

Trying politicians: on setting up special courts

The Supreme Court's order directing the Centre to frame a scheme [to establish special courts exclusively to try cases against politicians](#) marks another milestone in the higher judiciary's continuing campaign to cleanse politics of the taint of crime. The court has handed down many rulings that make legislators and holders of public office accountable for corruption. In recent years, it has grappled with the disturbing phenomenon of criminals entering the electoral fray. In a landmark verdict in 2013, the court removed the statutory protection for convicted legislators from immediate disqualification; and in 2014, it directed completion of trials involving elected representatives within a year. The court is now keen on establishing a time-bound and exclusive judicial mechanism to expedite trials involving "political persons". The order requires the Centre to provide details of the funding necessary to set up special courts, and indicates that State governments be involved in the exercise. True, cases involving offences by serving or past legislators move rather gingerly in the present criminal justice system. It is apparent that those with political influence have taken full advantage of its inherently languid nature by delaying hearings, obtaining repeated adjournments and filing innumerable interlocutory petitions to stall any meaningful progress. A few prominent leaders have been successfully tried and sentenced, but these are exceptions rather than the rule. For influential politicians, a criminal prosecution is no more than a flea bite; and, sometimes, even a badge of victimhood that redounds to their electoral benefit.

However, establishing special courts may not be the ideal way to expedite cases. From the viewpoint of the accused, the idea could smack of victimisation and engender a feeling of being chosen for discriminatory treatment. There is already a provision for special courts to try various classes of offences. For instance, corruption, terrorism, sexual offences against children and drug trafficking are dealt with by special courts. However, creating a court for a class of people such as politicians is discriminatory. While corruption charges against public servants are being handled by special courts, it is a moot question whether there can be special treatment for offences under the Indian Penal Code solely because the accused is a politician. A possible legal and moral justification is, of course, available. It is in the public interest to expedite cases in which those in public life face serious charges. It would be primarily in their own interest to clear their names quickly, lest their candidature be tainted. Also, the earlier order for completion of trial within one year appears to have had no significant impact. Special courts may indeed address these issues, but the ideal remedy will always be a speedy trial in regular courts. If only the routine criminal process is pursued with a universal sense of urgency, and if enough courts, judges, prosecutors and investigators are available, the expediency of special courts may not be needed at all.

Congress needs a cohesive agenda if it wants to push back the BJP in PM Modi's home State

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