

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 3

2020

© 2021 International Journal of Legal Science and Innovation

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

Curbing Criminalisation of Politics in India

HARSHIT SHARMA¹ AND VAISHALI SHARMA²

ABSTRACT

Democracy as an essential feature of the Constitution is unassailable and free and fair elections lie at the core of the democratic polity. While a free election is where all citizens can vote for candidates of their own choice with a free mind and without any threat or pressure, a fair election is one in which all votes have equal power and are counted equally but in addition to the above, a fair election encapsulates much more other than recognizing the principle of one man, one vote, and one value. If you ask ten people as to what free and fair election is, there will be ten different responses but amongst all, people insist on 'clean candidates' for the elections to be effective. It is one of the most disturbing features of India's electoral democracy that the candidates with a tainted and tarnished image are unscrupulously fielded by the political parties who indeed have no reservations but to directly or indirectly indulge in criminality to gain success at an election. Resultantly, we fail to have good leaders to keep the country abreast with the other progressing States. Today, India might vaingloriously claim to be the world's largest serving democracy but it can sadly not hold up to claim to be the greatest democracy of ideal representatives.

I. INTRODUCTION

The Criminalisation of Politics is a much wider term that is commonly used to refer to various practices that primarily relate to or emanates from the nexus between politicians and criminals which includes political subjugation of police authorities, brazen corruption, and lack of ethics amongst candidates and their political parties, etc. There may be various forms of Criminalisation of Politics, the one that is more alarming and growing tremendously is the indulgence of criminals in politics with a sole intent to use the political powers for personal gains or to the advantage of their proximate sans public welfare.

The issue of the Criminalisation of Politics in India has been lately in the discussion. The political system of the country has inadvertently done more damage than it has done any good to the country, a handful of honest politicians are not sufficient to revive the democracy from the perils that it faces today. The roots of the problem lie in the fault in the system as a

¹ Author is an Advocate in India.

² Author is a Student at Maharashtra National Law University, Aurangabad, India.

whole. The Criminalisation of Politics in itself is not a single problem rather it is a culmination of a series of problems which finds its basis in the defects in the socio-political system. It is time that we must pose ourselves with the question that what best could be done to avoid a situation when we are only left with a symbolic democracy?

II. REASONS FOR CRIMINALISATION OF POLITICS

Multiple factors contribute to the Criminalisation of Politics. The first and the foremost reason continues to be the weak laws that are allowed to linger by those in power as it is in their own interest. Some of the reasons for the Criminalisation of Politics are as follows:

- a. Lack of Political Will: Whatever reforms we have witnessed are by virtue of the rulings of the Hon'ble Supreme Court from time to time and efforts of the Election Commission of India. It is apparent that neither the Political Parties nor their members are willing to pay heed to the worsening circumstances.
- b. Vote Bank: The ulterior objective of the political parties is to secure seats in the election for which it requires a vote bank that one can rely upon. Since the network of criminals is well spread it becomes easy to secure votes to achieve winnability in the polls.
- c. The narrow interest of voters: Unlike other countries in the world, a large number of people consider voting in elections as mere duty and often tend to vote through a narrow prism of interests viz. caste, community, etc. disregarding other factors in totality. The low voter turnout continues to be the main problem that affects the result of the elections tending to be in favor of those who better deserves a place behind the bars instead of the sanctum of the Parliament.
- d. Money Power: It is but obvious that as compared to a normal candidate who finances his elections mostly through public funding, a candidate with the ability to finance his own elections and contributing immensely to the party fund are likely to have more influence over the voters particularly those of the poor and destitute. Winnability of a candidate is the paramount consideration for the political parties and there is a need to depart from such practice.
- e. Lack of Choices: Other than the aforementioned reasons, in the worst possible scenario, even if the voters negate the elements of caste and religion, they may still not be left with better options since almost all the competing candidates have criminal records.

III. LEGISLATIVE CHECKS

Chapter IX-A of the Indian Penal Code, 1860 deals with offences relating to elections. The

Chapter contains as many as 09 Sections which broadly deal with offences including but not limited to taking a bribe, exercising undue influence at elections, personation at the election, false statement & illegal payments in connection with an election, etc. On a bare perusal of the provisions contained in the Chapter IX-A of the IPC, 1860, one could easily conclude that the Code does not altogether deal with the entry or barrier over the entry of a person with criminal antecedents into politics.

Per contra, Section 08 of the Representation of People Act, 1951 appears more deterrent as it lays down provisions for disqualification on conviction of certain offences as elucidated in Clauses (a) to (n) of its Sub-Section (1). Pursuant to the decisions given by the Hon'ble Supreme Court, Rule 4A of the Conduct of Election Rules, 1961 requires each candidate to file an affidavit containing details of criminal cases pending against them as on the date of swearing the affidavit.

IV. JUDICIAL RESPONSE TO CRIMINALISATION OF POLITICS

The decision of the Hon'ble Supreme Court of India in *Union of India (UOI) and Ors. vs. Association for Democratic Reforms and Ors*³ not only emphasized the need for purity of elections and healthy democracy but also paved the way for introducing reformatory measures in the electoral system by issuing directions to the Election Commission to secure information on an affidavit from a candidate seeking election to the State Legislative Assembly or Parliament about following aspects of his candidature:

- a. Whether the candidate has been convicted/acquitted/discharged in past in relation to any criminal offence – if any, whether he is punished with imprisonment or fine?
- b. Details of pending cases initiated prior to six months of the filing of nomination of any offence punishable with imprisonment for two years or more and which charges have been framed or cognizance has been taken by the court of law.

Thereafter, an attempt was made by the legislature to virtually overshadow the effect of the judgment of the Hon'ble Apex Court in *Association for Democratic Reforms Case (Supra)* by inserting Section 33-B to the Representation of People's Act, 1951 which was subsequently challenged by Peoples Union for Civil Liberties (PUCL) in the case of *Peoples Union for Civil Liberties vs. Union of India*⁴. The Hon'ble Apex Court was pleased to strike down the said provision for being ultra vires the Constitution.

It was in the year 2013 that the Hon'ble Supreme Court doing away with the 3 months buffer

³ (2002) 5 SCC 295

⁴ AIR 2003 SC 2326

period that was allowed to convicted members to prefer an appeal against conviction and sentencing, ruled that the Members of Parliament, Legislative Councils, and Legislative Assemblies convicted of crimes wherein they have been sentenced to minimum imprisonment for 2 years would immediately cease to be members of their respective house(s) from the date of sentencing.⁵

The Hon'ble Supreme Court in the case of *Public Interest Foundation vs. UOI*⁶, respecting the principle of separation of power refused to add any further criteria for disqualification under Section 8 of the Representation of Peoples Act, 1951. However, at the same time, it urged the Parliament to enact laws to ensure that persons facing serious criminal charges are barred from entering into politics.

The recent judgment of the Hon'ble Supreme Court passed in the case of *Rambabu Singh Thakur v. Sunil Arora*⁷ will have a far-reaching consequence for Indian democracy wherein the bench comprising of Justices R.F. Nariman and S. Ravindra Bhatt taking note of the fact that there has been an alarming increase in criminalisation of politics have directed the political parties to publish information as to the criminal antecedents of their candidates contesting polls on their websites including social media platforms along with reasons for such selection, as also as to why other individuals without criminal antecedents could not be selected as candidates.

V. VOHRA COMMITTEE ON CRIMINALISATION OF POLITICS

The constitution of the Vohra Committee finds its genesis in the Chief Ministers' conference convened in the year 1992 on the theme of "Administration of Criminal Justice in India". The attendees of the conference deliberated upon several issues touching upon criminal justice and also expressed their grave concern over the increasing criminalisation of politics as well as the politicisation of administrative affairs. It was ultimately this conference that led to the formation of a Committee under the Ministry of Home Affairs, Government of India, for follow up action.

The Government of India Former Union Home Secretary NN Vohra headed the Committee with an object to identify the degree of political-criminal nexus. The report which was submitted in October 1993 recorded several observations by official agencies on the network of criminals who were virtually running a parallel government. The Hon'ble Supreme Court in the year 1997 recommended the appointment of a high-level committee to ensure the in-

⁵ Lily Thomas vs. Union of India, AIR 2013 SC 2662

⁶ AIR 2016 SC 2726

⁷ AIR 2020 SC 952

depth investigation into the findings of the Committee⁸, however, the recommendation has been conveniently swept under the rug over time.

Much recently, a Public Interest Litigation (PIL) was filed before the Hon'ble Apex Court seeking a Lokpal-monitored investigation into the 'political-criminal nexus' relying on the recommendations of the 1993 Committee's report. The Apex Court finding the prayers for relief made in the PIL to be utopianly directed the Petitioner to withdraw the Petition with the liberty to approach the Law Commission of India.

Appalling Statistics

Although under Indian criminal jurisprudence an accused is presumed to be innocent until proven guilty but in most cases, there is a ploy to misuse the presumption that lies in favour of the accused candidates contesting elections. The statistics of people with criminal background entering into politics is extremely worrisome. The members of Lok Sabha with criminal antecedents have drastically gone up from 30% in the year 2009 to 43% in the year 2019. The alarming increase in the members of Lok Sabha with criminal antecedents leaves one fathoming about the state of affairs at the State and local bodies.

The report of the Association for Democratic Reforms (ADR) on a background check of winners of Lok Sabha Elections 2019 makes some shocking revelations. As per the report, out of the 539 winners, 43% (233) winners have declared criminal cases against them and about 29% (159) winners have declared serious criminal cases pending against them including heinous offences such as rape and murder. The chances of winning for a candidate with declared criminal cases in the Lok Sabha 2019 was found to be 15.5% whereas for a candidate with a clean background it is 4.7%.⁹

VI. CONSEQUENCES OF CRIMINALISATION OF POLITICS

The major consequence of the growing Criminalisation of Politics is that the law-breakers get elected as law-makers thus, making the legislature more incompetent to enact apt laws. This is the primary reason as to why every second law enacted by the Parliament is challenged in a trice before the Hon'ble Apex Court on the anvils of constitutionality. Further, the entry of criminals into politics weakens the law and order in the society resulting in an exponential increase in the rate of crime such as circulation of unaccounted money, diluting probity in public life, to cite a few.

⁸ Shri Dinesh Trivedi, M.P. & Ors. vs. Union of India & Ors., 1997 4 SCC 306

⁹ Lok Sabha Elections 2019: Analysis of Criminal Background, Financial, Education, Gender and other details of Winners, Association for Democratic Reforms.

It will only be apt to quote the first President of India, Dr. Rajendra Prasad, from his address to the Constituent Assembly in November 1949:

“If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country... India needs today nothing more than a set of honest men who will have the interest of the country before them... We can only hope that the country will throw up such men in abundance.”

The repercussions that follow after such candidates emerge victorious in the elections can be well exemplified by what happened in the State of Uttar Pradesh after Ajay Mohan Bisht (Yogi Adityanath) was sworn in as the Chief Minister of the State. Soon after his appointment as the Chief Minister, his government on several occasions has ordered the withdrawal of cases pending against him thereby using the might of the State to prevent the law from acting against him. Following the lines of the State of U.P., BS Yedurappa led BJP government in Karnataka has recently decided to withdraw as many as 62 criminal cases against its leaders even though the police and the law department has suggested otherwise.¹⁰

VII. POSSIBLE SUGGESTIONS

Parting away with the issue by merely pointing out the discrepancies would do no good; it would only be fair enough to suggest some solutions to safeguard the ethos of the democratic fabric of our country. Following are the recommendations/suggestions that might help to change the situation as it stands today:

1. Despite there being laws to curb the issue of Criminalisation of Politics, yet the problem remains unabated. The main reason behind this is the ineffective laws that have failed to serve the purpose. One can understand that the hands of the Courts are tied for the reason they cannot venture into the domain of the legislature, therefore, there is a need for the legislature to wake up and strive to clean its own house by enacting laws that not only filter the present lot of politicians but also deter person with criminal background from entering into the political arena in the first place.
2. The candidates contesting polls are nothing but reflections of their affiliated political parties, their ideologies, and principles. Therefore, the political party must be extremely

¹⁰<https://thefederal.com/states/south/karnataka/ktaka-bjp-goes-the-yogi-way-revokes-62-criminal-cases-against-its-leaders/>

cautious about the fact as to whom they give tickets to. The ulterior motive of winning the elections should be subservient to the ethic and moralities.

3. Setting up special fast-track Courts so as to facilitate speedy adjudication of cases pending against politicians will help to maintain the sanctity and purity of the elections.
4. It is bizarre that even for the appointment of a person to the post of a peon at a government office, there is some minimum qualification that is required to be met, however, to one's utmost dismay those who run the country have no minimum qualification requirement whatsoever. It is indomitable that education not only helps a person to grow in a civil society but also arguably makes him less prone to criminal activities thereby, possibly eliminating the entry of criminals into politics.
5. The veil of secrecy that the political parties in this country are allowed to enjoy is highly questionable. It is high time that the political parties must be brought within the scope and ambit of the Right to Information Act, 2005 as the sunlight is the best disinfectant.
6. Vibrant civil societies along with media can spread awareness among the masses about the menace of politics getting highly criminalised.
7. State funding of elections has also been suggested in past in response to the high cost of elections which virtually ousts clean candidates from contesting polls. This will further help in establishing a fair playing field for parties with fewer resources.
8. Since the authority of the Government lies in the will of the people, the real power must vest in the electors. They must be conferred with the power to recall the elected candidate back from the house on the ground of non-performance. This will constrain the elected members to keep a close check on not only their own actions but also that of their close aides.

VIII. CONCLUSION

The Politics in India is not about social service anymore instead it has emerged as a lucrative profession or business. Understanding the magnitude of the issue that has deepened its roots in the Indian polity, one cannot expect to bring overnight reforms in the electoral politics in terms of ideal representatives. The same MLAs and MPs with criminal antecedents contesting the elections again would be nothing but pouring old wine in new bottles. It is high time that the Political Parties must introspect and strive to clean their own houses so that fairness in the elections can be achieved in its truest sense. It is also necessary for media houses to play a pro-active role in disseminating information and making more and more

people aware of the background of their candidates so as to enable them to make a wiser choice for a better tomorrow. The testing times call for every segment of the Indian society to stand up manfully and fight every adverse influence, political or executive instead of leaving the future of the country in the hands of the criminals.
