A SUMMARY OF THE THESIS

Submitted to the

FACULTY OF LAWS

PANJAB UNIVERSITY, CHANDIGARH

for the degree of

DOCTOR OF PHILOSOPHY

2013

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PANJAB UNIVERSITY

CHANDIGARH
Criminalisation of Politics in India: A Critique

Man, being a gregarious animal, deserves to have his own way to think and act as he likes and at the same time, everyone cannot have his own way, because he lives in society. One’s desire conflicts with those of another. The relation of the individual member of society with one another, therefore, needs regulation by the government. When a body of people is clearly organized as a unit for purposes of government, then it is said to be politically organized and may be called a body politic or state a society politically organized.¹

Politics, in its broadest sense, is the activity through which people make, preserve and amend the general rules under which they live.² It is the process by which groups make decisions. Although the term is generally applied to behavior within government, politics is observed in all human (and many non human) group interactions, including corporate, academic and religious institutions.³ “Politics is the conduct of public affairs for private advantage” - Bierce.⁴

The origin of the term “democracy” can be traced back to Ancient Greece. Democracy is derived from the Greek word “kratos”, meaning power or rule. Democracy, thus means, ‘rule by the demos’ (the demos referring to the people). Abraham Lincoln has defined democracy as Government of the people, by the people and for the people. Democracy links the government to the people, but that link can be forged in a number of ways.⁵

India is a country with a strong democratic tradition of electoral politics and the Election Commission has won plaudits, both at home and abroad. But, democracy goes beyond periodic elections, despite their seminal importance in ensuring free and fair choice. What is more important is the participative nature and quality of democratic governance.⁶

⁴ Id., at 376.
⁵ Supra note 2, at 68.
Empowerment implies free and fair polls. A good election translates into good governance, as it reflects true will of the people and, therefore, empowerment of India. An election without any fear, no coercion of the electorate or forcible manipulation, that expresses the true sentiments of the people and popular will, enable Indians to elect a government that can deliver on their aspirations. Empowerment of India begins when the political processes are free of all malpractices, including criminalization. The criminalization of politics and corruption in public life has become the biggest threat to India, the world’s largest democracy. It is here, that the country needs to be vigilant to ensure that its parliamentary system is not hollowed by the criminalization of the political, as well as of its electoral political processes.

Criminalization of Politics derives its root from the defects in the political system. The political system which comprises of the politicians and voters, is responsible for this evil that has deepened into our society. Criminalization of politics a systematic fact of subversion of the usual course of politics by illicit means intended to attain private gains. It gives rise to a kind of situation where there is a great dearth of erosion of value, organized valuations of norms, rules and principles, death of security of life, liberty and property lack of transparency and accountability, dominance of muscle power and black money, plundering of resources rampant corruption, denial of justice and of Rule of Law, contraction of popular sovereignty, lending to the underworld, an opportunity to establish substantial control over political process.

The voters, political parties and the law and order machinery of the State are all equally responsible for this. There is very little faith in India in the efficacy of the democratic process, in actually delivering a good governance. This extends to accepting criminalization of politics as a fact of life. Political parties are not above circumventing

9 Supra note 6.
the Rule of Law to ensure electoral victory. But, the fact that there is no public outcry against the fielding criminals as candidates, encourages the political parties to opt for criminals who ensure electoral victory through muscle power.\footnote{Sonika Gupta, \url{www.ipcs.org/newdebatepage1.jsp?id=23}, accessed on December 12, 2008, at 10.30 pm.}

Criminals are not entering politics because of some inexplicable moral lapse by candidate selection committees, but because they have huge incentives to get in. To get them out, we must change the incentive system. Many laws need change but one single change can have a huge impact. Let the law provide that criminal cases against legislators will be heard before all others on day to day basis to ensure quick verdict. In one stroke, that will create a huge disincentive for criminals to contest elections. Many will resign from the Legislature to escape the consequences. Today, the criminals join politics to gain influence and ensure that cases against them are either dropped or not proceeded with. The law disqualifies convicted criminals from fighting elections. But this does not keep criminals out of politics, because legal delays, often abetted by political preservers, make convictions of resourceful crooks rather rate. The dons invest large sum of money in getting tickets because a ticket to the assembly is a ticket to Kickbacks and extortion, using political power. The returns on political investments are so high that criminals are disinclined to invest in tax free RBI Bonds.\footnote{Swaminathan S. Anklesaria Aiyar, "How to get criminals out of politics", \url{http://articles.timesofindia.indiatimes.com/2002-03-10/india/27129343_1_criminals-politics-contest-elections}, accessed on December 16, 2012, at 11.08 pm.}

(A) Problem Profile

1. In a situation where the sanctity of elections is being increasingly undermined by rigging and booth-capturing, a criminal with muscle power has greater chances of winning, than a clean and decent individual without such capabilities. Anti-social elements dominate the scene all over India. The criminals have been nurtured by all political parties to channel their muscle power and money power to benefit themselves. Ironically, the politicians had begun using criminals earlier to do their bidding. Political parties have no qualms in using criminals to win elections or putting them up as candidates. The only goal is winning elections, attaining power
and using power to size the fruits of office. “To win at all costs”, is the only principle reflecting the sinking standards of morality in India.¹⁴

2. The Criminalization of politics and Corruption in public life has become the biggest threat to India, the world’s largest democracy. Corruption at higher levels of political leadership leads to corruption in the bureaucracy and other wings of the administration, like the police or the Public Works Department. It spreads from top to bottom. It travels downwards into the entire bureaucratic apparatus and also amongst the civilians.¹⁵ A 2005 study done by Transparency International (TI) in India found that more than 50 per cent of the people had first-hand experience of paying bribe or peddling influence to get a job done in a public office.¹⁶

    Judicial corruption in India is attributable to factors, such as inordinate delays in the disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a preponderance of new laws. Corruption not only has become a pervasive aspect of Indian politics, but also has become an increasingly important factor in Indian elections.¹⁷

    During the 1980s and 1990s, corruption became associated with the occupants of the highest echelons of India's political system. It does not shock Indians anymore to know that, not only the politicians, ministers and IAS & IPS officers are corrupt but even the judges, professors, doctors and NGO organizations are corrupt. There is extensive corruption in our system, because there is a vicious cycle, starting with political corruption leading to bureaucratic corruption, business corruption and criminalization of politics.¹⁸

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¹⁷ Ibid.

Our country is corrupt and corruption flourishes because there are people in power who benefit from the present system. Unfortunately, those who benefit from power are also those who have to initiate the change to check corruption.\textsuperscript{19}

3. Political parties need money to fight elections and one way of getting it is through the mafia dons and criminals. Muscle power is used to stamp out all opposition in the constituencies, where a particular party is dominant. And when political parties start accepting money from whichever source it comes, they become obliged to the fund-givers. Inevitably, they are from organized criminals, smugglers, extortionists, narcotic traders and illicit liquor barons. Once they obtain a hold on the leaderships of political parties, the cadres of organized crime exert pressure on law-enforcement agencies, dictate policies and start fielding their men as candidates for elections.\textsuperscript{20}

The mafia steadily grew and spread its tentacles over all manner of illicit operations like foreign exchange, smuggling, flesh trade, real estate and all manner of other dodgy business. And as their reach and power grew, so did the demands made on them for electoral services, such as rigging, providing unaccounted money and preventing certain classes of people from voting. But, services are never rendered gratis. There is a \textit{quid pro quo} and elected legislators found that they had to dance to the tune of their paymasters and underworld benefactors at the cost of the electorate, the democratic ethos and good governance.\textsuperscript{21}

Before long, mafia dons discovered that they had become king makers. From there, it was but a short step to becoming king. Why trouble to buy a legislator to get things done in the corridors of power? Simpler to do the job oneself by entering the Legislature, win respectability and acquire "leadership"

\textsuperscript{21} \textit{Supra} note 6.
status in the bargain. Some people do really believe that to be elected, by whatever means, is to be placed above the law.  

4. Electoral politics is not the sole reason for the criminalization of politics. The lure of money and the role of vested interests are among other reasons. Enormous power, self, privileges and patronage have become synonymous with public offices. Candidates spend lakhs and crores of rupees to get themselves elected. The statutory ceiling on election expenditure (Rs 15 lakh for Lok Sabha and Rs 6 lakh for Assembly elections) is followed more in its breach than in practice. And once they are through in the unequal battle of the ballot, an MP or MLA (not to speak of the minister) gets the authority to decide everything — from postings, transfers, promotions, contracts, tenders, licences and projects to fixing political opponents and filing police cases against them.

Once a legislator gets elected by deploying illegitimate and unaccounted money power, he converts politics into a business. While the constituents are kept relatively happy by 'good' deeds and selective intervention, the legislator's influence is largely deployed for postings of pliable bureaucrats and transfers of inconvenient officials; distorting market forces and undermining fair competition in contracts, tenders and public procurements; and endless interference in crime investigation.

There is no doubt that money plays an important role in all human activities. What however is worrying, is that, today money power has been identified with success and status in the society. In the context of elections, it has assumed alarming proportions, for there is no state funding and political parties have to incur expenses. That is where criminals with their black money come in handy. And criminals want respectability and acceptability.

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22 Ibid.
23 Supra note 20.
Earlier in the 1960’s, the criminal was content helping (covertly) a politician win the election, so he could in turn, get protection from him. The roles have now been reversed. It is now the politician, who seeks protection from criminals. The latter seek direct access to power and hence become Legislators or Ministers. The gullible treats them as role models and venerates them, just because they wield power and influence grabbed through criminal acts. Obsession with power at any cost has created a class of criminals and crooks dabbling in politics, and decent citizens are increasingly shunning public life. These criminals have not come out of a vacuum. Our malfunctioning governing institutions created fertile conditions for their rise. Anyone who has an unresolved civil dispute with a business partner or customer understands how tough it is to run a business ethically in India.

The criminals have understood the mechanics of the electoral process and have themselves become contenders for power. It is a surprise that the voters have no qualms in electing notorious gangsters as their representatives. People do know the difference between the right and wrong, and the good and evil. But, they have realized that an honest, peaceful representative cannot really deliver results in this unhappy milieu. That is why Manmohan Singh, whose assumption of office as Prime Minister was universally hailed, is not elected as a mere MP in the Lok Sabha constituency. And the decent men and women who do get elected are helpless in getting things done. We have created a system of alibi, in which authority is delinked from accountability, and stake-holding is divorced from powerwielding. In such a situation, honest legislators have very little capacity to

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influence events for public good. But a mafia don enforces iron discipline, and makes the bureaucracy comply with his needs or caprice. The very criminal reviled by the media and middle classes is perceived as a savior by the common man.\textsuperscript{29}

6. In fact, a new dimension has been added to the process by the criminalization of bureaucracy and the police. What makes the situation particularly dangerous is that, a criminalized administration poses a serious threat to the country’s security.\textsuperscript{30} The Criminalization of politics, Executive and Judiciary is almost complete. The corruption has spread its tentacles far & wide, there is corruption from womb to tomb, from maternity hospital to graveyard.\textsuperscript{31} In politics, individual politicians often seem to dominate the stage. But, individuals and their perceived shortcomings are only the symptoms and focusing too much on them diverts our attention from more substantial issues. Wide spread democratic failings, as they are happening in Indian politics, are pointers to institutional defects. Where the real future of our country is concerned, institutions matter much more than individuals.\textsuperscript{32}

7. We are a democracy and our politics definitely is, based on the principle that the elected representatives are responsible and accountable to the public who elect them. But, still the question of accountability in Indian politics does not arise, as many a time, even those who do not perform get re-elected, because of various other considerations, like, for example, caste or corrupt electoral practices and so on. We, therefore, find even lawbreakers becoming lawmakers.\textsuperscript{33}

8. The political parties are exhibiting authoritarian tendencies in protecting the privileges of those in power and nipping in the bud any potential threat to individual dominance, have not shown the slightest sense of shame or remorse in

\textsuperscript{29} \textit{Supra note} 24.
\textsuperscript{30} \textit{Supra note} 25.
assiduously cultivating and recruiting known criminals, corrupt persons and charlatans and rogues. Such shady elements are courted and welcomed, while decent and dignified citizens are shunned and often rejected. No major mainstream party has any published membership rolls. Spurious membership and disputes arising out of it are only too well known to all of us in respect of major political parties. As a net result, parties have often become a collection of greedy, corrupt and unscrupulous persons, who are willing to use any method, however ugly, immoral, violent or brutal, to perpetuate their hold on state power. By virtue of entry barriers and expulsion powers in the hands of party bosses, no real rejuvenation of parties with injection of fresh blood is possible. All idealistic, talented youngsters are often repelled by the parties, and undesirable elements find a haven in them.\textsuperscript{34}

9. Politics was, not too long ago, an opportunity to promote public good. Such a noble endeavour was transformed into private entrepreneurship over a period of time. This culture of politics as business is so pervasive that increasingly decent men and women are repelled by politics and shun it, like the plague.

10. If we examine the new entrants into politics over the past three or four decades in the country, very few with intellect, integrity, commitment to public service and passion for improvement of the situation could enter the political arena and survive. Almost every new entrant has chosen politics exactly for the wrong reasons. A careful analysis shows that heredity and family connections are the commonest cause for entry into politics. This is closely followed by those who have large inherited or acquired wealth and have decided that investment in politics is good business. In recent years, many local muscle men, whose services were earlier sought for extortion or vote-gathering, are now directly entering the fray and gaining political legitimacy. A few persons have entered politics out of personal loyalty to, and close contacts with those in high public office. People with very high visibility on account of great success in mass entertainment, like, sports or films have also been increasingly drawn into the vortex of politics.

Occasionally, accidents of fate are pitch forking certain individuals into elective public office. If we exclude these methods of heredity, money power, muscle power, personal contacts, high visibility, and accidents of fate, there will not be even a handful of persons in this vast country of ours, who have entered politics with deep understanding of public affairs and passion for public good and survived for any length of time over the past four decades. \(^{35}\)

11. The process of maturing of the Indian democracy is unfolding. In any such process, there are negative elements that surface distorting democratic choices that people make. Corruption, criminalization, communalism and casteism are some such manifestations. Among these, criminalization appears predominant, as compare to all others in the final analysis are crimes. The health of our democracy, naturally, will, therefore, depend on how effectively we can combat the criminalization of politics. However, lately, it appears that this malaise has reached the stage where we have, today, the Politicization of criminals. \(^{36}\)

12. Power corrupts absolutely, even without being absolute. The Indian politicians do not have to wait for absolute power to get totally corrupted. The calculating fluidity with which they are changing party loyalties, on the eve of the coming Lok Sabha polls and Assembly elections in some states, is a case in point. By no stretch of imagination, can one trace such tergiversations to any genuine change in their ideological beliefs. \(^{37}\)

In the present context, corruption is so much linked with power that our politicians have adopted a cynical attitude toward political morality. Maneuvering the Anti-Defection Law for electoral politics with the help of both money and muscle power and other unfair means for the sake of power have affected the political morality of all the political parties and as such none of them

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\(^{35}\) *Supra* note 32, at 29.


can claim themselves to be faithful to nation in true sense.\textsuperscript{38} Ideologies like Socialism, or Liberal Democracy in any case make no sense to this generation of politicians. Even humanitarian values, like, religious tolerance, or our Constitutional commitment to Secularism, are kicked overboard by them, when they make their choices while shifting loyalties. The erstwhile socialists can thus become allies of the Hindu communal BJP.\textsuperscript{39}

(B) \textbf{Research Hypotheses}

1. The most important factor, which determines the ticket distribution, is the winnability of the candidate. Hence, more and more people with money and muscle power are getting tickets from the political parties.\textsuperscript{40}

2. It is corruption and lack of probity in public life, which leads to totally unaccountable behaviour on the part of the elected representatives.\textsuperscript{41}

3. Indian Democracy has failed in building institutions which can replicate best practices and creating self-regulatory mechanisms that can consistently deliver results.\textsuperscript{42}

4. The autocratic Indian political parties, Flawed electoral process, Limited and often unhappy choice of candidates, Uninformed and distorted public discourse, Criminalization of politics, Marginalization of citizens and Over-centralization have all reduced our self governance to a mockery.\textsuperscript{43}

5. Rampant corruption, Hostility to public participation in governance, Centralization, Secrecy, Red tapism and a culture of touts and middlemen, with the backing of powerful party organizations have denied people any meaningful degree of empowerment, which means ability of citizens to influence the course

\textsuperscript{39} \textit{Supra} note 37.
\textsuperscript{40} “Criminalisation of politics – Can it be stopped?”, \textit{http://www.policyproposalsforindia.com/article.php?article_id=81&languageid=1}, accessed on January 24, 2013, at 5.36 pm.
\textsuperscript{41} \textit{Supra} note 33.
\textsuperscript{42} \textit{Supra} note 32, at 42.
\textsuperscript{43} \textit{Id.}, at 10.
of events on a sustained basis and to make meaningful decisions on matters of governance having impact on their own lives.44

6. Highly secretive functioning, habitual abuse of executive authority, ubiquitous patronage system, VIP culture in every public service, primacy of political agents, political control of crime investigation and the tardy and inefficient justice system - all make rule of law virtually non-existent in our society.45

7. Flawed elections have often reduced the legitimacy of our democracy. Severely defective electoral rolls, irregularities in the polling process, vote-buying, unaccountable use of money in elections, criminalization of politics and the curse of defections for personal gain, have undermined the sanctity of elections.46

8. Transparency in governance is crucial to ensure the State exercises its powers in a responsible manner.

9. If the best men and women that society can boast of, are either prevented or repelled or rendered incapable of surviving in the political arena, then that governance is bound to be in shambles.47

10. That undemocratic political parties cannot nurture, sustain or strengthen a democratic society. The most critical need is to reform parties and make them open, democratic and accountable.48

11. Integral to Criminalization in politics is the role of muscle power and anti-social elements during elections. The growing trend of electoral violence has become a cause of concern.49

12. There are loopholes in the laws, particularly as there is no ceiling on the expenditure that can be incurred by the there is no ceiling on the expenditure that can be incurred by the political parties. This issue, alongwith that of State funding

44 Ibid.
45 Ibid.
46 Id., at 12.
48 Ibid.
of elections, also needs to be considered and debated for a satisfactory solution to minimize the role of money power in elections.  

13. Institutions and laws are not self-operating. They depend on the individuals who operate them. It is they who have to take a decision or make a choice.

14. The criminal elements often take shelter within the political system for protection. The crime-politics nexus at certain levels is a reality. Underworld dons, gangsters, extortionists seek political patronage by offering muscle power to their mentors. This is a problem that needs to be urgently addressed.  

(C) Objectives of the Study

1. To analyze the electoral system in India, as without understanding the electoral system, it is not possible to deal with the problem of Criminalization of Politics as this problem has emerged due to faults which have occurred in this system with passage of time.

2. To study this problem of Criminalization of Politics in historical perspective, for analyzing whether this problem has emerged in present times, or it was in existence in modern, medieval and as well as in ancient times in one form or the other.

3. To study the provisions of various legislative enactments like the Representation of the People Act, 1951, the Prevention of Corruption Act, 1988, the Indian Penal Code, 1860, the Right to Information Act, 2005, the Central Vigilance Commission Act, 2003, the Commission of Inquiry Act, 1952 and Lokpal bill (which is pending in the Parliament). To analyze whether the provisions of these acts are sufficient to curb this problem or some type of restructuring is required in them.


4. To find out whether the Election Commission has been able to conduct elections in a free and fair manner and whether any kind of changes are required to increase their efficiency.

5. To study various reports given by Executive Committees and find out how far they have been successful in dealing with this problem of Criminalization of Politics.

6. To analyze the loopholes in the existing system that have paved way for Criminals and Mafia to get into politics and fight elections.

7. To study how the unaccounted and illegitimate funds during elections have contributed to this problem of Criminalization of Politics and find out that what type of Amendments are required in the statutes so that inflow of black money could be checked.

8. To study how muscle power as well as money power has affected our electoral system.

9. To analyze how Political Parties are contributing to this Problem.

10. To study the impact which this problem has on this system economically, socially, politically as well as its effect on various institutions like Police, Judiciary, Parliament, Investigation agencies and media i.e. both visual and print media.

11. To study various judgments given by the Supreme Court and analyze their contribution in dealing with this problem of Criminalization of Politics.

12. To find out the ways in which this problem can be dealt with, so that India could become democracy in its true sense where majority will decide about their representatives and not these mafia and Criminals.

(D) Research Methodology

The research work is based on documentary and analytical methods. The data will be collected from the primary, as well as secondary sources. Regarding primary sources, the relevant data will be collected from statutes, reports and various judicial decisions. As regard the secondary sources, the data will be collected from Books, Journals, Articles,
Newspaper, Magazines and Internet. The provisions of all the codes, relating to the problem of Criminalization of Politics has been thoroughly examined and efforts will be made to find out the grey areas in its actual operation.

ELECTORAL SYSTEM IN INDIA

Political system is a social institution which deals with the governance of a state and its relationship with the people. The political system of a country denotes the structure of institutions that constitute the State and its Government. India is no different and it had also developed government and political institutions to give shape and form to the fundamental principles. The multiple faces and diversity of the country is the most noticeable feature of the subcontinent.\textsuperscript{52} With the beginning of civilization, there arose a need for smooth administration and division of responsibilities. Since the population started to increase, people grew concerned about welfare and able ruling. This led to the rise of an organizational structure that dealt with the nuances of firm ruling and governance. The ancient Indian government was very simple in structure. There used to be a tribe chief, who used to appoint helpers to look over the smooth functioning of the society and dealt with grievances of people.\textsuperscript{53}

(A) POLITICAL SYSTEM IN ANCIENT INDIA

The identity and unity of government in India owes its provenance to the ancient Vedic age. Ancient Indian political system goes back to about five thousand years or more. India is a land that has been shaping civilizations through settlement patterns. Thus, history of India becomes enriched with the description of the Indus Valley civilization. This civilization had municipal cities and a centralized administration prevailed for each city in Harappa and Mohenjo-Daro. The people formed urban societies

\textsuperscript{52} “Ancient Indian Political System”, \url{https://www.classle.net/node/39535}, accessed on August 26, 2012, at 12.42 pm.

with agriculture as an occupation.\textsuperscript{54} There is not much knowledge about political life of people of Indus Valley. But, it may be said that they had political unity because same weights, measures, script, idols and small buildings are found in all the centres. It is evident that good administration was applied in the Indus Valley. So, Government took care of cleanliness of towns, drains and roads. The Great hall of Mohenjo-Daro was perhaps, the assembly hall of people of that time. Perhaps, the administration of big towns was handed over to any corporation or municipal committee.\textsuperscript{55}

However, the invasion by the Aryans had changed the whole scenario. Indian civilization was again predominated by the nomadic culture. A different concept of society in India developed with the Aryans, in the early \textit{Vedic} period. The early \textit{Vedic} saw the upsurge of kingdom which was tribal in character. Each tribe formed a separate kingdom.\textsuperscript{56} With the coming of different empires, the government of ancient India took a more complex and elaborate form. The establishment of large kingdoms in India gave birth to the concept of having a King or a \textit{Maharaja} who was the head of administration and the state. Everything worked under his command and no one dared to oppose him. He usually used to appoint a Council of Ministers who used to govern different areas of the state.\textsuperscript{57} Thus, for facilitating the better governance, entire administration was divided into various heads like Central administration, Provincial administration, Village administration, judicial system etc.

\textbf{(B) \hspace{1em} Political System in Medieval India}

Arabs were the first to enter India and establish their rule in Sindh and Multan. They were followed by Turks, namely Alptagin and Subuktagin, who were unable to gain substantial success during their invasions. It was only Mahmud Ghaznavi, who in his seventeen most powerful and strategic seventeen attacks routed India.\textsuperscript{58} Whereas Ghaznavi invaded India like a storm, plundered temples and exhibited full qualities of a robber who had a great lust for wealth, Mohammad Ghori had the distinction to lay

\textsuperscript{54} \textit{Supra} note 52.
\textsuperscript{56} \textit{Supra} note 52.
\textsuperscript{57} \textit{Supra} note 53.
\textsuperscript{58} M. S. Mann, \textit{History of Medieval India},1, (2000).
foundation of Muslim empire in India by leaving behind him, Qutub-ud-din Aibak. After Ghorı́’s death, Aibak became an independent ruler.\(^{59}\)

The Delhi Sultanate basically refers to the Muslim rulers who ruled India through Delhi. This basically came into existence after Mohammed Ghori captured Delhi after defeating Prithviraj. After Prithviraj was captured, the Delhi Sultanate went into the hands of one of Ghori’s general, known as Qutub-ud-din Aibak.\(^{60}\) The effectiveness of a ruler during this time depended entirely upon his ability to conquer the places that fell near military highways and trade routes, collect land tax for revenue of the state and have firm authority over military and state governors. The centre of Muslim rule was Lahore and it remained choice of every Muslim ruler till the times of Qutub-ud-din. But, Iltutmish was the first to change his capital from Lahore to Delhi and after this, in the history of Muslim rulers in India, Delhi occupied a special place because it facilitated conquests of Deccan from here.\(^{61}\) During the Medieval period, King-in-Ministry became the usual form of government. In addition to that, there were no republican states. Furthermore, the concept of Central Government evolved during the period of the Sultanate. The king became an autocrat and he was entitled to the throne on the base might. In the Mughal kingdom, the ancient Indian political system revolved around the autocracy of the king and he was assisted by the Councilors or Ministers to share the multifarious activities of the state. The Council of Ministers was given great power and they continued to advice the kings on their day to day handling of administration.\(^{62}\)

(C) CONSTITUTIONAL DEVELOPMENT IN MODERN INDIA DURING BRITISH TIME

The British East India company started its first voyage from 1601 to 1603 A.D. Until 1765, the East India Company remained basically a trading concern. The Constitution of the Company and its rights had been mentioned clearly in the Royal Charter issued on December 31, 1600 by Queen Elizabeth. Two committees were, accordingly, constituted in England to run the affairs of the Company smoothly. One of the committees was called

\(^{59}\) Id., at 45.
\(^{61}\) Ibid.
\(^{62}\) Supra note 52.
the 'Court of Proprietors' and the other 'Court of Directors'. There used to be a Council, comprising of one Chairman and four members, to look after the commercial interests and the administrative affairs of the Company in India.\(^{63}\) The East India Company established its suzerainty over Bengal after winning the battle of Plassey in 1757. By the Treaty of Allahabad in 1765, the Company further received the grant of *Diwani* over Bengal, Bihar and Orissa from the Mughal Emperor, Shah Alam. Thus, the Company, while being a trading organisation also became a political power.\(^{64}\) The first important step that Warren Hastings took immediately upon his arrival in 1772 was to do away with the dual system of administration. The British Parliament passed the Regulating Act in 1773, by which various changes were introduced in the administrative structure of the Company, both in England and in India.\(^{65}\) Various Acts were passed during this time like Act of 1773, 1781, 1784, 1813, 1833, 1853, 1858 and 1861. After this time, there was growth of political consciousness and Indian National Congress came into being. After formation of the Indian National Congress, there arose political consciousness and now, people demanded more reforms. Ultimately, Committee was appointed to prepare plans for the enlargement of the Provincial councils, for enhancement of their status, the multiplication of their functions, introduction of elective principles in the Councils and liberalization of their general character as political institutions. Though, the Bill was introduced in Parliament in 1890, but the law was passed two years later in the form of the Indian Council Act, 1892.\(^{66}\) Then, number of Acts were passed by the Government like The Government of India Act, 1909, 1919 and 1935.

The Indian Constituent Assembly was formed in 1946, under the Cabinet Mission Plan with the objective of making a Constitution for free India. Dr Rajendra Prasad was its President. In total, the Constituent Assembly held eleven sessions, over a period of 165 days from December 9, 1946 to November 26, 1949. On November 26, 1949, Dr Rajendra Prasad, as the President of the Constituent Assembly formally signed the

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\(^{64}\) *Id.*, at 64.

\(^{65}\) *Id.*, at 65.

Constitution, while expressing his dissent on 20 points. It was primarily written in English and no educational qualification was set for any of the posts enshrined in it.67

The Constitution declared India to be a Sovereign, Democratic and a Republic. Along with the Preamble, seven Fundamental Rights and the Directive Principles of State Policy were also proclaimed by it. Provisions were made in this Constitution, for a Union Executive, consisting of the President, the Vice President and a Council of Ministers. The Prime Minister was to be the head of the Council of Ministers and to be appointed by the President.68 At the Centre, there was to be a bicameral Legislature, called the Parliament, consisting of two Houses, known as the Lok Sabha and the Rajya Sabha. The Constitution dealt extensively on the powers of the Parliament. Similarly, Legislatures in the States were to be formed on the basis of their respective population and Governors appointed. As per the Constitution, a Supreme Court was also established consisting of 25 judges. Thus, the Constitution with all the aforesaid provisions was promulgated on January 26, 1950. Under it, Dr Rajendra Prasad and Pandit Jawahar Lal Nehru became the first President and the first Prime Minister, respectively.69

A very important feature of the Indian Constitution is, that every citizen has an equal right to vote. With the promulgation of this Constitution, the provision of communal representation came to an end and every citizen above the age of 21 years was given the right to vote. Now, this age limit has been reduced to 18 years. To get the right of adult franchise, countries like England had to fight for almost 100 years (1832-1928). The end of the system of communal representation and the beginning of adult franchise was the greatest and most revolutionary feature of the new Constitution.70

(D) DEVELOPMENT OF ELECTORAL SYSTEM IN POST-INDEPENDENCE ERA

Elections in India are considered to be the very backbone of the Indian democracy. Being a Parliamentary Republic, the citizens of India are entrusted with the responsibility of choosing the Head of the country, as well as of the State. There are both General and State elections, that are held in the country, based on the Federal structure of

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67 Supra note 63, at 258.
68 Ibid.
69 Id., at 259.
70 Id., at 265.
the Indian Republic. The elections in India often transcend from being a mere political activity to a high publicized and often sensationalized national event, with clear cultural ramifications. The entire nation had seemed, to suddenly come to life, at the onset of the elections, particularly the General Elections. Even the Assembly Elections, which determine the State Government, are events of great significance. All state elections are closely observed throughout the nation. A good electoral system is, therefore, the bedrock of genuine representative government. The architects of the Indian constitution attached the highest significance to arzon-dependent electoral machinery for the conduct of elections. For this, it was necessary that an independent Election Commission, with its vast paraphernalia should be set-up in country. Such a Commission could ensure fair and free elections of the representatives of the people at all levels.

**PROBLEM OF CRIMINALIZATION OF POLITICS IN HISTORICAL PERSPECTIVE**

Ruthlessness, inexorability, savagery and violence mark the struggle for power, almost without an exception in every part of the world. In Indian history too, the scheme was not different. It is an accepted tenet of criminology that no-one becomes an iniquitous criminal instantly. If a scandalizing crime involving persons in power, influence and authority ensues in the course of historical evolution of institutions, the reasons have to be sought against the background of attitudinal demoralization and the compulsions and pressures of the environment in which the individual grows and adjusts himself to them. Rulers in the past, should not be judged harshly, taking into account, the surroundings and the environment in which they existed. The task of ruling was at no time an easy one. When linked to the highest principle of utopian and righteousness, it was worthless being not effective and invariably ended in catastrophe. If the legal, ethical and virtuous standards applicable to the general people are sought to be applied to the rulers, no medieval king would have perhaps survived even a single day on his

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72 Ibid.
throne. Thus, from this prospect, felonies committed by persons in power in the past might be construed merely as the outcome of a self-defensive contraption, in an era replete with espionage and rage. Thus, this struggle for power, whether in ancient, medieval or modern times, is accompanied with violence as a consequence of strains which the political system had, on the individuals. To combat this stress, a mechanism had to be developed and at all times, violence and crime are an intrinsic part of this mechanism.\textsuperscript{75}

Criminalization of politics is, in fact, the product of the political elite which resorts directly or indirectly, to criminal and illegal ways to hold on to its power and privileges.\textsuperscript{76} Criminalization of politics has been there for a long time, for the last 50 or 60 years and it is going to stay.\textsuperscript{77} A bizarre aspect of India’s politics is the entry of anti-social and criminal elements into it in a big way. Its convoluted political culture has provided them space as well as legitimacy and responsibility. The nexus between the politics and crime has a basis in \textit{quid pro quo}. Politics provides protection to the mafia gangs and other anti-social elements; the latter help out in booth capture, intimidation of voters, and elimination of those booth capture, intimidation of voters, and elimination of those who do not yield to them.\textsuperscript{78}

The tie-up between the politician and the criminal is not a recent phenomenon, nor one confined to a particular is not a recent phenomenon nor one confined to a particular society or culture. The \textit{vishakanyas} of the old times and the mercenaries of our own times, attest to the universality of this practice. But what we are encountering today is a wider spread of this practice and its deeper reach. It cannot be explained simply in the terms of personal fallibility. Its explanation requires a larger frame of reference.\textsuperscript{79}

The tie-up between the politician and the criminal on a larger scale is largely due to the wide gulf that exists today between virtue and necessity. This gulf is created when we set before us, a collective task which, when accomplished, promises to build for us an earthly paradise, where indulgence and bliss may co-exist. However, in trying to

\textsuperscript{75} Ibid.
\textsuperscript{77} Id., at 85.
\textsuperscript{78} Id., at iv - v.
\textsuperscript{79} Id., at 69.
accomplish this task, we create structures that increasingly resist our efforts to shape reality in the light of our vision.\textsuperscript{80} When our virtuous collective goal encounters the evil reality, the domain of necessity, our growing skepticism about the possibility of moral insight increases and creates obstacles for effective action. This again is not a new phenomenon; what is new is its widespread.\textsuperscript{81}

In respect of political corruption in its crude form, that is, making money out of political office, we seem to be living in the times of the East India Company. The foremost among the empire-builders of the company-Robert Clive and Warren Hastings, indulged in crudest form of bribery and corruption to enrich themselves personally.\textsuperscript{82}

It is a paradox of history that the empire-builders of a foreign land who started their act in India with naked corruption, ended up handing over a remarkably clean administration to the leaders of independent India. It is a greater paradox that although our own nation-builders started off with the highest standards of probity and purity, we find ourselves trapped in the cesspool of corruption.\textsuperscript{83}

**LEGISLATIVE & EXECUTIVE MEASURE AND CRIMINALIZATION OF POLITICS**

India is the largest democracy in the world. The Election Commission of India is a permanent constitutional body vested with power to conduct elections. Elections are conducted according to the constitutional provisions, supplemented by laws made by the Parliament. The major laws are, The Representation of the People Act, 1950, which mainly deals with the preparation and revision of the electoral rolls and The Representation of the People Act, 1951, which deals, in detail, with all aspects of conduct of elections and post election disputes. With passage of time, elections have changed its horizons. Now, it is like a battle after every five years and person with more money power, greater muscle power and mafia power, will emerge as a champion. Slowly and steadily, largest democracy of the world is corroding from within by its own people, as during elections candidates resort to corrupt practices with the only aim of winning the

\textsuperscript{80} Ibid.
\textsuperscript{81} Id., at 69-70.
\textsuperscript{83} Id., at 28.
elections, by hook or crook. In this situation, pressing need was felt for certain kinds of laws which should be very effective in dealing with these problems. There are various statutes which contain provisions dealing with criminalization of politics, like The Representation of the People Act, 1951, The Prevention of Corruption Act, 1988, The Indian Penal Code, 1860, The Central Vigilance Commission Act, 2003, The Right to Information Act, 2005. Though Lokpal Bill is still in its transit phase but one thing is certain, that the day it becomes an Act, it will prove to be the strongest legislation to curb the problem of Criminalization of politics.

Various committees have given their recommendations from time to time to deal with this problem and these include Vohra Committee report, J. P. Committee recommendations, Goswami committee recommendations and Indrajit Gupta Committee recommendations. The above provisions, are just a prelude to the working of an efficient democracy, a pre-requisite to engender “autarky” in the working of the Government. An innate feeling of perseverance, self-abnegation, altruism need to be instilled in the hearts of political leaders to evince the existence of “panglossian citizens”. As the saying goes, “Rome was not built in a day”, the success of any activity, or a nation, as the case may be, depends upon empathy, and not sympathy towards the “plight” of the nation’s citizens. A nation, should be a bastion of strength, free volition, patriotism, and in the case of India, the annals of struggle for independence, bear a testimony to the fact.

**CRIMINALIZATION OF POLITICS AND JUDICIAL ATTITUDE**

Probity in the governance of our country is an essential and vital requirement for an efficient and effective system of governance and for socio-economic development. An important requisite for ensuring probity in the governance, is total absence of corruption. The other requirements being, effective laws, rules and regulations governing every aspect of public life and, more important, an effective and fair implementation of those laws, etc. Indeed, a proper, fair and effective enforcement of law is a facet of discipline. Unfortunately for India, discipline is disappearing fast from the public life and without discipline. Discipline implies *inter alia* public and private morality and a sense of
honesty.\textsuperscript{84} While in the West, a man who rises to positions of higher authority, develops greater respect for laws, the opposite is true in our country. Here, the mark of a person holding high position is the ease with which he can ignore and refract the laws and regulations. The paradox of India, however, is that in spite of a vigilant press and public opinion, the level of corruption is exceptionally high.\textsuperscript{85} This may be attributed to the utter insensitivity, lack of shame and the absence of any sense of public morality among the bribe-takers. Corruption today poses a danger not only to the quality of governance, but is threatening the very foundation of our society and of the State. It is not that there are no existing measures to combat this quagmire, rather these measures have fallen out due to the lack of political will.\textsuperscript{86} In the end, it is the Judiciary which has to work with activism to fulfill these loopholes and various landmark judgements, having great significance in curbing problem of criminalization of politics.

The Judiciary has come a long way in curbing the menace of Criminalization of Politics, by dealing with various aspects in different judgments. This institution has proved to be the watchdog of democracy, and it has, very effectively dealt with the issues of election expenditure during elections, thereby, regulating the use of money power during election time. It is the Judiciary which has made mandatory for all the candidates to disclose their assets, liabilities as well as criminal background, if any. It is also trying to restrict the media, so that they can play a more constructive role. We all are indebted to this institution for its valuable contribution in this field. The recent conviction of Indian Lokdai chief and Leader of the Opposition in Haryana Om Prakash Chautala and 54 others, including his son and MLA Ajay Chautala in the teacher recruitment scam of 1999-2000 bears testimony to this fact.\textsuperscript{87} There are bound to be accusations of political victimisation from those hit by the Delhi CBI court ruling, and righteous proclamations of being ‘holier than thou’ from their rivals. But the fact is that this is a victory for the justice delivery system. Besides the large number of witnesses and accused examined in the case, there was the additional burden of the prime accused being known for nursing

\textsuperscript{85} Ibid.
\textsuperscript{86} Ibid.
\textsuperscript{87} “Chautala hits a wall Conviction a wake-up call for all”, The Tribune, January 17, 2013, at 8.
grudges for long. Credit must go to certain witnesses whose brave depositions led to the convictions, unlike other high-profile cases against former chief ministers where all witnesses turned hostile.\textsuperscript{88} The importance of the ruling, however, lies more in the effect it will have on the political leadership and the bureaucracy at large. It may be the Chautalas that have been convicted, but the system of recruitments and awarding of government contracts has all along been suspect and continues to be. This case will send out a strong message. Even under political pressure, any official would think twice before risking his career. There have been officials in Haryana earlier too who have said no to being party to any wrong, but they were in minority and hounded. The ruling should give them hope.\textsuperscript{89}

**IMPACT OF CRIMINALIZATION OF POLITICS**

Politics is a highly sacred profession. It requires honest and service-oriented practitioners impregnated with statesmanship. Wherever in the world, politicians imbued with integrity and commitment have governed a country, socio-economic development has moved on an optimum growth path with speed. History of governance provides enough proof that competent and committed political leaders have made success of even weaker systems, a reality and incompetent and dishonest or corrupt leaders have failed even an otherwise good system.\textsuperscript{90}

India adopted the governance system of a socialistic-democratic republic with the flavour of a mixed economy. The Indian system of governance has been based on universal suffrage and a socialistic pattern with the public sector having the commanding heights. There was no fault in the system, yet the human element that governed the country failed the system through rigidity in policy formulation and implementation. Inefficiencies, favouritism, the rigidity in approach, a frigid bureaucracy and self-seeking politicians brought the system down to the nadir of misgovernance and inequity.\textsuperscript{91}

\textsuperscript{88} Ibid.  
\textsuperscript{89} Ibid.  
\textsuperscript{91} Ibid.
These inequities and inequalities have vitiated the democratic system of governance. The command of society has gone into the hands of the rich with unaccounted money and a large section of the poorer sections of society is virtually on sale for casting their votes. It is a shocking revelation that leaders of several areas where mostly the poor live openly demand money for their votes. Those who have adopted politics as a commercial venture have made it a family business, primarily on the strength of their unaccounted money, which they spend liberally. And after coming to power they make more money than they spend in elections through illegal and unhealthy means.\textsuperscript{92}

Thus, the democratic system has been damaged by the election system which is a ramification of money power, criminality, muscle power, lies and false promises that help mislead illiterate and poor voters. After elections, for five years the voters are again left high and dry with no way to get their grievances redressed. Unfortunately, the people have no choice. They have to choose from the same political class, a shifting mass from one party to another. One wonders if this was the freedom for which our elders had sacrificed their lives.\textsuperscript{93}

As per the study conducted by the National Election watch, in five states where elections are recently held, as many as one-third of the ministers seeking re-election have criminal charges against them; that predictably enough, the Punjab Cabinet ministers are the most prosperous with 83 per cent of the ministers being crorepati, the corresponding figure for Uttar Pradesh being only 37 per cent and in the small state of Manipur, where women traditionally enjoy a dominant role in society, surprisingly, barely 5 per cent of the candidates are women.\textsuperscript{94}

One of the trends, which have emerged from the studies so far, indicates the growing financial clout of the political class. Judging by the income tax returns filed by candidates themselves, it would seem that the average valuation of assets owned by MLAs in Punjab, for example, has grown by Rs 6 crore between the Assembly elections in 2007 and 2012. But, while it may be possible to generalize and say that increasingly,

\textsuperscript{92} Ibid.
\textsuperscript{93} Ibid.
only the wealthy and the well-heeled are able to find space in politics, it may be a mistake to link the candidates’ growing wealth to either corruption or criminality.\textsuperscript{95}

Unfortunately, the political parties in India have come to believe that stalling the Parliament is the best way of expressing their opposition to legislation or any other action of the government. Since the proceedings of both Houses are watched throughout the country, the non-functioning of Parliament which sends out a generally negative signal. Politicians are more to be blamed than the others, like the judiciary, the government and the media. The beams are split. The point to find out, is, why a nation which has largely followed democratic methods since 1950, when the Constitution was adopted, is turning violent in its action and the language that people use? A slap on the face of Agriculture Minister Sharad Pawar remains as unacceptable as was the shoe thrown at Home Minister P. Chidambaram. Both are violent expressions which neither the Constitution nor the country’s ethos allow.\textsuperscript{96} The “Shining India” suddenly appears to be receding into shadows. No official wants to take any decision, much less quickly. HRD Minister Kapil Sibal rationalizes that officials are afraid because they will be taken to task if the decision turns out to be wrong. Politics, or for that matter, every segment of society has shed morality. The realization that certain things are not being done or that wrong methods are not being employed, is not there anymore. Therefore, no political party has any compunction in doing anything to get what it wants, through peaceful methods, if possible, or the use of violence, if necessary.\textsuperscript{97}

The \textit{Lakshman Rekha} does not exist any more and the tendency to hit below the belt is not only common but also considered permissible. The media, puffed up by a sense of self-righteousness, has deteriorated to the extent that you can publish anything on any page in the news columns by giving a price (paid news). The judiciary, thumping its back for independence, can be generally “managed” according to eminent lawyers and former judges. It is an open secret that the clients know which judge has what type of predilection and the price involved in the same, contingent upon venality of judges. Cases

\textsuperscript{95} \textit{Ibid.} \\
\textsuperscript{96} Kuldip Nayar, “Stalling Parliament It sends out a wrong signal”, \textit{The Tribune}, December 10, 2011, at 12. \\
\textsuperscript{97} \textit{Ibid.}
are accordingly preferred before a particular bench. No one criticizes the judges fearing the contempt laws. Thus, the veneer of respectability stays. The bureaucracy, which runs the administration, is so divided hierarchically that the right hand does not know what the left is doing. Joint secretaries and their seniors cannot be touched without the permission of ministers who are mostly corrupt.98

SUGGESTIONS AND CONCLUSIONS

The agenda of political reform in India has to be different from the challenge in the advanced industrial democracies, for our problem is not demobilization and the slowing down of democracy. At the same time, unlike other new democracies of the Third World, India does not face the challenge of democratic transition or consolidation. The problems in Indian democracy are not the result of a failure of the modern idea of democracy, to take roots in an alien setting. Rather, we are faced with the problems arising out of an apparent success of the democratic experiment. The people accepted the democratic invitation and over the years, popular political participation has only gone up.99

The last decade has seen something of a democratic upsurge. Popular participation is not devoid of a sense of legitimacy and efficacy of the democratic system. The elections are free and fair in the minimal sense, that the rulers are not assured of a return to power. They are, at least, more free and fair than in most of the Third World democracies. Yet, the existence of this democracy does not deliver what democracies are supposed to, i.e., Peoples’ control over how the collective decisions affecting their lives are arrived at.100

The real failure of the current phase of Indian democracy is not the failure to hold free and fair elections, nor the inability of the people to affect change in the governments through the exercise of their free vote, but the growing distortion in the mechanism of political representation, the growing distance between the electors and the elected, the inability of the mechanism of competitive politics, to serve as a means of exercising effective policy options. Clearly, the institutional frame of democracy has failed to

98 Ibid.
100 Ibid.
translate popular participation and enthusiasm into a set of desirable consequences. The weak policy orientation of *dalit-bahujan* politics, lack of emphasis on institution building, the decision not to change the character of the bureaucracy and the retreat of the state in the face of the forces of globalization, were, in no way necessary to the design of Indian democracy.\(^{101}\)

In the end, it is submitted that no single reform or policy can change the entire system. Each and every individual as well as all the institutions like Police, Judiciary, Press, Investigation Agencies, Media, Bureaucracy, Parliament etc. has to effectively perform the role assigned to them without any outside influence. Everyone has to work, honestly and efficiently, to strive for excellence. Family, as the basic unit of the society has to inculcate social and moral values in the child so that all these get imbibed in the children from the very childhood. Educational institutions have to channelize the energy of youth in a more productive manner. There is an urgency to bring reforms at grassroots level. By achieving it, pyramid of corruption, red-tapism, money and muscle power, which is spreading its tentacles from bottom to top entangling the entire system could be broken. Today, as a consequence of economic growth, rich is becoming richer and poor is becoming poorer and it has led to tremendous increase in below poverty line population. This is one of the reason that money has become topmost priority for all which has led to the presumption that anything could be purchased for money. Therefore, the need of hour is economic development of the Nation as whole where per capita income of each individual should increase. Transparency in the working of the Government and accountability of politicians is required, so that no-one should take the system for granted. The present VIP culture has to be done away with, so that the common man should become the nucleus around whom entire system should revolve and this common man will prove to be the most important asset of this country, once sense of security is infused in him. If this is done, the common people will get attached to the nation in a real sense and will never think of doing anything adverse to national interest.

\(^{101}\) *Ibid.*
The recent events have given a ray of hope. Conviction of Chautalas by CBI Court has restored faith in the Judicial system. Even among Bureaucrats, on one hand, there is officer like Vidyadhar, IAS, who is a convict in JBT teachers scam and on the other hand, there is also officer like Rajni Sekri Sibal, who has refused to bow down before political bigwigs and her testimony led to ultimate conviction of Chautalas. Thus, India is a country with so much diversity in its heritage and each diverse individual has to pay tribute to the ‘Motherland’ so that Nation as a whole could progress.

In the end, it is to be concluded that the principal task of political reform is to address the democratic deficit and some of its root causes. Specifically, the challenge is to strengthen devices that facilitate popular mobilization and its effective expression in the formation of political agendas, formulation of governmental policies and their effective execution. In the context of the retreat of the state, there is a need to resorting the primacy of politics and restore its capacity to act as the principal vehicle of social change. The litmus test for any proposal of ‘radical’ political reforms is, its ability to deepen the ongoing process of democratization for the social groups and communities that have historically been denied access to political power.\footnote{Supra note 99.}