Criminalization of Politics in India

Meaning & Definition

“Criminalization of politics means the direct entry of criminals into the political parties and legislatures, including parliament. It also means use the criminal methods and tactics to influence political processes and procedures”

Criminalization of politics is not concerned with the altruistic individual who challenges the system through violence which includes criminal acts. It is concerned with a new form of political violence which has criminalized the electoral process as well as as other democratic institutions and the economy. Criminalization of politics is in fact the product of the political elite which resorts directly or indirectly to criminal and illegal ways to hold on to its power and privileges. Over time criminalization of politics has led to politicization of criminals. Similarly, criminalization of the economy has rendered the massive black money economy as the mainstay of our economic structure. While in the political field mafia elements become members of the Parliament, legislative assemblies and municipal corporations, in the economic field they function as contractor mafia, coal mafia, land mafia, cooperative mafia and even educational mafia. The phenomenon of criminalization, it has to be noted, runs across ideologies and political parties for the sole
purpose of protecting and enhancing the positions of power and privileges.

To get undue favor through the use of political power is crime. The term crime means an action which constitute a serious offence of an individual or the state and punishable by law. And gaining something by the use of political power is a crime and is punishable by law. The politics and political crime is not new. Even in the ancient times the political crime will take place because the person wants to go for higher gains or for higher post.
Criminalization in politics

Earlier, these people were not in such demand, they were limited to Crowd gathering, Booth capturing, but as their versatility grew, they became the first choice of the party.

- The first case of “Booth capturing” were reported in 1957, and involved hired goons who would mobilize or suppress turnout, or vote on behalf of disenfranchised voters. In return for their work, politicians would protect these criminals from prosecution.
- Until 1960, the re-election rates were high, goons got political favor for helping them to win the election.
- Indira Gandhi banning corporate financing of elections in 1969 which eliminated the most important legal source of campaign finance and pushed financing underground.
- At the same time, the costs of contesting elections kept increasing due to a rising population, increasing political competition.
- This led parties to a competitive search for underground financing, and they played into the hands of criminals and racketeers who had the means to acquire and dispose of large amounts of cash without detection.
- Thus, parties fielded tainted candidates because they could contest an election without becoming a burden on the party’s limited coffers.
- The 1993 Mumbai bomb blasts which was the result of a collaboration of a diffused network of criminal gangs, police and customs officials, and their political patrons.
- Data from the last three general elections shows that the strategy was an electoral success as candidates with criminal cases were three times more likely to win than a “clean” candidate.
• The number of political parties increased from 55 in the 1952 general election to 464 in 2014—and the trend of giving freebies for votes.
• If we talk about the 2015 Delhi Election, then 43 out of 70 such leaders who have serious criminal charges, and in current, there are 37 such MLAs that have serious charges.
• “There is an increase of 109% [in 2019] in the number of MPs with declared serious criminal cases since 2009,” – ADR

Association for Democratic Reforms (ADR) Reports

The problem is very small that the party does not give tickets to the criminals, but the fight for this small problem has been going on since 1999, and this has not been resolved yet.

In 1999, Association for Democratic Reform (ADR), filed a PIL against criminals in politics in Delhi High Court, and Delhi High Court accepted it. When the Delhi High Court accepted this PIL, the leaders whom we bring after the victory in the election, All these politicians come together and appealed against that PIL in Supreme Court. When the Supreme Court also rejected their plea, then we got to see what we had never seen before, All these parties unite together. These parties not even unite when there is talk of securities like URI attack, Balakot, China standoff etc, or other big issues in our country but for this, all parties unite. And these falls in one place, that is, Law of India. Because According to the law of India, the person is innocent until the final Judgement passed on, and this is what people take advantage of.
Some other finding of Association for Democratic Reforms (ADR):

- The number of people’s representatives on the wrong side of the law has steadily increased in the law-making bodies, and it is not a great thought that they are the ones who make the laws and are expected to hold law-enforcing agencies accountable.
- 233 of the 539 newly elected MPs have serious criminal charges against them. This is based on the affidavits filed by the candidates themselves. This means that about 45% of the MPs have been involved in criminal cases.
- About 30% of them face very serious charges, like those related to rape and other crimes against women, murder, kidnapping, etc., and one candidate is facing trial for terrorist acts. There are also 10 MPs who have actually been convicted by courts.
- In 2009, the percentage of MPs with criminal cases against them was 162 (30%) and in 2014 it was 185 (34%). The rising percentage might mean that in future the majority of our MPs will be people facing criminal charges. In the general population, not even 5% of the people might be facing such charges.
- Criminals may even be preferred as candidates because they have better chances of winning elections, as they may have more money and muscle power and would know how to win elections.
- The report said that the chance of candidates with criminal records winning the 2019 Lok Sabha election was 15.5% while the winning chance of those with a clean background was only 4.7%. That shows that the failure is not just of the parties but of the people, too.

Currently, under the Representation of Peoples (RP)
Act, lawmakers cannot contest elections only after their conviction in a criminal case. Section 8 of the Representation of the People (RP) Act, 1951 disqualifies a person convicted with a sentence of two years or more from contesting elections. But those under trial continued to be eligible to contest elections. The Lily Thomas case (2013), however, ended this unfair advantage.

Efforts by SC in this regard:
The SC has repeatedly expressed concern about the purity of legislatures. In 2002, it made it obligatory for all candidates to file an affidavit before the returning officer, disclosing criminal cases pending against them. The famous order to introduce NOTA was intended to make political parties think before giving tickets to the tainted. In its landmark judgment of March 2014, the SC accepted the urgent need for cleansing politics of criminalization and directed all subordinate courts to decide on cases involving legislators within a year, or give reasons for not doing so to the chief justice of the high court.

Factors responsible

Everyone concerned about this, every year reports came that criminalization in politics increased from last year. But the question that arises here is why... why criminalization is increasing? what’s the reason? what are the factors responsible for this? Here are some factors responsible for:

- Nexus between the Politicians and Bureaucracy – The nexus between politicians, police, and criminals turns the law according to their own will. The presentation of a case in court by the police against any politicians is generally controlled by the master himself. This lead to the presentation of the weaker case thereby twisting the
law in their favor. The corruption practiced by such nexus adversely affects the innocent.

- **Vote Bank** — Individuals & political parties do astronomical expenditure for buying the votes & for other illegitimate purposes. The politician’s link with the constituency gives rise to political crimes.

- **Corruption** — Corruption is also an important factor in the criminalization of politics. The corrupt political member uses his power for winning the elections not in a fair manner.

- **Lack of Governance** — Criminalization increases only if there is poor governance capacity. Ill-governance encourages criminals to do more crimes.

- **Loopholes in the Functioning of Election Commission** — The election commission must take the adequate measure to break the nexus between politicians and criminals. The forms prescribed by the Election Commission for candidates disclosing their convictions, cases pending in courts, and so on in their nomination papers is a step in the right direction if it is applied properly, but the implementation of this reform is not up to the mark.

- **Denial of Justice and Rule of Law** — There is very little in India in the efficacy of the democratic process in the actual delivery of good governance. Toothless laws against convicted criminals standing for elections further encourage this process.

- **Delaying in Justice** — It is rightly said that ‘Justice delayed is justice denied.’ There are numerous pending cases in our courts, for example, the 2012 Nirbhaya case, it takes 8 years to give justice, this gives criminals more encouragement.
The reason why Criminalization entrenched in the system

- **No Stringent Law:** This is the major reason why criminals entrenched in the system that requires political parties to revoke the membership of tainted candidates. “Unless the Parliament amends Article 102 of the Constitution and provisions of the People’s Act to disqualify unworthy candidates, nothing will change”

- **Socio-Political reason:** Soutik Biswas for the *BBC* points out that criminals get elected not only because many voters are ill-informed, but also for sociopolitical reasons. Voters support criminal candidates in constituencies where social divisions driven by caste and/or religion are sharp and the government is failing to carry out its functions.
  - In today’s date, an FIR also requires shrewd connections (Jugaad), but if you go to your caste leader than the work will be done. So, indirectly, the system which is weak compels people to vote for them, and these people take full care that the system does not become strong.

- **Money & Muscle Power:** This is the key factor motivating parties to select candidates with serious criminal records, parties prefer self-financing candidates who do not represent a drain on the finite party coffers but instead contribute ‘rents’ to the party. Because of the rising cost of election and the shadowy financing system, political parties want a candidate who himself handles his expense.
  - A criminal candidate became the perfect combination of Muscle & Power like – Fund collection for the party; Self-financing; Black money; Fund collection for the campaign. These people are experts in everything, that’s why they
become the first choice of politicians.

- **Privileges for Member of Parliament (M.P):** No legal proceedings shall happen against them, no matter what statement they make in the Parliament and the votes they give. Even if allegations of irregularity in parliamentary proceedings come to the fore, our Constitution mandates that courts cannot inquire into the validity of any proceedings. The members of parliament continue to enjoy this immunity for 40 days after the parliament session is over. Not to forget, the same immunity comes into effect 40 days before the session begins. This makes MPs more immune that’s why criminals want to be a member of parliament.

If you observe them closely, then every leader tries to explain that this system is weak, it is not up to the mark, this system has many loopholes and I will save you from this system. They themselves become rich while fighting for the rights of the poor.

**Steps were taken to tackle criminalization**

- In May 2002, the Supreme court established the filing of affidavits by the candidate as the right to information of the voter. The SC held that the right to information, the right to know antecedents, including the criminals past or assets of candidates was a fundamental right under Article 19 (1) (a) of the constitution and the information was fundamental for the survival of democracy.
- None of the Above (NOTA) option was also introduced by
the judiciary in 2003 in Electronic Voting Machine (EVMs) so that the voters who come to the polling booth & decide not to vote for any of of the candidates are able to exercise their right while maintaining their right of secrecy.

- Supreme Court in 2013, in its judgement, while disposing Lily Thomas V Union of India (along with Lok Prahari V Union of India) ruled that, any Member of Parliament (MP), Member of Legislative Assembly (MLA), or Member of Legislative Council (MLC) who is guilty of an offence and is given minimum imprisonment of two years, loses the membership of the house with immediate effect. This is in contrast to the earlier situation in which convicted members were held in their seats in the lower, state and the supreme court of India until all judiciary measures were abolished. In addition, section 8 (4) of the Representation of the People Act, which allowed elected representatives three months to appeal their sentence, was declared unconstitutional by a bench of Justice AK Patnaik and Justice SJ Mukhopadhyay.
- The Supreme Court favoured the creation of special courts for expediting criminal cases involving politicians.
- In 2014, directed the completion of trials involving elected representatives within a year.
- In 2017, it asked the Center to frame a scheme to appoint the special court to exclusively try cases against politicians.
- For Politicians parties to publicize pending criminal cases faced by the candidates in 2018.
- In 2020, Supreme Court, decision that requires political parties to publish the entire criminal history of their candidates for election along with the reasons to be filed such suspected criminals will be implemented.
  - The judgement also requires such information mandatorily be published in a local & national newspaper as well as parties social media handles.
Way Forward

- India should adopt the Shadow Cabinet. It is a very important provision. In Shadow Cabinet, a group of members of the major political party in the opposition who are elected as counterparts to members of the government who hold cabinet positions. Opposition ministry is also assigned parallelly with the ruling ministry, it will convey the activities of the ruling party.

- Enhanced awareness & increased democratic participation could create the right condition for the decriminalization of politics.

- Aware people through movies, like that of South Indian movie ‘Sarkar’ in which people got to know about Section 49P of Conduct of Election Rules. According to the Section 49P, if a voter realizes that someone has already voted using/her name, he/she can approach the presiding officer at the booth & flag the issue, under 49P voter will be allowed to the register his/her own vote as per the constitutional right.

- The judicial system will have to be overhauled drastically to ensure that justice is dispensed swiftly in all cases.

- Public opinion needs to be mobilized on all these fronts, opposition from criminal politicians to individual politicians is necessary. But only deep systemic reforms can solve the real crisis.
Conclusion

All this will not be cured at once. But one thing is in our hand, that atleast we should not vote for criminals, and it doesn’t happen that all of them are criminals, we just have to do is, to not vote for candidate who is criminal, then whether he/she is from our favorite party or from our caste, we do not have to vote for criminals. We have to do just a couple of times, then party will stop giving tickets to them.

As much as 10 percent of the time we do research to buy our phones, if we do research in order to know about our candidate, then these criminals will not be seen in Parliament, they will be seen where they exactly belongs to.

References: shodhganga, adr, the indian express, the hindu, times of india