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SEVENTH REPORT

SECOND ADMINISTRATIVE REFORMS COMMISSION

**CAPACITY BUILDING FOR
CONFLICT RESOLUTION**

FRICITION TO FUSION



FEBRUARY 2008

GOVERNMENT OF INDIA

SECOND ADMINISTRATIVE REFORMS COMMISSION

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PREFACE

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

– Lord Buddha

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 vis-à-vis 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.

We have been extremely fortunate in India in our rich and diverse heritage, which has contributed immeasurably to producing a vibrant culture and nation. We must recognise the importance of sustaining, in every way, the processes of democratic dialogue to enhance the quality of our society.

Democracy is, in fact, 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 channelised towards nation building except through the means and methods available within a democratic framework.

India was and is a mosaic of languages, cultures and ethnicities, not simply tolerating each other but accepting and harmonising all the diversities as part of the composite whole. Dr. Ambedkar’s

warning while framing the Constitution, in itself a significant conflict resolving document, was to urge Indians not to be content with what he called 'mere political democracy'. India had got rid of alien rule, but it was still driven by inequality and hierarchy. Thus, once the country formally became a republic on 26 January 1950, it was going to enter a life of contradictions. *"In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril"*.

After Independence, the leaders of India had to give serious thought as to how to deal with the tribals, particularly of the North East. They were granted autonomy in many areas under the Sixth Schedule to the Constitution of India using the flexibility and conflict resolving potential of that document. Pandit Jawaharlal Nehru once said, *"allow the tribals to grow according to their own genius"*. That was the basic policy framework of the Government of India. When Smt. Indira Gandhi became Prime Minister, she went a step further to say that the democratic aspirations of the people must be recognised and, in spite of the fact that if they were granted statehood there would not be economic viability, Arunachal Pradesh, Meghalaya, Tripura, Manipur, and Mizoram, all small States, were created.

The responsibility of bringing about an understanding between the tribals and non-tribals lies, of course, with the local leadership in the region. Such leadership must be very clear about its policy. Very often there is a tendency of capitalising on the issue particularly during elections, and in competition with other political parties, to project ourselves as a better champion of the tribal cause.

In a remarkable discussion that Andre Malraux had with Jawaharlal Nehru, he asked Pt. Nehru what his principal task was. And Pt. Nehru replied: *"My first task is to create a new modern State on the basis of an ancient civilization and my second task is to create a secular State on the basis of a profoundly religious society"*. Nehru expressed these views to Sardar Patel and in a series of letters he wrote to the Chief Ministers of various provinces. Three months after Partition he reminded them that:

"We have a Muslim minority who are so large in numbers that they cannot, even if they want, go anywhere else. That is a basic fact about which there can be no argument. Whatever the provocation

from Pakistan and whatever the indignities and horrors inflicted on non-Muslims there, we have got to deal with this minority in a civilized manner. We must give them security and the rights of citizens in a democratic State. If we fail to do so, we shall have a festering sore which will eventually poison the whole body politic and probably destroy it". Panditji defined secularism in the following words:

"It means freedom of religion and conscience, including freedom for those who may have no religion. It means free play for all religions, subject only to their not interfering with each other or with the basic conceptions of our State. It means that the minority communities, from the religious point of view, should accept this position. It means, even more, that the majority community, from this point of view, should fully realize it. For, by virtue of numbers as well as in other ways, it is the dominant community and it is its responsibility not to use its position in any way which might prejudice our secular ideal". He stated further: *"It is a question of building a secular order in a country which has profound religious beliefs. And, here again, religious beliefs, rituals, spirituality, and culture cannot be easily separated. This is true of Islam basically and also true about a great deal of other communities who come under the overall umbrella of Hinduism".*

About disputes and discord in general, Panditji had said:

"In ages long past a great son of India, the Buddha, said that the only real victory was one in which all were equally victorious and there was defeat for no one. In the world today that is the only practical victory. Any other way will lead to disaster".

In the Constituent Assembly (legislative) a resolution was moved on 3 April 1948 by M Ananthasayanam Ayyangar to ban communal parties. Ayyangar said that time had come to separate religion from politics, that for the proper functioning of democracy and for national unity and integrity, it was essential to root out communalism from the body politic of India. Any political party, the membership of which was dependent on religion, caste etc., could not be allowed to engage itself in any activities except those connected with the religious, cultural, social and educational needs of the community. It was some forty-five years later that a serious attempt to delink religion and politics was made with the introduction of the Constitution (Eightieth) Amendment Bill, 1993 on 29 July 1993.

As Rajiv Gandhi had said, *"Secularism is the basis of our unity. And any force that is out to counter secularism, any communal force, any religious force, any political force that relies on communalism or on religious interests must not be allowed to use this interest to weaken the nation... Communalism is*

a danger that is common to all in India. Our strength will lie not in allowing this to flourish but in seeing that everyone's interest is fulfilled by reducing communalism”.

In a BBC interview, the viewpoint that Rajivji put across on the Sikh militancy is worth mentioning:

“Ever since Sikhism took root, it fought for India's integrity and unity. Sikhs have played a part in building India and they are playing a part even today in taking India ahead”.

The real problem in many of our States and regions is economic; the conflict is over resources but camouflaged in various forms of identity politics based on religion, on caste, on region, on ethnicity, on language and less frequently based on ideological divides. For example, the North Eastern region was neglected right from the very beginning. Nothing was done during British rule for many reasons, because it was a partially annexed territory and the tribals would not cooperate. After Independence, there was a composite Assam State. Due attention was not given to the tribal people. Real developmental work after Independence started only in the 1970s when the new States came into being.

Economic development in the North Eastern region has lagged behind the rest of the country due to lack of major capital investments. There has been very little investment in the area by the private sector or in the form of foreign direct investment. The share of the entire North East in the central public sector in the country also remains extremely low. It is only the budgetary support given by the Union Government which is spent on infrastructure development, roads, education and health services thus leaving practically nothing to be spent on productive employment generating sectors.

We have been all the way to the moon and back, but have trouble crossing the street to meet the new neighbour. (His Holiness, The Dalai Lama, The Paradox of Our Age)

The questions that Indians have to find answer together are: What kind of country do we want to be? 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 gear, we have to move into second gear, which is to challenge underlying theories in use of how we can accelerate change towards our vision.

There is a saying in the Old Testament (in the book of Ecclesiastes) that nations without vision will perish. Another equally profound saying is that nations and organizations cannot have vision if the people in them do not have visions.

Such a vision arises from within – from an aspiration, from caring for a cause, from passionately wanting a change in the condition of an organization or nation. Think of Gandhi. He had such a vision. So did Jamsetji Tata, the founder of the Tata business empire, about whom Gandhi said that while he was fighting for India's political independence, Tata was fighting for its economic independence. These visionaries seek the answer that American theologian Reinhold Niebuhr sought in his prayer, *“Oh God, give me the patience to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference”*.

What is our shared aspiration for our country? What is the country we want and will commit to build? Diverse stakeholders meeting in Jaipur recently came up with the following:

- A much more effective and accountable system of governance. A theme emerged was, ‘apna paisa, apna hisaab’ (our money, our account), and a complementary variant of this, ‘apni mehnat, apna hisaab’ (our effort, our account).
- Entrepreneurship and leadership at all levels, not merely in pockets and not just at the top.
- Collective action to produce results.
- An Indian model of development, built on Indian values.
- India standing tall in the world, recognised for its achievements.
- Inclusive development and rapid removal of poverty.
- Growth of the rural economy.
- A tolerant society, sensitive to the needs and feelings of diverse peoples.

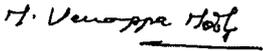
Nothing in these goals are controversial; can we not agree to such a minimum set of objectives and walk hand-in-hand to achieve them?

*We have sighted our target
And need to decide that if we move together
Nothing is hard to get
Let us each one be special
But knit our strengths around
For we want a country
That's first on the count**

It is in this spirit that the Second Administrative Reforms Commission (ARC) in its Report on Capacity Building for Conflict Resolution has tried to examine the background and emerging facets of the many conflicts that plague India. These have been detailed in separate chapters ranging from Left extremism to land and water related conflicts, to conflicts based on religion, regional disparities and social divisions (with particular focus on the SCs, STs and the OBCs) as well as conflicts based upon political identity and ethnicity such as the militancy in the North East. The Report thereafter looks at the extant operational and institutional arrangements for conflict management and how the capacity of these mechanisms can be strengthened so as to better manage and resolve conflicts in the country. It is our hope and prayer that the suggestions in this Report can contribute in some small measure towards our common goal of nation building.

I would like to express my deep sense of gratitude to their Excellencies the Governors of Assam, Meghalaya, Manipur, Tripura and Chhattisgarh and also to Hon'ble Chief Ministers of Assam, Meghalaya, Manipur, Tripura, Nagaland and Chhattisgarh for the extremely valuable suggestions given by them during the visit of the Commission to their States.

New Delhi
February 06, 2008


(M. Veerappa Moily)
Chairman

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

Resolution

New Delhi, the 31st August, 2005

No. K-11022/9/2004-RC. — The President is pleased to set up a Commission of Inquiry to be called the second Administrative Reforms Commission (ARC) to prepare a detailed blueprint for revamping the public administration system.

2. The Commission will consist of the following :
 - (i) Shri Veerappa Moily - Chairperson
 - (ii) Shri V. Ramachandran - Member
 - (iii) Dr. A.P. Mukherjee - Member
 - (iv) Dr. A.H. Kalro - Member
 - (v) Dr. Jayaprakash Narayan - Member*
 - (vi) Smt. Vineeta Rai - Member-Secretary

3. The Commission will suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government. The Commission will, inter alia, consider the following :
 - (i) Organisational structure of the Government of India
 - (ii) Ethics in governance
 - (iii) Refurbishing of Personnel Administration
 - (iv) Strengthening of Financial Management Systems
 - (v) Steps to ensure effective administration at the State level
 - (vi) Steps to ensure effective District Administration
 - (vii) Local Self-Government/Panchayati Raj Institutions
 - (viii) Social Capital, Trust and Participative public service delivery
 - (ix) Citizen-centric administration
 - (x) Promoting e-governance
 - (xi) Issues of Federal Polity
 - (xii) Crisis Management
 - (xiii) Public Order

Some of the issues to be examined under each head are given in the Terms of Reference attached as a Schedule to this Resolution.

4. The Commission may exclude from its purview the detailed examination of administration of Defence, Railways, External Affairs, Security and Intelligence, as also subjects such as Centre-State relations, judicial reforms etc. which are already being examined by other bodies. The Commission will, however, be free to take the problems of these sectors into account in recommending re-organisation of the machinery of the Government or of any of its service agencies.
5. The Commission will give due consideration to the need for consultation with the State Governments.
6. The Commission will devise its own procedures (including for consultations with the State Government as may be considered appropriate by the Commission), and may appoint committees, consultants/advisers to assist it. The Commission may take into account the existing material and reports available on the subject and consider building upon the same rather than attempting to address all the issues ab initio.
7. The Ministries and Departments of the Government of India will furnish such information and documents and provide other assistance as may be required by the Commission. The Government of India trusts that the State Governments and all others concerned will extend their fullest cooperation and assistance to the Commission.
8. The Commission will furnish its report(s) to the Ministry of Personnel, Public Grievances & Pensions, Government of India, within one year of its constitution.

Sd/-

(P.I. Suvrathan)

Additional Secretary to Government of India

*Dr. Jayaprakash Narayan – Member, resigned with effect from 1st September, 2007 (Resolution No. K.11022/26/207-AR, dated 17th August, 2007).

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

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RESOLUTION

New Delhi, the 24th July, 2006

No. K-11022/9/2004-RC (Vol.II) – The President is pleased to extend the term of the second Administrative Reforms Commission by one year upto 31.8.2007 for submission of its Reports to the Government.

Sd/-

(Rahul Sarin)

Additional Secretary to the Government of India

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

RESOLUTION

New Delhi, the 17 July, 2007

No.K-11022/26/2007-AR – The President is pleased to extend the term of the second Administrative Reforms Commission (ARC) by seven months upto 31.3.2008 for submission of its Reports to the Government.

Sd/-

(Shashi Kant Sharma)

Additional Secretary to the Government of India

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LIST OF ABBREVIATIONS

Abbreviation	Full Form
AC	Autonomous Council
ARC	Administrative Reforms Commission
BBC	British Broadcasting Corporation
BRGF	Backward Regions Grant Fund
CABE	Central Advisory Board on Education
CADP	Comprehensive Area Development Programme
CMP	Common Minimum Programme
CPI(ML-PWG)	Communist Party Marx – Peoples War Group
CPR	Centre for Policy Research
CrPC	Criminal Procedure Code
CSO	Central Statistical Organisation
DDP	Desert Development Programme
DONER	Department for Development of North East Region
FDST	Forest Dwelling Scheduled Tribes
FIR	First Information Report
GDP	Gross Domestic Product
GNLFF	Gorkha National Liberation Front
Ha	Hectares
ICSSR	Indian Council of Social Science Research
ICT	Information and Communication Technology
IFAS	Indian Frontier Administrative Service
IIPA	Indian Institute of Public Administration
IPC	Indian Penal Code
ITI	Industrial Training Institute
JNU	Jawaharlal Nehru University
LAMP	Large Area Multipurpose Cooperative Societies

MCC-I	Maoist Communist Centre – India
MHA	Ministry of Home Affairs
MNIC	Multi-purpose National Identity Card
NBA	Narmada Bachao Aandolan
NCCM	National Crisis Management Committee
NCRB	National Crime Records Bureau
NDC	National Development Council
NE	North East
NEC	North East Council
NEDFC	North Eastern Development and Finance Corporation Ltd.
NEEPCO	North Eastern Regional Electrical Projects Corporation
NEIGRIHMS	North Eastern Indira Gandhi Institute of Health & Medical Sciences
NEHHDC	North Eastern Handloom and Handicrafts Development Corporation
NEHU	North Eastern Hill University
NEPA	North East Police Academy
NERAMAC	North Eastern Regional Agricultural Marketing Corporation
NGO	Non Government Organisation
NHRC	National Human Rights Commission
NIC	National Integration Council
NLCPR	Non Lapsable Central Pool of Resources
NPC	National People’s Congress
NRCR	National Research Centre for Resettlement
NREGA	National Rural Employment Guarantee Act
NSCN	National Socialist Council of Nagaland
NSDP	Net State Domestic Product
NSSO	National Sample Survey Organisation
OBCs	Other Backward Classes
PAFs	Project Affected Families
PCR	Protection of Civil Rights
PESA	Panchayats (Extension to the Scheduled Areas) Act, 1996
POA	Prevention of Atrocities
POLNET	Police Network
R&R	National Rehabilitation and Resettlement Policy
RBOs	River Basin Organisations

SCs	Scheduled Castes
SCSP	Scheduled Caste Sub Plan
SEZs	Special Economic Zones
SHGs	Self Help Groups
SMR	Suicide Mortality Rate
SPOs	Special Police Officers
STs	Scheduled Tribes
SYL	Sutlej Yamuna Link
TNV	Tripura National Volunteers
TRIFED	Tribal Cooperative Marketing Development Federation of India Limited
UK	United Kingdom
ULFA	United Liberation Front of Assam
UPS	Usual Principal Status
USA	United States of America
UT	Union Territory
VAT	Value Added Tax
WWF	World Wildlife Fund

INTRODUCTION

1.1 The Terms of Reference of the Second Administrative Reforms Commission pertaining to Public Order cover two specific issues, namely:

- (i) Suggest a framework to strengthen the administrative machinery to maintain public order conducive to social harmony and economic development.
- (ii) Capacity building for conflict resolution.

For reasons indicated in its 5th Report on Public Order, the Commission had decided to deal with the above two issues in two separate reports. It has already submitted its Report on Public Order. This Report on Capacity Building for Conflict Resolution is a sequel to the Report on Public Order.

1.2 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.

1.3 Among other things, this Report distils the discussions at a workshop on conflict resolution organised at the behest of the Commission to deliberate on the nature of public expectations and the kinds of reforms that would need to be undertaken for the conflict resolution mechanisms to be more responsive. The wealth of information provided by the participants in the workshop has given valuable inputs for the preparation of this Report. The workshop was coordinated by the Centre for Policy Research (CPR), New Delhi and Kannada University, Hampi and was held at the CPR on 4th and 5th February, 2006.

1.4 The Report is organised in four parts. The first part, which is this, is a very brief introduction. The second part provides a conceptual framework. The third part deals with conflicts arising out of issues related to caste, class, religion & region as well as land & water related issues. The fourth and the last part deals with the institutional framework for conflict resolution.ⁱ

1.5 The Commission expresses its gratitude to Shri S.K. Das, Consultant and Shri Naved Masood for assisting the Commission in drafting this Report.

1.6 The Commission is grateful to Shri K. Asungba Sangtam (former Member of Parliament) for preparing a Report on “Conflict Resolution and maintenance of Public Order in the North East with central focus on Nagaland” which has been utilised in drafting this Report by the Commission. The Commission is also grateful to Shri P.K.H. Tharakan for his invaluable inputs.

CONFLICT RESOLUTION – A CONCEPTUAL FRAMEWORK

2.1 Conflict Resolution – Perspectives

2.1.1 Conflict has been defined as a situation between two or more parties who see their perspectives as incompatible.¹ Conflicts have a negative beneficial connotation, but some conflicts are desirable as they can create change.

2.1.2 John Donne, the 16th century poet, wrote, *‘No man is an island entire of itself’*. Individuals see themselves as members of a variety of groups which often span a number of their interests. 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, to all of which the individual belongs, tends to give him a particular identity,² but together he has multiple identities.

2.1.3 The search for identity is a powerful psychological driving force which has propelled human civilization.³ Identity is often evocative. It deals with a myth or an imagined community which has all the power and potential necessary for political mobilisation. 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.⁴ The concept of social capital, advocated by Robert Putnam, 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.⁵

2.1.4 And yet, identity can also kill – and kill with abandon.⁶ A strong and exclusive sense of belonging to one group does, in many cases, lead to conflict. Many of the conflicts today are sustained through the illusion of a unique and choiceless identity. In such cases, the art of manufacturing hatred takes the form of invoking the imagined power of some allegedly predominant identity that totally overwhelms all others. With suitable instigation, a fostered sense of identity with one group of people is often made into a powerful weapon

¹Conflict Resolution and Violence Prevention: From Misunderstanding to Understanding; Larry Cohen, MSW, Rachel Davis, MSW and Manal Aboelata; <http://www.preventioninstitute.org/pdf/conflict.pdf>

²Amartya Sen, Identity and Violence: The Illusions of Destiny (2006), Allen Lane

³Kumar Rupesinghe, Governance and Conflict Resolution in Multi-ethnic Societies

⁴Amartya Sen, Identity and Violence: The Illusions of Destiny (2006)

⁵Robert Putnam, Bowling Alone: The Collapse and the Revival of American Community

⁶Amartya Sen, Identity and Violence: The Illusions of Destiny (2006)

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.⁷

2.1.5 We now live in an increasingly violent world, because of the conflicts we generate. 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.

Table 2.1: Conflicts and Human Lives

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

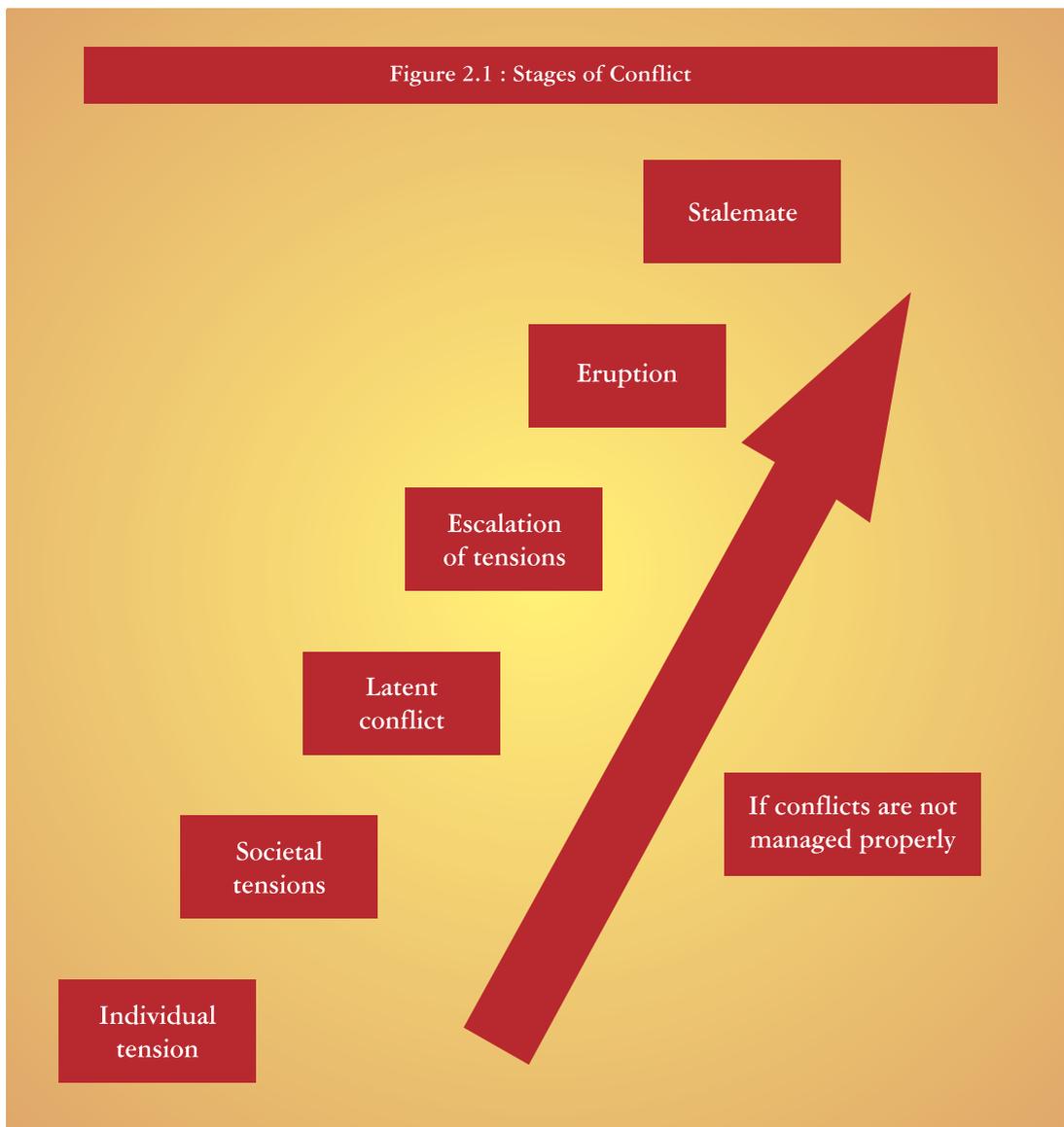
Source: Conflict deaths data, Sivard 1991, 1996; twentieth century population data, UN 2005; other population data, Human Development Report Office interpolation based on Sykes 2004.

2.1.6 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.

2.1.7 Loss of life is only one corollary of conflicts. Others are destruction of food systems, disintegration of public services, loss of income, dislocation, insecurity and a surge of crimes. What is important to note is that immediate costs imposed by conflicts, though enormous, represent only a small fraction of the price that the affected population has to pay. In particular, institutional costs of conflict can have debilitating consequences for long term growth of society. The physical infrastructure such as roads and buildings destroyed or damaged during conflicts can be repaired or rebuilt, though at a heavy cost, but the breakdown of institutions, the mutual trust and understanding that is lost and the trauma that is heaped on the vulnerable population, make it very likely that the bad blood will persist and conflicts and violence will recur. They lock entire populations into unremitting cycles of violence and that is why prevention of conflicts or their resolution at early stages becomes a compelling challenge.

2.2 Stages of Conflicts – a Life Cycle Approach

2.2.1 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, 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.



2.2.2 The potential for conflict will always exist in a society with its members having different mores, interests, and socio-economic conditions and needs. Thus, in any society, for a variety of reasons, perceptions may be conceived about group or communal interests being harmed or relatively deprived. If fostered, these may lead to expressions of discontent against the State or other social group(s)/communities. If such discontent is not attended to in the primary stages or dealt with in a manner which aggravates the already prevailing feeling of injustice done to the group/community, a major conflict situation may arise. Thus, different stages of a conflict situation can be envisaged, each caused by interventions not being taken in time or through inept handling of the situation and each crying out for its own mix of appropriate measures. These are presented in the Figure 2.1.

2.2.3 The representation of conflict as given in Figure 2.1 may be briefly described in the following manner:

1. Individual and Societal Tensions: 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. The 'spark' or the trigger may by itself not be a major event, but it leads to further polarisation of the people involved, and becomes an excuse for the violent eruption. Normally the Administration swings into action at this stage and tries to control the violence. It has been observed that even after the

violence has been contained, adequate efforts are often not made to address the root causes of the conflict.

5. *Stalemate*: This is a situation similar to the ‘latent tension’ and has the potential to erupt at regular intervals.

2.2.4 It needs to be emphasised that at each stage, there would be governance issues involved. While lack of governmental interventions or inept handling of the situation would tend to push the emergent situation to the next stage of conflict, appropriate and timely measures would in most cases lead to resolution of the conflict situation. 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. Such an eventuality would require a more complex and multi-pronged approach to salvage the situation, including taking recourse to negotiations and settlement, resulting in de-escalation of tensions and initiation of post-conflict confidence-building peace process.

2.2.5 Johan Galtung, Director, Transcend and winner of the Right Livelihood Award has come out with a manual “Conflict Transformation by Peaceful Means (the Transcend Method)”⁸ which deals with peaceful approaches to resolve conflicts. The basic premises behind the approach are based on thoughts of the six major religions of the world. Thus it holds that:

- Conflict is a destroyer as a source of violence; it is a creator as a source of development; the role of preserver can be achieved by transforming the conflict by avoiding violence and promoting development.
- Conflicts have no beginning and no end; everything grows together in mutual causation; no single actor carries all the responsibility and no single actor carries all the guilt.
- Ultimately, the responsibility for conflict transformation lies with individuals: on their decisions to act in peace and on the principle of hope.
- Everything is good or bad; there is high likelihood that the action chosen also has negative consequences and that action not chosen may have positive consequences; there is need for reversibility and only doing what can be undone.
- Deriving strength from submitting together to a common goal, including responsibility for the well-being of all.

⁸Source: http://www.transcend.org/pctrcluj2004/TRANSCEND_manual.pdf

- The truth lies less in a verbal formula than in the dialogue to arrive at the formula, and that dialogue has no beginning and no end.

2.2.6 Based on the above, the manual proposes a process where the conflict formation is mapped in totality with regard to all parties, all goals and all issues; forgotten parties with important stakes in conflict are brought in; emphatic dialogues are held with all parties singly; acceptable goals are identified in all parties; forgotten goals that may open up new perspectives are brought in; and over-arching goals acceptable to all parties are worked out.

2.2.7 It would be necessary in societies emerging from a history of human rights violations and atrocities to formulate a long term strategic action plan to resolve conflicts which arose out of such aberrations. This would necessarily require that truth is told, that justice is done and that reparation is provided to victims of such excesses. It was in such a scenario that countries like South Africa, Peru, Indonesia and Philippines etc. set up Commissions called “Truth Commissions” as temporary but extremely effective fact finding bodies to investigate past human rights violations and atrocities using a victim centred approach in order to promote both justice and reconciliation. Some Truth Commissions have designed their hearings to provide both victims and the perpetrators of atrocities with a forum for reconciliation.

2.3 Conflict Resolution and the Constitution

2.3.1 In India after the violence following Partition, the process of conflict resolution started with the integration of the princely States, which was achieved through remarkably peaceful means, considering the magnitude and dimension of the problem. 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. This is for several reasons. The Constitution opted for the democratic process and adult franchise. It has been aptly observed by Shri P.V. Narasimha Rao, former Prime Minister of India, 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.⁹ Moreover, the Constitution of India, 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. To that extent, it was expected that, within the context of democracy and development, diverse groups residing in various parts of the country would become the necessary building blocks for the development of the Indian nation as a whole, through mutual understanding.

2.3.2 While Article 30 of the Constitution enshrines the right of minorities based on religion to establish and administer their own educational institutions, in general, the rights to freedom of conscience and free profession, practice and propagation of religion (Article 25), freedom to manage religious affairs (Article 26) combined with the rights provided to any section of citizens to conserve their language, script or culture (Article 29), highlight the humanistic approach of the framers of the Constitution. As observed by Shri Rajiv Gandhi, former Prime Minister of India, the Constitution, while providing the religious minorities in the country with special protection, also allowed them the necessary space, like any other citizen of the country, to be able to fully enjoy their dignity and rights.¹⁰ 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.

2.3.3 The founding fathers of the Constitution were fully aware that a democratic polity with an unequalitarian economic structure could be a source of intense conflicts. That is why the Constitution contained a number of provisions entrusting the State with the responsibility of reducing and eliminating inequalities. By empowering the State to intervene in the economy to promote the interests of the economically disadvantaged, the Constitution sought to ensure that the democratic polity is not used as a vehicle for the perpetration, perpetuation or aggravation of economic inequalities.

2.3.4 The framers of the Constitution were also aware that steps taken to change the status quo would themselves create conflicts, especially in the context of transition of a traditional, unequal society into a modern democratic one. The change in status quo mandated by the various Rights conferred by the Constitution under the Right to Equality are examples of this. Provisions for reservations for various underprivileged communities also fall in the same category. It is the State's duty to scrupulously guard the core principles of the Constitution and contain any conflicts arising while implementing its mandate. However, the State has to apply abundant caution while further legislating on social reforms and modernisation of society and ensure that there is widespread public debate on such issues so that conflicts are minimised.

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

¹⁰Rajiv Gandhi, A Contemporary Perspective on Jawaharlal Nehru's Vision of India, Twenty-first Jawaharlal Nehru Memorial Lecture, 13th November, 1989

2.4 History of Conflict Resolution

2.4.1 The history of conflict resolution in independent India is a story of both successes and failures. The resolution of linguistic conflicts was one of the major achievements after Independence. Notable writers like Ramachandra Guha have observed that the formation of linguistic States and evolution of the three-language formula succeeded in deepening and consolidating the unity of the country.¹¹ Continuance of a common language has provided the basis for administrative unity and efficiency within the State. Interestingly, the three major movements for secession in independent India, namely those in Nagaland, in Punjab in the 1980s, and in Kashmir, were organised around the issue of historical ethnicity, religion and territory and not around language.

2.4.2 Among ethnic and secessionist conflicts the resolution of the Mizoram issue was a notable success. Armed insurrection had persisted in Mizoram for more than two decades. The movement by the Mizo National Front had racial and religious overtones, and its declared aim was secession of Mizoram from the Indian Union. There was an armed uprising in 1966 and violent conflict continued well into the 1980s. The Mizoram Accord of June 1986 succeeded in bringing to a satisfactory conclusion, the violent conflict of the past decades. Three factors may be said to have contributed to this historic conflict resolution: firstly, Prime Minister Rajiv Gandhi's sincere and positive gestures were greatly appreciated by the people of Mizoram and its leaders, which laid the initial foundation for negotiations; secondly, the maturity of the two Mizo political personalities of the time, namely, the undisputed insurgent leader Pu Laldenga and the then Chief Minister Pu Lal Thanhawala's unilateral offer of stepping down in favour of Laldenga as the Chief Minister and finally, the moderating influence and pressure of the Mizo civil society, especially the women who had been the most aggrieved and affected during the periods of violence.

2.4.3 Conflict resolution in the Darjeeling hills is another success story. The Gorkha National Liberation Front (GNLF) who had demanded Indian citizenship for all Gorkhas resident in India, complained of discrimination at the hands of the Government of West Bengal and accordingly, sought separation from the State. It also took up the cause of Gorkhas in other parts of the country, such as Meghalaya, where there had been trouble between Gorkha residents and the local population. The agitation acquired an increasingly violent colour over time. Finally, a tripartite agreement was negotiated between the Union Government, the GNLF and the State Government (1998). The Agreement consisted of three main points:

1. In the overall national interest and in response to the Prime Minister's call, the GNLF agreed to drop the demand for a separate State of Gorkhaland.
2. For the social, educational and cultural advancement of the people residing in the Hill areas of Darjeeling district, it was agreed to have an autonomous council known as the Darjeeling Gorkha Hill Council.
3. The composition of the Council and the extent of its executive powers were spelt out extensively, subject to the provisions of the Union and State laws.

2.4.4 This led to a halt in the nearly 5-year old conflict and restoration of peace. Currently, there is a proposal – and a debate – to include the region in the Sixth Schedule of the Constitution.

2.4.5 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. The situation was further aggravated when terrorist elements demanded secession in the form of 'Khalistan'. While terrorism was quelled, a determined effort was launched, soon after the elections of December 1984, to find an enduring basis for a resolution of the conflict which was inextricably enmeshed with violence in Punjab and its spin-off effects in other parts of the country. The Rajiv Gandhi-Longowal Accord in July 1985 brought this turbulence to a temporary end. With Sant Longowal's assassination a month later and the implementation of the Accord running into rough weather over the question of Chandigarh as a part of Punjab and the sharing of river waters, there was renewal of violence. Finally, the conflict was resolved by the government following a policy which was based on four parameters: security action to contain and eliminate terrorism; subterranean contacts with militants to persuade them to give up violence and come to the negotiating table; over-the-table discussions with dissident elements who were prepared to eschew violence and accept the basic tenets of the Constitution in exchange for full integration into the country's democratic process, and sensitivity to religious, cultural and ethnic sentiments of the affected population.¹²

2.4.6 There are many conflicts yet to be resolved. These inter alia include water related conflicts, conflicts arising out of inequities and social tensions, conflicts because of poverty and conflicts due to regional imbalances. In some cases, resolution of one conflict has created others. There has also been, in some cases, failure to implement the Accords and

agreements faithfully and in the spirit in which they were arrived at. Above all, there has been a tendency to take a minimalist, wait and see, approach resulting in intensification of violence. This has led to a growing perception that it is only violent manifestation that will draw the attention of governments. Another result has been the need to approach Courts on every issue and at almost every stage and the Courts having to issue directions even for convening meetings!

2.4.7 The Commission, in its deliberations, has concentrated on those areas where conflicts persist and has tried to suggest what needs to be done in respect of these conflicts. While doing so, the Commission has paid special attention to the genesis of these conflicts, the interventions required and capacity building measures to help mitigate them by early interventions.

2.4.8 This Report also discusses several other issues that are sources of conflict and has suggested a possible approach to resolve them. For example, issues relating to Scheduled Castes, Tribes and Other Backward Classes have been a major source of conflict. The issues have arisen as these disadvantaged groups have been subjected to atrocities, exploitation, discrimination and alienation that have prevented them from exercising their rights freely, enjoying privileges due to them and leading a life of dignity and a feeling of self-worth. The resulting discontentment has largely remained simmering, with sporadic manifestations of violence and providing a ground for the growth and spread of extremist movements.

2.4.9 Land has been another source of conflict. Added to the issue of inequality in land distribution are issues of dispossession, alienation and displacement—highly emotive issues that continue to inflame passions and generate conflict, especially in the context of rapid economic development. Issues such as indebtedness leading to farmers' suicides have also been sources of conflict.

2.4.10 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. These conflicts range from contending uses of water, to issues of water quality and to inter-state conflicts on allocations that prevail across the country. Unless resolved with imagination and understanding, they pose a significant threat to economic growth, social stability and even national unity.

2.4.11 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. In the tribal

hinterland of the country, which is now the bastion of the movement, problems of poverty and alienation, of marginalisation of entire communities from the economic mainstream and of dispossession of land and displacement from forest habitats and livelihood sources have all combined to create a fertile ground for the spread of the movement which holds out promises of equity, justice and livelihood. Violence resorted to by the movement has, however, exacted a huge price because those at the vanguard of the extremist movement have also opposed and disrupted initiatives for development which they view as coming in the way of achieving their political objectives. Unfortunately, the affected areas are arguably among the least developed in the country.

2.4.12 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. The divide has been the source of conflicts that have unleashed violent events and atrocities leading to loss of lives and also locking entire populations in trysts of violence and destroying the trust built over the years.

2.4.13 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. The conflict dynamics have ranged from insurgency for secession to insurgency for autonomy, from sponsored terrorism to ethnic clashes and to conflicts generated as a result of continuous inflow of migrants from across the borders as well as from other parts of the country. Ad hoc solutions have added to the cycle of conflicts in the region.

2.4.14 Regional inequalities have been another source of conflict. Over the last several decades, regional imbalances have got accentuated and the problems of intra-state inequalities and urban rural divide have also become more acute. This has happened in spite of the equity-promoting role of various plans/programmes and underlines the need for greater efforts to be made to remove gaps in the provision of basic services and infrastructure so that no region or sub-region and no group remains deprived of the benefits of growth and development.

2.4.15 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. The ultra-left extremist movement came later. As stated earlier, the response of the State to these conflicts has been largely reactive in recent decades. The State and its apparatus have tended

to view conflicts more in terms of breakdown of law and order – which, of course, it is, in a sense – and less in terms of the failure of the socio – economic, political, governance and development process. That a lack of responsive and good governance is often responsible for violent conflicts has not been adequately recognised and acted upon.

2.4.16 What should the State do to resolve conflicts? 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. Once identified and recognised, appropriate administrative and institutional

interventions need to be designed and assiduously followed to help mitigate the possibility of such conflicts. 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.

2.4.17 That is why 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. When the fault lines lie along identities of tribe, caste, region and religion, the State needs to create political conditions and institutions for mediating the conflicts of these diverse groups and integrating them so that the groups can function collectively and harmoniously. 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. It is fortunate, however, that such conflicts between groups and regions can be addressed. 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 multi-stakeholder platforms or similar participatory processes that bring stakeholders together. There is need for inclusive frameworks – both institutional and administrative – within

Box 2.1: Brains vs Bullets

In the future, fighting protracted, enervating counter-insurgency wars would offer no clear-cut victories. In the USA, a new manual of counter-insurgency mentions that counter-insurgency is “armed social work”. It requires more brain than brawn, more patience than aggression and the model soldier should be more an intellectual, preferably a linguist, with a sense of history and anthropology.

In his book “Learning to Eat Soup with a Knife” (2002), John Nagl, a US Lieutenant-colonel, points to the success of the British against revolutionaries in Malaya in the 1950s. As General Sir Gerald Templer, the British High Commissioner in Malaya, argued, the solution “lies not in pouring more troops in the jungle, but in the hearts and minds of the people”.

Source: Based on reports in The Economist (October 27th-November 2nd, 2007 issue; pages 15 and 33-35)

which people with divergent interests and aspirations can discuss and agree to cooperate and coordinate their actions.

2.4.18 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. 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.

3.1 Left Extremism: Spread and Intensity

3.1.1 The left extremist outburst, later known as the Naxalite movement, started in March 1967 in the three police station areas (Naxalbari, Khoribari and Phansidewa) of Darjeeling district in West Bengal. The ‘Naxalbari phase’ of the movement (1967-68) gathered momentum during May-June 1967 but was brought under control by July-August 1967. Today, the left extremist movement is a complex web that covers many States. According to the Ministry of Home Affairs, ‘at present, 76 districts in the nine States of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Uttar Pradesh and West Bengal are afflicted with ultra-left extremism forming an almost continuous Naxal Corridor. CPI(ML)-PWG and Maoist Communist Centre-India (MCC-I) 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.’¹³ The merger of the CPI (ML)-PWG and the MCC in 2004 has strengthened their combat capability. 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.¹⁴

3.1.2 Table 3.1 shows the spread and intensity of left extremist violence during the period 2003-06.

Name of States	2003		2004		2005		2006	
	Incidents	Deaths	Incidents	Deaths	Incidents	Deaths	Incidents	Deaths
Andhra Pradesh	577	140	10	74	535	208	183	46
Bihar	250	128	323	171	186	96	107	42
Chhattisgarh	256	74	352	83	385	168	715	388
Jharkhand	342	117	379	169	312	119	310	124

¹³Annual Report (2004-05), Ministry of Home Affairs

¹⁴P V Ramana, Observer Research Foundation

Table 3.1 Contd.

Name of States	2003		2004		2005		2006	
	Incidents	Deaths	Incidents	Deaths	Incidents	Deaths	Incidents	Deaths
Madhya Pradesh	13	1	13	4	20	3	6	1
Maharashtra	75	31	84	15	94	53	98	42
Orissa	49	15	35	8	42	14	44	9
Uttar Pradesh	13	8	15	26	10	1	11	5
West Bengal	6	1	11	15	14	7	23	17
Kerala	12	-	5	-	5	-	2	-
Karnataka	4	-	6	1	8	8	10	-
Haryana	-	-	-	-	2	-	-	-
Total	1597	515	1533	566	1608	677	1509	678

Source: Annual Report of Ministry of Home Affairs, 2006-07

From the figures given in the Table 3.1 it is evident that extremist violence is increasing and expanding. These figures, however, do not capture the fact that 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. Table 3.1 also does not adequately convey the fact that most of the affected areas are forest areas predominantly inhabited by tribal populations.

3.2 The 'Nature' of the Movement

3.2.1 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;

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

- It creates conditions for non-functioning of the government and actively seeks disruption of development activities as a means to achieve its objective of ‘wresting control’.
- It spreads fear among the law-abiding citizens.

3.2.2 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.

3.3 Causes for Spread of Left Extremism

3.3.1 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. It is, therefore, necessary to identify the reasons for such deprivation and consequent discontent. The Commission would like to refer to the causes exhaustively identified by the “Expert Group on Development and the Causes of Discontent, Unrest and Extremism” of the Planning Commission in its draft report. A summary of causes extracted from that Report is as under:

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.

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.

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.

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.

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.

It may be highlighted again that 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.

3.3.2 While the causes outlined by the Expert Group require no elaboration, attention needs to be drawn to some of these in greater detail. The first is the paradox that the diagnoses of the problem by the government and the left extremists are similar. Both 'sides' agree that concealed tenancy, tenurial insecurity, low wage rates and lingering feudal practices in many places have generated a discontent among the rural poor – a discontent that makes many of them active participants in politically motivated violent upsurges. Despite a variety of legislations enacted to address a whole host of land related issues like introduction of land ceilings, distribution of surplus land, consolidation of holdings, prevention of fragmentation of land, protection of rights of tenants and settlement of waste-lands etc, their impact at the ground level is marginal due to tardy implementation. This has enabled the left extremists to exploit the disappointment of the promises made to beneficiaries particularly in areas

where there are large number of landless labourers and share-croppers. For example, in Andhra Pradesh, it is the common perception that land for which pattas have been issued to the landless is under de facto occupancy of affluent and powerful people and that even tribal leaders are working as agricultural labour in such lands.

3.3.3 Another ‘cause’ which needs to be noted is the disruption of the age old tribal- forest relationship. Historically, tribal life was well integrated with the forest, but legislations and governance in the last century considerably altered this symbiosis. The Forest Act, 1927 and the Forest Conservation Act, 1980 along with stringent Supreme Court orders have turned forests into prohibited areas for the tribals, creating serious imbalances in their lives and livelihoods. This has turned the tribals against government’s methods of forest management, and gradually against government itself. This discontent has provided fertile ground for the spread of left extremism among tribals living in forest areas. Rampant alienation of the land rights of the tribals to non-tribals and the States’ measures to prevent and undo such transfers through legislations such as the Andhra Pradesh Land Transfer Regulation Act of 1970 have remained on paper, and have further accentuated tribal discontent. In fact, in Andhra Pradesh, there is a perception that even the talks held between the State Government and the Naxals failed primarily because forest land could not be distributed among the tribals as demanded by the Naxals.

Box 3.1 The Godavarman Case

The Supreme Court, in W.P.No.202 of 1995, and W.P.No.337 of 1995 have passed land mark judgements concerning the implementation of Forest Conservation Act, 1980 and the Wild life (protection) Act, 1972. The scope of the term ‘forest’ has been expanded. It has also been directed that no forest, National Park or Sanctuary can be dereserved without the approval of the Supreme Court and also no non-forest activity can be carried out in these areas. Further, new authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the compensatory Afforestation Management and planning agency.

The T.N. Godavarman Thirumulkpad Vs Union of India and others (WP No 202 of 1995), concerning the implementation of the Forest Conservation Act, 1980.

The Centre for Environmental Law (CEL), WWF vs Union of India and others (WP No 337 of 1995), concerning the issue of settlement of Rights in National Parks and Sanctuaries and other issues under the Wildlife (Protection) Act, 1972.

3.4 Resolution of Left Extremist Conflicts – Successes and Failures

3.4.1 Many left extremist movements, notably the uprising in Naxalbari, could be resolved successfully. An analysis of what really happened in such areas particularly in Naxalbari may provide necessary insights for resolving the present problem of left extremism.¹⁵

3.4.2 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

¹⁵Such an analysis is provided in Sumanta Banerjee, Beyond Naxalbari

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.

3.4.3 A case study about the left extremism affected Pavagada taluka of Karnataka is given in Box 3.2. The study reveals that once the Administration became complacent and started withdrawing from its proactive role, left extremism managed to regain a foot-hold in the area. There are important lessons to learn from this experience – there is no ‘permanent cure’ to conflict situations and any let up in measures which bring relief can cause recrudescence of conflicts.

3.4.4 Unlike the relatively successful stories 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 socio-economic 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.

3.4.5 Applying the West Bengal model and the experiment tried out in Pavagada to areas currently affected by left extremism like Chhattisgarh is a matter requiring careful consideration. It is clear that a judicious mix of development and welfare initiatives coupled

with land reforms and well planned counter-insurgency operations is required to restore peace, harmony and confidence in the administration in such areas. It is a matter of satisfaction, therefore that this approach is now receiving wide endorsement. The ‘Common Minimum Programme’ (CMP) of the United Progressive Alliance, for instance, recognised the multi-dimensional nature of this problem. Based on the position taken in the “CMP” a ‘14-point policy’ to deal with this problem was presented in Parliament by the Union Home Minister on 13th March, 2006. This policy outlines measures to be taken to deal with this issue at the political, social, developmental and administrative levels. Similarly, the Prime Minister, while addressing the Chief Ministers of the States affected by violent left extremism, on 13th April, 2006, also emphasised that, *“We must, however, recognize that naxalism is not merely a law and order issue. In many areas, the phenomenon of naxalism is directly related to under-development. It is not a coincidence that it is the tribal areas that are the main battleground of left wing extremism today. Large swathes of tribal territory have become the hunting ground of left wing extremists. Exploitation, artificially depressed wages, iniquitous socio political circumstances, inadequate employment opportunities, lack of access to resources, under-developed agriculture, geographical isolation, lack of land reforms – all contribute significantly to the growth of the naxalite movement. All these factors have to be taken into consideration as we evolve solutions for facing the challenge of naxalism.”*¹⁶ The Commission notes with satisfaction that a general consensus has now emerged on not treating violent left extremism only as a law and order problem but as a multi causal malaise with breakdown of law and order as its ‘ranking symptom’. In short, management of left

Box 3.2 Naxalism in Pavagada, Karnataka

A case study

Pavagada is a backward area in Karnataka. This area has a population of 2,46,255 people. Out of 4 hoblis (a taluka is divided into several hoblis), only one Nagalamadike hobli is affected by Naxalite movement. Naxalite conflict in Pavagada dates back to 1969. This Movement began with the rise of Marxist-Leninist party, which gained political eminence because of exploitation of the peasant class.

As tension grew, the Government of Karnataka implemented several measures for the welfare of the peasants, particularly the Scheduled Castes and Scheduled Tribes. However, in spite of this, the local residents felt that the money slated for development of the region was cornered by a few political leaders. As a result, the Naxalite philosophy gained momentum and the Naxalite leaders began to run virtually a parallel Government. The Government also reinforced the security measures by deployment of Karnataka State Reserve Police. In the ensuing violence, a few members of the State Police were killed. The Naxalites maintained that this killing was a revenge for the killing of one of their leaders.

In the next phase, it is believed that Naxalite leaders began extorting money and intimidating people through use of sophisticated weapons. Subsequently, Government tried to take up more developmental activities like building houses for the poor. But local people complained that there was nepotism in awarding of contracts and thus works were stalled.

The following measures have been suggested to tackle this problem:-

1. Appointment of suitable officers with proper training for understanding the issues of the Region.
2. Reassertion of the rule of law.
3. Development of local agro-based industries.
4. Proper rehabilitation policy for people who come out of the fold of the movement.

(The case study was prepared by Kannada University, Hampi)

¹⁶Prime Minister’s speech at the Chief Minister’s meet on Naxalism, April 13, 2006, New Delhi.

extremist violence would require tapping the capacity of all the elements of the government and civil society as discussed later in this chapter.

3.5 Managing Left Extremism – the Political Paradigm

3.5.1 The ‘14-point policy’ referred to in the previous paragraph rightly 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. 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. Viewed thus, the spread of the movement over a wide area signifies the fact that efforts to remove those conditions which give rise to the acceptance of the ideology of violent left extremism have not been particularly successful. 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. It will be reasonable, therefore, to take a view that while the movement has major law and order dimensions, it is not a purely law and order problem. The violent activities of the ‘foot soldiers’ – as opposed to its ideologically hardened hardcore – could well be due to the fact that their attempts to get their grievances redressed through non-violent, democratic methods may have not evoked due response. The temptation to utilise the police forces is very high but it should be remembered that unaccountable police action and abuse of police power validates violence even among the hitherto non-involved populations.

3.5.2 To sum up, left extremism feeds on persistent and serious shortcomings in the domain of general and development administration, resulting in the failure of the government to address the needs of the poor in areas pertaining to land, food, water and personal security, equity, ethnic/cultural identity etc. If this diagnosis is accepted, then the ‘containment’ of the problem may inter alia require consideration of the following:

- 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.
- A fortiori police action over a long period is counter-productive; it is likely to affect the innocent more than the extremists.
- Negotiations have a definite ameliorative role under the circumstances, this is the experience the world over.

- 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.
- Sustained, professionally sound and sincere development initiatives suitable to local conditions along with democratic methods of conflict resolution have a higher chance of success.

3.5.3 Actualisation of such strategy of ‘containment’ would require all round capacity building within the apparatus of the State and civil society, sincerity and perseverance of efforts and accountable and transparent administration as discussed in the following sections.

3.6 Capacity Building to Deal with Violent Left Extremism

3.6.1 Various instruments and elements of State and civil society need to be pressed into service to manage the situation brought about by left extremism. To achieve this, it is necessary that the capacities of such instruments and elements are suitably enhanced. These can be considered under the following categories:

- (i) Security Forces
- (ii) Administrative Institutions

Box 3.3 Government Policy to Deal with Naxalite Menace

- (i) The Government will deal sternly with the naxalites indulging in violence.
- (ii) Keeping in view that naxalism is not merely a law & order problem, the policy of the Govt. is to address this menace simultaneously on political security, development and public perception management fronts in a holistic manner.
- (iii) Naxalism being an inter-State problem, the states will adopt a collective approach and pursue a coordinated response to counter it.
- (iv) The states will need to further improve police response and pursue effective and sustained police action against naxalites and their infrastructure individually and jointly.
- (v) There will be no peace dialogue by the affected states with the naxal groups unless the latter agree to give up violence and arms.
- (vi) Political parties must strengthen their cadre base in naxal affected areas so that the potential youth there can be weaned away from the path of naxal ideology.
- (vii) The states from where naxal activity/influence, and not naxal violence, is reported should have a different approach with special focus on accelerated socio-economic development of the backward areas and regular interaction with NGOs, intelligencia, civil liberties groups etc. to minimize over ground support for the naxalite ideology and activity.
- (viii) Efforts will continue to be made to promote local resistance groups against naxalites but in a manner that the villagers are provided adequate security cover and the area is effectively dominated by the security forces.
- (ix) Mass media should also be extensively used to highlight the futility of naxal violence and loss of life and property caused by it and developmental schemes of the Government in the affected areas so as to restore people’s faith and confidence in the Government machinery.
- (x) The states should announce a suitable transfer policy for the naxal affected districts. Willing, committed and competent officers will need to be posted with a stable tenure in the naxal affected districts, These officers will also need to be given greater delegation and flexibility to deliver better and step up Government presence in these areas.

- (iii) Government Personnel
- (iv) Local Bodies
- (v) Civil Society Organisations

3.6.2 Building Capacity of Security Forces (including the Police)

3.6.2.1 The Commission in its Fifth Report on “Public Order” has examined in detail, various issues relevant to police reforms and made a large number of specific recommendations on the subject. Therefore, the Commission would like to deal with this subject only briefly and draw attention to the following aspects:

- (xi) The Government of Andhra Pradesh has an effective surrender and rehabilitation policy for naxalites and has produced good results over the years. The other states should adopt a similar policy.
- (xii) The State Governments will need to accord a higher priority in their annual plans to ensure faster socio-economic development of the naxal affected areas. The focus areas should be to distribute land to the landless poor as part of the speedy implementation of the land reforms, ensure development of physical infrastructure like roads, communication, power etc. and provide employment opportunities to the youth in these areas.
- (xiii) Another related issue is that development activities are not undertaken in some of the naxalite affected areas mainly due to extortion, threat or fear from the naxalite cadres. In these areas, even contractors are not coming forward to take up developmental work. Adequate security and other measures would need to be taken to facilitate uninterrupted developmental activities in the naxal affected areas.
- (xiv) The Central Government will continue to supplement the efforts and resources of the affected states on both security and development fronts and bring greater coordination between the states to successfully tackle the problem.

Source: Website of Ministry of Home Affairs; <http://www.mha.nic.in/Security/N.M.Division.pdf>

- (a) Where there is overt, recurrent violence, extremism cannot be tackled by negotiations alone. While the political and other non-police methods of handling the situation are dealt with later, it is clear that ‘dialogue’ and ‘accommodation’ are easier to find acceptance when the good intentions of the State and its will to restore order are concurrently visible. Thus subject to the limitations of police methods, security forces have a supportive but essential role in handling the situation. This would require suitable legal and motivational support to and effective deployment of the security forces.
- (b) A satisfactory state of law and order is also a necessary precondition for development. Development, despite being essential to maintain peace in disturbed areas, must be accompanied by vigorous action of the security forces including providing protection to personnel responsible for implementation of development programmes. In seriously disturbed areas where agencies involved with development work find it difficult to operate, there may be a case for temporarily entrusting some development

work to the security forces. This approach was tried successfully in West Bengal, where the local police helped in ensuring that schools and health institutions functioned effectively.

- (c) It goes without saying that even in the most difficult and trying situations, the operation of security forces must be strictly within the framework of the law. To enhance the capacity of the security forces to act effectively and firmly but within constitutional bounds, it is necessary that standard operational procedures and protocols are laid down in specific terms and detail.
- (d) Training and reorientation including sensitising police and paramilitary personnel to the root causes of the disturbances that they are seeking to curb are requirements that need no further elaboration.
- (e) Formation of specially trained special task forces on the pattern of the Greyhounds in Andhra Pradesh also form an important element of the strategy to build capacity in the police machinery for tackling left extremism.
- (f) Notwithstanding the large scale deployment of forces from outside the affected areas, experience of handling extremist violence of different types indicates that a police force comprising primarily of local people is of inestimable value in dealing with the situation. Local police forces have a huge advantage in intelligence gathering capacity because of their constant interaction with local populations. In terms of costs also, strengthening the local police station is far more cost effective and more viable in the long run than inducting central forces. In areas affected by left extremism generally the representation from the groups involved – mainly the tribals – is inadequate. Scrupulously enforcing the prescribed reservations from the relevant areas, filling up existing vacancies in the police and law and order agencies, employment creation by induction in Central and State police forces by launching special recruitment drives and raising tribal battalions of the Armed Police, and recruitment of local youth as Special Police Officers (SPOs) are some of the measures that require urgent attention.

3.6.3 Building Capacity of Administrative Institutions

3.6.3.1 The Commission in its Reports on “Public Order” and “Local Governance” has dealt in detail with the need to build institutional, in addition to individual, capacity to improve the quality of delivery of services. Filling the administrative vacuum in the regions

of the country affected by left extremism is of paramount importance. Institutional capacity refers not only to organisations but also to the legal framework and norms within which services are to be delivered. In the context of left extremism, matters like more efficient implementation of laws impinging on the lives and livelihood of the tribals and endowing the delivery institutions with greater effectiveness and empathy are issues of particular relevance.

3.6.3.2 Mention has already been made about the crucial importance of forests in the life of the tribals and the role which extinguishment of some of their traditional rights played in engendering discontent among this section leading to their support for left extremism. The recently enacted The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a welcome measure which seeks to enhance institutional capacity to deal with a major causative factor for support of left extremism in tribal areas. It vests land rights to the extent of four hectares per Forest Dwelling Scheduled Tribe (FDST) nuclear family provided they have been the 'user' of forest land for four generations or 75 years from the 'cut off' date i.e. December 13, 2005. This right is heritable but not alienable and transferable. Vested land can be used only for livelihood purposes. Rights under this also include access to minor forest produce, community rights to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity. The dwellers are duty bound to protect the forests, biodiversity and wildlife in the area. The provisions of the Act, if implemented effectively, will go a long way in addressing the problems of the tribals. It is also necessary that an Oversight Committee is constituted to monitor its implementation, consisting of individuals including tribals, people with commitment to forest conservation and wildlife preservation and those who have the right degree of social commitment to these causes.

3.6.3.3 Depressed wages and inadequate employment opportunities have already been referred to as causes for tribal discontent. The introduction of the National Rural Employment Guarantee Scheme initially in the 200 most backward districts of the country is a major institutional innovation to deal with these causative factors. Out of these 200 districts, 64 are seriously affected by left extremism. Given the heterogeneity and spatial dimensions of constraints in these two hundred backward districts, the implementation of the scheme is a difficult and challenging task. The Commission, in its Report on implementation of NREGA has already recommended a slew of measures for ensuring effective implementation of the scheme in these districts. Those measures, if implemented, would address both the problems of inadequate employment opportunities and depressed wages.

3.6.3.4 Institutional capacity needs to be similarly strengthened within the line departments, particularly within their field formations in tribal areas by introducing appropriate

management practices to deal with the specific needs of marginalised groups and to make deployment of personnel qualified to cater to area specific needs. At the State level, a coordinated approach towards converging development programmes for backwards/areas affected by left extremism by setting up suitable institutional mechanisms should be considered. For example, in Andhra Pradesh, the Principal Secretary, Remote and Interior Areas Development (RIAD) department heads such a mechanism to identify problems and suggest measures to meet the development needs of vulnerable areas and groups in a coordinated and comprehensive manner. Norms of development schemes, particularly those where a village or habitation is the unit of implementation pose difficulties in being applied to the tribal hamlets in view of their scattered nature and often minuscule population. There is a case for providing much greater flexibility in the implementation of centrally sponsored and other development schemes in such areas for which decentralisation would appear to be the answer. Considering the nexus between food insecurity and disaffection with the State, it is necessary that the non-functioning public distribution system is revived by strengthening organisations like LAMP (Large Area Multipurpose Cooperative Societies) to replace privately owned fair price shops and to implement decentralised schemes for procurement and distribution of food-grains etc.

3.6.3.5 Similar flexibility has to be introduced in the administrative and judicial set up so that dispute settlement at the local level is both timely and effective. Provision of local courts and giving judicial and magisterial powers to the officers of the revenue and developmental departments to effectively deal with local issues could also be considered.

3.6.3.6 The above are only a few illustrative cases requiring institutional capacity building, innovation and managerial rationalisation. Left extremism and other endemic disturbances feeding on public discontent, require a combination of efforts by the police, development and regulatory agencies. An in-depth analysis of the history of left extremism reveals that there should be effective implementation of the provisions of the Constitution and the laws and policies already adopted by the Government alongwith efficient delivery of services to remove the support base of extremists.

3.6.4 Capacity Building among Government Personnel

3.6.4.1 Personnel management has been a neglected aspect of administration in tribal areas. Posting and deployment in such areas is usually looked upon as a punishment by officers who either work half-heartedly or remain absent for long periods from their place of duty. This underscores the need to identify those officers from the State, including from technical services, who view postings in these areas as a challenging and satisfying experience and have empathy and sensitivity to appreciate the problems of its people and the commitment to play a role in

resolving them. State Governments should give such officers the benefit of being trained at national level institutions like the LBS National Academy of Administration to professionally equip them to serve in tribal areas. Such officers could then bring their exposure and unique experience in the making of public policies, strategies and schemes for the development of these areas and the well being of its citizens. As an incentive it would be necessary to reward these officers through better emoluments, recognition of their services and retention of residential accommodation and education of their children in the State headquarters, if so desired. There is need for a national policy which could provide for reimbursing State Governments for the additional resources that may be required to make it attractive for officers to voluntarily opt for serving under difficult conditions in such areas.

3.6.4.2 While firm data is not readily available on the percentage of non-tribal personnel in tribal areas, it appears that at the supervisory level and among technical personnel, non-tribals tend to predominate. Equally well known is the fact that service in a tribal area (by non-tribals) is out of compulsion i.e. only till such time as a posting or alternative employment in non-tribal areas is not available. In the circumstances, it is not surprising that absenteeism, dereliction of duty and poor work standards are the norms in such areas, and this, in turn, contribute to disaffection of local populations. Measures such as formation of regional cadres of technical departments taken by the Government of Assam for areas under the Bodoland Territorial Council are a positive step for obviating the situation but with 'outsiders' dominating such cadres, the problem of inadequate availability of willing personnel is not fully addressed. The suggestions made by the Commission in Chapter 12 of this Report to retain competent personnel in the North Eastern region could also be applied in the present case. The larger issue of maintaining a high degree of motivation and professional competence among government personnel, particularly those serving in 'problem areas' will be dealt with by the Commission in greater detail in its Report on 'Refurbishing of Personnel Administration'.

3.6.4.3 It also appears that the apathy in the discharge of functions resulting in poor delivery of services has a great deal to do with the relegation of oversight functions by administrative and 'line department' officials. While the malaise may be widespread, it has special relevance for areas affected by left extremism. 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 performance needs to be revitalised. It must be recognised that a major reason for such practices falling in disuse in 'disturbed areas' is the apprehension of senior functionaries about their personal safety while on duty. It would therefore be advisable to provide suitable security to senior administrative and technical officers while on tour, and thus should be taken into account in working out requirements for security forces in areas affected by serious violence.

3.6.5 Capacity Building in Local Bodies

3.6.5.1 In an atmosphere of distrust of the petty bureaucracy and apparent inefficiency of the administrative apparatus in delivering services, one obvious solution is to strengthen local self-governing institutions to facilitate settlement of local problems. Enactment of the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 commonly known as PESA, is thus a welcome initiative for ensuring grass-roots management of community affairs. This enactment applies to areas under the Fifth Schedule, which coincidentally comprises many areas affected by violent left extremism. PESA brings the 'general body' of the village – the Gram Sabha – at the centre-stage of village affairs. It brings common village assets like water bodies, wastelands, and minor forest produce etc under the collective ownership of the village community with the power to approve implementation of development plans and to verify their implementation by ratifying, or not ratifying, decisions of the Panchayats. The community is likewise made the custodian of traditions, culture and identity of the village and is thus in a position to build consensus about various aspects of village life. There is no doubt that the policies initiated under PESA will contribute in inculcating a sense of participation and purpose within the village community – something that would surely make them less susceptible to subversive agendas. The problem, however, is that PESA is an 'indicative legislation'; it lays down certain guidelines whose implementation depends on the States carrying out specific amendments (or enacting exclusive legislations) in their Panchayati Raj and other Acts. While many States have taken preliminary action on the lines suggested in PESA, there is a general impression that its implementation is, by and large, unsatisfactory. The Commission hopes that apart from taking the requisite legislative action, State Governments would also put in place mechanisms to monitor that the objectives set out therein are being met. It may be useful to link performance in this regard with allocation of untied grants for area development.

3.6.5.2 If the view that making people actively participate in their own development leads to greater public contentment and satisfaction is to be upheld, then the health of cooperative institutions in these areas is as important as a robust Panchayat system. Corruption and inefficiency in the excessively controlled and bureaucratic cooperative institutions was arguably responsible for sowing the seeds of disaffection among the tribals particularly in livelihood related societies concerned with minor forest produce, handlooms and handicrafts and fisheries etc. Subsequent legal reforms in the cooperatives carried out by many States, too, did not restore the health of the cooperatives in the affected areas as by the time the reforms came about, serious disturbances had already inactivated these institutions. Apex level institutions like TRIFED have failed to provide the right guidance and leadership to the cooperatives in tribal areas. It is time that the needs of the cooperative sector in these areas

are given attention on the analogy of PESA. The Commission will give recommendations to strengthen the cooperatives in its Report on ‘Social Capital, Trust and Participative public service delivery’.

3.6.6 Capacity Building in Civil Society Organisations

3.6.6.1 Opinions vary about the role of civil society organisations in bringing about peace in conflict situations particularly in cases of left extremism because many such organisations are alleged to have a leftist ideological orientation (without necessarily sharing the violent objectives of the extremists) and, in some cases, the ‘NGO’ may even be a ‘front’ for the extremists themselves. Votaries of the ‘law and order approach’ hold that such associations are no better than proxies for militant extremists with demoralisation of security forces as their primary aim and that they sidetrack the violence, killing and extortion by the extremists by raising the bogey of police persecution. On the other hand, there is a growing realisation that such organisations have a major role to play as interlocutors, and that their vigil and critical alertness acts as a bulwark against abuse of power by the police and other state functionaries – in other words their activities strengthen the rule of law. While there may be some ‘black sheep’ among these organisations, there is little doubt that they have the potential to act as a bridge between the extremists and the government and in educating the people about the futility of violence and preventing aggravation of the situation by ventilating public grievances within the legal-democratic framework. Ways and means of involving such organisations in conflict management have been discussed in greater detail in the last chapter of this Report.

3.7 Cutting the Source of Finances for Naxalites

3.7.1 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 and other governmental agencies which can execute these works directly. This is recommended as a purely temporary measure and not to stifle local private entrepreneurship.

3.7.2 Clamping down on the sources of funding for left extremists is another area that requires urgent attention. The extensive contractor-transporter-extremist nexus and its links with illegal mining and collection of forest produce in the entire region affected by left extremism yields a huge volume of funds for the extremists. An effective anti-extortion

and economic offences wing that can curtail if not totally dry up such funding sources to extremists, has to be constituted.

3.7.3 Left extremism is posing serious challenges in different parts of the country through exploiting the sense of deprivation and consequent discontent of marginalised sections of community. Arguably, the Indian state and society have dealt with this malaise with a greater degree of sensitivity and with a slew of non-police methods in tandem with the conventional methods of law and order enforcement with greater success than in many societies. At the same time, the fact that the phenomenon of left extremism is prevalent – and is in fact, endemic in several pockets – indicates that much more remains to be done. It is necessary that the approach to the problem must be balanced and multi-pronged with a judicious mix of development, political and police methodologies as indicated in the ‘14-point policy’ referred to in para 3.4.5.

3.8 Recommendations

- a. A long-term (10-year) and short-term (5-year) Programme of Action based on the ‘14-Point Strategy’ announced in Parliament may be formulated by the Union Government in consultation with the concerned State Governments to identify State specific action to be taken to implement the ‘Strategy’.**
- b. While agreeing with the spirit of the ‘14-Point Strategy’, negotiations with the extremist outfits should be an important mode of conflict resolution.**
- c. 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. It must be recognised that a major reason for such practices falling in disuse in ‘disturbed areas’ is the apprehension of senior functionaries about their personal safety while on tour. It is advisable that the need to provide suitable security to the senior administrative and technical officers while on tour, is taken into account in working out requirements for security forces in areas affected by serious violence.**
- d. There is need to enhance the capacity of the security forces to act effectively and firmly, but in conformity with constitutional bounds; it is necessary that standard operational procedures and protocols are laid down in specific terms and detail.**

- e. **Training and reorientation including sensitising the police and paramilitary personnel to the root causes of the disturbances that they are seeking to curb, are necessary.**
- f. **Formation of trained special task forces on the pattern of the Greyhounds in Andhra Pradesh should be an important element of the strategy to build capacity in the police machinery for tackling left extremism.**
- g. **Establishing and strengthening local level police stations, adequately staffed by local recruits, in the extremist affected regions should be an important component of the policing strategy for tackling left extremism.**
- h. **For effective implementation of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights) Act, 2006, multi-disciplinary Oversight Committees may be constituted to ensure that the implementation of this ameliorative legislation does not adversely affect the local ecosystems.**
- i. **Special efforts are needed 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.**
- j. **To facilitate locally relevant development adequate flexibility may be provided to implementing agencies in the affected areas as regards centrally sponsored and other schemes, so as to enable them to introduce suitable changes based on local requirements.**
- k. **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) and in implementing these provisions may be monitored and incentivised by the Union Ministry of Panchayati Raj.**
- l. **The nexus between illegal mining/forest contractors and transporters and extremists which provides the financial support for the extremist movement needs to be broken. To achieve this, special anti-extortion and anti-money laundering cell should be established by the State police/State Government.**

- m. For implementing large infrastructure projects, particularly road networks, that are strongly opposed by the extremists or are used to extort funds from local contractors, the use of specialised Government agencies like the Border Roads Organisation in place of contractors may be considered as a temporary measure.**

LAND RELATED ISSUES

4.1. 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 sine qua non 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 dependant on agriculture. The demand for land for non-agricultural use including development projects and the growing impulse to urbanise, create further scope for conflicts. These and similar aspects are discussed in this Chapter. Issues like tribal land alienation and tenurial reforms are, however, dealt with elsewhere in this Report while the public order implications of land disputes has received the attention of the Commission in its earlier Report on “Public Order”.

4.2 Land and the Agrarian Conflicts including Farmers’ Suicides

4.2.1. While the tragic spurt in suicides by farmers in some of the States has drawn attention to the brewing agrarian crisis, the ‘land dimensions’ of the larger malady needs to be properly flagged to assess its total ‘conflict generation potential’. Attention in this connection may be drawn to the following facts:¹⁷

- *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. It is worth noting that holdings of less than 2 Ha are considered to be only marginally economical. There is no reason to believe that this downward trend has been arrested and going by the current holding size, India has one of the lowest average holding sizes anywhere in the world.*

¹⁷Source; “Agricultural Statistics at A Glance” (2006), Government of India, Ministry of Agriculture

- *The decrease in the average size is accompanied by an increase in the number of holdings - from 11.58 crores in 1995 to 12.08 crores in 2000, attesting to the fact that even larger number of families are tilling shrinking parcels of land.*
- *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.*
- *With ceiling laws envisaging redistribution of 2 Ha of surplus land to each landless/marginal/ small farming household, the total quantum of land required will be of the order of 6.72 crores Ha for small and marginal farmers and around 10 crores Ha for landless labourers¹⁸ while the net sown area in the country is no more than 14 crores Ha. In other words while land reforms need to be pursued with greater vigour for a variety of reasons; they have limits in the Indian context which must be properly understood.*
- *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.*

4.2.2 The difficulties entailed by increased land fragmentation have been compounded by rising indebtedness of farmers due to a multiplicity of causes such as resort to non-formal sources like private money lenders for short term credit at usurious interest rates due to the long lead time taken by the formal institutions; inability of the farmers to deploy credit for productive purposes due to the necessity of utilising it to meet immediate consumption needs; failure to generate enough surplus from the activity for which loan was obtained to repay the debt etc. Lack of resources to repay outstanding loans often forces the farmer to go in for fresh borrowings, creating a vicious circle which causes deep distress. This debt burden often drives the farmer to suicide. According to data of the National Crime Records Bureau (NCRB), during the period 2001-05, 86922 farmers committed suicide out of whom 54% were from four States, viz, Andhra Pradesh, Karnataka, Kerala and Maharashtra. Even more significantly, the 'Suicide Mortality Rate' or SMR, which indicates suicide death per 100000 of population for farmers in States is much higher than the national average of 17.5: Kerala (195), Maharashtra (51), Karnataka (41) and Andhra Pradesh (33). Clearly, suicides by farmers in States are a reflection of the prevailing agrarian distress. Studies reveal that the causes for such large incidence of suicides are; indebtedness, crop failure, decline in economic status, crop failure, dent in social position and inability to meet social obligations etc.¹⁹ While measures for relief and rehabilitation of the bereaved families under the Prime Minister's special economic package and the steps taken by the State Governments concerned have provided some succour, treatment of the root causes of agrarian distress need specific policy interventions.

¹⁸Calculations are based on agricultural census figures for the relevant categories

¹⁹Sources are to be found in "Report of the Expert Group on Agricultural Indebtedness" (2007) Government of India, Ministry of Finance, Banking Division. Pp 86-87

4.2.3 Though the problems of Indian agriculture and the causes of distress of farmers are not matters within the purview of this Commission, it is clear that the difficulties of the agrarian community have the potential of engendering serious conflicts. The Expert Group on Agricultural Indebtedness appointed by the Ministry of Finance went into the causes of farmers' distress and came to the conclusion that phenomena like farmers' suicides and their debt burden are the symptoms of a larger malaise which manifests itself in declining profitability, increasing risks, degradation of natural resources and decline in investment (including public investment) in agriculture etc. With the farmers unable to meet basic needs like education for their children and family health care, deep distress and despair arise.²⁰ The Report goes on to explain that while institutional credit for agriculture plays a significant role in mitigating the difficulties of the farmers, it fails to cure the malady unless deeper causes are properly addressed. The Group implicitly recognises the need to widen alternative livelihood opportunities to the farmers but notes that this would be possible, paradoxically, if higher agricultural growth (at least four percent per annum) is sustained over a long period of time. The measures recommended include:

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

4.2.4 The Commission, while endorsing the above recommendations, also shares the view of the Group that tenurial reforms, including empowerment of the tenants on the lines of 'Operation Barga' of West Bengal are still highly relevant for empowerment of poor farmers, particularly for giving them access to credit from financial institutions and increasing their stake in the growth of agriculture. For similar reasons, consolidation of land holdings should be carried forward to the next stage. Pursuing agricultural growth through a slew of measures including empowerment of small and marginal farmers and continuing land

²⁰Chapters 4 & 5, op cit.

reforms measures, apart from achieving the macro and micro economic objectives, would also go a long way in preventing major rural unrest.

4.2.5 The recent decision of the Government to establish the National Council of Land Reforms with the Prime Minister as its head and to constitute an Expert Committee under the chairpersonship of the Minister for Rural Development to provide inputs to the National Council are welcome steps to bring land reforms back to the mainstream of public policy discourse. The proposed Expert Committee appropriately named “The Committee on State Agrarian Relations and the Unfinished Task in Land Reforms” will have experts from relevant subjects. Of particular interest would be the tasks assigned to the Committee to suggest a draft “National Policy on Land Reforms” and to discuss various ‘land related livelihood issues’. The Commission trusts that the issues outlined above will receive urgent and careful consideration of the Expert Committee so that a pragmatic, wide-ranging strategy to make land a source of strength of the entire agrarian community is worked out. Its success will depend on the extent to which State Governments are taken on board and their wholehearted commitment is obtained.

4.3 Displacement

4.3.1 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 like installation of a small sub-station involving very little displacement or for large projects like the major hydel 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.

4.3.2 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 persons dependant on the land are deprived of various benefits they derive from it – at times even livelihood.

4.3.3 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. Land Acquisition Officers follow the prevailing prices as indicated by the registered sale transactions. This ‘official’ value of land is a suppressed value of land.

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

4.3.4 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 which was notified in 2004. This policy was in the form of broad guidelines and executive instructions for guidance of all concerned and was available to projects displacing 500 families or more enmasse in plains areas and 250 families enmasse in hilly areas, Desert Development Programme (DDP) blocks and areas included in the 5th and 6th Schedules of the Constitution. The objectives of the policy were:

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

4.3.5 The policy stipulated that the scheme/plan for the Resettlement & Rehabilitation of the Project Affected Families in consultation with representatives of Project Affected Families should be prepared and funded by the body for which the land was being acquired. It also laid down norms for giving a rehabilitation package to the affected families.

4.3.6 Displacement of persons to accommodate projects and enterprises is not unique to India. Many countries have solved similar problems with considerable success; it will, therefore be useful to briefly note how similar problems were handled in other countries.²¹

4.3.6.1 Colombia: Starting in the early 1990s, Colombia began allocating a percentage of benefits from hydropower plants to the development of areas in which the displaced populations were relocated. In 1993, a law was enacted for 'benefit transfers'. It was followed in 1994 by official regulations which laid down the details of giving effect to the legislation. In 1996, another legislation was passed which created an "Environment Compensation Fund", financed through revenue from development projects. Shortly thereafter, the allocations to this compensation fund were increased to 20 per cent of project revenue. The Colombian

²¹Michael Cernia, Financing for Development: Benefit-Sharing Mechanisms in Population Resettlement, Economic and Political Weekly, March 24, 2007. The description of systems prevalent in Columbia, Brazil, China, Canada and Japan is taken from this paper.

laws also define the proportion of revenues to be returned to the 'relocation areas'. For instance, 3.8 per cent of the revenue of hydroelectric plants is to be transferred to the region's watershed agencies for new productive investments in water saving and local irrigation; 1.5 per cent of the project revenue must be transferred to the municipalities bordering the reservoir; and another 1.5 per cent is allocated to upstream municipalities etc.

4.3.6.2 Brazil: In Brazil, the construction of hydropower plants led to large-scale displacements which the government was not equipped to handle – the social consequences were adverse and affected people were severely impoverished with many of them moving into slums around big towns. An amendment to the country's Constitution in 1988 introduced the principle of reinvesting a percentage of royalties from hydropower projects in the resettlement areas. Subsequent to this, a series of laws were enacted in rapid succession to define entitlements and specific amounts of transferable royalties, together with procedures for assuring a regular timetable for such allocations. A 2004 assessment reveals that 137 hydropower plants with 145 reservoirs paid the requisite royalties and financial compensation to 22 of Brazil's state governments and 593 municipalities. Of these, 252 municipalities received financial compensation, 16 received only royalties, and 325 municipalities received both royalties and compensation. Annually, the amount of financial compensation and royalties exceeded US \$400 million.

4.3.6.3 China: Some of China's largest dams such as Xinanjiang, Sanmenxia and Danjiangkou, were built before 1980, each one displacing more than 3,00,000 people. Inadequate resettlement led to impoverishment, deep resentment and unrest among the affected populations. Learning from their mistakes, China embarked on a radically different course. Starting from the 1980s, China began to enact a series of governmental policies to regulate and improve resettlement, gradually increasing the state-financing of Development-caused Forced Displacement and Resettlement (DFDR) processes. Regulations were passed, starting in 1981 with the decree of the Ministry of Finance and of the Ministry of Electric Power that required each power plant to allocate 0.1 Fen /kWh to investments in the reservoir area for the life of the power plant. In 1985, China's State Council decided to create a Post-Resettlement Development Fund in which contributions from power companies would be deposited. A comprehensive land law was adopted in 1986, the Land Administration Law (LAL), which contained detailed provisions regarding acquisition and displacement operations. Subsequently, regulations were issued in 1991 to specify and enhance the compensation norms of the LAL for re-settlers from medium and large reservoirs. The entire Land Administration Law was re-examined and improved in August 1998 by the Ninth National People's Congress (NPC). The objectives of all these regulations were defined in terms of helping resettlers develop new forms of livelihood and

production. As distinct from Land Acquisition Acts in other countries, China's 1998 Land Law contains explicit and detailed provisions and norms for people's sustainable resettlement, rather than only for acquiring cultivated lands. More recent legislation adopted by the state Council of China has further restricted the previous authority of local governments to resort to land acquisition, an authority that these local governments had often abused, sparking peasant protests. These restrictions on expropriations reflect the central authorities' efforts to reduce the loss of arable lands, counteract abusive land seizures and the resulting peasant protests and to keep tighter checks on the aggregate size of involuntary resettlements. The Chinese institutional and administrative system provides for, and requires, that each province establish its own institutional capacity for resettlement, as a "Provincial Resettlement Bureau" equipped with a large multi-professional staff with expertise in resettlement operations and mandated to look at virtually all aspects of DFDR operations in that province. These are important agencies on their own, despite their modest title as "bureaus", given that the population in each of China's provinces is in tens of millions. Significantly, the legislation confers on these agencies the responsibility for managing the reservoir development funds and initiating development interventions to benefit the resettlers. Keeping in mind that China has increased, in several successive stages, the amount of resources channeled as "compensation" to the displaced populations, it is obvious that the combination of financing through multiple channels results in much more support for sustainable reconstruction post resettlement. This is one reason why the incidence of impoverishment of displaced people is reportedly decreasing in China over time, as reported by evaluation studies by the World Bank and other agencies despite the increase in numbers of persons displaced.

4.3.6.4 Canada: Canada has embarked on a systematic programme of building major dams. Indigenous tribal populations, with customary land rights recognised under the Canadian law, inhabit some of the areas where many of such projects are under implementation. In 1971, Hydro Quebec, Canada's major power utility announced plans for the James Bay project, which would include construction of as many as 20 dams with the potential of negatively affecting the entire homeland of the tribal Cree Indian population. The Cree organised themselves, protested intensely and publicly, and resorted to legal action as well. The Canadian courts decided in their favour and stopped project construction. The protests of the Cree, who were later joined by the indigenous Inuit populations, along with NGOs advocating indigenous rights and environmental protection, led to significant changes in the position of the Canadian government and its public utilities. To address the needs of this population and to recognise their contribution to the country's hydroelectric development, Canada's government and hydroelectric utilities adopted a strategy of partnering with the local indigenous communities. Hydro Quebec announced that it would enter into agreements with the affected indigenous groups for equity-sharing in the envisaged

hydropower capacities. The key premise in these agreements is that local indigenous communities are also direct investors in hydro projects, by contributing their lands. Even though up-front compensation is being paid to the Inuit population for the land, and also for helping them to adjust their productive fishing activities, the option of equity-sharing was made available as well. This equity enables the tribal Inuit communities to receive a share of project benefits as a partner, for the long term, proportionately with their land share in the construction of the project. The power utility provides the full financing and constructs the dam and power plant, the indigenous populations provide the lands, and then they proportionally share in the profits. This approach avoided the economic displacement of local communities and the risks of impoverishment from under-compensated displacement, by recognising their shareholding status and financial entitlement as a part of the project's benefits. This economic and financial arrangement is currently in full operation.

4.3.6.5 Japan:

4.3.6.5.1 In an attempt to minimise the tensions and conflicts inherent in land expropriation and population relocation, Japan has conducted land-leasing experiments. When the series of three Jintsu-Gawa small dams were built – the Jintsu-Gawa Dam Nos 1, 2 and 3 – the Japanese Government, rather than applying the country's expropriation law, decided to only lease the land required for the reservoirs from its owners. Payment for the land lease was structured into two types of financial transfers, deliberately designed to keep revenue accruing to the affected people for a long period rather than to make only a one-time compensation payment and dislocate them.

4.3.6.5.2 Two kinds of financial transfers were made:

- (i) Payment upfront to the land owners leasing land for the reservoir, which would enable those farmers to develop for themselves alternative livelihoods, and invest the money received into non-land-based income generating activities;
- (ii) Regular rent payments for the leased land, to be continuously paid to the local small holders for the life of the project. This way the leased land, although now deep under the reservoir waters, remains nevertheless a source of constant income for the affected farmers and their children. Rent payments supplement the initial upfront compensation and help to ensure livelihood sustainability even if the new alternative economic activities do not succeed from the outset or do not produce adequate returns.

4.3.6.5.3 Such two-pronged financing proved to be effective and the test of time has validated it. Recent data reveals that the power companies are still paying the rents today, 50 years after the construction of the three dams. The payments are not a significant burden on the power companies and they accrue to the new generation of families of the initial landowners. Japan has pursued another innovative strategy in planning the large-scale Numata Dam, whose reservoir was anticipated to displace about 10,000 people. To procure new lands for this sizeable population, the government made plans to convert 1500 Hectares of dry land on the slopes of Mount Akagi into paddy rice fields, introducing irrigation at government's cost. The defined

objective was to achieve physical resettlement with improved livelihoods for the resettled people. Each resettler was to receive an area approximately twice as large compared to what they had previously owned. When part of the land of a certain family was to be submerged, government planned to pay rent for the submerged portion as if the submerged land was leased by the farmers to the State, rather than merely paying a one-time compensation [Nakayama and Furuyashiki 2007]. Construction and resettlement plans were ready for implementation, but for other macro-economic reasons the construction of the Numata Dam was cancelled in 1972. Yet, this original, creative approach in Numata planning is relevant for possible replication and actual future testing.

4.3.6.5.4 The benefit-sharing strategy outlined above thus entails utilisation of a part of revenue from land acquisition to finance resettlement. The processes involve the following mechanisms:

Box 4.1 : Financial Payments for Rectifying Past Under-payments

China's state council has announced its readiness not only to recognise prior insufficient financing and past failures in income restoration, but also to rectify it through retroactive payments to large numbers of people displaced in prior years. Compensation will be paid also to all farmers displaced by dams during all the prior 57 years, since 1949. On a micro-scale, say at the level of a peasant family of four persons, the payment represents a total of \$ 300 per year every year as a "rent" for 20 years, a very significant amount for China's rural population. This measure is unprecedented in the resettlement practice of any state. The significance of principle, as an act of self-correction and reparation, as well as a forward looking decision of development policy and social protection, is not less meaningful than its financial weight. The financial outlays these retroactive payments entail are indeed huge. Data received from China's National Research Centre of Resettlement (NRCR) put the number of dam displaced people between October 1949 and June 2006 to about 1,80,00,000 individuals, which over 20 years will entail retroactive payments totalling \$ 27 billion. Further, the state council decided to extend this corrective reparatory measure also to the population growth in the families affected by displacement during the prior 57 years. This increases the number of beneficiaries from the 18 million mentioned above to about 22.88 million people. The total retroactive payments will therefore amount to \$ 34.3 billion, or 270 billion yuan.

Source: Michael Cernia, Financing for Development: Benefit-Sharing Mechanisms in Population Resettlement, Economic and Political Weekly, March 24, 2007. The description of systems prevalent in Columbia, Brazil, China, Canada and Japan is taken from this paper.

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

4.3.6.6 New Zealand: New Zealand's Public Works Act entitles private owners to be compensated for any permanent depreciation in the value of any retained land and damage to any land. Permanent depreciation in the value applies to situations where part of the land is acquired and the value of the rest of the land is reduced.²²

4.4 New National Rehabilitation and Resettlement (R&R) Policy

4.4.1 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, at the same time, 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.

4.4.2 The benefits to be offered under the new Policy to the affected families include; 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 within the definition of the 'affected family', subject to the availability of vacancies and suitability of the affected persons; 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; housing benefits including houses to the landless affected families in both rural and urban areas; and other benefits. 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 alternate fuel and non-timber forest produce resources, consultations with Gram Sabhas and Tribal Advisory Councils, protection of fishing rights, land free of cost for community and religious gatherings, continuation of reservation benefits in resettlement areas, etc.

4.4.3 A strong grievance redressal mechanism has been prescribed, which includes standing R&R Committees at the district, and at the project levels, and an Ombudsman duly

empowered in this regard. The Policy also provides that land acquired for a public purpose cannot be transferred to any other purpose but a public purpose, and that too, only with prior approval of the Government. If land acquired for a public purpose remains un-utilized for the purpose for five years from the date of taking over possession, the same shall revert to the Government concerned. When land acquired is transferred for a consideration, eighty per cent of any net unearned income so accruing to the transferor, shall be shared with the persons from whom the lands were acquired, or their heirs, in proportion to the value of the lands acquired.

4.4.4 Entitled persons shall have the option to take up to twenty per cent of their rehabilitation grant and compensation amount in the form of shares, if the Requiring Body is a company authorised to issue shares and debentures; with prior approval of the Government, this proportion can be as high as fifty per cent of the rehabilitation grant and compensation amount. Government has already decided to bring in legislation to provide statutory backing to this new Rehabilitation and Resettlement Policy, and also to suitably amend the Land Acquisition Act, 1984.

4.4.5 In the light of the lessons learnt and as a conflict resolution measure for those displaced, there is need to introduce the concept of benefit-sharing in development-induced displacement in India. While it is true that comprehensive amendments made in 1984 to the Land Acquisition Act have improved matters to some extent, the Act is still based on the concept of cash compensation. The old concept of paying compensation based on the market value of land should be replaced with assessing the true value of land for all those who depend on it and then compensating them adequately. Under the circumstances, there is need for enacting a new legislation that apart from laying down norms of fair compensation also incorporates the principles of income-sharing and creation of a resettlement development fund in addition to compensation payment. Also the compensation/rehabilitation should not be confined only to the title holders of land but should include all those who derived sustenance from the land. The Union Government has introduced The Land Acquisition (Amendment) Bill, 2007 and The Rehabilitation and Resettlement Bill, 2007 in the Parliament. The former Bill seeks to amend the provisions of The Land Acquisition Act, 1894 so as to strike a balance between the need for land for development and protecting the interests of the persons whose lands are statutorily acquired. The Statement of Objects and Reasons for the Bill states, inter alia:

“Issues around the utilisation of the land acquired and their transfer are also areas of concern. Here, provisions are proposed to be made so that the land acquired is not transferred to any other purpose except for a public purpose, and that too, not without prior approval of the appropriate Government. When any land or part

thereof, acquired under the Act remains unutilized for a defined period from the date of taking over possession, the same will return to the appropriate Government. Further, whenever any land acquired under the Act is transferred to any person for a consideration, a part of the net unearned income so accruing to the transferor, will be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired”.

The Statement of Objects and Reasons for the Rehabilitation and Resettlement Bill, 2007 states, inter alia:

“In brief, the Rehabilitation and Resettlement Bill, 2007 will provide for the basic minimum that all projects leading to involuntary displacement must address the grievances of the affected persons. A social impact assessment of proposals leading to displacement of large populations through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services, Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.”

4.4.6 The land acquisition and the subsequent rehabilitation processes often become time consuming. Complaints of corruption and indifferent attitude of the officials involved do exist. 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. Capability building measures and internal supervision mechanisms would need to be strengthened.

4.5 Special Economic Zones

4.5.1 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.²³

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

- (a) generation of additional economic activity;
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities.

4.5.3 The establishment of Special Economic Zones (SEZs) has become a source of conflict, leading frequently to violence. In Nandigram (West Bengal) for example, where a SEZ is proposed to be established, 14 persons died on 14th March, 2007 following the attempt by the police forces to enter the area. Displacement of people in the name of development is quite common, but what is unprecedented is the violence and the subsequent loss of lives that took place to protest against a proposal to set up a relatively small size SEZ in West Bengal.

4.5.4 The Special Economic Zones Act, 2005 is a comprehensive law which provides for larger tax incentives. It provides for 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. They are (a) 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 (b) Other fiscal incentives in the form of exemption from Service Tax and Securities Transaction Tax (c) Greater operational freedom, e.g., freedom to fix user charges (e) Approval committee for each zone to provide 'single-window' clearance in all matters and (f) SEZs are declared as public utilities under the Industrial Disputes Act.

4.6 Chinese Experience with SEZ

4.6.1 Establishment of SEZs in China started soon after the onset of the reforms in 1978 and these have contributed to the rapid economic growth of China. The SEZs in China are reported to have achieved considerable success because of (a) their unique locations – of the five SEZs, Shenshen, Shantou and Zhuhai are in Guangdong Province adjoining Hong Kong. Fourth, Xiamen, is in Fujian Province and nearer Taiwan (b) large size with government

and local authorities providing improved infrastructure with foreign collaboration (c) Investment-friendly attitude towards Non-resident Chinese and Taiwanese (c) Attractive incentive packages for foreign investment (d) Liberal customs procedures (e) Flexible labour laws providing for contract appointments for specified periods and (f) Powers to Provinces and local authorities to frame additional guidelines and in administering the Zones.

4.6.2 However, despite these successes there have also been negative fallouts of the Chinese SEZs. These have been brought out in a study²⁴ excerpts from which are reproduced as follows:

The Chinese experiment with SEZs had, however, important implications in loss of agricultural land and speculation for real estate. The implementation of the SEZ scheme produced a speculative market in land rights followed by rapid transfer through speculators. Between January 1992 and July 1993, rights over 1,27,000 hectares of land were granted to real estate developers across, but only 46.5 per cent of this land was actually developed. Large-scale transfer of land to real estate developers was prompted by what was called 'zone fever'; what it actually meant was the rapid multiplication of zones as a result of promoting the SEZ model. The Chinese National Government followed the initial zones with new technological zones eventually reaching 54 such zones in 2006. The provincial and local governments declared their own special zones providing land to the industries and real estate speculators. In fact, the zone fever was escalated to the level where. By early 1990s, there were no accurate numbers on how many developmental zones actually existed. According to estimates made in 1993, there were 6000 to 8700 such zones and their total area was estimated to be 15,000 square kilometers, which was, in fact, more than the built-up area of the existing cities.

The consequence of the growing 'zone fever' coupled with speculative activities in real estate was a sizable reduction in arable land in China. Between 1986 and 1999, about five million hectares of arable land were reportedly transferred for development of infrastructure and real estate expansion. Between 1990 and 1997, in Fujian province alone (with Xiamen SEZ) more than 3.50 lakh hectares of arable land were apparently diverted for industrial purposes. Similarly, Hainan SEZ (established in 1988) was referred by the Economist as the "world's biggest speculative bubble with few industrial firms and little industrial output." The ultimate result, of course, was disastrous. In June 1998, the Hainan Development Bank, the main banker of the provincial government closed down under bankruptcy, to be followed soon by the Guangdong International Trust and Investment Corporation of Guangdong province. These trends are reported to have become so alarming by 1997 that the government eventually imposed a blanket moratorium on land-use conservation. On the whole, the SEZ concept in China promoted

land development in China without directly addressing its impact on cultivable land and the natural resource base.

4.7 Administrative Arrangements for Conflict Resolution for SEZs

4.7.1 The source of conflict in respect of the SEZ policy in India arises from displacement, loss of agricultural land and the potential for real estate speculation. There is also criticism that a scramble has been generated among developers to grab cheap agricultural land in order to make quick profits or evade taxes and little attention has been paid to achieving the real objective of generating industrial investments for employment and export. It has also been pointed out that while China had permitted a limited number of very large sized SEZs, in India hundreds of SEZs have been approved including some that are only 10 hectares in size. The 25% cap on processing activity in multi-product SEZs has also been criticised as too little since it is felt that without strict land use regulations, this would lead to speculative real estate activity rather than job creating manufacturing activities. Finally it has been alleged that the tax breaks given which can continue for as long as 15 years will lead to revenue loss as well as diversion/displacement of units, particularly IT units which will all move to SEZs because their existing tax-breaks would expire in 2009. All the elements of the Chinese SEZ policy that led to negative consequences are also present in the Indian SEZ policy. It is therefore necessary to be vigilant about the social costs and consequences of the SEZ policy since it may lead to conflicts. The Group of Ministers constituted by the Government of India to look into the SEZ policy has already recommended that State Governments should not normally acquire the bulk of the lands for the SEZs. This is a good decision because establishing SEZs to allocate land to private companies cannot be termed as furtherance of a public purpose. The Commission also feels that a better approach would be to have a limited number of large SEZs preferably in backward areas so that they lead to infrastructure creation. In addition, it would be desirable that the proportion of land allowed to be used for 'non-processing' activities should be minimised.

4.7.2 The livelihood of those ousted should, however, be the prime concern in conflict resolution. While the Group of Ministers has suggested that the rehabilitation package should include a job for at least one person from the affected family, such a stipulation is not adequate. In fact, many entrepreneurs have already proposed rehabilitation packages, but they do not go far enough. Rehabilitation packages should be based on an income-sharing strategy, the details of which have already been described earlier in the this Chapter. The idea, on the whole, should be to make the oustees primary stakeholder partners rather than one-time beneficiaries or spectators of SEZ development. Thus, the Mangalore SEZ project's R&R package defines tenants dependant on land, encroachers living off government /forest

land and agricultural laborers, all as Project Affected Persons who are to be allotted alternative land sites of varying sizes along with those losing their land to the project. In addition to sites in lieu of land, an ex gratia housing grant, a transportation grant, a subsistence grant, a rehabilitation grant for loss of land, vocational training and employment to one member of each affected family constitute part of the package.

4.7.3 The SEZ law should also specify establishment of vocational training centers. Provision of water, sanitation and health facilities should precede the actual developmental activities in the vicinity of the villages. There should be a clear provision in the SEZ law allocating such responsibility to the entrepreneurs seeking to establish the SEZs.

4.7.4 In order to prevent conflict situations from arising and leading to violence, it is necessary that industrial activities and SEZs are located in areas where they cause the least displacement and dislocation, and do not usurp productive agricultural lands. For the purpose, it may be desirable to prepare comprehensive land use plans which could indicate where industrial activities and SEZs could be located. It is necessary, however, to ensure that such land use plans are finalized only after public consultations and inviting and taking into account objections to the proposed land use planning. Once the land use plans are finalised, they should be faithfully followed and should in effect be for a specified number of years.

4.8 Land Records

4.8.1 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. The Commission in its Report on the Right to Information has emphasised the importance of land records maintenance in our governance system. The Commission would be dealing with this issue in further detail in its Report on District Administration.

4.9 Recommendations

- a. **The following steps may be taken to alleviate the distress in the agrarian sector:**
 - i. **Provide renewed impetus to land reform measures like redistribution of surplus land, vesting title in tenants and carrying forward consolidation of land holdings etc for maintaining and promoting the sustainability of agriculture.**

- ii. 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.
 - iii. Redesign poverty alleviation programmes to make them more relevant to the needs of small and marginal farmers.
 - iv. Step up public investment in order to expand non-farm and off farm activities to provide alternative livelihood opportunities for the poorer farmers within rural areas.
 - v. Introduce measures to encourage formation of 'Self Help Groups' (SHGs) to improve access to credit and marketing and empower the disadvantaged.
 - vi. Diversify risk coverage measures such as weather insurance schemes and price support mechanisms.
- b. 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.
- c. There is need to amend the present approach to SEZs on the following lines:
- i. In establishing SEZs, use of prime agricultural land should be avoided.
 - ii. The number of SEZs should be limited, with a larger minimum size with locations preferably in backward areas so that they act as nuclei for economic growth.
 - iii. SEZs promoted by farmers themselves should be encouraged.
 - iv. The livelihood of the displaced should be a major concern of the SEZ policy.
 - v. The SEZ regulations should clearly allocate social responsibility of rehabilitation to entrepreneurs seeking to establish SEZs. This should include provision for water, sanitation, health facilities, and vocational training centres.

- vi. The proportion of land that is permitted to be used by the promoters of SEZs for non-processing activities should be kept to a minimum and this should be ensured at the time of approval of their plans. The existing ratio between processing and non-processing activities needs to be re-examined in order to maximize the proportion of land put to productive use. Also strict adherence to environmental regulations should be ensured.**
- vii. Comprehensive land use plans should be prepared and finalised after wide public consultations. Industrial activities in SEZs should be located only in areas earmarked for the purpose in the land use plans.**
- viii. The extremely liberal tax holidays provided both to export units and to developers require reconsideration.**

WATER RELATED ISSUES

The Prime Minister has said, “*Rivers are a shared heritage of our country ... they should be the strings that unite us, not the strings that divide us.*”²⁵ However, 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.²⁶

5.1 Inter-State Water Conflicts

5.1.1 Constitutional Provisions and Important Laws

5.1.1.1 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. List II of the Seventh Schedule, dealing with subjects in respect of which States have jurisdiction has entry 17 which reads: *Water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I; Entry 56 of List I (Union List), reads: Regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development under the control of the Union, is declared by Parliament by law to the expedient in the public interest.*

5.1.1.2 The Constitution contains a specific Article - Article 262 – which deals with adjudication of disputes relating to matters of inter-state rivers or river valleys, that reads: *Article 262(1): Parliament may by law provide for the adjudication on any dispute or complaint with respect to the use, distribution or control of water of, or in, any inter-state river or river valley. (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause(1).*

5.1.1.3 The two laws enacted under Article 262 and entry 56 of List I are the River Boards Act, 1956 and the Inter-State Water Disputes Act, 1956. The River Boards Act was enacted with the objective of enabling the Union Government to create, in consultation with the State Governments, boards to advise on the integrated development of inter-State basins.

²⁵Prime Minister's speech at the Inauguration of the National Conference of Irrigation and Water Resources Ministers, November 30, 2005.

²⁶Biksham Gujja, K J Jay, Suhas Paranjpe, Vinod Goud and Shruti Vispute, “Million Revolts in the Making”, Economic and Political Weekly, February 18, 2006

The River Boards were supposed to prevent conflicts by preparing developmental schemes and working out the costs to each State. No water board, however, has so far been created under the River Boards Act, 1956. The National Commission to Review the Working of the Constitution observed as follows:

While a more radical suggestion has been made to place all the inter-State rivers under the jurisdiction of an authority appointed to administer them in national interest by law enacted by Union Parliament, it is a fact that in relation to regulation and development of inter-State waters, the River Boards Act, 1956 has remained a dead letter. Further, as and when occasions arose, different River Boards have been constituted under different Acts of Parliament to meet the needs in a particular river system according to the exigencies, facts and the circumstances. The Commission, therefore, recommends that appropriate Parliamentary legislation should be made for repealing the River Boards Act, 1956 and replacing it by another comprehensive enactment under Entry 56 of List I. The new enactment should clearly define the constitution of the River Boards and their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and the recognized rights of the States through which the inter-State river passes and their inhabitants. While enacting the legislation, national interest should be the paramount consideration as inter-State rivers are 'material resources' of the community and are national assets. Such enactment should be passed by Parliament after having effective and meaningful consultation with all the State Governments.

5.1.1.4 The Inter-State Water Disputes Act provides for an aggrieved State to ask the Union Government to refer a dispute to a tribunal. A water disputes tribunal is appointed by the Chief Justice of India and consists of a sitting judge of the Supreme Court and two other judges chosen from the Supreme Court or High Courts. The tribunal, so appointed, can choose assessors and experts to advise it and the Award, once given, is final and beyond the jurisdiction of courts.

5.1.1.5 The Sarkaria Commission in its report at Chapter XVII 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 within a period not exceeding one year from the date of receipt of the application of any disputant State. The Inter-State River Water Disputes Act may be suitably amended for this purpose. (Para 17.4.11)*
- *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 in fact. (Para 17.4.14)

- *There should be a Data Bank and information system at the national level and adequate machinery should be set up for this purpose at the earliest. There should also be a provision in the Inter-State Water Disputes Act that States shall be required to give necessary data for which purpose the Tribunal may be vested with powers of a Court. (Para 17.4.15 & 17.4.16)*
- *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. If, however, for some reasons, a Tribunal feels that the five years period has to be extended, the Union Government may on a reference made by the Tribunal extend its term. (Para 17.4.17)*
- *The Inter-State Water Disputes Act, 1956 should be amended so that a Tribunal's award has the same force and sanction behind it as an order or decree of the Supreme Court to make a Tribunal's award really binding. (Para 17.4.19).*

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

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

5.2 Lessons Learnt from Inter-State River Disputes

5.2.1 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.

5.2.1.1 Krishna and Godavari

5.2.1.1.1 The National Commission for the Review of the Working of the Constitution has aptly summarised the various developments in the case of the dispute arising over the waters of the Krishna river:²⁷

²⁷Source: <http://lawmin.nic.in/ncrwc/finalreport/v2b3-6.htm>

“5.8 The Krishna Water Disputes Tribunal

- (a) *Krishna is the second largest river in the Peninsular India. Rising near Mahabaleswar, in the Mahadev range of the Western Ghats, it flows down a length of 1392 km, through Maharashtra, Karnataka and Andhra Pradesh, before it drops into the Bay of Bengal. Out of a total catchment of 2,55,949 sq. km., 6821 sq. km lie in Maharashtra, 1,11,959 sq. km in Karnataka and 75369 sq. km in Andhra Pradesh.*
- (b) *In 1951, in the backdrop of major development proposals being formulated by the States of Bombay, Hyderabad and Madras (among the total of four riparian States, including Karnataka), an agreement was drawn up, apportioning the available supply among them. However, disputes arose with Karnataka refusing to ratify the agreement.*
- (c) *Notwithstanding the best efforts of the Union Government towards convening several inter-State conferences, the disputes could not be settled. Further, the States moved for reference of the matter to a Tribunal. Accordingly, the Krishna Water Disputes Tribunal was constituted in April 1969, and the matter was referred to it.*

5.9 Krishna Waters Dispute : Rival Contentions

- (a) *The contention of Karnataka, in essence, was, that the 1951 understanding, not having matured into an agreement, was not binding, and therefore equitable distribution of the waters should be made. The implementation of Andhra Pradesh’s projects and Maharashtra’s proposal for West-ward diversion of Krishna waters in excess of 67.5 TMC, should be stayed.*
- (b) *Maharashtra too disowned the Agreement of 1951; further, it objected to implementation of other States’ projects without its prior consent. A fresh assessment of dependable flow as well as of equitable apportionment thereof, was sought.*
- (c) *In contrast, Andhra Pradesh affirmed the validity of the 1951 Agreement, and held Karnataka and Maharashtra guilty of its breach thereof. It sought an injunction, restraining them from undertaking works involving utilization of more waters than anticipated as their respective shares. It also sought to restrain them from intercepting flows to the delta, as well as to other irrigation works of Andhra Pradesh.*

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5.11 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 and river valleys thereof. In case of an Interim Relief Application filed by the party States of Maharashtra, Karnataka and Andhra Pradesh, the KWDT passed orders on June 9, 2006 declining to give interim relief as sought in the application and at the same time indicating certain norms with a view to facilitate adjudication of the dispute before the Tribunal. Subsequently, the State of Andhra Pradesh filed Interlocutory Application under Section 5(3) of the Inter-State Water Disputes Act, 1956 seeking further explanation/guidance on the Order of the Tribunal of June 9, 2006. The Tribunal in its hearing held in September and October, 2006 has framed 29 issues for adjudication of the dispute before it. On April 26, 2007, the Tribunal disposed of the Interlocutory Application under Section 5(3) of the ISWD Act, 1956 declining to give any explanation. Further hearings of the Tribunal are continuing on monthly basis.²⁸

5.2.1.1.2 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, 1980.²⁹

5.2.1.2 *Narmada*

5.2.1.2.1 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

²⁸Source: Website of Ministry of Water Resources: <http://wrmin.nic.in/index3.asp?subsublinkid=374&clangid=1&csslid=391>, retrieved on 1.2.2008

²⁹Source: Website of Ministry of Water Resources: <http://wrmin.nic.in/index3.asp?subsublinkid=753&clangid=1&csslid=390>, retrieved on 1.2.2008

to adjudicate upon the sharing of the Narmada waters and the Narmada River Valley 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.³⁰ 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.

5.2.1.3 *Cauvery*

5.2.1.3.1 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.

5.2.1.4 *Ravi-Beas*

5.2.1.4.1 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.

5.2.1.5 The most significant lesson from the past is that the Union Government has not been able to act decisively and has generally taken a 'minimalist' attitude. The other lesson is that the time lost in delays due to wrangling both before and during tribunal proceedings is very costly, in terms of loss of production, loss of farmers' income growth and the rising cost of constructing irrigation systems. Increasingly, States are becoming resistant to compliance with Awards of tribunals in spite of express provisions in the Constitution regarding the finality of such awards. Another lesson is that a long time is taken to constitute tribunals and giving awards and in pronouncements of interim Awards that have led to further complications. After an Award is given, there are problems of interpretation and implementation and there is no mechanism to enforce the binding character of such Awards. Courts are barred from reviewing the Awards of the tribunals, but matters are still taken to the Supreme Court on related issues. The questions raised before the Supreme Court are usually not so much on the subject of allocation of waters, but on questions of its sharing during years of poor rainfall and on those relating to environmental aspects, displacement and rehabilitation

**Box 5.1: The South African Example –
The National Water Act, 1998**

The Act Acknowledges the National Government's overall responsibility for and authority over the nation's water resources and their use, including the equitable allocation of water for beneficial use, the redistribution of water, and international water matters. Sustainability and equity are identified as central guiding principles in the protection, use, development, conservation, management and control of water resources. These guiding principles of the act recognise the basic human needs of present and future generations, the need to protect water resources, the need to share some water resources with other countries, the need to promote social and economic development through the use of water and the need to establish suitable institutions in order to achieve the purpose of the Act.

It also provides the framework within which water will be managed at regional or catchment level, in defined water management areas. The law provides for a 'reserve' which consists of two parts - the basic human needs reserve and the ecological reserve. The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene. The ecological reserve relates to the water required to protect the aquatic ecosystems of the water resource. The Act further provides for the progressive establishment by the Minister of catchment management agencies. The purpose of establishing these agencies is to delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy.

of people and human rights in the context of specific projects. Such references delay the settlement of disputes and implementation of projects for years.

5.2.1.6 The Commission would therefore like to suggest that the Union Government, through the Ministry of Water Resources should be made a party to proceedings before the Tribunals and there should be an enforcement mechanism to implement the awards given by the Tribunals. Article 262 (1) already bars the jurisdiction of the Supreme Court but matters are still being taken there on related legal, jurisdictional, environmental and constitutional issues. Since Article 262 is the only Article in the Constitution that bars the jurisdiction of the Courts, it would be necessary for Courts to take note of this constitutional provision.

5.2.1.7. As a measure of conflict resolution in case of inter-State rivers, the Commission would like to suggest that resource planning should be done for a hydrological unit such as the drainage basin as a whole. 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 National Commission had recommended that the

Box 5.2: The French Example – Integrated Basin Management

Decentralisation of water management in France to the basin level is the oldest and classic example of integrated basin management and the method is now used in a number of countries. The system, adopted after many years of study and debate, includes many excellent features and could serve as a model for other countries. Key elements include:

- Well-defined laws and regulations: The Water Acts of 1964 and 1992 are the foundation of the French system. The earlier law establishes specific quality objectives and regulations for pollution control, while the latter is designed in part to meet stricter European directives on water management.
- Hydrographic basin management: The system is organized around six major hydrographic basins. These correspond to the country's four main catchment areas and to two areas of dense population and intense industrial activity.
- Comprehensive management, decentralization and participation: Each of the six basins has a basin committee and a corresponding executing agency known as a Water Board. The basin committee, also known as a "water parliament" because of its representation and powers, reflects regional – rather than Union Government-control and is designed to promote the role and responsibility of different interest groups in the basins. The Water Boards (River Basin Agency) while executing the committee's directives, are also responsible to the Union Government for certain technical matters (such as upholding national standards). Water and sewerage services are provided by either public or private firms (increasingly through competitive bidding) and are chosen by communities.
- Cost recovery and incentives: The companies and entities operating water services deliver a portion of the charges they collect to the basin agencies. In addition, a "pollution fee" (a Penalty) is collected by the basin agency. Most of these revenues are reinjected into the system to provide technical assistance and to help the public or private sector ensure that water is safe and purified.
- Supporting research: About 14 per cent of the Water Boards' expenditure in 1992-96 was budgeted for research and development.

Source: Serageldin, 1995, 'Towards sustainable management of water resources', World Bank.

RBO should consist of a General Council consisting of a Minister as a representative of the State Government, the leader of the Opposition, representatives of selected Panchayats and urban local bodies from each district in the basin and representatives of water districts from each district in the basin. The National Commission had also recommended that, in addition to the General Council, there should be a standing committee with a permanent secretariat.

5.2.1.8 The Commission fully endorses the suggestion of the National Commission for Integrated Water Resources Development for establishment of RBOs in the manner as suggested. As the French, Australian and Chinese experience suggests, river-basin planning and implementation is the ideal system to follow. The system has worked well in those countries and the experience in Australia is relevant for us as it has a federal set-up. The Commission would like to recommend the enactment of a legislation in place of the River Boards Act, 1956 that could provide, in addition to the establishment of River Basin Organisations for each inter-State river, 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

Box 5.3: The Chinese Example – The River Basin Commission

Water management in a country as large and as populous as China is complex. Authority for water management flows from the national State Council through the Ministry of Water Resources, which has principal responsibility for the devolution of water management authority to provincial and country levels. There are seven large River Basin Commissions in China – Yangtze, Yellow, Huaihe, Haihe, Pearl, Sangliao and Taihu (this last focusing on Lake Taihu) – which are responsible upwards to provincial, county and municipal authorities. The River Basin Commissions integrate planning, implementation and supervision responsibilities for local, provincial and State agencies, and coordinate activities of different Ministries.

The Responsibilities of the River Basin Commission are:

- a. Enforce the national Water Law on behalf of the Ministry of Water Resources and to cooperate with water departments at local levels in the implementation of the law.
- b. To implement water management and flood control based on the plan approved by the State Council.
- c. To carry out overall planning, development utilisation and protection of water resources in the basin.
- d. To coordinate water-related activities between provinces and local agencies in the basin.

River Basin Commissions such as those of the Yangtze and Yellow Rivers have had significant success in developing basin-side management plans for disaster management (i.e. flood control), pollution control planning, and for hydrological management.

Note: In China, lower tiers and/or government have such powers as are delegated to them by the National Government. source: Proceedings, Malaysian National Conference on Irrigation and Drainage, Vol.III,

- f) Controlling land degradation
- g) 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.

5.3 National Water Resources Council

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

- (a) To lay down the national water policy and to review it from time to time
- (b) To consider and review water development plans submitted to it by the National Water Development Agency and the River Basin Commission
- (c) To recommend acceptance of water plans with such modifications as may be considered appropriate and necessary
- (d) To give directions for carrying out such further studies as may be necessary for full consideration of the plans or components thereof
- (e) To advise on the modalities of resolving inter-State differences with regard to specific elements of water plans and such other issues that arise during planning to implementation of the projects
- (f) To advise on practices and procedures, administrative arrangements and regulations for the fair distribution and utilisation of water resources by different beneficiaries keeping in view optimum development and the maximum benefits to the people

- (g) To make such other recommendations that would foster expeditious and environmentally sound and economical development of water resources in various regions.

5.3.2 The Prime Minister is the Chairman, the Union Minister of Water Resources is the Vice-Chairman and the Minister of State for Water Resources, concerned Union Ministers/Ministers of State, Chief Ministers of all States and Lieutenant Governors/Administrators of Union Territories are the members of the Council. The Secretary, Ministry of Water Resources is the Secretary of the Council. This Council first met in October, 1985 and adopted a National Water Policy in 1987. Although the Council is supposed to meet once a year, this does not often happen. As far as coordination of river basin planning and management and effective water use are concerned, the Council has not had much impact. The result has been that India has failed to develop its water resources through integrated river basin development, and internecine conflicts over rivers between States have become common and contentious.

5.3.3. Since it is such a high-powered body, the Council should play a much more positive role. What is really required is that 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. The Chairman of all the River Basin Organisations, as and when formed, may be made members of the Council.

5.4 Need for a National Law on Water

5.4.1 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.³¹

5.4.2 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. Normatively, a per capita availability of 1700m³ is required in order to be free of water stress, while availability below 1000 m³ is termed as water scarcity. Per capita availability in India was 5200m³ in 1951 but it had fallen to 2200m³ in

³¹John R Wood, The Politics of Water Resource Development in India

1991 and further to 1820m³ in 2001, reflecting the effect of increases in population. It is expected to fall further to 1340m³ in 2025 and 1140m³ in 2050. The expansion of economic activities as a result of the robust growth process that the country is experiencing has led to an increasing demand for water for a variety of purposes. As a result of this development, average availability of water is likely to fall below the water-stress level in the near future and given the wide variation across the country, water-stress conditions already exist in many parts.³² Under the circumstances, there is need for much greater efficiency in the use of water and a greater public awareness on the criticality of water conservation. This would call for efforts to develop, conserve, utilise and manage water on the basis of a framework that incorporates national perspectives.

5.4.3 A national water policy was formulated by the Ministry of Water Resources, Government of India in September 1987, but it is yet to be operationalised because of lack of guidelines. A better way to articulate and operationalise 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 :

- a. 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.
- b. The use of all water, irrespective of where it occurs in the water cycle, should be subject to regulation by prescribed bodies.
- c. The location of water resources in relation to land shall not in itself confer preferential rights to usage.
- d. 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.
- e. 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.
- f. 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.

- g. Water required to ensure that everyone has access to sufficient drinking water should be reserved. The quantity, quality and reliability of water required to maintain the ecological functions on which human beings depend should also be reserved so that the use of water by human does not individually or cumulatively compromise the long term sustainability of ecosystems.
- h. Provision should be made for the establishment of one or more regulatory bodies to ensure the implementation of the proposed law.
- i. There should be a standardised national information system with a network of data banks and databases integrating and strengthening the central, state and basin-level agencies and improving the quality of data and the processing capabilities.

5.5 Recommendations

- a. **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.**
- b. **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.**
- c. **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.**
- d. **The Chairmen of all the River Basin Organisations, as and when formed, should be made members of the National Water Resources Council.**
- e. **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.**
- f. **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 as suggested in para 5.4.3 above.**

6.1 Introduction

6.1.1 In its Report on Public Order, the Commission has made a distinction between 'Established Order' and 'Public Order'. Established Order may not always be as per the tenets of the rule of law. 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.

6.1.2 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.

6.2 Constitutional Safeguards

6.2.1 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:³³

- a. 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.
- b. Compensatory discrimination: Enforcement of reservation provisions in public services, representative bodies and educational institutions.

- c. 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.

This strategy was subsequently operationalised through enactment of various laws, setting up of elaborate watchdog mechanisms and taking steps for socio-economic development of the Scheduled Castes.

6.2.2 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.

6.3 Legislative Framework

6.3.1 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.

6.3.2 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:

- 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;
- appointment of officers for initiating or exercising supervision over prosecution for the contravention of the Act;
- setting up of Special Courts for the trial of offences under the Act.
- 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
- Provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for its better implementation.

6.3.3 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 with the main objective “*to prevent the commission of offences of atrocities against members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto*”. The provisions of the Act extend to the whole of India except the State of Jammu and Kashmir. Comprehensive Rules were also notified under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 31st March, 1995, which among other things provide for relief and rehabilitation to the affected person.

6.3.4 The provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are implemented by the respective State Governments/Union Territory Administrations concerned, which as per its Section 21(1)(2) are to take such measures as may be necessary for the effective implementation of this Act. Such measures include the following :

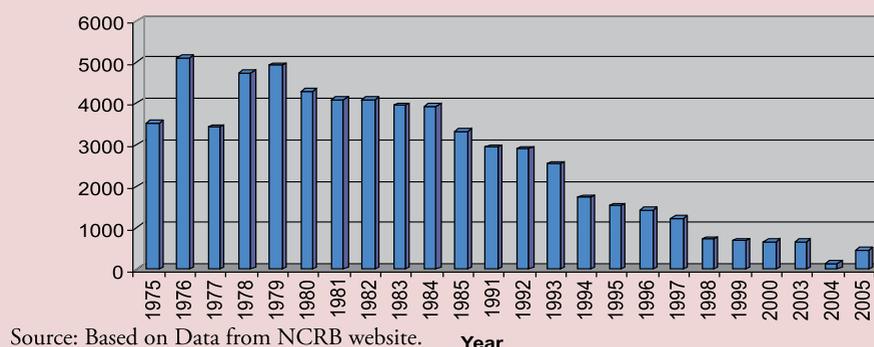
- provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;
- provisions for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under the Act;
- provision for the economic and social rehabilitation of the victims of the atrocities;
- appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of the Act;

- setting up of Committees at appropriate levels as the State Government may think necessary to assist the Government in formulation of such measures;
- provision for a periodic assessment of the working of this Act with a view to suggesting measures for its better implementation; and
- identification of atrocity prone areas.

6.3.5 Evaluation of the legislative framework:

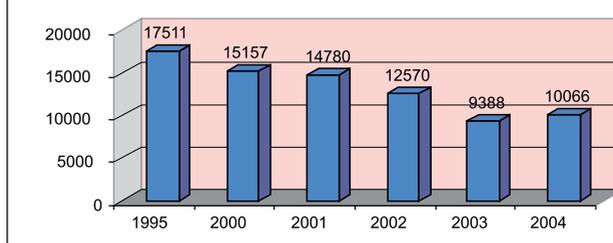
6.3.5.1 The number of cases registered under the PCR Act has shown a constant decline after the 1970s. These figures could, however, lead to the erroneous conclusion that

Fig. 6.1: Number of Cases Registered under the Protection of Civil Rights Act, 1955



the problem of untouchability is also on the decline. In fact, the National Commission for Scheduled Castes, in its Sixth Report has observed “rather, it is a reflection on the ineffectiveness of the law enforcement machinery”. From the figures indicated above, it is also evident that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has become the main instrument for preventing harassment to the Scheduled Castes. The conviction rate under both the Acts has been low. (Under the Protection of Civil Rights Act, in 2005 a total of 101 cases ended in conviction whereas 385 ended in acquittal; under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, in the year 2005, 7110 cases

Fig. 6.2: Number of cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
(Source: Table 1.16 Crime in India, 2005 NCRB)



ended in conviction whereas 17,401 cases ended in acquittal). Several studies have confirmed that the abhorrent practice of untouchability still persists. Studies have also highlighted cases of reluctance and negligence on the part of the law enforcement machinery. The National Commission for Scheduled Castes and Scheduled Tribes in a special report have stated that ignorance of law, fear of reprisals and lack of faith in the enforcement system, often compel victims to acquiesce in the existing unjust situation. Also because of protracted trials, witnesses become reluctant to testify against powerful elements.

6.3.5.2 The statement given in Table 6.1 indicates the State-wise position regarding the administrative and other measures for the implementation of the Protection of Civil Rights Act, 1955 and SCs/STs (Prevention of Atrocities) Act, 1989.

Table No 6.1 Steps taken by State Governments for Implementation of SCs/STs (Prevention of Atrocities) Act, 1989, and Protection of Civil Rights Act, 1955					
States	Setting up of Special Courts under SC/ST, POA Act, 1989.	Working of Special Cell in Police Department	Identification of untouchability prone areas and Surveys undertaken suggesting measures to implement the provisions of the Act.	State level Vigilance	Action in process/envisaged
Andhra Pradesh	12 Special Session Courts set up	Separate Cell Setup (12 DSPs and 128 Staff under IGP.)	Constituted a Commission; has accepted its report.	Yes	To establish 5 new Special Sessions Courts.
Arunachal Pradesh	Predominantly a tribal State; No reported case of atrocities against SCs/STs vigorously.				
Assam	18 Special Courts set up	SC & ST Protection Cell functioning	No instance of practice of atrocity.	Yes	Regular Monitoring
Bihar	The State Government is implementing the provisions of the SCs & STs (POA) Act, 1989 and PCR Act, 1955.				
Chhattisgarh	7 Special Courts set up	Special Police Stations and Cells functioning.	-	Yes	Special Public Prosecutors are appointed in all Special Courts.
Goa	A Special Court set up.	No	There are no vulnerable and untouchability prone areas.	State Level Committee appointed for periodical review of Atrocities cases.	A scheme has been formulated to provide free legal aid.

Table 6.1 Contd.

States	Setting up of Special Courts under SC/ST, POA Act, 1989.	Working of Special Cell in Police Department	Identification of untouchability prone areas and Surveys undertaken suggesting measures to implement the provisions of the Act.	State level Vigilance	Action in process/envisaged
Gujarat	10 Special Courts set up.	15 Dy. SPs for conducting investigation of offences.	–	Yes	A proposal for more Special Courts and Investigating Officers.
Haryana	Senior-most Addl. Sessions Judge in each District functions as a Special Court.	Special Cell at Police HQs and districts functioning.	There is no prone area in the state. However, special cells established in districts.	Yes	A proposal for more Special Courts and Investigation Officers.
Himachal Pradesh	Due to negligible number of cases, no Special Court set up.	DSPs of the concerned Districts function as Investigation Officers.	–	Yes	Regular Monitoring
Jammu & Kashmir	Negligible number of cases				Various measures being taken.
Jharkhand	Court of Session in notified as Special Court in each district.	A Special Police Station in each District under a Dy. SP.	–	Yes	Regular Monitoring.
Karnataka	Set up in each district.	Dy. SP as Investigating Officer.	No	High Power State Level committee constituted.	Regular Monitoring.
Madhya Pradesh	30 Special Courts set up.	All districts have Special SC/ST Police Stations.	Areas have been identified and notified.	–	Appointment of Special Public Prosecutor. Investigation Trg. Centre.
Maharashtra	Court of session in each district specified as Special Court.	Functioning	424 villages identified as sensitive villages and are being closely monitored.	High Power State Level committee constituted.	Steps being taken to establish Speedy Trial Courts.

Table 6.1 Contd.

States	Setting up of Special Courts under SC/ST, POA Act, 1989.	Working of Special Cell in Police Department	Identification of untouchability prone areas and Surveys undertaken suggesting measures to implement the provisions of the Act.	State level Vigilance	Action in process/envisaged
Mizoram	Predominantly inhabited by Scheduled Tribes. No incident reported of atrocities on SCs/STs in the recent past.				
Orissa	–	Investigation by Dy. SP or officer of higher rank.	Atrocity prone areas have been identified.	Yes	Regular Monitoring.
Punjab	Special Courts specified. In addition, the Court of Sessions Judge at each district declared as a Special Court.	A Special Cell	–	Yes	Regular Monitoring.
Rajasthan	In 17 Districts set up.	Functioning since 1978.	–	District level Committees formed.	Establishing a helpline at Police HQs.
Tamil Nadu	4 courts covering 14-districts set up. In the remaining districts, existing Sessions Courts designated as Special Courts.	DIS (Social Justice & Human Rights) supervises the functioning of SJ & HR units with 11 Dy. SPs.	Identified and annually updated. Surveys also conducted.	Yes	Regular Monitoring.
Tripura	Set up in all Districts.	Reports of incidents are negligible. Adequate measures taken up.			Regular Monitoring.
Uttarakhand	Special Courts in 3 districts set up under PCR Act and 1 Special Court setup under AS/ST (POA) Act.	Protection of Civil Rights Cell constituted in each district.	–	Yes	Regular Monitoring.
West Bengal	17 Courts set up	–	–	Yes	Training of Police personnel etc.

Table 6.1 Contd.

States	Setting up of Special Courts under SC/ST, POA Act, 1989.	Working of Special Cell in Police Department	Identification of untouchability prone areas and Surveys undertaken suggesting measures to implement the provisions of the Act.	State level Vigilance	Action in process/envisaged
NCT of Delhi	Set up	–	–	Proposal moved.	Regular Monitoring.
Puducherry	Set up	–	–	Yes	Regular Monitoring.
A&N Islands	No notified Scheduled Castes in A&N Islands				Sensitisation of officers being done.
Lakshadweep	There are no Scheduled Castes in the UT. The entire population is Scheduled Tribe.				–

Source: Based on information furnished by the States/UTs to the Inter-State Council Secretariat; Supplement to the Agenda; Tenth Meeting of the Inter-State Council, December 9, 2006.

6.3.5.3 The Commission is of the view that the Administration should be much more proactive in dealing with cases of exploitation of the Scheduled Castes. It has to be ensured that all registered crimes against SCs are taken expeditiously to their logical conclusion. The District monitoring mechanism has a very important role to play in this. Therefore the approach of the Administration should be to detect cases of violation of law, suo-motu rather than wait for an FIR to be filed.

6.3.5.4 Though the Act provides for setting up of Special Courts for trying offences, the Supreme Court has held that such courts can take cognizance of a case only after it has been committed to it by the jurisdictional Magistrate. As a result, a complaint or a chargesheet cannot be filed before the Special Court. This has added one more step to the trial process. The National Commission for Scheduled Castes has recommended an amendment to the Act to remove this lacuna. The Commission is also of the view that Special Courts should be empowered to take cognizance of offences under the Act, directly.

6.3.5.5 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 – (i) Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, (ii) Bonded Labour System (Abolition) Act, 1976, (iii) The Minimum Wages Act, 1948, (iv) Equal Remuneration Act, 1976, (v) Child Labour (Prohibition and Regulation)

Act, 1986, (vi) 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).

6.4 Institutional Framework

6.4.1 National Commission for Scheduled Castes

6.4.1.1 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 (1) National Commission for Scheduled Castes, and (2) National Commission for Scheduled Tribes. The Constitution lays down that it shall be the duty of the National Commission for Scheduled Castes –

- a. *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;*
- b. *to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;*
- c. *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;*
- d. *to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;*
- e. *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*

- f. 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.*

6.4.2 National Commission for Safai Karamcharis

6.4.2.1 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. It can investigate into specific grievances of Safai Karamcharis and take suo moto action relating to their problems. The Commission is empowered to call for information with regard to Safai Karamcharis from the concerned governments or authorities. The Commission is required to prepare an annual Report which is laid on the table of both Houses of Parliament. Where the matter in the Report relates to the State Government, a copy of such Report is to be laid by the Governor of the concerned State before the Legislature of the State. The Commission has so far submitted four reports with a large number of recommendations.³⁴

6.4.2.2 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.

6.4.3 Evaluation of the Working of the Institutional Framework

6.4.3.1 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

³⁴Extracted from Report on Prevention of Atrocities against Scheduled Castes (NHRC)

issue and empower the Commission by giving it more powers under the Constitution, to ensure the implementation of its recommendations³⁵.

6.4.3.2 In a report prepared by the NHRC on the Prevention of Atrocities against Scheduled Castes, it was observed :

“The prescribed drill on the reports of the statutory Commissions is that the nodal Ministry of the Commission circulates the recommendations of the Report to the concerned agencies of the Government whom they concern. The comments furnished by them are included in the Action Taken Report, which is placed before the Parliament indicating whether the recommendation is accepted or not accepted and, if accepted, what action is being taken. If no final decision has been taken on a particular recommendation, the comment inserted is that it is under consideration. With these comments on action taken, the report is placed before the Parliament. This explains why there is time lag between submission of the reports by the Commissions and their placement before the Parliament since quite sometime is taken in collecting comments of concerned government agencies. The time lag in case of National Commission for SCs and STs is as long as three years.”

6.4.3.3 In the same report, the issue of non-acceptance of several recommendations made by these Commissions was examined and it was observed :

Usually, in respect of recommendations which are radically divergent from the existing processes/practices/approaches or decisions on the subject, the bureaucratic tendency is to deflect or reject it and some grounds are mentioned for doing so. Commissions, however, expect that during the discussion on the report, some MPs may raise the question of non-acceptance of important recommendations which the Minister concerned may have to answer and, if there is widespread support for the issue, non-acceptance may cause embarrassment. The matter may even be picked up by the Media or NGOs/public spirited citizens/pressure groups which may also build up public opinion for its acceptance. But the reality is that reports do not come up for discussion at all as the experience of National Commission for SCs and STs in respect of last few reports placed before the Parliament indicates. This is partly because by the time reports are submitted with ATRs they are dated and at times lose their contextual relevance. Reference to these reports also does not come up during discussions on the budgetary grants of the nodal Ministry as due to shortage of time and low priority, the budget is passed after guillotining. The discussion on the Ministries is not taken up. NCW would also be facing similar problem. It is not known whether National Human Rights Commission has fared better in this respect. Information is not available about specific recommendations made by different

Commissions, which have not been accepted by the Government and the reasons assigned for such non-acceptance. While Government may have genuine difficulty in accepting some recommendations in view of their wider ramifications and other valid reasons, non acceptance of recommendations on a large scale is disheartening and even frustrating to the Commission because its efforts seem wasted.

This subject has been further dealt with in Chapter 14 of this Report.

6.5 Advisories by the Ministry of Social Justice and Empowerment

6.5.1 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.

6.5.2 Further as a follow up to the Inter-State Council Meeting held on 09.12.2006 on the subject matter of offences of untouchability against Scheduled Castes and atrocities on Scheduled Castes and Scheduled Tribes, the Minister for Social Justice & Empowerment addressed letters in 2007 to Chief Ministers suggesting specific measures as detailed below:

- a) *Printing and distribution of booklets/leaflets in Hindi and local languages highlighting the theme of combating untouchability and atrocities.*
- b) *Mass awareness programmes to be organised for the general public and particularly in schools and colleges with the involvement of office bearers of Panchayats and Urban Local Bodies.*
- c) *Special campaigns in print media on the occasion of Independence Day, Republic Day, Sant Ravi Das Jayanti, Maharishi Valmiki Jayanti, Gandhi Jayanti, Babu Jagjivan Ram Jayanti, Dr B.R. Ambedkar Jayanti etc.*
- d) *Training of constabulary and police officers of police station level, both at induction stage and in refresher courses, about the sensitivity of the issue and related legal provisions.*

- e) *To finance research studies for identifying the forms and causes of untouchability measures required for its eradication.*
- f) *Identification of atrocity prone areas as an on-going process with clearly drawn up parameters for identification of exact locations/pockets within the District in a focused manner.*
- g) *Identification of reputed and emphatic NGOs in identified areas, which can play a lead role in getting the cases of atrocities registered and in their regular follow up. These NGOs will also counsel the victims and offer them support and legal aid to withstand pressures.*
- h) *Effective implementation of land reforms, redressal of land disputes involving SCs/STs on priority basis and stringent enforcement of Minimum Wages Act in atrocity prone areas.*
- i) *To evolve a special package for development of identified atrocity prone/sensitive areas. The package may include appropriate income generating beneficiary oriented schemes. Promotion of Self Help Groups, especially for women, as well as upgradation of infrastructure facilities like link roads.*
- j) *Review of cases, which are pending disposal for over one year in courts so as to ensure award of exemplary punishment.*
- k) *Each case of acquittal to be thoroughly examined and in cases of apparent lapses on part of investigative agencies, appropriate disciplinary action to be taken apart from filing of appeal.*
- l) *Adequate flow of resources from the outlays earmarked by State Governments for Scheduled Caste Sub Plan (SCSP) to ensure provision of basic minimum services i.e. health, education, infrastructural facilities such as link roads, irrigation, and drinking water.*
- m) *Priority to be given to key infrastructural facilities such as construction of roads to the nearest police station and linkage of roads to highways, out of Special Central Assistance Funds released by the Ministry.*
- n) *Beneficiaries from identified atrocity prone areas to be covered on priority basis under beneficiary oriented income generating Schemes of National Scheduled Caste Finance & Development Corporation and National Safai Karmchari Finance & Development Corporation.*
- o) *Special efforts to be made to spread elementary legal literacy among women about their rights and provisions of legal aid available. For this purpose,*

formation of Self Help Groups should be promoted and reputed NGOs be involved.

- p) As a majority of SC population are wage labourers, the Minimum Wages Act be strictly enforced.*
- q) Expanding the coverage of social security under the proposed Unorganised Workers Social Security Scheme of the Ministry of Labour & Employment.*
- r) The Vigilance and Monitoring Committees, in association with State Commissions for Scheduled Castes, to particularly review cases pertaining to dispossession of lands owned by SCs as well as instances where pattas have been issued but actual possession of land has not been given.*

6.6 Administrative Action Required

6.6.1 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:

6.6.1.1 *Effective implementation of various laws enacted for the purpose:* As stated in para 6.3.5, the reduction in the number of registered cases under the Prevention of Civil Rights Act may indicate that the number of such incidents is coming down. Several Civil Rights activists have however argued that this reduction is due to the apathy of the Civil and the Police Administration in reporting and registering cases. Studies conducted by these organisations have revealed that a large number of incidents of discrimination and atrocities against the Scheduled Castes never come to light because of the prevalent fear in these sections and also because of the non-registration of FIRs at the Police Stations. Tackling crimes directed at the most vulnerable sections of our society requires a combination of professionalism and sensitivity to ensure that deterrent action is taken against the perpetrators. The normal approach of beginning an investigation only on receipt of an FIR is not sufficient for dealing with crimes of atrocities against the Scheduled Castes. It is equally important that the enforcement agencies should themselves detect such violations and book the guilty. The Commission in its report on 'Public Order' has made the following recommendations:

- a. The administration and police should be sensitised towards the special problems of the Scheduled Castes and Scheduled Tribes. Appropriate training programmes could help in the sensitising process.*

- b. *The administration and police should play a more proactive role in detection and investigation of crimes against the weaker sections.*
- c. *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 and adequate preparation should be made to face any such eventuality.*
- d. *The administration should also focus on rehabilitation of the victims and provide all required support including counselling by experts.*
- e. *As far as possible the deployment of police personnel in police stations with significant proportion of religious and linguistic minorities should be in proportion to the population of such communities within the local jurisdiction of such police station. The same principle should be followed in cases of localities having substantial proportion of Scheduled Castes and Scheduled Tribes population.*

6.6.1.2 *Motivating the field functionaries:* It has been observed that the field functionaries in State Governments including the police do not proactively enforce the provisions of various laws meant to protect the Scheduled Castes. Apart from issuing strict instructions that enforcement of such social legislations should not be downplayed for fear of further disturbance or retribution, 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 recognised.

6.6.1.3 *Monitoring and review by District Level Monitoring Committees:* Although District level Monitoring Committees have been constituted in most of the districts, their functioning is usually routine and perfunctory. It is, therefore, necessary that District Magistrates should be asked to ensure that these Committees become an effective forum for properly monitoring cases of violation of various social legislations. These Committees should evolve their own mechanism to identify/detect cases violation of various social laws apart from the inputs provided to them by the concerned departments/agencies.

6.6.1.4 *Police reforms:* The Commission has given comprehensive recommendations for police reforms and improvements in the Criminal Justice System in its Fifth Report-Public Order. It has also emphasised the critical need for sensitising through training the officers and other capacity building initiatives about the discrimination and atrocities committed against weaker sections of the society, many of whom belong to the Scheduled Castes and Scheduled Tribes. These reforms when implemented should go a long way in improving

the functioning of the police and the criminal justice system and consequently, upholding the rights and dignity of the Scheduled Castes.

6.6.1.5 Engaging independent agencies to conduct field surveys to identify cases of social discrimination: As stated earlier, incidents of exploitation of Scheduled Castes usually come to light when an FIR is filed. However, there is an increase in the number of cases where such incidents have been brought to light by vigilant civil society organisations and the media. The District Administration should realise the important role that these independent agencies play and use their services for conducting independent field surveys to identify cases of social discrimination.

6.6.1.6 Coordination mechanism for the various National and State level Commissions: There are several Commissions to look into cases of exploitation of the Scheduled Castes – National Commission for Scheduled Castes, National Human Rights Commission and National Commission for Women. The problem of multiplicity of agencies exists at the State levels also. The problem of too many enquiries and reports and too little action is real. Short of constituting a single Commission, there is need to evolve a coordination mechanism so that there is no duplication of efforts by these Constitutional/ Statutory Bodies.

6.6.1.7 Involving Panchayati Raj Institutions: Panchayati Raj Institutions and the Urban Local Bodies are governance structures closest to the people, who execute various development programmes for the weaker sections. These Institutions should be actively involved in various programmes concerned with effective enforcement of various social legislations.

6.6.1.8 Effective implementation of land reforms and other social legislation: There are a large number of legislations – Bonded Labour Abolition Act, Child Labour Prohibition Act, Land Reform Laws, Debt Relief Act etc – which seek to achieve different social objectives. Effective enforcement of these legislations would go a long way in ameliorating the conditions of the Scheduled Castes. The District Monitoring Committee should be entrusted with the responsibility of overseeing the implementation of these laws also.

6.6.2 The United Kingdom has witnessed several riots based on racial or ethnic based violence. In order to check racial discrimination the UK Parliament enacted the Race Relations Act in 1965 which was further amended in 1965 and 1968. Despite this legislation and the constitution of the Race Relations Board and the Commission for Racial Equality, incidents of racial tension occurred and one such manifestation was the Brixton riots. In

order to further strengthen the positive duty of the public authorities, the Race Relations (Amendment) Act, 2000 was passed. The main provisions of this law are:

- a. Placing a positive duty on certain public authorities to promote racial equality.
- b. Extending vicarious liability of the Chief Constables to all activities of the police service.
- c. Outlawing direct and indirect discrimination in public authority functions. (a public authority is defined as 'any person certain of whose functions are function of a public nature').

6.6.3 These are positive provisions, particularly those placing a specific duty on certain public authorities to promote racial equality because it puts an onus on them to actively check racial discrimination. While racial discrimination fortunately is not prevalent in India, some of the features of the UK legislation have relevance to our situation to check discrimination on grounds of caste and religion. In this context, there is a strong case to incorporate a provision in our relevant laws placing a positive duty on public authorities for promotion of social equality and checking discrimination on grounds of caste, particularly in view of the unsatisfactory track record of enforcement agencies in this respect.

6.7 Capacity Building

6.7.1 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. While the civil rights enforcement cells have tended to become routine regulatory organisations, the functioning of the state and district level committees have atrophied in the absence of review at the highest level. Considering the importance of these cells and committees, it will be useful to have a high-powered review committee at the State level with the Chief Minister as the Chairman, and the Home and Social Welfare Ministers as the Vice Chairmen to review the functioning of the civil rights enforcement cells, and the State and district level committees and monitor the progress on civil rights enforcement.

6.7.2 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. Presently, the bulk of the expenditure under this Scheme is incurred on staff and related establishment expenditure including for the special courts under the PCR and POA Acts. Since discrimination is still practised, atrocities committed and civil

rights violated, it will be necessary to appropriate part of the funds under the Centrally Sponsored Schemes for awareness building activities particularly in remote rural areas where awareness levels are low and victims do not come forward to lodge complaints. Further, funds from the Scheme should be utilised for training staff in the enforcement agencies so that they are suitably sensitised to the problems of the Scheduled Castes and their duty & responsibility in ensuring that no discrimination goes undetected and unpunished.

6.7.3 One of the problems that several Union Government agencies face is the lack of timely information. State Governments routinely send monthly, quarterly and annual reports of atrocity cases, but these reports often reach the Union Government agencies too late for any effective action to be taken. With the increasing use of ICT in the operations of the government, it should now be possible to collect and analyse real-time data and take immediate action. For example, POLNET, a satellite-based police telecommunications network, is in an advanced stage of completion and once completed, POLNET should provide telecom connectivity up to the *thana* level.

6.8 Convergence of Regulatory and Development Programmes

6.8.1 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.

6.9 Involvement of Civil Society Organisations (CSOs)

6.9.1 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.

6.10 Expeditious Trial of Criminal Cases

6.10.1 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. More often than not, adjournments are sought by defence lawyers on flimsy grounds only in order to win over prosecution witnesses. Such review by an Administrative Judge of the High Court would help in finding out whether any witness who has been summoned for examination and was actually present in the court had been sent away without being examined and cross-examined on that particular day of hearing.

6.11 Recommendations

- a. 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.**
- b. 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.**
- c. There is need to place a positive duty on public authorities for promotion of social and communal harmony and prevention of discrimination against the Scheduled Castes and Scheduled Tribes.**
- d. There is need for engaging independent agencies to carry out field surveys to identify cases of social discrimination.**
- e. 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'.**
- f. 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.**
- g. 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.**

- h. The Administration should focus on the rehabilitation of the victims and provide all required support to them including counselling.**
- i. 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.**
- j. A statutory duty may be cast on all public authorities to promote equality and actively check social discrimination.**
- k. 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.**
- l. 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.**
- m. The local governments – municipalities and panchayats – should be actively involved in various programmes concerned with effective enforcement of various social legislations.**
- n. 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.**

7.1 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 vis-à-vis the rest of the areas is widening at a much faster rate.³⁷

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.

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7.2 Social Justice

7.2.1 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, as the following table shows:

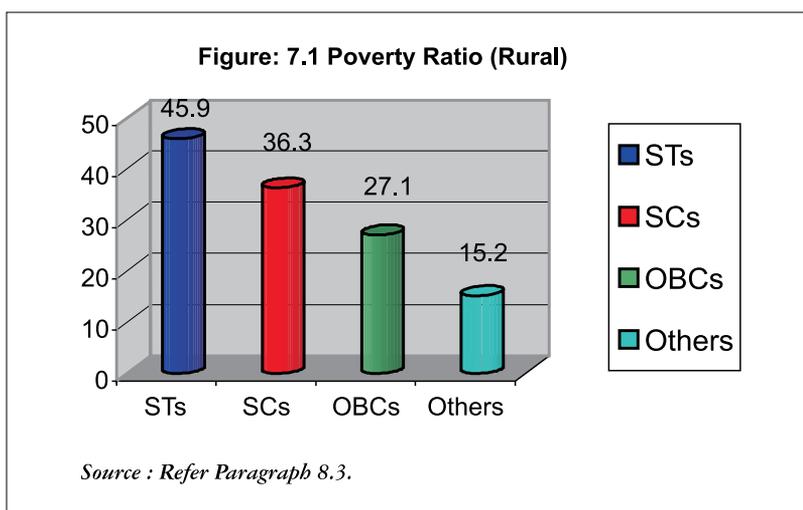


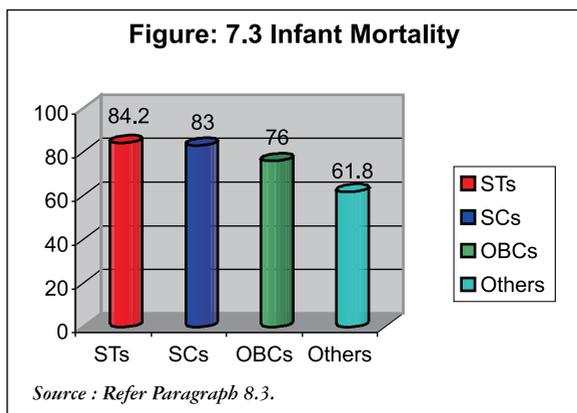
Table 7.1 Disposal of Cases for Crimes Committed against Scheduled Tribes by Courts during 2006

Number of Cases								
Sl.No.	Crime Head	Total Number of cases for Trial including pending cases from previous year	Cases withdrawn by Govt.	Compounded or withdrawn	In which Trials completed			Pending Trial at the end of the year
					Convicted	Acquitted or Discharged	Total	
1.	P.C.R. Act 1955	217	0	0	2	70	72	145
2.	SC/ST Prev. of Atrocities Act, 1989.	5621	0	40	255	761	1016	4565

Source : Crime in India, 2006; NCRB.

7.2.2 As indicated above, for crimes committed against members of the Scheduled Tribes under the P.C.R. Act, of a total pendency of 217 cases, trials were completed in only 70 cases and only 2 cases ended in conviction in the year 2006 and as many as 145 cases were pending trial, at the end of 2006. For crimes committed against the members of the Scheduled Tribes under the provisions of the SC/ST Prevention of Atrocities Act, out of 5621 cases pending trial, 40 cases were compounded by the government, only 255 ended in conviction and as many as 4565 cases were still pending trial in the courts at the end of the year 2006.

7.2.3 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.



7.3 The Panchayats (Extension to the Scheduled Area) Act, 1996

7.3.1 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.

7.3.2 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.

7.3.3 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. 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.

7.3.4 The Report of the Expert Group on Planning at the Grassroots Level – An Action Programme for the Eleventh Five Year Plan – has indicated what needs to be done in such cases. 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.

7.4 Displacement of Tribals

7.4.1 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. The Ministry of Rural Development has estimated the extent of alienation of tribal land in different states: Andhra Pradesh (2.79 lakh acres), Madhya Pradesh (1.58 lakh acres), Karnataka (1.3 lakh acres), Gujarat (1.16 lakh acres). Most tribals displaced by development projects or industries have not been satisfactorily rehabilitated. A survey conducted indicated that the number of displaced tribals till the year 1990 is about 85.39 lakhs of whom 64% are yet to be rehabilitated. Those displaced have been forced to migrate to new areas and more often, have unknowingly encroached on forest lands and on record, are considered as illegal occupants. This type of displacement has led to far-reaching negative social and economic consequences. The dislocations and the uncertainty concerning their future have made such displaced tribal population an easy target for the extremists.

7.4.2 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. Paradoxically, however, PESA has been unscrupulously and indiscriminately used to promote industrial development at the expense of tribals. There have been many instances of manipulation by local power lobbies which have deprived tribal groups of resources, traditionally and constitutionally guaranteed to them, for furthering their personal monetary benefits.

7.4.3 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.

7.4.4 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. Government's database should be up-to-date regarding all such lands lying fallow. If this is left alone, it is made use of by the extremists who in turn act as benefactors of the tribal people and distribute such lands to them, resulting in, the tribal population feeling indebted to the extremists.

7.4.5 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.

7.5 Lack of Harmony in Implementation of Laws and Policies

7.5.1. 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" – (a) between Central Acts and Local Land Laws, (b) between Forest and Revenue Records and (c) 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. Such an exercise is overdue. Among the laws which warrant particular attention are the Land Acquisition Act, 1894, the Mines and Minerals (Development and Regulation) Act, 1957, the Indian Forest Act, 1927, the Forest Conservation Act, 1980 and the Indian Registration Act. In so far as policies and CSSs/Central Schemes are concerned, policies pertaining to wastelands, water resources and extraction of minerals from lands in Fifth Schedule Areas do not seem to reflect the intent and purpose of PESA. These policies, as interpreted and implemented, have given rise at times, to confrontation between the tribal people and the Administration. The National Minerals Policy, 2003, National Forest Policy, 1988, Wild Life Conservation Strategy, 2002 and National Draft Environment Policy, 2004 would, in particular, require detailed examination from the view point of ensuring compliance with the provisions of PESA.

7.6 Capacity Building in Administration

7.6.1 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.

7.6.2 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.

7.7 Convergence of Regulatory and Development Programmes

7.7.1 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.

7.8 Tribal Policy

7.8.1 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.

7.9 Conflicts Related to Inclusion in the List of Scheduled Tribes

7.9.1 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.

7.9.1.1 *Article 342 of the Constitution stipulates:*

- (1) *The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.*
- (2) *Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.*

7.9.2 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.

7.10 Recommendations

- a. 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.**
- b. 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.**
- c. There should be a complete overhaul and systematic re-organisation of existing land records with free access to information about land holdings.**
- d. 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.

- e. Mining laws applicable to Scheduled Tribal Areas should be in conformity with the principles of the Fifth and Sixth Schedules of the Constitution.**
- f. 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.**
- g. 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.**
- h. 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.**
- i. 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

8.1 Introduction

8.1.1 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.

8.1.2 The Constitution refers to the term ‘backward classes’ in Articles 15(4), 16(4) and 340(1). While 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. 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.³⁸

8.1.3 Even at the time when the Constitution was being debated and drafted, the definition of the term remained imprecise. In the debates of the Constituent Assembly, there were two broad ways in which the term was used. One was an inclusive group of all sections of society that needed preferential treatment. In such an usage the term ‘backward classes’ included the “untouchables”. In the other usage, the term that was used was ‘Other Backward Classes.’ But the fact remains that the category ‘backward classes’ was not defined as precisely as the categories of Scheduled Castes and Scheduled Tribes were, but denoted other categories of people who were underprivileged and marginalised.

8.1.4 Article 340(1) empowers the State to investigate the condition of socially and educationally backward classes and appoint a Commission for the purpose. The First Backward 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

³⁸The Sachar Committee Report, 2007

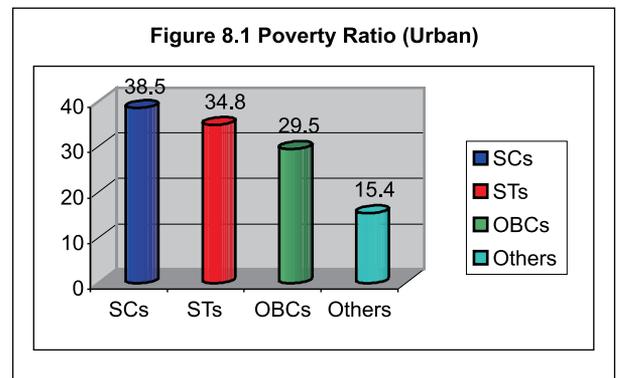
most Backwards. The Report was rejected by the Union Government for having used ‘caste’ and not an economic criterion for identifying Backward Classes.

8.1.5 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 drop out 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.

8.1.6 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.

8.2 Socio-economic Survey

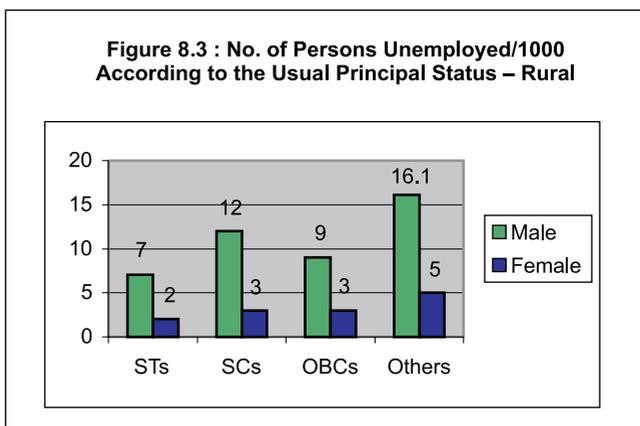
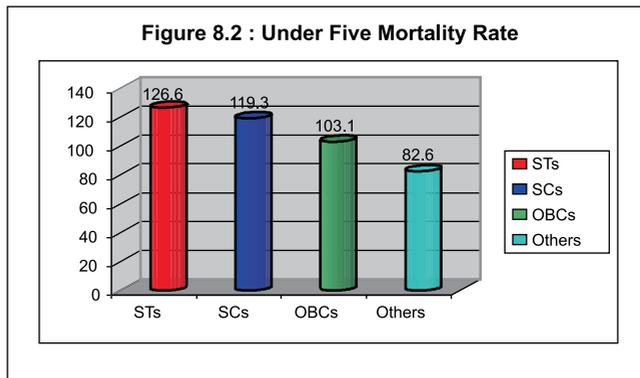
8.2.1 No socio-economic survey has been conducted of the Other Backward Classes in the country. Some State Governments have conducted socio-economic surveys of particular segments of the Other Backward Classes but it is difficult to get a comprehensive picture of the socio-economic conditions of the other backward classes in the country. It is therefore necessary that government immediately take up a socio-economic survey of the Other Backward Classes.



8.3 Socio-economic Indicators

8.3.1 Since 1998-99 some data relating to socio-economic position/status of development of OBCs has started appearing in various surveys viz,

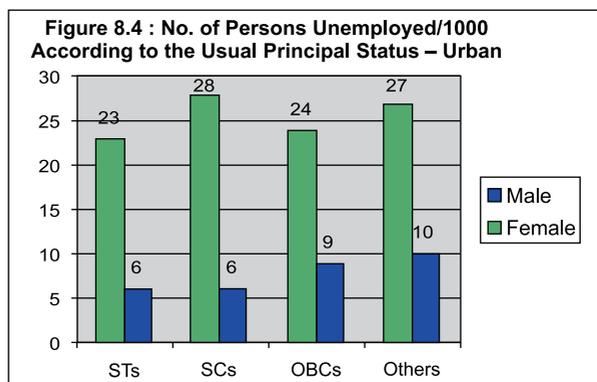
- (a) 1998-99 – National Family Health Survey
- (b) 1999-2000 – Consumption Expenditure Sample Survey of NSSO
- (c) 1999-2000 – NSSO report on Employment
- (d) 1999-2000 – NSSO Report on Land Holdings
- (e) 2002-03 – NSSO Report on Household assets and liabilities or Asset and Debt Survey
- (f) 2004-05 – NSSO Draft Report on Employment



An analysis of NSSO data contained various Surveys and Reports and provides following picture of socio-economic status of OBCs (Figures 8.1 to 8.6):

• Poverty

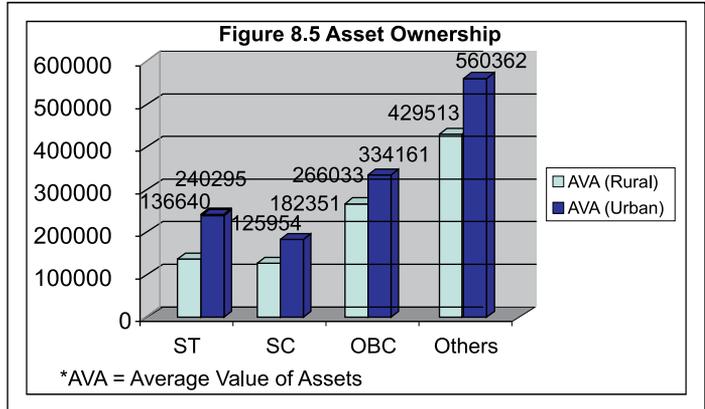
- The incidence of poverty among OBCs is intermediate to that among SCs/STs on the one hand and the non-SC-ST-OBC



(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'.

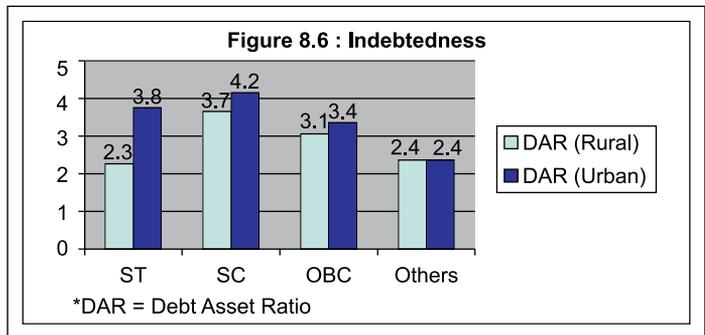
• **Health Indicators**

- As far as the health indicators are concerned, the OBCs 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 OBCs 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.

8.4 Social Empowerment

8.4.1 Clearly, the socio-economic conditions of the OBCs is 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.

8.4.2 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.

8.4.3 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.

8.5 Economic Empowerment

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

8.5.2 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.

8.5.3 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'.

8.6 Recommendations

- a. 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.**
- b. 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

9.1 Introduction

9.1.1 The preamble to our Constitution clearly declares the intention to secure to all citizens 'liberty of thought, expression, belief, faith and worship'. Article 25 guarantees freedom of conscience and the right to freely profess, practice and propagate religion. Article 26 ensures the right to manage religious institutions and religious affairs. Article 29 grants the rights to all citizens to conserve their language, script and culture. Article 30 provides for the protection of the interests of religious and linguistic minorities by giving them a right to establish and administer educational institutions of their choice and the State has been directed not to discriminate against the institutions of the minorities in the matter of giving aid. In addition, Article 350A directs the State to provide facilities for instruction in the mother tongue at the primary stage in education.

9.1.2 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:

"2.2.1.1 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. General amity and the peaceful coexistence of various faiths in India have been the envy of the civilised world. Nonetheless given the diversity of our society and our complex historical baggage, we are often beset with communal tensions which occasionally erupt into violence. At times, either bigoted and fundamentalist leadership, or unscrupulous political operators with an eye on short term electoral advantage, have deliberately and maliciously engineered communal passions, hatred and even violence to achieve sectarian polarisation. Most of the communal flare-ups have been between Hindus and Muslims, though conflicts involving other communities

have also occasionally occurred. Similarly, there have been other ethnic clashes from time to time.

2.2.1.2 Though a number of communal riots have been dealt with effectively, there have also been many serious failures on the part of the administration in dealing with communal situations in a prompt and effective manner. A number of Commissions of Inquiry such as the Justice Raghbir Dayal Commission (Ranchi riots, 1967), Justice P Jaganmohan Reddy Commission (Ahmedabad riots, 1969), Justice D. P. Madon Commission (Bhiwandi riots, 1970), Justice Ranganath Misra Commission (Delhi riots, 1984), Justice B N Srikrishna Commission (Bombay riots 1992-93) and also the National Human Rights Commission have gone into the causes of these riots and analysed the causes and response of the administration and the police in handling them.”

9.1.3 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 (paragraph 2.2.1.5 of Report on Public Order):

“Systemic Problems

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

Administrative Shortcomings

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

Post-riot Management Deficiencies

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

9.1.4 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 :

- i. Cooperation and coordination with the police (community policing).
- ii. Cooperation and coordination with the administration (citizens’ committees).

9.2 Community Policing

9.2.1 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 concept of community policing is incorporated in the Constitution of the Republic of South Africa. In conformity with the provisions of the Constitution, the South Africa Police Act, 1995 contains a provision for the establishment of community police fora at the police station level. According to Section 18 of the Act, these are to act as forums for liaison between the police and the community. The liaison is meant for:

- a. establishing and maintaining a partnership between the community and the police.
- b. promoting communication and cooperation between the police and the community.
- c. improving the rendering of police services in the community.

- d. improving transparency in the service and accountability of the service to the community.
- e. promoting joint problem identification and problem solving by the police and the community.

9.2.2 Police-citizen Interface: The Police force 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-defense 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 can not be compartmentalised between ‘absolute rights and wrongs’. One such programme by the Ontario police in Canada is worthy of emulation. It is known as the “Ontario Police – Minority Interaction” and is aimed, in particular, at gaining the confidence of the minority community. The programme provides an opportunity, on a continuing basis, to members of the target population to interact with the police in an informal and non-threatening environment. The programme consists of eight sessions of 2-1/2 hours, duration with an open forum style format. Sessions include topics such as arrest, detention, community policing, treatment of women by the police, police services available, youth and police, the rights and obligations of the citizens. The sincerity of police officers who conduct such sessions goes a long way in helping to build confidence in the minorities about the equity-enhancing role of the police. It also facilitates the public to adopt a more balanced approach to lingering local conflicts.

9.2.3 The Commission has also discussed matters related to community policing in its Report on ‘Public Order’; this is reproduced below:

“5.15.1 Community Policing has been defined as:

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

5.15.2 According to David H Bayley,³⁹ community policing has four elements:

- (1) Community-based crime prevention;*
- (2) Patrol deployment for non-emergency interaction with the public;*
- (3) Active solicitation of requests for service not involving criminal matters; and*

(4) *Creation of mechanisms for grassroots feedback from the community.*

5.15.3 *The basic principle underlying community policing is that 'a policeman is a citizen with uniform and a citizen is a policeman without uniform'. The term 'community policing' has become a buzzword, but it is nothing new. It is basically getting citizens involved in creating an environment which enhances community safety and security.*

5.15.4 *Community policing is a philosophy in which the police and the citizens act as partners in providing security to the community and controlling crime. It involves close working between the two with police taking suggestions from people on the one hand and using the citizens as a first line of defence on the other.*

5.15.5 *Many States in India have taken up community policing in some form or the other. Be it 'Maithri' in Andhra Pradesh, 'Friends of Police' in Tamil Nadu, Mohalla Committees in Bhiwandi (Maharashtra), there have been several success stories from all over the country. Without going into details of each one of these, the Commission would like to lay down a few it feels should be followed in community policing:*

- *It should be clearly understood that community policing is a philosophy and not just a set of a few initiatives.*
- *The success of community policing lies in citizens developing a feeling that they have a say in the policing of their locality and also making the community the first line of defence. community policing should not become a mere 'public relations' exercise but should provide an effective forum for police-citizen interaction.*
- *Interaction with citizens, should be organised through 'community liaison groups' or citizen's committees at different levels. It should be ensured that these groups are truly representative. The idea of community policing would be a success if it is people driven rather than police driven.*
- *Convergence with activities of other government departments and organisations should be attempted."*

9.2.4 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. The Commission reiterates that the principles laid down in paragraph 5.15.5 of its Report on 'Public Order' should be followed in community policing which would also bring societal and communal resilience in the context

of religious conflicts.

9.3 District Administration and Citizens' Peace Committees

9.3.1 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. Keeping in view the need for formalising district administration initiatives, encouraging civil society initiatives and recognising the importance of reconciliation efforts to promote communal harmony, the Commission is of the view that District Peace Committees should be made effective instruments of addressing issues likely to cause communal disharmony. These committees should be constituted by the District Magistrate in consultation with the Superintendent of Police. Representation from different communities should be such as to instill confidence in citizens about the effectiveness of the committee. In Police Commissionerates, these committees should be constituted by the Police Commissioner in consultation with the Municipal Commissioner. These committees should be institutionalised as an important forum for conflict resolution between groups and communities. Such committees should also identify issues of local relevance which have a propensity to degenerate into conflagration and suggest measures to deal with them. For example, these committees could look into matters related to finalisation of routes of religious processions and their regulation. Encroachment of public properties etc. could also be dealt with by these committees.

9.3.2 On the lines of the District Peace Committees as suggested above, there is also need for organising 'Mohalla Committees'. Generally, religious conflicts in India are urban centric, with a spill-over effect in adjoining rural areas. The successful experiment of 'Mohalla Committees' (locality level multi-community forums) in Bhiwandi in the aftermath of communal violence by an enterprising Superintendent of Police amply demonstrates the efficacy of this approach. While such committees were often constituted to defuse tensions precipitated by communal violence, the Bhiwandi approach institutionalised cross-communal interactions where issues of common concern were discussed regularly promoting mutual trust and confidence. Meeting regularly, rather than only when communal tensions ran high, brought different members of religious communities together to talk about common concerns. This mutual trust and understanding proved very effective in preventing occurrence of communal violence in Bhiwandi in 1992-03 when many other places in

Maharashtra experienced severe and prolonged communal violence.

9.3.3 The National Commission to Review the Working of the Constitution (NCRWC) in its Report made the following recommendation pertaining to the resolution of inter-religious 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 Commission endorses this approach.

9.4 The Sachar Committee

9.4.1 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 Commission acknowledges the role played by this Committee in benchmarking the criteria for the future development of the Muslim community.

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

9.5.1 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. This Bill:

- (i) provides for declaration of certain areas as communally disturbed areas by the State Governments;
- (ii) lays down measures for prevention of acts leading to communal violence;
- (iii) provides for enhanced punishments for offences relating to communal violence and for certain other offences;
- (iv) makes provisions for speedy investigation and trial of offences through Special Courts;
- (v) makes institutional arrangements for relief and rehabilitation measures for victims of communal violence;
- (vi) makes provisions for compensation to the victims of communal violence and provide for special powers to the Central Government in certain cases;
- (vii) provides for constitution of a National Communal Disturbance Relief and Rehabilitation Council, State Communal Disturbance Relief and Rehabilitation Council and District Communal Disturbance Relief and Rehabilitation Council; and
- (viii) prohibits any discrimination in providing compensation and relief to the victims of communal violence on grounds of sex, caste, community or religion.

9.5.2 The proposed provisions in the Bill are comprehensive and cover various aspects of tackling communal violence ranging from preventive measures to rehabilitation of victims. Clause 3 of the Bill deals with the powers of the State Government to declare an area to be a communally disturbed area in certain circumstances. Clause 4 lays down the measures to be taken by the State Government to prevent and control communal violence in a communally disturbed area. Clause 5 lays down the powers of District Magistrate to take preventive measures in case of a situation which has arisen causing apprehension of breach of peace and creation of discord between members of different groups, castes or communities. Clauses 6 to 10 describe the powers of the competent authority to take preventive measures in a notified communally disturbed area.

9.5.3 The Bill provides for the punishment of various offences in case of communal violence. Clauses 11 to 15 provide for the punishment for various offences like loitering near prohibited places in violation of orders, being in possession of arms, etc. without licence, assisting offenders, giving financial aid for the commission of certain offences and threatening witnesses. Clause 16 provides for the punishment for the driver, owner or any person in charge of goods transport vehicle for carrying more persons than authorized. Clause 17 provides for punishment for public servants acting in mala fide manner and for failure to discharge their duties through wilful commission or omission. Clause 18 provides for the punishment for violation of orders under section 144 of the Code of Criminal Procedure, 1973 in a communally disturbed area. Clause 19 prescribes the criterion for communal offence and enhanced punishment for committing communal violence. Clause 20 provides that the scheduled offences shall be cognizable offences for the purpose of the proposed legislation.

9.5.4 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. Clause 22 empowers the State government to constitute a Review Committee headed by an officer of the level of an Inspector General of Police to review cases of scheduled offences where the trial ends in acquittal and to issue orders for filing of appeals, wherever required. The Committee is required to submit a report on its findings and the action taken in each case to the Director General of Police. Clause 23 provides for the constitution of one or more Special Investigation Teams by the State government in case the State government comes to the conclusion that the investigation of offences committed in a communally disturbed area was not carried out properly in a fair and impartial manner. Clause 24 provides that the State Government shall, by notification in the Official Gazette, establish one or more special courts for the trial of scheduled offences committed during the period of disturbance. Clauses 25 to 33 lay down the various administrative and procedural aspects in relation to the Special Courts to facilitate speedy trial of offences and awarding of punishment to the guilty. These aspects include – (i) composition and appointment of Judges of Special Courts; (ii) place of sitting of Special Courts; (vi) power of Supreme Court to transfer cases; (vii) protection of witnesses; and (viii) power to transfer cases to regular courts. Clauses 34 to 36 lay down the procedure for imposing certain restrictions on movement of persons in communally disturbed areas and dealing with appeals against such restrictions. Clause 37 provides for abolition of certain Special Courts when a notified area ceases to be a communally disturbed area.

9.5.5 The Bill provides for mechanisms for relief and rehabilitation of victims of communal violence. Clauses 38 to 48 provide for establishment of institutional arrangements for relief and rehabilitation measures through constitution of State Communal Disturbance Relief and Rehabilitation Council, its composition and functions (Clauses 38 to 40), State Plan for promotion of communal harmony and prevention of communal violence (Clause 41); constitution of District Councils, their composition and functions (Clauses 42–44); constitution of National Council and its composition (Clause 45), terms and conditions of members of the National Council (Clause 46), the powers and functions of the National Council (Clause 47) and submission of Report by the National Council to the Central Government (Clause 48). Clauses 49 to 51 provide for the establishment of funds for relief and rehabilitation which include establishing- (i) State Fund, purpose and submission of annual report to the National Council (Clause 49); (ii) Scheme for grant of relief or immediate relief (Clause 50) and establishment of District Fund (Clause 51). Clause 52 lays down that the District Councils shall function under a State Council. Clause 53 lays down the modalities for payment of compensation to victims of communal violence through the District Council.

9.5.6 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. In terms of Clause 55, the Central Government has been given power to give directions to the State Government in case of communal disturbances and to issue notifications declaring any area within a State as a communally disturbed area and to deploy armed forces wherever necessary (on the request of the State Government). Where it is decided to deploy armed forces, an authority known as Unified Command may be constituted by the Union Government or the State Government for the purpose of coordinating and monitoring such deployment. Every notification declaring any area within a state as a communally disturbed area by the Union Government has to be laid before each House of Parliament. Clause 56 of the Bill provides that such notification shall also specify the period for which the area will remain so notified which shall not exceed in the first instance, 30 days. The Union Government may extend this period by notification but the total period during which an area may be notified as a communally disturbed area shall not exceed a total continuous period of 60 days.

9.5.7 Brief observations of the Commission on various sections of the Bill are indicated in the tabular statement (Table 9.1):

Table 9.1 : Analysis of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

Sl. No.	Object of the Section/Clause	The Section	Observations of the ARC
1.	Declaration of certain areas as communally disturbed areas	<p>3. (1) Whenever the State Government is of the opinion that one or more scheduled offences are being committed in any area by any person or group of persons—</p> <p>(a) in such manner and on such a scale which involves the use of criminal force or violence against any group, caste or community, resulting in death or destruction of property;</p> <p>(b) such use of criminal force or violence is committed with a view to create disharmony or feelings of enmity, hatred or ill-will between different groups, castes or communities; and</p> <p>(c) unless immediate steps are taken there will be danger to the secular fabric, integrity, unity or internal security of India, it may, by notification,—</p> <p>(i) declare such area to be a communally disturbed area;</p> <p>(ii) constitute such area into a single judicial zone or into as many judicial zones as it may deem fit.</p>	<p>In instances of sudden flare up of communal violence, there may not be enough time to issue such a notification.</p>
2.	Appointment of Competent Authorities under the Act	<p>(4) When a notification has been issued under sub-section (1), the State Government shall notify one or more officers of the State Government as the competent authority for the purposes of this Act and different competent authorities may be appointed for different provisions of this Act.</p>	<p>Existence of more than one Competent Authority could dilute unity of command and responsibility. Moreover, the DMs are already vested with all powers of the Competent Authority.</p>
3.	Powers of the District Magistrate	<p>(2) Notwithstanding anything contained in Sections 6, 7, 9 and 10, the District Magistrate shall also have the same powers as the competent authority has in the area under his jurisdiction in relation to the provisions of the said sections.</p>	

Table 9.1 Contd.

Analysis of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005			
Sl. No.	Object of the Section/Clause	The Section	Observations of the ARC
4.	<p>Powers given under the Act:</p> <ol style="list-style-type: none"> Deposit of Arms Power to Search Power to prohibit certain acts Power to make orders regarding conduct of persons 		<p>Since all these powers exist under the CrPC and Police Acts, there is no need to give such powers parallelly.</p> <p>Moreover such powers, in this proposed legislation become operational only after an area has been declared Communnally Disturbed.</p>
5.	<p>Offences defined under the Act:</p> <ol style="list-style-type: none"> Violation of order to deposit arms Disobedience of legal orders of competent authorities Loitering near prohibited places Assisting Offenders Threatening witnesses Overloading passengers in vehicles Violations of prohibitory orders under Section 144 of CrPC 		<p>All these are offences under existing laws.</p>

Table 9.1 Contd.

Analysis of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005			
Sl. No.	Object of the Section/Clause	The Section	Observations of the ARC
6.	Punishment for public servants for mala fide acts	<p>17. (1) Whoever being a public servant or any other person authorised to act by a competent authority under any provisions of this Act or orders made thereunder,</p> <p>(a) exercises the lawful authority vested in him under this Act in a mala fide manner, which causes or is likely to cause harm or injury to any person or property; or</p> <p>(b) wilfully omits to exercise lawful authority vested in him under this Act and hereby fails to prevent the commission of any communal violence, breach of public order or disruption in the maintenance of services and supplies essential to the community, shall be punished with imprisonment which may extend to one year, or with fine, or with both.</p> <p><i>Explanation.</i>—For the purposes of this section, any police officer who, wilfully refuses—</p> <p>(i) to protect or provide protection to any victim of communal violence;</p> <p>(ii) to record any information under sub-section (1) of Section 154 of the Code relating to the commission of any scheduled offence or any other offence under this Act;</p> <p>(iii) to investigate or prosecute any scheduled offence or any other offence under this Act, shall be deemed to be guilty of wilfully omitting to exercise the lawful authority vested in him.</p> <p>(2) Notwithstanding anything contained in the Code, no court shall take cognizance of an offence under this section except with the previous sanction of the State Government: Provided that every request for the grant of sanction under this section shall be disposed of by the State Government within thirty days from the date of the request.</p>	<p>It has been observed that Government sanction normally does not come easily. There should be a mechanism-an empowered committee to urgently process such sanctions.</p>

Table 9.1 *Contd.*

Analysis of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005			
Sl. No.	Object of the Section/Clause	The Section	Observations of the ARC
7.	Enhanced punishment for communal violence	<p>19. (1) Whoever commits any act of omission or commission which constitutes a scheduled offence on such scale or in such manner which tends to create internal disturbance within any part of the State and threatens the secular fabric, unity, integrity or internal security of the nation is said to commit communal violence.</p> <p>(2) Notwithstanding anything contained in the Indian Penal Code, or in any other Act specified in the Schedule, whoever commits any act of omission or commission which constitutes communal violence shall, except in the case of an offence punishable with death or imprisonment for life, be punished with imprisonment for a term which may extend to twice the longest term of imprisonment and twice the highest fine provided for that offence in the Indian Penal Code or in any other Act specified in the Schedule, as the case may be:</p> <p>Provided that whoever being a public servant or any other person authorised to act by a competent authority under any provisions of this Act or orders made thereunder, commits communal violence shall without prejudice to the foregoing provisions be punished with imprisonment which shall not be less than five years.</p> <p>(3) Any person who is guilty of an offence under sub-section (1) shall be disqualified to hold any post or office under the Government for a period of six years from the date of such conviction.</p>	This would make punishments more deterrent

Table 9.1 Contd.

Analysis of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005			
Sl. No.	Object of the Section/Clause	The Section	Observations of the ARC
8.	Provisions for investigations: a. Accused can be produced before Judicial or Executive Magistrates b. Constitution of a Review Committee c. Constitution of Special Investigation Teams		This would empower Executive Magistrates to remand or release the accused on bail. Setting of the Review Committee and Special Investigation Teams are more in the nature of administrative arrangements.
9.	Special Courts	24. (1) The State Government shall establish one or more Special Courts for trial of scheduled offences committed during the period of disturbance by issuing a notification for the purpose. (2) Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a State, the Government is of the opinion that it is expedient to establish, Additional Special Courts outside the State, for the trial of such scheduled offences committed in a communally disturbed area, the trial whereof within the State— (a) is not likely to be fair or impartial or completed with utmost dispatch; or (b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them; or (c) is not otherwise in the interests of justice, it may request the Central Government to establish, in relation to such communally disturbed area, an Additional Special Court outside the State and thereupon the Central Government may, after taking into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit, establish, by notification, such Additional Special Court at such place outside the State as may be specified in the notification.	This provision empowers the Union Government to establish Special Courts outside the State (On request of the State Government)

Table 9.1 Contd.

Analysis of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005			
Sl. No.	Object of the Section/Clause	The Section	Observations of the ARC
10.	Institutional Arrangements for relief and rehabilitation	<p>38. Every State Government shall, by notification, establish a Council to be known as State Communal Disturbance Relief and Rehabilitation Council.</p> <p>42. (1) The State Government shall, by notification, establish a District Communal Disturbance Relief and Rehabilitation Council in respect of each district in the State.</p> <p>45. (1) The Central Government shall, by notification, constitute, with effect from such date as it may specify in such notification, a council to be known as the National Communal Disturbance Relief and Rehabilitation Council, consisting of not more than eleven members, to exercise the powers conferred on, and to perform the functions assigned to it by or under this Act.</p>	This would create an institutional mechanism for dealing with relief and rehabilitation.
11.	Compensation to victims	<p>53. (1) Whenever a Special Court convicts a person for an offence punishable under this Act, it may, by its sentence, also pass an order that the offender shall make such monetary compensation as may be specified therein to the person mentioned in sub-section (5) for any loss or damage arising from such offence.</p> <p>54. (1) The District Council shall entertain claims by or on behalf of persons affected by Communal Violence and the District Council shall decide the quantum of immediate compensation to be awarded to the victim or his dependents, as the case may be, after due inquiry within a period of one month from the date of the claim.</p>	

Table 9.1 Contd.

Analysis of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005			
Sl. No.	Object of the Section/Clause	The Section	Observations of the ARC
12.	Special powers of Central Government	<p>55. (1) Whenever the Central Government is of the opinion that one or more scheduled offences are being committed in any area within a State by any person or group of persons in such manner and on such a scale which involves the use of criminal force or violence against the members of any group, caste or community resulting in death or destruction of property and such use of criminal force or violence is committed with a view to create disharmony or feelings of enmity, hatred or ill-will between different groups, castes or communities and there is an imminent threat to the secular fabric, unity, integrity or internal security of India which requires that immediate steps shall be taken by the State Government concerned, it shall—</p> <p>(a) draw the attention of the State Government to the prevailing situation in that area; and</p> <p>(b) direct the State Government to take all immediate measures to suppress such violence or the use of criminal force within such time as may be specified in the direction.</p> <p>(2) The State Government shall take appropriate action to prevent and control communal violence on the issue of a direction under sub-section (1).</p> <p>(3) Where the Central Government is of opinion that the directions issued under sub-section (2) are not followed, it may take such action as is necessary including—</p> <p>(a) the issue of a notification declaring any area within a State as a “communally disturbed area”;</p> <p>(b) the deployment of armed forces, to prevent and control communal violence, on a request having been received from the State Government to do so.</p>	<p>This would imply that the Union cannot deploy its armed forces without the consent of the concerned State.</p> <p>The Clause is silent about ‘Competent Authorities’. In case the Union Government declares an area to be disturbed, would they also appoint ‘Competent Authorities’?</p>

Table 9.1 *Contd.*

Sl. No.	Object of the Section/Clause	The Section	Observations of the ARC
13.	Scheduled Offences	<p>THE SCHEDULE</p> <p>[See Clause (l) of sub-section (1) of section 2]</p> <p>1. Offences under the following provisions of the Indian Penal Code (45 fo 1860):—Sections 120B, 143, 144, 145, 147, 148, 150, 151, 152, 153, 153A, 153B, 154, 155, 156, 157, 158, 160, 295, 295A, 296, 297, 298, 302, 303, 304, 307, 308, 323, 324, 325, 326, 327 to 335, 341 to 348, 352, 353, 354, 355 to 358, 363 to 369, 376, 379, 380, 383, 384 to 387, 392, 402, 411, 412, 426, 427, 431, 435, 436, 440, 447 to 462, 504 to 506 and 509.</p> <p>2. Offences under the following provisions of the Arms Act, 1959 (54 of 1959) —Sections 25, 26, 27, 28 to 30.</p> <p>3. Offences under the following provisions of the Explosives Act, 1884 —Sections 6(3), 8(2) and 9B.</p> <p>4. Offences under the following provisions of the Prevention of Damage to PublicProperty Act, 1984 (3 of 1984) —Sections 3 and 4.</p> <p>5. Offence under the following provisions of the Places of Worship (Special Provisions) Act, 1991 (42 of 1991)—Section 6.</p> <p>6. Offences under the following provisions of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988) —Section 7.</p>	

9.5.8 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. Section 153(A) of the IPC for example prescribes the following:

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

(1) Whoever

(a) By words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place or birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) Commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or

(c) Organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc- whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

9.5.9 In the same way, certain offences based on bias against religion, race, language or regional group, caste or community and which are prejudicial to national integration are dealt with in Section 153 B of the IPC.

“153B. Imputations, assertions prejudicial to national-integration. Whoever, by words either spoken or written or by signs or by visible representations or otherwise, -

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizen of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

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

“505. Statements conducing to public mischief. – (1) Whoever makes, publishes or circulates any statement, rumour or report, -

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to three years or with fine, or with both.

(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming views with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial,

language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc. –

Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.- It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.”

9.5.11 Further, Chapter XV of the IPC contains provisions regarding offences relating to religion. Briefly, these include:

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

9.5.12 From the above, it is evident that the Indian Penal Code contains a number of provisions to deal with communal offences. In fact it is comparable to laws in other countries which are there to combat offences referred to as hate crimes. Hate crimes like communal offences are criminal acts committed against people, property or organisations because of the group to which they belong or identify with, or are perceived to belong or identify. The basis therefore could be either race, colour, creed, religion or gender. In the Criminal Code of Canada e.g. Section 319 is similar to Section 298 of our Indian Penal Code because it provides for punishment against statements in any public place which incite hatred against any identifiable group.

9.5.13 Though there are adequate provisions in the IPC/CrPC to deal with communal offences and acts of a communal nature, some of the provisions have not been effectively used in respect of a number of offences e.g. those punishable under Sections 153A, 153B,

295A and 505 IPC, as per provisions of 190 CrPC cognizance cannot be taken by a court of law except with the prior sanction of the Union or the State Government or of the District Magistrate (in case of offences under Section 153 B and sub-sections (2) and (3) of Section 505). Such sanctions are generally difficult to procure. The Commission had considered this issue in paragraph 6.1.7 of its Report on 'Public Order', and is reproduced below:

“6.1.7.3 A suggestion was made before the Madon Commission that no sanction should be necessary for a prosecution under Section 153A of the Indian Penal code. The Madon Commission, however did not agree with this suggestion and stated that the power to grant sanction to prosecute should rest only with the Union Government or the State Government as now provided by Section 196(i) of the CrPc.

6.1.7.4 This issue has been examined by the Commission. It is felt that the sanction prescribed under Section 196 crPc does not serve any useful purpose. Moreover, once a case is chargesheeted by the police, the magistrate would frame charges only if there is a prima facie case, and this is adequate and reasonable protection against any malicious prosecution. Moreover, with the checks and balances suggested in this Report with regard to police functioning, such a provision becomes even more unnecessary. Therefore, such sanction should not be necessary for prosecution.”

9.5.14 Accordingly, the Commission recommended the following (para 6.1.7.9.a):

“No sanction of the Union Government or the State Government should be necessary for prosecution under Section 153(A). Section 196 Cr PC should be amended accordingly.”

9.5.15 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.

9.5.16 In this context, there are some innovative provisions in the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 which would further strengthen the hands of the Government in dealing with communal violence and negating the ills associated with such violence in a social context, if they are incorporated in existing laws. The following are such provisions in the Bill:

- *Clause 19 (1): Whoever commits any act of omission or commission which constitutes a scheduled offence on such scale or in such manner which tends to create internal disturbance within any part of the State and threatens the secular fabric, unity, integrity or internal security of the nation is said to commit communal violence.*
- *Clause 19(2): Notwithstanding anything contained in the Indian Penal Code, or*

in any other Act specified in the Schedule, whoever commits any act of omission or commission which constitutes communal violence shall, except in the case of an offence punishable with death or imprisonment for life, be punished with imprisonment for a term which may extend to twice the longest term of imprisonment and twice the highest fine provided for that offence in the Indian Penal Code or in any other Act specified in the Schedule, as the case may be:

Provided that whoever being a public servant or any other person authorized to act by a competent authority under any provisions of this Act or orders made thereunder, commits communal violence shall without prejudice to the foregoing provisions be punished with imprisonment which shall not be less than five years.

- *Clause 19(3): Any person who is guilty of an offence under sub-section (1) shall be disqualified to hold any post or office under the Government for a period of six years from the date of such conviction.*
- *Clause 20(3): Section 167 of the Code shall apply in relation to a case involving a scheduled offence subject to the modification that the reference in sub-section (1) thereof to “Judicial Magistrate” shall be construed as a reference to “Judicial Magistrate or Executive Magistrate”. (“Code” refers to the Code of Criminal Procedure, 1973 and it practically means that the accused could be produced before Executive Magistrates).*
- *Clause 24 (1): The State Government shall establish one or more Special Courts for trial of scheduled offences committed during the period of disturbance by issuing a notification for the purpose.*
- *Clause 24 (2): Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a State, the Government is of the opinion that it is expedient to establish, Additional Special Courts outside the State, for the trial of such scheduled offences committed in a communally disturbed area, the trial whereof within the State –
 - (a) is not likely to be fair or impartial or completed with utmost dispatch; or*
 - (b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them; or*
 - (c) is not otherwise in the interests of justice, it may request the Central Government to establish, in relation to such communally disturbed area, an Additional Special Court outside the State and thereupon the Central Government may, after taking into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit, establish, by notification, such Additional Special Court at such place outside the State as may be specified in the notification.**

- *In addition, Clause 17(1) provides for penalties in case a public servant acts in a mala fide manner or willfully omits to exercise lawful authority.*

9.5.17 These may be incorporated in the IPC and CrPC themselves, particularly since there are several enabling and supplementing provisions relating to maintenance of public order which would facilitate effective implementation of the above provisions. This is also justified on the ground that several other measures to deal with crimes relating to public order are included in these two Codes.

9.5.18 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. To illustrate this point, a comparison of the structures created by The Disaster Management Act, 2005 (DMA) and those proposed to be created by the present Bill is presented in Table 9.2 below:

Table 9.2: Comparison of the Provision Related to Relief and Rehabilitation in the National Disaster Management Act, 2005 and The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

Sl. No.	Authority/Body/ Plan/Guideline/ Fund	The Disaster Management Act, 2005	The Communal Violence (Prevention, Control and Rehabilitation of Victims), Bill, 2005
1.	National level authority/body	<ol style="list-style-type: none"> 1. National Disaster Management Authority, with the Prime Minister as the ex-officio Chairperson and nine other members. 2. National Executive Council with Secretary to Government of India in charge of Ministry or Department having administrative control of disaster as the ex-officio Chairperson and the Secretaries in the Union Ministries/ Departments having control over agriculture, atomic energy, defence, drinking water supply, environment and forests, finance (expenditure), health, power, rural development, science and technology, space, telecommunication, urban development, water resources and the Chief of the Integrated Defence Staff of the Chiefs of Staff Committee as ex-officio members. 	National Communal Disturbance Relief and Rehabilitation Council, having eleven members, with Secretaries to Government of India in the Ministries of Home Affairs, Defence and Finance as ex-officio members, and others nominated by the Central Government (Clause 45).

Table 9.2 Contd.

Table 9.2: Comparison of the Provision Related to Relief and Rehabilitation in the National Disaster Management Act, 2005 and The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

Sl. No.	Authority/Body/ Plan/Guideline/ Fund	The Disaster Management Act, 2005	The Communal Violence (Prevention, Control and Rehabilitation of Victims), Bill, 2005
2.	State level authority/body	<ol style="list-style-type: none"> 1. State Disaster Management Authority, with the Chief Minister as the ex-officio Chairperson. 2. State Executive Committee, with the Chief Secretary as the ex-officio Chairperson and four Secretaries to the State Government as ex-officio members. 	State Communal Disturbance Relief and Rehabilitation Council, with Chief Secretary as the ex-officio Chairperson and Secretaries to the State Government in the Ministries/Departments of Home and Finance and those dealing with relief and rehabilitation, social welfare, tribal welfare, minorities and women and child development, and Director General of Police as ex-officio members, among others. (Clause 39).
3.	District level authority/body	District Disaster Management Authority, with the Collector/District Magistrate/Deputy Commissioner of the district as the ex-officio Chairperson, and seven other members including elected representative of the local authority (ex-officio co-Chairperson), and CEO of the District Authority, Superintendent of Police, Chief Medical Officer as ex-officio members.	District Communal Disturbance Relief and Rehabilitation Council, with the Collector/District Magistrate/Deputy Commissioner of the district as the ex-officio Chairperson, and Superintendent of Police, Chief Medical Officer and other district level officers of the Departments of Social Welfare, Tribal Welfare, Minority Welfare, Women and Child Development etc. as ex-officio members, among others. (Clause 42).
4.	National Plan/ Guidelines	<p>National Plan, prepared by the NEC and approved by the National Authority.</p> <p>National Authority to recommend guidelines for minimum standards of relief.</p>	National Council to recommend to the appropriate Government on relief, rehabilitation and compensation. (Clause 47).
5.	State Plan/ Guidelines	State Disaster Management Plan, prepared by the SEC and approved by the State Authority.	State communal harmony plan (State Plan) to be prepared by the State Council. (Clause 41)

Table 9.2: Comparison of the Provision Related to Relief and Rehabilitation in the National Disaster Management Act, 2005 and The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005			
Sl. No.	Authority/Body/Plan/Guideline/Fund	The Disaster Management Act, 2005	The Communal Violence (Prevention, Control and Rehabilitation of Victims), Bill, 2005
			State Council to advise the State Government on guidelines for compensation, relief etc. (Clause 40).
6.	District Plan	District Plan, prepared by the District Authority and approved by the State Authority.	District Plan for Communal Harmony and Prevention of Communal Violence, prepared by the District Council and recommended to the State Council. (Clause 44).
7.	National Fund(s)	1. National Disaster Response Fund, available with the NEC for meeting expenses for emergency response, relief and rehabilitation. 2. National Disaster Mitigation Fund available with the National Authority exclusively for mitigation purposes.	N.A.
8.	State Fund(s)	1. State Disaster Response Fund 2. State Disaster Mitigation Fund	State Communal Disturbance Relief and Rehabilitation Fund. (Clause 49)
9.	District Fund(s)	1. District Disaster Response Fund 2. District Disaster Mitigation Fund	Victims Assistance Fund in each district at the disposal of the District Council. (Clause 51)

9.5.19 From this comparison, it is apparent that the Bill proposes to establish structures which are nearly identical to those already mandated under the DMA, envisaging the involvement of functionaries and authorities who are, in general, common. While one deals with measures related to disaster management, including relief and rehabilitation, the other relates to relief and rehabilitation precipitated per se by communal violence. The Commission is of the considered view that such parallel structures and duplication of roles hinder good governance. In fact, for similar reasons, while discussing issues related to disaster management, the Commission has recommended in paragraph 4.3.3.3 of its Report on

‘Crisis Management’ that the National Executive Council as stipulated under the Disaster Management Act, 2005 need not be constituted and the National Crisis Management Committee (NCMC) should continue as the apex coordinating body. Similarly, at the State level, the Commission has recommended the continuance of the existing coordination mechanism under the Chief Secretary. The Commission is of the view that for providing relief and rehabilitation to victims of communal violence, the structures envisaged to be created under Disaster Management Act, 2005 could be used which are sufficient to effectively deal with them. In fact, the term ‘disaster’ has been defined in Section 2(d) of the DMA, 2005 to mean, inter alia, a ‘grave occurrence’ which may arise from man-made causes or by accident or negligence resulting in substantial loss of life or human suffering or damage to, and destruction of property and which is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area. The adverse impact of communal violence would therefore come under the ambit of this definition which would bring it under the purview of the provisions regarding ‘disaster management’ including relief and rehabilitation {Section 2(e)(viii) of the DMA, 2005}.

9.6 Recommendations

- a. **Community policing should be encouraged. The principles laid down by the Commission in paragraph 5.15.5 of its Report on ‘Public Order’ should be followed.**
- b. **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.**
- c. **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.**
- d. **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:**

- i. Enhanced punishments for communal offences.**
- ii. Setting up of special courts for expeditious trial of cases related to communal violence.**
- iii. Giving powers of remand to Executive Magistrates in cases of communal offences.**
- iv. Prescription of norms of relief and rehabilitation.**

Further, as recommended in para 6.1.7.9 of the Commission's Report on 'Public Order', this should be accompanied by the deletion of the provisions contained in Section 196 of CrPC requiring prior sanction of the Union or State Government or the District Magistrate for initiating prosecution for offences under Sections 153A, 153B, 295A and sub-sections (1)(c), (2) and (3) of Section 505 of IPC.

- e. 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

10.1 Introduction

10.1.1 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. In this respect, political parties have a crucial role to play. When the political process is not in a position to articulate such legitimate demands, conflicts emerge. In the areas now plagued by the left extremist movement, it is the failure of the political process that has enabled the movement to mobilise people and enlist them in its ranks. In the 1960s and 1970s, political parties in States like Kerala and West Bengal were successful in understanding and then articulating and operationalising the interest and aspirations of people into concrete programmes thus averting a situation where sections of them would have come under the influence of extremist elements. Today it has become more difficult for democratic space to be used for resolving conflicts. One reason is because of compulsive politics where each political grouping has multiple identities and where conflicts impinge on regional issues almost all the political parties with regional interest in these issues take a rigid stand because of which conflicts tend to get “frozen”. Examples of these are the inter-State disputes on water, location of central projects etc where political parties of one State including the national parties make common cause against the other State thus becoming a source of conflict in the region.

10.1.2 Because of the above situation, it is necessary in the interest of conflict resolution for democratic restraint on the part of all political parties and their functionaries. An effective way of institutionalising this could be by formulating an enforceable code of conduct for political parties which would define the forms of dissent permissible in a democratic set-up and suggest measures for ensuring that these are complied with.

10.1.3 The Code must be drawn up by the political parties themselves. It could then be considered for incorporation into a law which would inter alia set out the forms of dissent permissible in a democratic set-up. Enforcement of this code can be by the Election Commission of India. In essence, the law should emphasise that constitutional provisions

be strictly adhered to in public affairs. The perspective should be that our Constitution has created the space to resolve conflicts – as it was forged at a time of great conflict. The law could also stipulate punitive action against political parties and their functionaries resorting to violence in conflict situations, instigating violence and exceeding the prescribed forms of democratic dissent by providing for criminal cases to be filed against them and imposing fines as deterrents.

10.2 Identity Issues

10.2.1 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. 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.

10.2.2 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.

10.2.3 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.

10.2.4 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

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.

10.2.5 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.

10.2.6 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.

10.2.7 While such a 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.

10.2.8 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.

10.3 Recommendations

- a. **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.**
- b. **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

11.1 Contours of the Problem

11.1.1 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. As Jeffery Sachs points out⁴¹ in the context of conflicts and backwardness in Africa, there are situations and places where disparities could be a fact of life. In his famous words, “geography has conspired with economics to give Africa a particularly weak hand”⁴². 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.

11.1.2 Per capita income is the measure of development and standard of living commonly used in inter-country comparisons to determine existence of disparities. Within a country, measurement and comparison of the Net State Domestic Product (NSDP) of its constituent units offer an idea of prevailing imbalances. The following Table provides a reasonably accurate idea of the existing inter-State disparities through details of per capita NSDP and the State-wise averages for selected years:

Table 11.1: Per Capita NSDP in Different States				
State	Average: 1960-61, 1961-62 & 1962-63	Average: 1970-71, 1971-72 & 1972-73	Average: 1987-88, 1988-89 & 1989-90	Average: 1996-97, 1997-98 & 1998-99
I High Income (HI)				
Goa			7364	23853
Gujarat	402	821	4602	17393
Haryana	371	1010	5284	17804
Maharashtra	418	849	5369	19248

⁴¹Jeffery D Sachs, “The End of Poverty”. New York (Penguin) 2005 pp 51-73 & 188-208

⁴²Ibid p-208

Table 11.1 Contd.

Table 11.1: Per Capita NSDP				
State	Average: 1960-61, 1961-62 & 1962-63	Average: 1970-71, 1971-72 & 1972-73	Average: 1987-88, 1988-89 & 1989-90	Average: 1996-97, 1997-98 & 1998-99
Punjab	401	1127	6996	18924
Average (HI)*	398	952	5563	18342
II Middle Income (MI)				
Andhra Pradesh	331	626	3455	12257
Karnataka	312	705	3810	13085
Kerala	292	659	3532	14448
Tamil Nadu	357	674	4093	15424
West Bengal	399	760	3750	11769
Average (MI)*	338	685	3728	13397
III Low Income (LI)				
Bihar**	223	452	2135	5465
Madhya Pradesh**	279	538	3299	9371
Orissa	240	551	2945	1556
Rajasthan	285	601	3092	11245
Uttar Pradesh**	252	540	2867	8298
Average (LI)*	256	536	2868	8387
IV Special Category (SC)				
Arunachal Pradesh			4670	11643
Assam	350	587	3195	7918
Himachal Pradesh		740	3618	11997
Jammu & Kashmir	266	575	3534	9916
Manipur		463	3449	9096
Meghalaya		620	3328	9678
Mizoram			4094	11950
Nagaland		540	3929	12422
Sikkim			4846	10990

Table 11.1 Contd.

Table 11.1: Per Capita NSDP				
State	Average: 1960-61, 1961-62 & 1962-63	Average: 1970-71, 1971-72 & 1972-73	Average: 1987-88, 1988-89 & 1989-90	Average: 1996-97, 1997-98 & 1998-99
Tripura		558	3763	8567
Average (SC)	308	583	3783	10418
Average of twenty-five States*	324	666	3877	11936
Max./Min. Ratio*	1.87	2.50	3.28	3.52
Coeff. of Variation*	.197	.257	.263	.309
<i>Note: *Excluding Goa. **Refers to the undivided State.</i>				
<i>Source: 'Regional Inequalities in India: Pre and Post Reform Trends and Challenges for Policy' by Amaresh Bagchi and John Kurian; in The Politics of Economic Reforms in India edited by Jos Mooij, 2005; {Basic data from reports of the Finance Commissions and Central Statistical Organisation (CSO)}</i>				

Data on NSDP clearly establishes that in terms of the maximum-to-minimum ratio, as also coefficient of variation, the gap between the haves and have-nots, in so far as the States are concerned, has widened over the last four decades.⁴³ Not only have the inequalities between States sharpened, there is also wide disparity between regions. State-wise data suggests that barring West Bengal, the Eastern region has lagged behind in growth compared to the West and South. What then emerges is a clear divide between regions – States in the west and south of India form a category clearly distinguishable from those in the East and North of the country.

11.1.3 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. This equity-promoting role of the State calls for initiatives to identify and remove gaps in the provision of human development and basic services and infrastructure with a view to ensuring that all regions or sub-regions and groups have equitable access to the benefits of development. Such an equity-promoting role assumes even greater criticality in the changed environment in which, with the opening of the economy and removal of controls, the play of market forces usually exacerbates disparities. As the country's economy integrates with the global economy, the State has to play a stronger equity-promoting role in order to remove the increasing regional disparities.

11.2 Intra-State Disparities

11.2.1 Inter state 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. In Karnataka, for example, a High Powered Committee for the Redressal of Regional Imbalances (HPCFRRI) identified 35 indicators encompassing agriculture, industry, social and economic infrastructure and population characteristics to measure and prepare an index of development. The HPCFRRI identified 59 backward taluks in northern Karnataka, of which 26 were classified as most backward, 17 as more backward and 16 as backward. To reduce backwardness in these 114 taluks, the Committee recommended implementation of a Special Development Plan of Rs 16,000 crore to be spent over eight years.

11.2.2 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. It is estimated that Telengana is inhabited by 40.5 per cent of the State's population, while coastal Andhra and Rayalaseema account for 41.7 per cent and 17.8 per cent respectively. It is reported that the literacy rate in Telengana is only 55.95% as against 63.58% in coastal Andhra, 60.53 per cent in Rayalaseema and 79.04 % in the capital city.

11.3 The Administrative Approach

11.3.1 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. In fact, adoption of planning as a strategy of State-led industrialisation with plans and policies designed to facilitate more investments in relatively backward areas, were intended to lead to a more balanced growth. It was expected that over time, with such measures in place, regional disparities would gradually disappear. Even though there is no historical consensus on the best mechanism for reducing regional disparities, there are two broad approaches. The first task is to fortify the backward areas adequately and target them with additional resources and investments to help them overcome structural deficiencies that contribute to their backwardness. The idea is that policy directions and strategies adopted would reduce iniquitous policies and support the innate strength of such areas. The other approach is to improve the overall environment for economic and social growth of less developed States and areas through a judicious combination of

major infrastructure interventions, institutional reforms and appropriate incentives structures. It would, however, bear repetition that not all imbalances are amenable to positive solutions and that under certain circumstances palliative measures in the form of safety nets may also be necessary for quite some time.

11.3.2 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. Some States have already constituted special Boards and Authorities such as Area Development Boards for the development of backward areas, but experience with these Boards and Authorities suggest that they have not been particularly effective in achieving the desired outcome as there is overlap of jurisdictions and functions as a result of which scarce resources are distributed among different agencies for the same types of schemes. Under the circumstances, the Commission recommends that efforts for redressing regional imbalances should be directed through local government agencies such as the Zila Parishads and others and not through 'special purpose vehicles' like Area Development Boards and Authorities.

11.3.3 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. The Commission, in its report on implementation of the NREGA, has recommended several measures to address these constraints. The implementation of these measures would certainly improve matters in these backward districts, but what is required is a rigorous process of monitoring the implementation of the scheme. The Commission would also like to recommend establishment of a system of rewarding States (whether prosperous or backward) who have successfully achieved significant reduction in intra-State regional imbalances.

11.4 Identification of Backward Areas

11.4.1 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.

11.4.2 The first attempt to identify 'backward areas' was made by the 'Committee for Industrialisation of Backward Regions' (Pandey Committee) and on the basis of its recommendations, backward areas were classified into several categories: desert areas, chronically drought affected areas, hill areas including border areas, areas with high density of population and low levels of income and employment. The B. Sivaraman Committee which was set up to delineate a strategy for the development of backward areas, recommended in 1978 that the block should be the primary unit for identification of backward areas and these should be situated in drought prone, desert, tribal, hilly, chronically flood affected areas and in coastal areas affected by salinity. In 1994-95, the C.H Hanumantha Rao Committee evolved a new criteria for identification. The unit of identification was the Block.

11.4.3 The EAS Sarma Committee which was given the responsibility of identifying the 100 most backward and poorest districts in the country for preparing a special action plan for infrastructure development submitted its report in November 1997. The Committee decided that the criteria should include direct indicators of human deprivation as well as indirect indicators which pertain to the quality of the life. The most direct indicator of development, the Committee suggested, is poverty. Other aspects of deprivation were also included. For education, the ratio of literate females to the total number of females was used as a measure of educational deprivation and in the case of health, it was the infant mortality rate. Indicators of both social and economic infrastructure were also included in the exercise. Thereafter, a sensitivity analysis was undertaken with different weights assigned to the poverty ratio relative to other indicators. However, the scheme suggested by the EAS Sarma Committee was not implemented.

11.4.4 More recently, a Task Force was set up by the Ministry of Rural Development to identify backward districts where there is need to undertake programmes of intensive public works to generate wage employment during lean agricultural season. Several parameters were considered for the selection of backward districts by the Task Force which submitted its Report in May 2003. The Committee finally based the index of backwardness on three parameters with equal weights to each: (a) value of output per agricultural worker, (b) agricultural wage rate, and (c) percentage of SC/ST population in the districts. These were found to be the most robust parameters available at the district level.

11.4.5 The recommendations of various Committees outlined above were meant to identify backwardness for specific policy interventions like further industrialisation and identification of areas stricken with acute poverty for special attention etc. Similarly, certain State Governments have undertaken exercises to identify more backward areas within their territory. Notable among them are the Hyderabad Karnataka Development

Committee (1981); the Maharashtra Committee on Regional Imbalances (1983) headed by Prof. V.M. Dandekar; and the Gujarat Committee for Development of Backward Areas (1984) headed by Dr. I.G. Patel. These committees, again, used a wide range of criteria from NSDP per capita in various parts of a State to workers in non-traditional occupations and irrigation coverage throughout the State concerned to identify areas which needed preferential attention in terms of public investment and allocations for development schemes etc.

11.4.6 On the whole, the approach to identifying backward areas seems to be varied. Clearly, there is need to formulate standard criteria for identifying backward areas. It is necessary that human development indicators such as literacy and infant mortality rates should be included within the criteria. On a balance of considerations, the criteria adopted by the EAS Sarma Committee which encompassed direct indicators of human deprivation and indirect indicators pertaining to the quality of the life of the people, is recommended for adoption. As poverty is the most direct indicator of development, it should be factored in the criteria. Factors such as literacy rates, infant mortality rate and other indicators of social and economic infrastructure should also be included.

11.4.7 As regards the geographical unit for defining backwardness, the Commission is of the view that as recommended by the B. Sivaraman and Hanumantha Rao Committees, the Block should be the unit for identification. The Commission had already recommended the block as the unit for planning and implementation for the purpose of NREGA in its Report on that programme. This is because districts encompass fairly large areas and populations with diverse characteristics and at varying stages of development.

11.4.8 After the State specific Block level indices are worked out, they need to be applied not for a given set of development schemes but as general guidelines for allocation of resources for all development initiatives and in particular allocations from State and district level plan funds. Backward Blocks thus identified should also receive recognition for the purpose of allocations under the appropriate centrally sponsored schemes. In short, the strategy of reducing and minimizing regional imbalances primarily through targeting attention to Blocks identified as backward within the context of each State needs to be formally accepted by the Planning Commission.

11.5 Overall Environment for Growth

11.5.1 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. Backward States are usually unable to attract sizable private investment due to poor infrastructure which cannot be upgraded for want of resources. The challenge, in essence, is to break this vicious cycle.

11.5.2 The Union Government has launched a programme – the Backward Regions Grant Fund (BRGF) in January 2007. In terms of the objectives of the scheme as described in the guidelines, the Backward Regions Grant Fund is designed to redress regional imbalances in development. It will provide financial resources for supplementing and converging existing developmental inflows into identified districts, so as to a) bridge critical gaps in local infrastructure and other developmental requirements that are not being adequately met through existing inflows; b) strengthen, to this end, panchayat and municipal level governance with more appropriate capacity building, to facilitate participatory planning, implementation and monitoring to reflect local felt needs; c) provide professional support to local bodies for planning, implementation and monitoring their plans; d) improve the performance and delivery of critical functions assigned to Panchayats, and counter possible efficiency and equity losses on account of inadequate local capacity.⁴⁴ For the untied portion of funds, the sharing pattern is (i) every district receiving a fixed amount of Rs. 10 crores per year; and (ii) the remaining portion being distributed on ‘50/50 basis’ as per the population and the geographical share of the district in the total population/geography of all backward districts. For identification of target regions for BRGF, greater emphasis should be placed on human development indicators. Elimination of minimum normative gaps in local area development, physical infrastructure, social attainments in health and education, and in land productivity should be the prime objectives in financing interventions from BRGF.

11.5.3 Additional funds should be provided to enable building of State infrastructure in a programme which could be a grant facility for providing viability gap funding that will allow resources to be leveraged for core infrastructure projects at inter-district level in less developed States and backward areas of developed States. This should include projects that would not be otherwise considered viable financially but are necessary for removing backwardness. The quantum of assistance under this scheme should be made available to the States in a manner that is proportionate to the number of people living in the backward areas.

11.5.4 On the whole, however, the approach to all such funding should be outcome driven. Funding in such cases should be provided as a mechanism to achieve desired outcomes,

and not as an end in itself as has been done in the past. The strategy should be to define acceptable minimum norms of human and infrastructure development that every block in the country should attain, and the policies, initiatives and manners of funding should be driven by the consideration of bridging the gaps and achieve the standards so defined.

11.5.5 It is in this context that initiatives such as NREGA, Sarva Siksha Abhiyan and the Mid Day Meal Scheme are commendable because they are examples of the normative approach discussed in paragraph 11.4.5 above. What is needed is convergent management of such schemes that would facilitate pro-equity resource flows to backward regions. This should be done by the preparation of district-level plans by the District Planning Committees, which should also clearly spell out the verifiable outcomes.

11.6 Recommendations

- a. 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.**
- b. Union and State Governments should adopt a formula for Block-wise devolution of funds targeted at more backward areas.**
- c. 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.**
- d. A system of rewarding States (including developed States) achieving significant reduction in intra-State disparities should be introduced.**
- e. 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.**

- f. 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

12.1 Introduction

12.1.1 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. 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. Even 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.

12.1.2 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. Indirectly, insurgent movements have spawned a variety of related conflicts which are referred to later in this Chapter. Insurgency has taken a toll of thousands of lives, both of security forces and citizens, as is clear from the statistics below:

Head	2001	2002	2003	2004	2005	2006
Incidents of violence	1,335	1,312	1,332	1,234	1,332	1,366
Extremists killed	572	571	523	404	405	395
Security personnel killed	175	147	90	110	70	76
Civilians killed	660	454	494	414	393	309

Source: Annual Report of Ministry of Home Affairs, 2006-07

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

12.2 Typology of Conflicts

12.2.1 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.⁴⁵ Conflicts in the region can be broadly grouped under the following categories:

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

⁴⁵Archana Upadhyay, "Terrorism in the North East: Linkages and Implications", Economic and Political Weekly, December 2, 2006.

- b. Ethnic conflicts: Involving assertion of numerically smaller and less dominant tribal groups against the political and cultural hold of the dominant tribal group. In Assam this also takes the form of tension between local and migrant communities.
- c. Sub-regional conflicts: Involving movements which ask for recognition of sub-regional aspirations and often come in direct conflict with the State Governments or even the autonomous Councils.

12.2.2 Besides, criminal enterprise aimed at expanding and consolidating control over critical economic resources has, of late, acquired the characteristics of a distinct species of conflict.⁴⁶ It has been aptly observed that:

The conflicts in the North East have some peculiar characteristics: they are asymmetrical; they are ambiguous, making it difficult to differentiate a friend from an enemy; they are fought in unconventional modes, deploying political and psychological means and methods; and the conflicts eventually tend to escalate into prolonged wars of attrition.⁴⁷ Violence in the region is also caused by the failure of the State administration to provide security. This has led to the creation of alternative forces of ethnic militia for provision of security. From the perspective of its ethnic constituency, a private ethnic militia is considered a more reliable provider of security when it is threatened by another ethnic group that is armed with its own militia. This is usually the context in an ethnically polarised situation in which the State administration fails to provide security and the actions of the Army are seen as partisan.⁴⁸

12.3 State Specific Conflict Profiles

12.3.1 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'.

12.3.2 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.

12.3.3 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

⁴⁶Archana Upadhyay, Terrorism in the North East

⁴⁷Archana Upadhyay, *ibid*

⁴⁸Archana Upadhyay, *ibid*

tensions between religious/linguistic groups and escalating conflicts involving tribal communities who seek local autonomy etc.

12.3.3.1 *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). It has also been argued that there have been several contributing factors for the youth to join the cadres of ULFA such as unemployment, corruption in Government machinery, influx of illegal migrants, dominance of non-Assamese in the business sector, perception of exploitation of Assam's natural resources by the Centre and alleged human right violation by the Security Forces. It became active from the 1980s and till the late 1990s, enjoyed considerable public support due to a perception that 'insurgency is causing secessions' from Assam and that if only the Assamese had launched a violent counter-agitation, the situation would have been different. The average Assamese also regarded the six years of largely non-violent agitation for 'expulsion of foreigners' as having achieved very little 'success'. With large scale criminalisation of ULFA cadres in the 1990s there was a rapid loss of public support particularly among the urban middle classes. Another factor for its decline was ULFA's known links with the 'agencies' of certain foreign countries with interest in subverting the distinctive culture of the State and in causing unrest in the country. It also appears that repeated volte-face by ULFA during several abortive negotiations with the Government, affected its credibility. After the crackdown by the Bhutanese Army, ULFA has not recovered its past strength though the organisation tries to make its presence felt through kidnappings, bomb blasts and selective murder of migrant workers. In addition, almost all tribal communities have some armed outfits purportedly safeguarding their interests.

12.3.3.2 *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). The 'foreigners' agitation' of 1979-85 brought Assam to the centre stage of attention. The problem can be traced to the early years of the last century when the landless from the neighbouring overpopulated districts of East Bengal started arriving in the fertile and then substantially fallow Brahmaputra valley. Following communal rioting in East Pakistan in the 1950s and 1960s there were further waves of migration from the minority community of that country. Still later, growing unemployment, fragmentation of land and the war for the liberation of Bangladesh encouraged a renewed influx even from the majority community. With the fear of being culturally and politically 'swamped', resentment built up among the Assamese and escalated into one of independent India's most prolonged and vigorous agitations. While both the Union and State Governments have accorded priority to the process of detection

and deportation of illegal migrants (foreigners), the issue continues to simmer with the 'original' inhabitants claiming that for reasons of 'vote bank politics' effective steps are not being taken to deport the 'trespassers' while people sharing the religious-linguistic profile of the 'foreigners' claim that they are harassed and unreasonably forced to "prove" their Indian citizenship.

12.3.4 *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.

12.3.4.1 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. The 'cultural distance' of tribals from the Meiteis widened with almost all the tribes coming under the Christian fold by the 1930s. There is considerable tension among the tribes over land and boundaries and violence between Nagas and Kukis took a toll of more than 2000 lives during the 1990s.

12.3.4.2 The cease-fire between the Union Government and the National Socialist Council of Nagaland (NSCN) has reduced violence in Naga areas but has given rise to fresh tensions as the NSCN insists on a greater 'Nagalim' which would include four Districts of Manipur. This is stoutly resisted by the Meiteis and had caused a very violent agitation in 2001. The assurance to safeguard the 'territorial integrity of Manipur' has resulted in comparative peace on this score. In the southern parts of the state Hmars, Paite and other tribes have been waging violent struggles partly for local hegemony and partly for their own enclave in the form of a Union Territory called "Zomi". District Councils in the Hill areas are non-functional since 1985 as most of the tribal communities want these Councils to be brought under the Sixth Schedule. This demand is vociferously opposed by those in the Valley. In short, Manipur continues to be an active arena for a multiplicity of violent conflicts.

12.3.4.3 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.

12.3.4.4 Since there has not been any significant industrial development in the State, there are no major industries or manufacturing units which could provide employment for the educated youth. The biggest employer continues to be the State not only in Manipur but the entire region. The educated youth has, therefore, to look for employment in far off places like Delhi, Mumbai, Pune and Bengaluru, etc.

12.3.5 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.

12.3.6 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.

12.3.7 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.

12.3.8 *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.

12.3.9 *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. Proximity to Mizoram exposed the State to the 'side effects' of that insurgency. However, effective decentralisation in the 'non-scheduled areas', bringing tribal areas within the purview of an autonomous 'Sixth Schedule' Council, successful land reforms and systematic promotion of agriculture have contributed to considerable conflict reduction. The changing religious composition of tribal groups (particularly, the Jamatias) is giving rise to newer tensions with apprehension of increased inter-tribal conflicts. While the tribal non-tribal clashes are on the decline, there is growing resentment among the tribals due to the restrictions on their 'freedom to use' the forests and their nominal participation in district development.

12.3.9.1 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.

12.4 Modes of Conflict Resolution

12.4.1 The modes of conflict resolution in the North East have been through; (i) security forces/ 'police action'; (ii) 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; (iii) negotiations with insurgent outfits; and (iv) 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. There is, however, no doubt that conflict prevention and resolution in the North East would require a judicious mix of various approaches strengthened by the experience of successes and failures of the past.

12.4.2 In the context of the present Report, it may not be necessary to go into the details of the several initiatives taken under the various 'modes'. In fact, the Commission has already considered, or is in the process of considering, some of these aspects in other Reports. Mention may, in particular, be made of the role of security forces in counter-insurgency operations dealt with by the Commission in its Fifth Report, on "Public Order". That Report inter alia recommends that the Armed Forces (Special Powers) Act 1958 may be repealed in the North East with some of its provisions⁴⁹ incorporated in the Unlawful Activities (Prevention) Act, 1967 to enable the Security Forces to have operational freedom consistent with human rights concerns. There are many other recommendations pertaining to Police reforms and toning up the local intelligence set up etc that would also apply to the situation in the North East. There are certain other aspects of dealing with the menace of insurgent outfits that will be dealt with in the report of the Commission on 'Terrorism'.

12.4.3 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.

12.4.4 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. From the 1980s, there has been substantial increase in public expenditure in the region and there is a stipulation that 10% of the spending of every Ministry/department in the Union Government should be earmarked for the North East. That the fruits of development have not adequately percolated to the beneficiaries is widely recognized. While a detailed analysis of the problem is beyond the remit of this Report, it must be conceded that the reasons for such failure vary from lack

of local absorptive capacity and inappropriate development strategies to corruption and diversion of funds, often to the coffers of insurgents. Of particular concern is the well documented siphoning of food-grains meant for the public distribution system a large proportion of which falls in the hands of the militants.⁵⁰ Similarly, the virtual extortion racket run by various militant groups at a number of points, marking several transitions from one militant group's area of influence to the next, collection of protection money from business and salaried classes etc have been extensively documented.⁵¹ Consequently, many observers feel that some parts of the North East now represent a state of 'stable anarchy' where the rule of law and other institutions of governance are subverted directly or through collusive arrangements, to serve personal or partisan ends of the militants.⁵²

12.4.5 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.

12.5 Conflict Resolution – the Political Paradigm

12.5.1 The realisation that the people of the North East needed special support to have their voice heard in a large polity with which they had little contact was evident since Independence itself. This realisation led to the Sixth Schedule, a model of decentralised governance that was clearly revolutionary from the perspective of the 1940s. Subsequent developments like bringing many Naga areas within an autonomous framework (1957), formation of the State of Nagaland (1963), creation of an autonomous tribal State within Assam (1971) and the large-scale reorganisation of the region (1972) indicate the keenness of the national political leadership to deal with discontent and alienation in the North East not as a simple 'restoration of order' issue, but through provision of greater opportunities of devolution and participation in the political processes. The political history of independent India does not offer a more radical example of meeting local aspirations. While there is always room for creative 'political solutions' of the perennial problems of the region through building of consensus and continually enlarging the scope of 'democratisation', it is doubtful if the political paradigm admits further radical innovations. There is a case for now working towards making the existing political instrumentalities realise their potential for the growth and well being of this important part of our country.

12.5.2 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

⁵⁰Archana Upadhyay, "Terrorism in the North East"

⁵¹Ajai Sahni and J George, "Security and Development in India's North East: An Alternative Perspective."

⁵²S K Pillai, "Insurgencies in North East India"

governments in the region. Recent developments such as the establishment of elected village councils in the Sixth Schedule areas in Tripura, the successful initiative of elected VEC and AEC in Meghalaya to implement the NREGA, the effective involvement of the largely elected Village Area Development Committees in Nagaland and the initiation of communitisation are all testimony of how democratic processes in village governance and development can yield positive results. This would call for bringing elements of democratic processes in local governance and development in the North East. In particular, there is need for introducing village self-governance in the Sixth Schedule areas (as appropriate to the specific conditions in each State), strengthening and providing resources to the autonomous councils to carry out their assigned executive responsibilities and for making suitable changes in respect of the tribal areas outside the Sixth Schedule and the tribe-specific Councils of Assam. It would also require revamping of the existing system of delivery of public services by entrusting this responsibility to the local bodies. These aspects are dealt with later in this Chapter.

12.6 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:-

- (i) Capacity Building in Administration
- (ii) Capacity Building in Police
- (iii) Capacity Building in Local Governance Institutions
- (iv) Capacity Building in Regional Institutions
- (v) Capacity Building in other Institutions

12.6.1 Capacity Building in Administration

12.6.1.1 While the issues related to personnel management of the All India Services including those serving in the North Eastern States will be dealt with by the Commission, in a subsequent report, the subject cannot be ignored in the context of conflict management in the region. Familiarity with the place and its issues, professional competence and a sense of empathy with the people are all essential pre-requisites for civil servants belonging to both the All India Services as also to the services under the State Governments. At present, a majority of the direct recruits to the All India Services are from outside the region. Till 1968, senior administrative positions in Manipur, Tripura, Nagaland and NEFA (as Arunachal

Pradesh was then known) were held by a region-specific Indian Frontier Administrative Service (IFAS) consisting of officers drawn from the Armed Forces, academics and other services who volunteered to serve in the area. This Service was merged with the IAS for a variety of reasons including the desire of its members to have better career opportunities. Even thereafter, the problem of officers willing to serve in the region persists. This is due both to disinclination of outsiders to serve in the region and to the limited number of posts available at senior levels within the region. Local officials, both direct recruits and 'promotees', on the other hand, also complain about limited opportunities for professional development as they do not get adequate opportunities to serve outside the region. Members of the State services, particularly, have limited exposure to diverse work situations. The extreme shortage of officers in the North Eastern States is attributed by many to the system of cadre allotment in the All India Services as per which insiders have very little chance of being allotted their home state. Government of Nagaland, for example, has contended that the present roster system enabled just one Naga candidate to be allotted to the home cadre in over a decade.

12.6.1.2 As stated earlier, issues relating to service conditions of officers working in the North-East will be discussed in the Commission's Report on Refurbishing of Personnel Administration. However, since, there is a close link between a committed and stable administration and prevention and resolution of conflicts, it is necessary to briefly examine some of these issues. Until the 1970s, officers from outside Assam and the then Union Territories in the region were willing to serve in the North East particularly on deputation – for example from Punjab, Madhya Pradesh etc. Today, it is regarded as a punishment posting; one of the reasons being that almost all the States are affected, in one form or another, by insurgency or due to limited "professional" experience. Regional institutions involved with the development of the area such as the NEC which were once vibrant, are much less effective now, as discussed later in this Report. There is an urgent need to reverse this trend. Government of India, in recognition of the difficult conditions in the North East, has already given several special incentives and facilities to officers working in this region. Perhaps, these need to be enlarged with more choices like permitting officers to have government accommodation at a place of their choice rather than at the last place of posting. Similarly, opportunities to work in larger States for increased professional experience is also advisable. Simultaneously, there should be more opportunities for local officers including those from the Technical Services on secondment to serve outside their States. Setting up regional training institutions for administrative and technical officials, liberal funding for obtaining higher qualifications in the country and abroad are some other incentives which should be provided.

12.6.1.3 Institutional capacity building within the administrative apparatus is as important as capacity upgradation of administrative personnel. The political executive, within the North Eastern States, too, needs to be sensitised to the imperatives of systemic reforms for peace, order and development. Initiatives for good governance in the region would include laying down a concrete charter for administrative reforms and good governance in the region in close association with the States and its systematic monitoring by the NEC. There is also a case for taking into account the performance of States in fulfilling their commitments under the charter of the NEC for determining their eligibility for special economic packages or other specified items of funding.

12.6.1.4 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.**

12.6.2 Capacity Building in Police

12.6.2.1 The only regional level institution for training police officials is the North Eastern Police Academy (NEPA) near Shillong which caters to the induction level training of Gazetted police officers of all States in the region other than Assam. Due to limited intake capacity and non-availability of appropriately trained instructors, to which attention was

drawn by the Committee on Police Reforms (Padmanabiah Committee), the institution has had limited impact. NEPA has the potential to be the nodal training institution for civil police officers in handling insurgency. The institution needs to be strengthened through augmentation of infrastructure and induction of instructors from various sources including the Central Police Organisations on attractive conditions. Considerable financial and other incentives are necessary to induce police officers with proven track record in operational matters to work in the academy.

12.6.2.2 On the subject of sufficiency of the police force in the North East, the same Committee noted:

“The availability of policemen per hundred square kilometers of area is higher in the Northeastern States, compared to all-India average, taking into account the thin population and terrain conditions. Compared to all-India average of 42 policemen for hundred square kilometers of area, Tripura has 117 policemen, Nagaland 91 and Manipur 63. In terms of population, the availability is certainly very high. Compared to the all-India average of 136 policemen per lakh of population, Nagaland has 950, Mizoram 752 Manipur 593 and Tripura 341. We beg to differ on this point. The situation in major parts of India is highly different from the situation that prevails in the states comprising the Northeastern part of our country. It does not admit of any comparison. The work load on different aspects of police work in each North Eastern state has to be assessed taking to account the various duties performed by the police in each such state in the last three years and the requirement of staff needs to be worked out.”

12.6.2.3 The Commission agrees with the findings of the Committee. It is imperative that norms of deployment are worked out for each State having regard to the local situation so that the benefits of (at least) relatively comfortable police strength are available to the largely insecure population. Inter-State movement of police personnel at all levels is as important as similar ventures in civil administration. If opportunity could be provided to police officials, particularly at the level of Inspectors (and equivalent in the armed police) to serve in the Central Police Organisations, the results should be particularly rewarding for developing professionalism. Bringing officers from outside the region will also have similar benefits.

12.6.2.4 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.**

12.6.3 Capacity Building in Local Governance Institutions

The North East, for reasons of history and ethnic diversity, has a wider variety of local self-governance institutions than elsewhere in the country. Some of the more important institutions are discussed under the following heads:

- Sixth Schedule Councils;
- Village self-governance in the Tribal North East;
- Tribe Specific Councils in Assam; and
- Other issues of Local Governance.

12.6.3.1 *Sixth Schedule Councils*

12.6.3.1.1 It may not be necessary to deal with the details of this Schedule adopted under Article 244 of the Constitution beyond very briefly noting its essential outlines. It was adopted primarily to address the political aspirations of the Nagas (who, however, refused it on the ground that it offered 'too little'). In essence, it lays down a framework of autonomous decentralised governance in certain predominantly tribal areas of undivided Assam with legislative and executive powers over subjects like water, soil, land, local customs and culture. Many aspects of local governance are entrusted to the largely elected autonomous District Councils mentioned in the table annexed to the Schedule while the manner in which the Councils are to function has been laid down in the substantive paragraphs of the Schedule. The subjects assigned to the Councils outside Meghalaya have been vastly expanded over the years – for the Bodoland Territorial Council established in 2003 the jurisdiction embraces almost all the items in Lists II and III. Except Tripura and Bodoland Councils, these bodies have also been given judicial powers to settle certain types of civil and criminal cases. Legislations passed by the Autonomous Councils come into effect only after the assent of the Governor. While the power to amend the Schedule vests in Parliament

through an ordinary legislation, the Governor has the power to create a new autonomous district or merge such districts on the recommendation of a Commission to be appointed by the Governor and to vary the area of such districts or to include or exclude such areas within such districts without the recommendations of the Commission. This Commission is also expected to examine and submit the state of administration in the autonomous districts.

12.6.3.1.2 The original areas under the Schedule were the present States of Meghalaya, Nagaland and Mizoram and North Cachar and Karbi Anglong (originally known as Mikir Hills) districts of Assam. While, as already noted, the Naga areas refused to elect a Council, the Mizo Council (initially, called the Lushai Hills Council) was dissolved following the formation of the Union Territory of Mizoram in 1972. Subsequently, five more Councils were created viz; three smaller councils in Mizoram representing non-Mizo minority tribes –Mara, Chakma and Lai; one Autonomous Council straddling tribal areas spread all over Tripura and a Territorial Council for three districts in Assam with a majority of Bodo tribes. Later, the powers of the 'Assam Councils' were enlarged to include subjects like primary education, health and welfare. The Bodoland Council in fact, now enjoys almost all the powers in Lists II and III of the Seventh Schedule.

12.6.3.1.3 The Sixth Schedule Councils have thus been given more powers than the local bodies (before or even after the Seventy-third Amendment), in the rest of the country. While many areas under the Schedule have seen turmoil and violence, it is generally agreed that the autonomy paradigm prescribed under it has brought a degree of equilibrium within tribal societies particularly through formal dispute resolution under customary laws and through control of money-lending etc. In Assam, Tripura and Mizoram, the autonomous Councils have power to decide if a State legislation, on a subject under the competence of the Council, may not apply or only apply with such exceptions as may be decided by these bodies within their territories. Union legislations on similar subjects can be excluded from applying to these areas by the State Government in Assam and the Union Government in the other two States. Such areas are visualised as administratively 'self-sufficient'. In fact, the Schedule has meant State level executive agencies withdrawing from such areas as became evident in the context of disturbances in Karbi Anglong. Meghalaya displays a peculiar situation as, despite the formation of the State, (and unlike Mizoram), the whole of the State continues to be under the Sixth Schedule causing frequent conflicts with the State Government which, however, enjoys certain overriding powers over these bodies including the supremacy of State legislation vis a vis 'Council legislation'. While the continuance of autonomous Councils in Meghalaya is said to have contributed to maintenance of inter-tribe equations, the arrangement has frequently resulted in conflicts with the State Government as was explained to the Commission during its visit to Meghalaya in January 2007. It was argued by the State officials that the arrangement of the geographical area of the State and

the Councils being identical, was unprecedented in the region. It was also contended that in the circumstances of a predominantly tribal State like Meghalaya, district level legislative bodies were no longer necessary.

12.6.3.1.4 During the Commission's visit to Assam and Meghalaya, representatives of the Councils expressed dissatisfaction about their inter-face with the State Governments concerned – there was a feeling that these autonomous bodies are treated as extensions of the Government. While the various provisions of the Schedule create an impression that the Governor under that Schedule is to act at his discretion, the present position is that in almost all matters the Governor acts on the aid and advice of the Council of Ministers. This is an important issue. There are provisions in the Schedule which envisage a role for the State Government. Paragraph 14(3), for instance, requires that one of the Ministers of the Government be put in charge with the subject of autonomous districts. Sub-paragraph (2) of the same provision requires that the report of Commission for inquiring into the affairs of autonomous Districts and creation of new Districts etc will be laid before the State legislature. Similarly, paragraph 15 dealing with annulment of resolutions and suspension of Councils, and paragraph 16 which enables their dissolution are subject respectively to the powers of revocation and approval of the State legislature. For matters requiring approval or ratification of the Assembly, it is obvious that the Governor would be acting on the 'aid and advice' within the meaning of Article 163 (1) of the Constitution and not on his discretion. There are other provisions, however, where there is scope for the Governor to act in his judgment after obtaining inputs from suitable sources including the State Government. Some of these provisions would appear to be conferment of powers on the Councils under the Code of Civil Procedure (CPC) and the CrPC (para 5); powers to approve Council legislations and regulations (paragraphs 3 and 8); resolving disputes about mining licences and leases (para 9) etc. The Commission is of the view that having regard to the spirit of the wide autonomy that underlines the Sixth Schedule, this aspect needs to be examined by the Ministry of Home Affairs.

12.6.3.1.5 At the commencement of the Constitution and for more than two decades thereafter, all the Autonomous Districts were located within the State of Assam. It was therefore quite in order in that State for the Governor to appoint a Commission to inquire into the state of administration in such districts and to examine other matters mentioned in paragraph 14. With four States now having such districts, this arrangement deserves reconsideration. Besides, in the last two decades this provision has not been invoked at all resulting in lower standards of governance in these sensitive areas. In the opinion of the Commission, there is a case for a common Commission for all Autonomous Districts under the Schedule by the Union Government and for providing appointment of such a Commission at fixed intervals. The Commission also notes that a similar recommendation

has been made by the Expert Committee of the Ministry of Panchayati Raj headed by one of its members (Shri V. Ramachandran).

12.6.3.1.6 Another emerging area of conflict is the rising disparity between the autonomous Councils and the local bodies established in pursuance of the Seventy-third Amendment as the latter are being more liberally funded through the State Finance Commissions. This disparity is likely to become particularly important in Assam and Tripura where both categories of local bodies co-exist. Similarly, there is a feeling of discontent in the two older Councils of Assam over what is perceived as preferential treatment to the new autonomous Council viz the Bodoland Territorial Council, in the matter of procedures relating to release of funds as well as the basis of budget allocations etc. While Article 243 M (1) expressly exempts areas under the Sixth Schedule from operation of the Seventy-third Amendment, there is no bar on some of the arrangements introduced by it to be engrafted in that Schedule.

12.6.3.1.7 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.**

- e. **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.**

12.6.3.2 *Village Level Self-governance in the Tribal North East*

12.6.3.2.1 Another area of potential resentment and dissatisfaction is the virtual absence of elected representative bodies at the village level in most of the Scheduled areas. With Panchayati Raj bodies stabilising over much of the North East including Arunachal Pradesh (an area that was kept out of the Sixth Schedule, on the grounds that it was too ‘primitive’) there is bound to be a feeling of deprivation in areas left out. At the commencement of the Constitution, there was no village level elective element even in the non-Scheduled areas. Therefore, there was nothing unusual in the Sixth Schedule neglecting village self governance. The situation has, over the years, changed significantly. Within the Sixth Schedule areas some innovation like elected village councils in Tripura and the partially elected Village Executive Committees being tried in parts of Meghalaya for overseeing implementation of the National Rural Employment Guarantee Act attest to the realisation of the importance of village level representative institutions. In the non-Scheduled areas, Nagaland has formalised Village Area Development Boards as a ‘mix’ of traditional village leaders and elected representatives with a role in village governance. Mizoram and the hill areas of Manipur have no formal village level representative bodies. In some tribal districts of Assam, in fact, elected village Panchayats were in existence prior to these areas being brought under the Sixth Schedule; they have ceased to exist since then.

12.6.3.2.2 An examination of the Sixth Schedule reveals that it gives ample scope for providing village self-governance. Clauses (e) and (f) of paragraph 3 (1) provide for establishment of, inter alia, Village Committees / Councils and investing them with powers and other functions relating to village administration including village policing, public health and sanitation etc. There is nothing in these clauses to suggest that these bodies cannot be elected. Given the scheme of the Schedule, establishment of elected village Councils will require suitable legislations by the Autonomous Councils concerned. To induce the Councils to adopt this ‘reform agenda’, it may be necessary to link discharge of this responsibility with release of part of the grants to the Councils. Whether elected village Councils should necessarily replace traditional village headmen is a ticklish question and has to be approached with tact, caution and patience.

12.6.3.2.3 Wherever justice is administered by village level institutions, particularly in the Sixth Schedule areas, the laws applicable particularly in respect of land and boundary

disputes are local customary laws. In the absence of codification of such laws, there is often ambiguity about their integration resulting in parties being dis-satisfied and this age old system of conflict resolution becoming less effective. This underscores the need for codification of customary laws including those based on local usage. The codification of the customary laws by the Chakma Autonomous Council in Mizoram is generally recognised as a conspicuous success. It is imperative that in all States where by virtue of the Sixth Schedule or other laws, village bodies administer justice, the applicable laws are duly codified by the tribes with the help of the government.

12.6.3.2.4 Recommendations

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

12.6.3.3 Tribe Specific Councils in Assam

12.6.3.3.1 Six tribe-specific Councils straddling twelve districts of Assam exist in areas where three-tier Panchayati Raj Institutions have already been established along with corresponding village councils. An unusual feature of the Councils is that in order to cover as many habitations of the 'tribe concerned' as possible their jurisdiction not only transcends district boundaries but also 'skips' areas lacking the relevant population to cover pockets of that population in the so called 'satellite areas'. In other words, the jurisdiction of such Council is often spread over geographically 'non-contiguous' areas. These bodies are a culmination of conflict resolution exercises undertaken by the Government of Assam to deal with assertion of identity by the tribes concerned. In fact, each of the Councils is the result of 'accords' entered between the government and the tribe concerned during the 1990s.

Table 12.2 : Summary Information of "Tribe Specific" Autonomous Council in Assam (AC- Autonomous Council)

Council	Population (lakhs)		Districts	Core areas	Satellite areas
	Total	ST (a)			
Rabha Hasang AC	5.53	3.29 (1.84)	South Kamrup & Goalpara	779	–
Sonowal Kachari AC	58.47	8.0 (1.94)	Dibrugarh, Tinsukhia, Dhemaji, Lakhimpur, Sibsagar & Jorhat	451 (c)	(c)
Mising AC	74.23	10.47 (5.30)	Dhemaji, Sonitpur, Lakhimpur, Dibrugarh, Tinsukhia, Sibsagar, Jorhat & Golaghat	1245	366
Lalung (Tiwa) AC	56.13	4.60 (1.63)	Morigaon, Nagaon & Kamrup	262	153
Deori AC	48.47	16.76 (3.44)	Lakhimpur, Dhemaji, Dibrugarh, Tinsukhia and Sibsagar	133(c)	(c)
Thengal Kachari AC	50.71	5.55 (d)	Jorhat, Sibsagar, Dibrugarh & Lakhimpur	(e)	(e)

Note: (a) Figures in 'brackets' indicate the population of the 'relevant tribe' within the overall ST population as per 1991 census (Tribe specific figures are not yet available for 2001 census); (c) For Sonowal Kachari and Deori Autonomous Councils villages have not so far been segregated in "Core" and "satellite" areas; (d) Thengal Kachari tribe was not separately enumerated in 1991 census; (e) Villages are yet to be notified for the Thengal Kachari Autonomous Council.

Source : Reports/documents of the State Government.

12.6.3.3.2 These Councils run parallel to the Zila Parishads while the village Panchayats and village councils under the Councils vie for virtually the same space. Even if the tribe specific arrangements and the Panchayati Raj structures are not mutually antagonistic, they certainly lack complementarities. This issue was examined by the One Member Committee on Tribal Affairs in Assam which gave a Report in 1996. The Committee observed as follows:

“The Bodoland Autonomous Council came into existence in 1993 as a result of Bodoland Autonomous Council Act, 1993. The other three Councils have been constituted in 1995 consequent on the passage of Rabha Hasang Autonomous Council Act, 1995, the Lalung (Tiwa) Autonomous Council Act 1995 and the Mishing Autonomous Council Act, 1995. All the four Councils have interim nominated Council members. Elections to these bodies have yet to take place. In the meantime, as a result of the passage of the Seventy-third Constitutional Amendment Act, 1992, (copy at Annexure VIII) elected Panchayats have come into being even in tribal areas in Assam and their jurisdiction has been notified. The Gaon Panchayats have been functioning and collecting taxes, etc. The State’s four legislations, mentioned above confer on the Councils powers similar to those exercisable by the Panchayats under the Assam Panchayat Act, 1992. Thus, an anomalous and piquant situation has emerged on account of self-management duality on the ground.”

12.6.3.3.3 The Committee was of the view that bringing these Councils under the Fifth Schedule would resolve this duality. However, as far as the Bodoland areas are concerned, these have already been given a special status under the Sixth Schedule by a constitutional Amendment in 2003.

12.6.3.3.4 In view of the lack of spatial cohesion of these bodies, their programmes in areas like rural roads, minor irrigation, control of soil erosion and village and cottage industries are impossible to implement. In fact, funding of these bodies is exclusively dependent on allocations from the tribal sub-plan and the outlays available from this source by no means match the requirements projected by the Councils. The Commission appreciates the fact that compelling socio-political and administrative reasons had weighed with the State Government in establishing these bodies. Aspirations of tribes not dominating a geographically discrete area could perhaps be met only through imperfect solutions like these. The arrangement, however, gives cause for concern as to its long-term viability and apprehension that this conflict resolution measure could spawn more conflicts. Clearly, efforts must be made to ensure that, as far as possible, the role to be performed by tribe specific bodies does not overlap those of the Panchayati Raj Institutions and that mechanisms exist to prevent and iron out differences between the two streams. It should be kept in mind that in areas of mixed ethnic composition, existence of bodies with overlapping jurisdiction could exacerbate conflicts. The basic objectives could best be achieved if the functional responsibilities of the two streams are kept distinct.

12.6.3.4 *Other Issues of Local Governance*

12.6.3.4.1 Arunachal Pradesh is the only State outside the Sixth Schedule area to which provisions of the Seventy-third Amendment apply. Nagaland, Manipur and most of Mizoram while being outside the Schedule are also exempted from the purview of the said Amendment. Out of these three States, Nagaland has made significant progress to provide at least partly elected village level institutions and to bring community participation in the delivery of services through a highly successful ‘Communitisation Act’. Mizoram has abolished the hereditary village ‘chieftains’ and replaced them with elected Village Councils all over the State including the urban areas – the State capital Aizawl has a multiplicity of councils. Growing urbanisation requires provision of ‘integrated’ civic amenities for which the urban municipal model has proved very useful. It is understood that the State Government is contemplating a legislation to introduce a municipal body for Aizawl. This needs to be expedited.

12.6.3.4.2 In Manipur, the situation in the hill areas is a cause for concern. While the valley districts are covered under the Seventy-third Amendment, hill areas are in the exempted category. Six statutory autonomous Hill District Councils consisting of elected members with a right of participation by the legislators from the district functioned till 1990 when the next elections were due. Elections since then have not been possible as there has been a demand from a significant section of tribal population for bringing these areas under the Sixth Schedule. The demand is strongly opposed by the valley areas on the ground that it would lead to dismemberment of the State. In the absence of these Councils, grassroots level services like primary education, veterinary care and local arts and crafts have been adversely affected and a forum for ventilating local problems has also been dispensed with. It appears that after hardening of attitudes on both sides, not much efforts have been made to break the stalemate. Manipur continues to be the only State where elected village councils have not so far been set up while the village authorities involved with regulation of village affairs are largely a body of traditional village principals. In the absence of representative grassroots level bodies, selection of beneficiaries and monitoring of poverty alleviation schemes and similar interventions has suffered considerably. While much greater efforts are required to build consensus on the issue of District Councils in the State, urgent action is needed to bring in suitable legislation to introduce elected village self-governance in the hill areas of the State.

12.6.3.4.3 **Recommendations**

- a. **Government of Assam may apportion functions between the tribe specific Councils/village Councils and the Panchayati Raj Institutions in a manner**

that schemes involving individual tribal beneficiaries may be assigned to the ‘Tribe Specific Councils’ while area development schemes are left to the latter.

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

12.6.4 Capacity Building in Regional Institutions

12.6.4.1 *The North Eastern Council*

12.6.4.1.1 The most significant ‘supra State’ institution of the region is the North Eastern Council (NEC) set up in 1972, following the enactment of the North Eastern Council Act, 1971. Its creation was necessitated by the reorganisation of the region into five States and two Union Territories and in response to the twin needs of effecting better inter-State/UT coordination, for maintenance of internal security and for facilitating planned, integrated development of the North East. While the aspect of security coordination received adequate consideration by the NEC in its initial phases – the Inspector General of the Assam Rifles acted as ex-officio Security Adviser – this responsibility was subsequently resumed by the Ministry of Home Affairs and the NEC is now primarily an agency to prepare and finance development schemes of inter-State importance. It also runs a number of educational and training institutions catering to the requirements of the region.

12.6.4.1.2 NEC initially consisted of the ‘common Governor’ of the North Eastern States as its Chairman with the Lieutenant Governors of the UTs and all the Chief Ministers as members. After the appointment of separate Governors (1981), the practice of either the Governor of Assam or the senior-most Governor acting as its head was followed. Following

an amendment in the NEC Act in 2002, Sikkim has been added as a member and, due to its non-contiguity with other the member-States, 'stand alone' schemes can be sanctioned for this State. Through this amendment provision was also made for nomination of the Chairperson of the NEC by the President and for positioning some full-time members. In pursuance of that provision and on the recommendations of an expert Committee (2003), it was decided that normally, the Union Minister for Development of the North Eastern Region shall preside over the NEC. Two full-time members have also been inducted to the Council.

12.6.4.1.3 In the absence of a systematic overall organisational appraisal of the NEC so far, it is difficult to be categorical about its successes and failures. It is, however, a fact that like many other high level bodies, transaction of purposive business by the NEC has been hampered, as its proceedings tend to be dominated by rhetoric with limited time devoted to deliberations. Similarly, increasing State plan outlays, coupled with ever increasing central subventions through statutory transfers, centrally sponsored schemes and ad hoc allocations have resulted in a 'shift of attention' of the member-States from this regional institution. It must however be acknowledged that NEC sponsored schemes have contributed significantly to improve inter-State road and air connectivity, substantially augment power distribution and harmonious regional cooperation. It is agreed by all that the inter-State institutions of medical, dental, technical and paramedical education established and maintained by it in different parts of the region have not only added to the development of human resources but have also enhanced better understanding between different areas within the region.

12.6.4.1.4 To review the role of the NEC in conflict reduction, reference may first be made to the mandate given to it originally under Section 4 of its Act, and the present position. Initially, the Council had a three-fold mandate of (a) considering issues in which two or more States of the region had an interest and to advise the Central Government in the matter; (b) preparation of regional plans and (c) security coordination in the region. Following the amendments, its present charter is:

- (a) To function as a regional planning body;
- (b) To finance and implement projects of benefit to two or more States (except Sikkim);
- (c) To review the pace of development in the region particularly in the context of the regional development plans; and
- (d) To review measures taken by the States to maintain security and public order in the region.

12.6.4.1.5 For the purposes of this Report, the role of the NEC in conflict resolution may be studied in three contexts – NEC as an inter-State coordinating body; NEC as a Regional

Planning body and its role in ensuring maintenance of Public Order. These aspects are briefly considered in the succeeding paragraphs.

12.6.4.1.6 One of the primary functions of the Council is to act as a forum to review the pace of development in the region. The amendment in the mandate of the Council which withdrew the power to discuss 'issues of common interest to two or more States and to advise the Union Government thereon' has already been referred to. The 'withdrawn responsibility' was identical to the mandate given to the Zonal Councils under the States Reorganisation Act, 1956. While the Commission is not recommending the rejuvenation of the Zonal Councils in other regions for the reasons mentioned in Chapter 14, it is clear that in matters like movement of supplies, including food-grains and passengers, local taxation policies and border disputes etc, a coordinating and problem solving forum is still highly relevant for the North Eastern Region. It is, therefore, imperative that the original provisions for inter-State coordination with its direct nexus with conflict resolution is restored.

12.6.4.1.7 The amendments to the NEC Act of 2002, as noted earlier, while somewhat narrowing the scope of the advisory jurisdiction of the Council more explicitly states its responsibility to review maintenance of security and public order. Earlier, this responsibility devolved only indirectly as part of the coordinating and advisory role of the NEC, it nevertheless found adequate reflection in the agenda of the Council. Explicit introduction of this responsibility through the 2002 amendment, creates problems for the DONER, as the 'administrative Ministry' for the NEC. DONER has been assigned no role in the sphere of security in the region. NEC, therefore, has to directly deal with the Ministry of Home Affairs in discharging this responsibility. The larger issue is how to work out the modalities of discharging this responsibility. It is clear that if the ambit of 'internal security reviews' has to extend even a little beyond holding meetings, the NEC secretariat will need to be more actively involved in security coordination issues. To facilitate meaningful reviews, the Council secretariat must involve itself with the emerging developments in the field. Ministry of Home Affairs (MHA) also needs to take a view whether 'security and public order reviews' under the aegis of the NEC offer benefits which cannot be had by the MHA's own reviews. MHA must further consider whether special empowerment of the NEC entailed by this responsibility will result in increased administrative burden on the agencies normally involved in monitoring the law and order scenario in the region. To effectively coordinate or even assist in deliberations on internal security related issues, the Council secretariat would need suitable augmentation. In short, adequate preparatory arrangements are necessary if the renewed mandate of the NEC for internal security reviews is to be meaningfully discharged.

12.6.4.1.8 With intra-regional disparities and uneven distribution of the fruits of development becoming increasingly evident within the North East, the role of regional

planning in anticipating and moderating grievances and ensuring sustainable growth has become more relevant. Factors like a common resource base, comparable agro-climatic systems and similar environment, all make the North East a logical unit of regional planning. It is beyond the scope of this Report to dilate on the conflict prevention benefits of planned development except for noting that this nexus is often neglected to the detriment of deriving optimal benefits from this process. Inter-State projects, particularly in communication and the many regional institutions imparting a variety of professional education, and services like tertiary health care have definitely promoted regional amity and cohesion. It is open to serious doubt, however, whether despite positive contributions of the organisation to the development of a very disadvantaged region of the country, it has been able to live up to its statutory mandate of being a 'regional planning body'. With very similar resource bases and opportunities, the States of the region are increasingly in competition among themselves – a competition with a potential to escalate local conflicts, but which could be canalised on productive lines. Lastly, it needs to be noted that Section 4 of the NEC Act treats the responsibility of regional planning as distinct from holding reviews of development and financing schemes.

12.6.4.1.9 The moot point is whether an adequate policy framework and resources have been provided to the NEC to enable it to prepare regional plans and to guide the member-States towards integrated regional development. A related issue is that of evolving suitable methodologies by the Council to carry out regional planning. Likewise, it needs to be addressed whether the different Ministries of the Union Government with a role in the development of the region have effectively involved NEC in their development initiatives. Devising and improving planning methodologies do not form part of terms of reference of this Commission. As, governance and development are so intertwined in the North East, a possible outline of a scheme to initiate the practice of regional planning may be indicated:

- (a) Regional Plans cannot supplant State plans – such an exercise will be counter-productive. Regional plans must, therefore, be primarily directed (at least to begin with) at reducing disparities and avoiding infructuous inter-State competition. Mechanisms of implementing such plans and the inter se responsibilities of the States, the NEC and the Union Government (including the Planning Commission) will need to be worked out in detail.
- (b) NEC can fulfil its role as a regional planner, in the sense outlined above, if the procedures and methods of formulation of plans are so amended by the Planning Commission that NEC becomes an active participant in all aspects of planning in the region and in the member-States.
- (c) Similarly, some of the 'heads of development' could be transferred out of the State plans and dealt with as part of the regional plan.

- (d) The Union Government will need to work out ways and means of involving NEC with the schemes and programmes of various nodal ministries so that the content and delivery of such programmes adequately reflect the region specific concerns.
- (e) Institutionalising regional planning will entail considerable upgradation and diversification of expertise within the NEC secretariat including appointment of a Security Adviser.
- (f) Regional planning is particularly relevant to ensure that the 'strengths' of the region are properly utilised. These strengths include the relatively comfortable land availability and the vast hydroelectric potential (particularly of Assam and Arunachal Pradesh) with its potential of more than 40000 Mega Watts promising to make the region the 'power supplier to the nation'. Regional planning is equally relevant for removing some major inhibiting factors in the development of the region like prevention of floods, control of soil erosion and large-scale watershed developments etc. In short, certain 'subjects' of planning can be more gainfully taken up at the supra-State or regional level. 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 may be reviewed by the Prime Minister regularly with the Chief Ministers.

12.6.4.2 *DONER*

12.6.4.2.1 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. Despite the formation of this Ministry, the Government of India (Allocation of Business) Rules do not give overall 'nodal responsibility' for the region to DONER – this continues with the Ministry of Home Affairs. The Rules only declare DONER to be the nodal Ministry for the NEC; its other duties are, (i) administration of the 'Non Lapsable Central Pool of Resources' (NLCPR), (ii) development of irrigation, power, and road works financed from central funds, (iii) development of roadways and waterways in the region and (iv) implementation of special economic packages sanctioned for individual States. The concurrent existence of DONER and NEC has posed issues of coordination and duplication of efforts. It also deprives the North Eastern States of the expert guidance of nodal Ministries like Power and Water Resources as these Ministries have often taken the view that insofar as the North East is concerned, their responsibilities are now substantially taken over by DONER. It is also clear that the division of development and other responsibilities between the MHA and DONER is not conducive to long term

growth and well being of the region – the chronic conflict scenario in the region requires that its territorial responsibility must continue to be with the MHA.

12.6.4.2.2 During the visits of the Commission to the North East in January and July, 2007, it was strongly contended by a cross-section of public opinion and most of the State Governments that the existence of DONER, apart from compromising the efficacy of the NEC, has also no added advantage for the development of the region. There was consensus that meaningful monitoring of its development is more effectively achieved from Shillong (the NEC headquarters) than by DONER operating from Delhi. At the same time, it was also argued that the limited technical expertise available locally makes it particularly important that the nodal Ministries in Government of India renew their interest in development of its water and power resources and augmentation of infrastructure – these Ministries appear to have ‘distanced’ themselves from interaction with the North East States after formation of DONER. The responsibilities cast on DONER with regard to various sectors are difficult to discharge unless the Ministry acquires in-house expertise to enable it to systematically monitor the relevant projects and schemes. Similarly, while the NLCPR offers an innovative mechanism to enable development in a situation of limited absorptive capacity, there is no reason to believe that its operation is best carried out by an exclusive agency; on the contrary, it would be both advisable and expedient if the implementation of initiatives financed from this ‘pool’ are steered by the subject matter Ministries.

12.6.4.2.3 After carefully taking into account all relevant factors, the Commission is of the view that continuance of a ‘stand alone’ Ministry with partial responsibility for the region is not in its long term interests. The Commission, therefore, recommends abolition of DONER. The Commission is further of the view that with the measures being recommended in this Report for making the NEC a more effective agency for the over-all growth of the North East through integrated regional planning and better inter-State coordination, some of the responsibilities of DONER like sanctions from the NLCPR and monitoring of special economic packages could be carried out by the NEC (along with the Ministries concerned with the initiatives being financed from the pool).

12.6.4.2.4 The composition of the North Eastern Council as per the North Eastern Council (NEC) Act includes the Governors and Chief Minister of States. After the establishment of DONER, the President under section 3(3) of the NEC Act has nominated the Union Minister in charge of DONER to be the Chairman of the North Eastern Council. In case DONER is abolished, a decision will have to be taken regarding nomination of a Chairman to this high-powered Board. Keeping in view the composition of the NEC, it is suggested that a senior Union Minister or an eminent person familiar with the region may be nominated as a Member of Council, with the rank of a Union Cabinet Minister and consequently as Chairman of the NEC.

12.6.4.3 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’.**
- c. **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.**
- d. **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.**
- e. **Planning Commission should ensure the association of the NEC in the State plan formulation exercise by suitably amending their guidelines.**
- f. **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.**
- g. **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.**
- h. **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.**

12.6.5 Other Regional Institutions

12.6.5.1 There are more than ten institutions of inter-State/regional technical, medical and vocational education run by the NEC and a North Eastern Central Agriculture University with campuses in all States (including Sikkim) except Assam which have, over the years, contributed significantly in upgrading human resources of the region and enhanced inter-State understanding and cooperation. Such institutions have served an important purpose, though they have little direct role in conflict resolution. There are, also regional level public sector units with marketing/promotional roles which were set up to facilitate peace and orderliness through economic development. Some of the important organisations are dealt with below:

NEEPCO or the North Eastern Regional Electrical Projects Corporation is charged with the responsibility of developing the electricity generation potential of the region not only to meet the requirements of the North East but also to sell electricity outside the region – a feasible goal given its very significant hydro-power potential. While the organisation has created an installed capacity of around 150 MW, it has not been able to play the role that the region needs to ensure rapid development of the power sector. Limited generation of power has not only hampered economic growth but also deprived the States of a potentially remunerative revenue source. The Ministry of Power needs to explore the feasibility of establishing a competent Energy Authority for the region to more effectively, speedily and optimally develop its potential and for preparation of a road map for the region. Under the Authority, linked to NEC, NEEPCO itself would have to be strengthened for improving its operational capacity. This proposed Authority should be entrusted with the task of planning and implementing a regional grid linked to the national grid.

NERAMAC or the North Eastern Regional Agricultural Marketing Corporation is a public sector company to promote marketing of agricultural and horticulture produce of the region including the processing of such produce. The Corporation has mainly tried to fulfil its mandate through running processing plants with very limited success. It is imperative that it concentrates on developing markets for the produce of the North East outside the region and facilitate entrepreneurs in setting up processing plants. The Corporation must also work towards reducing inter-State competition within the region by working out a mechanism of developing 'niche products' for every State in the region.

NEHHDC or the North Eastern Handloom and Handicrafts Development Corporation is meant to promote the age-old handloom and handicrafts sector of the region which are

part of its culture and ethos. The decline of this sector has arguably contributed to a feeling of disaffection in the region but the activities of NEHHDC have so far not had the desired outcome of turning around this declining sector. The Ministry of Textiles may take a view about the viability of this organisation and recommend suitable measures for its revival or winding up.

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

NEC may, in association with the promoters, draw up a concrete action plan for the activities of this organisation.

Lastly, the Commission would like to draw attention to some of the regional level institutions which need much greater attention so that their benefits may accrue to the entire region. The North Eastern Hill University (NEHU) was set up in 1975 for nurturing the intellectual development of the entire region. While NEHU has developed some innovative academic programmes, establishment of Universities in each of the Hill States, and two additional Universities in Assam has resulted in diluting the 'academic leadership' role for NEHU. There is a case for developing this institution as a centre for excellence for regional issues in economics, politics, culture, society and environment which transcend inter-State borders. It could also play a major role as a resource centre for good governance and administration for the region. Similarly, the North Eastern Indira Gandhi Regional Institute of Health & Medical Sciences (NEIGRIHMS) Shillong, apart from being commissioned after considerable delay has not yet been able to emerge as the regional 'hub' for tertiary health care – the primary objective which led to its inception – consequently large sections of society in this region are virtually denied access to 'super specialist' treatment.

12.6.5.2 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.**

12.6.6 National Register of Indian Citizens

12.6.6.1 The Group of Ministers on Reforming the National Security System recommended that as illegal migration had assumed serious proportions, registration of citizens and non-citizens should be made mandatory. This should be introduced initially in the border districts or may be in a 20 km border belt and extended to the hinterland progressively. This recommendation was accepted by the Government and immediate steps were taken to launch a pilot project. The pilot project would help to understand and develop the processes for collection and management database of citizens is being implemented in several States. The Pilot Project on MNIC has followed the census approach for collection of particulars of each individual in the pilot areas. Along with the particulars of individuals, photographs and finger biometrics are also being collected of all those who are 18 years of age and above. This would ultimately lead to a credible individual identification system and speed up transactions between the individual and the service provider with greater efficiency. The Multi Purpose National Identity Card (MNIC) will also function as a necessary instrument for e-governance. It will provide a user-friendly interface between the citizen and the government and will function as a deterrent for future illegal immigration. The Citizenship Act, 1955, has been amended and now a specific section on registration of citizens & issuing cards has been included:

Section 14A

- (1) *The Central Government may compulsorily register every citizen of India and issue national identity card to him.*
- (2) *The Central Government may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority.*
- (3) *On and from the date of commencement of the Citizenship (Amendment) Act, 2003, the Registrar General, India, appointed under sub-section (1) of section 3 of the Registration of Births and Deaths Act, 1969 shall act as the National Registration Authority and shall function as the Registrar General of Citizen Registration.*

In addition the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 has been notified in the Government of India Gazette Vide GSR No. 937(E) dated:- 10th December, 2003.

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

this issue with utmost care. The Commission is of the view that the MNIC project should be taken up on a priority basis. The Commission also notes that there are several Union 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 can lend itself to be used as a multi-purpose individual card.

12.6.6.3 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.**

12.6.7 Capacity Building – Miscellaneous Issues

12.6.7.1 There are a number of matters concerning development administration and related aspects which could if properly addressed and resolved minimise future conflicts. Attention may be briefly invited to the following:

- (a) With the primary sector accounting for 55-60 per cent of the income and the secondary sector for 55-60 per cent of the income, it is the country's most backward region industrially largely due to woefully weak infrastructure. In pursuance of the Prime Minister's announcement of 'New Initiatives for the North Eastern Region' at Guwahati in 1996, a High Level Commission was appointed under the Chairmanship of Shri S.P. Shukla, then Member, Planning Commission to identify gaps in infrastructure in the North Eastern region and recommend measures for filling them. The Planning Commission recommended an amount of Rs.1,03,014 crore for bridging the identified gaps – a recommendation that remains unimplemented. This recommendation along with the report of the Task Force of the NEC on Development Initiatives may be taken into account and should form the basis for assessing the requirement of funds for bridging the infrastructural gaps in the North East.
- (b) To promote industrialisation, a comprehensive policy framework needs to be evolved and put in place to promote the region as a preferred investment destination. A major awareness campaign for marketing the strengths of the

region to potential investors as an attractive destination should be launched. For improving the limited entrepreneurial base, a major capacity building exercise for local entrepreneurs should be taken up. As a necessary first step, governments in the region should allow free movement and employment of professional/skilled workers from within the region and outside to provide managerial and technological leadership. The North East Industrial Policy, 1997 should be extended for 10 years after suitable modification. Tourism should be identified as a thrust area for industrial development of the region. Skills upgradation and skill creation will have to be given top priority through promotion of vocational education, setting up of ITIs and polytechnics, and hotel management institutes. Export of services such as medical and health care workers, and education (English teachers in particular) could play an important role.

- (c) There is need to have a systematic approach to road construction in the region. A region specific Transport Development Fund should be set up to which funds from all windows should flow and the fund could be utilised to finance construction of all-important corridors. The study commissioned by the North Eastern Council for preparing a Perspective Transport Plan for Development of North Eastern Region has recommended certain road corridors for providing connectivity to neighbouring countries. The recommended corridors need to be examined critically, priorities taken into account and preparation of feasibility reports undertaken. Road construction and management practices in the region are different from those followed in other parts of the country due to its unique climate, topography, geology and administration. A separate unit for road research, under the Central Road Research Institute, should be established in the region in order to provide technological support to road and bridge construction activities.
- (d) The rate of unemployment in the region is almost double the all-India figure. In the urban sector, male youth unemployment is phenomenally high at over 77 per cent compared to the national average of nearly 40 per cent.⁵³ This calls for the preparation of an action plan for the region for generating employment opportunities which should cover industries and allied sectors. Special emphasis needs to be given to mass capacity building in order to enable the educated unemployed youth to find jobs in the private sector particularly in the service industry sector. For the purpose, special programmes need to be evolved by associating various reputed capacity building institutions throughout the country in the training of the youth of the region to enable them to find

- jobs in the private sector. Special opportunities may have to be provided to trained nurses to meet the huge international demand for nurses. ITIs need to be modernised, and upgraded, and new courses adopted in keeping with the requirement of the times.
- (e) The need to adequately exploit the hydroelectric potential, undertaking large scale flood control and soil conservation measures and development of natural resources has been briefly discussed in the context of strengthening NEC as a regional planning body. These measures will ensure much needed resources to enable sustainable development of the region while increasing the absorptive capacity of the local economies. Royalties received by exploiting the hydroelectric potential and the additional incomes will be possible once such initiatives succeed. These considerations need to be kept in view not only for regional planning purposes but also while formulating major investment projects (central sector or internationally funded) for development of infrastructure and appropriate economic activities in the region.
- (f) While geo-political factors and the imperatives of an increasingly integrated economy dictate that India as a country should engage itself more actively with countries on its east in trade, commerce and finance, reasons of geography present particularly promising opportunities to the States in the North East which abut areas that have begun to enjoy the fruits of regional economic development. Long term economic growth of the region is, therefore, intimately connected with implementation of sound strategies to make the 'look east policy' happen. Synergies of the economies of nations on the east of this region can have a catalysing effect on the economy of the North East if proper preparations are in place and local society is readied to deal with all the implications – economic, social, political, cultural and security, of such transnational engagements. There is need for a concrete agenda in order to achieve the relevant objectives – an agenda which must be prepared by actively associating the State Governments of the region. The recent resumption of trans-border trade between Sikkim and the Tibetan autonomous region of the Peoples' Republic of China, even though small, should offer the right lessons on how to go about this task. Within the Union Government, appropriate apportionment of responsibilities for effectuating the policy is also necessary, with the Ministry of External Affairs and other nodal Ministries playing a mutually complementary role with well defined common objectives.
- (g) While some progress has been achieved in bringing all the States of the region within the rail map of the country, this exercise should be made more

meaningful by providing broadgauge connectivity and early completion of the projects.

- (h) In the absence of institutional finance mechanisms, the bane of money lenders continues. Under-banked areas display a larger deficit of unexploited potential. Much greater efforts are needed to establish bank branches and other credit disbursement outlets through further relaxation and incentivisation in policies of the Reserve Bank and other financial institutions. Similarly, the newly established economic activities require significant degree of risk coverage; while some progress has been made in the expansion of bank branches, the situation remains highly unsatisfactory in the insurance sector.
- (i) Nagaland has a system of village guards for guarding border villages adjoining Myanmar. There are approximately 5,000 village guards who cover Mon and Tuensang districts and Meluri sub-division. They are paid a monthly salary of Rs.500 only and are issued a uniform once in a lifetime and are equipped with a firearm. The institution of village guard is said to have played an important role in protecting villages from militant attacks and providing security to their villages. It is felt that their effectiveness would be enhanced if their monthly remuneration is increased and they are equipped with better weapons.
- (j) Due to lack of higher educational infrastructure in the North East, a very large number of students migrate to other parts of the country for education leading to a drain of both manpower and financial resources. Thus it is estimated that as many as ten thousand students from Nagaland have to go to other parts of the country for their education. This re-emphasises the need for setting up of centres of excellence for professional and higher education in the North East.
- (k) In many of the tribal villages of the North Eastern States, disputes particularly those relating to land are settled by the village Councils under customary laws. 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.
- (l) The system of maintenance of formal land records in the North East is weak and practically absent in tribal areas. This prevents the land-holders from approaching the banks and financial institutions for securing loans as also leading to a large number of land related disputes. It is necessary to evolve a credible system of maintenance of land records.

12.6.7.2 Recommendations

- a. **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.**
- b. **A comprehensive framework needs to be evolved and put in place to promote the region as a preferred investment destination.**
- c. **A Transport Development Fund to finance construction of important road corridors should be set up.**
- d. **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.**
- e. **Rail connectivity should be improved in the region on a priority basis.**
- f. **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.**
- g. **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.**
- h. **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.**

13

OPERATIONAL ARRANGEMENTS FOR CONFLICT MANAGEMENT

13.1 There are several institutions – constitutional, statutory, and executive in addition to institutions in the civil society – who 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.

13.2 Executive and Conflict Management – Police and Executive Magistracy

13.2.1 The Commission in its Fifth Report on “Public Order” has dealt at length with the role of the Police and the Magistracy in maintaining order and preventing breaches of peace and has made extensive recommendations to enhance the effectiveness of the Police and Magistracy for maintaining Public Order. It is proposed to deal here briefly with capacity building in the police and executive magistracy to enable these agencies to be more effective in conflict resolution particularly as they are often the first responders in ‘conflict situations’.

13.2.2 As the Commission has explained in its Sixth Report on ‘Local Governance’, capacity building is as much about stepping up the capacity of individual functionaries as enhancing the capacities of organisations that such functionaries serve. While the two are inter-linked, enhancing individual capacities will not necessarily add to its institutional capacity without concrete steps for achieving both the objectives. The Commission earnestly hopes that its recommendations on Police Reforms will enable the Police to play a major role that goes beyond the normal policing functions of crime prevention and detection and maintenance of public order to a more effective participation in conflict prevention.

13.2.3 Despite considerable improvements and innovations in Police training, a great deal still remains to be done to sensitise police personnel in diagnosing emerging conflicts and devising ‘non-Police’ methods to forestall their exacerbation. In other words, there is need for their training and orientation to be so designed that inculcates in police personnel at all levels a consciousness that resolution of conflicts is a distinct and important element in their charter of responsibilities.

13.2.4 The Executive Magistracy at the cutting edge level has become increasingly isolated from the process of administration of criminal justice. While the District Magistrate may still retain a degree of participation and accountability in the system because of his overall coordinating role, the 'subordinate' Executive Magistrates are left with a restricted role under a few preventive sections of the Code of Criminal Procedure and in accompanying police parties on 'law and order duties'. This is particularly so in the former 'Zamindari areas' where there is little tradition of effective Sub-Divisional level law and order management by both the police and revenue officials. The net result is that both at the induction level or in-service trainings, there is lack of emphasis on the role of the Executive Magistracy in acting as interlocutors in mediating local conflicts, despite the fact that the public interface of Executive Magistrates as revenue officials continues to be active. What is needed, therefore, is encouragement to the Executive Magistrates to be proactive in conflict management, its prevention and regulation while acting as Revenue officers. This would necessitate State Governments devising an innovative institutional approach to conflict resolution i.e. approaches outside the 'Police – Law and Order' paradigm. This aspect is further considered in the context of inducting Panchayats in the conflict management 'loop' in a later section of this Chapter.

13.2.5 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.**

13.3 Judicial Delays and Alternative Dispute Redressal

13.3.1 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.

13.3.2 Administration of justice efficiently, speedily and impartially is possible when it is carried out by those well versed in the laws. The ever burgeoning arrears of judicial cases in courts at all tiers of the judicial hierarchy is one of the key factors for persistence of conflicts in our society. It is beyond the remit of this Commission to go into the details of this chronic bane of judicial delays. The Commission would, however, observe that acute shortage of judicial officers and dilatoriness of some of the procedures governing judicial proceedings are among the basic reasons for tardy resolution of disputes through the judiciary. It is, however, heartening to note that successive Chief Justices of the Supreme Court have endeavoured to tackle the problem of delays through a number of innovations like establishment of fast track courts for certain classes of offences, application of ‘IT techniques’ to monitor the pace of disposals and strengthening the inspection machinery of the High Court to keep a watch on the functioning of the lower courts etc. The Commission hopes that the 13th Finance Commission gives priority to the issue of judicial arrears and considers adequate resource allocation for administration of justice so that upgradation of personnel and infrastructure is possible at a scale commensurate with the magnitude of the problem.

13.3.3 The innovation of Lok Adalats has proved successful only to some extent. Barring cases of settling marital disputes, insurance and accident compensations and claims etc, this method has failed to reduce judicial arrears. Lack of support from sections of the Bar to the Lok Adalats is perhaps a cause for its limited success. Another aspect that deserves to be mentioned is the view consistently taken by the higher judiciary that the specialised quasi judicial tribunals are subject to the supervisory jurisdiction of the High Courts under Article 227 of the Constitution. This approach has stymied a major initiative of administering justice under specialised legislations that was initiated in a big way in the 1970s. Paradoxically, this judicial interpretation has adversely affected dispute resolution in many areas of our economy and has contributed enormously to the arrears of cases in the Supreme Court and the High Courts.

13.3.4 Recommendations

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

- b. 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.**
- c. 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.**

13.4 Civil Society and Conflict Resolution

13.4.1 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.

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

13.4.3 'Track II' initiatives have also a great potential as 'ice breakers' in major conflict situations. While the techniques of building bridges with the affected population are time tested, there has, of late, been an attempt to supplant informal mediators with official interlocutors in difficult conflict situations. There can be no hard and fast rules about when to involve NGOs or invoke the good offices of Track II good samaritans; still, there is a need to have general policy guidelines in the matter. This is specially relevant in case of NGOs as there have been instances where there were conflicting signals about involving specific organisations in a given conflict situation.

13.4.4 There is need to draw up a suitable policy framework for involving civil society organisations and other non-government sources to ensure that they are involved in a sustained and systematic manner, when required, rather than in an ad hoc, knee-jerk way when there is a crisis with little scope or time for planning their meaningful involvement.

The need to involve Panchayati Raj institutions in prevention and resolution of local conflicts needs to be strongly encouraged because there is enormous capacity in these bodies to supplement the time tested roles of the police and the executive magistracy.

13.4.5 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 ‘non-police’ 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

14.1 Introduction

14.1.1 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. Their role in this connection has been examined in detail by the Commission in its Fifth Report on 'Public Order' as well as in Chapter 13 of the present Report. Similarly, the role of democratic institutions of local self governments, including in the rural areas, has been discussed in the Commission's Sixth Report on "Local Governance". In this Chapter, focus will be on those major institutions which are positioned because of their assigned role to either address contentious issues or through their intermediation, discussions and deliberations prevent precipitation of conflicts.

14.2 Conflict Resolution and the Constitution of India

14.2.1 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. One illustration is the consensus arrived at on the contentious issue of "Official Language of the Union" by retaining English along with Hindi (Article 343), conceding the preeminence of regional languages in their areas of influence (Article 345) while protecting the interests of other languages in such regions (Article 347). The process of working out such compromises is adequately brought out in the Constituent Assembly debates on languages (Vol IX pp - 1377-1515). Similarly, on issues like Inter-State trade and commerce, taxing powers of the Union and the States, freedom of religion and citizenship etc, debates in the Assembly and backroom deliberations of the Drafting Committee provide ample evidence of how conflicts were avoided and the process of 'give and take' resulted in durable solutions to problems that appeared to be insoluble. 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 inter-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 – Article 350B which provides for a special officer to safeguard the interests of linguistic minorities, and Articles 338 and 338A which provide for Commissions to promote and protect the interests of Scheduled Castes and Scheduled Tribes respectively. Such provisions seek to narrow the scope for grievances escalating into conflicts.

14.2.2 The actual working of various constitutional institutions like the Election Commission of India and the Finance Commission has demonstrated their important role

in providing level playing fields for a healthy, functioning democracy and in promoting federal-fiscal regimes. These constitutional bodies have rendered signal service in maintaining unity within a highly diversified and differentiated polity. It is the endeavour of the Commission to suggest measures to suitably strengthen other institutions and practices to improve the process of building consensus on matters which have the potential to produce rifts within society.

14.3 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;

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

14.3.1 Institutions under the Constitution

14.3.1.1 *The Inter-State Council.*

14.3.1.1.1 Article 263 of the Constitution which has already been briefly referred to, is quoted below in extenso:

“263. Provisions with respect to an Inter-State Council – If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of –

- (a) inquiring into and advising upon disputes which may have arisen between States;*
- (b) investigating and discussing subjects in which some or all of the States, or the Union or one or more of the States, have a common interest; or*
- (c) making recommendations upon any such subject and, in particular, recommendations for better coordination of policy and action with respect to the subject, it shall be lawful for the President by order to establish such a Council, and define the nature of the duties to be performed by it and its organisation and procedure.”*

14.3.1.1.2 The opening words of Article 263, “If at any time ...” make it clear that the Constitution envisages this body to be constituted from time to time and not necessarily

as a continuing, permanent arrangement. It is also clear that the functions to be performed by the Council, when in existence, are two-fold viz (i) inquiring and advising on inter-State disputes; and (ii) investigation, discussion on subjects of interest to all or some of the States or the Union with special reference to subjects involving 'coordination of policy or action'. It may be noted that the role of the Council in cases of disputes is confined to 'inquiry and advice.'

14.3.1.1.3 For a long time, Article 263 was not invoked. The First Administrative Reforms Commission had recommended that the Inter-State Council may be constituted, in the first instance, 'on an experimental basis' for a period of two years. This recommendation was not implemented. The Commission on Union-State relations (referred hereinafter as the Sarkaria Commission) further considered the matter and recommended that the Inter-State Council be established to perform functions under clauses (b) and (c) of Article 263 i.e. investigation, discussion and recommendations on matters of interest to the Union and States, particularly those involving coordination of policy and action. In other words, the Sarkaria Commission did not recommend the role of conflict resolution for the Council envisaged under Article 263 (a). While that Commission did not assign any specific reason for this omission, it noted that clause (a) did not confer any power of adjudication to the Council. In any case, the recommendation was accepted and the Inter-State Council was constituted on 28th May, 1990, with the mandate recommended by the Sarkaria Commission.

14.3.1.1.4 It may be noted that just before the Inter-State Council was constituted, the Supreme Court, while disposing of a tax dispute in *Dabur India Ltd vs. State of Uttar Pradesh* 1990 (4) SCC 113 had suggested that the dispute arising due to divergence of interests of the Union and States with regard to the power to levy excise duty on certain items under the Central Excise and Salt Act, 1944 and the Medicinal and Toilet Preparations (Additional Excise Duty) Act, 1955 may be referred to the "Council to be constituted soon under Article 263 of the Constitution". As the Council constituted soon thereafter was not empowered in 'inquiring and advising upon disputes', the suggestion was not acted upon. It is however clear that the apex court expected that an Inter-State Council, once established, may be utilised inter alia as a forum to reconcile competing revenue interests of the Union and States.

14.3.1.1.5 The present composition of the Inter-State Council is;

The Prime Minister – Chairperson

Chief Ministers of all States/UTs – (Governors of States where Article 356 is in operation)

Administrators of UTs not having a Legislative Assembly;

Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister. (Other Ministers of the Union Government may be invited as permanent invitees, if so nominated by the Chairman of the Council, or as and when any item relating to a subject under their charge is to be discussed).

14.3.1.1.6 The Council subsequently decided to have a smaller 'Standing Committee' to consider in detail, subjects referred to it so that the 'full Council' would not need to examine each and every item of its agenda. This Committee consists of some Union Ministers and selected Chief Ministers and is presided over by the Home Minister. The Council has met ten times since its inception, or less than once a year and some of the important recommendations of the Inter-State Council together with the decision of the Government thereon in parentheses are as under:

- g. Transfer of 'residuary powers' from the Union to the Concurrent List (Not Accepted).*
- h. Prior consultation with States, except in cases of urgency, for legislations under List-III. (Accepted in principle).*
- i. Appropriate safeguards in the Commissions of Inquiry Act, 1952 to avoid possible misuse by the Central Government in cases relating to the conduct of Ministers of the State Governments. (Under consideration).*
- j. Enactment of a central legislation to allow urban local bodies to tax Union Government properties of industrial and commercial nature. (Under consideration).*
- k. Articles 200 and 201 of the Constitution should be amended laying down time limits of 1 month for Governor and 4 months for the President respectively for assenting to Bills, failing which the Bill would be deemed to have been passed. (Not accepted).*
- l. Retaining Article 365 (dealing with powers of the Union to issue directions to states in matters following within its executive powers) subject to its sparing application. (Accepted).*
- m. Obligatory consultations with State Chief Ministers before appointing Governors. (Not accepted).*
- n. To permit second term for Governors subject to a bar on their not returning to active politics except seeking election as President or Vice President. (Not accepted).*
- o. While choosing a Chief Minister, the leader of the party having an absolute majority in the Assembly should automatically be asked to become the Chief*

Minister and if there is no such party, the Governor must select a Chief Minister from among the parties or groups in the following order of preference:

- *An alliance of parties that was formed prior to the elections.*
 - *The largest single party staking its claim with the support of others, including “independents”.*
 - *A post-electoral coalition of parties, with the partners joining government.*
 - *A post-electoral alliance of parties with some of the alliance-parties joining the government and the remaining parties including “independents” supporting the government from outside. (Accepted).*
- p. *Article 356 may be invoked only sparingly. Safeguards contained in the Bommai Judgement, which have already become the law of the land, are adequate to prevent misuse of that article. (Agreed in principle, but no amendment in the Constitution was deemed necessary in view of Article 141).*
- q. *Interchange of officers between the Union and State Armed Police Forces provided it does not involve large-scale transfers. (Accepted)*
- r. *The Council approved an alternative scheme of devolution of share in Central Taxes to States. {The Constitution (Eightieth) Amendment Act, 2000 enacted in pursuance of this recommendation}.*
- s. *Early revision of the royalty rates on coal. (Implemented).*
- t. *Increasing representation of States on the Board of Directors of NABARD. (Accepted).*

14.3.1.1.7 A perusal of the above list indicates that most of the discussions in the ten meetings of the Inter-State Council, since it was set up, were confined to discussing and reviewing the recommendations of the Sarkaria Commission. This Commission, after careful consideration, is of the view that the Inter-State Council must be given the ‘complete’ role provided to it under the Constitution i.e. both conflict resolution and for better coordination of policy and action in matters of interest to the Union and States. For resolution of conflicts, whether inter-State or Union-State, the mechanism of ‘inquiring and advising’, even without having the power to adjudicate, envisaged by clause (a) of Article 263 can be an effective method to resolve disputes as has been demonstrated by the conspicuous success of the Committee of State Finance Ministers (Ashim Das Gupta Committee) constituted by the National Development Council in achieving consensus on the once highly contentious issue of Value Added Tax (VAT).

14.3.1.1.8 The Sarkaria Commission had also hoped that the meetings of the Council would obviate the need for frequent ad hoc conferences of Chief Ministers to discuss policy issues or review important programmes. This hope has not been realised as is evident from the fact that in 2006 alone at least nine meetings of Chief Ministers were held to discuss various issues. In other words, it has not been found feasible to use the Inter-State Council as a forum to review matters of general concern and importance to the Union and the States alike.

14.3.1.1.9 Keeping in view the provisions of Article 263 and the above discussion, the Commission is of the view that the Inter-State Council should be constituted as and when the need in that behalf arises and that the Council need not exist in perpetuity. The Commission is further of the view that an Inter-State Council could best serve its purpose as a pro tem body with a flexible composition suited to its terms of reference. The present omnibus Council may be dissolved, if need be after deciding on the basic common principles to be followed by the Government of India in the formation of ad-hoc councils. It also follows that there is no bar or other impediment for constituting more than one Council at a given time – with different composition for each – to consider different disputes or other matters of concern to different States and the Union. This approach would also facilitate meaningful, result-oriented discussions by parties directly interested in an item and facilitate time-bound solutions.

14.3.1.1.10 Recommendations

- a. 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.**
- b. 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.**
- c. The composition of an Inter-State Council may be flexible to suit the exigencies of the matter referred to it under Article 263.**
- d. 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.**

14.3.1.2 *The National Commission for Scheduled Castes and The National Commission for Scheduled Tribes*

14.3.1.2.1 These Commissions established respectively under Articles 338 and 338 A of the Constitution can be discussed together. In fact, before the passage of the Eighty-ninth Amendment to the Constitution, there was a composite Commission for Scheduled Castes and tribes established in 1990 following the Sixty-fifth Amendment to the Constitution. Another reason for considering these bodies together is the fact that the constitutional provisions concerning the two bodies are mutatis mutandis the same. The broad areas of responsibility of the two bodies are:

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

14.3.1.2.2 The Reports of the Commissions are to be presented annually to Parliament alongwith a statement of action proposed to be taken on the recommendations contained therein. These reports are ordinarily binding on government; where government is unable to accept any recommendation of the Commissions, it is necessary to place reasons for non acceptance before Parliament. The Commissions enjoy powers of a civil court in the discharge of their functions. These powers include summoning of witnesses and documents, recording evidence and issuing of summons for extra-mural inquiries.

14.3.1.2.3 Parliamentary debates on the Sixty-fifth Constitutional Amendment reveals that these Commissions were intended to function as watch-dogs for assessing the status and quality of implementation of the safeguards provided for the concerned sections. These Commissions are thus meant to adequately address grievances and to recommend measures that might minimise grievances. In other words, the underlying purpose of these bodies is to prevent conflicts by removing their root cause i.e. non-implementation of safeguards.

14.3.1.2.4 So far no independent assessment of the functioning of these bodies has been undertaken. Apparently, their Reports have also not received much attention. A perusal of these Reports, however, suggests that considerable time and effort is taken in addressing individual complaints and grievances of government and public sector employees belonging to the relevant categories. While reviewing the safeguards provided for SC/ST, including in personnel policies, is an important task of these Commissions, it is necessary that a distinction is drawn between group grievances and individual claims relating to promotions, transfers, postings etc. It is also evident that the secretariats of the two Commissions need to build suitable capacity for monitoring and evaluation of programmes, including monitoring of 'action research', carried out by other institutions on the socio-economic status of SC/ST. The administrative ministries responsible for these Commissions must carefully consider, in consultation with the Commissions, ways and means of enabling them to effectively discharge their constitutional responsibilities.

14.3.1.2.5 Recommendations

- a. **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.**
- b. **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.**

14.3.2 Statutory Bodies

14.3.2.1 *The Zonal Councils*

14.3.2.1.1 The need for establishing inter-State Councils on a 'zonal basis' was felt primarily to deal with problems arising out of the reorganisation of States on linguistic basis in 1956. Sections 15 to 22 of the States Reorganisation Act, 1956 (Act No 37 of 1956) deal with various aspects of the functioning of the four (North, South, East and West) Zones. These Councils consist of a Union Minister nominated by the President who acts as the Chairman and the Chief Ministers of States in the region along with two Ministers each

from the member-States, nominated by the Governor as members. The Council is aided by a number of 'Advisers' i.e Chief Secretary and one Officer of each of the member-States and an official nominated by the Planning Commission. The Act requires that regular Council Secretariats funded by the Union Government be located in one of the States of the region with Chief Secretaries of the States acting as its Secretary on rotational basis. Sub-section (2) of Section 21 of the Act prescribes the following duties for the Council:

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

14.3.2.1.2 In the years immediately following the States' reorganisation, the Zonal Councils were very active and helped resolve many issues. The Sarkaria Commission calculated that there were 33 meetings of the Councils between 1959 and 1963.

14.3.2.1.3 Over time however, the Zonal Councils met only occasionally. The Secretariats have ceased to be operational and the practice of State Chief Secretaries acting as Secretaries of the Councils on rotating basis, too, has hardly ever been acted upon. These bodies have become a peripheral responsibility of the Ministry of Home Affairs through the Inter-State Council Secretariat. There is no doubt that the Zonal Councils played a significant role in ironing out problems arising out of States' reorganisation, but once these problems were settled, there was a definite decline of interest on the part of the member-States. The recent creation of the States of Uttarakhand, Jharkhand and Chhattisgarh through bifurcating the States of Uttar Pradesh, Bihar and Madhya Pradesh respectively has not resulted in reactivation of the appropriate Zonal Councils and necessary coordination has been carried out bilaterally by the State Governments concerned. In short, the Zonal Councils are not only dormant, but there appears to be a lack of interest in their reactivation.

14.3.2.1.4 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.**

14.3.2.2 *National Human Rights Commission*

14.3.2.2.1 This body was created in 1994 under the Protection of Human Rights Act 1993 and is presided over by a former Chief Justice of India with four members out of whom two have to be former Judges of the Supreme Court. The Chairmen of the National Commissions for Scheduled Castes, Scheduled Tribes, Minorities and Backward Classes are ex-officio members when a matter ordinarily within the jurisdiction of any of these bodies is taken up by the NHRC. The scope of the term “human rights” as defined under Section 2(d) of the Act is wider than the fundamental rights guaranteed in the Constitution as they include “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India”. The Commission can take suo motu cognizance of an alleged human rights violation in addition to receiving complaints by or on behalf of the alleged victims. While NHRC ordinarily relies on investigation reports from State police authorities, it has the powers and the requisite infrastructure to undertake such investigations on its own. The Act also envisages State level Human Rights Commissions on the same lines as the NHRC with former High Court Chief Justices heading those bodies.

14.3.2.2.2 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. The Commission has been proactive in supporting the cause of victims of human rights violations in a variety of situations – its successfully moving the Supreme Court for transferring the ‘Best Bakery Case’ out of the State of Gujarat is just one among many instances in this connection.

14.3.2.2.3 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.

14.3.2.3 *National Minorities Commission and National Commission for Backward Classes*

14.3.2.3.1 These bodies function like the National Commissions for Scheduled Castes/Tribes with the difference that they derive their mandate from parliamentary legislations rather than constitutional provisions. Observations made with reference to the ‘Constitutional Commissions’ also apply in their cases. The Backward Classes Commission has so far not been able to optimally commence its assigned duties. Establishment of bodies like the National Commission on Minorities’ Education has taken away a part of the jurisdiction of the Minorities Commission – it appears that the older Commission had made a significant

contribution to address education related concerns of religious minorities. The desirability of multiplying bodies concerned with issues relating to the same sections of society needs to be seriously reviewed.

14.3.3 Institutions Established under Executive Orders

14.3.3.1 *The National Integration Council (NIC)*

14.3.3.1.1 The NIC owes its establishment to the initiative taken by the then Prime Minister, Pt. Jawaharlal Nehru, who in the wake of major communal conflagrations in Jabalpur and certain other places in Central India, convened a National Integration Conference in September, 1961 to find ways and means to combat the evils of communalism, casteism, regionalism, linguistic chauvinism and narrow-mindedness etc. The underlying idea was to build a consensus to rid the country of communal violence and other divisive evils through formulation of cross-party consensus and identifying suitable policy and other initiatives.

14.3.3.1.2 One of the important conclusions emerging from the Conference was the setting up of a National Integration Council (NIC) to review all matters pertaining to national integration and to make recommendations thereon. The NIC was constituted accordingly and held its first meeting on 2nd and 3rd June 1962.⁵⁵ It represented a wide spectrum of political opinion and membership, including eminent Gandhians, veteran journalists and eminent academics. In the wake of the Chinese aggression, the focus was primarily on building national solidarity. The spontaneous response of all sections of Indian society to external threats gave rise to hopes of a well knit polity and society. Escalation of communal violence in West Bengal, Bihar and Orissa and subsequently in parts of Gujarat caused much more attention to the issue of communalism relegating to the background other, equally important but somewhat less urgent issues of other fissiparous tendencies. The Council's concern during the 1960s and 70s with this issue was reflected in its composition. While it is difficult to categorically assess the contribution and effectiveness of the NIC, it is generally agreed that it engendered considerable sensitisation about the baneful and disruptive consequences of communalism. Specific policy measures like broad-basing recruitments to central paramilitary forces, issue of guidelines to deal strictly with outbreaks of communal violence and insertion of stricter penal provisions like Sections 153A (Promoting enmity between different groups on grounds of religion etc) and 153B (Imputations, assertions prejudicial to national integration) of the Indian Penal Code were the result inter alia of consensus arrived at in the Council. Thus while the Council has provided a useful forum for airing of grievances of sections of society

and led to a better understanding of the problem of communal violence, its conflict resolution role has remained restricted.

14.3.3.1.3 The Council was last reconstituted in February 2005, after a gap of fifteen years, with the Prime Minister as its Chairperson and with 141 members. They include Union Ministers of Cabinet rank, Chief Ministers of States and UTs with Legislatures, leaders of national and regional political parties, chairpersons of National Commissions, eminent media persons, representatives of business and labour, eminent public figures and women's representatives. The first meeting of the reconstituted NIC was held in New Delhi on 31st August, 2005. The Agenda set out for deliberations was 'Communal Harmony through Governmental Harmony, Education and Media'. The Prime Minister, while inaugurating the proceedings, identified 'communalism, casteism, regionalism and linguism' as the banes of national integration – the evils that were similarly identified by the Conference of 1961 that led to the birth of the NIC.⁵⁶ From the summary record of the discussions it appears that while there was a desire to extend the scope of deliberations to issues like engendering of core national values and visualising the impact of rapid economic growth on inter-regional disparities and unity of the country, the emphasis continued to be on communalism and communal violence.

14.3.3.1.4 Communalism is a major divisive factor and continues to define a major segment of identity politics in the country. Assertions of other group identities, too, are on the rise. These have equally important implications on national integration and, therefore, need much greater attention. With an increase in the number of agencies (Union and State level Commissions and Corporations with 'earmarked clientele' like SCs, STs, OBCs and minorities etc) catering to 'group specific' concerns and grievances there is a definite need to have a forum to look at the holistic picture and attempt to harmonise the legitimate concerns of promoting the interests of vulnerable sections and minorities and the equally pressing need to foster a supervening national identity. These goals are not mutually exclusive or antagonistic but their concurrent pursuit requires considerable effort. NIC offers an appropriate forum where this important nation-building goal could be pursued.

14.3.3.1.5 While a body with the varied and all encompassing mandate of the NIC will necessarily have a large membership, it is desirable that there is a normative basis for its composition. An exercise may therefore be undertaken to identify areas which need representation in the NIC and to lay down an indicative 'catchment area' from which its membership could be drawn. This will obviate criticism or dissatisfaction about non-representation of specific interest groups.

⁵⁶<http://pmindia.nic.in/speech/content.asp?id=174>

14.3.3.1.6 The emphasis laid by the Sarkaria Commission on discussions of specific agenda items instead of delivery of general addresses by the NDC is also relevant to this body. Important issues of national and societal cohesion admit of a diversity of opinions and perceptions. Issues of national cohesion and harmony considered by the NIC are best discussed through structured exchange of views. Development of mutual understanding and cooperation is particularly necessary for maintaining collegiality and tolerance in a body with the varied composition of the NIC. This objective will be considerably facilitated if much of the substantive business of the NIC is carried out through smaller, subject matter specific committees where more in-depth consideration may precede broad discussions in the 'full' NIC. Similarly, deliberations in the NIC are not an end in themselves – it is necessary that the conclusion worked out in its forum is utilised for wider consensus. Placing of NIC discussion and their conclusion in Parliament would seem to be a step in that direction.

14.3.3.1.7 Issues concerning the unity and emotional integrity of the nation also need to be gone into by academics from multi-disciplinary angles – this approach enables understanding and dissecting the multiple layers of factors inhibiting the emergence of a socially integrated nation despite the mosaic of diversities. Valuable contributions have been made towards this direction by historians, political scientists, sociologists and economists. These efforts require much greater focus through a common platform so that the intellectual underpinnings of the task could be properly understood and translated into sound policies and processes. There is, therefore, need to create such a platform either in an existing institution or setting up a new autonomous organisation to carry out research and to function as a 'think tank' on matters conducive to promotion of national integration. The Indian Council of Social Science Research – ICSSR – and the Planning Commission may take a lead in the matter.

14.3.3.1.8 Recommendations

- a. The mandate of the National Integration Council (NIC) requires consideration of all factors impinging on national cohesion, and not only communalism or communal violence. The agenda of the NIC needs to be diversified.**
- b. Substantive issues before the Council may be considered in detail in smaller, subject-matter specific committees.**
- c. The composition of the NIC may be rationalised to facilitate consideration of a wider variety of issues. Broad guidelines may be framed by the Ministry**

of Home Affairs for identifying interest groups and specialty streams that need to be represented on the NIC.

- d. The Council may meet at least once a year, while the sub-committees could meet as often as required to complete the assigned task in a time-bound manner.**
- e. Summary proceedings of the NIC may be laid before both Houses of Parliament.**
- f. The Indian Council of Social Science Research (ICSSR) and the Planning Commission may take a lead in the matter of establishing a multi-disciplinary research and policy analysis platform to discuss issues concerning national integration either in an existing institution or by promoting a new institution or as a network.**

14.3.3.2 *National Development Council (NDC)*

14.3.3.2.1 Established in 1952 as an apex body (NDC) under the chairmanship of the Prime Minister with State Chief Ministers and important Union Ministers as members, it was originally intended to ‘mobilise the nation in support of the five-year plans and to promote economic policies for balanced and rapid growth’. The mandate subsequently became somewhat more structured with the NDC having the authority to accord approval to the Five Year Plans and important development initiatives (mainly, new schemes). The NDC has often succeeded in building consensus on controversial policy issues through its committees and in earlier years, the discussions in the NDC itself were substantive. The limitations of unstructured discussions and “transaction of business” mainly through prepared speeches noted in the case of the NIC and Inter-State Council apply also to the NDC. The NDC could play a more effective role in building consensus to avoid serious differences of opinion on issues like economic development including allocation of resources and facilitating balanced, sustainable development while addressing concerns like regional disparities.

14.3.3.3 *Central Advisory Board on Education (CABE)*

14.3.3.3.1 While there are many ‘advisory’ bodies concerning diverse matters of mutual concern to the Union and the State Governments, CABE is unique in this group not only because it is the oldest body of its kind having been set up as early as 1921 - but also because it has played a major role in resolving serious conflicts and building national consensus on issues

concerning education particularly for the period before 1976 when 'education' fell within the exclusive domain of the States. Highly complex and emotive issues like the 'Three Language Formula', 'National Curriculum Framework' and even National Policy on Education were sorted out through the instrumentality of CAGE. Unfortunately, this important consensus building forum was allowed to lie dormant for most of the 1990s; its revival from 2004 is a happy augury. It is important that to ascertain responses of the States to major policy initiatives in education and allied fields CAGE resumes its earlier pro active role.

14.3.3.3.2 Recommendation

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

14.4 Other Institutional Innovations

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

14.4.1.1 Establishing State level Integration Councils to discuss State-specific conflict situations, including potential conflicts, and providing a mechanism of networking such Councils with the NIC. This networking may be achieved through bringing some of the important issues discussed in the State level body to the NIC (with recommendations made thereon) for its advice and for a national consensus on such issues wherever required. Similarly, while formulating guidelines for deciding the composition of the NIC, the Union Government may provide for some representation to the State level bodies. Similar bodies may also be visualised for the District level with linkages to the State Integration Councils. It may be added that in some of the chronically strife prone Districts a system of 'Peace Committee' was in vogue (District level Peace Committee have been dealt with in Chapter 9 of this Report). Such Committees had proved very effective in quickly bringing parties to conflicts to the negotiating table. The system needs to be revived and made less ad hoc by making it a normal 'peace time' activity as well.

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

approaches have already proved useful through ‘Track-II’ efforts of eminent citizens in sectarian conflicts, particularly in sorting out problems like routes of religious processions, timing of religious ceremonies and issues concerning major educational institutions. There is a case for institutionalising this approach through constituting ‘Peace Committees’ consisting of eminent citizens drawn from various walks of life, enjoying widespread public trust and confidence for their impartiality and wisdom. Such Committees could be in the form of standing arrangements put in place by the Union and the State Governments with adequate orientation of their responsibilities and functions so that during a crisis, precious time is not lost in working out procedural and other modalities. These bodies may be activated at short notice as and when the situation warrants. Moral authority instead of legal enforceability would be the basis of implementation of their ‘advisories’.

Box 14.1: Dispute Resolution at Village Level

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

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

Source: The Hindu, Business Line, 2nd November, 2007.

14.4.2 Recommendations

- 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 a 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.

SUMMARY OF RECOMMENDATIONS

1. (Para 3.8) Left Extremism

- a. **A long-term (10-year) and short-term (5-year) Programme of Action based on the '14-Point Strategy' announced in Parliament may be formulated by the Union Government in consultation with the concerned State Governments to identify State specific action to be taken to implement the 'Strategy'.**
- b. **While agreeing with the spirit of the '14-Point Strategy', negotiations with the extremist outfits should be an important mode of conflict resolution.**
- c. **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. It must be recognised that a major reason for such practices falling in disuse in 'disturbed areas' is the apprehension of senior functionaries about their personal safety while on tour. It is advisable that the need to provide suitable security to the senior administrative and technical officers while on tour, is taken into account in working out requirements for security forces in areas affected by serious violence.**
- d. **There is need to enhance the capacity of the security forces to act effectively and firmly, but in conformity with constitutional bounds; it is necessary that standard operational procedures and protocols are laid down in specific terms and detail.**
- e. **Training and reorientation including sensitising the police and paramilitary personnel to the root causes of the disturbances that they are seeking to curb, are necessary.**

- f. Formation of trained special task forces on the pattern of the Greyhounds in Andhra Pradesh should be an important element of the strategy to build capacity in the police machinery for tackling left extremism.**
- g. Establishing and strengthening local level police stations, adequately staffed by local recruits, in the extremist affected regions should be an important component of the policing strategy for tackling left extremism.**
- h. For effective implementation of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights) Act, 2006, multi-disciplinary Oversight Committees may be constituted to ensure that the implementation of this ameliorative legislation does not adversely affect the local ecosystems.**
- i. Special efforts are needed 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.**
- j. To facilitate locally relevant development adequate flexibility may be provided to implementing agencies in the affected areas as regards centrally sponsored and other schemes, so as to enable them to introduce suitable changes based on local requirements.**
- k. 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) and in implementing these provisions may be monitored and incentivised by the Union Ministry of Panchayati Raj.**
- l. The nexus between illegal mining/forest contractors and transporters and extremists which provides the financial support for the extremist movement needs to be broken. To achieve this, special anti-extortion and anti-money laundering cell should be established by the State police/State Government.**
- m. For implementing large infrastructure projects, particularly road networks, that are strongly opposed by the extremists or are used to extort funds from local contractors, the use of specialised Government agencies like the Border Roads Organisation in place of contractors may be considered as a temporary measure.**

2. (Para 4.9) Land Related Issues

- a. The following steps may be taken to alleviate the distress in the agrarian sector:**
 - i. Provide renewed impetus to land reform measures like redistribution of surplus land, vesting title in tenants and carrying forward consolidation of land holdings etc for maintaining and promoting the sustainability of agriculture.**
 - ii. 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.**
 - iii. Redesign poverty alleviation programmes to make them more relevant to the needs of small and marginal farmers.**
 - iv. Step up public investment in order to expand non-farm and off farm activities to provide alternative livelihood opportunities for the poorer farmers within rural areas.**
 - v. Introduce measures to encourage formation of 'Self Help Groups' (SHGs) to improve access to credit and marketing and empower the disadvantaged.**
 - vi. Diversify risk coverage measures such as weather insurance schemes and price support mechanisms.**
- b. 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.**
- c. There is need to amend the present approach to SEZs on the following lines:**
 - i. In establishing SEZs, use of prime agricultural land should be avoided.**

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

3. (Para 5.5) Water Related Issues

- a. **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.**
- b. **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.**

- c. **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.**
- d. **The Chairmen of all the River Basin Organisations, as and when formed, should be made members of the National Water Resources Council.**
- e. **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.**
- f. **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 as suggested in para 5.4.3 above.**

4. (Para 6.11) Issues Related to Scheduled Castes

- a. **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.**
- b. **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.**
- c. **There is need to place a positive duty on public authorities for promotion of social and communal harmony and prevention of discrimination against the Scheduled Castes and Scheduled Tribes.**
- d. **There is need for engaging independent agencies to carry out field surveys to identify cases of social discrimination.**
- e. **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'.

- f. 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.
- g. 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.
- h. The Administration should focus on the rehabilitation of the victims and provide all required support to them including counselling.
- i. 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.
- j. A statutory duty may be cast on all public authorities to promote equality and actively check social discrimination.
- k. 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.
- l. 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.
- m. The local governments – municipalities and panchayats – should be actively involved in various programmes concerned with effective enforcement of various social legislations.

- n. **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.**

5. (Para 7.10) Issues Related to Scheduled Tribes

- a. **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.**
- b. **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.**
- c. **There should be a complete overhaul and systematic re-organisation of existing land records with free access to information about land holdings.**
- d. **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.**
- e. **Mining laws applicable to Scheduled Tribal Areas should be in conformity with the principles of the Fifth and Sixth Schedules of the Constitution.**

- f. 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.**
- g. 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.**
- h. 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.**
- i. 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.**

6. (Para 8.6) Issues Related to Other Backward Classes

- a. 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.**
- b. 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.**

7. (Para 9.6) Religious Conflicts

- a. Community policing should be encouraged. The principles laid down by the Commission in paragraph 5.15.5 of its Report on ‘Public Order’ should be followed.**
- b. 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.

- c. 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.**
- d. 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:
 - i. Enhanced punishments for communal offences.**
 - ii. Setting up of special courts for expeditious trial of cases related to communal violence.**
 - iii. Giving powers of remand to Executive Magistrates in cases of communal offences.**
 - iv. Prescription of norms of relief and rehabilitation.****

Further, as recommended in para 6.1.7.9 of the Commission's Report on 'Public Order', this should be accompanied by the deletion of the provisions contained in Section 196 of CrPC requiring prior sanction of the Union or State Government or the District Magistrate for initiating prosecution for offences under Sections 153A, 153B, 295A and sub-sections (1)(c), (2) and (3) of Section 505 of IPC.

- e. For providing relief and rehabilitation to victims of communal violence, the framework provided under the Disaster Management Act, 2005 could be effectively used.**

8. (Para 10.3) Politics and Conflicts

- a. 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.

- b. 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.**

9. (Para 11.6) Regional Disparities

- a. 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.**
- b. Union and State Governments should adopt a formula for Block-wise devolution of funds targeted at more backward areas.**
- c. 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.**
- d. A system of rewarding States (including developed States) achieving significant reduction in intra-State disparities should be introduced.**
- e. 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.**
- f. 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.**

10. (Para 12.6.1.4) Capacity Building in Administration in the North East

- 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.**

11. (Para 12.6.2.4) Capacity Building in Police in the North East

- 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.**

12. (Para 12.6.3.1.7) Capacity Building in Local Governance Institutions in the North East – Sixth Schedule Councils

- 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.
- e. 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.

13. (Para 12.6.3.2.4) Capacity Building in Local Governance Institutions – Village Level Self-governance in the Tribal North East

- a. Measures should be taken to ensure that all the Autonomous Councils pass suitable legislation for establishing of village level bodies with well defined powers and a transparent system of allocation of resources.

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

14. (Para 12.6.3.4.3) Capacity Building in Local Governance Institutions in the North East – Tribe Specific Councils in Assam and other Issues

- a. Government of Assam may apportion functions between the tribe specific Councils/village Councils and the Panchayati Raj Institutions in a manner that schemes involving individual tribal beneficiaries may be assigned to the ‘Tribe Specific Councils’ while area development schemes are left to the latter.**
- b. State Governments may initiate a system of meeting at least the establishment costs of the Councils from sources outside the tribal sub plan and build in these requirements in their projections to the next Finance Commission.**

- c. **State Governments may take steps to identify innovative initiatives which could be entrusted to the Tribe Specific Councils without affecting area development concerns.**
- d. **Suitable guidelines may be prepared for preparation of District and sub-District plans in the relevant areas through joint efforts of the Tribe Specific Councils and the Panchayati Raj Institutions.**
- e. **While continuous and vigorous measures are needed to bring about a consensus between various sections of society in Manipur about revival of the Hill Districts Councils, steps may be urgently taken to bring in suitable legislation to introduce elected village level bodies in the hill areas of that State.**

15. (Para 12.6.4.3) Capacity Building in Regional Institutions in the North East – NEC and DONER

- 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’.**
- c. **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.**
- d. **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.**
- e. **Planning Commission should ensure the association of the NEC in the State plan formulation exercise by suitably amending their guidelines.**

- f. 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.**
- g. 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.**
- h. 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.**

16. (Para 12.6.5.2) Capacity Building in Other Regional Institutions in the North East

- 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.**

17. (Para 12.6.6.3) National Register of Indian Citizens

- 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.**

18. (Para 12.6.7.2) Capacity Building in the North East – Miscellaneous Issues

- a. 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.**
- b. A comprehensive framework needs to be evolved and put in place to promote the region as a preferred investment destination.**
- c. A Transport Development Fund to finance construction of important road corridors should be set up.**
- d. 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.**
- e. Rail connectivity should be improved in the region on a priority basis.**
- f. 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.**
- g. 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.**
- h. 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.**

19. (Para 13.2.5) Executive and Conflict Management – Police and Executive Magistracy

- 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.**

20. (Para 13.3.4) Judicial Delays and Alternative Dispute Redressal

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

21. (Para 13.4.5) Civil Society and Conflict Resolution

- 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 ‘non-police’ 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.

22. (Para 14.3.1.1.10) Institutional Arrangements for Conflict Management – The Inter-State Council

- a. 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.
- b. 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.
- c. The composition of an Inter-State Council may be flexible to suit the exigencies of the matter referred to it under Article 263.
- d. 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.

23. (Para 14.3.1.2.5) Institutional Arrangements for Conflict Management – The National Commission for Scheduled Castes and The National Commission for Scheduled Tribes

- a. 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.

- b. 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.

24. (Para 14.3.2.1.4) Institutional Arrangements for Conflict Management – The Zonal Councils

- 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.

25. (Para 14.3.3.1.8) Institutional Arrangements for Conflict Management – The National Integration Council

- (a) The mandate of the National Integration Council (NIC) requires consideration of all factors impinging on national cohesion, and not only communalism or communal violence. The agenda of the NIC needs to be diversified.
- (b) Substantive issues before the Council may be considered in detail in smaller, subject-matter specific committees.
- (c) The composition of the NIC may be rationalised to facilitate consideration of a wider variety of issues. Broad guidelines may be framed by the Ministry of Home Affairs for identifying interest groups and specialty streams that need to be represented on the NIC.
- (d) The Council may meet at least once a year, while the sub-committees could meet as often as required to complete the assigned task in a time-bound manner.

- (e) **Summary proceedings of the NIC may be laid before both Houses of Parliament.**
- (f) **The Indian Council of Social Science Research (ICSSR) and the Planning Commission may take a lead in the matter of establishing a multi-disciplinary research and policy analysis platform to discuss issues concerning national integration either in an existing institution or by promoting a new institution or as a network.**

26. (Para 14.3.3.3.2) Institutional Arrangements for Conflict Management – National Development Council and Other Apex Level Bodies

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

27. (Para 14.4.2) Institutional Arrangements for Conflict Management – Other Institutional Innovations

- 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.**

National Workshop on Conflict Management

held at

Centre for Policy Research, New Delhi

4th-5th February, 2006

Speech by the Chairman, ARC

“Enforcing rule of law, and maintaining public order, are inseparable and they form the bedrock of a civilised society and sound liberal democracy”.

In a democratic polity, which is founded on the bedrock of rule of law, maintenance of peace and order assumes paramount importance. Public order is synonymous with peace, safety and tranquility of the community. Maintenance of public order is a core function of governance. The Indian Constitution, while according a pre-eminent position for the fundamental rights of citizens, recognises the importance of public order, by providing for legislation imposing reasonable restrictions in the interest of public order. Under the Constitution of India, the Union and the federating units, that is, the States have well-defined areas of responsibility. ‘Public Order’ and ‘Police’ are essentially the responsibilities of State Governments. However, the Central Government assists them by providing Central Paramilitary Forces (CPMFs) as and when required.

The Administrative Reforms Commission is looking at ‘Public Order’ with a view to suggest a framework to strengthen administrative machinery to maintain public order conducive to social harmony and economic development and also to build capacity for conflict resolution. ARC is looking into all aspects of the subject therefore the focus is on studying the causes of public disorder, how early symptoms of disorder should be detected and addressed well in time, what should be the role of various stakeholders in maintenance of public order, how the enforcement machinery should be made more effective to deal with public disorder. The Commission is examining the subject by focusing on its components, namely, causes of conflicts and their resolution, secondly the role of civil administration, media, society, Judiciary and NGOs in maintaining public order, and thirdly the role of police and the need for reforms. Accordingly, each one of these is being discussed in great length in three separate workshops. In the first workshop which is being organised jointly with the Centre for Policy Research (CPR), the role of civil administration and other stakeholders would be discussed; in the second workshop, which is being organised jointly with CPR and the

Kannada University, Hampi, the different types of conflicts in the Indian Society would be discussed, and in the third workshop being organised jointly with the National Police Academy, the Role of Police would be discussed.

The aim of the first workshop on public order is to identify the salient lessons we can learn from a variety of experiences in dealing with public disorder. The workshop will help the ARC to think through some of the challenges posed for the maintenance of public order by the role of the four agencies namely the civil administration, the judicial interventions, the civil society and the media. How can these agencies be strengthened to make them promoters of a more humane public order? What are some of the difficulties that actors in these different domains face? What are some of the commonly leveled criticisms of these agencies? Do these criticisms need some administrative or legal response? What explains the success or failure of these agencies on some occasions. Although the focus of the workshop will be on reforms that can be implemented, this workshop would like to discuss these issues in the widest possible perspective so that new and innovative ideas can be countenanced. The main task of the workshop will be to identify problems and challenges in these domains, and to recommend possible solutions.

The purpose of the second workshop that is on ‘Conflict resolution’ is to (a) engage in free and frank discussions about the causes of conflicts in India, (b) arrive at some conclusion about the role and importance of different ethnic factors in the origin and continuance of these conflicts so that (c) fundamental solutions can be proposed to address the deep-rooted causes for the sustainable maintenance of public order. The emphasis will be on coming up with specific recommendations pertaining to administrative reform.

Similarly the third workshop, which is being organised jointly with the National Police Academy, would focus on the role of police and police reforms.

Before I go into the role of various stakeholders, I would like to clarify the meaning of the words public order. Any violation of Law is a problem of Law and Order, but every such violation is not a case of disturbance of public order. The dividing line between ‘Public Order’ and ‘Law and Order’ is very thin. The Apex Court has explained the concept of public order. It is the potentiality of an act to disturb the even tempo of the life of the community which makes it “prejudicial to the maintenance of public order”. If the contravention in its effect is confined only to a few individuals directly involved, as distinct from a wide spectrum of public, it would raise the problem of “law and order” only.

Importance of Maintaining Public Order

India today is poised to emerge as a global economic power with all its high growth rate of economy and all-round economic development. For realising our legitimate aspirations of economic development, it is essential that the problems of peace and order are managed efficiently in the country. No developmental activity is possible in an environment of insecurity and disorder. Failure to manage the multifarious problems arising out of violent conflicts based on religious, caste, ethnic, regional or any other disputes, can lead to unstable and chaotic conditions. Such conditions not only militate against realisation of our economic dream, but also would jeopardise our survival as a vibrant democracy. We have to look at the problem of public order management and the role of law enforcement in that regard, in this perspective. We should not forget that it is the weaker sections which suffer the most in any public disorder.

Whose Responsibility is to Maintain Public Order – Role of Civil Administration

Undoubtedly, it is the role of the police, as the principal law enforcement agency to preserve public order. The magistracy and the judiciary also have a vital role in preserving public order. But there are other agencies within the governmental set up which have to contribute towards preserving public order. It is the police which bears the brunt of violations of the Laws and also the ensuing violence. But in a large number of cases, addressing the root cause is much beyond their purview. The case of recent demolitions in Delhi is an example. The main cause there has been the non enforcement of the building regulations by the officials who were entrusted this task. Another example is the ‘Ulhasnagar demolitions’.

If one looks at the causes of public disorder, there are a host of reasons. These may be broadly classified into socio-economic, political, historical and administrative. I am not going into the details of each one of these but I would like to highlight that a large number of public disorders have administrative reasons as their root cause. Therefore we have to bring in change in our mindset. Our response to public disorder should commence at the very initial stage, and it is here that the role of entire civil administration including both regulatory and developmental agencies, becomes important.

The period after Independence has seen a tremendous increase in spread of education and alongside has increased the awareness among the people and so also the aspirations. And when these aspirations are not met, tensions prevail within the society, which if not redressed have the potential of erupting as a problem of public disorder. Increasingly, and

rightly so, administration is not being perceived as a ruling class. People are realising that they are service providers. The administration must also realise this role. Wrong doings of administration, which in the past may have got muted acceptance, are no longer being tolerated by the civil society. We have to provide an administration which is fair, objective and transparent. How to achieve this is a challenge before us.

Role of the Judiciary

Access to justice is fundamental to the 'Rule of Law'. If the citizens feel that access to justice is delayed or is not effective, they get alienated. If they feel that punishment is meted out to the wrong doers only in a few cases, they have a tendency to disassociate them with the judicial process and stop taking interest as a complainant, a witness or a pancha.

Sometimes a landlord looking to get a recalcitrant tenant out, a tenant seeking protection from an avaricious landlord, families involved in property disputes, start by thinking that gangsters (goondas) can settle their problems which the courts are going to take ages to do. If this becomes common, criminality will be a substitute for 'Rule of Law'. We have to ensure that we do not reach such a precarious situation. Criminals should be intimidated by what Shakespeare called "the awful majesty of the law", otherwise they will become a law unto themselves. Various Law Commissions have suggested reforms in the criminal and civil justice administration system, which need to be acted upon.

Role of the Media

The importance of a free press, for a healthy democracy cannot be overemphasised. More importantly, it is a sort of check and balance that keeps the authorities on their toes on the one hand and a type of mirror that enables people in authority to get a continuous reality check, on the other. This remains an important role for the media, despite the increasing pressures of commercialisation. The fact that democratic India could avoid famines, Amartya Sen has suggested, was almost entirely due to the role of the media in sensitising authorities to the urgency of providing relief. Indeed our free and energetic media is, in fact, our best early warning system.

But what is essential is that the media should play a responsible role. It has been observed that at times, a part of the media has not been quite objective in their reporting. Sometimes the media also plays a role in spreading prejudices, as they needlessly say, are more interested in sensational news than sensible constructive news. We may deliberate as to how the potential of media can be tapped in maintaining public order.

Role of the Society, NGOs

A democratic society cannot function properly if everything in it is left only to the State or even to statutory bodies. Because of the increasing complexities of societies everything cannot be taken care of by the Governmental institutions. The gap has to be filled up by the civil society. Government intervention itself will be in fructuous if it is not underpinned by voluntary action. Moreover the exercise of political power through civil society opens the way for democracy in real sense of the term. Civil society consists of open and secular institutions that mediate between the citizen and the State. In the absence of civil society, the State machinery and civil servants becomes the dominant and the only repository of power. The modern idea of civil government requires emergence of civil society which would make people self-reliant rather than remain dependent on State institutions. Participation by the civil society makes the citizens active agents instead of becoming merely passive recipients of welfare.

We, especially in the Government, need to realise that in a healthy growth model of a free democratic society, the Government is just one of the participants. The Government exists as one of the servitors in the service of the society. Indeed, the awareness that Government alone can neither solve all the problems of the society nor it is the only crucial actor in addressing major societal issues has dictated the need to look beyond Government. Interdependence and need to find solutions to societal problems call for greater collaboration between the Government and civil society.

A large number of Non Governmental Organisations (NGOs) are working in the developmental fields. But the number of such NGOs dedicating themselves to preservation of public order is limited. We can perhaps learn from experiences of some of these NGOs and recommend measures to pave the way for their greater involvement.

Role of the Police

I should have taken up the role of police first, as they are the main actors in this process. But as I have mentioned that we will be discussing this issue at great length in the third workshop, which we are organising at the National Police Academy. But I would suggest that aspects of police administration which require interaction with other governmental agencies and stakeholders may be discussed in this workshop.

Conclusion

Development and security are truly mutually inter-related. We need therefore, to evolve a combined strategy to deal simultaneously with the twin challenges of development and security within the framework of a democratic polity committed to respect for all fundamental human freedoms and also committed to upholding the rule of law. Internal conflict management is the key to the success of participative democracy, strengthening national solidarity and cohesion and firming up the nation's resolve and capability to meet any external threats to its security and territorial integrity. The deficiencies in this vital area need to be plugged through judicial and police reforms, better citizen participation in governance, transparency and more effective and integrated approach to public order maintenance.

Violations of public order, given their socio-economic, political and administrative causes demand a concerted response from different wings of the civil administration. When this is done at the nascent stage itself, minor discords can be prevented from turning into major public disorders. The challenge lies in institutionalising a mechanism so that all wings of the civil administration as well as other stakeholders work in a coordinated fashion. I hope that these two workshops would be able to come up with substantial recommendations for a framework and a roadmap for maintaining public order.

**National Workshop on Conflict Management
held at
Centre for Policy Research, New Delhi
4th-5th February, 2006**

List of Panelists/Participants

A. Panelists

1. Dr. D. Bandyopadhyay, IAS (Retd.), former Secretary to Govt. of India, Kolkata
2. Dr. Nandini Sundar, Delhi School of Economics, University of Delhi
3. Prof. Radha Kumar, Jawaharlal Nehru University
4. Prof. Abusaleh Shariff, Principal Economist, National Council for Applied Economic Research (NCAER)
5. Dr. Ranbir Samaddar, Director, Calcutta Research Group, Kolkata
6. Dr. Samir Kumar Das, Reader in Political Science, University of Calcutta
7. Prof. Surinder S. Jodhka, Centre for the Study of Social Systems, JNU
8. Dr. D. Shyam Babu, Fellow, Rajiv Gandhi Institute for Contemporary Studies
9. Prof. B.A. Viveka Rai, Vice Chancellor, Kannada University, Hampi
10. Prof. T.P. Vijay, Deptt. of Studies in History, Kannada University, Hampi
11. Prof. H.C. Boralingaiah, Deptt. of Tribal Studies, Kannada University, Hampi
12. Prof. T.R. Chandrashekar, Deptt. of Development Studies, Kannada University, Hampi

B. Participants

13. Dr. Pratap Bhanu Mehta, President & Chief Executive, CPR
14. Mr. Justice Rajinder Sachar
15. Lt. Gen. V.K. Nayar (Retd.), Honorary Research Professor, CPR
16. Shri Ved Marwah, Honorary Research Professor, CPR
17. Dr. Ajit Mozoomdar, Honorary Research Professor, CPR
18. Shri Sanjoy Hazarika, Honorary Visiting Professor, CPR

19. Shri Ramaswamy R. Iyer, Honorary Research Professor, CPR
20. Prof. Partha Mukhopadhyay, Senior Research Fellow, CPR
21. Dr. A.K. Samanta, IPS (Retd.), Kolkata
22. Shri K.S. Dhillon, IPS (Retd.), Bhopal
23. Prof. Sushma Yadav, Dr. Ambedkar Chair in Social Justice, IIPA
24. Shri Suresh Khopade, Commissioner of Police, Railways, Mumbai
25. Shri Chandra Bhan Prasad, Journalist
26. Ms. Priya Parker
27. Shri Siddharth Mallavarapu, School of International Studies, JNU
28. Shri Y.S. Rao, Consultant, ARC
29. Shri R. Viswanathan, Consultant, ARC

C. Administrative Reforms Commission

30. Shri M. Veerappa Moily, Chairman, ARC
31. Shri V. Ramachandran, Member, ARC
32. Dr. A.P. Mukherjee, Member, ARC
33. Ms Vineeta Rai, Member-Secretary, ARC

Brief Summary of the Recommendations made at the National Workshop

I. Issues Relating to Tribal Populations

1. Legislations like the Indian Forest Act, Wildlife Protection Act, Forest Conservation Act, etc. do not take into account the needs and sensibilities of the tribal populace and have created widespread resentment and discontent. These legislations, formulated with the intent of increasing State revenue and protecting State property have made it illegal for tribals to draw livelihood from forests; an activity that these people have engaged in, in a symbiotic and harmonious manner, for generations. Deprivation of the only resources available to them by a faceless and obdurate bureaucracy resulting in increased poverty and marginalisation has played a major role in the greater tribal participation in Naxalite activity.
2. There should be a re-examination of the powers vested in the Governor by the Fifth and Sixth Schedules vis-à-vis PESA. The Panchayat (Extension to Scheduled Areas) Act transfers, in many ways, the power of the Governor of State over areas protected by the Scheduled Areas Act to the Panchayats and has left quite a few grey areas pertaining to control and authority between Panchayats and gubernatorial authority.
3. There should be a grassroots level mechanism for redressing grievances along the lines of Nyaya Panchayats at Gram Sabha levels based on the rationale that adjudication of local problems at the local level would provide a more practical and expedient system of justice.
4. There should be a “Harmonisation of Laws” (a) between Central Acts and Local Land Laws (b) between Forest and Revenue Records and (c) between Court judgements and other laws.

II. Issues Relating to Conflict Areas

1. The peace process must be separate from a ‘political process’, emphasising the objectivity and professionalism of dialogue.

2. There should be increased coordination between various law enforcement agencies. Given the long-term nature of the engagement, such structures need to be put in place.
3. Presence of Armed Forces should be complemented by active role of civil administration and non-State players.
4. The peace process must be all encompassing involving participants at all levels. Local support must be matched to the central inclination of engaging in the peace process.

III. Issues Relating to the North East

1. Territorially based solutions alone are not likely to work in the North East. The structures of representation need to move away from a fixation with territoriality, making it easier to accommodate various competing interests.
2. It was time to think creatively about managing the migration from Bangladesh. The issue needs a systematic, continuous and informed approach.
3. The Armed Forces (Special Powers) Act needs to be abolished. The Inner Line Permit restrictions need to be reconsidered.

IV. Issues Relating to Religion

1. Opportunities for education should be increased for minorities and it should be ensured that delivery of public services to minorities is enhanced.

V. Issues Relating to Caste

1. As of now two Acts – the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – are invoked in atrocity cases. There is no need for two Acts to deal with one problem and it would be useful to devise a uniform legislation to address violations of human and civil rights, with the stronger of the punitive measure being adopted.

2. The two National Commissions on SCs and STs, may be restructured to make them more effective.

VI. Recurring Themes in Conflict Resolution

1. The principle of 'Subsidiarity' should be adopted to make the administration reach out to the people.
2. There is an urgent need to harmonise laws and to make sure that they are clear and transparent so that a general faith in the rule of law could be restored.
3. Accountability should be increased in the Government.



सत्यमेव जयते

Second Administrative Reforms Commission

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