

**DECRIMINALISING INDIAN POLITICS: SYNCHRONISING
DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S
ELECTORAL SET-UP**

ARCHISA RATN¹ & ATHARVA DWIVEDI²

In a democratic polity, the importance of representation as a method for the people to govern themselves cannot be overemphasised. The modern democratic governments mostly act as people's representatives, exercising delegated agency for the performance of sovereign functions. The prosecution of criminals is one such important function performed by the State on behalf of society. Therefore, the logical corollary is that the State authority should itself be free from any kind of criminal vice, in order for it to exercise the moral authority for the prosecution of criminals. Section 8 of India's Representation of the People Act, 1951, thus prohibits anyone found guilty of a crime that carries a sentence longer than two years from holding a representative office. This paper reviews Sections 8 and 11 of the RoPA, whereby it is contended that the sceptre swayed by these legislative provisions is inadequate and impaired in its application. The authors critically examine the adequacy of the legislative provisions in achieving their objective of divorcing criminality from political participation, including from historical and modern standpoints.

The authors shall propose a novel approach to legislative reform, aimed at eliminating the menace of criminality in politics. This approach will strive to strike a balance between an unduly harsh and draconian disqualification and one that is toothless and ineffective in the context of convicted (and accused) politicians. For this purpose, the paper shall begin with the legislative history and the rationale behind Section 8, enlisting similar laws in other democracies. Thereafter, in the second part, the authors shall empirically examine the inadequacy of Sections 8 and 11 by exposition of instances of its impaired application. Finally, the authors shall propose a novel and nuanced approach which balances the need for ethical politics, devoid of criminality and also safeguards the freedom of people to contest elections.

* Cite it as: Ratn & Dwivedi, *Decriminalising Indian Politics: Synchronising Democratic Probity and Fairness in India's Electoral Set-Up*, 9(2) COMP. CONST. L. & ADMIN. L. J. 41(2025).

¹ Archisa Ratn is a third-year student at National Law University, Jodhpur. The author may be reached at <archisa.ratn@nlujodhpur.ac.in>.

² Atharv Dwivedi is a third-year student at National Law University, Jodhpur. The author may be reached at <atharvdwivedi22@gmail.com>.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING
DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S
ELECTORAL SET-UP

TABLE OF CONTENTS

Introduction	42
Legislative History	44
Extent of Criminalisation of Politics	50
Misuse and Ambiguities in the Enforcement of Sections 8(3) and Section 11 Under ROPA, 1951	51
Comparative Analysis	59
Recommendations	61
Conclusion	67

INTRODUCTION

India, the world's largest democracy with a population exceeding 1.45 billion, has conducted eighteen general elections since its independence. These elections are pivotal to the functioning of its democratic system, allowing citizens to elect representatives to legislate and govern. The legitimacy of these representatives is paramount, and ensuring their integrity is crucial for maintaining public trust in the electoral process. To safeguard the democratic process, the Representation of the People Act, 1951 ("RoPA"),³ establishes clear criteria for disqualifying individuals from holding public office if they are found guilty of criminal offences. Among these, Section 8 of the Act specifically disqualifies individuals convicted of crimes with sentences of two or more years.⁴ thereby aiming to preserve the integrity of the legislative body and prevent the entry of individuals with questionable moral standards into politics.

The introduction of Section 8 was motivated by the need to ensure that those entrusted with lawmaking are free from criminal backgrounds, thereby upholding the ethical standards expected of public office holders. Over time, the provision has been instrumental in barring individuals with serious criminal records from contesting elections and holding legislative positions. However, the application of Section 8 has raised significant

³ The Representation of People Act, 1951, No. 43, Acts of Parliament, 1951 (India).

⁴ The Representation of People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).

concerns regarding its scope and effectiveness. One notable issue arises from its potential misuse for political vindication, with accusations that it has been selectively applied to target political opponents. The recent defamation case against Rahul Gandhi in 2019⁵ and his subsequent disqualification from the Parliament have reignited debates on the fairness and utility of this provision in contemporary times. These developments prompt a critical examination of whether Section 8 still serves its original purpose or if it has outlived its relevance in the present political climate.

Part I of this paper will trace the legislative history of Section 8, beginning with its introduction in 1951 and the rationale behind its inclusion in the RoPA. It will explore how this provision was designed to address growing concerns about the criminalisation of Indian politics, a phenomenon that has become increasingly pervasive in recent decades. The prevalence of politicians with criminal records, including those charged with serious offences such as murder, corruption, and sexual assault, highlights the challenges faced by the Indian political system in enforcing ethical standards. This section will critically examine the extent to which Section 8 has been effective in curbing the influence of criminal elements in politics and will analyse whether its enforcement aligns with its original legislative intent.

Part II will focus on the contentious issue of the interpretation and application of Section 8(3), which deals with disqualifying individuals convicted of crimes with sentences of two or more years. One of the major concerns raised in recent years is the ambiguity surrounding the phrase “*any offence*” which has led to debates about whether multiple minor offences can collectively lead to disqualification or whether each offence must individually meet the two-year threshold. This section will analyse key judicial decisions, including the landmark case of *K. Prabhakaran v. P. Jayarajan*⁶ which addressed this issue. Furthermore, this part will delve into the misuse of Section 11, which grants the Election Commission of India (“**ECI**”) discretionary powers to reduce or remove the period of disqualification. There have been several instances where the ECI has been

⁵ Explained Desk, *Rahul Gandhi's 2019 Defamation Case and the Gujarat Court Verdict*, THE INDIAN EXPRESS, (Mar. 24, 2023), <https://indianexpress.com/article/explained/explained-law/gujarat-court-rahul-gandhi-defamation-case-explained-8514062/>.

⁶ *K. Prabhakaran v. P. Jayarajan*, (2005) 1 SCC 754.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

accused of favouring certain candidates by exercising this discretion arbitrarily. The paper will examine these cases to highlight the inherent biases that affect the fairness of the electoral system.

Part III will provide a comparative analysis of India's disqualification laws with those of the United Kingdom ("U.K.") which shares a similar democratic framework. While both, India and the U.K. have provisions that disqualify individuals convicted of serious criminal offences from holding public office, the two countries have adopted different approaches in defining the criteria for disqualification. This section will examine the British legal framework, which places greater emphasis on the severity and context of the offence, and contrast it with India's comparatively rigid approach under Section 8. The analysis will highlight potential reforms inspired by the British system to make India's laws more nuanced and effective in ensuring that only individuals with a clean record are allowed to hold political office.

Finally, Part IV of this paper proposes recommendations for reforming Section 8 and related provisions to ensure that they are applied fairly and justly. The paper will argue for narrowing the term "any offence" to consider the nature and gravity of the crime committed, rather than applying a blanket disqualification for all offences regardless of severity. Additionally, the paper will recommend that the ECI's discretion under Section 11 be more tightly regulated to prevent bias and ensure consistency in its application. By making these reforms, the paper asserts, India can better safeguard the integrity of its electoral process and uphold the ideals of democracy by preventing the criminalisation of politics while ensuring a fair and transparent legal framework for all candidates.

LEGISLATIVE HISTORY

A. THE BEGINNING

The roots of the RoPA were planted on 9 April, 1951, when it was introduced in the Provisional Parliament by Dr. B.R. Ambedkar, the then Law Minister of India. He introduced it as a Bill to further amend the Representation of the People Act, 1950. The main intent was to establish procedures and rules regarding the conduct of elections, the

qualifications and disqualifications for membership, and the resolution of doubts and disputes arising from such elections, etc., prior to India's first general election in 1951.⁷ The first Bill was passed after amendment on 19 April, 1951.

However, that was not the end of the journey. A second Bill was introduced for consideration on 15 May, 1951, wherein provisions regarding the Returning Officer, polling booths, disqualifications, etc., were thoroughly discussed among the parliamentarians. This Bill was passed after in-depth deliberation on 7 June, 1951. Enacted as Act No. 43 of 1951 by the Provisional Parliament under Article 327 of the Constitution of India, it was brought into force before the 1951 general elections.

B. MAJOR DEBATES REGARDING THE DISQUALIFICATION OF THE MEMBERS OF THE PARLIAMENT AND STATE LEGISLATURES

The Provisional Parliament discussed the whole Bill in great depth, and the thorough discussions regarding the different disqualification grounds were taken up by the members on 28 May, 1951. All the disqualification grounds were presented as Clause 7, which later became different sections in the Act. Section 8 of the present Act stems from Clause 7(b), which states the following:

“Clause 7 - Disqualifications for membership of Parliament or of a State Legislature. A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State- (b) if, whether before or after the commencement of the Constitution, he has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than two years, unless

⁷ Statement of Objects and Reasons of the Representation of the People Bill, 1951 reads thus: “That the Bill to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections, as reported by the Select Committee, be taken into consideration.”

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING
DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S
ELECTORAL SET-UP

a period of five years, or such less period as the ECI may allow in any particular case, has elapsed since his release.”⁸

The major point of contention among many members with this part of the clause was the “*any offences*” part; they wanted to restrict the ambit of it and hence brought motions to amend it and include certain offences by listing them down or mentioning the term “*moral turpitude*” for the offences. Members like Shri Syamnandan Sahaya, Pandit Thakur Das Bhargava, and Dr. Deshmukh, moved motions to add the term “*moral turpitude*” after the word “*offence*” in the sub-clause.⁹ The reasoning provided by them was that the original clause has a very wide ambit and shall restrict even members who commit technical offences and shall disqualify them, which was not desirable in the given context. They believed that the inclusion of “*moral turpitude*” as a limit would keep the individuals of questionable integrity outside the House and still not create a huge restriction on others to be qualified as members. The intention behind such inclusion was, firstly, to include black-marketing and profiteers under the ambit of disqualification, which was a major issue at that time.¹⁰ Shri Jangde from Madhya Pradesh presented a separate amendment to include a clause for disqualifying black marketers and profiteers from being elected as members.¹¹ Even other members like Prof. K.T. Shah presented amendments to include such a clause as the members wanted to stress the need to include such offences as allowing such individuals to stand for public office weakens public trust and sends the wrong message.¹² They argued that disqualifying those convicted of these offences would reflect society’s shared sense of justice and clearly show disapproval of actions that may harm the economy and violate public interest. They sought to lead society by example and

⁸ PROVISIONAL PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, Official Report Vol. VII, 1951, May 28, 1951, p. 9474-9611, https://eparlib.sansad.in/bitstream/123456789/760707/1/ppd_28-05-1951.pdf.

⁹ *Id.* at 9487.

¹⁰ *Id.*

¹¹ *Id.* at 9537.

¹² *Id.* at 9491-9497.

therefore advocated for the inclusion of these offences under disqualification criteria, aiming to condemn such conduct until specific Bills or Acts could be enacted to address them. The other intention behind such inclusion was to ensure that issues of family disputes over parental property, which may lead to conviction, do not make some people ineligible to be elected again.

Prof. K.T. Shah, on the other hand, brought in multiple amendments, the most prominent of which was the addition of an explanation under Clause 7(b) to provide an exhaustive list of offences as grounds for disqualification.¹³ Some of these offences were treason, murder, rape, adultery, bigamy, robbery, tax-evasion, etc. He also introduced a motion to add another sub-clause stating that if a person is found to be directly or indirectly violating constitutional provisions, then he shall be disqualified. While explaining the motive behind such amendments, he stated that the choice of national representatives should exclude the right to get elected from persons who are convicted under any law passed for black marketing and profiteering, and establish an example for the society. He also advocated to make the disqualification irrespective of the nature of the punishment given to mark social disapproval for such individuals.¹⁴

Another major point raised by a lot of members was the issue of whether disqualification should be decided by the conviction period as stated in the proposed clause or the nature and the gravity of the offence. Regarding this, members of the house like Shri A. C. Guha, Shri Naziruddin Ahmad, and Shri Shiv Charan Lal presented their viewpoints. A.C. Guha stated that the offences should relate to moral turpitude and conviction for political offences should be exempted, as was also done in the British era. He remarked, "*It is not the duration of the sentence but the nature of the crime which should disqualify a person.*"¹⁵ Shri Naziruddin Ahmad presented his points along the same lines and stated that there should be a distinction between offences to be made and he even remarked, "*There are offences which may almost amount to virtuous indignation, and there are offences*

¹³ *Id.* at 9516.

¹⁴ *Id.* at 9517.

¹⁵ *Id.* at 9530.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

which make the offender a person of the blackest dye."¹⁶ Shri Shiv Charan Lal stated the same thing and presented the example of conviction of a person for private defence for three years, then his disqualification is not desired, and therefore, the offence should be the criterion to decide and not the sentence.¹⁷

If these concerns of the former parliamentarians are seen in the modern context, then we can say that the first contention finds relevance even today, as the disqualification grounds presented under Section 8 of the Act include certain offences whose conviction should not lead to disqualification as it is being misused by the political parties in the current scenario. A prime example of such an offence is defamation. A conviction for defamation may be strategically utilised by the ruling government to curtail the influence of political adversaries of the ruling establishment, or by political parties as a means of pursuing political retribution and vindication. Rahul Gandhi's 2019 defamation case showcases the imminent peril of not classifying serious offences which should attract disqualification and which offences do not need disqualification of the individual.

The other contention of the members regarding the nature of offence is that some offences like rape, murder, etc. do require serious consequences to set an example amongst others and thus disqualification should be given to convicted individuals of such heinous and grave offences. However, there are some other offences which do not require such strict debarment of six years. Hence, it cannot be said that the criterion of sentencing of two or more years is wrong, but it can be argued that the offences mentioned under this act need a strict classification and determination of disqualification should involve the evaluation of the nature of the offence.

C. AMENDMENTS BROUGHT TO SECTION 8 SINCE INDEPENDENCE

The RoPA¹⁸ has been amended many times, but Section 8 in itself has

¹⁶ *Id.* at 9533.

¹⁷ *Id.* at 9551.

¹⁸ *Supra* note 6.

faced only one major amendment in all these years – the 2013 ruling of the Supreme Court of India in the case of *Lily Thomas v. Union of India*.¹⁹ Here, the Court struck down section 8(4) of the Act,²⁰ which protected the parliamentarians, as unconstitutional, as it stayed the disqualification for three months, till the appeal was filed. The Supreme Court held it unconstitutional for violating Articles 102(1)(e) and 191(1)(e) of the Constitution. The Court reasoned that allowing convicted legislators to retain office by merely filing an appeal created an arbitrary distinction between candidates and sitting members, violating Article 14. Disqualification, it held, must operate immediately upon conviction unless the conviction itself is stayed. Emphasising the need to uphold democratic integrity, the Court concluded that Parliament cannot defer disqualification and must ensure equality and purity in the electoral process. Thus, if a person is convicted of an offence and given the mentioned punishment as in section 8 of the Act, then he shall be disqualified from the date of conviction itself and no stay till a future date shall be provided to the parliamentarian.

The Apex Court of the nation took such a step to address the issue of criminalisation in politics by ensuring that individuals with criminal records would not be able to hold public offices and influence governance by using their power and might. By striking down Section 8(4) of the RoPA, the Supreme Court closed a significant loophole that had enabled prolonged retention of public office despite serious criminal convictions. This decision reinforced the principle that lawmakers must be subject to the same standards of legal accountability as ordinary citizens. Consequently, it enhanced transparency and accountability in the political system, reaffirming public faith in democratic governance and the rule of law. However, in the following sections, we will see how the issue of criminalisation of politics persists in contemporary times, and how even well-intentioned provisions like Section 8 of the Act are strategically used by political parties to further their political agenda.

EXTENT OF CRIMINALISATION IN POLITICS

The Association for Democratic Reforms (“**ADR**”) and National

¹⁹ *Lily Thomas v. Union of India*, (2013) 7 SCC 653.

²⁰ The Representation of People Act, 1951, §8(4), No. 43, Acts of Parliament, 1951 (India).

DECriminalISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

Election Watch (“**NEW**”)²¹ have conducted notable research, which highlights the grave concern surrounding the criminalisation of politics in India. A troubling trend emerges from an examination of 62,847 candidates who ran for State Assembly or Parliamentary seats from 2004 till 2013.²² Of these candidates, 11,063 people, or around 18%, had open criminal cases, with 27,027 charges in total. Even more alarming is the fact that 5,253 applicants, or 8% of the total, were found to have been involved in 13,984 major crimes, including violent crimes like rape, murder, extortion, and corruption.²³ Serious criminal charges are those that have the potential to result in penalties longer than five years, that need non-bailable warrants, that involve crimes against women, or that have to do with electoral violations.

The findings of the ADR also point to a concerning pattern in parliamentary elections, as an increasing number of elected Members of Parliament (“**MPs**”) are dealing with outstanding criminal accusations. About 24% of MPs had criminal cases outstanding against them in 2004; by 2009, that number had risen to 30%; by 2014,²⁴ it had risen to 34%; and by 2019, it had alarmingly reached 43%.²⁵ The purity of democratic institutions is being threatened by the ongoing escalation, which indicates a growing relationship between criminal groups and political authority. It has been shown that candidates from all major political parties have a history of violent crimes, including 455 other crimes against women, 1,229 murder cases, 2,632 attempted murder cases, 68 rape cases, and other violent crimes.²⁶ 9% of candidates on average from 19 political

²¹ National Election Watch, *Ten Years Of National Election Watch (2004 to May 2013) Report On Elections, Crime And Money*, ASSOCIATION OF DEMOCRATIC REFORMS, (Mar. 28, 2023), <https://adrindia.org/sites/default/files/Ten%20Years%20of%20National%20Election%20Watch%20Report.pdf>.

²² *Id.*

²³ *Id.*

²⁴ Trilochan Sastry, *Owning up to criminalisation in politics*, THE HINDU (Jul. 10, 2020), <https://www.thehindu.com/opinion/lead/owning-up-to-criminalisation-in-politics/article32035186.ece>.

²⁵ *Id.*

²⁶ *Supra* note 16.

parties, which won almost 90% of all seats, had serious criminal accusations against them, and 18% had a criminal past of some kind.²⁰

Regionally, the ADR's analysis of the Karnataka state elections reinforces this concern, revealing that nearly 45% of candidates faced criminal charges, with about 30% accused of serious offences, including violent crimes like murder and rape.²⁷ This widespread criminal influence at the national and regional levels highlights the important and expanding relationship between India's political system and criminality.

The pervasive criminalisation of politics raises grave concerns about the integrity of India's democratic process. A concerning acceptability of crime in political representation is shown by the rising number of candidates with significant criminal histories. This undermines the moral authority of elected leaders and erodes public faith in government. In addition, the protracted legal process in India makes matters worse by leaving many cases unsettled for years, which permits those facing severe accusations to be active in politics. This intersection of political power and postponed justice underscores the pressing need for election reforms to protect democracy from criminal meddling.

MISUSE AND AMBIGUITIES IN THE ENFORCEMENT OF SECTION 8(3) AND SECTION 11 UNDER ROPA, 1951

The criminalisation of politics in India has emerged as a pressing concern, threatening the very foundation of democratic governance. The RoPA,²⁸ designed to ensure the sanctity of the electoral process, includes provisions like Section 8(3) and 11 that aim to disqualify convicted individuals from holding public office. However, the enforcement of these provisions has been marred by ambiguities and potential misuse, contributing to the persistence of criminal elements within the political sphere.

A. MISUSE OF SECTION 8(3)

²⁷ *Ease of getting elected in Karnataka: Most candidates with money & criminal past did better, says ADR finding*, ASSOCIATION FOR DEMOCRATIC REFORMS (Mar. 28, 2023), <https://adrindia.org/content/ease-getting-elected-karnataka-most-candidates-money-criminal-past-did-better-says-adr>.

²⁸3 PROVISIONAL PARLIAMENT DEBATES, (May 23, 1951), https://eparlib.nic.in/handle/123456789/760707?view_type=search.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

The RoPA serves as a cornerstone in maintaining the sanctity of electoral processes in India. The disqualification measures in RoPA, 1951 are designed to keep those with criminal records or other disqualifying factors from contesting in elections, thereby protecting democratic governance in the process. Unfortunately, the modern use of these clauses has exposed their shortcomings, prompting serious concerns about their applicability and execution.

Section 8(3) of the RoPA²⁹ serves a crucial function in disqualifying individuals from contesting elections upon conviction of an “*offence*” that results in a sentence of two years or more.³⁰ However, the meaning and use of the term “*offences*” in this section has generated a great deal of legal discussion and contention, leading to situations in which the original intent of the legislation appears to have been misappropriated or overreached. Although the Clause is intended to keep those with major criminal convictions out of the electoral process, the wording “*any offence*” has created situations where disqualification seems unnecessary, considering the gravity of the underlying offences.

A question arises regarding whether an individual would be disqualified under Section 8(3) of the RoPA if they have been sentenced on multiple counts, where none of the individual sentences exceeds two years, but the combined duration of the sentences, ordered to run consecutively, totals two years or more. Disqualification pertains to “*any person convicted of any offence*,” as stated plainly in Section 8(3),³¹ implying that disqualification should only take place if a single offence carries a sentence longer than two years. However, the Supreme Court in *K. Prabhakaran v. P. Jayarajan*³², decided that the focus should be on the total length of incarceration rather than the gravity of the offence for disqualification under Section 8(3).³³ At

²⁹ The Representation of People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).

³⁰ The Representation of People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).

³¹ The Representation of People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).

³² *K. Prabhakaran v. P. Jayarajan*, (2005) 1 SCC 754.

³³ *Decriminalisation of Politics: Does Section 8 of the Representation of the People Act, 1951 Pass the Muster of Rationality*, SCC TIMES, (Sept. 10, 2021), <http://sconline.com/blog/post/2021/09/10/decriminalisation-of-politics/>.

that time, Justice K.G. Balakrishnan contended in his dissenting opinion that Section 8(3) should be interpreted strictly since it results in disqualification, and that disqualification should only apply when the circumstances precisely meet the criteria outlined in the provision — meaning that, if no single sentence exceeds two years, the person should not be disqualified.³⁴

It is crucial to understand that the court has the authority to decide whether to impose sentences simultaneously or consecutively, as this decision affects how the sentence is executed. Nevertheless, there are no clear rules or regulations in the Bharatiya Nagarik Suraksha Sanhita, 2023,³⁵ that specify the proper method of execution under particular conditions, and due to this judicial discretion, punishments for two people found guilty of the same offence may differ. Therefore, under Section 8(3) of the RoPA, a person serving consecutive sentences longer than two years would be automatically disqualified, whereas a person serving concurrent terms could still be able to run for office.³⁶ This discrepancy raises concerns under Article 14 of the Constitution, which mandates equality before the law, ensuring that all individuals in similar situations are treated equally without arbitrary distinctions.³⁷

The distinction between consecutive and concurrent sentences, in this case, has no rational nexus to the objective of Section 8(3) of the RoPA, which is to prevent individuals with serious criminal backgrounds from entering and holding public office. The legislative intent behind disqualification provisions is rooted in preserving the integrity of democratic institutions by ensuring that representatives are individuals of sound character, free from serious criminal taint. However, how Section 8(3) operates, disqualifying those serving consecutive sentences totalling more than two years, while potentially allowing those serving concurrent sentences of similar or even greater gravity to escape disqualification, creates an irrational and arbitrary distinction. This arbitrariness is constitutionally problematic when tested against Article 14 of the Constitution, which enshrines the guarantee of equality before the law.

³⁴ *Id.*

³⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, Acts of Parliament, 2023.

³⁶ *Supra* note at 30.

³⁷ Jagannath Prasad Sharma v. State of U.P., AIR (1961) SC 1245.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

Under the twin test formulated by the Supreme Court³⁸ for a law to withstand scrutiny under Article 14,³⁹ two requirements must be satisfied: *first*, the classification must be founded on an *intelligible differentia* that distinguishes persons or things grouped from those left out of the group; and *second*, the differentia must have a rational nexus with the object sought to be achieved by the statute in question.

The classification inherent in Section 8(3) fails the first prong of this twin test, as there is no logical or coherent basis for treating individuals differently purely on the procedural circumstance of whether their sentences run consecutively or concurrently, particularly when the substantive nature of their criminal conduct may be identical. For instance, two individuals convicted of the same offences and receiving similar sentences could be treated unequally under the law solely because of the sentencing order regarding concurrency or consecutiveness, a factor largely determined by judicial discretion and not by the nature of the offence itself. Moreover, even if an *intelligible differentia* could somehow be strained out, the classification still lacks a rational nexus with the objective of Section 8(3), as allowing an individual with multiple concurrent sentences for grave offences to avoid disqualification, while disqualifying another based on consecutive sentencing for lesser offences, ultimately subverts the legislative purpose of maintaining the moral and ethical standards of public representatives.

The extent of misuse under Section 8(3) has been seen through executive action, where the period of conviction was reduced, resulting in reversing disqualification. In the case of *Sarat Chandra Rabha v. Khagendranath Nath*,⁴⁰ the prisoner was granted remission, which allowed for a reduction in his sentence from two years. According to the Court, he will not be disqualified because the remission has shortened his term.⁴¹

Section 8(3) treats all convictions leading to such a sentence in an equal

³⁸ State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1.

³⁹ INDIA CONST. art 14.

⁴⁰ Sarat Chandra Rabha. v. Khagendranath Nath, AIR 1961 SC 334, ¶ 7.

⁴¹ *Id.*

manner, regardless of whether the offence entailed moral turpitude or was a small infringement with a relatively light punishment. The two-year rule's uniform application fails to effectively convey the purpose of disqualification, which is presumably to maintain the moral standards and integrity of public service.⁴² The sole focus on the length of imprisonment under this section disqualifies individuals whose offences are not severe or morally reprehensible, while allowing those convicted of morally egregious crimes with lighter sentences to remain eligible for public office.⁴³ This lack of differentiation potentially undermines the law's objective of ensuring that only those of sound moral character serve in legislative positions. The absence of a clear consideration of the nature of the offence also leaves the provision open to criticism for its potential to produce inequitable outcomes. The rigid application of the two-year imprisonment rule fails to account for the context or circumstances of the crime, leading to a one-size-fits-all approach that may not always serve the broader goals of justice and fairness in electoral eligibility.

Section 8(3)'s wide scope makes selective prosecution possible, in which cases are brought or prosecuted against particular people based solely on their political associations. The result is clear that there will be automatic disqualification, which effectively removes the opponent from the political landscape without the need for electoral competition. The application of Section 8(3) of the RoPA has been subject to scrutiny, particularly in cases where its rigid application led to outcomes that appear disproportionate or politically motivated. A prominent example of this is the case involving Rahul Gandhi, who was disqualified from the Indian Parliament following his conviction in a defamation case.

B. RAHUL GANDHI'S CASE

In 2019, Rahul Gandhi, a senior leader of the Indian National Congress, was convicted in a defamation case for remarks he made during an election rally in Kolar, Karnataka during a campaign for the 2019 General Elections. During the rally he remarked, "*How come all the thieves have Modi as the common surname?*".⁴⁴ Later, the court sentenced him to two years of imprisonment, which is the minimum threshold for disqualification under

⁴² *Supra* note 6.

⁴³ *Id.*

⁴⁴ *Rahul Gandhi v. Purnesh Ishwerbhai Modi*, (2024) 2 SCC 595.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

Section 8(3) of the RPA.⁴⁵ As a result, Gandhi was disqualified from serving as an MP.⁴⁶

The crime for which Gandhi was found guilty was Criminal Defamation under Section 356 of the Bharatiya Nyaya Sanhita,⁴⁷ which does not usually entail moral turpitude unless with express malicious intent. The authors believe that defamation, especially in political cases, sometimes remains limited only to a speech-related violation, rather than tantamount to criminal conduct exposing the individual's moral conduct. Despite this, the two-year sentence triggered an automatic disqualification under Section 8(3), leading to significant political repercussions.⁴⁸

The Gandhi case also raised concerns about the coherence and justice of Section 8(3)'s implementation. The fact that the disqualification was automatic and did not take into account the circumstances or the seriousness of the violation raised the possibility that the law would be enforced differently depending on the political climate and the parties involved.

The disqualification of Gandhi raised concerns about the disproportionate impact of the law as the punishment and subsequent disqualification did not align with the nature of the offence, which can be seen as a minor legal infraction rather than a serious crime deserving of such severe consequences.⁴⁹ Gandhi's disqualification as a result of a defamation conviction highlights how Section 8(3) has been interpreted in a way that restricts free speech, especially political expression, which is crucial in democracies. While a conviction for defamation legally signifies

⁴⁵ The Representation of People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).

⁴⁶ M.R. Abhilash, *On Rahul Gandhi's conviction*, THE HINDU, (Jul. 16, 2023), <https://www.thehindu.com/news/national/on-rahul-gandhis-conviction/article67088017.ece>.

⁴⁷ The Bharatiya Nyaya Sanhita Act, 2023, § 356, No. 45, Acts of Parliament, 2023 (India).

⁴⁸ Suchismita Debnath, *Analyzing the Disqualification of Rahul Gandhi: What it Means for Indian Politics*, THE TIMES OF INDIA (Mar. 30, 2023), <https://timesofindia.indiatimes.com/readersblog/mera-anubhav/analyzing-the-disqualification-of-rahul-gandhi-what-it-means-for-indian-politics-52069/>.

⁴⁹ Subramanian Swamy v. Union of India, (2016) 7 SCC 221.

that the speech in question crossed the threshold of permissible expression and infringed upon another's right to reputation, such offences are inherently subjective and often context-dependent. In the realm of politics, where sharp criticism, satire, and provocative speech are commonplace and constitutionally protected under Article 19(1)(a), criminal defamation convictions can be misused to stifle dissent and opposition. This application of Section 8(3), therefore, raises concerns about its potential to chill legitimate political speech and disproportionately penalise individuals engaged in democratic dialogue. It calls for a more nuanced and balanced approach that distinguishes between genuinely criminal conduct and politically charged expression.

MISUSE OF SECTION 11

The ECI is the regulating body of the electoral process of India. However, there are some provisions as well which enlarge the domain and are not restricted to a mere regulatory one. An example of the significant authority granted to the ECI in the Indian election system is seen in Section 11 of the RoPA.⁵⁰ The section emphasises the Commission's function as a body that regulates as well as one that has significant control over candidate eligibility and the election process as a whole.

The section gives huge power to the ECI to reduce or remove the period of disqualification.⁵¹ The provision allows for flexibility and a measure in cases where strict application of disqualification under Section 8 may result in undue hardship. Over time, the provision has become a matter of concern due to multiple reasons.

The authors believe that the ECI uses the discretionary authority granted to it under Section 11 in a way that benefits particular political parties or persons. There is concern that this latitude may be abused to shorten the time required for disqualification for those with political ties or whose recovery would further certain political goals.⁵² This worry draws attention to the possibility that political influence might infiltrate what ought to be

⁵⁰ The Representation of People Act, 1951, § 11, No. 43, Acts of Parliament, 1951.

⁵¹ *Id.*

⁵² Om Marathe, *Sikkim CM gets EC's reprieve: Here are the Offences that Attract Debarment from Elections*, THE INDIAN EXPRESS (Oct. 1, 2019), <https://indianexpress.com/article/explained/sikkim-cm-prem-tamang-ec-election-debarment-6045442/>.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

an unbiased and equitable procedure.

The offences, particularly those serious and grave, should not be subject to reduction in disqualification periods. The reasoning for this is that the law should be followed without exception if it has been determined, in its “*solemnity and seriousness*,”⁵³ that particular conduct is grounds for a particular time of disqualification. The ECI, if allowed to change this time frame, would lessen the punishment's intended deterrent impact and send a message to the public that these kinds of offences are not regarded severely enough.

There are instances where the use of Section 11 has been the target of courts and critics. One of the major instances was the reduction of Sikkim Chief Minister Prem Singh Tamang's disqualification period from six years to just one year. He was accused and convicted of misappropriating funds in the procurement of cows when he was the Minister of Animal Husbandry of Sikkim during 1996-97.⁵⁴ The ECI argued that his conviction fell under a now-omitted section of the Prevention of Corruption Act, 1988.⁵⁵

Now, this interpretation sets a worrying precedent in which politicians with criminal convictions are quickly re-instated into public office by taking advantage of a legal loophole, as such use of Section 11 might inspire such future conduct and jeopardise the judicial system's ability to hold public officials responsible. Furthermore, the ECI's justification that people with relatively minor sentences should face shorter periods of disqualification weakens the deterrence principle, particularly when it comes to corruption charges. Corruption represents a severe breach of public trust, and by reducing disqualification periods, the ECI might inadvertently signal that such offences are less serious, thereby

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ ELECTION COMMISSION OF INDIA, COMMISSION'S ORDER REGARDING APPLICATION OF SHRI PREM SINGH TAMANG UNDER SECTION 11 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 (2019), <https://old.eci.gov.in/files/file/10777-commissions-order-dated-29092019-regarding-application-of-shri-prem-singh-tamang-under-section-11-of-the-representation-of-the-people-act-1951/>.

diminishing the deterrent effect that these legal sanctions are meant to enforce.

The ECI's judgement is made more difficult by the fact that it reduced Tamang's disqualification by using "*socio-economic-political factors*" as support.⁵⁶ This line of thinking raises the possibility that political factors may prevail over the requirement for moral and legal accountability, which could result in arbitrary and politically driven decisions. An approach like this might erode public trust in the ECI's impartiality since it would seem to favour powerful political figures over the principles of justice. The critics have drawn attention to the possibility that the reduction of Tamang's disqualification might exacerbate the existing issue of criminalisation in Indian politics.⁵⁷ Encouraging people with criminal records to return to politics swiftly undercuts attempts to preserve public trust and support moral principles in government. The necessity for strict implementation of disqualification laws is highlighted by the large number of Lok Sabha members who have unresolved criminal charges, making this matter more urgent.⁵⁸

To sum up, the enforcement of Sections 8(3) and 11 of the RoPA, 1951, reveals significant gaps and potential for misuse. The lack of clarity in the law and the wide discretion given to authorities have led to inconsistent and sometimes politically motivated outcomes. These issues highlight the need for clearer guidelines and more balanced implementation to protect the democratic process.

COMPARATIVE ANALYSIS

To critically assess the limitations inherent in India's disqualification framework, it is instructive to undertake a comparative analysis with the corresponding provisions in the U.K. Although both jurisdictions disqualify individuals convicted of serious offences, the U.K. adopts a

⁵⁶ *Supra* note 46.

⁵⁷ Dangerous precedent: *On Sikkim CM's disqualification*, THE HINDU (Sept. 30, 2019), <https://www.thehindu.com/opinion/editorial/dangerous-precedent-on-sikkim-cms-disqualification/article59779445.ece>

⁵⁸ Association for Democratic Reforms, *Almost Half of Newly-Elected MPs Face Criminal Cases, Reveals ADR Analysis*, ASSOCIATION FOR DEMOCRATIC REFORMS (June 7, 2024), <https://adrindia.org/index.php/content/almost-half-of-newly-elected-mps-face-criminal-cases-reveals-adr-analysis>.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

more discerning approach by evaluating the nature and context of the offence. In particular, disqualification in the U.K. tends to be triggered primarily by crimes involving dishonesty or a breach of public trust, thereby aligning the rationale for disqualification more closely with the principles of democratic integrity. As Pandit Thakur Das Bhargava observed during the Constituent Assembly Debates, “*We have copied most of our laws in this connection from the English law,*” referring specifically to the disqualification clauses.⁵⁹ This historical linkage underscores the necessity of examining both the convergences and divergences between the two legal systems not only to better understand the foundational underpinnings of Indian law, but also to evaluate the extent to which it requires recalibration in light of contemporary democratic imperatives.

When we trace the origins of the British law on disqualification, many legislations come up to facilitate this subject matter. The major legislation governing disqualification from the Commons is consolidated in the House of Commons Disqualification Act 1975.⁶⁰ However, the common law disqualifies a range of people, such as minors and aliens, amongst other categories.⁶¹ The arena of disqualification based on conviction of the member is regulated by Chapter 34 of the Representation of the People Act, 1981.⁶² It provides grounds to disqualify certain persons for election to the House of Commons. It states that any person who is detained in the British Isles or the Republic of Ireland for more than a year for any offence shall stand disqualified, and the election of such person shall stand void.⁶³

Apart from the general terms of the 1981 Act, there is a special set of provisions relating to persons whose crime consists of having committed corrupt or illegal practices at an election. This special provision is Section

⁵⁹ *Supra* note 6.

⁶⁰ House of Commons Disqualification Act 1975, c. 24 (UK), <https://www.legislation.gov.uk/ukpga/1975/24/contents>.

⁶¹ Parliamentary Research Briefing, The Representation of the People Act 1983, <https://researchbriefings.files.parliament.uk/documents/SN03221/SN03221.pdf>.

⁶² Representation of the People Act, 1981, c. 34 (U.K.).

⁶³ *Id.*

173 of the Representation of the People Act, 1983.⁶⁴ A conviction for any of these offences results in the immediate vacating of the M.P.'s seat. Furthermore, amongst other penalties, he may be disqualified from standing as an election candidate for 5 years (in the case of a corrupt practice) or 3 years (in the case of an illegal practice).⁶⁵

On the other hand, the Indian law on disqualification of parliamentarians is the RoPA, 1951.⁶⁶ Unlike the U.K.'s one-year threshold, Indian law requires a minimum two-year sentence for disqualification and imposes a uniform disqualification period of six years post-release, irrespective of the nature of the offence.

Thus, it can be seen that while the manner chosen to establish the grounds for disqualification run along the same lines in both nations and are similar in nature; however, the threshold of sentencing and the duration of the disqualification differ in both countries. While the U.K. has the threshold of one year conviction period, India requires sentencing of two or more years to disqualify and in the U.K., the duration of disqualification differs in cases of corrupt and illegal practices whereas in India, the period remains the same for all offences that is of six years from the date of disqualification. While both legislative Acts aim and strive to uphold the integrity and morality of the post, the Indian law is more extensive in description of the offences and criteria to disqualify a member of the Parliament, and the longer period of disqualification provides a stricter stance against criminality in politics in the nation. Still, both nations face the problem of deciding whether the criterion of duration of sentencing to decide disqualification has been able to help towards providing a just and fair system of election of members or not and as seen in the previous section of the paper, Indian cases do not answer this in the affirmative.

While the nations face such issues in contemporary times, they have been evolving in terms of their legal standards and are responding towards change as well with the changing political and social contexts in both nations.

⁶⁴ Representation of the People Act, 1983, c. 2, § 173 (U.K.).

⁶⁵ Joseph Jaconelli, *Constitutional Disqualification: A Critique of English and English-Derived Law*, 14 I.C.L.J. 167-197 (2020).

⁶⁶ *Supra* note 6.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

RECOMMENDATIONS

This section advances a set of legislative reforms aimed at enhancing the efficacy of Section 8 of the RoPA while minimising its potential for misuse. It is proposed that the legislature amend the language of Section 8(3) to more precisely define the term “*any offence*” in a manner that reflects the gravity and intent underlying the crime, thereby reducing the scope for arbitrary or overly broad application. Such a refinement would help prevent the imposition of disproportionate disqualifications arising from politically motivated or minor convictions, such as those about defamation, which may not necessarily indicate moral turpitude or a threat to democratic integrity.

Moreover, the discretionary power given under Section 11 should be controlled through clear statutory guidelines that lay down specific grounds and limits for its use. These could include factors like the type of offence committed, whether it involved moral turpitude, the severity of the sentence, and any special circumstances. For example, in the U.K., the *Representation of the People Act 1981* was passed to prevent prisoners serving more than one year from standing for Parliament, ensuring a clear rule without broad discretion.⁶⁷ Similarly, in Canada, the *Canada Elections Act* disqualifies individuals convicted of certain offences like election fraud for a fixed period, providing certainty and consistency.⁶⁸ Having such structured rules in India would help make the application of Section 11 more transparent and reduce the chances of political misuse. By recalibrating these provisions, the Indian legal framework can more effectively reconcile the imperative of purging the political arena of criminal elements with the foundational principles of due process, fairness, and inclusive democratic participation.

The report of the Committee to Take Stock of Criminalisation of Politics

⁶⁷ *Representation of the People Act 1981*, c. 34 (UK), <https://www.legislation.gov.uk/ukpga/1981/34/contents>.

⁶⁸ *Canada Elections Act*, S.C. 2000, c. 9, § 502(3), <https://laws-lois.justice.gc.ca/eng/acts/E-2.01/>.

(Vohra Committee)⁶⁹ paints a bleak picture of the relationship that exists in India between governmental elites and crime syndicates. It states that criminal organisations have grown so strong that they now control “a parallel government,” having close ties to the police, bureaucracy, and political parties. These criminal organisations are led by certain political leaders themselves, demonstrating that this infiltration of the political system has reached higher levels of authority than only the local or regional ones. This study serves as a sobering reminder of the difficulties India’s democratic institutions have in upholding the rule of law and making sure persons in positions of political authority are not engaged in illicit activity.⁷⁰

The Committee’s findings about the discrepancies in Section 8 of the RoPA point to a serious weakness in the current legal system. The example given shows how the law fails to preserve moral and ethical norms in politics i.e., a rapist found guilty and sentenced to 10 years in prison is only barred from office for six years and is even allowed to run for office during that time.⁴⁹ This disparity not only erodes public confidence in the voting system but also permits those with substantial criminal histories to remain active in politics.⁷¹

The authors agree with the recommendation of the Committee⁷² that the RoPA ought to be amended to specify that within a year of the charges being formally filed in court, any person accused of a crime carrying a maximum sentence of five years in jail or more would be ineligible to be elected to Parliament or a State Legislature. The disqualification shall last until the end of the trial if the person is not cleared within that year. In addition, the disqualification shall last for the whole term of the sentence as well as an extra six years after it ends if the accused is found guilty by a court and given a jail sentence of six months or more.⁷³

An increase in the proportion of candidates with untainted legal records

⁶⁹ VOHRA COMMITTEE REPORT, REPORT OF THE GROUP ON GOVERNANCE AND REFORM, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA (1993).

⁷⁰ 244 LAW COMMISSION OF INDIA, REPORT ON ELECTORAL DISQUALIFICATIONS, MINISTRY OF LAW AND JUSTICE (2014).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

is likely to enhance the integrity and credibility of the democratic process. The enforcement of disqualification provisions can serve as a genuine deterrent to individuals with criminal backgrounds, signaling the judiciary's commitment to addressing the criminalisation of politics—an effect supported by empirical evidence showing that Indian voters tend to penalise candidates with criminal charges through reduced vote shares.⁷⁴ This would further contribute to upholding the ethical standards expected from public servants and restoring public trust in the political system by preventing people like Engineer Rashid (charged under Unlawful Activities (Prevention) Act, 1967 (UAPA) for more than five years)⁷⁵ and Amritpal Singh (charged under National Security Act, 1980 (NSA) for more than a year).⁷⁶

The authors propose an amendment in Section 8(3) to restrict the wording of “*any offence*” and to take the nature and gravity of an offence into account. The wording of Section 8(3) includes both heinous and petty crimes, and the latter is often used to deter their rivals from standing in elections. Offences such as defamation, which do not inherently involve moral turpitude or a grave breach of public trust, are often classified as non-serious crimes. In contrast, serious crimes typically refer to offences

⁷⁴ Bhaskar Dutta & Poonam Gupta, *How Do Indian Voters Respond to Candidates with Criminal Charges? Evidence from the 2009 Lok Sabha Elections*, Working Paper No. 12/109, National Institute of Public Finance and Policy (2012), https://mpr.ub.uni-muenchen.de/38417/1/MPRA_paper_38417.pdf; see also Bhaskar Dutta & Poonam Gupta, *How Do Indian Voters Respond to Candidates with Criminal Charges? Evidence from Lok Sabha Elections*, IDEAS FOR INDIA (Aug. 26, 2020), <https://www.ideasforindia.in/topics/productivity-innovation/how-do-indian-voters-respond-to-candidates-with-criminal-charges-evidence-from-lok-sabha-elections.html>.

⁷⁵ Aaratrika Bhaumik, *Can Jailed Leaders Amritpal Singh and Engineer Rashid Function as MPs after Lok Sabha victories? Explained*, THE HINDU (Jun. 7, 2024), <https://www.thehindu.com/news/national/can-jailed-leaders-amritpal-singh-and-engineer-rashid-function-as-mps-after-lok-sabha-victories-explained/article68258062.ece>.

⁷⁶ Apurva Vishwanath, *Amritpal Singh in Punjab, Engineer Rashid in J&K Win from Jail: What Happens Next*, THE INDIAN EXPRESS (Jun. 5, 2024), <https://indianexpress.com/article/explained/explained-law/amritpal-engineer-rashid-win-jail-9373650/>.

that involve violence, corruption, economic fraud, or crimes punishable with imprisonment of three years or more—those which signify a direct threat to social order or public integrity. Nonetheless, the current inclusion of all convictions under the phrase “any offence” in Section 8(3) of the RoPA risks clubbing both categories together, leading to arbitrary and disproportionate disqualifications. This results in the automatic disqualification of the members.

The authors further suggest incorporating “*involving moral turpitude*” after offence. This recommendation is grounded in the existing practices within various statutes, such as the Uttar Pradesh (“UP”) Municipal Corporation Act, the U.P. Kshetra Panchayats and Zila Panchayats Adhiniyam, and the U.P.-Panchayat Raj Act, all of which bar individuals convicted of such offences from holding office,⁷⁷ and also in line with parliamentary debates.⁷⁸ Further, there should be a differentiation between the nature or gravity of the offences, potentially not allowing individuals convicted of morally reprehensible acts to participate in the electoral process after serving their sentence.

Holders of public office are supposed to uphold the highest moral and ethical standards. The addition of “*offences involving moral turpitude*” would guarantee that those who have carried out actions that are essentially immoral and go against the standards of justice, honesty, and integrity in society are not eligible to serve as public representatives. This is in line with the more general ethical and legal requirements that anyone serving in public office possesses high moral standards. Further, it will also prevent the disqualification of members who have not committed an immoral or non-heinous crime.

The third recommendation is to amend Section 11⁷⁹ to provide clear and explicit parameters under which the ECI can use its discretion. The criteria should examine elements such as the nature and severity of the offence, the individual’s conduct post-conviction. Furthermore, it is suggested that individuals convicted of egregious offences—defined as

⁷⁷ B.C. Shukla, *Offences involving Moral Turpitude*, THE HINDUSTAN TIMES (Mar. 7, 2010), <https://www.hindustantimes.com/india/offences-involving-moral-turpitude/story-5aQWtpl6xrJm0LOxyHEC0M.html>.

⁷⁸ *Supra* note 6.

⁷⁹ The Representation of People Act, 1951, § 11, No. 43, Acts of Parliament, 1951.

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

crimes that involve grave harm to individuals or society and significantly undermine public trust—such as rape, murder, terrorism, large-scale corruption, or offences punishable with imprisonment of seven years or more, be expressly excluded from eligibility for reduction or removal of disqualification. This definition helps ensure clarity and consistency, distinguishing such offences from less serious or technical violations. This clause would stop people who have committed serious offences from abusing Section 11 to get their criminal records cleared. To ensure transparency and prevent political bias in decisions regarding disqualification relief, an independent advisory body may be constituted, comprising retired judges of the Supreme Court or High Courts, eminent members of civil society, and senior legal professionals with a proven record of public service. This body should be constituted as a statutory authority under the RoPA, with appointments made by a collegium including the Chief Election Commissioner, the Chairperson of the National Human Rights Commission, and the Chief Justice of India (or their nominee), thereby insulating the process from executive control. The body may consist of five to seven members, with fixed, non-renewable terms to safeguard autonomy. A parallel can be drawn from the U.K.'s House of Lords Appointments Commission, which operates independently to vet nominations and maintains public trust in the process.⁸⁰ Similar mechanisms also exist in Canada, such as the Independent Advisory Board for Senate Appointments, which emphasises merit-based, non-partisan selection.⁸¹

Further, it is suggested that these people should not be eligible for any reduction in disqualification if they are found guilty or demonstrated to have violated these standards. The aim of such disqualification is to show public disapproval and ensure accountability in public office. To avoid ambiguity, a clear provision could be added to disqualify those found guilty of serious misconduct while holding public or constitutional

⁸⁰ House of Lords Appointments Commission, *The Commission*, <https://lordsappointments.independent.gov.uk/the-commission-2>.

⁸¹ Government of Canada, *Independent Advisory Board for Senate Appointments*, <https://www.canada.ca/en/campaign/independent-advisory-board-for-senate-appointments.html>.

office—especially when it involves abuse of power or breach of constitutional duties. This would help target genuine violations and uphold democratic values without room for misuse

CONCLUSION

This paper undertakes a critical examination of the persistent issue of criminalisation in Indian politics, with a particular focus on the statutory framework governing disqualification under Sections 8 and 11 of RoPA. Through doctrinal analysis and legislative critique, the paper has demonstrated that existing legal provisions inadequately safeguard the democratic process from the participation of individuals with serious criminal antecedents. The lacunae in the law, coupled with discretionary misuse and procedural delays, have contributed to the erosion of public faith in electoral integrity and the rule of law.

In light of these findings, the paper advances a series of normative and structural recommendations aimed at harmonising democratic probity with constitutional values. Drawing upon the Vohra Committee Report, which exposed the entrenched nexus between organised crime and political actors, the study underscores the urgent necessity for reform. It supports the recommendation that individuals formally charged with offences punishable with five years or more of imprisonment should be disqualified from contesting elections within one year of the framing of charges. Such disqualification should endure through the pendency of the trial and, in case of conviction, for the term of the sentence and an additional six years thereafter.

Further, this study recommends a substantive amendment to Section 8(3) to limit the ambit of the term “*any offence*” and to incorporate the phrase “*offences involving moral turpitude*”. This would align the provision with existing jurisprudential standards and prevent the disqualification of individuals for minor infractions that do not implicate moral culpability or public trust. This approach is consistent with analogous disqualification clauses in other statutory frameworks, such as the UP Municipal Corporation Act and reflects the legislative intent discernible from parliamentary debates.

Additionally, the paper calls for a comprehensive revision of Section 11

DECRIMINALISING INDIAN POLITICS: SYNCHRONISING DEMOCRATIC PROBITY AND FAIRNESS IN INDIA'S ELECTORAL SET-UP

to establish objective and transparent criteria guiding the ECI's exercise of discretionary power in removing or reducing disqualification. It proposes that individuals convicted of grave offences such as terrorism, rape, or corruption be categorically excluded from such relief. To ensure impartiality and insulate the process from political influence, it recommends the constitution of an independent advisory committee composed of members of the judiciary, legal experts, and civil society representatives. Furthermore, those found to have violated fundamental constitutional values or rights should be deemed ineligible for any discretionary exemption.

In conclusion, the research reaffirms its central thesis: that the decriminalisation of Indian politics is not merely a legal imperative but a democratic necessity. The proposed reforms seek to restore normative coherence to the legal framework, enhance the ethical standards of public office, and reinforce citizens' trust in the institutions of representative democracy. By bridging the gap between law and legitimacy, these measures can contribute meaningfully to the consolidation of constitutional governance in India.