



In Parliament's court

This article is related to Paper-II (Governance)

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"It is time for legislation to thoroughly clean up electoral politics."

While the issue of candidates facing criminal charges getting elected to Parliament and State legislative Assemblies is often raised, initiatives to minimise the problem, if not eliminate it completely, have been rather slow. One had hoped that the judiciary would show the way forward with regard to preventing such candidates from contesting elections, but in a recent judgment, the Supreme Court has left it to Parliament to legislate on the subject.

The expectation was not unreasonable, as some important changes in the electoral laws — 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 most recent change, i.e. providing an option to voters to exercise None of the Above (NOTA) in case they do not want to vote for any of the candidate contesting an election, was also introduced by the judiciary in 2003 on the basis of the PIL filed by People's Union for Civil Liberties.

The court mentioned that it was not within its powers to disqualify politicians facing criminal cases from contesting election, but recommended that Parliament enact a strong law. However, the court made it mandatory for political parties and candidates themselves to make public disclosure through print and electronic media.

there is serious doubt whether this judgment would in any way help in making our politics cleaner than before. The chances of Parliament acting fast on this issue are dim. The reasons are simple and obvious. No political party is free of this problem. The use of muscle power along with money power is a weapon used by all political parties to maximise electoral gains. In such a scenario, any move to ban candidates with a criminal record from contesting elections would mean political parties inflicting self-harm.

data show

Data from the Association for Democratic Reforms (ADR) indicate that 179 out of the 543 elected Members of Parliament in the present Lok Sabha have some kind of criminal case pending against them. While it is true that some of these may be of a frivolous nature, it is also true that many of these cases concern allegations of their involvement in serious crimes. In the case of over 100 MPs, the cases were of a very serious nature such as crimes against women and kidnapping. There seems to be very little improvement in this regard in the last five years. In the previous Lok Sabha (2009), 163 had criminal cases pending against them, many of which were of a serious nature. The profile of members of the Upper House is no better; of 228 members of the Rajya Sabha for whom data could be analysed, 20 have cases of serious crimes pending against them.



While political parties raise concern about candidates with a tainted background contesting elections and getting elected, none of them come forward to set an example for others when it is time to act. Among the Bharatiya Janata Party's MPs (Lok Sabha and Rajya Sabha), 107 (32%) have criminal cases pending against them. Of them, 64 (19%) have cases of serious crimes pending against them. The Congress is only a shade better than the BJP; 15 MPs (15%) have criminal cases pending against them, of whom eight (8%) have cases of serious criminal offences pending against them. There is hardly any difference between the national and regional parties in this regard. In the Shiv Sena, 18 MPs (86%) have criminal cases pending against them, of whom 10 (48%) are alleged to be involved in serious criminal cases. Of all MPs, six each of the Nationalist Congress Party (55%) and the Rashtriya Janata Dal (67%) have serious criminal cases pending against them. 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.

The issue is far more important and serious than the attention being paid to it by the policy makers. While the Election Commission has limited powers to legislate on such laws, it is only Parliament which can legislate to bring about the desired change. Public opinion too is not firm on this. For example, a survey conducted by the Centre for the Study of Developing Societies, found that opinion was divided when people were asked whether they would be willing to vote for a honest candidate who may not get their work done, or a tainted candidate who could get their work done.

Nota

Why in the discussion?

- Recently, after the directive of the Supreme Court, the Election Commission has announced the removal of the 'None of the above' (NOTA) option on September 11, 2018 from the ballot papers of Rajya Sabha and Legislative Council elections.
- The Supreme Court has issued orders not to publish the NOTA choice in the ballot paper for the elections of the Rajya Sabha and the Legislative Council.
- In direct elections like Lok Sabha and State Legislatures, NOTA can continue as an option.
- In the decision, the Election Commission said in an order issued to all the Chief Electoral Officers of all the states that from now on, the columns for nota will not be printed in the ballot papers of these elections.

What has the Supreme Court said?

- The Supreme Court said that applying NOTA in Rajya Sabha election seems wise but if it is investigated it is baseless.
- That's because, in this election, the role of the voter has been ignored, this leads to demoralization of democratic values.
- According to the court, this thinking may seem attractive in the beginning, but its practical use eliminates election unbiasedness in indirect elections.
- That too when the voter's vote is worth the price and that price is transferrable. In such a case, the NOTA is an obstacle.
- The court said that by enforcing the notices in the Rajya Sabha elections, not only does the discipline given in the 10th Schedule of the Constitution (the provision of disqualification), but it adversely affects the disqualification provisions in the Anti-Defection law.

What is NOTA?

- Electronic voting machine has been given the option of NOTA (None Of The Above) which you can use if you do not have your favorite candidate in the election by pressing the NOTA button .
- NOTA in India started in 2013 after an order passed by the Supreme Court.

- In the case of the People's Union for Civil Liberties vs Government of India, the Supreme Court ordered that an option of NOTA should be made available for people in voting.
- India is the 14th country in the world to provide the option of NOTA.

Expected Questions (Pre Examination)

1. Consider the following statements-

1. The laws would be made by the Law Ministry if Criminals contest in elections.
2. Complete disclosure of the criminal cases by the candidates before the elections are mandatory.
3. Declaration of income and property of the candidates are mandatory before the elections.

Which of the above statements is/are correct?

- (a) 1 and 2
- (b) 2 and 3
- (c) 1 and 3
- (d) All of the above

2. Consider the following statements-

1. Supreme Court has the power to declare ineligible to contest elections on the criminal background.
2. It is mandatory to disclose crimes by the candidates with criminal background on electronic and social media.
3. It is mandatory to disclose crimes of a candidate with criminal background by the political parties.

Which of the above statements is/are correct?

- (a) 1 and 2
- (b) 1 and 3
- (c) 2 and 3
- (d) All of the above

Note :

The answer of the pre-examination (expected questions) on 29 Sep is 1(a), 2(b).

Expected Questions (Mains Examination)

- Q. "Culprits of politics and corruption weaken the foundation of the world's largest democracy. Describe. (250 Words)