NEED FOR THE LEGISLATIVE MEASURES TO BE AMENDED TO CURB THE POLITICAL CORRUPTION IN INDIA : AN ANALYSIS

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The criminal person in politics leads the participation of criminals for contesting in Election and thereby they get elected as members of the parliament or of the state legislatures. It takes place primarily due to the nexus between politicians and the criminals. There are many forms of criminalization of politics, the one that is most alarming among them is a significant number of elected representatives who have pending criminal charges against them. It may be mentioned here that the criminalization of politics involves intimidation of voters, booth capturing, the proliferation of non- serious candidates, tampered electoral rolls, and other polling irregulates. This issue gets amplified when data highlights an increasing number of candidates with criminal cases contesting elections. Candidates who win from jail bring out the stark reality of our electoral politics. The Supreme Court and the election commission have called out for a change in our electoral laws to prevent candidates facing criminal cases from contesting elections. The parliament has made some amendments to electoral laws to incorporate the orders of the apex court and the recommendations of the election commission. However, the policy response to address the challenge of criminalisation of politics has been one dimensional. Only changes to the law have been made with the hope that it will solve this issue permanently. However, the changes made in the law haven‘t worked so far. The reason is that there is a gap in their intent and their implementation. This gap then ensures that the purpose of the law is defeated.[1]

It began in the late 1970s, at that time when there was no law to bar criminal candidates. Though there was criminalization during 80‘s and 90‘s, the alarming in the criminalization of

[1] Ministry of Finance, Government of India, *White Paper on Black Money* (2012).

politics was observed to be increased in the last 4 general elections. The Vohra Committee on Criminalization of Politics‖ was constituted with an objective to identify the extend of the political-criminal nexus and to recommend ways in which the criminalisation of politics can be effectively deal with. Official agencies in the report made several observations on the criminal network which had virtually been running a parallel government. The Report of the Vohra Committee also discussed how the criminal gangs enjoyed the support of politicians and protection they were being provided from the government functionaries. The report revealed how political leaders have been elected to Parliament, State Assemblies and local bodies. The Supreme Court in Shri Dinesh trivium's& Ors v Union of India & others, 1997[2] recommended for the appointment of a high-level committee for ensuring an in-depth investigation of the findings of the NN Vohra Committee. The criminalisation of politics has been a persistent issue, with various measures taken over the years to curb it. Here 's a brief overview for control of criminalisation of politics with some key steps:[3]

- Judicial Interventions – The Supreme Court has repeatedly called political criminalisation a "cancer for democracy" and has issued directives to increase transparency. Critics point out, that the disqualification of candidates with criminal cases depends on their conviction in these cases. With cases dragging in courts for years, a disqualification based on conviction becomes ineffective. Low conviction rates in such cases compounds the problem. The Association for Democratic Reforms (ADR) in their report from 2014 gave concrete numbers to this effect. According to their report, 30% of sitting MPs and MLAs were facing some form of criminal proceedings, and only 0.5% were convicted of criminal charges in a court of law. The law commission in its report on electoral disqualification in 2014 examined this issue. It deliberated on whether disqualification from contesting election should be triggered upon conviction as it exists today, or at the time of framing of charges by the court? It was of the opinion that, ―disqualification at the stage of charging, if accompanied by substantial attendant legal safeguards to prevent misuse, has significant potential in curbing the spread of criminalisation of politics. In February 2020, the Court mandated

[2] (1997)4SCC 306
[3] SC wants action on Vohra report", *The Indian Express*, 21 March 1997

political parties to justify the selection of candidates with criminal backgrounds within 72 hours of nomination. In September 2018, it required parties and candidates to publish details of criminal cases on three different dates before polling.[4] The representative governance structure faces unprecedented challenges as individuals with dubious legal standings penetrate elected offices systematically. This situation exposes fundamental weaknesses in electoral oversight while highlighting Parliament ‘s chronic unwillingness to create necessary safeguarding mechanisms. The inherent conflict between inclusive electoral rights and institutional purity creates an unsolvable democratic paradox. Parliamentary inertia forces extraordinary judicial involvement that surpasses traditional boundary limitations, thus generating tension within the three-branch governmental structure. While apex courts have established transparency requirements, the persistent lack of pre-trial exclusion systems allows criminal elements continued political entry. Court interventions remain structurally limited without accompanying legislative support. India ‘s democratic future depends on Parliament ‘s willingness to choose institutional integrity over short-term political gains through comprehensive electoral transformation.

- Electoral system degradation mirrors broader institutional failures that undermine democratic representation ‘s core values. When individuals under serious legal scrutiny can effortlessly move into lawmaking roles, it damages public trust in governmental institutions and establishes harmful precedents for future leadership standards. This trend especially endangers emerging democracies where institutional strength remains vulnerable to exploitation by politically powerful actors.
- Criminal penetration of political spheres surpasses surface-level social problems, representing total constitutional failure. Electoral systems created to express educated citizen choices now regularly feature candidates with troubled legal backgrounds. Despite continuous judicial warnings and institutional recommendations, Parliament shows unwavering opposition to establishing strict candidate evaluation procedures.

[4] *The Representation of the People Act, 1951*.

This regulatory gap forces courts into legislative-like roles while trying to protect democratic foundations.

- The core difficulty involves reconciling conflicting constitutional demands: guaranteeing wide electoral access while preserving institutional honour. This equilibrium becomes dangerously unstable when lawmaking bodies, partially comprised of individuals benefiting from current systems, reject substantial reforms. The ensuing governmental crisis transcends simple procedural issues to address democracy ‘s ability for self-improvement and institutional advancement.
- The relationship between legislative reluctance and judicial intervention forms this analysis ‘s main structural foundation, demonstrating how institutional stalemate continues democratic deterioration.
- Use of Legal Jargons
- Modern discussions about electoral honesty focus on fundamental constitutional principles including democratic morality, institutional balance, and legal assumption structures. Electoral eligibility requirements gain constitutional authority from basic charter sections within Articles 102(1)(e) and 191(1)(e), directly authorizing Parliament to create candidate qualification criteria through lawmaking processes.
- Current exclusion systems under the Representation of the People Act function solely through post-judgment mechanisms contained in legal sections 8(1), 8(2), and 8(3). This structural design allows individuals facing serious charges to continue unlimited electoral participation. Parliamentary refusal to require accusation-phase elimination despite crime seriousness shows self-interest driven legislative blockage, severely damaging electoral legitimacy and constitutional dignity.
- The regulatory system ‘s failure becomes especially clear when reviewing the time period between charge filing and final court decisions, during which accused persons can finish complete electoral terms. This design flaw allows calculated manipulation of court procedures, where defendants use procedural postponements to keep political roles while simultaneously blocking legal actions through multiple delay strategies.

- Constitutional experts contend this system opposes democratic representation ‘s essence, which assumes elected officials represent the highest legal and moral standards required of public officials.

Legislative Efforts –

The Representation of the People Act, 1951, governs disqualification criteria for election candidates. However, the Supreme Court has urged Parliament to pass a law preventing candidates accused of serious crimes from entering politics. Question remains about the RPA Act, 1951 on Contesting Elections.

Section 8(3): Disqualifies individuals convicted of criminal offenses and sentenced to imprisonment for two years or more. They are barred from contesting elections for six years post-release. Section 8(1): Disqualifies individuals convicted of heinous crimes (e.g., rape, corruption, UAPA offenses) regardless of sentence length, with a six-year post-release ban.

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Fast-Track Courts –

Special courts have been set up to expedite cases against politicians. Despite this, the number of pending cases against MPs and MLAs has increased from 4,075 in 2018 to 4,732 in January 2025, with 559 cases pending for over a decade.

Election Commission's Role –

The Election Commission of India (ECI) has been urged to take stronger action against political criminalisation. The Supreme Court has questioned how individuals unfit for government service can still become ministers.[5] The Law Commission ‘s 244th Report detailed that from 2014; it is proved that the accused persons systematically abuse procedural delays in the Court system to finish entire electoral periods before facing legal results. The Commission particularly recommended immediate exclusion when formal charges are filed for crimes with possible five-year prison terms, assuming cases began at least six months before electoral competitions.

- Despite these official recommendations supported by comprehensive factual studies, no related changes to the Representation of the People Act have occurred. The Election Commission has repeatedly approached higher courts through various petitions and official statements, desperately seeking parliamentary action to fix these systematic weaknesses. However, significant political agreement remains notably missing, may be due to apparent gain observed among the mole within the existing systems.
- Global comparisons show India ‘s unusual situation concerning electoral candidate evaluation. Most developed democracies have strict pre-judgment exclusion procedures, understanding that public positions require extraordinary integrity levels that go beyond simple legal formalities.

[5] Election Commission of India: Ludhiana district administration develops mobile app for Election Commission of India". *The Times of India*

Public awareness & Negative Voting –

The 2004 Proposed Election Reforms Report recommended negative voting as a way for voters to reject candidates with criminal backgrounds. The Supreme Court also mandated the disclosure of criminal records to help voters to make informed decisions.

Despite these efforts, political parties continue to prioritize "winnability," often fielding candidates with criminal cases. Some State legislatures have 55-65% MLAs with criminal records. Reforming the system remains a challenge due to the influence of money and muscle power.

The issue of the quality of candidates contesting elections becomes important because it is at the root of the governance challenges. Individuals who elect represent the public in legislative institutions and make laws that govern the society. It's very strange that the numbers of politician with criminal background are increasing and the prevailing laws are unable to control it. If it is took the account of the last 2024 Lok Sabha polls, it was historic not only in terms of the number of voters (64.2 crore), but also for the wrong reasons. A record 251 (46 percent) of the 543 newly elected members have criminal cases registered against them and 27 of them have been convicted, revealed an analysis done by Association of Democratic Reforms (ADR).The record of last 4 Legislative Assembly Election were as follows, a total of 251(46%) had declared criminal cases against themselves in 2024, 233 MPs (43 per cent) in 2019 185 (34 per cent) in 2014, 162 (30 percent) in 2009 and 125 (23 percent) in 2004, the ADR analysis report revealed.[6]

Among the 251 winning candidates in the 2024 Lok Sabha Election, having criminal cases against them, 170 (31 percent) face serious charges, including rape, murder, attempt to murder, kidnapping, and crimes against women. This is also an increase from 159 (29 percent) MPs in 2019, 112 (21 percent) MPs in 2014, and 76 (14 percent) MPs in 2009, the analysis showed.

The analysis also highlights specific cases among the winning candidates. It revealed that 27 winning candidates have declared they have been convicted in criminal cases. Four declared

[6] Delhi High Court's Judgement. AIR (2001) Delhi 126, 2000 SCC Online DEL 836.

cases related to murder under Section 302 of the Indian Penal Code (IPC) and 27 declared cases related to attempt to murder under Section 307 of the IPC.[7]

Only Court order cannot amend criminalisation in politics, political will is required to modify the existing laws. Legal changes should be made to prevent the criminals from contesting in elections. The criminal candidates should be blacklisted and disciplinary actions should be taken against them. The details of the candidate should be published within 48 hours of the selection of the candidate. Political parties should have details about their candidates on the homepage of website itself: The court also directed political parties to have a caption ―candidates with criminal antecedents' candidates‖ on their homepages.

The Supreme Court of India also from time to time give judgement for the protection of the democratic rights of the Indian people with utmost purity. Some of the leading cases are discussed hereunder:

Union of India v Association for Democratic Reforms[8]

The Court in dealing with the question of criminalization of politics held that under the Indian Constitution, electors had a fundamental right to know the antecedents of candidates contesting elections to hold public office. The court read in _right to be informed 'as a right flowing from freedom of speech and expression.

Election Commission was directed to secure affidavits by candidates recording all particulars relating to past or pending criminal charges or cases against them. This included information as to whether the candidate was convicted/acquitted/discharged of any criminal offence in the past. Additionally, if convicted, the quantum of punishment that was awarded; and whether prior to six months of filing of nomination, the candidate was accused of an offence punishable with minimum two years of imprisonment.

PUCL v Union of India 2004 [9]

The Peoples Union for Civil Liberties approached the Supreme Court challenging Section

[7] Supreme Court's Judgement. (2002) 5 SCC 294, AIR 2002 SC 2112.
[8] (2002) 5SCC294
[9] ASC568IR1997

33B of the Representation of People (Third Amendment) Act which nullified the decision in Association for Democratic Reforms (2002) by providing that candidates contesting elections need not file affidavit of criminal antecedents and particulars as directed by the Court.

This provision was held unconstitutional and void as it infringed the ―right of electors 'to know‖, a constituent of the fundamental right to free speech and expression and hindered free and fair elections, which is part of the basic structure of the Constitution. Subsequently, all criminal records and antecedents of candidates contesting elections are now mandated to be matters of public record.

K. Prabhakaran v P. Jayarajan 2005 [10]

The Court elucidated upon the scope and purport of Section 8(3) of the Representation of Peoples Act, 1951 which provides criteria for disqualification. It was observed that the purpose of enacting disqualification under Section 8(3) of RPA is to prevent criminalization of politics. Those who break the law should not make the law. Generally speaking, the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and governance. Persons with criminal background pollute the process of election, as they have no reservation from indulging in criminality to win an election. Thus, Section 8 seeks to promote freedom and fairness at elections. The provision has to be so meaningfully construed as to effectively prevent the mischief sought to be prevented.

Lily Thomas v Union of India 2013 [11]

A 2 Judge bench of the Supreme Court in 2013 ruled that Members of Parliament, Legislative Councils and Legislative Assemblies convicted of crimes where they had been awarded a minimum sentence of 2 years imprisonment would cease to be members of the house to which they were elected from the date of sentencing. It further struck down the provision, which allowed convicted members a 3 month time period for appeal against the conviction and sentencing and held that those convicted would suffer immediate disqualification.

[10] AIR2005SC688
[11] (2000)6SCC224

Manoj Narula v Union of India 2014 [12]

A 5 Judge Bench of the Supreme Court was dealing with the question whether persons with criminal backgrounds and antecedents or those accused of heinous crimes were fit to be appointed as Ministers in Central and State Governments. Recognizing the limitations of the powers of the Court in matters of appointment of Ministers, it was held that the judiciary could not read a disqualification not contemplated by the statute into Article 75(1). The Court left the appointment of Ministers with a criminal past to the discretion of the Prime Minister. However, it recorded that it can always be legitimately expected that the Prime Minister, while delivering on the Constitutional expectations, would consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a minister of the council of ministers.

Public Interest Foundation v UOI 2018 [13]

The Court delivered its judgement in the Electoral Disqualification case. The Court had to decide if persons ought to be disqualified from membership in legislative bodies when criminal charges are framed against them. Currently Section 8 of the Representation of Peoples Act only disqualifies persons when they are convicted of criminal charges. The five judge Bench unanimously decided that it cannot disqualify candidates, against whom criminal charges have been framed, from contesting elections. It recognized that it cannot introduce new rules regarding the disqualification of electoral candidates. The Bench asked Parliament to make a law that prevents candidates accused of serious crimes from entering politics.

Rambabu Singh Thakur v Sunil Arora 2020 [14]

On February 13th 2020, a 2 judge Bench comprising RF Nariman and SR Bhat JJ delivered a judgment in the contempt petition arising out of the Electoral Disqualification case (*Public Interest Foundation*). Various litigants, including BJP spokesperson Ashwini Kumar Upadhyay, had filed contempt petitions against the Election Commission of India for not monitoring whether political parties were complying with the directions issued in the 2018 judgment in *Public Interest Foundation*. The Bench re-iterated the Court‘s 2018

[12] MANU/SC/0736/2014
[13] AIR 2018 SC 4550
[14] MANU/SC/0172/2020

directions and directed the Election Commission to report to the Supreme Court any non-compliance by political parties.

Law Commission Report on Electoral Disqualification 2014

The Law Commission in its 244th Report recorded that disqualification upon conviction had proved ineffective in preventing the criminalization of politics. Disqualification at the stage of framing of charges, accompanied by other legal safeguards could be an effective means to curb such criminalization. It also recommended that the punishment for filing of false affidavits be enhanced to minimum 2 years imprisonment and such an offence must also be made a ground for disqualification. Accordingly, in all such cases trails must be conducted on a day-to-day basis so as to ensure the necessary conviction that precedes disqualification.

Key provisions of Constitution Amendment Bill, 2025:

- Grounds for Removal: A Union Minister, Chief Minister (CM), or State Minister will be removed from office if they are arrested and detained in custody for 30 consecutive days for an offense punishable with five or more years of imprisonment.
  - This also applies to the Prime Minister.
- Procedure for Removal:
  - For Union Ministers (excluding PM): The President must remove the Minister on the Prime Minister's advice, to be tendered by the 31st day of detention. If no advice is given, the Minister will automatically cease to hold office from the 31st day.
  - For State Ministers (excluding CM): A similar provision applies, with the Governor acting on the advice of the Chief Minister. If the CM does not advise by the 31st day, the Minister automatically loses office.
  - For Delhi Ministers (excluding CM): The President removes the Minister on the advice of Delhi's Chief Minister. If no advice is tendered, the Minister automatically ceases to hold office.
  - For Prime Minister or Chief Ministers (Union/State/Delhi): The Prime Minister or Chief Minister must tender their resignation by the 31st consecutive day of custody. If they fail to resign, they will automatically cease to hold office from the day thereafter.

- No bar on Reappointment: Reappointment of a Minister, Prime Minister, or Chief Minister is allowed after their release from custody.
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Arguments in favour of Bills:

- Constitutional Morality and Ethical Governance: SC in Manoj Narula v. Union of India (2014)[15] had indicated that morality is intrinsic to constitutional framework, urging against appointing persons with serious criminal charges as Ministers.
- Protecting Public Trust: This measure is seen as a strong stance against corruption and the criminalization of politics, potentially enhancing public trust in institutions.
- Good Governance: It seeks to eliminate anomaly of "governance from jail," aligning executive functions with accountability and addressing constitutional gaps in accountability.
- Bridging Legal Gap: The existing Representation of People Act (RP Act) disqualifies elected representatives only after conviction. This Bill addresses the interim period of arrest and detention, bridging a crucial legal gap.
- Fairness with Other Employees: Ordinary government employees face suspension after 48 hours in custody; similar standards should apply to Ministers.
- Other: Uniform party application, advances political decriminalization, Balancing Frivolous Arrests and Judicial Scrutiny etc.

Arguments against the Bills:

- Political Weaponization and Threat to Federalism: Central agencies like the ED and CBI could be misused to arrest leaders on flimsy charges, providing a "legal shortcut" to destabilize governments without electoral contest.

[15] supra

- Presumption of Innocence at Stake: The Bill is against the principle of "innocent until proven guilty" and natural justice by triggering removal based on detention alone, without conviction or even the framing of charges.
    - The SC in Lily Thomas v. Union of India[16] held that disqualification begins only upon conviction, not arrest or detention.
- Inconsistency in Treatment: There is an inconsistency between legislators and Ministers.
    - While Members of Parliament (MPs) and State Legislatures (MLAs) are disqualified only upon conviction under the RP Act, 1951. Ministers under this Bill could be forced to resign on mere detention.
    - This creates a paradox where a convicted legislator might continue as a Minister longer than an arrested Minister.
- "Revolving Door" Problem: The provision allowing reappointment after release from custody could lead to cycles of resignation and reinstatement, causing political instability and potentially incentivizing tactical legal manoeuvres.
- Executive Discretion and Politicization: The dual mechanism of removal (PM/CM's advice or automatic cessation) could politicize the process, allowing a Prime Minister to protect allies or remove a hostile Chief Minister to target rivals.
- Lack of Safeguards: No provision for compensation if the arrest is found to be malicious.
    - It can encourage misuse of preventive detention and laws like Unlawful Activities Prevention Act, 1967 (UAPA) and Prevention of Money Laundering Act, 2002 (PMLA).
        - E.g. of the 5,000 cases registered by ED in past five years, there were less than 10% c
- The Supreme Court of India introduces some Guidelines for Disposal of Criminal Cases against the Legislators:

[16] 2000(4)SCALE176

- Special Bench: The Court called for monitoring criminal cases against legislators to address the issue of Criminalization of Politics.[17] ○ Moreover, the special bench has the authority to seek assistance from the Advocate

  General (AG) or prosecutor.[18] ○ While the court addressed the aspect of plea seeking speedy disposal of cases against MPs and MLAs, it kept open the issue of replacing the 6-year ban with a lifetime one.

- Suo Motu Cases by Chief Justices: The chief justices from high courts (HC) can now initiate Suo motu cases for speedy resolution of pending criminal cases involving lawmakers.[19]

- Guidelines For Trial Courts: The court delegated the task to HCs devise effective monitoring measures.

- Authority To High Courts: The HCs can issue orders and instructions for the efficient resolution of such cases.

  ○ They can call upon the Principal District and Sessions Judge to take on the responsibility of allocating ―subject cases‖ to such courts.

- Priority Cases: The priority shall be given to cases against lawmakers that are punishable with death or life imprisonment, addressing the issue of Criminalization of Politics.

Conclusion

The criminalization of Indian politics is not just a legal dilemma—it is a democratic crisis. When nearly half of a nation ‘s lawmakers face criminal charges, it calls into question the very foundations of justice, accountability, and public trust. While the law continues to uphold the principle of innocent until proven guilty, the practical misuse of this safeguard allows powerful

[17] Supreme Court Introduces Guidelines for Disposal of Criminal Cases', *The Hindu* (New Delhi, 10 May 2023).
[8]Press Information Bureau, Government of India, 'Supreme Court Introduces Guidelines for Disposal of Criminal Cases' (2023).

[19] Supreme Court Introduces Guidelines for Disposal of Criminal Cases' (2023) https://www.example.com accessed 28 October 2025.

individuals to delay justice and use public office as a shield, rather than a responsibility. Judicial efforts, such as the rulings in Lily Thomas, Public Interest Foundation, and Manoj Narula, have been bold attempts to curb this trend. But despite these landmark decisions, loopholes in the Representation of the People Act, delayed trials, and weak political will have left these reforms largely toothless. The burden of proof cannot rest on the judiciary alone—it must be met by strong legislative action and voter awareness. India needs more than just procedural transparency; it needs a cultural shift in how political merit is defined. Clean governance begins not at the ballot box, but in who is allowed to stand beside it. Until we demand integrity over influence and convictions over connections, the line between lawmakers and lawbreakers will remain dangerously blurred. This includes legislative amendments to the Representation of the People Act, incorporating provisions for pre-conviction disqualification in cases involving grave charges, subject to judicial scrutiny; the establishment of independent fast-track courts for expeditious trial of elected representatives; and the strengthening of the Election Commission ‘s enforcement capacity. Additionally, enhancing voter awareness, implementing robust intra-party democracy, and promoting ethical leadership are critical to reversing this trend. Ultimately, the decriminalization of politics is not merely a legal objective—it is a constitutional imperative to ensure that the legitimacy of lawmaking rests in the hands of those who uphold, not undermine, the rule of law

- Electoral corruption through criminal involvement creates survival threats to India ‘s constitutional democratic structure by systematically destroying public trust in representative institutions, corrupting policy creation processes, and enabling systematic abuse of public resources for personal gain. Parliament ‘s ongoing refusal to establish meaningful structural changes, despite overwhelming factual evidence and repeated judicial appeals, shows deeply rooted political opposition to systematic institutional cleaning.
- The judiciary, while actively encouraging transparency through various procedural innovations, stays basically limited by power separation doctrine and constitutional innocence assumption principles. This institutional restriction prevents courts from directly tackling the problem ‘s fundamental causes while highlighting the democratic system ‘s reliance on legislative initiative for complete reform.

- Significant advancement requires immediate establishment of comprehensive electoral restructuring including multiple essential components: immediate creation of charge-phase exclusion laws for serious criminal crimes, formation of specialized rapid-track court systems dedicated to political case decisions, establishment of strict penalties for disclosure failures, and development of independent candidate evaluation systems.
- Citizen groups and educated voter involvement remain essential for lasting reform establishment. Voters must regularly demand openness while actively opposing candidates with criminal histories, while holding political parties responsible for their selection choices. News organizations have special responsibility for keeping consistent public knowledge about crime-politics relationships.
- Democratic representation must go beyond simple numerical majorities to include moral legitimacy and constitutional correctness of governing officials. Only through such complete institutional change can India reach truly representative and honest democratic governance that reflects the constitutional creators ‘original idea of clean, responsible public service.