A CRITICAL LEGAL ANALYSIS OF THE FUNCTIONING AND EFFECTIVENESS OF THE NATIONAL COMMISSION FOR SCHEDULED CASTES

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ABSTRACT

This article assesses the National Commission for Scheduled Castes (NCSC) under Article 338 of the Constitution of India against the text that created it, the case law that has interpreted it and the evidence of how it works. It argues that the Commission is effective as a monitor and a point of entry for complaints but ineffective as a remedy. The Supreme Court's decision in Mumbai Port Authority v. NCSC (28 July 2026) confirms that the Commission can inquire and recommend but cannot adjudicate or issue binding directions. The article identifies four structural weaknesses: inquiry without remedy; executive control over appointments, tenure and funding; a slow accountability loop through Parliament; and the absence of public outcome data. It proposes reforms ordered by cost and legal route, and concludes that the priority is to build the conditions under which a recommendatory body can succeed, not to convert it into a court.

1. Introduction

The Constitution of India protects Scheduled Castes through reservations, the abolition of untouchability and special statutes, and it created a constitutional body to watch over those safeguards. That body, now the National Commission for Scheduled Castes, receives roughly 12,000 complaints a year, yet its orders have no binding force.[1] In July 2026 the Supreme Court restated that limit in terms that reach well beyond the case before it.[2]

This article asks three questions.

1. What does Article 338 empower the Commission to do, and what does it oblige government to do in response?

2. How has the Commission functioned in practice, on the public evidence?

3. Do the legal design and the practice together make the Commission effective, and if not, what should change?

Scope and limits. The analysis draws on the constitutional text, reported judgments, parliamentary committee reports and press coverage. I relied on law reports and news coverage of the 2026 judgment and did not read the judgment itself, so paragraph references should be checked against the full text before the article is cited. I did not verify the Commission's current composition or budget. The reform proposals in Part 7 are my own and are labelled as such.

2. Constitutional and Statutory Framework

The Commission is a creature of the Constitution, and its legal character follows from the text of Article 338. The office began in 1950 as a single Special Officer whose only duty was to investigate safeguards for Scheduled Castes and Scheduled Tribes and report to the President. It became a multi-member body in 1990 and a separate Scheduled Castes commission in 2004.[3]

[1]Deccan Herald (13 Oct 2024), reporting an RTI reply to PTI: 11,917 complaints in 2020-21, 13,964 in 2021-22, 12,402 in 2022-23 and 9,550 in 2024 up to the date of the reply. "Roughly 12,000 a year" is an approximation across those figures.

[2]*Mumbai Port Authority v. National Commission for Scheduled Castes*, 2026 INSC 755; 2026 SCC OnLine SC 1398; 2026 LiveLaw (SC) 729 (decided 28 July 2026, Sanjay Karol and Augustine George Masih JJ.). The judgment is cited through SCC Online, LiveLaw and India Legal reports. The judgment text itself was not consulted.

[3]Constitution of India, art. 338 (original text, 1950); Constitution (Sixty-fifth Amendment) Act, 1990; Constitution

Date	Change	Effect
2018	102nd Amendment	Backward classes removed from Article 338 and given their own commission under Article 338B
19 Feb 2004	89th Amendment (2003)	Joint commission split into the NCSC (Article 338) and the National Commission for Scheduled Tribes (Article 338A)
1990	65th Amendment	One-member Special Officer replaced by a multi-member National Commission for SCs and STs
1950	Original Article 338	Special Officer for SCs and STs, appointed by the President, to investigate safeguards and report

Article 338 now has ten clauses. Five of them carry the analysis in this article.

- **Composition and appointment (clauses 2 and 3).** A Chairperson, a Vice-Chairperson and three Members, appointed by the President by warrant. Composition is "subject to" any law Parliament makes, and the conditions of service and tenure are whatever the President fixes by rule.[4] The Constitution itself sets no qualifications, no selection procedure and no guaranteed tenure.

- **Duties (clause 5).** To investigate and monitor safeguards, inquire into specific complaints of deprivation of rights and safeguards, advise on socio-economic planning, report annually, and recommend measures to the Union and the States.

- **Civil-court powers (clause 8).** Available only "while investigating" under clause 5(a) or "inquiring into" a complaint under clause 5(b): summoning and examining witnesses on oath, discovery and production of documents, evidence on affidavit, requisitioning public records and issuing commissions.

- **Accountability (clauses 6 and 7).** Reports go before each House of Parliament with a memorandum on action taken and reasons for any non-acceptance. The parts

(Eighty-ninth Amendment) Act, 2003, in force 19 February 2004; Constitution (One Hundred and Second Amendment) Act, 2018 (art. 338B). Sources differ on when the multi-member commission began operating: one explainer says a statutory commission replaced earlier bodies in 1992, while the table follows the 1990 amendment date.

[4]Constitution of India, art. 338(2)-(3). Clause (2) makes composition subject to any law Parliament may make. I did not find a dedicated Act in the sources consulted, so confirm the current position against the statute book before relying on this.

concerning a State go to the Governor, who places them before the State Legislature.

- **Consultation (clause 9).** The Union and every State Government must consult the Commission on all major policy matters affecting Scheduled Castes.

Two features of this design explain most of what follows. First, the text speaks the language of inquiry, monitoring and recommendation, and never of decision, direction or enforcement. Second, the only compulsion on government is procedural: explain, in a memorandum to a legislature, why a recommendation was not accepted.

3. Composition, Powers and Functions: What the Text Allows

Read against the clause-by-clause text, each function of the Commission has a different legal character, and only one of them places any duty on government beyond consultation.

Function	Clause	Legal character	Duty placed on government
Monitor and evaluate safeguards	5(a)	Investigation	None; findings feed the annual report
Inquire into specific complaints	5(b), with 8	Fact-finding inquiry using civil-court procedural powers	None; the authority may act or ignore
Advise on socio-economic planning	5(c)	Advisory participation	None
Report and recommend	5(d), 5(e)	Reporting to the President	Memorandum on action taken and reasons for non-acceptance (clauses 6 and 7)
Be consulted on major policy	9	Consultation	Duty to consult; no duty to follow
Other functions by presidential rule	5(f)	Defined by the executive	Depends on the rule

Three observations follow from the table.

The complaint jurisdiction is the Commission's most visible work, and legally its thinnest. Clause 5(b) speaks of inquiring into complaints about deprivation of "rights and safeguards".

It does not say what happens after the inquiry. Complainants, and sometimes the Commission itself, have read the clause as a grievance-redress forum. The Supreme Court has read it as a fact-finding power only (Part 5 below).

The civil-court powers are procedural. Clause 8 gives the Commission "all the powers of a civil court trying a suit", but it then lists the matters in which those powers operate: summoning witnesses, discovery, affidavits, requisitioning records and issuing commissions. In *Mumbai Port Authority v. National Commission for Scheduled Castes* (2026), the Court treated the word "namely" as confining the powers to what facilitates investigation, so they do not extend to injunctions or binding relief (LiveLaw).[5]

The residual clauses are an unexplored route. Clauses 5(f) and 8(f) let the President add functions and powers by rule. Whether a rule could confer enforceable powers is untested. My reading is that, after the 2026 decision, a rule trying to confer adjudicatory power would be hard to defend, because the Court read the whole scheme as recommendatory. That is an inference, not a holding.[6]

The Commission's own materials also describe its commitment to the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (NCSC awareness booklet). Enforcement under those statutes rests with the police and special courts, so the Commission's role there is monitoring and follow-up, not prosecution.[7]

4. Functioning in Practice

The evidence on how the Commission works is uneven. Intake data and some parliamentary scrutiny exist. Outcome data does not.

Caseload

Complaints reach the Commission in large and steady numbers. In reply to an RTI request by

[5]Constitution of India, art. 338(8). The reading of "namely" as limiting the powers is reported in the LiveLaw headnote (Paras 9-11 of the judgment).
[6]Constitution of India, arts. 338(5)(f) and 338(8)(f). The view on the effect of the 2026 ruling is the author's inference.
[7]Protection of Civil Rights Act, 1955; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended in 2015. The NCSC booklet is undated and carries a former Chairperson's message, so it reflects the Commission's stated position at that time. The statement about who enforces the Acts is general background and is not drawn from the booklet.

PTI, the Commission reported 11,917 complaints in 2020-21, 13,964 in 2021-22, 12,402 in 2022-23 and 9,550 in 2024 up to the date of the reply, over 47,000 in all (Deccan Herald). The reported reply gave intake figures.[8] I found no published figure for disposal, compliance with recommendations or outcomes for complainants, so effectiveness cannot be measured from public data. The absence of that data is itself a finding.

Reporting to Parliament

Clause 6 is the Commission's only accountability channel, and it has run slowly. In December 2018 the Lok Sabha's Committee on Papers Laid on the Table found that the Commission's annual reports for 2004-05 to 2016-17 were laid with delays running from 6 years 11 months (the 2005-06 report) to 10 months (2016-17), and that its audited accounts had never been laid since inception (Committee report). The Ministry blamed the time taken to collect action-taken comments from Union ministries. The Commission blamed late data from the States. The Committee also noted that Article 338 sets no time limit for laying the reports.[9]

The dates on which recent reports reached the President suggest the lag is not closing:

Report year	**Reported as submitted to the President**	**Approx. lag after year-end (31 March)**
2024-25	13 Aug 2026	about 16 months
2023-24	9 Jul 2025	about 15 months
2022-23	by Feb 2024	about 11 months

Sources: Manorama Yearbook (2026), Manorama Yearbook (2025), Drishti IAS. The reporting year follows the financial year used in the Committee's annexure. Submission to the President comes before laying in Parliament with the memorandum, so the lag to Parliament is longer

[8]The reported reply gave complaint intake only. The report does not say whether the 2020-21 to 2022-23 figures follow financial or calendar years, and the 2024 count was partial.

[9]Lok Sabha Committee on Papers Laid on the Table, Thirty-Fourth Report (16th Lok Sabha, 28 Dec 2018), paras 2-3, 6-8, 15 and Annexure. The report's text gives 10 months as the shortest delay, but its annexure lists 5½ months for 2015-16. The 10-month figure relates to 2016-17. General Financial Rules, rule 237, sets a nine-month norm.

still. I did not find recent laying dates.[10]

Vacancies and composition

In April 2023 a Supreme Court bench led by the Chief Justice of India directed the Centre to complete the Commission's composition "on an expeditious basis", on a plea by the Ambedkar Association for Development. The Centre had told the Court that there was one vacancy among a Chairperson, a Vice-Chairperson and two Members (The Tribune). The Chairperson, Vijay Sampla, later resigned in July 2023, saying he did so to strengthen his party in Punjab ahead of the 2024 general election (The Tribune). In March 2025 the Leader of the Opposition wrote to the Social Justice Minister that the Vice-Chairperson's post had been vacant for about a year (The Mooknayak). That is a political claim and should be read as such.[11] I did not find an official statement of the Commission's current composition. By August 2026 the Commission was led by Chairperson Kishor Makwana when it submitted its latest report.

Funding and accounts

The Committee recorded that the Commission is funded from the Ministry of Social Justice and Empowerment's non-plan budget, Rs 14.90 crore for 2015-16, and receives no grant-in-aid. That was the Commission's stated reason for never preparing audited accounts (Committee report). The figure is old and I have not verified current funding.[12] The structural point stands: the Commission's money, and the compilation of the government's answers to its recommendations, both pass through the ministry whose conduct it may need to criticise.

5. Judicial Approach

The Supreme Court has read Article 338 as an investigative and recommendatory provision for three decades, and its July 2026 decision is the clearest statement yet.

[10]Lag is counted in months from 31 March, the end of the financial year, to the reported submission date. The 2022-23 date is approximate, because the Drishti IAS item of 21 February 2024 says only that the report was recently submitted.

[11]The Mooknayak (4 Mar 2025), reporting a letter from the Leader of the Opposition. A search-result summary of the same letter in Business Standard referred to two vacant posts. I did not open that article, so the details of the claim may vary between reports.

[12]Lok Sabha Committee on Papers Laid on the Table, Thirty-Fourth Report, paras 1 and 8: non-plan budget of Rs 14.90 crore for 2015-16, no grant-in-aid, and no audited accounts prepared.

Case	Decided	Holding as reported
Mumbai Port Authority v. National Commission for Scheduled Castes (Karol and Masih JJ.), 2026 INSC 755	28 Jul 2026	The Commission cannot adjudicate service disputes or issue binding directions. Its order to pay arrears was contrary to the Constitution and void[13]
Collector v. Ajit Jogi, (2011) 10 SCC 357	2011	The Commission cannot determine caste status. It may inquire into complaints and report with recommendations to government
All India Indian Overseas Bank SC and ST Employees' Welfare Assn. v. Union of India, (1996) 6 SCC 606	1996	The powers are for investigation and inquiry. They do not include injunctions or other adjudicatory relief

Sources: SCC Online, LiveLaw. The LiveLaw headnote also lists *Bhabani Prasad Jena v. Orissa State Commission for Women*, (2010) 8 SCC 633, among the authorities relied on.[14]

The 2026 decision

The respondent was a Scheduled Caste employee of the Mumbai Port Authority who had been promoted under a 2002 Office Memorandum on consequential seniority. After the Bombay High Court quashed that memorandum, the Authority revised seniority and reverted her. She complained to the NCSC, which in 2024 directed the Authority to restore her promotional benefits and pay arrears within 30 days, and to file an action-taken report. The Bombay High Court dismissed the Authority's writ petition. The Supreme Court allowed the appeal, noting that the validity of the 2002 memorandum was pending separately and was not before it (SCC Online).

The Court's reasoning had three steps.[15]

4. **"Inquire" is not "adjudicate".** Clause 5(b) lets the Commission look into complaints,

[13]The 2011 and 1996 holdings are taken from how SCC Online and LiveLaw describe them in their reports of the 2026 case. The original judgments were not consulted.
[14]The full LiveLaw report is subscriber-only. The headnote and summary were read, and the headnote gives Paras 9-14 of the judgment for the reasoning.
[15]The reports of the facts are not identical. SCC Online says the Authority reverted the employee after the Bombay High Court quashed the 2002 Office Memorandum. India Legal says the benefit was withdrawn after *M. Nagaraj v. Union of India* and that the Central Administrative Tribunal dismissed her challenge before she approached the NCSC. The account in the text follows SCC Online.

record factual findings and call on the Union or State Government to act. The Court rejected the Commission's argument that the word "safeguards" is an enforcement limb, and read "rights and safeguards" together, noting that providing safeguards is for the Legislature.

5. **Civil-court powers stay procedural.** The clause 8 powers help the Commission gather evidence. They do not let it make an order on that evidence.

6. **The family of commissions is advisory by design.** The Court described the NCSC and its counterparts under Articles 338A and 338B as socially beneficent bodies, but with a role that is "recommendatory and advisory, but certainly not adjudicatory"[16] (LiveLaw).

Assessment of the line of authority

The doctrine is textually sound. Clause 5(b) says "inquire", clause 8 says "namely", and clause 6 supplies the only consequence the drafters attached to a recommendation: an explanation to the legislature. Reading an enforcement power into those words would have required the Court to supply what Parliament did not enact.[17]

The decision also exposes a practice problem. The Commission had issued a direction with a deadline and a reporting requirement, in the language of an order, and a High Court had upheld it. That suggests the Commission, and at least one High Court, had been treating its inquiry outcomes as binding for some time. The employee's complaint, which began as a request for quick relief from a constitutional body, ended with a Supreme Court judgment quashing the order two years after the Commission made it. A forum that cannot bind the respondent can leave the complainant in a worse position than if she had gone directly to a tribunal or court.

The counter-argument deserves weight. The Court did not say the Commission's findings are worthless. One report of the judgment says the Court treated the Commission's recommendations as persuasive but not enforceable (India Legal). A reasoned finding of fact by a body with evidence-gathering powers can carry weight with a government or a court. The question is whether the Constitution's design, which relies on persuasion and a legislative

[16]Quoted as reported by LiveLaw and SCC Online from the 2026 judgment. The wording was not checked against the judgment text.
[17]This assessment is the author's. The holdings it rests on are in notes 2 and 14.

memorandum, is enough for a population whose complaints so often concern the conduct of public authorities themselves.

6. Critical Evaluation

The Commission's central weakness is structural. The Constitution gives it eyes and a voice but no hands, and it leaves the Commission's membership, money and the response to its findings in executive hands.

What the Commission does well

- **Access.** About 12,000 complaints a year (Deccan Herald) show that people use it as a national, low-cost entry point.
- **Evidence-gathering.** Clause 8 lets it compel witnesses and records from public authorities, which an ordinary complainant cannot do.
- **A place in policy.** Clause 9 gives it a right to be consulted on major policy, and clause 6 forces government to answer its annual report in writing before Parliament.

1. Inquiry without remedy

A complainant who reaches the Commission gets an inquiry, a finding and, at best, a recommendation. The authority complained against can ignore it without legal consequence. The 2026 decision removed the Commission's one workaround, the practice of issuing time-bound "directions". The mismatch between what roughly 12,000 complainants a year may expect and what the law allows is the Commission's main credibility problem.

2. Executive control over composition, tenure and money

The Union executive appoints every member, fixes their conditions of service by rule, and funds the Commission through a ministry. The Constitution sets no qualifications, no selection committee and no fixed tenure.[18] The record shows the consequences: a Supreme Court direction in 2023 to complete the Commission's composition, a Chairperson who resigned mid-term for party work, and a reported year-long Vice-Chairperson vacancy in 2025 (sources in

[18]Constitution of India, art. 338(2)-(3) (appointment by warrant; conditions of service by presidential rule). See note 4 on whether any statute supplements this.

Part 4).

This is a structural point, not a partisan one. The design allows any government to leave posts vacant or fill them with party figures, and the body that is meant to monitor government compliance depends on government for its appointments, its budget and the compilation of the answers to its reports. The sister National Commission for Scheduled Tribes said in its 2006-07 report that it had only skeleton staff, and the Ministry's reply shows a proposal for 481 posts still being passed between the NCST and the Ministry's finance division in 2012 (Ministry of Tribal Affairs memorandum). I found no equivalent document for the NCSC, so I treat that as indicative of the common architecture and not as proof about this Commission.

3. A slow and weak accountability loop

Clause 6 is the only mechanism that obliges government to explain itself, and it works slowly. Reports have reached Parliament years late, audited accounts were never laid, and recent reports reach the President about 15 to 16 months after the year they cover (Part 4). The Constitution sets no deadline.

When the NCST recommended time limits of three months to lay reports and six months to lay the action-taken memorandum, the Ministry of Tribal Affairs answered in a memorandum laid in Parliament in April 2013 that this was "essentially a matter of procedure" and no amendment was needed (Ministry of Tribal Affairs memorandum). That memorandum answered a report for 2006-07, which illustrates the delay it was defending.[19] Clause 6 also has no follow-up step: a memorandum explaining non-acceptance can be laid and then nothing further happens.

4. Opacity

I found no public data on how many complaints the Commission disposes of, how many of its recommendations are accepted, or what happens to complainants afterwards. Without that, neither Parliament nor the public can judge effectiveness. The Commission's reporting practice also makes the question harder to answer because the annual report arrives late.

[19]Ministry of Tribal Affairs, Action Taken Memorandum on the Second Report of the NCST for 2006-07, laid in the Lok Sabha on 26 April 2013 and the Rajya Sabha on 2 May 2013. It concerns the NCST under art. 338A, whose clauses mirror art. 338. The same architecture is assumed to apply to the NCSC.

5. Is the advisory model itself defensible?

The government's case, put to Parliament about the NCST, has real force. Binding orders and fines are judicial functions. The Ministry argued that they need members with legal training, which the Constitution does not require for commission members, and that the Commission is not comparable to a statutory body such as the Central Information Commission (Ministry of Tribal Affairs memorandum). The Supreme Court's reading points the same way.

That argument supports not turning the Commission into a court as presently constituted. It does not answer the other weaknesses above: independent appointment, secure tenure and funding, enforceable deadlines, follow-up on recommendations and published outcome data. Reform should aim at those, and at giving the Commission's findings more legal weight, rather than at adjudicatory power.

7. Reform Proposals

The evidence supports strengthening the Commission's independence, process and the legal weight of its findings before considering adjudicatory power. The proposals below are my own, ordered from cheapest to heaviest, and each names the legal route and its main trade-off.

Proposal	Problem addressed	Legal route	Main trade-off
Publish yearly data: complaints received, disposed and pending, recommendations accepted, state-wise compliance	Opacity; effectiveness cannot be judged	Administrative direction, or proactive disclosure in the annual report	Extra reporting burden; exposes poor compliance by States
Dedicated budget head, own accounts, audited and laid before Parliament	Financial dependence on the Ministry; no audited accounts since 2004	Administrative, or a statute	Needs Comptroller and Auditor General capacity and a decision on who answers for spending
Time-bound filling of vacancies	Vacancies and delay (2023 Supreme Court direction; 2025 reported vacancy)	Statute or rules	Little; the government loses discretion over timing

Proposal	Problem addressed	Legal route	Main trade-off
Statutory deadlines for laying the annual report and the action-taken memorandum, with a duty on States to supply data	Years of delay in reaching Parliament	Statute, or amendment of clause 6 if a statute is held insufficient	States' slow data is the Ministry's own stated cause, so deadlines must bind them too
Selection committee, qualifications, fixed tenure and removal grounds for members	Executive control over composition and tenure	Act of Parliament, which clause 2 already contemplates	Debate over who sits on the committee; risk of a different form of capture
Comply-or-explain duty: a reasoned written response from the authority within a fixed period to a finding in a complaint inquiry, recorded and reported to the legislature	Findings can be ignored without trace	Statute; the residual rule-making clauses might support it but this is untested	Creates a record and pressure, not a sanction
Evidentiary weight for the Commission's findings, and standing to appear before courts and tribunals	Findings carry only persuasive value	Statute	More litigation; risk of conflict with court-found facts
Binding orders from a legally qualified bench with an appeal	No remedy at the Commission	Constitutional amendment	Duplicates courts and tribunals; the government has opposed it as a judicial function

The Committee on Papers Laid on the Table already recommended one interim step: if a report cannot be laid on time, a statement of reasons should be laid within 30 days after 30 September, or within seven days of the next session, whichever is later (Committee report).[20]

The first three rows need no constitutional change and could be done within a year.[21] The middle rows need a statute and are where most of the gain lies, because they address independence and the consequence of a finding together. The last row is the only one that would turn the Commission into a decision-making forum, and the Court's 2026 reading and

[20]Lok Sabha Committee on Papers Laid on the Table, Thirty-Fourth Report, para 16 (statement of reasons to be laid within 30 days after 30 September, or within seven days after the next session reassembles, whichever is later).

[21]The author's assessment of cost and feasibility. It is not drawn from a source.

the government's stated position make it the least likely and the most contestable.[22]

8. Conclusion

The National Commission for Scheduled Castes works as a monitor and a conduit and fails as a remedy. Its constitutional design is coherent: Article 338 makes it an inquiry, monitoring and recommending body, and the Supreme Court has read it that way consistently, most recently in July 2026. The difficulty is that the design depends on persuasion and on a legislative explanation that arrives years late, while leaving appointments, tenure, funding and the government's answer to the Commission's findings in the hands of the executive.

The useful question is therefore not whether the Commission should be binding or advisory. It is whether the conditions that make persuasion work, namely independent and full membership, secure funding, reports that reach Parliament on time, a recorded response to each finding and public outcome data, exist. On the evidence available they do not yet exist. Most of the remedies lie within Parliament's reach under Article 338 as it stands, and the Commission's complainants, who number about 12,000 a year, are the ones who bear the cost of leaving them undone.

[22]Ministry of Tribal Affairs, Action Taken Memorandum (2013), Chapter 1, recommendations 1 and 2 (binding acceptance of recommendations; fining power on the Central Information Commission model), both rejected as advisory or judicial in nature. It concerns the NCST; see note 19.

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