ABSTRACT

Free and fair elections constitute the basic foundation of a democracy. The Constitution of India ensures a free and fair election. For this purpose Part XV of the Constitution visualizes an Election Commission, adult suffrage, electoral rolls and provisions relating to the holding of elections. Parliament enacted the Representation of the People Act 1950 and the Representation of the People Act 1951 to regulate the electoral process. 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 an election can be called in question by filing an election petition in an appropriate court of law. Under the amended law, the appropriate court is the High Court of a state. An appeal from the decision of High Court in these petitions lies to the Supreme Court.

In spite of there being a vast body of law to regulate the election process, in actual practice elections are neither free nor fair. They are vitiated by corrupt and illegal practices. Section 123 of the Representation of the People Act 1951 envisages that candidates do not secure the valuable votes of the people by bribery, undue influence,
sectarian campaigning, or, other corrupt practices as defined in the Act. A charge of corrupt practice against a candidate, if established, entails serious penal consequences. It debars him from an election for a considerably long period.

The present work is an attempt to find out whether courts have been successful in completely eradicating, or, even in minimising the menace of corrupt practices from the electoral scene of the country. The study is mainly based on Supreme Court, High Court, and Election Tribunal cases.

The first category of corrupt practice is bribery. Courts have opted for more positive evidence to prove bribery. They want motive ascertained which is often very difficult to prove. In any case courts have put a narrow construction on the statutory provision of Section 123(1). They have often been subjective in their conclusions and have even differed when facts were the same. Again, law wants the voter to vote without fear either of physical injury, social deprivation or divine displeasure. Of course abuse of influence is the law's target only. However, judicial interpretation has been restrictive and has called for evidence difficult to obtain. That was Section 123(2). Clauses(3) of Section 123 rules against
divisive factors in electioneering and prohibits arousing sectarian or religiously centred irrational passions. The apex court laid down three principles in *Kultar Singh* to judge if Section 123(3) had been violated. However these directions have only been selectively implemented, keeping the doors of sectarian campaigning open. Clause (3A) was added to prohibit animosities for political gain. But once again judicial interpretation was not found enthused enough by the spirit of the Constitution. Glorification of *Sati* as a corrupt practice was added in 1988. No election has yet been impugned on this account. Law even took notice of the finer details of a political campaign because it was considered a part of the freedom of speech, though character assassination was hardly its object. Courts do recognise an individual to have a public character and private life, and piercing of the latter is looked upon with disfavour. Law also discourages use of vehicles to transfer voters to and from election booths, but what is to be done if the misuse is very rampant. Even election expenditure is required to be within limits, and yet money and muscle power rule the roost. Government employees are also prohibited from affecting a candidate's prospects, and booth capture is thought scandalous.
The study has led to conclude that the courts have given a narrow construction to Section 123 of the Act. This may be because of the fact that courts have always opined that in our country election is a costly venture and hence an election result should not be treated lightly.

Identifying a few practices as corrupt becomes a meaningless exercise, if circumvention and corruption infect the body-politic as a heinous disease. Law and courts are the greater sufferers because as institutions they are given short shrift. The Constitution of India has yet to become a way of life, its bulk and lip-service to it notwithstanding. What has eroded is a sense of values. Money and muscle power have no accountability. The Election Commission has very rightly observed, "Unless public conscience is stirred to its depth against these evil practices and the standard of public and electoral morality is raised, no police arrangement and no legal provision however adequate can root out these practices from our elections ..."

Note: The case law considered upto early 1994