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DECRIMINALISATION OF POLITICS IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

Criminalization of politics is a vital topic to be discussed in any democratic platform. This issue is on focus every now and then. The Government and the governance system's credibility is questioned. Sometimes the government loses its legitimacy and authenticity due to the involvement of persons with criminal backgrounds. The frequency with which alleged or convicted criminals manage to gain public office threatens the ideals and the functioning of the Indian democracy. The members of the legislature are expected and directed to represent vicariously the aspirations and concerns of the people whom they represent. Hence it is important for the legislature of a representative democracy to be a true reflection of the aspirations and dreams of the people and also to be fair, honest and accountable to the people they represent. But nowadays India is witnessing a crisis of empathy, quality, fairness, equality etc. amongst all the chosen MPs or MLAs. Not only is there a serious question of propriety lying over the fairness of electoral procedure followed, an even greater concern lies in the kind of people who are entering the polity of India. India stands witness to an alarmingly high number of people with criminal background who have polluted Indian polity. Though it has been almost 6 decades since India's first ever General Elections, the existing electoral laws have failed in more ways than one to prevent the menace of criminalization in Indian politics. In order to restore the faith of people in democracy, there is an urgent need for electoral reforms. Numerous electoral reforms have been introduced by Election Commission from time to time but still there is lot to be achieved. Among the much needed core reforms in the electoral system, decriminalization of politics deserves a central position. Criminalization of politics in India is today a sad reality. Several government-appointed Commissions have already made clear recommendations for electoral reforms, but the political will to implement these recommendations in letter and spirit is lacking. We have allowed criminalisation inpolitics to go completely unchecked. The numbers are appalling. In the Lok Sabha, 76 of the 543 members elected in 2009 had been charged with serious criminal offences such as murder, rape and dacoity. This paper discusses about the meaning of criminalisation of politics, reasons for criminalisation, consequences of criminalisation and the role of legislations and judiciary in decriminalisation of politics in India.

KEYWORDS

Criminalisation, Decriminalisation, Politics, Legislations and Judiciary.

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INTRODUCTION

Arundhati Kulkarni[1], Apart from terrorism, the most serious problem being faced by the Indian democracy is criminalization of politics. At times, the concern has been expressed against this obnoxious cancerous growth[2] proving lethal to electoral politics in the country. Purity and sanctity

of electoral process, sin qua non for a sound system of governance appears to have become a forgotten thing in view of the entry of a large number of criminals in the supreme legislative bodies at central and state level. Sri G.V.C Krishnamurthy, the election commissioner (as he then was) has pointed out that almost forty members facing criminal charges were the members of the Eleventh Lok Sabha and seven hundred members of similar background were in the state legislatures.

Criminalization of politics has greatly vitiated the socio-political fabric of our country. Elections in the world's largest democracy have been attracting an ever larger number of criminal elements and this trend is discernible across all political parties. It is ironical that while Indian citizens have the power to change their government democratically, they have not been able to stem the criminalization of politics and the consequent erosion of civil liberties. Despite all the agitation of the civil society over this issue, political parties tend to succumb to the temptation of enlisting the support of criminal elements and accord primacy to their "winnability" factor and electoral clout[3].

Even the political parties out of the glamour of political power and consequent benefits do not hesitate in giving tickets to the criminals and do not object to their use in winning the elections. Thus, politicization of criminals needs to be checked by all means at disposal.

Criminalisation of Politics

Man as selfish by nature inclined towards competition to have power. Gradually it led to cut throat competition amongst vested interests in power struggle. This turned existing political system into a hotbed which gave rise to political rivalry. To achieve their goal in this power struggle the politicians indulged in various criminal activities. The criminals help politicians in various ways. As a candidate, they win the seat. The intimidation of voters, proxy voting, booth capturing are the devices which are carried on by them. The use of money or muscle power and the totally unacceptable practices offend the very foundations of our socio-economic order. In the past, though criminals usually worked behind the scene but now apart from extending indirect help contest the elections and also become ministers[4].

As per the statistics collected by Association of Democratic Rights and National Election Watch resourced from records of Election Commission of India, the horrible position of criminals in the present day political system (2009-2014) is depicted below.

1. The total numbers of M. P. s and M. L. A. s from different political parties is 4,807, out of which 1,460(30%) and 688(14%) are involved in serious offences. They are believed to be hardened criminals and "history-sheeters" (those whose history of crimes is recorded in police stations for quick reference when any crime takes place) facing charges of murder, rape and armed robbery.
2. Out of total 543 M. P. s of Lok Sabha 162(30%) have criminal records and 75 (14%) are involved in serious crime. Out of total 4032 numbers of M. L. A. s in the country 1258(31%) have criminal records since the time of their nomination for election and 15% are involved in serious criminal cases.
3. Out of the 58 candidates for 2014 Rajya Sabha Election in February (for 16 states) whose self-sworn information in their affidavits have been analyzed, 14 candidates (24%) have declared criminal cases against them. Out of the 14 candidates who have declared criminal cases, 2 have declared serious criminal cases. These include charges of murder, kidnapping and crime against women. Shiv Sena candidate, Dhoot Rajkumar Nandlal from Maharashtra had declared charges of murder, kidnapping and crime against woman[5].

Almost all legislators are, however, believed to be engaged in some kind of corruption. In fact, a legislator routinely embarks on his legislative career by signing a false affidavit claiming to have spent much less money on his election than he has actually done.

It is only natural that, they would want to make at least 10 times of money backed during their five years in parliament. This, indeed, is the source of the

criminalization of Indian polity". As an honest politician one can no longer think of entering into the election fray. Businessmen and industrial houses, too, would not support an honest person as he (or an occasional she) would be useless for them once in parliament. In fact he may even become an obstruction for them[6].

Legislative measures to prevent criminalisation of politics

Chapter IX A of Indian Penal Code deals with offences relating to elections. It comprises of nine sections. It defines and provides punishment for offences, such as bribery, undue influence and personation at elections[7] etc. The maximum punishment for the offence of bribery is one year's imprisonment of either description or fine or both but bribery by treating is punishable only with fine. Similarly the maximum punishment for undue influence or personation at an election is one year's imprisonment of either description or fine or both[8]. Sec. 171 G provides the punishment of fine for false statement in connection with elections and for illegal payment in connection with an election .Sec 171 H provides the punishment of fine upto Rs.500. According to Sec 171 E, if there is failure to keep election accounts, the offender shall be punished with fine not exceeding Rs.500. Thus, in IPC, provisions have been made to check election evils but nominal punishments have been provided and interest is not taken in prosecution of election offenders. These provisions have failed to check criminalization of politics.

Sec. 8 of the Representation of People Act, 1951 appears more deterrent as it provides disqualification on conviction of certain offences. Sec. 8(1) provides that a person convicted of an offence specified therein[9] and sentenced to imprisonment for not less than six months shall be disqualified from the date of such conviction. S. 8(2) provides that a person convicted for the contravention of certain law mentioned in it[10] and sentenced to imprisonment for not less than six months shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

However, the disqualification under sub-sections (1), (2) and (3) shall not take effect in case of a person who on the date of the conviction is a member of parliament or state legislature until three months have elapsed from that date or if within that period an appeal or application for revision is brought in respect of the conviction or the sentence until that appeal or application is disposed by the court[11].

Sec. 8(4) of the Representation of People Act, accords benefit to a sitting Member of Parliament or legislative assembly if convicted for criminal offence. According to it, in respect of such member, no disqualification shall take effect until three months have elapsed from the date of conviction or if within that period appeal or application for revision is brought in respect of conviction or sentence until that appeal or application is disposed of by the court. The controversial issue is whether the benefit of this provision continues even after the dissolution of the house. There have been instances where the members taking advantage of this provision contested the subsequent election in spite of the faction by the court during the tenure of the house. The Supreme Court considered this unethical aspect also in *Prabhakaran case*[12]. The court considered the structural position of S. 8(4) and justifications for its retention. It held that "Subsection 4 would cease to apply no sooner the house is dissolved or the person has ceased to be a member of that house." Generally speaking the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and the house a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election.

Judicial Efforts to Decriminalise the politics

The courts are well aware of the problem of criminalization of politics but the politics is an area where courts do not want to be involved actively. In *Deepak Ganpat Rao Salunke V state of Maharashtra*[13]. The Deputy Chief Minister of Government of Maharashtra in a public meeting

made the statement that if Republican Party of India (RPI) supported the Shivesena BJP alliance in the Parliamentary Election he would see that a member of RPI was made Deputy Chief Minister of the State. It was held that the above statement did not amount bribery as defined under section 171 B as the offer was made not to an individual but to RPI with the condition that it should support BJP-Shivsena alliance in the election. Thus seeking support of a political party in lieu of some share in the political power does not amount gratification under S. 171-B of the Penal Code.

In *Raj Deb V Gangadhar Mohapatra*[14] a candidate professed that he was Chalant Vishnu and representative of Lord Jagannath himself and if any one who did not vote for him would be sinner against the Lord and the Hindu religion. It was held that this kind of propaganda would amount to an offence under S. 171 F read with S 171C.

The remedies provided in IPC have not proved to be effective because once the election is over, everything is forgotten. On the other hand, convictional disqualification for candidature appears more effective. However, judicial interpretation of S. 8(3) R.P. Act has not been very satisfactory. An order of remission does not wipe out the conviction[15]. For actual disqualification, what is necessary is the actual sentence by the court[16]. It is not within the power of the appellate court to suspend the sentence; it can only suspend the execution of the sentence pending the appeal. The suspension of the execution of the sentence (imprisonment of not less than two year) does not remove the disqualification, when a lower court convicts an accused and sentences him, the presumption that accused is innocent comes to an end[17].

In *T.R. Balu V S. Purushthoman*[18] it was alleged in the election petition that the returned candidate had a bigamous marriage and it was admitted by him through an affidavit submitted at the time of filing the nominations. Hence, his election should be declared void. Madras High Court upheld the election on the ground that the returned candidate was never prosecuted nor found guilty or punished for it.

There has been controversy with regard to the beginning of disqualification on the ground of conviction. A person convicted for an offence is disqualified for being a candidate in an election. Section 8 of the R.P. Act sets different standards for different offences. According to Sec. 8(3) a person convicted of any offence and sentenced to imprisonment for not less than two years (other than the offences referred to in Sec. 8(1) and (2)) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

In *K. Prabhakaran V P. Jayarajah*[19] the Court considered various issues. It considered the question whether for attracting disqualification under S. 8(3) the sentence of imprisonment for not less than two years must be in respect of a single offence or the aggregate period of two years of imprisonment for different offences. The respondent was found guilty of offences and sentenced to undergo imprisonment. For any offence, he was not awarded imprisonment for a period exceeding two years but the sentences were directed to run consecutively and in this way the total period of imprisonment came to two years and five months. On appeal, the session court directed the execution of the sentence of imprisonment to be suspended and the respondent be released on bail during the hearing of the bail. During this period, he filed his nomination paper for contesting election from a legislative assembly seat. During the scrutiny, the appellant objected on the ground that the respondent was convicted and sentenced to imprisonment for a period exceeding two years. The objection was overruled and nomination was accepted by returning officer on the ground that although respondent was convicted of many offences but he was not sentenced to for any offence for a period not less than two years. The High Court also took the similar view but the Supreme Court by majority took the different view[20]. Chief justice Lohati speaking for the majority held that the use of the adjective “any” with “offence” did not mean that the sentence of imprisonment for not less than two years must be in respect of a single offence. The court emphasized that the purpose of enacting S. 8(3) was to prevent criminalization of

politics[21]. By adopting purposive interpretation of S. 8(3), the Court ruled that its applicability would be decided on the basis of the total term of imprisonment for which the person has been sentenced.

The court also considered the question of the effect of acquittal by the appellate court on disqualification. It may be recalled that the Supreme Court in *Vidyacharan Shukla V Purushottam Lal*[22] had taken a strange view V.C. Shukla was convicted and sentenced to imprisonment exceeding two years by the Sessions Court on the date of filing nomination but the returning officer unlawfully accepted his nomination paper. He also won the election although conviction and sentence both were effective. The defeated candidate filed an election petition and by the time when it came before the High Court, the M P High Court allowed the criminal appeal of Shukla setting aside the conviction and sentence. While deciding the election petition in favour of the returned candidate, the court referred to *Mannilal V Parmailal*[23] and held that the acquittal had the effect of retrospectively wiping out the disqualification as completely and effectively as if it had never existed. However *Vidyacharan Shukla case*[24] which had the effect of validating the unlawful action of the returning officer and encouraging criminalization of politics was overruled by *Prabhakaran.* The Supreme Court observed:

Whether a candidate is qualified or not qualified or disqualified for being chosen to fill the seat has to be determined by reference to the date for the scrutiny of nomination… The returning officer cannot postpone his decision nor make it conditional upon what may happen subsequent to that date[25]. It is submitted that the view taken in the instant case is correct and would be helpful in checking the criminalization of politics.

Sec. 8(4) of the Representation of peoples Act accords benefit to a sitting Member of Parliament or legislative assembly if convicted for criminal offence. According to it, in respect of such member, no disqualification shall take effect until three months have elapsed from the date of conviction or if within that period appeal or application for revision is brought in respect of conviction or sentence until that appeal or application is disposed of by the court. The controversial issue is whether the benefit of this provision continues even after the dissolution of the house. There have been instances where the members taking advantage of this provision contested the subsequent election in spite of the faction by the court during the tenure of the house. The Supreme Court considered the unethical aspect also in *Prabhakaran case*. The court considered the structural position of S. 8(4) and justifications for its retention. It held that "Subsection 4 would cease to apply no sooner the house is dissolved or the person has ceased to be a member of that house[26]." Thus, it is another effort of the Court to strictly check the criminalization of politics.

CONCLUSION

The entry of criminals in election politics must be restricted at any cost. If it is not checked, it will erode the system totally. The dearth of talented persons in politics may collapse the country internally as well as externally. A number of commissions and committees such as, the Law Commission of India, Election Commission, and Vohra Committee etc. have examined the issue of criminalization of politics and recommended various reforms but the menace is increasing day by day. The parliament has taken efforts by amending the laws, such as, IPC and the RP Act but the exercise has proved futile. The Supreme Court of India has also made efforts to check the evil but the problem remains unabated. The Court has in unequivocal terms wants to prevent criminalization of politics. It says, those who break the law should not be allowed to make the law.

Actually the roots of the problem lie in the political system of the country. There is lack of political will to combat the problem. The political parties also do not believe in higher ethical norms. They should unitedly make efforts to prevent criminalization of politics. The IPC and the RP Act both should be suitably amended. For every electoral offence, the minimum punishment should not be less than two years. In the RP Act, care should be taken to ensure

that even suspects should not make entry into politics. The candidate should be asked to furnish detailed information in respect of civil and criminal matters against him on affidavit. And, if the information furnished make out a criminal case, he should be disqualified irrespective of the fact that he was not prosecuted and/or punished by a court of law.

However, implementation of the existing legal provisions and decisions with regard to electoral reforms should be strictly followed. There is need for legislation to regulate party funds, distribution and expenditure during non- election and election times. Maintenance, audit and publication of regular accounts by the political parties should be available for open inspection. There is also a need of setting up special courts for trying the cases of criminalization of politics. Keeping in view the ever deteriorating standards of politics, it would be more desirable to try all cases of politicians by special courts. It will help maintain sanctity and purity of elections.

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CONFLICT OF INTEREST

We declare that we have no conflict of interest.

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7. These three offences have been defined by SS 171B, 171C and 171D, IPC respectively.
8. Ss. 171E, 171F and 171G, IPC, 1860.
9. Offences punishable under SS. 153 A, 171E, 171F, 376 (1)&(2), 376A, 376B, 376C, 376D, 498A, 505(2) 2(3) IPC, the Protection of Civil Rights Act, 1955, S. 11 of the Customs Act, Ss. 10-12 of the Unlawful Activities (Prevention) Act, 1967, the Foreign Exchange Regulation Act, 1973; the Narcotic Drugs and Psychotropic Substances Act, 1985, Ss 3 or 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; Sec. 7 of the Religious Institutions (Prevention of Misuse) Act, 1988, Ss. 125, 135, 135A, S. 136(2) of the Representation of People Act, 1951; S. 6 of the Place of Worship Act, 1959, Ss 2 and 3 of the Prevention of Insults to National Honours Act, 1971.
10. (a) Any Law Providing for the Prevention of the Hoarding or Profiteering.
    (b) Any Law Relating to the Adulteration of Foods or Drugs.
    (c) Any Provisions of the Dowry Prohibition Act, 1961.
    (d) Any Provisions of the Commission of Sati (Prevention) Act, 1987.
11. Id. S.8 (4).
12. Prabhakaran V P, Jayarajah. AIR 2006 Mad. 17.
13. (1999) Cr LJ 1224 (S.C.).
14. AIR 1964 Ori. 1.
15. Sarat Chandra V Khagendra Nath. AIR 1961 SC 334.
16. Dewan V K. Election Law, 23-24.
17. Kapur B R. V State of T.N. AIR 2001 SC 3435; see also Dr. Mrs Kiran Jain and Jain, Chawla's P C Elections: Law and Practice, XXXV, 7th Edition, 1999, reprint 2002.
18. AIR 2006 Mad. 17.
19. AIR 2005 SC 688.
20. The bench consisted of Chief Justice Lohati and Justices Patil S V, Srikrishna B N,

Mathur G P, Balkrishnan K C. Majority judgment was delivered by Justice R.C. Lohati whereas Justice K.C. Balkrishnan wrote dissenting opinion.

21. Supra note 16 at 705.
22. (1981) 2 SCC 84.
23. (1970) 2 SCC 462.
24. Vidya Charan Shukla Vs Purshottam Lal Kaushik,1981 SCR (2) 637
25. The Court also overruled Mannilal V Parmai Lal, (1970) 2 SCC 462.
26. Ibid

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