

**DEMOCRACY ON TRIAL: A CASE OF TEMPORARY
DISQUALIFICATION OF PEOPLE'S REPRESENTATIVES
UNDER SECTION 8B OF THE REPRESENTATION OF THE
PEOPLE ACT**

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A recent report by the Association of Democratic Reforms, dated 6th June, 2024, reveals that 46% of the newly elected members of the Lok Sabha have criminal cases registered against them, with 27 already convicted. This report underscores the recommendation made by the 244th Law Commission of India advocating for the enactment of Section 8B of the Representation of the People Act, 1951. The proposed section suggests the disqualification of such representatives from contesting elections once the charges are framed for serious offences. The proposed amendment was never enacted, but it highlights society's deep concern about the growing trend of criminalisation in politics, which threatens constitutional democracy.

The Supreme Court, in Public Interest Foundation v. Union of India, held that a person cannot be disqualified from membership in a legislative body merely on the framing of criminal charges, and hence missed an opportunity to enable much needed reforms. This issue resonates with the recent case of Ashwini Kumar Upadhyay v. Union of India, which raises the question of whether candidates facing serious criminal charges should be barred from contesting elections.

In light of these developments, this paper evaluates the constitutionality and effectiveness of Section 8B. Part I examines the current legislative and judicial landscape for electoral disqualifications. Part II dissects the substance and intent of Section 8B while also addressing the arguments made against the temporary disqualification of candidates. It further addresses safeguards under Section 8B. It underscores the ineffectiveness of judicial intervention in curbing the cancer of the criminalisation of politics. Part III

*Cite it as: Bindal, *Democracy on Trial: A Case of Temporary Disqualification of People's Representatives under Section 8b of The Representation of the People Act*, 9(2) COMP. CONST. L. & ADMIN. L. J. 148 (2025).

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undertakes a comparative analysis of political decriminalisation with other countries, followed by an exploration of the practical implications, concluding with recommendations for enhancing electoral and legislative integrity.

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INTRODUCTION

A recent report released in June 2024 by the Association for Democratic Reforms reveals that, of the 543 newly elected Lok Sabha members in 2024, i.e., 251 members (46%) have pending criminal proceedings against them, and 27 of them have been convicted.² Among these 251 members, i.e., 170 members (31%) are accused of serious crimes such as rape, murder, terrorism, attempted murder, kidnapping, and crimes against women.³ This marks the highest percentage of elected officials ever charged with crimes in the Lok Sabha's history. The percentage in previous Lok Sabhas was 34% in 2014 (20% had serious criminal cases) and

² ASSOCIATION FOR DEMOCRATIC REFORMS, List of constituencies (District Wise): Lok Sabha 2024 Election Candidate Information (myneta.info).

³ *Id.* at 6.

escalated to 44% in 2019 (30% had serious criminal cases).⁴ This shows a rampant increase in the criminalisation of politics in the largest democracy of the world (**Fig. A**). This unrestrained amplification of criminal elements in governance continues despite various rulings of the Supreme Court, which mandated the disclosure of politicians’ criminal antecedents.⁵

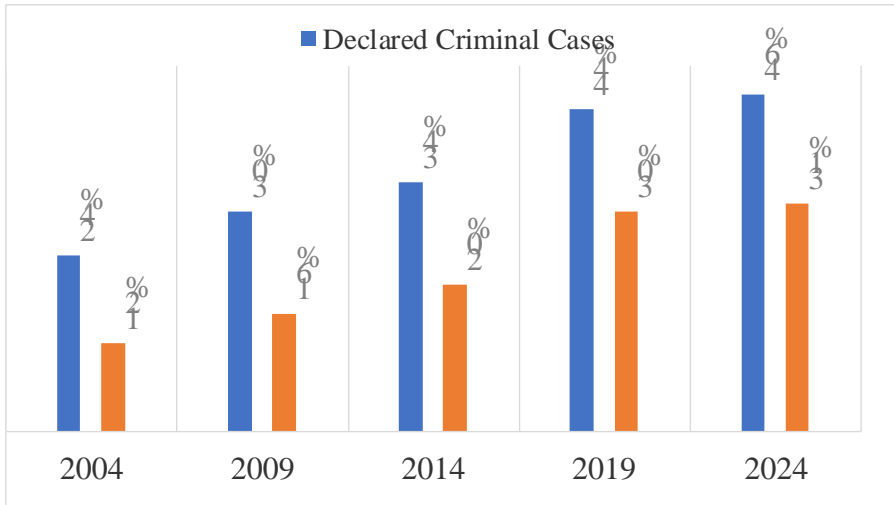


FIG. A: REPORT OF ASSOCIATION FOR DEMOCRATIC REFORMS

From the Economic Times to the New York Times, headlines such as “Ridding politics of crime, criminals”,⁶ “Vote against jail”,⁷ and “Electoral

⁴ ASSOCIATION FOR DEMOCRATIC REFORMS, MyNeta, Candidate Affidavits for Elections in India, Criminal, Financial, Educational, Income, Profession Details of candidates MPs & MLAs, Information from ADR and National Election Watch <https://myneta.info>.

⁵ ELECTION COMMISSION OF INDIA, GOV’T OF INDIA, UPDATED GUIDELINES ON PUBLICITY OF CRIMINAL ANTECEDENTS BY POLITICAL PARTIES AND CANDIDATES, IN LIGHT OF THE HON’BLE SUPREME COURT’S JUDGEMENT DATED 10TH AUGUST, 2021 (2022), <https://old.eci.gov.in/files/file/13949-updated-guidelines-on-publicity-of-criminal-antecedents-by-political-parties-and-candidates-in-light-of-the-honble-supreme-courts-judgment-dated-10th-august-2021-reg/>.

⁶ The ET Bureau, *Ridding Politics of Crime, Criminals*, THE ECONOMIC TIMES (Aug. 11, 2021), <https://economictimes.indiatimes.com/opinion/et-editorial/ridding-politics-of-crime-criminals/articleshow/85250511.cms>.

⁷ Rifat Fareed and Arbab Ali, ‘Vote against jail’: How two Modi critics won India election from prison, ALJAZEERA (Jun. 14, 2024), <https://www.aljazeera.com/news/2024/6/14/vote-against-jail-how-two-modi-critics-won-india-election-from-prison>.

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Autocracy⁸ have become commonplace in India. Stating the number of politicians with criminal antecedents has become a commonplace remark when discussing modern India; it flows as effortlessly as saying that the nation shares borders with Pakistan and Bangladesh.⁹

The criminalisation of politics through muscle power and coercive methods is not unfamiliar to India.¹⁰ The Constituent Assembly members had argued that a constitution's effectiveness ultimately depends on the integrity and actions of the people and political parties within it.¹¹ This was illustrated after the 1993 Mumbai bomb blast, wherein a thread of connection was revealed between the criminal gangs, politicians, police officers, and customs officials.¹² This attack shook the entire nation, prompting the establishment of a commission to investigate the issue of political criminalisation and the nexus between criminals, politicians, and bureaucrats in India.¹³

However, the trend of criminalisation in politics has evolved. In the past, politicians relied on criminal gangs, using their money and power to secure victories through vote rigging, intimidating candidates, inciting violence,

⁸ Soutik Biswas, *Electoral Autocracy: The downgrading of India's democracy*, BBC (Mar. 16, 2021), <https://www.bbc.com/news/world-asia-india-56393944>.

⁹ MILAN VAISHNAV, *THE MARKET FOR CRIMINALITY: MONEY, MUSCLES AND ELECTIONS IN INDIA* 29 (Yale University Press 2010).

¹⁰ Trilochan Sastry, *Towards Decriminalisation of Elections and Politics*, 49 EPW 1 (2014).

¹¹ Words of Dr. B.R. Ambedkar in the Constituent Assembly on 25.11.1949 and the sentiments echoed by Dr. Rajendra Prasad on 26.11.1949.

¹² PTI, *Criminalisation of politics felt in strongest form in 1993 Mumbai serial blasts: Supreme Court*, THE ECONOMIC TIMES (Sep. 25, 2018), <https://economictimes.indiatimes.com/news/politics-and-nation/criminalisation-of-politics-felt-in-strongest-form-in-1993-mumbai-serial-blasts-supreme-court/articleshow/65949574.cms>.

¹³ MINISTRY OF HOME AFFAIRS, GOV'T OF IND., VOHRA COMMITTEE REPORT ON CRIMINALISATION OF POLITICS, (1993), https://adrindia.org/sites/default/files/VOHRA%20COMMITTEE%20REPORT_0.pdf.

and booth capturing.¹⁴ In return for this support, politicians often protected the criminals from state machinery.¹⁵ In contemporary times, this trend has changed with many criminals entering the electoral fray and securing their place in the administrative set-up, thus becoming their custodians legally.¹⁶ Through this rampant process, criminals who are law-breakers are slowly turning into the lawmakers of the country.¹⁷ This trend is remarkably prevalent and is becoming a salient feature of our democracy. Legislative bodies are yet to take action despite the Election Commission¹⁸ and the Supreme Court urging Parliament to amend electoral laws to disqualify candidates facing serious criminal charges (as proposed in Section 8B of the Representation of the People Act, 1951).¹⁹

This paper critically analyses the effectiveness of judicial and legislative efforts taken to maintain probity in public life, arguing that these measures have been insufficient in Part I. It advocates for the implementation of stronger provisions, specifically the proposed Section 8B of the Representation of the People Act, 1951 (“**RPA**”), as a means to prevent individuals with criminal backgrounds from entering public office. The paper further explores the necessity and constitutionality of Section 8B, addressing and countering the concerns raised during legislative debates. It argues that Section 8B contains adequate safeguards and is essential for achieving the broader objective of cleansing the political landscape in Part II. Additionally, it draws comparisons with other countries and offers recommendations to achieve this goal in Part III.

¹⁴ VIKASA KUMARA JHA, *BIHAR, CRIMINALISATION OF POLITICS*, 71 (Srishti Prakashan, 1st ed., 1996).

¹⁵ SUSHEELA BHAN, *CRIMINALIZATION OF POLITICS*, 25 (Shipra Publications, 1995).

¹⁶ JOSE J. NEDUMPARA, *POLITICAL ECONOMY AND CLASS CONTRADICTIONS: A STUDY* (Anmol Publications, 2004); See Ramashankar, *Flying like A Phoenix*, *THE TELEGRAPH* (Nov. 11, 2010), <https://www.telegraphindia.com/bihar/flying-like-a-phoenix/cid/459775>.

¹⁷ *K Prabhakaran v. P Jayarajan*, (2005) 1 SCC 754, 780 ¶ 54.

¹⁸ DEVESH KAPUR & PRATAP BHANU MEHTA, *PUBLIC INSTITUTIONS IN INDIA: PERFORMANCE AND DESIGN* (Oxford University Press, 2005).

¹⁹ The Representation of People Act, 1951, § 8B, No. 43, Acts of Parliament, 1951 (India).

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**CONTEMPORARY LEGAL AND JUDICIAL LANDSCAPE FOR
DISQUALIFICATION LAW**

**A. LAW COMMISSION REPORTS AND PROPOSED ELECTORAL
REFORMS**

The Constitution outlines the specific grounds for disqualifying an individual from running for a legislative election, and permits additional grounds of disqualification to be added under other legislations.²⁰ The RPA outlines the various criteria for disqualification.²¹ The law does not prevent individuals with pending criminal cases from contesting elections. However, an individual sentenced to over two years is disqualified from contesting elections and holding a seat in legislative bodies.²² An individual convicted by a District Court cannot contest the election unless the higher Court passes an order for their acquittal; merely filing an appeal is insufficient after the judgment of *Lily Thomas v. Union of India*.²³ In this 2013 judgment, the Supreme Court ruled that a sitting MP or MLA convicted and sentenced for two years or more must vacate their seat immediately.²⁴ The judgment resulted in Lalu Prasad Yadav losing his Lok Sabha membership that same year.²⁵

Despite the existence of these legal safeguards, criminalisation of politics still prevails in the society. The persistence of criminalisation in politics can

²⁰ INDIA CONST. art. 84, art. 102, art. 173, art. 191.

²¹ *Id.*

²² The Representation of People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).

²³ *Lily Thomas v. Union of India*, (2000) 6 SCC 224.

²⁴ SUJIT CHOUDHRY, MADHAV KHOSLA, AND PRATAP BHANU MEHTA, OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 270-289 (Oxford University Press, 2016); Prianka Rao, *The Representation of the People (Second Amendment and Validation) Bill, 2013*, PRS LEGISLATIVE RESEARCH BRIEF, (Aug. 25, 2024), <https://prsindia.org/billtrack/the-representation-of-the-people-second-amendment-and-validation-bill-2013>.

²⁵ Deepu Sebastian Edmond, *Lalu Prasad gets 5-year jail term in fodder scam case, loses Lok Sabha seat*, THE INDIAN EXPRESS (Oct. 4, 2013), <https://indianexpress.com/article/india/crime/lalu-prasad-gets-5year-jail-term-in-fodder-scam-case-loses-lok-sabha-seat/>.

be attributed to two primary factors. *First*, the slow pace of the judicial system contributes to this issue, as delayed court proceedings allow those facing serious charges to remain in office while their cases are pending. *Second*, the low conviction rate allows politicians in power to exploit the state machinery, manipulating law enforcement and judicial processes to protect their interests and evade accountability.²⁶ This combination of factors undermines the Rule of Law and encourages individuals to engage in criminal activities, knowing that immediate consequences are unlikely.

Therefore, to cleanse politics, the 244th Law Commission Report 2014 suggested electoral disqualifications.²⁷ The report deliberated on whether the disqualification of politicians from contesting elections should be based on convictions or when the Court is framing charges for serious crimes. The proposed Section 8B of RPA, 1951 suggests disqualification upon the framing of charges by a competent Court against a person for an offence that carries a minimum punishment of five years imprisonment. The person will be disqualified for six years from the date of framing the charge or until the charge is quashed or acquitted, whichever occurs earlier.²⁸ However, exceptions were proposed to this rule to prevent misuse. The exemptions are as follows:

Disqualification exemption period: the commission recommended that charges filed up to one year before scrutinising nominations should not result in disqualification. This measure would help reduce the likelihood of politically motivated cases being brought against individuals ahead of an upcoming election.²⁹

Expedited Trials: the commission suggested that the trial for charges brought against MPs and MLAs should be conducted daily and completed within a year.³⁰

²⁶ Maj. Gen. Anil Verma Retd., *Criminality in politics: A point of no return?*, TRIBUNE INDIA (Mar. 01, 2025), <https://www.tribuneindia.com/news/comment/criminality-in-politics-a-point-of-no-return/>.

²⁷ LAW COMMISSION OF INDIA, GOV^T OF IND., ELECTORAL DISQUALIFICATIONS, REPORT NO. 244 (2014), <http://www.lawcommissionofindia.nic.in/>.

²⁸ *Id.* at 52.

²⁹ *Id.* at 43.

³⁰ *Id.* at 46-47.

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Severity of Offences: Only criminal offences with a maximum punishment of five years or more are to be included in this provision.³¹

Additional Safeguards: In addition to Section 8B, Section 8C and amendments to Section 8, Section 125A, and Section 123 of the RPA were also proposed to safeguard the Section from misuse.³²

However, the proposed Section 8B never saw the light of the day as it was rejected by the Eighteenth Report on Electoral Reforms (Disqualification of Persons from contesting elections on framing of charges against them for certain offences).³³ The rationale given by the committee was, *first*, that there are high chances that false and malafide charges will be framed against the political opponents due to the influence on the prosecution by the political parties in power, and due to the failure of state machinery.³⁴ *Second*, that the Court can arbitrarily frame charges against the accused.³⁵ This would lead to the accused being deprived of his statutory right to contest an election which would benefit his opponents. These concerns of the Rajya Sabha are addressed in Part II. of the paper, where it is argued that they can be effectively mitigated with a robust approach.

B. JUDICIAL PERSPECTIVE ON THE CRIMINALISATION OF POLITICS

The Supreme Court, on various instances, has sought to curb the menace of criminalisation of politics by giving directions to the government and the Election Commission. Essentially, the orders of the Supreme Court to

³¹ *Id.* at 42-43.

³² *Id.* at 56-59.

³³ PARLIAMENTARY STANDING COMMITTEE, 18TH REPORT ON ELECTORAL REFORMS (DISQUALIFICATION OF PERSONS FROM CONTESTING ELECTIONS ON FRAMING OF CHARGES AGAINST THEM FOR CERTAIN OFFENCES) (2007) https://docslib.org/doc/9405179/electoral-reforms-disqualification-of-persons-from-contesting-elections-on-framing-of-charges-against-them-for-certain-offences#google_vignette.

³⁴ *Id.* at 21.

³⁵ *Id.* at 20.1.

clean Indian politics can be tabulated into three types: *first*, the decision to increase the accountability of individuals holding public office; *second*, the decision to bring transparency into the electoral process and emphasise the voters' right to know; and *third*, judgments to remove corruption from public offices. This section examines how these judgments, while generally sound, exhibit certain flaws. It reveals a discrepancy between the theoretical principles of the Constitution and their actual implementation, potentially creating tensions between the moral imperatives of governance and the realities of political pragmatism.

Public Interest Foundation v. Union of India

In 2018, the five Judge Bench of the Supreme Court in the case of *PIF v. UOI*, analysed Section 8B.³⁶ It held that the time has come for Parliament to enact legislation that prevents individuals facing serious criminal charges from entering the political arena.³⁷ It further stated that while it is essential to uphold the principle of presumption of innocence, it is equally crucial that those who engage in public life and participate in lawmaking are free from serious criminal allegations.³⁸ Voters demand systematic preservation of constitutionalism, and the country suffers when money and muscle power dominate.³⁹ The nation eagerly awaits such legislation, as society has a legitimate expectation of governance rooted in constitutional principles.⁴⁰ In the case of *Rambabu Singh Thakur v. Sunil Arora*, a two-judge bench upheld the judgment passed in *PIF v. UOI*.⁴¹ The Court missed an opportunity to proactively address the criminalisation of politics by not issuing explicit instructions or guidelines for enacting relevant legislation. The Court could have set a precedent to safeguard the integrity of elections. The Court overlooked the likelihood that such legislation would be against the interests of legislators, leading to legislative apathy. Consequently, the legal implication of this judgment is that no legislation has been enacted to prevent criminals from entering legislative bodies,

³⁶ *Public Interest Foundation v. Union of India*, (2019) 3 SCC 224.

³⁷ *Id.* at ¶ 107.

³⁸ *Id.* at ¶ 118.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Rambabu Singh Thakur v. Sunil Arora*, (2020) 3 SCC 733.

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despite the Supreme Court's strong stance against allowing criminals into these institutions.

Manoj Narula v. Union of India

At the same time in *Manoj Narula v. UOI*, the issue of whether people with criminal histories or those charged with serious offences should be appointed as ministers was being considered by a five-judge panel of the Supreme Court.⁴² The Supreme Court again used the argument of separation of power and acknowledged that the Court does not have the authority to comment on the designation of Ministers. It was decided that the Court was not permitted to interpret a disqualification not included in the statute. Thereby leaving the minister's appointment with a criminal past to the discretion of the Prime Minister. Nonetheless, it stated that it is always reasonable to anticipate that the Prime Minister will consider the criminal history of the Council of Ministers and decline the appointment of an individual with a criminal history, all while upholding the expectations outlined in the Constitution. This ruling had no effect on legislative or procedural amendments that would have addressed the issue of people with criminal histories holding ministerial positions. Because of the Prime Minister's discretion, the nomination of such individuals is still determined more by political factors than by stringent legislative requirements. As a result, the ruling exposes a gap between the principles of the Constitution and their practical implications.

Lily Thomas v. Union of India

The Supreme Court, in the judgment of *Lily Thomas v. UOI*, in which Section 8(4) of the RPA 1951 was held unconstitutional, advocated for accountability of people holding public offices.⁴³ Section 8(4) allowed convicted MPs and MLAs to continue in office until an appeal against such conviction is disposed of. This was held unconstitutional for two significant reasons. *First*, it is not within the competence of Parliament to

⁴² *Manoj Narula v. Union of India*, (2014) 9 SCC 1.

⁴³ *Lily Thomas v. Union of India*, (2013) 7 SCC 653.

stipulate distinct criteria for disqualifying prospective members and current members; *second*, the presence of criminals undermines the integrity of the public office. Although this judgment was a positive step, its impact was limited by prolonged judicial delays and a low conviction rate, which did not effectively prevent the entry of criminals into politics.

K. Prabhakaran v. P. Jayarajan

At the same time, in the judgment of *K. Prabhakaran v. P. Jayarajan*, the Court clarified Section 8(3) of RPA, 1951, laying forth the disqualification requirements.⁴⁴ It was noted that the object of Section 8(3) is to prohibit the criminalisation of politics. Laws shouldn't be made by people who break them. The goal of laws that disqualify people upon conviction for specific offences is to keep those with criminal records out of politics and government. Consequently, it was held that the goal of Section 8 was to advance electoral justice and freedom. However, its impact was limited due to challenges in enforcement. Additionally, the verdict fell short of strengthening the practical execution of the law and successfully discouraging the criminalisation of politics since it failed to address the issues of political corruption or propose new reforms.

Association for Democratic Reforms v. Union of India

In *ADR v. UOI*, the Supreme Court directed the Election Commission to call for information regarding criminal antecedents of the individual contesting the election on an affidavit.⁴⁵ Such information would pertain to whether the candidate has been convicted, acquitted, or discharged. It would also include the length of any sentence if found guilty, and whether, within the six months before the nomination was filed, the candidate was accused of any crimes that were still pending and for which a Court had issued a charge or taken cognisance. This step was taken to ensure voters' fundamental right to be informed about the backgrounds of candidates running for public office. The Court concluded that this right to know is a crucial component and the basis for the meaningful exercise of the freedom of speech and expression that all people are entitled to under

⁴⁴ *K. Prabhakaran v. P. Jayarajan*, (2005) 1 SCC 754, 780.

⁴⁵ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

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Article 19(1)(a) of the Constitution. Despite this ruling, the voters were unaffected by the candidates' criminal histories, as they felt that the criminality factor of candidates had no direct bearing on them.

Ashwini Upadhyay v. UOI

In September 2020, a writ petition in *Ashwini Upadhyay v. Union of India* was filed to disqualify individuals from contesting elections against whom charges have been framed for serious crimes. Alternatively, the petition requests that the Court order the ECI to modify the 1968 Symbols Order so that political parties are required to forbid such individuals if they wish to be recognised as a national or state party.⁴⁶ In 2023, the Union Government opposed the petition using a two-fold argument. *First*, a politician cannot be disqualified at the stage of framing charges because of the principle of innocence until proven guilty. *Second*, they argued that the meaning of “serious offence” is unclear as any prosecution agency would argue that charges framed against the accused are serious. The said petition is still pending before the Court.⁴⁷

Through its interpretation of fundamental rights and statutory provisions, the Supreme Court has taken several steps to ensure cleaner politics. It has created substantial barriers for criminal elements seeking to enter public office and has provided mechanisms to remove those already in power.

However, due to the complexities of Indian democracy and procedural loopholes, the criminalisation of politics continues to rise at an alarming rate. This ongoing trend highlights the need to strengthen disqualification criteria, not only at the stage of conviction but also when charges have been formally framed for serious offences.

⁴⁶ Ashwini Kumar Upadhyay v. Union of India, (2021) 20 SCC 599.

⁴⁷ Abraham Thomas, *Centre opposes plea in SC to debar candidates charged with 'serious' offences*, HINDUSTAN TIMES (Apr. 10, 2023), <https://www.hindustantimes.com/india-news/centre-opposes-petition-to-debar-candidates-with-framed-charges-from-elections-defining-serious-offences-a-challenge-says-asg-sanjay-jain-101681145552018.html>.

DISSECTING THE SUBSTANCE AND INTENT OF SECTION 8B

The primary question that needs to be considered is whether the disqualifications under Section 8 of RPA, 1951 are sufficient, or whether more stringent temporary disqualifications are needed under Section 8B of RPA, 1951 to curb the cancer of criminalisation of politics. There are four compelling reasons for the essential need of Section 8B: *first*, the lack of free and fair elections; *second*, the integrity of the institution; and *third*, the influence of Political Parties in nominating candidates with criminal backgrounds. *Fourth*, voters' indifference towards criminal antecedents.

A. THE LACK OF FREE AND FAIR ELECTIONS

A fundamental aspect of a representative government is its commitment to conduct regular, free, and fair elections.⁴⁸ The involvement of candidates with criminal backgrounds undermines the core democratic principle of free and fair elections by fostering a climate of fear, coercion, and manipulation.⁴⁹ Tactics such as voter intimidation, ballot-stuffing, and violence distort electoral outcomes⁵⁰ and violate citizens' freedom of expression under Article 19(1)(a).⁵¹ This not only erodes public trust in democratic institutions but also threatens the legitimacy of representative governance.⁵²

B. MAINTAINING THE INTEGRITY OF THE INSTITUTION

It is well-established that MPs and MLAs accused of violating the very laws they are entrusted to uphold fundamentally contradict the vision of the framers of the Constitution. The Supreme Court recognised this in the case of *K Prabhakaran v. P Jayarajan*, stating that the involvement of individuals against whom serious crimes are framed is incompatible with the ideals of

⁴⁸ Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, 424, at ¶ 23.

⁴⁹ ATUL KOHLI, DEMOCRACY AND DISCONTENT: INDIA'S GROWING CRISIS OF GOVERNABILITY 214 (Cambridge University Press, 1990).

⁵⁰ D. N. Dhanagare, *Violence in the Fourth General Elections: A Study in Political Conflict*, no. 1/2 E&PW 3, 151–156, (1968).

⁵¹ Resurgence India v. Election Commission of India, (2014) 14 SCC 189.

⁵² *Id.*

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a just and lawful society.⁵³ Individuals who violate the law should not be involved in creating it. Individuals with criminal histories may violate the electoral process, as they are willing to disregard ethical boundaries and engage in unlawful activities to achieve electoral success.⁵⁴

C. INFLUENCE OF POLITICAL PARTIES IN NOMINATING CANDIDATES WITH CRIMINAL BACKGROUND

There is an absence of restriction on political parties from giving tickets to politicians despite having charges framed against them.⁵⁵ Many analysts explain why political parties may select candidates with criminal backgrounds.⁵⁶ Moreover, Milan Vaishnav, in his work, explains that candidates with criminal records have performed better in elections and appear to have an electoral advantage. This suggests that parties prioritise candidates' perceived "winnability" factor over their ethical standing when making nomination decisions.⁵⁷ Therefore, there is no motivation for political parties to ensure that the candidates they nominate do not have criminal charges.

D. VOTERS' INDIFFERENCE TOWARDS THE CRIMINAL ANTECEDENTS

Strangely enough, voters truly support criminal candidates in elections. Candidates with criminal histories often receive more votes and get elected more easily than anticipated. According to data from the 2004, 2009, and

⁵³ K Prabhakaran v. P Jayarajan, (2005) 1 SCC 754, 780, ¶ 54.

⁵⁴ Dhananjay Singh v. State of U.P., (2024) SCC OnLine All 5329.

⁵⁵ SURINDER SINGH GILL, *PATHOLOGY OF CORRUPTION* 203 (Harper Collin Publishers India, 1999).

⁵⁶ RUDOLPH AND RUDOLPH, *IN PURSUIT OF LAKSHMI: THE POLITICAL ECONOMY OF INDIAN STATES* 85 (University of Chicago Press, 1987); Many analysts believe that Sanjay Gandhi was mainly responsible for giving Congress Party tickets to unruly or undesirable people. However, after his death, the party did not completely stop this practice, and other parties also continued to do the same.

⁵⁷ MILAN VAISHNAV, *THE MARKET FOR CRIMINALITY: MONEY, MUSCLES AND ELECTIONS IN INDIA* 96 (Yale University Press, 2010).

2014 general elections, a candidate with criminal antecedents was, on average, over three times more likely to win an election than a candidate with no cases. Furthermore, candidates facing serious accusations have a greater “win rate” than those facing only minor charges.⁵⁸ This may initially appear to be a typical tale of logically uninformed voters unaware of a candidate's criminal history, but Vaishnav's book sheds light on this topic.⁵⁹

Milan Vaishnav discovered that voters support these politicians because of their criminal histories. Milan Vaishnav contends that there are situations in which voters, especially well-informed voters, vote for individuals with a history of criminal cases framed against them.⁶⁰ The voter behaviour is influenced by various extraneous factors such as caste, religion, and regional political bargains. Voters may overlook criminal charges against candidates because these charges do not have an immediate impact on their own lives.

Furthermore, this kind of support for public officials with criminal histories does not always indicate a breakdown in democratic accountability. Such support occurs within a system beset by a deficiency in state capacity and feeble government institutions incapable of delivering even the most basic public goods and services.⁶¹ Voters with higher levels of education are marginally more inclined to support these candidates than their counterparts with lower levels of education.⁶² Therefore, even if they are aware of a candidate's caste or criminal history, Indian voters may still be intellectually uninformed. As a result, when voters support candidates with criminal charges, political parties do not hesitate to nominate such candidates.

⁵⁸ *Id.* at 25. MILAN VAISHNAV, *THE MARKET FOR CRIMINALITY: MONEY, MUSCLES AND ELECTIONS IN INDIA* 25 (Yale University Press, 2010).

⁵⁹ *Id.* at 24-31.

⁶⁰ *Id.* at 173-177. *See also* MILAN VAISHNAV, *THE MARKET FOR CRIMINALITY: MONEY, MUSCLES AND ELECTIONS IN INDIA* 25 (Yale University Press, 2010).

⁶¹ Shivani Nayak and Anirban Mitra, *Criminal Politicians, Electoral Competition and Public Good Provision: Evidence from India*, 61 EUR. J. POL. ECON. 102470 (2024).

⁶² V.S. RAMA DESAI & S. K. MENDIRATTA, *HOW INDIA VOTES ELECTION LAWS, PRACTICE AND PROCEDURE* 233 (LexisNexis, 3rd ed., 2014).

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**CHALLENGING THE ARGUMENTS PROPOSED AGAINST
THE TEMPORARY DISQUALIFICATION OF CANDIDATES**

The debate over temporary disqualification has been prominent since 1999 when the 170th Law Commission Report recommended measures to address criminalisation in politics.⁶³ The report argued that including temporary disqualification as a criterion would help ensure that candidates with serious criminal charges are excluded from holding public office, aiming to reduce the influence of criminal elements in politics.⁶⁴ However, in various instances, the Parliament has argued its misuse, lack of remedy for the accused and the hindrance of the sanctity of criminal jurisprudence. This section analyses the multiple concerns of the 18th Report on Electoral Reforms by the Rajya Sabha, which raised problems with Section 8B.⁶⁵ The concerns raised regarding Section 8B were *first*, disqualifying individuals at the stage of framing of charges is considered premature and unjust; *second*, it contradicts the principle of innocent until proven guilty; third, the potential for misuse by political parties, which may file false cases against opponents, and *finally* that accused would be left without any remedy or recourse.

A. PREMATURE DISQUALIFICATION

It was asserted that disqualification at the stage of framing of charges under Section 228 Code of Criminal Procedure (“CrPC”) or Section 251 of the Bharatiya Nagarik Suraksha Sanhita (“BNSS”)⁶⁶ is premature, given the Court only has the charge sheet filed by the Police and the statements under Section 161 CrPC or Section 180 of the BNSS at this stage.⁶⁷ The

⁶³ LAW COMMISSION OF INDIA, REFORM OF THE ELECTORAL LAWS, REPORT NO. 170, (1999) https://lawcommissionofindia.nic.in/cat_ELECTORAL_REFORMS/.

⁶⁴ *Id.* at ¶ 5.2.6- 5.4.

⁶⁵ *Supra* note 33.

⁶⁶ CODE CRIM. PROC. § 228; The Bharatiya Nagarik Suraksha Sanhita Act, 2023, No. 45, Acts of Parliament, 2023 (India) § 251.

⁶⁷ CODE CRIM. PROC. § 161; The Bharatiya Nagarik Suraksha Sanhita Act, 2023, No. 45, Acts of Parliament, 2023 (India) § 180.

fact that the Court has framed charges is not enough protection because the Court does not yet consider the accused's side of the story at this stage. Further, it was contended that if Police want to frame frivolous charges against an individual, they only need two witness statements, and the validity of those testimonies will be decided later in the trial. Thereby, legislators believed that there could be highly unjust outcomes of Section 8B.

However, this concern is addressed by the case of *State of Maharashtra v. Som Nath Thapa*,⁶⁸ which clarifies that at the stage of framing charges, the burden is on the prosecution to prove a case against the accused, and charges could be framed only if there is 'grave suspicion' against the accused.⁶⁹ The stage of framing of charge goes through judicial scrutiny, and frivolous charges cannot stand at such a stage. It is imperative to check whether a grave suspicion exists against the accused, not an ordinary suspicion.⁷⁰ The accused would be entirely within his right to discharge if the judge believes the evidence produced only gives rise to some suspicion, not grave suspicion.

Referring to the above mentioned case, framing a charge is appropriate for disqualifying candidates from contesting elections. Not doing so would lead to adverse consequences in the law-making process.⁷¹ In the case of *Manoj Narula v. Union of India*, it was held that the criminalization of politics runs against the sacredness of democracy.⁷² Accordingly, to maintain the purity of democracy, the impugned Section disqualifies the person from contesting the election if charges are framed for serious crimes.⁷³

⁶⁸ *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659.

⁶⁹ *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135; *Sajjan Kumar v. Central Bureau of Investigation*, (2010) 9 SCC 368.

⁷⁰ *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4.

⁷¹ Election Commission of India, Proposed Electoral Reforms, Handbook (2016) http://eci.nic.in/eci_main/ElectoralLaws/HandBooks/proposed_electoral_reforms_01052017.pdf.

⁷² *Manoj Narula v. Union of India*, (2014) 9 SCC 1.

⁷³ *Supra* note 63.

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B. PRINCIPLE OF INNOCENT UNTIL PROVEN GUILTY

It was contended that in Indian jurisprudence, the 'principle of innocent until proven guilty' is on a high pedestal, and implementation of Section 8B would go against that principle. The rationale behind this contention was that an individual can be disqualified from contesting elections even before the Courts convict him.

However, such contention can be negated as the disqualification imposed on an accused is temporary, affecting only statutory rights and not a fundamental right. In the case of *A. Pari v. The Election Commission of India*,⁷⁴ it was held that the principle of 'presumption of innocence' is restricted to criminal law and not civil law. Therefore, the proceedings before reaching the final verdict of conviction can attract civil liability for the penalty. Thus, disqualifying a person from contesting an election against whom charges of a serious nature have been framed is merely a restriction of a civil nature.

Although the law assumes a person is innocent until proven guilty, the principle does not imply that an individual accused of serious charges like terrorism, rape, murder etc, has an absolute right to run for public office. Rather, it is a mere decision about suitability for public office and does not relate to their guilt or innocence, which will only be determined through a criminal trial. The rationale behind implementing temporary disqualification is the ongoing rise of individuals with criminal backgrounds in Parliament and State Assemblies. If such criminalization remains unchecked, it would undermine democratic institutions, even if these candidates have public support. Current laws on disqualification focus solely on convictions, which has proven ineffective in addressing this issue.⁷⁵

Therefore, there is a need to disqualify the accused against whom a competent court has framed criminal charges and prevent them from running for elections. The legislation aims to decriminalise politics so that

⁷⁴ *A. Pari v. The Election Commission of India*, (2019) SCC OnLine Mad 27267.

⁷⁵ *Indira Nehru Gandhi v. Raj Narain*, (1975) Supp SCC 1.

the candidates do not abuse their power to extend the duration of the trial, which in turn helps them to hold their seats for a more extended period by not getting convicted. Therefore, the classification created between an accused and an accused contesting elections has a rational nexus with the objective sought to be achieved, i.e., the decriminalisation of politics.

C. MISUSE BY POLITICAL PARTIES

The Committee thought that malafide and false charges could be framed against the accused by political opponents as, *first*, the prosecution is substantially influenced by the party in power and, *second*, failure of state machinery which will allow political actors to influence the legal process for their gains. Once the prosecution files these charges, the individual loses their statutory right to contest elections, ultimately benefiting their opponents.

However, to prevent such misuse of Section 8B, it has been proposed that charges filed up to one year before the scrutiny of nominations should not result in disqualification. This measure would help reduce the likelihood of politically motivated cases being brought against individuals ahead of an upcoming election.⁷⁶ The period is sufficient to ensure that any false accusations made with the intent to disqualify candidates won't result in that disqualification. As a result, each contender is given at least a year to be discharged. Further, the Supreme Court has consistently stated that the potential for abuse of the authority granted by statute does not negate the need not to make laws.⁷⁷ Thus, it achieves a suitable balance between expanding the extent of disqualification and attempting to discourage the filing of fraudulent cases only to manipulate disqualification.

D. LACK OF REMEDY FOR THE ACCUSED

The committee also considered that at the stage of framing of charges, the accused's defence is unavailable to the Court, and the accused cannot provide proof that the statements under Section 161 CrPC or Section 180

⁷⁶ *Supra* note 26 at 43.

⁷⁷ *Id.* at ¶ 237.

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of BNSS are frivolous.⁷⁸ However, apart from the protective measures incorporated during the charge-filing phase, there is an additional remedy available under Section 311 of the CrPC or Section 348 of the BNSS.⁷⁹ At any point during the trial, the Court may summon or question any witness whose testimony is crucial to a fair verdict under Section 311. This clause gives the Court broad discretion, which may even be employed suo-moto, even though it is not frequently used, and the Supreme Court has warned against the arbitrary exercise of this power.⁸⁰ The Court may utilise this Section to look into more evidence before filing charges in cases when doing so could result in the candidate's disqualification. Therefore, all the concerns raised by the Parliament for not enacting Section 8B lack rational basis.

Furthermore, expanding the range of disqualifications violates no fundamental or constitutional rights. The Supreme Court has consistently emphasised that the right to vote and contest elections is neither a fundamental nor a common law right.⁸¹ It is a unique privilege established by statute that is only exercisable under the restrictions outlined in the act.⁸² As a result, it is exempt from the Constitution's Fundamental Rights chapter.⁸³ Therefore, to achieve the democratic goal of clean politics, stringent steps need to be taken.⁸⁴ If such a percentage of criminals in legislative bodies prevail, it would erode confidence in democratic institutions. Thereby, it is high time for Parliament to curb the entry of individuals accused of serious crimes into law-making bodies and pollute them.

⁷⁸ *Supra* note 59.

⁷⁹ CODE CRIM. PROC. § 311; NAG. SURAK. SANHITA § 348.

⁸⁰ *Natasha Singh v. CBI*, (2013) 5 SCC 741.

⁸¹ *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, (1952) 1 SCC 94; *Jagan Nath v. Jaswant Singh*, (1954) 1 SCC 57; *Dr. N. B. Khare v. Election Commission of India*, AIR 1958 SC 139.

⁸² *Jumuna Prasad Mukhariya v. Lachhi Ram*, (1954) 2 SCC 306.

⁸³ *Jagdev Singh Sidhanti v. Pratap Singh Daulta*, AIR 1965 SC 183; *Ebrahim Suleiman Sait v. M.C. Mohammed*, (1980) 1 SCC 398.

⁸⁴ *Public Interest Foundation v. Union of India*, (2019) 3 SCC 224, ¶ 118.

SAFEGUARDS IN RELATION TO DISQUALIFICATIONS UNDER SECTION 8B

To ensure that the practice of misuse of Section 8B does not prevail, it is essential to limit its scope and balance it with safeguards such as *first*, the disqualification would apply only to a few cases, *second*, the period of applicability of disqualification would not be arbitrary and *third*, a cut-off date would be provided to avoid any frivolous cases.

A. LIMITATIONS ON THE OFFENCES TO WHICH DISQUALIFICATION APPLIES

Under Section 8B, it is proposed that only those crimes which have the punishment of imprisonment of more than five years should be disqualified from contesting elections. The said Section limits the ambit of Section 8B to very few serious crimes, like waging or attempting to wage war or abetting waging of war against the Government of India,⁸⁵ murder,⁸⁶ dowry death,⁸⁷ thug,⁸⁸ voluntarily causing grievous hurt by use of acid,⁸⁹ exploitation of a trafficked person,⁹⁰ rape,⁹¹ etc. Thus, Section 8B of RPA, 1951 is reasonable as it disqualifies a candidate only for very serious offences. The underlying rationale behind this rule is that individuals facing charges for serious crimes are not deemed suitable to serve in Parliament or State Legislatures.

This principle is consistently applied across various high-level positions, such as members of the Public Service Commission, the Chief Vigilance Commissioner, and the Chief Secretary, who are disqualified when charges are framed against them. The rationale for disqualifying individuals with criminal charges from these crucial posts underscores the broader intent

⁸⁵ PEN. CODE § 121; NYA. SANHITA § 147.

⁸⁶ PEN. CODE § 300; NYA. SANHITA § 101.

⁸⁷ PEN. CODE § 304(b); NYA. SANHITA § 80.

⁸⁸ PEN. CODE § 304(b); omitted in Bharatiya Nyaya Sanhita 2023.

⁸⁹ PEN. CODE § 326A; NYA. SANHITA § 124.

⁹⁰ PEN. CODE § 370A; NYA. SANHITA § 144.

⁹¹ PEN. CODE § 375A; NYA. SANHITA § 63.

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to maintain integrity and trustworthiness. Therefore, it is reasonable to extend this principle to legislative positions as well, in order to curb the criminalization of politics.

B. PERIOD OF APPLICABILITY

It is suggested that Section 8B disqualifies the individual for five years from the date of framing of charge or acquittal, whichever is earlier. The reasoning behind the five-year disqualification period was to ensure that an individual facing charges would be barred from participating in at least one cycle of election. However, this would work to the advantage of an innocent individual if a one-year cutoff period is also established. For instance, if charges are framed against someone six months before an election, they would not be disqualified from that election due to the protection provided by the one-year timeframe. Additionally, even if the next election occurs five years later, they would still be eligible to participate, as the five years since the charges were framed would have already lapsed. The six-month period will prevent the filing of frivolous cases. Generally, candidates' names are announced 3-4 months before the elections. This buffer period ensures that charges filed with malafide intent by the ruling party cannot influence the election process. This approach ensures that individuals are not unfairly barred from participating in elections for extended periods, promoting a more balanced and just system.

C. CUT-OFF DATE

It has been proposed that charges filed up to one year before the scrutiny of nominations should not result in disqualification. This measure would help reduce the likelihood of politically motivated cases being brought against individuals ahead of an upcoming election.⁹² The period is quite

⁹² India: Crackdown on the opposition, divisive rhetoric and targeting of activists and critics persists around the elections, Civicus Monitor, <https://monitor.civicus.org/explore/india-crackdown-on-the-opposition-divisive-rhetoric-and-targeting-of-activists-and-critics-persists-around-the-elections/>; B.S. Satish Kumar, *The fact that only 40 of 5297 PMLA cases have resulted in conviction shows they are politically*

lengthy to ensure that any false accusations made with the intent to disqualify candidates won't result in that disqualification. As a result, each contender is given at least a year to be discharged. Furthermore, authorities must exercise due diligence when evaluating candidates against whom charges have been framed within the cut-off period. Without such scrutiny, candidates could exploit this period to commit crimes with impunity, circumventing any restrictions. Additionally, the Supreme Court has consistently stated that the potential for abuse of the authority granted by statute does not negate the need not to make such laws.⁹³ Thus, it achieves a suitable balance between expanding the extent of disqualification and attempting to discourage the filing of fraudulent cases only to manipulate disqualification.

COMPARATIVE ANALYSIS OF POLITICAL DECRIMINALISATION

A comparative analysis has been conducted to understand how different countries deal with the issue of criminalisation of politics. A comparative study was conducted across a mix of civil and common law jurisdictions including the United Kingdom, Egypt, Philippines, Germany and Thailand. These countries were selected due to diverse legal frameworks and different approaches to electoral disqualification to reduce people with criminal histories in politics.

A. UNITED KINGDOM

The principles for political party systems in the UK and India are distinct when it comes to upholding moral principles and accountability. A comprehensive code of conduct has been established by the leading political parties in the United Kingdom, such as the Conservative Party, Labour Party, and Liberal Democrats. The code of conduct prioritises honesty, responsibility, and mutual respect among their constituents.⁹⁴

motivated, says Priyank Kharge, THE HINDU, (Jun. 1, 2024), <https://www.thehindu.com/news/national/karnataka/the-fact-that-only-40-of-5297-pmla-cases-have-resulted-in-conviction-shows-they-are-politically-motivated-says-priyank-kharge/article68710076.ece>.

⁹³ *Supra* note 30.

⁹⁴ Committee on Standards in Public Life, *Ethics in Practice: Promoting Ethical Conduct in Public Life*, U.K. GOVERNMENT (Aug. 26, 2024),

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Members are expected to respect the party's reputation in all interactions and to maintain discipline such as following the norms of the party, and demonstrating the party's strong commitment to moral conduct and democratic values, etc.⁹⁵

India, on the other hand, does not have a comprehensive internal code of conduct for political parties. Within Indian parties, disciplinary measures are less codified and differ greatly across parties.⁹⁶ This implies that although procedures exist to deal with misbehaviour, they might not be applied with the same rigour as they would in the UK. As a result, consistent ethical and moral standards as followed in the UK are largely absent in the Indian political system. Therefore, there is a need for a written code of conduct within political parties in India.

B. EGYPT

In comparing the electoral disqualification of India and Egypt, we can draw several insights. In Egypt, the rules governing the exercise of political rights are set down in the Egyptian election law.⁹⁷ Article 52 pertains directly to disqualification grounds; it states that a candidate may be excluded without a formal conviction if there are suspicions of legal irregularities, including criminal charges. The statute clarifies that disqualification procedures may start once criminal charges have been framed and proceedings are pending before the Court. Ahmed “Al-Tantawy”, the former leader of Egypt's Dignity Party, and several of his party members were barred from running for office in November 2023 because of allegations of terrorism and fraud against them that were

<https://www.gov.uk/government/publications/ethics-in-practice-promoting-ethical-standards-in-public-life>.

⁹⁵ Robert Williams, *Conduct Unbecoming: The Regulation of Legislative Ethics in Britain and the United States*, 55 PARLIAMENTARY AFFAIRS 611, 612-615 (2002).

⁹⁶ ELECTION COMMISSION OF INDIA, MODEL CODE OF CONDUCT <https://www.eci.gov.in/mcc/>.

⁹⁷ Egyptian Electoral Law on Regulation of Exercise of Political Rights, Act No. 45/2014, 2014.

forwarded to trial.⁹⁸

In India, we only disqualify people if they are convicted following the “innocent until proven guilty” principle. However, it ignores those situations where an individual may have serious allegations against them and the immediate possibility of a conclusion of trial is not possible due to the flaws in the justice delivery system. Therefore, taking inspiration from Egypt, they are disqualified even if they have serious allegations against them as well, even if they are not convicted. This shall be implemented in India: if a serious allegation is pending, they should still be disqualified.

India could prevent the criminalisation of politics and ensure higher election integrity by permitting disqualification based on grave suspicions. This would also help keep those with possible criminal history out of politics.

C. PHILIPPINES

Both India and the Philippines have election disqualification laws that are designed to preserve the integrity of their democratic systems. The primary law governing elections in the Philippines is the Omnibus Election Code, which reflects the guidelines for holding elections and several associated issues.⁹⁹ Sections 12 and 68 of the Code define the circumstances under which someone may be unable to hold office, and these Sections are comparable to Section 8 of the RPA, 1951. They both set disqualification standards based on criminal convictions. However, the scope of the Omnibus Election Code is broader, and it permits disqualification even without a sentence for accusations of moral turpitude.

On the other hand, Section 8B of the RPA, 1951 in India, is particularly focused on disqualifying candidates only following a conviction for significant offences rather than based on charges or moral accusations.

⁹⁸ CIHRS, Egypt: Al-Tantawy prevented from running for presidency and referred to trial, underscoring illegitimacy of upcoming elections, Cairo Institute for Human Rights Studies (CIHRS), <https://cihrs.org/egypt-al-tantawy-prevented-from-running-for-presidency-and-referred-to-trial-underscoring-illegitimacy-of-upcoming-elections/?lang=en>.

⁹⁹ Omnibus Election Code, 2007 Batas Pambansa Blg. 881, 2007 (Philippines).

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India could adopt the Philippines model which can broaden disqualification criteria to include pending accusations of moral turpitude, thereby improving candidate vetting and reducing the influence of unethical actors in elections.

D. GERMANY

Significant differences emerge in comparing the approaches to political party discipline between Germany and India. Germany, one of the most robust democracies, has introduced policies to ensure intra-party discipline. This ensures that action will be taken against the parties that align with non-democratic ways. According to Article 21 of Germany's Basic Law (Constitution), political parties are unlawful if their goals or the actions of their supporters intend to destroy the free democratic basic order or jeopardize the survival of Germany.¹⁰⁰ Determining whether a party is unconstitutional rests solely with the Federal Constitutional Court.¹⁰¹ A party's assets may be taken away, and it would be prohibited from running for office if found unlawful. This Article ensures that parties align with constitutional and legal methods to achieve their goals.¹⁰²

In contrast, RPA 1951, which governs elections in India, political parties do not take any actions if a candidate is willing to go against democratic principles. Although India has procedures to regulate party-related concerns, they are not as strict as Germany's proactive strategy. Therefore, India should consider adopting a legal system which empowers the court to ban political parties whose activities threaten democratic values. More stringent regulations akin to those in Germany would improve India's capacity to confront and thwart non-democratic actions in political parties, guaranteeing that all parties adhere to democratic and constitutional norms.

¹⁰⁰ GERMANY CONST. § 21, The Federal Statute of 23, 1990.

¹⁰¹ THE FEDERAL RETURNING OFFICER, Party ban - The Federal Returning Officer.

¹⁰² BUNDESVERFASSUNGSGERICHT, Bundesverfassungsgericht - Proceedings for the prohibition of a political party (last visited May 24 2025).

E. THAILAND

Thailand and India differ significantly when it comes to electoral disqualification. The Organic Act on Election of Members of the House of Representatives (2018) in Thailand lays down precise standards for disqualification, preventing those who are incarcerated or have been found guilty of a crime from seeking public office.¹⁰³

The RPA, 1951 in India, in contrast, largely disqualifies candidates only upon a conviction; it does not consider ongoing charges or incarceration. Adopting Thailand's method, India could also introduce a provision that disqualifies imprisoned individuals from contesting elections. This would simplify the voting procedure, stop the exploitation of legal loopholes, and support the upholding of better standards of election integrity in India.

PRACTICAL IMPLICATIONS

This section takes into account how the discussed legal, political, and institutional issues translate into real-world consequences and challenges. It also entails moral dilemmas, logistical challenges, and systematic obstacles that arise when individuals with criminal antecedents occupy public office.

A. MORAL AND LOGISTICAL CHALLENGES OF JAILED CANDIDATES

In the eighteenth Lok Sabha elections, two candidates who are presently jailed and are under trial were elected as MP- Amritpal Singh from Khadoor Sahib, Punjab and Engineer Sheikh Abdul Rashid from Baramulla, Kashmir.¹⁰⁴ The Constitution of India and RPA 1951 do not forbid such candidates from running for office unless found guilty of a crime that carries a minimum two-year sentence. However, the presence of such candidates poses two difficulties: *first*, moral questions are raised

¹⁰³ Organic Act on Election of Members of the House of Representatives, Act. No. 2 of B.E. 2566, 2023.

¹⁰⁴ Utkarsh Anand, *Jailed but elected: decoding Rashid, Amritpal Singh's Lok Sabha Victories*, HINDUSTAN TIMES (Aug. 25, 2024), <https://www.hindustantimes.com/india-news/jailed-but-elected-decoding-rashid-amritpal-singh-s-lok-sabha-victories-101717730654397.html>.

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because there could be embarrassing situations if these individuals are later convicted while serving in office, and *second*, logistical difficulties to ensure the presence of such members in the parliament for the normal working of the house.

Moral questions arise when such candidates are allowed to hold office as they may abuse power for personal gain, eroding public confidence in the political system. This has led to a hypocritical situation because an individual deemed unfit for bail because of involvement in acts prejudicial to national security or moral turpitude is now acting as an MP or MLA of the legislative body. Further complicating this issue are the logistical challenges posed by Article 101(4), that enables the Speaker to vacate the seat of any member who has been continuously absent for sixty days.¹⁰⁵

This leads to an issue for a jailed MP or MLA where their presence can only be ascertained through bail, which the courts rarely grant to any accused charged with offences like terrorism or corruption. For instance, both Amritpal Singh and Engineer Rashid are accused of serious crimes; Amritpal Singh, arrested in 2023 under the National Security Act of 1980, has been in jail since absconding amid a crackdown against his secessionist militants. Similarly, Engineer Rashid, a former two-time MLA, was arrested in 2019 under the Unlawful Activities Prevention Act, 1967, on allegations of money laundering linked to terror-funding activities and has been in jail ever since.¹⁰⁶

B. LEGISLATIVE APATHY AND SELF-INTEREST IN LAW-MAKING

In 2012, the Supreme Court in its decision in *Chief Election Commissioner. v. Jan Chaukidar*¹⁰⁷ stated that since a jailed person is not an elector, that

¹⁰⁵ INDIA CONST. art. 101, cl. 4.

¹⁰⁶ Aaratrika Bhaumik, *Can jailed leader Amritpal Singh and Engineer Rashid function as MPs after Lok Sabha victories*, THE HINDU (Jun. 10, 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>.

¹⁰⁷ *Chief Election Commissioner. v. Jan Chaukidar*, (2013) 7 SCC 507.

individual cannot contest the election. It was ruled that the right to contest elections would be extinguished even if the person was not convicted. The rationale behind the judgment was that though Section 8 of RPA, 1951 only provides for disqualification at the stage of conviction however, according to Section 2(1) of RPA, to contest the election, an individual needs to be an “elector”.

Section 16 of RPA provides for disqualification for registration in an electoral roll, and one of the disqualifications is that if the individual is disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections, the individual is disqualified. Interestingly, Section 62(5) of RPA also provides an additional ground for disqualification from voting and states that no person shall vote in any election if he is confined in prison or the lawful custody of the police, ergo a “jailed person”. This, in the opinion of the Court, meant that, since a jailed person by Section 62(5) ceases to be an “elector” under the RPA, they are no longer qualified to contest elections.¹⁰⁸ However, responding to this interpretation, the legislators enacted an amendment within four months of this judgment, in which any jailed person was deemed to be still eligible to contest elections.¹⁰⁹ Through the amendment, the ambit of disqualification from contesting elections or holding any assembly seat on account of criminal antecedents was effectively narrowed back to the condition of “conviction” in Section 8 of the RPA.

This instance reflects the legislative apathy towards the criminalisation of politics. It is expected that legislators will mould the nation's political system and be in charge of enacting the laws and policies that govern it. However, they might not always act in the country's best interests. There could be two reasons for this apathy of legislators: *first*, they might have a personal stake in preserving the status quo in politics, even if it involves engaging in illegal activities; *second*, succumbing to pressure from powerful lobbies or groups who benefit from such loopholes in the current system.

Another practical implication is that a legislator with vested interests may prioritise their personal gain over effective lawmaking. For instance, a

¹⁰⁸ Chief Election Commissioner. v. Jan Chaukidar, (2013) 7 SCC 507, at ¶ 7.

¹⁰⁹ The Representation of the People (Amendment and Validation) Act, No. 29 of 2013, Acts of Parliament, 2013 (India).

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person charged under the Unlawful Activities (Prevention) Act might be more focused on using their position to protect themselves rather than enacting reforms. This situation creates significant challenges, as it leads to legislative apathy and potential conflicts of interest. This phenomenon is evident in instances where the monthly pension of MLAs of Tamil Nadu was increased,¹¹⁰ or the amendments to the Companies Act increased the ceiling for political funding from companies.¹¹¹

Both measures saw broad support and minimal opposition, highlighting how legislative decisions can be influenced by the self-interests of the lawmakers. One of the most significant barriers to the growth of a more accountable and transparent political system may be the lack of political will to legalise politics. Consequently, it is unrealistic to expect political parties to pass laws that might undermine their own advantages or those of their members.

RECOMMENDATIONS FOR ENHANCING ELECTORAL AND LEGISLATIVE INTEGRITY

A. GENERAL RECOMMENDATIONS

Screening Process by Political Parties

The Law Commission of India, in its 170th report referenced by Subhash Chandra Agarwal and the Central Information Commission, made several important observations regarding the role of political parties in our democracy.¹¹² It stated that political parties are responsible for forming the government, staffing Parliament, and managing the country's governance. Therefore, political parties must maintain discipline, transparency, and accountability. A political party that fails to adhere to democratic principles internally cannot be expected to uphold those principles in governing the

¹¹⁰ TNN, *Stalin: Pension For MLAs Increased To ₹ 30k*, TIMES OF INDIA (Apr. 20, 2023), <https://timesofindia.indiatimes.com/city/chennai/pension-for-mlas-increased-to-30k/articleshow/99627503.cms>.

¹¹¹ The Companies Act, 2013, § 182, No. 18, Acts of Parliament, 2013 (India).

¹¹² *Supra* note 63.

country.¹¹³ As a result of the lack of principles within political parties, there is a black market for political donations.¹¹⁴ It is hardly surprising that illegal money has become more prevalent in Indian politics for elections at all levels, given that both campaign financing and campaign spending are conducted behind closed doors.

Penalties for Political Parties

To maintain discipline between political parties, it is vital to sustain intra-party discipline, and such discipline can only become a reality if penalties are imposed. To achieve the larger picture of having Parliament without criminals, imposing penalties on political parties that nominate candidates with criminal records is quintessential. This could include financial fines or deregistration for repeat offenders, thereby incentivising parties to vet their candidates more rigorously.

Time-Bound Justice Delivery System

Another problem that Indian politics faces is that even though we disqualify a candidate if the individual is convicted, such a step does not make a massive difference because the working of the judiciary in India is prolonged. The accused can destroy evidence against them and manipulate the state machinery. Therefore, our goal should be fast-tracking trials and expediting the judicial process to weed out corrupt and criminal elements in politics. The goal should be to establish special courts that render decisions in six months. It would be the decision of these Special Courts to decide whether the charges are justified or not and whether they should result in disqualification. These Special Courts will be at the same level as High Courts, and appeal to their decision would only lie with the Supreme Court. This would ensure there is no delay on the part of the judiciary and cases are resolved within one year. Two problems would be solved through this: *first*, filtration in Legislative bodies would be more robust, ensuring that no criminal enters the politics, and *second*, an innocent person would

¹¹³ SUBHASH CHANDRA AGARWAL, *supra* note 63.

¹¹⁴ William Stevens, *India Politics: The Sun Sets on Old Ways*, NEW YORK TIMES (Aug. 26, 2024), <https://www.nytimes.com/1984/11/26/world/india-politics-the-sun-sets-on-old-ways.html>.

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not be suffocated in a case where malicious or frivolous charges are framed against them and can easily contest elections.

B. SPECIFIC RECOMMENDATIONS

Insertion of Section 8B of RPA

In *Brajesh Singh v. Sunil Arora*, it was observed that the requirement of “conviction” under Section 8 of the RPA has produced the undesirable outcome of undertrials abusing the system and running for office only because their cases have not been resolved.¹¹⁵ The underlying reason for including Section 8B is not that the individual is a branded criminal in the eyes of society but that such an individual is not suitable for the role of lawmaker. Under criminal law, fundamental rights like the right to liberty and freedom can be constrained at the stage of framing of charges; thereby, taking away a statutory right, the right to contest an election in order to cleanse politics, is not a premature step.¹¹⁶

Voter Sensitization

Voter sensitization is one of the most important actions that could be taken. In developed nations such as the United States, the United Kingdom, and Germany, voters perceive the importance of their vote and find it unacceptable when a candidate is a criminal. In contrast, in India, voters do not perceive a candidate's criminality to have an immediate impact on their voting behaviour. Therefore, it is necessary to educate the voters about their power to vote and make them understand that the criminality of the candidate might not have a tangible effect, but it has intangible effects such as erosion of public trust and normalising criminality in politics in the long run. If voters become aware and stop supporting candidates against whom charges are framed, the political parties will be compelled to stop nominating such candidates.

¹¹⁵ *Brajesh Singh v. Sunil Arora*, (2021) 10 SCC 241.

¹¹⁶ *Anukul Pradhan Chandan v. Union of India*, (1997) 6 SCC 1.

Cumulative Crime Analysis

Another important step to consider when determining whether a candidate should be disqualified is the number and nature of charges framed against them. The severity and frequency of these charges should play a crucial role in the decision-making process. For instance, in the present Lok Sabha, there are numerous candidates who have more than 20 charges framed against them, many of which involve serious crimes. Such candidates should not be allowed to hold public office as it raises moral and integral questions.

One possible solution to this problem is to introduce a disqualification based on the crime's cumulative nature. For example, a candidate should be instantly disqualified from contesting an election or holding public office if substantial charges of a serious nature are framed against them. By ensuring that those with lengthy criminal histories are kept out of positions of authority, this strategy would protect the integrity of the legislative process and rebuild public confidence in the democratic system.

CONCLUSION

The integrity of an individual's actions as an MP or MLA is crucial for democracy. Although the accused cannot be considered a criminal in a pending trial, it does not mean that the individual has the same rights as a person against whom no charges have been framed. Specific restrictions can be imposed to cleanse politics and have lawmakers with the highest sense of morality. However, these restrictions must be balanced with the right of the individual and the rational nexus of the object to be achieved. However, many countries regard disqualification at the stage of framing of charges as a premature step. These countries do not have the same level of political landscape criminalisation as India or the same level of lingering cases that cause lengthy trials.

Disqualification from elections upon the filing of criminal charges should not be viewed as a form of punishment, as the Supreme Court's observation above makes it clear that disqualification is merely an outcome of the criminal charges, similar to an arrest, and is meant to prevent individuals from contesting elections who are unfit to hold public office.

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Therefore, every legislation relating to disqualification must be interpreted from society's viewpoint and considered separately and independently from an individual's rights.

The solution to the problem of criminalisation of politics in India is multi-dimensional. It has four stakeholders: the government, the citizens, the judiciary and the political parties. To effectively combat the perpetual criminalisation of politics, all these stakeholders need to act in harmony with each other. For instance, the government should pass legislation that prevents criminals from entering politics. The citizens should ensure that they vote for candidates who are committed to implementing the law democratically. The judiciary needs to expedite the resolution of cases and ensure that the rights of the candidates are not harmed. Lastly, the political parties need to ensure that the candidates they nominate are free from any criminal charges. If these stakeholders do not work together, it will result in a weak democracy, and the largest threat to India's democratic consolidation is a weak democracy. Only radical electoral reforms can prevent political decay in our magnificent country. The future of India rests on the integrity and sanctity of the electoral process, which must be preserved at all costs.