Special Courts For Trying Politicians - II

Click here for Part I

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What is the need?

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- Criminalisation of politics is an issue that worries the country's administration for long.
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- Apart from the political parties, it is also a concern for independent institutions such as the Supreme Court and the Election Commission.
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- The political class manages to escape the serious criminal cases because of a delayed and repeatedly postponed trial.
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- Resultantly, many influential politicians facing criminal proceedings continue to engage in contesting elections or holding public office.
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- Certainly, the criminal tendencies of these politicians get carried on to bureaucracy and the police and more importantly into law making.
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- It consequently affects every aspect of public governance from tenders and contracts, safety of buildings and roads to postings and transfers, education and healthcare.
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What are the challenges and possible solutions?

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- **Shortage of judges** - Bringing in place a number of special courts would create the demand for judges.
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- Shortage of judges can be overcome by reappointment of retired High Court Judges as ad hoc judges, as provided under Article 224A.

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- **Prosecutors** - Appointing prosecutors who are not attached to any political party is another challenge in the working of the special courts.
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- A directorate of prosecution headed by a retired senior judge could be created.
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- This directorate can choose prosecutors who in turn could be inspected by the Chief Justice of the High Court.
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- **Delay** - Another threat is that the main trial could be obstructed by interim orders.
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- Political leaders finding legal counsel and filing multifarious interim applications could delay the process, defeating the whole purpose.
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- This could be addressed and avoided if there is a provision in place for the Chief Justices to supervise and monitor the trial process.
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- **Equality** - There is an argument that creating special courts would breach the law of equality.
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- This is not wholly justifiable because, Art 14 permits classification based on criteria and nexus.
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- Clearly, MPs and MLAs form a distinct class and their early trial is a democratic must.
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- They thus deserve to be given priority treatment similar to their special privileges in many other instances and aspects.
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- **Besides** all these, the concern with ensuring availability of funds, especially from the States has to be addressed by a central scheme.
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Source: The Hindu

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