

## **13<sup>th</sup> Annual National Conference on Electoral and Political Reforms**

**Date and Venue: 30<sup>th</sup> April, 2017 at Panjab University, Chandigarh**

### **Background Note**

#### **Session: Criminalisation of Politics**

“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”

Winston Churchill

The hallmark of a vibrant democracy is the conduct of free and fair elections with all candidates and political parties having a level playing field. This fundamental principle, however, has become skewed with the deteriorating standards of ethical and moral propriety of India’s parliamentary democracy. Having legislators with tainted backgrounds in our electoral and political process is against the principle of free and fair elections as is embodied in our Constitution. In a number of judgments, the Supreme Court has held that democracy is part of the basic structure of the Constitution and free and fair election is its basic foundation. The ground reality, however, is that the involvement of criminals in politics has been progressively increasing over the years with disastrous consequences to the democratic polity of our country.

#### **Increased criminalization of politics**

A study conducted by ADR shows that almost all political parties give tickets to persons with criminal backgrounds. 34% or 185 out of 543 MPs in the current Lok Sabha are facing criminal charges including charges of very serious nature like Murder, attempt to murder, kidnapping etc. This is also true for legislators in the state assemblies and councils. In the recently concluded Assembly elections in the five states of Uttar Pradesh, Punjab, Uttarakhand, Manipur and Goa, out of 689 MLAs analysed, 228(33%) have declared criminal cases against them.

There has been rapid spread and growth of criminal gangs, armed senas, drugs mafias, smuggling gangs, drugs peddlers and economic lobbies in the country. An analysis of over 60,000 records of candidates and winners since 2004 shows that while only 12% of “clean” candidates without any taint win, around 23% of tainted candidates win, and 23% candidates with seriously criminal cases win.

#### **Supreme Court’s Verdicts**

On 10th July 2013, the Supreme Court of India ruled that any MP, MLA or MLC who is convicted of a criminal offence and awarded a minimum of two year imprisonment, would lose membership of the house with immediate effect<sup>1</sup>. This is in contrast to the earlier position, wherein convicted members held on to their seats until they exhausted all judicial remedy. On 27<sup>th</sup> August, 2014 in *Manoj Narula vs. Union of India*<sup>2</sup> and others, the Constitution Bench dealt with the issue of qualifications of our Parliamentarians and observed that and the entry of criminals in politics must be restricted at any cost and it is the duty of the PM and CMs not to appoint ministers against whom charges have been framed by a criminal court.

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<sup>1</sup> Lily Thomas and others vs. Union of India and others; (2013) 7 SCC 653

<sup>2</sup> (2014) 9 SCC 1 , W.P (C) 289/2005

## Way Forward

In an effort towards making political parties transparent as well as accountable in their functioning, the Central Information Commission, on 3rd June 2013, declared the six national parties as public authorities, thus bringing them under the purview of the RTI Act 2005<sup>3</sup>. However, the political parties refused to comply with the order, presently a petition has been filed by ADR in the Supreme Court.

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 center or vortex of a whirlpool of events. Good governance is possible only by the strengthening of democracy with robust, transparent, internally democratic and accountable political parties. Transparency is essential for accountability, both of which are in turn the quintessential cornerstones of good governance. Political parties being the fundamental instruments of democracy, play a crucial role in policy making and forming government and therefore are an integral part of the governance structure. ADR hopes this panel discussion will provide a platform to all the stakeholders, viz. civil society activists, Constitutional experts, Election Commission, Law Commission as well as political party representatives to come together and examine these and other aspects of criminality in politics with a specific focus on its relation to good governance. Good governance is, ultimately, the true manifestation of a successful democracy.

- Shivani Kapoor  
Program Officer (Legal), ADR

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<sup>3</sup> CIC/SM/C/2011/001386&000838