

## CRIMINALIZATION OF POLITICS

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*B.R. Ambedkar. "A Constitution can provide only the organs of State... The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave?"*

**Keywords:** constitution, organs, political, parties, instruments

### INTRODUCTION

Let us first start with understanding the meaning of crime.<sup>1</sup> So, what is a crime? According to IPC crime is "an act committed or omitted, which constitutes an offense and is punishable by law, is a crime. Crime is an unlawful act that is forbidden and punished by the state or the law, punishment is the result of the crime. India is a democratic country that gains independence in 1947 and according to that the government is elected by the people and the party which wins works for the people and to the people. But if crime enters into politics will justice be done to people at large? If crime will enter politics then it will be wrong to say that we are living in a democratic world. As our country will be governed by people who are having criminal charges against them then it's clear that there will be no progress in our country. As people with criminal charges are elected in politics, and come into power the criminalization in politics is increasing. The percentage of criminals in politics is increasing day by day due to scope and interest. Indian judiciary time to time had come forward with judgments regarding crime In politics although due to the separation of powers, it can't make laws on it. The power for this only lies in the hand of parliament.

### CONCEPT OF CRIMINALIZATION OF POLITICS<sup>2</sup>

If an activity is turned from being legal to illegal then an act is defined as criminalization. When criminals enter into elections for contesting the election and get elected to the

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<sup>1</sup> *Surbhi Jindal*, All you need to know about criminalization of politics, 2022<[All you need to know about criminalization of politics - iPleaders](#)>

<sup>2</sup> *Ibid*

parliament and state legislatures then it is the criminalization of politics. The criminalization of politics has affected rule of law, fundamental rights, free and fair elections, accountability and credibility have turned into a just dream. Money and muscle power have undermined the choice of people which is not a sign of a democratic country. It was observed in *K Prabhakaran vs. P Jayarajan* (2005) that, “those who break the law should not make the law.

## **POLITICAL PROCESS IN INDIA**

Let's begin with the term political party.<sup>3</sup> So, what exactly does the term political party means? The answer to this question is very simple, A Political Party is an institution that consists of leaders, followers, policies, etc. Political parties play an important role in a democratic political system. They are the source through which people took part in political processes. In India, people elect representatives who run the government. In India, there are several political parties and each of them has its distinct political ideologies, policies, regions, sources, etc. Political parties are mainly present at national, state, and panchayat levels, and based on their numbers they are classified as a one-party system, two-party system, or multi-party system.

## **REPRESENTATION OF PEOPLE ACT, 1951<sup>4</sup>**

- The Representation of the People Act, of 1951, established additional requirements for becoming a member of Parliament or the Legislative Assembly. Section 8 of the Act provides for a person's disqualification upon conviction for certain types of offenses.
- Section 8(3) of the Representation of the People Act, 1951, states that anyone convicted of an offense other than those listed in Sections 8(1) and (2) of the Act and sentenced to more than two years in prison is barred from the contenting election for six years after his release, in addition to the time he served in prison.
- The question is whether an individual will be disqualified under Section 8(3) of the Act if he or she has been sentenced on multiple counts and none of the convictions are for more than two years, but when the total period of different sentences of imprisonment is counted, it becomes two years or more and the Judge orders the sentences to run consecutively. A simple reading of Section 8(3) reveals that it refers

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<sup>3</sup> Uday Shankar, Constitutional regulation of the political parties: Need of a new legal order, 2021 <<https://www.scconline.com/blog/post/2021/03/14/constitutional-regulation-of-political-parties/>>

<sup>4</sup> Ibid

to "any person convicted of any offense," implying that any of the offenses must have a conviction of more than two years to attract disqualification under Section 8. (3). However, in *K. Prabhakaran v. P. Jayarajan*, the Supreme Court held that in Section 8(3) of the RPA, the gravity of the offense is unimportant, but the duration of the imprisonment is.

- The following question is, what if a person is convicted for more than two years and his prison time is subsequently reduced? Will he then be disqualified under RPA Section 8(3)? To answer this question, refer to the Supreme Court's Constitution Bench decision in *Sarat Chandra Rabha v. Khagendranath Nath*. In this case, the offender received a remission, which lowered his sentence from two years to one. The Court determined that because the remission decreased the length of his sentence, he would not be disqualified. Court determined that he would not be disqualified.

### MONEY SPENT ON THE ELECTION PROCESS

Table 1:- spending on elections has been growing exponentially<sup>5</sup>

YEAR	ESTIMATED SPENDING(in crore)
1998	Approx. 10000
1999	Approx. 14000
2004	Approx. 17000
2009	Approx. 20000
2014	Approx. 30000
2019	Approx. 60000

Table 2:- Election commission of India seizures in the 2019 elections were thrice those in 2014

<sup>5</sup> Nithya Subramanian, What's the price of a vote in India? A new report comes up with a startling number, 2019 <[The price of a vote: How money in elections entrenches inequality in India \(scroll.in\)](#)>

Total seizures in 2014: Rs 1,200 cr

<b>Drug</b>	<b>Rs 804 cr</b>
<b>Cash</b>	<b>Rs 304 cr</b>
<b>liquor</b>	<b>Rs 92 cr</b>

Total seizures in 2019: Rs 3,475.76 cr

<b>Drug</b>	<b>Rs 1279.9 cr</b>
<b>Cash</b>	<b>Rs 844 cr</b>
<b>Liquor</b>	<b>Rs 304.61 cr</b>
<b>Gold and precious metals</b>	<b>Rs 987.11 cr</b>
<b>Others/freebies</b>	<b>Rs 60.15 cr</b>

## Association for Democratic Reforms

### HISTORY

In 1999<sup>6</sup> the Association for Democratic Reforms (ADR) was established by a group of professors from the Indian Institute of Management (IIM) Ahmedabad. In 1999, Public Interest Litigation (PIL) was filed by them with Delhi High Court asking for [or requesting] the disclosure of the criminal, financial, and educational background of the candidates contesting elections.

### ELECTION WATCH

Based on this, the Supreme Court required all candidates running in elections to declare their financial, educational, and criminal backgrounds before the election by filing an affidavit with the Election Commission in 2002 and again in 2003.

<sup>6</sup> [Association for Democratic Reforms | Improving and Strengthening Democracy in India \(adrindia.org\)](http://adrindia.org)

To give a complete picture, they have gone a step further and incorporated an analysis of the rising assets of our politicians as well as an analysis of the expenses that candidates incurred during the election process. The Election Watch program has evaluated the effectiveness of assemblies in several states based on particular criteria.

- vote tally Politics: Criminals' resources and clout help political parties win votes. Due to the importance of caste, race, religion, and other elements in Indian electoral politics, politicians can withstand the damage to their reputations caused by criminal accusations and win elections.
- Election politics is heavily reliant on funding and money, which is known as "black money: Because politicians with criminal histories frequently have higher incomes, they guarantee a stronger influx of funds, labor, and other benefits that may aid a party in a successful campaign and also have greater "winnability."
- Absence of intra-party democracy: Political parties in India often lack intra-party democracy, and the party's elite leadership typically decides who should run for office. As a result, local party members and workers rarely scrutinize politicians with criminal pasts.
- Absence of sufficient deterrence: Political parties are not discouraged from distributing tickets to criminals due to the low rates of convictions of MPs and MLAs and the length of trials.
- First Past the Post (FPTP) election system: Under FPTP, a candidate may be declared elected from a constituency based on a plurality of votes cast rather than a majority.
- Hence, a contender with as few as 25–30% of the total valid votes cast could win. Because they employ their resources (money and force) to gain votes, criminals do not have much difficulty.
- The Electoral Commission has mandated forms for candidates to use when submitting their nomination papers, asking them to divulge information about their property, court cases now pending, convictions, etc. These actions, however, have not been severe enough to separate politics from crime.
- Due to establishment pushback, widespread use of money and physical power, and a lack of voter awareness, civil society in India has been unable to prevent the criminalization of politics.

- The issue of criminalization is exacerbated further by the lack of ethics and principles in Indian politics. For these reasons, the political parties have been hesitant to stop criminalization.

## REPORT CONCERNING ADR

### CRIMINAL BACKGROUND

- Winners with declared convicted cases: -<sup>7</sup>

S.NO.	STATE	PARTY	TOTAL CASES
1	KERALA	INC	221
2	MADHYA PRADESH	BJP	2
3	RAJASTHAN	BJP	2
4	MAHARASTRA	BJP	2
5	ANDHRA PRADESH	YSRCP	2
6	UTTAR PRADESH	BJP	3

- Winners with cases related to murder: -

S.NO.	STATE	PARTY	TOTAL CASES
1	ASSAM	BJP	7
2	WEST BENGAL	BJP AND INC	18
3	UTTAR PRADESH	BJP AND BSP	19

<sup>7</sup> [Association for Democratic Reforms | Improving and Strengthening Democracy in India \(adrindia.org\)](http://adrindia.org)

<b>4</b>	<b>MADHYA PRADESH</b>	<b>BJP</b>	<b>2</b>
<b>5</b>	<b>MAHARASTRA</b>	<b>NCP</b>	<b>8</b>
<b>6</b>	<b>ANDHRA PRADESH</b>	<b>YSRCP</b>	<b>2</b>

- Winners with cases related to crime against women: -

<b>S.NO.</b>	<b>STATE</b>	<b>PARTY</b>	<b>TOTAL CASES</b>
<b>1</b>	<b>WEST BENGAL</b>	<b>BJP</b>	<b>6</b>
<b>2</b>	<b>KERALA</b>	<b>INC</b>	<b>7</b>
<b>3</b>	<b>ANDHRA PRADESH</b>	<b>YSRCP</b>	<b>2</b>

- Winners with cases related to kidnapping:-

<b>S.NO</b>	<b>STATE</b>	<b>PARTY</b>	<b>TOTAL CASES</b>
<b>1</b>	<b>ASSAM</b>	<b>BJP</b>	<b>7</b>
<b>2</b>	<b>UTTAR PRADESH</b>	<b>BJP AND BSP</b>	<b>23</b>
<b>3</b>	<b>HIMACHAL PRADESH</b>	<b>BJP</b>	<b>2</b>

### **ANALYSIS OF THE ABOVE-MENTIONED REPORTS**

From the above-mentioned reports, it is visible that each political party in their respective winning state as well as the state where they lost the election committed several crimes. Every political party has one common agenda which is to protect the citizens from a crime that too especially from crimes against women but their members themselves violate their agenda and perform heinous crimes.

**FINANCIAL BACKGROUND**

- State-wise crorepati winners: -<sup>8</sup>

STATE NAME	PERCENTAGE OF CROREPATI WINNERS
UTTAR PRADESH	97%
MAHARASTRA	100%
WEST BENGAL	74%
BIHAR	95%
TAMIL NADU	84%
MADHYA NADU	93%
MADHYA PRADESH	93%
KARNATAKA	92%
GUJARAT	80%
RAJASTHAN	88%
ANDHRA PRADESH	67%
ODISHA	70%
KERALA	88%
TELANGANA	93%
JHARKHAND	71%
ASSAM	100%

<sup>8</sup> [Association for Democratic Reforms | Improving and Strengthening Democracy in India \(adrindia.org\)](http://adrindia.org)



<b>PUNJAB</b>	<b>82%</b>
<b>CHHATTISGARH</b>	<b>90%</b>
<b>HARYANA</b>	<b>100%</b>
<b>DELHI</b>	<b>100%</b>
<b>JAMMU AND KASHMIR</b>	<b>83%</b>
<b>UTTARAKHAND</b>	<b>80%</b>
<b>HIMACHAL PRADESH</b>	<b>100%</b>
<b>ARUNACHAL PRADESH</b>	<b>100%</b>
<b>MEGHALAYA</b>	<b>100%</b>
<b>MANIPUR</b>	<b>100%</b>
<b>MANIPUR</b>	<b>100%</b>
<b>GOA</b>	<b>100%</b>
<b>CHANDIGARH</b>	<b>100%</b>
<b>MIZORAM</b>	<b>100%</b>
<b>ANDAMAN AND NICOBAR</b>	<b>100%</b>
<b>DADRA AND NAGAR HAVELI</b>	<b>100%</b>
<b>NAGALAND</b>	<b>100%</b>
<b>PUDUCHERRY</b>	<b>100%</b>
<b>DAMAN AND DIU</b>	<b>100%</b>

## **ANALYSIS OF THE ABOVE-MENTIONED REPORT**

From the above report, it is visible that now politics is all about money and muscle power. Wealthy people have a higher chance to win the election.

### **REASONS FOR CRIMINALIZATION OF POLITICS<sup>9</sup>**

If we list down the reasons for the criminalization of politics the list is uncountable. So, let us discuss some of the main reasons for the criminalization of politics:-

- **CORRUPTION**

Every election, political parties field candidates with a criminal record. When the winnability of a candidate is considered, the obvious correlation between criminality and the possibility of winning is emphasized. A candidate who is facing criminal charges has twice the chance of winning as a clean candidate.

- **VOTE BANK**

Via these crooks, political parties and independent candidates have spent huge sums on vote buying and other illicit purposes.

- **DENIAL OF JUSTICE AND RULE OF LAW**

Ineffective rules prohibiting convicted criminals from running for office further encourage this process. Only persons who have been convicted on at least two counts are prohibited from running for office under current legislation. This opens the door to charge-sheeted criminals, many of whom are repeat offenders or history sheeters. The Constitution does not indicate what disqualifies a person from running for office in a legislature. The Representation of the People Act states what can disqualify a person from running in an election. Those with ongoing criminal charges are not barred from running for office under the law.

- **SCARCITY OF STATE CAPACITY**

The public prefers 'strongmen' who can utilize the necessary pulls and triggers to get things done because state capacity is limited.

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<sup>9</sup> [Criminalization of Politics \(drishtias.com\)](http://drishtias.com)

Criminality, rather than discouraging voters, encourages them since it shows that the politician is capable of keeping his promises and protecting the constituency's interests. This is a problem that affects every political party. All political parties employ muscle power in addition to money power to maximize electoral victories. With cases hanging on for years in court, a conviction-based disqualification becomes ineffectual. The problem is exacerbated by low conviction rates in such situations; people don't mind choosing candidates who have criminal records. Voter behavior then encourages political parties to award tickets to candidates who have a good chance of winning.

### **EFFECTS OF CRIMINALIZATION ON POLITICS<sup>10</sup>**

If we talk about the effects of the criminalization of politics the list is never-ending. So here are some of the important points related to the effects of the criminalization of politics:-

- Lack of voters' confidence

Voters lost their interest to give votes as they knew who will win the election and it all depends on the money and muscle power of the elected representative.

- Glorification of criminals in the society

Each and all political party members have committed heinous crimes which are against their party agenda and moral values but they are roaming free as they have power.

- Violence during election

As the representatives are from a criminal background, they opt for violence to gather votes.

- Abuse of political power

Criminals with political backgrounds misuse their power for their benefit.

- Bad influence on the youth

Leaders with a criminal background often influence the youth of the country by their bad influence.

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<sup>10</sup> [Criminalization of Politics \(drishtias.com\)](http://drishtias.com)

## SUGGESTIVE MEASURES<sup>11</sup>

1. There must be broad bipartisan support for a measure that bans candidates accused of terrible crimes.
2. More expedited courts will hear the cases involving significant allegations made against the candidates.
3. To provide equality of opportunity and to allow public-spirited individuals to run in elections,
4. to dismantle the corporate-political connection and put a stop to crony capitalism and rent-seeking.
5. to shift the election's focus from illegal fundraising to solving people's issues, or to concentrate on development politics.
6. stricter enforcement of anti-corruption legislation.
7. Mechanisms for transparency and auditing.
8. It is necessary to alter the Representation of Peoples Act (RPA) and to take more severe enforcement measures against significant violators.
9. The Election Commission should receive more funding

## CASES RELATED TO THE CRIMINALIZATION OF POLITICS

In the case of **Ramesh Dalal vs. Union of India**<sup>12</sup>(2005), the Hon'ble Supreme Court ruled that a sitting member of Parliament and a member of a state legislature may be barred from running for office if he is sentenced to at least two years in prison by a court of law.

Additionally, in **K Prabhakaran vs. P Jayarajan**<sup>13</sup> (2005), it was said that "those who break the law should not make the law. In general, the goal of adopting disqualification for particular offenses is to keep those with criminal records out of politics and the House of Representatives, which is a strong branch of government. People having a criminal history do

<sup>11</sup> [Criminalization of Politics in India: Causes, Effects, Measures | UPSC Notes - IAS EXPRESS](#)

<sup>12</sup> Ramesh.S/O Chotalal Dalal vs Union Of India & Ors, 1988 AIR 775

<sup>13</sup> K.Prabhakaran vs P.Jayarajan , AIR 2005 SC 688

poison the process of an election since they do not have many holds barred and have no reluctance from partaking in criminality to earn victory at an election".

If the convicted member filed an appeal within three months, the Hon'ble Supreme Court accepted the application. This meant that the member might continue to serve in the relevant legislature until the court ruled on the application. In the case of **Lily Thomas vs. Union of India**<sup>14</sup>, the court overturned this provision (2013)

## CONCLUSION

It is clear from the evidence and analysis above that political parties' corrupt behavior has gotten worse over time. The political parties have used a variety of strategies to win elections. The Hon'ble Supreme Court, Election Commission of India, and Parliament have occasionally taken action to stop this threat, but so far, nothing significant has been accomplished.

It is necessary to enact strict legislation and support constitutional institutions like India's Election Commission. It ought to have the authority to examine political parties' financial records. The alternative is to include political party financing within the scope of the right to information (RTI). Lack of political will is the issue, and this needs to be addressed.

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<sup>14</sup> Lily Thomas v. Union of India, AIR 2013 SC 2662