



“JUDICIAL RESPONSE TO CRIMINALISATION OF POLITICS – A STUDY IN THE INDIAN CONTEXT”

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Abstract

The tune on the criminalization of politics is currently the most popular. In every nation where democracy is practiced, it erodes the fundamentals of the admirable concept. One of the most typical human weaknesses is the urge to take and maintain power. The threatening vision of money and muscular power coerces politicians, political parties, and even bureaucrats into ceding their illegal grip over the government and the electoral process. Because it offers some protection, criminals are also interested in participating in actual election politics. The bureaucracy and the elected legislators are not especially driven to effectively fight evil by enacting the required laws or even carrying out the ones that are already in place. The counterargument is that the ruling party is politically biased toward the opposition and prepares criminal accusations in a way that benefits them. The judiciary, the third pillar of the democratic left, must be vital in restraining criminalization politics in order to strengthen democracy.

Key Words: Criminalization, Politics, and the Judiciary.

Introduction:

The Indian court system has contributed to impressive role in preventing the criminalization of politics. We must comprehend the ideas of crime, criminalization, and political criminalization in order to concentrate on it more fully. The evolution of the criminalization of politics, its effects, and the means of thwarting this evil must also be explained; the article focuses on demonstrating how the Indian judiciary has fulfilled its judicial authority. A crime is an act, omission, or behavior that contravenes the law. A crime is any action that qualifies as an offense that carries legal penalties.

Politics is being criminalized even if one gains something by abusing authority. It establishes a connection between criminals and politicians. Politicians are patronized by criminals, and in order to win elections, politicians use the money and physical strength of criminals. Criminals become interested in politics and were

inspired to run for office over time. On the other hand, war crimes, espionage, perjury, and sedition are typical types of political crimes.

Reasons for the criminalization of politics

What do you think is the reason behind India's criminalization of politics? It is caused by the following elements:

Vote Bank politics

The FPTP voting system has been implemented in elections in India. The candidate with the most votes is proclaimed the victor. Vote banks on a cast or other basis, like a vote bank in a block, are often present in every election constituency and aid in election victory. Criminals

or political parties nominating criminals as their official candidates help politicians easily win an election.

Corruption

Over time, a candidate's and political party's election expenses rise. Criminals can easily pay voters who lack literacy and economic resources because they have enormous illicit money power. Corruption contributes to the criminality of politics. Bribing people with criminal histories can lead to corruption and political domination.

Threats

Criminal Muscle Power: This tactic can be used to prevent candidates from submitting nominations, prevent voters from casting ballots, obstruct campaign rallies, seize booths, and more.

Low rate of Conviction

Due to the liberal foundations of democracy, the process of vetting candidates with criminal histories is drawn out and slow, which contributes to the growing criminalization of politics.

Lack of governance

In our society, a leadership void usually occurs during election season. There is rarely any comprehensive strategy and the guidelines for having Equitable and free elections are rarely followed because of the lack of leadership.

Narrow Self-interests

It might not make sense to make public the whole criminal histories of candidates running for office from various political parties. A sizeable portion of Indian voters frequently cast ballots based on social interests like caste or religion.

The extent to which politics has been criminalized is significant, and this has caused some grave concerns and uncertainties among Indians. The criminalization of politics is a major problem for the entire nation today. Everyone is aware of the alignment between bureaucrats, criminals, and politicians. To ensure their victory,

politicians and political parties side with these criminals and miscreants. From the first day of nomination filing until the day of counting and, more importantly, on the day of the election, bribery has become a concern for everyone in India due to the combination of the financial might of political parties and vested interest lobbyists with the physical strength of criminal gangs.

The weaker members of society who dare to oppose antisocial criminals in their community are typically the targets of criminal misuse and abuse.

As time goes on, criminals are more likely to run for office and engage in the electoral process since their prospects of winning are increased. Political parties have begun to nominate candidates with criminal histories, either voluntarily or under duress.

According to sworn affidavits filed with the Election Commission¹ alongside their nomination, roughly 19% of candidates running in the 2019 general elections are charged with rape, murder, and kidnapping. Affidavits submitted to the election commission by, 17% of the 5,380 candidates running in the 2014 election were determined to have been charged with a crime. Of those, 10% faced serious allegations of rape and murder. Politicians who are convicted vacate their seats but quietly transfer them to their relatives.

The situation is made worse by the persistence of the proxy rule.

The multi-party constitution is provided for by the principles of our liberal constitution. In order to facilitate political party registration, there were 2796 political parties in 2021, up from 55 in 1951 (there were The list includes 54 state parties, 8 national parties, and 2796 unrecognized groups). More criminals can participate in elections directly or indirectly when there are more political parties. In order to gain seats and split voters, national parties also take use of criminals through state-level small parties.

Effects of Criminalization on Politics

The nation's electoral process and collective governance are significantly impacted by the criminalization of politics. The main effects of criminalization are:

Criminals end up in politics.

People lose faith in democracy as a result, which negatively impacts its foundations.

- **In opposition to the free and fair election principle:** Threats of violence and campaign contributions reduce the number of legitimate options available to voters. A democracy's foundation is a free and fair election, and this behavior goes against that idea.
- **Impacting Good Governance:** The primary problem is that criminals frequently hold positions of authority, which lowers The effectiveness of democracy method to provide efficient governance. The

¹1 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>.

quality of India's elected leaders and state institutions is negatively portrayed by these unwholesome democratic tendencies.

- **Affecting Public Servants' Integrity:** This practice not only fuels pervasive corruption prior to, during, and following elections, but it also reduces government workers' productivity.
- **Causes Social Discord:** It erodes faith in the democratic system, instills a destructive lesson in young people, and spreads a growing tolerance for violence.
- **The criminalization:** Increases the level of uncertainty already present in Indian politics and has an effect on the fair trial process.

Countering the Criminalization of Politics

Any process or system has problems, challenges, or obstacles. This is a game of power, and power avarice endures in practically every life. Being the most intelligent species, humans are constantly looking for methods to trim things down. The lower or weaker electoral class is easily drawn to, suppressed by, and threatened by criminals with financial and physical might. Additionally, there are solutions for issues at the same time.

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

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

Article 102 of the Indian Constitution states Lok Sabha members and Council of States may be disqualified, although it makes no mention of preventing criminals from serving in either body. In a similar vein, Article 191 lists the requirements for disqualification from serving in a State legislative assembly but says nothing about criminal limitations. A situation like this would not have occurred to our illustrious constitutional framers.

Article 327 of the Constitution provides the legislature the precious authority to enact laws. Laws pertaining to elections for the State The House of People and the Legislative Assembly may occasionally be framed by Parliament. Under this article, the Parliament has drafted a number of statutes, regulations, and directives. The 1951 Representation of Persons Act is one among them. A person convicted of any of the prescribed offenses under the several enacted Acts is disqualified in accordance with Section 8 of this Act. Any conviction is open to additional judicial review in a democracy. Regrettably, the clauses of the R.P. Act of 1951 and other Acts are inadequate.

With multiple powers granted by Articles 324–329 of the Constitution, The Indian Election Commission is the independent constitutional body responsible for announcing, holding, overseeing, and monitoring the election. India, the largest democracy with unity in diversity, has held a number of general and by-elections

with grace and harmony thanks to ECI. ECI is sincerely working to promote transparency. In order to ensure a free and fair election, ECI is always quick to implement timely reforms.

Even in cases without formal legislation, the judiciary's recommendations and directives are used, along with its many authorities. ECI has been crucial in reducing the impact of criminalization. Another crucial instrument in a democracy is the judiciary. The High Courts and the Supreme Court may issue directives, orders, or writs to enforce any rights granted in Part III in compliance with the Constitution's Articles 32 and 226. Additionally, election issues must be resolved by the High Court and the Supreme Court in conformity with section 40 of the R. P. Act, 1951.

Landmark Judgments on the Criminalization of Politics

The Apex Court's conceptual beginning, or, to put it another way, its attempt to effectively decriminalize the political process by rendering the following historic and valiant rulings.

1) Dinesh Trivedi M.P. and others v. Union of India²

The background documents for the Vohra Committee report that was delivered to the government in July 1993 were requested to be published by the supreme court in a writ petition filed in this matter. The report's background papers were not made public, but only the recommendations—not the entire report—were presented. The petitioner filed a PIL* in collaboration with two NGOs after failing to obtain background documents for the report from the UOI Ministry of Home.

The most significant aspect of the ruling in this case is that the petitioner's endeavor to stop the criminalization of politics was made possible by his right to freedom of information being upheld by the Supreme Court. The Supreme Court recommended creating a high-level commission to carefully evaluate the Vohra Commission's conclusions in order to legalize politics.

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

In a writ action brought under Article 226 of the Constitution, the Delhi High Court was urged to rule on whether voters had a right to know the relevant details of the candidate in the race.

In a petition filed in accordance with Constitutional Article 226, the government is being asked to amend Rule Section 4 of the 1961 Election Conduct Rules for the first time in India's democratic history in order to incorporate a 1993 The Law Commission of India suggestion. The Government of India asked the Law Commission of India to thoroughly examine the steps necessary to speed up the reviewing the Representation of the People Act and evaluating petitions for elections 1951 in order to address the corruption and evils that have infiltrated The election system in India. The results of that study are described in detail in this paper.

The Delhi High The court was consulted. to decide whether or not Voters are entitled to know. the pertinent details of the candidate in office in a writ suit filed in accordance with the Constitution's

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

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

Article 226. For the first time in India's democratic history, a petition under Article 226 of the Constitution is being filed to amend Rule 4 of the Conduct of Election Rules 1961 to reflect a 1993 recommendation from the Indian Law Commission.

The Law Commission of India has been requested by the Indian government to examine Act of 1951 on Representation of the People and decide how to speed up the hearing of election complaints in order to address the inaccuracies and problems that have infiltrated the system. Here are the findings from that research.

However, the High Court decided that it is against the public interest and the interest of democracy to withhold information about a candidate's background or whereabouts prior to an election, taking into account the fundamental rights of voters regarding the right to know the candidate's background for whom they will cast their ballot.

The following details about each candidate must be gathered and disseminated to voters by ECI, under the court's mandate.

Does the applicant have any criminal charges against them that could result in jail time? If so, kindly provide more details.

The candidate and their family have financial resources at their disposal. Details like a candidate's educational background may provide insight into their suitability for a position in parliament or as a lawmaker.

Anything the electoral commission believes would aid in their decision to nominate a candidate for a state legislature or congressional seat.

In a sense, this was the groundbreaking ruling in which a High Court ordered ECI to inquire about the candidate's assets, criminal history, and educational background on the grounds that voters have a fundamental right to know the candidate they are voting for.

3) Union Of India v. AS & Socacnioattheieorn (UOI v. AS & Socacnioattheieorn for Democratic Reform) Appeal (Civil) 7178 of 2001 Writ Petition (Civil) 294 of 2001⁴

The Union Government, feeling wronged, appealed the Delhi High Court's argument in a civil case to the highest court. The petition addressed two significant issues:

1) Imagine voting for a representative body in a republican-democratic nation where you reside. Before casting your ballot, do you possess the right to comprehensive information on the candidates running against you?

2) In Writ Petition No. 294 of 2001, the petitioner requested that the High Court use Article 32 of the Constitution to grant the respondent a directive, writ, or order. The jurisdiction of the court was questioned.

a) Establishing regulations mandating that candidates for office reveal their financial assets, and that state legislatures and current members of parliament do the same every year.

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

b) Instructions for enforcing Article 141 of the Indian Constitution and mandating that candidates declare any charges or convictions they may have when seeking public office are provided in the Law Commission of India's 170th report.

Citing the R.P. Act of 1951 and the objectives of Article 32, the appellant's attorney contended that it was improper for the High Court to provide the Indian Election Commission any such orders. The Delhi High Court's ruling was contested by the Indian National Congress, which petitioned to intervene in the case. The top court requested that the Election Commission of India submit a written response to this matter. In his affidavit, the ECI agreed with the Delhi High Court's position and recommended that all candidates running for office be asked for this information.

The Apex Court concluded after a thorough examination of all pertinent Articles of the Constitution, including its history and development, the fundamental structure of the document, the rule of law, the core of the fundamental rights, several important rulings pertaining to the right to know, and the authority and duties of ECI under Article 324.

"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) ensures the correct 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 faced criminal charges, been found not guilty after a trial, or been found guilty of a crime but not given a jail sentence or a fine?
- Before the six-month nomination filing deadline, the candidate may have been charged with or had cognitive impairment determined by a court for any offenses punishable by two years or more in prison. If so, please provide information.
- The assets (cash, real estate, personal property, etc.) of the candidate and their family; the liabilities of the candidate and their family to any public financial institution or government obligations; and the applicants' educational attainment.

The Hon. Supreme Court notifies the public of the criminal histories of each candidate running for office through this ruling. It greatly aids voters in preventing criminals from entering the legislature. Since everyone is aware of their criminal past, it becomes challenging for political parties to field criminal candidates. As a result, voters can reject criminal candidates using the information that the candidates are submitting if there is not enough legislation to prevent them from running for office.

The Representation of People Act, 1951,⁵ was amended by Section 33A, which required all contesting candidates to provide criminal information as specified in the aforementioned ruling in an affidavit (Form no.26). Information about assets, liabilities, and education was not required.

The same amendment Act also added section 33B to the R.P. Act, 1951⁵, which states that "no candidate shall be liable to disclose or furnish 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, 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."

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

Parts of Sections 33A and 33B were to be overturned in this petition. The Supreme Court went into great detail on how crucial it is for voters to have access to information about rival candidates. Decriminalizing politics and upholding integrity, openness, and free and fair elections are facilitated by a number of elements, including the freedom of privacy and Article 19(1)(a). The Supreme Court also talked about the different rulings, including

- 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

The Hon. SC stated that the R.P. Act of 1951, a constitutional right, creates the right to vote. Although it is a type of free speech, voting is not a right that is assured. Section 33-B prohibits the suspension or stopping of the right to information, which is unconstitutional.

S.C. made a final ruling that:

The Hon. SC claims that the R.P. Act of 1951 established voting as a constitutional right. Voting is a form of free expression, but the right to vote is not guaranteed. Restricting or eliminating the ability to access information under Section 33-B would be against the Constitution.

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, 2003 AIR 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 Bengal 1995 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

S.C. made a final determination that:

Voting in elections for the House of People or Legislative Assembly is not only a statutory right but also a constitutional one, and Article 19(1)(a) guarantees the freedom to vote as a component of the fundamental right.

Voters are exercising their freedom to self-expression by casting their ballots for or against a candidate.

"Pro-Tempore in nature," the Union of India v. Association for Democratic Reforms [(2002) 5 SCC 294] ruling would only take effect until the legislature issued a long-term resolution. The court must perform its unbiased evaluation when laws are passed. The court must apply a balanced and comprehensive approach when assessing the right to know and the fundamental right under Articles 19(1) and 19(2).

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

For two main reasons, the Representation of the People Act, as amended by the Third Amendment, Section 33B, does not pass the constitutionality test: first, the prohibition on disclosing information beyond what is specified in the enactment is in effect even though the information currently provided is insufficient and deficient; and second, the prohibition is in effect regardless of current needs as well as future exigencies and expediencies.

It is adequate to safeguard the voter/citizen's access to information about ongoing criminal cases and prior engagement in such matters that Parliament has granted under Section 33A. Nonetheless, there is no strong argument to keep the cases that the court has taken cognizance of out of the disclosure's purview.

To ensure, the Elections Commission will have to release new rules. The application of Section 33A is governed by this ruling, just like in the cases it has observed. All of the Elections Commission's disclosure orders will continue to be fully enforceable.

As instructed in paragraph 14 of the bylaws, nomination papers that include errors or omit important information shall be rejected.

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

Even after the Supreme Court's two aforementioned rulings and the Election Commission of India's corresponding orders, it was observed that many candidates, despite submitting the necessary information on Form No. 26, did not fill out all the columns and instead left them blank or simply typed "-" in the column space, which ultimately served no purpose. If the affidavit contained inaccurate or misleading information, the repercussions were also a concern. To take this issue to the Supreme Court, an NGO named Resurgence India filed a writ petition against the Indian Election Commission under Article 32 of the Indian Constitution.

In view of the top court ruling in PUCL* (above), the Election Commission has adopted the stance that the Returning Officer cannot reject nomination papers on the basis of affidavits signed by the candidates that contain errors, incomplete information, or blanks. They claim that they are forced to accept the nomination

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

papers in light of the earlier decision. According to the commission, a nomination paper that omits crucial details ought to be turned down. Following a thorough analysis of R.P. Act, 1951 sections 33A, 36, and 125, the Supreme Court reached the following ruling in order to satisfy the electors' right to know the candidate:

- Voters' fundamental right to know specifics about the candidate is a natural consequence of democracy and is enshrined in Article 19(1)(a).
- Nomination papers and affidavits are filed in order for citizens to exercise the rights outlined in Article 19(1)(a) of the Constitution.
- If the affidavit is filed without the necessary information, it will be of no use.
- It is the returning officer's responsibility to confirm that all required fields are filled out completely.
- Affidavits filed with nomination papers must include details relevant to fulfilling the "right to know." The nomination papers may be rejected if the R.O. does not permit the candidate to provide the information.
- The applicant should put "NIL," "Not Applicable," or "Not Known" in all columns rather than leaving any blank.

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

These two PIL writ petitions are primarily intended to have Section 8(4) of the Representation of the People Act, 1951, ruled unconstitutional. When drafting the Constitution, the The Constituent Assembly's goal was to create certain disqualifications for individuals being chosen as and either as a member of the House of Representatives or for membership in Legislative Council or Legislative Assembly of the State under Article 102 and Article 191, respectively. This background is crucial to comprehending the challenge to subsection (4) of Section 8 of the Act. In accordance with the provisions of the Articles, Chapter III of the Representation of the People Act of 1951 created parliamentary disqualifications for serving in a State Legislature or Parliament.

Sub-section 4 of section 8 says;

If an individual is a member of the legislature or parliament of a state on the conviction date, their disqualification under either subsection will not take impact till three months have elapsed. since that date, or until the court has decided any appeals or revision requests made regarding the conviction or sentence during that time.

Since this issue was not stated in the petitions for writ, the court initially decided that Parliament was powerless to create subsection (4) of Section 8 of the Act.

The provisos of Article 101(3)(a), 190(3)(a), and Article 102(1)(e), 191(1)(e) were examined by the court. attentively examined Article 248's provision as well and determined that we do not need to address the other point brought up in these writ petitions, which is that subsection.

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

(3) of Section 8 of the Act violates Article 14 of the Constitution since Parliament lacked the authority to adopt Subsection (4) of Section 8. The question of whether the disqualifications previously Committed under Section 8 of the Act's subsections (1), (2), and (3) should be modified was raised by our ruling in this judgment that subsection (4) of the Act is ultra vires the Constitution.

(4) Current members of the State Legislatures and Parliament who have appealed or revised their conviction within the allotted three months must take action. Their appeals and modifications are still being reviewed by the appropriate court.

The date of conviction for any of the aforementioned offenses marks the beginning of disqualification under Sections 8(1), (2), and (3) of the Act. It is in force for the time frame listed below.

We maintain that current members of the State Legislature and Parliament, who are shielded by section 8(4), should not be impacted by the ruling we are rendering in this case. The Constitution's Articles 32, 141, and 142 give the court the authority to create legal concepts that ensure full 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 Section 128 of the Representation of the People Act of 1951. The freedom to vote and the freedom to not vote were the cornerstones of the prayer. The petitioner further claimed that since voting is a statutory right, it is not covered by Article 32's writ jurisdiction.

The court has determined the following on the extent of fundamental rights under Article 19 (1) (a) of the Constitution after giving it considerable thought:

The nation cannot function without a democratically elected leader. Allowing voters to choose "None of the above," (NOTA*), will encourage more submissions from political parties. competent applicants. Free and fair elections, a cornerstone of the Indian Constitution, protect and will tangentially support the decriminalization of politics. In the context of Article 19, the Supreme Court maintained the right of rejection.

The petitioner filed a PIL contesting the legitimacy of Rules 41(2) and (3) and 49, citing Article 32 of the Constitution.

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

Given Article 102(a)–(d) and the legislation enacted By Article 102(e) of the Parliament, this Bench must determine whether the court has the authority to create new grounds for membership disqualification.

The topic of the question was expanded as a result of the attendees' strong concerns about the criminalization of politics in a democracy.

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

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

Informed voters can still evaluate the candidate and reject their criminal mindset even after this court's orders, which required the candidates to reveal details regarding their criminal histories and their nominations and make it publicly available. Additionally, it was meant to put pressure on political parties to issue tickets to the felon out of concern that they would lose the election. Unfortunately, the candidates did not take this seriously because they did not supply the necessary thorough information. Such individuals were quickly established as the official candidates of political parties.

Political parties occasionally sponsored these candidates behind the scenes in order to gain from the polarization of votes in their favor.

The Supreme Court deliberated on the matter, examined the available evidence and rulings from six respectable courts, and talked about the various Articles of the Constitution and their applicability. Additional guidelines were established as follows by provisions of the current laws and regulations that made explicit promises to stop the criminalization of politics.

- A filled-out form with all the information asked must be submitted by each candidate to the election commission.
- Any criminal accusations that are still ongoing against the candidate ought to be clearly visible.
- Any existing criminal charges must be disclosed to the political party by a candidate running on their ticket.
- Both the candidate and the political party in question must publicly discuss the candidate's background in newspapers with a sizable local circulation and obtain substantial coverage in the electronic media. The relevant political party must post the aforementioned information about candidates with criminal records on its website. The same needs to be done three times between submitting nomination papers and election day in order to achieve widespread publicity.

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

This contempt petition raises a significant issue: India's criminalization of politics. The Constitution Bench of this Court issued directives in the Public Interest Foundation and Orv. Union of India and Anr. that were ignored. The court took into account the increasing criminalization of politics in India as well as the general lack of awareness regarding this trend while delivering its decision.

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

To close this information gap, this court has issued the following orders:

- In response to the petition, the The court issued the following directives in the exercise of its constitutional authority in accordance with Indian Constitutional Articles 129 and 142, noting that political parties fail to provide an explanation for the selection of candidates with outstanding criminal charges.
- Whether or not any of their candidates have pending criminal cases, as well as information about those cases (such as the type of offense, whether or not The court has drafted charges. in question, the case number, etc.), must be disclosed on the websites of parties running for federal or state office.
- Have you been selected as a candidate? If not, why weren't individuals without criminal histories selected as well?
- Selection criteria must take into account the candidate's credentials, accomplishments, and worth rather than just "winnability" at the polls. This notice must be included in these other publications as well:
- • This information must be released to the public within two weeks or 48 hours following the candidate's selection. prior to the first nomination deadline, whichever comes first. It must be published in at least two newspapers (one national and one local vernacular) as well as on the party's official social media pages (Twitter and Facebook).
- The appropriate political party is required to provide the Election Commission with a report explaining how it complies with these requirements within 72 hours after selecting the candidate.
- The Supreme Court will be informed by the Election Commission of India that the political party in question is in contempt of this rule for their noncompliance. if the political party does not provide a compliance report, court rulings or directives.

Sunil Arora vs. Brijesh Kumar Sinh&Ors¹⁶

Following the 2020 election of the State Legislative Assemblies in the five states, a contempt petition was submitted. It was noted that the majority of political parties did not adhere to the ECI letter.

- The Supreme Court declared nine political parties in contempt on February 13, 2020, for not disclosing details on criminal cases involving candidates running for the Lok Sabha and Assembly.
- The Supreme Court has urged lawmakers to enact laws to address this problem, but their requests "have fallen on deaf ears."
- Political parties were instructed to post information about local slang and criminal cases against their candidates on their websites newspapers, national newspapers and accounts on social media within 48 hours of the candidate selection or at least two weeks prior to the first nomination filing date, whichever comes first.

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

- In its most recent ruling, the court altered this. Since the latter is challenging to execute because of legal restrictions, it was stipulated that the information "shall be published within 48 hours of the selection of the candidate."
- For not disclosing their complete criminal backgrounds, candidates in the 2020 Bihar elections were fined one lakh rupees. Additionally, for not adhering In response to the directives of the Honorable Supreme Court, the Communist Party of India and the National Congress Party were each compelled to pay five lakhs of rupees, or roughly \$7,000. In a different case, it has issued orders that prohibit the dropping of any criminal proceedings against members of the legislative assembly or Parliament until the relevant state's High Court has given its assent.

In addition, our judiciary has proven its dedication to decriminalizing politics and ensuring free and fair elections for Indian democracy through a number of Supreme Court and High Court rulings, including

- (1) Manoj Nirula v, Union Of India¹⁷
- (2) Satendra Kumar Singh v. State of U.P. & Others Allahabad High- Court¹⁸
- (3) Jan Chaukidarv.Union Of India & Others Patna High Court¹⁹
- (4) Mohmed Amin v. Amin CRM Saikh . CBI director²⁰
- (5) Niranjn 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 19,2020Keralal High -Court²⁴
- (9) MadhuKodav.StateOf DelhiDelhi High -Court May 22.2020²⁵

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

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

¹⁹Jan Chaukidarv.Union Of India & others Patna High Court2004 (2) BLJR 988, 2004 (3) JCR 284.

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

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

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

²³Mohammad Azam v.The State Of A.P. December 31, 2018, Telangana High-Court1958 9 STC 231 AP.

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

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

Conclusion

Unfortunately, the lack of appropriate and sufficient laws and regulations makes it impossible to address the criminalization of politics, a significant problem facing our nation 75 years after independence. Undoubtedly, a legislature with the constitutional authority to enact laws and regulations pertaining to elections has not done its job of merely seizing and holding onto power. It is imperative that all political parties work together as a religious obligation to uphold democracy's foundations by aiding and abetting the ruling party in decriminalizing politics. As a watchdog for an election that is free and fair, the Indian judiciary has done a great job of analyzing the circumstances, the constitutional provisions, and the idea of fundamental rights. It has rendered effective judgments and given the appropriate directives from the Indian Election Commission to help curb the criminalization of politics. A few sections of the Representation of the People Act, 1951 that were ineffective or ineffective in limiting political criminality have also been repealed by the judiciary. The judiciary recognized that the Election Commission of India can give directives to ensure a free and fair election process, including limiting criminalization in politics, in the absence of other particular laws.

The Election Commission is now better equipped to oversee and manage the elections thanks to judicial declarations. The judicial power of the judiciary is limited. Establishing just and efficient laws and regulations, as well as the moral and legal obligations of political parties, is the legislature's top priority.

We all have the power to elect politicians by altering our attitudes and actions for the sake of democracy. In spite of the lack of appropriate legislation, NGOs like ADR*, PIL*, PUCL*, and Jan Chaudidar have played a crucial role in the process of decriminalizing politics through the judiciary. They keep a close eye on the elections, analyze the data, and rush to the judiciary.

As correctly stated²⁶, Dr. Rajendra Prasad, the renowned statesman, the first Maha Mahim President of India, and the head of the Constitution Committee,

“Regardless of what the Constitution says or doesn't say, how the nation is run will determine its level of welfare. The personnel who administer it will determine that. The adage "a nation can have only the government it deserves" is overused. Some people find some parts in our Constitution distasteful for various reasons. We have to acknowledge that the nation's and its citizens' overall circumstances are flawed. Even a flawed Constitution could be improved if the elected officials were capable and men of integrity and character. The Constitution cannot benefit the nation if these are absent.”

²⁶Irani, 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).

Recommendations

There are remedies for the long-standing illegality of Indian politics, as was previously mentioned. The following activities could be taken into consideration based on the above-mentioned discussions:

- **Enactment of laws:** The first and most important suggestion is that the legislature pass adequate and just laws and regulations limiting the criminalization of politics. It would support the administrative apparatus in putting laws decriminalizing politics into effect and upholding them.
- **Using the most recent technology:** Technology might be the biggest facilitator. Laws and regulations must be updated and modified by the time forms and techniques change, and new technologies must be used in a way that helps keep politics from becoming a crime.
- **Strengthening the Institutions:** The Indian Election Commission is the sole constitutionally independent organization with the authority to oversee, manage, and keep an eye on the elections. The electoral commission must have the authority to do specific things.
- **Prioritizing literacy:** The rise in the percentage of people who are literate is encouraging. Establishing minimal educational requirements for election candidates is a good idea at this time. In the end, community literacy and awareness initiatives will aid in limiting politics and criminality.

A few procedural recommendations:

- The judiciary ordered that if a candidate fails to compile the defect, the Returning Officer will have given them an opportunity before rejecting their candidature. If the affidavit contains false or incomplete information about criminal antecedents, assets, and liabilities, as well as educational qualifications, or if any information is suppressed, the nomination may be rejected during the scrutiny stage. However, examination usually takes place the day after the deadline for nominations.
- This issue needs careful thought because it is practically very difficult for the R.O. to identify the flaws in the affidavit, and rejecting nominations due to fraudulent or incomplete affidavits creates problems and defeats the objective.
- The highest court's directives in PIL v. ECI also raise a practical issue: it is now mandatory to publish criminal antecedents in print and electronic media in a specific format. In metropolitan areas, the cost of these periodicals is significantly higher. Regarding such expenses, the Supreme Court remains mute. Nevertheless, the ECI* has included the same candidate's election expenses in the election expenditure cap, which is not a fair or reasonable approach. It is stated that ethics is the heart and law is the head. To ensure that ethics and the law coexist, a healthy balance between the two must be established. All political parties, politicians, and bureaucrats who are morally and ethically obligated to refrain from promoting or involving criminalization in politics in order to obtain power or otherwise would support this tandem walking of ethics and law, which would eventually result in the decriminalization of Indian politics.

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