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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **CRIMINALISATION OF POLITICS IN INDIA:**

## **A CRITIQUE**

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### **Abstract**

Regarding the status of law and order, there has been a noticeable deterioration over the years, and the current circumstances make it more difficult to punish those responsible for serious crimes. The reason for this is that during election seasons, politicians enlist the aid and support of criminal groups. When they are having problems with law enforcement, criminals and antisocial elements turn to politicians for assistance. Therefore, the politicians meddle in the investigation of instances involving serious crimes, making it very difficult for the investigative authorities to find evidence that implicates them. Since then, things have become worse. A large number of criminals have come to believe that if they can use their physical might to elect others, then why shouldn't they run for office in the legislature? Many of them ran for office, and many of them were successful in winning elections. A few of them have even gone so far as to hold ministerial positions. Experience also reveals that any criminal cases against a person are confined to inactive folders after they are appointed Minister or Legislator. The criminalization of politics has had equally devastating effects on other areas of society as it has deeply undermined the orderly and healthy operation of our democratic democracy.

### **Introduction**

India is a democratic nation with a parliamentary form of government, meaning that representatives chosen by the people rule the nation. Every five years, elections are held, and there are several political parties. The opportunities and desire to enter politics are growing daily, but so is the ratio of criminal engagement. Periodically, even the Indian Supreme Court has conveyed its distress at the growing criminalization of politics in the country.



The Supreme Court is constrained by the separation of powers concept and constitutional principle, according to Justice Rohinton Fali Nariman. It cannot, however, enact rules and regulations pertaining to this. Although parliament has the authority to enact legislation, it is unclear when India's parliament will act to reform Indian politics. Will it ever do something? This article's goal is to provide a thorough analysis of the reasons for and effects of India's political criminalization. It also covers the measures that we may do to purify Indian politics in order to improve the country.

## **Criminals entering the Indian political sphere**

For a number of reasons, criminals in India are becoming involved in politics. The first is that criminality is profitable. One technique to further legitimise one's riches from crime and control their finances is to enter the reputable field of politics. The dearth of chances in other professions is the second issue. Some criminals saw politics as a way to make a livelihood without violating the law since they were forced out of their previous areas by labour market changes and economic liberalisation.

The third reason criminals enter politics is that, compared to other politicians, they are often more driven and, as a result, more likely to fulfil campaign pledges like creating jobs or doing projects that would enhance the lives of citizens.

## **The notion of making politics illegal**

The act of making an activity unlawful when it has previously been legal is known as criminalization. It is the process by which a court ruling or legislative act renders an individual's activities unlawful, hence designating such persons as criminals. When criminals engage in political activity, such as running for office and winning seats in state legislatures and the parliament, it is referred to as criminalization of politics. Principles of democracy such as the rule of law, basic rights, free and fair elections, accountability, and legitimacy have been so quickly influenced by this expanding threat that they have become only ideals with no actual basis in reality.

India is among the biggest democracies in the world. The brightest candidates in the nation must run for office in free and fair elections. The people's will becoming the foundation of any democratic



concept. The people's intentions must always be in line with the law. However, the availability of wealth and power, which significantly influences politics, has weakened the ability to choose individuals. It is crucial to stop the criminalization of politics because criminals have no place in the holy election process.

## **Statistical analysis of criminalization of politics**

The ethos of our Indian democracy is slowly being undermined by the threat of making politics illegal. India calls itself the largest democracy in the world, yet it is not a democracy with perfect representatives. In his Gettysburg Address on November 19, 1863, Abraham Lincoln provided a definition of democracy. "Government of the people, by the people, and for the people" is what he defined as democracy. However, democracy is now limited to the written word. How can society's welfare win out in such a scenario?

According to the Association for Democratic Reforms (ADR), those who are accused of crimes have a higher probability of succeeding than those who are innocent and devoid of misconduct. Since 1999, ADR has been an organisation that has worked tirelessly to bring about political and electoral changes. The data indicates that there is a steady rise in the number of convicts engaging in the electoral process with each election. Thirty percent of Lok Sabha MPs opposed criminal charges in 2009. Of the Lok Sabha MPs in 2014, 34% were charged with a crime. In the most recent Lok Sabha elections, the percentage was extraordinarily high. Of the members of the Lok Sabha, 29% were accused of committing major crimes, and 43% were charged with felonies.

It is depressing to see such poor conditions in a democratic nation. Voters are afraid to cast their ballots. They are being forced to cast their ballots for a specific party by goondas and mafias. They are promised certain benefits by political parties in order to forward their political agendas, but these promises are quickly forgotten when the election is done. Since the beginning of Indian democracy, goondas and mafias have always been a component of the election process.

## **Reasons why politics is becoming more illegal**

### **Strengthening muscles**

Today, the situation is shifting more often. The crooks are now seizing control of the situation. Politicians are observed giving impassioned speeches during election seasons, in which they declare their distaste for criminal activity and pledge to eradicate corruption nationwide. They emphasise the need to do away with the use of force in politics. However, this is seldom ever used. Envision the individual facing criminal charges delivering a protracted and elegant speech advocating for the eradication of crime in their community during an election. To what extent is it ironic? The basic majority system, sometimes referred to as the first past the post system, operates under the tenet that a candidate must receive the greatest number of votes in order to win. Adopting the muscle power approach is motivated by the notion that violence and terror may help a party gain faith in society if they are unable to do so otherwise. The most dangerous people in society emerge when there is a connection between criminals and political groups.

### **Power of money**

In addition to physical strength, mafia and black money are important contributors to the criminalization of politics. According to K.C. Suri, political elites have been using force and money to win elections since antiquity, yet this is entirely incorrect. "A large number of individual politicians—not just members of the political elite—have ties to criminals, and this has further exacerbated social division as a formidable obstacle to winning elections." One of the main causes of the rise of political criminality is money amassed via illegal activities. This sum of money turns becomes a simple means of purchasing votes and winning elections. The bulk of voters are readily bought off by the political parties. Additionally, it will serve as a haven for unchecked corruption, another threat.

### **Corruption**

Another important factor contributing to the criminalization of politics is corruption. Most candidates running for office need cash, contributions, and other resources. It is important to remember that disobedience to the law is a direct result of corruption. Sin, criminalization of politics, and contempt of law are all closely related. Corrupt practises develop when there is a combination of criminality of politics and disrespect of law. Politics becomes illegal as a result of growing corruption. Almost every

aspect of the Indian political system has been corrupted.

## **Certain sections in our Indian constitution oppose making politics a crime, and those articles include**

### **Article 327**

The Indian parliament has the authority to enact laws pertaining to elections for state legislatures or for either house of the parliament, as stated in Article 327 of the constitution.

### **ARTICLE 102**

Under certain circumstances, members of either house of the Indian parliament may be disqualified from standing in elections under Article 102 of the Indian constitution.

### **ARTICLE 191**

In accordance with the provisions of the Indian Constitution, members who meet the qualifying requirements may also be disqualified from the legislature or state legislative council rather than from elections.

## **Partitions within the Political System of India**

The differences that exist within Indian society are the foundation of the Indian political system. Criminals join the political sphere by taking advantage of this split. They deftly present them as the defenders of their particular caste, class, religion, and society. Generally speaking, candidates' criminal histories are not given much consideration when selecting them. Voters frequently base their decisions on the caste, ethnicity, religion, community, and linguistic heritage of the candidates.

## **There is no retirement policy in Indian politics.**

The Indian political system's retirement policy is the other main issue. Since the Lok Sabha lacks a retirement policy, some members never take retirement leave. The problem of family fiefdom puts aspiring politicians' and attorneys' careers in grave danger. The issue of the criminalization of politics is made worse by the bureaucracy's poor turnover and high number of open cases.

## **The consequences of making politics illegal**

A nation's ability to advance appears to be impeded when criminals are elected to the legislature. Both the efficacy of government and the efficiency with which Parliament can enact legislation are compromised. The public becomes less trusting in Parliament's ability to function as a result. Prominent figures' favouritism and the culture of delay contribute to the slow pace of criminal proceedings. The legislature, bureaucracy, and judiciary are only a few of the governmental institutions that suffer from rising levels of corruption. It supports the violence that permeates society and offers a poor example for young people. Political norms are steadily deteriorating. The Indian democracy's criminalization of politics is the cause. Politicians no longer serve society altruistically, as they formerly did. These days, it draws people with criminal histories and self-pursuit inclinations more frequently. The nation must bear the consequences. Legislators have been under enough pressure to enact the necessary changes, but as of right now, nothing has changed.

## **The judiciary's role in preventing the criminalization of politics**

The Honourable Supreme Court of India has occasionally taken action to stop the growing criminalization of politics in the country. In this regard, several rulings, opinions, and conclusions have been made. That being said, not much noteworthy has transpired. The majority of us would wholeheartedly concur with the following, which the Apex Court correctly noted in its statement:

The threat of criminality inside the Indian political system is becoming more and more apparent every day. Furthermore, it is undeniable that those with criminal histories and those who contribute to the criminalization of politics need to be prohibited from holding public office in order to preserve the integrity of the democratic system.

The Honourable Supreme Court's bench of Justices Rohinton Fali Nariman and B.R. Gavai voiced their distress at the criminalization of politics in August 2021. The following were noted by the Honourable Court:

"The political parties are unwilling to emerge from their profound sleep. It is clear that one of the legislative branch of government's primary interests is not clearing the tainted political stream.

In February 2020, the political parties filed a contempt suit before the Supreme Court, requesting that



they follow the ruling in *Public Interest Foundation and Ors. v. Union of India and Anr.* (2018). Nonetheless, the different political parties disregarded the decision's directives. The court declared that the Hon'ble Supreme Court's directives were not followed by the Bharatiya Janata Party (BJP), the United Janata Dal (Janata), the Rashtriya Janata Dal (RJD), or the Congress, and that they were thus guilty of contempt. It fined one lakh rupees for not revealing all of the criminal history of candidates running in the 2020 Bihar elections. In addition, the Hon'ble Supreme Court ordered the Communist Party of India and the National Congress Party to deposit five lakhs apiece for their complete noncompliance with its directives. Advocate Brajesh Singh filed the current contempt suit in August 2021, claiming that during the 2020 Bihar assembly elections, the different political parties disregarded the court's directives. Following consideration of the claims and arguments made, the Bench concluded that the majority of political parties had either not disclosed all relevant information or had not adhered to the prescribed format.

Additionally, the topic was raised primarily in light of two distinct instances of criminality in Indian politics.

**Cases against politicians:** The Honourable Supreme Court noted that state governments were not permitted to drop their legal actions against lawmakers without the consent of the corresponding state high courts.

**Parties penalised:** Nine parties were found in contempt for withholding information pertaining to the 2020 Bihar elections. Eight of them further received severe fines and penalties.

The Honourable Supreme Court of 1997 instructed higher courts not to vacate a conviction if the defendant was found guilty in accordance with the Prevention of Corruption Act of 1988.

The Hon'ble Supreme Court ruled in the 2005 case of *Ramesh Dalal v. Union of India* that a sitting member of Parliament or a state legislature may also be barred from running for office if they are found guilty of a felony that carries a minimum two-year prison sentence.

Furthermore, the statement "those who break the law should not make the law" was noted in *K Prabhakaran v. P Jayarajan* (2005). In general, the goal of establishing disqualification upon conviction for specific acts is to keep those with criminal records out of politics and the house, which is a significant branch of government. Due to their lack of restrictions and willingness to engage in criminal activity in order to succeed in an election, those with criminal histories taint the electoral process.

The Honourable Supreme Court upheld its 2018 ruling in 2020. The principal objective is to dissuade candidates with criminal records from running for office. Political parties have to provide an explanation for their selection of a candidate with a criminal record. The Supreme Court noted that the selection of candidates must be made on the basis of quality, not winnability. The content has to be posted on the website, social media sites, and national and local publications. Within 72 hours of the candidate's name being announced, the electoral commission must get the same information. The Election Commission must receive a compliance report, failing which there will be contempt proceedings. There is no denying the urgent necessity for judicial and electoral changes.

### **The path ahead**

Unquestionably, at any costs, criminals should not be permitted to run for office. They contaminate democracy's authentic essence. However, what if the individual has just been charged? Should one be prohibited from running for office merely on the basis of an accusation? No, is the response. "Innocent until proven guilty" is the legal precept that guides the operation of our criminal justice system. Election contesting is a privilege that belongs to every innocent guy. Then, what should be done next? For these types of cases, the Supreme Court established special fast-track courts in 2017. The main benefit is that the cases will be resolved as soon as possible, making it possible to determine whether or not the individual is eligible to run for office.

The Representation of People Act of 1951 also needs to be amended. Election contestants are covered in Sections 7 through 11 of this Act. In order to withstand the test of time and adapt to changing societal situations, the requirements must be reviewed. Numerous suggestions have also been made by committees like the Dinesh Goswami and Vohra committees. It is imperative that these suggestions are considered as soon as feasible. We urgently need both judicial and electoral changes. It is crucial

to remember, nevertheless, that citizens also have a responsibility to uphold the genuine spirit of democracy in addition to the state.

## **Conclusion**

It is evident from the evidence and analysis above that political parties have been engaging in increasingly corrupt activities. The political parties have used a variety of strategies to win elections. The Hon'ble Supreme Court, the Indian Election Commission, and Parliament have periodically taken action to stop this threat, but thus far little real progress has been made. Tough legislation need to be enacted, and constitutional agencies like the Indian Election Commission ought to get support. It need to be authorised to examine political parties' financial records. An alternative approach would be to include political party finance under the purview of the Right to Information (RTI). Politicians must act quickly to solve the issue, which is a lack of political will. The earliest possible deeper, more comprehensive adjustments are needed. It is true that our court is making an effort to deal with the growing criminalization of politics by taking appropriate action. However, since the Parliament has been given the authority to decide on the law-making powers under our Constitution, the burden of proof now rests with it. India needs to progress and become a fully independent country.

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