



The Criminalization of Politics In India And The Indian Judiciary

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Abstract:

The most popular tune these days is one about the criminalization of politics. It undermines the foundations of the noble idea of democracy in every country where it is practiced. The desire to seize and hold onto power is a common human flaw. Politicians, political parties, and even bureaucrats are intimidated into handing over their illicit control of the electoral process and the Government by the intimidating imagery of muscle and money power. Criminals are also interested in being a part of actual election politics as it provides a certain safeguard. Neither the elected legislature nor the bureaucracy is particularly motivated to combat evil effectively by passing the necessary legislation and even implementing the existing legislation effectively. The counterargument is that the ruling party frames criminal charges favorably for themselves while being politically prejudiced against the opposition. To fortify democracy, the Judiciary, the third pillar of the democratic left, must play a crucial role in restraining criminalization politics.

Key Words: Criminalization, Politics, and the Judiciary.

Introduction:

The role of the Indian Judiciary in combating the criminalization of politics is remarkable. To focus on it more thoroughly, we need to understand the concept of crime, criminalization, and criminalization in politics. One also needs to explain the evolution of the criminalization of politics, its impact, and the tools to combat this evil—the paper focus on illustrating how the Indian Judiciary has played its role within its judicial power. An action, omission, or behavior that violates law provisions is a crime. Any act that constitutes an offense punishable by law is also a crime.

Even gaining something by using unfair means of power in politics is criminalizing politics. It creates a nexus between politicians and criminals. Criminals get the patronage of politicians, and politicians take the help of muscle power and money from criminals to win elections. Over time criminals felt motivated to contest elections and developed criminals in politics. Conversely, common categories of political crimes are sedition, perjury, espionage, and war crimes.

Reasons for the criminalization of politics

Why do you think politics in India have become criminalized? It can be attributed to the following factors:

Vote Bank politics

In India, we have adopted the FPTP voting system in an election. The Candidates who secure the highest votes is declared as the winner. Generally, every election constituency has vote banks on a cast or other bases such as vote bank in block helps win the election. Politicians make it easy to secure an election with the help of criminals or political parties nominating the criminals as their official candidates.

Corruption

The cost of election for a candidate and political party increases with time. Criminals have huge illicit money power and can easily bribe illiterate and economically poor voters. The criminality of politics is aided by corruption. Corruption and political dominance can be achieved by bribing persons with criminal records.

Threats

Criminal Muscle Power: Criminal muscle power is a useful tool in restraining the candidates in filing nominations and the electoral from casting votes, creating hurdles in campaign rallies, booth capturing, etc.

Low rate of Conviction

Democracy is liberal in its roots, resulting in a lengthy and slow process against candidates having criminal antecedents, which is also a reason for evolving criminalization in politics.

Lack of governance

Election season in our society is typically marked by a vacuum in leadership. Due to the absence of leadership, there is rarely any coherent strategy, and the rules for holding free and fair elections are rarely adhered to.

Narrow Self-interests

Publicizing the complete criminal history of election nominees fielded by different political parties may not be reasonable. A significant group of Indian voters tends to vote through a constrained lens of societal interests like religion or caste.

The magnitude of the criminalization of politics is not small, which has led to certain serious issues and doubts in the minds of the Indians. The whole country today is seriously concerned about the criminalization of politics. The alignment of politicians, criminals, and bureaucrats is known to all. Politicians and political parties align with the criminals and such miscreants to secure their victory. The combination of the muscle power of criminal gangs coupled with the money power of political parties and vested interest lobbies creates an atmosphere of fear and threat, and bribery, which has become a point of concern for everyone in India from the first day of filing the nomination till the day of counting and more preciously on the day of the poll. The misuse and abuse of criminals are normally in the weaker sections of society, who dare defy antisocial criminals in their area.

As time passes, criminals are inclined to participate in the election process by candiduric themselves as candidates, and the chances of their winnings are higher. The Political parties, willingly or in compulsion, have started nominating candidates having criminal antecedents.

About 19% of those contesting the 2019 general elections face charges including rape, murder, and kidnapping, as per signed affidavits submitted to the Election Commission along with their nomination. 17% of 5,380 candidates contesting elections of 2014 were found prosecuted for criminal charges in their submitted affidavits to the Election Commission.¹ 10% of those were with serious charges of murder and rape. Once convicted, politicians leave their seats but silently hand them over to Kith and kin. The proxy rule continues, which makes the situation still worse.

The provisions of our liberal Constitution provide for the multi-party Constitution. Ease the registration for political parties, the number of political parties increased from 55 in 1951 to 2796 in 2021 (8 national parties, 54 state parties, and 2796 unrecognized ones) parties. More nos. of political parties allow more criminals to enter the election process directly or from the back of the screen. National parties also misuse the criminals through state-level small parties to secure their seats to divide votes.

Effects of Criminalization on Politics

The criminalization of Politics severely affects the country's electoral process and collective administration. The impacts of criminalization largely are:

- Lawbreakers** become lawmakers.
- It adversely damages the roots of democracy;** people lose their confidence in the democratic.
- Against the Principle of Free and Fair Election:** When campaign contributions and threats of violence are used, voters have fewer viable options from which to choose. A free and fair election is a cornerstone of a democracy, and this practice contradicts that principle.
- Affecting Good Governance:** The main issue is that criminals often end up in positions of power, reducing the effectiveness of

¹ Beniwal, V. & Kumaresan, S. (2019). In the 2019 general elections, no bar on candidates charged with murder or rape. Retrieved from: <https://economictimes.indiatimes.com/news/elections/lok-sabha/india/in-2019-general-elections-no-bar-on-candidates-charged-with-murder-or-rape/articleshow/69318220.cms>.

the democratic process to provide effective government. These unwholesome democratic tendencies paint a dim picture of the quality of India's state institutions and elected officials.

- **Affecting Integrity of Public Servants:** In addition to contributing to widespread corruption before, during, and after elections, this practice hinders the efficiency of government employees.
- **Causes Social Disharmony:** It spreads a newfound tolerance for violence, teaches young people a harmful lesson, and undermines confidence in the democratic system.
- **The criminalization** impacts the fair trial process and adds to the existing uncertainty level in Indian politics.

Countering the Criminalization of Politics

Problems/issues/hurdles are there in any process or system. Here this is the game of power, and greediness of power persists in almost all lives. Human is the most intelligent and always tries to find out shortcuts. Criminals with muscle and money power easily attract, suppress and threaten the lower or weaker electoral class. At the same time, there are also solutions available for problems.

To curb criminalization in politics, we have four main tools available.

- (a) Constitution
- (b) Legislation
- (c) Implementing authority and
- (d) Judiciary

The Constitution of India provides for disqualification of the member of Lok Sabha and Council of States in Article 102, but in no way expressly provides restrictions for criminals to become members of either House. Similarly, Article 191 provides the disqualification criteria to be a State legislative assembly member but is also silent for criminal restrictions. Our legendary constitutional framers would not have thought of such a scenario.

The legislature, i.e., is empowered to make legislation, preciously under Article 327 of the Constitution. Parliament may frame the laws related to elections of the House of People and the State Legislative Assembly from time to time. The Parliament has framed a series of Statues, rules, and orders under this Article. Amongst it, The Representation of People Act,1951 is concerned. Section 8 of this Act disqualifies a convicted person under various prescribed offenses under the different prevailing Acts. In a democracy, any conviction is subject to further judiciary revision. Unfortunately, the existing R.P.Act,1951, and other Act provisions are insufficient.

The Election Commission of India is the autonomous constitutional authority to announce, conduct, superintend, and monitor the election having plural powers under Articles 324- to 329 of the Constitution. ECI has gracefully and peacefully conducted several general and by-elections of India, the largest democracy having unity in diversity. ECI is putting its sincere efforts into transparency. ECI is always prompt to adopt timely reforms to achieve a free and fair election. Even though where there is no direct legislation uses its plural powers and the directions or suggestions of the Judiciary. In curbing the effect of criminalization, ECI has played a remarkable role. A judiciary is also an important tool in democracy. Under Articles 32 and 226 of the Constitution, the apex and the High courts can issue directions, orders, or writs to enforce any rights conferred in Part III. Further, under section 40 of the R. P. Act,1951, election disputes are to be settled by the High Court and the Supreme Court.

Landmark Judgments on the Criminalization of Politics

The conceptual starting or, say, the attempt of the Apex Court, opening the door towards decriminalizing the political process effectively by pronouncing the following landmark and courageous judgments.

1) **Dinesh Trivedi M.P. and others v. Union of India**²

In this case, a writ petition was filed, praying the apex court to publish the background papers of the *Vohra Committee report* be submitted to the Government in July 1993. Only the recommendations were submitted, not the full report, but the background papers of the report were not put forward to public knowledge. Petitioner failed to get background papers of the report from the UOI Ministry of Home and filed a PIL* in association with two NGOs.

In this case, the most important part of the judgment is that the Supreme Court's assertion of the petitioner's **right to freedom of information** opened the door for his attempt to curb the criminalization of politics.

To decriminalize politics, the Supreme Court suggested appointing a high-level commission to thoroughly assess the Vohra Commission's findings.

² Dinesh Trivedi M.P. and others v. Union of India (1997 4 SCCC 306)

2) Association for Democratic Reforms (ADR) (Writ petition 7257 of 1999)³

The Delhi High Court was asked to decide whether voters had a right to know the pertinent particulars of the running candidate in a writ case filed under Article 226 of the Constitution.

For the first time in India's democratic history, a petition filed under Article 226 of the Constitution asks the government to alter Rule 4 of the Conduct of Election Rules 1961 to reflect a proposal from the Law Commission of India from 1993. To address the distortion and evils that have crept into the Indian electoral system, the Government of India requested that the Law Commission of India conduct a thorough study of the measures necessary to speed up the election petition hearing and review the Representation of the People Act 1951. This report details the findings of that study.

In a writ petition brought under Article 226 of the Constitution, the Delhi High Court was urged to rule on whether or not voters had a right to know the relevant particulars of the running candidate.

Rule 4 of the Conduct of Election Rules 1961 is being petitioned for the first time in India's democratic history under Article 226 of the Constitution to conform to a suggestion made by the Law Commission of India in 1993.

The Government of India has asked the Law Commission of India to review the Representation of the People Act of 1951 and determine what steps need to be taken to expedite the hearing of election petitions to correct the distortions and ills that have crept into the system. The results of that investigation are presented here.

But keeping in view the fundamental rights of electors regarding the right to know the candidate's background for whom there are going to vote, The High Court ruled that it is against the public's interest and the interest of democracy to conceal information about a candidate's background or whereabouts before an election.

The court ordered ECI to compile and distribute the following information about each candidate to voters.

Is the candidate facing any criminal charges that could lead to jail time? If yes, please explain in greater detail.

Financial resources are available to the candidate and their family. Information, such as a candidate's academic credentials, might shed light on whether or not they are qualified to serve as a lawmaker or parliamentarian.

Anything that the election commission thinks would help them decide whether or not to put forth a candidate for a seat in Congress or a state legislature.

In a way, this was the landmark judgment wherein a High Court directed ECI to ask the information about the candidate's background about his, criminal history, assets, and educational qualification on the ground that it is the fundamental right of electors to know their candidate for whom they are going for a vote.

3) Union Of India v. AS & Socacnioattheieorn (UOI v. AS & Socacnioattheieorn for Democratic Reform) Appeal (Civil) 7178 of 2001 Writ Petition (Civil) 294 of 2001;⁴

Being aggrieved, the Union Government filed a civil appeal to the apex court against the Delhi High Court's contention; two important questions were raised in this petition:

1. Suppose you live in a country with a republican-democratic government, voting for a representative body. Do you have the right to know all the facts about the contesting candidates on the ballot before you cast your vote?
2. In Writ Petition No. 294 of 2001, the petitioner asked the High Court to issue a writ, order, or direction to the respondent under Article 32 of the Constitution. The court's jurisdiction was called into question.
 - a. To institute rules requiring election candidates to disclose their financial holdings and for sitting members of parliament and state legislatures to do the same annually.
 - b. The 170th report of the Law Commission of India provides instructions for implementing Article 141 of the Indian Constitution and requiring candidates to disclose any charges or convictions they may have when running for office.

The appellant's counsel argued that the High Court shouldn't have granted any such directives to the electoral commission of India by citing the provisions of the R.P. Act, 1951, and the goals of Article 32. The Indian National Congress filed to intervene in the case and took issue with the Delhi High Court's decision. The Election Commission of India was asked by the apex court to file a written reply to this issue; the ECI filed his affidavit agreeing with the Delhi High-court view and suggested the information be asked from all contesting candidates.

³ Association for Democratic Reforms (ADR) (Writ petition 7257 of 1999)

⁴ Union Of India v. AS & Socacnioattheieorn (UOI v. AS & Socacnioattheieorn for Democratic Reform) Appeal (Civil) 7178 of 2001 Writ Petition (Civil) 294 of 2001

After a lengthy discussion of all relevant Articles of the Constitution, its origins & evolution, principles of the Basic Structure of the Constitution, the Rule of Law, the essence of the Fundamental Rights, various landmark judgments concerning the right to know, and the powers and functions of ECI under Article 324, the Apex Court held that;

"Article 324, in our view, operates in areas left unoccupied by legislation, and the words 'superintendence, direction, and control' and 'conduct of all elections are in their broadest term."

The court also held (in para 77) that;

"We have been told that whenever the Parliament has intended a hearing, it has said it is in the Act and the Rules and inferentially where it has not specified it is Otiose. There is no such sequester. The silence of a statute has no exclusionary effect except where it flows from necessary implications. Article 324 vests a wide power and were some direct consequences on candidate emanate from its exercise we must read this functional obligation."

In a nutshell, the Supreme Court established two very crucial principles;

- (1) Article 19(1&2) guarantees the right to obtain information on a candidate for public office
- (2) The Indian Election Commission's purview extends far enough to encompass all powers essential to the orderly running of elections; elections here cover the entire election process, from planning to voting to counting the ballots.

Last, the Delhi High Court said that the ECI must exercise its authority under Article 324 to issue an order requiring all candidates seeking election to provide information under oath.

- Has the candidate ever been charged with a crime, tried and found not guilty, or found guilty of a crime but not sentenced to jail or a fine?
- Whether the candidate has been charged with or had cognitive impairment determined by a court before the six-month nomination filing deadline for any offenses punishable by imprisonment for two years or more, if so, please provide specifics.
- The candidate and their family's assets (real estate, personal property, cash, etc.);
- The candidate and their family's liabilities towards any public financial institution or government dues.
- The level of education that applicants have obtained.

By this judgment, the Hon. Supreme Court informs the people about the criminal antecedents of all the candidates contesting the election. It significantly helps the electors close the door for criminals entering the legislature. It becomes difficult for political parties to set up criminal candidates as their criminal history is known to everybody. Thus, in the absence of sufficient legislation to debar the criminals from contesting the election, the electors can reject such candidates with the help of the information provided by contesting candidates. Section 33A inserted into the Representation of People Act, 1951,⁵ in which criminal information as directed in the above judgment was made mandatory to be provided in an affidavit (Form no.26) by all contesting candidates information regarding assets, liabilities, and education was not called for.

In addition, section 33B was inserted into the R.P. Act, 1951 by the same amendment Act stating that;

"Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the election commission of India, no candidate shall be liable to disclose or furnished any such information, in respect of his election, which is not required to be disclosed or furnished under these Act or the Rules made thereunder."

4) People's Union Of Civil Liberties .v. Union Of India &Anr on March 13, 2003⁶

This petition aimed to overturn parts of Section 33A and Section 33B. The Supreme Court elaborated at length on the importance of voters' access to information about competing candidates. Article 19(1)(a), the freedom to privacy, and many other factors all play a role in decriminalizing politics and maintaining purity, transparency, and free and fair elections. The Supreme Court also discussed the various judgments, namely;

- S.P. Gupta v. Union of India [(1981)⁷
- Dinesh Trivedi v. Union of India⁸.
- Secretary, Ministry of I & B v. Cricket Association of Bengal⁹
- Union of India V. Association for Democratic Reforms' case (supra)¹⁰

⁵ Representation of People (Third Amendment) Act 2002 w.r.e.f. 24-08-2002)

⁶ Union Of Civil Liberties .v. Union Of India &Anr on March 13, 2003AIR 1997 SC 568, J.T. 1997 (1) SC 288,)

⁷ S.P. Gupta v. Union of India [(1981)AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365

⁸ Dinesh Trivedi v. Union of India(1997 4 SCC 306)

⁹ Secretary, Ministry of I & B v. Cricket Association of Bengal1995 AIR 1236 JT 1995 (2)

¹⁰ Union of India V. Association for Democratic Reforms' case (supra)1977 AIR 1027 1977 SCR (2)719 1977 SCC (1) 834

The Hon.SC remarked that the right to vote is formed by the R.P. Act of 1951, a Constitutional right. Electoral participation is a form of free speech, but it is not a guaranteed right. There can be no suspension or halting of the right to information under Section 33-B, which is unconstitutional.

S.C. ruled definitively that:

According to the Hon.SC, voting is a Constitutional right established by the R.P. Act of 1951. The right to vote is not guaranteed, yet voting is a means of free expression. The right to access information under Section 33-B cannot be limited or revoked since doing so would violate the Constitution.

S.C. made a final determination that:

Voting in elections for the House of People or Legislative Assembly is a constitutional right, not only a statutory right, and the freedom to vote, as it is distinct from the right to vote, is a component of the fundamental right guaranteed by Article 19(1)(a). Voting for or against a candidate is exercising the voter's right to self-expression.

The Union of India v. Association for Democratic Reforms [(2002) 5 SCC 294] order was "Pro-Tempore in nature," meaning it would only be in effect until the legislature passed a permanent solution. After laws are passed, the court must conduct its impartial review. When evaluating the right to know and the basic right under Articles 19(1) and 19(2), the court must take a holistic view and use a balanced approach.

The law guarantees citizens the right to know and establishes its boundaries.

The Representation of the People Act, as amended by the Third Amendment, Section 33B, fails the constitutionality test for two main reasons: first, the ban on disclosure of information beyond that specified in the enactment applies even though the disclosure of information currently provided for is deficient and inadequate; and second, the ban operates regardless of the need of the hour and future contingencies and expedients.

It is sufficient to protect the right to information vested in the voter/citizen that Parliament has provided under Section 33A regarding the pending criminal cases and past involvement in such matters. However, there is no compelling reason to exclude from the scope of disclosure the cases in which the court has taken cognizance.

The Elections Commission will need to publish new guidelines to guarantee. This judgment governs the applicability of Section 33A as in the cases it has noticed. All disclosure orders issued by the Elections Commission shall remain in full force and effect. Nominating papers should be rejected if they were filled out incorrectly or omitted significant facts, following directions No.4 of paragraph 14 of the by-laws.

5) The Resurgence of India v. The Election Commission Of India¹¹

Even after the above two judgments of the Supreme Court and the accordingly orders issued by the Election Commission of India, it was experienced that many candidates, though filing their required information on (Form No.26), were not filling all the columns of information and left it blank or just put '-' in the column space, which ultimately does not serve the purpose. The consequences were also concerned if the information provided in the affidavit was not correct or false. An NGO called Resurgence India filed a writ case under Article 32 of the Indian Constitution against the Election Commission of India to bring this matter before the Supreme Court. The petitioner requested that the respondent here be issued an appropriate writ of mandamus instructing the returning officer to verify that the affidavit presented by the candidate is full before respecting and rejecting those nomination papers accompanied by blank affidavits.

The Election Commission has taken the position that the Returning Officer cannot reject nomination papers based on falls/incomplete/blank information affidavits signed by the candidates in light of the top court judgment in PUCL* (supra). Given the previous ruling, they say they have no choice but to accept the nomination papers. The commission opines that a nomination paper missing important information must be rejected. After examining sections 33A, 36, and 125 of the R.P. Act, 1951 in-depth, the Supreme Court came to the following conclusion to fulfill the purpose of the electors' right to know the candidate:

- As a natural outgrowth of democracy and as an inherent part of Article 19(1)(a), voters have a fundamental right to know for particulars of the candidate.
- Affidavits and nomination papers are submitted so citizens can exercise their rights guaranteed by Article 19(1)(a) of the Constitution.
- It will be useless if the affidavit is filed without the required information.
- The returning officer is responsible for verifying the completeness of all required fields.
- Affidavits filed with nomination papers must include details essential to fulfilling the "right to know." The R.O. must allow the candidate to supply the information; if they don't, the nomination document can be rejected.
- The applicant should not leave any columns blank and should instead write "NIL," "Not Applicable," or "Not Known"

¹¹ The Resurgence India v. The Election Commission Of India & Anr W.P. as decided on September 13, 2013.

where appropriate.

6) Lily Thomas v. Union Of India [Writ Petition (Civil) No.490] of 2005, and; Lok Prahari, through its Gen. Secretary v. Union Of India [Writ Petition (Civil) No.213] of 2005¹²

The primary purpose of these two PIL writ petitions is to have Section 8(4) of the Representation of the People Act, 1951, declared to violate the Constitution. The context is important for understanding the challenge to subsection (4) of Section 8 of the Act, which states that the Constituent Assembly intended to lay down some disqualifications for persons being chosen as and for being a member of either House of Parliament or for membership in the Legislative Assembly or Legislative Council of the State under Article 102 and Article 191, respectively, when drafting the Constitution. Following the terms of the Articles Parliamentary disqualifications for serving in Parliament or a State Legislature were established in Chapter III of the Representation of the People Act 1951, specifically Sections 102(1)(e) and 191(1)(e).

Sub-section 4 of section 8 says;

In the case of a person who, on the date of the Conviction, is a member of Parliament or the Legislature of a State, a disqualification under either subsection shall not take effect until three months have elapsed from that date or if an appeal or application for revision is brought in respect of the Conviction or the sentence within that period until the court disposes of that appeal or application for revision.

As a preliminary matter, the court ruled that Parliament did not have the authority to establish subsection (4) of Section 8 of the Act, as this point was not mentioned in the writ petitions.

The court discussed the provisos of Article 102(1)(e), 191(1)(e) and Article 101(3)(a), 190(3)(a) critically also considered the provision of Article 248 and held that;

We need not address the other issue raised in these writ petitions, namely, that subsection.

- (3) of Section 8 of the Act violates Article 14 of the Constitution because subsection (4) of Section 8 was not within Parliament's power to enact. Our decision in this judgment that subsection (4) of Section 8 of the Act is ultra vires the Constitution posed the question of whether the disqualifications previously incurred under subsections (1), (2), and (3) of Section 8 of the Act should be affected.
- (4) Members of Parliament and State Legislatures currently serving their terms and have filed an appeal or revision of their Conviction within three months are required to act. The relevant court is still considering their changes and appeals.

Disqualification under Section 8(1), (2), and (3) of the Act begins on the date of Conviction for any of the above offenses. It is in effect for the duration specified below.

We hold that the declaration we are making in this judgment should not affect sitting members of Parliament and State Legislature who are protected by the provisions of section 8(4). Articles 32, 141, and 142 of the Constitution empower the court to formulate legal doctrines to meet complete justice.

7) People's Union for Civil Liberties v. Union of India & Anr. (NOTA * Case)¹³

Rules 49-M of the Conduct of Election Rules, 1961. and under Section 128 of the Representation of the People Act, 1951. The prayer's pillars were the freedom to vote and the freedom to abstain from voting. The petitioner further asserted that Article 32's writ Jurisdiction does not apply to the right to vote because it is a statutory right.

In light of its careful deliberation, the court has reached the following conclusion about the scope of fundamental rights under Article 19 (1) (a) of the Constitution:

A leader must be chosen democratically for the country to function. By allowing voters to select "None of the above," (NOTA*), political parties will be motivated to submit more. Qualified candidates. The fundamental characteristic of the Indian Constitution, free and fair elections, shields and will indirectly aid in decriminalizing politics. The Supreme Court upheld the right of rejection in an Article 19 context.

The petitioner invoked Article 32 of the Constitution to file a PIL challenging the constitutionality of Rules 41(2) and (3) and 49-O.

¹² Lok Praahari through Gen. Secretary v. Union Of India AIR 2018 SC 4321.

¹³ People's Union for Civil Liberties v. Union of India & Anr. AIR 1997 SC 568, J.T. 1997 (1) SC 288, 1996 (9).

8) Public Interest Foundation vs. Union Of Indians September 25, 2018,**Writ Petition no 536 of 2011 With Criminal Appeal No.1714-1715 of 2007 And Writ Petition (Civil) no.800 of 2015¹⁴**

In light of Article 102(a)-(d) and the law passed by the Parliament under Article 102(e), this Bench must decide if the court may establish additional grounds for membership disqualification.

At the hearing, attendees expressed deep concern about the criminalization of politics in a democracy, leading to a broadening of the question's focus.

Even after the directions issued by this court, which compelled the candidates to provide information about their criminal history and the nomination and make it available in the public domain, informed voters can judge the candidate and reject the candidate's criminal mindset. It was also intended to pressure the political parties to give tickets to the criminal person for fear of losing the election. But unfortunately, this was not taken seriously by the candidates as they were not providing the required comprehensive information. Political parties did not hesitate to set up such candidates as their official ones. Sometimes, political parties were behind the screen sponsoring such candidates to benefit from votes' polarisation in their favor.

The Supreme Court discussed the issue, analyzed the facts available and judgments of six honorable courts, and discussed the various Articles of the Constitution and their scope, Provisions of the existing laws and rules with firm commitments to curb the criminalization of politics issued more directions as under.

- Each candidate must submit a completed form to the electoral commission, including all information requested on the form.
- Any pending criminal charges against the candidate must be prominently displayed.
- A candidate running for office on a political party's ticket must disclose any current criminal charges to that party.
- The relevant political party must publish the above data regarding candidates with criminal records on its website.
- Both the candidate and the political party in question must make a public statement about the candidate's background in newspapers with significant circulation in the area and receive extensive coverage in the electronic media. Broad publicity means the same must be done thrice between filing nomination papers and election day.

9) CONTEMPT PET. (C) NO. 2192 OF 2018 IN WP (C) No. 536 OF 2011¹⁵**Rambabu Singh v. Sunil Arora (The Chief Commissioner, ECI). With Contempt Pet. (C) NO. 428 of 2019 in W.P. * (C) NO. 536 OF 2011 & Contempt Pet. (C) NO. 464 of 2019 in W.P. * (C) NO. 536 OF 2011**

The criminalization of politics in India is an important topic that this contempt petition brings up. In Public Interest Foundation and Orv. Union of India and Anr. The Constitution Bench of this Court issued directives that were disregarded. When rendering its verdict, the court considered the growing criminalization of politics in India and the widespread ignorance about this trend. This court has issued the following directives to fill this knowledge gap:

Regarding the petition, the court noted that political parties do not explain why candidates with pending criminal cases are selected as candidates in the first place; issued the following directions in -exercising constitutional powers under Articles 129 and 142 of the Constitution of India.

- Parties seeking office at the federal or state level must disclose on their websites whether or not any of their candidates have pending criminal cases, along with details about those cases (such as the nature of the offense, whether or not charges have been framed, the concerned court, the case number, etc.).
- Have you been chosen as a candidate, and why were those without criminal records also not chosen?
- The reasons for selection shall be with reference to the candidate's qualifications, achievements, and merit and not merely "winnability" at the polls. These additional publications must also carry this notice:
- (a) In at least two newspapers (one local vernacular and one national) and (b) on the party's official social media platforms (Facebook and Twitter), either within 48 hours after the candidate is chosen or two weeks before the first date for filing nominations, whichever comes sooner, this information must be made public.
- Within 72 hours of picking the candidate, the relevant political party must file a report detailing how it complied with these guidelines with the Election Commission.
- The Election Commission of India shall bring such non-compliance by the political party concerned to the knowledge of the Supreme Court as being in contempt of this. Court orders/directions if the political party fails to submit a compliance report.

Brijesh Kumar Sinh vs. Sunil Arora & Ors¹⁶

A contempt petition was filed after the five states elected the State Legislative Assemblies in 2020. It was observed that most of the political parties did not comply with the letter of ECI

¹⁴ Criminal Appeal No.1714-1715 of 2007 and Writ Petition (Civil) no.800 of 2015.

¹⁵ CONTEMPT PET. (C) NO. 2192 OF 2018 IN WP (C) No. 536 OF 2011.

¹⁶ Brijesh Kumar Sinh vs. Sunil Arora & Ors. CONTEMPT PETITION (CIVIL) NO. 656 OF 2020

- On February 13, 2020, the Supreme Court ruled that nine political parties were in contempt for failing to publish information on criminal proceedings involving candidates fielded in the Lok Sabha and Assembly elections.
- The Supreme Court's pleas for politicians to pass legislation to combat this issue "have fallen on deaf ears."
- Within 48 hours of candidate selection or not less than two weeks before the first date for filing of nominations, whichever is earlier, political parties were directed to publish details of criminal cases against their candidates on their website, a local vernacular newspaper, a national newspaper, and social media accounts.
- The court changed this in its most recent order. It stated that the information "shall be published within 48 hours of the selection of the candidate," as the latter is difficult to implement due to statutory constraints.
- It fined candidates in the 2020 Bihar elections 1 lakh rupees for failing to disclose their full criminal histories. In addition, the National Congress Party and the Communist Party of India were each ordered to deposit five lakhs of rupees (about \$7,000) for failing to follow the Hon'ble Supreme Court's directives.
- In a separate matter, it has issued directives requiring the approval of the High Court of the relevant state before any criminal charges can be dropped against members of Parliament or the legislative assembly.

Over and above, there are several judgments of the Supreme Court and High Court through which our Judiciary has established its commitments towards decriminalization of politics and to secure the free and fair election for Indian democracy, namely;

- (1) Manoj Nirula v, Union Of India¹⁷
- (2) Satendra Kumar Singh v. State of U.P. & Others Allahabad High- Court¹⁸
- (3) Jan Chaukidar v. Union Of India & Others Patna High Court¹⁹
- (4) Mohmed Amin v. Amin CRM Saikh . CBI director²⁰
- (5) Niranjan Patel Union of India April 17, 2012, Delhi High Court²¹
- (6) Dr. Subramanyam Swami v. Director CBI May 6, 2014²²
- (7) Mohammad Azam v. The State Of A.P. December 31, 2018, Telangana High-Court²³
- (8) Manikandan v. State of Kerala October 19, 2020 Keralal High -Court²⁴
- (9) MadhuKodav.State Of Delhi Delhi High -Court May 22.2020²⁵

Conclusion

Unfortunately, the criminalization of politics, a serious issue our country is experiencing, is not manageable seventy-five years after independence due to the lack of proper and sufficient laws and rules. Certainly, a constitutionally empowered legislature to make any law and rules related to the election has not fulfilled its duties only to capture and retain power. The need of the hour is for all the political parties to join hands as a pious duty towards the roots of democracy by supporting and strengthening the ruling party in decriminalizing politics. The Indian Judiciary has, as a watchdog of a free and fair election, very effectively analyzed the situations and the constitutional provisions along with the concept of fundamental rights, pronounced effective judgments, and issued correct directions to the Election Commission of India in aid to control the criminalization of politics. The Judiciary has also repealed certain provisions of the representation of the People Act, 1951, which have been hurdles or half-hearted in controlling the criminalization in politics. Judiciary established that where there are no other specific laws, the Election Commission of India can issue orders and instructions to make the election process free and fair, including restricting criminalization in politics. Judicial pronouncements have strengthened the Election Commission in the superintendence and conduct of the elections. The Judiciary has its limitation of judicial power. The prima face duty of the legislature is to provide fair and effective laws and rules and legal and moral duties of political parties.

Politicians and we are all electors by changing our mindset and behavior in the interest of democracy. We must appreciate the role of NGOs like ADR*, PIL*, PUCL*, and Jan Chaukidar that are very alertly sharply focused their eyes on the elections, analyze the data, rush to the Judiciary, and even in the absence of proper legislation has caused landmark directions in the process of decriminalization of politics through the Judiciary.

Dr. Rajendra Prasad, the legendary leader, chairman of the Constitution Committee, and the first Maha Mahim President of India, as rightly said²⁶,

¹⁷ Manoj Nirula v, Union Of India AIR (2014) 9 SCC 77.

¹⁸ Satendra Kumar Singh v. State of U.P. & Others Allahabad 2007 (2) ACR 2244.

¹⁹ Jan Chaukidar v. Union Of India & others Patna High Court 2004 (2) BLJR 988, 2004 (3) JCR 284.

²⁰ Mohmed Amin v. Amin CRM Saikh . CBI director AIR 358 1952 SCR 1133.

²¹ Niranjan Patel v. Union of India April 17, 2012, Delhi High Court.

²² Dr Subramanyam Swami v. Director CBI May 6, 2014 JT 2005 (2) SC 382, (2005) 2 SCC 317.

²³ Mohammad Azam v. The State Of A.P. December 31, 2018, Telangana High-Court 1958 9 STC 231 AP.

²⁴ Manikandan v. State of Kerala October 19, 2020 Keralal High -Court AIR 1999 (2) KLJ 188.

²⁵ Madhu Koda v. State Of Delhi Delhi High -Court May 22.2020 AIR (1983) 1 SCC 177.

²⁶ Irani, C.R. (2001). Effectuation of Fundamental Duties of Citizens. Retrieved from: [https://legalaffairs.gov.in/sites/default/files/\(V\)Effectuation%20of%20Fundamental%20Duties%20of%20Citizens.pdf](https://legalaffairs.gov.in/sites/default/files/(V)Effectuation%20of%20Fundamental%20Duties%20of%20Citizens.pdf).

"Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions that appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the elected people are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they lack these, the Constitution cannot help the country. After all, a Constitution, like a machine, is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country be for them."

Recommendations

The criminalization of Indian politics is deep-rooted, but as discussed above, there are solutions. From the deliberations mentioned above, the following actions may be considered:

- **Enactment of statutes:**
The First and crucial recommendation is that the legislature enact fair and sufficient statutes and rules restricting the criminalization of politics. It would aid the Administrative machinery in implementing and enforcing legislation decriminalizing politics.
- **Usage of the updated technology:**
Technology can be the greatest enabler. By the time the forms and techniques are changing and updating, laws and rules are to be amended, and the adoption of emerging technologies must be that that would be useful in preventing the criminalization of politics.
- **Empowering the Institutions:**
The Election Commission of India is the only constitutionally autonomous institution empowered to superintend, conduct and monitor the elections to strengthen its powers and scope. The election commission needs to be empowered to take certain actions.
- **Emphasis on literacy:**
It is heartening to see the increase in the percentage of literacy. It is the right time to have some minimum educational criteria for candidature in the election. Community literacy and awareness programs will ultimately help restrict criminalization and politics.
- **Some procedural suggestions:**
The Judiciary directed that an incomplete and false affidavit providing information of criminal antecedents, assets, and liabilities and educational qualification or suppression of any pieces of information the nomination is subject to rejection at the stage of scrutiny but before rejecting candidature to the Returning officer has given an opportunity and if a candidate fails to compile the defect. But generally, scrutiny is on the immediate next day of the last day of the filing of nominations. Generally, most National political party candidates file nominations on the last day. Practically it is very difficult for the R.O. to trace out the defects in the affidavit, and the rejection of nominations because of incomplete and false affidavit causes difficulties, and the purpose is not served; this issue requires due consideration.
One more practical issue in PIL v ECI by the apex court's directions is that the publication of criminal antecedents in electronic and print media in a prescribed manner has been made compulsory. The expenditure of such publications in metro cities is comparatively much more. The Supreme Court is silent about such expenditures. Still, the ECI has treated the same candidate's election expenditure and is included in the election expenditure limit, which is not a reasonable and fair approach of the ECI. It is said, Law is the head, and ethics is the heart. A proper balance must be created between head and heart so that Ethics and Law walk together. This tandem walking of ethics and law supported by all political parties, politicians, and bureaucrats who are morally and ethically duty-bound not to involve or promote criminalization in politics to gain power or something, would lead to a day, a day of sunshine when the Indian politics would be decriminalized.

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