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Supreme Court on Criminalisation of Politics

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Why in News

Recently, the **Supreme Court** in the two different judgements has raised concerns about the menace of criminalisation in politics.

- In one case, it found **nine political parties** guilty of **contempt** for not following in letter and spirit its **February 13, 2020** direction.
- In another case, it has issued directions that **no criminal case against MPs or MLAs** can be withdrawn without an **approval of the high court** of the concerned state.

Supreme Court cracks down

The Supreme Court took up the issue of criminalisation in Indian politics in two separate cases on Tuesday. Key takeaways:

CASES AGAINST POLITICIANS: State govts cannot withdraw criminal cases against legislators without permission by the high courts, the court ruled

PARTIES PUNISHED: Nine parties - including the BJP, Congress, JD(U) and RJD - held guilty of contempt for incomplete disclosure on candidates ahead of 2020 Bihar elections. Eight of them also fined

The political parties refuse to wake up from deep slumber... Cleansing the polluted stream of politics is obviously not one of the immediate pressing concerns of the legislative branch of govt
- SUPREME COURT

A special bench at SC may be formed to monitor the cases involving accused MPs and MLAs, the apex court indicated



Modifying a 2020 order, SC said parties must make public criminal antecedents of candidates within 48 hours of their selection, and not prior to two weeks before nomination



Election Commission to create a mobile app for info on criminal antecedents of candidates

Country is "losing patience" as appeals have "fallen on deaf ears" to bring stricter laws to decriminalise politics, SC observed



Key Points

- **Case I: Political Parties Parties Penalised for Contempt:**
 - **February 13, 2020 Order:**
 - The February 2020 order **required political parties to publish details of criminal cases against its candidates** on their **websites**, a local **vernacular newspaper, national newspaper and social media accounts**.
 - This is to be done within **48 hours of candidate selection** or not less than two weeks before the first date for filing of nominations, whichever is earlier.
 - **Supreme Court's Directive:**
 - The court took a lenient view of the matter, as it was the first elections (Bihar assembly Elections 2020) conducted after issuance of its directions.
 - Directed political parties to have a caption “**candidates with criminal antecedents candidates**” on their **homepages**.
 - It asked **Election Commission of India (ECI)** to create a **dedicated mobile application containing information published by candidates regarding their criminal antecedents**.
 - The court appealed to the conscience of the lawmakers to **come up with a law tackling the criminalization of politics**.

- **Case II: Approval of High Court for Withdrawing Criminal Cases against MPs/MLAs:**
 - **Background:**
 - The Bench was hearing a **pending PIL (Public Interest Litigation)** seeking **establishment of fast-track courts for cases against legislators.**
 - In **November 2017**, the **Supreme Court** had ordered **setting-up of Special Courts in each state to try the pending cases.**
 - Accordingly, **12 such courts** were set up across the country.
 - **Supreme Court's Directive:**
 - Examine the withdrawals, whether pending or disposed of since last year.
 - **High court Chief Justices** to constitute **Special Benches to monitor the progress of criminal cases against sitting and former legislators.**
 - **Judicial officers** presiding over **Special Courts or CBI Courts** involving prosecution of **MPs or MLAs** shall **not be transferred until further orders.**
 - Asked all the **high courts** to **furnish details of posting of judges** and the **number of pending and disposed cases** before them.
 - **Significance of the Judgment:**

It was a move that **significantly clips the powers of the state governments** at a time when the **top court has expressed grave concern** over the **criminalisation of politics.**
 - **Section 321 of the Code of Criminal Procedure, 1973:**

Under this provision, the **public prosecutor or assistant public prosecutor** may, with the **consent of the court**, withdraw from the **prosecution of a case** at any time before the judgment is pronounced.

Several states have withdrawn cases against legislators, under **this section.**

Criminalisation of Politics

- **About:**
 - It means the **participation of criminals in politics** which includes that criminals can contest in the elections and **get elected as members of the Parliament and the State legislature.**
 - It **takes place primarily** due to the **nexus between politicians and criminals.**

- **Reasons:**
 - **Lack of Political Will:**
In spite of taking appropriate measures to amend the **Representation of the People Act, 1951** there has been an **unsaid understanding among the political parties** which **deters Parliament** to make strong law curbing criminalisation of politics.
 - **Lack of Enforcement:**
Several laws and court judgments have not helped much, due to the lack of enforcement of laws and judgments.
 - **Narrow Self-interests:**
Publishing of the entire criminal history of candidates fielded by political parties **may not be very effective**, as a **major chunk of voters tend to vote through a narrow prism of community interests** like caste or religion.
 - **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.
 - Also, sometimes voters are left with no options, as all competing candidates have criminal records.
- **Effects:**
 - **Against the Principle of Free and Fair Election:**
 - It **limits the choice of voters** to elect a suitable candidate.
 - It is **against the ethos of free and fair election** which is the bedrock of a democracy.
 - **Affecting Good Governance:**
 - The **major problem** is that the **law-breakers become law-makers**, this **affects the efficacy of the democratic process** in delivering good governance.
 - 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.
 - **Affecting Integrity of Public Servants:**
It also leads to **increased circulation of black money** during and after elections, which in turn increases corruption in society and affects the working of public servants.
 - **Causes Social Disharmony:**
It **introduces a culture of violence in society** and sets a bad precedent for the youth to follow and reduces people's faith in democracy as a system of governance.

Landmark Decisions in Decriminalising Politics

- In 2002, the Supreme Court, in ***Association for Democratic Reforms (ADR) v. Union of India***, mandated the **disclosure of information relating to criminal antecedents, educational qualification, and personal assets** of a candidate contesting elections.
- The Supreme Court in ***Lily Thomas v. Union of India (2013)*** case, struck down as **unconstitutional Section 8(4) of the Representation of the People Act** that allowed convicted lawmakers a three-month period for filing appeal to the higher court and to get a stay on the conviction and sentence.
- In ***People's Union for Civil Liberties v. Union of India (2013)***, the SC recognised **negative voting as a constitutional right** of a voter and directed the Government to provide the **'NOTA' option** in electronic voting machines.
- In ***Public Interest Foundation and Ors. v Union of India (2014)*** based on recommendations made by the **Law Commission in its 244th report**, the SC had **ordered that trials, in relation to sitting MPs and MLAs be concluded within a year of charges against them being framed.**
- The Supreme Court's decision on information disclosure (***Lok Prahari v. Union of India, 2018***) paves a way for **future constitutional interventions in India's political party funding regime**, including the scheme of electoral bonds.

Way Forward

- The **nature of the government machinery** needs to change to **make it more transparent, accountable and pervade.**
- **Awareness among people (voters)** about their rights and they should vote for the right person should be created.
- Given the **reluctance by the political parties** to curb criminalisation of politics and its growing detrimental effects on Indian democracy, **Indian courts must now seriously consider banning people accused with serious criminal charges from contesting elections.**

Source: IE