**Deconstructing Article 371-A: The Naga Exceptionalism**

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***Abstract***

Article 371-A *of the Constitution of India which gives the State of Nagaland an exceptional status, has long been a subject of political debates and has also been the cause of much ire within the legal intellectual community in India. The principle objective of this paper is to demonstrate that despite the special provision,* Article 371-A(1)(a) *does not confer legislative power to the State of Nagaland for regulation and development of mineral oil and that the power to make a law in that subject rests with the Parliament alone. As such, the Nagaland Petroleum and Natural Gas Regulations, 2012 as notified by the Government of Nagaland, lacks constitutional validity. This paper closely examines the constitutional legality and validity of the Resolution passed by the Nagaland Legislative Assembly in 2010 under the garb of* Article 371-A *which rendered laws made by the Parliament on petroleum and natural gas inapplicable in Nagaland with retrospective effect.* Article 371-A(1)(a) *is interpreted by using settled rules of construction and judicial precedents contending that there was a misuse of the special provision enshrined in the Constitution while passing the Resolution in 2010.*

**KEYWORDS:** Constitution of India, Article 371-A, Nagaland, Centre-State, Mineral Oil

**Introduction:**

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he State of Nagaland came into existence in the year 1963 as the 16th State in India after being accorded a special status under Article 371-A (*hereinafter “*Art.371-A*”*) of the Indian Constitution through the 16-Point Agreement between the Government of India and the Naga People’s Convention (NPC) in 1960.[[2]](#footnote-3) The 13th Amendment Act, 1962 which inserted the said provision, was necessitated to fulfil the aspiration of the people of the then Naga Hills-Tuensang Area.[[3]](#footnote-4) It has been 53 years since Nagaland has achieved Statehood, yet a clear and correct interpretation of Art.371-A still eludes the Naga society.[[4]](#footnote-5) Clause (1) sub-clause (a)(iv) of the aforementioned provision *inter alia* statesthat no Act of Parliament shall affect the ownership and transfer of land and natural resources unless the Nagaland Legislative Assembly decides to do so by passing a resolution. It is the interpretation of this particular clause that has caused the Centre and the State to lock horns in the recent past regarding the exploitation of the latter’s natural resources.

**Revisiting the History:**

On 26th July, 2010, the Nagaland Legislative Assembly had passed a Resolution (*hereinafter* “Resolution dated 26.07.10”) in light of the special provision in Art.371-A(1)(a)(iv) that in respect of ownership and transfer of land and its resources including mineral oil, no Act of Parliament shall apply or deemed to have applied to the State. Furthermore, all previous Central Acts pertaining to that subject are to be cancelled and new modalities were to be framed.[[5]](#footnote-6) Two years later, on 22nd Sept, 2012, the then Chief Minister of Nagaland, Neiphiu Rio passed the “Nagaland Petroleum and Natural Gas Regulations and Rules, 2012” (*hereinafter* “NPNGR Rules, 2012”) and welcomed expressions of interest (EoI) from companies to extract oil and natural gas in the State by issuing permits.[[6]](#footnote-7) Consequently, the Union Government held the “Resolution dated 26.07.10” to be unconstitutional and commented that the “NPNGR Rules, 2012” lacked constitutional validity and that it has ‘serious constitutional and economic implications’.[[7]](#footnote-8) On, June 2013, the then Union Minister of Petroleum and Natural Gas, Mr. Veerappa Moily wrote a letter to the Nagaland State Government stating that Art.371-A did not confer legislative power on Nagaland ‘for regulation and development of mineral oil’.[[8]](#footnote-9)

Two years later, on October 2015, the tribal body ‘Naga Hoho’ filed a PIL questioning the constitutional validity of the “NPNGR Rules, 2012” before the Guwahati High Court.[[9]](#footnote-10) The Court in its opinion, not only termed the “NPNGR Rules, 2012” as ‘legally questionable’, but also stayed the oil exploration permits issued by the Nagaland Government earlier.[[10]](#footnote-11) It expressly stated that the Legislative Assembly of Nagaland did not have legislative competence to enact laws on the subject of ‘exploration of oil and natural gas’ which is covered by Entry 53 List I and therefore falls within the exclusive domain of the Union Parliament. [[11]](#footnote-12) However, it failed not only in providing any in-depth reasoning behind it but also in addressing the key issue of interpreting Art.371-A(1)(a)(iv).

Amidst all the chaos, quite recently on June 3rd 2016, the incumbent Chief Minister of Nagaland, Mr. TR Zeliang, in his interaction with a delegation of the Central Naga Tribes Council (CNTC) expounded the importance of Art.371-A in the Constitution for the Nagas and how it overrules Central Acts with pertaining to the subject of ‘oil and natural gas’.[[12]](#footnote-13) He also stated that the peace negotiations initiated earlier with the Centre in order to resolve the Naga political issue have reached an advanced stage.[[13]](#footnote-14) However, so far neither the Centre nor the State Government has reached a consensus regarding the matter.

This paper has been divided into four segments. The first part deals with the relevant constitutional provisions with regard to the State of Nagaland’s legislative competence regarding the matter. The second part is concerned with the only acceptable interpretation of Art.371-A which furthers the claim that there was a misuse of the special provision enshrined in the Constitution while passing the “Resolution dated 26.07.10”. The next segment revolves around how the “NPNGR Rules, 2012” lacks constitutional validity apart from being replete with inherent contradictions. The last part serves as a conclusion to this paper.

**I. The Constitutional Provisions**

Art.371-A(1)(a)(iv), viz., ‘ownership and transfer of land and its resources’ posed certain problems. First and foremost, before moving on to the interpretation of Art.371-A(1)(a)(iv), it is essential to acknowledge the respective entries in the List I and List II in Schedule VII[[14]](#footnote-15). The concerned subject matter, i.e. oil and mineral resources falls under Entry 53 of List I. Thus, as per Art.246(1), only the Centre has exclusive power to make laws in the context of petroleum and natural gas.[[15]](#footnote-16) It can take under its control the regulation of oilfields and development of mineral oil resources in the country. Likewise, the subject of ‘Mines and Mineral Development’ pertains to Entry 54 of List I and similarly, the decision-making rests with the Parliament as opposed to the State legislature.[[16]](#footnote-17)

On the other hand, Entry 23 of List II also deals with the same subject as does Entry 54 of List I. However, it is subject to the latter on account of the required ‘declaration’ which is present in s.2 of the Mines and Minerals (Regulation and Development) Act, 1957 (*hereinafter* MMRD Act, 1957), a Central Act. To the extent to which the Union takes under its ‘control’ ‘the regulation and development of minerals’, so much gets withdrawn from the ambit of the power of the State legislature under Entry 23. Accordingly, the legislation of the State resting under that Entry becomes to the extent of that ‘control’, ineffective.[[17]](#footnote-18)

The Nagaland Government via the “Resolution dated 26.07.10” bypassed Entry 53 List I and the MMRD Act, 1957 which vests the subject of ‘mines and minerals’ in the occupied field of the Union.[[18]](#footnote-19) Furthermore, it rendered laws made by the Parliament on petroleum and natural gas, such as the ‘Petroleum and Natural Gas Rules, 1959’ (*hereinafter* ‘PNG Rules, 1959’) and ‘The Oilfields (Regulation and Development) Act, 1948’ (*hereinafter* ‘Oilfields Act, 1948’) inapplicable in Nagaland with retrospective effect. Emphatically, this Resolution was passed by the Naga Government under the garb of the special status enshrined in Art.371-A.

**II. A Suitable Interpretation**

Art.371-A(1)(a)(iv) reads *‘Notwithstanding anything in this Constitution, no Act of Parliament in respect of ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.’*

The “Resolution dated 26.07.10” was a statutory resolution since it was tabled in pursuance of a provision in the Constitution.[[19]](#footnote-20) If a literal interpretation is done of Art.371-A(1)(a)(iv), it can be inferred that the word *‘decides’* stands for only ‘*acceptance’* and not ‘*rejection’* of the applicability of Central Acts. In other words, it means that an Act of Parliament will be applicable to the State of Nagaland, only when its Legislative Assembly assents to it by passing a Resolution to its effect. The State can indeed ‘*reject’* the applicability of a Central Act that falls in the any of the areas mentioned in the provisions, but it does not have to pass a Resolution in order to do so. This is because, if the word ‘*decides’* in Art.371-A(1)(a)(iv) included a rejection of Central Acts, then according to the Article, it would create an absurdity against the very language of the provision. It is a settled rule of construction that in cases of ambiguity, the provision should be read as to avoid the resulting absurdity or anomaly.[[20]](#footnote-21) If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid such an absurdity or inconsistency.[[21]](#footnote-22)

But does this mean that every Act of Parliament to start with, is applicable in the State of Nagaland on its enactment unless the State Legislative Assembly by a resolution decides otherwise? No. The language of Art.371-A(1)(a)(iv) does not endorse such an elucidation. In other words, the State Legislative Assembly need not pass a resolution to explicitly *‘reject’* an Act of Parliament. However, the State Legislative Assembly of Nagaland can very well scrutinize every Act of Parliament bearing on the fields of legislation envisaged in Clause (1)(a)(iv) and can ‘*accept’* its applicability to the State by passing a resolution to its effect.[[22]](#footnote-23)

The Neiphiu Rio government via the “Resolution dated 26.07.10” sought to nullify/reject existing Central Acts like PNG Rules, 1959 and Oilfields Act, 1948 in Nagaland along with the previous decisions taken by the earlier State Government and it was done under the garb of Art.371-A(1)(a)(iv). This particular act by the Government is totally outside the scope of the said special provision and hence the Resolution could not have been passed under it.

**III. A Most (Im)perfect Union?**

An interesting provision in the Constitution which would further facilitate my line of reasoning would be Art.249 of the Constitution.[[23]](#footnote-24) It states that if the Council of States passes a Resolution that it is necessary in the national interest for the Parliament to legislate on a subject in the State List (List II), it may do so, as long as the resolution ‘remains in force’. Therefore, it seemingly provides a scope for the Council of States to withdraw the resolution and nullify the Parliament’s law. Comparing Art.249 with Art.371-A(1)(a)(iv), it is noticed that the latter fails to provide for such a power; i.e. to nullify a Parliamentary law by passing a Resolution. Had the drafters of our Constitution intended to include such a provision, they would have done so. Hence, the necessary conclusion would be that once a law of Parliament has been made applicable to the State of Nagaland, it would not be open to the State to pass another Resolution calling for the withdrawal of such law from the State. The interpretation of Art.371-A(1)(a)(iv) is done in such a way that it provides the State with a right against implementing certain Central Acts in any of the areas mentioned in the provision. However, it does not provide the State Government a right to legislate or regulate or reject existing Central Acts in any of the areas that may fall under Central control.

On a bare perusal of text of Art.371-A(1); specifically the word ‘*Notwithstanding*..’, it becomes worthwhile to give due regard to the presence of the ‘non-obstante clause’. Such clauses are usually used in provisions with the object that in case there is any inconsistency between the non-obstante clause and another provision, the former would prevail over the latter.[[24]](#footnote-25) Consequently, it may very well be urged that the power to impose conditions by any other provisions in the Constitution is limited, when it comes to Art.371-A(1) because of the non-obstante clause and consequently, the Nagas have full autonomy and independence over exploitation and exploration of natural resources for the State’s development and the accompanying progress of the society.[[25]](#footnote-26) However, it is equally worthwhile to mention that the non-obstante clause in Art.371-A cannot be construed as taking clause (1) sub-clause (a) indefinitely so as to transgress any basic features of the Constitution.[[26]](#footnote-27)

Without delving into the nitty-gritty of customary law, the seemingly innocuous belief that Art.371-A(1) grants the State Government blanket rights to practice, propagate and uphold prevailing customary laws and traditions in Nagaland is reasonably ill-conceived. An indispensable requirement for any custom, usage or tradition to have the force of law is to make sure that they are not in conflict with the Constitution of India or any other statutory laws enacted by the Parliament and State Legislative Assemblies. In this case, the “NPNGR Rules, 2012” is in direct conflict with Central Acts like PNG Rules, 1959 and Oilfields Act, 1948.

Hypothetically, even if it were to be assumed that the Naga Government had requisite authority to declare previous actions and decisions of an earlier government as null and void, as it purports to do so under Art.371-A (thus rejecting and nullifying existing Central Acts), it would have attracted the operation of Section 6 of the General Clauses Act, 1897. According to it, even though the Acts have been declared void, the operations which were undertaken during the timeframe when the Act was valid, would continue to stand valid even after the validity of law in question ceases to exist if the operations which were undertaken were within the scope of that law, unless a contrary intention appears from the repealing statute. Thus, Section 6 *inter alia* provides protection to any right, privilege, obligation or liability acquired or accrued under any enactment which has been repealed.[[27]](#footnote-28)

The Supreme Court in the case of *Commissioner of Income Tax* v. *Shah Sadiq and Sons*[[28]](#footnote-29) elucidated the effect of Section 6 of the General Clauses Act, 1897. It observed that a right which had accrued and become vested, continued to be capable of being enforced notwithstanding the repeal of the statute under which that right accrued, unless the repealing statute took away such a right ‘expressly’ or by ‘necessary implication’.[[29]](#footnote-30) The line of enquiry would then be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them.[[30]](#footnote-31) The “NPNGR Rules, 2012” does indeed expressly takes away such rights accrued and liabilities incurred under PNG Rules, 1959 and Oilfields Act, 1948 as evidenced in its Preamble.[[31]](#footnote-32) Nevertheless, it is merely a ‘restatement of the effects’ of the “Resolution dated 26.07.2010”, and since the concerned Resolution itself is *ultra vires* the Constitution, it cannot be contested that on account of an expressed intention to the contrary, the “NPNGR Rules, 2012” stands valid.

It is also worthwhile to observe that Section 14 of the “NPNGR Rules, 2012”, talks about *‘Revenue Sharing’* instead of *‘Royalty’,* which is mentioned in Section 14 of the PNG Rules, 1959. The immediate consequence of this swapping bears the connotation of negating the customary right to ownership of land and resources of the Naga people, which is something enshrined in Art.371-A. *‘Royalty’* is an acknowledgement of ownership of land and resources, whereas *‘Revenue’* is the government’s wealth. In this sense of understanding, the former assures an idea of ownership as opposed to the latter, which is more like the Government’s income for promoting public welfare etc. Now, if this revenue is shared with a private individual, it would lead to a gross violation of the concerned Government’s Financial Rule, and no government shall incorporate such a rule which would violate another rule of its own. Hence, the “NPNGR Rules, 2012” apart from being unconstitutional, does not even reflect the true spirit of the customary rights of the Nagas,[[32]](#footnote-33) something that was purported to be the sole purpose when it was passed by the Nagaland Legislative Assembly.

**IV. Conclusion**

If the Legislative Assembly of Nagaland refuses the continuance of Central Acts like ‘PNG Rules, 1959’ and ‘The Oilfields Act, 1948’ in the State of Nagaland, under the garb of Art. 371-A(1), then it would result in a void in terms of legislative competence, as the State of Nagaland would also not have the legislative competence to enact laws on a subject that falls under the Union List (Entries 53 and 54). An acceptable interpretation would then be to construe the word ‘resources’ under Art.371-A to those resources which the State of Nagaland would have the competence to enact laws on in accordance with the Constitution, (i.e., ‘resources’ listed in List II and List III of the Seventh Schedule). The special provision has to be understood in the right perspective. Surely if the State of Nagaland continues to retain their *status quo* on issues like mining etc, it can do so, but if it seeks a change, then it has to abide by the Constitution. It cannot seek a change on its own terms as it has admittedly done so, because of an obvious lack of competence.[[33]](#footnote-34) The mining of natural resources is very much a central subject as per Entry 53 List I. Article 371-A(1)(a) only provides the Naga Government with a right *against* implementing Central Acts in certain areas but not to make new laws or regulations on subjects like petroleum and natural gas.[[34]](#footnote-35) Six years have passed by since and yet, to this date, it remains to be seen whether the Naga Government takes up a viable stance with regard to this matter.

All said and done, if one decides to take a practical stance regarding this matter like the ‘Sarkaria Commission’[[35]](#footnote-36) did back in 1988, it is seen that the development of major minerals, mineral oil resources and their exploitation require financial investment, technical know-how, manpower, etc. of an order which goes beyond the reach of an individual State Government as it would inevitably face insurmountable problems of implementation, unless a very large amount of financial, technical and other assistance were to be provided by the Union Government over a long period of time. Unless the Centre and the Naga Government come together with an approach of concerted action through political dialogues and discussions, no mutually beneficial arrangement for the development of mineral oil resources can be evolved.[[36]](#footnote-37) Instead of resorting to established conventional methods of dispute resolution like litigation by referring the matter to the Supreme Court under Art.143, carrying out such policy discussions in the spirit of mutual trust and co-operation as originally symbolized by the 16 Point Agreement between the Government of India and the Naga People’s Convention (NPC) in 1960 could very well be the solution to the reconciliation of State and National interests.

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