

CHAWLA'S ELECTIONS : LAW AND PRACTICE (4th ed. 1991). By V.S. Deshpande and Kiran Jain. Bahri Brothers, Delhi. Pp. xl+1016. Price Rs. 360.

THE PREAMBLE to the Constitution of India declares India to be a sovereign, socialist, secular and democratic Republic. The Constitution aims at securing to the citizens of India, among other things, equality of status and political justice. In furtherance of this goal, it provides for universal adult franchise whereunder every man and woman of 18 years of age is entitled to vote. We have accepted the ideal of one person one vote without any qualification or distinction whatsoever.

It is on the basis of this provision of universal adult suffrage that India becomes the largest democracy in the world. Democratic polity requires an independent machinery to conduct and supervise periodic election of people's representatives to the Union Parliament and state legislatures. The Constitution provides for an independent Election Commission to ensure free and fair elections. Parliament enacted the Representation of the Peoples Act 1950 and the Representation of the Peoples Act 1951 to regulate the electoral process. The two Acts were in the nature of skeleton legislation providing for essential matters and left the details to the executive to be provided later by subordinate legislation.

Thus in the course of time and in the light of experience gained in the last forty years a vast body of law has come to be built up around these enactments. Though the Constitution restricts judicial interference in the election process beginning from the issue of election notification and ending with the declaration of results, the validity of any election can be called in question by filing an election petition in an appropriate court of law. Under the amended law, the appropriate court to hear an election petition is the High Court of a state. The said court is competent to hear an election petition questioning the validity of an election not only to the state legislature but also to Parliament. An appeal from the decision of High Courts in these petitions lies to the Supreme Court. The Supreme Court while hearing such appeals has interpreted many provisions of law and the Constitution. Thus a vast body of case law has come to be built up as part of election law.

The book under review<sup>1</sup> is a comprehensive treatise on various aspects of election law. It has been designed to be a handy manual for lawyers and follows a scheme convenient for a practitioner as also an official handling election matters. It is divided into XIV parts spread over a thousand pages. Of these pages, the text of the book proper is in its first four hundred pages divided again into thirty three chapters and the rest of the six hundred pages contain the text of relevant provisions of the Constitution, Acts of Parliament, Presidential and Vice-Presidential Election Act 1952 and the Rules and Orders under the Constitution, laws relating to removal of disqualifications, statutory rules and orders and the model code of conduct. The law relating to elections to *panchayats* and other

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1. V.S. Deshpande and Kiran Jain, *Chawla's Elections : Law and Practice* (4th ed. 1991).

local bodies being subject matter of local laws has been, for obvious reasons, left out of the scope of this book.

The first edition of this book had appeared nearly twenty five years ago in 1967. Since then it has run into four editions. Some chapters of the book are very useful for practising lawyers while others render considerable help to those who conduct elections at the district level. The chapter on words and phrases in the election laws is very well written giving accurate meaning of various expressions used indicating the relevant provision of the law defining the same and where necessary giving citation of the case wherein the same was interpreted by the judiciary. The chapter on election machinery is divided into two parts, viz. Election Commission and machinery at the field level.

The chapters on electoral rolls, political parties and election symbols are written in a very simple and lucid style so that lawyers and laymen both understand them easily. Part III dealing with conduct of election is divided into seven chapters and extends to the entire gamut of electoral process beginning with the publication of election notification to publication of election results and includes the topic of election expenses.

Part IV on disputes regarding elections, states succinctly the law on election petitions and matters incidental and ancillary thereto. By an amendment made in 1966, the election petitions are now filed only in High Courts and not in any lower court. Thus not only are there not many courts of appeal from the judgment and order of the trial court, the petitions are heard and disposed of expeditiously. In this part, one chapter is devoted to study the question relating to the ambit of article 329 of the Constitution on bar to interference by courts in electoral matters to show that the writ jurisdiction of High Courts under article 226 and by that logic of the Supreme Court under article 32 is still available in matters other than calling the election in question which can be done only by filing an election petition under section 80 of the Representation of Peoples Act 1951. The chapters on appeals and costs in this part are very useful.

Part V divided into nine chapters deals with corrupt practices and electoral offences. Part VI in its two chapters traces the evolution of anti-defection law since 1973 and gives an appraisal of the working of the present law on defection as contained in the Tenth Schedule of the Constitution added by the Constitution (Fifty-second Amendment) Act 1985.

The law of elections is a growing body of law. Reforms are urgently called for. Suggestions for reform have come from time to time from various quarters. Functioning of the Election Commission became a subject of public criticism. There was a proposal to amend the Constitution to broadbase the working of the said Commission. The proposal could not be carried through for want of consensus and the same was withdrawn. The recommendations of Dinesh Goswami Committee are awaiting approval and enactment into law. The book does not deal with election reforms or any proposal or recommendation of any committee in this regard. Since it was published in 1991, it does not refer to attempts made to amend the Constitution on Election Commission or amendment of the Representation of the Peoples Act to prevent abuse of religion for electoral gains.

In spite of there being a vast body of law to regulate the election process, in actual practice elections are neither free nor fair. In many cases, they are fought and won on the strength of money and muscle power. The political parties select candidates not on the basis of their past record of public service but on the basis of their caste, financial soundness and ability to win elections. The candidates appeal to the voters on caste lines and other extraneous considerations. Caste and religious factors play an important role in electioneering. Both the political parties and candidates file false returns on election expenses. Multiplicity of political parties and absence of prohibition on independents from contesting the elections make mockery of the electoral process. The much awaited by polarisation has not yet come about.

A common malpractice adopted in almost all elections is impersonation. To curb this practice, a suggestion to issue an identity card with photograph to every voter was under consideration for quite some time. In a country of India's dimension and the number of voters being so large, the expenses involved in accepting this suggestion were stupendous. But the Election Commission has set a deadline for implementing this programme in a phased manner. The government has also accepted the suggestion in principle to be implemented in a phased manner.

In such a social and political scenario the Election Commission relied more on morality rather than law. The Commission of late has used the model code of conduct as a means of cleansing the process in areas where the law was not effective. In cases where it took action on the basis of some provision in the code of conduct which was not supported by authority of law, the matters went to the Supreme Court. The court in some cases advised caution.

The Election Commission in its quest to cleanse the process adopted a new strategy of appealing to the people by launching an awareness campaign for the voters. The book though an exhaustive treatise is strictly a lawyer's book and does not deal with matters connected with electoral reforms. We suggest that in its next edition, note be taken of various views and suggestions in this regard.

The printing and get-up of the book except a few printing mistakes are excellent. The price for such a big volume is indeed very moderate thereby ensuring that it is within the reach of all those who are interested in this subject. The reviewer enjoyed reading and reviewing the book.

*M.L. Upadhyaya\**

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\* Ph.D. (Lond.); formerly Professor of Law, Calcutta University.

## BOOKS RECEIVED REVIEW

H.P. GUPTA, *Comparative Law* (1994). Pp. 124. Central Law Agency 30D/1 Moti Lal Nehru Road, Allahabad-211002. Price Rs. 40.

J.J.R. UPADHAYA, *Administrative Law* (1994). Central Law Agency, Allahabad. Pp. xlviii+510. Price Rs. 110.

M.R. MALLICK, *B.B. Mitra on The Limitation Act 1963* (19th ed. 1994). Eastern Law House Pvt. Ltd., 54 Ganesh Chunder Avenue, Calcutta-700 013. Pp. 136+1287. Price Rs. 525.

M.R. MALLICK, *Bail : Law and Practice* (2nd ed. 1994). Eastern Law House Pvt. Ltd., Calcutta. Pp. 37+547. Price Rs. 350.

R.K. SINHA, *The Transfer of Property Act* (1994). Central Law Agency, Allahabad. Pp. xx+430. Price Rs. 80.

SHOORVAR TYAGI, *The Code of Criminal Procedure, 1973* (3rd ed. 1994). Central Law Agency, Allahabad. Pp. xxxix+507. Price Rs. 120.