

## **Publication of criminal cases against candidates selected by political parties along with reasons for such selection**

**On 13<sup>th</sup> February, 2020** the Supreme Court had directed political parties *to list out reasons on their website including their social media platforms for nominating candidates with criminal background within 72 hours of the selection of such candidates*. This direction of the Apex Court had come in the light of a contempt petition filed against the non-implementation of its earlier order dated **25<sup>th</sup> September, 2018** on publication of criminal cases by candidates and political parties which clearly were not taken very seriously. Consequently, the Supreme Court had reprimanded political parties for failing to widely publish the details of criminal cases pending against the candidates selected by them. Going one step further, the Supreme Court in its directions had also specifically instructed political parties *to give reasons for such selection and why other individuals without criminal antecedents could not be selected as candidates*. As per these mandatory guidelines, the reasons for such selection have to be with reference to *qualifications, achievements and merit of the candidate* concerned. Sadly, even these directions of the Supreme Court have had no effect on the political parties in selection of candidates as they have again followed their old practice of giving tickets to candidates based on **'Muscle and Money'**.

In order to curb this blatant practice of giving tickets to candidates with criminal background, the SC has, lately given four orders; **10<sup>th</sup> March, 2014 (Trial within one year); 1<sup>st</sup> November, 2017 (Special 11 fast-track courts); 25<sup>th</sup> September, 2018 (Publication of criminal cases); 13<sup>th</sup> February, 2020 (Reasons for giving tickets to candidates with criminal background)**. Unfortunately, none of these orders have been able to dissuade parties from giving tickets to candidates with criminal background rather than entry to clean, credible and honest candidate.

### **Blatant Contempt of the SC directions:**

**The Bihar State Assembly election**, which took place in November, 2020, was the first ever to have witnessed the enforcement of these mandatory SC directions of February, 2020. However, despite sufficient time being allotted to political parties for preparation, submission, and publication of Format C7 on their respective websites, only a few

political parties fulfilled the requirement in a timely manner. This was noted for the recent held elections in **Bihar, Tamil Nadu, Assam, West Bengal, Kerala and Puducherry.**

ADR's analysis of publication of criminal antecedents by political parties revealed major shortcomings in the implementation of the SC judgement. It was also found that several political parties, regardless of their current political outreach and popularity, **did not have a functional website** to publish details of candidates with criminal background along with reasons. On the other hand, a few political parties that did have a website link, **had not bothered to maintain** this crucial information and/or **had inaccessible webpages**. There were yet others that had a separate section dedicated for election information, but they either **failed to upload necessary documents or had dysfunctional website tabs**. Notably, even among the few political parties that published Format C7's within the stipulated time period, there were some grave problems which emerged upon analysis of the information provided through these affidavits. These included a) **justifying fielding of tainted candidates with unfounded and baseless reasons like chances of winning, popularity of the person, does good social work, offences not being grave in nature, cases are politically motivated**, b) **repetition of reasons** outlined through forms, not just for candidates within a single political party, but also for those contesting on behalf of other parties; and c) **publication of Format C2 (information with particulars on criminal cases pending against candidates) but not Format C7 (information regarding pending criminal cases along with reasons)**. Other discrepancies include **omission of crucial information** on affidavits, such as name of candidate and reason for selection (which is the primary purpose of Format C7), as well as **submission of data in incorrect (letter) format**.

This is especially concerning in light of the total number of pending cases against the candidates in question, and their categorisation under 'serious criminal cases'. It is also important to note that for all the State Assembly elections, reasons for inclusion of independent candidates with criminal background has not been provided on any public platform.

### **Magnitude of the problem:**

As per the data analysed by Association for Democratic Reforms, 43% of the current Lok Sabha MPs have declared cases against them and 29% have declared serious criminal cases. **24%** Rajya Sabha MPs have declared criminal cases out of which **12%** have declared serious criminal cases against them. There are **11** MPs who have declared cases relating to murder, **33** have cases related to attempt to murder. There are **8** MPs who have declared cases related to kidnapping and 13 related to robbery. There are **18** MPs and **58** MLAs who have declared cases related to crimes against women. We have **3** MPs and **6** MLAs who have declared cases related to rape. It is also a matter of concern that, as per ADR's '**All India Survey on Governance Issues and Voting Behaviour 2018**', **35%** voters in India are comfortable with voting for tainted candidates even if they have a criminal background.

### **How and when will the contempt action be taken?**

As per the SC order and ECI's letter dated 6<sup>th</sup> March, 2020, "**if a political party fails to submit** such compliances report with the Election Commission, **the Election Commission shall bring such non-compliance by the political party concerned to the notice of the Supreme Court as being in contempt of this Court's orders/directions**". However, there is no information available about any such contempt action been taken against these political parties. In reality, citizens are not sure whether such action has been initiated at all, in the first place. ECI, should ideally prepare a list of such political parties during each election and submit such a list to the Supreme Court for appropriate action. At the same time, ECI should also upload this list on their website so that citizens can see, understand and question such an unrestricted entry of candidates with criminal background in politics.

### **Immediate action needs to be taken:**

There is no dearth of solutions to curb the ever-growing problem of criminality in politics. What is required is the courage and will to do the same. At this juncture, it not only becomes imperative to remind the key duty holders of their role, but it is also vital to make sure that such duties are discharged diligently by preserving, protecting and defending the Constitution. The only way to remedy the existing problem of

criminalization is to immediately act upon the plausible solutions offered by various committees, civil society and citizens. Perhaps, we have reached a stage **where ‘disqualification on charges framed’ and ‘permanent disqualification if convicted of heinous crimes’ is the only answer apart from various other significant recommendations given by these agencies.** Most importantly, the Supreme Court of India being the ultimate custodian of “Justice and Rule of Law” should take note of the current situation and reprimand political parties and politicians for such contempt, complete lack of will, reprehensible predilection and absence of required laws.

ADR hopes this panel discussion will provide a platform to examine various aspects of criminality in politics with a specific focus on **‘13<sup>th</sup> February, 2020 SC directions’** and also suggest measures required to make political parties accountable for this blatant contempt of the SC directions and how to reverse this incessant trend and make way for clean, credible and honest candidates into our electoral process.

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