DECRIMINALIZATION IN INDIAN POLITICS: CHALLENGES AND DEVELOPMENTS

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ABSTRACT

The pervasive criminalization of Indian politics jeopardizes the integrity of democracy. Over fifty percent of the current Members of Parliament and Members of Legislative Assemblies are facing criminal charges, including severe offenses like murder and kidnapping. The Representation of the People Act, 1951 (RPA) prohibits those accused of criminal activity from contesting elections while their cases are pending. This limitation is due to the fact that individuals are only prohibited from candidacy if convicted of a crime with a minimum term of two years' imprisonment. In the Supreme Court case Lily Thomas v. Union of India (2013) and subsequent instances, justices revoked protections for politicians found guilty and instructed Parliament to legislate against the disqualification of parliamentarians upon the mere filing of accusations. India's law remains unchanged despite calls for harsher punishments and faster disqualifications for false affidavits. To combat corruption, improvements include better voter education, mandatory NOTA clauses, stricter campaign finance rules, consistent government transparency, quicker court processes, and consistent ethics standards.

Keywords: Criminalization of Politics, Decriminalization, Representation of the People Act, Electoral Reform, NOTA, Supreme Court Directives, Voter Education, Campaign Finance, Political Accountability, India

Introduction

The pervasive criminalization of politics in India has become a major threat to democracy's progress and integrity. Recent analyses by the Association for Democratic

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Reforms (ADR) reveal alarming statistics. In their affidavits, for instance, 225 (44%) of the 514 current Lok Sabha MPs stated that they are still facing criminal charges[2]. Even worse, roughly 29% of these MPs are accused of serious crimes like murder, kidnapping, and crimes against women[3]. Similar trends can be seen at the state level: 1,861 out of 4,092 MLAs (45%) in 28 states and 3 UT legislatures filed criminal cases, and 1,205 (29%) of them were charged with serious offenses[4].In local-body elections, where formal disclosure requirements might be less stringent, nontrivial criminal elements might also be present. An ADR analysis of the 2022 Zilla Parishad elections in Odisha showed that 82 out of 726 (11%) of the elected members had declared criminal cases, while a survey of Surat municipal candidates in 2021 found that 43 out of 452 (10%) had ongoing crimes. ADR data from the 2024 Lok Sabha elections shows that candidates with declared criminal charges won 15.3% of the time, while clean contenders only won 4.4%. This implies that candidates with criminal histories are well-represented and may even have an electoral edge. As one Supreme Court justice rightly warned, "The criminalization of politics is the bane of society and negation of democracy"[5]. When accused wrongdoers infiltrate legislatures, it erodes public trust and distorts governance agendas. Lawmakers who face serious criminal charges may divert public funds, influence law enforcement, or change laws to protect colleagues rather than focusing on development. This leads to the "politicization of crime and criminals" colliding and "neglecting the very intent" of free and fair elections. As political rivalry shifts from actual development issues to coercion, patronage, and caste or sectarian appeals, voters often witness money-and-muscle politics in action. Politics should be cleansed of persons with established criminal backgrounds because they are "the bane of society." This undermines accountability and contributes to the growth of cynicism. When elected governments run by dishonest people it fail to implement laws or budgets meant to better society, long-term planning becomes vulnerable.

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[2] ADR, https://www.adrindia.org/content/adr-report-reveals-shocking-statistics-44-sitting-mps-face-criminal-charges-5-identified#:~:text=A%20recent%20analysis%20conducted%20by,assets%20exceeding%20Rs%20100%20crore , (last visited July 15, 2025)

[3] ibid

[4] Business Standard, https://www.business-standard.com/india-news/45-of-4-092-mlas-in-28-states-3-uts-face-criminal-charges-adr-analysis-125031701084_1.html , (last visited July 15, 2025)

[5] ADRhttps://adrindia.org/sites/default/files/All_India_Sitting_MLAs_Report_2025_English.pdf#:~:text=□%20Sitting%20MLAs%20with%20Criminal,cases%20including%20cases%20related%20to , (last visited July 15, 2025)

Constitutional and Legal Framework

India's Constitution and laws give voters and Parliament a lot of discretion while establishing some guidelines. Article 102(1)(d) for MPs and Article 191(1)(d) for MLAs both use the Representation of the People Act, 1951 (RPA), as a statute to evaluate disqualifications. RPA Section 8 disqualifies only convictions for major offenses (those carrying a sentence of at least two years in jail). Those convicted are immediately ineligible as of the date of conviction; however, incumbent lawmakers may be able to avoid immediate expulsion prior to 2013 by obtaining a timely appellate stay. The Supreme Court resolved this matter in Lily Thomas v. Union of India (2013) by striking down the provision in Section 8(4) that had shielded MPs and MLAs from appeal. A lawmaker who has been sentenced to more than two years in prison is currently ineligible and will not be able to run for office for six years[6]. Importantly, a simple charge or accusation, regardless of how serious, does not disqualify a person under current law. The mere fact that a trial is ongoing or charges have been brought against a candidate does not give the RPA the right to reject them. As one commentator notes, Section 8 of the RP Act actually deals with disqualification upon conviction rather than charge framing[7].

Attempts have been made to expand the grounds for disqualification. The RPA (Section 125A) stipulates that filing a false affidavit carries a maximum penalty of six months in prison; however, convictions for this offense are far too rare. In 2018, the Supreme Court even mandated that candidates and parties publish their nomination affidavits in order to increase transparency. Crucially, though Section 8 has not been judicially expanded by the high court. A five-judge panel in the 2018 case Public Interest Foundation v. Union of India declined to rule that RPA Section 8 was unconstitutional on the grounds that charges had been brought, concluding that "it was not for the Courts but the Legislature" to create any further disqualification criteria. Since Article 102

[6] Supreme Court Observer, https://www.scobserver.in/cases/public-interest-foundation-framing-of-criminal-charges-electoral-disqualification-case-background/#:~:text=Currently%2C%C2%A0Section%208%C2%A0of%20the%20RP%20Act,person%20upon%20framing%20of%20charges , (last visited July 15, 2025)

[7] ibid

explicitly grants Parliament the power to decide grounds for disqualification, the Court urged Parliament to pass legislation targeting candidates who are the subject of serious accusations. The Court called for legislative change, noting that permitting felons to openly run for office would compromise Article 326's guarantee of free and fair elections. In line with this, independent groups have proposed reform. A 2014 Law Commission Report recommended that disqualification be started at the charge-filing stage and claimed that conviction-based disqualification was ineffective due to delayed trials[8]. For example, it recommended that disqualification should be automatically lifted on those charges filed within a year prior to the election be excluded and that this be applied only to offenses that carry a sentence of at least five years. Furthermore, it suggested that sanctions be strengthened and that false affidavits be considered a corrupt practice[9]. None of these Law Commission recommendations have been put into practice, and bills to this effect have repeatedly stalled in Parliament.

Declarations of Judges

For many years, the Supreme Court has opposed making politics a crime. Criminal elements in the legislature are a "bane of society" and "subversive of free and fair elections," the Court warned in Anukul Chandra Pradhan v. Union of India (1997).[10] In Rambabu Singh Thakur v. Union of India and associated contempt petitions (2018), a five-judge panel reiterated that, absent legislation, a candidate cannot be disqualified simply by the filing of charges. Parliament should enact laws that would prevent contestants from facing serious criminal charges, the bench said[11]. The Court emphasized that until Parliament acts, the current system—disqualification upon conviction—must be maintained. Consequently, the courts have essentially upheld the presumption of innocence while criticizing the current state of affairs as insufficient.

[8] PRS Legislative Research, https://prsindia.org/policy/report-summaries/law-commission-report-summary-electoral-disqualifications#:~:text=>%20%20%20, (last visited July 15, 2025)
[9] ibid
[10] ADR,https://adrindia.org/sites/default/files/Intervention_WP_No.1142_of_2020_1.pdf#:~:text=the%20Supreme%20Court%20observed%3A%20“5,It%20is%20subversive%20of%20free , (last visited July 15, 2025)
[11] Drishti IAS, https://www.drishtiias.com/daily-news-analysis/parliament-should-enact-law-to-clean-politics-sc#:~:text=In%20the%20Public%20Interest%20Foundation,law%20to%20prevent%20criminalization%C2%A0of%20politics , (last visited July 15, 2025)

At the same time, other SC decisions have addressed similar subjects. Lily Thomas claims that the Court has barred the executive branch from using its discretion to protect corrupt ministers and mandated that MPs and MLAs be immediately evicted upon conviction (Manoj Narula v. Union of India, 2014). It has also issued directives for political parties to self-regulate, emphasizing that the success of cleansing politics ultimately depends on the parties' willingness to expel criminals. There is a lack of enforcement of these exhortations, as even guilty lawmakers often avoid by-elections and may still influence their parties' choice of candidates.

Improving Election Accountability

Because of the limited judicial action, reformers emphasize a multifaceted approach. First and foremost, voter awareness is crucial. Many people, especially those who reside in rural and underdeveloped areas, are not aware of the records of candidates. ADR and other NGOs offer voting literacy campaigns and legal aid, but more outreach is needed. With the help of civic education and technologies like RTI, voters can scrutinize candidates and comprehend the long-term effects of electing criminals.

Secondly, electoral reforms may discourage criminals from seeking public office. One encouraging step is to increase the NOTA ("None of the Above") option's impact. NOTA was enacted nationally after PUCL v. UOI (2013) [12], allowing voters to reject any candidate without abstaining. According to the current ECI rules, the candidate with the next-highest number of votes wins even if NOTA receives the most votes. As of right now, NOTA remains purely symbolic. By, for example, demanding a re-election in the event that NOTA wins, activists support binding NOTA. In 2018, the Maharashtra and Haryana election bodies decided that if NOTA won a plurality in municipal elections, a new election would be held with new candidates. Some scholars have even proposed excluding candidates from the rerun if their performance was below that of NOTA[13]. Voter dissatisfaction is demonstrated by such experiments, but

[12] Drishti IAS, https://www.drishtiias.com/daily-news-editorials/has-the-sc-missed-a-chance-to-keep-criminals-out-of-polls , (last visited July 15, 2025)

[13] Drishti IAS, https://www.drishtiias.com/daily-updates/daily-news-analysis/nota-option-in-indian-elections#:~:text=%2A%20Re,‘fictional%20candidate’%20in%20municipal%20polls , (last visited July 15, 2025)

they will most likely need legal backing. If comparable "right to reject" clauses were expanded nationwide (and possibly to state and local elections as well), it might incentivize parties to nominate cleaner candidates.

Third, it's critical to make changes to campaign finance and punishment. Since criminal candidates usually rely on illicit funds, stricter enforcement of election expenditure caps may reduce their influence. The recommendations include limiting contests by repeat offenders, increasing disclosure penalties, and discouraging patronage hiring. Notably, the 244th Report of the Law Commission recommended harsher punishments for making false affidavits, raising the jail term from six months to two years[14]. This could deter criminal cases from going unreported if it were implemented. Court decisions (which were highlighted in 2023) require poll workers to reject incomplete affidavits, giving them some teeth.

Finally, political party reform is crucial. The Supreme Court and experts agree that parties are the main gatekeepers. There have been calls for party-level cleanliness rules, such as requiring parties to eject people who are accused of heinous crimes or ban members from[15]. Theoretically, some parties have internal ethics committees with the power to punish offenders, like the BJP's "Arpit Vyakhyan." Candidate primaries and civil society pressure have been suggested as ways to reduce party influence over candidate selection. To force parties to disaffiliate offenders, more stringent regulation is ultimately needed through election law or internal democracy mandates.

State and Local Assemblies

This issue is not unique to Parliament. State legislatures exhibit comparable or even worse trends. According to ADR data, criminal proceedings have been filed against at least 50% of MLAs in nearly all major states (Andhra Pradesh 79%, Bihar 66%,

[14] PRS Legislative Research, https://prsindia.org/policy/report-summaries/law-commission-report-summary-electoral-disqualifications#:~:text=False%20affidavits%20as%20grounds%20for,disqualification , (last visited July 15, 2025)

[15] Drishti IAS, https://www.drishtiias.com/daily-news-analysis/parliament-should-enact-law-to-clean-politics-sc#:~:text=,ticket%20to%20offenders%20in%20both , (last visited July 15, 2025)

Maharashtra 65%, Tamil Nadu 59%)[16]. More than half of MLAs in several states—Andhra 56%, Telangana 50%, Bihar 49%, and Odisha 45%—are facing serious charges[17]. High courts and election commissions have begun to put pressure on state governments to enact transparency laws akin to those at the federal level. However, many state candidates often underreport or misreport cases that remain unresolved.

At the panchayat or municipal level, transparency is usually lacking. Since many state election laws did not require candidate affidavits until recently, even ex-offenders were able to win without any opposition. Some states, like Tamil Nadu and Haryana, now require the disclosure of criminal histories even for village council elections, while others are falling behind. Empirical evidence suggests significant criminal engagement. According to ADR studies of local polls, NOTA vote shares were highest (up to 4.6%) in areas with disputed candidates in the 2017 Maharashtra municipal corporation elections, indicating that protest voters distrust all candidates. Eleven percent of the winners of the 2022 Odisha Zilla Parishad local elections had criminal convictions against them[18]. Similarly, it was discovered that 10% of candidates in the municipal election of Surat in 2021 had charges against them[19]. This suggests that local officials are not immune and often serve as entry points for "caste strongmen," or those with mafia backing.

Given that local entities have received development funds, this is concerning. Criminal elements within panchayats and municipalities have the power to embezzle money from rural development projects or threaten neighboring communities. Experts recommend that municipal elections be subject to stringent screening and mandatory disclosures. The Election Commission of India (ECI) could exert pressure on states to implement uniform nomination laws by using court orders if necessary.

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[16] ADR, https://www.adrindia.org/content/adr-report-reveals-shocking-statistics-44-sitting-mps-face-criminal-charges-5-identified#:~:text=A%20recent%20analysis%20conducted%20by,assets%20exceeding%20Rs%20100%20crore , (last visited July 15, 2025)

[17] Business Standard, https://www.business-standard.com/india-news/45-of-4-092-mlas-in-28-states-3-uts-face-criminal-charges-adr-analysis-125031701084_1.html , (last visited July 15, 2025)

[18] ADR,https://www.adrindia.org/content/adr-report-reveals-shocking-statistics-44-sitting-mps-face-criminal-charges-5-identified#:~:text=A%20recent%20analysis%20conducted%20by,assets%20exceeding%20Rs%20100%20crore , (last visited July 15, 2025)

[19] ibid

The NOTA and the Reform Experiments

The Supreme Court created the "None of the Above" option in PUCL v. UOI (2013) to protect voter confidentiality, and it has symbolic meaning in this argument. It gives dissident voters a voice rather than spoiling ballots. On its own, though, it has minimal effect on criminalization. According to Drishti IAS's analysis, NOTA votes are regarded as invalid votes[20]. This implies that the candidate with the next-highest number of votes wins even if NOTA receives the largest vote share. As a result, a criminal candidate will still win if, for instance, 30% of voters support them and 40% of voters vote NOTA. The Supreme Court is reportedly considering a petition to close this loophole, and civil society is demanding more stringent rules (new polls if NOTA wins).

It's interesting to note that two states have already implemented comparable policies for municipal elections. In November 2018, the Maharashtra State Election Commission declared that NOTA would be considered a "fictional electoral candidate" on the village and city website[21]. If NOTA got the most votes, no legitimate candidate would be declared the winner, so a re-election would be required. Haryana's municipal elections scroll.in quickly did the same. These state actions demonstrate the growing public desire to make NOTA a helpful check. The RP Act or election laws could be changed to encourage states to nationalize such policies, or the ECI and Parliament could consider doing so themselves.

In addition to NOTA, election reform experts suggest recall procedures, which allow voters to remove incumbent lawmakers with anti-corruption ballots, and asset thresholds, which forbid candidates who cannot explain their excessive wealth. Despite not having a direct criminal goal, such policies could indirectly screen out illegal actors by increasing the cost of political crime. Proposals for proportional representation or reservation adjustments have also been made in an attempt to change the party calculus.

[20] Drishti IAS, https://www.drishtiias.com/daily-updates/daily-news-analysis/nota-option-in-indian-elections#:~:text=,election%20and%20holding%20fresh%20polls (last visited July 15, 2025)

[21] Mathew Idiculla and Maya Roy, Maharashtra has boldly expanded NOTA, with Haryana following suit. Will it pass legal scrutiny?, Scroll.in (Jul. 15, 2025, 9:49 PM), https://scroll.in/article/902716/maharashtra-has-boldly-taken-the-nota-idea-further-but-will-the-move-withstand-legal-scrutiny#:~:text=The%20order%20of%20the%20Maharashtra,NOTA%20as%20a%20“fictional%20election

Each concept has trade-offs, but they all demonstrate a growing understanding that merely waiting for convictions is not enough.

Conclusion

Decriminalizing Indian politics is a challenging endeavor that requires collaboration from lawmakers, institutions, and citizens. The severity of the problem is evident in the fact that nearly half of MPs and MLAs are currently being accused of crimes[22]. However, the legal system offers no immediate relief, with the exception of eventual conviction. The legislature is now in control, despite the Supreme Court's recognition of the issue, which called on Parliament to pass legislation and declare criminalization a democratic bane[23] .

In order to preserve election integrity and protect the presumption of innocence, reforms must find a balance between political reality and the rule of law. In addition to the severe penalty of immediate disqualification on mere accusation, practical measures include mandatory criminal disclosure, speedier trials for politicians, greater limitations on unaccountable party activities, and voter education campaigns. Crucially, if voters continue to reject candidates with a track record of corruption, public awareness can put pressure on parties to change or risk losing votes. Through innovative measures like legally binding NOTAs or political party whitelists of candidates, disgruntled citizens can find a voice.

Ultimately, accountability must be restored. According to Dr. B.R. Ambedkar, a constitution acquires life because of the men who control it, and India needs legislators who promote the common good and have strong character. Citizens, civil society, and the media can all contribute to the demand for this type of leadership. Only by applying constant pressure and implementing bold legal remedies can the country hope to buck the criminalization trend and ensure that democracy fosters progress rather than deterioration.

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[22] Business Standard, https://www.business-standard.com/india-news/45-of-4-092-mlas-in-28-states-3-uts-face-criminal-charges-adr-analysis-125031701084_1.html , (last visited July 15, 2025)

[23] Drishti IAS, https://www.drishtiias.com/daily-news-analysis/parliament-should-enact-law-to-clean-politics-sc#:~:text=In%20the%20Public%20Interest%20Foundation,law%20to%20prevent%20criminalization%C2%A0of%20politics , (last visited July 15, 2025)