

Towards Decriminalisation of Elections and Politics

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This article studies the role of crime and money in elections and politics in the context of several recent far-reaching judgments of the Supreme Court and the Central Information Commission. Based on publicly available data of over 62,800 candidates, who contested national and state assembly elections from 2004 to 2013, it shows that both crime and money play an important role in winning elections. The article ends with some tentative recommendations for improving the situation; the recommendations include legal and administrative changes, and the role that civil society and voters can play. A long public debate and discussion is needed to try and evolve a reasonable consensus.

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Democracy disciplined and enlightened is the finest thing in the world. A democracy prejudiced, ignorant, superstitious, will land itself in chaos.

– MK Gandhi

Democracy is a faith in the spiritual possibilities of not a privileged few but of every human being.

– Sarvepalli Radhakrishnan

Context

The Supreme Court has recently given several judgments on electoral and political reforms in response to various public interest litigations (PILs). These include disqualification of convicted Members of Parliament (MPs) and Members of Legislative Assembly (MLAs),¹ barring those in jail from contesting (now reversed by Parliament),² and directing the Election Commission of India (ECI) to bring the issue of election-related “freebies” under the ambit of the Code of Conduct.³ The union cabinet decided to pass an ordinance to nullify the disqualification of convicted MLAs and MPs, but reversed its decision when a political leader publicly opposed it. A recent court ruling said that returning officers should reject nomination papers of candidates who do not provide all relevant information about their assets, liabilities, and criminal cases if any.⁴ This strengthened an earlier ruling asking candidates to declare their financial, criminal and educational background. While earlier the court had said that returning officers could not reject nomination papers that contain “false” information, this judgment says that incomplete or blank affidavits can be rejected. The Supreme Court also ruled that voters should have the option of “None of the Above (NOTA)” on electronic voting machines (EVMs) to ensure privacy for those who do not find any candidate suitable.⁵ The Central Information Commission (CIC) declared political parties as

public authorities under the Right to Information (RTI) Act which has become a matter of public debate.⁶ An earlier judgment of the Supreme Court in 2001 barred a former chief minister of Tamil Nadu from contesting elections even though she had got a stay from the high court.⁷ This effectively barred all such convicted candidates.

Two petitions on illegal foreign funding of political parties and on paid news during elections are pending. Most of these petitions can be traced to a 2002 judgment of the Supreme Court in response to a petition by the Association for Democratic Reforms (ADR) mandating disclosure of candidates’ financial, educational and criminal background if any.⁸ As information and analysis of candidates and winners became public, more and more petitions were filed.

In all cases, the political parties have come together and have tried to undo the judgments and rulings. These include the attempt to overturn the 2002 judgment on the ADR petition through an amendment to the Representation of People (RP) Act. This amendment was later struck down as unconstitutional by the Supreme Court. The RP Act was amended to allow jailed persons to contest to overturn the Supreme Court’s judgment. An ordinance to overturn the judgment disqualifying convicted MPs and MLAs was almost passed and halted only when there was opposition from a political leader. There are serious attempts to overturn the CIC ruling bringing political parties under RTI. Parliament wants the current system to continue, while civil society and citizens at large want a change.

Inaction is sometimes more eloquent than action. The reluctance to tackle corruption, trying to ignore and undermine the Comptroller and Auditor General (CAG) who is a constitutional authority, and withholding sanction to prosecute ministers involved in the Commonwealth Games, 2G, and Coalgate scams, reveal the nature of the current political system. The movement for a Lokpal bill has also been opposed by the political system by masterly inaction. While there may be several views on what kind of

Lokpal bill is needed, everyone agrees that we need to eliminate corruption. So we have swift action to overturn or nullify decisions and reports of constitutional authorities like the Supreme Court, the CJC, and the CAG. On the other hand, there is complete inaction on issues of corruption and big scams.

These events raise several questions. Why are we in this situation? What can be done about it? What are the powers of Parliament and the courts? What is the recourse if Parliament passes laws that are against public interest? Do we need to change the electoral and political system? These are larger questions. They would require separate studies and analysis. We examine here only the limited issue of the criminalisation of elections and politics – the use and misuse of money and muscle power in elections.

Decriminalisation of Indian politics captures public imagination. A recent survey shows that a vast majority of Indians, about 98%, want criminals out of Parliament and assemblies (*Business Line* 2013). On the other hand, expert analysis and informed opinion usually dive deeper into the root causes and seek solutions therein. But political parties ultimately respond only to public pressure. The “demand” side therefore also needs to be addressed to bring about change. There is a key difference between the outlook of the political establishment and that of scholars and analysts. The former are very concerned about how public opinion will affect their electoral fortunes, the latter are not. As a result, we see the political establishment opposing civil society efforts, court judgments and CJC rulings, whereas, many scholars and analysts see these efforts as irrelevant, incomplete or even counterproductive.

Research on Criminalisation

Ever since data became public, a large volume of research emerged, which is impossible to cite completely. A paper by Haokip (2013) traces this problem to a lack of ethics in politics and to autocratic political party leaders. Tiwari (2013) argues that governance will not improve merely with cleaner candidates and representatives, and a lot more needs to be done. Chauchard (2013) says that as long

as we have bad governance, politics will be governed by ethnic identities which will lead to voters preferring tainted candidates who can dole out patronage. Vaishnav (2011, 2013) concludes that voters prefer tainted candidates who are seen as powerful and can ensure some access to government services and jobs. He recommends political party reforms and greater voter awareness. The parliamentarian B Panda (2013) has a set of recommendations based on a strengthening of the law. Godbole (1998) recommends more information to voters in the absence of political will to reform the system.

Jaffrelot (2012) examines in some detail the cause of the problem and attributes its genesis to the Emergency. Minch (2013) describes the ground-level situation and recommends greater voter awareness led by civil society organisations. Sridharan (1999) examines an important aspect of decriminalising politics, namely, funding elections, and recommends public funding. Gowda and Sridharan (2012) recommend partial public funding to overcome the problem of black money in elections. Chhokar (2001, 2003) argues for a greater involvement of citizens in electoral reforms. Sastry (2004, 2005) examines the role of civil society in electoral reforms and describes some breakthroughs and also argues for greater transparency as the first step towards changing the system. Much of the literature goes into depth on some aspects of electoral reforms. Most of them suggest administrative, legal and structural reforms, and only a few touch upon raising voter awareness.

Overview of Situation from 2004 to Date

The analysis that follows is based on the sworn affidavits submitted by candidates to the ECI prior to contesting elections. This was the outcome of two Supreme Court judgments in 2002 and 2003 based on a PIL filed by ADR. The latter petition was also filed by People’s Union for Civil Liberties (PUCIL), Lok Satta and several other organisations. The Supreme Court mandated disclosure of cases where charges had been framed⁹ against a candidate and where conviction would lead to a sentence of two years or more.

To prevent malicious or motivated cases by rivals, the Court limited this disclosure only to those cases where charges were framed at least six months prior to the date of elections. The ECI now makes affidavits of candidates available on their websites. ADR conducts “National Election Watch” for every national and assembly election in partnership with a nationwide network of organisations and in the process collected this data. This database which can be found at www.adrindia.org and www.myneta.info was used to analyse the issues of criminalisation, money in elections, winnability, and role of gender in elections.

Criminalisation of Politics

(a) Candidates: The RP Act as it stands today does not bar from contesting elections people with pending criminal cases who are not yet convicted. Meanwhile, cases drag on for years and even decades, allowing many to continue to contest elections. Candidates convicted and sentenced for two years or more are disqualified for six years from the date of completion of the jail sentence. Those convicted by a lower court are barred from contesting elections even if they have filed an appeal, unless they have been exonerated by a higher court. Recently the Supreme Court disqualified sitting MPs and MLAs who are convicted. It struck down a provision in the RP Act that allowed such MPs and MLAs to complete their term in the assembly or Parliament.

Analysis of 62,847 self-declared affidavits of candidates, covering all assembly and Lok Sabha elections between 2004 and September 2013, including by-elections, shows that 11,030 (18%) had 27,027 pending criminal cases against them while 5,253 (8%) candidates had 13,984 serious criminal charges¹⁰ including murder, rape, corruption, extortion, dacoity, etc. That is more than one in five serious cases per candidate. Among serious cases, there were 1,229 cases of murder, 2,632 cases of attempt to murder, and 496 instances of violation of the Indian Penal Code (IPC) in other cases related to murder like culpable homicide, abetment to suicide, etc. There were 68 rape cases and 455 other cases for crimes

against women. There were 978 violations of IPC sections relating to kidnapping and abduction, and 1,004 violations of IPC sections relating to robbery and dacoity. There were 1,319 cases against candidates for cheating. There were 1,720 violations of IPC sections relating to forgery and counterfeiting. In addition, there were 226 violations of IPC sections relating to counterfeiting government seals. There were 746 violations of IPC sections relating to breaking the law during elections.

There were 8.4% of candidates with some serious case against them. About 2,700 or 4.3% had two or more serious

Table 1: Percentage of Candidates and Winners with Serious Criminal Cases* (2004-September 2013)

No of Serious Cases	No of Such Candidates	As a % of Candidates	No of Such Winners	As a % of Winners
>50	5	0.01	1	0.01
>40	9	0.01	2	0.02
>30	17	0.03	3	0.03
>20	50	0.08	17	0.19
>10	152	0.24	50	0.57
>5	433	0.69	127	1.44
>4	627	1.00	184	2.09
>3	971	1.54	270	3.07
>2	1,533	2.44	416	4.73
>1	2,700	4.30	678	7.71
>0	5,253	8.36	1,187	13.50

*Serious crimes include murder, attempt to murder, rape, crimes against women, cases under the Prevention of Corruption Act, Maharashtra Control of Organised Crime Act, loss to public exchequer, state or national treasury, Lokayukta initiated cases, forgery, counterfeiting and/or sale of Government documents, stamps; issue of non-bailable warrants, and cases which on conviction would result in five years or more of jail (the RP Act disqualifies anyone sentenced for only two years or more).

cases, 152 had 10 or more such cases, 14 had 40 or more such cases, and five had more than 50 cases against them. Table 1 gives details. Even if we ignore so-called trivial cases and focus only on serious cases, we find that all political parties field such candidates. It varies from a high of 17% for the Shiv Sena to a “low” of 4% for the Asom Gana Parishad. We looked at 19 political parties which won nearly 90% of all seats in the period under review. All of them fielded candidates with serious criminal cases, the average per cent of such candidates being 9%. If we look at candidates with some criminal case, the percentage shoots up to 18%.

(b) Winners: Of the 8,882 winners analysed from 2004 to 2013, 2,497 (28.4%) had 9,993 pending criminal cases against them while 1,187 (13.5%) candidates had

4,824 serious criminal charges including murder, rape, corruption, extortion, dacoity, etc. That is more than one serious case for every two winners. This is more than the one in five for candidates, meaning winners are more likely to be tainted. There were 335 instances of murder, 846 violations of IPC sections on other cases related to murder like culpable homicide, abetment to suicide, etc. There were 17 rape cases, and 136 other cases for crimes against women. There were 282 violations of the IPC related to kidnapping, abduction and so on, and 276 violations related to robbery and dacoity. There were 909 violations of the IPC for cheating, forgery and counterfeiting. In addition, there were 76 violations for cases relating to counterfeiting government seals and 303 violations for cases relating to breaking the law during elections.

There were 13.5% of winners with some serious case against them. About 678 or 7.71% had two or more serious cases, 50 had 10 or more such cases, two had 40 or more such cases, and one had 69 cases. As is clear from Table 1, the percentage of winners with serious charges is significantly higher than that among candidates.

Table 2 compares candidates and winners. As can be seen, in every type of criminal case, the percentage amongst winners is much more. There were on average 0.22 IPC sections for serious crimes against a candidate, while there were 0.55 against winners – one in five for candidates versus one in two for winners. These facts have led to a demand

for barring candidates with serious criminal cases.

‘Winnability’ and Serious Crime

While only 12% of candidates with a “clean” record win on average, 23% of candidates with some kind of criminal record win, and more alarmingly, 23% of all those with serious criminal charges win. Nearly every party shows that a greater percentage of those with a serious criminal record win compared to those without any record. For instance, of the Bharatiya Janata Party’s (BJP) winning candidates 28% were clean versus 40% with serious criminal records. The figures for Bahujan Samaj Party (BSP) are 7% and 16%, Samajwadi Party (SP) 16% and 31%, Nationalist Congress Party (NCP) 18% and 26%, Janata Dal (United) 21% and 50%, Shiv Sena 11% and 33%, All India Anna Dravida Munnetra Kazhagam (AIADMK) 51% and 73%, Dravida Munnetra Kazhagam (DMK) 48% and 59% and so on. The Indian National Congress (INC) very slightly reverses this trend with 39% clean winners and 34% with serious criminal cases. This partly explains the strong tendency of political parties to continue fielding people with badly tainted records. Unfortunately information about the candidates’ criminal background is not easily available to voters. Table 3 (p 37) summarises the situation.

In addition, we find that several cases drag on for years. Over 3,450 candidates had contested the elections more than once. Of them, there were 849 with a

Table 2: Summary of Serious Criminal Charges on Politicians (All State Assembly, Lok Sabha, Rajya Sabha Elections from 2004 to September 2013)

	Serious Cases: Instances of IPC Sections on Candidates and Winners			
	No of IPC Sections against Candidates	No of IPC Section Per Candidate	No of IPC Sections against Winners	No of IPC Section Per Winner
Murder	1,229	0.02	335	0.04
Other murder related	3,128	0.05	846	0.10
Rape	68	0.00	17	0.00
Other crimes against women	455	0.01	136	0.02
Robbery and dacoity	1,004	0.02	276	0.03
Kidnapping	976	0.02	282	0.03
Cheating, forgery, counterfeiting	3,039	0.05	909	0.10
Government seal counterfeiting	226	0.00	76	0.01
Electoral frauds	226	0.00	303	0.03
Sub total	10,351	0.16	3,180	0.36
All other serious charges	3,633	0.06	1,644	0.19
Total	13,984	0.22	4,824	0.55

The data show that there was one serious charge for approximately every five candidates (0.22), and one for every two elected representatives (0.55).

criminal record the first time they contested, and 631 who had a criminal case the second time they contested. About 474 of them had the same cases pending against them for at least four years. This means that a person facing serious cases can complete the term of an assembly or Lok Sabha before the cases are disposed of. The need for barring such candidates

becomes even stronger since they have had ample time to get their names cleared from the courts.

Money Power and Crime

The average assets go up from Rs 1.37 crore per candidate to Rs 2.03 crore for third place candidates, Rs 2.47 crore for runners up, Rs 3.8 crore for winners,

Rs 4.27 crore for winners with some criminal record, and Rs 4.4 crore for winners with serious criminal records (Table 4). Wealth increases the chances of winning, and a combination of wealth and criminal record increases it even further as 23% of tainted candidates win compared to only 12% of clean candidates. Some extreme examples include independents where the figures are Rs 54.6 lakh (candidate), Rs 7.2 crore (winner), Rs 11.26 crore (winner with a criminal record) and Rs 15.1 crore (winner with a serious criminal record). Some of the major parties showing the same trend of an increase in assets from candidate to winner to winners with crime records include the INC, BJP, BSP, SP, NCP, Shiv Sena, AIADMK, DMK and the Akali Dal.

Describing the role of money in elections, the then chief election commissioner had said in 2012 that about Rs 10,000 crore of black money was spent in the 2012 UP assembly elections.¹¹ At Rs 25 crore in each constituency, and over 4,000 assembly seats all over India, this amounts to Rs 1,00,000 crore. If we take the Lok Sabha elections with 543 seats, this adds up to another Rs 12,500 crore though the spending is much more here. Local elections including municipal, district, block and panchayat, easily double that figure as there are lakhs of contested seats. However, many of the panchayat elections are never held. Estimates of expenditure vary from a total of Rs 1,50,000 crore to Rs 2,50,000 crore for all elections put together. This occurs once in five years and is adjusted for inflation as well. Until this flow of black money into elections is minimised, we cannot get good governance.

The estimate by the former chief election commissioner shows that candidates exceed the legal limit on election expenses several times over. If we go by the recent declaration of a politician who said he spent over Rs 8 crore, it is 20 times the current limit of Rs 40 lakh per assembly constituency. At the same time, an analysis of the election expenses filed by candidates with the ECI for the 2009 elections shows that the average spend was Rs 4.3 lakh. Clearly there is under reporting of the election expenses. There is a provision in the RP Act that empowers

Table 3: Relative Chances of Winning for Clean and Tainted Candidates
(All State Assembly, Lok Sabha, Rajya Sabha Elections from 2004 to September 2013)

Party	Contested	Won	% of Contested Seats Won	% of Those with Clean Records Who Won	% of Those with Charges Framed Who Won	% of Those with Serious Charges Who Won
INC	6,322	2,453	39	39	37	34
BJP	5,605	1,689	30	28	38	40
BSP	4,738	430	9	7	17	16
SP	2,090	418	20	16	31	31
CPI(M)	1,163	520	45	49	35	34
NCP	1,085	225	21	18	30	26
JD(U)	1,005	272	27	21	43	50
AITC	904	256	28	25	40	48
JD(S)	655	81	12	11	19	15
RJD	618	125	20	18	25	25
CPI	602	91	15	12	25	24
SS	590	135	23	11	37	33
AIADMK	426	234	55	51	68	73
RLD	393	29	7	6	12	18
DMK	315	167	53	48	65	59
TDP	312	127	41	38	48	56
BJD	233	197	85	85	82	75
SAD	209	117	56	59	48	50
AGP	180	39	22	23	11	14
IND	19,819	348	2	1	5	6
Sub total	47,264	7,953	17	15	27	26
Total	62,847	8,882	14	12	23	23

Table 4: Interaction of Crime and Money in Elections
(All State Assembly, Lok Sabha, Rajya Sabha elections from 2004 to September 2013)

Party	% of Those with Serious Charges Who Won	Average Assets of Such Candidates (Rs Lakh)	Average Assets of Such Winners (Rs Lakh)	Average Assets of Winners with Charges Framed (Rs Lakh)	Average Assets of Winners with Serious Charges Framed (Rs Lakh)
INC	34	432.6	581.2	801	675.6
BJP	40	179.7	288.4	340.2	387.4
BSP	16	125.9	273.7	256.2	278.3
SP	31	152.6	416.7	412.5	546
CPI(M)	34	27.3	21.2	20.9	23.1
NCP	26	140.7	356.2	331.5	414.5
JD(U)	50	133.3	361.6	85.5	92
AITC	48	136.8	131.3	79.7	98.8
JD(S)	15	473.4	772.6	366.6	616.7
RJD	25	57.3	70.2	76	89.9
CPI	24	28	29	22	35.9
SS	33	122.5	227.9	261.5	339.5
AIADMK	73	203.8	289.6	539.4	479.9
RLD	18	119.4	379.1	694.6	790.3
DMK	59	301.6	294.6	290.8	489.7
TDP	56	561.4	872.2	613.1	276.8
BJD	75	101.3	110	62.5	53.7
SAD	50	602	627	873.4	1,734.00
AGP	14	62.5	77.2	54.1	23.2
IND	6	54.6	720.4	1,125.60	1,512.10
Total	23	137.1	380.7	427.2	438.2

the EC1 to countermand an election for false declaration of electoral expenses.

Meanwhile, wealth has become concentrated. The top 100 people in India have a combined wealth of \$259 billion or about Rs 15,50,000 crore. India has the world's sixth largest number of dollar billionaires. The top 1% own 33% of the wealth and earn 17% of the total income of the nation (*The Financial Express*, 11 November 2013 and *The Times of India*, 9 October 2013). To quote, "Businessmen today have a great influence on the economy, on employment, government policy, and sometimes, on politics as well. India's rupee billionaires have a combined wealth of about \$357 billion, or 20% of the market capitalisation of all listed companies in India. There were 657 rupee billionaires and 45 dollar ones in 2011" (Sastry 2011). The declared wealth of each ultra-high-net worth individual (UHN1) is several times the combined declared wealth of all the politicians in Parliament put together. At the same time, inequality has risen and India has the largest number of people below the poverty line. With much greater awareness thanks to TV, mobile and large-scale migration of working class rural populations, that inequality has become more glaring. Exposure to consumer goods and lifestyles of the well-to-do has perhaps changed aspirations of the working class. In the final analysis, extreme inequality and democracy are perhaps incompatible.

There is a proliferation of candidates and parties. In the 2009 Lok Sabha elections, 392 registered political parties contested for 543 seats. In most so-called developed countries, the number is at most half a dozen. There were 14 candidates per Lok Sabha seat in 2009 of which seven were independents. The same is true in several state assembly elections.

If we pause for a moment to reflect on these developments, we may be able to see how the role of crime and money would play out in such a messy competitive election scenario with rising inequality. Most parties no longer reflect the interests of a broad spectrum of citizens. They need only a small percentage of swing votes to win. A winner got 25.7% of the registered voters on an average in

the last Lok Sabha, and 44.2% of the votes cast; 423 MPs in the current Lok Sabha won with less than 50% of the votes cast, 167 of them with less than 40%. Of the registered voters, 538 won with less than 50%, 506 with less than 40% and 356 with less than 30%. If we look at the percentage of votes that MPs in the ruling coalition got out of the total votes cast it is less than 19%.¹² As a percentage of the total registered voters it is less than 11%.¹³ But the ruling coalition controls the government, the budgets, and new legislation. While this is natural in a multiparty system, it does raise questions about how representative elected MPs, MLAs and governments are.

To win an election, an astute candidate has to therefore manage a small fraction of voters. Buying votes and providing freebies is one way to try and win elections. There is big money available to finance such elections. In a repeat of the muscle man turned politician of the 1980s, we now see the moneyed-person turned-politician today. A senior leader of one political party once told this writer that 92% of the applications for tickets were from builders and real estate businessmen in one southern city. The leader of the rival party agreed with this.

Growth in Assets of Elected Representatives

Of the 3,452 candidates who contested more than one election, 2,967 showed an increase in wealth. This includes all those who contested elections more than once between 2004 and 2013 and includes all state assembly elections, and the Lok Sabha and Rajya Sabha elections, since all of them went to the polls at least twice during this period. The average declared wealth of such re-contesting candidates in 2004 was Rs 1.74 crore, and Rs 4.08 crore in 2013, an increase of 134%. For winners, the average assets went up from Rs 1.8 crore to Rs 5.81 crore, an increase of 222%. Winners are able to increase their wealth much faster than other candidates.

How have the assets of all candidates, winners and those with criminal charges grown over time? Table 5 presents telling detail. Candidates, winners and winners facing criminal charges have all recorded

a growth in assets after 2009. And those of winners with serious criminal charges shows the highest growth.

Table 5: Growth in Assets

Growth in Assets: Candidates, Winners, Tainted Winners (in %)				
Party	Growth in Average Assets of All Candidates	Growth in Average Assets of Winners	Growth in Average Assets of Winner with Criminal Charge	Growth in Average Assets Winner with Serious Criminal Charge
INC	71.0	201.4	380.4	340.9
BJP	63.1	142.0	158.4	178.0
BSP	91.3	358.9	499.1	621.7
SP	179.8	162.6	302.3	383.9
CPI(M)	79.0	63.9	199.5	122.7
NCP	85.9	336.0	335.6	352.4
JD(U)	52.3	120.0	90.4	201.5
AITC	551.4	172.2	208.4	106.9
JD(S)	363.3	207.0	66.0	-25.2
RJD	156.4	230.3	61.8	99.1
CPI	57.3	148.0	34.6	-30.5
SS	226.0	387.1	545.0	1145.0
AIADMK	459.0	295.7	59.3	276.1
RLD	281.3	236.9	506.3	905.3
DMK	303.6	439.6	252.1	681.1
TDP	105.5	1069.3	-	-
BJD	139.4	176.8	194.5	148.3
SAD	62.9	173.8	209.8	701.1
AGP	267.0	652.9	265.5	-
IND	53.6	286.6	271.6	260.8
Total	133.4	206.3	282.9	275.3

Figures show assets growth of candidates and winners after 1 January 2009 compared to those before that.

Gender and Elections

Of the 62,847 candidates, only 6.6% were women, and of the 8,882 winners only 7.6% were women. They are still under-represented in elections. Of the 2,575 winners with criminal charges only 4.3% are women and of the 1,187 winners with serious criminal charges, only 3.1% are women. A greater representation of women would perhaps improve the situation. However like men, the percentage of women with criminal records who win (16.4%) compared to women with clean records who win (10%) is higher. For men the comparable figures are 30.4% and 18.1%, respectively. For those with serious criminal cases the figures are 5.5% and 3.9% for women, and 14.2% and 8.7% for men.

Women also show an increase in declared assets in general over crime and money, as do men. The average assets of women candidates is Rs 1.46 crore (men Rs 1.37 crore), women winners Rs 4.46 crore (men Rs 3.78 crore), women winners with criminal charges Rs 4.04 crore

(men Rs 4.32 crore) and women with serious criminal charges Rs 5.77 crore (men Rs 4.34 crore). The higher average assets of women may come as a surprise and is due to the presence of outliers and large standard deviations.

An Overview

A total of 4,807 sitting MPs and MLAs as of August 2013 were analysed, of whom 1,460 (30%) sitting MPs and MLAs have declared criminal cases against themselves and 688 (14%) have serious criminal cases. If anything, the situation has become slightly worsened since the data has become publicly available and analysed since 2004 when the comparable figures for winners with a criminal charge were 28.4% and winners with serious criminal charges were 13.5%.

In the current Lok Sabha, 162 (30%) out of the 543 MPs have criminal cases of which 76 or 14% have serious criminal cases. Compared to that, in the state assemblies, 1,258 (31%) out of the 4,032 sitting MLAs from all state assemblies have criminal cases and 15% have serious cases.

Some Implications

In analysing such a complex set of events and trends, it may be important to focus on the two things that seem to drive politics in India – power and money. Those in power need to make money to ensure the next victory in an increasingly high stake, high risk, competitive political environment. In this era of coalition politics with several small parties, the role of money will become even more important. Real estate, infrastructure, public-private partnership (PPP) projects and natural resources are opportunities for creating wealth. All of them have links with elections and politics today. So money and power feed each other. All this is well understood. Perhaps there was a time when ideologies played a role and influenced people to join politics. Today there seems to be a digression and politics merely uses the camouflage of ideology to garner votes and come to power. The difference between adhering to an ideology and using it for electoral gains has become clear.

The major impact of all this is on the quality of governance. Any winning

candidate who spends lavishly in elections will focus on recovering his investment or returning favours to those who funded him/her. The same is true of political parties and of ruling coalitions. A superficial analysis says that voters have become savvy, take money from all candidates, and then vote for the candidate of their choice. Therefore the misuse of money no longer affects the outcome. This is clearly not true as the earlier analysis reveals. But even if it were true, governance will suffer no matter who wins because all have spent huge sums. A clean election process is important to ensure good governance, even if it has no impact on the final outcome. Elections are not only about who wins, but also about the quality of governance we get. With so many parties and unstable ruling coalitions, there will be greater opportunity for big money and some corporate houses to adversely influence government policy and legislation. The problem of misuse of funds in elections goes to the heart of the matter.

The Way Forward

Gandhi said “To safeguard democracy the people must have a keen sense of independence, self-respect, and their oneness”. Whether we have the first two is not clear. But we certainly do not have oneness. Political parties currently tend to divide voters further. Perhaps some of those with privilege and those who are concerned would need to come together to build that sense of independence, self-respect, and oneness. As Nelson Mandela said “For to be free is not merely to cast off one’s chains, but to live in a way that respects and enhances the freedom of others”. If the elites imbibe that spirit much can be achieved.

In this light, we examine possible solutions on four dimensions: structural, legislative, administrative, and civil society-led changes. The media continues to play an active role in all this. Unlike in other leading democracies, the corporate sector in India has not yet come forward to engage openly with improving elections and governance. This may be understandable where being on the wrong side of power may have consequences.

In the recent past, several commissions have been set up to examine the issue of electoral and political reforms. They include the Goswami Committee on Electoral Reforms (1990), the Vohra Committee Report (1993), Indrajit Gupta Committee on State Funding of Elections (1998), Law Commission Report on Reform of the Electoral Laws (1999), National Commission to Review the Working of the Constitution (2001), ECI – Proposed Electoral Reforms (2004), and the Second Administrative Reforms Commission (2008). Recently, the government has once again appointed a Law Commission to examine the issue disregarding the excellent recommendations made by the previous committees and commissions. Clearly there is hesitation to implement the recommendations. On the legal front, there is a long list of suggested remedies by the various commissions. Some of the more popular ones include barring candidates with several serious criminal charges, and making political parties accountable for fielding such candidates. But it remains to be seen whether Parliament and the current political system will pass suitable legislation.

The Lok Sabha needs to be compared with other Parliaments. An MP represents over 13 lakh voters on average. The next highest is the US, where a congressman represents five lakh voters. The UK, France and Germany all have less than 1,00,000 voters per elected representative. In this sense, India is the least representative of all democratic countries. This is further compounded by the vast number of political parties which leads to winners that represent only a fraction of voters.

There are several radical suggestions including changing the system from the first past the post to a US-style presidential system, or a European-style proportional representation system, or French style run-off elections between the top two candidates if no one gets more than 50% of the vote. There are various hybrids of these as well, including the Japanese multi-member constituencies where in addition to the first past the post winners, electoral districts elect several members based on the number of votes a party gets. These issues have been discussed

at great length by scholars as well as the various commissions referred to earlier. The three major issues that need to be balanced are (i) the quality of representation within a constituency that the French and Japanese systems improve, (ii) the quality of representation of a political party that the proportional representation system improves as seats are allocated in some proportion to the overall votes a party gets, and (iii) a faster decisive functioning of government that a presidential system tries to achieve. Given deep ideological preferences, we are unlikely to achieve a consensus and may not see a change in the near future.

One of the several ways money power can be contained is to reduce the fierce competition for votes. This happens in closely contested electoral constituencies. Insisting on either winning the election decisively with, say, at least a 5% margin, or getting more than 50% votes in a second round run-off poll makes it much more difficult to buy so many votes. Similarly, declaring anyone with more than 40% of votes cast as a representative as in multi-member constituencies in Japan will help. A proportional

representative system is welcomed by various groups – the dalits, the Muslims, the communists, the urban professional class, and so on. They see a clear possibility of increasing their presence in state assemblies and Parliament as they get a small fraction of the pan-India votes. The increasing clamour for a presidential style system reflects the deep disappointment with unstable, corrupt governments. Often stability is sought from a dictatorship or an authoritarian regime. Authoritarianism is antithetical to democracy and may do long-term damage. Each alternative has its advantages and disadvantages, and much wider public debate and discussion is required to evolve a consensus if we want a change from the current system.

Another important legal remedy is to enact a law to regulate the functioning of political parties. One such draft bill has been prepared and circulated for discussion by civil society under the chairmanship of a former Chief Justice of India.¹⁴ It seeks to introduce greater democracy and transparency in political parties as this is vital for reforming our system. Political parties nominate

candidates and contest elections. A party that is internally autocratic cannot function democratically once it comes to power. A small but growing section of concerned and informed citizens is pushing for such a law. Companies, banks, cooperatives, non-governmental organisations (NGOs), trusts, societies, temples, mosques, churches and other places of worship, hospitals, educational institutions and so on have to comply with an increasing number of state and government regulations and legislation. Only political parties are relatively exempt.

Going beyond legal remedies, the administrative systems introduced by the ECt are largely to be commended. Starting with the Code of Conduct, successfully curbing election-related violence and booth capturing, tracking the flow of money and liquor to the extent possible during elections, putting in place systems for election expenses within the existing laws and other measures have improved things considerably. However, the vexed question of misuse of money during elections has not been fully addressed. The system of election observers needs to be strengthened or re-looked at. When even

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the chief election commissioners (CECs) have publicly said that black money is freely used in elections, and have appointed special expenditure observers, it is surprising that not one election to the Lok Sabha has been set aside. Meanwhile, the public and the media openly report the use of money in elections. The first “corrupt practice” listed in the RP Act is bribing voters during elections. Surely it merits action. A liberal interpretation of the powers of the ECI can address this problem. Also, since adequate information to voters is not available, the candidate affidavits in a summary form should be prominently displayed at each polling booth so that voters can see them before voting.

Civil society has played a vital role in various court judgments and CIC rulings as described earlier. However, one role civil society can play effectively is in voter education campaigns. It is perhaps pertinent to recall what Gandhi said “In a true democracy every man and woman is taught to think for himself or herself”. Franklin Delano Roosevelt, the longest serving us president, like Gandhi said “Democracy cannot succeed unless those who express their choice are prepared to choose wisely. The real safeguard of democracy, therefore, is education”. If voters stop taking bribes and stop voting for people with serious criminal cases, the system will automatically change. This is not as far-fetched as it may sound, since voters already do that in states with high levels of education like Kerala and some north-eastern states. Changes in voter and citizen behaviour are perhaps the best guarantee for decriminalisation and good governance. Traditional voter awareness campaigns, focused on saying “Go out and vote” need to be supplemented by “Do not sell your vote, and do not vote for tainted candidates”. The first campaign is largely for the upper- and middle-class voters where voting percentages are low. The latter is for working class and poorer voters, who do go out and vote in large numbers in any case.

There is a view that it is elitist and ignorant to think that voters are not aware. Needless to say they are fully aware of ground-level reality, the campaign rallies, the display of money, buying of

votes in various parts of the country, the caste, religious and regional identities of candidates and parties, their own interests, and their expectations from the political system. As many point out, they increasingly take gifts from one candidate and vote for another. But a deeper understanding of the link between black money, vote buying, corrupt elections and corrupt government delivering bad governance needs to be built. They sometimes do not see how they themselves suffer and get bad schools, healthcare, roads, corrupt government, and bad implementation of various government schemes. The ECI could also consider such a campaign, and it certainly has sufficient resources to do it. Needless to say, media support is vital. The more thoughtful seek an incentive system that makes political parties less corrupt: in other words, how do we ensure that it is in the political parties’ interests to go in for clean elections, clean candidates, and deliver good governance? A perfect alignment between voters’ interest in good governance and political parties’ interest in winning elections may never be possible. Such an incentive system needs to be supplemented with active civil society involvement and much higher voter awareness. If we can move forward on some of these suggestions, it may lead us to clean elections, clean candidates, strong political parties and good governance.

NOTES

- 1 Writ Petition (civil) 490 of 2005, *Lily Thomas vs Union of India*; 10 July 2013.
- 2 SPL (Civil) of 2004, *Chief Election Commissioner vs Jan Chaukidar*.
- 3 Civil Appeal No 5130 of 2013 (Arising out of SLP (C) No 21455 of 2008), *S Subramaniam Balaji vs Government of Tamil Nadu*.
- 4 Writ Petition (civil) No 121 of 2008, *Resurgence India vs Election Commission of India*, 13 September 2013.
- 5 Writ Petition (civil) no 161 of 2004, *PUCI vs Union of India*, 23 September 2013.
- 6 Central Information Commission Decision CIC/SM/C/2011/000838 dated 3 June 2013.
- 7 Writ Petition (civil) no 242 of 2001, *BR Kapoor vs State of Tamil Nadu*, 21 September 2001.
- 8 *Union of India vs Association for Democratic Reforms*, Appeal 7178 of 2001 with Writ Petition (C) No 294 of 2001; 2 May 2002; Appeal from: CWP 7257 of 1999 (High Court, Delhi).
- 9 A charge is framed by a court, typically a judicial magistrate first class (JMFC), on the basis of a charge sheet filed by the police after investigation. Thus an FIR against someone would not constitute a case as described by the Supreme Court.
- 10 Serious crimes include murder, attempt to murder, rape, crimes against women, cases under the Prevention of Corruption Act, Maharashtra Control of Organised Crime Act, loss to public exchequer, state or national treasury, Lokayukta initiated cases; forgery, counterfeiting and/or sale of government documents, stamps; issue of non-bailable warrants, and cases which on conviction would result in five years or more of jail (the RP Act disqualifies anyone sentenced for only two years or more).
- 11 “Reforms Must to Rid Polls of Black Money, *The New Indian Express*, 10 January 2012”; “Cash Haul in UP, Punjab: Black Money Running Assembly Polls”; IBN Live, 10 January 2012, *The Times of India*, 29 March, 2011: “EC’s Mission Track Rs 10,000 Crore in Two Weeks”.
- 12 The parties got more votes, but here the losing candidates, votes are not being counted.
- 13 All data and percentages in this section are from the ECI.
- 14 The Political Parties (Registration and Regulation of Affairs, etc) Bill, 2011, draft bill for wider circulation and discussion, www.adrindia.org

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