

---

# CRIMINALISATION OF POLITICS: ISSUES AND RESOLUTIONS

---

Danda Sai Shubham, National Law University, Delhi

## ABSTRACT

Have you ever considered what it means when you hear the term "political criminalization"?

Criminals are involved in politics as a result of the criminalization of politics. This means that someone with a criminal record can run for office and be elected to the parliament or state legislature. It is alleged that politics had progressed to the point where lawmakers had become lawbreakers. The growing nexus between criminals and politics in a democratic society like India threatens the existence of true democracy. Persons with criminal records have more political clout than people without criminal records, which is currently becoming a trend.

The growing proportion of parliamentarians with a criminal record:

24 % in 2004

30 % in 2009

34 % in 2014

43 % in 2019

Almost half of the new Lok Sabha MPs have a criminal past. The growing number of members of parliament with criminal convictions jeopardises the future of any legitimate democracy.

The objective of this study is to describe how the system of criminalisation of politics still persists, as well as the measures undertaken by relevant authorities to combat this threat and its repercussions. This paper argues that a more concerted and focused effort is required to restore faith in the whole democratic process while also freeing politics of criminal elements. There are 3 components to this study. Part one discusses the scope of the problem and the issue of goonda raj statistics, Part two discusses how the system aids and abets its persistence, and Part three discusses the countermeasures adopted and whether or not they were effective.

## **INTRODUCTION**

India is a democratic country, and in a democratic system of government, we pick our own representative to run the country. As a result, it is critical that those who enter the sphere of politics have a positive image and a good moral character. Political criminalization has become a burden for India's democracy, and it is now a grim reality. Our forefathers, who fought for our freedom and put their lives on the line in the process 70 years ago, had a dream, which we see being crushed today. India can boast about being the world's largest democracy, but it can't claim to be the world's greatest democracy of perfect representatives. Because the number of candidates in elections, whether for Parliament or state assemblies, having criminal charges against them has risen steadily and audaciously over the years. "In terms of law and order, there has been a discernible decrease throughout the years, and the situation now is such that the prospects of convicting perpetrators of significant crimes have grown progressively unlikely. The reason for this is that during election seasons, politicians enlist the aid and support of criminal groups. Criminals and anti-social elements, on the other hand, seek the assistance of politicians when they are in trouble with law enforcement authorities. As a result, politicians meddle in the investigations of big crimes, making the work of investigative agencies in obtaining damning evidence exceedingly difficult. Many criminals have been convinced that if they can use their muscular strength to elect others, why shouldn't they run for office themselves? Many of them ran for office as candidates, and a significant number of them were elected. Some of them have even risen to the position of minister. When a person becomes a legislator or a minister, all criminal procedures against him are relegated to pigeonholes where they remain inactive, according to experience. The criminalization of politics has not only harmed the healthy and orderly functioning of our democratic politics, but it has also had devastating consequences in other areas."<sup>1</sup>

## **SCOPE OF THE PROBLEM AND GOONDA RAJ STATISTICS**

There are many factors which have exacerbated and deepened the problem of increasing criminalisation in Indian politics. To a large extent this problem can be traced back to the mismanagement and lack of coordination and democracy within the political parties which in turn has led to inability in controlling the political cadres which has resulted in gruesome and incriminating consequences.

---

<sup>1</sup> Khanna, H. R. (1994) 'Decline of Institutions', *Indian Journal of Public Administration*, 40(3), pp. 264–269.

“The entry of crime in political parties and politics shows the prevalence of muscle power in Indian politics which can be viewed from the prism of two functional factors. First, the failure or fragility of state machinery, as well as the incompetence of official capacities to deliver, produces a power vacuum in many Indian states. This void has been filled by economically strong individuals with a criminal history, who provide patronage and protection to local constituencies. Second, in the increasingly violent scene of Indian politics, muscular power has become a critical component for ensuring survival and sustenance in political fights. As a result, political parties feel obligated to induct and support powerful individuals with a criminal history for political expediency, rejecting the imperatives of democracy in general and inner-party democracy in particular.”<sup>2</sup>

The use of brute force and persuasive tactics is not entirely new to the Indian electorate. They are frequently asked to exercise their preference under threat of violence. This was an unavoidable feature of political life. Even in the early 1950s and 1960s, some flimsy charges were made regarding politicians using outlaws to advance their election prospects. However, the severity and number of such allegations have recently escalated. Persons with a criminal history becoming legislators and ministers has not only become frequent, but is publicly defended by party leaders.

“According to an August 7, 1995 report in the Indian Express, 180 of the 425 members of the Uttar Pradesh Legislative Assembly had criminal records, and the previous general elections in Bihar were contested by 243 candidates against 321 who had charges pending. The Bihar Assembly had 10 history-sheeters in 1977, and by 1990, the number had grown to 40. Kalyan Singh, the then-Chief Minister of Uttar Pradesh (UP), enlarged his portfolio in October 1997 to include every defector and criminal who backed him in the election. This demonstrates that, rather than preventing criminalization, political parties and their top command support it. On the eve of the 12th Lok Sabha elections, there were 150 out of 4708 candidates across the country facing charges of murder, rape, robbery, and extortion at one point or another. Despite the Election Commission's efforts to prevent history-sheeters from running for office, at least 15 people with criminal records have been elected to the Lok Sabha. It highlights the EC's limitations in terms of criminalization control. During the 14th Lok Sabha, 128 Members of Parliament (MPs) faced criminal accusations, with approximately one-third of them engaging

---

<sup>2</sup> Vivek Mishra & Ambar Ghosh, *Dissecting the Evasiveness of Inner Party Democracy*, 4 LIBERAL Stud. 9 (2019).

in severe crime. According to their self-reported affidavits, 158 freshly elected MPs of the 15th Lok Sabha had declared ongoing criminal offences. There were 76 MPs with serious cases against them among these.”<sup>3</sup>

There are many forms and aspects to criminalisation. Sometimes people with criminal background themselves contest elections which has been a recent trend in the Indian politics. Moreover they are supported and promoted by political parties because they have good financial backing and their muscle power could be used to influence the voter’s decision. But back in the old days criminals played a minor role in Indian elections as they supported certain candidates and helped them win the elections thus playing a passive role. Whatsoever may be the degree of involvement criminals have in elections one thing is for sure that the phrase government is of the people for the people and by the people has been proven wrong and it is nowhere that democracy which is by the people is established.<sup>4</sup>

### **HOW THE SYSTEM AIDS AND ABETS ITS PERSISTENCE**

Professor Seshadri has rightly commented, "Political leaders have acted irresponsibly, with no other goal in mind but to grab all kinds of votes by any means even if it means going out of the textbook recommended ways... The laws are no longer relevant in today's world, where outlaws are nominated for parliament, one can only imagine the depths to which political parties have descended...."<sup>5</sup>

Professor Maheshwari was equally critical on the power hungry politicians and said "Anti-social elements have always existed; a neighbourhood goon has been a regular sight in most sections of the country," he claims. Previously, thieves preferred to play the role of backroom boys, remaining in the shadows and pleased to help politicians.<sup>6</sup>

The Vohra committee’s report reveals the immoral and criminal nexus between the criminals and officials of law enforcing authorities and politicians which in form is a symbiotic

---

3 Rupkatha Bhattacharyya, Nexus between Crime and Politics: A Study with Reference to Electoral Candidature, 11 INDIAN J.L. & Just. 217 (2020).

4 Pawan Kumar, Legal and Social Justice under Indian Constitutional Law: Some Reflections, 6 GNLU J.L. DEV. & POL. 188 (2016).

5 Seshadri, K. (1994) ‘Law of Political Jungle and Bureaucracy’, Indian Journal of Public Administration, 40(3), pp. 287–296

6 Maheshwari, S. (1998) ‘Political Reforms for True Governance’, Indian Journal of Public Administration, 44(3), pp. 307–317

relationship benefiting all the parties in the nexus.<sup>7</sup> The findings in brief are:

1. Over time, the money power gained by the syndicate is used to establish links with politicians and expand activities with impunity. Money power is utilised to build a network of muscle power that politicians can use during elections.
2. According to the C.B.I., crime syndicates and mafia have become law unto themselves throughout India. Even in tiny towns, muscle men have become the norm, and paid serial killers have become a component of these organisations. The nexus between criminal gangs, police, bureaucracy, and politicians has been visible in numerous places and localities around the country.
3. In several places, including as Bihar, Haryana, and Uttar Pradesh, these gangs have the patronage and assistance of local politicians, cutting across and protecting governmental personnel. Some political leaders become leaders of these gangs/armed groups over time and are elected to and the national Parliament. As a result, such elements have gained significant political clout, significantly threatening the administration's smooth functioning and the safety of the common man's life and property, producing a sense of despair and alienation among the average voter.
4. Certain Mafia components have turned to narcotics, drug, and weapon smuggling and developed narco-terrorism networks, particularly in the states of J&K, Punjab, Gujarat, and Maharashtra. The cost of running for office has pushed politicians into the crosshairs of these elements, leading to a gracious compromise by officials of the preventive/detective systems. The virus has spread to practically every city in the country, with coastal and border states being particularly hard hit.

Vaishnav claims in his book *When Crime Pays: Money and Muscle in Indian Politics* that politicians with criminal records acquire momentum with political parties due to their financial prowess. Candidates with a criminal history are disproportionately rich, with both the resources and motivation to contest elections. The increasing costs of contesting elections, as well as their highly competitive nature, have contributed to the critical role of money power in electoral

---

<sup>7</sup> Bhambhri, C. P. (1994) 'Constitutional Democratic State of India: A Critique', *Indian Journal of Public Administration*, 40(3), pp. 249–256

politics. With the development of political parties and the growing number of the population, electoral politics has become an expensive business.<sup>8</sup> Over the last decade, national parties' expenditure on general elections has surged by 386 percent. As a result, money becomes a significant "determining factor" in determining who runs in elections. Parties have become so desperate for resources that they compete with one another to field tainted candidates who can self-fund their campaigns as well as pay to the party in exchange for the right to run. Furthermore, the lack of intra-party democracy has resulted in the issuance of tickets to candidates with criminal backgrounds on the basis of a hazy definition of winnability, decided only by the amount of money and physical that a candidate possesses.<sup>9</sup>

When it comes to the reasons for voters' acceptance of criminal politicians, it has been found that people see these strongmen as someone who can "get things done." A street savvy politician who is better at making the wheels of bureaucracy groan, although slowly, is in the interests of his constituency. This is especially true in areas with significant social distinctions based on caste and/or religion, as well as institutional inadequacies in the delivery of fundamental welfare services. Many people also say that during election campaigns, voters are unable to recognise criminal or corrupt politicians in many cases. In other words, the alleged cause of compromised politicians is a lack of voter awareness. The criminal record of a politician is simply viewed as an asset, and many individuals are making a "self-interested calculation" by supporting such candidates. A candidate's criminality is considered as having a twofold advantage: it can fill a perceived governance gap by promising benefits to a limited group of followers while also weakening the competition.<sup>10</sup>

'Cycle of dependence,' reflecting how cooperation between politicians and goondas is the result of the state institutions' inaccessibility to its poor inhabitants. The poor and impoverished require politicians to assist them in obtaining jobs and public services, while the politicians require their votes. The cycle continues, with political parties fielding goondas with money and muscular power who can "get things done." As a result, these goondas provide patronage to the poor, participate in elections, and manipulate voting. As a result, criminal candidates gain credibility and are perceived as a Robin Hood figure capable of doing good while being wicked (using their criminal reputation).<sup>11</sup>

---

8 Milan Vaishnav, *When Crime Pays (Money and Muscle in Indian politics)* 73-76 (Yale University Press 2017)

9 Kameshwar N. Chaturvedi, *Validating Election Law 2013: A Bad Precedent*, 35 *Statute L. REV.* 133 (2014).

10 Shreesh K. Pathak, *Some Reforms Are Urgent, Cannot Wait Anymore*, 4 *LIBERAL Stud.* 21 (2019).

11 Shelly Mahajan, *An All Pervasive Criminality*, 38 *Common Cause* 5, 7-8 (2019)

Aside from that, the party and caste of candidates are important variables affecting voter selections. Candidates receive votes despite their criminal histories, whereas individual ethics/integrity suffers. This is especially true in India, given the prevalence of sectarianism and the paralysis of the public sector.<sup>12</sup>

## COUNTERMEASURES ADOPTED AND THEIR EFFECTIVENESS

The Election Commission recognised booth capturing as the primary issue in elections. In its findings, the Dinesh Goswami Committee recommended that legislative steps be taken to prevent booth capturing, rigging, and voter intimidation. The Law Commission's Report indicated that, in the case of electoral offences and certain other major offences, the drafting of a charge by the court should be a reason for disqualification in addition to conviction. To prevent false complaints, relevant criminal procedure regulations should be changed.<sup>13</sup>

From 1987 until the present, the Election Commission made a number of recommendations and constantly reminded the government of the importance of altering the existing rules to combat corruption in elections. Previous governments may have judged that all of these recommendations were unworthy of consideration or action. As a result, there had been no significant effort to counteract the criminalization of politics.

In these conditions, the Association for Democratic Reforms petitioned the Delhi High Court to order the Government to follow the Law Commission's recommendations.<sup>14</sup> By order dated November 2, 2000, the Court required the Election Commission to make available to voters the following information about each of the candidates running for Parliament and the State Legislature:

1. Is the candidate accused of any of the aforementioned offences punishable by imprisonment? If so, please provide specifics.
2. A candidate's assets, as well as those of his or her spouse and dependant relatives;
3. Facts indicating the candidate's competence, capacity, and suitability to serve as a parliamentarian or legislator, including educational qualifications;
4. Information deemed necessary by the Election Commission for determining the

---

12 Trishla Dwivedi, Criminalization of politics, Times Of India(Aug 10, 2020, 13:43 IST), <https://timesofindia.indiatimes.com/readersblog/hail-to-feminism/criminalization-of-politics-24324/>

13 Dinesh Goswami, Report of committee on electoral reforms, Government of India ministry of law and justice department,(1990)

14 Election Commission of India, Annual report, Election Commission of India, (1984)

capacity and capability of the political party fielding the candidate for election to the legislature or the state legislature.<sup>15</sup>

The Government of India filed an appeal with the Supreme Court against the Delhi High Court's decision. The Union of India contends that it was up to political parties to decide whether revisions to the Representation of People's Act, 1951 and Rules should be introduced and implemented. After hearing the views and representations of, all parties, the Supreme Court modified the High Court of Delhi's ruling, directing the "Election Commission to seek for information on affidavit by issuing requisite order in exercise of its power under Article 324 of the Indian Constitution."

After a chain of litigations and cases it was finally settled by SC and based on its judgement it ordered election commission to issue a fresh notification on 27<sup>th</sup> March, 2003. According to the new notification, candidates must now submit the following information on affidavit while filing for nominations:<sup>16</sup>

1. Whether the applicant has been convicted, acquitted, or dismissed of any criminal offence in the past, and if so, whether he was sentenced to imprisonment or a fine?
2. Whether the candidate is accused in any pending case of any offence punishable by imprisonment for two years or more and in which a charge is framed or cognisance is taken by a court of law, prior to six months after filing of nomination. If yes, what are the specifics?
3. The assets (immovable, moveable, and bank balances) of a candidate, his or her spouse, and dependents.
4. obligations, if any, particularly any overdues owed to any public financial institution or government dues
5. Educational qualifications

## CONCLUSION

As a result, the tone is evident. Members of Parliament sought to demonstrate their authority to legislate - the merits of the law being secondary - and have delivered a clear message. They will not accept any incursion into their domain from anyone. The legislature's decision is final and binding. As a result, the dilemma was transformed into a matter of who is powerful.

---

15 Association For Democratic ... v. Union Of India (Uoi) And Anr., AIR 2001 Delhi 126

16 People's Union Of Civil Liberties ... v. Union Of India & Anr, (2003) 2 S.C.R. 1136



Political parties with nothing in common banded together. After all, the prestige of the institution is at stake, and unionisation is a chance to prevail. "united you stand divided you fall". We have observed that neither political parties nor the Parliament have made a single concrete and meaningful attempt to counteract this trend. Instead of cheerfully accepting the adjustments, the judges' decisions were viewed as an incursion into the 'right' of the parliament. Invoking the parliament's "right or privilege" was nothing more than a pretext to keep the criminalization going. Instead of enacting stricter regulations and tactics to force criminals out of politics, they enacted legislation that watered down the recommendations of various government-appointed committees and judgments. In summary, political parties and legislatures proved to be too pliable. We either go all-hard to drive criminals out, or we contribute to the brutalization and criminalization of politics. In spirit, if not in language, the latter alternative represents a defeat of the parliamentary system, democracy, and Indians' age-old ambitions. In *Public Interest Foundation & Ors. v. Union of India & Anr.*, the Supreme Court of India emphasised the importance of addressing concerns about political criminalization. It also made suggestions for how to stop this occurrence. It proposed, among other things, that political parties be held accountable for posting details of criminal proceedings filed against their candidates on their websites. It also requested that, while filing nomination forms, the candidate's criminal history and pending cases be revealed in bold letters, and that political parties publicise their candidates' backgrounds on electronic media and issue declarations. The disclosure of criminal case records of the candidates in the public domain, on the other hand, will serve no purpose. Even in 2003, the Supreme Court issued a similar decision on the declaration of criminal and financial facts of candidates in an affidavit. Despite the fact that these are landmark decisions in the field of electoral reform, there is still considerable ground to be covered.