

LITMUS TEST FOR A JUDICIAL CLEAN-UP ORDER

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

Last week's Supreme Court judgment, on February 13, 2020, by Justices R.F. Nariman and S. Ravindra Bhat, marks an important and possibly far-reaching step towards reining in the political establishment as far as fielding candidates with criminal antecedents is concerned. This judgment goes well beyond the Court's earlier orders of 2002 and 2003 that made it obligatory for all candidates to provide self-sworn affidavits of criminal cases pending against them in any court of law.

By virtue of this order, the Court has also shifted part of the onus on political parties, ruling that they must do much more to publicise the criminal antecedents of candidates that they have selected to contest both parliamentary and State Assembly elections. It would no longer be sufficient to cite "winnability" as the criterion. Citing figures of the alarming increase in the number of such persons selected as candidates across the political spectrum, the order asks parties contesting elections to henceforth explain why persons without criminal blemish could not have been chosen instead. While the judgments of 2002 and 2003 were important, and emanated after a prolonged struggle by the Association for Democratic Reforms, they did not have the desired impact on either the political establishment or indeed on voter choices: the present Lok Sabha has an all-time high of 43% of its members having one or more criminal cases against them.

As Election Commissioner and subsequently Chief Election Commissioner, and in the years thereafter, I have frequently expressed myself against "muscle" and "money" power, which have become the bane of our political system. Indeed "money" power has moved us in the direction of a plutocracy.

Both these two ills need urgent course correction, preferably from within the Executive itself. It surely cannot augur well for us that criminality within Parliament grew from 24% in 2004 to 30% in 2009, to 34% in 2014 and 43% in 2019. Almost half these cases were/are for alleged heinous offences such as murder, attempt to murder, rape and kidnapping.

In turn, political parties and candidates have often voiced their concern that cases tend to be foisted on them by political opponents. When the Election Commission of India (ECI) recommended to the government that legislation was warranted to exclude those candidates against whom charges had been framed by a court of law for heinous offences punishable by imprisonment of five years and more, the Parliamentary Committee that had been set up to examine the proposal unanimously ruled against the ECI recommendation; perhaps the most vociferous voice was that of the late legal luminary, Ram Jethmalani, who was a member of the committee. He pointed out that he had dealt with many such cases arising out of political vendetta. Even when we met after I had retired from the ECI, I was unable to convince him of my point of view.

Of course, not all first information reports lodged against political players are criminal in intent. The violation of Section 144 of the Code of Criminal Procedure as a result of civil protest is one such example. The case of a Medha Patkar or other social activists can hardly be considered criminal. Which is why the ECI, for over two long decades, has addressed various Prime Ministers to pass legislation on the ground that charges framed by a court of law for only heinous offences, and cases registered (not on the anvil of elections, but up to one year prior) would amount to a "reasonable restriction" and that such a person be barred from contest. But

so far to no avail.

Although the recent judgment has decreed that political parties will give much wider publicity to the criminal antecedents of their candidates, it is possible that this alone may not suffice. Voter behaviour is most often conditioned by their own immediate needs. The distribution of “freebies”, for instance, was often a one-way street, of candidates “offering” money and goodies. Voter behaviour has since begun to change. Voters now often enough tend to demand money and freebies. With our criminal justice system clogged with cases and lawyers fees often far beyond what many can afford, the local “don” standing for elections, who promises delivery of rough and ready justice, is often seen as the messiah on hand. All too often these cases involve bread and butter issues, from land and irrigation dispute resolution, to matters involving family honour. In such cases this “Robin Hood” contestant is actually a preferred choice, which helps to explain that where muscle and money get combined in the rural landscape, they often win by large margins. This was not always the case. In the 1970s and 1980s, the “don” was content to support the local political bigwig with his muscle, crowd-pulling capacity and money, hoping that once elections were over, the elected leader would help the “don” in turn, not least to help wipe out his string of cases. By the 1990s the muscle man decided that this was not good enough. He decided to instead help himself to the fruits of political power by entering the electoral fray. Not all such players were men: witness the life and death of Phoolan Devi who came into political power on the power of a gun, and faded out too in the same manner.

So far whatever significant electoral reforms have taken place have emanated from the Supreme Court. For critics of this present order, I would remind them of None of the Above (NOTA) and the July 10, 2013 Order in the Lily Thomas vs Union of India case, wherein a parliamentarian or legislator convicted of an offence that leads to a sentence of two years and more will be debarred from contesting an election for six years after his or her prison term ends.

It is therefore prudent to await the next important Assembly elections on the anvil — in Bihar and West Bengal. No doubt the political parties will once again bat for the “winnability” factor in their selections. It remains to be seen how the recent judgment will affect the choices of the political establishment and whether it will have the desired effect in eliminating or significantly purging criminality from future legislatures.

Navin Chawla was India's 16th Chief Election Commissioner. He is the author of 'Every Vote Counts: the Story of India's Election'

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