CHAPTER VIII
CONCLUSION

Like other citizens of a state Internally displaced population also have the right to have access to basic necessities of life during flight and in refuge. However, in most cases these displaced-population find themselves in precarious situations without these facilities. In India a large number of IDPs are still remain unprotected. Therefore the investigator undertakes this study to have a look as to how far India has succeeded in providing protection to such population within the existing national as well as international norms.

The nature, magnitude and causes of the problem of internal displacement in Assam including other Northeastern states and the existing legal norms for protection of the human rights of internally displaced persons both at international and national level have been discussed in the preceding chapters. On the basis of those analysis and observations made in the previous chapters the following conclusion may be forwarded.

1. Findings

1. Various human rights and humanitarian law instruments have categorically emphasized the need to prevent displacement of population. However, the investigator argues that in a country like India where causes of population displacement are varied and myriad, the task of preventing population displacement is the most difficult one. Further, given the scale of displacement, poor state like Assam cannot be expected to be successful in preventing displacement without active cooperation from the Union Government.

2. A major set back to find out a solution in the field of social science research and in humanitarian law is the problem of having an accurate data on internally displaced persons. Much of the published research works on IDPs are based on data that have been collected using fairly unstructured
interviews in a small scaling setting. Of course, it is true that in-depth interviews have provided us rich and useful store of descriptive data. But they do not give a sufficiently representative sample of the population as the size of the targeted population is important in generating a proper sample.

As there is no designated organization responsible for the collection of data, it is inevitable that there are multiplicity of agencies and statistics. As a result there is no co-ordinated procedure for data collection, verification, assessment and analysis.

3. In some cases the Government itself is the perpetrator of violence or human rights abuses that leads to displacement. For instance, In Gujrat 2002 violence against Muslims is committed at behest of the state authority as alleged by a senior police officer who was part of the state intelligence during that time. Sometimes because of the presence of security forces and non-state armed actors, states are unable to exercise full control over their territory and therefore to prevent displacement in such a situation seems to be very difficult.

4. Refugees have an international agency and legal structure for their protection. But IDPs have no structure of that nature. There is no specific system of legal framework for internally displaced persons; being citizens of the country they remain under the jurisdiction and sovereignty of the State. Of course, this national protection is complemented by international human rights law and humanitarian law. In recent years, various humanitarian and development agencies have come forward to provide humanitarian assistance to internally displaced population, but in absence of coherent legal framework and clear institutional responsibility entrusted to a particular organization, the response of the international community is not uniform and up to the mark. In fact, international agencies have a very limited role to play so far as protection of human rights and physical security of internally displaced persons are concerned. Further there are situations where Government is either unwilling or unable to provide protection and assistance to IDPs. As the Union Government has overall
responsibility for the protection and assistance of internally displaced persons, in such a situation IDPs are left to fend for themselves.

5. At present there exists no universally accepted definition of internally displaced persons. The broad definition as provided in the Guiding Principles has drawn criticism from many quarters and as a result international efforts to protect and assist IDPs have been handicapped to a large extent.

6. Neither the human rights law nor humanitarian law is explicit in its protection of IDPs. For example, there is no explicit guarantee against forcible return of IDPs to places of danger unlike the refugees who have been protected by the principle of non-refoulement under the legal regime.

7. Internal conflicts give rise to a serious problem so far as international obligation of the parties to the conflict is concerned. In case of established authorities it is easier to impose obligation with regard to protection of human rights of affected population. But this is not the case with the armed groups which have no legal entity and not the signatories of Geneva Conventions and its Protocols as the insurgents cannot be legally bound by a Convention which they had not signed. Moreover, in comparison to international armed conflicts there are very few provisions in IHL to deal with non-international or internal armed conflict and therefore, there is lack of effective mechanism that deals conclusively with such conflicts. Further in situations of internal conflict not only the armed groups but also the army and para-military forces are responsible for gross violation of human rights and the Government along with the state institutions has failed to address these violations.

In India Government generally refers to the situations of internal conflict as 'law and order' situation thereby trying to avoid international scrutiny and denying international humanitarian assistance to displaced population. Further, under the Constitution of India, law and order is a state subject. As a result ethnic conflict or insurgency problem is seen as a local issue and
rehabilitation of displaced population mostly rest with the State Government.

Under the provision of the Geneva Conventions Act, 1960 the court is not empowered to entertain a complaint against any army personal except when complaint is made by the Government deputed authority. Thus the Act is proved to be grossly inadequate to protect the human rights of victims when atrocities are committed by the members of armed forces in a conflict situation.

8. Lack of transparency and accountability give rise to most unholy nexus of politicians, bureaucrats and businessmen and national funds meant for development and poverty alleviation have regularly been misappropriated. Of course, the Government has taken certain initiatives to bring peace into the region by signing peace accords with a number of insurgent groups operating in Assam and Northeastern states. Assam Government has also entered into agreements with some ethnic organizations in the state and granted small measure of autonomy. But these measures have proved to be piecemeal in nature and are not comprehensive and therefore conflict continues.

Recently Government has increased the development expenditure for infrastructure development and employment generation with a view to containing insurgency activities. But due to rampant corruption of various state agencies resources have not reached common people. Time to time it has been reported by the media that sizeable portion of this development funds land up in the coffers of the various insurgent groups operating in Assam. As a result, instead of containing violence it aggravates violence.

9. Since the publication of the Guiding Principles on Internal Displacement in 1998, growing number of national Governments have begun to implement these principles through enactment of national legislation and policy to address the situation of internal displacement. India is yet to have an integrated national law to cover all the categories of displaced population. There is no law for resettlement, rehabilitation and loss of
livelihood in India. Of course, India has a National Policy on Resettlement and Rehabilitation (2003) for project affected families. However these rehabilitation policies do not cover fisher folk, landless labourers and artisans. This has created a void so far as protection and assistance provided to the all categories of IDPs especially the landless people are concerned.

10. Population explosion in Assam due to large scale influx of immigrants into Assam from neighbouring countries and flow of migrants from other parts of India to the Northeast is one of the fundamental causes of high level of unemployment generation in the region, that in turn has attracted many educated youths to join armed opposition groups. It is also one of the root causes of land alienation and consequent inter-ethnic conflict in the region. Therefore, protection of land of indigenous people who are CPR dependent is a must. If indigenous people living in CPRs lose land in large measures insurgency is likely to grow and that would consequently lead to large-scale displacement.

Large scale influx of population into the Northeast region has given rise to a situation where security and integrity of India is threatened. The Supreme Court of India has intervened time and again and directed the governments to discharge their bounden duty i.e. to detect and deport illegal migrants. But both the Union Government as well as State Government have failed to acknowledge the reality and turned a blind eye to this burning problem.

11. Selective enforcement of Armed Forces Special Powers Act, 1958 has created distrust in the minds of the people of Northeast because of its oppressive nature and for many year people in the region especially Manipur have been pressing for the abolition of the legislation. The Act has not only undermined the democratic mandate of the Constitution of India but also violates the International Covenant on Civil and Political rights that India signed in 1978. There is no doubt that AFSPA has miserably failed to contain insurgency. The Act also violates two cardinal principles of criminal justice system- *nullum crimen sine lege* and *nulla poena sine lege* by providing arbitrary powers to the law enforcement agencies. Therefore
investigator argues that India should seriously think about to repeal the legislation and if the situation requires replace it with a more human enactment to contain insurgency as suggested by the Constitution Review Committee and Justice Jeevan Reddy Committee.

12. In many parts of Northeast India human rights of common people are regularly being violated by both state and non-state actors. The Union Government has set up National Commission for Human Rights (NHRC) in 1993 but no power has been given to investigate against the Indian army which is one of the cause of violation of human rights of people in a conflict situation.

13. Right to property is no longer a fundamental right after 44th Amendment to the Constitution of India. Thus under Article 300 A, legislature can validly make a law depriving a person of his property. However even prior to the 44th Amendment by the 42nd Amendment Articles 14, 19 and 31 had lost much of their substance as any law inconsistent with these rights cannot be challenged in the court on the ground of being inconsistent with these Articles. Thus the effect of these Amendments is that a legislature can make a law depriving a person of his property and there would be no obligation on the part of the state to pay anything as compensation.

14. Generally development projects especially dams are constructed in remote areas which are mostly inhabited by indigenous or tribal people. As a result, indigenous people very frequently become target of these development projects and consequently significantly marginalized. Ranganadi Dam project in Arunachal Pradesh is responsible for massive flooding, sand casting and erosion in the districts of Lakhimpur and Dhemaji in upper Assam. People inhabiting in the downstream area are also suffering from scarcity in water, electric supply and lack of infrastructure.\(^2\) The districts of Marigaon and parts of Nagoan in central Assam get regularly flooded by the Karbi-Longpi, Kapili and Umtru dams when excess water is released from the dams.
Without looking into feasibility of constructing large dams in a seismically active region like Northeast and completely overlooking the problems of common people affected by the Lower Subansiri Project, Government has taken decision to go ahead with the project without taking the confidence of the local people. This has created apprehension in the minds of the people affected by the project. As per the current status, the Dam is higher than the Sardar Sarovar Project on the river Narmada. But the Sardar Sarovar Dam is attracting much more attention than the Lower Subansiri Project. As the benefit of such projects are mainly harvested by the Government and medium and higher strata of the society, such type of development can be termed as ‘anti people’ because it does not benefit downtrodden people.

As the ecology of the river Subansiri entwined inseparably in Assam and Arunachal Pradesh the project is deemed to cause immense ecological disaster in Assam. The life style of the people is going to change forever once the river dries up. Further people living in downstream area will always live in constant fear of a disaster to occur as the region is seismically active region.

Another big blunder that has been committed in respect of a big dam like Lower Subansiri is that the clearance of EIA was done in a very casual and mechanical manner on the basis of sub-standard impact assessment report. For instance the report lists 55 species of fish in a river but in reality there are at least 156 species.\(^3\)

The ILO Convention 169/1989 refers to the principle of free prior informed consent in the context of relocation of indigenous people from their homes.\(^4\) World Commission on Dams has also made recommendation to include this principle. This gives indigenous people the right to refuse to allow proposed dams which might affect their land. It gives them the power to negotiate the conditions under which the project can go ahead. However, the Government of India has totally ignored these recommendations. Thus by ignoring the genuine concerns of the people of the Northeast and bypassing their interests in the name of development the Government
violates the very foundation of equitable justice as provided by the Constitution of India.

15. The existing land acquisition law is exploitative in nature and was enacted by the British to suit its colonial needs. The Act has been exploited by commercial interests and corrupt politicians to promote their own selfish interests to the detriment of common people. Despite multiple amendments made to the original Act, the principal law continues to be the same. The continuance of this age old legislation has no justification as it violates the democratic fabric of the constitution. In a recent land acquisition case the Supreme Court of India expressed concerned over misuse of Land Acquisition Act, by all states to acquire land from farmers for development in the guise of public purpose. In the case the Supreme Court accused States of running a sinister campaign to grab the land of the poor farmers and quashed the 2007 notification issued by Uttar Pradesh Government in Greater Noida. The Court also imposed a 10 lakh fine on the Greater Noida Industrial Development Authority and directed it to return the land to its original owners.

Under the current acquisition process compensation is often awarded only to those persons who have legal titles or individual ownership over land such as land owners, tenants sharecroppers, daily wage earners, artisans who are dependent on lands are rarely considered as entitled for compensation despite the fact that they are most vulnerable group and in dire need of support.

16. CPRs like forests, grazing grounds are not compensated for under the modern law even though these are the only source of sustenance, life and livelihood of indigenous people. The delayed payment of compensation and exclusion of CPRs from compensation often leads to impoverishment. In addition, tribal people do not have much experience in handling large amount of money therefore whenever money/ cash they receive as compensation, it easily slips out of their hands on one or other factor.
The Protection of Plant Varieties and Farmers' Rights Act was enacted by the Parliament of India in 2001 with one of the basic objective to protect the plant varieties and the rights of farmers. But this very objective has been openly flouted by the Government by allowing for establishment of various development projects at the cost of the indigenous people and farmers.

Dependence of human being on biological diversity can not be doubted and is evident in everyday life. Especially forest dwellers and other indigenous people have been using the environment and biodiversity for their sustainable development since ages. In conformity with the Convention on Biological Diversity adopted by United Nations, the Biological Diversity Act was passed by the Indian Parliament in 2002. However the existing legal regime is proved to be insufficient without putting in place a framework for management of biodiversity.

17. Both under the national law and policies of international agency there is a wide gap between the law and policies and their implementation. For instance, in Sardar Sarovar Project even the World Bank policies have failed to prevent widespread impoverishment and sufferings of the affected people. In India, resettlement and rehabilitation which is crucial for displaced population is generally promised by executive orders and such orders are rarely implemented in their entirety as they have only persuasive value. Thus, existing policies have failed to protect the internally displaced persons in India and they are left without any legal protection on rehabilitation and resettlement front.

18. In most cases displacement has been involuntary and invariably affected people but they do not get any scope to raise their voice against dam projects when these projects are planned and implemented. The reason being there is lack of transparency and meaningful information. Moreover, the information they receive are limited and provided very late.

19. Every year during monsoon season Assam reels under flood and erosion washes away huge chunks of land which virtually destroys the economy of the state especially rural economy triggering displacement of
millions of people both permanent and temporary. The measures that have been undertaken by the Government to control this menace are temporary and carried out in a patchwork manner. In order to find out a permanent solution to the problem Government has already asked for suggestions of experts. If the study is carried out in a proper scientific manner, hopefully a permanent solution of flood and erosion will come out in near future.

Flood control is a state subject and Assam’s Irrigation or Water Resources Department takes care of flood control in the state. The Central Government plays only advisory, monitoring and funding role. Corruption and lack of accountability of irrigation bureaucracy are the most prominent reasons for dismal performance in controlling flood. The best example is the Brahmaputra Board which was constituted by the Union government long back in 1980 for planning and implementation of flood and erosion control measures in the Brahmaputra valley. But it became effectively functional only after 1997 when the Union Government took an active interest in the flood problem of the Northeast. The Brahmaputra Board is entrusted with the job of preparing flood and erosion control projects, but it does not have the technical expertise to deal with the complex problem of flood and erosion in the state.

Although erosion has become a major problem for Assam, the Government has not yet recognized the problem as a natural disaster. According to the Disaster Management Act 2005 disaster is serious disruption in a community, caused by the impact of an event that requires a significant coordinated response by the State and other entities to help the community recover from disruption. Keeping in view of the enormity of the problem the State Government is not financially strong enough to find out a permanent solution to the problem of flood and erosion, declaration of the problem as national problem is a must to ease the financial constrain so that the families who have lost their land due to river-bank erosion get government assistance under the Calamity Relief Fund (CRF).

At present society is more vulnerable to natural hazard that includes flood and erosion due to destruction of natural environment and ecology. To
achieve a sustainable and long term solution to the problem of flood and river-bank erosion measures have to be taken keeping in mind protection of environment. Construction of embankments in Assam without taking adequate measures for the restoration of ecological balance in the catchment areas has led to increased siltation of rivers and reservoirs. In some areas such as in Dibrugarh river beds are now higher than the ground level in the vicinity.

The State Government has put in place a number of structural measures like spurs, embankments for flood control and riverbank erosion mitigation. But the non-structural measures such as flood warning system and Flood plain zoning are largely underdeveloped. Even the existing structural measures are not properly maintained due to chronic shortage of fund that leads to deterioration in flood management infrastructures.

Continuous deforestation in both hills and plains has devastative impact in plains of Assam as it has resulted into soil erosion and loss of soil fertility due to environmental degradation. This has caused land slides in hills and silting of river beds and floods in plains.

20. Protection of environment, peace and development are interdependent and the principle of sustainable development has been recognized by the international community through a number of international documents. In conformity with this principle Government of India has made elaborate framework of environmental legislation for conservation of forests, preservation of wildlife and the control of water, air and soil pollution. But due to lack of sincere effort on the part of the Government to implement these policies and laws on sustainable development is still remains a far cry. In the context of Assam, protection of environment could go a long way to solve the problem of flood and river-bank erosion.

21. Media in Assam had played a very proactive role in creating public opinion on various issues of public concern. For instance six year long Assam movement is the result of public awareness created by the media
especially print media. To a large extent media has been able to highlight the problem of displacement in case of ethnic conflict, flood etc. but has failed to highlight the plight of displaced population in a pressing manner affected by river-bank erosion. Every year a large number of people have lost their homes and livelihood permanently due to erosion. Even in cases of ethnic conflict or flood people used to forget about these people once flood water recedes or ethnic conflict subsides.

22. While undertaking the study in the districts of Kamrup, Dibrugarh and Nalbari the investigator finds no instance of repeated displacement while the districts of Karbi Anglong and N.C. Hills witness multiple displacement. In Assam natural disaster causes highest number of displacement followed by armed conflict and development projects. Only 30 per cent of the people over whom study has been undertaken have enough food to eat. Ration cards are available to 24.5 per cent whereas 75.5 per cent of them are deprived. A staggering 98 per cent of people do not have APL card and only 2 per cent of people have them. So far as BPL card is concerned 27 per cent of the people have been provided with the cards while 73% are without it. Those who have BPL card only 4 per cent have got sufficient food to eat whereas 96% do not get two square meal.

Medical facility is available to only 24 per cent displaced population and the remaining population are deprived of it. About 54 per cent people fell sick during displacement and only half of these sick people receive some medical aid. There were 19 per cent while in displacement and 13.2 per cent died at the age of five and 10.5 per cent at the age of 60 and above. It shows that death is more common at the extreme age.

Majority of people living in displacement collect drinking water from well while 32.5 per cent collect it from ponds and the rest of the population collect it from pump. More than 85 per cent people do not have hygienic sanitary toilets. It shows the unhygienic living conditions of these people. School drop out rate is 25.5 per cent and only one per cent of the displaced
people are receiving vocational training for their livelihood. Similar is the case with adult education as the scheme is available only to one per cent.

2. Suggestions

1. In the background of significant increase in the number of non-international armed conflicts in recent years, the investigator argues that the Commission on Human Rights and other United Nations agencies should take initiative to develop an appropriate mechanism for proper implementation of the existing provisions of laws relating non-international armed conflicts for the protection of human rights of victims of such conflict.

The present law in India for implementation of the international Geneva Conventions is proved to be grossly inadequate. For effective implementation of the Geneva Conventions it is imperative that the Government should enact a new comprehensive legislation for the protection of the rights of victims of armed conflict. India had ratified the Geneva Conventions long back in 1950, as such there is an obligation on the part of India to enforce its provisions in a responsible manner.

2. As the under development is one of the root cause of conflict in the Northeast region, the investigator suggests that the Government should adopt a corruption proof sound policy for development and makes sincere effort for peace making and conflict resolution otherwise it would not be possible to improve the overall situation and establish peace in the region because without peace there can be no development.

3. India is lagging behind in formulating policies and enacting legal framework to address the human rights concerns of the victims of displacement. Therefore, it is high time that the Union Government should take steps to enact an appropriate legislation without making any delay. As the public order, police, water, land etc fall within the State list of the Constitution of India, the State Government has primary responsibility to
frame laws on these subjects so as to deal with the problem of displacement of population.

4. Despite the enforcement of draconic legislation like AFSPA for quite a long time in Northeast India and continuous presence of army, Government has failed to contain insurgency. Therefore, investigator argues that India should seriously think about to repeal the legislation and replace it with a more human enactment as suggested by the Constitution Review Committee review committee and by Justice Jeevan Reddy committee.

5. For the protection of the land rights of indigenous people especially those who are CPR dependents we need to evolve a system where modernization and scientific approach must go hand in hand with that of the traditions and cultures of these people. In other words sustainable development is the only solution for the protection of human rights of indigenous people living in CPRs.

6. To effectively control flood and river-bank erosion mitigation renovation of existing flood and erosion management structure is a high priority. Since the State Government is not in a position to spend so much money on maintaining these infrastructures, the Union Government should initiate steps to ease out the financial constrain by increasing central assistance.

3. Recommendations

The Constitution may be amended by incorporating a new provision in Article 21 as Article 21B. A draft of the amendment has been provided herewith.

Transfer of property other than agricultural land, education, social security—employment and unemployment fall in the Concurrent list and maintaining law and order, healthcare, land policies, police forces fall in
the State list of the Constitution of India. In this background it is necessary that both the Union and State Governments need to develop suitable and comprehensive legislation on the subject of displacement of population keeping in mind human rights concerns of such population. A draft of the legislation has been annexed herewith.

Further the investigator recommended for the establishment of a National Commission for the Protection of the Rights of Internally Displaced Persons with independent investigating and enforcement authority. There is also a need to make the human rights institutions like National Human Rights Commissions and State Human Rights Commissions more meaningful and effective. The existing Human Rights Protection Act, 1993 should be suitably amended so as to include internally displaced persons so that whenever arbitrary displacement takes place they get entitled to make complaint of violation of human rights. NHRC should be elevated to the status of Supreme Court of India so far as violation of human rights are concerned. Government should also take steps to confer effective enforcement rights over the various human rights institutions such as District Courts, State Human Rights Commissions. Moreover, like ordinary courts provisions for appellate jurisdiction and contempt of court should also be made in the Act in order to provide an effective enforcement mechanism.

For according better protection to the internally displaced population in India the Government should take appropriate steps to establish a Ministry of Disaster Management of State with independent charge for the collection of data on IDPs and that will give impetuous to the rights and concerns of internally displaced persons. In Assam there is Relief and Rehabilitation Department and the department is providing relief measures to the victims of natural disaster and ethnic violence. But in most cases victims do not get the relief measures in time and not rehabilitated.7
A concrete policy is needed to be developed by constituting a Commission on Internally Displaced persons to look after their humanitarian assistance, repatriation, rehabilitation, personal and social security. The Commission should also have the responsibility for providing document from the appropriate government organs so that these people will be able to assert their political, rights including intellectual property and other rights.
END NOTE

1 The news magazine ‘The Week’ reported in 7 Feb. 2010 on the National Investigation Agency probe into the alleged politician-bureaucrat-militant nexus in Assam’s N.C.Hills district.


3 Assam Against Megadam, “The environmental impact, downstream impact and flood concerns with Lower Subansiri Hydro Electric Power Project”, 8 February 2012, Available at www.assamagainstmegadam.blogspot.in, Accessed on 30/03/2012.

4 Article 6.

5 Radhy Shyam Thr. Lrs. And Others vs. State of U.P., Civil Appeal No. 3261 of 2011, S.C.

6 Section 13.