

IMPACT OF CRIMINALIZATION ON INDIAN POLITICS

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ABSTRACT

India's Independence portrays a mixed feeling of achievement & dismay.¹ Achievement because of uninterrupted elections every five years and thus a smooth transfer of power (except a brief spell of emergency) but on the other hand corruption is rampant & criminalization of elections and politicization of crime has put in jeopardy the impeachable reputation of electoral reforms. A nation wedded to democracy where elections are primary for the governance of the nation but growth and multiplicity of criminal gangs, drug mafia & criminal lobbies has eroded the government functionaries at every level. Criminal elements have acquired political status seriously jeopardizing the functioning of administration and corrupted the government machinery at all level, wielding financial and muscle power. Majority of our representatives are elected by minority of votes cast thereby making their representative credentials doubtful. The result is that the legitimacy of our electoral process becomes grave. The political parties prefer criminals as candidates as elections are increasingly undermined by rigging, booth capturing so man with muscle power has a fair chance of winning than a clean, decent candidate without such capabilities. The increased presence of criminals in the representative institutions proves the fact. The technical and natural justice aspect cannot be ignored that no one can be called a criminal till proved by a court of law. Moreover, they have been elected by the people so what if they are criminals.

Keywords: *Criminalization, Criminal Lobbies, Criminal Gangs, Drug Mafia.*

Introduction

A government constituted by electoral malpractices and coercion of electorate can hardly be representative of the people. An electoral system which fails to represent the majority of electorate cannot be called democratic even though periodic elections are held and the maintain the trappings of democracy. Elections provide an opportunity to the people to express their faith in the government and change it when it loses one. Criminalization of elections and politics and leaders known to have criminal antecedents are becoming a matter of grave concern among the intelligentsia. The Representation of People's Act, 1951, under Chapter III Section 8, states, that a person can be disqualified from being chosen to either House of the Parliament or the Legislative Assembly or Legislative Council of the State if he has:²

- been convicted of an offence punishable under the Indian Penal Code, 1860.
- under the Protection of Civil Rights Act, 1955, which provides punishment for preaching and practice of "untouchability" and enforcement of disabilities arising from it;
- under Section 11 of Customs Act, 1962 for importing and exporting prohibited goods;
- under Sections 10 to 12 of the Unlawful Activities (Prevention), Act, 1967;
- Foreign Exchange (Regulation) Act, 1973;
- Narcotics Drugs and Psychotropic Substances Act, 1986;
- Offences under the Religious Institutions (Prevention of Misuse) Act, 1988;

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¹ N.R. Madhava Menon, Reforming the Electoral Law, The Hindu 25.11.1998 p. 10.

² Section 8, The Representation of People's Act, 1951.

- Sections 125, 135, 135A and Section 136(2)(a) of the People's Representation Act, 1951 whereby offences of booth capturing, removal of ballot paper from polling stations or fraudulently destroying nomination papers.¹

The Indian Penal Code, 1860 categorizes certain actions related to elections as punishable offences. It includes:

- Disqualification for six years from the date of conviction for certain offences.
- Disqualification, when convicted for certain other listed offences. Is also for a period of six years but not from the date of conviction but from the date of release of the person from such conviction.

However, Section 8(4) of the Act provides that if this conviction is against an MP or an MLA in any State. The disqualification shall not take effect for three months or if within this period there is an appeal, then till the appeal is disposed of by the court. The Peoples Representation Act, 1951 debates people with criminal record from contesting elections hut cannot present those under trial or those whose appeal is pending for disposal. In Navjot Singh Sidhu v. State of Punjab,² he was convicted under Section 304 of IPC for 3 years. He resigned. By elections were announced and he sought to fight them. The Supreme Court stayed his conviction temporarily & he won the election. The criminals are taking advantage and making mockery of the system. The acceptance of the preposition implies giving every criminal an access to contest elections as provisions of appeal are numerous and can go on for years. On the other hand it would deprive large number of activists from fighting elections as instances of fake cases against political rivals by party in power are abundant.

The Supreme Court entertaining the two writ petitions³ clearly emphasized that the growth and multiplicity of criminal gangs, drug mafia and economic lobbies has eroded the government functionaries at every level. These criminal elements have today acquired political status seriously jeopardizing the functioning of administration and corrupted the government machinery at all level, wielding financial and muscle power. This has rendered the work of enforcement and investigative agencies extremely difficult in ensuring safety of life and property of common man. Criminalization of politics by such candidates vest them with ultimate power to manipulate the machinery and governance to suite their interests as cases get decided in their favour or are kept pending over a long period without encroaching their political plans.

Emphasizing on the rising chart of criminals entering and occupying higher echelons in Parliament, the writ petitions filed under Article 226 before the High Court and under Article 32 before the Supreme Court, called for an analyses of three core issues;

- Whether Election Commission is empowered to issue directions as per the orders of the High Court.
- Whether a voter being a citizen of this country has a right to get relevant information about the candidate contesting the election.
- Whether the Election Commission can order mandatory declaration by the candidates with respect to their financial assets. Educational and criminal antecedents every year during their tenure as elected representatives.⁴
- The Supreme Court judgment on May 2, 2002. Clearly aimed at restricting the persons with criminal background from entering the Parliament. It clearly mandates that candidate should disclose their criminal antecedents, if any, as well as their financial and educational background.⁵

At times, Criminals win elections while remaining in judicial custody. As a result of Supreme Court's judgment in P.V. Narsimha Rao v. State.⁶ The members of Parliament and State Legislatures cannot be prosecuted on a specific charge of bribery if it is proved that the speech made by the Member or a vote given by him in the House constituted a motive behind the bribe taken. The Supreme Court in

¹ Section 8-A of the Representation of People's Act, 1951.

² (2007) 2 SCC 574

³ Union of India v. Association for Democratic Reforms, AIR 2002 SC 2121 and People's Union for Civil Liberties v. Union of India, (1997)1 SCC 301

⁴ Ibid.

⁵ Era Seztian, What Power Can Do, The Hindu, 21.05.2001.

⁶ AIR 1998 SC 2120

this case broadly interpreted Article 105(2) of the constitution which confers immunity on Members of Parliament from liability to any proceedings in any Court in respect of anything said or vote given in the House. It is submitted that the Civil Society and Media should pressurize the Government to implement the necessary electoral reforms suggested by the Law Commission, the Election Commission, and the National Commission to Review the Working of the Constitution from time to time. The voters should also ensure that a candidate with a criminal background does not get elect. The Election Commission must create an awareness amongst the voters about the ill-effects of the law-breakers becoming law-makers.

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