

CRIMINALISATION OF POLITICS: PROBLEM AND SOLUTIONS

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Abstract

This article examines the challenges faced by the Indian democracy due to the entry of criminals into Indian politics. It is unfortunate that the people who have criminal background started to be associated with political parties and contesting elections. The present paper analyses some of the Association of Democratic Reforms (ADR) reports on the General Election in 2019 and State legislative elections in 2022. The entry of criminals in the political parties is considered to be the biggest problem in today's era. In the political history of India, criminals have always some influences inside and outside the parliament and state legislatures. An attempt has been made to examine effects of the criminalization of politics and the conviction of the few ministers under criminal and corruption charges in 2022. The article further examines the legal aspects and Constitutional provisions of disqualification of candidates with a criminal background. Secondary data has been collected from various sources including books, articles, newspapers, and websites. In the end, it is suggested that there is a need to strengthen the Election Commission of India, an amendment is required in the Representation of People Act (1951), fast-tracking courts for the cases of MLAs/MPs, and strict penalties against candidates involved in the corruption, physical assault, murder and electoral malpractices.

Keywords

Association of Democratic Reforms (ADR), Election, Criminalisation, Corruption, Politics.

Introduction

The entry of criminals in the political parties is considered to be the biggest problem in today's era. The criminalisation of politics means the participation of criminals in politics. In the political history of India, criminals have always some influences inside and outside the parliament and state legislatures. Gradually, persons with criminal backgrounds themselves started contesting the election and getting selected as members of

parliament, state legislature or local bodies. It is said that the politics had reached a stage where lawbreakers became the lawmakers. In a democratic country like India, the increasing nexus between criminals and politics threatens the survival of democracy. It is now becoming a sad trend that the people with criminal backgrounds have more influence in politics than people without criminal backgrounds.

India got Independence in August 1947 through 'the transfer of power'. The influence of almost 200 years of colonialism seem to have been entrenched in the society and politics of India. In a society, political power is the best means to attain social and economic development. Political power is the authority to regulate society through a process of election, and it always influences the policies of a nation. If the policies are weaker in a nation against crime and corruption, it would be harmful to the social and economic development of a country. Kautilya, a very famous political philosopher has once said in his seminal book Arthashastra¹, "Just as it is impossible not to taste honey or poison that is at the tip of the tongue, so also it is impossible for a minister or a government servant not to eat up at least a bit of government revenue". Although, in a corrupted institution or organization, politics becomes the easiest route to achieve economic ends. Mahatma Gandhi said that 'seven sins' will destroy us. These seven sins are Wealth Without Work, Pleasure Without Conscience, Knowledge Without Character, Commerce without Morality, Science Without Humanity, Religion Without Sacrifice and Politics Without Principle.² Gandhi said having politics without truth and honesty to justly dictate the action creates chaos, which ultimately leads to violence. Gandhi called these missteps as "passive violence", which fuels the active violence of crime and rebellion in the society.

Elections are the most significant part of the politics in a democratic system of governance. A true democracy can function only when elections of local to centre government are held in a free and fair manner. Former Chief Election Commissioner of India, Sushil Chandra has written³ to Law Minister of India to expedite the action on the electoral reform proposals pending with the government, including the one which seeks an enhanced two-year jail term for those furnishing incorrect information in their poll affidavit. He also suggested to enhance the imprisonment period for those furnishing incorrect details in poll affidavits from existing six months to two years was a key electoral reform proposal. A two-year jail term could bar the candidate from contesting elections for

¹https://www.mkgandhi.org/articles/political_corruption.htm accessed on 06-06-2022 at 02:03 pm

²<https://www.mkgandhi.org/mgmt.htm> accessed on 12-06-2022 at 01:50 pm

³<https://www.thehindu.com/news/national/cec-sushil-chandra-writes-to-law-minister-prasad-reminding-him-of-pending-electoral-reforms/article34760167.ece> accessed on 08-06-2022 on 07-06-2022 at 07:15 pm

six years. There has been Electoral Reforms after 2000 to reform the electoral process in the country like ceiling on election expenditure, Restriction on exit polls, voting through postal ballot, Awareness Creation (January 25th as National Voters Day) and Political parties need to report any contribution in excess of Rs. 20000 to the EC for claiming income tax benefit. Declaring of criminal antecedents, assets, etc. by the candidates is required and declaring false information in the affidavit is now an electoral offence punishable with imprisonment up to 6 months or fine or both.

Crime and Politics

It is unfortunate that the crime started to be associated with political life and slowly criminals themselves started entering politics. The effects of criminalization on the politics are that the voters lose confidence in democratic electoral processes and sometimes they decide not to cast votes in elections. Through winning election, the criminals getting validation in the society, threatening the law and order and candidates with criminal background opt for violent measures like booth capturing, voters' coercion, abduction etc. to win elections. After they get into political power they abuse the public office for their personal advantage and leads to increase in corruption and crime.

There are several other issues effecting the electoral process in India like use of money power in elections, candidates spend crores of rupees for campaigning, publicity, etc. and most of candidates far exceed the permissible limit of expenses. Second, the use of muscle power in election time, there are widespread reports of illegal and untoward incidents during polling such as the use of violence, intimidation, booth capturing, etc. Third, the incumbent parties use government machinery such as government vehicles for canvassing, advertisements at the cost of the exchequer, and other such means to improve the chances of their candidates winning. Fourth, role of casteism in Indian political parties, certain caste groups lending strong support to particular political parties. Thus, political parties make offers to win over different caste groups, and caste groups also try to pressurize parties to offer tickets for their members' elections. Fifth, and last significant problem is criminalisation of the Politics. Criminals enter into politics and ensure that money and muscle power wins them elections, so that the cases against them are not proceeded with. Political parties are also happy as long as they have winnable candidates. Political parties field criminals in elections for funds and in return provide them with political patronage and protection

People with Criminal background in Law Making Bodies

According to the Association of Democratic Reforms (ADR), approximate half of the elected members in 2019 Lok Sabha have criminal charges against them, it shows 26% increase as compared to 2014. Out of 539 winning candidates of Lok Sabha (2019) as analysed by the ADR was found that 233 MPs (43%) have criminal charges. As per shown in table no.1.1 world's largest political party BJP has 116 MPs (39%) of its winning candidates with criminal cases, from Congress 29 MPs (57%), 10 (43%) from the Dravida Munnetra Kazhagam (DMK). While in 2014, 185 Lok Sabha members (34%) had criminal charges and 112 MPs had serious criminal cases against them. In 2009, 162 (nearly 30%) out of the 543 Lok Sabha MPs had criminal charges and 14% had serious criminal charges. In the 17th Lok Sabha (2019), approximate 29% of the cases are related to rape, murder, attempt to murder or crime against women⁴. Table no.1.2 shows that Goa Legislative Assembly has 16 (40%) of winning candidates with criminal cases, while the legislative assemblies of Manipur and Punjab have 14 (23%) and 58 (50%) respectively members with declared criminal cases against them. And, Uttarakhand and Uttar Pradesh Legislative Assemblies have 19 (27%) and 205 (51%) respectively winning candidates declared criminal cases against them. It is alarming to notice this.

Table 1.1: Party wise Winners with self-declared criminal cases in Lok Sabha 2019⁵

Party Name	Total number of winners analyzed	Winners with declared Criminal Cases	Percentage of winners with declared criminal cases	Winners with declared serious criminal cases	Percentage of winners with declared serious criminal cases
BJP	301	116	39%	87	29%
INC	51	29	57%	19	37%
DMK	23	10	43%	6	26%
AITC	22	9	41%	4	18%
YSRCP	22	10	46%	8	36%

⁴<https://adrindia.org> accessed on 05-06-2022 at 10:18 am

⁵[file:///C:/Users/iamam/Downloads/Analysis_report_of_Criminal_and_Financial_background_details_of_Winners_in_Lok_Sabha_2019_elections_updated%20\(2\).pdf](file:///C:/Users/iamam/Downloads/Analysis_report_of_Criminal_and_Financial_background_details_of_Winners_in_Lok_Sabha_2019_elections_updated%20(2).pdf) accessed on 05-06-2022 at 12:14 am

Table 1.2: State wise Winning Candidates with criminal cases in State Legislative Assemblies in 2022⁶

Serial No.	State	Total Number of Winning Candidates Analysed	Number of Winning Candidates with Declared Criminal Cases	Percentage of Winning Candidates with declared criminal cases	Number of Winning Candidates with Declared Serious Criminal Cases	Percentage of Winning Candidates with declared serious criminal cases
1.	Goa	40	16	40%	13	33%
2.	Manipur	60	14	23%	11	18%
3.	Punjab	117	58	50%	27	23%
4.	Uttarakhand	70	19	27%	10	14%
5.	Uttar Pradesh	403	205	51%	158	39%
	Total	690	312	45%	219	32%

There are some **reasons** for the penetration of criminals in politics like getting into the legitimate sphere of politics is an only way to increase their money power. The second reason, is the lack of skills and opportunities in other fields. In some cases, criminals were under pressure from the law implementing agencies. They discovered politics as an opportunity to make a living without breaking any laws or getting noticed. The third reason is that criminal candidates tend to be highly energetic sometimes people perceive that they are more likely to deliver on electoral promises, such as social security, providing employment or development projects which can improve the people's lives of their constituency. Last important reason for the criminalisation of politics is the increasing nexus between politicians and criminals.

The Association for Democratic Reform (ADR) has released its report in February 2018 on India's 31 Chief Ministers, they are included in the criminal cases registered against each of them. Maharashtra former Chief Minister Devendra Fadnavis had the highest number of criminal cases. As per the information received by electoral affidavits given by Chief Ministers of all the 29 states and two Union Territories, Chief Minister

⁶<https://adrindia.org/content/5-states-assembly-elections-2022-analysis-criminal-background-financial-education-gender-1> on 07-06-2022 at 08:18 am

Devendra Fadnavis has 22 criminal cases registered, including 3 serious cases. Out of these 31 Chief Ministers, 11 have criminal cases registered against them and only 8 have “serious” criminal cases. Pinarayi Vijayan, Kerala, and Arvind Kejriwal stand second and third in the list with 11 and 10 cases, respectively. The criminal record of 20 out of the 31 Chief Ministers in the country is clear, while 8 Chief Ministers have cases registered under serious charges.⁷

Many politicians have been arrested in 2022 under the corruption and criminal charges. For instance, very recently in 2022 Vijay Singla, Health Minister in Punjab government was removed from the state cabinet on charges of corruption. Corruption charges put on him after receiving a complaint from a government officer over the minister demanding 1% commission in award of government tenders. In other case, special CBI court sentenced former Haryana Chief Minister Om Prakash Chautala to four years’ rigorous imprisonment and imposed a fine of ₹ 50 lakhs on him after finding him guilty of amassing assets disproportionate to his income. Convicted Omprakash Chautala in the disproportionate assets case registered by the CBI in 2006, finding him guilty of charges under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988.⁸

Lalu Prasad Yadav (RJD Chief) was sentenced to five years in prison and slapped a fine of Rs 60 lakh by a special CBI court in Ranchi in connection with the fifth fodder scam case involving embezzlement of over Rs 139 crore by Doranda treasury. The court in the Jharkhand capital pronounced the sentence against the ailing 73-year-old former chief minister of Bihar and 39 others after virtually hearing arguments on the quantum of punishment in the case. The court has given five years’ imprisonment to four others, four years each for to 32 convicts and three years each to three convicts.⁹ It was shocking to find another high profile case of politician into illegal activities when in 2022, the Vigilance Bureau has arrested former Punjab Minister Sadhu Singh Dharamsot under the Prevention of Corruption Act. He has been accused of being involved in illegal felling of over 25,000 trees. He has been accused of making more than Rs 100 crore through commissions in felling of trees and allowing other works related to the forest department, say senior vigilance officials¹⁰.

⁷<https://adrindia.org/content/highest-number-criminal-cases-against-maharashtra-cm-devendra-fadnavis> accessed on 12-06-2022 at 01:13 pm

⁸<https://www.thehindu.com> accessed on 10-06-2022 at 03:08 pm

⁹https://www.business-standard.com/article/current-affairs/cbi-court-sentences-lalu-to-five-years-in-prison-in-fodder-scram-case-122022100592_1.html on 06-06-2022 at 07:18 pm

¹⁰[Former Punjab minister Sadhu Singh Dharamsot arrested in graft case : The Tribune India](#) accessed on 21-06-2022 at 04:31 pm

Constitution and Criminal Candidates

There are some legal aspects and Constitutional loopholes in provisions of disqualification of the criminal candidates. The law commission¹¹ in its 179th report recommended an amendment to the Representation of people act 1951. The report suggested that people with criminal backgrounds should be disqualified for 5 years or until acquittal. It is also recommended in the report that the person who wants to contest the election must furnish details regarding any pending case, with the copy of the FIR/complaint, and also furnish details of all assets. Unfortunately, no action was taken on the recommendation by the government due to a lack of consensus among the political parties.

The representation of people Act, 1951 mentions the criteria to disqualify a person to contest the election. Section 8 of the Act says that a person punished with a jail term of more than 2 years cannot contest an election for six years after the jail term has ended. The law does not bar any person who has criminal cases pending against him. Therefore, the disqualification of candidates with criminal backgrounds depends on their conviction¹².

Way Forward

Most of the votes in India are given on the basis of religion, caste and status of the party, in which the personal profile of the candidates of the Constituency is ignored. At the time of the election, political parties spend a huge sum of money buying the votes. The voters don't pay attention to the candidate to whom they are going to cast their vote, whether he has any criminal background or not. It doesn't have the proper laws and rules for governing the procedure of the election. To keep the politics clean in India, there is a great need of electoral and political reforms. National Election Watch (NEW) and Association for Democratic Reforms (ADR) recommended some electoral reforms as given below¹³ -

1. Stopping the criminals from entering politics – For upholding the probity and morality in public life, any person against whom charges have been framed by a Court of offences punishable for two years or more should not be allowed to contest elections. In particular,

¹¹ awcommissionofindia.nic.in/lc170.htm on 12-06-2022 at 11:18 am

¹² https://legislative.gov.in/sites/default/files/04_representation%20of%20the%20people%20act%2C%201951.pdf on 14-06-2022 at 10:01 am

¹³ https://adrindia.org/sites/default/files/ADR_and_NEWs_recommendations_for_electoral_and_political_reforms_summary.pdf on 15-06-2022 at 07:19 pm

any candidate charged with serious charges like murder, attempt to murder, rape, kidnapping, extortion, etc. should be banned from contesting any elections.

2. Implement ceiling on expenses of political parties during election period– To make the current laws on election expenses more effective, ceiling should be imposed on expenses during elections made by political parties as well.

3. Action against candidates who fail to file their election expenses – Any candidate who fails to file their election expenses within the given time period should face penalty, including not being allowed to take oath until they fulfil this obligation.

4. Strict penalties against those involved in electoral malpractices - The relevant sections of the Representation of People Act pertaining to electoral malpractices need to be amended and stricter penalties imposed on criminal candidates. Electoral malpractices should be declared criminal offenses carrying a sentence of two years or more.

5. Fast tracking of cases for MLAs/MPs- All pending cases against MPs and MLAs should be fast tracked and brought to conclusion within a specific time (preferably one year). If these cases go to High Court or Supreme Court, they should be treated at a high priority in these courts too. These fast track courts should also have open and transparent hearings and witness protection. Any evidence of intimidation should be taken as evidence of guilt.

6. Other Suggestions

There should be some other initiatives which are required to reform the election process like an amendment in the Representation of People Act, 1951 to debar those candidates from contesting elections against whom any heinous crimes are pending. Second, before elections some awareness programme should be started for voters to know the criminal background of the person to whom they are going to cast their votes. Third, the election commission should take strict action to prevent the criminalisation of politics. A penalty should be inflicted on those political parties who give the ticket to a person with a criminal background. The publication of the criminal records of the person who is contesting the election must be in such a manner that it is easily available to the public, not on the party website because in rural areas most people don't know the uses of the internet. The time has come to framing of charges to initiate disqualification as an appropriate measure to curb the criminalization of politics, the Representation of People's Act should be amended to debar persons against whom cases of a heinous crime are pending from contesting elections. To bring a greater transparency in campaign financing will it make less attractive for the political parties to involve gangsters. The Election Commission of

India should have the power to audit the financial accounts of all political parties and the finances of political parties should be brought under the Right to Information Act.

Conclusion

The criminalization of politics and corruption are shaking the roots of democracy. For regulating the affairs of the political parties, it is essential to have a free and fair electoral process. The awareness programmes for voters should be there to make them aware of the background of the candidates and there is need to strengthen the Election Commission of India. Political parties should themselves take some initiatives, and establish criteria that debar the criminals to contest elections. The Parliament should take timely steps to curb this problem and make society a safe place for living. Only then, we can hope for a healthy, developed and good society in our country.