



ELECTORAL PROCESS-LIMITATION UPON POLL EXPENSES AND ANTECEDENCE OF CRIMINALS IN THE ELECTIONS

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Introduction:

In a Democratic country like India, facing of elections is a tough job to the political leaders, including the Prime Minister of India or chief ministers of the states. In fact, facing elections, especially general elections, which are being conducted by the Election Commission of India, in every five years of interval, is as equivalent to climbing of the mount Everest either to the ruling political parties or opposition parties and all politicians how so ever they are great. In order to get success in elections, in some circumstances, political parties would have offered their party tickets to the persons, who are having criminal records and criminal cases and would have spent huge money Resultantly, the ratio of the Criminals participation in elections and money power has been increasing drastically in every five years as well as election by election for the past few decades. In order to eradicate and abolish such money power and antecedents of criminals from the elections, the Hon'ble

Supreme Court of India has taken remarkable steps and strengthens the hands of the Election Commission of India to implement the judgments and directions, passed by the Supreme Court of India.

Recently, the Hon'ble Supreme Court of India in Rambabu Singh Thakur v. Sunil Arora & others¹ held that basing upon the documents placed on record and after submissions of counsel, it appears that over the last four general elections there has been an alarming increase in the incidence of criminals in politics. In the year 2004, 24% of the members of Parliament had criminal cases pending against them and in

1.Rambabu Singh Thakur v. Sunil Arora and others, WP.© No.536 of 2011, decided² on 13th February, 2020.

2009 that ratio went up to 30% and in 2014 to 34% and in 2019 as many as 43% of MPs had criminal cases pending against them, thus, Percentage of criminals in politics has been increasing every five

¹ W.P.©.No.536 of 2011 decided on 13th February, 2020

² Ibid



years. As per the above statistics it can be predicted that the said criminals percentage in the coming 2024 general elections would be 52% to 55%, it means that more than 50% contestants in the coming general elections will be with criminal cases in respect of MPs but in the case of MLAs and in respect of local elections the number will be numerous and countless. Therefore, whenever the percentage of criminals in elections has been increased, then simultaneously the money and muscle power also will be increased.

Money and Muscle power in elections

The present electoral system is 'first past the post, which encourages the contesting candidates to spend humongous amount of money either in Parliament election or state Assembly elections. In the beginning days, money used only for canvassing and publicity expenditure like poster printing, hand bills and other forms of publicity designing, but gradually it has developed until purchasing of votes. In the present elections, lot of money, has been spending only to attract the voters, in this way, liquor flows like flood of the rivers and votes are being purchased like any item, available in the market. Thus, the meaning of "universal suffrage" has been changed and re-written as "universal purchase"

Poll expenses

To revise the limit on poll expenses rule 90 of Conduct of election rules, 1961 was amended in 2011. The commission issued

notification to this effect on 23 February 2013. Rule 90 of the conduct of election rules is amended in exercise of powers conferred by section 169 of the representation of the People act 1951 and the maximum limit range enhanced up Rs.40 lakhs for the parliamentary constituencies and a maximum of Rs.22 lakhs for legislative assembly.

Most recently, the Election commission of India has increased the limit of the expenditure of the candidates, who are contesting in Lok Sabha and legislative assemblies. It was hiked by the ECI up to 70 lakhs for candidates contesting for Lok Sabha. Prior to this enhancement, it was Rs.40 lakhs in respect of Member of Parliament but with respect to Members of Legislative Assemblies, it was increased up to Rs.40 lakhs from Rs.28 lakhs. The same enhancement has come into force since the most recent five state elections.

However, it is absolutely true and well known fact that either the political Parties or politicians spend hundreds of crores in each and every election to get success. Hence, There is a need and time is at hand, to take certain steps to cut down the humongous election expenditure and money power, which are the main causes of corruption in the elections. In order to minimize the election expenditure, some effective measures have been taken by the commission such as conducting state and parliamentary elections simultaneously; reduction of time of election campaign; allowing a candidate to contest only from one



constituency and imposing code of conduct and making it as legal etc., by the marvellous support and encouragement of the Hon'ble Apex Court.

As per section 33 (7) of the Representation of People Act, 1951, a person is allowed to contest in polls either in a general election or by-elections or biennial elections from a maximum of two seats. Prior to this law, candidates could contest in any number of constituencies. Generally persons who are contesting as candidates, seeking to be appointed as Prime Minister, Chief ministers and other ministers, used to contest more than one constituency only for not to lose, at any circumstances, the chair, they wanted to grab. If he/she wins both of the seats, in such circumstances, he/she must vacate one within 10 days, triggering a by-election, as stated in section 70 of the Representation of the People Act.

As rightly stated by Subhash C Kashyap, the above provision simply allows leaders to misuse the electoral process, in fact, most of such elections, only ruling party candidate, would get success with huge margin of votes and high majority than the opposite parties. The said section doesn't serve any useful purpose or real intension of the Legislatures, who had brought the said section in to the Act. There fore, there is a need to repeal the section.

The Supreme Court had in December 2017 issued notices seeking replies from the Election Commission and the Centre on the issue. At the time, the Supreme

Court had said the practice of one candidate contesting multiple seats was a drain on the exchequer since it necessitated by polls. A petition has also been filed in the Supreme Court challenging Section 33(7) of the Representation of People Act, 1951.

In Public Interest Foundation v. Union of India, a public interest litigation (PIL) was filed in 2011, before the Hon'ble Supreme Court of India, praying inter alia for guidelines or framework to be laid down by the Court to deal with the menace of Criminalization of politics and debar those charged with serious offences from contesting elections.

In this case, on 25th September 2015, the Court delivered its judgment in the case popularly known as Electoral Disqualification case. The Court had to decide that the persons shall be disqualified from membership in legislative bodies when criminal charges are framed against them. Section 8 of the Representation of Peoples Act authorizes disqualification of persons only when they are convicted of criminal charges by the competent courts.

The five-judge Bench unanimously decided that it cannot disqualify candidates, against whom criminal charges have been framed, from contesting elections. The Bench cited respect for the separation of powers it recognized that it cannot introduce new rules regarding the disqualification of electoral candidates.



The Bench asked Parliament to make a law that prevents candidates accused of serious crimes from entering politics. The Bench suggested that such laws are necessary to ensure that voters can make informed choices about whom they choose to elect. The Bench concluded that informed choice is a cornerstone of a strong and pure' democracy.

The Court issued the following directions:

1. Candidates must fill up forms containing all particulars.
2. In said forts, criminal antecedents to stated in bold
3. Candidates must inform the concerned political party of pending criminal cases against them
4. Concerned political party to put up such criminal antecedents of candidates on party website.
5. Wide publicity by both candidates and parties in press and media of the criminal antecedents 'Wide publication meaning at least thrice after tiling of nominations.

The Supreme Court held as such in K Prabhakaran v. P Jayarajan where it said,

“Those who break the law should not make the law. Generally speaking the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and the house - a powerful wing of governance, persons with criminal

background do pollute the process of election as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election.”

In Lily Thomas v. Union of India the Court held that Section 8(4) of the RPA, which allows MPs and MLAs who are convicted while serving as members to continue in office till an appeal against such conviction is disposed of. is unconstitutional.

Two justifications were offered --- first: Parliament does not have the competence to provide different grounds for disqualification of applicants for membership and sitting members, second, deferring the date from which disqualification commences is unconstitutional inLight of Articles 101(3) and 190(3) of our Constitution, which mandate that the seat of a member will become vacant automatically on disqualification.

The Election Commission of India has issued instructions on 13 October 2015 by which it has required the Chief Secretaries to issue appropriate instructions to the department dealing with prosecutions in States and Union Territories to ensure that cases of conviction of sitting Members of Parliament or of the State legislature are brought to the notice of the Speaker or Chairman of the House and the Chief Electoral Officer of the State along with the order of conviction within seven days



of the order. This was upheld in the case of Lok Prahari in 2018.

The opening words of Articles 102(1)(e) and 191(1)(e) i.e. "for being chosen as, and for being, a member of either House of Parliament" clarifies that Parliament is to make law for both candidates and sitting members, who to be disqualified. In Election Commission India v. Saka Venkata Rao, Court held "the same set of disqualifications for election as well as for continuing as a member".

Thus, Parliament has no power under these articles to make different laws for a person to be disqualified for being elected as a member and sitting member of Parliament or the State Legislature. This reasoning holds the rule that to interpret any law first of all grammatical meaning should be taken into consideration if it is not clear then purpose should be interpreted. Hence, Court properly declared Section 8(4) ultra-vires Constitution of India.

The Apex Court in Anukul Chandra Pradhan v. Union of India has observed that the provisions of election law are scanty to exclude persons with criminal background of the kind specified therein from the election scene as candidates and voters with the object to prevent criminalization of politics and maintain propriety in elections, and as such while explaining the ambit of Section 3(3) of the Representation of People Act, 1951, the Court unequivocally asserted that persons with criminal

background pollute the process of election as they have no reservation from indulging in criminal to gain success at an election.

Articles 102(1)(e) and 191(1)(e) mention that once a person who was a Member of either House of Parliament or House of the State Legislature becomes disqualified by or under any law made by Parliament under Articles 102(1)(e) and 191(1)(e) of the Constitution, his seat automatically falls vacant by virtue of Articles 101(3)(a) and 193(1)(a) of the Constitution and Parliament cannot make a provision (as it was done in Section 8(4) of the Representative of People Act, 1951) to defer the date on which the disqualification of a sitting Member will have effect and prevent his seat becoming vacant on account of the disqualification.

So the decisions taken in Lily Thomas case first in 2000 are SC nullified Section 8(4) as unconstitutional and void. The Court used the wisdom from Art. 102(1)(e) and 191(1)(e) of the constitution, 102(1) (e): Parliament can make a law providing for circumstances whereby a MP shall stand disqualified from the membership of either house of the Parliament. Article 191(1)(e) says the same thing about MLAs. Although Parliament can make laws to decide on disqualification", it can't "preserve and protect" its members who have been convicted for crimes. And in Lily Thomas Case, decided in 2013, Supreme Court struck down this clause as unconstitutional. It was perceived as a case of inequality and criminalization in



which the SC stated: Constitution allows parliament to make laws for disqualification and not protection and preservation of membership of the house. It will be prospectively applied: Special courts formed for sitting candidates out of the judgment of SC as it doesn't apply retrospectively.

Conclusion:

As per the above discussion, even though the election commission of India has put a cap vide limitation of election expenditure, the real fact is well known to every prudent person that either political parties or candidates who are contesting in the present elections, spend hundreds of crores to attract the voters. Further, votes are being purchased by the candidates, even though the Election commission put its 100% efforts to control and eradicate the money power from the elections. Furthermore, the Hon'ble Supreme Court of India as well as various High Courts have passed several judgments to strengthen the Election commission to curb and abolish the money power in the elections. However, due to the huge black money, the Commission could not control and overcome the money power from the election, though it has almost over come the muscle power by introducing EVM, VVPAT etc., technological advancements in the elections.