



## Criminal law, politics and the country

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### Abstract

The Supreme Court and the Election Commission of India (ECI) have undertaken some commendable steps for reforming the electoral process. But these two constitutional bodies are also bound by the laws enacted by the elected legislative body. The ECI has achieved considerable success in containing the role of muscle power through measures such as the effective implementation of the model code of conduct and the setting up of the expense monitoring cell. Mandatory declaration of assets and existing criminal charges in self-sworn affidavits to the ECI prior to elections has brought in some transparency. Supreme Court judgments disqualifying convicted MPs and MLAs (*Lily Thomas vs. Union of India, 2013*), barring those in jail from contesting (*Chief Election Commissioner vs. Jan Chowkidar, 2013*), directing the EC to bring the issue of election related freebies under the ambit of the Code of Conduct, the Allahabad High Court banning caste and religion based political rallies are all attempts to change the system. However, implementation of these judgements has faced unequivocal opposition from all the political parties. When the Supreme Court in its recent intervention (*Lily Thomas vs. Union of India, 2013*) sought to prevent convicted MPs from continuing in office, the legislators promptly geared up to nullify the judgment through an ordinance.

**Keywords:** election, court, supreme court

### Introduction

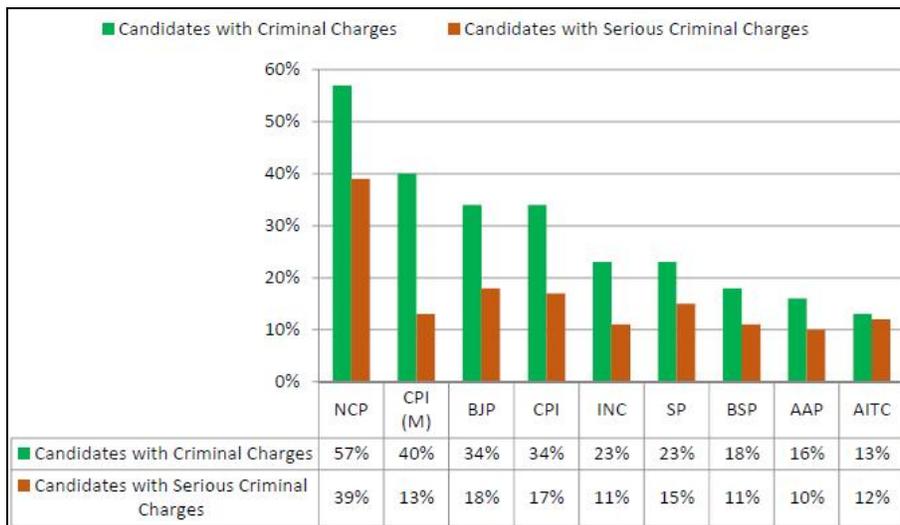
An analysis of the data compiled by the Association for Democratic Reform shows the degree to which criminalisation has entered Indian politics: 7 per cent of 5,380 candidates contesting the Lok Sabha election 2014 have declared criminal charges in their affidavits submitted to the Election Commission; 10 per cent have declared serious criminal charges such as murder and rape charges. With the coming Lok Sabha election in progress, it becomes pertinent to reflect on these figures and their implications for the democratic processes in the country,

### How Many Criminal Politicians run the country

A preliminary analysis of the candidate data compiled by the Association for Democratic Reforms (ADR) for the Lok Sabha and Assembly elections gives an idea of the degree to which criminalisation has seeped into Indian politics. This research paper examines the self-sworn affidavits submitted to the Election Commission of India by over 10,700 candidates who contested the Lok Sabha 2004 and 2009 elections and also takes a preliminary look at the number of criminal candidates that are contesting for the current Lok Sabha election. The analysis done by ADR from these affidavits has been further used and analysed to understand the patterns of criminalisation in our political system. With the coming Lok Sabha election in progress, it becomes pertinent to reflect on these figures and their implications for the democratic

processes in the country. From ADR's compilation of data on 5,380 candidates contesting the Lok Sabha election 2014, 17 per cent have declared criminal charges in the affidavits submitted to the Election Commission; 10 per cent have declared serious criminal charges such as murder and rape charges. Aam Aadmi Party (AAP) candidate S.P. Udayakumar, Kanyakumari constituency, Tamil Nadu, faces the highest number of criminal cases - 382 including 19 charges related to Attempt to Murder (IPC section 307) and 16 charges related to sedition (IPC section 124A). He is closely followed by M. Pushparayan, also an AAP candidate, Thoothukudi constituency, Tamil Nadu, with 380 criminal cases.

At the time of writing this report, five phases of the ongoing 2014 Lok Sabha election have been completed. For phases 1-5, Figure 1 shows the proportion of candidates with criminal charges fielded by some major parties. Among the six national parties (the Indian National Congress [INC], the Bharatiya Janata Party [BJP], the Nationalist Congress Party [NCP], the Bahujan Samaj Party [BSP], the Communist Party of India [CPI], and the Communist Party of India (Marxist) [CPI-M]), the NCP has the highest percentage of candidates with criminal candidates (57 per cent) followed by the CPI (M) (40 per cent). The NCP also has the highest percentage of candidates with serious criminal charges (39 per cent) followed by the BJP (18 per cent).



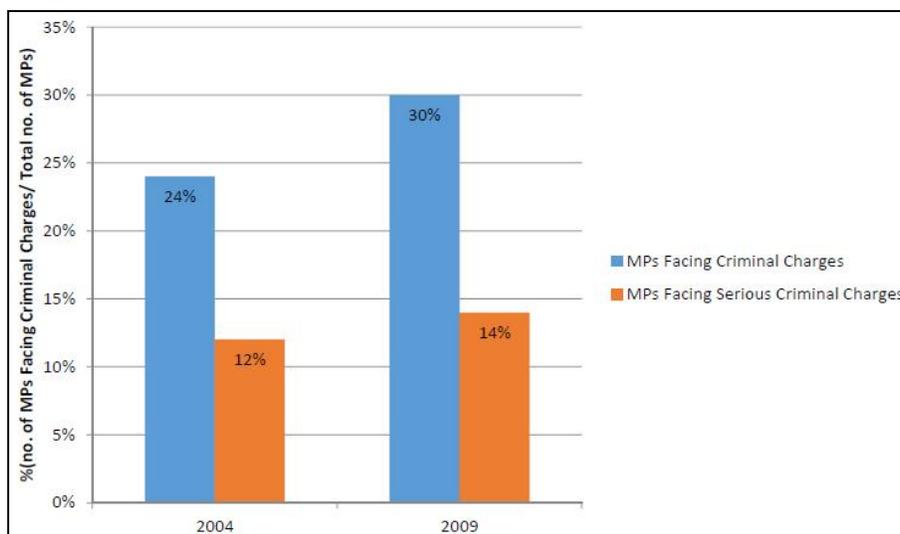
Source: Association for Democratic Reforms

Fig 1: Party-wise Candidates with Criminal Charges, Phase 1- Phase 5, Lok Sabha elections 2014

States that top the list with the highest percentage of candidates facing criminal cases are Goa (32 per cent), Kerala (29 per cent), Bihar (26 per cent) and Jharkhand (26 per cent). On the lower end lie Rajasthan (6 per cent candidates face criminal charges), Haryana (7 per cent candidates face criminal charges) and Assam (7 per cent candidates face criminal charges). Among the 232 constituencies analysed 94 (i.e. 41 per cent) have at least three candidates with criminal

cases.

The proportion of MPs in the 15th Lok Sabha facing criminal charges is not only high but actually increased between the 2004 and 2009 Lok Sabhas. The proportion of MPs facing serious criminal charges (like murder, kidnapping and extortion) also showed an increase from 12 per cent in 2004 to 14 per cent in 2009.



Source: Association for Democratic Reforms

Fig 2: Proportion of MPs Facing Criminal Charges Lok Sabha 2009

Table 1: Serious IPS charges faced by MPs Lok Sabha 2009

IPC section*	Offence	No of MPs Accused	No. of Women MPs Accused
307	Attempt to Murder	26	1
302	Murder	17	
304	Culpable homicide not amounting to murder	3	
384	Extortion	2	
364	Kidnapping or abducting in order to murder	7	

124	Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power	7	
395	Dacoity	6	
471	Using as genuine a forged document or electronic record	6	
332 & 333	Voluntarily causing hurt or grievous hurt to deter public servant from his duty	22	1
353	Assault or criminal force to deter public servant from discharge of his duty	32	2

\*Note: List is not exhaustive.

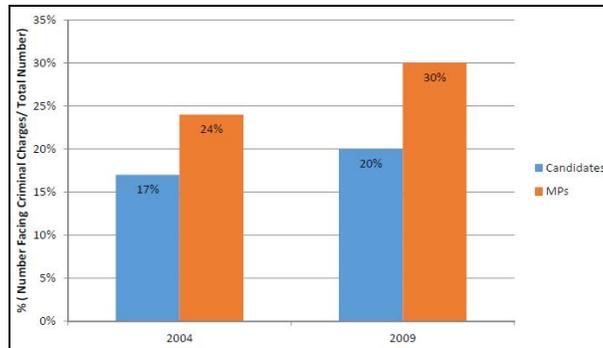
Source: Association for Democratic Reforms

The current Lok Sabha has 76 MPs accused of multiple serious crimes with an average of three cases each. Out of the 37 political parties represented in the Lok Sabha, MPs from 22 parties face serious criminal charges.

In 25 constituencies, the number of candidates with criminal charges was higher than the number of candidates without any criminal charges (without taking independent candidates into

account). For the upcoming Lok Sabha elections, out of the 1,566 candidates analysed by ADR, 18 per cent have declared criminal charges and 10 per cent have declared serious criminal charges in their affidavits.

Figure 3 shows the levels of criminalisation among the candidates contesting elections and among winners, for both the 2004 and the 2009 Lok Sabha elections.



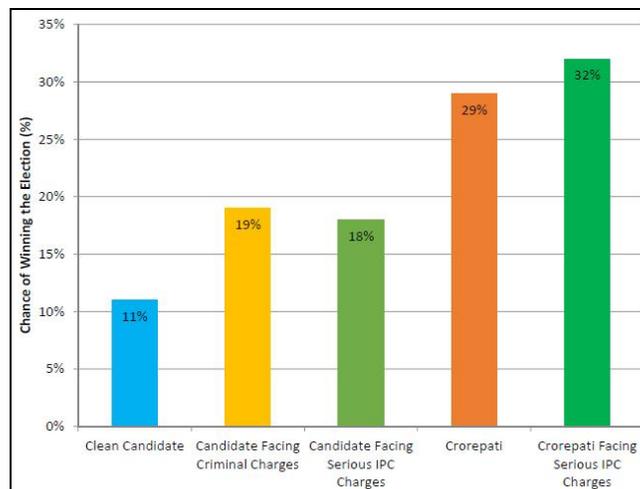
Source: Association for Democratic Reforms

Fig 3: Percentage of Candidates and MPs Facing Criminal charges for Lok Sabha 2004 and Lok Sabha 2009

**Criminality and Winnability**

The evident link between criminality and the probability of winning is further reinforced when we look at the winnability of a candidate. While any random candidate has one in eight chances of winning a Lok Sabha seat, a candidate facing criminal charges is twice as likely to win as a clean candidate.

The picture is no different for women candidates. Among the major parties (with more than 10 candidates), those that lost the election were on an average cleaner (14 per cent candidates had criminal charges) than those that won (26 per cent candidates had criminal charges).

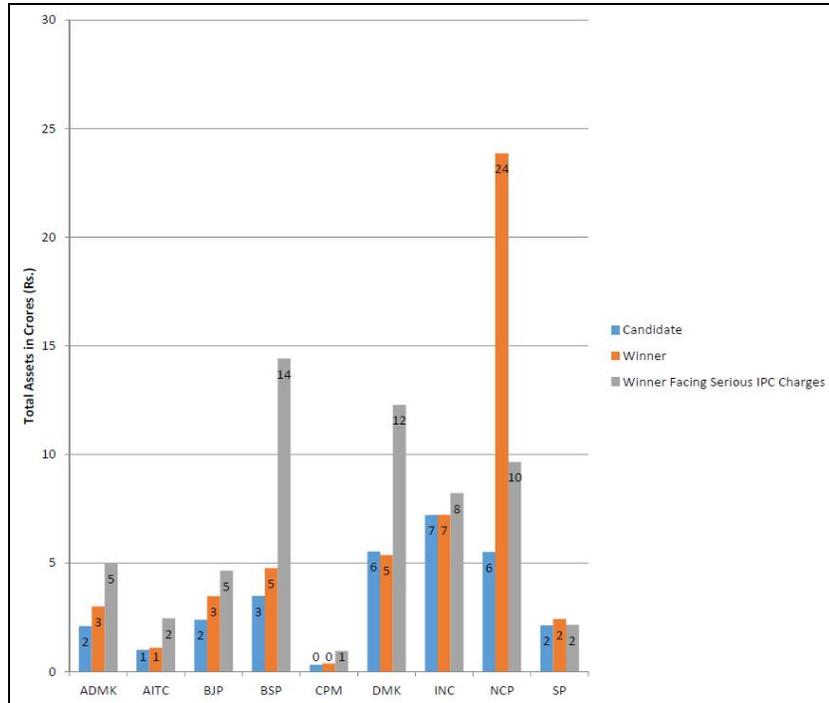


Source: Association for Democratic Reforms

Fig 4: Candidate Winnability in 2009 Lok Sabha Election

Twenty-four MPs who had criminal charges against them and won in the 2004 Lok Sabha election, won again in the 2009 Lok Sabha election. Eleven current MPs facing serious criminal charges have been given tickets to contest the Lok Sabha election, 2014. Of these, Ganesh Singh (BJP), Naveen Jindal (INC) and Avtar Singh Bhadana (INC) won both the Lok Sabha 2004 and the 2009 elections. This shows that political parties continue to give tickets to candidates despite the fact that they have criminal cases pending against them. See Table 2 for details on current Lok Sabha MPs facing criminal charges and re-contesting in the 2014 Lok Sabha election.

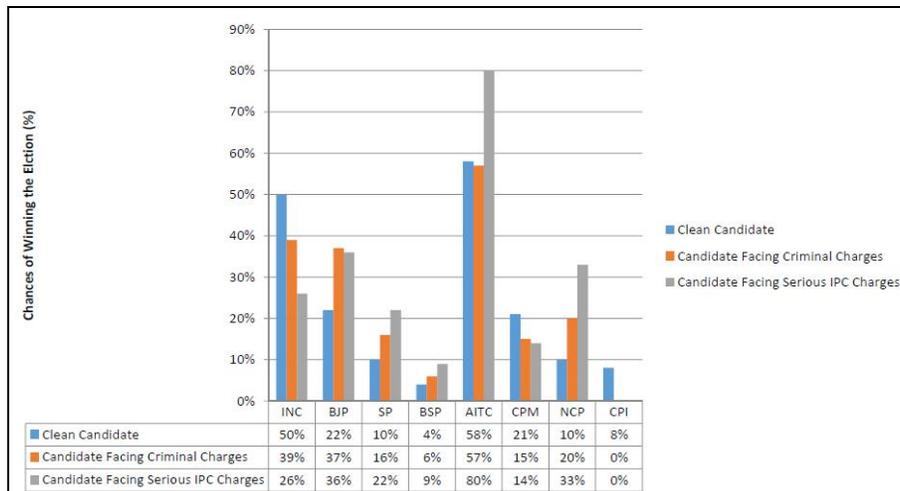
Another notable pattern is the vital link between money power and muscle power. There are more candidates as well as MPs with criminal backgrounds in the top 25 per cent of declared asset value than in the bottom 25 per cent. While a clean crorepati had a 29 per cent chance of winning the Lok Sabha 2009 elections, a crorepati facing criminal charges had a 29 per cent chance of winning. The chances increased further to 32 per cent for a crorepati facing serious criminal charges. For major parties, Figure 5 below shows that the value of assets increases from candidates to winners and to winners with criminal charges (NCP is an exception).



Source: Association for Democratic Reforms

Fig 5: Party-wise Average Asset Value

Figure 6 below shows party-wise winning chances for candidates for the Lok Sabha election 2009.



Source: Association for Democratic Reforms

Fig 6: Party-wise Winning Chances for Candidates, Lok Sabha Election 2009

### Patterns of Criminalisation

The criminalisation of politics is ubiquitous and is present in all States despite different levels of literacy, development, GDP or urbanisation. As per the Raghuram Rajan Committee’s composite development index, Rajasthan is one of the least developed States, but has the highest proportion of *crorepati* MPs among the eight Empowered Action Group (EAG) States. Among these eight States, it has the lowest number of MPs facing criminal charges (9 per cent), none of which are of serious nature. Gujarat, Tamil Nadu and Maharashtra, on the other hand, are better developed States, with higher rates of literacy, but have a higher proportion of MPs with criminal charges (Gujarat 42 per cent, Tamil Nadu 26 per cent and Maharashtra 54 per cent). The northeastern States fare better than most others. Put together, the seven sister States had only nine out of 126 candidates (seven per cent as against the national average of 20 per cent) with criminal charges against them (five of which are serious) during Lok Sabha 2009. They also had a lower proportion of MPs facing criminal charges (nine per cent as against the national average of 30 per cent). Except the two MPs from Assam with criminal charges (neither of them has a serious charge), none of the MPs elected from the other six States had criminal charges.

The level of education does not appear to reduce criminality among the candidates or the elected representatives. 53 out of the 76 MPs in the current Lok Sabha facing serious criminal charges are graduates and above. Again, in the graduate and above category too, candidates facing criminal charges had better chances of winning than those with no criminal charges.

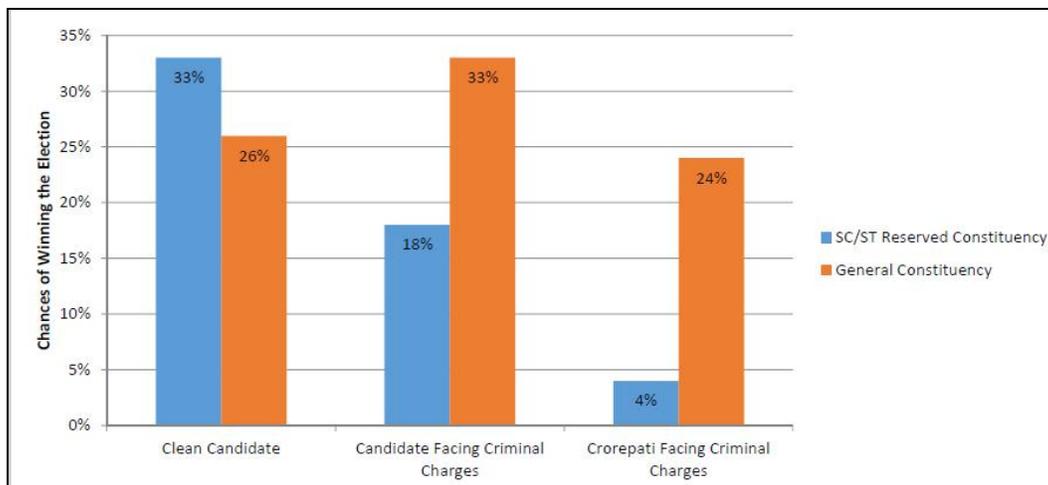
The comparatively better winnability of a criminal candidate across gender, financial status and education of the candidate and across political parties and States, is a worrisome pattern.

### Voter Behaviour

Why do candidates with criminal charges win elections? It is not about the lack of choice of candidates in a constituency. During the Lok Sabha 2009 elections, except in two constituencies – Vadodara (Gujarat) and Kasaragod (Kerala) where all candidates contesting Lok Sabha 2009 elections had criminal charges pending against them – every other constituency had at least a few clean candidates. In a survey conducted by Lokniti, rural poor said that they would not mind voting for a candidate with a criminal record if the candidate could get their work done. The survey also revealed that an approachable politician is preferred to an honest politician.

Data reveal that there is less criminality among candidates as well as the MPs elected from constituencies reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) than from general or unreserved constituencies.

During the Lok Sabha 2009 election, in reserved constituencies, a clean candidate had a 33 per cent chance of winning the election, whereas in a general constituency, a clean candidate had a 26 per cent chance of winning the election. While only four per cent of the MPs elected from reserved constituencies are *crorepatis* facing criminal charges, the corresponding figure for general constituencies is 24 per cent.



Source: Association for Democratic Reforms

Fig 10: Winning Chances - Reserved vs Unreserved Constituencies, Lok Sabha Election 2009

A probable explanation for this trend is that caste, ethnic and religious considerations are more likely to influence the decision of a voter than a candidate’s or the party’s criminal record. As has been explained in Milan Vaishnav’s paper, candidates who are suspected of engaging in criminal activity tend to draw support from parties and voters when they represent castes or communities that are vying for local dominance in contexts where ethnic cleavages are highly salient. This tendency is slightly less in reserved

constituencies where the caste divisions are less salient and a clean record is an advantage.

### Agents of change

The Supreme Court and the Election Commission of India (ECI) have undertaken some commendable steps for reforming the electoral process. But these two constitutional bodies are also bound by the laws enacted by the elected legislative body.

The ECI has achieved considerable success in containing the role of muscle power through measures such as the effective implementation of the model code of conduct and the setting up of the expense monitoring cell. Mandatory declaration of assets and existing criminal charges in self-sworn affidavits to the ECI prior to elections has brought in some transparency. Supreme Court judgments disqualifying convicted MPs and MLAs (*Lily Thomas vs. Union of India, 2013*), barring those in jail from contesting (*Chief Election Commissioner vs. Jan Chowkidar, 2013*), directing the EC to bring the issue of election related freebies under the ambit of the Code of Conduct, the Allahabad High Court banning caste and religion based political rallies are all attempts to change the system. However, implementation of these judgements has faced unequivocal opposition from all the political parties. When the Supreme Court in its recent intervention (*Lily Thomas vs. Union of India, 2013*) sought to prevent convicted MPs from continuing in office, the legislators promptly geared up to nullify the judgment through an ordinance. While the Supreme Court should be commended for taking long strides, judicial reforms targeting speedy disposal of cases could go a longer way in decriminalising the Parliament. The Supreme Court's recent order setting a deadline for the lower courts to complete trial in cases involving lawmakers within a year of framing of charges is a welcome step in this direction.

There is a widely anticipated participation of first time voters who are likely to constitute 10 per cent of the electorate. This expected increase in voter turnout and recent civil society activism over issues such as corruption have stirred some awareness among voters in the 2014 Lok Sabha election. Whether this will make a difference to the criminal composition of the Parliament remains to be seen.

Levelling the electoral field by addressing the role of money power in elections is a pressing imperative. Deeper research into state-funding of elections and devising a metric to quantitatively measure the performance of individual MPs are areas of far-reaching consequences to the criminalisation of politics.

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