

Judiciary- A Purifier of Indian Politics

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Abstract

Criminalization in politics and corruption emerged as great threat to representative democracy which is a fundamental principle of good governance and basic structure of the constitution. Entry of corruption by politicians, rampant employment of caste, religion, language and region for winability of electoral posts and heinous incidents of electoral corrupt practices are the factors defacing the beautiful temple of democracy. However, the judiciary being custodian of the constitution and guardian of democracy came forward to protect the parliamentary system and politics from the menace of criminalization. The supreme court had exercised the power of judicial review to strengthen the election commission for free and fair elections as well as suggested various electoral reforms to achieve the aim of crime and corruption free politics and to bring the principle that "Law breakers should not be law makers" in truth.

Key words: Criminalization, Corrupt Practice, Democracy.

"The judicial power is exercised by courts on behalf of people of India, so long as, 'we the People' have appointed them to exercise such powers". Justice V.R. Krishna Iyer.

Introduction

The alarming effects of the criminalization of politics, nexus between criminals and politicians is aptly reported by the Vohra Committee in its report. A committee appointed under the chairmanship of the Home Secretary N.N. Vohra for studying the nexus between mafia, organizations, crime syndicates and politicians had reported that, --- "there was been a rapid spread and growth of criminals gangs, armed senas, drug mafias, smuggling gangs, drug peddlers and economic lobbies in the country, which have over the years, developed extensive network of contacts with the Bureaucrats at local level, politicians, media persons. They are running the parallel government".

This has resulted in increase of the electoral malpractices like booth capturing, undue influence for voting, spread of hatred on communal and caste basis, bribery for casting votes, etc. with the help of criminals and mafias. Therefore, in the states like Bihar, Uttar Pradesh the strong links between political leaders and mafias as well as dacoits in Chambal valley is often seen.

Democracy and fair elections are inseparable. In fact fair and transparent elections is soul of representative democracy. Unless there are free, fair and transparent elections, survival of true democracy is impossible. Therefore, it is observed by the supreme court in *Indira Gandhi v Raj Narain*¹ that, "principle of free and fair election is an essential postulate of democracy which in turn is part of basic structure of the Constitution." The task of conducting free, fair, regular elections is shouldered by the Election Commission which is independent, impartial constitutional authority². The Election Commission, being a guardian of electoral process in the country, had played its pivotal role in introducing revolutionary electoral reforms and maintaining purity in election process through the code of conduct.³ However, though the Election Commission is trying hard for having free and fair elections, the Commission could not curb the menace of criminalization and corruption in politics. Therefore, that task is articulately shared by the judiciary of the country.

The Supreme Court is custodian of the Constitution and always vigilant in protecting the fundamental principles of the constitution including democracy and purity of the electoral process.

Taking free hand advantage of the judicial independence and using self-produced weapon of judicial activism, every attempt is made by the judiciary to safeguard its roaring slogan, "Law breakers should not be the law makers."⁴

The Supreme Court time and again came forwarded for the help of the Election Commission when the Commission is found in difficulty while discharging its functions. It is the Supreme Court which has made aware to the Election Commission that it possess various powers within itself in relation to superintendence and control over the elections. The court observed that, the election Commission has no limited powers but it has reservoir of powers under Article 324 of the Constitution⁵.

While undertaking the judicial review of the decisions taken by the Election Commission regarding electoral matters as well as while interpreting the provisions under the election laws, endeavor is made to give purposive meaning so as to achieve the true aim and object behind it. The Supreme Court has shown its great concern about the increasing corruption and criminalization in politics and rendered historical judgments for eradication of corruption and criminalization from the political walks. The famous jurist and former judge of the Supreme Court Justice Krishna Iyer therefore observed that, "The judicial power is exercised by the courts on behalf of people of India, so long as, 'we the people' have appointed them to exercise such powers"⁶. Therefore, we can be proudly say that the Indian judiciary is purifier of politics in India.

The vital role played by the Supreme Court for elimination of criminalization of politics can be analyzed by the following major aspects-

- 1] Electoral Corrupt practices and Judiciary.
- 2] Prevention of Political Corruption.
- 3] Criminalization of politics and the Supreme Court.
- 4] Electoral Reforms.

1] Electoral Corrupt practices and Judiciary

Electoral corrupt practices not only materially affects the results of the elections but also acts as hurdle in free and fair elections. Threat to free and fair elections is directly a threat to the democracy, therefore the judiciary is very keen about the corrupt practices like bribery, booth capturing, undue influence, spreading communal disharmony on the basis of caste, religion etc. in electoral process

so as to gain the votes or refrain from voting etc.⁷ It is always tried by the court to prevent the entry of disgraceful people in the house of legislatures. The free and fair elections are the hallmarks of the working democracy, therefore, it is at the higher pedestal. According to the Supreme Court, "free and fair elections are the very foundations of democratic institution and just it is said that justice must not only be done but also seen to be done, similarly election should not only be so conducted as to inspire confidence in the minds of the electors but has to be done to ensure free elections."⁸

Exercise of undue influence is frequently seen in the electoral process. This relates with direct or indirect interference in free exercise of electoral rights, use of threat, carrying a propaganda etc. Law prohibits use of undue influence but does not prohibit use of influence. The candidates contesting an election has right of legitimate canvassing and to persuade the electors by lawful means and what is prohibited is undue influence in canvassing.⁹

In an interesting case, the supporters and agent of with connivance of a returned candidate put double stamps on the ballot papers on which valid votes infavour of other candidate were already casted, so as to make those ballot papers invalid. While taking serious note of it, the Supreme Court found this as indirect interference in the free exercise of electoral rights and set aside the election by declaring it invalid.¹⁰

Religion is most sensitive and sentimental feeling of the human being and taking disadvantage of that, the political parties as well as candidates use it as a tool to gain the political power. Political parties and organizations based on religious ideologies spread the communal hatred to polarize the electors and bag the votes. This is not only a corrupt practice of undue influence but also serious threat to the Secularism, which is part of 'basic structure' of the Constitution. Therefore, the Supreme Court has dealt this issue seriously. The court while dealing with this has held that, appeal to the voters on the ground of religion is also a corrupt practice even though a rival candidate belongs to the same religion.¹¹ It is also held by the court that even a single appeal on the ground of religion amounts to corrupt practice and election of the returned candidate vitiates on that ground.¹² The court also held that hukumas, fatwas and firmans issued by the

religious leaders and gurus for directing votes to a particular candidate or speechless canvassing by them also comes within the ambit of corrupt practice.¹³

It is always seen by the judiciary that religious activism should be away from electoral process. Religion should not be mixed with politics. The electoral process is essence of democracy and it should not be influenced by religious sentiments. Though right to propagate, profess and practice any religion or right to speech and expression are fundamental rights, those are not absolute but are controlled by the doctrine of 'reasonable restrictions'. Therefore, the Supreme Court had observed that, though right to religion is a fundamental right, it does not mean that it can be extended to create hatred or enmity between two groups or sets of religion. Right to contest an election is not a fundamental right but is a statutory right governed by certain limitations and conditions and the candidate is bound to comply those conditions¹⁴.

Bribery in electoral process is one of the common corrupt practices. Offering or promise to offer gifts, money to the voters either for voting in particular way or to refrain from voting is called bribery. The Supreme Court though held that, commission of bribery has to be proved beyond all reasonable doubts and burden of proof is like proving a criminal offence, at the same time, the court also cautioned that doctrine of strict proof should not be applied in such a way that it will defeat and frustrate the very purpose of maintaining the purity of elections.

Under the R. P. Act, gratification is not specifically defined and therefore, while giving the purposive meaning to the same, the court held that gratification under the R. P. Act is not restricted to the pecuniary gratification only but it covers all forms of entertainment and employment for rewards.

Inducement to the voters to cast their votes in a particular way is also prohibited as it amounts to corrupt practice in electoral process. The Supreme Court had interpreted the term 'inducement' and held that for inducement, it is not necessary that it should be directly by the candidate himself. Even indirect inducement through third person is corrupt practice and prohibited by law.¹⁵ The Court also held that for constituting a corrupt practice of inducement, it is not necessary that a person giving a bribe by

inducement should mention specific amount. Even a mere offer of bribe without actual payment or without its acceptance also amounts to bribe.¹⁶

Thus, the Supreme Court has interpreted the corrupt practices in such a way that the true object behind its enactment is fulfilled and elections will be free and fair without contamination by corrupt practices.

2] Prevention of Political Corruption

Corruption is one of the significant aspect of the criminalization. Corruption by politicians under the garb of their office is great difficulty before establishment of welfare state and good governance. Corruption is recognized as an obstacle in achieving the aim of welfare state. Therefore, to curb the menace of corruption, the Supreme Court has expanded the scope of definitions of public servant, official duties etc. and brought the political corruption within the zone of punishment. The court has held that, "It would be the duty of the court to adopt the construction which would advance the object underlying the Act namely to make effective the provisions for the prevention of bribery and corruption at any rate and not to defeat it. --- Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act".¹⁷

The corruption by the ministers, MPs, and MLAs has become a routine. Politics earlier was considered as a medium of public service and social work. But now it has taken a shape of well-organized business and industry. Politics is recognized as a sure source of acquiring power as well as wealth and therefore, the corruption has become inevitable. Looking to the heavy corruption and scams by the politicians and the administrative officers, the judiciary has taken very serious steps and is keen about it. According to the Supreme Court, "No doubt corruption affects the normal fabric of the society. The citizens lose their faith in the political leaders who shout that they are for the people. The roots of the corruption are so deep that it is an uphill task to eradicate them. It is only possible if and if each citizen of our country follows the philosophy of contentment. To quench the thirst of greed and lust one must be drenched in shower of honesty and the foundation of sublime lover should sprinkle the magical drops on the eyes for the reality of life.

Unless one tries to find a golden key to open the gates of wisdom, the heavenly life remains a myth and we are all making the futile effort to attain divinity in life. The public man should have crystal clear and transparent personality. Creaser's wife must be above suspicion¹⁸.

The view expressed by the Supreme Court above make it crystal clear that the judiciary is very keen about the spreading of cancer of corruption in the social and political walks. Therefore in number of matters, the Supreme Court had shown indulgence when the allegations of corruption against political leaders or government are made. The Supreme Court had directed investigation and registration of crimes in the corruption scams like 2G Spectrum, Common Wealth Games, etc. The Supreme Court also tested the bonafides and truth behind the allegations of misdeed in Raffel Aircraft deal. It is the Supreme Court which has imposed heavy cost of Rs. Fifty Lacs to the former Petroleum Minister Capt. Satish Sharma when it is found that he has allotted retail outlets of petroleum products to his close relatives and officers by arbitrary exercise of powers, while allotting the government larges¹⁹.

3]Criminalization of politics and the Supreme Court

Criminalization of politics is not only paralyzing the foundation of democracy but also boosting the criminals and convicts to take the privilege of political immunity and continue in political offices. Therefore, the Supreme Court had rendered effective decisions to prevent the criminals and particularly convicts from the houses of legislatures. Conviction is one of the disqualifications for being the members of the Parliament or State Legislatures. Therefore, the provisions regarding conviction, its effects and true interpretation of the term 'conviction' is given by the court in such way that the convicted person should not enter in the Parliament or legislature.

Under the R.P Act, conviction of two years or above against certain offences is a disqualification²⁰.The effect of disqualification on conviction was postponed by the legislatures by introducing sec. 8(4) of the R. P. Act. By this amendment and introduction of proviso to sec.8(4) it was suitably provided that the seating members of the Parliament or State Legislature, if convicted for

any offence, he will not be disqualified immediately. His disqualification would be deferred till the period of limitation for filing appeal or revision against such conviction is over and if statutory appeal or revision is filed, the effect of disqualification shall be postponed till decision in appeal or revision as the case may be and such disqualification shall not take effect until conviction is finally confirmed by the higher courts. Introduction of sec. 8(4) was with malafide intention to defeat the purpose of providing disqualification on conviction and to protect the fellow members from clutches of disqualification under the grab of parliamentary privileges. However understanding the gimix behind it, the Supreme Court struck down the proviso postponing the effect of disqualification on conviction holding it unconstitutional and contrary to Article 100 of the Constitution. The Court also observed that, the moment conviction is awarded, seating M.P or MLA loses his right to seat in the house and filing of appeal or revision as the case may be or grant of bail would not make any difference on the disqualification. Such disqualification cannot be deferred till decision and conformation of conviction by the higher courts.²¹²²

The landmark judgment of the Supreme Court had played very effective role and the leaders like Lalu Prasad Yadav are unseated. The day of conviction is held as material date and unless the conviction is stayed in appeal, rigour of disqualification will be in operation. The court had also warned that the stay to the conviction or suspension of conviction cannot be ordered unless special case is made out or case falls in rarest of rare category for granting stay to the conviction.²³

In the R. P. Act, the exact method of counting two years conviction is not provided. However the Supreme Court had given literal meaning to it. In a case before the court issue was if a person is convicted for two or more offences but in no case conviction is for more than two years, however total period of conviction is more than two years, whether he is disqualified to be a member of legislature on the ground of conviction. The five judges bench of the Supreme Court held that, law does not contemplate conviction of two years in a single offence and while counting the period of two years, conviction awarded under all heads has to be calculated²⁴.

According to the Supreme Court, 'public man should have crystal clear and transparent personality. Therefore to bring transparency in candidature and to make the people aware about their candidate's criminal and financial background, the Supreme Court directed the Election Commission to make the rules mandating the candidates contesting elections for the parliament or State Legislatures to file an affidavit giving details of his educational qualification, criminal antecedents and financial assets and liabilities. According to the court, it is right of the electors to know all these details of the candidates to whom they are voting.²⁵

Decriminalization of the politics is foremost agenda of the judiciary therefore, the Supreme Court had taken all necessary care to mould the Election Laws so as to make them meaningful in achieving the object behind it. In addition to this, the court also taken care to empower the investigation agency like Central Bureau of Investigation and Central Vigilance Commission. Observing the political influence over these investigation agencies and paralyzed investigation against political criminals, the court given directions to the government which are useful for strengthening these investigation agencies and minimizing political interference in their functioning. The court directed the Government to depute/ appoint the Directors and officers of the CBI who will have experience of financial matters and functioning of financial agencies, experience in investigation wings. The court also directed the government to give independent and statutory status to the Central Vigilance Commission so that it can perform its function impartially and effectively.²⁶

4] Electoral Reforms and Judiciary

The Supreme Court is guardian of the Constitution as well as democratic fabric of the country. Therefore the court not only guided the Election Commission in holding the free and fair elections but also strongly supported the decisions taken by the Commission for electoral reforms. The Supreme Court imbibed on the Election Commission that it is not a powerless functionary, but it possess vast and multiple powers to hold free, fair and transparent elections. The Supreme Court upheld the decision of the Election Commission directing the political parties to submit the account of donations received by them from any private individual or

company, association or organization. This had certainly resulted in controlling the use of black money in political donations.

The Election Commission had taken a decision of introduction of NOTA (None of the above) on the ballot paper so that people can cast their vote's infavour of NOTA if the candidates given by the political parties or independently contesting an elections are not found suitable. The said decision was questioned before the court and while upholding the decision of Election Commission, the court held that, when the political parties will realize that large number of people are expressing their disappointment with candidates put up by them, gradually there will be a systematic change and political parties will be forced to accept the will of the people and nominate the candidates who are known for their integrity".²⁷

The Supreme also supported the Election Commission in the decisions introducing Electronic Voting machines (EVM) and VVPAT system.

Conclusion

The Supreme Court, being a guardian of the Constitution and democracy, worked for prevention of criminalization and corruption from political walks. In real sense it is purifier of politics in India. However it has some limitations. The Supreme Court is also bound by the jurisdictional limitations as well as infrastructural disabilities. There are various criminal cases pending against politicians. However due to lack of sufficient judicial officers and necessary infrastructure, those cases are pending for years together. The court has limited scope for interference in administrative decisions of the government and court cannot dictate the legislation. However, even after having these limitations the judiciary has played its role articulately and became the 'voice of the people', which is supreme in the Constitution. Now it is up to the people at large to use their wisdom and conscience in choosing the representatives having high morals and integrity, which will ultimately results in curbing the criminalization and corruption from politics.

Reference

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² Art.324 of *The Indian Constitution, 1950.*

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- ⁴ *K.Prabhakaran v P.Jayarajah*, AIR2002SC3393.
- ⁵ Art.324 of *The Indian Constitution, 1950*.
- ⁶ V.R. Krishna Iyer, *Law and people, published in 1972*.
- ⁷ Sec.123 of R. P. Act.
- ⁸ *P.R. Belgali v B.D. Jatti*, AIR 1971 SC 1348.
- ⁹ S.K. Mendiratta, *All you want to know about Indian Elections* (Wadhwa publication, Nagpur, 2nd edn. 2007).
- ¹⁰ *Amar Singh v Dharma Veer*, AIR 1990 NOC 132.
- ¹¹ *Kultar Singh v Muktiar Singh*, AIR 1965 SC 141, 1964 SCR (7) 790.
- ¹² *Harcharan Singh v Sajjan Singh*, AIR 1985 SC 236.

- ¹³ *Ram Dial v Sant Lal*, AIR 1959 SC 855.
- ¹⁴ *Subhash Desai v Sharad Rao*, AIR 1994 SC 2277.
- ¹⁵ *Kalyan Singh v Genda Lal*, AIR 1975 SC 1634, 1975 SCR (3) 783.
- ¹⁶ *Rajendra Jain v Sheel Yajee*, AIR1967 SC 1445.
- ¹⁷ *R. S. Nayak v A.R. Antulay*, AIR1984 684.
- ¹⁸ *State v S.Bangarapapa*, AIR 2001SC 222.
- ¹⁹ *Common cause v Union of India*, (2006) 6 SCC 593.
- ²⁰ Sec. 8(3) of R. P. Act.
- ²¹
- ²² *Lily Thomas v Union of India*, (2000) 6 SCC 224, *Lok prahari v Union of India* 2014 All HC 3181.
- ²³ *Sanjay Dutta v State of Maharashtra*, (2009) 5 SCC 787.
- ²⁴ *K. Prabhakaran v P.Jayarajah*, AIR2002SC3393.
- ²⁵ *Union of India v Association for Democratic Reforms*, (2002) 5 SCC 294.
- ²⁶ *Vineet Narain & others v Union of India & another*, 1996 SCC (2)199.
- ²⁷ *Peoples Union for Civil Liberties(PUCL) v Union of India*, AIR 2003SC 2363.

