

CLEANING THE HOUSE

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On Tuesday, a five-judge bench of Supreme Court refused to disqualify candidates with criminal cases pending against them from contesting elections. However, the country's political class would do well take to serious note of the bench's lament that the "increasing trend of criminalisation of politics... strikes at the very root of democracy". While showing a welcome inclination to not step out of its domain, the SC has asked Parliament to come up with a law to check the criminalisation of politics. It has also issued a slew of directives to ensure that the voters are aware of the antecedents of candidates. Political parties will have to upload details of criminal cases pending against their candidates on their websites. The candidates will have to furnish such information in their election affidavit and also publish it in a "widely-circulated newspaper".

The Representation of the People Act (RPA) does not bar individuals who have criminal cases pending against them from contesting elections. It does state that an individual punished with a jail term of more than two years cannot stand in an election for six years after the jail term has ended. But the fact that cases drag on in courts for years makes this provision virtually ineffective. A 2014 report of the Law Commission, in fact, pointed out that "disqualification upon conviction has proved to be incapable of curbing the growing criminalisation of politics, owing to long delays in trials and rare convictions." An affidavit submitted to the Supreme Court in March by the Centre also testifies to the shortcomings of the RPA's disqualification clause. There are more than 3,800 criminal cases against 1,765 MPs and MLAs across the country, of which 3,045 cases are pending, the affidavit noted.

Notwithstanding the compelling urgency to decriminalise politics, the SC has always been steadfast that its interventions in the matter should not transgress the principles of separation of powers enshrined in the Constitution. At the same time, it has been unequivocal that "voters have a right to know about the candidates contesting elections". In 2002, in *Union of India Vs. Association for Democratic Reforms and Another*, the court noted that such information should comprise, "antecedents of the candidate's life including whether he was involved in a criminal case and if the case is decided". The court's ruling on Tuesday not only affirms such observations, it also underscores its dissatisfaction with the RP Act. "The time has come for a law against criminalisation of politics. The nation eagerly waits for such legislation," the bench observed. The ball is now in the executive's court.

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