MORAL TURPITUDE AND DISQUALIFICATION OF MINISTERS

Gaurav Kataria (Ph.D.)
Associate Professor
Ethiopian Civil Service University, Addis Ababa, Ethiopia

Abstract

Politicians of all stripes must pay special attention to the evil of criminalization of politics as it deals mainly with the vested interests of politicians. Essentially, it eliminates all constitutional safeguards of democracy, spoils bureaucracy by making it partial, and even threatens the judiciary; thus, destroying the basics of democracy. This paper attempts to look at the Supreme Court of India; there was a fundamental question-court curbing criminalization with case analysis. Reforming political finance and governance is vital to prevent money and muscle from becoming a hegemonic role in politics. Is it feasible to cohabit with rampant criminality while maintaining free and fair democratic processes? A five-judge bench is appropriate given the issue's intricacy and essential importance in Manoj Narula v. Union of India (2014). The Constitution obligates the Court to breathe new life into the Constitution's terms.

Keywords: Disqualification, ministers, appointment, criminal record

INTRODUCTION

The Court concerning the legitimacy of people with criminal backgrounds as ministers in the Central and State Governments. The increasing misuse of money in elections is alarming in India. The commoner is left wondering what these elections accomplish, especially when one considers that India, as a developing country committed to welfare state goals, has yet to feed a sizable population that goes hungry or has failed to provide even the most basic amenities a sizable population. Illicit funds have flowed into elections due to the increased need for money. In addition to undermining the average citizen's faith in democratic institutions, this type of sleazy expenditure prevents qualified candidates from winning elections due to a lack of financial resources. Money plays a significant role in electoral politics in India and the many methods available to curb its influence (Salgaonkar, 2018). Failures in India's administration have infused criminal politicians with widespread support. Reform of political finance and governance is necessary to stop money and muscle from dominating politics (Vaishnav, 2017). Crime and politics have a symbiotic relationship in India, the world's largest democracy. For example, is free and fair democratic processes possible to coexist with rampant criminality? What is the purpose of seeking out candidates with criminal backgrounds? One-third of state and national legislators are elected and frequently re-elected? Corruption is becoming an increasingly salient issue in India. A massive amount of academic researchers attempted the attention of the media (Vaishnav, 2020).

PETITION AGAINST THE APPOINTMENT OF MINISTERS

A writ petitioner challenged the appointment of many of the original respondents as Ministers to the Union of India's Council of Ministers, despite their involvement in significant crimes in the case Manoj Narula v. Union Of India. During the hearing of this matter before the Bench presided over by the learned Chief Justice on 24.3.2006, the following ruling was entered: This case relates to the point of critical public concern. It concerns the legality of individuals with criminal histories and who have been accused of crimes involving moral turpitude being appointed as ministers in Central and State Governments (*Manoj Narula v. Union Of India Manoj Narula v. Union of India*, 2014).

Mr. Rakesh Dwivedi, learned senior counsel, has been designated an amicus curiae to assist the court, the learned Solicitor General representing the Union of India, and Mr. Gopal Subramaniam, learned Additional Solicitor General representing the Attorney General for India. A five-judge bench is appropriate due to the complexity of the issue and its critical nature. As an experienced Solicitor General representing the Union of India, no formal notification was sent to the Union of India.

A notification was also sent to the State's Advocates General. They affirm that the State Governments and the Union of India have four weeks from the date of service of the notice to file their affidavits and supporting documents. Members of the Union Cabinet have been designated as party respondents, including the Prime Minister. To resolve the issue mentioned above, the court observed that it is unnecessary to impeach individual ministries or the Prime Minister. As a result, the respondents, including the Prime Minister and other cabinet members, were removed from the list of parties.

List the matter for instructions on presenting it to the Constitution Bench when the Court reopens following the summer recess. The case has been referred to the supreme court after the previous order and subsequent orders. In light of the debate, the court is obligated to interpret the extent and purpose of Articles 75 and 164 of the Constitution, considering the Constitution's language, context, scheme, and spirit.

POLITICAL LEADERSHIP AND ALTERCATIONS ON CRIMINAL ANTECEDENTS

In the case, Manoj Narula v. Union of India, the Senior Counsel argues that implied limitations have become a standard for interpreting our organic and living Constitution to accommodate the present social transformation. If not applied to Article 75(1), it would lose the Constitution's essential zeal. In his view, as the last arbitrator of the Constitution, the court is constitutionally required to breathe new life into the words of the Constitution to prevent them from becoming stagnant or sterile. Kesavananda Bharati Sripadagalvaru

v. State of Kerala and Anr. was relevant in this regard. This Court has recognized implicit limitations, as demonstrated by in the case. The wording of Article 75(1) of the Constitution must be interpreted as stating that a minister facing a criminal trial and having had charges framed against them may not be suggested by the Prime Minister when advising the President on a minister's appointment. To maintain public trust, he added that high constitutional positions must be held by persons who have institutional integrity. The President, Governors, Judges of the High Courts and the Supreme Court, and the Comptroller and Auditor General of India all hold positions of great public trust. Naturally, the incumbents of these positions have impeccable integrity and character. It seems impossible that such a person would commit any crime. Dwivedi has made a distinction between a person's eligibility to become a Member of Parliament, which is based on qualifications and disqualifications, and that of a Minister in the Council of Ministers, solely determined by the Prime Minister. Parliamentary democracy is a core feature of the Constitution. The Council of Ministers exercises all its powers according to the democratic convention, so it must be treated as a critical constitutional institution of national governance and therefore cannot be held by individuals convicted of crimes.

Besides pointing to the dictionary definition, the learned senior Counsel stated that the Constitution's authors adopted the term advice because the Prime Minister's Office is supposed to carry the weight of the constitutional trust. According to Article 75(1), the Prime Minister's advice to the President must be careful, deliberate, and informed, considering the absence of criminal antecedents and a lack of integrity. Under the legislation established by this Court and convention, the Prime Minister's advice binds the President, whereas a minister serves at the President's leisure. As the Executive Head of State, the President can, however, disregard advice if a constitutional ban or impropriety exists or if an unusual circumstance forces him to act to preserve the Constitution's foundation. The learned senior Counsel would submit that the President, in exercising his constitutional prerogative, may decline to accept the Prime Minister's advice if he discovers that a Member of Parliament is being considered for appointment as a Minister while facing a criminal charge of severe offenses. In a rare instance, the Governor defied the Council of Ministers' advice and granted authorization for prosecution. Elaborates on the constitutional notion of the prime minister's constitutional trust, which is included in the Constitution and discussed during the Constituent Assembly Debates. It is maintained that a constitutional convention must be read into Article 75(1), stating that a person accused of a severe crime cannot be nominated as a Minister because the Cabinet's accountability is always viewed as a subset of collective accountability.

While the prime minister's appointment is a constitutional prerogative, such a decision cannot be made arbitrarily, blind to a person's honesty, integrity, and criminal history. While advising the President on ministerial appointments, the prime minister must adhere to some criteria not directly specified in the Constitution. Nonetheless, he is bound by the unwritten code of morals and philosophy enshrined in the Constitution's Preamble. The learned Counsel has highlighted the need for a purposeful interpretation of the Constitution as a means of preserving, protecting, and defending the Constitution regardless of the political consequences. He argues that when a constitutional clause is silent on a specific subject, this Court must unavoidably give directions or orders through the interpretive process to fill the resulting vacuum or void until legislation is passed accordingly. Each provision of the Constitution must be construed in light of its history, aims, and intended consequence.

In the absence of any qualifications specified for members of the Union Cabinet under Article 75 of the Constitution, except that a member must be a Member of either House of Parliament, and when the oath required of a Minister under Article 75(4), as specified in the Third Schedule, does not specify the person's antecedent, there is no legal restriction under the Constitution for a person unless he has been convicted of an offense as defined in Section 66. According to him, Article 84 describes the conditions for filling the seats in Parliament. Nevertheless, it does not include any information regarding the character or abilities of a candidate for election to the House of Commons. In addition to the disqualifications outlined in Article 102(i)(e) and the 1951 Act, a Member of Parliament cannot be disqualified from holding the position of Minister for any other reason. Therefore, the criminal antecedents or any disqualification for the office of the Minister arising from the framing of the charge, as stated by the Petitioner, cannot be contained within the constitutional framework.

INTERNATIONAL SCENARIO

Section 44(4)(ii) of the Australian Constitution imposes a restriction on members of the House who have been convicted and sentenced, or are about to be punished, for any offense punishable by imprisonment for one year or more under the law of the Commonwealth or a State, would be ineligible to be chosen or to sit as a senator or a member of the House of Representatives. Lanes Commentary on the Australian Constitution, 1986 affirms that, while this is a particular provision of the Constitution that prohibits a person from being a Member of Parliament even if he is acquitted, but is likely to face a sentence for the prescribed offense, the Court cannot introduce such an aspect based on propriety in the absence of such a provision or a law passed by Parliament.

A person sentenced to imprisonment or detention for more than one year is ineligible, his election is nullified, and the vacant seat. Lied to a House of Commons Library article on disqualification for House of Commons membership, which states that the presence of a criminal record does not automatically qualify a person for a ministerial position. Furthermore, convictions for crimes such as corruption, dishonesty, violence, or severe sexual misbehavior impair an individual's prospects for a career in the church. In addition, learned senior Counsel has drawn our attention to a 1994 Public Law publication by Professor Rodney Brazier, Is it a Constitutional issue: Fitness for Ministerial Office, in which it is stated that while it is unclear whether a criminal record should disqualify a person from government membership, a conviction of severe offenses could impede appointment. According to an unwritten rule of constitutional propriety in the United Kingdom, a person is unlikely to be appointed a Minister if convicted of a serious crime or under investigation. According to the learned amicus curiae, there is no implied prohibition in the Constitution against the appointment of a Minister in the case of pending prosecution for a serious criminal offense other than a conviction, and therefore not fall within the implied prohibition that a person who is acquitted but is being prosecuted or charged with a criminal offense will be barred from being a Member of the Legislature and thus not be eligible to be a Minister.

CONCLUSION

While the Supreme Court noted that there is no disqualification for a person charged with serious or heinous offenses or offenses involving corruption from contesting an election, it is difficult to read the prohibition into Article 75(1) or, for that matter, into Article 164(1) of the Prime Minister's or Chief Minister's powers in this manner. This would fall within the eligibility criteria and entail prescribing an eligibility requirement and adding a disqualification not specified in the Constitution. In the absence of a constitutional restriction or legislative prohibition, we believe that such disqualification cannot be read into Article 75(1) or 164(1) of the Constitution.

There is no question that the Court used the theory of implication to enlarge constitutional notions, but it is necessary to consider the circumstances in which the horizon was broadened.

From the above, it is clear that the Prime Minister has historically been viewed as the repository of constitutional trust. The phrase on the recommendation of the Prime Minister cannot be permitted to lose its importance in a vacuum. There can be no question that the Prime Minister's advice on the appointment of a person to the Council of Ministers is binding on the President unless the said individual is disqualified from

contesting the election under the Constitution or the 1951 Act, as was ruled in B.R. Kapur's case. This falls within the category of disqualification. However, a pregnant one, the Constitution's faith in a high constitutional functionary such as the Prime Minister does not end there. Appropriate counsel from the prime minister to the President is a valid constitutional expectation, as it is a primary constitutional priority. In a regulated Constitution such as ours, the Prime Minister is expected to behave constitutionally accountable because the cherished democratic principles and set standards of good governance are fructified in a dignified manner. The Constitution's founders left many things unwritten by vesting enormous faith in the prime minister. The Constitution's structure implies that there must be an emerging constitutional government that progressively grows to give birth to a constitutional renaissance.

Moreover, the Prime Minister is supposed to work in the nation’s best interest. During this process, he should keep in mind that unjustifiable elements or individuals charged with specific categories of offenses may obstruct or block the canons of constitutional morality or principles of good governance, eroding constitutional faith in the process. Previously, we explained that prohibition cannot be applied to counsel but that the principles of counsel, particularly the constitutional trust, can be recognized throughout the process of such guidance.

Thus, when reading Article 75(1), a disqualification cannot be inserted definitively. However, the prime minister is living up to the trust placed in him and should always consider not appointing a person with criminal antecedents and who has been charged with heinous crimes or corruption as a Minister of the Council of Ministers. The Constitution implies this, and the Prime Minister is expected to follow this rule. It is up to the Prime Minister to make the decision. No omissions or additions are made.

Prime Minister applies solely to the Chief Minister, taking into account the words used in Article 164(1) of the Indian Constitution.

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