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# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: BALLB/BBALLB**

**SEMESTER SUBJECT:**

**ELECTION LAWS**

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**NAME OF FACULTY: PANKHURI SRIVASTAVA**

# Lecture-17



## LECTURE 17: ELECTION SYMBOLS

An electoral or election symbol is a standardized symbol allocated to a political party. They are used by the parties during their campaigning and are shown on Electronic Voting Machines (EVMs), where the voter chooses the symbol and votes for the associated party. They were introduced to facilitate voting by illiterate people, who can't read the name of the party while casting their votes.

In the 1960s, the Government of India proposed that the regulation, reservation and allotment of electoral symbols should be done through a law of Parliament, i.e., Symbols Order. In a response to this proposal, the Election Commission of India (ECI) stated that the recognition of political parties is supervised by the provisions of Election Symbols (Reservation and Allotment) Order, 1968 and so will the allotment of symbols. In 1968, the Election Commission promulgated this order.

- **Provisions under the Election Symbols (Reservation and Allotment) Order, 1968**

In 1968, the Election Commission (EC) promulgated this order, which provided for specification, reservation, choice and allotment of symbols at elections in Parliamentary and State Assemblies' constituencies. It also had provisions regarding the registration and recognition of political parties as state and national parties. Paragraph 3 of the order mentions the registration of political parties while Para 6 deals with the recognition of political parties.

The Election Symbols Order also provided for resolution of disputes in cases involving splits in recognized parties or merger of two or more political parties. Symbols are reserved for political parties and Paragraph 5 of the order distinguishes between a reserved and a free symbol. A reserved symbol is one that is allocated to a political party while a free symbol is available to be allocated to non-recognized parties and independent candidates.

Also, political parties are divided into regional or state and national parties, or registered and unregistered parties. Paragraph 6 of this order states the conditions which a party has to fulfil to become a national or a state party. And after two consecutive general elections, the poll performance of the already recognized political parties and newly associated parties would be evaluated and if they fail to perform well, they could be deregistered or derecognized and newly associated parties could find their place as recognized or registered parties. This order helped the Commission to achieve one of its primary objectives to prevent the wanton growth of political parties.

The constitutional validity of the symbols order was challenged in the Apex Court in the

case Kanhaiyalal Omar v. R K Trivedi (AIR 1986 SC 111), under Article 32 of the Constitution. The main objection was that Article 324 of the Constitution could not be interpreted to have vested legislative powers to the ECI to issue such an order. However, this argument was repudiated by the Apex court on two grounds.

The objection raised was that the Commission issued this order ensuing the rules framed by the central government under Section 169 of the Representation of People's Act, 1951 for carrying out its objects, but it went against Rule 5 of the Conduct of Election Rules, 1961. This rule obliges the Commission to specify the symbols used by the political parties in Parliamentary and State Elections. Rule 10(4) of the Conduct of Election Rules, 1961 empowers the ECI to issue general or specific directions to the returning officers at the booth in respect of allotment of symbols, but this direction had to be in consonance with the allotment. In addition to this, Rule 10(5), authorizes the Commission to revise the allotment of the symbols by the returning officers if they are inconsistent with the directions issued by the EC. In the light of these rules, it is apparent that the ECI has been bestowed with powers to win the order in the case of allotment of symbols.

The other ground emerged from the conjoined consideration of Article 324 and Article 327 of the Constitution. According to Article 327, the power to make laws in respect of elections to legislatures has been vested in the hands of Parliament, but it's subject to provisions of the Constitution. So, this arresting clause meant that the laws made by the Parliament under Article 327 could be subject to other provisions of the Constitution, including Article 324, which provides the Election Commission with the power of control, superintendence and direction of elections. So, the EC should be empowered to issue such orders in light of the wide powers vested to it under the Indian Constitution.

The Preamble of the Election Symbols Order mentions that the EC makes the following order in consonance with Article 324 of the Constitution, read with Section 29A of the Representation of People's Act, 1951 and Rules 5 and 10 of the Conduct of Election Rules, 1961. Article 324 describes the power of control, superintendence and direction of elections to be vested in an Election Commission. The Election Commission directs the preparation for and conduct of Parliamentary and State Elections, and also the elections for the Post of President and Vice President. It then talks about the composition of the Commission. Section 29A of the Act stated that political parties intending to enjoy benefits under the Act, need to get themselves registered with the Commission under the prescribed period. Rule 5 states that the Election Commission specifies the symbols that may be chosen by the candidate in State Assembly and Parliamentary elections and also specify the restrictions to which their choices shall be subject to. Rule 10 states the task of preparation of a list of contesting candidates is also to be performed under the direction of the Commission.

Election Symbols (Reservation and Allotment) (Amendment) Order, 2017 contained the list of the national and state parties with their respective symbols, list of registered unrecognized parties, list of free symbols, images of reserved symbols of national and state parties and also the list of registered unrecognized parties under Para 10/10A of the Order and the symbols allocated to them when they were recognized