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## Institutionalization of Crime in Indian Politics

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### **Abstract:**

*The paper wants to highlight that After Independence 'criminalization of politics', people with criminal records becoming politicians and elected representatives and 'criminalization of administration' or politicization of administration, not rule of law but rule of gundas, mafias and thugs seating into the vitals of the country have become persistent and administration was accused of inaction and involvement. Earlier politicians patronized criminals and provided them protection from the law-enforcement institutions in exchange for the use of their muscle power during elections. And now it is the reverse with the criminals themselves intriguing over the pedals of power and denigrating the politicians. The Indian democratic institutions are in the dirty hands of criminals being supported by the institution of corrupt bureaucracy. Actually the roots of the problem lie in the political system of the country. There is lack of political will to combat the problem. The political parties also do not believe in higher ethical norms. They should united make efforts to prevent criminalization of politics.*

**Key words:** Political, Criminalization, Criminal, politicization Administration, Democracy, Corruption, Administration, Policy making

### **1. Introduction**

A criminal generally begins criminal activity at local level with petty crimes. In big cities, he begins with country liquor, gambling, betting and prostitution. The politicians use criminals for their selfish ends and the criminals and their syndicates seek their protection and patronage to carry on their criminal and antinational activities. One can relevantly quote Napoleon that the great complexity with politics is that there are no established ethics. He noted that politics and ethics have infrequently gone together. If at all they did, it was by and large in the nature of an omission, or that the principle itself was distorted to suit the political goal. The mounting criminalization of politics and politicization of criminals has taken profound toll on policing in the country. This experience has further windswept the trustworthiness, efficacy, and neutrality of the police hence resulted into lack of conviction and confidence in police forces in great sections of the society. The administration and the police are the first causalities of criminalization of the politics, resulting into a system of law that is neither fair nor impartial. The Government of India woke up belatedly to this alarming situation and convened a conference of Chief Ministers on the "Administration of Criminal Justice in India" in 1992. The chief ministers conference resulted in Government constituting a committee with Union Home Secretary N.N. Vohra as Chairman, and Secretary R&W, Director I.B., Director C.B.I. Special Secretary Home as members. I yet the fate of country is still in the hands of criminals and the decision making institution falls prey to them. alas!

What is crime could be asked at very outset? An action or omission which constitutes an offence and is punishable by law as per oxford dictionary An action or an instance of negligence that is deemed injurious to the public welfare or morals or to the interests of the state and that is legally prohibited can be defined as a crime as per dictionary.com.

Nani A. Palkhivala, the eminent constitutional expert observes that I do not think India, in its entire history of five thousand years, has ever reached a lower level of degradation that it has reached now....the picture that emerges is that of a great nation in a state of moral decay, of which crime, chaos and corruption of three of the several facts.<sup>2</sup> India at fifty is sick and sad. The body politic appears to be suffering from a multi-organ failure; every organ seems to have gone dysfunctional at least in so far as the life of the common man is concerned. The evidence of eroding political order is everywhere. The omnipresent but feeble state, in turn, has vacillated; its responses have varied over a wide range: indifference, sporadic concessions and repression. The ineffectiveness of repression moreover has highlighted the breakdown of the civil machinery intended to enforce the law and maintain order. In order to protect themselves, citizens in some parts of the country have begun to organize private armies.<sup>3</sup> In the words of Atul kohli, Sooner or later all developing countries become difficult to govern, and over the past two decades India has been moving in that direction.<sup>4</sup> Nothing can be sadder than the Home Minister expressing inability to do anything in the face of lawlessness and the crime and Prime Minister himself throwing up his hands in utter helplessness in the matter of corruption charged politicians not heeding his advice to resign, leaders maintaining double faces and different standards of conduct and saying one thing in public and another in private. The election process has been largely taken over by criminal elements and money power.

## 2. Vohra Panel Report

The much talked report of the vohra panel categorically points out that the crime syndicates and mafia organizations have developed muscle and money power and established linkages with governmental functionaries, political leaders and others.<sup>5</sup>

The report observes:

“A n organization crime Syndicate/Mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/gambling/organized satta and prostitution in the larger towns .....In the biggest cities, the main source of income relates to real estate- forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants, etc. Over time, the money power thus acquired is used to develop a network of muscle power which also used by the politicians during the elections.”<sup>6</sup>

The CBI has reported that “the nexus between the criminal gangs , police, bureaucracy and politicians has come out clearly in various parts of the country.”<sup>7</sup>

The DIB has also stated that there has been a rapid spread and growth of criminal gangs, armed senas, drug mafias smuggling gangs drug peddlers and economic lobbies in the country which have, over the years, developed an extensive network of contacts with the bureaucrats/Government functionaries at the local levels, politicians, media persons and strategically located individuals in the non-state sector. In this context, the DIB has given the following examples:<sup>8</sup>

In certain states like Bihar, Haryana and U.P, these gangs enjoy the patronage of local level politicians, cutting across party lines and the protection of Government functionaries. Some political leaders become the leaders of these gangs/armed senas and, over the years, get themselves elected to local bodies, State Assemblies and the national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardizing the smooth functioning of the administration.

(2)The big smuggling syndicates having international linkages, have spread into and infected the various economic and financial activities, including hawala transactions, circulation of black money and operations of vicious parallel economy causing serious damage to the economic fibre of the country. These syndicates have acquired substantial financial and muscle power at all levels and yield enough influence to make the task of investigating and prosecuting agencies extremely difficult; even the members of the judicial system have not escaped the embrace of the Mafia.

DIB has stated that the network of Mafia is virtually running a parallel Government, pushing the state apparatus into irrelevance .....The cost of contesting elections has thrown the politicians into the lap of these elements.....”<sup>9</sup>

Thus,the quintessence of the Vohra Committee report is that “Crime Syndicates flourish under political patronage” and “ the politician-criminal nexus was running a parallel government pushing the State to irrelevance.”

Politicisation of crime and the criminalization of politics

L.S. Rathore rightly observes , “Another feature in the political culture of ruling class in the politicization of crime and the criminalization of politics. Politicization of crime involves the competitive use of anti-social forces for the mobilization of party funds, for management of elections , for organizing meetings and conferences and even for recruiting workers at lower levels from among anti-social elements. It also means the misuse of criminal intelligence as a political tool for blackmailing political opponents.”<sup>10</sup>

“Criminalization of politics means direct entry of criminals into the political parties and legislatures, including parliament . it also means the use of criminal methods and tactics to influence political processes and procedures. “<sup>11</sup>

Let us have a look at the recent past so we may understand how deep and serious is the the issue.According to india today, “of the 424 members of the vidhan sabha, 132 are suspected criminals,16 of them now actually sit cabinet meetings presided over by kalia.”<sup>12</sup> Former Election commissioner G.V.G. Krishnamurty , while addressing press persons on August 20,1997 said as per records,40 members of parliament have criminal cases pending against them while nearly 700 members of state assemblies out of 4,072, are named in criminal cases.<sup>13</sup> According to him it was an international accepted norm that “Law breakers cannot be allowed to be lawmakers,’ which India must also follow.<sup>14</sup>

India today observes, that the teak paneled walls of the 11<sup>th</sup> Lok Sabha will shelter a host of elected representatives charged with the most brutal of crimes....Name the crime, and chances are you ’ll find an MP charged with it. Uttar Pradesh leads the way. A record 435 candidates with criminal backgrounds stood for election; 27 of these actually made it to Parliament. Leading the list is the BJP with 14 MPs, though they are charged mostly with petty cases. The SP has 7 MPs with criminal records, of whom 4 are history-sheeters. The BSP has 3 MPs named in criminal cases and the congress, one.<sup>15</sup>

At the eve of 12<sup>th</sup> Lok Sabha elections, there were 150 out of 4,708 candidates all over the country , against whom charges of murder, rape, robbery and extortion had been made at one point of time or the other. In spite of the initiative taken by the Election Commission (EC) to debar history –sheeters from seeking election to legislatures, at least 15 persons with criminal antecedents have made it to the Lok sabha.<sup>16</sup>

India Today observes, “the NDA has 37 MPs with criminal charges. Of 138 BJP MPs, the EC lists 26, about 20 per cent, with criminal charges. Out of 145 congress MPs, 15 close to 10 per cent, have criminal charges against them. The RJD has 40 per cent MPs with criminal charges while the BSP has over one-third “tainted” MPs.

Prabhunath, Shahbuddin, Surajbhan and Soren have one thing in common. They all are MPs with criminal charges against them. In a creul Irony, all of them display utter contempt for the law and make mockery of justice, break the law with impunity and even get away with it. Criminalization of politics has become an all pervasive phenomenon. At one time politicians hired with criminals to help them win elections by booth capturing. Today those same criminals have begun entering Parliament and the state Legislatures.

The historic Resolution passed by the Lok Sabha at the special session of parliament on the occasion of the golden jubilee of independence, August 26 to September 1,1997 observes: “the meaningful electoral reforms be carried out so that our parliament

and other legislative bodies be balanced and, effective instruments of democracy and further that political life and processes be free of the adverse impact, on governance of undesirable extraneous factors including criminalization.”

### 3. Efforts to Prevent Entry of Criminals into Politics

“Criminalisation of politics is worrying because parliament is losing its credibility,” says the CPIs Indrajit Gupta. Jai Pal Reddy, the JD leader says: “All parties have a nexus with criminals. The links just differ in degree from party to party .....and in nature from state to state.” Vijay Joshi, an economist and fellow of the Merton college at Oxford University observes, “In India, the crime politics nexus goes beyond politics. It's not a scramble for power, it's for what power can do.” Infact, the nexus runs so deep and so wide that it ensnares virtually, every mainstream party in every state.

In the words of Justice V.R. Krishna Iyer, corruption in public life begins with money in elections.

On June 28, 2002, the Election Commission implemented the Supreme Court's order within the allotted time frame of two months. On May 14, the Commission wrote to the Government to amend forms 2A to 2E of the Conduct of Election Rules, 1961 dealing with nomination papers and included drafts of the revised forms. On May 28, the Commission issued its order requiring each candidate to furnish information to the Returning Officer on (i) Past criminal convictions, (ii) Pending criminal cases carrying a conviction of more than two years, (iii) Assets, (iv) Liabilities (especially public dues), and (v) Educational qualifications.

### 4. Supreme Court Guidelines

The Union Government, all political parties and several NGOs including our "Citizens for National Consensus" (CNC) have been advocating electoral reforms with a view to spiraling democracy at assorted levels, notwithstanding promises, political parties have not brought about the mandatory changes in the Representation of Peoples' Act. On May 2, 2002, the Supreme Court gave a historic ruling following public interest litigation by an NGO. It ruled that every candidate, contesting an election to Parliament, State Legislatures or Municipal Corporation, has to declare the following along with the application for his/her candidature.

- A candidate's criminal records (convictions, acquittals and charges)
- The candidate's financial records (assets & liabilities)
- The candidate's educational qualifications

If the candidate fails to file any of the above three declarations, the Returning Officer will have the right to reject his nomination papers. The Supreme Court has ruled that all the three declarations will have to be truthful. The Election Commission had sent a notification on June 28, 2002, to all State Election Officers with a view to enforcing it. The Supreme Court's thrust has been that the people and the voters have the right to know about the candidate's criminal record, assets and liabilities and educational qualifications. 17

A number of commissions and committees such as, the Law Commission of India, Election Commission, and Vohra Committee etc. have examined the issue of criminalization of politics but the nuisance is escalating every now and then.

The latest landmark Supreme Court judgment

In a landmark judgment, the Supreme Court of India in July 2013 struck down a section of Representation of the People Act that allows a convicted lawmaker to remain in office while there are still cases pending against them. "The only question is about the vires of section 8(4) of the Representation of the People Act (RPA) and we hold that it is ultra vires and that the disqualification takes place from the date of conviction," a bench of Justices A K Patnaik and S J Mukhopadhyaya said. In effect, what the Supreme Court order says is that the disqualification of an MP or MLA will come into effect immediately after the representative is convicted by any court. The SC order also says that the representative cannot contest elections again and a representative cannot cast his vote from jail, under any circumstances. However, the court said this order will not have a retrospective effect so that those who have filed appeals in cases pending against them will not be affected.

Latest Crime record of sitting MPs or 16<sup>th</sup> Lok Sabha members.

Every third of the newly elected member of the Lok Sabha has a criminal background, an analysis of the disclosures they have made in their affidavits has shown.

An analysis of 541 of the 543 winning candidates by National Election Watch (NEW) and Association for Democratic Reforms (ADR) shows that 186 or 34 percent newly elected MPs have in their election affidavits disclosed criminal cases against themselves.

In 2009, 30 percent of the Lok Sabha members had criminal cases. This has now gone up by four percent. According to the analysis, a candidate with criminal cases had 13 percent chance of winning in the 2014 Lok Sabha election whereas it was five percent for an aspirant with a clean record. Of the 186 new members, 112 (21 percent) have declared serious criminal cases, including those related to murder, attempt to murder, causing communal disharmony, kidnapping, crimes against women etc.

Party wise, the largest numbers 98 or 35 percent of the 281 winners from the BJP have in their affidavits declared criminal cases against themselves.

Eight (18 percent) of the 44 winners from the Congress, six (16 percent) of the 37 winners from the AIADMK, 15 (83 percent) of the 18 winners from the Shiv Sena, and seven (21 percent) of the 34 winners fielded by Trinamool Congress also have disclosed criminal cases against themselves. (courtesy National Election Watch and Association for Democratic Reforms, India Times).

Observation and recommendations of National Commission to Review the Working of Constitution 2000-2002 regarding criminalization of politics.

On 23 February 2000, the President of India appointed Justice Shri M.N. Venkatachaliah, former Chief Justice of India as the Chairperson of the Commission and the following persons as the other Members of the Commission:

## 5. Recommendations

- Section 8 of the Representation of the People Act, 1951, be amended such that a candidate accused of an offence punishable by imprisonment of 5 years or more be disqualified on the expiry of a period of one year from the date the charges were framed against him, and unless cleared during that one year period, he shall remain disqualified until the conclusion of his trial.
- It also recommended that in case a candidate is convicted by a court of law and sentenced to imprisonment of six months or more, he shall be disqualified during the period of the sentence and for six additional years after his release. Candidates violating this provision should be disqualified and political parties putting up such a candidate with knowledge of his antecedents should be derecognized and deregistered.
- Thirdly, the Commission has stated that any person convicted for any heinous crime such as murder, rape, smuggling, dacoity, etc., should be permanently barred from contesting political office.
- Finally, the Commission proposes the establishment of Special Courts to decide cases against candidates within a period of six months or less. Potential candidates against whom charges are pending may take the matter to the Special Court, which can decide if there is indeed a prima facie case justifying the framing of the charges. Special Courts would be constituted at the level of High Courts and decisions would be appealable only to the Supreme Court.

## 6. Conclusion

It is unfortunate that no countervailing force to check criminalization of politics is budding. In topical court orders ranging from supreme court to high courts to lower courts the judiciary has been tiring stumping the criminal politician, quashing his bail applications, ordering his arrest warrants and sending him to jail from hospital. Unlike the campaign against tainted ministers in parliament, this battle is neither partisan nor for each –finger-accusing the rival three- points towards you.

Inspired by the bold new brand of judicial activism, the former Chief Election Commissioner T.S.Krishnamurthy has in a letter suggesting to the former Prime Minister Dr. Manmohan Singh a set of poll reforms proposing that anyone charge-sheeted at least six months before elections should be barred from contesting elections.

The entry of criminals in election politics must be restricted at any cost. If it is not checked it, will erode the system totally. The dearth of talented persons in politics may collapse the country internally as well as externally. A number of commissions and committees such as, the Law Commission of India, Election Commission, and Vohra Committee etc. have examined the issue of criminalization of politics but the menace is increasing day by day.

The answer of all the questions that are coming up in the paper shall have good number of answers. But, one answer that every one may agree upon is that things won't shape up in Indian polity unless good people enter politics as professionals. Then and only the much needed good laws could be framed to nip the evil of crime in Indian political system. At the moment one could only hope wish and pray for the system free from crime in general and immune from the criminalization of politics or politicization of criminals. The unfortunate silence of intellectuals or so called intellectuals is no answer to the menace as rightly put by Martin Luther King the silence of good men is more dangerous than the brutality of bad men. There is also a need of setting up special courts for trying the cases of criminalization of politics.

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