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# Decriminalisation of Politics

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## ABSTRACT

*The growing criminalisation of politics represents one of the gravest challenges to Indian democracy. While democracy is premised on equality, justice, accountability, and the rule of law, the increasing presence of elected representatives with serious criminal charges poses a direct threat to these ideals. Empirical data from the Association for Democratic Reforms (ADR) reveals a steady rise in Members of Parliament and State Legislatures with pending or convicted criminal cases, including heinous offences such as murder, rape, and corruption. This trend undermines the credibility of governance, erodes public trust, and creates an environment where lawbreakers become lawmakers.*

*This paper critically analyses the causes and consequences of criminalisation, drawing on jurisprudential theories, constitutional principles, and landmark judicial pronouncements. It highlights how factors such as misuse of parliamentary privileges, political defection, electoral malpractices, and weak enforcement mechanisms enable individuals with criminal backgrounds to secure political power. The discussion further examines judicial interventions, including *Union of India v. ADR*, *PUCL v. Union of India*, and *Public Interest Foundation v. Union of India*, alongside proactive measures by the Election Commission of India mandating disclosure of criminal records, regulation of candidate selection, and voter awareness initiatives.*

*Despite these efforts, the absence of stringent disqualification laws, efforts, delays in judicial processes, and lack of political will continue to obstruct meaningful reform. The paper argues that decriminalisation requires a holistic strategy involving legislative reform, fast-track courts, transparent candidate selection, stronger regulatory institutions, and active citizen participation. Ultimately, decriminalisation is not merely a legal reform but a democratic imperative to preserve the sanctity of governance and uphold constitutional morality.*

**Keywords:** *Criminalisation of Politics, Democracy, Association for Democratic Reforms, Judicial Reforms, Electoral Reforms.*

## I. INTRODUCTION

In a real sense true democracy power rests with the people. It is a system where the government is formed by the citizens, run through their chosen representatives and exists solely to serve

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their interest. Democracy being a system of government where power is in the hands of people and exercised directly by them or through elected representatives by them. Democracy promotes principles like political equality, popular control and transparency in decision making. Democracy in its true sense means “rule by the people”.

We all are familiar with the Social Contract Theory of jurisprudence which is a political and philosophical concept that suggests the consent of citizens explicitly or implicitly to surrender certain freedoms to authority in exchange for protection of their remaining rights and the maintenance of social order. Key thinkers of this theory like Thomas Hobbes, John Locke and Jean - Jacques Rousseau believed that there is a need for a strong sovereign to avoid chaos and anarchy, emphasized natural rights, and argued for popular sovereignty.

For a country like India, which has the world's largest democracy, a nation where the people hold the supreme power to shape their government through the right to vote and active political participation. Our country, being a democratic republic, is guided by the principles of liberty, equality, justice and fraternity. It guarantees universal adult suffrage, which means every citizen above 18 years has the right to vote, regardless of representation through elected leaders who are accountable to the people. Nevertheless as there is a famous proverb “every coin has two sides”, democracy in India faces certain challenges like corruption, criminalization of politics, growing inequality, communal tensions, and low political literacy in some regions. But the strength also lies in the people of the country, their ability to question, protest, vote and bring about change through peaceful and constitutional means.

Democracy is basically of two types: ‘Direct’ which allows citizens to vote directly on laws and policies and ‘Indirect’ where citizens elect their representatives to make decisions on their behalf.

Criminalisation of Politics is a critical issue that demands attention in any democratic disclosure. It frequently comes into focus, as it raises serious concerns about the credibility of the government and the integrity of governance. The involvement of individuals with criminal backgrounds in the political system often undermines the legitimacy and authenticity of democratic institutions. The repeated election of alleged or convicted criminals to public office poses a significant threat to the value and effective functioning of Indian democracy.

Legislators are expected to embody the hopes and concerns of the people they represent.

Therefore, a truly representative democracy must ensure that its legislative bodies reflect the honesty, fairness and accountability that citizens deserve. However, in India today we are witnessing a decline in empathy, quality, equality and integrity among many elected MPs and

MLAs. This raises serious concerns not only about the transparency of electoral processes but also about the nature and background of individuals entering Indian politics. As per the data of Association for Democratic Reforms in 2024 “of these 543 newly elected Lok Sabha members, 251 (46 per cent) have criminal cases registered against them and 27 of them have been convicted, according to an analysis by election rights body Association of Democratic Reforms (ADR). This is the highest number of candidates facing criminal charges to be elected to the lower house. A total of 233 MPs (43 per cent) had declared criminal cases against themselves, up from 185 (34 per cent) in 2014, 162 (30 per cent) in 2009 and 125 (23 per cent) in 2004.

According to the analysis, the number of MPs with declared criminal cases has increased by 55 per cent since 2009. Of the 251 candidates who won in this year, 170 (31 per cent) have serious criminal cases, including rape, murder, attempt to murder, kidnapping and crimes against women. The analysis showed that this is also an increase from 159 (29 per cent) MPs in 2019, 112 (21 per cent) MPs in 2014 and 76 (14 per cent) MPs in 2009. It said the number of MPs with serious criminal cases declared has increased by 124 per cent since 2009.”<sup>2</sup>

In a book titled *Indian Constitutional Law*, Eastern Law Company 2008 M.P. Jain has briefly discussed the issue of criminalisation of politics in India and its impact on the right to freedom of speech and expression. He further highlights how the presence of criminals in politics undermines the fundamental rights and also weakens the democratic framework.

Furthermore in a book called *Law of Elections* (Bharat Law House 2004), P.D.T Acharya explains the whole election process and also laws related to it. He states that for an election to be turned out meaningful, it is important that it should be free and fair. In a country like India where the population is too high for many candidates, political parties and voters, it is the duty of election authorities to ensure free and fair elections.

The literal meaning of criminalisation of politics is that the criminals who enter into politics and contest elections even get elected to parliament and state legislature.

There was a report released by National Elections Watch and Association for Democratic Reforms, the 17th lok sabha has close to half of its new MPs with declared criminal cases against them<sup>3</sup>. “In 2019 Lok Sabha elections, out of 7928 candidates, 1500 candidates (19%) had criminal cases, out of which 1070 candidates (13%) were serious criminal cases. However, out of 514 elected members of 17th Lok Sabha (2019-2024), 225 members (44%) had criminal

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<sup>2</sup> [adrindia.org](http://adrindia.org), 46 percent of newly elected MPs have criminal cases: ADR | Association for Democratic Reforms, (last visited 20-07-2025)

<sup>3</sup> [adrindia.org](http://adrindia.org), 17th Lok Sabha: Highest Number Of MPs Facing Criminal Charges Since 2004 | Association for Democratic Reforms, (last visited 20-07-2025)

cases against them. Thus, the candidates with criminal cases have won more seats than candidates without criminal cases.” a report by Association for Democratic Reforms said.<sup>4</sup>

Man who is selfish by nature is always inclined towards having more power and for which he always has that competing attitude. Due to this it led to having a cut throat competition among all vested interests in power struggle. And this is the reason which gave rise to power struggle and a political rivalry. Hence in the rush of being more powerful than the other politicians indulge in various criminal activities. The politicians also get support from the criminals which help them in winning seats. As per the data collected by Association of Democratic Rights and National Election watch resourced from records of Election Commission of India, the position of criminals was horrible in the present day political system (2009-2019) is depicted below.

According to an ADR report, “251 of the 543 newly elected members have criminal cases registered against them and 27 of them have been convicted, revealed an analysis.

The 2024 Lok Sabha polls were 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).

A total of 233 MPs (43 per cent) had declared criminal cases against themselves in 2019, 185 (34 per cent) in 2014, 162 (30 percent) in 2009 and 125 (23 percent) in 2004, the ADR analysis report revealed.”<sup>5</sup>

Furthermore In the 2014 Rajya Sabha elections held in February across 16 states, 58 candidates submitted self sworn affidavits. Out of these, 14 candidates said that they had criminal cases against them. Among them 2 candidates had serious charges, including murder, kidnapping and crimes against women. One such candidate was *Shiv Sena's Dhoot Rajkumar Nandlal from Maharashtra*, who had declared all three of these serious charges.<sup>6</sup> There is also an increase of 109% in the number of MPs with declared serious criminal cases in 2019.

## II. IMPACT OF CRIMINALISATION OF POLITICS IN INDIA

The major impact of criminals becoming political leaders is that the law breakers are elected as law makers. For instance:

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<sup>4</sup> adrindia.org, Candidates With Criminal Cases Had More Success Rate In 2019 Lok Sabha Elections : Amicus Report In Supreme Court | Association for Democratic Reforms, (last visited 20-07-2025)

<sup>5</sup> adrindia.org, Record 46% of newly-elected Lok Sabha MPs facing criminal cases: Study | Association for Democratic Reforms, (last visited 20-07-2025)

<sup>6</sup> adrindia.org , Analysis of Criminal and Financial Background and other details of Candidates contesting in the Rajya Sabha Elections (February), (last visited 20-7-2025)

- According to the Election commission, about 40 % of members elected to Lok Sabha are facing criminal charges in court of law.
- Also if the corruption in public life is increased it will weaken the state institutions including the bureaucracy, the executive, legislature and judiciary, and will also set a bad example in the society.
- Furthermore this can also be seen as a threat to the rule of law where it creates a culture where laws are not followed properly and powerful people can act beyond which the law permits.
- It also discourages honest candidates from joining into politics due to fear of threats or unfair competition.
- It also impacts the fundamental rights to freely express their opinion or vote without fear and coercion.
- There will also be erosion of democratic values as the criminals in power will undermine the principles of equality, accountability and justice.
- The lack of public trust in the electoral system will also increase as when the voters see the criminals in power they'll lose their faith from the electoral system.
- Once coming into power, criminal politicians can use state machinery to protect their networks, and also to dominate in future elections.
- Politics will become a safe haven for hardened criminals to legitimize their wealth and power.
- The criminals in power will also be free to use public money not for their benefit but for strengthening their power and wealth.

Apart from these impacts, criminalisation of politics also has some long term consequences such as institutional decay, loss of global credibility and economic harm.

Hence the failure of decriminalisation of politics establishes a cycle of crime, corruption, and impunity which poses a serious threat to democratic governance, weakening institutions and risking the nation's development.

### **III. IS DECRIMINALISATION BLOCKED BY PRIVILEGE?**

Article 105 and Article 194 of the Constitution which talks about the parliamentary privileges which are an important aspect in India's legislative framework. It plays a vital role in protecting the freedom and independence of lawmakers. These special rights allow the members of

parliament to speak and act without fear of being arrested, sued, or pressured. In essence, these protections are not personal perks but tools that help parliament work freely and fairly for the benefit of citizens.

But the question lies here is that does holding parliamentary privilege give MPs to act without limits and accountability?

The answer lies in some of the important judgments by The Hon'ble Supreme Court, one of which was the case of *PV Narsimha Rao v. State (1998)*, where a seven judge constitution bench of Hon'ble Supreme Court held that, "the Members of Parliament (MPs) and Members of Legislative Assemblies are not protected with immunity under Article 105(2) and 194(2) of Constitution in cases of bribery.

This larger bench overruled its five judges constitution bench decision in the year 1998 which held that the immunity granted to law makers under Article 105(2) applied to everything said or any vote cast in the house".<sup>7</sup>

Moving forward, the term called Political Defection or the act of elected representatives switching parties either for personal or political gain as we all must be aware about "Aaya Ram, Gaya Ram" in year 1967 in which a Haryana MLA Gaya Lal switched his political party three times in the short span of 15 days first from Congress to Janata party then back to Congress and then back to Janata party, this switching of the parties by political leaders has long posed a challenge to the stability of parliamentary democracies. To overcome this issue Indian parliament took strong action by amending the constitution in 1985 which led to the introduction of Tenth Schedule through the 52nd Constitutional Amendment Act, 1985 which laid down clear rules for disqualifying legislators indulge in defection. These provisions aim to preserve the sanctity of the electoral mandate and discourage opportunistic party switching that undermines democratic governance.<sup>8</sup>

#### IV. MEASURES TO PREVENT CRIMINALISATION OF POLITICS

The legislative measures to prevent the criminalisation of politics are essential to ensure democratic institutions remain credible, accountable and free from corrupt or criminal influences. It refers to the rising trend in individuals having criminal backgrounds entering politics and even securing legislative positions. There are some measures proposed and implemented by various countries to address this issues;

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<sup>7</sup> scobserver.in , MLA Bribery | Judgment Summary - Supreme Court Observer , (last visited 19-07-2025)

<sup>8</sup> nyaaya.org, Aaya Ram, Gaya Ram': When Politicians Change Political Allegiances - Nyaaya , (last visited 19-07-2025)

*Such as the disqualification of candidates with criminal charges, the fast track courts for politicians, mandatory disclosure for criminal records, stricter political party regulations, state funding of elections, electoral reforms and empowered election commission, and stronger anti corruption laws. As criminalisation of politics corrodes democracy. A combination of strong laws, accountable institutions and vigilant civil society is essential to change this mechanism.*

### **(A) Supreme Court Measures Towards Decriminalisation of Politics**

In the year 2002, the Hon'ble Supreme Court gave an important decision in the case of *Union of India vs. Association for Democratic Reforms*<sup>9</sup> where it ruled that every person contesting elections- whether for parliament, state assemblies, or municipal bodies- must give details about their criminal cases, financial status and education.

Later in 2005, in the case of *Ramesh Dalal vs. Union of India*<sup>10</sup> The Hon'ble Supreme Court said that if a sitting MP or MLA is convicted by a court and given a jail sentence of two or more years, they will be disqualified from contesting elections.

In another case of *People's Union for Civil Liberties vs. Union Of India 2013*<sup>11</sup> the Hon'ble Supreme Court directed the Election Commission to include a NONE OF THE ABOVE (NOTA) option on voting machines. This system allowed voters to show that they did not support any of the candidates.

In the year 2018, in the case of *Public Interest Foundation vs. Union of India*<sup>12</sup> the petitioners asked the court to take steps to stop the criminalisation of politics. They requested that people facing serious criminal charges should not be allowed to contest elections. This ruling was given by a five judge constitution bench of the Hon'ble Supreme Court. The bench was led by the then Chief Justice Dipak Misra, along with Justices RF Nariman, AM Khanwilkar, DY Chandrachud and Indu Malhotra.

Here, the court said candidates cannot be disqualified just because criminal charges have been framed against them. However the court asked parliament to make law to stop people with criminal backgrounds from entering politics. There were certain directions given by the court in this case which were as follows:

1. All candidates must declare any past criminal cases against them at the time of filling their nominations.

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<sup>9</sup> UOI vs. Association of Democratic Reforms, AIR 2001 Delhi 126

<sup>10</sup> Ramesh Dalal v. UOI, 1988 SCR (2) 1011

<sup>11</sup> People's Union for Civil Liberties vs. UOI, AIR 2013 SC 568

<sup>12</sup> Public Interest Foundation vs. UOI, (2019) 3 SCC 244

2. Political Parties must publish these details on their official websites .
3. Parliament should make laws to stop candidates with criminal records from contesting elections.
4. The Election Commission must make sure that the candidates clearly mention their criminal cases in bold letters in nomination forms.
5. Political parties must also issue public declarations about their candidates' criminal backgrounds and give wide publicity in the media.

Furthermore in the case of *Lok Prahari v. Union Of India 2018*<sup>13</sup> the Hon'ble Supreme Court ordered that the source of income and their associates must be disclosed. It helped in tracking illicit wealth accumulation and conflict of interest.

## **V. MEASURES AND RECOMMENDATIONS TAKEN BY THE ELECTION COMMISSION OF INDIA**

The Election Commission of India has actively participated in addressing the criminalisation of politics which refers to the rising number of elected representatives with serious criminal charges. Over the years, the ECI has made several measures, recommendations, and reforms to overcome this issue.

1. As per the Supreme court rulings in the case of *Association for Democratic Reforms case 2002*<sup>14</sup> and *People's Union for Civil Liberties vs. Union of India, 2003*<sup>15</sup> The Election Commission of India made it mandatory for candidates to file affidavits disclosing criminal cases which include (both pending and convicted), their assets and liabilities, and their educational qualifications should be made public on the official website of election commission of India.
2. Following the case of *Public Interest Foundation vs. Union of India 2019*<sup>16</sup> The Election Commission of India directed candidates and political parties to publish details of criminal cases in newspapers, TV, party websites and social media. They should also explain why a candidate with criminal background be selected over a candidate with a clean background, and its publication must be done 3 times during the campaign period.
3. The Election Commission of India also coordinates with the Supreme Court, High court and State Governments to identify the pending criminal cases against MPs/MLAs. An

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<sup>13</sup> Lok Prahari vs. UOI, 2018 SC 4675

<sup>14</sup> UOI vs. Association For Democratic Reforms , AIR 2001 Delhi 126

<sup>15</sup> People of Civil Liberties vs. UOI, AIR 2013 SC 568

<sup>16</sup> Public Interest Foundation vs. UOI, (2019) 3 SCC 244

affidavit filed by Senior Advocate Vijay Hansaria, who has also been appointed as Amicus Curiae in a PIL seeking expeditious disposal of cases against the MPs and MLAs said that “more directions are needed for speedy adjudication of pending trials and their investigation under strict monitoring by respective High Courts, as there are around 501 candidates with criminal cases who are contesting the Lok Sabha elections in the first two phases”.<sup>17</sup>

4. The Election Commission of India also monitors the spending on elections to reduce the influence of black money and criminal elements.<sup>18</sup>
5. The Election Commission of India takes strict actions against candidates who violate Model Code of Conduct, especially those involved in hate speech, intimidation or violence.

Moving further to the recommendations made by the Election Commission of India in this regard are:

- Candidates with serious criminal charges should be debarred; Election Commission of India recommended that the candidates facing serious criminal charges i.e. punishable with 5+ years should be deferred from contesting elections. But with a condition that the charges should be framed by a competent court at least 6 months prior to the elections.<sup>19</sup>
- Ban on convicted politicians for a lifetime; Election Commission also recommended that there should be lifetime ban on convicted politicians from contesting elections.<sup>20</sup>
- Election Commission of India also supports supreme court orders on setting up special fast track courts and ensuring that the cases against MPs and MLAs should be disposed of within 1 year.<sup>21</sup>
- Candidates presenting false affidavits should be rejected; Election commission also recommended that if a candidate intentionally hides criminal antecedents or assets, they should face disqualification and also criminal prosecution under *Indian Penal code, 1860* under **Section 120B Criminal Conspiracy now 61(2) BNS (Bhartiya Nyay Sanhita), Section 171 offences relating to elections now section 205 of BNS, Section 153A**

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<sup>17</sup> verdictum.in , Breaking | Supreme Court Empowers High Courts To Expedite Trials Of Criminal Cases Against MPs/MLAs [Read Directions , (last visited 19-7-2025)

<sup>18</sup> legalaffairs.gov.in, ELECTORAL PROCESSES AND POLITICAL PARTIES, (last visited 19-7-2025)

<sup>19</sup> legalaffairs.gov.in , ELECTORAL PROCESSES AND POLITICAL PARTIES, (last visited 19-7-2025)

<sup>20</sup> legalaffairs.gov.in, ELECTORAL PROCESSES AND POLITICAL PARTIES, (last visited 19-7-2025)

<sup>21</sup> verdictum.in ,Breaking | Supreme Court Empowers High Courts To Expedite Trials Of Criminal Cases Against MPs/MLAs Read Directions, (last visited 19-7-2025)

**Promoting enmity between groups now 196 BNS, Section 295A Deliberate acts to outrage religious feelings now 299 BNS, Section 499/500 of Defamation now 356(1),(2) BNS and**

- ***Representation of People's Act, 1951* Section 8 Disqualification on conviction, Section 123 Corrupt practices, Section 125 Promoting enmity in elections, Section 126 Prohibition of election campaign during 48 hours before polls(silence period), Section 127 Disturbance at election meetings, Section 127A Prohibition of printing of pamphlets without declaration, Section 136 other electoral offences (booth capturing, impersonation, etc).**

## VI. CONCLUSION

The decriminalisation of politics is not just a legal or electoral reform - it is essential for preserving the integrity of democracy in India. The growing number of elected representatives with serious criminal charges poses a grave threat to the rule of law, public trust and functioning of democratic institutions. While the Supreme Court has taken significant measures through landmark judgements like ADR, PUCL, Public Interest Foundation, and the Election Commission of India has made proactive recommendations and measures to decriminalise politics in India. But true decriminalisation requires a multi pronged approach like Strict Laws, Fast Track Courts, Transparent Candidate Selection, Voter Awareness and Civic Education etc.

It is imperative that the issue of decriminalisation does not remain the *elephant in the room*-acknowledged by all yet addressed by none. Rather than differing responsibility, proactive engagement from all stakeholders-legislature, judiciary, political parties, civil society, and the electrode is essential to restore faith in democratic institutions and uphold the integrity of public office.

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