Introduction

Statement of the Problem:

The poor status and treatment of dalits is one of the most important challenges facing Indian society today. Indeed, along with widespread poverty, hunger and deprivation, the persistence of discrimination against dalits can fairly be described as one of the most important moral challenges facing not just India, but the world. As per 2001 Census, 166.6 millions Scheduled Castes (SCs) are spread all over the country and they constitute 16.2 percent of India's population. In India, historically, the exclusion of dalits from human society has been for religious and cultural reasons. Because of the pre-assigned duties of the caste into which they are born, many dalits are condemned to clean toilets, transport human excreta manually, clear animal carcasses and human remains etc., while others are forced to work in the hazardous leather and tanning industry. Frequently subjected to humiliation, often the victims of rape and enforced prostitution, controlled in parts of the country by caste militias, the dalits are virtually slaves and hardly in a position to choose a profession of their own choice. For most dalits, birth is in itself a life sentence as there is hardly any prospect of improvement in social status despite education or a change of profession. At times even a change of religion does not help. Considered impure and therefore untouchable, even a dalit's shadow was considered polluting in the past. Free access to drinking water from sources shared by upper castes is still forbidden in many parts of rural India. Exposure to education is extremely limited, and interaction with other sections of society not easy. Their earnest demands for equality are frequently met with dishonest denial of the problem itself. Faced with untouchability, social exclusion, official apathy or even antagonism from inadequately trained public officials, dalits are denied the
opportunity to participate meaningfully in society, either culturally or economically. Rarely protected by the police, frequently denied entry into places of worship, succumbing to superstition and far removed from the achievements and benefits of modern civilization, the dalits of India are the victims of the Hindu caste system. In the period of globalization, privatization and liberalization, the pressure on these groups has become unbearable. Even after 60 years of independence, dalits still live in segregated sections of the overwhelming majority of Indian Villages. Even today, in several parts of the country, it is risky for them to even walk through the upper castes bastis. They have no access to the burial grounds in many villages. Residential segregation is still practiced in the case of dalits. Even the developmental schemes initiated by the government have not been able to correct the problem of residential segregation. For instance, the Indira Awas Yojana reinforces the practices of building homes for dalits away from the rest of the village.

As a group, they are more discriminated than any other group in the country. The cure is part of the cause in this case; as members of the Scheduled Castes and Scheduled Tribes (SCs/STs), also known as dalits, avail themselves of the advantages of reservation, and awareness of rights increases, the status quo of inter-caste relations in villages faces severe challenges. Increased violence, and increased reporting of incidents of violence, is a natural product. So why has the impact of these dramatic developments not been felt within the country? Although dalit groups have had great success in gaining publicity for their cause, they have consistently failed to hold the Indian governments to the standards of existing national and international legislations. The Prevention of Atrocities Act is a case-in-point. In 1989, the Government of India passed the Prevention of Atrocities Act (POA), which delineates specific crimes against Scheduled Castes and Scheduled Tribes as “atrocities,” and describes strategies and prescribes punishments to counter these acts. Although the POA is a powerful and precise
weapon on paper, in practice the Act has suffered from a near-complete failure in implementation. Ironically, the primary obstacles to implementation are intended to be the primary enforcers of the Act—the lowest rungs of the police and bureaucracy that form the primary node of interaction between state and society in the rural areas. Police have displayed a consistent unwillingness to register offences under the Act. This reluctance stems partially from ignorance. According to a 1999 study, nearly a quarter of those government officials charged with enforcing the Act are unaware of its existence. In most cases, unwillingness to file a First Information Report (FIR) under the Act comes from caste-bias. Upper caste police are reluctant to file cases against fellow caste-members because of the severity of the penalties imposed by the Act; most offences are non-bail able and carry minimum punishments of five years imprisonment. Hard work by human rights defenders has slowly begun to decrease this problem. Nevertheless, the staggering scope of the problem demands government intervention before cases can be properly registered under the Act. The statistics speak for themselves: out of 147,000 POA cases pending in the courts in 1998, only 31, 011 were brought to trial. Such delay is pandemic to the Indian judicial system.

So why has there not been more public outcry about the dismal failings of the POA? Within the government, shoddy monitoring systems have prevented effective action from being taken. The question remains as why dalits are subjected to this situation despite the constitutionally guaranteed rights and elaborate provisions of institutional instruments. Among the others, The National Commissions for Scheduled Castes and Scheduled Tribes is especially important in this regard.

The National Commissions for Scheduled Castes and Scheduled Tribes is a body set up pursuant to article 338 of the Indian constitution. It has been entrusted
with the responsibility of ensuring the safeguards and protections that have been given to scheduled castes and tribes are implemented. As part of their assigned responsibilities the Commission oversees implementation of the Prevention of Atrocities Act, 1989, and the Protection of Civil Rights Act, 1955, though does not have a statutory responsibility to do so. The commission both receives complaints and proactively investigates matters that come to its attention through news reports or by any other means. Under the Act the commission has the powers of a civil court and can call on anyone for evidence to ensure that the laws are being implemented. The Commission lacks the powers of a criminal court, and therefore cannot enforce its findings.

Although not statutorily mandated to do so, the National Commission for Scheduled Castes and Scheduled Tribes (NCSCs/STs) monitors the implementation of the Act. The NCSC/ST only reports to the Central Government, although it primarily monitors compliance to the POA in the states. The NCSCST has state offices that report to it, but those are vastly understaffed and only have an advisory relationship to the state legislatures. Such a monitoring system depends on the central government’s commitment to dalit rights for enforcement of the recommendations. The sorry record of the POA is ample evidence that the commitment is lacking. The structural flaws of the monitoring system have instead led to a lot of futile finger-pointing about the failures of the POA. For example, in 1998, the NCSC/ST recommended that states conduct awareness programmes through Non Government Organizations(NGOs) about the Act for citizens and government officials. In its reply to this recommendation, the Central Government placed the responsibility for organizing awareness programs with the states. However, there was no indication that the recommendation would be referred to the states, nor was there any provision for follow-up between the central government and the states. Such instances of passing the buck are not exceptional; most of the recommendations, particularly
those relating to land reform laws and special court creation, are referred to the states without any provision for follow-up.

The NCSC/ST is also hobbled by its mandate. Its chairman is not authorized to release funds. Repeated requests from the NCSC/ST to the central government to increase its funding and staff are either ignored or deflected to various state agencies and then ignored. Similarly, the Commission can also receive and investigate complaints under its powers as a civil court, but cannot enforce its findings because it is not a criminal court. The NCSC/ST is virtually powerless as a result, and cannot carry out its responsibilities as the monitoring body of the POA.

It is in this context that the present work attempts to revisit the constitutional space and institutional mechanisms for the protection of the dalit rights. Given pathetic situation of the dalits even after sixty years of the constitutionally guaranteed rights it appears as requisite to retrospect as to what has gone wrong over all these years. There are multiplicity of factors responsible for the pathological state of affairs but the focus of the work is not to venture into the causal analysis of the same. It rather restricts itself to the institutional dimension linking them to the wider context of dalit rights. For in-depth and critical analysis, the National Commission for Scheduled Castes and Scheduled Tribes [Bifurcated in year 2006 and now known as the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes] has been taken as a case.

Objective and Rationale of the Study:

The prime objective of the present work is to examine the role of the National Commission for Scheduled Castes and Scheduled Tribes. What kinds of role and responsibilities have been assigned to these commissions? But more than
that the work also attempts to examine the question as to how and to what extent the commission is competent in discharging its responsibilities. Is there any deficit in delivering its assigned responsibilities? If yes what are the constraining factors? What could be the appropriate measures to make this body competent in real sense of the term?

There is no doubt that significant literature has come up in recent years that focus on the status of the dalits, and their rights and violation but there is hardly any work that situates the problem in the context of institutional mechanism for the protection of dalit rights. There is as such no exclusive work done on the National Commission for Scheduled Castes and Scheduled Tribes. The present work makes a modest attempt to bridge the gap and minimise the deficit.

Scope of Work: The Present work is focused on the critical examination of the role of the National Commission for Scheduled Castes and Scheduled Tribes in the protection of dalit rights but before delving into this aspect it is important to point out the scope of the work. As mentioned earlier the work basically focuses of the institutional mechanism and in this context dalit rights have been examined. The use of the word dalit in the present work is context specific. Here we used the term dalit that constitute both Scheduled Caste and scheduled Tribe. Here dalit refers the marginalized people, who have been suffering from centuries. Notwithstanding the dalits widely seen as a homogeneous social category, they are spread in all parts of India. According to an earlier estimation, every seventh Indian happened to be an ex-untouchables. If the term dalit is used in its narrow connotation, i.e., only for the Scheduled Castes (SCs) , then the estimation, at present , might be roughly closer to one wherein every fourth or fifth Indian could be a dalit. But if we accept the term dalit in its broader connotation consisting of the SCs, the Scheduled Tribes (STs) and the other
weaker sections, then the said estimation could be like that wherein every third or fourth Indian could be a dalit. Besides such estimation of population of the dalits, either as a broad or a narrow social category, the dalits are layered or stratified into numerous castes and sub-castes, and numerous tribes and sub-tribes. Their such layering or stratification is a replica of that of the caste system per se, and is broadly based on the notion of purity and pollution, with the added number of other parameters or achievable attributes like education, economic position, access to power and other resources, etc. as in the case of other castes and communities. In other words, the dalits are also differentiated into Caste (jati), like others, on the basis of both the notional attributes of purity and pollution, and of the aforesaid achievable attributes or criteria. Now what needs to be emphasised is the protection of rights and dignities of dalits—either with narrow or with broad connotation of the term dalits. Before explicating how to protect their rights and dignities, there is also a need to distinguish between the human rights of an individual and that of a community he or she belongs to. As far as human rights are concerned, these have already been declared in the United Nation’s Human Rights Charter of 1948 to which hundreds of countries, including India, are the signatories. Yet, with regards to the accords of these human rights, namely the socio-economic and cultural rights to the human beings, all the countries, including those who have signed the UN Charter, have invariably violated these. But that is not immediate concern here; instead, the concern here is to look at both the human rights and the fundamental rights wherein one hardly finds any distinction. Howe ever, in the case of human rights it is the countries or the nations, who have signed the UN Charter, are to be fixed with the responsibility in the event of volition of human rights of their citizens. As far as fundamental rights are concerned, it is the individual who has to strive, either through the court of law or through the various government agencies, to get these rights accorded to him or her. It is not an exaggerations to say that even
the fundamental rights of an individual, and that too if that individual happens to be a dalit, have not always been accorded to him or her on account of both the vulnerability of such individual and the laxity of the state machinery.

Sources of Data: The study is based on both the primary and secondary sources. The Reports of the National Commission for Scheduled Castes and Scheduled Tribes constitute important source material for analyzing the case of the protection of dalit rights. Besides the government reports and documents the work has also taken note of the literature that have come up in the recent years. The newspaper reports and writings also constitute important source materials for locating the issue of dalit rights and their violation.

Chapter Scheme:

The work is organised into four main chapters besides introduction and Conclusion.

The Chapter-I entitled as 'Constitutional and Legal Measure for the Protection of the Dalit rights: A Critical Appraisal' attempts to recapitulate the constitutional safeguards and the legal measures taken over the years for the protection of dalit rights. The Constitution of India provides legal safeguards in the interests of from civil rights violation and atrocities. Besides the constitutional remedies different legal measures have been taken over the years for the protection of dalit rights. The major legal enactments are: (i) Protection of Civil Rights Act (PCR), 1955 was enacted in furtherance of Article 17 of the Constitution to abolish untouchability and its practice in any form. Further, in order to check and deter crimes against dalits by persons belonging to other Communities, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted.
The PCR Act, 1955 prescribe punishment for untouchability means the practices evolved as social restrictions in sharing food, access to public places, offering prayers and performing religious services, entry in temple and other public places and denial of access to health services and drinking water sources, etc. Despite this measure to protect dalits civil rights, they are still denied a number of other human and economic rights and are subjected to various offences, humiliation and harassment. The chapter also touches upon these issues.

Chapter-II exclusively focuses on Atrocities and Violation of dalit Rights attempts to understand that caste based discrimination and atrocity against dalits community is alarmingly increased all over India that lead to bloody and brutal killing of dalits everyday. These anti-social committed by so called caste Hindus terrorize the dalits in almost every corner of India. The extent and occurrence of dalit atrocity is rampant like an epidemic in many parts of India. In many states such as Bihar, Maharashtra, Haryana, Punjab, Rajasthan, Gujarat, U.P., M.P., Karnataka and several parts of Tamil Nadu and AP the violence against the dalits reached to newer heights. The severity of violence’s against dalits is beyond any human comprehension as dalits are lynched, murdered and mutilated. This kind of violence is not seen even in animal world. There is hardly any day goes by when dalits are not killed, harassed, socially boycotted by the upper castes. dalits houses are burnt, physical violence against dalit woman like rape, terrorizing the dalit woman by parading naked on streets, cutting genitals of dalit children, beating elderly dalits are rampant and it is like an epidemic in rural areas and villages across India. The so-called caste Hindu’s cannot tolerate dalits for no reason. The dictatorial attitudes of upper caste Hindus go beyond any legal authorities, the law and order is in serious danger due to this anti-social elements, so to say that any social activities of dalits such as marriages, temple festivals, funeral proceedings of dalits cannot go smoothly without violence and dalits killings because the Hindu’s cannot stand a dalits wearing a decent cloth, a
Dalits should not ask for minimum wages in rural areas, they are not allowed freely to participate in political meetings and activities, dalit bridegroom cannot ride a mare in front of upper caste Hindus, the dalits have to step down voluntarily from the above said activities otherwise he or she and the marriage party has to face the wrath of the upper caste Hindus, this is particularly common in the ignoble Rajputana state called Rajasthan. The violence and attack on dalits are so horrendous that dalit people live in constant fear, insecurity and torturous life. It is a gross human rights violation, state governments like Maharashtra where the recent Khairlanji murder of entire dalit family members, states like Haryana where 5 dalits were lynched like animals in a day light under the blessings of law and enforcement (the local police), raping of minors as young as 5 year old dalit girl, mutilating and cutting hands, legs and genitals of childrens, adults and olds, parading dalit woman’s naked in broad day light in the presence of entire village people are few of the thousands of examples of organized and well planned caste brutality against dalits. Dalits are treated all over India as cheap dirt or less than animals and this sad status of Indian society is displayed with detailed information with graphics to the world by digital media. In this 21st century where the information spread at the speed of light to entire world, sadly our local authorities, political leaders and law enforcement is sitting quite and encourage such heinous crimes go unaccountable in India.

Chapter-III exclusively focuses on The National Commission for Scheduled Castes and Scheduled Tribes and the Protection of dalit Rights. It attempts to understand that the duty of this commission is to provide safeguards against the exploitation of SCs & STs and to promote and protect their social, educational, economic and cultural interests, special provisions were made in the Constitution. Due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, government jobs and educational institutions and, therefore, it was considered necessary to follow a policy of
reservations in their favors to ensure their equitable participation in governance. For effective implementation of various safeguards provided in the Constitution for the SCs & STs and various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. The Special Officer who was designated as Commissioner for SCs & STs was assigned the duty to investigate all matters relating to the safeguards for SCs and STs.

Chapter-IV exclusively focuses on "Working of the National Commission of Scheduled Caste and Scheduled Tribe: A Critical Appraisal". It attempts to analyse the role of the Commission. For the purpose of analysis the Annual Reports of the commission for SCs and STs have been taken as the point of reference. From the methodological point of view, first of all the salient points of reports especially related to violation of dalit rights are presented. Subsequently the interventions of the Commission in these cases have been analysed.