

Special Courts for Criminal Politicians : A Judicial development

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Supreme Court has decided regarding this fact as on 14 December, 2017. This article basically aims analysing the decision taken by the Supreme Court. This is the decision taken by the Supreme Court having an important cause in favour of public policy. This article tries to analyse pros and cons for the decision taken by the honourable court of judicature. This article also stressed on reason behind the decision taken.

Indian Judicial system is one of the oldest judicial systems in the world. It is one of the most famous and prosperous systems in the world. It has its unique style of working. Broadly if observed, Indian judicial system is a three tier system. At lower position, we have District Courts and other lower courts, in the middle we have the High Courts and at the top we have the Supreme Court. Also our constitution is one of the bulkiest constitutions in the world consisting of 395 articles, 22 parts, and 12 schedules. Hitherto, 100 amendments have been made. And we have parliamentary system of government.

Our judiciary system has its own pros and cons. Pros of our judicial system in brief: At first, there is a single and integrated judicial system in India. Supreme Court controls the judicial administration all over the country; district courts are controlled by the High Courts. All courts in India appear in link of single judicial system. Secondly, we have independence of judiciary. Judicial wing is not dependant on any of the wings of government. It has its independent existence. Indian judiciary has a power of judicial review. It has a power to strike down or put a stay on law or a bill or an order opposed to public policy. Thirdly, we have High Courts for each state and we have a provision of joint High Courts. And also we have open trials.

Cons of Indian judicial system : At first, there

is problem of corruption. Almost all the sectors of government in India are badly affected by the corruption. And gradually it has also affected the very important part of our country as well as the government and that is judiciary. Many legal officials such as judges, clerks, etc. are indulged I corruption. Even there is no specific provision regarding filing an FIR against a judge. Secondly, backlog of pending cases. Over 30 million cases are pending in Indian Judicial system. Out of them 4 million cases are pending in High Courts and over 65000 cases are pending in the Supreme Court. And this number is constantly increasing. It is a matter of grave concern that clearing off these cases will be far more difficult. Thirdly, there is a lack of transparency. Fourthly, hardships faced in under trials. This is one of the biggest problems with the Indian Judiciary. Even the innocents wrongly convicted of any offense have to stay in jail for a long time. Reason behind this is that a person convicted of any offense has to stay in jail till his case comes on the board in the courts. They stay in jails for a term even more than they would have stayed if judgment was given at a proper time.

These are some of the merits and demerits of Indian Judicial system.

Now let's move on to the bone of contention. Let's have glimpse of background behind this decision of establishing special courts for criminal politicians.

A BJP MLA filed a PIL appealing for the lifetime ban on criminal politicians. These politicians are convicted of serious offences. But still they are successful in contesting elections. This shows that the law breakers are making the law and expecting the public to follow. These politicians are convicted of crimes like murder, rape, bribery, extortion, etc. In spite of having

convicted of such legal offences still they contest elections and if won they eventually enjoy the office of ruling party. This is extremely against the public policy. Those who don't even follow the law they make the law. 'Law breakers are the Law makers'. Considering this serious cause the Supreme Court lawyer Ashwin Upadhyay filed a petition in Supreme Court seeking lifetime ban on criminal politicians in the country. He is also a BJP MLA. In the same petition he also appealed for establishment of special courts for trying criminal politicians.

Now coming to violations made by these politicians, this will make clear that how the acts and actions of criminal politician are prejudicial to the interest of public. *According to section 8 (3) of Representation of People Act, 1951, a person convicted of any offence for an imprisonment of 2 years or more will be the cause for disqualification from contesting elections.* As in the case with *Chhatar Singh Vs Gajendra Singh*³ the said petition was dismissed by the honourable court. It was filed by a politician who was convicted of an offence and was out of jail. But the court held that a merely out of jail does not qualify him for contesting elections. A person cannot contest elections for a period of 6 years term after getting released from the jail. The petition was filed by respondent in the case above for contesting elections. Hence, it has been cogently stated under this act that criminal offence against a politician is strictly a cause of disqualification from contesting elections. Furthermore it also explains that even if a person is on bail then also he is disqualified from contesting any elections. These politicians also carry out such practices which are against law and the code of legal conduct. Many of the politicians in India pay to the voters for voting or for not voting to a candidate of opposition. This is seriously a grave act. This is prejudicial in the interest of public. This is a crystal clear violation of section 123 (1) of Representation of People

Act, 1951. It states, *acceptance of money to vote for a candidate is a corrupt practice of bribery. It is also punishable under section 171-B of Indian Penal Code. Any person convicted under such offence shall be punishable with imprisonment.* In the case *Sushil Singh Vs Prabhu Narain Yadav and ors.*⁴ The politicians in the case carried out corrupt and bribery practices at polling station. The respondents made recounting of votes which resulted in their win. After investigation it was discovered that the respondents tampered with the machine. The petitioner prayed before the court to declare this process as illegal. The petition was allowed under section 123(1) of Representation of people act, 1951. The process was declared illegal. It is clear from the respective statute and the case stated as above that corrupt practices stand as a cause for disqualification of candidate from contesting elections even if the candidate wins the election. Still, many of the politicians in the country are indulged in such kinds of unlawful practices.

Now coming to the juncture, what are these special courts? Why are they going to be established?

As per the Special Criminal courts Act, 1950, it explains that any court constituted under any law included in the schedule. Special courts are the courts established for some special purpose. That court is established exclusively with a motto to handle a particular matter. Now, in this respective case the special courts are going to be established exclusively to sort out the matters of criminal politicians. There are over 1581 case pending against the lawmakers in India⁵. The condition is very critical for now. The numbers of cases are rampant. For this purpose, SC has taken such a step regarding establishment of special courts.

But before all these discussion regarding future aspects of these special courts functioning, the question remains as, why supreme required these special courts? How the politicians got

successful in contesting elections? Let's have a look.

- Delay in judicial procedure- It is correct to say that these politicians are convicted of offence. It is also correct to say that they are caught under judicial web. But they are not tried within time. The procedure is so long that the criminal politician or a convict gets successful in escaping the judicial procedure. It is one of the biggest disadvantages of the Indian judicial system.

- Corrupt practices- Like other organs of the government; the judiciary is also affected from the hitch of corruption. Judges and judicial officers of the bar are indulged in corrupt practices. This has made the judicial system of the country iniquitous. Politicians manage with the officers behind the veil. But they are unaware of the fact that they are guardians of the country. They are protector of law. In this act they acquit those criminal politicians.

- Abuse of power- The criminal politicians abuse the power which are conferred to them. They get indulged in the illegal practices and by making use of their power they insult the judicial procedure.

- Wealth- It is the most important factor for the criminal politicians that make everything easy for them. Many a times the police don't even lodge an FIR. It is ultimately a practice of corruption but most important fact that makes this possible is money. These politicians have money in abundance and our police departments are highly corrupt. In this case, the very important department and that is police whose work is to protect the society from the evils but it is very sad fact that those only honourable officers are indulged in the corrupt practices. Even after lodging an FIR the politicians manage with the department's personnel. In this way wealth is responsible for escaping the procedure.

- Managing a good counsel- In this very fact it must clarified that the lawyers are not

responsible for such a situation. They are just carrying out their duty well. Most of the times politicians manage good lawyers and they get acquitted. In this case we can also observe that there might be a case where the public prosecutors also fail to present a case in a proper manner. Because of lack of experience and lack of knowledge might amount to losing that particular case.

These are some of the reasons that how the criminal politicians get escaped from the judicial web.

Now the main information to be analysed is that how these courts will function. According to scheme framed by the government, there are 12 special courts which will be established at 12 places in India. They will function as a fast track courts. 7.8 crore is an estimated expenditure for functioning of these courts. Jurisdiction of these courts will be exclusively to try criminal politicians. Under the plan it is expected that all the pending cases will be decided within a year. These courts are also conferred with certain powers such as imprisonment of the politicians, acquittal and certain injunctions, etc. These courts will start functioning from the 1st day of March 2018. And the next hearing regarding this matter is scheduled to be on 7th of March 2018.

Now advantages of the setting up of special courts are as follows:

At first, it will clear up all the cases pending against the law makers.

Secondly, it will relieve the Supreme Court. There might be appeals by convicts against the decision but the primary responsibility will be borne by these special courts.

Thirdly, there will transparency in the functioning, as these courts will exclusively try criminal politicians.

Fourthly, there will be dedicated functioning. These courts will work as fast track courts. These courts have a target of around 1581 cases pending against the law makers and they have

to clear those within a period of one year. It is one of its kinds of a challenge in the history of judicial system.

Fifthly, there will be undisputed and unbiased adjudication by the judges because the judges who are going to be appointed will be of a high profile with well and good educational qualification.

And last but not the least; it will wipe out all the 1581 pending cases in India.

Now disadvantages are as follows:

At first, the expenditure will be very high, for now it is around 7.8 crore which contended as less by the counsel but in reply, Justice Ranjan Gogoi said “12 courts are not the end of it. But let them start. It is easy to blame but to start something is difficult.”

Secondly, it will require plenty of resources such as infrastructure. Courts will have to manage and have to form a foundation for these courts.

Thirdly, number of judges is a matter of concern. We have fewer judges available. It will be a challenge for the judicial system.

Fourthly, there will be a heavy workload. There are already lots of cases pending against the MPs and MLAs. But as soon as these courts start to function the new and fresh cases will come up.

Fifthly, this is a utopian milestone. 1581 pending cases or even more, one year, 12 special courts is indeed an extra ideal plan which is extremely difficult to achieve.

After analysing all such advantages and disadvantages of the decision, Supreme Court of India finally arrived at a decision that there will be 12 special courts to be established which will exclusively try and solve matters relating to criminal politicians.

Finally coming to conclusion, here we find that this decision in itself is a judicial development.

But it is in itself a big challenge as well. This will no doubt has a great impact over judicial system as well as the Indian society but it also a great challenge which the judicial system will have to cope with. We have many stringent laws. Those laws are so deterrent that there can be no crime in the society. But here, the main problem lies with execution. The Indian executive system is also very faulty. Plenty laws are made but the only problem lies with the execution of those laws. In this case, our Indian Judiciary has one of the most important jobs ahead and that job is of the execution. But for now this decision is actually a judicial development. This is actually the need of hour. Otherwise the condition may become chaotic. The Supreme Court of India is optimistic in this view. They expect the good results out of this development. In my opinion as well, I think let these courts start its functioning and expect that whatever has been planned must be achieved.

(Endnotes)

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- 3 file:///C:/Users/Saurabh%20Dhote/Documents/TP_2000_1_mp_lj_118_126_saurabhdhote18_gmailcom_20180108_192825.pdf
- 4 file:///C:/Users/Saurabh%20Dhote/Documents/J_2005_SCC_OnLine_All_1381_AIR_2006_All_187_2006_4_AIR_saurabhdhote18_gmailcom_20180108_193426.pdf
- 5 <http://www.thehindu.com/news/national/sc-clears-12-special-courts-to-try-cases-against-politicians/article21665775.ece>