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## **Criminalisation of Politics: A Challenge to Governance**

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According to Gandhiji “ Politics without principle” is one of the seven sins.

In India, there are many levels of elections, including national and state levels. In many Indian states, state level elections create state governments, while national elections create the nation's central government. There are elections at the city, town, and village levels as well as at the grassroots level. After the government is established, the people of India pick representatives to serve them. All Indian political parties are required to abide by a set of rights, obligations, and other rules. Candidates for office, who are representatives, are expected to possess all the attributes necessary for effective governance. But sadly, the current situation has completely altered.

By subjecting our citizens to the actions of individuals who are nothing more than a burden to a nation, criminalization in politics threatens to undermine the constitutional ethos and strikes at the very foundation of our democratic system of governance. The degree of criminality that has been eroding the Indian polity has steadily increased in our democracy..<sup>1</sup>

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### **Concept and nature of Criminalization of Politics**

Political systems involve the government and its politics, which also include the state's elected officials. The term "criminalization of politics" refers to the entry of criminals into institutions that make laws, such as the State Legislature, the Local Self Governments, and the Parliament, by running in elections and winning them via the use of unlawful methods. It is the infiltration of criminals into the political system. The relationship between politicians and criminals makes it feasible for criminals to intrude on society. The criminals are needed by the politicians for their resources and force. In exchange for their clout and massive sums of money, criminals grant them access to politicians. To continue their illicit operations, criminals require the support of those who hold public office. The criminals themselves enter elections as a result of the connections between corrupt politicians and criminals. As a result, national and state legislators abuse their position of authority.<sup>2</sup>

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### **Concept of Criminalization of Politics**

Criminals become involved in politics to utilise the system or their position to further their evil goals. According to Indian Penal Code, obtaining something unlawfully is a crime. However, there are very few chances for the person in authority to be prosecuted for that offence if they are acting illegally in order to obtain unfair advantage. Criminal politicians support other criminals in their efforts to expand their illicit enterprises. Using political influence to get unjustified favours is illegal. In the criminalization of politics, the give-and-take system is evident.<sup>3</sup>

According to Sourish Benarjee, "Criminalization of politics" refers to an increase in the involvement of criminals and those who are the subject of criminal investigations or who are facing legal proceedings. Additionally, choosing them to serve as elected representatives of the people."<sup>4</sup>

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### **Causes of the Criminalization of politics**

We cannot just hold the bureaucrat-politician alliance responsible for the criminalization of politics. People are partly to blame for their election to power and their subsequent reign in politics. Following are some of the factors that contribute to the criminalization of politics:

- Nexus between politicians and bureaucracy;
- The lure of power;

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<sup>1</sup>Ashwini Kumar Upadhaya v. Union of India (2018) CWP 95.

<sup>2</sup> Milan Vaishnav, When Crime Pays: Money and Muscles in Indian Politics 10 ( Harper Collins Publishers 2014).

<sup>3</sup> Vikas Kumar Jha, Bihar: Criminalization of Politics 34 (Srishti Prakashan, 1996).

<sup>4</sup> <https://www.quora.com/What-is-criminalization-of-politics> ( Visited on January 4, 2018)

- Vote bank politics;
- Corruption;
- Win ability of candidate;
- Denial of Justice;
- Scarcity of State capacity;
- Illiteracy and poverty.

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### Present Laws to Curb Criminalization of politics

There are several statutes, including the Indian Penal Code, 1860, the Representation of People Act, 1951, and the Election Offences and Inquiries Act, 1920. However, it has not been demonstrated that they are adequate to stop criminals from joining politics.

The disqualification upon conviction of certain acts is addressed in Section 8 of the Representation of People Act, 1951. A person can be barred from running in the elections for the State Legislature and Parliament if they are found guilty of one of the following acts under this legislation.

The election official does not have the authority to bar someone from a subsequent nomination. Election independence and justice are promoted under Section 8 of the R.P. Act of 1951. Additionally, it emphasises the need of upholding law and order during the electoral process.<sup>5</sup>

The provisions relating to free and fair elections are included in the Election Offences and Inquires Act of 1920. The offences listed in the IPC, 1860, and the Representation of the People Act, 1951, are separate from one another. While the latter simply prescribes the disqualification of the member or candidate who is found guilty under the R.P Act, the former has set down the penalties and fine for offences covered by the IPC. Section 100 of the R.P. Act of 1951 also allows for the annulment of the candidate's election.<sup>6</sup>

We all know that the most crucial aspect of democracy is the electoral process. The goal of the Constitution would not be achieved in the absence of free and fair elections. The Law Commission of India prepares a number of reports about elections, some of which are listed below:

- 170<sup>th</sup> Report regarding Reforms of Electoral Laws
- 244<sup>th</sup> Report regarding Electoral Disqualifications
- 255<sup>th</sup> Report regarding Electoral Reforms

These three reports mainly prepared by Law Commission of India to bring the positive changes in Electoral System in India.

The 1999 report, number 170, was created. The Indian Law Commission decided on its own to write a report on reforming the election laws after seeing the necessity to review the laws governing the voting system. This study, which has nine sections, includes suggestions for changes to the Constitution, the Indian Penal Code, the Criminal Procedure Code, and the Representation of the People Act.

The suggested reforms in the report are:

- There should be a need to keep track of political party accounts and publish financial disclosures. This will give a true picture of the resources that Political Parties have access to. There should be a clause stating that anyone planning to run for office must disclose all of the assets that they, their spouse, and their family members own. The candidate must also provide information on any criminal cases involving the person.
- If a candidate is accused of a major crime and the accusation is proven true, the authorities must disqualify the candidate. It is vital to take the required precautions before excluding someone.

The 244th Report of the Law Commission was released in 2014. Two topics dominate this report. The first is the disqualification of candidates with criminal backgrounds, and the second is the repercussions of a candidate filing a fraudulent affidavit.

According to the panel, conviction on the allegation of filing a false affidavit should be grounds for disqualification from running for office, and these matters should be handled on a daily basis. They have also suggested that the Representation of People Act, 1951's definition of "Corrupt Practise" be expanded to include false affidavits, which would result in harsher penalties.

The 255th Report of the Law Commission is released in 2015. Essentially, this paper discusses election changes. This study emphasises the importance of fair elections once more. Greater public engagement safeguards democratic principles. The numerous new election system additions discussed in this paper include Right to refuse or (NOTA) None of the Above option, which raises concerns about whether a candidate should be permitted to run for office in more than one constituency and if sponsored news should be labelled a corrupt practise or electoral infraction. The report is prepared after the

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<sup>5</sup> Angad Yadav v. Election Commission of India AIR 2007 All. 72

<sup>6</sup> B. M. Gandhi, *Indian Penal Code* 261 (Eastern Book House, 4<sup>th</sup> Edition 2017)

Public Interest Litigation filed in the case of **Yogesh Gupta v. Election Commission of India**,<sup>7</sup> In this case Government in the submission told that they would seek the views of Law Commission on the Electoral Reforms. Hence this report is prepared after the government submission.

Chapter 2 of this report talks about Election Finance Reforms. Money play a vital role in political activities like conduct and campaigning for elections. The question was being articulated that why there is Financial Reforms.

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## Judicial Attitude

The administration of justice is crucial to the efficient operation of the nation's many institutions. The judicial examination of legislative action also guarantees the nation's socioeconomic development. The requirements of society are taken into consideration while creating laws. Due to certain authorities' lack of shame, corruption in India is still on the rise. There are laws in place to prevent corruption, but again, a lack of political will is further destroying the country. History demonstrates that the court has always been committed to making the nation the best in all spheres of public life. The judiciary has left its impact on everything from reducing environmental pollution to reducing the criminalization of politics.<sup>8</sup>

Supreme Court in its exercise examined various executive actions and show its great disregard to the practices happened in the public offices.

In the case of **Common Cause Society v. Union of India**,<sup>9</sup> The petitioners in this matter contested the petitioner's allotment of retail establishments, which is being made by Captain Satish Sharma. The petitioner disputed that the petroleum ministry had not received any applications while designating the outlet. They don't have any entries or records of any applications. They proceeded with hate in their hearts because there is no entry in any register. Additionally, there is no documentation of any criterion used to make the allocation for the same. When allocating the gas pumps to nearby locations, the minister exercised his own judgement. He did not apply any criterion or assign fuel pumps to the underprivileged and jobless. Poverty and unemployment are the only two requirements for receiving an allotment.

The allocation of the fuel stations was made in a way that is totally nepotistic, arbitrary and without the use of legal procedures since Capt Sharma was personally interested in it. In this case, the Supreme Court expressed its opinion on the welfare state idea and the responsibilities of a minister in a democratic nation. He gets promoted to the post of minister because the people of the nation trust him. He is not allowed to betray the confidence that others have placed in him.

The government should have given so many factors attention while making allotments, the court emphasised. The minister is not permitted to pick and choose who receives an allocation from the same categories. In Article 14 of the Indian Constitution, the idea of equality is established and must be followed. Nepotism and arbitrariness are encouraged by the system's lack of openness. The judge ruled that Capt. Sharma had broken the public's confidence. Public employees must now accept personal responsibility for any unlawful acts committed while performing their official duties.

So in this way the Supreme Court has exercised innovative techniques to question the executive action and gave a strong message to executive, ministers to refrain from malafide actions.

In the case of **Association for Democratic V. Union of India**,<sup>10</sup> The court noted that the unholy link and the political system must be broken in order to prevent the criminalization of politics. The issue will be perpetuated and made worse by keeping such sinful deeds hidden, which will also further increase the criminality of politics. Political parties have a responsibility to exercise caution before nominating candidates with a criminal background.

In the case of **Union of India V. AS & Co**,<sup>11</sup> The crucial issue before the court was whether voters had a right to know pertinent information about their candidates before casting a ballot in elections for members of parliament or the legislative assembly. Another query was whether, in light of Article 226 of the Indian Constitution, the High Court had the authority to issue a directive. The electoral commission was ordered by the court to tell voters of any criminal proceedings involving the candidate, any assets the candidate may have, and any information pertaining to his competency and educational background.

The Court also directed that the election commission should from time to time issue instructions to meet with the situation where the field is unoccupied by the legislation.

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## Conclusion

A nation's association with the worship of the gun after achieving hard-won independence from a nation with a democratic political system is truly shameful. Instead of punishing them, our democracy allows them to participate and be elected to the State and Federal legislatures to help manage and rule the nation.

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<sup>7</sup> WP (Civil) No. 422/2014

<sup>8</sup> National Commission To Review The Working Of The Constitution, "A Consultation Paper on Probity in governance" , lawmin.nic.in/ncrcw/finalreport/v2bl-12.htm, accessed on October 5, 2018, at 2.00 am.

<sup>9</sup> AIR 1996 SC 3538.

<sup>10</sup> AIR 2001 Delhi 126

<sup>11</sup> Appeal (Civil) 7178 of 2001

Such decisions are nothing short of a nightmare, and individuals are now forced to live with the results. Otherwise, the only tool for bringing about social and economic transformation is political power. If such cults are not taken seriously, the nation will continue to suffer. Increased civic engagement can only help to lessen political corruption and abuse of power. Power must be decentralised, and laws and regulations must be open to public scrutiny. Every candidate should develop attributes of a decent citizen if they wish to represent any party. The wellbeing of all people should be their goal.

The entry of criminals in the legislative assembly of the state, offices of the local self government and Parliament is major cause of concern because with their unholy intentions they hold the offices of central and state cabinets. Due to this the deterioration of the public offices is on the rise. The prosecution of the political criminals is very tough for the law enforcement agencies.

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## Suggestions

The following recommendations are offered to improve the current state of the political system:

- The existing administrations must demonstrate a strong political stance against the criminalization of politics as the first step towards building a robust democracy. All political parties ought to pledge that they won't distribute election tickets to anyone who has a criminal history.
- Law enforcement organisations and courts should be dedicated to rendering impartial judgements in situations involving politicians. This commitment should come from both political parties and the general public. To prevent criminals from getting involved in politics, the open cases should be resolved as soon as possible. The Indian Election Commission needs to do comprehensive election planning. They shouldn't be subjected to any government pressure when holding free and impartial elections.
- The amount of money spent on development that is granted to members of state legislatures and the parliament should be made public and should be frequently audited by accountants.

There should be appropriate institute to provide education to political persons. Legislative members should be trained up in legislative procedures, rules and regulations of the house and should be educated regarding the law making process. The orientation and refresher courses should be made compulsorily for the member of the legislature. In this way the proceedings of the parliament would go fast and so much of public money will be saved. In addition to that they will be able to make laws which will be better for the country.

- The constitution should be changed to allow for the impeachment of politicians who engage in illegal activity. Before the important election events, the parties shouldn't be allowed to bring in well-known figures to mislead the public. To sway voters, they distribute tickets to politicians who are either singers or movie stars. People are duped into thinking they are less popular than they are. When they get control, they start to ignore the common issues facing the populace.
- Political parties made a lot of promises, including the overall growth of cities, jobs, and numerous populist initiatives. People elect them into power because they are drawn to their false promises. After gaining power, they are unable to fulfil any of their promises. Parties should keep their pledges from their party manifestos, and for that reason, there should be sanctions in place. If poll promises are not kept, mechanisms should be made to penalise those responsible.

Hence, it is to be said that democracy of India is in peril and by making suitable enactments, strengthening judiciary and to implement such reformation measures, the democracy of the country can be strengthened and the criminalization of politics can be curbed.