

## Agenda Note

**Sub** : Comments of NCST requested by DARPG on the recommendations made by Administrative Reforms Commission (ARC) in its Seventh Report titled “Capacity Building for Conflict Resolution – Friction to Fusion”.

### **I      Recommendations of ARC in brief.**

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.

- 115    a) The National Commission 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 Ministeries/appropriate forum with the Commissions playing a critical oversight role.
- 116    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.

### **II      Proposed Comments of the Commission on the matter.**

Keeping in view the fact that the scope of Constitutional safeguards for STs is extensive, the Commission may agree to the recommendations of the ARC contained in para 14.3.1.2.5 above. It is, however, relevant to point out that Commission can't ignore the cases of individual nature as per the obligations of the Commission under Article 338A(5)(b) of the Constitution. The National Commission for Scheduled Tribes follows detailed Rules of Procedure, which, inter-alia, lay down the procedure for enquiry and, approach and methodology to be adopted by the Commission. In order to deal effectively and promptly with individual complaints, draft guidelines are also under consideration of the Commission. A computerized system for expeditious processing and close monitoring of the complaints received in the Commission is also under trial.

In order to enable the Commission to effectively discharge its constitutional mandate, the followings issues need to be addressed:

i) *ARC has stated in their report that “it is also evident that 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/STs”.* The existing sanctioned and available strength of the Commission is grossly inadequate to achieve the assigned objective the Commission. Therefore, it also needs to be strengthened, with adequate functional units in the Hq. Office as well as its Regional Offices. A detailed management study is required to recommend an appropriate organizational structure/ manpower requirements. In this connection, it is pertinent to mention that while implementing the Constitution (65th amendment) Act, 1990, the Government of India abolished all the posts in the office of the Commissioner for Scheduled Castes and Scheduled Tribes and also abolished 31 posts of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes, thereby causing a reduction of 117 posts and the personnel. Further, while setting up the National Commission for Scheduled Tribes as per the provision of the Constitution (89th) Amendment Act, 2003, the Government of India did not sanction any functional posts for the National Commission for Scheduled Tribes which has adversely affected the functioning of the Commission.

ii) The Commission has to discharge multifarious functions in fulfillment of its Constitutional mandate. To ensure the functioning of the Commission in a smooth and effective manner, it deserves financial autonomy, which has not been granted to it. In the absence of adequate financial powers, the Commission is facing a lot of difficulties in meeting its day-to-day needs, as a number of proposals having financial implications have to be referred to the Internal Finance division of M/o Tribal Affairs through its administrative division for obtaining the approval of the competent authority. A lot of time and manpower has to be devoted to pursuing routine proposals with the Ministry of Tribal Affairs and delay in clearance of the proposals often put the Hon'ble Chairperson, Vice-Chairperson and Members of the Commission to a lot of avoidable inconvenience.

iii) A lot of time and effort is being expended on pursuing implementation of the Commission's recommendations with different agencies of the Govt. In cases, where the investigation by the Commission discloses any violation of safeguards of the STs or negligence in the prevention of violation of these safeguards by a public servant, and for taking corrective remedial measures including action against the erring officials, it should be mandatory for the concerned organization of the Central Govt. or the State Govt. to accept such recommendations. The Commission should also be empowered to penalize recalcitrant officials who delay information ( as for the Information Commission).

iv) The Ministries and State Govts should refer all the policy matters affecting STs to the NCST for its consideration. There is a need to ensure timely and due attention by the concerned Department/Ministry/Govt. on the recommendations of the Commission on such policy related issues and its views should be placed before the competent authority without modification. The Commission should be permitted separate legal representation in legal fora in case its views are at variance with extant views of the Govt.

v) In accordance with the clause (6) of Article 338A of the Constitution, the Commission is required to furnish Annual Report on working of the safeguards provided to STs, and to make recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other necessary measures for the protection, welfare and socio-economic development of the STs. These reports are required to be placed before Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations. This has resulted abnormal delay in tabling of the Annual Reports; and Reports pertaining to the year 2004-05 and 2005-06 submitted in August 2006 has not been tabled till date. The delay in this regard has been adversely commented upon by various agencies. The Commission has repeatedly emphasized the need to place its Annual Report immediately before the Parliament after its submission. Even if complete ATRs can not be submitted simultaneously, there should be no hesitation in placing the report before Parliament without undue delay, as this will lead to timely awareness of the recommendations in general public as well as in various Govt. Deptts., State Govts. and other agencies for effecting timely corrective action.

vi) The State Commissions of SCs/STs should have close linkages with the National Commission so that they can lend a helping hand in matters relating to handling of local grievances and monitoring of implementation of development programmes.