



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Criminalisation of Politics in India

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*Received* 19 February 2022; *Accepted* 08 March 2022; *Published* 11 March 2022

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*In a country like India, having a diverse population, it becomes difficult to maintain a smooth functioning democracy. The rapidly increasing problems like criminalisation in politics have made it more difficult for sustaining democracy in the country. This growing unholy alliance between politicians and criminal elements creates major challenges on several fronts. It has now become a political endemic, with no meaningful steps done so far. In this article, I will be dealing with the increasing trend of criminalisation in politics and what popular measures had been taken by our courts and legislators, and also what can be done to curb this issue.*

**Keywords:** *criminalisation, politics, democracy, elections, reforms.*

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### INTRODUCTION

India, the world's largest democracy is successful not because of ideals envisioned by great leaders but because of the people who have kept these values. The people believed in the system of our country and trust these ideals as superior. However, in recent years, it has been observed that due to causes such as the rising involvement of criminals in politics, people's faith and confidence in the government have eroded. This criminalisation of politics though not at all new but was first uprooted in the year 1993, after the Mumbai bomb blast, whose

investigations pointed out the involvement of various politicians and other big powers with criminals and other gangs.

## SO, WHAT DOES CRIMINALISATION OF POLITICS MEANS?

The criminalisation of politics refers to the engagement of criminals in politics, which includes the participation of criminals in elections and even winning the elections and representing them in the Parliament and state legislatures. It occurs mostly as a result of the link between politicians and criminals who desire to exert more power over the general public. This, while not immediately apparent, poses a long-term threat to the country as the basic fundamental ideas of the constitution upon which the country was founded are shattered.

## INCREASED TREND OF CRIMINALS IN PARLIAMENT<sup>1</sup>

According to data issued by the **Association of Democratic Reforms (ADR)**, in India, there has seen a rising number of candidates having pending criminal charges against them contesting elections over the years.

- **Lok Sabha 2009** – Out of the 521 winners in the 2009 Lok Sabha elections, around 30% of them had declared some criminal charges against themselves, and 15% of them were charged with serious offences.
- **Lok Sabha 2014** – Out of the 542 winner candidates in the Lok Sabha elections, around 34% had declared facing criminal charges and out of which around 21% were charged with serious offences including murder, crimes against women, kidnapping, etc. Since most of the candidates contesting elections were charged for criminal offences, the possibility of winning a candidate with a criminal background was around 13% whereas the candidate with a clean record had only a 5% chance of winning the election.

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<sup>1</sup>Lok Sabha Elections 2019 Analysis of Criminal Background, Financial, Education, Gender and Other Details of Winners' (ADR, 3 June 2020) <<https://adrindia.org/content/lok-sabha-elections-2019-analysis-criminal-background-financial-education-gender-and-other>> accessed 14 February 2022

- **Lok Sabha 2019** – In the current Lok Sabha, 43% of members are charged with criminal offences and out of which 29% are charged with serious offences like rape, murder, kidnapping, etc.

## CRIMINALS IN UPCOMING 2022 ELECTIONS

As the elections are due for state assemblies in 5 states in Feb-March this year, the problem of candidates with criminal backgrounds is still on the rise. In Uttar Pradesh Legislative Assembly only, out of 403 candidates, 140 MLAs have criminal charges registered against them.<sup>2</sup> According to the data published by ADR for Phase-I<sup>3</sup> of UP elections, around 156 candidates out of 615 contesting for elections have declared criminal charges against themselves. Further, for candidates in the Phase-II<sup>4</sup> of the elections, 147 out of 584 have declared criminal charges against themselves and for Phase-III<sup>5</sup>, 135 out of 623 have declared criminal charges. This increasing trend of criminals indulging in elections is critical for the democracy of our country and the Election Commission should take some concrete steps to stop criminals contesting the elections.

## FACTORS LEADING TO CRIMINALISATION IN POLITICS

There are various factors why criminals easily get into the frame of politics.

- **Lack of Governance** - As different governments are barely able to provide basic amenities to the poor public, and Law and Order are also poor in most of the regions as Police don't work properly for the poor public, and incidence of harassment are a

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<sup>2</sup> 'Uttar Pradesh Assembly Election 2017 Analysis of Criminal Background, Financial, Education, Gender and other details of Sitting MLAs' (ADR, 23 November 2021) <<https://adrindia.org/content/uttar-pradesh-assembly-election-2017-analysis-criminal-background-financial-education-gender>> accessed 14 February 2022

<sup>3</sup> 'Uttar Pradesh Assembly Elections 2022 - Phase I : Analysis of Criminal Background, Financial, Education, Gender and other Details of Candidates' (ADR, 2 February 2022) <<https://adrindia.org/content/uttar-pradesh-assembly-elections-2022-phase-i-analysis-criminal-background-financial>> accessed 14 February 2022

<sup>4</sup> 'Uttar Pradesh Assembly Elections 2022 - Phase 2: Analysis of Criminal Background, Financial, Education, Gender and other Details of Candidates' (ADR, 9 February 2022) <<https://adrindia.org/content/uttar-pradesh-assembly-elections-2022-phase-2-analysis-criminal-background-financial>> accessed 14 February 2022

<sup>5</sup> 'Uttar Pradesh Assembly Elections 2022 - Phase 3: Analysis of Criminal Background, Financial, Education, Gender and other Details of Candidates' (ADR, 15 February 2022) <<https://adrindia.org/content/uttar-pradesh-assembly-elections-2022-phase-3-analysis-criminal-background-financial>> accessed 16 February 2022

common problem. So, the public thinks that if the police can't help them properly then they should select someone powerful from all aspects (like money, power, influence, etc.) so that the person can help them from police harassment and other problems. Thus, this factor leads to an increase of such people having criminal backgrounds in elections.

- **Winn ability factor** - As political parties wish to get into power by any means and also they think that people with criminal backgrounds having muscle powers can terrorize their voters and can have their influence on the larger public and so they can easily grab votes for their parties. Thus, the political parties grant tickets to such persons so that they can easily win the elections and can come to power.
- **Financial Support** - Political parties also require a large amount of money (financial power) for the proper and smooth functioning of their parties and so to gain financial support, parties take large funds usually people from persons with criminal backgrounds as they own a lot of black money and can easily fund their parties. Thus, these people by giving their financial support easily become the face of such parties and get elected to power.
- **Justice Delayed** - Because of the massive delay in deciding of cases pending against the criminals, they took advantage of this delay and run for the elections in the meantime, and somehow if they win the elections then they easily erase the pending charges against them by abusing their authority and bribing the officials. This, in turn, leads to increase circulation of black money and affects the integrity of the officials too.

## HOW IS IT HARMFUL

There arise several problems with the criminals contesting and winning the elections. Firstly, it is against the principle of Free and Free Election, because it restricts voters' choice for electing a suitable candidate. It also goes against the ethos of the democratic ideal of free and fair elections. Secondly, if suppose a criminal gets a ticket from a political party and somehow manages to win the election, then that person will represent the public in Parliament and Legislative Assemblies, but as being a criminal, the person will more focus on increasing his

criminal activities and making more and more money by misusing his powers rather than working for public and making laws for the public good. Third, once in power, these criminals will have patronage over their illicit activities, and Police and other law enforcement agencies will not be able to arrest them easily as they misuse their powers to stop police officials or use the influence of their powers to manipulate evidence against their criminal activities or they sometimes try to just remove all pending cases against themselves by bribing officials with a large amount of money and this way they just become unstoppable from continuing their criminal activities even at a larger scale. Also, there arise various other problems too with the criminalisation in politics, as it results in intimidation of voters, booth capturing, tampered electoral roll, and other irregularities during the elections. Thus, the quality of governance is highly affected if the criminals do represent them in high-rank positions such as ministerial seats in Parliament or legislative assemblies. Also, it tarnishes the value of our democracy, by giving the world a negative view of India.

### **LEGAL ASPECTS REGARDING CRIMINALS INVOLVED IN POLITICS**

- In this regard, the Indian Constitution is silent on what disqualifies a person from running for the election of Parliament, the Legislative Assembly, or any other body or what measures to be taken to curb the criminalization in politics. However, the conditions for disqualifying a person from contesting a legislative election are listed in the Representation of Peoples Act 1951<sup>6</sup>.
- Section 8<sup>7</sup> of the statute, i.e., disqualification on conviction for certain offenses, states that anyone sentenced to more than two years in prison is ineligible to contest an election for six years after the sentence is completed. However, Individuals with criminal charges ongoing against them are not prohibited from running for office, therefore candidates with criminal cases are only disqualified if they are convicted in these cases

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<sup>6</sup> The Representation of People Act, 1951

<sup>7</sup> The Representation of People Act 1951, s 8

- Also, after the recommendations made by the 170<sup>th</sup> law commission report<sup>8</sup> on electoral reforms in 1999, Section 4A<sup>9</sup> was added in The Conduct of Election Rules, 1961, which mandated the candidates to file an affidavit to disclose all their assets along with the criminal charges pending against them<sup>10</sup>.
- Furthermore, the law commission in its 179<sup>th</sup> Report<sup>11</sup> suggested an amendment in the Representation of People Act 1951 to disqualify such people for five years or until acquittal who were charged for their criminal activities. It was also recommended that anyone running for election provide information about any pending cases, including a copy of the FIR/complaint, as well as information about all assets. However, due to a lack of consensus among political parties, the government did not act on the advice<sup>12</sup>.

## STEPS TAKEN TO CURB CRIMINALISATION

### The Vohra Committee:

After the Bombay blasts in the 1990s, P.V. Narasimha Rao Government set up a Committee in July 1993 to suggest measures to curb 'Criminalisation in Politics' which was headed by former Indian Home Secretary N.N Vohra.<sup>13</sup> The Vohra committee released its report in October 1993, which claimed that there were strong links between the criminals, politicians, and bureaucrats in the country and also there were some criminal mafias that were running their parallel government and were strongly supported by politicians, who were protecting them from government actions. The report also revealed how criminals were supported by

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<sup>8</sup> Law Commission of India, *Reform of Electoral Law* (Law Com. No. 170 1999) <<https://lawcommissionofindia.nic.in/lc170.htm>> accessed 14 February 2022

<sup>9</sup> Conduct of Election Rules, 1961, s 4A

<sup>10</sup> Aprajita Verma, 'Voter's Right to Know- Disclosure of Candidate's Criminal Antecedents' (*FACTLY*, 21 March 2020) <<https://factly.in/voters-right-to-know-trajectory-of-law-on-the-disclosure-of-candidates-criminal-antecedents/>> accessed 11 February 2022

<sup>11</sup> Law Commission of India, *The Public Interest Disclosure and Protection of Informers* (Law Com. No. 179 2001) <<https://lawcommissionofindia.nic.in/reports/179rpt1.pdf>> accessed 11 February 2022

<sup>12</sup> Abhishek Kumar, 'Criminalization of Politics' (*Reader's Blog*, 2 October 2021) <<https://timesofindia.indiatimes.com/readersblog/rationalthoughts/criminalization-of-politics-2-37946/>> accessed 11 February 2022

<sup>13</sup> Eshaan Jacques, 'An Analysis of the Vohra Committee Report of 1993' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-5835-an-analysis-of-the-vohra-committee-report-of-1993.html>> accessed 11 February 2022

various political parties and were being elected in Parliament and state legislative assemblies. However, the original report published in the public domain was only made available of 11 pages and the rest of the document was made highly confidential. Many prominent people filed cases in Supreme Court to make the complete document available in the public domain, one such was *Shri Dinesh Trivedi, M.P. & Ors v Union of India & Ors*<sup>14</sup> but the Apex Court in the case dismissed the petition and said the releasing of the entire report could jeopardise the country's investigative agencies' ability to function. However, the court also ordered to constitute a high-level committee to monitor the investigations involving the nexus referred between politicians and criminals in the Vohra Committee report.

### **Electoral Reforms:**

After that, the Election Commission also set up a committee to bring the Electoral reforms in the country and submitted the report in 2004 which made the following recommendations in the conduct of elections:

- It proposed to amend the section 125A<sup>15</sup> of the Representation of People Act 1951, which penalises the candidate for a term of up to 6 months, or fine or both if the candidate himself or through his proposer with the intent to get elected in the election furnishes false information regarding his declarations in the Form-26 during the nominations.
- It also proposed amending Form-26 to add a column where candidates should disclose their annual income for tax purposes, including their profession.

### **THE SUPREME COURT JUDGEMENTS**

The Apex Court in the case of *Union of India v Association for Democratic Reforms* <sup>16</sup>(2002) held that under the Indian constitution, voters had a fundamental right to know about the backgrounds of individuals running for election. The “Right to be informed” was interpreted by the court as a right arising from freedom of speech and expression under Article 19<sup>17</sup>. Thus,

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<sup>14</sup> *Dinesh Trivedi, M.P. and Ors. v Union of India and Ors.* (1997) SC 1138

<sup>15</sup> Representation of Peoples Act, 1951, s 124A

<sup>16</sup> *Union of India v Association for Democratic Reforms* AIR 2001 Delhi 126

<sup>17</sup> Constitution of India, 1950, art. 19

the Election Commission was ordered to get affidavits from candidates detailing any past or pending criminal accusations or prosecutions against them. This contained information on whether the candidate had ever been convicted, acquitted, or dismissed of a criminal offence. Also, if the candidate was charged with an offence punishable by a minimum of two years in prison before submitting the nomination; and whether the candidate was charged with an offence punishable by a minimum of two years in prison before filing the nomination.

In the case of *People's Union for Civil Liberties v Union of India*<sup>18</sup>, (2003) PUCL approached the Supreme Court challenging the section 33-B<sup>19</sup> of the Representation of People's Act 1951 which nullified the 2002 order of SC in *Association for Democratic Reforms*, by stating that election candidates are not required to file an affidavit of criminal antecedents and particulars as required by the Court. This clause was declared illegal and void because it violated the "right of electors to know," which is a part of the fundamental right to free speech and expression, and also hampered free and fair elections, which are part of the Constitution's basic structure. As a result, all criminal histories and antecedents of candidates running for office are now required to be made public.

The judgement of the Supreme Court in the case of *People's Union for Civil Liberties and Ors. v Union of India and Ors*<sup>20</sup> (2013) marked a landmark precedent. The introduction of the NOTA (None of the above) option in the EVMs makes the political parties rethink their candidates as giving tickets to criminals may bring them in trouble as the public has now the option to reject candidates of all the parties by using their negative votes.

In the landmark case of *Lily Thomas v Union of India*<sup>21</sup> (2013), the court ruled that the members of Parliament, Legislative Councils, and Legislative Assemblies who have been convicted of offences for which a minimum sentence is two years imprisonment, will no longer be the members of the house to which they were elected as of the day of sentencing. It also

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<sup>18</sup> *People's Union for Civil Liberties v Union of India* AIR 1997 SC 568

<sup>19</sup> Representation of Peoples Act, 1951, s 33B

<sup>20</sup> *People's Union for Civil Liberties and Ors. v Union of India and Ors* AIR 1997 SC 568

<sup>21</sup> *Lily Thomas v Union of India* (2000) 2 ALD Cri 686



overturned a provision that gave guilty members a three-month window to appeal their convictions and sentences, ruling that those convicted would face automatic disqualification.

Supreme Court in its 2018 verdict in the case of *Public Interest Foundation v Union of India*<sup>22</sup> decided that it cannot disqualify such candidates having criminal charges registered against them and directed the parliament to make laws to curb this criminalisation of politics. It also directed the Election Commission to make political parties as well their candidates having criminal charges mandatorily publish information regarding their criminal background on websites, newspapers, and television channels. After the verdict of 2018, various litigants filed a contempt petition in the Supreme Court that the passed order was not being implemented properly by the political parties. It was also alleged that EC also has not amended the Model Code of Conduct to implement the directions of the judgment. The plea also mentioned that the EC has neither published the important websites nor the timings for publication. This led to the publication of information on such newspapers and channels which were not so popular and in this way the purpose of the judgment was of no means. Thus, the Apex Court in its order<sup>23</sup> of Feb 2020, directed the EC to report non-compliance of its order and also directed additional guidelines to the political parties to also declare the reason for selecting a candidate with criminal background over the candidate with clear records. It also said that the “Winnability” factor cannot be the reason for such selection.

## MEASURES CAN BE TAKEN TO CURB CRIMINALISATION

- It is necessary to enact legislation prohibiting such individuals from running for election if they are facing criminal accusations. This will only be feasible if all political parties unite around a common subject and fight for the benefit of the country's democracy rather than for their own personal gain.
- Political parties should propose some alternatives, such as not giving tickets to those with criminal records or excluding people with major criminal offenses from joining the political party.

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<sup>22</sup> *Public Interest Foundation and Ors. v Union of India (UOI) and Ors.* (2018) SC 1048

<sup>23</sup> *Rambabu Singh Thakur v Sunil Arora and Ors* (2020) SC 0172

- Fast track courts should work more diligently to solve the pending charges against the legislators so that it can create a strong precedent for criminals and can prevent the increasing involvement of criminals in politics.
- Voters should also restrict themselves from receiving any type of gifts and other offers from candidates.
- Also, EC should start awareness campaigns in the country to make the voters aware of their right to know the criminal background of the candidate.
- There should be penalties inflicted upon the political parties who encourage candidates with criminal backgrounds.

## CONCLUSION

In last, I would like to conclude that this increasing trend of criminalisation in politics is making a mockery of our democracy and is a tough challenge for the country to curb this issue. When the lawbreakers become the lawmakers, it makes bringing reforms more problematic but seeing the increasing involvement of the judiciary in curbing this problem and also efforts by the various organization in spreading the awareness among the general public about the criminals' involvement in politics, we can expect a positive solution to this problem but for this, we need a vigilant public and strong political will to cease the involvement of criminals in politics.