



## CRIMINALIZATION OF POLITICS : A SERIOUS THREAT TO INDIAN DEMOCRACY

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### ABSTRACT

Criminalization of politics is now a serious threat to Indian democracy. Criminalization of Politics simply means using the political power for wrongful gain. It makes us very anxious that, 43 per cent members have criminal background who are elected the as MP in 2019. The main reasons for rapid growth of criminalization of politics are such as vote bank politics, use of black money in the election, lack of democracy inside the political parties, lack of ethics in politics etc. Consequently, Law-breakers are getting elected as Law-makers. The Constitutional framework and other legal provision like Representation of the People's Act, has not been fruitful to prevent this problem.

In this backdrop, the present study would like to analyse the reason for rising trend of criminalization of politics as well as to give some remedial measures for minimizing this problem.

**Key words** – Criminalization, Politics, Threat, Democracy.

### PROLOGUE

At present, the words criminalization of politics is very common to us. It may be

known to us that there is a great importance of politics in a democracy and India is one of the largest Representative Democracy in the world. Here the legislators are elected by the mass people through regular elections. But the rapid rising trends of criminalization of politics are threatening the democracy in India. The Politicians are using money and muscle powers to ensure their victory in elections. This is the way by which the criminals are entering into Legislature.

Now Criminalization of Politics is a burning issue of our country. It takes aback us that, 43% members of parliament who have elected in the election in 2019 are from criminal background. What a funny matter that, criminals are making law for the welfare of the people! It is nothing but like a fox as a guard of a hen. Whatever, criminalization of politics is an issue which will not destroy the governing system directly but also it will be trying to paralyze the Governing system and all democratic institution.

### CONCEPT & NATURE OF CRIMINALIZATION OF POLITICS

Criminalization of politics means to use politics or political power for nefarious gains. To gain something which is not legal or normal has been called crime. Here the word crime is used in politics in special sense. For instance, an officer who is in administration wants to get promotion for the higher post. But it is not the due of him. He uses political power for this achievement. The person gets success. But the matter is not stopped here. The person will again use that person for previously helping him to get undue privilege, for his self-interest or to achieve something which is his not due. This



is the policy of give-and-take and this happens behind the screen.<sup>1</sup>

So, basically the criminalization of politics means to use politics and political power for wrongful gain which is not legal.<sup>2</sup> The term crime means an action which constitutes a serious offence against an individual or the state and is punishable by law. Hence, using the political power to gain something is a crime and is also punishable.<sup>3</sup>

On the other hand there is also another aspect of criminalization of politics. Politicians are getting cut money and other commission from the criminal for their various illegal works. Even at the time election the politicians take huge amount from the criminals for the election expenses. For which the maximum politicians always play role like a silent spectator in the matter of the criminals. Consequently, executing even a serious crime the criminal are moving freely in the society with swelled chest.

### HISTORICAL BACKDROP

The trends of using political power are not a new phenomenon. Even the political power or politics was used by the people in ancient Greece for personal gaining or for achieving a higher stage of social and political power. The great Greek philosopher Plato got great pain for misusing and abusing the political power. That is the reason,

because of he thought of a philosopher-king and for the introduction of communism in property and family.<sup>4</sup>

### INTERNATIONAL PERSPECTIVE

The rising trends of Criminalization of politics in India make us terrified. But criminalization of politics is not only a problem of India but also it is the problem of other democratic country like United States of America. American politics have become criminalized. The Word Criminalization of Politics is often used in the United States of America by media person, as well as by defenders of high-ranking government officials who have faced criminal or ethical investigation. Even before few years, the term has been applied for proceedings against President George W. Bush's advisor and the Republican Party leadership in congress.

### HIGHLIGHTS OF THE RISING TRENDS OF CRIMINALIZATION OF POLITICS IN INDIA

In India, the trends of criminalization of politics are horribly increasing day by day. The growing percentage of criminalization of politics makes us very anxious. Below is the percentage of members of the Parliament who faced criminal cases and the cases are pending against them:<sup>5</sup>  
In the year 2004 - 24%  
In the year 2009 - 30%

<sup>1</sup>Criminalization of Politics: Nature, Causes and recent Developments, Available at <http://www.yourarticlelibrary.com/essay/politics-essay/criminalization-of-politics-nature-causes-and-recent-developments/63464> (Last visited on 26.07.2019).

<sup>2</sup>Akash Kumar, "Criminalization of Politics in India", Available at <http://www.legalserviceindia.com/legal/article-988->

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<sup>3</sup>Supra Note 1.

<sup>4</sup>Ibid.

<sup>5</sup>Source: Vanya Verma, "The Criminalization of Politics how to prevent?", Available at <http://www.google.com/amp/s/blog.ipleaders.in/criminalisation-politics-prevent/amp/> (Last visited on 18.05.2021)



In the year 2014 - 34%  
In the year 2019 - 43%

criminalization of politics. These can be discussed as follows:

### REPORT OF A TV STING OPERATION

Some MPs were caught by a TV sting operation. They were total 11 in numbers. Among them 6 MPs were from BJP, 3 MPs were from BSP, one MP was from RJD and one Congress MP. All of them took bribe as ranging from Rupees fifteen thousand (15,000) to Rupees one lakh ten thousand (1,10,000) for raising question in the parliament. The law-makers were taking dime amount to destroy the highest democratic institution of the country. — Times of India, Kolkata edition, 13.12.2005.<sup>6</sup>

It is a shame on the part of the members who are law maker and the member of the highest democratic institution of this country. This is really a shame on the part of the members of parliament. These Member of Parliament are legislator. They make laws and these laws are implemented for making the society crime-free. But the law-makers are themselves parts of criminal activities.

### CAUSES OF CRIMINALIZATION OF POLITICS

After the independence of India, Criminalization of politics was not a major problem in the country. But presently, Criminalization of politics is a major issue of our country. It will not be wrong to say that, now the citizens of India are under the rule of criminals instead of rule of law. There are so many reasons for horribly growing of

1. Presently, Electoral politics is very dependent on the money for its campaigning and other election expenses. For which huge black money are used by the politician with for winning the election. Even some time this black money use to purchase the voter. In this way, politician with criminal background are easily ensuring their victory.

2. There is lack of democracy inside the political parties in India. In a political party they enjoy more power, who are economically rich and belong to elite class. For that reason, criminals are entering into politics and being developed politically and abusing the political power for having a strong backing of these elite politicians.

3. When a politician commits any crime, then the punishment for that crime is very little and very negligible and the trial process also delayed in the matter of any politician. For that reason, political parties are not deterred from giving tickets to criminals.

4. There is First Past the Post (FPTP) Electoral System, by which a candidate may be elected from any constituency on the basis of plurality of votes polled but not on the basis of the majority of votes polled.<sup>7</sup> So, if a candidate gets even 25% of valid votes polled may be elected. That is why the criminals do not feel any difficulties to secure the votes due to their muscle and money power.

<sup>6</sup>Supra Note 1.

<sup>7</sup>Criminalization of Politics in India, Available at <https://blog.forumias.com/article/criminalization-of-politics-in-india> (Last visited on 26.07.2019).



5. In India, there is vote bank politics. Political Parties gain vote easily by the helping of money and muscle power of criminals. Whereas, in India electoral politics is more about religion, caste and several issues, candidates overcome the loss of reputation owing to criminal charges and get victory in elections.<sup>8</sup>

6. There is lack of ethics in Indian politics. On the other hand, there are no strict rules and principles provided by the Election Commission of India to break the nexus between politics and criminals.

### CONSEQUENCES OF CRIMINALIZATION OF POLITICS

The major consequence of criminalization of politics is that law-breakers are being elected as law-makers. What can be shameful than it! However, the major impacts of criminalization of politics are as follows:

1. Black money are using for Election.
2. Politicians with criminal background are making law which is very shameful for democracy.
3. Corruptions in various Government sector are increasing due to politician with criminal background.
4. Trail process of the court is also delaying due to influence of politicians with criminal background.

5. Anti-socials are moving freely in the society due to backing of politicians with criminal background.

### CONSTITUTIONAL FRAMEWORK

Indian Constitution has given a detailed outline for conducting free and fair elections as well as it tells about the qualifications and disqualifications of members of Parliament and the members of State Legislature. **Article 324** of the Indian Constitution gives the power to the Election Commission of India to conduct and control free and fair election in India. It gives the power of Superintendence, direction and control of election to the Election Commission India.

On the other side, **Article 102** of the Indian constitution says about the disqualifications for membership of a member of parliament.<sup>9</sup> It says that:

A person shall be disqualified for being chosen as, and for being, a member of either house of Parliament if-

- a) he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
- b) he is of unsound mind and stands so declared by a competent court;
- c) he is an un-discharged insolvent;
- d) he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any

<sup>8</sup>Ibid.

<sup>9</sup>The Constitution of India, Asia Law House, Hyderabad, First Edition, 2018, p.48.



acknowledgement of allegiance or adherence;

e) he is so disqualified by or under any law made by Parliament.

Similarly, **Article 191** of the Constitution says about the disqualifications for membership of a member of any State Legislative Assembly.

### OTHER LEGAL PROVISIONS

Apart from the Constitution, Representation of the People's Act, 1951 says about the qualifications and disqualifications for the Member of Parliament and State Legislature.

#### Representation of people's Act 1951

Representation of the People's Act had been made to conduct free and fair election of house of Parliament and the House of State Legislature as well as this act said about the qualifications and disqualifications of the member of Parliament and member of any State Legislature. **Section 8A** of Representation of the People's Act says about the disqualification on ground of corrupt practices and **Section 8** of the Representation of the People's Act deals with the disqualification on conviction for certain offences.

According to Section 8 of Representation of the People's Act,<sup>10</sup> If a person convicted of any one offence mentioned in Section 8(1)(a) to 8(1)(n), shall

be disqualified, where the convicted person is sentenced to-

- i) only fine, for a period of six years from the date of such conviction;
- ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

### JUDICIAL INTERVENTION BY THE SUPREME COURT OF INDIA

In the case of **Lily Thomas v. Union of India, 2013**<sup>11</sup>, Section 8(4) of The Representation of the People Act, 1951 was declared as ultra vires to the Constitution by the Supreme Court of India. Section 8(4) provided that, if a sitting member of the House is being convicted for any offence which is punishable with two years of imprisonment, shall not be disqualified if he moves an appeal within 3 months of conviction. The petitioner said in the petition that, Article 102(1) and 191(1) of the Indian Constitution provides more disqualifications and there are no exemptions for the sitting members of the house from losing their membership when they convicted. Thus the Supreme Court held that Section 8(4) of the Representation of the People Act, 1951 is unconstitutional, hence it has been removed.

### In the case of **Public Interest Foundation & Others Vs Union of India,**

<sup>10</sup> Representation of the People's Act, Available at <http://www.bareactive.com/ACA/ACT949> (Last visited on 17.05.2021).

<sup>11</sup>Lily Thomas v. Union of India, Available at <https://indiankanoon.org/doc/63158859> (Last visited on 18.05.2021).



2018<sup>12</sup>, The Supreme Court made the following directions:

1. Each and every candidate who will contest in election shall fill up the form as directed by the Election Commission and the form must be contained with all the particulars as required therein.
2. If any criminal cases are pending against the contesting candidate, it shall be stated in bold letters.
3. A contesting candidate is required to inform the political party about the pending criminal cases against him, if the candidate will contest an election on the ticket of that particular party.
4. If any cases having criminal antecedents are pending against any contesting candidate of any political party, the party shall be obligated to put up the information regarding the pending criminal cases of the contesting candidate on its website.
5. The concerned political party as well as the contesting candidate shall issue a declaration regarding the criminal antecedents of the contesting candidate in the widely circulated newspapers in the locality and also give wide publicity in the electronic media. When we say wide publicity, it means that the same shall be done minimum three times after filing of the nomination forms.

The above direction of the Supreme Court has been criticised on the ground that, no political party will be interested to show its weakness like criminal background of its candidate which may create negative impact in the election.

### IMPORTANT RECOMMENDATIONS BY LAW COMMISSION

For preventing the trends of criminalization of politics, the Law Commission has given some important recommendations in its **255th** report. The main recommendations are as follows:

1. The Law Commission recommended that independent candidates should be disbarred from contesting in elections because the current regimen allows a proliferation of independent candidate and among them maximum are mostly dummy or non-serious candidates or those who stand in the election for the same name like other candidate only for increasing confusion of the voters. Thus, section 4 and 5 of the RPA should be amended to provide for only those political parties which are registered with the ECI under section 11(4) for contesting Lok Sabha or Vidhan Sabha elections.<sup>13</sup>

2. The Law Commission also recommended to regulate government sponsored advertisements before six months to the date of expiry of the House or Assembly for maintaining the purity of elections; preventing the use of public money for winged interests of, inter alia, highlighting the achievements of government

<sup>12</sup>Public Interest Foundation & Others v. Union of India, Available at <https://indiankanoon.org/doc/63158859> (Last visited on 18.05.2021).

<sup>13</sup>Press Information Bureau, Law Commission Report, Available at <http://pib.gov.in/newsite/PrintRelease.aspx?relid=116934> (Last visited on 22.09.2019).



and to ensure that the ruling party or the contesting candidate does not get any undue favour or advantage over another in the spirit of free and fair elections.<sup>14</sup>

**RECOMMENDATIONS BY ADMINISTRATIVE REFORMS COMMISSION**

The Second Administrative Reforms Commission had also given some important recommendations for the prevention of criminalization of politics. The Commission had made in its fourth report on Ethics in Governance (2008) the following recommendations:

1. Section 8 of Representation of people’s Act, 1951 needs to be amended for disqualifying all the candidates who are facing charges related to grave and heinous crimes and corruption, with the modification suggested by the Election commission.<sup>15</sup>
2. Appropriate legislation may be enacted under Article 102(e) of the Constitution spelling out the conditions for disqualification of membership of Parliament in an exhaustive manner. Similarly, the States may also legislate under Article (e).<sup>16</sup>

**ELECTION COMMISSION RECOMMENDATIONS**

The Election commission of India has made some recommendation for the prevention of criminalization of politics time to time. The Commission recommended in its

“Proposed Electoral Reforms” in 2016 that: if a Persons charged with cognizable offences should be allowed for contesting in the elections, at the stage when the charges have framed by the competent court providing the offence is punishable by imprisonment of minimum 5 years, and the case is led at least 6 months prior to the election.<sup>17</sup>

The recommendation of Election Commission has been criticised primarily on following two grounds:

1. Ruling politicians will misuse this against the opposition.
2. According to the law of the land, everyone is innocent until it has been proved that he is guilty or convicted.

**SUGGESTIONS FOR PREVENTING CRIMINALIZATION OF POLITICS**

In the view of the above discussion, some suggestion may be given in order to provide remedial measures to prevent criminalization of politics. These are as follows:

1. There is a need to make conscious and aware the people about the criminalization of politics.
2. Trail Process should be ends very soon specially when an accused is a politician or he has strong political backing.

<sup>14</sup>Ibid.

<sup>15</sup>Fourth Report of Second Administrative Reforms Commission on Ethics in Governance, Available at <https://darpg.gov.in/arc-reports> (Last visited on 17.05.2021).

<sup>16</sup>Ibid.

<sup>17</sup>Supra Note 7.



3. Election Law needs to be more amended and reformed to stop the criminalization of politics.
4. Election Commission must take serious and adequate steps to break the chain between the criminal and politics.
5. More and more good and honest persons should come into politics and the thought is to be changed that politician means bad and dishonest person.

### EPILOGUE

It is the reality that a large number of MPs and MLAs are facing criminal charges in India. It is only appropriate to say that, at present criminalization of politics is the most serious threat to Indian democracy. It is not only creating many vices in the society but also it is a barrier in the way of bringing for the good governance in India.

Hence, it is most important to take necessary steps to ensure decriminalization of politics by way to clean the electoral process. In this regard, the special courts to be set up for cleansing the political system in India and for paving the way of good governance.

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