

Forum on General Elections 2019: Issues & Challenges

Date and Venue: 10th October, 2019 at Lecture Room – 1 (Annexe), India International Centre (IIC), New Delhi

Session 1: Crime and Money in Electoral Politics: Is it irreversible?

Background Notes

Subtheme 1: Why Political Parties and Voters continue to choose candidates with Muscle and Money Power?

India is famed for being the world's largest democracy. In light of increasing number of voters during each election phase – nearly 9 million voters for the recent one in 2019 – the entire process of ensuring free and fair elections, which is an integral part of democracy, becomes much more crucial. However, as per the latest annual Democracy Index report released by the Economist Intelligence Unit (EIU), India scored a total of 7.23 out of 10, and secured the 41st position on the list. It also fell under the category of 'Flawed Democracy' which is defined by the EIU as having "free and fair elections and, even if there are problems (such as infringements on media freedom), basic civil liberties are respected. However, there are significant weaknesses in other aspects of democracy, including problems in governance, an underdeveloped political culture and low levels of political participation"¹. When it comes to electoral politics, in particular, one of the biggest challenge that the country faces is a rising connection between muscle and money power in securing a position as a political front-runner.

Notably, according to ADR's findings in the All India Survey on Governance Issues and Voting Behaviour 2018, 97.86% voters are of the opinion that candidates with criminal background should not be favoured for a political position, yet 35.89% are willing to vote for such candidates if they have done good work previously². The results also reveal that 34.23% of those surveyed favour those candidates who make enormous expenditures during election time; and 35% can vote for strong candidates even if they have a criminal background. Voters' decision to support powerful candidates despite having information about their criminal background has seen a significant jump since 2014, when only 22.82% were willing to do so. Similarly, their acceptance of candidates with non-serious criminal charges was 29.33% in 2014³, which shows the ease with which candidates with a tainted background are allowed into the folds of national and state-level politics. Political scientist Milan Vaishnav, seems to be of the opinion that the appeal held by candidates with criminal background stems from the fact that they can utilise their "bad social image" to fill the gap brought in by a lack of governmental cooperation to ensure growth and development in different sectors – as a result of which the former come across as "Robin Hood-like figure(s)"⁴. But once these candidates come to power, they misuse available resources for personal growth, and thus give rise to a never-ending cycle of poor governance and lack of development⁵.

At the same time, such a situation arises when political parties, more than voters, look at candidates' winnability, based on a wide range of factors such as their public image and personal wealth. According to another report by ADR on 2019 Lok Sabha elections, 88% of 542 winners were crorepati winners, of which 43% had declared criminal charges against them (showing an increase of 44% from 2009 elections), wherein 29% were for serious cases (with an increase of 109% since 2009)⁶. There is a common supposition amongst political analysts and critics that money power equals muscle power, wherein those political contenders who have more assets as well as criminal charges against their names are chosen over many others who don't. Neelanjan Sircar, a Senior Fellow

¹ https://www.business-standard.com/article/economy-policy/india-moves-up-a-rank-on-the-economist-s-democracy-index-2018-119010900782_1.html

² <https://adrindia.org/content/all-india-survey-governance-issues-and-voting-behaviour-2018-0>

³ https://adrindia.org/sites/default/files/All_India_Survey_Report_compressed.pdf

⁴ <https://www.bbc.com/news/world-asia-india-38607255>

⁵ <https://mail.google.com/mail/u/0/#sent/QgrCJHrtsvXDWcbgPSDfrLPhnpdwhNTFjL?projector=1&messagePartId=0.1>

⁶ <https://adrindia.org/content/lok-sabha-elections-2019-analysis-criminal-background-financial-education-gender-and-other>

at Centre for Policy Research, says that wealthy candidates with the ability to self-finance themselves are sought out by political parties primarily to “fill party coffers”⁷. Dr. Vaishnav, in this regard, provides further insight, by outlining the pattern that leads to inclusion of candidates with tainted background, wherein “local goons working for the politicians...realise the benefits of being involved in politics...(and) thus move to the core of Indian politics”⁸.

And so we see a clear pattern forming out of an unscripted coordination between the public’s perception and that of the political parties’. The speaker with therefore examine the reasons that contribute to greater participation of candidates with such backgrounds and how it creates a breeding ground for further problems in the country’s electoral politics, as both voters and political parties continue to support such political contenders.

By Bipasha Nath
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⁷ Sircar, Neelanjan. “Money in Elections: The Role of Personal Wealth in Election Outcomes”. *Costs of Democracy: Political Finance in India*. Oxford University Press, 2018. Pages 36-73.

⁸ https://www.commoncause.in/publication_details.php?id=585

Subtheme 2: The continuing trend of Crime and Money in Electoral Politics

“The voter [in India] is subject to the law of the two ‘Ms’, money and muscle.”

- *Christophe Jaffrelot (2002)*

I sometimes wonder whether we can ever hope to realise the aspirations of our freedom fighters, who sacrificed so much to gain independence from colonial rule. Sadly, foreign domination has been replaced in some measure by our home grown oligarchy that possesses both “money power” and “muscle power”.

- *Navin B Chawla, 16th Chief Election Commissioner (2017)*

The 17th Lok Sabha elections were not only a resounding victory for the BJP but a victory for [money and muscle power](#), with 43% (233) of elected MPs having declared criminal cases against them (an increase of 44% since 2009), 88% (475) MPs having assets worth Rs. 1 crore and more, and the average assets per winner being Rs 20.93 crore. Crime and money are seen ever so strongly linked with electoral success. According to ADR analysis, a candidate facing criminal charges had 15.5% chances of winning Lok Sabha 2019 elections against a 4.7% chance for a clean candidate. Speaking of winning based on assets, there were 21% chances of winning for crorepati candidates contesting elections against a 1% chance of candidates with assets below Rs 1 crore. This is the grim reality of world’s largest elections, popularly referred as the *dance of democracy*. One may then ask, ‘dance to whose tune?’

According to a [Centre for Media Studies \(CMS\) study](#), a whopping Rs 55,000-60,000 crore is estimated to have been spent during the 2019 Parliamentary elections, making them the costliest elections ever. 40% or Rs 24,000 crore have been spent by candidates while parties spent an estimated Rs 20,000 crore (35%). On further analysis, we see that nearly Rs 100 crore were spent per Lok Sabha constituency which, on an average, comes down to Rs 700 per voter (India has approximately 900 million eligible voters).

Throughout the election campaign, media frequently reported about instances of money being spent and distributed to bribe voters. The Election Commission of India (ECI), beginning March 26, 2019, published [seizure reports](#) highlighting the amount of cash, liquor, drug/narcotics, precious metals, freebies etc. seized during the campaigning period each day. The total seizure reported by the ECI at the end of elections was a monstrous Rs 3475.76 crore (in contrast to Rs 299.943 crore seized in 2014 elections) with drugs/narcotics topping the list at Rs 1279.90 crore followed by precious metals (gold etc.) at Rs 987.11 crore. [10%-12% voters admitted receiving cash for votes](#), another two-third acknowledged that voters around them were also bribed. A considerable amount of the total poll expenditure is unaccounted cash which remains outside the purview of the formal system.

Moreover, as political strategizing and campaigning continues to become more sophisticated and competitive, we see crores being spent on political advertising, especially on social media, making it difficult to monitor the indirect expenditure with precision. These elections also witnessed the highest ever anonymous funding (through Electoral Bonds) in the months preceding the general elections; [March and April 2019](#) accounted for purchase of bonds worth Rs 3622 crore – 62% of the total bonds purchased till date and 2.5 times the amount purchased in earlier phases.

While money has definitely grown in prominence, crime is not far behind. As elections grow costlier, so does the demand for wealthy candidates, and accompanying these candidates, are often their dubious reputations blurring the lines between the politician and the criminal. Despite the Supreme Court judgment of 2018 that mandated political parties and candidates to declare the criminal antecedents of every contesting candidate in print and electronic media, at least three times after filing the nomination, [159 MPs with declared serious criminal charges](#) (an increase of 109% since 2009) have been elected to the 17th Lok Sabha.

The reality of tainted candidates fighting for political power is expansive across party lines. This was also true for elections this year. BJP and INC fielded [175 \(40%\) and 164 \(39%\) candidates](#) with declared criminal cases respectively, while the proportion of such candidates fielded by CPI (M) and NCP was at 58% and 50% respectively. ADR reports define constituencies which have 3 or more candidates with criminal cases contesting elections as 'Red Alert constituencies'. Interestingly, there were [265 \(49%\) such constituencies](#) during Parliamentary elections 2019.

Evidently, crime and money remain the indomitable winners that continue to enjoy stronghold in India's electoral politics and solicit immediate attention. In the light of the above, we hope that the speaker reflects upon the factors behind the continuing victory of the two 'Ms' and how their ever increasing role damages the democratic integrity of our elections. The speaker may also examine how sturdily these factors will continue to dominate in future and in what ways (suggesting any new forms these factors may take).

By Shelly Mahajan
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Subtheme 3: How can this trend be reversed?

Systemic corruption and sponsored criminalization have corroded the fundamental core of elective democracy and consequently, the constitutional governance. On one hand there is a free flow of unaccounted money at the disposal of political parties during elections and on the other hand, criminal elements have been playing a major role in the electoral process in India both as candidates for elections and as party workers. The number of Political Parties in India has been continuously increasing and attracting persons with high assets and criminal background. The fundamental reason why candidates with money and muscle power are able to dominate politics is because no political party has seriously pursued electoral and political party reforms. Voters meanwhile have either been alienated or become cynical and no longer really expect good governance.

The effect of money power and criminalization of politics has been examined by several committees and authorities which have repeatedly emphasized the need to weed out criminal elements and unaccounted money from politics. *Vohra Committee Report, 1993; Indrajeet Gupta Committee Report on State Finding of Elections; The 170th Report of Law Commission of India on Reforms of the Electoral Laws (1999); National Commission to Review the Working of the Constitution, 2000; The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (2007); Ethics in Governance Report: Second Administrative Reforms Commission, 2007; The 244th Law Commission of India Report on Electoral Disqualification; Justice J.S Verma Committee Report on Criminal Law Amendment; The 255th Law Commission Report on Electoral Reforms* are few of these committees/commissions which had considered the problem of money and muscle in elections. Some of the important recommendations are as follows:

- Disqualification from contesting elections if charges have been framed against a candidate in an offence punishable with imprisonment for a maximum period of five years or more.
- Permanent disqualification of candidates who are convicted of heinous crimes like rape, murder, dacoity, robbery, crimes against women etc.
- Disqualification of candidates furnishing false information in the election affidavit.
- Limit on the election expenditure of political parties.
- Disclosure of all sources of funds received by the political parties, irrespective of the amount.
- Cancellation of tax exemptions given to the political parties in case of default.
- Requirement to strengthen NOTA and make it more effective.
- Immediate need to bring political parties under the ambit of RTI Act.
- Introduce provisions for inner-party democracy within political parties/Choosing of candidates.
- Bring in a comprehensive bill to regulate working of political parties/Legislation for regulation and functioning of Political Parties.

In an effort towards making electoral and political process transparent as well as accountable in their functioning Association for Democratic Reforms (ADR) has filed a petition in the Supreme Court to bring political parties under the ambit of RTI Act. ADR has also challenged in the Supreme Court amendments brought to the Foreign Contribution (Regulation) Act, 2010 & 1976 respectively that changed the definition of a “foreign source” to quietly let BJP and the Congress off the legal hook of the Delhi High Court judgment where they were found guilty of taking foreign funding. ADR has also challenged the Finance Act, 2017 enacted as Money Bill which had introduced a system of electoral bonds and had also removed the previous limit of 7.5 per cent of the company’s average three-year net profit for political donations. A petition has been also filed in the Delhi High Court for the regulation and monitoring of election expenses of political parties and to also have a limit on the election

expenditure of political parties.

Furthermore, few electoral reforms initiated over the last two-three decades have been due to legal advocacy and judicial activism. Indian judiciary has also tried to safeguard and ensure that the representative democracy is truly reflected in the form of people's will and mandate. To name a few of such landmark judgments;

- Disclosure of criminal, financial and educational details by candidates contesting elections to Parliament and State Assemblies.
- Declaration of Section 8(4) of the Representation of People Act unconstitutional, which allowed a Member of the Parliament and State Legislative Assemblies to retain their membership of the House they were elected to, for three months to enable them to file an appeal in the higher court.
- Inclusion of NOTA buttons on the EVMs.
- Direction to all High Courts to conclude trial against sitting MPs and MLAs who have charges framed against them for the offences specified under Section 8(1), 8(2) and 8(3) of the RP Act, within one year from the date of the framing of charge(s).
- Compulsory for the Returning Officers to ensure that the affidavits filed by the contestant blank all respects and to reject the affidavits having blank particulars.
- Non-disclosure of information, which is very vital to enable the voter to form his/her opinion about the candidate's antecedents, results in misinformation and disinformation thereby influencing the voters to take an uninformed decision.
- Inclusion of column pertaining to "Sources of income" of the candidate, spouse and dependents in Form 26.
- Publication and widely circulation of information related to criminal background by candidates as well as political parties.

The Executive and the Legislature are most reluctant to undertake electoral reforms because of the obvious bias and prejudice. As a matter of fact, the political establishments have completely disregarded or intentionally sidelined the reforms suggested by various committees, citizens and civil societies. The Judiciary has been only been somewhat successful since most of the directions given by courts are eventually amended by the successive governments for their own benefit. Over a period, we have observed criminalization, burgeoning election expenditure, political party funding, and inadequate reporting and disclosure laws. There is a complete agreement that change is needed, but there are serious differences on how to go about it. We may be at the centre or vortex of a whirlpool of events. ADR hopes this panel discussion will provide a platform to examine aspects of crime and money in politics with a specific focus on **'how to reverse this trend'** and also suggest measures required to make elected representatives and political parties more responsive towards initiating reforms.

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