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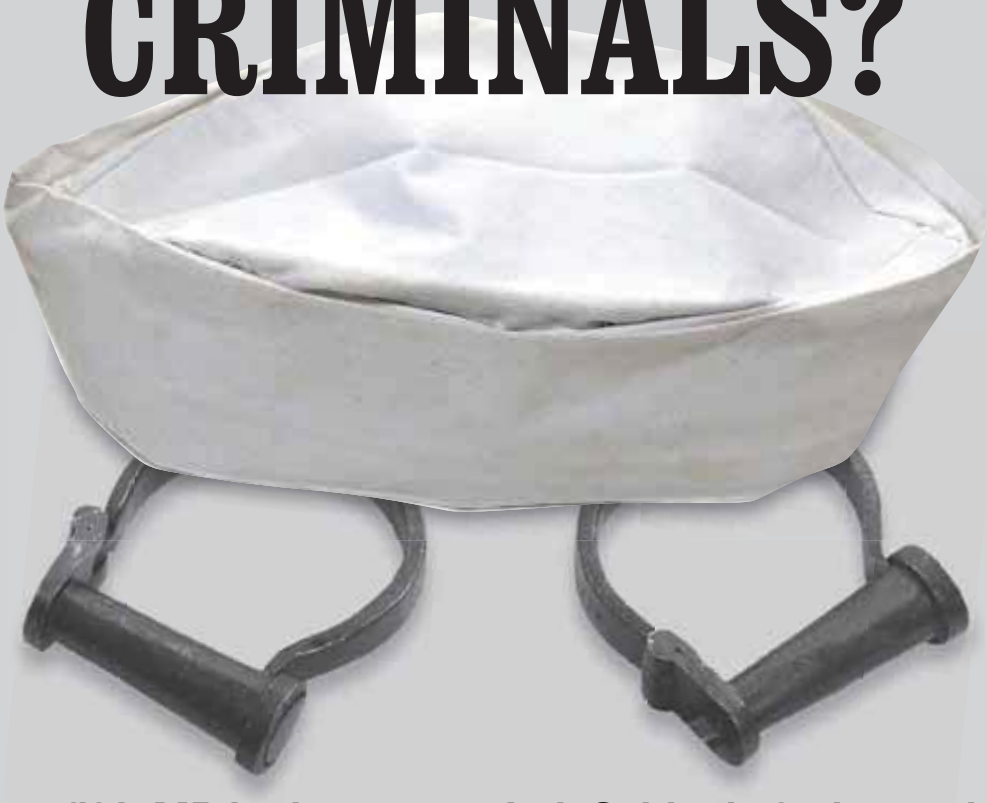
WHY DO WE ELECT CRIMINALS?



Every fifth MP in the current Lok Sabha is facing serious criminal charges, including murder, extortion and kidnapping.

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WHY VOTE FOR VIOLENCE?

A Decisive Action May Come Through the Legal Route

Do criminals abuse politics or is it politics which thrives on criminals? Is there a symbiotic relationship between the two? Can we free elections from excessive use of money or muscle power? Can India afford to have one in five MPs facing serious criminal charges? Why can't we ban all criminals from fighting elections?

The future of Indian democracy hinges on some of these questions. And for answers, we turn to our leaders, political parties, elected representatives or experts. As citizens it is our right to ask questions or demand action from our politicians and parliamentarians. However, we, as voters, never ask ourselves the simplest of all questions: Why do we elect criminals?

The answer, obviously, is more complicated than we think. In real life, candidates with serious criminal charges are not just allowed to contest but they are twice as likely to win, when compared to cleaner candidates. Also, we elect thugs and criminals consciously and with full knowledge about them. We do so even when better choices are available. We also know that if the voters stop electing criminals, the parties would stop fielding them.

So, if the bulk of voters have only themselves to blame, should the rest of us close our eyes and do nothing? Or should we give in to cynical retorts like, "Nothing can be done in this country and so on…" or even worse, "Only a benevolent dictator can clean the system etc." However, such remedies turn out to be worse than the diseases they hope to cure because cynicism kills all hope and dictatorship is a recipe for disaster. The need, therefore, is to first diagnose the problem objectively before finding systemic and long term solutions rather than quick fixes.

First of all, we as citizens, must applaud our achievements in holding relatively free and fair elections for decades in a country as large, as diverse and fragmented as India. It is not a small thing that our elections are largely peaceful and the transfer of power is always smooth. We have left behind the days of booth capturing and stuffing of ballot boxes. It was common in the sixties and seventies for the people of the vulnerable communities to be driven away from polling booths or to be told that their votes had been cast. Today, a wholesale hijack is almost impossible and the people of the weaker sections tend to turn up in larger numbers in successive elections. It is in this overall context that we need to see, and resolve, the relatively recent problem of criminalisation of politics.

One of the reasons for the rise of criminals is the advent of a narrow identity politics in the past few decades. People are rediscovering or consolidating their narrow identities because of a suspicion that the louder voices are the only ones getting heard and the smaller caste and community groups and the marginalised are being ignored. So, every community is learning to prop up its own version of a strong leader or an identity-based party. Such is the state of suspicion of the other — and the recoil into one's own identity — that the crimes of 'our own people' appear to be lesser offences than those of others and therefore, voting for them looks like a reasonable thing to do.

Tainted slumlords are also hot favourites because of their capacity to provide protection and entitlements to voters. For poor slum dwellers, often treated by the police as aliens and encroachers, voting for Mr Nice Guy may appear to be a waste of vote. In a study of Delhi slums, Sanjay Kumar (2016) of the Centre for the Study of Developing Societies shows how the urban poor negotiate political clout using a network of

patron-client ties through a broker who happens to be an influential person or a community leader. And for this reason, scholars like Kanchan Chandra, a well-known political scientist at the New York University have referred to Indian democracy as a "patronage democracy."

Another big reason for criminalisation is a disproportionate rise in the intensity of competitive politics in India. When we juxtapose such perceived discrimination to India's competitive politics, we begin to see the justification for inter-ethnic, inter-religious or inter-caste polarisation. Many parties, their fringe organisations and followers, work hard to first drive the wedge deeper and then to win over the fragmented groups. Factors like the agrarian crises, lack of jobs and economic stagnation further complicate matters. Even the upper caste Brahmins and Rajputs, and other dominant castes like the Jats, Patels etc, believe that the 'others' are being appeased at their expense. In his seminal book, *Votes and Violence*, Steven I Wilkinson (2004) cites several examples from around the world to show that there is a relationship between ethnic violence and political competition.

We are obviously not so concerned about 'crimes' registered during campaigns, agitations, dharnas or processions or while courting arrest against government policies etc. Serious crimes imply offences like armed dacoity, abduction, rape or murder, serious fraud etc. which attract a prison term of more than two years. The politicians argue that no one should be punished or presumed guilty unless convicted or else it would be a violation of the candidate's fundamental rights.

It has been suggested that a candidate should be barred from contesting elections if charges of a serious nature have been framed against him by a court of law. A distinction has to be made between bona fide political protests and rioting, arson or hate crimes. There can even be a court-appointed screening committee in every state to work under the supervision of the Election Commission to certify that the charges against the candidate are criminal or political in nature. However, as a leading democracy, we need to be worried about the spurt in hate crimes, communal riots or vigilante violence, which is vitiating India's body politic and creating a new cadre of lumpen politicians.

An antidote to the poison of identity and competitive politics is inclusive governance where the parties try to meet the aspirations of all sections of people without fear or favour. People can bear scarcity, even deprivation, but they revile favouritism, especially when shown to others. Rights-based citizenship and delivery of services can spur a healthy competition of its own. But for that our political parties need to stop feeding prejudices and blaming one section of people for the problems of the other. Just as there are electoral incentives in spreading politically motivated crimes there can be equal incentive in stopping them. However, a decisive action against criminalisation and hate mongering will most likely come through the legal route because the politicians would always put a candidate's winnability before his antecedents. We, as citizens, must keep the faith in democracy and its institutions and treat electoral reforms not as an event but as a continuous process.

Vipul Mudgal
Editor

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

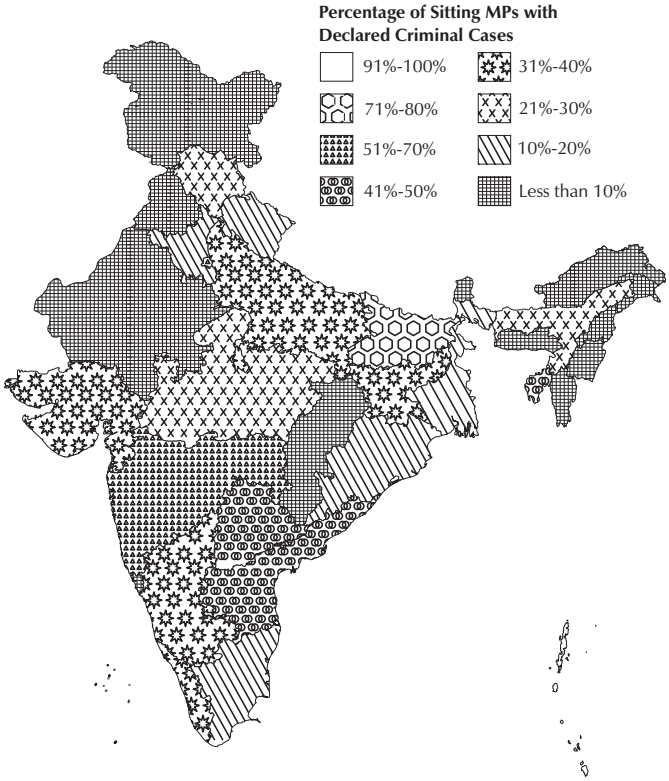

Figure 1: Percentage of Sitting MPs with Declared Criminal Cases

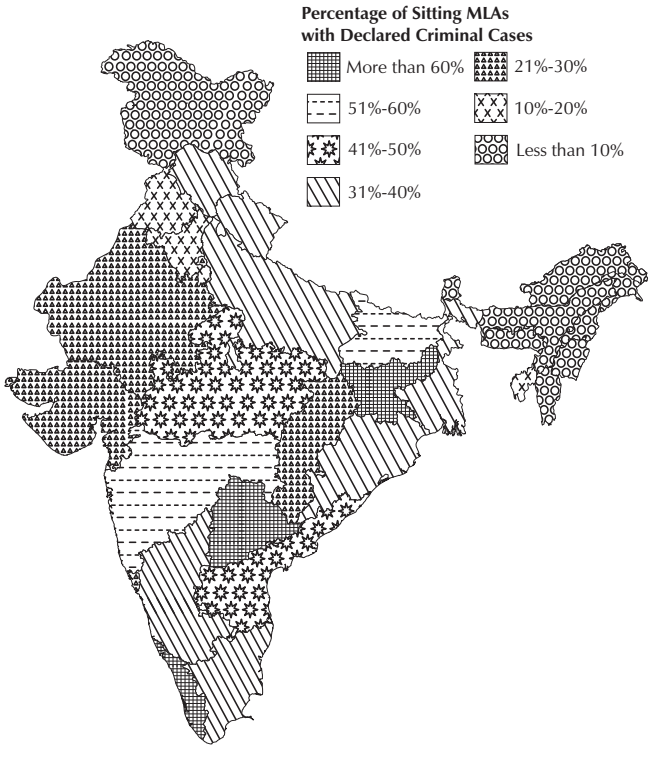

Figure 2: Percentage of Sitting MLAs with Declared Criminal Cases

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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[1] 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 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".[2]

> ***"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."***

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."[3]

However, Milan Vaishnav, in his discussion with the business analytics journal, Knowledge@ Wharton,[4] 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.[5] 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

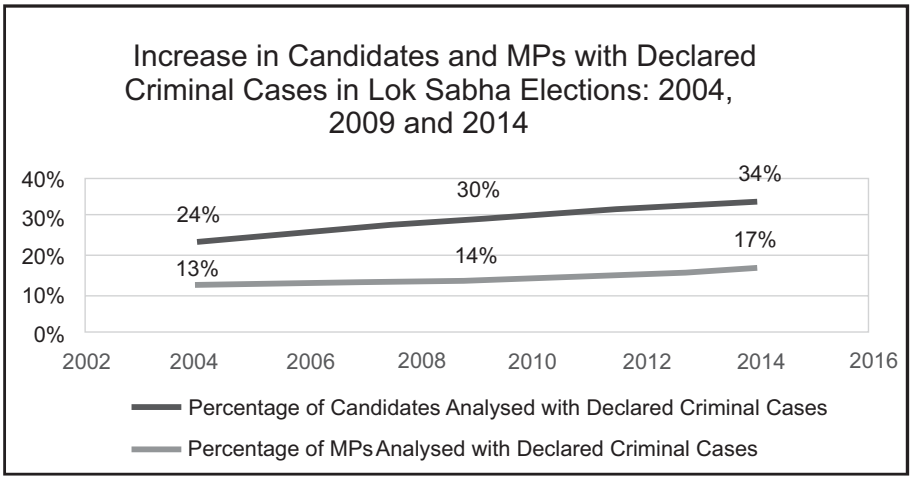

Figure 3: Comparison of Candidates and MPs with Declared Criminal Cases: 2004, 2009, 2014

in the election.[6] In the recent State Assembly elections in Chhattisgarh,[7] Madhya Pradesh[8] and Telangana,[9] 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.[10] 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.[11] 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,

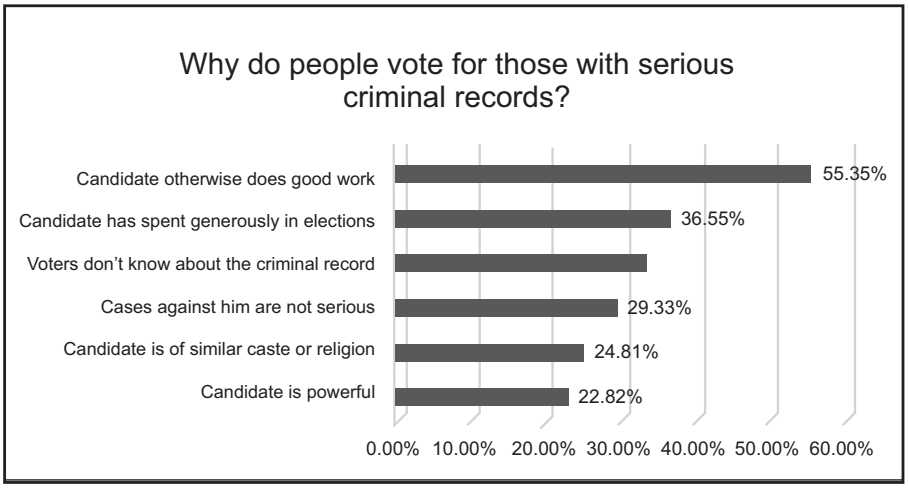

Figure 4: Why do people vote for those with serious criminal records?

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.[12] 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.[13] 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.[14] 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.[15]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.[16]

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.[17] 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 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'.[18] Consequently, muscle power gives way to money power, undermining transparency and fairness in electoral politics, and may also facilitate emergence of crony capitalism.

> ***"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."***

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.'[19] 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.[20] 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.[21] 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.

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IS CLEAN PARLIAMENT A PIPE DREAM?

Why is the Court Reluctant to Legislate?

Swapna Jha*

"When the Rashtriya Janata Dal announced its candidates for the first phase of the Lok Sabha polls in Bihar Friday, its allies were left scratching their heads about the choice of Vibha Kumari from Nawada. It later came to light that she is the wife of Raj Ballabh Yadav, an MLA who was convicted for raping a minor girl and is currently in jail,"[1] begins a recent article in ThePrint, lamenting how criminals and dons in Bihar have been able to preserve their political prominence by propping up their wives or kin.

It's apparent that the friendship between crime and politics in the world's largest democracy is alive and thriving. Indian lawmakers also seem to be comfortable with the idea of crime lubricating the electoral machinery. In response to the Common Cause petition seeking appropriate directions for combating the criminalisation of politics, the Supreme Court judgment of September 25, 2018 did go on to say that "criminalization of politics is the bane of society and negation of democracy and is subversive of free and fair elections which is a basic feature of the Constitution," but the Parliament is still not in a mood to enact a law to address this malaise.

That keeping criminals out of polls is essential to a vibrant democracy is an uncontested truth. It is also the reason why Common Cause along with

* *Swapna Jha is a Senior Legal Consultant with Common Cause*

other petitioners approached the Supreme Court in 2011 for respite. It sought to espouse the fundamental right of millions of voters to have free and fair elections, thus ensuring a clean democratic polity.

When the judgment was delivered seven years later in 2018, there seemed to be hardly any effective relief granted. The wait for a clean legislature seemed to stretch for eternity, despite the Chief Justice of India Dipak Misra taking cognisance of the unsettling state of affairs. He said: "The constitutional functionaries, who have taken the pledge to uphold the constitutional principles, are charged with the responsibility to ensure that the existing political framework does not get tainted with the evil of corruption. However, despite this heavy mandate prescribed by our Constitution, our Indian democracy, which is the world's largest democracy, has seen a steady increase in the level of criminalization that has been creeping into the Indian polity. This unsettlingly increasing trend of criminalization 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 our citizenry suffer at the hands of those who are nothing but a liability to our country."

The CJI's views, as well as the unanimous ruling delivered by the Constitution Bench, came in the wake of a petition jointly filed by Public Interest Foundation, Common Cause, Transparency International and Gandhian Seva & Satyagraha Brigade in the Supreme Court under article 32 of the Constitution. It sought appropriate directions to arrest the rampant criminalisation of politics.

The main prayer in the petition was to disqualify persons charged with serious offences from contesting elections to Parliament and the state legislatures. At the insistence of Common Cause, a prayer for fast-tracking of pending criminal cases against sitting members of Parliament and state legislatures was also incorporated in the petition.

The prayers finally made in the PIL were as follows.

A. Lay down appropriate guidelines/ framework to ensure that those charged with serious criminal offences are unable to enter the political arena by contesting elections.

> ***"The friendship between crime and politics in the world's largest democracy is alive and thriving."***

B. Lay down a time frame of six months during which trial of such persons are concluded in a time bound manner.

C. Direct the Central Government to implement the directions passed by this Hon'ble Court in *Dinesh Trivedi, M.P. & Ors. v. UOI & Ors*. (1997) 4 SCC 306 in letter and spirit.

D. Direct the Government to consider the feasibility of enacting legislation to deal with the menace of criminalisation of politics and debar those charged with serious offences from contesting elections of any sort.

E. Declare the provisions of Sec. 8(4) of the Representation of People Act as ultra vires Art. 14 of the Constitution of India.

Ground Reality

Despite a clarion call for corrective action, the executive has done little more than twiddle its thumbs. In fact, it has failed to exercise its constitutional

> ***In today's times of coalition politics, where every vote in the legislature counts, criminal elements pervade every political party.***

obligation to frame appropriate legislation securing the exercise of fundamental rights as guaranteed under Part III of the Constitution. In today's times of coalition politics, where every vote in the legislature counts, criminal elements pervade every political party and exert enough influence to nullify integrity measures. Inevitably there's lack of political will to tackle this insidious threat.

This is amply reflected in the 18th Report of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, and Law and justice on 'Electoral Reforms (Disqualification of persons from contesting Elections on framing of charges against them for certain offences).' It says, "... all the political parties feel that merely framing of charges by a competent court should not be the basis of denying a candidate the right to contest election."

Not surprisingly, the Standing Committee rejected the Election Commission's proposal of an amendment to the Representation of People Act, 1951 (RPA), under which candidates would stand disqualified from contesting elections when charges are framed against them. The rejection was cemented on the ground that during charge framing, the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient for convicting the accused. It was also argued that prosecution in select cases is bound to be influenced by the party in power or by failure of system. There is a general sense of indignation among political parties that chances of candidates being framed with false and malafide charges by their political opponents are very real.

The Standing Committee's reasoning holds very little water, while its rejection of the amendment proposal on the grounds of misuse smacks of extreme indolence towards concrete action.

Journey of the PIL

While notice to the respondents, viz. the Union of India (UOI) and the Election Commission of India (ECI) had been issued on January 5, 2012, they failed to file their replies despite repeated reminders. The ECI eventually responded in February 2013, broadly supporting the prayers made in our PIL. The Commission reinforced its longstanding position on debarring persons charged with serious criminal offences from contesting elections to Parliament and state legislatures and endorsed our prayer for declaring Section 8(4) of the RPA as *ultra vires* the Constitution. Section 8(4) allowed convicted legislators to avoid disqualification merely by filing an appeal or revision petition.

On July 7, 2013, the Supreme Court delivered its judgment in the two writ petitions *Lily Thomas v. Union of India & Ors*. WP (C) 490/2005 and *Lok Prahari v. Union of India & Ors*. WP (C) 231/2005 . It declared Section 8 (4) as unconstitutional, which set different criteria for disqualification of an electoral candidate and an elected representative. The Court held that it was beyond the law making powers conferred by the Constitution on Parliament to make separate sets of rules for disqualification for persons. This took care of the last of the reliefs sought in our PIL.

On August 19, 2013, the Court passed the following order:

"2. Insofar as prayer (e) is concerned, we are informed that by a decision of this Court dated July 7, 2013 in Writ Petition (C) No. 490 of 2005 *Lily Thomas v. Union of India* and others and Writ Petition (C) No. 231 of 2005 - *Lok Prahari through its General Secretary S.N.*

Shukla v. Union of India and others, the said provision has been declared ultra vires.

3. We are also informed that a review petition has been filed by the Union of India seeking review of the judgment dated July 7, 2013.

4. Be that as it may, prayers (a),(b),(c) and (d) remain to be considered by this Court.

5. In its counter-affidavit filed by the respondent No. 2 Election Commission of India (for short "Election Commission"), it is stated that as early as on 16.09.1997, it had expressed its serious concern and anxiety in the matter of growing criminalization of politics to the then Prime Minister of India. Election Commission says that it has recommended that the law may be simplified by amending Section 8 of the Representation of People Act, 1951 (for short "the Act") that whoever is convicted of any offence by a court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections for a period totaling the sentence imposed plus an additional six years. It is also the view of the Election Commission that where a person has been accused of serious criminal charges and the court is prima facie satisfied about his involvement in the crime and consequently, charges have been framed against such person, then in such cases, keeping them out of the electoral arena would constitute a reasonable restriction for serving the larger public interest. As a precaution against motivated cases, it is suggested that it may be provided that only those cases which were filed prior to six months before an election, may be considered for the purposes of disqualification as proposed. It is also the suggestion of the Election Commission that persons found guilty by a Commission of Enquiry should also stand disqualified from contesting election.

6. The views of the Election Commission have also been expressed before the Parliamentary Committee in its meeting held on 20.2.2007. The Parliamentary Committee in its 18th report is reported to have disagreed with the views of the Election Commission.

7. The counter-affidavit of Election Commission states that the matter is understood to have been under re-consideration by the Ministry of Law & Justice to consider

> ***"Tainted politicians have merely tightened their grip on the Indian democracy."***

disqualification of persons in cases where charges concerning heinous offences have been framed by the Court.

8. The views of the Election Commission are, thus, in accord with the recommendations made by the Law Commission of India relating to the above subject in its 170th Report wherein a recommendation has been made that Section 8B of the Act be enacted and the framing of charge (by court) in respect of election offences and certain other serious offences be made a ground of disqualification."

In an effort to buy time, the government informed the Court that the issue of electoral reforms had been referred in its entirety to the Law Commission. The issue was passed on `for consideration and examination with the aid of reports of various Committees in the past, the views of the ECI and other stakeholders, etc., and to suggest comprehensive measures for plausible changes in the law under reference'. During the hearing on November 25, 2013, the Court directed the

> ***Keeping criminals out of polls is essential to a vibrant democracy.***

government to file the reference made to the Law Commission, so that the judicial authority could shorten the area of debate.

Later, the apex court decided to cut down the time for concrete action. On December 16, 2013, it felt that the Law Commission may take a long time in filing a comprehensive report. Hence, it requested the Commission to expedite consideration, focussing on the following issues:

"(1) whether disqualification should be triggered upon conviction as it exists today or upon framing of charges by the court or upon the presentation of the report by the Investigating Officer under Section 173 of the Code of Criminal Procedure [Issue No. 3.1(ii)of the Consultation Paper] and (2) whether filing of false affidavits under Section 125A of the Representation of People Act, 1951 should be a ground of disqualification? and, if yes, what mode and mechanism needs to be provided for adjudication on the veracity of the affidavit? [Issue No. 3.5 of the Consultation Paper]."

The Supreme Court on March 10, 2014 passed an interim order to the effect that trials in criminal cases against lawmakers must be concluded within a year of the charges being framed. The Court had also directed that in the event of inability of a lower court in completing the trial within a year, it would have to submit an explanation to the Chief Justice of the High Court concerned and seek an extension of the trial. This interim order of the apex court virtually granted the relief sought in Prayer B of the PIL.

In the February 17, 2015 hearing, the petitioners pressed for the effective implementation of the Court's landmark order of March 10, 2014 for time-bound disposal of pending criminal cases against sitting legislators. The Court was informed that the lead petitioners had requested the Registrars of the Supreme Court and the High Courts in June 2014 to lay down appropriate procedures and regulations with an in-built monitoring mechanism. This would ensure compliance of the Court's order by all the subordinate courts under its jurisdiction. Regrettably, these letters did not elicit any response.

Expectedly, the roles of the Parliament and the judiciary were kept distinct as well. With regard to the prayer for debarring persons charged with serious offences from contesting elections, the Court seemed disinclined to assume the legislative role of Parliament and referred the matter to the Constitution Bench on March 8, 2016.

It was evident at that point that none of the stakeholders were in a tearing hurry to complete criminal case trials against lawmakers. Since Common Cause had no way of ensuring the communication/compliance of this order, an application under RTI was sent to the Supreme Court and six High Courts. The response received from the SC reflected how cavalier the judiciary was in implementing the SC directions.

However, Common Cause played a pivotal role in using the information thus extracted to file an IA to seek specific, time-bound directions from the Supreme Court, for the implementation of its March 2014 order.

The Judgment

The much-awaited verdict on the fast-festering rot among Indian legislators came on September 25, 2018, when the Constitution

Bench led by Chief Justice Misra declined to grant relief sought in our petition. It simply left it to the Parliament to enact appropriate laws. Though the CJI was concerned with the criminalisation of politics and articulated the need for proactive steps, the Court declined to interfere in the legislative domain.

It sought shelter behind the doctrine of separation of powers and refused to cross the *Lakshmanrekha*. The buck was passed back to the Parliament, asking it to legislate on this issue but failed to notice how Parliamentarians did not budge an inch in the past even when mountains needed to be moved. Parties across lines have stood as one when it came down to opposing any law seeking to debar perpetrators of serious crimes, when the cases are pending.

The unanimous judgment, said:

"In a multi-party democracy, where members are elected on party lines and are subject to party discipline, we recommend that the Parliament establish a strong law whereby it is mandatory for the political parties to revoke membership of persons charged with committing heinous and grievous offences and not to set up such persons in elections, both for the Parliament and the State assemblies."

The Bench did however provide a slew of directions to the EC:

- While filing their nominations candidates must state in bold letters details of criminal cases pending against him or her.
- The candidate is required to inform the party about his/her pending criminal cases.
- The party has an obligation to put up on its website information of criminal cases filed against their candidates.
- The candidate as well as the political party shall issue a declaration in the widely circulated newspapers in the locality about his/her criminal antecedents while also giving wide publicity in the electronic media.

> ***"The executive has failed to exercise its constitutional obligation to frame appropriate legislation securing the exercise of fundamental rights as guaranteed under Part III of the Constitution."***

The bench emphasised this by stating "When we say wide publicity, the same shall be done at least thrice during the campaign." It also underscored that the Parliament must legislate on this matter. The Court lamented the present situation in these words "The citizens in a democracy cannot be compelled to stand as silent, deaf and mute spectators to corruption by projecting themselves as helpless. The voters cannot be allowed to resign to their fate."

However, it declined to pass directions to the EC as requested in the petition as it felt that the judiciary lacked this power. Thus, though our petition has been disposed of, the situation remains the same till the executive and legislature decides to clean up their acts.

Conclusion

The right to vote is a fundamental right and flows from Art. 14 and 19(1)(a) read with Art. 326 of the Constitution of India. Any other interpretation would render the entire tenet of Parliamentary democracy illusory. Without the right to cast a ballot, democracy would be rudderless and ineffective. Criminalisation of politics, a layered and extremely problematic social reality, suggesting a nexus between politicians, bureaucrats, police and criminals, strikes at the very root of the right to vote freely and without fear or favour. Arguments have been made in favour of criminals using their money and muscle power to influence election outcomes once they turn electoral candidates. When this happens, the rights of voters are completely negated. Judicial notice may be taken of the numerous cases of booth capturing, bribery and use of money in elections, which merely go a long way to strengthen the entrenched positions of criminal politicians in our legislatures.

According to a report[2] by Association for Democratic Reforms (ADR), 1580 MPs and MLAs have criminal cases registered against them. The SC seems to have exonerated them with its judgment. Efforts in the direction of severing the deep linkages between crime and politics have been minimal. Rather, tainted politicians have merely tightened their grip on the Indian democracy. This is amply reflected in a National Election Watch (NEW) and Association for Democratic Reforms (ADR) analysis of declarations made by candidates in the 2014 general elections. The analysis indicates that at the conclusion of 2014 parliamentary election, out of the 542 winners analysed, 185(34%) winners have declared criminal cases. With the steady stream of politicians with dubious backgrounds laying a claim to the legislative space, the provision of political justice as envisaged in the Preamble of the Constitution seems like a mirage.

(Endnotes)

1. Mishra, Dipak (2019, March 24). 'Bihar's dons are propping up their wives, sons and brothers to keep their political clout.' *The Print*. Retrieved March 25, 2019 from https://bit.ly/2JB09Kq

2. ADR (2018, November 19) 1580 MPs, MLAs are facing criminal charges. *India Today*. Retrieved April 6, 2019, from https://adrindia.org/content/1580-mps-mlas-are-facing-criminal-charges

SPIR PRESENTATION

Anshi Beohar*

Common Cause was invited to discuss its Status of Policing in India Report (SPIR) and make a presentation on the key findings of the 280 page study, comprising extensive data and survey results. SPIR has been instrumental in providing a firm statistical foundation to advocacy for police reforms and generated time series data on the satisfaction levels of the citizens to monitor its impact on the ground.

Dr. Vipul Mudgal, the Director of Common Cause, was invited by the Bureau of Police Research and Development (BPR&D) to make a detailed presentation at a conference of Senior IPS officers on February 8, 2019. It was part of the second National Conference of Micro Missions of National Police Mission which took place at the BPR&D Headquarters in New Delhi. The conference, inaugurated by the Former Governor of Jammu and Kashmir, Shri NN Vohra, focussed on micro missions such as human resource development, community policing, communication and technology, infrastructure, new age crimes and technology, among other things.

Mr. Rakesh Ranjan from NITI Aayog chaired the session on Proactive Policing and Visualising Future Challenges, in which Dr. Mudgal spoke on the ranking of states in policing parameters. This process had been undertaken through an all India performance-

The Chief Guest of the conference was Former Governor of Jammu and Kashmir, Shri NN Vohra

cum-perception survey of 22 states, done in collaboration with the Lokiniti Programme of the Centre for the Study of Developing Societies (CSDS).

Dr. Mudgal discussed the objectives, evolution and the derivations of SPIR of 2018. Common Cause had initiated the project on police reforms in early 2000s, while the current report is a combination of performance and perception of policing through an analysis of official data as well as an elaborate perception survey. It also highlights the gaps and systemic inefficiencies which have become endemic in almost all states despite having been flagged by successive CAG reports. The analysis is arranged primarily in terms of best or worst-performing states and on parameters like age, gender, caste, community, urban/ rural or economic/educational status of the respondents.

Along with Dr. Mudgal, Mr. Maithili Sharan Gupta, Special DG (Police Reforms) Madhya Pradesh, spoke on developing automated support system for reducing crimes in railways, while Mr. Santosh Mehra, ADG, West Bengal discussed the Comprehensive Integrated Border Management System. Other speakers like Dr. Avik Sarkar from the Data Analytics Cell of NITI Aayog, shed light on Data Analytics or predictive policing and its applications. Later, a resolution discussion was followed by valedictory address by the Former Governor of Uttarakhand, Shri KK Paul.

Common Cause Director Dr. Vipul Mudgal was presented a memento on the occasion

** Anshi Beohar is a Legal Consultant at Common Cause*

Condolence Resolution

After observing a minute of silence in the memory of Major General (Retd) J. P. Gupta, all of us present at the Annual General Meeting including the staff members pass the following resolution of condolence:

It is hereby resolved to convey to the family of our Governing Council member, Major Gen (Retd) J.P. Gupta, our deep and sincere condolences and sympathy on his passing away on January 17, 2019. May God give his family members and friends the strength to bear this enormous loss.

We, too, mourn his loss as we would that of a family member. He has had our respect, admiration and affection. He endeared himself to all the people he met and with whom he worked because of his honesty and sincerity, his humour, and ability to empathise with fellow humans.

We, the members of Common Cause Society, have lost a compass of our life but will forever treasure the times we spent with him**.**

A noble gentleman on a noble mission, Gen Gupta was too gentle to be an activist but as a citizen of India he strived to leave a better world for our children. He stood for democracy, human rights and justice for all. His commitment to Common Cause and his belief in the highest standards of probity in public life got him going in his post-retirement life.

Gen Gupta's presence shone a light on everyone around him and that light will be deeply missed though cherished by all of us.

(Unanimously passed at the Annual General Meeting, March 02, 2019)

OUR SALUTE TO A SOLDIER

Major General (Retd) J. P. Gupta
(1932-2019)

(left) Fieldwork for SPIR 2019 is underway in Rajasthan; (right) Data collection has been completed in Assam

SPIR 2019

SPIR 2019 is nearing completion: Survey of Police personnel for the next phase of the SPIR has commenced across 22 major Indian states along with the analysis of official data on policing. The ongoing study is focused on police infrastructure, working conditions, training, attitudes and perceptions of police personnel. Snowballing methodology is being used for the survey in this round. As of now, data collection has been nearly completed in 21 states.

A field investigator reading out the survey questionnaire to a policeman in Karnataka

A police officer in Nagaland responding to the questions of a field investigation for SPIR 2019

WHAT MPS HAVE TO SAY IN THEIR DEFENCE

Lok Sabha Elections 2014

Before we hear the politicians' side of the story, it is important to analyse the complexion of our Parliament and the antecedents of our lawmakers. We need to know if the political parties bend over backwards to field super-rich candidates or those with criminal backgrounds. For the same reason, it is also good to know about the MPs with low assets or high liabilities.

Although peeling back the layers of criminal history surrounding Indian politicians is a tall order, this feat has been accomplished by National Election Watch (NEW) and Association for Democratic Reforms (ADR) in this article. Here they take a deep dive into the self-sworn affidavits of Sitting MPs in the Lok Sabha 2014 Elections and offer a bird's eye view of candidates linked to crime.

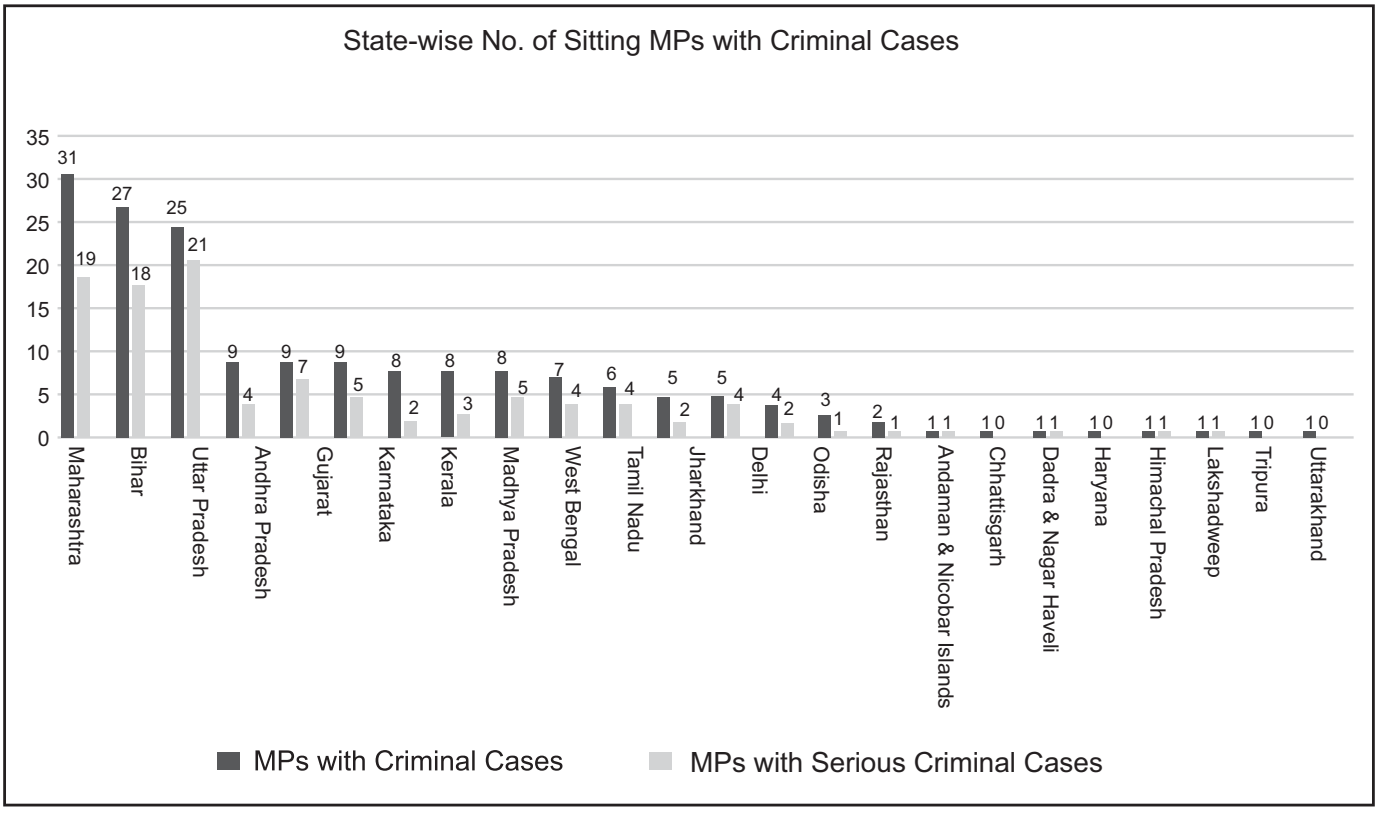
They have analysed the self-sworn affidavits of 521 Sitting MPs out of 543 MPs in the Lok Sabha 2014 Elections. This report is based on the information declared by the MPs in their affidavits submitted prior to Lok Sabha 2014 Elections. There are 22 constituencies where the seats are vacant.

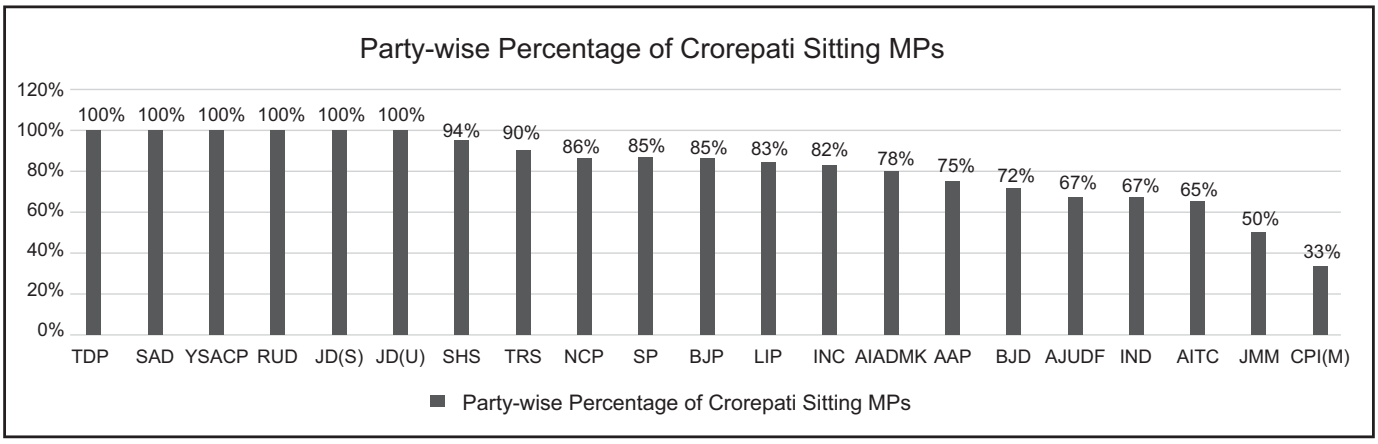
For the complete report, please go to: https://adrindia.org/content/lok-sabha-elections-2014-analysis-criminal-background-financial-education-gender-and-other

Summary and Highlights

Criminal Background

- **Sitting MPs with Criminal Cases:** Out of the 521 Sitting MPs analysed, 174(33%) Sitting MPs have declared criminal cases.
- **Sitting MPs with Serious Criminal Cases:** 106 (20%) Sitting MPs have declared serious criminal cases including cases related to murder, attempt to murder, communal disharmony,





kidnapping, crimes against women etc.

- **Sitting MPs with cases related to Murder:** 10 Sitting MPs have declared cases related to murder. Out of these, 4 Sitting MPs are from BJP, 1 MP from INC, NCP, LJP, RJD, Swabhimani Paksha each and one MP is an independent.
- **Sitting MPs with cases related to Attempt to Murder:** 14 Sitting MPs have declared cases of attempt to murder. Out of these, 8 Sitting MPs are from BJP and one MP each from INC, AITC, NCP, RJD, Shiv Sena and Swabhimani Paksha.
- **Sitting MPs with cases related to causing Communal Disharmony:** 14 Sitting MPs declared cases related to causing communal disharmony. Out of these, 10 Sitting MPs are from BJP and 1 MP by TRS, PMK, All India Majlis-E-Ittehadul Muslimeen and AIUDF each.
- **Party-wise Sitting MPs with Criminal Cases:** 92 (35%) out of 267 Sitting MPs analysed from BJP, 7 (16%) out of 45 from INC, 6 (16%) out of 37 from AIADMK, 15 (83%) out of 18 from Shiv Sena and 7 (21%) out of 34 Sitting MPs fielded by AITC have declared criminal cases in their affidavits.
- **Party-wise Sitting MPs with Serious Criminal Cases:** 58 (22%) out of 267 Sitting MPs analysed from BJP, 2 (4%) out of 45 from INC, 3 (8%) out of 37 from AIADMK, 8 (44%) out of 18 from Shiv Sena and 4 (12%) out of 34 Sitting MPs fielded by AITC have declared serious criminal cases in their affidavits.
- **Crorepati Sitting MPs:** Out of the 521 Sitting MPs analysed, 430 (83%) are crorepatis.
- **Party-wise Crorepati Sitting MPs:** 227 (85%) out of 267 Sitting MPs analysed in BJP, 37 (82%) out of 45 in INC, 29 (78%) out of 37 in AIADMK and 22 (65%) out of 34 in AITC have declared assets worth more than Rs. 1 crore.
- **Average Assets:** The average assets per sitting MP for Lok Sabha 2014 elections are Rs. 14.72 crore.
- **Party-wise Average Assets:** Among major parties, the average assets per MP for 267 BJP Sitting MPs analysed is Rs 11.89 crore, 45 INC Sitting MPs have average assets of Rs.15.47 crore, 37 AIADMK Sitting MPs have average assets worth of Rs.6.47 crore and 34 AITC Sitting MPs have average assets of Rs. 2.56 crore.

- **High Asset Sitting MPs*:** 32 Sitting MPs have declared more than Rs.50 crore worth of assets. The top three Sitting MPs with the highest assets are given below:

S. No.	Name	State	Constituency	Party Name	Total Assets (Rs.)	PAN Given
1	Jayadev Galla	Andhra Pradesh	Guntur	TDP	6,83,05,81,361 683 Crore+	Y
2	Konda Vishweshwar Reddy	Telangana	Chevella	TRS	5,28,62,30,210 528 Crore+	Y
3	Gokaraju Ganga Raju	Andhra Pradesh	Narsapuram	BJP	2,88,35,67,122 288 Crore+	Y

**Total Assets include income of self, spouse and dependents.*

- **Low Asset Sitting MPs:** A total of 2 Sitting MPs have declared assets less than Rs. 5 lakh. The two Sitting MPs with lowest assets are as follows:

S. No.	Name	State	Constituency	Party Name	Total Assets (Rs.)	PAN Given
1	Sumedha Nand Saraswati	Rajasthan	Sikar	BJP	34,311 34 Thou+	Y
2	Uma Saren	West Bengal	Jhargram	AITC	4,99,646 4 Lakh+	Y

- **Sitting MPs with High Liabilities:** A total of 96 Sitting MPs have declared liabilities of Rs. 1 crore and above. Out of these 96 Sitting MPs, 14 have declared liabilities of Rs. 10 crore and above. The Sitting MPs with the top three liabilities are as given below:

S. No.	Name	State	Constituency	Party Name	Total Assets (Rs.)	Liabilities (Rs.)	PAN Given
1	Srinivas Kesineni	Andhra Pradesh	Vijayawada	TDP	1,28,41,22,669 128 Crore+	71,54,62,989 71 Crore+	Y
2	Poonam Mahajan Alias Poonam Vajendla Rao	Maharashtra	Mumbai North Central	BJP	1,08,08,67,626 108 Crore+	41,44,79,088 41 Crore+	Y
3	Harsimrat Kaur Badal	Punjab	Bathinda	SAD	1,08,16,64,910 108 Crore+	41,26,34,299 41 Crore+	Y

- **Crorepati Sitting MPs with no PAN:** 2 Sitting MPs with total assets worth more than Rs. 1 crore have not declared PAN details. These Sitting MPs are as follows:

S. No.	Name	State	Constituency	Party Name	Total Assets (Rs.)
1	CL Ruala	Mizoram	Mizoram	INC	2,57,33,421 2 Crore+
2	Prasanna Kumar Patasani	Odisha	Bhubaneswar	BJD	1,35,57,443 1 Crore+

- **Sitting MPs with High Income as declared in ITR*:** 45 Sitting MPs have declared total annual income of more than Rs. 1 crore. The top three Sitting MPs with highest declared annual income are given below:

**Some Sitting MPs may be exempted from filing Income Tax Returns.*

S. No.	Name	Party Name	Constituency	State	Total Assets (Rs.)	Total income shown by MP in ITR (Self+Spouse+ Dependents)	Self-income shown by MP in ITR
1	Jayadev Galla	TDP	Guntur	Andhra Pradesh	6,83,05,81,361 683 Crore+	16,85,54,700 16 Crore+	16,30,91,770 16 Crore+
2	Konda Vishweshwar Reddy	TRS	Chevella	Telangana	5,28,62,30,210 528 Crore+	14,64,24,120 14 Crore+	62,66,140 62 Lakh+
3	Thambidurai. M	AIADMK	Karur	Tamil Nadu	13,24,57,262 13 Crore+	10,68,54,272 10 Crore+	17,05,970 17 Lakh+

- **Sitting MPs who have not declared Income Tax Details*:** 42 (8%) Sitting MPs out of 521 analysed have not declared income tax details.

**Some Sitting MPs may be exempted from filing Income Tax Returns.*

- **Sitting MPs with High Assets who have not declared Income Tax Details:** 24 Sitting MPs with assets worth more than Rs. 1 crore, have not declared Income Tax Details.

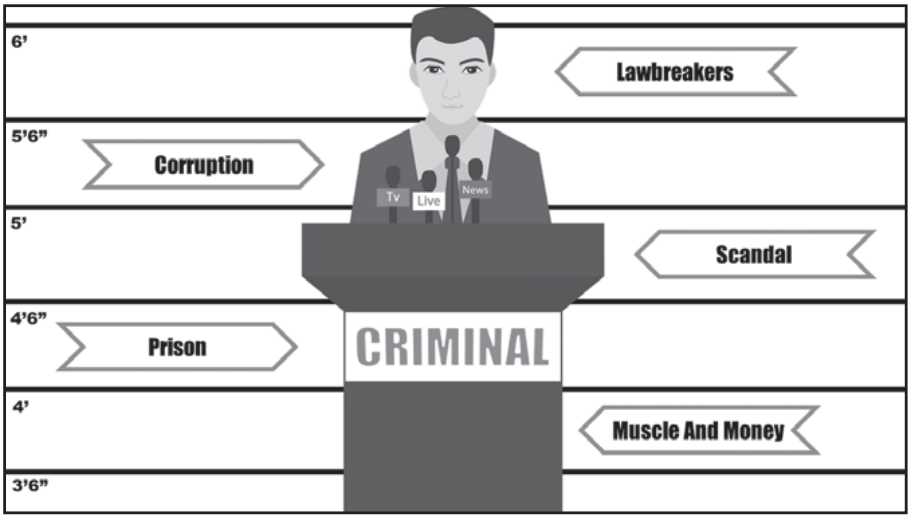
Other Background Details

- **Education Details of Sitting MPs:** 1 MP has declared that he is illiterate. Also, 126 (24%) Sitting MPs have declared that they have an education qualification of 12th pass or below while 384 (74%) Sitting MPs have declared having educational qualification of graduate or above.
- **Age Details of Sitting MPs:** Regarding this context, 206 (40%) Sitting MPs have declared their age to be between 25 to 50 years, 281 (54%) have declared their age to be between 51 to 70 years and 34(6%) have declared their age to be above 71 years.
- **Gender Details of Sitting MPs:** Out of 521 Sitting MPs analysed, 66 (13%) are women while 455 (87%) are men.

THE OFFICIAL ACTION SO FAR: TOO LATE, TOO LITTLE

What Expert Reports Tell Us

Dhruv Shekhar*



In The New York Times bestseller 'Behind the Beautiful Forevers,' author Katherine Boo describes the troubling relationship between the Corporator Subhash Sawant, a politician and Annawadians, his constituents: "They understood Subhash Sawant to be corrupt. They assumed he'd faked his caste certificate. "But he alone comes here, shows his face," Annawadians said. Before each election, he'd used city money or tapped the largesse of a prominent American Christian charity, World Vision, to give Annawadi an amenity: a public toilet; a flagpole; gutters; a concrete platform by the sewage lake, where he usually stood when he came."

The book seems to suggest that candidates with criminal reputation have takers in the Indian democracy. The lack of information about politicians linked to crime is certainly not a deterrent for voters who are often economically bereft and socially divided.

Crime and Politics: A History

The links between criminals, politics and the resultant corruption runs deep. The crime-politics nexus is also a multi-epochal phenomenon. Way back in the 4th century B.C, Indian philosopher Chanakya noted: "Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat at least a bit of the King's revenue."

According to commentators, when the modern Indian State was established in 1947, the first three general elections were largely free of criminal elements.[1] However, as Milan Vaishnav, senior fellow and director of the South Asia Program at the Carnegie Endowment for International Peace, points out, in the immediate post-independence period, politicians would rely on variety of criminal elements such as strongmen, thugs, mercenaries for controlling and influencing different aspects of electoral process.

But by all accounts, problems began to surface from the 1967 General Election onwards when one witnesses a change in the rules of engagement between politicians and their erstwhile criminal lackeys. From the late 1970s and early 1980s, the phenomenon of criminals contesting in elections becomes common.

Various committees have spoken about the perils of criminals being in public office, and have laid down roadmaps to combat this malaise. This article discusses the recommendations made by several such Law Commissions and other committees/ commissions, including legislative measures and policy remedies to counter the idea of a criminal-politician.

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Dinesh Goswami Committee on Electoral Reforms (1990)

This committee was set up to examine some of the suggestions made by an inter-political party meeting convened under the chairmanship of former Prime Minister Vishwanath Pratap Singh on January 9, 1990. Chaired by the then Law Minister, Dinesh Goswami, this committee gave its recommendations on a broad range of topics, such as the constitution of the Election Commission, securing its independence and appropriate management of electoral rolls, among other things.

The commission probed ways in which criminalisation of politics manifests in the Indian democracy, including booth capturing, rigging, violence, misuse of official machinery and increasing menace of non-serious electoral candidates.

The focus of this report, like its predecessors such as the Tarkunde Committee Report (1974), was to keep the established framework of elections clean through regulation. There was little focus on individuals or criminal groups who were already entering the political fray. Instead, the committee worked towards ensuring ways to keep the election apparatus corruption free.

N.N. Vohra Committee Report (1993)

The 1993 blasts resulted in mayhem and destruction not just in ground zero Mumbai, but also across the country. It served as a moment of public reckoning for the political elite to take stock of the nefarious links between the existing political order, government agencies and Mafia/ Crime Syndicates.

In July,1993, a committee was formed just four months after the blasts, under the chairmanship of the newly appointed Union Home Secretary, N.N. Vohra. The objective of this committee was to take into account all the information which alluded to links between governmental agencies/officials, political functionaries and criminal syndicates. In addition, its goal was to take cognisance of how a nexus of quid pro quo favours and political patronage allowed this anomaly to sustain and flourish.

On the basis of the committee's recommendations, the government was supposed to determine the need, if any, to constitute an organisation which would collect information on such matters and pursue further investigations.

The Vohra Committee exposed the increased linkages between political elite, bureaucracy and criminal syndicates. As part of the Committee, senior officers of major investigative agencies such as the directors of Intelligence Bureau (IB) and Central Bureau of Investigation (CBI), gave candid responses to the problem at hand. They highlighted how this tangled network cannot be addressed by a single agency. Rather, there's need for cooperation between district, state and central authorities in order to come up with a remedy. The example of Iqbal Mirchi and his rise from a merchant of contraband goods in the late 1980s to the alleged right hand-man of Dawood Ibrahim, was cited.

The Committee ultimately agreed to set up an independent nodal agency under the aegis of the Ministry of Home Affairs, presided over by the Home Secretary. Its objective was to collate and compile all information regarding crime syndicates and terror networks operational in India and/or targeting India, from other investigative and non-investigative agencies across the country.

However, in a surprising turn of events, the government decided against making the complete report public. The reason was apparent. In the report annexures, the committee had stated the names of multiple politicians and bureaucrats who had developed close linkages with organised crime syndicates and even terror networks. These functionaries had also played a crucial role in helping them operate in India. As a result, the report was published without annexures.

A petition challenging this was filed by Rajya Sabha Member, Dinesh Trivedi who demanded the release of the complete findings of the committee for public scrutiny. The Supreme Court decreed the report was complete by itself and

the release of supporting documents forming the basis of the Vohra Committee Report would in fact act against public interest.[2] Instead, it directed the establishment of a body which would assess the Committee's findings and have the power to prosecute the accused in specially designated courts. Not surprisingly, governments of all political complexion have failed to act on the Supreme Court's directions.

The Law Commission of India: Report on Reforms of the Electoral Laws (1999)

Post the Vohra Committee Report release, the Ministry of Law & Justice made representations to the Law Commission of India (LCI) to review election petitions in 1995. This in turn lead to a thorough review of the Representation of People Act (RPA),1951 and the suggestions made were presented as part of the LCI's 170th Report. The objective was to ensure a fair, transparent and equitable electoral process. The report also aimed to reduce deviations creeping into the Indian electoral system.

The Law Commission recommended the inclusion of Section 4-A to RPA in an attempt to diminish the presence of contestants whose reputations are under the scanner. The suggested amendment would enable the electorate to know about a candidate's movable and immovable assets, or those possessed by their spouse or any other dependent relation. Additionally, a secondary classification would be about the disclosure of any criminal antecedent, regarding any of the offences mentioned under a proposed Section 8B of RPA. While declaration of criminal antecedents of candidates has long been a part of the Form 2E under the Conduct of Election Rules, 1961, it was the Supreme Court ruling in the case of *Union of India v. Association of Democratic Reforms & Ors*. that it became mandatory. It also became an essential part of the voter's right to know as well as a requirement for valid nomination under Section 33(1) & 33A of the RPA,[3] read with Form 4A and 26 under the Conduct of Election Rules, 1961.

The proposed section 8B would list out a set of offences and if any charges were framed on these grounds, it would lead to the individual's disqualification. While a new provision was not created, the LCI suggestions were included within the confines of Section 8 of RPA.

The National Commission to Review the Working of the Constitution (2002)

With the Indian Constitution turning 50 in the year 2000, a commission was set up to assess how the Constitution can deal with the changing demands of the new millennium by ensuring an efficient system of governance and continued socio-economic development. Any recommended changes to the Constitution were required to be done without interfering with its basic structure.

> ***"Criminalisation of politics manifests in the Indian democracy, through booth capturing, rigging, violence and misuse of official machinery."***

One of the addressed issues related to election system in India. Split across two volumes, the committee report builds on the work of the Vohra Committee as well as other committee reports preceding it, to present a historical narrative on the problems plaguing the Indian electoral process.

The commission recommended an amendment to Section 8 of the RPA on the criminal candidates issue. It cited certain incongruities with the provisions of sub-sections (1), (2) and (3) of the said Section 8 of the RPA. These were illustrated through the example of a convicted rapist who had been sentenced to 10 years. As per the current provision laid down under Section 8 of the RPA, the convicted person would be disqualified for contesting election for the first six years of his sentence as per sub-section (1) of Section 8, but would also be eligible to contest elections, even in prison, while serving the last four years of his sentence.

To address this issue, the commission recommended the

amendment of Section 8. This should read that any individual who has been convicted of an offence punishable with an imprisonment of five years or more, should be disqualified from his being chosen or being a member of Parliament. This should happen upon the expiry of a period of one year from the date on which the charges were framed against him by the court.

If the charges are not cleared in this intervening period of one year, the candidate should remain disqualified till the conclusion of trial for that particular offence. In the event that the candidate has a sentence of six months or more, he/she should be debarred from contesting elections for a period totalling the sentence imposed, along with an additional six years. If any candidate violates this provision, he/she should be disqualified.

In addition, it was recommended that any individual convicted of serious offences like rape, murder should be permanently barred from contesting office. The Commission also suggested that candidates be allowed to take the issue of framing charges against them before a Special Court. The court would then be required to determine whether there was a *prima facie* case, justifying the framing of charges in a time bound fashion. This was done so as to prevent disqualification of candidates on the basis of dubious charges.

The commission however provided an exception to incumbent parliamentarians and Legislative Assembly members, recommending that no disqualification will come into effect for three months. Also, if an appeal is filed in the case in the meanwhile, no action is to be taken till its disposal.

There was a suggestion to set up a multi-tier mechanism to streamline a candidate's disqualification process. The President, would then determine the period of disqualification under Section 8A, based on the opinion of the Election Commission.

The Election Commission of India: Proposals on Electoral Reforms (July 2004)

The EC in its primary recommendation stated that the law should be amended so that any person who is accused of an offence punishable by imprisonment for five years or more should be disqualified from contesting elections, even if the trial is pending. The proviso here was that charges have been framed against him/her by the competent Court. The Commission having made a similar recommendation in 1998, stated that such an initiative would go a long way in cleansing the political establishment of the influence of criminal elements, and thus, maintain the sanctity of the Legislative Houses.

In addition to the above, the Election Commission recommended that an amendment of Section 125 of RP Act,1951 should be made, so as to impose a stronger punishment on individuals found concealing or providing wrong information with respect to Form 26 of Conduct of Election Rules, 1961. The commission suggested a minimum period of imprisonment of two years as well as the removal of imposing a fine upon the candidate. The recommendation also stated that Form 26, must be amended to include a column, which will require the candidates to disclose their annual declared income for tax purpose and their profession.

The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice: Report on Electoral Reforms (Disqualification of Persons from contesting Elections on framing of charges against them for certain offences) (2007)

This Committee took cognisance of the crime-and-politics bonhomie only when the Election Commission expressed its concerns on the possibility of criminals like Dawood Ibrahim and Abu Salem contesting elections. The Standing Committee's beef was with the lacunae in the existing legislative set-up regulating election candidates. It was also apprehensive about how this set-up could be misused by

> ***The practice of disqualifying candidates before contesting is symptomatic of dictatorial regimes.***

individuals to gain eligibility for elections to the Houses of Parliament as well as the state legislatures.

The proposal before the Committee was largely to review the Election Commission's long-standing position on disqualifying candidates charged with offences carrying or exceeding five years of jail term (as iterated in their 2004 and 1998 proposals). According to Committee member Advocate Prashant Bhushan, the disqualification criteria is not adequate.

The Commission ultimately decided against moving forward with the EC's proposal. According to it, the jurisprudence on Section 227 and 228 of Code of Criminal Procedure,1973 (CrPC) showed that a judge is not required to make a detailed assessment of the matter before framing the charges. This is not the same standard of assessment which is employed when a judge makes a decision on whether a criminal act has been committed by the accused.

However, the committee decided to create an exception. It recommended that an amendment be made to the RPA. This will result in a proclaimed absconder, declared so under Section 82 of the CrPC, who is wilfully absconding for a reasonable period of time, being barred from contesting elections. Here 'reasonable' denotes one year prior to the date of revision of electoral rolls. In such cases, the absconder would be regarded as intentionally contributing to the delay in the framing of charges or for the trial to proceed.

The committee further recommended that term of an absconder should clearly be defined and the conduct for which the alleged absconder is to be disqualified, is to be proved beyond reasonable doubt. It should also be made clear to the individual disqualified that the punishment imposed is for the act of absconding and not for the offence with which he has been charged (and not convicted). The committee felt that individuals absconding for a period exceeding one year should have his/her name deleted from the electoral list. However, in the event of such an act, due process should be followed by issuing a show cause notice to the concerned individual. This would give him/her the right to contest the deletion of their name from the electoral roll.

Expedient disposal of cases was also stressed upon. It recommended that when a criminal case charge sheet is to be filed in court against a political person, the case should be transferred to a fast track court with a six-month-timeline for judgment. In order to ensure a stringent timeline compliance, hearings should be held on a daily basis, till the case is finally disposed of.

The Second Administrative Reforms Commission: Report on Ethics in Governance (2007)

This Commission was formed to review the functioning of the Indian public administration machinery. The criminalisation and corruption in politics were attributed to excessive and largely unregulated inflow of money into political parties. The commission emphasised on remedies like partial state funding of elections, after examining positions of other countries in this regard. Its recommendations also came in the wake of studying legal regulations in India.

It also held that the practice of disqualifying candidates before contesting is symptomatic of dictatorial regimes. According to the commission, the right to elect representatives should rest with the public. However, recognising the dire circumstances, it recommended disqualification for all candidates who have been charged with heinous offences.

It also supported the proposal of considering false declarations made to the Returning Officer, Electoral Officer, Chief Electoral Officer or the Election Commission an electoral offence under Section 31 of RPA. At the time of this report and even at present, the offence is only restricted to making false

declarations relating to electoral rolls. However, the above mentioned expansive suggestion has not been included as part of the existent legislation.

Additionally, the commission recommended that a new legislation be enacted under Article 102 (e), which will comprehensively lay down circumstances (other than the ones mentioned under Article 102(e)) under which Members of Parliament can be disqualified.

Disposal of election related petitions within six months has been a constant refrain. Its recommendation included the establishment of tribunals under Article 323B of the Constitution, chaired by a High Court Judge and a senior civil servant who has at least five years of experience in conducting elections. This suggestion appears to be stuck in limbo as well. While the Supreme Court took cognisance of this matter by issuing tentative guidelines and other directions to the government on ways to proceed on the fast track court suggestion, it appears that the implementation of this scheme has still some way to go.[4]

Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013)

In the aftermath of the Nirbhaya rape incident of December 2012, numerous post facto actions were undertaken by the government to curb sexual violence against women, including setting up of a committee to review the existing criminal justice legislation. Chaired by former Chief Justice of India, J.S Verma, this committee's objective was to review the existing criminal justice framework and make recommendations.

It has been surmised that the Nirbhaya incident was similar in its impact on the criminalisation of politics discourse (as a concomitant issue to safety of women) as was the murder of political activist, Naina Sahni in 1995. The latter made the disclosure of the Vohra Committee Report to the public a matter of national interest.[5] In a similar vein, this incident, while not featuring accused who are politicians or involved with them, resulted in a serious debate on criminal acts committed by politicians.

The constituted committee felt that electoral reform within India was integral to the achievement of gender justice and the prevention of sexual offences against women. Without reforms, there would be question marks on the integrity of the legislative process on the reform of the criminal justice system. These doubts creep in primarily because law reformers on occasion, have criminal backgrounds to begin with.

One of the recommended amendments to the RPA included the insertion of Schedule 1, which would enumerate offences under IPC befitting the category of 'heinous' offences. Taking

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off from this amendment, the committee had the following recommendations.

Any candidate, convicted by a court with respect to any of the offences stated within the expanded list under Section 8(1) of RPA, would be disqualified on the date of taking cognisance or conviction. The ensuing disqualification is set to continue for six years i.e. from the date of release upon conviction. In case of an acquittal, the disqualification will operate from the date of the matter being taken into cognisance by the court till the date of the acquittal.

Recognising the long timeline of the courts to frame charges, the commission recommended the disqualification of the candidate against whom a charge sheet has been filed and cognisance taken by the court. It also suggested the creation of a publicly accessible database of candidates whose offences have been taken cognisance of by the courts. Onus was placed on the candidate to provide progress reports to the Election Commission every three months on cases pending against him/her.

Other propositions were communicated as well. When

a candidate is making any statement through an affidavit, he/she must get a certificate from the Registrar of the concerned High Court, in the context of his/her pending case status. This is to facilitate a mechanism to verify the candidate's pronouncements related to their criminal antecedents.

The commission also recommended an amendment to the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, regarding the assessment of a candidate's assets/liabilities. Its objective was to carry out an in-depth investigation of the assets/liabilities declared at the time of filing nominations. If it is not possible to carry out this exercise for all candidates, then it should at least be done for all successful candidates.

According to the commission, a certificate issued from the office of the Comptroller and Auditor General of India would attest to correct asset declaration by candidates.

The Commission recommended a code similar to the UK's Political Parties, Elections and Referendums Act, 2000, in the context of regulation of political parties. This code intended to implement certain principles on the criteria of admission into parties, ensuring internal democracy, transparency in receiving donations, among other things. This was aimed to include political parties in the process of weeding out criminal candidates.

As a final note, the committee made an impassioned plea to all elected members of the Parliament and state legislatures, with pending heinous criminal cases to vacate their seats as a mark of respect to the Parliament and the Constitution.

The 244th Report of the Law Commission of India (2014)

The commission felt that if at the stage of framing of charges, adequate levels of judicial scrutiny are present, coupled with legal safeguards to prevent its misuse, it would serve as an adequate shield against criminalisation in politics.

Some of the suggested safeguards were:

A) Inclusion of offences which had a maximum punishment of five years or above.

B) Charges which have been filed up to one year before the date of scrutiny of nominations will not lead to disqualification.

C) The disqualification will operate till the acquittal of an individual by the trial court, or for a period of six years, whichever is earlier.

D) For charges against sitting MPs/MLAs, the trials must be expedited so that they are conducted on a day to day basis and must be concluded within a one-year period. If the above does not happen, then the MP/MLA may be disqualified on the expiry of the one-year period.

> ***"Recommendations pushed forward by expert committees on ways to tighten the noose around criminal politicians are momentous."***

Alternatively, the MP/ MLA's right to vote in the House as a member, remuneration and other perquisites attached to their office shall be suspended.

E) The above-stated manner of disqualification would also apply retroactively. There would be only one exception to this rule. It would apply unless the charges have been framed less than one year before the date of scrutiny of nomination papers at the time of the Act's enactment.

Additionally, the commission recommended certain amendments to the RPA. To begin with, a minimum sentence of two years should be included under Section 125- A. Apart from this, a conviction under Section 125- A i.e. the offence of filing false affidavits, should serve as grounds for disqualification under Section 8(1) of RPA.

There were other remedial measures prescribed. Since a conviction under Section 125 A is necessary for disqualification under Section 8, the Commission recommended that the Supreme Court should order all trials under Section 125A to be conducted on a daily basis.

A gap of one week was given between the last date of filing nomination papers and the date of scrutiny, so that adequate time can be given for filing objections to nomination papers.

Lastly, it was suggested that the offence of filing false affidavits be included as a corrupt practice under Section 123 of RPA.

Conclusion

Recommendations pushed forward by expert committees on ways to tighten the noose around criminal politicians are momentous but they are just the beginning of the path to a clean legislature. Investigators have consistently suggested measures and definitive policy remedies to reform the system, but there is still a long way to go in terms of implementation. In addition, they have red flagged concomitant issues, including election financing, transparency in disclosure of criminal antecedents by electoral candidates and assessment of a candidate's assets/liabilities.

However, the tragedy of democracies being vulnerable to corrupt and criminal lawmakers continue. In tandem, institutional failings to check epidemic levels of criminality in national and state legislatures are disappointing. Even the stance of the judiciary with respect to this issue is puzzling. The 2018 judgment by the Supreme Court in the *Public Interest Foundation* matter seems to suggest that the Court is tip-toeing around the issue of criminalisation of politics.[6]

Although the SC's judgment appeared to be a diatribe against criminals entering politics, there was little there to bring about a change in status quo.

Even if such a decision is constitutionally prudent, it fails to recognise that a Parliament, composed of individuals with criminal records, is unlikely to pass any effective Criminal Law Amendment reform.[7]

The recourse perhaps then lies with a public-spirited uprising, that is not restricted to a set of advocacy groups or civil society organisations, to fight for the quality of representation.

(Endnotes)

1. The National Commission to Review the Working of the Constitution, Vol. 2, Book 1 (2002)
2. *Dinesh Trivedi, M.P & Ors. v. Union of India* (1997) 4 SCC 306
3. *People's Union for Civil Liberties and anr. v. Union of India* WP (C) 490 OF 2002. Subsequent to this case, the Election Commission issued a notification order no. 3/ER/2003/JS-II, dated 27th March, 2003 making details about a candidate's criminal antecedents (i.e. disposed and active charges) along with details of their assets to be made public. Prior to this, in 2002 an amendment was made to the RP Act, 1951 which led to the inclusion of Section 33 A.
4. *Ashwini Kumar Upadhyay v. Union of India & Anr.* WP(C) No(s). 699/2016, D.O No. 29079/2016 Order 14-Dec 2017
5. The accused in that matter, Sushil Sharma was an MLA representing the Congress Party.
6. *Public Interest Foundation and Ors. v. Union of India and Anr.* WP(C) No. 536 of 2011
7. By 2014 the numbers had risen to 34% and 21% for MP's & MLA's, respectively.

COMMON CAUSE UPDATES

Supreme Court:

Right to Clean Air, Adoption of Electric Vehicles: Common Cause, along with Centre for Public Interest Litigation and Sitaram Jindal Foundation, filed a writ petition in Supreme Court, demanding the implementation of the plans and policies for the adoption of electric vehicles to tackle air pollution and challenges arising out of climate change. To spell it out, it asks for the implementation of the FAME-India scheme and NITI Aayog's recommendations, as well as adoption of internationally recognised best-practices for integration of usage of electric vehicles. The petition WP 228/2019 was filed on February 2, 2019 and registered on February 22, 2019. It brings to attention the National Electric Mobility Mission Plan, 2020, brought out in 2012, making several recommendations for adoption of electric vehicles. To implement the plan, the government promulgated the FAME-India Scheme in 2015, which provided subsides to consumers but failed to mandate demand and charging infrastructure.

The petitioners allege that while a modest target of the sale of 7 million electric vehicles was set by the 2012 plan, only 0.263 million vehicles have been sold as of January, 2019, revealing "a total failure of that scheme." The petition points out that the government has thus far allocated less than Rs 600 crore over seven years towards the entire scheme, despite the 2012 plan calling for an investment of Rs 14,500 crore to spearhead the demand and creation of charging infrastructure. This matter was taken up on March 3, 2019 when the Court said that further orders in the matter will be passed after the Government of India informs the Court about the steps taken in implementation of the Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles in India (FAME) scheme. The next date of hearing is May 6. 2019

Fair Working Conditions for Domestic Workers: Common Cause, along with the National Platform for Domestic Workers (NPDW), an umbrella unit of 36 unions and federations, and social activist Aruna Roy, has filed a writ petition in the Supreme Court praying for directions by the Court to ensure fair and humane working conditions for domestic workers.

The petition filed on November 15, 2018, seeks urgent intervention of the Court to acknowledge domestic help as a "service for pay," lay down guidelines for protection of their human rights and issue appropriate directions to the government. The prayers also include ensuring notification of minimum wages, compulsory weekly and annual paid leaves, and extension of maternity leave benefits. The petition argues that until a law is brought in place, interim guidelines should be issued for safeguarding rights of domestic workers, in line with ILO Convention 189. The petition also prays that domestic workers be included under the Minimum Wages Act, 1948. Other prayers include setting up of a committee of experts, under Supreme Court's supervision, to suggest means to regulate employment agencies of domestic workers, terms and conditions of their dignified employment, as well as formulating a mechanism for dispute resolution. On December 7, 2018, in the course of hearing, the Bench sought clarification from the petitioners on the aspect of enforcement of the rights of domestic workers, especially in light of the increasing concerns for right to privacy. The petitioners agreed to make submissions on the aspect of enforcement, and the matter was directed to be listed after six weeks. There are no further orders of listing.

Challenging the Arbitrary Removal of CBI Director: Common Cause, in its quest to uphold transparency and integrity of public institutions, filed a petition in the Supreme Court challenging the removal of CBI Director Mr. Alok Verma. The petition prayed for quashing of the order dated 23.10.2018, issued by the Central Vigilance Commission, vide which Mr. Verma was illegally divested of all the responsibilities related to the Director, CBI, for malafide reasons. The petition also sought quashing of the order dated 23.10.2018, issued by the Appointment Committee of Cabinet, vide which Mr. M Nageswara Rao, Joint Director, CBI, was handed over the charge of Director CBI in gross violation of the law. In addition, the petition sought a direction for the removal of the CBI's Special Director Mr. Rakesh Asthana from the organisation in light of serious corruption cases pending against him. Further, Common Cause prayed for the constitution of a Special Investigation Team (SIT) to look into the recent unprecedented events and also to investigate allegations of corruption against the senior CBI officials and submit the report before the Supreme Court. On Jan 8, 2019, SC reinstated Mr Verma as the Director of CBI and set aside the appointment of Mr Rao as interim CBI Director.

Wrongful Appointment of CBI Interim Director: On February 19, 2019, the SC decided not to interfere and dismissed the Common Cause petition challenging the appointment of Mr M Nageswara Rao as interim director, CBI. A bench of Justices Arun Mishra and Vineet Saran said no further interference was required as the relief to the petitioners had already been granted with the appointment of a full time CBI Director. The petition stated that the appointment of Mr Rao was not made on the basis of recommendations of the high-powered committee, as mandated under the Delhi Special Police Establishment Act. On January 10, 2019, the Committee appointed Mr Rao "as per the earlier arrangement" which had since been quashed by the SC during the hearing in Alok Verma's case. However, the government still invoked its earlier "quashed" order to once again appoint him as the interim director. The CJI as well as Justices Sikri and Ramana had during the course of the hearing recused themselves on various grounds.

Curative Petition in CBI Special Director Case: Subsequent to the review petition being dismissed by the SC, a curative petition was filed on March 27, 2018 and registered on July 4, 2018. This was dismissed on December 11, 2018 by the bench vide the following order:

"We have gone through the Curative Petition and the connected papers. In our opinion, no case is made out within the parameters indicated in the decision of this Court in the case of *Rupa Ashok Hurra v. Ashok Hurra & Another*, reported in 2002 (4) SCC 388. Hence, the Curative Petition is dismissed."

Miscellaneous Application in Large Scale Govt advertising: A Miscellaneous Application has been filed in pursuance of an IA filed by another petitioner in WP 13/2003. The MA which was filed on July 30, 2018 and registered on August 17, 2018 supports the IA that government has been incurring large expenditure despite the SC judgment to the contrary. The respondent states have been given time to file their responses and the matter is listed for April 3, 2019.

Writ for Police Reforms: The battle for police reforms has been going on for the last 22 years. The Supreme Court took 10 years to give a historic judgment in 2006, in the petition filed by Prakash Singh, Common Cause and NK Singh. Since then it has been a struggle to get the Court's directions implemented. On July 3, 2018, responding to an interlocutory application filed by the Ministry of Home Affairs (MHA) regarding the appointment of acting Director General of Police (DGP) in the states, the Supreme Court gave a slew of directions to ensure that there were no distortions in such appointments. It laid down that the states shall send their proposals to the UPSC three months prior to the retirement of the incumbent DGP. The

UPSC shall then prepare a panel of three officers so that the state can appoint one of them as DGP. To curb the practice of appointing Acting DGPs by the states, the Court directed that the UPSC should ideally empanel officers who have at least two years of service left, giving due weightage to merit and seniority. It also held that any legislation/rule framed by the states or the central government running counter to the direction shall remain in abeyance. On Jan 15, 2019, the Secretary, UPSC, was directed to inform the Court about the empanelment of IPS Officers for promotion to the rank of DGP in different states. On Jan 16, 2019, Rakesh Kumar Gupta, Secretary, UPSC affirmed that as directed in the Prakash Singh Case, a UPSC committee has set a definitive process in motion. The committee, consisting of representatives of the UPSC, the central as well as state governments have drawn up a panel of eligible officers belonging to the rank of DGP or Additional DGP in 12 states. The SC held that the order dated July 3, 2018, in Prakash Singh case is wholesome and dismissed the applications filed by Punjab, Bihar, Haryana, West Bengal and Kerala against it.

Contempt Petition on Non-Appointment of Lokpal: The Common Cause petition for the appointment of Lokpal was disposed in April 2017 with the court maintaining that the Lokpal Act was a perfectly workable piece of legislation. However, the government failed to appoint the Lokpal nine months after the Apex Court verdict. Common Cause filed a contempt petition seeking directions against the government's wilful and deliberate failure to fully comply with the judgment. The matter was taken up on February 23, 2018 and thereafter in March, April and May, 2018. The Centre had on May 15, 2018 informed the Court that senior advocate Mukul Rohatgi has been appointed as an eminent jurist in the selection committee for Lokpal appointment. The Supreme Court on July 2, 2018 directed the Centre to apprise it within 10 days about the time frame for Lokpal appointment. As the selection committee was scheduled to meet on July 19, 2018, the Bench fixed the matter for further hearing on July 24, 2018, without passing any orders. On July 24, 2018, the Attorney General (AG) submitted an affidavit stating that a meeting of the selection committee was held but the names for the search committee were not finalised and therefore another meeting would be held soon. Expressing dissatisfaction over the Centre's response, the Bench directed it to file a fresh affidavit giving relevant details of the search committee within four weeks. On January 4, 2019 the SC directed UOI to place on affidavit all steps taken since September 2018 to set up a search committee for the appointment of Lokpal. On January 11, 2019, Common Cause filed an IA, to place on record that the Search Committee had not held any meetings before December 13, 2018. The matter was listed for March 7, 2019. During the hearing on March 7, 2019, the AG informed the Court that the Chairperson of the committee vide communication dated February 28, 2019 forwarded three panels of names to be considered by the Selection Committee for appointment of the Chairperson, Judicial Member(s) and Non-Judicial Member(s). In this background, the AG suggested that since the deliberations of the committee were complete and it was "in seisin of the matter, the contempt petition may appropriately be closed".

Mr. Prashant Bhushan, counsel for CC, however, submitted that further steps needed to be taken in the matter of constitution of the Lokpal. He proposed that the names enlisted should be put in the public domain. He drew the attention of the Court to Section 4(4) of the Lokpal and Lokayuktas Act, 2013 which states that the committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal. However, the Court deemed it proper to not issue any directions in this regard and left the matter for a just determination by the committee as and when its meeting was convened. It requested the AG for information on the possible

date of convening the meeting to finalise names for Lokpal constitution, within 10 days from March 7, 2019. However, after dragging its feet for so long, the government appointed members of the Lokpal, headed by former SC judge, Justice Pinaki Ghose as the first Lokpal of India hastily on March 19, 2019.

Introduction of Electoral Bonds Challenged: Common Cause and the Association for Democratic Reforms (ADR) have challenged the introduction of Electoral Bonds, which was done by amending Finance Act 2017. These bonds have not only made electoral funding of political parties more opaque, they have legitimised high-level corruption on an unprecedented scale by removing electoral funding limits for big corporates and foreign lobbyists. The PIL seeks direction from the Supreme Court to strike down the amendments made through the Finance Act, 2017, and the Finance Act, 2016. It is also alleged that such wide- ranging amendments to the Representation of People's Act, 1951, the Reserve Bank of India Act, 1934, the Income Tax Act, 1961 and the Companies Act were brought in illegally as a "Money Bill" in order to bypass the Rajya Sabha. This matter was taken up on October 3, 2017, when notice was issued to the Union of India and other respondents. There are no further orders of listing. However, on February 2, 2018 our petition was tagged with the petition filed by Communist Party of India (Marxist) who approached the Court challenging the Centre's decision to introduce the electoral bond scheme. It said that this move "undermines democracy"; and will "lead to greater political corruption."

No hearings were held since October 3, 2017. However, in another matter on July 2, 2018, the Supreme Court Bench of Chief Justice Dipak Misra, Justice AM Khanwilkar and Justice DY Chandrachud issued notices seeking the central government's response on a plea challenging the amendments to Foreign Contribution (Regulation) Act. The petition, filed by ADR and Mr. EAS Sarma, a retired IAS Officer and a former Secretary to the Government of India, argued that the amendments were introduced to bail out the BJP and Congress parties after the Delhi High Court held them guilty of taking foreign funding. The retrospective amendments changed the definition of what constituted a foreign company in such a way that key beneficiaries would not face legal scrutiny for donations, with effect from September 26, 2010. The BJP and Congress had challenged the High Court judgment in the Apex Court, only to withdraw it later. Instead, the government undertook legislative steps to circumvent the ruling and legitimise the funding received from abroad. On March 14, 2019, the Centre in its affidavit filed in the SC claimed that electoral bonds would "promote transparency in funding and donation received by political parties." The matter was again taken up on March 26, 2019 when the Election Commission of India red flagged the bonds scheme, conveying that it had expressed concerns about it even in 2017. The EC in its affidavit said that the electoral bond project and removal of caps on the extent of corporate funding would have "serious repercussions/impact on the transparency aspect of political finance/funding of political parties." The matter is now listed for April 2, 2019.

Undoing the Mala fide Favours to RIL in K G Basin: The petition seeks appropriate writs to the UOI to undo the mala fide favours shown to RIL and its associate, NIKO, in the working of the Production Sharing Contract for KG Basin Gas Block and a thorough court monitored SIT inquiry into the collusion between the establishment and the said entities. It prays for cancellation of the RIL lease and an appropriate penalty for its failure to adhere to its commitments and deliberate under production. On December 3, 2018, the CJI refused to hear the case, saying it would rather look into more important cases. The case will likely be listed on April 4, 2019.

Illegal Mining in Odisha: There has been much progress since the final judgment on August 2, 2017, when the Court imposed 100 per cent penalty on companies indulging in illegal mining (mining without forest and environmental clearances, mining outside lease/ permitted area and mining in excess of permissions). In September 2017, Common Cause filed an application for clarification of issues arising out of the judgment. The Central Empowered Committee (CEC) formed by the SC, and featuring Former Justices GS Singhvi and Anil R Dave, was asked to ascertain whether there had been any violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 and violation of Rule 37 of the Mineral Concession Rules, 1960. Subsequent to the Court's judgment on the IA/ objections on November 12, 2018, which held SMPL guilty of illegal mining in Odisha, the matter was taken up on January 16, 2019. On that day, the time to complete the task of reviewing the National Mineral Policy, 2008 and announce a new National Mineral Policy was further extended till April 30, 2019. In the course of hearing, the issue of deleterious effect of mining on vegetation in the area came up before the bench. It's a fact that mining results in complete elimination of grass cover, which results in absence of fodder for herbivores. The Court was informed that re-grassing technology is in existence. It was also made aware that mine owners would be willing to bear the cost of re-grassing upon termination of mining activities in the area, since it is in the larger interest of the environment.

The Court requested the counsel appearing for the respondent (State of Odisha) to look into the matter and make appropriate suggestions to implement the re-grassing proposal, once the mining activities are terminated. The UOI said that re-grassing would also be included as part of the National Mining Policy 2019, being formulated by the government. It was pointed by our counsel that the report of the CEC was awaited. The Registry was directed to find out the time period within which the aforesaid report is expected to come and apprise the Court of the same thereafter. The matter was directed to be put up after four weeks and is likely to be taken up on April 5, 2019.

Delhi High Court:

SIT on Over-invoicing Requested by CPIL, Common Cause: Common Cause and Centre for Public Interest Litigation (CPIL) approached the Delhi High Court seeking a direction for a thorough investigation by a Special Investigation Team (SIT) into the over-invoicing of imported coal and equipment. The over-invoicing was carried out by various private power companies as detailed by Directorate of Revenue Intelligence (DRI) in several of its investigative reports. In the last few years, major instances of such over-invoicing have been unearthed by the DRI, which involved several prominent and influential companies. The matter was taken up on October 11, 2018, when the petitioners were directed to file a response within three weeks to the status report filed by the DRI. In addition, the DRI would be filing its response to the additional affidavit filed by Common Cause within the stipulated time. Also, it was directed that the report filed by the CBI on April 28, 2018 be furnished to all the petitioners. On December 4, 2018, the CBI was ordered to produce their original records/ investigation files relating to the two preliminary enquiries and regular case as mentioned in their affidavits/reply filed on April 28, 2018 in sealed cover, if necessary. On January 31, 2019, the Court directed the DRI counsel to produce the four adjudicating orders concerning various entities. It also directed the CBI counsel to file the status report and produce relevant records, duly flagged together with a comprehensive note vis- a-vis each one of them. The matter is listed to be heard next on April 5, 2019.

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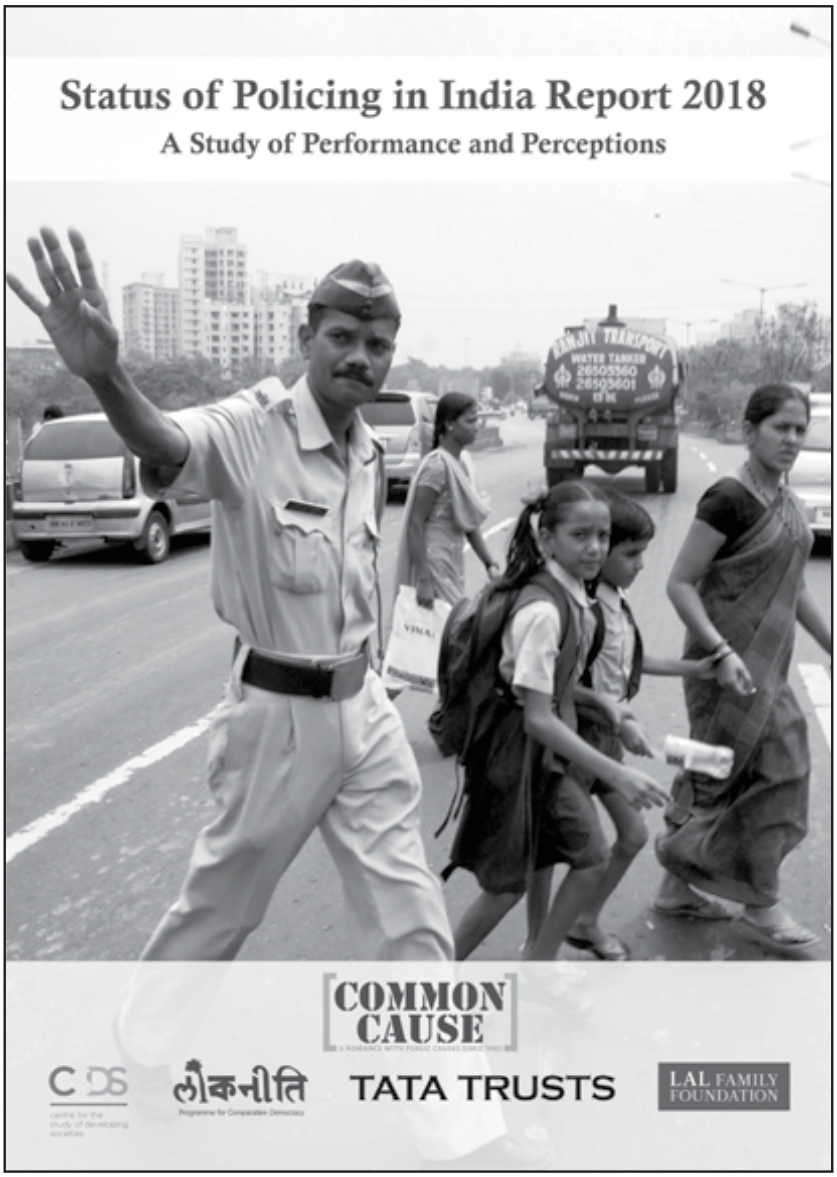

Jointly prepared by Common Cause and its academic partner, Centre for the Study of Developing Societies (CSDS), the report is a study of the performance and perception of the police in India. It covers about 16000 respondents in 22 states on parameters like citizens' trust and satisfaction levels, discrimination against the vulnerable, police excesses, infrastructure, diversity in forces, state of prisons and disposal of cases etc.

The study combines mixed methodologies to present a slice of life of policing in India. It also analyses official data and CAG reports along with an all India perception survey conducted by the Lokniti team of CSDS and their partners in the states.

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