CHAPTER – VI
PROTECTIVE DISCRIMINATION : CONSTITUTIONAL MACHINERY FOR ENFORCEMENT

1. INTRODUCTION

The concern of the framers of the Indian Constitution for the betterment of the scheduled castes, scheduled tribes, other socially and educationally backward classes and minorities is quite apparent from the Constitution itself. They took special care to safeguard the interests of minorities and give them a sense of security so as to help them to get integrated in the main stream of national life. They have not only incorporated safeguards for social, economic and educational interest of such minorities but also provided constitutional machinery both Administrative and Judicial for implementation of these safeguards. For proper evaluation of the constitutional safeguards it is more valuable and important to go into their actual operation rather than merely studying the relevant constitutional provisions. The founding fathers also realized this aspect of the problem and thus made adequate provisions for an effective machinery to ensure proper functioning of these measures. The same idea was conveyed by Sardar Patel while submitting the report of Minority Rights to the Constituent Assembly. He said:

We have also provided for some sort of administrative machinery to see that whatever safeguards are provided are given effect to, so that it may not be felt by communities concerned that these are paper safeguards.¹

¹ V. Constituent Assembly Debates 199.
There is no denying the fact that a legislative measure however good will turn out to be bad if it is not implemented properly. So it is the implementing machinery on which the success and failure of a particular legislative depend.\(^2\)

In the words of M.V. Pylee, “A Constitution when written does not breathe. It comes to life and begins to grow only when Human elements get together and work it.”\(^3\)

Therefore, the study of actual working of the Constitutional safeguards is very germane. The Minority Report\(^4\) and Draft Constitution\(^5\) envisaged special provisions for the appointment of Special Officers for minorities for the Union and States to investigate all matters relating to safeguards provided for minorities under the Constitution. The Constitution had provided machinery to safeguard the interest of the scheduled castes, scheduled tribes, backward classes, linguistic minorities and Anglo-Indians.

II. ADMINISTRATIVE MACHINERY

A. Special Officers for Scheduled Castes and Scheduled Tribes

\(^2\) Dr. Ambedkar said in Constituent Assembly:
I feel, however, good a constitution may be, it is sure to turn out bad because those who are called to work it happen to be a bad lot. However, bad a Constitution may be, it may turn out to be good if those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of state such as Legislature, the Executive and Judiciary. The factors on which the working of those organs of the State depend are the people and political parties they will set up as their instruments to carry out their wishes and their politics.

\(^3\) M.Y. Pylee, Constitutional Government in India 700 (1960).
\(^4\) Supra note 1 at 249.
\(^5\) Draft Article 299.
To ameliorate the status of the scheduled castes and tribes and secure them social justice guaranteed under the Constitution, the founding fathers have provided machinery for implementation of the said safeguards. In that regard, the most important provision is laid down under Article 338 of the Constitution. It provides for the appointment of a special officer for the scheduled castes and scheduled tribes by the President. Such officer has the duty to investigate all matters relating to the safeguards guaranteed to the scheduled castes and scheduled tribes under the Constitution and to report to the President about the working of the safeguards at such intervals as the President may direct and such reports are to be laid before each House of Parliament. The reference to scheduled castes and scheduled tribes under this Article shall be construed as including reference to such other backward class as the President may on receipt of the report of the report of Backward Classes Commission, specify by order. The special officer designated as Commissioner of Scheduled Castes and Scheduled Tribes is also required to discharge similar functions with regard to the Anglo-Indian Community. The Commissioner submits his report to the President and who in turn causes it to be placed before each House of the parliament. The Commissioner assesses the implementation of safeguards in the

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6 It reads:

Special Officer for Scheduled Castes, Scheduled Tribes etc. –

(1) There shall be a special officer for scheduled castes and scheduled tribes to be appointed by the President.

(2) It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for scheduled castes and scheduled tribes under this Constitution an report to the President upon the working of those safeguards at such intervals as the President may direct, the President shall cause all such reports to be aid before each House of Parliament.

(3) In this Article reference to scheduled castes and scheduled tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of Article 34 by order specify and also the Anglo-Indian Community.

7 Article 338 (1).

8 Article 338 (2).

9 Article 338 (2).
States, the progress made in different spheres, implementation of instructions issued by the Centre, evaluation of welfare work and their impact. He has been given certain non-statutory functions like evaluation of the progress of the welfare scheme taken up in the State and non-official agencies with grants-in-aid from the Centre. He represents union government on all the committees and non-official agencies with grants from the Centre, examines the accounts of organisations receiving grants from the Centre and advises the Central Government regarding the schemes received from the State Governments. He is expected to act as a link between States on the one hand and States and Central government on the other. The Central Government evaluates the progress in implementation of various safeguards through the medium of the Commissioner.\(^\text{10}\) In order to give effect to the provisions of Article 338 the first special officer designated as Commissioner for Scheduled Castes and Scheduled Tribes was appointed on November 16, 1950. He was required to submit his report annually (for each calendar year) but after 1955, the report covers each financial year. In the beginning the Commissioner was given the status of a Secretary in the Ministry of Central Government. The first Commissioner raised the question of his independent status and it was decided by the Government of India that his status was to be same as that of any other statutory officer. He was declared ‘Head of the Department’. He was attached to a minister for the purpose of parliamentary work only. This position appeared to have continued only up to 1956-1957. By going through the Commissioner’s annual reports since 1957-58 it appears that the earlier decision regarding the status of the Commissioner has been reversed. In his 1958-59 Report, the Commissioner mentions the recommendation of the Study Team on Welfare of Backward Classes.

(1959) as well as of the Estimate Committee of Second Lok Sabha\textsuperscript{11} for according an independent status to the Commission’s organisation. The Estimate Committee was critical about the assignment of non-statutory functions to the Commissioner’s office. The first Commissioner maintained upto his last reporting year i.e. 1960-61 that it was desirable to attach adequate statutory defined powers to the post.\textsuperscript{12}

For assisting the Commissioner a few Regional Assistant Commissioners functioned through out the country. They were expected to help the State Government to remove bottleneck in the implementation of welfare measures. In 1967 they were withdrawn from the control of the Commissioner and were placed under the Director General, backward Classes Welfare. This caused a great handicap for the Commissioner and they were obliged to function from the headquarter at New Delhi.\textsuperscript{13} The withdrawal of Regional Assistant Commissioners was criticized by the Committee on welfare of Scheduled Castes and Scheduled Tribes in its Report in 1969.

In the absence of regional offices, Commissioner has either to depend on State Government or request Regional Directors of Backward Classes or ask the Inspecting Teams of his office to investigate and all these arrangements are ineffective. The Commissioner has no control over Regional Director of Backward Classes and latter do not pay due attention to the request of the former. The Inspecting Teams of the Commissioner’s office are not adequately staffed and there is only one research officer.\textsuperscript{14}

\textsuperscript{11} 48\textsuperscript{th} Report, 1958-59.
\textsuperscript{14} Supra note 12 at 451-452.
The Committee on untouchability took note to the practical difficulties of the Commissioner because of vastness of the country and the fact that the areas inhabited particularly by scheduled tribes are not easily accessible and also the each State having its own problems has pleaded for Regional Organisation located within the State. The Report of the Committee further recommends that “The Commissioner’s organization must not only be given a really independent status with clearly defined and codified power, responsibility and jurisdiction of actions, but his field organization as existing before the 1967 reorganisation must also be immediately restored, further strengthened and systematized.”

The office of Commissioner for Scheduled Castes and Scheduled Tribes is combination of functions in regard to scheduled castes and scheduled tribes. He has to deal with the problem of the both simultaneously. The former relates to the areas which are developed and later to under-recommended by the Report of the Scheduled Areas and Scheduled Tribes Commission that there should be separate Commissioner for Scheduled Tribes.

The Commissioner in his report for the year 1957-58, stated that backwardness had a tendency to perpetuate itself and become a vested interest and that if the ultimate goal of having a classless and castes and scheduled tribes would have to be reduced from year to year ad replaced in due course by a list based on criteria of income-cum-merit. Instead of reducing the list originally drawn in 1950, became just twice as long in 1956.

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15 Supra note 11 at 400.
The Commissioner in his Report of 1978-79 while referring to the progress in the advancement of the scheduled castes and scheduled tribes said:

Thirty-two years are no small period of stabilise transformation in a society and yet may not be long enough to fully at one the sins of centuries. Efforts have been made, perhaps not commensurate with the magnitude of the problem. The results achieved could not, therefore, answer to the crying needs in a manner of leveler.\textsuperscript{18}

According to the report significant strides had been made in the various fields of development such as agriculture, employment but “by and large the beneficiaries in the rural and urban sectors had been the affluent section.” The weaker sections, bulk of which include the scheduled castes and scheduled tribes, have “yet to drive tangible benefits”.\textsuperscript{19} This fact necessitated for drawing new priorities in the ascending order, putting emphasis on scheduled castes and scheduled tribes and backward classes of comparatively lower order among them constituting the majority of our people. This report had recommended the establishment of a separate Ministry of Scheduled Castes and Scheduled Tribes at Centre headed by the Prime Minister and the Departments concerned in the State Government by the Chief Minister. The Report said, “Since the safeguards fro special classes under the Constitution is a charge on the Nation, it is appropriate that they should be dealt with at the highest level both at the Centre and in the States.”\textsuperscript{20}

The Twenty-seventh Report (1979-81) of the Commissioner dealt with the in-depth studies conducted by the organization of the

\textsuperscript{19} ibid.
\textsuperscript{20} Id. at 15.
Commissioner in connection with some of the serious crimes committed on the scheduled castes and scheduled tribes. It revealed that “various socio-economic maladies have been causing distress among scheduled castes and scheduled tribes”.21 This happened because of denial of equal treatment, their normal rights and privileges, lack of adequate protection for their lands and other possessions and exploitative practices by the vested interests in the matter of wages, rural indebtedness and also the practice of bonded labour. Their determination to resist at anticipated injustice invited unprovoked heavy handed treatment resulting in atrocities of varying magnitude. Inadequate legal protection, therefore, only helped to aggravate the problem. It was unfortunate that “affluent sections committing atrocities are helped in their nefarious activities by the lower level revenue and police officials and even by politicians.”22 Thus, the Report suggested that it was very important to remove underlying maladies so that the scheduled castes and scheduled tribes could hope for security of life and property and social justice.23 While dwelling on discontentment in Tribal Areas the Report suggested that more strenuous efforts should be made through suitable coordination between official and non-official bodies to accelerate the tempo of development and for better implementation of protective measures.24 As regards problems of untouchability the Report suggested vigorous implementation of the provisions of the Protection of Civil Rights Act, 1955 which would go a long way in checking the social exploitation of persons belonging to scheduled castes. At the same time the Report regretted that so far most of the implementing authorities at various levels had not been sufficiently geared up in the task of removing this

22 Ibid.
23 Id. at
24 Id. at 421 para 289.
evil from the society.\textsuperscript{25} The Commissioner had highlighted in his report the fact that his office was under-staffed and, therefore, recommended for extending his jurisdiction over Regional Offices in various States. He wrote:

Perhaps no other office, either at the Centre or in the States, can be found to be working as chronically understaffed as the office of the Commissioner for scheduled castes and scheduled tribes. This is a case of ever increasing workload and shrinking strength. It was in this context that the Commissioner suggested in his previous Report that his administrative control ought to be extended to the Regional Offices in various States so as to enable him to discharge his onerous constitutional obligation with some credibility.\textsuperscript{26}

Thus, from above it is evident that although the Commissioner for Scheduled Castes and Scheduled Tribes is a constitutional authority but he is unable to function properly because of an inadequate machinery. “Thus he was clipped of his wings.”\textsuperscript{27} Although a number of Committees\textsuperscript{28} have recommended the strengthening of the Commissioner’s Organisation ‘Government has taken no steps in that direction.’\textsuperscript{29}

In face of all these odds the Commissioner has been doing good deal of work particularly watching the implementation of various protective measures, evaluation of various welfare schemes undertaken by both official and non-official agencies and as an advisory and liaison agency.\textsuperscript{30}

\textsuperscript{25} Id. at 4141 para 237.
\textsuperscript{26} Id. at 397.
\textsuperscript{27} D. Ravindra Prasad, \textit{op.cit., supra note} 10 at 439.
\textsuperscript{28} Committee on untouchability, economic and educational development of the scheduled castes; Study Team on Tribal Development Programme; Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes etc.
\textsuperscript{29} D. Ravindra Prasad, \textit{op.cit., supra note} 10.
\textsuperscript{30} Ibid.
B. Commission for Scheduled Castes and Scheduled Tribes

In addition to the existing Commissioner for Scheduled Castes and Scheduled Tribes the Central Government felt the need for a high level Commission for Scheduled Castes and Scheduled Tribes and thus the Commission for Scheduled Castes and Scheduled Tribes was set
up in July, 1978\textsuperscript{31} by a Government resolution. The Commission is required to submit an annual report to the President who then places it before each house of Parliament.

The Commission for Scheduled Castes and Scheduled Tribes in its annual report for 1978-79 refers to the registered cases of atrocities against Harijans and Adivasis. According to the report the landless peasants, mostly Harijans are now trying to assert their right over surplus land distributed to them and the landlords and their henchmen have unleashed terror all over the countryside. The Commission has asked for clear demarcation of land distributed to the landless and summary eviction and deterrent punishment for those responsible for dispossessing them of such land. An important observation made by the Commission is that the scope of Article 46 of the Constitution clearly enjoins upon the Centre “to protect the members of scheduled castes and scheduled tribes from social injustice and all forms of exploitation.” It cannot pass this responsibility on the States and show the helplessness in the matter of taking concrete steps. The Central Government, the Commission feels, is also empowered to ask State concerned to make use of the police or the army to ensure social justice. The Commission is of the view that cases of social justice

\textsuperscript{31} The Commission was constituted with following members:
(1) Shri Shola Paswan Shastri, M.P. (Chairman).
(2) Shri Sisir Kumar, Ex. M.P. and Commissioner for Scheduled Castes and Scheduled Tribes.
(3) Shri A. Jayaraman, Ex. M.P.
(4) Shri Thakur Sen Negi, M.L.A.
(5) Shri S.K. Mallick, ICS (Retd.).
The Commission was assigned following functions: (1) investigating all matters relating to safeguards provided for scheduled castes and scheduled tribes including reservations in public services and its implementations; (ii) to study the implementation of Civil Rights Act, 1955 with particular reference to objective of removal of untouchability and individual discrimination within a period of five years and (iii) to ascertain the socio-economic and other relevant circumstances accounting for the Commission of Offences against persons belonging to scheduled castes or scheduled tribes with a view to ensure the removal of implements in the laws in force and to recommend appropriate remedial measures to ensure prompt investigation of offences.
should not be lumped together with other cases of social justice should not be lumped together with other law and other problems.\textsuperscript{32} The Commission has recommended\textsuperscript{33} a statutory status to the Commission with a provision for participation in planning process of socio-economic development of scheduled castes and scheduled tribes and evaluation of the progress of implementation of the measures undertaken for the said purpose.

The Commission in its Second Report (April 1979 – March 1980) stated that for investigation into cases of atrocities the Commission had no legal powers to summon witnesses and call for documents and without these powers the investigation would not be complete, effective and fruitful. The Commission, therefore, reiterated the recommendation in its First Annual Report, that for the purpose of holding investigations they should be given the status and powers of an Enquiry Commission under the Commission of Enquiries Act, 1952.\textsuperscript{34} For the protection of scheduled castes and scheduled tribes form Commission of atrocities against them the Commission recommended that a special provision may be added in the Constitution in the form of Article 46A which may be read as follows:

With a view to ensuring the protection of the scheduled castes and scheduled tribes from social injustice and all forms of exploitation and with a view to ensure that adequate steps are taken for their protection against the Commission of offences including atrocities against them the executive power of the Union shall extend to the giving of direction to State as to the taking of suitable steps specified in the direction to be essential for the protection of the scheduled castes and scheduled tribes from

\textsuperscript{33} Ibid.
social injustice, all forms of exploitation and commission of offences including atrocities against them.\textsuperscript{35}

The Commission had not been associated by the Central Government and the Planning Commission in the plan discussion and other policy matters relating to socio-economic development of the scheduled castes and scheduled tribes with which the Commission had been intimately concerned. Thus, the Commission and recommended that they should be fully associated with planning process and also be given necessary powers to monitor and evaluate the progress of various programme for the welfare of the scheduled castes and scheduled tribes the progress of various programmes for the welfare of the scheduled castes and scheduled tribes.\textsuperscript{36} The Commission also recommended that it should be conferred with constitutional states and for the said purpose an appropriate bill be brought before the Parliament.\textsuperscript{37}

The Commission further recommended that matters relating to protection and development of scheduled castes should be included under the concurrent list in the Seventh Schedule of the Constitution as item No. 42.\textsuperscript{38}

\textsuperscript{35} Id. At 463 para 10.
\textsuperscript{36} Id. Para 2.
\textsuperscript{37} Id. Para 3. The Commission suggested to incorporate following amendment with a view to give it following powers: (i) to participate in and advice the planning process of socio-economic development of scheduled castes and scheduled tribes; (ii) to monitor and evaluate the progress of implementation of schemes both in respect of the Union and the States; (iii) to make it obligatory on the Union and the State Government to consult the Commission on all major policy matter affecting the scheduled castes and scheduled tribes and (iv) Status and powers of a Commission of enquiry under the Commission of Enquiry Act, 1952.
\textsuperscript{38} Id. At 464 para 14. The items recommended for the inclusion: (a) Development and Welfare of Scheduled Castes, Scheduled Tribes and their social, educational and economic development; (b) Protection of the scheduled castes, scheduled tribes from social injustice and all forms of exploitation including untouchability; (c) Protection of the scheduled castes and scheduled tribes from Commission of Offences including atrocities against them; (d) Public order in so far as it relates to the scheduled castes and scheduled tribes and (e) Reservation for scheduled castes and scheduled tribes in making appointment to services and posts in connection with the affairs of a State.
The Commission among other things also recommended pre-metric\textsuperscript{39} and post-metric\textsuperscript{40} scholarship and distribution of surplus land\textsuperscript{41} for scheduled castes and scheduled tribes.

The Commission in its Third Report (April 1980 – March, 1981) was of the view that for raising the economic status of the scheduled castes and making them economically self-reliant, a fundamental pre-requisite for the eradication of social inequalities and humiliations from which they suffered, it was necessary to lay down as a matter of policy that allocation of funds made to them should be more than appropriate to their population. The Commission recommended that there should be proper monitoring at various levels, monitoring cells at Central, State and field levels and that the Commission should also be associated with these cells.\textsuperscript{42}

In order to remove the anomalies in the lists of scheduled castes and scheduled tribes appearing in various orders, the Commission recommended that the Central Government may bring forward a suitable legislation for revision of scheduled castes and scheduled tribes lists to remove existing anomalies.\textsuperscript{43} According to the Commission bonded labour was still prevalent in some form or the other in many parts of the country and suggested that the Ministry of Labour should examine as to why some of the State Government had not utilized Central financial assistance for rehabilitation of bonded labour despite the fact that bonded labourers had been identified and yet remained to be rehabilitated.\textsuperscript{44} In the field of educational development the Commission had noted that the extent of variation

\textsuperscript{39} Id. at 498.
\textsuperscript{40} Id. at 499.
\textsuperscript{41} Id. at 468.
\textsuperscript{43} Id. para 4.
\textsuperscript{44} Id. at 193 para 16.
between the literacy rate of scheduled castes and scheduled tribes communities in various States was such that it required remedial measures. The Commission, therefore, suggested that special schemes be evolved for attracting the children of those scheduled castes and scheduled tribes communities whose literacy rate was less than 50% of State’s overage for these communities. The opening of residential schools had been suggested for scheduled castes wherever necessary and in case of scheduled tribes communities, 50% of seats in the Ashram Schools in the various States should be reserved for the children of these communities. It also recommended that the scope of post-matric scholarship should be enlarged so as to award pre-matric scholarship (Rs. 145 per child to cover boarding and lodging) to all vulnerable scheduled castes and scheduled tribes including those belonging to communities whose children were unable to reach upto post-metric stage due to economic/social constraints.

Regarding reservation for scheduled castes and scheduled tribes in services the Report said that it was desirable that anomalies regarding reservation in promotion posts from feeder cadres in Central Government establishment located in regions, were removed by prescribing the same percentage in promotions as were applicable at the time of direct recruitment. The Commission further recommended that special measures be taken to create facilities for larger intake of scheduled castes and scheduled tribes in technical courses and professional so that large number of scheduled castes and scheduled tribes candidates become available to take benefits of opportunities available in services where such qualifications were essential.

45 Id. para 31.
46 Id. para 32.
47 Id. para 54.
48 Ibid.
The Commission in its Fourth Report (April 1981 – March 1982) has again repeated its earlier recommendation for granting it a constitutional status in absence of which its functioning had been very seriously limited.\footnote{Report of the Commission for Scheduled Castes and Scheduled Tribes (April 1981 – March 1982) Fourth Report p. 116 para 1.} The Commission with a view to ensure adequate benefits to scheduled castes under the Special Component Plan recommended that each State Government should create at State level a Scheduled Castes Development Agency on the lines of District Development Agencies for formulation, implementation and monitoring of schemes under the Special Component Plan for Scheduled Castes. Chief Minister should be its Chairman and Minister-in-Charge of Harijan Welfare as Vice-Chairman, Secretaries of the Departments concerned as members and an officer of the status of Development Commissioner as Member-Secretary. All funds falling in State’s Special Component Plan should be placed at the disposal of this Agency. The Agency should have the authority to allocate funds according to need sand capacity of various departments and should possess full power to make inter-sectoral re-appropriations.\footnote{\textit{Id.} at 116-117 para 6.} The Commission recommended that the literacy rate of females among the scheduled castes and scheduled tribes be increased to at least 10% (from 4.85% scheduled tribes and 6.44% scheduled castes).\footnote{\textit{Id.} para 10.} It also recommended that there should be at least one residential school for scheduled castes boys, scheduled castes girls, scheduled tribes and Union Territories.\footnote{\textit{Id.} para 11.} The Commissioner further recommended that reservation of seats in medical college run/aided by the Central Government should be 15% and 70% respectively.\footnote{\textit{Id.} para 14.}
The Commission in its Fifth Report (April 1982 – March 1983) had recommended that the existing arrangement for monitoring/review/evaluation in respect of the following programmes requires to be strengthened wherever necessary – loan schemes, rehabilitation of scheduled castes/scheduled tribes person displaced on account of setting up of big/heavy industry, house site allotment, land reform measures, reservation of seats for professional courses.\textsuperscript{54}

It recommended periodical checks by senior officers of nationalised banks to ensure strict compliance of the directive of Reserve Ban of India with regard to lending to weaker sections including scheduled castes/scheduled tribes\textsuperscript{55} and that the Scheduled Castes Development Corporation should formulate the schemes in such a way so as to eliminate the possibility of rejection at the level of the bank.\textsuperscript{56}

It further recommended establishment of Land Reforms Commission by the States/Union Territories on the line of the Government of Assam because proper implementation of land reform laws had a direct bearing on the well being of the vast majority of scheduled castes and scheduled tribes.\textsuperscript{57}

In order to prevent atrocities being committed against scheduled castes and scheduled tribes the Commission suggested that special branches of all States may be given the charge of the collection of intelligence. It recommended that a Central agency should simultaneously by entrusted with the collection of similar intelligence so that the Centre may adequately advice the State Governments to take timely precautions.\textsuperscript{58}

Regarding reservation in services the Commission recommended that the existing percentage of reservation for scheduled castes and scheduled tribes in services


\textsuperscript{55} Id. para 10.

\textsuperscript{56} Id. para 11.

\textsuperscript{57} Id. para 23.

\textsuperscript{58} Id. at 205 para 44.
may be raised keeping in view the increase in their percentage in the population according to 1981 Census.\(^59\)

Although it is a matter of scheme that a Commission for Harijans and Adivasis is still needed in order to identify and suggest remedies for the same but it is good that the Commission has raised certain fundamental conceptual issues. From above it is quite clear that Commission for scheduled castes and scheduled tribes which is established by a government resolution and the Commissioner who is a constitutional authority have to function in the same area discharging more or less similar functions.

C. Commission for Scheduled Areas and Scheduled Tribes

The Constitution envisages another constitutional machinery for performing the function of investigating and reporting on the problems of scheduled areas and scheduled tribes under Article 339\(^60\) of the Constitution, Article 339 (1) empowers the President to appoint a Commission at any time, and must appoint it after ten years of the commencement of the Constitution, to report on the welfare of the scheduled tribes in the States and the administration of the scheduled areas. The Presidential order appointing the Commission may define its composition, powers and procedure and may make other incident or ancillary provisions. No such provision has been made in the

\(^{59}\) Id. para 45.
\(^{60}\) It reads:

Control of the Union over the administration scheduled areas and welfare of scheduled tribes – (1) The President may at any time and shall at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the scheduled areas and the welfare of the scheduled tribes in the States.

The order may define the composition, powers and procedure of the Commission and may contain such incident or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of direction to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the State.
Constitution for scheduled castes. Article 339 (2) empowers the centre to issue directive to any State giving directions as to drawing up and execution of schemes specified in directives to be essential for the welfare of the scheduled tribes in the State. Article 339 (2) is supplementary to Article 275 (1) which provides, *inter alia* that grants-in-aid shall be payable to a State out of the consolidated fund of India for the purposes of meeting cost of each scheme of development as the State may undertake with the approval of the Government of India for promoting the welfare of the scheduled tribes in that State. The Central Government has been given the power to give direction as respects such schemes because it pays the cost thereof.61

In purposes of this Article the scheduled areas and scheduled tribes Commission was appointed on April 28, 1960 under the Chairmanship of U.N. Dhabar. The Commission was to report on:

a. the administration of the scheduled areas under the fifth schedule to the Constitution and, in particular as to:

   (i) The functioning of the Tribes Advisory Councils;

   (ii) The laws applicable to the scheduled areas and the exercise by the governors concerned of powers under paragraph 5 of the fifth schedule; and

   (iii) The principles to be followed in declaring any territory to be, or to form part of, a scheduled area, or directing that any territory shall cease to be, or cease to form part of a scheduled area;

b. the welfare of the scheduled tribes in the States and in particular, whether the development plans in relation to matters

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61 M.P. Jain, *op.cit.*, *supra note* 25 at 614.
connected with the welfare of scheduled tribes require any alteration in respect of objectives, priorities or details of working; and

c. any other matter connected with the administration of scheduled areas or the welfare of the scheduled tribes in the States which may hereafter be specifically referred to the Commission for investigation and report.62

The report of the Commission was submitted to the President of India on October 1961. According to the Report the Commission had visualized and analysed the problem of the scheduled tribes in its historical and geographical setting and given number of recommendations to achieve the twin objective set by the framers of the Constitution, i.e., the scheduled tribes should be brought out from the age-old isolation and their existing rights, customs and way of life should not be jeopardised.63

The Commission circulated a questionnaire64 to State Government and Union Territories regarding criteria to classify an area as scheduled area. After indepth study if suggested the following criteria for determination of scheduled areas.65

62 Ministry of Home Affairs Notification No. 11.
64 The questionnaire called upon n consider whether the following factors to be present for classifying an area as scheduled area:
   (i) strict necessity;
   (ii) preponderance of tribal population;
   (iii) reasonableness of the size;
   (iv) susceptibility of the area to special administrative treatment;
   (v) compactness;
   (vi) inaccessibility;
   (vii) conclusiveness and distinctive way of life of the tribal population;
   (viii) marked disparity in economic standard in relation to people of the surrounding area;
   (ix) disparity in the level of education; an relative development of the area vis-à-vis the rest of the State.
65 Id. at 63, para 8.13.
(i) Preponderance of tribals in the population;
(ii) Compact and reasonable size;
(iii) Underdeveloped nature of the area;
(iv) Marked disparity in economic standards of people.

The Commission applied the criteria suggested by it to the present scheduled area and found that the application of the criteria already determined should disqualify many areas since they did not fulfill the requisite necessity for scheduling them. Regarding descheduling of areas the Commission was of the view that for descheduling the governments must be satisfied after examination of the relevant data that “in point of economic development, education, health, communications and other services it has reached a stage where it can no longer remain a scheduled area.” According to the Commission, no scheduled area had reached the stage of descheduling.

The report of the Commission called upon the State to undertake general legislation applicable throughout the scheduled and non-scheduled areas for protection of the rights of tribals in land and forests and protection from exploitation by money lenders and this legislation should be implemented within a period of ten years and pending such legislation the regulatory powers of the Governor under Para 5(2) of the Fifth Schedule may be utilized for the promulgation of corresponding regulations for scheduled areas. It recommended that all tribal areas should be grouped under tribal development block so that the bulk of the tribal population is brought under intensive development schemes.

66 Id. at 69 para 8.32 (b).
67 Ibid.
The Commission concluded its unanimous report with following observation.\textsuperscript{68}

Thus ends our long quest for the solution of one of the most important and vexed problems that confronts the country as we have said in the earlier portion of the Report the problem emanates from centuries of isolation. Only to this extent it is different from the problems facing the other sections of the Indian society. Nevertheless or because of the very reason, it has its specialities. The great hopeful feature is that the tribal himself has awakened to the need for finding a solution and is responding. The aim of the country is to secure the advancement of the tribals without imposition. We have viewed the tribal problem from this wider angle of the interest of the tribal, need for maintaining harmony and of integration. We hope and trust that our recommendations conform to that objective and will be helpful in fulfilling it.

Although the Central and State Governments are doing their best to protect the tribal people from exploitation and have taken up the work of economic, social and educational reforms with right spirit but still there is long way to go. A care should be taken than while inculcating the progressive outlook among them the essential harmony of their life is not disturbed.

D. Commission for Backward Classes

In addition to scheduled castes and scheduled tribes the Constitution extends some protection to backward classes because they have been neglected for long. Backward classes are not confined to Hindus but are present in Muslim, Christian etc. Therefore, for the advancement of backward classes and to investigate their conditions the Constitution contemplates under Article 340 the appointment of a Commission to be known as Backward Classes Commission. It is yet

\textsuperscript{68}Id. at 498-99.
another agency provided by the Constitution for investigating the problems of Backward Classes. Article 340 empowers the President to appoint a Commission to investigate the conditions of socially and educationally backward classes in India and the difficulties under which they labour and to make recommendations as to the steps that should be taken to make recommendations as to the steps that should be taken to improve that their conditions. The Commission may also make recommendations as to the grants which should be made for the purpose by the Centre or any State, and the conditions subject to which such grants should be made. A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper. The report of the Commission together with a memorandum explaining the action taken thereon by the Government has to be laid before each House of Parliament.

(i) First Backward Classes Commission

In pursuance of Article 340 the President appointed a Backward Classes Commission on January 29, 1953 under the Chairmanship of Kaka Saheb Kalelkar. The Commission was asked among together

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69 Article 340 (1).
70 Article 340 (2).
71 Article 340 (3).
72 The Commission comprised of following eleven members including the Chairman:

(i) Shri Kaka Saheb Kalelkar, M.P. (Chairman)
(ii) Shri Narayan Sadoba Kajrolkar, M.P.
(iii) Shri Bheeka Bhai, M.P.
(iv) Shri Dayal Singh Chaurasia.
(v) Shri Rajeshwar Patel, M.P.
(vi) Shri Abdul Qayum Ansari, M.L.A. (Bihar).
(viii) Shri Lala Jagannath.
(ix) Shri Atma Singh Namdhari, M.P.
(x) Shri N.R.M. Swami, M.P.
(xi) Shri Arunomghrut Dey (Member Secretary).
things to determine criteria to be adopted for classifying socially and educationally backward classes.\textsuperscript{73}

After two years of hard work the Commission submitted its report on March 30, 1955. The Commission prepared a questionnaire for determination of backwardness dealing with the social, economic education and caste aspects of the problem. On the basis of the responses to the questionnaire it adopted the following tests for classifying socially and educationally backward classes: (i) Low social position in the traditional hierarchy of Hindu society; (ii) Lack of general educational advancement among major sections of a caste or community; (iii) Inadequate or no representation in Government services; (iv) Inadequate representation in the field of trade, commerce and industry.\textsuperscript{74}

The Commission prepared a list of two thousand three hundred and ninety nine castes and communities as socially and educationally backward and eight hundred and thirty seven were classified as ‘most backward’. Out of all these castes nine hundred and thirteen alone had an estimated population of one hundred and fifteen millions. The Commission realized that the problem of backward classes was

\textsuperscript{73} The Commission’s terms of reference were to:
(a) determine the criteria to be adopted in considering whether any section of the people in the territory of India (in addition to the scheduled castes and scheduled tribes specified by notifications issued under Articles 341 and 342 of the Constitution) should be treated as socially and educationally backward classes; and in accordance with such criteria, prepare a list of such classes setting out also their approximate number of their territorial distribution;
(b) investigate the conditions of all such socially and educationally backward classes and the difficulties under which they labour and make recommendations – (i) as to the steps that should be taken by the Union or any State to remove such difficulties or to improve their conditions and (ii) as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made;
(c) investigate such matters as the President may hereafter refer to them; and
(d) present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

\textsuperscript{74} Report of Backward Classes Commission Vol. I, p. 46.
essentially the problem of rural India. The Commission could not present an unanimous report. In fact five of its members recorded minutes of dissent.

A perusal of the report disclosed a considerable divergence of opinion among its members and the Commission failed to specify any easily discernible objective tests for defining ‘backwardness’. It considered several criteria relevant in determination of backward classes and ultimately decided to treat ‘caste’ as an important factor for the same. The Commission proceeded to prepare a list of backward communities on the basis of caste.

It is very pertinent to note that the Commission was itself disturbed over the reliance on caste criteria. It observed:

We are not less anxious to eradicate the evil of caste system nor are we desirous to perpetuate caste-system. We tried to avoid caste in the present prevailing conditions we wish it were easy to dissociate caste from social backwardness at the present juncture.

The commission suggested reservation in service for the listed castes and communities of at least 25 per cent in Class I 33.5 per cent in Class II and 40 per cent in Class III and IV services. It recommended 70 per cent of reservation in medical, scientific and technical education. It also suggested that creation of a separate ministry for backward classes welfare.

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75 Id. at 55.
76 Id. at 41.
77 Report of Backward Classes Commission Vol. II
78 Id. at 125.
79 Id. at 143.
However, the Chairman of the Commission who did not record a formal dissent expressed grave dissatisfaction for adopting caste as a criteria to determine backwardness in his forwarding letter to the President. According to him the remedies suggested by the Commission were worse than the evil, it was out of fight.\textsuperscript{82} He felt that “if we eschew the principle of caste, it would be possible to help the extremely poor and deserving from all communities.”\textsuperscript{83}

Thus, the last minute repudiation of Commission’s work (which contributed largely to the rejection of the report by the Central Government) changed the whole picture.\textsuperscript{84}

After a detailed examination of the Commission’s Report the Government laid its copy together with a Memorandum\textsuperscript{85} before each House of Parliament on September 3, 1956. The Government pointed out in the memorandum that, “It cannot be denied that the caste system is the greatest hinderance in the way of our progress towards an egalitarian society, and the recognition of the specified castes as backward may serve to maintain or even perpetuate the existing distinctions on the basis of caste.” Regarding the recognition of a large number of castes and communities as backward, it was pointed out, “If the entire community, barring a few exceptions, has thus been regarded as backward, the really needy would be swamped by the multiple and hardly receive any special attention or adequate assistance nor would such dispensation fulfil the conditions laid down in Article 340 of the Constitution.” In view of the above the Government of India came to the conclusion that “some positive workable criteria should be devised for specification of socially and educationally

\textsuperscript{82} Forwarding letter to the President of India dated March 30, 1955 para 21.
\textsuperscript{83} Id., para 22.
\textsuperscript{84} Dr. Parmanand Singh, Equality, Reservation and Discrimination in India 149 (1982).
backward classes “and to undertake further investigations” so that deficiencies that have been noted in the findings of the Commission are made good.”

The Central Government requested all the State Governments to undertake ad hoc surveys to determine backward classes. In the meanwhile the States were to provide reasonable facilities to the people who come within the category of backward classes in accordance with their existing list and also to such others who in their

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86 Ibid.
87 In furtherance of the direction following States appointed their own Commissions/ Committees:

(x) Tamil Nadu: The Tamil Nadu Government appointed a Backward Classes Commission under the Chairmanship of Shri A.N. Sattanathan and it gave its report in 1970.
(xi) Eight other States and Union Territories have notified list of other Backward Classes without ordering a formal inquiry in their conditions. These are Haryana, H.P., Assam, Pondicherry, Rajasthan, Orissa, Maghalaya and Delhi.
(xii) States and Union Territories which have never prepared a list of O.B.C.S. or taken any separate action for their uplift are: Andaman & Nicobar Island, Arunanchal Pradesh, Chandigarh, Dadra & Nagar Haveli; Goa, Daman & Diu, M.P., Manipur, Mizoram, Nagaland, Sikkim, Tripura and W.B.
opinion, deserve in the existing circumstances to be considered as socially and educationally backward.\textsuperscript{88}

After presenting the Memorandum to the Parliament, the Government made efforts to discover some criteria other than caste for determination of backward classes. The asked the Deputy Registrar General to conduct pilot survey to see if caste but in vain. In May, 1961 the Central Government decided not to draw up all India lists of backward classes. Consequently on August 14, 1961, the Home Ministry informed all the States about its decision and that they were free to choose their own criteria although it would be better if economic criteria is applied.\textsuperscript{89}

(ii) Second Backward Classes Commission

In 1978, the President in exercise of the powers conferred by Article 340 of the Constitution appropriate a Backward Classes Commission under the Chairmanship of Shri B.P. Mandal\textsuperscript{90} and included four other members.\textsuperscript{91} The terms of reference of the Commission were:

(i) to determine the criteria for defining the socially and educationally backward classes;

(ii) to recommend steps to be taken for the advancement of socially and educationally backward classes of citizens so identified;

\textsuperscript{88} Id. at 4-5.
\textsuperscript{89} Letter of the Ministry of Home Affairs to the Chief Secretary of all States and Union Territories, August 14, 1961.
\textsuperscript{90} The appointment of the Commission was announced in the Lok Sabha by the then Prime Minister Mr. Morarji Desai on 20\textsuperscript{th} Dec., 1978.
\textsuperscript{91} The four members of the Commission excluding Chairman were Shri R.R. Bhole; Shri Dewan Mohan Lal, Shri L.K. Naik (Shri Naik was appointed in place of Shri Dina Bandhu Sahu who resigned from the membership of the Commission on November 5, 1979 on health grounds); Shri K. Subramaniam.
(iii) to examine the desirability or otherwise of making provision for reservation of appointments or posts in favour of such backward classes of citizens which are not adequately represented in public service and posts in connection with the affairs of the Union of any State; and

(iv) present to the President a report setting out the facts as found by them and making such recommendations as they think proper.\textsuperscript{92}

The Commission was required to present its report to the President not later than the 31\textsuperscript{st} December, 1979 but later it was extended in stages up to Dec. 31\textsuperscript{st}, 1980. It submitted its report in Dec., 1980.

The Commission evolved eleven ‘indicators’ or criteria for determining social and educational backwardness. These eleven ‘indicators’ were grouped under three heads\textsuperscript{93} i.e., social, educational and economic.

\textsuperscript{92} \textit{The Times of India} (New Delhi) Dec. 21, 1978.

\textsuperscript{93} They are:

(A) Social: (i) Castes/classes considered as socially backward by other;
(ii) Castes/classes which mainly depend on manual labour for their livelihood;
(iii) Castes/classes where at least 25% female and 10% male above the State average get married at an age below 17 years in rural areas and at least 10% female 5% male do so in urban areas;
(iv) Castes/classes where participation of female in work is at least 25% above the State average.

(B) Educational: (v) Castes/classes where the number of children in the age group 5-15 years who never attend school is at least 25% above the average;
(vi) Castes/classes where the rate of student drop-out in the age group of 5-15 year is at least 25% above the State average;
(vii) Castes/classes amongst whom the proportion of matriculate is at least 25% below the State average.

(C) Economic: (viii) Castes/classes where the average value of family assets is at least 25% below the State average;
(ix) Castes/classes where the number of families living in Kuccha houses is at least 25% above State average;
(x) Castes/classes where the source of drinking water is beyond half a kilometer for more than 50% of households;
(xi) Castes/classes where the number of households having taken consumption loan is at least 25% above the State average.
As these indicators are not of equal importance, the Commission gave separate weightage to these ‘indicators’. The Commission has identified 3743 castes both, Hindu and non-Hindu, for classification as backward classes and these classes constitute 52 per cent of the population.

The Mandal Commission has recommended that 27 per cent of all jobs in Central and State Government services, public undertakings and educational institutions should be reserved for backward classes. While admitting that a few thousand Government jobs for these castes would not bring about their socio-economic emancipation, it has pointed out that in India, Government service is looked upon as a symbol of prestige and power. Increasing the backward classes’ representation in these services would give them an immediate feeling of participation in the Government of the Country. The Commission did not find substance in the argument that such reservations would lower administrative efficiency and has pointed out that even now the efficiency is not every high. The Commission has proposed the following overall scheme of reservation for backward classes:

(1) Candidates belonging to backward classes recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27 per cent;

(2) The above reservation should also be made applicable to promotion quota at all levels;

(3) Reserved quota remaining unfilled should be carried forward for a period of three years and dereserved thereafter;

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(4) Relaxation in the upper age limit for direct recruitment should be extended to the candidates in the same manner as for scheduled castes and scheduled tribes;

(5) The roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently done in respect of scheduled castes and scheduled tribes.95

The Commission has said that all private sector undertakings which receive financial assistance form the Government in one form or the other should also be obliged to recruit personnel on this basis. All universities and affiliated colleges should be covered by this scheme of reservations.96 To give effect to these recommendations, the Government should make adequate statutory provisions to amend the existing enactments, rules, procedures, etc. whereas necessary.97

The report of the Commission has been laid before the Parliament and no decision has yet been taken by the Government regarding its acceptance. The Central Government appointed a Committee of Secretaries to examine the Mandal Commissions’ recommendations.98 This Committee has rejected the caste based criteria for determination of backwardness and preferred a criteria based on economic status. It also disagreed with some of the conclusions of the Mandal Commission’s Report. Mr. M.H. Beg the Chairman of the Minorities Commission has also severely criticized the caste-based reservations. According to him such a classification in the

95 Id. at 58.
96 Ibid.
97 Ibid.
long run, results in “rigidifying backwardness creating vested interests.”

However, the ‘All India Seminar’ on Backward Classes very strongly urged that “caste alone could be the criteria for backwardness”. The Seminar was organized with main objective to decide on a memorandum of demands to be presented to the Backward Classes Commission.

E. Special Officers for Linguistic Minorities

In 1956 the States were reorganized on linguistic basis. This instead of solving the problem of linguistic minorities, entirely made it more acute because in the newly organised States there came into being one dominant language group and other small language groups whereas before 1956 in multilingual States there was a balance between dominant linguistic group and other linguistic groups but this balance was disturbed after 1956 by reorganization of the States on the linguistic basis. For solving the problem of linguistic minorities the State Re-organisation Commission, 1956 suggested the amendment of the Constitution, so as to provide for appointment of

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100 It adopted eight resolutions at its concluding session on May, 20, 1979. These were: (i) the caste criteria is constitutionally, legally and ethically valid; (ii) that economic criteria of backwardness should equalitarian but was, in its view deceptive and impractical; (iii) that the country could not progress unless backward classes who were economically weak become participants in its affairs; (iv) it expressed concern over the deterioration of the socio-economic conditions of backward classed in last 30 years and felt that the “entice benefits of development have been concerned by higher caste people; (v) it observed that entire bureaucracy at higher level was monopolized by the higher castes even though they “constituted idea then twenty per cent of the country’s population”; (vi) it felt that interests of all exploited classes were common and urged the to work for uplift of the downtrodden; (vii) it apprehended that the Backward Classes Commission headed by Mr. B.P. Mandal may be surely a device to prolong the solution; (viii) the preparatory Committee for the national Conference of Backward Classes resolved to take steps to submit to the Backward Classes Commission, a comprehensive charter of desirable. See G.P. Verma, Caste Reservation in India, 35 (1980). The s was held on May 19, 1979 at New Delhi
101 A linguistic minority is a group of people having mother tongue different from that of the majority in a State or part of it.
102 M.P. Jain, op.cit., supra note 16 at 44.
Commissioner for Linguistic Minorities in the Centre on the pattern of the office of the Commissioner for Scheduled Castes and Scheduled Tribes and thereby to protect the interest of the minorities. The Constitution was accordingly amended and a new Article 350B was added to it, by the Constitution (Seventh Amendment) Act, 1956. This Article provides that there shall be a special officer for linguistic minorities to be appointed by the President. It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

Thus, Article 350B provides the appointment of a Special Officer for linguistic minorities by the President. This administrative machinery has been contemplated with a view to safeguard the interest of linguistic minorities.

The State Re-organisation Commission in its report examined various suggestions for creating a suitable agency for enforcing the rights of linguistic minorities. One such suggestion was for creation of a Central Ministry for Minority Affairs. Another suggestion was for establishing statutory Commission for Minority Affairs.

In furtherance of Article 350B a Commissioner for Linguistic Minorities was appointed at the Centre under the Ministry of Home Affairs. The Commissioner assumed charge on 30th July, 1957. It submits its report annually, these reports are laid before each House.

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103 Article 350B (1).
104 Article 350B (2).
106 Id. at 214.
107 Ibid.
of Parliament where they are discussed. These reports are also sent to the concerned State Governments.

In the Fifth and Sixth Reports the Commissioner for Linguistic Minorities pointed out that the three language formula became in reality a four language formula for linguistic minorities whose mother tongue is not Hindi. The solution of this problem according to the Commissioner is that minorities might not be compelled to learn the regional language. It is expected that the linguistic minorities would themselves learn the State Official language in the long run in their own interest.

The Commissioner for Linguistic Minorities in his Seventh Report (July 1974 to Jan., 1975) said that much progress could be achieved in implementation of the safeguards for linguistic minorities if the wise saying of Jawaharlal Nehru is kept in view: “The real test about minority community is not how we feel about it but how they feel. If they are not satisfied then we have to search for some remedy for their malaise. In a democracy this is specifically important. Democracy means rule by the majority but it means something more i.e., full play and opportunity for the minorities. It means also that minorities should have the sensation of having this full play and opportunity.”

The Commissioner also suggested that every efforts should be made by the Government of States and Union Territories to avoid the time leg in furnishing their comments an also to furnish the annual information regarding progress in implementation of safeguards for linguistic minorities.

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109 Id. at 184-85.
The Commissioner for linguistic minorities in its Ninth Report has dealt with the problem of National integration and the role of linguistic minorities. The Commission has said:

Even a very elaborate scheme of guarantees cannot secure a linguistic minority against every kind of discriminatory action by a right policy for the majority language group to treat linguistic minorities with sympathy and even generosity, it is also a right policy for linguistic minorities to prove by their action that they are second to none in putting their whole weight for the betterment of the State of which they happen to be resident.\(^{110}\)

Keeping in view the very nature of the functions envisaged under Article 350B, the Commissioner has not end cannot be saddled with the executive responsibility also. So what machinery the Government of India would like to establish at Centre to supervise the progress of the implementation of the safeguards for linguistic minorities in the State/Union Territories is a matter which the Government of India may like to consider.\(^{111}\)

One thing which clearly emerges is that the role of the Commissioner for Scheduled Castes and Scheduled Tribes and linguistic minorities is largely of investigative nature because there is no direct responsibility of these Commissioners to enforce the implementation of the safeguards for protecting the interest of the minorities. This is a lacuna in the administrative apparatus. The Commissioner’s suggestion for establishment of machinery to supervise the implementation of the safeguards is a pointer towards that.\(^{112}\)

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\(^{110}\) Ninth Report of the Commissioner for Linguistic Minorities, p. 81.

\(^{111}\) The Twelfth Report of the Commissioner for Linguistic Minorities, p. 78.

\(^{112}\) Ibid.
F. Zonal Councils

The Zonal Councils provide another institutional set up to protect the interest of linguistic minorities particularly. The Zonal Councils enable the States in a zone to evolve a common policy regarding these minorities. Zonal Councils have been established between the Centre and the States by the States Re-organisation Act, 1956. These Zonal Councils have been created for inter-governmental consultation and cooperation mainly in socio-economic field and to arrest the growth of controversies and particularistic tendencies among the States. The country has been divided into five zones. Keeping in view several factors such as the natural division of the country, cultural and linguistic affinity. These zones are:

(i) The Northern Zone;  
(ii) The Southern Zone;  
(iii) The Central Zone;  
(iv) The Eastern Zone; and  
(v) The Western Zone.

A zonal Council consists of a Union Minister to be nominated by the Central Government and Chief Minister and two other Ministers from each State to be nominated by the State Governments. The Union Territory has two members nominated by the Central Executive. The Union Minister will be the Chairman of the Zonal Council whereas

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113 Part III, Section 21 of the States Re-organisation Act reads: “A Zonal Council may discuss and make recommendations with regard to any matter concerning linguistic minorities”.
114 I Lok Sabha Debates 880, December 23, 1955.
115 Northern Zone comprises of States of Punjab, Haryana, Rajasthan and Jammu & Kashmir and Union Territories of Delhi, Chandigarh and Himachal Pradesh.
116 Southern Zone comprises of States of Andhra Pradesh, Tamil Nadu, Mysore and Kerala.
117 Central Zone comprises of States of Uttar Pradesh and Madhya Pradesh.
118 Eastern Zone comprises of the States of Bihar, West Bengal, Orissa, Assam, Nagaland, Manipur and Tripura.
119 Western Zone comprises of States of Gujrat and Maharasthra.
each Chief Minister acts as Vice-Chairman for one year in rotation. A Zonal Council discusses and recommends (a) a matter of common interest in the field of economic and social planning; (b) a matter concerning border disputes, linguistic minorities or inter-State transport; (c) a matter connected with, or arising out of the re-organisation of the States under the States Reorganisation Act. The Central Government is empowered to make rules for regulating the procedure at joint meetings of the Zonal Councils.\textsuperscript{120}

A liaison between the Centre and Zonal Councils is provided by; (i) Appointment of a Central Minister as the Chairman of the Council; (ii) Submission of Proceedings of a Zonal Council to the Central Government; (iii) Appointment of the Joint Secretary of a Zonal Council by the Chairman i.e., the Central Minister; (iv) Approval of the Central Government being made compulsory for framing of the rules of procedure by a Zonal Council for its own meetings as well as those of Committees.\textsuperscript{121}

The Council Home Minister is the Chairman of all the five Zonal Councils. The founding fathers have borrowed the idea for setting up such an institution from Section 135 of the Government of India Act, 1935 which provided for an inter-Provincial Council.

Although Zonal Councils are advisory bodies only and do not perform any executive or legislative function but these have been successful in promoting co-operation and consultation between Centre and States and evolution of common policies for the common good of the country as a whole. These Zonal Councils have done good work for solving the problems of linguistic minorities.

\section*{G. Minorities Commission}

\textsuperscript{120} M.P. Jain, \textit{op.cit.}, supra note 26 at 340. \\
\textsuperscript{121} Ibid.
The Janta Government by means of an executive order appointed a Minority Commission in January, 1978 under the Chairmanship of Mr. M.R. Massani (a Parses of secular outlook). The composition of the Commission was criticized by some sections of minorities. Mr. Massadi resigned in March the same year protesting against the Government’s apathy towards the Commission. He was succeeded by Mr. M.R.A. Ansari, who was already a member of the Commission. At the same time the size of the Commission was increased by two. On April 1st, 1978 Home Minister, Charan Singh (as he then was) announced that a Bill was being drafted to give constitutional backing to the Minorities Commission and the proposed scheduled castes and scheduled tribes Commission. He told the consultative committee of M.Ps that Articles 338 and 350B of the Constitution were proposed to be emended for the purpose. The Prime Minister Mr. Morarji Desai (as he then was) told the Rajya Sabha that the opinion given by the Minorities Commission in cases referred to it “shall be binding” on the Government. He also assured that the Commission shall be made a statutory body through constitutional document. However, the Bill for amending Articles 338 and 350B of the Constitution which was brought before the Lok Sabha in May, 1979 fell through as it could not attract even a guorum.

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122 The other members of the Commission excluding the Chairman were: Mr. H.R.A. Ansari, a former Chief Justice of J&K High Court (Member) Mr. V.V. John, an eminent educationalist (Member).
123 Mr. Abdula Bukhari, the Shahi Imam of Jama Masjid, criticized the Composition of the Minorities Commission on the ground that a Muslim should have been appointed its Chairman because they constitute the largest minority in India. Sikhs were also not satisfied with Commission’s composition because it did not include any Sikh. See B.M. Sinha, “Tale of the Commission”, The Hindustan Times, January 28, 1982, p. 4.
124 Ibid.
125 The Commission thus considered of Mr. M.R.A. Ansari as its Chairman and includes: Kushak Bakula (Buddhist) member; Mr. Arjun Singh a former Air Chief (Sikh) member; V.V. John (Christian) member; and Professor Miss Alooj Dastur (Parsee) member. The Tribune, July 28, 1978, p. 4).
127 Forty Sixth Amendment Bill.
128 Ibid.
in the House. Before Janta Government could review the measure it went out of office.

After the coming of Congress (I) Government in power two of its members, Professor V.V. John and Dr. (Miss) Aloo J. Dastur resigned presumably to give the new Prime Minister an opportunity to reconstitute the Commission. After Mr. M.R.A. Ansari’s term came to an end in March 1980, he was succeeded by Mr. M.H. Beg\textsuperscript{129} a former Chief Justice of India. Mr. Zail Singh (the then Home Minister) promised a statutory status to the Minorities Commission.\textsuperscript{130} The Commission submitted four major reports which ought to have been placed before Parliament but the Janta Government did not do so nor did it accept any of the recommendations of the Commission.\textsuperscript{131}

The Commission in its Fourth Annual Report (January 1, 1981 – March 31, 1982) said that it could not carry out the important functions entrusted to it if depend on the good will and voluntary cooperation either of the authorities against which complaints were received or of others. The Commission, therefore, reiterated the earlier recommendation for a constitutional status to be conferred upon it as a part of a more comprehensive National Integration-cum-Human Rights Commission, or if that was not possible immediately, it must be given powers under Section 5 of the Commission of Inquiries Act by an appropriate Notification under Section 3 of the Act.\textsuperscript{132} As regards largest religious minority of India, namely Muslim the Commission recommended the immediate enactment of a new Muslim Wakf Act

\textsuperscript{129} The Commission consisted of Mr. M.H. Beg, Chairman; Mr. Kaushik Bakula, member; Sujan Singh, member; Mr. S.A. Dorai Sebastian, Member; and Mr. K.T. Satarawala, member.

\textsuperscript{130} He only reiterated what the Congress (I) election manifesto 1980 pledged.

\textsuperscript{131} J.R. Siwach, Dynamics of Indian Government and Politics 434 (1985).

whose provisions are made uniformly applicable all over India.\textsuperscript{133} It recommended to the Government of India to advise all State Government to establish Minorities Commission or Panels in each State to look into specific grievances of members of minority communities. For removing vide spread feeling among minority communities of discrimination it recommended measures to ensure adequate representation of members of minority communities on selection boards/Commissions, department promotion committees and other similar bodies for appointments were taken, it would help to remove such sense of grievance.\textsuperscript{134} In addition to these recommendations the Commission had given following major recommendations:

1. Formulation of a very comprehensive scheme for promotion of National Integration and secular tradition and protection of human rights of all sections of the people including minorities. Such a scheme involves the setting up of appropriate institutional machinery such as National Integration-cum-Human Rights Institute to help National Integration-cum-Human Rights Commission to be provided for by the Constitution itself. A comprehensive Commission of this kind could have sub-Commissions or sections dealing separately with the problems of minorities and those of scheduled castes and scheduled tribes and Human Rights sub-Commission as a part of it could cover cases of all citizens alleging discrimination against them on illegal grounds.\textsuperscript{135}

2. The setting up of such a comprehensive Commission, however requires a fuller study to frame an elaborate scheme to carryout the objects involved in this recommendation.\textsuperscript{136}

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\textsuperscript{133} Id. at 90 para 10.10.
\textsuperscript{134} Id. at 91 para 10.16.
\textsuperscript{135} Id. at 92 para 10.19.
\textsuperscript{136} Id. para 10.20.
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The Commission recommended that a Special Committee of legal experts be constituted to decide upon the details of a comprehensive scheme for setting up a National Integration-cum-Human Rights’ Commission and to report within three months of setting up of such a Committee.

“The Commission’s recommendation is meritorious only to the extent it is based on a correct premise that both national integration and minorities’ security are far from ideal.”137 But the basic flaw is a belief that deprivation of human and fundamental rights can be prevented or even checked by appointment of a Commission. There also exists a National Integration Council which has proved completely ineffective in dealing with Punjab and Assam situations. The Commission is of the view that new panel would avoid competitive and ultimately divisive championship of the minorities’ cause. The Commission has sought to extend its definition of ‘minorities’ cause. The Commission has sought to extend its definition of ‘minority’ to include economically deprived sections. However, this suggestion would not work because if poverty and communalism could be tackled “our country would have become long ago an object of global envy.”138

The minorities Commission has failed to deliver the goods because of its ineffectiveness which may be attributed to following reasons:

(i) **Communal Composition**

Unfortunately the members of the Commission were appointed on the basis of their capacity to represent one community or the other and, therefore, they represented their communities more than the ideology of the national integration. The members were most of the

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138 Ibid.
time busy in serving the cause of their respective communities.\textsuperscript{139} It was thus difficult to take unanimous decision on vital issues.

(ii) **Control over Officers**

The officers of the Commission were drawn from different ministries and continued to be under the administrative control of their parent department. Thus, the Chairman of the Commission had no disciplinary control over them. Sometime officers not wanted by the Government were thrust upon the Commission.\textsuperscript{140}

(iii) **Ill-equipped Staff**

The Commission was “unequipped” with staff and facilities to carry out the functions described in the Cabinet Resolution of January 13, 1978. It was without a library, legal section or a research wing. It had no regional offices to collect data and information; it had no machinery to safeguard the constitutional benefits for minorities. Thus about Rs. 15 lakh allocated for the Commission every year simply went down the drain.\textsuperscript{141}

(iv) **Role of the Chairman**

The role of Mr. M.R.A. Ansari was also responsible to great extent for erosion of its status. For example, he made a statement that the Commission had found a hand of R.S.S. in Jamshedpur riots

\textsuperscript{139} When Mr. M.R.A. Ansari, a fundamentalist, was the Chairman of the Commission some Muslim students of I.I.T. Kharagpur complained that they were not investigated. The complaint was found to be baseless. But still Mr. Ansari allegedly wanted special arrangement to be made for these students to get ‘halal’ meat. Mr. V.V. John and Miss Allo J. Dastur opposed it because they feared that it would undo whatever the country had done to bring about communal harmony among various communities. See B.M. Sinhe, “Tale of the Commissions – II” *The Hindustan Times*, January 29, 1982, p. 5.

\textsuperscript{140} For example Mr. Sankaran Nair, a senior officer felt humiliated when he was removed from the position of RAW Chief by the Janta Government and made Secretary to the Minorities Commission – *Ibid.*

\textsuperscript{141} *Ibid.* at 4.
(This fact was denied by Professor Aloo Dastur). During his tenure the largest number of complaints received by the Commission was from individuals. His approach perhaps encouraged individuals to make representations even on vague issues.

(v) Multiplicity of Commission

The plethora of Commissions was also responsible for its failure. At one time there were eight bodies for safeguarding the interests of scheduled castes, scheduled tribes, backward classes and minorities. These were as follows:

1. Office of the Commissioner for Scheduled Castes and Scheduled Tribes set up in 1951;
2. Commission for Scheduled Castes and Scheduled Tribes set up in July, 1978;
3. Parliamentary Committee on Scheduled Castes and Scheduled Tribes Welfare;
4. Directorate General for Backward Classes set up in 1967;
5. Office of the Commissioner for Linguistic Minorities set up in 1957 under Article 350B;
7. High Power Penal on Scheduled Castes and Scheduled Tribes, Minorities and Weaker Sections set up in May, 1980; and

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142 The Indian Express, August 25, 1979, p. 1.
143 Ibid.
144 The Statement, August 5, 1979, p. 7.
The State of Madhya Pradesh appointed its own Minorities Commission in 1982. Because of multiplicity of Commissions, their reports are “so identical that it appears that they have been prepared with the help of same sources and persons.” Thus much money was wasted in making recommendations which had already been made.

(vi) Appointment of Right Power Panel

The “Messy situation” become “messier” when Dr. Gopal Singh was appointed as Chairman of the High Power Penal on Scheduled Castes and Scheduled Tribes, Minorities and other weaker sections in May, 1980. The Panel was asked to look into the implications of the Government’s fiscal policies for the minorities and weaker sections. However, Dr. Singh declared that his panel was above all the Commissions set up by the Janta Government. He claimed that his panel can go into any issue connected with these sections. Dr. Gopal Singh’s panel destroyed whatever credibility the Commissions for Minorities and Scheduled Castes and Scheduled Tribes had. He publically said that the Government had no faith and trust in these Commissions because they were the products of Janta Government. When told that his panel was duplicating the work being done by these Commissions, he remarked that “there would be duplication only if they are doing any work”. These remarks hurt the members of the Commission.

For the last few years different sections of minorities are also demanding reservations on the lines of the scheduled castes, scheduled tribes and other backward classes. Dr. Gopal Singh who heads the Union Government’s Committee on Minorities has said that

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145 Ibid.
146 J.R. Siwach, op.cit., supra note 131 at 437.
147 Supra note 139.
148 Ibid. Commenting on this remark one member said that “our difficulty is that we cannot join issues with himn.”
there should be no fixed quotas and reservations for minorities. He overstated his point by suggesting that to recognize the “backwardness” of a community was “an insult to humanity”.\(^{149}\) The Home Minister in his reply to Syed Shahabuddin’s question stated that the Centre feels it is not possible to make reservations in the Government service and public sector enterprises for religious minorities, as is being done in case of scheduled castes and scheduled tribes.\(^{150}\)

**H. Machinery for Children and Women**

For tackling discrimination in favour of women and children the Constitution as such does not require the appointment of any authorities or agencies. Generally if a law is passed implementing the Constitutional provisions then the offences under the law would be investigated and tried or otherwise dealt with by the competent executive or judiciary authority. Department of Social Affairs have been functioning within the appropriate Government and are of course, responsible for administration of the relevant measures.

The Children Acts as in force in various States do contemplate the setting up of the Children Courts. The recent Juvenile Justice Bill passed by the Parliament on November 18, 1986 enables every State Government to give neglected and delinquent children the same treatment throughout the country. This was not possible under the Children Act, 1960 which is sought to be replaced by Juvenile Justice Bill. The Children Act applied only to the Union Territories whereas the new Bill applies throughout India except the State of Jammu and Kashmir.\(^{151}\) The administrative machinery provided under the Juvenile

\(^{149}\) “Minority quotas” (Editorial), *The Hindustan Times*, October 14, 1980.


\(^{151}\) After the Bill becomes an Act, every child will be treated as an Indian instead of the Child of that State alone. The age till which a person is a Child will also become uniform. Under
Justice Bill is (i) Welfare Boards for neglected children and (ii) Juvenile Courts for delinquent children. The persons to be appointed as members of Welfare Boards and Juvenile Courts must have the knowledge of child psychology and child welfare. The stern and formal nature of the court in relation to child will change because the Juvenile Courts must be assisted by a panel of two honorary social workers. One of the two at least be a women. After a State Government issues notification under the Act to make its provisions applicable in the State, the State must provide the observation homes, medical examination and treatment and useful occupation. The Juvenile homes for neglected and special homes for delinquent apart from the child’s normal care and protection, will have to give facilities for rehabilitation of the child. The Bill provides that a boy or girl who is likely to be abused or exploited for immoral or illegal purposes or unconsciousnable gain is also a neglected child. The Bill also recognizes the increasing evil of drug abuse among the young. Now State Governments having charge of the neglected and delinquent children may send the child to a treatment centre for drug addicts if he or she appears to be suffering from drug addiction. All enquiries about neglected or delinquent children must be completed within three months from the date of the commencement of such enquiry. Thus, it has improved over the Children Act.\textsuperscript{152} This Bill also ensures creative competition amongst the State Governments and they have the option to provide after-care programmes and organizations for neglected or delinquent children released form Juvenile or Special homes. It ensures that such children will continue to lead honest, industrious and useful lives.\textsuperscript{153} But again there is no denying the fact that the effective

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\textsuperscript{153} Ibid.
working of the measure will depend upon the sincerity of each of us for the Indian child.

III. JUDICIAL MACHINERY

A. Right to Constitutional Remedies

As discussed in earlier chapters it is clear that most of the safeguards for the protection of scheduled castes, scheduled tribes, other backward classes and minorities are provided in the Part III of the Constitution which deals with ‘Fundamental Rights’. It was, therefore, in the fitness of things that our founding fathers provided also for remedies for their enforcement. In this respect also the framers were influenced by British Jurisprudence which insists that “there can be no right unless the Constitution provides a remedy for it.”\textsuperscript{154} Without such a remedy these rights are in the words of Dr. Ambedkar “glittering generalities”.\textsuperscript{155} The right to constitutional remedies was laid down in Article 25 of the draft Constitution which is now Article 32 of the Constitution. While commenting on this Article in the Constituent Assembly Dr. Ambedkar said:

\begin{quote}
If I was asked to name any particular Article in this Constitution as the most important – an Article without which this Constitution will be nullity – I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it.\textsuperscript{156}
\end{quote}

The above views of Dr. Ambedkar has been re-affirmed by the Court itself on several occasions. In Ramesh Thapper v. The State of Madras,\textsuperscript{157} the Supreme Court held:

\begin{flushright}
\textsuperscript{154} Dr. B.R. Ambedkar, VII Constituent Assembly Debates 953. \\
\textsuperscript{155} Ibid. \\
\textsuperscript{156} Ibid. \\
\textsuperscript{157} A.I.R. 1950 S.C. 124.
\end{flushright}
Article 32 provides a guaranteed remedy for the enforcement of the rights conferred by Part III (of the Constitution) and this remedial right is itself made a fundamental right by being included in Part III. The Court is thus constituted the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid down upon it, refuse to entertain applications seeking protection against infringements of such rights.

Article 32(1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution. Clause (2) of Article 32 confers power on the Supreme Court to issue appropriate direction or order or writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of any right conferred by Part III of the Constitution. Under Clause (3) of the Article Parliament may by law empower any other court to exercise within the local limit of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2). According to Clause (4) the right guaranteed by Article 32 shall not be suspended except as otherwise provided for by the Constitution.

The scope of Article 32 had been curtailed to a great extent by Article 32A which was inserted by the Constitution (Forty-second Amendment) Act, 1976. Article 32A laid down that validity of State law shall not be considered in proceedings under Article 32 unless the Constitutional validity of any central law is also in issue. However, Article 32A has been omitted by the Constitution (Forty-third Amendment) Act, 1977. Now the scope and breath on Article 32 is same as it was before the Constitution (Forty-second Amendment) Act.

Article 32 provides an expeditions and inexpensive remedy for the protection of fundamental rights from the legislative and executive
interference. In Minerva Mills v. Union of India, Bhagwati, J., has characterized the power of judicial review conferred by Articles 32 and 226 as “part of the basic structure of the Constitution”. According to him “judicial review is a vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution.”

Article 32 gives the court very wide discretion in providing appropriate writ to suit the exigencies of a particular situation. In K.K. Kochunni v. Madras, the Supreme Court held that the power of the Court is not limited in issuing writs only, it can pass any order including a declaratory order or give any direction as may appear to it to be essential for providing adequate relief to the aggrieved petitioner. The Court said that application cannot be dismissed simply on the ground that the proper writ or direction has not been prayed for.

Under Article 226, the High Court has also been given concurrent power of issuing writs for enforcement of fundamental rights but the difference so far as the nature and purpose of the right conferred by Articles 32 and 226 is that whereas the right guaranteed under Article 32 can be exercised for the enforcement of fundamental rights only, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights but for any other purpose. So the power of the High Court is wider than the power conferred by Article 32 on the Supreme Court.

In Ramesh Thappar v. State of Madras, where the petitioner had come directly to the Supreme Court for the enforcement of the fundamental rights, the Attorney General contended that as a matter of

159 Id. at 1826.
orderly procedure he should first resort to the High Court which under Article 226 exercises a concurrent jurisdiction to deal with the matter. The Court rejected this contention and said that although both the Supreme Court and High Courts possess concurrent power to issue orders and write in the matter of enforcement of fundamental rights it is no condition for the exercise of jurisdiction by the Supreme Court that the petitioner must in the first instance approach the High Court.

**Locus Standi**

The traditional view is that only aggrieved person whose fundamental right is violated is entitled to file petition under Article 32. However, in recent years the Supreme Court has relaxed this rule regarding locus standi to a great extent. The Court has allowed public interest litigation at the instance of public spirited citizen for the enforcement of constitutional and legal rights of those who because of poverty or some other reasons are not in position to come to the court.

In *A.B.S.K. Sangh (Rly.) v. Union of India*, the Supreme Court held that the Akhil Bhartiya Soshit Karmachari Sangh (Railway) which was an unregistered association can maintain a writ petition under Article 32 for the redressal of a common grievance. Krishna Iyer, J., who delivered the judgment of the Court observed:

> Our current processual jurisprudence is not of an individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envision access to justice through ‘class action’, ‘public interest’, ‘litigation’ and ‘representative proceedings’. Indeed, little Indian in large numbers seek remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We

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have no hesitation in holding that the narrow concept of ‘cause of action’ and ‘person aggrieved’ and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognised association maintaining the writ petitions.\(^{163}\)

In *S.P. Gupta v. Union of India and other*\(^ {164}\) (popularly known as *Judge Transfer* case), the Supreme Court has once again held that any member of the public having “sufficient interest” can move the court for enforcement of constitutional or legal right of other persons and redress a common grievance even by writing a letter. In the instant case the Court permitted the petitioning practicing lawyers to maintain petition against a circular of Union Law Minister alleging danger to the independence of judiciary. But the individual must be acting bona fide without personal gain or profit or out of political motive. This rule will also apply where the injury is to public interest generally not a private injury to a determinate group of persons, arising out of breach of public duty or from violation of some provisions of the Constitution or the Law.\(^ {165}\) However, if the public injury also causes a specific legal injury to an individual or to a specific class or groups of individuals and such individual or persons do not wish to claim any relief and accept the situation, the action cannot be maintained by the member of public.\(^ {166}\)

In *Kamaladevi v. State of Punjab*,\(^ {167}\) Kamaladevi Chattopadhyah, a social worker petitioned the Supreme Court for release of women and children detained in the Central Jail and Special Security Jail Ludhiana after the “Blue Star” action in Amritsar. The

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\(^{163}\) *Id.* at 224-25.


\(^{165}\) *Id.* at 532.

\(^{166}\) *Ibid*.

\(^{167}\) *A.I.R. 1984 S.C. 1895*. 

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district judges of Ludiana and Amritsar were asked by the Court to personally visit the jails and verify whether the women and children were detained in jails. The Court found that there were three mothers and their children. Neither the affidavit of Superintendent of the Central Jail nor the report of the district judge mentioned any reason for the detention. The Court set the above persons free.

The locus standi principle has been relaxed by the Supreme Court in number of other cases viz. Sunil Batra v. Union of India;\textsuperscript{168} Veena Sethi v. State of Bihar;\textsuperscript{169} Peoples Union of Democratic Rights v. Union of India;\textsuperscript{170} D.S. Nakara v. Union of India;\textsuperscript{171} Lakshmi Kant Pandey v. Union of India.\textsuperscript{172} The decisions in these cases by the Supreme Court has considerably broadened the scope of Article 32. Now the courts would be ever ready to intervene where injustice is being perpetuated. In Dr. Upendra Baxi v. State of U.P.,\textsuperscript{173} when it was found that the inmates of the Protective Home at Agra were living in inhuman and degrading conditions in blatant violation of Article 21 of the Constitution and by the reason of their socially and economically disadvantaged position, were not in a position to move the court for judicial redress, two law professors of the Delhi University addressed a

\textsuperscript{168} A.I.R. 1980 S.C. 1759, Sunil Batra's case No. 1, A.I.R> 1978 S.C. 1675. Here the Supreme Court held that the writ of habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment.

\textsuperscript{169} A.I.R. 1983 S.C. 339. In this case the Court took cognizance of a letter and released the prisoners.

\textsuperscript{170} (1983) 1 S.C. 1473 (Popularly known as Asiad Workers case). Here the Court held that the Peoples Union for Democratic Rights has locus standi to file a writ petition for enforcement of various labour laws under which certain benefits are conferred on the workers.

\textsuperscript{171} (1983) 1 S.C.C. 304. In this case the Supreme Court held that a voluntary organization is entitled to file a writ petition under Article 32 for espousing the cause of old, infirm pensioners.

\textsuperscript{172} A.I.R. 1984 S.C. 469. In this case the Court entertained a letter petition by Lakshmi Kant Pandey, an advocate of the Supreme Court complaining of mal-practice indulged in by social organizations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign countries. The letter was treated as writ petition. The Court gave valuable suggestions in respect of inter-country adoption.

\textsuperscript{173} (1983) 2 S.C.C. 308.
letter to the Supreme Court seeking enforcement of the Constitutional right of the inmates under Article 21 by improvement of the living conditions in the Protective Home so that the inmates can live with human dignity in Protective Home. The Court treated the letter as a writ petition and this provided judicial redress to them. Similarly, in Bihar Blinding case;\textsuperscript{174} The Bonded Labour case;\textsuperscript{175} The Bombay Payment Dwellers case;\textsuperscript{176} the Court has issued appropriate orders by relaxing the principle of \textit{locus standi} to a great extent. Thus incases where weaker sections of the community are involved such as where under trial prisoners languishing in jails without trial, inmates of protective homes in Agra or Harija workers engaged in road construction in the Ajmer district who are living in poverty and destitutes who are helpless victims of exploitative society and who do not have access to justice, this court did not insist on regular writ petition to be filed by public spirited individual and treated the letters of public minded individuals as a writ petitions and acted upon them.

Under Article 32 the Court will confine itself to the examination of issues relating to violation of fundamental rights only.

\textbf{Article 32(1)}

It is clear from clause (1) of Article 32 that right to move the Supreme Court is subject to the condition of ‘appropriate proceedings’. Gajendragadkar, J., while explaining the term in \textit{Daryao v. State of U.P.},\textsuperscript{177} has observed:

\begin{itemize}
\item \textsuperscript{174} Khatri and Others v. State of Bihar, (1982) 1 S.C.C. 623.
\item \textsuperscript{175} Bandhua Mukti Mocha v. Union of India, A.I.R. 1984 S.C. 802. In this case the Supreme Court took cognizance on a letter with thumb impression of alleged bonded labourers and appointed two commissioners for inquiring into existence of Bonded Labour.
\item \textsuperscript{176} Olga Tellis v. Bombay Municipal Corporation, A.I.R. 1986 S.C. 180. In this case the Supreme Court held that right to earn a livelihood is included in Article 21 of the Constitution.
\item \textsuperscript{177} A.I.R. 1961 S.C. 1457.
\end{itemize}
The expression “appropriate proceedings” has reference to proceedings which may be appropriate having regard to the nature of the order, direction or writ which the petitioner seeks to obtain from this Court.  

**Article 32(2)**

The right given under Article 32 being a fundamental right cannot be abrogated abridged or taken away by an Act of the Legislative unless Constitution is amended.

Under clause (2) of Article 32 the Supreme Court is empowered to issue directions or orders or writs, including the write in the nature of habeas corpus; mandamus, prohibition, quo warranto and certiorari, which ever may be appropriate for the enforcement of fundamental rights conferred by Part III of the Constitution.

**Article 32(3)**

Under Clause (3) of Article 32 the Parliament is authorized to empower by law any other court to exercise, within the local limits of its jurisdiction any of the powers exercisable by the Supreme Court under clause (2).

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178 Id. at 1461.
179 *Habeas Corpus*: This writ is issued in the form of an order calling upon a person by whom another person is detained to bring that person before the court and let the court know by what authority he had detained that person.
180 *Mandamus*: The writ of mandamus is an order by a superior court commanding a person or a public authority including the Government and public corporation to do or for bear to cases of a statutory duty — See, A.T. Markose, *Judicial Control of Administrative Action in India*, 364.
181 *Prohibition*: This writ is issued primarily to prevent an interior court or tribunal from acceding its jurisdiction, or acting contrary to the rules of natural justice. It is issued by a superior court to inferior courts to compel inferior courts to keep within the limits of its jurisdiction (*Best Indian Commercial v. Collector of Customs*, A.I.R. 1962 S.C. 1893).
182 *Quo Warranto*: The word “quo-warranto” means “by what authority”. This writ is issued against a person to show under what title he holds a particular office or franchise.
183 *Certiorari*: It is an order by a superior court to any interior judicial or quasi-judicial authority to remove a suit from such inferior court or Body and adjudicate upon the validity of the proceedings or body exercising judicial or quasi-judicial functions.
Article 32(4)

Clause (4) of the Article provides that right to move the Supreme Court for enforcement of the Fundamental Rights shall not be suspended except as otherwise provided by the Constitution. In this connection it is pertinent to note that Article 359 empowers the President to suspend the enforcement of the Fundamental Rights during the period when the proclamation of emergency under Article 352 is in operation.

While commenting on Article 32 of the Constitution a writer has observed:184

There is no other country where there is a guarantee of rights to constitutional remedies as a fundamental right in itself. In the U.S.A. the ‘due process’ clause under the 5th and 14th Amendments affords adequate relief without specifically setting it out as a fundamental right.185

Thus, it is heartening to note that the Supreme Courts has acted very efficiently as the guardian of fundamental rights and on several occasions has declared unconstitutional an action of Government that violates the fundamental right. It has also been very active in protecting the interest of weaker sections of the society.

IV. APPRAISAL

The founding fathers were concerned with the welfare of scheduled castes, scheduled tribes, other backward classes and minorities and constitutional provisions are testimony of the same. They not only provided constitutional safeguards for them but also provided constitutional machinery both administrative and judicial for

184 V.G. Ramachandran, II Fundamental Rights and Constitutional Remedies 657.
185 Ibid.
their implementation. As regards administrative machinery Article 338 has provided for the appointment of Special Officers for Scheduled Castes and Scheduled Tribes to ameliorate their States in the society and to secure social justice guaranteed to them under the Constitution. The duty of these officers is to investigate all matters relating to the safeguards guaranteed to them and to report the working of the safeguards to the President. These reports are laid before both the House of the Parliament. The Special Officer who has been designated as Commissioner is also required to look after the interest of Anglo-Indian community. He examines accounts of non-official organizations receiving grants from Centre and advises the Central Government regarding schemes received by it from the States and acts as a link between States on the one hand and State and Centre on the other hand. To start with the Commissioner was given the status of Secretary in the Ministry of Centre Government. Then he was given the status of any other statutory officer. But this position was reversed as per the report of Commissioner since 1967-58. The study team of welfare of backward classes (1959) and estimate committee of the 2nd Lok Sabha have recommended independent status for the Commissioner's organization. There are Regional Assistant Commissioners throughout the country to assist the Commissioner. But in 1967 they were withdrawn from Commissioner’s control and put under the control of the Director-General, Backward Classes Welfare which caused a great handicap for the Commissioner. In its report of 1969 the Committee on Welfare of Scheduled Castes and Scheduled Tribes criticized this measure. The Committee on Untouchability has recommended not only “a really independent status with clearly defined and codified powers, responsibility and jurisdiction of actions, but his field organization as existing before 1967 re-organisation must
also be immediately restored.” The Commissioner in his report of 1957-58 has recommended for reducing the list of the scheduled castes and scheduled tribes from year to year and in due course replace it with income-cum-merit criteria. Because of no regional offices the Commissioner has to either depend on State Governments or request the Regional Directors of Backward Classes or ask the Inspecting Teams of his office to investigate and all these arrangements are not very effective. Moreover investigative Teams are not sufficiently staffed. This is a great handicap in the working of the Commissioner.

The Commissioner in his Twenty Sixth Report (1978-79) has said that significant stride had been made in various fields of development such as agriculture, employment but the beneficiaries of the same had been the affluent sections. It has recommended separate ministry for scheduled castes and scheduled tribes at Centre headed by the Prime Minister and in States by respective Chief Ministers. In its Twenty-seventh Report (1979-81) the Commissioner has suggested vigorous implementation of the provisions of the Protection of Civil Rights Act, 1955. A Parliamentary Committee was appointed in 1968 to guide, control and criticize the Government in matters of scheduled castes and scheduled tribes. It also considers the report of the Commissioner for scheduled castes and scheduled tribes and reports to the Parliament on the action to be taken by the Government in that connection.

Inspite of inadequate machinery at the disposal of the Commissioner of scheduled castes and scheduled tribes it is doing a good job and is watching the implementation of various schemes undertaken by the official and advisory and liaison agency.

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186 Supra note 16.
The Centre is addition to the Commissioner for Scheduled Castes and Scheduled Tribes constituted a high level Commission for Scheduled Castes and Scheduled Tribes in July, 1978, for investigating all matters relating to safeguards provided for scheduled castes and scheduled tribes including reservations in public service and its implications, implementation of Civil Rights Act, 1955 with particular reference to the objective of removal of untouchability and individual discrimination with five years and factors accounting for Commission of Offences against the person belonging to scheduled castes and scheduled tribes. The Commission in its report of 1978-79 has thoroughly dealt with the circumstances leading to atrocities against Harijans and Adivasis. It has observed that the Centre cannot pass on its obligation under Article 45 of the Constitution to the States and show its inability to take concrete steps in that direction. The Commission feels that Central Government is empowered to ask States to use the police or the army to ensure social justice. The cases of social justice should not be treated mere a law and order problem.\(^{187}\)

It has recommended a statutory status to the Commission and also a right to participate in planning process of socio-economic development of the scheduled castes and scheduled tribes and evolution of progress of implementation of the measures undertaken for the same. The Commission has raised certain fundamental conceptual issues in its report which need through attention. In its Second Report (April 1979 – March 1980) the Commission reiterated its earlier recommendation that it should be given a statutory status. The Commission in its Third Report (April 1980 – March 1981) recommended that with a view to raise their economic status sufficient allotment of funds should be made and there should be properly

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monitoring at various levels. The Fourth Report (April 1981 – March 1982) in addition to its recommendation for constitutional status for itself it has suggested for the creation at State level a Scheduled Castes Development Agency for formulation, implementation and monitoring of schemes under special component Plan for Scheduled Castes. It has also recommended for increasing literacy rate of females among scheduled castes and scheduled tribes. In its Fifth Report (April 1982 – March 1983) the Commission has recommended for strengthening the arrangement for monitoring/review/evaluation in respect of various programmes for scheduled castes and scheduled tribes.

Another administration machinery for implementation of the protective discrimination measures is the Commission for Scheduled Areas and Scheduled Tribes. The Constitution of this Commission is envisaged under Article 339 of the Constitution. In furtherance of this Article the Scheduled Castes and Scheduled Tribes Commission was set up in 1960 which submitted its report in 1961. The Commission has suggested the following criteria for determination of scheduled areas;\(^\text{188}\) (i) Preponderance of tribals in the population; (ii) compact and reasonable size; (iii) underdeveloped nature of the area and (iv) marked disparity in economic standards of people. By applying the above criteria the Commission found that number of areas already so determined are not entitled to such a status. For –de-scheduling the Commission said that the Government must examine the relevant data “in point of economic development, education, health, communications and other services it has reached a stage where it can no longer remain a scheduled area.”\(^\text{189}\) The Commission was of the view that no


\(^\text{189}\) Id. at 69 para 8.32(b).
area had reached the stage of de-scheduling. According to the Commission it had gone into the problem of scheduled tribes historically and geographically and kept in mind the twin objectives first, to bring them out from age old isolation and secondly, not to jeopardize their existing rights, customs and way of life. It has also suggested for general legislation for both scheduled and non-scheduled areas for protecting the rights of tribals in land and protection from exploitation by money lenders.

To ameliorate the conditions of backward classes a Commission was set up in January 1953 in pursuance with Article 340 of the Constitution. This Commission came to be known as Kalelkar Commission for Backward Classes. The Commission prepared a list of 2399 castes and communities as socially and educationally backward. Out of these only 915 castes represented the population of 115 millions. The Commission made caste as the basis of backwardness and it is important to note that the Commission itself was disturbed over the reliance on caste criteria. The Commission failed to present a unanimous report and five of its members recorded minutes of dissent. The Central Government after detailed examination of the Report laid the copy together with a memorandum before each House of Parliament on September 1956. The last minute repudiation of work of the Commission by its Chairman contributed to a great extent in rejection of the report by the Central Government.

The Second Backward Classes Commission popularly known as Mandal Backward Classes Commission was appointed by the President in 1978. The Commission was required to determine the criteria for defining the socially and educationally backward classes; to

190 Ibid.
191 Id. at 494.
193 Dr. Parmanand Singh, op.cit., supra note 84.
recommend steps for their advancement and to examine the desirability or otherwise of making provisions for reservation of posts in favour of such backward classes of citizens who were not adequately represented in public services. The Commission submitted its report in December, 1980.

The Commission evolved eleven ‘indicators\(^{194}\) or criteria for determining social and educational backward classes. These indicators are divided under three heads; i.e. social, educational and economic. It has identified 3743 castes both Hindu and non-Hindu for classification as backward classes. The Commission has recommended 27 per cent of all jobs in Central and State Government services, public undertakings and educational institutions. It estimated the country’s other backward population at 52 per cent, sought the same proportion of reservation just as reservations for Harijans and tribals are proportionate to their share of the population.

Although the Mandal Commission was appointed by the Janata Government at Centre in 1978, but it was Mrs. Indira Gandhi who received its report in December 1980. She did not even bother to put it before Parliament until April, 1982. That is where it has been laying since then. According to one commentator the Congress which knows the Commission was meant to consolidate other backward classes support for Janata, would prefer not to have to implement a document from whose political fall-out it may not gain much.\(^{195}\) The Report of the Commission has been severely criticized by Mr. M.H. Reg the Chairman of the Minorities Commission.

The next administrative machinery for the implementation of measures for protective discrimination is Special Officer for Linguistic

Minorities. The reorganization of States in 1956 on linguistic basis instead of solving the problem of linguistic minorities complicated it further because in newly created States there can to be known as one linguistic dominant group and other small linguistic groups. For rectifying the situation the States Re-organisation Commission suggested amendment of the Constitution which was accordingly amended and a new Article 350B was added to the Constitution which was accordingly amended and a new Article 350B was added to the Constitution by Constitution (Seventh Amendment) Act, 1956. It provides for appointment of the Commissioner for Linguistic Minorities in the Centre on the pattern of the Commissioner for Scheduled Castes and Scheduled Tribes for protecting the rights of the linguistic minorities. The first Commissioner was appointed under the Minorities of Home Affairs. He took charge in July, 1957. In the fifth and sixth reports it has pointed out that the three language formula in reality is a four languages formula for linguistic minorities. In its ninth report the Commissioner dealt with the problem of national integration and role of linguistic minorities. Keeping in view the nature of Article 350B the Commissioner cannot be saddled with the executive responsibility also. On the whole the role of Commissioners for Scheduled Castes and Scheduled Tribes and Linguistic Minorities is largely investigative in nature. They have no direct responsibility to enforce implementation of safeguards for minorities. It is an important lacuna in the administrative apparatus. The Commissioner in its Twelfth Report has suggested for a machinery to supervise implementation of safeguards for linguistic minorities.\(^{196}\)

The institution of Zonal Council has been created particularly to protect the interest of linguistic minorities. These Zonal Councils enable the States in a zone to formulate a common policy for the

\(^{196}\) Supra note 11.
minorities and have come into being under the States Re-organisation Act, 1956. These have been created for inter-governmental consultation and cooperation mainly in socio-economic field and to arrest the growth of controversies and particularistic tendencies among the States.\textsuperscript{197} India has been divided into five zones, viz., The Northern Zone; The Southern Zone; The Central Zone; the Eastern Zone and the Western Zone. A Zonal Council comprises of a Union Minister nominated by the Central Government and two ministers nominated by each State Government and in case of Union Territory two members nominated by the Central Executive. The Union Minister is the Chairman of the Zonal Council. There is liaison between the nature but have been successful in promoting cooperative and consultation between Centre and States and solving the problems of linguistic minorities.

The last administrative institution constituted for looking after the interest of minorities is Minorities Commission. It was the Janata Government which appointed Minorities Commission in January, 1976 by an executive order. Although the Home Minister at that time announced that a Bill was being drafted for giving it a constitutional backing and that Article 338 and 350B were proposed to be amended for the purpose.\textsuperscript{198} However, the Bill fell through in the Lok Sabha for want of a quorum. After Congress (I) government came back to power at the Centre it also promised a statutory status to the Minorities Commission. During Janata Government’s time it submitted four major reports but the Government neither placed them before Parliament nor accepted any of its recommendations. The Commission in its Fourth Annual Report (January 1, 1981 – March 31, 1982) has suggested for setting up of a National Integration-cum-Human Rights Commission as

\textsuperscript{197} 1 \textit{Lok Sabha Debates} 880, December 23, 1955.
\textsuperscript{198} \textit{The Hindustan Times} (New Delhi) April 2, 1978.
a way out of continuing violence against various vulnerable groups in the country. This recommendation is based on a correct premise that both national integration and minorities security are far from ideal. However, it is doubtful that the appointment of such a Commission will be able to prevent or even check deprivation of human and fundamental rights. Although there exists a National Integration Council but it has completely failed in dealing with Assam and Punjab situations. The Minorities Commission has suggested the extension of its definition of ‘minority’ so as to include economically deprived sections, its effort is commendable but futile. If Commission could tackle poverty and communalism our country would have become long ago an object of global envy. The Commission has proved to be ineffective because of variety of reasons. As to the demand for reservations for minorities the Government has made it known that it is not possible to do so. In order to make Minorities Commission really effective one it is suggested that it should be given a statutory status.

For tackling discrimination in favour of women and children the Constitution does not appoint any authorities or agencies. But generally if a law is passed for their protection then the offences under the law would be investigated and tried by competent executive or judicial authority. Department of Social Affairs has been functioning within appropriate Government and are, of course, responsible for administration of relevant measures. The Juvenile Justice Bill provides following administrative machinery; (i) Welfare Boards for neglected children and (ii) Juvenile Courts for delinquent children.

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199 Supra note 137.
200 Ibid.
201 See heading “Minorities Commission” supra.
202 Supra note 150.
Regarding Judicial Machinery Right to Constitutional Remedies has been provided under Articles 32 and 226 of the Constitution. The rights guaranteed to scheduled castes, scheduled tribes, other backward classes and minorities can be enforced by having recourse to these Articles. The scope of Article 32 which had been curtailed by Article 32A substituted by Constitution (Forty-second Amendment) Act, 1976 has been done away with by omitting Article 32A by Constitution (Forty Third Amendment) Act, 1977. In Minerva Mills case, Bhagwati, J. (as he then was) has characterised the power of judicial review guaranteed under Article 32 and 226 as “part of the basics structure of the Constitution.” In another case the Supreme Court has held that the power of the Court under Article 32 is not limited to issuing writs only, it can pass any order including declaratory order or give any direction as may appear to be essential for providing adequate relief to the petitioner although he has not prayed for proper writ or direction. For directly moving the Supreme Court under Article 32 it is not essential that he must first resort to High Court under Article 226. The Supreme Court has revolutionized the concept of locus standi. It has allowed public interest litigation at the instance of public spirited citizen for enforcement of constitutional and legal rights of those who are not in a position to come to the court because of poverty. In A.B.S.K. Sangh (Rly.) v. Union of India, court allowed an unregistered association of railway employees to maintain petition under Article 32 for redress of a common grievance. Other cases where the Supreme Court relaxed locus standi principle and issued appropriate writs, are S.P. Gupta, Sunil Batra, Veena Sethi.

204 Id. at 1826.
Asiad Workers; D.S. Nakara; Dr. Upendra Baxi; Lakshmi Kant Pandey; Khatri; Handhus Mukti Morcha and Olga Tellis. The Supreme Court in its very recent landmark judgment has opened the court for the oppressed, the exploited and the downtrodden in village India or urban slums, the economically deprived or disadvantaged, the physically handicapped person in custody or simply women and children. The five judges of the Court have supported what the then justice Bhagwati has stated in the case of Bandhua Mukti Morcha with R.S. Pathak and A.N. Sen, JJ., dissenting. These judges had stated that letters could be written only in “exceptional circumstances” and the background of the writer must be verified or the facts therein be supported by an individual judge but only to the Chief Justice or the Registrar of the Court. Now the Court has relaxed these conditions to the extent that letter may be written to any judge of the Supreme Court and requirement of affidavit has been done away with. The five judges have laid down two more far reaching propositions for the poor. First, the court for the enforcement of fundamental rights of the poor can appoint socio-legal Commissions or devise any procedure and forge any tools if it deems appropriate to deliver the poor their rights. Second, the Court can grant compensation where the infringement of fundamental right is “group and patent” and affects persons on a large scale.”

The whole of the case law on scheduled castes, scheduled tribes, other backward classes, women, children and minorities discussed in the respective chapters of this work shows that the role of the Judiciary has had been very positive in fulfilling the aspiration of the framers of the Constitution. It has protected the rights of scheduled castes, scheduled tribes, other backward classes, women and children and minorities with full zeal.

From the above discussion it can safely be said that there is sufficient machinery both administrative and judicial to safeguard the interests of weaker sections of the society and minorities. The real problem is that plethora of bodies and Commissions concerning scheduled castes, scheduled tribes, other backward classes and minorities have been established.\(^{220}\) This has resulted in duplication of work for ensuring the Constitutional benefits for the minorities and weaker sections of the society. According to Sh. B.M. Sinha, the office of the Commissioner for Scheduled Castes and Scheduled Tribes and that for Linguistic Minorities “alone could have done the work intended by the Constitution. But political interests seem to have compelled the Government not only to reduce their importance but create new bodies for similar objectives.”\(^{221}\)

\(^{220}\) See Minorities Commission (in this Chapter).

\(^{221}\) Supra note 139.