

CRIMINALISATION OF POLITICS- LEGAL LACUNA AND REALITY

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ABSTRACT

The world's largest democracy within every five years elects a new government for itself, where every citizen will get the opportunity to be a part of this revolution. While some people This paper tries to answer several orthodox as well as unorthodox questions to the topic, more importantly what exactly a man looks when he votes for a candidate in these elections and why is that a common man wants to see a fresh face contesting in elections in an era of two-party dominance. The paper further ventures into analysing the issues prevalent in the status quo ante in relation to the topic. A brief analysis over various reports is done just to point out the various fallacies existing in law of which criminals are taken advantage of. The paper endeavours further to find the meaning of the term “passing of the torch to the next generation” in the context of the issues present currently and more so why is it necessary to do so. A sceptic’s eye will eventually find rest when after reading the facts mentioned, issues prevalent, analysis and various opinions and solutions put forward by the author in these matters. Eventually it is the working-class citizen of the country, in whose hands the fate of the country rests.

INTRODUCTION

The world's largest democracy is successful not because of the ideals envisioned by great political stalwarts, but because of the people who have upheld these values. It is the people who believe in this system and trust that these ideals are supreme. But in the recent years, it has been seen that due to some factions created in the society, this trust and confidence of people in our governments.

One of the major reasons that the general public is losing confidence in the various functionaries of the government is due to the level of corruption prevalent in our "system". In a country where power cannot remain innocent, the problem of corruption has now been like a wildfire which is beyond control now. Why that is when one hears the "politics", the first thing which comes to their mind is not public service but criminals corrupting numerous functionaries of the government,

This wave of criminalisation of politics has been rooted in the Indian political setup for quite some time. But this trend was most strongly felt in 1993, during the Mumbai serial blasts which in turn was a result of a collaboration of police, custom officials, criminal gangs, politicians and their patrons. The Vohra committee report ¹clearly indicates the extent to which the system was corrupted in the city of Mumbai, where political parties not only facilitated the local gangs and petty criminals to risk the lives of millions but also provide orders to police to help them.

The 1993 Mumbai blasts was one such example where the individuals the Vohra committee reported the depreciating value of lives in the country as seen by one of the three main organs of the government itself. Those events were an eye opener for the country, maybe for many more eye washes which were about to come in the future.

One out of many observations of the Apex court by these reports was that when such unruly forces get intertwined with the political setup of the country, it become fairly impossible to get them apart. Where the end result directly affects the working-class heroes of the country.

"Criminalisation of politics was never an unknown phenomenon in the Indian political system, but its presence was seemingly felt in its strongest form during the 1993 Mumbai bomb blasts

¹ Report available at https://adrindia.org/sites/default/files/VOHRA%20COMMITTEE%20REPORT_0.pdf

which was the result of a collaboration of a diffused network of criminal gangs, police and customs officials and their political patrons." ²

The criminalisation of politics, where it initially came into the notice of the country, never seized to have stopped there. Jingoism like "Gundaraj" are heard almost every day, now more than often. There are people who live in fear because of the pressure of these elected criminals at the Parliament, where everything becomes jolly good at the time of elections or worse still such goons and hooligans force people to vote by mere force.

So, the question around which the paper revolves is what happens when the people who has the power to safeguard you against several heinous crimes is himself/herself a criminal? And also, what makes these people so powerful that even the strongest organisation, when it tries to, cannot deter them? And is the tag "world's oldest democracy" is just a farce, when everyone has already submitted to such people?

ISSUES PREVALENT

As we might already know (or have prejudiced) that Indian political setup is full of criminals, if one had to put a number on it, what would that be?

In a country like ours, the number of politicians who take rounds at police stations are ever increasing. Reports suggest that there are at least 1580 MPs and MLAs who are facing pending criminal charges.³ In such situation, how does one not expect the law-making functionaries to work efficiently?

The former Chief Election Commissioner while in office has made no bones when talking about the process of election and the inflow of cash which suddenly pops out of nowhere. For instance, while in office, he said that about Rs 10,000 crores of black money was spent in the 2012 UP elections.⁴ At Rs.25 crores for each constituency, and in over 4000 Assembly seats in India, this amounts to Rs.100,000 crores.

² Deepak Mishra, Abu Salem Abdul Qayoom Ansari vs State Of Maharashtra & Anr, CRIMINAL APPEAL NO. 990 OF 2006.

³ Report of Association for Democratic Republic, July 2014.

⁴ Quoted in Business Today, April 24, 2014, "Ceiling on legitimate election expenditure is too low"

In an ideal case scenario, if one considers the Lok Sabha elections with 543 seats this adds up to another Rs.12,500 crores or a total of Rs.125,000 crores. Estimates of the 2014 campaign expenses by the ruling party are between Rs.4000 and Rs.10,000 crores. Local elections including Municipal, District, Block and Panchayat, easily double the figure of over Rs.100,000 crores as there are lakhs of contested seats. However, several Gram Panchayat elections are barely held.

Estimates for all elections put together, vary from a total of Rs.150,000 crores to Rs.250,000 crores. It should be taken note of that the numbers by the former Chief Election Commissioner shows evidently that candidates tend to spend for than the prescribed limit on election expenses several times over. A politician who he spends over Rs. 8 crores over an election is in reality spending 20 times the limit of Rs.40 lakhs per Assembly constituency.

The provision in the Representation of Peoples' Act⁵ which empowers the Election Commission to cancel an election for false declaration of electoral expenses is of course prevalent. This raises several questions about the nature of elections and democracy. If this continues, it can be concluded that government's finances are in the control of these criminals, where an honest tax payer would be left to suffer at the end of this.

As said by many officials, there has been a rapid spread and growth of anti-social elements in the society, this in turn has led to the growth of "armed senas", criminal gangs, smuggling gangs, drug mafias, economic lobbies and drug peddlers which in turn, over the years, advanced an widespread network of associates with the bureaucrats at regional levels, media persons, politicians and strategically located individuals in the Non-State sector. Where some of these Organizations also have linkages to international avenues, including the foreign intelligence agencies.

This just proves that how dangerous current problem can get. We as Indians, are living in an era where the Home Ministry⁶ is not aware of the emergency⁷ being imposed in the State of

⁵ *Ibid*

⁶ The Ministry of Home Affairs or Home Ministry is a ministry of the Government of India. As the interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy. The Home Ministry is headed by Union Minister of Home Affairs Rajnath Singh.

⁷ Article 370 of the Constitution of India states that Parliament of India and the Union Government jurisdiction extends over limited matters with respect to State of Jammu and Kashmir, and in all other matters not specifically vested in Federal governments, actions have to be supported by state legislature.

Jammu and Kashmir, the Finance Ministry⁸ not being aware of Demonetisation policy and the Defence Ministry⁹ being completely unaware of the Rafael deal taking place in the country. In a country, where some of the most reputed independent organisations like the Judiciary, Media and the CBI are turning against each other and there is evident threat to R&AW, the thought of these institutions being further corrupted by criminalisation of politics is nerve chilling.

- States, like Haryana, Bihar and UP these gangs enjoy the benefaction of local level politicians, which offers them ease to cut across party lines and the fortification of governmental officials. The candidates contesting spearhead these armed senas and get themselves elected at local, State and the national Parliament. In conclusion, such elements have assimilated considerable political influence which seriously jeopardizes the smooth functioning of any administration and the safety of life of the common man, causing a sense of despair amongst the people.
- It is no surprise that various economic transactions do get affected by the syndicates controlling the political clout in the country, this mainly occurs due to the dominance of these criminals in the international environment, these affect the economics of the country in several ways which include circulation of black money, havala transactions and operations of a vicious parallel economy causing serious strain to the economic fibre of the country. This primarily happens because there is a certain amount of respectability and fear which these syndicates churn. They exercise enough influence to make the task of prosecuting and investigating agencies extremely difficult; where even the adherents of the legal system have not escaped the encirclement of them.
- Certain elements of the Mafia have shifted to drugs, narcotics and weapon smuggling and established narco-terrorism states, one such examples can be cited in the States of J&K, Gujarat, Maharashtra and Punjab. The cost of contesting elections has thrown the politician into the lap of these elements and led to a grave compromise by officials of the preventive/detective systems. The spread of virus to almost all the areas in the country; the coastal and the border States have been particularly affected.

⁸The Ministry of Finance is an important ministry within the Government of India concerned with the economy of India, serving as the Indian Treasury Department.

⁹ The Ministry of Defence is charged with coordinating and supervising all agencies and functions of the government relating directly to national security and the Indian armed forces.

- Presently, there is no mechanism which is precisely designated to gather intelligence connect the dots to the linkages developed by Mafias with the politicians present in the government organisation. The various enforcement agencies collect information about the link between the administration and politicians with the Mafia gangs, smugglers and the underworld.

In a country, where terms like ‘Hafta’ are so commonly used, where common people, instead of protesting find it easy to give-in to these goons, it is fairly impossible to count the number of criminals in the country. But the reports submitted towards this cause point out that out of 62,800 candidates who have filed for elections, at least 11,030 (18%) had around 27,027 pending criminal cases against them while 5,253 (8%) candidates had 13,984 serious criminal charges including murder, rape, corruption, extortion, dacoity etc.

These include were 1229 cases of murder, 2632 cases of attempt to murder, and 496 instances of IPC sections on other cases related to murder (culpable homicide, abetment to suicide etc.). An average of 9% of all candidates fielded by political parties had serious criminal cases. Without exception all parties had such candidates, varying from 4% to 17%. If we look at candidates with some criminal case, including so called ‘trivial’ cases, the average shoots up to 18%.

Relative chances of winning for clean and tainted candidates
(All State Assembly, Lok Sabha, Rajya Sabha elections from 2004 to September 2013)

No. who Contested	No. who Won	% of those with clean records who won	% of those with charges framed who won	% of those with serious charges who won
62847	8882	12%	23%	23%

The quantity of winners with unlawful cases is 28.4% though only 18% of candidates had such records. Similarly, 13.5% winners had serious criminal charges compared to 9% of candidates. In every type of criminal case, the percent amongst winners is much more. Civil society and the Election Commission have therefore asked for candidates with serious criminal cases to be

barred from contesting elections. The Courts have also been inclined to take this view although they are not empowered to enforce this.¹⁰

CAUSES OF CRIMINALISATION OF POLITICS IN INDIA

After understanding that the criminalisation of politics is a far deep-rooted problem than it seems, it becomes imperative to comprehend the issues which help in contributing the criminalisation of politics in our country. The issue contributing such events should be seen as a black ink for democracy, where the people who are supposed to have a set vision for the country is identified, just not to do that.

- **Caste and Religion**

In our country, any big institution which goes parallel to caste and religion, seems to go corrupt in no time (at least in this case), the country which is supposed to run by politicians who are supposed to either make laws or govern the country delve themselves into the holiness of religion their respective caste systems.

The between personal and public lives is now completely blurred out, where the politicians try to impose concepts of their religious teacher onto the general public. The fundamental understanding that these are personal laws, which is up to each individual never occurs. Hence, when these people influence support from some of the sections in the society, it entitles them to use means which are juxtaposed from ethics.

- **Relationship between the Bureaucracy and the Legislature**

The dangerous relationship between the organs of the government has aggravated the problems. Gone are the days where the Executive and Legislature were supposed to be separate. The link between them has led many politicians to think that they can influence the laws at their disposal. This mindset of politicians has scarred the image of politics in the country.

¹⁰ *Ibid*

- **Interference of politics with administration**

This interference of politics in the domain of law making is another effect which emerges out of this cause. The politicians have entered the domain of administration, leaving what they are actually supposed to do. The administrative departments of the government also, does have a tendency of getting muscled out by such politicians.

This intertwining of politicians with the administration has made the civil servants as well as other politicians who are at the look out to gain more money more and more corrupt, eventually leaving the politics of the country of this country at the hands of these criminals.

- **Public opinion**

In a country like India, where the freedom of speech is a Fundamental Right for people,¹¹ there seems to be a lack of strong public opinion of people against corruption. The issue which has already destroyed so many lives and has the potential to destroy more and more is also a matter, which is almost never spoken about. Only when an individual when have the knowledge that how is this phenomenon affecting his life, they will open their mouth, but by then it becomes too late. The country's silence over certain pertinent issues in the society makes it fairly impossible to spread awareness regarding the catastrophic effects to which it leads to.

- **Nature of the society**

The Indian society as a whole being underdeveloped, poor and illiterate leads to gain these criminals an upper hand in the society. These further upheavals the nature of the shrewd politicians to cater to his greediness. The self-interest seeking politicians cum criminal thence, stops at nothing, and makes sure to get what he wants, no matter at what cost.

FOR THE APEX

The increasing nexus between criminals and politics threatens the survival of any true democracy. In India, the Election Committee's official publication 'Electoral Reforms (Views

¹¹ Freedom of Speech guaranteed under Article 19 (1) of the Constitution, 1950

and Proposals)' highlighted the need to amend the Representation of the Peoples' Act, 1951¹² to debar anti-social and criminal elements making inroads into the electoral and political fields. It said that criminalisation of politics had reached a stage where the law breakers have become law makers.

The views were reiterated by the Law Commission¹³ which also recommended amendments of the Representation of Peoples' Act, 1951 by providing that framing of charges for offences punishable with death or life imprisonments, should disqualify a candidate for five years or until acquittal, whichever happens earlier. It also recommended that a candidate seeking to contest election must give details about his criminal history, or any pending criminal cases, including a copy of the FIR/Complaint and also furnish details of all assets possessed whether by the candidate, spouse or dependent relations. No action was taken on the recommendation by the government because of lack of consensus amongst the political parties.

It is in this environment of inaction of the government, Parliament and the political parties, the matter was first brought before the Delhi High Court through a PIL Writ Petition¹⁴. Basing itself on the thesis that under Article 19(1)(a) of the Constitution, guaranteeing freedom of speech and expression, the right to information is an integral part of the freedom of speech and expression. Accordingly, the High Court ruled that a candidate while filing his nomination for his nomination for election to Lok Sabha or a State Legislature should give his full information in an affidavit about his past criminal record, financial status etc.

The Central Government appealed to the Supreme Court against the High Court verdict. On appeal, the Supreme Court has more or less reiterated the same judgement that was pronounced before. The Supreme Court has ruled that the Election Commission should call for information of each candidate on affidavit regarding his past criminal record, his financial assets (including those of his spouse or dependants), his liabilities to public sector bodies and educational qualifications¹⁵

¹² The Representation of People Act, 1951 is an act of Parliament of India to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

¹³ Law Commission Of India, 179th report

¹⁴ Association For Democratic ... vs Union Of India (Uoi) And Anr, AIR 2001 Delhi 126, 2000 (57) DRJ 82

¹⁵ Union of India vs Association of Democratic Reforms

It may be noted that these are not in any disqualifications of the candidate. The idea underlying is that if the electors have the full information about the antecedents of a candidate, they will be in a better position to decide as to whom to give vote.

Subsequent to the decision in the Supreme Court in Association of Democratic Representation of People Act, 1951 was amended the existing provision¹⁶ by inserting Section 33A which requires a candidate to furnish information whether he is accused of any offence punishable with the imprisonment of two years or more in a pending case in which charges have been framed by a court of competent jurisdiction and whether he has been convicted and sentenced to imprisonment for one year or more.

Whereas, failure to file an affidavit or concealing information is punishable under Section 125-A. As far as the declaration of assets is concerned, the Parliament chose to partially implement the decision of the Supreme Court by requiring an elected and not a candidate standing for election, to declare his assets.¹⁷

Where Section 33-B primarily states that a candidate is not required to disclose

- (a) the cases in which he is acquitted or discharged of criminal offence(s);
- (b) his assets and liability and
- (c) his educational qualification. The section was held to be unconstitutional by the courts in the case of *People Union of Civil Liberties vs Union of India*¹⁸, in the ground that the voter had a fundamental right under Article 19(1)(a) to be aware of the antecedents of his candidate.

MEASURES TAKEN

The Election Commission, is the body responsible to make sure that the election does take place in a free and fair manner. But in the recent years, there have been certain instances where this freedom has been compromised time and again. But still, the Election Commission tries to as much as it can to save democracy.

¹⁶ - The Representation of the People (Third Amendment) Act, 2002 (Act 72 of 2002)

¹⁷ Sec 75 A of the Representation of People Act, 1951.

¹⁸ *People Union of Civil Liberties vs Union of India*, Writ Petition (Civil) No.196 of 2001

The Election Commission of India (ECI) has debarred as many as 1921 entrants from contesting the 2014 Lok Sabha elections. These candidates from all over the country had not submitted their election spending results in the earlier election that they had disputed in, whether in the State assembly or Lok Sabha elections. Even after several years, the governance has failed time and again against the Gundaraj which prevails in the system.

But coming back to an important question as to what exactly does an individual want when they cast their votes in these elections. The top 10 priorities for voters was basic essential services (drinking water, education, health, and electricity), employment, basic infrastructure (roads, public transport), law and order and women's security, lower food prices/subsidized Public Distribution System (PDS).¹⁹

Voter rating of performance on Governance				
	Expectation on 30 governance parameters	Performance on 30 governance parameters	Top 10 priority expectation	Top 10 priority performance
Score on 10 point scale	7.53	5.74	7.74	5.87
Interpretation	Medium to High	Bad to Average	Medium to High	Bad to Average

In a scenario, where the criminalisation of politics is not the top agenda or given high priority, there needs to be an establishment of a link between the two dots in the voter's mind. The issue of misuse of funds for the purpose of election sits in the heart of the matter. Elections as it is, is a high-risk investment for any candidate, this money has to be recovered by the candidate by earning revenues from the public taxes and public remunerations. This in turn will affect the administration in an adverse fashion where primacy of self-interest will always prevail to that of nations.

THE WAY FORWARD

It is no doubt that the issue of criminalisation of politics in our country germinates from the society. In a way, the general perception of the public to be indifferent functions as a catalyst

¹⁹ ADR report, 2014

for the promotion of a behaviour which is more like this. This clearly reflects upon the type of democracy these people want to develop. The ADR survey clearly report that the people are more focussed upon their day to day necessities rather than building an ideal form of democracy.

To eradicate such issues the public requires a clear vision. A collaborative process where society is based on the principle serving the wants and needs of people first, and in turn spreading awareness may be one alternative. We live in a country where public anger can be quickly mobilized (thank fully in this case) every time there is a crisis (or none at times). Where building of a clear vision seems to be a wide term goal, but this in turn can bring in a lot of positive changes for the people of this country.

In this era, where various businesses and political interests are synergising into one and want to achieve goals to their best interest, a citizen interests are not really being addressed by either, where the latter has a fundamental duty²⁰ to do so. However, rule-making is in the hands of politicians and bureaucrats. Hence, in this present scenario, a citizen is only important to cast a vote in the elections term after term.

Hence, a voter needs to focus on identifying the link in voters' minds between the goodness amongst the same politicians at the time when elections are fought, and the bad governance we get as a result. Voters need to recognize the consequences of electing such people which comprises corruption to recover electoral investments, auction of public and natural resources, and a shift in policy and budget allocations towards the interests of those who fund elections. People's interests are of lower priority. This vote education needs to be based on verifiable facts, rather than ideology and opinion. Such a voter awareness campaign is difficult to do, and requires a lot of resources. It will also be long drawn out and needs to be a continuous process over decades.

²⁰ The Constitution lays down certain Directive Principles of State Policy, which though not justiciable, are 'fundamental in governance of the country', and it is the duty of the State to apply these principles in making laws.

CONCLUSION

It is the "solemn responsibility" of all concerned to enforce the law as well as the directions laid down by this court from time to time in order to "infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that we shall be governed no better than we deserve".

These were the words of the honourable judge presiding at the case where the aforementioned issue was being heard. This statement has only meant to say that it is not only the responsibility of the officials but also a responsibility of us as citizens of the largest democracy in the world to serve this nation. It can be concluded from the aforementioned arguments that politics is a double-edged sword, where powers and responsibilities to fulfil expectations go hand in hand. What needs to be realised that in the status quo, the powers are enjoyed a lot, but the duties are almost never fulfilled, the main reason behind that is the criminalisation of politics, which eventually ruptures the entire political setup. What needs to be seen is how much our democracy can survive, if the issues at hand continue like the way they are at present.