Clean up the system

Sudhanshu Ranjan

Members of Parliament with criminal
records are back in the headlines because
of the desperation of the government to
win the trust vote. The ruling coalition and
the opposition are trying their best to get as many votes, including those MPs who have been convicted and are behind bars. The list of criminal MPs is long. But
unfortunately, Parliament is not prepared to make any law to stop criminals from contesting elections. The Parliamentary Standing Committee on Personnel, Public Grievances and Law and Justice in a report submitted last year rejected the proposal to disqualify any
citizen from contesting
elections on mere framing
of charges against him
in a court of law for
committing offences. The
committee was set up
after the Chief Election
Commissioner wrote a
letter to the prime minis-
ter saying people like
Abu Salem and Dawood
Ibrahim could become
MPs and MLAs unless
the law is amended. He
suggested amending the Representation of People Act (RPA), 1951 to disqualify any person accused of an offence punishable by imprisonment by five years or more from contesting elections even when trial is pending, provided charges had been framed against him by a competent court. Section 8 of the RPA prescribes dis-qualification for certain offences but a person attracts disqualification only after conviction by court. The Ethics Committee lamented in its first report in 1999 that the process of conviction gets inordinately delayed which defeats the very purpose of Section 8 and recommended that the government should "expedite major electoral reforms in order to keep criminal out of the political arena".
There are different views on whether
a person should be disqualified from the moment the FIR is filed or the chargesheet is presented or the accused is convicted. Politicians in general believe that even after conviction by a trial court an MP should not be disqualified unless the Supreme Court upholds the conviction. According to Article 102(l)(e) of the
Constitution, a person shall be disquali-fied for being chosen as, and for being, a

member of either House if he is so disqualified by or under any law made by Parliament. The RPA provides for disqualification on various grounds: conviction for certain offences (Section 8), corrupt practices (Section 8A), dismissal for corruption or disloyalty (Section 9), government contracts (Section 9A), failure to lodge account of election expenses (Section 10A) and conviction for certain electoral offences. The Law Commission has recommended insertion of a new section (Section 8B) in the RPA that a person against whom charge has been framed under certain sections of the IPC, the Unlawful Activities (Prevention) Act, the Narcotic Drugs and
Psychotropic Substances
Act or any other offences
punishable with imprison-
ment for life or death
be banned. The National
Commission to Review the
Working of the Constitu-
tion also made a similar
recommendation in 2002.
Some people feel that
prohibiting a person from
contesting elections after
framing of charges by the
court is not justified as this
is done on the basis of a police chargesheet. Political parties have also expressed fears that such a law could encourage motivated charges. However, now prisoners can contest elections even though they do not have the right to vote under Section 62(5) of the RPA. Even proclaimed absconders are not disqualified from contesting elections notwithstanding Section 16 of the RPA which says that a person shall be disqualified for registration in the electoral rolls if he is a proclaimed absconder. It is common knowledge that one has to be a voter in order to contest an election. Besides, once an accused is elected during the trial period he gets the advantage of pressuring the government to withdraw the case against him. In an era of coalition governments, every single vote matters. And this immensely increases the bargaining power of MPs and MLAs. Unfortunately, political parties are
not prepared to cleanse the system. Since legislators won't do anything, the judiciary, the Election Commission and the media should join hands to stop criminals from becoming legislators.
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