

## **Nexus between Crime and Politics: A Study with Reference to Electoral Candidature**

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### **Abstract**

*The nexus between crime and politics in India has been a deep rooted one, since the genesis of the country. This notion was confirmed in the Vohra Committee Report in 1993, which found out a definitive link of criminal networks with bureaucrats, politicians and media persons. The nexus has only deepened ever since and perhaps become more pronounced. In 2002, the report of the National Commission to Review the Working of the Constitution (NCRWC) further disclosed that criminals were now seeking direct access to power by becoming legislators and ministers themselves.*

*The Background Paper on Electoral Reforms, 2010 disclosed some alarming truths about the criminalization of politics but perhaps the most stunning statistics was that the percentage of winners with criminal cases pending is higher than the percentage of candidates without such backgrounds. The background paper reveals that “while only 12% of candidates with a “clean” record win on average, 23% of candidates with some kind of criminal record win. This means that candidates charged with a crime actually fare better at elections than ‘clean’ candidates.” The response to this was underwhelming. Even the celebrated PIL approach has failed in Manoj Narula vs. UOI, whereby Court reserved its judgment whether persons with criminal backgrounds and antecedents or those accused of heinous crimes were fit to be appointed as Ministers in Central and State Governments.*

*This paper attempts to trace the changing trends in criminalization of politics, especially with focus to the Candidature vis-a-vis disclosure of criminal antecedents of the candidate, bar on contesting elections on criminal charge pending or on previous conviction and the link of candidates with criminal organizations. The paper also scrutinises the existing legal framework on criminalization of politics and examines the judicial pronouncements in this regard to understand the effect of criminalization of politics on the society.*

**Keywords:** *Crime and Politics, Electoral Reforms, Criminalisation of Politics,*

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## I. Introduction

The right to know, including the right to know the criminal antecedent of a candidate to an election, falls within the right to freedom of speech and expression as envisaged under Article 19(1) (a). Even though it isn't an absolute right<sup>2</sup>, in the context of the criminal antecedents of a candidate to an election, be it in State or Centre, right to know the criminal antecedent of a candidate has been well recognized by the judgment in *PUCL v Union of India*.<sup>3</sup> But the right to know the criminal antecedents of a candidate presumes that this knowledge will affect the decision making of a voter in an election. Such presumption may not be wise to make, especially in the Indian context. Statistically speaking, the candidates with criminal antecedents have always done better in Indian election. An outcome that wasn't entirely unexpected, as is evident in the writings of Mr. C. Rajagopalachari in 1922, in his prison diary:

“Elections and their corruption, injustice and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us...”<sup>4</sup>

So there is a need to delve into the law that affects participation of candidates with a criminal nexus in the election and why such nexus has proven itself to be immaterial to Indian voters.

## II. Trends in Criminalisation of Politics

Criminalisation of politics not only involves the direct entry of criminals into the electoral politics but includes use of criminal methods and means to influence the political process as well. In the last decade, 18% of candidates contesting elections have criminal cases pending against them, half of which are charges of serious criminal offences like murder, rape, crimes under the Prevention of Corruption Act, 1988, etc. It is seen that political parties don't have a problem giving out tickets to candidates with a criminal background. This is perhaps a result of the success rate of candidates with criminal antecedents.

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<sup>2</sup>Prabha Dutt v. Union of India, (1982) 1 SCC.

<sup>3</sup>PUCL v. Union of India. (2003) 4 SCC 399.

<sup>4</sup>LAW COMMISSION OF INDIA, ELECTORAL DISQUALIFICATION, REPORT NO. 244, 14,(February,2014).

Criminal backgrounds are not limited to contesting candidates, but are found among winners as well as many as 28.4% of the winners had pending criminal cases against them, according to the Background Papers on Electoral Reforms, which further argues that candidates with criminal backgrounds fare much better in Indian election with 23% of candidates with criminal records winning the election.

### III. Existing Legal Framework

Articles 84 and 102 of the Indian Constitution mention the qualifications and disqualifications of the Members of the Parliament. Both the Articles give validity to the Parliament to make any Law for qualification and disqualification of a Member of the Parliament. The Representation of the People Act of 1951 draws its validity from this. Similarly, corresponding provisions for members of State Legislative Assemblies found in Articles 173 and 191 also allow the Parliament to make any law for the qualification and disqualification of the Members of State Assemblies.

Consequently, the Parliament has prescribed further qualifications and disqualifications for membership to Parliament or to a Legislative Assembly via the Representation of the People Act of 1951 (hereinafter RPA).

Section 8 of the RPA lists certain offences which disqualify a person convicted of those offences from being elected or continuing as, a Member of Parliament or Legislative Assembly.

Section 8(1) lists a number of offences, such as certain electoral offences, offences under the Foreign Exchange Regulation Act, 1973, the Narcotics Drugs and Psychotropic Substances Act, 1985 the Prevention of Corruption Act, 1988 etc, convictions under which disqualify the candidate irrespective of the quantum of sentence or fine.<sup>5</sup> Where the punishment on conviction is only fine, the disqualification lasts for a period of six years from the date of such conviction. When the convicted person is sentenced to imprisonment, disqualification extends from the date of such conviction and such person shall continue to be disqualified for a further period of six years since his release.

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<sup>5</sup>LAW COMMISSION OF INDIA, ELECTORAL DISQUALIFICATION, REPORT NO. 244, 14, (February, 2014)

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Convictions under offences related to hoarding or profiteering, adulteration of food or drugs or any offence under the Dowry Prohibition Act, 1961 would only result in disqualification, under Section 8(2), if imprisonment is for six months or more.<sup>6</sup>

Under Section 8(3) if a candidate is convicted of any other offence and imprisoned for two years or more, he is disqualified. Disqualification operates from the date of conviction and continues for a further period of six years from the date of release.

Article 324 of the Indian Constitution vests the superintendence, direction and control of elections in an Election Commission. Where there is a valid law made by the Parliament of State Legislature, the Election Commission has to act in accordance to that. But it is worth mentioning that where such a law is silent, Article 324 is a 'reservoir of power'<sup>7</sup> to act for the purpose of ensuring a free and fair election.

Section of RPA	Nature of Offences	Duration of disqualification
Section 8(1)	Special Offences, for example, Foreign Exchange Regulation Act, 1973, the Narcotics Drugs and Psychotropic Substances Act, 1985 the Prevention of Corruption Act, 1988 etc	Fine only:6 years from the date of conviction  Imprisonment: period of imprisonment+6 years since release

<sup>6</sup> Representation of the People Act, 1951, No. 43, Acts of Parliament, 1951 (India).

<sup>7</sup> V.N. SHUKLA, CONSTITUTION OF INDIA 990 (13<sup>th</sup> ed., Eastern Book Company, Lucknow, 2017).

Section 8(2)	offences related to hoarding or profiteering, adulteration of food or drugs or any offence under the Dowry Prohibition Act, 1961	Disqualified only if imprisonment is for six months or more
Section 8(3)	Residuary provision for offences other than those mentioned in Section 8(1) and Section 8(2)	Period of imprisonment+6 years since release

The lawmakers unfortunately could not have foreseen the nature of complexities that would have come about in the working of the Indian democracy. The candidates from political parties are often in a unique and powerful position to be able to modify the legal machinery to their benefit. They evade convictions by delaying the trial process or tampering with evidence. The legal developments since independence will show the complex nature of problems related to the nexus between crime and politics.

#### **IV. Tracing Legal Development**

In 1997, the Election Commission made a recommendation which proposed that filing of affidavits for offences under Section 8 of the RPA also be made mandatory. Additionally in September 1997, the Commission wrote a letter to the then Indian Prime Minister Inder Kumar Gujral, recommending that under an amendment to Section 8, any candidate convicted and sentenced to six months or more should be disqualified from contesting elections. In 1998, the Commission recommended that any person against whom charges has been framed for an offence punishable by imprisonment of five years or more should be disqualified from contesting elections.

In 1998 in *Vineet Narain v Union of India*<sup>8</sup>, when there was a nexus found between politicians, bureaucrats and criminals, the Supreme Court used the power of continuing mandamus to direct a large scale institutional reform to curb the crime and politics nexus. To that end the Apex Court ordered that the CBI should be placed under the supervision of the Central Vigilance Commission (CVC), an independent governmental agency intended to be free from executive control or interference. The CVC was to be made responsible for ensuring that allegations of corruption against public officials were thoroughly without any interference from the Government. The Criminal Procedure Code 1973 and the Prevention of Corruption Act 1988 both provide a sanction required for prosecuting a public servant for corruption but Vineet Narain's Judgment also set a limit of 3 months for the granting of such sanction, thereby limiting redundant delay and defeat of the process of justice. However the Election Commission maintained that the Election Commission should have the power to decide whether or not a candidate will be disqualified because of a corruption allegation. As a rationale they offered that there needs to different approach for different graveness of the alleged corruption.

Again in 1998, through the landmark judgment of *Satya Narain Sharma v State of Rajasthan*, the Apex Court declared that no Court can stay any proceeding involving any offence under the Prevention of Corruption Act, 1988 on any ground whatsoever.<sup>9</sup> How far this order has been followed and executed remains to be seen.

Shortly after this case, the 170<sup>th</sup> report of the Law Commission was published in the year 1999. It recommended the adding of Section 8B in the RPA to include certain electoral offences. The framing of the charge itself were to be sufficient for these offences to disqualify a candidate from contesting elections. This suggestion was implemented by introducing Section 33A to RPA.

In April 2001, Jayalalitha, who had been convicted on corruption charges in the TANSI land deal, was sentenced to imprisonment for two years, which was subsequently suspended by the Madras High Court and she was later released on

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<sup>8</sup>Vineet Narain v Union of India, (1998)1 SCC 226.

<sup>9</sup>Satya Narain Sharma v State of Rajasthan, AIR 1998 SC 889.

bail.<sup>10</sup> But she was still disqualified under Section 8 of the RPA. This was not the first time that a candidate was disqualified under Section 8 of the RPA, which commences from the date of the conviction, irrespective of whether the person was out on bail. The Election Commissions verdict in Jayalalitha's case was given – “after careful analysis of judgments of other high courts (Madhya Pradesh High Court in the *Purshottam Kaushik vs Vidya Charan Shukla*, the Allahabad High Court in *Sachindra Nath Tripathu vs Doodnath* and the Himachal Pradesh High Court in *Vikram Anand vs Rakesh Singh*) of Section 8 of the Representation of People Act.”<sup>11</sup>

In 2002, in *Union of India v Association for Democratic Reforms*<sup>12</sup>, the petitioners filed a case seeking the implementation of the 170<sup>th</sup> Report of the Election Commission, in which the disclosure of criminal antecedents of the electoral candidates was taken up. The Court ruled in favour of the petitioner and directed the Election Commission to issue a notification mandating the disclosure of criminal antecedents inter alia, before filing their nominations, for those who are willing to contest an election. The Parliament, not surprisingly, tried to negate the effect of the Court's judgment by amending the RPA through Section 33B. This amendment was subsequently challenged in *People's Union for Civil Liberties v Union of India*<sup>13</sup>. The amendment was alleged to be violative of the citizens right to information as guaranteed under Article 19(1)(a) of the Indian Constitution. The Supreme Court struck down the concerned Section of RPA. So the law stands that criminal antecedents along with assets and liabilities and educational qualifications will have to be disclosed before filing the nomination for candidature.

Again in 2004, the Election Commission reiterated that candidates should be disqualified from contesting an election on the basis of framing of a charge against him for an offence punishable by more than five years. However no concrete step towards that goal was taken.

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<sup>10</sup>B. Venkatesh Kumar, *Criminalisation of Politics and Election Commission*, 36 EPW 2119, 2119-2121(2001).

<sup>11</sup>*Id.*

<sup>12</sup>*Union of India v Association for Democratic Reforms*, (2002) 5 SCC 294.

<sup>13</sup>*People's Union for Civil Liberties v Union of India*, (2003) 2 SCC 549.

In 2004 itself, the Patna High Court set an example by disallowing the Rabri Devi Government to have criminals contest the election. The Court declared that those who were behind bars could not contest elections. Six candidates were contesting from Jail in Bihar but the Court declared them to be “disenfranchised” by law and therefore not permitted to participate as a candidate. However, the Supreme Court then stayed the order of the Patna High Court saying that once the election process has commenced, it can’t be halted.

The Second Administrative Reforms Commission’s Report on Ethics in Governance (2008) said that Section 8 of the RPA needs to include the disqualification of candidates based on a charge filed against them related to grave and heinous offences. The same report also spoke of the filing of affidavits.

A candidate to the National or State Assembly Elections is required to submit an affidavit stating whether there is a criminal proceeding or criminal conviction against them, under Form 26 read with Rule 4A of the Conduct of Election Rules and Section 33A of the RPA. But it is extremely prevalent amongst candidates to file a false affidavit regarding their criminal antecedents. The Second Administrative Reforms Commission’s Report proposed that the filing of false affidavit be made an electoral offence under Section 31 of the RPA, as was earlier recommended in 1998 by the Election Commission itself.

The National Commission to Review of the Working of the Constitution (2002) proposed certain serious modifications in its recommendations. Most notably, it suggested that-

If a person is convicted of any heinous offences, it recommended a permanent bar from contesting any political office. It also recommended that Special Courts be set for the assessment of the legality of charges framed against potential candidates so that the cases may be disposed of speedily. Finally, it also recommended that the political parties knowingly fielding candidates with a criminal nexus, against the law, be made accountable by a process of de-registration and de-recognition of those political parties.

Vineet Narain’s Case had set down a time limit of three months for grant of sanction for prosecuting public servants in corruption cases. Further in

*Subramaniam Swamy v. Manmohan Singh*<sup>14</sup>, the Apex Court recommended the restructuring of Section 19 of the Prevention of Corruption Act in a way that sanction for prosecution will be deemed to have been granted by the concerned authority at the expiry of the time limit.

In 2013, the Supreme Court in *Lily Thomas v. Union of India*<sup>15</sup>, held that Section 8(4) of the RPA unconstitutional. This provision allowed MPs and MLAs who are convicted while serving as members to continue in office till an appeal against such conviction is disposed of. Following the Lily Thomas judgment only 3 legislators were disqualified as a result of convictions.<sup>16</sup>

In the same year, in *People's Union for Civil Liberties v. Union of India*<sup>17</sup>, the court held that the provision of the Conduct of Election Rules, 1961, which require mandatory disclosure of a person's identity in case he intends to register a no-vote, is unconstitutional. Court held that the Right to Freedom of expression under Article 19 includes right to chose a candidate or for that matter reject all candidates. There is no basis to classify between someone who registers a vote in favour of a candidate and someone who rejects all candidates.

Again in 2013 itself the Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013) proposed insertion of a Schedule 1 to the Representation of People Act, 1951 enumerating offences under IPC befitting the category of 'heinous' offences. It further recommended that Section 8(1) of the RPA should be amended to include said schedule, as a basis for disqualification.

In 2014, in *Manoj Narula v Union of India*<sup>18</sup> a five-judge bench dealt with the question whether persons with criminal antecedents or those who have been accused of heinous crimes and not yet convicted or acquitted were fit to be appointed as Ministers in Central and State Governments. The Supreme Court

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<sup>14</sup>Subramaniam Swamy v. Manmohan Singh,(2012) 3 SCC 65.

<sup>15</sup>Lily Thomas v. Union of India,(2013) 7 SCC 653.

<sup>16</sup>LAW COMMISSION OF INDIA, *ELECTORAL DISQUALIFICATION*, REPORT NO. 244, 27,(February,2014).

<sup>17</sup> People's Union for Civil Liberties v. Union of India,(2013) 10 SCC 1.

<sup>18</sup>Manoj Narula v Union of India,(2014)9 SCC 1.

left it to the wisdom of the Prime Minister to decide upon that issue, sighting the reason that law presumes a person to be innocent until proven guilty.<sup>19</sup>

In this backdrop, the best way to find the location of the problem of crime-politics nexus, focus needs to shift to the factors that might be responsible for the thriving political career of a criminal.

## **V. Factors Responsible for the nexus**

### **V.I. Vulgarisation of Politics in India**

Politics is no longer a noble arena in India. It isn't something that tirelessly pursues lofty ideals like equality or liberty. Instead, it has become a business venture. Much like a family run business, well connected people with family ties with politics have been entering the Indian politics since its freedom. The criminal tendency of electoral candidates is so intrinsic that it might very well be the only thing that works in this new kind of Politics.

The most recent trend in India's political culture is a tendency which thrives on heaping abuses on dissenters and opponents.<sup>20</sup> Even if a high Government official performs his Constitutional duty, he is dubbed as unfaithful if his actions are against the interests of the ruling party.<sup>21</sup> There is also the recent trend of 'whataboutery' which shifts the focus from oneself to the opposition, as if to say "if they can't be just, why should we". In this climate, it is difficult to win an election of issues or mere ideology alone. Statistically speaking, criminals have thrived in such chaotic political climate, which not only feeds on ignoring political etiquette but encourages such ignorance. There is thus, always the allure of giving a ticket to a candidate with criminal ties or antecedents. This culture of criminality has been well established by the statistics collected by The Background Paper on Electoral Reforms, 2010.

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<sup>19</sup> V N SHUKLA, CONSTITUTION OF INDIA 990 (13<sup>th</sup> edn, Eastern Book Company, Lucknow, 2017).

<sup>20</sup> L.S. Rathore, Political Culture of India's Ruling Class, 51 (No. 2) JPS, 276, 276-289, (1990).

<sup>21</sup> *ibid*

## V.II. Abysmal Rate of Conviction

In *Ashwini Kumar Upadhyay v Union of India and Anr*<sup>22</sup>, which was a Public Interest Litigation, demanding a life ban for politicians convicted in criminal cases, a summary of convictions or acquittals against criminal cases against MPs and MLAs was submitted by the Centre as an affidavit to the honourable Supreme Court. In that data submitted by the Centre to the Supreme Court, it was found that no more than 6% of criminal cases against India's MPs and MLAs ended in conviction. Against a total number of 3884 cases against MPs and MLAs, there were 560 acquittals and only 36 instances of conviction.<sup>23</sup>

In the backdrop of this PIL, on December, 2017, the court ordered the Centre to set up 12 special courts to deal with such cases. A mighty budget of Rs 7.8 crore<sup>24</sup> were allocated to the cause, courts were established in Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu, Bihar, Maharashtra, Madhya Pradesh, Uttar Pradesh and West Bengal and in the National Capital Territory of Delhi. The other 19 states and union territory were instructed to fast-track the already pending cases.

In September of 2018 the results proved to be less than fortuitous.” 40% (1,233) of these cases were transferred to the special courts, of which judgments were pronounced in 136 (11%); 89% (1,097) cases so transferred are pending.”<sup>25</sup>

## V.III. Changed Nature of Sycophancy

Sycophancy has always found place in Indian politics, as it has in many other developing countries. There were always people to launch attacks on those who criticized ‘the man’. But this has taken a new, more lethal form. It is no more limited to words of propaganda but has verged itself into a criminal sphere that has seen the deaths of some eminent critiques of the Government and armed attacks on more. Gauri Lankesh, editor of the Kannada weekly Gauri

<sup>22</sup> *Ashwini Kumar Upadhyay v Union of India and Anr*, W.P.(C) NO. 699 of 2018.

<sup>23</sup> SHREYA RAMAN, *As Elections Loom, Conviction Rate In Criminal Cases Against India's MPs/MLAs: 6%* [indiaspend.com](https://www.indiaspend.com/As-elections-loom-conviction-rate-in-criminal-cases-against-indias-mps-mlas-6.html), (September 19, 2018), <https://www.indiaspend.com/As-elections-loom-conviction-rate-in-criminal-cases-against-indias-mps-mlas-6.html>.

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*

Lankesh Patrike and critique of the then administration, was gunned down in front of her house. A similar horrific fate awaited writer M.M. Kalburgi, rationalist writers Narendra Dabholkar and Govind Pansare in Maharashtra, in the period between 2013 and 2015. Not only did the Maharashtra anti-terrorism squad (ATS) arrest Hindutva activist Vaibhav Raut, Sharad Kalaskar and Sudhanva Gondhalekar for the murder of Gauri Lankesh but there were connections found between the extremist organizations that murdered Lankesh and those responsible for the death of Kalburgi.<sup>26</sup> The crackdown on dissent cannot be a coincidence. There exists a very real link between those who have been involved in lynching, in extremist militia and various vigilante groups and those who are in power.

Sometimes these groups have even received support from a Government. The poorly trained anti-Naxalite people's organization called Salwa Judum has been accused of violating a plethora of human rights. It was alleged by many eminent writers and activists, including Arundhati Roy, in her book titled 'Walking with the Comrade' that they burnt down villages of tribal people suspected of having Naxal ties, they raped tribal women and terrorized the tribals by looting their belongings or crops. The then (2005 to 2011) Chattisgarh Government had shown their public support for this group.<sup>27</sup> They even trained the youths who later joined forces with Salwa Judum, a name which ironically means "purification hunt". Similarly, members of the Shiv Sena, Gau Rakshaks (bovine vigilantes) and Anti-Romeo squads, have gone forth to enter mainline politics, which suggests that sycophancy as we knew it has taken a fatal turn. Politician Pragya Thakur has publicly professed her involvement in the demolition of the historic monument Babri masjid, an act of national shame. She has further

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<sup>26</sup> AJAY SUKUMARAN AJA, *Who Killed Gauri, Kalburgi, Dabholkar, Pansare? The Puzzle Cracks, Slowly*, OUTLOOK INDIA, (29 August 2018), <https://www.outlookindia.com/magazine/story/who-killed-gauri-kalburgi-dabholkar-pansare-the-puzzle-cracks-slowly/300555>.

<sup>27</sup> *Chhattisgarh govt defends Judum* (Jan 29, 2008, 12.27 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/chhattisgarh-govt-defends-judum/articleshow/2738976.cms?from=mdr>.

commented that she was proud of the demolition of said Masjid.<sup>28</sup> She currently holds office as Member of Parliament. Naveen Dalal, one of the two men accused of attacking JNU students' union leader Umar Khalid in August 2018, has been given a ticket to contest election in Haryana's assembly polls by Shiv Sena. He was arrested after the shooting and is currently out on bail.<sup>29</sup>

The changed nature of sycophancy is indicative of the bigger concern of violence relating to elections. In West Bengal itself, between 1999 and 2016, there were 365 politically motivated murders.<sup>30</sup> These numbers concur with the pattern of election related violence stalking the entire country. The idea of violence has been interlaced with elections persistently and with purposeful legerdemain.

#### V.IV. Clashes in a Pluralistic Society

The ideology of a nation state is not inherent to the Indian subcontinent. It is a borrowed idea. In the Indian context, the Hindu heartland concept has taken hold of the political consciousness in a manner where people have been led to believe that certain norms can be overlooked if the unity or integrity of the Country is in danger. The clashes that happen in a pluralistic society like that of India often give rise to a form of extreme patriotism.

“The whole pluralistic notion gives place to a more monistic perspective of the State..”<sup>31</sup>

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<sup>28</sup>“Proud” Of Babri Masjid Demolition, Says BJP's Pragya Thakur Gets Notice, NDTV, (7 December, 12:00 pm), [https://www.youtube.com/watch?v=oN\\_apeSv3k8](https://www.youtube.com/watch?v=oN_apeSv3k8).

<sup>29</sup> Mihir Vasavda, *Shiv Sena hands Haryana poll ticket to man who attacked JNU's Umar Khalid*, THE INDIAN EXPRESS, (October 9, 2019 10:47:25 am), <https://indianexpress.com/elections/shiv-sena-hands-haryana-poll-ticket-to-man-who-attacked-jnus-umar-khalid-6059722>.

<sup>30</sup> Mukesh Rawat, *How West Bengal has been fertile land for violence during elections*, INDIA TODAY, (May 16, 2019 at 12:00 pm), <https://www.indiatoday.in/elections/lok-sabha-2019/story/west-bengal-election-political-violence-history-trinamool-congress-bjp-left-mamata-banerjee-amit-shah-1526598-2019-05-16>.

<sup>31</sup> Rajni Kothari, *Cultural Context of Communalism in India*, 24( 2) EPW, 81, 81-85 (Jan. 14, 1989 at 1:00 pm)

Often in the name of nationalism and similar sentiments, the law of the land plays the second fiddle. The attitude towards minorities has been influenced by this same idea. “The key to winning an election is to mobilize the Hindu Heartland in which the majority of the people are located.”<sup>32</sup> In such a context, the importance of “strongman” in Indian politics is high. These strongmen more often than not, have a tendency to ignore that which is strictly legal. Therein lies the nexus between crime and politics. In an attempt to create a vision of strength, the social norms are ignored, strongman politics and crime becomes intertwined.

### **V.V. Influencing Voters through Money or Muscle**

Not all votes being cast are voluntary. Booth capturing, employing ‘gundas’ or thugs and voter mobilization by fear, are not new in India. Voters have often been forced to vote for particular candidate by threat. “At one time politicians hired criminals to help them win elections by booth capturing. Today, those same criminals have begun entering parliament and the State legislature.”<sup>33</sup> There also have been instances of votes being ‘bought’. Even if votes are not directly bought, the effect of high campaign expenditure is reflected in the results, even if high spending isn’t the only factor influencing voter behaviour. Financial superiority translates into electoral advantage.<sup>34</sup> Supreme Court in *Kanwar Lal Gupta v Amar Nath Chawla*,<sup>35</sup> explained the influence of money by commenting that,

“...money is bound to play an important part in the successful prosecution of an election campaign. Money supplies assets for advertising and other forms of political solicitation that increases the candidate's exposure to the public.”

In this backdrop of campaign finance as well, the candidates who have been able to bend the rules have been gaining a certain amount of success. The success of

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<sup>32</sup> *ibid*

<sup>33</sup> Dr. Bimal Prasad Singh, *Electoral Reforms in India – Issues and Challenges*, Volume 2 Issue 3,

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<sup>34</sup> Law Commission of India, *Electoral Reforms*, Report No.255, (March, 2015).

<sup>35</sup> *Kanwar Lal Gupta v Amar Nath Chawla*, (1975) 3 SCC 646 (India).

money and muscle power has caused a general erosion of political values. As a remedy, stricter scrutiny will have to be imposed on campaign finance and transparency regarding party funding- an issue which forever remains intertwined in a country like India.

#### **V.VI. Doublespeak in Mass Media**

The role of media in criminality is undeniable. The crime related to politics is no exception. “The emotive power of the media may, however, sometimes lead to illogical and ill conceived notions.”<sup>36</sup> Media today can spread fake news and thereby control public perception. The problem is further exaggerated by big corporation ownership of media houses. Big corporation’s ownership of media ensures that the news that is favourable to such parent corporation is highlighted and the rest is either not emphasized or suppressed altogether. Media today sensationalizes more than it sensitizes. Consequently, the reaction to crimes of political candidates is temporary and easily forgotten with the passage of time.

This tendency of purposeful propaganda was referred to by George Orwell in his book 1984, as ‘doublespeak’. Similarly, Indian media defines patriotism as the lack of dissent and labels without a second thought, human beings as ‘anti-national’ or ‘urban-Naxals’. According to NCRB data of 2017, there has been a 45% increase of sedition cases filed by the government, where only 4 out of 228 accused persons were arrested<sup>37</sup>. Arundhati Roy, in this context, refers to the use of ‘the language of genocide’ by the Politicians and the Media houses.<sup>38</sup> She argues that use of terms such as Maoist “infestation” reduces a group of people to pest-like stature which absolves the State of the responsibility to treat them as Human beings capable of holding human rights.<sup>39</sup> In this way the media houses

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<sup>36</sup>N V PARANJPE, CRIMINOLOGY, PENOLOGY AND VICTIMOLOGY 97(Central Law Publications,Allahabad,17<sup>th</sup> edn.,2018).

<sup>37</sup> Rahul Tripathi, *Over 45% rise in sedition cases in 2017: NCRB Data*, THE ECONOMIC TIMES, (Oct 23, 2019, 09.09 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/over-45-rise-in-sedition-cases-in-2017-ncrb-data/articleshow/71714464.cms?from=mdr>.

<sup>38</sup>ARUNDHATI ROY, WALKING WITH THE COMRADES(Penguin 2011).

<sup>39</sup>*ibid*

and the political parties create an atmosphere where certain criminal behaviour is portrayed as the means to a greater end.

## VI. Conclusion

The RPA has been observed to be limited in its application. The trial stage takes a long time in India and the trial of a politician is no exception. The rate of convictions among MPs and MLAs are very low. Additionally the Problem of filing of false affidavits is prevalent and the law doesn't seem to deter political parties from abstaining in their link with criminals. In the light of the above discussion it is not impertinent to comment that the effect of the laws restraining criminal participation in elections has not been very far reaching in India.

It has been proposed that the disqualification should operate as soon as a candidate is charged with a crime. Many have argued that a disqualification based on a pending charge only will attract false cases to malign a candidate. Some have argued that this goes against the well established jurisprudence that a man is innocent until proven guilty. Infact the initial purpose of RPA was the disqualification of convicted criminals and not those against whom there was a charge pending. Mr. Fali S. Nariman opines that there are already sufficient safeguards within the Code of Criminal Procedure, 1973 (Cr.P.C) which will take care of a false case.<sup>40</sup> Some, like Mr. T. R. Andhyarujina maintains that the disclosure of criminal antecedents in the affidavits should suffice in allowing the voters to make the right decision or rather, an informed decision.<sup>41</sup>

Perhaps the main problem remains the unaccountability of the political party. Political maturity dictates the cleansed nature party politics and minimum nexus with crime. But it is difficult to restrain that if the political parties are not made accountable for involving criminal elements in mainstream politics. The Election Commission has already proposed that more power be given to it for registering

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<sup>40</sup> Law Commission of India, *Electoral Disqualification*, Report No. 244, 8, (February, 2014).

<sup>41</sup> Law Commission of India, *Electoral Disqualification*, Report No. 244, 9, (February, 2014).

and de-registering political parties.<sup>42</sup> The National Commission to Review the Working of the Constitution, 2001, has also recommended that the Election Commission should increase qualification of a party to get registered so as to make a party more accountable to the democratic values and the Constitutional schemes. It is difficult to get the Parliament to pass a law that puts more accountability on a political party because of an obvious interest clash that is consequently bound to happen. But pressure groups needs to keep working on the demand for such a concrete law, as the future of the largest democracy in the world hangs in the balance.

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<sup>42</sup> Core Committee on Electoral Reforms, *The Background Paper on Electoral Reforms*, 27, (December,2010) .