

Towards the De-Criminalization of Politics

Chair: Ramachandra Guha

Discussant: N. Gopalaswami,
Former Chief Election Commissioner of India

Speaker: Trilochan Sastry,
Professor IIM Bangalore, and
Chairman, Association for Democratic Reforms

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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. - M.K. Gandhi

Towards the De-Criminalization of Politics

It is an honour to speak here at this august gathering. My thanks are due to IIC for arranging this event. Thanks also to Dr. Ramachandra Guha who is Chairing this session and to Sri N. Gopalaswami who readily agreed to participate. As one of the nation's leading historians, Ram Guha is the ideal person to provide a perspective to the topic. As one of the finest Chief Election Commissioners in India, Sri Gopalaswami has been ideally placed to observe and act on issues of critical importance in elections. His public espousal of electoral reforms even after retirement has given a lot of encouragement to civil society initiatives around the country. Their presence lends considerable weight to today's seminar and speaks of their concern for the issues we are discussing.

We need to thank Ram Guha for suggesting the title and topic of discussion. As an academic turned social activist, one was hesitant to speak of de-criminalization of Indian politics to such a distinguished and well informed audience. However on sober reflection, he proved to be right, since this is a subject that captures public imagination. Informed opinion on the other hand usually dives deeper into the root causes and seeks solutions therein. Criminalization of politics and the use of money power in elections is then a symptom, and eliminating them does not remove the root cause. But change of the type we are discussing is also political and public support is vital, even if that extends only to the symptoms. A recent survey shows that a vast majority of Indians, about 98 per cent, want criminals out of Parliament and Assemblies.

This talk is based on nearly 15 years of active work in the field with the Courts, with the Election Commission, the media, several politicians, retired Judges, IAS and IPS officers, eminent civil society leaders, and over a thousand NGOs spread all over the country. My friends and colleagues who initiated this work include Professor Jagdeep Chhokar, Ajit Ranade, Sunil Handa, Kamini Jaiswal and several Professors and Alumni of the IITs and IIMs. Today, many well qualified, bright young idealists have joined us. The most encouraging sign in today's times is the increasing support of the corporate sector for improving governance, though it largely chooses to remain behind the scenes. While we have worked diligently, we realize that the task is perhaps beyond us, and better minds and younger bodies need to take this forward. We cannot claim to have made even a beginning; we have merely participated in a long process that perhaps began soon after Independence. So we seek your guidance.

A brief diagnosis

Governance has been a matter of great concern lately. There is 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. How we manage them in the near and medium term will perhaps play a decisive role in how governance is shaped for a long time to come. Some of these events include several Supreme Court judgments, recent amendments to the Representation of People Act, Central Information Commission rulings, the passing of the Right to Information Act, the increasing role of money and muscle power in elections, other legislative changes that have taken place, and last but

not least, the awakening and assertion of a large section of the public while fighting corruption. In the backdrop are worrying signs in the economy with growth slowing down, the rupee sliding, petroleum prices rising, inflation, jobless growth and so on.

Let us briefly trace these events. It is important to note that major changes sometimes have their seeds in events that took place years or even decades ago. One such event was the use of musclemen to fight elections. Perhaps as the Congress party's complete dominance of Indian elections since 1950 began to erode, greater competition was introduced into electoral politics. The tactics used from the late 1970s were to intimidate voters, capture voting booths, stuff ballot boxes and so on. Evidence shows that several parties and their candidates were involved in this. There was violence during elections. A perceptive politician of the 1990s observed that musclemen realized that instead of working for the candidate, they could reap greater benefits by becoming candidates themselves. Such events were not unique to India and took place elsewhere including in the United States and several developing countries. One reads of ballot boxes being stuffed in Presidential elections in the US in the early 1960s and the involvement of the mafia as well. In India, we also witnessed the 'aaya ram, gaya ram' phenomena back then when MPs and MLAs changed parties, and brought down Governments as ruling parties and coalitions lost their majority. This was traced to the use of money and other incentives to lure them from one party to another. The Government did try to stem this by the Anti Defection Law. However, experience has shown that this was not a sufficient deterrent. Some critics even said that the remedy was worse than the disease leading to a stranglehold of party bosses on party legislators, stifling dissent, and a situation where a single defector was suspect but mass scale defection was all right. For our purposes it is sufficient to note that money power came into politics and elections at that time. Back then, muscle power was more openly displayed and money power often remained behind the scenes. As we see later, their relative roles were somewhat if not totally reversed a couple of decades later.

The Government did try to curb the misuse of money in elections and passed legislation to cap the amount of money a candidate could spend. However one ruling of the Supreme Court declaring an election null and void if the winner spent more than the prescribed limit was overturned by new Legislation which stated that money spent on behalf of the candidate by the political party and by friends and well wishers would not count towards the expenses. This amendment along with the use of black money changed electoral politics decisively.

Meanwhile the Election Commission also took steps to clean up the election process. Posters, defacing of walls, loud rallies on the streets and so on were banned and a Code of Conduct introduced for candidates and for the ruling Government. Several scholars and politicians have also observed that a tight regulation of the election process and on spending limits led to the entry of more and more black money, and to directly buying votes in exchange for money, gifts, liquor and so on. While this may be somewhat true, it is not clear that without the Election Commission measures, the problem of money power would have been kept in check. Today buying of votes has spread to several parts of the country vitiating the elections which in turn impacts the quality of governance.

Along the way, the number of political parties grew and competition grew much faster. Today we have six recognized National Parties and several hundred regional parties. In the recent Lok Sabha 2009 elections, 392 registered political parties contested for 543 seats. In 1950 there were only 54 parties. In most so called developed countries the number is at most half a dozen. Over 3600 Independents also contested in 2009 – that is 7 per constituency on average. Of this, only 37 parties won some seat, 24 of them got 6 seats or less, and only 9 Independents won. There were 14 candidates per Lok Sabha seat in 2009. We saw a real proliferation of candidates and parties in the fray. The same is true in several State Assembly elections.

Why are we seeing so many parties and candidates? The aspirations of the public as well as many politicians are no longer satisfied by the existing political parties. Given the nature of Indian politics where leaders seldom step down or retire, the career path of several politicians is permanently blocked. Their only way out is to form their own parties. Whether they reflect the aspirations of a diverse mosaic of voter groups in India or the aspirations of frustrated or opportunistic politicians, or some combination of the two, is a matter of speculation. A rising rural population throws up ambitious persons who seek social respect through politics since most other ways are blocked for them. If the major national parties had provided good governance, the space for so many new parties would not have been there. Parties emerged based on sharper and narrower definitions of voter identity based on caste, religion and region. The new emerging parties were often single leader and personality based. They ensured longevity for the founder and his or her family. Politics became messier. As the number of political parties increased, it not only led to the well known phenomena of coalition politics and Governments, it also led to changes in campaigns. The competition at the constituency level became very fierce with several parties and candidates in the fray. The uncertainty in election outcomes for a political party and for the candidate grew. This led to adoption of different means for winning elections. The nature of campaigns became more shrill, attacking rivals fiercely in strong language, appealing to caste, religious and regional identities, pitting one group of citizens against another, and creating real and fictitious ‘others’ or enemies.

We also witnessed economic liberalization since 1991 leading to accelerated growth in the economy and the creation of several new dynamic profit making enterprises, and the rise of a small but significant number of extremely wealthy individuals and corporate houses. Economic policies also welcomed privatization of public enterprises, massive investments in infrastructure and primary industries like coal, gas, petroleum, mining, minerals along with modern ones like telecommunications. While these investments came in, proper regulation to prevent corruption were not in place. As the scale of investments crossed thousands, tens of thousands and even lakhs of crores of rupees, the stakes became higher and higher. We now have a dichotomy – a corporate sector, the best elements of which aspire to a modern, ethical, transparent system, side by side with a very competitive political system that gathers votes based on narrowly defined voter identities. There are of course other types of corporates as well. It is not difficult to see which type of corporate houses would emerge winners in the privatization efforts.

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. Most parties no longer reflect the interests of a broad spectrum of citizens. To win they need only a small percentage of swing votes. A winner got 25.7% of the registered voters on average in the last Lok Sabha, and 44.2% of the votes cast. Of the votes cast, 423 MPs in the current Lok Sabha won with less than 50%, 167 of them with less than 40%; of the registered voters, 538 of them won with less than 50%, 506 with less than 40% and 356 with less than 30%. If we look at the percent of votes that MPs in the ruling coalition got out of the total votes cast it is less than 19%¹. As a percent of the total registered voters it is less than 11%. But the ruling coalition controls the Government, the budgets, and new legislation. While this is natural in a multi-party system, it does raise questions about how representative elected MPs and MLAs are.

To win an election, an astute candidate has to therefore manage a small fraction of voters. Given an increasingly alienated set of voters who no longer expect good governance, 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 a political party said in private that 92% of the applications for tickets were from builders and real estate businessmen. The leader of the rival party agreed with this.

The role of crime is also different in such an environment. With so many parties and candidates, most appealing to a narrow identity, crime committed by one's own candidate against 'other' people is not seen as such a big offense. Even if we ignore criminal charges related to dharnas, agitations, disturbing the peace and so on, most serious criminal charges against candidates are for deeds committed on the 'other' group. Even if this is not viewed by voters as a justified 'war crime' committed on soldiers of an enemy nation, such people are sometimes viewed by voters as their protectors. Some voters also take the view "when your leader commits such a crime, you all say and do nothing. Why do you blame my leader?" 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 a similar 23% of seriously tainted candidates win. In a multi tiered contest, with deteriorating governance, the voter seems to say "my man needs to be supported at all costs because others will never do any good to me."

In summary, a political system that no longer reflected the aspirations of all the people, and a party system dominated by life long party leaders that blocked the career aspirations of several politicians, led to a proliferation of political parties. Severe competition first led to the use of muscle power, then the entry of muscle men directly into politics. With the coming of big money, big money first backed elections, and later entered the fray themselves. Voters meanwhile have either been alienated or become cynical and no longer really expect good governance.

Overview of situation from 2004 to date

¹ The parties got more votes, but here the losing candidates votes are not being counted

The analysis that follows is based on the sworn affidavits submitted by candidates to the Election Commission of India 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 PUCL, Lok Satta and several other organizations. After that, the Election Commission has put in public domain the affidavits of candidates on their websites. ADR conducted citizen election watches through its nationwide network of partner organizations and in the process collected and analyzed this data.

Criminalisation of Politics

a) Candidates

Based on an analysis of 62,847 records of candidates filed by them in self-declared affidavits with the Election Commission, the following picture emerges. Of them, 11,030 (18%) of them had 27,027 pending criminal cases against them while 5,253 (8%) candidates had 13,984 serious criminal charges including murder, rape, corruption, extortion, dacoity etc. That is more than 1 in 5 serious cases per candidate contesting. Serious charges are defined here as those for which (i) the sentence is 2 years or more on conviction, (ii) a Court issues a non-bailable warrant, (iii) any crime against women is alleged, or (iv) any election related criminal charge. For instance, there were 1229 cases of murder, 2632 cases of attempt to murder, and 496 instances of IPC sections on other cases related to murder (culpable homicide, abetment to suicide etc.). There were 68 rape cases, and 455 other cases for crimes against women. There were 978 instances of IPC sections against candidates for cases related to kidnapping, abduction and so on, and 1004 instances of IPC sections against candidates for cases related to robbery and dacoity. There were 1319 cases against candidates for cheating. There were 1720 instances of IPC sections against candidates for cases related to forgery and counterfeiting. In addition, there were 226 instances of IPC sections against candidates for cases related to counterfeiting Government seals. There were 746 instances of IPC sections against candidates for cases related to breaking the law during elections.

Even if we ignore for the time being so called trivial cases and focus only on serious cases, we find that all political parties are guilty of fielding 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. All of them fielded candidates with serious criminal cases, the average percent of such candidates being 9%. If we look at candidates with some criminal case, the percentage shoots up to 18%.

b) Winners

Of the 8882 winners analyzed from 2004 to 2013, 2497 (28.4%) of them had 9993 pending criminal cases against them while 1187 (13.5%) candidates had 4824 serious criminal charges including murder, rape, corruption, extortion, dacoity etc. That is more than 1

serious case for every 2 winners. This is more than the 1 in 5 for candidates, meaning winners are more likely to be tainted. For example, there were 335 instances of murder, 846 cases of instances of IPC sections on other cases related to murder (culpable homicide, abetment to suicide etc.). There were 17 rape cases, and 136 other cases for crimes against women. There were 282 instances of IPC sections against candidates for cases related to kidnapping, abduction and so on, and 276 instances of IPC sections against candidates for cases related to robbery and dacoity. There were 909 instances of IPC sections against candidates for cheating, forgery and counterfeiting. In addition, there were 76 instances of IPC sections against candidates for cases related to counterfeiting Government seals. There were 303 instances of IPC sections against candidates for cases related to breaking the law during elections.

Table 1 at the end compares candidates and winners. As can be seen, in every type of criminal case, the percent 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. Civil society and the Election Commission have pointed to such facts to ask for reforms including barring candidates with serious criminal cases. The Courts have also been inclined to take this view although they are not empowered to enforce this. Recent judgments on disqualifying convicted MPs and MLAs and on barring those in jail from contesting (nor reversed by Parliament) are in this direction. Politicians on the other hand have often said that most of the cases are trivial – though what we discuss are not trivial cases. They also say that such cases are false and foisted by the ruling party on the opposition candidates. This is not true as the data shows that many cases are against the ruling party candidates themselves. Even if their contention was true, it makes a strong case for greater independence of the Police from the political system. Some analysts and politicians themselves have further argued that no one can be considered guilty until proved innocent. A final argument of some politicians is that voters have elected them, and so there is no need for any further reforms. This is an old debate between the principles of justice and the rule of the majority. Others have said that barring anyone from contesting does not deprive them of any fundamental right, and the candidate can seek legal remedy by getting himself exonerated in a Court. In public life, public interest is paramount. Thus the debate continues.

'Winnability' and Serious Crime

A large percentage of candidates with serious criminal charges actually win the elections. 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,

the BJP had 28% clean candidates who win versus 40% of candidates with serious criminal records who win. The figures for BSP are 7% and 16%, SP 16% and 31%, NCP 18% and 26%, JD(U) 21% and 50%, Shiv Sena 11% and 33%, AIADMK 51% and 73%, DMK 48% and 59% and so on. The INC very slightly reverses this trend with 39% and 34%. This partly explains the strong tendency of political parties to continue fielding people with badly tainted records. Unfortunately information about candidates' criminal background is not easily available to voters. Table 2 at the end of this report summarizes the situation.

In addition, we find that several cases drag on for years. Over 3450 candidates had contested the elections more than once. Of them there were 849 with a 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 4 years. This means that a person with serious cases against him can complete the term of an Assembly or Lok Sabha before his 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.

The data clearly show that a much higher percentage of candidates with criminal charges win. As pointed out earlier many of them have very serious criminal cases against them. Since the reins of Government are in the hands of elected representatives and in particular the Ministers, the country faces some serious challenges. Since all political parties field such candidates, legal remedy may be required.

Money power and Crime in elections

There were 8882 winners out of the 62847 candidates. The average assets of winners was Rs.3.8 crores, that of runners up Rs.2.47 crores and those of the third place candidate, Rs.2.03 crores. This clearly shows that wealthier candidates win elections. It should be noted that these are only the declared assets of candidates. If there are other assets they have it is unknown. For instance, the then Chief Election Commissioner of India had said that about Rs.10,000 crores of black money was spent in the 2012 UP Assembly elections. At Rs.25 crores in each constituency, and over 4000 Assembly seats all over India, this amounts to Rs.100,000 crores. If we take the Lok Sabha elections with 543 seats this adds up to another Rs.12,500 crores or a total of Rs.125,000 crores. 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 vary from a total of Rs.150,000 crores to Rs.250,000 crores for all elections put together. This occurs once in 5 years and is adjusted for inflation as well.

If we look at the interaction between crime and money an even more alarming picture emerges. The average assets of 62,847 candidates between 2004 and 2013 were Rs.1.37 crores and of winners, Rs.3.8 crores. The average assets of those with some crime record were higher at Rs.4.27 crores, and of those with serious crime records were still higher at Rs. 4.38 crores. This means that not only does wealth increase considerably the chances of winning, a combination of wealth and criminal record increases the chances even further. Some extreme examples include Independents where the figures are Rs.54.6 lakhs (candidate), Rs.7.2 crores (winner), Rs.11.26 crores (winner with crime record) and Rs.15.1 crores (winner with serious crime record). Some of the major parties showing the same trend of 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.

This raises several questions about the nature of elections and democracy. First, we need a much greater level playing field. This is clearly not the case where persons with greater wealth win elections. Second, persons with crime records who win have even greater wealth than those who win without any crime record. In fact, such winners have on average 15% more wealth than untainted winners, and a whopping 220% more than an average candidate.

It is more than likely that crime allows them to amass wealth which in turn allows them to win elections, which further increases their wealth if they win and so on. If this is indeed the case, such people pose a threat to good governance since tax payers' money and the Government budgets are in their control either directly or indirectly. In any case they wield a great influence on how the Government functions. Table3 at the end illustrates the interaction of crime and money in elections.

Growth in Assets

Analysis of candidates who contested in more than one election is even more revealing. Of 3452 candidates who contested more than one election, 2967 showed an increase in wealth. The average declared wealth in 2004 was Rs.1.74 crores, and Rs.4.08 crores in 2013, an increase of 234%. It reflected an increase of Rs.50 lakhs of wealth each year on average.

Education and Elections

We compared educated candidates and winners with others. One would expect that graduates would fare better than those who never went to college when it came to criminal charges and winning. However, this does not turn out to be true. While 27.4% of candidates with college degrees (graduate and higher) having criminal charges won, only 19.6% such candidates with high school or below won. The comparable figures for serious criminal charges are 27.4% and 18.8%. Among all winners with criminal cases,

55.8% were at least graduates and 44.2% high school or below. Among all winners with serious criminal charges, 53.4% were graduates and 46.6% others. This shows that those with higher educational qualifications have more criminal cases and win more elections. The Table below summarizes the facts.

	# of Candidates	# of Winners	Winners with charges/ Contestants with charges	Winners with charges/ Total Winners with charges	Candidates with charges/ Total Candidates with charges
Graduates with criminal charges	5248	1436	27.4%	55.8%	47.4%
Graduates with serious charges	2317	634	27.4%	53.4%	44.1%
Non graduates with criminal charges	5815	1139	19.6%	44.2%	52.6%
Non graduates with serious charges	2936	553	18.8%	46.6%	55.9%

A look at the wealth shows an increase in average declared assets from candidates with criminal charges to those with serious charges, increasing further for winners with criminal charges and further still for winners with serious criminal charges. Unfortunately this is equally true for those with graduate degrees or above and for those with education up to High School. In all categories, the assets of graduates are significantly higher than others. The following Table summarizes the situation. Clearly, if the goal is to curb money and muscle power in elections, mandating educational qualifications will not help. The evidence actually suggests otherwise.

	Avg. Assets of Cand w criminal charges	Avg. Assets of Cand w serious charges	Avg. Assets of Winner w criminal charges	Avg. Assets of Winner w serious charges
Graduate and above (Rs crore)	2.91	3.56	4.76	5.15
12th class and below (Rs crore)	1.69	1.69	3.74	3.51

Gender and Elections

How do women compare with men in elections? Of the 62847 candidates who contested elections since 2004, only 6.6% were women, and of the 8882 winners only 7.6% were women. They are still under represented in elections. Of the 2575 winners with criminal

charges only 4.3% are women and of the 1187 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 crores (men Rs.1.36 crores), women winners Rs.4.46 crores (men Rs.3.78 crores), women winners with criminal charges Rs.4.04 crores (men Rs.4.32 crores) and women with serious criminal charges Rs.5.77 crores (men Rs.4.34 crores). The higher average assets of women may come as a surprise and is due to the presence of outliers and large standard deviations. The assets of men show that the largest wealth is still with men. The largest declared wealth of women is Rs.494 crores whereas there are 9 men with greater wealth, the top declaration being Rs.1977 crores. At the other extreme, 44% men and 41.4% women have declared wealth of less than Rs.10 lakhs.

An overview of today's situation

A total of 4807 sitting MPs and MLAs as of August 2013 were analyzed. A total of 1460 (30%) sitting MPs and MLAs have declared criminal cases against themselves. A total of 688 (14%) out have serious criminal cases. If anything, the situation has slightly worsened since the data was publicly available and analyzed since 2004 when the comparable figures for winners with a criminal charge is 28.4% and winners with serious criminal charges is 13.5%.

In the current Lok Sabha, 162 (30%) out of the 543 MPs have declared criminal cases against themselves. A total of 76 or 14% of the current Lok Sabha MPs have declared serious criminal cases against themselves. Compared to that, in the State Assemblies, 1258 (31%) out of the 4032 sitting MLAs from all state assemblies have criminal cases and 15% have declared serious criminal cases against themselves. The Jharkhand 2009 Assembly has the highest percentage of elected representatives where 55 out of 74 MLAs (74%) declared criminal cases against themselves. Among the recent elections that have been covered by ADR and NEW, the Bihar 2010 Assembly has 58% MLAs with criminal cases and the Uttar Pradesh 2012 Assembly has 47% MLAs. None of the MLAs of the Manipur 2012 Assembly have declared criminal cases against themselves.

Some implications

Data reveal that there is a nexus between crime and money in elections. There are implications for all sectors – the voting public, candidates, elected representatives, Governments, administration, political parties, the kind of ruling coalitions we get, and the corporate sector. Corruption will continue to remain a major aspect of our public life,

touching everyone from the ordinary citizen to those at the highest levels of Government, politics, media and the corporate sector. All this will impact the quality of governance we get, and even the economy and our development and growth targets. In such a maelstrom of events it is natural that those who are dynamic and opportunistic will benefit, and many will get left behind. Inequality will perhaps rise and lead to greater social strife.

In analyzing such a complex set of events and trends, it may be important to focus on what drives everything. Politics is driven by two things – power and money. There may have been a time immediately after Independence when the two were separate, but today they are two sides of the same coin. Money wins elections, and the winners enjoy power. Power in turn needs to make money to ensure the next victory in an increasingly high stakes, high risk, competitive political environment. In this era of coalition politics, the role of money will become even more important to retain a hold on power. In today's environment, major deals, real estate, infrastructure, 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 often merely uses the camouflage of ideology to garner votes and come to power. The difference between adhering to an ideology and using it for other purposes has become clear.

The major impact of all this is on the quality of governance. Any candidate who spends lavishly in elections will focus on recouping his investment or returning favours to those who funded him after winning. The same is true of political parties and of ruling coalitions. Given that the next election may be more expensive, the tendency is to make money once in power. When making money becomes an imperative, corruption will go up, public services degenerate, and the quality of governance is bound to suffer. 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 in many ways goes to the heart of the matter. A former Chief Minister of a major state told one of our election watch partners that to fight corruption, the problem of money in elections needs to be tackled. Since we are discussing de-criminalization of politics, we need to note that the nature of crime has been shifting from violent ones to white collar ones involving financial dealings.

The Way Forward

Gandhiji said “To safeguard democracy the people must have a keen sense of independence, self-respect, and their oneness.” Whether we have the first two or not is not clear. But we certainly don’t have oneness. Political parties only 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 or five dimensions: legislative changes and actions derived from the RTI Act, administrative, civil society led, and changes in voter behaviour. The media continues to play an active role in all this. Unlike other leading democracies, the corporate sector has not yet come forward to engage openly with improving elections and governance. Their actions are behind the scenes. This may be understandable in an environment seen as corrupt where being on the wrong side of power may have consequences. Activism is not respectable today in our country.

On the legal front, recent Supreme Court Judgments disqualifying convicted MPs and MLAs, barring those in jail from contesting (now reversed by Parliament), directing the EC to bring the issue of election related ‘freebies’ under the ambit of the Code of Conduct, the Allahabad High Court banning caste and religion based political rallies are all attempts to change the system. While there are critics of these judgments, perhaps the Courts are concerned about deeper issues plaguing the system. They can only react to the petitions they hear and in that limited role, they have done what they could. There are several other petitions still to be heard that were some filed by former Chief Election Commissioners among others. The recent ruling of the Central Information Commission declaring political parties as public authorities has also become a matter of public debate. The CIC, like the Courts reacts to appeals filed before them, and perhaps it is also concerned about deeper issues. The main point to be noted is that in all cases, the political parties have come together, disregarding their bitter rivalries and decided to try and undo each and every one of these judgments and rulings.

In the recent past several Commissions have been set up to examine the issue of electoral and political reforms. They include the following:

- Goswami Committee on Electoral Reforms (1990)
- 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)
- Election Commission of India – Proposed Electoral Reforms (2004)
- 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 a hesitation to move forward on this. 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 unrelated, serious criminal charges framed against them. Ministers in particular should not be allowed to take oath if they have any criminal case against them. They are free to seek relief through fast tracking their cases. Political parties give tickets to candidates. Hence the political party office bearer in charge of elections should countersign the affidavits of candidates. The party should be accountable for fielding such candidates and should be liable for any false declaration made by candidates. One of the most popular demands from the public around the country that has shown wide acceptance in survey after survey is the right to reject all candidates. Details and suggestions are in plenty. But it remains to be seen whether Parliament and the current political system will pass suitable legislation.

There are several radical suggestions including changing the system from the first past the post to a US style Presidential system, or a German/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. These issues have been discussed at great length by scholars as well as the various Commissions referred to earlier. We don't need to repeat the discussions here, but many have recommended a change from the present first past the post system. The three major issues that need to be balanced here are (i) the quality of representation within a constituency, that the French system improves, (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 on this and may not see a change in the near future.

Another important legal remedy is to enact a Bill 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. 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. Unless parties are strengthened, things are unlikely to change. Voters don't have that much of a role in changing the system since they have to choose between the candidates presented by the parties. A small but growing section of concerned and informed citizens is pushing for such a Bill.

If we restrict the French style runoff elections to only those seats where the difference between the runner up and the winner is small, it may be administratively easier to manage. For instance data from Lok Sabha 2009 show that if re-elections are mandated for only those constituencies where the difference between the winner and runner up is

less than 5%, then re-poll is needed in only 76 out of 543 seats. 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 or getting more than 50% votes in a second round run-off poll makes it much more difficult to buy so many votes.

Going beyond legal remedies, the administrative systems introduced by the Election Commission 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 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 the 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 in the Lok Sabha has been set aside. Meanwhile, the public and the media openly acknowledge it. 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 Election Commission can address this problem. Also, since adequate information to voters is not available, the candidate affidavits should be prominently displayed in each polling booth so that voters can see them before voting.

Civil society has played a vital role in some of the changes we have seen. These include the RTI Act and its use, Court Judgments on mandatory disclosure of candidates’ financial and criminal background, disqualifying convicted MPs and MLAs, directing the EC to evolve a code of conduct for ‘freebies’ that influence elections, banning caste or religion based rallies, CIC rulings on mandatory disclosure of Income Tax returns as well as placing National political parties under the RTI. A few more PILs are being heard in the Supreme Court on Electoral Reforms, including some filed by former CECs and IAS officers. In short, civil society has been active. The work continues, but is still a little uncoordinated and piece meal. The best work usually comes from individuals and groups who are engaged with ground realities. Their interventions therefore tend to be more pragmatic. At the same time, civil society is not a homogenous monolith. They represent diverse views and sections of society. The challenge before civil society perhaps is to make so called activism respectable – much like Gandhi did. Right now, the establishment sees much of civil society with suspicion, and as anti-development.

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 behavior are perhaps the best guarantee for de-criminalization

and good governance. Whether such changes need to be left to chance or deliberately brought about by civil society and perhaps the Election Commission through voter awareness campaigns is a matter for debate. Traditional voter awareness campaigns, whether by the Election Commission, civil society, or the corporate sector, often using celebrities to endorse their campaigns, have focused on saying “Go out and vote”. This needs to be supplemented by “Don’t sell your vote, and don’t 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. But such campaigns need to go beyond slogans. They need to raise voter awareness on the connections between black money, vote buying and bad governance. One slum dweller said “it is so nice that we all get money and gifts during elections”. She felt that this was money spent by the Government through various candidates. Most voters may not be so naïve, but they certainly feel that good governance is only a dream, so why not take money when given freely? But the slum dweller did say “only 50% of the work on drainage, paved roads in our slum, water supply and electricity is done. There is massive corruption”. Rural voters voice the same concern. They sometimes don’t see the connection between massive election spending and bad governance. Most important, they may not see that they themselves suffer and get bad schools, health care, roads, corrupt Government, and bad implementation of various government schemes as a result. Even if they see it, they feel helpless as individuals to do anything about it. Such a voter awareness campaign requires a lot of resources, and media support. It remains to be seen whether civil society by itself can do that. The new age Internet, mobile and social media technologies provide some hope as voters can be reached in a far less expensive way. The EC could also consider such a campaign, and it certainly has sufficient resources to do it. Needless to say, media support is vital.

It is perhaps pertinent to recall what Gandhiji said “In a true democracy every man and women is taught to think for himself or herself.” Franklin Delano Roosevelt, the longest serving US president, like Gandhiji says “Democracy cannot succeed unless those who express their choice are prepared to choose wisely. The real safeguard of democracy, therefore, is education.” Voter awareness campaigns need to do precisely that.

Shakespeare said “There is a tide in the affairs of men, which, taken at the flood, leads on to fortune.” Are we witnessing such a tide? Positions on both sides are entrenched. One side wants to preserve the status quo, and they are either in power or close to those in power. The other side wants change. Open dialogue, discussion and debate are an ancient Indian tradition. Voter awareness and understanding of the link between corrupt elections and corrupt governance needs to be built. Legal and administrative changes are required. If we can do that, it may lead us to fortune.

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

-Dr. Sarvepalli Radhakrishnan

Table 1: 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	IPC section per candidate	No of IPC sections against Winners	IPC section per winner
Murder	1229	0.02	335	0.04
Other murder related	3128	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	1004	0.02	276	0.03
Kidnapping	976	0.02	282	0.03
Cheating, forgery, counterfeiting	3039	0.05	909	0.10
Government seal counterfeiting	226	0.00	76	0.01
Electoral frauds	226	0.00	303	0.03
Sub total	10351	0.16	3180	0.36
All other serious charges	3633	0.06	1644	0.19
Total	13984	0.22	4824	0.55

Note: the data show that there was one serious charge for approximately every 5 candidates (0.22), and for every 2 elected representatives (0.55).

Table 2: 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 w charges framed who won	% of those w serious charges who won*
INC	6322	2453	39%	39%	37%	34%
BJP	5605	1689	30%	28%	38%	40%
BSP	4738	430	9%	7%	17%	16%
SP	2090	418	20%	16%	31%	31%
CPM	1163	520	45%	49%	35%	34%
NCP	1085	225	21%	18%	30%	26%
JD(U)	1005	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%
INDEP	19819	348	2%	1%	5%	6%
Sub Total	47264	7953	17%	15%	27%	26%
Total	62847	8882	14%	12%	23%	23%

*This column shows for instance that of all candidates with serious criminal charges put by the INC, 34% of them won.

Table 3: Interaction of Crime and Money in Elections
(All State Assembly, Lok Sabha, Rajya Sabha elections from 2004 to September 2013)

Party	% of those w serious charges who won	Avg Assets of cand (Rs lakhs)	Avg. Assets of Winners(Rs lakhs)	Avg. Assets of winners w charges framed (Rs lakhs)	Avg. Assets of winners w serious charges framed (Rs lakhs)
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
CPM	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
INDEP	6%	54.6	720.4	1,125.60	1,512.10
Total	23%	137.1	380.7	427.2	438.2