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## Criminalization of Politics in India

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*Politicians are significant in our nation. Ministers run the government and enact legislation. However, concern for politics is raised by the criminalization of politics. The following article explains the criminalization of politics and brings out in detail the problem of an increasing number of politicians with a criminal background. The aim of analyzing the adverse impact of criminalization on India's development. It elaborates on why Supreme Court judgments, guidelines of the Election Commission of India, and Indian legislation are unable to reduce the number of politicians with criminal records.*

**Keywords:** *politics, criminal, politicians.*

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### INTRODUCTION

India recently celebrated its 75th independence day. Prime Minister Narendra Modi while addressing the nation from the Red Fort, New Delhi promised that India would prosper and become self-sufficient. However, ineffective politicians would impede the nation's prosperous future. One of the factors contributing to incompetent politicians is the criminalization of politics. Criminalization of politics means individuals with criminal history entering into politics and getting elected as Minister of Parliament and Minister of Legislative Assembly. The last few years have seen a dramatic rise in this trend.

In 2004, there were 24% of Lok Sabha members had criminal records. By 2014, that figure had risen to 34 percent, and by 2019, it was 43 percent. This indicates that about 50% of Lok Sabha MPs have a criminal background. Of the 43% of former criminals who have become politicians, 29% had serious criminal charges like murder, kidnapping, extortion, etc., against them. In 25 constituencies, the number of candidates with criminal charges was higher than the number of candidates without any criminal charges<sup>1</sup>.

## INDIAN LEGISLATION ON CRIMINALIZATION OF POLITICS

There are many provisions in Indian legislation regarding the disqualification of ministers in order to prevent the involvement of more criminals in politics. The Representation of People's Act, 1951 contains specific provisions pertaining to the disqualification of ministers. Section 8 of the Representation of the People's Act<sup>2</sup> concerns disqualification on conviction for certain offenses including the offense of bribery, rape, or any grave crime against women, creating enmity between two groups, violation of the dowry prohibition act, and engaging in terrorist activity. An individual is sentenced to a term of imprisonment for years, a fine, and a six-year prohibition from standing in elections under the act.

Under section 8A of the Representation of People's Act<sup>3</sup>, a person found guilty of corruption is disqualified from contesting in elections. According to section 9<sup>4</sup>, A person holding an office under the Government of India or under the Government of any State will be dismissed for corruption or disloyalty for a period of five years.

Article 102(1)(e)<sup>5</sup> and Article 191(1)(e)<sup>6</sup> of the Indian Constitution deals with the disqualification of ministers holding an office of profit under central or state government.

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<sup>1</sup> 'Criminalization of Politics' (*The Hindu Centre*, 24 August 2022)

<<https://www.thehinducentre.com/verdict/get-the-fact/criminalisation-of-politics/article64936366.ece>>  
accessed 25 September 2022

<sup>2</sup> Representation of People Act 1951, s 8

<sup>3</sup> Representation of People Act 1951, s 8A

<sup>4</sup> Representation of People Act 1951, s 9

<sup>5</sup> Constitution of India 1950, art 102(1)(e)

<sup>6</sup> Constitution of India 1950, art 191(1)(e)

## SUPREME COURT ON CRIMINALIZATION OF POLITICS

The Supreme Court has delivered multiple verdicts to lessen the criminalization of politics. In *Association for Democratic Reforms (ADR) v Union of India*, 2002<sup>7</sup> the Hon'ble Supreme Court held that all political parties should disclose the criminal antecedents, personal assets, educational qualifications, and liabilities, if any, of their candidates.

In the landmark judgment of *Lily Thomas v Union of India*, 2013<sup>8</sup> the Apex Court held that a serving MP or MLA who receives a sentence of two years or more in prison for an offense listed in Section 8 of the Representation of the People's Act, 1951 shall immediately lose their membership in the legislature. Lalu Prasad Yadav, former Chief Minister of Bihar was found guilty under the Prevention of Corruption Act (PCA), and as a result, he was disqualified from serving in the Lok Sabha at the time and from standing in elections for six years.

In *Public Interest Foundation and Ors. v Union of India*, 2014 the Supreme Court mandated that trials involving serving MPs and MLAs conclude within a year of the allegations being brought against them. This decision was based on recommendations given by the Law Commission in its 244th report.

In 2020 a public interest litigation was filed in the Supreme Court claiming that the Election Commission of India failed to take any action to ensure the implementation of a 2018 judgment by the five-judge constitutional bench that had mandated that political parties disclose and publish all criminal cases of the candidates contesting in elections. Supreme Court bench of Justice R F Nariman and Justice S Ravindra Bhat ordered to divulge the criminal records of their candidates. Parties must also declare within 48 hours of selecting candidates the detailed justifications for choosing candidates with a criminal background. Supreme Court has specified winnability cannot be a factor to choose a candidate.

A complaint of contempt was made in 2021 by an advocate Brajesh Singh against political parties that violated Supreme Court directives about releasing the criminal records of their candidates

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<sup>7</sup> *Association for Democratic Reforms v Union of India* [2002] 5 SCC 294

<sup>8</sup> *Lily Thomas v Union of India* [2013] 7 SCC 653

during the 2020 Bihar elections. The Nationalist Congress Party (NCP) and CPM were each fined Rs. 5 lakh by the Supreme Court for disobeying its directive on the 2020 Bihar elections. Other parties, including the Congress, BJP, Communist Party of India, JD(U), RJD, and LJP, have each received a fine of Rs. 1 lakh<sup>9</sup>.

## GUIDELINES OF ELECTION COMMISSION

In 2021, the election commission released guidelines for the publication of criminal antecedents by political parties in pursuance of the Hon'ble Supreme Court of India's judgment. The Commission has prescribed the following timeline for publicity of criminal antecedents during the period starting from the day following the last date of withdrawal and up to 48 hours before ending with the hour fixed for the conclusion of the poll.

- Within the first 4 days of withdrawal of nominations.
- Between next 5th - 8th days
- From the 9th day till the last day of the campaign (the second day before the date of the poll).

The following are the election commission's regulations on the disclosure of political candidates' criminal records:

- The particulars regarding criminal cases pending against the candidate shall be in bold letters.
- The matter in newspapers shall be published in font size of at least 12
- The above information shall be published State-wise for each State/UT.
- If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

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<sup>9</sup> 'BREAKING: Supreme Court Imposes Fine On 8 Political Parties For Violating Directions To Publish Criminal Antecedents Of Candidates In Bihar Polls' (*Livelaw*, 10 August 2021) <<https://www.livelaw.in/top-stories/supreme-court-fine-flouting-criminalization-of-politics-order-cpim-ncp-bjp-inc-179261>> accessed 24 September 2022

- The political party shall be obligated to put up on its website the information of candidates having criminal antecedents.
- The Political Party shall submit a report about the publishing of a declaration regarding criminal cases in Format CS to the Chief Electoral Officer of the State within 30 days of the declaration of the result of the election concerned<sup>10</sup>.

## REASONS FOR THE INCREASE OF CRIMINALIZATION IN POLITICS

Despite the laws passed and judgments made by the supreme court, the number of ministers with a criminal background has risen significantly in recent years. The following is a detailed analysis of the factors contributing to the increased criminalization of politics.

- **Lack of Effective Enforcement**

The primary cause of the rise of criminalization in politics is the ineffective execution of laws, Supreme Court judgments, and guidelines issued by the Election Commission of India. The election commission has published standards for disclosing the criminal antecedents of candidates contesting in elections, but the political parties have flagrantly ignored these guidelines. Likewise, the model code of conduct is also not well-enforced. The Supreme Court's directive to disclose candidates' criminal histories has not been complied with in the Lok Sabha elections in Bihar and Uttar Pradesh. The Election Commission of India must be given the powers to enforce the rules and other laws and to de-recognize the political parties that are not abiding by them.

- **Money Power**

Political parties tend to choose a candidate to contest in an election depending on his ability to fund his campaigns. Sometimes few large private companies and hooligans will frequently finance candidates in order to influence the decision-making process, once that particular

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<sup>10</sup> 'The Election Commission of India, Broad guidelines of Election Commission of India on Publicity of Criminal Antecedents by Political Parties & Candidates-February, 2021' (*Government of India*, 26 February 2021) <<https://eci.gov.in/files/file/12949-broad-guidelines-of-election-commission-of-india-on-publicity-of-criminal-antecedents-by-political-parties-candidates-february2021/>> accessed 23 September 2022

candidate comes into power. Political parties bribe voters by offering them cash, alcohol, drugs, gold, and other valuables to support their party. Political parties use black money to achieve the same. This trend has grown over the past few years. In the 2019 Lok Sabha Elections cash, drugs, and liquor worth Rs.3,456.22 was seized in India which is nearly 90 percent of the amount that the government officially spent in conducting the 2014 Lok Sabha election. The Election Commission of India said alcohol, and drugs worth 200 crores were seized in Punjab, Goa, Manipur, Uttar Pradesh, and Uttarakhand after the announcement of the Assembly Elections.

This practice must end because voters might grow accustomed to it. In the 2014 Lok Sabha elections during one of the political campaigns in Rohaniya village near Varanasi, a woman clearly said if you want our vote, give us money<sup>11</sup>. This is an extremely dangerous trend that, if left unregulated, could have an impact on our democracy in the future.

- **Winnability**

The majority of voters in our country choose a candidate based on his or her religion and caste. Political parties also provide opportunities to those candidates who have a possibility to win while keeping these considerations in mind.

## **ADVERSE IMPACT ON THE DEVELOPMENT OF INDIA**

The election process is a fundamental component of democracy. Indian Constitution ensures elections are held in a free and fair manner. This can only be ensured when voters elect their representatives without any fear or intimidation. However, we are unsure of how free and fair the elections are in India. Political parties try to bribe voters using money, alcohol, drugs, gold, and precious items to support their parties. According to the findings of the Vohra Committee, there is a clear relationship between criminals, police, bureaucracy, and politicians, and this link is utilized by these leaders for voting purposes during the election. The gangs are employed for booth capturing and threatening voters.

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<sup>11</sup> 'Opinion | Money and its role in politics' (*Mint*, 28 April 2019)  
<<https://www.livemint.com/opinion/columns/opinion-money-and-its-role-in-politics-1556474333221.html>>  
accessed 22 September 2022

Elections in India are considered to be very crucial. In *Indira Nehru Gandhi v Rajnaraian*<sup>12</sup>, it was observed: “The principle of a free and fair election is an essential postulate of democracy which in turn is a part of the basic structure of the Constitution of India.” Elections are crucial since they determine the future of our nation, hence this evil practice needs to be controlled. Given that India is still in its early stages of development, our country needs strong leaders who will work hard to make improvements. However, the ability of the democratic process to achieve effective governance is hampered when lawbreakers are elected to become legislators. Rightly said by Israelmore Ayivor “You don't necessarily need atomic bombs to destroy a nation. Politicians who value their pockets more than the life of citizens always do that every day.”

Those politicians enact laws that are in their own best interests and show little concern for the welfare of the populace or the development of the nation. They follow the directives of the powerful private corporations and hooligans who provided them with funding during election campaigns. Corruption will prevail in long run. All the institutions will weaken as a result of not having an able and competent administrator. These leaders misuse their position to prolong the court proceedings or avoid criminal cases. In the end, a regular man's life is affected by all of these circumstances.

## CONCLUSION

By using the legal system, the electoral commission, and other tools, this scenario can be controlled to prevent getting worse. The Election Commission of India has the power to create guidelines, but it is not able to compel all political parties to adhere to such criteria strictly. Additionally, the commission lacks the authority to de-register political parties that failed to comply with the guidelines. Power should be granted to the Election Commission of India so that all conditions for free and fair elections can be met. Senior advocate K Viswanathan proposed that ECI exercise its authority order to ban political parties that do not adhere to procedures granted by clause 16A of the election symbols. But Supreme Court has rejected this

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<sup>12</sup> *Indira Nehru Gandhi v Raj Narain* [1975] AIR 865

suggestion. However, the Election Commission must be granted extensive power to regulate this issue.

No political party in our nation is driven to address this issue; therefore, the Supreme Court is the only hope for reducing the number of politicians with a criminal record. The Supreme Court has rendered numerous decisions on this matter, yet directives given by the court are not followed by the political parties. The political parties even failed to abide by even the Supreme Court's 2020 instructions. The supreme court dismissed the petition filed by advocate Brajesh Singh against political parties as they failed to comply with the Apex Court's guidelines in the Uttar Pradesh elections in 2021. The Supreme Court should grant the Election Commission authority so that it can carefully adhere to its guidelines and the court's orders.

State funding of the elections will reduce the use of illicit funds in election campaigns. If the government starts funding political parties in election campaigns, it will stop candidates from exploiting the funds for powerful, moneyed interests. However, this approach is unsustainable in light of the state's financial situation. The political consciousness of voters needs to be raised on this issue. The right steps should be made straight away before the situation becomes really serious.