

SUPREME COURT ON CRIMINALITY IN POLITICS

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The Supreme Court is the conscience-keeper of democracy, but it must take care not to infringe upon other democratic institutions, or appear to be well-meaning but ineffective, for this would reduce its stature. In trying to contain the growing presence in legislatures of members accused of serious crimes, it is in danger of overstepping limits and boundaries that it has, by and large, respected. Undoubtedly, criminality in politics exists, and that it flourishes so many decades after Independence is certainly a disgrace. In 2004, about one in four members of Parliament had criminal cases against them, but between 2009 and 2014, the frequency grew to about one in three, and in 2019, it was much closer to one in two. If almost every other MP stands accused of a serious crime, something is very wrong with the choice of candidates by political parties. The Supreme Court does well to reiterate its concern about this development, but it could have drawn the line there, limiting itself to exerting moral force on political parties, which are clearly in error.

But the court has proceeded, not just to make it mandatory for parties to publicise the number of serious cases which their candidates face, but also to justify their choice over other hopefuls who may be legally unencumbered. Further, the court has dictated that “winnability” cannot be the sole criterion for selection. Had these been framed as guidelines for parties, they would be unexceptionable. But making them enforceable under Article 142 of the Constitution — which empowers the court to demand the production of documents, and makes failure to do so a display of contempt — is problematic and threatens to undermine the autonomy of the system of elections and elected legislatures. Candidates are already required to file their details in affidavits with the Election Commission. This order could infringe upon the role of the poll watchdog.

Even more problematic is the requirement to justify the choice of candidates. An election is an issue to be decided between parties, candidates and the voters. The courts should have no say in the matter, except in particular cases where the Representation of the People Act is violated. Besides, the suitability of candidates is a subjective matter, and the justification required by the Supreme Court can only be an opinion, and not an objective fact, making the court’s order effectively unenforceable. Perhaps the SC has ventured too far beyond its remit, and while its goal is obviously in the public interest, it could ponder the means further.

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