

Ethics vs. Law

Posted at: 13/02/2025

Ethics vs. Law: The Fight Against Criminalisation in Politics

Context

The issue of **criminals entering politics** has been a major concern in India. Many elected representatives have **criminal cases against them**, including serious offenses like **murder, rape, and corruption**. This raises questions about **ethics in governance and democracy**.

To address this issue, **Ashwin Upadhyay and others have filed a petition in the Supreme Court**. They are demanding a **lifetime ban on convicted persons from contesting elections**. They argue that if a person **convicted of a serious crime cannot apply for a government job**, then such individuals **should not be allowed to become lawmakers either**.

The **Supreme Court is now examining the issue and has asked for the views of the Central Government and the Election Commission (EC)**.

Current Law on Disqualification of Convicted Politicians

The **Representation of the People Act, 1951 (RP Act, 1951)** lays down rules for disqualification:

- **Section 8(3):**

- If a person is convicted and **sentenced to at least two years in prison**, they cannot contest elections **while in jail and for six years after release**.

- **Section 8(1):**

- For serious crimes such as **rape, terrorism (UAPA), corruption (Prevention of Corruption Act), and untouchability (Protection of Civil Rights Act)**, the disqualification applies **regardless of sentence length** and continues for **six years after release**.

- **Section 11:**

- The **Election Commission (EC)** has the power to **reduce or remove a convicted person's disqualification period**.
- In **2019**, the EC reduced the disqualification period of **Prem Singh Tamang (Chief Minister of Sikkim)** from **six years to 13 months**, allowing him to contest

elections despite a corruption conviction. This decision was criticized.

Supreme Court's Past Judgments on Criminalisation of Politics

The Supreme Court has previously ruled in favor of **keeping criminals out of politics**:

1. Association for Democratic Reforms (ADR) Case (2002):

- Made it **mandatory for candidates to disclose their criminal records, financial details, and education.**

2. CEC vs Jan Chaukidar Case (2013):

- Ruled that **prisoners lose their right to vote under Section 62(5) of the RP Act, 1951.**
- Since **only electors can contest elections**, this ruling meant **undertrial prisoners could not contest elections.**
- However, **Parliament changed the law, allowing undertrials to contest elections.**

3. Lily Thomas Case (2013):

- Struck down **Section 8(4) of the RP Act, 1951**, which earlier allowed convicted MPs and MLAs to **keep their seats if they filed an appeal.**
- After this ruling, **convicted legislators are immediately disqualified, even if they appeal.**

These judgments show the **Supreme Court's commitment to preventing criminals from holding public office**, but **political resistance has weakened these efforts.**

What Does the Current Petition Demand?

The petitioners argue that:

- A convicted person **cannot apply for a government job**, yet they can **contest elections and become lawmakers** after a six-year ban.
- To maintain **integrity in public life**, convicted individuals should **never be allowed to contest elections again.**

However, the **Central Government disagrees**. In a 2020 affidavit, it argued that:

- **MPs and MLAs are not government employees** and do not have "service conditions" like government servants.
- The current **six-year disqualification period is enough.**

The **Supreme Court has now asked the Central Government and the EC to clarify their stance.**

Why Is This Issue Important?

A **2024 report by the Association for Democratic Reforms (ADR)** found that:

- **46% (251 out of 543) of elected MPs have criminal cases against them.**
- **31% (171 MPs) face serious charges, such as murder, rape, and kidnapping.**
- **Candidates with criminal records have a 15.4% chance of winning, while candidates with clean records have only a 4.4% chance.**

These statistics show that **criminals have a much higher chance of winning elections** than honest candidates.

What Can Be Done?

The **Law Commission (1999 and 2014)** and the **Election Commission** have suggested reforms to **stop criminalisation of politics**:

- **Disqualify candidates against whom charges have been framed for serious crimes (punishable by more than five years in prison).**
- However, **political parties oppose this**, fearing that these laws could be **misused for political revenge**.

A **balanced approach** may be needed:

- **Lifetime disqualification** for crimes like **rape, murder, terrorism, and corruption**, as they **directly affect public trust**.
 - **Temporary disqualification** for lesser offenses, based on **severity and moral impact**.
 - **Review of the EC's power to reduce disqualification periods**, to ensure fairness.
-

Conclusion

The **criminalisation of politics is a major threat to democracy and governance**. While a **lifetime ban is necessary for heinous crimes**, a **one-size-fits-all approach may not be fair**.

The Supreme Court's decision on this petition will be **crucial in shaping India's electoral system**. The country needs **stronger laws to ensure that only ethical and law-abiding individuals enter politics**, restoring public faith in democracy.