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Criminalisation of Politics and Judicial Reforms: Strengthening Electoral Integrity, Rule of Law and Democratic Accountability in India

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Recent Developments:

- A recent report placed before the **Supreme Court** indicates that special courts established to expedite criminal cases involving Members of Parliament and Members of Legislative Assemblies have not substantially eliminated the backlog, with **more than 4,000 cases** involving serving and former lawmakers reportedly remaining pending.
- The issue originates from **Ashwini Kumar Upadhyay v. Union of India**, in which the Supreme Court directed the establishment of **12 special courts across 10 States and Union Territories** for expeditious disposal of criminal cases involving sitting and former MPs and MLAs.
- The continuing pendency has renewed attention on **judicial capacity, monitoring mechanisms, delays in criminal trials and the broader problem of criminalisation of politics**.

Criminalisation of Politics:

Meaning and Context:

- **Criminalisation of politics** refers to the increasing presence of persons facing criminal allegations or having criminal backgrounds in electoral politics. However, a pending criminal case represents an allegation and should not be treated as equivalent to a conviction.
- The issue becomes particularly significant when criminal proceedings against elected representatives remain pending for long periods because prolonged trials can affect **public accountability, electoral transparency and confidence in the rule of law**.

Current Data on Lawmakers:

- According to data cited in the recent Supreme Court proceedings, **251 of 543 Lok Sabha MPs** had declared pending criminal cases, including **170 MPs with serious criminal cases** involving offences punishable with imprisonment of five years or more.
- In the **Rajya Sabha**, **75 of 233 MPs** had declared pending criminal cases, including **40 serious criminal cases**.
- Among **4,111 State MLAs**, **2,098** had declared pending criminal cases, including **1,286 serious criminal cases**, according to the data cited in the recent proceedings.
- The **2024 Lok Sabha election data** separately showed that 251 of the 543 newly elected MPs had declared criminal cases, while 170 had declared serious criminal cases, demonstrating the persistence of the issue across electoral cycles.

Constitutional and Legal Framework:

Representation of the People Act, 1951:

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- The **Representation of the People Act, 1951** provides for disqualification of persons convicted of specified offences, but the statutory framework generally operates upon **conviction rather than the mere filing of criminal charges**.
- This distinction reflects the principle of **presumption of innocence**, under which an accused person is not treated as guilty merely because criminal proceedings are pending.
- At the same time, lengthy trials can create a regulatory gap because candidates facing serious charges may continue to contest elections until conviction and the consequent statutory disqualification becomes applicable.

Supreme Court and Disqualification:

- In **Lily Thomas v. Union of India (2013)**, the Supreme Court struck down the protection that had allowed sitting legislators to avoid immediate disqualification after conviction. A legislator convicted and sentenced to imprisonment of **two years or more** becomes subject to disqualification under the applicable provisions.
- The judgment strengthened the principle that elected representatives should not receive a separate statutory protection from the consequences of conviction merely because they are sitting members of a legislature.

Special Courts for MPs and MLAs:

Ashwini Kumar Upadhyay Case:

- In **2017**, the Supreme Court directed the establishment of **12 special courts in 10 States and Union Territories** to expedite the disposal of criminal cases involving MPs and MLAs.
- The framework gave priority to cases involving offences punishable with **life imprisonment**, followed by offences carrying imprisonment of **five years or more**, reflecting the need to address serious criminal proceedings first.
- The Supreme Court also required **High Courts to monitor the progress of such trials** and directed trial courts to avoid unnecessary adjournments except where circumstances were genuinely compelling.

Continuing Pendency:

- The persistence of thousands of pending cases indicates that creating specialised courts alone cannot resolve judicial delays without adequate **judicial manpower, prosecution capacity, investigation quality, witness availability, court infrastructure and case-management mechanisms**.
- The Supreme Court subsequently directed High Courts to establish **special benches for monitoring pending criminal cases involving MPs and MLAs**, reinforcing the importance of institutional supervision.

Causes of Criminalisation of Politics:

Delayed Justice and Disqualification:

- Criminal trials frequently take several years to reach finality, allowing accused politicians to contest successive elections before the judicial process produces a final conviction.
- The resulting gap between **accusation, trial and electoral consequences** creates a major challenge for electoral accountability while requiring safeguards against disqualification based merely on unproven allegations.

Money and Muscle Power:

- Political parties may consider candidates with substantial financial resources, organisational networks or local influence electorally useful, creating incentives for candidates with criminal backgrounds to enter electoral competition.
- Such dynamics can reinforce the interaction between **money power, muscle power and political influence**, particularly where weak enforcement allows illegal networks to operate alongside legitimate political

structures.

Voter Information and Awareness:

- Candidates are required to disclose criminal antecedents through election affidavits, but the effectiveness of disclosure depends on whether voters can **access, understand and evaluate** the information.
- The Supreme Court has therefore strengthened disclosure requirements and directed political parties to publish criminal antecedents and the reasons for selecting candidates with pending cases.

Political Party Incentives:

- The selection of candidates with criminal cases has also raised questions regarding **internal party democracy, candidate selection procedures and the incentive to prioritise electoral winnability**.
- The Supreme Court has specifically required political parties to disclose reasons for selecting candidates facing criminal cases, with the stated reasons to relate to qualifications, achievements and merit rather than merely electoral winnability.

Organised Crime–Political Nexus:

- The **Vohra Committee Report, 1993** examined the links between organised crime or mafia networks and government functionaries and political personalities, highlighting the potential consequences of such networks for governance and the rule of law.

Impact on Democracy and Governance:

Rule of Law:

- The prolonged pendency of serious criminal cases involving lawmakers can weaken perceptions of **equality before law and institutional accountability**, particularly when judicial outcomes remain delayed.

Representative Democracy:

- Criminalisation can affect the quality of representative democracy by increasing the importance of **money, coercive influence and local criminal networks** in electoral competition.
- However, the presence of a criminal allegation alone cannot establish that an elected representative is guilty, making **fair trial and due process** essential components of any reform.

Public Trust:

- Persistent criminal allegations against elected representatives and prolonged trials can contribute to declining public confidence in political and judicial institutions, particularly when cases remain unresolved for extended periods.

Governance and Corruption:

- Criminal networks operating through political connections can facilitate **corruption, intimidation, illegal financing and misuse of public institutions**, thereby weakening administrative accountability and the rule of law.

Key Committee Recommendations:

Law Commission of India:

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- The **244th Report of the Law Commission of India, 2014**, titled *Electoral Disqualifications*, examined the relationship between criminalisation and electoral disqualification and proposed reforms concerning persons facing serious criminal charges. The report is officially listed by the Law Commission under electoral reforms.
- The report supported stronger mechanisms for dealing with serious criminal cases while recognising the need to protect individuals from unfair electoral disqualification based merely on unproven allegations.

National Commission to Review the Working of the Constitution:

- The **National Commission to Review the Working of the Constitution** recommended greater accountability of political parties, including measures concerning financial transparency and disclosure of candidates' assets and liabilities.

Indrajit Gupta Committee and Second Administrative Reforms Commission:

- The **Indrajit Gupta Committee** and the **Second Administrative Reforms Commission** supported the idea of partial **state funding of elections** to reduce dependence on private money and address the role of excessive expenditure in electoral politics.

Supreme Court Interventions:

Public Interest Foundation Case:

- In **Public Interest Foundation v. Union of India**, the Supreme Court emphasised the importance of voters having access to information concerning the criminal antecedents of electoral candidates.
- The Court subsequently required political parties to publish detailed information about candidates facing pending criminal cases, including the nature of the offences and relevant case details.

2020 Disclosure Directions:

- In **2020**, the Supreme Court directed political parties to publish information concerning candidates with pending criminal cases on their websites, in newspapers and through official social-media platforms.
- The information must be published within **48 hours of candidate selection**, and political parties must also provide reasons for selecting candidates with criminal cases.

2021 Strengthening of Disclosure:

- In **2021**, the Supreme Court further directed that information concerning candidates with criminal antecedents should be prominently available on the homepage of political-party websites and required the Election Commission to strengthen voter-awareness and compliance mechanisms.

Way Forward:

Strengthening the Criminal Justice System:

- **Independent prosecution wings** should be strengthened with institutional safeguards against political interference, while investigation agencies should receive adequate professional capacity and resources.
- Courts should introduce **time-bound disposal of stay and quashing petitions** in cases involving elected representatives so that interim judicial proceedings do not indefinitely delay trials.

Improving Case Management:

- Digital case-monitoring systems should track **investigation, charge-sheet filing, summons, witness examination, adjournments and stays**, allowing High Courts to identify avoidable delays.
- Special courts should be supported by adequate **judges, prosecutors, court staff, forensic facilities and digital infrastructure**, because institutional capacity determines whether specialised jurisdiction actually produces faster trials.

Witness and Investigation Protection:

- Effective implementation of the **Witness Protection Scheme, 2018** can reduce intimidation and improve the reliability of criminal trials involving politically influential accused persons.
- Investigation should be conducted independently and professionally so that cases are neither delayed through administrative interference nor pursued selectively for political purposes.

Electoral Reform with Due Process:

- Any reform involving **electoral disqualification before conviction** must carefully balance the objective of preventing criminalisation with the constitutional values of **presumption of innocence, fair trial and due process**.
- A possible reform framework can focus on exceptionally serious offences, judicial scrutiny after charges are framed, time-bound trials and safeguards against politically motivated prosecution rather than automatic disqualification merely on the basis of an allegation.

UPSC Relevance:

Essay:

- **Democratic accountability, electoral reforms, criminalisation of politics, judicial reforms and the relationship between representation and rule of law** are interconnected themes suitable for analytical essays.

Value Addition for UPSC:

Key Concept — Criminalisation and Democratic Accountability:

- **Criminalisation of politics is not solely an electoral problem; it is a combined challenge involving political-party incentives, criminal justice delays, electoral finance, institutional capacity and voter information.**

Mains-Ready Line:

- *“The objective of electoral reform should be to ensure that serious criminality does not undermine representative institutions while preserving the foundational principles of due process, presumption of innocence and judicial determination of guilt.”*

Constitutional Values:

- **Rule of Law, Free and Fair Elections, Equality Before Law, Due Process, Presumption of Innocence, Representative Democracy, Accountability.**

Important Cases and Reports:

- **Ashwini Kumar Upadhyay v. Union of India (2017)** — Special courts for MPs and MLAs.
- **Lily Thomas v. Union of India (2013)** — Immediate disqualification upon qualifying conviction.
- **Public Interest Foundation v. Union of India (2018/2019)** — Disclosure of criminal antecedents.

- **RambabSingh Thakur v. Sunil Arora (2020)** — Political-party disclosure and reasons for candidate selection.
- **Vohra Committee Report (1993)** — Organised crime–political nexus.
- **Law Commission Report No. 244 (2014)** — Electoral disqualifications.