ELECTION LAWS

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.

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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1 Course Teacher: Jasmine Joseph, Assistant Professor (Law)
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


Module II

Content

Democracy- Indian Perspective
- Government and Politics in India
- Issues in Indian Democracy
Readings

Books and Articles

10. Asghar Ali Engineer, Minorities and Elections – What are the Options?, EPW Vol. 39 No. 13 1378

Cases

1. N.P Ponnuswami v. R.O Namakkal AIR 1952 SC 64
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
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

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

Cases
1. Indira Gandhi v. Raj Narain AIR 1975 SC 2299
2. R.C Poudyal v. Union of India AIR 1993 SC 1804
4. M.S Gill v. CEC AIR 1978 SC 851
5. Election Commission of India v. Ashok Kumar AIR 2000 SC 2979

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

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

3. V. Venketasan, For State Funding In Elections, Frontline Vol. 16 :: No. 04 :: Feb. 13 - 26, 1999
5. B. Venketesh Kumar , Power to Allot Symbols, EPW Commentary, Sept. 16, 2000
7. S Aarthi Anand, Celia Joanne Jenkins, Exit Polls: Debating Freedom or Fairness, EPW Commentary, Nov. 20, 2004
15. Exit Polls and the First Amendment Source: 98 Harv. L. Rev. 1927

Cases
5. Gajanan Krishnaji Bapat v. D R Meg AIR 1995 SC 2284

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
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