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ARTICLES 371 TO 371J OF THE INDIAN CONSTITUTION: EMBEDDING THE SPIRIT OF CO-OPERATIVE FEDERALISM IN INDIA

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Abstract

The asymmetric form of Constitution is inevitable in modern federal democratic constitutions. The constitutional framers contemplated the idea of 'special provisions' and treated certain regions with privileges, and granted concessions not only to maintain the identity and unique culture of tribe community but also to accommodate them in Indian Union. Thus, Article 371 and its sub-sections are classic example for both asymmetric and cooperative federalism in India. The north-eastern States consisting of different tribe groups are the major beneficiary under the special provisions. Nevertheless, these special provisions have been extended to other States on one or other reasons. This paper provides an overview of the special provisions conferred to different States with a focus on north-eastern States, and also critically analyzed the most pertinent and persistent political and legal challenges faced by the region and the role of the Union Government in tackling it. The author has found that the spirit of cooperation both in vertical and horizontal federalism can be achieved not only by guaranteeing the asymmetric features in the Constitution but also to follow it in spirit through the laws and policies formulated by the Government. It has been suggested that the Union Government should act as an arbiter in negotiating the inter-State and intra-State disputes arising out of porous borders, language, ethnic identity, etc. and resist using forces through the implementation of draconian laws to nurture cooperative federalism.

Keywords: Article 371, Indian Constitution - Asymmetric Federalism in India - Cooperative Federalism in India - Challenges faced by North-eastern States - Special Provisions under Indian Constitution

I. INTRODUCTION

The concept of federalism entails a division of power between two democratic Governments through a written Constitution but not necessarily with the hard and fast rule through which the powers have to be demarcated between the federal and its units. Every federal State has accommodated federal features in its Constitution through a tailor-made approach considering the needs and aspirations of its units without compromising the concept of nationalism. The relationship between the central authority with all its units will not remain the same as envisaged in the Constitution; and the changing characteristics of relationship in different political circumstances and the interpretation of federal constitutional provisions by the Constitutional Courts had either strengthen or weaken the federal polity. The practice of federalism ignoring the theory on which it was founded has led to evolution of different forms of federalism, such as competitive, cooperative, coercive, paramountcy and the adjectives are keep on adding.¹

The units that exhibit differences in social, ethnic, cultural, economic and political factors finds it difficult to coordinate with fellow units and federal union, which leads to secessionist tendencies.² However, greater integrity among States *vis-à-vis* federal Union can be accomplished if they are assured with differential treatment through asymmetric arrangement under the Constitution.³ India has a unique form of federalism and no specific feature has been imported from any major federations, like U.S., Canada and Australia.⁴ Unlike United States, the upper house in the Parliament contains representations based on the population of a State. Nonetheless, the major fiscal matters governing the Union-State or inter-State relations are being decided by the Goods and Services Tax (GST) Council with 'one State-one vote' model.⁵ Thus, the practice of federalism differs in changing circumstances although it was recognized as one of the basic features of Indian Constitution in *S.R. Bommai v. Union of*

¹ Balveer Arora, "Federalism in India: Is it Tilting Towards being Coercive?" in A.V. Satish Chandra (ed), *Federalism and Decentralization in India for Better Governance* 33 (Viva Books, 2017).

² Charles Tarlton, "Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation" 27 (4) *Journal of Politics* 861 (1965).

³ McGarry & Christina Isabel Zuber, "Understanding the Multinational Game: Toward a Theory of Asymmetrical Federalism" 44(5) *Comparative Political Studies* 546 (2011).

⁴ Louise Tillin, *Indian Federalism* (Oxford University Press, India, 2019).

⁵ Constitution of India, art. 279A (9).

*India*⁶. There are very few scholars embarked on asymmetric federalism in India and the work of Prof. M.P. Singh⁷, Prof. Louise Tillin⁸ and Prof. Rekha Saxena⁹ are worth to mention. Nonetheless, no comprehensive literatures are available on the ‘special provisions’ granted to certain States under Article 371 of the Indian Constitution. The asymmetric treatment devised to the north-eastern States under the Constitution was an idea of integrationist approach through the cooperative and cordial spirit of federalism. There were 12 states enjoying the special provisions under Article 371 and of late, the Union Home Ministry is considering to extend the special provisions for the Union Territory of Ladakh, who were insisting on inclusion under the sixth schedule of the Constitution.¹⁰ The inter-State border row almost in all the north-eastern States, persistent claim of autonomy based on the ethnic or tribal identity in certain regions of the north-eastern States, demanding complete removal of Armed Forces (Special Powers) Act, 1958 (AFSPA), Naga Peace talks, Citizenship (Amendment) Act, 2019 and etc. are all posing a great danger to cooperative federalism in spite of granting special provisions under the Constitution. This paper would analyze the above special provisions and its consequential impact on asymmetric and cooperative federalism in India along with a bird’s eye view of several challenges faced in the region.

2. HISTORICAL PERSPECTIVE ON “SPECIAL PROVISION”

The features of asymmetric federalism can be perceived in several forms in Indian Constitution through the employment of the word ‘special’ either in express¹¹ or implied¹² and also can be *de jure* or *de facto*. The express provisions which provide positive discrimination intended to mitigate inter- or intra-State inequality through Article 371-A to Article 371-J along with fifth and sixth schedule of the Constitution. Whereas, the implied one was the special status conferred to the erstwhile State of Jammu and Kashmir through Article 370, which is inoperative now. In addition to it, ‘special’ treatment through central policies is granted to specific States, for example, the erstwhile Planning Commission categorized certain States as ‘Special Category States’ entitling them to receive certain financial benefits extra-

⁶ (1994) 3 SCC 1.

⁷ Mahendra Prasad Singh, *Indian Federalism* (National Book Trust, India, 2011).

⁸ Louise Tillin, ‘Asymmetric Federalism’ in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* 540-559 (Oxford University Press, India, 2016).

⁹ Rekha Saxena (ed.), *New Dimensions in Federal Discourse in India* (Routledge, India, 2020).

¹⁰ Vijaita Singh, “As talks on Ladakh resume, Centre offers special provisions under Article 371”, *The Hindu (Madurai)*, Oct. 23, 2025,

¹¹ Constitution of India, art. 371, art. 371A to art. 371I.

¹² Constitution of India, art. 370.- Temporary provisions with respect to the State of Jammu and Kashmir

constitutionally due to demographic impact and tribal population.¹³ In addition to the temporary provision effected to the State of Jammu and Kashmir under Article 370, the Constitutional framers provided a temporary arrangement with respect to States in Part B of the First Schedule under Article 371. It was a single provision without any clauses stating that the States under Part B of the first schedule¹⁴ shall be under the control and bound by the directions of the President for a period of ten years from the commencement of the Constitution. The proviso clause authorizes that the President to issue an Order and may exclude any State from the application of this provision. Nevertheless, the Parliament may by law extend or shorten the period of the application of this provision and also include any State apart from the State(s) specified under Part B of the first schedule.¹⁵ This provision cannot be termed as a ‘special’ as it mandates certain States to comply the directions of Central Executive for a specified period. It has short-lived and totally replaced with a new one with prefix “Special Provision” instead of “Temporary Provision” after reorganization of States in 1956 on linguistic lines.

3. ASYMMETRICAL UNDER ARTICLE 371 AND ITS SUB-CLAUSES

The process of reorganization of States in India is a continuing phenomenon as it involves much sensitivity, such as cultural homogeneity, demographic backwardness, administrative fiscal viability, and other political considerations. The first and major restructuring of States took place through the State Reorganization Act, 1956 on linguistic lines. Later, the State of Assam was divided into seven units in 1962 and 1970s along tribal regional lines.¹⁶ In this process, many Union Territories (U.T) with legislatures were upgraded to Statehood, such as Himachal Pradesh, Manipur, Tripura, Mizoram, Arunachal Pradesh and Goa.¹⁷ The object of this amendment was to give special treatment to certain regions which merges with the existing State or forms part of a newly emerged State as a result of bifurcation under the State Reorganization Act, 1956 and to promote the cooperative spirit of federal nature of the Indian Constitution.

The ‘special provisions’ under Article 371 predominantly empowers the President to issue an Order directing the Governor of the State to discharge some special responsibilities superseding

¹³ These comprise the eight north east States, and the Himalayan states of Jammu and Kashmir, Himachal Pradesh and Uttarakhand.

¹⁴ Part B States of the first schedule at the commencement of the Indian Constitution are: (1) Hyderabad; (2) Jammu and Kashmir; (3) Madhya Bharat; (4) Mysore; (5) Patiala and East Punjab States Union; (6) Rajasthan; (7) Saurashtra; (8) Travancore-Cochin; (9) Vindhya Pradesh.

¹⁵ Constitution of India, art. 371: Temporary Provisions with respect to States in Part B of the First Schedule.

¹⁶ Singh, *Supra* note 7, at 49.

¹⁷ K. Venkataramanan, “The forms of federalism in India”, *The Hindu (Madurai)*, Aug. 11, 2019.

the advice tendered by their Council of Ministers.¹⁸ It ensures intra-State equity for the State which undergone substantial rearrangement of territorial boundaries under the State Reorganization Act, 1956. Later, the ‘special provision’ clause has been extended to all north-east States in different times after the sub-state autonomies within the State of Assam became separate federative States due to ethnic conflict among different tribes in the region.¹⁹ The State of Meghalaya and Tripura are the only two north-eastern States, which were not accorded with ‘special provision’ under any of the sub-clauses of Article 371. The first special provision was in respect to the States of Andhra Pradesh, Maharashtra and Gujarat through the Constitution (Seventh Amendment) Act, 1956. The State of Andhra Pradesh was removed through the Constitution (Thirty-second Amendment) Act, 1973 as there was a demand to create ‘special provision’ for certain regions in that State and it was done under Article 371D and 371E.

A. STATE OF MAHARASHTRA AND GUJARAT

The Governor of Maharashtra and Gujarat under Article 371 has to establish separate development boards for certain regions in the State concerned and report the working of these boards before their respective State Legislatures. It should be ensured that the developmental funds have been equitably allocated to all regions in providing adequate facilities for education and generate opportunities for public employment without affecting the whole State.

B. STATE OF NAGALAND

The State of Nagaland is the first State in the north-eastern region to get a ‘special’ treatment under Article 371A²⁰, notwithstanding any other constitutional provisions. India has witnessed long lasting secessionist movements, not only in Jammu and Kashmir but also in the regions like Punjab, Nagaland and Mizoram.²¹ However, the Union of India has made several valiant attempts and succeeded the challenges posed by the insurgents and extremists in Mizoram and Jammu and Kashmir but the same approach could not be extended towards Nagaland. Besides being the first State to enjoy a special constitutional position to maintain the distinct identity of the region, it also enjoyed certain financial benefits from the Union Government under the ‘special category state’ in 1969 as one among the first States with Assam and Jammu and Kashmir. Despite these special treatments, certain fringe political parties in Nagaland are

¹⁸ *Id.*

¹⁹ Singh, *Supra* note 7, at 63.

²⁰ The Constitution (Thirteenth Amendment) Act, 1962, s 2 (w.e.f. 01.12.1963).

²¹ Tillin, *Supra* note 4, at 61.

demanding a separate flag and Constitution similar to the ‘special status’ enjoyed by the erstwhile State of Jammu and Kashmir. The secessionist tendencies of Naga people even before India’s independence resulted in the enactment of the AFSPA²². This Act was first implemented in the undivided State of Assam to counter Naga rebels²³ and was extended to the whole of north-east States declaring the region as ‘disturbed area’ either by the State Government or Central Government.²⁴ Furthermore, the State of Nagaland is one of the reasons for ‘Anti-cession Bill’, which was passed as Constitution (Sixteenth Amendment) Act, 1963. The words ‘sovereignty and integrity of India’ has been added under Article 19(2) to quell a person advocating the secessionist tendency peacefully in the guise of free speech. Thus, the Constitutional amendments and legislations were primarily intended to suppress the secessionist forces thriving in Nagaland since Indian Independence.

A ‘SPECIAL’ WITHIN A ‘SPECIAL’

The State of Nagaland has experienced the inter-ethnic conflict since British administration. This special provision contains a ‘special’ clause providing a differential treatment for the Tuensang District. The Governor shall establish a regional council for the Tuensang district consisting of thirty-five members and make discretionary rules in relation to the office and members of the council for its effective functioning. Notwithstanding anything in this Constitution, the Governor has been entrusted with discretionary powers in the administration of the Tuensang district for a period of ten years, i.e., the first ten years after the formation of the State of Nagaland, the Governor has the duty to apportion the money provided by the Central Government between the Tuensang district and the rest of the Nagaland depending on the needs of the State. The Governor on the recommendations of the regional council shall approve the laws made by the Nagaland Legislative Assembly to implement in the Tuensang district and also empowered to make any regulations for peace, progress and good government of the district and such regulations may repeal or amend any law in force including Parliamentary laws with retrospective effect. On the advice of the Chief Minister, the Governor shall appoint a Minister from any of the members representing Tuensang district to manage its affairs. The said Minister has to report directly to the Governor in the matters relating to the district and shall inform the same to the Chief Minister. Notwithstanding the above conditions, the

²²Act No. 28 of 1958.

²³ This Act empowers the armed forces to maintain public order in ‘disturbed areas’ through the use of force including open fire after due warning. They can prohibit any gathering of five or more persons and also arrest a person or enter or seize any premises without a warrant.

²⁴ Tillin, *Supra* note 4, 62.

Governor shall exercise his discretion to perform any of his functions aforesaid. or such further period after the emergence of the State of Nagaland. However, the regional council was abolished in 1973-at the end of the tenth year and the Tuensang district merged with the rest of Nagaland, taking part in the elections to the Nagaland Legislative Assembly. The Tuensang District (Assimilation of State Subject) Act, 1969²⁵ was passed even before the abolition of regional council in 1973. It states that all laws related to the State List of the VII Schedule of the Indian Constitution which was in force in the district of Kohima and Mokokchung shall extend to the District of Tuensang. However, the Act of 1969 has been repealed by the Tuensang and Mon District (Assimilation of law) 1973²⁶. The said Act brought uniformity in the application of laws in the District of Tuensang and Mon with the rest of the Nagaland in the matters mentioned in List II and III of the VII Schedule of the Constitution. Hence, a special has become redundant.

C. STATE OF ASSAM

Article 371B²⁷ is applicable to the State of Assam, and it enables the President to issue an Order to constitute a committee of legislators from the tribal areas of the North Cachar Hills District, The Karbi Anglong District (Mikir Hills District) and the Bodoland Territorial Areas District specified in Part I²⁸ of the table appended to paragraph 20 of the Sixth Schedule of the Constitution and ensure the proper functioning of the committee. This provision actually contained the areas mentioned as Part A of the table at the commencement of the Constitution, which includes the United Khasi-Jaintia Hills District; The Garo Hills District; The Lushai Hills District; The Naga Hills District; The North Cachar Hills and The Mikir Hills. After the North-Eastern Areas (Reorganization) Act, 1971, the United Khasi-Jaintia Hills District and the Garo Hills District formed part of the State of Meghalaya and the Lushai Hills and Naga Hills formed part of the State of Mizoram and Nagaland respectively.

D. STATE OF MANIPUR

Article 371C²⁹ also contains a similar provision for the State of Manipur, wherein the committee of legislators has to be identified from the Hill areas of the State. Moreover, the

²⁵ The Nagaland Act No. 10 of 1969.

²⁶ The Nagaland Act No. 1 of 1973.

²⁷ The Constitution (Twenty-second Amendment) Act, 1969, s 4 (w.e.f. 25.09.1969).

²⁸ It was substituted by the North-Eastern Areas (Reorganization) Act, 1971 (81 of 1971), Sec. 71 for "Part A" (w.e.f. 21.01.1972).

²⁹ The Constitution (Twenty-seventh Amendment) Act, 1971, s 5 (w.e.f. 15.02.1972).

Governor has to send an annual report to the President about the administration of the Hill areas and the Central Government is empowered to give directions for the effective administration of it.

E. STATE OF ANDHRA PRADESH

Article 371D confers special treatment for the State of Andhra Pradesh to provide intra-State equity considering the Telangana region. Even before the insertion of this clause, there was an agreement between the representatives of Andhra Pradesh and Telangana region in 1956 at Delhi to provide certain safeguards for the latter region when the State of Andhra Pradesh emerged as a first State in India on linguistic basis. In consequent to it, the Union Government by virtue of the Public Employment (Requirement as to Residence) Act, 1957³⁰ has framed Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959 mandating 15 years continuous resident for the appointment in Government services in Telangana region. However, this rule was challenged in the case of *A.V.S. Narasimha Rao v. State of Andhra Pradesh*³¹ and the Court held it-as unconstitutional reasoning that it violates Article 16 of the Indian Constitution. As a result, the State Government could not enforce these rules, which lead to agitation in 1969 seeking separate statehood for Telangana. In order to overcome the imbroglio, the Parliament brought Article 371D³² covering additional safeguards for the Telangana region besides the safeguards assured in 1956 Delhi Agreement.³³ Nonetheless, instead of the word 'Telangana', Article 371D specifies 'any part of the State', which signifies that this provision is still being effective even after Telangana became a separate State.

This provision empowers the President to issue an Order for the State of Andhra Pradesh notwithstanding any other provisions of the Constitution or any law in force, to provide equitable opportunities and facilities in the matter of education and public employment for the people belonging to different parts of the State through different provisions considering the needs of the whole State. In specific, the President mandates the State Government to classify the civil posts in local cadres for different parts of the State and allot it as specified in the Order.³⁴ It stipulates any part or parts of the state as local area for the purpose of recruitment under the State or admission to any educational institution. Furthermore, the President is

³⁰ Act No. 44 of 1957.

³¹ (1969) 1 SCC 839.

³² The Constitution (Thirty-second Amendment) Act, 1973, s 3 (w.e.f. 01.07.1974).

³³ Tillin, *Supra* note 8, at 554.

³⁴ The Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, dated 18.10.1975.

authorized to constitute an Administrative Tribunal to hear any grievances relating to appointment, allotment, promotion and conditions of services in public employment. It provides detailed clauses relating to the powers, jurisdiction, authority and procedure for the Administrative Tribunal including the power to punish for contempt as the President may deem necessary. The Supreme Court does exercise superintendence over this Administrative Tribunal and not the High Court.

It also contains a savings clause that validates all appointments made by the State before incorporation of this provision. The Order of the Administrative Tribunal will be in force after confirmation by the State Government or on the expiry of three months from the date of the Order, whichever is earlier. The most significant provision is the proviso to clause 5 of Article 371D, which states that the State Government may modify or annul any Order of the Administrative Tribunal through a reasoned Order made on this behalf. This proviso clause was challenged before the Supreme Court and it was held in the case of *P. Sambamurthy v. State of Andhra Pradesh*³⁵ that the external interference with the Order of Tribunal is against the 'rule of law' and 'separation of powers' and thus, violating the basic features of the Constitution. There are many cases cropped up before the Supreme Court in relation to Article 371D, particularly the residential restrictions both in public employment and admission to educational institutions. The Court gave due weightage to Article 371D relying on the *non-obstante clause* and upheld many Presidential Orders, which is still in force even after the Telangana succeeded to get a separate statehood in 2014.

It is inevitable to mention that there was a discussion in the Group of Ministers (GoM) concerning the status of Article 371D after bifurcation. The Chief Minister of Andhra Pradesh and Seemandhrara ministers insisted for an amendment and even the Attorney General opined for a fresh constitutional amendment to preserve the special provision. However, the then Finance Minister, Shri. P. Chidambaram has categorically denied for the amendment of Article 371D by drawing the example of Article 371B with respect to the State of Assam and how the State of Meghalaya was formed without affecting the nomenclature of the State of Assam. Further, he also recalled about the replacement of the words 'State of Maharashtra and Gujarat' for the words 'State of Bombay' in Article 371 (2). It is also noted that the amendments or alterations made in Article 371D need not require the application of Article 368 of the Indian

³⁵ (1987) 1 SCC 362.

Constitution.³⁶ Article 371E³⁷ provides an establishment of a Central University in the State of Andhra Pradesh through a law made by the Parliament.

F. STATE OF SIKKIM

Article 371F is the result of the accession of State of Sikkim, an erstwhile ‘Associated State’ of Union of India.³⁸ It enjoys certain special treatment under this provision after it has been integrated as a full-fledged State with the Union of India.³⁹ It provides savings clause for the following: (1) the Assembly formed after 1974 election with thirty-two sitting members shall be deemed to be the Legislative Assembly of the State of Sikkim and has the powers to perform the functions as stipulated under the Constitution; (2) all properties and assets vested with the Government of Sikkim before 1975 shall continue to be vested with the Government of the State of Sikkim; (3) the High Court functioning for the territories of the State of Sikkim before 1975 shall be deemed to be the High Court for the State of Sikkim; (4) All Courts of civil, criminal and revenue jurisdiction and all authorities functioning in the State of Sikkim before 1975 shall continue as per the Constitution; (5) all laws existed in any of the territories of the State of Sikkim before 1975 shall continue to exist until amended or repealed. However, the President may, by Order within two years of the accession, can make necessary changes in the existing law to bring it in conformity with the Constitutional provisions and such changes is beyond the scope of judicial review. The Supreme Court of India in the case of *State of Sikkim v. Surendra Prasad Sharma*⁴⁰ has acknowledged the continuation of laws existing before 1975 albeit violation of the fundamental rights.

The President can also extend any enactment which is in force in India at the time of notification, to the State of Sikkim, nevertheless, with necessary modifications. The President can remove any difficulties in implementing the ‘special provisions’ specified in this Article by issuing an Order. There shall be one seat in the House of People representing the State of Sikkim and the Legislative Assembly of the State of Sikkim shall possess at least thirty members. The Parliament is allowed to reserve seats in the Legislative Assembly to protect the rights and interests of different ethnic communities and this led to reservation of 12 seats for Sikkimese of ‘Bhutia-Lepcha’ and one seat each for ‘Sangha’ and ‘Budhist Lamaic

³⁶ Jairam Ramesh, *Old History New Geography – Bifurcating Andhra Pradesh* 111-112 (Rupa Publications, New Delhi, 2016).

³⁷ The Constitution (Thirty-second Amendment) Act, 1973, s 3 (w.e.f. 01.07.1974).

³⁸ The Constitution (Thirty-fifth Amendment) Act, 1974.

³⁹ The Constitution (Thirty-sixth Amendment) Act, 1975.

⁴⁰ (1984) 5 SCC 282.

Monasteries' respectively. This was challenged in *R.C. Poudyal v. U.o.I*⁴¹, wherein the Court held that reserving a seat in Legislative Assembly in favour of certain group representing a religious institution can be accepted as it is necessary for the development of the newly admitted State. Moreover, the Court observed that the principle of 'one person-one vote' need not be strictly enforced and upheld the reservation of seats for certain communities disproportionate to its population. The Article also entrusts special responsibility on the Governor of Sikkim for peace and to create an equitable arrangement for ensuring the social and economic advancement of different sections of the people and the Governor shall discharge this responsibility as directed by the President from time to time, in his discretion.

G. STATE OF MIZORAM

The special provision under Article 371G is an outcome of the Mizo peace accord entered among the Union of India, Government of Sikkim and Mizo National Front (MNF). In 1961, the Mizo National Front was formed to assert the self determination of Mizo people and they resorted to fight as insurgents against Indian Union to relish their dream of a separate sovereign State. The most intense fight erupted after declaration of independence by MNF on March 1, 1966.⁴² After the two decade of unrest and disturbance in the region, the Union of India invited the MNF to hold peace talks on the conditions that they should cease violence and the talks should be within the framework of the Indian Constitution. Finally, the peace accord was signed on June 30, 1986 promising statehood for Mizoram with certain autonomy in the governance without compromising their culture and traditions.

Notwithstanding anything in the Constitution, Article 371G provides that no Parliamentary legislation shall apply to the State of Mizoram unless the State decides by a resolution on the following matters, such as, religious, social and customary law and procedure of the Mizos; the administration of justice involving decisions in accordance with Mizo customary laws and ownership and transfer of land. This clause does not invalidate any Central Act which was already in force in the erstwhile Union Territory of Mizoram. Like Mizoram, the administration of justice in many parts of the north-east States are in accordance with customary laws practiced in that region, which is largely uncoded and enjoys greater autonomy. Although the tribal justice system involves minimal procedure, cost effective and

⁴¹ 1984 Supp (1) SCC 324.

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PTI, 'Mizo Peace Accord ensured enduring peace in Mizoram' *Business Standard (New Delhi)*, Feb. 20, 2019.

ensures timely delivery of justice, it squarely has certain negative aspects, such as, the village heads are partial in deciding the cases and the customary laws are not in consonance with the principles of natural justice. The Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice had addressed this issue and submitted a report suggesting synergy between tribal justice system and regular justice system of the country instead of replacing the tribal justice system.⁴³ Thus, every special feature has both positive and negative impacts. The Legislative Assembly of the State shall consist of at least forty members. Moreover, certain extra constitutional actions⁴⁴ had been taken by the Union to bring normalcy in the State and equally, the MNF had also reciprocated by fulfilling certain commitments⁴⁵ as negotiated during the peace talks. In the 34th anniversary of the Mizo Peace Accord, the Chief Minister hailed it as a historic accord and one of the successful accords ever signed not only in the Country but in the World. It stood the test of the time and ensured enduring peace in the State albeit the accord is not up to the satisfaction of both the parties.⁴⁶

H. STATE OF ARUNACHAL PRADESH

Article 371H⁴⁷ is a special provision in respect of the State of Arunachal Pradesh. It empowers the Governor with special responsibility to maintain law and order in the State and while doing so, the Governor may consult the Council of Ministers but actions can be taken based on his individual judgment. The decision of the Governor is final in the matters relating to exercise of the functions under this provision and the same shall not be judicially reviewed. The Governor performs this task during the pleasure of the President. Furthermore, it stipulates that there shall be at least thirty members in the Legislative Assembly of the State of Arunachal Pradesh.

I. STATE OF GOA

⁴³ Ministry of Law and Justice-Government of India, *Eighteen Report of the Parliamentary Standing Committee on Synergy between Tribal Justice System and Regular Justice System of the Country* (Report No. 80) 10 March 2016 < <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/80.pdf>> accessed 21 June 2025.

⁴⁴ The Centre's financial assistance to bridge the revenue gap of the State; Boosting border trade in accordance with a scheme formulated by the Central Government; The Inner Line Regulation will not be amended without the consultation of the State; Compensation to the dependents of the deceased, victims, damage to the properties during the military action in the Union Territory of Mizoram since 1966.

⁴⁵ MNF agree to amend its articles in consonance with the Indian Laws and no support to any insurgent groups in the north-east region.

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PTI, 'Mizo peace accord most successful one: CM Zoramthanga' *Express News Service (New Delhi)*, June 30, 2020.

⁴⁷ The Constitution (Fifty-fifth Amendment) Act, 1986, s 2 (w.e.f. 20.02.1987).

Article 371I⁴⁸ does not have any special nature except imposing a condition that the legislative assembly of the State of Goa shall consist of a minimum of thirty members.

J. STATE OF KARNATAKA

Article 371J⁴⁹ is an amendment applicable to the State of Karnataka for the development of Hyderabad-Karnataka region. It runs similar to Article 371 as mentioned above. However, clause (2) provides reservation for the students in educational institutions and certain posts under the control of State Government for persons belonging to this region, either by birth or domicile.

4. CHALLENGES AMIDST ASYMMETRIC FEATURES

The north-eastern States are facing so many challenges, such as boundary disputes, demand for autonomy to certain tribal or ethnic group in a particular State, Repealing AFSPA, Naga Peace Talks, and etc. However, the researcher has not dealt with the Manipur imbroglio between Meitei-Kuki conflict and the issues surrounding Assam Accord as it leads beyond the scope of the paper. The researcher would like to provide a glimpse of the following issues, which commonly affects the north-eastern region and not confined to a State or a region.

A. INTER-BOUNDARY DISPUTES ARE FOUGHT AS INTERNATIONAL BORDER DISPUTES

There is always a disquiet situation prevailing at the State borders of north-eastern region due to unsettled boundary issues. Many States in the north-eastern region were bifurcated from the erstwhile State of Assam in 1971⁵⁰ but unfortunately the boundaries were not clearly demarcated, leaving the residents to fight with security persons guarding the State boundaries. In July 2021, there was a violent clash between Assam and Mizoram's police forces leading to the killing of five policemen and a civilian from the former State.⁵¹ In consequence to this ghastly attack, the State of Assam entered many treaties with neighbouring States to resolve the boundary disputes. Firstly, it signed a deal with the State of Nagaland at the end of July 2021 to reduce tension along the border by withdrawing the security personnel from the border regions and to use drones and satellite imagery to monitor the region.⁵² Secondly, in August 2021, the

⁴⁸ The Constitution (Fifty-sixth Amendment) Act, 1987, s 2 (w.e.f. 30.05.1987).

⁴⁹ The Constitution (Ninety-Eighth Amendment) Act, 2012

⁵⁰ The North-Eastern Areas (Reorganisation) Act, 1971.

⁵¹ Editorial, "Dangerous Conflagration", *The Hindu (Madurai)*, July 28, 2021.

⁵² PTI, "Assam and Nagaland sign deal to reduce tension along border", *The Hindu (Madurai)*, Aug. 01, 2021.

State of Assam and Meghalaya agreed to form regional panels to settle disputes in ‘less complicated’ areas through different phases. Thirdly, in August 2022, the State of Assam and Arunachal Pradesh formed twelve regional panels, which were similar to the Assam and Meghalaya accord to resolve border disputes.⁵³ In a major step towards the resolution of boundary disputes between the State of Meghalaya and Assam, the two Chief Ministers hold the ninth CM-level meeting in Guwahati for resolving the remaining six of the twelve disputed areas since the six ‘less complicated’ sectors were resolved peacefully through an agreement signed on January 29, 2022 and the Central Government gave its assent to the agreement on March 29, 2022.⁵⁴ Nonetheless, it is also to be noted that certain Meghalaya tribes oppose this deal and likely to file a petition before the Court opposing the memorandum of understanding to settle six out of twelve disputed sectors.⁵⁵

It is regrettable to state that no delimitation exercise conducted in four north-eastern States, i.e. Arunachal Pradesh, Assam, Manipur and Nagaland as per the Representation of the Peoples Act, 1950 (RPA) due to the boundary disputes. A public interest litigation has been filed before the Supreme Court stating that “selectively denying delimitation in the four north-eastern States stating law and order problems, while the same exercise was being conducted in the rest of India under the Delimitation (Amendment) Act, 2002 and sec. 8A of the RPA violates Article 14 of the Constitution. This petition came before the Supreme Court Bench on Nov. 25, 2011, wherein the Court pulled up the Centre and questioned “How long will you say that it is ‘sensitive’ and ‘tribal dominant area?’ it has been 70 years now; you are conducting General and Assembly elections but could not carry out delimitation exercise”⁵⁶ and adjourned the matter to February 2023.⁵⁷ Although, there were many peace talks, committees, panels constituted to resolve the border disputes, the situation is highly volatile and sensitive, which was evident from the recent exchange of fire in the Assam-Meghalaya boundary leaving six people dead, including an Assam Forest guard and several persons injured.⁵⁸ It is manifest that

⁵³ Special Correspondent, “Assam, Arunachal form regional panels to resolve border dispute”, *The Hindu (Guwahati)*, Aug. 12, 2022.

⁵⁴ Special Correspondent, “Meghalaya, Assam CMs hold talks”, *The Hindu (Madurai)*, Aug. 22, 2022.

⁵⁵ Special Correspondent, “Meghalaya tribes oppose boundary deal”, *The Hindu (Madurai)*, April 28, 2022.

⁵⁶ Rintu Mariam Biju, “Why No Delimitation Held in North-Eastern States? Supreme Court Asks Centre, ECI”, *LiveLaw.in*, Nov. 26, 2022, available at: <https://www.livelaw.in/top-stories/supreme-court-delimitation-exercise-north-eastern-states-rp-act-215126> (accessed on Dec. 04, 2025).

⁵⁷ Delimitation Demand Committee for the State of Arunachal Pradesh Assam Manipur and Nagaland in North East India v. Union of India and Others, Writ Petition(s) (Civil) No(s). 357/2022 dated Nov. 25, 2022.

⁵⁸ The Hindu Bureau, “Six dead; Meghalaya says Assam officials fired without provocation”, *The Hindu (Madurai)*, Nov. 23, 2022.

there are many boundary disputes lingering for more than five decades in spite of different efforts for resolution, thus creating a biggest challenge to cooperative federalism in India.

B. DEMAND FOR AUTONOMY OR SEPARATE STATEHOOD

Many States in the north-eastern region are demanding greater autonomy to their region or claiming separate Statehood based on their unique culture and lifestyle. The Rengma Nagas in Assam demand an autonomous district council stating that they were eliminated from the political map of the State and replaced with that of Karbi Anglong (previously Mikir Hills) in 1951. They submitted a memorandum to the Union Government stating their history and how they differ from the people of Mikir Hills and also expressed that they are treated with stepmotherly approach as they speak different dialects and do not know Karbi language of Karbi Anglong. They also demanded a separate legislative seat for Rengmas as their population is around 22,000.⁵⁹

Furthermore, the State of Assam is deeply divided as Assamese-speaking Brahmaputra valley and the Bengali-speaking Barak valley, and there is a claim for separating Barak Valley from the State of Assam as the residents of the region are protesting against the imposition of the Assamese language where Bengali is the official language. Many Organizations in the Barak Valley demanding for a separate Statehood for their region to end the language-based conflicts.⁶⁰ Similarly, the intra-State separatist tendency is evident in the State of Nagaland, where the Eastern Nagaland People's Organisation (ENPO) are demanding a separate statehood for six of Nagaland's sixteen districts. Recently, they threatened to boycott 2023 Assembly Elections in the State and decided not to participate the famous Hornbill Festival, if their demand is unfulfilled. Further, they also warned that 20 MLAs cutting across party line from six districts would resign from Nagaland Legislative Assembly if the Centre fails to respond.⁶¹

C. DEMANDING COMPLETE REMOVAL OF AFSPA

⁵⁹ Vijaita Singh, "Rengma Nagas demand autonomous council", *The Hindu (Madurai)*, June 9, 2021.

⁶⁰ Special Correspondent, "Call to separate Barak Valley from Assam grows louder", *The Hindu (Madurai)*, Oct. 24, 2021.

⁶¹ The Hindu Bureau, "Nagaland group to raise its bifurcation bid with Shah", *The Hindu (Madurai)*, Nov. 28, 2022.

The Armed Forces (Special Powers) Act, 1958 is a draconian legislation, which was in operation in many parts of the north-eastern States.⁶² However, presently, it was confined to certain regions of Nagaland and Arunachal Pradesh.⁶³ The Act empowers both the Union and State Government to impose the AFSPA provisions, thus giving unbridled powers to the Armed Service Personals to arrest a person or enter or search premises without a warrant and to ban the possession of firearms if ‘reasonable suspicion exists’.⁶⁴ Furthermore, the Act empowers the armed forces to use force even causing death of any person for the maintenance of public order in the ‘disturbed area’ notified by the Government from time to time. The Central Government’s previous sanction is required to prosecute any person who performs duty under this Act. This Act is always in the limelight as it is often misused by the security personnel. In 2022, 14 civilians of Mon district of Nagaland have been killed by the Army mistaking them as the members of an extremist outfit. After an intense protest all over the country, the Nagaland Government constituted a Special Investigation Team and filed the chargesheet against 30 soldiers, including a Major after a thorough probe but yet no prosecution was initiated and moreover, the outcome of an internal probe by the Army is unknown. Almost a year had passed since the botched military operation but no culprit was either prosecuted or punished.⁶⁵ On the other hand, the State Governments, such as Manipur and Assam have had retained the AFSPA to a considerable period by renewing the notification every six months after it was discontinued by the Union Government.⁶⁶ The only ultimate relief from the draconian legislation is to repeal the AFSPA from all States of north-eastern region.

D. NAGA PEACE DEAL

The State of Nagaland has a long political history since it became part of British India in 1881. They were forcefully annexed by the Indian Republic at the time of Indian independence as the Naga National Council (NNC) declared Nagaland as an Independent Sovereign State on August 14, 1947 under the leadership of Angami Zapu Phizo. The insurgency was controlled through the enforcement of AFSPA but it intensified in mid-1970s and returned in the form of NSCN led by Mr. Muivah and Mr. S.S. Khaplang. In order to settle the political issues in Nagaland and to root out the insurgency, the Union Government entered into a framework

⁶² K. Venkataramanan, “Which States in the N.E. are under AFSPA?”, *The Hindu (Madurai)*, Dec. 12, 2021.

⁶³ The Hindu Bureau, “AFSPA extended in Nagaland, Arunachal”, *The Hindu (Madurai)*, Oct. 01, 2022.

⁶⁴ Rahul Karmakar, “Naga killings point to AFSPA pitfalls”, *The Hindu (Madurai)*, Dec. 07, 2021.

⁶⁵ Rahul Karmakar, “A year on, kin of slain villagers await justice in Nagaland”, *The Hindu (Madurai)*, Dec. 04, 2022.

⁶⁶ Vijaita Singh, “Manipur and Assam wanted to retain AFSPA”, *The Hindu (Madurai)*, Dec. 13, 2021.

agreement on August 3, 2015⁶⁷ after more than 100 rounds of talks with several twists and turns since 1997. Nonetheless, the framework agreement was not released due to security reasons and there was a claim by the NSCN (I-M) outfit that the contents of the agreement was manipulated by the then Governor Mr. R.N. Ravi.⁶⁸ The Naga peace talks is in limbo due to three main contentious issues, (1) Inclusion of *Yehzabo* (Naga Constitution) into the Indian Constitution, (2) Recognition of Naga Flag, (3) Creation of 'Greater Nagaland' or '*Nagalim*' by integrating Naga-dominated areas of Assam, Arunachal Pradesh and Manipur into the existing State of Nagaland.⁶⁹ The Naga group has categorically mentioned that they will not compromise in these three issues as it affects their identity. The Union Government is also reluctant to concede to the demands of the Naga groups as it is akin to the special status enjoyed by the erstwhile State of Jammu and Kashmir under Article 370 of the Constitution. Thus, the Union Government will not agree to such plea as it affects the Sovereignty and Integrity of India.

E. INFILTRATION, REFUGEES AND CAA

There was a large-scale infiltration occurred in the north-eastern States, particularly in the State of Assam, during the liberation of Bangladesh from Pakistan. The organizations in the State of Assam spearheaded a movement against illegal immigrants from Bangladesh between 1979-1985. As a result, the Assam Accord was signed in 1985 prompting the Union Government to update the National Register of Citizens keeping March 24, 1971 as cut-off date to identify the foreigners from Bangladesh. However, there were much controversies erupted in the update of NRCs as around 40.07 lakh applicants were excluded from NRC final list, which was released on 30th July 2018. The entire process of NRC update was monitored by the Supreme Court since 2013.⁷⁰ The Supreme Court remarked about the final NRC list as merely a draft and no action could be taken out of it.⁷¹ Nevertheless, the NRC matter has been tagged with the petition challenging CAA and is pending before the Constitution Bench since 2015. Moreover, there was a severe agitation in the State of Assam, Tripura and Meghalaya over the Citizenship (Amendment) Act, 2019 as it allows Hindus and other minorities except Islam to claim citizenship in the tribe dominated north-eastern regions.

⁶⁷ Rahul Karmakar, "Why have the Naga peace talks stumbled?", *The Hindu (Madurai)*, Oct. 27, 2019.

⁶⁸ Rahul Karmakar, "Hurdles to Naga Peace", *The Hindu (Madurai)*, Aug. 16, 2020.

⁶⁹ Vijaita Singh, "Naga delegation meets Shah, pushes for revival of talks", *The Hindu (Madurai)*, Sep. 13, 2022.

⁷⁰ *Assam Public Works v. Union of India*, (2019) 9 SCC 70.

⁷¹ Supreme Court Observer, "Assam's National Register of Citizens", *SCO*, available at: <https://www.scobserver.in/cases/assam-public-works-v-union-of-india-assams-national-register-of-citizens-background/> (last updated on Sep. 07, 2022).

Many States have expanded the Inner Line Permit (ILP) system to regulate the visit of outsiders to their States.⁷² The ILP acts as a shield against the entry of illegal immigrants. The State of Arunachal Pradesh, Mizoram, Nagaland, Manipur have implemented the ILP, but several groups in Meghalaya have been demanding the enforcement of ILP.⁷³ Meanwhile, the Rohingya Muslims are entering into Indian territories as refugees from Myanmar *via* Bangladesh, which is yet another challenge of recent times in the State of Assam.⁷⁴ It is a herculean task before the Union Government to protect the infiltrators based on religion without affecting the interests of the tribe community.

5. THE WAY FORWARD

The Indian sub-continent has accommodated diversities along linguistic, religious, regional, ethnic and tribal lines since before independence and these diversities can be identified particularly with their land and territory. During the time of independence, the process of integrating India amidst the differences was made reality through constitutional contracts or employment of armed forces or clubbing it together. The demands of different groups were acclimatized through the element of asymmetrical federalism in the Constitution under the category 'special' as it provides a differential treatment in safeguarding their culture and tradition and to spur the economic growth despite little resources due to their geographical location. The special treatments were also guaranteed through Statutes and policies of the Government ascertaining that the asymmetric arrangement is indispensable for Indian federation to flock all the units in unison. The number of states had increased thrice since independence-similarly the 'special provisions under Article 371', postulating that in one fine day, almost all the States would receive some special treatment for one or other reasons. The accommodation of diversity is not a one-time measure by just conferring a 'special provision' as a constitutional guarantee but a long-driven process till they accept the sense of nationality unfeignedly without compromising their identity. The Union Government has taken valiant efforts consistently since 1970s to suppress the insurgency in many States of north-eastern region through dialogues and pacts recognizing their genuine grievances and also entered into a

⁷² Sudipta Datta, "Why is the Northeast on the boil?", *The Hindu (Madurai)*, Dec. 15, 2019.

⁷³ Special Correspondent, "Inner-Line Permit is Centre's biggest gift to Manipur", *The Hindu (Madurai)*, Dec. 28, 2020.

⁷⁴

PTI, "26 suspected Rohingya without valid documents detained in Assam", *The New Indian Express*, May 30, 2022, available at: <https://www.newindianexpress.com/nation/2022/may/30/26-suspected-rohingya-without-valid-documents-detained-in-assam-2459749.html> (accessed on Dec. 04, 2025).

ceasefire agreement with Nagaland to settle their political issue, which was burning since 1980s. Nonetheless, there are few challenges left unaddressed or cropping up now and then, which affects the unity and integrity of our nation. The Union Government should take all negotiating measures *sans* using forces by inking a pact with all secessionist forces and retain the unity both intra-State and inter-State without compromising their interests as well as the integrity of our nation. The objective of asymmetric features is to develop the spirit of cooperativeness amongst the States irrespective of differences and the same can be realized only through the balancing of interests between the Union and the State, and not by following the ideology of ‘one-nation and one-policy’.