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HAS THE SC MISSED A CHANCE TO KEEP CRIMINALS OUT OF POLLS?

Relevant for: Indian Polity & Constitution | Topic: Separation of powers between various organs

A view of the Supreme Court in New Delhi. | Photo Credit: Shiv Kumar Pushpakar

The verdict is a disappointment — what we need are untainted MPs

The September 25 verdict of the Supreme Court on criminalisation of politics left much to be desired. The Election Commission (EC), frustrated by its own helplessness in the matter, has been crying hoarse to the government, political parties and the apex court for help in stemming corrupt influences on our legislatures. The court's verdict essentially passed on the responsibility to the EC itself.

The court also said that it cannot play the role of Parliament. But Parliament, regardless of the party of coalition in power, has not been playing its own legitimate role. According to Article 102(1) of the Constitution, Parliament is obliged to make a law on the matter. But if history is any indicator, there is a slim chance, if any, that legislative action will follow the Supreme Court judgment.

Directions issued by court

The directions given by the Supreme Court are welcome but have some practical issues. For instance, the apex court has instructed political parties to put on their respective websites information on candidates having criminal antecedents. How many people are capable of accessing websites? Also, both the candidate and the political party are required to publicise the information. Why would they actively publicise anything that goes against their interests?

Third, the EC 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.

Section 8 of the Representation of the People Act, 1951, bans convicted politicians from contesting. However, those facing trial, no matter how serious the charges, are free to contest.

In fact, political parties appear to be competing to field criminal candidates, as their 'winnability' is proven to be more. 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 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 opposition is based on two grounds: ruling politicians will misuse this against the Opposition; and the law of the land assumes everyone to be innocent till proved guilty or convicted.

EC’s safeguards

The EC’s safeguards in this regard are crystal clear. First, all criminal cases will not invite a ban; only those concerned with heinous offences like rape, dacoity, murder and kidnapping will. Second, the case should be registered at least six months before the elections. Third, a court must have framed the charges.

Further, assertions regarding a candidate being “innocent until proven guilty” are debatable. After all, there are about 2.7 lakh prisoners in jails still under trial and hence innocent. Yet, they are denied fundamental rights like right to liberty, freedom of movement, freedom of occupation and right to dignity. May I remind that contesting elections is not even a fundamental but a statutory right?

The verdict has arrived as a huge disappointment when seen in the context of the need for untainted parliamentarians. Judicial activism saved this country many times when the executive and the legislature were not willing to do their job. We know from history that the legislature has not moved on this front. This was an activist measure from the judiciary that would have been welcome.

The order is in line with the principles of natural justice and separation of powers

S.Y. Quraishi is a former Chief Election Commissioner of India

The order is in line with the principles of natural justice and separation of powers

The Supreme Court has rightly rejected the temptation to disqualify candidates facing serious criminal charges from contesting elections. The court’s order is in line with the principles of natural justice and the separation of powers enshrined in our Constitution.

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.

Further, 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. The political class has already taken measures that will help clean up the system. For example, fast-track courts have recently been established to try cases involving politicians speedily.

Remember, if a citizen is convicted of a crime, finality is not arrived at until all appeals are exhausted. But public officials are judged by a higher standard. Thus, politicians, the moment they are convicted and sentenced to more than two years in jail by a lower court, lose their seats and are debarred from contesting for some period. This higher standard prevails despite the possibility of convictions being overturned and political careers being unjustly derailed.

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.

However, political parties often choose to field chargesheeted candidates if they are deemed to be ‘winnable’. As Milan Vaishnav has shown in his book, *When Crime Pays*, voters have no qualms about electing criminals for a range of reasons. For example, weak public institutions leave a vacuum which is exploited by criminal politicians who solve problems for their

caste/social/community groups.

To the extent that voters are ignorant of the candidates' criminal antecedents, the court has mandated that such information be prominently displayed so that voters get a chance to make an "informed choice". The Election Commission is already working on ways to put this directive into action. In the forthcoming State elections, we shall see whether it affects voters' choices.

Public funding of elections

However, while seeking to decriminalise politics, we must acknowledge the inherent structural issues that need to be addressed. We need to face up to the costs of democracy and allow candidates and parties to raise and spend money legally and transparently. In an attempt to limit even legitimate election expenditure, our system actually penalises the sainted and rewards the tainted. A measure of public funding of elections will also enable cleaner candidates to reach the threshold of resources needed to out-compete their crooked and criminal competitors.

We must resist the temptation to treat all politicians as potential criminals. The Supreme Court has shown us the way with its recent pronouncement.

Rajeev Gowda is a Congress MP and Chairman, AICC Research Department. Views are personal

Conviction is a basis for disqualification. But does this rule serve as an effective deterrent?

I am concerned, as any right-thinking citizen would be, about the increasing criminalisation of politics. It is a matter of grave concern. And to address this, both the Law Commission and the Election Commission had suggested ways to keep criminals from entering the legislatures.

Both have said that candidates who have committed heinous crimes like rape and murder, and against whom charges are being framed, should be disqualified. The Representation of People Act (RPA), 1951 says that only those convicted of crimes mentioned in the act are barred from contesting elections. The Law Commission and the Election Commission's suggestions are aimed at plugging a crucial loophole in the RPA.

Alarming rise of criminals

But what I want to ask is, while conviction is a basis for disqualification, in light of the alarming rise of criminals in politics, does that measure serve as an effective deterrent? The petition in the Supreme Court was premised on the fact that at the time of the framing of charges against a candidate, the magistrate would look at the evidence and take a call on whether the candidate considered should face trial.

Having said that, the government has another view and the opinion is not without merit. Let me restate the government's position. It says that this proviso could become a potential tool of abuse in the hands of the party in power and that witnesses could be intimidated. But what do we do, in the meantime, about the spiralling criminality in politics? My personal view is that at the time of framing of charges, the candidate can be disqualified.

While I say this, I am conscious of the fact that the Supreme Court cannot make a law to this effect and that is why it did not venture into this area. In our constitutional system, each organ of the state is assigned a certain task.

For example, the job of the legislature is to make laws and the judiciary is tasked to interpret the

laws. It is not the job of the judiciary to formulate legislation, and therefore, the Supreme Court, has very wisely refrained from amending the concerned section of the RPA and it is not difficult to understand the court's position on the matter. But the Supreme Court does not stop there. It puts forward certain conditions to cleanse politics. It directs political parties to mention past criminal charges of candidates being fielded in elections.

Publishing antecedents

At the moment, as the law stands, the candidate has to file an affidavit. But the apex court has directed political parties to publish criminal antecedents of their candidates in newspapers.

The parties also have to give publicity in the electronic media. However, this suggestion is not without pitfalls. The measure can result in the public shaming of candidates but can also be subject to misuse — it can also be deployed to scuttle a candidate's chances.

To reiterate my view, disqualification of a candidate at the time of the framing of charges will be a reasonable solution to the problem of criminalisation of politics. However, it is Parliament, not the Supreme Court, which is the appropriate constitutional authority authorised to proceed on this. The legislature has chosen not to act on this so far. It is hence imperative that Parliament now amend the RPA to provide such punitive measures. This would dissuade political parties from fielding candidates with dubious credentials in the future.

P.D.T. Acharya was the secretary-general of the 14th and the 15th Lok Sabhas

As told to Anuradha Raman

Last week Ram Kadam, a BJP MLA from Maharashtra, told the men in an audience that if they were interested in women who didn't reciprocate the feeling,

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