



## CRIMINALISATION OF POLITICS IN INDIA

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### ABSTRACT

India, the largest democratic country and also home to the fair and regular elections is now giving rise to criminals in the political system. So criminalization of politics means to use politics or political power by self-interest seeking persons for pecuniary gains or various other advantages. Crime in political sense is usually described as to gain something not legal or normal which is punishable by law such as to get special position in administration or to rise to the higher stage of administration which is normally not feasible. So when we find that political power has been or is being used by some persons for the attainment of undue privileges and when this is rampant in the arena of politics we generally call it criminalization of politics.

This evil of Criminalization of Politics in India calls for special attention of the people because this revolves around the self-interests of politicians of all hues; people can never hope that the politicians would take any initiative to rectify this evil. In this research paper, an attempt will be made to analyze the factors leading to the Criminalization of politics in India and its impact on the democracy of India. This prevailing trend is nullifying all the constitutional safeguards of democracy and is spoiling bureaucracy and is even threatening the judiciary. The political parties of today do not pay attention to

inculcate noble political values and principles of citizenship in the people. On the contrary, they perpetuate the differences among the people and make full use of those differences for creating conflicts among them.

As the scheme of research, this research paper deals with the question that **how badly is the Indian political system criminalized and its consequences on free elections and democracy as concepts**. This project will use case-studies, facts and figures published and also the articles and essays published by people on this topic, since the problem is an emerging one. This research paper will also use other research techniques.

Keywords: Criminalization of politics, politics, democracy, constitutional safeguards

### Introduction to Criminalization of Politics

Criminalization of politics is when politics or political power is used by self-interest-seeking persons for pecuniary gains or various other advantages such as to get special position in administration or to rise to the higher stage of administration which is normally not feasible. It means to use politics or political power for nefarious gains.

To gain something not legal or normal has been called crime. Here the word crime is used in politics in special sense. For example an officer in administration wants to be promoted to higher post. But this is not his due. He uses politics or political power to



achieve this. The person succeeds. But the matter does not stop here. The person who helped to get undue privilege will again use this person for the achievement of his purposes which are, in normal course, not due. This is the policy of give-and-take and this happens behind the curtain.

Hence we find that political power has been or is being used by some persons for the attainment of undue privileges and when this is rampant in the arena of politics we generally call it criminalization of politics. To get undue favor through the use of political power is a crime. The term crime means an action which constitutes a serious offence against an individual or the state and is punishable by law. Hence, gaining something by the use of political power is a crime and is also punishable.<sup>1</sup>

Criminalization of politics has become an enduring phenomenon in Indian politics. It is crucial to discuss this because it is against the very spirit of democracy. A rule that was meant to be governed by law has rather ended up being a rule of money and muscle power. What is even more shocking is the acceptability of these elements both by the political entities and the masses, which means that it is people's mandate acting against the values of democratic system.<sup>2</sup> We can thus say that democracy has become the contradiction of democracy. This leads to the negation of all the democratic safeguards provided by our constitution; that

<sup>1</sup>Sanchit Sharma, Criminalization of Politics in India : A project study, SCRIBED LAW (Sept 24, 2009), <https://www.scribd.com/doc/20133814/Criminalization-of-Politics-in-India-A-project-study>

<sup>2</sup> SHUSHEELA BHAN, CRIMINALISATION OF POLITICS IN INDIA, Pg 3 (1995)]

is, the three organs which were supposed to keep a vigilant check on each other - legislature, executive and judiciary- are being weakened and its roots are corrupting. The count of political parties has been on enormous increase in the country. This rise in the number of political parties is not on the account of improvement in the standards of politics; rather it is an indication of the falling standards to abysmal levels and weakening of the spirit of nationalism. It can be derived from the pathetic living conditions of the people. The lives of the masses were worse under the colonial rule but even after the independence, the benefits of being a free and democratic nation have not reached to all the citizens residing in the country. There is still a stratum of people who dominate the policy-making either as a part of the government or by funding the government, which helps them to get their work done through the decision-makers. The political domain now pulls in criminals and rowdies with testified record of hooliganism, who aim for riches and dominating the functionaries and law-abiding residents. Thus, the politics in the nation has become a business yielding huge profits; rather than being a field of dedication and commitment towards ameliorating the welfare of the concerned subjects.

### History and Development of Criminalization of Politics in India

After Independence, some of the first set of leaders emerged from the rural and urban elite. They were replaced by the rising aspirations of the Backward Castes who

<sup>3</sup>Rachit Bharghav, Civil Society, Indian Elections and Democracy Today, 465 IIMB, 11 (2014)



were numerically larger, and then by the Dalits. As the one party rule of the Congress was dismantled, there was greater competition for votes, and musclemen were often hired to enable candidates to intimidate voters, capture voting booths and stuff ballot boxes. There was violence during elections. A perceptive politician of the 1990s observed that musclemen realized that instead of working for a candidate, they were better off becoming candidates themselves. In India, we also witnessed the 'aaya ram, gaya ram' phenomena when MPs and MLAs changed parties, and brought down Governments as ruling parties and coalitions lost their majority.<sup>4</sup> This was traced to the use of money and other incentives to lure them from one party to another. The Government did try to stem this by the Anti-Defection Law. However, experience has shown that this was not a sufficient deterrent.

One major reason for the proliferation of political parties is that they have not lived up to the people's expectations. This provides space for new ones to emerge. Another reason perhaps is their misuse as tax shelters. But how do 475 parties compete for 543 Lok Sabha seats?<sup>5</sup> Such fierce competition leads to much greater uncertainty for candidates and parties. We see high voltage, intense campaigns attacking rivals with in strong language, shrill speeches, fanning caste, religious and regional identities, pitting one group of

citizens against another, and creating real and fictitious 'others' or enemies. Money has become an important factor in campaigns.

Wealth is now concentrated, and income inequality is very high. The declared wealth of some ultra-high-net worth individuals (UHNI) is several times the combined declared wealth of all the politicians in Parliament put together. At the same time, inequality rose and India has the largest number of people below the poverty line. Exposure to consumer goods and lifestyles of the well to do has raised working class aspirations, and inequality has become more glaring. Voting percentages among the working class are much higher than those for the middle and upper classes.

Meanwhile the quality of representation in the Lok Sabha and State Assemblies has changed. In the early years after Independence, the ruling party obtained between 45% and 47% of votes in the years 1951 to 1962.<sup>6</sup> In the recent 2014 elections where a single party came to power for the first time in 30 years, it was 31%. In the intervening years of 1989 to 2009, it was much less as we had coalition Governments. The average winner obtained between 45.6% and 47.7% of the votes cast in the last 5 general elections between 1998 and 2014. In 1951 it was 50.9%. If we look at the percent of votes that MPs in the ruling party got out of the total votes cast in 2014, it is about 25.2%, up from 19% in the 2009 ruling coalition. In 1951 it was 28.9%. In

<sup>4</sup>AVINASH KUMAR, CRIMINALISATION OF POLITICS: CASTE, LAND AND STATE, 52-57 (2<sup>nd</sup>ed 2015)

<sup>5</sup>Alok Gupta, All about Political Parties, INDIA BIX (2014) <http://www.indiabix.com/group-discussion/voters-not-political-parties-are-responsible-for-the-criminalization-of-politics/>

<sup>6</sup>Dr. Mallikarjun I Minch, Criminalisation Of Politics And Indian Administration, 2 SAJMR 112, 117-167 (2013)



1951 an MP on average represented 354,000 voters, while today it is 1.53 million – result of the increase in population. So on all counts – total vote share of the ruling alliance, vote share of the MPs, vote share of the ruling alliance MPs, and number of voters an average MP represents, the quality of representation has declined. But the MPs in Parliament control the Government, large budgets, and new legislation. The revenue expenditure in the early 1950s was between Rs.400 and Rs.500 crores a year. In 2014 the revenue expenditure budget is over Rs.17.63 lakh crores – a increase of over 3900 times.<sup>7</sup> Even at 10% growth, it should have gone up by about 500 times.

Criminal records of candidates do not seem to play any role on election outcomes. An analysis of over 60,000 records of candidates and winners since 2004 shows that while only 12% of ‘clean’ candidates without any taint win, around 23% of tainted candidates win, and a similar 23% of seriously tainted candidates win.<sup>8</sup> Either voters are not aware of these records, or for those who vote based on caste or religious affiliation, the question seems to be “when your leader commits such a crime, you all say and do nothing. Why do you blame my leader?”

### Overview of situation from 2004 to date

<sup>7</sup> SHEFALI ROY, SOCIETY AND POLITICS IN INDIA UNDERSTANDING POLITICAL SOCIOLOGY 114-157 (2014)

<sup>8</sup>Sambit, Criminalization of Politics: Nature, Causes and Recent Developments, Article Library (2016) <http://www.yourarticlelibrary.com/essay/politics-essay/criminalization-of-politics-nature-causes-and-recent-developments/63464/>

The Supreme Court requires candidates to disclose cases where charges had been framed. Publicly available data from the EC and from databases was used in the following analysis.

#### *Criminalization of Politics*

a) Candidates: Data of over 62,800 candidates filed with the Election Commission show that 11,030 (18%) had 27,027 pending criminal cases against them while 5,253 (8%) candidates had 13,984 serious criminal charges including murder, rape, corruption, extortion, dacoity etc. These include were 1229 cases of murder, 2632 cases of attempt to murder, and 496 instance of IPC sections on other cases related to murder (culpable homicide, abetment to suicide etc.). An average of 9% of all candidates fielded by political parties had serious<sup>4</sup> criminal cases. Without exception all parties had such candidates, varying from 4% to 17%. If we look at candidates with some criminal case, including so called ‘trivial’ cases, the average shoots up to 18%.

b) Winners: The proportion of winners with criminal cases is 28.4% while only 18% of candidates had such records. Similarly, 13.5% winners had serious criminal charges compared to 9% of candidates.

In every type of criminal case, the percent amongst winners is much more. Civil society and the Election Commission have therefore asked for candidates with serious criminal cases to be barred from contesting elections. The Courts have also been

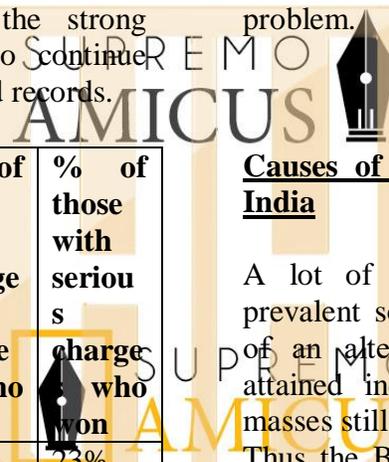


inclined to take this view although they are not empowered to enforce this.<sup>9</sup>

*‘Winnability’ and Serious Crime*

A large percentage of candidates with serious criminal charges actually win the elections. While only 12% of candidates with a ‘clean’ record win on average, 23% of candidates with some kind of criminal record win, and more alarmingly, 23% of all those with serious criminal charges win. Nearly every party shows that a greater percentage of those with a serious criminal record win compared to those without any record. This partly explains the strong tendency of political parties to continue fielding people with badly tainted records.

records was Rs. 4.38 crores.<sup>10</sup> Money seems to help in winning elections, and having a crime record seems to further increase the chance of being elected. The underlying reasons for this trend need to be understood with further research. The issue of crime in elections has been debated at length in the media. Anyone with such charges, even if they are false, would not be appointed to any non-political position, whether in the Government or the private sector. Perhaps the recent Supreme Court Judgments disqualifying convicted MPs and MLAs, and asking for speedy trials will help arrest this problem.



No who contested	No. who won	% of those with clean records who won	% of those with charges framed who won	% of those with serious charges who won
62847	8882	12%	23%	23%

**Causes of Criminalization of Politics in India**

A lot of this can be attributed to the prevalent social structure in India and lack of an alternative people’s regime. India attained independence on papers but the masses still suffered from colonial hangover. Thus the Britishers were replaced by local masters and roadies. And this led to a new kind of politics in India, degenerated and pervert, but characteristic to the land.

**TABLE SHOWING RELATIVE CHANCES OF WINNING FOR CLEAN AND TAINTED CANDIDATES**

(All State Assembly, Lok Sabha, Rajya Sabha Elections from 2004 to September 2013)

The interaction between crime and money is even more alarming. The average assets of winners with some crime record was Rs.4.27 crores, and of those with serious crime

- 1. Emergence of vote bank politics:** One of the major reasons of why the political parties bring in such candidates on the election field lies in the services that these rowdies offer to them. The ambit of the services provided by such people is vast and includes the help rendered by them in

<sup>9</sup>Subrata Kumar Mitra , Politics in India: Structure, Process and Policy, Routledge (2015)

<sup>10</sup>Alok Gupta, All about Political Parties, INDIA BIX (2014) <http://www.indiabix.com/group-discussion/voters-not-political-parties-are-responsible-for-the-criminalization-of-politics/>



carrying on unlawful activities during strikes, bandhs, rallies, etc. And when such criminals attain the designation of political leaders, they attempt to accomplish their targets and ambitions on the stake of rules and regulations that should govern them but unfortunately it doesn't. The political parties spend galactically to buy votes and conduct other illegal activities through these crooks or the so called goondas. The majority of Indians are ignorant of politics that goes on in the nation and thus remain unaware of whom they should to vote. Therefore most of the franchise holders of the country are purchasable which further lays an easier path for the political parties to acquire their support.

2. **Corruption:** The political parties claim to be different and better than the other existing parties but a common characteristic that runs almost through all the parties, is the criminal background of the candidate backed by them. But the fact that these candidates not only contest elections but also win and reach to the political office is evident of the failure of democracy as the greatest power a citizen has been armed with is to show the exit way to the incompetent contestants and such authority has not been exercised in a responsible manner by the people.

Corruption is a two-tier process, first, the institutions get corrupt and then the corruption is institutionalized. Thus, corruption and institutions become complementary to each other making the whole superstructure of institutions hollow. The corruption in the governance of our country has now been institutionalized as can be easily observed through the various scams that are running

across the country. The incapacity to cope with corruption has called forth the contempt of the law. The combination of contempt of the law and criminalization of politics leads to the flourishing of corruption. In the Corruption Perception Index 1998, India has been ranked 66 out of 85, by the German non-government organization Transparency International established in Berlin, which further implies that India is more corrupt nation than 65 countries.<sup>11</sup>

3. **Loopholes in the functioning of Election Commission:**

Another reason for the nurturing of felons in the political system of the country is the loopholes in the working of the Election Commission. It is the function of the Election Commission to take required steps to bust the link between the politicians and criminals. The Election Commission has prescribed forms for the contestants of elections to disclose their property details, cases pending in courts, convictions, and so on while filing their nomination papers. This is a positive step taken by the Commission to make the voters known about the criminal history of the candidate but it has not been effectively applied. These disclosures only inform people about the candidate's background and qualifications, but do not forbid them from casting their franchise, irrespective, in favor of a criminal. There has been a gap between the working of Election Commission and the electorates from many years and thus the common man barely comes to know about the rules drawn by the commission. It is essential to bridge this gulf not only to outcast the

<sup>11</sup> RAJVIR SINGH, CRIMINALIZATION OF POLITICS AND CORRUPTION, ASR Publications Pg 117 (2014)



undesirable elements from politics but also for the endurance of our democratic polity. And this can be achieved by an increase in literacy rate in the country. The voters, while exercising their voting rights, have to make wise choice in the interest of the national. Also, the Commission has the authority only to de-recognize but not de-register a party, which further interrupts in the functioning of the Election Commission.

4. **Denial of Justice and Rule of Law:** Criminalization has become a fact of Indian politics today. The political parties, electors and the whole machinery of law and order of the country are equally responsible for bringing in such a situation. There is very little belief in the country regarding the efficacy of the democratic procedure to actually deliver good governance, which extends to swallowing in of the fact of criminalization of politics. The laws made against convicted criminals who contest elections are weak and toothless in nature which further leads to the encouragement of such practices. "If fundamental rights can be taken away from those who have been charged but not proven guilty, why cannot the same apply to politicians?" This allows the charge sheeted criminals, who are many a times habitual offenders, to contest elections and also attain the political office.
5. **Unholy nexus between politicians and bureaucracy:** Ramchandra Guha says, "In Jawaharlal Nehru's time the civil service was shielded from politics, transfers, promotions and the like were decided within the executive branch itself. From the 1970s, however, individual bureaucrats came increasingly to ally with individual

politicians or political parties. When the party they allied with was in power, they get the best postings. In return, they energetically implemented the partisan agenda of the politicians".<sup>12</sup>

This undesirable and dangerous relationship between bureaucracy and political leaders opened the door of criminalization of politics. The great founders of Indian nation-state thought of an independent bureaucracy. But within two decades of freedom their hope and dream shattered. Both came to an understanding to help each other and this led to the criminalization of politics.

**Interference of politicians in the administration:** Guha's says, "In a letter to the prime minister, the retired civil servant M. N. Buch has highlighted the consequences of this politicization of the administration. The way the government is now run means that the disciplinary hierarchy of the civil services has completely broken down. A subordinate who does not measure up and pulled up by his superior knows that he can approach a politician, escape the consequences for his own misdeeds and cause the harm to his superior".<sup>13</sup> In the 1970s this started in embryonic form and today this has assumed an epidemic. Most of the politicians of modern India interfere with administration in one form or another. The civil servants are becoming more and more corrupt, so also the politicians. The net result is politics is, ultimately, criminalized.

<sup>12</sup> RAMCHADRA GUHA, INDIA AFTER GANDHI: THE HISTORY OF THE WORLD'S LARGEST DEMOCRACY, 221-222 (2011)

<sup>13</sup> Id



7. **Caste and religion:** Caste and religion both are equally responsible for the criminalization of politics. In bureaucracy there are certain fixed procedures and rules in the promotion. But caste and religion both interfere in this process. Less qualified and inefficient civil servants get promotion. The quota system is fully responsible. It has been found that a minister of a particular caste or religion will distribute favor to the members of his own caste and religion. In many states of India this is found.
8. **System of party government:** The system of party government is also responsible for the criminalization of politics. On the eve of general election the leaders of the party give promises to the electorate. The purpose is to win the election. If the party luckily comes to power, the members of the ruling party try to implement the promises. The dark side of this situation is the party in power does not consider the feasibility and rationality of the action or promises unreasonable and impractical ways and techniques are adopted. This is a cause of criminalization of politics. In post-independent India strong public opinion against corrupt practices has not developed. Each person knows that that system or practice is corrupt. But there is nobody to protest against it. Rather, he thinks that this is the system and he accepts it. This tendency has finally opened the door of the criminalization of politics. But if anybody objects to the corrupt practice he is either penalized or deprived of his due.
9. **Un-development, illiteracy, poverty and prismatic nature of Indian social system:** Un-development, illiteracy, poverty and prismatic nature of Indian

social system are collectively responsible for the criminalization of politics. The shrewd and self-interest-seeking politicians — in collaboration with corrupt civil servants — adopt various types of unfair means to satisfy their greediness and ill-motives. The Indian society is in transition. From various sources the government of India is getting funds for development.

The government also spends huge amount of money through Five Year Plans. A large amount of money is laundered by politician and bureaucrats. There is a close alliance between the two and this has led to the worst type of criminalization of politics.

#### Impacts of Criminalization of Politics in India

The primary sacrifice at the altar of criminalization is that of governance, along with transparency and accountability. Expensive election campaigning favors candidates with strong financial background. Such candidates, when elected, seek to recover their expenses besides securing a corpus for the future election as quickly as possible, especially in the era of coalition governments with tenuous stability.

The average number of years that criminal cases against MPs have been pending is seven (until 2009). Kameshwar Baitha, JMM, Palamau, Jharkhand, has declared 10 cases of murder, which have been pending for an average of 12 years. Ramakant Yadav, BJP, Azamgarh, Uttar Pradesh, has declared a murder case which has been pending for 25 years.



Not all is lost though. A comparison of top 10 MPs with criminal charges in 2004 and 2009 Lok Sabha elections reveals that the number of MPs with serious criminal backgrounds has declined. For the top 10 MPs with serious criminal charges, the total number of cases decreased by 42 per cent, count of serious IPC charges reduced by 32 per cent and murder charges were reduced by 55 per cent.<sup>14</sup>

The law breakers today are now the law makers and they do not allow the parliament to enact sufficient laws to effectively administer the country. The parliament loses the moral authority to legislate laws. Further, it has led to increased violence which overtime has trickled down into the society creating a cruel and nasty atmosphere. The money power used during elections has led to increased corruption in public life. This creates a vacuum created by the non-performance of field level infrastructure affecting the poor and the rich alike. It is the problems created by this void which leads to evils like Naxalism.

Justice Chandra Shekhar aptly wrote in his book<sup>15</sup> –

“Jeet gaye to Minister,  
Haargaye to Governor,  
Retire ho gaye to Vice Chancellor.  
Our kuchnai to Sarvodaya Sansthai hi..”

12 bombs blasts that shook Bombay on 13 march 1993, had involved the collaboration of a diffuse network of criminal gangs, police and customs officials as well as their political.

Patrons, a commission were institutes to investigate the so-called nexus. The report by N.N.Vohra found such deep involvement of politicians with organized crime all over India that it was barred from publication. Here Vohra observes "the various crime syndicate/mafia organizations have developed significant muscle and money power and established linkage with governmental functionaries, political leaders and other to be able to operate with impunity. As highlighted by the Vohra Committee Our elections involve a lot of black money and it is this use of black money in elections which has also brought about the criminalization of politics. After all, the story of the Hawala scam started by the police stumbling to the Jain diaries in their effort to trace the money received by the Kashmir militants. The scam brought out the linkage between the corrupt businessmen, politicians, bureaucracy and the criminals. The 1993 Bombay blasts which took away the life of 300 people was made possible because RDX could be smuggled by allegedly bribing a customs official with Rs.20 lakhs. Some 15 years ago Vohra committee submitted its report to curb criminalization of politics but the fact is that no application in this way is being made.<sup>16</sup> This was mentioned in the petition submitted by the Speaker of Lok Sabha and President of India on 16th may that- “The subject of criminalization of politics is one that concerns the entire nation closely. It is deeply disturbing that on the one hand, our polity is tolerant of ‘fake encounters’ (summary executions) of alleged criminals and terrorists, while our highest

<sup>14</sup>Id 13

<sup>15</sup>Id 10

<sup>16</sup> Id 13



representative body – Indian Parliament – harbors people caught red-handed in acts of human trafficking, and convicted on charges of abduction and suspected murder.”

innocence of such candidates and give a thought to their social responsibilities.

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Criminalization also includes the following impacts on this society:

- A criminal is on the wrong side of the law and hence cannot be expected to make positive contributions to the legislative and administrative process.
- It brings a sense of futility among the administration particularly the police administration and demoralizes them.
- Presence of tainted candidates in the law making institutions creates embarrassment for the country as well as the people.
- Rise of a criminal to high levels of powers has an adverse effect on the society. The immunity and success of these people lures more and more youngsters to follow in their footsteps. This brings in degeneration and moral values in the society.
- Stand of Political Parties: Politicians and Political Parties take a stand that the charges are politically motivated. They also contend that the candidate fielded by them has not been proved guilty. This argument is based on the accepted legal principle that every man is innocent once proved guilty. The logic is correct from an individualistic point of view, but it is expected that a political party would give precedence to the larger public interest. The question is: will a politician having criminal case pending against him, be able to gain confidence of people of the country. The answer would be no. Therefore, it would prudent if the political parties refrain from taking a call on the

