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***Title: “All About Criminalisation of Politics: Challenge to Indian
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School, Nagpur,***

Email Id: aryanmohanty482@gmail.com.



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ABSTRACT:

“Democracy is often described as being by and for the people. The people occupy the centre stage of democracy in this sense. Nonetheless, even after 75 years of freedom, the lives of the average person have reportedly worsened. Democracy involves the rule of law, adherence to the principles of the Constitution, and the norms of morality and legal propriety. But, during the years since independence, social, political, and economic upheaval have all come to be linked to crime in much the same way that an umbilical cord connects a mother and child. Politics used to have morals, but that is no longer the case. Politicians are embroiled in controversies in every Indian state. They have developed a relationship with criminals over the years, and these criminal forces have taken control of democracy. No party is immune to the influence of criminals, and the leaders benefit from a favourable system. Unfortunately, legislative issues in the most popular government on the planet are now associated with the gun culture. These people are picked for the Parliament and State councils and are in charge of overseeing and operating the nation despite such records and illegal interests. The criminalization of governmental affairs has become a painful reality for the vote-based government of India. Much worse than criminal intimidation is this. Our forebears, who fought for our chance and their fight behind the fight 75 years ago, had a fantasy, but we now witness the illusion being destroyed. The paper tries to analyse how criminalisation started in India, how it impacted democracy in India, and how the judiciary attempted to resolve this problem. Also, the paper highlights the steps taken for electoral reform and how to implement them”.

I. INTRODUCTION:

In Indian politics, the criminalisation of politics has emerged as a persistent phenomenon. This needs to be discussed because it goes against the basic foundations of democracy. A rule that was supposed to be guided by the law became a rule of money and force. The acceptance of these features by both political parties and the general populace is even more surprising since it implies that the people have the authority to act in opposition to democratic principles. Hence, democracy has turned into a paradox of democracy. This results in rejecting all the democratic safeguards outlined in our constitution, meaning that the legislative, executive and judicial

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branches of government are weakening and becoming more corrupt.¹ “*When Wrongdoing Pays: Money and Muscle in Indian Legislative Issues*” by Milan Vaishnav explains how goondas and mafias have been a part of component governmental concerns ever since the establishment of the Indian vote-based system. The number of political parties in the country has significantly increased. Political standards have not improved due to the increase in political parties; instead, it is a sign that standards have declined to pitifully low levels and that the spirit of nationalism is waning. That can be inferred from the appalling living circumstances of the populace. Under colonial rule, the lives of the majority were worse.

Even so, the advantages of living in a free and democratic country have not yet been felt by all citizens. A group of people still control policy, either by funding the government or being part of it. This allows them to influence the decision-makers to accomplish their goals. Aiming for wealth and dominating the bureaucrats and law-abiding citizens, criminals and rowdies with a history of hooliganism are now drawn to the political sphere. As a result, instead of being a profession devoted to ensuring the well-being of the subjects in question, politics in the country has evolved into a lucrative business.² An attempt to criminalise politics in a country involves the direct infiltration of criminals into political parties, the legislative, including the parliament, through elections, and the employment of criminal methods and tactics to influence political processes and procedures. Politicians frequently buy votes in today's society using their financial or physical might. Politics being made illegal is a very problematic development for Indian democracy. Political crime is becoming more prevalent. Of course, this harms democracy. Politics has been made a crime for several reasons. The caste system, the notion of religious superiority, and a lack of democratic responsibility may be a few. Citizens in a country that practises true democracy are free to express their opinions, make criticisms, and disagree. Tolerance should be the cornerstone of democracy. Democracy shouldn't suppress people's personal views and beliefs; instead, it should allow them to thrive and give them a forum to

¹ Neha Sharma, *Criminalisation of Politics-A Threat to Democracy*, Vol.3 Issue 2,3, LMQOL, 86, 86-87 (2015)
<https://journal.lawmantra.co.in/wp-content/uploads/2015/10/10.pdf>

² Ibid

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discuss the problems with a democratic administration. But, if a nation's political system is populated by political figures who care little about their country, their growth and prosperity become their top priorities. Becoming a world power and gaining respect on the international stage are mutually exclusive. It might fail to give its residents the kind of country they wish they could live. Politics being criminalised is an issue that originated within the political system and is attempting to cripple all democratic institutions in this nation. The criminalization of politics has permeated the system so thoroughly that people no longer believe in notions and values like the rule of law, political accountability, free and fair elections, democracy, and freedom of speech and expression.³ In his article "*Electoral Reforms: Standards in Political Life*,"⁴ Justice Arun Madan of the Rajasthan High Court analyses the significance of election fraud and the criminality of politics in India and claims that democracy is built on the "Will" of the people. But, this "Will" must be expressed in a way that complies with the law. Yet, money and forces have undermined the "will" of the people. The criminalization of politics has led to a rise in the influence of cash and power in Indian politics.

II. MEANING OF CRIMINALISATION OF POLITICS:

Politics being criminalised is not the product of a single cause. Yet, it is the result of many factors and has an impact beyond a nation's political climate and stability. Yet, it affects the country's overall growth. Today, the study benefits India's social, legal, and political structure. Under this political model, people with criminal histories enter politics, win elections, and join the legislative branch. This primarily operates in two ways: first, politicians support criminals because they need their strength, resources, and influence; second, criminals are guaranteed protection from politicians.⁵ Election rigging, violence incitement, proxy voting, booth capture, financial support for politicians from criminals, intimidation of candidates, and murder of party

³ Sriya Shubhalaxmi Mishra, *The Concept of Criminalization of Politics in India* (November 12, 2019). *Manupatra Articles*, Forthcoming. Available at SSRN:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3598954 (Last visited on February 18, 2023 at 09:23 PM)

⁴ AIR 2002 37

⁵ M.P. Jain, *Indian Constitutional Law*, (8th ed. Justice Jasti Chelameswar ed., Justice Dama Seshadri Naidu ed., Lexis Nexis Butterworth 2008)

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employees all include criminals. Also, they provide politicians who link with them with cash and resources. When elected, politicians exploit public resources to protect criminals. Under the covert support of politicians, criminals also broaden their range of operations. The criminalisation of politics progresses in this way.⁶ When individuals with self-interest utilise political authority for dishonest and financial gain or other advantages, such as to obtain a particular position in the administration or to advance to a higher degree of administration, which is typically not possible, thus, it is generally referred to as the criminalization of politics when political authority has been or is being utilised by some individuals to get unwarranted advantages and when this is widespread in politics. Using political influence, one may obtain an ill-gotten advantage or acquire anything illegal or improper. Here, the word "crime" has a specific political meaning. Crime refers to an action that is a significant offence against a person or the state and is sanctioned by the law. Hence, using political influence to obtain something is illegal and punished. For instance, a government officer desires to be promoted to a higher post even if it is not his right. The person uses political influence to carry out his purpose. But this is different from where the issue ends. The individual who assisted in obtaining an impropriety will once more use this person to further his indiscretion. This is the give-and-take policy, and it takes place behind closed doors.⁷

Political influence is the best tool for bringing about social and economic change in every nation. But, in a corrupted system, politics is the simplest means of obtaining financial goals. The two main factors that support the criminalization of politics are money and force. These two powers are displayed during the election process. Two moral and legal dilemmas are connected to financial strength. The ethical issue is that the contenders for office strive to influence the vote through money and power. The vote should be merit-based and not dependent on material possessions. The candidate is not following the mandated limit imposed by the Election Commission, which is the legal side of exceeding the expenditure cap. Also,

⁶ Sriya Shubhalaxmi Mishra, supra note 4

⁷ Gulshandeeep & Dr. Sumanpreet Kaur, *Criminalisation of politics in India: Evolution and Causes*, Vol.7 Issue 10, JETIR, 2060, 2060-2061 (2020) <https://www.jetir.org/papers/JETIR2010267.pdf>

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the candidate is they were spending extravagantly using "*black money*," cash obtained illegally. "*Muscle power*" is the second aspect of the criminalization of politics. Since the 1970s, public employment of musclemen has been used to win votes and affect the attitudes and behaviours of the electorate. This has been portrayed in Indian popular culture with a strong sense of realism. Movies like "*Rakhta Charitra*" and "*Gangs of Wasseypur*" have demonstrated how electoral victory is achieved through force and cash. Instead of only giving the candidates their physical might, these musclemen began to enter the political sphere in the 1990s. This change in Indian politics' trajectory further tainted the political landscape. A well-known political commentator and academic named Rajni Kothari has succinctly described Indian politics as a link between *Neta-Dada-Babu-Lala (Politician-Muscleman-Bureaucrat-Businessman)*. The doors were opened for the criminalization of politics by this unwelcome and hazardous interaction between bureaucracy and political leaders. Religion and caste are equally to blame for making politics illegal.

There are specific steps and regulations for promotions in the bureaucracy. Nevertheless, both caste and religion obstruct this process. Less qualified government employees frequently receive promotions. In all, the quota system is to blame for this. Also, it has been observed that a minister of a particular caste or religion will favour those who belong to such castes or religions. It can be found in several Indian states. The criminalization of politics is another result of the party-based form of administration. The party's leaders make pledges to the electorate on the eve of the general election. But, once in power, the political party will not take any action on behalf of its supporters. To meet their needs and wants, the government provides funding for public welfare. Nonetheless, the political party still employs those resources or funding for its objectives, which stem from the criminalization of politics. This demonstrates that candidates prone to infractions have a higher chance of winning than candidates with apparent qualifications. Why do Indians elect corrupt politicians to do this? According to speculations, voters continue to support the wrongdoer. Indian voters support criminals because of the divine rewards they will get and because politicians will have enormous latitude to enact laws that bestow gifts onto their constituents. The worst aspect of

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money in politics is that after a candidate is chosen, their top priority is to recoup the money used in the race. This is where the political impasse in India's history began.⁸

III. CRIMINALISATION OF POLITICS – THE EVIL PART OF THE INDIAN ELECTION SYSTEM:

There are also a lot of difficulties related to election administration that need to be addressed. Elections are a daunting task because of the size of the electorate, but this shouldn't be used as an excuse for problems like booth capturing, voter intimidation, falsified voter registration lists, widespread election rigging, and other irregularities at the polls; the prevalence of ineffective candidates; and the misuse of religion and caste in voter mobilisation. It is undeniable that virtually all political parties in India use the help of criminal groups to control the election scene. Nonetheless, this process impacts people's thoughts and, as a result, their willingness to hold the nation as they see fit. Because India's democracy is now in the hands of criminals who don't seem qualified to serve in the legislature, some people are starting to view it as a dictatorship. The criminalization of politics in India is a severe problem that has already gotten out of hand. Political parties don't pay attention when people try to instil lofty political principles and civic virtues in them. They do not encourage nation-building and patriotism. By highlighting the value of peaceful life, they do not aim to bring the country's people together.⁹ They exacerbate existing racial and ethnic disparities and use them to foment strife between groups of people. The biggest threat to India, the largest democracy in the world, is the criminalization of politics and public corruption. There are two ways to conceptualise the criminalization of politics. In a strict sense, it alludes to criminals' direct access to and meddling in state legislatures and the Indian parliament. In contrast, in a larger sense, it refers to the involvement of criminals in politics, whether directly or indirectly, through the financing of

⁸ SY Qureshi, *Criminalisation of Politics must be curbed*, The Indian Express, August 14, 2021 <https://indianexpress.com/article/opinion/columns/criminalisation-of-politics-must-be-curbed-7451116/> (Last visited on February 19, 2023, at 02:09 PM)

⁹ Dr. Parmeshwari Bagra, *Criminalisation of Indian Politics*, Vol.3 Issue 4, IJARCMSS, 305, 307 (2020) <https://www.inspirajournals.com/uploads/Issues/235202737.pdf>

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candidates, the provision of anti-social labour, booth grabbing, the assassination of rival candidates, the use of muscular strength, and other activities. The competitive use of antisocial forces for raising party funding, running elections, setting up meetings and conferences, and even hiring antisocial components as lower-level employees have multiplied during the past few decades. Almost all national and local political parties rely on criminals to win elections. Before entering the democratic process, criminals were prone to receiving outside assistance, but now they have become not only members of the house but even ministers. As a result, "*tainted ministers*" are a brand-new phenomenon in Indian politics.¹⁰

IV. CAUSES OF CRIMINALISATION OF POLITICS:

Several factors cause the criminalisation of politics. Many enter politics for the allure of power. People have access to the governmental apparatus by holding the political reins. They frequently employ this to advance their agenda, enrich themselves, and sharpen their blades. Legislators and political executives are the political masters, and they have a lot of authority to affect policy. Many of the schemes that we saw included numerous politicians. This demonstrates the connection between bureaucrats and politicians. Committed bureaucracy has evolved into "*Sycophant bureaucrats*" who follow the orders of their political masters. Because politicians will have enormous leeway to enact laws that give presents to their constituents, Indian voters favour criminals because of the intangible benefits they will receive. The worst aspect of money power in politics is that after a candidate is chosen, their primary focus is on recovering the money spent on the election process. Thus, the vicious spiral that has engulfed Indian politics begins. Political parties and individual candidates are required to spend a sizable number of money during the election process to pay criminals, commonly referred to as goondas, to buy the votes of mortals illegally. Political crime flourished in the constituency because of a political connection to them. To win the election, the political parties and independent candidates spend exorbitant sums on these criminals, generally referred to as goondas, for vote buying and other illegal objectives. The majority of voters in this country are

¹⁰ Ibid

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those who are unsure of why they should cast a ballot. The majority of votes can therefore be influenced and bought. It is easier for the bad to understand their support than for good. Every party, without exception, nominates candidates with a criminal history during an election. Although some of us complain about the parties' decisions, these people typically win elections to office. By responding this way, we fail to understand that the best power a democracy can give its citizens is the ability to remove inept leaders from office. Independence was achieved throughout two stages. Institutional corruption was the first stage, and institutionalisation of corruption was the second. Looking at the corruption scenario today, we see that it has progressed to this point because repeated institutional corruption has ultimately resulted in the institutionalisation of corruption. The inability to combat corruption has led to a disrespect for the law. Corruption thrives when there is disdain for the law and political activity is made illegal.¹¹

Elections to the State Legislatures and the Parliament are expensive, and it is a universally acknowledged indisputable fact that massive election expenditure is the primary driver of corruption in India. A contender should invest tens of thousands of rupees to win. Regardless of whether he wins, his actual pays while serving as an MP or MLA could be better than his campaign costs. Today's politicians are successful because of the muscle that criminals supply. In most circumstances, the people who make up the voting population are too reluctant to demand actions to reduce criminal activity. The thought that if we cannot instil faith within the Community, then we may instil fear or threat to urge the ability within the election style is one that many politicians have adopted to achieve a vote bank within the nation.¹² The weaknesses in the operation of the Election Commission are another factor contributing to the breeding of offenders in the nation's political system. The Election Commission is responsible for taking the necessary action to break the connection between politicians and criminals. While submitting their nomination papers, the Election Commission requires candidates to complete documents that ask them to provide information about their property, pending court issues,

¹¹ Ibid

¹² Ibid

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convictions, and other matters. Although the Commission made an excellent decision to inform voters about the candidate's criminal record, it has not been implemented well. These disclosures educate voters about the candidate's background and credentials, allowing them to cast their vote for a criminal regardless of those facts. Since there has long been a disconnect between how the Election Commission operates and the electorate, the average person needs to learn more about the regulations that the agency has created. It is crucial to close this gap for the survival of our democratic polity as well as to banish the undesirable forces from politics. And the country's literacy rate can be raised to do this. Voters must exercise their power to vote responsibly and, in the country's, best interests. Additionally, the Commission may only de-recognize parties; it cannot de-register them, hindering the Election Commission's ability to do its job.¹³

Minimal legal measures have been taken to stop this enormous threat. After committees are formed and hundreds of millions of rupees are spent. Why would a thief ever launch an inquiry against him? In the case of the legislators, the circumstance is comparable. Why would they ever pass a strict law that would target them for persecution? Another strategy is to pass legislation but not carry it out. Yet, the Supreme Court was a trailblazer in this case and issued some bold rulings. Second, passing ground-breaking laws, such as the Right to Information, supported by a sizable majority of the populace, has proven to be a powerful weapon in the hands of the commoner against the democratic goons.¹⁴

V. EFFECTS OF CRIMINALISATION OF POLITICS:

Although the consequences of the criminalization of politics are grave and far-reaching, it is neither wise nor practicable, to sum up, the issue in simple or practical words. A more comprehensive definition of the term is frequently developed only after the confusing array of political and socioeconomic changes in India over the past 40 years has been evaluated.

¹³ Neha Sharma, supra note 2

¹⁴ Ibid

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Focusing on the causes and trends set in motion by people or organisations that have vitiated the environment and unleashed criminalization in alarming proportions becomes equally crucial. The problem is not limited to criminals taking over the political landscape and dominating it. Although the consequences of the criminalization of politics are grave and far-reaching, it is neither wise nor practicable to sum up the issue in simple or practical words. A more comprehensive definition of the term is frequently developed only after the confusing array of political and socioeconomic changes in India over the past 40 years has been evaluated. Focusing on the dynamics and trends started by people or organisations who have poisoned the environment and unleashed worrisome levels of criminalization becomes equally crucial. The problem is not limited to criminals taking over the political landscape and dominating it.

The circumstances, procedures, and trends that made it necessary and possible for the criminalization method to develop into an effective weapon in the struggle for dominance should also be noted. It is a well-established fact that criminalising politics undermines the legitimacy of the Communal ethos, dreams, and aspirations of the citizenry and may even make the rule of law less effective. There is no question that India's democracy is a result of the rule of law and tries to establish an egalitarian social structure. It is a form of political philosophy and constitutional thought. The problem is not limited to criminals taking over the political landscape and dominating it. The circumstances, procedures, and trends that made it necessary and possible for the criminalization method to develop into an effective weapon in the struggle for dominance should also be noted. It is a well-established fact that criminalising politics undermines the legitimacy of the Communal ethos and the dreams and aspirations of the citizenry and may even make the rule of law less effective. There is no question that India's democracy is a result of the rule of law and tries to establish an egalitarian social structure. It is a form of political philosophy and constitutional thought. Elections in India are frequently fought with the help of money power obtained from dubious sources and occasionally with tainted money to maintain their influence in the upcoming election. The state's police and order apparatus, political parties, and voters are equally responsible for this. Only those who have been found guilty of a minimum of two charges are currently prohibited from running for

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office. This opens the market to charge-sheeted criminals, many of whom are repeat offenders or have a criminal background. Why a person should be found guilty on two charges and barred from running in elections baffles me. The definitions are where the main issue is. Hence, a person is not a criminal unless found guilty—more than simple charge sheets and is required to disqualify someone from running for office. As a result, the law has to be adjusted.¹⁵

The main effect is that criminals get voted into office as lawmakers. As a result, the Parliament is less effective in passing the legislation required for the efficient running of the nation. The Parliament and the Council of Ministers lose their standing as the nation's leaders. A "*culture of adjournment*" and political favouritism work together to delay elected officials' prosecutions—often ineffectual and biased by special interests and public prosecution. The procedure is set up to resolve an accusation against an elected official favourably.¹⁶ Speedy trials against elected officials are thwarted by political favouritism and a "*culture of adjournment*." Public prosecutors frequently lack effectiveness and are biased by vested interests. The system is set up to resolve an accused elected official's case favourably. Additionally, it weakens the integrity of public life by increasing the flow of unreported or "black" money before, during, and after elections. The state institutions, such as the bureaucracy, the executive, the legislature, and the judiciary, are weakened by the rising levels of corruption in public life. Further, it promotes a culture of violence and sets a negative precedent for the children to follow.¹⁷ Additionally, it causes a rise in the flow of unaccounted-for or illegal funds both before and after elections, weakening the integrity of public affairs. The state institutions, including the bureaucracy, the executive, the legislature, and the judiciary, are weakened by the rising levels of corruption in public life. Furthermore, it instils a culture of violence in the community and sets a poor example for the next generation. The Supreme Court ruled in *Ramesh Dalal vs. Union of India*¹⁸, that a sitting *Member of*

¹⁵ Dr. Parmeshwari Bagra, supra note 10

¹⁶ Sriya Shubhalaxmi Mishra, supra note 7

¹⁷ Karan Choudhary, Decriminalization of Politics in India, Vol.3 Issue 6, IJLMH, 746, 750-751 (2020)
<https://www.ijlmh.com/decriminalisation-of-politics-in-india/>

¹⁸ 1988 SCR (2)1011

Parliament (MP) or Member of State Legislature (MLA) shall also be subject to disqualification from contesting elections if he is found guilty and given a sentence of not less than 2 years in prison by a court of law. This decision followed protests from various groups.

VI. THE CRIMINALISATION OF POLITICS AND ROLE OF POLITICAL PARTIES:

In India, the number of political parties has been steadily rising. The proliferation of political parties is not a result of rising political standards or an increase in the number of qualified individuals joining politics with a commitment to serving the nation and its citizens. On the contrary, it blatantly shows that political standards have fallen to pitifully low levels. Today, politics draws people with criminal backgrounds rather than altruistic gentlemen ready to serve society. Hence, it is regretful that, over time, such a situation has developed, forcing each of us to consider the future of India's democratic politics. On *August 29, 1997*, *G.V.G. Krishnamurti, India's Election Commissioner*, shocked the country by releasing figures demonstrating the politicisation of criminals. Out of the 1 37,752 candidates that ran for the Lok Sabha in 1996, he said that over 1500 had a criminal history, including murder, dacoity, rape, theft, and extortion. UP alone accounted for 520 candidates, and Bihar had the second-largest number of 350 candidates. Nearly 700 MLAs out of 4722 in the country were involved in criminal cases, and trials were pending against them in twenty-five states and two Union territories.¹⁹ *The Association for Democratic Reforms' (ADR)* investigation reveals that candidates accused of crimes have a higher likelihood of winning than those with a spotless record, which begs the question of why Indians elect criminals to public office. People often claim that they vote for criminals out of fear. Since politicians would have a great deal of freedom over adopting laws that permit the transfer of advantages to the public, Indian voters elect criminals due to the divine benefits they would receive from them. Political crime has

¹⁹ Zahoor Ahmad Dar, An Assessment of the Impact of Criminalization of Politics on Democratic Process of India, Vol.5 Issue 3, IJAR, 495, 496 (2015) [https://www.worldwidejournals.com/indian-journal-of-applied-research-\(IJAR\)/article/an-assessment-of-the-impact-of-criminalization-of-politics-on-democratic-process-of-India1Ng==/?is=1&b1=425&k=107](https://www.worldwidejournals.com/indian-journal-of-applied-research-(IJAR)/article/an-assessment-of-the-impact-of-criminalization-of-politics-on-democratic-process-of-India1Ng==/?is=1&b1=425&k=107)

spread from the legislative branch to the executive branch and from the executive branch to the court. According to the *Association for Democratic Reforms (ADR)*, the percentage of such candidates in India's elections has increased from 15% in 2009 to 17% in 2014 and then to an unbearable 19% in 2019. The callous picture is that 13% of candidates in the 2019 election are suspected of heinous crimes like murder, attempted murder, kidnapping, rape, and other crimes against women. Remarkably, in 2009, 30% of the Lok Sabha's members had bodies of evidence from lawbreakers against them; this number rose to 34% in 2014; it has now reached a troubling level of 43% for the Lok Sabha's selected candidates in 2019. The seriousness of the threat can be better understood by considering that 29% of individuals who voted for the Lok Sabha in 2019 have admitted to committing actual misconduct. Goa (32%), Kerala (29%), Bihar (26%), and Jharkhand (26%), which are at the top of the list, have the highest percentage of newcomers dealing with criminal indictments. Rajasthan (6%), Haryana (7%), and Assam (7%) are on the lower end. Uttar Pradesh, Gujarat, and Maharashtra are top of the list with the most unprecedented number of MPs accused of criminal and actual criminal charges.²⁰

This infection affects almost all of the groups, and it appears in all of the states. Weird. Nonetheless, the public authority rapidly provides security to those with criminal backgrounds. Regardless of a state's level of competency, improvement, GDP, or urbanisation, the criminalization of governmental issues is inevitable and available in every state. Politicians and appointed officials often have criminal backgrounds. The nation's peacekeeping, legal infrastructure, ideological movements, and blotters share responsibility for creating an especially dishonourable situation. Assembly, leader, and legal executive—the three organs supposed to be vigilant of one another—are deteriorating, and their basic foundations are becoming erroneous. India achieved autonomy on paper, but the majority still had a colonial hangover.²¹

²⁰ Trishla Dwivedi, Criminalisation of politics, The Times of India, <https://timesofindia.indiatimes.com/readersblog/hail-to-feminism/criminalization-of-politics-24324/> (Last visited on February 19, 2023, at 06:01 PM)

²¹ Ibid

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School, Nagpur,***

Email Id: aryanmohanty482@gmail.com.

VII. EFFORTS TO CURB THE CRIMINALISATION OF POLITICS:

*According to the Dinesh Goswami Committee*²² (1990), other laws must be passed to prevent voting intimidation, rigging, and booth capture. In its *170th report, the Law Commission* recommended that anyone convicted of an electoral or other significant offence should also be disqualified from voting. The Commission also stated that many people convicted of terrible offences, including murder, rape, banditry, and similar crimes, had run for office while awaiting trial, and some had been elected. With lawbreakers now serving as parliamentarians and having police protection, this development creates an awkward and unpleasant situation. According to the Rajya Sabha's Ethics Committee, relevant laws and statutes exist. Still, they have yet to have the expected effect, as indicated in their first report, which was adopted on December 1, 1998. The challenges brought on by criminalising politics and the causes and results of such a move often needed to be resolved by legislation alone. Additionally, it claimed that it is difficult to reject people with criminal records or those who are given a "dubious distinction" and that steps should be taken to limit the number of people with criminal records who run for office.²³

The Election Commission issued an order on March 27, 2003, requiring candidates to submit an additional affidavit stating that Section 125A²⁴ of the Representation of Peoples' Act, which establishes penalties for misrepresenting or omitting information on Form 26, carries a maximum sentence of six months in prison, a fine, or both. *The Central Vigilance Commission* gave all organisations instructions in 1999. Efforts were also made to make tender announcements more available and publicise discretionary awards and out-of-tour favours to introduce openness and deter illicit operations, all while being monitored to identify potential hot spots for corruption. On the other side, a highly anticipated result of e-governance is that it

²² Report of the Committee on Electoral Reforms, May 1990, Government of India, Ministry of Law and Justice, Legislative Department

²³ Abhisena Dey, Criminalization of Politics Challenge to Indian Democracy, Vol.1 Issue 3, JALS, 49, 54 (2021) <https://www.uniquelaw.in/post/criminalization-of-politics-challenge-to-indian-democracy>

²⁴ Representation of Peoples' Act, 1951, s.125A

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would force administrators to rely on files and strong privacy protection, which can further cut down on transaction times and thwart manipulations that could occur in manual processes.²⁵

VIII. LEGISLATIVE MEASURES TO CURB CRIMINALISATION OF POLITICS:

The Indian Criminal Code's Chapter IX A addresses elections-related offenses. There are nine portions in it. For crimes like bribery, improper influence, and impersonation during elections, it defines them and lays forth the associated penalties. The maximum term for a bribery offence is one year in prison, a fine, or both; however, corruption in the course of business is only penalised by a fine. Similarly, the most severe penalty for improper influence or personation during an election is a year in jail, followed by a fine. False statements in connection with elections and illicit payments made with elections are punishable by fines under Section 171 G²⁶. A fine of up to 500 rupees is the maximum penalty under Section 171 H²⁷.

In violation of Section 171 E²⁸, the offender would be fined a maximum of Rs. 500 for failing to maintain election accounts. As a result, the IPC contains provisions to prevent electoral malpractice but minimal sanctions. Election-related offences are not prosecuted with any interest. These regulations have not deterred politics from being made illegal. Since it permits disqualification upon conviction of specific crimes, Section 8²⁹ of the Representation of People Act, 1951, seems more deterrent. According to Section 8(1)³⁰, anyone convicted of an offence listed therein and given a term of at least six months in jail is barred from holding public office as of the date of their conviction. According to S. 8(2)³¹, a person convicted for breaking specific legislation stated in it and sentenced to at least six months in prison is disqualified

²⁵ B.P.C. Bose, Criminalization of Politics: Need for Fundamental Reform, *The Indian Journal of Political Science*, Vol. LXVI, No. 4, Oct-Dec, 2005

²⁶ Indian Penal Code, 1860, s.171 G

²⁷ Indian Penal Code, 1860, s.171 H

²⁸ Indian Penal Code, 1860, s.171 E

²⁹ Representation of Peoples' Act, 1951, s.8

³⁰ Representation of Peoples' Act, 1951, s.8(1)

³¹ Representation of Peoples' Act, 1951, s.8(2)

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starting on their conviction and for an additional six years after their release. The disqualification under subsections (1), (2), and (3)³² does not, however, apply to someone who was a member of the state or federal legislature or the parliament on the date of the conviction until three months have passed since that date or, if an appeal or application for a review of the trust or sentence is filed during that time until the court has decided on that appeal or application. A sitting member of Parliament or a legislative assembly is given benefit under Section 8(4)³³ of the Representation of People Act if found guilty of a crime. It states that disqualification for that member will occur three months after their conviction or if, within that time, a petition for review or an appeal of their conviction or sentence is filed until the court has resolved that petition or appeal. The contentious question is whether this provision's benefits endure even after the house is dissolved. There have been cases where members who took advantage of this clause ran in the next election, notwithstanding the court's action during the house's existence. In the Prabhakaran³⁴ case, the Supreme Court also considered this unethical component. The court took the structural position of S. 8(4) and the reasons for its retention. “*subsection 4 would cease to apply no sooner the house is dissolved, or the person has ceased to be a member of that house*”, the court ruled. In general, establishing disqualification upon conviction for specific offences is to deter people with a criminal past from entering politics and the house, an important branch of government. Those with criminal history taint the electoral process since they don't hold back and don't hesitate to engage in criminal behaviour to win an election.

Under *The Representation of People's Act 1951*, the Parliament included Section 33B³⁵, which required new members to declare their assets and obligations exclusively to the house's presiding officer within 90 days of joining. However, the Supreme Court declared Section 33-B 8 invalid and unconstitutional because it infringed upon the fundamental right of individuals

³² Representation of Peoples' Act, 1951, s.8(3)

³³ Representation of Peoples' Act, 1951, s.8(4)

³⁴ K Prabhakaran v. P Jayarajan, AIR 2005 SC 688

³⁵ Representation of Peoples' Act, 1951, s.33B

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to make an informed decision.³⁶ The current voting system, known as "first past the post," encourages candidates to spend enormous sums of money on each election. One can thoroughly investigate the possibilities of transitioning to a presidential system, a two-party system, a proportional representative system, etc. Some action must be taken to reduce the enormous election expenditure, which is the primary source of election corruption. Measures like holding state and parliamentary elections simultaneously, shortening the election campaign, enabling candidates to run from just one constituency, making the election code of conduct legal, etc., can be successfully adopted to reduce the cost of elections. A person may run for office from a maximum of two seats in general elections, multiple by-elections, or biennial elections under Section 33(7)³⁷ of the Representation of People Act, 1951. Before this law, candidates had a wide range of constituency options. According to section 70³⁸ of the Representation of the People Act, if they win both seats, they must resign from one within 10 days, which calls for a by-election.

IX. VOHRA COMMITTEE REPORT:

The Government of India formed a committee to review all the information on the activities of crime syndicates and mafia organisations that were allegedly linked to and protected by certain politicians and government officials in this context, amid allegations of corruption involving a politician and the perception that politics has become criminalised. After considering the issue, the committee in 1993 gave the Indian government its report. The committee noted that *"the link between criminal gangs, police, bureaucracy, and politicians"* had become evident in different sections of the nation in its description. The report also noted the country's rapid growth and spread of criminal gangs, including armed drug cartels, smugglers, drug pushers, and economic lobby groups. Over the years, these groups built up sizable networks of contacts with local government officials, politicians, journalists, and other influential figures in the non-state sector. Mafia gangs benefited from the protection of government officials and the support of long-time local politicians in some states, including Bihar, Uttar Pradesh, and Haryana.

³⁶ People's Union for Civil Liberty v. Union of India, (2003) 4 SCC 399

³⁷ Representation of Peoples' Act, 1951, s.33(7)

³⁸ Representation of Peoples' Act, 1951, s.70

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According to the report, the mafia network operated as a parallel government, rendering the state machinery almost irrelevant. The syndicates had amassed enough financial clout and prestige to exert enough sway that investigating and convicting organisations was highly challenging. Even the judiciary was affected by the mafia, and officers in charge of cases regularly had to be relocated before they could finish their work.³⁹ On August 23 and 24, 1995, the much-anticipated Vohra committee report was finally addressed in both houses of parliament. The report had recommended creating a nodal agency within the Ministry of Home Affairs, Government of India, to be run directly by the Union Home Secretary, who would be assisted by one or more chosen officers of the Ministry for the gathering and compilation of all information received from various intelligence agencies. An All-Party Meeting was then conducted on September 15, 1995, with Shri S. B. Chavan serving as the meeting's chairman to discuss the whole range of criminal-politician nexus issues and associated concerns regarding the declaration of assets and liabilities of Members of Parliament and Ministers. ***The problems on the agenda included, among other things:***

- *Creating a separate committee for ethics in the parliament from the privileges committee.*
- *Adopting a code of conduct at the political party level to promote a more wholesome public life, such as refusing to sell party tickets to those with criminal records.*
- *Open-audited accounting for each Political Party should be required and released each year—changes to the judicial system that streamline the process and deliver justice quickly.*

Unfortunately, no concrete efforts have been made to stop criminals from entering politics since the Vohra committee's report was submitted. They still have access to political positions and other benefits. If the names of the politicians who have close ties to criminals are not made public, the disease of the criminalization of politics will remain limited to theoretical realms. The Vohra Committee has completed the necessary legwork by highlighting the different aspects of this disorder of the criminalization of politics and how the mafia network ran a parallel government. Thus, action must be taken right once to forbid criminals from entering

³⁹ Zahoor Ahmad Dar, supra note 20

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politics. In *Shri Dinesh Trivedi, M.P. & Ors vs. Union Of India & Ors*⁴⁰, the Supreme Court recommended the creation of a high-level committee to ensure a thorough investigation of the N N Vohra Committee's findings and to ensure the prosecution of those responsible. The Supreme Court also stated that the committee should "take urgent stock of all available information about the activities and links of all...(Customs, Revenue, Intelligence, etc.) to gather. The paper described how the muscle-power network that politicians deploy during elections is essentially developed using money power. The Vohra Committee concluded by restating the necessity of establishing intelligence agencies to address the issue of the criminality of politics to stop the same.

X. RTI ACT & CRIMINALISATION OF POLITICS:

The Supreme Court has ruled that the right to information—the right to learn about a candidate's background, including any criminal convictions or assets—is a fundamental right guaranteed by Article 19(1)(a)⁴¹ of the Indian Constitution and that access to information is essential for the survival of democracy. The Apex Court ordered the Election Commission to obtain information from each candidate running for office on affidavit as a requirement of the nomination papers on whether the candidate has been convicted/acquitted/discharged of any criminal offence in the past, if applicable; whether the candidate was accused in any pending case of any crime punishable with imprisonment for two years or more, and in which charge was framed or cognizance take place. If so, it is necessary to know the specifics of such responsibilities, the candidate's educational background and assets (*including bank accounts, real estate, and other financial holdings*), and those of their spouse and dependents.⁴² The Right to Information Act 2005 is a landmark legislation that gives citizens more power and makes government employees accountable for penalties if they don't respond to requests for information from the public within a certain amount of time.

⁴⁰ (1997) 4 SCC 306

⁴¹ Constitution of India, 1949, art.19(1)(a)

⁴² Union of India v. Association for Democratic Reforms & Anr., (2002) 5 SCC 294.

XI. JUDICIAL EFFORTS TO DECRIMINALISE POLITICS IN INDIA:

In *Ram Babu Singh Thakur vs. Sunil Arora and Ors*⁴³, the Supreme Court issued a landmark decision on the criminalization of politics that mandates political parties reveal the criminal backgrounds of their candidates for election as well as the justification for nominating such suspected criminals. ***Here are some issues the court decided on:***

- 1. Requirements for candidates to disclose their assets and criminal histories.*
- 2. The voting system now includes a "None of the above" selection.*
- 3. Repealing the clause that protected sitting lawmakers from immediate disqualification after conviction.*
- 4. The creation of Special Courts in every state to hasten the resolution of cases involving elected officials.*

In *T.R. Balu V S. Purushthoman*⁴⁴, it was alleged in the election petition that the returned candidate had a bigamous marriage. He admitted it through an affidavit submitted when filing the nominations. Hence, his election should be declared void. Madras High Court upheld the election on the ground that the returned candidate was never prosecuted nor found guilty or punished for it. There has been controversy concerning the beginning of disqualification based on conviction. A person convicted of an offence is disqualified from being a candidate in an election—section 8 of the Representation of Peoples’ Act. The act sets different standards for different crimes. According to Sec. 8(3), a person convicted of any offence and sentenced to imprisonment for not less than two years (other than the offences referred to in Sec. 8(1) and (2)) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. The court also thought about how the appellate court's acquittal would affect disqualification. The Supreme Court adopted an odd stance in *Vidyacharan Shukla vs. Purushottam Lal*⁴⁵. As soon as the nomination was made, the Sessions Court found V.C. Shukla guilty and sentenced him to imprisonment exceeding two

⁴³ Contempt Petition. (C) No. 2192 OF 2018

⁴⁴ AIR 2006 Mad. 17

⁴⁵ (1981) 2 SCC 84

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School, Nagpur,***

Email Id: aryanmohanty482@gmail.com.

years. The returning officer did, however, illegally accept his nomination paper. Even if his conviction and punishment were compelling, he prevailed in the election. After the High Court heard an electoral case submitted by the losing candidate, the Madhya Pradesh High Court granted Shukla's criminal appeal, vacating the conviction and punishment. The court cited *Mannilal vs. Parmail's*⁴⁶, decision to rule in favour of the returned candidate in the election petition. It was decided that the disqualification was retrospectively eliminated by the acquittal in the same comprehensive and efficient manner as if it had never occurred. *In Sasangouda vs. SB Amarbhed*⁴⁷, the Supreme Court of India addressed the issue of booth capture. It concluded that it completely undermines the democratic process and violates the fundamental principles of our constitution. Parliamentary elections have firmly established a democratic democracy in this nation, which cannot be jeopardised by staying silent.

Consequently, the obligation to regularly hold free and fair elections is inherent in representative democracy based on popular sovereignty. Free and fair elections are crucial because they are a legitimate manifestation of the people's will and are vital in choosing their representatives. In *Mohinder Singh Gill vs. Chief Election Commissioner*⁴⁸, the Supreme Court emphasised the significance of free and fair elections in a democratic polity. Section 8(4) of the Representation of Peoples' Act, which permits MPs and MLAs who are convicted while serving as members to continue in office until an appeal against such conviction is decided, was found to be unconstitutional in *Lily Thomas vs. Union of India*⁴⁹, according to the court. Two defenses were put forth: first, that Parliament lacks the authority to specify different grounds for disqualifying both candidates for membership and sitting members, and second, that delaying the date at which disqualification begins would be in violation of Articles 101(3)⁵⁰ and 190(3)⁵¹ of our Constitution, which state that a member's seat must vacate automatically

⁴⁶ (1970) 2 SCC 462

⁴⁷ AIR 1992 SC 1163

⁴⁸ 1978 AIR 851

⁴⁹ (2013) 7 SCC 653

⁵⁰ Constitution of India, 1949, art.101(3)

⁵¹ Constitution of India, 1949, art.190(3)

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upon disqualification. In the case of *Vineet Narain vs. Union of India*⁵², the Central Bureau of Investigation (CBI) was criticized for being slow to look into issues raised by the seizure of some documents known as the "Jain diaries," which revealed a connection between politicians, bureaucrats, and criminals who received funding from illegal sources. In the landmark case of *Union of India vs. Association for Democratic Reforms*⁵³, the Supreme Court ruled in 2002 that every candidate for a seat in the Parliament, a state legislature, or a municipal corporation must disclose their criminal histories, financial situations, and educational backgrounds. The court concluded that Article 19(1)(a) of the Constitution's right to know one's antecedents, including past crimes, is a fundamental right that will significantly contribute to the survival of the judicial system.

In the 2013 case *People's Union for Civil Liberties vs. Union of India*⁵⁴, the Supreme Court requested that the Election Commission allow voters to select "*none of the above*" to exercise their freedom to express disapproval of any candidates. In the 2018 case of *Public Interest Foundation v. Union of India*⁵⁵, the petitioner Public Interest Foundation essentially requested guidelines or a framework to address the threat of the criminalization of politics in its appeal. It had asked that people accused of severe crimes be disqualified from running in elections. The Supreme Court's constitution bench, consisting of *Justices RF Nariman, AM Khanwilkar, DY Chandrachud, and Indu Malhotra, led by Chief Justice Dipak Misra*, issued the decision. According to the constitution bench, candidates cannot be disqualified just because they are the subject of criminal proceedings. The court also ordered the legislature to consider creating a statute to guarantee the decriminalisation of politics. *The bench issued the following directives to stop the gradual increase in criminalization of politics in India:*

- I. *All candidates who wish to run for office must disclose any prior convictions or arrests. Political parties must post any relevant information about the criminal charges brought against their candidates on their official websites.*

⁵² (1998) 1 SCC 226

⁵³ AIR 2005 SC 688

⁵⁴ AIR 2013 SC 568

⁵⁵ (2019) 3 SCC 244

- II. *To prevent candidates with a criminal history from participating in public life or the legislative process, Parliament must enact legislation.*
- III. *The Election Commission must also ensure that candidates include information about their current legal issues or criminal histories in bold type when submitting their nominations.*
- IV. *Political parties should also state the candidates' criminal records and promote them widely in electronic media.*

The Supreme Court significantly contributed to Indian electoral reform jurisprudence in ***Lok Prahari vs. Election Commission of India***⁵⁶, in 2018. In this case, the Court instructed to establish a long-term system for the routine observation of MPs' and MLAs' asset growth that is out of proportion to their known sources of income. This oversight committee is required to release the data and suggest appropriate actions. The ruling opens the door for further constitutional changes to India's electoral bond programme and other mechanisms for financing political parties. In 2019 ***V. Abdullah Sait vs. The Chief Election Commissioner of India and Ors***⁵⁷, a writ petition was filed for a directive to the respondent authorities to take action against respondents for violating the model code of conduct and disqualifying them from contesting elections. The court held that the petitioner had made a case for issuing the directive and that an FIR had been filed against the respondents. After that, the request to act on the representation could not be granted because the court could not impose disqualification in the absence of a conviction.

XII. RECOMMENDATIONS OF THE ELECTION COMMISSION:

The Election Commission of India has continuously carried out specific electoral reforms that it could carry out independently or on the Supreme Court's instruction. *All Returning Officers (ROs)* were instructed by the Election Commission in 1997 to reject the nomination papers of any candidate convicted on the day the nomination papers were submitted, even if his sentence

⁵⁶ 2018 SC 4675

⁵⁷ MANU TN 1549 2019

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School, Nagpur,
Email Id: aryanmohanty482@gmail.com.***

was suspended. ***The Election Commission has also advised the Union Government to pass the following electoral reforms into law to decriminalise politics:***

- ❖ *If a person is accused of a major crime—one for which the law stipulates a sentence of at least five years—and a court of law has filed criminal charges against the accused, this is recognised as a reasonable basis to bar the accused from running in elections. According to the Election Commission, when a court frames criminal charges against a defendant, it indicates that the accused is at least presumptively suspected of participating in the alleged offence.*
- ❖ *A person is prohibited from running in elections if they are found guilty by an inquiry commission.*
- ❖ *The two-ballot system, which declares a candidate elected from a territorial constituency based on the majority principle, shall replace the first-past-the-post (FPTP) electoral system. The two candidates who received the most legitimate votes in a multi-cornered race will be permitted to run in the following round of voting if neither one gets more than 50% of the valid votes. A criminal would have a hard time winning an election under this system.*
- ❖ ***Right to recall:*** *It gives registered voters in a constituency the authority to remove their elected MPs from the house for the cause. At the local level, it might provide the populace with more influence. It is possible to make the elected official entirely answerable to the people. Political parties will be compelled to propose qualified and appealing candidates in such a case because they are concerned about the possibility of having elected officials removed from office. Voters must possess a high level of political maturity for such a system to function.*
- ❖ *Elections are supported by state money, which is provided to political parties through cash, in-kind contributions, or both. By supporting political parties and candidates during elections, the goal may be to reduce or altogether abolish the external pressure on governmental policies and vested interests' ability to function. It might aid in reducing the flow of illicit funds, the influence of criminals in political campaigns, and corruption in public life.*

XIII. REPORT ON PROPOSED ELECTION REFORMS, 2004:

In its report on the Proposed Election Reforms, 2004, the Election Commission of India made the following recommendations:

- *Section 125A of the Representative of Peoples’ Act should be amended to provide a minimum term of two years imprisonment for concealing or providing false information in Form 26 under the Conduct of Election Rules, 1961, the alternative punishment of assessing a fine upon the candidate should be removed.*
- *Additionally, it was suggested that Form 26 be changed to contain all of the specified additional affidavit elements by the Election Commission and to add a column for candidates to report their annual income for tax purposes, including their profession.*
- *The most significant suggestion was to change The R.P. Act of 1951 to add a new section requiring disclosure of assets and any ongoing criminal proceedings against the candidate. This requirement should be made for eligibility to serve in the House of People.*

To deter those who have committed heinous crimes, the 1951 Act must be broadened. Candidates with pending criminal charges against them under Section 8 should be barred from holding elected office for six years. On the other hand, under any circumstances, excluding someone for a specific time will not be sufficient. It is only possible to set aside the lacuna if politics is decriminalised.

All parties that knew of the antecedents of the candidates who violated this clause shall be derecognized and deregistered. On this subject, several committees proposed that anybody convicted of such heinous crimes as murder, rape, banditry, or drug smuggling should be permanently debarred from running for public office.

There is an inherent necessity to replace the present judicial hierarchy and establish fast-track courts. It incorporates a quick six-month trial, which must end within six months from the moment charges are filed, to see if a candidate can hold public office.

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XIV. CONCLUSION:

The criminalization of politics and corruption impacts the foundation of democracy. Candidates with criminal records running for office should receive extensive attention, as should the political parties that support them. The publishing needs to be where voters can quickly obtain it; it should be on something other than the party's official website because only some voters will look at each candidate's profile, and others may need access to or awareness of this electronic medium. To stop the criminalization of politics, this is crucial. Likewise, if people participate more broadly in managing state projects, abuse of state power and criminalization of governmental issues can be reduced and eliminated. Rules and principles should be clear, and forces should not be brought together. The agents must exhibit the traits of a social worker, including inactivity. Because of a justifiable worry for the nation, they should consider and advocate for government aid for everyone. Presenting the electoral reforms and how they might aid the crucial situation of Indian politics.

In contrast, answers for decreasing criminalization in politics have been thoroughly covered in the subsequent section. To solve the problem, it is necessary to elect changes such as a sufficient number of accounts and more pronounced financial straightforwardness by the Electoral Up-and-Comers, which have been partially implemented (*yet are still rife with escape clauses*), a decrease of Poll Booth Manipulation, and so forth. As *Gandhiji has mentioned, “Politics without principle” is one of the seven sins.*

XV. SUGGESTIONS:

- a) *The political parties should deny the corrupt candidate's tickets.*
- b) *It is time to alter the Representation of the People Act to ban those charged with serious crimes from running in elections.*
- c) *Politicians with criminal histories should be heard in expedited courts. Fast-track courts are required because politicians can continually stall the legal process and rule*

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for decades before any charges are brought. Politicians with prior convictions who are swiftly tried could not be permitted to run in elections.

- d) The Constitution should encourage accountability and democratic intra-party processes.*
- e) Those who have received a sentence of more than seven years in prison shouldn't be permitted to run in elections before the Supreme Court approves.*
- f) To stop criminals from winning elections, awareness should be raised about NOTA (none of the above) and other comparable possibilities.*
- g) More campaign financing transparency should be implemented to deter political parties from selecting candidates with criminal records.*
- h) Political parties that provide tickets for criminals to run in elections should face punishment.*
- i) Election commissioners should be appointed relatively and openly.*
- j) The Right to Information (RTI) Act must be applied to political party finances, or the Election Commission of India (ECI) should be granted the authority to audit the financial records of political parties.*
- k) It is essential to strengthening general governance so voters know candidates' criminal histories.*
- l) It is necessary to make legal reforms to the current rules and bar criminals from running for office. The offenders should be placed on a blacklist, and sanctions must be applied.*
- m) The Election Commission must take appropriate action to sever the connection between politicians and criminals.*