



# Capacity Building for Conflict Resolution - 2nd ARC

## CHAPTER 1. Introduction

Conflict is an unavoidable facet of human life. The maturity of a society is thus measured not so much by the absence of conflict in it as the ability of its institutions and procedures for resolving it.

The potential for conflict will always exist in a society with its members having different mores, interests, and socio-economic conditions and needs. Thus, in any society, for a variety of reasons, perceptions may be conceived about group or communal interests being harmed or relatively deprived.

Democracy is, in fact, essential for conflict resolution and nation building, particularly in pluralistic States. Conflicts and differences cannot be removed by Government decrees nor can the energy of diverse elements be channelized towards nation building except through the means and methods available within a democratic framework.

The real problem in many of our States and regions is economic; the conflict is over resources but camouflaged in various forms of identity politics based on religion, on caste, on region, on ethnicity, on language and less frequently based on ideological divides.

## CHAPTER 2. Conflict Resolution - A Conceptual Framework

Conflict has been defined as a situation between two or more parties who see their perspectives as incompatible. Conflicts have a negative beneficial connotation, but some conflicts are desirable as they can **create change**.

John Donne, the 16th century poet, wrote, '**No man is an island entire of itself**'. Individuals see themselves as members of a variety of groups which often span a number of their interests.

The search for **identity is a powerful** psychological **driving force**. The sense of identity can contribute enormously to the strength and warmth of an individual's relations with others such as his neighbours, members of his community, fellow citizens or people who profess the same religion.

And yet, **identity can also kill** - a strong and exclusive sense of belonging to one group does, in many cases, leads to conflict. With suitable instigation, a fostered sense of identity with one group of people is often made into a **powerful** weapon to brutalise another and the result is hatred and violence. The intensity of such hatred and violence poses a veritable threat to the very fabric of society.

### A. Stages of Conflicts - a Life Cycle Approach

A conflict is not a single-event phenomenon but is a dynamic process having different stages. [//](#)



1. **Individual and Societal Tensions** when an individual or a group feels that he/it has been wronged or has not got what was due.
2. **Latent Conflict:** Tensions lead to a feeling of injustice and give rise to simmering discontent. However, at this stage, these tensions may manifest themselves in the form of requests to authorities, etc. This is the **best time for Administrative to act**.
3. **Escalation of Tensions:** The parties involved express their feelings through more aggressive methods such as demonstrations, processions, strikes, 'bandhs' etc.
4. **Eruption:** a small 'spark' leads to eruption of violence.
5. **Stalemate:** situation similar to the 'latent tension' and has the potential to erupt at regular

intervals.

## **B. Conflict Resolution and the Constitution**

Democracy is one of the most potent instruments for containing and moderating conflict.

The constitution opted for the democratic process and adult franchise which created the space for diverse groups in the country to acquire a stake in the process of nation-building.

Apart from providing for a powerful and independent judiciary, the constitution also included provisions for the creation of institutions for resolving conflicts, for example, water disputes, disputes between States etc.

### **What should the State do to resolve conflicts?**

The State should develop an understanding of the genesis of conflicts and to formulate long-term strategies that not only address immediate demands but also include attention to underlying issues such as alleviation of poverty, social justice and empowerment, and corruption-free development at the grass-root level.

## **CHAPTER 3. Left Extremism**

### **A. Left Extremism: Spread and Intensity**

The left extremist outburst, later known as the Naxalite movement, started in March 1967 in the three police station areas (Naxalbari, Khoribari and Phansidewa) of Darjeeling district in West Bengal. The 'Naxalbari phase' of the movement (1967-68) gathered momentum during May-June 1967 but was brought under control by July-August 1967. Today, the left extremist movement is a complex web that covers many States.

### **B. The 'Nature' of the Movement**

The left extremist movement has been largely agrarian, that it seeks to mobilize discontent and misgovernance in the rural areas to achieve its objectives.

### **C. Causes for Spread of Left Extremism**

A summary of causes extracted from that report is as under:

#### **1. Land Related Factors**

- Evasion of land ceiling laws
- Encroachment and occupation of government and community lands
- Lack of title to public land cultivated by the landless poor

#### **2. Displacement and Forced Evictions**

- Eviction from lands traditionally used by tribals.
- Displacements caused by irrigation and power projects without adequate arrangements for rehabilitation.
- Large scale land acquisition for 'public purposes' without appropriate compensation or rehabilitation.

#### **3. Livelihood related causes**

- Lack of food security – corruption in the Public Distribution System.
- Deprivation of traditional rights in common property resources.

#### **4. Social Exclusion**

- Denial of dignity.
- Continued practice of untouchability in various forms.
- Poor implementation of special laws on prevention of atrocities, protection of civil rights and abolition of bonded labour etc.

#### **5. Governance Related Factors**

- Corruption and poor provision/non-provision of essential public services including primary health care and education.
- Incompetent, ill trained and poorly motivated public personnel who are mostly absent from their place of posting.
- Misuse of powers by the police and violations of the norms of law.
- Perversion of electoral politics and unsatisfactory working of local government institutions.

## D. Resolution of Left Extremist Conflicts - Successes and Failures

Many left extremist movements, notably the uprising in **Naxalbari**, were resolved successfully.

The **comprehensive Area Development Programme (cADP)** was introduced to **supply inputs** and **credit** to small farmers and the government took the responsibility of **marketing their produce** and it was ensured that **debts** incurred by the tribal poor are cancelled and instead, loans were advanced to them from banks and other sources for agricultural improvement.

In West Bengal, **Operation Barga** was started to ensure the rights of the sharecroppers. Alongside, significant increases were made in the minimum **wages** which benefitted large sections of the rural poor. As a result, the **beneficiaries** of these government programmes began to distance themselves from Naxalism and this started the beginning of the **end of Naxalism** in these areas.

Unlike the relatively successful stories outlined above, the situation in Chhattisgarh today continues to cause serious concern. The situation in the region has not been helped by the raising of local resistance groups called **Salwa Judum**.

Applying the West Bengal model is a matter requiring careful consideration. It is clear that a judicious mix of development and welfare initiatives coupled with land reforms and well planned counterinsurgency operations is required to restore peace, harmony and confidence in the administration in such areas.

## E. Managing Left Extremism - the Political Paradigm.

It needs to be emphasized that while the ultimate goal of the left extremist movement is to capture state power, its immediate manifestation is in the form of a struggle for social justice, equality, dignity and honesty in public services. In that context, there may also be a need to keep the door open for negotiations with such groups and not necessarily insist on preconditions such as laying down of arms.

To sum up, left extremism feeds on persistent and serious shortcomings in the domain of general and development administration, resulting in the failure of the government to address the needs of the poor in areas pertaining to land, food, water and personal security, equity, ethnic/cultural identity etc.

### Way Forward

- Most of the 'participants' in left extremist organizations are alienated sections of society
- Police action over a long period is counter-productive; it is likely to affect the innocent more than the extremists.
- Negotiations have a definite ameliorative role.
- Faithful, fair and just implementation of laws and programmes for social justice will go a long way to remove the basic causes of resentment among aggrieved sections of society.
- Development initiatives suitable to local conditions along with democratic methods of conflict resolution will have a high success rate.

## F. Capacity Building to Deal with Violent Left Extremism

### Government Policy to Deal with Naxalite Menace

1. The government will deal sternly with the naxalites indulging in violence.
2. Keeping in view that naxalism is not merely a law & order problem, the policy of the Govt. is to address this menace simultaneously on political security, development and public perception

management fronts in a holistic manner.

3. Naxalism being an inter-State problem, the states will adopt a collective approach and pursue a coordinated response to counter it.
4. The states will need to further improve police response and pursue effective and sustained police action against naxalites and their infrastructure individually and jointly.
5. There will be no peace dialogue by the affected states with the naxal groups unless the latter agree to give up violence and arms.
6. Political parties must strengthen their cadre base in naxal affected areas so that the potential youth there can be weaned away from the path of naxal ideology.
7. The state from where naxal activity/influence, and not naxal violence, is reported should have a different approach with special focus on accelerated socio-economic development of the backward areas and regular interaction with NGOs, intelligencia, civil liberties groups etc. to minimize over ground support for the naxalite ideology and activity.
8. Efforts will continue to be made to promote local resistance groups against naxalites but in a manner that the villagers are provided adequate security cover and the area is effectively dominated by the security forces.
9. Mass media should also be extensively used to highlight the futility of naxal violence and loss of life and property caused by it and developmental schemes of the Government in the affected areas so as to restore people's faith and confidence in the Government machinery.
10. The states should announce a suitable transfer policy for the naxal affected districts. Willing, committed and competent officers will need to be posted with a stable tenure in the naxal affected districts. These officers will also need to be given greater delegation and flexibility to deliver better and step up Government presence in these areas.
11. The Government of Andhra Pradesh has an effective surrender and rehabilitation policy for naxalite and has produced good results over the years. The other states should adopt a similar policy.
12. The State Governments will need to accord a higher priority in their annual plans to ensure faster socio-economic development of the naxal affected areas. The focus areas should be to distribute land to the landless poor as part of the speedy implementation of the land reforms, ensure development of physical infrastructure like roads, communication, power etc. and provide employment opportunities to the youth in these areas.
13. Another related issue is that development activities are not undertaken in some of the naxalite affected areas mainly due to extortion, threat or fear from the naxalite cadres. In these areas, even contractors are not coming forward to take up developmental work. Adequate security and other measures would need to be taken to facilitate uninterrupted developmental activities in the naxal affected areas.
14. The Central Government will continue to supplement the efforts and resources of the affected states on both security and development fronts and bring greater coordination between the states to successfully tackle the problem.

### **Capacity Building of Elements of State and civil society.**

1. Security Forces
2. Administrative Institutions
3. Government Personnel
4. Local bodies
5. Civil Society Organizations

### **1. Building capacity of Security Forces (including the Police)**

#### **A satisfactory state of law and order is a necessary precondition for development.**

- Temporarily entrusting some development work to the security forces, For eg. the local police helped in ensuring that schools and health institutions functioned effectively.
- Laying down necessary standard operational procedures and protocols in specific terms and detail.
- Training and reorientation including sensitizing police and paramilitary personnel to the root causes of the disturbances that they are seeking to curb are required.



- Formation of specially trained special task forces
- Strengthening the local police station is far more cost effective and more viable in the long run than inducting central forces.

## **2. Building capacity of Administrative Institutions**

**Institutional capacity refers not only to organizations but also to the legal framework and norms within which services are to be delivered.**

- By filling the administrative vacancies for better delivery of services and effective implementation of schemes.
- Providing Provision of local courts and giving judicial and magisterial powers to the officers of the revenue and developmental departments to effectively deal with local issues
- LAMP (large Area Multipurpose cooperative Societies) to replace privately owned fair price shops and to implement decentralized schemes for procurement and distribution of food-grains.
- Enhancing institutional capacity through Legal interventions like the MGNREGA and FRA (Forest Rights Act) and if implemented, would address both the problems of inadequate employment opportunities and depressed wages.

## **3. Capacity building among Government Personnel**

- People serve in a tribal area (by non-tribals) out of compulsion and are apathetic to their needs, therefore there is a need to Identifying those officers who are compassionate and sensitive and training them at LBS National Academy of Administration to professionally equip them to serve in tribal areas. Such officers will make of public policies, strategies and schemes for the development of these areas and the well being of its citizens.
- It must be recognised that a major reason for such practices in 'disturbed areas' is the apprehension of senior functionaries about their personal safety while on duty. It would therefore be advisable to provide suitable security to senior administrative and technical officers.

## **4. Capacity building in local bodies**

### **Achivements**

- Enactment of PESA ( Panchayat Extension to the Scheduled Areas) Act, 1996
- PESA brings the Gram Sabha – at the centre-stage of village affairs.
- It brings common village assets under the collective ownership with the power to approve implementation of development plans and to verify their implementation by ratifying, or not ratifying, decisions of the Panchayats.
- It will contribute in inculcating a sense of participation and purpose within the village community.

### **Challenges**

- The problem, however, is that PESA is an 'indicative legislation'; whose implementation depends on the States carrying out specific amendments in their Acts.
- Apex level institutions like TRIFED have failed to provide the right guidance and leadership to the cooperatives in tribal areas.

## **5. Capacity building in Civil Society Organizations**

- Such organizations have a major role to play as interlocutors, and that their vigil and critical alertness acts as a bulwark against abuse of power by the police and other state functionaries.
- They have the potential to act as a bridge between the extremists and the government and in educating the people about the futility of violence and preventing aggravation of the situation by ventilating public grievances within the legal-democratic framework.

## **G. Cutting the Source of Finances for Naxalites**

- Naxalites movement requires funds, which is mobilized through extortion from local people and from contractors executing various projects in these affected areas. Besides, funds are also raised through forest and mine operations.
- One way to ensure that development funds do not reach the extremists is by entrusting these works temporarily to organizations like the Border Roads Organization and other governmental agencies which can execute these works directly.
- An effective anti-extortion and economic offences wing that can curtail if not totally dry up such funding sources to extremists, has to be constituted.

## Recommendations

- A. A long-term (10-year) and short-term ( 5-year) Programme of Action based on the '14-Point Strategy' announced in Parliament may be formulated .
- B. Negotiations with the extremist outfits should be an important mode of conflict resolution.
- C. Enhanced protection for senior functionaries regarding their personal safety while on tour
- D. Enhance the capacity of the security forces to act effectively and firmly.
- E. Sensitizing the police and paramilitary personnel to the root causes of the disturbances that they are seeking to curb.
- F. Formation of trained special task forces on the pattern of the Greyhounds in Andhra Pradesh (Special task force for Anti-Insurgency and Anti-Naxalite operations.)
- G. Establishing and strengthening local level police stations, adequately staffed by local recruits.
- H. Effective implementation of the **Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights) Act, 2006**.
- I. Better implementation of constitutional and statutory safeguards, development schemes and land reforms initiatives for containing discontent among vulnerable sections.
- J. Implement locally relevant development and adequate flexibility to implementing agencies.
- K. Monitoring and incentivizing performance of the States in amending their Panchayati Raj Acts and other regulations to bring them in line with the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA).
- L. Constituting Special anti-extortion and anti-money laundering cell to break the nexus between illegal mining/forest contractors and transporters and extremists.
- M. Use of specialized Government agencies like the Border Roads Organization, temporarily, in place of contractors for implementing large infrastructure projects.

## CHAPTER 4. Land Related Issues

### Introduction

Implementation of land reforms in rural areas in the 1950s and 1960s abolished intermediaries and considerably reduced agrarian unrest, while it resulted in the emergence of a new class of land owners.

Ceiling on agricultural holdings has had limited success in granting landless labourers and small and marginal farmers access to land ownership.

Economic growth creates demand for land for non-agricultural use including development projects and the growing impulse to urbanize, putting more pressure on land resource of the country.

According to The Economic Survey 2017-18, agriculture sector which employs more than 50 per cent of the total workforce in India, contributes only around 17-18 percent to the country's GDP create further scope for conflicts.

Clearly, land is at the heart of the crisis being faced by our agrarian communities and the issue has the potential of initiating major conflicts.

### A. Land and the Agrarian Conflicts including Farmers' Suicides

#### Facts regarding Indian Agriculture

- India has one of the lowest average holding sizes anywhere in the world. The average size of agricultural holdings for the country as a whole declined from nearly 2 Hectares (Ha) in 1951 to 1.41Ha in 1995 to 1.32 Ha in 2000.
- Apart from being uneconomical, small and marginal holders are particularly vulnerable to uncertainties of weather, market fluctuations and even moderate increases in inputs costs.

### **Rising indebtedness of farmers due to**

- Resort to non-formal sources for short term credit at exorbitant interest rates
- Utilising it to meet immediate consumption needs
- Failure to generate enough surplus from farming
- Lack of resources to repay outstanding loans often forces the farmer to go in for fresh borrowings, creating a vicious circle which causes deep distress.

*This debt burden often drives the farmer to suicide.*

### **The measures recommended include:**

- Expanding the agricultural base by giving more support to small and marginal farmers primarily through 'Self Help Groups' (SHGs) and cooperatives.
- Transferring informal debt to formal institutions.
- Rejuvenation of natural resource base particularly in rain fed areas.
- More effective risk coverage to protect the farmers from risks like price and demand fluctuations, vagaries of weather and natural calamities.
- Increased public investment not only in agriculture but for diversification of the non-farm sector within the rural areas to generate alternative livelihoods for farmers.
- Poverty alleviation programmes to more specifically cater to the needs of poorer farmers with farmers' organisations being involved in the design of such programmes.

## **B. Displacement**

Acquisition of land is necessary for the larger socio-economic development of a country.

Putting land to more economic use and thus increasing the economic returns to the society is **the underlying principle** for acquisition of land.

Acquisition of lands is generally problematic as the persons dependant on the land are deprived of their livelihood.

The land acquisition laws provide for a reasonable compensation to be paid to the land losers. But generally the compensation so paid is a lower than market value of land.

This low compensation often coupled with the usual bureaucratic hurdles brings a feeling of deprivation among land losers and marks the beginning of conflict.

There was no comprehensive policy for rehabilitation of such persons until 2003 when Government of India formulated a **National Policy on the Resettlement and Rehabilitation** of Project Affected Families which was notified in 2004.

### **Objectives of the policy were:**

- To minimize displacement and to identify non-displacing or least-displacing alternatives;
- To plan the resettlement and rehabilitation of Project Affected Families (PAFs), including special needs of Tribals and vulnerable sections;
- To provide better standard of living to PAFs; and
- To facilitate harmonious relationship between the requiring body and PAFs through mutual cooperation.

### **The benefit-sharing strategies outlined involve the following mechanisms:**



1. Establishment of revolving development funds through fixed allocations.
2. Equity sharing in the new, project-created enterprises and other productive assets through various forms of co-ownership.
3. Special taxes paid to regional and local governments, additional to the general tax system, to supplement local development programmes with added initiatives.

### **Revised National Policy On The Resettlement And Rehabilitation 2007.**

The objectives of the policy were:

- Principle of rehabilitation before displacement;
- Land for land as compensation;
- Consultations with Gram Sabhas or public hearing made compulsory
- Social Impact assessment (SIA) introduced for displacement of 400/200 or more families in plain/tribal, hilly, Scheduled areas, etc;
- Skill development support and preference in project jobs
- Option for shares in companies implementing projects to affected families;
- Housing benefits to all affected families including the landless;
- Monthly pension to the vulnerable, such as disabled, destitute, orphans, widows, unmarried girls, etc;
- National Rehabilitation Commission for external oversight.
- Ombudsman for Grievance Redressal.

If land acquired for a public purpose remains un-utilized for the purpose for five years from the date of taking over possession, the same shall revert to the Government concerned.

In the light of the lessons learnt and as a conflict resolution measure for those displaced, there is need to introduce the concept of benefit-sharing in development-induced displacement in India.

The old concept of paying compensation based on the market value of land should be replaced with assessing the true value of land for all those who depend on it and then compensating them adequately

Also the compensation/rehabilitation should not be confined only to the title holders of land but should include all those who derived sustenance from the land.

Capability building measures and internal supervision mechanisms needs to be strengthened.

### **C. Special Economic Zones**

The Special Economic zones (SEZs) Policy was announced in April 2000.

SEZs in India functioned from 1.11.2000 to 09.02.2006.

To instill confidence in investors and signal the Government's commitment to a stable SEZ policy regime and with a view to impart stability to the SEZ regime the SEZ Act, 2005, was enacted.

#### **The main objectives are:**

- Generation of additional economic activity
- Promotion of exports of goods and services
- Promotion of investment from domestic and foreign sources
- Creation of employment opportunities
- Development of infrastructure facilities.

The SEZ Act, 2005 makes quite a few incremental changes over the SEZ policy of 2000. Like, corporate tax exemption, exemption from Service Tax and Securities Transaction Tax, Greater operational freedom etc.

### **Chinese Experience with SEZs**

Establishment of SEZs in china started in 1978 and achieved considerable success because of

- **Unique locations** - of the five SEZs, Shenshen, Shantou and zhuhai are in Guangdong Province adjoining Hong Kong. Fourth, Xiamen, is in Fujian Province and nearer Taiwan
- **Large size**
- **Investment-friendly attitude** towards Non-resident chinese and Taiwanese
- **Attractive incentive packages** for foreign investment
- **Liberal** customs procedures
- **Flexible labour laws** providing for contract appointments.
- **Decentralization** of Power local authorities in administering the zones.

However, the **negative consequence** was that the SEZ scheme produced a **speculative land market**.

The Large-scale transfer of land to real estate developers was prompted by what was called 'zone fever'. The provincial and local governments declared their own special zones providing land to the industries and real estate speculators. In fact, the zone fever was escalated to the level where by early 1990s, there were no accurate numbers on how many developmental zones actually existed.

### Criticism of SEZs in India

- SEZ has led to displacement, loss of agricultural land.
- Rehabilitation package which include a job for at least one person from the affected family is Inadequate.
- While China had permitted a limited number of very large sized SEZs, in India hundreds of SEZs have been approved including some that are only 10 hectares in size.
- The 25% cap on processing activity in multi-product SEZs would lead to speculative real estate activity rather than job creating manufacturing activities.
- Tax breaks given which can continue for as long as 15 years will lead to revenue loss as well as diversion/displacement of units, particularly IT units which will all move to SEZs because their existing tax-breaks would expire in 2009.

All the elements of the Chinese SEZ policy that led to negative consequences are also present in the Indian SEZ policy.

### Administrative Arrangements for Conflict Resolution for SEZs

- A job for at least one person from the affected family, such a stipulation is not adequate. Rehabilitation packages should be based on an income-sharing strategy.
- The idea, on the whole, should be to make the oustees primary stakeholder partners rather than one-time beneficiaries or spectators of SEZ development.
- In addition to sites in lieu of land, an ex gratia housing grant, a transportation grant, a subsistence grant, a rehabilitation grant for loss of land, vocational training and employment to one member of each affected family constitute part of the package.
- The SEZ law should specify establishment of vocational training centers. Provision of water, sanitation and health facilities should precede the actual developmental activities in the vicinity of the villages. There should be a clear provision in the SEZ law allocating such responsibility to the entrepreneurs seeking to establish the SEZs.
- In order to prevent conflict situations from arising and leading to violence, it is necessary that industrial activities and SEZs are located in areas where they cause the least displacement and dislocation, and do not usurp productive agricultural lands.

### Land Records

The unsatisfactory state of land records is a major source of dispute between individuals as also between individuals and the government. Such disputes sometimes take a violent turn.

The commission in its Report on the Right to Information has emphasized the importance of land records maintenance in our governance system.

## Recommendations

*The following steps may be taken to alleviate the distress in the agrarian sector:*

1. Provide renewed impetus to land reform measures like redistribution of surplus land, vesting title in tenants and carrying forward consolidation of land holdings etc for maintaining and promoting the sustainability of agriculture.
2. In order to provide adequate and timely facilities to farmers, there is need to augment the banking system in the rural areas and make them more responsive to the farmers' needs
3. Redesign poverty alleviation programmes to make them more relevant to the needs of small and marginal farmers.
4. Step up public investment in order to expand non-farm and off farm activities to provide alternative livelihood opportunities for the poorer farmers within rural areas.
5. Introduce measures to encourage formation of 'Self Help Groups' (SHGs) to improve access to credit and marketing and empower the disadvantaged.
6. Diversify risk coverage measures such as weather insurance schemes and price support mechanisms.

*There is need to amend the present approach to SEZs on the following lines:*

1. In establishing SEZs, use of prime agricultural land should be avoided
2. The number of SEZs should be limited, with a larger minimum size with locations preferably in backward areas so that they act as nuclei for economic growth.
3. SEZs promoted by farmers themselves should be encouraged
4. The livelihood of the displaced should be a major concern of the SEZ policy.
5. The SEZ regulations should clearly allocate social responsibility of rehabilitation to entrepreneurs seeking to establish SEZs. This should include provision for water, sanitation, health facilities, and vocational training centers.
6. The proportion of land that is permitted to be used by the promoters of SEZs for non-processing activities should be kept to a minimum and this should be ensured at the time of approval of their plans. The existing ratio between processing and non-processing activities needs to be re-examined in order to maximize the proportion of land put to productive use. Also strict adherence to environmental regulations should be ensured.
7. Comprehensive land use plans should be prepared and finalized after wide public consultations. Industrial activities in SEZs should be located only in areas earmarked for the purpose in the land use plans.
8. The extremely liberal tax holidays provided both to export units and to developers require reconsideration.

## CHAPTER 5. Water Related Issues

### A. Inter-State Water Conflicts

#### Constitutional Provisions and Important Laws

- Water is a State subject in list II of 7th Schedule and the union comes in only in the case of inter-State waters, Entry 56 of list I (union list)
- Article 262 – which deals with adjudication of disputes relating to matters of inter-state rivers or river valleys

The two laws enacted under Article 262 and entry 56 of list I are:

1. **The River boards Act, 1956** : The River boards tried to prevent conflicts by preparing developmental schemes and working out the costs to each State. **No water board**, however, has so far been created under the River boards Act, 1956.
2. **Inter-State Water Disputes Act, 1956**. Provides for an aggrieved State to ask the union Government to refer a dispute to a tribunal.

The Inter-State Water Disputes Act was amended in 2002 and the following important changes were made:

- Government of India to establish a Tribunal within one year on a request by a State Government.
- The Tribunal to investigate the matters referred to it and give its Report within a period of three years (Government of India may extend the period by another two years).
- The decision of the Tribunal, after its publication in the Official Gazette by the central Government, shall have the same force as an order or decree of the Supreme court.

## **B. Lessons Learnt from Inter-State River Disputes**

- The union Government has not been able to act decisively
- The other lesson is that the time lost in delays due to wrangling both before and during tribunal proceedings is very costly, in terms of loss of production, loss of farmers' income growth and the rising cost of constructing irrigation systems.
- States are becoming resistant to compliance with Awards of tribunals in spite of express provisions in the constitution regarding the finality of such awards.
- A long time is taken to constitute tribunals and giving awards and in pronouncements of interim Awards that have led to further complications.
- After an Award is given, there are problems of interpretation and implementation and there is no mechanism to enforce the binding character of such Awards.
- Courts are barred from reviewing the Awards of the tribunals, but matters are still taken to the Supreme Court on related issues.
- The questions raised before the Supreme court are on questions of its sharing during years of poor rainfall and on those relating to environmental aspects, displacement and rehabilitation of people and human rights in the context of specific projects. Such references delay the settlement of disputes and implementation of projects for years.

## **Inter State Water Dispute Tribunals**

- Krishna: Out of a total catchment of 2,55,949 sq. km., 6821 sq. Km lie in Maharashtra, 1,11,959 sq. Km in Karnataka and 75369 sq. Km in Andhra Pradesh.
- Godavari: the party States are Maharashtra, Andhra Pradesh, Orissa, Madhya Pradesh and Karnataka
- Narmada: The union Government constituted the Narmada Water Disputes Tribunal (NWDT) on 6th October, 1969
- Cauvery: The dispute over the allocation of the waters of the River Cauvery is more than 100 years old. The matter has again been taken up before the Supreme Court in the form of a Special Leave Petition.
- Ravi-Beas: to consider river water claims of Punjab, Haryana and Rajasthan, tribunal was set up by an ordinance in January 1986.

The National commission for Integrated Water Resources Development that gave its report in 1999 had recommended setting up of River basin Organisations (RBOs) as a body in which the concerned State Governments, local governments and water users would have representation and which would provide a forum for mutual discussions and agreement.

## **Way Forward**

The commission recommended legislation in place of the River boards Act, 1956 that could provide, in addition to the establishment of River basin Organisations for each interstate river, the following by way of goals, responsibilities and management for the RBOs:

### **Goals:**

- A. Enunciation of principles for the development of the basin



- B. Issuing guidelines for major projects
- C. Prescribing technical standards
- D. Maintaining and improving water quality for all beneficial uses
- E. Prescribing a framework for development of ground water
- F. Controlling land degradation
- G. Rehabilitation of land resources to ensure their sustainable utilization and conservation of the natural environment of the basin

### **Responsibilities:**

- a. Water allocation to the States and administration of various key natural resources strategies
- b. Technical responsibility for water quality, land resources, nature conservation and community involvement
- c. Collection of data

### **Water Management Responsibilities:**

- a. Regulation of inter-state rivers and a programme of water quality monitoring.
- b. Coordination of river management to encourage appropriate land-use practices, best practical means of waste-treatment and off-river disposal
- c. Responsibility for developing programmes for the preservation of the ecosystem and for coordination of management of wetlands.

## **C. National Water Resources Council**

The National Water Resources council was set up by the Government of India in March 1983 to discharge the following functions:

- To **lay-down** and **review** the national water policy.
- To **consider** and review water development plans.
- To **recommend** acceptance of water plans with such modifications as may be considered appropriate and necessary
- To **give directions** for carrying out such further studies as may be necessary for full consideration of the plans or components thereof
- To **advise** on the modalities of resolving inter-State differences with regard to specific elements of water plans.
- To **advise** on practices and procedures, administrative arrangements and regulations for the fair distribution and utilization of water resources.

As far as coordination of river basin planning and management and effective water use are concerned, the council has **not had much impact**.

### **National Water Resources Council**

- The Prime Minister is the chairman
- The Union Minister of Water Resources is the Vice-chairman

### **Members of the Council**

The Minister of state for water Resources, concerned union Ministers/ Ministers of State, chief Ministers of all States and lieutenant Governors/Administrators of Union Territories are the Secretary, Ministry of Water Resources is the Secretary of the council.

This Council first met in October, 1985 and adopted a National Water Policy in 1987; Although the council is supposed to meet once a year, this does not often happen.

## Way Forward

- The council should play a much more positive role.
- The council and its secretariat should be more proactive, suggest institutional and legislative reforms in detail, devise modalities for resolving interstate water conflicts, and advise on procedures, administrative arrangements and regulation of use of resources by different beneficiaries keeping in view their optimum development and ensuring maximum benefits to the people.

## D. Need for a National Law on Water

Due to Rapid development, average availability of water is likely to fall below the water-stress level in the near future and there is need for much greater efficiency in the use of water and a greater public awareness on the criticality of water conservation. This would call for efforts to develop, conserve, utilise and manage water on the basis of a framework that incorporates national perspectives.

The commission would therefore like to **recommend** that the law, at the minimum, should incorporate the **following**:

1. The use of all water, should be subject to regulation by prescribed bodies.
2. The location of water resources in relation to land shall not in itself confer preferential rights to usage.
3. The unity of the water cycle and the inter-dependence of its elements needs to be recognized.
4. Resource planning should be done for a hydrological unit such as a drainage unit as a whole or for a sub-basin.
5. Responsibility for the development, apportionment and management of available water resources will vest with the basin or regional level in such a manner as to enable the interested parties to participate fully
6. Water required to ensure that everyone has access to sufficient drinking water should be reserved.
7. Provision should be made for the establishment of one or more regulatory bodies.
8. There should be a standardized national information system with a network of data banks and databases integrating and strengthening the central, state and basin-level agencies and improving the quality of data and the processing capabilities.

## E. Recommendations

1. The Union Government needs to be more proactive and decisive in cases of inter-State river disputes and act with the promptness and sustained attention that such disputes demand.
2. Since Article 262 of the Constitution provides that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of inter-State river disputes, it is necessary that the spirit behind this provision is fully appreciated.
3. River Basin Organisations (RBOs) should be set up for each inter-State river, as proposed by the Report of the National Commission for Integrated Water Resources Development, 1999 by enacting a legislation to replace the River Boards Act, 1956
4. The Chairmen of all the River Basin Organisations, as and when formed, should be made members of the National Water Resources Council.
5. The National Water Resources Council and RBOs should play a more positive role. The Council and its secretariat should be more proactive, suggest institutional and legislative reforms in detail, devise modalities for resolving inter-State water conflicts, and advise on procedures, administrative arrangements and regulation of use of resources by different beneficiaries keeping in view their optimum development and ensuring maximum benefits to the people.
6. In order to develop, conserve, utilize and manage water on the basis of a framework that incorporates long term perspectives, a national water law should be enacted.

## CHAPTER 6. Issues Related To Scheduled Castes

### Introduction

Members of the Scheduled castes are among the poorest in the country and also, the most discriminated against. This discrimination often manifests itself in the form of socio-economic exploitation, denial of civil rights, social ostracism and even violence against them which sometimes assumes brutal proportions in the form of massacres, rape, burning of colonies etc.

## A. Constitutional Safeguards

Broadly classified into 3 types:

1. **Protection:** Legal/Regulatory measures for enforcing equality and removing disabilities; providing strong punitive action against physical violence
2. **Compensatory discrimination:** Enforcement of reservation provisions in public services, representative bodies and educational institutions.
3. **Development:** Measures to bridge the wide gap between the Scheduled castes and other communities in their economic conditions and social status, covering allocation of resources and distribution of benefits.

## B. Legislative Framework

Article 17 of the constitution of India abolished 'untouchability' and forbids its practice in any form.

In order to enforce Article 17 of the constitution, within five years of adoption of the constitution, the untouchability (Offences) Act, 1955 was enacted by Parliament. Subsequently, the Act was revised in November 1976 and renamed as the Protection of civil Rights Act, 1955. The offences under the Act were made cognizable as well as non-compoundable.

Further, to check and deter crimes against the Scheduled castes and Scheduled Tribes, the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was brought into force with effect from 30th January, 1990. **Measures taken for the effective implementation of this Act are:**

- Provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;
- Provisions for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under the Act;
- Provision for the economic and social rehabilitation of the victims of the atrocities;
- Appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of the Act;
- setting up of committees at appropriate levels as the State Government may think necessary to assist the Government in formulation of such measures;
- provision for a periodic assessment of the working of this Act with a view to suggesting measures for its better implementation;
- Identification of atrocity prone areas.

## C. Evaluation of The Legislative Framework

- The number of cases registered under the **PCR Act** has shown a constant decline after the 1970s. These figures could, however, lead to the **erroneous conclusion** that the problem of untouchability is also on the decline.
- In fact, the National commission for Scheduled castes, in its Sixth Report has observed "**rather, it is a reflection on the ineffectiveness of the law enforcement machinery**". From the figures indicated above, it is also evident that the **Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act** has become the main instrument for preventing harassment to the Scheduled castes.
- The **conviction rate** under both the Acts has been **low**. (Under the Protection of civil Rights Act, in 2005 a total of 101 cases ended in conviction whereas 385 ended in acquittal; Under the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, in the year 2005, 7110 cases ended in conviction whereas 17,401 cases ended in acquittal).

Several studies have confirmed that the abhorrent practice of untouchability still persists. Studies have also highlighted cases of reluctance and negligence on the part of the law enforcement machinery. The National commission for Scheduled castes and Scheduled Tribes in a special report have stated that ignorance of law, fear of reprisals and lack of faith in the enforcement system, often compel victims to acquiesce in the existing unjust situation. Also because of protracted trials, witnesses become reluctant to testify against powerful elements.

## Way Forward

The commission is of the view that the Administration should be much more proactive in dealing with cases of exploitation of the Scheduled castes. Therefore the approach of the Administration should be to detect cases of violation of law, suo-motu rather than wait for an FIR to be filed.

## D. Institutional Framework

### 1. National commission for Scheduled castes

- The constitution, earlier provided for appointment of a Special Officer under Article 338; designated as commissioner for Scheduled castes and Scheduled Tribes.
- In 1978, Article 338 was amended vide the constitution (Sixty-fifth) Amendment Act, 1990 and the first National commission for Scs and STs was set up in March, 1992.
- Consequent upon the constitution (Eighty-ninth Amendment) Act, 2003 which came into force on 19th February, 2004, the National commission for Scheduled castes and Scheduled Tribes has been replaced by:  
(1) National commission for Scheduled castes, and (2) National commission for Scheduled Tribes.

### 2. National commission for Safai Karamcharis

Constituted in August 1994, through an Act of Parliament, namely the National commission for Safai Karamcharis Act, 1993 initially for a period of three years.

- It is **not a permanent** commission but its tenure has been extended from time to time.
- It consists of a chairperson, a Vice-chairperson and five members all nominated by the union Government. At least one member is a woman.
- The **union Government** is required to **consult** the National commission on all policy matters affecting Safai Karamcharis.
- It can **investigate** and take **suo moto** action relating to their problems.
- The commission is **empowered** to call for information with regard to Safai Karamcharis from the concerned governments or authorities.
- The commission is required to **prepare an Annual Report** which is laid on the table of both Houses of Parliament. Where the matter in the Report relates to the State Government, a copy of such Report is to be laid by the Governor of the concerned State before the legislature of the State.
- The commission has so far **submitted four reports** with a large number of recommendations

## E. Evaluation of The Working of The Institutional Framework

The National Human Rights commission has analyzed the effectiveness of the above mentioned watch-dog institutions and has concluded that these institutions are handicapped because of the very large number of complaints received, their limited capacity to deal with these complaints and also due to the absence of adequate field staff.

The National commission for SCs and STs feels there is an urgent need to look into the issue and empower the commission by giving it more powers under the constitution, to ensure the implementation of its recommendations.

### Advisories by The Ministry of Social Justice and Empowerment

- Distribution of booklets in Hindi and local languages highlighting the theme of combating



untouchability and atrocities.

- Mass awareness programmes.
- Sensitizing of constabulary and police officers of police station level.
- Research studies for identifying the forms, causes & measures required for eradication of untouchability.
- Identification of atrocity prone areas in a focused manner.
- Effective implementation of land reforms.
- Promotion of Self Help Groups, especially for women.
- Adequate flow of resources from the outlays earmarked by State Governments for Scheduled Caste Sub Plan (SCSP)
- Legal literacy among women about their rights and provisions of legal aid available
- The Minimum Wages Act be strictly enforced.
- Expanding the coverage of social security.
- The Vigilance and Monitoring Committees, in association with State Commissions for Scheduled Castes, to particularly review cases pertaining to dispossession of lands owned by SCs as well as instances where pattas have been issued but actual possession of land has not been given.

## F. Administrative Action Required

Considering the magnitude of the atrocities and discrimination practices, a strategy should be evolved that needs to include the following:

1. **Effective implementation of various laws enacted for the purpose:**
2. **Motivating the field functionaries**
3. **Monitoring and review by District Level Monitoring Committees**
4. **Police reforms**
5. **Engaging independent agencies to conduct field surveys to identify cases of social discrimination**
6. **Involvement of Civil Society Organisations (CSOs):**  
To help the Scheduled castes to raise their voice against atrocities discrimination and exploitation fearlessly
7. **Coordination mechanism for the various National and State level Commissions**
8. **Involving Panchayati Raj Institutions**
9. **Effective implementation of land reforms and other social legislation:**  
There are a large number of legislations – bonded labour Abolition Act, child labour Prohibition Act, land Reform laws, Debt Relief Act
10. **Expeditious Trial of Criminal Cases.**
11. **Convergence of Regulatory and Development Programmes:**  
Social justice through effective implementation of existing legislations and other measures for preventing and protecting members of the Scheduled castes from atrocities is not enough for resolving conflicts unless they are accompanied by effective and time-bound implementation of developmental schemes.

## G. Recommendations

- Effective **Implementation** of the Constitutional, legal and administrative provisions in letter and spirit.
- To ensure **speedy trial** of cases pending in subordinate.
- Place a **positive duty** on public authorities for promotion of social and communal harmony.
- There is need for engaging **independent agencies** to identify cases of social discrimination.
- Launch well-targeted **awareness** campaigns in areas where the awareness levels are low.
- The administration and the police should be **sensitized** towards the special problems of the Scheduled Castes and Scheduled Tribes.
- Strict **enforcement** of the rights of the weaker sections should not be downplayed by the administration for fear of further disturbances or retribution.
- More focus on the **rehabilitation** of the victims including Counselling.

- As far as possible the deployment of police **personnel** in police stations with significant proportion of SCs and STs should be in proportion to the population of such communities
- Introduce a system of **incentives** for officials, in detecting and successfully prosecuting cases of discrimination/atrocities against the Scheduled Castes.
- Active involvement of the **local governments, corporate sector** and **NGOs** in complementing the efforts of government for the development of the Scheduled Castes.

## CHAPTER 7. Issues Related To Scheduled Tribes

### Introduction

The position of the tribals lies at the very periphery of the social formation. The Human Development Indices (HDIs) of the ST population are much lower than the rest of the population. Social inequalities of the tribal population are manifested in various forms of exploitation such as bondage, forced labour and indebtedness. They are also exploited by merchants, money lenders and forest contractors.

### A. Social Justice

Like the members of the Scheduled castes, tribals are also subject to atrocities. And, the position regarding the disposal of cases for crimes committed against members of the Scheduled Tribes by courts is no better than in the case of the Scheduled castes.

The implementation of laws and capacity building, recommendations made by the commission in case of the Scheduled castes, hold good for the Scheduled Tribes also.

### B. Displacement of Tribals

- Tribals have been displaced in large numbers on account of various large development projects like irrigation dams, hydro-electric and thermal power plants, coal mines and mineral-based industries.
- A National Policy on Relief and Rehabilitation of Project Affected Families (PAFs) was notified in February, 2004 with a relief package of seventeen parameters to be fulfilled before permitting dislocation. Thereafter, the Government of India, in October, 2007 approved a new National Policy for Rehabilitation and Resettlement. But serious work on PAFs is yet to start in tribal areas.
- PESA had specifically provided for prevention of alienation of land. It had asked the State legislatures in the area not to make any law which is inconsistent with the objective of preventing alienation of tribal land.
- Paradoxically, however, PESA has been unscrupulously and indiscriminately used to promote industrial development at the expense of tribals.
- State Governments should enforce the existing laws on land ceiling
- A complete overhaul and systematic organization of existing land records with freer access to such information would have a positive effect and avoid conflict situations.

### C. The Panchayats (Extension to the Scheduled Area) Act, 1996

- It ensures involvement of tribals in their empowerment process not only as active participants but also as effective decision-makers, implementors, monitors and evaluators.
- The Gram Sabha is empowered to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution. The Gram Sabha as articulated in PESA, has within itself an inbuilt capacity for conflict resolution.
- A comparative analysis of PESA and the legislations enacted by the States on this subject reveals that the provisions of PESA have been highly diluted in the process of ratification by the States and most of the powers of the Gram Sabha have been given to the district administration or to the zilla Parishad.

### D. Capacity Building in Administration

- The main problem, while dealing with conflicts concerning the tribal population is that the existing

constitutional provisions and laws designed to protect them are not optimally used.

- A significant section of the tribal population has gradually been weaned away from the mainstream by the extremists.
- It is necessary that the administration takes special care to exercise its basic functions and provide core services in the tribal areas.
- It is also necessary that Government posts only such police, revenue, forest and development officials who have the required training and commitment to work in such areas and empathise with the tribal population.
- Officials also need to be motivated to work in such areas. One way of doing this would be to select officials for specific posts in tribal areas providing hardship pay, preferential treatment in accommodation and education etc all of which would induce officials to volunteer for such posting.
- No amount of legal provisioning or refinement of the planning process can lead to better compliance of legislations either in the protection of rights of the tribal people or development of the Scheduled Areas unless the administration at the cutting level edge is trained and attuned towards the objectives of PESA

## **E. Tribal Policy**

There is no clear national tribal policy laying down the direction and imperatives for tribal development. The last one was the Panchsheel Programme for tribal development enunciated by the late Prime Minister Pt. Jawaharlal Nehru. It is time that a national plan of action for tribe-specific comprehensive development which could serve as a road map for the welfare of the tribals is formulated.

## **F. Conflicts Related to Inclusion in the List of Scheduled Tribes**

There have been agitations –sometimes violent – by certain groups, while laying their claims for inclusion in the list of Scheduled Tribes. The agitation by Gujjars in Rajasthan, and a few groups in Assam are some recent examples of such conflicts.

### **Article 342 of the Constitution stipulates:**

1. The President may after consultation with the Governor specify the tribes or tribal deemed to be Scheduled Tribes.
2. Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1).

In June, 1999, Government approved modalities for deciding claims for inclusion in or exclusion from the lists of Scheduled Tribes. Thus, there has to be a mechanism to bring together all such authorities which, in consultation with the major States with tribal population, should attempt to arrive at a comprehensive methodology with clearly defined parameters. It is well understood that inclusion of any tribe in the list would generally lead to further demands and conflicts

## **G. Recommendations**

1. While all States in the Fifth Schedule Area have enacted compliance legislations vis-à-vis PESA, their provisions have been diluted by giving the power of the Gram Sabha to other bodies.
2. Timely submission of Annual Reports of the Governors under the Fifth Schedule of the Constitution.
3. Awareness campaigns should be organised in order to make the tribal population aware of the provisions of PESA and the 73rd amendment to the Constitution.
4. existing land records with free access to information about land holdings.
5. There is need to harmonise the various legislations and government policies being implemented in tribal areas with the provisions of PESA
6. Mining laws applicable to Scheduled Tribal Areas should be in conformity with the principles of the Fifth and Sixth Schedules of the Constitution.
7. Government should select such police, revenue and forest officials who have the training and zeal to work in tribal areas and understand as well as empathise with the population they serve.
8. A national plan of action for comprehensive development which would serve as a road map for the welfare of the tribals.

9. The authorities involved in determining the inclusion and exclusion of tribes in the list of Scheduled Tribes should adopt a mechanism of consultation with the major States and those with tribal populations.

## CHAPTER 8. Issues Related To Other Backward Classes

### Introduction

There has been a great deal of resentment among people belonging to Other backward classes (OBCs) including minorities that they have not been given the benefit of comprehensive amelioration packages as has been done in the case of SCs and STs. This has often led to conflicts culminating in violence.

**The MANDAL commission** evolved 11 indicators – a mix of caste and class features – for assessing social and educational backwardness. It arrived at an exhaustive list of 3473 castes that were declared as backward. The tangible indicators to ascertain a caste or any social group as backward included their lower position in the class hierarchy, lower age at marriage within the group, higher female work participation, higher school drop out rate, inaccessibility to drinking water, lower average value of family assets, higher existence of kutcha houses and so on.

**Article 15(4) and 16(4)** empower the State to make special provisions for any socially and educationally backward class of citizens.

**Article 340(1)** authorizes the appointment of a commission to investigate the conditions of backward classes.

The constitution refers to the term 'backward classes' in Articles 15(4), 16(4) and 340(1).

The First backward commission which was appointed under Article 340(1) submitted its Report in 1955. The Report was rejected by the union Government.

The Second All India backward classes commission – the Mandal commission – submitted its report in 1980. The report of the Mandal commission was partially implemented in 1991.

The Registrar General of India and the census commissioner had discontinued collection of caste-wise information (except for SCs and STs) since the 1931 census. Even the Mandal commission which had estimated the OBC population at 52 per cent of the country's total population had used the 1931 census data.

No socio-economic survey has been conducted of the Other backward classes in the country. It is therefore necessary that government immediately take up a socio-economic survey of the Other Backward Classes.

An analysis of **NSSO data** contained various Surveys and Reports and provides following picture of socioeconomic status of OBCs - Poverty, Health Indicators, Unemployment, Asset Ownership, and Indebtedness.

**Social Empowerment** - On the whole, special schemes on the lines of the schemes for SCs and STs need to be taken up for social empowerment of the OBCs.

**Economic Empowerment** - the NSSO surveys reveal that the incidence of poverty among OBCs is intermediate to that among SCs/STs on the one hand and the 'Others', on the other. We have also seen how open unemployment is consistently higher among OBCs than among 'Others'. As far as asset ownership including land is concerned, the ownership is only about two-thirds of 'Others' in both rural and urban areas. The incidence of indebtedness and consequently the debt to asset ratio is highest among OBCs of all the social groups.



Clearly, if the OBCs are to be put on par with 'Others' and made a part of the mainstream, they have to be empowered economically through employment and income generation activities and alleviation of poverty.

**The preamble** to our constitution clearly declares the intention to secure to all citizens 'liberty of thought, expression, belief, faith and worship'.

**Article 25** guarantees freedom of conscience and the right to freely profess, practice and propagate religion.

**Article 26** ensures the right to manage religious institutions and religious affairs.

**Article 29** grants the rights to all citizens to conserve their language, script and culture.

**Article 30** provides for the protection of the interests of religious and linguistic minorities by giving them a right to establish and administer educational institutions of their choice and the State has been directed not to discriminate against the institutions of the minorities in the matter of given aid.

**Article 350A** directs the State to provide facilities for instruction in the mother tongue at the primary stage in education.

**Communalism** in a broad sense implies blind allegiance to one's own communal group- religious, linguistic or ethnic- rather than to the larger society or to the nation as a whole. In its extreme form, communalism manifests itself in hatred towards groups perceived as hostile, ultimately leading to violent attacks on other communities.

## Recommendations

1. Government may work out the modalities of a survey and take up a state wise socio-economic survey of the "Other Backward Classes", which could form the basis of policies and programmes to improve their status.
2. Government needs to formulate and implement a comprehensive scheme for capacity building of OBCs that would bring them at par with the rest of society.

## CHAPTER 9. Religious Conflicts

After Independence, there have been instances of large-scale communal violence in the country.

Though a number of communal riots have been dealt with effectively, there have also been many serious failures on the part of the administration in dealing with communal situations in a prompt and effective manner.

This commission found the following problems and shortcomings:

### Systemic Problems

- Conflict resolution mechanisms are ineffective;
- Intelligence gathered is not accurate, timely and actionable;
- Bad personnel policies - poor choice of officials and short tenures - lead to inadequate grasp of local conditions.

### Administrative Shortcomings

- The administration and the police fail to anticipate and read indicators which precipitated violence;
- Even after the appearance of first signals, the administration and police are slow to react;

- Field functionaries tend to seek and wait for instructions from superiors and tend to interfere in local matters undermining local initiative and authority;
- The administration and police at times act in a partisan manner;
- At times there is failure of leadership, even total abdication on the part of those entrusted with the maintenance of public order.

## Post-riot Management Deficiencies

- Rehabilitation is often neglected, breeding resentment and residual anger;
- Officials are not held to account for their failures, thus perpetuating slackness and incompetence.

So far as **capacity building** for resolution of conflicts is concerned, there is need for involvement of citizens in developing **internal mechanisms** for diffusing conflict situations, which are as follows:

1. cooperation and coordination with the police (community policing).
2. cooperation and coordination with the administration (citizens' committees).

### 1. Community Policing

*The Basic Principle Underlying Community Policing is that 'A Policeman is a Citizen with Uniform and a Citizen is a Policeman without Uniform'*

The Concept of community policing is incorporated in the constitution of the Republic of South Africa. It's basic principles are:

- Establishing and maintaining a partnership between the community and the police.
- Promoting communication and cooperation between the police and the community.
- Improving the rendering of police services in the community.
- Improving transparency in the service and accountability of the service to the community.
- Promoting joint problem identification and problem solving by the police and the community.

**Definition** "Community Policing is an area specific proactive process of working with the community for prevention and detection of crime, maintenance of public order and resolving local conflicts and with the objective of providing a better quality of life and sense of security".

Many States in India have taken up community policing in some form or the other. Be it 'Maithri' in Andhra Pradesh, 'Friends of Police' in Tamil Nadu, Mohalla Committees in Bhiwandi (Maharashtra), there have been several success stories from all over the country.

### The Commission suggestions on community policing

1. Community policing is a philosophy and not just a set of a few initiatives.
2. The success of community policing lies in citizens developing a feeling that they have a say in the policing of their locality.
3. The idea of community policing would be a success if it is people driven ( inclusive Liaison Group) rather than police driven.
4. Convergence with activities of other government departments and organisations should be attempted

### 2. District Administration and Citizens' Peace Committees

In times of communal tension, administrators working in districts have formed peace committees, consisting of politicians and influential members of different communities who have participated meaningfully in the deliberations of the peace committees and in peace marches.

These committees should be institutionalized as an important forum for conflict resolution between groups

and communities. The commission is of the view that **District Peace committees** should be made effective instruments of addressing issues likely to cause communal disharmony. These committees should be constituted by the District Magistrate in consultation with the Superintendent of Police.

On the lines of the District Peace committees as suggested above, there is also need for organizing '**Mohalla committees**'.

#### *The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005*

With a view to further empower the union and State Governments to take effective measures to provide for a holistic approach to prevent and control communal violence, including rehabilitating the victims of such violence, mandating for speedy investigation and trial, and imposing enhanced punishment, the Government of India introduced the bill in Parliament in 2005.

A brief analysis indicates that a **separate legislation** for dealing with communal violence is, perhaps **not required** since there are adequate provisions in the present statutes to deal with all aspects of communal violence. For example, there are several provisions in the Indian Penal Code (IPC) which deal extensively with offences relating to religious, racial, linguistic or regional groups, castes and community.

**153A.** Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

In addition, sub-sections (1)(c), (2) and (3) of **Section 505** of the IPC also deal with offences related to promoting enmity, hatred or ill-will between classes on grounds of religion, race, place of birth etc.

Further, **chapter XV** of the IPC contains provisions regarding offences relating to religion.

*Briefly, these include:*

- i. Section **295** - Injuring or defiling place of worship with intent to insult the religion of any class.
- ii. Section **295A** - Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.
- iii. Section **296** - Disturbing religious assembly.
- iv. Section **297** - Trespassing on burial places etc.
- v. Section **298** - uttering, words, etc., with deliberate intent to wound the religious feelings of any person.

*In the light of these considerations, the commission is of the view that a separate legislation is not necessary to combat communal violence and may even lead to restricting the use of the substantive provisions in the basic laws. It is better to strengthen the basic laws themselves, where necessary.*

However, there are some innovative provisions in the communal Violence (Prevention, control and Rehabilitation of Victims) bill, 2005 which would further strengthen the hands of the Government in dealing with communal violence and negating the ills associated with such violence. These are:

1. Clause 19(2): Notwithstanding anything contained in the Indian Penal Code whoever commits any act of omission or commission which constitutes communal violence shall, except in the case of an offence punishable with death or imprisonment for life, be punished with imprisonment for a term which may extend to twice the longest term of imprisonment and twice the highest fine provided for that offence in the Indian Penal Code or in any other Act specified in the Schedule. Provided that whoever being a public servant or any other person authorized to act by a competent authority under any provisions of this Act or orders made there under, commits communal violence shall without prejudice to the foregoing provisions be punished with imprisonment which shall not be less than five years.
2. Clause 19(3): Any person who is guilty of an offence under sub-section (1) shall be disqualified to hold any post or office under the Government for a period of six years from the date of such conviction.
3. Clause 24 (1): The State Government shall establish one or more Special Courts for trial of scheduled offences committed during the period of disturbance by issuing a notification for the

purpose

4. Clause 24 (2): Establish Additional Special Courts outside the State, for the trial if:
  - It is not likely to be fair or impartial or completed with utmost dispatch;
  - It is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them;
  - It is not otherwise in the interests of justice, it may request the Central Government to establish, in relation to such communally disturbed area, an Additional Special Court outside the State.

*These may be incorporated in the IPC and CrPC themselves, particularly since there are several enabling and supplementing provisions relating to maintenance of public order which would facilitate effective implementation of the above provisions.*

Another feature of the bill is that it provides a detailed institutional structure for the purpose of providing relief and rehabilitation to persons affected by communal disturbances.

After a comparison, it is apparent that the bill proposes to establish structures which are nearly identical to those already mandated under the DMA, envisaging the involvement of functionaries and authorities who are, in general, common.

While one deals with measures related to disaster management, including relief and rehabilitation, the other relates to relief and rehabilitation precipitated per se by communal violence.

*The commission is of the considered view that such parallel structures and duplication of roles hinder good governance*

## **Recommendations**

1. Community policing should be encouraged. The principles laid down should be followed.
2. District Peace Committees/Integration Councils should be made effective instruments of addressing issues likely to cause communal disharmony. The District Magistrate in consultation with the Superintendent of Police should constitute these committees. In Police Commissionerates, these committees should be constituted by the Police Commissioner in consultation with the Municipal Commissioner. The committees should be of permanent nature. These committees should identify local problems with a potential to degenerate into communal conflicts and suggest means to deal with them at the earliest. Further, Mohalla Committees should also be organized on the same lines.
3. In conflict prone areas, the police should formulate programmes in which the members of the target population get an opportunity of interacting with the police as a confidence building mechanism.
4. A separate law to deal with communal violence is not required. The existing provisions of the Indian Penal Code and the Criminal Procedure Code need to be strengthened. This may be achieved by incorporating provisions for:
  - Enhanced punishments for communal offences.
  - Setting up of special courts for expeditious trial of cases related to communal violence.
  - Giving powers of remand to Executive Magistrates in cases of communal offences.
  - Prescription of norms of relief and rehabilitation.
5. For providing relief and rehabilitation to victims of communal violence, the framework provided under the Disaster Management Act, 2005 could be effectively used.

## **CHAPTER 10. Politics and Conflicts**

### **Introduction**

In a heterogeneous country like India, in which different sections of people have grievances that arise out of social, economic and political issues that remain to be resolved, it is important that they make use of the democratic space for the resolution of such grievances. In this respect, political parties have a crucial



role to play. When the political process is not in a position to articulate such legitimate demands, conflicts emerge. In the areas now plagued by the left extremist movement, it is the failure of the political process that has enabled the movement to mobilize people and enlist them in its ranks.

Today it has become more difficult for democratic space to be used for resolving conflicts. One reason is because of compulsive politics where each political grouping has multiple identities and where conflicts impinge on regional issues almost all the political parties with regional interest in these issues take a rigid stand because of which conflicts tend to get “frozen”. Examples of these are the inter-State disputes on water, location of central projects etc where political parties of one State including the national parties make common cause against the other State thus becoming a source of conflict in the region.

## Politics and Identity Issues

Identity issues are not unique to India, they are a worldwide phenomenon although they prevail in a particularly intense form in today's India where communities based on language, religion, sect, caste and tribe have strengthened their identities. Conflicts based on such identity issues often lead to violence. A recent example is the increasing conflict generated by sections of society wanting to be counted as tribes, as evidenced in the agitation by the Gujar community and its opposition by the Meena community in Rajasthan.

- The matter is compounded by the fact that identity issues largely determine how political parties behave and function. Whether at the time of elections or in forming alliances in the legislatures or in and between political parties, the equations based on identity issues become the guiding consideration.
- Identity politics has induced fundamental changes in how political parties woo the electorate. In the early days of Independence, political parties used to woo all sections of society irrespective of caste, religion, community or class. They projected an inclusive nationalist image rather than that of any sectional interest. Politicians used the need for over-all development as well as anti-poverty, rural development or employment programmes to attract votes.
- Fragmentation of the political party system based on the proliferation of narrow and local identities can continue endlessly. Each segment further encourages its sub-segments to search for their political space. In Andhra Pradesh, for example, the conflict between Malas and Madigas, two important Dalit communities in the State, has led to the emergence of separate political organisations.
- While it is an inevitable step in the inclusion of marginalized groups in the country's democratic process, it can also lead to conflict and endless violence.

## Recommendations

1. Political parties should evolve a code of conduct on the forms of dissent permissible in our democratic set up. This could be incorporated in a law, which would apply to all political parties and their functionaries. Enforcement of the law could be entrusted to the Election Commission. The law should also stipulate punitive action against political parties and their functionaries violating the prescribed forms of democratic dissent, by providing for criminal cases to be filed against them and imposing fines as deterrent.
2. There should be consensus that identity politics would be played within the space provided by democracy and not allowed to develop into intractable conflicts leading to violence. Political parties need to build capacity to arrive at such a consensus.

## CHAPTER 11. Regional Disparities

### A. Introduction

Many regional conflicts are an outcome of disparities in the development of a particular region compared to the remaining parts of the country or the State of which that particular region is a part.

Within a country, measurement and comparison of the Net State Domestic Product (NSDP) of its constituent units offer an idea of prevailing imbalances.

Data on NSDP clearly establishes that the gap between the haves has widened over the last four decades.

Not only have the inequalities between States sharpened, there is also wide disparity between regions.

State-wise data suggests that barring West Bengal, the Eastern region has lagged behind in growth compared to the West and South. What then emerges is a clear divide between regions – States in the west and south of India form a category clearly distinguishable from those in the East and North of the country.

Governments have a crucial role to play in reducing regional disparities by identifying and remove gaps and promoting balanced development in which all areas and regions are enabled to develop.

## B. Intra-State Disparities

The Telengana region of Andhra Pradesh is an example. Geographically, the State of Andhra Pradesh comprises three regions; it is reported that the literacy rate in Telengana is only 55.95% as against 63.58% in coastal Andhra, 60.53 per cent in Rayalaseema and 79.04 % in the capital city.

## C. The Administrative Approach

**There are two broad approaches.**

The **FIRST** attempt to identify 'backward areas' was made by the 'committee for Industrialisation of backward regions' (**Pandey committee**) and on the basis of its recommendations, backward areas were classified into several categories:

Desert areas, chronically drought affected areas, hill areas including border areas, areas with high density of population and low levels of income and employment.

The **B. Sivaraman committee** which was set up to delineate a strategy for the development of backward areas, recommended in 1978 that the **block** should be the primary unit for identification of backward areas.

In 1994-95, the **C.H Hanumantha Rao Committee** evolved new criteria for identification. The unit of identification was the block.

The **EAS Sarma Committee** submitted its report in November 1997 decided that criteria should include direct indicators of human deprivation as well as indirect indicators which pertain to the quality of the life such as Poverty, Education, Indicators of both social and economic infrastructure, etc. **However**, the scheme suggested by the EAS Sarma committee was **not implemented**.

- The first task is to fortify the backward areas adequately and target them with additional resources and investments to help them overcome structural deficiencies that contribute to their backwardness
- The other approach is to improve the overall environment for economic and social growth of less developed States and areas through a judicious combination of major infrastructure interventions, institutional reforms and appropriate incentives structures.

States have constituted special boards and Authorities such as Area Development boards for the development of backward areas but these are inefficient and there is wastage of resource due to work duplication.

**The commission recommends** - that efforts for redressing regional imbalances should be done through local government agencies such as the zila Parishads and others and not through 'special purpose vehicles' like Area Development boards and Authorities.

## D. Identification of Backward Areas

- Economic and social development in our country is, more often than not, analyzed at the level of the State. But analysis at the level of the State does not necessarily capture the varying development strands within a State.
- Over time, there has been a shift in focus from the State as a whole to the district as the unit.
- Initially, the National Rural Employment Guarantee Act, 2005 (NREGA) was introduced in 200 of the most backward districts of the country. It is in this context that initiatives such as NREGA, Sarva Siksha Abhiyan and the Mid Day Meal Scheme are commendable.
- On the whole, the approach to identifying backward areas seems to be varied. Clearly, there is need to formulate standard criteria for identifying backward areas.
- It is necessary that human development indicators such as literacy and infant mortality rates should be included within the criteria.
- As regards the geographical unit for defining backwardness, the commission is of the view that as recommended by the B. Sivaraman and Hanumantha Rao committees, the block should be the unit for identification.

## E. Overall Environment for Growth

The need for investment in social services and infrastructure in the relatively backward States is far greater than in the more developed States:

1. Governments in the backward States are, fiscally weak and, as a result, not in a position to muster adequate resources to fund the huge investments.
2. They are unable to attract sizable private investment due to poor infrastructure which cannot be upgraded for want of resources.

The challenge, in essence, is to **BREAK THIS VICIOUS CYCLE**

- The union Government has launched - the backward Regions Grant Fund (BRGF) in January 2007. The backward Regions Grant Fund is designed to redress regional imbalances in development. It will provide financial resources for supplementing and converging existing developmental inflows into identified districts.
- Elimination of minimum normative gaps in local area development, physical infrastructure, social attainments in health and education, and in land productivity should be the prime objectives in financing interventions from BRGF.

*On the whole, however, the approach to all such funding should be outcome driven. Funding in such cases should be provided as a mechanism to achieve desired outcomes and not as an end in itself as has been done in the past.*

## F. Recommendations

1. A composite criteria for identifying backward areas (with the Block as a unit) based on indicators of human development including poverty, literacy and infant mortality rates, along with indices of social and economic infrastructure, should be developed by the Planning Commission for the 12th Five Year Plan.
2. Union and State Governments should adopt a formula for Block-wise devolution of funds targeted at more backward areas.
3. Governance needs to be particularly strengthened in more backward areas within a State. The role of 'special purpose vehicles' such as backward area development boards and authorities in reducing intra-State disparities needs to be reviewed. It is advisable to strengthen local governments and make them responsible and accountable.
4. A system of rewarding States (including developed States) achieving significant reduction in intra-State disparities should be introduced.
5. Additional funds need to be provided to build core infrastructure at the inter-district level in less developed States and backward regions in such States. The quantum of assistance should be made proportionate to the number of people living in such areas.

6. The approach to all such funding should be outcome driven. The strategy should be to define acceptable minimum norms of human and infrastructure development that every block in the country should attain and funding should be driven by the consideration to achieve the norms so defined.

## CHAPTER 12. Conflicts In The North East

For more than half-a-century, the North East has seen an unending cycle of violent conflicts dominated by insurgencies with demands ranging from outright sovereignty to greater political autonomy. Insurgency has taken a toll of thousands of lives, both of security forces and citizens.

### Roots of Insurgency

- The roots of insurgency in the North Eastern region are embedded in its **geography, history and a host of socio-economic factors**.
- **Ninety-eight per cent** of the borders of the region are international borders, pointing to the region's tenuous geographical connectivity with the rest of India.
- While the population share of the region at around 3.90 crores is a mere 3 per cent of the national population, its rate of growth has exceeded two hundred per cent between 1951-2001, generating great stress on livelihoods and adding to **land fragmentation**.
- While, nominally tribals constitute 27 per cent of the population of the entire region minus Assam, it increases to 58 per cent for the remaining States. Percentages, however, do not adequately reflect the extensive diversity in the tribal population of the region which has **more than 125 district tribal groups** – a diversity not to be seen in States like Jharkhand and Chhattisgarh where tribal populations predominate.

### A. Typology of Conflicts

**Conflicts in the region can be broadly grouped under the following categories:**

- A. **'National' conflicts:** Involving concept of a distinct 'homeland' as a separate nation and pursuit of the realization of that goal by its votaries.
- B. **Ethnic conflicts:** Involving assertion of numerically smaller and less dominant tribal groups against the political and cultural hold of the dominant tribal group. In Assam this also takes the form of tension between local and migrant communities.
- C. **Sub-regional conflicts:** Involving movements which ask for recognition of sub-regional aspirations and often come in direct conflict with the State Governments or even the autonomous councils.

### B. State Specific Conflict Profiles

#### A. Arunachal Pradesh

- The State has remained peaceful after the cease-fire with NSCN (National Socialist Council of Nagaland) which was active in Tirap District. There was some disquiet with the settlement of relatively more enterprising chakma refugees from Bangladesh in the State in large numbers which appears to have subsided.
- Growing income disparities and constriction of employment opportunities could be a potential source of conflicts.

#### B. Assam

- A wide variety of ethnic conflicts prevail in the State e.g. agitations against 'influx of foreigners', perceived inability of the Government to deport them, tensions between religious/linguistic groups and escalating conflicts involving tribal communities who seek local autonomy etc

#### C. Manipur

- Currently, it is the **'Most Insurgency Ridden'** State with about fifteen violent outfits



representing different tribes/communities active in the State and has become a self-financing extortion activity particularly in the Valley. The commission, during its visit to the State, was told of several instances where development funds were siphoned off to finance various unlawful and disruptive activities.

**Manipur** One fourth of Manipur (which is the valley), is home to more than seventy per cent of its population which predominantly consists of culturally distinct Meitei community. The State was ruled as a monarchy (later princely state) by Meitei rulers. The Meitei influence declined in the socio-economic spheres after Independence with the tribals coming into the forefront largely because of reservations. There was also resentment in a section of the Meitei society about the merger of the State with the Indian union- a resentment which led to the Meitei insurgency from the 1960s. Tribals account for around thirty per cent of the State's population and broadly belong to Naga, Kuki-chin and Mizo groups. Insurgency in Nagaland and Mizoram also spilled over to the State. The 'cultural distance' of tribals from the Meiteis widened with almost all the tribes coming under the Christian fold by the 1930s.

#### D. Meghalaya

The State is fortunately free from violence of the intensity that prevails in many other parts of the region. Except violence against 'outsiders' particularly the Bengali speaking linguistic minority, there have been no major problems in the State. The following are some future areas of concern:

- Increasing clash of interest between the State Government and the Sixth Schedule District councils – the entire State is under that Schedule
- Increasing inter-tribal rivalry.
- Emerging tensions about infiltration from Bangladesh particularly in the Garo Hills.

#### E. Mizoram

- The State with its history of violent insurgency and its subsequent return to peace is an example to all other violence affected States. Following an 'accord' between the union Government and the Mizo National Front in 1986 and conferment of statehood the next year, complete peace and harmony prevails in Mizoram.
- The only potential areas of conflict are the growing income and assets disparities in a largely egalitarian society and the dissatisfaction of the three small non-Mizo District councils with the State Government, on account of issues pertaining to identity and reservation as STs.

#### F. Nagaland

Following the cease-fire with the dominant Muivah-Swu of the NSCN, the State is virtually free from overt violent unrest, certain areas of concern with regard to the future are:

- The issue of a final political settlement including the demand for 'greater Nagaland' or 'Nagalim' which as already noted is causing disquiet in the neighbouring areas, particularly Manipur
- Growing competition over the limited resources of the State and the problem of unemployment of the educated youth.

#### G. Sikkim

The State has not only done well in the sphere of development through decentralised planning but the constitutional mandate of striking a balance between the various ethnic groups (mainly the Lepchas, Bhutiyas and Nepalis) has also prevented emergence of major conflicts.

#### H. Tripura

Proximity to Mizoram exposed the State to the 'side effects' of that insurgency. However, effective decentralization in the 'non-scheduled areas', bringing tribal areas within the purview of an autonomous 'Sixth Schedule' council, successful land reforms and systematic promotion of agriculture have contributed to considerable conflict reduction.

### C. Modes of Conflict Resolution

1. Security forces/ 'police action';
2. More local autonomy through mechanisms such as conferment of Statehood, the Sixth Schedule, Article 371 c of the constitution in case of Manipur and through 'tribe specific accords' in Assam etc;
3. Negotiations with insurgent outfits;
4. Development activities including special economic packages

Conflict prevention and resolution in the North East would require a judicious mix of various approaches.

## **D. Capacity Building for Conflict Resolution**

**The specific areas needing capacity building in the region for conflict resolution are examined as under:**

1. Capacity building in **Administration**
2. Capacity building in **Police**
3. Capacity building in **local Governance Institutions**
4. Capacity building in **Regional Institutions**
5. Capacity building in **other Institutions**

### **1. Capacity Building In Administration Recommendations**

- Greater opportunities may be provided to officers serving in the region to serve outside the North East to gain greater exposure to diverse work situations. Local and technical officers from the State should also be given opportunities to serve in larger States and to improve their professional qualifications through training in the country and abroad.
- Incentives available for officers working in the North East should be increased.
- Regional training institutions for various branches of administration, including the technical services may be operated by the North Eastern Council.
- NEC may initiate discussions with the States to examine the legal implications and feasibility of regional cadres for senior positions in technical and specialized departments under the States.
- NEC and the Ministry of Home Affairs may, in collaboration with the States, draw up an agenda for administrative reforms for the region with its implementation being monitored systematically. Satisfactory performance in implementation of this charter may qualify the States to additional funding including special economic packages.

### **2. Capacity Building In Police Recommendations**

- The North Eastern Police Academy (NEPA) needs major upgradation of infrastructure and staff to cater to a larger number of officers at the induction level. NEPA may also be developed for imparting training to civil police officers from other regions in dealing with insurgency. Financial and other incentives are necessary for attracting and retaining instructors in the Academy from the Central Police organisations and civil police particularly those with proven track record in counter-insurgency operations.
- Concrete steps are needed to introduce a scheme of deploying police personnel from the region to Central Police Organisations and to encourage deputation of police officers from outside the region to the North Eastern States.

### **3. Capacity Building In Local Governance Institutions Recommendations**

- I. Sixth Schedule councils;
- II. Village self-governance in the Tribal North East
- III. Tribe Specific councils in Assam
- IV. Other issues of local Governance.

#### *I. Sixth Schedule Councils*

- To avoid complaints of less favourable treatment to 'Scheduled Areas' in certain respects, suitable amendment may be made in the Sixth Schedule of the Constitution to enable the Autonomous Councils to benefit from the recommendations of State Finance Commissions and the State Election Commissions provided respectively under Articles 243I and 243K of the Constitution of India.
- The Union Government, Government of Meghalaya and the Autonomous Councils in that State may review the existing pattern of relationship between the Councils and the State Government to evolve a satisfactory mechanism to resolve conflicts between the Councils and the State Government.

- Ministry of Home Affairs may, in consultation with the concerned State Governments and the Autonomous Councils, identify powers under the Sixth Schedule that Governors may exercise at their discretion without having to act on the 'aid and advice' of the Council of Ministers as envisaged in Article 163 (1) of the Constitution.
- Paragraph 14 of the Sixth Schedule may be suitably amended to enable the Union Government to appoint a common Commission for all autonomous districts for assessing their state of administration and making other recommendations envisaged in that paragraph. A periodicity may also be provided for the Commission.

## *II. Village Self-Governance In The Tribal North East*

- Measures should be taken to ensure that all the Autonomous Councils pass suitable legislation for establishing of village level bodies with well defined powers and a transparent system of allocation of resources.
- Stipulation may be made in the rules relating to release of grants to the Autonomous Councils to the effect that passage of appropriate legislation for elected village level bodies and its implementation, will entitle the Councils to additional funding.
- To enable the Autonomous Councils to discharge their responsibilities satisfactorily, it is imperative that the requirement of funds by these bodies is worked out normatively with reference to the minimum standards of service to be provided and capacity to raise local resources. Such exercise could be undertaken by the State Finance Commission. d. Nagaland has made commendable efforts to usher in a paradigm of decentralised village self-governance which combines the elective element with traditional power centers. The Ministry of Rural Development should formally recognise this arrangement for implementation of various development and poverty alleviation initiatives.
- Government of Meghalaya may take steps for extension of the experiment of elected village committees in the Garo Hills for implementation of the National Employment Guarantee Act throughout the State for implementation of all rural development programmes.
- It is imperative that in all States where village bodies administer justice under customary laws by virtue of the Sixth Schedule or other laws, such laws are duly codified.

## *III. Tribe Specific Councils In Assam*

## *VI. Other Issues of Local Governance*

- Government of Assam may apportion functions between the tribe specific Councils/village Councils and the Panchayati Raj Institutions in a manner that schemes involving individual tribal beneficiaries may be assigned to the 'Tribe Specific Councils' while area development schemes are left to the latter.
- State Governments may initiate a system of meeting at least the establishment costs of the Councils from sources outside the tribal sub plan and build in these requirements in their projections to the next Finance Commission.
- State Governments may take steps to identify innovative initiatives which could be entrusted to the Tribe Specific Councils without affecting area development concerns.
- Suitable guidelines may be prepared for preparation of District and sub District plans in the relevant areas through joint efforts of the Tribe Specific Councils and the Panchayati Raj Institutions.
- While continuous and vigorous measures are needed to bring about a consensus between various sections of society in Manipur about revival of the Hill Districts Councils, steps may be urgently taken to bring in suitable legislation to introduce elected village level bodies in the hill areas of that State

## **4. Capacity Building In Regional Institutions Recommendations**

- The NEC Act, 1971 may be suitably amended to restore the original 'conflict resolution provision' requiring the Council to 'discuss issues of mutual interest to two or more states in the region and to advise the Central Government thereon'.
- The Planning Commission needs to lay down a framework for preparation of integrated regional plans, with priorities and not as an assortment of schemes by the NEC. The regional plan should

focus on areas with a bearing on intra-regional, inter-State priorities which have the potential of avoiding conflicts and promoting regional integration.

- Planning Commission should ensure the association of the NEC in the State plan formulation exercise by suitably amending their guidelines.
- The responsibility of sanctioning funds from the 'Non Lapsable Central Pool of Resources' (NLCPR) should be entrusted to the North Eastern Council (NEC). NEC should work out mechanisms for scrutinising proposals for funding from the 'pool' and their funding in coordination with the Ministries concerned.
- It is desirable that a 10-year perspective plan is prepared for the entire region encompassing areas like development of human resources and infrastructure. A governance reform agenda should also form part of this plan. This comprehensive plan needs to be reviewed by the Prime Minister regularly with the Chief Ministers for speedy follow-up.
- The Ministry for Development of North Eastern Region (DONER) may be abolished and the responsibility for the development of the region, including the infrastructure sectors, and utilisation of the non-lapsable fund should be restored to the subject matter Ministries, with the MHA acting as the nodal Ministry.

## 5. Other Regional Institutions

There are more than ten institutions of inter-State/regional technical, medical and vocational education run by the NEC and a North Eastern central Agriculture university with campuses in all States (including Sikkim) except Assam which have, over the years, contributed significantly in upgrading human resources of the region.

### DONER

Initially, of a Department for Development of the North Eastern Region (DONER) within the Ministry of Home Affairs in 2001 and its subsequent up gradation to a full fledged Ministry in 2004. Despite the formation of this Ministry, the Government of India (Allocation of business) Rules do not give overall 'nodal responsibility' for the region to DONAR - this continues with the Ministry of Home Affairs.

**NEEPCO** or the North Eastern Regional Electrical Projects Corporation is charged with the responsibility of developing the electricity generation potential of the region not only to meet the requirements of the North East but also to sell electricity outside the region - a feasible goal given its very significant hydro-power potential.

**NERAMAC** or the North Eastern Regional Agricultural Marketing corporation is a public sector company to promote marketing of agricultural and horticulture produce of the region including the processing of such produce. The corporation has mainly tried to fulfil its mandate through running processing plants with very limited success. It is imperative that it concentrates on developing markets for the produce of the North East outside the region and facilitate entrepreneurs in setting up processing plants.

**NEHHDC** or the North Eastern Handloom and Handicrafts Development Corporation is meant to promote the age-old handloom and handicrafts sector of the region which are part of its culture and ethos. The decline of this sector has arguably contributed to a feeling of disaffection in the region but the activities of NEHHDC have so far not had the desired outcome of turning around this declining sector.

**NEDFI** or the North Eastern Development and Finance Corporation is a company jointly promoted by a number of financial institutions to provide finance to industrial houses and entrepreneurs to establish concerns for development of various sectors of the economy of the region on commercial lines.

### Recommendations

NEC may prepare a comprehensive scheme for making NEHU a centre for advanced study in Sciences, Social Sciences and Humanities to address diverse issues common to the region as a whole. NEC may also actively coordinate arrangements with the State Governments to make NEIGRIHMS a centre for tertiary



health care particularly for the low income groups in the region.

## **E. National Register of Indian citizens**

The Group of Ministers on Reforming the National Security System recommended that as illegal migration had assumed serious proportions and registration of citizens and non-citizens was made mandatory. This was done by issuing The Multi Purpose National Identity card (MNIC)

Implementing the MNIC project is a challenging task. Government will first have to carry out a census-type survey to create a National Population Register, based on which the cards will be issued. With large illiteracy rates and people in several areas having little documentary proof.

### **Recommendation**

- The MNIC project needs to be taken up on a priority basis. Since there are several Union Government and State Government agencies which issue similar identity cards, it would be necessary to achieve convergence amongst all such systems so that the MNIC becomes the basic document for identification of a person and lends itself to be used as a multi-purpose individual card.
- Priority should be given to areas having international borders, for implementation of this Project.

## **Final Recommendations by Commission**

1. The recommendations of the High Level Commission contained in its Report - 'Transforming the North East' - and the report of the Task Force on Development Initiatives prepared by the North Eastern Council should be implemented to fill the gaps in infrastructure in the region.
2. A comprehensive framework needs to be evolved and put in place to promote the region as a preferred investment destination.
3. A Transport Development Fund to finance construction of important road corridors should be set up.
4. Comprehensive implementation of a 'look east' policy though relevant for the country as a whole, is especially important for the long term growth of the North East. The agenda for its implementation must be prepared in active association with the State Governments. Clear apportionment of responsibility for planning and implementation of the policy between various Ministries of the Union Government for its implementation should be expeditiously undertaken.
5. Rail connectivity should be improved.
6. Establish bank branches and other credit disbursement outlets through further relaxation and incentivisation in the policies of the Reserve Bank and other financial institutions
7. There is need for setting up of centres of excellence for professional and higher education in the North East. In addition, a large scale expansion of facilities for technical education, such as ITIs, should be carried out to create a pool of skilled work force and generate entrepreneurial capacity as well as employment.
8. There is a need to make an in-depth study of the customary judicial system in order to achieve better understanding and dissemination of the prevailing norms and practices
9. It is necessary to evolve a credible system of maintenance of land records for the North East.

## **CHAPTER 13. Operational Arrangements For Conflict Management**

There are several institutions - constitutional, statutory, and executive in addition to institutions in the civil society - that have the capacity to play a role for conflict prevention and resolution. Many of these institutions, for example, the police are first responders to conflict situations and, therefore, their action or inaction can, in fact either prevent or generate conflicts.

### **A. Executive and Conflict Management - Police and Executive Magistracy**

The commission in its Fifth Report on "Public Order" has dealt at length with the role of the Police and the Magistracy in maintaining order and preventing breaches of peace and has made extensive recommendations to enhance the effectiveness of the Police and Magistracy for maintaining Public Order.

## Recommendations

1. Police Reforms recommended by the Commission in its Fifth Report, "Public Order" (Chapters 5 and 6) are likely to augment the institutional capacity of the Police to play a more proactive and effective role in conflict resolution.
2. Police Manuals must be updated to contain suitable provisions extending the scope of responsibilities of Police officials to include conflict resolution in their charter of duties. Suitable amendments in training formats may also be carried out to provide relevant inputs on the subject. Achievements under this 'head' needs to be taken into account while evaluating overall performance.
3. Executive Magistrates in their capacity as Revenue and other field level officials have extensive public inter-face and enjoy considerable goodwill particularly in rural areas. Their familiarity with the field situation and general acceptability makes them eminently suitable to be involved as interlocutors in mediating in local conflicts. State Governments need to build on the modalities and the institutional framework in this regard

## B. Judicial Delays and Alternative Dispute Redressal

In any civilised society, the forum of dispute resolution is the judiciary. While 'disputes' can be said to differ from 'conflicts' as the latter involve a larger number of 'opponents' in contending for rival claims - many conflicts are the result of non-settlement of disputes often due to judicial delays.

### Findings By The Commission

- The ever burgeoning pendency of judicial cases in courts at all tiers of the judicial hierarchy is one of the key factors for persistence of conflicts in our society.
- The acute shortage of judicial officers and slow pace of some of the procedures governing judicial proceedings are among the basic reasons for tardy resolution of disputes through the judiciary
- The innovation of lok Adalats has proved successful only to some extent. Barring cases of settling marital disputes, insurance and accident compensations and claims etc, this method has failed to reduce judicial arrears. Lack of support from sections of the bar to the lok Adalats is perhaps a cause for its limited success.

### Recommendations

1. Allocation of resources for upgradation of infrastructure and personnel of the subordinate judiciary needs to receive higher priority in federal fiscal transfers.
2. Much greater attention needs to be paid to make the institution of Lok Adalats serve their intended objective, and in particular to enlist active cooperation of the members of the Bar to give this approach, a chance of success.
3. Ministry of Law may initiate a dialogue with the Bench and the Bar of the higher judiciary to explore ways and means of bringing 'greater finality' to the decisions of quasi-judicial authorities and bodies.

## C. Civil Society and Conflict Resolution

### Findings By The Commission

- In all societies, there are elements capable of rising above narrow partisan concerns and thus becoming effective in conflict situations. Examples of these include NGOs with a long track record in conflict zones, church organisations and social workers who have a major presence and role in areas facing communal, caste, militant and ethnic conflicts in different parts of our country.
- It must also be recognised that communities in control of their affairs are likely to be more self-confident and in a better position to sort out internal problems between themselves.

The need to involve Panchayati Raj institutions in prevention and resolution of local conflicts needs to be strongly encouraged.

### Recommendations

1. While social capital formation needs encouragement to improve delivery of services and build community self reliance, it is imperative that such initiatives also attempt to involve communities in 'in-house' conflict resolution.
2. General policy guidelines need to be formulated by the State Governments for involving both the Panchayats and urban local bodies along with 'nonpolice' instrumentalities of the State, in conflict resolution.

## CHAPTER 14. Institutional Arrangements For Conflict Management

### Introduction

There are several institutions, and instrumentalities within the framework of the State whose mandate it is to deal with potential and actual conflict situations. Some of these institutions have a constitutional status while others were constituted through statutes or executive orders.

### Salient Provisions of the Constitution

**Article 131** recognizes the importance of resolving Union-State/s and Inter-State disputes through the exclusive original jurisdiction of the Supreme Court.

**Article 262** empowers Parliament to appoint a tribunal for Inter-State Rivers or River valleys water disputes and to provide for adjudication of such disputes

**Article 236** envisages inter-State councils for resolution of disputes and to discuss matters of mutual interest to the union and the States as well as issues requiring coordination between them. This provision is dealt with in detail later in this chapter.

**Article 280** provides for establishment, of a quasi-judicial Finance commission to recommend the norms of distribution resources between the union and the States. This Article clearly underscores the need to prevent disputes arising out of 'financial grievances' of States.

**Article 307** authorizes setting up an authority to facilitate inter-State trade and commerce.

**Beside these there are other provisions which include-**

**Article 350b** which provides for a special officer to safeguard the interests of linguistic minorities, and **Articles 338** and **338A** which provide for commissions to promote and protect the interests of Scheduled castes and Scheduled Tribes respectively. Such provisions seek to narrow the scope for grievances escalating into conflicts.

### Important Official Conflict Prevention/Resolution Agencies

- A. Institutions established under constitutional provisions.
- B. Institutions under legislative enactments.
- C. Institutions or deliberative forums issued under executive orders of the Government.

### A. Institutions Under The Constitution

#### 1. Inter-State Council

Provisions with respect to an Inter-State Council –

If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of –

- a. **Inquiring** into and advising upon disputes which may have arisen between States;
- b. **Investigating** and discussing subjects in which some or all of the States, or the Union or one or more of the States, have a common interest; or
- c. Making **recommendations** upon any such subject and, in particular, recommendations for better coordination of policy and action with respect to the subject.

### Findings By The Commission

1. Most of the discussions in the ten meetings of the Inter-State council, since it was set up, were confined to discussing and reviewing the recommendations of the Sarkaria commission.
2. Inter-State council must be given the 'complete' role provided to it under the constitution i.e. both conflict resolution and for better coordination of policy and action in matters of interest to the union and States.
3. The Inter-State council should be constituted as and when the need in that behalf arises and that the council need not exist in perpetuity.

### Composition of the Inter-State council

- The Prime Minister – Chairperson
- Chief Ministers of all States/UTs- (Governors of States where Article 356 is in operation)
- Administrators of UTs not having a Legislative Assembly;
- Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister. (Other Ministers of the Union Government may be invited as permanent invitees, if so nominated by the Chairman of the Council, or as and when any item relating to a subject under their charge is to be discussed).

### Recommendations

- The conflict resolution role envisaged for the Inter-State Council under Article 263 (a) of the Constitution should be effectively utilised to find solutions to disputes among States or between all or some of the States and the Union.
- The Inter-State Council may not, however, exist as a permanent body. As and when a specific need arises, a suitable Presidential order may be issued constituting and convening the Council to consider a dispute or coordination of policy or action on matters of interest to the Union and concerned States. This body may cease to function once the purpose for which it was constituted is completed.
- The composition of an Inter-State Council may be flexible to suit the exigencies of the matter referred to it under Article 263.
- If necessary, more than one Inter-State Council could be in existence at the same time with different terms of reference and composition as warranted for each Council.

## 2. The National Commission For Scheduled Castes And The National Commission For Scheduled Tribes

The broad areas of responsibility of the two bodies are:

- a. Investigation and monitoring of implementation of safeguards for Sc/ST provided under the constitution or other laws;
- b. Inquiry into specific cases of violation of safeguards provided for these groups;
- c. Participation in planning and socio-economic development and evaluate the impact of such programmes in the union and the States;
- d. Presenting annual reports to Parliament about the working of the safeguards for Sc/ST; and
- e. Making recommendations for better implementation of safeguards and for the socio-economic development of the relevant groups.

### Findings By The Commission



1. So far no independent assessment of the functioning of these bodies has been undertaken.
2. Their Reports have also not received much attention.
3. Considerable time and effort is taken in addressing individual complaints and grievances of government and public sector employees belonging to the relevant categories.
4. It is necessary that a distinction is drawn between group grievances and individual claims relating to promotions, transfers, postings etc.
5. The administrative ministries responsible for these commissions must carefully consider, in consultation with the commissions, ways and means of enabling them to effectively discharge their constitutional responsibilities.

## Recommendations

- The National Commissions for Scheduled Castes and Scheduled Tribes have an important mandate to guide review and monitor the implementation of safeguards provided for SC/STs in various fields, including in the matter of their service conditions. It is imperative that the focus of the two Commissions remains on policy and larger issues of implementation rather than on cases of an individual nature which can be looked into by the administrative Ministries/appropriate forum with the Commissions playing a critical oversight role.
- The administrative Ministries connected with the two Commissions may undertake an exercise, and in consultation with these bodies, work out the details of how these bodies could be better enabled to discharge their constitutional mandate.

## B. Institutions Under Legislative Enactments

### 1. The Zonal Councils

- The need for establishing inter-State councils on a 'zonal basis' was felt primarily to deal with problems arising out of the reorganization of States on linguistic basis in 1956.
- Sections 15 to 22 of the States Reorganization Act, 1956 (Act No 37 of 1956) deal with various aspects of the functioning of the four (North, South, East and West) zones.
- These councils consist of a union Minister nominated by the President who acts as the chairman and the chief Ministers of States in the region along with two Ministers each from the member-States, nominated by the Governor as members.

*Sub-section (2) of Section 21 of the Act prescribes the following duties for the council:*

- a. Any matter of common interest in the field of economic and social planning;
- b. Any matter concerning border disputes, linguistic minorities or inter-State transport; and
- c. Any matter connected with, or arising out of, the re-organisation of States.

## Findings By The Commission

1. Over time however, the zonal councils met only occasionally.
2. The Secretariats have ceased to be operational and the practice of State chief Secretaries acting as Secretaries of the councils on rotating basis, too, has hardly ever been acted upon.
3. These bodies have become a peripheral responsibility of the Ministry of Home Affairs through the Inter-State council Secretariat.
4. The recent creation of the States of uttarakhand, Jharkhand and chhattisgarh through bifurcating the States of uttar Pradesh, bihar and Madhya Pradesh respectively has not resulted in reactivation of the appropriate zonal councils and necessary coordination has been carried out bilaterally by the State Governments concerned.
5. In short, the zonal councils are not only dormant, but there appears to be a lack of interest in their reactivation.

## Recommendation

The system of Zonal Councils may be dispensed with. Important issues of inter-State coordination or disputes between States in the same region may, wherever necessary, be entrusted to an Inter-State Council with appropriate composition and terms of reference so that any given issue is considered in

depth.

## 2. National Human Rights Commission

The scope of the term “human rights” as defined under Section 2(d) of the Act is wider than the fundamental rights guaranteed in the constitution as they include **“rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India”**.

- The commission has been proactive in supporting the cause of victims of human rights violations in a variety of situations – its successfully moving the Supreme court for transferring the ‘best bakery case’ out of the State of Gujarat is just one among many instances in this connection.
- While conflict resolution does not formally figure in the agenda of the NHRC, institutions like it have a major **preventive** role in dispelling helplessness and despair from victims of major human rights violations and dissuade such groups from resorting to violence.

## 3. National Minorities Commission and National Commission for Backward Classes

These bodies function like the National commissions for Scheduled castes/Tribes with the difference that they derive their mandate from parliamentary legislations rather than constitutional provisions.

Observations made with reference to the ‘constitutional commissions’ also apply in their cases.

## C. Institutions Established under Executive Orders

### 1. The National Integration Council (NIC)

#### Commission Observations

The NIC owes its establishment to the initiative taken by the then Prime Minister, Pt. Jawaharlal Nehru, who in the wake of major communal conflagrations in Jabalpur and certain other places in central India, convened a National Integration conference in September, 1961 to find ways and means to combat the evils of communalism, casteism, regionalism, linguistic chauvinism and narrow-mindedness etc.

- The underlying idea was to build a consensus to rid the country of communal violence and other divisive evils through formulation of cross-party consensus and identifying suitable policy and other initiatives.
- The NIC was constituted accordingly and held its **first meeting** on 2<sup>nd</sup> and 3<sup>rd</sup> June 1962
- The council was last reconstituted in February 2005, after a gap of fifteen years, with the Prime Minister as its chairperson and with 141 members.

### National Human Rights Commission

This body was created in 1994 under the Protection of Human Rights Act 1993 and is presided over by a former chief Justice of India with four members out of whom two have to be former judges of the Supreme Court. The chairmen of the National commissions for Scheduled castes, Scheduled Tribes, Minorities and backward classes are **ex-officio** members when a matter ordinarily within the jurisdiction of any of these bodies is taken up by the NHRC.

## Recommendations

1. The mandate of the National Integration Council (NIC) requires consideration of all factors impinging on national cohesion, and not only communalism or communal violence. The agenda of the NIC needs to be diversified.
2. Substantive issues before the Council may be considered in detail in smaller, subject-matter specific committees.

3. The composition of the NIC may be rationalized to facilitate consideration of a wider variety of issues. Broad guidelines may be framed by the Ministry of Home Affairs for identifying interest groups and specialty streams that need to be represented on the NIC.
4. The Council may meet at least once a year, while the sub-committees could meet as often as required to complete the assigned task in a time-bound manner.
5. Summary proceedings of the NIC may be laid before both Houses of Parliament.
6. The Indian Council of Social Science Research (ICSSR) and the Planning Commission may take a lead in the matter of establishing a multidisciplinary research and policy analysis platform to discuss issues concerning national integration either in an existing institution or by promoting a new institution or as a network.

## **2. National Development Council (NDC)**

Specific rules of procedure for the National Development Council and other apex level bodies may be drawn up to ensure focused deliberations

## **3. Central Advisory Board on Education (CABE)**

CABE is unique in this group not only because it is the oldest body of its kind having been set up as early as 1921 - but also because it has played a major role in resolving serious conflicts and building national consensus on issues concerning education particularly for the period before 1976 when 'education' fell within the exclusive domain of the States. Highly complex and emotive issues like the 'Three language Formula', 'National curriculum Framework' and even National Policy on Education were sorted out through the instrumentality of CABE. Unfortunately, this important consensus building forum was allowed to lie dormant for most of the 1990s; its revival from 2004 is a happy augury.

## **D. Other Institutional Innovations**

### **Commission Observations**

While there is a need to broad base, strengthen and effectuate the existing institutions and fora for conflict reduction and resolution, there is also a case for extending the existing framework of some of the institutions so that certain proven methods of negotiations and deliberations could be more widely applied.

### **Dispute Resolution at Village Level**

To reduce conflicts based on caste, class and religion in the village which are blocking the path of their development, the Maharashtra Government has launched the Tanta Mukta campaign.

In the first state, all the pending court case would be listed. The Gram Sabha would elect a Tanta Mukta committee consisting of representatives from all sections of society. This committee will work towards resolving the conflicts. However, the committee will not look into the crimes committed under the 'Atrocities Act'. If the committee resolves the conflicts then the warring sides will withdraw the cases.

Establishing State level Integration councils to discuss State-specific conflict situations, including potential conflicts, and providing a mechanism of networking such councils with the NIC.

Conflicts involving States, parts of the same State or even sizeable section of people agitating for redressal of specific grievances or fulfilment of demands can be solved through arbitration of people commanding respect and acceptability within the community.

There is a case for institutionalising this approach through constituting 'Peace committees' consisting of eminent citizens drawn from various walks of life, enjoying widespread public trust and confidence for their impartiality and wisdom.

## Recommendations

1. State Integration Councils may be constituted to take stock of State level conflict situations having suitable linkages with the NIC. In important matters, the report of State level bodies may also be brought for consideration, advice and recommendations of the NIC. Guidelines for deciding the membership to the National Integration Council may also give suitable weightage to adequately representing the State Integration Councils in the national body.
2. District level integration Councils (District Peace Committees) having suitable linkages with the State Councils may also be considered particularly for Districts with a history of violent, divisive conflicts. These should comprise eminent individuals enjoying confidence of all sections of society. These bodies may play mediatory and advisory roles in conflict situations.

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