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OPINION

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

When Ateeq Ahmed, a former Samajwadi Party legislator, held court, he would do so with “one ear pressed to his mobile phone and the other taking in requests for constituency service” in party headquarters that “often bore closer resemblance to an armoury... the walls impressively lined with imported automatic weaponry.” It is a striking image to begin Milan Vaishnav’s deep dive into the criminality of Indian politics in his book, *When crime pays: Money and muscle in Indian politics*. And it sums up the tangled relationship between political effectiveness and criminal strength in Indian politics.

The Supreme Court (SC) was never going to be able to untangle this knot. In its *Public Interest Foundation & Ors. versus Union of India & Anr.* judgement on Tuesday, it has, wisely, recognized this. Any judicial attempt to broaden the criteria for membership of Parliament beyond the constitutional provisions laid out from Article 102(1)(a) to 102(1)(d) would have been disastrous on multiple fronts.

As Chief Justice of India Dipak Misra has written in the unanimous ruling, “The constitutional provision states the disqualification, confers the power on the legislature, which has, in turn, legislated in the imperative.” There is no confusion about separation of powers here. Another concern is the numerous Indian laws that have no place in a modern republic. These range from Section 124A of the Indian Penal Code (IPC) criminalizing sedition to Sections 499 and 500 recognizing criminal defamation. The Indian state—no matter the party in power—has used and abused these laws with abandon. It should not be handed the tools to lock inconvenient individuals out of the political process. This is what disqualifying citizens from contesting elections at any stage of a criminal process prior to conviction would amount to.

Besides, every nation-state has a foundational myth that is impervious to fact. India’s revolves around the politics of protest and a willingness to do jail time for it—never mind, say, the 1946 Royal Indian Navy mutiny and the spectre it raised for the British of vast Indian forces hardened in World War II turning restive. There is a dissonance between the political culture built on this myth and any attempt to bar individuals charged with a crime from standing for elections. Laws erected on such shaky foundations rarely work.

Thus, the SC has limited itself to mandating that all candidates contesting an election publicise any criminal cases pending against them to the party and to the public at large. There is no harm in this. Neither, unfortunately, is there much good. The court assumes that the problem is one of an information gap for voters. This is either naive or a wistful hope. As Vaishnav has pointed out, the SC had mandated disclosure of criminals’ antecedents in 2003. Despite this increase in public awareness, the proportion of members of Parliament facing criminal charges and criminal charges of a serious nature, respectively, grew from 24% and 12% in 2004 to 30% and 15% in 2009 and 34% and 21% in 2014. Indeed, a candidate facing a criminal case was thrice as likely to win in these elections as one without.

This is down to structural factors, not individuals. At the heart of politics is the rational principal-agent relationship. Marcos Fernandes da Silva noted in *The political economy of corruption in Brazil* that the public agent—the political candidate— “is not a perfect agent, immune to his own interests and those of the lobbies of several private agents who can put pressure on him.” Likewise, the principal—the voting public—has its own rational interests. The trick is building institutions that hold out the promise of the right payoffs within the law. Developed economies with lower levels of corruption have undergone this process at various historical junctures. The

UK is a good example. It moved from the Old Corruption that greased the wheels of the state in the 18th century to cleaner administration in the 19th “not as a result of a change in people, but mainly because the rules which were implemented created a specific pay-off system.”

In India, the wrong rules and institutions, along with historical happenstance, have ensured that the rational quest for payoffs leads politicians and voters outside the law. When Indira Gandhi banned corporate campaign financing in 1969, she simultaneously destroyed her party’s local power centres in an attempt to centralize authority. This ensured that the Congress lacked the ability to raise sufficient funds and had to rely more heavily on illegal money. Others followed suit. The subsequent warping of Lohiaite politics, paired with state institutions that lacked the capacity to deliver public goods and services, meant that it was in voters’ interests to vote along caste lines for in-group strongmen who could deliver public goods and services to them—and resources to political parties.

Political parties will rarely introduce governance reforms when the payoffs are bigger for not doing so. The Narendra Modi government’s botched attempt at reforming election finance is an example of this. But sustaining economic growth is difficult without improving state capabilities and capacities. This, if anything, has the potential to change voters’ calculus. The Supreme Court does not.

What can be done to stop criminalization of politics? Tell us at views@livemint.com

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