

## JUDICIAL ACTIVISM AND THE DECRIMINALIZATION OF INDIAN POLITIC

Dr.Suyog S.Ingle  
NMD College, Gondia



**Abstract :-** The higher judiciary is continuously doing efforts towards strengthening the democracy in the country. A significant contribution made through judicial activism in the domain of decriminalization of politics in the country by this constitutional Court, is worth mentioning.

The role of Apex court towards the decriminalization of Indian politics has been analyzed in the paper. There has been a disturbing decline seen in the performance of Legislature in the country both at central and state level in solving the problems of the people, in few previous years. With a large section of the bureaucracy having willingly given up its autonomy from political machinations, citizens have little hope of getting a responsible and responsive government. It is the vacuum left by this crisis of bad governance that Indian judiciary, specially the Apex court is seeking to fill.

**Introduction :-** The unique status and character of the judicial wing emerges out of its objectives, namely, the maintenance and protection of individual and society's rights. In the absence of the Legislature, Courts might apply rules derived from other sources, such as custom or their own previous decisions. The judiciary is important part of the democratic Government. It has vital role in the functioning of the State. In governance of a federal type of Constitution where powers are distributed between the Union Government and the State Governments, the judiciary, by virtue of its very task of interpreting the constitutional and statutory provision while delivering judgments and reviewing the decisions of the Union and State Governments, assumes a significant and special importance. And hence we can see that the judiciary has a unique, unparallel role in the rule of law and participatory democracy.

The Supreme Court Justice A.M Ahmadi has expressed his views that, the court's activist role was necessitated by the degeneration of the functioning of other democratic institutions. The citizens, turn to the court is, for justice Ahmadi an attempt to find new ways of expressing their concern for public issues such as political corruption. Thus the judiciary continued to intervene to meet public expectations.

**Public Interest Litigation :-** The (PIL) Public interest Litigation has proved to be stronger and potent weapon in the hand of the court, enabling to unearth many scams and corruption cases in public life, and to punish the guilty involved in those scams. After the Maneka Gandhi's decision the ambit of the PIL was expanded by the Judiciary. Hawala scams, Uria scam, fodder scam, illegal allotment of government houses and petrol pumps etc., have come to light through the public interest litigation. Certain social organizations and public spirited individuals filed a writ petition in the Supreme Court and the High Court's by way of Public interest litigation requesting Court to Inquire and punish those who are guilty of, by violating laws and legal provisions in the country and misusing their official position in public life.

**Electoral reforms and PIL :-**The increasing nexus between criminals and politics threatens the existence of any democracy. In India, the Election Committee's official publication Electoral reforms (views and proposals)' highlighted the need to amend the Representation of the Peoples Act, 1951 to debar these anti-social and criminal elements making inroads into the electoral and political fields. It said that the criminalization of politics had reached a stage where the law breakers had become law makers.

The view was repeated by the Law Commission in its 179<sup>th</sup> Report which also suggested an amendment of the Representation of the Peoples Act, 1951 by providing that framing of charges for offences punishable with death or life imprisonment, should prohibit a candidate for five years or until acquittal, whichever event happens earlier. It also recommended that a candidate seeking to contest an election must furnish details regarding any pending criminal case, including a copy of the FIR/complaint and also furnish details of all assets possessed whether by the candidate, spouse or dependent relations. No action was taken on the reference of the commission by the government because of lack of harmony amongst the political persons and political parties.

It is this environment of failure to act of the government, Parliament and the political parties, the matter was first brought before the Delhi High Court through a (Public Interest Litigation) writ petition. Basing itself on the view that under Article 19 (1) (a) of the Indian Constitution, guaranteeing freedom of speech and expression, the right to get information is also guaranteed. The right to information is an integral part of the freedom of speech and expression. Accordingly, the High Court ruled that a candidate while filing his nomination for election to Lok Sabha or a State Legislature should give full information in an affidavit about his past criminal record, financial status etc.

The Central Government appealed to the Supreme Court against the high Court verdict. On appeal, the Supreme Court has more or less reiterated what the Delhi High Court has said. The Supreme Court has ruled that the Election Commission should call for information from each candidate on affidavit regarding his past criminal record, his financial assets (including those of his spouse or dependents), his liabilities to public sector bodies and educational qualifications.

It may be noted that these are not in any disqualifications of the candidate. The idea underlying the direction is that if the electors have full information about the antecedents of a candidate, they will be in a better position to decide as to whom to cast vote. Subsequent to the decision of the Supreme Court in Association of Democratic Reform, the Representation of the People Act, 1951 was amended, by inserting Section 33-A which requires a candidate to furnish information whether he is accused of any offence punishable with imprisonment of two years or more in a pending case in which charges have been framed by a Court of competent jurisdiction and whether he has been convicted and sentenced to imprisonment for one year or more. Failure to file an affidavit, filing a false affidavit or concealing information is punishable under Section 125-A. As far as the declaration of assets is concerned, Parliament chose to partially implement the decision of the Supreme Court by requiring an elected and not a candidate standing for election, to declare his assets. Section 33-B provided that a candidate was not liable to disclose or furnish any such information, in respect of his election, which was not required to be disclosed or furnished under the Act or the rules made there under 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. In other words, a candidate is not required to disclose;

- (a) The cases in which he is acquitted or discharged of criminal offences;
- (b) His assets and liabilities; and
- (c) His educational qualification.

This section was held to be unconstitutional in, People's Union for Civil Liberties (PUCL) v Union of India, on the ground that the voter had a fundamental right under Article 19 (1) (a) of the Indian Constitution to be aware of the antecedents of his candidate.

Thus the Apex court has continuously done the judicial activism for non-pollution or filtration of Indian politics by the evil of criminalization of politics. And on 10th July, 2013, the Supreme Court had given a landmark judgment which struck down section 8 (4) of the Representation of People Act, 1951. The provision allowed MPs and MLAs to continue in their posts, provided they had appealed or filed an application for revision against their conviction in higher courts within three months from the date of conviction. So apparently they could not be disqualified until the appeals or revisions were exhausted. Two Public Interest Litigations were filed by Lily Thomas and an NGO LokPrahari in 2005 questioning the validity of section 8(4) of the RP Act, since it provides special safeguard to the sitting MPs and MLAs who have been convicted of an offence and whether Section 8(4) of the RP Act is Ultra Vires to the Constitution. The Hon'ble Supreme Court held that, Parliament has exceeded its power conferred by the Constitution in enacting Sub-section (4) of section 8 of the Act and accordingly it is ultra vires the Constitution.

**Sum up :-** The judicial activism regarding the prevention of criminals in arena of politics and the judgments given for controlling the problem is only the hope of strengthen the democratic values of our system. The role of the Apex Court in interpretation of the democratic provisions is far helpful in cherishing the noble views of the framers of the Constitution. The role of Judiciary is always to establish rule of law in country. Judiciary has always tried to remove the hurdles in the progress of democracy. The various preventive laws are present in the country, but by certain loop holes in the system, these legal provisions are escaped by the politicians, but it is the effort of the judiciary that the rule of law is protected. The 2002 decision of Supreme Court regarding disclosure of every candidate, contesting an election in Indian Parliament, State Legislatures or Municipal Corporation, that they have to declare the following along with the application for nomination of his/her candidature;

- 1) A candidate's criminal records (convictions, acquittals and charges),
- 2) The candidate's financial records (assets & liabilities)
- 3) The candidate's educational qualifications.

The Apex Court was of the view that voters has the right to know about their candidates, and have a right to choose for them their representative, was implemented during the Lok Sabha election held in April - May **2004**.

And the significance of the decision of the Supreme court of striking down Section 8(4) of the Representation of People Act, 1951 would be that it will act as a deterrent for political parties which have been giving tickets to stained candidates. This judgment would also bring in equality between an ordinary individual and elected member who so far enjoyed an additional layer of protection from disqualification under section 8(4) of the Representation of Peoples Act, 1951.

The Supreme Court also ruled that voters should have the option of "None of the above (NOTA)" on the Electronic Voting Machines (EVMs) to ensure privacy for those who don't find any candidate suitable.

The Supreme Court of India has always made efforts to check the evil of criminalization of politics. It says, those

who break the law should not be allowed to make the law. The criminalization of politics can have harmful effect on the administration of law and order as well justice delivery system.

#### References

1. *Maneka Gandhi V Union of India* AIR 1978 SC 597
2. *Jain M.P. Indian Constitutional Law, 6th Edn. 2010 Lexis Nexis, Gurgaon, Haryana, p.44*
3. *AIR 2001 Del 1264 Union of India v Association of democratic Reforms, (2002) 5 SCC 294; AIR 2002 SC 2112*
4. *The Representation of the People (Third Amendment) Act, 2002 (Act 72 of 2002)*
6. *People's Union for Civil Liberties (PUCL) v Union of India (2003) 4 399, at page 443; AIR 2003 SC 2363*
7. *Lily Thomas v Union of India and others; (2013) 7 SCC 653*
8. *W.P. (civil) no. 161 of 2004, PUCL vs Union of India, 23/09/2013*
9. <https://www.indialegallive.com/special-story/the-saga-of-decriminalization-of-electoral-politics-in-india-and-the-way-forward-244th-law-commission-report/>
10. <http://www.legalservicesindia.com/article/1614/Electoral-Reforms-Towards-Decriminalizing-Politics.html>