

IN PARLIAMENT'S COURT

Relevant for: Indian Polity & Constitution | Topic: Electoral Reforms in India

While the issue of candidates facing criminal charges getting elected to Parliament and State legislative Assemblies is often raised, initiatives to minimise the problem, if not eliminate it completely, have been rather slow. One had hoped that the judiciary would show the way forward with regard to preventing such candidates from contesting elections, but in a recent judgment, the Supreme Court has left it to Parliament to legislate on the subject.

The expectation was not unreasonable, as some important changes in the electoral laws — making it mandatory for candidates to submit an affidavit with full disclosure of criminal cases, if any, and details of their asset and income — were made mandatory by the judiciary. The most recent change, i.e. providing an option to voters to exercise None of the Above (NOTA) in case they do not want to vote for any of the candidate contesting an election, was also introduced by the judiciary in 2003 on the basis of the PIL filed by People's Union for Civil Liberties.

The court mentioned that it was not within its powers to disqualify politicians facing criminal cases from contesting election, but recommended that Parliament enact a strong law. However, the court made it mandatory for political parties and candidates themselves to make public disclosure through print and electronic media.

But there is serious doubt whether this judgment would in any way help in making our politics cleaner than before. The chances of Parliament acting fast on this issue are dim. The reasons are simple and obvious. No political party is free of this problem. The use of muscle power along with money power is a weapon used by all political parties to maximise electoral gains. In such a scenario, any move to ban candidates with a criminal record from contesting elections would mean political parties inflicting self-harm.

Data from the Association for Democratic Reforms (ADR) indicate that 179 out of the 543 elected Members of Parliament in the present Lok Sabha have some kind of criminal case pending against them. While it is true that some of these may be of a frivolous nature, it is also true that many of these cases concern allegations of their involvement in serious crimes. In the case of over 100 MPs, the cases were of a very serious nature such as crimes against women and kidnapping. There seems to be very little improvement in this regard in the last five years. In the previous Lok Sabha (2009), 163 had criminal cases pending against them, many of which were of a serious nature. The profile of members of the Upper House is no better; of 228 members of the Rajya Sabha for whom data could be analysed, 20 have cases of serious crimes pending against them.

While political parties raise concern about candidates with a tainted background contesting elections and getting elected, none of them come forward to set an example for others when it is time to act. Among the Bharatiya Janata Party's MPs (Lok Sabha and Rajya Sabha), 107 (32%) have criminal cases pending against them. Of them, 64 (19%) have cases of serious crimes pending against them. The Congress is only a shade better than the BJP; 15 MPs (15%) have criminal cases pending against them, of whom eight (8%) have cases of serious criminal offences pending against them. There is hardly any difference between the national and regional parties in this regard. In the Shiv Sena, 18 MPs (86%) have criminal cases pending against them, of whom 10 (48%) are alleged to be involved in serious criminal cases. Of all MPs, six each of the Nationalist Congress Party (55%) and the Rashtriya Janata Dal (67%) have serious criminal cases pending against them. Going by the ADR's estimates, there are more than 1,500 MPs and MLAs in Parliament and State Assemblies with criminal cases pending against them.

The issue is far more important and serious than the attention being paid to it by the policy makers. While the Election Commission has limited powers to legislate on such laws, it is only Parliament which can legislate to bring about the desired change. Public opinion too is not firm on this. For example, a survey conducted by the Centre for the Study of Developing Societies, found that opinion was divided when people were asked whether they would be willing to vote for a honest candidate who may not get their work done, or a tainted candidate who could get their work done.

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