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Criminalization of Politics and Role of Election Commission in India: A Critical Study

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Abstract

Maintaining a healthy democracy in a country as varied as India is tough. Constant dangers to democracy, such as political prosecution, have made keeping the country's government functioning properly more challenging than ever. This increasingly murky alliance of politicians and criminals is harmful on several levels. There has been no advancement in addressing the political crisis. This means that free and fair elections are important to the survival of the democratic system. This agency is in charge of both election planning and supervision. The lower houses of parliament (*Lok Sabha* and *Rajya Sabha*), as well as state legislative legislatures and councils, are all monitored by the same organisation that regulates the country's high-profile presidential and vice-presidential elections. Nonetheless, throughout its history, the voting process has been afflicted by a variety of difficult phases and situations. In reality, conditions like this encourage antisocial elements to compete in elections. Given these considerations, the current study is an apolitical endeavour to learn more about how the Election Commission plans, monitors, and controls federal and state elections. In addition, the article examines the role of the Election Commission in India's electoral transition. This article will also address what actions our judges and politicians have made, as well as what more may be done to stop the criminalization of politics.

Keywords: criminalisation, politics, democracy, elections, reforms

Introduction

Terrorism, massive socioeconomic disparity, communal turmoil, significant wealth disparities, and the monstrous monster of poverty were all threatening Indian democracy. Political criminalization, on the other hand, was by far the most serious of all. The term 'criminalization of politics' refers to the use of politics or political influence to acquire illicit financial or other benefits. When it became evident that certain persons had used or were attempting to utilise political power to acquire unfair benefits, this was frequently referred to as the "criminalization of politics." Political criminalization is increasingly commonplace. Politicians used to hire criminals to help them capture polling booths and therefore win elections. At this period, lawbreakers had begun to penetrate federal and state legislatures.

Justification of the Study

The major issue with politics was that there were no universally accepted ideals. Unfortunately, most Indian politicians and administrators have been utterly tainted by their own self-interest and voracious desire for power. In this case, the pattern of adherence to immoral politics had

generally developed through the arbitrary application of obtained power, which was frequently achieved with the help of criminals. That is to say, the use of ill-gotten power has become increasingly common in recent politics. Several politicians in India have entered politics despite having a criminal background. Even more so now, as India's next elections are shrouded in suspicion. With more candidates to pick from, political parties may occasionally choose those with criminal records in reaction to increased election competitiveness. This was true in districts with a higher illiteracy rate as well as in less developed regions.

The corrupt politician employed criminal organisations to buy votes, frighten citizens into voting for his or her favoured candidate, ensure that person's election, and stifle political opponents. These criminals eventually ascended through the ranks of democratically elected administrations and influenced the legislation of the states to which they had acquired access. Crime in Indian politics has reached crisis proportions, is spreading like a cancer, and threatens to destroy the country's core guarantees of free expression and assembly.

Unfortunately, criminals who join political parties frequently wind up supporting such parties, therefore no party is actively striving to reduce or eliminate their participation. However, decriminalising political participation in the country became an imperative necessity to ensure the survival of democratic values and the realisation of their potential public benefits. It's important to remember that our country's political corruption predates the independence movement. This trend, which has been on the rise in India since the country's independence, has resulted in the current criminalization of politics. However, it is important to remember that political corruption in our country's history began at the very beginning of the independence struggle, in the 1960s, long before this topic got popularity.

In this background, the present study *Criminalization of Politics: Role of Election Commission* had been undertaken.

Objectives of the Study

The major objectives of the study were the following:

1. To understand the meaning of criminalization of politics and its impact.
2. To study the recent trends of Election Commission in curbing electoral malpractices and
3. To find out the measures adopted by the Election Commission of India to curb criminalization of politics.

Research Methodology

For the completion of this study archival method was adopted. The information relevant to this research work was collected from both primary and secondary sources. The primary sources included affidavits of the candidates contesting elections and reports of Committees like Vohra Committee. The secondary sources such as books, articles by eminent writers published in journals of repute were also consulted.

Factors Leading to Criminalisation in Politics

There are various factors why criminals easily get into the frame of politics.

- (i) **Lack of Governance:** Law and order issues, as well as harassment, are pervasive throughout most of the country, owing to local governments' inability to effectively fund these services for the poor. People believe that if the police are unable to assist them in an acceptable manner, they should choose someone who is exceptionally powerful in every way (such as having a lot of money, power, influence, and so on) to protect them from police harassment and other issues. As a result of this issue, more persons with criminal backgrounds are voting in elections.
- (ii) **Winnability Factor:** For political parties, winning is critical to acquiring power because they fear that criminals and other powerful persons may frighten their supporters into voting for them. Furthermore, they believe that violent offenders may impact public opinion due to their muscle power. As a result, political parties would issue such people tickets in the belief that they would eventually win elections and take over the government with relative ease.
- (iii) **Financial Support:** Political parties require a large amount of money (financial power) to function effectively and efficiently. As a result, parties must rely on enormous sums of money to survive; these funds are frequently obtained from persons with criminal backgrounds, who typically have access to large sums of unlawfully obtained money. This allows them to easily become the public face of these parties and assist them win elections with their financial support.
- (iv) **Justice Delayed:** Because of the massive backlog of ongoing criminal proceedings, offenders have had plenty of opportunity to take advantage of the situation and run for office in the interim. If elected, they will be able to rapidly clear their names of the allegations levelled against them by abusing their power and bribing the appropriate authorities. As a result, the authorities' integrity suffers, and the flow of black money grows.
- (v) **Emergence of Vote Bank Politics:** One of the main reasons political parties put such candidates on the ballot is for the services rowdies like these provide to the parties, which may be considered as contributing to the emergence of vote bank politics. Such people' services

include assisting in the commission of unlawful activities during strikes, bandhs, protests, and other similar events. And when criminals like this attain political power, they jeopardise the hopes and dreams of their country's citizens, as well as the rules and regulations that should govern them, in order to realise their own terrible goals. Political parties spend huge amounts of money employing these goons, sometimes known to as goondas, in an effort to buy votes and indulge in other illicit acts. Most Indians lack the knowledge essential to cast an educated vote because they are politically illiterate. Therefore, the vast majority of franchise holders in the country are up for grabs, making it much easier for political parties to win over these individuals and secure their votes.

- (vi) **Corruption:** Every political party promises to be different and better than the rest, but almost all of them support candidates with criminal records in elections. However, the fact that these individuals not only crave political power but actually achieve it through election is proof that democracy is faulty. When faced with inadequate rivals, citizens have the greatest power, but they have not used it wisely. The fact that they not only run for office but also win elections demonstrates the ineffectiveness of democracy. There are two phases to corruption: first, institutions fall to corruption, and subsequently, corruption institutionalises. Therefore, corruption and institutions tend to sustain one another, resulting to the hollowing out of the superstructure of institutions. Corruption in our nation's leadership is so ubiquitous that it has become institutionalised, as proven by the countless statewide frauds. Because there is no efficient answer to the omnipresent issue of corruption, the law is being disregarded. When political engagement is criminalised with widespread lawlessness, corrupt practises develop. According to the 1998 Corruption Perceptions Index issued by the Berlin, Germany-based non-governmental organisation Transparency International, India is the 66th most corrupt country in the world. Based on this rating, India is also more corrupt than 65 other countries (Raveer Singh, 2014).
- (vii) **Loopholes in the Functioning of Election Commission:** A lack of control in the functioning of the Election Commission is also a contributing factor to the rise of criminals within the political system. These outliers are one of the reasons criminals can survive within the democratic system. It is the Election Commission's job to take the necessary steps to break the link that exists between politicians and criminals. The Election Commission requires candidates to divulge personal information, such as the features of their property, any current issues in court, any convictions they may have received, and so on, when submitting their nomination papers. Although this is a positive move, the Commission has not used it effectively to notify voters about the candidate's criminal history. These statements merely aim to inform

voters about the candidate's past and credentials; they do not bar voters from voting for a candidate with a criminal record. Because there has been a long period of separation between the work of the Election Commission and the voting public, most people are unfamiliar with the rules and standards issued by the commission. Finding a way to bridge this chasm is critical for the survival of our democratic system and the abolition of corrupt politicians. This can be accomplished by boosting the country's overall literacy rate. Voters must employ their right to vote deliberately and strategically, with the national interest in mind. Furthermore, the Commission can only de-recognize political parties; it cannot de-register them. As a result, the Election Commission's capacity to conduct its work is hampered even further.

- (viii) Denial of Justice and Rule of Law:** Criminalization has grown frequent in Indian politics today, which is a violation of justice and the rule of law. Political parties, citizens, and every component of the country's law-enforcement apparatus should share responsibility for the country's current dilemma. Residents of this country have very little faith in the ability of democratic systems to produce truly successful forms of governance, and this lack of faith extends all the way to an acceptance of the reality that political engagement can be a criminal offence. Regulations prohibiting felons from running for office, due to their ineffectiveness and lack of teeth, serve to encourage such behaviour. Politicians should face the same restraints as those who have been accused but not found guilty, if the same can be done for those who have been charged but not proven guilty. People who have been convicted of crimes, many of whom are repeat criminals, can now participate in politics and run for office.
- (ix) Unholy Nexus between Politicians and Bureaucracy:** "In Jawaharlal Nehru's time, the civil service was shielded from politics, and transfers, promotions, and the like were decided within the executive branch itself," Ramchandra Guha explains. However, since the 1970s, individual bureaucrats have increasingly allied with specific politicians or political parties. When the party with which they associated was in power, they received the best assignments. In exchange, they vigorously pursued the politicians' political agenda." (Guha, 2011). The cosy relationship between bureaucrats and political leaders laid the groundwork for political criminality, which was both undesired and perilous. The noble individuals who founded the Indian nation-state sought to construct a self-governing administration. Their hope and goal were rapidly dashed, however, because they only had twenty years of freedom before everything went south. Because the two sides agreed to aid each other, the criminal justice system became politicised.
- (x) Interference of Politicians in the Administration:** Guha writes, "In a letter to the prime minister, retired civil servant M. N. Buch has highlighted the consequences of the administration's politicization." Because of the way the government is presently administered,

the civil service's disciplinary hierarchy has entirely collapsed. A subordinate who does not measure up and is hauled up by his superior knows he may contact a politician, avoid the penalty for his own wrongdoings, and inflict harm to his superior." (Alok 2014). This trend can be traced back to the 1970s, although it has only recently reached epidemic proportions. The great majority of current Indian politicians are involved in the country's administration in some way. Today's politicians and public workers are increasingly viewed as dishonest. As a result, politics is beginning to resemble criminal activity.

- (xi) **Caste and Religion:** Religious bigotry and political social stratification are both at blame. Promotions within a bureaucracy must follow a set of rules and procedures. It is vital to highlight that caste and religious issues play a role in this process. Those with the fewest talents and production advance through the ranks of government bureaucracy. The quota system must be held entirely responsible. Ministers from specific religious or ethnic backgrounds have been observed to favour persons from their own community.
- (xii) **System of Party Government:** The party system of governance is essentially responsible for its own upkeep, in addition to contributing to the crime of politics. Party leaders frequently guarantee their supporters that they will win the election-on-election night. Winning the election is the target. If the ruling party is elected, its members will make every effort to keep their campaign pledges. The unfavourable aspect of this circumstance is that the ruling party disregards the feasibility and logic of the action or promises, and thus employs unrealistic methods and approaches. This contributes to the criminal justice system's politicisation. In the years after India's independence, there has been no significant increase in popular opposition to corrupt actions. The corrupt nature of the practise or procedure under consideration is well known. Nobody, on the other hand, is raising their voice in protest. Instead, he accepts the situation as unavoidable and has learnt to live with it. As a result, the movement toward criminalising politics has emerged. However, if someone speaks up about the unethical behaviour, that person will be punished or defrauded of what is rightfully his.

Underdevelopment, Illiteracy, Poverty and Prismatic Nature of Indian Social System

Underdevelopment, illiteracy, poverty, and the multifaceted nature of Indian criminality have resulted in the following issues for this society:

- (i) It would be absurd to expect someone who has breached the law to make good contributions to the legislative or administrative processes.

- (ii) It demoralises the administration, particularly the police department's management, by instilling a sense of futility in them.
- (iii) When people with questionable backgrounds are given the opportunity to run for office in organisations that draught legislation, it puts dishonour on the country and its citizens.
- (iv) It reflects ill on society as a whole when a criminal advances through the ranks. Because of their seeming invincibility and success, these people are idolised by an increasing number of young people nowadays. As a result, moral standards and overall quality of life suffer. Many politicians and political groups believe the charges are politically motivated. And they are adamant that their nominee has been cleared of all wrongdoing. This line of thinking is anchored in the universally accepted legal principle that an accused person should be treated as innocent unless proven guilty. Although this line of thought makes sense from an individualist perspective, one would assume that a political party would prioritise the needs of the masses over the needs of its members. It is critical to determine whether or not a politician who is currently facing criminal accusations can regain the faith of the people in his or her country. The answer is no in this circumstance. Political parties should therefore avoid from passing judgement on the guilt or innocence of such candidates and instead consider their social duties (Sunney, 2012)

Role of Election Commission

The integrity of the electoral process can only be protected if an objective authority is charged with ensuring that the electoral machinery runs properly and fairly. Article 324 of the Constitution calls for the establishment of a special EC for this purpose (Sunney, 2012). The Election Commission of India (ECI) is in charge of regulating all electoral processes in India and establishing what levels of security and openness are required. The European Commission has been dubbed a "power reserve" due to its extensive administrative, legislative, and quasi-judicial powers (Mohinder Singh, 1978). The only limitation with respect to legislative power is that the exercise of power should not be in contravention of the express provision of the Constitution or statute. While exercising the executive and quasi-judicial power, the Commission should act in accordance with the philosophy of natural justice. (Pillai, 1984).

It is the duty of the EC to conduct elections; it is anticipated to play a pivotal role in reducing the corrupt practices in elections. As the election is a fight for winning power to carry on the affairs of the most powerful human association, namely, the State, the candidates and parties sometimes do not hesitate to have recourse to any means and methods however illegal, immoral, foul or nefarious they may be out that some devices such as the taking away of ballot

boxes, the impersonation of voters, etc, have been made almost impossible by the enactments. But, other less direct forms of electoral corruption and offences as gifts in money of kind, promises of employment and various forms of pressure and intimidation are very difficult to penalize, though special provisions to deal with them is made, in most countries. It may be pointed out that all the forms of electoral corrupt practices and electoral offences are almost universally forbidden. And India is not an exception to it. The statute has made elaborate provision to make sure that the electoral process is not vitiated by the corrupt practices (Bhalla, 1998).

Role of Election Commission in curbing ‘Corrupt Practices’ and ‘Offences Relating to Elections.’

- Bribery
- Undue Influence
- Appeal on ground of Caste, Race, Community or Religion
- Publication of False Statements
- Free Conveyance of Voters
- Incurring Unauthorized Expenditure
- Obtaining Services of Government Servant
- Booth Capturing
- Personation at Election
- False Statement in Connection with an Election
- Illegal Payments in Connection with Election

Role of Election Commission in Curbing ‘Electoral Offences’ under the Representation of People Act, 1951.

- Filling of False Affidavit
- Prohibition Regarding Public Meetings During the 124 Specified Period
- Ban on Exit Poll
- Disturbance at Election Meetings
- Restriction on Printing of Pamphlets or Posters
- Maintenance of Secrecy of Voting
- Prohibition on Officers to act for Candidate or Influence the Voters
- Prohibition Regarding Canvassing in or Near Polling Stations
- Disorderly Conduct or Misconduct in or Near Polling Stations
- Failure to Observe Procedure for Voting

- Breach of Official Duty in Connection with Election
- Penalty for Government Servant in case he/she acts 33 as an Election Agent
- Prohibition of Going Armed to or Near a Polling Station
- Penalty for Employer in case of not Providing Paid Holiday on the day of Poll
- Ban on Selling or Distributing of Liquor on the Day of Poll

Other Important Roles of Election Commission

- Preparation of Electoral Roll
- Conduct of the Poll
- Cancellation of Poll
- Holding of Bye-Elections
- Recognition of Political Parties and Allotment of Symbols
- Disqualifying of the Candidates
- Implementation of Model Code of Conduct (MCC)
- Making Order for Fresh Polls
- Communication-plan for Election Tracking (ComET)
- Appointment of Expenditure observers
- Vigilance App for Reporting Code Violation
- Police Observer
- Role for the Benefit of Voters

Election Commission of India's Recommendations

The Election Commission (1984:77-90)) identified the practice of booth capturing as the main problem of elections and made the following recommendations to check that problem.

- (i) Detainees whose detention has been approved by the Judicial Advisory Committee under the National Security Act, Essential Services Maintenance Act, Conservation of Foreign Exchange and Prevention of Smuggling Act, and Foreign Exchange Regulation Act, among others. This Board, in particular, should not be allowed to hold public office. If the legislation is altered, everyone convicted of a crime involving moral turpitude, regardless of the severity of their punishment, and even if they are sentenced to less than two years in prison, will be disqualified from holding public office for the rest of their lives.
- (ii) If it can be proven that voting booths were captured at even a tiny percentage of polling places, the Commission will be entitled to declare the entire constituency's election fraudulent and order new voting in the entire constituency.

- (iii) Captured voting booths should disqualify a candidate from seeking for office for at least six years. The commission should be able to disqualify such people without first seeking approval from a court, allowing for rapid action and disqualification of the guilty candidates even before the elections are over.
- (iv) Booth capture should be made a crime, with harsh implications for candidates and their representatives who participate in or assist with the practise.
- (v) If it is established that the Returning Officer, Presiding Officer, or other officials involved in the conduct of the polls have abetted the crime, the Commission shall have the jurisdiction to begin prosecution against such errant officers. (ECI, 1984 :77-90).

Suggestions

There is need of well-defined electoral laws instead of Election Commission using its plenary powers under Article 324 of the Indian Constitution.

- The Aadhar Card should be seeded with the voter Identity Card to avoid booth capturing and bogus voting.
- Citizen participation should be increased because “Politically illiterate is worst illiterate”
- The provisions relating to party funding and spending should be transparent and within the reach of the common people.
- The updating of the poll roll should be done by the proper trained staff and accountability should be fixed in case of any discrepancies.
- The voters should be educated regarding the right to vote and its importance.
- All political parties should be under the ambit of the Right to Information Act, 2005.
- There should be proper laws to deal with the menace of paid news and proper punishment should be provided in case of violation.
- Step should be taken by the Commission regarding providing the facility of voting to the labour or employee wherever he is.
- The power regarding de-registering the political party should be given to the election Commission in proper cases.
- A person against whom charges in heinous crimes have been framed by the competent court should be banned from contesting elections.
- The polling staff including the police force should be trained well before sending them on polling duty. Such training should be must; no exemption should be given from the training.

- There should be proper law to stop the manufacturing and supply of illegal/country made arms/weapons.
- More paramilitary forces should be deployed at the polling stations on the day of poll especially in the disturbed and sensitive areas.
- The deployment of the local administration including the state police should be less near or at the polling station.
- The law relating to the misuse of religion, caste, community for the political benefit should be stricter and well defined.
- In case of any violence during the elections, the accountability should be fixed and the accused person or political party should be made responsible to pay the damages caused to the public or private property or compensation to the victim apart from the criminal punishment.
- The election cases should be decided by the competent court in a prescribed time limit.
- In case of making any decision by the Election Commission, both accenting and dissenting views of the Chief Election Commissioners and other Election Commissioners should be given importance.
- Road shows and motorcycle rallies, by the political parties and candidates should be banned.
- The law relating to the exemption from income tax should be revised and such exemption should be given only to the active political parties and not to the political parties only on papers.
- The political parties which do not contest the elections should be de-registered by the Election Commission by proper verification and procedure.
- If there is any cancellation of poll for commission of the corrupt practice then in such a case the expenses of re-election should be borne by the accused political party or the candidate.
- If any political party or individual leader doubts the procedure of the conduct of the election including EVM/VVPAT then in such a case their doubt(s) should be removed and after such removal, such person or political party/parties should appear in the public and explain the fairness of the procedure and affirm his or her faith in the electoral process.
- There should be state funding for the political parties and for that some criteria should be fixed.

- There should be auditing of the accounts of the political parties and such auditing should be done by the auditors of the Commission engaged for this purpose.
- There should be proper law relating to the transparency in the internal democracy in the political parties.
- The dummy candidates should be stopped by enacting proper law and the expenditure of such candidates should be included in the expenditure of the candidates/political parties for whom they are working.
- The misuse of religion for the electoral gain should be considered as religious fanaticism is serious threat to free and fair election and needs to be handled with tough hands.
- The law relating to the paid news should be amended and it should be made an electoral offence and minimum punishment of two years should provide for this.
- Offences relating to bribing and undue influence provided under section 171B and 171C of IPC should be coupled with a punishment of minimum for three years.
- There should be proper provisions relating to the use of religion for the political gain and it should be clarified that what would be the status of an appeal made by any other person or supporter during the election campaign which is not with the consent of the candidate.
- Time to time the election Commission gives its recommendations for the electoral reforms but only a few are considered by the government of the day. There should be law regarding the laying every recommendation of the Commission before the Parliament and giving the report of implementation in the Parliament.
- The expenditures incurred by a candidate before the filing of the nomination papers should be counted and should be included in the total expenses of such candidate.
- There should be proper laws relating to the appointment and removal of the Election Commissioners, it should not be done by the government of the day.
- The personnel for conducting the elections should be recruited from the non-government employees also and after proper training they should be made part of the electoral process so that the trust of the general public in the electoral process should be maintained.
- There should be a permanent Election Reform Commission for updating and reforming the election laws in the country.
- There should be mobile polling stations to allow the electorate to cast their votes where the proper polling station could not be organized.
- The electorate should be permitted to cast their votes through internet.
- The existing definition of election expenses and the limit of election expenses should be periodically reviewed and revised.

- There should be an independent election department for the preparation and revision of the electoral roll.
- The Election Commission of India should be empowered to regulate the internal functioning of political parties.
- How the political parties raise funds and spend them should be regulated by enacting proper law and the accounts of the political parties should be in the reach of the general public.
- The existing laws relating to use of media for getting votes is not adequate. There should be proper defined and properly framed laws relating use of media (both print and digital) by the political parties for campaigning.
- The MCC should be backed by proper law of the land and in case of violation, clear law should be there to tackle such a situation.
- The other ECs should also be protected from removing their post in the same manner as the Chief Election Commissioner.
- A candidate should be allowed to contest an election or bye- election only from one constituency to avoid unnecessary burden on the exchequer.
- Presently there is trend of counting the votes by polling stations. Totalizer machines should be used for avoiding the harassment, intimidation and post-election victimisation to the voters.
- of conduct are necessary for the representatives otherwise, democracy will degenerate into autocracy. It is ignominious to see that the moral slandered of some MPs are at the lowest ebb. Hence it is needed of the hour to enhance the standards of conduct of public representatives.
- There should be training and orientation programmes for all the newly elected members of parliament or state legislatures regarding their role in the democracy, to ensure their active participation.

Conclusion

Finally, author wants to conclude that the increasing criminalization of politics poses a severe threat to our democracy and that addressing the issue will be tough for the government. I'd also like to emphasise that this is a major responsibility for the country. Reforms are more difficult to enact when the people who disobey the law are also the ones who make the laws. We can expect a favourable solution to this problem; but we will need a vigilant public and a strong political resolve to discourage criminals from getting involved in politics. This is especially

true considering the judiciary's growing engagement in preventing this problem and the efforts made by numerous organisations to raise public awareness about the involvement of criminals in politics.

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