

SC Judgement on Criminalization of Politics

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Manifest pedagogy: Criminalisation of Politics is a dangerous tendency in Indian politics. Current Parliament has seen a rise in the number of Lawmakers with criminal cases pending against them. There is a need for a balance between the rights of accused criminals and the obligation of offering clean political options to the public. The recent judgement tries to bring in more transparency into the system.

In news: The Supreme Court recently ordered political parties to publish the entire criminal history of their candidates for Assembly and Lok Sabha elections.

Placing it in syllabus:

- Criminalisation of politics
- Electoral reforms

Static dimensions:

- Criminalisation of politics, its magnitude and impact on democracy
- Provisions to tackle them
- Lily Thomas Judgement
- Special Courts for such cases

Current dimensions:

- SC Judgement of 2018
- Recent judgement of 2020





Content:

Magnitude of criminalisation of politics in India and its impact on democracy:

- **Criminalisation of politics refers to** the entry of criminals into politics and use of political power for personal gains by these criminal elements.
- The **rising trend** of criminalisation of politics is threatening the very pillars of democracy in India.
- **Money and muscle powers** have become the sole criteria to ensure winnability in elections.
- Out of the 542 MPs analysed during **Lok Sabha elections in 2014**, 185 (**34 percent**) winners had declared criminal cases against themselves while during **Lok Sabha elections in 2009**, **30 percent** had declared criminal cases against themselves.
- Out of the 539 winners analysed in **17th Lok Sabha elections of 2019**, 233 MPs have declared criminal cases against themselves (**43 percent**).
- The **chances of winning for a candidate with declared criminal cases** in the Lok Sabha 2019 was **15.5 percent** whereas for a candidate with a clean background, it was just 4.7 percent.

Impacts on Democracy

- Disrupts the constitutional ethos
- It threatens the structure of parliamentary democracy and causes deterioration of democratic values.
- It breeds more crime and corruption.
- It results in deterioration of societal values and norms which can also eventually cause social disintegration.
- It goes against the free and fair principle of elections needed for a healthy democracy

- It increases unfair governance based on principles of corruption, nepotism.

Provisions to tackle them:

- **Rule 4A of the Conduct of Election Rules, 1961**, prescribes that each candidate must file an affidavit regarding

(i) cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more and

(ii) cases for conviction for an offence other than any of the offences mentioned in Section 8 of the Representation of the People Act (ROPA), 1951 and sentenced to imprisonment for one year or more.

- The Election Commission in March 2003, issued an order that candidates must file an additional affidavit stating **Section 125A of the ROPA, 1951** which prescribes penalties for withholding or providing incorrect information on **Form 26**, which amounts to imprisonment of up to six months, or fine, or both.
- Section (8) of ROPA has following provisions:
- **Sec 8(1)**: A person convicted of an offence punishable under certain acts of Indian Penal Code, Protection of Civil Rights Act 1955, Unlawful Activities (Prevention) Act 1967, Prevention of Corruption Act 1988 etc...shall be disqualified, where the convicted person is sentenced to – (i) only fine, for a period of six years from the date of such conviction (ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.
- **Sec 8(2)**: A person convicted for the contravention of – (a) any law providing for the prevention of hoarding or profiteering or (b) any law relating to the adulteration of food or drugs or (c) any provisions of the Dowry

Prohibition Act, 1961.

- **Sec 8(3)**: A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (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.
- In 1995, SC based on a petition filed directed that, every **candidate contesting elections has to disclose the following during nomination**:
 - Education qualifications
 - Criminal background
 - Assets and liabilities of the candidate and his/her family
- SC in 2018 had said that voters have a **right to know** the antecedents of candidates and the Election Commission could be asked to direct political parties to ensure that those facing criminal charges do not contest on their tickets.

Lily Thomas vs Union of India case (2013):

- A two-judge bench of the Supreme Court ruled that **Members of Parliament, Legislative Councils and Legislative Assemblies convicted of crimes** where they had been awarded a **minimum sentence of 2 years imprisonment** would **cease to be members of the house** to which they were elected from the date of sentencing.
- It further **struck down the provision Section 8(4) of the ROPA**, which allowed convicted members a 3-month time period for appeal against the conviction and sentencing and held that those convicted would suffer immediate disqualification.
- Earlier the convicted members held onto their seats until they exhausted all judicial remedies in lower, state and supreme court of India.

Special Courts for such cases:

- In November, 2015, a **Supreme Court bench directed the centre to set up special fast-track courts** to deal with pending cases against legislators.
- These special courts **act as time-bound and exclusive judicial mechanism** to expedite trials involving politicians.
- The court requires the Centre to provide details of the funding necessary to set up special courts, and wants state governments to be involved in the exercise.
- The **rationale behind this move** is that the longer political functionaries with charges against them continue in office, the more their chances to manipulate the system.
- Since **political parties are not averse to those against whom charges have not been proven**, one way of tackling it is to lessen the judicial delays in concluding the cases.
- In 2017, the centre informed the Supreme Court that it has **decided to set up 12 special courts** throughout the country to exclusively deal with 1581 criminal cases pending against MPs and MLAs within a year.
- Both the **Law Commission in its 244th report and the Election Commission of India** have sought lifetime ban on convicted politicians.
- The **Second Administrative Reforms Commission (ARC)**, in its report "Ethics in Governance" had recommended that: "Special Election Tribunals should be constituted at the regional level under article 329B of the Constitution to ensure speedy disposal of election petitions and disputes within a stipulated period of six months.

SC judgement in 2018:

- On 25th September 2018, the SC delivered its verdict in the **Public Interest Foundation v. Union of India case**.
- The five-judge Bench unanimously decided that **it cannot disqualify candidates, against whom criminal charges**

have been framed, from contesting elections.

- The Bench cited respect for the **separation of powers.**
- It **asked the Parliament to make a law** that prevents candidates accused of serious crimes from entering politics.
- It concluded that **informed choice is a cornerstone of a 'strong and pure' democracy.**

Recent judgement of 2020:

A two-judge Bench of Supreme Court recently delivered a judgment on the contempt petitions regarding the criminalisation of politics in India and the non-compliance of the directions of a Constitution Bench of Supreme Court in Public Interest Foundation and Ors. v. Union of India and Anr (2018) case.

The Court observed that the political parties offer no explanation as to why candidates with pending criminal cases are selected as candidates in the first place.

The Court issued the following **six directions** (though these directions were given in 2018, they were not followed by the parties).

1) It shall be **mandatory for political parties to upload on their website detailed information** regarding candidates with pending criminal cases along with the reasons for such selection.

2) The **reasons as to selection shall be with** reference to the qualifications, achievements and merit of the candidate concerned, and not mere "winnability" at the polls.

3) This **information shall also be published in:**

1. One local vernacular newspaper and one national newspaper;
2. On the official social media platforms of the political

party, including Facebook & Twitter.

4) These **details shall be published within 48 hours of the selection of the candidate** or not less than two weeks before the first date for filing of nominations, whichever is earlier.

5) The political party concerned shall **submit a report of compliance with these directions with the Election Commission** within 72 hours of the selection of the said candidate.

6) **If a political party fails to submit such compliance report,** the Election Commission shall bring such non-compliance by the political party concerned to the notice of the Supreme Court.