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## TOWARDS DECRIMINALISATION OF INDIAN POLITICS

Suman A. Chittaragi<sup>\*1</sup> and Rajesh Gurani<sup>2</sup>

<sup>1</sup>\*S.C. Nandimath Law College, Bagalkot, Karnataka, India.

<sup>2</sup>Basaveshwar Engineering College, Bagalkot, Karnataka, India.

### ABSTRACT

India is a democratic country where people have right to elect their representatives of their respective State legislatures and the members of parliament by casting their votes. People have faith in their representatives but some elected members are having criminal backgrounds which defeat the actual purpose of representation of the members for the people's welfare. In order to overcome from this hurdle the parliament enacted Representation of People's Act 1951 which prescribes some disqualifications to the candidates but those are not satisfactory. This paper focuses on impact of criminalization in Indian politics ends with recommendations for improving the situation and the role of general public.

### KEYWORDS

Democratic country and Indian politics.

### Author for Correspondence:

Suman A. Chittaragi,  
S.C.Nandimath Law College,  
Bagalkot, Karnataka, India.

**Email:** [suman.chittaragi@gmail.com](mailto:suman.chittaragi@gmail.com)

### INTRODUCTION

The preamble of Indian Constitution prescribes India as a sovereign socialist democratic and republic country. Presently having population of 1.34 billion people, more than 800 million people are eligible to vote, India takes pride in being the "world's largest democracy and home to the regular and fair elections". Elections provide an opportunity to the people to select their representatives. The essence of democracy is the freedom to voice one's opinion even if it is critical of the government. In fact, democracy is enriched when different voices and constructive opinions influence the policies of the government. Democratic government is an

administration that manages itself through popular assessment which is communicated through the medium of elections<sup>1</sup>.

The members of the legislature are mandated to represent vicariously the aspirations and concerns of the people whom they represent. Hence it is quintessential for the legislature of a representative democracy to be a true reflection of the aspirations of the people and also to be fair, honest and accountable to the people they represent. However, unfortunately, in recent times, India has witnessed a crisis of empathy, quality, fairness, integrity, honesty, and intellectual capability among the members of its legislatures, both at the Centre as well as the State level<sup>2</sup>. Most of the elected members and candidates who are contesting in elections are having criminal backgrounds, they are involved in heinous crimes like rape, theft, dacoity, murder, and extortion etc, these people spend huge money on elections which they get money from party funds that money basically came from doing criminal activities due this public may lose hope in their representatives therefore there is necessary to decriminalize Indian politics with new reforms.

### **DECRIMINALISATION OF POLITICS**

Part XV of the Indian constitution includes Article 324 to 329 which deals with the electoral system in our country. Whereas, the country is facing the serious problem of criminalization of politics in which criminals, i.e., persons convicted by courts of law for certain offences, are entering into election fray and contesting as candidates. This was confirmed when The Government had formed committee in 1993 to collect all information's regarding crimes and mafia activities in the country.

The committee pointed that there has been a fast spread and development of criminal groups, equipped senas, mediate Mafias, pirating posses, tranquilize merchants and financial entryways in the nation which have, throughout the years, built up a broad system of contacts with the officials/Government functionaries at the nearby levels, legislators, media people and deliberately found people in the non-State division. Some of these Syndicates additionally have global linkages,

in specific States, similar to Bihar, Haryana and UP, these packs appreciate the support of nearby level legislators, cutting crosswise over partisan divisions and the insurance of administrative functionaries. Some political pioneers turn into the pioneers of these posses and, throughout the years, get themselves chose to neighborhood bodies, State Gatherings and the national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardizing the smooth functioning of the administration and the safety of life and property of the common man, causing a sense of despair and alienation among the people<sup>3</sup>.

Constitution allows Parliament to make provisions in all matters relating to elections to the Parliament and State Legislatures. In exercise of this power, the Parliament has enacted Representation of the People Act 1951 (RPA Act 1951). Section 8 of the Representation of the People Act, 1951, lays down the conditions under which a person's would be disqualified on grounds of conviction for contesting elections to parliament and Legislature of a State; which includes:

- Any person convicted of any offence listed under sub-section (1) of section 8 of the Representation of the People Act, 1951 shall be disqualified for a period of six years from the date of such conviction;
- A person convicted for the contravention of any of the laws listed under sub-section (2) of section 8 of the Representation of the People Act, 1951, and punishable with imprisonment for not less than 6 months shall be excluded from the date of such conviction find shall continue to be precluded for a additional period of 6 years subsequent to his release;
- Under sub-section (3) of section 8 of the Representation of the people Act, 1951, a person who is convicted of any other offence and punished with 2 years might be excluded from the date of such conviction and should keep on being precluded for a further period of 6 years from the time of his release;
- Sub-section (4) of section 8 of the Representation of the People Act, 1951 states that none of the above mentioned

disqualification will take effect in case of a person who on the date of the conviction is a Member of Parliament of the Legislature of a State, till 3 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 of by the court<sup>4</sup>.

This scheme of disqualification upon conviction laid down by the RPA clearly upholds the principle that a person who has conducted criminal activities of a certain nature is unfit to be a representative of the people. The criminal activities that result in disqualification irrespective of punishment under Sec. 8(1) are either identified with public office, for example, electoral offenses or offending the national flag, or are of grave nature, for example, offenses relating terrorism. S. 8(3), then again, visualizes that any offense for which the base is two years of imprisonment is of a character sufficiently genuine to justify preclusion. In either case, obviously the RPA sets out that the commission of genuine criminal offenses renders a man not qualified to stand in election or proceed as an agent of the general population. Such a confinement, it was visualized, would give the statutory hindrance to keep criminal components from holding public office, consequently protecting the fidelity of representative government.

However, it is clear from the above account of the spread of criminalization in politics that the purpose behind S. 8 of the RPA is not being served.

With respect to the filing of affidavits by candidates, a candidate to any National or State Assembly elections is required to furnish an affidavit, in the shape of Form 26 appended to the Conduct of Election Rules, 1961, containing information regarding their assets, liabilities, educational qualifications, criminal convictions against them that have not resulted in disqualification, and cases in which criminal charges are framed against them for any offence punishable with two years or more.

Failure to furnish this information, concealment of information or giving of false information is an offence under S. 125A of the RPA. However, the

sentence under S. 125A is only imprisonment for a period of 6 months, and the offence is not listed under S. 8(1) or (2) of the RPA. Therefore, conviction under S. 125A does not result in disqualification of the candidate. Nor is the offense of false exposure recorded as a degenerate practice which would be a ground for putting aside a election under Sec 100.

Therefore, there is as of now little consequence for the offense of recording a false affidavit, these resulted uncontrolled practices<sup>5</sup>.

The RPA does not bar the people who have criminal background it only provides the disqualifications and after completion of that disqualification period they can again enter into politics. This is not enough there is necessity to amend the Act again make complete ban on persons to enter into politics who are having criminal backgrounds as already there in Judiciary and Administrative field.

## RECOMMENDATIONS

The Supreme Court of India requested the Law Commission in a writ petition W.P. (Civil) No. 536 of 2011 titled *Public Interest Foundation. v. Union of India*, to expedite consideration of the two issues, namely, (1) whether disqualification should be triggered upon conviction as it exists today or upon framing of charges by the court or upon the introduction of the report by the Investigating Officer under Section 173 of the Code of Criminal Procedure [Issue No. 3.1(ii) of the consultation Paper] and (2) in the case of recording of false affidavits under Sec 125A of the RP Act, 1951 ought to be a ground of exclusion? And, if yes, what mode and mechanism needs to be provided for adjudication on the veracity of the affidavit? [Issue No. 3.5 of the Consultation Paper].

In pursuance of the above order, the Law Commission has prepared its recommendation in the form of 244th Report titled 'Electoral Disqualifications'<sup>6</sup>.

The report inspected issues identified with: (I) disqualification of applicants with criminal background, and (ii) outcomes of documenting false affidavits. Key suggestions include:

### **Stage at which disqualification is to be triggered**

The Commission analyzed the diverse stages at which preclusion might be activated, and chosen the phase of confining of charges.

Conviction: The present practice with regards to disqualification upon conviction has not been able control the criminalization of governmental issues, attributable to lengthy proceedings and unavoidable delays are contributing towards rare convictions. The law must develop to go about as a compelling impediment.

### **Filing of police report**

At the stage of the filing of the police report, there is no application of judicial mind. Thus, this would not be the appropriate stage at which disqualification may be effected.

### **Framing of charges**

The stage of framing of charges is based on adequate levels of judicial scrutiny. By effecting disqualification at this stage, with adequate safeguards, the spread of criminalisation of politics may be curbed.

### **Safeguards at the stage of framing of charges**

Certain measures must be incorporated to anticipate abuse of this provision and to address the worry of absence of solution for the charged. These include:

- The offenses that pull in greatest punishment of five years or above ought to be incorporated inside the ambit of this provision.
- Charges filed within one year before the date of scrutiny of nominations for an election will not lead to disqualification.
- The disqualification will operate until acquittal by a trial court, or a period of six years, whichever is earlier.
- For charges framed against sitting MPs or MLAs, the trial must be expedited. It must be conducted on a day to day basis, and completed within one year.
- If the trial is not concluded within a one year period then the MP/MLA may be disqualified at the expiry of that period. Alternatively, the MP/MLA's right to vote in the House as a member, remuneration and other perquisites

attached to his office should be suspended at the end of one year.

- Disqualification at the stage of framing of charges must apply retroactively as well. People with charges pending (deserving of five years or more) at the time of this law coming into force must be precluded from contesting future elections. The protections for charges documented inside one year of the date of investigation of nomination papers would apply.

### **False affidavits as a ground for disqualification**

- On the issue of filing of a false affidavit, the Representation of the People Act, 1951 must be amended to reflect the following:
- Conviction on the charge of filing of a false affidavit must be grounds for disqualification.
- Punishment to be enhanced, from a maximum of six months imprisonment, to a minimum of two years imprisonment.
- Filing of a false affidavit should qualify as a 'corrupt practice' under the Act.
- Consequently, trials of cases in relation to false affidavits must also be conducted on a day to day basis. Further, a gap of one week should be introduced between the last date for filing nominations and the date of scrutiny. This would give proper time to record an objection on nomination papers.

In February 2002 The National Commission to Review the Working of the Constitution submitted the consultation paper on review of election law, processes and reform options thereby provided the following recommendations:

- Once charges relating to certain crimes have been framed by a court against a person, he should not be permitted to contest elections unless cleared.
- A potential candidate against whom charges have been framed by the police may take the matter to a special electoral court. This court would be obliged to enquire and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a *prima facie* case justifying

the framing of charges. If yes, the person should not be allowed to contest.

- Eliminate incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951, whereby a rapist convicted and sentenced to ten years imprisonment, may be disqualified only for six years under sub-section (1) and thus remain free to contest elections, even while in prison serving the last four years of his sentence. The law should provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totaling the sentence imposed plus an additional six years.
- Under Section 8(4), sitting members are not disqualified even when convicted until their appeal is decided. This should be deleted.
- If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw from the legislature for six months and if within that period he fails to get an acquittal, he should be disqualified.
- Political parties, when they are seen to be abetting criminalization should face derecognition and other action<sup>7</sup>.

#### **Recent Supreme Court verdicts**

In *Lily Thomas v. Union of India and Ors*<sup>8</sup>. In this case Lily Thomas is an Indian lawyer along with Lucknow-based NGO Lok Prahari petitioned in the Supreme Court to strike down Section 8(4) of the Representation of the People Act, 1951 to exclude an legislator quickly when sentenced for at least two years' jail.

The Supreme Court ruled that any MP, MLA or MLC who is convicted of a crime and awarded a minimum of two year imprisonment, loses membership of the House with immediate effect. This is in contrast to the earlier position, wherein convicted members held on to their seats until they exhausted all judicial remedy in lower, state and Supreme Court of India. Further the provision of Sec 8(4) of RPA permitted elected representatives to

appeal to conviction within 3 months was held unconstitutional.

In *Chief Election Commissioner v. Jan Chaukidar*<sup>9</sup> the verdict of Patna HC “right to vote is a statutory right, not absolute, so it can be taken away” was challenged by CEC in SC, but the petition of CEC was rejected by the SC while holding up the validity of HC. SC said “by virtue of these acts, a person who has no right to vote by virtue of provision of section 62(5) of RPA, 1951 is not an elector and is therefore cease to contest the to the house of people or legislative assembly.

#### **CONCLUSION**

The health of a democracy depends on the choice of representatives and leaders, hence it is the responsibility of the general public to choose proper representatives. Gandhi ji said “In a true democracy every man and woman is taught to think for himself or herself”. Franklin Delano Roosevelt, the longest serving US president, like Gandhi said “Democracy cannot succeed unless those who express their choice are prepared to choose wisely. The real safeguard of democracy, therefore is education ”If voters stop taking bribes and stop voting for people with serious criminal cases, the system will automatically change<sup>10</sup>. Hence the people should be aware while selecting their leaders. Therefore it is the duty of the Government to educate the people regarding electoral reforms by conducting awareness programs and by other ways. Hence there is equal burden on general public as well as Government to make healthier democracy.

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#### **CONFLICT OF INTEREST**

We declare that we have no conflict of interest.

## BIBLIOGRAPHY

1. People's participation in democratic process, available at: [http://www.nios.ac.in/media/documents/SecSocSci\\_Cour/English/Lesson-22.pdf](http://www.nios.ac.in/media/documents/SecSocSci_Cour/English/Lesson-22.pdf).
2. Decriminalization of Politics in India, available at: <https://www.scribd.com/document/263252780/Decriminalization-of-Politics-in-India>. last visited on 23/10/2017.
3. Government of India, 'Vohra Committee Report on Criminalisation of Politics, Ministry of Home Affairs' (1993), available at: [http://adrindia.org/sites/default/files/VOHRA%20COMMITTEE%20REPORT\\_0.pdf](http://adrindia.org/sites/default/files/VOHRA%20COMMITTEE%20REPORT_0.pdf), last visited on: 12/10/2017.
4. Appendix-VI-A, Chapter II, Election Commission of India, 1968, available at: [http://eci.nic.n/archivehandbook/CANDIDATES/cap6/cap6\\_4.htm](http://eci.nic.n/archivehandbook/CANDIDATES/cap6/cap6_4.htm), last visited on 15/10/2017.
5. Law Commission Report No 244 February 2014 on electoral disqualifications, available at: <http://lawcommissionofindia.nic.in/reports/Report244.pdf>, last visited on 15/10/2017.
6. Public interest foundation v. Union of India, latest SC order, available at: <http://www.desikanoon.co.in/2014/03/public-interest-foundation-v-union-of.html>, last visited on 23/10/2017.
7. NCRWC report on review of election law, processes and reform options, available at: [http://lawmin.nic.in/ncrwc/final\\_report/v2b1-9.htm](http://lawmin.nic.in/ncrwc/final_report/v2b1-9.htm), last visited on 20/10/2017.
8. Lily Thomas v. Union of India, (2013) 7 SCC 653.
9. Civil appeal No: 3040-3041 OF 2004, available at: <https://indiankanoon.org/doc/158890876/>, last visited on 21/10/2017.
10. Towards Decriminalization of elections and politics, available at: [http://adrindia.org/sites/default/files/Towards\\_Decriminalisation\\_of\\_Elections\\_and\\_Politics.pdf](http://adrindia.org/sites/default/files/Towards_Decriminalisation_of_Elections_and_Politics.pdf), last visited on 20/10/2017.

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