

Refereed article

From Lawbreakers to Lawmakers: The Subnational Dimension of Political Malfeasance and the Criminalization of Indian Electoral Politics

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Summary

This study examines the extent and the correlates of the increased entry of persons with alleged or proven criminal backgrounds into Indian electoral and representative politics, as “tainted” candidates and elected national legislators. It confirms the previously perceived trend of an increase in the number and share of tainted national-level politicians active in the country from 2004 onward. A state-level analysis of information about candidates, legislators, as well as the regional social and political contexts shows that larger shares of tainted national MPs elected from particular federal states are in part a function of larger shares of tainted candidates running in the respective states’ electoral districts, and of the average level of competitiveness of the electoral contests in those states. These are themselves strongly correlated with the shares of state-level legislators (MLAs) with criminal backgrounds. Non-national political parties and smaller national parties are more likely to count tainted legislators among their MPs, although both the Indian National Congress and the Bharatiya Janata Party have over the years consistently produced large numbers of tainted national legislators themselves.

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Introduction

India is rightly viewed as one of the rare cases of the emergence of a successful and relatively stable postcolonial democracy having multiple competing political parties, a free and critical media, and regularly held, relatively free, and fair elections (Lijphart 1996; Jürgenmeyer 2006; McMillan 2008; Mitra and Singh 2009). When thinking of the relevant positive attributes of candidates running for political office in any democracy, traits like experience, likeability, policy positions, and perceived competency all spring to mind. One characteristic that would seemingly ruin an otherwise viable candidate's chance of being elected in most democratic contexts is that of having a known criminal background.

In light of this, the growing trend of Indian politicians — both candidates and legislators — coming to the fore with self-reported criminal convictions or pending charges of illegal behavior against them seems somewhat puzzling.¹ Intuitively, one would expect to see a progressive decline of this trend as democratic systems become more institutionalized and voters become more experienced. In India, however, the contrary actually seems to be the case. Despite the general success of procedural democracy there, there has been in the last 15 years a growing debate around a perceived creeping criminalization of politics at all levels of India's federal system (see, for example, Bardhan 2001: 237; Dreze and Sen 2002: 365).²

A number of factors have been identified as to blame for this development. In particular, the pressures of increasing party competition at the district level (Golden and Tiwari 2009), the consequent incentives for parties to nominate tainted candidates who might offer certain electoral advantages, such as campaign funds (Vaishnav 2014), and thus the existence of individuals who might simply be more capable of using their greater wealth to “buy a party ticket” in a given electoral district so as to compete in the election there (Dutta and Gupta 2012; Betz, Neff, and

1 When referring to “criminalization” or “taint” here, this denotes the phenomenon of a growing number and percentage of active candidates and legislators with self-reported criminal charges or convictions against them. While some of these charges and convictions are for minor offenses or those types of offenses, which one may ascribe to mobilization tactics using the methods of contentious politics (see the discussion in Kumar 2002), this study is most concerned with serious offenses (murder, attempted murder, assault, kidnapping, and the like), as defined by the Association for Democratic Reform (ADR). Such criminal acts are grave enough to merit further investigation here. This is particularly true since the members of parliament classified as having “serious” cases pending against them by the ADR are all defendants in multiple such cases and have furthermore allegedly violated multiple sections of the Indian Penal Code. The worthiness of this further study is also true given the fact that these serious charges have not led, and may never lead, to a conviction. This may ultimately say more about India's notoriously slow judicial system — which at the lower, and even regional, levels is also prone to outside influence being exerted on it by politicians (see the discussion of this issue in Dutta and Gupta 2012) — than it does about guilt or innocence.

2 More recently, concerning the 2010 Bihar State Assembly elections, see “Bihar Election: Hall of Shame,” NDTV.com, available at: <http://www.ndtv.com/article/assembly%20polls/bihar-election-hall-of-shame-68195> (accessed: June 27, 2014). The same is true regarding the problem of administrative and political corruption (see Sun and Johnson 2010; Charron 2010).

Destradi 2014). Additionally important is the relative lack of electoral sophistication found especially among uneducated voters (Golden and Tiwari 2009). What remains puzzling, however, is the variance between federal states in terms of how much they have been following this overall trend, and the role that the different types of political party play in selecting candidates with tainted records in the first place.

This article seeks to contribute to the debate through an exploratory analysis of these party-relevant and regional variations specifically from 2004 onward. The findings here suggest that there is some merit in the view that smaller regional and smaller national political parties are afflicted to a greater extent by the trend toward having in their ranks a growing numbers of legislators with (serious) criminal charges pending against them. Nonetheless in the course of the three national elections analyzed here, the two truly national parties, the Bharatiya Janata Party (BJP) and the Indian National Congress (INC) both contributed a significant number of tainted legislators to the membership pool of the lower house of India's national legislature, the Lok Sabha. The results suggest that there seems to be a strong relationship between the criminalization of state-level legislators and state-wise percentages of (seriously) tainted national legislators and candidates. Also, the regional variations between the number of national legislators elected from the various states seems to some extent to be a function of the availability of viable nontainted candidates who voters can choose from — or, rather, the lack thereof.

The subsequent parts proceed as follows: Next will come a survey of the relevance of the issue at hand, the laying out of the theoretical framework to be used, and the giving of an overview of the methodological approach to be taken. The article will then proceed to illustrate the extent to which the presence of tainted candidates and legislators at the national level has become commonplace — and how this varies across parties. Following on, the study will further assess significant regional variations in the extent of this criminalization, and outline the other characteristics of politics across the Indian federal states that correlate with these respective levels of criminalization.

The significance of political malfeasance and criminal politicians

India, like other states with a constitutional democratic government, struggles to strike a balance between accountability toward voters on the one hand and achieving sufficient independence for political and administrative decision-making processes from legitimate or illegitimate social pressures on the other. Many developing countries, in fact, fail to cope with the simultaneous challenges of ensuring democratic accountability and guaranteeing institutional independence. All too frequently their public institutions become the object of so-called “state capture” in a

variety of ways (Hellmann et al. 2000; Leftwich 2007)³ — including through corruption.

Consequently much of the research thus far on political malfeasance has concentrated specifically on the issue of corruption. A qualitatively different and particularly insidious form of this more general phenomenon of criminals having a palpable influence on politics is that of the replacement of elected officials without a criminal record with legislators who themselves have minor or major backgrounds in crime, or in some cases even ties to organized crime. This phenomenon will be referred to henceforth as the criminalization of electoral politics, in other words meaning the emergence in the political realm of candidates with either actual or alleged criminal backgrounds as well as their election to public office — such as to India’s state and national legislatures.⁴ It is this process, and the debate surrounding it, that this paper attempts to shed some further light on.

In view of India’s overall positive democratic track record, research into the nature and extent of the criminalization of electoral politics in the country is of particular importance given that the phenomenon has the capacity to substantially undermine procedural democracy. Especially in the Indian popular media, the scandalization of politics and elected officials has attracted ever-increasing attention over the course of the last decade.⁵ The political system in India is affected by the growing impact thereon of criminal elements, especially at the local level (Weinstein 2008) where organized crime can influence — and has influenced — the allocation of financial resources and the provision of public goods and services — usually to the detriment of the overall level of development of a given geographical area.

It was observed earlier that “money and muscle” (cf. Hardgrave and Kochanek 2000) have for decades influenced both politics as well as the actual implementation of policies on the ground in India. Traditionally, however, it was the civil service sector, tasked with federal, state, and local program implementation, that was the primary target of corruption or that had ties to criminal forces (Echeverri-Gent 1988). More recently the debate in the Indian popular press as well as in academic circles has taken note of a change occurring in how crime influences politics in India. Instead of self-interested politicians employing criminal elements for political ends (organizing vote banks, intimidating opponents and/or voters, illegally financing campaigns), alleged criminals are now also increasingly found to be

3 For an early discussion of state capture in the Indian case, see the discussion of West Bengal in John Echeverri-Gent’s (1992) study on that federal state.

4 When referring to candidates or legislators with a criminal background in the following sections the terms “criminal,” “criminalized,” and “tainted” candidates and legislators will be used, even though the majority of them have not been convicted. As it stands many of them have merely been accused of certain crimes, according to their own statements made in the affidavits filed with the Election Commission of India.

5 See, for example, the reporting about the case of Gujarat minister Amit Shah in *Tehelka* on July 3, 2010, “Gujarat Home Minister Amit Shah Called Cops Arrested for Killing Tulsi Prajapati,” p. 14.

running for political office themselves — possibly indicating a new quality in the capture of political space. As the numbers below will show (see Table 1), India has a large number of electoral candidates at present who have some sort of self-reported prior criminal record at the time of competing for public office, as well as a high percentage of legislators with similar such records.

The discussion of whether this is an epiphenomenon for voters and merely a focus for middle-class Indians and Western-influenced media aside (see Dutta and Gupta 2012), if this growing involvement of tainted candidates and legislators is indeed a discernible trend nationwide across India then it is significant for a number of reasons. First, the involvement of more criminals in politics — whether as candidates, legislators, or as campaign supporters — is often rightly assumed to have a profound influence on the level of violence observed in politics, and especially during election campaigns (Wilkinson 2001). Another important finding is the established link between the representation of electoral districts by criminal legislators and measurable district-level increases in poverty (Chemin 2008). Depending on the number and severity of the criminal charges filed against candidates, the increased election to office of those with criminal records can also be hypothesized as significantly increasing the abuse of public office for private gain.

This would especially be the case when successful candidates return favors for having received financial backing from criminal individuals for their election campaigns, as well as for the manipulation of the electoral process through vote buying, intimidation, ballot stuffing, and/or ballot theft.⁶ Such a trend, over time, could lead to less accountability and responsiveness on the part of political elites, and perpetuate the catering to small clienteles rather than broad constituencies in legislators' home districts — or to the country as a whole. Finally, it is obviously ironic, and normatively highly problematic, that the making of laws — one of the most important, if not the single most important, functions of government — should be left to (sometimes habitual) lawbreakers. The contempt shown by politicians with criminal backgrounds toward the rule of law will likely further lower the respect of the general public for the institutions central to democratic governance.

The perceived growth in such criminalization in India has already been accompanied by declining levels of trust in political institutions among the Indian general public in the years from 1990 to 2014, as results from the World Values Survey of 2014 indicate. Although this data does not indicate a uniform trend of decline in trust over time and across institutions, it is clear that political parties commanded less trust in 2014 than they did in 1990. In numerical terms, this decline was by 14.7 percentage

6 Already today, respondents in a recent survey in India affirmed this. Of the respondents, 53.3 percent stated their belief that voters there are bribed fairly often or very often. In the same survey, 37.7 percent of respondents stated that they think voters are threatened by violence at the ballot box fairly often or very often (World Values Survey 2014).

points from 53 percent to about 38.3 percent as far as the share of respondents expressing “a great deal” or “quite a lot” of confidence was concerned.

India has long grappled with the issue of malfeasance in public life, especially with both political and administrative corruption. The scandals of the last one-and-a-half decades have revolved around such acts as the diversion of funds from a provident fund by, among others, retired and sitting judges of the Allahabad and Calcutta High Courts, the misappropriation of funds from public works programs, the illicit financial aid given by local politicians to the “mining mafia” in the southern Indian state of Karnataka, as well as the prosecution of a high-ranking administrative official from the state of Jharkhand by prosecutors in the neighboring state of Bihar. The sheer number of scandals logically begs the question of whether this is merely indicative of a larger trend toward more political and administrative malfeasance overall, including that of corruption in the form of bribe-taking, and/or of a public culture that supports, or at least tolerates, such behavior.

In light of the recent anticorruption movement led by Anna Hazare in 2012 and the subsequent electoral successes of the Aam Admi Party in state elections on the basis specifically of an anticorruption platform, it would seem short-sighted to interpret corruption, and the connected phenomenon of the criminalization of Indian electoral politics, as an expression of a permissive Indian culture — as evidenced by an apparent greater tolerance on the part of Indian voters vis-à-vis these deleterious practices. In all likelihood the moral rejection of corrupt practices by the Indian citizenry, coupled with the view that much of the Indian state apparatus is already corrupt (with negative performance evaluations thereof), will have at least in part contributed to the relatively unfavorable overall impression evinced in Table 1 below. Since tolerance of corruption and crime is ultimately not a very convincing explanatory factor for the growing number of criminals running for elected public office in several Indian states, other socioeconomic — as well as genuinely political — factors thus assume greater importance in the quest to account for the observable trend of increasing numbers of criminal candidates and legislators now being active in Indian politics.

Related Work and Hypotheses

A number of studies have highlighted possible causes of the growing influence generally wielded by criminals in Indian electoral politics, and more specifically of the growing number of criminals acting as candidates and legislators. One of the more detailed studies of the phenomenon is that of Golden and Tiwari (2009). While controlling for other possible factors, Tiwari and Golden consider the overall increase in the number of tainted candidates in many of the country’s electoral districts to be the consequence of a strategic response by the Indian political party elites who nominate such candidates in each individual electoral district. Based on a district-level analysis they discern two particularly important factors herein, ones

which in their view drive parties to consider selecting candidates with criminal backgrounds: 1) how well informed voters are likely to be, as measured by local literacy levels and 2) the chances of winning a district, as discerned by the political parties nominating the candidates.

The latter variable is measured by the electoral distance of each party from victory in each district in the previous general election. Thus, the smaller the margin of victory of winning candidates in a district in the previous legislative election the greater the incentive would seem to be for a political party to nominate a candidate with a criminal background in that district. Such an individual might be able to secure a win due to his or her greater available (illicit) financial resources or due to the social networks that he or she can mobilize during the campaign (see Vaishnav 2014). Golden and Tiwari also show that nominations of such candidates are more likely to occur in districts with lower levels of literacy. Since this study here focuses on legislators — that is, successful candidates in national legislative elections — rather than on candidates per se, the arguments here will have to be made somewhat differently. Instead of a mainly agency-driven view focusing on elite decision-making, this study will employ insights from that school of thought in conjunction with a perspective that also emphasizes the relevance of region-specific, system-level contexts.

This study is premised on several basic assumptions, ones that also underlie Tiwari's and Golden's own work. It is taken to be true that voters can be grouped into one of the following categories regarding their choice between candidates with and without criminal backgrounds: 1) those who do not know the difference, 2) those who do not care, and 3) the rest of the electorate. Many, if not most, voters will not know whether candidates have such criminal backgrounds or not, since they rarely — if ever — read newspaper articles or watch and extensively discuss political news programs. Second, it is assumed that even if these voters knew about the issue of criminals running in an election, other more pressing issues — such as patronage on the basis of ethnic group ties — will frequently trump the criminality of candidates and legislators in terms of importance when deciding who to vote for (see Vaishnav 2014). Both the lack of information and the lack of concern function as enabling conditions, and will tend to minimize the importance of criminal backgrounds in most voters' minds at the time of an election. Keeping these circumstances in mind, the growing percentage of tainted legislators found in India's national legislature being elected from the various federal states is thus taken to be primarily an outcome of two interrelated processes — namely candidate selection by political parties and voter behavior.

Candidate Pools

The first hypothesis thus concerns the issue of the number of tainted candidates being put forward in all of the federal states. It is logical that, all other things being

equal (that is, not taking into consideration the merits of being untainted, the ideological affinities between voters and candidates, and so on), large numbers of tainted candidates competing in a district-level election should make the coming to office of a tainted candidate more likely to occur. Thus, it seems more likely that tainted legislators will be elected from districts, and *mutatis mutandis*, from states with a higher average number of tainted candidates per district. Based on these considerations, it is safe to assume that, to some extent, the number of tainted legislators elected to the national legislature from a specific federal state will be a function of the percentage of tainted candidates (Hypothesis 1a) or of seriously tainted candidates (Hypothesis 1b) there relative to the total number of candidates running for office in that state.

National-level Criminalization as a Trickle-up Effect of State-level Taint

The second hypothesis is that higher levels of tainted candidates and legislators in national-level elections are more likely to exist in states where the state-level political elite are thoroughly tainted already. Very early state-specific studies already documented the electoral campaign nexus between candidates for state-level legislative office and criminal organizations from the 1980s onward (Verma 1991). While one can remain agnostic about the exact nature of the mechanism at play in this context, the trickle-up pattern envisioned here could be conceived as follows: In India, even in the more centralized BJP, state-level powerbrokers such as chief ministers, party leaders, and Members of Legislative Assemblies (MLAs) exercise influence over, and are consulted in, the process of candidate selection at different levels of the intra- and inter-party process. State-level party elites in those states that already have a sizeable percentage of tainted MLAs would be more likely to be open to exercising their influence over the nomination process for party tickets in favor of tainted candidates in national elections, for example because those candidates offer them monetary or other incentives to do so. On the other hand the emergence of more tainted candidates aspiring to national office would also seem more likely, since a sizeable proportion of ambitious (and possibly tainted) regional politicians increasingly these days see state-level office as a springboard for national ambitions (Chopra 1996: 168–169).

Hence if the political process at the state level has already been tainted, over time this phenomenon can also be expected to produce similar consequences at the higher national level. State-level patterns thus begin to impact candidate nomination processes in national elections as well. If there are more legislators with criminal backgrounds to be found in the state-level legislatures, this might also indicate that voters in those federal states are not averse to voting for tainted candidates. Hence it is assumed that the higher number of candidates with criminal backgrounds elected as MLAs in a region prior to the 2009 election coincides with higher percentages of

elected national legislators with criminal backgrounds from that region in 2009 (Hypothesis 2). This study will now consider a range of alternative relationships, by way of reference to the state-specific levels of criminalization of national legislators against the backdrop of the above proposed hypotheses.

Money Matters

A third way in which criminal candidates might provide an edge to a party's electoral campaign, and hence might seem attractive despite their less-than-clean record, is their potential access to extensive funds. Golden's and Tiwari's work (2009) actually shows that tainted candidates are more likely to be successful than nontainted ones are. Assuming that tainted candidates can provide (illicit) financial resources for the purpose of winning elections and for other ends beside, it would make sense for parties to nominate such candidates if money was a particularly important factor in winning elections. In the absence of any reliable speculations about the extent of, and amounts involved in, illegal campaign finance, it is assumed that money is important in Indian elections. The following hypothesis (no. 3) presupposes that parties and candidates equally assume that, across the board, "money matters."

This would produce a double effect. Candidates are likely to be more successful when they are rich, and thus candidates with criminal backgrounds (and perhaps with access to additional "black" or "hidden" campaign money) can provide that necessary "monetary edge" for winning elections in states where candidates have had a lot of money historically. Also, if this logic is widely shared among party decision-makers, this might lead to a herding effect, where nominating tainted candidates becomes almost the only game in town for any party wanting a realistic chance of winning in certain districts. The hypothesis, then, is that the higher the average assets that candidates claim to own in each state, the higher the number of elected legislators with a criminal background will be (Hypothesis 3).

States as Criminal Milieus

Another factor that might explain the emergence of criminal candidates and elected representatives across all federal states is the overall level of crime nationwide in India, as well as the level of corruption in each of these states. Tainted candidates and successful candidates would thus mirror their respective states. The circumstances in states where crime rates are higher might, on the one hand, encourage parties to nominate more candidates with criminal backgrounds because of a lack of available alternatives in the pool of potential political leaders, or because they believe that citizens will not see the criminality of candidates as a decisive (negative) factor in their voting choice. The same logic might also hold true in a region marred by high crime rates overall. Hence, Hypothesis 4 states that the higher

the level of crime in a region, the higher the number of legislators with (serious) criminal backgrounds will be.

Criminalization as a Response to Political Competition

Golden and Tiwari (2009) emphasize the importance of the margin of victory of the winning candidates at the district level relative to each party's strength during the previous election. They see this as prompting parties to consider nominating candidates with criminal backgrounds in situations where they feel they might be equally likely to win in the current election cycle as they might be to lose. Hence "criminalization via nomination" should be expected in situations where the margin between a party's vote share and that of the winner or the runner-up, as the case may be, is sufficiently small for parties to set aside any qualms about the morality of nominating a viable but tainted candidate. I extend this hypothesis to the state level and assume that it might make less sense for parties (both large and small alike) to try and get an edge over their competitors by using tainted candidates when (statewide) there is generally not much of a chance of them winning. Thus in states where the average margin of victory of winning candidates is rather large — in other words, in states with many "safe districts" — it is expected to see fewer such candidates and in consequence fewer legislators elected from such states. It is assumed that the more decisive the winning candidate's victory during the previous election cycle (in terms of average winning margins, here meaning in the 2004 Lok Sabha election) was in each region, the lower the number of legislators with (serious) criminal backgrounds will be (Hypothesis 5).

Levels of Poverty

Levels of poverty might also influence the number of elected tainted legislators in two ways. First, voters might be swayed to plump for candidates with criminal backgrounds who offer them monetary incentives — just as they might be swayed in favor of noncriminal candidates through vote-buying as well. In the poor regions of India, material considerations might trump moral ones in determining voter choice — even when candidates do not offer to buy votes. This might allow parties to consider nominating tainted candidates, and might make voters elect such persons — possibly doing so despite having moral misgivings about the candidate's criminal past. As such I expect that the higher the poverty rate in a region, the higher the number of elected officials with (serious) criminal backgrounds will be (Hypothesis 6).

Criminalization as a Peril of Economic Success

Lastly, Hypothesis 7 speaks to the idea of a nexus between the per capita wealth of a region and the prevailing level of corruption there. This in turn could conceivably foster an environment in which more candidates with criminal backgrounds might

run for public office (and succeed). This could be due to those parts of India recently becoming wealthier attracting a certain breed of politician to public office, namely those who are even more self-interested and who see elected office primarily as an opportunity for personal gain rather than for public service. In other words, these settings might attract the type who could *ceteris paribus* be more likely to have a criminal past. Thus one might alternatively hypothesize that the higher the per capita wealth in a region, the higher the number of candidates with (serious) criminal backgrounds will be.

Measurement and Data

Information on 28 states and union territories of India, covering well over 95 percent of the Indian population, was used for this study. The states of Goa, Tripura, and five smaller union territories are not covered here. The analysis is done at the state level rather than at the electoral district one for three reasons: First, regional — in addition to district-level — factors ought to be considered in any explanation of the criminalization of Indian electoral politics, and those can be better captured at the state level of analysis. One reason for this is that a lot of data on socioeconomic characteristics is not easily available at the country's electoral district level, and further because states have for a long time now been seen as quasi-laboratories of policymaking and as distinct arenas of socioeconomic and political development (Kohli 1987).

Second, many national electoral districts were redrawn in the years between the 2004 and 2009 elections. This makes a comparison of national electoral districts over time extremely difficult. The same is not true for a comparison using the state level of analysis, however. Finally, in order to investigate the possible nexus of the criminalization at the state and the national levels of politics then processes that operate in two types of electoral districts — those of the state legislative assemblies and those of the Lok Sabha — need to be scrutinized. These electoral districts are not congruent, and, hence, the state level of analysis seems to be the only feasible one for this type of analysis at present. More so since it is also assumed that supralocal — meaning regional or state-level — elites inject themselves into the selection process for national election candidates, thus counteracting the influence of local and national party elites to at least some extent.

To analyze the above hypotheses, this study draws on a variety of data sources. The first type thereof concerns information on the backgrounds of candidates running in Indian national and state-level legislative elections. In 2003, as a result of a public interest litigation case initiated by the Association for Democratic Reforms (ADR), the Supreme Court of India ruled, on appeal, that all candidates contesting national and regional elections must file sworn affidavits about their financial assets. Further, they were now required to disclose their personal and criminal backgrounds to the Election Commission of India and to the respective state-level election

commissions, along with their nomination papers and deposits.⁷ The information provided in these affidavits forms the knowledge base of this collection of data.⁸ A detailed breakdown of the variables and data sources can be found in the appendix to this article. Before outlining some of the correlates of criminalization across regions, a look at the overall national picture of the growing number of candidates with criminal backgrounds in Lok Sabha elections will provide an initial descriptive overview of the current situation.

Criminalization since 2004 — A National Overview

A number of observations stand out when looking at the overall national figures regarding the running for office of candidates with criminal records (see Table 1). First, the share of candidates with criminal backgrounds has grown steadily from 8.88 percent in the 2004 general elections to 14.8 percent in 2009 and 17 percent in 2014. Of the 1158 candidates in the 2009 Lok Sabha elections with criminal charges filed against them, 608 (52.5 percent of tainted candidates and 7.4 percent of all surveyed candidates) reported being tainted with serious charges or convictions (murder, fraud, assault, extortion, and the like) in their affidavits.

Table 1: Criminalization in National Elections Since 2004

Indicator	2004	2009	2014
Candidates with Criminal Charges	8.9	15	17
Candidates with Serious Charges	n/a	7.8	11
Legislators with Criminal Charges	23.6 (128)	30 (162)	34 (186)
Legislators with Serious Charges	11 (58)	14 (76)	21 (112)

Note: Cell entries represent percentages with absolute numbers in parentheses.

Source: Based on ADR's *National Election Watch* 2004, 2009 and 2014 reports.

The three most egregious self-declared backgrounds of actually elected candidates in 2009 included Kameshwar Bhaita from Jharkhand, with a total of 35 charges including 11 related to murder, Jagdis Sharma from Bihar, with six charges related to fraud, and Bal Kumar Patel from Uttar Pradesh with ten charges — involving, among other things, one charge each for murder and kidnapping and multiple charges of fraud. The second finding concerns the partisan affiliation of candidates with (serious) criminal records. Two different pictures emerge from the numbers, each depending on the perspective that one employs. The first analyzes which political parties contribute significant numbers to the pool of tainted candidates and legislators overall. The second perspective, meanwhile, focuses on the issue of what percentage of different parties' (national versus non-national, and so on) legislators in the Lok Sabha have been accused of (serious) crimes; this will follow below.

⁷ Union of India vs. Association for Democratic Reforms, Civil Appeal No. 7178 of 2001.

⁸ Thanks are due to the ADR for making the data available to the author.

National parties, as defined by the Election Commission of India, nominated 43.05 percent of all candidates with criminal backgrounds in 2004.⁹ When looking only at the two truly national parties with pan-Indian electoral support, the INC and the BJP, the number of such candidates is reduced to 37.3 percent. In the 2009 general elections, 46.07 percent of all criminal candidates were nominated by national parties and 40.31 percent of candidates with serious criminal charges were nominated by the INC and BJP alone. During the period under investigation, then, national parties were no less involved in the selection of increasing numbers of tainted candidates than other parties were.

Table 2: Party-wise Breakdown of Criminalization of MPs

Category	2004	2009	2014
BJP, of all Tainted MPs	21.9 (n/a)	27.2 (25)	53 (56.3)
INC, of all Tainted MPs	18.8 (n/a)	27.2 (17.1)	4.3 (2.7)
Other Natl. Parties, of all Tainted MPs	17.2 (n/a)	9.9 (15.8)	5.9 (4.5)
Other Parties/Independents, of all Tainted MPs	42.1 (n/a)	35.7 (42.1)	36.8 (36.5)
BJP MPs, Tainted	21 (n/a)	38 (16)	35 (22)
INC MPs, Tainted	17 (n/a)	21 (6)	18 (7)
Other Natl. Parties' MPs, Tainted	27.1 (n/a)	23.1 (n/a)	68.8 (31.3)
Other Parties/Independent MPs, Tainted	30.2 (n/a)	47.3 (n/a)	48.8 (20.4)

Note: Cell entries are percentages (numbers for the “serious” category are in brackets). Author’s calculations based on ADR’s National Election Watch 2004, 2009 and 2014 reports. Explanation: In 2004 21.9% of Tainted MPs belonged to the BJP, while 21% of BJP MPs were tainted.

In 2004, 128 (or 23.6 percent) of the 543 elected members of the Lok Sabha had self-reported criminal charges, as Table 2 (above) shows. That level rose to 162 (or 30 percent) in 2009 and 185 (34.1 percent) in 2014. In 2004, 86 of the 128 legislators with criminal backgrounds (or 67 percent) were affiliated with parties that at the time were classified as national rather than state-level or other parties by the Election Commission of India. In 2009, the number stood at 105 (or 64 percent of all tainted candidates). The bulk of all the tainted legislators were affiliated with either the INC or the BJP. Among the 128 MPs with criminal charges in 2009, 27 percent were members of the INC. This calls into question the idea that the 2009 pre-election efforts of party leaders such as Rahul Gandhi to keep tainted candidates from running on Congress “tickets” paid off in any substantial way.¹⁰ In 2014 fully 53 percent of all tainted MPs and 56.3 percent of all seriously tainted MPs were members of the BJP, while only 2.7 percent of the latter type belonged to the INC. From this perspective, the two largest Indian parties contributed significantly to the

⁹ Bahujan Samaj Party (BSP), Nationalist Congress Party (NCP), Communist Party of India/Marxist (CPM), and Communist Party of India (CPI).

¹⁰ Sharma (2010) makes this claim with regard to the 2009 elections, and points to parties like the BSP and the Rashtriya Janata Dal (RJD) as being the main promoters of a criminalization of politics instead.

overall number of (seriously) tainted legislators — and in line with their combined seat shares. The BJP at this time clearly has the bigger problem with tainted legislators being present among its ranks than the INC does, as Table 2 shows. The other national parties in 2014 accounted for 4.5 percent of all seriously tainted MPs, and all other parties accounted for 36.5 percent of all such seriously tainted individuals.

On the other hand, as Table 2 also shows, the different (types of) parties are affected in different ways by the phenomenon of criminalization. The INC has been least affected when compared to the BJP, other national parties, and other parties in all three elections held since 2004. Especially in the 2014 election, the percentages of tainted and seriously tainted legislators among smaller national parties and other parties beside grew significantly. Thus while a large number of (seriously) tainted MPs continue to be affiliated with the INC or the BJP (though less so in the case of the INC, and especially in 2014), the extent to which the legislators of smaller national and non-national parties are tainted is significant — with numbers still growing, and in some cases now drastically greater than they were in the past. Despite the latter finding, overall these results confound the all-too-simplistic notion that the increase in criminal elements in Indian electoral and representative politics was mainly caused by the entry of smaller — and hence perhaps less scrupulous or transparent — political parties into the electoral fray there over the past two-and-a-half decades.

Criminalization — An Analysis of Regional Variation

When breaking the national picture down to the regional level so as to study the regional provenance of tainted national legislators, stark differences between the various Indian federal states quickly become obvious. Figure 1 (see appendix) maps the different levels of criminalization across India's regions in 2004 and in 2009. As the maps indicate, a significant regional clustering of high levels of tainted legislators in 2004 and 2009 is not really discernable. It is remarkable, however, that in the small northeastern states of India, those levels are almost uniformly low as compared to most of the rest of the country.

Table 3: Regional Variation in Criminalization in National Elections

	Tainted Legislators 2004	Tainted Candidates 2009	Tainted Legislators 2009	MPs With Serious Charges 2009
Top-5 States	Jharkhand 50 Maharashtra 41.7 Punjab 38.5 Bihar 37.5 Kerala 35	Jharkhand 31 Bihar 28 Kerala 22 Orissa 21 Gujarat 19	Jharkhand 57 Maharashtra 54 Bihar 45 Gujarat 42 U.P. 39	U.P. 28 Gujarat 27 Maharashtra 21 Karnataka 18 West Bengal 17

Note: All cell entries are percentages. U.P.=Uttar Pradesh.

Source: ADR's *National Election Watch* 2004 and 2009 reports.

Table 3 shows that the top-five states in the different categories of criminalization show some stability amid variation. For example, Jharkhand and Bihar appear in each of the first three lists. Gujarat ranks high in the latter three of the top-five lists, which speak only to the 2009 electoral landscape. Uttar Pradesh, on the other hand, stands out when looking at the criminalization of legislators in 2009 with both minor and major charges against them. The states that negatively stand out in at least three out of four of the criteria are: Bihar, Gujarat, Jharkhand, and Maharashtra. While this group includes both older as well as more recently created, richer and poorer, as well as geographically disparate states, at least two (Gujarat and Maharashtra) have shared the experience of extensive periods of communal tension — including riots between Hindu and Muslim sections of their respective populations. Bihar and Jharkhand (a part of Bihar until 2000) have been home to extended agitations and sometimes violent conflicts over the assertion of rights by the newly mobilized “former untouchables” (or dalits), Other Backward Castes (OBCs), and tribal populations — including in Maoist insurgencies. It may well be the case that these difficult-to-ascertain factors play a role in providing the backdrop to the kinds of volatile political process that combine traditional as well as contentious and less-than-savory methods of mobilization. In these, upwardly mobile powerbrokers with long charge sheets can emerge first as tainted candidates and then later as tainted legislators. Overall, however, the regional landscape of criminalization remains varied and murky, and clear trends based on geographic factors are difficult to discern at first sight.

The Correlates of Criminalization

Given the considerable variation in the levels of criminalization of candidates and legislators across regions in India, the question of possible linkages to other characteristics of political and social life in those regions thus assumes greater significance. Before going into the analysis of these possible connections, one fact that stands out is the stability of these levels of criminalization over time. A Spearman correlation shows a strong association of the levels of criminalization in the state-level candidate pools in 2004 and 2009 at .706 ($N=28$, $p<0.01$).¹¹ Across states, the levels of taint of national legislators in 2004 and 2009 correlate strongly at .794 ($N=28$, $p<0.01$). Finally, the levels of criminalization of members of regional assemblies (one of the independent variable indicators) between the pre-2004 and pre-2009 election cycles correlate very strongly at .948 ($N=15$, $p<0.01$), albeit with a smaller sample of observations since only 15 states elected new assemblies between 2003 and 2004 (after candidate affidavits became mandatory in 2003). This suggests that these different levels seem to have somewhat stabilized within states, indicating

¹¹ This rank order correlation coefficient ranges from -1 to +1. A score of +1 indicates a perfect positive relationship between two variables. Scores above 0.4 are considered an indication of a moderate relationship, scores above 0.6 of a strong one, and scores above 0.8 of a very strong relationship.

the possible significance of regional effects for the cross-state variation in this phenomenon.

Looking at the correlates of criminalization of national legislators (MPs) in 2004,¹² only the level of criminalization of MLAs stands out as very strongly and significantly related to it (Spearman's $\rho = .924$, $p < 0.01$, $N = 15$). The latter finding points to the fact that the criminalization of legislators is a phenomenon that transcends different levels of government. It is instead, potentially, a more general feature of politics in certain Indian states.

Table 4 (below) details the correlates of criminalization in 2009. When examining the variation in the state-wise criminalization levels of legislators in the 2009 national elections (Column 2), poverty seems to be moderately and significantly correlated with it. As expected in H5, the respective 2004 winning vote share margins of the successful candidates in each state are also moderately — but inversely — related to the levels of general criminalization of elected legislators. The following analysis will now concentrate mainly on the levels of seriously tainted legislators as the dependent variable, since these individuals seem to warrant the greatest concerns regarding their negative effects on the quality of India's democracy.

Table 4: Bivariate Correlates of Criminalization 2009

	(1) Expected Sign	(2) Tainted MPs, 2009	(3) Tainted MPs (Serious), 2009
Tainted Candidates '09 (H1a)	+	.639**	.563**
Tainted Candidates '09, Serious (H1b)	+	.603***	.640***
Tainted MLAs '09 (H2)	+	.690**	.609**
Tainted MLAs '04 (H2) (n=15)	+	.839**	.750**
Average Assets '09 (H3)	+	.186	.266
Crime Rate (H4)	+	-.238	-.280
Winning Vote Margin '04 (H5)	-	-.373*	-.230
Poverty Rate (H6)	+	.424*	.337*
Per Capita Wealth (H7)	+	.003	.072

Source: Various, see the section on data and measurement. Author's calculation.
N=28. Spearman's Rho. * $p = .05$, ** $p = .01$, *** $p = .001$.

Hypothesis 1 is supported by a strong relationship between the number of tainted candidates and that of seriously tainted elected legislators in the states. This suggests that to some extent the electoral success of seriously tainted legislators is simply a function of the high numbers of tainted candidates running in elections; in other

¹² The results of this analysis are not listed here, but are available from the author upon request.

words, there is perhaps a lack of alternatives for voters to choose from. At the same time, the level of criminalization of MLAs in 2004 (Table 4; $\rho=.750$) and 2009 (Table 4; $\rho=.609$) is both strongly and significantly positively correlated with 2009 state levels of elected MPs who have serious criminal charges. The latter may indicate a trickle-up effect during the first phase of national-level criminalization. The fact that the relationship appears to have weakened between 2004 and 2009 suggests, however, that this effect might have been temporary, and furthermore that national-level criminalization is now a much broader phenomenon — while the differences between states might have by today become smaller.

The fact that for the states of Karnataka and Haryana the trends regarding state-level criminalization (a decreasing percentage of tainted MLAs) and national-level criminalization (an increasing percentage thereof) point in opposite directions also speaks to this possible trickle-up effect. However, a correlation of the level of national legislator criminalization in 2009 with the percentage of MLAs who had criminal backgrounds in 2004 and earlier (the smaller set of 15 States for which both types of data are available) shows a strong and significant relationship between both indicators ($\rho=.750$, $p<0.01$). This suggests that consistently high levels of tainted MLAs across states has a lasting relationship with the similarly high levels of seriously tainted national legislators being elected from those states. The fact that in most parties (even in the most centralized organization, the BJP), state-level party elites and legislators wield considerable influence over who is nominated may also account for state-level trends in criminalization being reflected in the national-level electoral successes of seriously tainted candidates.

As Table 4 also shows, there is no significant evidence to support Hypothesis 4. It sought to link state-wise crime levels and legislator criminalization, although the negative coefficient suggests that the assumption of an inverse relationship was perhaps not unfounded at least. Also, while the directions of the relationship of the state-level average assets of candidates with the dependent variable is as expected, it is nevertheless not significant. There is somewhat more support for the assumption of an association of poverty levels, the state-level average winning margins of candidates in the previous elections, and of the average winning vote shares with the dependent variable. Correlations of additional indicators — such as inter-election volatility levels, literacy levels, and the vote shares of national versus regional and local parties across states — with the same dependent variable indicators did not produce strong or significant results worth documenting here. It is obvious from Table 4 that there is a strong relationship between the statewide numbers of tainted national candidates as well as of MLAs with criminal backgrounds up to 2004 and 2009 on the one hand, and those of tainted and seriously tainted national legislators elected from the various states on the other — as anticipated in Hypotheses 1 and 2. This begs the question of what (if any) association remains between the seemingly important factor of the number of seriously tainted candidates (X) and national legislator criminalization (Y), when controlling for the percentage of tainted MLAs

in each state (Z). A partial correlation, holding the share of tainted MLAs constant, yields the following partial correlation coefficient: $r(xy.z) = .392$ ($p < 0.05$).

The drops in the significance level and in the correlation coefficient suggest that the share of tainted legislators in the state assemblies modifies the relationship of the average number of seriously tainted candidates to that of tainted national legislators elected to the Lok Sabha from the various states. The partial correlation suggests that the level of criminalization of the regional political elites in the states, as measured by the percentage of regional legislators (MLAs) with a criminal background, acts as an antecedent variable in this case. This leads to the conclusion that both independent variables are partial explanations for the variance of seriously tainted national legislators across the different states for the 2009 election.

In the face of the regional variation of the level of criminalization among national legislative elites, and given the picture regarding the correlates of this criminalization, one important fact remains. That is, the phenomenon of a growing criminalization discernible in the state-level legislatures is being mirrored at the level of national legislative elections. Also, states are somewhat consistent in what percentage of candidates with a criminal background get elected at each level. This suggests that this phenomenon is not a passing one, but rather has deeper and more lasting roots in the political systems of the various regions of India. This indicates a deeper penetration of these political arenas, rather than it affecting only one level of elections and representation — namely the national one.

Conclusion

The discussion presented here yielded a number of interesting insights into the extent, the correlates, and the consequences of the candidatures and election of politicians with serious — as well as with minor — criminal charges and convictions against them across India's federal states. First, it seems clear that since 2004 (but likely before then as well) there has been an increasing criminalization of the electoral process and of representation, in the form of larger numbers of tainted candidates and legislators reporting criminal backgrounds in their affidavits. Particularly disturbing are the growing numbers of candidates and legislators reporting serious charges and convictions as part of their affidavits. Second, a noticeable variation in the levels of criminalization of candidates and legislators across states was observed, although geographic concentrations were not really discernable.¹³

A moderate negative association exists between the criminalization variables and the levels of taint of national legislators elected from the various Indian states on the one

13 Beside the visual analysis based on the maps of criminalization, I also conducted a battery of tests using hierarchical cluster analysis. This also yielded no clear groupings of states similar along a number of variables.

hand, and the levels of electoral competitiveness across states on the other. Though measured at a higher level of aggregation here (at the state level), the latter confirms a finding pointed out in a previous district-level study by Golden and Tiwari (2009). The most important finding was perhaps the fact that the provenance of Indian national legislators and candidates in national elections, who declared criminal backgrounds in their affidavits before the national elections in 2004 and in 2009, was clearly linked to the levels of state-level legislators (MLAs) with criminal backgrounds in the respective states. This points to the need for further studies probing the nexus between state-level political processes, such as candidate selection, and regional variations in the Union levels of taint of members of the Lok Sabha. However, correlating only the states' percentages of legislators with serious charges and convictions showed that most of the other hypotheses were equally weakly or entirely unsupported when looking at them as system-level characteristics measured at the state level, with the exception of those about MLA criminalization and the number of tainted national candidates active.

Perhaps some of the appeal that candidates with criminal charges have for parties and voters can be explained by reference to the protest movements from which this subset of politicians grew. For certain groups of voters, protest — and the occasional use of illegal means in politics — are legitimate and necessary tools in a political struggle, and do not, in their mind, taint but rather actually ennoble these leaders. However, most charges and convictions across India actually do not stem from such activities and could therefore hardly be explained away so easily. Instead, an anecdote from the recent 2014 election might illustrate the nexus between the taint of state-level elites and MLAs and national-level criminalization. In the Kerala constituency of Thiruvananthapuram, the Communist Party of India nominated a relative outsider to run under its party label in the 2014 elections (Jayaraj 2014). It was subsequently alleged that the candidate, who had criminal charges pending against him and who was a well-to-do physician and member of the Church of South India with considerable influence in his local community, had bought the party "ticket" with his great wealth and with the promise of bringing a vote bank of Christian voters with him to the CPI's fold. One of the political fixers who is alleged to have facilitated this was C. Divakaran, a sitting member of the Kerala State Assembly and himself facing criminal charges, together with another (as yet untainted) MLA and the State Secretary of the Kerala CPI, Paniyan Ravindran.

One research angle that definitely needs further investigation is the influence of the level of institutionalization of party organizations across states on the number of criminalized politicians running for and winning office at the national level. Betz (2005) has pointed to this growing criminalization as being one consequence of India's relatively noninstitutionalized party system overall and of parties as organizations, and furthermore as a price for the consolidation of the democratic process as such. It seems plausible that the large numbers of tainted candidates active in elections and the success that candidates with serious criminal charges

against them have with voters could both be related to the relative functionality of political parties as selection apparatuses. Golden and Tiwari (2009) and Vaishnav (2014) provide a theory based on strategic incentives for why parties might actually prefer selecting criminals in certain electoral scenarios. On the other hand (and not incompatible with that view), this study demonstrated the fact that and theorized how criminalization could actually be a trickle-up effect from state-level elites who are already tainted by criminal charges or convictions to national-level parties and legislative elites. In some states, the selection of viable candidates without criminal backgrounds by political parties definitely seems to work better than it does in others. What the exact reasons are for this remains open to — indeed, urgently requires — further investigation.

Dutta and Gupta's work (2012) indicates that voters do punish candidates at the ballot box for their criminal backgrounds to some extent, but only in those constituencies where they clearly stand out as candidates with such tainted records as compared to others who are "clean." The Congress Party made a conscious effort in 2014 to reduce the number of tainted candidates among its ranks by introducing comprehensive grassroots candidate selection processes. It was not rewarded for these efforts in the 2014 general elections. Unless and until future reforms of Indian political parties' internal functioning as well as a growing pushback from civil society are able to curb this growing criminalization among candidates and legislators of all parties alike, this overall trend — as well as the correlates that seem to influence it — will continue to pose serious challenges for the quality of the world's most populous democracy, with it hence perhaps also being the most important non-Western one anywhere.

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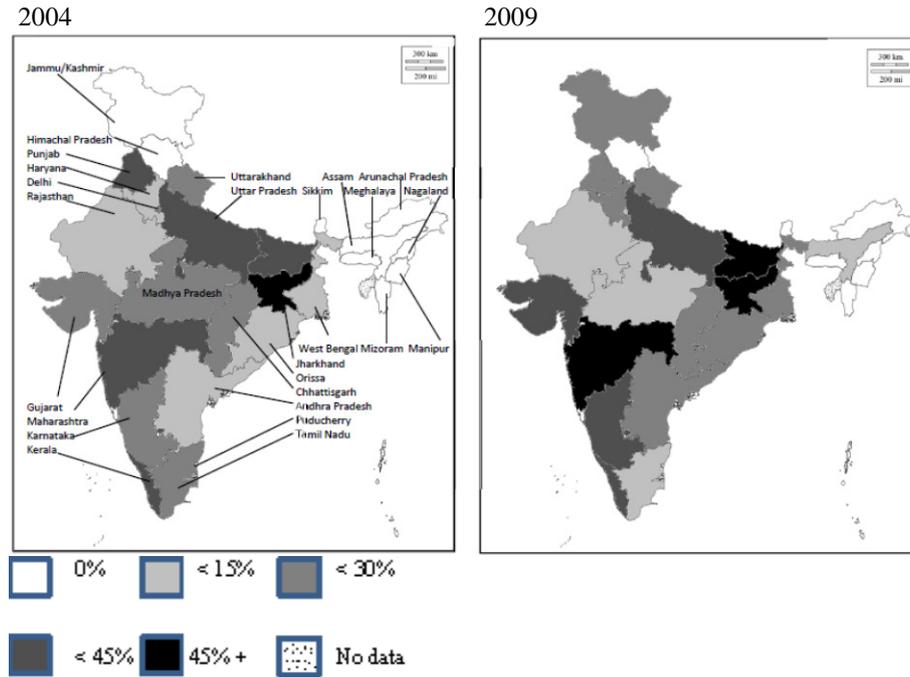
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APPENDIX

Figure 1: Shares of Tainted National Legislators from States and Union Territories



Source: Own depiction. Colors denote the share of tainted MPs elected in each state/UT relative to the total number elected from that state/UT. Criminalization data compiled from ADR's Lok Sabha Election Watch reports 2004 and 2009 as well as from the Liberty Institute's online database (<http://www.empoweringindia.org/new/home.aspx>).

Note: The maps depict areas claimed and presently occupied by Pakistan and the People's Republic of China as part of the territory of Jammu and Kashmir. This is done without prejudice to those legal and political claims and merely follows conventional practice in all maps used for official purposes by Indian authorities.

Figure 2: Variables, Indicators and Sources of Data Material

Variable	Indicator	Data Source
Criminalization/Taint of MPs	Share of MPs with declared criminal backgrounds	ADR 2010, ADR 2004, Liberty Institute 2015
	Share of MPs with declared serious criminal backgrounds	ADR 2010, ADR 2004, Liberty Institute 2015
Criminalization/Taint of Candidates	Share of candidates with declared criminal backgrounds	ADR 2010, ADR 2004, Liberty Institute 2015
	Share of candidates with declared serious criminal backgrounds	ADR 2010, ADR 2004, Liberty Institute 2015
Criminalization/Taint of MLAs	Share of MLAs with declared criminal backgrounds by State in elections between 2005 and 2009	Liberty Institute 2015
	Share of MLAs with declared criminal backgrounds by State in elections between 2003 and 2004	Liberty Institute 2015
Candidate Assets	Average declared assets per candidate by State in 2009 affidavits	ADR 2010, Liberty Institute 2015
Crime Rates	Murder rates in 2008-09 relative to populations size by State	Government of India 2009
Competitiveness of Political Environments	Average margin of victory of district winners over second place candidates by State in 2004 Lok Sabha election	Liberty Institute 2015 (and author's calculations)
Poverty	Share of persons living below the poverty line during the 2008-09 period	NSSO Consumption Survey 2008-09, (both MRP and URP recall method)