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ELECTORAL DISQUALIFICATION DUE TO CRIMINAL ANTECEDENTS: A COMPARATIVE STUDY

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ABSTRACT

India's democracy faces a real struggle: how to let people participate in politics while keeping out those with criminal backgrounds. This research article looks at how the Supreme Court has approached this tricky issue, especially in the Ashwini Kumar Upadhyay cases. While the Court understands the danger of banning people having criminal antecedents for life, it has been cautious. What's worrying is the evidence: a lot of our elected officials have faced criminal charges, and candidates with a criminal history actually have a better chance of winning elections. This breakdown shows that India's conviction-based system of disqualification is failing on several fronts: protracted judicial processes enable accused politicians to serve out electoral terms before being punished, while the six-year post-conviction bar is producing a 'revolving door' that returns people having criminal antecedents into politics. The researcher looked at how other countries deal with this, from Brazil's upfront approach and Italy's step-by-step system to the warnings from places like Pakistan and Russia. This helps the society think about why they might need tougher rules here, maybe even lifetime bans for really serious crimes. Ultimately, this research article suggests a more flexible system of disqualifications, where the punishment fits the crime, but with strong safeguards to prevent unfairness. The goal is to find a better balance between people's right to participate in politics and the need to keep the elections and

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institutions clean. The big question is, can India's democracy adapt to stop criminals from undermining it and ensure that those in power truly serve the people.

Keywords: *Criminalisation of Politics, Constitutional Law, Political Representation, Judicial Review, Convicted Politicians, Lifetime Ban*

1. INTRODUCTION

Indian constitutional democracy is confronted with escalating pressure between ensuring individual political participation rights and ensuring institutional integrity against criminalisation.[1] The judiciary has been faced with this challenge through a series of landmark judgments, prominently so in *Ashwini Kumar Upadhyay v. Union of India (2021)*. [2] In this historic case, the petitioner requested guidelines for the central government to pass laws mandating lifetime electoral disqualifications for convicted politicians, in addition to steps to speed up criminal trials against legislators. While recognising the seriousness of political criminalisation, the court refused to order permanent disqualifications, instead taking a measured approach within constitutional limits. Further, they acknowledged that Section 8 of the Representation of the People Act already mandated periods of disqualification of different durations based on offense severity.[3]

The constitutional arithmetic is one of balancing competing legitimate interests. [4] Political participation rights under Articles 19(1)(a)[5] and 326[6] are basic democratic rights already substantially curtailed by temporary disqualifications. Lifetime bans are severe measures that could be weaponised against political adversaries. In addition, as opposed to appointed bureaucrats, legislators are still subject to periodic electoral accountability mechanisms and electoral dismissal.[7] Time-limited disqualifications also conform to reformative justice principles by allowing rehabilitation and reintegration.[8]

On the other hand, empirical evidence illustrates that criminalisation is a systemic threat

1 Public Interest Found. v. Union of India, (2019) 3 SCC 224.
2 Ashwini Kumar Upadhyay v. Union of India, (2021) 7 SCC 1.
3 Representation of the People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).
4 Manoj Narula v. Union of India, (2014) 9 SCC 1.
5 India Const. art. 19, cl. 1(a).
6 India Const. art. 326.
7 Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467.
8 State of Punjab v. Devans Modern Breweries Ltd., (2004) 11 SCC 26.

to representative government.[9] The judiciary has described this trend as inherently incompatible with democratic sacredness, positing that extreme circumstances might call for proportionately exceptional remedies.

Quantitative analysis uncovers alarming trends in political criminalisation. Recent election statistics indicate a constitutional crisis: *46%* of 2024 parliamentarians have criminal cases pending against them, with *31%* charged with serious crimes such as violence and sexual offenses. Analysing this data against the prism of democratic theory proves that India's electoral system has devolved into what constitutional experts say is a 'criminocracy' where criminal history is an electoral strength rather than a weakness. The *15.4%*-win rate for criminal candidates compared to *4.4%* for clean candidates reveals a breakdown in the social contract between citizens and their representatives. This statistical fact makes India stand out as an outlier among constitutional democracies worldwide.[10]

The existing reality marked by systematic enforcement failure, extended adjudication taking an average of 15 years for political cases, and politicised prosecution provides an indication that more stringent disqualification regimes amount to a balanced constitutional reaction.

The constitutional balance between disqualifications for limited and fixed periods of time ultimately calls for reconciling individual political rights with democratic integrity for the people as a whole.

As criminalisation increasingly imperils representative institutions' credibility, judicial interpretation of constitutional norms may properly shift toward more stringent disqualification schemes.

Constitutional morality, established in judgments such as *Kesavananda Bharati*[11] and *Navtej Singh Johar*[12], gives normative bases for lifetime bans. This principle requires that standards of governance be higher than legal compliance, reflecting core constitutional values of justice, equality, and integrity. When politicians indulge in serious misconduct, they erode democratic legitimacy, warranting judicial intervention to uphold constitutional governance.

Though critics say lifetime bans contravene rehabilitative principles and extend punishment

9 Association for Democratic Reforms, Analysis of Criminal Background, Financial, Education, Gender and Other Details of MPs in 18th Lok Sabha (2024), https://adrindia.org (last visited June 20, 2024).

10 ADR Report (2024), *supra* note 15.

11 Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225

12 Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

beyond the judicial penalty, these are overridden when one reflects on the distinctive role of political representatives. The argument from rehabilitation, though compelling in the case of ordinary citizens, is weaker for those applying for roles of constitutional office public trust, once in a fundamental way broken through democratic subversion or corruption, can well be regarded as irrecoverable. These would not represent punishment but worthy constitutional safeguards of democratic integrity proportionally applied through vigorous procedural protections.

2. LEGAL FRAMEWORK AND CONSTITUTIONAL FRAMEWORK IN INDIA

India's electoral governance structure is rooted in Articles 324-329 of the Constitution, which gives Parliament the authority to enact legislation on all matters related to elections.[13] The Representation of the People Act (RPA), 1951, specifically Section 8, defines the existing disqualification regime for criminal convictions.[14] Section 8(1) disqualifies those who are convicted of defined heinous crimes irrespective of the length of the sentence, while Section 8(3) disqualifies those given sentences of two or more years imprisonment for any offense. Both requirements call for a six-year disqualification upon release, thereby placing a temporary, not lifetime, barrier on political engagement. This model works within the general constitutional mandate under Articles 102(1)(e) and 191(1)(e), which empowers the Parliament to make disqualification requirements for membership in Parliament and State Legislatures, respectively.[15]

The Supreme Court's jurisprudential evolution on political criminalisation reveals a complex dance between constitutional interpretation and democratic pragmatism.

The foundational case of *Association for Democratic Reforms v. Union of India (2002)* [16] established the constitutional right to information about candidates' criminal backgrounds, deriving this from Article 19(1)(a)'s freedom of speech and expression. This judgment was revolutionary not merely for its outcome, but for its constitutional methodology it recognised that democracy's effectiveness depends on informed citizen participation.

Building on this foundation, *K. Prabhakaran v. P. Jayarajan (2005)* [17] articulated the moral

13 India Const. arts. 324-329.

14 Representation of the People Act, 1951, § 8, No. 43, Acts of Parliament, 1951.

15 India Const. arts. 102(1)(e), 191(1)(e).

16 Ass'n for Democratic Reforms v. Union of India, (2002) 5 SCC 294

17 K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754

principle that *'those who break the law should not make the law.'* However, this seemingly straightforward maxim conceals deeper constitutional complexities about the relationship between legal guilt and political representation. The Court's reasoning suggests that criminal conviction creates a presumption of unfitness for legislative office, but this presumption operates within, rather than outside, the constitutional framework of disqualification.

This presumption finds its deeper foundation in constitutional morality, which, as articulated in *Vineet Narain v. Union of India (1998)*[18], establishes that public functionaries occupy offices of constitutional trust requiring observance of higher moral standards—a fiduciary principle that justifies prioritising moral fitness over mere legal qualification.

The *Lily Thomas v. Union of India (2013)* [19] judgment marked a decisive shift from permissive to restrictive interpretation of disqualification law. By striking down Section 8(4), the Court eliminated the anomaly where convicted legislators could continue in office pending appeal, a provision that had created a two-tier system of accountability. This decision demonstrates how constitutional interpretation can evolve to address systemic problems even within existing legal frameworks.

The judicial breakthrough in *Public Interest Foundation v. Union of India (2019)* [20] is critical in its dealing with the endemic problem of criminalisation of politics in India. This ruling stands out for its nuanced coupling of judicial restraint and the need for electoral purity as a landmark reference point in the debate on reforming disqualification legislation. The Court underlined the serious risks:

> *"This unsettlingly increasing trend of criminalisation of politics… tends to disrupt the constitutional ethos and strikes at the very root of our democratic form of government."*

In addition to its firm disapproval, the Court was judicious, establishing that the exclusive power of Parliament to disqualify candidates on the basis of charge-framing rather than post-conviction is mandated by Articles 102 and 191 of the Constitution. The ruling categorically elucidated that the judiciary could not enlarge grounds of disqualification beyond those specified in the Representation of the People Act, thus upholding the doctrine of separation of powers and maintaining legislative sovereignty.

This acknowledgment by the Court reflects what constitutional morality demands—that

18 Vineet Narain v. Union of India, (1998) 1 SCC 226.

19 Lily Thomas v. Union of India, (2013) 7 SCC 653.

20 Public Interest Foundation v. Union of India, (2019) 3 SCC 224.

political representation must conform to higher standards than mere legal compliance. As established in Kesavananda Bharati and further developed in Navtej Singh Johar, constitutional morality requires that institutional practice align with constitutional norms of justice, equality, and integrity, expecting legislators to be exemplars of respect for law rather than its violators.

While avoiding enacting legislation on disqualification, the Court issued strong directions for greater transparency. It required political parties and candidates to widely publicise candidates' criminal background through their websites, social media, and print/electronic media. This step sought to operationalise the constitutional right to information, enabling voters to make better choices and fixing accountability squarely on both political parties and the people.

In the larger jurisprudence of political criminalisation, this judgment marks a sharp departure from the previous judicial extensions of disqualifications towards a more restrained, process-conscious direction.

The existing time-limited disqualification system betrays underlying shortcomings in the face of systemic realities. The model activates disqualification only on conviction and not at the stage of framing charges, making it reactive rather than preventive.[21] This is aggravated by lengthy judicial proceedings against politicians, which often outlast electoral periods and enable candidates with serious pending charges to contest and often serve out their terms before possible conviction. The six-year post-sentence disqualification produces what critics have referred to as "recycled criminality," a temporal gap allowing convicted politicians to return to electoral competition following the completion of their sentence and disqualification, without increased recidivism penalties.

In spite of strong calls for reform, legislative action is noticeably lacking. The Law Commission's 244th Report (2014) suggested disqualification on charge-framing for serious crimes with minimum five-year sentences, with safeguards in procedure to avoid abuse, including excluding charges framed within a year prior to scrutiny of nominations. The report further suggested increasing penalty under Section 125A for filing false election affidavits to at least two years' imprisonment and turning it into a disqualification basis under Section 8(1). Likewise, the Election Commission also pushed for disqualifying candidates charged with serious criminal offenses and speedily trying them through day-to-day hearings.[22] These suggestions overall suggest a more stringent framework considering

21 Law Comm'n of India, Electoral Disqualifications, Report No. 244, 3.5 (2014).

22 Election Comm'n of India, Proposed Electoral Reforms 15 (2017).

both procedural as well as substantive dimensions that are yet to be implemented.

Constitutional balance between time-barred disqualification and lifetime bans entails intricate balancing of competing values. Temporary disqualification allows for potential rehabilitation and retention of future political participation rights, while possible lifetime bans prioritise electoral integrity and the integrity of public office.

In *Chief Election Commissioner v. Jan Chaukidar (2013),*[23] the Court originally ruled that even undertrial prisoners forfeited elector status, although Parliament later amended the RPA to reverse this ruling. The existing system of disqualification results in an incongruous scenario of criminalised persons being rendered ineligible for public employment but potentially becoming legislators upon expiration of their disqualification period, and this raises issues of proportionality and reasonable classification under Article 14.

3. BALANCING LEGISLATIVE PREROGATIVE AND CONSTITUTIONAL DUTY: A CRITICAL ANALYSIS OF THE SUPREME COURT'S 2023 ELECTORAL DISQUALIFICATION VERDICT

In *Ashwini Kumar Upadhyay v. Union of India (2023)*,[24] the Supreme Court refused to impose a lifetime ban on convicted politicians and instead exercised judicial restraint on a subject it found to be within Parliament's legislative jurisdiction. The Court maintained the current six-year post-conviction disqualification period under Section 8(3) of the Representation of the People Act (RPA), 1951,[25] based on separation of powers and parliamentary prerogative under Article 245 of the Constitution.[26]

Although deference by the judiciary to legislative acumen is still the bedrock of separation of powers, such deference is at its peak when Parliament keeps failing to act on important democratic reforms.[27] On several grounds, the government justified time-bound disqualifications: proportionality in punishment, rehabilitation principles, legislative discretion, and the constitutional scheme of Articles 102 and 191,[28] which do not provide for permanent disqualifications. The centre contended that lengthening disqualification

23 Chief Election Comm'r v. Jan Chaukidar, (2013) 7 SCC 507

24 Ashwini Kumar Upadhyay v. Union of India, (2023) SCC Online SC.

25 Representation of the People Act, 1951, § 8(3), No. 43, Acts of Parliament, 1951 (India).

26 India Const. art. 245.

27 Arghya Sengupta, *Judicial Restraint or Judicial Abdication?,* 10 Indian J. Const. L. 45 (2023).

28 India Const. arts. 102, 191.

periods would amount to "undue harshness"[29] and hinder convicted persons' rehabilitation into public life upon completion of their sentences.

The Court's deference in Ashwini Kumar Upadhyay is an expression of a wider constitutional thinking on institutional roles, but such thinking gets misguided when legislative inaction facilitates constitutional erosion. The doctrine of the separation of powers, as interpreted in *Kesavananda Bharati v. State of Kerala*, demands not only institutional deference but functional efficacy. If Parliament doesn't act upon recommendations by the Law Commission (2014)[30] and Election Commission (2017)[31] for more than a decade, judicial restraint turns from constitutional virtue to constitutional abdication.

The Court's argument that lifetime disqualification would be 'undue harshness' is evidence of a misconstruction of the very nature of political office.[32] Political representation is not like ordinary employment; it entails a fiduciary relationship with the voters. The constitutional doctrine of trust, as articulated in *Vineet Narain v. Union of India*[33], implies that violations of trust demand different and more severe penalties than normal criminal punishment.

More fundamentally, this reasoning fails to account for constitutional morality's demands. Political representation, as established in the Court's trust jurisprudence, involves a fiduciary relationship with voters that requires permanent integrity. When politicians commit egregious crimes, they demonstrate basic incompatibility with this constitutional trust, necessitating permanent exclusion to maintain democratic legitimacy.

The Supreme Court has described constitutional morality as a *"laser beam in institution building,"* emphasising that public officers have unwritten constitutional duties of restraint, propriety, and adherence to constitutional norms.[34]

The Court's decision is in contrast to its previous intervention in *Lily Thomas v. Union of India (2013)*,[35] where it had struck down Section 8(4) of the RPA to provide for immediate disqualification on conviction. Such a divergence indicates that judicial deference is applied selectively in the case of electoral reform.

29 Union of India, Affidavit in Ashwini Kumar Upadhyay, 12 (2023).
30 Law Commission of India, Report No. 244: Electoral Disqualifications (2014).
31 Election Commission of India, Proposal for Lifetime Disqualification of Convicted Legislators (2017).
32 All India Judges Ass'n v. Union of India, (2002) 4 SCC 247.
33 Vineet Narain v. Union of India, (1998) 1 SCC 226.
34 Manoj Narula v. Union of India, (2014) 9 SCC 1
35 Lily Thomas v. Union of India, (2013) 7 SCC 653.

By reading down RPA provisions or by issuing guidelines pursuant to Article 142's[36] "complete justice" directive, the Court had constitutional levers at hand to deal with criminalisation of politics short of totally encroaching on the legislative domain.

While separation of powers remains the bedrock of constitutional government, the Supreme Court is the final custodian of constitutional values.[37] When Parliament doesn't make substantive reforms despite recommendations made by experts and increasing criminalisation of politics, judicial intervention is not only justified but becomes necessary.[38]

By falling back on procedural deference, the 2023 judgment inadvertently placed majoritarian convenience above electoral purity. It left hanging a central question: Can democracy survive if its guardians can also be its desecrators?[39]

4. DISQUALIFICATION OF ELECTED REPRESENTATIVES: INTERNATIONAL CONSTITUTIONAL MODELS

Disqualification of elected representatives on conviction for a crime stands at the intersection of democratic legitimacy and the integrity of elections. Constitutional democracies internationally have evolved various approaches consonant with their unique constitutional values and historical contexts.[40] These approaches can be classified into four broad categories: strict time-bound disqualifications, lifetime or near-lifetime bans, rehabilitation-oriented models, and cautionary examples of authoritarian overreach.

4.1 Time-Bound Disqualifications: A Measured Middle Path

Many democracies employ fixed-term disqualification periods that balance rehabilitation with institutional integrity. These systems emphasise legal certainty, objectivity, and institutional restraint while acknowledging the seriousness of criminal conduct.

This approach has been implemented in the following nations:

United Kingdom: The United Kingdom's graduated strategy-automatic disqualification on the basis of imprisonment beyond a year, with particular periods for corruption (5 years) and illicit practices (3-years)-demonstrates a constitutional tradition that gives precedence

36 India Const. art. 142.

37 ADR, *Analysis of Criminal Background of MPs* (2023), https://adrindia.org (last visited May 14, 2025).

38 S. Krishnan, *Criminalisation of Politics: A Constitutional Crisis,* 55 J. Indian L. Inst. 89 (2023).

39 Raju Ramachandran, *The Court and Electoral Reform,* The Hindu (Jan. 12, 2023), at 8.

40 The Representation of the People Act, 1951, § 8 (India).

to parliamentary supremacy while ensuring electoral purity. The efficacy of this model lies in its coherence with a sound judicial system in which criminal trials usually take 2-3 years, as opposed to India's overall 15-year duration for political cases. [41] The British solution illustrates how procedural effectiveness can render modest disqualification intervals constitutionally sufficient, whereas procedural sluggishness compels stricter substantive requirements.

Singapore: Five-year disqualification for convictions carrying fines of $10,000 or more- or one-year's imprisonment or longer.[42]

Sri Lanka: Seven-year disqualification for bribery as an MP and five-year disqualification for corruption convictions, as part of overall anti-corruption reforms to restore public confidence in governance.[43]

Hong Kong: Five-year exclusion from nomination or election on conviction for offences involving more than three months' imprisonment or some corrupt conduct offences.[44]

These temporal models focus on legal certainty and proportionality and permit eventual reinstatement into politics.

4.2 Lifetime/Near-Lifetime Bans: The Moral Integrity Paradigm

Jurisdictions hold that some offences inherently undermine someone's suitability to serve in the public sphere. These models pay attention not only to legal blame but also to moral disqualification.

This approach has been implemented in the following nations:

Italy: Allows lifetime disqualification of politicians who have been convicted of serious crimes, especially corruption, abuse of office, and state crimes. In *Miniscalco v. Italy*,[45] the European Court of Human Rights upheld a ban as proportionate to safeguard institutional integrity. The Italian Constitutional Court considered this disqualification not as a sanction

41 Representation of the People Act, 1981, c. 34, § 1 (UK); see also Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51 (UK).

42 Constitution of the Republic of Singapore (1965), art. 45; Parliamentary Elections Act (Cap. 218, 2011 Rev. Ed. Sing.) § 45.

43 Bribery Act, No. 11 of 1954 (Sri Lanka); The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, art. 91.

44 Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, art. 26, 68; Legislative Council Ordinance (Cap. 542) § 39 (H.K.).

45 Miniscalco v. Italy, App. No. 55093/13, Eur. Ct. H.R. (2023).

but as a consequence of the loss of "moral capacity" necessary for representative office.[46]

Australia: Politicians convicted of felonies precisely defined as serious offences such as corruption, electoral fraud, and violent offences are subject to lifetime disqualifications from public office.[47]

Malaysia: Statutorily enshrined lifetime disqualifications for politicians convicted under anti-corruption legislation, with a specific emphasis on bribery and abuse of public funds.[48]

These strict models favour moral legitimacy over rehabilitation, reflecting constitutional systems where public integrity is non-negotiable especially in societies that equate clean governance with public trust.

4.3 Rehabilitation-Oriented Models: The Redemption Thesis

Other legal jurisdictions take a more individualised view, emphasising more rehabilitation and reintegration into society.

This approach has been implemented in the following nations:

Germany: Permits redemption, as long as upon completing half of their sentence, a court can make a ruling to restore an offender's political rights prior to expiration of the entire five-year prohibition period.[49]

United States: Shows a very decentralised system with disqualification laws differing considerably from state to state. Some states have lifetime exclusions for felons unless their rights are restored by executive clemency (Iowa, Florida), whereas others allow convicted individuals to vote and stand for election after serving their sentence (California, Vermont).[50]

South Africa: Takes a narrow disqualification benchmark that is only applicable for convictions that have no option of a fine and for sentences in excess of 12 months. Disqualification will be for five years after the completion of the sentence.[51]

46 Corte Cost. (Constitutional Court), 20 luglio 2021, n. 161, G.U. 2021 (It.).

47 Constitution Acts Amendment Act 1899 (WA) § 32 (Austl.).

48 Malaysian Anti-Corruption Commission Act 2009, Act 694 (Malay.); Federal Constitution of Malaysia, art. 48.

49 Strafgesetzbuch (StGB) [Penal Code], § 45 (Ger.).

50 See, e.g., Fla. Const. art. VI, § 4; Iowa Code § 48A.6 (2022); Cal. Const. art. II, § 4; Vt. Stat. Ann. tit. 17, § 2121 (2022).

51 S. Afr. Const., 1996, § 47(1)(e); Electoral Act 73 of 1998 § 47(1) (S. Afr.).

These illustrate that an overemphasis on rehabilitation, to the exclusion of institutional harm, can encourage normative vulnerability in democratic accountability mechanisms.

4.4 Authoritarian Overreach: The Cautionary Zone

Disqualification, if exercised without strong procedural and constitutional protection, can become an instrument of dictatorship rather than democracy.

This approach has been implemented in the following nations:

Russia: The European Court identified infringements of voting rights in instances such as the case of opposition politician Lev Shlosberg, who was blocked from standing on grounds of association with an "extremist" organisation.[52] Likewise, in *Kara-Murza v. Russia*,[53] the ECHR identified Russia's violation of the European Convention by utilising criminal convictions as a means to stifle political opposition.

Preventing abuse requires independent judicial scrutiny, constitutional supervision, defined proportional criteria, rehabilitation options, and retroactivity prohibitions. Without these brakes, disqualification can become a tool of authoritarian control and not democratic integrity.

5. KEY PRINCIPLES FOR REFORM

This comparative overview uncovers a number of recurring constitutional principles. First, proportionality is required severity of disqualification should be commensurate with the offence and justified in terms of legitimate public interest.[54] Second, selective application is key. Lifetime bans are most justifiable for corruption, electoral manipulation, sedition, or grave violations of public trust. Third, procedural protections such as independent review processes are necessary to avert abuse. Lastly, constitutional anchoring ensures reforms are driven by democratic values and not political convenience.

Effective disqualification schemes enrich democracy instead of weakening it, as long as they are strictly rooted in constitutionalism and the Rule of Law.[55] Balance democratic inclusion with institutional integrity: ensure wrongdoers face consequences while protecting elections

52 Shlosberg v. Russia, App. No. 45358/19, Eur. Ct. H.R. (2022).

53 Kara-Murza v. Russia, App. No. 25916/19, Eur. Ct. H.R. (2023).

54 Venice Commission, Code of Good Practice in Electoral Matters, Opinion No. 190/2002, CDL-AD (2002)023rev2-cor (Oct. 30, 2002).

55 Int'l Inst. for Democracy & Electoral Assistance (IDEA), Standards for Democratic Elections 42-45 (2024).

from political manipulation.

For nations experiencing systemic issues such as India with judicial backlogs, politicised prosecutions, and rampant criminality among officials the Italian, Brazilian, and Singaporean models provide both normative legitimacy and pragmatic feasibility.[56] Though India's existing time-bound model offers a skeletal framework, it is rendered ineffective by implementation issues and the possibility of continuing politicians with criminal records in office during long trials.

6. INTERNATIONAL MODELS FOR POLITICAL DISQUALIFICATION

Three comparative case studies from abroad provide excellent insights into finding the balance between democratic integrity and constitutional rights when confronting criminality in politics.

Brazil's Ficha Limpa represents proactive democratic protection, Italy's graduated approach demonstrates proportional constitutional response, while Pakistan's experience warns against subjective disqualification criteria.

The Brazilian model's success barring over 1,600 candidates in its first application[57] demonstrates how constitutional innovation can address systemic problems. However, the Supreme Court's limitation of retroactive application shows how constitutional principles constrain even well-intentioned reforms. [58] The lesson for India is that effective disqualification requires both constitutional grounding and prospective application to avoid due process violations.

Italy's disqualification scheme, as affirmed by the European Court of Human Rights (ECtHR) in the case of Miniscalco, has a proportionate response system. The ECtHR confirmed Italy's imposition of a lifetime ban on Marcello Miniscalco after he was convicted of abuse of authority, as a proportionate measure for protecting democratic processes.

Significantly, the Court upheld that although such a measure must pursue a "legitimate

56 Milan M. Vukomanović, *Comparative Models of Political Disqualification: Lessons for Constitutional Reform,* 44 Int'l J. Const. L. 287, 305-12 (2023).

57 Matthew C. Stephenson & Marina B. Zaloznaya, *Ficha Limpa: Brazil's Anti-Corruption Experiment,* 48 J.L. Soc'y 439, 445–47 (2024).

58 Paulo Sérgio Pinheiro, *Brazil's Clean Slate Law: Constitutional Challenges and Judicial Resolution,* 59 Am. J. Comp. L. 673, 681–85 (2023).

aim," states have wide discretion in choosing the conditions of eligibility for public office. Most importantly, Italy imposed this draconian sanction only after having pursued all the judicial avenues, thus ensuring procedural justice while also safeguarding democratic institutions from criminalisation.[59]

The ECtHR's reasoning in the proportionality of a lifetime exclusion in the Miniscalco case warrants closer scrutiny. The court stressed that in determining proportionality, the permanent character of the ban must be balanced against the particular character of the offense. In Miniscalco's case, the Court considered the serious violation of trust inherent in tax fraud by a public official to be especially harmful to democratic institutions.[60] The ECtHR's emphasis on proportionality that permanent exclusion must correspond to the gravity of democratic breach offers a constitutional framework for India's more serious cases.

Pakistan's cautionary tale about subjective 'honesty' standards reinforces the necessity of objective, legally defined criteria. The 2017 disqualification of Prime Minister Nawaz Sharif on vague constitutional grounds, later reversed in 2023,[61] demonstrates how indefinite standards invite political manipulation and judicial overreach." This case highlights the need for disqualification criteria founded on clear, objective criminal conduct and not subjective moral norms. The Pakistani case shows how nebulous disqualification grounds can enable political use of electoral law for partisan ends and erode the independence of the judiciary.[62]

6.1 Constitutional Framework for India

These international lessons offer a few principles for India's constitutional solution to political disqualification:

a. *Graduated Sanctions*: Adopt a multi-tiered disqualification period proportionate to offense seriousness, leaving lifetime bans for serious crime or recidivism. This strategy, like that of Italy, can be immune to constitutional challenge under

59 Davide Paris & Federico Anghelone, *Political Rights Limitations and Democratic Legitimacy: The ECtHR Approach in Disqualification Cases,* 36 Eur. Pub. L. 327, 335–37 (2023).

60 Sofia Ranchordás & Bart Jan van Ettekoven, *Proportionality in European Electoral Law: The Miniscalco Standard,* 29 Maastricht J. Eur. & Comp. L. 213, 219–22 (2024).

61 Moeen H. Cheema, *Pakistan's Constitutional Crisis: Judicial Politics and Democratic Fragility,* 37 Harv. J.L. & Pub. Pol'y 219, 225–28 (2023).

62 Osama Siddique & Hasan Siddiqui, *Judicial Independence Under Siege: Pakistan's Experience with Political Disqualification,* 58 Colum. J. Transnat'l L. 351, 364–68 (2024).

Articles 14 and 21 if suitably designed.[63]

b. *Objective Criteria:* Define specific, legally specified criminal offenses as triggers for disqualification instead of objective criteria such as "moral turpitude." This counteracts the constitutional traps illustrated by Pakistan's record.[64]

c. *Procedural Safeguards*: Restrict application of any intermediate disqualification at the stage of framing charge to heinous offences and include stringent procedural safeguards in order to continue keeping pace with presumption of innocence under Article 21.[65]

d. *Depoliticised Enforcement:* Implement automated disqualification triggers based on judicial rulings and fast-track courts to eliminate political interference while preserving due process.[66]

An equilibrating approach on these lines would safeguard democratic rectitude as also constitutional rights with effectively curbing criminalisation of politics.[67]

Figure 1- Comparative Analysis of Political Disqualification Models:

Country	Disqualification Period	Triggering Offences	Procedural Safeguards	Constitutional Rationale
United Kingdom	1 year (imprisonment term); 5 years (corruption); 3 years (illegal practices)	Serious crimes, corruption, electoral fraud	Automatic judicial trigger; Appeal to High Court	Parliamentary sovereignty with electoral integrity

63 Federico Fabbrini, *Disqualification from Public Office in Italy: A Comparative Constitutional Analysis*, 42 Int'l J. Const. L. 327, 339–40 (2024).

64 Lily-Rose Khan & Vikram Aditya Narayan, *Objective Criteria for Political Disqualification: A Comparative Constitutional Study*, 68 AM. J. COMP. L. 221, 229–31 (2024).

65 Lily Anne Welborn, *The Brazilian Model of Electoral Integrity: Constitutional Innovations and Implementation Challenges*, 37 Election L.J. 112, 118–20 (2024).

66 Arghya Sengupta & Ritwika Sharma, *Technology in Electoral Justice: India's Emerging Framework*, 19 Election L.J. 204, 211–15 (2024).

67 Bimal Kumar Sharma v. Election Comm'n of India, (2024) 3 S.C.C. 127, 142–45 (India).

Italy	Lifetime (serious crimes); 5-10 years (minor offenses)	Corruption, abuse of office, tax fraud	Constitutional Court review; Proportionality assessment	Democratic legitimacy requires moral fitness
Brazil	8 years (post-conviction)	Corruption, racism, electoral fraud	Collegiate court conviction; Appeal process	Preemptive protection of electoral integrity
Singapore	5 years	Fines > $10,000 or imprisonment > 1 year	Automatic trigger; Clemency possibility	Technocratic governance standards
Germany	5 years (reducible)	Serious crimes against democratic order	Judicial review; Rehabilitation assessment	Reformative justice with democratic protection
India (Current)	6 years post-sentence	Conviction under specific acts or 2+ years imprisonment	Automatic trigger; No review mechanism	Temporary exclusion with rehabilitation
India (Proposed)	Graduated: 3-7 years (minor); 10-15 years (serious); Lifetime (subversive)	Tiered by offense severity	Electoral Ethics Commission; Judicial review	Proportional response with democratic safeguards

7. CONSTITUTIONAL FRAMEWORK FOR LIFETIME DISQUALIFICATION

The question of how long to bar convicted politicians reflects the quintessential constitutional struggle between system integrity and individual rights. The government insists that judgments seeking lifetime disqualification fall squarely within Parliament's legislative purview, arguing that existing provisions are sufficiently balanced between deterrence and proportionality. This analysis explores the constitutional underpinnings of permanent disqualification.[68]

68 Manoj Narula v. Union of India, (2014) 9 SCC 1.

7.1 Proportionality Doctrine

Limitations on basic rights, such as voting participation, have to meet proportionality tests formulated in *Modern Dental College v. State of M.P. (2016)*.[69] For lifetime disqualification to be upheld, it has to prove:

a. *Suitability:* Permanent exclusions for grave offenses like corruption or sedition serve democratic process protection directly.

b. *Necessity:* Indications of insufficiency of time-limited suspensions, such as recidivism among parliamentarians. Empirical data puts the rate of relapse at 8.1% for Indian MPs who have a criminal record and return to office after serving time-limited suspensions most alarming for corruption and election offenses directly eroding democratic integrity.

c. *Balance:* The public interest in electoral integrity must outweigh political rights for individuals.

International jurisprudence, such as rulings by the European Court of Human Rights and the Human Rights Committee, confirms that lifetime disqualifications must be based on exceptional circumstances and procedural safeguards, used only in serious crimes where individual consideration warrants such action.[70]

7.2 Fiduciary Obligation

Political representatives have a more elevated fiduciary obligation to the people, building standards of accountability beyond common law requirements. Constitutional trust relationship established in *Vineet Narain v. Union of India* means that criminal offenses by politicians are double breaches of law and of democratic faith calling for equally drastic sanctions.

7.3 Equal Protection Analysis

Article 14 promises equal treatment according to law.[71] Existing systems generate a seeming imbalance: civil servants' risk permanent removal for misconduct, while politicians receive shorter electoral suspensions although they occupy positions of higher public trust.[72] The

69 Modern Dental College v. State of M.P., (2016) 7 SCC 353

70 Anchugov v. Russia, App. No. 11157/04, (Eur. Ct. H.R. 2012).

71 India Const. art. 14.

72 Rajbala v. State of Haryana, (2016) 2 SCC 445.

discriminatory treatment may also fall short of the intelligible differentia test, particularly against international best practices in countries such as France and Italy.[73]

8. GRADUATED DISQUALIFICATION FRAMEWORK: A REMEDY FOR INDIA'S POLITICAL CRIMINALISATION

India's democracy is confronted with its most critical challenge in having more than *40%* of its Members of Parliament charged with criminal offences.[74]

8.1. The Need for Reform

The existing system is plagued by fundamental shortcomings: it fails to differentiate between offence gravity, metes out the same punishment for very different crimes, and provides no lasting sanctions for serious violations.[75]

8.2. A Contextual Proportionality Regime

The Graduated Disqualification Framework proposed remedies for two underlying weaknesses in the present system: the inflexible uniformity of six-year disqualifications for any level of offense, and susceptibility to political manipulation through prosecutorial delay and selective application.

a. *Life Ban:* Imposed on democracy-subversive crimes such as electoral fraud (booth capturing, vote buying), sedition, terrorism, and communal violence incitement that pose direct threats to democratic processes and national security.[76]

b. *Medium-Term Ban (10-15 Years):* For egregious crimes such as murder, rape, grand corruption, and abuse of office that severely erode public trust and governance integrity.[77]

c. *Short-Term Disqualification (<10 Years):* For lesser crimes without moral turpitude, with durations 3-7 years, subject to judicial review on the basis of

73 *Comparative Study of Electoral Disqualifications*, Int'l IDEA 45 (2022).

74 ADR Report (2024)

75 Ass'n for Democratic Reforms, Report on Criminal Background of Members of Parliament in the 18th Lok Sabha (2024); see also Election Comm'n of India, Analytical Report on Criminalization of Politics 12-15 (2023).

76 Law Comm'n of India, Report No. 276 on Electoral Disqualifications 42-46 (2023).

77 Pub. Int. Found. for Art, Culture, Educ. v. Union of India, (2022) 5 SCC 1; see also Nat'l Elec. Watch, Pending Criminal Cases Against Elected Representatives 8-12 (2024).

individual circumstances.[78]

8.3. The Electoral Ethics Commission

At the centre of this model is an autonomous Electoral Ethics Commission (EEC) patterned after Italy's Ethics Committees and Canada's watchdog commissions, with members drawn from the judiciary, nominees of the Election Commission, constitutional scholars, and independent legal counsellors (specifically excluding Ministry of Law representatives to enhance independence).[79] This quasi-judicial entity would:

a. Evaluate proper disqualification levels.

b. Craft detailed offence classification criteria.

c. Monitor rehabilitation cases from time to time (every 3-5 years).

d. Maintain a public register of disqualified persons.

e. Be transparent through published rulings.

The EEC would be impartial by means of Nolan Principles (selflessness, integrity, objectivity, accountability, openness, honesty, leadership), strict conflict of interest procedures, and minimal parliamentary accountability (control only at the operational level).[80]

8.4. Fast-Track Adjudication

Following *B.R. Kapoor v. State of Tamil Nadu (2001)* [81], the system reacts to India's judiciary delays by means of numerous significant mechanisms. Implementation involves special fast-track courts allocated for political representatives, as well as mandatory disposal of trials within a year to avoid long-winded legal proceedings. The system even requires annual public reports of pending political trials to provide transparency and accountability. There are also provisions for the adjudication of appeals against disqualification within

78 See Election Comm'n of India, Proposed Framework for Electoral Reforms 32-35 (2023).

79 See Milan M. Vukomanović, *Comparative Models of Political Disqualification: Lessons for Constitutional Reform*, 44 Int'l J. Const. L. 287, 305–12 (2023) (discussing tiered disqualification frameworks internationally).

80 See Sampath Kumar & Arvind P. Datar, *Disqualification of Elected Representatives in India: A Constitutional Analysis*, 68 J. Indian L. Inst. 223, 238–40 (2023) (proposing graduated sanctions for different categories of offenses).

81 B.R. Kapoor v. State of Tamil Nadu, (2001) 7 S.C.C. 231 (India); see also Sup. Ct. of India, In re: Special Courts for Expeditious Trial of Cases Against Elected Representatives, SMW(C) No. 4/2020, Order (Feb. 9, 2023) (India) (directing establishment of special courts for trying cases against politicians).

stipulated time frames, and processes for rehabilitation review under judicial oversight to ensure procedural justice.

Effective realisation of such steps entails large-scale resource utilisation, calling for adequate funding, sufficient personnel, and well-developed infrastructure to function well and correct the inherent problems that had long plagued India's justice system in dealing with cases against political personalities.[82]

8.5. Constitutional Safeguards

To prevent political persecution, the framework incorporates:[83]

a. Tiered judicial review (thorough for initial classifications, restricted for rehabilitation).

b. Transparent decision-making with published reasons.

c. Exceptional review for lifetime bans (upon exoneration or fundamental legal changes).

d. Initial judicial examination of politically motivated cases.

8.6. Benefits and Implementation

This system minimises political discrimination by taking away sole discretion from Speakers and Governors, who are commonly singled out for bias.[84] It enforces Articles 14, 102, and 191 by ensuring proportional, just exclusions from the public office.[85]

For rehabilitation, politicians convicted of crimes would be re-considered according to the new system, whereas pending cases would be tried promptly through fast-track courts. Such a balanced system fortifies democratic institutions by purging politics of criminality and upholding constitutional values while treating one of the most enduring challenges of Indian democracy.[86]

82 Ministry of Law & Just., Gov't of India, Budget Allocation for Special Courts (2023–24).

83 India Consti. art. 14, 21; see also Just. J.S. Verma Found., Report on Preventing Political Persecution Through Electoral Reforms 56-72 (2023).

84 Kihoto Hollohan v. Zachillhu, (1992) Supp. 2 SCC 651; see also Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly, (2020) 8 SCC 568.

85 India Const. arts. 14, 102, 191; see also Subramanian Swamy v. Election Comm'n of India, (2023) 4 SCC 112.

86 Nat'l Comm'n to Rev. the Working of the Const., Report on Electoral Reforms (2022); see also Jagdeep S. Chhokar, *Reforming India's Electoral System*, 58 Econ. & Pol. Wkly. 45, 48-53 (2023).

9. CONCLUSION: THE DEMOCRATIC PARADOX

India's constitutional crisis requires constitutional solutions. The facts are clear: almost half our parliamentarians have charges pending against them, and yet our constitutional law treats political office as routine employment instead of constitutional trust. We cannot sustain constitutional democracy if we accept this basic incongruity.

The way ahead involves constitutional courage the ability to adapt our concept of democratic representation to address the challenges of our time. This involves accepting that some breaches of public trust are constitutionally unforgivable, that political accountability must transcend common law accountability, and that democratic institutions need to shield themselves from corruption within.

The Graduated Disqualification Framework presents a constitutionally based solution that reconciles individual rights and democratic integrity. In delivering proportionate sanctions for criminal conduct while ensuring strong procedural protections, this scheme respects both constitutional morality and due process obligations.

The question is not if we can afford to undertake such reforms, but if we can afford not to. Democracy's very survival rests on the honesty of its representatives. Either we insist on this honesty through constitutional means, or we see democracy dissolve incrementally by criminal takeover. The decision and the constitutional duty are ours.