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# India's Criminalisation of Politics: Rising Pendency of Cases Against Legislators and the Challenge to Democratic Governance

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## Recent Developments:

- A recent status report placed before the **Supreme Court of India** indicates that **4,192 criminal cases** against sitting and former Members of Parliament and Members of Legislative Assemblies are pending trial across the country.
- The report also indicates that **14 of India's 28 State Chief Ministers** have criminal cases pending against them, highlighting the continuing penetration of criminality into the political system.
- The issue has acquired renewed significance because the Supreme Court has repeatedly directed the judiciary to ensure **expeditious disposal of criminal cases involving legislators**, yet substantial pendency continues.
- The Supreme Court had already noted in its earlier proceedings that the number of pending cases against MPs and MLAs had increased substantially, while designated courts faced institutional constraints in disposing of the accumulated cases.
- The **Constitution (130th Amendment) Bill, 2025** has also brought the issue of criminality in public office into sharper political and constitutional debate.
- The Bill was introduced in the Lok Sabha on **20 August 2025** and was referred to a **Joint Committee of Parliament** for examination.
- The Bill remains **under consideration** and has not become law.

## Understanding Criminalisation of Politics:

- **Criminalisation of politics** refers to the increasing presence and electoral success of individuals with criminal backgrounds in political institutions, including Parliament, State Legislatures and governments.
- It is important to distinguish between a **criminal case, framing of charges and conviction**, because the mere existence of a criminal case does not establish guilt.
- The constitutional principle of **presumption of innocence** requires that an accused person be treated as innocent until proven guilty according to law.
- The democratic concern arises when serious criminal allegations remain unresolved for prolonged periods while accused individuals continue to contest elections, exercise public authority and influence policy-making.

## *Current Electoral Context:*

- The problem has persisted despite greater disclosure requirements and repeated judicial interventions.
- The Supreme Court observed in **Public Interest Foundation v. Union of India, 2018** that the criminalisation of politics had become a serious concern and examined data showing a substantial proportion of elected representatives facing criminal cases.
- More recent analyses indicate that the proportion of elected representatives declaring criminal cases remains substantial, demonstrating that disclosure alone has not eliminated the electoral incentives associated with

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criminality.

### **Major Causes of Criminalisation of Politics:**

#### ***Weaknesses in Disqualification Laws:***

- Under the **Representation of the People Act, 1951**, disqualification on specified criminal grounds generally follows **conviction**, subject to the statutory conditions.
- Consequently, the mere pendency of a criminal trial ordinarily does not automatically disqualify a person from contesting an election.
- Since criminal trials may continue for several years, an accused candidate can contest successive elections before the judicial process reaches its conclusion.
- This creates a structural gap between the **electoral cycle and judicial cycle**, particularly where trials are delayed.

#### ***Money and Muscle Power:***

- Political parties may consider candidates with substantial financial resources, organisational networks and local influence to be electorally advantageous.
- Individuals possessing **money power and coercive influence** may acquire greater capacity to mobilise voters, manage electoral campaigns and maintain local political networks.
- The resulting electoral advantage can create incentives for parties to nominate candidates with criminal backgrounds.

#### ***Voter Behaviour and Limited Awareness:***

- Candidates are required to disclose relevant information concerning their **criminal antecedents, assets, liabilities and educational qualifications**.
- However, disclosure is meaningful only when voters can access, understand and evaluate the information.
- The Supreme Court has therefore emphasised voter awareness and directed the Election Commission to facilitate access to information regarding candidates with criminal antecedents.

#### ***Political Party Incentives:***

- Political parties sometimes justify the selection of candidates with criminal cases on grounds such as **electoral winnability, popularity and organisational influence**.
- The Supreme Court has specifically directed political parties to explain why candidates facing criminal cases were selected and why candidates without such antecedents were not preferred.
- The Court clarified that the reasons should relate to the candidate's **qualifications, achievements and merits**, rather than merely electoral winnability.

#### ***Judicial Delays:***

- Frequent adjournments, inadequate judicial capacity, procedural complexity and shortages of judicial personnel can prolong criminal trials.
- When trials remain pending for long periods, the electoral consequences of criminal allegations remain unresolved.
- The persistence of pendency despite repeated judicial directions demonstrates that **institutional capacity is as important as legal reform**.

### **Consequences of Criminalisation of Politics:**

#### ***Erosion of Democratic Values:***

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- The presence of individuals facing serious criminal allegations can weaken public confidence in **free, fair and ethical political representation**.
- When voters repeatedly encounter candidates with serious criminal backgrounds, the effective range of electoral choices may become constrained.
- Criminalisation can therefore weaken the normative foundation of **representative democracy**.

#### ***Weakening of the Rule of Law:***

- Political influence can create perceptions that individuals holding public office are capable of avoiding or delaying legal accountability.
- Such perceptions weaken the principle of **equality before law** and can undermine citizens' confidence in constitutional governance.

#### ***Corruption and Electoral Malpractices:***

- Criminal networks may facilitate **voter intimidation, illegal expenditure, coercion and other electoral malpractices**.
- The combination of criminal influence and unaccounted financial resources can distort electoral competition.
- Political-criminal networks can also create opportunities for corruption and patronage after elections.

#### ***Decline in Public Trust:***

- Repeated election of representatives facing serious criminal allegations can reduce citizens' confidence in political institutions.
- Persistent allegations of criminality may contribute to political cynicism, disengagement and declining faith in democratic institutions.

#### ***Distortion of Public Policy:***

- Political power may be used to protect personal, financial or criminal networks rather than advance broader public interests.
- This can weaken institutional accountability and distort the allocation of public resources.
- Criminalisation therefore represents not merely an electoral problem but a wider **governance and institutional integrity problem**.

#### **Major Committee and Commission Recommendations:**

##### ***Indrajit Gupta Committee, 1998 and Second Administrative Reforms Commission:***

- The **Indrajit Gupta Committee** and the **Second Administrative Reforms Commission** supported the idea of **partial State funding of elections**.
- The objective was to reduce candidates' dependence on private financial resources and thereby limit the influence of black money in elections.
- Electoral finance reform can therefore complement measures directed specifically at criminalisation.

##### ***National Commission to Review the Working of the Constitution:***

- The Commission's **2002 report** emphasised greater accountability and transparency in political parties.
- It recommended measures including greater scrutiny of party finances, statutory auditing of political party accounts and disclosure relating to candidates' **assets and liabilities**.

##### ***Law Commission's 244th Report, 2014:***

- The **244th Report of the Law Commission of India** dealt specifically with **electoral disqualifications**.

- It recommended disqualification at the stage of **framing of charges** for specified serious offences carrying a maximum punishment of five years or more, subject to safeguards against politically motivated prosecutions.
- It also recommended **expediting criminal trials involving sitting MPs and MLAs** through designated or fast-track judicial mechanisms.
- The recommendation reflects the need to address the problem before an accused person repeatedly contests elections during prolonged trials.

### Supreme Court Interventions:

#### *Union of India v. Association for Democratic Reforms, 2002:*

- The Supreme Court upheld the voters' right to obtain relevant information about election candidates.
- The information includes **criminal antecedents, assets and educational qualifications**.
- The Court connected the voter's right to know with the constitutional protection of **freedom of speech and expression under Article 19(1)(a)**.
- The judgment established transparency regarding candidates as an important component of informed electoral choice.

#### *Lily Thomas v. Union of India, 2013:*

- The Supreme Court struck down the protection that had allowed convicted legislators to avoid immediate disqualification in certain circumstances.
- Following the judgment, a sitting MP or MLA convicted of an offence attracting the statutory threshold of **two years or more imprisonment** becomes subject to immediate disqualification under the relevant provisions of the Representation of the People Act.
- The decision strengthened the principle that conviction for specified serious offences should have immediate electoral consequences.

#### *Public Interest Foundation v. Union of India, 2018:*

- The Supreme Court directed political parties and candidates to disclose criminal antecedents more prominently.
- The Court emphasised the importance of enabling voters to make an **informed electoral choice**.
- The judgment also recognised the need for Parliament to consider stronger legislative measures for preventing the criminalisation of politics.

#### *RambabSingh Thakur v. Sunil Arora, 2020 and Subsequent Directions:*

- The Supreme Court directed political parties to publish information concerning candidates with pending criminal cases through their **websites, social media platforms and newspapers**.
- Political parties were also required to provide reasons for selecting candidates with criminal antecedents.
- The Court subsequently strengthened these disclosure requirements and required the information to be made readily accessible to voters.
- In 2021, the Court directed the Election Commission to develop a dedicated application containing information on candidates' criminal antecedents and conduct extensive voter-awareness campaigns.

### Supreme Court Directions for Speedy Trials:

- The Supreme Court has repeatedly attempted to create institutional mechanisms for expediting criminal trials involving elected representatives.
- In **2017**, the Court supported the establishment of special courts for expeditious disposal of criminal cases involving legislators.

- In **2018**, directions were issued for identifying designated **Sessions Courts and Magistrate Courts** for priority disposal of such cases.
- In **2023**, the Supreme Court directed High Courts to monitor the progress of pending criminal cases involving MPs and MLAs and encouraged the use of appropriate judicial mechanisms for expeditious disposal.
- However, subsequent proceedings have shown that substantial pendency continues because designated courts themselves face limitations in judicial manpower and institutional capacity.
- A 2025 Supreme Court order noted the concern that pending cases were not being disposed of at the required pace while additional cases continued to enter the system.

### **Constitution 130th Amendment Bill, 2025:**

#### ***Background and Present Status:***

- The **Constitution (130th Amendment) Bill, 2025** was introduced in the Lok Sabha on **20 August 2025**.
- The Bill was subsequently referred to a **Joint Committee comprising members of both Houses of Parliament** for detailed examination.
- The Digital Sansad records confirm that the Bill remains under the consideration of the Joint Committee and has therefore **not become a constitutional amendment law**.

#### ***Major Provisions:***

- The Bill proposes constitutional changes concerning the continuation in office of the **Prime Minister, Chief Ministers and Ministers** who are arrested and detained in custody for serious offences carrying a punishment of **five years or more**.
- The proposed framework is triggered by **30 consecutive days of detention**.
- The provisions also extend to the **Union Territory of Delhi, Puducherry and Jammu and Kashmir**, through corresponding legislative changes included in the wider reform package.
- The proposal seeks to address the constitutional question of whether a person holding high public office should continue in office despite prolonged detention for serious criminal offences.

#### ***Constitutional and Democratic Concerns:***

- Supporters argue that prolonged detention of a constitutional office-holder can create a serious **governance and public confidence problem**.
- Critics have raised concerns regarding the possibility of **politically motivated arrests**, the distinction between detention and conviction, and the potential impact on democratic accountability.
- The core constitutional dilemma is to balance **clean governance and institutional integrity** with the **presumption of innocence, due process and protection against arbitrary state action**.
- Therefore, any reform in this area requires strong safeguards against misuse of criminal law for political purposes.

#### **Way Forward:**

- India requires a comprehensive strategy combining **electoral reform, judicial reform, political-party reform, campaign-finance transparency and voter awareness**.
- Criminal trials involving elected representatives should receive priority without compromising **fair trial guarantees and judicial independence**.
- Dedicated judicial capacity should be created through adequate numbers of judges, prosecutors, court staff and technological infrastructure rather than merely designating existing courts.
- Political parties should adopt transparent internal criteria for candidate selection and provide substantive reasons when choosing candidates with serious criminal antecedents.
- Electoral finance should become more transparent so that dependence on **black money and illicit financial networks** is reduced.

- Voters should have easy access to verified candidate information through official digital platforms and local-language awareness campaigns.
- Any proposal for disqualification before conviction should contain safeguards against **frivolous, politically motivated or selectively initiated criminal proceedings**.
- The ultimate objective should be to ensure that criminal law is neither used to protect powerful politicians nor misused to eliminate legitimate political opponents.

### Value Addition for UPSC:

- **Key Constitutional Principle:** The criminalisation of politics raises a direct conflict between **presumption of innocence, due process and democratic choice** on one side and **clean governance, public trust and institutional integrity** on the other.
- **Key Legal Provision:** Under the **Representation of the People Act, 1951**, specified disqualifications generally operate following conviction rather than merely upon registration of a criminal case.
- **Key Judicial Principle:** The Supreme Court has repeatedly recognised that voters have a **right to know** the criminal, financial and educational background of candidates.
- **Key Reform Principle:** **Disclosure without informed voter choice is insufficient**, while disqualification without safeguards can create risks of political misuse.
- **Committee Reference:** The **Law Commission's 244th Report, 2014** is an important source for UPSC answers on electoral disqualification and criminalisation of politics.
- **Contemporary Constitutional Link:** The **130th Constitution Amendment Bill, 2025** demonstrates the continuing debate over the relationship between **criminal proceedings, executive office and constitutional accountability**.
- **Analytical Line for Mains:** *The criminalisation of politics is fundamentally a governance problem created by the interaction of electoral incentives, delayed justice, political-party strategies and inadequate institutional accountability.*
- **Conclusion:** Decriminalising politics requires more than banning convicted politicians; it requires **speedy and fair trials, transparent political financing, accountable political parties, informed voters and strong safeguards against the misuse of criminal law**, so that democratic representation remains consistent with the **rule of law and constitutional morality**.