

# AN ALL-PERVASIVE CRIMINALITY

## The Big Reveal About Criminal Cases Against Sitting MPs/MLAs

Shelly Mahajan and Loveleena Sharma\*

We are in the midst of the world's largest democratic exercise. As India goes to polls, we are also aware that electoral candidates with criminal background are a reality. Political parties choose them on the basis of a vague concept of winnability, determined purely by the money and muscle power he or she wields. The aim of this article is to analyse how a candidate's criminality is not seen in the Indian electoral scheme as a disadvantage. Rather, political parties are so squeezed for resources that they fall over backwards to field tainted candidates, who can self-finance their campaigns as well as contribute to the party for the privilege of running. We will try to discuss in detail as to how pervasive criminality in politics has become.

According to Association for Democratic Reforms' analysis, as on date, among the 4865 sitting MPs/MLAs, 1642 (33.7%) have declared criminal cases. Among these, 1043 (21.4%) have declared serious criminal cases. Out of 542 winners of the analysed Lok Sabha Election 2014, 112 (21 per cent) have declared heinous crimes like cases of murder, attempt to murder, communal disharmony, crimes against women, kidnapping etc.

The prevalence of criminalisation is not just horizontal i.e. existing in all the states of India, but also vertical, from the Parliament to local bodies. In the Maharashtra local body elections 2017, 268 (22%) winners had declared criminal cases. Similarly, in Bihar Municipal Corporation Elections

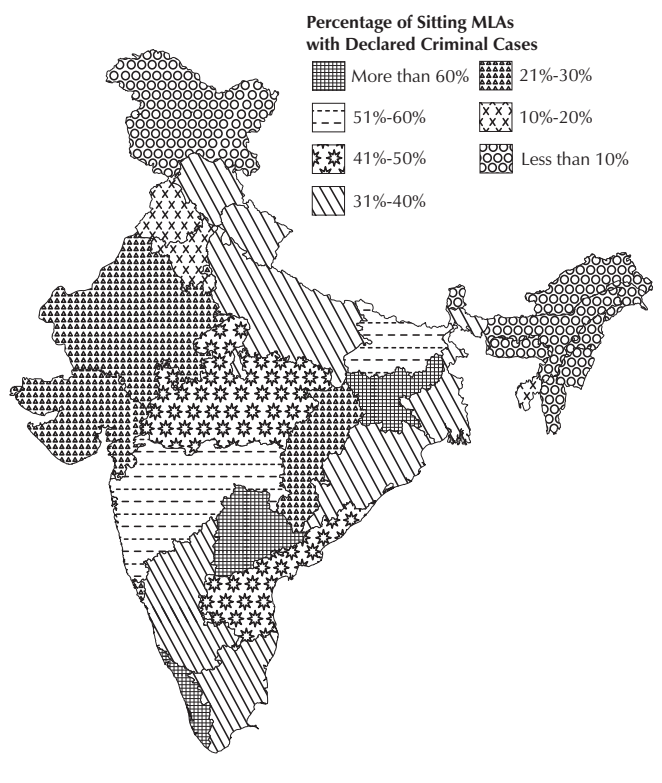
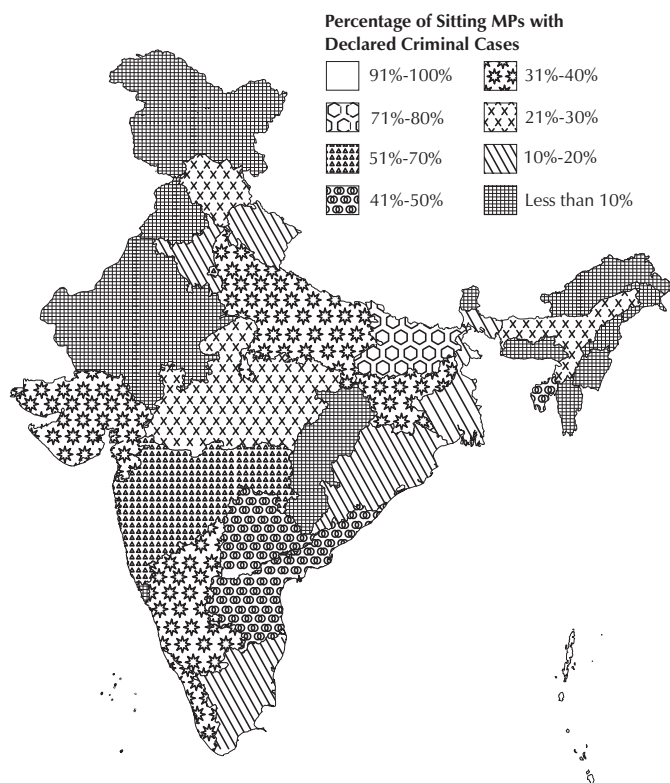


Figure 1: Percentage of Sitting MPs with Declared Criminal Cases

Figure 2: Percentage of Sitting MLAs with Declared Criminal Cases

\* Shelly Mahajan is a Program Associate (Political Party Watch) and Loveleena Sharma is a Senior Program Associate at Association for Democratic Reforms

2017, in Patna region, 29% of the winners had declared criminal cases in their affidavits.

## The Genesis – Money and Muscle Power in Politics

These appalling facts are the grim reality of Indian politics. Hence, it is valid to ask ourselves – how have we reached such lows in our political system?

To answer this question, Kochanek<sup>1</sup> has directed the discourse towards the inter-linkage of waxing popular appeal of nationalist leaders in politics and waning of the election cost.

He said: “In the early years following independence, elections in South Asia were largely influenced by the popular appeal of nationalist leaders and not by coercion or money or the manipulation of election results. Over time, however, the growth of factionalism, confrontational politics, and increased electoral competition has led to the increased use of violence, money and muscle at the polls. The growing criminalization of politics and the growth of electoral violence in

“**According to an ADR analysis, there has been an increase of 44% in the number of MPs with declared criminal cases from 2004 to 2014 Lok Sabha Elections.**”

South Asian politics have been reinforced by the decline of ideology and ideologically-based political parties, the growth of anti-government revolutionary movements, the desire to gain control of the patronage resources of the state, and the increasing polarization of party politics”.<sup>2</sup>

India faced the same fate with the declining appeal of freedom fighters turned politicians. It saw a transition from one-party dominance to the inception of multiple parties directed towards different sections of society with various ideologies. Kochanek believes that the criminalisation of politics began somewhere in early 1960s with Congress based nationalist leaders passing on their legacy to the post- independent leaders. He added: “By the mid 1980s, the very criminals and thugs who were hired by politicians to engage in booth capturing decided to secure public office for themselves. Election to the state assembly and the national parliament became a way for criminals to secure political protection for their illicit activities and guarantee safety from prosecution. Like the political bosses that came to dominate urban politics in the early part of the twentieth century in the United States, India began to develop its own mafia-style gangs and political bosses in places like the slums of Mumbai and the coalfields of Bihar.”<sup>3</sup>

However, Milan Vaishnav, in his discussion with the business

analytics journal, Knowledge@Wharton,<sup>4</sup> presents a different timeline for the criminalisation of politics in India. He believes that criminal entities were always a part of Indian politics. Earlier, these local goons were working for the politicians to increase or suppress turnout and engage in booth capturing. With time, they realised the benefits of being involved in politics. Thus, from the periphery, these criminals moved to the core of Indian politics.

The number of politicians with criminal background has only been increasing over the years. According to an ADR analysis, there has been an increase of 44% in the number of MPs with declared criminal cases from 2004 to 2014 Lok Sabha Elections.<sup>5</sup> Clearly, a considerable number of our elected representatives are steeped in and emerging from the world of crime. The question that stares us in the face now is why parties continue to field such candidates and voters continue to reward these candidates by electing them to political office. According to ADR’s analysis of winners of Lok Sabha Election 2014, the chances of winning for a candidate with criminal cases are 12.8% whereas for a candidate with clean background, it is 5.23%. In case of state assembly elections, a candidate with declared criminal cases has 18.6% chance of winning whereas a clean candidate has only 7.4% chance to come up trumps

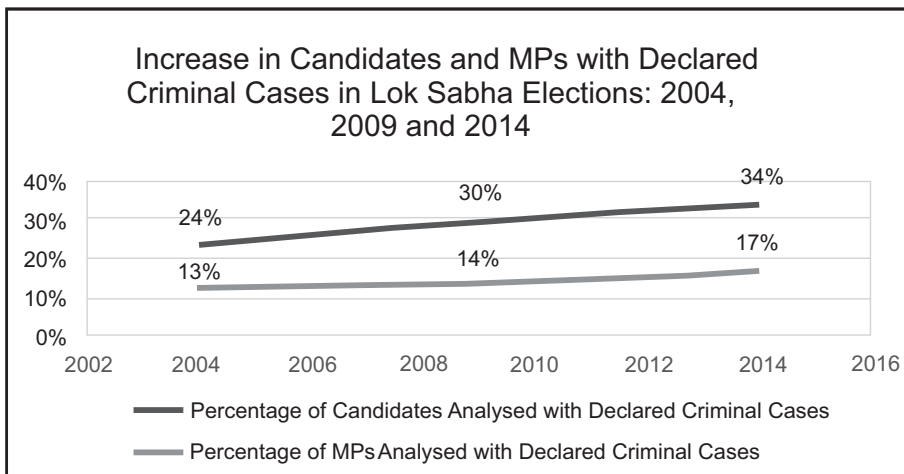


Figure 3: Comparison of Candidates and MPs with Declared Criminal Cases: 2004, 2009, 2014

in the election.<sup>6</sup> In the recent State Assembly elections in Chhattisgarh,<sup>7</sup> Madhya Pradesh<sup>8</sup> and Telangana,<sup>9</sup> more than 40% of MLAs with declared criminal cases won with 50% or above vote share in their constituencies.

### Why Do Political Parties Field Criminal Candidates and Voters Elect Them?

In the book *When Crime Pays: Money and Muscle in Indian Politics*, Vaishnav argues that politicians with criminal reputations gain traction with political parties because of financial prowess. Candidates with criminal background are disproportionately wealthy, having both means and incentives to fight elections. The crucial role played by money power in electoral politics is largely attributed to the increasing costs of contesting elections and their highly competitive nature. Given the proliferation of political

parties and the expanding size of electorate, electoral politics has become a costly affair. The expenditure incurred by national parties during general elections over the last 10 years increased by 386 per cent.<sup>10</sup> Thus, money becomes a great “determining factor” in deciding who contests the elections. Parties have become so desperate for resources that they compete with one another to field tainted candidates, who can self-finance their campaigns as well as contribute to the party for the privilege of running. Additionally, the absence of intra-party democracy has also resulted in distribution of tickets to candidates with criminal background on the basis of a vague concept of winnability, determined purely by money and muscle power a candidate wields.

Speaking of the reasons behind acceptability of criminal candidates among voters, it is observed that voters view these strongmen as someone who can

“**Contrary to popular notion, voters are not only informed of politicians’ criminal backgrounds but willingly vote for such candidates.**”

“get things done.” Raghuram Rajan during a speech given in 2014 said that a street smart politician who is better at making the wheels of the bureaucracy creak, however slowly, is in favour of his constituents.<sup>11</sup> This is especially true in places where there are sharp social divisions driven by caste and/or religion and institutional gaps in delivery of basic welfare services.

Many also argue that in several instances voters are not able to identify criminal or corrupt candidates during election campaigns. In other words, lack of awareness among voters is the alleged reason behind tainted politicians coming to power. However, ADR’s ‘Pan-India survey conducted in 525 Lok Sabha constituencies on Governance issues (December 2013-February 2014)’ proves otherwise. Contrary to popular notion, voters are not only informed of politicians’ criminal backgrounds but willingly vote for such candidates. Around 55.35 per cent people in India said that they will ignore the criminal record of their candidates because they feel such candidates have done “good work.” The example of Jagan Reddy of YSR Congress,

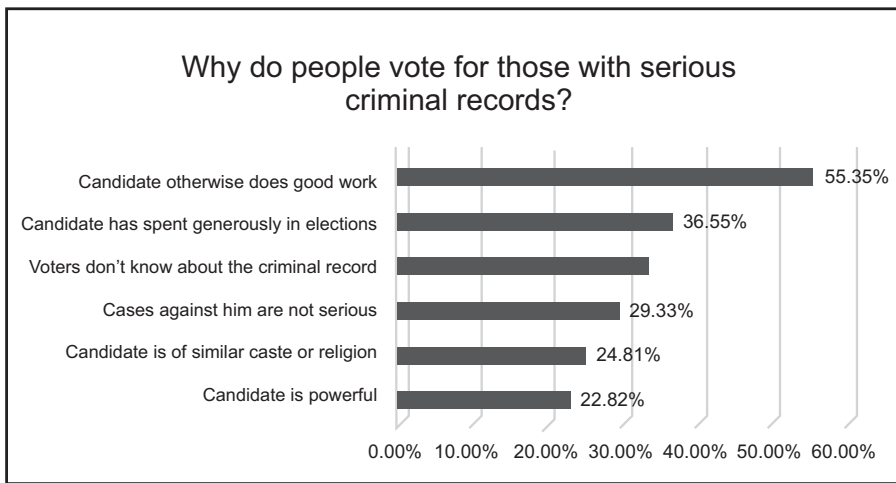


Figure 4: Why do people vote for those with serious criminal records?

seen as a benefactor of the poor, is a case in point. It was found that 36.55 per cent people vote for a criminal candidate because the candidate has spent generously in an election campaign whereas around 25 per cent people vote for candidates facing criminal charges because they were of their own caste/religion. In a survey conducted by Lokniti, it was also revealed that voters prefer an approachable politician to an honest politician.

A candidate's criminal reputation is simply perceived as an asset and many citizens are making a "self-interested calculation" by lending support to such candidates.<sup>12</sup> A candidate's criminality is seen of dual advantage – it can fill the perceived governance deficit by pledging to deliver benefits to a defined group of supporters and weaken the opposition from rival groups.

The above can be substantiated in form of a 'cycle of

dependence,' reflecting how the cooperation between politicians and goondas is an outcome of unapproachability of the state institutions to its poor citizens. The poor and underprivileged need politicians to help them get jobs and public services while the politician needs their votes. The cycle continues with parties fielding goondas with money and muscle power who can 'get things done.' Subsequently, these goondas supply patronage to the poor, fight elections and manipulate voting. As a result, criminal candidates establish credibility and are viewed as a Robin Hood figure who can do good by being bad (using their criminal reputation).

Apart from this, the party and caste of candidates are other significant factors influencing the choices of voters. Candidates get votes despite their criminal antecedents, while individual ethics/integrity takes a backseat. This is primarily true in the Indian context, given the prevalence of sectarian

differences and paralysis in public delivery system.

The share of elected officials in India with pending criminal cases has been increasing, not decreasing, over time. To start with, 24% of MPs elected in 2004 faced criminal cases (12% faced charges of a serious nature). This figure grew to 30% (15% serious) in 2009 and climbed to 34% (21% serious) in 2014.<sup>13</sup> This happened despite the Supreme Court's disclosure mandate, which states that candidates must reveal their criminal antecedents. Although general awareness about private lives of politicians has grown, it is apparent that awareness campaigns are not the answer. As long as citizens continue to cast their votes along the lines of caste/party and remain bereft of basic services, bad candidates will continue to enjoy dominance in electoral politics. Thus, any future discussion on criminalisation of politics must not be restricted to the issue of voter awareness, campaign finance, or absence of inner-party democracy alone but also examine the continued role played by caste/party in influencing voters' choices and the vacuum in governance.

## Impact of Criminalisation of Politics

### Selection of criminal candidates by parties

Analysis of winners of Lok Sabha 2014 Elections show that

97 (35%) out of 281 winners analysed from BJP, 8 (18%) out of 44 winners from Indian National Congress (INC), 6 (16%) out of 37 winners from AIADMK, 15 (83%) out of 18 winners from Shiv Sena and 7 (21%) out of 34 winners fielded by All India Trinamool Congress (AITC) have declared criminal cases in their affidavits.<sup>14</sup> Out of 542 MPs analysed, as on date, there are 447 (82%) crorepati MPs while there are 2958 (72%) crorepati MLAs out of a total of 4095 MLAs analysed.<sup>15</sup> As discussed earlier, money and muscle power play a crucial role in determining the type of candidates who will get a party ticket to contest elections. Political parties choose candidates who are 'winnable', and what is invariably seen as making a candidate 'winnable' is how much money the candidate can raise and spend, contribute to the party and how much muscle power he or she commands. As a result, parties field candidates who have little to do with the constituencies they contest from or representing the interest of voters and end up hurting the chances of more deserving candidates.

This militates against the idea of a fair or level playing field, paves way for muscular politics and undermines the importance of internal democracy in functioning of political parties and ticket distribution. Given the absence of any systematic data on candidate selection by parties, they continue to focus on individuals with greater electability, resulting in a scenario

where disconnect between voters and their representatives continue to perpetuate and there remains little incentive for the honest and talented to enter politics.<sup>16</sup>

### **Integrity of electoral process diminishes**

In its judgment on criminalisation of politics delivered in September 2018, the five-judge bench noted the submission of Attorney General K K Venugopal that the court should not cross the "lakshman rekha" vis-à-vis the separation of powers.<sup>17</sup> The court said that according to the constitutional framework, it would be inappropriate for it to take recourse to any other method. The court also made it clear that since it cannot legislate but can only recommend bringing in a law regarding disqualification of candidates, "the law has to be made by Parliament." Thus, the inability of the judiciary and unwillingness of the legislature to debar criminals from contesting elections compromise the overall integrity of the electoral process. Simultaneously, they lower the quality of people being elected to various offices, which is at the root of our governance challenges.

Mr G Devasahayam of Centre for Electoral Integrity argues that there is only a physical sense of elections being conducted efficiently which doesn't directly result in integrity in the electoral process. Over the years, fast growing states such

**“The party and the caste of candidates are other significant factors that influence the choices of voters as they vote for such candidates despite their criminal antecedents.”**

as Tamil Nadu, Maharashtra, Andhra Pradesh have seen criminal candidates turning businessmen with interests in contracting infrastructure, real estate, agriculture etc and having access to tenders/contracts, bids. This has resulted in 'white collared form of corruption'.<sup>18</sup> Consequently, muscle power gives way to money power, undermining transparency and fairness in electoral politics, and may also facilitate emergence of crony capitalism.

### **Quality of democracy and law-making suffers**

According to the Supreme Court of India, 'The unsettling Increasing trend of criminalisation of politics, to which our country has been a witness, tends to disrupt the constitutional ethos and strikes at the very root of our democratic form of government by making citizenry suffer at the hands of those who are nothing but a liability to the country.'<sup>19</sup> The growing acceptability of criminal politicians among the electorate is a dangerous phenomenon that undermines the quality of our democracy, as crime

and money rather than merit/ performance drive electoral choices. As a result, several law breakers enter the legislature and become lawmakers. Once such candidates come to power, the quality of governance suffers along with transparency and accountability because criminal candidates with strong financial background get a chance to recoup their investments from public funds, adversely affecting the delivery of good governance.<sup>20</sup> A legislature comprising representatives with criminal cases loses its credibility as well as the efficiency to enact crucial laws. Such politicians do nothing to address the existing lacuna (disqualification based on conviction only) in the legal provision. This gap allows candidates facing court trials for serious offences such as murder, crimes against women etc to fight elections by simply declaring their charges in an affidavit.

## Conclusion and Recommendations

On preventing politicians facing criminal charges from contesting elections, the Supreme Court of India in *Public Interest Foundation & Ors. v. Union of India & Anr.* emphasised the urgency to address concerns on criminalisation of politics. It also provided recommendations to stem this phenomenon. Among other things, it suggested that political parties be held responsible for putting up details of criminal cases filed against their candidates on their website.

It also proposed that while filing the nomination forms, the criminal past and cases pending against the candidate must be declared in bold letters, and political parties should publicise the background of their candidates on electronic media and issue declarations. However, the publication of criminal case details of the contesting candidates in public domain will not serve any purpose. Even in 2003, the SC gave a similar judgment for the declaration of criminal and financial details of the candidates in an affidavit.<sup>21</sup> Though these are landmark judgments in the domain of electoral reform, there is still much ground to be covered. What with NOTA being toothless, voters still have to choose the lesser evil anyway. Additionally, the SC in March 2014 directed all subordinate courts to dispose cases involving legislators within one year; in case of failure to do so, reasons must be provided to the Chief Justice of the High Court. However, progress on this issue is yet to be assessed.

The upcoming General Election 2019 holds immense opportunity to tackle this menace. Here, political parties must take lead by fielding only clean candidates and change the discourse among voters about the winnability of such candidates. For this, it is imperative that civil society groups, activists, and the intellectual class continue to put pressure as well as demand action on the long pending

recommendations related to the problem of increasing criminalisation. At the same time, the Election Commission must take adequate measures to break the nexus between criminals and politicians wherein it should ensure that background details submitted by the candidates are made available in the public domain in a timely manner. If this malaise is allowed to fester, the sacrifices made will be democracy and governance, along with transparency and accountability. Hence, immediate action must be taken and the buck passing should be brought to rest.

## (Endnotes)

1. A. Kochanek, Stanley (2013). 'Corruption and the Criminalization of Politics in South Asia, edited P. Brass, 364-381 Routledge handbook of South Asian politics. London: Routledge
2. *ibid* p. 374
3. *ibid* p.374
4. Pandya, Mukul (2017, July 8) Does Democracy Encourage Criminal Politicians. Knowledge@Wharton. Retrieved February 5, 2019, from <https://whr.tn/2YR0YCe>
5. Data compiled by Association for Democratic Reforms (ADR)
6. Data compiled by Association for Democratic Reforms (ADR)
7. Association for Democratic Reforms (2019, 30 January). Analysis of Vote Share, Margin of Victory and Representativeness of Winners, Chhattisgarh Assembly Election, 2018. Retrieved 31 January, 2019, from <https://bit.ly/2OOQmPV>
8. Association for Democratic Reforms (2019, January 21) Analysis of

- Vote Share, Margin of Victory and Representativeness of Winners, Madhya Pradesh Assembly Elections, 2018. Retrieved February 4, 2019, from <https://bit.ly/2TVI6i1>
9. Association for Democratic Reforms (2019, January 31) Analysis of Vote Share, Margin of Victory and Representativeness of Winners, Telangana Assembly Elections, 2018. Retrieved February 4, 2019, from <https://bit.ly/2D2MsOK>
  10. Association for Democratic (2015, March 2) Reforms Analysis of Funds Collected and Expenditure Incurred by National Political Parties – Lok Sabha 2004, 2009 & 2014. Retrieved February 7, 2019, from <https://bit.ly/2G2mpJf>
  11. Quartz Staff (2014, August 14) Raghuram Rajan explains why corrupt politicians win elections in India. *Quartz India*. Retrieved February 6, 2019, from <https://bit.ly/2UC2M2N>
  12. Vaishnav, Milan (2017). *When Crime Pays: Money and Muscle in Indian Politics*, HarperCollins, 160-161
  13. Data compiled by Association for Democratic Reforms (ADR)
  14. Association for Democratic Reforms (2014, May 18) Analysis of Criminal and Financial background details of Lok Sabha 2014 Winners. Retrieved February 13, 2014, from <https://bit.ly/2N0ss1k>
  15. Data compiled by Association for Democratic Reforms (ADR)
  16. Sircar, Nilanjan (2018, March 26) How Political Parties choose their candidates to win Elections. *Hindustan Times*. Retrieved February 15, 2019, from <https://bit.ly/2TZhNHt> -
  17. *Public Interest Foundation & Ors. v. Union of India & Anr.* WP(C) No. 536 of 2011
  18. Masih, Archana (2017, February 23) Why Indians vote for dons and criminals. *Rediff.com*. Retrieved February 20, from <https://bit.ly/2UC3rRP>
  19. *Id.* at 17
  20. Sastry, Trilochan (2014, July) 'Civil Society, Indian Elections and Democracy Today', Working Paper No. 465, IIM Bangalore, <https://bit.ly/2I0VZK3>
  21. *People's Union for Civil Liberties (PUCL) & Anr. v. Union of India & anr.* W.P(C) NO.490 OF 2002