Syllabus subtopic: Salient features of the Representation of People’s Act.

Prelims and Mains focus: about the SC remarks on the criminalization of politics; various judgements of SC; about RPA, 1951

News: The Supreme Court on Friday agreed to examine a proposition made by the Election Commission (EC) to ask political parties to not give ticket to those with criminal antecedents.

About the SC judgements on this issue

- In 2002, it made it obligatory for all candidates to file an affidavit before the returning officer, disclosing criminal cases pending against them.

- The famous order to introduce NOTA was intended to make political parties think before giving tickets to the tainted.

- In its landmark judgment of March 2014, the SC accepted the urgent need for cleansing politics of criminalisation and directed all subordinate courts to decide on cases involving legislators within a year, or give reasons for not doing so to the chief justice of the high court.

- The September 2018 judgment of a Constitution Bench, which had directed political parties to publish online the pending criminal cases against their candidates was not complied with by the political parties.

- The judgment had urged Parliament to bring a “strong law” to cleanse political parties of leaders facing trial for serious crimes.

- The ruling by a five-judge Bench led by then Chief Justice of India Dipak Misra concluded that rapid criminalisation of politics cannot be arrested by merely disqualifying tainted legislators but should begin by “cleansing”
RPA, 1951

- Currently, under the Representation of Peoples (RP) Act, lawmakers cannot contest elections only after their conviction in a criminal case.

- Section 8 of the Representation of the People (RP) Act, 1951 disqualifies a person convicted with a sentence of two years or more from contesting elections. But those under trial continued to be eligible to contest elections. The Lily Thomas case (2013), however, ended this unfair advantage.

What does the Law Commission say in its report?

- The law commission in its report on electoral disqualification in 2014 deliberated on whether disqualification from contesting election should be triggered upon conviction as it exists today, or at the time of framing of charges by the court? It was of the opinion that, “disqualification at the stage of charging, if accompanied by substantial attendant legal safeguards to prevent misuse, has significant potential in curbing the spread of criminalisation of politics.”

- The commission went on to specify some of these safeguards. One of them being that only criminal offences which have a maximum punishment of five years or more are to be included in this provision. The commission suggested that charges filed up to one year before the date of scrutiny of nominations would not lead to a disqualification. This safeguard would then minimise politically motivated cases from being filed against an individual before an upcoming election. It also suggested that in the case charges framed against sitting MPs/MLAs the trial should be conducted on a day-to-day basis and completed within a year. The election commission in its 2016 note on proposed electoral reforms agrees with the recommendation of the law commission.
Proposed measures to curb criminalization of politics:

- Bringing greater **transparency in campaign financing** is going to make it less attractive for political parties to involve gangsters.

- The Election Commission of India (ECI) should have the power to audit the financial accounts of political parties, or political parties’ finances should be brought under the **right to information (RTI) law**.

- Broader governance will have to improve for voters to reduce the reliance on criminal politicians.

- The Election Commission must take adequate measures to break the nexus between the criminals and the politicians.

- The forms prescribed by the Election Commission for candidates disclosing their convictions, cases pending in courts and so on in their nomination papers is a step in the right direction if it applied properly.

Conclusion

- The Supreme Court’s long string of judgments against criminalisation of politics had hardly scratched the surface of the deep rot.

- The Election Commission had tried several measures to curb criminalisation of politics, but to no avail.

- Just a move to steer politics away from the denizens of the criminal world would definitely serve national and public interest.