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Ineffectiveness in Curbing Criminalisation of Politics

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This article is based on **“Crime and politics: on political candidates with criminal records”** which was published in The Hindu on 28/01/2020. It talks about reasons for failure to curb criminalisation of politics in spite of a series of landmark judgments by the Supreme Court on addressing this issue.

Recently, the **Supreme Court** agreed to examine a proposition made by the **Election Commission of India (ECI)** to ask political parties to not give the ticket to those with criminal antecedents. Over the years, the Supreme Court has passed many judgements that sought to curb **criminalisation of politics**, but the extent of the problem has not been eliminated.

The recent report by the **Association for Democratic Reforms** has highlighted the **urgency of the issue**. The report stated that:

- **46% of Members of Parliament have criminal records** (including minor offences like “unlawful assembly” and “defamation”).
- Current **Lok Sabha MPs have the highest (29%) proportion** of those with serious declared criminal cases compared to its recent predecessors.

Landmark Judgments

- The Supreme Court in **Public Interest Foundation vs Union Of India, 2018** had directed political parties to publish online the pending criminal cases of their candidates.
 - The Supreme Court concluded that rapid criminalisation of politics cannot be arrested by merely disqualifying tainted legislators **but should begin by “cleansing” the political parties**.
 - It suggested that **Parliament frame a law that makes it obligatory for political parties to remove leaders charged with “heinous and grievous” crimes like rape, murder and kidnapping and refuse ticket to offenders in both Parliamentary and Assembly polls**.

- In 2017, it asked the Centre to frame a scheme to **appoint special courts** to exclusively try cases against politicians, and for political parties to publicise pending criminal cases faced by their candidates in 2018.
- In 2013, the Supreme Court in the case **Lily Thomas vs. Union of India** ruled that a sitting MP and MLA convicted of a jail term of two years or more would lose their seat in the legislature immediately.
 - Further, Section 8(4) of the Representation of the People Act 1951, which allowed elected representatives three months to appeal their conviction, was declared unconstitutional.
 - The Supreme Court held that, if a lower court has convicted an individual, he cannot contest an election unless a higher court has overturned his conviction. Simply filing an appeal against the judgment of the lower court is not enough.
- The Supreme Court in **People's Union for Civil Liberties vs. Union of India, 2013** ruled that voters should have the option of **"None of the above (NOTA)"** on the Electronic Voting Machines (EVMs) to ensure the option for those who don't find any candidate suitable.
- The Supreme Court directed the Election Commission to bring the issue of election-related **'freebies'** under the ambit of the Code of Conduct.

Why the criminalisation of politics is still prevalent?

Lack of political will: Representation of the People Act, 1951, deals with disqualification of candidates against whom charges have been framed in court for serious offences. Therefore, in order to curb criminalisation of politics, Parliament needs to bring an amendment in the Act.

However, there has been an unsaid understanding among the political parties which deters Parliament to make strong law curbing criminalisation of politics.

Legal Aspect of Disqualification

Indian constitution does not specify as to what disqualifies a person from contesting elections for the Parliament, Legislative assembly or any other legislature. The Representation of Peoples Act which mentions the criteria for disqualifying a person for contesting an election of the legislature.

- **Section 8 of the act**, i.e. disqualification on conviction for certain offences, according to which individual punished with a jail term of more than two years cannot stand in an election for six years after the jail term has ended.
- The law does not bar individuals who have criminal cases pending against them from contesting elections therefore the disqualification of candidates with criminal cases depends on their conviction in these cases.

- With cases dragging in courts for years, a disqualification based on conviction becomes ineffective due to low conviction rate.
- **Use of muscle and money power:** Candidates with serious records seem to do well despite their public image, largely due to their ability to finance their own elections and bring substantive resources to their respective parties.
- **Narrow self-interests:** Some voters tend to view such candidates through a narrow prism: of being able to represent their community interests by hook or by crook.
- **Lack of Choices:** Sometimes voters are left with no options, as all competing candidates have criminal records.
- Relatively weak and half-hearted governance and delivery of public goods, which has allowed voters to elect candidates despite their dubious credentials.

Consequences of Criminalisation of Politics

- The major problem is that the law-breakers become law-makers, this affects the efficacy of the democratic process in delivering good governance.
- It also leads to increased circulation of black money during and after elections, diluting probity in public life.
- It introduces a culture of violence in society and sets a bad precedent for the youth to follow.
- These unhealthy tendencies in the democratic system reflect a poor image of the nature of India's state institutions and the quality of its elected representatives.

Former President Dr Rajendra Prasad held that *"If the people who are elected are capable and men of character and integrity, then they would be able to make the best even of a defective constitution. If they are lacking in these, the Constitution cannot help the country"*.

While judicial pronouncements on making it difficult for criminal candidates to contest are necessary, only enhanced awareness and increased democratic participation could create the right conditions for the decriminalisation of politics.

Drishti Mains Question

Discuss the reasons for the prevalence of criminalisation of politics in India.