possibility of outcomes at odds with constitutional values. What ultimately emerges is procedural democracy without substance, whereby the form of democracy remains intact while its substance weakens. Unless they are readdressed, these crises risk involving democracy into a mere instrumental tool, stripped of its normative core.

4.3 Reformation Priorities: What's Needed

The solution for the criminalization of politics must be holistic and multi-faceted beyond mere improvements. The structural nature of the problem calls for reforms to the legal system, political architecture, political processes and the electoral environment.

³⁰ STOKES SC. Perverse Accountability: A Formal Model of Machine Politics with Evidence from Argentina. *American Political Science Review*. 2005;99(3):315-325.

³¹ Bo Rothstein & Jan Teorell, What Is Quality of Government? A Theory of Impartial Government Institutions, *21 Governance*, 180 (2008).

³² Government of NCT of Delhi v. Union of India.

³³ Canon JS. Three General Wills in Rousseau. *The Review of Politics*. 2022;84(3):350-371.

- A. Legal Reforms: A much-debated proposal is the creation of special courts for trials of elected officials. Such courts can accelerate the trial process to minimise the delay between charge-framing and conviction, reducing the chance of candidates with serious accusations abusing the process by delaying the trial. A controversial but notable suggestion is the inclusion of conditional disqualification at the charge framing stage for serious offences, with safeguards against abuse. Although this violates the presumption of innocence, certain safeguards- such as judicial scrutiny and restriction to serious offences - can balance individual and community interests.
- B. Institutional Reforms: Better institutional frameworks like the Election Commission is essential. This includes giving it greater powers over management of candidate declaration, compliance monitoring and election campaign regulations. At the same time, the efficiency of the judiciary must be improved as a delay in the process is still a key aspect of criminalisation.
- C. Political Reforms: Political reforms may be the key to this. Establishing intra-party democracy, transparent nomination procedures and accountability measures can minimise the need for criminal candidates. The Supreme Court order to parties to explain reasons for fielding candidates is commendable but does need to be more strongly enforced and could include penalties.
- D. Electoral Reforms: Reforms such as government financing of elections can minimise the reliance on private and at times illegal funding. Improved campaign finance transparency and voter education programs can also contribute to changing electoral incentives.

Conclusion

An investigation of criminalization in politics underscores that this is a structural issue that poses threats to the procedural and normative efficiency of democracy in India. As India continues to display the procedural markers of a robust democracy with regular elections, high electoral participation and institutional stability, the substantive democracy is nonetheless placed at serious risk by the continued involvement of criminally accused candidates in electoral politics. This issue is a clash between ideal and real, constitutional and political. The constitution, together with family legislation like the Representation of the People Act, 1951, emphasises that it has a strong belief in good governance and transparency. Legal responses, such as important decisions as *Union of India v Association for Democratic Reforms* and *Lily Thomas v Union of India*, have additionally helped to increase transparency, formalise

disqualification in the event of conviction. Yet, these steps have not dealt with the problem of criminalization. The fact that this still occurs implies the inefficiency of a system to put undue emphasis on post-conviction disqualification and it is laden with judicial backlogs. The results of this as the findings of this examine, the process of criminalization is not an exceptionally important deviation in the Indian electoral process. Political party as gatekeepers of democratic electoral representation are very instrumental in catalysing this phenomenon. The fact that they are winnable, which correlates with resourcefulness on finances, such local influence and will to intimidate, gives an incentive to field criminals as candidates. This method is supported by certain empirical evidence, indicating that such candidates are victorious hold elections more often, which also enhances the given occurrence.

Likewise, voter choice needs to be understood within the limits of this system. Voters don't make decisions in isolation; they are constrained by the choices offered by political parties, as well as by social and economic circumstances, local government service delivery and immediate material needs. In some situations, electorates view criminal candidates as able to facilitate material benefits or security, with voting being a rational outcome given system-wide failures, not a statement of support for criminals. Political systems are open to capture by special interests, rule of law is undermined through selective application and a deepening of social divisions occurs. Criminality in politics normalised in this way undermines public confidence in democracy itself and engenders a sense of impunity, eroding the authority of the state. This, in turn, fuels a crisis of values, in which democracy might turn into a mere procedural shell without any moral and constitutional content. A clear shift in focus from piecemeal to structural reforms is needed. Legal reforms such as fast-track courts and pre-conviction disqualification conditions can close the law and practice gap. Institutional reforms particularly in the area of judicial and electoral law are required to be effectively applied. Most importantly, political reforms to increase political transparency and accountability of the party is had to vary the reward system used to select candidates. Reformation of the electorate like the public funds and greater financial transparency can also ameliorate the need for illicit funds. And finally, it not merely whether the commission of criminal charges against candidates has a bad influence on democracy, but whether democracy is nice with such candidates. A regime that frequently permits persons involved in charges it might pose the danger of destroying itself, by taking on to itself serious crimes, which might have to be occupied by them. Rebuilding the integrity of democracy, in this sense is, not only law and institutional reformation but also a new commitment to values of democracy itself, such as accountability, equality and the rule of

law.

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