



Decriminalising the Politics

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The Supreme Court expressed displeasure over the Centre not giving details sought by it on setting up of special courts to exclusively deal with cases involving politicians.

- In November, 2017, Supreme Court had directed the Centre to set up special fast-track courts to exclusively try lawmakers and politicians facing criminal cases.
- The Supreme Court in December, 2017 directed the Centre to set up 12 special courts to exclusively deal with cases involving politicians and said that these should start functioning from March 1 this year.
- Earlier as per a March 2014 Supreme Court order, cases against politicians ought to have been disposed of within one year.
- Under the Representation of People Act 1951, a convicted person is disqualified for contesting elections for six years from the date of release from prison.

Criminalization of Politics

- It implies the criminals entering the election fray and contesting elections and even getting elected to the Parliament and state legislature.
- The criminals need the patronage of politicians occupying public offices to continue with their criminal activities and the politicians need the money and muscle power that the criminals can offer to the politicians to win elections. In course of time, the nexus led the criminals themselves to contest elections.
- This is perpetuated by inbuilt delays in the criminal justice system. It takes on an average 15 years for a criminal case to be finally disposed off by the courts.
- The rate of conviction in the country has been going down which means more and more criminals may go unpunished as their guilt is not proved beyond reasonable doubt in court of law. Thus, the known criminals are not legally prohibited from contesting elections.

Consequences

- The major problem is that the law-breakers become law-makers.

- According to Association of Democratic Reforms, about 34% of members elected to 16th Lok Sabha 2014, are facing criminal charges in court of law which makes the Parliament less efficient in enacting necessary laws for the effective administration of country. The Parliament loses its credibility and the Council of Ministers loses its legitimacy to administer the country.
- It also leads to increased circulation of unaccounted money or black money during and after elections, diluting the probity in public life.
- Further, it introduces a culture of violence in the society and sets a bad precedent for the youth to follow.

Election Commission's Measures and Recommendations

- In 1997, Election Commission directed all the Returning Officers (ROs) to reject the nomination papers of any candidate who stands convicted on the day of filing the nomination papers even if his sentence is suspended.
- The Election Commission recommended that if a person is found guilty by a Commission of Inquiry then he shall be disqualified from contesting elections.
- Further, Election Commission believes that if a court of law frames the criminal charges against the accused person then prima facie he might have been involved in the alleged crime, hence he should be disqualified from contesting elections.
- The First Past The Post (FPTP) electoral system shall be replaced by the 2-ballot system under which a candidate is declared elected from a territorial constituency on the basis of majority principle. If no one wins 50 percent of the vote, all candidates except the top two are excluded and voters are asked to vote a second time. In the second round, the candidate who wins the most votes is elected.
- The 2-ballot system will make winning election very difficult for criminals as they will have to garner the widest possible support from the voters to get the majority votes.

Judicial Measures

- In 2002, Supreme Court gave a historic ruling in **Union of India (UOI) vs. Association for Democratic Reforms** that every candidate, contesting an election to the Parliament, State Legislatures or Municipal Corporation, has to declare their criminal records, financial records and educational qualifications.
- In 2005, the Supreme Court in **Ramesh Dalal vs. Union of India** held that a sitting Member of Parliament (MP) or Member of State Legislature (MLA) shall also be subject to disqualification from contesting elections if he is convicted and sentenced to not less than 2 years of imprisonment by a court of law.
- In 2013, in **Lily Thomas vs. Union of India**, the Supreme Court held that Section 8(4) of The Representation of the People Act, 1951 is unconstitutional which allows MPs and MLAs who are convicted to continue in office till an appeal against such conviction is disposed of.

- In 2013 in **People's Union for Civil Liberties vs. Union of India** case Supreme Court asked Election Commission to provide 'none of the above' choice to voters to exercise their right to express no confidence against all candidates in fray.
- In 2014 Supreme Court recommends to PM/CMs not to include persons, against whom charges have been framed in serious offences, in their council of Ministers.
- In 2016, Supreme Court refers to 5-judge Constitution bench whether framing of charge in heinous crimes (which entails imprisonment of five years or more) against an MP or MLA would disqualify him. This also meant whether a person against whom charges framed in serious offences be debarred from contesting elections.