



Special Courts for Trial against Legislators

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Why in News

Recently, a three-judge Bench of the Supreme Court has said that the setting up special courts to expeditiously try sitting and former MPs and MLAs accused of various crimes is in **public interest** and will enhance faith in judiciary.

The Bench was **considering a report filed by a committee of the Madras High Court** that raised reservations over the setting up of special courts to exclusively try legislators for various offences.

Key Points

- **Background:**

- In **2017**, the Supreme Court had **ordered that special courts be set up** across the country to **fast-track the long-pending trials of lawmakers**.
- Following this, **12 special courts were set up across 11 States** exclusively to try sitting MPs and MLAs.

The **special court in each State has jurisdiction over the entire State** while the two in Delhi cover cases within the precincts of Delhi or “partly Delhi”.

- In September 2020, **SC-appointed amicus curiae** (friend of the court), in his two reports, highlighted that despite the best efforts by the court to constitute special courts for trying cases against legislators, **close to 4,442 criminal cases involving 2,556 sitting members of Parliament (MP) and members of legislative assemblies (MLAs)** are pending. **Reasons** for delayed trial:
 - **Stays** granted by various high courts,
 - **Insufficient special courts** to exclusively try cases against MPs/MLAs,
 - **Shortage of prosecutors and latches in prosecution,**
 - **Delayed investigation.**
- Considering the reports, the **SC passed an order** that **criminal trials involving elected representatives** will be **monitored by a special bench of each high court** and in cases where a trial has been stayed, the special bench will hear and decide on continuing or cancelling the stay, preferably within two months.

Expediting cases against legislators is required not only because of the **rising wave of criminalization that is occurring in the politics** in the country, but also due to the **power that elected representatives** wield to influence or hamper effective prosecution.

- **Reservation of the Committee of the Madras High Court:** It has **questioned the constitutional validity** of setting up Special Courts to exclusively try MPs and MLAs for various crimes.
 - Special Courts can only be **constituted by a statute** and not by executive or judiciary.
 - The Special Courts **should be “offence-centric” and not “offender-centric.”**

For example, an MP/MLA, who commits an offence under the POCSO Act can only be tried by a Special Court created under the POCSO Act and there cannot be another Special Court exclusively for trial of an MP/MLA, who commits POCSO offence.
 - Further, it **questioned how one Special Court could cover the cases across all districts** of a State. Witnesses may face travelling and other issues.
 - It also referred to **how cases are filed and withdrawn in a State** when a government gets changed in that State.

Criminalization of Politics

- **Reasons:** Criminalization of politics in India includes political control of the police, state money, corruption, weak laws, lack of ethics, values, vote bank politics and loopholes in the function of the election commission.
- **Data Analysis:** According to the **Association of Democratic Reforms (ADR)**, nearly half of the newly-elected Lok Sabha members (2019) have criminal charges against them, a 26% increase as compared to 2014.
- **Legal Provisions:**
 - **Section 8 of the Representation of the People Act, 1951**, bans **convicted** politicians (for certain offences) from contesting. However, those facing trial, no matter how serious the charges, are free to contest.
 - According to **Article 102 (1) of the Constitution**, Parliament is obliged to make a law on the matter.
- **Related Orders by the Supreme Court:**

In February 2020, the Supreme Court **ordered political parties to publish the entire criminal history of their candidates** for Assembly and Lok Sabha elections along with the reasons that goaded them to field suspected criminals over decent people.

- **View of the Election Commission:**

- The **EC** had **supported the plea seeking life ban on politicians convicted in criminal cases.**
- The EC proposal to **bar candidates accused of an offence punishable with at least five years of imprisonment from contesting elections,** after charges are framed against them by a court, has been opposed by many parties.

The opposition is based on two grounds: ruling politicians will misuse this against the Opposition; and the law of the land assumes everyone to be innocent till proven guilty or convicted.

Way Forward

- As politics dominates the bureaucracy, and reins in business, civil society and the media, the country needs governance that is free of the “criminal” virus.
- Ensuring prosecution with public pressure may help. If one political leader is hauled up for giving tickets to large numbers of tainted candidates, something positive may happen.
- Further, there is a need to strengthen the Election Commission, EC can register a political party but cannot deregister it. Regulating the affairs of a political party is essential for a cleaner electoral process.

Source: TH