

Role of Indian Judicial Activism on Politics Under Inflammable Issue: - “Criminalization of Indian Politics.”

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As and when the Courts actively perform an interventionist role, we witness the phenomenon of judicial activism. Recent past the people have witnessed the judicial activism, which brought a revolutionary change in the outlook of the Indian politics. It denotes the specific role played by the Indian judiciary like other two bodies of the Government i.e. the Executive and the Legislative.

India has the distinction of being the largest democracy of the world. Elections are the most important and integral part of politics in a democratic system of governance. The election at present are not being hold in ideal conditions because of the enormous amount of money required (root of corruption) to be spent and large muscle power needed for winning the elections. Some of the candidate and parties participate in the process of elections to win them at all costs, i.e. so many factors like Money Power, Mussel Power, Corruption, Communalisation, Criminalisation, Paid News, and Opinion Polls etc. are there in the election processes which damage the process of free and fair election irrespective of moral values. ¹⁾

It has become very serious problem for Indian Politics that corruption and criminalisation in Politics are very often seen during these days. Today, corruption & crimes have badly gripped the Indian Politics. Many scandals, scams, bribery, communal violence and various political, social, & cultural events and criminalisation are creating serious threats to the Nation. ²⁾

The main object of this Research Article is to be searching how far “Judicial Activism” is helpful for Clean & Fair Indian Politics?

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❖ The Roll of Political Parties in “Criminalization of Indian Politics.” -

Political parties are a central institution of our democracy; “the life blood of the entire constitutional scheme.”³⁾ Political parties act as a conduit through which interests and issues of the people get represented in Parliament. Since political parties play a central role in the interface between private citizens and public life, they have also been chiefly responsible for the growing criminalisation of politics. Since electoral politics is a combination of several factors, often issues like ethnicity or other markers of the candidate may overcome the reputational loss he suffers from the criminal records.

Further, electoral politics is largely dependent on the money and the funding that it receives. Several studies by economists estimate that candidates and parties in the 2009 general elections alone spent roughly \$3 billion on campaign expenditures. Huge election expenses have also resulted into large-scale pervasiveness of so-called ‘black money’. The Law Commission has earlier also expressed the concern of election expenses being far greater than legal limits. Therefore, campaign funding is one of the most important concerns for political parties. Since candidates with criminal records often possess greater wealth, the negative effect of the stigma of criminal charges can be overcome by greater campaigning resources. Thus, even if a candidate has any criminal record, he may fare well in elections due to the positive effect of the other markers. Thus, overall a candidate with a criminal record can prove beneficial to political parties in several ways. Not only does he ensure greater inflow in money, labour and other advantages that may help a party in successful campaign, but also possess greater ‘Winn-ability’.⁴⁾

The Law Commission of India, in its 170th report quoted in Subhash Chandra Agarwal, by the Central Information Commission (CIC) has made certain observations which are very pertinent to describing the position of political parties in our democracy: -

“It is the Political Parties that form the Government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency, and accountability in the working of the Political Parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the

governance of the country. It cannot be dictatorship internally and democratic in its functioning outside.”⁵⁾

Thus, the crime-politics nexus demands a range of solutions much broader than disqualification or any other sanctions on elected representatives.

❖ **Control the Criminalization of Indian Politics**:-The views of the Supreme Court on criminalisation in politics should also be supported by the Parliament that democratic value and dignity are required to be maintained in the Parliament. Sufficient courts should be opened in the country for speedy trial affordable (Low expensive) justice so that the cases do not linger for a long time in the courts and justice/decision can be delivered on time. Independent constitutional govt. Bodies like Lokpal, Lokayukt, CVC, CIC, LokAdalat etc. are required to be constituted to provide speedy justice without cost or on low expenses.

CBI and other Govt. investigating and auditing agencies and its officials including Attorney General of India who are mainly responsible to curb the corruption and crime should be free from political manipulation and pressure. The court has already passed the remarks regarding CBI that ‘open the cage and let the parrot free from many masters’. Despite the best intentions of the drafters of the Constitution and the Members of Parliament at the onset of the Indian Republic, the fear of a nexus between crime and politics was widely expressed from the first general election itself in 1952. In fact, as far back as in 1922, Mr C. Rajagopalachari had anticipated the present state of affairs twenty five years before Independence, when he wrote in his prison diary: *“Elections and their corruption, injustice and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us...”⁶⁾*

Interestingly, observers have noted that the nature of this nexus changed in the 1970s. Instead of politicians having suspected links to criminal networks, as was the case earlier, it was persons with extensive criminal backgrounds who began entering politics.⁷⁾ This was confirmed in the Vohra Committee Report in 1993, and again in 2002 in the report of the National Commission to Review the Working of the Constitution (NCRWC). The Vohra Committee report pointed to the rapid growth of criminal networks that had in turn developed an elaborate system of contact with bureaucrats, politicians, and media persons.⁸⁾ A Consultation Paper published by the NCRWC in 2002 went further to say that

criminals were now seeking direct access to power by becoming legislators and ministers themselves.⁹⁾

Since the judgment of the “Supreme Court in Union of India v/ s. Association for Democratic Reforms,” which made the analysis of criminal records of candidates possible by requiring such records to be disclosed by way of affidavit, the public has had a chance to quantitatively assess the validity of such observations made in the previous reports. The result of such analysis leads to considerable concern. In order to control the criminalization in the Government or political Corridors; the Judiciary time to time issues orders, directions, remarks or comments etc., through PIL or Sue Moto. Some important of such beneficial or corrective orders, directions, remarks are as under-

a) MPs, MLAs to be disqualified on date of criminal conviction¹⁰⁾

The Supreme Court held that charge sheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months’ time for appeal, as was the case before. The Bench found it unconstitutional that convicted persons could be disqualified from contesting elections but could continue to be Members of Parliament and State Legislatures once elected. The Bench, ruled that any MP (Member of Parliament), MLA (Member of the Legislative Assembly) or MLC (Member of a Legislative Council) **who is convicted of a crime and awarded a minimum of two year imprisonment**, loses membership of the House with immediate effect. This is in contrast to the earlier position, wherein convicted members held on to their seats until they exhausted all judicial remedy in lower, state, and Supreme Court of India. Further, Section 8(4) of the Representation of the People Act, which allowed elected representatives three months to appeal their conviction¹¹⁾ was declared unconstitutional by the bench of Justice Patnaik A. K. and Justice Mukhopadhyaya S. J.

b) Charge sheeted persons should not be Ministers¹²⁾

“Criminalisation of politics is anathema to the sacredness of democracy”

➤ Justice Misra Dipak.

Justice Misra Dipak, writing the main judgment for himself, the CJI, Justice Bobde, Lokur Madan B. and Joseph Kurian, said “criminalisation of politics is anathema to the sacredness of democracy. It is worth saying that systemic corruption and sponsored criminalisation can corrode

the fundamental core of elective democracy and, consequently, the constitutional governance.”

❖ **Roll of Indian Politics By Indian Judiciary:**-The Parliament and the Election Commission both have failed to usher in electoral reforms. Judicial directions on doling out freebie and largesse, proscribing caste rallies, debarring convicted and jailed persons from elections, deprecating political promises to allure electorates were long overdue.

Recently the Justice Verma J.S. Committee Report on Amendments to Criminal Law (2013) proposed insertion of a Schedule 1 to the Representation of People Act, 1951 enumerating offences under IPC befitting the category of ‘heinous’ offences. ¹³⁾ It recommended that Section 8(1) of the RP Act be amended to cover inter alia the offences listed in the proposed Schedule 1. It would then provide that a person in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under section 190(1) (a), (b) or (c) of the Cr.P.C. or who has been convicted by a court of competent jurisdiction with respect to the offences specified in the proposed expanded list of offences under Section 8(1) shall be disqualified from the date of taking cognizance or conviction as the case may be. It further proposed that disqualification in case of conviction shall continue for a further period of **six years from the date of release upon conviction and in case of acquittal, the disqualification** shall operate from the date of taking cognizance till the date of acquittal. ¹⁴⁾

Thanks to the supreme power of the activist character of the Indian Judiciary. Truly, that is “Judicial Activism” in the right sense.

References:-

- 1) **View resulted on this thought-Dr. Rao P Pulla’s thought** “Supreme Court cancelling Caste reservations.” **Dr. Rao as a Socio-political and Economic analyst.** NEW DELHI- March 22, 2015.
- 2) The thoughts expressed by the Dr. Singh Rajvir, Associate Professor, Deptt. Of Defence & Strategic Studies, KS SAKET PG College, in in the National Seminar on the subject “The Growing Challenges of Criminalization of Politics and Corruption & its Deleterious Consequences.” Sponsored by ICSSR on 23-

- 27 October 2013, Organized at KS SAKET PG College, Ayodhya, Faizabad, Allahabad University, Uttar Pradesh.
- 3) Timmons, Heather and Hari Kumar, ‘India’s National Election Spreads Billions Around’, The NEW YORK TIMES May 14, 2009.
- 4) Background Report on Electoral Reforms, Ministry of Law and Justice 2010.
- 5) “Reform of Electoral Laws,” 170th Report of the Law Commission of India, 1999.
- 6) Per C Rajagopalachari in Kishor Gandhi, India’s Date with Destiny: Ranbir Singh Chowdhary Felicitation Volume, 1st Ed. (Allied Publishers, 2006) 133.
- 7) Concluded result on this thought- Milan Vaishnav, ‘The Market for Criminality: Money, Muscles and Elections in India’ 2010.
- 8) Government of India, ‘Vohra Committee Report on Criminalisation of Politics, Ministry of Home Affairs’ 1993.
- 9) National Commission to Review the Working of the Constitution, ‘A Consultation Paper on Review of the Working of Political Parties especially in Relation to Elections and Reform Options’ 2002.
- 10) (2002) 5 SCC 294.
- 11) Section 8 in the Representation of the People Act, 1951.
- 12) According to the ‘Hindu News Paper, New Delhi,’ August 27, 2014.
- 13) The Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013) with effect from February 3, 2013.
- 14) According to 20th Law Commission Report- “Electoral Disqualifications” Report No. – 244

