CHAPTER IV

CONFLICT-INDUCED DISPLACEMENT IN ASSAM

The state of Assam, located south of Bhutan and north and east of Bangladesh is geographically almost cut off from the rest of India except for a narrow land corridor that connects the state with West Bengal. The total population of Assam in 2001 census is 26,655,528. Out of them 3,308,570 belong to Scheduled Tribes (STs), constituting 12.4 per cent of the total population of the state. The state has registered 15.1 per cent decadal growth of ST population in 1991-2000.¹ Society in Assam has historically been multi-racial, multi-ethnic, multi-caste and multi-lingual in composition and Assamese people have constituted the majority national group.

Violent conflict that we have witnessed to-day in Assam is the result of number of socio-economic factors operating right from the advent of British rule. Human migration is an ongoing phenomenon in the Brahmaputra valley for centuries. Various immigrant groups most of them belonging to Mongoloid group had entered Assam from neighbouring South-East Asian countries. The Tai-Ahoms immigrated to Assam during 13th century from Thailand and consolidated their position to establish the Ahom kingdom which ruled Assam for nearly 600 hundred years. In 1818, The Burmese invaded Assam and forced Ahom king to leave the kingdom. Finally, in 1826, the British drove out the Burmese and Assam came under the British rule under the Treaty of Yandaboo².

1. Social transformation of Assam since 1826

Annexation of semi-tribal and semi-feudal society in Assam by the colonial rulers into British India in the year 1826 changed the traditional social culture of Assam. Assam was put under the provincial administration of Bengal. Before the natural process of ethnic assimilation takes place and different ethnic groups could emerge as a singular Assamese identity, annexation and subsequent administrative experimentation with Assam by the colonial ruler had added altogether a different dimension to the society of Assam. It had far
reaching consequences for the Assamese nationality formation and inter-ethnic relations both in pre-colonial and post-colonial Assam. The boundary of the multiethnic social base was further widened with the incorporation of new territories within the political boundary of Assam as well as induction of different groups of people from various parts of British India. Following the victory in the Anglo-Burmese war in 1826, western Assam was immediately annexed to the British India. However, eastern Assam came under the British rule only in 1839. Since then for about 35 years, Assam was part of Bengal Presidency till the administrative reorganization of 1874. During this early phase of colonial rule British introduced Bengali as the official language of Assam at the cost of the linguistic identity of Assamese in 1837. It sowed the seeds of Assamese-Bengali inter-ethnic conflict till the restoration of Assamese in 1874. This inter-ethnic hostility continued right through the colonial period and even spilled over to the post-colonial Assam.

After taking over of Assam, British established tea and oil industry in Assam and high productive oil fields were also discovered during that time. In Assam’s colonial administration the Bengali people had monopolized all jobs meant for local people. There are two reasons for this--firstly the Bengal was annexed much earlier than to Assam and Bengalis already had a large chunk of western educated middle class who had been brought to Assam for assisting in the administration and to run the tea plantation. These educated Bengali Hindus held important positions in the colonial administration and other important professions like teachers, doctors, lawyers and magistrates. Secondly, after amalgamation of the thickly populated Bengal i.e. Sylhet into the province of Assam many educated Hindu Bengalis moved into Assam. Thus the British owned tea plantation had remarkably grown but failed to accommodate the emerging Assamese middle class in jobs. They face stiff competition from Bengalis. This had eventually led to an anti-Bengali feeling amongst Assamese middle class which failed to understand the colonial limitation. The British also ignored the demand for replacement of Assamese as language of the schools and courts. However after protracted protests by Assamese intellectuals, Assamese became language of schools and courts in Assam. The linguistic
clash of migrant Bengalis and the native population generated a socio cultural conflict between the two groups.

In 1905, the Viceroy of India Lord Curzon divided Bengal Presidency into East and West Bengal. Assam was merged with the new Muslim majority province of East Bengal. However, in 1911 British government annulled the Bengal partition due to massive political unrest in West Bengal and Assam was restored to its earlier status as a Chief Commissioner’s Province. Again the British did another damaging act by integrating Bengali speaking Cachar, Goalpara and Sylhet with Assam province. This had resulted increased flow of Bengali speaking population into the territory.

The pre colonial and post colonial Assam was thinly populated with abundance of land. Therefore state’s contribution to the colonial coffer was below the expectation of colonial rulers. As a result, the colonial rulers encouraged immigration of various groups of people in order to bring more and more land under habitation and cultivation to enhance their land revenue. Migrants from East Pakistan were much more industrious, hard working and ready to be employed in any hazardous work. In this way they encroached upon vast stretches of land suitable for agriculture. As a result movement of population across the border has become a regular practice for over a century now.

In order to avoid the due oppression of feudalism and colonialism, many people from erstwhile East Pakistan migrated to Assam where the oppression is far below than East Bengal due to abundance of land. Further the local people were reluctant to work in tea gardens which results in lack of local labour force in colonial Assam. As a result the colonial rulers also encouraged migration of tribal people from Jharkhand and Orissa in order to meet the demands of cheap labour in the British owned tea gardens in Assam. In search of better living the poverty ridden tribal people of those areas migrated to Assam. This situation opened the floodgates of migration to Assam during colonial period. In this process of social composition the population of Assam was drastically transformed.
As a part of the divide and rule policy of the colonial administration British, provoked the Assamese and non-Assamese conflict. British also did not let the Assamese nationality to grow and hindered the process of assimilation in Assam. Following the independence and partition of the country, Bengali inhabited Sylhet became a part of East Pakistan and Assamese became majority in post-independence Assam. This strengthened the Assamese people and they started exerting its hegemony over other ethnic groups and minorities, in the process, it divided into smaller states in 1972.

2. Problem of illegal immigration

Since 1970s, the political history of Assam is mostly dominated by the issue of illegal immigration from neighbouring country Bangladesh. The immigration of people from erstwhile East Pakistan took a dangerous turn during post independence period. But Government of India did not take it seriously. No definite policy nor organized plan had been adopted by the successive Governments to tackle the problem. Nehru-Liaquat Pact also facilitated and accelerated infiltration during the post independence era. The Pact, which validated the entry of immigrants up to 31st December 1950 was against the spirit of Immigrants (Expulsion from Assam) Act, 1950 enacted by the parliament on 13th February 1950 that provided for expulsion of certain immigrants from Assam. The Act distinguished between Hindus and Muslims. The Hindus were regarded as refugees and the Muslims were considered as illegal aliens. This discriminatory piece of legislation was repealed in 1957. But a secret administrative order was passed by the Government of India in 1965 enabling the East Pakistani minorities, that is the Hindus, settled in India who were residing in India for more than six months to obtain citizenship by District Magistrate following some very easy procedure. The administrative order was withdrawn in 1971, but the order became the cause of conflict in the negotiations between Assam movement leaders and the Government.

In early sixties, the Govt. of Assam armed itself with Prevention of Infiltration from Pakistan (PIP) Plan, 1964 launched an aggressive campaign to flush out
the immigrants, who settled in Assam since January 1951. Bimala Prasad Chaliha then Chief Minister of Assam even disregarded the then Prime Minister’s plea to go slow on the deportation. Chaliha even went on to say that the problem was so critical that Assam’s demography and culture would be permanently damaged. Chaliha’s campaign pressed a panic button among the Muslim immigrants. Ultimately Chaliha’s Plan was put in the cold storage. Those who were deported earlier gradually returned and again settled in Assam.

Atrocities in East Pakistan committed by Pakistanis in early 1970s led to large scale entry of East Pakistani refugees from erstwhile East Pakistan to India. After the emergence of Bangladesh in 1971, the problem of Bangladesh refugees, who had taken shelter in India during Indo-Pak war posed a major problem for India. As per World Bank report, the financial burden of refugee relief on India was estimated to be about $ 700 millions in the fiscal year 1971-72. The issue was however, discussed between two countries and as per the Indira-Mujib pact of 1972, it was agreed that all refugees, who entered India prior to March 25, 1971 will be allowed to stay back.

In the absence of any effective mechanism to prevent further infiltration, Indira-Mujib pact could not be implemented and illegal influx of large number Bangladesh nationals continued unabated. Occasionally government expressed concern about the problem but no serious effort had been made to resolve the problem. If we look at the census figure of 1971and 1991, it shows that there has been steady to rapid rise in the Muslim population in the districts proximate to the Bangladesh border. An analysis of data for the growth of various religious communities, in Assam since 1971 is also instructive.

It has to be noted here that, the Assamese members of the Constituent Assembly advocated for giving much wider power to the States. The proposals include the right to legislate on immigration; inclusion of citizenship matter in the concurrent list; giving residual powers to the States; limitation of central power over subjects in the central list; not to give power to the Central Government to unilaterally redraw State boundaries; to make State Governorship an elected
office and to give a much larger share of the excise and export duties on tea and petroleum to the producing States."^{12}

**TABLE 1, Growth of Hindu Muslim population**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Groups</td>
<td>Hindus</td>
<td>Muslims</td>
</tr>
<tr>
<td>Assam</td>
<td>41.89</td>
<td>77.42</td>
</tr>
<tr>
<td>All India</td>
<td>53.25</td>
<td>73.04</td>
</tr>
</tbody>
</table>


During the post Bangladesh era, the All Assam Student’s Union (AASU) started a movement called Bideshi Khedao Movement which is also known as Assam Movement. The movement was actually triggered by the discovery of sudden rise of registered voters in the electoral rolls. in 1970s. Taking advantage of the deep rooted sentiments and discontentment of Assamese people against the immigrants AASU successfully translated the agitation into a widespread popular movement. Thus, tens of thousands of Bengalis, Hindus and Muslims, were displaced all over Assam in violence unleashed during the 1960s, 1970s and 1980s, particularly during six years of anti foreigner’s agitation led by students and the dominant Assamese people.

According to the noted security analyst and former Army Lt. General (Retd.) D.B. Shekhatkar, the efforts made by some political parties to create vote bank of illegal migrants changed the demographic pattern in Assam especially in BTAD area and in the process, the land belonging to the tribal groups including Bodos, are being occupied by the suspected migrants.\(^{15}\)
2.1. The Illegal Migrants (Determination by Tribunal) Act, 1983 and repeal thereof

Despite the existence of the Foreigner's Act 1946 which empowered the Government of India to execute in respect of the entry, presence and departure of foreigners inside the Indian territory, the Indian Parliament in 1983 enacted Illegal Migrants Determination by Tribunal (IMDT) Act. The IMDT Act described the procedure to detect illegal immigrants and expel them from Assam. The Act was pushed through mainly on the grounds that it provided special protections against undue harassment to the minorities that were affected by the Assam Movement. The Act was made applicable only in the state of Assam whereas in the other states, detection of foreigners is done under the Foreigners Act 1946. There were fundamental differences between these two Acts. According to the Foreigners Act, a suspected illegal immigrant has to establish his/her nationality whereas under the IMDT Act the responsibility of proving the citizenship of a suspected illegal immigrant was upon the complainant unlike the Foreigners act. Interestingly, the IMDT Act was passed by Parliament when the House had no representative from Assam. Under the IMDT Act, 1983 all Bangladeshis who moved to Assam before March 1971 are citizens and those who moved later are illegal and liable to be deported.

The controversial IMDT Act was challenged by Sarban and Sonowal before the Supreme Court and it was contended that the Act had only encouraged vote bank politics without addressing the mammoth problem of illegal migrants. The three judge bench, in an unanimous decision declared the IMDT Act of 1983 and Rules framed there under as ultra vires of the Constitution of India.

Again the establishment of IMDT Tribunal under the IMDT is unconstitutional as the Article 323 B of the Constitution of India specifically mentions certain grounds under which tribunals can be constituted and IMDT Tribunal is not covered by any of these provisions.
2.2. Assam Accord

The Assam Movement continued for six consecutive years and ended with the signing of the Assam Accord in 15th August 1985. Apart from a compromise on the issue of immigrants, the Assam Accord was a broad settlement that included significant promises for cultural and economic development of Assamese people. On the question of illegal immigrants in Assam, it was agreed that they would be classified into a number of categories based on when they had entered India. Although the IMDT Act had hidden political agenda and some basic flaws since its inceptions, it is extremely interesting to recall that AASU or Assam Gana Parishad (AGP) a political wing of AASU did not raise any uproar about the shortcomings on identification, detection and deportation of illegal migrants in the Act which was enacted just two years before the Assam Accord. It was only when the AGP lost Assembly election the AASU started hue and cry about the defects in the IMDT Act.

In this context it is important to refer to the failure of the IMDT. According to an affidavit filed by the Assam government in 1999, a total of 302,554 inquiries were initiated under the Act. Nearly all of them were completed but only 31,264 were referred to the tribunals for review and action. Half of these have been completed and only 9,625 were declared as illegal migrants. Out of them only 1,461 were physically deported. One would not be surprised if all the deported migrants have since been returned and working in different parts of India.

2.3. Rise of United Liberation Front of Assam (ULFA)

During the height of anti-foreigner agitation, a hard line section parted from AASU to form an armed wing called United Liberation Front of Assam (ULFA). However there is a fundamental difference between the ideologies of AASU and ULFA. AASU’s agitation was pointed against illegal migrants whereas ULFA’s struggle is solely against the Indian state. Ulfa’s objective is to overthrow the so-called Indian colonial occupation from Assam. The ULFA does not consider itself as a separatist or secessionist organization, as it claims that Assam was never a part of India because Assam was not a party to the Yandaboo Treaty.
At present a faction of ULFA continues to be active but has lost its credibility to a large extent due to involvement in the mindless violence and killing of ordinary people. On December 2009 the Chairman and Deputy Commander-in-chief of ULFA fell into Indian custody. Recently there has been a large crackdown on ULFA in Bangladesh and that assisted Government of India to ULFA leaders to negotiation table.

3. Conflict and displacement in Bodo areas

3.1. Background

Out of all the states in entire India, perhaps Assam is the only state where largest number of IDPs living in relief camps in different parts of the state. The reason being that ethnic conflict and violence have been taking place in Assam at regular intervals. Like other sub-nationalists and ethnic movements the Bodo movement has been associated with ideas of autonomy, liberation and revolution. The term ‘Bodo’ can be understood at two levels. In a broad sense, it is founded on the colonial ethnography and other anthropological studies based on the assumption that ‘language family’ tells a definitive story about the race. In this sense, it would include various tribes belonging to the Bodo language-family like Rabha, Sonowal, Lalung, Chutia, Moran, Kachari etc. In the narrow sense of the term it refers to certain tribes who speak Bodo-Kachari language. The earliest colonial reference to Bodos was made by Captain R.B. Pemberton in ‘Report on Bhootan’ (1838), where he observed that the ‘Dooars’, over which the Bhutan king exercised authority and control, were mostly inhabited by the Bodos.

In the post colonial era, history writers of Assam mostly focused on compositeness of Assamese identity, subsuming all the tribal communities within the state of Assam. For instance, in the 1960s the Government of Assam initiated a voluminous project of recording the political history of Assam, headed by eminent historian H.K. Barpujari, that resulted in the publication of ‘Political History of Assam’ in three volumes. Despite the fact that Plains Tribal played an important role in the politics of Assam during the freedom movement,
reference to the role of plain tribes is restricted to the minimum of three lines in the three volumes. Bodos resented this apathy of Assamese people and thus cultural assimilation of Bodos with that of Assamese was not productive.

3.2. Plain Tribal Council of Assam

In the early 1960s the Plains Tribals Council of Assam (PTCA), a political party representing Bodos and other plain tribals of Assam realized that tribal belts and blocks were gradually being acquired by rich landlords or new immigrants through illegal means. Moreover, Bodos had little or no access to economic aid that were granted by the central government. In addition, there were several other reasons for which, in 1967, PTCA demanded a Union Territory called ‘Udayachal’ to be carved out of Assam. It launched a vigorous movement to get a separate state for the plain tribals within the constitution of India. The proposed Udayachal map included mainly those areas that were known as tribal belts and blocks. However, PTCA movement was not successful. The All Bodo Student’s Union (ABSU) lent their support to the PTCA movement. Later PTCA got fragmented into PTCA and PTCA (progressive). As early as in 1916 to protect from undesirable impact of land hungry immigrants, the Nagaon district authority had delimited certain tribal inhabited areas as closed to immigrants which was known as ‘line system’. Subsequently the system was extended to other tribal inhabited areas of the state. But the system did not succeed as some sections of people opposed it.

In place of the line system, the Government of Assam, in the name of ‘grow more crops’ had introduced a new scheme known as Development Scheme in 1941. For the implementation of the scheme, cultivators were brought in from erstwhile East Bengal and settled in the tribal inhabited areas.

3.3. Protection of tribal belts and blocks and their rights

Subsequently in 1945, the Government of Assam had adopted a resolution to protect the tribal people in areas predominantly inhabited by them against influx
of people from neighbouring country. On the basis of the resolution, the Assam Land and Revenue Regulation, 1886, was amended and chapter X was added to it, in 1947. The amended Regulation made provisions for creation of protected tribal belts and blocks and restriction of transfer of land in such protected areas were made.\textsuperscript{29} Since then as many as 17 belts and 30 blocks were created in the plain districts of Assam covering 85,80,842 bighas of land. But no successive governments have taken care to implement the provisions of the protected belts and blocks.\textsuperscript{30} The migrants used to own land in tribal belts and blocks and cultivated land and settled in the forest villages. These migrants have not only denied the right of ownership of land of forest dwellers but also some of them have even been evicted. For these reasons Bodo people feel unsafe and insecure of their very existence. Bodos also feel that they have been neglected, exploited and discriminated against for decades. The growth of literacy and education among the plain tribes in the Bodo inhabited areas is quite negligible. There is constitutional mandate to provide free and compulsory education to all children between the age of six to fourteen years\textsuperscript{31}. However at the beginning education was not fundamental right but after 86\textsuperscript{th} Amendment, education was brought within the purview of the Fundamental rights. Thus the failure of the Assam government to provide certain basic rights is one of the cause of Bodo unrest during post independence period.

During the early part of British regime, forests were considered as non-revenue generating resource. Therefore, expansion of agricultural land in place of forests was encouraged. People who cleared forests and tilled the land were given titles to it. But those who let the forests survive were penalized by asking them to leave the forest. This had led to alienation of tribal communities from their ancestral lands. Even in independent India the Government has failed to recognize the customary rights of the indigenous people over forest produce. Local communities traditionally manage the forest resources in sensible and sustainable ways, through informal rules and practices. It is evident from the existence of widespread network of sacred grooves throughout India. Bringing these resources under state control actually created problem rather than solving it. The local communities lost all incentives and interests in the proper
management of forests as a result they started acting irresponsibly. After the Forest Act was passed in 1878, the Colonial Government started bringing more and more areas under the reserve forest.

In the post independence period in India the constitutional guarantee that tribal people could earn their living from forests was severely affected by the Forest Conservation Act 1980 and the Wild life Protection Act 1972. Finally in 2006 the Government of India made an attempt to undo this historical injustice meted to the indigenous people by enacting the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act. The Act for the first time recognized the rights of tribal and other forest dwelling communities over the forest resources. This can be said to be a definite step towards the recognition and legalization of ‘third generation rights’ as recognized under the international law. However there are certain issues which are not effectively addressed by the Act of 2006. The Act has not taken into account the fact that the hundreds of forest dwellers belonging to Scheduled Tribes face charges under the different provisions of the draconian Forest Conservation Act of 1980 for accessing minor produce in the forest areas. Although the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006 ensures tenure security and legitimizes the Scheduled Tribes’ ownership over the minor forest produce and their role in the conservation of forest, it failed to deal with the charges pending against the tribal under the forest conservation Act of 1980 and Indian Forest Act of 1927 with retrospective effect.

There were 2,57,226 forest cases pending against 1,62,692 tribals between 1953 to 30th June 2004 under sections 26, 33 and 41 of the Indian Forest Act 1927 pertaining to illegal felling of trees for domestic use and ferrying of wood by bullock carts in Chhattisgarh as on November 2005, and 2,531 such cases in Orissa as on 10 March 2005.

Another significant feature of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is the extension of the cut off date to qualify for holding rights from 25 October 1980 to 13 December 2005. In fact the cut off date is quite immaterial to the majority of the forest dwelling
scheduled tribes as they have been living in the forests for generations. This extension of cut off date is basically to benefit the other traditional forest dwellers who are required to prove that they have been occupying the forest land for three generations. 40 There is another provision in the Act that hardly benefits the scheduled tribes because rather than helping the indigenous forest dwellers, the law actually seeks to dispossess the forest dwellers from their ancestral land if they are in possession in excess of four hectares of land. 41

3.4. Bodo movement

The official Bodoland movement for an independent state of Bodoland started under the leadership of Upendranath Brahma of ABSU. The ABSU created a political organization, the Bodo Peoples’ Action Committee (BPAC) to spearhead the movement. The movement started in 1986 and continued till 1992. Of course, the Bodos did not want to secede from India but sought a separate state by the name called ‘Bodoland’. Bodos demanded a separate state with status of union territory under the provision of Constitution of India. 42 But the movement did not remain non-violent due to the formation of BPAC. The Bodo accord was signed in 1993 which provided for the creation of the Bodoland Autonomous Council (BAC). However, BAC failed to fully meet the aspirations of Bodos. Actually the present BAC area is spread across seven districts of the state of Assam. Since the Bodo villages are not contiguous, the demarcation of the jurisdiction of the BAC remained a problem. In some areas under the BAC there were more than 50 per cent non-Bodo population consisting of Assamese Hindus, Assamese Muslims, Rabhas, Na-Asamiya Muslims, Bengali Hindus, Santhals and Nepalis. In fact, in large part of BAC areas Bodos do not constitute a simple majority. This dissimilarity stalled the process of clear demarcation of boundaries of BAC.

3.5. Displacement in Bodo areas

The State Government’s refusal to hand over non-Bodo majority areas has further complicated the matter. This vindicated the stance of separatist National Democratic Front of Bodoland (NDFB), which opposed the accord. Many
people argued that with a view to establish their majority and gain complete hold over the territory ethnic cleansing started with large-scale attack on Muslims of Bengali descent in October 1993. Violent clash between Bodos and immigrant Muslim settlers displaced 3568 families consisting of 18,000 people in Kokrajhar and Bongaigaon districts.\textsuperscript{43} Again, in May- June 1996 launched massive attacks against the Adivasis\textsuperscript{44}. The conflict has resulted in displacement of 42,214 families consisting of about 2,62682 persons throughout western Assam. After this initial outbreak, conflict between the two ethnic groups became a regular feature in western Assam.\textsuperscript{45}

In the 1998 clash, 48,556 families were displaced, adding upto a population of 3,14,342. Hence within a span of two years, nearly 5.5 lakh people were living in camps at some point and about 44,000 of them are children. These victims are sheltered in 78 relief camps around Kokrajhar and its adjoining areas. After staying as inmates in the camps many of them returned to their villages in 1997 with a small amount of returnees grant provided by the Government of India.\textsuperscript{46} As of in August 2009, a good number of people had returned to their original homesteads but there are still about 23,000 families termed as encroachers who have not been able to resettle in their original habitats. Children of these displaced families have been brought up in most abysmal conditions and women have often been to venture out of the camps to earn something through prostitution. Food and other amenities are also grossly inadequate.\textsuperscript{47} As of in April 2005, in Kokrajhar 1,26,263 inmates were living in 38 State sponsored relief camps in Kokrajhar district.\textsuperscript{48}
TABLE 2, Number of inmates in the camps

<table>
<thead>
<tr>
<th>Area</th>
<th>No. of relief camps</th>
<th>No. of families</th>
<th>population Adult</th>
<th>population Minor</th>
<th>population Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kokrajhar Sub-Division</td>
<td>15</td>
<td>7269</td>
<td>27499</td>
<td>14500</td>
<td>41999</td>
</tr>
<tr>
<td>Gosaigaon Sub-Division</td>
<td>23</td>
<td>16687</td>
<td>55216</td>
<td>29084</td>
<td>843000</td>
</tr>
<tr>
<td>Total</td>
<td>38</td>
<td>23956</td>
<td>82715</td>
<td>43584</td>
<td>1,26299</td>
</tr>
</tbody>
</table>

Source: Office of the Deputy Commissioner, Kokrajhar (April 2005)

Bodo-Santhal conflict again resurfaced in 2004 leaving 37,000 people displaced. Again in August 2008, communal violence between Bodos and immigrant Muslim settlers broke out in Routa in Udalguri district when AASU organized a state-wide campaign to evict illegal migrants. More than 50,000 people fled and took shelter in nine relief camps. Further violence in October 2008 in Udalguri, Darang, Sonitpur and Chirang districts killed 55 and displaced 212,000 persons. During the conflict 54 villages were directly affected and residents of 150 villages fled from their homes for fear of being attacked though there was no attack in their villages. The displaced included both Bodos and Muslims. As of January 2009, 50,000 people mostly Muslim IDPs were living in relief camps in Udalguri and Darrang districts because they are afraid to go back to their homes.

The attacks on non-Bodos including Assamese settlers provoked the Mising, the Tiwa and the Rabha communities to start agitation for establishment of autonomous council for themselves. The Santhals and other non-Bodo communities have also begun to arm themselves to fight back. Thus Adivasi Cobra Militants of Assam (ACM) was formed by Adivasis and Bengali Liberation
Tiger was formed by Bengali Hindus. Both these groups teamed up and attacked several Bodo villages after massive Bodo-sponsored violence in May-June 1996.

Thus the enmity between immigrants Muslim settlers and tribal communities have increased over the years in Assam as the migrants encroaching upon the areas previously dominated by tribal communities. Both the groups are fighting for the same political and geographical space.

Over the years, it has been found that majority of the protected class of persons are so backward both economically and socially that they could not protect themselves adequately against the more advanced immigrants farmers. Because of the administrative failure to protect tribal belts and blocks leads to vast tracts of lands belonging to tribal people were illegally transferred to various non-tribal and immigrant settlers, leading to displacement of tribal people from forest as well as non-forest areas. It is pertinent to note that alienation of tribal people from their land has been one of the root causes of tribal unrest in Assam. Therefore, existing land policy of Assam should be revised and amended in the light of the Chapter X of the Assam Land and Revenue Regulation Act to grant land rights to the economically and socially backward people of the state.

The recent conflict between Bodos and Bangladeshi immigrants which started in July 2012 has displaced 400,000 people from about 400 villages. Increased competition for livelihood, land and political power led to frequent incidents of violence between these two groups. The most disheartening fact is that the political leadership in the country has turned a blind eye to the problem and not trying to solve the root cause of the problem by taking a tough stand against this uncontrolled flow of immigrants into this part of the country.
4. Conflict in Karbi Anglong and North Cachar Hills

4.1. Background of Karbi-Kuki conflict

The Karbis were formerly known as Mikir and belong to the Mongloid stock. They are a part of the Tibeto-Burman linguistic group. The Karbis inhabit Karbi Anglong, North Cachar Hills (now Dima Hasao), Golaghat, Nagaon and Kamrup districts of Assam, Meghalaya and Arunchal Pradesh.

Kukis also belong to the Mongoloid stock and Tibeto-Burman linguistic group. The ethnic groups of Karbi Anglong include Karbi, Dimasa, Garo, Khasi, Jaintia, Kuki and Rengma Naga tribes. In addition, people belonging to Adivasi, Assamese, Bengali, Nepali, Bihari and other communities inhabit the district. The Kuki and Karbi tribes have similarities in their origin, culture, tradition and ways of life. The conflict that took place between the two tribes was a result of certain events that changed their outlook about each other and led the conflicting parties to develop certain attitudes and perceptions. Kuki migration to the hills of Karbi Anglong can be mentioned as the main event that led to the conflict.

4.1.1. Kuki migration

Kukis inhabit some areas under Hamren sub-division and the Singhason-Khonbamao hills ranges under Diphu sub-division. There are two different groups of Kukis in Karbi Anglong. One group that inhabits the Harmen area is indigenous to Karbi Anglong. These old Kuki groups have fully integrated with the local population in all respects. The present conflict has nothing to with the ‘old Kukis’, who have a population of around four to five thousand and are confined to a small pocket in the Harmen sub-division.

The other group of Kuki people that is involved in present conflict with the Karbis has migrated from the neighbouring states of Nagaland and Manipur during the last two decades. Some of these migrations have taken place via the North Cachar Hills route, that is, the migrated population first came to the North Cachar Hills from Manipur and stayed there for a couple of years before moving...
to Karbi Anglong. The population of these 'new Kukis' is around twenty thousand and they have settled mostly in Singhason-Khonbamon Hill ranges of Diphu sub-division.

The cause of this migration is very obvious. The socio-political turn of events in Nagaland in 1980s as well as Naga-Kuki (1992-1993) and Naga-Paite (1994-1995) clashes in Manipur compelled many Kukis to leave the state and to look for better opportunities elsewhere. Some people of Kuki groups crossed over to Manipur, while some others moved to Karbi Anglong. Again when Manipur got entangled in numerous inter-tribal feud, and sometimes inter sub-tribal violent clashes, leading to a situation where Kukis started looking for a safer place to settle down in the hills of Karbi Anglong.

4.2. Karbi-Kuki conflict

In the aftermath of the Assam movement in the late 1970s and early 1980s the state of Assam witnessed a new awakening among tribal communities. In Karbi Anglong district, the demand for an autonomous state was raised under the leadership of Autonomous State Demand Committee (ASDC) under the Article 244 A of the Constitution of India. Within a short span of time, ASDC became strong political force not only in Karbi Anglong but also in NC Hills.

In the beginning of the movement Kukis got involved in the socio-political events of Karbi Anglong. Many of them have been part of statehood movement for Karbi Anglong and NC Hills. However, central and state governments' failure to respond to their demands results in formation of a number of rebel groups. Karbis formed Karbi People's Force (KPF) and the Karbi National Volunteers (KNV). The two groups formed a united front in 1999 and named it as the United Peoples’ Democratic Solidarity (UPDS). UPDS sought to realize the dream of a separate state of Karbi Anglong and NC Hills. UPDS also aimed at accelerating the socio-cultural and economic advancement of the people of the two districts. The UPDS later split into two due to disagreement on whether to hold negotiations with the central Government or not. One faction agreed to hold negotiations while the other faction led by H.E. Kathar decided to stay
away. The Kathar faction of UPDS has been renamed as Karbi Longri North Cachar Hills Liberation Front (KLNLF). 52

The Kuki Revolutionary Army (KRA) was similarly formed in 2000-2001 in Manipur, allegedly with the help of Isac-Muiva faction of the NSCN. The outfit’s declared objective is the creation of ‘Kuki National Council’- an autonomous administrative council for the Kukis in Karbi Anglong-- a separate homeland for the Kukis with the help of armed struggle. KRA also aimed to work for socio-cultural, political and economic advancement of Kuki people. 53

One of the reason of growth of tension between KLNLF and KRA was the collection of tax. Tension between these two groups developed in Singhason-Khonbamon hills as both the groups were operating in the same area and they did not confine extortion or tax collection to their own community. Another reason for the tension between the two ethnic groups was the ban on jhoom cultivation in the Singhason-Khonbamon Hills on the ground that it resulted in ecological damage. 54 Ginger cultivators, with the slash and burn mode of jhoom cultivation are alleged to have destroyed the forest cover in the hill areas, a charge which can also be leveled against Karbi cultivators who have settled in the lower part of the same hill areas.

The main parties to the conflict Karbi- Kuki conflict were the KLNLF and the Karbi tribe on one hand and KRA and Kuki tribe on the other. The Karbi specially the KLNLF perception is that the Kuki in general and KRA in particular should follow the law of the land and that being a minority group they should not have acted so aggressively. The Kuki and KRA perception is that the majority tribe has resorted to ethnic cleansing of their community. But the fact is that both the tribes have experienced fear of elimination and loss of control over resources and property. 55

The UPDS action against the Kukis has brought the KRA, primarily a Manipur based outfit, into the scene resulting in violent conflict between the two groups. Both these groups have clashed repeatedly, and have not only targeted each other’s armed cadres, but also civilians, on the suspicion of being rival’s
sympathizers. In March 2004, attacks by Kuki insurgent groups displaced an estimated 2000 Karbi villagers and several hundred Kukis from Karbi Anglong. The majority took shelter in government run relief camps. About three hundred Kukis fled to Dimapur in Nagaland while hundreds more took refuge in the neighbouring state of Manipur.\(^5^6\)

Because of the Karbi-Kuki conflict, hundreds of persons of both sides were killed, countless people were injured and villagers were reported missing after the attacks. Several villages of both the communities were destroyed completely. The most disastrous effect of the conflict is the feeling of distrust and fear against each other. The camps were set up in community halls, government schools and office buildings in towns like Manja, Longnit, Hidipi, Rongplimlam, Dillai, Khatkhati, Bokajan, Upper Deopani etc. The district administration took steps to provide help to the victims soon after the relief camps were set up.\(^5^7\)

The state and district administration called in the army after sometime as the Police were unable to control the activities of the KLNLF and the KRA. The Army operations were partly successful in bringing down the violence but with their introduction in Singhason and nearby areas, there were reports of army atrocities on the villagers.\(^5^8\)

5. Dimasa non-Dimasa conflict

5.1. Karbi-Dimasa conflict

The Dimasas are the largest tribe in the North Cachar Hills district followed by the Nagas and Hmars. The two hill districts of Assam Karbi Anglong and North Cachar Hills have worked in close cooperation for two decades. The Karbi tribe of Karbi Anglong has lived in peace with the Dimasa tribe of NC Hills. In fact these two were a single district till the 1950s. Even after the division into two districts, Karbi Anglong remains the largest district of Assam and shares the distinction of being the melting pot of different cultural, religious, ethnic and linguistic groups.
Many people believe that violence in Karbi Anglong in 2005 was a planned move to destabilize Karbi Anglong district through ethnic clashes. For example, in July 2005 there was violence between the Biharis and Adivasis who were living in the same villages, doing the same type of cultivation and most of them migrated to this area from the same place. In August 2005, the tension between the Karbis and Khasis over the border issue was blown out of proportion both in Assam and Meghalaya. Before 2005 there was no history of the tribals of Karbi Anglong and NC Hills killing or attacking each other. The conflict divided these two tribes which are involved in political struggle for a joint state.  

5.2. Dimasa-Hmar conflict

During the past several years, an attempt to create a Dimasa homeland has disturbed the life on NC Hills with infighting between Dimasas and non-Dimasas. Dimasa armed groups comprise Dima Halam Daoga (DHD) led by Pranab Nunisa and Dima Halam Daoga Jewel (DHDJ) or the ‘Black Widow’ led by Jewel Garlosa. These armed groups have tried to create a Dimasa homeland in Assam’s NC Hills. Dimasa armed groups have resorted to ethnic cleansing since 2003. A little known Dimasa Protection Army (NDPA) formed on December 2011, is currently present in the North Cachar Hills district. Three major conflicts have taken place between Dimasa-Hmar (2003), Dimasa-Karbi (2005) and Dimasa-Zeme Naga (2009), claiming many innocent lives and displacing hundreds of people. The non-Dimasa communities in NC Hills have been pressing the State Government to scrap the Group of Minister’s (GoM) Committee decision and their recommendations be declared null and void.

The Government of Assam constituted a cabinet sub-committee on September 9, 2009 to resolve the ongoing conflict in the NC Hills. The Committee submitted its report on February 5, 2010 recommending the formation of ‘Dima Hasao District’ the demand that was raised by Dimasas. Further, it recommended Dimasa to become the mother tongue of the newly suggested district with additional privileges of appointment to government jobs. On the basis of the report Assam Government renamed the existing NC Hills as Dima
Hasao District in April 2010. On the other hand, right from the time the report was submitted protestors from non-Dimasa communities demanded that the NC Hills be bifurcated. They demand that if there can be one district for Dimasas then there should be another for the remaining indigenous tribal communities.

The ethnic feud between Hmar and Dimasa tribes started with the abduction of three important members of Dima Halim Daoga by cadres of NSCN-IM (Isak-Muivah) faction. This abduction was apparently carried out with the help of Hmar rebels that led to string of retaliatory attacks by the Dimasa armed groups. Since then, both the groups started killing members of the other and burning down villages. This had worsened the relation between the two groups. As a result thousands of Dimasas and Hmars were displaced from their gutted down villages and had taken shelter in 25 relief centres. The area had been intermittently under curfew, and this has led to severe scarcity of essential food items because of the disruption in supplies and the people’s inability to go or set up the market in the midst of all the violence.\(^60\)

During the Dimasa-Hmar conflict in 2003 approximately 350 Pnar people having close affinity with the Jaintia community of Meghalaya also fled North Cachar Hills following the ethnic clashes between the Hmars and Dimasas. The Pnars had been driven out by Hmar militants on the charges that they had been aiding the Dimasa militants.\(^61\)

**5.3. Dimasa-Zeme Naga conflict**

Ethnic conflict between Dimasa and Zeme Naga people in the erstwhile North Cachar Hills (now Dima Hasao) district of Assam from March to July 2009 led to the displacement of several thousand people from both the communities. Majority of them displaced within the district, while several hundred Zeme Nagas fled to Tamenglong district of Manipur state. The majority of Zeme Nagas who fled to Manipur were women and children under twelve years of age as men and youth stayed behind in order to guard houses and villages.\(^62\)
The North Cachar Hills Autonomous District Council has most of the power to administer the district except law and order. The demand for the change of nomenclature of NC Hills district of Assam seems to be the main reason for ethnic violence between Zeme Nagas and Dimasas. The Dimasas argued that the name ‘North Cachar Hills’ has long been outdated since the district was separated from Cachar district in 1951 and with the changing of name they formally want to link the district with themselves. The district’s other dominant ethnic groups like Nagas, on the other hand, consider this move as threat to their plans to establish an independent greater Nagalim, which would comprise the state of Nagaland, part of Manipur, part of Assam, part of Arunachal Pradesh and part of Myanmar.\(^{63}\)

Violence between Dimasas and Zeme Nagas broke out in a context of limited economic resources and infrastructure. Dima Hasao district is very underdeveloped, with only one hospital for a population of 186,000 people and out of total 552 villages only 136 villages have access to electricity. Most children only attend primary school since they have to help their parents with agricultural work. Development funds provided by the Government of India and the State Government of Assam are regularly diverted by politicians linked to armed insurgent groups.\(^ {64}\)

In August 2009, more than 16,000 IDPs from both communities were staying in 41 relief camps in the North Cachar Hills (now Dima Hasao) district in Assam state. An additional 800 Zeme Naga IDPs were staying in camps in Tousem sub-division of Tamenglong district of Manipur. According to National Human Rights Commission, as of July 2010, the relief camps had been closed and IDPs had returned to their villages.\(^ {65}\)

6. India’s international law obligation for the protection of human rights of IDPs

Internal Displacement Monitoring Centre (IDMC) submitted the periodic report to the Committee on Economic, Social and Cultural Rights\(^ {66}\) in 2008 providing information relating to the living conditions of conflict-induced IDPs in India and
their access to essential services. According to the report a majority of IDPs in India have not been able to return to their homes for years, due to protracted conflicts or unresolved disputes over land and property. The Government’s response to displaced people is often ad-hoc and largely insufficient, and the IDPs frequently find themselves in an extremely vulnerable situation.

The enjoyment of various economic, social and cultural rights of conflict and violence affected IDPs have been generally restricted in India. Different levels of assistance and protection are afforded by competent authorities to various groups of IDPs resulting discrimination and denial of these basic rights. So far as the displaced Kashmiri Pandits are concerned in Jammu, they have been provided with one-room tenement accommodation and free water, electricity and sanitation services.67

In contrast, conditions of IDPs in camps in Assam are very poor. In early 2007, camps in Karbi Anglong district were extremely overcrowded, and most IDPs had to sleep in open.68 One school in Karbi Anglong’s capital hosted 2,000 displaced people in a very limited space. In Kokrajhar and Bongaigaon districts of Assam, IDPs housed in 78 camps were living in rows of temporary sheds of polythene and aluminium sheets and sleeping on makeshift bamboo beds. No sanitation services were provided near the camps.69

Kashmiri Pandits in India are receiving somewhat better treatment with cash relief and dry rations than its counter part Assam. It was reported in January 2007 that IDP camps in Karbi Anglong district were receiving very basic provisions such as lentils and rice, but no cash relief to enable them to buy vegetables or even firewood to cook food. The state government was providing a limited number of utensils because of which in some cases, four IDPs had to share one plate. There was also no baby food for many children in the camp.70

In the Santhal IDP camps in Assam, it was reported in December 2004 that the displaced were receiving only rice for ten days each month, 600 grams for each adult and 400 grams for each child. Even this food aid was arriving sporadically, and many IDPs had to go in search of wild roots and herbs. Venturing out of the
IDP camps to collect firewood or vegetable was dangerous, particularly for women.\textsuperscript{71}

The Government has been providing free water facilities to Kashmiri Pandit IDPs living in camps in Jammu and has allocated more funds for construction of water tanks and improvement of drainage system. On the other hand, in North-eastern states, there has been lack of clean drinking water. Many camp residents have to travel a long distance in search of drinking water or collect it from dirty ponds. Although the state government has provided tube wells in camps, most of them have stopped working, while others in unhygienic condition.\textsuperscript{72}

Because of prolong period of displacement Kashmiri Pandits have been experiencing deterioration of both physical and mental health. Overcrowding in camps has caused a large number of pneumonia and tuberculosis cases and mental disorders have also taken epidemic form. Despite that Pandits have much better access to health facilities than other IDP groups in India, as a number of dispensaries have been set up to provide them with medical care.\textsuperscript{73}

In the Northeast, health facilities for IDPs are almost non-existent. Lack of clean drinking water and poor living conditions have led to the outbreak of diseases such as malaria, jaundice, dysentery and influenza. The few government dispensaries that exist lack even basic medicines such as pain killers and cough syrups. As was reported in January 2007, in the camps in Karbi Anglong district of Assam there were no preventive measures in place to stop the spread of malaria among IDPs. The 200 pregnant women in the camps had no access to medical facilities and babies were delivered inside the camps. Cases of many infant deaths and miscarriages have been reported in IDP camps in Assam.\textsuperscript{74}

Thousands of IDP children in Northeastern state of India are living in camps and have been forced to abandon their education due to closure of school because of conflict.\textsuperscript{75}
Many IDP camps in India are located in remote inaccessible areas, where there is no scope for self employment. A significant number of IDPs were farmers before their displacement and lack alternative land to cultivate at their new locations. They also lack skills to take up other types of employment and often land up doing jobs that no other group want to do.\textsuperscript{76}

Many women taking on responsibility for households have never worked outside the home before, and have no specific skill or job experience. The women who had worked prior to displacement find it impossible to continue or resume work. Women who survived by working in home industries lose their jobs once they are forced to move out of their homes. Female IDPs are also sometimes unable to take up employment outside camps on account of safety reasons.\textsuperscript{77}

From an international perspective the primary responsibility for the protection and assistance of IDPs rests with individual states in accordance with the principles of sovereignty. However, state parties to human right treaties have responsibility to respect and protect human rights of persons under their jurisdiction. Francis. M. Deng, has characterized the corresponding obligation of states to accept offers of assistance and protection to IDPs as one of the areas where International law offers insufficient protection.  \textsuperscript{78}

International Convention on Civil and Political Rights (ICCPR) contain clauses providing for derogation in times of emergency.\textsuperscript{79} However, International Convention on Economic Social and Cultural Rights does not include any such provision on restriction or derogation. International Covenant on Economic, Social and Cultural Rights (ICESCR) has emphasized the international co-operation for development and for realization of economic, social and cultural
rights by the state parties. Thus under the human rights law, a duty to offer assistance can be derived from the ICESCR. The Article 2 (2) of the Covenant provides for the realization of economic, social and cultural rights without discrimination. Therefore, India has responsibility to ensure that discrimination does not occur. As India has ratified the convention it has obligation to respect, protect and fulfill the human rights enumerated in the convention and to cooperate in providing relief and humanitarian assistance to individual within its jurisdiction including in situation of internal displacement.

Under the International Humanitarian Law (IHL) people displaced due to conflict have rights to physical safety, security, liberty and access to basic humanitarian services such as adequate housing, food, health care, education and protection. In the Geneva Convention there are a number of provisions which provides that International Committee of Red Cross (ICRC) may offer its services to the individuals during the conflict. There is also constitutional obligation of India to protect its citizens and to accord these basic rights to the citizens so that they are able to enjoy the right to life with dignity. Therefore, recognizing its responsibility under the international law India should develop a policy for conflict induced IDPs.

In this context, it is pertinent to mention that violations of IHL are not due to the inadequate laws, but due to unwillingness to respect the rules, because of ineffective means to enforce them. The Geneva Conventions and their Additional Protocols provide an extensive regime for the protection of persons affected by conflict. It also contains rules for means and methods of warfare, prohibition on use of antipersonnel mines, the protection of cultural property in the event of armed conflict. While the four Geneva Conventions have been universally ratified and has acquired the status of customary law, the same is not true with that of Additional Protocols. Even though the Additional Protocol I has been ratified by more than 160 states, its efficacy is limited because several states that have involved in international armed conflicts are not party to it. Similarly, nearly 160 states have ratified Additional Protocol II, but many states in which non-international armed conflict are taking place have not done so. In
these states common Article 3 of the four Geneva Conventions which attains the status of customary international law is the only applicable law for the protection and assistance of individuals affected by internal armed conflict.

Currently, India has several situations of armed conflict within the country. However Government of India (GOI) does not recognize that it has internal armed conflict instead recognize these areas as ‘disturbed areas’ \(^{82}\) and insurgency affected areas. At present the draconian Armed Forces Special Powers Act (AFSPA) is in force in the large parts of Northeastern states and in Jammu and Kashmir. Section 7 of the AFSPA specifies that there can be no prosecution, suit or other legal proceeding against any one under the law. AFSPA has not only led to gross violation of human rights, but it has allowed members of the armed forces to perpetrate abuses with impunity.\(^{83}\) The law grants the military personnel wide powers to arrest without warrant, shoot to kill, and destroy property in so called ‘disturbed areas’.\(^{84}\)

People in Northeast India have been protesting against the Act for a long time. The Supreme Court in 1997 has issued guidelines to prevent human rights violations, but these guidelines are routinely ignored. In 1980 Manipur Human Rights Forum filed a public interest litigation in the Supreme Court, challenging the constitutional validity of the AFSPA. The Naga People’s Movement for Human Rights and the People’s Union for Democratic Rights also moved separate petitions on the same issue in 1982. However the Supreme Court did not proceed in the matter for 15 years. In 1997, a five member bench headed by Chief Justice J.S.Verma in its final verdict upheld the law.\(^{85}\) Since 2000, Irom Sarmila, a civil right activist from Manipur, has been on hunger strike demanding repeal of the Act. Following widespread protest in 2004, the Government of India constituted a five member committee under the chairmanship of B.P. Jeevan Reddy, former judge of the Supreme Court to review the AFSPA. The Review Committee submitted its report on 6 June 2005 recommending repeal of the Act. However the government has not acted on those recommendations because of the opposition from the armed forces.
By its form and in its application the AFSPA has violated a number of international human rights treaties. Especially many of the provisions of UDHR have been violated by the AFSPA. For example free and equal dignity of rights, non-discrimination, life, liberty and security of person, equality before the law, no torture, no arbitrary arrest. Under the international law, state have obligation to treat persons humanely and protect and safeguard their interests both in international and non-international conflicts.

It is extremely surprising that Delhi High Court had found the AFSPA to be legal and constitutional when it was challenged. However, when India had presented its third periodic report to the United Nations Human Rights Committee in 1997, members of United Nations challenged the validity of the AFSPA and questioned how the AFSPA could be deemed constitutional under the Indian law. Therefore the committee recommended that application of these emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the ICCPR.

The Act not only violates the international standard of human rights but also violates the national standard. Article 14 in the part III of the constitution of India ensure to its citizens equality before the law and equal protection of laws within its territory. It means that there shall be no discrimination among its citizens or group of citizens. However the Armed Forces Special Powers Act has been made applicable only to the Northeastern region and not to the other states of India except for Jammu and Kashmir where insurgency like situation is prevailing. Insurgency problem in Northeast India can be resolved politically and not with power, it is evident from the fact that despite being in force for more than five decades number of insurgent groups in the region is continuously rising. Since Act was enacted against the wishes of the common people of Northeast the government should seriously think about the repealing of the Act.

India enacted the Geneva Conventions Act in 1960 with a view to giving effect to the provisions of international Conventions adopted at Geneva in 1949. However the Act is confined only to the implementation of the provisions regarding ‘grave breaches’ of the Conventions and is silent on the measures
that are to be taken by the state for suppression of all acts contrary to the provisions of Conventions other than grave breaches.\textsuperscript{93}

Mushrooming of non-State actors and violation of international humanitarian law by these groups are realities of the Northeast India. There is no doubt that states have right and duty to take all measures to eliminate such human rights violation and to protect their nationals, and establish democracy and rule of law. States also have obligation to bring the perpetrators of such acts to do justice. However that does not mean that States have the unfettered right to take away the right to life arbitrarily and to violate human rights of individuals guaranteed by both the Constitution of India and international law.

7. IHL obligation of non-state actors

The threat of violation human rights posed by non-state actors is a matter of grave concern in certain parts of India including Northeast India. Under the contemporary international humanitarian law insurgents, belligerents and rebels or armed opposition groups (unrecognized insurgents) have international obligation.\textsuperscript{94} International law originally considered rebels as having international rights and obligations from the time they are recognizes as insurgent groups. Traditionally, insurgents were considered to have international rights and obligations with regard to those states that recognize them as having such status. Today, these recognition regimes have been replaced by compulsory rules of IHL which apply when fighting reaches certain thresholds.\textsuperscript{95}

In this context it may be mentioned that there is an additional category of international actors ordinarily referred to as national liberation movement (NLM). The representatives of NLM may reject to label them as of non-state actors. Because of the distinction between recognized belligerents and insurgents, the NLM may be able to claim rights and subject to international obligation, even in the absence control over territory or express recognition by its adversary.\textsuperscript{96} The First Additional Protocol to the Geneva Conventions expanded the application of the Geneva Conventions to the armed conflicts in
which people are fighting against colonial domination, alien occupation and against racist regimes in the exercise of their right of self determination. Thus national liberation movement is recognized as international armed conflict and therefore all the rules applicable to these conflicts apply to the parties to the conflict. Where there is no recognition of insurgency or belligerency, the group in question is not a NLM and as such application of rules of international armed conflict does not apply.

There have been numerous instances of human rights violations in Assam and Northeast India during the last few decades. People have been illegally detained, tortured and killed by the Indian army, paramilitary forces, and the police on numerous occasions. Even the armed opposition groups are responsible for gross violations of human rights in the conflict areas. Therefore, the armed groups operating in these areas should bind themselves under the international humanitarian law for protection of human rights of innocent people. However, it is saddening to see that out of all these rebel groups only one group i.e. the People’s Liberation Army (PLA) of Manipur has consented to comply with the international law norms.
The treaty was concluded between the East India Company on the one part and His Majesty the King of Ava on the other. According to the Treaty of Yandaboo, the Burmese renounced their rights on Assam as well as neighbouring kingdoms of Cachar, Jaintia and Manipur. The treaty marked the end of Ahom monarchy and established British sovereignty in Assam.

Nehru-Liaquat Pact was signed Pakistan’s Prime Minister Liquat Ali Khan and Indian Prime Minister Jawaharlal Nehru in New Delhi on 8 April 1950. The agreement provided for restoration of rights of immigrants over their properties if they would choose to return not later than the 31st Dec. 1950.

Sec. 2 of the Immigrants (Expulsion from Assam) Act, 1950 provides that if the Central Government is of opinion that any person or class of persons, having been ordinarily in any place outside India come into Assam, before or after the commencement of the Act and is detrimental to the interests of the general public of India or of any section thereof or of any schedule tribe in Assam, then the Government has the power to remove such person or persons from India or Assam. The proviso has stated that the section is not applicable to any person who on account of civil disturbances or for fear of such disturbances has been displaced from any part of Pakistan and has been subsequently residing in Assam.

During the Sino-Indian war of 1962, it was reported that some infiltrators were seen with Pakistani flags. This resulted in adoption of the ‘Prevention of Infiltration from Pakistan to Assam Plan 1964.


In 1978, the Chief Election Commissioner of India, S.L. Shakdher, announced at the meeting of state electoral officers that Assam’s alarming rise in population was attributed to the influx of a very large number of persons from the neighbouring
The Art. 323 B provides that the appropriate legislature may, by law, provide for adjudication or trial by tribunals of any dispute, complaints or offences with respect to all or any of the following matters: (a) levy, assessment, collection and enforcement of any tax; (b) foreign exchange, import and export across custom frontiers; (c) industrial and labour disputes; (d) land reforms by way of acquisition by the state of any estate as defined in Article 31A or any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way; (e) ceiling on urban property; (f) elections to either House of Parliament or the House or either House of Legislature of a state, but excluding the matters referred to in Article 329 and Article 329 A; (g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods; (h) rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants; (i) offences against laws with respect to any of the matters specified in subclause (a) to (g) and fees in respect of any of those matters; (j) any matter incidental to any of the matters specified in subclause (a) to (i).

The Assam Accord was a tripartite agreement between AASU, the Government of Assam and the Government of India. After much debate and negotiations, AASU retracted from its earlier position of deporting all migrants who came after 1951 and agreed to recognize 25 March, 1971 as the cut off date to determine foreign infiltrators in Assam.

Clause 6 of Assam Accord states for constitutional, legislative and administrative safeguards, as may be appropriate shall be provided to protect, preserve and promote social, linguistic identity and heritage of Assamese people. Clause 10 provides that it shall be ensured that relevant laws and prevention of encroachment of government lands in tribal belts and blocks are strictly enforced and unauthorized encroachers evicted as laid down in such laws.

Supra, note 2.

Baruah, op. cit., p. 5,
The term ‘subnationalism’ has been used by Sanjib Baruah to refer to a pattern of politicization and mobilization that meets some of the criteria of nationalism, but is not committed firmly to the idea of the criteria of nationalism.

Mountain passes in the frontier areas between Bhutan, Koch and Ahom kingdoms.

The indigenous tribes of plain districts of Assam are recognized as Scheduled Tribes (plains). They are Bodo, Mising, Rabha, Sonowal, Lalung (Tiwa), Deori, Thengal (Mech), Hojai and Barman. By a subsequent amendment order, Singphos and Khamtis have been recognized as Scheduled Tribes (plains) and likewise three more hill Schedule Tribes, namely Garo, Hajong and Dimasas have also been recognized as Plains Tribes.

Basumatary, Loc.cit.

The tribal belts and blocks were established with the objective of protecting land from occupation by other advanced groups other than the protected class of people such as plains tribal, hills tribals, Santhals, Scheduled Castes and Nepali cultivator graziers. Later on, indigenous Koch-Rajbongshis of Goalpara, Dhubri, Kokrajhar and Bongaigaon districts were also added under this category.


Art. 21 A, Constitution of India.


The Act sought to consolidate and reserve the areas having forest cover, or significant wildlife, to regulate the movement and transit of forest produce, and duty levied on timber and other forest produce. It also defines the procedure to be followed for declaring an area to be a Reserved Forest, a Protected Forest or a Village Forest.

Art. 338(9), Constitution of India provides that the Union and every State Government is required to consult the National Commission for Scheduled Castes and Scheduled Tribes on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

Sec. 2, Forest (Conservation) Act, 1980; The Act has made it mandatory that state Governments seek the central government’s approval before diverting any forest land for non-forestry use. The Wild Life Protection Act 1972, provides for the protection of wild animals and plants. The Act under section 38 allows any area to be constituted as a protected area namely national park, wildlife sanctuary, tiger reserve or community conservation area.

The third generation of human rights refer to those rights that go beyond the mere civil, political and social, economic and cultural rights expressed in any international law documents such as right to development.


Ibid, p.5.

Sec. 2 (o), The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
Ibid, AITPN, p.3.

Ibid, Sec. 4(6), The Section states that where the forests rights recognizes and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3, such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

Art. 2, Constitution of India provides that Parliament may, by law admit into Union, or establish new States on such terms and conditions as it thinks fit; Under Article 3, a new state may be established (i) by separating territory from any state (ii) by uniting two or more States (iii) by uniting any parts of States (iv) by uniting any territory to a part of any state.


The word ‘adivasi’ is a general Hindi term which means tribe. The word is generally used to refer different ethnic groups in Assam who work on the State’s tea plantation. In Assam adivasis consist of Santhals, Orangs, Munda etc. who were brought by the British to work only tea garden. However in course of time, they started settling in and around tea gardens and spread to other places.

Hussain, Phanjoubam, loc.cit.

Hussain, Phanjoubam, loc.cit.


Hussain, Phanjoubam, loc.cit.


Id.


Id.

Id.

Ibid. p. 83.

57 Jeyaseelan, op. cit., p. 61.

58 Id.


61 Ibid, p.22.


63 Id.

64 Id.

65 Id.

66 The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of of the International Convention on Economic, Social and Cultural Rights by its states parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.


69 Id.


71 Ibid, p.5.

72 Id.

73 Id.

74 Ibid, pp. 5-6.

75 Id.

76 Id.

77 Ibid, pp.6-7.


Art. 2(1), ICESCR, 16 Dec. 1966; Each state party to the present covenant undertakes to take steps, individually and through international co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Art. 3, Common to the four Geneva Conventions reads: An impartial humanitarian body, such as the International Committee of Red Cross, may offer its services to the parties to the conflict; Article 70(1), Protocol I Additional to the Geneva Conventions, 1949 reads: If the civilian population of any territory under the control of a party to the conflict, other than the occupied territory, is not adequately provided with the conducted without any adverse distinction shall be undertaken, subject to the agreement of the parties concerned in such relief actions. Offers of such relief shall 18(1) Protocol I Additional to the Geneva Conventions further provides that relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict.

Sec. 2(b), Armed Forces Special Powers Act, 1958, defines disturbed area to be an area which is for the time being declared by notification as disturbed area under section 3 of the Act. Under the section 3, Act empowers only the Governors of the states and the Administrators of the Union Territories to declare areas in the concerned states or Union Territory as disturbed, to enable its armed forces to exercise the special powers. The Act was first applied to the Northeastern state of Assam and Manipur and was amended in 1972 to extend to all the seven states in the Northeastern region of India.

Sec. 6, AFSPA, 1958.

Sec. 4, AFSPA, 1958.


Article 1, Universal Declaration of Human Rights, 1948.

Ibid, Art. 2.

Ibid, Art. 3.

Ibid, Art. 7.

Ibid, Art. 5.

Ibid, Art. 9.


Art. 3 common to the four Geneva Conventions, 1949; Additional Protocol II additional to the Geneva Conventions, 1977; Art. 19, Hague Convention on Cultural Property, 1954 provides that in the event of an armed conflict not of an international character parties to the conflict are bound to maintain a minimum standard.


International law establishes certain requirements for eligibility to become an international subject. Firstly, insurgents or rebels should prove that they have effective control over some part of the territory. Secondly, insurgents have a support from the majority of the people inhabiting the territory and thirdly, civil commotion should reach a certain degree of intensity and duration.

Art. 1(4).