

The Nagaland Quagmire: Problems, Perspectives and Challenges

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Abstract

The North east part of India and more particularly Nagaland constitutes a largely ignored part of the national narrative. The State of Nagaland endowed with rich natural resources and vibrant ecology has a number of peculiarities in its system of governance and constitutional status which remains largely unexplored. Yet it is not free from problems as well; the internal strife, the menace of extremism, assault on wildlife and natural resources, backward status of women, meddling by our neighbouring states, etc., are some of the many problems which continue to be an *Achilles heel* in relation to Nagaland. While election has been conducted and governments made and unmade, the status of the common man remains more or less the same. Equally, the hopes and aspirations of the Naga people remain unheard. As the year 2016 drew to a close, a new ray of hope emerged with the signing of the framework peace agreement between the Government of India and the National Socialist Council of Nagaland (IM) which was one of the largest organised resistance movements in the state of Nagaland. The situation however, did not come to a logical conclusion with a number of other resistance groups disagreeing with the predominant role given to the NCSN (IM). This was followed by the issue of reservation for women wreaking havoc in the peace process and resulting in warranted violence and bloodshed. In this context this paper, is an attempt to throw light on the history of the Nagas, tribal governance in Nagaland, special constitutional status of Nagaland, the conflicts in the region and it also implores all the stakeholders to arrive at an amicable solution towards a peaceful North east which is in the best interest of the State as well as the Union.

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Introduction

The seven sister states of North east India constitute a largely ignored part of the national narrative and discourse. Varied in ethnicity, culture, social and political factors the region stands as a testament to the diversity of Indian sub-continent. The State of Nagaland which is bordered by the states of Arunachal Pradesh, Assam, Mizoram and Myanmar is the subject of the present study. This paper explores the history of the Nagas, tribal governance in Nagaland, special constitutional status of Nagaland, the conflicts in the region and implores all the stakeholders to arrive at an amicable solution towards a peaceful North east which is in the best interest of the State as well as the Union.

Special Constitutional Status and Special Category Status Distinguished

The special status of Nagaland has been provided in Article 371-A of the Constitution of India. In this context, it is important to understand the difference between special status of certain states provided in Part XXI of the Constitution of India as opposed to the concept of special category status accorded to states. The dichotomy lies in the fact that special status is granted by way of constitutional amendment under Art. 368 of the Constitution of India and requires a two-thirds majority of the Parliament and it invariably includes special legislative and political rights conferred upon such states.

Special category status granted by the erstwhile National Development Council (NDC) provides preferential treatment in varied areas such as finance, administration and fiscal areas. Thus, it involves an executive order by the NDC to states in geographically and socio-economically disadvantageous situation such as hilly terrain, low population and so on. There are 11 states that have been conferred special category status by the NDC.

Historical Perspective of Nagas and Nagaland

The historical perspective of Naga ethnicity, culture and socio-economic set up is necessary to comprehend the multifarious reasons for the prolonged unrest and turmoil of the State of Nagaland. The term 'naga' is attributed with multiple meanings including 'people with earrings', 'naked hill people' and 'mountaineering people' and so on. The earliest recorded reference of the Naga hill tribes is found in the 12 century A.D during the rule of *Ahoms* in Assam who conquered the Naga territory.

Nagas Under Burma

The Naga people were a headhunting tribe engaged in war-mongering and were considered to be a martial clan. The Nagas came under the annexation of the Burmese empire in the year 1726 A.D. and it resulted in Naga tribes falling under the overall control and supervision of

Burma though the tribal areas were by and large not administered directly by them. This was followed by the Anglo-Burmese war which ended with the Britain annexing the Naga tribal areas and hills. The Naga tribal area came under the administrative control of the British. By then, there were sixteen major tribes in Naga hills and the adjoining area.

Nagas under British Colonial Regime

British laws were made applicable for the first time by virtue of the Inner Line Regulation of 1873, the Scheduled District Act of 1874 and the Frontier Tracts Regulations of 1880. These British enactments and regulations primarily focused on preventing any discord and conflict between the British subjects and the tribal people due to unrestricted access. The seeds of secession were first sowed in the year 1918 by the setting up of the Naga Club which was the first organized political movement of the Nagas.² In the year 1929, the Naga people sought “to be left free and decide their future for themselves”. The Naga tribal and hill area was treated as Excluded and Partially Excluded Areas under the Government of India Act, 1935.

Naga National Council and Demand for Sovereignty

The Naga National Council (NNC) was set up in the 1940s and became a powerful body representing the interests of the Nagas. In the year 1946, the Naga National Council passed a resolution which stated that the Naga National Council stood for the solidarity of all Naga tribes including those in the un-administered areas and that the council strongly opposed the grouping of Assam with Bengal apart from a demand for a separate electorate for the Naga tribes. The resolution further went on to add that “the Naga Hills should be constitutionally included in autonomous Assam, in a free India, with local autonomy and due safeguards for the interests of Nagas”. The demand of separate sovereign state was not made during this time. The aforesaid resolution was forwarded to Jawaharlal Nehru for his response and who not only promised the largest possible autonomy to the Nagas but even anticipated the Naga demand for independence which he asserted, was unviable both politically and economically.

Nehru’s Response and Indian Policy towards Nagas

The quick response made by Nehru served as an outline of India’s policy as regards the Naga people. He provided a powerful counter-argument to secessionist forces in the Naga community by reiterating the fact that the Nagas being crammed between two large nations of India and China would find it extremely challenging to survive as a separate sovereign political entity. On a positive note, he assuaged the fears and concerns of the Nagas by stating

²Walter Fernandes, *Conflict in North-East: A Historical Perspective*,34(51) ECONOMIC AND POLITICAL WEEKLY3579, 3579-3582 (1999).

that the autonomy, customs and traditions would be adequately safeguarded by Indian government and the Constitution of India.³ However, on the 14th August, 1947 one day prior to the Indian Independence Day certain secessionist groups unilaterally declared their independence from the British rule.

Naga-Hydari Pact and Constituent Assembly Debate on Nagas

In the time following this event, intense negotiations were carried on between the dominion of India and the Naga Nationalist Council which resulted in a compromise in the form of the Naga-Hydari pact on 1947 with the moderates of the NNC. However, the Constituent assembly refused to ratify it fully and accepted the Nagas to be a part of Assam with district autonomy and administrative powers. The Constituent assembly felt that district autonomy was the only acceptable demand under the aforesaid pact while the NNC argued for shared sovereignty, with India acting as a guardian power for the sovereign state of Nagaland which the constituent assembly deemed unacceptable.

Sixteen Point Agreement

Under the original constitutional scheme as envisaged in the year 1950, Naga Hills and Naga Tribal areas was included in Assam in Part A and Part B of the Sixth Schedule. These two areas were combined to form the Naga Hills Tuensang Area (NHTA) with increased autonomy and administered by the Governor of Assam. On the 26th July, 1960, the Government of India and Naga Peoples' Convention signed a 'Sixteen Point Agreement' and as per the provisions of this agreement it was decided that the state of Nagaland was to be created from what was earlier the NHTA by virtue of the Thirteenth Constitutional Amendment Act, 1962 and the State of Nagaland Act, 1962. Thus, the State of Nagaland created with thirteen administrative districts was notified with effect from 1st December 1963.

Constitutional Perspective of Nagaland and Special Status

The Constitution of India grants special status to the state of Nagaland under the Constitution (Thirteenth) Amendment Act, 1962 under Article 371-A of the Constitution of India. The aforesaid article lays down certain legislative and political rights for the state of Nagaland. In accordance with the provisions of Art. 371A (1) (a), no act made by the Parliament in so far as it relates to matters relating to social and religious practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according

³Sajal Nag, *Nehru and the Nagas: Minority Nationalism and the Post-Colonial State*,44(49) ECONOMIC AND POLITICAL WEEKLY 48, 48-55(2009).

to Naga customary law and ownership and transfer of land resources shall apply to the state of Nagaland unless it is accepted by a resolution of the Nagaland state legislative assembly.

Special Responsibility of Governor and Regional Councils

As per Art. 371A(1)(b), the Governor of the Nagaland has a special responsibility to maintain law and order in the state of Nagaland when he opines that there is scope for internal disturbance in the NHTA and such functions are to be discharged by the Governor after consulting the Council of Minister as per his individual judgement. The proviso to the said clause states the decision of the Governor in this regard shall be treated as final. The next proviso lays down that the President can direct that such special responsibility of the Governor to cease based on the Governor's report or otherwise. Article 371A(1)(c) provides that the Governor's recommendation in relation to the spending of money from the consolidated fund of India shall be for the purposes as specified by the Union government. Article 371A(1)(d) deals with the constitution of regional councils in the Tuensang District and the powers of the Governor in this regard.

Applicability of Other Provisions of the Constitution

While Article 371A of the Constitution of India provides for certain concessions, privileges and exceptions to the state of Nagaland. It does not mean that the other provisions of the Constitution of India are inapplicable by virtue of Article 371A. The State of Nagaland itself being a creation of the Constitution of India the principle enshrined in the constitution is equally applicable even to Nagaland. It can also be argued that the Article 371A would not have the effect of validating all the customary laws and practices or usages and it would also be subject to the provisions of Part III.

Panchayat Raj and Electoral Governance in Nagaland

Article 243M (2) (a) provides that the panchayat raj system as per the Constitution (Seventy Third) Amendment Act, 1992 is not applicable to the State of Nagaland. Article 332 read with section 7A and second schedule of the Representation of People Act, 1950 provides for reservation to the legislative assembly in the State of Nagaland. Under the Fourth Schedule of the Constitution of India, one Rajya Sabha member is elected from the state of Nagaland. In accordance with the First schedule of the Constitution of India, one Lok Sabha seat is provided for the state of Nagaland. However, Article 243T read with 243ZC providing for the setting up of urban local bodies as per the Constitution (Seventy-Fourth) Amendment Act, 1992 is applicable to the state of Nagaland.

Role of Tribal Councils and Non-Tribal Councils

Governance in the state of Nagaland is carried out by the tribal councils apart from a three-tier structure of regional, area and village councils in accordance with the Nagaland Village and Area Councils Act, 1978. Each village in Nagaland has a Village Council and a Village Development Board – corresponding to a regulating and executive body. The traditional institution of the village council was given a legal status in 1968. Subsequently, in 1978, the traditional Village Councils were given powers to deal with development matters.

The Village Council has a major power share authorized by the Nagaland Village and Area Councils Act 1978 and it has the power to decide on matters relating to administration of village, development projects and justice delivery processes. Under the Village Development Board laws, one-fourth women of the management committee of the VDB should comprise of women. However, women wings are carved out separately as a para body to collect funds for women specific purposes.

Militant Insurgency and Extremism in Nagaland

The rise of militancy, insurgency and conflict in the northeast can be traced to the fault lines and fissures created during the Naga-Hydari pact which was considered a setback by the Nagas in their quest for special status within the Indian union. A section of the NNC led by AngamiZapuPhizo who had significant support in the NNC declared the secession of Naga territory from India and moved for the creation of a sovereign Naga state. Thus, the NNC resolved to establish a sovereign Naga state and claimed to have conducted a “referendum” in 1951, in which “99 per cent” supported an “independent” Nagaland.

Naga Resistance Movement

AngamiZapuPhizo established a so-called ‘parallel government’ known as the Naga Federal Government (NFG) and the Naga Federal Army (NFA) to fight against the Indian state. This marked the beginning of armed resistance against Indian government in the Naga territory. In response, the Government of India sent the Army to crush the insurgency and the Armed Forces (Special Powers) Act, 1958 was proclaimed. A number of other restrictive enactments were imposed in the state to reign in the violent elements. This was followed by a period of intense armed conflict between the Indian army and the insurgent groups.

Carrot and Stick Approach of Indian Government

During this period, the Indian government followed the carrot and stick approach with the use of military force interrupted by lavish doles of development money whose source and target

are often couched in secretive deals in the backward regions.⁴In the year 1980 some important young leaders of the Naga Nationalist Council who were sent to China for training left the fold of the Naga Nationalist Council to form the Nationalist Socialist Council of Nagaland (NSCN) in opposition of the Shillong Peace Accord signed by certain members of the NNC with the Indian government. NSCN was designated as a terrorist organisation under the Unlawful (Activities) Prevention Act, 1967. The objective of the NSCN was the creation of 'Nagalim' (Greater Nagaland) comprising of parts of other states and countries.

Ceasefire Agreement and Return to Normalcy

In the year 1997 a ceasefire agreement was signed between the Indian government and armed groups in the state of Nagaland. In the same year, the Supreme Court in *National People's Movement for Human Rights v. Union of India*,⁵ decided on the validity and constitutionality of the Armed Forces Special Powers Act, 1958 and held the act to be constitutionally valid.

Since the year 2000, there has been a marked reduction in the casualties and the ceasefire agreement has been placed effectively to a large extent. The prime reasons for this being the dwindling number of militants and the change in status quo. Even during the height of conflict in Nagaland, the peculiar feature was the low attacks on government targets and highly violent local politics which was a result of the policy of localized autocracy permitted by the Union government so as to maintain stability in the northeast.

The Indian army works closely with its counterparts in Myanmar and Bhutan so as to put pressure on the insurgents and other infiltrators to give up arms and foil bids of infiltration from the outside. The demands for local autonomy, reorganisation of state boundaries and creation of new states are some of the persisting demands of certain militant groups in Nagaland.

Landmark Peace Pact

In the year 2015, the Indian government and the NSCN (IM) signed a framework peace agreement towards laying down arms and amalgamating in the social fabric and mainstream of the nation while protecting the peculiar interests of the Nagaland. The ageing leadership of the NSCN (IM) which was one of the biggest militant groups in the state of Nagaland was also a reason for the move towards peace.

A perusal of the historical factors reveals a tussle between the modern and traditional leaders on one side and the dilemma between tribal autonomy and identity and the

⁴Dolly Kikon, *Engaging Naga Nationalism: Can Democracy Function in Militarised Societies*, 40 (26) ECONOMIC AND POLITICAL WEEKLY 2833, 2833-2837 (2005).

⁵1998 2 SCC 109.

homogenizing factors on the other side. Thus, the peace accord is an extremely delicate issue and short-sightedness would exacerbate the Indo-Naga conflict and also set a poor precedent to ethnic and nationalist groups who are willing to negotiate. Introspection on the postulates of federalism would be a step in the right direction. There is also a strong belief that interim government will act as buffer for the transformation of the administrative and political system in the state which may get some political autonomy as part of the proposed solution.⁶

Issue of Women's Reservation in Nagaland

The conflict of northeast resulted in women being the worst affected lot among the tribes. The status of women under the Naga customary law which accords them very little significance proved to be an obstacle in the empowerment of women in Nagaland. The Constitution (Seventy-Fourth) Amendment Act, 1992 mandates providing of 33% reservation to women in urban local bodies in the state of Nagaland however the same was not provided under the Nagaland Municipal Act, 2001.

Guwahati High Court's Mandate

In the year 2004, a petition was filed before the Guwahati High Court seeking the implementation of 33% reservation guaranteed to women under the Constitution of India. Even as the petition was pending before the High Court, elections for the urban local bodies in the State of Nagaland were conducted without providing reservation as aforesaid. The Hon'ble Guwahati HC ordered the inclusion of 33% reservation under the state Act in the year 2005. The State government of Nagaland made the required amendments by the Nagaland Municipal (First Amendment) Act, 2006.

Opposition by Naga Hoho

It was proposed by the government to provide for reservation to women in the 2009 ULB election. However, there was widespread opposition from various tribal bodies including the Naga Hoho in the state of Nagaland which resulted in the postponement of elections in the state. In the meantime, a social welfare organisation by name Naga Mothers' Association filed a writ petition before the Guwahati HC against the decision of the State government postponing elections to the ULBs. A single judge bench of the Guwahati HC ordered the holding of election in the state of Nagaland and also the provision of reservation in accordance with the Nagaland Municipal (Amendment) Act, 2006 and the Constitution of India.

⁶Rupesh Datta, *Naga Peace Accord reaches final stage*, THE WEEK (September 14, 2017), <http://www.theweek.in/news/india/naga-peace-talks-reach-final-stage.html>.

Nagaland Government's Response

The Nagaland government's appeal against the decision of the single judge before the division bench was accepted and the earlier decision was stayed. The Nagaland state assembly also adopted a resolution on 22nd September, 2012 stating the safeguards under Art. 371A was violated by the reservation to women as it was against the customary and social practices of the Nagas.⁷

Continuing Opposition to Women's Reservation

A special leave petition was filed before the Hon'ble Supreme Court against the decision of the division bench of the Guwahati HC as well as the resolution passed by the State legislative assembly. In 2016, the SC ruled in favour of providing reservation in ULBs and once again violence erupted affecting normal life in the state of Nagaland. The decision of the State government to postpone the election for a few months was set aside by the Guwahati High Court that ordered the immediate conduct on elections. However, unprecedented violence resulted in the elections being postponed once again.

Role of Women in Naga Society

Naga society being a patriarchal society provides that the chieftainship be held by male members of the clan. As already discussed even the village level governance is predominantly carried on by village council elected based on Naga customary laws. In any process of elections, a general perception prevails that a woman is unworthy of representing the clans. There is no representation of women in the village councils and very meagre representation in the village development boards. Over the years exclusion of women from electoral politics has adversely affected the women's voice in the State of Nagaland in relation to political, economic and social issues.

A denial in decision making processes within traditional institutions, local municipal bodies and state electoral bodies has utmost significance because the progress of a society is determined by the equity in governance. While women are given scope for leadership in student unions, women's society and self-help groups, it is significant to note that these organisations are semi-political and exclusively for women in certain cases. Hence the objective of providing a fair share in the political participation of society is not fulfilled.

Conclusion and Suggestion

⁷MonalisaChangkija, *Pride as well as prejudice*, THE HINDU (February 8, 2017), <http://www.thehindu.com/todays-paper/tp-opinion/Pride-as-well-as-prejudice/article17244228.ece>.

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In conclusion, despite the peace accord between the NSCN(IM) and the Indian government splinter groups though small in number pose a serious threat in the final settlement of the Naga issue. The renewed efforts of the Chinese to support the splinter groups with supplies are a perturbing fact as they stand to gain from the turmoil.

The strategic significance of the northeast particularly the state of Nagaland requires no mention as it is located in the buffer zone between a number of other countries with which India has had a protracted border dispute. In this context, the region acquires even greater significance. A major concern in the redressal of conflict in the northeast is the support given to these groups from our neighbours such as China, Pakistan, Cambodia and Thailand.

There is an urgent need to cut off the sources of funding to these militant and insurgent groups. The question of sovereignty has been raised time and again by the Naga groups. However, it is heartening to note that a large share of the population as well as militant group that have participated in the peace process have come to agree to the concept of autonomy instead of sovereignty.

The words of Jawaharlal Nehru as aforementioned still ring true and the continuation of Nagaland within the Indian union is necessary in the best interests of the Naga people and the whole of India. Dialogue and deliberation is the best approach for the present issue in the north-east and there is also a need for enhanced awareness creation and confidence building measures on the part of the union government as well as the state machinery.

The author would like to put forth that the strengthening of grassroot democracy at the local level will serve as an impetus in the rapid resolution of the problem. Grassroot democracy can be strengthened only by accommodating all sections of the society including women, who need to play a vital role in the rehabilitation of the northeast and reservation to women will be a step in the right direction in this regard.

It is reassuring to note that the people of northeast and particularly the state of Nagaland have voted in record numbers in the 2014 general elections which shows their faith on Indian nation and commitment to our democratic polity. It is also a well-known fact that in any violent conflict the common people are the worst sufferers and it is factual even in the case of northeast India. Let us all hope that peace prevails in the northeast and the hope and aspirations of the Naga people are fulfilled within our nation.