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Criminalization Of Politics: A Judicial And Legal Perspective With Reference To India

1Anurudh Upadhyay, 2Anubhav Singh, 3Abhinendra Singh, 4Akash Tripathi

1LLM Student, 2LLM Student, 3LLM Student, 4LLM Student

1Gautam Buddha University, Greater Noida (UP),

2Gautam Buddha University, Greater Noida (UP),

3Gautam Buddha University, Greater Noida (UP),

4Gautam Buddha University, Greater Noida (UP)

Abstract

We are observing that a prompt rate of increasing the criminalization in politics day by day or we can say year by year has been consistently posing a latent threat to India's Democratic Fabric. This research paper is about to explore everything about the political criminalization from its root causes to the initiatives taken by our hon'ble judiciary to control criminalization in politics. However, recently Hon'ble Apex Court took various steps through the landmark rulings to address such issues but in order to control this rate of criminalization of politics, just an issuance of number of orders will not suffice but there must be an effective mechanism to implement these orders or there is a need to take a bit of stringent actions to ensure a proper compliance of these orders by the Supreme Court through Judgment. India is a country with a constitutional and democratic landscape and in a democratic fabric it is not just a judiciary to take initiatives to free our nation from such types of threats but a democracy also expects such an effort from its executive as well. As in India, crime in politics has been reached to an alarming rate, so in order to control this both Judiciary and Executive have to work in a coordinated, planned and harmonious way and its only a tactic through which we can make a big fall in this alarming rate of political criminalization. This research paper also delves deep into identifying what is criminalization in politics, also explores into its socio-economic and socio-political effects.

Keywords- India, Democracy, Criminalization in Politics, Supreme Court, Judiciary and Executive.

Introduction: In India every citizen has a right to choose/elect their representatives by a fair exercise of Universal Adult Franchise (Universal Adult Suffrage in Indian Context) and definitely number of representatives elected by peoples of India in their respective constituencies use to lead/govern our country. India is a country with democratic fabric so it is necessary to identify that who enters the politics, with what reputation & with what level of moral standard in previous political life. Today, Criminalization in politics is a subject of major concern and we can also consider it as a formidable reality, what's going on an alarming rate day by day. All of us are aware of the reality that India's freedom forbears faced a lot of trouble and hardships to make nation Independent and they had a vision towards our nation but, this vision of our freedom fighters seems to has been vanished and shattered due to a black shadow as a result of political criminalization. Now a days, we can see large number of connections between Politicians/ Political Leaders & criminals and these connections are the root causes of rising criminality in political landscape of our country and this connection also leads our leader and politicians to indulge in illegal activities and corruption. This level in growth of political criminality is nothing but is about to impair upon the ideals of a democracy. When the criminal elements engaged with political components, then ultimately results in hindering a fascinating journey of nation's prosperity and growth. When political activities are blended with criminal activities then they lead to an obstacle in the operating a democracy with an efficacy. As criminals are consistently participating in politics and with this consistent participation criminals influence in politics has been on a rise day by day, which is not a good sign for the survival of a healthy democracy, especially in Indian scenario.

What is Criminalization in Politics?

We can define criminalization of politics as the circumstances, where criminals do engage in the government politics and these criminals after getting engaged in political activities do contest election either on a party symbol or independently and elected to parliament as MP and to state legislatures as MLA. In other words, we can say when individuals or persons with a criminal history enter into political arena or filed then such situation is called as the criminalization of politics and criminalization of politics is currently looking as a growing concern on India's Social and Political Landscape. As large numbers of persons with multiple criminal charges are associating with politics and it thereby leading peoples to lost their faith in democratic fabric of India, its political system and peoples look the politicians with distrust eyes that they misuse their power to evade law or go beyond scope of law.

Statistics on Criminalization of Politics:

- **Association of Democratic Reforms (ADR) Report of 2004, 2009, 2014 & 2019:** As per the report of this ADR Association when trace back to the time of **2004 Lok Sabha Election total 24%** of winning candidates were with pending criminal charges and in subsequent Lok Sabha Elections such as **15th General Election of Lok Sabha in 2009**, there is data of **521 winning candidates** out of this figure **158 means 30% of 521** had declared themselves with the criminal charges and when we traces back to the **16th Lok Sabha General Election of 2014**, where such tally of criminalisation of politics was hiked from **30% of total winners in 2009 to 34% of total winners in 2014** and in **2014 out of total 541 winning candidates 186 it means 34% of 541 were with the criminal cases** were pending against them and tally was hiked and reached to **43% of winning candidates in 2019 General Election of Lok Sabha. In the February 2023**, a petition was filed with a high increase in percentage of criminal members of parliament/members with pending criminal charges and this increment was **44% since 2009 General Election of Lok Sabha.**

In Lok Sabha Election of 2019, 159 of total winning candidates declared heinous criminal charges pending against them such as those of Rape, Crime Against Women, Kidnapping, Murder and Attempt to Murder etc.

- **Association of Democratic Reforms (ADR) recent report:** As per the ADR's recent report before the **2023 Karnataka Vidhan Sabha Election**, there were large number of election contesting candidates, who were with the pending criminal charges and such tally of candidates with criminal record had increased across all political parties in the **State of Karnataka.**
- **Recommendation by Association of Democratic Reforms (ADR):** The ADR did make a recommendation for the permanent solution of political criminalization as it recommended that criminal candidates should be disqualified from contesting election for lifetime, but this recommendation ADR has not been come into effect or executed yet.

Roots of Criminalization of Politics:

- **Corruption:** In an election the most of the candidates who are about to contest the election have lots of requirement to get donations, funds and money etc. and it is noteworthy that for the sake of financial strength they use to resort to the way of corruption that results in the deliberate disobedience of law. When we see corruption as a root cause of political criminalisation in India then we can relate disobedience to the law or legal framework directly to the political criminalisation. When the combination of both of these unsocial and unethical activities comes into play that ultimately leads to the birth of corruption.
- **Muscle Power:** Muscle Power is basically a way, when political parties during the election use to try to win the election by using their money power, muscle power and way to induce peoples to support them by making fake demand and also in past there are numerous examples where voters have undergone various inducements made by political parties to win the election. Political Parties use to tap these ways when they believe that they are not about to win the election anyway through the popularity or by winning the trust of peoples. One of the main reasons behind the muscle power being a strong source of political criminalisation The First Past the Post (FPTP) system which is a favouring instrument for such types of candidates in getting the most votes. Basically, the FPTP is also called as a system of simple majority under which candidates who secure highest number of votes become a winning candidate in their constituencies. In the muscle power political leaders use to create fear and cause violence to help them in winning election if they loss popular trust and this would ultimately lead to a horrific bridge between criminals and political parties.
- **Money Power:** Apart from the using of muscle power, power of money is an another factor leading to a rise in criminalisation of politics and word 'Money Power' used here refers to a combination of fund and black money come from the source of mafias. Funds generated out of illegal acts is also a big source of consistently rising political criminalisation in India. A stipulated amount of money with illegal activities as a primary source becomes a very easy path to induce the voters and to get a win in elections and through these ways political parties use to get a hold on the voter's majority. K.C. Suri gave a statement with this regard that from the ancient period, the use of a blend of money and muscle power by political giants to ensure their victory in elections has always been an unsocial and illegal. **"Large individual politicians, not just political elite, are having a nexus with criminals and this has further channelized social fissure as one of the formidable factors to get through elections"**.

- **Indian Political System with No Retirement Policy:** Another major source of consistently rising political criminalisation is that in Indian Politics there is no system of retirement. We can see everywhere either in Indian Parliament or State Legislatures, there is no policy of retirement for Lok Sabha, Rajya Sabha and Members of State Legislative Assemblies and Councils. Continuity in power encourages political leaders to use illegal tactics with the resort of being in government or in power and that ultimately makes the problem of political criminalisation worst of worst.
- **Indian System of Politics with Division Policy:** Basically, in Indian System political parties do the politics based on caste, community, religion and other factors based on division policy. In this way political parties use to show themselves as a better protector of one particular religion or community as compared to others. When political parties and their criminal minded leaders portray themselves as a protector of particular community then they almost get succeed in their intention by gaining the majority by people irrespective of their background.
- **Vested Interests:** Here, term '**Vested Interest**' refers that most of the voters in our country vote to the political party or leaders suited to their demands irrespective of criminal background/history of concerned parties or their leaders and through this way where voters use to vote with a narrow temperament, leaders with criminal charges enter into politics and this ultimately gives rise to criminalisation of politics. Vested Interests is a situation where aspirations of voters are aligned with the political leaders regardless of their criminal activities/behaviour. This is indeed a strong source leading to a rise in political criminalisation.
- **Poor System of Governance:** Lacking of an efficient system of governance also gives a rise to the criminalisation of politics. Absence of stringent laws and regulations to govern the election procedure in our country is another drawback which encourages the politicians with criminal charges to enter into politics and do everything whatever they want. There is only a strong law that is "**Model Code of Conduct**", which also has not been executed by any law yet.

Impact of Criminalisation in Politics:

If we want to head our nation on the path of prosperity then law makers must be embodied with a role of law protector but in India situation is just reverse it means here law makers are law breakers and if law makers are the law breakers then how is it possible to continue our country to scale new heights of progress, growth and development. As a result of criminalisation in politics the efficiency of our administration has been hurdled and the working productivity of our parliament has also been diluted and which results in that a common man or peoples of country have lost their faith in the public administration, statutory authorities and functioning of parliament. As we are aware of the fact there is approach system of politics in India and

also a system adjournment of matter in a court and both of these systems lead to an adverse impact on the speedy disposal of cases. A graph of corruption is also steadily increasing day by day and this level of corruption diluting the honesty and integrity in bureaucracy and other constitutional bodies. All of these things are making Indian Political System horrific and giving a rise to the commission of nefarious activities.

As the political system in India has undergone a criminalisation and that is consistently lowering or toppling down the standard of Indian Politics. At the time of Independence there were many leaders who faced hardships to make the nation progressive and worked to do so selflessly but today there only a few leaders who are working in such a way and this trend of selfishness in politics impliedly invites the persons with pursuits of personal bias and interests and with criminal mind to debut in politics. There are several initiatives have been taken to curb this menace of political criminalisation but has not been effective yet.

Recommendations to Curb Criminalization of Politics:

Vohra Committee of 1983: The essential motive behind the constitution of this committee was to get identify to what extent this nexus of political parties and criminals exists? And this committee aimed to suggest the directions through which we can have an edge in our journey of curbing political criminalisation. This committee recommended that all political candidates with pending criminal charges and criminal backgrounds must be debarred from contesting any of the elections and all political parties must be bounded with a requirement to reveal all pending criminal charges on their candidates, when filing for election nomination. In other way, we can say that all persons with criminal records must be debarred from the race of contesting elections. This committee further recommended the **Creation of Special Courts** and motive for these courts is to accelerate the trial of matters of persons concerning with politics and contesting elections and acceleration in trial will lead to the speedy disposal of such matters. These courts must be embodied with powers to seize the property/assets of convicted leaders or criminals and also to grant compensation to the concerned victims.

Law Commission's 244th Report (2014): As all of us know that criminal leaders and politicians have been consistently posing the latent threat to the India's True Spirit of Democracy so this report suggested to tackle with this negative trend of such kinds of leaders entering into the Indian Politics. This report also recommended the debar of leaders, against whom charges have been framed for offences punishable with an imprisonment of **5 years or more** at least one year before the time of the scrutiny of the nominations.

Special Courts Creation (2017): For the purpose to give an acceleration to the trial of criminal matters against MP's and MLA's, **The Government of India** used to start **12 Special Courts for a year**. This was also an initiative in a way to curb the menace of political criminalisation within the territory of India.

Judicial Pronouncements on Criminalisation of Politics

- **Association for Democratic Reforms v. Union of India**, ¹in this case Hon'ble Apex Court of India cleared that, each and every candidate who is about to partake in election is strictly required to disclose the criminal charges against him along with his financial record and educational qualification and this was a landmark judgment.
- **Ramesh Dalal v. Union of India**, ²in this case Hon'ble Supreme Court's order was landmark mandate for all sitting Member of Parliament and all MLA and court cleared that all sitting MP and MLA, if convicted or imprisoned for a term of 2 years or more than two years by a court of law then same will be debarred from taking part in elections.
- **Peoples's Union for Civil Liberties v. Union of India (NOTA Case)**, ³in this case Hon'ble Apex Court held that there is an option available for the voters in the form of "NOTA", if they found that nobody is suitable to their needs and aspirations. NOTA is None of the Above and now a days there are many candidates who prefer to tap NOTA while do vote in election.
- **Lily Thomas v. Union of India**, ⁴in this case Hon'ble Supreme Court of India relied on its Judgment in **Ramesh Dalal v. Union of India (2005)** and further rules that any MP and MLA, who is convicted or imprisoned for an offence for 2 or more years then same will lead to his disqualification from contesting elections and holding any of the offices.
- **Manoj Narula v. Union of India**, ⁵this was a case regarding the disqualification of candidates from contesting elections, who are charged for criminal offence but here in this case High Court of Delhi held that mere a charge of criminal offence can not be a ground of candidate's disqualification from taking part in election. However, court here held that political parties should restrain themselves from choosing candidates with criminal records.
- **Public Interest Foundation v. Union of India**, ⁶in this case Hon'ble Supreme Court of India directed the political parties to publish the criminal history of their candidates on their handles of social media and websites and court further directed the Election Commission of India to create a mechanism that will ensure the proper disclosure candidate's criminal information.

¹ (2002) 5 SCC 294.

² (2004) 2 BLJR 988, (2004) 21 AIC 424.

³ (2002) 5 SCC 294.

⁴ AIR 2013 SC 2662.

⁵ AIR 2014 SC 736.

⁶ AIR 2018 SC 4550.

Conclusion:

After a detailed observation of facts and data tally throughout this research paper, we can conclude that the illegal and other malpractices by political parties have been achieved an exceptional height and still achieving the same. There are the large number of illegal tactics, which have been adopted by political parties and their leaders to ensure their triumph in elections. Hon'ble Apex Court of India, Indian Parliament, our Election Commission and other relevant Constitutional Bodies have taken the multiple steps to address this fear have created out of criminalisation of politics but all these steps have been ineffective in solving this problem. If we want to address this problem then command to do the same should be entrusted to the relevant constitutional bodies such as Election Commission of India and this constitutional body must be assisted and accompanied by making stringent rules, laws and regulations. Election Commission of India must have a wider power to make a necessary audit related to the financial strength of all political parties and not only this but there must be a law to bring the financial information of political parties under the ambit of Right to Information Act, 2005. In order to achieve all objectives, what we have included in this conclusion there is a need of a committed political will but there is a lacking of this and we need to fill this gap first then go to achieve these objectives.

Despite of all hurdles in a way to curb the effect of political criminalisation, Indian Judiciary has played a pivotal role to tackle with the consistently rising menace of political criminalisation. It's up to the parliament of our nation with having law making power and it should pass the stringent laws to address these issues with efficacy. These are only ways with which India can shift from this status with criminalised politics to a progressive nation and a nation with a true democratic fabric in real sense.

Way Forward:

Undoubtedly, it is a very considering factor that persons with criminal charges must be debarred from contesting any of the elections because these categories of persons dilute the democratic fabric of our nation at large. But there are lots of question with regard to the criminality of persons, who are about to enter in the politics of our country. **These questions are as what to do in case where a person only alleged to be an act of crime? Must only on the basis of accusation he be debarred from contesting an election or entering into politics? Definitely a collective answer of both of these questions we have is no. India's Administration of Criminal Justice is aligned with a system of well-established legal principle "innocent until proven guilty" and this refers that no innocent man should be debarred from contesting an election. In other words, we can say that there is no bar on the right of innocent persons to contest an election. Then, what is the way forward? In year 2017, Hon'ble Apex Court of India mandated/directed to create "Fast-Track Courts" to ensure the speedy and timely disposal of matters. We can relate this mandate of Supreme Court to create fast-track courts with our above mentioned two questions, because via**

these courts matters will be disposed off at earliest and this makes possible to know whether or not a person with allegations/accusations is eligible to contest an election.

There is an important act to deal with political criminalisation in India that the **Representation of People Act, 1951** and on the basis of ongoing situation an amendment is also required in this **Act of 1951**. There are the five major sections in this act **Section 7 to Section 11, which deals with who is eligible to contest an election in India?** But these sections should be reconsidered and must be rearranged to be best suited to the changing scenario of society and time. There are two major committees known as **Dinesh Goswami Committee and Vohra Committee** and these committees have recommended a lot of things, but these recommendations must have considered but not considered yet. So, these considerations must be taken into the accounts by the authorities dealing with these-crisis. An appropriate alteration is also required in both Judicial System and Electoral System. Duty to address this problem of political criminalisation is not just a duty of government but it also extends to the peoples of India to contribute in maintaining the **Democratic Fabric of India**.

