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NYAYAVIMARSHA

## **CRIME AND POWER : THE TROUBLING INTERSECTION OF THE CRIMINALIZATION OF POLITICS**

### **ABSTRACT**

"Elections and their corruption, injustice and tyranny of wealth and inefficiency of administration, will make a hell of life as soon as freedom is given to us", as rightly said by Rajaji in his prison diary<sup>1</sup>. After independence, in India, the primary setup was the political parties. At that time, the nexus between politicians and criminals was starting to emerge. The political persons involving the assassins or local dominance on legal functionaries have been visible in recent times. These parties trusted by people aim for profits in several unfair ways instead of showing commitment and fairness towards the welfare of the nation. It is really hard to state that the truth is that the leaders chosen and being represented are a major reason for the criminalization of politics, which affects the nature of democracy. As we know, the criminalization of politics is an enduring phenomenon in Indian politics, where this phenomenon is very crucial to discuss. At the outset, this essay outlines the concept of the criminalization of politics, its impact on society, and the suggested measures to curb the criminalization of politics. The Vohra Committee on the criminalization of politics was established in 1986 with the goal on determining the extent of political-criminal connection and the making recommendations for how to effectively address it. Moreover, the 244<sup>th</sup> Law Commission Report which was submitted in 2014, addressed the need to cut off the current scenario of corrupt lawmakers who are endangering the democracy. In the Representation of People's Act 1951, section 8 deals with the requirements for disqualifying a person from contesting in an election for legislature. Further, the objective of this study is to know whether India's democratic process has been adversely affected by the criminalization of politics ever since independence.

**KEYWORDS :** *Vohra Committee, 244<sup>th</sup> Law Commission, Section 8 of the Representation of People's Act, Election Commission, corruption.*

### **INTRODUCTION**

As India is said to be democratic, still, people residing in the country have not reached it fairly, so that means the policymaking actions and rights of residents are dominated by persons as part of the government or persons engaging with criminals. The members of the legislative assembly and parliament were elected to refrain from criminalization occurring in India. On the other hand, these

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<sup>1</sup> The Hindu, [https://www-thehindu-com.cdn.ampproject.org/v/s/www.thehindu.com/news/national/sc-quotes-rajajis-apprehension/article61529836.ece/amp/?amp\\_gsa=1&\\_js\\_v=a9&usqp=mq331AQIUAKwASCAAgM%3D#amp\\_tf=From%20%251%24s&aoh=17259753116636&referrer=https%3A%2F%2Fwww.google.com&ampshar=https%3A%2F%2Fwww.thehindu.com%2Fnews%2Fnational%2Fsc-quotes-rajajis-apprehension%2Farticle61529836.ece](https://www-thehindu-com.cdn.ampproject.org/v/s/www.thehindu.com/news/national/sc-quotes-rajajis-apprehension/article61529836.ece/amp/?amp_gsa=1&_js_v=a9&usqp=mq331AQIUAKwASCAAgM%3D#amp_tf=From%20%251%24s&aoh=17259753116636&referrer=https%3A%2F%2Fwww.google.com&ampshar=https%3A%2F%2Fwww.thehindu.com%2Fnews%2Fnational%2Fsc-quotes-rajajis-apprehension%2Farticle61529836.ece), (last visited 10<sup>th</sup> September 2024).

members were the co-founders of the local dominant bodies or assassins. The local dominant bodies are associated for the purpose of dealing with illicit activities. Moreover, politicians were also engaged in criminal activities with the help of their positions to shield themselves from accountability or to deceive the system of the government. This leads to the position where criminal behavior is formalized in the political arena. The most important factors that contributed to the criminalization of politics were the weak legal frameworks, social inequality and marginalization, electoral compulsions, lack of transparency, etc. This results in the ruining of the entire faith that our forebears had in the political system. Above all, the criminalization of politics has become a threat to Indian politics.

### **CRIMINALIZATION OF POLITICS**

The initial concept to understand was crime and power. Crime means any individual or a group of people commits an act illegally to endanger the property or the life of a person, which is against the law and the power means an authority given to an individual for his position in an occupation. Both crime and power pay an equal amount of contribution in the prevailing political system. The current scenario of the political system is under the control of politicians and criminals.

The Criminalization of politics is a pressing issue in contemporary democracy portrayed by the exposure of criminal elements in political sphere. The criminalization of politics indicates the involvement of individuals in politics with criminal background such as murder, assault, rape, theft and smuggling.

### **REASONS FOR CRIMINALIZATION OF POLITICS**

There are several reasons for criminalization of politics that affects the democracy:

- **Vote Bank**

The Vote bank refers to the people who are loyal to a specific political party based on their religion or caste rather than the current policies and regulations. These people often vote the same political parties for some immunities like money or other favor. The political parties rely on these groups for the sake of getting the votes to win the elections. In such case, a vote bank affects fair election which eventually becomes the criminalization of politics.

- **Corruption**

Corruption exists in other fields, including politics, where politicians misuse their power for personal gain. It includes bribery, embezzlement, nepotism, or fraud. Political corruption weakens the trust which people have in politics, leading to poor governance. Corruption leads to haziness, draining of the legal system and a lack of transparency.

- **Lack of Governance**

The lack of governance enables the criminalization of politics where the law enforcement, election oversight, accountability and transparency factors are futile. Since there is a default in the governance and the statues, there is a rise of criminals in the political system. The weak judicial system such as delayed trials, inadequate investigation and political interference empowers politicians with serious criminal offenses to escape from justice and hold office.

- **Muscle and Money Power**

Muscle and money power are one of the significant reasons for the criminalization of politics. The muscle power which helps the politicians to control the public by using physical force, violence or coercion, etc. whereas money power refers to the use of financial resources which are acquired by means of illegal or unethical activities. This power enables them to grab the votes from the public by giving bribery .

- **Weaknesses in Election Commission Oversight and Implementation**

The Loopholes in the functioning of the election commission include inadequate scrutiny of candidates, lack of technological tools, influence from political entities, insufficient penalties for fraud and slow response to complaints.

## **STATISTICAL ANALYSIS**

The statistical analysis on the criminalization of politics relates to the data containing the number of politicians with background. According to a 2019 report by the Association for Democratic Reforms (ADR), nearly 43% of Members of Parliament (MPs) elected in India's 2019 general election had criminal cases pending against them. This marked an increase from 34% in 2014 and 30% in 2009, showing a consistent rise in the criminalization of politics. Of these, 29% of MPs had serious criminal cases, such as murder, rape, kidnapping, and corruption.<sup>2</sup>

The criminalization of politics is more prevalent in certain states or regions where law enforcement is weak, poverty is widespread, and caste or ethnic divisions are deep-rooted. In India, states like Uttar Pradesh, Bihar, and Jharkhand have a higher number of elected representatives with criminal backgrounds, particularly those involved in violent crimes. In Uttar Pradesh, 49% of the elected MPs in 2019 had criminal cases against them, while in Bihar, this figure was 59%. These regions are

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<sup>2</sup> The Legal Service, <https://www.legalserviceindia.com/legal/article-10366-an-analysis-criminalization-of-politics-in-india.html>, (last visited 11<sup>th</sup> September 2024).

known for higher levels of political violence, corruption, and weak governance.<sup>3</sup> Criminal politicians often have significant financial resources, which help them fund extensive election campaigns and buy votes. Studies show that candidates with criminal backgrounds tend to declare higher assets compared to those without criminal records. According to the 2019 ADR report, the average assets of MPs with criminal cases were approximately ₹4.5 crores (USD 600,000), while those without criminal cases declared average assets of about ₹3 crores (USD 400,000). This suggests a correlation between wealth and the success of criminal candidates in elections.<sup>4</sup>

The 2024 report by the Association for Democratic Reforms (ADR) reveals a significant trend of criminalization in Indian politics. Among the key findings, 44% of sitting Lok Sabha MPs have criminal cases against them, with 29% facing serious charges such as murder, kidnapping, and crimes against women. States like Uttar Pradesh, Maharashtra, and Bihar have over 50% of MPs with criminal records. Additionally, 21% of candidates in the fourth phase of the 2024 elections declared criminal cases, including charges of attempted murder and rape.<sup>5</sup>

The ADR highlights that this growing nexus between politicians and criminal elements, coupled with weak legal frameworks, undermines free and fair elections. Proposed reforms include permanently disqualifying candidates convicted of serious crimes and bringing political parties under stricter transparency laws, such as the Right to Information Act.

## **VOHRA COMMITTEE**

The Vohra committee was introduced in 1993, which was commissioned by the government of India and chaired by the Home Secretary N.N. Vohra. The committee was formed when the Mumbai (Bombay) Bomb blast took place. The Committee consisted of high-ranked officials which included the Home Secretary, the Director of the Intelligence Bureau (IB), the Director of the Central Bureau of Investigation (CBI), and the other experts who presented their insights and recommendations based on their respective organization's expertise. The committee investigates the criminalization of politics, the Nexus between the politicians, criminals and the law enforcement bureaus. The committee published the report based on the linkage between the criminal syndicate, politicians and some members of the judiciary. Even though there are an enormous number of cases pending against each politician, they are still contesting the elections and holding office. The

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<sup>3</sup> ForumIAS, [https://forumias.com/blog/criminalisation-of-politics-causes-impacts-and-solutions-explained-pointwise/#What are the recent trends](https://forumias.com/blog/criminalisation-of-politics-causes-impacts-and-solutions-explained-pointwise/#What%20are%20the%20recent%20trends), (last visited 13<sup>th</sup> September 2024).

<sup>4</sup> PWOnlyIAS, <https://pwnonlyias.com/current-affairs/criminalization-of-politics/>, (last visited 12<sup>th</sup> September 2024).

<sup>5</sup> Association for Democratic Reforms, <https://www.google.com/amp/s/www.thehindu.com/news/national/at-least-93-of-lok-sabha-poll-winners-are-crorepatis-adr-analysis/article68258651.ece/amp/>, (last visited 13<sup>th</sup> September 2024).

committee also highlighted that the criminal syndicate or mafia are running a parallel government and the use of black money in the elections.

The Supreme Court in *Shri Dinesh Trivedi, M.P. & Ors V. Union Of India & Ors*, 1997<sup>6</sup> describe that muscle-power network that politicians deploy during elections is essentially developed using the money power. To secure the prosecution of those involved and ensure an in-depth investigation of the N. N. Vohra Committee's findings, it was advised that a high-level committee be appointed. It also stated that it was necessary "to take urgent stock of all available information about the activities and links of all... (Customs, Revenue, Intelligence, etc.) to gather the required information."

The Vohra Committee concluded by restating the fact that intelligence agencies must be established to handle the issue of the criminalization of politics in order to stop it. The report of the Vohra committee has not been made public yet.

### PROVISIONS INVOLVING IN CRIMINALIZATION OF POLITICS

- Article 102(1)(e) of the Constitution of India<sup>7</sup>, Disqualifies a person from contesting elections if they have been convicted of certain offenses and sentenced to imprisonment for two years or more.
- Article 324 of the Indian Constitution<sup>8</sup> grants powers to the Election Commission of India to direct and control free and fair elections in India. The powers of Superintendence have been vested in the Election Commission.
- Article 325 of the Constitution<sup>9</sup> ensures universal suffrage and provides that no person be ineligible for inclusion in, or to claim to be included in a special, electoral roll- on grounds of religion, race, caste or sex.
- The Representation of People's Act 1951<sup>10</sup> specifies the requirements for disqualifying a candidate from running in a legislative election. Section 8 of the act, or disqualification upon conviction for certain offences, states that a person sentenced to more than two years in prison is not eligible to run for office for six years after serving the sentence. Election disqualification for those with active criminal cases depends on their conviction because the law does not prohibit those with active criminal cases from running for office.
- Section 33(b) of the Representation of People's Act 1951<sup>11</sup> specifies that any judgment, decree or order of any court or any direction, order or any other instruction issued by the

<sup>6</sup> *Shri Dinesh Trivedi, M.P. & Ors vs Union Of India & Ors* on 20 March, 1997, AIR ONLINE 1997 SC 304.

<sup>7</sup> Indian constitution 1950, Article 102(1)(e), Acts of Parliament 1950 (India).

<sup>8</sup> Indian constitution 1950, Article 324, Acts of Parliament 1950 (India).

<sup>9</sup> Indian constitution 1950, Article 325, Acts of Parliament 1950 (India).

<sup>10</sup> The Representation of People's Act 1951, Section 8, Acts of Parliament 1951 (India).

<sup>11</sup> The Representation of People's Act 1951, Section 33(b), Acts of Parliament 1951(India).



- Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished.
- The 244<sup>th</sup> Law Commission Report<sup>12</sup> dealt with two issues related to electoral reforms – the disqualification of electoral candidates against whom criminal charges had been framed, and the disqualification of candidates filing false affidavits.

## JUDGEMENTS OF CASE LAWS

- Union of India v Association for Democratic Reforms (2002)<sup>13</sup>, the Court in dealing with the question of criminalization of politics held that under the Indian Constitution, electors had a fundamental right to know the antecedents of candidates contesting elections to hold public office. The court read in 'right to be informed' as a right flowing from freedom of speech and expression. Election Commission was directed to secure affidavits by candidates recording all particulars relating to past or pending criminal charges or cases against them. This included information as to whether the candidate was convicted/acquitted/discharged of any criminal offence in the past. Additionally, if convicted, the quantum of punishment that was awarded; and whether prior to six months of filing of nomination, the candidate was accused of an offence punishable with minimum two years of imprisonment.
- Peoples Union for Civil Liberties v Union of India (2004)<sup>14</sup>, the Peoples Union for Civil Liberties approached the Supreme Court challenging Section 33B of the Representation of People (Third Amendment) Act which nullified the decision in Association for Democratic Reforms (2002) by providing that candidates contesting elections need not file affidavit of criminal antecedents and particulars as directed by the Court. This provision was held unconstitutional and void as it infringed the "right of electors' to know", a constituent of the fundamental right to free speech and expression and hindered free and fair elections, which is part of the basic structure of the Constitution. Subsequently, all criminal records and antecedents of candidates contesting elections are now mandated to be matters of public record.
- K. Prabhakaran v P. Jayarajan (2005)<sup>15</sup>, the Court elucidated upon the scope and purport of Section 8(3) of the Representation of Peoples Act, 1951 which provides criteria for disqualification. It was observed that the purpose of enacting disqualification under Section

<sup>12</sup> 244<sup>th</sup> Law Commission Report 2014 (India).

<sup>13</sup> Union of India v Association for Democratic Reforms (2002), AIR2002SC2112.

<sup>14</sup> Peoples Union for Civil Liberties v Union of India (2004), AIR 2004 SUPREME COURT 1442.

<sup>15</sup> K. Prabhakaran v P. Jayarajan (2005), AIR 2005 SUPREME COURT 688.

8(3) of RPA<sup>16</sup> is to prevent criminalization of politics. Those who break the law should not make the law. Generally speaking, the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and governance. Persons with criminal background pollute the process of election, as they have no reservation from indulging in criminality to win an election. Thus, Section 8 seeks to promote freedom and fairness at elections. The provision has to be so meaningfully construed as to effectively prevent the mischief sought to be prevented.

- Lily Thomas v Union of India (2013)<sup>17</sup>, A two Judge bench of the Supreme Court in 2013 ruled that Members of Parliament, Legislative Councils and Legislative Assemblies convicted of crimes where they had been awarded a minimum sentence of 2 years imprisonment would cease to be members of the house to which they were elected from the date of sentencing. It further struck down the provision, which allowed convicted members a 3 month time period for appeal against the conviction and sentencing and held that those convicted would suffer immediate disqualification.
- Public Interest Foundation v UOI (2018)<sup>18</sup>, the Court delivered its judgement in the Electoral Disqualification case. The Court had to decide if persons ought to be disqualified from membership in legislative bodies when criminal charges are framed against them. Currently Section 8 of the Representation of Peoples Act only disqualifies persons when they are convicted of criminal charges. The five-judge Bench unanimously decided that it cannot disqualify candidates, against whom criminal charges have been framed, from contesting elections. It recognized that it cannot introduce new rules regarding the disqualification of electoral candidates. The Bench asked Parliament to make a law that prevents candidates accused of serious crimes from entering politics.<sup>19</sup>

#### **SUGGESTED MEASURES FOR CRIMINALIZATION OF POLITICS**

- The political parties should not give seats to criminal candidates who are willing to contest elections.
- The amendment in to the Representation of People's Act to eliminate the candidates who have heinous crimes pending against them.

<sup>16</sup> The Representation of People's Act 1951, Section 8(3), Acts of Parliament 1951(India).

<sup>17</sup> Lily Thomas v Union of India (2013), AIR 2013 SUPREME COURT 2662.

<sup>18</sup> Public Interest Foundation v UOI (2018), AIR 2018 SUPREME COURT 4550.

<sup>19</sup>Supreme court observer ,<https://www.scoobserver.in/journal/criminalisation-of-politics/amp/>, (last visited 14<sup>th</sup> September 2024).

- The appointment of election commissioner must be in fair and transparent manner.
- The election commission of India should have the power to audit the finances of the political parties. Hence, this helps to prevent black money in politics.
- The laws must be made in a more stringent way to prevent criminals from contesting elections.

## CONCLUSION

In summary, the troubling intersection of criminalization of politics dealt with the correlation between crime and power. It encompasses the corruption and other illicit activities done in politics by the elected representatives. It ruins public trust, disintegrates the political arena and prioritizes their own gain or wealth. Moreover, the statistical analysis and Vohra committee discusses the rise in the criminal activities by politicians over a decade. The provisions that are used in the Indian Constitution, Representation of People's Act and judgement of case laws indeed state the disqualification of political parties for their misconduct. To have more stringent laws, accountability and transparency in elections, disclosure of the criminal and civil records of contesting political members and to have rigorous rules and regulations in the model code of conduct, these are the effective measures to curb the criminalization of politics.