

VEERING CORRUPTION: DECRIMINATLISATION AND DISCLOSURE.

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ABSTRACT

The draconian problem that the political reformers, judiciary and the electorate have to face is that the corruption still lies at the heart of Indian Politics. It has been successfully guarded by corrupt politicians as well as officials who benefit from the corporate financing of the parties. This question the legitimacy of the political parties in serving the citizens of the nation and their welfare. Corruption in the Indian polity is powered by the two procedures which are always antagonized for illegal benefits of the candidates. Therefore, it is a necessity to possess a strong political will is required on the part of government to decriminalize the entire political system by opting for more and more stringent measures as well as by enactment of required legislation. Article 21 of the constitution under Part III also upholds free and fair trial and therefore, the convicted wrong doers should be barred from being a candidate. The problem is calling for a dire need to sublime the the criminal-political nexus. An effective action is called for before public ends up losing faith in politics, politicians and democracy itself. The act of asset declarations has been adopted by a great number of countries. Asset declaration can make a citizen to know whether the tons of wealth available with one person were adopted legally or illegally. Therefore, the particular paper deals with legislative opinions and judicial opinions/ evolution of the two concepts over the years. The author of the paper thinks the right use of the tools of disclosure of assets and criminalization can lead to effective control in Corruption in politics in India. The paper also suggests the probable suggestions for dealing with the problems while considering the legal lacunae.

KEY WORDS: Criminalization, Disclosure, Assets, Politics, Corruption, Election.

I. INTRODUCTION

"Democracy is a rule of the people, for the people and by the people."

-Abraham Lincoln.

The only means of smooth, peaceful and effective transfer of power with the consent and choice of the majority is elections. Elections is a procedure by which the decision is put into

the hands of the electorate, whereby, the people choose and vote for the party or the candidate which they think will fulfill their expectations and aspirations of a representative in the parliament and also who would work for them with honesty, integrity and impartiality as the cornerstone imbedded in the character. Elections should be fair, which will uphold the principle of democracy. However, in the modern democracies this very basic structure or system is sometimes seen to be tarnished.

The purpose of electoral reforms is the decontamination of General Will. The eradication of corruption could take place by decriminalizing the politics and making stringent laws for disclosure of assets and liabilities. There must be no place for the criminals in the sacred electoral process conducted with free will and due process. Electoral system should be an arena for the best candidates around the country by weeding out the criminal who might have unknown benefits/ favours to be done under cover of the office. Elections should not only be viewed from angle of being mere rituals but the pathways of democracy. For a true decriminalization of politics, there has been a dire need to eradicate the patronage to criminals which is often given by politicians and political parties. One other mechanism by which we can have a cleansing impact in democratic regimes is by giving voters the information they need to eject dishonest or incompetent politicians. The Information will help citizens to know the illegal ways that one politician has grown his wealth from. This will also help to keep a better check on the corruption done by the politicians as the average salary should be close to average profits a person makes around the year concerning one cannot be employed elsewhere while holding office. Therefore, disclosure of assets and decriminalization being such areas that make a difference are often taken lightly by the government which creates a huge gray area for mischief.

A. A.1. DISCLOSURE OF ASSETS

Corruption has been deep-rooted in India's economy since so many decades. Corruption has not left alone even the purest considered institutions like schools and parliament. Politics and politicians have been stained these days by the enormous thick black color of the monetary transactions.

“WE, THE PEOPLE OF INDIA”, the first few magical words of our preamble to the constitution, these words are proof of the unity we have amongst ourselves to defeat the corrupt individuals and make better informed choices as to move to a healthier, safer and

richer country. Theoretically, a better informed voter can evaluate the futuristic social and economic hazards among the candidates for election¹⁸¹⁶s, if there is transparency about them, this would lead to the election of more honest and competent politicians¹⁸¹⁷ and even encourage positive self-election by politicians themselves¹⁸¹⁸.

160 countries have now mandated their respective public officials to disclose assets and liabilities and this activity can play a prime role in investigation in scams and corruption cases and could be used as a tool for better public accountability¹⁸¹⁹. Therefore, many countries have been taking the initiative of mandating the politicians to disclose their assets while filing for election post vacancy and while resigning. In some cases, including that of India which is our focus here, public asset disclosures are required even to stand for office¹⁸²⁰.

Not much evidence has been out forth by the government on issues such as self-election of voters choosing incumbent leaders after the disclosure of assets was made mandatory. The need of data on such topic has been exacerbated because of the curious readers after the scam of Panama Papers in 2016, which brought unexpected transparency to the finances of politicians in a number of countries. The scam put shame to Iceland's PM amongst many others and consequently a resignation was handed.¹⁸²¹

The existence of disclosure laws and the extent of compliance using cross-country data, and examination of the correlates of these variables find that public disclosure is associated with better government and less corruption¹⁸²²

A.2 TURNING POINT

A Public Interest Litigation (PIL) was filed by ADR in December of 1999 which grew onto to become a landmark Supreme Court Judgment on May 2, 2002¹⁸²³ and in consequence, an

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¹⁸¹⁶Besley, Timothy. 2005, Political Selection, Journal of Economic Perspectives, 19 (3): 43-60.

¹⁸¹⁷Barro, R.J. "The control of politicians: An economic model". Public Choice 14, 19-42 (1973). <https://doi.org/10.1007/BF01718440>

¹⁸¹⁸E Dal Bó, F Finan, MA Rossi, Strengthening state capabilities: The role of financial incentives in the call to public service, The Quarterly Journal of Economics, 2013

¹⁸¹⁹Djankov, Simeon & la porta, Rafael & Lopez-de-Silanes, Florencio & Shleifer, Andrei. (2009), Disclosure by Politicians, American Economic Journal: Applied Economics. 2. 10.2139/ssrn.1334126.

¹⁸²⁰Ferejohn, "J., Incumbent performance and electoral control", Public Choice 50, 5-25 (1986). <https://doi.org/10.1007/BF00124924>

¹⁸²¹Voting technology, political responsiveness, and infant health: Evidence from Brazil, T Fujiwara Econometrica 83 (2), 423-464

¹⁸²²Djankov, Simeon & la porta, Rafael & Lopez-de-Silanes, Florencio & Shleifer, Andrei. (2009), Disclosure by Politicians, American Economic Journal: Applied Economics. 2. 10.2139/ssrn.1334126.

¹⁸²³Union of India v. Association of democratic reforms, [2002] 5 SCC 294.

ordinance on Electoral Reforms promulgated in August of the year 2002. The ordinance got the assent and became a bill in December of 2002. It partially was in conflict with landmark ruling Supreme Court, requiring past details of candidates. This act was again challenged by ADR¹⁸²⁴. The Supreme Court, in a second landmark ruling on March 13, 2003, held the bill unconstitutional and dismissed it as void and reverted back to its previous ruling.

People's Union for Civil Liberties (PUCL) had also filed a writ under Article 32 of the Constitution praying several things one amongst was making a provision for compulsory disclosure of assets by the candidate for the elections and this practice to be carried out every year during the period as an elected representative as MP / MLA

Finally, through the 2003 ruling, the Supreme Court ruled that the candidates standing for offices would be responsible for disclosure of assets and liabilities and should submit an affidavit during at the time of nomination. The ruling has been proved to be a blessing as it has started weeding out the politicians by making them exit the polls and hence, giving chance to honest incumbents.

The landmark decision requires details of movable and immovable assets possessed by them, their other halves and their dependents, including responsibilities like loans from public sector banks and unpaid bills by them such as telephone bill and electricity bill. These documents are submitted with nomination papers and the Election Commission uploads them all in on one website in order to educate voters about the background of these candidates.

The regrettable fact that the number of corrupt candidates has only increased¹⁸²⁵, but it does make the scale of corruption public and exposure is also a key preventive when it comes to fighting corruption.

B.2.i. Lokpal and Lokayuktas Act 2013

This act was enforced because of the enormous concerns India's investigatory authorities were not very much independent of government influence to police corruption within the government. It creates the posts held by independent ombudsmen at the central and state levels to inspect and prosecute cases of corruption by public officials.¹⁸²⁶

¹⁸²⁴ *Association of democratic reforms v. Union of India*, AIR 2001 Del 126.

¹⁸²⁵ Raymond Fisman, Florian Schulz and Vikrant Vig, *Journal of Political Economy*, Vol. 122, No. 4 (August 2014), pp. 806-862.

¹⁸²⁶ "How the political class has looted India," *The Hindu*, July 30, 2012, [<http://www.thehindu.com/opinion/lead/how-the-political-class-has-looted-india/article3700211.ece>].

Non-disclosure of assets and sources of income of the candidates would be constituted as corrupt practices and would result in law suit against the candidate under the Section 12(3) of the RP Act¹⁸²⁷, 1955

A.3 CASE STUDY

State assembly elections in India take place at different places at different timings. Himachal Pradesh and Rajasthan had elections in 2003 but the electoral process happened in Himachal Pradesh in April and in Rajasthan in November. The disclosure of asset was mandated from November, therefore the politicians in Rajasthan were mandated to make disclosures while the ones where election happened before were not. The comparison before the 'just-before' state like Himachal Pradesh to 'just-after' state like Rajasthan, an analysis can be drawn as there is a little impact on the first election after disclosure of assets was mandated. But the next elections after that, was hit with a drop of about 15 percentage points in the fraction of incumbents standing for re-election. The drop was analyzed to be a lack of stigma associated with wealth – rich businessmen turned politician like Donald Trump are not implicated in corruption. But the effect concerns those who grow their wealth while employed to the particular post/office as they attract suspicions as how one can earn so much more than what their salary is deemed to be.¹⁸²⁸

A.4 LEGAL CASES

1. PUCL & Lok Satta v. UOI

The language in Section 75A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has miscarried to effectuate the right to information and the freedom of expression guaranteed by the constitution of the voters/citizens. The parliament while accepting the need for disclosure of assets and liabilities of the elected candidate together with those of spouse or dependent children, the Parliament should have made a clause of furnishment of the same at the time of nomination and the failure of same has been concluded as violation of rights guaranteed under article 19(1)(a)¹⁸²⁹.

2. Common Cause v. Union of India

It was observed that:

¹⁸²⁷ Representation of People Act, 1955, Section 12(3)

¹⁸²⁸ G Linden, *Business and Politics* 6 (3), 1-26, 2004. 82, 2004.

¹⁸²⁹ *PUCL & Lok Satta V. UOI*, AIR [2003] SC 2363.

“Flags go up, walls are painted and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxies. The political parties in their pursuit for power spend more than a thousand crore of rupees on the General Election (Parliament alone), yet nobody asks for the accounts for the bulk of the money so consumed and there is no accountability anywhere. From where does the money come no one knows? In a democracy where rule of law prevails this type of naked display of corruption, by violating the compulsory provisions of law, cannot be permitted.” To combat this uncovered display of unaccounted/black money by the candidate, declaration of assets is likely to have check of violation of the provisions of the Act and other relevant Acts including Income Tax Act.”¹⁸³⁰.

3. *Mayawati Case*

Ms. Mayawati of Uttar Pradesh was suspected by Central Bureau of Investigation(CBI) that assets increased from Rs. 1 Crore in 2003 to Rs. 50 crore in 2007. The affidavit was consequently filed in Supreme Court and it talked about 96 plots, houses and orchids In her ownership and her close relatives between 1998 and 2003. The Rajya Saba nomination form of Mayawati was Rs.111.64 core . The fact that income tax returns are so readily accepted by IT officers have increased the happening of such scams and frauds

4. *Lok Pahari v. UOI*

The judgment stated that rights to know the sources of incomes and liabilities of the candidates contesting for elections is a right of a voter and hence should be considered a fundamental right¹⁸³¹.

A.5 LEGAL LACUNAE

- It is observed that Indian voters have had the benefits of the ruling for disclosure of assets as the accountability for the assets of politicians and election results have arisen¹⁸³². Even demonetization could not flush out corruption in the country¹⁸³³, as

¹⁸³⁰ *Common Cause v. Union of India and others*, [1996] 2 SCC 752.

¹⁸³¹ *Lok Pahari v. UOI*, [2018] 4 SCC 699.

¹⁸³² Sunlight as disinfectant disclosure requirements and corruption in India, *Idea for India*, <https://www.ideasforindia.in/topics/governance/sunlight-as-disinfectant-disclosure-requirements-and-corruption-in-india.html>

corrupt perpetrators have adapted to a new way of corruption techniques as politicians have grown accustomed to declaration requirements by simply hiding their wealth. E.g.: The Panama Papers where all the information of black money was held in the off shore accounts handled by a Panamanian law firm. Politicians globally are already proficient at putting their wealth in untraceable spots abroad.¹⁸³⁴

- Politicians are considered to stop complying to disclosure requirements entirely. A research project by World Bank researchers have concluded that around 75% countries require asset declaration confirming to the necessary principle but those details are not made public thus defeating the object of the provision. Public force is necessary to force politicians to make disclosures in the first place.¹⁸³⁵
- S. 75 of the Representation of people Act, 1955 states that disclosure of assets is only necessary for the politicians who have won the election and will be taking oath for office, it doesn't specify the candidates who even appear for contesting elections. To de-elect a candidate after election needs very much efforts so once the candidate is elected and even if his finances look unusual, not much can be done about.
- After winning, elected members are required to submit an annual statement under the "The members of Lok Sabha Declaration of Assets Rules, 2004" and the one for Rajya Sabha named "The members of the Rajya Sabha Declaration of Assets rules, 2004", although the presence of such acts, not a lot of states has given access by the Public to such information. The information hasn't been granted under Right to Information Act, 2000 and this lessens the chances of such criminals being caught and impeached from the respective houses.¹⁸³⁶ In November 2011, the Government of Jammu and Kashmir made assets of the administrative officers' public via official website of the General Administration Department (GAD).

A.6 GLOBAL STANCE

¹⁸³³BJP Leader Manish Sharma Arrested with new notes worth Rs.33 Lakhs, *Firstpost*, <https://www.firstpost.com/india/west-bengal-bjp-leader-manish-sharma-arrested-with-new-notes-worth-rs-33-lakh-3143556.html>

¹⁸³⁴ Fisman, R, F Schulz, and V Vig (2017), Financial disclosure and political selection: Evidence from India, Working Paper.

¹⁸³⁵ Batalha, João Paulo (2013), Holding Politicians to Account: Asset Declarations, Transparency International, 17 January.

¹⁸³⁶Govt Makes Assets of IAS, KAS Officers Public (2012), *Greater Kashmir*, <https://www.greaterkashmir.com/news/kashmir/govt-makes-assets-of-ias-kas-officers-public/>

According to a 2006 World Bank, survey was conducted in 147 countries that is on the list for World Bank assistance, 101 lacked and had to mandate senior government officials to declare their income and/or assets, of which a few 31 (more than 30%) required that the declarations should be made public. A more extensive World Bank survey¹⁸³⁷ conducted for 176 jurisdictions which was completed in 2012 shows that 137 (78%) have financial disclosure systems and about 93% of those countries have mandated disclosure as a procedure through which cabinet members have to undergo, 91% for Members of Parliament and 62% for high-ranking prosecutors. Only about 43% of that many countries provided the data to public online. Many countries mandating disclosure requirements, such as Latvia, have proficiently lessened corruption.¹⁸³⁸

A.6. i. UNITED KINGDOM

The 2010 Code of Conduct for specifically, the Members of the House of Lords sets out a similar two-fold system is in place for the registering of interests of the Members of the House of Lords. Government ministers are effectively come under by the disclosure regime as they are considered sitting MPs or members of the House of Lords.¹⁸³⁹

A.6.ii. UNITED STATES OF AMERICA

In a consequence to Watergate and other publicly done scandals and a day by day weakening of the public's trust in government, Congress has enacted the Ethics in Government Act of 1978 ("Ethics Act"), which required annual statement by high-level government employees in all three branches of the federal government

A.7 SUGGESTIONS

- I. Section 75 only guarantees for the asset declaration after one is elected, but an amendment to the act should be passed mandating every candidate to file an annual statement so that every voter is affair of the deeds of the candidates, and thus a fair and honest candidate is voted for the office
- II. The asset declaration should record exact values of the assets and liabilities, but India opts for recording the values of the same in ranges.
- III. There should be an administration set up for the task of analyzing assets and liabilities of every candidate and making a percentage bars or diagrams, thereby

¹⁸³⁷OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (2011), p. 44

¹⁸³⁸Committee of Experts of MESICIC, *Report on Implementation in Mexico* (2005); Second Report (2007).

¹⁸³⁹World Bank, *Public Accountability Mechanisms: United Kingdom*.

simplifying it for the public to know who to vote and how credible the candidate is.

- IV. The administration of an asset disclosure programme requires a monitoring and evaluation agency to collect and verify information and investigate, prosecute and sanction those who fail to comply.
- V. The assets and liabilities of a minister or holder of office should also be mandated to record on the day the minister/ holder of the office resigns. So that the increase in his wealth could be tallied with the income and expenditures.
- VI. If the abnormal increase in his assets or decrease in his liabilities are not justified by the minister then the minister should be charged with penal punishment along with a ban on his ticket to the office, he desires to be in¹⁸⁴⁰.
- VII. A punishment should be specified for those who fail to or dishonestly commits fraud by disclosing false annual statement

B. CRIMINALISATION OF POLITICS

A hundred years ago, the great, Napoleon said that the greatest difficulty with politics is that there is no set of established principles. He observed that proficient politics and principles have seldom gone together. The biggest confounding aspect in the political environment of business is criminalization of politics. The direct passage for the criminals into the politics through the tickets given by various parties to such nefarious criminals into the legislature, including parliament and they consequently use criminal methods and tactics to coerce people into voting for them thereby attempting to corrupt political processes and procedures. Once the political aspect joins the criminal elements, the nexus becomes extremely dangerous and which in turn threatening the growth and development of the country. Our electoral process isn't transparent enough for the public to be aware of the criminal backgrounds of the candidates contesting elections. Around 29% of the members of the current Lok Sabha have criminal cases pending against them.

¹⁸⁴¹The charges in several of the cases are of heinous crimes such as murder, robbery, kidnapping and not just violation of section 144, or something similar¹⁸⁴². According to

¹⁸⁴⁰Himachal Pradesh, Congress, MLA acquitted dalit woman murder case, *First post*, <https://www.firstpost.com/india/himachal-pradesh-cong-mla-acquitted-dalit-woman-murder-case-1708093.html>.

¹⁸⁴¹ Sharad Karkhanis 1981, *Indian Politics and the Role of the Press*, Vikas Publishing House, New Delhi

¹⁸⁴² P.D.T Achary 2004, *Law of Elections*, Bharat Law House

Hon'ble Justice H.R Khanna of Supreme Court, that most of the members of legislative assemblies for the state of Bihar have been found in police records because of their nefarious activities. The 1997 elections conducted in Bihar threw light on the scandalous backgrounds of our politicians as 67 politicians with criminal background were elected who were Janata party members.

The criminalization of politics is threatening political democracy¹⁸⁴³. According to Mr. Madabhushi Sridhar, the astronomical wealth accumulated by the nefarious criminals and the influence they seem to hold over every constitutional institution and the greedy needs of these law-breakers for fighting an election in the present conditions are the most worrying factors¹⁸⁴⁴, as they seem to endanger the very purpose of electoral democracy and mechanism of representative governance.¹⁸⁴⁵

B.2 LEGISLATIVE OPINION

Chapter IX A of Indian Penal Code, 1872 is defined to deal with offences relating to elections.¹⁸⁴⁶ On 28th of August 1997, the then Election commissioner of India, G.V.G.Krishnamurti shocked the nation by throwing light on the statistics, showing politicization of criminals. According to him, out of 1, 37,752 candidates who had contested for the elections to the Lok Sabha in 1996, nearly 1500 had past criminal records of offences amounting to more than 7 years of punishment. The Indian Government, the world's largest democracy, woke up very late to this alarming situation and held a conference of Chief Ministers on the "Administration of Criminal Justice in India" in 1992¹⁸⁴⁷. The Government constituted a committee with then, Union Home Secretary, N.N Vohra as Chairman, and then, Secretary R&W, Director I.B., Director C.B.I. Special Home as members. The draft by N.N. Vohra had traced such deep involvement of politicians with crime all over India that it was banned from publication. The Vohra Committee work hinted of the rapid growth of criminal networks that had in turn developed an elaborate system of contact with bureaucrats, politicians and biased media persons. Not rule of law but rule of dadas and thug seating into the vitals of the country have become chronic

¹⁸⁴³ Adi. H. Doctor (1985), *Issues In Political Theory*, Sterling publishers Ltd, New Delhi.

¹⁸⁴⁴ Subhash C. Kashyap (2003), *National Resurgence through Electoral Reforms*, (Ed) Shipra publications, New Delhi,

¹⁸⁴⁵ Madabhushi Sridhar, *The Law of Expression*, Asia Law House 2007

¹⁸⁴⁶ Indian Penal Code, 1860, S.171B, 171C and 171D, IPC

¹⁸⁴⁷ V. Bhaskara Rao (1987), *General Elections in India*, Uppal Publishing House, New Delhi.

Sec. 8, Representation of People Act, 1951 seems more preventive as it provides ineligibility on conviction of certain offences. Sec. 8(1) delivers that a person sentenced of an offence and sentenced to imprisonment for more than six months shall be disqualified from the date of such conviction. S. 8(2) offers that a person sentenced for the breaking of certain law mentioned in it and sentenced to imprisonment for more than six months shall be disqualified from the date of such conviction and shall last on to be considered disqualified for a further period of six years since his release. However, the disqualification under sub-sections (1), (2) and (3) will not take place when an individual who on the date of the conviction is a member of parliament or state legislature and until three months have elapsed from that date or if within that period an appeal or revision is done in furtherance of the conviction until that appeal or application is disposed by the court¹⁸⁴⁸

B.3 JUDICIAL HISTORY

The Union Government along with the tireless efforts of NGO's such as "Citizens for National Consensus" (CNC) have been backing up the electoral reforms with a motive of strengthening the democracy at various levels. In the year 2002, the Supreme Court gave a historic ruling following public interest litigation by an NGO. The judgment came as a relief to all as it played a very big role in bringing transparency in the electoral process as every candidate, contesting an election to Parliament, State Legislatures or Municipal Corporation, has to affirm in an affidavit the following along with the application for his/her candidature.

- A candidate's records of criminal charges (convictions, acquittals and charges)
- The candidate's financial records (assets and liabilities)
- The candidate's educational qualifications

If any candidate does not abide by the requirement to file any of the above three declarations, the Returning Officer has the right to reject his nomination papers. The Supreme Court passed another landmark judgment dated March 10, 2014¹⁸⁴⁹ *Lily Thomas v. Union of India*¹⁸⁵⁰ case (along with *Lok Prahari V. Union of India*¹⁸⁵¹) with a view to mandating and

¹⁸⁴⁸ *Kapur B R. v. State of T.N.*, AIR 2001 SC 3435; see also Dr. Mrs Kiran Jain and Jain, Chawla's P C, *Elections: Law and Practice*, XXXV, 7th Edition, 1999, reprint 2002.

¹⁸⁴⁹ SC sets deadline against for trial against MPs and MLAs, *The Hindu*, <https://www.thehindu.com/news/national/SC-sets-deadline-for-trial-against-MPs-and-MLAs/article11406239.ece>

¹⁸⁵⁰ *Lily Thomas v. Union of India*, [2000] 6 SCC 224

¹⁸⁵¹ *Lok Prahari v. Union of India*, [2018] 4 SCC 699

terminating that the candidature disclose their criminal antecedents, if any, as also their financial and educational background, and any member of Parliament (MP), Member of Legislative Assembly (MLA) or Member of Legislative Council (MLC) who is convicted of crime and awarded a minimum of two year imprisonment will result in termination of the office they are holding and would lead vacancy in the office. This was not in consonance and gave rise to different approach from the earlier position, wherein convicted members could hold on to the offices/ seats until they exhausted all judicial remedy in lower, state and the Supreme Court of India. Further, section 8 (4) of the Representation of Peoples Act which permitted the elected representatives, 3 months of time to appeal against their conviction, was declared null and void (unconstitutional) by the bench¹⁸⁵². History was created when again on 10th of March 2014, Supreme Court ordered another remarkable judgment on a PIL filed by Public Interest Foundation, it ordered the subordinate courts to dispose of cases U/S 8 (1) (2) (3) within a year from the date on which charge sheet before concerned High Court was submitted.¹⁸⁵³. Hence, it should be ascertained that the Judiciary is trying its best to check criminalization in India politics.¹⁸⁵⁴,

The court also discussed briefly on the topic of right to information- the right to know criminal antecedents or assets of a candidate was a constitutional right under article 19(1)(a) of the constitution of India, 1950¹⁸⁵⁵ and that the information was fundamental for survival of democracy.

B.4 LEGAL CASES

1. *K. Prabhakaran V P. Jayarajah*¹⁸⁵⁶

Issue: The question before the court in this case was whether the 2 years imprisonment required for the disqualification has to be for one offence or could be the aggregated conviction leading to imprisonment for multiple offences.

Facts: The respondent had many cases against him but there were no punitive measures such as imprisonment for any offence exceeding two years. The time of imprisonment was supposed to be passed consecutively or else it would add up to 2 years and 5 months of imprisonment. After appealing, the session court ordered

¹⁸⁵² *Deepak Ganpat Rao Salunke V state of Maharashtra*, [1999] Cr LJ 1224 [S.C.].

¹⁸⁵³ *Raj Deb V Gangadhar Mohapatra*, AIR 1964 Ori 1.

¹⁸⁵⁴ Dharendra Kumar Jena, Judiciary: A Check to Criminalization in Indian Politics, International Journal of Social Science and Humanities Research, 2(4), 2014, 325-332.

¹⁸⁵⁵ Sharma S N, Booth Capturing: Judicial Response, 41 JILI, 44, 1999, 45-46.

¹⁸⁵⁶ *K. Prabhakaran V P. Jayarajah*, AIR 2005 SC 688.

suspension of the order of imprisonment and the respondent be released on bail during the hearing of the bail. Whilst the appeal, he filed his nomination paper for candidature from a legislative assembly seat in a state. During scrutiny, the Appellant investigated and found that the respondent was convicted and sentenced to imprisonment for a total of not less than two years. The objection being dismissed, nomination was accepted by returning officer on the ground that the respondent was convicted for any offence for more than 2 years. The Supreme Court dismissed the contentions, and stated while applying the golden rule of interpretation that the use of the adjective “any” with “offence” did not mean that the sentence of imprisonment for not less than two years must be in respect of a single offence. The court emphasized that the purpose of enacting S. 8(3) was to prevent criminalization of politics.

2. *Vidyacharan Shukla V Purushottam Lal*¹⁸⁵⁷

Mr. V.C. Shukla was convicted and sentenced to imprisonment exceeding two years by the Sessions Court of the state on the date of filing nomination but the returning officer unlawfully and dishonestly accepted his nomination paper. He fraudulently won the election although criminal charges against him were effective. After the losing candidate, challenged it and the Madhya Pradesh High Court permitted the criminal appeal of Shukla setting aside the conviction and sentence.

OVERRULED: Vidyacharan Shukla case, which promulgated validating the unlawful action of the returning officer and encouraging criminalization of politics was overruled by Prabhakaran.

3. *Mannilal V Parmailal*¹⁸⁵⁸

The court held that the acquittal of a candidate having criminal charges against him, had the effect of retrospectively wiping out the disqualification as completely and effectively as if it had never existed.

B.5 EXAMPLES

1. Mohammad Sahabuddin was elected for four successive terms in the Indian Parliament from 1996-2008 from Bihar on RJD ticket. In 1996, Sahabuddin was

¹⁸⁵⁷ *Vidyacharan Shukla V Purushottam Lal*, [1981] 2 SCC 84.

¹⁸⁵⁸ *Mannilal V Parmailal*, [1970] 2 SCC 462

declared minister for home ministry. He was debarred after being convicted murder, kidnapping and 34 serious crimes.¹⁸⁵⁹

2. Shibu Soren, was the chief minister of Jharkhand and later, was found guilty by the court of murder of his secretary.
3. Raja Bhैया who has royal ancestry is also a leader; however he is purported to be a criminal and has spent many years in Jail under the POTA (Prevention of Terrorist Activities Act).¹⁸⁶⁰
4. Charges for heinous crimes such as murder, kidnapping and crime against women have been against Shiv Sena candidate, Dhoot Rajkumar Nandlal from Maharashtra
5. Adiq Ahmat, a member of Lok Sabha from the Phulpur Lok Sabha Constituency in Uttar Pradesh, at the time of election he was facing trial in 35 criminal cases including several cases of murder.

B.6 REASONS FOR CRIMINALIZATION OF POLITICS:

1) Muscle Power

The fact that muscle power has influenced Indian politics has been veraciously proven. In the year 1977, the National Police Commission headed by, then Dharam Vira, analyzed, the way in which a party rallies or votes especially on the eve of periodic election, involves criminal practices like use of musclemen and Dadas/goons to coerce in the name of influence sizable sections of the electorate. The panchayat elections are termed as mild kind of hazards on the political-sociologic integrity, as there have been instances of insane violence as the politicians try to gain votes on basis of castes and that is a legal offence. The civilians who constitute the most numbers in the electoral procedure voters, generally are too loath to take methods that would inhibit the criminal activities. The nexus of the criminal minds along with political power has been termed as a danger to the freedom of expression vested in Indians by Article 19(1).¹⁸⁶¹

2) Money Power

¹⁸⁵⁹ B. Vankatesh Kumar (2009), *Electoral Reforms in India*, Rawat Publications, New Delhi.

¹⁸⁶⁰ Ahuja, M.L. (2005), *General Election in India: Electoral Politics, Electoral Reforms and Political Parties*, Jain Book Agency, New Delhi.

¹⁸⁶¹ Saini, Pankaj (2009), *Parliamentary Democracy and Political Change in India*, Alfa Publications, New Delhi.

The elections to Parliament and State Legislatures are very costly and political funding for elections is a root cause for corrupt in the country. A candidate has to spend enormous amount of rupees to get elected and after election also, the total salary one might get during his tenure as an MP/MLA will be meagre compared to his election expenses. The gap between income and expenditures is curtailed by publicly faking donations. The spending approximation for an election estimated as Rs. 5 per voter as election outlay, for 600 million voters, and calculation of all the expenditures in one electoral procedure estimated about Rs. 2,000 crore. Then there are some state elections and local elections. In all, system is supposed to generate around Rs. Five thousand crore in a five year cycle or Rs. One thousand crore on an average each year. This huge amount of investment comes from criminal activity.¹⁸⁶²

3) Loopholes in the election process

Our Indian Election process has too many loopholes. The forms by the Election Commission which are supposed to be filled by the candidates disclosing their convictions, cases pending in courts and so on in their nomination papers is a great initiative by the election commissioner but even this process is tainted. The nomination papers would only inform people of the candidate's history and qualifications, but not prohibit them from voting for the criminals. A gulf is existent between the Election Commission and the voter. Civilians hardly come to know about the rules made by the commission. Associating this gap is indispensable not only for rooting our detrimental elements from politics but also for the endurance of our democratic polity. This is an incremental practice, the rate of accomplishment of which is directly relative to the increase in literacy rate in India.

4) Emergence of vote bank politics

The major reason criminalization of politics still prevail is because the criminal candidates services the people before election from the long accumulated black money. The range of the services provided by such people is gigantic and includes the help rendered by them in carrying on unlawful activities during strikes, bandhs, rallies, etc. After being elected as political leader, they attempt to accomplish their targets and ambitions on the stake of rules and regulations that should govern them. The political parties spend gargantuan amount to

¹⁸⁶² Palekar, S.A.(2002), *Constitution and Parliamentary Democracy in Contemporary India*, ABD Publishers, Jaipur.

buy votes and conduct other illegal activities through these mafias. Indian citizens are too ignorant about the politics going on in the country and thus remain unaware of whom they should to vote.¹⁸⁶³

5) *Corruption*

The realm of democracy is wide enough to bestow powers in the hands of voters to weed out the bad politicians or criminals. The corruption has been done in a two-fold manner, the first stage was the corrupting of the institutions and the second stage was the institutionalization of corruption. The fiasco to deal with corruption has bred disdain for the law. When there is scorn for the law and this is combined with the criminalization of politics, corruption flourishes. India is ranked on 66th out of 85 in the Corruption Perception Index 1998, performed by the German non-government organization Transparency International based in Berlin, Germany.¹⁸⁶⁴

B.7 CONCLUSION

Criminalization of politics in India is an extremely dangerous problem. This malevolent criminalization calls for exceptional attention of the people, because the problem is about the vested interests of politicians of all varieties, as such people never long or hope for the politicians would take any initiative to correct this evil. It is abolishing all the constitutional protections of democracy; it is tainting bureaucracy by making it partial; it foils press; even menacing judiciary, and thus is rescinding the foundation of democracy. The entry of criminal in politics must be banned and checked, this will ensure that criminalization has been eradicated from the political system totally. The lack of talented persons in politics may result in a downfall for the country internally as well externally. The parliament has taken a few steps by amending the laws such as IPC, and PR Act, but the efforts were in vain as none of the act still has completely prevented Corruption from ceasing. The Supreme Court of India has made tremendous efforts to check the malevolent, but the efforts were futile. The roots of the problem lie in politics and hence politics itself can combat the problem by inculcating in itself higher ethical values. They should unitedly make efforts to prevent entry of criminals in politics.

¹⁸⁶³ Shastri, Sandeep.(2003), *Local democracy and Political Parties in India*, Sage Publication, New Delhi.

¹⁸⁶⁴ Updhyaya, Anjoo Saini (2005), *Electoral Reforms in India*, Concept Publishing Co., New Delh.

B.8 SUGGESTIONS

Some recommendations for a way to curb Criminalization of Politics in India:-

- (i) Nominated politicians should come under definition of public authorities under section 2(h) of RTI Act so as to bring them under the purview of the audit by common people and thus, help people confide in better governments by having full transparency
- (ii) The Election Commission of India (ECI) should have the power to audit the financial accounts of political parties, thereby reviewing corruption.
- (iii) The political parties and the politicians should be strongly discouraged to recruit any people who having charges of criminal activities against them. The political parties should voluntarily come together and decide with a firm mind and full commitment to contribute to conduct free and fair poll. Immense importance should be given to the personality of a person in the selection of a candidate rather than his capability to win based on illegal means
- (iv) There has to be provisions set forth for more accountability in political parties which will be possible after framing a set of effective rules and regulations. Accountability would create a show for the misdeeds of the political parties and honest parties thereby could get an edge of.
- (v) Apart from a supreme court order for speeding proceedings in cases against politicians, there has been no concrete steps taken to ensure that For speedy disposal of such legal cases the system of speedy trials court may be introduced.
- (vi) People should be lesser ignorant and research about a candidate's deeds and past before casting a vote for them, in this way people can alone prevent criminals in entering into politics. For the proficient use of the above power, the people are need to be knowledge with political education.
- (vii) RPA Act, 1955 should have provision in which it is mandated for Political parties to submit the list of their candidates at least three months prior to the elections so that a through IB and IT check could be carried out.
- (viii) The Election Commission has managerial control over the civil and political officials thereby looking for to cease political interference stated to be the origin of electoral

malpractices but still there have been instances of violence. In spite of such scenario, there hasn't been a single case reported.

- (ix) The Chief Electoral officers in states, under the administrative control of the Election Commission are expected to perform their task as independently but due to severe pressure and constraints, they are unable to do so. The Election Commission analyze and hence consider the posting of Chief Electoral Officers in the state from any of the states outside.
- (x) There should be a provision for firing the errant legislators from the office, similar provisions have been instilled for judges as well. This will ensure that politicians keep working for the citizens. The impeachment should have a proper process and should be reviewed by experts.
- (xi) No training or teaching has been given to the newly elected legislators, even the trainees recruits and student in schools and jobs get training of how to deal with the particular subject they are dealing with in it, but our country doesn't impart enough knowledge to the lawmakers about the upkeep of making a law.
- (xii) Amount fixed to an M.P or M.L.A under local area's development be paid phase wise in two payments and making it compulsory to submit accounts of spending of the first installment in order to get the second installment of the stock and accounts of expenditure should be audited periodically and make it public.

CONCLUSION:

The situation with decriminalization and assets issue leading to corruption calls for a legislation to regulate party funds, distribution and expenditure during non- election and election times. Maintenance, audit and publication of regular accounts by the political parties on a surprise notice should be made available through a provision by legislature this will award lesser time for politicians to cover their tracks. Seating up of special courts can also be another alternative for trying the cases of criminalization of politics. The standards of political have been falling day by day and it would be more desirable to try all cases of politicians by special court which ameliorates the process of maintaining sanctity and purity of elections. This opus strives to draw attention to the problems that persist in the Indian Democracy with respect to politics and what has been done till now to curb the same.