

Sarthak edit

The Supreme Court last week said it was “surprised”, “shocked” and “sorry” to learn that there are 4,442 criminal cases pending against legislators—2,556 against sitting lawmakers (MPs and MLAs). In 2017, it had ordered the setting up of special courts to fast-track trial—completion within a year of framing of charges—and 12 such courts had been set up to cater for different states. On Thursday, it ordered High Courts to form a special bench to monitor the progress on cases against lawmakers within their respective jurisdictions. The High Courts are to list all pending criminal cases involving sitting/former lawmakers, including those in which a stay has been granted; as per a report submitted to the apex court, there are 352 cases stayed by the HCs or SC. The breadth of offences lawmakers have been charged with covers corruption, offences under the child sexual abuse law, tax offences, murder, kidnapping etc. There are 413 cases where the offences are punishable with life imprisonment; 174 of these involve sitting lawmakers. This should show how mammoth the task before the judiciary is. A special bench in each HC to monitor progress is a good step, but how effectively crime in politics is dealt with will need other stakeholders—primarily political parties—to get serious about their roles.

The fact is that crime in politics has gone unchecked despite many interventions by the Supreme Court; in 2018, the court had ordered political parties to publish details of criminal candidates they fielded in polls in mainstream media. Given how 233 candidates facing criminal charges were elected to the Lok Sabha in 2019—with 159 facing serious criminal charges (87 from the ruling party)—it is clear that the court’s order was either not complied with or had little effect.

So, in February this year, the SC had ordered parties to list ‘criminal’ candidates along with details of crime, status of probe/trial, etc, on their websites, social media accounts and news media within 48 hours of announcing such candidates. The parties also had to explain the basis of selection. They also have to file a compliance report with the Election Commission of India (ECI). Bear in mind, the SC’s 2018 order also required parties to file compliance reports on the publishing of ‘criminal’ candidates’ details with the ECI—which had also mandated this. It is odd that the ECI never took action against parties for failing to do this, though, under the Election Symbol Order 1968, it can suspend recognition of a party for failing to comply with its lawful orders.

The problem is quite deep-rooted, with politicians flexing power to keep themselves out of trials and parties showing little political will to confront this. It is therefore not surprising that

there are a large number of cases, as noted by the SC, that are pending at the appearance stage, with many in which non-bailable warrants issued by courts have failed to get executed. The Supreme Court has done well to instruct the HC special benches (whose formation it has just ordered) to examine the merit of stay granted in cases involving MPs/MLAs, in keeping with the principles enshrined in the Asian Resurfacing of Road Agency judgment—noting that stays can't be unconditional or of indefinite duration. With judiciary pulling all stops to tackle crime in politics, the onus is now on the mainline political parties and the poll regulator to act.