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CRIMINALIZATION OF POLITICS: AN URGENT NEED FOR ELECTORAL REFORMS

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Abstract:

The evil of Criminalization of Politics calls for special attention of the people because the subject revolves around the vested interests of politicians of all hues; as such the people can never hope that the politicians would take any initiative to rectify this evil. The prevailing trend is spreading like cancer. It is nullifying all the constitutional safeguards of democracy; that is, it is spoiling bureaucracy by making it partial; it thwarts press; and even threatens judiciary; and thus, is destroying the foundation of democracy. As regards the state of law and order, one can discern perceptible decline all these years and the situation today is such that the chances of procuring the conviction of culprits in major offences have become increasingly remote. The reason that the politicians take the help and support of criminal elements at the time of elections. The criminalisation of politics has not merely caused deep erosion in the healthy and clean functioning of our democratic polity; its fall-out in other spheres has been no less disastrous (Khanna, H.R. 1994:265,266). The purpose of this paper is to present the magnitude and impact of criminalization of politics on the democratic process and to recall the efforts made by the concerned agencies.

Key words: Criminalisation Of Politics, Political Parties, Legislature,Vote Bank Etc

Introduction

Criminalisation of Politics has emerged as a view a new threat for the already delicate social fabric of the country. Mafia dons, gang leaders, bandit queens and history sheeters have found it convenient to pose as champions of their caste, community or the downtrodden. Roding on this wave of popularity among gullible and illiterate voters they have set their eyes on Parliament among gullible and illiterate voters they have set their eyes on parliament and state legislator. Politics in India has become a profession rather than a vocation. We do not have political culture; only uncultured politics are found in the country. The public realm is increasingly and sharply in the risk of being taken over by the greedy, exploitative private realm. Naturally, there is to be seen a glaring disjunction between policy formulation and policy implementation.

Political corruption is the mother of all corruption. In the 15th Lok Sabha of 542 members, there are 150 newly elected MPs with criminal cases pending against them. Politics is now dominated by corrupt and criminal persons for whom grabbing power of money-making has become the main objective. Mafia gangs and criminals in large numbers in garb of politicians are now occupying seats of power. Communal and caste identities are being highlighted by them to gain political or economic ideologies by simply grabbing political power by projecting caste and communal identities. Ex. Chief

Election Commissioner J.S. Lyngdoh and rightly said, that the politicians are the cancer of the society.It is well known that all parties take the help of criminal elements to dominate the election scene in India. But this process is influencing the mind and the will of the people both to gain the majority to rule the country according to their will. The system of democracy is now changing into the dictatorship of some. Because the democracy of India are now in hands of the criminal who are not capable any way to hold the post if legislature.

Components: -

Muscle Power: -

The influence of muscle power in Indian politics has been a fact of life for a long time. As early as in 1977, the National Police Commission headed by Dharam Vira observed: ``The manner in which different political parties have functioned, particularly on the eve of periodic election, involves the free use of musclemen and 'Dadas' to influence the attitude and conduct of sizable sections of the electorate. The Panchayat elections, like other elections in the recent past, have demonstrated once again that there can be no sanity in India as long as politics continues to be based on caste.

Gangsterism:

The politicians are thriving today on the basis of muscle power provided by criminals. The common people who constitute the voters are in most cases too reluctant to take measures that would curtail the criminal activities. Once the political aspect joins the criminal elements the nexus becomes extremely dangerous. Many of politicians chose muscle power to gain vote bank in the country, and they apply the assumption that, if we are unable to bring faith in the community then we can generate fear or threat to get the power in the form of election.

Money Power: -

The elections to Parliament and State Legislatures are very expensive and it is a widely accepted fact that huge election expenditure is the root cause for corruption in India. A candidate has to spend lakhs of rupees to get elected and even if he gets elected, the total salary he gets during his tenure as an MP/MLA will be meagre compared to his election expenses. How can he bridge the gap between the income and expenses? Publicly through donations and secretly through illegal means. The expenditure estimation for an election estimated as Rs 5 per voter as election expenditure, for 600 million voters, and calculation of all the expenses in a general elaction estimated around Rs 2,000 crore. Then there is the period between elections. This requires around Rs 250 crore. Then there are state elections and local elections. All told, the system has to generate around Rs 5,000 crore in a five-year cycle or Rs 1,000 crore on average each year. Where is this money to come from? Only criminal activity can generate such large sums of untaxed funds. That is why you have criminals in politics. They have money and muscle, so they win and help others in their party win as well.

Reasons of the Criminalization: -

Vote Bank:-

The political parties and independent candidates have astronomical expenditure for vote buying and other illegitimate purposes through these criminals or so-called goondas. A politician's link with them constituency provides a congenial climate to political crime. Those who do not know why they ought to vote comprise the majority of voters of this country. Therefore, majority of the voters are maneuverable, purchasable. Most of them are individually timid and collectively coward. To gain their support is easier for the unscrupulous than the conscientious.

We have long witnessed criminals being wooed by political parties and given cabinet posts because their muscle and money power fetches crucial votes. Elections are won and lost on swings of just 1 Per Cent of the vote, so parties cynically woo every possible vote bank, including those headed by accused robbers and murderers. Legal delays ensure that the accused will die of old age before being convicted, so parties virtuously insist that these chaps must be regarded as innocent till proved guilty.

Loop Holes In The Functioning Of Election Commission: -

The Election Commission must take adequate measures to break the nexus between the criminals and the politicians. The forms prescribed by the Election Commission for candidates disclosing their convictions, cases pending in courts and so on in their nomination papers is a step in the right direction if it applied properly. Too much should not be expected, however, from these disclosures. They would only inform people of the candidate's history and qualifications, but not prohibit them from casting their votes, regardless, in favour of a criminal.

For the past several general elections there has existed a gulf between the Election Commission and the voter. Common people hardly come to know the rules made by the commission. Bridging this gap is essential not only for rooting out undesirable elements from politics but also for the survival of our democratic polity. This is an incremental process, the rate of success of which is directly proportional to the increase in literacy rate in India. The electorate has made certain wrong choices in the past, but in the future national interest should guide them in making intelligent choices.

Denial of Justice and Rule of Law: -

Criminalization is a fact of Indian electoral politics today. The voters, political parties and the law-and-order machinery of the state are all equally responsible for this. There is very little faith in India in the efficacy of the democratic process in actually delivering good governance. This extends to accepting criminalization of politics as a fact of life. Toothless laws against convicted criminals standing for elections further encourage this process. Under current law, only people who have been convicted at least on two counts be debarred from becoming candidates. This leaves the field open for charge-sheeted criminals, many of whom are habitual offenders or history sheeters. It is

mystifying indeed why a person should be convicted on two counts to be disqualified from fighting elections. The real problem lies in the definitions. Thus, unless a person has been convicted, he is not a criminal. Mere charge sheets and pending cases do not suffice as bars to being nominated to fight an election. So the law has to be changed accordingly.

A Criminal Mix

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. For example, in the 2009 Lok Sabha elections, 369 parties contested. And, totally 8070 candidates represented these parties. Out of 369 parties, 333 parties did not win even in a single constituency. Even among the remaining 36 parties, 19 parties won only in three or less number of seats! Why should there be such a large number of non-serious political parties and candidates, making a mockery of the election process?

Moreover, the number of candidates with criminal records among our 'elected representatives' is steadily increasing. In 2004 Lok Sabha, there were 128 MPs with criminal backgrounds; and in 2009.In all political parties, the rowdies are given red-carpeted welcome; because their 'services' are needed to these parties frequently for carrying on unlawful activities during the *bandhs,* strikes, rallies etc., organized by them. When such criminals become political leaders, they seek to achieve whatever they want without caring for rules and regulations; they would not hesitate to adopt criminal methods for attaining their goals; whether it is winning an election or elimination of rivals. For these hard-core criminals, the offences like threatening officials, kidnapping and even murder do not appear bad.

In the 15th Lok Sabha of 542 members, there are 150 newly elected MPs with criminal cases pending against them. Out of these, there are 73 MPs having serious charges against them. Here is the high-level summary of the new Lok Sabha:

- Affidavits available for MPs -533
- MPs with criminal charges -150 (28.14 Per Cent)
- MPs with serious criminals' charges -72 (13.51 Per Cent)
- Total criminal cases against MPs – 412
- The serious IPC sections against MPs -213

As compared to 2004, the no of MPS with criminal records has gone up. There are 128 MPs with criminal cases in 2004 Lok Sabha out of which 55 had serious criminal records. There is an increase of about 17.2 Per Cent in MPs with criminal records and 30.9 Per Cent increase in the number of MPs with serious criminal records.

Source:http://www.scribd.com/doc/15561813/criminals-in-the -15th-Lok-Sabha

Table -I

	2004	2009	Increase	Per Cent Increase(%)
MPs with Criminal records	128	150	22	17.2 Per Cent
Total criminal cases	429	412	-17	-4 Per Cent
MPs with serious criminal records	55	72	17	30.9 Per Cent
Serious charges	302	213	-89	29.5 Per Cent

Comparison of MPs Criminal Records Between 2004 and 2009.

The maximum criminal charges are against INC's Gujarat's MP VITTHALBHAI HANSRAJBHAI RADADIYA. He has a total of 16 cases out of which 5 cases are of serious nature. The maximum no of serious IPC charges are against Jagdis Sharma of JD(U) from Jahanabad, Bihar

Table – II

The Top 10 List of MPs with Serious Criminal Charges

S. No.	Name	State/ District	Constituency	Party	Age	Serious IPC Counts	No of Cases in which Accused	No of cases which Convicted	Total
1.	Jagdis Sharma	BIHAR	Jahanabad	JD(U)	58	17	6	0	6
2.	Bala Kumar Patel	U.P	Mirzapur	SP	48	13	10	0	10
3.	Prabhatsinh Pratapsinh Chauhan	Gujarat	Panchamahal	BJP	67	10	3	0	3
4.	Kapil Mini Karwariya	Uttar Pradesh	Phulpur	BSP	42	8	4	0	4
5.	P. Karuna karan	Kerala	Kasaragod	CPM	64	6	12	0	12
6.	Lalu Prasad	Bihar	Saran	RJD	60	6	2	0	2
7.	Kunvar rjibhai Mohan Bhai Bavaliya	Gujarat	Rajkot	INC	54	6	2	0	2
8.	Vitthal Bhai Hansraj Bhai Radadiya	Gujarat	Porbandar	INC	51	5	16	0	16

9.	Feroze Varn Gandhi	Uttar Pradesh	Pilibhat	BJP	29	5	6	0	6
10.	Chandrakant Raghunath Patil	Gujarat	Navsari	BJP	54	5	6	0	6

Source: http://www.scribd.com/doc/15561813/criminals-in-the -15th-Lok-Sabha.

MPs with criminal background party wise:

BJP has maximum MPs having criminal cases – 42 MPs have criminal cases against them, out of which 17 MPs have serious criminal cases against them. It has followed by congress – 41 MPs with criminal cases out of which 12 MPs have serious charges against them. SP has 8 MPs with criminal cases out of which 7 has serious charges, followed by Shivsena which has 8 MPs with criminal charges out of which 3 have serious charges. The details of all the parties is given below:

Table -III
List of Party Wise MPs with Their Criminal Background

Party	Total MPs	MPs with Criminal Charges	Percentage of MPs with Criminal Charges	MPs with Serious Criminal Charges	Percentage of MPs with Serious Criminal Charges
BJP	116	42	36.21	19	16.38
INC	202	41	20.30	12	5.94
SP	22	8	36.36	7	31.82
SHS	11	8	72.73	3	27.27
JD(U)	20	7	35.00	3	15.00
BSP	21	6	28.57	6	28.57
BJD	14	4	28.57	1	7.14
AITC	19	4	21.05	4	21.05
NCP	9	4	44.44	3	33.33
DMK	16	3	18.751	1	6.25
RJD	4	3	75.00	2	50.00
CPM	15	3	20.00	1	6.67
ADMK	7	3	42.86	3	42.86
RLD	5	2	40.00	1	20.00
JD(S)	3	2	66.67	1	33.33
TDP	6	2	33.33	1	16.67
JVM	1	1	100.00	0	0.00
VCK	1	1	100.00	1	100.00
AIMIM	1	1	100	1	100.00
SAD	4	1	25.00	0	0.00
IND	9	1	11.11	0	0.00
JMM	2	1	50.00	1	50.00
TRS	2	1	50.00	0	0.00
AIFB	2	1	50.00	1	50.00
Total	533	150	28.14	72	13.51

Source: http://www.scribd.com/doc/15561813/criminals-in-the -15th-Lok-Sabha.

MPs with criminal background state wise:

Amongst the states, UP has maximum MPs with criminal cases (total of 31 out of which 22 have serious charges against them). Maharashtra is second with 23 MPs having criminal cases out of which 9 have serious cases against them. It is followed by Bihar, Andhra Pradesh and Gujarat. The full details of all states are given in the table below

Table- IV
List of State wise MPs with Criminal Background

State	Total MPs	MPs With Criminal Charges	Percentage of MPs with Criminal Charges	MPs with serious Criminal Charges	Percentage of MPs with serious Criminal Charges
Uttar Pradesh	79	30	37.97	21	26.58
Maharashtra	48	23	47.92	9	18.75
Bihar	40	17	42.50	6	15.00
Andhra Pradesh	42	11	26.19	3	7.14
Gujarat	26	11	42.31	7	26.92
Karnataka	28	9	32.14	5	17.86
West Bengal	42	7	16.67	7	16.67
Tamil Nadu	31	7	22.58	5	16.13
Jharkhand	14	6	42.86	1	7.14
Kerala	20	6	30.00	2	10.00
Orissa	21	5	23.81	2	9.52
Madhya Pradesh	29	4	13.79	2	6.90
Punjab	13	2	15.28	1	7.69
Chhattisgarh	11	2	18.18	0	0.00
Rajasthan	24	2	8.33	0	0.00
Haryana	10	2	20.00	1	10.00
Jammu & Kashmir	6	1	16.67	0	0.00
National Capital Territory of Delhi	7	1	14.29	0	0.00
Dadra and Nagar Haveli	1	1	100.00	0	0.00
Andaman and Nikobar Islands	1	1	100.00	0	0.00
Assam	14	1	7.14	0	0.00
Uttarakhand	5	1	20.00	0	0.00
Total	533	150	28.14 Per Cent	72	13.51 Per Cent

Source: http://www.scribd.com/doc/15561813/criminals-in-the -15th-Lok-Sabha.

The question of electoral reforms acquires with the growing erosion of the electoral system. Concern for electoral reforms have been expressed from almost all quarters in India. A number of committees were set up to streamline the electoral process. It was as early as 1974 that Jaya Prakash Narain set up a committee on Electoral Reforms under the

chairmanship of V.M. Tarkunde, which submitted its report in 1975. Besides, a number of studies also echoed the need for electoral reforms (Sanjay Kumar, 2002).

The judgment by the High Court of Delhi on a writ petition on the non-action of the Government of India on the recommendations of Law commission initiated a remarkable change in the efforts to check the criminalization of politics. Before going into that let, us recall the efforts made till 2000.The Election Commission (1984:77-90) identified the practice of both capturing as the main problem of elections and made the following recommendations to check that problem.

1. Persons with proven criminal records and shady past and history sheets and persons, whose detention under National Security Act, Essential Services Maintenance Act, Conservation of foreign exchange and prevention of smuggling Act and Foreign Exchange Regulation Act, etc., has been approved by the Judicial Advisory Boards, should be disqualified from contesting elections. The law may be amended so that a person convicted by a Court for any offence involving moral turpitude shall be disqualified from the date of such conviction, even if he is sentenced for less than two years.
2. If it is established that booths have been captured even in a few polling stations, the Commission should have the power to declare election in the entire constituency as void and order fresh poll in the entire constituency.
3. Candidates found responsible for booth capturing should be disqualified from contesting for the next six years. Commission should have powers to disqualify such persons without reference to any court so that expeditious action can be taken and the guilty candidates disqualified even before the elections are completed.
4. Booth capturing should be made a cognizable offence and drastic penalty must be meted out to the candidates and their agents who indulge in or abet in the commission of offence.
5. If it is found that the Returning Officer, Presiding Officer or such other officers connected with the conduct of poll have abetted the crime, the Commission should have powers to initiate prosecution against such delinquent officers.

Goswami Committee in its report (1990:164) suggested that legislative measures shall be taken to check the booth capturing, rigging and intimidation of voters. The Report of the Law Commission (1998) recommended that in electoral offences and certain other serious offences, framing of a charge by the court should it self be a ground of disqualification in addition to conviction. Relevant provisions of criminal procedure code be amended to check false complaints etc (quoted in NCRWC, 2001:16). Justice Kuldeep Singh Panel made the following recommendations to prevent the criminals from entering politics:

1. Candidates with criminal background or those facing substantial criminal Charges framed by a court be debarred from contesting elections.
2. Just as government servants facing criminal proceedings are placed under suspension until cleared by the courts, the same yardstick should be applied to politicians as well.

3. Election Commission should bring effective changes in the model code of conduct to exclude candidates from contesting elections who have criminal proceedings pending against them. If the Election Commission can't do it, parliament must do it
4. More effective laws be created that will prevent criminals from entering the political process. The legal reforms can push criminals out of the system. New legal initiatives such as amendments in section 89 of the RPA 1951 could empower the Election Commission to deal with crime – tainted politicians.
5. If we can't bar criminals from contesting elections until the courts convict them, then the next best course would be to get speedy verdicts in their cases. Special courts and benches to try cases against legislators and other high profile people should be set up for speedy trials (quoted in NCRWC, 2001:16).

The National Commission to Review the Working of the Constitution made the following recommendations:

1. The Representation of Peoples Act should be amended to disqualify anyone charged with an offence punishable with imprisonment for a maximum term of five years, on the expiry of a period of one year from the date the charges were framed.
2. The disqualification has to remain in force till the conclusion of the trial.
3. In case of conviction, the bar should apply during the period he is undergoing sentence and for a period of six years after completion of the sentence.
4. There should be a permanent bar in case of conviction foe any heinous crime like murder, rape, smuggling, decoity, etc.
5. Special courts and benches of the high courts be set up to hear election petitions for the speedy disposal of cases (Godbole: 2002, 4002 and 4006).

From 1987 onwards the Election Commission made a number of recommendations and repeatedly reminded the government of the necessity of changing the existing laws to check the corrupt practices in the elections (for details of recommendations and their status see Election Commission: 1999 and 2004).

Successive governments might have felt that all these recommendations are unworthy of either consideration or action. As a result, there had bee no substantial effort to check criminalization of politics. No wonder, the politics became the profession of goondas, murderers, and all types of anti-social elements and the politicians who depend on the support of these anti-social elements. It was in these circumstances that the Association for Democratic Reforms filed a writ petition before the Delhi High Court to direct the Government to implement the recommendations of the Law Commission. The Court, by its order dated 2nd November, 2003. Held that for making a right choice by electors, it was essential that the past of the candidate should not be kept in the dark, and directed the Election Commission to secure to voters the following information pertaining to each of the candidates' contesting elections to parliament and to the State Legislatures:

1. Whether the candidate is accused of any offence(s) punishable with imprisonment? If so, details there of;
2. Assets possessed by a candidate, his or her spouse and dependent relations;

3. Facts giving insight into the candidate's competence, capacity and suitability for acting as a parliamentarian or legislator including details of his or her educational qualifications;
4. Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to parliament or the state legislature.

The Government of India challenged the order of the Delhi High Court by filling an appeal before the Supreme Court of India. The Congress Party sought the permission of the Supreme Court to intervene into the Appeal of the Union of India. The people's Union for Civil Liberties (PUCL) had also filed writ petition praying that the Supreme Court may lay down suitable guidelines under Article 141 of the Constitution.

Union of India's contention is that it was for the political parties to decide whether amendments should be brought and carried out in the RPAct, 1951 and Rules. It further contended that the Delhi High Court ought to have directed the writ petitioners to approach the parliament for appropriate amendments to the law instead of directing the Election Commission of India to implement the same. Hence, Delhi High Court order is improper. The EC supported the Delhi High Court order and directions. The congress party held that citizens right to know about the affairs of the government did not mean that the citizens' have a right; to know the personal affairs of the MPs and MLA's. The Supreme Court, on hearing the views and submissions of all sides, modified the order of the High Court of Delhi, by its order dated 2nd May, 2002. It directed the "Election Commission to call for information on affidavit by issuing necessary order in exercise of its power under art 324 of the Constitution of India from each candidate seeking election to parliament or a state legislature as a necessary party of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature :

1. Whether the candidate is convicted/ acquitted/ discharged of any criminal offence in the past- if any, whether he is punished with imprisonment or fine?
2. Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
3. The assets (immovable, movable, bank balances etc) of a candidate and of his or her spouse and that of dependents.
4. Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.
5. The educational qualifications of the candidate" (AIR, 2002, SSC: 294).

The EC issued notification on June 28th 2002 in pursuance of the Supreme Court judgment. Immediately, the Union Government convened al all-party meeting on July 8th, 2002 (for the opinions of various political parties on the judgment of High Court and latter the judgment of the Supreme Court,Content and http:// www. induonnet.com/2002/07/10/stories). The meeting rejected the Election Commission's move to implement the apex court directives on checking the antecedents of candidates.

The parties unanimously asked the government to bring out a comprehensive legislation to curb criminalization of politics and bring in probity in public life (URL:http://www.expressindia.com/fullsotory. php? newsid).

The Government of India promulgated an ordinance (Representation of the peoples Act (Amendment) Ordinance 2002(4 of 2002) on 24th, Aug. 2002. The objective of the ordinance according to the Union Government was to remove criminals, money power, muscle power, corruption etc. from politics. The president of India returned the ordinance with a direction to reconsider the issues involved in the ordinance, particularly, the issue of right to information. However, the Union Cabinet sent the ordinance back to the President without making any changes. The ordinance received the assent of the President on Dec. 58th, 2002. Subsequently, Government replaced the ordinance with the Representation of People (Amendment) Act, 2002 on 23.10.2002. This act came into force with Representation of People (Amendment) Act, 2002 on 23.10.2002. This act came into force with retrospective effect. Two sub clauses, namely clause 33-A and 33-B, were added to the PRA, 1951. Sub clause 33-A, which deals with the right of information, provides the following:

1. A candidate shall, apart from any information, which he is required to furnish, under this Act or the rules made there under, in his nomination paper delivered under sub-section (1) of Section 33, also furnish, the information as to whether-

(i) He is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction;
(ii) He has been convicted of an offence other than any offence refereed to in sub-section (3) of Section 8 and sentenced to imprisonment for one year or more.

2. The candidate or his proposer, as the case may be, at the time of delivering to the returning officer the nomination paper under sub section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).
3. The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1) display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2) at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

A careful reading of this insertions makes it clear that a candidate need not disclose the cases in which he is acquitted, or discharged of criminal offences; his assests and liabilities and his educational qualification as ordered by the Supreme Court in its judgment in the earlier case which forced this amendment. The second clause is more objectionable. Claus 33-B is more objectionable. It reads: 33-B. Candidate to furnish information only under the act and the rules. Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any

such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under.

Thus, the tone is clear. The members of parliament wanted to assert their right to legislate – the merits of the legislation being secondary. They have sent the message in unambiguous language. Right or wrong, the say of the legislature is final and binding. Thus, the problem of criminalization was converted into the question of who is powerful. No wonder all political parties, who have nothing common, bundled up. After all it is the prestige of the institution that is involved and the unionization is the only way to win. Does not the conventional wisdom reminds, "united you stand, divided you fall".

The PUCL, Loksatta and the Association for Democratic Reforms challenged the constitutional validity of the Representation of People (Amendment) Act, 2002 (writ petition no.490 of 2002) before the Supreme Court. After listening to the arguments of the contending parties, the Supreme Court declared the Act "illegal, null and void" (Election Commission of India, order dated 27th, March 2003, and restored its earlier order. The following are the conclusions of the Court:

1. The legislature can remove the basis of a decision rendered by a competent court thereby rendering the decision ineffective but it has no power to ask the instrumentalities of the State (such as the Election Commission) to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision tendered by the Court is not binding or is of no effect.

It is true that the legislature is entitled to change the law with retrospective effective, which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision; therefore, it cannot enact a law, which is violative of fundamental right.

2. Section 33-B which provides that notwithstanding anything contained in the judgment of any court or direction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made there under, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19 (1) (a) to know the attendance of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

The Amendment Act does not wholly cover the directions issued by the Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.

3. The judgment rendered by this Court by this in the case field by Association for Democratic Reforms has attained finally; therefore, there is no question of interpreting constitutional provision, which call for reference under Article145 (3).

4. Voters' fundamental right to know the antecedents of a candidate is independent of statutory right under the election law. A voter is first citizen of this country and apart

from statutory right; he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right vote would be meaningless unless the citizens are well informed about the antecedents of candidate. There can be little doubt that exposure to public gaze and security is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

5. It is established that fundamental rights themselves have no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the court should to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistency. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgment rendered by this Court (AIR, 2003, SC, 2363).

The Supreme Court ordered the Election Commission to issue a fresh notification on the basis of its judgment. Accordingly, the Election Commission issued a fresh notification on 27th March 2003. According to the notification, the candidates now have to furnish the following information on affidavit filing nomination.

1. Whether the candidate is convicted/ acquitted / discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine?
2. Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
3. The assets (immovable, Movable, bank balances etc) of a candidate and of his or her spouse and that of dependents.
4. Liabilities, if any, particularly whether there are over dues of any public financial institution or government dues.
5. Educational qualifications.

There is no gain saying that the criminals and illegal elements are dominating the electoral process and even the politics. The criminalization of politics has reached a stage where ordinary methods will be a miss match. This is particularly so, given the patronage enjoyed by these criminals from major and minor political parties alike. We have seen that no single concrete and serious move was made by either political parties or the parliament to check this tendency. The judgments of the courts were interpreted as intrusion into the 'right' of the parliament, instead of gracefully accepting the charges. Invoking the 'right or privilege' of the parliament was nothing but an excuse to perpetuate the criminalisation. The galaxy of political parties who have nothing in common, neither ideology nor programme readily came forward to extend friendly hand to each other, when the courts provided an opportunity. Instead of coming out with more stringent legislation and methods to drive the criminals out of the political arena, they brought out a legislation that watered down the recommendations of various government appointed

committees and various judgments. In short, the political parties and the legislatures proved to be too soft.

We argue that the situation had reached a point of no return. Either we go all out to drive the criminals out, or we contribute to brutalization and criminalization of politics. The latter option amounts to the defeat of the parliamentary government, democracy and age – old aspirations of Indians in spirit if not in letter. The following suggestions may be seriously considered to clean the politics.

Any detention under serious offences –either criminals or financial – approved by judicial bodies shall be enough to disqualify a person from contesting the election, till he is cleared. On judicial confirmation of a prima –facie involvement in rigging, booth capturing, encouraging criminal offences etc., the candidates responsible shall be immediately declared ineligible for contesting in future till he is cleared by the court. We agree with the recommendation of the law commission that it electoral offences and certain serious criminal offences, framing a charge by a competent judicial authority should it itself be a ground of disqualification. The Criminal Procedure Code shall be so amended that false complaints will be checked and the 'framing the charges' is made more cautious. Representation of Peoples Act shall be amended to facilitate these changes. There is an urgent need to have more special courts and benches to get speedy verdicts. The relevant provisions of the law may be amended to create separate judicial mechanism to deal with any case that is related to electoral process. The hands of the Election commission should be strengthened, if we expect it to fulfill its Constitutional Responsibility. The powers of the Election Commission are not sufficient to "superintendence, direction and control of elections (Constitution of India, Art.324, Part. XV).

Another stringent provision is any person who is accused of an offence punishable by imprisonment for five years or more should be disqualified from contesting election even when trial is pending, provided charges have been framed against him by a competent court. If a lower court for any offence convicts a person for a period of one or more years, that person shall be debarred from contesting election, though higher courts on appeal are hearing the case. A person found guilty of a commission of enquiry or tribunals shall be debarred though the final verdict is pending from appellate courts. Any person behind the bars on a criminal offence under criminal offence under Criminal Procedure. Code, shall be declared ineligible to contests the election. However, every precaution shall be taken to prevent false implications for political advantage. Before raising any objection to those suggestions, one has to consider two important things. One, Reasonable objection is a part of ant legal arrangement. The purpose of the reasonable restriction is to save many though it impinges the right of a few. Two, political activity, besides many things, is a method of serving the society. Fulfilling one's social obligation towards other members of the society. Contesting the election is the election is one of the many methods of service. One can, as well, serve the society without contesting in the election. One can remain as a political activist, and leader, though he is debarred from contesting the election. Considering that, because of one of the suggestions made, there is a possibility of an innocent losing the opportunity of contesting in the election here and

there. It just prevents a person from contesting in the election, but does not prevent from serving the society.

The suggestions made may be criticized for their harshness. A remote possibility of an innocent becoming a victim of cleaver political poly. But a serious and cancerous decease requires an equally strong medicine. Once we accept that entry of criminal into politics means end of the politics, any amount of stringency becomes tolerable.

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