

Article 371 (A) – Naga’s Shield: A Blessing In Disguise

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Abstract:

About constitution the famous dictum runs – “constitution is not a mere lawyer’s document, it is a vehicle of life and its spirit is always the spirit of age.” Every independent country had its constitution of its own. Etymologically speaking, a constitution is the law-books, series of do’s and don’ts that the citizen should or should not follow. India has one of the oldest legal systems in the world. Its laws and jurisprudence stretched back into the centuries, forming a living tradition. It came into force on 26th January, 1950. At the time of its adoption, the constitution contained 395 Articles and 8 Schedules. Later, many changes have come in the constitution. There were new rules that were implemented for sake of people. The implementation of Article 371 (A) is one such. It was actually a special provision with respect to the state of Nagaland. The Article mainly stressed that no act of parliament would applied to the state of Nagaland in matter relating to religious or social practices of Nagas, Naga customary law and procedure, at administration of civil or criminal justice involving decisions according to Naga customary law, ownership and transfer of land and its resources. This paper will hence focus on the utility of implementation of Article 371 (A) in Nagaland and its actual position in the Naga society.

Key words: Constitution, Article, Nagaland, rules.

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Objective of the Study

The objective of the study can be –

- (i) To point out the effect of the Article 371 (A) in the state of Nagaland and on its people
- (ii) To highlight the dark and light sides of the Article.
- (iii) To make a clear picture about the utility of the Article in the state.
- (iv) To point out the supposed plight of the Article in future.

Literature Review

Article 371 and 371 (A) had been a great topic of discussions and they allured the scholars and researchers to write something. The effect of 371 (A) in the state of Nagaland has also been penned many times by researchers and they are following –

- (i) One Such Beautiful Book Is **Nagaland : A Journey To India’s Forgotten Frontier** by Jonathan Glancey in which author beautifully gives in detail about everything related with Naga Tribes.
- (ii) Another marvellous book is **Walking The Roadless Road : Exploring the Tribes of Nagaland**. It is a faithful picture of the Naga society and laws related with them.
- (iii) **A History of The Nagas and Nagaland** is another epoch-making creation where the historical graph of Nagas is recorded. The book is also faithful picture of rise and fall of the race in course of time.

I. Introduction

Very frankly speaking, a democracy is a political system where the people have the ultimate power. In a true democracy, the people vote on every issue, however, most democracies are representative characters on republic. This means that the people will vote for the leaders who rule over the people. A constitution is a body of law that govern the political system of a country. It defines the powers of the various levels and divisions of the governments and enumerates the rights of the people. It is more specifically a set of principles governed by

government. It is a set of written laws and regulations that place the power of government in the hands of citizens in a democratic system. It assists to serve as a part of laws the people as well as its basic principles that govern the country.

India has one of the oldest legal systems in the world. Its laws and jurisprudence stretched back into the countries, forming a living tradition which has grown and evolved with the lives of its diverse people. India's commitment to law is created in the constitution which constituted India into a 'sovereign', 'democratic', 'republic', containing a federal system with parliamentary form of government in the union and the states, an independent judiciary, guaranteed fundamental rights and directive principles of state policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

As the government abrogated Article 370 that gave special status to Jammu and Kashmir, Article 371 which has special provisions for the states mostly from the North-East has invited some attention. Most of the states that have been accorded special provisions under Article 371 are in North-East and the special status aims to preserve their tribal culture.

Article 371 (A) states that no act of parliament shall apply to the state of Nagaland in respect of their religious or social practices of the Nagas, its customary land and procedure administration of civil and criminal justice involving decisions according to Naga customary law and ownership and transfer of land and its resources. It shall apply to Nagaland only after the state Assembly passes a resolution to do so. Hence it has special provisions and they are –

No Act of Parliament in respect of

- i) Religious or social practices of the Nagas.
- ii) Naga customary law and procedure.
- iii) Administration of civil and criminal justice.
- iv) Criminal justice.

Although it was said that it shall be applied to Nagaland only after the State Assembly Passes resolution to do so. At the same time the governor is given special responsibilities with respect to law and order in the state as well.

It is noteworthy that the Article 371 (A) was inserted in the constitution between the centre and the Naga people's convention in 1960 which led to creation of Nagaland in 1963. Also, there is a provision for a 35 member Regional Council for Tuensang district which elects the Tuensang members in the Assembly. A member from the Tuensang district is Minister for Tuensang affairs. The governor has the final say on all Tuensang related matters.

There is no written record to substantiate the exact origin and history of Naga people and the period of migration to this part of the world. It is learnt from elders about their ancestors through folktale or folklore which were passed on to the present generation. In spite of lack of alphabetical and numerical usage Nagas were able to survive and live an honourable life because of ingenuous nature. One can take pride in the gene because they are from the blood line of race that was honest, truthful, hard working and hospitable. The greatest compliment of Naga race is that their forefathers were dead serious about taboo words, such as forbidden, shame, and so on. Every village is democratically governed by rules set by the community and no one dares to go against it because of the belief that destruction will befall on the defaulters. They heard stories of tragic incident that had come to people who defy these taboos. The culture, tradition and customary practices of the forefathers were one of the best unwritten form of democracy system acknowledged by the most advanced people, the Britishers. When we compare ourselves in terms of population, economy and education/technology, we are still lacking behind. Nevertheless, they should be proud of their unique lineage and tradition which is the base of their existence as well as take pride in their real identity.

There has been much talk on Article 371 (A) (Indian constitution) since some time for different reasons enlightening about the advantage and disadvantage. People may have different point of view in expressing basing on an event or circumstances taking place. Article 371 (A) is Nagas shield, a blessing in disguise. This is because Naga people are enjoying a special status under the constitution of India as no Act of Parliament in respect of ; Religious or Social Practices of the Nagas, Naga Customary Law and Procedure including Civil and Criminal Justice and Ownership and Transfer of Land, its Resources shall remain with the state (means Naga people). Like Nagaland even Jammu & Kashmir enjoy special position under Article 370 in regard to land ownership and transfer. The present central government did try to abrogate Article 370 which was strongly opposed tooth and nail by the people of Kashmir. Once abrogated every Tom, Dick and Harry from main land of India shall have the right and liberty to own land in Kashmir. If tomorrow the special status is abrogated and Article 371 (A) is no more, just imagine what will happen to the land. Even further, the central government wanted to introduce **Uniform Civil Code** in the country which in most probability shall include Nagaland state. If implemented, somewhere down the line the faith they profess (Christianity) the principles the people follow

shall be superseded and has to be compromised when it comes to the norms of marriage, divorce etc. There are other ruling if enacted definitely shall make invalid the special status enjoyed by the Nagas. In this juncture, it will depend on the Nagas to either protect Article 371 (A) to safe guard their identity or abandon it to accept or adopt cultural norms which are alien to them.

The social set up in Naga society is such that every member whether men, women or children is treated with respect and dignity. Men and women have their own respective equal responsibilities and respect one another. Everyone plays their own part equally, independently which is the key to harmony within the family. There is no instance as such that Nagas practice class system, reservation or discrimination. With the coming of the modern education good things had evolved in Naga society and when it comes to educational knowledge, women are excelling much better in recent years. To elevate better living condition of the society equal opportunity should be given, if the person has the calibre to do the job irrespective of gender. But the life of Nagas has become so engrossed in westernized character that they are losing the good values and revered cultures of their forefathers which were once regarded the most treasured and essence of the Naga heritage. The fact is that questioning the legitimacy of Naga Customary Law Practices is tantamount to total denial of Naga identity. A person without identity is like a subject which has no dignity of its existence. Can Nagas go on this trend losing all the good qualities and be proud to say 'this is my legacy' to oneself and their future generation. Have they thought of the identity that their children will inherit ? Many races are living desperate life because they have completely lost their culture and are regarded as second class citizen. What they need today is to restore back their true identity least they become people without culture which is clearly referred and mentioned in Naga Memorandum to Simon Commission, British India, 1929 by our past leaders. Nagas should not be self-seeking on a certain issue alone and suffer in the greater nucleus matters related to the whole.

There will be differences in certain issues which should be sorted out by Nagas alone keeping in mind the traditional values and system which is the best method of pure democracy, thereby keeping alive the time immemorial Naga Customary Practices and Culture of their forefathers. While Article 371 (A) gives some protective rights to the Nagas, it also has its downsides. For instance, an individual in the state cannot avail of a bank loan by mortgaging his land or real estate property if it falls outside municipal areas where the government has not yet issued land "pattas." Scholar and president of opposition party Naga People's Front (NPF), Shurhohelie Liezietsu, said it is natural that people will have varied opinions on Article 371 (A). *"The land-holding system is different in Nagaland. The land here belongs to individuals. If the government wants to have a project somewhere, it has to either pay compensation or negotiate with the landowners on some conditions. However, I feel that doesn't stand in the way of development,"* he told Express. Stating that any development that takes place is for the people, he said it all depends on how the government deals with the landowners. The Naga Hoho, which is the state's apex tribal organisation, however, did not dispute the NDPP MLA's observation.

"There are certain things in Article 371 (A) which need clarity. The state government has to come up with a detailed interpretation of the rights given to landowners. As the existing provisions are interpreted differently, the landowners are enjoying maximum privileges. This is the reason why the government cannot come up with developmental projects." Naga Hoho president Chuba Ozukum said. He said it was imperative that there is a serious debate on the rights of the landowners so the government could come up with the right interpretation. The Nagas are governed by customary rights where a judgement passed by the authority.

II. Conclusion

Hence from the above discussions one can safely conclude that the state of Nagaland is rich in historical past. It has a glorious ancient culture and people are proud of their heritage. The implementation of Article 371 (A) in Nagaland is significant and it has its good sides too. Yes, the people are enjoying a lot for this Article. There is special provision also. But some of the rules of the Article are wrongly implemented. This must not be ignored and for this mass awareness is very essential. Apart from that, both the State and the Central Government must take every issue of the State not from political angle but from humanitarian perspective, so that the Article will soon be proved as a real shield of Naga Tribe in future.

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