

ELECTION LAWS¹

OBJECTIVES, COURSE OUTLINE, MODULES AND APPROACH

Scope and content of the Course

Elections are considered to be a process to achieve democracy and as an indispensable element in the establishment and continuation of any democracy. India is having a Constitution that guarantees a democratic republic to its citizens. This is based unmistakably on adult franchise, though the question remains about the nature of right to vote whether fundamental or statutory. This apart, the Constitution of India gives a scheme of democratic bodies/posts as well as an independent constitutional authority bestowed with the function of conduct of free and fair elections, namely the Election Commission. So it can be safely assumed that elections are firmly rooted in the constitutional premise and are an attribute of the promise of democracy. Elections could be viewed as a part of the political process that reaches the culminating point of establishment of democratic governance. The proposed course would offer both these perspectives, needless to say that both are having points of convergence than divergence. The subtle difference is that the Constitutional foundation gives a rights axis and the political perspective gives the philosophical position.

The introduction of the course will be done on the political structure of democracy and will proceed to the postulate of free and fair elections. The next phase of link up with the Constitution will be a natural progression, which could be achieved by analyzing democracy as a right and the relevance of elections therein. Constitution of India provides specified matters for discussion than the guaranteed right to democracy. The next segment will therefore cover specific areas of the Constitution of India in the following string.

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|---|-------------------|---|
| 1 | Democratic Bodies | Parliament State Legislatures Local Self- Governments |
| 2 | Democratic Posts | President Vice- President Governors (though not elected) Speakers/ Chairperson |

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| | | |
|---|--------------------------|--|
| 3 | Constitutional Authority | Election Commission |
| 4 | Special Provisions | SC / ST Anglo Indians Relating to States |
| 5 | Disqualification | Members in elected bodies |
| 6 | Schedules | III- IV- X- Defection |

The next major component within the scope of the subject will be the process of election. The legal framework with regard to the process of election ranges from general enactments like the Indian Penal Code to specific election related laws like Representation of People's Acts not forgetting the innumerable Rules and Orders under the Constitution and specific legislations.

Case laws in this area are major force of development and balance. Amendments by Legislative bodies and the orders and notifications of Election Commission too occupy the same field. Law Commission and National Commission on the Review of Constitution are the other major players. The role of the civil society bodies in the matter of electoral reforms is a major segment of study. A composite approach of analyzing the cases, amendments, notifications, recommendations and civil society groups will be a fair indicator to the development of law in this field.

Objectives

1. To develop a critical thinking about the development of this branch of law. The same will be based within the premise of the right to better democratic order, the focus being the election process
2. To familiarize the students with the existing legal framework of elections to various democratic bodies/ posts
3. To critically analyse the present regime of laws with reference to the postulate of free and fair elections as the fundamental point of democracy
4. To learn the process of development/reforms in the field of election laws by parallel forces
 - a. Legislations/ Amendments
 - b. Judicial contributions

c. Civil society interventions

5. To sketch the probable future developments by studying the report of the National Commission on the Review of the Working of the Constitution and Law Commission of India

Modules

Module I

Content

State and Democracy

- Theories of State
- Theories of Democracy
- Democracy and Power

Readings

Books and Articles

1. Herman Finer, Theory and Practice of Modern Government, (Greenwood: 1970) pp 67-93
2. Thomas Feliner and Lidija R. Basta, Constitutional Democracy in a Multicultural Globalised World, (Springer: 2009), pp 373- 397
3. B.C. Chowdhury, Political Theory Traditional and Modern Theory, (National Publishing House: 1999) pp 66-118
4. David Held, Political Theory and the Modern State, (Worldwide Publication: 1998) pp 11 – 118
5. Austin Ranney, Governing: An Introduction to Political Science, 5th edn., (Prentice Hall: 1990) pp 111- 117, 173- 199

Module II

Content

Democracy- Indian Perspective

- Government and Politics in India
- Issues in Indian Democracy

Readings

Books and Articles

1. Rajni Kothari, Rethinking Democracy (Orient Longman: 2005) pp 1-70, 90 –153
2. Manoranjan Mohanty, Theorizing India's Democracy, in Indian Democracy: Meanings and Practices, Rajendra Vohra, ed. et al., (Sage: 2004) p 99
3. Atul Kohli, The Success of India's Democracy, (Foundation Books : 2005)
4. Sunil Khilnani, India's Democratic Career in Democracy, The Unfinished Journey 508 BC to AD 1993, John Dunn, ed., (OUP: 1992) pp 189-206
5. Niraja Gopal Jayal, Democracy and the State, Welfare, Secularism and Development in Contemporary India (OUP: 2001) pp 9-30
6. Suhas Palshikar, Whose Democracy Are We Talking About, in Indian Democracy: Meanings and Practices, Rajendra Vohra, ed. et al., (Sage: 2004) pp 127
7. Ramesh Thakur, Government and Politics of India, (Palgrave Macmillan: 1995), pp 326- 351
8. Francine R Frankel, Contextual Democracy: Intersections of Society, Culture and Politics in India, in Francine R Frankel, Transforming India: Social and Political Dynamics of Democracy (Oxford: 2000)
9. E. Sridharan, Electoral Coalitions in 2004 General Elections – Theory and Evidence, EPW, Vol. 39 No. 51 5418 (2004)
10. Asghar Ali Engineer, Minorities and Elections – What are the Options?, EPW Vol. 39 No. 13 1378
11. Alistair Macmillan, Delimitation, Democracy, and End of Constitutional Freeze, available at
<<http://www.epw.org.in/showArticles.php?root=2000&leaf=04&filename=1198&filetype=pdf>>
12. Alistair Macmillan, Constitution 91st Amendment Bill: A Constitutional Fraud?, EPW Commentary, April 14-21, 2001

Cases

1. N.P Ponnuswami v. R.O Namakkal AIR 1952 SC 64
2. Jyoti Basu v. Debi Ghosal AIR 1982 SC 983
3. Nalla Thampy v. B.L Shankar AIR 1984 SC 135
4. Anukul Chandra Pradhan v. Union of India AIR 1993 SC 2814
5. Rama Kant Pandey v. Union of India AIR 1993 SC 1766
6. C Narayanaswamy v. C.K Jaffar Sheriff (1994) Supp (3) SCC 170
7. PUCL v. UOI 2003 (3) SCALE 263

Module III

Content

Frame Work of Elections

- Right to Democracy

- Electoral System
- Constitutional framework
 - Election Commission
 - Democratic Bodies
 - Reservation in Legislative Bodies
 - Defection

Readings

Books and Articles

1. E Sridharan, The Origins of Electoral System: Rules, Representation and Power Sharing, in India's Living Constitution: Ideas Practices Controversies, Hasan ed., et al., (Permanent Black: 2002) pp 344 - 369
2. A. G Noorani, Strangers in Rajya Sabha, in Constitutional Questions and Citizens Rights (OUP: 2006) pp 140-145
3. H.M. Seervai, Constitutional Law of India: A Critical Commentary, Vol.3 N.M. Tripathi, 1996, pp 3072- 3080
4. M.P Jain, Indian Constitutional Law, 5th Edn., (Wadhwa: 2005) pp 803 - 826
5. Zoya Hasan, The 'Politics of Presence' and Legislative Reservations for Women, in India's Living Constitution: Ideas Practices Controversies, Hasan ed., et al., (Permanent Black: 2002) pp 405-427
6. Pran Chopra, The Voter as Agent of Change, in Upendra Baxi et al ed., Reconstructing the Republic, (Har. Anand : 1999)
7. David T. Canon, Electoral Systems and the Representation of Minority Interests, Legislative Studies Quarterly, Vol. 24, No. 3 (Aug., 1999), pp. 331-385
8. Jeffrey C. O'Neill, Everything That Can Be Counted Does Not Necessarily Count: The Right To Vote And The Choice of A Voting System, 2006 Mich. St. L. Rev. 327
9. A.K Roy, Role of Election Commission in Ensuring Fair Polls, EPW Commentary, Sept. 11, 1999
10. Katju Manjari, Election Commission and Functioning Democracy, EPW Vol. 41 No 17 p. 1635, 2006
11. Sriram Panchu, Free and Fair Election Commissioners, EPW Vol. 44 No. 17 p. 93 (2009)
12. Manjari Katju, Election Commission and Changing Contours of Politics, EPW Vol. 44 No. 14 p. 8 (2009)
13. Vasanthi Raman, Women's Reservation and Democratisation - An Alternative Perspective, EPW Commentary, December 11-17, 1999
14. B. Venketesh Kumar, Election to Rajysabha Proposed Reforms, EPW Commentary, January 26, 2002
15. B. Venketesh Kumar, Anti-Defection Laws: Welcome Reforms, EPW Commentary, May 10, 2003

Cases

1. Indira Gandhi v. Raj Narain AIR 1975 SC 2299
2. R.C Poudyal v. Union of India AIR 1993 SC 1804
3. T.N Seshan v. Union of India AIR 1995 SC 852
4. M.S Gill v. CEC AIR 1978 SC 851
5. Election Commission of India v. Ashok Kumar AIR 2000 SC 2979
6. Election Commission of India v. Dr. Manmohan Singh (2000) 1 SCC 591
7. Kuldip Nayar v. Union of India, Judgement dated 22/08/06, available at <<http://judis.nic.in/supremecourt/qrydisp.asp?tfnm=27959>>

Module IV

Content

Process of Election

- Election to the Parliament
- The Presidential and the Vice Presidential Elections
- The Voting System

Readings

Legislations

1. The Representation of People Act, 1950
2. The Representation of People Act, 1952
3. The Presidential and Vice- Presidential Elections Act, 1952
4. The President and Vice- President Election Rules, 1974

Books and Articles

1. V.S Ramadevi and S.K. Mediratta, How India Votes: Election Laws Practice and Procedure, 2nd Ed., (LexisNexis : 2006) pp. 119-182, 463- 486, 1135 - 1140
2. Election to the Office of the President of India, Statement by Election Commission of India , http://www.eci.gov.in/miscellaneous_statistics/PresdElec/Backgrounder.pdf
3. Andre Blais, The Debate over Electoral Systems, International Political Science Review, Vol. 12, No. 3 (1991), pp. 239-260
4. Lauri Karvonen, Preferential Voting: Incidence and Effects, International Political Science Review Vol. 25, No. 2 (2004), pp. 203-226
5. The Proportional Voting System, available at <<http://www.mtholyoke.edu/acad/polit/damy/BeginnningReading/PRsystems.htm>>
6. Electoral Systems, available at <<http://www.parl.gc.ca/information/library/PRBpubs/bp334-e.htm>>

Module V

Content

Election Disputes and Issues

- Jurisdiction
- Registration of Political Parties
- Allotment of Symbols
- Criminalisation of Politics
- Right to Information vis-à-vis Election
- Election Expenditure
- Electoral Offences
- Exit Polls and Opinion Polls

Readings

Books and Articles

1. V.S Ramadevi and S.K. Mediratta, How India Votes: Election Laws Practice and Procedure, 2nd Ed., (LexisNexis : 2006) pp. 1005- 1126, 547 – 626, 696 – 704, 905 - 1004
2. E. Sridharan, Reforming Political Finance, available at <<http://www.india-seminar.com/2001/506/506%20e.%20sridharan.htm>>
3. V. Venketasan, For State Funding In Elections, Frontline Vol. 16 :: No. 04 :: Feb. 13 - 26, 1999
4. Order No. ECI/GE98/437MCS/98 dated 16 Jan 1998 of the Election Commission of India, on Scheme for use of Govt. owned electronic media by political parties during elections.
5. B. Venketesh Kumar , Power to Allot Symbols, EPW Commentary, Sept. 16, 2000
6. Samuel Paul, Right to Information on Candidates How Will the Voters Know?, EPW Commentary, April 12, 2003
7. S Aarthi Anand, Celia Joanne Jenkins, Exit Polls: Debating Freedom or Fairness, EPW Commentary, Nov. 20, 2004
8. Michael Marcucci, Speech or Not: Applying Election Law Strict Scrutiny to Campaign Finance Regulations, 42 B.C. L. Rev 173
9. Randall G. Chapman and Kristian S. Palda, Assessing the Influence of Campaign Expenditures on Voting Behavior with a Comprehensive Electoral Market Model, Marketing Science, Vol. 3, No. 3, pp. 207-226 (Optional Reading)
10. Pippa Norris, Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems, International Political Science Review, Vol. 18, No. 3 (1997), pp 297-312
11. Seymour Sudman, Do Exit Polls Influence Voting Behavior?, The Public Opinion Quarterly, Vol. 50, No. 3 (1986), pp. 331-339
12. Richard L. Henshel and William Johnston The Emergence of Bandwagon Effects: A Theory, The Sociological Quarterly, Vol. 28, No. 4 (1987), pp. 493-511
13. Anthony M. Barlow, Restricting Election Day Exit Polling: Freedom of Expression vs. the Right to Vote, 58 U. Cin. L. Rev. 1003

14. Brad Alexander, Good Money and Bad Money: Do Funding Sources Affect Electoral Outcomes?, Political Research Quarterly, Vol. 58, No. 2 (2005), pp. 353-358
15. Exit Polls and the First Amendment Source: 98 Harv. L. Rev. 1927
16. Richard Briffault, Public Funding and Democratic Elections, University of Pennsylvania Law Review, Vol. 148, No. 2 (1999), pp. 563-590
17. Richard Briffault, Reforming Campaign Finance Reform: A Review of Voting with Dollars, 91 Calif. L. Rev. 643
18. William Cross, Regulating Independent Expenditures in Federal Elections, Canadian Public Policy Vol. 20, No. 3 (1994), pp. 253-264
19. E. Sridharan, State Funding of Elections, 440 Seminar p. 27 (2004)
20. Arora Dolly, State Funding of Elections – Some Posers, EPW Vol. 35 No. 37 3283 (2000)

Cases

1. Common Cause- A Registered Society v. UOI (1996) 2 SCC 752
2. Union of India v. Assn. for Democratic Reforms (2002) 5 SCC 294
3. Lakshmi Charan Sen v. A K M Hassam Uzzaman AIR 1985 SC 1233
4. K. Venketachalam v. A Swamickan AIR 1999 SC 1723
5. Gajanan Krishnaji Bapat v. D R Meg AIR 1995 SC 2284
6. Rajendra Prasad v. Sheel Bhadra AIR 1967 SC 1445
7. Bhanu Kumar v. M. Sukhadia AIR 1971 SC 2025
8. R Y Prabhoo v. P.K Kunte AIR 1996 SC 1113
9. B. R. Kapur v. State of Tamil Nadu (2001) 7 SCC 231
10. K.Prabhakaran v. Jayarajan Judgment dated 11/01/2005 in CIVIL APPEAL NO. 6691 OF 2002

Module VI

Content

Development in Election Laws

- Legislative Endeavours
- Judicial Efforts
- Contribution of Civil Society
- Recommendations and Efforts by Election Commission
- Report of the NCRWC
- Law Commission Report on Reform of Electoral Laws

Readings

Books and Articles

1. V.S Ramadevi and S.K. Mediratta, How India Votes: Election Laws Practice and Procedure, 2nd Ed., (LexisNexis : 2006) pp. 1127 - 1140
2. P Bhanu Mehta, Reform Political Parties First, available at <<http://www.india-seminar.com/2001/497/497%20pratap%20bhanu%20mehta.htm>>
3. Trilochan Sastry, Electoral Reform and Citizens Initiatives- Some Breakthrough, EPW Perspectives, March 27, 2004
4. Madhav Godbole, Reform of Political System Growing Concern after election 2004, EPW Perspectives, July 10, 2004
5. Bikash Chandra Dash, Civil Society Initiatives in Electoral Reforms, EPW Commentary, Sept.11, 2004
6. Jagdeep S. Chhokar, Reforming the Electoral System, 521 Seminar, p. 61 (2003)
7. Vinod Bhanu, Right to Recall Legislator – The Chhattisgarh Experience, EPW Vol. 43, No.40 15 (2008)
8. Bhaskar Dutta, The Fragmented Lok Sabha – A Case for Electoral Engineering, Vol. 44 No. 17 p. 93 (2009)
9. Patrick Dunlevy and Helen Margetts, Understanding the Dynamics of Electoral Reform, International Political Science Review Vo. 16, No. 1, 9-29 (1995)