

## **Tokenism or Empowerment? A Comparative Analysis of Public Policies and Institutions of Disadvantaged Communities in India**

From the 1990s the issue of discrimination in particular and the larger problem of exclusion in general have received considerable attention, but the studies so far have focused overwhelmingly on issues relating to political mobilization and the construction of identity. Until recently the scheduled castes (SCs) have had the larger share of this attention. Even within this group, the dalit movement and the construction of dalit identity, and political mobilization has been the focal point of interest with very little attention being directed at specific public policies and institutions relating to the disadvantaged communities. The Indian state created a web of institutions for the implementation of policies with regard to disadvantaged groups. The creation of these institutions was a distinctive feature of our democracy. It marked, on the one hand, the institutionalized commitment to the protection and welfare of the marginalized and the disadvantaged on the part of the state, and, on the other, the creation of an organized mechanism for the representation of their concerns. But these institutions mandated by the Constitution to monitor safeguards for the disadvantaged groups have received remarkably little attention in the scholarly literature.<sup>1</sup>

This paper examines two such public institutions: the National Commission for the Scheduled Castes<sup>2</sup> (NCSC) and the National Commission for Minorities (NCM). The rationale for comparing these institutions is simple: numerous studies of the Indian state have acknowledged the centrality of public policies and their impact on outcomes for disadvantaged groups but there have been few analytical studies of the impact of institutions and even fewer studies compare the divergent trajectories of policies and institutions and the politics associated with them. I intend in this paper to undertake a comparison of the two commissions from the point of view of their role in the protection and promotion of the interests of the disadvantaged. The paper is partly focused on the commissions and partly on the broader context in which they function. But the main focus is not on the commissions per se, but the general issues pertaining to the state's differential approach to disadvantage and the consequences of this. This comparative study would not include an evaluation of the institutional capacity or efficacy of either or both of the commissions. Beginning with an overview of the policy framework, the paper seeks to assess the differential approach of the Indian state to the disadvantaged communities and how this might impact on the working of institutions that aim directly, or indirectly, to address social inequality. Apart from the policy approach and institutional context, it is important to note that political processes have the greatest influence on the performance

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<sup>1</sup> There is no comparative analysis of public institutions for the disadvantaged communities in India, although there are two recent works on individual public institutions. These are: (1) Bishnu Mohapatra and Niraja Gopal Jayal, 'Report on the National Commission for Scheduled Castes and Scheduled Tribes: A Report', in Nanda Wanasundara et al, (ed) *Protection of Minority Rights and Diversity* (ICES: Colombo), 2004; Niraja Gopal Jayal, 'Social Inequality and Institutional Remedies: A Study of the National Commission for Scheduled Castes and Scheduled Tribes', Paper presented at the NETSAP conference, Bangalore, June 2004 (forthcoming); (2) Tahir Mahmood, *National Commission for Minorities: Minor Role in Major Affairs* (Delhi: Pharos Publications), 2001.

<sup>2</sup> The NCSC emerged through a long evolutionary process. In its present form it was established in 2001 when the government bifurcated the NCSC & ST into two separate commissions – one for the Scheduled Castes and the other for the Scheduled Tribes. This paper is concerned with the work of the Commission with regard to the scheduled castes and in that sense only with the NCSC component even when there was one combined Commission for both the categories.

of institutions and impact on the nature and effectiveness of implementation of pluralism. In short, the strengths and limitations of existing structural arrangements cannot be judged merely on the basis of institutional logic and design but these depend critically on the linkages between public policy and institutions and also between political mobilization and ideological contestation.

Both the NCSC and NCM were established specifically for the protection of the interests of disadvantaged groups and both were accorded statutory status roughly at the same time. There are differences with regard to the constitutional mandate, but the design, membership and process of appointment of members of the two commissions is very similar. Over the past fifteen years or so as statutory bodies the two commissions have had varied trajectories and impact on the patterns of discrimination and exclusion in our society. Although this paper does not purport to essay an evaluation of the two commissions, it seeks to provide an overview of their origins, mandate and functioning in order to understand the variation in performance. The main objective of the paper is to account for the diverse trajectories of caste and community politics in India through a comparative analysis of the two commissions, and identify the limits of the dominant conception of social backwardness and government policy for dealing with different types of discrimination crafted around this notion. For the purpose of comparative analysis, I ask the following three questions: (1) how does the Indian state deal with diversity and the problems of different disadvantaged groups; (2) what has been the impact of policies and institutions on improving outcomes for the disadvantaged communities; (3) how do we account for the variation in institutional trajectories of the two Commissions.

The argument developed here is that the NCSC has had some beneficial impact on the lives of the scheduled castes and this has largely arisen as a result of the slew of policies and measures, the objective of which all is the political empowerment of lower castes. Whether official action against ritual discrimination has been able to do enough remains a question; but undeniably there is a widely shared consensus and readiness to implement the constitutional mandate to empower and enhance the protection of the scheduled castes and scheduled tribes. As to the minorities, special measures for minorities remain a politically contentious subject, and are still considered a matter of controversy. Hence politicians and policy makers appear cautious and circumspect in regard to initiating or formulating proposals and policies for minorities and remain reluctant to be active in this arena of policy, despite the fact that an assertive approach to the issue of the well being of minorities could have a positive bearing on national unity. Of more concern, is the reticence to address the socioeconomic rights of the minorities? It is also true that the concept of autonomy in minority politics is simply not a workable proposition and there are no institutional incentives to sustain it. The state's differential approach to social backwardness and discrimination against lower castes and minorities, the limited conception of minority rights as mainly cultural rights, and the differences in levels of political mobilization of dalits and minorities are factors that may help to clarify the divergent pathways.

## I

India was among the first major democracies in the world to recognize and provide for the right of cultural collectivities - diverse religious, linguistic communities, castes and tribes living in the country. This represents a significant and creditable initiative on the part of democratic India's early political leadership because at the time the Indian state framed these policies, most of the western and third world states had not consciously acknowledged

in their policy frameworks the internal diversities in their societies. By contrast the democratic framework of the Indian Constitution gave recognition to diversity and accepted that the political community consisted of several different communities. Placing the principles of diversity and pluralism in the context of choice rather than tradition, the Indian approach provides large space for the development of a broad based democracy by arguing that people have the right to linguistic and religious identities and that the adoption of policies that recognize and protect these identities is the only sustainable approach to development and democracy in diverse societies. The secular-democratic-federal design enabled the state to recognize rights of linguistic groups, minority communities and the socially and economically weaker sections and promoted their political and cultural integration.<sup>3</sup>

The constitutional form of pluralism guaranteed inclusion, and simultaneously, provided autonomy for cultural communities. This has involved recognition of group identity on the basis of caste, language, religious and regional affiliations. The Indian state extends constitutional/legal recognition to four specific categories – religion, language, region and caste. Within this broad framework there is a further classification, which privileges certain identities over others. The master narrative of nation building, policy-making and political mobilization entails foregrounding linguistic and caste identities than those of class and gender. Class location has remained on the fringes except when it overlaps with caste as invariably in the case of dalits. This means that demands based on language and caste get primacy, leaving other social locations and affiliations to find expression within a ‘minorities discourse’ that is self-limiting and conceptualized as less than equal and less deserving of state protection or promotion.

Recognizing that equal treatment would be insufficient to ameliorate historic discrimination suffered by the lowest social groups, the constitution provided legislative reservations for the scheduled castes and scheduled tribes. Similar consideration, however, was not extended to Muslims or women. In granting rights to various groups a basic distinction was thus being made between the rights of groups, which were socially discriminated through untouchability or physical isolation, and the rights of religious minorities, which were viewed as part of the larger concepts of pluralism and the need to accommodate diversity. The minorities were given the freedom to observe and preserve their language, culture and religious practices, establish, and administer educational institutions of their choice and, separate personal laws were retained for different communities. These rights were supposed to safeguard against the possibility of unequal treatment and restrain the hegemony of any community or the state; however, such policies do not guarantee equal status to groups and communities in the social and economic life of the country. Initially, the term “minorities” encompassed not only the religious minorities, but the scheduled castes and scheduled tribes as well. It was only in the process of the drafting of the Constitution that the term itself came to be renegotiated and redefined. Following Partition, the earlier proposal of instituting a Special Minority Officer was now recast as a Special Officer for the Scheduled Castes and Scheduled Tribes. The existence of a Commission for the Scheduled Castes and Scheduled Tribes thus has its origin in the erasure of religious minorities from a formerly inclusive category.<sup>4</sup>

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<sup>3</sup> See David Stuligross and Ashutosh Varshney, ‘Ethnic Diversities, Constitutional Designs, and Public Policies in India’, in Andrew Reynolds (ed) *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy* (New York: Oxford University Press), 2002.

<sup>4</sup>Niraja Gopal Jayal, ‘Social Inequality and Institutional Remedies: A Study of the National Commission for Scheduled Castes and Scheduled Tribes’.

Their protection was in no small measure due to the earlier Assembly resolution that had implicitly declared them Hindus. To cut a long story short, when the Assembly dropped protections for minorities it did not do the same for the scheduled castes and scheduled tribes. A conscious distinction was made between the religious minorities and the lower castes, with the latter being declared part of the Hindu community and therefore different from the religious minorities. Congress leader Shibban Lal Saksena put the point forcefully: “As far as we are concerned, we consider the scheduled castes as belonging to Hindus, they are not a minority, they have also always formed part of us”. In other words, the scheduled castes were neither a racial minority nor a linguistic minority, not certainly a religious minority, but they were disadvantaged Hindus who needed protections earlier enjoyed by non-Hindu minorities.<sup>5</sup> Social backwardness of a group in the Hindu caste system was thus the only legitimate ground for group-preference provisions.

This distinctive arrangement resulted in a reification of certain kinds of group identities and a discourse where citizenship inevitably got linked to group identities rather than being dissociated from it. This arrangement had the imprimatur of approval of the Muslim religio-political elite, a kind of quid pro quo between them and the new state. The national political leadership may well have believed that since it was giving equality in one sphere, i.e. inter-group equality through protection of personal laws, it was somehow absolved from the obligation to provide equality in the public domain, which is the domain of economic opportunities and employment. In the long term, this implicit and ill considered trade-off between two set of rights resulted in the weakening rather than the empowering of the minorities, that were the said focus of this attempt at promoting their well being because the failure to address the issues of socio-economic empowerment and only promising preservation of the minority group culture, meant that the real deprivation and disadvantage that accrued to the status of being a minority citizen in terms of livelihood and access to resources was not tackled.

## II

India established an array of institutions to cater exclusively to social justice and the protection of the disadvantaged sections of society. Though some of these institutions were established in the 1950s, they gained statutory status in the 1990s. In policy terms, the 1990s was a period when the Indian economy moved away from planning and state intervention towards market and competition and from an interventionist state to a regulatory state. In social policy, this shift has meant a diminished and reduced role for the state’s distributive agenda and a greater focus on group-based social justice and particularistic institutions. While this shift was a reflection of the larger context of the changing concept of the role of the state, this was also in part a response to the political mobilization and growing clout of the articulate sections of the disadvantaged groups demanding greater recognition and presence in decision-making structures. It was also in part a reaction to the decline of the centrist and upper caste oriented Congress party, the policy approach of which typically tended to focus on universalistic themes rather than particularistic concerns. At the institutional level, most new institutions were regulatory and procedural than involved in substantive policy making. Among the most significant such institutions are: the National Human Rights Commission (NHRC), NCSC, NCM and

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<sup>5</sup> Oliver Mendelsohn and Marika Vicziani, *The Untouchables: Subordination, Poverty, the State in Modern India*, (Cambridge: Cambridge University Press), 2000. p. 131.

the National Commission for Women (NCW). But these institutions have had a varied history, self-image, popular perception of their worth and effectiveness and so on.

This section of the paper presents a brief account of the genealogy, design and structure of the two commissions: NCSC and NCM. Both institutions are designed to protect and promote the welfare of disadvantaged sections of our society; both ultimately intended to address the compelling demands of social equality. It is important to remember at the outset that the responsibility for promoting the welfare of the scheduled castes does not vest exclusively in the NCSC. The NCSC is only one component of an assortment of institutions, policies and laws designed for protecting the scheduled castes against a variety of injustices and historical discrimination.

The category of Scheduled Castes came into being through the enactment of the Government of India Act, 1935 whereby a conglomerate of castes whose defining feature is untouchability were identified and placed in a schedule in order to render them eligible for certain safeguards and benefits. The Constitution is very clear about regarding the scheduled castes and tribes as a special category and it directs the state to take special care to promote their interests. This constitutional emphasis was based on the understanding that disabilities derived from caste were the most conspicuous impediment to equality. It was thought that deliberate intervention was necessary to ensure that the social structures of inequality did not reflect in an inequitable and unequal participation of these disadvantaged sections in the political process and public sphere. Thus, the Constitution has provided for a good number of social, educational, economic and political safeguards as also a set of policies and measures for the amelioration of their conditions. These include Articles 15, 17 and 46 which variously abolish untouchability, prohibit the state from discriminating between citizens, forbid discrimination being practiced by private individuals in public places, and enjoin the state to promote the educational and economic interests of the scheduled castes and scheduled tribes, and protect them from all forms of social injustice and exploitation. In Part XVI (Special Provisions Relating to Certain Classes), the Constitution provided for the reservation of seats in the legislatures as also in public employment and educational institutions funded by the state; and for the creation of a body to monitor all these safeguards.

The establishment of the NCSC is one of the principal features of the constitutional provision for these two groups.<sup>6</sup> Embedded in a complex constellation of laws, policies and institutions, it is an institution designed to address social inequality.<sup>7</sup> In 1950 an office of the Commissioner for SCs and STs was created under Article 338, in 1967 it was reorganized in the form of five zonal offices affiliated to the Department of Social Welfare. In 1978 a constitutional amendment was proposed by the Janata Government to merge the extant Commissioner's office with a new multi-member body to look into issues concerning the SCs and STs. But this amendment could not be passed for lack of a requisite majority in the Lok Sabha. Before the amendment was introduced, the Janata government had already created a broad-based multi-member Commission for SCs and STs through a resolution of the Ministry of Home Affairs. In 1990-92 merging the old Commissioner's office with the National Commission's office created the NCSCST in its present form.<sup>8</sup> A separate National Commission for the Scheduled Castes came into

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<sup>6</sup> Marc Galanter, *Competing Equalities: Law and the Backward Classes*, (Delhi: Oxford University Press) 1984.

<sup>7</sup> See Bishnu Mohapatra and Niraja Gopal Jayal, 'Report on the National Commission for Scheduled Castes and Scheduled Tribes: A Report..

<sup>8</sup> *Ibid.* pp. 159-61.

existence in 2002 when the government took the decision to bifurcate and create two separate Commissions for the Scheduled Castes and the Scheduled Tribes.

The NCSC seeks to monitor and evaluate five categories of safeguards: social, economic, educational and cultural, political and service safeguards.<sup>9</sup> It seeks to investigate and monitor all matters relating to the safeguards provided for the SCs in the Constitution; evaluate the working of such safeguards; inquire into specific complaints pertaining to the deprivation of rights and safeguards to these sections; advise in the planning process and evaluate the development of these communities; and submit reports annually on the working of the safeguards with appropriate and specific recommendations.<sup>10</sup> The Reports of the Commission highlight education, economic development, service safeguards and atrocities as the core areas of its concern. Overall, it is organized to monitor the working and implementation of safeguards, on the one hand, and redress violations of safeguards, on the other. Dalit activists have seen the latter as its primary role. To be sure, it has been more effective in dealing with service safeguards and much less effective in dealing with welfare issues affecting the majority, or atrocity related issues, for instance. A recent Report notes: “The Commission is prompt and effective in monitoring service-related safeguards. It has continually monitored recruitment patterns and promotion procedures adopted by the government, as well as those in public sector enterprises, nationalized banks, scientific and technical posts and universities.”<sup>11</sup> Thus, it has taken an active interest in investigating complaints of violations of reserved quota or the abolition of reserved posts or discrimination in promotion. As a result of its concerted efforts, significant gains have been registered in the implementation of reservations and in giving representation to the SCs in public employment.<sup>12</sup> But it must be noted that the attention paid to ensuring the participation of the SCs in public employment is sometimes at the expense of more substantive concerns such as the implementation of social welfare schemes for dalits etc. The Commission has taken a strong stand on questions of land reforms, the problems of wage labour in the agricultural workforce, and the need for streamlining of land revenue administration.<sup>13</sup> It may not have been able to bring about concrete change but at least it is not reluctant to take up the issue, which speaks of its predisposition to confront such issues. The second major area of intervention is monitoring the progress of SCs in education at all levels. The third issue concerns atrocities and here the main focus is on the monitoring of the legal provisions with regard to such incidents. It is least effective in dealing with atrocities largely because the commission refers the complaints to the very institutions that are either complicit or implicated in the perpetuation of violence.<sup>14</sup>

The Constitution does not define the term minority. The term figured only in Article 30 of the Constitution. It encompasses groups of various types, linguistic, religious, and territorial, and in addition, groups unique to Indian society, minorities on the basis of inferior caste status. Today, however, many Indians narrowly use the term minority to refer to those who are not Hindus. This definition would appear to be a questionable one, suggesting as it does that the core of Indian identity is Hinduness and therefore those not part of the Hindu “mainstream” are minorities.<sup>15</sup> In the process, and partly as a

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid. p. 164.

<sup>11</sup> Ibid. pp. 192-93.

<sup>12</sup> Ibid. p. 153.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Myron Weiner, ‘India’s Minorities: Who are They? What Do They Want?’, in Partha Chatterjee (ed) *State*

consequence, minorities are distinguished from the majority along religious lines. Even though the word minority is not specified in the Government Resolution that established the NCM, this majoritarian conception animates the characterization and classification of minorities in the NCM as well. Initially only Muslims, Christians and Parsis were included, but the government issued a notification under the NCM Act 1992 proclaiming Muslims, Christians, Buddhists, Parsis and Sikhs to be minorities.

At its apex the NCM consists of a Chairman, Vice-Chairman and five members appointed by the Central Government. The NCM usually includes representatives from all the minorities but unlike the NCSCST there is no requirement that at least one member be a woman. Despite a strong demand for autonomy, the NCM lacks both financial and political autonomy necessary for independent and effective functioning.<sup>16</sup> The executive driven process of appointment for both commissions is such that they have become a sinecure for unemployed politicians and retired bureaucrats, which the ruling parties and their allies find convenient to accommodate in such commissions.<sup>17</sup>

The NCM came into being in January 1978 through a government resolution. Contrary to popular belief the Congress government was not instrumental in its creation; the first non-Congress government led by the Janata Party established it.<sup>18</sup> The Janata party in response to rising atrocities against dalits had announced that it would set up an umbrella civil rights commission that would protect the minorities, backward classes, scheduled castes and scheduled tribes against discrimination and inequality. Six months later the government set up two commissions, one for the scheduled castes and scheduled tribes and the other for minorities through two separate resolutions of the Ministry of Home Affairs. The creation of the NCM was a response to the frequent appeals from Muslim organizations that the government set up a minority commission to check the increasing incidents of violence and discrimination against them. The Ministry of Home Affairs Resolution specifically states that: “Despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration the government attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in the Central and State Laws etc”.

Under the NCM Act 1992, the mandate of this body was to (a) evaluate the progress of the development of minorities under the Union and States (b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures (c) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities (e) study problems arising out of any discrimination against minorities and recommend

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*and Politics in India*, (Delhi: Oxford University Press, 1997).

<sup>16</sup>The NHRC for example is far more independent and impartial.<sup>16</sup> The selection procedure, which consists of a Committee chaired by the Prime Minister, and includes the Lok Sabha Speaker, the Deputy Chairman of the Rajya Sabha, the Leader of the Opposition in both Houses of Parliament and the Minister of Home Affairs ensures this to some extent and this process adds to its credibility

<sup>17</sup> S. Ubaidur Rahman, 'Is Minority Commission a farce?'

<sup>18</sup> The government introduced in the Lok Sabha the 46th amendment bill, 1978 whereby the Special Officer for Linguistic Minorities was to be abolished under article 338A. But this amendment could not be passed for lack of majority.

measures for their removal (e) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities (f) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments (g) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular the difficulties confronted by them.

The commission is vested with some powers. It has the powers of a civil court trying a suit. It can summon and enforce the attendance of any person from any part of India and examine him on oath. It can ask for the production of any document and receive evidence on affidavit. To carry out its functions effectively it can also requisition any public record or copy thereof from any court or office and issue commissions for the examination of witnesses and documents. It does not take into its purview complaints that are not based on or relating to minority status/rights/safeguards. The complaints have to be related to the events that are not more than one year old. Further neither can it take complaints pertaining to matters sub judice (pending before a court/quasi-judicial/body); complaints which are vague, anonymous, pseudonymous or frivolous nor those for which ordinary judicial/quasi-judicial/administrative remedies are available elsewhere but have not been availed by complainant without any reasonable justification.

A quick review of the NCM Reports show that its energies are largely consumed, investigating complaints ranging from encroachment of land of religious places, neglect of Urdu to denial of holiday on a particular festival of minorities, hindrance in observing religious ceremonies and hurting religious sentiments. The commission, which should logically be the agency or instrumentality in the larger context of the protection of minority rights or the enhancement of minority well being, is ironically not filling that critical political space. It has not been entrusted with the task of tracking and assessing the progress and development of minorities or monitoring the progress of education despite the fact that a scrutiny of these areas is essential for an understanding of the relative levels of deprivation and marginalization. Whenever the commission is concerned with education its attention is invariably focused on issues pertaining to recognition of minority educational institutions, denial of permission to open minority institutions and any unlawful interference in these institutions. As for service safeguards, even though its functions include service related issues these are limited to cases of harassment by police and other state authorities. It is supposed to monitor the representation of minorities in public employment and has from time to time documented the gross under-representation of Muslims in government jobs, but this effort does not amount to much in the absence of reservations for minorities in government jobs. In other words, the commission's functioning and approach appears largely directed towards the preservation of facilities for minorities rather than the long-term objective of increasing their empowerment and protecting their rights in an institutional sense.

In policy terms, the NCSC has managed to secure legitimacy to carry out its tasks because it is a part of a varied set of policies and interlocking institutions, laws and agencies, while the NCM functions more or less as a stand-alone institution. In its advisory role, the NCM is supposed to interact with the central and state governments. But this does not happen on a routine basis or even on major controversies pertaining to minorities that crop up from time to time. The central government has not acted upon the provision of the charter for referring important minority-related issues to the Commission despite an explicit recognition of its responsibilities by the Supreme Court in the *Misbah Alam*



judgment.<sup>19</sup> The Court suggested in two subsequent decisions of 1995-97 that the Law commission in consultation with the NCM should examine the question of personal law reform. But the government has simply ignored the NCM. Oddly, the body that the government seems to have preferred to consult, and that too, frequently, on minority issues is the All India Muslim Personal Law Board, which is a voluntary organization with no statutory status whatsoever. The government not only consults the AIMPLB on personal law issues but also relied substantially on consultations with the Board on the Ayodhya issue, which as well known had the disastrous culmination of the demolition of the masjid and its gruesome aftermath (1992-93), to give just one example. The most glaring instance of the NCM's futility was demonstrated under the National Democratic Alliance government when, while the NHRC was lambasting Narendra Modi government in Gujarat, Tarlochan Singh, the Chairman of the NCM, was busy giving certificates to Narendra Modi with regard to the state government's role in the Gujarat violence of 2002. As a watchdog body mandated to protect the rights and interests of minorities it proved to be a mute spectator to the pogrom against minorities.

The Annual Reports and recommendations have to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations. But in practice, despite the statutory directive to have the Reports placed in Parliament, these reports do not come to the Parliament table although the commission has been regularly preparing and forwarding its Reports to the Ministry for laying before Parliament as required under Section 13 of the Act.<sup>20</sup> When the odd Report does surface in Parliament, it is not taken up. For instance, the 12th report of the Minorities Commission had been laid on the table of the Lok Sabha but this has not been discussed. In this regard the experiences of the NCM and NCSC are analagous. Like the NCM, the NCSC Reports too are not regularly tabled in Parliament usually on account of the same requirement that the Action Taken Report be submitted along with the main report and this has to make the rounds of all the Government Departments. It is not possible to take any effective action on the basis of Reports that for all practical purposes remain in the Ministries of Home Affairs and Social Welfare and on the shelves of the Parliament Library.

The most serious handicap that constrains both commissions is that their recommendations are not binding, but advisory.<sup>21</sup> In spite of this limitation, the commissions continue to place emphasis on addressing themselves primarily to the state rather than attempting to engage civil society and with the larger public discourse. Neither of the two institutions has really attempted to embark on a deeper analysis of the larger social realities. Consequently, they have tended to be directionless and deprived of a larger vision of what are essentially historic responsibilities of increasing the empowerment and strengthening the rights of the disadvantaged citizens, the object of their endeavours. The

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<sup>19</sup> Tahir Mahmood, 'National Minorities Commission', op. cit.

<sup>20</sup> The position with regards to laying of the reports before the Parliament 13<sup>th</sup> and 14<sup>th</sup> Reports (1990-1991 & 1991-1992) of Minorities Commission: A note for Cabinet is stated to be under circulation to the concerned Ministries /Deptts, Reports for the year 1993-1994, 94-95 & 95-96 of NCM: A combined note with Action Taken Report is under circulation to the concerned Ministries/Deptts. Reports for the Year 1996-97 & 97-98 of NCM Report for the year 1998-99: Comments from the concerned agencies are awaited.

<sup>21</sup> Bishnu Mohapatra and Niraja Gopal Jayal, 'The National Commission for Scheduled Castes and Scheduled Tribes: A Report', op. cit.

failure to orient the commissions to the larger task of empowerment results in the inability to formulate policies and prescriptions that can usher in fundamental change in the social realities that would help reduce the inequalities between the privileged groups and the disadvantaged. It is clear that these commissions see themselves as limited to merely preserving existing facilities and provisions and they are not really looking to place their efforts into a larger context of ensuring democracy and a healthy pluralism.

### III

Empirical evidence points to the strong and still pervasive persistence of social discrimination in India. There is no sector in which social and economic discrimination is not practiced towards dalits and that too without penalty. This is so extensive that it would be difficult to deny the reality of continued discrimination and exclusion of these groups. The same is true for large sections of Muslims.<sup>22</sup> The implication of these inequalities is obvious: the marginal presence of minorities in the public sector, government and legislatures. Even as the historically disadvantaged groups have managed to obtain civil and political rights, it is clear that when it comes to socio-economic rights their marginalisation is quite evident. In other words, while political participation is assured, ownership, access and control over resources is denied.

The continued prevalence of widespread discrimination which operates in addition to other forms of inequality of access are undoubtedly indicators of the incapacity of public institutions and of the measures and policies for the disadvantaged. This would suggest that the public institutions established specifically for the promotion of their interests have failed in addressing the broader goals of anti-discrimination. My reading is that though the record of both commissions is mixed, however, the NCM is more ineffectual and powerless.<sup>23</sup> Envisaged as a proactive organization, the NCSC has unlimited power to investigate any matter relating to safeguards for the SCs, while the NCM has limited power to investigate matters relating to minorities, while the NCM functions principally as an agency that forwards complaints to concerned authorities with no real powers do anything about it.

Judged in terms of its overall constitutional mandate the NCSC has fallen short and has failed to provide specific protections in the face of socially powerful opposition. The empirical study and report cited in the previous section notes that the NCSC has been effective only with regard to service quotas and safeguards and has failed in dealing with atrocities against dalits or the implementation of more important socioeconomic measures such as land reforms.<sup>24</sup> This study also pointed out that the NCSC has not been able to come up with new policies and measures to alleviate the problems of the dalit poor and that its limitations are self-created since it has chosen to focus on service safeguards. The record of the commission has not been satisfactory in bringing about abatement of untouchability or atrocities or poverty. The emphasis on service safeguards and fulfillment of quotas in public employment has however played an important part in the enhancement of political participation and incorporation of dalits in the political elite. In sum, its success

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<sup>22</sup> According to the 50<sup>th</sup> and 55<sup>th</sup> rounds of the National Sample Survey Organization (NSSO), in 1993 and 1999-2000, on all major socio-economic indicators, Muslims were worse off than their counterparts in the majority community.

<sup>23</sup> Observers of the NCM stress this repeatedly. See for example Tahir Mahmood's assessment in 'National Minorities Commission', op. cit.

<sup>24</sup> Bishnu Mohapatra and Niraja Gopal Jayal, 'The National Commission for Scheduled Castes and Scheduled Tribes: A Report.'

story has most to do with the political empowerment of SCs.<sup>25</sup> Significant progress has been made, though there remains considerable room for improvement with regard to implementation of development and welfare policies. On the other hand the transformation that has taken place is in part attributable to political empowerment.

Of all the policies, the provisions for political representation for the SCs and STs have been the most important because this has given considerable power to the disadvantaged groups. The elected representatives have the opportunity to influence decisions concerning their group and through that the social restructuring of society as a whole. Their presence has helped to promote the implementation of preferential treatment programmes even at a time when the economically powerful groups make demands for greater resources. Even though there are very few systematic attempts to measure the impact of political empowerment in terms of its wider socio-economic and policy implications, one recent analysis that looks at policy outcomes shows a positive relationship between the proportion of scheduled tribe legislators in a state and the amount of welfare spending targeted at the scheduled tribes.<sup>26</sup> There is less of a positive connection in the case of the proportion of scheduled caste legislators and spending on scheduled caste welfare, compared to the policies towards STs, which are more effective due to the concentration of the tribal population in particular constituencies. Their political strength is built upon local tribal support. The best effect of electoral reservation has been to provide a guaranteed minimum number of legislators from the SCs and STs and that it provides representation for a group that would not otherwise get adequate representation.

A half-century later the project of empowerment of the scheduled castes and scheduled tribes through reservations in education and public employment remains a matter of substantial national consensus even though on occasion there have been rumblings of dissent. This consensus has much to do with the ideology of India's freedom struggle, the social contract it stood for, and the kind of nation it sought to build. Keen to eliminate caste inequality, the framers of our Constitution took an unequivocal view of the nature of intervention required to reduce social inequalities ranging from the abolition of untouchability to giving representation in public services and legislatures and the state in turn devised numerous policy schemes for social welfare.

The record has been quite different in the case of policies in relation to the minorities. In contrast to the assertiveness and will to ensure affirmative action for lower castes, the legislature and executive appear disinclined to take on board as a visible public policy issue - the socioeconomic rights of minorities. Afraid of wading into politically contentious waters, politicians are reluctant to be upfront in this regard. There was an overwhelming consensus emerging from discussions in the Constituent Assembly on the framing of the Constitution that the focus, post-Partition, of state policy would have to be primarily on the religious and cultural dimensions rather than on the social and economic aspects of minority rights. As a result, minorities do not have state support in areas of education and public employment. Nevertheless, they have a right to their personal laws and to carry on their own affairs under state protection.

The differential approach to disadvantaged communities and the emphasis on formal equality obscures the substantive issues of poverty and class inequality and discrimination among Muslims. The government's so-called egalitarian philosophy forbids

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<sup>25</sup> For such an assessment, see Mendelsohn and Vicziani, *The Untouchables*, op. cit. pp. 145-46.

<sup>26</sup> Rohini Pande's study discussed in Alistair McMillan, *Standing at the Margins*, p. 198.

the statistical classification and generation of socioeconomic data by religious groups, except for scheduled castes and scheduled tribes. One reason for not generating socioeconomic data was the basic premise that religion-wise data would heighten distinctions and tensions, but differences do not go away by just refusing to gauge and evaluate them. For the last few rounds the National Sample Survey Organization (NSSO) has provided disaggregated data on some parameters. Analysis of the 50th and 55th rounds of the NSSO in 1993 and 1999-2000 shows that the defining characteristic of the Muslim community in India is its dismal educational and exceedingly poor socio-economic status.<sup>27</sup>

The NCM does not address the critical issues of socioeconomic backwardness and discrimination suffered by minorities. Disregarding the commission, Mrs. Indira Gandhi set up a High Power Panel under the Chairmanship of Gopal Singh to report on the socioeconomic status of minorities. The report and recommendations of the Committee, however, did not get tabled in Parliament. In 1983, Mrs. Gandhi announced the Prime Minister's 15 Point Programme for Minorities without reference to the commission or the Gopal Singh Committee Report. However, Mrs. Gandhi has not been the only one to ignore the Commission or High Powered Committees. Prime Minister Manmohan Singh within a few months of the United Progressive Alliance government coming to power announced his decision to set up a Prime Minister's High Level Committee to examine the socioeconomic status of Muslims even though there now exists a mass of NSSO data that clearly reveals the social and economic deprivation of Muslims. The foot-dragging on the part of political leadership in coming to grips with the facts and actual details of the deprivation of minority groups would suggest that the prevailing political context, especially post-Hindutva, has an inhibiting effect on the willingness of politicians to chart new courses in this sensitive arena of minority group rights and empowerment.

Indeed, political and social contexts have a great deal to do with the actual performance of public institutions and the consequences of their actions. Apart from the limitations of the dissimilar meanings of disadvantage, the major reason for the difference in the performance of the two commissions is the absence of social/political mobilization by and around minority issues versus caste issues. Shifts in politics and political power may produce very different pressures, as public policies are reinvented in changing political contexts. Increased political mobilization in the late 1980s and 1990s produced a new political discourse, which seemed to favour the lower castes. This has been reinforced by the influx of lower castes into the field of democratic contestation, which has made it respectable to talk of caste and caste equity in the public domain.<sup>28</sup> By contrast, no great mobilization of minorities has taken place except with reference to the perceived threats to Muslim personal law and minority identity against the ShahBano judgment in the 1980s. Historically, the political claims of Muslims are grounded in perceptions of a distinct group identity and interest, and as such are conceived as more threatening to national cohesion. But there is no doubt that a large section of minorities feel stigmatized and excluded and want real equality and not just legal equality. However, special measures for minorities

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<sup>27</sup> Rammanohar Reddy, 'Deprivation affects Muslims more', *Hindu*, 12 and 13, September 2002.

<sup>28</sup> In the October 2005 Bihar Assembly elections the Congress party was so emboldened with regard to the new openness about caste in the public domain that the Bihar Pradesh Congress Committee published its candidate list along with the caste of the contestants in the adjacent column, this was something that would have been unthinkable a decade earlier. When found out the party leadership was not particularly embarrassed about it because the whole purpose was to bring to public and voter attention the Congress party's commitment to distribution of tickets on the basis of caste and to emphasize that like caste-based parties the Congress was also giving the largest number of tickets to lower castes.

remain a politically contentious subject, and are still considered a matter of controversy. Hence, politicians and policy makers appear cautious and circumspect in regard to initiating or formulating proposals and policies for minorities and remain reluctant to be active in this arena of policy, despite the fact that an assertive approach to the issue of the well being of minorities could have a positive bearing on national unity. Of more concern is the reticence to address the socioeconomic rights of the minorities. This was the overwhelming consensus emerging from discussions in the Constituent Assembly on the framing of the Constitution that the focus, post-Partition, of state policy would have to be primarily on the religious and cultural dimensions rather than on the social and economic aspects of minority rights, and it has not changed much since then.

In addition, there is the basic issue of dealing with different forms of disparity and disadvantage and where to draw the line in terms of caste versus class or caste versus community. There are clear indications that at different levels of economic and social policy the debilitating role of class and gender inequality as also the disadvantages of belonging to a particular religious minority receives very little attention, and in this neglect the single-minded focus on caste discrimination did play a role. The fact that these aspects of inequality continues to be subsumed and in fact underplayed in public discourse is not just the result of vested interests, but also because of the competing pressure of the politics of identity. Cultural and identity politics has displaced the earlier politics of economic and social inequality, thus group identities are supposedly primary to our sense of self-worth. Even if this is true in part, it does not generate a workable politics of transformation.

In conclusion, this brief analysis I have etched of public policies and the functioning of the two commissions, each intended to address a particular facet of disadvantage in a society and under a state committed to democracy, equality and pluralism, shows that real empowerment and enshrinement of the rights of disadvantaged groups, would come only from the state and society unveiling concrete strategies for empowerment, geared to a larger vision of achieving substantive equality. Otherwise setting up instrumentalities and agencies such as these commissions would prove mere tokenism or symbolic affirmations.