

Electoral Reforms: Some Perspectives and Suggestions

By

Mr. Rajiv Dutta,
Senior Advocate, Supreme Court of India

Assisted by
Mr. Arijeet Singh, Advocate, and
Mr. Vijay Kasana, III Year Student,
Campus Law Centre, Delhi University

In a few months from now India is going to its Sixteenth General Election. This is the time to introspect. Let us know about one major setback which has crept its way into our polity, and see if anything can be done, or at least needs to be done in cleaning the system. Unless we have a clean public life, nothing will happen in the right direction of making India of our dreams.

Criminalization of Indian Polity:

In a democracy, the elected representatives are responsible for governing the country; therefore, it is of utmost importance, that the people who enter the field of politics have a clean image and a high moral character. However the reality is otherwise. Criminalisation of politics has many forms, but perhaps the most alarming amongst them is the significant number of elected representatives with criminal charges pending against them. It is high time that we amend our Election Laws to tackle the problem of Criminal Politicians. Therefore, it would be appropriate for us to first gauge the real extent to which the criminalization has seeped within the Indian Polity. In furtherance of this endeavour we hereby produce the statistical trends of recent years:

Criminal Records of MPs of Lok Sabha¹

	2004	2009	Increase	Percentage wise increase
MPs with Pending Criminal Records	128	162	34	26.56%
Total Pending Criminal Cases	429	522	93	21.68%
MPs with Pending Serious Criminal Cases	58	76	18	31.03%
Total Serious Cases Against MPs	296	275	-21	-7.09%

¹ Statistics collected from the Research conducted by Association of Democratic Reforms: <http://www.adrindia.org/files/High%20level%20criminal,%20financial%20&%20educational%20analysis%20LS%202009.pdf>.

Party-wise Criminal Records of MPs of Lok Sabha²

Party	Total	MPs with Pending Criminal Cases	MPs with Pending Serious Criminal Cases ³
INC	206	44	13
BJP	116	44	19
JD(U)	20	08	08
BSP	21	06	06
BJD	14	04	01
NCP	09	04	03
ADMK	09	04	04
RJD	04	03	02
CPM	16	03	01

The above stated statistical trends reflecting criminalization of Indian Polity further gain strength upon considering the classical case of Ms. J. Jayalalitha, Chief Minister State of Tamil Nadu. Ms. J. Jayalalitha was convicted in two criminal cases under Section 120-B of the *Indian Penal code, 1860* read with Sections 13 of the *Prevention of Corruption Act, 1988* and for offences under Section 409 of the *Indian Penal Code*. She was sentenced to 3 years' rigorous imprisonment in the first case and 2 years rigorous imprisonment in the second case. Her appeals were pending at the Hon'ble High Court of Judicature at Madras. At her instance, the Hon'ble High Court had suspended the sentences of imprisonment under Section 389 (3) of *Code of Criminal Procedure, 1973* and directed her release on bail. Her applications for stay of the operation of the judgment in the said two criminal cases were, however, rejected.

In April 2001, Ms. J. Jayalalitha filed nomination papers for four constituencies in respect of the general elections to Legislative Assembly of State of Tamil Nadu. Three of the said nomination papers were rejected on account of her disqualification under Section 8 (3) of the *Representation of the People Act 1951* by reason of her conviction and sentence in the aforesaid two criminal cases. The fourth nomination paper was rejected because she had filed her nomination for more than two seats. She did not challenge those orders of rejection. Her disqualification to contest was a major obstacle to her being sworn in as the Chief Minister of Tamil Nadu, even if her party won an absolute majority in the 234-member Assembly. The overwhelming legal opinion was that the Governor could not have her sworn in as the Chief

²<http://www.adrindia.org/files/High%20level%20criminal,%20financial%20&%20educational%20analysis%20LS%202009.pdf>.

³ The expression "Serious Criminal Cases" denote those criminal offences in which as per the *Indian Penal Code, 1860* and other Penal Statutes, the minimum prescribed sentence is of imprisonment for a period of seven years or more.

Minister even if a victorious AIADMK elects her as the leader of the legislature party unless the Hon'ble High Court of Judicature at Madras set aside her conviction.

In those elections AIADMK, achieved majority in the state Legislature and elected Ms. J. Jayalalitha as its leader. Consequently, she was sworn in as the Chief Minister of the State of Tamil Nadu. But her nomination as a Chief Minister of State of Tamil Nadu was challenged in *B.R. Kapoor v. State of Tamil Nadu*⁴. The Hon'ble Supreme Court held that her appointment as the Chief Minister of the State of Tamil Nadu in 2001 was not legal and valid and that she cannot continue to function as such. It was held that:

"... When a Lower Court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an Appellate Court and the accused released on bail. If the Appeal of the accused succeeds the conviction is wiped out as cleanly as if it never existed and the sentence is set aside. But that is not to say that the conviction and the sentence it carries operate against the accused in all their rigour until set aside in Appeal, and a disqualification that attaches to the Conviction and sentence applies as well ..."

*"... The conclusion, therefore, is that on the date on which the second respondent was sworn in as Chief Minister she was disqualified, by reason of here convictions under the Prevention of Corruption Act and the sentences of imprisonment of not less than two years, for becoming a member of the Legislature under section 8 (3) of the Representation of People Act ..."*⁵

In the light of the above stated trends and case study it becomes imperative for us to discuss the prevailing legislative regime to tackle the above described menace of criminalization of Indian Polity.

Current Legislative Regime:

In India the elections to the Union Legislature and the State Legislature are governed by *Representation of the People Act, 1951* (hereinafter referred to

⁴ (2001) 7 SCC 231.

⁵ Subsequently, in March 2002, Ms. J. Jayalalitha having been acquitted of some charges by the Hon'ble High Court of Judicature at Madras, assumed the position of Chief Minister once more. She contested a midterm poll to the Andipatti constituency, winning the election by a handsome margin.

as the Act). The said Act was enacted under the auspices of Article 327⁶ of the Constitution of India. The object of the said Act is to, provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of every State in India, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. In securing the said object, particularly in relation to disqualification Section 8 of the Act, provides for disqualification of candidates from contesting an election on conviction for certain offences. Broadly and lucidly put the scheme of Section 8 is as follows:

Section 8 (1)⁷ provides that, a person convicted of an offence ... shall be disqualified, where the convicted person is sentenced to—

⁶ **Article 327 of the Constitution: Power of Parliament to make provision with respect to elections to such legislature.**—Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

⁷ **8. Disqualification on conviction for certain offences.** —(1) A person convicted of an offence punishable under— (a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or (b) the Protection of Civil Rights Act, 1955 which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or (c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962; or (d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967; or (e) the Foreign Exchange (Regulation) Act, 1973; or (f) the Narcotic Drugs and Psychotropic Substances Act, 1985; or (g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or (h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988; or (i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or (j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991; or (k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971, or; (l) the Commission of Sati (Prevention) Act, 1987; or (m) the Prevention of Corruption Act, 1988; or (n) the Prevention of Terrorism Act, 2002, shall be disqualified, where the convicted person is sentenced to— (i) only fine, for a period of six years from the date of such conviction; (ii) Imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(i) only fine, for a period of six years from the date of such conviction; (ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

Section 8 (3) provides that, a person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred in sub section (1) or sub section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

Section 8(4) further provides that, Notwithstanding anything contained in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

In addition to the above discussed provisions of the Act, there are also provisions in the form of Section 9⁸ which more specifically cover the area of

-
- (2) A person convicted for the contravention of—
 (a) any law providing for the prevention of hoarding or profiteering; or
 (b) any law relating to the adulteration of food or drugs; or
 (c) any provisions of the Dowry Prohibition Act, 1961,
 (3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.
 (4) Notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.
 (a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—
 (i) the regulation of production or manufacture of any essential commodity;
 (ii) the control of price at which any essential commodity may be bought or sold;
 (iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;
 (iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;
 (b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940;
 (c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955;
 (d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954.

⁸ **Disqualification for dismissal for corruption or disloyalty.** —(1) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.

“Disqualification for dismissal for corruption or disloyalty.” It provides that any public servant under the Central Government or the State Government who has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.

Realization for Need of Change in the Existing Legal Frame Work:

In a nutshell under the present legislative scheme once a person has been convicted of specified offences under the *Representation of the People Act, 1951*, disqualification will follow. However considering the typical Indian political and judicial system it is a sad story that the trial of accused persons goes on and on for years and such accused persons are able to bypass the disqualification claws of the *Representation of the People Act, 1951*. Therefore from time to time various recommendations have been made to bring about serious and potent changes within the existing Election Law to curb this menace of Criminalization of Indian Polity. The first amongst these is the, “*Report of National Commission to Review the Working of the Constitution, 2002*”⁹ headed by Retired Chief Justice of India Justice M.N. Venkatchallaiah, wherein following recommendation was made:

“... Representation of the People Act be amended to provide that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a member of Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the court in that offence and unless cleared during that one year period, he shall continue to remain so disqualified till the conclusion of the trial for that offence. In case a person is convicted of any offence by a court of law and sentenced to imprisonment for six months or more the bar should apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with

(2) For the purposes of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of the fact:

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.

⁹ Retrieved from <http://lawmin.nic.in/ncrwc/finalreport/v1ch4.htm>.

knowledge of his antecedents, it should be derecognised and deregistered ...”

“...Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office...”

“... Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily, if necessary, by appointing Special Courts...”

“... The Special Courts should be constituted at the level of High Courts and their decisions should be appealable to the Supreme Court only (in similar way as the decisions of the National Environment Tribunal). The Special Courts should decide the cases within a period of six months. For deciding the cases, these Courts should take evidence through Commissioners ...”

“... A potential candidate against whom the police have framed charges may take the matter to the Special Court. This court should be obliged to enquire into and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a prima facie case justifying the framing of charges ...”

“...the proposed provision laying down that a person charged with an offence punishable with imprisonment which may extend to five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges were framed in a court of law should equally be applicable to sitting members of Parliament and State Legislatures as to any other such person ...”

To further sharpen the claws of the Act the Election Commission of India in its 2004 Report¹⁰ made the following recommendations:

- *In its report on Proposed Election Reforms, 2004, the Election Commission of India recommended that an amendment should be made to Section 125A of the Representation of the People Act, 1951, to provide for more stringent punishment for concealing or providing wrong information on Form 26 of Conduct of Election Rules, 1961 to minimum two years imprisonment and removing the*

¹⁰ Election Commission of India, “Proposed Election Reforms, 2004” cited in Legislative Department, Ministry of Law and Justice, Government of India “Background Paper on Electoral Reforms, 2010” retrieved from lawmin.nic.in/legislative/ereforms/bgp.doc.

alternative punishment of assessing a fine upon the candidate. It also recommended that Form 26 be amended to include all items from the additional affidavit prescribed by the Election Commission, add a column requiring candidates to disclose their annual declared income for tax purpose as well as their profession.

- *The Election Commission further proposed in the said Report that Section 8 of the Representation of the People Act, 1951 should be amended to disqualify candidates accused of an offence punishable by imprisonment of 5 years or more even when trial is pending, given that the Court has framed charges against the person. In the report the Commission addresses the possibility that such a provision could be misused in the form of motivated cases by the ruling party. To prevent such misuse, the Commission suggested a compromise whereas only cases filed prior to six months before an election would lead to disqualification of a candidate. In addition, the Commission proposed that Candidates found guilty by a Commission of Enquiry should stand disqualified.*
- *Both the Election Commission and Law Commission of India recommend that a negative or neutral voting option be created. Negative/ neutral voting means allowing voters to reject all of the candidates on the ballot by selection of a “none of the above” option instead of the name of a candidate on the ballot. In such a system there could be a provision whereas if a certain percentage of the vote is negative/neutral, then the election results could be nullified and a new election conducted.*

A perusal of the aforesaid recommendations provide us a clear cut indication that definitely the legislative frame work in particular and the overall political system in general is on the brink of a major change, the sound of change can be clearly heard. As has been clearly reflected by filing of a Special Leave Petition (Civil) No. 9204-9205 of 2004 titled *Chief Election Commissioner Etc. v. Jan Chaukidar (People’s Watch) and Others* in the Hon’ble Supreme Court of India, wherein provisions of Section 8 (4) of the Act are challenged. The said Special Leave Petition has been converted into Civil Appeal No. 3040-3041 of 2004, which has been eventually tagged with Writ Petition (Civil) No. 490 of 2005 titled *Lilly Thomas v. Union of India and Others*. It is submitted that the said Writ Petition along with the aforesaid Civil Appeal and other connected matters are presently at a final Part Heard stage. The common ground of the Petitioners in the aforesaid matters is that Section 8

(4) of the *Representation of the People Act, 1951* is ultra vires Article 14¹¹ and Article 102 (1) (e)¹² of the Constitution of India. The question of law involved is that:

“... Whether “If under-trials who are lodged in jails are not allowed to vote in this country than how come under-trials and convicts who are lodged in jails are allowed to contest elections? ...”

Another important aspect which needs to be highlighted and needs urgent attention is Sections 29-B¹³ and 29-C¹⁴ of the Act. The sum and substance of these two provisions of the Act are that, every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company. Provided that no political party shall, accept any contribution from any foreign source. And, the Treasurer of a political party shall, in each financial year, prepare a report in respect of the, contribution in excess of Rupees Twenty Thousand received by such political party from any person and from companies other than Government Companies in that financial year. Moreover, where the Treasurer of any political party fails to submit a report as aforesaid, such political party shall

¹¹ **Article 14 of the Constitution of India: Equality before Law.—The** State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹² **Article 102 (1) (e) of the Constitution of India: Disqualification for membership.—(1)** A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(e) if he is so disqualified by or under any law made by Parliament.

¹³ **29B Political parties entitled to accept contribution.—**Subject to the provisions of the Companies Act, 1956, every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976.

*Explanation.—*For the purposes of this section and section 29C,—

(a) “company” means a company as defined in section 3;

(b) “Government company” means a company within the meaning of section 617; and

(c) “contribution” has the meaning assigned to it under section 293A, of the Companies Act, 1956 and includes any donation or subscription offered by any person to a political party; and

(d) “person” has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961, but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

¹⁴ **29C. Declaration of donation received by the political parties.—(1)** The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961, to the Election Commission.

(4) Where the treasurer of any political party or any other person authorized by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961, such political party shall not be entitled to any tax relief under that Act.

not be entitled to any tax relief under the *Income Tax Act, 1961*. Political parties rely heavily on donations for fighting elections and running their daily affairs. They receive huge sums of money in the form of donations and contributions from corporate, trusts and individuals.

As stated above in terms of Section 29-C of the Act the Political Parties are required to submit contribution details received in excess of Rupees Twenty Thousand. It is submitted that declared contributions seem to be very small i.e. single contributions above Rs 20,000 seem to be very few in numbers for all the parties. i.e. single contributions above Rs 20,000 seem to be very few in numbers for all the parties. In addition to this, the coupon system has been adopted by political parties for collecting funds by issuing of coupons in lieu of receipts to donors for cash contributions. Moreover, these are cash donations and it becomes all the more difficult to establish the identity of the donor. This implies that a lot of cash donations received remain unaccounted for in the books of accounts as only those amounts would be recorded for which a receipt has been issued. The total incomes of political parties have been calculated from the income to the parties from various sources all over India as submitted in their Income Tax Returns.

Indian National Congress, with Rupees 2,00,871.74 Lakhs, tops the list of political parties who have collected highest total income between financial year 2004-05 and 2010-11, followed by *Bhartiya Janta Party*, with Rupees 99,476.67 Lakhs; *Bahujan Samaj Party*, with Rupees 43,839.84 Lakhs; *Communist Party (Marxist)*, with Rupees 41,726.15 Lakhs; *Samajwadi Party*, with Rupees 27,855.65 Lakhs; and *Janata Dal United*, with Rupees 2,667.81 Lakhs. *Bhartiya Janta Party* tops the list of maximum donation collected between financial year 2004-05 and 2010-11 with Rupees 82,000.50 Lakhs which forms 82.43% of its total income; while *Indian National Congress* has showed a total donation of Rupees 27,250.48 lakhs which is only 13.57% of its total income. Details of donors who have made donations above Rs 20,000, such as their names, address, PAN No., mode of payment and amount donated, have to be made public by the political parties and such donors are called named donors.

It is quite a shocking revelation that in spite of a total income of Rs 2,00,871.74 lakhs between financial year 2004-05 and 2010-11, *Indian National Congress* has declared that only 8.85% of its total income is covered by donations above Rs 20,000. Similarly *Bhartiya Janta Party* with a total income of Rs 99,476.67 lakhs, has only 19.46% coming from donations above Rs 20,000 collected during the same period. Thus, the inferences drawn are quite clear that both *Indian National Congress* as well as *Bhartiya Janta Party*

have been able to amass huge amounts of income by taking undue advantage of the current limit of Rupees Twenty Thousand.

To put it more precisely 91.15% income of *Indian National Congress* and 80.54% income of *Bhartiya Janta Party* has come from donations which are undisclosed and unaccounted for.¹⁵

In our well considered opinion this is a clear and blatant abuse and subversion of the present legislative scheme of the Act in respect of Section 29-C. Therefore in order to better serve the purpose of Section 29-C of the Act, it is a considered suggestion that the limit of Rupees Twenty Thousand should be further reduced to Rupees Five Hundred only, whereby the Political Parties shall be bound by the mandate to submit contribution details received in excess of Rupees Five Hundred. However, we are aware that since this involves legislative exercise at the level of Parliament, it will most likely take several years as it involves great deal of Political Will, which considering the present political scenario seems to be a farfetched idea.

Conclusions and Suggestions:

Based on our above stated discussion it can be safely surmised and concluded that though the winds of changes are strong enough to be evidently felt, however, it is highly unlikely that current Government will be able to bring about any changes in Election Laws, particularly in the *Representation of the People Act, 1951*, before 2014. There are few changes which can be brought before 2014 elections. The Election Commission can play a major role in realization and implementation of these reforms without involving government. The following *sou motto* steps are needed to be taken by Election Commission in 2014 elections:

1. Writ Petition (Civil) No. 490 of 2005 titled *Lily Thomas v. Union of India* along with other Civil Appeals 3040-3041 of 2004 be immediately listed for hearing on urgent basis and disposed of prior to the next General Election, since we are not sure when the next General Election are going to be held (i.e. exact date) at least effect should be made now to have them disposed off at an early date.
2. The Election Commission shall give Public Notice in newspapers informing general public about the Criminal records of the candidates. Every possible effort shall be made by the election Commission to make public aware of the antecedents of these candidates. What charges have

¹⁵ A Report by National Election Watch and Association for Democratic Reforms, p. 5, retrieved from: http://adrindia.org/sites/default/files/Analysis%20of%20donations%20of%20Rajasthan's%20Political%20Parties_0.pdf.

been framed against each of these candidates shall also be mentioned. A list of candidates with criminal record or cases against them should be published with the name of the party as soon as the nomination is over.

3. If Candidate has been convicted of serious offence and contesting election on pending appeal or Serious charges have been informed against the candidate then some extra steps shall be taken by Election commission. The Election Commission shall organize Street Plays (*Nukkad Nattak*) to make public aware of the candidates antecedents. The help of the NGO's working for Electoral Reforms can be taken.
4. If a candidate has a case pending against him/her and is still capable of contesting the election due to our existing legal system, then he/she should be at least debarred from filing a nomination from that area or constituency where he/she has committed the offence for which criminal case has been pending against him/ her.
5. Article 102 1 (a)¹⁶ and Article 191 (1) (a)¹⁷ of the Constitution of India provides for disqualification for membership from the Parliament and the Legislative Assembly or Legislative Council of State respectively, on the ground of holding any office of profit under the Government of India or the Government of any State. We would suggest that the law should be made more stringent in this regard in as much as that, the Members of the Parliament or of Legislature of a State, should also be debarred from carrying on any business activity either in his/her own name or in the name of any other person. The purpose sought to be achieved by this suggestion is that in the present political scenario our system needs such motivated and committed individuals who are there in the politics for the sole full time purpose of serving the Nation. Therefore, we further suggest that if it is found that a Member of Parliament or of State Legislature is found to be engaged in any manner whatsoever in any business, whether carried on in his name or in the name of any other person, then such a member should be sentenced to severe punishment as provided in this regard by the law.

¹⁶ **Article 102 (1) (a) of the Constitution of India: Disqualifications for membership.— (1)** A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not disqualify its holder;

¹⁷ **Article 191 (1) (a) of the Constitution of India: Disqualification for membership.— (1)** A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;