Criminalization of Politics in India: A Critical Legal Analysis of Electoral Disqualifications and Judicial Interventions

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***Abstract*—The criminalization of politics in India is a severe danger to democratic government. This research paper provides a critical analysis of its development from the era of "muscle power" in the 1970s until the current state of affairs wherein crime and politics are combined. The paper takes an approach of doctrinal and analytical research by reviewing the following primary sources of law – Articles 102 and 191 of the Constitution of India, Section 8 of the Representation of the People Act, 1951, important Supreme Court cases (ADR, PUCL, Lily Thomas), and relevant reports (Vohra Committee). In particular, the analysis of these sources shows how the high cost of elections, "winnability" criteria, illegal funding of elections, and caste considerations prompt political parties to put forward candidates with a criminal background. Though some judicial pronouncements helped increase the level of accountability and took away some statutory safeguards for corrupt politicians, judicial delay and legislative stagnation have been not tackled successfully so far. The paper demonstrates that the conviction-based disqualification system does not work properly because of the inefficiency of the judiciary.**

***Index Terms*—crime, politics, election, electoral finance, criminality**

I. INTRODUCTION

The paper presents a sound and exhaustive analysis of criminalization of politics in India, tracing the genesis and subsequent transformation of the problem from the muscle power of the 1970s to the recent trends of legislators entering the fray with serious criminal allegations. Using an effective doctrinal and analytical methodology, the study has analyzed various primary sources in the form of fundamental reports, precedents and literature to verify the central thesis, i.e., the relationship between crime and politics is a logical and perverse consequence of criminal money and "winnability" incentives.

There are several reasons why studying is important. First and foremost, the connection between crime and politics is essentially undermining the democratic system by creating a culture of impunity, which adversely affects the credibility of the police and the judiciary and leads to the deterioration of the legislature. In terms of practical application, this issue is highly relevant, as it influences the local administration, down to the poor condition of infrastructure in Indian cities like Pune, as well as the overall process of economic development of the country.

1.2. Literature Review

The researcher has reviewed these following works:

The first examines the historical evolution of the crime-politics nexus, with foundational reports like the Vohra Committee Report (1993)[1] providing official recognition of the entrenched links between criminal syndicates, politicians, and bureaucrats.

The second and arguably the most comprehensive stream centers on electoral dynamics. Scholars such as Milan Vaishnav, in his influential 2017 work When Crime Pays: Money and Muscle in Indian Politics[2], contend that in contexts marked by weak institutions and low public trust, voters may paradoxically support candidates with criminal reputations, perceiving them as capable enforcers who can deliver results. This body of literature delves into notions of "winnability,"

[1] Government of India, Ministry of Home Affairs, *The Vohra Committee Report*, para. 3.6 (1993).

[2] Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics*, Chap 1 & 2 (Yale University Press, 2017).

the strategic use of muscle power for voter mobilization and suppression of opposition, and the critical role of illicit financing in sustaining costly election campaigns.

The third stream evaluates institutional responses. This includes legal and political analyses of key Supreme Court judgments such as Union of India v. Association for Democratic Reforms (2002)[3] and Lily Thomas v. Union of India (2013)[4] as well as the role of the Election Commission of India (ECI), and critiques of the persistent legislative inaction by political parties in enacting substantive reforms.

What is sought to be achieved through this paper is the synthesis of all the three strands of literature to discuss the continuous gap between the proposed solutions and the practicalities involved. The claim made is that though there have been considerable judicial efforts, but what they have failed to achieve is that of paying attention to the problem of transparency and post-conviction disqualification. This has not addressed the political economy which prevails before elections.

1.3. Objectives of the study

1. To understand how the relationship between politics and crime started off as an insignificant one during the early independent era of India to what it has become today – a well-established problem.
2. To analyze the causes behind the relationship in terms of the actual economic and political factors which make criminals victorious such as high election expenditure, corruption, and 'winnability' syndrome.
3. To critically assess the effectiveness of the Representation of the People Act, 1951, the legislature, Election Commission, and key decisions of the Supreme Court in curbing the same.
4. To identify why the present laws are failing and providing practical solutions to overcome them.

1.4. Research Methodology

In order to conduct an analysis of the criminalization of Indian politics using a legal, political, and sociological perspective, the current study employs a qualitative, doctrinal, and analytical research methodology.

1.4.1. Doctrinal Legal Research

The essential legal framework for the research has been identified and analyzed by examining relevant primary legal materials, which include the following:

i. Articles from the constitution dealing with electoral qualifications and disqualifications.
ii. Relevant statutory laws including Representation of the People Act, 1951.
iii. Important judicial decisions including Union of India v. Association for Democratic Reforms (2002) and Lily Thomas v. Union of India (2013).
iv. Authentic reports from the Vohra Committee and Law Commission of India.

1.4.2. Descriptive Approach

In order to critically analyze the operation of these laws, the current study follows a dual approach by employing authentic data collected by the Association for Democratic Reforms (ADR) to determine the percentage and nature of criminal background among the legislature members.

II. HISTORICAL OVERVIEW OF CRIME AND POLITICS IN INDIA

The criminalization of Indian politics reflects a decades-long erosion of democratic norms. This chapter traces its evolution from early post-independence probity, through the 1970s "muscle power" era and subsequent legislative capture, culminating in the 1993 Vohra Committee Report.

2.1 The Early Post-Independence Era

In the immediate aftermath of independence, Indian politics bore the imprint of the nationalist struggle. Leaders of this era, largely veterans of the freedom movement, carried with them an aura of moral legitimacy and a public service ethos. The Congress Party's dominance, often described as a "one-party system within a democratic framework," provided stability and discipline within political structures[5].

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[3] *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294
[4] *Lily Thomas v. Union of India*, (2013) 7 SCC 653
[5] Rajni Kothari, *Politics in India* Chap 5 (Orient Blackswan,1970).

Corruption may have occurred, but it was limited to petty corruption, which was different from the latter stage when the criminal-political nexus took form. Instead of using force or financial power, the political conflicts that raged were intellectual ones, such as socialism versus capitalism and secularism versus communalism. Party organizations were in charge of nominating candidates, and loyalty and organizational prowess were valued more highly than financial strength. Because political criminalization had not yet taken hold, there was some integrity in the early republic.

2.2 The 1970s: Growth in Political Patronage and Muscle Power

The loss of Congress supremacy in the late 1960s ushered in an age of competitive multi-party politics. With regional parties asserting themselves and electoral margins shrinking, the stakes of elections increased significantly. Political actors began to seek new types of advantage, and local strongmen emerged as desirable allies.

At first, criminals entered politics as service providers rather than as candidates. Their role was to manipulate the voting process by violence and intimidation. Practices such as booth capturing first recorded in Bihar in the late 1950s but institutionalized by the 1970s and grew widespread. Political parties utilized hired force to take polling locations, prevent opposing voters from casting their ballot, and pack boxes with bogus votes.

Intimidation of voters was another method that gained notoriety through the use of criminals for frightening voters, interrupting meetings, and neutralizing opponents. This alliance exploited crime to further its political objectives. Deeper criminal involvement within the system was preceded by the criminals acting as the politicians outside muscle.

2.3 The 1980s and 1990s: The Criminal Direct Entry into Politics

The next decisive transformation occurred in the 1980s and 1990s. Criminals who had long operated as "contractors of violence" realized that they commanded the very assets politicians needed: money, loyal cadres, and fear. Instead of remaining subordinate agents, they began to enter politics directly.

Several factors converged to make this shift possible:

i. With the Congress system collapsing and coalition politics emerging, parties sought "winnable candidates" above all else. Wealthy strongmen, even with criminal backgrounds, became attractive choices.

ii. Campaign expenditure ballooned, and illicit money from criminal activities became indispensable to sustaining competitive campaigns[6].

iii. Don-turned-politicians could not only neutralize pending cases but also acquire the illusion of respectability and influence.

The transformation was profound: a don who once acted as the enforcer for a political party could now contest elections, win, and wield power as an MLA or MP. This brought legitimacy, control over state machinery (e.g., transfers of police officers, manipulation of investigations), and access to state funds.

Case studies from Bihar and Uttar Pradesh are instructive. Figures such as Shahabuddin in Siwan[7] and Pappu Yadav in Bihar[8] exemplify how dons transitioned into lawmakers. In Andhra Pradesh, the nexus between factional leaders and regional parties became equally entrenched. The criminal was no longer a tool of politics rather he became the politician. This period marks the fusion of crime and politics, where the line between public service and criminal enterprise dissolved.

2.4 The Vohra Committee Report (1993):

The Vohra Committee Report of 1993 was the first official recognition of the systemic and

[6] Centre for Media Studies (CMS). (2019). *Poll Expenditure, The 2019 Elections*. CMS India.

[7] Santosh Singh, "From terror to political power: the rise and fall of Mohammad Shahabuddin", *The Indian Express*, May 1, 2021, available at: https://indianexpress.com/article/political-pulse/from-terror-to-political-power-the-rise-and-fall-of-mohammad-shahabuddin-7297121/ (last visited on September 6, 2025).

[8] Amarnath Tewary, "A bahubali trying to shed his muscleman image", *The Hindu*, April 19, 2024, available at: https://www.thehindu.com/elections/lok-sabha/a-bahubali-trying-to-shed-his-muscleman-image/article68082986.ece (last visited on September 6, 2025).

institutionalized link between crime and politics.[9] Headed by the Union Home Secretary, N.N. Vohra, the committee was tasked with examining the role of criminal syndicates in governance.
Its findings were shocking. It noted that a "network of mafias" had come to wield significant influence over politics, bureaucracy, and law enforcement. In some areas, it warned, these networks had grown so powerful that they effectively ran a parallel government, rendering state institutions irrelevant.
The report identified electoral finance as the key driver of this nexus. Political campaigns demanded vast sums of money, which criminal syndicates were able to provide. In return, they received political patronage and legal immunity. This "unholy alliance" was sustained by systemic weaknesses in enforcement, political interference in investigations, and the absence of a centralized intelligence mechanism.
Although the report was a watershed in acknowledging the scale of the problem, it was never fully published, and its recommendations were largely ignored. Its suppression reflected the very problem it sought to expose: the unwillingness of the political class to confront a system that had become mutually beneficial.
What began as occasional reliance on local muscle has, over decades, transformed into a systemic fusion of politics and crime. The historical genesis of this nexus sets the stage for understanding why criminalization has become entrenched, why reforms have largely failed, and why the problem today represents not just a legal or electoral issue, but an existential challenge to the Indian democratic project.
The criminalization of politics in India is a historical process that evolved through distinct stages. Following a period of relative probity in the post-independence era, the 1970s saw the rise of "muscle power,' where political parties began using criminals as external agents for electoral malpractices like booth capturing in exchange for political protection. This mutually beneficial connection altered in the 1980s and 1990s, as criminals, strengthened by their wealth and the weakening of party institutions, entered politics directly to become legislators themselves, thereby combining crime with governance. The 1993 Vohra Committee Report, which warned of a "parallel government" managed by a mafia network, formally recognized the seriousness of this connection, although its conclusions were mainly buried. This trend poses a systemic threat to Indian democracy since it depicts a somber progression from criminals being employed by politicians to criminals becoming politicians.

III. THE POLITICAL ECONOMY OF CRIMINALITY IN INDIAN POLITICS

We must look beyond moral critique and investigate the underlying structural elements that support the criminalization of politics in order to comprehend why it persists. The nomination and subsequent victory of candidates with criminal histories are not flaws; rather, they are the inevitable results of a political ecology where identity, wealth, and power come together. As highlighted in M. Vaishnav's work, political parties, voters, and candidates all make deliberate choices in an environment where institutions are weak, election rivalry is intense, and governance failures drive individuals to look for unofficial methods of power.
This chapter describes the political and economic logic of the phenomenon of criminality in Indian politics. It is concerned with four interrelated elements, namely the doctrine of 'winnability', the role of illicit finance, the importance of caste and community, and the institutional decline of party organization. All of this creates an environment where criminal candidates are not just tolerated, but actively incentivized.

3.1 Winning Probability:

For any political party, the overriding aim is electoral victory. In choosing candidates, a candidate's perceived "winnability" often takes precedence over considerations of integrity, ideology or past service to the party. As discussed in M Vaishnav's work, a candidate with a criminal background is often perceived to have a competitive advantage because they possess resources, influence and loyalty that "clean" candidates do not have.
The paradox is that criminal charges are not disqualifiers; sometimes they enhance a candidate's reputation as a "strongman." Voters view such leaders as delivering immediate results where governance is weak and state institutions are unresponsive.

[9] Min. of Home Affairs, Gov't of India, Vohra Committee Report (1993).

Political scientist Milan Vaishnav, in his influential study When Crime Pays: Money and Muscle in Indian Politics (2017), demonstrates through empirical analysis that candidates with criminal records are three times more likely to win elections than their "clean" counterparts. This is because of several intertwined factors:

1. Clientelist Services
- Criminal politicians are able to bypass bureaucratic hurdles and deliver services such as ration cards, welfare entitlements, or even road repairs.
- For many voters, particularly in rural areas, the immediacy of these benefits outweighs abstract concerns about legality or morality.

2. Extra-Legal Adjudication
- The Indian judicial system is plagued with delay: over 5 crore cases were pending across all courts, with an average disposal time of 10–15 years in civil and criminal disputes[10].
- In this vacuum, criminal politicians act as informal adjudicators, resolving disputes quickly, even if coercively.

3.2 The Role of Illicit Finance:

Elections in India are among the most expensive in the world. Despite the Election Commission of India (ECI) prescribing official spending limits (e.g., ₹70 lakh for a Lok Sabha constituency candidate in 2019), actual expenditures far exceed these caps. A 2019 Centre for Media Studies (CMS) report estimated that the 2019 Lok Sabha elections cost around ₹60,000 crore (approx. $8 billion), making it the most expensive election in world history after the U.S. presidential elections. Of this, a significant portion was unaccounted "black money," funnelled through unregulated cash flows, gifts, and welfare distribution.

Why Criminal Candidates Excel in Election Finance

1. Self-Financing Ability
- Candidates with criminal backgrounds often accumulate vast fortunes through illicit activities such as land-grabbing, extortion, mining, and smuggling.
- These resources allow them to finance their own campaigns, making them less dependent on party coffers.

2. Fundraising Networks
- Their entrenched networks in business, crime syndicates, and local power structures enable them to raise large sums from "donors."
- Donations are often extorted, but business groups see it as an "investment" for securing protection or favorable policies.

3. Vote-Buying Practices
- According to ECI the distribution of liquor, cash, and gifts to voters during elections is rampant. A 2019 ECI report revealed seizures of ₹3,475 crore worth of cash, liquor, narcotics, and gold during the election period[11].
- Criminal candidates, with access to liquid cash, dominate this grey economy of electoral patronage.

3.3 The Interplay of Caste and Community:

The persistence of criminality cannot be explained without reference to India's deeply embedded social differences, particularly caste and community identities.

3.3.1 The Role of Identity in Neutralizing Criminality
- Recent trend is that the voters evaluate candidates not on their criminal record but on their capacity to represent and protect their caste or religious group.
- Charges of criminality are reframed as conspiracies by rival communities or hostile governments.

[10] National Judicial Data Grid, "NJDG Home", *e-Courts Services*, available at: https://njdg.ecommittee.gov.in/ (last visited on September 9, 2025).

[11] Election Commission of India, "General Election 2019 - Seizures Made So Far", *Press Note No. ECI/PN/56/2019*, May 21, 2019, available at: https://www.eci.gov.in/files/file/10043-general-election-2019-seizures-made-so-far/ (last visited on October 9, 2025).

For example:
- In Uttar Pradesh, leaders like Mukhtar Ansari and Atiq Ahmed enjoyed sustained electoral success despite facing numerous criminal charges, largely because they were perceived as protectors of Muslim communities in communally sensitive constituencies as stated by The Indian Express[12].
- Similarly, in Bihar, Anant Singh ("Chhote Sarkar") cultivated an image of a Robin Hood figure who safeguarded the interests of his Bhumihar caste[13].

This intersection of caste identity with criminality transforms charges into symbols of resistance, further legitimizing criminal politicians.

3.3.2 The Decline of Party Organization

Finally, the institutional weaknesses of political parties themselves exacerbate the criminalization of politics.

1. From Cadre-Based to Candidate-Centric Politics
- In the early decades post-independence, parties like the Congress and Communist parties had robust internal democracy and cadre-based systems. Candidates were selected based on loyalty and ideological commitment.
- Today, most parties have become leader-centric electoral machines, where ticket distribution is determined by central leadership based on private surveys, consultants, and financial strength.

2. Consequences of Weakening Party Structures
1. Top-Down Candidate Selection
- The absence of grassroots input means tickets go to resource-rich candidates with local dominance, often strongmen.
2. Decline of Ideology
- Parties prioritize pragmatic considerations of money and winnability over ideological commitment.
3. Marginalization of Loyal Cadres
- Lifetime party workers without financial clout are side lined in favor of wealthy "musclemen."

For instance, in states like Uttar Pradesh and Bihar, several political parties have admitted candidates facing multiple criminal charges simply because they had the capacity to self-finance campaigns and mobilize caste-based vote banks. ADR's analysis of party candidates in the 2019 Lok Sabha elections shows that all major parties including BJP, Congress, SP, RJD fielded between 25% and 40% candidates with declared criminal cases[14]. This demonstrates not isolated lapses but a systemic reliance on criminal candidates across the political spectrum.

The rise of criminalization in Indian politics is not accidental; it is deeply rooted in the structural realities of the political economy. Winnability, illicit finance, social factors, and institutional decay together sustain and normalize the dominance of criminal politicians. Any reform must therefore go beyond moralistic appeals and address these structural incentives through state funding of elections, fast-track courts for politicians, stricter disqualification norms, and internal party democratization as discussed by Law Commission of India.

IV. LEGISLATIVE EFFORTS TO CURB CRIMINALIZATION OF POLITICS

Criminalization of politics persists not only because political parties' field "winnable" candidates with money and muscle power, but also because the legislative framework has failed as a filter.

The principal statute i.e. the Representation of the People Act, 1951 (RPA) was enacted to operationalize constitutional provisions on electoral qualifications and disqualifications. Yet, despite its lofty objectives, it has proven inadequate. Far from being a deterrent, it

[12] Asad Rehman, "The fall of Mukhtar Ansari and Atiq Ahmed in UP's Purvanchal", *The Indian Express*, April 8, 2023, available at: https://indianexpress.com/article/explained/explained-politics/mukhtar-ansari-atiq-ahmed-gangsters-in-ups-purvanchal-8544921/ (last visited on October 9, 2025).

[13] Prashant Srivastav, "Mokama's 'Chhote Sarkar' Anant Singh: A story of crime, caste politics & an AK-47", *The Print*, August 28, 2019, available at: https://theprint.in/politics/mokamas-chhote-sarkar-anant-singh-a-story-of-crime-caste-politics-an-ak-47/282215/ (last visited on October 9, 2025).

[14] Association for Democratic Reforms, *Lok Sabha Elections 2019: Analysis of Criminal Background, Financial, Education, Gender and other details of Candidates*, May 2019, available at: https://adrindia.org/sites/default/files/Lok_Sabha_2019_Analysis_of_Criminal_Background_Financial_Education_Gender_and_other_details_of_Candidates.pdf (last visited on October 9, 2025).

has become a permissive structure, allowing thousands of individuals facing grave criminal charges to contest elections and occupy law making positions.

The rising curve of criminalization has unfolded under the very nose of the RPA. This raises critical questions: Was the law structurally incapable of addressing the problem? Or has it been deliberately weakened by legislative inertia to preserve the political class's self-interest?

This chapter critically examines the statutory framework, especially Section 8 of the RPA, its historical weaknesses, case laws, and the missed opportunities for reform.

4.1 Constitutional Mandate and the Representation of the People Act, 1951

The Constitution of India provides the foundation for electoral disqualifications.

- Article 102(1) governs disqualifications of Members of Parliament[15].
- Article 191(1) governs disqualifications of Members of State Legislative Assemblies[16].

Both list grounds such as holding an office of profit, unsoundness of mind, insolvency, or allegiance to a foreign state. Crucially, Articles 102(1)(e) and 191(1)(e) empower Parliament to legislate further disqualifications. It is under this enabling power that Parliament enacted the RPA, 1951.

The RPA was envisioned as more than a procedural law for elections. It was to be the gatekeeper of democracy, ensuring that legislators are persons of integrity. However, as criminalization deepened in the 1970s and 1980s, the Act proved ineffective, largely because of its conviction-based disqualification model.

4.2 Section 8 of the RPA: The Toothless Tiger

Section 8[17] is the heart of disqualification law. It specifies when criminal convictions lead to disqualification. A closer analysis reveals both intent and inadequacy.

4.2.1 Section 8(1): Offences against the State and Social Fabric

The rationale behind it was that a person convicted of dividing society, corrupting elections, or committing terrorism cannot hold public office. However, the list is narrow and excludes major heinous crimes like murder and rape which puts limitations on it.

4.2.2 Section 8(2): Economic Offences

Applies to convictions with at least six months imprisonment for:

- Hoarding and profiteering.
- Adulteration of food/drugs.
- Dowry-related offences.

The law targets act of economic exploitation or moral turpitude, but economic crimes often take decades to resolve in courts and rarely lead to swift convictions.

4.2.3 Section 8(3): The General Clause

Provides disqualification for any offence with a sentence of two years or more.

This is the most frequently invoked section.

- Example: Lalu Prasad Yadav was disqualified in 2013 under Sec 8(3) after his conviction in the Fodder Scam[18].

4.2.4 Section 8(4): The Shield for Sitting Legislators (Struck Down in 2013)

Earlier, sitting MPs/MLAs could avoid disqualification if they filed an appeal within 3 months. This created a two-tier system: ordinary citizens were disqualified immediately, but legislators could continue in office indefinitely.

- In Lily Thomas v. Union of India (2013), the Supreme Court struck down Sec 8(4), holding that immediate

disqualification applies equally to all[19].

4.3 The Core Flaw: Futility of Post-Conviction Disqualification

The post-conviction model is the Achilles' heel of the RPA. While "innocent until proven guilty" is sacrosanct in criminal jurisprudence, its mechanical extension to electoral law has subverted democracy.

[15] Art. 102(1) of the Constitution of India 1950.
[16] Art. 191(1) of the Constitution of India 1950.
[17] S. 8 of the Representation of the People Act, 1951.
[18] Roy, A. (2013, September 30). "Lalu Prasad Yadav convicted in fodder scam, disqualified from Parliament." *The Hindu*.
[19] *Lily Thomas v. Union of India*, (2013) 7 SCC 653

Many politicians facing murder, kidnapping, or rape charges since the 1990s have contested multiple elections while trials dragged on. Example: Several Bihar and UP legislators faced dozens of FIRs, yet served as ministers because cases never reached conviction. This makes Section 8 a paper tiger: the sword of disqualification rarely falls during a politician's career. Thus, politicians can contest 3,4 elections before a trial concludes.

4.4 Legislative Inertia: The Politics of Self-Preservation

Despite repeated calls for reform, Parliament has avoided amending Section 8. The consistent failure of the Indian Parliament to amend Section 8 of the Representation of the People Act, 1951, is not an oversight or a result of legislative gridlock. Instead, it is a clear and calculated case of legislative inertia. A deliberate inaction born from a powerful, cross-party consensus to protect the vested interests of the political class. This phenomenon is rooted in the "politics of self-preservation," where incumbent and aspiring lawmakers from all sides of every party quietly agree to maintain a flawed system that benefits them, even at the expense of democratic integrity.

As established in the analysis of political economy, candidates with immense financial resources and local coercive power ('muscle') are often seen as having high 'winnability.' Every major political party, at some level, relies on such candidates to win crucial seats. Enacting a stricter disqualification law such as barring candidates at the charge-framing stage would decimate the pool of these "winnable" candidates for all parties. No single party is willing to unilaterally disarm itself by championing a reform that its rivals will continue to flout. This creates a classic 'prisoner's dilemma' where the collective best interest (cleaner politics) is subverted by individual party interests (winning the next election).

Politicians publicly defend their inaction by invoking the sacred legal principle that a person is innocent until proven guilty. They argue that disqualifying someone at the charge-framing stage would be unjust and could be misused to launch politically motivated witch-hunts against opponents.

However, this argument is a red herring in the context of electoral law. The standard for holding a high public office should arguably be stricter than the standard for avoiding criminal conviction. The purpose of disqualification is not to punish an individual but to protect the sanctity of the legislature. By conflating these two distinct legal purposes, the political class creates a convenient moral shield to hide its self-serving agenda.

The most blatant evidence of this self-preservation instinct was the political establishment's reaction to the Supreme Court's landmark 2013 judgment in Lily Thomas v. Union of India. The verdict, which mandated the immediate disqualification of convicted legislators, was met with unified opposition from almost all political parties.

The government of the day swiftly introduced the Representation of the People (Second Amendment and Validation) Bill, 2013, with the explicit goal of nullifying the Court's judgment. This was a rare instance where the government and the opposition were largely in agreement. The attempt only failed due to immense public and media pressure, which forced the government to withdraw the bill. This episode laid bare the true intentions of the political class: when their own immunity is threatened, they are willing to use their legislative power to overturn even a vital judicial reform.

Legislative inertia on this front is not a passive state but an active, ongoing political project. It is a calculated strategy to maintain a system where the entry barriers for individuals with criminal backgrounds remain conveniently low, ensuring that the nexus of money, muscle, and politics continues to thrive.

4.5 Comparative Perspective

A comparative perspective on electoral disqualification laws reveals just how permissive and inadequate India's current legal framework is. Examining the practices in other major democracies highlights that a much lower threshold for barring individuals from public office is not only feasible but is considered essential for maintaining legislative integrity.

4.5.1 United Kingdom:

In the United Kingdom, under the Representation of the People Act 1981, a person is disqualified from being a Member of Parliament if they are sentenced to a term of imprisonment exceeding one year. This standard, while still based on conviction, is significantly stricter than India's two-year sentencing requirement and reflects a stronger stance against serious criminal conduct by public representatives.

4.5.2 Brazil

Looking further afield, Brazil makes a strong case for taking the initiative. After a massive public movement, in 2010 it passed the "Ficha Limpa" or "Clean Record Law." This landmark legislation prevents candidates from running if they have been convicted of a serious crime by a trial court even if their appeal is pending. This directly tackles the problem of judicial delays, preventing the lengthy appeals process from being used as a tool by those convicted by a court of first instance to hold public office. This is unlike the Indian model where the entire process of appeals needs to be completed before a disqualification becomes effective.

4.5.3 Italy

Similarly, Italy, in the wake of its "Mani Pulite" or "Clean Hands" anti-corruption investigations in the 1990s, has adopted stringent measures[20]. For example, the Severino Law prohibits both convicted politicians and those under trial for major offenses, like as corruption, from entering public office. This indicates a clear legislative intention to treat even a plausible accusation of a major conduct as a temporary impediment to occupying a position of public trust.

India's is undoubtedly the weakest. The system is ripe for exploitation because we have a post-conviction model, meaning they can only be disqualified after all appeals have been exhausted. Other democracies have started to disqualify candidates on the basis of sentencing thresholds, trial court convictions or even the framing of charges. But legislative inertia has kept India firmly tethered to a framework that prioritizes the rights of accused politicians over the integrity of its democratic institutions.

The RPA, 1951 was meant to be a safeguard, but the disqualification model based on conviction only has failed. Section 8, intended as a filter, is a shield. Convictions rarely end political careers because of decades of judicial delays. Without disqualification at the charge-framing stage, supported by fast-track courts and strong electoral reforms, the RPA will be a toothless tiger and Indian democracy will be vulnerable to criminal capture.

V. THE JUDICIAL RESPONSE

The Supreme Court took the initiative to propose election reforms through PIL and constitutional interpretations in view of these criminal and political ties and the lack of legislative action. It made the disclosure process for candidates more transparent, but it also made the limitations of court intervention clear.

5.1.1 Union of India v. Association for Democratic Reforms (2002):

The foundational moment in this judicial saga was the landmark judgment in Union of India v. Association for Democratic Reforms (ADR)[21]. The case originated from a letter written by a professor to the Delhi High Court, which was converted into a PIL, seeking the disclosure of the criminal, financial, and educational backgrounds of candidates. The High Court ruled in favour of disclosure, a decision the Union of India promptly appealed in the Supreme Court.

The central legal question was whether the Election Commission of India (ECI) could be directed to compel candidates to disclose such information in the absence of a specific provision in the Representation of the People Act, 1951 (RPA). The government's case was based on a positivist reading of the law: neither the ECI nor the courts could impose such a requirement because Parliament, in its legislative wisdom, had not deemed appropriate to demand such disclosures. In the area of electoral law, this was a defense of parliamentary supremacy.

In Justice M. B. Shah's ruling, the Supreme Court rejected the government's limited interpretation. The Court's logic, which connected voting procedures to people' fundamental rights, was a brilliant exercise in constitutional interpretation. The main ideas behind its logic were:

1. Expansive Interpretation of Article 19(1)(a): The Court held that the freedom of speech and expression, guaranteed under Article 19(1)(a), is not merely the right to express one's own views but also includes the right to receive information. For a voter to effectively exercise their freedom

[20] Curi, U., & Gelli, F. (2014). "The 'Anti-Corruption' Law in Italy: An Assessment." *European Journal of Crime, Criminal Law and Criminal Justice*.

[21] *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

of expression at the ballot box, that choice must be informed. An uninformed choice, the Court reasoned, is no real choice at all. Therefore, the "right to know" the antecedents of a candidate were held to be an integral, though implicit, part of Article 19(1)(a).

2. The Essence of a Free and Fair Election: The Court connected this right to the broader constitutional mandate of ensuring free and fair elections, which is the cornerstone of democracy. It observed that casting a vote is a form of speech, and for this speech to be meaningful, the voter must have the necessary information to evaluate the person they are electing to a position of public trust.

5.1.2 PUCL v. UoI (2003)

The political establishment's reaction to the ADR judgment was one of immediate and unified hostility. In an attempt to nullify the Court's verdict, Parliament swiftly amended the RPA, 1951, by inserting Section 33B. This new section explicitly stated that, notwithstanding any judgment or order of any court, a candidate was not liable to disclose any information other than that which was required under the Act itself. This was a direct legislative challenge to the Supreme Court's authority.

This led to the second crucial case in this saga, People's Union for Civil Liberties (PUCL) v. Union of India (2003)[22]. The Supreme Court was now tasked with deciding the constitutionality of Section 33B of RPA. The Court, in a powerful reassertion of its role as the guardian of the Constitution, struck down Section 33B as unconstitutional. It held that the "right to know" was a fundamental right and that Parliament could not, through legislation, abrogate a fundamental right that was part of the Constitution's basic structure. The Court declared that the legislative amendment was an attempt to "make the people's right to know a 'mockery'."

In accordance with the guidelines given by the Supreme Court in the ADR and PUCL case, the Election Commission of India required candidates to submit affidavit (Form 26) stating their criminal, financial, and academic credentials, creating the huge databank of information related to criminalization.

This decision was based on rational choice theory; transparency would help voters to reject candidates with a criminal background. "Sunlight of transparency" was seen as the best disinfectant. But, after two decades of analysis, it can be stated that the optimism was not justified. Many voters, especially in underdeveloped regions, do not focus on the criminal record of a candidate, despite having access to it. Clientelism, identity politics, and patronage sometimes become more important than the tainted past of the candidate.

Thus, the main drawback of transparency reform is revealed; although information is crucial, it alone does not lead to rational behavior in elections in the Indian context.

5.1.3 Lily Thomas v. Union of India (2013):

The next major judicial intervention targeted a specific and gross legal loophole that provided a safety net for convicted legislators. As discussed in the previous chapter, Section 8(4) of the RPA, 1951, created a special privilege for sitting MPs and MLAs, effectively insulating them from disqualification upon conviction while their appeals were pending.

The case of Lily Thomas v. Union of India[23] resulted in the declaration as unconstitutional of Section 8(4) of the Representation of the People Act that provided immunity from disqualification from holding office as a legislator in the case of a conviction for a period of three months.

The Court ruled that Parliament could not make an artificial distinction between the citizens and the legislators who are elected to represent the people. Article 102(1) and 191(1) of the constitution impose similar disqualifications on both categories. The judgment provided for immediate disqualification and a two-year sentence following a conviction.

It unseated several prominent politicians. However, its impact is quite narrow. Though it eliminated post-conviction impunity for the legislators, it has done little to solve the much bigger issue of pre-conviction impunity resulting from long-drawn-out cases and poor conviction rates. Over the years, the court has grown increasingly frustrated.

[22] *People's Union for Civil Liberties (PUCL) v. Union of India*, AIR 2003 SC 2363.

[23] *Lily Thomas v. Union of India*, (2013) 7 SCC 653.

5.1.4 Public Interest Foundation v. Union of India (2018),

In this instance, the petitioners once more requested that the Court exclude applicants who had been charged with horrible offenses. Despite voicing serious concerns about the "dismaying and disconcerting" situation, the Court ultimately refrained from taking action.

It concluded that creating a new ground for disqualification was a legislative function that fell within the exclusive domain of Parliament. This was a moment of judicial self-restraint, acknowledging the separation of powers[24].

However, the Court did not stop there. Invoking its powers under Article 142 to do "complete justice," it issued a series of directives aimed at "naming and shaming":

I. Political parties were ordered to publish the criminal antecedents of their candidates in widely circulated newspapers and on television channels on at least three occasions after the filing of nomination papers.

II. They were also directed to put up this information on their official websites and social media platforms.

When it became clear that parties were complying with these directions only mechanically (e.g., publishing in obscure newspapers or at odd hours), the Court, in a subsequent case in 2020, escalated its directives[25]. It ordered parties to not only publish this information but also to submit a report to the ECI explaining why they could not find a candidate with a clean record and why they felt compelled to select a candidate with criminal antecedents. Failure to do so would result in contempt of court proceedings.

The money-muscle nexus drives the demand for criminal candidates. To combat this, India should implement partial state election funding, create a transparent National Election Fund, and mandate annual CAG audits for political parties.

VI. CONCLUSION

In this paper, I have looked at the problem of the criminalization of politics in India, and come to the realization that it is a highly ingrained problem which does not have simple solutions. From the transactional "muscle power" of the 1970s to the complete integration of crime with political power, the process has evolved. This is demonstrated by the startling 43% of Members of Parliament facing criminal charges in the 17th Lok Sabha, a sharp increase from 24% in 2004. Driven by the system itself, this is a logical, perverse reaction. Parties concentrate on "winnability" and illicit election funding in an atmosphere where the 2019 general elections cost about ₹60,000 crore. Therefore, the chances of winning were 5% for honest people and 15.5% for criminals.

However, the courts and legislation now in place have shown to be inadequate in this regard. Disqualification following conviction lies at the heart of the Representation of the People Act, 1951. With almost 5,000 lawsuits against serving parliamentarians still waiting in Indian courts due to judicial delays, it is ineffective. As a result, offenders who are awaiting trial enjoy total impunity. Furthermore, the Supreme Court's forced disclosure rules demonstrate its limitations in terms of impact: the number of tainted members of parliament keeps rising continuously in spite of the mandatory disclosure requirements. The computation of criminals' election success cannot be impacted by disclosure in and of itself. It stands for the most severe corruption that violates the rule of law in the democratic republic of India.

This system has to be completely redesigned with the goal of addressing the root causes rather than just the symptoms. In order to address the issue of the enormous number of cases that are still pending, it is imperative that electoral finance laws be urgently reformed in order to eliminate the reliance on tainted funds. Additionally, legislation that prohibits candidates facing serious criminal charges from running for office at the time the charges are brought must be changed. In order to combat oligarchy and dynasticism within political parties, they must also be forced to engage in intra-party democracy.

[24] *Public Interest Foundation v. Union of India*, (2019) 3 SCC 224.

[25] "Publish Criminal Antecedents Of Candidates Within 48 Hours Of Selection: Supreme Court Modifies Its February 2020 Judgment", *LiveLaw*, August 10, 2021, available at: https://www.livelaw.in/top-stories/supreme-court-political-parties-publish-criminal-antecedents-of-candidates-48-hours-of-selection-179379 (last visited on October 9, 2025).

VII. RECOMMENDATIONS

The criminalization of politics in India is deeply rooted in the electoral and political economy. Piecemeal judicial interventions have proved insufficient. A holistic reform agenda is needed to change the incentive structures that allow crime to become a pathway to political power.

7.1. Reforms in Electoral Finance

i. The connection between money and muscle power fuels the requirement for criminal candidates. Some of the measures that should be taken into consideration are:

ii. Partial Government Funding for Elections: Adopt the Indrajit Gupta Committee (1998) suggestion in terms of in-kind contributions through providing free airtime on Doordarshan and All India Radio, as well as some amount of fuel, transportation and printing materials for legitimate political parties, as well as common platforms for rallies. It will decrease dependence on illegal private financing.

iii. National Election Fund: Substitute the scrapped Electoral Bonds scheme with the creation of public fund which would accept individual and corporate donations. The funds should be provided transparently to political parties in proportion to their previous electoral performance.

iv. Annual Auditing of Parties Accounts: Political parties are entitled to 100% tax exemption according to Section 13A of Income Tax Act. They should be audited annually by CAG.

7.2. Strengthening Disqualification Laws

The existing post-conviction disqualification mechanism is ineffective because of the extensive delays in the judicial process. In 2019, 90 percent of the MPs who won the election and had some criminal cases against them were still under trial, while 40 percent of the cases against legislators did not get beyond the stage of framing the charges. Amend the Representation of the People Act (RPA), 1951, to disqualify the candidate in respect of whom charges have been framed for serious crimes (with punishment more than five years of jail term). This should apply only to those cases which have been framed within a year before the election from the police charge sheets.