

Social Inequality and Institutional Remedies:
A Study of the National Commission for Scheduled Castes
 CENTRE FOR POLICY RESEARCH

Executive Summary

Institutions are often distinguished by whether they perform a protective or a promotional role. The NCSC is clearly more of a protective institution, though it does monitor the progress of promotional policy initiatives emanating from other state agencies. While its creation was mandated by the Constitution, neither the responsibility of promoting the welfare of the scheduled castes nor that of protecting them against injustices has been vested exclusively in this institution. Indeed, though it enjoys constitutional status, the recommendations of the Commission are advisory rather than mandatory.

I. Role and Mandate:

The NCSC has a complex history (detailed in the main paper) and its mandated responsibility is to investigate and monitor matters relating to the safeguards for the Scheduled Castes in the constitution and the law; to evaluate the working of such safeguards; to inquire into specific complaints relating to the deprivation of rights and safeguards; to participate in the planning process; and to submit annual reports to the President on all these. The NCSC has classified the constitutional safeguards it seeks to monitor and evaluate in five broad categories: (a) social safeguards (e.g., untouchability and child labour); (b) economic safeguards; (c) educational and cultural safeguards (such as reservations in technical and professional courses); (d) political safeguards (reserved seats in legislatures); and (e) service safeguards (relating chiefly to reservations in recruitment to public employment). The remedial action that the Commission suggests is purely recommendatory in character. It also plays an advisory role vis-à-vis the union and state governments who are obliged to consult it on all major policy matters affecting the Scheduled Castes.

The annual report that the Commission submits to the President is to be placed before each House of Parliament, along with the Action Taken Report on the recommendations relating to the Union, and the reasons for not accepting the recommendations in case of non-compliance. As such, the Commission is a formal watchdog for the legislative wing of the state on the executive wing, while remaining autonomous from both. To that extent its role is analogous to that of the Comptroller and Auditor-General.

II. Four areas of functioning:

1. Of the four core areas of the Commission's functioning – viz., service safeguards, education, economic development and atrocities – the **Services Safeguards** Wing is the most active. These complaints relate mostly to promotions, discrimination and harassment on various counts, institution of disciplinary proceedings on flimsy grounds, the conduct of departmental enquires in an unfair manner, adverse entry in the annual confidential reports, transfers to far off places or insignificant positions, delay in payment

of retirement benefits, delay in the completion of departmental inquiries, and so forth. It has also succeeded in institutionalizing the system of liaison officers and special SC and ST cells in all central ministries and public sector enterprises for the speedy and effective resolution of the grievances of employees of these communities.

The Services Safeguards Wing has the largest workload and also the largest workforce of all the functional departments of the Commission. In this area of its functioning, the Commission's inquiries into complaints are on the whole effective, and its recommendations specific, pointing out exactly where the violations are occurring and the measures that should be taken to improve the situation. However, there is a perception that the wing caters primarily to the needs of the new elites of the SC and ST groups, created as a result of policies of compensatory discrimination, and hence to work for those who have already overcome certain barriers and gained access.

2. Secondly, the Commission monitors the levels of literacy and *educational development* of the Scheduled Castes. It has shown sensitivity to the internal differentiations, relative levels of deprivation and marginalization *within* the SCs, along gender and community lines. It has taken special interest in female literacy rates. It marks the tendencies in enrolment at the primary level and dropout rates at successive tiers of the educational ladder. It also monitors the working of book-bank facilities and various scholarship programs at all levels, and has paid special attention to the creation of hostel facilities for these sections.

Most complaints received by the Commission in this sector relate to the denial of, or discrepancies in the application of, reservation policy. The key problem in the Commission's approach here appears to be that it lacks a general philosophy of education, and the role that education can play in the betterment of these communities.

3. A critically important area of concern is, of course, that of *atrocities against dalits*, and here the NCSC monitors the implementation of the various legal provisions in force regarding such occurrences. It collects and comments on the statistics pertaining to cases under the Civil Rights Act, 1955 and the Prevention of Atrocities Act 1989. It pays special attention to the atrocities perpetuated by police personnel. A key monitoring activity performed by the Commission pertains to the setting up of special courts for the speedy trial of offences under the Civil Rights Act and the Atrocities Act. It also monitors the case disposal rates of these courts. Over the years, the Commission has conducted several on-the-spot inquiries into complaints of atrocities.

Atrocities against members of the Scheduled Castes account for 89% of the crimes against SCs and STs combined. Even though the Commission has extensive powers of investigation and inquiry in this area and can fix responsibility and recommend action, its recommendations are not binding. There are delays in conducting the inquiry and in delivering judgements. Moreover, there is a perception that the Commission tends to confirm the government's position on most cases. This is hardly surprising because petitions and complaints that are received by the Commission are routinely referred to the

same authority – revenue or police – that was either complicit in the perpetuation of the atrocity, or else implicated in the cover-up operation.

The Commission has, curiously, never deemed this an issue worthy of detailed study, with the objective of generating a comprehensive set of recommendations, as has been the case with service related complaints, the circulation of false certificates or reservations in general. It places far too much premium on the formal mode of raising such issues in the report as would be debated in Parliament.

4. ***Economic development*** is, curiously enough, the least contentious area of the Commission's functioning. In its second report (as the NCSCST) the Commission investigated ***the land question***, establishing beyond doubt that the vast majority of the workforce in the agricultural sector is from the Scheduled Castes. It systematically unraveled their plight through the marshalling of statistics pertaining to occupational holdings, average size of holdings, etc. Addressing the all-important questions of land reform, land records, and the streamlining of land revenue administration, the Commission recommended land ceiling and the redistribution of surplus land by various state governments. It also suggested a range of tenancy reforms and several measures to prevent the alienation of tribal land (as it was the NCSCST at the time). Ironically this attempt to safeguard and even advance the interests of the Scheduled Castes has not produced results, because the agenda is not well-served by the entire political class paying lip service to it.

III. ***Evaluation:***

1. By choosing to interpret its constitutional mandate narrowly, the Commission has laid itself open to the charge of ***elite bias***. The fact that it is both most energetic and most effective in the area of service-related safeguards speaks for itself. Since the Commission, for the most part, acts on complaints, and it is the more upwardly mobile sections within these groups that are articulate and capable of mounting claims, it could be said to have been less than sensitive to the exclusions engendered by the lack of education or information, and has not used its powers of *suo moto* cognisance actively enough.

2. The Commission's competence in settling service-related grievances may be contrasted with its ***inability to reduce the incidence of atrocities and violence against dalits, or to effectively fight the persistent scourge of untouchability***. The Commission has been active in suggesting ways of streamlining procedures or ensuring fairness in the implementation of reservations and development schemes. It is, however, less active in making a stronger case for fundamental change, or even a frank and sharp analysis of the social realities of discrimination. By drawing attention to the landlessness of dalit wage labourers, and highlighting the need for streamlining land revenue administration, the Commission has clearly sought to go beyond its role as protector, to advance the welfare of disadvantaged social groups. It has, however, failed to bring about any concrete change in these areas, if only because the ostensible – and weakly articulated – consensus on such issues results in politically correct homilies rather than in concrete policy.

3. A particular Commission seems to be only as good as its members, and especially its Chairperson, are. The ***lack of institutionalisation in the procedures of appointment*** to the Commission has meant that competent and committed members are less likely to be appointed, especially in a political and policy environment where membership of the Commission becomes a convenient sinecure for unemployable politicians or a temporary shelf for bureaucrats belonging to these groups.

4. The most significant handicap of the Commission is the fact that ***its decisions are not binding, but recommendatory***. Though this is not explicitly stated in the Constitution (as amended), Article 338, with all its sub-clauses, is deeply ambiguous on this issue. It gives the Commission quasi-judicial powers of investigation, but does not mention the form in which the Commission's judgement of a particular issue would be delivered and implemented. It makes it incumbent upon the Central and state governments to consult the Commission, but does not state that its advice would be binding. In practice, it appears that as and when the Commission is effective, it is its moral authority that is important, if not decisive. The Commission could arguably use its mechanism of reporting more imaginatively, in ways that are responsive to societal concerns, for instance in respect of the practice of untouchability. It could certainly contribute to and even guide debates in civil society on these issues.

5. An important constraint is the ***underlying tension between the Commission's constitutional obligation of monitoring the working of safeguards, on the one hand, and its functioning as a body that redresses complaints of violations of safeguards, on the other***. This tension at least partly stems from the enormity of the latter task, the huge resources that it requires, and above all the fact that this is popularly perceived as its primary role. The tension is also manifested in the discrepancy between the yardstick adopted by the Commission to carry out its work, and that which activists adopt to evaluate its working. The latter argue that the Commission should be an autonomous, centrally administered, investigative agency, empowered to carry out civil as well as criminal investigations, with trial courts all over India to exclusively try cases of atrocities.¹ However, to give the Commission additional powers, in criminal investigation for instance, would require it to follow the prevailing rules regarding evidence and procedures. Quite apart from the dubious consequences of creating a parallel judicial system, these may actually retard the effectiveness of the Commission, by rendering it vulnerable to litigation in the form of appeals to higher judicial bodies, thereby nullifying its operational effectiveness and, what is more, diluting its moral authority and stature. Indeed, such a Commission would be so inundated with legislation that it may be unable to perform its monitoring role.

¹ There are already Special Courts for the speedy trial of cases relating to atrocities. These courts are designated by state governments, in consultation with the Chief Justice of the relevant High Court, to be special courts for trying offences under the PCRA and the SC&ST (POA) Act, but the NCSC has argued that there should be not just designated courts, but *exclusive* courts, for this purpose. (NCSC 4th Report, 1998:239)

5. The Commission is supposed to prepare an *Annual Report* for presentation to Parliament. Reports are often tabled two or more years after they have been submitted to the President. Such delays are usually on account of the requirement that the Action Taken Report be submitted along with the main report. This means that the President circulates the Report to all the Ministries and Departments which are mentioned in it, and it is only when they have all explained their actions, or justified their inaction, that the Report can be presented in Parliament. The Constitution does not fix any period within which the Report must be discussed in Parliament.²

6. *Even when Reports are tabled in Parliament, they are frequently not discussed.* There is no evidence in the Lok Sabha debates of a discussion on any of the first four reports. Of the four Special Reports, only one has an all-India scope and this is about service safeguards. This is in sharp contrast to the extremely active Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, which has been in continuous existence since 1968, and has presented as many as 166 Original Reports, 148 Action Taken Reports and an additional 177 Reports of the Study Tours undertaken by its Study Groups.

7. In many policy sectors, as in the case of the Scheduled Castes, the proliferation of institutions has created an institutional jungle in which the roles and powers of each are obfuscated. The *duplication and multiplication of institutions* is, in such situations, primarily a symbolic low-cost response to political pressures, imbued with few serious expectations. As such, it is only the rather chance factor of leadership which predisposes one or other to become more active or prominent. The larger political and institutional environment is certainly not particularly conducive to institutions like these pursuing their goals with clarity and effectiveness.

IV. Recommendations:

It is often argued that the Commission is a paper tiger which needs to be armed with greater powers. This argument is premised on an inadequate appreciation of the location of the Commission in the existing constitutional setup. To give the Commission additional powers, in the matter of criminal investigation for instance, would require it to follow prevailing rules and procedures pertaining to evidence and prosecution. These may in fact retard the effectiveness of the Commission by rendering it vulnerable to litigation in the form of appeals to higher judicial bodies, and thereby nullifying its operational effectiveness, and diluting its moral stature.

² The Commission has itself recommended that the Action Taken Report should be delinked from the main Report. The latter could be tabled in Parliament within 3 months of its submission to the President, with the ATR following in 6 months. (NCSC, 4th Report, 1998:247)

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1. The Annual Report is a crucial activity of the Commission, the importance of which is generally overlooked. The Report is generally tabled several years after the period to which it pertains, and is barely debated. An amendment is required either in Article 338 itself, or in the rules by which the President may fix a period for the discussion of the Report in Parliament.
 2. The quality of reports in terms of the data they contain, and the manner in which the data is organized, has also been declining over the years. Though its interventionist activities may be more important than its report making duties, it would be appropriate for the institution in the long term to pay more attention to an activity that perpetuates its legitimacy. The reports of the Commission have all along depended more on statistical data than on qualitative data regarding the changing nature of relationship between various communities and SCs and STs as well as within these communities. A recent book-length study of the sordid prevalence of untouchability in India has been published by a non-governmental organization in collaboration with reputed scholars, rather than by the NCSC. It would be appropriate for the Commission to undertake qualitative studies, commission social anthropologists and other social scientists to undertake such studies, and to institutionalize mechanisms by which contemporary changes and transitions in the social structure can be mirrored, recorded and acted upon. There is a pressing need for reliable data on a variety of subjects: the emergence of a “creamy layer” amongst the Scheduled Castes; the extent to which reservations in educational institutions and public employment have effected a social transformation; the experience of reserved constituencies in parliament as well as the state legislatures, etc. In this manner, the Commission would also become more responsive to societal issues like the changing context of untouchability and intra-group conflicts of interest, and contribute to debates in civil society.
 3. A more thoroughly institutionalized mechanism for appointing the Chairperson, Vice-Chairperson and other members, would be appropriate, for it has been observed that the leadership and personnel are key determinants of the Commission’s effectiveness. The process of appointment to the Commission should be made more autonomous of the government of the day. It would be desirable for the members of the Commission to be appointed through a political process that is consensual. This would also enhance the ability of the Commission to venture into sensitive areas such as assessing the efficacy of the political safeguards given to SCs that is practically overlooked in all the reports.
 4. There are a variety of conflicts that characterise the functioning of the Commission. Firstly, there has historically prevailed a conflict between the Commission and its nodal ministry, the Ministry of Social Welfare (now the Ministry of Social Justice and Empowerment), which has often taken the form of

conflict between the Minister and the Chairman of the NCSCST. Secondly, conflict between the Chairperson and members has also tended to characterise the Commission, because of the politicised nature of appointments to it. A new government at the Centre is invariably confronted by a few politically hostile members appointed by its predecessor, and these conflicts tend to mar the functioning of the Commission, especially when Chairpersons seek to punish members by denying them permission or funds to travel, etc.

5. The existing priorities of the Commission are visibly lopsided in favor of the elite of these communities. The fact that it is most effective in the area of service-related safeguards speaks for itself. This bias is accentuated by the fact that the Commission acts on complaints, and it is the more upwardly mobile sections within these groups that are articulate and capable of mounting claims. To counter elite biases, the Commission needs to be sensitive to the exclusions that the lack of education and information may engender, and should ideally use its *suo moto* powers more actively.

It would be desirable for the Commission to engage in an internal evaluation of its priorities on an ongoing basis, and to redefine them in a substantively more egalitarian way so as to accomplish its mandate in the spirit in which it was intended.

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I
 INTRODUCTION

The creation of the National Commission for Scheduled Castes (formerly the National Commission for Scheduled Castes and Scheduled Tribes) was mandated by the Constitution to “investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes...” (Article 338) in both constitutional and ordinary law. The NCSC is an institution embedded in a complex constellation of laws, policies and institutions designed to address social inequality. In terms of the distinction between the institutional orientations of protection or promotion, it could be said that the NCSC is predominantly a protective institution, albeit one that is supposed to monitor the progress of, and advise on, promotional policy initiatives emanating from other state agencies.

However, two caveats must be entered before essaying any evaluation of the Commission’s work. First, neither the responsibility of promoting the welfare of the scheduled castes and tribes, nor that of protecting them against a variety of injustices, has been vested exclusively in this institution. Despite the fact that it enjoys constitutional status, secondly, the recommendations of the Commission are advisory rather than mandatory. This study adopts an *internalist* perspective, seeking to evaluate the institution from within, in terms of its own interpretation of its mandate, analysing the link between the institutional mandate and its concrete operation over a period of time. However, since this institution does not have any formal mechanism by which it evaluates itself on a continuing basis, this evaluation is partly also externalist in nature.

The scheduled caste population in India is predominantly rural. According to the 2001 Census, 79.82% of the SC population is rural in character compared to the national average of 72.18 %. The primary occupations of the Scheduled Castes are in the farm sector. They form a major part of the work force of Indian agriculture, and their proportion in the workforce has been increasing over the years. This is the inverse of the trend observed for the overall population, whose dependency of the general population on agriculture is on the wane. However, the population of SCs and STs is more dependent on it than at any previous time, and more absolutely so. There was a drastic decrease in cultivators and artisans (household industry) from among these sections between 1961 and 1991, paralleling a massive increase in the category of agricultural labourers. The ramifications of these tendencies can be better appreciated when we observe that land distribution in rural India is closely tied to the social hierarchy of caste, in which large landowners are invariably from the upper castes, the cultivators belong to the middle castes and the agricultural labourers are mostly from the scheduled castes and scheduled tribes. This fact explains the sharpening of social cleavages in rural India and the reinforcement of the basis of domination of privileged groups over the marginalized. According to estimates of the Planning Commission of India, 77% of the SCs and 87% of the STs are near landless, devoid of any productive assets and any sustainable employment opportunities.³ Of the few who own land from these communities, an overwhelming majority of 87% of SCs and 65% of STs, belong to the category of small and marginal farmers.⁴ Consequently, it is hardly surprising that the vast majority of SCs and STs live in abject poverty, and that the levels of poverty among them are much higher than those prevalent among the general population. Further, though the rates of the betterment of SCs are somewhat comparable to those of the general population, the gap between the general population and them is in fact increasing. Thus, between 1977-1988, the gap in the poverty levels, between the general population and SC population increased from 8% to 11.6%.

³ See Draft Ninth Five-Year Plan 1997-2002, Planning Commission, Government of India, New Delhi, Vol II, p. 347.

⁴ Agricultural Census (1990-91) abstracted in the Third Report of the National Commission for SCs and STs (1996)

An analogous tendency may also be observed in the literacy rates among the SCs in comparison with the general population over a period. Though the growth rate of literacy among the SCs is remarkably higher compared to the general population – at 43%, 46% and 75% for SCs compared to 23%, 23% and 44% for general population during the decades 1961-71, 1971-81 and 1981-91 – the gap between the general population and the SCs and STs remains the same and in fact shows an increase in the case of STs. Further, the dropout rate among these sections continues to be very high and tends to be progressively higher as the level of education increases.

Above all, the SCs continue to suffer from various degrees of the denial of their basic human rights and dignity due to the practice of untouchability. They are often victims of criminal violence and atrocities perpetrated by the upper castes, as well as of custodial violence by the police. These violations of basic human rights continue unabated even in face of the constitutional proscription of the practice of untouchability, and the promulgation of strict laws to deal with the denial of civil rights and perpetuation of violence against these sections.

In fact, many of the atrocities perpetrated on the scheduled castes are related to the issue of agricultural wages. A former deputy commissioner for the scheduled castes and scheduled tribes, Southern Zone, observed that most often the tussles are not even about the payment of statutory minimum wages but rather about securing parity between the wages paid to the SC agricultural labourers and non-SC workers. The violence however can be quite gruesome. He cites an instance of 42 SC agricultural labourers being bolted in a 6x4 feet room and roasted alive in Thanjavur district in 1968 as an example of the form these atrocities may take⁵. Many such examples can be cited from all parts of India, even in contemporary times, with women belonging to these groups being the worst victims of these atrocities.

⁵ Srivastava, B.N. "Working of the Constitutional Safeguards and Protective Measures for the Scheduled Castes and Scheduled Tribes" in *Journal of Rural Development*, Vol. 19(4), 2000, p.580.

It was in recognition of the completely subordinated status of these social groups that the Constitution makers envisaged a comprehensive set of safeguards for them as also a set of ameliorative measures for the betterment of their condition. On the social plane, untouchability was declared a statutory crime, and discrimination was legislated against. The Constitution also envisaged a comprehensive package of affirmative action and preferential treatment for these sections in the matters of education, appointments to public services and planned expenditure by the state. Further, in view of the subjugated status of these sections, they were given political safeguards in the form of reservation of seats in the lower house in Parliament as well as in the state legislative assemblies. Finally, the Constitution also provided for a watchdog institution, originally called the Special Officer for the Scheduled Castes and Scheduled Tribes to oversee the implementation of these safeguards. Later, after an attempted improvisation of the functioning of this institution through a constitutional amendment, it is called the National Commission for the Scheduled Castes and Scheduled Tribes. The following table summarizes the various constitutional safeguards that have been provided.

For the last decade or so, we have been witnessing a period of great social churning and a new political awakening in these sections. There are demands for a stricter adherence to

S.No	Category	Measures/safeguards	Articles of the Constitution
I	Social	Social problems like abolition of untouchability, prohibition of discrimination on grounds of caste, race, sex, access to public places, wells, tanks, hotels, restaurants etc., prohibition of forced labor, and throwing open Hindu religious institutions etc.	14,15(1), 15(11), 17, 23, and 25
II	Educational And Economic	Reservation for the admission in educational institutions, reservation in the public employment, claims in appointments to the services, promotion of educational and economic interests and protection from social injustice and all forms of exploitation	15(4), 16(1), 16(4),16(4)A, 29, 46 and 335
III	Political	Reservation of seats in Lok Sabha and state assemblies and periods of reservation, minister in charge of tribal welfare in the states of Bihar, Madhya Pradesh and Orissa	164(11), 330, 332, and 334
IV	Other safeguards	Administration of the scheduled areas and tribal areas, grants-in-aid out of consolidated fund of India to states for scheduled areas and promoting the welfare of Scheduled Tribes, national commission for scheduled castes and scheduled tribes, executive power of union in giving direction to state for scheduled tribes, appointment of backward classes commission, specification of the scheduled castes and scheduled tribes, definitions, special provisions with respect to the state of Nagaland, Assam, Manipur, Mizoram and Arunachal Pradesh., fifth and sixth schedules.	244, 275, 338, 339, 340, 341, 342, 366, 371. Fifth and sixth schedules.

the quotas prescribed at all levels and in all sectors, and demands also to extend the affirmative action package to the fast expanding private sector. More and more acts of discrimination and oppression are being recognized as such, are being reported under the relevant statutory provisions directed against them, and are being resisted in overtly political ways. The Indian state is responding to these developments in ways that that do not always bespeak a cogent action plan. At one level, it tries to grapple with the problem

with more financial sops. At another level, it responds by brutally repressive measures, as evidenced in the growing complicity of the police in the perpetuation of various atrocities, and the repressive tactics adopted by the state apparatus to quell any dissenting voices emanating from these sections.⁶ In these turbulent times, an institution like the National Commission for Scheduled Castes could play a crucial role, given its constitutional role as a watchdog over the implementation of safeguards. It could act as a grievance redressal body that addresses complaints emanating from individuals as well as institutions, and act as an interface between these levels.

In the following pages, we will sketch the history of the NCSCST, upto its present form of the NCSC, elaborate its organisational structure and legal framework, assess its functioning, and evaluate the extent to which it has been able to realise the mandate entrusted to it. The paper will examine the constitutional, institutional and political limitations on the Commission's functioning.⁷ It will analyse the Commission's own often narrow interpretation of its constitutional mandate, provide data on the working of the Commission in the four main areas of its work, and seek to demonstrate the emphasis – in its actual functioning – on service safeguards rather than the prevention of atrocities or welfare. This is a study of an institution not merely in terms of what it does on a day-to-day basis, but also in terms of its role – or the lack of it – as the creator of rules and processes that inform a normative vision of a better society. The paper will conclude with a series of policy recommendations.

II

EVOLUTION OF THE NCSC

Although the National Commission as a constitutional body, in its present form, came into being in the early 1990s, its creation has to be understood as a part of a larger

⁶ Cf. *Broken People: Caste Violence against India's 'untouchables'*, a Human Rights Watch Report (1999) pp.42-124 for a detailed report on the state repression in Bihar and Tamil Nadu.

⁷ As such, the paper also adopts the official terminology of the terms Scheduled Castes and Scheduled Tribes, except in the context of political mobilization and political discourse.

historical process that can be traced back to the colonial period, especially the late nineteenth century, when leaders belonging to the low caste and untouchable groups highlighted the need for reforms, and drew the colonial state's attention towards the practices of discrimination and inhumanity in Indian caste society. The appeal for social reform gradually got linked to the demand for special provisions and special rights for collective representation.

By the time of independence, special representation for the Scheduled Castes and Tribes - through joint electorates - was in place. Though the Constituent Assembly of India, convened as a result of the Cabinet Mission Statement of May 1946, was based on limited franchise, it was meant to represent various interests and communities. Of a total of 296 members to be elected from the Provinces of British India, there were 31 members of the Scheduled Castes and 6 members of the so-called Backward Tribes. In the Constituent Assembly (1946-49), the debate on these groups originated in the context of the larger discussion on minority rights. Four days after the Assembly began its deliberations, Jawaharlal Nehru moved a resolution outlining the philosophy that the Constitution should reflect. The Constitution, he said, must secure justice for all, equality of status and opportunity, and equality before the law, for every citizen. In the new Constitution, "safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes". In his letter to the President of the Constituent Assembly, Vallabhbhai Patel mentioned four aspects of the desirable political safeguards for minorities. These were: representation in legislatures; reservation in the Cabinet and in the public services; and, finally, ***an administrative machinery to ensure the protection of minority rights***.

In his *Memorandum and Draft Articles on the Rights of the States and the Minorities* presented to the Constituent Assembly in March 1947, Dr. B.R. Ambedkar had argued that there was a need for a Superintendent of Minority Affairs, enjoying a status similar to that of the Auditor-General, to report annually to the legislature on how minorities were being treated by the state, and on "any transgressions of safeguards of any miscarriage of justice due to communal bias" by government officials. (Ambedkar, 1947)

It is important to note that, at this time, the term “minorities” encompassed religious minorities, as well as the Scheduled Castes and Scheduled Tribes.⁸ It was only in the process of the drafting of the Constitution that the term itself came to be renegotiated. The term minority – which had hitherto referred to religious minorities *as well as* scheduled castes and tribes – was redefined. Special provisions for minorities now came to be confined only to the latter two categories, while religious minorities were given only cultural and educational rights. The existence of one Commission for both the SCs and STs thus had its origin in the *excision* of religious minorities from a formerly inclusive category, and as such was a creation of residuality rather than a deliberate bringing together of the Scheduled Castes and Scheduled Tribes, premised on some homology between the two types of groups.⁹ It was only in 2004 that the decision to bifurcate the Commission, and establish a separate National Commission for the Scheduled Tribes, was notified.

As far as the administrative machinery was concerned, the earlier idea of instituting a ‘special Minority Officer’ - whose duties would be to “enquire into cases in which it is alleged that rights and safeguards have been infringed and to submit a report to the appropriate legislature” – was abandoned. In its place was instituted a Special Officer for the Scheduled Castes and Scheduled Tribes, whose concerns excluded other minorities, including religious ones. This provision, contained in Article 338 of the Indian Constitution, is the root provision of the existence of the Commission.

It is arguable that an institution such as this can only be properly evaluated by locating it in the wider political and institutional context of Indian democracy. As far as politics are concerned, scholarship on dalit politics has produced two widely accepted arguments, the first of which suggests that it is the policies of compensatory discrimination that

⁸ See, for instance, the Resolution moved by G.B. Pant for the setting up of the Advisory Committee on fundamental rights, as also Harnam Singh’s draft on Fundamental Rights. Ambedkar himself said that “To say that the Scheduled Castes are not a minority is to misunderstand the meaning of the word ‘minority’” (Rao, ed., 1967, Volume II: 116-114)

⁹ Virginius Xaxa has argued that the logic of reservation in the two cases is not identical. Reservations for the scheduled castes and scheduled tribes are justified by the disabilities suffered by them as a result of, respectively, segregation and isolation from the dominant community. (Xaxa, 2001: 2768)

facilitated the emergence of the Bahujan Samaj Party and its leadership.¹⁰ This argument does not make the claim that reservations policies or political empowerment have definitively enhanced the welfare of dalits or improved the material condition of the poorer among them, it only links these policies with the political mobilisation of the dalit community. The second argument is more explicit on this count. It argues that while political mobilization and policies of compensatory discrimination have led to the incorporation of these groups in the political elite, policy outcomes for the well-being of dalit citizens in general have been woefully inadequate.¹¹ It could be argued that the functioning of the NCSC has tended to follow this pattern. Instead of contributing to the welfare of poor dalit communities, it has tended to work fairly systematically as an organization for the more privileged sections of these.

Apart from relating the institution to the ebb and flow of dalit politics, it is also important to note the institutional context. Institutional engineering is an established and legitimate method of managing diversity, but the periodic re-invention of institutions such as the NCSC, in response to social and political developments, raises several questions. Should an institution with an avowedly particularistic orientation be evaluated in the same way as a more universalistic institution? Does it not merit an assessment both in terms of its constitutional mandate and role, and in terms of its efficacy in delivering and producing results for the social constituency which it eponymously 'represents'?¹² Does the way in which the institution functions reflect the incentives that informed its creation in the first place? If so, is the creation of new institutions a genuine response to the perceived failure of other previously existing institutions, or simply a politically inexpensive way of responding to political exigencies? Above all, can *any* institution function in a robust manner if the wider institutional context is weak or underdeveloped?

¹⁰ Cf. Sudha Pai (2002) *Dalit Assertion and the Unfinished Democratic Revolution: The Bahujan Samaj Party in Uttar Pradesh*. Sage Publications, New Delhi and Kanchan Chandra (2004) *Why Ethnic Parties Succeed: Patronage and Ethnic Head Counts in India*. Cambridge University Press, Cambridge.

¹¹ Myron Weiner (2001) "The struggle for equality: caste in Indian politics" in Atul Kohli (ed.) *The Success of India's Democracy*. Cambridge University Press, Cambridge.

¹² For purposes of such an assessment, the reference-point adopted in this paper is that of the dalits, because the Scheduled Tribes now have a separate Commission.

As compared with social movements and party politics – which are implicitly assumed to possess the merit of being inherently dynamic, and therefore truer to reality – institutions of the state tend to be viewed as relatively more static phenomena. As prisoners of the structures, rules and laws that constitute them, institutions are presumed to be less likely to tell a story that captures the processes of change. The evolutionary trajectory of the National Commission for Scheduled Castes and Scheduled Tribes belies this in two ways. Its evolution, firstly, has been highly contested, subject to the rough-and-tumble of partisan politics, a creature mostly of circumstance. Secondly, while processes of change in an institution are generally conceptualised as processes of decay and erosion (e.g., Parliament) or, conversely, of recovery, consolidation, and strength (e.g., the Election Commission after T.N. Seshan or the Supreme Court since judicial activism), the NCSC exemplifies neither of these tendencies. It lacks the potential for erosion and decay because it was never robust to begin with. Equally, it lacks the capacity for recovery and strength because it is handicapped both by external limitations and internal constraints.

III

ORGANISATIONAL STRUCTURE AND LEGAL FRAMEWORK

Organisational Evolution:

This section of the paper presents a legal and organizational genealogy of the NCSC from its constitutional ancestry to the design and structure of the Commission in its present form. The relationship of institution formation to societal and political processes is clearly exemplified in the evolution of the NCSC. As mentioned earlier, the idea of such a watchdog body was advocated in the Constituent Assembly by Ambedkar, among others, and adopted in Article 338. On November 18, 1950 an office of the Commissioner for Scheduled Castes and Scheduled Tribes was created, and the first appointment to this office was made. By 1965, the institution had grown substantially, with 17 regional offices across the country. Two years later, these were reorganized in the form of 5 zonal

offices, delinked from the Commissioner's office, and affiliated to the newly created office of the Directorate General of Backward Classes Welfare in the Department of Social Welfare of the Government of India. With the regional organizations reporting to the Department of Social Welfare, the Commissioner's office was now deprived of access to the field organization through which it could collect information on the working of the safeguards. Meanwhile, programmes for the Scheduled Castes and Tribes remained low on the list of governmental priorities, were poorly planned and even worse co-ordinated. The Commissioner's office was poorly resourced. In terms of staffing, for instance, it had in 1977, precisely two Research Officers and two Investigators. As such, it possessed neither the capacity to generate its own data nor the authority to compel other government agencies to provide it. (Galanter, 1984:70)

In the meantime, Parliament had set up its own Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes in 1968. This 30-member Committee, with 20 members from the Lok Sabha and 10 from the Rajya Sabha, was given investigative powers which, at this stage, the Commissioner's office did not possess. Unlike the Commission, the Parliamentary Committee has had an uninterrupted record of functioning since 1968, and has presented to Parliament close to 500 Reports on a wide range of subjects.¹³

The Janata Party government that came to power after the Emergency had, in its election manifesto, made a commitment to bring about a socio-economic revolution. Barely two months into office, and partly in response to evidence of rising atrocities against dalits, it announced that it would set up an umbrella civil rights commission that could protect the minorities, backward classes, scheduled castes and scheduled tribes against discrimination and inequality. Six months later, there was speculation that the government was planning to set up two commissions – one for religious minorities and

¹³Some of the recent reports of the Committee have examined the representation of scheduled castes and tribes in the higher judiciary, the military, and the nationalised banking sector. Others have investigated the allocation of funds by the Planning Commission for welfare programmes for these groups; or employment policies in the wake of liberalisation; or the working of tribal co-operatives; and so on. Most recently, the Nineteenth Report of the JPC, presented to Parliament in December 2006, deals with reservations for, and employment of, Scheduled Castes in a leading public sector insurance company.

the other for the Scheduled Castes and Scheduled Tribes – instead of a single commission on civil rights. The commission for minorities was appointed in January 1978, while for the Scheduled Castes and Tribes, a constitutional amendment was proposed to merge the extant Commissioner's office with a new, broad-based, multi-member body that would serve as the main constitutional authority to look into issues concerning the Scheduled Castes and Scheduled Tribes.

Before the amendment was introduced, however, the Union Government created, by a resolution of the Ministry of Home Affairs, a Commission for Scheduled Castes and Scheduled Tribes, consisting of a chairperson and four members, including the Special Officer appointed under Article 338. The mandate of this body was to investigate the implementation of safeguards – especially in respect of job reservations – and the laws pertaining to social disabilities. The first Commission under this dispensation was set up in August 1978, with Bhola Paswan Shastri as the Chairperson. The field offices of the erstwhile Commissioner for Scheduled Castes and Scheduled Tribes, which had been transferred to the DGBCW in 1967, were brought under this Commission constituted through an administrative decision. In August 1978¹⁴, the Government of India introduced the Constitution (Forty Sixth Amendment) Bill in the Lok Sabha. This bill was debated in May 1979 but it could not get enacted for want of the requisite two-third majority. (Austin, 1999:451) The Government of India, however, did not nullify the 1978 home ministry resolution and the two organizations – the one brought into being by the Constitution and other through the resolution – co-existed till 1992.

The functions of these two organizations overlapped considerably, and so in July 1987 the Government of India began the task of demarcating more precisely their operational domains. As part of this move, the office of the Commission was reinvented as the National Commission for Scheduled Castes and Scheduled Tribes (NCSC-87) through a resolution of the Ministry of Social Welfare. In this new version, the Commission's office became more of a think tank for welfare policy, while the Commissioner's office

¹⁴ It is worth recalling that the Mandal Commission on Backward Classes was also set up by the same government, and in the same year.

retained exclusive rights over its original domain, namely, the monitoring of the working of the safeguards provided for SCs and STs in the Constitution. While it is difficult to prove that it was the radical nature of the 28th and 29th Reports of the Commissioner (B.D. Sharma) that provoked yet another reorganization, it is the case that these reports were highly critical of government policy – including the issue of the displacement of tribals in the Narmada Valley, and the impact of forest laws on the relationship of tribals to the forest – and as such extremely inconvenient.

Thus, this arrangement was once again revised, paving the way for the creation – this time by constitutional amendment – of the National Commission for Scheduled Castes and Scheduled Tribes in its present incarnation. The Commission was constituted to give effect to the Constitution (Sixty Fifth Amendment) Act, 1990 and came into being on 12 March 1992, in the process merging the old Commissioner's office and the old National Commission's office.

In 2002, the Government announced its decision to have two separate Commissions for the Scheduled Castes and Scheduled Tribes. The Eighty-Ninth Constitutional Amendment was enacted to this end in September 2003, coming into effect in 2004. As we have seen, the administrative rationale of establishing a single commission for both groups was not, even in the first instance, premised on any presumption of likeness between them, but simply by virtue of their being the two categories of groups – as distinct from religious minorities – that were eligible for compensatory discrimination. The administrative rationale for separation is less likely to be a belated recognition of sociological difference than a function of politics. Ten months after the notification of rules and appointment of the new commission by the nodal ministry officers and staff of the NCSCST were divided between the NCSC and NCST in the ratio of 2:1. This came about on 1st December 2004, on which day 12 of the 18 regional offices of erstwhile NCSCST 12 placed under the NCSC.

In a democracy, the pressure to homogenize and consolidate votes creates the imperative – for, say, the BSP – to link the Dalit-Bahujan *samaj*, in an inclusive conception of the

SCs, STs, OBCs and Minorities. For others, who stand to gain from a separate electoral constituency of tribals, it makes good political sense to oppose such a move. The Scheduled Tribes themselves have been arguing that their problems are distinct, and that their relative isolation has prevented them from availing of the opportunities available, allowing the SCs to march ahead of them in education and employment.

Mandate:

The primary legal framework for the functioning of the Commission is, as we have noted, found in Article 338 as amended by the Constitution 89th Amendment Act. This is the foundational law on which the very existence of the Commission is premised. It wills the Commission into existence, defines its character, assigns it definite functions and bestows on it the powers to carry out these functions and duties effectively. The Constitutional Amendment specifies the duties of the Commission, and gives it both the responsibility and the mandate to act on particular issues. According to these provisions, it is the responsibility of the Commission to

- investigate and monitor all matters relating the safeguards provided for the SCs and STs in the constitution and any other law in force at the moment;
- evaluate the working of such safeguards;
- inquire into specific complaints pertaining to the deprivation of rights and safeguards to these sections;
- participate and advise in the planning process and evaluate the progress of development of these communities.
- submit reports “annually and at such times as the commission may deem fit” to the President on the working of safeguards, with appropriate and specific recommendations addressed to the various state governments and the Union government.

This listing of the Commission’s duties is thus quite specific about its role, even as it gives the Commission a fair degree of autonomy as well as space for interpreting its field

of action. It indicates the proactive role envisaged for the Commission in the amendment, combining the investigative, monitoring, evaluative, advisory and remedial roles of the Commission in matters relating to the Scheduled Castes.

Over the years, the Commission has arrived at a classification of *the constitutional safeguards it seeks to monitor and evaluate* in terms of five broad categories. These are (a) social safeguards (b) economic safeguards (c) educational and cultural safeguards (d) political safeguards (e) service safeguards.

Under *social safeguards* the Commission has identified four constitutional provisions. These are: Article 17 that abolishes untouchability, and makes the enforcement of disability arising out of untouchability, a punishable offence; Article 23 that prohibits traffic in human beings; Article 24, pertaining to child labor; and Article 25(2)(b) that throws open all Hindu religious institutions of a public character to all classes and sections of Hindus. Though neither Article 23 nor Article 24 contains any reference to SCs and STs, the Commission may bring them within its ambit, on the grounds that the content of these articles is of relevance to the welfare and well-being of those sections of society whose responsibility has been entrusted to it. The Commission has argued that the operation of these provisions fall within its domain as the large majority of victims of the traditional practices of forced labor are from these sections of society, and a substantial number of child labourers are also from these sections. Thus, there is a measure of autonomy that the Constitution grants to the institution in its operation, and in interpreting the meaning of Article 338 that grants the Commission powers to determine its own procedure.

The key legislations that the Commission has identified under these safeguards are: the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989, under Article 17; and the Bonded Labor System (Abolition) Act, 1976, under Article 23. The first two are of central importance to the activities of the Commission, given the magnitude of the atrocities against the SCs and STs and the widespread practice of untouchability in the country. The Protection of Civil

Rights Act was originally enacted in 1955, as the Untouchability (Offences) Act, 1955. It was amended to its present form and renamed in 1976. The Act specifies the offences under the constitutional proscription of untouchability, and the modes in which the state and union governments are to act in the face of the occurrence of such acts. Further, the Union Government formulated rules in continuation of this Act in September 1977, called the Protection of Civil Rights Rules, 1977. These rules prescribe that state governments shall appoint an officer of a rank not lower than sub-divisional magistrate for purposes of making an enquiry into any alleged offence under this Act. They also specify the procedures to be followed by the officer, and the timeframe for finishing and submitting the inquiring officer's report. Similarly, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 defines the atrocities and provides for the special courts for the trial of such offences. The rules range from definitive preventive measures to the prescription that all state governments send an annual report to the central government regarding the measures taken by it in the previous year to implement the provisions of the act. The Commission's monitoring function makes it the responsibility of the Commission to ensure that all the norms invoked in these laws and rules are adhered to, and no procedures are violated in the process of addressing the grievances of the victims of offences. It can, moreover, initiate an inquiry of its own accord if it wishes to find out if such a violation has indeed taken place, and can fix responsibility and recommend action. However, the recommendations of the Commission are not binding.

Under the *economic safeguards* the Commission (in its earlier form of the NCSCST) identified Articles 23, 24 and 46 (as discussed above) to constitute the general economic safeguards for the SCs as well as STs. Beyond these provisions, it also identifies some specific constitutional safeguards provided for ensuring the economic well being of the STs.

The Commission has identified Articles 15(4), 29(1), and 350 (A) as *educational and cultural safeguards*. The most significant of these is Article 15(4) that was added as the First Amendment in 1951. This article empowers the state to make provision for the

social and educational advancement of backward classes. This enables the state to provide reservations in educational institutions including in technical, professional and specialized courses. The phrase ‘backward classes’ used here is a generic term that includes SCs, STs, other backward classes, denotified tribes, nomadic and semi-nomadic communities.

The key *political safeguards* are contained in Articles 330 and 332, which provide for the reservations of seats for SCs and STs in the Lok Sabha (the directly elected lower house of Parliament), and the state legislative assemblies respectively. These provisions are to be read along with article 334, which stipulates the time-frame for the reservations, and has been periodically amended to extend the period from the initial ten years. Further, political safeguards are provided for STs in the states of central and north-eastern India.

Finally there are the all-important *service safeguards*, contained in Articles 16 (4), 16(4A), 335 and 320 (4). Article 16 (4) lays down that the state may make reservations for the backward classes in appointments to the services under the state, while Article 16(4A) - which was inserted through the Seventy-Seventh Amendment Act, 1995 - provides for the application of reservations in matters of promotion. Further, a more specific mention of SCs and STs in respect of the reservations in service is made in Article 335 which lays down that their claims have to be taken into consideration when making appointments to services and posts in the union or state governments. Appointments in this respect need not be routed through the Union Public Service Commission or the State Public Service Commissions vide Article 320(4).

A significant component of the Commission’s mandate is to *investigate, monitor and evaluate* these safeguards. The Commission’s interpretation of these three key terms is also an important aspect of the framework within which it functions. To begin with, the Commission has unlimited power to investigate any matter relating to the safeguards listed above. In the words of the Commission itself, this is a “broad enabling provision”. The specifics of the matters to be investigated are decided by the Commission from time to time. Secondly, the monitoring of the working of the safeguards implies keeping a tab

on whether all the provisions listed above are being followed everywhere and at all times. This responsibility is specific to the Commission in present incarnation, and was not a part of its earlier forms in either 1978 or 1987. Thus, the Commission has to keep a watch on, and point to discrepancies and deficiencies in, the application of safeguards so that “midcourse correction can be applied immediately”. This capacity of the Commission assumes great significance in the event where it has to intervene in cases of atrocities. Here, as a part of its monitoring activity, the Commission immediately contacts the law enforcement and administrative machinery of the relevant state to ensure that the provisions of the Prevention of Atrocities Act, 1989 are adhered to. Its monitoring activity is expected to be carried out scrupulously, starting from the mandatory visit of district magistrate to the scene of crime, through the appointment of special public prosecutors, to the last detail of the handling the case by the administration. It further monitors whether adequate medical assistance, protection and mandatory compensation is provided to the victims. It is clear from these observations that, in the understanding of the Commission, monitoring does not mean merely the collection of statistics or figures but is an integral part of the process of intervention and evaluation. However, the evaluative function of the Commission is much broader in scope than as a component of the monitoring process. All programs conceived under the provisions of constitutional safeguards are studied to assess their successes and deficiencies, for the further refinement of programme formulation and implementation.

Further, as already noted, the Commission has the mandate to inquire into *specific complaints* pertaining to the deprivation of rights, and safeguards for, the SCs. The Commission has by rule determined that any member of the SC community might lodge a complaint with the Commission, either by addressing it directly to the Chairperson or Vice-Chairperson or secretary at the headquarters in Delhi, or to the heads of the state offices. The complainant has to reveal his /her full identity. However, the Commission does not consider matters which are *sub judice*, or matters over which a court has already pronounced a judgment. The remedial action that the Commission suggests upon investigating the matter is purely recommendatory in character.

Finally, it is obligatory on the part of the union and state governments to consult the Commission on all major policy matters affecting SCs and STs. This is ordained under article 338(9), and is the chief role of this Commission in its advisory capacity.

While the existence and authority of the Commission is constitutionally mandated, there are no clear mechanisms for ensuring its efficacy. The constitution requires that the annual report that the Commission submits to the President shall be placed before each House of Parliament along with the Action Taken Report on the recommendations relating to the Union, along with reasons for not accepting the recommendations in case of non-compliance. A similar procedure is laid down for the state level reports for all the states. Thus, the Commission is a formal watchdog for the legislative wing of the state on the executive wing, while remaining autonomous from both. To that extent its role is analogous to that of the Comptroller and Auditor-General.

Organisational Structure:

In organizational terms, the Commission's headquarters are located in New Delhi, and its field organization of 16 state offices is spread across the country. At headquarters, the Commission is organized into four departments, each headed by a director, each of whom is responsible to a joint secretary and the secretary to the Commission. The Commission's office is organized into four wings: the Administration and Coordination Wing (ACW), the Service Safeguards Wing (SSW), the Atrocities and Protection of Civil Rights Wing (APCRW) and the Economic and Social Development wing (ESDW). The ACW takes care of the internal administration of the Commission and coordinates the various activities performed by it, including the setting up of meetings with the administrations of the states and union territories to review the implementation of the safeguards. The SSW engages with all the details pertaining to service safeguards in the several ways discussed above, and also takes care of cases related to false certificates and exclusion/inclusion of castes from the lists of these communities. The APCRW deals with matters pertaining to atrocities, civil rights, bonded labor, and the minimum wages act. It also acts *suo moto* based on newspaper reports. The ESDW primarily monitors the Plan schemes of the central and state governments, including the special component Plan

for SCs, and the tribal sub-plan for STs, land reforms, educational schemes, and so forth. While each of these departments has assistant directors, deputy directors and research officers, the largest number of staff at headquarters is engaged in the personnel and administration wing. Of the more functional wings, it is the services safeguards wing that is substantially better staffed, while the atrocities and protection of civil rights wing has the smallest number of personnel. This clearly indicates both the priority given to these issues within the Commission, as also its institutional capacity for handling them.

At its apex, the Commission consists of a Chairperson, Vice-Chairperson, and three other members, appointed by the President of India. The rules given by the President, along with the Commission's power to regulate its own procedures, constitute the secondary legal framework for the functioning of the Commission.¹⁵ They include the rules governing the composition of the Commission, in which the positions of chairperson, vice-chairperson and two other (of the three) members are reserved for people belonging to the Scheduled Castes; at least one of the members at any given time must be a woman; and part-time members can also be appointed. The qualifications for appointments to the Commission are specified in the rules. The individuals appointed should be persons of "ability, integrity and standing who have a record of selfless service to the cause of justice" for the Scheduled Castes. The Chairperson should be an eminent socio-political worker who can inspire the confidence amongst the SCs by his/her personality and record of service. The tenure of the members is three years. The rules also allow for the appointment of the retired persons from the judiciary and civil service to all positions in the commission. The removal of the chairperson, vice-chairperson and the members is sequentially easier. In the normal course, the Chairperson can be removed if the Supreme Court decides so, on a reference made to it by the President, and on grounds of misbehaviour. The President may suspend the Chairperson pending the decision of the Supreme Court on the presidential reference. For the removal of the vice-chairperson or any other members, a judicial reference is not required.

¹⁵ ~~Following the bifurcation of the NCSCST, the President of India, through a notification of February 20,~~ 2004, issued the rules prescribing qualifications for appointments to the NCSC, and specifying the tenure and terms of service, as well as of removal, of these members. The Rules of Procedure of the Commission were issued in September 2004.

Using the power to regulate its own procedures, the Commission has defined the division of responsibilities and the allocation of work within the organization. The Chairperson allots the work among the rest of the members, retaining all the residuary powers. Members have a ‘collective responsibility’ to participate in the meetings and sittings of the commission. They are given overall responsibility for certain subjects and/or regions, and play an advisory role to the state governments within their purview. The rules of procedure also define the status and duties of the field offices, which play a vital role as the ‘eyes and ears’ of the Commission. They disseminate information regarding the policies and programmes of the Union Government pertaining to SCs and STs, and obtain similar information from state governments, NGOs and media within their jurisdiction. Most importantly, they conduct on-the-spot enquires into cases of atrocities and interact with the administrative and police officials that have jurisdiction over the area in which the act was committed. They also deal with complaints and representations from individuals and welfare associations. In short, most of the actual work of the Commission is actually done at the regional level but the Commission’s office in Delhi comprehensively monitors all this work.

Beyond the division of labour as outlined above, the rules of procedure also delineate the specific activities of the Commission and the procedures for carrying them out. The first of these activities is the *meetings of the commission*. As per the rules, the Commission has to meet at least once in two months, though an emergency meeting can be called at the behest of any member or of the secretary. The Chairperson or Vice-Chairperson, along with at least two other members, constitute the quorum for holding the meeting of the Commission. In the normal course, the Commission’s meeting considers a wide range of subjects. To begin with, the rules of procedure can be amended in this meeting only. It decides on matters to be investigated by the Commission directly, and considers all reports that are to be considered by the Commission. It also discusses important issues pertaining to the development and welfare of the SCs. Any other matter may be introduced in the meeting either by the Chairperson or by any other member with the consent of the Chairperson.

Besides these meetings, the Commission also holds *sittings*. The Commission can hold sittings or meetings anywhere in the country. The Commission holds sittings when a specific matter has to be investigated. For sittings, the presence of all members is not required. Sittings of the commission may be held as and when they are necessary, and may be held simultaneously in different parts of the country. Significantly, the Commission pays travel allowance and daily allowance to the people who are summoned to its presence to depose, if the information cannot be obtained from any other source and it is required by procedure. The rules of procedure identify four kinds of activities engaged in by the Commission, Apart from the meetings and sittings that enable it to carry out its mandate and lay down the procedure for doing so, the rules of procedure identify four kinds of activities engaged in by the Commission. These are: investigation and inquiry; advisory activities; monitoring activities; and non-formal action.

(a) Investigation and Inquiry: In its investigative role, the Commission has unlimited power to investigate any matter relating to the safeguards, protection, welfare and development of the Scheduled Castes and Scheduled Tribes, as also specific complaints. The Commission may carry out an investigation or inquiry (I/I) either directly or by deputing an investigative team from headquarters or through its state offices. The Commission possesses the powers of a civil court to summon and enforce attendance of any individual, including officials, and to ask for testimony on oath, documents, public records, and evidence on affidavits. Only matters that are already *sub judice* cannot be investigated. These provisions do sometimes lead to turf wars between the Commission's central team/field offices and the local administration, on which the former depend for administrative and logistical support. Despite this support, the responsibility of preparing and submitting the report rests with the team members only. The Chairperson, Vice-Chairperson, or any of the members who have jurisdiction over an area or subject matter may order an I/I by a state office. The headquarters closely monitors these investigations.

(b) Advisory Activities: A second type of activity undertaken by the Commission is in its advisory capacity. In performing this role, it interacts with the various state governments

and with the Planning Commission. The Commission interacts with the state governments through its members, secretariat and state offices. With the Planning Commission, the interaction is more multifarious and takes place through various committees and working groups. The Commission also undertakes various research activities and studies to evaluate the impact of the implementation of the constitutional provisions aimed at the betterment of the status of the SCs and STs. For this purpose, it may constitute special teams at the headquarters or at the state offices, or collaborate with the state or union governments or with universities and other research bodies. It may also commission studies or give grants for studies to any person or body it deems competent to carry out a study on the themes it deems appropriate. Such studies are either incorporated in the annual report or published separately.

(c) Monitoring Role: In its monitoring role, the Commission is supposed to ensure that all the provisions are being followed everywhere and at all times. It can ask any public authority for a report, or ask state offices to collect data on specific subjects. This is an extremely important activity, especially as it relates to atrocities against dalits, and enables intervention in such cases outside of the sluggish legal process. When an atrocity is reported, or even taking *suo moto* cognizance of an atrocity, the Commission contacts the law enforcement and administrative machinery of the state to ensure that the Prevention of Atrocities Act, 1989 is adhered to. It monitors every stage of this process, from the mandatory visit of the District Magistrate to the scene of the crime, through the appointment of special public prosecutors, to the last details of the handling of the case. It also determines whether adequate medical assistance and the mandatory compensation have been provided. Monitoring thus is not just about collecting data, but is actually intended to be a potent instrument of intervention. In some special cases, which are not strictly covered by the law, the Commission can resort to non-formal action in its capacity as the “protector” of the interests of Scheduled Castes and Scheduled Tribes. This provision is sometimes used to, for instance, protect couples entering into an inter-caste marriage, from social hostility and threats of violence.

(d) *Non-formal Action:* The Commission may resort to non-formal action in special cases and matters, which are not strictly covered by law. This is carried out in its capacity as the ‘protector of the interests’ of SC and ST communities.

The Commission is, finally, enjoined to prepare an Annual Report, which is submitted to the President of India, and then placed before both Houses of Parliament, along with an Action Taken Report on the Commission’s recommendations, or – in the case of non-compliance – reasons for not accepting its recommendations. In sum, therefore, the Commission is designed to function as a watchdog institution that monitors the executive wing on behalf of the legislative wing of the state, while remaining autonomous of both. The Government is technically responsible to Parliament regarding its actions/inaction on the recommendations of the NCSC.

In design, the NCSC was intended to be rather like the Comptroller and Auditor-General of India or the Election Commission, similarly appointed by the President of India. The Election Commission enjoys considerable autonomy within its own area of functioning, while the CAG has power over the various departments of the executive, which it can hold accountable in certain respects. The Commission lacks the autonomy enjoyed by the former, as well as the control exercised by the latter. As an institution which monitors the functioning of state agencies with respect to the interests of certain disadvantaged social groups, the NCSC was designed to be roughly analogous to the CAG, though in a somewhat more limited sphere. In its actual performance of this role, as the next section of the paper shows, the Commission has been circumscribed not merely as a result of institutional design, but also by its own predisposition to be self-limiting.

THE COMMISSION AT WORK

Of the four core areas of the Commission's functioning – viz., service safeguards, education, economic development and atrocities – the Services Safeguards Wing is arguably the most active. In the first year (1992-93), a total of 8,858 petitions were received by the Commission; followed by 5220 in 1994-96, 3388 in 1996-97, 1301 in 1999-2000 and 1206 in 2000-2001. These complaints relate mostly to promotions, discrimination and harassment on various counts, institution of disciplinary proceedings on flimsy grounds, the conduct of departmental enquires in an unfair manner, adverse entry in the annual confidential reports, transfers to far off places or insignificant positions, delay in payment of retirement benefits, delay in the completion of departmental inquiries, and so forth.

Service Related Petitions Processed by the NCSCST (1994-97 & 1999-2001)

	Nature of complaint	1994-96	1996-97	1999-2000	2000-2001
1.	Appointments	1375	723	222	199
2.	Promotions	1480	873	247	262
3.	Transfers	485	292	126	109
4.	Harassment and discrimination	940	606	431	278
5.	Dismissal	-	-	71	84
6.	Others (e.g., disciplinary cases, confidential report cases, pay, appointment on companionate grounds)	940	894	204	274
	Total	5220	3388	1301	1206

Source: Fourth & Sixth Reports of the NCSCST (1998, 1999-2001)

The Services Safeguards Wing has the largest workload and, as we have seen, the largest workforce of all the functional departments of the Commission. In this area of its

functioning, the Commission's inquiries into complaints are on the whole effective, and its recommendations specific, pointing out exactly where the violations are occurring and the measures that should be taken to improve the situation. As such, it functions as a fairly effective mechanism for the redressal of grievances, and almost a form of endorsed unionization. Of course, this means that the wing caters primarily to the needs of the new elites of the SC and ST groups, created as a result of policies of compensatory discrimination, and hence works for those who have already overcome certain barriers and gained access.

Employment profile of SCs and STs in Central Government

A Comparison of 1965 and 1995

Group	Total		Scheduled Castes		% to total		Scheduled tribes		% to total	
	1965	1995	1965	1995	1965	1995	1965	1995	1965	1995
Class I	19,379	65,408	318	6,637	1.64	10.12	52	1,891	0.27	2.89
Class II	30,612	1,08,857	864	13,797	2.82	12.67	103	2,913	0.34	2.68
Class III	10,82,278	23,41,863	96,114	378,172	8.88	16.15	12,390	1,33,179	1.14	5.69
Class IV	11,32,517	10,14,082	1,01,073	221,380	17.75	21.6	38,444	67,453	3.39	6.48
Total **	22,64,795	35,57,210	2,98,369	619,986	13.17	17.43	50,989	2,05,436	2.25	5.78
Sweepers	*	1,77,527	*	78,719	*	44.34	*	12,269	*	6.91
Grand Total	22,64,795	37,34,737	2,98,369	698,705	13.17	18.17	50,989	2,17,705	2.25	5.83

*Figures relating to sweepers in 1965 are included in the figures for Class IV employees.

**Excluding sweepers.

Source: Fourth Report of the NCSC (1998): 14

As the above table demonstrates, significant gains have been made over the years in terms of giving adequate representation to SCs and STs in public services. In fact, at the level of Class III and Class IV posts, the SCs have exceeded the targeted 15% reserved

for them. However, there is a stark shortfall of 5% and 2.5 % at the Class I and II level positions. In the case of STs, moreover, the quota remains unfilled in all categories of posts. Particularly striking is the fact that an overwhelming 44.34% of the sweepers in government service are still from among the SCs, suggesting a certain reproduction of the structures of social domination in the corridors of power. Any temptation to conclude that the NCSC may be pre-occupied with redressing service-related grievances for this group of employees is also not sustained, because in 1994, the Central Government set up a separate National Commission for Safai Karamcharis, which only recently presented its Fifth Annual Report to the Government.

The Commission also, secondly, monitors the levels of literacy and educational development of the Scheduled Castes and Scheduled Tribes (including the collection of data differentiated by gender and community) to understand relative levels of deprivation and marginalization. It also monitors schemes relating to scholarships, book-banks, hostels, etc. The complaints in this area are unsurprisingly few.

Complaints received by the NCSC regarding the violation of educational safeguards
(1993-94)¹⁶

S.No	Nature of Complaint	No. of cases
1.	Denial of admission in schools and colleges of general education	17
2.	Denial of admission in professional colleges	24
3.	Non-payment of stipends/scholarships	6
4.	Request for financial assistances/opening of schools etc	11
5.	Harassment of SC/ST students/teachers by the upper castes	15
6.	Discrimination in the awarding of marks in examinations/deliberate failing etc.	2
7.	Request for the covering of eligibility criteria for admission in to	2

¹⁶ Education related complaints are not routinely recorded in the Reports of the Commission, and have been classified and recorded only in the Second Report.

	professional colleges	
8.	Reduction of reservation % for admission to the Goa Medical College	1
9.	Others	22
	Total	100
	Cases which did not merit the Commission's intervention	2102

Source: Second Report of the NCSC (1996): 15

Another issue that is frequently brought to the Commission is that of false community certificates, the passport to a reserved place in an educational institution or a job. Between 1991-97, there were as many as 588 complaints of this nature, mostly from Andhra Pradesh and Tamil Nadu, filed at the Commission's headquarters, and 1489 more at its various state offices. To deal with what has apparently become an enormous problem, the Commission has compiled the relevant constitutional and legal provisions, as also judicial pronouncements, in one place; and prepared a checklist of uniform procedures for issuing a certificate.

Curiously enough, economic development is the least contentious area of the Commission's functioning. The Commission routinely chronicles the tribal sub-plans, and monitors the various poverty alleviation programmes being administered by the central and state governments. More recently, it has turned its attention to the question of rehabilitation for the tribes, in Madhya Pradesh and Maharashtra, displaced by large irrigation projects. However, the Commission's recommendations for the regularization and rationalization of land records, the streamlining of land revenue administration, the enforcement of ceiling legislations and tenancy reforms, are neither heeded nor translated into policy.

An illustration of the role of the Commission in this area is instructive. In 1975-76, under Mrs. Gandhi's 20-Point Programme, the dalit residents of a village in the National Capital Territory of Delhi were allotted land. In 1995, when the Delhi Government

sought to re-acquire the land for commercial development – without compensation, for the allottees had not been given ownership of the land – the residents complained to the NCSC. The Commission held meetings with representatives of the Delhi Government, at the end of which the latter agreed to give the landholders certificates of possession (*bhumidari* rights), as opposed to certificates of ownership. The legal deadlock that ensued was resolved by the Commission directing the Chief Minister of Delhi to give them certificates of ownership, and if necessary, amending the existing law on land reform. This case demonstrated that, compared to the civil courts, redressal is likely to be quicker and more effective when a civil matter is taken to the Commission, which has the power to summon senior government officials to present their case, and also commands sufficient respect to effect its will. In the ultimate analysis, however, the decision of the Commission is not legally binding, and it remains a recommendation unless, as in this case, the moral authority of the Commission is respected.

One of the most important areas of the Commission's functioning is that of atrocities against dalits. The NCSC collects and comments on data relating to cases under the Civil Rights Act and the Prevention of Atrocities Act, and its reports suggest a rising graph of atrocities and violence against these groups in the 1990s. Many of the atrocities against scheduled castes relate to the issue of agricultural wages. As such, they are not necessarily about the payment of the statutory minimum wage, but simply about parity between the SC and non-SC agricultural labourers, *neither* of whom is frequently paid the legal minimum wage. Atrocities against members of the Scheduled Castes account for 89% of the crimes against SCs and STs combined.

Crimes against Scheduled Castes 1995-97 & 2003-05

S.No	Nature of Crime	1995-1997				2003-2005			
		1995	1996	1997	Total	2003	2004	2005	Total
1.	Murder	571	543	503	1,617	581	654	669	1904
2.	Hurt	4,544	4,585	3,462	12,591	3969	3824	3847	11640
3.	Rape	873	949	1,002	2,824	1089	1157	1172	3418
4.	Kidnapping & abduction	276	281	242	799	232	253	258	743
5.	Dacoity	70	90	57	217	24	26	26	76

6.	Robbery	218	213	157	588	70	72	80	222
7.	Arson	500	464	348	1,348	204	211	210	625
8.	PCR act, 1955*	1,528	1,417	1,157	4,102	634	364	291	1289
9.	SC and ST (POA) act, 1989**	13,925	9,620	7,831	31,376	8048	8891	8497	25436
10.	Other offences	10,492	13,278	11,693	35,463	26252	26887	26127	79266
	Total	32,997	31,440	26,488	90,925	41103	42339	41177	1,24,619

Statement of cases registered with police pertaining to the criminal offences on the members of Scheduled Castes between the years 1995-97 & 2003-05. This statement is based on data from national crime records.

*Protection of Civil Rights Act (1955)

*Prevention of Atrocities Act (1989)

When an atrocity comes to its notice, whether through a petition or through a media report, the Commission can ask the relevant state office to pursue it; or Commission member(s) may hold an on-the-spot inquiry, and remain in the area where it was committed to pressurize the district administration to act effectively. However, even though the Commission has extensive powers of investigation and inquiry in this area and can fix responsibility and recommend action, these recommendations are not binding.

The experience of an activist associated with the National Campaign on Dalit Human Rights suggests that the Commission is not particularly responsive on atrocity related issues. He claims that, as a human rights activist, he has often referred to the Commission well-documented cases of victims of atrocities who have not been given due compensation by the state Government. However, the Commission takes six to eight months to conduct the inquiry, and another year to deliver its judgement, which is more often than not negative. In his view, the Commission tends to confirm the government's position on most cases, and this is hardly surprising because petitions and complaints that are received by the Commission are routinely referred to the same authority – revenue or police – that was either complicit in the perpetuation of the atrocity, or else implicated in the cover-up operation.¹⁷

¹⁷ Interview with P.L. Mimroth of the National Campaign on Dalit Human Rights.

VI

EVALUATION

In the fairly extensive constellation of laws, policies and institutions relating to the Scheduled Castes (and, until recently, the Scheduled Tribes), the NCSC appears to have been a marginal presence so far. This section of the paper seeks to evaluate the performance of the Commission in terms of its institutional capacity, efficacy and interlinkages with other institutions.

Of all its ancestors and relatives since 1950, the NCSC possesses the most wide-ranging set of powers. The office of the Commissioner for Scheduled Castes and Scheduled Tribes (appointed in 1950) was, as we have seen, poorly resourced and staffed, with its field organization being detached and appended to the Department of Social Welfare in 1967. The creation by administrative resolution, in 1978, of a multi-member Commission did not resolve this situation, for while the field offices were placed under its direction, the constitutionally ordained office of the Commissioner continued to exist as a parallel body. Their functions overlapped, and powers were divided. The attempt, in 1987, to demarcate more precisely their respective domains, merely resulted in the multi-member Commission acquiring the appellation 'National' and the orientation of a think-tank on welfare policy, while the Commissioner's office lay in semi-oblivion till its abolition in 1992. The 65th Constitutional Amendment Act conferred on the reinvented National Commission an apparently vast range of powers – from the power to investigate atrocities to the monitoring of safeguards, and from the evaluation of welfare schemes and projects to an advisory role in development policy – that are carried over into its post-89th Amendment incarnation. As a consultative body, the NCSC enjoys the status of the pre-eminent agency that advises the President, Parliament, the Union Government, the State governments and the Planning Commission on all matters relating to the Scheduled Castes and, until recently, the Scheduled Tribes.

The mandate of the Commission being to investigate, monitor, evaluate, and advise regarding all matters pertaining to the constitutional and legislative safeguards for Scheduled Castes, any evaluation of the Commission's work should proceed from a discussion of the Commission's own interpretation of its mandate in general, and of its execution.

It appears that the Service Safeguards Wing is the most active wing of the Commission, though the section related to this area of operation is generally found towards the end of the Annual Reports of the Commission. The wing that deals with *service safeguards* at the headquarters has the largest workload and the largest work force (with the sole exception of the general administration wing). The recommendations of the Commission in respect of general policy-related issues in this area are more specific, and its inquiries into specific complaints are more effective. This is perhaps not surprising considering that this wing caters to the needs of the elite created among the SCs and STs during the last sixty years of the working of the safeguards.

The Commission appears to be reasonably prompt and effective in monitoring service-related safeguards. It has gone to great lengths to pinpoint exactly where the violations are occurring and specifying the measures that should be undertaken to improve the situation. The Commission has continually monitored the recruitment patterns and promotion procedures adopted by the government, as well as those in public sector enterprises, nationalized banks, scientific and technical posts and university services. Significantly, it has recommended the application of the reservation policy in other institutions that receive grants-in-aid from the government. It has taken special interest in such significant detail as writing of the annual confidential reports of SC and ST employees by their superiors. It has actively investigated complaints regarding the denial of time-bound promotions or the abolition of reserved posts or discrimination in the matters of promotion. It has also actively endorsed the unionization of SC (and ST) employees at various levels of government, and in particular in public sector units and nationalized banks, and also recommended the recognition of these unions as legitimate bargaining partners with the management, even outside of the majority union. Further, it

has insisted on and succeeded in institutionalizing the system of liaison officers and special SC and ST cells in all central ministries and public sector enterprises for the speedy and effective resolution of the grievances of employees of these communities. These cells are also expected to work as localized monitoring agencies as far as that particular institution's activities have a bearing on the wider population of SCs and STs. However, the Commission places emphasis on these cells as grievance redressal mechanisms, in the first instance, rather than anything else.

One issue that has been given rather extensive attention over the years by the Commission's service related complaints wing is the prevalence of false certificates. In its third report, the Commission devoted an entire chapter to this issue. It used its field organization to conduct investigations regarding the circulation of false certificates and came up with a check list and a set of recommendations for streamlining the process of issuing such certificates.

Another significant area of intervention by the Commission is **education**. This is one sector of safeguards in the monitoring of which the Commission has shown some sensitivity to the internal differentiations, relative levels of deprivation and marginalization *within* the SCs and STs, along gender and community lines. Over the years, it has taken special note of literacy rates among the SCs and STs in general, in comparison with other sections of the population and across different states. It has taken special interest in female literacy rates. It marks the tendencies in enrolment at the primary level and dropout rates at successive tiers of the educational ladder. It also monitors the working of book-bank facilities and various scholarship programs at all levels, and has paid special attention to the creation of hostel facilities for these sections. Most complaints received by the Commission in this sector relate to the denial of, or discrepancies in the application of, reservation policy. In its third report, the Commission came out with a comprehensive set of recommendations regarding the changes it considers desirable in this sector. These include a demand that the Ministry of Human Resource Development prepare a ten year perspective plan to bring the educational standards of SCs and STs on par with the general population; significant curriculum

reform; the setting up of residential schools for better quality education; placing special emphasis on non-formal education etc. The key problem in the Commission's approach here appears to be that it lacks a general philosophy of education, and the role that education can play in the betterment of these communities. From such a perspective alone could emerge a more comprehensive list of recommendations which, when implemented, would give definite shape to the welfare profile of these communities.

Atrocities are another area of concern, in which the chief thrust of the NCSC is twofold. One, it monitors the implementation of the various legal provisions in force regarding such occurrences. As such, it collects and comments on the statistics pertaining to cases under the Civil Rights Act, 1955 and the Prevention of Atrocities Act 1989. The data collected by the Commission typically relates to the number of cases registered under each of these Acts, the ranking of states in terms of the incidence of such events, conviction rates, and so on. Significantly, the Commission pays special attention to the atrocities perpetrated by police personnel on the population of these sections. A key monitoring activity performed by the Commission pertains to the setting up of special courts for the speedy trial of offences under the Civil Rights Act and the Atrocities Act. It also monitors the case disposal rates of these courts. Over the years, the Commission has conducted several on-the-spot inquiries into complaints of atrocities. While this is a significant contribution, there is a certain irony in the fact that the Commission has never deemed this an issue worthy of detailed study, with the objective of generating a comprehensive set of recommendations, as has been the case with service related complaints, the circulation of false certificates or reservations in general. This inability may be due, at least in part, to the inherent elite bias in this institution, and partly to the fact that the Commission primarily addresses itself to the state rather than to civil society and public discourse. It places far too much premium on the formal mode of raising such issues in the report as would be debated in Parliament. Thus, wherever it could suggest statutory changes, or lay down procedures, the Commission is earnest in intervening. However, where an analysis of social realities is required or normative prescriptions or fundamental changes are necessary, it has been reluctant to play a role.

The singular exception to this observation is perhaps *the land question* that the Commission raised in its second report, where it established beyond doubt that the vast majority of the workforce in the agricultural sector is from the Scheduled Castes. It systematically unraveled their plight through the marshalling of statistics pertaining to occupational holdings, average size of holdings, etc. Addressing the all-important questions of land reform, land records, and the streamlining of land revenue administration, the Commission recommended land ceiling and the redistribution of surplus land by various state governments. It also suggested a range of tenancy reforms and several measures to prevent the alienation of tribal land. Ironically this attempt to safeguard and even advance the interests of the Scheduled Castes has not produced results, because the agenda is not well-served by the entire political class paying lip service to it. The apparent consensus on this goal undermines the recommendations of the Commission.

The performance of the NCSCST (before bifurcation) in the area of *economic and social development* was largely focused on the Scheduled Tribes, particularly on tribal people affected by the Forest Conservation Act of 1980 or those displaced by development projects such as large dams.

Notwithstanding its many achievements, several factors diminish the Commission's effectiveness. Beginning with the internal factors, the Commission has, by choosing to interpret its constitutional mandate narrowly, laid itself open to the charge of elite bias. The fact that it is both most energetic and most effective in the area of service-related safeguards speaks for itself. Since the Commission, for the most part, acts on complaints, and it is the more upwardly mobile sections within these groups that are articulate and capable of mounting claims, it could be said to have been less than sensitive to the exclusions engendered by the lack of education or information, and has not used its powers of *suo moto* cognisance actively enough.

The Commission's competence in settling service-related grievances may be contrasted with its inability to reduce the incidence of atrocities and violence against dalits, or to

effectively fight the persistent scourge of untouchability. This predisposition to confront only the lesser challenge is apparent also in the readiness of the Commission to suggest ways of streamlining procedures or ensuring fairness in the implementation of reservations and development schemes, or even statutory changes. It appears reluctant, however, to play a role in making a stronger normatively informed case for fundamental change, or even a frank and sharp analysis of social realities.¹⁸ The Commission's stand on the land question is perhaps the only exception to this. In its reports, the Commission has systematically presented statistics to show that the Scheduled Castes constitute the vast majority of wage labourers in the agricultural workforce. It has repeatedly highlighted questions of land reform, land records, the alienation of tribal land, and the need for streamlining land revenue administration. In all this, the Commission has clearly sought to go beyond its role as protector, to advance the welfare of disadvantaged social groups. It has, however, failed to bring about any concrete change in these areas, if only because the ostensible – and weakly articulated – consensus on such issues results in politically correct homilies rather than in concrete policy.

One reason for this may be the fact that a particular Commission is only as good as its members, and especially its Chairperson, are. The lack of institutionalisation in the procedures of appointment to the Commission has meant that competent and committed members are less likely to be appointed, especially in a political and policy environment where membership of the Commission becomes a convenient sinecure for unemployable politicians or a temporary shelf for bureaucrats belonging to these groups. It is rare for members to have the necessary expertise in the law, lacking which technical skills they are quite easily, in their inquiries into departmental functioning, (mis)led by the bureaucracy.¹⁹

¹⁸ The comments of Dr. Ambedkar on the Third Report of the Commissioner (quoted on p.1) suggest that this has been a trend from the very beginning.

¹⁹ Interview with Mr. Ram Raj, President of the All-India Confederation of SC/ST Organizations.

The most consequential handicap of the Commission is the fact that its decisions are not binding, but recommendatory. Though this is not explicitly stated in the Constitution (as amended), Article 338, with all its sub-clauses, is deeply ambiguous on this issue. It gives the Commission quasi-judicial powers of investigation, but does not mention the form in which the Commission's judgement of a particular issue would be delivered and implemented. It makes it incumbent upon the Central and state governments to consult the Commission, but does not state that its advice would be binding. In practice, it appears that as and when the Commission is effective, it is its moral authority that is important, if not decisive. The Commission itself has registered this frustration in its Report:

It has been our unfortunate experience that even after detailed inquiries and investigations, the directions and findings of the Commission are not being implemented by a number of Departments/Authorities. The problem, as we see it, lies not only in the attitudes of the concerned Departments/Managements, but also in the fact that the powers of the Commission, as presently enunciated in Article 338, do not clearly specify that the recommendations and directions of the Commission are binding. Thus, at this stage it is felt that there is a real requirement and full justification for amending Article 338 and giving power to the Commission to issue directions for corrective action and implementation of its findings and at the same time ensuring that action is taken against defaulting public servants who violate the safeguards. (NCSC, Fourth Report, 1998:247)

The fact that the recommendations of the Commission are not binding has been asserted by the Department of Personnel and Training in a controversial office memorandum (invoking a Supreme Court judgement), which provoked the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes to an angry response. In its 16th Report, presented in 2001, the Committee claimed that the DOPT was not justified in issuing a spate of memoranda that were anti-reservation in nature, and hence unconstitutional. It also described the DOPT's wilful avoidance of the NCSC – on the pretext that it was following a Supreme Court judgement – as partisan and *mala fide* bureaucratic action, and so recommended penal action against the Secretary of the Department (CWSCST, Sixteenth Report, 2001: 20 ff.)

None of this should imply that the Commission in its present form is hopelessly constrained in taking bold initiatives. It could arguably use its mechanism of reporting more imaginatively, in ways that are responsive to societal concerns, for instance in respect of the practice of untouchability. It could certainly contribute to and even guide debates in civil society on these issues.

An important constraint is the underlying tension between the Commission's constitutional obligation of monitoring the working of safeguards, on the one hand, and its functioning as a body that redresses complaints of violations of safeguards, on the other. This tension at least partly stems from the enormity of the latter task, the huge resources that it requires, and above all the fact that this is popularly perceived as its primary role. The tension is also manifested in the discrepancy between the yardstick adopted by the Commission to carry out its work, and that which activists adopt to evaluate its working. The latter argue that the Commission should be an autonomous, centrally administered, investigative agency, empowered to carry out civil as well as criminal investigations, with trial courts all over India to exclusively try cases of atrocities.²⁰ However, to give the Commission additional powers, in criminal investigation for instance, would require it to follow the prevailing rules regarding evidence and procedures. Quite apart from the dubious consequences of creating a parallel judicial system, these may actually retard the effectiveness of the Commission, by rendering it vulnerable to litigation in the form of appeals to higher judicial bodies, thereby nullifying its operational effectiveness and, what is more, diluting its moral authority and stature. Indeed, such a Commission would be so inundated with legislation that it may be unable to perform its monitoring role.

The argument that the Commission is a paper tiger that should be armed with more powers is in fact premised on an inadequate appreciation of the location of the

²⁰ There are already Special Courts for the speedy trial of cases relating to atrocities. These courts are designated by state governments, in consultation with the Chief Justice of the relevant High Court, to be special courts for trying offences under the PCRA and the SC&ST (POA) Act, but the NCSC has argued that there should be not just designated courts, but *exclusive* courts, for this purpose. (NCSC 4th Report, 1998:239)

Commission in the existing constitutional system, and particularly of the interlinkages between this Commission and other institutions. From 1978 to 1992, as noted earlier, there were effectively two bodies charged with the same tasks, with the single-member constitutional body getting step-motherly treatment from the government. It is notable that the statutory single-member Commissioner's office presented 30 Reports between 1952 and 1991. The non-statutory multi-member Commission set up in 1978 was not required to prepare annual reports, as its task was to conduct research studies. (First Report of the NCSC, 1994:134)

The Commission is supposed to prepare an Annual Report for presentation to Parliament. In 2003, the last report tabled in Parliament was the Fourth Report of 1998, while the Fifth and Sixth Reports had been prepared and submitted to the President two years earlier, but had not yet been tabled in Parliament. Such delays are usually on account of the requirement that the Action Taken Report be submitted along with the main report. This means that the President circulates the Report to all the Ministries and Departments which are mentioned in it, and it is only when they have all explained their actions, or justified their inaction, that the Report can be presented in Parliament. The Constitution does not fix any period within which the Report must be discussed in Parliament.²¹ As the table below shows, there is usually a gap of two years between the Report being submitted to the President, and it being tabled in Parliament.

S.No	Report	Period	Date of Submission to the President	Tabled in Lok Sabha	Tabled in Rajya Sabha
1.	First Report	1992 - 93	15/8/1994	28/7/1998	27/7/1998
2.	Second Report	1993 - 94	9/7/1996	28/7/1998	27/7/1998
3.	Third Report	1994 - 95	2/2/1998	13/3/2000	24/4/2000

²¹ The Commission has itself recommended that the Action Taken Report should be delinked from the main Report. The latter could be tabled in Parliament within 3 months of its submission to the President, with the ATR following in 6 months. (NCSC, 4th Report, 1998:247)

		& 1995- 96			
4.	Fourth Report	1996 - 97 & 1997 - 98	25/4/1998	13/3/2000	24/4/2000
5.	Fifth Report	1998 - 99	26/2/2001	17/5/2002	13/5/2002
6.	Sixth Report	1999 - 00 & 2000 - 01	16/11/2001	20/12/2004	23/12/2004
7.	Seventh Report	2001- 02	19/2/2004	To be Tabled	To be Tabled
8.	First Report (NCSC)	2004- 05	13/7/2006	To be Tabled	To be Tabled
	<u>Special Reports</u>				
9.	Special Reports On Service Safeguards for the Members of SCs and STs	—	22/1/1998	28/7/1998	27/7/1998
10.	Special Reports On Land Alienation in Bihar	—	26/4/2000		Sent to respective States vide Article 338 Clause 7 of the Constitution
11.	Special Report on the Implementation of SCs and STs Prevention of Atrocities Act in UP	—	26/2/2001		
12.	Special Report on Working of Special Courts Setup under SCs and STs Prevention of Atrocities Act, 1989 in MP	—	26/2/2001		

Even when Reports are tabled in Parliament, they are frequently not discussed. In fact, the 30th Report of the Commissioner for Scheduled Castes and Scheduled Tribes (1989-91) was laid on the table of the Lok Sabha simultaneously with the First and Second Reports of the NCSC, on July 28, 1998. Likewise, the Third and Fourth Reports were

tabled together in March 2000. There is no evidence in the Lok Sabha debates of a discussion on any of the first four reports. In August, 1998, there was an extended discussion (under Rule 193²²) on the “problem” of Scheduled Castes and Scheduled Tribes. This discussion was initiated by Ram Vilas Paswan, who demanded, among other things, that the Fourth Report of the NCSC – which he had seen “unofficially” in the library – should be presented and discussed. (*Lok Sabha Debates*, 4.8.1998: 78ff.) There is no evidence that it was. Of the four Special Reports, moreover, three have a state-level focus, and only one has an all-India scope. It is significant that this one is about service safeguards.

This experience is in sharp contrast to the extremely active Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes. As we have seen, this Committee has been in continuous existence since 1968, and has presented as many as 166 Original Reports, 148 Action Taken Reports and an additional 177 Reports of the Study Tours undertaken by its Study Groups. In the 14th Lok Sabha alone (since 2004), the Committee has presented 19 Reports to Parliament. Apart from the fact that its primary function is to consider reports submitted by the NCSC, the Committee is empowered to make recommendations, and report on the action taken by various departments on these; to examine the measures taken by the Central Government to ensure that the SCs and STs are properly represented in all public sector undertakings and nationalised banks, etc.; to report on the working of welfare programmes for SCs and STs in the Union Territories; and any other matter that it considers fit to examine. The Committee has not merely been prolific in producing reports, but also effective in, for instance, bringing to public notice the virtual non-representation of dalits and tribals in the higher judiciary. The fact that there were, out of a total of 481 High Court judges in 1998, only 15 SC judges and 5 ST judges, and – at the time – not a single Supreme Court judge from these groups, attracted a great deal of attention. (CWSCST, 2000:13-15)

²² Rule 193 makes it possible for members who wishes to raise a discussion on a matter of urgent public importance to do so, with advance notice and supported by an explanation.

Clearly, there is an overlap between the Committee and the Commission in terms of their objectives, though it manifests itself only in relation to their role in Parliament, as one is a Parliamentary Committee, and the other is located outside Parliament. In many policy sectors, as in the case of the Scheduled Castes and Tribes, the proliferation of institutions has created an institutional jungle in which the roles and powers of each are obfuscated. The duplication and multiplication of institutions is, in such situations, primarily a symbolic low-cost response to political pressures, imbued with few serious expectations. As such, it is only the rather chance factor of leadership which predisposes one or other to become more active or prominent. The larger political and institutional environment is certainly not particularly conducive to institutions like these pursuing their goals with clarity and effectiveness.

Political mobilization has arguably addressed the symbolic aspects of the dalit condition. The politics of self-respect have not, however, been successful in ending violence – “atrocities” in policy discourse – or the practice of untouchability against dalits. The installation of Ambedkar statues, and other such grand symbolism, has been a poor substitute for a firm handling of such violence and the social prejudices underpinning it. Likewise, despite a plethora of “schemes” devised to address the material deprivation of these groups, their economic condition has not vastly improved. (Pai, 2003) The only policies that have shown some – albeit partial – results are those of reservations. These too, however, are a rather weak substitute for a more robust and widespread improvement in the material condition of all sections of dalits. The performance of the National Commission for Scheduled Castes and Scheduled Tribes is of a piece with this general pattern. Instead of a Commission that could give the government serious policy advice and policy alternatives designed to address both the symbolic and material disadvantages that mark the dalit condition, what we have instead is a Commission that is, for some of the reasons discussed here, incapable of being even an effective conscience-keeper of government, and of our society and polity.

VII

RECOMMENDATIONS

The performance of the Commission seems to be critically dependent on two aspects: its report and the individuals who hold office in it. These aspects are usually overlooked in favour of a 'give more teeth to the Commission' argument, but appear to be critical to improving its performance. The argument that the Commission is a paper tiger which needs to be armed with greater powers is premised on an inadequate appreciation of the location of the Commission in the existing constitutional setup. To give the Commission additional powers, in the matter of criminal investigation for instance, would require it to follow prevailing rules and procedures pertaining to evidence and prosecution. These may in fact retard the effectiveness of the Commission by rendering it vulnerable to litigation in the form of appeals to higher judicial bodies, and thereby nullifying its operational effectiveness, and diluting its moral stature.

6. The Annual Report that the Commission is required to submit to the President is a crucial activity of the commission, the importance of which is generally overlooked. The delay in submitting and discussing reports has been remarked upon by members of parliament over the years. The Commission has generally claimed that it is up-to-date in the preparation of its annual reports, and has sent all these at the ordained time. The delay in presenting the report to Parliament is attributed to the requirement that the Action Taken Report of the various ministries and departments be appended to it before it can be presented to Parliament. This process takes an inordinately long time, sometimes on account of administrative reluctance to act on the recommendations of the Commission, the failure to do which would invite censure in Parliament. As a result, the Report is generally tabled several years after the period to which it pertains, and is barely debated. In this way, the procedures and the lack of political will in adhering to the spirit of the exercise actually render it infructuous. Clearly, an amendment is

required either in Article 338 itself, or in the rules by which the President may fix a period for the discussion of the Report in Parliament. This would give greater weight to the sanctions behind the Commission's activities. Frequent institutional engineering – such as bifurcation – is also an inhibiting factor in regular reporting.

7. The quality of reports in terms of the data they contain, and the manner in which the data is organized, has also been declining over the years. Comparisons are often made with the first ten reports prepared under late L.M. Shrikant and the decline in quality thereafter. Part of the reason for this negligence may be that the Commission in its reinvented form since 1991 – with more members, powers and a redefined mandate – has taken its interventionist activities more seriously than its report making duties. However, it would do well for the institution in the long run to pay more attention to an activity that perpetuates its legitimacy. The reports of the Commission have all along depended more on statistical data than on qualitative data regarding the changing nature of relationship between various communities and SCs and STs as well as within these communities. This preoccupation with statistical data is also reflective of the self-image of the Commission as an organ of the state rather than as an autonomous body concerned with the welfare of SCs in the widest sense of the term. We believe that it would be appropriate for the Commission to undertake qualitative studies, commission social anthropologists and other social scientists to do these, and to institutionalize mechanisms by which contemporary changes and transitions in the social structure can be mirrored, recorded and acted upon. There is, for instance, a pressing need for reliable data on a variety of subjects: the emergence of a “creamy layer” amongst the Scheduled Castes; the extent to which reservations in educational institutions and public employment have effected a social transformation; the experience of reserved constituencies in parliament as well as the state legislatures, etc. In this manner, the Commission would also become more responsive to societal issues like the changing context of untouchability and intra-group conflicts of interest, and contribute to debates in civil society.

8. It has been frequently observed that the personality, experience, and stature of the members appointed to the Commission is a key determinant of its effectiveness. In the light of these observations, and the oft-repeated allegation that the membership of the Commission is a sinecure, a more thoroughly institutionalized mechanism for appointing the Chairperson, Vice-Chairperson and other members, may be appropriate. The process of appointment to the Commission should be made more autonomous of the government of the day. It would be desirable for the members of the Commission to be appointed through a political process that is consensual. This would significantly enhance the ability of the Commission to venture into sensitive areas such as assessing the efficacy of the political safeguards given to SCs that is practically overlooked in all the reports.

9. There are a variety of conflicts that characterise the functioning of the Commission. Firstly, there has historically prevailed a conflict between the Commission and its nodal ministry, the Ministry of Social Welfare (now redesignated as the Ministry of Social Justice and Empowerment), which has often taken the form of conflict between the Minister and the Chairman of the NCSCST. This rivalry is well-documented for the period when Mr. Ram Vilas Paswan was the Minister and Mr. Ram Dhan the Chairperson of the NCSCST-87. As a consequence of this rivalry, the Ministry chose to delay the constitution of the Commission and, when it ultimately did constitute it, it denied the Commission adequate staff to effectively carry out its mandate, and also denied members of the Commission the promised status (e.g., the promised rank of a Union Cabinet Minister for the Chairperson, and Minister of State for the Vice-Chairperson, materialised as the rank of a secretary to the Union government in both cases). Sometimes, when the promised status is provided, it is invariably personal to the particular incumbent. The conflict between Minister and Chairperson recurred during Sitaram Kesri's tenure as Minister, with his scheduled caste rivals in the party trying to undermine him by backing the candidature of a candidate other than Ram Dhan. Most of these conflicts have had political undertones, as they represent rival desires to control the same

constituency. Secondly, conflict between the Chairperson and members has also tended to characterise the Commission, because of the politicised nature of appointments to it. A new government at the Centre is invariably confronted by a few politically hostile members appointed by its predecessor, and these conflicts tend to mar the functioning of the Commission, especially when Chairpersons seek to punish members by denying them permission or funds to travel, etc.

10. The existing priorities of the Commission are visibly lopsided in favor of the elite of these communities. The fact that it is most effective in the area of service-related safeguards speaks for itself. This bias is willy-nilly accentuated by the fact that the Commission acts on complaints, and it is the more upwardly mobile sections within these groups that are articulate and capable of mounting claims. Some examples of such complaints – such as the case of Prabhakar Rao and Prashanto Banerjee of GAIL – point to the dangers of abuse, and therefore caution against giving the Commission more teeth. To counter elite biases, the Commission needs to be sensitive to the exclusions that the lack of education and information may engender, and should ideally use its *suo moto* powers more actively.

It would be desirable for the Commission to engage in an internal evaluation of its priorities on an ongoing basis, and to redefine them in a substantively more egalitarian way so as to accomplish its mandate in the spirit in which it was intended.
