The purity and freedom of elections can be ensured only if the supervisory arrangements for ensuring efficient and impartial functioning of the electoral machinery are done by an independent authority. For that purpose the Constitution provides for an independent election commission. Under Art. 324 the superintendence, direction and control of elections is vested in a Chief Election Commissioner and such number of Election Commissioners as the President may fix. Before each election to the House of the People, to the Legislative Assembly of each state and each biennial election to the Legislative Council of a State, the President, in consultation with the Election Commission, may appoint such Regional Commissioners as he may consider necessary to assist the Election Commission. In order to secure the independence of the Chief Election Commissioner, it is provided that he can be removed from office in like manner as a judge of the Supreme Court and the conditions of his service are not to be varied to his disadvantage after his appointment. Election Commissioners and Regional Commissioners cannot be removed from office.
except on the recommendation of the Chief Election Commissioner.

The Election Commission heads the entire election machinery in the country and wields plenary powers for taking appropriate steps to ensure free and fair elections. Since the Commission enjoys wide executive, legislative and quasi-judicial powers, it is described as a reservoir of power. The only limitation with respect to legislative


   (a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

   (b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State legislature has made valid law relating to or in connection, with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Art. 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fair play-in-action in a most important area of the constitutional order, viz., elections (at 886).
power is that the exercise of power should not be in contravention of the express provision of the Constitution or statute. While exercising the executive and quasi-judicial power, the Commission should act in accordance with the principles of natural justice.

Since the Election Commission is constitutionally charged with the duty of securing the due conduct of election, it is expected to play a pivotal role in reducing the corrupt practices in election. The role of the judiciary in relation to the prevention of corrupt practices is limited to declaring the election void and identifying the miscreants if the commission of corrupt practice is proved in the course of the trial of election petition. However, the Election Commission can take appropriate steps for preventing a person from committing any corrupt practice, since from the date of notification of election to the declaration of results, the entire election process is under the control of the Commission. Under Article 329 of

3. In A. C. Jose v. Sivan Pillai A.I.R. 1984 S.C. 921 the order of the Election Commission introducing electronic machines for recording votes was declared invalid on the score that it was the violation of the express provision of the statute.

4. See supra n. 2.


the Constitution, judiciary is prevented from interfering at this stage. Since the entire election machinery is under the control of the Commission, it can make use of the services of the persons engaged in election duty for preventing corrupt practices.

Postponement of the Poll, Cancellation of Notification and Ordering of Repoll

The first step in this regard is to warn the concerned persons. The postponement of elections or cancellation of the notification of elections is the other possible course of action. If the commission of corrupt practice has occurred during the time of polling the Commission can order repoll.

The question may arise whether the discretionary powers of the Commission are subject to judicial review. The issue assumes importance considering the fact that in recent days instances of postponement of the poll, cancellation of notification for election and the ordering of repoll have increased enormously⁷. Such extreme steps taken by the Commission were justified on the grounds of maintaining the integrity of the electoral process.

⁷ In April 1993 notifications were issued for holding by elections to four Lok Sabha and sixteen State Legislative Assembly seats. However, notifications were cancelled in the case of two Assembly Seats and the polling was postponed in two Lok Sabha seats. Repoll was ordered in 75 polling booths. (Source: Newspaper reports during 10-4-1993 to 20-5-1993).
Election Commission are challenged before the High Courts. Appeal petitions on this point are pending before the Supreme Court. It is an accepted principle of administrative law that any kind of power vested in an authority should be exercised in accordance with the law. The abuse of power and non-exercise of power are the grounds for judicial review. Even in the case of a power to be exercised in accordance with the subjective satisfaction of the authority, judicial review is possible. However, in the case of election process, according to Article 329 (b) of the Constitution "no election to either House of Parliament 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 or under any law made by the appropriate Legislature". According to the view taken by the Supreme Court in


PonnuSwami v. Returning Officer\textsuperscript{11}, the word 'election' is used in the wide sense of the entire process culminating in the candidate being elected and it was used in that sense in Art. 329 (b). Hence it may be argued that no court is competent to entertain any petition connected with election disputes other than an election petition filed after the declaration of the result. In Mohinder Singh v. Chief Election Commissioner\textsuperscript{12} the Supreme Court considered the question whether a writ petition challenging the cancellation of poll coupled with re-poll could be maintainable. Though the question was answered in the negative, the Court did not reject the scope of entertaining a writ petition in connection with the steps taken by the Election Commission. It was observed:

\ldots a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in 'election' and is therefore barred by Art. 329 (b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would have then thwarted the course of the election and different considerations would come into play. We need not chase a hypothetical question\textsuperscript{13}.

\textsuperscript{11} A.I.R. 1952 S.C. 64.
\textsuperscript{12} A.I.R. 1978 S.C. 851.
\textsuperscript{13} Id. at 868.
It is submitted that judicial review by writ proceedings for examining the legality of the decision taken by the Election Commission is necessary in certain exceptional circumstances. The purpose of Article 329(b) is to avoid the delaying of election process by way of judicial interference. However, in the matter of postponement of the poll and cancellation of notification, the very action of the Election Commission itself results in the delaying of election process. There seems to be a general consensus that the power to cancel the notification of election and the postponement of the poll should be conferred on the Election Commission. However, the safeguards for preventing the abuse of such power should be provided. There are instances in which it has been alleged that the Election Commission had ordered to postpone the poll with a malafide intention to help the ruling party by way of avoiding its electoral defeat. If the Commission's power to postpone the poll and to cancel the notification is not subject to judicial review the Commission can help a particular party by conducting the poll in constituencies where the chances of success of that party are bright and postponing the poll indefinitely in other constituencies. Hence the dispute relating to the postponement of poll and the cancellation of the notification of election should be excluded from the purview

of Article 329 (b). These two issues are distinguishable from other electoral disputes on the ground that the postponement of the poll and the cancellation of notification for election ultimately result in delaying the conduct of the election, which Art 329 (b) specifically seeks to aovid.

Formulation of the Model Code of Conduct

Though there are elaborate provisions defining corrupt practices, all activities which militate against the true spirit of democracy are not covered by the existing laws. The residual matters are sought to be regulated by the Model Code of Conduct evolved by the Election Commission in consultation with representatives of political parties during the last twenty three years. The current code of conduct\(^\text{15}\) issued in 1984 is designed to regulate (i) the general conduct of political parties and candidates, (ii) election meetings, processions; (iii) conduct of all concerned on the polling day; (iv) entry into the polling booth; (v) the conduct of the party in power, whether at the centre or in the states. The formulation and the publication of the code of conduct may provide an opportunity to the

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persons engaged in election and the general public to understand the nature of activities prohibited by the Commission. However, the fundamental question whether the violation of the Code of Conduct would invite any legal sanction is not yet settled. Recently, the Election Commission, cancelled the notification for election to the Kalka Legislative Assembly constituency in Haryana on the ground that the State Government had initiated development works after the date of notification of the election\textsuperscript{16}. The decision of the Commission was challenged before the Punjab and Haryana High Court. Through an interim order, the High Court directed the Election Commission to proceed with the election. On appeal, the Supreme Court set aside the order of the High Court\textsuperscript{17}. However, the legal issues have not been considered by the Court and the original petition is still pending. Here the crucial question is whether the Election Commission enjoys the power to cancel the notification for the election on the ground of the violation of the Model Code of Conduct. The action of the Commission could be held valid only if the Code of conduct could be treated as having the force of law. There is a view that the power of superintendence, direction and control vested in the

\textsuperscript{16} One of the contesting candidates in the election was the son of the Chief Minister of the State. See Indian Express, May 6, 1993.

\textsuperscript{17} See, ibid.
Election Commission by Article 324 of the Constitution has such amplitude that the Commission could not only issue a code, but also issue suitable directions for its enforcement\(^\text{18}\). However, it is submitted that, the better thing is to amend the R.P. Act so as to make the violation of the Code of Conduct a corrupt practice and an electoral offence. Such an action would clear the doubts regarding the legal validity of the Model Code of Conduct. In addition, clarifications regarding the ambit of various corrupt practices can be given through the Model Code of Conduct.

\(^{18}\) See L.P. Singh, Electoral Reform (New Delhi, 1986) p. 47.

It is interesting to note that the Election Commission itself had entertained some doubts regarding the validity of the Code. In the Second Annual Report (Election Commission of India, 1984) it was observed:

As a follow-up action to the decisions taken at the meeting with the political parties, the Commission reviewed the "Model Code of conduct for Political parties and Candidates" with a view to making some of the serious violations of the code as electoral offences. Thereafter, it was recommended to the Government that (a) specific provision may be made in Chapter III of the Representation of the People Act, 1951, to prevent the use of temples, churches or other places of worship as forums for election purposes and prescribing suitable penalty for default and (b) a new section 133A may be added to the Representation of the People Act, 1951 prescribing suitable penalty to those persons who commit offences specified in section 123 (7) including those officials who abet in commission of such offences or who allow the use of official machinery for such purpose. (at 82).
Making Suggestions and Recommendations

The competence of the Commission to make suggestions for improvement of the election process and for reforms of the election law is undisputed. The recommendations of the Commission to the Government are published in the reports of the Commission. However, a careful study reveals that though every report of the Commission contains a number of recommendations to the Government, only few have been implemented so far. The reasons for not implementing the valuable suggestions of the Commissions are unknown. Hence it is suggested that the law should impose an obligation on the Government to lay the recommendations of the Election Commission before the Parliament and to inform the Parliament of the steps taken by the Government for their implementation.

19. For example the Second Annual Report (Election Commission of India, 1984) contained the recommendation for amending the election law for incorporating provision in relation to (a) steps to check booth capturing; (b) measures to check frivolous candidates and (c) restrictions on contesting election from many constituencies; (at 77-79). However, the only thing done by the Government is to partially implement the suggestion for preventing booth capture. Though in 1989 the R.P. Act was extensively amended the suggestions contained in (b) and (c) remain totally ignored.
In 1989, through an amendment, Section 29-A was inserted in the R.P. Act 1951\(^2\). The purpose of the

20. The provisions read thus:

(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made, --

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;
provision was to provide an opportunity for the registration.

Footnote 20 (Contd...)

(f) whether it has any local units; if so, at what levels;
(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.
of political parties. It seems that the allegiance to the basic values of the Constitution is a condition precedent for granting registration and the Election Commission is the competent authority to grant or refuse to grant registration. However, there is no provision which states that the registration of the party is compulsory. Hence, it is submitted that the registration of political parties should be made compulsory and the association or body of persons not registered as political parties should not be permitted to engage in political activities. Moreover, detailed rules should be formulated in accordance with Article 19(4) of the Constitution, for controlling the discretionary power vested in the Commission in the matter or registration of political parties.

In the matter of allotment of symbols to the candidates of the political parties and to other candidates there are detailed rules regarding recognition of political parties as National Parties and State Parties and for reserving the election symbol to such parties and giving preference to certain types of candidates in the matter of allotment of symbol. The Commission is the sole authority to

21. Art. 19(4) deals with the reasonable restrictions which may be imposed on the right to form associations or unions guaranteed by Art.19(1(c)) of the Constitution.

22. See Election Symbols (Reservation and Allotment) Order, 1968.
determine the particular symbol to be reserved for a recognised party and other symbols to be included in the list of election symbols. According to the proviso to Section 123 (3), no symbol allotted under the R.P. Act shall be deemed to be a religious symbol or national symbol for the purpose of that clause. Hence, it is the duty of the Election Commission to ensure that no symbol which has the character of a religious symbol or national symbol is included in the list of election symbols. Since there are no guidelines for determining the symbols to be included in the list of election symbols, it is necessary to formulate some guiding principles in this regard.

Control over the Officers on Election Duty

During the period of election, the officers on election duty are deemed to be on deputation to the Election Commission. Hence the Commission can take disciplinary

23. Section 28-A inserted by the Amendment Act of 1989 reads thus:

The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election, shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.
action against the civil servants found to be guilty of violating laws related to elections. It is relevant to note that the procuring of the assistance of government servants is a corrupt practice under Section 123 (7).

According to the direction issued by the Election Commission, employees deputed for election duty should not be transferred without obtaining the prior permission of the Commission. In Kanhaiya Prasad Sinha v. Union of India\(^24\), the legal effect of the direction was considered by the Allahabad High Court. The facts of the case disclose that the petitioner, an official posted as sub-divisional officer of Musaffarpur was transferred by the State Government ignoring the direction of the Election Commission. Justice Ali Ahamed considered the legal effect of the direction issued by the Commission and observed:

The question as to whether the directions issued under Article 324 of the Constitution are mandatory or directory is not very material because even if they are directory in nature they cannot be easily ignored. They have to be respected and implemented. In case the directions so issued by the Commission are not respected then

\(^{24}\) A.I.R. 1990 Pat. 189.
in appropriate cases the Court may examine the same and pass appropriate orders.\(^{25}\)

However, the petition was dismissed on the ground that the violation of the direction issued by the Commission "did not give handle to a person to challenge his transfer".\(^{26}\) The Court rightly pointed out that the issue was a matter purely between the Commission and the concerned State.

Hence, it seems that the Commission wields necessary power to run the election machinery efficiently and in accordance with law.

Credibility of the Commission

The above discussion clearly reveals that the Election Commission is a reservoir of power and scope of using that power for ensuring free and fair election is very wide. However, it seems that the safeguards for preventing the misuse of power are not provided under law. It is to be remembered that, barring few exceptions, single member Election Commissions have been functioning since independence. Exercise of wide discretionary powers by a single individual may raise several problems. For example,

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25. \textit{Id.} at 191. In a concurring judgment S.B. Sanyal and Ram Nandan Prasad JJ. agreed with the view taken by Ali Ahamed J.

26. \textit{Ibid.}
if in a particular matter to be decided by the Commission, the person acting as the Commission has some personal interest, it will become necessary to decide that matter by that interested person. According to the view taken by the Madras High Court the exception to the rule against bias, viz., necessity \(^{27}\) is not applicable in the case of a decision taken by the Election Commission since more than one Election Commissioners may be appointed \(^{28}\). The functioning of a multi-member commission may help to tackle problems of this type. In addition, the exercise of power by a body of persons is more acceptable than that by a single individual. Hence it is suggested that a three member Election Commission should be constituted.

The observation of Justice P.B. Sawant in S.S. Dhanoa v. Union of India \(^{29}\) is relevant in this context.

\(^{27}\) See H.W.R. Wade supra n.8 at 426-27.

\(^{28}\) Indian Express July 3, 1993. The dispute related to the allegation of electoral disqualification against Miss. Jayalalitha, the Chief Minister of Tamil Nadu. On behalf of Miss. Jayalalitha, it was contended that since the wife of the complainant was the lawyer of the Chief Election Commissioner Mr.T.N. Seshan, in a defamation case, the writ of prohibition should be issued preventing the C.E.C. from taking the decision on the ground of violation of the principles of natural justice. The writ was issued.

\(^{29}\) A.I.R. 1991 S.C. 1745. The facts of the case show that petitioner along with Shri.V.S. Seigell was appointed as the Election Commissioners. Two notifications were issued-one for fixing the number of Election Commissioners (other than the Chief Election Commission)
There is no doubt that two heads are better than one and particularly when an institution like Election Commission is entrusted with vital functions, and is armed with uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual however, all-wise he may be. It ill-conforms the tenets of democratic rules .... A single individual may at times prove capable of withstanding all the pulls and pressures, which many may not. However, when vast powers are exercised by an institution which is accountable to none, it is political to entrust its affairs to more hands than one. It helps to assure judiciousness and want of arbitrariness.

Footnote 29 (Contd...) Commissioner) at two and the other for appointing the two persons as Election Commissioners. The notifications were issued at the time of general election to the Lok Sabha. However, after the election two other notifications were issued by the President of India rescinding the earlier notifications. The Court upheld the actions taken by the President. For a critical study of the decision see S.N. Singh, "Administrative Law", 27 A.S.I.L. 451, 455-56 (1991).

30. Id. at 1754-55. The view assumes significance in the context of allegations of partisan attitude against the present incumbent of the office of Election Commission. See the editorial "Mr Seshan's Ways" Indian Express April 30, 1993.
Hence, the Constitution should be so amended as to-make the multi-member Election Commission mandatory. In order to ensure the credibility of Election Commission such an action is essential. The status and service conditions of the Chief Election Commissioner (C.E.C.) and the other Commissioners should be the same. It is relevant to note that at present only the C.E.C. enjoys constitutional protection of tenure and conditions of service\(^{31}\). In the case of other Election Commissioners, the position is different. No effective safeguards for the security of their tenure are provided in the Constitution\(^ {32}\) as well as in the statute which lays down their service conditions\(^{33}\). Hence,

31. According to the proviso to Article 324(5) of the Constitution "the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment".

32. According to the second proviso to Article 324(5) "any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner".

33. According to the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991 the salary of the C.E.C. shall be equal to that of the judge of the Supreme Court. However, the salary of the other Commissioner shall be equal to that of the judge of a High Court. Though C.E.C. and an Election Commissioner shall hold office for a term of six years, the retirement age is prescribed as 65 years in the case of C.E.C. and 62 years in the case of other Election Commissioners. In the matter of other service conditions chapter IV of the Supreme Court Judges
it is suggested that the status of other Election Commissioners should be so elevated as to ensure their integrity and impartiality. The position of the C.E.C. should only be the first among the equals as in the case of the Chief Justice of the Supreme Court.

The Constitution neither prescribes any qualifications—academic, administrative, professional or judicial—for appointment to the posts of C.E.C and other Election Commissioners nor lays down the procedure for their appointment. Though the power to appoint the C.E.C. and other Election Commissioners is vested in the President of India, the selection of the person for appointment is actually made by the Council of Ministers since the President of India is bound to act in accordance with the advice tendered by the Council of Ministers. There is a view that this mode of appointment may make room for the

Footnote 33 (Contd...)

(Conditions of Service) Act, 1958 is applicable to the C.E.C. and Chapter IV of the High Court Judges (Conditions of Service) Act, 1954 is applicable to an Election Commissioner. After equating their service conditions with those of the High Court Judges, leaving the tenure of other Election Commissioners purely at the mercy of the C.E.C. appears to be rather paradoxical.

34. Art. 74, The Constitution of India.
exercise of political influence\textsuperscript{35}. The apprehension of such political influence may affect the credibility of the Commission\textsuperscript{36}. Hence, it is suggested that the relevant constitutional provisions be suitably amended so that appointment to the posts of the C.E.C. and other Election Commissioners should be made in consultation with the Chief Justice of India and the leaders of opposition in the Council of States and the House of the People\textsuperscript{37}. Such provision for consultation, one hopes, would ensure that only persons of calibre and integrity are appointed as Election Commissioners.


\textsuperscript{36} The existing practice of appointing the members of the Civil service as C.E.C. is undesirable since loyalty to political leadership may be the dominant consideration in choosing a civil servant for the post. For the background of persons appointed as C.E.C., see R.P. Bhalla, \textit{supra} n.1 at 17.

\textsuperscript{37} If the House of the People is not existing at the time of appointment, the mandatory consultation may be limited to the other authorities.