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CRIMINALIZATION AND POLITICS IN INDIA

KEY WORDS:

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INTRODUCTION

The criminalization of politics is the evil of Indian Democracy. Criminalization has been phenomenally increasing in India. Growing of political parties and voters behaviour are main causes for that. The mushroom growth of political parties is not the result of improvement in political standard; nor is it because more qualified and service-minded persons are entering the field of politics, determined to serve the country and its people.

A criminal generally begins criminal activity at local level with petty crimes. In big cities, he begins with country liqueur, gambling, betting and prostitution. The politician use criminals for their selfish ends and the criminals and their syndicates seek their protection and patronage to carry o their criminal and antinational activities. Vohar Committee found that all over India crime syndicates have become a law unto themselves even in rural areas and small towns muscle men have become the order of the day. The report finds sinister link between media and antinational elements on one hand and bureaucrats and politicians on the other hand.

The criminals help politicians in various ways. As a candidate, they win the seat. The intimidation of voters, proxy voting, booth capturing are the other devices which are carried on by them. In the first two general elections the situation was different but it changed and kept on changing with each subsequent general election and today it has become very grim threatening the very existence of the democratic polity in the country. It has been well highlighted by the Presidential message to the nation on 14 August 1989 which emphasizes;

The use of money or muscle power and the totally unacceptable practices of voters' intimidation and booth capturing offend the very foundations of our socio-economic order.

Wrangling and corrupt practices were prevalent during Gandhiji's time as received many letters containing allegations of corrupt practices. However, the number of election offences has gone up in recent years and politics and elections have been criminalized because of the entry of criminals. In past, criminals usually worked behind the scene but now them apart from extending indirect help contest the elections and also become ministers. In a general election, Seshan, the Chief Election Commissioner (as he then was) countermanded polls in five parliamentary and fifteen assembly constituencies of UP and Bihar because of booth capturing and violence. It is also true that Bihar, Uttar Pradesh and Andhra Pradesh have been notorious for electoral malpractices like rigging and booth capturing. While highlighting the derailment of democratic polity train Rao observes:

Hundreds of criminal groups with an average strength of 500 each, some of them on bail, lakhs of licensed and equally daunting unlicensed and indigenou weapons apart from vast quantities of ammunition and bombs constitute on integral part of the election-scenario in states like UP and Bihar in particular and other in general. Killing of party workers and candidates has become common place making it look like our internal threats to democracy are far more deadly than the external.

He further points out that of the 14,000 candidates in one general election as many as 1500 candidates had a record of violent crimes, such as, murder, dacoit, rape, robbery or extortion. The two states, UP and Bihar accounted for 870 candidates with such a criminal record.

Criminalization of Politics

The criminalization of politics has poisonous effect on the administration of law and order and criminal justice. The chances of procuring conviction of criminals in major offences have become increasingly difficult if not impossible. The political interference in the investigation of offence by police and at different stages of trial appears to crumbling the criminal justice delivery system. A large number of acquittals and lighter sentences in most of the cases where the accused is found guilty of the offence make the mockery of the system.

National Commission on the review and working of the constitution notes

A state now has reached when the politicians openly boast of their criminal connections. A Bihar minister's statement in the assembly that he patronized and would continue to patronize gangsters to fight and win elections is a pointer to the growing phenomena where criminal background has become an invisible requisite to win elections.

In its annual report of 1984, the Election Commission identified the practice of booth capturing as the main problem of elections and made numerous recommendations to get red of it. The Supreme Court of India in Sasangouda V/S SB Amarbhed observed:

Booth capturing wholly negates the election process and subverts the democratic set up which is the basic feature of our constitution. During the post independent era ten parliamentary elections have entrenched democratic polity in this country which can't be permitted to be eroded by showing laxity in the matter of booth capturing.

The Supreme Court has been tough in preventing the criminalization of politics. The SC in K. Prabhakaran V/s P. Jayarajan has pointed out that the purpose of enacting disqualification uder section 8(3) of the Representation of People Act is to prevent criminalization of politics. Chief Justice R.C.Lohati speaking for the majority observed:

Those who break the law should not make the law. Generally speaking the purpose sought to be achieved by enacting disqualification on conviction for certain offence 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 holdsbarred and have no reservation from indulging into criminality to win success at an election.

Dinesh Goswami Committee)1990) suggested that legislative measures must be taken to check boot capturing, rigging and intimidation of voters. In its 170th report, the Law Commission of India recommended that in electoral offences and certain other serious offences framing of charge by the court should itself be a ground of disqualification in addition to conviction. The commission also noticed:

There have been several instance of persons charged with

serious and heinous crimes like murder, rape, dacoit etc. contesting election pending their trial and even getting elected in a large number of cases. This leads to a very undesirable and embarrassing situation of law breakers becoming law makers and moving around under police protection.

The first report of the Ethics Committee of Rajya Sabha adopted on 1st Dec. 1998 on criminalization of politics and corrective measures noted that provisions exist in various statutes and the rules of procedure but the laws and rules, however, had not the desired effect. It felt that the problems of criminalization of politics and its cause and effects could not be tackled by legislation alone. It also noted that disqualifying persons with criminal record or those with dubious distinction is a very complex issue and efforts should be made to prevent persons with criminal background from contesting the elections.

Over the years the situation has been allowed to become worse. On 28th August 1997, the Election Commissioner G.V.G.Krishnamurti startled the nation by revealing statistics, showing politicization of criminals. According to him, of 1,37,752 candidates who had contested the General Election of the Lok Sabha in 1996, nearly 1,500 has criminal records of murder, dacoit, rape, theft or extortion. UP, alone accounted for 520 such candidates and Bihar had the second largest number of 350. Mr.G.V.G.Krishnamurti further revealed that the eleventh Lok Sabha had reportedly 40 members, who had criminal background, Nearly 700 MLA's out of 4722 in the country then were involved in criminal cases and trial were pending against them in 25 states and two union territories. The main reason for such downslide in political standard is the absence of reasonable restrictions to formation of political parties and admission of members to the political parties.

In the past few weeks, India's elected representatives have been in new and for all the wrong reasons. They were not in the news because of some important policy decision that they had taken, nor were they in the news because they did something significant to help the downtrodden. Be it Shibhu Soren, who was remanded in custody over a 30 years old case. Laloo Prasad Yadav attempting to bribe voters ahead of the Assembly elections in Bihar or Pappu Yadav, who had flouted every possible rule in the Jail manual there is a great tendency among India's elected representatives to at some point or the other brush with the law as we had seen Madhukoda, A Raja etc.,

When did Indian Politics start its downward slide from the lofty to the grotesquely vile, till it finally reached a point where some even question the very sanctity of the Parliament? Various political analysts have suggested that the electoral landscape was first spotted sporting some serious gangrene-like wounds in the early 1970's. Things went pretty much downhill from there on slip sliding away into a virtual cesspool.

Ironically, the political establishment has made multiple breathtakingly insincere attempts to tackle this malaise over the past 38 years. By framing committees. Here is the list below:

- 1975- Tarkunde Committee Report
- 1990-Goswami Committee on Electoral Reforms
- 1993-Vohra Committee Report
- 1998-Indrajit Gupta Committee on State Funding of Elections
- 1999- Law Commission Report on Reform of the Electoral Laws
- 2001—National Commission to Review the Working of the Constitution
- 2004- Election Commission of India- Proposed Electoral Reforms
- 2008-The Second Administrative Reforms Commission
- 2010-Background Paper on Electoral Reforms (Ministry of

Law)

Here are two more that are equally incisive, though not an outcome of some government-appointed committee:
 2002- Background Paper on Electoral Reforms (Dr.Jayaprakash Narayan)
 2011—New Recommendations for Electoral Reforms (Submitted to Law Ministry & Election Commission of India)

Bury All The Reports

These reports pull no punches, are devoid of euphemisms and hit home hard on several key issue pertaining to all three stages of the Electoral Process: the pre, the actual process and the post.

Other than a few cosmetic and ineffective changes to the rules of engagement {anti-defection; a form here and an affidavit there, to capture criminal antecedents of candidates, declaration of assets etc}, the reports have led to very little meaningful progress or reforms. Unless of course one assigns any meaning and weight to the highfalutin, high-minded and incredibly vacuous utterances on the subject by leaders from all political parties, and mistakes the same for action.

The evidence in support of the case that politicians have been sincerely trying to clean up the Electoral system, despite the well-meaning observations and recommendations of bureaucrats, academicians legal luminaries, simply does not stack up. In fact, what becomes amply evident is that the current electoral landscape holds too many hidden contradictions in its folds, and hence can be summarily dismissed as on that is inconsistent and unstable. The most stunning contradiction of it all being, the power to make effective changes and modifications rest with the very same people who stand to lose the most {private gains, private wealth, private power} were such changes to be effected.

Criminalisation of Voters

Today most of the politicians and their parties try to grabbing the vote from several tricks. Party abhiyana is one of them. This type of the programme will be surviving the criminal politicians. Because the voter should not change their mind set for the party.

Judiciary and Criminalization

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 Deepark Ganpat Rao Saluke V/S State of Maharashtra. The Deputy Chief Minister of Government of Maharashtra in a public meeting made the statement that if Republican Party of India supported the Shivesena BJP alliance in the Parliamentary Election he would weep 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 is should support BJP-Shivesena 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/s Gangadhar Mohapatra a candidate professed that he was Chalan 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 171 C.

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. For actual disqualification, what is necessary is the actual sentence by the court. 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.

In T.R. Balu v/s Purushthoman 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 S. 8 of the R.P. Act set different standards for different offences. According to S. 8(3) a person convicted of any offence and sentenced to imprisonment for not less than two years (other than the offence referred to in S.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/S P. Jayarajah 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 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. 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. By adopting purposive interpretation of S. 8(3), the Court ruled that the 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 Vidyacharana Shukla V/S purushottam Lal 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 returned candidate, the court referred to Mannilal V/S Parmail and held that the acquittal had the effect of retrospectively wiping out the disqualification as completely and effectively wiping out the disqualification as completely and effectively as if it had never existed. However Vidyacharan Shukla 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 o nomination. The returning officer cannot postpone his decision nor make it conditional upon what may happen subsequent to that date..

It is submitted that the view taken in the instant case in correct and would be helpful in checking the criminalization of politics.

Sec. 8(4) of the RP 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 "{S}ubsection 4 would cease to apply no sooner the house is dissolved or the person has ceased to be member of that house." Thus, it is another effort of the Court to Strictly check the criminalization of politics.

In this way most of the political parties try to change the appointment of Judges by remove the Judge Appointment committee.

Concluding Observations

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 but the menace is increasing day by day.

The parliament has taken efforts by amending the law, 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 united make efforts to prevent criminalization of politics.

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26. Supra note 16 at 705
27. (1981) 2SCC 84
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