



Has The SC Missed A Chance To Keep Criminals Out Of Polls

(The editorial is based on the article “Has the SC missed a chance to keep criminals out of polls” which appeared in The Hindu on 12th October 2018. It analyses the Supreme Court’s judgement on criminalisation of politics)

In the Public Interest Foundation and ors vs. Union of India judgment, the Supreme Court (SC) has ruled that it is the responsibility of the parliament to frame a law to prevent criminalization of politics.



According to Article 102(1) of the Constitution, Parliament is obliged to make a law on the matter. The Supreme Court has rejected the inclination to disqualify candidates facing serious criminal charges from contesting elections. It ruled that mere framing of charges cannot be a basis of disqualification of the candidate.

The court observed that cleansing politics from criminal elements begins with purifying political parties itself, as they are the central institution of India’s democracy. **The Supreme court’s order created the ground for debate, whether the order is in line with the principles of natural justice or is a verdict of disappointment in keeping criminals out of polls.**

Background

- The past three Lok Sabhas have seen an increasing number of legislators with criminal background — 128 in 2004, 162 in 2009 and 184 in 2014.
- The Election Commission (EC), tried to obtain help from the government, political parties and the apex court in ending corrupt influences on legislatures.
- The Election Commission has moved to Supreme Court in appeal against a decision of the Delhi High Court to set aside the disqualification of a MP in Madhya Pradesh.
- 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 court's recent verdict passed on the responsibility to the EC itself.

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.
- 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.
- Recently, SC directed the Government to set up special courts to exclusively conduct time-bound trials of politicians accused of corruption and criminality.
- The Supreme Court's decision on information disclosure (*Lok Prahari v. Union of India*) paves a way for future constitutional interventions in India's political party funding regime, including the scheme of electoral bonds.

Argument against Supreme Court's verdict

- The apex court has instructed political parties to put on their respective websites information on candidates having criminal antecedents. But accessibility remains as an issue for most of the population.
- Both the candidate and the political party are required to publicise the information. But political parties will not go against their interest and they will not publish the real information.
- Election Commission is asked to publicise the candidates' background. The EC already displays these details, given in the candidates' affidavits, on its website. The only difference this time is that these details are to be given in bold. Any more advertising by the EC will create problems, like inviting allegations of subjectivity, bias and partiality.
- Political parties appear to be competing to field criminal candidates, as their 'winnability' is proven to be more. Verdict will indirectly support this tradition.

Argument supporting Supreme Court's verdict

- The court ruled that any move to disqualify candidates charged with crimes (as opposed to those convicted) would require an amendment to the Representation of the People Act. That is the domain of the legislature and thus, it is Parliament that should take action.
- In terms of natural justice, disqualifying persons from contesting elections at the stage of framing of charges is a blatant violation of due process.
- It can easily lead to abuse, with politicians filing false cases in order to disqualify their opponents.

Way Forward

- Inherent **structural issues need to be addressed** by allowing candidates and parties to raise and spend money legally and transparently.
- **State funding of election** could also help in controlling the flow of unaccounted money and muscle power during elections.
- Providing power to registered voters in a constituency to **recall elected representatives** from the house on grounds of non performance can create awareness at grassroot level.

It is not the job of the judiciary to formulate legislation. Parliament should act in the direction to decriminalise politics. **If Parliament does not act, there are two ways to keep potential criminals out of the electoral arena: political parties can choose to not give tickets to aspirants charged with heinous crimes; and voters can reject such candidates at the polls.**

