

**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES  
(NUALS), KOCHI**



DISSERTATION SUBMITTED AS A PART OF THE MASTER OF LAWS IN  
CONSTITUTIONAL AND ADMINISTRATIVE LAW COURSE.

2019-2020

TOPIC:

**CRIMINALIZATION OF POLITICS IN INDIA**

Under the guidance and supervision of Dr. Balakrishnan. K  
Associate Professor, NUALS, Kochi.

Submitted by-

Anoop. C

Reg. No. LM0119007

LL.M (Constitutional & Administrative Law)

## **CERTIFICATE**

This is to certify that Mr. *Anoop. C* (Reg. No. LM0119007) has submitted his dissertation titled, “**Criminalisation of Politics in India**” to the National University of Advanced Legal Studies, Kochi under my guidance and supervision as a part of his course in Master of Laws in Constitutional and Administrative Law. It is also affirmed that, the dissertation submitted by him is original, bona-fide and genuine.

Date: 12.10.2020

Place: Ernakulam

Dr. Balakrishnan. K  
Associate Professor  
NUALS, Kochi

## **DECLARATION**

I hereby declare that this dissertation titled “**Criminalization of Politics in India**” submitted to the National University of Advanced Legal Studies, Kochi as a part of my course in Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of Dr. Balakrishnan. K, is my original and bona fide work pursued in academic interest with utmost honesty and sincerity. This work or any other form or kind of this work has not been submitted by me or any other person for the award of any degree either in this University or any other University.

Dated this the 12<sup>th</sup> day of October at Ernakulam

Anoop. C

Roll No. 10193, Reg. No. LM0119007

LL.M (Constitutional & Administrative  
Law)

NUALS, Kochi

## **ACKNOWLEDGEMENT**

The guidance, assistance and support received throughout the writing of this dissertation has contributed significantly to this work, to the extent that this dissertation would not have been possible without it. I would first like to thank my guide and supervisor Dr. Balakrishnan. K for his guidance, patience, encouragement and useful criticism. I thank him for the effort he took to help me throughout my research, particularly to organise my thoughts in a logical manner. He helped me disintegrate ideas into the most basic form and then rebuild them in an organized fashion. I also thank him for all the encouragement and support which helped me through this pursuit.

I would also express my deep gratitude to Prof. (Dr.) Mini S, Director, Centre for Post Graduate Legal Studies for the efforts he took to groom us into Post Graduate Research Scholars. I thank him for making us feel confident enough to put forward our academic opinions.

I would also like to thank Dr. Balakrishnan K., who helped me in selecting the topic for my dissertation. The guidance that I got from him in initial state of this dissertation has helped me through out in my research. I thank him for encouraging us to express our opinions without the fear of sounding ridiculous.

I would also like to thank Prof. (Dr.) K. C. Sunny, Vice Chancellor and all the members of the faculty for all the help which was provided to me in completing this dissertation.

*Anoop C*

## TABLE OF CONTENT

### CHAPTER 1: INTRODUCTION

Significance of study.....	3
Research Problem.....	4
Objectives.....	5
Research Questions.....	5
Hypothesis.....	6
Review of Literature.....	7
Methodology of study.....	8
Chapterization.....	14

### CHAPTER 2 : LEGISLATIVE RESPONSE TO CRIMINALIZATION OF

#### POLITICS IN INDIA

- Important articles of constitution of India relating to election..... 23
- Relevant provisions of RPA 1951.....26
- Administration of election..... 28

### CHAPTER 3: JUDICIAL RESPONSE TO CRIMINALIZATION OF

#### POLITICS IN INDIA

- Various Decision of Supreme court and High courts..... 45
- The case of Jayalalitha in the light of RPA, 1951..... 49
- Role of Judiciary in curbing criminalization of politics..... 50

### CHAPTER 4 : ROLE OF ELECTION COMMISSION

- Requirements of free and Fair elections..... 59
- Independency of Election Commission..... 60
- Power and functions of ECI..... 61
- Elections laws in India..... 65

### CHAPTER 5 : CONCLUSION AND RECOMMENDATIONS

74

## TABLE OF CASES

Peoples Union for Civil liberties v. Union of India (AIR 1997 SC 1203).

Association for Democratic Reforms v. Union of India (AIR 2001 Del 127).

YK Gadakh v. Balasaheb Vilche Patil (AIR 1998 SC 678).

Krishnamoorthy v. Sivakumar and others - civil appeal No. 1478 of 2015(SC) 2015

Common Cause v. Union of India [(1996) 2 SCC 752],

Sharat Chandra Rabha v. Khagendra Nath (AIR 1961 SC 334).

Ankul Chandra Pradhan v. Union of India (1997) 6 SCC 1

Sachindra noth Triopathi v. Doodnath (84, ELR, 46).

Jawahar Singh v. Election Commissioner (AIR 1999, All, 1821).

Niranjan Hemachandra Sashittal v. State of Maharashtra (2013)4 SCC 462

Aad Lal v. Kanshi Ram (1980) 2 SCC 350

Brundaben Nayak v. Election Commission of India – 1965 AIR 1892

Lily Thomas v. Union of India Writ Petition (CIVIL) NO. 490 OF 2005, Supreme Court of India.

C Narayanaswamy v. Jaffer Sharief [(1994) 3 SCC 170].

Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405

### ABBREVIATIONS

RPA	Representation of peoples Act
AIR	All India Report
SCC	Supreme Court Cases
IPC	Indian Penal Code
CRPC	Criminal Procedure Code
ECI	Election commission of India
EPW	Economic and Political weekly
ADR	Association for democratic Reforms
CEO	Chief electoral officer
MP	Member of Parliament
MLA	Member of Legislative assembly
NDPS	Narcotic Drugs and Psychotropic Substances Act
POTA	Prevention of Terrorism Act

## CHAPTER – I

### INTRODUCTION

The modern existing democratic governments are the fallout of a long drawn battle waged by ordinary people against the sovereign power. It is to say that the experience or the long journey experienced by the political society made them to think of an alternative government for the purpose of protecting their rights and interests from the tyrannical Sovereign, the outcome is the modern democratic government.

In a democratic form of government, may it be Parliamentary form of democracy or Presidential form of democracy, a government is formed by the representative of the citizens directly or indirectly elected on the basis of adult franchise. Out of the three organs of the democratic government legislature is the elected body<sup>1</sup>. The legislature is formed by the representatives of citizens elected generally in the form of a political party. The Executive, technically termed as the government is formed by a political party or alliance of political parties having majority in the legislature.

The State governed through representatives of people according to the will of the people is termed as a democratic government. The International Human Rights Convention and Declaration such as Universal Declaration of Human Rights and the International Convention on Civil and Political Rights recognized the participation of the people in the formation of government and will of the people as the basis of authority for the government.

---

<sup>1</sup> Dr. Mallik Arjun I Minch. Criminalization of Politics and Indian Administration, SAJMRVol-2 2013 Pp 34-38 at p35.



The Convention also cast a duty on the States to reaffirm the Conventions and enact laws for them in pursuance of the Convention. The will of the people referred to in these documents can be achieved only when elections are conducted in a very free and fair manner.<sup>2</sup>

After the Second World War, throughout the world, most of the countries opted for the democratic forms of government. To make this dream a real one, the statesmen came with a living document called as Constitution.

Generally speaking the Constitution of a country is a living instrument with capabilities of enormous dynamism. It is a Constitution made for a progressive society Working of such a Constitution depend up on the prevalent atmosphere and existing condition. The Constitution highly relies upon constitutional morality. Constitutional morality is not a natural sentiment but is has to be cultivated.

The conventions& traditions have to grow to maintain the value of such Morality the democratic values survive and grows only when the people at large and the persons in charge of the institution are strictly accepted by the constitutional parameters without paving the way of deviance and reflecting. The primary concern is to maintain institutional integrity and requisite Constitutional restraint. It can be simply said as commitment to a constitution is a facet of constitutional morality.<sup>3</sup>

<sup>2</sup> *ibid* at p 38

<sup>3</sup> *Krishnamoorthy vs Sivakumar & others*, Civil Appeal No. 1478 of 2015 (SC) 2015

Moreover, it is understood that the institutional respectability and adoption of preservation for the substance of constitutional values would bring sanctity for the constitutional structure. Realizing the reality, the law makers of the state started to incorporate various provisions in their Constitution for making this constitutional morality as a sacrosanct; India is also not an exception to this change.<sup>4</sup>

### **Significance of study**

In India, the provision relating to election system is given in part XV of the Constitution. In this part, under Article 326 of the Constitution of India the citizens have been guaranteed right to vote in elections to Parliament (Union Legislature) and State Legislatures on the basis of adult franchise subject to disqualifications mentioned under the Constitution or any law made by the appropriate legislature. Accordingly, power has been conferred on Parliament and State Legislature under Articles 327<sup>5</sup> and 328<sup>6</sup> respectively to make laws with respect

---

<sup>4</sup> B. Venkatesh Kumar, “Criminalization of politics and Election Commission of India”, EPW June- 2001 Pp 2119 – 2121 at P 2119.

<sup>5</sup>Art. 327 reads as “Power of Parliament to make provision with respect to Elections to legislature subject to the provision of this constitution , Parliament may from time to time by Law make provision with respect to all matters relating to or in connection with elections to either house of Parliament or to the house or either house of the Legislation of a State including the preparation of the electoral rolls the delimitation of constituencies and all other matters necessary for securing the due constitution of such house or houses.”

<sup>6</sup> Act. 328 runs as “ Power of legislature of a state to make provision with respect to elections to such legislature subject to the provision of this constitution and in so far as provision that in behalf of is not made by Parliament. The Legislature of a State may from time to time by law make provision with respect to all matters relating to or in connection with the elections to the house or either house of the

of all matters relating to elections. In pursuance of this mandate, Parliament has enacted two statutes in this regard. The Representation of the People Act, 1950<sup>7</sup> and the Representation of the People Act, 1951<sup>8</sup>. The Act of 1950 provides for the allocation of seats and delimitation of constituencies for the purpose of election to Parliament and State Legislatures, preparation of electoral rolls and manners of filling seats in the Council of States. The Act of 1951 deals with conduct of elections, qualifications and disqualifications for membership of legislatures, corrupt practices and other offence in connection with elections and also other matters relating to elections. The conduct of free and fair election has been assured by vesting the superintendence, direction and control of elections in an independent body, under Article 324<sup>9</sup> of the Constitution of India. The other attempt in this regard has been made by giving decisive role to the Election Commission in deciding matters relating to disqualification for membership of Parliament under Article 103(2)<sup>10</sup> and State Legislature under Article 192(2)<sup>11</sup>.

Evidently, the constitutional scheme regarding election is sufficiently effective for the conduct of free and fair elections. The problem in this regard arose when the charge sheeted person or persons with criminal record were elected to Parliament or State Legislature with the overt or covert assistance of various political parties.

---

*legislature of the state including preparation of electoral rolls and all other matters necessary for securing the due constitution of such house or houses.*

<sup>7</sup> Act. No. 43 of 1950

<sup>8</sup> Act No. 43 of 1951

<sup>9</sup> Art. 324 reads as “*Superintendence, direction and control of elections to be vested in an election commission.*”

<sup>10</sup> Art. 103(2) reads as “*Before giving any decision on any such question, the President shall obtain the opinion of election commission and shall act according to such opinion*”.

<sup>11</sup> Art. 192(2) runs as “*Before giving any decision on any such question, the Governor shall obtain the opinion of election commission and shall act according to such opinion.*”

The Law Commission in its 170<sup>th</sup> Report<sup>12</sup> published in 1999 drew attention of the concerned authority towards the problem and suggested several amendments in the Act of 1951 to declare the persons charged with offences as disqualified for the membership of legislatures. But, no attention was paid by Governments to deal with the problem. It is only the judiciary that made attempts towards elimination of criminalization of politics whenever it got opportunity.

In a constitutional democracy purity of election, probity in governance, sanctity of individual dignity, sacrosanctity of rule of law, sustenance of independence of judiciary, acceptability of bureaucracy, credibility of institutions, integrity of those who control the institutions and prevalence of mutual deference among all the wings of the State are very significant, in a way, imperative. The recognised ideal which is required to be realised is eradication of criminalization of politics and corruption in public life. When criminality enters into the grass-root level and at the higher levels as well, there is a feeling that ‘monstrosity’ is likely to wither away the multitude and eventually usher in a fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry. “Democracy being the basic feature of our constitution, there can be no two opinions that free and fair elections would alone certain the growth of a sound democracy in the country<sup>13</sup>.

---

<sup>12</sup> [www.lawcommissionofindia/1c170.htm](http://www.lawcommissionofindia/1c170.htm).nic.in last visited on 3<sup>rd</sup> March 2016

<sup>13</sup> *Union of India vs Association for Democratic Reforms* (2002) 5 SCC 294

### **Research questions:**

- 1) what is the extent of the impact of criminalization of politics in political life of country.
- 2) what are the various cause for cause for growth of criminalization of politics
- 3) How to barricade the entry of criminals in to political arena
- 4) How far the judiciary able to curb the criminalization of politics in India.

### **Research objectives:**

- 1) To study the concept of criminalization of politics in India.
- 2) To analyse the reasons of entry of criminal elements in Indian politics
- 3) To study the role of judiciary in preventing criminalization of politics
- 4) To suggest an efficient mechanism to prevent criminal inputs into legislation
- 5) To evaluate the working of judiciary and approach to curb criminalization of politics

### **Research hypothesis**

- 1) It is assumed that criminalization of politics increasing due to non implementation of judicial decision in proper manner
- 2) provisions of Representation of people Act ,1951 are not effectively enforced due to lack of political will and prolonged legal battles and litigations.

### **Research Methodology**

Doctrinal study on various commissions report and judgements of courts.

The other references will Be from decisions of executives and informal statements of politicians , Bureaucrats , jurists, then data collected from books, journals, articles and government publications and also from different websites.

### **Review of literature:**

- 1) J. V.R Krishnaiyer "Law and Life "- Universal Law of publication 2008
- 2) Medhabushi Sreedhar " Law of expression" - Asia Law house publication 2007.
- 3) Subash c. Kashyap "National Resurgence through electoral reforms" - shipra publication ,New Delhi 2003
- 4) Santhanam committee report (1963)
- 4) Goswamy committee report (1990)
- 5) Vohra committee report (1993)
- 6) Law reforms commission report (2008)

## **Chapterisation:**

Chapter 1 deals with scope of study, research problem, research objectives, research hypothesis, review of literature Introduction of criminalization of politics and its elements

Chapter 2 deals with legislative response to criminalization of politics

Chapter 3 deals with judicial response to criminalization of politics

Chapter 4 deals with role of election commission in conducting free and fair elections

Chapter 5 summarises the findings of researcher by way of conclusion and recommendations

## **Free and Fair Elections**

Free and fair election is not a priori concept, but of cherished constitutional goal oriented value. Secrecy of ballot is undoubtedly a vital principle for ensuring free and fair elections, It was enshrined in law to subserve the larger public interest, namely, purity of election for ensuring free and fair election. The concept of secrecy of ballot cannot stand in isolation and in confrontation to the foundation of free and fair elections, namely, purity of election. They can co-exist but where one is used to destroy the other, the first one must yield to principle of purity of election in larger public interest. In fact secrecy of ballot, a privilege of the voter, is not inviolable and may be waived by him as a responsible citizen of this country to ensure free and fair election and to unravel foul play<sup>14</sup>.

The 'fair' denotes equal opportunity to all. Universal adult suffrage has made it possible for many individual voters to go to the polls and thus participate in the governance. For democracy to survive, it is very important that the best available man should be chosen as representative for proper governance of the country. This can

---

<sup>14</sup> *PUCL & Others vs UOI* (2003) 4 SCC 399

be achieved through man of high moral and ethical value. Thus in an efficient democracy, the voter must be given an opportunity to opt none of the above (NOTA) button, which will compel the political parties to nominate a competent candidate. This situation clearly tells us the dire need of negative voting.<sup>15</sup>

Democracy is all about choice. This choice can be better expressed by granting the voters an opportunity to express themselves openly and by putting least restrictions on their ability to make such a choice. By providing NOTA button in the Electronic Voting Machines, it will extend the effective political participation in the current state of democratic system and the voters in fact empowered.<sup>16</sup> We are of the view that in bringing out this right to cast negative vote at a time when electioneering is in diligent mode it will encourage the dignity of the electoral process and also fulfil one of its objective, namely, wide participation of people.<sup>17</sup>

The Free and fair election is a basic feature of the Constitution and necessarily includes within its purview the right of a voter to cast his vote without fear of reprisal or coercion. Protection of voter's identity and affording secrecy is therefore integral to free and fair elections and a whimsical line between the voter who casts his vote and the voter who does'nt cast his vote is in violation of Article 14 of Indian constitution. Thus, secrecy is required to be maintained for both categories in a constitutional democracy, we are disposed to think that any kind of criminalization of politics is an extremely lamentable situation. It is an anathema to the sanctity of democracy. The

---

<sup>15</sup>*PUCL & Others vs UOI* (2013) 10 SCC 1

<sup>16</sup>*Lilly Thomas vs Speaker of Lok Sabha* (1993) 4 SCC 234

<sup>17</sup>*Mohinder Singh Gill vs Chief Election Commissioner* (1978)1 SCC 405

criminalization creates a concavity in the heart of democracy and has the potentiality to paralyze, comatose and strangle the purity of the system.<sup>18</sup>

The object is to prevent criminalization of politics and maintain integrity in elections. A provision enacted with a view to promote this object must be upheld as subserving the purpose of constitution. The existing stance in which the law has to be applied cannot be avoided in determining its validity because it's related to the purpose sought to be achieved by the legislation. Criminalization of politics is the cause of great distress of society and negation of democracy. It is vitiating the free and fair elections which is a basic feature. Thus, a provision of election law to promote the purpose of fair elections and facilitate maintenance of law and order which is the essence of democracy must, therefore, be so viewed. More elbow room to the legislature for classification has to be available to achieve the professed object.”<sup>19</sup>

It is worth saying that sponsored criminalization and systematic corruption can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. The agonised concern expressed by the Court on being moved by the conscious citizens, as is perceptible from the authorities referred to here in above, shows that a democratic republic polity aspires to be governed by a government which is being run by the elected representatives who do not have any involvement in offences relating to corruption, societal problems,

---

<sup>18</sup> Supra Note. 15

<sup>19</sup> *Anukul Chandra Pradhan vs Union of India & others* (1997) 6 SCC 1



casteism, affecting the sovereignty of the nation and various other offences.

“It can be said without any fear of denial that corruption is not to be determined by degree, for corruption mothers disorder, distort societal will to progress, expands undeserved ambitions, murders the conscience, jettisons the shine of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality.”<sup>22</sup>

*“It has to be remembered that it is an essential ingredient of the corrupt practice of “undue influence” under sub-section (2) of Section 123 of the Act, that there should be any “direct or indirect interference or attempt to interfere” on the part of the candidate or his agent, or of any other person with the consent of the candidate or his agent, “with the free exercise of any electoral right”. There are two provisos to the sub-section, but they are obviously not applicable to the controversy before us. It was therefore necessary, for the purpose of establishing the corrupt practice of “undue influence”, to prove that there was any direct or indirect interference or attempt to interfere with the exercise of any electoral right.”<sup>23</sup>*

<sup>22</sup> Niranjan Hemchandra Sashittal vs State Of Maharashtra

<sup>23</sup> Aad Lal vs Kanshi Ram (1980) 2 SCC 350

The purity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is to be held.

However, in recent times, India has seen a big crisis of quality, fairness, empathy, integrity, honesty, and intellectual capability among its legislative members, both at the Centre and the State level. Not only is there a serious problem of propriety lying over the fairness of electoral procedure followed, an even greater problem lies in the kind of people who are entering the politics in India. The very objective and spirit of democracy could be lost if India doesn't stop to be deteriorated at the hands of such politicians who are so harmful to the nation and its society. Corruption has always been seen to be rampant in Indian polity, not just at the electoral level, but also at the Executive level. In addition to this, India possesses an alarmingly high number of people having criminal backgrounds who have polluted Indian polity. Although 61 years have passed since India's first ever General Elections, the existing electoral laws have failed in more ways than one to prevent the menace of criminalization in Indian politics. In this regard, it is necessary to make a critical analysis of the existing electoral and post-electoral legal provisions governing the representation of people in India.

Criminalization of politics and corruption has become the biggest hazard to the world's largest democracy that is India. The roots of the menace of corruption are present in the election expenses of the candidates, the expenses done by the candidates are usually much more. Candidates generally not having so much money to spend, the funds usually come from the business world or the underworld. Once the candidate becomes a Member of Parliament, Member of Legislative Assembly or a minister, he has to pay back to his donors in a wide way. This is the main reason of corruption. Corruption at upper levels of political hierarchy leads to corruption in the bureaucracy and other parts of the administration such as the public works department, the police department, etc. Corruption flows downwards into the entire bureaucratic setup and

ultimately also amongst the civilians. Money power is not the only pollutant of elections. Muscle power also plays a big role. A large number of the MPs and legislators in the nation possess criminal records against them.

This evil of Criminalization of Politics should be getting special attention of the people. This is because criminalization of politics revolves around the interests of politicians of all hues, and is against the interests of the whole population. The people can never expect that the politicians would take any initiative in order to rectify this evil. The prevailing trend has been spreading like cancer. It has been nullifying all the constitutional safeguards of democracy, by spoiling bureaucracy, by making it partial; it spoils press; and even threatens the independent wing of judiciary; and thus is destroying the very foundation of democracy. In order to stop such criminalization of politics, the people should immediately wake up and force the political parties to mend their ways.

Criminalization of politics in India is a very serious problem, which has already reached hazardous levels. The political parties are ignorant towards inculcating as well as adopting noble political values and principles of citizenship in the people. They do not attempt to promote patriotism and the commitment to nation-building. They don't have the ambition to unite the people of nation by asserting the importance of harmonious relations. On the contrary, they are usually seen to be perpetuating the differences among the people on the basis such as caste, religion, etc. They make full use of those differences in order for creating conflicts among them. The British used the policy of 'divide and rule' in India. After India became independent, our politicians became masters of the art of dividing groups from the population and inciting hatred against one another. They try to fish in the troubled waters and when the water is calm, they try to trouble it to achieve their own selfish ends. An objective discussion of the public issues by the people is the corner-stone of democracy. The representatives of the

people are expected to encourage such discussions, generate valuable ideas and take decisions in the larger interests of the people. However, even democratic forums like legislative assemblies and Parliament aren't used for sincere discussions but instead they use it for fighting and demeaning each other.

It is a settled principle that criminalization of politics corrodes the legitimacy of the Collective ethos, the hopes and aspiration of the citizen and also potentially obstruct the effectiveness of the principle of rule of law. It has to be understood that democracy in India is a product of the rule of law and aims to establish a social order which is egalitarian. This is not merely a political philosophy but also an embodiment of Constitutional philosophy. Many a times it is witnessed that elections in India are contested with the help of money power which may be gathered from black sources and sometimes also with tainted money in order to retain their power in the subsequent election.

The nexus between the criminal gangs, police, democracy and politician have come out clearly in various parts of India and that Some Political leaders of these armed senas/gangs over the years get elected to local bodies, State Assemblies, and National Parliament. This point becomes self evident when one looks at the number of pending criminal cases against the elected representatives at all levels in our federal system. Several remedies have been proposed by the various committees on the criminalization of politics in the Country. It is also pertinent to note that numbers of elected representatives with pending criminal cases against them are occupying the higher offices of the federal system. As such the aim of this research work is to analyze the various possible methods to minimize the effects of criminalization of politics in the country.

There has been grainy concern over the years in India about several aspects of our electoral system. The conduct of election also has a number of issues that need to

be attended. While the massive size of the electorate makes holding election a daunting task, it should not serve as a Jurisdiction for the presence of issues such as booth Capturing intimidation of voters, Tampered electoral law, large scale rigging of elections and other polling irregularities.

Even after 60 years of India's independence the life of the common man in India are worse than when they were under the British rule. The benefits of independence have reached only a small part of the population, thus creating islands of some ultra rich people who are surrounded by a vast sea of utterly poor population. The rich people who are in nexus with the powerful are getting favourable laws enacted to suit their ends.

It is well known by all that assistance is sought by political parties from criminal elements with the objective of dominating the election scene in India. However, this process is influencing by and large the mind and the will of the people, and the political parties now rule the country according to their will. The system of democracy is now transforming into a dictatorship, because the democracy of India are now in hands of the criminals who are not capable any way to hold the post of legislature.

## **Components of Criminalization of Politics**

### **Muscle Power**

The presence of muscle power in Indian Politics has always been a fact of life for a long time, as far as can be remembered. In the year 1977, it was observed by the National Police Commission (headed by Dharam Vira that:” The manner in which different political parties have kept functioning, especially on the eve of periodic election, involves the free use of musclemen and ‘Dadas’ to influence the attitude and conduct of sizable sections of the electorate. The Panchayat elections, like other election in the recent past, have demonstrated once again that there can be no sanity in India as long as politics continues to be based on caste and religion.

### **Gangsterism**

The politicians today thrive on the basis of muscle power which is provided by criminals. The common people who are the voters are mostly too reluctant to take any measures that would curtail criminal activities. When the political aspect meets the criminal elements, the result is extremely dangerous. Many of politicians choose muscle power illegally to gain vote bank in the country. The assumption they apply is that if they are unable to bring about faith in the Community then they can generate threat or fear to achieve the power in the form of election.

## **Money Power**

The elections to Parliament and State Legislatures take up a lot of expenses and it is widely accepted that this is the chief cause of corruption in India. A candidate who spends lakhs of rupees to get elected, gets a meagre salary during his tenure as an MP/MLA, if and when he is elected.

## **Reasons for Criminalization**

### **Vote Bank**

In the election process both the political parties and individual candidates has to spend a huge sum of a money for the criminals or so called goondas for buying votes of the common man in a illegitimate manner. A political link with them provided a congenial climate to political crime in constituency.

The political parties and independent candidates spend huge amounts of expenditure for vote buying and other illegal/unethical purposes through these criminals or so called goondas to won in the election. A politician's constant link with their constituency provides a congenial climate to political crime. Majority of voters of this country do not know why they should vote. Thus, most of the voters are maneuverable and can be purchased. Most of them are not only individually timid but also collectively coward. To collect their support is easier for the unscrupulous than the conscientious.

It has been witnessed that the criminals are usually wooed by political parties and then given the cabinet posts, merely because their muscle and money power gets them many votes. Elections are often won and lost on swings of a meagre 1% of the vote, so parties cynically woo every possible vote bank, including even those which are headed by any accused robbers or murderers. Legal delays make sure that the accused will definitely die of old age before he is convicted, so the parties keep insisting that these

persons must be regarded as innocent till they are proven guilty.

### **Corruption**

In each election all parties put up candidates with a criminal background, without any exception. Even though some of us may whine about such a decision taken by those parties, the general trend seems to be that these candidates are usually elected to the office. By acting in such a way, we do not realize that the greatest power that democracy gives the people is to vote incompetent and corrupt people out of power.

Independence has taken a two-step process. The first step was the corrupting of the institutions and the second step was the institutionalization of corruption. One can understand that we have reached such stage because the corrupting of the institutions has finally led to the institutionalization of corruption. The failure to deal with corruption has made space for the contempt of the law. Wherever there is contempt for the law and it is combined with the criminalization of politics, corruption is bound to flourish. In the Corruption Perception Index 1998 by the German non-government organization “Transparency International” based in Berlin, India has been placed at the rank of 66 out of 85. This means that 65 countries were perceived to be less corrupt than India and 19 were perceived to be more corrupt.

### **Effects of Criminalization of Politics: Denial of Justice and Rule of Law**

Criminalization is a truth in Indian electoral politics today. The voters, political parties and the law and order machinery of the state are all equally responsible for this. There is very little faith in India in the efficacy of the democratic process in actually delivering good governance. This extends to accepting criminalization of politics as a fact of life. Toothless laws against convicted criminals standing for elections further encourage this process. Under current law, only people who have been convicted at least on two counts be debarred from becoming candidates. This leaves an open window for charge sheeted criminals, many of whom are habitual offenders or history-shelters.



It is surprising indeed why a person should be convicted on two counts in order to be disqualified from competing in elections. The real problem lies with the definitions, according to which, unless a person has been convicted, he is not identified as a criminal. Mere charge-sheets and pending cases are not enough bars to the nomination to compete in an election. Thus, the law needs to change accordingly.

### **Criminalization of Politics and Right to Information Act**

The court has held that right to know antecedents, including the criminal past, or assets of candidates- was a fundamental right under Article 19 (1) (a) <sup>23</sup> of the

---

<sup>23</sup> 19 (1) (a) provides that “All citizens shall have the right to freedom of speech and expression”.

Constitution and that such information was fundamental for the survival of democracy. In its May 2, 2002 judgement<sup>24</sup>, it directed the Election Commission to call for information on affidavit from each candidate seeking election a parliament or the State Legislature as a necessary part of the nomination papers on the following questions:

- 1- Whether the candidate is convicted, acquitted/discharged from any criminal offence in the past?
- 2- if yes, then Whether the Candidate was accused of my offence which is punishable with an imprisonment for 2 or more years, and in which a charge was framed or cognizance was taken by any court of law.
- 3- If so, requires the details thereof; educational qualifications of the candidate; the assets (immovable, movable, bank balance, etc.) of particularly of any overdue of any public financial institution of Government dues.

The RTI 2005 is a very historical Act. This Act makes the Government officials liable for punishment if they fail to provide the information sought by people within a stipulated timeframe. Many government officials are leading luxurious lifestyle, beyond the legal sources of their income. Various government officials file false affidavits about their annual income and wealth details to the Election Commission of India, to the Vigilance Commission or to other authorities. The authorities fail to properly verify these affidavits. Several scams, scandals are coming to light day in & day out and politician keep accusing each other of being involved in scams. Whereas, the authorities keep quiet, as if the affidavits which are filed by the tainted government officials were true. The tainted government officials don't even provide full and right information to the public as per the RTI Act, lest the trutcome out.

---

24 – Union of India v Association for Democratic Reforms and Another (2002) 5

This seen is very common now a days that some government officials, caught red- handed during luxurious spending, easily say that it is at the expense of their political party or of their well wisher. However, in the account books, no entries are found of said parties to that respect. The law prohibits government officials from accepting any sort of gifts, hospitality, favours which may be over the value of rupees one hundred (Rs. 100), because it may be a kind of bribe. But it may be asked under Right to Information Act, 2005. Right to Know is an inherent to every person. Right to know differs and right to information differ only in a single sense, that right to information is a provision given by the government to its people and right to know is a natural right. Natural rights do not have any legal value until they are considered legally. Thus, right to know as being implicit in the freedom of speech and expression, which is a Fundamental right, must have be given a special value. Right to information has the power to bring transparency of governmental activities and to allow the people to find remedies for the things they suffered with.

## **CHAPTER -II**

### **LEGISLATIVE RESPONSE TO CRIMINALIZATION OF POLITICS**

In the preceding Chapter we discussed various components of criminalization of politics in India. The enormous entry of criminals into politics adversely affected the functioning of democracy. In the present Chapter, therefore, an attempt has been made to analyse the role played by the Legislative bodies to curb criminalisation of politics in India. The Parliament of India has enacted various laws and framed rules and regulations to curb criminalisation of politics but nothing seems to have worked till now. The question of criminalization of politics came to the forefront again in the 15<sup>th</sup> Lok Sabha elections and elections were held in 5 states of Uttar Pradesh, Uttarakhand, Goa, Manipur and Punjab in 2012 and in Delhi, Rajasthan, Madhya Pradesh, Chattisgarh and Mizoram in December 2013. In all of these elections there are evidences of involvement of the criminals defying the existing laws of elections.

There has always been a crisis of legitimacy in our political system. While we have outstanding men and women in public life, a flawed electoral process is increasingly alienating public-spirited citizen from the political and electoral arena. The persons best equipped to represent people find it impossible to be elected by adhering to law legitimacy. On the other hand, a person having a criminal and corrupt record getting elected to legislatures seems to have become the norm. The problem of criminalisation goes well beyond the political fate of few individuals.

The impact of criminalisation of politics in India has reached such an alarming stage that if it continues in such an unprecedented way then in the near future the entire governmental machinery will collapse.

Under the Indian legal system there are various laws, which directly or indirectly deal with the entire political process of the country. The Constitution of India also contains various provisions relating to the conduct of electoral process in the country. India has a detailed structure of laws to administer and conduct elections. The formal legal framework for elections rests on certain constitutional provisions, The Representation of the People's Act 1950, The Representation of the People's Act 1951, and the various rules, regulations and orders issued under these statutes largely control the electoral poll process of the country. In addition, certain provisions of the Indian Penal Code and a few other Acts are relied upon to provide for punishment as well as disqualification of candidates and members of the two Houses of Parliament of India and State Legislatures.

India also contains various provisions relating to the conduct of electoral process in the country. India has a detailed structure of laws to administer and conduct elections. The formal legal framework for elections rests on certain constitutional provisions, The Representation of the People's Act 1950, The Representation of the People's Act 1951, and the various rules, regulations and orders issued under these statutes largely control the electoral poll process of the country. In addition, certain provisions of the Indian Penal Code and a few other Acts are relied upon to provide for punishment as well as disqualification of candidates and members of the two Houses of Parliament of India and State Legislatures.

The important articles of the Constitution of India relating to elections are.<sup>1</sup>

- 1 Articles 54-58, 62, 66-68 and 71, which prescribe the terms of office and manner of electing the President and the Vice-President,
- 2 Articles 80-83 lay down the composition and duration of the Rajya Sabha and the Lok Sabha.
- 3 Article 84 prescribes the minimum qualification for a Member of Parliament in terms of citizenship and age.
- 4 Article 101 states that no person can be a member of both Houses of the Parliament or of the Parliament and a State Legislature.
- 5 Article 102 lays down disqualification for membership of Parliament of India.
- 6 Articles 168-173 and 190-192 contain similar provisions for the Constitution, composition, duration and qualifications and disqualifications for membership of State Legislatures.
- 7 Article 324 provides for the establishment of the Election Commission and its functions.

<sup>1</sup> See, *the relevant Articles of the Constitution of India* (i) M.P. Jain, *Constitution of India*, Eastern Book Company, Lucknow, 2003

- 8 Article 326 provides that elections to the House of the People and to the Legislative Assemblies of the States shall be on the basis of adult suffrage i.e. citizens of minimum 18 years of age.<sup>2</sup>
- 9 Article 329 lays down a bar to interference by Courts in electoral matters in as much as any law relating to delimitation of constituencies or allotment of seats cannot be questioned in a Court of law and no election to a House of the Legislature can be questioned, except by an election petition.

*2 The voting age was reduced from 21 to 18 years by 61st constitutional amendment in 1988.*

- 10 Article 102 lays down disqualification for membership of Parliament of India.
- 11 Articles 168-173 and 190-192 contain similar provisions for the Constitution, composition, duration and qualifications and disqualifications for membership of State Legislatures.
- 12 Article 324 provides for the establishment of the Election Commission and its functions.
- 13 Article 326 provides that elections to the House of the People and to the Legislative Assemblies of the States shall be on the basis of adult suffrage i.e. citizens of minimum 18 years of age.<sup>2</sup>
- 14 Article 329 lays down a bar to interference by Courts in electoral matters in as much as any law relating to delimitation of constituencies or allotment of seats cannot be questioned in a Court of law and no election to a House of the Legislature can be questioned, except by an election petition.

The Indian Penal Code, 1860 is used to classify certain actions in connection with elections as punishable offences. There are two sets of disqualification envisaged:

- (i) The first is a disqualification for six years from the date of conviction for certain offences.

<sup>2</sup> The voting age was reduced from 21 to 18 years by 61st constitutional amendment in 1988.



(ii) The second set of disqualification, when convicted for certain other listed offences is also for six years from the date of the release of the person from such conviction. In addition, any person convicted of any offence and sentenced to imprisonment for not less than two years also *attract a six year* disqualification from the date of release from such conviction.

Similarly, the relevant provision of the Representation of People's Act, 1951<sup>3</sup>:

1. Sections 3-6, which deals with qualification of candidates for Parliament as well as State Legislative Assemblies and Legislative Councils.
2. Section 7-11 deals with disqualification of candidates on grounds of their being convicted for certain offences under the Indian Penal Code or some other Acts of Parliament, electoral offences like impersonation, bribery as well as on grounds of corrupt practices and for failure to lodge account of election expenses
3. Sections 19-25 provide details of the administrative machinery for conducting elections.
4. Section 29A deals with the registration of political parties.

<sup>3</sup> See, the Bare act of Representation of Peoples Act, 1951 (cf [www.manupatra.com](http://www.manupatra.com)).

5. Section 58A empowers the Election Commission for suspension of a poll or for countermanding of elections.
6. Section 77 lays down that an account of all expenditure by the candidate and his election agent is kept but explanation (1) excludes expenditure made by his political party or any others from such account.
7. Section 79-122 lay down the procedure for dealing with electoral disputes and disposal of election petitions.
8. Sections 123-136 specifies in detail corrupt practices and electoral offences and punishments prescribed for the same.

However, the Representation of People's Act (section 8 (4)) provides that if this conviction is against an MP or an MLA in any State, the disqualification shall not take effect for three months or within this period if there is an appeal, then till the appeal is disposed of by the Court.

The Representation of the People's Act 1950 and Representation of the People's Act 1951, between them provide for the allocation of seats, delimitation of constituencies, and preparation of electoral rolls and conduct of elections. Some important provisions of the Act are:

1. Sections 13 A 13CC which deal with the electoral system at the State and district level.
2. Section 14-25 provide for the preparation of electoral rolls for each constituency under the supervision, direction and control of the Election Commission and cover the qualifications and disqualifications for

registration of an elector and other conditions applicable to the preparation and revision of the electoral rolls.

3. Section 32 deals with punishment in case of breach of official duty in connection with the preparation of electoral rolls.

### **Administration of elections**

With regard to the administrative machinery required for the elections, each State has a Chief Electoral Officer (CEO) under the supervision, direction and control of the Election Commission. These CEOs in turn have District Election Officers in each district. The Election Commission may nominate an observer to watch the conduct of elections in a constituency or a group of constituencies. For each constituency, for every election to fill a seat or seats in the Rajya Sabha and for every election by the MLAs of a State to fill seats in the state's Legislative Council, the Election Commission, in consultation with the Government of the State, designates or nominates a Returning Officer who is an officer of Government or of a local authority. The Election Commission may also appoint Assistant Returning Officers and subject them to the control of the Returning Officer. In addition, the Election Commission requisitions from the State government staff for appointing as Presiding Officers at polling stations and polling officers to assist these Presiding Officers. In fact, the persons deployed for elections not only consists of employees of Central Government and the State Government but also of local authorities, autonomous bodies, Government Companies, etc. All these staff including the Returning Officers are deemed to be on deputation to Election Commission for the period which commences on and from the date of the notification calling for such election and ends with the date when the results of such election are declared and accordingly such officers are during that period, subject to the control, superintendence and discipline of the Election Commission.<sup>1</sup>

---

<sup>1</sup> P.D.T. Achary, *Elections law and Practice*, Bharat publication, New Delhi, 1st edn, 2004

## **Representation of People Act, 1951**

The Representation of People's Act, (RPA) 1951 contains various grounds for the disqualification of persons contesting an election which falls within the ambit of this Act. The Supreme Court of India in *Y.K. Gadakh v Balasaheb vikhe padl*<sup>2</sup> has also given various guidelines, which the person contesting the election has to follow. But in spite of all these laws, rules, guidelines and various committee reports we cannot say that the problem of criminalisation of politics has been solved to some extent.

The entry of criminals into the political arena of the country is a matter of great concern. The Vohra Committee<sup>1</sup> had strongly stated that the nexus between crime syndicates and political parties was very deep and wide. Although under the Indian criminal justice system there are some Acts and rules, which cover the area relating to the election procedure and conduct of elections but these Acts with their various provisions have not been able to stop this growing menace of criminalisation of politics. There were grave incongruities in the existing provisions of the Representation of People's Act 1951, especially in section 8 of the Representation of People's Act 1951.<sup>3</sup>

---

<sup>2</sup> AIR (1994) SC 678.

<sup>3</sup> see , section 99 of RPA 1951

Section 8(A) of the Representation of People's Act 1951 provides for disqualification on the ground of corrupt practices. The current practice is that once the High Court hands out the judgment on an election petition holding the candidate guilty of corrupt practices<sup>3</sup>, the case goes to the Secretary of the concerned State Legislature or Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President of India who in turn forwards it to the Election Commission. Only then does the EC get the jurisdiction to tender its opinion to the president based on which the disqualification order is issued. The Vohra Committee has strongly recommended for the amendment of the said provision, thereby giving the power to the President to determine the period of disqualification under section 8(A) on the direct opinion of the Election Commission and avoid delay currently experienced. This can be done by resorting to the position prevailing before the 1975 amendment to Representation of Peoples Act, 1951.<sup>1</sup>

It is not true that there is no law to prevent criminals from contesting elections. The election law specifically provides for disqualifying convicted criminals from contesting elections. It is time that the Representation of People Act is amended suitably. For this purpose distinction is to be made between disqualification of a candidate and unfitness of a candidate. The former would mean, as defined in the Representation of People's Act, 1951 being disqualified from the membership of either Parliamentary house or of a state's Legislative Council or Legislative Assembly. The latter will permit a candidate to contest the election and it will be left to the people to decide, on the basis of full information about the candidate, whether to elect him as their representative even after knowing his criminal background. The Representation of People's Act, 1951 makes a distinction between the offences for disqualification of a person. Thus, for certain offences, disqualification runs for a period of six years from the date of conviction.

<sup>1</sup> Report of the NCRWC, Ministry of Law, Justice and Company affairs, Government of India, 2002

For example, people who have been found guilty of committing any of the below mentioned criminal offences by a competent Court is disqualified for a period of six years from the date of conviction. In certain other cases the disqualification is from the date of such conviction and person continues to be disqualified for a further period of six years after his release. These distinctions need to be reviewed.<sup>1</sup>

Offences under section 8(1) of the Representation of People's Act on the basis of which a person can be disqualified are:-

- 1 Promoting enmity and inciting hatred between members of  
different religious and linguistic groups;
- 2 Offences related to rape;
- 3 Practicing and/or preaching untouchability
- 4 Involving in bribery or corruption;
- 5 Offence of undue influence or personation at an election
- 6 Section 3 (offence of committing terrorist Acts) or section 4 (offence of committing disruptive Activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or
- 7 Beating one's wife;
- 8 Insulting the National Flag and preventing the singing of the  
National Anthem;
- 9 Offences related to drug trafficking;

1 R.N Choudhury, op.cit, p. 8

- 10 Importing or exporting prohibited goods;
- 11 Offences related to illegal transactions in foreign currency;
- 12 Misusing places of worship;
- 13 Electoral offences like booth capturing, taking away ballot papers from the booth, and,
- 14 Fraudulently defacing or destroying ballot papers and
- 15 Offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860);
- 16 Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991<sup>1</sup> or,
- 17 Section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971)<sup>2</sup>,
- 18 The Commission of Sati (Prevention) Act, 1987 (3 of 1988)<sup>3</sup>;

1 Ins. by Act 42 of 1991, s. 8 (w.e.f. 18-9-1991).RPA 1951.

2 Ins. By Act 42 of s. 3, (w.e.f. 1-8-1996). RPA 1951.

3 Ins. by Act 9 of 2003, s. 2 (w.e.f. 7-1-2003). RPA 1951.

If a person has been convicted of the following offences and sentenced to a prison term of not less than six months he/she will be disqualified from the date of being found guilty and for a further period of six years from the date of release from prison-

1. Offences related to dowry taking or giving;
2. Adulterating food and medicines and
3. Hoarding and profiteering illegally.

In case of a person who has been dismissed from government service on charges of corruption, he is disqualified for five years from the date on which he has been dismissed. If a candidate has not filed details about the money spent on elections by him/her the Election Commission can disqualify such a person for three years.

Furthermore if a person has been found guilty of committing any criminal offence other than those mentioned above and have been sentenced to prison for a term of two years or more he/she will be disqualified from the date of such conviction and for a further period of six years after release from prison. This provision in the election law covers grave offences like murder, kidnapping, dacoity, arson and indulging communal riots. A glaring anomaly is in respect of Section 8 (4) the Representation of People's Act 1951, which gives a limited immunity from disqualification incumbent legislators. If an incumbent has been convicted for an offence, no disqualification comes into effect for three months and if he appeals against the conviction during that period, then disqualification will not come into effect until the appeal is disposed off. The intention of lawmakers, evidently, is to prevent a needless vacancy and by-election if the legislator is eventually acquitted. However, this kind of immunity cannot be given to the incumbent for the next general elections, when he becomes a candidate . The law should be amended to clarify that a convicted legislator will stand on the same footing as another convicted person in respect of the election after the expiry of his term.<sup>1</sup>



In *Lily Thomas v. Union of India*<sup>2</sup> the Supreme Court of India has recently strike down section 8(4) as violative of the constitutional provisions. Now even if appeal is preferred against the order of conviction it would not have any effect on disqualification and the person shall stand disqualified.

Illustrating this further, in case relating to a rapist, convicted and sentenced to ten years imprisonment, being disqualified only for six years under subsection 18 and while not be able to vote, being free to contest elections even while serving the last four years of his sentence in prison.

Further in this regard the Law Commission of India has advanced some suggestions to remove the difficulties and to curb the problem of criminalisation of politics, they are.<sup>3</sup>

1. There has been increasing corruption in all areas of public life. People are generally willing to enter politics or contest elections with the sole purpose of getting rich overnight. Before people are allowed to enter public life, the public has a right to know the antecedents of such persons. The present framework in which any person can freely enter the political arena without any bar, especially without the electorate being informed about any details of assets possessed by the candidate are far from satisfactory. It is legally essential to provide that a candidate seeking election has to furnish the details of all his assets, whether movable/immovable, possessed by him/her, wife/husband and dependent relations, duly supported by an affidavit.

---

1 'Criminalisation and the anomalies of Law', The financial Express, Friday, Jul 30, 2004

2 <http://www.pucl.org/Topics/Law/2013>

3 170\* Report of Law commission of India, 1999, (29\* May).

2. In view of the Law Commission's recommendations for debarring a candidate from contesting an election if any charges against him have been framed by a Court in respect of offences that are mentioned in the proposed section 8-B of the Act, it is also essential for a candidate who seeks to contest election to furnish details regarding the criminal case, if any, which is pending against him, including a copy of the FIR complaint and any order made by the concerned Court.
3. With the purpose of achieving these objectives, it is important to insert a new provision after Section 4 of the Representation of the People's Act, 1951, as follows:

[4A. Qualification for membership of the House of the People, the Council of States, Legislative Assembly of a State or Legislative Council]:

A person shall be qualified to file his nomination in order to contest for election for a seat in the Lok Sabha, the Vidhan Parishad or the Vidhan Sabha of a State only if he or she:

4. Declares all his assets, whether movable or immovable, whether possessed by him/her, by his/her spouse or by any dependent relations, and such declaration should be duly supported by an affidavit, and,
5. Declare whether any charge has been framed against him in respect of any offence referred to in Section 8B.

Basically, the existing disqualification provisions under Section 8 only apply to cases of conviction. The real problem is that criminal cases usually take an interminably long time to get disposed; if any accused is elected even during his trial period, he now

gets the advantage of twisting the arms of the police and prosecution to dilute the case or he pressurizes the government to withdraw charges against him. This is the chief reason why a political office is very attractive to persons with criminal antecedents. Obviously, the solution lies in disqualification of those facing criminal charges from being able to contest elections. But such blanket disqualification is usually opposed on two grounds :

1. The law considers a person innocent until he is proven guilty.
2. Disqualifying a person against whom criminal charges are framed would amount to an unfair denial of his rights. But two arguments counter this kind of thinking.

The first is that disqualification of a person does not prove his guilt. Right to contest for elective office is not a fundamental right of a citizen but only a legal right. The option to contest is always open for a citizen once the charges are cleared against him. Even if he does not contest in elections during trial, no irreversible damage has been inflicted upon him in the form of violation of fundamental rights. It must be understood that a public office is nobody's birthright.

Second, in election and representation matters, the people's rights are fundamental. In case there is a clash between the people's right of having a good representative in the Parliament/state legislature, and an individual's right to represent the people, then precedence should be given to the society's right. Such as the right to privacy, which is subjected to public interest that is when public interest is bigger than the individual's right to privacy, then such right must be exercised keeping in mind the interest of the society.

But there is a more serious objection to an outright disqualification of any candidates who faces charges. Our criminal justice system is nowhere near to perfect. Often, made-up charges are framed against innocent rivals. Criminal investigation is not

always professional or fair. If candidates are started to be disqualified on the basis of malicious charges or politically motivated charges, we will have reduced our democracy to the level of Pakistan or Iran. Considering the state of our politics, policing and justice delivery of our nation, such a blanket disqualification is both unwise and dangerous. It means murderers and mafia dons can continue to be elected, pressurize police and governments, escape scot-free, and undermine the principles of Democracy, Obviously, we have to search for a realistic solution between the two extremes, one being disqualification for all charges, and the other being even a criminal enjoying the right to contest until he gets convicted. The law has proved to be so absurd Rajiv Gandhi's murderers had the right to contest elections between 1991 and 1998, after which they were convicted. Happily, a just resolution is possible. In view of a Supreme Court judgment<sup>1</sup> which mandated a candidate to disclose his antecedents, the central government drafted a Bill which provided for disqualifying persons against whom charges of committing heinous offences have been framed by a competent Court in two separate criminal proceedings. It is obviously laughable that a person is eligible to contest even if he has committed the grave offence of murder, but is not eligible if there were two murder charges pending! That absurdity apart, a sincere effort was made to disqualify persons facing extremely grave charges. These heinous offences listed were.

1. Waging war against India (section 121 IPC);
2. Murder (section 302);
3. Abduction with an intention to commit murder or for ransom (sections 364 and 364A); rape (section 376);
4. Dacoity with or without murder (sections 395 & 396)
5. Offence under section 18 and 20 of Narcotics Drugs and Psychotropic Substances Act, 1985; and

6. Section 3 of POTA (Prevention of Terrorism Act, 2002)

These offences are extremely grave, and citizens are unlikely ever to face such charges. Disqualification occurs only when a competent Court frames charges after preliminary evidence, not when an FIR is lodged, or when police file a charge sheet.

Under section 8A of Representation of People's Act 1951 each case of disqualification on the grounds of corrupt practices is required to be referred to the President for determination. This seems unnecessary. The Act itself should provide disqualification for a specified period. Disqualification for dismissal for corruption for disloyalty of a state or central government servant is for a period of (5) five years from the date of dismissal. It is not clear why in such cases the period is shorter as compared to disqualification under other sections of the Act.

The country is facing the problem of criminalisation of politics in which criminals, that is person convicted of criminal offences are entering into election fray and contesting as candidates and section 8 of the Representation of People's Act, 1951 lays down the condition in which anyone would be disqualified for contesting election for Parliament and Legislature of the state on the grounds of being convicted, and, where as any person convicted of any offence listed under sub-section (1) of section 8 of the Representation of Peoples Act, 1951 shall be disqualified for six years from the date of such conviction and any person convicted for the contravention of any of the laws listed under sub section (2) of section 8 of Representation of People's Act, 1951 and sentenced to ten years of imprisonment then for not less than six (6) months shall be disqualified for a further period of six (6) years after his release from the date of conviction and the disqualification shall continue and under sub section (3) of section 8 of Representation of People's Act, 1951, a person who is sentenced to imprisonment for 2 years or more shall be disqualified from the date of conviction and the disqualification shall continue for further period of six (6) years

since his release. Under sub-section (4) of section 8 of Representation of People's Act 1951, states that none of the above disqualification will take effect in case of a person who on the date of such conviction is a member of Parliament or State Legislature, since three months have elapsed from the date or, within that period an appeal and application for revision is brought in respect of conviction or sentence, until that appeal or application is disposed off by the Court and it is often been observed that even those persons who are not sitting members of Parliament of State Legislature on the date of such conviction contest election if they have filed an application for revision and have been granted bail during pendency of such appeal/revision.

The question is now of the effect of the suspension of the sentence by the appellate Court. Section 389 of Criminal Procedure Code gives this power to the first Court till filing of appeal and the appellate Court enables the suspension of execution of sentence or order appealed from, it is only the execution which is suspended and nothing more with the result that the sentence awarded is not suffered during the pendency of the appeal and even though it subsists and the appellant is released on bail. There is no inclination in section 8 (2) of the Representation of People's Act, 1951 that the disqualification there under remains in abeyance during the pendency of the appeal against conviction on the other hand, section 8 (4) gives the contrary indication by laying down an exception only in case of a sitting member. Suspension of execution of sentence/order/grant of bail under section 389 of Criminal Procedure Code has only the effect of avoiding the sufferance of sentence pending appeal, but then in order to attract the disqualification under section 8(2), it is not necessary to suffer any part of the sentence awarded. The above views have been upheld by the Supreme Court of India as well as Various High Courts in India and, therefore, the Election Commission has after taking due note and paying due regard to the Various judicial pronouncements of the Hon'ble

Supreme Court and Hon'ble High Courts come to the view that the disqualification under section 8 of the Representation of the People's Act, for contesting election to Parliament and State Legislature, on conviction of offences mentioned therein, begins from the date of conviction notwithstanding the fact whether the person is released on bail or not during the pendency of the appeal (subject to the exception in the case of the sitting members of Parliament and State Legislature under subsection 4 of the said section 8 of the Representation of Peoples Act} accordingly the Election Commission has in exercise of its power of superintendence, control and direction of election to Parliament and State Legislature vested by article 324 of the Indian Constitution hereby directs that all the Returning Officers at the time of scrutiny of nomination must take note of the above legal position and decide about the validity of the candidature of contestants disqualified under the said subsection 8 of the Representation of People's Act 1951.<sup>1</sup>

This shows that the provisions of the Representation of People's Act, 1951 needs to be examined afresh in the light of the experience of the working of democracy in the last 65 years, without such vigilance, democracy in India may remain only in form and on paper. The Parliament needs to disqualify persons who face such charges. Any minor or political offences are not included in this category. However, currently, if people facing these grave charges are disqualified, we can clear our politics from some of the most corrupt elements.

Such disqualification does not address the elementary issues like highly politicized policing, poor justice delivery and prosecution and a perverted electoral system, which makes hardened criminals with money and caste power "winnable" candidates. But this could be the first step in our quest to decriminalize politics.

The early signs of criminalisation appeared after Section 77 of the Representation of People's Act was amended in 1974 to provide that expenditure incurred

by political parties and others shall not form part of the election expenditure of a candidate, thereby paving the way for unrestricted spending in elections.

The Commission has suggested the deletion of Explanation (1) to Section 77 of the Representation of Peoples Act 1951 so that expenses incurred by the political party and the friends of a candidate are considered part of his or her election expenses. It has also suggested that the Election Commission be vested

with legal powers to supervise, verify and investigate the election expenses of candidate and initiate legal action if they exceed the prescribed limits. State funding of elections, with sufficient safeguards, will help to those seeking to contest elections without money power.

There has always been widespread concern in India about the growing menace of criminal elements entering the political arena. Parliament has undoubtedly been conscious of the alarming deterioration of ethical norms in public life during the past 60 years. At the special Parliamentary session on the Golden Jubilee of Independence which was celebrated during August-September 1997, the Lok Sabha adopted a resolution urging that “Continuous and proactive efforts be launched for ensuring greater transparency, probity and accountability in public life so that the freedom, authority and dignity of the Parliament and other Legislative bodies are ensured and enhanced; that more especially, all political parties shall undertake all such steps as will attain the objective of ridding our polity of criminalisation or its influence.”<sup>1</sup>

Since this pledge, there have been two round of elections to the Lok Sabha. Soon after forming its government in 1998, National Democratic Alliance (NDA) released the National Agenda for Government, which was a “a joint commitment, an assurance given to the entire country”. In that declaration, the NDA gave an said,

<sup>1</sup> *Frontline*, Volume 19 - Issue 16, 3-16 August, 2002.



“We will introduce necessary electoral reforms on the basis of recommendations of the Goswami Committee so as to deal with the malaise of defections, corruption and criminalisation of politics and to end electoral malpractices “Unfortunately, that government fell in April 1999.<sup>1</sup>

The Law Commission had proposed that the law should be amended so that any person who has been accused of an offence which is punishable by imprisonment for five years or more must be disqualified from contesting elections, even if when the trial is pending. The only condition is that the charges have been framed against him by a competent Court. The Commission said that this would help to cleanse the political establishment from the influence of criminal elements and protect the sanctity of the Legislative Houses. The counter view to the proposal is based on the doctrine that a person is presumed to be innocent until proved guilty.

The Commission said that the law should be amended to provide that a person cannot contest from more than from one constituency at a time. It added that in case the legislature was of the view that the provision facilitating contesting from two constituencies was to be retained, then there should be an express provision in the law requiring a person to deposit an amount which would match the expenditure for holding the by-election, if he contests and wins election from two seats, resulting in a by-election from one of the two constituencies. The amount could be Rs. 5 lakhs for the State Assembly and Rs. 10 lakhs for the Lok Sabha election.

Favouring negative or neutral voting, the Commission recommended that the law should be amended.

1- Ibid

“For this purpose, Rules 22 and 49B of the Conduct of Election Rules, 1961 may be suitably amended adding a proviso that in the ballot paper and the particulars on the ballot unit, there shall be a column ‘None of the above’ to enable a voter to reject all the candidates,” it said it also wanted the political parties to publish their accounts annually for the information and scrutiny of the public for which purpose the maintenance of accounts and their auditing were a pre-requisite.<sup>1</sup>

On opinion and exit polls, The Commission favored some restrictions for a specified period on their publication, in the wider interests of free and fair elections.<sup>2</sup>

Criminalization of politics and the politicisation of crime is a theme that has been endlessly debated in India, yet no effective practical solution is in sight. The idea of doing something drastic to put away ‘anti-social’ and ‘criminal’ elements and prevent those ‘behind bars’ from contesting elections thus have its attractions for middle class mind. However, it comes up against basic tenets of the rule of law, above all the principle that a person is legally innocent unless found guilty by a Court. This is not to underestimate the social and political importance of waging a determined campaign to cleanse politics of unsavory elements, including those who capture polling booths, register fraudulent votes, terrorize voters, use firearms in electioneering, unleash caste oppression, indulge in communal hatred, spend unaccounted money to buy votes, and break the election and general laws in various other ways.

The Law Commission of India recommended in its 170th Report, submitted in May 1999, that The Representation of the People Act should be amended authorizing the courts in framing charges for electoral disqualification. The Report justified the change proposed by asserting that most of the relevant offences were committed by

1 Refer to Rule 22 &49B of the Conduct of Election Rules, 1961.

2 170th Report of Law Commission of India, Government of India, 1999, (29th May).

“persons having political clout and influence” and frequently enjoying the backing of anti-social elements, with the result that “no independent witness [was] prepared to come forward to depose against such persons.” The report itself called attention to the scope for misusing the criminal justice system because of corruption “at certain levels” and the politicization of the process of appointing public prosecutors. Interestingly, when the Law Commission invited responses to its proposal, two eminent men of the law registered their firm opposition. According to the report, Justice V.R. Krishna Ayer, the former Supreme Court judge, “strongly opposed the amendment of section 8, observing that the state should not resort to “any shortcuts even for achieving desirable goals.

“ The then Minister for Law and Justice, Ram Jethmalani, also cautioned the Law Commission that the proposed change would provide plenty of scope for political mischief. There is no alternative to plugging the big holes in law enforcement, reforming and speeding up the criminal justice system, and mobilizing democratic public opinion to put pressure on political parties not to field mafia dons, *goons* and other unsavory characters either as candidates or campaigners. Until this is done, the phenomenon of criminalization of politics will not go away.

## **Chapter – III**

### **JUDICIAL RESPONSE TO CRIMINALIZATION OF POLITICS**

In India, too, the judiciary has sought to cleanse the political system of criminal elements by the pronouncement of specific judgments which has directly or indirectly influenced the issue of the criminalization of politics. Various Cases determined by the Supreme Court and by various High Courts are discussed below in brief:

The Indian Supreme Court replied to a writ petition lodged by the Association for Democratic Reforms<sup>1</sup> has taken notice of the increased trend of criminalisation of politics in India and held that the voters has every right to know the social, political educational history of a candidate in parliamentary election or election of the state Legislature. In addition, India's Supreme Court guided the Election Commission of India to give a notice to all aspiring candidates to publish accessible information about education, assets, liabilities and criminal antecedents for the benefit of the voter. But the Indian Parliament, in order to negate the Court's order and Indian election commission notification amended the electoral law (Representation of the People's Act). In response to this amendment.

1 – AIR (2002) SC 2112

Peoples union for civil Liberties<sup>2</sup> lodged a writ petition before the Indian Supreme Court on the grounds that Amendment infringes the person's right to know under Article 19(1)(a) of the Constitution of India<sup>3</sup>. The revised People's Representation Act provided that Only elected candidates were required to provide details of their assets and liabilities to the chairmen of the houses concerned and not to the MPs who are not elected. Supreme court of India responded to the amendment has held that the Parliament can not declare that the law declared by the court is not binding. The court further stated that the amended People's Representation Act was a 'half hearted attempt' by government to combat the use of money and muscle power in Elections<sup>4</sup>. The Indian Supreme Court has also upheld the view in the case of Common Cause a registered Indie Society v Union of India<sup>5</sup> In which the court describing the power of Election commission under article 324(1) of constitution of India to seek for details of election expenses incurred by a candidate in an election. To bring about greater accountability and transparency and to stop involvement of black money in election<sup>6</sup>.

2 – PUCL V. UOI op.ct

3 – for detail covering this point see article 19(1)(a) of constitution of India

4 – JN pandey, *constitutional law of India*, Allahabad law agency, Allahabad, P.170

5– [(1996)2SC 752]

6– for detail covering this point see article 324(1) of constitution of India

The Supreme Court has drawn Parliament's attention time and time again to that atrocious piece of harm done to the integrity of the election process.

The Supreme Court had observed in *G. Y. Kanakarrao*:<sup>7</sup> “prescription on ceiling on expenditure by a candidate is a mere eyewash. This lacuna in the law is, however, for the parliament to fill, lest the impression is reinforced that it is retention is deliberate for the convenience of everyone. If this is not feasible, it may be advisable to omit the provision to prevent resort to indirect method for its circumvention and subversion of the law. This provision has ceased to be even a fig leaf to hide the reality.”

Again in *C.Narayanaswamy vs. Jaffer Sharief*<sup>8</sup> the Supreme Court expressed its unhappiness: "As the law stands today, anyone including a smugglers, criminals or other anti-social elements can spend any amount over the Election of any candidate interested in such case, for whom no account shall be managed or furnished, and no other expenditures shall be incurred may be considered to have been expenditure for election under Section 77(1), to be equal to corruption.

7 – AIR (1994)SC 678

8 – [(1994)3SCC 170]]

In *Jawahar Singh v. Election commission of India & Others* the Supreme Court of India dealt with the issue of criminals' involvement in elections and whether a person can contest in election who is released on bail in a criminal offence pending appeal section 8(3) of Representation of Peoples Act which deals with the disqualification of a candidate pending an appeal in a criminal offence.

In the case of *Sharat Chandra Rabha v Khagendra Nath*<sup>10</sup> the Supreme Court held that suspension of sentence did not wipe out sentence and conviction. A reprieve was held to be a temporary suspension from a sentence. Remission has the effect of wiping out the remaining portion of the sentence which has not been served, thus in practice the sentence is reduced to that one already undergone. Remission, in fact, does not affect the order of conviction by court and a court passed sentence. When suspension of the sentence while an appeal is pending has no purpose of wiping it out, it is difficult to accept the concept that the disqualification U/S 8(2) remains arrested or abeyance while the suspension order pending appeal against the conviction and sentence. This is more so in the case of Section 8(3) provides an indication to the contrary. Thus in the instant case, the sentence of three years' imprisonment shall not be affected and the appellant shall remain disqualified even if he does not have to go through the whole sentence.

9 – AIR (1999) ALL 182

10 – AIR (1961)SC 34

In Sachindra Nath Tripathi v Doodnath<sup>11</sup> , Allahabad high court also held the same view. In this case the election of Shri Doodnath was declared invalid, who stood Convicted by the trial court for the 302 and 307 I.P.C offenses and released Upon bail on election period, held that- "the disqualification which is automatic effect of conviction, springs up right at the time of pronounce of conviction, which findings is yet to be reversed or set aside".<sup>12</sup>.

### **The case of Jayalalitha in the light of the Representation of People Act, 1951<sup>13</sup>**

The incongruities in Section 8 of the Peoples' Representation Act, 1951 deeply examined in Jayalalitha disqualification case. The Constitution bench of Supreme Court ruled that she was ineligible to hold the Chief Minister's office, Tamil Nadu after her arrest and disqualification under Clause 8(3) & Section 8(1) of the RPA<sup>14</sup>.

Pursuant to section 8(3) of the People's Act 1951, a person convicted of any offence and sentenced to two years imprisonment or more in an electoral contest shall be barred for a total in six (6) years after the conviction date. Jayalalitha was

11 – 84<sup>th</sup> election law report, P.46

12 – refer to Indian penal code, sec 302 & 307

13 – “ politics after disqualification”, frontline(2000, June)

14 – refer to sec 8(3) & 8(1) of the RPA, 1951



sentenced to two and three years imprisonment by the Court of Justice in respect of various cases. The sentences were later stayed by the High Court of Madras.

Jayalalitha brought her Nominations from Krishnagiri, Andipatti, Bhuvanagiri And pudukottai constituencies. On two grounds the Returning Officers rejected her nominations. Firstly, she was convicted and sentenced to two years' and three years of imprisonment for two corruption charges against her, and so Section 8 (3) the representation of People's Act disqualifies her from contestation. The 1997 Order states disqualification under RPA for criminal prosecution Referred to in the Act as having effect as of the date of conviction by the trial court, Regardless of whether or not the person accused is released on bail during the pendency of appeal.<sup>15</sup> Her papers were also rejected on the ground that Section 33(7) (b) which restrict person from filing nomination more than two constituencies.

The dispute ended up subsiding when the Chief Electoral Commissioner on April 30 Dr. M.S. Gill agreed with the Returning decisions Officers in both Tamil Nadu and Kerala. He said that there is legal justification for the Election commission's order dated 28 August 1997 and the returning officers acted

15 – Refer to sec 8(3) of RPA, 1951

correctly<sup>16</sup>. The law was “clear” on the exemption provided to sitting MLAs such as Balakrishna Pillai. He also denoted that Section 8 of the People's Representation Act upheld by two separate orders from the High Court of Madras. The six-page order stated: The election commission, therefore, after taking due note and paying due regard to the above judicial pronouncements of the supreme court and High court come to the considered view that the disqualification under section 8 of RPA,1951 for contesting elections to parliament and state legislature , on conviction for offences mentioned therein, takes effect from the date of conviction by the trial court, irrespective of whether the convicted person is released on bail or no during the pendency of appeal.

“Accordingly, the Election Commission, in the exercise of its power of superintendence, direction and control of elections to parliament and state legislature vested by article 324 of constitution, here by direct all the Returning officer, at the time of scrutiny of nomination must take note of above legal position and decide accordingly about the validity or otherwise the candidature of the contestant disqualified under the said section 8 of Representation of people Act 1951”

16 – Election commission’s order No. 509/dsqln/97 – jsl of Aug 28, 1997

17 – RPA, 1951 sub sec (4) of sec 8

In 1953 *Y.K Gadakh v. Balasaheb Vikhe*,<sup>19</sup> Supreme Court once again pointed out certain guidelines concerning disqualification of persons from contesting the election. Indian courts are designed to prevent a person charged with serious crimes and a court is prima facie satisfied with his involvement in the crime, he should be kept out of election as it would be a fair restriction in public interest.

The Supreme Court 's judgement in *Lily Thomas v. Union of India*<sup>20</sup> in this regard, the Supreme Court of India has changed its earlier stance. The court held that if a sitting MP or MLA is convicted (not only charged), he / she would be immediately disqualified and the seat declared vacant. Court also explained another issue relating to disqualification by affirming that if certain guidelines also applicable for sitting MPs and MLAs, hence they cannot continued to be a member of state legislature or parliament. Court also opined that parliament does not have power to legislate different laws for disqualification of a member. Above mentioned judgement has given rise to a lot of debates among the politicians,

18 – for details concerning this point see article 324 of constitution of India, Sec 8 of RPA,1951

19 – AIR (678) SC 1994

20 – Writ petition(civil) No. 490 of 2005, SC of India

administrator, state men and common people alike. It also create a controversy over judiciary's clipping of legislature's power.<sup>21</sup> The observation made by Supreme Court are to protect the conduct of elections from evils of money control and criminalization. Court fully recognised its limitations and it totally left the Parliament to make appropriate legislation.

It would be unacceptable to raise the bogey of usurpation of legislative power by court. Tough there are laws to govern such unlawful activities and from time to time numerous commissions made various recommendations, but still parliament has not been worked to implement such recommendation till date. A comparison with constitution of United States should demonstrate that the American law on corrupt practices is the presence of broad rules in constitution of many states. That elections must be free and equal that does not just mean free exercise of right to vote but also having equal influences over each and every vote.

This restricts law makers to pass laws that violate free and fair election . The sanctity of election is the essence of democracy and invalidation of election on the basis of any corrupt practice is the object of enacting these provisions, it is unacceptable that the election seen as degenerated over years, appreciation of

21 – “parties rue erosion of parliamentary democracy” the Assam tribune, 1<sup>st</sup> Aug 2013

evidence for determining the commission of a corrupt practices, handed liberally.

If rule of law is to be upheld as the essence of democracy it is the responsibility of court to consider the facts and to comply with the law. For democracy to survive, rule of law must prevail and it is necessary that best available men should be chosen as representative of people for proper governance of nation. This can be best achieved through men of high moral and ethical values who win in the election on a positive vote obtained on their own merit and not by the negative processes of vote of elimination based on comparative demerits of the candidate. It is necessary that the impact of money power should also be reduced from election, otherwise many person of undoubted skills or capacity and credibility for want of requisite economics support would not be able to enter the field to make the people's choice meaningful. It can only be done if elections are conducted through a positive vote and a comparison of merits and skill of contestants without power of money. Apart from other adverse consequences the rising influence of money power has also promoted criminalisation of politics.

Real education of electorate envisages reminding them of past achievements and future plans of the political party on a positive note and its candidate's qualification to serve that purpose compared with those of other political parties and their candidates and not a projection of comparative greater demerits of the opponents. This is with a view to emphasising political functioning depends on the standard of person chosen for governance of the country. This is need, which the election campaign is meant to serve in an election based on party lines, the qualification of the candidate being material for this purpose.<sup>22</sup> Right to education act can make a vital contribution in this regard by

22 – Cf para 18, Manu / SC / 0599 / 1994

making illiterate voter literate. So that the voter can exercise his astuteness more effectively while exercising his right to vote because he will be in much better position to realise the power and value of his vote. The responsibility of top echelons of leadership at national and state level of all political parties shall set the trend giving the needed information to the electorate by the following desirable criteria so that it percolates to lower levels and provides a pleasant ambiance for free and fair poll.

A contrary trend of speeches by top leaders tends to degenerate the election campaign as it descend to lower level and at a time promotes even violence leading to criminalisation of politics. The growth of this unhealthy trend is a serious cause for concern proper functioning of democracy and it is the responsibility of top leaders of all political parties are reversing this trend to allow the movement of functioning of democracy in right direction. Against this background it is the time that Representation of Peoples Act, 1951 is amended appropriately for this purpose, distinction needs to be made between disqualification of a candidate and unfitness

of a candidate. The former signifies as defined in the RPA being disqualified for being elected as a member of either house of parliament or legislative assembly of state. Later will allow a candidate to contest in election and it will be left to the people to decide as above whether to elect him as their representative even after knowing his criminal background.

In a judgment of the case PUCL v. Union of India<sup>24</sup> the Supreme Court of India giving its verdict requested the Election Commission to include a new choice of preference besides the contesting candidates “none of the above” in the EVM

24 – PUCL *op. Cit.* 105

machines. Such a provision will help the voters to reject all the candidates who are not of their choice. This has been for the first time practised in the last assembly election of five states of India. It is certain that the inclusion of such a provision would definitely have some contribution to combat criminalisation of politics, since the provision itself acts as the most effective instrument to check the entry of the criminals in Indian politics.

From the above analysis it is seen that at the higher level in government in general and legislatures and Judiciary in particular, the problem of criminalisation of Indian politics has attracted attention from time to time, and, committees and commissions have been set up to deal with the problem. Institutional devices to remedy the defects of the political system are of particular relevance for the developing countries. In the western democracies non legal institutions like the political parties, the press and the public opinion have been traditionally exercising influence over the political system. They have also developed their own internal norms and political ethics. They have been able to work fairly effectively to ensure that political system really serves the public purpose. By contrast, the developing countries like India to combat criminalisation of politics need strong political will and a steady development of political infrastructure. From of all this, it may be said that legislative and judicial response to combat criminalisation of Indian politics cannot be said to be effective. It is true that both the two institutions have taken some measure which may be of mere cosmetic value and not of real worth.

## **Chapter 4**

### **ROLE OF ELECTION COMMISSION**

In the last chapter judicial response to criminalization of politics in India has been discussed. In this chapter we are discussing about the role of Election Commission and the importance of free and fair election. In present chapter, therefore, an attempt has been made to discuss conducting of free and fair election and the role of election commission in holding free and fair poll.

Elections are a crucial aspect of a country. It becomes more important when the country is democratic and tends to follow the path of representative government. India claims to be the world's largest democracy. It has a written Constitution which is the lengthiest Constitution of the world. No other country has that elaborative and bulkiest Constitution as that of India. Democracy is not just a term but is the very spirit of India. Elections are the only instrument which can be used to uphold the democratic principles of India. Hence, being a weapon which is used to test the accountability of the officials, the elections are being regulated and administered by the autonomous and independent body named the Election Commission of India. The Election Commission is the constitutional body which is solely responsible for supervising, conducting and administrating the entire process of the elections in India in order to maintain the sanctity of the Constitution of India. The Election Commission of India is a highly authoritative and decisive in matters of Elections, however, it can be challenged in courts as nothing is above the Constitution of India. The elections are confined to a particular process and it is important to follow a specific format in order to have elections conducted in India. It is important to understand the historical background, composition and power and functions of the body which is responsible for the maintenance of the democracy in the country.

As defined by the Preamble of the Constitution, India is a Socialist, Secular, Democratic Republic which came into existence as modern Indian nation state on 15th



August 1947 with the following the process of dreadful partition. Elections have been the part and parcel of the democratic process in the country since then. Free and fair elections have been conducted on regular intervals in accordance with the principles enshrined in the Indian Constitution, Electoral systems and laws. The Election Commission was established on 25th January 1950 in accordance with the Constitution of India and the Golden Jubilee of the same has been celebrated in 2001. Originally the commission consisted of only Chief Election Commissioner and two Election Commissioners. The theme that the Election Commission of India adopted in celebrating its Diamond Jubilee in 2010 was ‘Greater Participation for Stronger Democracy’, thus, demonstrating the major aspect of democracy that is participation of the citizens of the country itself. The ECI has evolved from time to time and has been questioned a lot of times. It has been the most crucial body for making sure that the elections are being conducted in a manner which is not violative of Constitutional principles.

The Election Commission is a body which is responsible for making sure and conducting free and fair elections in the country. This power has been vested to the body by Article 324 of the Constitution of India. Since its establishment in 1950 and till 15th October 1989, the Election Commission had functioned as a single member body consisting of the Chief Election Commissioner. But on 16th October 1989, the President of India appointed two more election commissioners to cope up with the increased work of the election commission, this was done due to the fact that the voting age had been reduced to 18 years from 21 years. And in October 1993, the President of India appointed two more election commissioner and since then, to this day, the Election Commission has been functioning as a multi-member body consisting of three election commissioners. This article deals with the Election Commission’s powers and functions as well as the flaws which are present in the body. The Election Commission is an independent and permanent

body which is established by the Constitution of India to ensure free and fair elections in the entire nation.

Article 324 of the Constitution of India provides for the power of superintendence, direction, and control of the elections for the parliament, state legislatures, the office of the President of India and the office of the Vice-President of India, is vested in the Election Commission's jurisdiction. Hence, the election commission is a body which is common to both the Central Government as well as the State Governments. The election commission is not at all concerned with the elections of panchayats and municipalities in the states, for these elections, there is a separate body which is called as the State Election Commission.

**The Mission of the Election Commission:** The Election Commission of India has to maintain its independence, integrity, and autonomy and it must also ensure ease of accessibility, inclusiveness, and ethical participation. It must also adopt the highest standards of professionalism for free, fair, and transparent elections in India to strengthen the trust which the people have in the electoral democracy and governance.

**The Vision of the Election Commission:** The Election Commission of India has to be an Institution of excellence by intensifying active involvement through participation and deepening as well as strengthening the situation of Democracy in India.

### **Requirements of free and fair Elections**

The constitution of India has mentioned many requirements for conducting free and fair elections but the major requisites are: Free and independent authority In order to conduct elections an authority is needed, this authority should be independent and free from any political interference. Rules and regulations– The set of rules and regulations required for governing the elections will be held by the authority appointed to conduct the elections. Redressal mechanism– If any doubts or disputes arise during the conduct of

elections, a redressal mechanism is needed in order to address those doubts and resolve disputes.

As per Article 324, the Constitution of India has made many provisions with respect to the composition of the election commission, these are, The Election commission will consist of the chief election commissioner and any number of other election commissioners, if any, as per the President of India's assent. The appointments of the chief election commissioner and any other election commissioner will be done by the President of India himself. When another election commissioner is appointed then in such cases, the chief election commissioner will have the authority to act as the chairman of the election commission. The President of India can also appoint regional commissioners as he deems necessary to assist the election commission, this can be done after consulting with the election commission. The tenure and the conditions of the work to be done by the election commissioners and the regional commissioners will be determined by the President of India.

The chief election commissioner and the two other election commissioners have equal powers and they also receive equal salary and allowances, these are similar to those of a Judge of the Supreme Court. Tenure: They hold the office for a period of 6 years or till they attain the age of 65 years, whichever happens first and they can also resign at any time or can be removed before the expiry of their tenure.

### **Independence of Election commission**

Article 324 of the Constitution of India has made many provisions which safeguard and ensures that the Election Commission is independent and impartial in its functioning, these are the following provisions, The chief election commissioner has been provided with the stable tenure and he cannot be removed from his office except in the manner and grounds on which a Supreme Court's Judge is removed from his office. He can be

removed by the President of India on the basis of a resolution passed for such an outcome by both the Houses of the Parliament with a special majority (2/3rd of the members present and voting) which is either on the grounds of misbehaviour or incapacity to work. The conditions of the chief election commissioner's service cannot change to his disadvantage after his appointment is done. Any other commissioner (election commissioner or regional commissioner) cannot be removed from his office unless it is done on the recommendations of the chief election commissioner himself. However there are certain flaws in the Election Commission

The Constitution of India has not specified the qualifications of the members of Election Commission. The Constitution of India has not specified the term of the tenure of the members of the Election Commission. The Constitution of India has not restricted the retiring election commissioners from any further appointments by the government of India.

### **The powers and functions that the Election Commission of India**

The powers and functions of the Election Commission with respect to the Parliament, the state legislature, and the offices of the President and the Vice-President of India, are can be categorised into three kinds, these are,

#### **Administrative Powers**

The important responsibility of superintendence, direction and control of the conduct of elections covers powers, duties and functions of many sorts, these are essentially the administrative powers of the election commission of India. Article 324 vests many functions in the Commission which may be powers or duties, essentially administrative and even judicative or legislative.

### **Advisory Powers**

The Election Commission of India has been vested with this power in the cases where if a person is found to be guilty of any corrupt practices during an election either by a High Court in an election petition or by the Supreme Court in an election appeal, the President of India decides whether such a person should be disqualified for contesting elections in the future or not and, if so, for what time period. Before taking a decision on the occurrence of such a scenario, the President of India requests to obtain the opinion of the Election Commission and may act according to such opinion as per the situation.

### **Quasi-Judicial Powers**

The Election Commission has another important function to perform under the law. All associations or the bodies of citizens calling themselves as political parties and willingly wishing to contest the elections under the name and banner of a political party have to get themselves registered with the Election Commission. Such a function of registration of political parties by the Election Commission has been held by the Supreme Court to be a quasi-judicial function of the Election Commission of India.

### **Hence, the Powers and Functions of the Election Commission include**

- To Notify the dates and the schedule of the elections and to scrutinise the nomination papers.
- To prepare and revise electoral rolls and register all the eligible voters.
- To determine the areas of the electoral constituencies throughout the territory of India.

- To grant recognition to the political parties and assign the election symbols to the political parties.
- To act as a Court for settling disputes which are related to granting recognition to the political parties and in the allotment of election symbols to these political parties.
- Determining the code of conduct to be followed by the parties and the candidates at the time of the elections.
- Appointment of officers for inquiring into disputes related to electoral arrangements.
- Preparing a roster for publicity of the policies of the political parties.
- Advising the President of India on the matters related to the disqualifications of the members of the Parliament.
- Advising the Governor of a state on the matters related to the disqualifications of the members of the state legislature.
- Cancelling of polls in cases of rigging, booth capturing, or any other irregularity.
- Requesting the President of India or the Governor of a State for commandeering the staff for conducting the elections.
- Supervising the machinery of the elections throughout the territory of India and ensuring fair and free elections in the country.
- Advising the President of India on the scenario of President's rule in the state.
- Registering the political parties for elections and granting them the status of a national or a state political party on the account of their poll performance.

In the case *Brundaben Nayak v. Election Commission of India and another*<sup>1</sup> if any question gets raised whether any sitting member of the Parliament or of the State legislature has become a subject to disqualification for continuing as a member under the Constitution of India (on grounds other than that of the ground of defection) or any law. Such a matter is decided by the President of India in cases which involve the members of the Parliament and in cases which involve the member of the State Legislature then the governor of that state has to decide on such a matter. And he is bound by the opinion of the Election commission in these matters as established in this case. Hence, in this case, it was held that the President of India and the governors of States are bound by the opinion of the Election Commission of India in such matters and they are not required to even consult the council of ministers in this regard.

The election commission of India has itself laid down the guiding principles of good governance, these are,

- Upholding the values that are enshrined in the Constitution, i.e. equality, equity, impartiality, independence. As well as rule of law in superintendence, direction, and control over the electoral governance.
- Conducting elections with the highest standard of fairness, transparency, integrity, credibility, freeness, accountability, autonomy, and professionalism, as much as possible.
- Ensuring the participation of all the eligible citizens in the election process in a voter-friendly environment.
- Engaging with the political parties and all the stakeholders in the interest of the election process.

1 – 1965 AIR1892, 1965 SCR (3) 53

- Promoting awareness about the election process among the voters, political parties, election functionaries, candidates and people at large and enhancing and strengthening the confidence and trust of the people in the electoral system of India.
- Developing the human resource for effective delivery of the electoral services.
- Making sure that quality infrastructure is built for smooth conduct of the electoral process.
- Adopting new and improved technology in all areas involving the election process.
- Contributing to the reinforcement of democratic values by maintaining and reforming the confidence and trust of the people of the nation in the electoral system of India.
- To strive for the adoption of new and innovative practices for achieving excellence and overall
- realization of the vision and mission of the Election Commission of India.

### **Elections Laws in India**

There are various laws related to the conduct of elections in India. The elections for both the centre and the state are conducted differently but the laws governing the conduct of elections of the Parliament and State Legislature are almost the same. These are as follows:



### **The Representation of the People Act, 1950**

This act provides for the allocation of seats in Lok Sabha and Legislative Assemblies, delimitation of constituencies, qualifications of voters, manner of filling the seats of Rajya Sabha by Union Territory representatives etc. The election commission should appoint or nominate a Chief electoral officer for each and every state with the consultation of the state government. Appointment of district level election commissioners should also be done by the Election Commission with the consultation of the state government. The Central government has the power to make any rules under this Act with the consultation of the Election Commission. This Act bars the power of the Civil Courts to question the legality of any action of electoral registration officer regarding revision of electoral roll.

### **The Representation of the People Act, 1951**

This Act provides for the conduct of elections to the Parliament and State Legislatures, qualifications, disqualifications, various offences, various doubts and disputes etc. Following are some of the rules laid down under this Act: Everybody or association who wants to stand as a candidate in the elections have to get itself registered with the Election Commission of India. It is on the EC to register a political party or not after considering various relevant factors and particulars. Any change in the name and address of the political party should be communicated to the Election Commission. A person cannot represent the people in either Lok Sabha or Rajya Sabha if he is not eligible to vote.

### **The Registration of Electors Rules, 1960**

The rules contained in this Section are related to the preparation of electoral rolls, their periodic updating and revision. This act also provides the process for registration of eligible voters and the issuance of voter ID cards with the photograph of the voter. The inclusion of eligible and registered voters in the electoral rolls and the exclusion of non-

eligible and non-existing voters are included in this act. The election commission prepares the electoral rolls during the elections which contain the name, photograph and the other particulars of the voter because of the rules mentioned under this Act.

### **Conduct of Election Rules, 1961**




This Act deals with each and every stage of conduct of elections in detail. It holds the issuing of writ notification for conducting elections, filing of nominations, scrutiny of nominations, withdrawal of candidates. This rule also governs the counting of votes and taking of polls. In the end, this rule also categorises the constitution of the Houses on the basis of the results. Many amendments have been made in this rule such as the Conduct of Election Rules (Amendment), 2013 and the Conduct of Election Rules (Amendment), 2016.

### **Election Symbols Order, 1968**

This is the order which empowers the Election Commission to recognise political parties and allot them symbols. The commission under para 15 of this order also has the power to decide disputes arising among rival groups or sections of a political party who is claiming the symbol. Under this paragraph, only the Election Commission has the power to decide all the issues arising on any disputes or a merger.

### **Presidential and Vice-Presidential Rules, 1974**

This Act is particularly made for the conducting of elections for both the President and Vice-President. This act consisted of 41 sections in total and provides the whole process for conducting elections such as:

-  Voting by electors under preventive detention
-  Adjournment of the poll in emergencies
-  Place and time for counting of votes

- ✚ Maintenance of secrecy of voting
- ✚ Recounting
- ✚ Production and inspection of election papers
- ✚ Copies of return of election
- ✚ Sec-41 of this Act repealed the Presidential and Vice-Presidential Elections Act, 1952.

### **Anti-defection Law, 1985**

This law was introduced during the tenure of Rajiv Gandhi by the 52nd Constitutional Amendment and is contained in the Tenth Schedule of the constitution which is also known as the Anti-defection law. If a member of a House belonging to a particular party voluntarily gives up the membership of his political party or votes or abstains from voting, contrary to the directions of his political party or if an independent member joins a political party after the election then that particular member will come under the situation of defection. The need for such a law was felt especially when a legislator from Haryana named 'Gaya Lal' changed his party three times in a fortnight. After that incident, it took 17 years for the Parliament to pass such a law. Under this law, any member of a house will be disqualified by the Chairman or the Speaker of the house if any complaint is received regarding that member with respect to defection.

### **Election expenditure by a political party or a candidate**

A political party or the candidate cannot spend on the election campaigns according to their desires but there is a limit set by the Election Commission. As mentioned in Rule 90 of Conduct of Election Rules, 1961 a party or a candidate can spend between Rs 50 lakh to Rs 70 lakh depending on the state for which they are going to conduct Lok Sabha elections. For conducting the Assembly elections the limit for spending is between Rs 20- 28 lakhs.

The candidates are supposed to keep a separate account for their election expenses and file it to the concerned authority. If the Election commission finds out that the account filed by the candidate is wrong or they have spent beyond the cap, then this will lead to their disqualification for up to 3 years under Sec-10A of the Representation of People Act, 1951.

### **Universal Adult Suffrage**

Article-326 of the Indian Constitution provides for the adult suffrage which means that any citizen of India either male or female who is not less than 18 years of age has the right to vote. The rule of Adult Franchise was adopted when the constitution of India was enacted in 1949 and was implemented in 1950. Initially before the enactment of the constitution voting rights were not available to the women but the Motilal Nehru report of 1928 advocated unlimited adult franchise and equal rights for women. Moreover, the minimum age for a person to be eligible voting was 21 years during the implementation of the constitution but after the 61st Amendment Act, the minimum age required for voting has been changed from 21 years to 18 years.

### **Right to Vote**

Right to vote has been enshrined in Article 326 of the Indian Constitution. The right to vote is neither a fundamental nor a constitutional right but is merely a statutory or legal right. This right came into existence because of the constitution and accordingly, is enshrined in it but the right has been shaped by a statute called the Representation of People Act, 1951.

### **Model code of conduct**

It is a set of rules and regulations framed and implemented by the Election Commission of India to be followed by the political parties and the candidates during the

conduct of elections. In order to make it more convenient for the political parties and the candidates, the rules are divided into subcategories.

### **General Conduct**

No party or candidate shall indulge in any activity leads to the expansion of the existing differences and hatred between different castes or communities or religions. Activities which are related to 'corrupt practices' such as bribing of voters, impersonation of voters, transport or conveyance of voters to and from polling station shall be strictly avoided by the parties or the candidates as these are regarded as offences under election law. An individual's right to peace and undisturbed home-life shall not be violated under any circumstances by way of protesting against their opinions before their houses or by organizing demonstrations. The private property of an individual shall not be used without his permission by the political party or candidate himself or by its followers for pasting notices, suspending banners etc. The political parties or the candidate shall not use religion or communal feelings of the public for securing votes for their party.

### **Meetings**

The schedule and the venue of the meetings shall be informed by the party or a candidate to the police within a reasonable time so that arrangements can be made for controlling the traffic and for maintaining peace and order. If the use of loudspeakers or any other facility in the meeting requires prior permission or license then the party or the candidate shall apply for such licence or permission to the authority concerned. The organizers of the proposed meeting themselves shall not take any action against a person or a group who is disturbing the meeting but shall seek the assistance of the police.

**Procession**

The time and the venue of the starting of the procession or a rally, the route to be followed during the procession and the time and place where it will end should be decided beforehand by the party or the candidate and it should not deviate from the plan. Intimation to the local police authorities should be given within reasonable time by the organizers so that they can make the necessary arrangements. The procession shall try not to disturb the right of the people to the road as much as it is possible and the police authority shall comply with that. If a situation arises where two or more political parties or candidates decide to take processions over the same route or some part of it, then the organizers shall establish contact with each other and shall adopt such measures which shall not cause and clash of the processions or any traffic hindrances.

**Polling day**

All political parties and candidates-

For ensuring peace and order during the poll day shall cooperate with the officers on the election duty and therefore should ensure that there is no obstruction in the exercising of the right to vote of the people. Shall not serve or distribute liquor among the public on polling day and during 48 hours preceding it. They shall provide with suitable badges or identity cards to their authorized workers. They shall make sure that no unnecessary crowd is collected near the camps set up by the political parties and candidates near the polling booths.

## **Polling Booth**

No one shall enter the polling booths without a valid pass from the Election Commission, except the voters.

## **Observers**

The Election Commission appoints a particular set of observers to observe the conduct of elections on the polling day. If any party or a candidate have any issues or problems regarding the conduct of elections they may bring that issue to the notice of the observer.

India is the second most populated country in the world and is called the largest democracy too. It is true that it is lagging behind in the Democracy Index but one should consider the fact it is not easy to maintain democracy in one of the most populated countries and India has been successful in maintaining the democracy for almost 70 years. There are many loopholes in the election laws which need to be looked upon in order to improve the country's rank in the Democracy Index. Therefore the legislature and the judiciary are trying to get an insight into these loopholes and are making amendments. Over the decades, the Election Commission of India has conducted a good number of elections in India and there have been many changes to the electoral reforms to strengthen the democracy and enhance the elections in India. However, the elections in India have become or are still plagued to this day. This is due to many reasons, the reasons for such events happening may be, to win votes, the political parties resort to using foul methods or corrupt practices in order to gain an advantage in the Elections. The Election Commission of India tries its level best to wipe out the virus of malpractices from its roots. This is done through the usage of the new and improved technology which is ever growing and developing every day. The Election Commission of India has taken many steps in the recent past to overcome the

corrupt practices that may exist. Through schemes for use of State-owned Electronic media for broadcasting by Political parties, providing electors with identity cards, and simplifying the procedure for maintenance of accounts and filling the same by the candidates, etc.

The success of democracy depends upon free and fair election. when there is so much of violence in the political and social life in the country can the elections be free and fair? Violence during the elections is a negation of free and fair poll. From all this, it may be said that the role of Election Commission in holding free and fair poll in India is not effective since political parties do not care to the directions of the commission. As a result the commission is failed to curb this socio political evil. The entry of criminals with the support of political parties adversely affects the functioning of Indian democracy.



## **CHAPTER - V**

### **CONCLUSION AND RECOMMENDATION**

In the preceding Chapters an analysis has been made on some components of criminalization of politics in India. (ii) Legislative response to criminalization of politics in India (iii) judicial response to the criminalization of politics in India and, (iv) Role of election commission in India. At this stage it would be pertinent to draw certain conclusions from the study.

One of the main characteristics of democratic politics is elections at steady intervals. Elections are a signpost to democracy. Elections are the means by which people's attitudes and beliefs are reflected in their political environment. Elections are the central democratic process of choosing leaders in control. Elections give voters the opportunity to express themselves every now and then, their faith in the government change it when required.

In dealing with the criminalization of politics in India, it is seen that a large number of cases have come, to light to indicate that the unholy alliance between the politicians and the criminals have reached an alarming state. In many cases criminals are found to be aided and abetted by politicians. The nexus between them has become a pervasive reality.

The present study of the nexus between the politicians and the criminals reveals that the nexus between the politicians and the criminals has become very prominent in all the states. From the study of the nexus between the politicians and the criminals,, it is found that as their relation is growing in all the Indian states, it may be said that the growing relation between them is responsible in criminalization of politics.

Another overriding reason for criminalization of Indian politics is that political parties select and nominate those candidates who have better chance to win in the election. Generally winnability of such candidates is determined by their money and muscle power. Political parties nominated and rewarded such persons with ministerial office. No political party is exempt from this behaviour. In such behaviour 'winnability' of the candidate is all important. Whoever can spend more money, deploy muscle power and mobilize people by unfair means have got tickets to contest in the election. In this vicious cycle created by the political parties misgovernance and criminalisation grow and 'good' candidates are left with no chance of winning.

It is to be mentioned here that the political parties give tickets to the criminals to contest the election because in most cases they are not convicted and in most cases, cases are either under investigation or simply charge sheeted. The police out of fear of reprisal wanted to keep the investigations pending. On the other hand, the court does not give importance to quick disposal of such cases where powerful gangsters are involved. This reason, *inter-alia* the number of criminals in the legislatures has gone up and politics of India has been criminalized.

Nexus between politicians and gangsters is the most formidable problem for the future of Indian politics. Every segment of the Indian society must stand up, manfully and fight every adverse influence, political or executive instead of leaving the future of the country in the hands of the criminals.

In dealing with the role of Election Commission and political parties in conducting free and fair elections in India, it is found that the Election Commission failed to conduct free and fair elections because of undemocratic and autocratic nature of political parties. Free and fair elections are an exercise central to a democratic system. But politicians and political parties do not believe in free and fair elections. The lesson drawn from the general elections since the first general elections held in 1952 show that even after deployment of armed police, paramilitary forces and army in sensitive areas, framing of code of conduct for political parties by the Election Commission, special security measures at and near the polling booths, no human efforts or mechanical devices can ensure free and fair elections in India. Thus, the legal system of India has not been able to centre the problem of criminalization of politics.

The analysis on legislative and judicial responses to the criminalization of politics in India, it is found that their responses are not affective as expected to curb criminalization from Indian politics. The legislative bodies have not brought the necessary changes in the existing laws to prevent criminalization from Indian politics. Due to the various loopholes in the existing laws, it provides a lot of scope to the intending candidates with criminal background to contest elections and may be due to this factor some of the legislators have criminal background. It is seen that different studies on criminalization of politics in India have brought out a number of loopholes and weaknesses of the existing electoral laws, rules and regulations. Such studies also recommended framing of new electoral laws, rules

and regulations to curb criminalization of politics. In addition to this, several committees and commissions also recommended a series of reforms of the existing electoral laws. The Union legislative body is responsible with its authority to materialize such recommendations and to come out with new electoral laws and necessary reforms. Unfortunately, the response of union legislative body in this regard is not positive. This might perhaps be because of the reason that they are not going to prepare a net through which they would be caught.

The Judicial system in India too proved to be inadequate to resolve the issue of criminalization from Indian politics. Cases involving election disputes on corrupt practices need to be heard on a day to day basis to ensure a quick verdict, but in this regard the response of the Judiciary is also questionable. Through Judicial activism the Judiciary has taken a very leading role in ensuring an equilibrium society, where everyone enjoys equal rights and opportunities, but when it comes to weeding out criminals out of the political system, one fails to realize, why the Judiciary has not taken an activist role. In this regard, although the Judiciary has taken a few initiatives but that has not proved to be futile. The judiciary too has not been free from the political clutches and corruption as is evident from various cases from appointment to after retirement incentives. The Judiciary has not been able to provide a positive response to the problem of criminalization of politics in India. Time and again, various Commissions and Jurists have also commented on the functioning of the Judiciary in India and recommended for making it more independent in its functioning in order to provide

an effective role free from all political pulls and pressure to provide Justice to the Indian society. From of all this, it may be concluded that the legislative and judicial responses to curb criminalization from Indian politics is a mere lip service.

The study of criminalization of politics in Assam in present research work reveals that the nexus between criminals and politicians runs deep and wide in India in general and in the Indian states in particular. Criminalization of politics in India is seen in Assam in miniature form. An analysis of the linkage with the underground criminals reveals that most of the political parties in Assam maintain linkage with underground criminals. The study establishes the fact that there is an increasing trend of the entry of the number of criminals in Assam politics. Another unhealthy trend noticed in the present study is that the number of crorepatis is on the rise in all major political parties of Assam. This implies the involvement of the politicians in corrupt practices. It may be concluded that the entry of criminal element and their participation in the state politics of Assam destabilizes the socio- political life of the state. The findings of the study acknowledges the findings of the study conducted in other Indian states like U.P, Bihar, West Bengal etc. that the nexus between the politicians and the criminals has become prominent in all the Indian states.

From the whole range of study, it may be concluded that there has been a steady decline in the standards, practices and the pronouncements of the political parties which fight the elections. Money and muscle power, corrupt practices and unfair means are being freely employed to win the elections. Over the years several

measures have been taken by the Parliament, Election Commission with a view to check criminalization of Indian politics but nothing could be achieved. As a result, there has been a pervasive trend towards criminalization of politics and a phenomenal rise in gangsterism and mafia rule in the political process.

It is to be mentioned here that criminalization is in itself is not a single problem rather it is a culmination of a series of problems. Criminalization of politics is obviously striving because of people's quest for power and money. A handful of people in their quest for power and money are polluting the whole political and social life of the country.

In the present study it is found that criminalization of politics and politicization of crime has become synonymous in India. The entry of criminals to the legislative body and Central and State Cabinets should be cause for deep concern. It explains the continuing deterioration of law and order situation in the country because of inability of the state authority to arrest and prosecute criminals with political connections or politicians with criminal antecedents.

### **Recommendations**

On the basis of the findings of the present study the following recommendations have been put forwarded to curb Criminalization of Politics in India.

- 1 To curb criminalization of politics the first necessary condition is the need of strong political will of the political parties. The political parties

and the politicians should not recruit any people who have charges of criminal activities. All the political parties should come together with an open mind and full commitment to contribute to conduct free and fair poll. They should give importance to the personality of a person in the selection of a candidate rather than his winnability capacity.

2 To curb criminalization from Indian politics there is need of making the political parties more accountable to the public. This can be possible by framing a set of affective rules and regulations. Accountability of the political parties to the public for their misdeeds would definitely minimize the problem. Thus, there is a need of framing a set of affective new rules and regulations to make the political parties accountable to the public.

3 To prevent criminalization of politics the pending cases before the Courts of law should be disposed quickly so that a person with criminal charges cannot contest in the election. For speedy disposal of such cases the system of fast track court may be introduced.

4 The general people have an important role to prevent criminalization of politics. People themselves can prevent criminals in entering into politics by rejecting the candidature of the criminals. For this the people should have political education. They should be educated, alert and intelligent.

5 Another important recommendation is that the Representation of Peoples Act 1951 should be suitably amended insisting required minimum qualifications for aspiring as a candidate to State Legislative Assembly and Parliament. The Act should well define eligibility criteria

to contest in the election. It should also include a condition of verification of the background and assets of the persons at the time of submission of nomination papers. Political parties must submit the list of their candidates at least 3 months in advance of elections so that a thorough IB and IT check can be done on them.

6 The Election Commission should hold procedural integrity and peaceful elections to be an inviolable norm. Any violation of this norm should result in countermanding the election because the integrity of the electoral process cannot be compromised at any cost. Politicians and political parties would then get a clear and loud message that criminal activities like coercion, fraud, booth capturing and bogus voting will get them nowhere because any reported instance of such practices would immediately result in the polls being countermanded.

7 During the elections, the Election Commission has administrative control over the civil and political officials thereby seeking to end political interference stated to be the root cause of electoral malpractices. But then, violence and booth-capturing have been taken place under their very nose, sometimes with their active participation. There has not been a single reported case of any penal action having been taken against any official for dereliction of duty while functioning as a polling officer. The Election Commission should address the issue in all seriousness.

8 Another important recommendation is that the Chief Electoral officers in states, under the administrative control of the Election Commission are expected to perform their task as independently as the Commission



itself. But being officers of the state, they are unable to do so due to severe pressure and constraints. The Election Commission should seriously consider posting of Chief Electoral Officers in the state from outside the state.

9 At one point of time some likeminded prominent political leaders of different political parties proposed formation of National Government at the centre as a remedy of instable coalition government. This helps formation of the government by selecting clean politicians from different political parties. Thus, it was proposed to form the government not by the political parties but by the elected members with clean political images. Due to differences of opinions it could not be materialized. Here, it is recommended to reconsider the proposal for formation of National government if necessary after thorough review of the proposal.

10 The framers of the Indian Constitution to retain independence of judiciary provision had been made for impeachment of the Judges. A formal procedure has been provided in the Constitution under Article 61 to impeach a Judge from his office if the Judge is found guilty of any matter prescribed in the said Article. But the framers of the Constitution did not incorporate similar provision to impeach an errant Legislator from his membership to the legislature. In the absence of such a provision, the present study recommends including a provision to recall an errant legislator. The details of the procedure for recall will be worked out by an expert committee. For this, the relevant provision of the Constitution shall be amended.

11 In developing countries training and education to the administrators and the politicians have become a neglected area. India is not an exception. The government of India provides inadequate training and education facilities to its civil servants. But, no such facilities have been provided to the politicians it is desirable that the legislators should be trained up in legislative procedures, rules and regulations etc. They should also be given orientation and refresher courses on public relations, behavioral pattern, attitudes etc. Except some such courses organized voluntarily by some educational institutions, there is no such incentive from the Government. Considering the present pattern of behavior, perspective, attitude and knowledge of the legislators in India, the present study recommends establishment of an institution like Academic Staff College to impart training and education to the legislators and administrators.

12 Inclusion of a Provision in Representation of Peoples Act 1951 for making it compulsory that all aspiring candidates to be at least graduate in a respective stream. The political parties should also give preference to Law graduates since it is essential that the law makers should have some knowledge on law.

13 Amount allotted to an M.P or M.L.A under local area development should be made phase wise in two installments and making it compulsory to submit accounts of expenditure of the first installment in order to get the second installment of the fund and accounts of expenditure should be audited periodically and make it public.

14           The government should also consider establishing an independent research institute at the national as well as at the state level to study, investigate, and to suggest measures to deal with problems confronting various issues relating to politics, governance and democracy from time to time.

With the electoral process fast losing its integrity and sanctity, the future of India's democracy is in peril. Given the polluted political atmosphere in the country and the abrasiveness of the political class, electoral reforms are a very long shot. But strict implementation of existing electoral laws and procedures is very much within the power and control of the Election Commission and it would do well to concentrate on this task regardless of what happens on the reform front. The Election Commission should, therefore, prepare an agenda of short term and long term electoral reforms. But the successful implementation of such reforms depends upon active participation and cooperation of all the political parties.

## BIBLIOGRAPHY

### BOOKS

1. Achary, P.D.T., (2004) Elections: Law and Practice, New Delhi Bharat Publication.
2. Aggarwal, R.C., (2006) Indian Government and Politics, New Delhi, S. Chand & Co.
3. Choudhury, R.N.A., (2004) Commentary on Representation of Peoples Act, 1951.
4. Chawla, D.D., (14th edn. 1991) *Election Law and Practice*.
5. Doctor, Adi. H., (1985) Issues in Indian Political Theory, Sterling Publishing Private Ltd.
6. Ghosh S.K., (1991), The Indian Mafia, Aakash Publishing House, New Delhi.
7. Ghosh, S.K., (1997) Indian Democracy Derailed, APH Publishing Corporation, New Delhi.
8. Inder, Dev, (2004) Manual of Election Laws in India, Universal Law Publishing House.
9. Iyer, Krishna V.R., (2008) Law & Life, Universal Law Publishing.
10. Iain, M.P., (2008) Constitution of India, Eastern Law Company.

## Articles :

1. B V Kumar, 'Criminalisation of Politics and Election Commission' *Economic and Political Weekly*, Sameeksha Trust Publication 16 June, 2001.

R Upadhyaya, '*Political Corruption in India: An Analysis* ', Paper no. 219, *South Asia Analysis*, 30th March 2001.

A.K. Ray, 'Civil Rights Movements and Social Struggle in India,

*Economic and Political Weekly*, Sameeksha Trust Publication vol. XXI, No. 28, 12th July 1986.

Jay Dubashi, In Inside BJP, *Times of India*, 22 March 2001.

S Singh, *Criminalisation of politics in India: A study of the Politicians in the 15th Lok Sabha*, A Project Report of Criminology, National Law Institute University, Bhopal, 2 March, 2010.

*The Mili Gazette*, VOL. 18, Issue 26, December 22, 2001. *Sunday*, 17-23 August, 1997.

*India Today*, 30th June 1990.

'Sex, lies and Politics' published in *Sunday*, 30 November - 6th December 1997.

*Gcmashakti*, 3 April 1992.

*The Tribune*, online edition, 30 July 2008.

Competition Master, Chandigarh: Chandrika Press Pvt. Ltd, March 1977.

## **STATUTES**

1. Representation of peoples Act, 1951
2. Indian penal code, 1860

## **OTHER AUTHORITIES**

1. The Report of the National front Government Committee Report Electoral Reforms\* Government of India.
2. The Report of the Tarkunde Committee on Electoral Reforms, 1975 Government of India.
3. N.N Vohra Committee Report of 1993 on Criminalization of Politics, Government of India.
4. 170th Law Commission of India Report on Electoral Reforms, Government of India.
5. Report of the Election Commission of India on Electoral Reforms 2004. Government of India.
6. List of persons Disqualified under Section 8a, 10a & 11a (2) of the Representation of the Peoples Act, 1951 (published by Election Commission of India as on 01-03-2004).