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ARTICLE 371A OF THE INDIAN CONSTITUTION; ITS IMPORTANCE AND NEED OF PRESERVATION OF THE ACT IN THE STATE OF NAGALAND

AUTHORED BY - TEISOZELHOU
Research Scholar (Law),
Nagaland University, Nagaland, India

ABSTRACT

The Indian Constitution is a written document and one of the longest and lengthiest constitutions, where it covers every written laws and rules to be followed by the states and respect its abiding laws. The article 371-A which gives the special provision to Nagaland on respect of any external affairs and on which it inserted into Part XXI of the Indian Constitution 1962. The people living in Nagaland has a different and peculiar form of cultures and tradition in which they follows and beliefs, the rules and laws on administrations of justice are strictly follows through the principles of customary laws. Where the act gives the authority to the state of Nagaland to deals its own internal affairs and proceedings in terms of administration of justice, ownership of lands, social and religions matters. Through this articles, we can understand what is Article371-A, what does it contains, significant of customary laws and its implementation, preservation of the act, reason why it is considered to be important and needs to preserved it and the sum up of the articles.

KEYWORDS: Constitution, Provision, administration of justice, ownership of land, Nagas, culture and tradition, Customary, Sovereignty, separate, indigenous, article, peoples, communities, development, culture, tradition, protection, prevention.

INTRODUCTION

In July 1960, the Government of India and the Leaders of the Naga Peoples Convention has reached an agreement for the formation of the Naga Hills Tuensang Area (Nagaland) for the separate state in the Indian union. "The state of Nagaland Act, 1962 was passed for the formulation of new state of Nagaland"¹. To make sure the matter covered under the agreement

¹ History of the NLA <https://webtest.nagalandgov.in/nla/about-us/>

is effective, the constitution (thirteen amendment) act, 1962 was passed, which inserted a new Article 371-A for the matters aforesaid purposes. Whereas the 13th amendment act states that “it was purely a temporary and transitional provision, till the formal announcement of the separate state of Nagaland”. Thus, the state of Nagaland came into being on 1st Dec, 1963².

What is Article 371-A?

The Indian Constitution provides Article 371-A to the state of Nagaland in particular. The main reason of the act is to provide special provisions to the Naga people to improve in all round development without the interference of outsiders, its main focus is to meet the unique features and needs to improved of the backwardness of the region of the state and protect from all kind of external aggression in matters of economic and cultural importance and interest of the regions, combating its local challenges and safeguard its peculiar customary laws. The parliament does not have the power to enact any laws on regard on religion, social practices and its law and procedure of Nagaland. The Governor of the state of Nagaland is given special privileges in law and order, to maintain it and take measures on responsibilities to preserve peace. The Naga Customary laws on its decision cannot be legislated by the Parliament on administration of civil and criminal justice. Therefore no Indian law or uniform laws is applicable in Nagaland on regards of punishment, as all the matters of administration and justice are done by the practise of customary laws and order, even the transfer of land is based on this Act where no outsiders can take the ownership of land in the state. And if there is any conflict arise between the laws and practices among the local people, the Governor shall have the responsibility to maintain the peace of the area.

What contain in the Act?

The Indian Constitution has provided this Act and has unique contains where the text of the act is explained below:

“Article 371-A states as notwithstanding (in spite of / regardless of) anything contained in the constitution-

- a. No act of parliament concerning the following matters, shall apply to the state of Nagaland unless the legislative assembly of Nagaland by resolutions so decides –
 - i. Religious or social practices of the Nagas,
 - ii. Nagas customary law and procedure
 - iii. Administration of civil and criminal justice involving decisions according to the Naga

² 13th Amendment Act, 1962, <https://legislative.gov.in/constitution-thirteenth-amendment-act-1962>

customary law,

- iv. Ownership and transfer of and its resources”³.

As mentioned above, the whole of the working system in Nagaland has been governed by this provision of the constitution. Unless decided by the state legislature no central laws can directly apply to the state of Nagaland. So Nagaland State Assembly is the supreme law-making body in Nagaland. In other words, with this special provision the state of Nagaland is like a separate country free to enact any laws for the best interest of its citizen though functioning indirectly under the Union Government through the governor.

Whereas from Clause (b) it deals with the power and functions of the Governor of Nagaland in times of internal disturbances, his decision and responsibility; formation of Regional Council for Tuensang district, and its duration, composition, functions and; provisions for administration and representation to the state legislature⁴.

Unless there is failure of State Legislature the stress is on Article 371 A (a) for our existence as a privileged State. Let specifically discuss the special provision given to our state in the Indian constitution.

- i. Religious or social practices of the Nagas,
- ii. Firstly, Nagas have unique religious practices different from other parts of the world since time immemorial. But with the advent of Christianity in our state almost all the Nagas has been converted to Christianity. Therefore, how we practice or profess our religion is not the question here but what are the rights and privileges available under this provision is the question.

And the answer is listed under:

- a. No parliament acts can be applied in the state of Nagaland against the will of the state legislative assembly in prohibition of any religious practices;
- b. Nagaland legislative assembly have every right to enact, passed and make laws for the welfare of any religion in Nagaland without jeopardizing the fundamental rights of the constitution;
- c. Any aggrieved Naga individual/sections/citizens have the right to protest against any central laws which infringes the rights to traditional religious practices as violation of Article 371 A (a)(i).

Secondly, the social practices also fall under the same footings of the religious practices. With

³ Contain of the Act, <https://legislative.gov.in/constitution-thirteenth-amendment-act-1962>

⁴ North East Council, https://necouncil.gov.in/sites/default/files/upload_files/371A.pdf

rapid social changes the culture and tradition Nagas has changed simultaneously. The works of churches and educations has impacted the social change where new changes has crop in and old one has discarded or weary out in the Naga society. Previously, in reference of Angami tribe, Morung life is the social institution for the youth to learn and educate themselves with the traditional practices and customs⁵ but now we find educational institutions have replaced them. Yet still there exist a social aged group call “pelekro” which is to be appreciated.

Again, social factors like marriages, divorce, widow remarriage, inheritance of ancestral property by legitimate and illegitimate child, adoption succession, bigamy, breach of marital engagement, women inheritance comes under the social practices. These issues have been in practice in the form of customs till up to date. Such that, the success of social customs practices in the state of Nagaland is the result of this special provision.

In spite of the special provision the State Legislative Assembly is yet to codify/compile the traditional social practices in the form of laws for the whole state. Although yet to codify the social customs the state legislatures assembly has been vested with the power to make any laws for the upbringing and protection of social practices in the state.

ii. Naga customary law and procedure

The phrase ‘Naga customary law and procedure’ covers all the aspects of sound administration in Nagaland. The term “Nagas” refers to a Mongolian race of people living in Nagaland, Manipur, Arunachal Pradesh and Myanmar comprising more the 40 tribes⁶ (NBSE Book for class 9 & 10). While the Article is confine only to the state of Nagaland and the people living in it.

The term “customary law” simplifies, “a certain legal practice is observed and the relevant actors consider it to be law (opinion juris)”. And ‘custom’ in law is through the establishment patterns of behavior which can objectively verified within a particular or regional social setting. A claim in which ever could be carried out from defence of what has always can be done accepted by law. “It is a right to enjoyed through long custom of practices than the enacted law. And ‘law’ in its definite term means “a body of rules of conduct of binding legal force and effect, prescribe, recognised and enforce by the controlling authority.”⁷

Again, the term ‘procedure’ in law means “the method by which illegal rights are enforced; specific machinery for carrying on a law suit, including process, the pleadings, rule of evidence and rules of civil procedure and criminal procedure.” In short, it is the method and mechanic

⁶ NBSE Book for class 9&10, NBSE

⁷ Wikipedia meaning customary laws <https://en.m.wikipedia.org/customary-law>

of the legal process.

So comprehensively, the phrase “Naga customary law and procedure” means “a set of legal customs and practices observed and recognised by the Nagas having binding effects within Nagaland. And that the methods for enforcing legal rights being derived from Naga customary law.”

The liberty to make laws for its own people was best seen in the enactment of the Nagaland Village Council Act, 1978 by the Nagaland Legislative Assembly. Through this Act the Panchayati Raj System could not be applied in Nagaland when it applies to other state in India. The Act deals with the constitution of village councils, powers and function, development, administration of justice within its jurisdiction which was accepted by all the citizens in Nagaland. Likewise many others relevant laws were also enacted by the legislative assembly for better administration in Nagaland.

Iii. Administration of civil and criminal justice involved through the decision given and according to Naga Customary Law like in the preceding paragraphs, this provision has given absolute rights to the Legislature to established its own form of administration of civil and criminal justice in accordance to the Naga Customary Law, that, the Judiciary System in Nagaland. Following which the Naga Customary Court has been set up in every Range and District in Nagaland. And to which the Dobashis were appointed to the Customary Court to administer justice through customary laws under the administrative assistance of Deputy Commissioner and his subordinate officers in all districts.

Administration of civil justice is to do with the civil wrong committed by individual, societies, and institutions against another. Its punishment would be enforcement of legal duty, compensation, and resettlement, and does not attract arrest or detentions. Where, administration of criminal justice is to do with crime committed by any persons against the public tranquillity. Commission of a crime is an offence committed against not only to the individual but to the whole world; therefore the state government takes the responsibility to prosecute the wrongdoer. Their punishments are of arrest, detention, life imprisonments and even up to death sentence depending on the nature of crime committed by the wrongdoer.

So the provision gives the clear picture of the right to adjudicate justice in customary practices of the Nagas. As customary Court is in progress, it is pertinent to state that through this Article the Nagas enjoys special privileges in the sphere of judiciary. (Apart from the Customary Court the state government have full-fledged functioning of Court of District & Session Judge , Court of Chief Judicial Magistrate, Court of Judicial Magistrate First Class, High Court (Kohima Bench), Motor Accident Tribunal, Consumers Redressal Forum, Vigilance Commission Judge,

Family Court and Lok Adalat in the state.)

iv. Ownership and transfer of land and its resources.

The term 'ownership' means the full and complete right of dominion over the property. And the process of changing the ownership is the transfer. So ownership of land means the person who has absolute right over the said land thereby having the power to dispose or transfers the said land.

Whereas the Nagaland (Ownership and Transfer of Land and its Resources) Act, 1990 Section 2 (d) has define "land and its resources" as "advantages derived from the surface of land and all that is below it and which is valuable or is a source of money or income, and includes-

- I. Minerals,
- II. Minerals oils, petroleum and petroleum products and (including liquid petroleum gas) and
- III. Every other product of mines including forest and forest products."

The land is the solid part of the earth's surface. The entire surface of the earth crust within the territory of Nagaland should be owned by the Naga Indigenous and not by the Non- Indigenous inhabitant of Nagaland. (The Nagaland Land And Revenue Regulation Amendment Act, 1978)⁸. So the process for ownership and transfer of land and its resources in the state is absolute and no Parliament Acts can curb the rights of the Nagas without prior decision of the State Legislative Assembly.

Significance of Customary and its implementation

Our history of civilization once called by the outsiders as "barbaric" and adopted a pluralistic legal approached is now on the transition. The customary demarcation of rights and duties followed through ages may to the modern legal jurist appear to harsh requiring reforms. The biggest democratic in the world such as United State and India have made special reservation in tribal governance. The Nagas are privilege to have to have such customary freedom along with its fundamental rights under the Constitution of India. In every issue law must not be taken as dictate, but it should be regarded as a weapon of social engineering to maintain the rule of law and to hold equality in the society. The practice of Naga customs and its usages are customary law for they have sanction of law. They are as valid and authoritative as any other laws. However, this position does not provide immunity to the Naga customary law from judiciary scrutiny legislative reforms. The state recognition of customary authorities as

⁸ Indiacode.nic.in <https://www.indiacode.nic.in/bitstream/123456789/11022/1>

auxiliary to the administration expressly illustrates the faith of the state in the application and enforcement of the customs in the management of the society at all levels of decision and policy making. It appears thus in Nagas Society, the customary authorities are supplementary advisory body in addition to the cabinet. However, under the Constitution of India there is no provision that expressly validate the advice of the customary authorities binding upon the government. Therefore, in the light of the state recognition of the customary authorities as auxiliary in administration, until and unless a decision was given or passed by the State Legislative Assembly the Act appearing in Article 371A requires a study. Customary laws are considered to be the identity laws where it passed through generation to generation, where in beginning there was no written records, but it has been followed by many indigenous peoples and local communities. Their life has an aspect from these laws. Their rights and obligations, responsibilities of its indigenous peoples were ruled from these laws and all the local communities are abided to follow it. Here the customary laws include vast spheres and access in many aspects such as in natural resources, conduct of spiritual life, rights and duties in respect of land, transfer of inheritance lands and property, preservation and maintaining of cultural values and its heritage and knowledge of system and many other aspects. Customary law also helps its people to maintain the identity of its communities and characterized its importance.

Having said that, Article 371A can also be amended or repealed by the parliament and a justification for it may not be at all necessary. The Hon'ble Supreme Court has given numerous pronouncements in tribal and personal legislations enacted by the state. One such observation of the **Hon'ble Supreme Court in *Pannalal Bansilal v. State of A.P.*, (1990) 2SCC498** is reproduced as "In a democracy governed by rule of law; gradual progressive change and order should be brought about. Making law of amendment to a law is slow process and the legislature attempts to remedy where the needs are felt most acute. It would therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable. The mischief or defect which is most acute can be remedied by process of law at stages"⁹.

Notwithstanding the rulings of the judiciary, the state can repeal or amend any provisions that are ultra vires before the verdict of the court, thus avoiding the inelegance. The substituting the provision in challenge with a modified version thereby compelling the petitioner with multiple and lengthy litigations. However, the instant subject is a social transition issue that requires a socio-legal study that would harmonize the conflict. The struggle for human rights and equality has led to nationalism and therefore the word 'change' has created civilization as well as

⁹ Pannalal Bansila v. State of A.P., (1990)2SCC4898) <https://www.lawinsider.in>

history. The principle of traditional intergenerational equity is another aspect to be considered by all organs of the state and the society protecting the uniqueness of the Naga traditions without the violating constitution rights. The state and the society are therefore encumbered with a responsibility to be copiously vigilant.

Preservation of the Act

There is no official history of written document where it stated the exact origin and times of migration of the Naga peoples to this part of the world. The history on origin of the Naga people has been learned from the ancestors through Folktale/Folklore which were passed on through generation to generation. The Nagas were blessing with intelligence and wisdom in which even without any formal form of writing alphatical and numerical, but through its ingenuous nature it able to survive and live an honourable live. The forefathers are very serious about taboo words, such as forbidden, lie, oath, and shame and so on. That it gives the pride to our genes where the people were live with honesty, truthful, hospitality and hardworking. Every village is administered and democratically governed by its own community and thus no other interfere or goes against its rules as they have a belief that there will be a loss or a destruction will befall on those defaulters. A stories were been told how a tragic incident happen when one doesn't follow the rules set by the elders, in which those defaulters had befallen to those people who defy the oaths or those taboo. There is a remarkable acknowledgement in the culture and traditions, customary and taboo beliefs, where even though there is no written document, the village rules and administrator were democratically governed were inspired even by the Britishers. Even if there is still a lacking in the system of education, development, technology or any other modern equipment, we should honour how the forefathers had lead us till today as we are of unique identity.

With the modernization, the government may changes but it should be preserved the Act of Article 371-A of the Indian Constitution because only through this act the Nagas people were able to enjoy a special status, it can also regard that we had separate country of our own identical race. In which the Constitution of India provided us that no Act of Parliament will be able to adopt in respect of Nagaland state in their Naga Customary Law and Procedure which includes" Civil and Criminal Justice also the Ownership and Transfer of Lands and its resources and Religious and Social practices of the Nagas shall remain with the State".

If this Act is remove, the special status enjoy by the Nagas will be no more, where the land ownership and right to hold land will be disturb, the land which no other than Nagas can hold

it will be gone and anyone outside can buy land and established any property to build and to use, where any establishment of company can built. This Act which provide us as Separate Country where no other interference of the constitution Act other than Parliament introduced from the majority of the State Assembly on regard of any norms on Marriage and Divorce, Uniformed Civil Code etc. therefore we should protect and safeguard this Act to preserved our identity and not adopting those culture which are alien to us. In Nagas society, there is equal treatment to every men and women or children with dignity and every member has a role to performs and has responsibility. Everyone has its own part in family and is performs through harmony. And when it comes to educational knowledge women are progressing much more than the men, the job are base on calibre of the individual and not through advantages of gender. In Naga Society there might be some difference issue arise where it need to be sort out by the Nagas alone, where attachment of tradition values and beliefs may exist, thus it is important and necessary to practise the Customary laws which our forefathers has passed to this generation and to holds its importance of our tradition, customs and revive, rely on its legacy which is unsurpassed our civilization and history. The customary are different from other laws and its status can be less than the other laws as it only prevail to the indigenous people and its community and can be implemented only within. The customary laws also shared and developed the traditional heritage of culture. Though it only prevail within the original community and has concern over its importance, it also gives various form of respect and values to others and recognised it the Indian constitutional laws, especially in reference of transfer of land and its resources. There in course has its own diversity among the indigenous people and the local communities, where there is complexity and need to refer to national laws. Yet even though there arise complexity in the Act, the indigenous peoples doesn't not agree to adopt the other national laws as even there is an expression where though there is the bare content it should no leaves the peculiarity on its traditional heritage culture and system of knowledge. Thus, there need to be preservation of the act and should not be taken away from the indigenous people as it safeguard in many ways and also prevent and protect many other matters from any kind of aggression and also in any establishment or acquisition of lands and its resources.

Reason why this Act is considered to be important and need to preserve

The Article 371-A where the special provision on respect to the state Nagaland has been given under the Part XXI of the Indian Constitution in the year 1962¹⁰. The act can be regarded as

¹⁰ Part XXI of the India Constitution http://en.wikipedia.org/wiki/Part_XXI_of_the_Constitution_of_India

the shield in protecting the Nagas from any external aggression and conflicts. It also gives full freedom to the Naga people on based on giving judgment on civil and criminal justice, where the punishment are giving through the tribal laws and direction in which it becomes the final decision and abide all judicial process. In regard on social and political issue the state is governs through its own principles on state legislation where it base on democracy to elect its on leaders and participate by its own people. There is no direct influence in its process of election from the centre government, the state deals all its matter by them and declare the result on the majority of votes. In matter of ownership of land and transfer of property it strictly held that no outsiders apart from Nagaland can posses the ownership of land and the land can be sale or transfer within the local people only. As it was inserted by the Part XXI of the Indian Constitution that the special provision on these regard for preservation of land was entirely given to the Naga people. In matter on Religion issue, the is no common denomination among the Nagas, through the 42nd Amendment 1976 referring the adoption of the word 'Secularism' in the preamble which was consider as the basic structure of constitution through the leading case of Kesavanda Bharati vs State of Kerala 1976, in which we can understood that the state of Nagaland being one of the states among India do enjoy the privileged of Secularism and that the centre cannot force or infringe the rights given in the Act of Article 371-A in which it provides the state to adopt its own religion according to their choice. And in matters of its natural resources, the constitution has given the Nagas protection and preservation from the external force or affairs to drain its wealth on natural resources and the states laws becomes the absolute authority to set up or establish in developing its resources. Thus the act provides and safeguards the state of Nagaland from any outsider's invasion and threat on any sources from maintaining the peaceful environment among the people. Therefore it becomes an important to understand the act and also preserved it on which it gives freedom of the Nagas in many ways with many privileges.

CONCLUSION

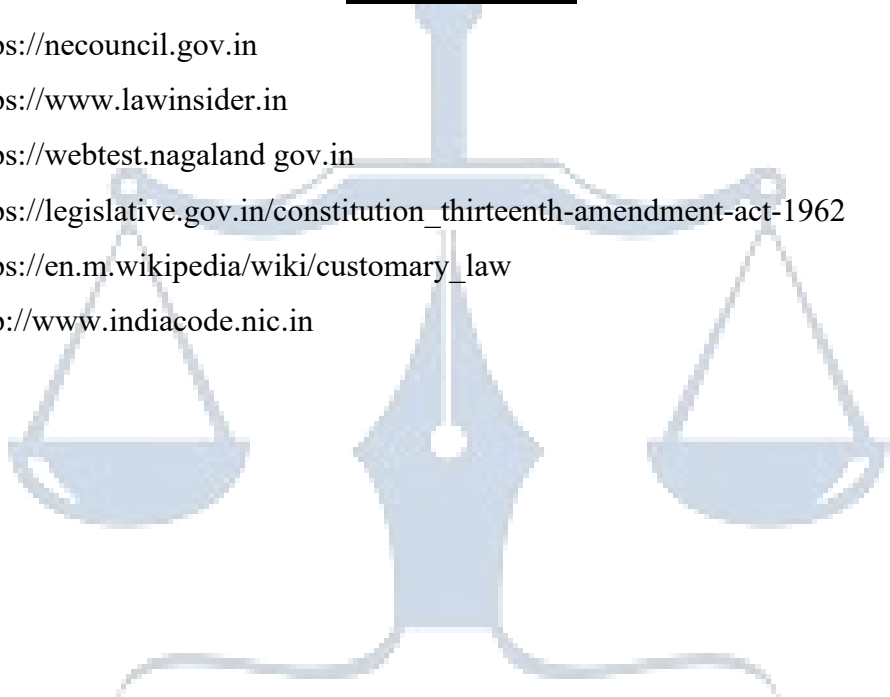
The Article 371 A is a very special article for the state of Nagaland as it gives overriding effects to other Parliament Acts, gives the right to profess and practice any religion as per custom, gives the rights to govern oneself according to customary practices, gives the right to established customary courts as judiciary and gives absolute control over its land and its resources. It has given immense power to the State Legislative Assembly to enact, formulate, and make laws according to the needs of its citizen. The privileged to deny or override the

central laws by the state legislature is the key feature of the Article 371 A and thus, it can be considered as “The Shield of Nagas”.

There are times where the judiciary finds difficulties in administration of justice to the people due to lack of proper enacted laws applicable to the state. This is a flaw to the state legislature for delaying in making appropriate laws for the state. Therefore the need have arisen for the State Legislative Assembly to codify and make more laws to meet the needs of its citizen. As such, in the future we can hope to see a better Nagaland.

REFERENCE

1. <https://necouncil.gov.in>
2. <https://www.lawinsider.in>
3. <https://webtest.nagaland.gov.in>
4. https://legislative.gov.in/constitution_thirteenth-amendment-act-1962
5. https://en.m.wikipedia/wiki/customary_law
6. <http://www.indiacode.nic.in>



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