CHAPTER FOUR

Output Policy: A Look into the Parliamentary Deliberations

- Conceptualisation of Legislative Deliberations and Policy Output
- A Test Case of Policy Proposals on the Floor of the House
- Parliamentary Committee on the Welfare of SC/STs and the Policy Output
- Summing up
A policy can be the product of already-existing, systemic modifications or a product of completely fresh proposals of demands put on the political system by various individuals, groups or institutions. Legislations become sources of various policies and are the results of proposals by the government and deliberations of the legislators in a political system. Policy outcomes of the existing legislations create conditions either for the continuation or alteration of such arrangements. In the previous chapter, an analysis was made to ascertain the perspectives of the MPs in response to the reports of the Commissioner and the Commission. It was found that there are gaps between the reports presented and perspectives adopted by the MPs. Again there were differences between the MPs perspectives and the Ministers responses relating to the policies towards Dalits. If MPs emphasised on the need for policy adoptions then Ministers did not heed the demands. And even if sometimes promises were made, no time bound assurance was given to fulfill them. The perspectives adopted in the Lok Sabha on Dalit policies in the last chapter show a prevalence of disenchantment among the Members over the existing safeguards for these sections. Whether with regard to the functioning of the Commission or PCRA or about the economic policies, the Members have not only shown their dissatisfaction regarding the implementation of those policies but also felt the need for alteration in their safeguards.

The present chapter tries to examine the impact of the perspectives adopted by the Members and the subsequent policy formulation by the government. The issue of policy outputs of the perspectives taken during policy-making is the major concern here. Policy outputs indicate the actual decisions taken by the government, distinguished from what is regarded as given assurances. Policy outputs constitute a body of specific inducements for the members of a political system to support it (Easton 1957). The government may come out with an alternative legislation that usually may not be a voluntary initiative but is a result of outside pressure i.e., of interest groups, of concerned individuals, of representatives in legislatures etc. We examine the impact of perspectives adopted by the MPs as Policy output is influenced by the policy responsiveness of the representatives that relates to their decision-making conduct in a given field of policy (Eulau and Wahlke 1978:63). Not only can policy initiative be influenced by the representatives in legislatures, the policy content may also be altered through the addition or deletion of some clauses on the floor of the House.

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Conceptualisation of Legislative Deliberations and Policy Output

Here, we try to examine the representation vis-à-vis policy output of the legislative interventions. The policy responsiveness also indicates the attitude of the representatives towards their constituents. Mere representation is not a guarantee for participation, and similarly participation is not an insurance of effective representation. It requires the proper judgement of policies, as on the basis of which the question of support or rejection of the policy initiatives as taken by the treasury benches can be properly understood. Thus in this case, policy output is about how far the legislations brought by the government on the floor of the House would have an impact on the Parliament's involvement. Parliament's involvement in selected areas could furnish with ample material to discuss the role played by it in formulating and controlling policies (Jain 1983: 560).

Here we make an attempt to develop linkage among the NCSCT reports of the Commissioner and the Commission, and the perspectives adopted by the MPs and the government's proposals to formulate policies for Dalits on the floor of the House. The focus is not only in terms of deliberations by the MPs but also an examination of the role of the MPs to modify, amend or alter the policy or legislations proposed by the government on the one hand and government's responses to the propositions of the MPs on the other. Thus, the concern is about the Enduring representation of the MPs in policy formulation in Lok Sabha and examination of the role of Parliament as an institution to function for the welfare and development of Dalit masses. The policy responsiveness of the legislators towards their constituents in the House apparently is the subject-matter of the present chapter. Special representation of Blacks in American Congress had been primarily based on the premise that Black constituents have distinct needs and interests that differ from the White constituents (Swain 1993:7-10), and they are disproportionately affected by problems such as crime, drugs, poverty discrimination and poor health. Moreover, politicians representing districts with higher African-American population differ in their response to the needs and interests of these constituents (Canon 1999: 353). Applying this framework in the case of India, it is examined whether Dalit legislators in the Lok Sabha differ in their responses in comparison with their counterparts while they address the issue of the legislations meant for Dalits.
We see how legislators participate in discussion with response to policy proposals in terms of Legislations and Statements by the government. We need to examine how legislators respond to government proposals and finally become instrumental in formulating policies for Dalits.

Below we make an attempt to exert the policy output of parliamentary interventions. For the purpose of exerting the role of legislators, this process can be divided into three stages:

1. Analogy between Legislative Perspectives and Policy Proposals of the Government

The purpose here is to probe the resemblances and gaps between broader legislative perspectives adopted during discussion on the reports of the Commissioner and the Commission for SC/STs and the nomenclatures of legislations proposed by the government.

2. Contextualisation of Legislative Responses to Policy Proposals

Bills, Resolutions, and Statements by the Minister/Government constitute policy proposals of the regime in power for consideration of the legislature. At various points of time, the legislators respond to such proposals which may contain major policy themes. We need to contextualise legislative responses to the policy proposals and develop a relationship between the two as the demands are put before the Government during deliberations. The nature of this representation can be divided into two parts:

(a) *Enduring Representation of Customary Character*, where opinions are expressed and suggestions are made to include or exclude some themes of a Bill, a Statement, etc, and

(b) *Enduring Representation of Specific Character*, where demands are pursued before passing a Bill in the form of amendments regarding specific themes.*

The reports of PCWSCT have also been examined in this perspective.

3. Impact of Legislative Interventions on Policy Proposals

*In the later discussion we have used representation of customary character instead of enduring representation of customary character and representation of specific character instead of enduring representation of specific character.*
The amendments or changes proposed by the legislators may or may not be accommodated by the government. Proposals may be passed without incorporating the suggestions made by the legislature thus reducing it to insignificance. These in turn would reflect upon the consequences of the legislative interventions on the policy outputs which finally go to become policies.

Legislative deliberations during the discussion on the NCSCT reports appear to be concerned both with short-term objectives i.e., phenomenal representation and also long-term objectives i.e. enduring representation. Not the phenomenal representation but only Enduring representation is the focus here, as the study focuses upon long-term objectives or policy aspects.

There has been a consistent rise in the scale of atrocities during 1985-95 and the legislators were not satisfied with the results produced by PCRA (1976) so they demanded a more stringent legislation to deal with the atrocities. The Government came with a legislation called, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill 1989.

To strengthen the existing institutional mechanism, they argued for strengthening the Commission for SC/STs by providing it with a constitutional status so that it can function as a premier monitoring agency vis-à-vis Dalit policies. It was also argued that the Dalit issues should be transferred from the Ministry of Welfare to the Ministry of Home Affairs. The Government introduced the Sixty-fifth Constitutional Amendment Bill to strengthen and bestow constitutional status to the Commission. But the Government did not propose transfer of Dalit issues from MW to MHA.

The legislators were also concerned to improve the conditions of the Safai Karamcharis, so, a National Commission for Safai Karamcharis (NCSCK) was constituted that was to function as a monitoring and advisory body for the abolition of manual handling of human excreta by a section of the society, majority of whom belonged to Dalit communities.

Another important concern of the MPs during the discussion on Reports of the Commissioner in 1994 was to safeguard the interests of SC/St employees regarding promotions in reservations withdrawn by the Supreme Court in the Mandal Commission verdict. In this regard 77th Constitutional Amendment Bill was passed in 1995.
Though four more legislations were introduced by the Government, these were primarily for inclusion of more communities under the SC/ST category than to alter the Dalit policy paradigm. But we will discuss the Constitution (Scheduled Castes) Orders (Amendment) Bill because Dalits who converted to Buddhism were re-introduced in the SC list. If observed carefully, the legislations by the Government reveal how during this period the emphasis was on the extension of safeguards to a few more communities rather than, the development of policies to safeguard the Dalit interests.

There were legislative perspectives adopted on land distribution, reservation in government jobs, special recruitment drive to fulfil backlog, special policies for Tribals, representation in private sector due to privatisation, liberalisation and globalisation etc. But no legislation was introduced by the regimes in power on these crucial matters.

There were twelve Statements made by Ministers in the House which can be divided into two parts: a) Instantaneous Statements, and b) Policy Statements: i) Statements for continuation of policies, ii) Statements of policy shifts or changes. The former has short-term connotations, whereas the latter are long-term in nature. Out of the twelve statements seven were Instantaneous Statements* and five were Policy Statements. Among policy Statements, two were Statements for continuation of policy viz., i) continuation of the scheme for the supply of wheat/rice at specially subsidized rates in Integrated Tribal Development Areas and Tribal majority States for one more year from 1st April 1990 (LSD 18 April 1990), and ii) Enhanced subsidy for SCs under IRDP(LSD 26 April 1990); and, three were statements of policy shifts viz., i) liberalisation of orders with a view to improving the representation of SC/STs in central posts/ services (LSD 19 April 1990) ii) reservations in promotions for SC/STs in the wake of the judgement by the Supreme

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3. The incident relating to atrocities on members of Scheduled Castes in West Numar Khargon District of Madhya Pradesh. (LSD 9 September 1991).
5. The incident rioting and arson on the issue of installing the statue of Dr. B. R.. Ambedkar in a plot in Parwana Road in Khureji under Police Station Krishna Nagar, Delhi (LSD 8 May 1995).
6. The reported incident of intimidation of Kr. Mayawati and others in the State Guest House of Lucknow, Uttar Pradesh on June 1, 1995 (LSD 3 June 1995).
Court (LSD 23 December 1992) and iii) the previous statement regarding reservation in promotions was repeated (LSD 15 August 1993).

The Statements by the Government show their concern more for short-term objectives because seven out of the twelve Statements were Instantaneous. And among five Policy Statements one was repeated by the Minister next year. This means a lack of policy proposals in response to the legislative perspectives adopted in the previous chapter on the one hand and on the other a repetition of the existing measures in one form or the other. Thus there seems to be a little similarity in the legislative perspectives and policy proposals of the Government. In this regard, some of the areas left out by the legislations have been taken care of the Policy Statements.

It reflects how there is some affinity between the broader legislative perspectives and policy proposals of the Government, whether in terms of nomenclatures of legislations proposed or Policy Statements issued by the Government on the floor of Lok Sabha.

At the same time, the most crucial legislative perspectives in the emerging eco-socio-political scenario, whether it is reservation in the private sector due to the policy of liberalisation and privatisation where role of the State is shrinking, or for the matter of land distribution by the lack of which majority of the Dalits are deprived of material gains in the rural society, none have been taken care of by the Government.

The analogy between Legislative perspectives and Policy proposals of the Government indicates some gaps in terms of Bills introduced and Statements issued by the Government in the Lok Sabha. It needs to be looked what the legislators deliberated upon while participating in the debate on various Bills and Statements of the Government. First, we find how they approve of the themes contained in the Bills and the Statements, or how they advance modifications or reject them. Secondly, how far those modifications are pursued in terms of amendments, while passing the Bills. The PCWSCT's role in policy formulation has also been examined. Whether it is able to raise the issues left unaddressed on the floor of the House by the Government and bridge the gaps in terms of policy formulation. It has been looked into in the context of the parliamentary committees being expected to curb the decline of Parliament as law-making body (Kashyap 1995).
A Test Case of Policy Proposals: Reservation in Jobs for Dalits

The job reservations have been an important aspect of compensatory discrimination for Dalits. It has become an instrument to secure employment and aspire occupational mobility from the age-old heritage of poverty and subordination. Initially the reservations were made applicable on an all India basis but later on it was felt that in majority of the cases, Group 'A' & 'B' services attract candidates from all over India, whereas for Group 'C' & 'D', only those residing in the nearby localities or areas are attracted. In accordance an order was issued in 1985 by the DOPT, wherein it was stated that the recruitment for Group 'C' & 'D' would be carried on the basis of the population percentage of SC/STs in a particular region as per 1981 Census and this order came into effect from June 1 1985.

Though the backlash against reservation has been continuing since the adoption of the Constitution its opposition has become more evident during the last twenty years. Innumerable limitations of job reservations could be found in various studies conducted in the recent past. The latest among these by Mandelsohn and Vicziany (1998) underline four major problems which are linked to its structural and functional flaws. They are:

a) only a small proportion could be benefited even with the cent-percent reservations;

b) habitual lack of bureaucratic performance due to traditional discrimination practiced against these communities;

c) backlash and violent protests by the caste-Hindus; and

d) doubts about the value desired from maintaining the policy of Compensatory discrimination itself.

On 19 April 1989, the Minister for Personnel, Public Grievances and Pensions gave a Statement on the floor of the House to liberalise the orders for improving the representation of SC/STs in the central government. Two decisions were taken in this regard:

a) there will be ban on dereservation in all cases of direct recruitment in Group A, B, C & D vacancies, and it will be permitted only in group 'A' in exceptional cases and with prior permission of the Ministry of Personnel, and b) the restriction with regard to promotional reservations was revised to 75 percent instead of existing $66\frac{2}{3}$ percent in case of direct recruitment:
The Statement attracted the attention of the House and forced the government to have a discussion on the subject. Subsequently a debate was held for three days (4 and 11 May 1989) in which 36 Members participated on the Motion moved by E. Ayyapa Reddy (Kurnool), who argued that there is no dearth of candidates as per Union Public Service Commission's reports then, why the quota is not being fulfilled in the central services (LSD 4 May 1969: 410).

Members were critical of the non-implementation of policies meant for Dalit upliftment. The liberalisation of orders was pointed out to be the consequence of apathy and lack of political will of the government to achieve the set targets. The apprehensions were expressed the over non-implementation and it was maintained that reservation will have to be continued till the society keeps discriminating on the basis of caste.

The biased principles, prejudiced notions and the changing names of discrimination viz., the pretext of non-availability of SC/ST candidates, than their non-suitedness, and finally the incapability of SC/ST candidates, were concerns which were also raised out by the Members. Anadi Charan Das [Jajpur] categorically mentioned how in the garb of non-suitedness, the authorities appoint non-Dalits against the reserved vacancies (LSD 11 May 1989:150). The unsuitability argument vis-à-vis the authorities attitude attracted the attention of majority of the Members. They also wanted to take stringent action against the officials found guilty of bypassing the reservation policy and ignoring the interests of the weaker sections of the society. Ram Ratan Ram [Hajipur] urged the government to pass a central act to provide legal safeguards against the dereservacation of vacancies. Without legal security it was argued, the violation of reservation policy may continue for longer period (LSD 12 May 1989: 30) Similar views for the constitutional amendment were expressed by Thampan Thomas [Mavelikara] Demand for a Special Tribunal to accomplish the cases related with the compensatory discrimination in services for SC/STs was enunciated by the Members. As per the information of the NCSCT as many as 8,858 petitions were attended and action taken wherever the allegations or grievances warranted intervention by the Commission (NCSCT 1992:62) The gravity of the problem could be visualized with these figures and the Members

* Calling Attention Motion was converted in to Rule 193.
concerned to devise the institutional safeguards for these sections by instituting a special tribunal to speed up the cases related to service sector. Mere instituting a Special tribunal could not solve the deep-rooted problems so a demand to facilitate the process was also put in terms of having a time-bound programme for the fulfillment of quota (LSD 4 May 1985: 430, 450, 11 May 1989: 138, and 12 May 1989: 47). It was impressed upon by various Members that the institutions run with any kind of assistance from the government should also be asked to follow the reservation policy as prevalent in the government institutions and departments.

Some desperate and idiosyncratic opinions were also aired, such as having cent-percent reservations till the required quota is not fulfilled (Keyur Bhushan [Raipur], (LSD 11 May 1989: 139); reservations until arrangements to provide modern education and training is achieved to all the SC/STs (LSD 4 May 1989: 425) etc. These opinions however, did not have many receivers.

Some doubts were also raised on the percolation of benefits to the people at the lowest levels who are not able to send their children to the schools and colleges. The opinion that a section within the SC/STs is taking away all the benefits of compensatory discrimination, was also placed by Syed Shahabuddin [Kishangunj] (LSD 12 May 1989: 149). however, there were no takers of such opinions.

Repeating to the debate, the Minister of State for Personal, Public Grievances and Pensions, and Home Affairs thanked the Members for participating in the debate and narrated about how the number of reserved seats have been on the rise since 1968 and also non-fulfillment that led to acute backlog (LSD 12 May 1989: 72-83). Ayyapa Reddy [Kurnool] asserted that it means backlog can be attributed to official negligence and the Minister admitted the inbuilt bias in the system against SC/ST recruitment. A Special Recruitment Drive was to be started from 1st June 1989 to fulfill the backlog in various central government departments. He also told the House that a policy for SC/ST candidates who come on merit basis not to be adjusted against reserved vacancies has also been adopted by the government.

On non-implementation of derservation in promotions, the Minister stated that due to the 'zone of consideration', no one can pretend that SC/ST candidates are not available and the power of dereservation had been delegated to ministries and departments. If things happened adversely then the Government may have to consider centralising this power in one ministry, he asserted.
In the course of Minister's reply Ayyapa Reddy and Thampan Thomas intervened but those interventions were not specifically related to the Statement, which showed a sense of satisfaction among the Members on the Minister's reply.

Thus the discussion in response to the Statement on 'Liberalisation of order for improving Representation of SC/STs in Central Government Posts/Services' indicates more towards representation of a customary character, where MPs raised policy matters in relation to Dalits but the government did not alter its stand except for the objectives of the Statement. The non-pursuance of issues raised during discussion by the MPs itself shows absence of representation of a specific character.

Therefore, except the Statement's implications on the Dalit policy output, the Members deliberations during the discussion had no impact on the Government. There were merely little assurances in the form of the centralisation of power of dereservation in one ministry, acceptance of in-built bias against Dalit recruitment among the officials etc.

However, the Minister's Statement and its implications could be ascertained with the considerable fulfillment of backlog with three SRDs undertaken between 1989 to 1993.*

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill 1989.
At the time of the Constitution making, it was not merely the form of government that was undergoing transformation but various cultural, regional and linguistic realities at the social level were also being redefined. There was an attempt to change the basic Indian social realities like gender inequality, caste prejudices, inflicted cultural inferiority in the form of Untouchability etc. Article 17 of the Constitution specifically dealt with Untouchability. While going through the Constituent Assembly Debates, one cannot ignore a general attitude of sympathy and generosity among the Members on the issue (Kanananaikel 1982:17). Untouchability was evident in various forms in the society but it was primarily concerned with the protection of the individual and not the group because social boycott based on conduct was not covered by article 17. (Devrajiah vs. Padmanna, AIR 1961 Madras:35-39). While explaining the tyranny of socio-economic boycott of the Scheduled Castes, Ambedkar stated:

* The SRDs were undertaken in 1989, 1990 and 1991 to fill up the backlog of reservation for SC/STs.
This boycott is often planned on such an extensive scale as to include the prevention of the Depressed Classes from using the commonly used path and the stoppage of sale of the necessities of life by the village Bania. According to evidence, sometimes small causes suffice for the proclamation of a social boycott against the Depressed classes (Moon 1979: 46-47).

Untouchability is not merely a social stigma which is aimed at avoiding proximity with a group of people, but also an ideology of social violence aimed at those groups. It is a kind of conflict between two unequals where the relatively weak wishes to be socially equal with the relatively strong and the weak resists and tries to oppose the injustice and exploitation by the other (Ram 1995: 270). If we look at Dalits from this perspective, we come closer to understanding the social and physical violence perpetrated by the caste- Hindus against them. It was in 1974 that the MHA termed the crimes against Dalits as 'atrocity' and classified it into four categories viz., murder, grievous hurt, arson and rape (Commissioner 1988).

Atrocities have been inflicted upon Dalits of one type or the other through the ages due to their subjugation on socio-economic, religious and political levels. On the account of the dominance of caste-Hindus, Dalits rarely dared to openly defy their dictates and so there was hardly a question of protest on their behalf. Even if there used to be some individual resentment, it used to have violent repercussions and that is why the collective protests were non-existent.

In the post-independence period and more particularly in the last two decades the cases of physical violence the on Dalits have increased due to their rise in the collective consciousness and strong reactions to the injustices on them, as suggested by the government reports. Thus, the more the united protests of the collective consciousness of Dalits, the more the chances increased for physical violence on them by their counterparts.

Apart from the growing socio-political consciousness, there are two other major causes which fan the rising atrocities. One is the dispute over possession of surplus land allotted by the State. The other is the non-payment or underpayment of minimum agricultural wages by the landowning communities.

Statistics reveal that the post-independence period has witnessed a steep increase in the atrocities against Dalits. There has been an increase of 86.3 percent in the cases of atrocities committed during 1951-61 in the entire country. But during 1961-71 and 1971-81 the percentage increase remained 69.4 and 63.9. Yet again
1977 saw the manifestation of a 75.5 percent increase of atrocities on Dalits as compared to the year 1976 (NCSCT 1992:95).

Article 17 for abolition of untouchability was not adequate enough to deal with various related offences. Subsequently the Untouchability Offences Act (UOA) 1995 was enacted to give effect to the abolition of untouchability. But even this Act could not check the Untouchability cases which were cumulating day by day. In the light of the emerging conditions, the UOA was renamed as Protection of Civil Rights Act (PCRA) 1976 which made untouchability as a non-compoundable offence. Separate provisions were made with regard to enforcing religious disabilities, social disabilities refusing to admit persons to hospitals denying them sale of goods or services etc.

A collective fine was imposed on the residents of any area who were involved directly or latently in offence or its abatement. In situations where the concerned persons failed to render the assistance in their possession or failed to apprehend the offenders or anyone suppressing material evidences regarding the commission of such offences, was also made punishable.

The PCRA also provided assistance to the aggrieved persons. Under Section 15(a) of the Act, responsibility was legally fixed on the State Governments to take measures necessary for ensuring that the rights originating from the abolition of untouchability were made available to the victim in the form of legal aid, appointing officers for inhaling supervision over prosecution under the Act, setting up Special Courts or Committees at various levels to assist the State governments in implementation of the measures prescribed in the Act.

Even the PCRA could not put a check on the sprawling violence on Dalits all over the country. The cases of atrocities, exploitation and discrimination on account of caste untouchability went on increasing day by day and year by year. It is extremely effective and efficient mechanism, changing its form and expression to suit the situation in each area and at each period (Krishnan 1993: 416). To cease atrocities and its changing nature, the government introduced another Bill named the Scheduled Castes And Scheduled Tribes (Prevention of Atrocities) Bill 1989.

While introducing the Bill, the Minister of Welfare Rajendra Kumari Bajpai stated:

During 1988, there were a little over 15,000 offences against Scheduled Castes and 3380 cases in respect of Scheduled Castes and 783 in respect of
Scheduled Tribes. Of these heinous offences such as murder, arson, rape and grievous hurt were about 3300 cases accounted for Scheduled Castes and 783 in case of Scheduled Tribes. There are other minor offences also. This shows the attitude and tendency of the other caste people. They did not want that the SC/SCs should be respected in the society. The nature of these offences in many States indicated that these were not isolated instances but represented a trend in the country (LSD 14 August 1989: 59).

Further she enumerated a number of reasons behind introduction of the Bill. Enumerating the causes, mention was made of suppression of voices of equality and change at the first place. The other reasons included as stated by the Minister were dishonor to a person, particularly to a Dalit woman, to question the manhood of male-members, land relations, dumping carcass in the vicinity of Dalit house etc. This is a new phenomenon of atrocities arising from no specific cause but Dalit assertion for self-respect (Krishanan 1993:423) Nowadays, there is a collective outrage against them, if they disown the traditional caste calling, a collective violence is perpetuated on Dalits if they asking for wage raise land disputes, etc., that leads to physical torture, burning alive, dismantling of their dwellings, molestation and rape of their womenfolk (Ram 1977: 111-121).

Some of the major themes included in the Bill or Prevention of Atrocities Act 1989 (PAA) can be divided into three parts:

a) Punitive Actions
b) Preventive Actions
c) Miscellaneous Aspects

Punitive action relates to the punishment for offences of atrocities and punishment for the neglect of duties on the part of executive officers. It explains thoroughly about 15 types of offences and a minimum of six months punishment for the offender that could be extended upto five years with fine. Even the indirect involvement for an offence has become punishable. The willful neglect of duty by a public servant except those belonging to SC/STs has also been brought under punishable offence. Subsequent offences grants enhanced punishment of minimum one year. Even forfeiture of property could take place with the order of the Special Court.

To prevent the offence, removal of a person likely to commit atrocity may take place and if he does not leave the area himself can be arrested as a preventive measure. A State Government can impose collective fine as well on the area of the
people, who do not raise voice to restrain a person or a group to commit atrocity. Executive officers can also take preventive action in the atrocity prone area.

Under the miscellaneous aspects a special court for each district has been prescribed with a special public prosecutor for the purpose of conducting cases.

The State Governments have been asked to take measures for effective implementation of the Act and provide infrastructural facilities to the victim and the witness, for not only meeting the travelling and maintenance expenses but also for the economic and social rehabilitation of the victim. A periodic review of the implementation and identification of atrocity-prone areas also occupy a major part of the Act. Even the action taken in good faith by the authorities have been asked to give protection.

A comparison between the PCRA and the PAA would point that there is hardly any difference between the two so far as objectives are concerned. The difference is in terms of details of the atrocities and their nature on the one hand and provisions for strict punishments and implementation on the other. The PCRA described atrocities under various heads like enforcement of religious and social disabilities and denying excess to public places. Whereas the PAA talks more of social disabilities in terms of committing atrocity or intending to commit atrocity. Another major difference in the PAA relates to the provisions of Special Court; Special Public Prosecutor; forfeiture of property of certain persons, and externment of prospective offender that was absent in the PCRA. Earlier the minimum punishment was one month but under the PAA it is six months. The PAA explains untouchability in terms of atrocities, whereas the PCRA portrayed untouchability in terms of disabilities. The most significant proposition of the PAB is the protection of STs which was explicitly absent under the PCRA.

Overall thirty five Members participated in a two-day (14 and 16 August 1989) debate on the Bill. On both the days, the question of a low presence was raised by the Members. On 14 August, 1989 it was alleged that no opposition Member was present (the opposition alleged the political reasons for bringing out the legislation on the eve of elections). It is interesting to note that out of thirty-five Members, eight did not speak much about the Bill and only made indirect and usual suggestions viz. to punish those not implementing the laws and mis-utilising the funds (LSD 14 August 1989: 103 & 16 August 1989: 25,52).
The denial to lodge an FIR by the police occupied center-stage. During the discussion the Members wanted to know what action the Government contemplates which would deal with the officials who indulge in the negligence of duty.

On the question of FIR and negligence of duty by the concerned personnel, the Minister responded that such offences have been dealt in clause 4 of the Bill which says:

> whoever being a public servant but not being Scheduled caste or Scheduled Tribe willfully neglects his duties required to be performed by him under the Act shall be punishable with imprisonment, for a term which shall not be less than six months, which may be extended to one year.

Digvijay Singh [Rajgarh], Lacchi Ram [Jallaur] and Janak Raj Gupta [Jammu] questioned the exemption of SC/ST officials in this regard (LSD 14 August 1989:97 and 16 August 1989: 20,74). They wanted to bring these officials also in the net for the negligence of duty. Syed Shahabuddin [Kishanganj] moved an amendment in this regard but it was squashed by the House. The rationale behind exemption of the SC/ST officials as pointed out by the Minister was that the focus of the Bill was about atrocities committed by one section of the people on the other and the purpose of bill was to check such ideals prevailing in the society. It was further added that even if the SC/ST officials indulge in negligence of duty, they can be dealt with through the ordinary law of the land in this regard (LSD 16 August 1989: 100).

The discharge of quantum for rehabilitation and compensation in favour of the victims of atrocities was another significant theme of the Bill. A few suggestions like fixing up the amount for the purpose by the central government, constructing houses under the National Housing Policy for the victims etc., were made by the Members. Vir Sen [Khurja] raised the inability of providing compensation to an unmarried girl who has been a victim of rape and how to provide her rehabilitation. In this regard again, an amendment was moved by Syed Shahabuddin to "compensate them fully for the loss of damage to the movable and immovable property, and for loss of life and physical injury in accordance with the prescribed scale." Responding to the amendment, the Minister pointed out that the Bill incorporates broader outlines and the minute aspects shall be taken care of while framing the rules. On the assurance by the Minister, the Member withdrew the amendment.
A few other important themes of the debate were externment of the offender from the area; appointment of SC/ST officials in sensitive areas; punitive fine for the people in the area of atrocities; establishing monitoring cells at the district level; and, involving MPs and MLAs at various stages in the administrative machinery to arrest violence against SC/STs.

Ram Ratan Ram [Hajipur] alleged that the choice to extern the area remains with the prospective offender (LSD 14 August 1989: 68). Some others suggested that instead of asking a prospective offender to leave the area, the person must be arrested (LSD 16 August 1989:62). Reacting to the sentiments expressed by the Members, the Minister reminded that being an order of the Special Court, the offender has to comply with it under section 10 and 11 of the Bill which states "anyone who does not comply with the externment order shall be arrested and put into police custody."

The demand for appointing SC/ST officials in the areas where Dalits are likely to be subjected to atrocities surfaced time and again in the Lok Sabha and the Members repeatedly demanded for it (LSD 14 August 1989: 70,90 and 16 August; 1989: 54).

The prime reason for people of this demand was pointed out to be the biased sympathies towards their own social background among the caste-Hindu officials and their obvious insensitivity towards the Dalit sections. Syed Shahabuddin moved yet another amendment to substantiate the feeling of the House which seek to provide "due representation of the Scheduled Castes and Scheduled Tribes in the administrative machinery so as to give the local administration a composite character." The Minister evaded the concern by saying to fill up the backlog instead of due representation in all branches of law and order machinery to the SC/STs (LSD 16 August 1989: 96).

Regarding punitive fine, members wanted the Panchayat or the Revenue Block to be taken as unit to impose collective fine on those who do not react to an atrocity being committed. Most of the atrocities are committed in the rural areas and the dominant sections insensitive to the offences against Dalits.

There was no new provision in the Bill to empower the State government to impose collective fine if the inhabitants of an area are found guilty of abetting the commission of offence or harboring with the offender in a direct or indirect way by either suppressing the material evidence or failing to discover or apprehend the
offenders. But what was proposed was just a repetition of section 10A of PCRA. But through this the citizen was accountable made only to be vigilant but also to be instrumental in avoiding a crime.

Ram Ratan Ram [Hajipur], Syed Shahabuddin [Kishanganj] and Janak Raj Gupta [Jammu] in particular raised the question of summary trial for quick disposal and to prosecute the offenders. K. Kunjabu [Adoor] and Rambhagat Paswan [Rosera] wanted appointment of Dalits as Special Court judges and justice to the victims at the doorsteps respectively to avoid any kind of turning hostile of the witnesses (LSD 16 August 1989: 54, 77).

In this case to speed up the trial of the accused, the State Governments need to be in touch with the Chief Justice of the High Courts to specify for each district, a court of session to be termed as special court to try the offences under the Act. About these two main demands, the Bill proposed not only the constitution of a Special Court but also to appoint a Special Public Prosecutor having an experience of not less than seven years.

The legislators raised several pertinent questions during the debate on the Bill which were not part of it e.g., exemption of Dalit officials, rehabilitation and compensation to the victim of atrocity, appointment of SC/ST officials in atrocity-prone areas, making Panchayat or Revenue Block as unit to impose collective fine etc. It indicates that legislators take interest in Dalit policy paradigm showing prevalence of Enduring representation of a customary character. But there are some grim areas untouched by the MPs which include, how Centre should deal with the States which do not implement the provisions of PAA in the right spirit as well as the way in which to make people aware of the existence of such an Act.

At the same time, the legislators who raised questions not addressed in the Bill did not pursue those, while passing it because none except Syed Shahabuddin moved amendments to the Bill. Even eight amendments moved by Syed Shahabuddin were withdrawn on the assurance by the Minister, to look into those while framing the rules. No Dalit MP supported these amendments.

* The care for constituting Monitoring cells has been taken in the rules, wherein both at the state level and at the District level vigilance and Monitoring Committees are supposed to be established. At the State level chief Minister/ Governor (in case of President's rule) and at the District level the District Magistrate occupy the position of chairman at their respective levels. The MLA & MPs find place in the Monitoring committee at the District level.
The debate on the Bill shows that both Dalit and non-Dalit MPs not only participate but also raise issues on the proposed legislation. Apart from discussing issues like, lodging of FIRs, strict action against culprit, special courts etc. The MPs also raised those issues which were not part of the Bill e.g. rehabilitation of the victim of atrocity, appointment of SC/ST officials in atrocity-prone areas, to fix collective fine on the Panchayat or Block prone to atrocities, etc. At the same time, some crucial aspects of implementation and making the people aware of the provisions have been ignored by both Dalit and non-Dalit MPs. The maintenance of law and order is subject of the States. How to deal with the States defying the provisions by not implementing them was largely neglected by the MPs. The non-implementation of programmes and schemes being the major aspect of Dalit policies, should have been put more emphatically than being ignored. Secondly, how to make people aware and inform the society about the prevalence of such legislation was completely ignored by the MPs. The MPs could have asked to use the Government and the private media to spread awareness of such an important legislation.

The pursuance of issues raised during the debate while passing the Bill was completely absent among the Dalit MPs, whereas a non-Dalit MP of Janta Party moved eight amendments. It shows that the non-Dalits from opposition party is more active in legislature as compared to Dalit MPs either from the ruling party or from the opposition. Most of the issues uncovered in the Bill have been taken care of while framing the Rules. It is a different matter that these rules were framed under the Janata Dal and not the Congress government.

Debate on Atrocities apart from Discussion on the Bill and NCSCT Reports

Although the PAA was passed in 1989 but the rules regarding it were framed in 1990 and it came into force from 1992 onwards. Another significant aspect of the matter is that during this period many atrocities were committed in which large number of Dalits were killed and the Lok Sabha also discussed them time and again under various legislative rules.

Thus apart from the discussion during the NCSCT Reports, atrocities on Dalits were debated in the Lok Sabha three times under Rule 193, once each under the Adjournment Motion and the Private Member's Resolution. Before adoption of PAA 1989, atrocities were discussed in 1988 under Rule 193, where the emphasis of
the discussion was not much different from the discussion during the Commission’s Reports or during passing of the PAB 1989 Bill itself.

The only difference was in terms of strengthening the safeguards under compensatory discrimination by representation in the Army, private sector, public schools etc. A few major demands that came up while discussion in August 1988 was for liquidation of various caste armies prevalent in Bihar, providing Arms to Dalits and declaring central Bihar a disturbed area (LSD 12 August 1988: 355, 370, 373, 433, 350, 449).

The PAA 1989 was unable to contain atrocities on Dalits. The atrocities kept multiplying year by year as the NCSCT Reports (1992-95) would suggest. After enforcement of the new Act, major massacres particularly in the States of Uttar Pradesh and Bihar took place, and they led to debate in the House.

The discussion after passing of the PAB shows a major shift in the opinions of the legislators regarding atrocities on Dalits. Apart from the non-implementation of the Act, acquittal of the perpetuators of atrocities due to lack of evidence etc., the emphasis now was to transform the caste-based Indian society and bring about a change in the mind-set that either commits or supports the atrocities on Dalits due to the social sanction of untouchability and the caste-system. The following excerpts from the Lok Sabha debates by the MPs indicate prevalence of such opinions:

R. Mallu [Nagarkurnool]:

I would like to suggest certain things for the permanent solution of this problem. Unless you attack the caste-system, you are not going to succeed in solving the problem. The incidents that took place in Tsundur in Andhra Pradesh or in Uttar Pradesh or in Bihar are only sporadic incidents. Actually such incidents are taking place in all over India, in all the villages .... It is not the individual but caste that comes in the way (LSD 19 August 1991: 267-8).

Another discussion under the Adjournment Motion on the reported incidents of atrocities on Dalits in various parts of the country with particular reference to Uttar Pradesh and Bihar, the following statements show the amount of dis-satisfaction on the legal safeguards among the legislators:

Santosh Kumar Gangwar [Bareilly]:

Sir, the subject being discussed today has been discussed unlimited times since independence but what has been the outcome. Whatever be the deliberations, the end-result is always the same .... The social equality is
not possible until we stop mental exploitation and mental torture (LSD 25 February 1991: 538-9).

Dinesh Singh [Pratapgrah]:

Several of the hon. Members said that the psyche of the society will have to be changed. As long as the psyche of the society is not changed, this type of things will continue to take place (LSD 25 February 1991: 598).

Suggesting solutions members have been arguing, a need for social transformation and particularly to opt for mass movement. After three years of the above discussion, a Private Member's Resolution was adopted in 1994, which reflect upon the arguments for social movements as legal system is not helping the Dalits at large.

Hanan Mollah [Uleberia]:

You are aware Sir, that Scheduled Castes and Scheduled Tribes, as we understand by the very word are the victims of casteism. Casteism is the worst kind of crime against humanity in the world. Though we, the Indians, feel pride in saying that we are one of the oldest civilised countries in the world, at the same time, we also feel ashamed that we are carrying on this oldest crime of casteism in our society..... we have to participate in the social movements and fight for the right for the SC/ST. then only the real emancipation of the SC & ST can take place (LSD 30 May 1995: 279-82).

The above affirmations display that there is a major shift in the opinion of the MPs. Now emphasis has not been on the question of different governance but on the initiatives of the civil society and to transform the basic Indian social reality i. e., the caste-system.

The Constitution (Sixty-Fifth Amendment) Bill 1990 or National Commission for Scheduled Castes and Scheduled Tribes

To equip the Commission for SCs and STs with constitutional powers, has been a long-standing demand of the Lok Sabha. Even before setting up of the Commission in 1978, the Members had been pleading to strengthen the office of the Commissioner and also deplored the lack of co-operation from State governments in providing the required information. (Narayana 1980: 453).

Instead of strengthening the Commissioner's position, the Janata Party Government appointed a Commission and made the Commissioner a member of the Commission vide Ministry of Home Affairs Resolution dated 21 July 1978. Apart from the Commissioner, there were four other members including a Chairperson.
Though it was stated that the functioning of the Commission would not lesson the authority of the Commissioner but its function broadly corresponded with him. This dis-enchanted the Commissioner who in its 27th Report categorically maintained that there are two alternatives to strengthen the monitoring system under article 338. Either to replace the Commission with a multi-member Commission or to retain both the offices with clearly demarcated functions and status. In case the latter option is accepted then, "it would be desirable to appropriately revise the functions assigned to the Commission so that these do not overlap with the functions assigned to the Commissioner under the Constitution......" (27th Report of the Commissioner for SC/STs, 1979-81: 49-50). These observations had no impact on the government and the status quo was maintained till 1990. Thereby, the Commission and the Commissioner existed simultaneously and both have been presenting their reports. But during 1981-90, on many occasions, none of the two had the required composition. From 1981 to 1986, the post of Commissioner was lying vacant, whereas the Commission did not either have the full-members or there was no Chairperson to head the meetings and prepare requisite reports during the said period.

The legislative perspectives have shown that one of the major demands during 1985-95 related to the conferment of constitutional status to the Commission and to provide it more powers to investigate, monitor, participate and advise in the matters of Dalits. The major themes of the Bill introduced in 1990 can be divided into three parts:

i) Composition of the Commission

ii) Duties of the Commission

iii) Powers of the Commission

The Bill proposed five member Commission, which included one Chairperson and a Vice-Chairperson with three other members to be appointed by the President of India

So far as duties were concerned it was to perform the following:

a) to investigate and monitor all matters relating to Dalit interests;

b) to examine specific complaints of deprivation of rights to these sections;

c) to present annual reports to the President and in response the government to table the reports in Parliament with action taken report and also mention the reason for not taking action;
d) to advise on effective implementation of measures for protection, welfare and socio-economic development; and

e) to send a copy of report or part thereof to the concerned State Governments and the Government was to table the action taken report before the State Legislative Assembly.

The only power the Commission had was to regulate its own procedures.

The debate on the 3rd and 4th Reports of the Commission for 1980-81 did put up a strong demand for providing constitutional status to it. It has been clearly mentioned in the previous chapter that the discussion on reports of the Commission and Commissioner provide a contextual framework on the functioning of the policies and programmes for SC/STs and most of the Members strongly pleaded for strengthening of the Commission not through some vague orders or guidelines but with a constitutional amendment Bill. Though during that time, the Minister of Welfare smartly ignored the issue by saying that "the Government will certainly look into how effectively the Commission can work" (LSD 29 November 1985: 262).

During the discussion on the Bill, nineteen Members participated in the debate in the House. One of the eldest Members of the House N.G.Ranga [Guntur] stated that there was no need to be very optimistic about the capacity of the Bill to provide the services and protection to the concerned people, but he did not object to passing of the Bill (LSD 28 May, 1990: 124) Yet another Member called the exercise another "small step" to boost the downtrodden (Ibid:129).

The MPs brought in other issues related to Dalits like taking economic measures to make the Commission successful. It was suggested that misutilisation of funds should be looked into by the Commission (LSD 28 May 1990: 132), and the Central Government should be made accountable for the implementation of the Special Component Plan and Tribal Sub-Plan, which are premier programmes to uplift Dalits. The fact that land reforms implementation needs special legislation to ensure effective intervention of the Commission was argued by Matilal Handra [Jhargram] (LSD 28 May 1990: 140). Arvind Netam [Kankar] wanted a separate Tribunal for SC/ST employees on the lines of Central Administrative Tribunal (LSD 23 May 1990: 138).

Majority of the Dalit Members were apprehensive about the success of the Commission and reiterated their demand to look after the implementation of the
rules and regulations formulated under the Bill (K.D. Sultanpuri, Kusuma. Krishna Murthi, Arvind Netam, Kumari Mayawati, Ramlal Rahi, etc., LSD 29 May 1990)

Another area of suspicion among the Members was the dependence of the Commission on the state governments which have hardly been co-operative in providing the required information to the commission. To avoid the gaps in formulation and implementation Piyarelal Handoo [Anantnag] asked the government to confer not only the powers of monitoring and enforcement but also to implement the welfare programmes for Dalits to the commission so that the objectives set in the Constitution could be realised (Ibid: 143).

One of the most frequent observations during the debate was to bring the Commission under MHA. Although there was no consensus on the issue, but most of the Members suggested the Commission to be either under MHA or to be an independent body like UPSC or CAG, but not under the jurisdiction of MW. It was only Mayawati of Bahujan Samaj Party, who argued for the Commission to be under the direct jurisdiction of MW (LSD 29 May 1990: 140) K.S Chavada [Patan], even suggested that a new Ministry should be created for the Welfare of SC/STs under whom the commission should also function or the welfare functions should be brought under the MHA (Ibid : 124)

It is interesting to note that the three amendments suggested by the then Chairperson of the Commission and Member of Lok Sabha from Lalganj, Ramdhan, were introduced as the government amendments and incorporated in the Bill. The Government Amendments included:

1) the appointment of some more Members in the Commission, apart from the Chairperson and Vice-Chairperson,
2) the substitution of 'examine' with "inquire into" regarding the complaints against the government functionaries vis-à-vis the programmes for the positive discrimination for SC/STs and,
3) to participation and advise in the planning process of socio-economic development of SC/STs and to evaluate the progress of their development under the union and any State.

Ramdhan wanted the number of members to be six instead of three. He was also not in favour of a Vice-Chairperson in the Commission. It was on the plea of the non-existence of such a post in case of Backward Class Commission or Minorities Commission.
P.R. Kumarmangalam [Salem] moved two amendments, 1) to increase the number of Commission Members to ten, and; 2) to elect the Members of the Commission from amongst the Members of the Lok Sabha. But the government did not accept any of the two suggestions. Whereas K.D. Sultanpuri [Simla] moved seven amendments, out of those three related to the omission of the post of Vice-Chairperson, the other related to the Chairperson to belong to SC/ST communities and another appointing the commission for a period of five years. The sixth amendment of K.D. Sultanpuri was to ensure the fulfillment of the SC/ST quota in lower courts, Public sector undertakings; state and central government offices, and, the last one being to direct the state governments to remove all the impediments coming in the way of economic welfare of SC/STs. Also was included the question of taking action against those States which would show non-compliance with regard to these concerns. Though K.D. Sultanpuri withdrew all the amendments on the assurances of the Minister of Welfare for inclusion of the relevant amendments, while formulating rules and regulations concerning the Bill.* Though Jose Fernandez [Nominated], Anandi Charan Das [Jajpur] and K.V. Thomas [Ernakulam] also gave notices to put amendments but they did not move them.

In spite of repeated demands by the Members in Lok Sabha, the Commission was kept under the jurisdiction of MW, instead of bringing it under the MHA.

As per the status of the Commission as a nodal agency to safeguard the interests of the SC/STs, it has been given powers to investigate, monitor and inquire into specific complaints with regard to the usurpation of rights and welfare provisions for them. It can ask any office or department under the state or central government to send requisite information and investigate into the complaints received by it. It also monitors the implementation of the existing policy decisions with regard to these sections. As a monitoring agency, it has to present annual or special reports to the President and can make recommendations that should be adopted by the union or the states in safeguarding the measures for the protection, welfare and socio-economic development of the concerned groups. Also the President can ask at times to discharge some other functions in this regard as per the laws passed by the Parliament.

* To appoint the Chairperson only from amongst the SC/ST communities was incorporated under the rules.
The most important function that was absent in the provisions of the erstwhile Commissioner and the Commission related to the powers of the Commission to function as a Civil Court. Now it has got the following powers:

a) summoning and enforcing the attendance of any person from any part of the country;

b) requiring the discovery and production of any document;

c) receiving evidences on affidavits;

d) requisitioning any public record or its copy from any court or office;

e) asking for examination of witnesses and document; and

f) any other matter that may be determined by the President

These provisions were not part of the original Bill but were introduced while passing. These are indicative of the legislators' impact on the policy output because they demanded to confer it the status of the Commission of Inquiry 1962. It was due to the Commissioner's role in the policy process and planning that a controversy erupted in the 1970's, wherein the CSCT's role was questioned regarding his involvement in it. But to avoid this controversy, the 65th Amendment Bill has categorically carved out its role in the planning process as a participant as well as an advisor to evaluate the progress of SC/ST's under the central and the State governments. The powers of the NCSCT have not only been confined to the participation in the planning process but also it has been made obligatory on the part of the state and central governments to consult the NCSCT on all major policy matters that have direct or indirect impact on the concerned collectives of the Indian Society.

The Members' articulations show presence of both, the representation of Customary, as well as the specific Character, where demands are raised to encompass a few more themes in the Bill, and then pursue those demands while passing it through. The real impact of the demands does not occur during the deliberations on the floor of the House, but before the Bill comes to the House as is evident from the amendments to the original Bill by Ramdhan which were incorporated as the government's amendments. The amendments by K. D. Sultanpuri and P.R. Kumarmangalam regarding the Chairperson of the Commission to be only from SC/ST communities of the former and to elect the Members of the Commission from amongst the MPs of the Lok Sabha by the latter were not included
by the Minister. Though initially they insisted upon for their inclusion but after the Ministers' response on the debate, they withdrew their amendments. Ramdhan's insistence to increase the numbers from five to six members was also left out and even the voting on it could not help it to get incorporated in the Bill.

The discussion on the 65th Amendment Bill reflects the prevalence of both enduring representation of customary and specific character, where not only suggestions are made but also amendments moved to incorporate those in the original Bill. The major issues raised during the debate had been to bring the Commission under MHA or to create a special Ministry, to look into the implementation of the rules and regulations of the Bill misutilisation of funds etc., which were directly concerned with the Bill. Some of the Members raised issues which were indirectly related such as special tribunal for SC/STs on the lines of Central Administrative Tribunal, attention towards land reforms, asking the Commission to implement Welfare programmes also with monitoring them, etc.

If we look at the amendments introduced by the Members we find that the focus was on increasing the number of members in the Commission or on the indirect issues such as fulfilment of quota, directing state governments to remove all the impediments hindering welfare of SC/STs etc. Many members who gave notice more amendments, did not do so, while passing the Bill.

Thus we see that the focus of the discussion, while the passing of the Bill, remained on either increasing the number of Members of the Commission or on indirectly concerned aspects, and not on strengthening the Commission by providing it with more powers and functions which would help Dalits. The overall impression of the legislature's involvement remains unsatisfactory with a few successes like acceptance of three amendments proposed by the MP from Lalganj constituency.

Thus so far as demands for amendments are concerned, the Members raised the demands which indicated the representation of the specific character prevalent among the Members but the impact of such demands on the policy output had been negligible. On the other hand, the perspectives of the Members adopted during deliberations show some impact because the government included a number of themes in the original Bill.

After enforcement of NCSCT, a debate on the erstwhile Commissioner and the Commission's reports was held in 1994 on which 41 Members participated in the discussion. Among them only 9 Members referred to the functioning and status of
the present Commission. One of the major observations was to present and discuss the annual reports of the Commission in time on the floor of the House. Some Members raised the issue of flaws in the functioning of the Commission as it could not direct the state governments to take necessary steps where excesses on Dalits were committed (K.D. Sultanpuri [Shimla] 7 December 1994). They also raised the issue of the reports being confined to the red-tapism prevalent in the bureaucracy, and the establishment of a network between the Union Commission and the State Commissions to function in a proper and efficient way (Dwarkanath Das [Karimganj] Ibid: 236, 237).

The vast majority of the Members were satisfied with the power conferred on the Commission but the non-Dalit MPs, Ramashray Prasad Singh and Rasa Singh Rawat were not satisfied with its powers and function. They maintained that even the Constitutional status has not helped the Dalit masses and there is a need to make it more competent:

Rasa Singh Rawat [Ajmer]:
Sir, one thing I would like to say through you that this commission should be made competent, strong and effective. At present it is like a toothless tiger. This Commission cannot take any action. Whenever any incident of atrocity is occurred and news are read in the newspapers, the Chairman of the Commission, or Minister goes there to get information. But the inhuman act that has been committed cannot be done undone and lateron matter is hushed up and no action is taken. The exploitation and oppression which is being done of these classes should be checked. That is why I would say that the Commission for Scheduled Castes and Scheduled Tribes should be strengthened and it should be empowered to accomplish the task with which it has been entrusted (LSD 8 December 1994:295).

The Commission's inability to check atrocities has always been raised and rightly so because it does not work or has not been entrusted with the powers of taking preventive action and even if it suggests so, then the implementation has to be done by the state not by the central government. Thus on the one hand the Commission lacks the power to exercise preventive measures and on the other hand, its jurisdiction does not provide it to function as a criminal court and that is why on most occasions, its criticism lies not in its functioning but in its structure itself which
fails in taking punitive action against the culprits in case of violation of laws regarding SC/STs.

The Commission's capacity against the adverse discrimination is marginal as compared to the compensatory discrimination. Its power to function as a civil court with regard to the socio-economic development of Dalits and its constant monitoring and reviewing the implementation of programmes, policies, rules and regulations against adverse discrimination has been marginal.

In terms of atrocities committed and findings available with the commission, it cannot enforce to provide justice to the Dalits (Human Rights Watch 1999:182)

**Constitution (Scheduled Castes) Orders (Amendment) Bill 1990**

The Constitution has been amended several times to include new communities in the SC/ST list. Though the Constitution does not allow any kind of discrimination on the basis of religion, but the SCs other than 'Hindus' have not been allowed to get the benefits of reservations. Among such groups, have been the neo-Buddhists who converted from amongst the SCs to Buddhism. Though the Government of Maharashtra had provided them the facilities long back but it was denied by the Central Government till 1990.*

On 24 May 1990, the Minister of Labour and Welfare, Ramvilas Paswan introduced a Bill in the Lok Sabha to provide the facilities available to those SCs who adopted Buddhism. The Bill was already passed by the Rajya Sabha. Twenty-eight MPs participated during the discussion on 28 and 29 May 1990 on the Bill. Twenty seven MPs supported the Bill and only one MP, Eduardo Faleiro (Mormugaon) opposed the Bill but abstained from voting and it was passed with a consensus. There were three categories under which majority of the MPs spoke:

1) Those, supporting the Bill without mentioning support for other religious converts to be given facilities under Dalit policy Paradigm;
2) those arguing in favour of other converts; and,
3) those who explicitly opposed the move to provide facilities to all categories other than Buddhists.

* Constitution (Scheduled Castes) orders (Amendment) Bill 1956 denied the facilities to other than Hindus but later on Sikhs also got it.
The emphasis of the debate was whether SCs converted to Christianity or Islam should also be given the same facilities as available to their counterparts. Fifteen Members argued in its favour. The very basis of secularism of the Indian Constitution was questioned by most of them. If there is a discrimination on the basis of religion in providing facilities to other religious converts then the secular credentials of the Indian State need to be questioned. This was opined by the legislators among whom K. S. Rao [Machilipatnam] was the most vocal (LSD 28 May 1990:55). One other significant argument was that the educational and economic status of a person cannot change overnight due to conversion. Though other religions may not recognise caste or untouchability, yet those who practice untouchability continue to do so and the life of such converts remains miserable, hence the need for amendment was argued by G. M. Banatwala [Ponnani] (LSD 28 May 1990:78). Interestingly, majority of the MPs in favour of facilities to other religious converts were from Southern States as conversion whether to Christianity, Islam or Buddhism has been a basic feature of society in those States. They emphatically pointed out that the demand to provide the facilities to other religious converts is quite legitimate and those converts are none but the same SCs with the same social and economic disabilities. The inhuman treatment of caste-Hindus was held to be the prime reason for conversion and it has neither changed their economic nor social status, was alleged by them. Of course, another major argument was based on the religious freedom provided to the citizens by the Indian Constitution which proclaims that no citizen shall be discriminated against on the basis of religion. So in the absence of these facilities to the Christians and Muslim converts, the right to freely profess and practice any religion becomes meaningless, was opined by them.

Supporting the Government's move to provide facilities to Buddhist converted from Scheduled Castes, Mayawati (Bijnor) opined against some Members who held that Buddhism was part of Hinduism, and also criticised the Government for taking a long time to confer the facilities (LSD 28 May 1990:73). Five MPs supported the Government's move to pass this legislation, but these. MPs did not mention about providing reservations to other religious converts. Implicitly we can say, they were neither against nor in favour of other religious converts on the issue. Among them, four belonged to reserved constituencies and one to unreserved.

Among twenty-eight Members, five vehemently opposed the demand for the inclusion of Muslim and Christian SCs in the list. They argued that the case for
Buddhist converts, and Muslim and Christian converts was entirely different. Those converting to Buddhism though adopted this measure against the evil of untouchability but it was not for the material benefits. It was a kind of protest, whereas, people converting to Christianity in particular go after financial benefits or under threat was their allegation. The following observation substantiate their opinion.

Ram Ganesh Kapse [Thane]:

"....... the people who adopted Islam or Christianity that conversion has taken place either under pressure or for pecuniary benefits (LSD 28 May 1990: 57)."

Replying to the debate the Minister of Welfare Ramvilas Paswan said that the Government did not have a negative attitude towards other converts but it needed a general consensus in the House as is present for Buddhist converts. He also remarked that if it would not have required a general consensus then the 8th Lok Sabha in which Congress had 3/4 majority could have passed a Bill in the regard (LSD 29 May 1990:88-107).

Due to these remarks of the Minister, MPs like G. M. Banatwala, S. Benjamin Shikiho Sema and N. Danis, who had proposed amendments to include Christian and Muslim SCs, did not pursue them and hoped that in future, the Government will include them to benefit all the converts and preserve the secular character of the Indian Constitution.

The MPs showed both representation of customary and specific character. They may have argued in favour of inclusion of the other communities in the SC list but they did not pursue increasing the proportion of reservations due to addition of Buddhists. Replying to the debate the Minister himself gave assurance on various issues viz., increasing the percentage of reservation, inclusion of land reforms in the 9th schedule, a policy for proper rehabilitation of the persons involved in manual scavenging, and continuation of special recruitment drives (SRDs).

One explanation for legislators not asking for larger questions could be passing of the Constitution (Sixty-eighth) Amendment Bill during the same period, where the policy issues were being discussed on a larger scale.
National Commission for Safai Karamcharis Bill

Safai Karamcharis, among them mostly Dalits, are considered to be in the lowest rung of the social order. A national scheme for elimination of scavenging and disposal of 'night soil' by human beings was initiated by the Central Government in March 1991. It had two integral components viz., a) to restructure the mechanism of carring human excreta by introducing water borne latrines; and, b) to rehabilitate the scavengers in other occupations by training them. This scheme involved the Ministry of Urban Development and (MUD) and the Ministry of Welfare (MW) and the State Governments, where conversion of dry latrines into water borne ones was with MUD and rehabilitation was to be taken care of by MW and the outlay on margin money was to be shared by State and Central Governments in the ratio of 49:51. "The process of liberation of scavengers involves not only value conflict, rehabilitation and change in the means of livelihood, it is also closely related to the change in social status and patterns of social relationship". (Pathak 1996:14)

Ramesh Chandra (1999) numerated a number of flaw in implementation of the scheme. He mentions about:

a) Government cannot bear the expanses of providing water born latrines to all the people countrywide;
b) The rate of stipend, which is Rs. 150 per month has been very low for each trainee;
c) Banks have shown reluctance to sanction loans to those scavengers who were found defaulters in other schemes, and,
d) Training gets weakened by poor enrolment of people due to lack of initiatives, and poor coordination and inadequate facilities, etc.

The All India Safai Mazdoor Congress has been demanding the constitution of a National Commission for Safai Karamcharis since 1990 (session held in 7th and 8th July 1990). On the eve of the 102th birth anniversary of Dr. Ambedkar, the Prime Minister Narsimharao pointed out that a Bill was to be introduced in this regard so that the menace of scavenging could be abolished completely (Nav Bharat Times (Hindi) Jaipur: 15 April 1993).

It was on 12th August 1993 that the National Commission for Safai Karamcharis Bill was introduced in the Lok Sabha. The main function of the Comission was to recommend specific programmes of action towards elimination of
inequalities in status, facilities and opportunities for Safai Karamcharis, and, a time-bound action plan. Pointing out the major functions of the Commission while introducing the Bill, the Minister of State for Welfare said that it will be primarily dealing with the manual scavengers of urban areas. It would look into the conversion of dry latrines into waterborn latrines, liberation and rehabilitation of those engaged in this occupation. Scavenging was to be ended by March 1997 as per the provisions of the Bill. The Commission was to recommend the policies and programmes to improve the living conditions of Safai Karamcharis; and, the Commission's reports to be presented before the Parliament and State Legislatures. He further stated that the 'Government has drawn a comprehensive scheme for rehabilitation of all the seven lakh scavengers and their dependends' (LSD 12 August 1993).

Twenty-five Members of Parliament participated in the debate on the Bill. Most of the members emphasised on providing alternative employment to the scavengers (LSD 13 August 1993: 279, 289 and 16 August 1993: 296, 306, 311, 315, 326; 331) The Members suggested that due to lack of alternative arrangements for scavengers' employment, there would be no change in the basic status of their reality. Without alternative employment, they will have no means to get their bread and butter. In spite of the filthiness of the occupation, their survival depends on it and so the primary need for the removal of scavenging depends on the alternative mechanism of employment for their survival was pointed out by them.

The second important aspect addressed by the Members was that the State should provide free education to the children of the scavengers (LSD 16 August 1993: 286, 290, 303, 314, 316, 320, 323). It was argued during the discussion that even if the present scavengers are able to get alternative means of livelihood, it may not ensure the abolition of the system in the absence of proper and free education to their children. The need was felt not only for education but also for uniform education so that the hierarchical system of education could not become a hindrance in getting employment opportunities to their children who would only be admitted in government run schools.

A demand was raised that arrangements like the Sulabh Sauchalyas could help in abolishing the system of carrying human excreta on head and other related issues (LSD 16 August, 1993, 290, 322, 323, 332) One of the members raised the issue of non-recruitment of scavengers by the Sulabh International - considered to be the pioneer organisation in the field of alternative arrangement of scavenging.
The other much debated issue concerned the relationship between NCSK and State Governments (LSD 16 August 1993: 297, 298, 326, etc.). The implementation of the schemes depended on the state governments so the members argued that without proper co-ordination between the Commission and these governments, the objective of the Bill cannot be achieved. They wanted establishment of committees at the levels of central and state governments.

The other issues raised by the members included special training to the scavengers, representation of Dalits in judiciary, regular salaries to the Safai Karamcharis, abolition of contract system, and last but not least changing the attitude of society towards this class of people.

The Members were basically concerned with the implementation part of the Bill and suggested some guidelines for action but none of them commented on the functions given to the Commission or the administrative apparatus essential for the proper functioning of the Commission.

Opposition members expressed dismay over the amount earmarked for the eradication of scavenging being too inadequate. Sayed Shahabuddin also criticised the Government for not being clear in its mind about the objectives of the Commission itself.

The Minister responding to the debate stated that for the identification and rehabilitation of scavengers Rs. 111.23 crores have been released to the State Governments. The SCSTFDC would be the direct incharge of the programme in collaboration with MUD. Out of Rs. 905 crores 105 crores had been earmarked for training and the rest for rehabilitation. The NCSK is to monitor the implementation of the programme and advise the Government for proper functioning of the scheme for ending the practice of carrying night-soil on the head by human beings and to rehabilitate them in alternative occupations.

A careful observation of the legislative responses to the NCSK Bill point out that the MPs were more concerned with the implementation part of the functions of the Commission and not for strengthening the Commission itself. They did not even ask obvious questions on how the Commission will deal with the State Governments or the individuals found guilty of manual scavenging. They could have argued for the status of a Civil Court to the Commission to handle the cases of violation of the law on manual scavenging, for which precedence existed under the NCSCT that functions as a Civil Court.
As the legislative interventions were not specifically for the Commission so amendments were not moved by the Members on the Bill and the Bill was passed in its original form.

Though the MPs showed representation of customary character but it was not directly concerned with the strengthening of the Commission. The concern was how the Commission should function, showing a focus more on the implementation aspect. The legislators having moved no amendment, again reveal the MPs satisfaction with whatever the Government proposes.

Constitution (Eighty-Sixth) Amendment Bill

The demand for reservation in promotion was raised several times during the Question Hour and debates on Dalit policy aspects. These demands were product of the Supreme Court judgment in the *Indira Sahni Vs Union of India* case popularly known as Mandal Commission Verdict, wherein the Court decided against the promotional reservation for Backward Classes prospectively. This was to be applicable only after five years beginning from 16 November 1992. For the continuation of the provision of reservation in promotions for Dalits, a constitutional amendment Bill was introduced by the Government on 2 June, 1995. A total of twenty-two legislators participated during the discussion on the Bill.

Apart form other concerns, the MPs raised four major demands: 1) inclusion of other Backward Class under the ambit of the Bill; 2) punishment to officials, indulging in non-fulfillment of quota; 3) someone can approach the court for the discrimination between SC/STs and OBCs regarding promotions in the bill; and to deal with the question of writing confidential Reports (CRs).

Majority of the legislators argued for the inclusion of OBCs in the Bill because reservations were provided to them also in the services under the State after the Mandal Commission verdict. Members argued that as per the provision of the Constitution, Backward Classes include SCs, STs and OBCs. So there was no need to create confusion among the people by separating them, which shows a discriminating attitude and slackness on the part of the Government. Reflecting towards the mood of the House in this regard, Mumtaz Ansari [Kodarma] asserted that "section of the House is raising no objection to the inclusion of OBCs also"

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* After passing the bill, it became the Constitution (Seventy-Seventh) Amendment Act.
Nitish Kumar [Barh] observed that as the Supreme Court covered various issues while giving its judgement in the case, similarly the Government also need to "cover all the issues and bring a comprehensive Bill in which ceiling of 50 percent should also go." (LSD 2 June 1995: 324).

The legislators were also suspicious of someone going to the court of law against the Bill, as it was discriminatory in nature against the OBCs and the court could term the Bill to be unconstitutional in the present form.

The following excerpt would indicate prevalence of this opinion:

Anandi Charan Das (Jaipur):

Article 16(4) deals with backward classes and all the people are covered in it. The provision of reservation has been made in section 335. It should also be included otherwise Supreme Court might be approached (LSD 2 June 1995: 359).

Another important feature of the debate was related with the punishment of officials indulging in any sort of recklessness with regard to non-fulfillment of reservations. They suggested various measures in this regard viz., fixing up the penalty against the officials, sending them to jail, making a criminal case against them, suspending or terminating them etc. Reflecting upon the opinion of the House in this regard, Ratilal Varma [Dhanduka] pointed out that "the laws are quite good but the people who have to enforce those are prejudiced, their intentions are malafide" (LSD 2 June 1995: 339).

The related concern of the discussion had been about writing of adverse remarks against SC/ST personnel in their CRs. Some of them observed that the non-Dalits may not like Dalits to be their bosses and spoil their CRs. The following statement of the MP need to be mentioned: Manikrao Hodlya Gavit [Nandarbar]:

"Now reservations in promotions will be given but when CR would be examined, and bad remarks given by officers will be seen in the confidential reports of SC&ST employees, then their promotion may be stopped. Therefore, Government should see how to check this tendency (LSD 2 June 1995: 348).

On the other hand, GMC Balayogi, K.D. Sultanpuri raised the issues of representation of SC/STs in High Courts and Supreme Courts. Rupchand Murmu questioned the intentions of the Government on land reforms that was needed for overall development of the SC/STs and its non-implementation in the absence of
sincerity and honest will. Kalka Das wanted steps to be taken for reservation in private sector. Geeta Mukherjee raised the question so providing in-house training to SC/ST officials so that the hindrance in their promotion could be stopped.

Responding to the debate, the Minister of Welfare, Sitaram Kesari said that it was a long pending demand to provide promotional reservations to the SC/STs in view of the Mandal verdict and so far as the question of similar provision for OBCs was concerned, he assured the House that when a consensus is built then he will bring the Bill in this regard.

When the motion was put for voting then, four Members* introduced their amendments and few others supported them. But, on assurances from the Minister all the amendments were withdrawn. And the Bill was passed by majority of the House, wherein 326 members favoured the Motion and only one member Mohan Rawale [Bombay South Central] opposed it stating that there were political reasons behind the introduction of the Bill (LSD 2 June 1995: 369).

The deliberations during the discussion on the Bill show a concern for policy issues and the concerns were basically related with OBCs but was not absent in favour of SC/STs. Whether it was a question of punishment to officials indulged in non-implementation of reservation policy or putting a check on adverse remarks in the CRs of SC/ST officials or even for that matter the fear of somebody going to the court of few against the Bill, related primarily with Dalits. Thus it shows a prevalence of the representation of customary character among the legislation.

On the other hand, demands for amendments in the Bill in favour of SC/STs, while passing it were almost completely absent. One solitary example in favour of SC/STs was the amendment proposed by Ramvilas Paswan for promotions in the organisation taking assistance from the Government and that could have had a major impact on Dalit policy paradigm. Thus during the debate on the Bill Enduring representation of specific character was present but it was more in favour of OBCs and almost neglected SC/STs.

* P.G. Narayanan [Gobichettipalayam], Ramvilas Paswan [Rosera], Anadi Charan Das [Jajpur] and Devandra Prasad Yadav [Jhanjharpur].
Parliamentary Committee on the Welfare of SC/STs: Its Recommendations and the Policy Output

In the following discussion, an attempt has been made to examine the observations and the recommendations contained in the Reports and their impact on the policy output for Dalits. It would also be looked into that how far these Reports bridge the gaps left by the Lok Sabha for the development of Dalit policy paradigm.

Since the Parliament is pressed for time it does not and can not debate and discuss each and every matter that comes before it. To save time, several Committees are constituted by the House to look deeper into the questions as well as recommend to the Executive measures to be taken under the given circumstances. Legislative committees are "meant to provide a balancing factor in a system that is otherwise geared to the hegemony of the executive (Parliamentary Committees in India (preface), Institute of Constitutional and Parliamentary Studies, New Delhi: 1973).

To save the time and resources of the Parliament, a Committee on the Welfare of SC/STs was set up in 1968 to consider the reports of Commissioner for SC/ST (now NCSCT); to report to both the Houses on action taken by the Government; to examine measures taken by the union government; to secure due representation and matters referred by the House; and to report to both the Houses on the working of the Welfare measure, regarding Dalits (Narayana 1980).

During 1985-95, as mentioned in the introduction, the Committee produced 93 reports where all but four reports were primarily concerned with implementation aspects. Among the four, two were Action Taken Reports on the previous two prepared by the Committee. These were:

1) Reservation for Scheduled Castes and Scheduled Tribes in Private Sector (4th Report 10th Lok Sabha 1991-92), and 2) Formulation Implementation and Monitoring of Reservation Policy (24th Report, 10th Lok Sabha 1993-94) 53rd and 43rd Reports of the Committee respectively discussed about the action taken by the Government on the above two reports.

Stating the reasons for coming out with the report on Reservations for SC/STs in Private Sector, the mention was made, a) to examine the impact of new economic reforms, and b) lock of formal consideration by the Government on the issue.
The Minister of Welfare Ramvilas Paswan held discussions in 1990 with the concerned officials and took the view that reservations could be provided in private sector if Article 46 was read with Article 15(4).

Before this, the P.C. Mathew Committee on National Employment Service had also held that "any technical difficulty (to provide reservations in private sector to SC/STs) should be overcome by amending the constitution. However the Cabinet on 19 July 1990 took a decision against such a move at that stage.

The demand for reservations in private sector by the Committee has not been new and the matter was examined previously also in 41st Report by Fifth and 18th Report by Sixth Lok Sabha. It was emphasised in the Reports that proportional representation should be provided to the SCs and STs in the private sector. Those reports in particular asked to make it compulsory in case of private institution who received any kind of assistance such as loans, land and licences from the government.

The 18th Report had asked for enactment of a new legislation in this regard but the Ministry of Law said that “it was not possible under the law to impose such a condition" and that article 16 (4) permits reservation in jobs only in respect of services under the State and not under the private sector.

The Members of the 9th Lok Sabha Committee held discussions with various officials in Ministries. The Labour Secretary during that time held that though legal opinion on the reservations in private sector was not favourable, even then "whatever has transpired since then (1983), the way constitutional law had developed, and based on the guidance of this committee, this issue would certainly be considered again". On the contrary, the Additional Secretary in the Deptt. of Industrial Development stated that in the changing scenario increasing productivity will be the focus of industrial service and trading organisations. The focus should be to equip people rather than asking them (private sector) for reservation, which some of them are finding difficult to accept from the point of view of efficiency and productivity.

* The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. It was added by the constitution (first Amendment) Act 1951 that says "nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and Schedule Tribes".
The Committee also learnt that the Ministry of Finance has proposed to impose a cut of Rs. 3500 crores on both plan and non-plan expenditure during 1991-92 and banned fresh recruitment in Government Departments, and public sector banks and under takings due to financial constraints. A cut of Rs. 500 crores was also imposed on the annual budget outlay of Department of Rural Development. When the Ministry of Finance was suggested by the Committee Members not to impose cuts on various schemes/programmes undertaken for socio-economic uplift of the SC/STs. The government replied that "this has to be seen in the overall context of the total available resources at the disposal of Central Government".

On the basis of above facts and figures, the committee made six recommendations.

1. The impact of liberalisation of economy on poorer sections, particularly SC/STs has to be considered carefully.

2. The second recommendation primarily narrated the recommendations of 4th and 5th Lok Sabha and Secretary in MW etc.

3. Immediate measures need to be taken up - a) to ensure reservation policy in employment to lower all new employment opportunities in private sector; b) to extend reservation policy in all such industrial service and trading organisations which receive any kind of assistance from the Government; c) to ensure that retrenchment of staff due to new economic policy does not adversely affect the SC/ST employees; and, d) to take immediate steps to implement the above three measures in a time-bound framework.

4. The allocations for welfare schemes in Central and State budgets should in no case be less than that of 1991-92 and grants-in-aid institutions should follow reservation policy in letter and spirit. Making policy statements will not do if needed even the constitution could be amended for legislation in this regard.

5. Need to review July 1990 Cabinet decision against reservations in private sector.

6. For amending constitution, the Government should not rely on the legal advice given in 1983 but it must take into consideration the development of constitutional law since then.
The recommendation on "the allocations for Welfare activities should not be reduced" was withdrawn by the committee as these allocations did not reduce during 1992-93 and 1993-94 Budgets).

The recommendations which were made need to be analysed in the light of the 53rd Action Taken Report on the issue. Action Taken Reports assess recommendations/observations in terms of:

1) those, accepted by Government,
2) those, Committee does not want to pursue in the light of the replies;
3) those, reiterated by the Committee; and
4) those, on which final replies not received from the Government.

The first two observations were accepted by the Government i.e., 1) liberalisation process will reduce the Government activity and will affect Dalit population putting them in a helpless situation in the employment market unless adequate and immediate measures are adopted to correct the emerging imbalances and, 2) previously the committee, Cabinet Ministry of Welfare etc. have also recommended in this regard.

The reply of the Government with regard to the major recommendation on the implementation of reservations in the private sector and to review the Cabinet decision of July 1990 was not accepted by the Government on the pretext that the Attorney General of India to whom the matter was referred to by the Ministry of Law and Justice held that "legislation for reservation in private sector is constitutionally not in order". But the Committee reiterated the demand.

There has been no impact of the Committee's recommendations on the Dalit policy paradigm. The government accepted only the observations of the Committee and not the recommendations for reservations in the private sector. The only output of the recommendations seems to be the absence of reduction in the budgetary allocations for welfare programmes vis-à-vis 1991-92 which is primarily a short-term concern. The administrative apparatus had become an hindrance in the policy formulation because the Additional Secretary in the Ministry of Industrial Development and Department of Personal (1980) and the Attorney General (1993) argued against such moves. Thus in spite of several developments since independence, the Committee's recommendation to have reservations in the private sector had no consequences on policy output of Dalits. Not only this, the
Government gave no assurance to come out with a legislation in future also, leading to insignificance of PCWSCT.

On the notice given by Rajnath Sonkar Shastri [Saidpur] a Half-an-Hour discussion was held in the Lok Sabha on 'Reservation for SC/STs in DESU after Privatisation' (LSD 23 August 1993: 430-462). On the reports that the Government is going for privatisation of DESU, the member raised two questions, while initiating the debate: (i) Whether the Government contemplates to come out with a necessary amendment in the Constitution for reservations in private sector, and, (ii) Whether the Government signed any agreement with the Multi-National Corporations (MNCs) to safeguard constitutional provisions in jobs for Dalits.

While participating in the discussion four members made four observations. Santosh Kumar Gangwar [Bareiley] asked how, when power generation is in the hands of Government and distribution with the private sector, could the reservation policy be followed. Laxmi Narayan Pandeyya [Mandsur] raised the issue of loss to DESU with the privatisation in general. Rasa Singh Rawat [Ajmer] wanted to know what assurances the Government took from the companies on reservation. Kalka Das [Karol Bagh] alleged that the Government is not taking the matter seriously.

Initially the Minister of Power and Energy N.K. P. Salve stated that if reservations can be followed in private sector, "we shall definitely follow it" (Ibid: 438). Further he said that "I do welcome your suggestion". "I personally stand for social emancipation and economic advancement of Backward Classes" (Ibid: 448) but he also stated that he had no injunction which stipulates for providing reservation in private sector as there are not constitutional guarantees and Article 335 categorically mentions regarding reservations only in the affairs of the Union and the State Governments. So far as agreement with the MNCs, the Minister remarked "we have not made any agreement and whether I can stipulate or not, is not the issue in question" (Ibid: 460).

It exposes the government's concern to safeguard the interests of the SC/STs in the emerging economic scenario, where private sector is to play a more important role as compared to earlier times. Thus, the legislators raise the policy matters vis-à-vis Dalits but the Government's stand remains indifferent and even the assurances are not given.

Yet, another question on Dalit policy paradigm emerges is, whether it would be extra-constitutional or against the Constitution to provide Dalit representation in
private sector. Here it needs to be re-affirmed as stated by the Minister of Welfare in 53rd Action Taken Report that reservations could be made in private sector under Articles 46 read with Article 15(4). If 73rd Amendment Act to give powers to Panchayats can be implemented on the basis of sole Article 40 of the Constitution under Directive Principles of State Policy, then the question arises why it can not happen with regard to the representation of SC/STs in the private sector with the help of Article 15(4) and 46 in which the former is part of fundamental rights which are mandatory to be implemented on behalf of the State.

Another report on 'Formulation, Implementation and Monitoring of Reservation Policy', was prepared by the CWSCT in 1993-94. So far as formulation of reservation policy was concerned the Committee was informed that six departments/ministries* were involved in the process. The Secretary in the Ministry of Personnel, Public Grievances and Pensions (DOPT) stated that special reservation for SC/STs in case of promotions comes under DOPT.

The implementation of Reservation policy is the responsibility of various Departments and Ministries, while Monitoring is done by NCSCT was also stated by the DOPT.

Some of the major recommendations of the Committee were:

1) To develop an understanding with the Bank Unions for 50: 50 ratio for direct and promotional recruitments respectively.
2) Relaxation in the period of qualifying service for SC/STs in case of promotions.
3) To bring a proposal for removal of all restrictions limiting applicability of reservations orders and follow Supreme Court judgement in Syndicate Bank case for the departments Ministries, PSU, etc.
4) Reservation in ad-hoc appointments.
5) Reservation according to population as per 1991 census.
6) Fulfill huge reserved quota in various departments.
7) Best among SC/ST candidates to be selected.
8) In-service training at a massive level to wipe out the backlog particularly in technical and quasi-technical services.

* (i) Department of Personnel and Training; (ii) Department of Public Enterprises, (iii) banking Division of Ministry of Finance; (iv) Insurance Division of Ministry of Finance; (v) Ministry of Rural Development (vi) Ministry of Urban Development.
9) Setting-up pre-examination training centres at the district level particularly with reference to Special Recruitment Drive.

10) To hold special examination for SRDs.

11) Supply of up-to-date statistics in various Departments/Ministries and particularly in University Service, Judicial Service and Organised Private Sector.

12) Reservation in allotment of Houses to government personnel.

13) Making Panchyati Raj Act applicable to Schedule Areas immediately under para 5(1) of the 5th Schedule.

14) By cooperating with the State Governments to monitor, the administration of Scheduled Areas and under Article 339 (2)*.

15) To fix up income criteria of Rs. 11,000/- for beneficiaries of Integrated Rural Development Programme because the land capabilities vary from region to region.

A few recommendations of the Committee were accepted by the Government. These included:

(i) reservation in ad-hoc appointments;

(ii) maintaining and furnishing statistical information relating to SC/STs to the Committee;

(iii) Special Recruitment Drive to fill up backlog under consideration;

(iv) legislation on Reservation for SC/STs under active consideration; and

(v) ban on dereservation.

In some of the cases, such as opening pre-examination centres, keeping information about the number of SC/STs, backlog in Departments etc. the Government maintained that the concerned Department has been requested to take necessary action. And the Committee asked to be apprised of the result.

Two recommendations were withdrawn by the Committee in the light of Government reply. They were:

1) relaxation in basic educational qualifications because it was not in consistent with article 335, and

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* The executive power of the Union shall extend to the giving of directions 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.
2) no reservations for the allotment of dwelling units because low income groups' interests are given preference in such cases.

There were some areas of recommendations which the Government did not accept and the Committee reiterated those for action viz.:

i) to increase the percentage of direct recruitment from 25 percent to 50 percent and negotiate with Bank Unions for the same;

ii) relaxation in qualifying period of service for promotion may not be juxtaposed with Article 335 on the pretext of being inconsistent with it;

iii) to make applicable the Supreme Court judgement in Syndicate Bank case to all Ministries/Departments, Public Sector Undertakings, Public Sector Banks etc;

iv) to revise percentage of reservations as per 1991 census; and

v) to enhance allotment of Government accommodation for SC/ST Personnels.

Regarding the recommendation of extension of the Panchayati Raj Act provisions to the Scheduled Areas, the Government was not able to provide any satisfactory replies but stated that the matter was in the pipeline for consideration with the Chief Ministers who have not been working in accordance with Article 339 (2). The Committee asked to bring in its notice the action taken by the Ministry of Welfare in this regard.

The Committee seems to have been successful to bridge some gaps left by the Lok Sabha on the floor of the House regarding onslaught on reservation policy due to privatisation and liberalisation of the economy, and the need for relaxation to fulfill the reserved vacancies. The reports prepared by the Committee did not touch issues concerning major chunk of Dalit population viz., educational development, socio-economic uplift such as providing them lands or enhancing their capabilities through financial assistance.

Reservation in public sector did have a major impact on the socio-economic and political development of Dalits but this is an aspect that can not touch majority of the Dalit population i.e., all the Dalits or major chunk of Dalits cannot be accommodated in public sector because even if hundred percent jobs are reserved for them, only a small proportion of Dalit populace will be able to develop, and the rest will be left out without any consequence (Mandelsohn et al., 1998). It is more relevant in the present circumstances, where private sector is controlling the
economy at large and reservation as a safeguard for Dalits to secure jobs is declining due to its absence in private sector.

There were two important policy issues discussed by the 24th Report of the CWSCT. One related to providing reservations in ad-hoc appointments and the other for ban on dereservation. Similarly there were two important aspects under the Government’s consideration a) special recruitment drive for filling up back log; and, b) new legislation on reservation.

Another important aspect of 24th Report was the Government's pronouncement that the concerned Ministry/Department has been asked to take necessary action.

The most important recommendations which could have some consequences on Dalit Policy paradigm were not accepted by the government and the Committee reiterated those for reconsideration. Moreover, implementing the Panchayati Raj provisions in Scheduled Areas found no concrete and satisfactory reply from the Government.

The overall impression of the Reports of CWCST comes out to be that the Government is reluctant to accept major shifts in Dalit policy paradigm. The recommendations proposed by the CWCST hardly have positive responses from the Government. The recommendations which had the Government's consent are of minor consequence for Dalit policy paradigm and do not resemble any short of shifts necessary under the present circumstances. The Government is found to be neither ready to launch effective socio-economic programmes on its own nor able to pressurize the private sector to provide proper representation to Dalits.

Compensatory discrimination efforts or social justice programmes cannot be limited to education and public sector. Universalisation of education; healthcare; access to land and other property; and, ensuring access to employment both in public and private sectors are necessary to strengthen safeguards. Moreover if the liberalisation process is to be successful, the private/corporate sector cannot remain an island of "upper" caste privilege, as argued by Omvedt (Omvedt 'Reservation in the Corporate Sector': The Hindu, 31 May 2001).

* The ban on dereservation was addressed first by the Statement on ‘Liberalisation of orders for improving SC/ST representation in Central government Posts/Services’ on 19 April 1989 but dereservation could take place with the prior permission of the Ministry of Personnel.
Summing Up

In this chapter, an attempt was made to develop a co-relation between policy perspectives adopted by the MPs as outlined in the previous chapter. Also, we looked at the policy proposals of the Government on the one hand and the impact of legislative interventions on the policy output of Dalits on the other. We examined five Bills and twelve Statements made by the Government; and the Government's responses on four PCWSCT Reports prepared by the Parliament.

Policy perspectives by the legislators as discussed in the previous chapter shows their concern for strengthening existing institutional mechanisms and creating new ones for proper policy implementation. They also termed present policies of the Government as inadequate, inefficient and offered alternatives. Broadly, the policy issues the legislators had been concerned with were - stringent law to deal with atrocities, strengthening institutional mechanism of the Commission for SC/STs by providing it constitutional status, shifting the Dalit subject from the MHA to the MW, amending land distribution mechanism to make it more efficient for Dalits, fulfilling backlogs in government jobs, framing law in the light of Mandal Commission judgement for reservations in promotions, providing reservations in private sectors against the backdrop of liberalisation process, etc.

Policy proposals of the Government relate to atrocities, Commission for SC/STs, providing reservations to Buddhists converted from amongst Dalits, National Commission for Safai Karamcharis, and reservations in promotions. Regarding two major perspectives, one on land reforms and the other on reservations in private sectors, no policy proposal was forthcoming from the Government. Although in the 9th Lok Sabha, assurance was given to put this issue under the the 9th Schedule of the Constitution and the PCWSCT also came out with a comprehensive report on private sector reservations but the Government did not respond positively on the issue.

The legislators' contributions to policy proposals of the Government could be put under two heads:

(a) representation of customary character, and
(b) representation of specific character.

Whether Dalit or non-Dalit MPs, the representation of customary character was prevalent among the both, so was the case with representation of specific character.
A careful observation would reveal that representation of customary character indicates more towards a doubt among the representatives on implementation of the legislations. During deliberations on almost all the five Bills, apprehensions were expressed on the implementation part of a legislation. The second observation relates to drifting away from the subject matter of the Bills, whether its a debate on NCSCT or NCSK, the interventions seldom attempted to strengthen these mechanism as institutions, rather these deliberated upon what functions they should perform and how the functions could be performed adequately and efficiently. Thirdly, while debating on a legislation, related aspects were focussed more than themes in the Bill. For instance, asking for special tribunal for SC/ST employees on the lines of Central Administrative Tribunal, while discussing NCSCT Bill, representation of Dalits in judiciary, while deliberating upon NCSK Bill, providing reservation in private sector and empphasis on OBC reservation during the discussion on the 77th Amendment Bill that was only for continuation of job reservations in promotions in government sector, etc. Thus representation of customary character indicates towards lack of pin-pointed discussion on a particular Bill and this applies both to Dalit and non-Dalit MPs discussing on Dalit policies.

On the representation of specific character front, Dalit MPs have been equally active as compared to non-Dalits. While passing of PAB no amendment was introduced by Dalit MPs whereas a non-Dalit MP introduced eight amendments. Similarly in case of NCSCT Bill, two Dalit and one non-Dalit MP moved amendments, and during the SC Order Amendment Bill, two non-Dalits and one Dalit MP moved amendments, no amendment was introduced while passing of NCSK Bill. It was during the 77th Amendment Bill that both the Dalits and non-Dalits were equally active for amendments.

A look at the policy proposals of the Government in terms of Bills and Statements makes it abundantly clear that the Government was more responsive during the 9th and 10th Lok Sabha as compared to 8th Lok Sabha. There had been only one Bill that was passed in the 8th Lok Sabha and it concerned the prevention of atrocities. No Policy Statement was made during 8th Lok Sabha. Our view that the Lok Sabha has become more active towards Dalits in the post-Mandal period stands substantiated. Even all the four PCWSCT Reports on policies were prepared in the post-Mandal period.
Though the 9th and the 10th Lok Sabha discussed Dalit issues promptly but one major aspect of representation of specific character was emphasis not on extending facilities but to bring more groups within the framework of special safeguards, as could be seen while passing of the SC Order Bill in 1990, where major emphasis was to include Christian and Muslim converts. The same holds true for the 77th Amendment Bill, wherein OBCs inclusion in the promotional benefits was emphatically asked for.

It is to be noted that legislators have been more active on representation of specific character primarily on three occasions - one, during the 65th Amendment Bill, two while passing SC order Amendment Bill and three, while passing of the 77th Amendment Bill.

Analogy between policy perspectives during discussion on CSCT Reports and policy proposals by the Government reveal a nominal relationship between them. One, of the aspects left untouched by the Bills has been covered by the Statement made on the liberalisation of Orders to improve the representation of Dalits in the central services.

Only the 9th Lok Sabha was responsive towards legislative deliberations as is evident from the fact that the 65th Amendment Bill was passed and many new clauses were added to the original Bill. Significantly at no other point of time the amendments introduced by the MPs were added to the original Bill.

Policy output of PCWSCT reports on Dalit policy paradigm has been to say the least, negligible. Although these reports were able to bridge the gap left by legislative debates on private sector reservations and fulfillment of backlogs but here as well the Government's response has both been quite poor and muted. No substantive policy issue was tackled positively by the Government. It shows that PCWSCT may try to bridge the gaps left by legislative deliberations but the Government remains unaffected and unaltered on Dalit policy questions.

We may conclude thus that though the Lok Sabha does deliberate upon Dalit issues, it does so both poorly and inadequately. And the response of the government remains negligible and muted. However, assurances are given for formulating policies in future. All this indicates that there has been no major shift in the Dalit policy paradigm and the focus only remains on strengthening mechanisms for implementing existing policies.
The Parliament seems to have been able to bring various Dalit issues on the agenda of the government. It could be observed with the perspectives adopted by the MPs on the reports of the CSCT and the Bills introduced by the government. Nevertheless, in spite of deliberations and proposed amendments on the Bills the MPs failed to alter the themes contained in the legislations introduced by the regimes in power.

Neither the perspectives on CSCT reports, nor the deliberations on the Bills and even the PCWSCT would make the Government realise the need to provide representation to Dalits in the areas not covered by the present Dalit policy paradigm.