



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ARTICLE 371A: A SHIELD FOR THE NAGAS? OR A CURSE**

AUTHORED BY - SHLOKE JATIA

## **ABSTRACT:**

Part XXI of the Constitution of India, Mentions the “*temporary, transitional and special provisions*”, these special provisions show us that our constitution accepts and recognises the diversity and unique historical pasts of different states. One of these provisions is article 371-A which states “*special provision with respect to the state of Nagaland*”. It includes various special provisions for specific states to put forward their distinct needs and historical contexts. These tools help to accommodate the cultural, linguistic and administrative diversities of different states within the union.

Article 371-A of the constitution grants Nagaland with special status that ensures a great level of autonomy and cultural protection within India’s federal structure. Along with Nagaland, in the Northeast region special provisions are made for the states of “*Arunachal Pradesh, Assam, Manipur, Mizoram and Sikkim*”. But in this article, we would focus only on the State of Nagaland.

## **INTRODUCTION/HISTORICAL BACKGROUND:**

The article provides an in-depth historical account of Nagaland’s integration into the Indian Union. Before India won her independence in 1947, the Naga Hills were not directly administered by the British Government. The Naga Hills excluded Ara and were administered indirectly through a system of Indian Authorities. This was done because the Naga people which comprised many different Naga tribes considered themselves neither a part of India nor Burma as they were different on every page, be it Cultural, linguistic or other social practices.<sup>1</sup> As a result, the “*Naga Hills-Teunsang Area Act, 1957*” was passed by the Indian government in response to the desire for a distinct administrative division for the Nagas. This Act covers two areas: The entire Naga Hills Teunsang region, which was included in “*section B of the*

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<sup>1</sup> B K Bhattacharjya, S Borah, P Das, D Baruah, N S Odyuo and K Kense, ‘Nagaland: Status and Perspectives’ (2018) 38 *Fishing Chimes* 1.

*Sixteen Schedule*”, was created by combining the Naga Hills-Teunsang Area with the entire Naga tribal region. The Governor of Assam continued to manage it on behalf of the President of India.

This did not satisfy the Naga leaders, who pushed for the “*creation of a state*” in Nagaland. As a result, the Naga leaders and the Indian government came to an agreement in July 1960 that the Naga Hills region, which was in Part B, would become an independent state and be separated from Assam. The State was created by the “*State of Nagaland Act, 1962*”. This Act created a distinct State and divided the Hills region from Assam. The Act established the state's legislative assembly and legislative council, and the governor will follow the council of ministers' recommendations. Assam's High Court will serve as Nagaland's High Court as well. Nagaland became a full-fledged state under the first schedule when the Act went into effect on February 1st, 1964, subject to the unique requirements set forth in Article 371-A. Later an Act was also passed Nagaland Land Revenue Restrictions Act, 1978, which specifically mentioned that no outsiders could purchase any land in the State.<sup>2</sup>

### **SALIENT FEATURES OF THE ARTICLE:**

**ACTS OF PARLIAMENT:** “*No act of parliament in respect of religious or social practices of the Nagas, Naga customary law and procedure, administration of Civil and criminal matters according to Naga customary Law, will apply to Nagaland unless the State legislative assembly of Nagaland decides by resolution to do so.*”

**ROLE OF GOVERNOR:** “*The governor of Nagaland will have special responsibility concerning law and order in the state for as long as internal disturbances continue therein and will exercise his judgement only after consulting the Council of Ministers of the State of Nagaland. The governor is given the responsibility to ensure that any money which is provided by the government of India for any specific service or purpose is included in the demand made for the grant and that the money is not used for any other purpose.*”

**REGIONAL COUNCIL:** “*There's an obligation to establish a regional council for the Tuensang district, which will consist of 35 members and the Governor shall make rules for its compositions and how it functions. This regional council shall have powers concerning making laws on a few matters such as land, forest, fisheries, Village administration, inheritance of*

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<sup>2</sup> D Nyekha, *Article 371A and the Special Constitutional Status of Nagaland: The Principles and Practices of Autonomy*(n.d.).

*property, marriage and divorce, social customs etc., only within the Tuensang district.”*

**TUENSANG DISTRICT ADMINISTRATION:** *“In this area a regional council shall be constituted for Tuensang District by representatives from all the tribes of the Tuensang district. On the progress of the regional council, actions will be taken to start several other councils and courts, in the areas where civilians feel themselves capable of developing such institutions. No Act will be enacted by the state legislature that is related to the Tuensang District unless specifically advised by the regional council.”*

### **ARTICLE 370 ABROGATED, 371-A NEXT?**

Basic difference between both the articles is, *Article 370* was a part of the original constitution which came in force in 1950 different from *Article 371-A* which was added in 1962 through the 13<sup>th</sup> Constitutional Amendment. From this basic difference we can make out that 12 years after the constitution was drafted Nagaland was formed and special status was given, we can interpret that the Government of India observed the activities taking place in the Naga hills which made them understand that there was need of a special legislation. 12 years of deep observation by the Government of India resulted in a constitutional safeguard for the Naga culture and various other practices. This special status was result of a 16 point amendment between the Nagas and the Government, which in turn means the Nagas themselves wanted this special status to protect their society.<sup>3</sup>

In my view, *Article 370* was abrogated because of the increasing insurgency in Kashmir and stone pelting incidents, as mentioned by the government in 2019 and the Government wanted Kashmir directly under control as the boarding nation adds fuel to the fire. Not ignoring the fact that even in Nagaland separatist movements and insurgencies have taken place but they are of match compared to Kashmir. Plus, there were also political brownie points involved while abrogating *Article 370* which won't be involved in abrogation of *Article 371-A*.

### **MAIN BODY:**

#### **Challenges and controversies:**

One of the fundamental challenges possessed by *Article 371-A* is the ongoing tension between preserving Nagaland's autonomy and fostering its “*integration with the Union of India*”. The provisions do provide a high degree of autonomy, some people urge that it may inadvertently

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<sup>3</sup> B G Gokhale, 'Nagaland—India's Sixteenth State' (1961) 1 *Asian Survey* 36.

hinder the state's full integration with the rest of India. This is still a central issue in Nagaland's politics. Autonomy in an excess may prove to be harmful in the long run as ideas of cessation may increase among the Naga tribes. Mentioning Nagaland's tribes, its diverse tribal cultures give rise to inter-tribal problems and issues over land disputes, resources, and political presence. The provision of *Article 371-A* does not provide for mechanisms to deal with such, a greater problem that occurs is India's land law doesn't affect Nagaland, and the different tribes of Nagaland have their own laws to govern Land disputes which create confusion. These instances leave a lot of space for internal disputes and may undermine stability of the State.<sup>4</sup> The Article provides the areas where Indian laws aren't applicable in Nagaland without the state legislative assembly's approval. The limited scope of the provision can create ambiguity, there can be a lot of disputes over the application of laws made by the parliament. This can create a lot of confusion especially when matters of local administration and customs are in question. By applying different tribal laws in different tribes, it also creates in the judiciary as no uniform law would be there in matters governing Naga cultures and linguistics.

**Advantages:**

The article ensures the cultural and traditional identity of Nagaland, it gives recognition to various tribes of the Naga region along with their culture, language, practices etc. This is vital for the sense of belonging the Nagas feel and also shows pride in their culture. Article 371-A has also contributed to peace and stability in the region, as the law was enacted by the will of the people and a long duration of observation of the government, I reduced the insurgency that was going on in the Naga Hills by the various Naga tribes.

The provision also encourages dialogue between the central government and Nagaland. It helps to address issues through peaceful means and dialogue rather than rage and violence. It promotes a harmonious "*relationship between the central government of India and the tribes of Nagaland*". The article amplifies the Commitments of India in reference to accommodating dialogue within the Country. It serves as a model in recognising unique historical, political and cultural situations of different areas and communities, which in turn shows the strength of India's federal structure.

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<sup>4</sup> G Bhattacharjee, 'The Reality of Special Category States' (2014) 49 *Economic and Political Weekly* 48.

### **Special status of Nagaland violative of Article 14?**

Article 14 grants the “*Fundamental right to equality before the law and equal protection of law for all citizens*”. It states that the “*state shall not deny equality before the law to any person and shall provide for equal protection of law within the territory of India*”. However, Article 371-A provides special provisions for Nagaland, and creates a situation where certain rights and protections are given to Nagaland and the people living there. This raises the question whether the special status to Nagaland Violative of Article 14 is The Indian judiciary has through the course of time held the principle that not all different treatment is unconstitutional and violative of Article 14. As laid in the case of “*State of West Bengal Vs. Anwar Ali Sarkar*”<sup>5</sup>, any law will not be Violative of Article 14 if it treats certain persons a certain way only if:

- 1) The classification is based upon some intelligible differentia that distinguishes the persons or things grouped together from others that are left out of the group.
- 2) The differentia made must have a rational nexus with the objective of the statute under discussion or question.

In the present issue we can see that the bifurcation is made on the basis that Naga people have cultures and practices that are poles apart from the cultures followed in the rest of the country. Just for the basic reason to protect and preserve these special cultures and practices of the Nagas the Statute has been brought in. As we can see the Differentiation has been made with intelligible differentia, and the statute in question does have a rational and direct nexus with the differentiation created. Hence, Article 371-A in question will not be violative of Article 14.<sup>6</sup>

### **Why is purchase of land by non residents of Nagaland in Nagaland prohibited?**

The “*Nagaland Land Revenue Regulation Act, 1978*”, prohibits all the non-residents of Nagaland from buying land in the state. The primary rationale behind this act is to protect the culture and interests of the tribal Naga and other communities. By preventing purchase of land by Non residents the government seeks to prohibit exploitation of tribal land and encroachment by outsiders. It ensures that the tribals use the land according to their interests and interests of other local communities of the state. If unrestricted purchase of land is allowed it may lead to cultural and social tensions between the Non residents and the tribal people of Nagaland.

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<sup>5</sup>State of West Bengal v Anwar Ali Sarkar MANU/SC/0033/1952 (SC).

<sup>6</sup>S.L. Walling & T.Y. Humtsoe, Political Economy of Development in the Indian State of Nagaland: Issues and Challenges, 15 *Indian J. Hum. Dev.* 395, 395–409 (2021).

These restrictions may also have bad consequences on the state, restricting purchase of land by outsiders may hinder economic development of the state. Such restrictions can discourage potential investors, industrialists, business etc. from establishing their operations in the state which may provide for more employment opportunities. The real estate industry of the state can get a huge boost as Nagaland as a state is filled with natural resources which potential business may want to utilise. Land transactions also generate revenue for the government in the form of various kinds of taxes and fees that come along the transfer of property. Restricting land revenue may lead to a reduced revenue for the state and more the revenue the government earns it will be able to provide more facilities to the tribals. Land ownership in the state can also enhance the development of modern technology in the state as technologies that are being used in other parts of the country can be injected in Nagaland. If restrictions are lifted up from the state there would be a great ease in doing business, businessmen within the state could welcome their partners and other associated business from other states to come and set up operations.

While the legislation aims to protect the Culture and interests of the Naga tribes they also carry a potential downside. These downsides can cause hindrance in the economic growth of the state. A good answer to solve such a problem can be limited purchase of land in a given area, For Example: what if the legislation allows the outsiders to buy land in just the city of Kohima the state's capital, as it also being the financial capital more investment can result in being very fruitful for the state's economic development. Not just Kohima a few more cities can be allowed where purchase of land is not totally restricted. Another way to counter the problem could be getting the states approval for the kind of business a person wants to carry in the state for which he buys land, which would solely be used for that business only.<sup>7</sup>

### **Why isn't travelling to Nagaland easy?**

The state of Nagaland requires an Inner Line Permit for any non-resident of the State including Indian citizens to visit and travel within the state. An ILP is a document which allows the Non-residents to visit areas that are protected, Nagaland being one of them. To apply for the ILP the non-resident shall have to apply for it through the official government portals, this may also include visiting the local police commissioner and paying an application fee. Generally the

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<sup>7</sup>G.P. Sema, Political Elite and Their Roles in Nagaland, 4 *Int'l J. Advance Rsch., Ideas & Innovations Tech.* 714, 714-18 (2018).

documents required for the ILP will be a passport size picture and any identification card, Aadhaar or passport. If a person wishes to stay for a long time in the state he shall have to renew the permit. Because of this process it becomes difficult for any person to visit the state as it places many restrictions on the person.<sup>8</sup>

There are many drawbacks to the same, firstly the whole process acts as an administration burden on the state and can be time consuming. Not only the administration but even people wanting to visit there may not feel comfortable in going and visiting the commissioner of police each time for a renewal or issue of the permit. Travellers who make a last minute trip find it difficult as there's a detailed and time consuming process to obtain the permit. The LIP system can also deter some travellers from visiting the state, as it would require additional costs and a lot of pre-planning. If the borders are opened the state can see a huge surge in the tourism sector as people will be able to travel without any restrictions imposed on them.

### **CONCLUSION:**

Since a while ago, there has been a lot of discussion concerning Article 371-A for various reasons that shed light on its benefits and drawbacks. People may express differing opinions depending on the situation or event that is occurring. Nagas's shield is Article 371-A. This is due to the Naga people's unique status under the Indian constitution, which states that the state retains ownership and transfer of land and its resources, as well as any Act of Parliament pertaining to their religious or social practices, Naga customary law and procedure, including civil and criminal justice. In terms of land ownership and transfer, Jammu & Kashmir too enjoyed a privileged standing under Article 370, similar to Nagaland. The people of Kashmir fiercely rejected the current central government's decision to repeal Article 370. Imagine what will happen to the land if Article 371-A is repealed tomorrow and the special status is revoked. Furthermore, as was already said, whether or not this legislation is sound, the question of strangers purchasing land could be brought up.

We can infer from the comments above that the State of Nagaland has a rich cultural heritage. As was already noted, there are numerous benefits to the execution of Article 371-A, and people take pleasure in the autonomy this blessing grants them. However, as previously said, there are issues with this article that have also been brought out; this needs to be taken seriously

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<sup>8</sup> M. Khan, Nagaland, in *The Territories and States of India 2024* 237, 237–44 (Routledge 2024).

and is crucial for raising public awareness. Every state issue must be approached from a humanitarian standpoint by both the federal government and the state governments, not for political points. In order for the Naga tribes to benefit from this article rather than suffer from it.

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