INTRODUCTION

Free and fair elections are the fountain-spring of a healthy democratic set up. Hence electoral administration must be free from pressure and interference of the executive and legislature. The declaration of result is sometimes questioned by the defeated candidates on one pretext or the other. Generally allegations of corrupt practice in elections happen to be afterthoughts mischievously conceived after the elections when one finds that the results declared are not to one's satisfaction.

In the course of a judgment justice Krishna Iyer observed:

The end of the poll process is often the beginning of the forensic process at the instance of the defeated candidates with its protracted trial and appeals upon appeals, thus making election doubly expensive and terribly traumatic.

To inspire public confidence in the verdict of ballot box, the founding fathers of the Indian Constitution provided for a fair and speedy adjudication of election petitions. Part VI of the R.P. Act, 1951 provides for settlement of election disputes.
PRESENTATION OF ELECTION PETITIONS

Section 80 lays down that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part. This provision has its genesis in the Constitution of India. Article 329(b) is the provision which runs: No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature.

It should be observed that there is some difference between constitutional provisions and the provisions in Section 80 of the R.P. Act, 1951. The Constitution authorities an appropriate legislature to make any law prescribing the authority and the manner for the presentation of an election petition. Evidently, Parliament has got the right to prescribe the authority and the manner for Parliamentary election and a State Legislature has got similar powers for elections unto itself. This is made especially clear by the provisions of Articles 327 and 328 which are as follows:
Article 327: **Power of Parliament to make provision with respect to elections to legislatures**: Subject to the provisions of this constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

Article 328: **Power of Legislature of a State to make provision with respect to election to such legislature**: Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to or in connection with, the elections to the House or either House of Legislature of the state including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses. But the powers of the State Legislature in this respect are postponed to those of the Parliament also by Article 328 ... in so far as provision in that behalf is not made by Parliament. As Section 80 of the R.P. Act has made a provision which
applies to the elections to the State Legislatures also, the latter's powers in this respect are not exercisable.³

Pursuant to the provision under Article 329, the R.P. Act, 1951, has made provisions relating to election petitions.

HIGH COURT TO TRY ELECTION PETITIONS

An election may be called in question by presenting an election petition to the High Court within the local limits of whose jurisdiction the election to which the petition relates has been held.⁴ An election petition calling in question an election may be presented by any candidate at such election, or any elector⁵ who was entitled to vote at such election. The petition must be presented within forty-five days from, but not earlier than, the date of election of the returned candidate. Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.⁶

If the requirements are not followed, it would result in the dismissal of the election petition without any trial as provided by Section 86.
Interpreting Section 81(1) of the Act, it has been held by the Madhya Pradesh High Court in Ramanlal Premy V Shiv Pratap Singh\(^5-b\) that the presentation of the election petition ought to be made by the candidate himself though the words "himself" or "personally" have not been incorporated in the section. The words "candidate at such election" particularises the person; where the petition was presented by the candidate's counsel and the candidate waited outside or was somewhere away, the presentation of the petition could not be construed as having been made in his immediate presence. As this was tantamount to non-compliance of the provisions in Section 81((1), the petition deserved to be dismissed. The Court opined in this connection that the provisions of the Civil Procedure Code could be invoked only in the absence of procedural provisions in the Act or the rules framed under its authority. As the manner of presentation of an election petition has been provided for in the Act itself its scope cannot be extended or enlarged by importing into its provisions something from the Civil Procedure Code or from the general law.

In Chandrakant Shukla V Maharaja Martand Singh\(^5-c\) the question of an election petition being barred by limitation was discussed. As already noted Section 81(1)
of the Act provides that a petition calling in question any election may be presented to the High Court within forty-five days from the date of election of the returned candidate. Section 67-A lays down that the date on which a candidate is declared by the returning officer to be elected to a House of Parliament or the Legislature of a State shall be the date of election of that candidate.

In the instant case, the election to the parliamentary constituency from Madhya Pradesh was held on March 1, 1971. The counting was over on March 10 and the same day the election results were announced. The respondent was declared elected. The results were published in the official gazette on March 15, 1971. The election petition was filed on April 29, 1971. Reading Section 81(1) and Section 67-A together, it is clear that the election petition should have been filed within forty-five days from March 10, 1971.

It was contended that there was sufficient cause to condone the delay in filing the petition. The averment made by the petition was that the advocate he had consulted had advised him that he could file the petition within forty-five days from the date of publication of the results in the gazette. The advocate was not examined as a witness. The High Court therefore had come to the
conclusion that the petitioner's story of his consulting the advocate was an afterthought and refused to condone the delay. Referring to the finding of the High Court that there was no sufficient cause for condonation, the Supreme Court through Hegde, J., observed:

This is essentially a finding of fact and this Court ordinarily does not interfere with the decision of the High Court on question of fact. Further, the relief asked for is essentially a discretionary relief and when a trial court exercises its discretion an appellate court is reluctant to interfere with that discretion unless there are very good grounds for doing so.

The scope of sub-clause (3) of Section 81 has also been a subject of judicial scrutiny in a large number of cases. One such pronouncement of the apex Court is Satya Narain v. Dhuna Ram. In the instant case the Punjab and Haryana High Court had dismissed Satya Narain's election petition on the preliminary ground that the appellant had failed to comply with the mandatory requirement of Section 81(3) of the Act inasmuch as the requisite number of spare copies of the petition for the respondents were not filled along with the petition in the High Court. It was further held by the High Court that the said defect could not be cured subsequently even within the period of limitation prescribed for filing the election. The High
Court further held that the spare copies were actually filed beyond the period of limitation.

As the requisite number of copies were actually filed soon after the period of limitation, it was contended on behalf of the appellant that there would be substantial compliance if the prescribed number of copies instead of being enclosed with the petition were filed before the petition was laid before the judge for orders or even within the time the judge might grant for the purpose.

The Supreme Court (Goswami, j., on behalf of himself and Jaganmohan Reddy, j.) opined that the Representation of the People Act, being a self-contained special law, the court had to seek answers to questions raised within the four corners of the Act and the powers of the Court were circumscribed by its provisions. An election petition could not be equated with a plaint in a civil suit. The purpose of enclosing the copies of the election petition for all the respondents, the Court observed, was to "enable quick despatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election
petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. The Supreme Court, therefore, held that the provision relating to the number of copies which should accompany the petition was a peremptory provision and that total non-compliance with the same would entail dismissal of the election petition under Section 86 of the Act. The Court also held that in the absence of any provision under the Act or the rules made thereunder, the High Court Rules could not confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defects in an election petition presented in the High Court beyond the period of limitation provided for under the Act.

The observation of Dwivedi, J., in the instant case who delivered a separate judgment requires serious thinking. The learned judge agreed that the requisite copies of the election petition were not filed within the period of limitation. He was constrained also to agree that for this procedural fault the election petition was liable to be dismissed in view of the decision of the Court in Jagat Kishore Prasad Narain Singh V Rajindra Kumar Poddar. "It makes me sad to read this requiem for this election petition", justice Dwivedi felt. In this
connection he referred to the opinion of Lord Buckmaster: "All rules of courts are nothing but provisions intended to secure proper administration of justice. It is therefore essential that they should be made to serve and be subordinate to that purpose". The opinion of Justice Ameer Ali that "Rules of procedure are not made for the purpose of hindering justice", was also referred to. Justice Dwivedi, hence, commented: "Our decision restores the primacy of procedure over justice. It makes Section 86(1) a tyrannical master. The rigidity of the rule of precedent ties me to its chains". He, however, added that his only hope was that Parliament would make a just choice between the social interest in the supply of copies by the election petitioner along with his election petition and the social interest in the purity of election by excluding Section 81(3) from the purview of Section 86 (1) of the Act.

It is clear that in construing the provision the Court has kept in the forefront the expeditious trial of the election dispute for the purity of election. And the very object of expeditious trial will be defeated if the presentation of the election petition should be treated casually permitting all kinds of devices to delay the ultimate trial. The purpose of the provision under
Section 81(3) is to enable quick despatch of the notice for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. The legislature shows no mercy in case there is non-compliance of Section 81(3). It has rightly been concluded that "Section 81(3) read with Section 81(1) is draconian in their severity".\(^{5-1}\)

PARTIES TO A PETITION\(^{6}\)

A petitioner must join as respondents to his petition:

(a) Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no further declaration is claimed, the returned candidate; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

The applicability of Section 82(b) was discussed by the Supreme Court in *Udhar Singh V M.R. Scindia*.\(^{6-a}\) The Court held that Section 82(b) in clear, peremptory terms,
obligates an election petitioner to join as respondent to his petition, a candidate against whom allegations of any corrupt practice are made in the petition. Disobedience of this mandate, in the opinion of the Supreme Court, inexorably attracts Section 86 which commands the High Court, in equally imperative language, to "dismiss an election petition which does not comply with the provisions of Section 82". It was further observed that the respondent cannot by consent, express or tacit, waive these provisions or condone a non-compliance with the imperative of Section 82(b). "Even inaction, laches or delay on the part of the respondent in pointing out the lethal defect of non-joinder cannot relieve the Court of the statutory obligation cast on it by Section 86. As soon as the non-compliance with Section 82(b) comes or is brought to the notice of the Court, no matter in what manner and at what stage, during the pendency of the petition, it is bound to dismiss the petition in unstinted obedience to the command of Section 86". 6-b

In the light of the above enunciation, the Court observed, the respondent was not precluded from raising the objection as to non-joinder, merely because he had done so after the close of the petitioner's evidence, and not at the earliest opportunity. He could do it by his written statement, he could also follow some other mode.
Referring to Rule 2 & Order 8 of the Code of Civil Procedure, it was observed that if the plea or ground of defence raised issues of fact not arising out of the plaint, such plea or ground was likely to take the plaintiff by surprise and was, therefore, required to be pleaded. The Court further observed:

If the plea or ground of defence raises an issue arising out of what is alleged or admitted in the plaint, or is otherwise apparent from the plaint itself no question of prejudice or surprise to the plaintiff arises. Nothing in the Rule compels the defendant to plead such a ground, nor debars him from setting it up at a later stage of the case particularly when it does not depend on evidence but raises a pure question of law turning on a construction of the plaint. Thus, a plea of limitation that can be substantiated without any evidence and is apparent on the face of the plaint itself, may be allowed to be taken at any stage of the suit. 6-c

Sarkaria, j., speaking for the Court on behalf of himself and Bhagwati, j., also explained the rationale of this provisions:

Behind this provision is a fundamental principle of natural justice, viz., that nobody should be condemned unheard. A charge of corrupt practice against a candidate, if established entails serious penal consequences. It has the effect of debarring him from being a candidate at an election for a considerably long period. 6-d
The Supreme Court dismissed the appeal by upholding the judgment of the Madhya Pradesh High Court on the ground of petitioner's failure to implead one of the candidates against whom allegations of corrupt practice were made in the petition.

**CONTENTS OF PETITION**

An election petition:

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

Where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Any schedule or annexture to the petition shall also be signed by the petitioner and verified in the same manner as the petition.
The petitioner shall deposit in the High Court, a sum of Rs.2000 as a security for costs of the petition. During the course of the trial on an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.  

Hidayatullah, C.J., laid down in _Samant N. Balakrishna V George Fernandez_ a few propositions relating to the contents of election petitions. According to him, Section 83 is mandatory and requires the election petition to contain first a concise statement of material facts and then requires the fullest possible particulars. The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated; (II) Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad; (III) the function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet; (IV) material facts and particulars are distinct matters, material facts giving statements of facts, and particulars setting out the names of persons with date, time and place; (V) material facts will show the ground of corrupt practice
and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action; (VI) in stating the material facts it is not enough merely to quote the words of the section because then the efficacy of the words 'material facts' will be lost; (VII) the fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice; (VIII) an election petition without the material facts relating to a corrupt practice is no election petition at all; (IX) a petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. 8-b

RELIEF THAT MAY BE CLAIMED 9

A petitioner may claim a declaration that the election of the returned candidate is void and may, in addition, claim a further declaration that he himself or any other candidate has been duly elected.
An election petition may be presented on one or more of the following grounds:

(a) That on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution or the law;
(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;
(c) that any nomination has been improperly rejected;
(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(I) by improper acceptance of any nomination, or

(II) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(III) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(IV) by an non-compliance with the provisions of the Constitution or of the R.P. Act, 1951, or of any rules or orders made under that Act;
If in the opinion of the High Court a returned candidate has been guilty by an agent, other than his election agent of any corrupt practice, the High Court may not decide the election of the returned candidate to be void if it is satisfied —

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents.

**GROUNDS FOR WHICH A CANDIDATE OTHER THAN THE RETURNED CANDIDATE MAY BE DECLARED TO HAVE BEEN ELECTED**

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion —
(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

Thus, if any of the grounds under Section 100 is proved, the High Court will declare the election of the returned candidate void. If any of the grounds under Section 101 is proved, the High Court will after declaring the election of the returned candidate void, also declare the petitioner or such other candidate to have been duly elected.

BAR TO INTERFERENCE BY COURTS

Article 329 of the Constitution prescribes bar to interference by courts in electoral matters. Part (a) of the Article lays down that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies shall not be called in question in any Court. Section 3012 of the R.P.
Act, 1950 and Section 170 of the R.F. Act, 1951, also debar the jurisdiction of civil court to adjudicate any question of a person relating to his registration as an elector or the legality of any action taken by the Electoral Registration Officer.

Article 329(b) of the Constitution bars judicial intervention with the electoral process. The Supreme Court in the case of Ponnuswami on the scope of Article 329(b) has declared that the courts are barred from dealing with any matter that may arise while the elections were in progress. The courts would not interfere with the process of election, i.e., from the time the notification is issued till the election petition is disposed of. Any irregularity committed during the course of election could be challenged through an election petition after the election was over. The Supreme Court in A.K.M. Hassan Uzzaman V Union of India emphasized that no High Court in the exercise of its powers under Article 226 should pass any order, interim or otherwise, which has the tendency or effect of postponing an election which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The more imminent an election, the greater ought to be the reluctance of the High Court to take any step which will postpone the electoral process.
A High Court cannot entertain a writ petition on behalf of a candidate whose nomination paper has been rejected by the Returning Officer as this is a part of the election process and is covered by Article 329(b). The proper remedy for him is to file an election petition after the completion of the election. But preparation of electoral rolls is anterior to, and not a part of, the election process, and the same may be challenged through a writ petition if provisions of the Constitution or the relevant Act, are not complied with. On the other hand, once the final electoral rolls are published and elections are held on the basis of such electoral rolls, it is not open to anyone to challenge the election from any constituency or constituencies on the ground that the electoral rolls were defective. That is not a ground available for challenging an election under Section 100 of the R.P. Act, 1951. The finality of the electoral rolls cannot be assailed in a proceeding challenging the validity of an election held on the basis of such electoral rolls.

TRIAL OF ELECTION PETITIONS

Chapter III (Sections 86 to 106) lays down the procedure for the trial of election petitions by the High Courts. Sub-section (1) of Section 86 says that the High
Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. The order of dismissal shall be final as it is dismissal under Section 98 after the conclusion of the trial. Sub-section (2) provides that the Chief Justice shall, as soon as may be after an election petition has been presented to the High Court, refer the election petition for hearing to the judge whom he has assigned for the trial of election petition. Subs-section (3) lays down that where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same judge who may, in his discretion, try them separately or in one or more groups. Sub-section (4) provides for a candidate who has not been made a respondent to apply for being joined as such. He has to give an application to the High Court within fourteen days from the date of commencement of the trial. Explanation to the Sub-section lays down the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim made in the petition. Sub-section (5) provides for amendment of the election petition by the petitioner. This right is available only when charges of corrupt practice are there. The High Court will allow the petition to be amended or amplified in such manner as may
in its opinion be necessary for ensuring a fair and effective trial of the petition. However, no amendment of the petition will be allowed which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. For allowing this amendment the High Court may subject the petitioner to pay costs.

On the scope of Sub-section (5), the Supreme Court in *Harish Chandra Bajpai v Triloki Singh* has held that the Election Tribunal has power to allow an amendment in respect of particulars of illegal and corrupt practice, or to permit new instances to be included, provided the grounds or charges are specifically stated in the petition, but its power to permit amendment of a petition under Order VI, Rule 17 of the Code of Civil Procedure will not be exercised so as to allow new grounds or charges to be raised or the character of the petition to be so altered as to make it in substance a new petition, if a fresh petition on those allegations would on the date of the proposed amendment be barred.

Hidayatullah, C.J., followed the above judgment of the Supreme Court in *S.N. Balakrishna v George Fernandez* and observed that if the material facts of the corrupt practice are stated, more or better
particulars of the charge may be given later, but where
the material facts themselves are missing it is impossible
to think that the charge has been made or can be later
amplified. The power of amendment is given in respect of
particulars but there is a prohibition against an
amendment "which will have the effect of introducing
particulars of a corrupt practice not previously alleged
in the petition". 20-c

The learned Chief Justice further clarified that
there is, however, a difference of approach between the
several corrupt practices: If for example the charge is
bribery of voters and the particulars give a few
instances, other instances can be added; if the charge is
use of vehicles for free carriage of voters, the
particulars of the cars employed may be amplified. But if
the charge is that an agent did something, it cannot be
amplified by giving particulars of acts on the part of the
candidate or vice versa. In the scheme of election law
they are separate corrupt practices which cannot be said
to grow out of the material facts related to another
person. Publication of false statements by an agent is one
cause of action, publication of false statements by the
candidate is quite a different cause of action. Such a
cause of action must be alleged in the material facts
before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different causes of action. Since a single corrupt practice committed by the candidate, by his election agent or by another person with the consent of the candidate or his election agent is fatal to the election, the case must be specifically pleaded and strictly proved. If it has not been pleaded as part of the material facts, particulars of such corrupt practice cannot be supplied later on. The bar of the latter part of the fifth Sub-section to Section 86 then operates.  

**Goka Ramalingam V Boddu Abraham** is an interesting case. The question of amending a plea of conversion of the answering respondent to one of conversion of his parents to Christianity was raised before the Supreme Court in which the election of the respondent who had stood for a Scheduled Caste reserved seat was challenged on the ground that he was a convert to Christianity. Under the Constitution (Scheduled Castes) Order, 1950, it is provided that no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste. In the trial Court evidence was adduced to prove that the respondent was a convert to Christianity. But it appeared
from the evidence produced that his parents were converted to Christianity. If he was born of Christian parents he did not need conversion.

The Supreme Court did not allow the application for amendment. Hidayatullah, C.J., who delivered the judgment of the Court, observed:

... because it changes the nature of the case requiring fresh evidence to be taken and is filed also beyond the period of limitation prescribed for filing election petitions. That it does not change the entire nature of the case is obvious, because instead of the plea that the answering respondent was converted to Christianity, it is now sought to be substituted a plea that the parents were converted to Christianity. We should have understood such an application being made in the Court of trial when the Register was produced, because that might have been a matter not within the knowledge of the election petitioner till the register was produced. But after the Register had been produced and it lay in the Court for nearly an year and had been inspected by the answering respondent, it does not lie in his mouth to say that he had no notice of the true facts...

The learned Chief Justice dismissed the appeal and concluded:

We may say that it is an odd situation, because probably a Christian occupies a Reserved Seat, but this is the result of the vagaries of litigation which has to be carried on according to rules. The rules do not permit us to give relief where the party himself is at fault in making a wrong plea and in not making the right plea in time.
Sub-section (6) provides that the trial of the petition be continued from day to day until its conclusion. The trial should not be discontinued unless the High Court finds it necessary, in which situation it is required to record its reasons. Sub-section (7) is a direction to the court to try the petition expeditiously and make endeavour to finish it within six months from the date on which the election petition is presented. This Sub-section embodies the long cherished desire of parliament to provide for an expeditious hearing and election petitions without undue delay. So far such petitions have taken years for disposal sometimes the whole period of the life of the House and thus made the trial of the petition of no use at all. The elected candidate has had a tenure of the entire period available under the law before his election could be set aside by the tribunal. It is to guard against this that the amendment of the Act were made in 1966.21

It has been pointed out that Sub-section (1) and (2) of Section 86 discussed above present some difficulty.22 The learned author points out that at the time of the amendment of 1966 they did not receive proper attention. Under the old law, election petitions were to be made to the Election Commission. The Commission would scrutinise the petitions and had the power to dismiss
those petitions which did not comply with provisions of Sections 81, or 82 or 117. It is only those petitions which were found valid after this preliminary scrutiny which could be referred to the tribunal to be appointed by the Commission. Now that the election petition is not to be made to the Election Commission at all but to be made direct to the High Court there is no possibility of a preliminary scrutiny before reference to the election court. Before referring them to the Election Judge in the High Court this cannot be done by the Registrar, neither can the Chief Justice hold this scrutiny before referring it to the Election Bench. Therefore, retention of Sub-sections (1) and (2) in the same order as they were in the original enactment causes some misunderstanding. Sub-section (2) should have come before Sub-section (1) and accordingly they should exchange their numbers. Then Sub-section (3) has a right of precedence over Sub-section (1). As it provides for the referring of all the petitions in connection with a particular election to the same judge, it properly comes after sub-section (2). It is only when the petitions have been referred to the election court that question of scrutiny may come up. So, Sub-section (1) should really become Sub-section (3).
PROCEDURE BEFORE THE HIGH COURT

Every election petition is tried by the High Court in accordance with the procedure laid down under the Code of Civil Procedure, 1908. However, this is subject to the provisions of the Representation of the People Act and the Rules made there under. The provisions of the Indian Evidence Act, 1872, is subject to the provisions of the R.P. Act, 1951. The High Court has been given power to refuse to examine any witness or witnesses if it is of the opinion that such evidence is not material for the decision of the petition or that it has been done on frivolous grounds or with a view to delay the proceedings. In connection with evidence Section 93 provides that no document shall be in admissible in evidence on the ground that it is not duly stamped or registered. And Section 94 provides for maintaining the secrecy of voting, i.e., no witness or other person shall be required to state for whom he voted at an election. Reasonable expenses incurred by a witness may be allowed by the High Court. A witness shall not be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may
tend to expose him to any penalty or forfeiture. However, a witness who answers truly all question shall be entitled to receive a certificate of indemnity from the High Court. Such an answer given by a witness shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in either civil or criminal proceeding. After a certificate has been granted, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IX A of the Indian Penal Code or Part VII of the R.P. Act (i.e. Corrupt practices and Electoral Offences) arising out of the matter to which such certificate relates. However, it shall not be deemed to relieve him from any disqualification in connection with an election imposed by the R.P. Act, 1951 or any other law.

In other words, the indemnity applies to any proceeding against the witness for any corrupt or illegal practices at or in relation to the election or for any illegal payment, employment or hiring so committed, or for the partner or clerk of an official, an agent in the conduct of or management of the election or for printing, publishing, posting or distributing election publications without the printer's and publisher's name and address
thereon or of making or entering into any agreement or undertaking for the corrupt withdrawal of an election petition. The trying court may stay the proceedings on production of the certificate and pay costs to such persons. 28

RECRIMINATION WHEN SEAT CLAIMED

The literal meaning of the term 'recrimination' is counterattack or mutual accusation. Section 97 of the Act provides for recrimination when the election petition not only seeks to avoid the election of the returned candidate but also to have an unsuccessful candidate returned in his place. Section 97 lays down: (1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election. The proviso to the Section adds that the returned candidate or such other party shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the High Court of his intention to do so and has also given the security and the further security referred to in Section
117 and 118 respectively. Sub-section (2) of the Section mentions that a notice of recrimination shall be accompanied by the statement and particulars required by Section 83 in the case of election petition which shall be signed and verified in like manner.

An election petitioner may ask for the relief under Section 100 that the election of the returned candidate be declared void. In addition to this, he may also ask for the additional relief under Section 101 that he or any other candidate (other than the returned candidate) should be declared as duly elected. It is only if such a composite claim is made that Section 97 is applied. Under Section (1) the returned candidate can, if he so desires, recriminate against the person in whose favour a declaration is sought under Section 101.

On the scope of Section 97, the Supreme Court (Gajendragadkar, Sarkar, Wanchoo, Das Gupta and Rajogopala Ayyangarm J J.) in Jabar Singh V Genda Lal observed that there are cases in which the election petition makes a double claim; it claims that the election of a returned candidate is void and also asks for a declaration that the petitioner himself or some other person has been duly elected. "It is in regard to such a composite case that Section 100 as well as Section 100(1)
would apply, and it is in respect of the additional claim for a declaration that some other candidate has been duly elected that Section 97 comes into play. Section 97(1) thus allows the returned candidate to recriminate and raise pleas in support of his case. The result of Section 97 (1) therefore is that in dealing with a composite election petition the Tribunal enquires into not only the case made out by the petitioner, but also the counter-claim made by the returned candidate. In this connection the returned candidate is required to comply with the provisions of Section 97 (1) and Section 97 (2) of the Act. On the failure to file a recrimination petition, the Court held, "If the returned candidate does not recriminate as required by Section 97, then he cannot make any attack against the alternative claim made by the petitioner. In other words the returned candidate will not be allowed to lead any evidence because he is precluded from raising any pleas against the validity of the claim of the alternative candidate."

In *Anirudh Prasad V Rajeshwari Saroj Das* the Supreme Court held that the recriminatory plea is:

"[I]n truth and substance, not so much a plea in defence of one's own election, though that be its ultimate purpose and effect, as a plea of attack by which the successful candidate assumes the role of
a counter-petitioner and contends that the election of the candidate in whose favour the declaration is claimed would have been void if he had been the returned candidate and a petition had been presented calling his election in question. 33

Thus a recriminatory plea is a plea of attack by which the successful candidate assumes the role of a counter-petitioner. In such an event, the contest in the election petition is not only between the petitioner and the returned candidate but also between the returned candidate and any other party to the petition and the candidate who has been sponsored by the petitioner for such an election. The underlying idea behind the provision is to maintain the purity of election in which the constituency as a whole is vitally interested. The law treats this counter claim as a second election petition and subjects the counter claimant to payment of security and further security under Section 117 and Section 118 respectively. Since it is a new case, i.e., a new election petition against a successful candidate all the formalities of an election petition have to be complied with in filing it. 34 The provisions of Section 97 are clearly mandatory and have to be strictly complied with. 35 In the instant case the respondent neither gave
notice within fourteen days from the date fixed for his appearance, nor furnished security. It was held that he was disentitled to lead evidence in support of his recriminatory pleas.

Though trial of a recrimination petition is to be held only after the election of the returned candidate is declared void, it cannot be said the recriminating petitioner can file details of the grounds on which he seeks the election of the unsuccessful candidate (if he were to be declared to be elected) to be declared to be void only at that time. The grounds have to be mentioned in recrimination petition itself. If the grounds are so taken then only they have to be tried after the election of the returned candidate is declared void.\footnote{36}

\textbf{DECISION OF THE HIGH COURT}

Sections 98 and 99 prescribe the orders which the High Court can make at the conclusion of the trial of an election petition. Section 98 provides that the High Court shall make an order - (a) dismissing the election petition; or (b) declaring the election of all or any of the returned candidates to be void; (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.
Section 99 deals with (a) naming all persons guilty of corrupt practice and the nature of that practice as found in the trial, (b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid. The proviso, however, lays down that a person who is not a party to the petition is found guilty of a corrupt practice he should be given a notice to appear before the court and to show cause why he should not be so named. And if he appears, he shall also be given an opportunity of cross-examining any witness who had already been examined by the High Court and had given evidence against him. He may also adduce evidence in his defence and be personally heard. It will appear that notice to a stranger to the petition can only be given after the petition has been heard for sometime and when it can be inferred that the person is likely to be guilty of the corrupt practice. No notice can be issued before such a point in the trial. It is mandatory for the High Court to name such guilty persons. The duty of the court is to find out whether any corrupt or illegal practice has or has not been proved to have been committed and the nature of that corrupt practice. The High Court shall intimate the substance of its decision to the Election Commissioner and to the Speaker or Chairman of the House of Legislature.
concerned. Thereafter as soon as possible, the Court will send to the Commission an authenticated copy of the decision. Section 106 casts upon the Election Commission the duty of sending copies of the decisions of the High Court to the appropriate authority as also to the Speaker or Chairman of the House concerned. The Commission shall then cause the order to be published in the gazette.

**EFFECT OF ORDERS OF THE HIGH COURT**

Sub-section (1) of Section 107 lays down that the order shall take effect as soon as it is pronounced by the High Court, but if the losing side intends to file an appeal to the Supreme Court and makes an application for stay of operation of the order under Section 116 (B), the High Court can grant the application and the stay, as also the Supreme Court can grant such stay after the appeal has been filed to it. In such a case the order of the High Court will not take effect till such stay order is vacated. Sub-section (2) of Section 107 makes special provision for validating the acts of the elected member upto the date when his election is declared void. Neither will the proceedings of the legislature be vitiated thereby nor will the member incur any liability or penalty because of such participation. This indemnity clause shows that no interim injunction will be issued by the High
Court against an elected candidate prohibiting him from participating in the affairs of the legislature to which he has been elected. 40

WITHDRAWAL OF ELECTION PETITIONS

An election petition once filed cannot be abandoned or withdrawn by the petitioner at his sweet will. It may be withdrawn only by leave of the High Court. After receiving an application for leave to withdraw, the Court shall fix a date for hearing thereof and shall give notice of the petition to other parties. The notice shall also be published in the Official Gazette. 41 If there are more than one election petition in the same matter no petition can be withdrawn without the consent of others. No application for withdrawal shall be granted if the High Court is of the opinion that the application for withdrawal has been induced by any bargain or consideration which ought not to be allowed. 42 If the application is granted, then, first, the petitioner shall be ordered to pay the respondent's costs upto the time of the withdrawal or as the High Court may think fit; secondly, it may direct publication of the notice or withdrawal in the Official Gazette and in such other manner as it may specify. Finally, a provision is made for the substitution of the petitioner by another person who
might have himself been a petitioner, within fourteen days of such application. The substituted petitioner shall have to fulfil the conditions as to security and comply with such other terms as the High Court may deem fit. The High Court will thereafter report the fact of granting an application for withdrawal to the Election Commission and the latter shall publish it in the Official Gazette.

**ABATEMENT OF ELECTION PETITIONS**

An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners. When an election petition abates, the High Court shall publish this fact as it may deem fit. Any person who might himself have been a petitioner desires he may be substituted as a petitioner within fourteen days of the publication of the notice of abatement. The substituted petitioner shall be required to furnish the statutory security and comply with the terms and conditions imposed by the High Court. If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the High Court shall publish this fact in the Official Gazette and thereupon any other
The elector/petitioner may apply for substitution within fourteen days of such publication, to oppose the petition. He will be entitled to continue the proceedings upon such terms as the High Court may think fit. Highlighting the said special features of election case in matter of withdrawal and abatement the Supreme Court observed:

The election petition does not necessarily abate or fail by reason of the death of the petitioner or any of the respondents or by their ceasing to take any interest in the petition, once the petition has been referred to the Tribunal. On the other hand, any person who could be a petitioner can continue the petition inspite of the death of either the petitioner or the respondents to the petition and on the original parties failing to prosecute it. These provisions have been made to ensure that the election process on which the democratic system of Government is based is not abused or misused by any candidate and that enquiry is not shut out by collusion between persons made parties to the petition or by their deaths.

APPEALS

Before the amendment of the R.P. Act, 1951 in 1966, election petitions were triable by Election Tribunals set up for this purpose. Originally a tribunal consisting of three persons had been provided. Later by an amendment of the law a single member tribunal was provided for and a serving District Judge or a retired High Court judge was
appointed to constitute an election tribunal. After the amendment the jurisdiction to try an election has been given to the High Court. 47-a

(i) **Appeals to Supreme Court**

Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (Whether of law or fact) from every order made by the High Court under Section 98 or Section 99. The limitation period fixed is thirty days from the date of the order of the High Court, but the Supreme Court can extend this time on sufficient cause being shown by the appellant. 48

(ii) **Procedure in Appeal**

Section 116-C lays down the procedure in appeal before the Supreme Court. Sub-section (1) provides that every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction and of the provisions of the Code of Civil Procedure, 1908 and the Rules of the Court (including the provisions as to furnishing security and the execution of any order of the
Court) shall so far as may be, apply in relation to such appeal. Sub-section (2) provides that as soon as an appeal is decided, the Supreme Court shall intimate the substance of the decision to the Election Commission and the Speaker or the Chairman as the case may be, of the House of Parliament or of the Legislature concerned. The Supreme Court shall also send to the Election Commission an authenticated copy of the decision. The Commission will then forward copies thereof to the authorities to which copies of the High Court order would have been sent under Section 106. The order will then be published in the same manner as the order of the High Court to be published under Section 106.

**LOCUS STANDI FOR APPEAL**

Who can appeal against order dismissing election petition? On this point the Supreme Court in *Thammanna V Veera Reddy* observed that before a person is entitled to maintain an appeal under Section 116-C, all the conditions mentioned below, must be satisfied:

1. that the subject-matter of the appeal is a conclusive determination by the High Court of the rights with regard to all or any of the matters in controversy, between the parties in the election petition;
(2) that the person seeking to appeal has been a party in
the election petition; and

(3) that he is a "person aggrieved", that is, a
party who has been adversely affected by the
determination.

The facts of the case were that Thammanna, a
defeated candidate filed an appeal from a dismissed
election petition in which he had not taken any active
part, even though he was one of the respondents. Veera
Reddy, the first respondent, raised a preliminary
objectioncontending that the appeallant (Thammanna) was
not competent to maintain the appeal, because he did not
fulfil the character of a "person aggrieved" by the
judgment of the High Court. The first respondent sought to
prove his contention by pointing to the fact that the
appeellant did not participate in the proceedings before
the High Court and that he did not join issue with the
first respondent. The Supreme Court sustained the
objection. The Court held that in the present case, the
three conditions mentioned above, particularly Nos. (1)
and (3), had not been complied with. Before the High Court
the appellant did not, at any stage, join the contest. He
did not file any written statement or affidavit. He did
not engage any counsel. He did not cross-examine the
witness produced by the election petitioner and the contesting respondent. He did not address any argument. In short, he did nothing tangible to participate in the proceedings before the High Court.50

Explaining the expression "person aggrieved", the apex court held that the meaning might vary according to context of the statute and the facts of the case, nevertheless, normally, "a person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something.51 "In the face of the stark facts of the case", the Court opined, it was not possible to say that the appellant was aggrieved or prejudicially affected by the decision of the High Court, dismissing the election petition.

It was also argued that in an election petition, the petitioner is not the dominus litis, but acts as a representative of the whole body of elections in the constituency, that is why an election petitioner cannot at his sweet will abandon the election petition or withdraw from it without complying with the procedure prescribed, and if he does so, in view of Sections 109 and 110 of the Act, the Court can allow another voter or respondent to
continue the petition. The Court showed its inability to accept this "wide argument" and pointed that it was clear from the language, setting and scheme of the provisions in Section 109 to 116, that they did not either in terms, or, in principle, apply to appeals or the procedure to the allowed at the appellate stage before the Supreme Court. "The principle that an Election Petition is a representative action on behalf of the whole body of elections in the constituency, has a very limited application to the extent it has been incorporated in Section 109 to 116 of the Act, and its application cannot be extended to appeals under the Act." In the course of the judgment it was observed:

If an appellant, who is an aggrieved person under Section 116-C of the Act, has got a right to withdraw or abandon his appeal unconditionally a fortiori, he has every right not to file an appeal against the dismissal of his Election Petition, much less has any other respondent who never joined the contest in the Election Petition, a right to file an appeal, if the aggrieved party does not do so.

The Supreme Court, thus, upheld the preliminary objection that the appellant took no interest, whatever, in the controversy in the election petition which was confined only to the election petitioner and respondent I. The appellant could not, by any reckoning be said to be a 'person aggrieved' by the decision of the High Court,
dismissing the election petition. It was on that ground that the appeal was dismissed.

(iv) Stay of Operation of the Order

Both the Supreme Court and the High Court enjoy the power to issue order for the stay of operation of an order. The High Court has been given such power under Section 116-B (1) to stay the operation of its order under Section 98 or Section 99. The Supreme Court enjoys the power under Section 116-B (2) to stay the operation of an order of the High Court under Section 98 or Section 99 where an appeal has been filed from the said order. The effect of such stay either case will be that the order shall be deemed never to have taken effect. As soon as the appeal is admitted, the High Court, or, as the case may be, the Supreme Court, shall intimate the fact to the Election Commission and the Speaker or the Chairman of the Legislature concerned.

COSTS AND SECURITY FOR COSTS

(I) Deposit of Security

At the time of presenting an election petition, the petitioner shall have to deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition. During the course of the trial of an election petition,
the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct. Section 118 provides for the deposit of security by the respondents as the High Court may direct. Thus Sections 117 and 118 provide for deposits of securities for costs both by the petitioner and the respondent. This provision is intended to produce a salutary effect of discouraging frivolous petitions. But it is not the petitioner alone who can present a frivolous petition, a frivolous defence may also be put up by other persons by seeking to be joined as respondents under Section 86(4). Candidates or persons who have already been made respondent by the petitioner are of course exempted from providing any security. The reason is that necessary parties must have been joined by the petitioner himself. If any other person wants to be joined of his own free will chances are that he may in the end be found to be unnecessary but as his inclusion will occasion some costs it is reasonable that he should be put to some security for this. That is why persons applying for being added as respondents are also put to such security as the High Court may decide.

A question relating to the deposit of security was raised in Chanan Lal Sahu V Nanda Kishore Bhatt before
the M.P. High Court. The petitioner prayed that the amount of security prescribed by Section 117(1) of the R.P. Act, 1951, be reduced from Rs.2000 to Rs.250 or in the alternative he be permitted not to make any deposit whatever. The High Court rejected the petitioner's application and pointed out that an election petition is neither an action at law nor a suit in equity, but a purely statutory proceeding unknown to the Common law and the Court possessed no common law powers independent of the statute. It was observed:

The right to stand for election and the right to move for setting aside the election are not common law rights. These rights are conferred by statute and strict statutory compliance is necessary for enforcing them.58

The High Court, therefore, held that it was not competent to reduce the amount of security deposit or to dispense with it.

Another judicial pronouncement on the point is Yashwant V Jaisingrao.59 In this case it was ruled that the sum of Rs.2000, the deposit to be made under Section 117 of the Act, could be made by joint petitioner where there were more than one and each petitioner need not deposit a sum of Rs.2000. The security should be deposited at the time the petition is presented and not later.
(II) Costs

Under clause (b) of Sub-section (1) of Section 99 of the R.P. Act, 1951 the High Court is required, at the time of making an order under Section 98, to also make an order fixing the total amount of costs payable and specifying the persons by and to whom costs should be paid. Section 119 provides that costs shall be in the discretition of the High Court but that where a petition is dismissed under clause (a) of Section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate. It means that it will not be open to the High Court to disallow costs to a successful returned candidate on any such ground as production of false evidence by the returned candidate and the like, on which ground, sometimes, costs are disallowed to a successful defendant in a suit. In Ram Phal v Bramha Prakash, it was observed that the question of awarding costs is, generally speaking, a matter left to the discretion of the Court and unless such discretion has been exercised arbitrarily or contrary to the well recognised principles, it is not open to the court of appeal to interfere with it.
One of the contentions raised before the Supreme Court in *Lakshminarayan v Returning Officer*, was concerning the costs awarded by the High Court to the second respondent. It was pointed out by the appellant's counsel that counsel, who appeared for respondents Nos.2 and 11, did not file a certificate in the High Court in proof of payment of any fees to him. As no other evidence was adduced to prove payment of fees and as the respondent's counsel did not contradict the statement of the appellant's counsel, the court proceeded on the assumption that there was no evidence on the record to show that any fees were paid to counsel for these two respondents. Citing Section 119 which states that costs shall be in the discretion of the High Court provided that where a petition is dismissed under clause (a) of Section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition, and interpreting the word "incurred" in the section to mean "actually spent", the Supreme Court held that as there was no proof of any payment of fee to counsel by the returned candidate he was not entitled to the amount of Rs.400 a day, the fee prescribed by the Bombay High Court for counsel; he was, however, held entitled to any other costs shown to have been incurred by him.
Another case in regard to the question of costs is B.B. Karemore v Govind. The first respondent in the instant case was entitled to the costs he had actually incurred. But there was no proof of payment of any fee to counsel by him. Hence it was held that he would not be entitled to the amount of Rs.400 a day awarded by the High Court, but only to any other costs shown to have been incurred by him. The counsel for the first respondent submitted that his client should be given an opportunity to produce receipts of payment to fees, because at the time the case was decided costs were being awarded as prescribed by the rules of the High Court. The Supreme Court rejected the prayer. Jaganmohan Reddy, j., who wrote the judgment of the Court observed that "these rules did not preclude his client from filing any fee certificate, if he had paid any amount and obtained it. We cannot, therefore, allow him to do so now".

(III) Payment of Costs

Section 121 provides for payment of costs out of security deposits and return of such deposits. Clause I of the Section provides that if the costs awarded are not paid by the party ordered to pay them, this may be paid out of the security deposits on an application made in writing in that behalf within a period of one year from
the date of such order to the High Court by the person in whose favour the costs have been awarded. Clause (2) lays down that if there is any balance left after payment it will be returned to the said person or his legal representative as the case may be.

Section 122 provides for execution of orders for costs. Any order as to costs may be produced by an application before the principal civil court of original jurisdiction within whose local limits the judgment debtor resides. In presidency towns, the executing court will be the court of small causes. No application for execution lies within one year of the order. This period is allowed for realisation of all the costs from the security deposits of the other side. When such realisation has been made execution for any balance remaining unpaid can be had even within this one year.

The Act does not make any express provision about orders in execution proceedings being appealable or not, but the fact that an order of High Court as to costs is to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by the principal civil court of original jurisdiction or the court of small causes within a presidency town imports
that the ordinary incidents of the procedure of that court are to attach. The general right of appeal from the decisions of the civil court in execution proceedings of a money decree would, therefore, apply to orders made by that court in the course of execution of an order of the High Court as to costs. 66

EXPEDITIOUS DISPOSAL OF PETITIONS

Sub-section (7) of Section 86 of the R.P. Act, 1951 provides that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. However, it has been found that the period of pendency of a large number of election petitions has always been much longer than the stipulated period of six months. The Election Commission has always been anxious that the election petitions are disposed of as expeditiously as possible so that an elected representative does not remain under cloud for an indefinite period and at the same time a person who secured his election by corrupt, illegal or irregular means does not sit in the august House for long. 67 The Commission, therefore, addressed the Registrars of the Supreme Court and the concerned High Courts on 20.06.1983
requesting them to bring to the notice of the Chief Justice the position of the pendency of the election petitions for such orders as they might consider necessary for the speedy disposal of the pending petitions. Later the Commission suggested that ad hoc judges could be appointed on the basis of a stipulated norm. Ad hoc judges could be used for regular work and some of the regular judges could be earmarked for dealing with the election petition. 68

Another suggestion is that the number of election petitions entrusted to a judge should not be more than 3 to 5, provided this is possible having regard to the number of election petitions to be disposed of and the number of judges in the High Court. Election petitions in which corrupt practices have been alleged take longer time for disposal as compared to others. The other kind of election petitions in order of the time usually taken in their disposal are those in which general scrutiny and recount are claimed. The number of election petitions to be entrusted to a judge should therefore be decided after considering the nature of the disputes raised in the election petitions. For this, of course, no statutory provision can be made. The number can be settled with the Chief Justices of the High Courts through a letter of request from the Home Ministry or the Election Commission
or by oral talks. Preferably and as far as possible election petitions may be entrusted to judges who have had experience of original work, either in the High Court or elsewhere, that is to say, of taking oral evidence for deciding disputes before them, as such experience will be conducive to greater control and therefore quicker progress at the recording of evidence. The entrustment of election petitions to judges in the High Court should be made as soon as the last date for filing election petitions upon a general election has passed and the number of election petitions filed and their nature are known.

Yet another suggestion is concerning corrupt practices. Under the existing electoral law the Commission has hardly any power for dealing with cases of corrupt practices. They can be challenged only through election petitions filed by a contesting candidate or by a voter in the constituency. It may be recalled in this connection that according to the electoral rules under the Government of India Act of 1935, there was a provision which authorised an officer empowered by the Governor-General-in Council to present an election petition against any returned candidate on the ground that the election was not a free one because in a number of cases undue influence had been
exercised or bribery committed. It may be appropriate, in view of the growing number of election petitions on corrupt practices, to amend our electoral law vesting a similar power in Election Commission to authorise certain named officers under the Commission to file election petitions. The very existence of such a provision in the law may serve as a healthy deterrent against a candidate being guilty of corrupt practices of indulging in the exercise of undue influence lest his election should be challenged on a petition by an authorised election officer. It may also serve as a check on possible attempt by a scrupulous person to get an election petition withdrawn through monetary or other inducement.\textsuperscript{72}

CONCLUSION

The Court having the jurisdiction to try an election petition is the High Court. Section 81(1) of the Act provides that an election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101 to the High Court. The term "election petition" used in Section 81(3) is not defined in the Act. However, it is well settled that other papers also, in addition to the petition, which form integral part of the petition, are to be included in the term "election petition".
It is apparent from clause (a) and (b) of Section 83(1) that a election petition shall contain a concise statement of the material facts and also set forth full particulars of any corrupt practice. These two requirements are mandatory in nature. So, whenever there is an allegation of corrupt practice, the election petition shall contain a concise statement as to the material fact on which the petitioner relies and also must set forth full particulars of the corrupt practice alleged by the petitioner. If the material facts of the corrupt practice are stated, more or better particulars of the charge may be given later. The power of amendment is given in respect of particulars but there is a prohibition against an amendment which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

An election petition once filed cannot be abandoned or withdrawn by the petitioner of his sweet will. It may be withdrawn only by leave of the High Court. The abatement of election petition shall take place only on the death of a sole petitioner or of the survivor of several petitioners. Any person who might himself have been a petitioner desires he may be substituted as a petitioner within fourteen days of the publication of the
notice of abatement by the High Court. The substituted petitioner shall comply with terms and conditions imposed by the High Court.

An appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by the High Court under Section 98 or 99. Although the limitation period fixed is thirty days from the date of the order of the High Court, but the Supreme Court can extend this time. Before a person is entitled to maintain an appeal under Section 116-C, all the three conditions must be satisfied, First, that the subject-matter of the appeal is a conclusive determination by the High Court of the rights with regard to all or any of the matters in controversy, between the parties in the election petition; Secondly, that the person seeking to appeal has been a party in the election petition; Thirdly, that he is a 'person aggrieved', that is, a party who has been adversely affected by the determination.

A perusal of judicial interpretation of Part VI of the Act shows that the courts have always kept in mind that the right to stand for election and the right to move for setting aside the election are not common law rights. These rights are conferred by statute and strict statutory compliance is necessary for enforcing them.
It has been seen that more often than not, appellants appear to take up issues which have been settled by judicial decisions. Perhaps what induces the litigant to proceed to appeal is the desire to exhaust all possible remedies. He may also feel that since two or more heads are fairer than one, he may have a better chance at the appellate stage. One wonders whether it will not make any difference in the attitude of the litigant, and incidently some improvement in the administration of justice, if a collegiate bench of at least three judges hear and adjudicate election disputes at the trial stage. This will undoubtedly help towards justice being manifestly seen to be done.73
NOTES AND REFERENCES

3. Id at 124
4. Sections 79(e) and 80-Â of the R.P. Act, 1951.
5. Explanation to Section 81 says that an "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.
5-a Section 81 clauses '1) & (3). R.P. Act, 1951.
5-b AIR 1978 N.O.C. 1982 (M.P.)
5-c AIR 1973 S.C. 584
5-d Id at 585
5-e AIR 1974 S.C. 1185.
5-f Id at 1192
5-g (1971) ISCR 821 : AIR 1971 S.C. 342. In this case Hegde J said: "The law requires that a true copy of the election petition should be served on the respondent has not been either fully or substantially complied with. Therefore we have no doubt in our mind that the election petition is liable to be dismissed under Section 86 of the Act".
5-h Ma Shwe Mya V Maunq Ho Hnaung, AIR 1922 P.C. 249 at 250.
5-i See Raja Indrajit Pratap Bahadur Sahai V Amar Singh, AIR 1923 P.C. 128 at 135.
5-j Supra note 5-e at 1187.
5-k Ibid.
5-l Virendra Kumar, in Annual Survey of Indian Law 243
6-a AIR 1976 S.C. 744.
6-b. Id at 749.
6-c. Ibid.
6-d. Supra note 6-a at 748.
8-b. Id at 1212.
10. Section 100, R.P. Act, 1951.
12. "No Civil Court shall have jurisdiction (a) to entertain or adjudication upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency; or (b) to question the legality of any action taken by or under the authority of an electoral registration officer, or of any decision given by any authority appointed under this Act for the revision of any such roll".
13. "No Civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the returning officer or by any other person appointed under this Act in connection with an election".
14. "No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature".
15. Ponnu Swami V Returning Officer, I.E.L.R. 133.
17. Ibid
18. Supra note 15.
20-c. Id at 1202.
20-d. Ibid.
20-f. Id at 743.
20-g. Ibid.
23. Ibid.
24. Ibid.
25. Ibid.
29. (1964)6 SCR 54.
30. Id at 55.
31. Ibid.
32. AIR 1976 S.C. 2184.
33. Id at 2189.
34. See also Bhag Mal V Prabhu Ram, AIR 1985 Supreme Court 150; P. Malai Chami V M. Andi Ambalam, AIR 1973 Supreme Court 2077; Arun Kumar Bose V Mohd. Furkan Ansari, AIR 1983 Supreme Court 1311; Janardan Dattuappa Bondoe V Govinda Prasad, AIR 1979 Supreme Court 1617. See also a nice comment on Judicial trends of the Supreme Court by Virendra Kumar, Annual Survey of India Law 434 - 443 (1985).
40. B.S. Chowdhury, Op. Cit. at 150.
41. Section 109, R.P. Act, 1951.
42. Section 110 (Clauses I & II), at 150.
43. Section 110 (Clause III)
44. Section 111, at 150.
45. Section 112 at 150.
46. Section 116-A.
47. Jagannath v Jaswant Singh, 9 E.L.R. 231.
48. Section 116, 80-A R.P. Act, 1951. It is a statutory appeal and has no resemblance with the constitutional appeals provided under Article 132 to 136 of the Constitution. It is like a first appeal.
50. Id at 119. It was held in Heera Singh v Keerka, AIR, 1958 Raj. 181 that an appeal under Section 116-A can be filed only by a party to the petition and not by any other person claiming to be a voter. So also a person interested in having the election of a particular candidate set aside cannot come forward to be joined in an appeal filed by another person: Deo Kant Barooah v Kusha Ram Nath, AIR 1959 Assam 68.
52. Supra note 49.
53. Id at 121.
55. B.S. Chowdhury, Op. Cit. at 159.
56. Ibid.
57. AIR 1974 M.P. 40.
58. Id at 41.
59. AIR 1974 Goa, Daman & Diu. 4.
60. G.L. Sriwastava, Law of Election Petitions 479(Vol.2 196'
61. AIR 1962 Punj. 129.
64. Ibid.


70. Ibid.

71. Id at 526.

72. B. Shiv Rao, "Election Practices and Machinery - Need for Reform" Id at 479.

In connection with frivolous petitions challenging Presidential/Vice Presidential election, the apex Court observed that "it is now time to make suitable provisions to prevent entertaining such frivolous petitions filed in a cavalier fashion requiring the hearing by a Bench of five Judges of this Court. The only purpose served by such frivolous petitions is the giving of some undue publicity to the petitioner which appears to be the sole purpose of filing such a petition. Obviously, use of the Court as a forum for this purpose must not be permitted ... It is now necessary to make suitable amendments in the provisions for screening of such frivolous petitions ... Per Verma, j., in Mithilesh Kumar Sinha V Returning Officer, (1992) 3 S.C.J. 630 at 655-56.