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REPORT

**CAPACITY BUILDING FOR
CONFLICT RESOLUTION**

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CAPACITY BUILDING FOR CONFLICT RESOLUTION

Index

- 1. Introduction**
- 2. Conflict Resolution - A Conceptual Framework**
- 3. Left Extremism**
- 4. Land Related Issues**
- 5. Water Related Issues**
- 6. Issues Related to Scheduled Castes**
- 7. Issues Related to Scheduled Tribes**
- 8. Issues Related to Other Backward Classes**
- 9. Religious Conflicts**
- 10. Politics and Conflicts**
- 11. Regional Disparities**
- 12. Conflicts in the North East**
- 13. Operational Arrangements for Conflict Management**
- 14. Institutional Arrangements for Conflict Management**
- 15. Conclusion**

CAPACITY BUILDING FOR CONFLICT RESOLUTION

INTRODUCTION

“Better than a thousand hollow words is one word that brings peace.” – Lord Buddha

Conflict and Progress

Conflict is an unavoidable facet of human life. It is as much an internal process of the human mind when it evaluates the pros and cons of a decision, as it is a part of the individual's daily interaction with others in society. Some philosophers have attributed all progress to the continuous process of conflict and conflict resolution. The absence of conflict may be an impossible condition to reach and it may often mean brutal repression or callous indifference by one section with the rest.

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 more broad based and impartial this mechanism, the less is the likelihood of discontent and disaffection festering in it. The State with its organised judiciary is the final arbiter of all conflicts, but there always exist traditional means of settling matters at the level of the family and the community and most issues do get resolved at these levels.

Conflict and Democracy

We must recognise the importance of sustaining, in every way, the processes of democratic dialogue to enhance the quality of our society.

Democracy is essential for conflict resolution and nation building, particularly in pluralistic States. It is only within a democratic framework that the aspirations of all constituent elements can be fulfilled. It is only through mutual understanding, mutual respect and the processes of dialogue that genuine grievances can be removed and the miasma of misperceptions dissipated. 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.

What kind of nation do we want?

The questions that Indians have to find answer together are: What kind of nation do we want to become? What are the essential characteristics of this nation that we aspire to have? What is the place we want to occupy in the community of nations? This must be a shared vision in order to motivate people to align their efforts to achieve it. Shared visions cannot be created by presentations of numbers and intellectual debates. Nor are they shaped by political negotiations. They require deeper dialogues. Moreover, these dialogues must include the wants of the many diverse stakeholders in the future of the country. Creating a shared vision is a first step, but not enough. From this first step, we have to move into second one, which is to accelerate change towards our vision.

Case of India

In the last few decades, conflicts have arisen in our country from multiple causes such as caste and tribal issues, religion, regional disparities, poverty, land and water, just to name a few. There has been considerable research on why conflicts occur and how to resolve them.

Such research, however, provides only a general treatment of the subject and the root remains mite ridden. Conscious of this, the Commission has undertaken a comprehensive study of the problem of conflict resolution including organising workshops for consultations on specific conflicts in India and through discussions with a large number of individuals from different walks of life, who have had experience in dealing with conflicts.

Report

The Second ARC report on Public Order covers two specific issues, namely:

1. A framework to strengthen the administrative machinery to maintain public order conducive to social harmony and economic development.
2. Capacity building for conflict resolution

This Report on Capacity Building for Conflict Resolution is a sequel to the Report on Public Order. The Report is organised in four parts.

1. The first part - brief introduction.
2. The second part - conceptual framework.
3. The third part - deals with conflicts arising out of issues related to caste, class, religion & region as well as land & water related issues.
4. The fourth part - deals with the institutional framework for conflict resolution.

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.

Identities and Harmony

Individuals see themselves as members of a variety of groups which often span a number of their interests. For example, an individual's geographical origin, gender, caste, class, language, politics, ethnicity, profession and social commitments make him a member of various groups. Each of these collectivities, tends to give him a particular identity but together he has multiple identities.

The search for identity is a powerful psychological driving force which has propelled human civilization. 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. The concept of social capital tells us how a shared identity with others in the same social community can make the lives of all those in that community so much more harmonious and meaningful. To that extent, the sense of belonging to the social community becomes a valuable resource almost like capital.

Identities and Conflicts

Identity can also kill – and kill with abandon. A strong and exclusive sense of belonging to one group does, in many cases, lead 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.

Data – Global and National

The twentieth century was, by far, the most violent period that humanity lived through. Almost three times as many people were killed in conflicts in the twentieth century than in the previous four centuries combined together.

Period	Conflict-related deaths (millions)	World population, mid-century (millions)	Conflict-related deaths as share of world population (%)
Sixteenth century	1.6	493.3	0.32
Seventeenth century	6.1	579.1	1.05
Eighteenth century	7.0	757.4	0.92
Nineteenth century	19.4	1,172.9	1.65
Twentieth century	109.7	2,519.5	4.35

Source: Conflict deaths data, Sivard 1991, 1996; twentieth century population data, UN 2005; other population data, Human Development Report Office interpolation based on Sykes 2004.

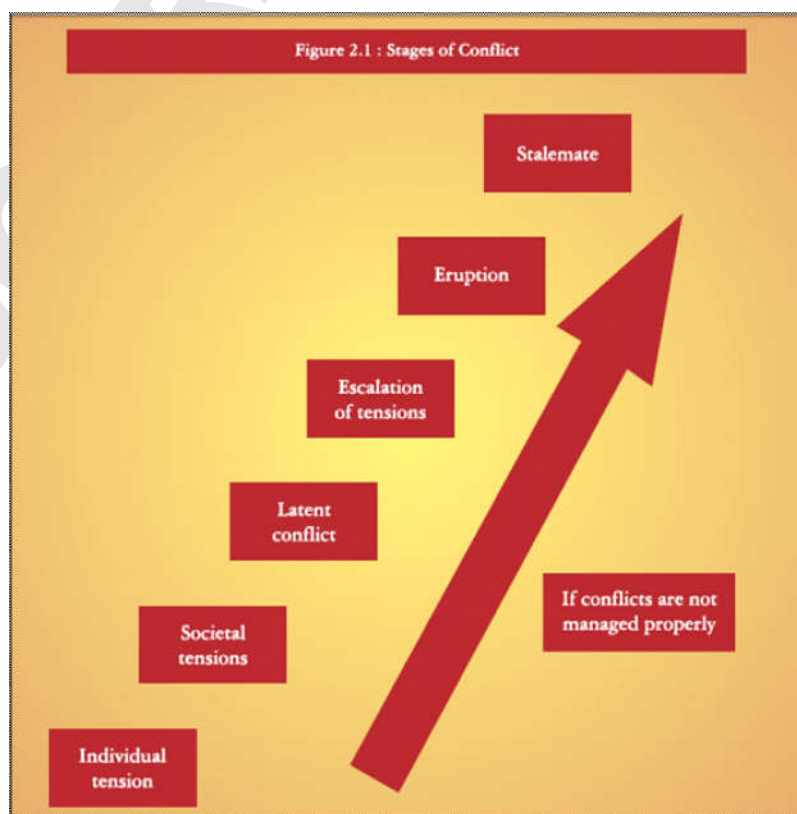
In fact, even in India, by the end of the last century, tendencies bordering on intolerance have grown and various groups have shown an increasing predilection for resorting to violence often at the slightest provocation.

Stages of Conflict – a Life Cycle Approach

A conflict is not a single-event phenomenon but is a dynamic process having different stages. The objectives of the parties involved, their approaches, the intensity levels, and the likely damage etc. all change between the various phases of a conflict's life cycle.

Therefore an optimum conflict management strategy differs from stage to stage. This makes it necessary to have a thorough understanding of the dynamics of conflict throughout its life cycle for application of conflict prevention and management strategies.

The representation of conflict as given in the figure may be briefly described in the following manner:



1. **Individual and Societal Tension** - Such tensions are created whenever an individual or a group feels that he/it has been wronged or has not got what was due. Such tensions may also arise due to historical socio-economic inequalities. Poor governance is a major cause of tension amongst individuals and the society.
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. From the point of view of the Administration, this is the most opportune time for managing a conflict or rather preventing a conflict. However, as the Administration is pre-occupied with 'fire fighting' measures, the early symptoms of latent conflict are often overlooked.

3. **Escalation of Tensions:** Unattended grievances, overlooked concerns, neglected tensions by the Administration lead to further aggravation of the discontent. The stand taken by the opposing parties begins to harden. Half hearted attempts in this phase prove to be of little help. The parties involved express their feelings through more aggressive methods such as demonstrations, processions, strikes, 'bandhs' and the like.
4. **Eruption:** Tensions if not managed properly lead to a situation where a small 'spark' leads to eruption of violence. Normally the Administration swings into action at this stage and tries to control the violence.
5. **Stalemate:** This is a situation similar to the 'latent tension' and has the potential to erupt at regular intervals.

What is important to recognise in the above context is that once a stalemate situation is reached, the conflict may enter a cyclical phase, leading to recurrent escalations and eruptions.

Conflict Resolution and the Constitution

In India after the violence following Partition, the process of conflict resolution started with -

1. The integration of the princely States through peaceful means.
2. The drafting of the Constitution, which followed, and the way it was debated, drafted and finally adopted makes it one of the finest examples of conflict resolution.
3. The Constitution opted for the democratic process and adult franchise. It has been aptly observed that this was the best possible choice because the experience of large multi-ethnic States around the world has shown that democracy is one of the most potent instruments for containing and moderating conflict.
4. The Constitution by providing for pluralism, federalism with a strong Union and for economic and social upliftment of the underprivileged sections of society, created the space for diverse groups in the country to acquire a stake in the process of nation-building.

Constitutional Features

These articles highlight the humanistic approach of the framers of the Constitution:

- **Article 30** of the Constitution enshrines the right of minorities based on religion to establish and administer their own educational institutions, in general,
- **Article 25** the rights to freedom of conscience and free profession, practice and propagation of religion (Article 25),
- **Article 26** freedom to manage religious affairs (Article 26) combined with
- **Article 29** the rights provided to any section of citizens to conserve their language, script or culture (Article 29)
- **Provision for Amendments** - Another conflict resolution measure in the Constitution was the provision for amendments in keeping with the changing times and the enshrinement of affirmative action in favour of the traditionally disadvantaged sections of society. The provisions in the Constitution were based on the concept that it was not only necessary to end discrimination against the disadvantaged, it was equally important to empower the disadvantaged through special access to the legislature, educational opportunities and public employment.
- **Provisions for reservations** for various underprivileged communities also fall in the same category.
- **Powerful and independent judiciary**

- Provisions for creation of *institutions for resolving conflicts*, for example, water disputes, disputes between States etc

History of Conflict Resolution

The history of conflict resolution in independent India is a story of both successes and failures.

- ***Linguistic Conflicts*** - The resolution of linguistic conflicts was one of the major achievements after Independence.
- ***Ethnic Conflicts*** - The three major movements for secession in Nagaland, in Punjab and in Kashmir, were organised around the issue of historical ethnicity, religion and territory and not around language. Among ethnic and secessionist conflicts the resolution of the Mizoram issue was a notable success. Conflict resolution in the Darjeeling hills is another success story.
- ***Sectarian Conflicts*** - The quest for a separate Sikh identity manifested itself, after Partition, in their demand for a separate State in India. Even after the formation of a separate state of Punjab, some related issues remained unresolved pertaining inter alia to their demand for Chandigarh as the State capital, sharing of river waters etc.

Conflicts yet to be resolved

There are many conflicts yet to be resolved which includes water related conflicts, conflicts arising out of inequities and social tensions, conflicts because of poverty and conflicts due to regional imbalances.

- ***Land Related conflicts*** - Land has been another source of conflict
- ***Water conflicts*** - continue to divide segments of our society - political parties, States, regions and sub-regions within States, districts, castes and groups and individual farmers
- ***Extremist Conflicts*** - The left extremist movement, which has so far claimed thousands of lives, has grown steadily over the years and spread across many parts of the country
- ***Religious Conflicts*** - between religious groups and sects have been fairly common and the scourge of religious-sectarian divide has threatened the very survival of our societal fabric in a way that no other socio-political issue has done
- ***Regional disparity*** - Regional inequalities have been another source of conflict. At present, one sixth of India's population lives in the shadow of violent conflicts. Some of these conflicts, particularly in the North East and J&K go back to 1947
- ***North Eastern Conflicts*** - In the North Eastern region of India, many lives have been lost in conflicts that have raged between groups through decades. This sensitive region of the country has been plagued by conflicts which are embedded in the geography and history of the region, the multi-ethnicity of its population and its political and economic situation which has become the feeding ground for deep-seated discontent and conflicts.

What should the State do to resolve conflicts?

It is important to 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.

The State cannot allow itself the indulgence of treating conflicts as mere breakdown of law and order and adopt fire-fighting techniques to address such breakdowns:

1. Ideally, the State should pay adequate attention to the genesis of conflicts and find solutions to the problems before they become significant and deepen into conflicts.
2. Once identified and recognised, appropriate administrative and institutional interventions need to be designed and assiduously followed to help mitigate the possibility of such conflicts.
3. There are early stages in the development of a problem when through mechanisms such as early warning, timely analysis and appropriate response; problems can be prevented from escalating into conflicts accompanied by violence.
4. There is need to recognise that such conflicts are the touchstones for deep-seated grievances over the unequal sharing of benefits from the process of growth and development.
5. The surest way is to restore confidence through a process of multi-stakeholder dialogue. The approach ought to start from the simple principle that conflicts can be resolved peacefully – and on an enduring basis – only through trust and persistent and inclusive dialogue. The need is to build multistakeholder platforms or similar participatory processes that bring stakeholders together.
6. There is need for inclusive frameworks – both institutional and administrative – within which people with divergent interests and aspirations can discuss and agree to cooperate and coordinate their actions.
7. There is also need to recognise that political, social and economic rivalry is an unavoidable part of the development process – who gets what, when and how.
8. Whether these rivalries deepen into conflicts that prove intractable over time depends on the capacity of the institutions of the State to articulate and understand the interests and aspirations of different groups, to arbitrate between them and to mediate rivalries. All of this depends on having institutions at all levels that are seen as legitimate, effective, participatory, credible and accountable, and not as tokens or as mechanisms that promote and buttress narrow vested interests. The task, then, is one of building appropriate capacity and effectiveness in these institutions.

LEFT EXTREMISM

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.

Present Status

Today, the left extremist movement is a complex web that covers 76 districts in the nine States of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Uttar Pradesh and West Bengal. Left extremists have been trying to increase their influence and operations in some parts of other States, namely Tamil Nadu, Karnataka and Kerala and in certain new areas in some of the already affected States. It is estimated that these extremist outfits now have 9,000-10,000 armed fighters with access to about 6,500 firearms. There are perhaps another 40,000 full-time cadres.

It is evident that extremist violence is increasing and expanding. The gravity of violent incidents has become far more pronounced as is particularly evident from some recent violent incidents taking a heavy toll of lives in Chhattisgarh.

The 'Nature' of the Movement

Barring a phase in the late 1960s and early 1970s the left extremist movement has been largely agrarian in the sense that it seeks to mobilize discontent and misgovernance in the rural areas to achieve its objectives.

Some of the major features of the left extremist movement include the following:

1. It has emerged as the greatest challenge to internal security.
2. It has gained people's confidence, grown in strength particularly in forest and Tribal areas, by mobilising dispossessed and marginalised sections

While these features also form part of the activities of all terrorist organisations, due to its wider 'geographical coverage', left extremism has made a deep impact on the 'conflict scenario' of the country.

Causes for Spread of Left Extremism

While the goal of the left extremists was to actualise their own vision of the State through 'revolution', they chose to usher that revolution by enlisting the support of the deprived and exploited sections of society particularly in areas where such sections constituted a significant part of the population.

A summary of causes for the deprivation and consequent discontent -

A. Land Related Factors

- Evasion of land ceiling laws.
- Existence of special land tenures (enjoying exemptions under ceiling laws).
- Encroachment and occupation of Government and Community lands (even the water-bodies) by powerful sections of society.
- Lack of title to public land cultivated by the landless poor
- Poor implementation of laws prohibiting transfer of tribal land to non-tribals in the Fifth Schedule areas
- Non-regularisation of traditional land rights.

B. 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.

C. Livelihood Related Causes

- Lack of food security – corruption in the Public Distribution System (which are often non-functional)
- Disruption of traditional occupations and lack of alternative work opportunities.
- Deprivation of traditional rights in common property resources.

D. Social Exclusion

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

E. 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.

These causes are most glaring in forest areas predominantly inhabited by tribal populations who thus become the main instruments and victims of left extremist violence.

Resolution of Left Extremist Conflicts – Successes and Failures

An analysis of what really happened in such areas particularly in Naxalbari may provide necessary insights for resolving the present problem of left extremism.

Naxalbari (West Bengal)

From 1972 onwards, the Government of West Bengal adopted a slew of ameliorative measures in the Naxal-affected districts. 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. Naxalbari and Debra, the worst Naxal affected areas, were selected for the programme. At about the same time, directives were issued to government officials in Srikakulam in Andhra Pradesh and Ganjam in Orissa to ensure 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, after the Left Front government came to power in 1977, 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 the process signalled the beginning of the end of Naxalism in these areas.

Bastar (Chhattisgarh)

Unlike the relatively successful story outlined above, the situation in Chhattisgarh today continues to cause serious concern. The Bastar region of the State, where 12 Blocks are seriously affected, is an example of how left extremism gained ground because, inter alia, the tribals in the area were deprived of forest-based employment. Initially, the forests of Bastar were used by the extremists from Andhra Pradesh and Maharashtra as a temporary refuge; later permanent training camps came to be established. The active participation of local tribals followed much later in the wake of stresses and strains on their livelihood, growing food insecurity and the growing despair about improvements in their socioeconomic situation.

The situation in the region has not been helped by the raising of local resistance groups called *Salwa Judum* started initially in two tribal development blocks of south Bastar and now extended to eleven blocks in Chhattisgarh. Even though *Salwa Judum* is publicised as a spontaneous awakening of the masses against extremists, today thousands of tribals are being protected in fortified camps pointing to the disturbed life they are forced to lead. These camps have been attacked by the extremists leading to several deaths. In the process, the poor tribals have been caught between the legitimate sovereign power of the State and the illegitimate coercive power of the extremists who deliver instant justice through peoples' courts and other informal devices.

Managing Left Extremism – the Political Paradigm

The '14-point policy' underscores the need to contextualize left extremism in a perspective that is much wider than the conventional wisdom which places trust on a mixture of the 'police stick' and the 'development carrot' as the panacea for militant extremism particularly of the left variety.

1. 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.
2. The spread of the movement over a wide area signifies the fact that efforts to remove left extremism have not been particularly successful.
3. In the circumstances it should be possible to visualize this movement not as a threat to the security of the State but a fight within the State for obtaining what the system promised but failed to deliver. 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.
4. It will be reasonable, to take a view that while the movement has major law and order dimensions, it is not a purely law and order problem..

If this analysis is understood, then the 'containment' of the problem may require consideration of the following:

1. Most of the 'participants' in violence perpetrated under the banner of left extremist organisations are alienated sections of society rather than perpetrators of 'high treason' they have to be treated as such.
2. A fortiori police action over a long period is counter-productive as it is likely to affect the innocent more than the extremists.
3. Negotiations have a definite ameliorative role under the circumstances; this is the experience the world over.
4. 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.
5. Sustained, professionally sound and sincere development initiatives suitable to local conditions along with democratic methods of conflict resolution have a higher chance of success.

Capacity Building to Deal with Left Extremism

Various instruments and elements of State and civil society need to be pressed into service to manage the situation. To achieve this, it is necessary that the capacities of such instruments and elements are suitably enhanced.

Instruments and elements can be considered under the following categories:

- Security Forces
- Administrative Institutions
- Government Personnel
- Local Bodies
- Civil Society Organisations

Cutting the Source of Finances for Naxalites

Like any other extremist movement the Naxalite movement also mobilises funds which sustain them. Such mobilisation is in the form of extortion from local people and also from contractors executing various projects in the 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 organisations like the Border Roads Organisation(BRO) and other governmental agencies which can execute these works directly.

Recommendations at a glance

1. A long-term (10-year) and short-term (5-year) Programme of Action based on the '14-Point Strategy' may be formulated by the Government
2. Within the spirit of the '14-Point Strategy', negotiations with the extremist outfits should be an important mode of conflict resolution.
3. There is a strong case for 'back to the basics' in the matter of administrative monitoring and supervision. The system of periodic official inspections and review of organisational performances needs to be revitalised.
4. There is need to enhance the capacity of the security forces to act effectively and firmly
5. Formation of trained special task forces on the pattern of the Greyhounds in Andhra Pradesh
6. Establishing and strengthening local level police stations, adequately staffed by local recruits.
7. For effective implementation of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights) Act, 2006, multidisciplinary Oversight Committees may be constituted to ensure that the implementation of this ameliorative legislation does not adversely affect the local ecosystems.
8. To monitor the implementation of constitutional and statutory safeguards, development schemes and land reforms initiatives for containing discontent among sections vulnerable to the propaganda of violent left extremism.
9. 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) may be monitored and incentivised by the Ministry of Panchayati Raj.
10. The nexus between illegal mining/forest contractors and transporters and extremists which provides the financial support for the extremist movement needs to be broken.
11. For implementing large infrastructure projects, particularly road networks agencies like the BRO in place of contractors may be considered as a temporary measure.

LAND RELATED ISSUES

Land is a perennial source of conflict in all societies and even more so in predominantly agrarian economies where apart from being the principal asset, possession and ownership of land is the standard of social respectability.

While successful implementation of land reforms in rural areas in the 1950s and 1960s abolished intermediaries and considerably abated agrarian unrest, it resulted in the emergence of a new class of proprietors.

Ceiling on agricultural holdings has had limited success in granting landless labourers and small and marginal farmers access to land ownership. The benefits of consolidation of land holdings visible in a few States appear to have petered out as is evident from the stagnation in agricultural production and renewed agricultural land fragmentation.

Clearly, land is at the heart of the crisis being faced by our agrarian communities and the issue has the potential of precipitating major conflicts. Similarly, the imperatives of a buoyant economy create parallel demands for land, generating its own tensions in a country where the share of agriculture in the GDP may have shrunk from around 60% in 1951 to 27% in 2002-03 but where more than 67% of population continues to be dependent on agriculture. The demand for land for non-agricultural use including development projects and the growing impulse to urbanise, create further scope for conflicts.

A. Land and the Agrarian Conflicts including Farmers' Suicides

The '*land dimensions*' needs to be properly flagged to assess its total 'conflict generation potential'.

- 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
- The decrease in the average size is accompanied by an increase in the number of holdings
- The percentage of marginal (holding size of <1 Ha) and small farmers (holding size of 1-2 Ha) accounted for 82% of farmers 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 etc - in short, small and marginal farmers and even the 'small-medium' farmers (holdings of 2-4 Ha) are in the throes of one crisis or the other all the time.

It is clear that the difficulties of the agrarian community have the potential of engendering serious conflicts.

The measures recommended include:

- Expanding the agricultural base by giving more support to small and marginal farmers primarily through 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

Displacement of people from their lands has been a source of conflict, even when government acquires land for a public purpose under the provisions of the law. Lands may be acquired for small projects involving very little displacement or for large projects resulting in large scale displacement. Lands are acquired under the ***Land Acquisition Act, 1894*** or similar State laws. The laws prescribe the procedure to be followed while acquiring lands and also lay down the norms for compensating the title holders.

Why land acquisition?

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.

But it has been experienced that the person who loses land feels that he has been given a raw deal while compensating him. Acquisition of lands is generally problematic as the person dependant on the land is deprived of various benefits they derive from it – at times even livelihood.

Land Acquisition Law

The land acquisition laws provide for a reasonable compensation to be paid to the land losers. But generally the compensation so paid is inadequate because the evaluation of the market value of land is based on techniques which do not reflect the actual value of the land to the land loser.

A closely associated issue is the rehabilitation of persons who have lost their land, and consequently their livelihood. 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 (2004)***.

New National Rehabilitation and Resettlement (R&R) Policy

Government of India, in October, 2007, approved a new national policy on Rehabilitation and Resettlement. The new Policy and the associated legislative measures aim at striking a balance between the need for land for developmental activities and protecting the interests of the land owners, and others, such as the tenants, the landless, the agricultural and non-agricultural labourers, artisans, etc whose livelihood depends on the land involved.

The benefits to be offered under the new policy are -

- Land-for-land, to the extent Government land would be available in the resettlement areas
- Preference for employment in the project to at least one person from each nuclear family
- Training and capacity building for taking up suitable jobs and for self-employment;
- Scholarships for education of eligible persons from the affected families;
- Preference to groups of cooperatives of the affected persons in the allotment of contracts and other economic opportunities in or around the project site
- Wage employment to the willing affected persons in the construction work in the project
- Special provisions for the STs and SCs include preference in land-for-land for STs followed by SCs
- A Tribal Development Plan which will include a programme for development for alternate fuel and also a programme of development for non-timber forest produce resources.
- A strong grievance redressal mechanism has been prescribed, which includes standing R&R Committees at the district level.
- Processes are time consuming. Therefore it is necessary that the field machinery has the right skills and attitude so that the new policy could be implemented in letter and spirit.

C. Special Economic Zones

With a view to overcome the shortcomings experienced on account of the multiplicity of controls and clearances; absence of world-class infrastructure, and an unstable fiscal regime and with a view to attract larger foreign investments in India, the ***Special Economic Zones (SEZs) Policy*** was announced in April 2000.

This policy intended to make SEZs an engine for economic growth supported by quality infrastructure complemented by an attractive fiscal package, both at the Centre and the State level, with the minimum possible regulations.

SEZs in India functioned from 1.11.2000 to 09.02.2006 under the provisions of the Foreign Trade Policy and fiscal incentives were made effective through the provisions of relevant statutes

To instil 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 of the SEZ Act 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

Problems of displacement with SEZ

The establishment of SEZ has become a source of conflict, leading frequently to violence.

Displacement of people is quite common, but what is unprecedented is the violence and the subsequent loss of lives that take place to protest against a proposal to set up SEZ.

The SEZ Act, 2005 is a comprehensive law which provides for

1. Larger tax incentives.
2. Several aspects such as establishment of zones, operation and fiscal regime.

The Special Economic Zones Act, 2005 makes quite a few incremental changes over the SEZ policy of 2000.

1. Corporate I.T. exemption increased to a block period of 15 years: 100% I.T. exemption for 5 years, 50% for the next five years and 50% of ploughed-back profits for the last five years
2. Other fiscal incentives in the form of exemption from Service Tax and Securities Transaction Tax
3. Greater operational freedom, e.g., freedom to fix user charges
4. Approval committee for each zone to provide 'single-window' clearance in all matters and
5. SEZs are declared as public utilities under the Industrial Disputes Act.

Administrative Arrangements for Conflict Resolution for SEZs

Some of the measures are –

State Governments should not normally acquire the bulk of the lands for the SEZs.

- The better approach would be to have a limited number of large SEZs preferably in backward areas so that they lead to infrastructure creation.
- It would be desirable that the proportion of land allowed to be used for 'non-processing' activities should be minimised.
- The SEZ law should also specify establishment of vocational training centres. Provision of water, sanitation and health facilities should precede the actual developmental activities in the vicinity of the villages.

- 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. For the purpose, prepare comprehensive land use plans is needed

D. 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 problems of displacement of families by large scale acquisition are further aggravated because of the poor status of land records.

Recommendations at a glance

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

- Provide renewed impetus to land reform measures
- 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.
- Redesign poverty alleviation programmes to make them more relevant to the needs of small and marginal farmers.
- Introduce measures to encourage formation of 'Self Help Groups' (SHGs) to improve access to credit and marketing and empower the disadvantaged.
- Diversify risk coverage measures such as weather insurance schemes and price support mechanisms.

A new legislation for land acquisition incorporating the principles laid down in the revised national rehabilitation policy needs to be enacted. The recently announced national policy on rehabilitation of project affected persons should be implemented forthwith for all ongoing projects as well as those in the pipeline.

WATER RELATED ISSUES

"Rivers are a shared heritage of our country ... they should be the strings that unite us, not the strings that divide us."

Water conflicts now divide every segment of our society: political parties, states, regions, sub-regions within states, districts, castes, groups and individual farmers. Water conflicts, not water, seem to be percolating faster to the grassroots level in India

A. Inter-State Water Conflicts

Constitutional Provisions and Important Laws:

The Constitution lays down the legislative and functional jurisdiction of the Union, State and Local Governments in respect of water. Water is essentially a State subject and the Union comes in only in the case of inter-State waters.

The Constitution contains a specific Article - Article 262 – which deals with adjudication of disputes relating to matters of inter-state rivers or river valleys.

The **Sarkaria Commission** in its report on Inter-State River Water-Disputes recommended that:

- Once an application under Section 3 of the Inter-State River Water Disputes Act (33 of 1956) is received from a State, it should be mandatory on the Union Government to constitute a Tribunal.
- The Inter-State Water Disputes Act should be amended to empower the Union Government to appoint a Tribunal, suo-moto, if necessary, when it is satisfied that such a dispute exists.

- The Inter-State Water Disputes Act should be amended to ensure that the award of a Tribunal becomes effective within five years from the date of constitution of a Tribunal

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

- Government 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).

Lessons Learnt from Inter-State River Disputes

Since the enactment of the Inter-State Water Disputes Act in 1956, five Inter-State Water Disputes Tribunals have been set up for adjudicating water disputes in respect of the Krishna, Godavari, Narmada, Cauvery and Ravi-Beas rivers.

a) Krishna [Duration of the Krishna Tribunal (1969 - 76)]

The Krishna Tribunal was set up in April 1969 and forwarded its Report to the Government of India in December 1973, in less than five years time. Within three months, however, all the party States and the Government of India made further references to the Tribunal. A further Report of the Tribunal was forwarded in May 1976, giving therein, such explanation and guidance as it deemed fit, regarding regenerated flows. So, in all, it took seven years for the Tribunal, to consummate the process of adjudication."

Even though the Krishna Tribunal gave its award on the dispute in 1976, the dispute could not be resolved. A new Krishna Water Disputes Tribunal (KWDT) was constituted on 2nd April, 2004 for adjudication of the dispute relating to sharing of waters of Inter-State River Krishna.

b) Godavari

In case of dispute over the waters of the Godavari, even while the adjudication proceedings were going on, the party States viz. Maharashtra, Andhra Pradesh, Orissa, Madhya Pradesh and Karnataka entered into several inter-State agreements in 1975.

Subsequently, bilateral and tripartite agreements with regard to various irrigation projects were also reached between the party States during 1978-79. The Godavari Water Disputes Tribunal took cognizance of all these agreements and having regard to the requests of the party States, included them in the Final Award in July, 1980.

c) Narmada

In July 1968, Gujarat asked the Union Government to refer the issue for adjudication under Section 4 of the Inter State Water Dispute Act. The Union Government constituted the Narmada Water Disputes Tribunal (NWDT) on 6th October, 1969. Development under the Chairmanship of Justice V. Ramaswami. The tribunal gave its Award on 7th December, 1979, which was notified by Government of India on 12th December, 1979 whereupon it became final and binding on the parties to the dispute. This was facilitated by the prior settlement of the two major issues of allocation of waters between Madhya Pradesh and Gujarat and the height of the Narmada dam through informal discussions, under the leadership of the then Prime Minister, over a period of three years. Conflicts arose subsequently, not on the question of allocation, but on the height of the dam, the issue of submergence, displacement of people and their rehabilitation. The Narmada Bachao Aandolan (NBA), the NGO that spearheaded the issue, challenged the decision on the height of the dam in the Supreme Court in a Public Interest Litigation in 1994. The Supreme Court gave its judgment on 18th October, 2000.

d) Cauvery

The dispute over the allocation of the waters of the River Cauvery is more than 100 years old. In 1892, an agreement had been signed between the princely State of Mysore and Madras Presidency. In the 1892 agreement, a framework had been established for consultation and resolution of conflict, but both the governments had resented the agreement. In 1924, a new agreement was signed, specifying the capacity and extent of irrigation to be provided by the KRS dam in Mysore and Mettur reservoir in Madras. The 1924 agreement provided for review of certain clauses after 50 years, i.e, in 1974 but the review did not take place, nor was the agreement either terminated or renewed. Discussions held by the Union Government and the dialogue between Karnataka and Tamil Nadu for over two decades produced no results. In July 1986, Tamil Nadu made a formal request to the Union Government under the Inter State Water Dispute Act to set up a tribunal. The tribunal was finally set up in June 1990. The Tribunal passed an interim order in 1991 which caused a lot of violence. The final order of the tribunal which came recently has not been received well. The matter has again been taken up before the Supreme Court in the form of a Special Leave Petition.

e) Ravi-Beas

Under the terms of the Rajiv-Longowal Accord which provided that a tribunal should be set up to investigate the river water claims of Punjab, Haryana and Rajasthan, a tribunal was set up by an ordinance in January 1986. The tribunal gave its award in 1987, but Punjab contested the award on the ground that the tribunal had overestimated the free water available. Haryana approached the Supreme Court on the ground that no clear decision had been given by the Tribunal. In January 2002, the Supreme Court ordered that Punjab should complete the construction of the Sutlej Yamuna Link (SYL) Canal within 12 months. In January 2003, the deadline expired and in June 2004, the Supreme Court directed the Union Government to construct the unfinished part of SYL canal. In July 2004, Punjab passed the Punjab Termination of Agreements Act, 2004, abrogating the Yamuna agreement of 1994 between Punjab, Haryana, Rajasthan, Delhi and Himachal Pradesh and all other Accords. The Union Government filed a petition before the Supreme Court asking for fresh directions as a result of the Punjab Act. The President of India referred the Punjab Act to the Supreme Court in July 2004. In August 2004, the Supreme Court upheld its earlier order directing the Union Government to construct the remaining portion of the SYL canal. The conflict is still not resolved.

The Important Lessons learnt

- The Union Government has not been able to act decisively and has generally taken a '*minimalist*' attitude.
- 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.

Measures Taken

As a measure of conflict resolution in case of inter-State rivers,

1. Resource planning should be done for a hydrological unit such as the drainage basin as a whole.
2. In this respect, 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.

The report suggests that enactment of legislation in place of the River Boards Act, 1956 that could provide, in addition to the establishment of RBO for each inter- State rivers, the following by way of goals, responsibilities and management for the RBOs:

A. 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 controlling land degradation
- f. Rehabilitation of land resources to ensure their sustainable utilisation and conservation of the natural environment of the basin

B. 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

C. Water Management Responsibilities:

- a. Regulation of inter-state rivers and a programme of water quality monitoring to maintain flows and water quality for a range of purposes including supply to domestic users and for irrigation
- 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.

National Water Resources Council

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

1. To lay down the national water policy
2. To consider and review water development plans submitted to it by the National Water Development Agency and the River Basin Commission
3. To recommend acceptance of water plans with such modifications as may be considered appropriate and necessary
4. To give directions for carrying out such further studies as may be necessary for full consideration of the plans or components thereof different beneficiaries keeping in view optimum development and the maximum benefits to the people
5. To make such other recommendations that would foster expeditious and environmentally sound and economical development of water resources in various regions.

Need for a National Law on Water**Water Budget of India**

India's total precipitation is of the order of approximately 400 million hectare (mhm) annually, falling in the form of rain (97 per cent) or snow (3 per cent) over a land mass of 329 million hectares. Approximately 17.5

per cent of this total immediately evaporates; another 41.25 per cent transpires through forests and vegetation, 12.5 per cent percolates below the ground and 28.75 per cent becomes surface flow. Surface water availability in India, most of it in lakes and rivers, is 185 mhm of which 57.29 flows to the sea or other countries, 4.87 per cent evaporates, 4.88 per cent becomes groundwater, and only 37.83 per cent is available for consumption. India has a potential of approximately 45.2 mhm of groundwater of which 13.5 mhm are currently utilised.

“While India has 16 per cent of the world’s population, its share in the world’s fresh water availability is only 4 per cent.”

A national water policy was formulated by the Ministry of Water Resources, Government of India in September 1987, but it is yet to be operationalize because of lack of guidelines.

National Water Law

A better way to articulate and operationalize a national perspective on water will be through the instrumentality of a law. The Commission would therefore like to recommend that a national water law that keeps in view the interests and needs of the States should be enacted. It is necessary that the law, at the minimum, should incorporate the following:

1. The national water law should be subject to and consistent with the Constitution in all matters including the determination of public interest and the rights and obligations of all parties with regard to water.
2. The use of all water, irrespective of where it occurs in the water cycle, should be subject to regulation by prescribed bodies.
3. The location of water resources in relation to land shall not in itself confer preferential rights to usage.
4. The unity of the water cycle and the inter-dependence of its elements where evaporation, clouds and rainfall are linked to groundwater, rivers, waterbodies, wetlands and the sea, and where the basic hydrological unit is the catchment, needs to be recognised.
5. Resource planning should be done for a hydrological unit such as a drainage unit as a whole or for a sub-basin. All projects and proposals should be formulated and considered within the framework of such an overall plan for a basin or sub-basin so that the best possible combination of options can be made.
6. Subject to the provisions of the Constitution and relevant laws, 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.

Recommendations at a glance

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, utilise and manage water on the basis of a framework that incorporates long term perspectives, a national water law should be enacted.

ISSUES RELATED TO SCHEDULED CASTES

'Established Order' vs 'Public Order'

The Public Order is always as per the tenets of the rule of law while the Established Order may not. Exploitation of the under-privileged sections of society may be considered by the exploiting sections as the established order. Laws and public policies aimed at desirable social change may sometimes lead to conflicts in the short term. Nevertheless, such laws need to be enforced firmly if the core values of the Constitution and human rights are to be protected. In the ultimate analysis, public order is strengthened by protecting the liberty and dignity of all citizens through social change.

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.

Constitutional Framework

The *scheme of the Constitution* to safeguard the interests of the weaker sections of society reflects a three-pronged strategy for changing the status of Scheduled Castes and the Scheduled Tribes based on the traditional social order. This consists of:

1. **Protection:** Legal/Regulatory measures for enforcing equality and removing disabilities. Providing strong punitive action against physical violence inflicted on them. Eliminating customary arrangements which deeply hurt their dignity and person, Preventing control over fruits of their labour and striking at concentration of economic assets and resources and setting up autonomous watch-dog institutions to safeguard their interests, rights and the benefits guaranteed to them.
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.

The Constitution recognises the need for providing special safeguards for the Scheduled Castes and incorporates several Articles which provides for their protection as well as promotion of their social, economic, educational and cultural interests.

- **Article 17** of the Constitution abolishes untouchability and forbids this practice in any form
- **Article 46** under the Directive Principles of the State Policy stipulates that “*The State shall promote with special care, the education and economic interest of weaker sections of the people and in particular of Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation*”.

- **Article 15(4)** empowers the State to make special provisions for advancement of socially economically backward classes or citizens and for Scheduled Castes/Scheduled Tribes.\
- **Articles 330 and 332** provide for reservation of seats for Scheduled Castes/Scheduled Tribes in the Lok Sabha and Vidhan Sabhas.
- **Article 338** of the Constitution provides for the setting up of a National Commission for Scheduled Castes and stipulates that it shall be the duty of the Commission to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under the Constitution or any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.

Legislative Framework

Article 17 of the Constitution of India (Part III, Fundamental Rights – Right to Equality) abolished ‘untouchability’ and forbids its practice in any form and stipulates that the enforcement of any disability arising out ‘untouchability’ is an offence punishable in accordance with the law.

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, to enlarge its scope, the Act was revised in November 1976 and renamed as the **Protection of Civil Rights Act, 1955**. The Act extends to the whole of India and the offences under the Act were made cognizable as well as non-compoundable. The Act made it mandatory for the States to take specific measures as per Section 15 A (2) of the Protection of Civil Rights Act. Such measures include the following:

1. Provision of adequate facilities, including legal aid, to the persons subjected to any disability arising out of “untouchability” to enable them to avail themselves of such rights –
2. Appointment of officers for initiating or exercising supervision over prosecution for the contravention of the Act;
3. Setting up of Special Courts for the trial of offences under the Act.
4. Setting up of Committees at such appropriate levels as the State Governments may think fit to assist the State Governments in formulating or implementing such measures; and
5. Provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for its better implementation.

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

Evaluation of the legislative framework

The number of cases registered under the PCR Act has shown a constant decline after the 1970s the problem of untouchability is also on the decline the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has become the main instrument for preventing harassment to the Scheduled Castes.

Apart from the above mentioned legislations dealing specifically with the practice of untouchability, other social legislations were also enacted post-Independence. Some of these are:

1. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993,
2. Bonded Labour System (Abolition) Act, 1976,
3. The Minimum Wages Act, 1948,

4. Equal Remuneration Act, 1976,
5. Child Labour (Prohibition and Regulation Act, 1986,
6. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

Besides, the States also have brought in Land Reforms Laws, Debt Relief Legislations and laws to deal with special problems and practices (for eg. Abolition of the Devadasi system).

Institutional Framework

A. National Commission for Scheduled Castes

The Constitution earlier provided for appointment of a Special Officer under Article 338 to investigate matters relating to the safeguards provided for Scheduled Castes and the Scheduled Tribes. This Office was subsequently designated as Commissioner for Scheduled Castes and Scheduled Tribes. In 1978, a multi-member Commission known as the Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs) was constituted.

In 1990, 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

- a. National Commission for Scheduled Castes
- b. National Commission for Scheduled Tribes.

The Constitution lays down that it shall be the duty of the National Commission for Scheduled Castes-

1. To investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards
2. To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
3. To participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union or any State;
4. To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
5. To make in such reports, recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by the rule specify.

B. National Commission for Safai Karamcharis

The National Commission for Safai Karamcharis was 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 Commission is serviced by a Secretariat headed by a Secretary. Its function is to oversee the laws and programmes relating to Safai Karamcharis and particularly regarding abolition of manual scavenging and

for improvement of conditions of those engaged in this activity. The Union Government is required to consult the National Commission on all policy matters affecting Safai Karamcharis.

Besides, the Human Rights Commission, established under the Human Rights Act, 1993 also intervenes in complaints of exploitation of the Scheduled Castes and Scheduled Tribes as these are gross violations of human rights. The National Commission for Women established under the National Commission for Women Act, 1990 takes up complaints of injustice to women referred to it for redressal irrespective of caste. It therefore looks into complaints pertaining to women belonging to the Scheduled Castes as well.

Evaluation of the Working of the Institutional Framework

The National Human Rights Commission has analysed 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

The Ministry of Social Justice & Empowerment has been addressing the State Governments/Union Territory Administrations to implement the provisions of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in letter and spirit with specific emphasis for taking necessary steps towards setting up of exclusive special courts, sensitisation of investigating officers, ensuring registration of First Information Report (FIR), timely registration of cases and filing of charge sheets in the courts, giving due attention to maintenance of law and order in the identified atrocity prone areas and use of electric printing and other media outfit to publicise provisions of the Act for creating awareness among the target groups and ensuring participation of Panchayati Raj Institutions and the civil society at large.

Administrative Action Required

The National Commission for Scheduled Castes has made wide ranging recommendations in the past. The Report on Prevention of Atrocities against Scheduled Castes (NHRC) has also made elaborate recommendations to ameliorate the conditions of the Scheduled Castes. Considering the magnitude of the atrocities and discrimination practices, the Commission is of the view that a multi-pronged 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. Coordination mechanism for the various National and State level Commissions
7. Involving Panchayati Raj Institutions
8. Effective implementation of land reforms and other social legislation

Capacity Building

State governments have constituted civil rights enforcement cells for the effective promotion and monitoring of civil rights enforcement. State and district level committees have also been constituted to periodically review civil rights enforcement

A Centrally Sponsored Scheme is in operation to ensure implementation of civil rights measures. Under the scheme, financial assistance is provided for strengthening of administration, enforcement and judicial machinery as well as relief and rehabilitation of the affected persons.

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. It is recommended that a decadal perspective plan should be drawn up for implementation of development schemes for the Scheduled Castes.

Involvement of Civil Society Organisations (CSOs)

Many Civil Society Organisations are implementing projects for the benefit of the Scheduled Castes including with financial assistance and grants-in-aid from the government. It is equally important that these CSOs should be encouraged and incentivised to work in inaccessible and remote areas where development projects are required and the presence of CSOs are still minimal. The CSOs should also be encouraged to help the Scheduled Castes to raise their voice against atrocities discrimination and exploitation fearlessly and with the confidence that action as per law would be promptly taken on their complaints.

Expeditious Trial of Criminal Cases

It may be necessary to institutionalise an internal watch-dog mechanism under the control of an Administrative Judge of the respective High Court. At the end of each month, a review of such cases pending trial in the appropriate courts may have to be carried out to ascertain whether the postponement of the trial, which is very often the case, was due to justifiable reasons.

Recommendations at a glance

1. Government should adopt a multi-pronged administrative strategy to ensure that the Constitutional, legal and administrative provisions made to end discrimination against the Scheduled Castes are implemented in letter and spirit.
2. To ensure speedy disposal of discrimination cases pending in subordinate courts, an internal mechanism may be set up under the control of the High Court Administrative Judge to review such cases.
3. There is need to place a positive duty on public authorities for promotion of social and communal harmony and prevention of discrimination against the SCs and STs.
4. There is need for engaging independent agencies to carry out field surveys to identify cases of social discrimination.
5. There is need to spread awareness about the laws and the measures to punish discrimination and atrocities. It is necessary to launch well-targeted awareness campaigns in areas where the awareness levels are low. The District Administration should organise independent surveys to identify 'vulnerable areas'.
6. The administration and the police should be sensitised towards the special problems of the Scheduled Castes and Scheduled Tribes. They should also play a more pro-active role in detection and investigation

of crimes against the weaker sections. Appropriate training programmes would help in the sensitising process.

7. Enforcement agencies should be instructed in unambiguous terms that enforcement of the rights of the weaker sections should not be downplayed for fear of further disturbances or retribution.
8. The Administration should focus on the rehabilitation of the victims and provide all required support to them including counselling.
9. 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. The same principle should be followed in cases of localities having substantial proportion of linguistic and religious minorities.
10. A statutory duty may be cast on all public authorities to promote equality and actively check social discrimination.
11. It would be desirable to introduce a system of incentives wherein efforts made by these officials in detecting and successfully prosecuting cases of discrimination/atrocities against the Scheduled Castes are suitably acknowledged.
12. There should be training programmes for the law enforcement agencies to suitably sensitise them to the problems of the Scheduled Castes and the need for strict enforcement of laws.
13. The local governments – municipalities and panchayats – should be actively involved in various programmes concerned with effective enforcement of various social legislations.
14. The corporate sector and NGOs need to be involved in complementing the efforts of government for the development of the Scheduled Castes. Such voluntary action should not only be directed towards economic and social empowerment of the SCs, but also towards enabling them to raise their voice against atrocities, discrimination and exploitation.

ISSUES RELATED TO SCHEDULED TRIBES

According to the 2001 census, the population of Scheduled Tribes in the country is 84.32 million which constitutes 8.2 per cent of the total population.³⁶ Of these, about 1.37 million (1.57 per cent) belong to Primitive Tribal Groups (PTG). The Human Development Indices (HDIs) of the ST population are much lower than the rest of the population in terms of all parameters such as education, health, income, etc.

Further, the gap in the infrastructure in the tribal areas relative to rest of the areas is widening at a much faster rate. The position of the tribals lies at the very periphery of the social formation. 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. In terms of 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. PESA - The Panchayats (Extension to the Scheduled Area) Act, 1996

The Panchayats (Extension to the Scheduled Area) Act, 1996 (PESA) is a landmark legislation that ensures involvement of tribals in their empowerment process not only as active participants but also as effective

decision-makers, implementors, monitors and evaluators. Section 4 of the Act provides for the establishment of a Gram Sabha for every village. 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.

The tribal communities have a tradition of decision making that is often democratic in nature. If the tribal population is made aware of the provisions of PESA and the 73rd Amendment to the Constitution, it would result in greater participatory democracy in the tribal areas. This would call for organising awareness campaigns so that the tribals would be in a position to demand accountability of the elected representatives and government functionaries, particularly in respect of cases where the ultimate decisions are contrary to the resolutions passed by the Gram Sabha or Panchayat. To that extent, the tribals would be in a position to have a voice in deciding on the issues pertaining to the development of their villages, as envisioned by PESA.

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.

PESA - Objective

The main objective in enacting PESA was to enable the tribal society to assume control over livelihoods, have a say in management of natural resources and to protect the traditional culture and rights of the tribals. The information available indicates that the main objective of PESA has been diluted to the detriment of the tribal population. Critical issues such as access to natural resources, especially the definition and rights over minor forest products remain unresolved and, in general, the objectives of PESA have not been realized in any serious manner in any of the states with a large tribal population.

PESA derives its constitutional basis from Article 243 (m) (4) (b) and the Fifth Schedule, and is a logical extension of the Fifth Schedule. A duty is cast upon the Union Government to see that its provisions are strictly implemented. If any State does not implement the provisions of PESA in letter and spirit, the Government of India should issue specific directions in accordance with its power to issue directions under proviso 3 of part A of the Fifth Schedule. In addition, the Committee has recommended that one of the ways in which implementation of PESA provisions can be ensured at the grass roots level is to establish a forum at the Central level so that violation of the provisions of the enactment could be brought before this forum and the deviations highlighted and necessary correctives applied.

Moreover, the Fifth Schedule of the Constitution requires the Governor of every State to send an annual report, but this requirement is not being met regularly. The Committee has recommended that the practice of regular annual reports from Governors should be given due importance. Such reports should be published and placed in the public domain.

C. 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. Tribals are alienated from their lands not only by acquisition of land for public purpose, but also by fraudulent transfers, forcible eviction, mortgages, leases and encroachment.

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. It had

empowered every Gram Sabha to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of the Scheduled Tribe.

Different laws exist in individual States in respect of mining and industries in scheduled/tribal areas. It is imperative that these laws should be in conformity with the principles of the Fifth and Sixth Schedules of the Constitution. State Governments should enforce the existing laws on land ceiling. There is a provision in some States which says that if a land is fallow for five years, the government can take over such land.

The dismal state of land records maintained by the local administration is another source of frustration and conflict. The non-availability of land records, and in many instances, the marked reluctance of the administration to provide information on the actual ownership of land has made it increasingly difficult for tribals to contest acquisition of land by the state to prove their ownership. A complete overhaul and systematic organisation of existing land records with freer access to such information would have a positive effect and avoid conflict situations.

Lack of Harmony in Implementation of Laws and Policies

The basic system of laws governing Tribal Rights is still extremely unclear. It is therefore imperative to create a task force that should undertake a “Harmonisation of Laws” –

1. Between Central Acts and Local Land Laws,
2. Between Forest and Revenue Records and
3. Between Court judgments and other laws.

The Committee that looked at planning at the grassroots levels had made a specific mention of the need for harmonious operation of such laws and policies to promote the interest of the tribals.

A critical issue in the implementation of PESA is to harmonise its provisions with those of the central legislations and also to recast relevant policies and schemes of Union ministries / departments. No integrative exercise has so far been undertaken to examine the relevance of different central laws to these Fifth Schedule Areas and to harmonise them with the aims and objectives of PESA.

Among the laws which warrant particular attention are the -

- Land Acquisition Act, 1894
- The Mines and Minerals (Development and Regulation) Act, 1957
- Indian Forest Act, 1927
- Forest Conservation Act, 1980
- Indian Registration Act.

The National Minerals Policy, 2003, National Forest Policy, 1988 Wild Life Conservation Strategy, 2002 National Draft Environment Policy, 2004 would, in particular, require detailed examination from the view point of ensuring compliance with the provisions of PESA.

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.

In certain areas, the State has been perceived to be tardy and insensitive in protecting the interests of the tribals and the situation is further aggravated by the absence of government functionaries at their place of posting.

A significant section of the tribal population has gradually been weaned away from the mainstream by the extremists. Tribal populations have been antagonised by the manner in which they have been alienated from their land and forests by the enforcement agencies. In such situations what is required is the task of State building in the literal sense of the term. 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. Each State therefore needs to constitute a group to look into strengthening of the administrative machinery in Fifth Schedule Areas.

Convergence of Regulatory and Development Programmes

As in the case of Scheduled Castes, steps for social justice for the STs through effective implementation of the existing legislations and other regulatory measures would succeed in resolving conflicts only if they are accompanied by effective and time-bound implementation of developmental schemes for the STs. For the purpose, a decadal developmental plan may be prepared and implemented in a mission mode.

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.

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

In June, 1999, Government approved modalities for deciding claims for inclusion in or exclusion from the lists of Scheduled Tribes. According to these approved guidelines, only those claims that have been agreed to by the concerned State government, the Registrar General of India and the National Commission for Scheduled Tribes will be taken up for consideration and, after approval of Government, it is put up before Parliament in the form of a Bill to amend the Presidential Order. Thus, the procedure which is now being followed is quite elaborate. However, each of the authorities concerned with tribal affairs tends to look at the issues involved with its own perspective and the process involved is basically sequential. 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. The purpose of adopting a consultative mechanism and evolving a comprehensive methodology is to reduce the scope for conflict and arrive at decisions within a reasonable time frame.

Recommendations at a glance

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. Subject matter laws and rules in respect of money lending, forest, mining and excise have not also been amended. This needs to be done. In case of default, Government of India would need to issue specific directions under Proviso 3 of Part A of the Fifth Schedule, to establish a forum at the central level to look at violations and apply correctives. The Commission would like to re-iterate the importance of the Annual Reports of the Governors under the Fifth Schedule of the Constitution.
2. 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 so as to demand accountability in cases in which the final decisions are contrary to the decisions of the Gram Sabha or Panchayat.
3. There should be a complete overhaul and systematic re-organisation of existing land records with free access to information about land holdings.
4. There is need to harmonise the various legislations and government policies being implemented in tribal areas with the provisions of PESA. The laws that require harmonisation are the Land Acquisition Act, 1894, Mines and Minerals (Development and Regulation) Act, 1957, the Indian Forest Act, 1927, the Forest Conservation Act, 1980, and the Indian Registration Act. National policies such as the National Water Policy, 2002, National Minerals Policy, 2003, National Forest Policy, 1988, Wildlife Conservation Strategy, 2002 and National Draft Environment Policy, 2004 would also require harmonisation with PESA.
5. Mining laws applicable to Scheduled Tribal Areas should be in conformity with the principles of the Fifth and Sixth Schedules of the Constitution.
6. 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.
7. A national plan of action for comprehensive development which would serve as a road map for the welfare of the tribals should be prepared and implemented.
8. There should be convergence of regulatory and development programmes in the tribal areas. For the purpose, a decadal development plan should be prepared and implemented in a mission mode with appropriate mechanism for resolution of conflicts and adjustments.
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, on the basis of which a comprehensive methodology with clearly defined parameters is arrived at.

ISSUES RELATED TO OTHER BACKWARD CLASSES

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.

Constitutional Provisions

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

The *term 'backward classes'* which had originally been in use during colonial times had multiple referents, but lacked any clearly defined parameter regarding the inclusion and exclusion of groups described collectively as

backward. In fact, the term, at least in its early usage, denoted an all-encompassing category that included the underprivileged and marginalised castes, tribes and communities.

- **Articles 15(4) and 16(4)** empower the State to make special provisions for any socially and educationally backward class of citizens,
- **Article 340(1)** authorises the appointment of a Commission to investigate the conditions of backward classes.
- **Article 340(1)** empowers the State to investigate the condition of socially and educationally backward classes and appoints a Commission for the purpose.

Backward Class Commissions

The **First Backward Class Commission** which was appointed under Article 340(1) submitted its Report in 1955. The Report presented a list of 2399 castes and communities considered as backward. Of these, 237 were considered as most backward, requiring special attention. Thus the category 'backward classes' was bifurcated into two categories – the Backwards and the most Backwards. The Report was rejected by the Union Government for having used 'caste' and not an economic criterion for identifying Backward Classes.

The **Second All India Backward Classes Commission – the Mandal Commission** – submitted its report in 1980. The 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 dropout rate, inaccessibility to drinking water, lower average value of family assets, higher existence of Kutcha houses and so on. The report of the Mandal Commission was partially implemented in 1991.

What are the Other Backward Classes?

The Other Backward Classes in terms of the Government of India notification of 8th September, 1993 include castes and communities which are named in both the lists contained in the Report of the Second All India Backward Classes Commission (Mandal Commission) and in the list of individual State Governments. There is, therefore, a major limitation on historical data about the OBCs. 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. As a result, there are no time-series data on the demographic spread of OBCs and their access to amenities. 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.

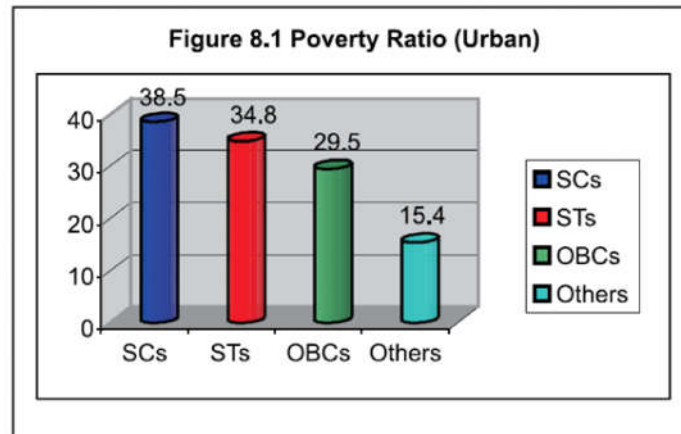
Socio-economic Survey

No socio-economic survey has been conducted of the Other Backward Classes in the country. Some State Governments have conducted socioeconomic surveys of particular segments of the Other Backward Classes but it is difficult to get a comprehensive picture of the socio-economic conditions 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.

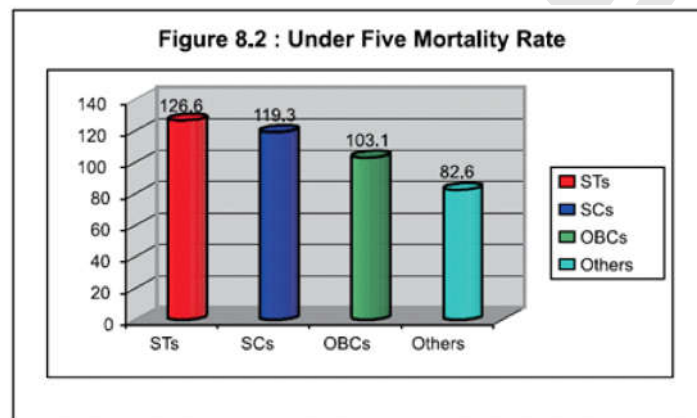
Socio-economic Indicators

An analysis of NSSO data contained various Surveys and Reports and provides following picture of socioeconomic status of OBCs -

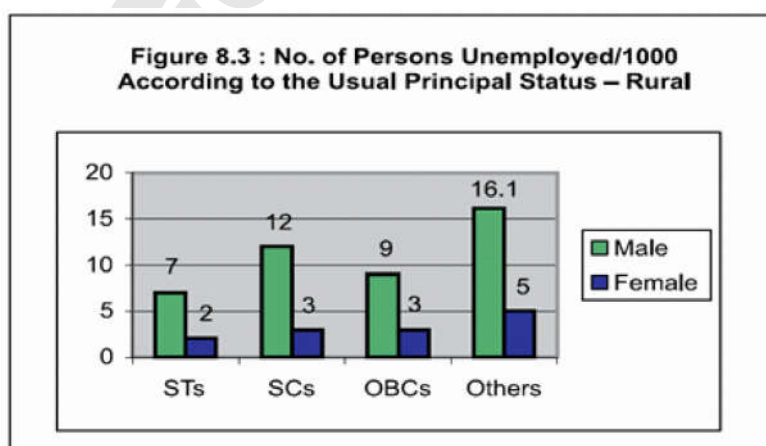
- **Poverty** The incidence of poverty among OBCs is intermediate to that among SCs/STs on the one hand and the non-SC-ST-OBC (Others) on the other. In general poverty among SCs/STs is 3 times that of the 'Others', while for OBCs it is double that of the 'Others'.



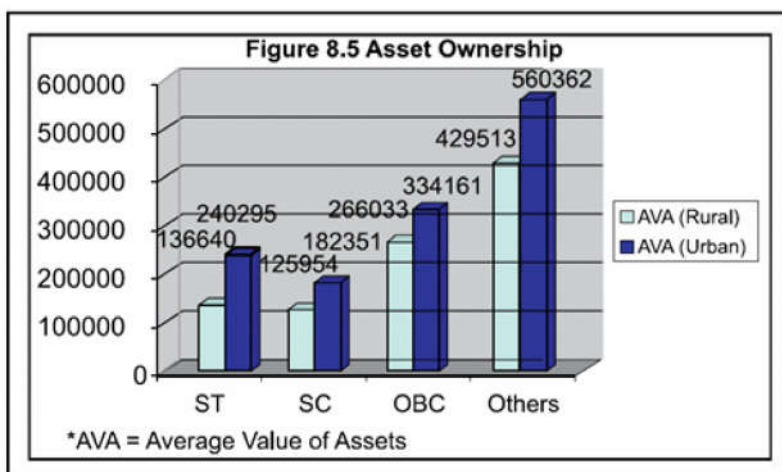
- **Health Indicators-** As far as the health indicators are concerned, the OBC s are much closer to 'Others', than to SCs/STs, who are far behind.



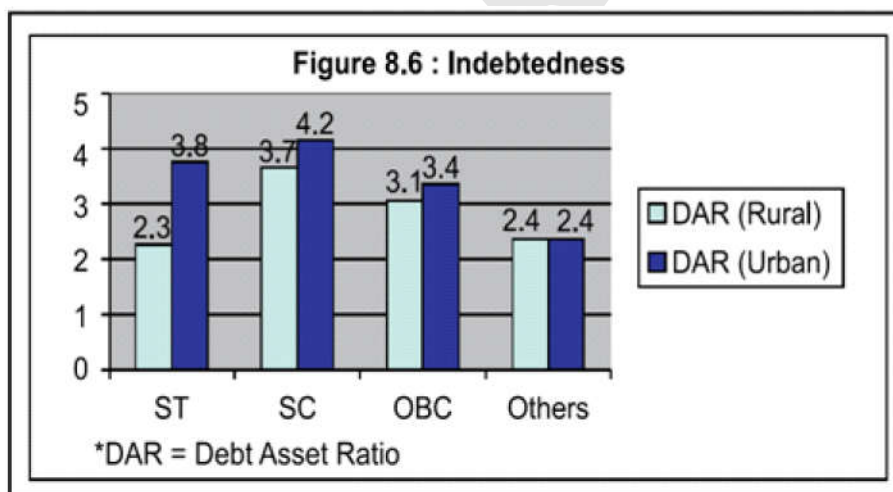
- **Unemployment-** Open unemployment, as measured by the Usual Principal Status (UPS), is more or less consistently higher among OBC s than among 'Others'. • Unemployment, including underemployment, as measured by the Current Daily Status (CDS) among OBCs is the lowest among all social groups in rural areas and not significantly less than the STs but less than 'Others' in urban areas.



- **Asset Ownership** - Asset ownership (including land) per household of OBCs is double that of SCs and STs, but only about two-thirds of 'Others' in both rural and urban areas.



- **Indebtedness-** However, the incidence of indebtedness, and consequently the debt to asset ratio, is highest among OBCs of all social groups. It also appears that OBCs borrow a lower proportion of their debt from institutional sources and have higher dependence on informal sources as compared to all the other social groups.



Social Empowerment

Clearly, the socio-economic conditions of the OBCs are such that it would require interventions to bring them on par with the others and put them in the mainstream. Schemes such as the Centrally Sponsored Scheme of Post Matric Scholarship, which is available to SCs, could be extended to OBCs including minorities. Various evaluation studies conducted of the scheme by, among others, the Babasaheb Ambedkar National Institute of Social Sciences (2000), Tata Institute of Social Sciences (1999), Centre for Research Action and Training (2000) have recommended that this benefit should be extended to other economically and socially backward communities including the minority communities.

The 2001 Census shows that the literacy rate among Muslims at 59.1 per cent is below the national average of 64.8 per cent. The educational status of Muslim women, with a literacy rate of 50.1 per cent, is very low. For the educational uplift of the Muslims, particularly of the girl child, it is important to ensure that in localities with concentrations of population of the Muslim community, primary schools are established in adequate numbers. 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

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. What is required is a comprehensive package of schemes, on the lines of those drawn up for SCs and STs, to enable the OBCs to develop their potential and capacities as agents of social change, through a process of planned development.

Article 15 (4) of the Constitution empowers the State to make special provisions for the advancement of socially and educationally backward classes of citizens. In Article 46, an obligation has been cast upon the State to promote with special care the educational and economic interests of the weaker sections of the people. So the State will be fulfilling its constitutional obligations in formulating and implementing a comprehensive scheme towards capacity building of the OBCs including minorities that would improve their socio-economic status and thus bring them at par with rest of society. This will also obviate the conflicts of the OBCs vis-a-vis the ‘Others’.

Recommendations at a glance

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.

RELIGIOUS CONFLICTS

The preamble to our Constitution clearly declares the intention to secure to all citizens ‘liberty of thought, expression, belief, faith and worship’.

Constitutional Provisions

- **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 giving aid.
- **Article 350A** directs the State to

What is communalism?

After Independence, there have been instances of large-scale communal violence in the country. The Commission, while discussing communal riots in its Report on ‘Public Order’, has stated that:

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.

Causes of Communal Violence

This Commission examined the reports of various Commissions which have inquired into different communal riots and found that they pointed to the following problems and shortcomings:

A. Systemic Problems

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

B. Administrative Shortcomings

1. The administration and the police fail to anticipate and read indicators which precipitated violence
2. Even after the appearance of first signals, the administration and police are slow to react
3. Field functionaries tend to seek and wait for instructions from superiors and tend to interfere in local matters undermining local initiative and authority
4. The administration and police at times act in a partisan manner; and
5. At times there is failure of leadership, even total abdication on the part of those entrusted with the maintenance of public order.

C. Post-riot Management Deficiencies

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

In the context of maintenance of public order, the Commission examined these issues extensively while making recommendations in a holistic manner with regard to reforms in the police and the criminal justice system in its Report on 'Public Order'.

So far as capacity building for resolution of conflicts is concerned, there is need for further involvement of citizens in developing internal mechanisms for diffusing conflict situations. These citizen centric initiatives would include:

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

D. Community policing

The confidence of different communities in the impartiality of the police and other administrative machinery is a key factor determining the success of the initiatives suggested above. The participation of the police in a manner responding to the needs of the community, and the community, in turn, participating in its own policing and supporting the police is an ideal situation for handling communal conflicts.

- The Police forces in various countries which are conflict prone have undertaken several programmes to sensitise the citizens. The main aim of such programmes is to develop the self-defence capability of citizens and reduce their vulnerability by familiarising them with the root cause of such conflicts and to enable them to realise that most of these situations cannot be compartmentalised between 'absolute rights and wrongs'.

- Community policing is thus a concept which visualises the police and the citizens working together to provide security to the community. It is a proactive process in which the police works with the community in resolving conflicts and in providing a sense of security to all the citizens.

District Administration and Citizens' Peace Committees

Citizens' peace committees in the districts have been found useful in many areas. 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. In the process, peace committees have been successful in reducing tensions.

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

The National Commission to Review the Working of the Constitution (NCRWC) in its Report made the following recommendation pertaining to the resolution of interreligious conflicts:

"The setting up of 'Mohalla Committees' with the participation of different communities to take note of early warning symptoms and alerting the administration in preventing them have produced enduring beneficial results. In particular, the endeavours made in Bhiwandi, in the state of Maharashtra, after the tragic riots there, have emphasized the value of such measures."

The Sachar Committee

In March 2005, a High Level Committee was constituted to ascertain the "Social, Economic and Educational Status of the Muslim Community in India" under the chairmanship of Mr. Justice Rajindar Sachar. The Sachar Committee was essentially a fact finding Committee to analyze the variety of data relevant to the specific aspects of the Muslim community - the task of suggesting measures to remedy the problems appearing from such analysis was not expressly included in its terms of reference; the Committee, however, has made many useful recommendations which logically emerged from its painstaking analysis. The Committee gave its report in November 2006. It has addressed almost all the problems that the Muslim community has been facing and has made comprehensive recommendations for their empowerment and a number of policy suggestions to deal with the relative deprivation of these communities with a view to promoting their intensive development and mainstreaming them.

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

Despite strong constitutional provisions for a secular India and a plethora of legal and administrative provisions to deal with communal offences, they continue to recur and threaten the secular fabric, unity and internal security of our country. 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 a Bill in Parliament in 2005.

The proposed provisions in the Bill are comprehensive and cover various aspects of tackling communal violence ranging from preventive measures to rehabilitation of victims.

- The Bill provides for the punishment of various offences in case of communal violence.
- The Bill makes comprehensive provisions for constitution of review committees and investigation teams and establishment of special courts to facilitate speedy trial of offences and awarding punishment to the guilty.
- The Bill provides for mechanisms for relief and rehabilitation of victims of communal violence.

- One of the important provisions of the proposed Bill is the special powers of the Union Government to deal with communal violence in certain cases

The above 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.

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.

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. Though this initiative is laudatory in its intent and purpose, in a way it tantamounts to establishing parallel structures for similar functions.

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

Recommendations at a glance

1. Community policing should be encouraged.
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 organised 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:
 - a. Enhanced punishments for communal offences.
 - b. Setting up of special courts for expeditious trial of cases related to communal violence.
 - c. Giving powers of remand to Executive Magistrates in cases of communal offences.
 - d. 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.

POLITICS AND CONFLICTS

Political parties are crucial elements in the democratic process, and to that extent, very important from the perspective of conflict resolution. 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

Identity Issues

In recent times, identity issues have had a significant influence on how conflicts arise and escalate. Identity issues are those in which collective identities such as those based on language, religion, sect, caste and tribe, assume preeminence.⁴⁰ 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.

Case of Gujjar and Meena Communities

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 Gujjar community and its opposition by the Meena community in Rajasthan. Ideally, such issues should be adjudicated by the institutional mechanisms provided for the purpose such as the National Commissions for Scheduled Castes, Scheduled Tribes and the Backward Classes and the decisions of these Commissions should be final and accepted by all concerned.

Identity and Politics

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. The felicity with which the abiding loyalties of caste and community are harnessed for mobilizing political support is because of certain fundamental features of Indian society.

Identity politics and Democracy

Historically, the seeds of identity politics were planted in India during colonial rule. The British acted from a combination of motives. Some of them adopted a paternalistic, almost protective attitude towards the religious minorities and the backward communities and promoted their interests on humanitarian considerations. They were, at the same time, not oblivious to the opportunities for maintaining their authority in India through the archetypal policy of divide and rule.

The seeds thus planted came to bear fruit during Partition and later in India as parliamentary democracy took roots. Democratic politics has played a crucial role in shoring up identity based on language, religion and caste because the primary concerns of democratic politics were centred on the distribution and redistribution of the benefits Capacity Building for Conflict Resolution and burdens of society among its various constituent parts. To that extent, identity politics which essentially seeks to bring about a more favourable redistribution within the existing social framework became a handy tool for politicians to exploit.

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. There was a change when some religious revivalists and caste groups created cohesion within the group by stressing on separation from and conflict with 'outsiders'.

Consolidation of these groups went hand-in-hand with the fragmentation of society as a whole. Today, the survival of many political parties depends on the maintenance of linkages with one and more segmented groups. Political parties openly flaunt their narrow identities, these particularisms are now seen as a part of the process of empowerment. A positive aspect of the stress on particular social segments is that some of the groups or interests that were earlier marginalised have been able to find more space for themselves within the political and social systems. They have more bargaining power than they had in the past, and are now increasingly part of the mainstream. But the negative aspect has been the growth of a group-based approach in all matters.

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. This type of fragmented 'pluralism' has surfaced in several parts of the country. 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. Though they are not political parties in the strict sense of the term, these organisations are politically important because they have made their support to political parties conditional on the benefits the parties would be able to provide to them.

Politics Democracy and Development

While development can, in one sense, be viewed as an inevitable step in the inclusion of marginalised groups in the country's democratic process, it can also lead to conflict and endless strife, leading ultimately to a recurring cycle of violence. What is important, therefore, is to ensure that the process of identity politics is played out in the political arena within the space provided by democracy and does not develop into intractable conflicts tainted by violence and threat to public order and unity.

Considering the magnitude and complexity of the problem and the compulsions and proclivities of political parties to play the identity card, mere punitive action may not be enough. It may be necessary to create an institutional framework that can keep a watch on the political parties playing the identity card and creating conflict at the district and sub-district levels. The services of such an institution can be utilised as a watchdog body at the district and sub-district levels to monitor and prevent activities of political parties in playing identity politics engender conflicts. The reports of this watchdog body would be an important input for the Election Commission to take action under the law proposed earlier.

Recommendations at a glance

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.

REGIONAL DISPARITIES

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. Such conflicts are not unique to India; no State can afford to ignore its region specific conflicts whether they arise on account of disparities or for other reasons. This highlights the need for disparities to be tackled preferably through appropriate interventions, or else, by putting in place suitable 'safety nets' and better governance to avoid situations of conflict and strife.

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

Intra-State Disparities

Interstate differences are only one aspect of balanced regional development; equally important is the emergence of large disparities between areas within States that are otherwise performing well, suffering from severe backwardness. The Telengana region of Andhra Pradesh is another such example. Geographically, the State of Andhra Pradesh comprises three regions namely Telengana, coastal Andhra and Rayalaseema accounting for approximately 41.5 %, 34% and 24.5% respectively

The Administrative Approach

Balanced regional development is an important objective in the country's planning and various measures including fiscal incentives, industrial policies and directly targeted measures have been used in the past to achieve this objective.

There is a very strong case for strengthening governance in backward areas. Towards this end, it is necessary that local bodies in backward areas are empowered and strengthened.

Initially, the National Rural Employment Guarantee Act, 2005 (NREGA) was introduced in 200 of the most backward districts of the country. Given the heterogeneity and spatial dimensions of constraints in the selected districts, the implementation of the NREGA is a challenge.

Identification of Backward Areas

Economic and social development in our country is, more often than not, analysed at the level of the State. But the States also include districts and regions with well-defined physical, economic and social characteristics. The result is that 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. However, it needs to be noted that the districts also encompass fairly large areas and populations with diverse characteristics.

Overall Environment for Growth

Admittedly, the need for investment in social services and infrastructure in the relatively backward States is far greater than in the more developed States. Governments in the backward States are, generally speaking, fiscally weak and, as a result, not in a position to muster adequate resources to fund the huge investments required to catch up with the more developed States

Recommendations at a glance

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. 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.

CONFLICTS IN THE NORTH EAST

At the commencement of the Constitution, the present States of Nagaland, Meghalaya and Mizoram constituted a district each of Assam, whereas Arunachal Pradesh, (then NEFA), consisted of several 'frontier tracts' administered by the Governor of Assam and was, therefore, deemed to be a part of that State. The States of Manipur and Tripura were princely States which, after merger with India in 1948, became part C States, the earlier name for Union Territories.

Constitutional Provisions

The Constitution-makers, recognising the significant difference in the way of life and administrative set up of the North Eastern region from the rest of the country, provided for special institutional arrangements for the tribal areas in the region, giving them a high degree of self governance through *autonomous District Councils under the Sixth Schedule* of the Constitution.

Critics agree that the Sixth Schedule has to some extent satisfied tribal aspirations and has thus prevented many conflicts. Similarly, the gradual *administrative reorganisation of the region* with the formation of the States of Nagaland (1963), Meghalaya (1972), conferring first, status of Union territory (1972) and subsequently Statehood (1987) to Arunachal Pradesh and Mizoram and elevation of Manipur and Tripura from Union Territories to States in 1972 attest to the considerable attention given to reduce conflicts in the region through increased empowerment.

Following the large scale reorganisation of the region in 1972, a regional body, *the North Eastern Council (NEC)* was set up to provide a forum for inter-State coordination, regional planning and integrated development of the region to avoid intra-regional disparities.

The *"look-east" policy* announced by the Government of India envisages the North Eastern region as the centre of a thriving and integrated economic space linked to the neighbouring countries such as Myanmar and Thailand by a network of rail, road and communication links criss-crossing the river. The policy tries to leverage the strategic geographical location of the region, with past historical links with South East Asia and its rich natural resources (hydel, gas, power etc.) to transform this region vast potential into reality. However, this requires not only massive efforts towards infrastructure links but also a major improvement in the security situation.

Nonetheless, 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

Roots of Insurgency in North-East

The roots of insurgency in the North Eastern region are embedded in its geography, history and a host of socio-economic factors.

1. 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.

2. 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.
3. 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 distinct tribal groups – a diversity not to be seen in States like Jharkhand and Chhattisgarh where tribal populations predominate.

Typology of Conflicts

Conflicts in the region range from insurgency for secession to insurgency for autonomy, from 'sponsored terrorism' to ethnic clashes, to conflicts generated as a result of continuous inflow of migrants from across the borders as well as from other States.

Conflicts in the region can be broadly grouped under the following categories -

1. **National conflicts:** Involving concept of a distinct 'homeland' as a separate nation and pursuit of the realisation of that goal by its votaries.
2. **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.
3. **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.

State Specific Conflict Profiles

While the region as a whole displays a variety of conflicts, it needs to be noted that in its acute form the problem is endemic in certain well defined areas. The 'variety' of conflicts besetting the region will be evident from the short 'conflict profiles of the region'

A. Arunachal Pradesh

The State has remained peaceful after the cease-fire with NSCN which was active in Tirap District. The policies initiated under the guidance of Verrier Elwin (a noted anthropologist) in the 1950s have resulted in considerable cohesion in the area with Hindi emerging as its lingua franca. 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; occasional tensions between religious/linguistic groups and escalating conflicts involving tribal communities who seek local autonomy etc.

- a. **National/Extremist Conflicts:** Undivided Assam had the longest history of insurgency. Naga and Mizo insurgencies were the earliest to flare up. The affected areas formed two districts of the State. Even in the present truncated Assam, there are a number of extremist outfits led by the United Liberation Front of Assam (ULFA).
- b. **Ethnic Conflict:** The major ethnic conflict in the State is the grievance against the perceived influx of 'foreigners' i.e. people with a language and culture substantially different from the Assamese from across the border (i.e. Bangladesh).

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. One fourth of Manipur (which is the valley), is home to more than seventy per cent of its population which predominantly consists of the 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.

It is reported that today militant organisations are virtually running a parallel government in many districts of Manipur and they are able to influence the decision of the State Government in awarding contracts, supply orders and appointments in government service. It is also reported that militant organisations indulge in widespread extortion and hold 'courts' and dispense justice in their areas of influence. Such a situation results in erosion of faith of the people in the constitutional governance machinery.

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:

- a. Increasing clash of interest between the State Government and the Sixth Schedule District Councils – the entire State is under that Schedule.
- b. Increasing inter-tribal rivalry.
- c. 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 State is recognised as having done a commendable job in the implementation of development programmes and making agriculture remunerative. 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 although as already noted, it is the original 'hot spot' of insurgency. The minority Khaplang faction which does not approve of the cease-fire has also, on the whole, remained peaceful. Certain areas of concern with regard to the future are:

- a. The lingering 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.

- b. 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

The State's demographic profile was altered since 1947 when mass migrations from the newly emerged East Pakistan converted it from a largely tribal area to one with a majority of Bengali speaking plainsmen. Tribals were deprived of their agricultural lands at throw-away prices and driven to the forests. The resultant tensions caused major violence and widespread terror with the tribal dominated Tripura National Volunteers (TNV) emerging as one of the most violent extremist outfits in the North East .

Despite impressive strides made by the State in the last decade, the fact remains that the virtual embargo on trans-border movement of goods, and services to Bangladesh from Tripura have impeded the tempo of economic growth of the State. The Ministry of External Affairs should take up this Tripura specific issue during bilateral negotiations for increased economic cooperation with Bangladesh.

Modes of Conflict Resolution

The modes of conflict resolution in the North East have been through;

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.

Many of these methods have proved successful in the short-term. However, some of these interventions have had unintended, deleterious consequences as well. The manner of 'resolution' of conflicts in certain areas has led to fresh ones in others and to a continuous demand cycle.

A Shift from Law and Order aspects

The Commission would, however, like to reiterate that even in dealing with the purely 'law and order aspects' of insurgency and violence in the region, much greater reliance needs to be placed on the local police than has been the case so far. While deployment of the Armed Forces of the Union may be required, there is a strong case for minimising their use for operational purposes in a region which still continues to harbour a sense of alienation. Similarly, utilising the 'non-police components' of administration and civil society organisations for handling conflicts needs much greater attention than has so far been given. The needed measures to achieve these and similar objectives have been dealt with elsewhere in this Report

The other mode of conflict resolution is the developmental approach. This approach embodies the thinking that if institutions of development are created in the region and plan outlays substantially increased, the problems of politics, society, ethnic strife, militant assertion and of integration will get minimised.

Reform and capacity building of various institutions of governance are, therefore, essential if development efforts are to play their intended role in reducing disparities and alienation.

Conflict Resolution – the Political Paradigm

At the political level, therefore, what is now required is the strengthening of the rule of law and constitutional politics, the authority and legitimacy of the democratically elected State and local governments. This would satisfy the need for introducing accountability and democratic practice into the conflict resolution machinery in the North East. It would also involve an enhanced role for the legislatures, State administration and elected local governments in the region.

Capacity Building for Conflict Resolution

The complexities in the region and the successes and failures of past efforts at conflict resolution call for urgent and innovative efforts to build capacity in different wings and levels of governance. Against the background given in the preceding paragraphs, the specific areas needing capacity building in the region for conflict resolution are examined as under

Capacity Building in Administration

Recommendations

- a. 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.
- b. Incentives available for officers working in the North East should be increased.
- c. Regional training institutions for various branches of administration, including the technical services may be operated by the North Eastern Council.
- d. NEC may initiate discussions with the States to examine the legal implications and feasibility of regional cadres for senior positions in technical and specialised departments under the States.
- e. 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.

Capacity Building in Police

Recommendations

- a. 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.
- b. 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.

Capacity Building in Local Governance Institutions

Recommendations

- a. 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.

- b. 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.
- c. 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.
- d. 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. Government of Assam should review the existing arrangements of determining budgetary allocations and release of funds to the 'original' Autonomous Councils with a view, as far as practicable, to bringing them at par with the arrangements for the Bodoland Territorial Council.

Capacity Building in Regional Institutions

NEC & DONER

An important organisational issue in the context of the North East is the formation, initially, of a Department for Development of the North Eastern Region (DONER) within the Ministry of Home Affairs in 2001 and its subsequent upgradation to a full fledged Ministry in 2004.

Recommendations

- a. 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'.
- b. To enable the Council to assist effectively in the discharge of its responsibilities for reviewing the measures taken by the member-States for maintenance of security in the region, Ministry of Home Affairs should keep the Council Secretariat regularly within its 'security coordination loop'. The Council Secretariat would also need to be suitably strengthened to effectively assist in security coordination.
- c. 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.
- d. Planning Commission should ensure the association of the NEC in the State plan formulation exercise by suitably amending their guidelines.
- e. 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.
- f. 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.

- g. 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.

Capacity Building in other Institutions

Recommendation

- a. 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.

National Register of Indian Citizens – MNIC Project

Multi Purpose National Identity Card (MNIC) will function as a necessary instrument for e-governance.

Recommendation

- a. 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.

Capacity Building – Miscellaneous Issues

Recommendations

- 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.
- A comprehensive framework needs to be evolved and put in place to promote the region as a preferred investment destination.
- A Transport Development Fund to finance construction of important road corridors should be set up.
- 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.
- Rail connectivity should be improved in the region on a priority basis.
- Much greater efforts are needed to establish bank branches and other credit disbursement outlets through further relaxation and incentivisation in the policies of the Reserve Bank and other financial institutions.
- 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.
- 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.

- i. It is necessary to evolve a credible system of maintenance of land records for the North East.

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. The discussion in this Chapter is confined to the role of these agencies of State or instrumentalities of civil society in conflict resolution.

Executive and Conflict Management – Police and Executive Magistracy

Recommendations

- a. 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. The Commission, therefore, reiterates these recommendations.
- b. 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.
- c. 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.

Judicial Delays and Alternative Dispute Redress

In any civilised society, the forum par excellence 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. Administration of justice efficiently, speedily and impartially is possible when it is carried out by those well versed in the laws. The innovation of Lok Adalats has proved successful only to some extent.

Recommendations

- a. Allocation of resources for upgradation of infrastructure and personnel of the subordinate judiciary needs to receive higher priority in federal fiscal transfers. 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.
- b. 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.

Civil Society and Conflict Resolution

Conflicts not involving assertion of conflicting identities are particularly amenable to community and social intervention. A case in point is the initiative taken by farmers of the Cauvery delta in Tamil Nadu to come to an understanding with their ‘upstream’ counterparts on the release of Cauvery waters from reservoirs in Karnataka for the delta areas. Irrespective of the actual outcome of this initiative, it is clear that this was a spontaneous response of the farmers.

In all societies, there are elements capable of rising above narrow partisan concerns and thus becoming effective in conflict situations

Recommendations

- a. 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.
- b. 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.
- c. Guidelines of Centrally sponsored and Central Sector Schemes may be suitably modified to require that beneficiary capacity building may also emphasise developing self-reliance in local conflict management.

INSTITUTIONAL ARRANGEMENTS FOR CONFLICT MANAGEMENT

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. These institutions include those which are normally the first responders to conflict situations and also play a role in their subsequent management

Conflict Resolution and the Constitution of India

All national Constitutions lay down the governance paradigms perceived by their Framers, as best suited to maintain and promote national cohesion and harmony and are thus instruments of conflict resolution. The process of framing the Constitution of India offers an example of successfully harmonising competing interests and nipping in the bud the causes of potential conflicts.

Some of *the salient provisions of the Indian Constitution* which seek to provide an institutional platform for conflict prevention or resolution are given below:

- a. **Article 131** recognises the importance of resolving Union-State/s and inters- State disputes as being inherently vital to the smooth functioning of a federal polity and confers the exclusive original jurisdiction on the Supreme Court to try suits concerning such disputes. It is clearly a mechanism designed to authoritatively and judicially determine situations potentially injurious to the health of the Union as a whole.
- b. **Article 262** empowers Parliament to exclude by legislation, jurisdiction of all courts, including the Supreme Court, in a sensitive area of conflict viz. inter- State Rivers or River valleys water disputes and to provide for adjudication of such disputes. In this sense, this provision is an exception to Article 131. Here again, the intention is to provide a special procedure for dealing with a dispute which may require resolution taking a variety of factors into consideration.
- c. **Article 263** 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.
- d. **Article 280** provides for establishment, ordinarily for five-year periods, of a quasi-judicial Finance Commission to recommend the norms of distribution of certain central levies between the Union and the States and to generally assess the financial requirements of central subvention for carrying out the administration of the states efficiently. This Article clearly underscores the need to prevent disputes arising out of 'financial grievances' of States.

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

Besides, there are other provisions which establish mechanisms to investigate and redress grievances of certain vulnerable sections of society. These include –

- f. **Article 350B** which provides for a special officer to safeguard the interests of linguistic minorities, and
- g. **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

There are several agencies and institutions with a role in conflict prevention and resolution. It is not practicable to enumerate all such executive and deliberative bodies. The Commission proposes to cover only some of them in the following broad categories;

Institutions established under constitutional provisions.

A. The Inter-State Council.

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.

B. The National Commission for Scheduled Castes and The National Commission for Scheduled Tribes

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.

*Institutions under legislative enactments***A. The Zonal Councils**

Recommendation

- a. 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.

B. 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. Over the years, the NHRC has made visible impact on a wide variety of human rights related issues all over the country including in sensitive states like Jammu and Kashmir, North East and Punjab during the peak of militancy in these regions. 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.

C. 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.

Institutions or deliberative forums issued under executive orders of the Government

- *The National Integration Council (NIC)*
- *National Development Council (NDC)*
- *Central Advisory Board on Education (CABE)*

Recommendation

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

Other Institutional Innovations

While there is a need to broaden the 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.

Recommendations at a glance

- a. 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.
- b. 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.

CONCLUSION

It has been said that peace is not the absence of conflict but the presence of creative alternatives for responding to conflict – alternatives to passive or aggressive responses, alternatives to violence.

In this Report on Capacity Building for Conflict Management, the Administrative Reforms Commission (ARC) has tried to outline measures that can be taken to improve the institutional capacity of the country to manage and resolve conflicts of all types. It is well recognized today that the Indian Constitution provides ample scope to resolve conflicts between different social groups, contains fissiparous tendencies across regions, and provides hope to disadvantaged sections of our society, while remaining part of the diverse mosaic that India represents.

During the course of our post Independence history, we have been faced with many types of conflicts, some of which have been successfully resolved whereas some are still simmering. A combination of political liberalism, strong governance structures and a resolute insistence on adherence to our constitutional norms has enabled India to successfully rise above the political tumult in our neighbourhood and protect our fledgling democracy to the point that it has grown to become a mature and respected emerging power. Creating an institutional context wherein conflict management is done in a democratic manner keeping the interests of all sections of society in mind rather than resorting to short term fire fighting is the focus of the Report.

The issue assumes paramount importance because increasingly in our country it has become a disturbing truism that resorting to violent agitation is the preferred strategy for aggrieved groups to articulate their grievances as compared to constitutional methods of democratic agitation and dissent. The irony is that the father of the Indian Nation, Mahatma Gandhi, was humanity's torch bearer for non-violent and peaceful methods of agitations against injustice. Satyagraha, civil disobedience, peaceful non-cooperation, there were all his contributions to the arena of political mobilization of people for a cause.

India needs today to return to the paradigm of political agitations that remain peaceful, to political discourse that retains civility and humility, to a politics centred on mutual accommodation and respect; to the give and take of democratic bargaining without aggression, and to conflicts that are of ideas and thoughts rather than of sticks and stones.

The institutional mechanisms that can help bring this about are discussed in detail in this Report. It is hoped that the shared vision of a peaceful and prosperous India can bring all stakeholders together on this collective quest for resolving our differences peacefully as part of our nation building process.

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