

Article 371A and the Special Constitutional Status of Nagaland: The Principles and Practices of Autonomy

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ABSTRACT

With the signing of the still undisclosed framework between Th. Muivah the General Secretary of NSCN-IM and Prime Minister Modi, the future of the Nagas has been shrouded in secrecy and many now becoming apprehensive of the agreement as it was not signed with general consensus but behind closed doors. This paper, deals briefly on the history of the Nagas, and how the problem of the Naga freedom movement stemmed from and still continue. The problems and local issues being faced on the ground and the conflicts occurring regularly. It remains likely that Article 371A will become an issue of deliberation once the framework is made public. This Article is of paramount importance to Nagaland as it states and steers the direction of the state's power, administration, legislature, hence, at this critical juncture in Naga history, it is imperative that there is clear and comprehensive study on the genesis and ongoing events of the Naga movement and Article 371A in particular.

Key Words : Nagas, Principles and practices

INTRODUCTION

Nagas are a group of ethnic tribes in north-eastern India, along the India-Myanmar border who were brought under the governance of British India during the 19th century. The state of Nagaland came into existence in the year 1963 as the 16th state in India after being accorded a special status under Article 371A. This Article, though a small part of the constitution is unique as no other special category state has such provisions. An important objective is that Article 371A should be understood in the right perspective. The Indian Constitution has special status given to several states due to varied reasons.

There is no fixed formula for Special Central Assistance and it depends on the basis of the state's plan, size and previous plan expenses.

Nagaland has benefited from this article to a great extent. The article is seen as the only form of protection against the centre from encroaching on its traditions, culture, lands, customs etc. At the slightest sign of infringement of the article in any form, there is often social unrest and civil protests. Through Article 371A, the state also gets surplus revenues and financial assistance from the centre.

Article 371A is a special provision granted to the state of Nagaland as a partial fulfilment of

the 1960 agreement that later created the State in 1963. In this regard not only the customary law, social practice and belief of the people of Nagaland but also the resources of the state are safeguarded from the intervention of the union government and its various policies unless the State Assembly so decides by resolution. Special Category State for Nagaland is a peculiar and unique one. It has been an issue of contention and conflicts, most recently with the events of the protests against the now former Chief Minister T.R Zeliang and his cabinet's decision to hold the urban local bodies election with 33% women reservation. Jammu and Kashmir's Article 370 is a temporary provision but Article 371A is a special provision.

Review of literature:

Jamir Mapu I.A.S. (Retd.) (2017) has stated that the State of Nagaland Act, 1962 was the most important clause. It was through this clause that the State of Nagaland was created. The other was the Article 371A which gave much autonomy and prevented the Parliament from infringing or interfering into the traditions, customs, land, resources etc. There is a conflict between Article 371A and Article 243T over its application in Nagaland. Article 243T is specific to reservation of seats for SC/ST/OBC and women. This Article gives reservation of 1/3 to women belonging to SC/ST. The point that needs to be defined are whether the provision contained in Article 371A overshadow that of Article 243T or vice versa, how to implement Article 243T along with Article 371A in a unique state like Nagaland etc.

Z. Lohe (2016) in his article has written that the protective clauses and provisions in article 371A satisfied the Naga Peoples' Convention in 1960 which led to creation of the state. However, it was rejected by the Naga National Council (NNC) which led to the onset of the Naga freedom movement against India. Thus, it failed to bring peace. Over the years there have been instances of infringement of Article 371A by both Government of Nagaland and organisations. One that is still fresh in memory is the recent unrest in Nagaland over 33% reservation of women in local urban body elections. Are Naga women of Nagaland satisfied with the decimation or removal of Art 371A if they are allowed to become Councillors in small towns under reservation? This is one of multiple cases where some entities under the guise of something seemingly positive grounds whether intentional or unintentional. A disturbing fact is how the mainstream media outside of Nagaland is giving a wrong perception that the protests in Nagaland are against women.

Terminology:

- NSCN – Nationalist Council of Nagaland
- NSCN IM -Nationalist Council of Nagaland Isak and Muivah
- NSCN K- Nationalist Council of Nagaland Khaplang
- NNC- Naga Nationalist Council
- GoI – Government of India
- NGO – Non-Governmental Organisation
- FGN – Federal Government of Nagaland

Objectives of the study:

- An extensive observation how this article has effected Nagaland.
- To know the motive and reason of the special status to Nagaland. Why such a provision was created.
- To know if it has helped the state of Nagaland and Nagas.

- To understand why there has been conflicts and contentions over it.
- The know the perception of laymen Nagas over the article.
- Problems in Peace Settlement

METHODOLOGY

The research has been compiled using secondary research. Secondary research is a common research method; it involves using data gained by others through primary research. This method is advantageous as there is extensive data and covers a large spectrum.

History :

The Nagas historically did not have a sense of belonging to any country, be it India, China or Myanmar. The cause for the perennial 'insurgency' by the Nagas is to form a separate new country the greater Nagalim by incorporating the whole Nagaland, with elements of Manipur, Assam, Arunachal Pradesh and Myanmar.

The roots of separatism stem from the creation of the Naga Club in 1918 in Kohima. During the period of the Kuki Revolution (1917-1919) and the First World War (1914-1918), the British government recruited a variety of workers and porters from the Naga tribes. As part of the labour Corps, some 2,000 Nagas were sent to France, where they felt alienated from other British Indian forces, and developed a sense of unity amongst themselves. They agreed that once they returned to their motherland, they would work for unity and friendship among the various Naga tribes. Eventually, in collaboration with British officials, they formed the Naga Club in 1918. Their goal was to represent Naga's interests to the British government. By then, a clear picture of what was later known as "Naga National" had not appeared yet.

Nagas made a note to the Simon Commission, which visited Nagaland in 1929. In this note, they asked the British Government to leave Nagas as a free people and not to be embodied within the Indian Federation. One result of these efforts was the declaration of the Naga region as a backward area and later the exclusion zone under the Government of the Republic of India Act of 1935.

The above amendment in the Constitution in some respects on paper, gave Nagas the best worlds. The right to self-determination as much as the administrative isolation or very little from the rest of the Republic of India as they want, as well as support for India.

Aspiration of the Nagas :

In a survey conducted by Morung express, which is a distinguished newspaper in Nagaland, it opined that the ambitions of the Nagas are to live as in liberty and as a self-determining nation. If the survey is to be taken in consideration, the Article 371A doesn't represent the aspirations of the Nagas. It does not to characterize the ambitions of the Nagas, but denotes just what India was agreeable to acknowledge and provide, that was acknowledged by the NPC through the Sixteen Point Agreement. because of its inadequacies, the conflict carries on for over five decades.

Some see the article as a means that has only divided the Nagas even further by bringing disagreements and clashes between one another. Its vagueness has been worked to suit the desires of persons in power when it might have been used constructively.

The May 16 1951 Naga Plebiscite is largely seen as what embodies the desires of the Nagas. Consequently, a person can say that the Article 371A refutes the Naga Plebiscite and thus, can't be

supposed to signify the fullest goal of the Nagas. The Nagas deserved and are trying for something beyond the article. The will of the Indians not the Nagas was the priority for the Article. It was a guarantee of the 16-Point Agreement which was perceived by many as a sell-out of the Naga's history and political rights. Therefore, there's no way that the Article 371A thoroughly met the concerted will of the Nagas. Of course it has benefited a number of the Nagas, except for the bulk of the Nagas, and it has only caused more divisions and misunderstandings.

There is growing space between rich and poor because of provisions like the Article 371(A), that has been abused by politicians. This may have been a white wash to divide the Naga people so that India will rule over the Nagas. The article contradicts the goal of the Nagas and GoI made so to create misunderstanding and disunion among the simple minded Nagas.

One of the main contention between the centre and Nagas as a whole was the 16th Point Agreement in July, 1960. Many saw this as a move against their will and being betrayed by a fellow Naga and Nagas selling out to the Indians. This led to Muivah, Swu and Khaplang and plenty of distinguished leaders breaking away from the NNC who saw this as an act of betrayal and resolved to fight and formed NSCN. There have been issues of disputes with the centre in the past.

The Article states that - "ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the legislative assembly of Nagaland by a resolution therefore decides;".

On July 26, 2010, The Nagaland Assembly, gave a resolution that in respect of article, no Act of Parliament shall apply to the State, which will create fitting rules to implement within the State. Nagaland then asked corporations to explore for oil and gas to which several companies expressed concern. On June 13, 2013, the petroleum ministry wrote stating the article "does not confer legislative power" on Nagaland "for regulation and development of mineral oil". It was of the opinion that the Nagaland regulations "lack legitimate validity" and that the problem has "serious constitutional and economic implications". It asked the Nagaland Government to take out the statement and revoke the new rules.

What can be mentioned about now is how to employ the article inside the Constitution of India for benefiting the Nagas. However, beyond that Article 371A doesn't benefit or impair the Nagas-nevertheless it can be thought of a burden to achieving the fullest objectives of the Nagas. Important to spot is that Article 371A is an outcome of another issue. For instance, the Indo-Naga conflict or the so called 'insurgency' that the govt imprints on the nationalists.

It can be said that it did facilitate to safe guard the Nagas from mistreatment; however, who in the first place requested them to bring their constitution into our land is what many Nagas have to say on the matter during discussion. It absolutely was the Indians who established and made the land a part of India forcefully even when the Nagas concertedly resisted. Overlooking about fullest aspiration, there are many Nagas who take advantage of the article for their own self-centred gain, even by procuring government owned lands as their personal property.

In the grand scheme of things, the Sixteen Point Agreement was a blunder. In the eyes of the international community, it devastated the Naga movement. However also that it didn't achieve stifling the Naga movement. Nowadays, the Sixteen Point Agreement and Article 371(A) might even be seen as unintended boon for Nagaland state because the disunion and violence among the Nagas didn't take the Naga movement forward to its coherent finish.

If 'aspiration' infer complete political autonomy, then no provision within the Indian constitution has no slight bearing on it. However, the article as a social action or shielding discrimination has saved our culture and land rights for many years. Compared with different indigenous/ tribal groups in mainland India, we are in a higher place in the realms of power equation vis a-vis the Indian

state. It ought to be conjointly remembered that this constitutional provision has protected Naga tribes from land estrangement and cultural genocide faced by many tribal communities in states like Madhya Pradesh, Andhra Pradesh etc.

The Article embodies the 'limited political aspirations' of the Nagas because it arose out of the sixteen-point Agreement - although the non-accordists might not agree. On whether or not it's relevant to the 'fullest aspirations' of the Naga people now could be very difficult and vague.

To question ourselves how have we utilised the Article has added to our profit or towards the fulfilment of our aspirations. The query to how we've utilised the provisions from Article 371A is equally necessary as asking whether or not the Article itself represent the fullest aspirations of the Naga people- inside the Constitution of India.

Conflict :

In 2016, Nagaland was under strife with the announcement of the govt of Nagaland's saying of civic bodies' poll, the matter reaching its peak with protestors vandalising public properties and a state-wide bandh for a few weeks. The Nagaland civic bodies' elections were declared in December 2016, which has been followed by intensive protests by traditional tribal bodies against the govt, conjointly leading to loss of two lives. These traditional tribal bodies that considered Article 234(T) – providing thirty-three per cent reservation for women – as an infringement upon Naga tradition and customs as protected under Article 371(A) of the Constitution. Women groups beneath the banner of Nagaland Mothers' Association (NMA) and Joint Action Committee for Women's Reservation (JACWR) on their part have approached the Supreme Court.

The violence and death of 2 persons compelled the home Ministry to employ central forces to contain the law and order situation whilst curfew and Section 144 continued to stay imposed in Dimapur and Kohima districts. Union home minister Rajnath Singh on weekday called up state chief minister TR Zeliang and asked him to with patience, win over the folks of the state to simply accept the fact. "Singh told the chief minister that the choice taken by the government to fulfil the constitutional obligation of holding elections to the civic bodies wasn't wrong in any respect, and suggested him to with patience win over the people of the State to simply accept the fact," an official release in Kohima said.

Zeliang conjointly overruled the call for his government's resignation after the violence and appealed to the folks requested the people to not engage in violence and not be susceptible to rumour. "Constructing unreasonable and unconstitutional demands like asking the whole cabinet to quit when the cabinet has undisputed, unquestionable majority and support of the whole Assembly, is solely improper and non-negotiable," the office of the Chief Minister said in a statement. (Indian Express)

Naga Framework Agreement :

The 2015 Naga framework agreement signed between the NSCN (IM) and the government of India was a glimpse of hope after decades of conflict in the Naga-inhabited areas of India. On that day, several celebrated. Nevertheless, some were sceptical because the details of the framework agreement weren't divulged by either of the signatories. Till date, the main points are unelaborated at best.

Secret negotiations to resolve long-standing conflicts don't seem to be uncommon, and details are usually kept close to the negotiators for worry that "spoilers" would possibly menace the process before the final settlement.

Notwithstanding the desirability of secrecy, the 2015 Naga framework agreement has thrown up many queries. Naga community leaders and academics are speculative what the framework agreement amounts to. Some accuse the NSCN (IM) of selling out to the govt on the Naga cause; others suspect that the Naga framework agreement is simply an empty piece of paper, with nothing promised. Some suggests that there's really no resolution in sight.

Conclusion and future scope :

A growing perspective amongst people who study the Naga issue is that the framework agreement allows the NSCN (IM) to continue with parallel governments, as well as achievement and coaching, procurance of illegal weapons and running extortion networks. This perspective has been vindicated by the 8 may arrest of 9 NSCN (IM) members with a large cache of illegal weapons, including AK-47 and 56 rifles. Moreover, the NSCN (IM) continues to levy taxes on local people at a rate of 24% annually, depending on the earnings bracket. Recently, the group declared that it was reducing the taxes from 24 to 12-tone music annually (1% of earnings per month). Naga tribes are exempted from paying taxes to the state and Central governments. The annual budget of the NSCN (IM) is ₹180 crores (2016-2017). while most view NSCN (IM) taxes as “coercive extortions”, the NSCN (IM) describes them as necessary to continue their fight for the Naga cause (Namrata Goswami)

The issue of representation is another issue. While the NSCN (IM) is the most dominant armed group, there are others like the NSCN (K) and NNC that claim they represent Nagas. Amongst Nagas, Konyaks view the NSCN (K) as representing them and Angamis look up to the NNC. This dissentious issue has to be resolved for long-term peace and acceptance of the final accord by all Naga tribes.

On 9 May, the NSCN (IM), in a press release, expressed they have accepted the concept of “shared sovereignty” and to co-exist with India. The idea of “shared sovereignty”, as understood from the NSCN (IM)’s perspective implies that it will share in the Central government’s initiatives. This has resulted in an increase in local recruitment to the outfit (from 2000 to 5000) with new NSCN (IM) recruits planning to be inducted into a central service.

So, the serious policy question that arises with the NSCN (IM)’s acceptance of “shared sovereignty” is: what will it amount to, legally and constitutionally? For one, it may suggest that the NSCN (IM) accepts its future inside Republic of India, but seeks to keep on enjoying an empowered status of crafting its own policies for the Naga areas. As an alternative, the concept of shared sovereignty may mean that the NSCN (IM) can evolve into an establishment which will share in the development of Naga areas. For this to figure, the outfit would need large resources, which cannot be based on “taxing” or extorting from the very people it claims to figure for.

Shared sovereignty in Naga areas would mean that the state is not any longer the only real authority in policy making, however that perform is shared with the NSCN (IM), NGOS, community leaders, amounting to a supra-state structure encompassing of these actors. Given Nagas live across internal state borders in Republic of India, this institutional arrangement will add up. Sophisticated problems like “shared sovereignty”. As such, the person is left with no voice or selection but to trust the Government of India and NSCN (IM) will consider these problems and hope their negotiations end in a wise peace agreement and works for the common aspirations of the Nagas.

REFERENCES

- “Background Note Relating to the 33% Reservation for Women in the Municipality/Town Councils in Nagaland,” Kohima: Department of Urban Development.
- Bush, Sarah Sunn (2011). “International Politics and the spread of Quotas for women in legislatures,” *International Organisations*, **65** (4) : 91-95.
- Chasie, Charles (2017). “Naga society Lies Wounded Again,” Morung Express, Dimapur, 5 February.
- Dzuvichu Rosemary (2011). “Peace is possible by empowering women,” Walking the path of despair and hope: Understanding and justifying the ways of God, L Kari Longchar (ed), Vol 2, Kohima: Nagaland Baptist Church Council.
- Eastern Mirror (2017). “Why every Nagas should object to Nagaland Municipal Elections,” Kohima, 27 January.
- Hausing, Kham Khan Suan (2014). “Asymmetric Federalism and the Question of Democratic Justice in Northeast India. *Indian Review*, **13** (2) : 87-111.
- Hausing, Kham Khan Suan (2015). “Framing the Northeast in Indian Politics: Beyond the Integration Framework. *Studies in Indian Politics*, **3** (2) : 277-283.
- Horam, M. (1975). Naga Polity. Delhi: B.R. Publishing Company.
- Kikon Rosanna (2016). Women, polygyny and economy: An analysis on the Precolonial Naga society of Northeast India with special references to the Lotha Nagas, IOSR Journal of Humanities and social science (IOSR-JHSS)
- Mills, J.P. (1922). The Lotha Nagas. London: Macmillan and Co. Limited.
- Shimray, U.A. (2002). Equality as Tradition: Women’s Role in Naga society. *Economic & Political Weekly*, **37** (5): 375-77.
- Shimray, U.A. (2014). Naga Traditional institutions and contemporary changes, Bitstream.
- Zeholkevekha and Lucy Zehol (1998). “Konyak Women”, Women in Naga society, Lucy Zehol (ed), New Delhi: Regency, pp 77-81.
