

Accountability Commission

- S.A.T.Rizvi

Presently eyes of the nations are riveted on the drama unfolding in the electoral arena of Uttar Pradesh. While there will be winners and losers and some party or combination of parties will eventually (hopefully) form the Government, one should not lose sight of the serious distortions creeping into the electoral system as emerging from the invaluable data thrown up by the UP Election Watch.

Data compiled and released by UP Election Watch shows that about 28 percent of candidates (366) contesting election in the first Five Phases of elections were crorepatris. Likewise, Samajwadi Party topped the list of candidates with pending cases at 34.62%, followed by BSP - 32.53%, BJP -27.86% and the Indian National Congress -20.42%. This situation prevails after the passage of an unanimous resolution in the State Assembly declaring that criminals had no place in public life following the killing of a sitting MLA, Shri Krishnanand Rai! Final figures emerging after completion of all seven phases of polling is only likely to worsen the situation as Districts of Purvanchal, known for their 'Mafia Dons' go to the polls in the last two phases.

Money power in politics

One thing which is clearly borne out is that in the very next general elections, and most assuredly in the one to be held thereafter, multi-millionaires will be contesting from all the assembly constituencies, with a substantial number of them blessed with an enviable record in the world of CRIME. This would be so across parties, with State/National parties vying with each other for the first position. The issue is whether we should keep on looking at this development with equanimity and in the fond hope that the "Democratic System" would, by itself, provide the necessary correctives "before it is too late".

Philosophically speaking, I am prone to believe that "unlimited" wealth is capable of only one thing, and that is of inflicting pain and misery on the populace in uncanny ways, in ways which we cannot foresee. This would hold good more in a feudal society like the one we live in rather than in others which vibrate instinctively with all that is good by way of liberty, equality and fraternity. I have used the word "unlimited" deliberately to bring home something which again is an article of belief with me. It is the belief that wealth tends to acquire unlimited proportions only through malfeasance and robbery (of people) and through a systematic suppression of the rights of the hapless many. Of course, the experience acquired by each one of us through the rough and tumble of our lives in public service only confirms the soundness of my philosophy. Once an agreement on this philosophical question is reached, it should not be difficult to spell out measures that ought to be taken to protect the grand edifice of "Free India".

Accountability Commission

At the very outset, we will have to agree on a magical figure, i.e., a cut off limit of wealth in possession of an individual person. We may, for the sake of convenience fix it at, say, Rs.50 lakh. This is a decent limit having regard to the economic conditions generally prevalent in our country. Let us then say that anyone in possession of wealth in excess of Rs.50 lakh and wanting to contest an election shall necessarily subject himself to a rigorous scrutiny by an independent **Accountability Commission** on a priority basis, and will be willing to give up automatically on being found to be guilty of acquiring wealth by wrongful means. That is to say that such a guilty person shall stay away from the House of the people until finally cleared by the High/Supreme Court. The added condition would be that the verdict of the Accountability Commission shall not be STAYED by any Court under any circumstance. If, on the other hand, a person found guilty as above has not been returned to the House, he shall stand debarred from contesting future elections at any level until finally cleared by the High/Supreme Court, and further that there shall be no opportunity for the grant of stay by any Court affecting the operation of the verdict of the Accountability Commission.

The proposed Accountability Commission (AC) should be a constitutional body whose independence must be guaranteed in the same way in which the independence of judiciary has been guaranteed under the Constitution.

Preliminary investigation by CBDT

Before a matter is taken up by the AC, the Government of India (Department of Revenue -DOR) should be ordained to deal with the matter through the CBDT directly under the existing provisions of the I T Act. I believe there is a provision in the said Act which can be validly invoked in all such cases for issuing omnibus notices requiring the individuals concerned to explain how and when the wealth in excess of Rs.50 lakh has been acquired. The replies to such notices should be carefully scrutinized at the senior most levels in the CBDT, and, in no case, at lower levels. Based on such scrutiny, and after making further investigations, such as might appear to the CBDT to be necessary, the CBDT should pass a clear and speaking order closing the case, or, where, the individual concerned has failed to render satisfactory explanation, for launching prosecution in law courts and for taking such other action as might be permitted under the law of the land. The CBDT should be allowed a maximum period of one year to do so.

Role of Accountability Commission

The AC should come in the picture only after the CBDT have completed action as above. The AC should derive authority, inter alia, from the provisions of the I T Act, the Excise Act, the Customs Act, the IPC etc. and it should be charged with the responsibility of scrutinizing the cases closed by the CBDT after due scrutiny and investigation as above. At the same time, the AC should act as an appellate authority in cases in which the CBDT might decide to launch prosecution and / or take other action permitted under the law. AC's verdict should result in immediate action against the guilty person. Those found guilty by the AC must stay away from office for all purposes until cleared finally by the High Court/ Supreme Court. AC's verdict should, in no case, be stayed by any Court. Those found guilty finally by the AC/Courts should be debarred for good from contesting elections at any level any for any institution, and those already elected to a legislature or any other institution during the pendency of proceedings before the CBDT / AC should, likewise, cease to be a member of the concerned body with effect from the date of the order passed by the CBDT / AC. Those found guilty by the CBDT should be allowed a month's time to prefer an appeal before the AC.

Action as above would need to be taken irrespective of whether the individual under scrutiny has acquired a PAN under the IT law.

Nominated Members

Incidentally, I have a suggestion with regard to the nomination of individuals to the Parliament of India. I have no quarrel with the provision which empowers the President of India to nominate. But this power should be vested in the President himself acting in his discretion. Additionally, every such nomination should be thoroughly debated in the Rajya Sabha before it materializes. The President would then be expected to weigh and consider the nature of the debate before he takes a decision. The decision to nominate should, in any case, be his. After all, is he not himself a part of the Parliament of India? There can be no better method of stopping the misuse of the power to nominate currently vested in the Government. In the past, some Governments are known to have tried to muster up a majority in the Parliament by misusing this power. The change suggested will thus prevent political parties from faking majority support and should be welcome on this account also.

Incidentally again, I would like to suggest a procedure similar to the above for the appointment of High Court and Supreme Court judges with the President, as usual, retaining the power to appoint on the advice of the Cabinet / Government. It might be recalled that the nomination of persons as judges of the U S Supreme Court is subjected to a debate in the Senate.

Criminalization of politics

Where a person has one or more criminal cases pending against him, irrespective of the stage of pendency, the action should proceed on the same lines, *mutatis mutandi*. Without dilating on this aspect, I would suggest just this that the fact of pendency of criminal cases should affect such luminaries, for good or for bad, exactly in the same way in which it affects any other citizen of India. To illustrate, the idea is to subject such a person to the same kind of disability to which a job seeker in Government is subjected, though, in principle, the test prescribed for those seeking positions in the Legislature should be far more rigorous. I have always held the view that any distinction made in favour of those contesting an election to a Legislature is hit by Article 14 of our Constitution.

As regards criminal cases, individuals contesting elections to the legislature are not presently required to disclose all manners of crime in which they may be involved, directly or indirectly. If I recall correctly, the Supreme Court had favoured disclosure of information by the candidates (contesting elections to the legislature) on the ground that the people / electorate had a right to receive (or, be supplied with) as much information about the candidates as is required to know the worth of the candidate for the purpose of making an intelligent (well informed) choice. If that be the case, I fail to see why the candidates should not be required to disclose the details of criminal cases which may have ended in acquittal, or, in which the police may have filed a final report, or else the fellow might have been discharged. By the same token, and more importantly, the lack of obligation on the part of the candidate, to disclose information about the pendency or otherwise of criminal cases involving offences carrying a maximum punishment of less than two years' imprisonment, is something which I find very difficult to accept as just and proper. A cursory perusal of the Indian Penal Code, would show that a very large number of offences listed therein carry, in case of conviction, a penalty of less than two years, but those charged with the commissioning of such offences are the DAADAAS and as such the biggest and the surest threat to peace and order on the face of the earth. They are the ones who, for instance, indulge in *marpit*, and even serious *marpit*, and rioting at the slightest pretext, and never fail to intimidate the peace loving citizens through strong arm tactics. We can gauge the extent of havoc created by them in the country's hinterland only if we could ever get to know the number and the type of cases in which the police refuse to lodge the FIRs, or, when lodged, dilute the seriousness of the crime by clever manipulation of words. The crime related information, for purposes of disclosure, should also include factual information with regard to framing of charges by the Sessions Court, conviction by the same court showing the period of imprisonment and the amount of fine, stay of conviction / sentence of imprisonment by the High Court / Supreme Court and pendency in higher courts. In other words, the disclosure made by a contestant must reveal, as vividly as possible, the entire life spent by him in crime. The information revealed by a candidate should be verified from the respective police stations and, if necessary, from the courts concerned with utmost expedition. With internet connectivity fast catching on, it should not be difficult to have, in possession of the Returning Officers / Chief Electoral Officers, duly verified detailed information well in advance of the date(s) of poll thereby rendering it possible to publicize all such information for the benefit of the electorate in time.

Role of elected MPs / MLAs pending investigation

The candidates contesting elections to legislatures are required to subscribe to oaths, the form of which is prescribed. Similarly, the elected representatives are supposed to take oaths, the format of which is again prescribed. According to me, those with a criminal background should be made to subscribe to oaths on a different format declaring, in some way, the provisional nature of their membership. The same should apply to those in possession of wealth, according to their own admission, in excess of Rs.50 lakh but who have not acquired PANs. I will go a step forward to suggest also that all such "provisional" members should be made ineligible to vote in the legislature except during no-confidence motions. This way, those entering the legislature with a criminal background and / or unexplained wealth (of more than Rs.50 lakh without having a PAN) would be effectively prevented from playing a decisive role in law making even though they would still have the freedom to participate in the debates held in the legislature.

Conclusion

My apprehension is that, in the absence of regulatory measures such as the ones suggested in the preceding paragraphs, we are soon likely to land up in a situation in which our legislatures will become full of the wealthy and the criminals, or, both combined, leaving little or no scope for a fair representation of the peoples' case for equitable and adequate distribution of social goods like food, health, education, and housing.
