
Criminalization of Politics

1) Introduction
   • Criminalization of Politics means that the criminals entering the politics and contesting elections and even getting elected to the Parliament and state legislature.
   • Criminalisation of politics is the focus of public debate when discussion on electoral reforms takes place.
   • The issue of candidates facing criminal charges getting elected to Parliament and State legislative Assemblies is often raised.

2) Why there is a need to Decriminalize Politics
   • The quality of candidates contesting elections becomes important because it is at the root of our governance challenges.
   • Individuals we elect represent us in our legislative institutions and make laws that govern our society.
   • Dr Rajendra Prasad said that a constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it.

3) What Data Shows
   • Data from the Association for Democratic Reforms (ADR) indicate that 179 out of the 543 elected MPs in the present Lok Sabha have some kind of criminal case pending against them.
   • In the case of over 100 MPs, the cases were of a very serious nature such as crimes against women and kidnapping.
   • Going by the ADR’s estimates, there are more than 1,500 MPs and MLAs in Parliament and State Assemblies with criminal cases pending against them.
   • Data suggests that voters don’t mind electing candidates facing criminal cases.

4) What the Law Says?
   • The Representation of People Act specifies what can disqualify an individual from contesting an election.
   • The law does not bar individuals who have criminal cases pending against them from contesting elections.
   • An individual punished with a jail term of more than two years cannot stand in an election for six years after the jail term has ended.
   • If a lower court has convicted an individual, he cannot contest an election unless a higher court has overturned his conviction.
   • Critics Arguments
     a. With cases dragging in courts for years, a disqualification based on conviction becomes ineffective.
     b. According to ADR report, 30% of sitting MPs and MLAs were facing criminal proceedings, and only 0.5% were convicted of criminal charges in a court of law.
5) **SC's Rulings**
   - Making it mandatory for candidates to submit an affidavit with full disclosure of criminal cases, if any, and details of their asset and income — were made mandatory by the judiciary.
   - The court made it mandatory for political parties and candidates themselves to make public disclosure through print and electronic media.
   - None of the Above (NOTA) option was also introduced by the judiciary in 2003.
   - In 2013, the apex court ruled that a sitting MP and MLA convicted of a jail term of two years or more would lose their seat in the legislature immediately.
   - The Supreme Court favoured the creation of special courts for expediting criminal cases involving politicians.

6) **Supreme Court’s Recent Judgement**
   - One had hoped that the judiciary would show the way forward with regard to preventing candidates facing criminal charges from contesting elections.
   - In a recent judgment, the Supreme Court has left it to Parliament to legislate on the subject.
   - The court mentioned that it was not within its powers to disqualify politicians facing criminal cases from contesting election.
   - There is serious doubt whether this judgment would in any way help in making our politics cleaner.
   - The chances of Parliament acting fast on this issue are low.
   - **Reasons**
     a. No political party is free of this problem.
     b. The use of muscle power along with money power is used by all political parties to maximise electoral gains.
     c. In such a scenario, it would be difficult to ban candidates with a criminal record from contesting elections.

7) **Concerns / Challenges**
   - Election Commission has limited powers to legislate on such laws.
   - Public opinion too is not firm on the issue.
   - A survey found that opinion was divided when people were asked whether they would vote for a honest candidate who may not get their work done, or a tainted candidate who could get their work done.
   - While political parties raise concern about candidates with a tainted background contesting elections, none of them come forward to set an example for others when it is time to act.
   - In the present criminal justice system it takes years, probably decades, to complete the trial against a politician.
   - Those with political influence have taken full advantage by delaying hearings, obtaining repeated adjournments and filing innumerable interlocutory petitions to stall any progress.
   - They also engage in corruption and infect the bureaucracy and the police.

8) **Way Forward**
   - A single-pronged legislative and judicial solution will not help reform the electoral system.
   - Addressing the entire value chain of the electoral system will be the key to solve criminalization of politics.
   - Law commission report said that, disqualification at the stage of charging with proper safeguards to prevent misuse, has significant potential in curbing the spread of criminalisation of politics.
   - Sensitising the electorate about the role and responsibility of the elected representatives.
Currently, a large part of the voting population views their representatives as their problem solvers. Viewing them as lawmakers will slowly change their perception of what they want from their representative.

- We require a fresh pool of candidates who can appeal to the voters by their abilities as good lawmakers with innovative ideas.
- Political parties would then be pressured to give tickets to individuals who can win elections without having muscle power or criminal cases against them.
- Political parties will have to be encouraged to have stronger inner party democracy to attract this new set of leaders to join the party.
- Judicial system will have to be overhauled drastically to ensure that justice is dispensed swiftly in all cases.
- All these steps will have to work in parallel to remove criminalisation of politics.