

Date 29<sup>th</sup> May 2023

## Press Release

### Analysis of Format C7 - Publication of Reasons Given for Selection of Candidates with Criminal Cases by Political Parties

#### Karnataka Assembly Election 2023

### Association for Democratic Reforms

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## Introduction

**On 13th February 2020** the Supreme Court had directed political parties *to list out reasons on their website including their social media platforms for nominating candidates with criminal background within 72 hours of the selection of such candidates*. This direction of the Apex Court had come in the light of a contempt petition filed against the non-implementation of its earlier order dated **25th September, 2018** on publication of criminal cases by candidates and political parties which clearly were not taken very seriously. Consequently, the Supreme Court had reprimanded political parties for failing to widely publish the details of criminal cases pending against the candidates selected by them. Going one step further, the Supreme Court in its directions had also specifically instructed political parties *to give reasons for such selection and why other individuals without criminal antecedents could not be selected as candidates*. As per these mandatory guidelines, the reasons for such selection have to be with reference to *qualifications, achievements, and merit of the candidate* concerned. Sadly, even these directions of the Supreme Court have had no effect on the political parties in selection of candidates as they have again followed their old practice of giving tickets to candidates based on *'Muscle and Money power'*. On 15th July 2021 and 20 July 2021, the Supreme Court again considered the contempt by political parties against the wilful disobedience of the Apex Court's order dated 13th February 2020. While observing the egregious default by political parties, the Supreme Court also stated *that neither the Legislature nor the Political Parties will ever be keen on taking steps to stop the entry of candidates charged with criminal cases*.

In order to curb this blatant practice of giving tickets to candidates with criminal background, the SC has, lately given four orders; **10th March, 2014 (Trial within one year)**; **1st November, 2017 (Special 11 fast-track courts)**; **25th September, 2018 (Publication of criminal cases)**; **13th February, 2020 (Reasons for giving tickets to candidates with criminal cases)**. Unfortunately, none of these orders have been able to dissuade parties from giving tickets to candidates with criminal background rather than entry to *clean, credible and honest candidates*.

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<sup>1</sup> [https://main.sci.gov.in/supremecourt/2020/24482/24482\\_2020\\_32\\_11\\_28409\\_Order\\_15-Jul-2021.pdf](https://main.sci.gov.in/supremecourt/2020/24482/24482_2020_32_11_28409_Order_15-Jul-2021.pdf)

<sup>2</sup> [https://main.sci.gov.in/supremecourt/2020/24482/24482\\_2020\\_32\\_1\\_28730\\_Order\\_20-Jul-2021.pdf](https://main.sci.gov.in/supremecourt/2020/24482/24482_2020_32_1_28730_Order_20-Jul-2021.pdf)

<sup>3</sup> [https://adrindia.org/sites/default/files/Supreme\\_Court\\_10-03-2014\\_daily\\_order\\_in\\_PFI\\_vs\\_UOI\\_0.pdf](https://adrindia.org/sites/default/files/Supreme_Court_10-03-2014_daily_order_in_PFI_vs_UOI_0.pdf)

<sup>4</sup> [https://adrindia.org/sites/default/files/Order\\_dated\\_01\\_-\\_Nov\\_-\\_2017\\_Ashwini\\_Upadhaya\\_case.pdf](https://adrindia.org/sites/default/files/Order_dated_01_-_Nov_-_2017_Ashwini_Upadhaya_case.pdf)

<sup>5</sup> [https://adrindia.org/sites/default/files/judgment\\_on\\_de-criminalization\\_25-Sep-2018.pdf](https://adrindia.org/sites/default/files/judgment_on_de-criminalization_25-Sep-2018.pdf)

<sup>6</sup> [https://adrindia.org/sites/default/files/Supreme\\_Court\\_judgement\\_dated\\_13th\\_Feb\\_2020\\_in\\_Contempt\\_petition\\_No\\_2192\\_of\\_2018.pdf](https://adrindia.org/sites/default/files/Supreme_Court_judgement_dated_13th_Feb_2020_in_Contempt_petition_No_2192_of_2018.pdf)

**EC's directions (in its letters dated 6th Mar'20 & 10th Oct'18) in compliance with SC orders dated 25th September 2018 and 13th February 2020 on Publication of Criminal Cases by Candidates and Political Parties including recording of reasons for selection**

**ECI's Letter dated 6th March 2020 in compliance with Supreme Court directions dated 13th February 2020 stated:**

- 1) It is mandatory for **political parties** at the Central and State election level to upload on their **website detailed information regarding candidates with pending criminal cases including the nature of offences, relevant particulars like whether charges have been framed, the concerned court, the case number etc.**
- 2) **Political parties** will also have to give reasons for such selection and why other individuals without criminal antecedents could not be selected as candidates.
- 3) The reasons as to selection shall be with reference to the qualifications, achievements and merit of the candidate concerned, and **not mere "winnability"** at the polls.
- 4) This information shall also be published in: (a)One local vernacular newspaper and one national newspaper; (b)On the official social media platforms of the political party, including Facebook and Twitter.
- 5) These details shall be published within 48 hours of the selection of the candidate or not less than two weeks before the first date for filing of nominations whichever is earlier. For ensuring periodic awareness of electors during the campaign, ECI has now prescribed following timeline for publicity of criminal antecedents during the period starting from the day following the last date of withdrawal and up to 48 hours before ending with the hour fixed for conclusion of poll,
  - Within first 4 days of withdrawal of nominations,
  - Between next 5th - 8th days.
  - From 9th day till the last day of campaign (the second day prior to date of poll) the day

6) The **political party** concerned shall then submit a report of compliance with these directions with the Election Commission within 72 hours of the selection of the said candidate.

7) If a **political party fails to submit such a compliance report** with the Election Commission, the Election Commission shall bring such non-compliance by the political party concerned to the notice of the Supreme court as being in contempt of this court's orders/directions

**ECI's Letter dated 10th October 2018 in compliance with Supreme Court directions dated 25th September 2018:**

**For Candidates:**

1. Each contesting candidate shall fill up the form as provided by the Election Commission and the form ***must contain all the particulars as required*** therein.
2. It shall state, ***in bold letters, with regard to the criminal cases pending against the candidate.***
3. If a candidate is contesting an election on the ticket of a particular party, ***he/she is required to inform the party about the criminal cases pending against him/her.***

**For Political Parties:**

1. The concerned political party shall be ***obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.***

**Both Political Party and Candidates:**

1. It is mandatory for **political parties** and **candidates** with criminal antecedents to publish the declaration ***atleast on three different dates from the date following the last date of withdrawal of candidatures and up to two days before the date of poll.*** The matter should be published in font size of at least 12 and should be placed suitably in newspapers. In case of ***declaration in TV Channels, the same should be completed before a period of 48 hours ending with hours fixed for conclusion of poll.*** There is a format provided by ECI for such a declaration by the candidates and political parties.

2. In case of non-compliance of the direction by the ***candidate/political parties, the returning officers will give a written reminder*** to them and in the event of non-compliance till the end of the elections, ***the returning officer will report to the state's Chief Electoral Officer who will intimate ECI. ECI will take a final decision in the matter.*** The standard format for such a reminder to the candidates and political parties is also annexed in the letter.
3. ***All political parties; recognized parties and registered unrecognized parties shall submit a report to the CEO of the concerned state stating that they have fulfilled the requirements of the directions and enclosing herewith the paper cuttings containing the directions.*** This shall be done within 30 days of the completion of elections. Thereafter, within the next 15 days, the CEO should submit a report to the ECI confirming compliance and pointing out cases of defaulters.

**Format/Forms issued by ECI in pursuant to the aforementioned SC directions**

It is to be noted that **Form C7 and C8** should be ***duly signed by the office bearer of a political party with proper name and designation.*** Form C8 shall also bear ***seal of the concerned political party.***

Format/Form	Action to be taken by	Platform
C1	Candidates	To publish information regarding criminal background in Newspapers and TV
C2	Political Parties	To publish information regarding criminal background in Newspapers, TV and Political party's website
C7	Political Parties	To publish information regarding criminal background <b><i>along with reasons</i></b> in Newspapers, social media platforms, website of political parties
C8	Political Parties to the Election Commission of India	Compliance Report with respect to the SC judgment dated 13th Feb, 2020

## Summary and Highlights

**Association for Democratic Reforms (ADR) and Karnataka Election Watch (KEW)** have analysed **Format C7** of **345** candidates out of **1001** contesting candidates of **8** political parties who contested in the **Karnataka assembly election 2023**. These **345 (34%)** candidates have declared criminal cases against themselves.

*This data has been compiled from political parties' websites as well as social media handles that were functional before and during the period of the above-mentioned State assembly elections. Most political parties published details as per form C7 on their social media handles such as Twitter. It must be noted that in some cases, parties may have published these details (elsewhere) and it may not have appeared in our records.*

State	Total Contesting Candidates	Number of Political Parties Analysed	Contesting Candidates Analysed from Shortlisted Political Parties	Number of Candidates Analysed with Declared Criminal Cases	No. of Candidates with Criminal Cases having a Published Format C7
Karnataka	2615	8	1001	345	287

8

*No. of Political Parties Analysed*

287

*No. of Candidates with Criminal Cases having a Published Format C7 (83%)*

58

*No. of Candidates with Criminal Cases whose Format C7 is not Published (17%)*

### **Political parties analysed:**

Out of all the National, State and Registered unrecognized political parties which contested in the **Karnataka 2023** Assembly Elections, the following **8** political parties have been analysed for this report.

1. Bharatiya Janata Party
2. Indian National Congress
3. Bahujan Samaj Party
4. Aam Aadmi Party
5. Janata Dal (Secular)
6. All India Majlis-E-Ittehadul Muslimeen
7. Communist Party of India (Marxist)
8. Communist Party of India (Marxist–Leninist) Liberation

### **Criminal Background**

- **Candidates with Criminal Cases:** Out of **1001** contesting candidates analysed, **345 (34%)** candidates belonging to the aforementioned political parties have declared criminal cases against themselves.
- **Candidates with Serious Criminal Cases:** Out of **1001** contesting candidates analysed belonging to the aforementioned political parties, **220 (22%)** have declared serious criminal cases against themselves.

- Format C7 has been published for **3 candidates** even though no criminal cases have been registered against them. This demonstrates carelessness on the part of the political parties and insincerity in adhering to the directions of the Supreme Court.

S.No.	Name of candidate	Constituency	Political Party	No. of cases	Serious IPC counts	Reasons for selection of candidate with criminal background	Reasons as to why other individuals without criminal antecedents could not be selected
1	Subhash Guttedar	ALAND	BJP	0	0	Sri Subhash Guttedar is a <b>highly dedicated individual</b> who has tirelessly devoted their time and efforts to social service in the constituency for many years. They have a deep understanding of the needs and challenges of the people and have worked tirelessly to improve the quality of life for all members of the community. They have built strong relationships with the voters, establishing a genuine and positive rapport with them, and have earned their trust and respect. Their unwavering commitment to the betterment of the community is reflected in their track record of achievements and the numerous positive changes they have brought about. We are confident that they are the best choice to represent the constituency and will continue to serve the people with passion, dedication, and integrity.	The Bharatiya Janata Party is dedicated to selecting the most qualified candidate who can best represent the hopes and desires of the people of the constituency. After extensive consideration and evaluation of all potential candidates, Sri Subhash Guttedar was selected as the most suitable choice. The party firmly believes that he has the necessary skills, experience, and dedication to best serve the people of the constituency and represent the values of the BJP. We are confident that he has the ability to bring about positive change and progress for the constituency and will work tirelessly to meet the needs of the people. Therefore, we stand by our decision to field him, who we believe is the best choice to represent the BJP and the people of the constituency.
2	Lokesh. V. Nayaka	KUDLIGI (ST)	BJP	0	0	Shri Lokesh V. Nayaka is a <b>highly dedicated individual</b> who has tirelessly devoted their time and efforts to social service in the constituency for many years. They have a deep understanding of the needs and challenges of the people and have worked tirelessly to improve the quality of life for all members of the community. They have built strong relationships with the voters, establishing a genuine and positive rapport with them, and have earned their trust and respect. Their unwavering commitment to the betterment of the community is reflected in their track record of achievements and the numerous positive changes they have brought about. We are confident that they are the best choice to represent the constituency and will continue to serve the people with passion, dedication, and integrity.	The Bharatiya Janata Party is dedicated to selecting the most qualified candidate who can best represent the hopes and desires of the people of the constituency. After extensive consideration and evaluation of all potential candidates, the current candidate was selected as the most suitable choice. The party firmly believes that this candidate has the necessary skills, experience, and dedication to best serve the people of the constituency and represent the values of the BJP. We are confident that this candidate has the ability to bring about positive change and progress for the constituency and will work tirelessly to meet the needs of the people. Therefore, we stand by our decision to field this candidate, who we believe is the best choice to represent the BJP and the people of the constituency.

S.No.	Name of candidate	Constituency	Political Party	No. of cases	Serious IPC counts	Reasons for selection of candidate with criminal background	Reasons as to why other individuals without criminal antecedents could not be selected
3	Dinakar Keshav Shetty	KUMTA	BJP	0	0	Shri Dinakar Keshav Shetty is a <b>highly dedicated individual</b> who has tirelessly devoted their time and efforts to social service in the constituency for many years. They have a deep understanding of the needs and challenges of the people and have worked tirelessly to improve the quality of life for all members of the community. They have built strong relationships with the voters, establishing a genuine and positive rapport with them, and have earned their trust and respect. Their unwavering commitment to the betterment of the community is reflected in their track record of achievements and the numerous positive changes they have brought about. We are confident that they are the best choice to represent the constituency and will continue to serve the people with passion, dedication, and integrity.	The Bharatiya Janata Party is dedicated to selecting the most qualified candidate who can best represent the hopes and desires of the people of the constituency. After extensive consideration and evaluation of all potential candidates, the current candidate was selected as the most suitable choice. The party firmly believes that this candidate has the necessary skills, experience, and dedication to best serve the people of the constituency and represent the values of the BJP. We are confident that this candidate has the ability to bring about positive change and progress for the constituency and will work tirelessly to meet the needs of the people. Therefore, we stand by our decision to field this candidate, who we believe is the best choice to represent the BJP and the people of the constituency.

• **Reasons furnished for nominating candidates with criminal antecedents:**

- Out of **345** candidates with criminal cases, reasons have been furnished for **287 (83%)** candidates.
- Out of **220** candidates with serious criminal cases, reasons have been furnished for **191 (87%)** candidates.
- For **58 (17%)** candidates with criminal background, no reasons for their selection have been provided by political parties.

• **Reasons given for top 3 candidates** with highest number of total criminal cases:

S.No.	Candidate	Constituency	Political Party	No. of cases	Serious IPC Counts	Reasons for selection of candidate with criminal background	Reasons as to why other individuals without criminal antecedents could not be selected
1	Manikanta Rathod	CHITTAPUR (SC)	BJP	43	15	Sri. Manikanta Rathod is a highly dedicated individual who has tirelessly devoted their time and efforts to social service in the constituency for many years. They have a deep understanding of the needs and challenges of the people and have worked tirelessly to improve the quality of life for all members of the community. They have built strong relationships with the voters, establishing a genuine and positive rapport with them, and have earned their trust and respect. Their unwavering commitment to the betterment of the community is reflected in their track record of achievements and the numerous positive changes they have brought about. We are confident that they are the best choice to represent the constituency and will continue to serve the people with passion, dedication, and integrity.	The Bharatiya Janata Party is dedicated to selecting the most qualified candidate who can best represent the hopes and desires of the people of the constituency. After extensive consideration and evaluation of all potential candidates, the Sri. Manikanta Rathod was selected as the most suitable choice. The party firmly believes that he has the necessary skills, experience, and dedication to best serve the people of the constituency and represent the values of the BJP. We are confident that he has the ability to bring about positive change and progress for the constituency and will work tirelessly to meet the needs of the people. Therefore, we stand by our decision to field him, who we believe is the best choice to represent the BJP and the people of the constituency.
2	B Nagendra	BELLARY (ST)	INC	42	105	He is young leader who has been elected independently because people have reposed faith in him. He has a good vision for youth, women and labours.	He has fought many cases for labourers. He is interested in welfare of his constituency people. He has completed many projects in Bellary. Most of the cases against him are politically Motivated.
3	Y S V Datta	KADUR	JD(S)	40	0	Y S V Datta is a qualified person & a very competent leader. And he is well known leader in the state & he has deep attachment with the people in his constituency	Y S V Datta has good vision for youths, women and children. The party has given ticket to contest the election due to the demand of constituency people

**Table: Reasons given for top 3 candidates with highest number of total criminal cases**

- **Top commonly stated reasons by political parties for selection of candidates with criminal background:**

Reasons for selection of candidate with criminal background	Reasons as to why other individuals without criminal antecedents could not be selected
He is well known publicly accepted leader and has been in responsible position attached to social service	Best Candidate chosen on demand from people
highly dedicated individual who has tirelessly devoted their time and efforts to social service in the constituency	No such prospect found to replace him.
Social worker, most approachable and down to earth person	Always fought for people's right and weaker sections of the society
He is a leader of people's movements, who enjoys the trust and affection of common masses and the workers.	No Other Candidate with similar ground Support
In comparison to the other candidates and their history, it was found to be suitable being the candidates has stated that false FIR has been lodged against him	The Offences are not grave one seems to be based on false allegation. His image supported by the local office bearers of the party as clean as good.

**Table: Top commonly stated reasons by political parties for selection of candidates with criminal background**

- **Political parties that did not publish reasons for selection of candidates with criminal background\*:**

Political Party	Total no. of contesting candidates with criminal background	No. of Candidates without Format C7	Percentage of candidates without Format C7
INC	123	14	11%
BJP	96	35	36%
JD(S)	71	5	7%
AAP	48	3	6%
BSP	2	0	0%
AIMIM	2	0	0%
CPI(ML)(L)	2	0	0%
CPI(M)	1	1	100%

**Table: Political parties that did not publish Format C7 for candidates with criminal background**

\*At the time of making this report, format C7 data of some political parties was not available on the websites and social media handles. However, it may have been posted earlier by the parties and removed later.

• **Top 3 candidates with highest criminal cases whose reasons for selection have not been published:**

S.No.	Candidate	Constituency	Party	Cases Total
1	Munirathna	Rajarajeshwarinagar	BJP	8
2	Prabhavati Basavaraj Mastmardi	Belgaum Dakshin	INC	7
3	C Venkatachalapathi	K.R. Pura	JD(S)	7

**Table: Top 3 candidates with highest criminal cases whose reasons for selection have not been published**

• **Other discrepancies in Format C7 of some candidates:**

Name of the Party	Remarks
BJP	Around 70% the candidates with cases against them have given the same word to word reasons for the selection of the candidate. Selection shall be with reference to the qualifications, achievements and merit of the candidate, and not mere “winnability” at the polls <b>Refer Party Website Link Given Here : <a href="https://karnataka.bjp.org/bjp-karnataka-2023-criminal-antecedent-declarations-form-c-7/">https://karnataka.bjp.org/bjp-karnataka-2023-criminal-antecedent-declarations-form-c-7/</a></b>
AAP	The Form C7 was uploaded on their party website but there is no signature of the office bearer and around 90 % the candidates with cases against them have given the same word to word reason in the both sections for selection of candidate with criminal background and reason as to why other individual without criminal antecedents could not be selected as candidates <b>Refer Party Website Link Given Here : <a href="https://aamaadmiparty.org/karnataka-assembly-elections-2023-format-c7-c2/">https://aamaadmiparty.org/karnataka-assembly-elections-2023-format-c7-c2/</a></b>
BSP	100 % the candidates with cases against them have given the same word to word reason in the both sections for selection of candidate with criminal background and reason as to why other individual without criminal antecedents could not be selected as candidates <b>Refer Party Website Link Given Here : <a href="https://bahujansamajparty.net/?page_id=3042">https://bahujansamajparty.net/?page_id=3042</a></b>

**Financial Background**

- **Crorepati Candidates:** Out of the **345** candidates, **303 (88%)** are crorepatis.
- **High Assets Declared:** Highest declared total assets of **top 3 candidates**, along with details of their criminal backgrounds:

S.No.	Name of the Candidate	Constituency	Political Party	Cases Total	Serious IPC Counts	Total Assets
1	N Nagaraju	Hosakote	BJP	1	1	16,09,56,44,113 <b>1609 Crore+</b>
2	D K Shivakumar	Kanakapura	INC	19	6	14,13,80,02,404 <b>1413 Crore+</b>
3	Priyakrishna	Govindarajanagar	INC	1	0	11,56,83,93,089 <b>1156 Crore+</b>

**Table: Top 3 candidates with criminal background having highest declared assets**

## Observations by ADR

### I. General:

Functioning of our political parties can only be regulated by adopting stringent measures which are enforced by concerned agencies like the ECI and the law and order machinery. Mere warnings issued to political parties will not help the cause. In 2015, the Supreme Court had left it to the wisdom of the Prime Minister and Chief Ministers of the states to not appoint ministers in their cabinet with criminal backgrounds. However, since 2015, the crime rate in the legislative offices has only escalated further. On 30th August, 2020 the Madras High Court had not only asked the Central Government to ***“enact a law to prohibit candidates with criminal background contesting the elections to the Parliament as well as State legislatures”*** but had also emphasized that ***“the Central Government has to come out with a comprehensive legislation to prohibit persons with criminal background from contesting elections to Parliament, State Legislatures and local bodies”***.

The stipulation that more people who are ***honest, fair, credible, capable and men of character and integrity***, should contest elections and be the key policy makers, holds no ground in the Indian Political System. Over the years, political establishments have completely disregarded or intentionally side-lined the reforms suggested by various committees, citizens and civil societies. It is on record that various recommendations given by several committees dating as far back as 1999, are lying un actioned.

In the Format C7, under the column where ***“Reasons as to why other individuals without criminal antecedents could not be selected”***, it is noticed that in most cases, instead of giving cogent answers to the question, justification is given as to why the candidate in question has been selected.

How casually political parties take the SC and ECI directions is evident from the list of C7 format available on the websites of BJP, INC, AAP, JD(S) and others for the 2023 assembly elections. While giving reasons for fielding candidates with criminal cases, the exact same reasons have been replicated for all candidates.

## **II. Blatant contempt of the Supreme Court directions:**

ADR's analysis of publication of criminal antecedents by political parties reveals major shortcomings in the implementation of the SC judgement. Several political parties, regardless of their current political outreach and popularity, **did not have a functional website** to publish details of candidates with criminal background along with reasons, or they were not uploaded on the websites and on social media platforms which made it difficult to access these forms. There were yet others that had a separate section dedicated for election information, but they either **failed to upload necessary documents or had dysfunctional website tabs**. Notably, even among the few political parties that published Format C7's within the stipulated time period, there were some grave problems which emerged upon analysis of the information provided through these affidavits. These included a) **justifying fielding of tainted candidates with unfounded and baseless reasons like chances of winning, popularity of the person, does good social work, offences not being grave in nature, cases are politically motivated**, b) **repetition of reasons** outlined through forms, not just for candidates within a single political party, but also for those contesting on behalf of other parties; and c) **publication of Format C2 (information with particulars on criminal cases pending against candidates) but not Format C7 (information regarding pending criminal cases along with reasons)**.

Other discrepancies include **omission of crucial information** on affidavits, such as name of candidate and reason for selection (which is the primary purpose of Format C7), as well as **submission of data in incorrect (letter) format**. This is especially of concern in light of the total number of pending cases against the candidates in question, and their categorisation under 'serious criminal cases'. **It is also important to note that for all the State Assembly elections, reasons for inclusion of independent candidates with criminal background has not been provided on any public platform.**

## **III. Strong muscle and money nexus cannot be reprimanded by mere pious hopes:**

Criminal elements have been playing a major role in the electoral process in India both as candidates for elections and as party workers. The nexus between politicians, bureaucrats, and criminal elements in our society has been on the rise, the adverse effects of which are increasingly being felt on various aspects of social life in India. **Such a strong criminal political bureaucratic nexus in our electoral and political process has to be confronted with resolve and determination by ECI and law enforcement agencies.**

**The present law i.e. section 8 of the Representation of People's Act, 1951 and the repeated orders issued by courts have not been able to deter politicians with criminal backgrounds from occupying high offices as MPs, MLAs and Ministers.** Conviction rate under our judicial system has been falling over the years. More importantly, the time taken for trials is unduly long. In addition, politicians do not even diligently or properly furnish each and every information as required under Form 26 or without constant reminders and warnings by the Election Commission of India. The result is that the law breakers have become law makers.

#### **IV. Absence of Law, Rules, and Regulations:**

There is no well-defined process in the selection of candidates by the political parties. There is no law for regulating the functioning of political parties. There is no way to penalise the office bearers of the political parties in case of any conflict or contravention with rules or laws. Political parties have blatantly refused to come under RTI law. Tickets are given to the candidates for contesting elections on the sole basis of winnability factor. Historically, it has been observed that muscle power and money power make a winning combination. Candidates with criminal background quiet easily make their foray into the Lok Sabha and State Assembly elections as political parties do not hesitate in giving tickets to such candidates.

#### **V. How and when will the contempt action be taken?**

In view of the Supreme Court's orders dated 25th September, 2018 and 13th February, 2020 and as per the ECI's letter dated 6th March, ***"if a political party fails to submit*** such compliances report with the Election Commission, the ***Election commission shall bring such non-compliance by the political party concerned to the notice of the Supreme Court as being in contempt of this Court's orders/directions"***. However, there is no information available about any such contempt action having been taken against these political parties. In reality, citizens are not sure whether the ECI has reported to the Supreme Court the non-compliance of its directions by some political parties in the recently held elections. It is also not clear if the ECI even keeps a tab over the submission and maintenance of these forms.

## **Recommendations by ADR**

There is no dearth of solutions to curb the ever-growing problem of criminality in politics. ***What is required is the courage and will to do the same. Lawmakers will not frame laws that ban the unimpeded and unchecked entry of politicians with criminal cases. Constitutional bodies and institutions will continue to take refuge under reasons like 'lack of power'.*** In fact, on 20th July, 2021 while hearing the contempt petition against publication of reasons for selection of candidates with criminal cases by political parties, the Bench headed by Justice R.F Nariman and Justice B.R Gavai had added, ***"We are certain that the legislative branch will not take this forward, not only in the foreseeable future, but at any time in the future"*** Given the current situation, where all political parties stand united and determined to stall any attempts to bring accountability, transparency, and fairness in our electoral process, it becomes imperative to remind the key duty holders of their role duties in preserving, protecting, and defending the Constitution. The only way to remedy the existing problem of criminalization is to immediately act upon the plausible solutions offered by the judiciary, various committees, civil society, and citizens.

Until and unless these trends are not reined in, our current electoral and political situation is bound to deteriorate further. It is after all the electorate, who has to suffer on account of criminalization and often can do little but helplessly participate in the election of the mighty and moneyed criminal elements. ADR, therefore, proposes following recommendations that need to be acted upon immediately ***without further delay and damage to our Participatory democracy and Rule of Law.***

**I. Criteria for selection of candidates:** There should be a strict criterion for selection of candidates by political parties. As per the ***Supreme Court judgment*** dated ***13th February 2020***, ***political parties*** are already required to give ***reasons for selection*** of candidates and ***why other individuals without criminal antecedents could not be selected as candidates.*** As per the judgment the reasons as to selection shall be with reference to the ***qualifications, achievements and merit of the candidate concerned***, and not mere ***"winnability"*** at the polls.

**II. Disqualification on charges framed:** Problem of criminalization can be tackled if such tainted candidates are outrightly banned from entering the electoral process based on both stage and degree of crime. This can be achieved by ***disqualifying candidates from contesting elections to the public offices against whom 'charges have been framed by court' for having committed serious criminal offences punishable by imprisonment of at least 5 years, and the case is filed at least 6 months prior to the election in question.***

**III. Permanent disqualification for heinous offences:** It is reprehensible to have a Lawmakers charged/convicted of heinous crimes making laws for citizens and policies for the nation. ***There should be a permanent disqualification of candidates convicted for heinous crimes like murder, rape, smuggling, dacoity, kidnapping, robbery etc.***

**IV. List of political parties to be prepared and shared by ECI:** Election Commission of India is expected to implement the 25th September, 2018 and 13th February, 2020 SC orders in its letter and spirit by listing out names of such tainted candidates selected by the political parties along with such reasons for such selection. ***This list needs to be religiously prepared and submitted to the Supreme Court after every election and the same should be uploaded on ECI's website for public inspection.***

**V. Contempt action against its orders by Supreme Court:** The Supreme Court of India being the ultimate custodian of "Justice and Rule of Law" should take note of the current situation and ***reprimand political parties and politicians for such contempt, complete lack of will, reprehensible predilection and absence of required laws.*** In addition, the Supreme Court should also ***immediately take a strict contempt action against political parties, their office bearers and candidates for blatantly bypassing its 25th September 2018 and 13th February 2020 orders.***

**VI. Cancellation of Tax Exemption given to the political parties:** Tax exemption given to the political parties under Section 13A of the Income Tax Act, 1961 and Section 29 C (4) of the Representation of People Act, 1951 ***should be cancelled for those parties who have deliberately side-lined the SC orders by giving tickets to undeserving, dishonest, corrupt, moneyed and tainted candidates.***

**VII. De-recognition of political parties:** Failure to abide by the Supreme Court directions dated 25th September 2018 and 13th February 2020 should be treated as a serious breach under Paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968. Paragraph 16A gives power to the Commission to suspend or withdraw recognition of a recognised political party for its failure to observe Model Code of Conduct or follow lawful directions and instructions of the Commission. Therefore, ***the Election Commission of India should invoke its powers under Paragraph 16A read with Article 324 of the Constitution and suspend or withdraw recognition of a recognized political party for its incessant failure and disobedience of the SC directions.***

**VIII. Parties must face consequences for breach:** Political Parties must realize that the aforementioned ***SC directions are mandatory and therefore the compliance is not optional.*** Parties should be held accountable for brazenly defying the Supreme Court's order dated 25th September, 2018 and 13th February 2020. ***There should be a heavy financial penalty levied on them for making insufficient disclosures, invalid and common reasons, selection of candidates based on winnability, failing to submit the Compliance Report on time etc. Officer in-charge of a political party pertaining to submission of a compliance report should also be held accountable for such a breach.***

**IX. Strict and immediate action needs to be taken by the Election Commission of India:** ECI should also not hesitate from using its wide powers given under Article 324 of the Constitution. Since the power of ***superintendence, direction and control of elections*** lies with the Election Commission, therefore ***without causing any delay, the Commission should immediately report such default to the Supreme Court during each election.*** In addition, ECI must ensure that the Supreme Court's directions are being truly implemented by political parties by taking concrete steps in the light of reasons

given by political parties in Form C7 and C8, diligent publication of reasons in newspapers, T.V channels, party website etc and strict and constant reminders by ROs to the defaulters.

**X. Officer bearers of a Political Party to file annual information on criminal antecedents:** Political party should **annually file the information on criminal antecedents of their Office Bearers** such as President, Secretary, General Secretary, Chairperson, Convenor, Treasurer etc and make such records available to the public, **including NIL records.**

**XI. Prior announcement of candidates contesting elections:** List of candidates contesting elections should be **announced at least 3 months prior to elections** and they should be required **to submit affidavits stating specific reasons for changing/joining a particular party and approximate amount to be spent by them in the next elections and of the source thereof.** All this information should be placed in the public domain.

**XII. False affidavit should lead to immediate disqualification:** Furnishing of false information in the affidavits by candidates should not be taken lightly by the ECI. **It is after all, the first and foremost step in the direction of 'free and fair elections.'** Section 125A of the RP Act,1951 has not been able to deter candidates from furnishing wrong/incorrect information as it only leads to a six months imprisonment or fine or both, and therefore doesn't attract disqualification. **There should be an immediate disqualification of candidates who furnish misinformation, no information false, information in the election affidavit.**

**XIII. More power to NOTA:** The Supreme Court judgment dated 23rd September, 2013 on provision of NOTA buttons on the EVMs needs to be implemented in its letter and spirit by ensuring a) **if NOTA gets more votes than any of the candidates, none of the candidates should be declared elected, and a fresh election should be held;** b) **in the fresh election, none of the candidates in the earlier election, in which NOTA got the highest number of votes, should be allowed to contest.**

**XIV. Fast tracking of cases for MLAs/MPs:** All pending cases against MPs and MLAs should be fast tracked and brought to conclusion **within a period of one year as mandated by the Supreme Court orders dated 10th March 2014 and 1st November 2017.** This will also help in ensuring that the arbitrary and unbridled power given under Section 321 of the Cr.P.C is not misused by the governments of the day by ordering withdrawal of cases pending against powerful politicians, ministers and other rich and powerful people.

**XV. Declare Political parties as Public Authorities:** It is the political parties that form the government, man the Parliament, and run the governance of the country. Where bringing political parties under the ambit of Right to Information Act,2005 will usher transparency and accountability in the functioning of political parties and party leaders at one hand, on the other, it will also give a chance to the citizens to play their part in a democracy by acting as a watchdog. **Bringing parties under RTI law will not only empower the citizens to question, audit, review, examine, and assess information**

*like inner party elections, criteria for ticket distribution but it will also allow people to seek definite and direct answers from the office bearers for the kind of candidates being fielded by our political parties. Therefore, it is high time that the Supreme Court of India takes note of this current predicament and upholds and implements the 3rd June 2013 CIC order by bringing the parties under the ambit of RTI Act.*

**XVI. A comprehensive law to regulate political parties' affairs:** Political parties are the ultimate repository and guardian of our whole constitutional, democratic, social-economic set up, but *we don't have a single comprehensive law entirely dealing with political parties. In absence of a comprehensive law, citizens cannot question, appraise and audit the functioning of political class and politicians.* Therefore, there is a dire need for a comprehensive legislation *regulating the functioning of political parties, recognition of their party constitution, election at various levels of party organs, conditions for registration and de-registration, compulsory maintenance of accounts, women representation at organisational positions,* as recommended in the '170th Law Commission Report, Part III, Chapter I' and Chapter 8 of the NCRW report.

**XVII. Introduce provisions for inner-party democracy within political parties:** In spite of being one of the largest democracies in the world, our political parties which run this democracy are painfully undemocratic in their functioning. Political parties have miserably failed in their 'Code of conduct' and self-initiated reforms for themselves. Therefore, mandatory provisions should be made to *introduce inner-party democracy, transparent decision-making, ticket distribution, elections of office bearers, financial transparency and stronger organisational discipline* within the political parties. This should include *mandatory secret ballot voting for all elections for all inner party posts and selection of candidates, as suggested by the 170th Law Commission Report.*

**XVIII. Annual Report by MPs and MLAs:** Elected MPs and MLAs should be required to submit an '*Annual Report to their constituency giving details of their accomplishments for previous year and the plan for the next year.*' This report should be made available at the Lok Sabha/Rajya Sabha/ State Assembly website and on the Election Commission's website.

**XIX. First-past-the-post, "50%+1 of the registered votes cast":** As per the recommendations given by various committees, Law Commission and NCRWC, '*no candidate should be declared elected unless he or she secures more than 50% of the votes cast*'. In the case when no candidate gets the required number of votes, *there should be a runoff between the top two candidates getting maximum votes.* It is worth noting that 50%+1 of the votes cast is an easier requirement for being declared elected, a more stringent requirement, and the ideal to ensure appropriate and proper representation.

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