

**CULTURAL RIGHTS IN INDIAN FEDERALISM:
A STUDY OF NAGA ETHNIC RIGHTS**

*A thesis Submitted to the University of Hyderabad in Partial
Fulfillment of the Requirements for the Award of*

**DOCTOR OF PHILOSOPHY
IN
POLITICAL SCIENCE**

By

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DECLARATION

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I hereby declare that the research embodied in the present thesis entitled “**CULTURAL RIGHTS IN INDIAN FEDERALISM: A STUDY OF NAGA ETHNIC RIGHTS**” carried out under the supervision of **Dr. Biju. B. L.** Department of Political Science, University of Hyderabad, Hyderabad, for the award of Doctor of Philosophy in Political Science, is an original work of mine and to the best of my knowledge, no part of this thesis has been submitted for the award of any research degree or diploma at any University. I also declare that this is a bonafide research work which is free from plagiarism. A report on Plagiarism statistics from the University Librarian is enclosed. I hereby agree that my thesis can be uploaded in Shodhganga/INFLIBNET.

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J. Nukshimenla Lemtur has the following publications in research journals:

- “Violation of Human Rights: A Study of Armed Forces (Special Powers) Act, 1958 (AFSPA) with Special reference to Nagaland”, *Humanities and Social Science Review*, Volume 4, No.2, 2015 (CD-ROM ISSN: 2165-6258).
- “Social and Political Life of Women in Nagaland”, *Shoryabhumi*, Volume 2, Issue-5, Raigad, Odisha, Feb-April 2014, Apeer-reviewed International Journal of Multi-disciplinary Research (ISSN:2319-720X).

She presented research papers in conferences/seminars as follows.

- “Violation of Human Rights: A Study of Armed Forces (Special Powers) Act, 1958 (AFSPA) with Special reference to Nagaland”, International Conference for Academic Disciplines at Harvard Medical School, Boston, Massachusetts, United States of America, May 26-30, 2015.
- “Asymmetrical Federalism: A Critical Analysis of the Constitutional Provisions in India”, National Seminar at Model Christian College, Kohima, Nagaland, November 23-24, 2017.

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(J. NUKSHIMENLA LEMTUR)

ABBREVIATIONS

ARC	ADMINISTRATIVE REFORM COMMISSION
AIADMK	ALL INDIA ANNA DRAVIDA MUNNETRA KAZHAGAM
AITC	ALL INDIA TRINAMOOOL CONGRESS
AFSPA	ARMED FORCES SPECIAL POWERS ACT
BJP	BHARATIYA JANATA PARTY
DAN	DEMOCRATIC ALLIANCE OF NAGALAND
DONER	DEVELOPMENT OF NORTH EASTERN REGION
DMK	DRAVIDA MUNNETRA KAZHAKAM
ENPO	EASTERN NAGALAND PEOPLE’S ORGANIZATION
FGN	FEDERAL GOVERNMENT OF NAGALAND
GOI	GOVERNMENT OF INDIA
INC	INDIAN NATIONAL CONGRESS
ILP	INNER LINE PERMIT
JD (S)	JANATA DAL (SECULAR)
JD (U)	JANATA DAL (UNITED)
JCC	JOINT COORDINATION COMMITTEE
MNA	MIZO NATIONAL ARMY
MNF	MIZO NATIONAL FRONT
NMA	NAGA MOTHERS ASSOCIATION
NNC	NAGA NATIONAL COUNCIL
NNDP	NAGA NATIONAL DEMOCRATIC PARTY
NNO	NAGA NATIONAL ORGANISATION
NPC	NAGA PEOPLE CONVENTION
NBCC	NAGALAND BAPTIST CHURCH CONVENTION
NLA	NAGALAND LEGISLATIVE ASSEMBLY
NCN	NATIONAL CONVENTION OF NAGALAND
NSCN (I-M)	NATIONAL SOCIALIST COUNCIL OF NAGALAND (ISAK- MUIVAH)
NSCN (K)	NATIONAL SOCIALIST COUNCIL OF NAGALAND (KHAPLANG)
NSCN (R)	NATIONAL SOCIALIST COUNCIL OF NAGALAND (REFORMATION)
NSCN (N/K)	NATIONAL SOCIALIST COUNCIL OF NAGALAND (NEOPAO KONYAK/KITОВI)
NCP	NATIONALIST CONGRESS PARTY
NEDFI	NORTH EASTERN DEVELOPMENT FINANCE CORPORATION LTD

NEFA	NORTH EAST FRONTIER AGENCY
NHTA	NAGA HILLS TUENSANG AREA
NEC	NORTH- EASTERN COUNCIL
RLD	RASHTRIYA LOK DAL
RAP	RESTRICTED AREA PERMIT
SAD	SHIROMANI AKALI DAL
SRC	STATE REORGANIZATION COMMISSION
NBA	NAGALAND BAR ASSOCIATION
NPF	NAGALAND PEOPLE'S FRONT
NPNGR	NAGALAND PETROLEUM AND NATURAL GAS REGULATION
UT	UNION TERRITORIES
UDF	UNITED DEMOCRATIC FRONT
UNF	UNITED FRONT OF NAGALAND
UPA	UNITED PROGRESSIVE ALLIANCE GOVERNMENT

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Centrally appointed Commissions on Centre-State Relations
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CHAPTER I

INTRODUCTION

This thesis is a study of the interlinkage between cultural and ethnic rights and Indian federalism. Federalism by way of an approach is appreciated best as fostering self-rule and shared-rule besides harmonizing the welfares of both a nation and its regions. It is generally done for two objectives—reducing the probability of the majority’s tyranny and of engendering stability through the union. Federalism has been generally regarded as an institutional solution to intra-societal struggles and tensions in the plural and diversified societies. It was best calculated, as Livingston observed, “to maintain and foster a national coherence while at the same time articulating and protecting the several diversities within the society to which value is assigned”.¹

Federalism is both descriptive and a normative category, signifying the paradox of unitary rule and exemplifying the normative ideal of distribution of substantive areas in which power is shared between two sets of governments at least. A federal system is a constitutional arrangement that gives federalism its institutional form. The present-day concern over widespread intra-societal conflict variously described as regional, ethnic, multi-nationalist and ethno-nationalist within India along with various regions in the world has prompted fresh consideration of federalism as one of the approaches or strategies for management or resolution of the problems. Khan, in his book *Federal India: Design for change* mentioned that ethnic federalism or territorial reorganization of states on the criterion that the states be provided with “maximum homogeneity within and maximum identity without”. To this he continued to say that such a criterion can be determined on five principles namely, (a) socio-cultural affinity in terms of language, dialects, beliefs, religious communities and historical memories; (b)

¹ K.R. Bombwall. *The Foundations of Indian Federalism*. (Bombay: Asia Publishing House, 1967) 30.

ethnic similarity in terms of jatis, tribes etc.; (c) administrative manageability in terms of territory and population; (d) distinct pattern of economy; (e) size of the state with the need for closer contact between the voters and their representatives i.e. the rulers and the ruled. In brief, the main concern should be to create states which are socio-culturally homogeneous and administratively and politically manageable.²

This research aims to bring out how the culture and ethnic right have been accommodated or have been incorporated in the Indian constitution. In this thesis, I will discuss, how the Constituent Assembly members participated and debated upon the issue regarding the cultural and ethnic rights, generally on the Tribals in India and particularly the Tribals of the North East and the Naga Hills people. For this purpose, the summary and analyses of the Constituent Assembly Debates 1946-1950 will be presented as well as the working of the federal structure of India-centre-state relation and also will discuss the cultural question of the people of Nagaland. This will give a clear picture of the working condition of the federalism in India and also with the state of Nagaland.

Over the years, it is observed by various researchers and statesmen that the world as an integral is amid a paradigm shift from a world of states that emulated the epitome of the nation-state (which evolved during the inception of the modern era in the seventeenth century), into a world with diminished sovereignty of a state and augmented liaison between states of a constitutionalized federal character.³ This shift started post-World War II. It does not imply of vanishing states, only about the state system obtaining a new facet, being initiated as an adjunct and is not attempting to overlay the system that succeeded through the modern period. This

²Rasheeduddin Khan. *Federal India: A design for change*. (New Delhi: Vikas Publishing House, 1992) 34-35.

³Daniel J. Elazer. "From Statism to Federalism: A Paradigm Shift". *International Political Science Review* (1996). Sage Publication, Vol. 17, No.4 .417. <http://www.jstor.org/stable/1601278> accessed on: 15.09.2012.

overlap is a network of concurrence which is bounded constitutionally besides economically and militarily.

Post-cold war era, multi-ethnic states was one of the most significant challenges to world security and order. The crisis of multi-ethnicity does not constrict to the supposed third world states in Africa alone, but few western democratic states which are renowned for their longstanding stability are now perceived as fluctuating owing to the multi-ethnicity crisis. Federalism, which could be recognized as territorial based or ethnic-based, has been considered as the most excellent substitute to foster the dealing of conflict-prone multi-ethnic societies. Including those who extended harsh criticisms against federalism acknowledged that it (when enforced appropriately) would make effective decision making even during a complicated situation and promote democracy.

While considering the existing condition, the impression of supremacy and repulsiveness that ethnic conflicts and disorders have acquired over the past few years in India cannot be evaded. A remarkable heterogeneity constitutes India. Religion, caste and language alone comprised an exceptional share of dominant criteria of diversity, leading to conflicts and compromise. Religion, caste and language are certainly just three focal points of ethnic identity and community; tribe and region also comprise India's ethnic diversity. In fact, diversity is both India's most extraordinary strength and also its most menacing threat.

1.1. Review of Literature

Here are some of the authors who extensively worked on federalism and described or explained the importance of federal governments. Elazar, in his book *Exploring Federalism*, says "Federal arrangements are often introduced to reconcile the interest of different peoples within a common political framework. It is in this connection that the distinction between people and public becomes crucial and this arrangements, principles, or practice into their political systems to

accommodate the heterogeneity that has given rise to the introduction of federalism in many countries”.⁴ Livingston, in his book *Federalism and Constitutional Change*, presented a sociological perceptive by stating that “the essence of federalism lies not in the constitutional or institutional structure but in the society itself. The federal government is a device by which the federal qualities of the society are articulated and protected”. He further observed, “Federalism is a function not of constitutions but societies”.⁵ Narang says, “Federalism, as Daniel Elazar points out, differs from pluralism in that it bases its efforts to deal with the realities of human nature in a firm constitutional structure. The federalist argument is that pluralism in one form or another may indeed be a safeguard of liberty, but it cannot be relied upon by itself unless constitutionally institutionalized”.⁶ Singh says, “The real essence of federalism is autonomy and integration. Overemphasis on any one of them may only cause severe stress and conflict between regionalism and nationalism. Thus, the real challenge is to institutionally accommodate diversities, and pattern them federally”.⁷

Sonu Trivedi says, “Human rights are the ultimate norms of politics. Only democracy, within the states and the community of states, can truly guarantee human rights. It is through democracy that individual rights and collective rights, that is, the rights of peoples and the rights of persons are reconciled. There can be no sustainable development without promoting democracy and, thus, without respect for human rights”. He also said that “the foundations of democracy are strengthened by the existences of human rights and their enjoyment by the individuals. Human rights ensure human rights, which are the life-blood of

⁴ Daniel J. Elazar. *Exploring Federalism*. (Tuscaloosa: The University of Alabama Press, 1987) 141.

⁵ William S. Livingston. *Federalism and Constitutional Change*. (Oxford: Clarendon Press, 1956) 2-4.

⁶ A.S. Narang. *India: Ethnicity and Federalism* in B.D. Dua. M. P. Singh (eds.). “Indian Federalism in the New Millennium”. (New Delhi: Manohar, 2003) 67.

⁷ Ajay Kumar Singh. *Federalism and State Formation* in B.D. Dua, M. P. Singh (eds.). “Indian Federalism in the New Millennium”. (New Delhi: Manohar, 2003) 106.

democracy. He continued to hold that democracy does not merely mean majority rule: it means majority rule coupled with human rights”.⁸

Elazar also says, “Federal systems have worked where they were useful to address the ethnic conflicts. In India, the commitment to managing ethnic conflict through a constitutionally protected diversity on a federal basis is visible. He also argues that it is evident from India’s efforts to reorganize the state boundaries and to create new states to accommodate cultural diversity following the aspiration of the Indian public”.⁹

Roy Burman points out “federal polity emerges through two processes, one unitary political regime accepting federal structure to satisfy cultural and social aspirations, two voluntary acceptances of federal polity on geopolitical and historical considerations and he said that in India both the processes had taken place, the second one particularly in the North East”.¹⁰ Vasuki Nesiah says, “The absence of a nationwide cleavage along the ethnic line also provides a source of stability, since religious, caste, tribal, linguistic and regional differences do not converge on a single fault line. Indian’s federal structure would appear to have a higher chance of success in addressing ethnic difference since centre-state relations will not be over determined by single high-stakes cleavage; a more diffused and multi-pronged dynamic could prevail”.¹¹

When it comes to the study of federalism and ethnicity and the usefulness of federalism, the answer is depended on how ethnic attachments and federalism

⁸Sonu Trivedi. “Human Rights under Democracy”. *Mainstream* (2003). New Delhi. Perspectives Publication Limited. Vol. XLI. No.52. December 13. 15.

⁹ Daniel J. Elazar. n.4. 149.

¹⁰ B.K. Roy Burman. “Federalism in Perspective, Problem and prospect for North-East India”. *Mainstream* (1993), New Delhi, Perspectives Publication Limited, Vol. XXXI, No.39, August 7, 8-9.

¹¹Vasuki Nesiah. *Federalism and Diversity in India* in Ghai, Yash (eds.). “Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States”. (United Kingdom: Cambridge University Press, 2000) 54-55.

were defined and also what all factors were considered to be at the root of what came to be expressed or disguised as ethnic conflict and what purpose federalism was employed to serve. The architects of the Indian Constitution enabled the Indian state to retort the demands for autonomy through the double mechanism of individual and group rights as well as the federal construction of political power.

Throughout the debates of the Constituent Assembly, the matter about the rights of the minority for their religious minorities got exposed to excessive deliberations and disputations. By the time of debate culmination, excluding the grant of political safeguards to the religious minorities, those rights which were intended to guard their identity and inhibit discrimination towards them were rested. However the discussion on religious minorities was filled with anxieties as we have experienced it with the partition, and the Constituent Assembly members were skeptical and feared that too much attention or recognition to the religious minorities would disrupt the project of Indian nationhood. Babasaheb Ambedkar made a famous statement during the debates of Constituent Assembly saying that “On the 26th January 1950 we are going to enter a life of contradictions. In politics, we will have equality, and in social and economic life, we will have inequality”.¹² He wanted more action on the part of India’s politicians to “restore non-Brahmans to their rightful place in the public sphere”.

India’s diversity is indeed a well-known fact as over a billion populous speak about 4600 languages/dialects (counting the eighteen recognized in the Eighth Schedule of the Constitution) affiliated with twelve languages families and 24 scripts. The country has nearly 2800 ethnic communities and nearly 20,000 caste groups. A cross-cutting of communities across a vast territory is a significant feature of India’s diversity. Ethnicity, as we see today, in the context of the twenty-first century is a configuration of some factors where culture, religion, racial

¹²Stuart Corbridge. *Politics and Culture* in Niraja Gopal Jayal and Pratap Bhanu Mehta (eds.). “The Oxford companion to Politics in India”. (New Delhi: Oxford University Press, 2010) 257.

features, language and historical bondages and symbols and their distinctive features, etc., play a vital role.

During the presidential address at the international conference on Ethnicity, Ahluwalia observed, “In the twenty-first century society ethnic, ethno-religious, ethno-social, ethno-political consciousness would play a significant role- both positive and negative. Positively, ethnic consciousness, in general, would be a significant constituent factor in evolving multifocal, pluralist dispensation of the future. Negatively, if suppressed by Unitarian-totalitarian trends and forces, ethnic, and in particular ethno-religious, consciousness would assume sharper militancy and even more acute violent forms, threatening peace, harmony and amity”.¹³

The North East is a typical example to be studied where many ethnic groups co-exist with different colors and a distinct division of their own. Their ethnic consciousness is the need of the time towards multi-focal, pluralist arrangement along with the keen desire to belong to the members of the contemporary communities. Ethnicity thus has played a role in injecting the group values and the realization of the value of existence. Though from time to time, we have witnessed tremendous uproar and conflict in the different ethnic groups for their supremacy over others and also autonomy and other issues which demand political solution at the state level.

The state of Nagaland is no exception in terms of different ethnic groups as it is a unique combination of many tribes and their languages. The people are gradually coming together and sorting out their group clashes and heading for the issue of a “Greater Nagaland”. However, still, there is much conflict among themselves, which virtually weakened this race.

¹³Sukhendu Mazumdar. *Ethnic Issues in Nagaland and North –East India* in Bimal J. Deb (eds.). “Ethnic Issues, Secularism and conflict Resolution in North East India” (New Delhi: Concept Publishing Company, 2006)119-120.

During the Independence Day speech, 1999, Shri. S. C. Jamir, the then Chief Minister of Nagaland, stated, “The last decade of the twentieth century has been particularly a painful and violent period for the Naga people. On the one hand, there is the deep pain of bloodshed and the loss of precious lives. On the other hand, there is the greatest danger that the Nagas of the future will be divided into tribal, village and clan lines leading us back to the dark head-hunting past, instead of looking to the future with the hopes and confidence. Along with it, in the name of Naga Sovereignty, the social and economic systems of the land have been systematically torn down and crippled. Our work culture is dying and replaced by gun culture. The Nagas who were free people are now chained socially, economically and politically. Can we then call it a ‘righteous cause’ or ‘holy cause’ when everything is being destroyed?”¹⁴

However, the trouble begins when the mad race for such issues gain momentum. Honestly speaking, we do not see any end of such conflicts and rivalries and find it very tough to handle since they require careful and delicate handling with broadness and political wisdom. The wall between the majority and the minority and the game of politician with their vested interest and along with the classification of language, territory, occupation, cultural differences and physical attributes matters a lot.

1.2. Statement of the problem

The study focusses on the linguistic reorganization of the Indian states, but how it can give space to its cultural minorities as we can see the cultural dominance within the minorities. Indian federal state and the basis of recognition of the identity of the units (states and its people) is mostly based on language. However, the language is not sufficient to explain the diversity in the country. Some identities split up the linguistic homogeneity, and some others are crossing the linguistic boundaries. Coming to North East, especially Nagaland, much of the attention is

¹⁴Sukhendu Mazumdar. 122.

given to insurgency, foreign national issues, tribal uprising and brutality committed by the security forces. However, there is hardly any analysis or focus on socio-economic, demographic and most importantly, cultural factor. Since 1950s lots of issues on cultural as well as socio-economic distinction have acquired in the wake of the rapid modernization in the regions. So to what extent Indian Federalism is becoming a means to recognize or materialize cultural diversity? How it accommodates the distinct cultural aspect of the Nagas in the Indian constitution? The study also focuses on the centre and state conflict with special reference to the socio-cultural life given the cultural diversities in India.

1.3. Significance of the study

There have been several studies on federalism and ethnicity in general and ethnic rights in particular. The present study focuses not only on the linguistic basis but also on cultural and social activities of North Eastern states. The study also focuses on the role of Indian Federal structure on safeguarding Ethnic Rights of Naga people, towards the economic and social development of their culture.

1.4. Research Question

- What are the contributions and limitations of Indian Federalism in protecting the Cultural Rights of the Nagas?
- How the rights guaranteed by the constitution and the federal system of India for the protection of Naga ethnic groups are contradicted by the coercive and assimilative powers of the central government?

1.5. Objectives

The objectives of the study are as follows:

- To study the ethnic, cultural identity of the Nagas structured in India's constitutional federalism and process.
- To examine the protection of rights of the Nagas ethnic groups guaranteed by the Federal structure of India with special reference to the coercive and assimilative powers of the central government.
- To evaluate the compliance and contradictions between the constitutional structure of Indian federalism and the ethnic diversity and cultural rights of its citizens.

1.6. Methodology

Methodology for the proposed study has been analytical and descriptive. Both primary and secondary data has been used for this study. It has embraced both qualitative and quantitative research to elicit the information. Primary data has been collected through official records, government reports and annual bulletin. Secondary data has been gathered through articles, books, newspaper clippings, published and unpublished thesis and journals.

1.7. Chapterization

This thesis is divided broadly into seven chapters, including introduction and conclusion.

The first chapter introduces the idea of federalism, its connotation and contradiction. A qualitative interpretation of the idea of federal structure with its

varied dimension had given elaborately. The basic problem for which the idea of federal nature is considered are the ethnic diversities.

The second chapter is an exploration into theoretical ideas of federalism and their intertwining with ethnic and cultural rights. In this chapter, the researcher discusses the history, the origin and the evolution of federalism as an idea and principle of political organization. Moreover, it attempts to compare the institution of federalism in the Multi-Ethnic States.

The third chapter deals with the Constituent Assembly Debates 1946-1950: An evaluation. This chapter focuses on the Constituent Assembly Debates 1946-1950 (Volume I-XII) regarding cultural and minority rights and the special provisions for the North East Frontiers Agency.

The fourth chapter discusses the federal process and reforming centre-state relations. This chapter also discusses the reorganization of Indian states, with a focus on the working of the federal process.

The fifth chapter deals with the institutions and socio-political process in Nagaland. It also look at the overview of the state of Nagaland, discussing about the historical background of the evolution of the insurgency movement which will help us in understanding the insurgency trends and issues in Nagaland and the Indian state responses towards the insurgency movement, and also about the electoral politics, its continuities and connections between the traditional and modern electoral system.

The Sixth chapter discusses the contestations on accommodating the cultural and ethnic rights of the Nagas. This chapter deals with the Sixth Schedule and the special provisions of Article 371A, through which a special status has been given to Nagaland. This chapter will also focus on the working of centre-state

relation and how the constitutional dimension of federalism accommodated the Naga ethnic rights.

In the concluding chapter, the whole work is summarized, along with the researcher's assessment and arguments.

CHAPTER II

THEORETICAL IDEAS OF FEDERALISM AND THEIR INTERTWINING WITH ETHNIC AND CULTURAL RIGHTS

This chapter discusses the theoretical ideas of federalism in connections with ethnic and cultural rights. For this, the researcher has referred to different scholars. In this chapter, we can see the detailed analysis from the origin, to the spread of federalism and also how federalism plays a pivotal role in binding between ethnic and cultural rights.

Federalism is a government's modus operandi wherein a written constitution dispenses and shares the power between a stable central government and its member states or regional or sub-divisional governments. Both the governments enjoy supreme power within their legitimate sphere of authority and also rule the people directly through their officials and laws. However, for making any changes in the constitution, the central governments have to come to a consensus. Traditionally, the concept of federalism involved relationships between the central government and federal units. Federal principles promote both self-rule and shared-rule. In federalism, elementary rules are prepared and executed over arbitration in a certain aspect, enabling everyone to participate in the decision making and implementing the procedures of the system.¹⁵

Ben Mollov, in his article, *Daniel J. Elazar: Federalism, Brit, and Implications for Israeli Society*, says, "The essence of federalism is to allow different elements to coexist under a larger political framework. Thus federalism is viewed as more of a process and an approach, enabling diverse groups to interact

¹⁵ Daniel J. Elazar. n.4. 3.

favorably and enter into partnerships, as opposed to specific territorial or formal arrangements”.¹⁶

By its very nature, federalism denotes a political system which provides for or recognises the presence of a government at the centre for the entire nation and certain autonomous governments at the regional level for the division of the whole territory. It provides various mechanisms and strategies to settle “rivalries and feuds between the centre and the regional governments, and also between any two or more of the regional units”. The Federal States are also related to vast territories, enormous populations, and democracies with territorial based linguistic dissolution. Each age-old democracy in a territory established on multilingual and multinational polity is a federal state. Thus, in order to unite and allow each of these separate states or other politics and to sustain its essential political integrity within an overarching political system, federalism acts as a mode of political organization.

Daniel J. Elazar says that in the broadest connotation, “federalism is more than an arrangement of government structures; it is a mode of political activity that requires certain kinds of cooperative relationships through the political system it animates”. Besides, he emphasised that “the important contribution of federalist approaches to societies fraught with problems of increasing diversity and ethnic heterogeneity is cohesion in the polity”.¹⁷

2.1. Origin and Development of Federalism

The historical and the conceptual origins of the federalism go back to the Amphictionic League of ancient Greece and the idea of *foedus* as unity. However, as a political arrangement and as a philosophical concept, “federalism can be traced

¹⁶ Ben Mollov. “Daniel J. Elazer. Federalism, Brit, and Implications for Israeli Society”. Jerusalem Center for Public Affairs: Israeli Security, Regional Diplomacy and International Law. *Jewish Political Studies Review* (2007)

1 March 2007. 1.

¹⁷ Ben Mollov. 2.

to the adoption of federalism at the relatively later time in history when the United States of America adopted federalism as a form of government”.¹⁸ The term “federal” is a derivative of the Latin word *foedus* that can be transcribed as agreement, “treaty, compact, contract, covenant, league etc. –all words that imply a voluntary joining together of separate entities to achieve some common objectives”.¹⁹ *Foedus* comes itself from a Latin word ‘fides’ meaning ‘trust’. A federal agreement is a partnership, institutionalized and controlled by a covenant, inner relations that emulates the distinct sort of participation that necessarily exists amongst the associates, precisely one where there is mutual recognition of each other’s integrity and pursue to nurture a distinct sort of unity in their midst.²⁰ Federalism is also described as a system of the government in which its constitution divides the sovereignty between a central administering authority and constituent political entities (example, provinces or states).

The Western world theologians, philosophers, and political theorists have noted the root of federal idea in the Bible. It was first “applied from a theological standpoint, demonstrating the collaboration between God and humans as is mentioned in the Bible, in which both were connected and made accountable for the world’s welfare by a covenant. This caused a notion of a covenantal (or federal) affiliation among individuals and families resulting in the establishment of a body politic and between bodies politic resulting in the conception of complex politics. The political applications of the theological usages promoted the conversion of the term federal into an unambiguously political concept”.²¹

¹⁸Abdulrahim P. Vijapur. *Dimensions of Federal Nation Building: Essays in memory of Rasheeduddin Khan*. Centre for Federal Studies. (New Delhi: Manak Publications (p) Ltd., 1998) 24.

¹⁹ John Kincaid, *Introduction: Historical and Theoretical Foundations of Federalism*, in *Federalism*. Volume 1: “Historical and Theoretical Foundations of Federalism” (eds.) John Kincaid. (New Delhi: Sage Publications, 2001) xxxvii.

²⁰ Daniel J. Elazar (eds.). *Federal System of the World: A Handbook of Federal, Con-federal and Autonomy Arrangements* (2nd edition). Longman Current Affairs. 1994. xv.

²¹ Daniel J. Elazar. n.4. 3.

Elazer also mentioned “Federalism was first formulated in the covenant theory of the Hebrew Bible as the basis for God’s relationship with Israel”, this perception of federalism was revitalized by those Bible-centered “federal theologians” from the sixteenth and seventeenth-century Protestant Reformation who constructed the word federal, derivative of the Latin word foedus that implies covenant (as mentioned earlier) to define the structure which is a divine and persistent covenants between God and humankind that contributes their world perspective at the basis of their world view.²²

Charles S. Roy, in his article, *Federalism: The Lost Traditions?*, mentioned, “Federalism! New in 1787? Only someone who has drunk deeply of Lethe’s waters of forgetfulness could make such a statement.” He continued to say that “most historians of the U.S. Constitution know little of the federal background to the Constitution and the structure of American Society. For mainland political science, federalism became as much a lost tradition in political history as in theology and ethics”.²³ Also, Daniel J. Elazar in his article *Althusius and Federalism as Grand Design* mention “As Althusius²⁴ himself was careful to acknowledge, the first grand federalist design was that of the Bible, most particularly the Hebrew Scriptures or Old Testaments. For Him, it also was the best- the ideal polity based on the right principles”. Althusius continued to say that “Biblical thought is federal from first to last”.²⁵ Elazer continued to say that the grand biblical design for humankind is federal in three ways: (a) it is based upon a network of covenants beginning with those between God and Man, which weave the web of human, especially political, relationships in a federal way. That is through pact, association and consent, (b) The classical biblical commonwealth was fully articulated federation of tribes instituted and reaffirmed by covenant to function under a common constitution and laws, (c) The biblical vision for the end of days- the messianic era- not only sees a

²²Daniel J. Elazar. 71.

²³Charles S. McCoy. “Federalism: The Lost Traditions?” *Publius*. (2001) Vol. 31, No.2. Essays in Memory of Daniel J. Elazar (spring, 2001) 2-4.

²⁴ Johannes Althusius was a German jurist and Calvinist political philosopher.

²⁵Daniel J. Elazer. “Althusius and Federalism as Grand Design”. *Jerusalem Center for Public Affairs*. 1 <http://jcpa.org/dje/articles2/althus-fed.htm> accessed on: 12.05.2017.

restoration of Israel's tribal system but what is, for all intents and purposes, a world confederation or league of nations, each preserving its integrity while accepting a common Divine covenant and constitutional order.²⁶

John Kincaid also mentioned, "The idea of ancient federalism grounded in the biblical notion of covenant was revived by Protestant reformers, beginning with Huldrych Zwingli (1484-1531), Johannes Oecolampadius (1482-1531), and especially Heinrich Bullinger (1504-75), who revolted against the presumptively uniform, hierarchical, and sacramental theology and structure of Roman Christendom".²⁷ In his book, he also mentioned that Johannes Althusius (1563-1638) was the leading thinker to translate the covenant idea into a fully articulated and largely secular theory of federalism in his 1603 work entitled *Politica Methodice Digesta, Atque Exemplis Sacris et Profanis Illustrata*. Althusius located sovereignty in the people and conceptualised a republic as being a voluntary compound of consociations, namely, socioeconomic communities in which individuals are embedded as part of their very social nature.²⁸

According to Elazer, the triad third critical federal experimentations in the humankind's history date—"first, the Israelite tribal federations described in the Bible, Second, the Swiss Confederation, where during Medieval Europe (seven hundred years ago) it preserved liberty. Later it fostered the principal liberating stream of the protestant Reformation and survived to create a garden spot in the world, self-governed by free people. Three, the United States of America, two hundred years ago it became the first modern federalism and more recently the first federal superpower, which showed the way to combine freedom and federalism in the continental-sized polity".²⁹

²⁶ Daniel J. Elazer. 2.

²⁷ John Kincaid. n. 19 xxxvii.

²⁸ John Kincaid. xxxviiiic.

²⁹ Daniel J. Elazar. n.4, viii-ix.

2.2. Birth of Modern Federalism

The birth of the modern federalism as a concept was originated during the American Revolution, as, Daniel J. Elazer has shown, and “Modern Federation, had its origin in the United States Constitution of 17th September 1787” where for the first time, federation was conceived as uniting both member states and their population.³⁰ The concept was usually identified with the drafting of the Constitution of the United States of America in 1787 and with the defense and explanation of that constitution established in the *Federalist* written by Alexander Hamilton, James Madison and John Jay in 1787-88.³¹ As mentioned earlier, the base of modern federalism roots back to the revolutionary experience of the Americans, including the phase of their constitution-making. The utmost eloquent explanations of this model are to be found in *The Federalist* and Alexis de Tocqueville's *Democracy in America*. Elazer, in his book *Federalism and the way to peace*, emphasises the fact that modern federalism did not progress till the notion of civil society turned into the cornerstone of Western politics. He also said that Federation might function as the counterbalance to an adverse political, cultural environment. We can see that most specialists on federalism settle that development and maintenance of a federal system are straight away linked to the existences of a federal spirit.

According to Douglas V. Verney, “federalism differs from the other ‘isms’³² in two crucial aspects. Firstly, contrary to the other which originated in Europe after the French Revolution, Federalism was invented by the framers of the U.S. Constitution in Philadelphia in 1787. Secondly, instead of becoming the

³⁰Max Frenkel. “Federal Theory”. Review, *Publius*. (1990) Vol.20, No.1 (winter, 1990) Oxford University Press. 148.

³¹ John Kincaid. n. 19 xxxix.

³² “Isms” we can see in political theory such as socialism, liberalism, conservatism and nationalisms.

province of political theorist, until recently it was left to be studied mainly by those who examined the actual institutions of government”.³³

Federalism in its every aspect remained a challenging concept. Larger flexibility of deliberated agreements or treaties has been allowed by the constitutional rigidity. Subsequently, the association between federal and regional government have been gaining further stability and otherwise con-federal features. We can also see that the rise of trans-border and identity politics has challenged the territorial jurisdiction and representation. Therefore, the theorists and expounders of federalism hesitate to advocate those variations to the classical model as both are embodied by the American model and its professedly ageless constitutional treatise in the “*Federalist Papers*” (Hamilton and Jay et al.). It first appeared as the narration in a newspaper by Alexander Hamilton, John Jay and James Madison in 1787-1788 to create sanction of the American constitution in the New York state. Their essays undoubtedly compose the fundamentals of the modern federal state in theory and practice.

Hueglin, in one of his articles mentioned “the federalist drew from an older European tradition and their source of inspirations was from Montesquieu’s idea of the Confederate Republic in *The Spirit of Laws* (1750). Montesquieu had derived this idea from the contemporaneous example of federated governance in Switzerland, Germany, or what was then called a Holy Roman Empire of the German Nation and the Netherlands. After a century earlier and based on the same historical examples, Johannes Althusius has developed a grand theory of covenanted or consociational federalism”.³⁴ Against these views, the predominant American model of the federal state constantly emerged out of these earlier

³³Douglas V. Verney. *Federalism, Federative Systems, and Federations: The United States, Canada and India* in *Federalism*, Volume II: “Alternative Models, Constitutional Foundations, and Institutional Features of Federal Governance” (eds.) John Kincaid. (New Delhi: Sage Publications, 2001) 42-43.

³⁴Thomas Hueglin. *Federalism at the Crossroads: Old Meanings, New Significance* in John Kincaid (eds.) *Federalism*. Volume IV: “Fiscal Features, Federal Failures, and the Future of Federalism”. (New Delhi: Sage Publications, New Delhi, 2001) 334-335.

practices. Moreover, we can see that the American model established a deliberate and fundamental split from those traditions.

We can see some of the examples here, while the Federalist advocated federal hegemony above the states, the Montesquieu and Althusius urged upon a federation with the stability of power basically inclined towards its constituents. The federalist pursued to promote divisions of power among territories to cross social community and class, Montesquieu and Althusius perceived it as a way of fortifying the solidity of those societies. Though the Federalist founded their influences upon a hierarchic distinction of policy needs between nation and region ability, Montesquieu and Althusius highlighted that lesser community would continue in their capacity, the completely operational politics.³⁵ Therefore, the earlier vision of federalism syncs exceptionally with critiques of the federal state as excessively statist, top-heavy in the federal hegemony, territorial prejudiced and indifferent to the self-governing rights of social communities and ineffective in its obsolete provision of powers.

2.3. Spread of Federal Idea

The federal notion was secularized in the late 17th and 18th centuries with the compressed theories that were developed by Thomas Hobbes, John Locke. However, it continued for Montesquieu and Madison to alter the idea of federalism into a completely secular political doctrine as well as *modus operandi*.³⁶

One of the most prevalent revolutions which alter the world is the federalist revolution. Federalism evolved like a channel of catering to the people's ever-increasing longings to secure or recover the integrity of lesser societies, and the increasing requirement for greater amalgamations to organize the utilization of collective resource better. Subsequently, federal arrangements are applied widely

³⁵Thomas Hueglin. 334-335.

³⁶ Daniel J. Elazer. n.4. 71.

to incorporate new politics but also conserving legitimate internal diversities. Almost 80 per cent of the world's populace exists under politics which is either strictly federal or utilizes federal provisions one way or another, while 20 per cent exists in politics that could be designated as away from any federal provisions.³⁷ Federalism, during the 19th century, was predominantly regarded for its rigid institutional provisions whereas coming to the 20th century, it became valuable chiefly for its flexible nature while we consider transforming principle into the political system.

The modern nation-state is closely linked with that of the history of modern federalism. The federal principles stand in disagreement to the centralized, "reified nation-state—the main output of modern nationalism. The modern nation-state was invented in Europe in the century and a half between the revolt of the Netherlands against Spain (1567) and the Treaty of Utrecht (1714). The first modern nation-states were France, and Jean Bodin (1530-96), a Frenchman, unsurprisingly developed the theory upon which it rested, presented in full in his *Six Books of the Republic* (1576).³⁸ From the mid-sixteenth through the mid-eighteenth centuries, France, England, and Prussia selected the path of the modern nation-state; Switzerland and the Netherlands selected the path of traditional federalism or confederations, and the other German and Italian states tried to reserve their independence through a modernized version of medieval personal rule. Russia and Austria were transformed into modernized empires with certain organizational characteristics of modern states but remained multinational medieval autocracies in conception, and they remained till World War I".³⁹ Finally, Germany, Switzerland, and Austria opted for federalism and sustained it. Switzerland ardently made federalism a universal needed system with its combined political culture and situation. After its 1917 revolutions, Russia also opted a federal structure as the workable channel for reintegrating the ancient empire under Bolshevik rule.

³⁷ Daniel J. Elazar. n. 20. xv.

³⁸ Daniel J. Elazer. "Federalism, Centralization, and State Building in the Modern Epoch". *Publius* (1982) Oxford Journals. Oxford University Press. Vol.12, No.3 (summer, 1982) 1.

³⁹ Daniel J. Elazar. n.4. 81.

Amidst all these developments in Europe, the recently liberated American states were engaged in formulating modern federalism. The new American nation, like other modern nations, rejected medieval corporatism. American was congenitally resisted the tyranny of power centralization by any means. Therefore, the Founding Fathers, as Republicans, “came to an understanding that sovereignty as residing in the people rather than in any state. A *res publica* (or thing of the people)”⁴⁰ as it was presumed as a commonwealth wherein the citizen would establish and delegate definite powers to government agencies to work for them rather than a reified state.

The United States experiment soon attracted the curiosity of statesman and scholars both in its country of origin and abroad. Once the Americans developed modern federalism, the Dutch, under the Napoleonic pressure, renounced their customary system for a centralized Jacobin republic, and further reconstructed as a unitary, decentralized monarchy (as per the Dutch Constitution). The first considerable European study was by the German Robert Von Mohl (1799-1875) published in 1824, his writing profoundly influenced the Germans and German-Swiss studies, and began outpouring of theoretical writings on federalism. Perhaps, the most influential of all early European writers on the U.S.A. was the Frenchman Alexis de Tocqueville (1805-59), whose *Democracy in America* (first Volume 1835) contained an excellent account of the main principles of the U.S. Constitution. He also gave credit to the American for the originality of their federal system, in particular for the idea of having the Centre operate directly on the citizens. In Germany, the federal idea was making its mark as the knowledge of federal became widespread and federal principles were now always likely to be considered as a possible solution to problems of association between previously independent countries, or problems of devolution in vast empires.⁴¹

⁴⁰ Daniel J. Elazer. n.38. 3.

⁴¹ Geoffrey Sawer. *Modern Federalism*. (London: C.A. Watts & Co. Ltd, 1969) 24-26.

The next country to move towards the federal directions was Switzerland. They are the earliest association of Cantons (Regions) having been established in 1291, but the strains of the Napoleonic wars and religious conflicts between the Protestant and Roman Catholic Cantons after that displayed the requirement for a stronger central institution. The Roman Catholic Cantons designed a League within a League- the Sonderbund- in 1845; this resulted in the civil war, and after the victory of the Protestant Cantons in 1817, they enforced a constitutional change in 1848 which created a Centre with substantial organizational powers, operating directly on citizens in the U.S. fashion. Therefore, after a constitutional reform in 1874, it became a federation with 19 full Regions and 6 half Regions. However, the most distinctive features of the Swiss system are found in the sixth basic federal principles- Constitutional change and judicial review.⁴² However, in 1848, the Swiss borrowed the American model and converted into a modern federation from their customary federal system.⁴³ Therefore, considering modern Europe's outlook towards federalism as partially diversified, North America as the federal continent was at the level of excellence.

Canada is another country where we can find federalism working strongly. Since it elucidates more about the working of federalism, we have to look into the history of how it all started. The United Kingdom Parliament in 1867, enacted the British North America Act, either embarking on federalism or attempted federalism. British North America had hitherto consisted of separate colonies and territories whose relations had been with Britain rather than with each other; "Canada" included both the predominantly French people of what became the province of Quebec and British people of what became the province of Ontario, and main drive for a strong unions came from these "Canadians". The reason for retaining a degree of Regional autonomy was because the area, communication, distinctive traditions, the special language and the culture of Quebec were powerful.

⁴² Geoffrey Sawyer. 26-27.

⁴³ Daniel J. Elazer. n.20. 7.

There was also an internal reason for desiring a strong centre, notably the formation of an authority which could uncover the vast western territories. The unique characteristic of the Canadian system was the provision of proficiency between the centre and the Regions in a much more multifaceted pattern than that of the U.S.A or Switzerland. However, the actual plan of British North America sections 91 and 92⁴⁴ seemed to be to give exclusive powers to the Regions and the residue to the centre. The trio of North American countries, the United States of America, Canada and Mexico, were earlier federal, and definitely, in the first two, the correct form of the polity was federalism.⁴⁵

By 1900, the United Kingdom Parliament carried out its second significant venture in federal constitution building by passing the Commonwealth of Australia Constitution Act. However, there was no war or civil commotion in the background. Some worries regarding the efficient defense granted to the federating structure. Moreover, some anticipated economic benefits from this. There had been preliminary confederal trot in 1885 under the United Kingdom Federal Council of Australian Act and immediately were all the colonies parties' experiences like that of the U.S.A. under the 1781 Articles of Confederations which functioned to exhibit the requisite for tougher unions. The colonies converted into Regions (States) in federations, maintaining the existing Constitutions and their power to amend them and the residual power. The Centre (Commonwealth) received an express list of powers. The Australian Federal Father adhered more closely to the model of the U.S.A., but they also borrowed from Canada and Switzerland.⁴⁶

Malaysia is another country which followed the federal form of government. Malaysia settled down in the face of much Indonesian and a little Philippine hostility to be a federation of Thirteen Regions (States). The system is even further along the federal spectrum in centralizing direction than India. The

⁴⁴ Geoffrey Sawer. n. 41. 29-31.

⁴⁵ Daniel J. Elazer. n.20. 7.

⁴⁶ Geoffrey Sawer. n. 41. 41-42.

Malaysian distribution of powers is on a three-list system Exclusive Centre powers, exclusive Regional powers and Concurrent powers and in Malaysia, the residuary power falls into the Regional power. However, the Centre has a great power to acquire uniformity of law and policy.

Nigeria established or became a federal country in 1954, revised in 1960 and 1963. Nigeria, however, presented a present a character of the federal situation. The tribal, religious, linguistic and cultural differences within an area wholly by the course of conquest and protection demanded a division into Regions as we have seen in the earlier case for what elsewhere has been called by different names as States, Cantons or Province. The problem that Nigeria experienced arose not out of any elementary defect in the Constitutional system but of the gross numerical predominance of the Northern Region and the political hardship of including excessive cultural and tribal dissimilarity and resultant of common jealousies. After 1963 political and constitutional contention arrived at a point of violence, individual assassination, mass murder and finally civil war. In Nigeria folioed two-list system- Centre exclusive powers, concurrent power, and residue to the Regions. The Centre is like the United States and Australian type.⁴⁷

When it comes to the question of India, the population, size, regional (including linguistic) difference and communications complications offered an apparent federal condition, if not the prospect of numerous discrete nations. The British Raj first bought it together under a strong central military power, and the considerable first steps were the Government of India Act passed by the United Kingdom Parliament in 1935, which adumbrated a substantial federal system.

As mentioned by Geoffrey Sawyer in his book, he considered as a federal system, formerly, the unique characteristics of the Indian Constitution are: it is certainly the lengthiest and most intricate of prevailing federal constituting 392 sections with nine schedules. The provisions of powers between the Centre and the

⁴⁷ Geoffrey Sawyer. 50-55.

Regions are carried out on an even more intricate pattern than the Canadian. The Indian constitution has three lists, centre, state and concurrent, but here in India “the Centre is obviously given the residue. In the Indian constitution, we can also find that the structure of the region, as well as the Central government, provides for a close alliance between them under the Centre’s guidelines”.⁴⁸

These are some of the countries where we can find the working of the federal form of government or the directions in which the countries have been leading to the federal form. The wave of the federal system and the similar struggle are also taking place in Africa and Asia along the decolonization of the third world nations. Most of the countries in the third world nations have pursued the steps of the developed nations and adopted the federal form of government, countries such as Pakistan, Malaysia, and South Africa.

2.4. Types of Federalism

2.4.1. Dual or Co-ordinate Federalism

Dual Federalism is a theory explaining the association that exists between the government and the states, with the states portrayed as powerful machinery of the federal government approximately equivalent to the national government. One of the chief significance in dual federalism is ‘state rights’ where it preserves all the rights of the states not precisely conferred on the national government by the Constitutions.⁴⁹ In order words, “it marks mainly the nonexistence of formal subordination of the units’ one to another”.⁵⁰ Generally, this is “the concept of harmonizing the scale of power between a huge and far-reaching government and

⁴⁸Geoffrey Sawer. 44-49.

⁴⁹ Levi Clancy. “Dual Federalism and Co-operate federalism”.

<http://studentreader.com/dual-federalism-cooperative-federalism/> accessed on: 15.07. 2018.

⁵⁰ Geoffrey Sawer. n.41. 117.

a more local, centralized one”.⁵¹ This theory acts as a type of check to guarantee that corruption does not influence either the government.

Traditionally, the conclusive instance of dual federalism is the United States. Dual federalism was a legal creation of the Supreme Court, which originated in “the Slaughterhouse Cases of 1873 (*Lochner v New York*, 1905)”.⁵² Introductory texts books in American government traditionally have characterized, the period from 1900 to 1937 as one of dual federalism. Also, dual federalism is consistent with the layer cake model of American federalism. Clifford Less Staten in his articles says, “The layer cake model focuses upon the conflict among the level of government and emphasizes the specific constitutional functions of each as defined by the Supreme Court”.⁵³

Even in Germany, there is the irony that Centre and the Regions in a federation are in a sense co-ordinate and yet at the same time the Centre is, in a sense ‘superordinate’. As we can see that “The Australian Constitution begins with the statement copied from the Constitution of the U.S.A., that the ‘people’ of New South Wales, Victoria, South Australia, Queensland and Tasmania- Western Australia decided to join too late to be included in this recital-‘have agreed to unite in one indissoluble Federal Commonwealth’. It is clear from the document that uniting does not merely mean creating new Centre authorities but with the sustained existence of the six colonial governments, now to become States of the Federation”.⁵⁴

⁵¹Jason C. Chavis. “What id Dual Federalism?” June 7, 2014.

<http://www.wisegeek.com/what-is-dual-federalism.htm> accessed on: 23.09.2018.

⁵²Clifford Less Staten. “Theodore Roosevelt: Dual and Cooperative Federalism”. *Presidential Studies Quarterly* (1993) Vol.23, No.1. Democracy in Transition (winter, 1993). Center for the Study of the Presidency and Congress. 141.

⁵³Clifford Less Staten. 129.

⁵⁴ Geoffrey Sawer. n. 41. 118-120.

2.4.2. Cooperative Federalism

On the other hand, Cooperative federalism discards the notion of the state and the national government prevailing in a distinct sphere. Its focus is that agencies of the national and state usually assume functions of the government mutually and not independently. It was devised during the 1930s⁵⁵ and acknowledged the want for collaboration between the state and the federal government.

Revisionist scholars such as Jane Perry Clark, Morton Grodzins, and Daniel J. Elazar have rejected “the layer cake or conflictual model of federalism”.⁵⁶ The revisionist model is based upon a cooperative rather than a conflictual relationship among levels of government. It focuses on the interdependence of all units of government within the nation. The cooperative model is defined in terms of actual practice, processes and interactions among the levels of government whereas the conflictual model or dual federalism view federalism as distributions of power. Daniel J. Elazar emphasizes “federalism refers to the process; a process of cooperating among the levels of government in which [...] basic politics [...] (are)[...] made and implemented through a process of negotiation that involves all politics concerned, federal systems enable us all to share in the overall system’s decisions making and exciting processes”.⁵⁷

On the other hand, in a more theoretical understanding of Co-operating federalism according to Geoffrey Sawer, “Unless the ‘co-operating’ governments have some bargaining capability, the expression ‘co-operation’ becomes a euphemism for domination by one party or the other usually under modern conditions, the Centre, owing to its advantages in prestige and economic strength”. He continued to say that occasionally circumstances may arise wherein the Centre

⁵⁵ Levi Clancy. n.49. 2.

⁵⁶ Clifford Less Staten. n.52.129.

⁵⁷ Clifford Less Staten. 130.

proposes some scheme and a Region cannot say 'no'. Therefore it has a decent arrangement of bargaining capability. For instance, in Australia, the Regions had no option but to agree the Centre enforced uniform income tax system in 1942,⁵⁸ because of the seizure of their tax departments under the hot water defense power and the implied threat to seize any fresh department which they might establish. Overall we can say that it is a nation-centred form.

The then President of United States Theodore Roosevelt was the first person to advocate "a cooperative, inter-governmental method to societal difficulties publicly and to discard the theory of dual federalism".⁵⁹ All Presidents before Roosevelt publically supported the theory of dual federalism. Thomas Jefferson had initially proposed such an idea concerning the desirability of the cooperation between the executive of the several states and that of the Union. Even James Madison and Alexander Hamilton argued in the *Federalist Papers No.17 and No.45* that it would be necessary at times for the federal government to use the service of the state official to implement its policies.⁶⁰ In additions to the United States, "Cooperatives federalism have been followed by countries like Australia, Canada, European Union, India etc."⁶¹

2.4.3. Organic Federalism

The word 'organic' federalism is not extensively used, like the word 'cooperative' federalism. The Australian Constitutional Scholar Geoffrey Sawer defined "organic federalism as the federalism wherein the Centre has such sweeping powers and provides such robust lead to Regions in the most perilous areas of their individual as well as their cooperative activities that the political

⁵⁸Clifford Less Staten. 122-23.

⁵⁹ Daniel J. Elazer. *The American Partnership*. (Chicago: University of Chicago Press, 1962) 13-18.

⁶⁰ Clifford Less Staten. n. 52. 138-39.

⁶¹C. K. Lanz. "What is Cooperative Federalism?"

<http://www.wisegEEK.org/what-is-cooperative-federalism.htm> accessed on: 16.05.2014.

taxonomist may vacillate to describe the result as federal only”.⁶² To this, Sweden Wilfried says in his words, “Organic federalism in the extreme equal almost complete federal-regional interdependence. Just as the different part of a body cannot function in isolation from each other, federal and regional entities that are embedded in an organic federal structure are mutually dependent”.⁶³ Austria falls into this category, as the Center dictates in each aspect of the policy, supervise the administration and also the regions have the frailest negotiating spots. Even India falls under this and to match this, a good illustration of the aims of such matter stood in the year 1962-63, when India declared emergency during the Nehru period.⁶⁴

2.4.4. New Federalism

New federalism is devolution or shift of particular power to the states (United States) from the federal government. In consequence to President Franklin Roosevelt’s New Deal, some power and autonomy were lost to the federal government and the main objective of the New Federalism was to reinstate those vanished power. It was developed in the elections of Ronald Reagan in 1980s.⁶⁵ In this category, additional power was provided to the state to equalize between the state and the national government. The Block Grants was a way of achieving this shift in balance.⁶⁶ The states were provided with Block Grants and fewer expenditure limits as well as additional possibilities in spending these grants.

⁶² Geoffrey Sawer. n.41. 125.

⁶³Sweden Wilfried. *Federalism and Regionalism in Western Europe: A Comparative and Thematic Analysis*. (New York: Palgrave Macmillan, 2006) 66.

⁶⁴ Geoffrey Sawer. n.41. 126.

⁶⁵Julia Levine and Trevi Yavore. “Types of Federalism”.
<http://apgovernmentchs.wikispaces.com/Types+of+Federalism> accessed on: 27.09.2015.

⁶⁶ Aziza Alam and Jon Qian. “Evolution of Federalism”.
<http://apgovernmentchs.wikispaces.com/Evolution+of+Federalism> accessed on: 27.09.2015.

2.4.5. Progressive Federalism

The Obama administrations employed a new form of federalism called Progressive federalism, which permits the states to take better control over the concerns usually earmarked for the national government. In other words, progressive federalism permits the state and the local officials the freedom to solve problems at the national level. For instance, we can see from here how California imposed stricter restrictions on greenhouse gas emissions as compared to those that were applied by the Environmental Protection Agency (EPA).⁶⁷

2.5. Symmetrical and Asymmetrical Elements of Federalism

In every multi-ethnic state, only some constituent units demand a certain amount of self- government. In almost all cases, some units of the federation demand a certain level of autonomy due to historical reasons, and others represent regional division with no ambition for self -government.⁶⁸ Canada and Spain have splendidly explained this. Quebec in Canada stands for the Francophone community and recognizes itself as a national community entitled to a definite degree of self- government, whereas the remaining nine provinces do not harbor nationalist desires and thus labelled as Anglophone Canada or rather disreputably, the Rest of Canada, merely signifying regional divisions. In Spain's Catalonia, the Basque Country and Navarre are national communities whereas the remaining 14 provinces mirror a regional division of a single nation.

Federalism, like discussed earlier, is not merely a single entity but numerous types and diverse functionalities, such as symmetric and asymmetric federalism, dual federalism, cooperative federalism etc. Symmetric federalism gives each constituent state to the federation equivalent powers. Whether the state shares a

⁶⁷ Aziza Alam and Jon Qian.

⁶⁸ Kymlicka, W., *Federalism, Nationalism and Multiculturalism* in Karmis, D. and Norman W., (eds.) "Theories of Federalism". (New York: Plagrave, Macmillan, 2005) 277.

symmetrical or asymmetrical relationship is a query of its contribution in the form of the social, cultural, economic and political features of a federal structure which it belongs. Also, we can see that in symmetrical federalism, all regions receive equal treatment. No constituent unit within the federation receives any extraordinary power grounded on a historical entitlement or the particular culture or a particular community.⁶⁹ However, on the contrary, possessing different powers by diverse constituent states of the union is allowed in the asymmetric federalism, bestowing special or higher self-governing powers on one or more of the constituent units. In an asymmetric arrangement, one or more of the states have substantially more autonomy than the others, despite having the same constitutional status.⁷⁰ Moreover, it is often seen that asymmetric federalism is proposed as an answer to the disappointments felt by one or two constituent units of considerably diverse requirements as compared to the rest because of ethnic, cultural or linguistic variations.

Charles D. Tarlton mentioned “Symmetrical federalism would be one composed of political units having a more or less equal size in territory and population, similar economic features, climatic conditions, cultural patterns, social groupings and political institutions. In this federalism, each state would maintain essentially the same relationship to the central authority”.⁷¹ Both the central government and state government gets almost the same amount of power. An ideal asymmetrical form of federalism should be comprised of political units consistent to variations of preferences, makeup and character that exists inside the entire society. In this system, the difference between states or system considered as a

⁶⁹Yonatan Fessha. “Federalism and the Challenges of Accommodating ethnic diversity”. Constitution Building Workshop in Sudan. AUW, Ahfad University for Women. 35. <http://ahfadgender.com/pdf/accommodating.pdf>. accessed on: 21.01.2019.

⁷⁰Nehginpao Kipgen. “The Quest for Federalism in Myanmar”. *Strategic Analysis*. Routledge Taylor & Francis Group, Vol. 42, No.6, 613. <https://www.tandfonline.com/doi/full/10.1080/09700161.2018.1557933> accessed on: 21.01.2019.

⁷¹Charles D. Tarlton. “Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation”. *The Journal of Politics* (1965) Vol.27, No.4. Cambridge University Press, 868-869 accessed on: 28.05.2014.

whole lies in each constituent having peculiar features or set of features that detached them in significant aspects, from the other.

This asymmetrical system of federalism, however, does not sit comfortably with politicians, scholars and especially amongst members of other ethnic groups that do not demand or appreciate such differential treatment. The differential treatment offered to Kashmir is, for example, resented in India. The same is right about “how the remaining of Canada feels towards Quebec. Generally, the idea of asymmetrical federalism is strongly resisted by most members of the dominant group. An example of asymmetrical federalism, though in an incomplete manner, is the Indian federalism, which provides special provision for Kashmir and Nagaland”.⁷²

The country which comes under the symmetrical form of a federal system is United States of America, Austria, Germany, Switzerland, Australia, Brazil and Argentina, where each unit has the similar constitutionally rooted duties and rights. Nevertheless, “in a democratic asymmetrical federal system, the constitution-makers, in order to ‘hold together’ the polity in one peaceful democracy, might provide constitutionally sanctioned special rights for distinct members of the federations”.⁷³ In Canada, Spain, India and Belgium it led to asymmetries among the units.

⁷²Yonatan Fessha. n.69. 36.

⁷³Alfred Stepan. “Multi-Nationalism, Democracy and ‘Asymmetrical Federalism’. (With Some Tentative Comparative Reflections on Burma)” 2.
www.burmalibrary.org/docs4/TAN-WPO2-02-AStepan-Multinationalism.pdf accessed on: 15.04.2015.

2.6. Ethnicity and Federalism

2.6.1. Ethnicity

Before going into the detailed discussion about ethnicity and federalism, let us first try to understand the concept and the meaning of ethnicity. The word 'ethnic' has a long story and has its word root in the Greek word 'ethnos' which means nation. The reference, however, "is not a political unity but to the unity of people of common blood or descent".⁷⁴ Ethnicity as a term has been substantially used in academic discourse, however, to fix the term and the definition into a viable one for a particular case study has been problematic. Ethnicity may be defined "as an organizing principle by a group of people in order to differentiate themselves from other groups in terms of race, kinship, language (or dialect), customary mode of livelihood, culture and religion".⁷⁵ An ethnic issue is always an emotional one, and it may take violent turns at any given time. Ethnicity also refers to "a common tradition, a system of shared values and culture by a group of people who identify themselves as a distinct identity different from other culture." Nearly to the concept of ethnicity originates the ethnic minorities who acknowledge themselves different as compared to the bigger societies by displaying some features already cited above. Therefore, "subject to discrimination and outright repression by the dominant group in their society, they may respond by seeking to blur distinctions between themselves demanding recognition and better tolerance for their group".⁷⁶ The significance of ethnicity varies and changes with time, reflecting the variations and changes in the broader society.

⁷⁴ Stephan Cornell and Douglas Hartmann. *Ethnicity and Race: Making Identities in a Changing Worlds*. (New Delhi: Pine Forge Press, 1998) 16.

⁷⁵ Susmita Priyadarshini. *Ethnicity, Ethnic Conflict and Conflict Resolution in North-East India* in Bimal J. Deb (eds.) "Ethnic Issues, Secularism and Conflict Resolution in North East India". (Shillong: North-East India Council for Social Science Research, 2006) 102.

⁷⁶ B. R. Rizvi. *Ethnicity and Ethnic Movements in North-East India*, in Bimal J. Deb (eds.) "Ethnic Issues, Secularism and Conflict Resolution in North East India". (Shillong: North-East India Council for Social Science Research, 2006) 17.

The term Ethnicity has been widely used only in the 1970s, where it plays an essential part in the sociological imagination, and in policy and political discourses. The question of 'ethnicity' has perhaps never been so crucial for the social scientist at the global level as it is today. Moreover, we can see that the 20th Century has come about as an ethnic century. The term 'ethnic groups', 'ethnicity' and 'ethnic conflict' have become current topics of interest because of the challenges they pose before the nation-state. The word "ethnic is currently being increasingly used to identify groups of people who have evolved from their primitive stages of tribe and clan identity into a more cohesive group looking for a coherent political identity".⁷⁷ There are lots of ethnic conflict in the world, and since the 20th century, it got enhance, such as Germany's Nazi regime, through the World War II, undertook the systematic annihilation of Europe's Jewish. In 1960, the African state of Nigeria gained independence from Great Britain; however, "struggle over the sharing of power among the ethnic group and regions exploded soon afterwards".⁷⁸ During the 1980s and 1990s in Sri Lanka, an ethnic conflict by a minority Tamils initiated a fierce insurgency movement countering the majority Sinhalese. The underlying ethnic divisions causing the disintegration of the Soviet Union in 1991 is another example. There are also ethnic problems in Canada, Ethiopia, and India.

Earlier ethnicity as a phenomenon was hidden or somewhat ignored. It was understood that "to acknowledge the notion of ethnicity, was to undermine the efforts towards attaining nationhood, co-operation and unity. For many, 'ethnicity' as a phenomenon represented conflict in some way".⁷⁹ Assimilation of minorities into a large integrated whole was viewed as inevitable for an integrated future. It was assumed that technological progress, the democratization of politics, expansion of education and communication media would eventually wipe out ethnic assertions

⁷⁷ Patricia Mukhim. *Negotiating Ethnic Identity in a Democracy*, in B. B. Kumar. "Problems of Ethnicity in the North-East India". (New Delhi: Astha Bharati 2007) 97.

⁷⁸ Stephan Cornell and Douglas Hartmann. n. 74. 1-3.

⁷⁹George L. Hicks, Philip E. Leis. *Ethnic Encounters: Identities and Context*. (Massachusetts: Duxbury Press,1977) 9.

within nations. In this context, traditional societies were perceived as essentially constricting and limited, whereas modern societies were perceived as much more able to cope with an incessantly broadening range of complications in their internal and external areas.⁸⁰ However, the persisting worldwide phenomenon of ethnicity suggests that this phenomenon is not confined to traditional societies nor developing nations alone, but it is part of the problem faced by all of humanity.

Ethnicity has also led to the re-examination of the view that “modernization would necessarily lead to a decrease in ethnic heterogeneity and increase in secularization. It is now broadly understood that ‘modernization’ by threatening cultural identities inspires ethnic resurgence and can spark ethnic movements”.⁸¹ Therefore, the process of ‘modernization’ and ‘development’ generally motivate and then combat ethnic consciousness. Ethnicity is established in all both developed and underdeveloped countries in societies with diverse dogmas, cultural and historical background. Thus ethnicity unites people, gives them inner coherence and endorses their sense of identity. It also fosters a sense of affiliation as part of an intermediate level of social relations between individual and society.

The negative facets of ethnicity are the creation of a challenging situation to social harmony in multi-ethnic societies as it represents a symbolic, apprehensive, and passionate aspect, which endorses violent conflict. The genocide in Somalia, Bosnia- Herzegovina, Kosova, Rwanda, and Croatia underlines an exclusive and horrible character of ethnicity. Thus ethnicity hurts the peace, harmony and integrations of the national society and also affected the political stability of the multiethnic societies around the world. Therefore, it resulted to the disintegration of the Czechoslovakia, Yugoslavia and Soviet Union, the disintegrations of Somalia state, and widespread political discords in countries such

⁸⁰Sreeja C.T. “Ethnicity in South Asia: A study of the Nepali-Bhutanese Refugees”. Ph. D Thesis, submitted at Department of Political Science. University of Hyderabad. 2.

⁸¹Sreeja C.T. 3.

as Lebanon, Palestine, Northern Island, Spain, Cameroon, Uganda, Congo, Sudan, India, Nigeria, Sri Lanka, Canada, Belgium etc.⁸²

J. Milton Yinger, mentioned that “Ethnic groups range in various usages, from small, relatively isolated, nearly primordial kin-and-culture groups within which much of life proceeds, all the way to large categories (not groups) of people defined as alike on the basis of one or two shared characteristics for instances, Latino Americans, Asian Americans, Blacks in South Africa, the Maghrebi Muslims in France”. He continued to say that, in general definition, an ethnic group is a segment of a larger society whose members are thought by them or others, to have common origins and to share important segments of a common culture and who in addition, participated in shared activities in which common origin and cultures are significant ingredients”.⁸³

According to Paul R. Brass, “there are three ways of defining ethnic groups- in terms of objective attributes, with reference to subjective feelings and in relation to behaviour. An objective definition assumes that though no specific attributes are invariably associated with all ethnic categories, there must be some distinguishing cultural features that separate one group of people from another, whether that features or feature be language, territory, religion, colour, diet, dress etc. The difficulty with subjective definitions is that they make it impossible to answer the basic question of how a group of people arrives at subjective self-consciousness in the first place. Moreover, the behavioral definition merely suggests that there are specific, concrete ways in which ethnic groups behave or do not behave, particularly in relations to and in interaction with other groups”.⁸⁴

⁸²Jasvir Singh. *Problem of Ethnicity: The United Nations and Kosovo Crisis*. (Punjab: UNISTAR Books Pvt. Ltd, 2008) 2-3.

⁸³J. Milton Yinger. *Ethnicity: Source of Strength? Source of conflict?* (New Delhi: Rawat Publications, 1997) 2.

⁸⁴Paul R. Brass. *Ethnicity and Nationalism: Theory and Comparison*. (New Delhi: Sage Publications, 1991)18.

Brass also uses the term ‘community’ for “ethnic groups whose member have developed an awareness of a common identity and have attempted to define the boundaries of the group”. Brass points out that when a community “mobilizes for political action and becomes politically significant, makes political demands and achieves a significant measure of success by its effort,” then exceeds into nationality or a nation from a community.⁸⁵

Francis also defines “an ethnic group in terms of common descent or race. It then lends itself to defining the category of individuals who identified as a group because of their characteristic behavior patterns”.⁸⁶ Language is another crucial element that maintains a distinct ethnic personality, and it is certainly true that language constitutes the single most characteristic features of a separate ethnic identity.⁸⁷

Bimal J. Dev in his article *Ethno-Nationalism and Self-Determination* says “the crystallization process of the ethnic community does not, however, take place at a rapid pace and at the same time no uniform patterns is visible either. The belongingness of ethnic nationalism elucidates the explosive power rooted in the myth of common descent and homeland”.⁸⁸ He also says that above all, religion and language contribute to a sense of solidarity and are regarded as the significant capital of an ethnic community.

In the contemporary time, ethnicity is also defined as a matter of claim based typically on culture. Whether or not such claims can be objectively defined is open to debate. The communal and personal dimension of ethnicity is stressed

⁸⁵ Paul R. Brass. *A Language, Religion and Politics in North India*. (Cambridge: Cambridge University Press, 1974) 8.

⁸⁶ E.K. Francis. *Comparative Ethnic Relations: A Framework for Theory and Research*. (Chicago: University of Chicago Press, 1970) 12.

⁸⁷ G. Devos and L. R. Ross (eds). *Cultural Continuities and Changes*. (C.A. Mayfield. Palo Alto, 1975) 15.

⁸⁸ Bimal J. Deb. *Ethno-Nationalism and Self-Determination*. in his (eds.) book “Ethnic Issues, Secularism and Conflict Resolution in North East India”. (Shillong: North-East India Council for Social Science Research, 2006) 2.

here. Ethnicity then, refers to distinct bond/ shared culture among individuals, causing them to consider their group as different from the others.

Horowitz, in his book, *Ethnic Groups in Conflict*, says, “Ethnicity is considered as an identity-seeking instrument by the peoples of multi-racial and multi-cultural societies. In this case, ethnicity is not always instrumentally oriented”.⁸⁹

Asghar Ali Engineer “concept of ethnicity was advanced as a generic term encompassing tension and struggle arising out of the cultural heterogeneity in a territorial state. In my sense, it was put forth as a replacement for the class to conceptualize social stratification in society”.⁹⁰ Anton said that “the cultural minorities are only too aware that failure to maintain them politically, economically and socially would lead to erosion of cultural identity; they seek opportunity structures to advance themselves and to present their cultural power which depends on political and economic power”.⁹¹

Ganguly points out, “Regarding regionalism and sub-nationalism which have become an irresistible force and also become vigorous enough to challenge the process of centralization and assert the right to autonomy if a thorough analysis of the different movements is made, it may perhaps be safely concluded that proper understanding of the psychology of the ethos and correct handling of the situation should have changed the picture, if not absolutely, at least to a great extent”.⁹²

⁸⁹ D.H. Horowitz. *Ethnic Groups in Conflict*. (Berkeley: University of California Press, 1998) 24.

⁹⁰ Asghar Ali Engineer. “Ethnic Conflict in South Asia” (Reviews) of State, Nation and Ethnicity in South Asia by Ishtiaq Ahmed. *Economic and Politically Weekly*, Vol. XXXIII, No. 33&34. 1997. 1.

⁹¹ Anton E. Alcock et al (eds.). *The Future of Cultural Minorities*. (London: Macmillan, 1979) 109-110.

⁹² Bangendu Ganguly. *Ethnopsychology: Significance in Federal Polity in Centre- State Relations in India*. (eds.) Bidyut Chakrabarty. (Delhi: Segment, Delhi, 1990)187.

2.6.2. Ethnicity and Federalism

There are as many as 3000 plus ethnic or tribal groups around the world who are conscious of their own identities. Moreover, out of that 180 politically “sovereign” states and “over 170 are multi-ethnic in composition.”⁹³ Approximately 50 per cent of those states is part of proper provisions employing federal doctrines in one way or another to fulfil demands for self-rule or shared rule inside their boundaries or incorporation with other polities. Countries like Italy, Belgium, and Spain have constitutionally federalized or recognized themselves. Portugal, like the Netherlands and Denmark, has transferred/delegated power to its island provinces. Already a federal system like that of Germany, Switzerland, and Austria are also experiencing a strengthening of their federalist dimensions somehow.

Africa and Asia have many new states, most of which confront the multi-ethnic issues. Only some have constitutionally guaranteed federal systems of government as in India, Nigeria, Pakistan, and Malaysia. Just like the twentieth century, the twenty-first century also seems possible to be a tormented with the conflict amid religious and linguistic communities. Though every idea of the unavoidable struggles between diverse communities is artificial, the opening of the new millennium with the attacks of the World Trade Center confirmed Samuel Huntington’s “Clash of Civilization”.

Khan in his book *Federal India: A design for change* stated that “Ethnic federalism” or “territorial reorganization” of states, based on “maximum homogeneity within and maximum identity without” along with the more significant quantum of autonomy for such states have come to be proposed as solutions.⁹⁴ This is conceived in the context of a broadly integrated and democratic

⁹³ Daniel J. Elazer. n. 20. xvi.

⁹⁴ Rasheeduddin Khan. n. 2. 34-35.

polity based on a just socio-economic order which should protect and promote both the rights of the individual as a citizen and of groups and communities.

Internationally, federal notion and federal systems are attaining growing significance in the phase and environments at four levels- in the United Nations system and its agencies; in world bodies including multinational interests and transactions; in regional groupings for economics, technological, scientific, political and cultural cohesion; and within the national management of large states marked by socio-cultural diversities. Federation in its present form is mostly a late eighteenth to mid-twentieth century phenomenon. Of the democratic politics, only Switzerland was federal, rather confederal before 1750, as already mentioned in the earlier paragraph. The USA emerged as the first new democratic federation in 1776. Between 1801-1850 four Latin American federations emerged- Argentina, Brazil, Mexico and Venezuela. During 1852-1900 Canada and two West European countries- Germany and Austria became federal. During 1901-1950 six federal states emerged- Australia, the Soviet Union and Yugoslavia in Eastern Europe; and India and Pakistan in South Asia, apart from China in East Asia, which is classified as quasi-federal. During 1951-70, five federations came into being- three in Africa, namely Nigeria, Cameroon and Tanzania, one in Central Europe, i.e., Czechoslovakia and one in Southeast Asia, i.e., Malaysia.

All the federal polities except for Switzerland have evolved in countries earmarked by three features, i.e., “the largeness of territory, socio-cultural diversities of the people and density of population”. Also, all countries excluding Switzerland have significantly merged in countries and territories that were once under the colonial- imperial dominance before their evolution as a sovereign federal state. “When we reminisce the history we can observe the dismantling of the centralized-authoritarian colonial rule over large contiguous multi-ethnic regions which resulted in the creation of many small states, and it took the form of new federal states in conditions of freedom, reconciling a new sovereign identity with regional and local autonomy. With this, we can also observe the upsurge of many

new small states with different Multi-ethnic countries with the federal democratic states. Federal states, in most cases, evolved as new independent political formations in the wake of ending of western colonial- imperial systems”.⁹⁵

There are two types of federations in the world: some of them are based on ethnic principles (India, Nigeria, Ethiopia, the erstwhile Soviet Union and Czechoslovakia, etc.) while some others (the USA, Germany, Brazil, Mexico, etc.) are not. Some non-federations (Spain, China, etc.) have a distinct autonomous region. Each federal state has peculiarities of its own, firm by the degree of heterogeneity or homogeneity of their ethno linguistic structure, and they have diverse political, the social and economic system but the common features of all federations is the division of plenary powers between the central bodies and subjects of a federation.

Federalism currently emerges as “the essential principles for organizing heterogeneous societies into a sustainable pattern of political sharing of power, by reconciling the twin processes of political unification and social diversity of commonality for certain purposes and specificities for others”. Federalism is a political system of unity in diversity, wherein both “the values of unity and diversity are equally legitimized”, valued and connected in an encompassing political system. Absence of centre/union/general authority implies no federation. Likewise, absence of state/ regions/provinces/ federating units/cantons, implies no federation.

When we look at ethnicity, ethnic attachments and cleavages covered racial, tribal, national, linguistic, caste and religious and operated more or less, independently of levels of economic development or exploitation, discriminations etc. Most geographically discrete ethnic groups would try to establish their political homelands. This led to a few scholars of pluralism concluding that let alone

⁹⁵Rasheeduddin Khan. *Rethinking Indian Federalism*. (Shimla: Inter-University Centre for humanities and Social Sciences and Indian Institute of Advanced Study Rashtrapati Nivas, 1997) 6-7.

federalism, even democracy (free and open competition for the people's vote) is just not feasible in an environment of extreme ethnic preferences, or severe ethnic conflicts were hard to resolve within purely democratic bound. Contrary to this, a study shows that a way to avoid conflict in ethnicity heterogeneous societies lies in the establishment of political institutions for power-sharing by and among all ethnic groups. Taking the cue from India about "Ethnic Homogeneity", "Democratization" and "Power Resources", Vanhanen considered federalism as one important institutional arrangement adopted to ethnic behavioral pre-dispositions".⁹⁶ Therefore adjustment of state boundaries to major ethnic boundaries, creation of more units and extension of their autonomy constitute a viable solution.

Cynthia Enloe pointed to the interrelation between two critical factors, one, "the level of demand for state mobilization capacity" and two "level of political development of the relevant ethnic groups". She observed that both factors are at relatively high levels in third world countries. Therefore federal solutions became more attractive to the third world elites, and it also became a tactic that may "quarantine issues without resolving them".⁹⁷

A stable democracy requires that groups and individuals continue to have both the freedom and the capacity for a variety of cross-cutting politically relevant affiliations as also diverse levels of political cooperation among segmental elites. Stanovcic observed, "Although it brings a dispersion of power, ethnic federalism does not necessarily promote democratization", may not be lightly dismissed. As federal dispersal of power is mainly extendable to territorially centred and demarcated ethnic/cultural identities. Whereas ethnic, cultural or regional mobilization is partly a reactive mechanism against the majoritarian impulses in the

⁹⁶Harish K. Puri. *Federalism in Multi-Cultural Societies: Issues for consideration* in Rasheeduddin Khan. "Rethinking Indian Federalism". (Shimla: Inter-University Centre for humanities and Social Sciences and Indian Institute of Advanced Study Rashtrapati Nivas, 1997) 43-44.

⁹⁷ H. Cynthia Enloe. "Internal colonialism, Federalism and Alternative State Development Strategies". *Publius* (1977) VII: 4 (fall) 154.

polity, similar majority principles come, no too often, to be vigorously stressed at the level of federal units.⁹⁸ For instances, in Assam (one of the states in Northeastern parts of India) a sort of ethnic engineering observable in the violent liquidation/removal of non-Bodo groups from a recently demarcated Bodo Autonomous Area is one of the extreme manifestations of the impulse for constituting the majority.

Ethnic heterogeneity is a persistent characteristic of the current world. The difficult it stances, particularly in extremely fractionated or plural societies is one of reuniting ethnic diversity with encompassing allegiance to the state. A plural society is thus one in which politics is ethicized, in which political competition is openly drawn along ethnic lines. Examples of such societies are Belgium, Ceylon, India, Lebanon, The Netherlands, Nigeria and Yugoslavia etc.⁹⁹ Canada provides a notable example of political integration and ethnic accommodation through the federal mechanism. Canada is the first country which combined federalism with the Westminster Parliamentary traditions. Having been designated as a federation possessing central institutions strong enough to overcome significant geographical and cultural cleavages, Canadian federalism for over a century has proved remarkably effective and flexible through many changes and conditions.

It is well known that most of the newly independent African states were undemocratic and ethnocratic, and they are controlled by one or several ethnic groups, which denied equality to the rest of the population. This generated political mobilization of ethnic communities, ethnic tension and conflicts. The ethnic communities' demand for equality and an equitable share of participation in exercising power is a quest for democracy. Federalism "not only provides the institutional framework for distributing and sharing political power but permits and regulates the participation of ethnic communities in the decision- making the

⁹⁸Harish K. Puri. n. 96. 51-53.

⁹⁹ L. Adele Jinadu. "Federalism, the Consociational State, and Ethnic Conflict in Nigeria". *Publius* (1985) Vol. 15, No. 2, Federalism and Consociationalism: A Symposium, Oxford University Press. Spring. 1985. 72.

process as well.”¹⁰⁰ Federalisms means “more comprehensive power of the subjects of a federation and civil equality of all ethnic groups irrespective of their numerical strength and development level”. The continuing ethnic tension and conflicts in many parts of the world and aggressive nationalism are the reasons why the theoretical and poetical interest in the self-determination of people, forms of organization and different version of federalism, including cultural ones has strengthened so much in the recent years.

Ethnicity is observed in Ethiopia in various sphere of life, such as the functioning of the government bodies, army, the activity of parties, social and economic relations, culture, etc. To most of the Ethiopian, their ethnic belonging is much more important than their Ethiopian identity. However, ethnicity and ethnic feelings are used by politicians to numerous ends such as unequal access to government structures, social differentiation along ethnic lines, cultural and legal discrimination, persisting prejudices and ethnic hierarchy which results in ethnic tension; simultaneously, they are the essential conditions for the ethnic mobilization.¹⁰¹

One of the most critical aspects of federalism is that it must conform with strong local self-government as it is directly related to the interethnic relation. It is a well-established fact that most of the conflicts arise at this level owing to unresolved problems and/or abuse of the minorities’ rights. A vital mechanism of resolving ethnic problems in multiethnic societies is exterritorial ethnic and cultural autonomy as it aimed is to preserve their ethnic identities and also develop their traditions, language and culture and resolve ethnic problems at the local level which is more effective. However, ethnic and cultural autonomy should not only ensure

¹⁰⁰RozaIsmagilova. “Ethnicity and Federalism: the case of Ethiopia, Africa: Rivistatrimestrale di studi e documentazionedell’Istitutoitaliano per l’Africa e l’Oriente”. Anno 59, No.2 Giugno 2004, 179-180.

<https://www.jstor.org/stable/pdf/40761737.pdf?refreqid=excelsior%3A1f2ac3c99610eb37cab4912aae60a580> accessed on: 15.09.2012.

¹⁰¹RozaIsmagilova.183.

the preservation of the ethnic culture but facilitate the equitable representation of the ethnoses in government bodies and administration.

Multiethnic federalism has weakened the motivation for separation by mainly eradicating the manifest forms of ethnic oppression. Grounded in shared reverence and exchange, the multiethnic federation has the potential to augment about the interethnic harmony. Thus the main ethnic groups are required to develop a shared space as well as endorse pluralist strategies and traditions concerning all ethnic groups in the world.

CHAPTER III

CONSTITUENT ASSEMBLY DEBATES 1946-1950: AN EVALUATION

This chapter is focused on the Constituent Assembly Debates 1946-1950 (Volume I-XII) where I will be looking at the discussions on the cultural and minority rights and the special provisions for the North East Frontiers Agency: Scheduled Tribes Areas and Tribal Autonomous Council.

The Indian Constitution was framed from December 1946 to November 1949 in three years; this perhaps was the most significant achievements of India after attaining Independence. Framing of the constitution was a remarkable and challenging task considering the size, diversity and complex problem of India. However, with all those trials and tribulations, the Constituent Assembly members finally gave shape to the multi-tasking work during that critical period. Further discussion in the Constituent Assembly shows that most of its members were overwhelmed that they were writing the constitution of free India.¹⁰²

3.1. Constituent Assembly Debates (CAD)

It took two years, eleven months and seventeen days for the Constitution Assembly Debates to draft the Constitution for independent India. Altogether, eleven sessions were conducted spanning over 165 days, out of which, consideration of the Draft Constitution itself took 114 days.¹⁰³ It was indeed a mammoth task to have written the Constitution, given the milieu of the partition of the country, the persistent communal turmoil and also to integrate those 565 odd princely states with

¹⁰² Rajeev Bhargave (eds.). *Politics and Ethics of the Indian Constitution*. (New Delhi: Oxford University Press, 2008) 146.

¹⁰³ Constituent Assembly Membership.

https://rajyasabha.nic.in/rsnew/constituent_assembly/constituent_assembly_mem.asp accessed on: 15.11.2015

the erstwhile British province as one functioning unit. The Constituent Assembly was assigned such a task as to draft a constitution that would give a framework for an institutional structure and a democratic government competent enough to sustain and quicken social change and political stability. It was to provide the instrument of stimulating increased participation for securing the higher levels of institutionalization necessary to accommodate expanding demands.¹⁰⁴

Since the Muslim League boycotted the convention of the Constituent Assembly on 9th December 1946, the Assembly could not take up the sensitive issue of federalism or go into the details concerning the form or type of the constitution.¹⁰⁵ The Constituent Assembly elected its permanent chairman as Rajendra Prasad¹⁰⁶, the then member of the interim government on 11th December 1946 and in his speech says, “We should frame a Constitution which will ensure all men and women of this country, no matter of what religion, province or shade of opinion, that their right is fully protected”.¹⁰⁷ He also found the Constituent Assembly wanting of the Muslim League and said, “Our brethren of the Muslim League is not with us, and their absence increases our responsibility”.¹⁰⁸ Nehru while laying down the ‘Aims and Objective’ Resolution, was troubled by the non-attendance of the Muslim League and the Indian States’ representatives and most of all, Mahatma Gandhi’s, who was away on his walk for communal amity in Bengal.¹⁰⁹

¹⁰⁴Robert L. Hardgrave, Jr. *India: Government and Politics in a Developing Nations*. (New York: Harcourt Brace Jovanovich Inc. 1970) 45.

¹⁰⁵ Aditya Nigam. *A Text Without Author: Locating the Constituent Assembly as Event*, in Rajeev Bhargava, “Politics and Ethics of the Indian Constitution”. (New Delhi: Oxford University Press, 2008)121.

¹⁰⁶Rajendra Prasad. General category (Community under the terms of the Cabinet Mission Plan). Hindu (Kayastha) Congress, elected from Bihar.

¹⁰⁷*Constitutional Assembly Debates*. Official Report. Sixth Reprint. (New Delhi: Lok Sabha Secretariat, 2014)Vol.1. 11th December 1946. 37-38.

https://eparlib.nic.in/bitstream/123456789/762978/1/cad_09-12-1946.pdf accessed on: 23.06.2016

¹⁰⁸Aditya Nigam, n.105. 122.

¹⁰⁹Aditya Nigam 122.

The Constituent Assembly Debate was held for three years, i.e. from 9th December 1946 - 26th November 1949. The Assembly's deliberations can be divided into two main phases: the report stage, from December 1946 till August 1947, when committees were constituted that prepared reports on constitutional provisions and the draft stage, from November 1948 till December 1949, which comprised detailed readings of the Draft Constitution.

3.1.1. Objective Resolution

Jawahar Lal Nehru laid down the Objective Resolution on 13th December¹¹⁰. It was otherwise called as the “terms of reference of the Constitution of India”, the basic aspirations of which is expressed in the Preamble today. Purushottam Das Tandon seconded it¹¹¹. Nehru further added that the Objective Resolution should grant and secure to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and also mentioned that adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.¹¹²

However, on 16th December 1946, M. R. Jayakar¹¹³, the first speaker on the Objective Resolution, motioned an amendment pursuing an adjournment of the deliberation of the Objective Resolution because of the absence of two other parties

¹¹⁰Jawahar Lal Nehru. General category (Community under the terms of the Cabinet Mission Plan). Hindu (Brahmin), Congress and elected from United Provinces.

¹¹¹Purushottam Das Tandon, General category (Community under the terms of the Cabinet Mission Plan), Hindu (Kayastha), Congress, United Provinces.

¹¹²*Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.5.10).13th December 1946. <https://cadindia.clpr.org.in/constitution-assembly-debates/volume/1/1946-12-13> accessed on: 01.03.2018

¹¹³ M .R. Jayakar. General category (Community under the terms of the Cabinet Mission Plan). Hindu (non- Brahmin), Congress, Bombay.

- Muslim League and the Indian States without which, no agreement would be fair.¹¹⁴

During the discussion of the Objective Resolution and its amendments in the House, Krishna Sinha¹¹⁵ stated the necessity of setting an example by having a state in India, which will be a state for the whole of India while providing safeguards for every cultural minority. This, according to him, reflects the Resolution, which will further make provision for the fundamental rights of the individual and groups living in this country, and also for safeguarding the fundamental rights of the minorities.¹¹⁶

M. R. Masani¹¹⁷ stated that in order for India to become one corporate nation, a homogenous nation, both minorities and big masses should make an effort to get closer. He stated that both the minorities and the majority should continue their progress together to grow into a nation but believed that the formation of a nation cannot allow the existences of continuous or perpetual minorities. Hence, he said, while accepting the Clause in this Resolution which assures the minorities with proper safeguards, yet in due course, no legal safeguards could safeguard the small minorities from being prodigiously controlled by big masses.¹¹⁸

On 13th December 1946, while delivering his first speech on Objectives Resolution, used the expression ‘other backward classes’. He then pronounced to take exceptional methods favoring the ‘minorities, backward and tribal areas and

¹¹⁴Shibanikinkar Chaube. *Constituent Assembly of India: Springboard of Revolution*”. (New Delhi: Manohar, 2000) 61.

¹¹⁵ Krishna Sinha. General category (Community under the terms of the Cabinet Mission Plan). Hindu (Brahmin), Congress and elected from Bihar.

¹¹⁶*Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.6.113). 16th December 1946. [https://cadindia.clpr.org.in/constitution assembly debates/volume/1/1946-12-16](https://cadindia.clpr.org.in/constitution%20assembly%20debates/volume/1/1946-12-16) accessed on: 01.03.2018.

¹¹⁷ M. R. Masani. General category (Community under the terms of the Cabinet Mission Plan). Parsi community, Congress and elected from Bombay.

¹¹⁸ *Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.7.4). 17th December, 1946. [https://cadindia.clpr.org.in/constitution assembly debates/volume/1/1946-12-17](https://cadindia.clpr.org.in/constitution%20assembly%20debates/volume/1/1946-12-17) accessed on: 01.03.2018.

depressed and other backward classes'.¹¹⁹ He also stated that in Independent India, all would be provided with equal opportunities and the backward groups must also be provided with special opportunities for their economic, educational, and cultural progress to enable them to catch up with those who progressed already.¹²⁰ This statement gave significant implication in the debates that created provisions for the upliftment of the backward class.

Biswanath Das¹²¹ also supported the Resolution and at the same time argued how the British Parliament could say “this great Assembly is a Caste Hindu institution?” He contended that it is most unfair and unfortunate to call it a caste Hindu institution. The Assembly comprised of the representatives of the Hindu minorities in Muslim majority provinces, Scheduled Caste, Christian, Sikhs, Parses, Anglo-Indians and of the Tribal and partially-excluded areas and also the representatives of the great Muslim community excluding the leaders of the Muslim League and not only the representatives of the Hindu majority provinces. He further demanded of a country that does not have any minorities as England herself has her minorities such as Welsh and Scots etc. Even the United States of America and U.S.S.R have gotten racial and linguistic minorities. Therefore, he opined that under this circumstance, it is biased of the conservative leaders in England spread propaganda against India and the Constituent Assembly.¹²²

¹¹⁹ Christophe Jaffrelot. *Containing the Lower Castes: The Constituent Assembly and the Reservation Policy* in Rajeev Bhargava. “Politics and Ethics of the Indian Constitution”. (New Delhi: Oxford University Press, 2008) 255.

¹²⁰ Beteille Andre. *Equality and Inequality Theory and Practice*. (New Delhi: Oxford University Press, 1983) 45.

¹²¹ Biswanath Das. General category (Community under the terms of the Cabinet Mission Plan). Hindu (non-Brahmin), Congress and elected from Orissa.

¹²² *Constitutional Assembly of India Debates (Proceedings) - Vol.1*. (1.8.34). 18th December 1946. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/1/1946-12-18 accessed on: 01.03.2018.

Somnath Lahiri¹²³ made his argument as cited in Paragraph 4, 5 and 6 of the Original Resolution saying adequate safeguards would be provided, but challenged the adequacy of the safeguards as to who or when was it getting determined.¹²⁴

Jaipal Singh¹²⁵ supported the Resolution on behalf of the Adivasis and said that the Resolution is not going to teach the Adivasis and the Tribal people about democracy. Instead, he believed that we should rather learn from these people as the highest form of democracy already existed among them. He also voiced the desires of the tribals for equal treatment like any other Indian, i.e. with equality and equal recognition and that they never asked for any special protection.¹²⁶

Vijayalakshmi Pandit¹²⁷ while supporting the Resolution, also reminded of the larger picture in which the minorities also belong to this whole; so the very essence of safeguarding the interest of any minority would be nullified/futile if the larger interest gets sacrificed in the process¹²⁸ She stated that the fear of the minorities is not justified as the Resolution before the Assembly stressed absolute freedom for the individuals and conceded assurance to every legitimate group.

S. Nagappa¹²⁹ also supported the Resolution and said equal opportunity should not remain in the statute book alone but must be implemented saying, “We

¹²³Somnath Lahiri. General category (Community under the terms of the Cabinet Mission Plan). Hindu (Brahmin), Communist and elected from West Bengal.

¹²⁴*Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.9.35). 19th December, 1946. <https://cadindia.clpr.org.in/constitution-assembly-debates/volume/1/1946-12-19> accessed on: 01.03.2018.

¹²⁵Jaipal Singh. General category (Community under the terms of the Cabinet Mission Plan). Adibasi, Independent and elected from Bihar.

¹²⁶*Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.9.66). 19th December, 1946. <https://cadindia.clpr.org.in/constitution-assembly-debates/volume/1/1946-12-19> accessed on: 01.03.2018.

¹²⁷Vijayalakshmi Pandit. General category (Community under the terms of the Cabinet Mission Plan). Hindu (Brahmin, Congress and elected from United Provinces.

¹²⁸*Constitutional Assembly of India Debates (Proceedings) - Vol.1I.* (2.12.12). 20th January, 1947. <https://cadindia.clpr.org.in/constitution-assembly-debates/volume/2/1947-01-20> accessed on: 01.03.2018.

¹²⁹S. Nagappa. General category (Community under the terms of the Cabinet Mission Plan). Hindu (Scheduled Caste), Congress and elected from Madras.

do not claim that we are a religious minority or racial minority rather a political minority”. He thought the Resolution would give us scope, an opportunity and a chance to be treated as equal and provide equal opportunity in the administration of the country. However, regarding the safeguarding of the rights, he opined that the minorities did not deserve those special opportunities and thought it to be unfair. He was against granting them as it will only encourage them to ask for more.¹³⁰

R.V. Dhulekar¹³¹ supported the Resolution and opined that safeguards could not remove the existing disparities and divisions. He instead appealed to the people to be strong and give joint efforts towards removing the inequalities such that all may enjoy equal rights.¹³² S. H. Parter¹³³ also agreed and said that the Resolution advocates fundamental rights for every citizen and also the fullest protection of the minorities in the country. He pointed that safeguarding the minorities becomes vital in the framing of the whole Constitution as the unity that was aimed could be accomplished only by giving the fullest protection for economic, social, cultural and religious needs of the minorities in the province”.¹³⁴

However, Ambedkar¹³⁵ finds the Resolution suffering from certain other lacunae. He says that “though the Resolution expressed certain rights, yet it does not speak of remedies”. He continued to say that awareness of their rights alone is not adequate unless provided with remedies which allow the people to seek, to

¹³⁰ *Constitutional Assembly of India Debates (Proceedings) - Vol.1I.* (2.12.15). 20th January, 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/2/1947-01-20 accessed on: 01.03.2018.

¹³¹ R.V. Dhulekar. General category (Community under the terms of the Cabinet Mission Plan). Hindu (Brahmin), Congress and elected from United Provinces.

¹³² *Constitutional Assembly of India Debates (Proceedings) - Vol.1I.* (2.13.63). 21st January 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/2/1947-01-21 accessed on: 01.03.2018.

¹³³ S. H. Parter. General category (Community under the terms of the Cabinet Mission Plan). Hindu, Congress and elected from Madras.

¹³⁴ *Constitutional Assembly of India Debates (Proceedings) - Vol.1I.* (2.13.87). 21st January 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/2/1947-01-21 accessed on: 01.03.2018.

¹³⁵ B.R. Ambedkar. General category (Community under the terms of the Cabinet Mission Plan) Hindu (Scheduled Caste), Scheduled Caste Fed. /Congress and elected from West Bengal and Bombay.

obtain and redress when there is an invasion on their rights. Even the traditional principle like “no man’s life, liberty and property shall be taken without the due process of law, finds no place in the Resolution”.¹³⁶

After the House deliberating the Objective Resolution for six weeks, Nehru says, “It appeared now that there is no one now in the house who does not accept fully to this Resolution or some would like it to be slightly different worded, or the emphasis placed more on this part or that part but overall this is a Resolution which has already received the full assent of this house and there is little doubt that it has received the full assent of the country”.¹³⁷ Thus, the Resolution finally got adopted on 22nd January 1947 with a standing ovation from the entire members of the Constituent Assembly.

3.2. Cultural Rights

The question of minorities has dominated Indian politics for over a century, but India is not alone here, countries across the world currently debate minority rights. In each country, ways of accommodation of minorities’ interest and rights are shaped by histories of nation-building. In India, the forms in which the question of minorities has recurred in public debate have tended to follow lines that crystallised at a key historical moment, the making of the Indian Constitution. Quotas and other forms of special representation in legislatures and public services, known at the time as political safeguards, had been the chief elements in the colonial regime of minority rights. During the Constituent Assembly debates,

¹³⁶*Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.7.26) .17th December 1946. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/1/1946-12-17 accessed on: 01.03.2018.

¹³⁷*Constitutional Assembly of India Debates (Proceedings) - Vol.1I.* (2.14.24). 22nd January 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/2/1947-01-22 accessed on: 01.03.2018.

several representatives had petitioned for quotas for Scheduled Castes and Tribes because these were communities distinct from the majority of populations.¹³⁸

In order to adequately protect the minority rights, Syama Prasad Mookherjee¹³⁹ was of the view that all other minorities such as Sikhs, Anglo-Indians, Indian Christians, the Parsees, the Tribal Areas, the Adibasis etc., even Hindus who constitute a minority in at least four provinces in India must be equally affected, which may result in variation from province to province.¹⁴⁰

J. J. M. Nichols Roy¹⁴¹ says, “The framing of the constitution will do justice to all minorities and shall not overlook any community”.¹⁴² Pandit Kunzru¹⁴³ went a step ahead when he suggested about making a decision with the primary objective of empowering India to gain her independence and safeguarding the basic rights of the minorities and backward classes. Such reasoning would be a wise step as it would make each stratum of the people of India understand that they do not want to enforce on their willpower or any party or community.¹⁴⁴

¹³⁸Rochana Bajpai. *Cultural Rights of Minorities During Constitution-Making: A Re-reading* in Gurpreet Mahajan and Surinder S. Jodhka (eds). “Religion, Community and Development, Changing Contours of politics and Policy in India”. (New Delhi: Routledge Tylor and Francis Group, London, 2010) 282.

¹³⁹Syama Prasad Mookherjee. General category (Community under the terms of the Cabinet Mission Plan), Hindu (Brahmin), Congress and elected from West Bengal.

¹⁴⁰*Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.7.23). 17th December 1946. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/1/1946-12-17 accessed on: 01.03.2018.

¹⁴¹J. J. M. Nichols Roy. General category (Community under the terms of the Cabinet Mission Plan), Congress and elected from Assam.

¹⁴²*Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.8.19). 18th December 1946 https://cadindia.clpr.org.in/constitution_assembly_debates/volume/1/1946-12-18 accessed on: 01.03.2018.

¹⁴³Hriday Nath Kunzru. General category (Community under the terms of the Cabinet Mission Plan), Hindu (Brahmin), Congress and elected from `United Provinces.

¹⁴⁴*Constitutional Assembly of India Debates (Proceedings) - Vol.1.* (1.8.35).18th December 1946 https://cadindia.clpr.org.in/constitution_assembly_debates/volume/1/1946-12-18 accessed on: 01.03.2018

N.G. Ranga¹⁴⁵ while framing the Constitution suggested, a charter of fundamental rights alone would not suffice. He also indicated how the Government of several other countries neglected the fundamental rights though instituted. In order to obviate this, he, therefore, suggested to lay down certain provisions in the Constitution itself, enabling the people to make the state and government enforce these fundamental rights by invoking the aid of the law.¹⁴⁶ During the making of the Constitution, as well as subsequently in post-Independence India, quotas and other forms of representation in the legislature and public services, known at the time as political safeguards, had been the main element of the minority rights in the colonial regime of minority rights. Religious minorities particularly Muslims had been the main beneficiaries of political safeguards and were included in such provisions in initial constitutional proposal however political safeguards for religious minorities were dropped and were made restricted primarily to the Scheduled Castes and Scheduled Tribes during the final draft of the Constitution.¹⁴⁷ The backwardness of a community has become the sole focus of quota claim. For example, the Madras administration was the first to use the words ‘backward classes’ in the 1870s in support of a positive action policy favoring the under-educated groups.¹⁴⁸

While granting exceptional provisions towards the benefit of Scheduled Castes and Backward Tribes K. T. Shah¹⁴⁹ stated, “In regard to Scheduled Castes and backward tribes, it is an open secret that they have neglected in the past. Their capacity to be equal citizens was denied because of their backwardness. They must be given, for some time to come, at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where

¹⁴⁵ N.G. Ranga. General category (Community under the terms of the Cabinet Mission Plan), Hindu (non-Brahmin), Congress and elected from Madras.

¹⁴⁶ *Constitutional Assembly of India Debates (Proceedings) - Vol.1I.* (2.12.13) 20th January, 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/2/1947-01-20 accessed on: 01.03.2018.

¹⁴⁷ Rochana Bajpai. n. 138. 282-283.

¹⁴⁸ Christophe Jaffrelot. n.119. 249.

¹⁴⁹ K.T. Shah. General category (Community under the terms of the Cabinet Mission Plan), Hindu (Vaishya), Congress an. elected from Bihar.

their present backwardness is a hindrance to the rapid development of the country”.¹⁵⁰ Shah argued that in order to secure representations of the backward section to legislative bodies, it should be made according to the proportion of their population. He also pointed out the fact that millions of other Backward Class populaces also require the provision for basic education as they also lag in the society apart from the Scheduled Caste or Scheduled Tribe. He, for that reason, asked for equal representation of the members of not just the Scheduled Caste and Scheduled Tribe but also the other backward classes in public support as well.¹⁵¹

P.S. Deshmukh¹⁵² suggested for equal representation from all castes receiving reservations. He stated, “all that I want is that Parliament and the Legislature should be free to see that there is a fair proportion of representation from all classes and the communities in India....Unless every community, especially the larger and more popular communities advance equally and the advance communities afford them opportunities for development, the advancement of India will be impossible. All that I demand is fairness and justice for the millions of people who are not in a position to come forward and compete”. He implored for just allocation of SC, ST and other backward classes in public services.¹⁵³ Nagappa advocated that he ‘would prefer, in order to be just and equitable, that the reservations should be on population bases’.¹⁵⁴

¹⁵⁰*Constitutional Assembly of India Debates (Proceedings) - Vol.VII. (7.62.87-91)* 29th November 1948.

https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-29 accessed on: 01.03.2018.

¹⁵¹*Constitutional Assembly of India Debates (Proceedings) - Vol.VII. (7.79.34)* 4th January 1949. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1949-01-04 accessed on: 01.03.2018.

¹⁵²P.S. Deshmukh. General category (Community under the terms of the Cabinet Mission Plan), Hindu (Maharatta), Congress and elected from Central Province and Berar.

¹⁵³*Constitutional Assembly of India Debates (Proceedings) - Vol. IX. (9.122.30)*. 23rd August, 1949. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-08-23 accessed on: 01.03.2018.

¹⁵⁴ *Constitutional Assembly of India Debates (Proceedings) - Vol. IX. (9.122.128)*. 23rd August, 1949. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-08-23 accessed on: 01.03.2018.

D. H. Chandrasekharaiya made out a well-argued case in favor of adopting some form of Proportional Representation system, which he said was scientific and elastic enough to give representation to majorities and minorities exactly in proportion to their voting strength. Z. H. Lari also forcefully advocated on the adoption of the proportionate representation system. He gave instances of its successful experiment in Ireland, Switzerland and Belgium.¹⁵⁵

Mahavir Tyagi¹⁵⁶ reminded the house by saying that Gandhiji endorsed general electorates for the Harijans rather than creating isolated electorates so that SC be provided appropriate representation. To him, Gandhiji observed that the SC is inseparable from the Hindus and Dr. Ambedkar was given a Communal Award which successively offered more seats to SC as compared to the allocation in the Round Table Conference.¹⁵⁷

Monomohan Das¹⁵⁸ said that during Government of India Act in 1935 the Scheduled Caste was already granted with reservation and that the benefit of this special reservation commenced in 1937 when the Act came into action. Regrettably, the Scheduled Caste could enjoy the benefits only for two years till 1939 as the Constitution got suspended till 1946. He stated that “it is fair and generous on the part of this House to have given the SC a longer-term with regard to these reservations”. The chairman of the drafting committee of the constitution, Ambedkar had a bigger vision and insisted on a provision which also included those communities who have been excluded from the administration thus far. The drafting committee was compelled to generate a regulation that could settle the difference of opinions and thereby provide an equal opportunity and reservations

¹⁵⁵ Iqbal A. Ansari. *Minorities and the Politics of Constitution Making in India*, in D.L. Sheth and Gurpreet Mahajan, “Minority Identities and the Nation-State”. (New Delhi: Oxford University Press, 1999)122.

¹⁵⁶ Mahavir Tyagi. General (Community under the terms of the Cabinet Mission Plan), Hindu (Taga Brahmin), Congress and elected from United Province.

¹⁵⁷ *Constitutional Assembly of India Debates (Proceedings) - Vol. IX. (9.123.199)*. 24th August 1949. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-08-24 accessed on: 01.03.2018.

¹⁵⁸ Monomohan Das. General (Community under the terms of the Cabinet Mission Plan), Hindu (Scheduled Caste), Congress and elected from West Bengal.

favoring those communities which had been ignored so far, allowing them to have a voice in the administration.

He also stressed on the safeguard of a couple of things, i.e. the ideologies of equality of opportunity and simultaneously met the communities' demand, which had not been represented in the State so far. As a result, in order to fulfil the second demand besides reconciling with the first, the word 'backward' was proposed by the Drafting Committee.¹⁵⁹

Ambedkar, who was one of the Sub-Committee members of the Fundamental Rights, suggested that one of the measures to be taken in favor of the backward groups should be in the form of job quotas, the government should prescribe 'certain proportion of posts of public service for the minorities whoever they may be'. The Sub-Committee's discussions led its members to define these minorities as "any backward class of citizens which, in the opinion of the state, in not adequately represented in the service of the state".¹⁶⁰ During the Constituent Assembly debates, several representatives had petitioned for quotas for Scheduled Caste and Tribes because these were communities distinct from the majority populations. However, the reservation policy in favor of the Scheduled Caste which resulted from the Constituent Assembly Debates did not enable them to send their representatives to Parliament, as the assembly largely failed to define the 'other backward classes'.¹⁶¹ We can see the notion of 'Backward Classes' remained vague. This worried some of the Constituent Assembly members, especially those from north; however, the drafting committee refused to be more specific. One of its senior members, K. M. Munshi, responded quite aggressively that, "It is perfectly clear that the word 'backward' signifies that class of people does not matter whether you call them untouchables or touchable, belonging to this communities or that- a

¹⁵⁹ *Constitutional Assembly of India Debates (Proceedings) - Vol. VII.* (7.63.205) 30th November 1948.

https://cadindia.clpr.org.in/constitution_debates/volume/7/1948-11-30 accessed on: 01.03.2018.

¹⁶⁰ Christophe Jaffrelot. n.119. 255.

¹⁶¹ Christophe Jaffrelot. 250.

class of people who are so backward that special protection is required in the service and I see no reason why any member should be apprehensive of regard to the word backward".¹⁶²

While there was only a handful of OBC, lower caste members were hardly represented the Constituent Assembly. The main advocate of the low castes was Punjabtao Deshmukh, who did not even belong to this category introduced an amendment according to which all the "class and communities" of India would be represented within the administration on a population basis. He also wanted the OBCs to be mentioned along with the Scheduled Caste and Scheduled Tribes. On the other hand, Thakur Das Bhargava¹⁶³ who himself was from a minority group, objected that the Scheduled Caste and Scheduled Tribes should be given more rights than the 'backward classes' since they were 'more backward'. However, for Ambedkar, backward classes were "nothing else but a collection of certain castes".¹⁶⁴

After the murder of Gandhiji, a large number of amendments poured in demanding the abolition of reservation even though the Drafting Committee had incorporated the recommendation of the Advisory Committee. We can see from Hasrat Mohani's emotional speech, call for the abolitions of separate electorates. Pocker Sahib¹⁶⁵ reiterated the demands for separate electorates, while Mohammed Ismail¹⁶⁶ insisted on separate electorates as well as reservation of seats. Reservation of seats for the minorities would mean, in many cases, members of the minority community being elected by the majority community. H. C. Mukherjee, Tajamul Husain, P. R. Thakur, Lakshmikanta Moitra, Thakurdas Bhargava and Govind Das, all of them, sought to propose to the Constituent Assembly the obliteration of

¹⁶² Christophe Jaffrelot. 256.

¹⁶³ Thakur Das Bhatgava. General (Community under the terms of the Cabinet Mission Plan), Hindu (Brahim), Congress and elected from East Punjab.

¹⁶⁴ Christophe Jaffrelot. n. 119. 260- 262.

¹⁶⁵ Pocker B, Muslim (Community under the terms of the Cabinet Mission Plan), Hindu, Muslim League and elected from Madras.

¹⁶⁶ Mohammed Ismail. Muslim (Community under the terms of the Cabinet Mission Plan), Congress and elected from West Bengal.

reservation of seats for minorities. We can see that the case for separate electorates was lost. The partition had left many India Muslim scattered all over the country, creating an electoral disadvantage for them so many Leaguers considered proportional representation a better safeguard than reservation. At the same time, there was a strong feeling among the Muslim leaders that separate electorates or reservation will turn a Muslim into an alien in the eye of the Majority community in India.¹⁶⁷

The separate electorates of any kind were rejected by leaders such as K. M. Munshi, Seth Govind Das, Rajendra Prasad and Vallabhbhai Patel because to use K. M. Munshi's words, which recalled Gandhi's argument in 1932, Scheduled Castes were "part and parcel of Hindu Community". Another assembly member even mentioned the fact that people had to consider "the Scheduled Castes as belonging to Hindus".¹⁶⁸ Patel continued with his objection by mentioning that, "the Scheduled Caste should be ashamed of their demands, which almost amount to separatism, whereas their real hero, Gandhi, kept the nation united". He also said that the problem lies in the Scheduled Castes psychology; they must remove their inferiority complex.¹⁶⁹

Therefore, the proportional representation or reserved seats for minorities were rejected but what Shefali Jha, in her article tried to say "instead of trying to shore up or strengthen representation by proposing some alternatives anti-majoritarian representatives scheme, the solution proposed to relieve the fear of minority groups was a set of rights which included not merely individual rights but a few collective rights for minorities rights as well".¹⁷⁰ However, the initial report of the Minorities Sub-Committee filed in July 1947 focuses on mechanisms like separate electorate and reservation in the legislature to prevent the 'tyranny of the majority'. Consequently, the draft constitution of February 1948 was followed with

¹⁶⁷Shibanikinkar Chaube. n. 114. 152-154.

¹⁶⁸ Christophe Jaffrelot. n.119. 251.

¹⁶⁹ Christophe Jaffrelot. 252-253.

¹⁷⁰Shefali Jha. "*Rights Versus Representation: Defending Minority Interests in the Constituent Assembly*", in Rajeev Bhargava, "Politics and Ethics of the Indian Constitution". (New Delhi: Oxford University Press, 2008) 339.

the recommendation of the Minorities Sub-Committee, reserved seats in Parliament and state legislatures for Muslims, Scheduled Castes, Scheduled Tribes and Indian Christian for ten years.¹⁷¹ According to Granville Austin, amongst the most influential persons who were drafting the constitution, not a single one was from the low castes (11 were Brahmins, 2 Amils, 1 Kayasth, 1 Banya, 1 Rajput and 1 Scheduled Caste namely Ambedkar).¹⁷²

During 23-24 August 1949 articles 292 and 294 of the draft was amended that maintained reservation of seats only for the Scheduled Caste, Scheduled Tribes and autonomous district of Assam. However, the system of reservations on a population basis was limited to a period of ten years by another amendment. Mentioned of the Scheduled Tribes in the Constitution was however considered unnecessary. On 17th September 1949, ‘Scheduled Tribes’ was erased from the eighth schedule of the Draft Constitution listing.¹⁷³

Govind Ballabh Pant¹⁷⁴ while proposing the Resolution of the Advisory Committee said, “Unless the minorities are fully satisfied, we could not make any progress; we cannot even maintain peace in an undisputed manner”. In continuation, he added that “let not the minorities looked to any external power for the protection of their rights. This will never help them. They can find their protection only from the people in whose midst they live, and it is on the establishment of mutual goodwill, mutual trust, cordiality and amity that the rights and interest not only of the majority but also of the minorities depend”.¹⁷⁵

¹⁷¹Shefali Jha. 347.

¹⁷²Shefali Jha. 259.

¹⁷³Shefali Jha. 155.

¹⁷⁴Govind Ballabh Pant. General (Community under the terms of the Cabinet Mission Plan). Adibasi, Independent and elected from Bihar.

¹⁷⁵ *Constitutional Assembly of India Debates (Proceedings) - Vol. II.* (2.15.23). 24th January 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/2/1947-01-24 accessed on: 01.03.2018.

During the discussion on the Amendment of the Advisory Committee Jaipal Singh¹⁷⁶ critically pointed out “the absence of the tribal women member in Advisory Committee, and also the absence of tribal member in the Fundamental Rights Committee”.¹⁷⁷

Mahboob Ali Baig¹⁷⁸ postulated for a democratic Constitution, where all the minority sections were represented in the legislature, the cabinet and the Executive. He also demanded reservation in the legislature and the cabinet for minorities or different sections. Baig cited Swiss Constitution as an example of this, which is considered as the most democratic, as it represents all sections and all parts of the country in its legislature and its cabinet.¹⁷⁹

B Pattabhi Sitaramayya¹⁸⁰ expressed that the minorities had constantly addressed themselves to the three questions of freedom such as freedom of religious worship, faith and customs, and preservation of language script and culture. Though the involvement from the British Government had complicated the question of minority by blending it with political matters; he said that the period is over and we are now entering upon a new period in the development of our country.¹⁸¹

¹⁷⁶Jaipal Singh. General (Community under the terms of the Cabinet Mission Plan), Hindu (Brahmin), Congress and elected from United Provinces.

¹⁷⁷*Constitutional Assembly of India Debates (Proceedings) - Vol. II.* (2.15.122). 24th January 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/2/1947-01-24 accessed on: 01.03.2018.

¹⁷⁸Mahboob Ali Baig. Muslim (Community under the terms of the Cabinet Mission Plan), Muslim, Muslim League, elected from Madras.

¹⁷⁹*Constitutional Assembly of India Debates (Proceedings) - Vol. IV* (4.25.59) 17th July, 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/4/1947-07-17 accessed on: 01.03.2018.

¹⁸⁰B .Pattabhi Sitaramayya. General (Community under the terms of the Cabinet Mission Plan), Hindu (Brahmin), Congress and elected from Madras.

¹⁸¹*Constitutional Assembly of India Debates (Proceedings) - Vol. IV* (4.25.69) 17th July, 1947. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/4/1947-07-17 accessed on: 01.03.2018

Ambedkar, while moving the Draft Constitution, complimented that the Constituent Assembly for granting safeguards for minorities. First off, in a country like India, one must acknowledge the existences of the minorities to start with and then aim to merge majorities and minorities into one. Hence, welcoming the remedy offered by the Constituent Assembly is wise as it serves this double purpose. According to him, “minorities are an explosive force which, if it erupts, can blow up the whole fabric of the state”. However, in India, the minorities themselves submit to the majority. For example, as we can see in the history of negotiations for preventing the partition of Ireland, Redmond had said to Carson “ask for any safeguards you like for the Protestant minority but let us have a United Ireland”. To which Carson replied, “Damn your safeguards; we do not want to be ruled by you”. This is not the case with India’s minorities; instead, they have faithfully welcomed the majority’s supremacy, which is essentially a communal majority and not a political majority. Hence, the duty to understand not to discriminate the minorities rests with the majority.¹⁸²

Till now, in the ongoing debates, not even a single member of the Assembly defines the actual meaning of minorities and who shall be included or excluded in the minority list. Manmohan Das¹⁸³ brought about the ambiguity regarding the identity of the minority communities, though minorities have been clustered together for providing safeguards regarding two affairs- one using reservation of seats in the legislatures, and the other is using reservation of posts and services.

To the question of Manmohan Das, M.AnanthasayanamAyyangar¹⁸⁴ also had expressed a similar view. He demanded to specify the names of the minorities,

¹⁸²*Constitutional Assembly of India Debates (Proceedings) – Vol. VII. (7.48.233). 4th November, 1948.*

https://cadindia.clpr.org.in/constitution_debates/volume/7/1948-11-04 accessed on: 01.03.2018.

¹⁸³Manmohan Das. General (Community under the terms of the Cabinet Mission Plan), Hindu and elected from West Bengal.

¹⁸⁴M. Ananthasayanam Ayyangar. General (Community under the terms of the Cabinet Mission Plan), Hindu (Brahmin) Congress and elected from Madras.

as the word minority is so generic that it could be related to linguistic, caste, and religious minorities, etc. In case of occasions when the government wanted to appoint the Special Officers from two or three minorities, why not the Constituent Assembly specify them as “Anglo-Indians, Scheduled Castes” and so on? Ayyangar continued his argument: “There is no definition- of ‘Minorities’ in the whole of the Draft Constitution. We may say that the Scheduled Castes, Scheduled Tribes and the Anglo-Indian are the three minorities for whom we are making provision here. There are other minorities, also. Let us here decide who the minorities are? Otherwise, any minorities can come forward and ask for this or that rights. If there is one, we can say this article will apply to such and such minorities. We use the word ‘minority’ here and do not say that this applies to this and that minority. It may be that we are contemplating to have a general officer for them all. However, the constitution is for the future. We should, therefore, clear up this matter and include only those minorities for whom we intend making provision”.¹⁸⁵

During the colonial framework, the entitlement of minority groups to special provisions has been an established principle. However, during the Constituent Assembly Debates, the purpose of preferential treatment was recast towards the enhancement of backwardness’ alone. As in other areas of minority provisions, cultural rights adopted in the report stage of the Constituent Assembly’s deliberation came to be whittled down during the draft stage of Constitution-making.

Some example, the Assembly in August 1947 had adopted a draft provision which read “No minority whether based on religion, community or language shall be discriminated against in regard to admission into state education institutions, nor shall any religious instruction be compulsorily imposed on them.” However, in 1949, this came to be amended as “No citizen shall be denied admission into any

¹⁸⁵*Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.125.38) 26th August 1949. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-08-26 accessed on: 01.03.2018

educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them”.¹⁸⁶

Another important change of wording in cultural rights between the report and the draft stage of Constitution-making occurred in the article pertaining to the language and script of minorities. The original article adopted by the Constituent Assembly in 1947 reads “Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect”. However, the drafting committee altered the wording to “Any section of citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same”. Ambedkar defended providing more healthy protection to minorities as it gives fundamental rights and thus any laws by the state that were conflicting the grants of this revised article would then be null. This change triggered much opposition and especially from several Muslim representatives in the Constituent Assembly, who pressed for the restoration of the earlier wording and tabled an amendment providing for primary education to minorities in their mother tongue at the expense.¹⁸⁷

Ambedkar also explained the reason for substituting the word minority by the word “any section” in the Draft Constitution observing that the term minority was used not in the technical sense of the word ‘minority’ but for the main purpose of certain political safeguards such as representation in the legislature, representation in the service and so on. This is the reason for dropping the word ‘minority’ as it might be interpreted in the narrow sense of the term when the intention was to use the word ‘Minority’ in a much wider sense so as to give cultural

¹⁸⁶Rochana Bajpai. n. 138. 286-287.

¹⁸⁷Rochana Bajpai. 287.

protection to those who were technically not minorities but minorities nevertheless.¹⁸⁸

The cultural rights eventually adopted in 1949, but at the same time, unlike the case of political safeguards, where the opponents of minorities' cultural rights also did not get their way. Thus, for instance, demands that cultural and educational rights be confined to linguistic minorities were rejected. Though minority cultural rights also came to be weakened during Constitution-making, the reduction was less drastic than in the case of political safeguards. As unlike political safeguards, minority and cultural rights and educational rights did find some support within the Assembly.¹⁸⁹

Rev. Jerome D'Souza supported the removal of political safeguards for religious minorities which read, "The desire of our country is to work for the political homogeneity of this vast country. Unfortunately, that political homogeneity was threatened and to some extent destroyed by the need to give political safeguards to minorities. However, remember those safeguards were asked for or deemed necessary for the sake of religious and cultural and individual rights and not merely for the sake of political privileges or nay emoluments which might come from them. As long as these cultural and personal rights are safeguarded, we do not need any other political safeguards".¹⁹⁰

Z. H. Lari¹⁹¹ said, "Minorities in every unit shall be protected in respect of their language, script and culture and no laws and regulations may be enacted that may operate oppressively or prejudicially in this respect". In April 1947, the August

¹⁸⁸Anand Palliwal. *Minority Rights and Nationalist Opinion*. <http://airwebworld.com/articles/index.php?article=897> accessed on 23.06.2016.

¹⁸⁹Gurpreet Mahajan. *Federal Accommodation of Ethno Cultural Identities* in Baogang He, Brain Galligan, Takashi Inoguchi (eds.). "Federalism in Asia". (Cheltenham: Edward Elgar Publishing Limited U.K., 2007) 284.

¹⁹⁰Gurpreet Mahajan. 290.

¹⁹¹Z. H. Lari. Muslim (Community under the terms of the Cabinet Mission Plan), Muslim, Muslim League and elected from United Provinces.

House had approved this recommendation of the Committee on Fundamental Rights. But the Drafting Committee instead of framing the Draft Constitution based on resolution adopted by this House altered the terminology and further put forth the sub-clause which exists today as, “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same”.¹⁹²

During the Constituent Assembly Debates, the entire minority groups were incorporated under these provisions in the early proposal, and the first draft of the Constitution was published in 1948. However, in the final draft, religious minorities were not included in the preview of all political safeguards and became restricted, especially in regard to the Scheduled Caste and Scheduled Tribes. These radical changes in minority safeguards were based in terms of the partition of the countries in the literature on the Indian Constituent Assembly Debates.¹⁹³

The Indian Constitution guarantees to every citizen the fundamental rights of equality and non-discrimination. The Constitution recognizes only individual rights and not group rights. It does refer to minorities but only those “based on religion or language”. Hence, protection to safeguard political and economic rights of the minorities which was granted in the draft constitution (1947-49) was removed with the guarantee that the minorities would be shown fairness and benevolence by the majority.¹⁹⁴

Meanwhile, they did not think that there is a need to preserve a distinct cultural identity. The immersing of particular cultural identity in sovereign India

¹⁹² *Constitutional Assembly of India Debates (Proceedings) – Vol. VII. (7.68.261-262)*, 7th December, 1948.

https://cadindia.clpr.org.in/constitution_debates/volume/7/1948-12-07 accessed on: 01.03.2018.

¹⁹³ Rochana Bajpai. n. 139. 282-283.

¹⁹⁴ Gurpreet Mahajan. n.189. 292.

was the concern of the most religious minority communities as were reflected in their representatives' speeches. The argument was that a member of these communities could contribute effectively to the nation solely by the maintenance of their own discrete cultures.

Though most of the backward caste claimed Minority status in the debates, yet cultural distinctiveness from the majority community did not generally figure in the claims. Though cultural and lingual diversity is an asset and has basic importance that must be protected and sheltered, yet cultural rights can be protected solely by fostering diversity will successively endorse acceptance and fight discrimination at any stages.

Cultural identities received little or no recognition in the formation of States. Though the constitution framers were cognizant of the existing diversity; they also recognized the need to treat different communities as equal; but after the partition of the country, they were extremely reluctant to make cultural identities the basis of political identity at any levels. Only special cultural rights and not political rights accommodated the cultural communities. The concerns of "national unity" and "integrity" were the two central motives that reserved the political arena free of cultural identities during independence.¹⁹⁵

3.3. Scheduled Tribes and Scheduled Areas

Before Independence, the British with the intention of refashioning the old notions of untouchables or Shudras, introduced reservations favoring the lower castes along with the tribals, creating a new administrative divisions. For instance, the Madras administration used the term 'backward classes' first in the 1870s in the framework of an affirmative action policy in favor of under-educated groups. The

¹⁹⁵Rochana Bajpai. n. 139. 284-85.

sharing of the word 'backward' between 'Depressed Classes' (Untouchables and tribals) and 'Castes other than Depressed Classes' was determined in 1925.¹⁹⁶

In the Objective Resolution, Nehru's first speech (13 December 1946) before the Constituent Assembly used the expression 'other backward classes', and announced to take special methods favoring the 'minorities, backward and tribal areas and depressed and other backward classes'.¹⁹⁷ However, he did not elaborate further. Therefore, in order to elucidate the content of this notion on 'other backward classes' further within the Constituent Assembly, the 'Advisory Committee on Rights of citizens, Minorities and Tribal and Excluded Areas' was step up on 24th January 1947, to prepare the articles dealing with these matters. The Committee Chairman, Vallabhbhai Patel, created several sub-committees and among them, the one in charge of the Fundamental rights was the first one to reflect upon the reservation issues. While on the one hand, the Committee recommended that none of the citizens shall the State discriminate simply based on their caste, religion, race, place of birth, sex' and that there should be 'equality of opportunity for all citizens in matters of public employment'.¹⁹⁸ Ambedkar, who was one of the sub-committee members, on the other, suggested that one of the measures to be taken in favor of the backward groups should be in the form of job quotas: the government should prescribe 'a certain proportion of posts of public service for minorities whomever they may be'.¹⁹⁹ Therefore the Sub-Committee defines these minorities as 'any backward class of citizens which, in the opinion of the state, is not properly represented in the service under the State'. This clause was eventually voted by the Constituent Assembly and become Article 16(4) of the Indian Constitution.

¹⁹⁶ Rajeev Bhargava, n.102. 250.

¹⁹⁷ *Constitutional Assembly of India Debates (Proceedings) – Vol. I.* (1.5.10) 13th December, 1946. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/1/1946-12-13 accessed on: 01.03.2018.

¹⁹⁸ Rajeev Bhargava, n.102. 255.

¹⁹⁹ Rajeev Bhargava. 256.

The Provision for the Tribal areas of North East to have a proper-constitutional set up received ample care when it was finally debated in the Constituent Assembly. The main purpose was making sure that the needs of the people of the areas are fulfilled and also are finally integrated with the mainstream of the country. A Sub-Committee was formed to Report on the North East Frontier Tribal Areas and Assam Excluded and Partially Excluded Area in order to aid the Assembly in this regard. This Sub- Committee was assigned to work under the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas. The Advisory Committee appointed Sub-Committee to prepare schemes for the Administration of the North- Eastern Tribal Areas and Excluded Areas. Gopinath Bordoloi,²⁰⁰ the then premier of Assam was made the Chairman of this Sub-Committee. Other persons who acted as full members of the Committee were:

- (1) J. J. M. Nicholas Roy²⁰¹
- (2) Rup Nath Brahma²⁰²
- (3) A. V. Thakkar and
- (4) Mayang Nokcha,²⁰³ who was later replaced by Shri Aliba Imti²⁰⁴

On 27th February 1947, the Committee toured the province of Assam, which also encompassed North Cachar Sub-Division, Lushai Hills, the Naga Hills District and Mikir Hills. However, the Committee could not visit the Gara Hills District and Jowai Sub-Division of Khasi Hills District on account of bad weather. The Committee also recorded the concerns of the hill people in regard to their lands and also their fear of being exploited by those more advance persons, which included money lenders. All these resulted in the desire to have control over immigration. The Sub-Committee handed over the report on 28th July 1947 to Vallabhbhai Patel, the Chairman of the Advisory Committee on Fundamental Rights, after much

²⁰⁰ Gopinath Bordoloi from Assam and represented the Congress Party.

²⁰¹ J. J .M. Nicholas Roy. General (Community under the terms of the Cabinet Mission Plan), Congress and elected from Assam.

²⁰² Rup Nath Brahma, represented the plain tribes of Assam.

²⁰³ Mayang Nokcha, represented the North- Eastern Tribal Areas.

²⁰⁴ Aliba Imti, represented the North- Eastern Tribal Areas.

consideration.²⁰⁵ The report had a detailed consideration of the several facets in relation to the administrations of the Tribal areas. Thereafter, on 7th December 1947 and 24th February 1948, the Advisory Committee discussed the matters.

While seconding the Resolution on the Advisory Committee, Harnam Singh²⁰⁶ expressed his belief that the minorities would find protection of all their various opinions and that both the more substantial interest of the country and also the interest of the minorities would be protected in this report. Rajendra Prasad²⁰⁷ while delivering his speech on that 14th of August 1947, said to the entire minorities in India, “we give the assurance that they will receive fair and just treatment and there will be no discrimination in any form against them. Their religion, culture and language are safe and will enjoy all rights and privileges of citizenship, and in return, they should render loyalty to the country in which they live and to its constitution”. In continuation of his speech he also said, “To all, we also give the assurance that it will be our endeavor to end poverty and its companion hunger and diseases and also to abolish distinction and exploitation and to ensure decent conditions of living”.²⁰⁸

Brajeshwar Prasad,²⁰⁹ in his discussion, says “he totally opposed to the introduction of the principle of elections in the tribal areas as this would disrupt the life. It would, in his opinion, be a fissiparous tendency as they had an entirely different system of society.” He observed, “The tribals had more or less a corporate society which emphasized group consciousness. The principle of elections would emphasize individualism and the principle of competition and the tribal people being ignorant, backward, down-trodden, would be exploited by powerful groups

²⁰⁵Sixth Scheduled. <https://www.mea.gov.in/Images/pdf1/S6.pdf> accessed on: 23.09.2015.

²⁰⁶Harnam Singh. Sikh (Community under the terms of the Cabinet Mission Plan), Sikh, Akali and elected from East Punjab.

²⁰⁷Rajendra Prasad. General (Community under the terms of the Cabinet Mission Plan), Hindu (Kayastha), Congress and elected from Bihar.

²⁰⁸ *Constitutional Assembly of India Debates (Proceedings)* – Vol. V. (5.36.6) 14th August, 1947. <https://cadindia.clpr.org.in/constitution-assembly-debates/volume/5/1947-08-14> accessed on: 01.03.2018.

²⁰⁹Brajeshwar Prasad, General (Community under the terms of the Cabinet Mission Plan), Hindu (Kayastha), Congress and elected from Bihar.

during the times of election”.²¹⁰ Interestingly he added that he would anyway support Article 294 that provided reservation of seats for the Scheduled Tribes.

Naziruddin Ahmad²¹¹ says, “I feel that the Scheduled Castes and the Scheduled Tribes sometimes require protection”. He seriously contested Brajeshwar Prasad and remarked that giving a few seats to the Scheduled Castes/ Scheduled Tribes would not improve their lives as they have been in despair and exploitation. He even doubted the ability of the services rendered by the members from the non-Scheduled classes. He also pointed out that this representation implies the representation of the weak and for their protection. Responding to Brajeshwar Prasad, Naziruddin Ahmad said the contentions that the benefits of democracy should not be given to Scheduled Caste is a contested remark. He considered democracy as grace and the only means to uplift these ill-fated Scheduled Castes and Scheduled Tribes from their wretched status. He concluded his statement by saying that he fully supports the article.²¹²

J. J. M. Nichols Roy in retaliating to Brajeshwar Prasad’s statement on the tribal people say, “There are different kinds of tribal people, for example in Assam we have tribals who are very democratic. These democratic institutions which we have here in this constitution will suit them very well. They are used to this kind of democratic institutions. Wherever I have known, the tribal people are very democratic-minded”. He continued to say that Scheduled Castes and Scheduled Tribes in certain parts of India are in destitution, who are not in a position look after themselves, and so democratic institutions may not be suitable for them. Mr. Jaipal

²¹⁰ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX* (9.123.161) 24th August 1949. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-08-24 accessed on: 01.03.2018.

²¹¹ Naziruddin Ahmad, Muslim (Community under the terms of the Cabinet Mission Plan), Muslim, Muslim League and elected from West Bengal.

²¹² *Constitutional Assembly of India Debates (Proceedings) – Vol. IX*. (9.123.166-167) 24th August 1949. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-08-24 accessed on: 01.03.2018

Singh stated that since the tribals are already democratic, as is true in Assam, the right and privilege that the democratic institutions give them would be brilliant.²¹³

On 11th May 1949, Sardar Patel submitted a report of the Advisory Committee to the House on political safeguards for minorities, wherein Yudhisthir Mishra²¹⁴ precisely stated that “nothing contained in the Resolution passed by the Minorities Advisory Committee shall affect the recommendation made by the North-East Frontiers (Assam) Tribal and Excluded Areas Sub-Committee and the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee with regard to the tribals in the legislatures. It was also laid down that the resolution would not affect the special provision made for the representation of the Anglo-Indians in the legislatures”.²¹⁵

Jadubans Sahay²¹⁶ said that for the first time in Indian history “we are going to set up the Tribal Advisory Council”. He continued to say, after visiting the areas of Assam such as Lushai Hills and Naga Hills for the first time accompanied by the chairman Mr. Gopinath Bardoloi and the Minister Rev. Nichols Roy and the Committee members in 1947, said that it was better that the country in total learn about these people and to quickly integrate them to the nation.²¹⁷

Kuladhar Chaliha²¹⁸ says “the Nagas were very primitive and simple people and that they had not forgotten their old days of doing summary justice when they had a grievance against anyone”. He also added, “It would be a negation of justice

²¹³*Constitutional Assembly of India Debates (Proceedings) Vol. IX. (9.123.171) 24th August 1949.*

²¹⁴Yudhisthir Mishra, he is from Orissa States.

²¹⁵*Constitutional Assembly of India Debates (Proceedings) – Vol. IX. (9.123.218) 24th August 1949*

²¹⁶Jadubans Sahay General (Community under the terms of the Cabinet Mission Plan), Hindu, Congress and elected from Bihar.

²¹⁷*Constitutional Assembly of India Debates (Proceedings) – Vol. IX. (7.132.179) 5th September 1949.*

https://cadindia.clpr.org.in/constitution_debates/volume/9/1949-09-05 accessed on: 01.03.2018

²¹⁸Kuladhar Chaliha. General (Community under the terms of the Cabinet Mission Plan), Hindu, Congress and elected from Assam.

or administration, something like anarchy if the Constitution allows for ruling them or running the administration”. Like the old separatist tendency, tribals would be kept away, thus creating a Tribalstan just like the creation of Pakistan, because in times of trouble, tribals, according to him, could be helpful to their enemies”.²¹⁹

Brajeshwar Prasad opposed the district council and also Regional Council which was proposed by the Tribal Advisory Committee, on the concern that another Pakistan would be established in this country. However, he was happy with a provision ensuring the educational, social and cultural development in the Assam tribal areas. However, he was opposed to putting the modern political power into the hands of tribal. He thought that it would be the certain way of attracting anarchy, chaos and disorder all over the length and breadth of the country. He also said that Sixth Scheduled would lead to anarchy.²²⁰

Gopinath Bardoloi was appreciative of the “certain institutions” in the hill tribals, concerning which he thought it to be wrong if the Constituent Assembly wanted to obliterate them. The manner in which the tribals settled their disputes was one such thing.²²¹ Those cases which the “Penal Code” would consider as murder, the tribal people resolved them by the simplest technique of Panchayat decisions and by paying compensation.

Lakshminarayan Sahu²²² said that the Nagas are head hunters and the regional council which they intended to establish for the Nagas would benefit neither of the parties. According to him, there exists an organization for each tribe which functioned like a *panchayat*. In fact, there was a Panchayat in every village,

²¹⁹ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.10) 6th September 1949.

https://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-09-06 accessed on:01.03.2018

²²⁰ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.25) 6th September 1949.

²²¹ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.33) 6th September 1949.

²²² Lakshminarayan Sahu. General (Community under the terms of the Cabinet Mission Plan), Adibasi, Independent and elected from Orissa.

with differing customs across the villages. Establishing the regional council would mean uniform laws which are likely to bring endless complications in several villages. Given this, he said, “the powers vested in us, the Centre and the States should be kept intact”. Delegating these power to the councils would contradict with their ideas, starting disputes amongst themselves as they come under the pressure of diverse ideas while the council, on one hand, asserting about absolute freedom. Thus, moving with utmost cautiousness and alertness was indispensable.²²³

A. V. Thakkar, while discussing the Nagas with Rev. Nichols Roy, said that the Nagas had seven sub-divisions, each having a diverse dialect of their own and the system of head-hunting still prevailed from history among the Nagas. Nagas, according to him were so under-developed and very much behind in civilization, fighting with their own neighboring villagers and the plains tribes. Jaipal Singh spoke of- “but of one tribe of Nagas killing another tribe of the Nagas, Ao Nagas and Sema Nagas and cutting off their heads and putting them on the door tops as a memento of their victory”.²²⁴

He continued to say that out of the 150 cases that were tried in the court of law, 150 people were accused either with head-hunting or taking part in it at the present day and questioned “What do you say of such a thing as that? Why take no notice of such a state of things existing at the present day?” Schedule No.VI resulted from the Committee’s inquiry into the Nagas’ state of affairs along with all the tribal areas. He further reported that the Nagas were a tough race to handle. A Naga member was in the Committee, Mr. Aliba Imti, a graduate of the Calcutta University who used to work with them somehow or the other. However, he

²²³ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.56) 6th September 1949.

²²⁴ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.66) 6th September 1949.

withdrew later as his other Naga friends discouraged him from working with the Committee, assisting them or being a part of it.²²⁵

J. J. M. Nichols Roy observed, “One of our honorable gentlemen said that the hill tribes, have to be brought to the culture which he said, ‘our culture’ meaning the culture of the plains”. He continued to ask, “But what is culture? Does it mean dress or eating or drinking? If it means eating and drinking or ways of living, the hill tribes can claim that they have a better system than some of the people of the plains. Among the tribesmen, there is no difference between class and caste. Even the Rajas and Chiefs work in the fields together with their laborers. They eat together. Is that practiced in the plains? The whole of India has not reached the level of equality. Do you want to abolish that system? Do you want to crush them and their culture and be swallowed by the culture which says one man is lower and another higher? You say I am educated and you are uneducated and because of that you must” but this “is not the principle among the hill tribes. When they come together, they all sit together, whether educated or uneducated, high or low. There is that feeling of equality among the hill tribes in Assam which you do not find among the plains people”.²²⁶

He continued his argument by reading out a few declarations made by the Assam Government concerning the hill areas. They are of Mongoloid load and found only in the hill areas, divergent from most Indian just as the Indians does from Europeans. The populace in any area is homogenous excluding those few non-tribal keepers and officials. Therefore a traveler would spot only Nagas in the Naga Hills, only Lushai in the Hills and so on.²²⁷

²²⁵ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.66) 6th September 1949.

²²⁶ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.76) 6th September 1949.

²²⁷ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.77) 6th September 1949.

Nicholas Roy also mentioned that these people have migrated and were never under the rule of Hindu or Muslim, and so have their own rule, language, court and culture. He further stated that it was very astonishing to anybody who wanted to build India as a nation and integrate all the people. He continued to say that the manifold language belonged to the Tibeto-Burman linguistic family except for Khasi which belonged to the Mon-Khmer family. These languages were not spoken anywhere in India. Moreover, none of them professed Hinduism or Islam, excluding a section of Kacharis in the North Cachar Hills, who practiced a form of Hinduism. Tibetan Buddhism was introduced in the Northern Hills and Burman Buddhism in the Tirap Frontier Tract. While a substantial figure of tribesmen belonged to Christianity, predominantly among the Nagas, Khasis and Lushais the rest followed Animism. The communal feeling was, however, absent between animists and others.²²⁸

He pointed out the cultural and lifestyle differences of tribals in the following manners: “The Hindus do not eat beef, but the tribesmen do. The Muslim does not eat pork, but the Tribal people do. Therefore these people cannot be either Hindus or Muslims”.

In the Government report, the people of the hills have a distinct culture from that of the plains with no practice of caste or purdah and child marriage. The social organization of the tribe, the clan and the village, the attitude and structure are intensely democratic. He instead suggested that India should grow to the sense or notion of equality and real democracy which the tribals practiced. Indians should not try to make these people abdicate their democracy and equality and be absorbed by an alien culture, which, according to them, is unsuitable to their society.²²⁹ Saying that these tribesmen would be hostile or that they would invade Assam or go over to Tibet on introducing the Sixth Schedule in their areas was rather

²²⁸*Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.79) 6th September 1949.

²²⁹*Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.85) 6th September 1949.

shocking. The notion was founded on an erroneous perception towards the issue of clubbing the hill folks with the plains people.

3.4. Fifth Schedule and Sixth Schedule

3.4.1 Fifth Schedule

Though the Indian constitution grants equal rule over the entire country, yet some regions have been given special provision. This provision in the Fifth Schedule and Sixth Schedule ensures for the protection of identities, culture, customs and political and economic interest of the original natives of these areas.

During the Constitution Assembly debate, Ambedkar indicated the word 'aboriginal' in clause (5) of Article 13, be substituted by Schedule. He said, “when the drafting committee was dealing with the issues of Fundamental Rights, the Committee appointed for the Tribal Areas did not make its Report, and consequently, we had to use the word ‘aboriginals’ was used, at that time”. Subsequently, it was later found that the phrase ‘Scheduled Tribes’ was used by the Committee on Tribal Areas and even in the schedules which accompanied this Constitution. He further added that to keep the language even, substituting the word “aboriginal” by “Schedule” was required.²³⁰

To this, Jaipal Singh asked Ambedkar to clarify in changing the word aboriginal to Scheduled.²³¹ Ambedkar explained that there are two classifications

²³⁰ *Constitutional Assembly of India Debates (Proceedings) – Vol. VII.* (7.64.237) 1st December 1948.

https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-12-01 accessed on: 01.03.2018.

²³¹ *Constitutional Assembly of India Debates (Proceedings) – Vol. VII.* (7.65.22) 2nd December 1948.

https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-12-02 accessed on: 01.03.2018

of areas, Scheduled Areas and Tribal Areas. Those areas related only to the Assam province were categorized under the Tribal Areas. However, those that are distributed in provinces other than Assam were categorized under the Scheduled Areas. It was known as the ‘partially excluded areas’ in the Government of India Act. The scheduled tribes inhabited both the areas but the difference between the position of the Scheduled Tribes in Scheduled Areas and Scheduled Tribes in tribal areas is this: In the case of the Scheduled Tribes in the Scheduled Areas, they are governed by the provisions contained in paragraph V of the Fifth Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local Legislature applies automatically until and unless the Governor declares the law or part of that law as not applicable. In the case of the Scheduled Tribes in Tribal Areas, it is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded, and in the other case, it does not apply unless extended.

He said that the same question might arise while concerning with the Adivasis, like who are the Adivasis? This question would be pertinent as these Adivasis were conferred with certain rights and privileges by this Constitution.

He said that the term “Scheduled Tribe”, as is seen in the two Schedules, has a concrete connotation as it specifies the tribes. However, the term “Adibasi” is certainly a generic term, having no specific *legal de jure* implication, approximately like the Untouchables, the reason why a need to provide the term ‘untouchable’ with some legal implication in the Government of India Act 1935 and the only approach was to identify those communities which in various parts and areas were considered by the local people as befitting the test of untouchability.²³²

²³²Constitutional Assembly of India Debates (Proceedings) – Vol. VII. (7.65.24) 2nd December 1948.

Ambedkar, while moving the Fifth Schedule, pointed the first significant alteration is in paragraph 4, concerning the formation of the Tribes Advisory Council. Since the Draft Constitution formally included the Paragraph, having a Tribal Advisory Council in every state where there were Scheduled Areas or Scheduled Tribes was obligatory. The change, however, is that the Constitution left to the decision of the President to form an Advisory Council and did not make it obligatory.²³³

Jaipal Singh while moving his amendment said that Fifth Schedule and its provisions should benefit the Scheduled Tribes and that the Tribes Advisory Council should not be a sham but a reality. He said, “Let us not give it a big name, without any powers to do things”.²³⁴ Even Yudhisthir Mishra on Fifth Schedule said that it was for a reason why some areas were listed as Scheduled Areas while some tribes have been defined as Scheduled Tribes. Since the Scheduled Tribes are backward, they merit the exceptional care and attention of the Government both in the Centre and the provinces. He continued to argue that a Council for the tribes where there is no Scheduled Area should be provided for the same reason that a Tribes Advisory Council was set up in a State where there is a Scheduled Area. Yudhisthir Mishra opined that leaving to the discretion of the President, he would have to be advised by the executive authority of the Centre and the provinces and there is a possibility that the Provincial Governments may dislike the presence of such a Council. Thus, he submitted that for the welfare of the tribal people, the Governments should set up a Tribes Advisory Council even in those which do not have Scheduled Area.²³⁵

²³³ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.132.3) 5th September, 1949.

https://cadindia.clpr.org.in/constitution_debates/volume/9/1949-09-05 accessed on: 01.03.2018

²³⁴ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.132.96, 105) 5th September, 1949.

²³⁵ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.132.113) 5th September, 1949.

Shibban Lal Saksena while putting forward his amendment says, “The existence of the Scheduled Tribes and the Scheduled Areas are a stigma /disgrace on our nation just as the existence of untouchability is a stigma on the Hindu religion”. Therefore he also suggested that these Scheduled Tribes and areas must grow on par with the remaining population and must be advanced to the fullest degree. He also says that these Scheduled Tribes and Scheduled Areas should be developed rapidly and become identical with the remaining Indian population and that the Union Government and the Parliament should take this responsibility. He wanted that the Central Government alone takes accountability for their prosperity and advancement, though the States' Governors and Rajpramukhs too had their share of work.²³⁶

Shri Brajeshwar Prasad supported the schedule moved by Ambedkar and at the same time suggested that centrally administering the entire tribal areas would be the best form of Government for the tribal people. However, he was not in favor of the Tribes Advisory Council and said that the tribals only desired an assurance by the Constitution that means of livelihood, free medical facilities and free education shall be granted for all tribals and not a Council. The provinces were not in a condition to assume this responsibility as its economic resources were weak. Hence he opined about bringing the tribal areas under the command of the Centre without the people of India losing anything.²³⁷

Lakshminarayan Sahu questioned the vagueness of the population that constituted the category, “Scheduled Tribes”. He also suggested that with the use of the term “Scheduled Areas”, consideration should also be made as to what areas should be included in it. Like Shibban Lal Saksena, even he opined that if the power to announce as to what areas come under the term “Scheduled Areas” lied with the

²³⁶*Constitutional Assembly of India Debates (Proceedings) – Vol. IX. (9.132.131) 5th September, 1949.*

²³⁷*Constitutional Assembly of India Debates (Proceedings) – Vol. IX. (9.132.161) 5th September, 1949.*

President, intense agitation may arise when the areas are re-distributed. He, therefore, favored that such powers be conferred on the Parliament.

Syamandan Sahaya²³⁸ on the Advisory Council noted that besides the responsibility of the tribals' prosperity and advancement, it should, as has been rightly done, be entrusted with more powers relating to trying cases, etc. He dreaded the future of the councils formed by the tribal people if the Advisory Council were to tie down with the work of political nature. He further evidenced how their village Panchayats in some places had turned into a land of political conflict and resentment.²³⁹

Muniswami Pillai²⁴⁰ supported the Fifth Schedule made by the drafting committee but expressed that since the Tribal Advisory Council will only be an advisory, certain provision should be formulated to make whatsoever recommendations made by the Council compulsory. Moreover, in order to elevate of the tribes, the recommendations made by the Advisory Committee must be implemented without overlooking by the Government.²⁴¹

K. M. Munshi²⁴² rejected the amendment moved by Mr. Jaipal Singh and Mr. Yudhishtir Mishra, terming it as an utter absurdity. According to him, for every matter under the scope of this Scheduled, the Tribes Advisory Council should be a miniscule senates with the power to support and counsel the Governor. A kind of Government should exist in regard to these affairs in which the Governor should

²³⁸Syamandan Sahaya. General (Community under the terms of the Cabinet Mission Plan), Hindu, Independent and elected from Bihar.

²³⁹ *Constitutional Assembly of India Debates (Proceedings)* – Vol. IX. (9.132. 181) 5th September, 1949.

²⁴⁰Muniswami Pillai. General (Community under the terms of the Cabinet Mission Plan), Hindu, Congress and elected from Madras.

²⁴¹*Constitutional Assembly of India Debates (Proceedings)* – Vol. IX. (9.132.192) 5th September, 1949.

²⁴²K. M. Munshi. General (Community under the terms of the Cabinet Mission Plan), Hindu, Congress and elected from Bombay.

receive the counsel of an assembly and not of a ministry.²⁴³ Also, Prof. Shibban Lal Saksena in his last amendment, left the responsibility to announce a Scheduled Area with the central parliament. For him, the problem “varies not only from province to province but from district to district, and it would be impossible for Parliament by law to do it”. Thus, he suggested that the entire Scheduled, should be, in the interests of the tribals themselves.

3.4.2. Sixth Schedule

Brajeshwar Prasad proceeds his discussion by mentioning that Assam is on the border with foreign States, and conflicts are going on between the Ahoms and the Assamese, the Bengalis and the Muslims and the Mongoloid races. He continued to say, “The Government of Assam was confronted with the conflicts between the Bengalees and the Assamese, between the Hindus and the Muslims and between the tribals and the non-tribals”. He was, therefore, doubtful about the appropriateness of leaving this matter to the provincial government and asked, “Is it right, is it safe, is it strategically desirable, is it militarily in the interests of the Government of India, is it politically advisable, that the administration of such a vast tract of land should be left in the hands of the provincial government?” He said that the entire tribal area should be centrally administered and should be detached from the Province of Assam. He also pointed out that concerning the administration of these frontier areas of Assam, the Governor would be performing under the President as per the provision of this Schedule. Accordingly, whatever approach the frontier areas might have, the Centre would certainly have plenty of jurisdiction to see that any of the troubling aspects that he mentioned will have no place there. Thus, he thought that all those amendments were needless and inappropriate.²⁴⁴

²⁴³*Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.132. 245) 5th September, 1949.

²⁴⁴*Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.132.295-298) 5th September, 1949.

Kuladhar Chaliha²⁴⁵, while discussing his amendment, said that the background of this Schedule is perceived to form a Tribalstan by keeping the keeping the tribals away. Moreover, the result will be that there will be a “Communistan” (a communist country) there.²⁴⁶

Gopinath Bardoloi²⁴⁷ on the trend of criticism on the amendments that have been submitted before the Assembly mentioned about the seeming indications that these independent Councils were given added powers, possibly much beyond what the State Legislature of Assam could. He disagreed with this opinion and stated that actually, much of the provisions were mere translation of something that the tribal societies already had.²⁴⁸

Rohini Kumar Chaudhuri²⁴⁹ out rightly opposed the Sixth Schedule saying that Ambedkar with this Schedule was so closely following, except in some cases, the British method. He pointed out that before the arrival of the British, the Nagas had a cordial relationship with the Assamese and had even embraced the Assamese language, even to the extent that the Nagas used Assamese as their court language to that date. The same sort of rules applied to Ballipara Frontier Tract, the Sadiya Frontier Tract and the Hills areas, including the Garo Hills. He thought that the Scheduled could be formulated only by those who had direct and intimate knowledge of the tribal affairs, for which neither Mr. Munshi nor Ambedkar was suitable. He thus suggested that the only course opened and the only proper method was to send a minor committee of the House, comprised of both tribals and non-

²⁴⁵Kuladhar Chaliha. General (Community under the terms of the Cabinet Mission Plan). Hindu, Congress and elected from Assam.

²⁴⁶ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.11). 6th September 1949.
https://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-09-06 accessed on: 01.03.2018.

²⁴⁷Gopinath Bardoloi. General (Community under the terms of the Cabinet Mission Plan), Hindu, Congress and elected from Assam.

²⁴⁸ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.35-36). 6th September 1949.

²⁴⁹Rohini Kumar Chaudhuri. General (Community under the terms of the Cabinet Mission Plan), Hindu, Congress and elected from Assam.

tribals, to round the areas, looking the condition of things personally and then review the entire constitution in this Scheduled.²⁵⁰ He continued to say that “this autonomous district is a weapon whereby steps are taken to keep the tribal people perpetually away from the non-tribals”.²⁵¹

J. J. M. Nichols Roy says these areas would be given some measure of self-government by the Sixth Schedule yet the Governor of Assam have the control over the laws and regulations to be made by the District Councils. The sub-committee for the tribal areas in Assam endorsed that the districts listed in this Sixth Schedule should have a kind of self-government, to rule themselves according to their culture and genius. The provisions of the Sixth Schedule would satisfy these people to a certain extent and at the same time joint the rest of the province. The provisions of the Sixth Schedule were based on the recommendations of the sub-committee after considering the evidence given by those hill people, a few of whom were members of the sub-committee.²⁵²

Finally, he supported the amendment moved by Ambedkar but simultaneously expressed the controlling and inadequacy feelings that the Sixth Schedule had brought upon the people of the hills. He further urged the people to agree, given the circumstances, to bring peace between all parties. Because it is the process by which they will be unified,²⁵³ though they had been brought under the control of the Governor of Assam, without even been given enough according to their ideas.²⁵⁴ Nicholas Roy said that in order to keep the frontier area safe, “We cannot use force upon them. If you want to win them over for the good of India,

²⁵⁰ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133. 37-39). 6th September 1949

²⁵¹ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.53). 6th September 1949.

²⁵² *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.82) 6th September 1949.

²⁵³ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.94) 6th September 1949.

²⁵⁴ *Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.94) 6th September 1949.

you will have to create a feeling of friendliness and unity among them so that they may feel that their culture and ways of living have not been abolished and another kind of culture thrust upon them by force”.²⁵⁵

Ambedkar, in response to the discussion of the Sixth Schedule, regarding the Hill tribes of Assam and also the creation of the Regional and District Council says “the tribal people in areas other than Assam are more or less Hinduised”. He further added had they properly studied the provisions of this Scheduled, the point that creating those Regional and District Councils was generating sort of an isolated populace would not arise. He also mentioned that the Regional and District Councils would provide the tribal people with adequate representation in the Legislature of Assam besides Parliament such that they would take their role in the making of laws of both Assam and entire India. He, therefore, concluded, “in creating the Regional Councils and the District Councils, the population of Assam was cut up into two water-tight compartments, viz., tribals and non-tribals”.²⁵⁶ However, this is not the case for the tribals in Assam. Their origins still remains in their own culture and civilization. Their laws of marriage, inheritance, customs, etc. were reasonably diverse from the Hindus. For instance, he said that the situation of the tribals of Assam, for some reason, is slightly comparable to the situation of the Red Indians in the United States, as against the white emigrants there. They created the Reservations of Boundaries within which the Red Indians lived and are a republic by themselves. Undoubtedly, they are citizens of the country by the law of the United States, but that is an insignificant allegiance to the Constitution of the United States. Literally, they are distinct, sovereign people. The United States felt that their laws and lifestyles, their manners and habits of life were so diverse that bringing them at one shot, in other words, within the range of the laws made by the

²⁵⁵*Constitutional Assembly of India Debates (Proceedings) – Vol. IX. (9.133.85) 6th September 1949.*

²⁵⁶*Constitutional Assembly of India Debates (Proceedings) – Vol. IX. (9.133.105) 6th September 1949.*

white people for white persons and to serve the purpose of the white civilization would be perilous.²⁵⁷

If we look into the Constituent Assembly Debates, nowhere can we find any member of the Naga Hills people or the tribal people participating in the debate. Schedule Fifth and Sixth were actually for the tribal people, but we do not find any member from the tribal community participating in the debate. Though we can find Rup Nath Brahma representing the plain tribes of Assam and also Mayang Nokcha representing the North-Eastern Tribal Areas, their participation is missing from the Assembly debates. Even though the drafting of the Constitution was one of the most significant accomplishments of independent India, the debates in the assembly were held away from the public, and most importantly, the most marginalized groups.

²⁵⁷*Constitutional Assembly of India Debates (Proceedings) – Vol. IX.* (9.133.195) 6th September 1949.

CHAPTER 4

THE FEDERAL PROCESS: REFORMING CENTRE STATE RELATIONS

This chapter deals with the federal process in India and focuses on centre-state relations. The progress that it has made since the inception of the constitution of India and how it has accommodated the different ethnic groups or community into the union of India.

There is an emerging scholarly consensus that though India remains a federation with strong centre features; it is more federalized today than in the past. It is therefore not surprising that India counts among the most thriving federations in the world and is definitely ‘the most successful federation in Asia’.²⁵⁸ The Constitution of India grants a parliamentary federal system with definite unitary structures besides formal favoritism towards the centre. Indian federalism has evolved into a distinctive form owing to its origins, traditions and development. Federalism evolved as a progressive course of decentralizing the power from an extremely centralized colonial rule and not as a device to regulate power or as a consequence of the congealing of a cluster of sovereign states. Since the initial Government Regulatory Acts of 1773 till independence, India was never governed as a federal but as a unitary state. Although provinces existed in British India, they were primarily administrative rather than political units. They had no legal rights and acted solely as agents of the Central government.²⁵⁹

²⁵⁸Balveer Arora, K. K. Kailash and Rekha Saxena and H. Khan Khan Suan. *Indian Federalism* in K. C. Suri and Achin Vanaik (eds.). “Political Science: Indian Democracy”, Vol.2. (New Delhi: Oxford University Press, 2013)111.

²⁵⁹ Robert L. Hardgrave Jr and Stanley A. Kochanek. *India: Government and Politics in a Developing Nation*. (United States of America: Thomson Wadsworth, 2008) 143-144.

4.1. Federation in India: Centre-State Relationship Patterns

The unity and integrity of its diverse cultures were the grounding principles for Federalism in India. The intention of the founding fathers of the Indian Constitution was to fortify the Union against any probable anarchic and disintegrative pressures that were existing within the political purview of partition during the time of independence. Therefore, while introducing the draft Constitution in the Constituent Assembly, Dr. B. R. Ambedkar said, “Though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation. Not being a result of an agreement, no state has the right to secede from it. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source [...] The Drafting committee thought it was better to make (this) clear at the outset rather than leave it to speculation”.²⁶⁰

Federalism in India was the outcome of contradicting cultures, the nationalist leaders, on the one hand, upholding the unique personality of India as was shaped by its geography and history and the other on the new concern for security, unity and administrative efficiency.²⁶¹

Indian federalism has been the subject of considerable controversy as the political scientists have sharply differed among themselves as to whether the Indian Constitution is really and truly ‘federal’, ‘quasi-federal’ or ‘unitary with subsidiary features’. During the framing of the Indian constitution, it was indicated that India needed a centralized constitution to establish the stability and the unity necessary for its future social revolution. Haqqi and Sharma rightly observed that the constitutional framework having the context of historical, political and

²⁶⁰ *Constitutional Assembly of India Debates (Proceedings) – Vol. VI* (7.64.237), December 1, 1948. https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-12-01 accessed on 01.03.2018.

²⁶¹ A. S. Narang. n.6. 72.

circumstantial issues had determined the true value towards a centralized federation.²⁶² It is visible that the Indian Constitution depicts the mixture of federal and unitary but neither a complete federal or unitary. The basis of the Indian federal character is the Assimilation Integration of diverse characteristics like regionalism, language, varied unity and culturalism. Indian federalism is established on the Centre's supremacy over the State.

The Indian federal structure formally favors the Center- a bias that has been a subject of controversy since the system's inception. Paylee considers it as "perfectly federal". Morris Jones terms it "bargaining federalism", "quasi-federal", as described by K. C. Wheare and Ashok Chandra, former Comptroller and Auditor General of India, has stated that India is not a federal state, but a unitary state considering its state and operation.²⁶³

The unitary emphasis in the constitution is rooted in the Government of India Act of 1935, where the partition of powers and various articles specify the relationship between the Center and the states. The Seventh Schedule of the constitution laid down the division of powers in three lists exhausting "the ordinary activities of government". The three lists are the Union List²⁶⁴, the State List²⁶⁵ and the Concurrent List²⁶⁶, whereby the Union retained the residual power and prevails if there arises any discord between Union and State.²⁶⁷ The Centre's supreme position is accentuated by the power vested in the Parliament to amend the boundaries of prevailing states, to form new states, and even to abolish a state by

²⁶²Hari Ram. *Special Status in Indian Federalism*. (New Delhi: Seema Publication, 1983) 21-22.

²⁶³ Robert L. Hardgrave Jr and Stanley A. Kochanek, n.259. 84.

²⁶⁴ Union List gives the Centre exclusive authority to act in matters of national importance and includes among its ninety-seven items such as defense, foreign affairs, currency, banking duties and income taxation etc.

²⁶⁵ The State List, with sixty-six items, covers public order and police, welfare, health, education, local government, industry, agriculture and land revenue etc.

²⁶⁶ The Concurrent List contains forty-seven items over which the Centre and the states shares authority. The most important are civil and criminal law and social and economic planning. In case of any conflict between centre and the state regarding any matter in the concurrent list the centre's will shall prevails.

²⁶⁷Robert L. Hardgrave, Jr. n.259. 85.

the legislative procedure, without recourse to a constitutional amendment and consent of the concerned state(s).

However, being unitary, the Centre is heavily dependent on the states for the implementation of its policies. The leaders in the states, sensitive to the base of their political support, have often remained adamantly independent, as, for example, in their refusal to levy taxes on agricultural incomes the Centre has recommended. Paul Appleby has argued that “no other large and important government [...] is so dependent as India on theoretically subordinate but rather distinct units responsible to a different political control, for so much of the administration of what is recognized as national programs of great importance to the nation”.²⁶⁸ Furthermore, for all its potential, the Centre has used its power to intervene in state affairs sparingly. This has led many scholars to stress upon the cooperative federalism, the interdependence of the Centre and the state.

Marcus F. Franda said that the federal relationship is “a bargaining process between central and state leaders, one in which experiment, cooperation, persuasion and conciliation could describe both generally accepted norms and the usual procedural patterns of intergovernmental relations”.²⁶⁹ In a situation of limited resources each state seeks to maximise its advantage, stressing its needs and its potential, says W. H. Morris-Jones that of practical relations depends upon on co-operative bargaining.²⁷⁰

In the Indian Constitution, some “temporary, transitional or special provisions” have been made to meet special circumstances or particular requirements of certain areas. Thus it has provisions to accommodate regional problems and demands in certain areas of states such as Kashmir, Nagaland, Assam,

²⁶⁸Robert L. Hardgrave, Jr. 86.

²⁶⁹Robert L. Hardgrave, Jr. 86.

²⁷⁰ Robert L. Hardgrave, Jr. 87.

Manipur, Sikkim etc.²⁷¹ Nagaland has been accorded special status in the manner that no parliamentary Act can be applied in that State with relation to religious practices, Naga Customary law, civil and criminal justice, ownership and transfer of land unless the legislature of that State so decides and gives its consents.²⁷² This status is partly due to the disturbed law and order condition in that State and partly to maintain their feeling regarding their customs and maintain their identity in various aspects of their culture. The Indian president is also sanctioned to constitute a Committee for the State of Assam, consisting of the members of the Legislative Assembly of that State, elected from the North Cachar Hills District currently called Dima Hasao and the Mikir Hills District to meet the local demands of these areas. A similar provision has been formulated for the made for the Manipur Hill Areas. The aim is to pay due attention and meet the interests of the hill areas in that state.²⁷³

Indian federal system also provides various categories of special provision to certain union territories and certain areas to meet the peculiar requirement of the inhabitants in this part of the federation. By doing so, India is trying to solve its political, linguistic, religious, historical, regional, cultural, communal and socio-economic problems pertaining to the minorities, backward classes, backward areas, Scheduled Tribes and Scheduled Castes democratically.

The Constitution of India has consistently strived to provide a rationalised method to the association concerning the Union and the State. According to U. N. Gupta, “the problem has two aspects: First, the realization of interstate equality among the states subject to Article 2 of the Constitution and maintenance of reasonable classification where special provisions had to be made in favor of any State, such as provided by Article 370, 371A to 371F of the Constitution. Secondly,

²⁷¹Hari Ram. n.262. 32.

²⁷²Durga Das Basu. *Introduction to the Constitution of India*. 19th Edition Reprint. (New Delhi: Wadhwa and Company Law Publishers, 2004) 34-35.

²⁷³Durga Das Basu. *Constitutional law of India*. (New Delhi: Practice hall of India, 1978) 449.

giving of free play to the states in the democratic process and with regard to assigned functional autonomy to the States”.²⁷⁴

The Constitution of India with a federalist spirit had certain inbred tensions in the subject of equality among the Federal Units. The chiefly visible inequality was regarding the exceptional status granted by Article 370 to Jammu and Kashmir drawn from the Instrument of Accession. However, the then prevailing national and international state generated by the aggression of Pakistan adequately legitimized the exceptional status towards Jammu and Kashmir. Considering the unity of the nation, during the bargaining, the Constituent Assembly had to acknowledge added substantial autonomy in the legislative powers to Jammu and Kashmir in comparison with the other Princely States. The Constitution envisages special consideration in Article 370 and 371A to 371F to handle specific difficulties of some States, for example, Gujarat, Maharashtra, Assam, Nagaland, Andhra Pradesh, Manipur and Sikkim. Considering the unity of the nation, these provisions offer purposive content to federalism, by making certain desirable modifications in support of the spirits or extent of development of the people concerned. Nevertheless, these provisions do not interrupt inter-state equality in the legislative field that is customarily presented in the Seventh Schedule.²⁷⁵ The Constitution’s early provisions and succeeding amendments arranged for self-government under special administrative provisions for Jammu and Kashmir (Scheduled IV, Article 370) and to tribal areas of North East (Nagas, Manipuri, Mizos, Tripura, under Articles 371 and 371A-I), but the Constituent Assembly declined to uphold proposal for forming states based on language.

Nehru, with his anticipation that it would threaten India’s unity and integrity, opposed the provision to the point of threatening his resignation if it were

²⁷⁴U. N. Gupta. *Indian Federalism and Unity of Nation: A Review of Constitutional Experience and Prospects*. in “Indian Federalism and Unity of Nation: A Review of Indian Constitutional Experience”.(Allahabad: Vohra Publishers and Distributors, 1988)10.

²⁷⁵U.N. Gupta. 11.

to be implemented. Nonetheless, he shortly reviewed his stand on this crucial issue, when in 1953, reorganizing of states based on language was approved, and the Telugu-speaking Andhra was formed as the first state on such basis.²⁷⁶ However, the Commission established to reorganize states in the Indian Federation sustained to underscore that “it is the Union of India that is the basis of our nationality”.²⁷⁷ This was the compelling progress towards integrating cultural identities into political and administrative units. The federal decentralization of power reinforced this manifestation of cultural diversity. The second problem in the relationship between Union and State emerges when there are different ruling political parties at the two levels.²⁷⁸ Also, the asymmetrical form of government that India follows by giving special provisions to the state of Jammu and Kashmir, Nagaland, Punjab etc.

The developments in the Indian federation had at times prompted some observers to doubt if India would continue to retain its federal structure. Thus writing in 1968, after reviewing the political developments, which had resulted in a reduced majority for the Congress Party at the Centre and its losing control in about half the number of States, Geoffrey Sawyer observed that “The consequences of these political developments could be a breakdown of order to such an extent as to cause either a division of the country into several independent states, or the adoption of a completely centralized system under a military dictatorship”.²⁷⁹ However, none of the ultimate solutions so far happened.

However, the question arises, has federalism in India remained at the same level as the inauguration of the Constitution, or has it moved towards either end of

²⁷⁶S. D. Muni. *Ethnic conflict, federalism, and democracy in India* in Rupesinghe Kumar and Valery A. Tishkov (eds.). “Ethnicity and Power in the Contemporary World”. (New York:United Nations University Press, 1999)
<http://archive.unu.edu/unupress/unupbooks/uu12ee/uu12ee00.htm#Contents> accessed on: 12.04.2013.

²⁷⁷ S.D. Muni.

²⁷⁸U.N. Gupta. n.274.12.

²⁷⁹V.D. Sebastian. *Strengthening of Indian Federalism* in U. N. Gupta (eds.) “Indian Federalism and Unity of Nation: A Review of Indian Constitutional Experiences”. (Allahabad: Vohra Publishers& Distributors, 1988) 21.

the federal spectrum? To this Charles Alexandro has said, “Though Constitution-making in India was over in 1950, federalism making commenced only with the reorganization of states on linguistic basis in 1956”.²⁸⁰

4.1.1. Asymmetrical Federalism

One of the most prevalent and defensible reactions to acknowledge and accommodate sub-state nations within multinational states is asymmetric federalism.²⁸¹ Charles Tarlton introduced the concept of asymmetrical federalism who in 1965, countered the federations embedded with asymmetrical constitution design that it will increase the interests among federal subunits, and will eventually lead to increase in “secessionist potential”. Many scholars, while commenting on this said that “asymmetrical constitution status is necessary for the protection of cultural group’s rights and the policies of recognition in multinational countries”. Alfred Stepan also observed, “This sort of asymmetrical federalism appears to be associated with democratic consolidations in multi-national countries. All (or all but one Switzerland) of the long-standing multi-national federal democracies are constitutionally asymmetrical”.²⁸²

Several problems are facing the relations between units and the federation. There have been the long-standing problems of Kashmir and North East etc. While some of these problems have called for assistance by the Centre through army intervention for the preservation of law and order in the units. The country’s political matters from 1980 to 1985 was dictated by issues pertaining to national unity and integrity and the character of centre-state relations. The Central government was threatened by the rebellious groups in the border states of Jammu and Kashmir and Punjab. In Assam, mostly in the North East also, anti-state agitations persisted to be the rule rather than the exception –seeming to justify the

²⁸⁰V. D. Sebastian. 23.

²⁸¹ Kham Khan Suan Hausing. “Asymmetric Federalism and the Question of Democratic Justice in Northeast India”. *India Review*. (2014) Routledge Taylor and Francis Group. Vol.12, No.2. 88.

²⁸² Louise Tillin. “United in Diversity? Asymmetry in Indian Federalism”. *Publius*. (2006) Vo.37. Issues-1. 2.

harsh laws. Governments that are non-Congress in the other states, for instance, Telugu Desam Party in Andhra Pradesh, Dravida Munnetra Kazhagam (DMK) in Tamil Nadu, Shiromani Akali Dal (SAD) in Punjab and Communist Party of India (Marxist) in West Bengal were taking up the need for reforms in Centre-State relations and raising political demands.²⁸³ They questioned the fairness and the efficacy of the Constitution's distribution of powers and called upon New Delhi to join them in making adjustments.²⁸⁴

Introducing federal components into the Constitution of India has been contentious for a number of reasons like historical, legal, political, cultural and socio-economic. The major problem amongst the various complications in centre-state relations are the considerable inequalities in the disbursement of power and the increasing chasm between constitutional guarantees and political parties. Recent studies on comparative federalism regularly mentioned India as a successful federal democracy, although one which also exhibits abundant features of asymmetry. As we can see from the severe conflict between the central government and groups in numerous states had led to the breakdown in relations. Jammu and Kashmir was integrated by the 1950 Indian Constitution on the circumstance of the Article 370²⁸⁵ of the Constitution whereby the exceptional status of autonomy is enshrined. It gave full legislative powers to the state assembly, except for foreign affairs, defense and telecommunications. In addition to certain other arrangements, the Constitution of India provides certain special provisions to some states especially, Nagaland (Article 371A) and Mizoram (Article 371G), which have maintained veto power over national legislation regarding social and religious practices, administration of civil and criminal justice, customary law and procedure as well as ownership and transfer of land and its resources, presenting an

²⁸³ Communist Party of India (Marxist). "Approach Paper on Restructuring of Centre-State Relations". The Marxist, (Adopted by the Central Committee at its October 12-14, 2008. Meeting at Kolkata).

²⁸⁴Granville Austin. *Working a democratic constitution: A history of the Indian Experience*. (New Delhi: Oxford University Press, 1999) 535.

²⁸⁵Louise Tillin. n.282. 47.

asymmetrical image to the federal Constitution of India.²⁸⁶ In the North East, asymmetric federalism was initially envisioned under Sixth Schedule to predominantly hold Nagas and other tribal groups in the Assam hill areas.

To substantiate this point in a broader sense, Rao and Singh said, “The wide-ranging asymmetric features were incorporated to accommodate the differential bargaining powers of the state of the Indian Union. Mindful of the impact of political economy on federal institutions, they emphasized the imports of ‘transparent and rule-based’ asymmetry over what they called the ‘opaque and discretionary’ variant”.²⁸⁷ Stepan, Linz and Yadav have also underlined that adopting the framework of asymmetric federal allows India’s polity to accommodate ‘multiple yet complementary identities’ besides facilitating ‘positive identification’ with the state’s political institution.²⁸⁸

Since asymmetrical federalism has been developed as an analytical and a conceptual tool, it has been rightly or wrongly associated with a ‘secessionist potential’, of fostering social and political disintegration and possibly engendering ‘antagonistic cooperation’. These misgivings find resonance in contemporary debates on asymmetric federalism in India wherein granting more autonomy to Jammu and Kashmir, for example, is seen by some as a recipe to secession or disintegration of the Indian state.²⁸⁹

Gagnon contends that at the heart of asymmetric federalism lies in the question of justice. His contention that asymmetric federalism as a normative idea is justified by the “need to secure the conditions of enlarged democratic settings

²⁸⁶ Patrick Honig. “India between Scylla and Charybdis: Negotiating the Cliff of Federalism”. Heidelberg Papers in South Asian and Comparative Politics, working Paper No.50, October 2009, South Asia Institute, Department of Political Science, Heidelberg University, 10 <https://core.ac.uk/download/pdf/32581325.pdf>. accessed on: 23.05.2015.

²⁸⁷ Balveer Arora, K. K. Kailash. n. 258.126.

²⁸⁸ Alfred Stepan, Juan J. Linz and Yogendra Yadav. “The Rise of State-Nations”, *Journal of Democracy*, Vol. 21. No.3. 50-68.

²⁸⁹ Balveer Arora, K. K. Kailash. n. 258. 127- 128.

which provides us with a helpful benchmark to understand the working of de jure asymmetry in India's Jammu and Kashmir".²⁹⁰

Jammu and Kashmir is the only Muslim majority state of India, and because of the circumstances surrounding its accession to India in 1947, Jammu and Kashmir remains a subject of dispute between India and Pakistan. The state is also provided with a special status by Article 370 of the Indian Constitution, which distinguished it from the other states. Jammu and Kashmir is exempted from the even constitutional arrangements designed for states throughout India, permitting it to draft its own constitutional scheme and citizenship. It also limited the parliament's powers to create laws to defense, foreign affairs and communications. Furthermore, the affairs mentioned in the "Union" and "Concurrent" lists might be expanded only to the state "with the concurrence of the Government of the State". No other states in the Union partook in a war that involved a foreign country or was the matter of a United Nations resolution.²⁹¹

The asymmetrical status of Jammu and Kashmir did not stem in the constitution of India from the acknowledgement that its ethnic or religious uniqueness established a base for a higher level of self-government than other Indian states, albeit its majority Muslim populace was an important cause for the discord in and over the state. In fact, Article 370 was considered as transitory expediency intended to govern the state's relation with India before the military conflict over its status could be determined.²⁹² In addition to Jammu and Kashmir, numerous asymmetrical provisions have been incorporated in the Constitution for the states of North East.

²⁹⁰Alain G. Gagnon. *The Moral Foundations of Asymmetrical Federalism: A Normative Exploration of the Case of Quebec and Canada*, in Alain G. Gagnon and James Tully (eds.). "Multinational Democracies". (Cambridge: Cambridge University Press, 2011) 310.

²⁹¹ Louise Tillin. n. 282. 9-11.

²⁹² Louise Tillin. 3.

The Sixth Scheduled introduced constitutional provisions for independent district councils for the tribal areas of Meghalaya, Assam, Mizoram and Tripura. North East India is home to 214 Scheduled Tribes, which inherit a long-standing tradition of self-ruled, scattered across a sensitive region, these tribes drew special attention of the framers of the Constitution. Article 371 puts, North East India's exceptionalism by distinguishing the unique political, socio-cultural and historical rights of particular tribal groups in India's North East to sustain their 'self-rule' within their wide structure of a 'shared rule'.²⁹³ The 13th Constitutional amendment gave distinct arrangements for the newly formed Nagaland state (formed in 1963 with a tremendous tribal and Christian populace) to safeguard social and religious practice, customary laws, etc. Excepting Jammu and Kashmir which has a distinct Constitution under Article 370 of Constitution of India, the Legislative Assembly of Nagaland is the only one in India which is empowered to make any law made by the Parliament inapplicable on "ownership and transfer of land and its resources" by simply passing a resolution to this effect. Subsequently, the new state of Mizoram was also provided with a comparable constitutional status under Article 371G; the only difference is that it has the power to control "ownership and transfer of land" sans "its resources".²⁹⁴

The Sixth Schedule provided sub-state level sovereignty to the tribal areas in other parts of the region. Similarly, many of the North Eastern states which became states through the status of the union territory, were provided states of 'special category' besides numerous others in the other parts of India.²⁹⁵ By this constitutional provision, Nagaland Legislative Assembly (NLA) can make any law approved by the Indian Parliament inapplicable by passing a resolution on the affairs mentioned above. However, recent incidence where the Indian Government "unconstitutionalised" the Government of Nagaland's effort to control and develop petroleum and natural gas in the state, established the datum that this constitutional

²⁹³Balveer Arora, K. K. Kailash. n.258.132.

²⁹⁴ Kham Khan Suan Hausing. n.281. 99.

²⁹⁵Louise Tillin. n.282.12.

asymmetry does not insulate Nagaland from the centralist intervention of the Indian Government even on those matters that are within the preview of Article 371A.²⁹⁶ This agitated the Government of Nagaland and several Naga tribal bodies, and they raised the questions of democratic justice and the probable limits of constitutional asymmetry that a constituent can enjoy within the federal polity of India.

The situation in North East India is highly complex, and it continues to witness sustained ‘insurgency’ movement that is driven by the issues of protecting land, territory, and identities. In India, secessionism is an issue in Nagaland in the North East, in Punjab and Kashmir. The North East region is comprised of over 200 ethnic groups and indigenous populaces, efficiently countering any effort at categorization and one-size-fits-all solutions. Moreover, the critics analyzed that for decades, the central government’s method to the ‘Northeastern frontier’ has comprised of alternatively attempting to ‘develop’ the region, co-opt political adversaries and subdue differing opinions on the margin.²⁹⁷

The Indian government’s carrot and stick policy of pouring development funds which suppressed or reduced the political aspiration of the Nagas to fight for Independence, but the response was a bit different. So when the political initiatives became futile in bringing the Nagas to uphold the Indian Constitution, the government called the army to reinstate law and order in the state by imposing the Armed Forces (Special Powers) Act, 1958 (AFSPA), but it failed miserably and have rather generate ‘military democracy’ in the North East. AFSPA, which has been in constant force for over 50 years in certain parts of the North East and Jammu and Kashmir heretofore 1990, sanctions the shooting, among other things, “even to the causing of death”, of any person “who is acting in contravention of any law and order”. AFSPA has not been repealed, but the Central government seems to be prepared to consider amending it. However, not much progress has been made in

²⁹⁶ Kham Khan Suan Hausing, n. 281. 87.

²⁹⁷ Patrick Honig, n.286.12.

repealing the Act.²⁹⁸ On the other hand, the Mizo struggle for secession (and merger with areas across the Burmese border) in the seventies was led by the Mizo National Front (MNF) and its armed wing the Mizo National Army (MNA) under Laldenga. The MNF finally settled for autonomy within the Indian Union with no severe damage to its popular base. The Naga question could not meet a similar fate.²⁹⁹

4.2. North East States and Centre-State Relations

North East India is the easternmost region of India, and it is comprised of eight states called the eight sisters, namely Assam, Arunachal Pradesh {former North-East Frontier Agency (NEFA)}, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. The present state of Nagaland, Mizoram and Meghalaya comprised a district each in Assam whereas Arunachal Pradesh (then NEFA), comprised numerous “frontiers tract” administered by the governor of Assam and was thus adjudged a component of the state. In 1948, both the Princely States—Tripura and Manipur became Part C State (the previous name for Union Territories), post their merger with India. It is predominantly tribal states and centrally administered territories. The Siliguri Corridor in West Bengal, with a width of 21 to 40 kilometres connects the North East regions with the main part of the country. The population of North East India is roughly 40 million, representing 3.1% of the entire Indian population. North East is a home of 214 Scheduled Tribes which inherit a long-standing tradition of self-rule.³⁰⁰ It has over 220 ethnic groups and an equal number of dialect. The North East region shares international border with Myanmar in the east, China in the north, Bhutan in the northwest and Bangladesh in the southwest. North East is inherently a sensitive region, and it is mainly ethnic, linguistic and religious groups living for centuries. A form of quasi-martial law continued in the Tribal regions of North East, exhibiting both the

²⁹⁸Balveer Arora, K. K. Kailash. n.258.134.

²⁹⁹Achin Vanaik. *The Painful Transition: Bourgeois Democracy in India*. (London: Verso, 1990)121.

³⁰⁰Balveer Arora, K.K. Kailash. n.258.131.

sustained danger of turbulence and the strategically susceptible nature of the region.³⁰¹ It is a home for tribe-structured self-governing local societies with a long history of isolation, stagnation and foreign domination.

Rahmathulla says, “Perhaps, nowhere in the world is the composition of the population so diverse and varied as in this part of India. It is the complexity of the ethnic structure of these States, which often make the tribal population think of themselves as different from the rest of the other people in the country. Ethnic and cultural heterogeneity is conspicuous in the dress and traditional traits of every tribe. This is the reason that the tribes exhibit a greater sense of belonging and responsibility to their own group, particularly in the event of feuds, internal and external”.³⁰²

North East India has historically experienced a huge degree of violence, frequently from ethnic and separatist clashes. It continued to witness sustained “insurgency” movements that are driven by the issues of protecting land, territory, and identities.³⁰³ It was among the first region in independent India to demonstrate traits of political unrest in the pattern of nationalist movements, which resulted in a thread of armed separatist movements and intergroup ethnic conflict which became the persistent features of its politics. The separatist rebellions first occurred in the Naga Hills district of erstwhile Assam state, thereafter the Lushai Hills district of the same state and soon the secessionist movement overtook Manipur, Assam and Tripura. Later Arunachal Pradesh and Meghalaya joined the roll of the states that are categorized as unstable and violent.³⁰⁴ There are also counter-insurgency strategies, epitomized by the Armed Forces (Special Powers) Act, 1958 (AFSPA) which have failed to restore the ‘law and order’ and have rather spawned

³⁰¹ Robert L. Hargrave and Stanley A. Kochanek. n.259. 169.

³⁰²B. Rahmathulla. *Ethnic Heterogeneity and insurgency in the Tribes of North East India: Predicament for Nationalism* in S. A. H. Haqqi (eds.). “Democracy, Pluralism and Nation Building”. (New Delhi: NBO Publishers Distributors, 1984) 326.

³⁰³Balveer Arora, K. K. Kailash, n.259. 134.

³⁰⁴Sanjib Baruah. *Ethno-nationalism in India: A Reader*. (New Delhi: Oxford University Press, 2010) 291.

“militarized democracy” in the North East.³⁰⁵ Despite several attempts made by the central government to bring the situation under control, many of these movements have continued to this day.

4.2.1. Formation of North Eastern states

The Constitution of India sanctions the Central Parliament to form a new state, change state boundaries, rename the state and it can do all that with a simple majority. These actions are not even considered a constitutional amendment.³⁰⁶ Even the laws forming new states out of Assam were also passed with the simple majorities in Parliament.

After India gained its Independence from British rule in 1947, the North East region of British India comprised of Assam and the princely state of Tripura and Manipur. The first step in the reorganization of boundaries of Assam was the separation of Naga areas (combining the Naga areas of the Naga Hills district and the Tuensang district of North East Frontier Agency) and then eventually creating Nagaland as a new state in 1963. It was a response to the Naga insurgency movement. And subsequently, Meghalaya (1972), Arunachal Pradesh (1975), and Mizoram (1987) were formed out of Assam. Manipur and Tripura continued as Union Territories of India between 1956 until 1972 when they attained complete statehood. Sikkim was incorporated as the eighth North Eastern Council State in 2002.³⁰⁷

When declaring statehood to Nagaland in 1963, the state Assembly of Assam did not have much voice. The Assembly’s resolution illustrates its profound ambivalence, but given India its weak federalism, the state legislature had to acquiesce in the decision made by New Delhi. The resolution read as follows, “This

³⁰⁵Balveer Arora, K.K. Kailash. n.259.134.

³⁰⁶Sanjib Baruah. n.304. 107.

³⁰⁷North East India. http://en.wikipedia.org/wiki/North_Eastern_Council. accessed on: 23.08.2017

Assembly is of the opinion that in the interest of the national solidarity and also with a view to bringing about a coordinated development and greater political stability of the Eastern region of India, there should be an integrated political and administrative set-up of various units within this area and nothing should be done which may have an effect of weakening this unity[...] This Assembly is of the view that the provisions of the State of Nagaland Bill, 1962 are not conducive to the aforementioned objectives[...] This Assembly, however, notes that the Government of India is committed to the setting up of Nagaland as a separate state within the Indian Union”.³⁰⁸

When deciding to separate the NEFA, today's Arunachal Pradesh-from Assam, the Assam Assembly was least consulted. There was no movement for a separate state for Arunachal Pradesh unlike other states in the North East; this was entirely the product of New Delhi's strategic consideration and its response to India's border conflict with China.³⁰⁹ In the case of Nagaland, when the state government's view was overridden by the Centre, the State cabinet has urged the Centre not to extend the “Disturbed Area Act” which was supposed to expire later in 2004 but the Central Government extended the “Disturbed Area Act”³¹⁰ in Nagaland under the Armed Forces (Special Powers) Act 1958 against the wishes of the State Government.³¹¹ On 26th July 2011, Neiphiu Rio, the then Chief Minister of Nagaland also said that in spite of resistance from the State government, the Central government has been prolonging the Act now and then “ostensibly on the ground that the Naga political insurgency for secession and political sovereignty is

³⁰⁸Sanjib Baruah. n.304.108.

³⁰⁹Sanjib Baruah. 109.

³¹⁰ Disturbed Area means If in relation to any State or Union Territory to which this Act extends, the Governor of the State or the Administrator of the Union Territory, or the Central Government in either case, is of the opinion that the whole or any part is in such a disturbed or dangerous condition that the use of Armed Forces in aid of civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area.

³¹¹Excessive Powers. Editorial, *Eastern Mirror*. Vol. 2, No.334, Dimapur, Thursday, July, 15, 2004.

continuing till today”.³¹² It shows the power being used by the Central government over the state government.

4.2.2. North East under Emergency Rule

The state emergency, also known as the President’s Rule, refers to Article 356 of the Constitution of India, which handles the failing of the Constitutional machinery of the Indian State. If the State government becomes incapable of functioning according to the constitution, the Central government directly controls the State, with executive authority exercised through the Governor instead of the Council of Ministers accountable to the State legislature. In reality, the president's rule has been enforced under diverse conditions viz. (i) State Legislature is unable to elect a leader as Chief Minister Breakdown of a coalition; (ii) Elections postponed for unavoidable reasons; (iii) Most often, until the mid-1990s, it was imposed in states through abuse of the authority of Governors in collusion with the federal government. However, following a landmark judgment by the Supreme Court of India in March 1994, such abuse has been reduced drastically.³¹³

Under the Indian Constitution, “formal emergency” had been promulgated thrice. The first two were due to the external threats during the Sino-Indo war (1962) and Indo-Pak war (1971). The third (1975-1977) was on the plea of “threat by internal disturbance”. After that, no emergency has been promulgated so far in India.³¹⁴ However, the people of the North East are living under an Undeclared Emergency since the imposition of AFSPA, 1958. Their fundamental rights have been curtailed. During the formal emergency, “all the fundamental rights except the rights available under Article 20 (Protection in respect of conviction for offence)

³¹² Rio Clarifies stand on Disturbed Area Act, *The Assam Tribune*, Guwahati, July 27, 2011. <http://www.assamtribune.com/scripts/detailsnew.asp?id=jul2711/oth06>. accessed on: 26.06.2016.

³¹³ President’s Rule. http://en.wikipedia.org/wiki/President's_rule. accessed on: 12.10.2015.

³¹⁴ Long Journey into the Night (The AFSPA and the Supreme Court). *Manipur Update*, (Feature-2) December Issue, Vol-1, Issue-1, December, 1999.

and 21 (Protection of life and personal Liberty)”³¹⁵ are not suspended, but in the case of the people of North East, even these rights are suspended under the AFSPA.

4.2.3. Various Organization for the Development of the North East Region

While democracy encourages the formation of the new states, development pointed to the need for bringing these separate states into a kind of relationship of joint actions in matters of common interest. North East region is not as developed as compared to the rest of the states in the country. Hence, the Central government appointed a different organization namely the North-Eastern Council (NEC) in 1971, the North Eastern Development Finance Corporation Ltd (NEDFI) 1995, and the Ministry of Development of North Eastern Region (DONER) 2001 to look into the development of the region.

The North-Eastern Council (NEC) was constituted in 1971 by a Parliamentary Act. The eight states (Assam, Manipur, Arunachal Pradesh, Mizoram, Meghalaya, Sikkim, Nagaland and Tripura) of North East India are the members of the Council with their governors and Chief Ministers representing them.³¹⁶ The NEC Act has been amended in 2002 to add Sikkim and restructured as the regional planning body of the North Eastern Region. As an institution in the field of centre-state co-operation, the North Eastern Council stands out as an unmatched administrative innovation in India. It is the only institutions in “the country specifically designed to meet the peculiar requirements of the North East regions of the country. Its objectives enjoined upon it to work for all integrated development of the whole region as well as for its security. No organization in India seeks and depends on such an active and extensive participation of constitutional office of the Governor as does in the North Eastern Council”.³¹⁷ The North Eastern

³¹⁵Durga Das Basu. n. 272. 106-108.

³¹⁶The North Eastern Council Act, 1972.

<http://necouncil.gov.in/sites/default/files/about-us/THE%20NORTH%20EASTERN%20COUNCIL%20ACT%2C%201971.pdf> accessed on: 30.09.2015.

³¹⁷S. R. Maheshwari. *India Administration*. (New Delhi: Orient Black Swan, 2001) 427.

Development Finance Corporation Ltd., (NEDFI) and the Ministry of Development of North Eastern Region (DONER) were also established by the central government on 9 August 1995 and September 2001 respectively to handle the affairs related to Socio-economic development of the eight states of North East India.³¹⁸

Most of the development processes in the regions are curtailed because of the insurgency problem. Effect of insurgency activities on society and politics and development is so extensive, deep and complex. It makes it worse with the nexus between the politician and the insurgent groups during the time of elections as the insurgent group play a significant part in order to get votes. The insurgent groups had pocketed large portions of funds meant for the development work. They also cornered “the majority of the contract works in collaboration with politician and officials”.³¹⁹ Business and enterprises fail because of the extortion by the insurgent groups, and we can also see that many big industries, despite the interest, the abundant resources and potentials, hold back from investing because of the insurgency. Excluding Assam, the Northeast is an industrial desert all because of the insurgency.

Hazarika observes, “India has wasted more than fifty years dealing with its rebellious minorities in the North East. It cannot afford to continue this piecemeal approach. Only a doctrine embracing regional, economic, and environmental and security concerns can transform the jungles of unrest into communities of prosperity”.³²⁰ Sanjay Baruah asserted that as long as crudely the mindset centred

³¹⁸ Ministry of Development of North east Region, http://en.wikipedia.org/wiki/Ministry_for_Development_of_North_Eastern_Region accessed on: 17.06.2016.

³¹⁹Radha Binod Koijam. *The Impact of Insurgency Activities in Northeast India in Socio-economic Development and its solution thereof*. Center for North East Studies and Policy Research (C-NES), February 13, 2010. <http://www.c-nes.org/539/the-impact-of-insurgency-activities-in-northeast-india-on-socio-economic-development-and-its-solution-thereof>. accessed on: 17.06.2016.

³²⁰Sanjoy Hazarika. *Strangers of the Mist: Tales of War and Peace from India's Northeast*. (Gurgoan: Penguin Books India, 2000) 330.

crudely on the development and national security endures to form policy, the aim of attaining peace in Northeast India is likely to be vague.³²¹

4.3. The Federal Process: Reforming Centre-State Relations

During the time of independence, most of the 500 princely states joined the Union of India as the federal provided space for their incorporation either by treating them as new provinces or by merging them with the neighboring territories to hold together the diverse territories with varied histories as a single unit. With the accession of the princely states since India became independent, the process of integration began. The components of the new Union were divided into three categories or types such as Part A, Part B and Part C depending upon both their makeup and relationship with the Centre. Some, former governor's provinces and princely states alike, retained their boundaries. Others, however, were formed from the union of various contiguous states. A number of the smaller territories remained under Central administration.³²² During the time of independence, national unity and integrity were the two core motives for removing the cultural identities from the political arena. This section mainly analyses the approach and commendations of the State Reorganization Commission with exceptional mention to the demand for independent statehood in North East India.

4.3.1. The Reorganization of Indian States

One of the most significant developments over the last two decades in India has been the increasing demand for the reorganization of the states created at independence. Redrawing the map of India was a complex and prolonged process in the 1950s. It involved several difficult steps beginning with partition, integration of the princely states into Indian Union and also carving out of new states within

³²¹Radha Binod Kojam. n.391.

³²²Robert L. Hardgrave, Jr. n.259. 87.

the federal structure. Linguistically, India is considered to be one among the most varied and intricate societies in the world. It is almost impossible to count the total number of languages, mother tongues, dialects and speech variety spoken throughout the country. This linguistic diversity was speculated to lead to the break-up of the country in the initial years immediately after independence. In order to comprehend the lingo-cultural structure of India and to have colonial control over the vast and heterogeneous Indian social structure, the “British colonial state used a number of enumerative strategies to classify and categorize the linguistic demography of the country such as censuses, gazetteers, linguistic survey reports and ethnographical accounts to record the linguistic diversity”.³²³

At the formative stage of the Constitution in South India, people were demanding statehood based on Language. However, after the partition, we can see the central government (then interim government) was very skeptical about creating new states. However, things changed as the situation leading to big agitations and political crisis, “since Independence, India has experienced a succession of regional/linguistic movements, which have sometimes, seemed to be on the point of breaking the unity of the country”.³²⁴

Regarding the linguistic reorganization, it started way back in the 1920s when Congress officially endorsed the establishment of linguistic provinces and repeatedly called for the reorganization of India on linguistic lines. The British too paid attention from time to time to the theoretical desirability of linguistic provinces provided that they could be made economically viable and established with the general agreement of the population concerned. So in 1936, the two new linguistic provinces, Sind and Orissa, were finally established. However, no other such reforms occurred before the granting of Independence³²⁵. The state formation

³²³Asha Sarangi. *Language and politics in India*. (New Delhi: Oxford University Press, 2009) 13.

³²⁴ Paul Brass. *The Politics of India Since Independence* (second editions). (Cambridge: Cambridge University Press, 2008) 3.

³²⁵Joseph E. Schwartzberg. *Factors in the Linguistic Reorganization of Indian States* in Asha Sarangi (eds.) *Language and Politics in India*. (New Delhi: Oxford University Press, 2009) 143-144.

process in independent India began with the territorial reorganization of the then existing states. “The reorganization of states in 1956 was based on the partial fulfilment of recommendations made in the State Reorganization Commission (SRC) set up in the year 1953. Earlier Nationalist leaders debated and argued passionately for redrawing the state boundaries corresponding with their regional linguistic and cultural homogeneity to promote regional solidarity as well as national unity”.³²⁶

4.3.2. Background of the State Reorganization in India

Indian federation in its beginning saw three kinds of states, which the Constitution recognized as Part A, Part B, and Part C States. Part A States³²⁷ constituted nine states, with most of its regions previously belonging to the provinces of British India, which was under the jurisdiction of the Governor General. The Part B States³²⁸ constituted eight states that were previously governed by the princes, also called as princely states. Most of them made treaties with the British by which they recognized the autonomy of the states. Part C States³²⁹ encompassed both provinces of British India and princely states. This Unit of the federation was formed primarily for the reasons of administrative continuity and convenience to political necessity. Cultural identities received little recognition during the formation of these groups of states. The Constitution framers were actually cognizant of the existing diversity and had also recognised the need to treat different communities as equals, but after the partition of the country, they were extremely reluctant to make cultural identities³³⁰ the basis of political identity at any level. Special rights were created to accommodate the cultural communities but not political rights. To keep the political arena liberated from political divisions

³²⁶Asha Sarangi. n.323. 19.

³²⁷ Part A states were Assam, West Bengal, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh.

³²⁸ Part B states were Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union (PEPSU), Rajasthan, Saurashtra, and Travancore-Cochin.

³²⁹ Part C states were comprised of Delhi, Kutch, Himachal Pradesh, Bilaspur, Coorg, Bhopal, Manipur, Ajmer, and Tripura.

³³⁰Gurpreet Mahajan. n.189.87.

based on cultural identities, concern for national unity and integrity were provided as the core reason in the post-independence.

The princely states and provinces were, supposed to be free from interference from the Central Government when acting within their constitutional jurisdiction. The scheme for unification adopted by the Constituent Assembly in 1948 was first to merge some small Princely States, like Rampur, completely with Provinces, secondly, to form Part B States wholly out of Princely States, and thirdly, to create Part C States out of smaller but delicately or strategically situated Princely States. The Province of the Government of India Act 1935 was included as Part A States. This classification of federal units into A, B and C was abolished in 1956 by Parliament through the State Reorganization Act and the Constitution (Seventh) Amendment Act. The Seventh Constitution Amendment had firmly established that no state can have any power in the matter of maintaining its boundaries, that is, the fact of a state being erstwhile princely states will not make their boundaries sacred. This was a highly successful political move taken in favor of the unity of the nation, which ended the identity of princely states altogether. Henceforth, India was divided between “states” and “Union Territories” (UT). Therefore, since 1956, further adjustments in the boundaries have been made by the parliament by various Acts or constitutional amendments regarding the states.³³¹

The Central government set up different commissions, and several resolutions were adopted by different bodies to resolve the conflicting issues involved in the centre-state relations at the initiative of some state government alone or collectively. However, no consensus could be evolved, or a reasonable and perfect formula was formulated by way of compromise. On the contrary, discussions after discussions are going on without finding out any clear cut solution to the problems of centre-state relations. Hereafter this chapter examines the

³³¹ U. N. Gupta. n.274. 8.

proposal of different commissions on centre-state relations and their recommendation.

4.3.3. S. K. Dhar Commission 1948

After independence, the demand for the reorganization of the States on a linguistic basis was raised from different regions, particularly in South India. Therefore, in order to study its possibilities and the issue involved in reorganizing the states based on language, the Indian Government established the Linguistic Provinces Commission on June 14, 1948, chaired by S.K. Dhar. The Dhar Commission submitted its report on 10th December 1948, which stated, “The formation of provinces on exclusively or even mainly on linguistic consideration is not in the larger interest of the Indian Nation and should not be taken in hand”.³³² It recommended that the reorganization of states should be on administrative convenience rather than linguistic basis, in keeping the integrity and general long-term development of the country.

4.3.4. JVP Committee 1948

As the recommendations of the Dhar Commission against the formation of states based on language created massive shocks in the country including the Telugu speaking regions, the national Congress committee had to immediately form a new committee named JVP Committee in its Jaipur session in 1948 with Jawaharlal Nehru, Vallabhai Patel and Pattabhi Seetha Ramaiah as its members.

The tri-member committee submitted its report on April 1949, and endorsed the conclusion of the Dhar Committee and stated, “The old Congress policy of having linguistic provinces can only be applied after careful thought being given to each separate case and without creating serious administrative dislocation or mutual

³³² The Dhar Commission Report, Report of the Linguistic Provinces Commission, 1948, Para 146. 37.

conflicts which would jeopardize the political and economic stability of the country[...]We are clearly of the opinion that no question of rectification of boundaries in Provinces of North India should be raised at the present moment, whatever the merits of such a proposal might be”.³³³ The committee was of the view that the formation of linguistic states should be shelved/adjourned/suspended for some years depending on the socio-economic and political reasons. However, the central government had to face agitations by linguistic communities for separate States. This was accentuated by the decisions of the central government to adopt Hindi as the official language, and compulsory instructions of Hindi in all the education institutions across the country.

4.4. State Reorganization Commission 1956

The first such case of demanding a separate state based on their Linguistic identity was the demand of Andhra by the Telugu people. Regional and ethnic leaders made instant demands for sovereignty and also for the partaking in political power. With this, the problem of linguistic states became the focal point of popular agitation.³³⁴ When Potti Sriramulu started his fast-unto-death in 1952 demanding for a separate community for the Telugu speakers and to subsequently redraw the territories of the Madras State, the Central Government did not pay any heed to his demand until his death on 16th December 1952. This created a massive protest in 1953 in Andhra Pradesh where Telugu-speaking people lived. The riots after the death of Sriramulu ultimately compelled the first Prime Minister, Jawaharlal Nehru to constitute a Commission to look into the reorganization of the state boundaries. This demand won the agreement of the government of Madras and thereby obtained the support of the Tamil Nadu Congress Committee. Nehru initially argued this as “foolish and tribal attitudes” of provincialism.³³⁵ He again pointed out that, “we are

³³³The J.V.P. Report, Report of the Linguistic Provinces Commission of Jaipur Congress, 1948, Para 1. 15.

³³⁴Rajeev Bhargava. *The promise of India's Secular Democracy*. (New Delhi: Oxford University Press, 2010) 44.

³³⁵Robert L. Hardgrave, Jr. n.259. 90.

on the verge of a civil war”, and felt that “we have disturbed a hornet’s nest and I believe most of us are likely to be badly stung”.³³⁶ The states, he affirmed, were only for administrative purposes. However, he and Nationalist Congress Party could not withstand the regional demand for linguism.

Therefore, Nehru on 22nd December 1953, constituted a three-member States Reorganization Commission (SRC) “to examine objectively and dispassionately the question of the reorganization of states of the Indian Union, so that the welfare of the people of each constituent unit as well as the nation as a whole is promoted”³³⁷. Fazal Ali, the retired Chief Justice of the Supreme Court as its head, chaired the Commission with other two members, historian K.M. Panikkar and Rajya Sabha member H.N. Kunzru. The State Reorganization Commission undertook a thorough analysis of political, administrative and socio-cultural aspects for creation of linguistic states. It toured all over India and considered thousands of Memoranda. The Commission adopted a different attitude towards the principle of linguistic homogeneity from previous commissions and laid down its view in the following words:

“It is obviously an advantage that Constituent units of a Federation should have a minimum measure of internal cohesion. Likewise, a regional consciousness, not merely in the sense of a negative awareness of the absence of repression or exploitation but also in the sense of scope for positive expression of the collective personality of a people inhabitation a state or a region, may be conducive to the contentment and well-being of the community. Common language may not only promote the growth of such regional consciousness but also make for administrative convenience”.³³⁸

³³⁶Harish K. Puri. n.96.44.

³³⁷Sudha Pai, Avinash Kumar. *Revisiting 1956: B.R. Ambedkar and State Reorganization*. (New Delhi: Orient Black swan, 2014)3.

³³⁸ A. k. Majumdar and Bhanwar Singh. *Regionalism in India Politics*. (New Delhi: Radha Publications, 1997)104.

In September 1955, a report was submitted generally accepting language as the foundation for states reorganization. It was of the view that while redrawing any of the country's political units, Indian unity should be the prime focus. Following were the four major factors that they identified which can be taken into account in any scheme of reorganization of the states: Preservation and strengthening of the unity and security of the country; Linguistic and cultural homogeneity of Units; Financial, economic and administrative considerations; Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.³³⁹

The commission recommended that the political divisions within the Union would be redrawn generally in accordance with linguistic demands. Thus, in November 1956, the Parliament finally passed the States Reorganization Act, providing fourteen States and six Union Territories. Following the recommendations of the commission, however, Bombay and Punjab, two of the most sensitive areas on the question of language, were not divided on linguistic line. The demands for separate tribal states, including Jharkhand and Nagaland, were also bypassed.

However, the distribution of linguistic groups does not follow administrative needs or economic viability. This reorganization was done based on “a single principle of linguistic homogeneity”³⁴⁰. The borders of the State were ultimately redrawn in phases by the State Reorganization Commission. In the first phase, territories mainly of Part A states were reconstituted so that linguistic communities of neighboring areas could form one unit of the federal polity like the creation of the states of Maharashtra and Gujarat in 1960, Nagaland in 1963 and

³³⁹*Report of the States Reorganization Commission*, (New Delhi: Government of India, 1955).105 https://mha.gov.in/sites/default/files/State%20Reorganisation%20Commisison%20Report%20of%201955_270614.pdf . accessed on: 18.04.2015.

³⁴⁰ U. P. D. Kesari. *The Language issue in the perspectives of National Unity- Review of Constitutional and Political Experience* in U. N. Gupta. “Indian Federalism and Unity of Nation: A Review of Indian Constitutional Experiences”. (Allahabad,: Vohra Publishers& Distributors, India, 1988) 53.

Haryana and Punjab in 1966. In the second phase, in 1970s Northeast was divided, and numerous new states were formed through which numerous tribal communities' established territorial and political autonomy. In each process of reorganization, "cultural and community identity became the ordering principle of the federation in the post-independence period".³⁴¹ However, Nagaland, one of India's North Eastern states which were formed in 1963 was perhaps the only exemption from the pattern of the 1950s and 1960s. It was formed following the protracted fight of the Naga tribes against the Indian state for a sovereign land, independent from India for the recognition of their tribal identity. The foremost focus of reorganizations in the 1970s and 1980s was on North East. The footing of reorganizations was tribal insurgency based on separations and statehood. The chief institutional reaction of the Union government was the North Eastern States Reorganization Act, 1971 which promoted the Union Territories of Manipur and Tripura, and other Sub-State of Meghalaya to complete statehood and Mizoram and Arunachal Pradesh (then Tribal District) to Union Territories but later they also became states in 1986.

In the third phase, three other states were formed in the year 2000, Chhattisgarh, Jharkhand and Uttarakhand (now, Uttarakhand) carved out of the larger states in the northern Hindi-Belt—their struggle was a long drawn, but it became dynamic in the 1990s. And also carving out of Telangana state from Andhra Pradesh in the year 2014. The primary basis of their demand was a mixture of tribal ethnicity, regional deprivation, language, and ecology. However, language did not play any significant part in the conception of these states. The legislative processes, rather than any Commission or ethnic peace accords prescribed in the Constitution were followed in creating these states in 2000.³⁴² While the older demands of statehood were not yet addressed, several new demands such as Coorg in

³⁴¹Gurpreet Mahajan. n.189. 88.

³⁴²Harihar Bhattacharyya. *Federalism and Regionalism in India: Institutional Strategies and Political Accommodation of Identity*. Heidelberg Papers in South Asian and Comparative Politics. Working Paper No.27, May, 2005. 13.

Karnataka, Gorkhaland in West Bengal, Bodoland in Assam have emerged.³⁴³ As many as 30 such demands seem to be pending for consideration before the government.

By the States Reorganization Act 1956 and the 7th Constitutional Amendment Act 1956, the difference between the Part A and Part B states was dissolved, and Part C states were obliterated. Though some of them were merged with neighbouring states and others were denominated as Union Territories. Consequently, 14th states (Andhra Pradesh, Madhya Pradesh, Assam, West Bengal, Bihar, Bombay, Kerala, Madras, Mysore, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Orissa) and 6 Union Territories (Delhi, Andaman and Nicobar Islands, Manipur and Tripura, Himachal Pradesh, Minicoy and Amandivi, Laccadive) were created on November 1, 1956. This was a highly successful political move taken in the interest of unity of Nation, which ended the identity of Princely States altogether. Henceforth, India was divided into “States” and “Union Territories”³⁴⁴. The first linguistic state that came into being was Andhra Pradesh in 1956, formed by segregating the Telugu speaking areas from the state of Madras (a Tamil speaking state). The Parliament is empowered to form a new States by Article 3 of the Constitution.

Following the State Reorganization Act of 1956, the boundaries of the southern states were recognized in closer conformity with linguistic regions. All the reorganizations, excepting those in Punjab and the North East region of the country, satisfied the grievances of the huge language communities of India. However, it is crucial to recognize that not all linguistic movements were succeeded to get separate states but only those which were both well placed to begin with and which were able to prevail against the rival groups within the former provinces of

³⁴³Sudha Pai, Avinash. n.337. 4.

³⁴⁴ U. N. Gupta. n. 274. 8.

British India and against the reluctance of central government leaders to begin and continue a process to which they saw no certain end.³⁴⁵

The demand for the creation of Nagaland posed a more serious problem. Secessionist movements in the North-Eastern tribal areas were based not only on their cultural uniqueness in various cases, or the differences of their language and religion from the mainstream Indian language and religion but because of the early failure to grant self-government rights to these regions. The rebellion of Nagas was because “the Assam government violated an agreement with the Naga National Council to recognize it as the principal political and administrative force in the Naga Hills district”.³⁴⁶ These Naga tribes which were in the hills along the Assam-Burma border were eager to assert their independence from the new Indian government as the British had never brought them completely under their control. The situation was further complicated by the conversion of many of the Nagas to Christianity by American Baptist missionaries. Their missionary tie gave the Nagas outside leverage. When the Government sought to bring formerly unadministered areas of the Naga Hills under its control, the Nagas appealed to the United Nations, protesting what they called an Indian invasion and the Naga National Council was organized to function as a parallel government with Assam. With money and arms secured by the Naga leader A. Z. Phizo, who later set up an exile government in London, the rebellion became increasingly serious. In 1956 the Indian government sent in troops to pacify the area. The Naga People’s Convention, representing the more traditional leadership of the Naga tribes, opposed Phizo and proposed a settlement “within the Indian Union.”³⁴⁷ The Nagas were finally released from Assamese administration, and in 1963 the state of Nagaland came into being.

The establishment of the “Naga Hills-Tuensang area in 1957 was the first of a series of concession by the central government to the political aspirations of

³⁴⁵ Brass Paul. n.324. 169.

³⁴⁶ Rajeev Bhargava. n.334. 49.

³⁴⁷ *Report of the States Reorganization Commission*. n. 339. 90- 93.

tribal peoples in the far northeast of India. Though the linguistic differences of the highland Nagas from the lowland Assamese were substantial, Nagaland, as the area become known on achieving statehood in 1963, could hardly be considered a linguistic state as not only did the many culturally related Naga tribes speak a host of mutually incomprehensible languages but they also overlap considerably into the union territory of Manipur, the North East Frontier Agency (established in 1954) and the republic of Burma”.³⁴⁸ The next new tribal territory to be established was Meghalaya, and it attained full state status in January 1972, and at the same time, the North East Frontier Agency and Mizo Hills districts of Assam respectively became the Union Territory of Arunachal Pradesh and Mizoram. Regarding the state of Sikkim in 1975, it had nothing to do with the internal linguistic politics of India.

The criterion of linguistic homogeneity was considered to be the most appropriate for redrawing the boundaries of the existing states immediately after independence. However, such a territory re-demarcation could not use the principle of linguistic homogeneity uniformly throughout the country. “The border disputes between neighboring states which earlier seemed to be lingo-cultural in origin begin to tell more complicated forms after the reorganization process was over. Apart from purely linguistic considerations, other ethnic factors did enter from time to time concerning the formation of new provinces and states. When we talk about the tribal states of North-Eastern India- the racial and cultural distinctiveness is the case. Caste too seems to have played a role”.³⁴⁹ Kaviraj in his essays engages and argues well about the “pluralities of world view inherent in a multilingual society like India, where achieving cultural homogenization through the primacy of one language is not possible or even desirable”.³⁵⁰

³⁴⁸Joseph E. Schwartzberg. n. 325. 162-163.

³⁴⁹Joseph E. Schwartzberg. 172.

³⁵⁰Asha Sarangi n.323. 22-23.

In the course of the struggle, Brass pointed out that the central government developed a set of four formal and informal rules/ strategies to regulate towards the regional demands. The first rule was that the Central government would not acknowledge groups which made secessionist demands but would suppress them by all necessary means, including armed force. This rule has been applied to North East since independence to suppress the secessionist demand of Nagas, Mizos and others, and in Punjab since 1984. The second rule was that the government would not entertain regional demands which were based upon religious differences. The third rule was that the demand for formation of separate linguistic states would not be accepted suddenly or on the merely objective grounds that a distinctive language was the predominantly spoken language in a particular region. The fourth rule was that the central government would not concede to the reorganization of a province if the demand were made solely on one of the important language concerned. The reorganization of the southern provinces was taken up first because it had strong support from both the Telugu and Tamil speaking peoples.³⁵¹

Thus the Indian Constitution has functioned with a set of written and unwritten rules which limited the form in which regional demands can be made. The strategy of accommodation of regional demands seems to have had three main consequences such as reducing of conflict aimed at central government, regionalization of politics and augmented political participation and in certain cases augmented political organization in numerous states.³⁵²

4.5. Centrally appointed Commissions on Centre-State Relations

Apart from resolving demands for the reorganization of states, there have been different Commissions appointed by the Central government to deal with many other vital issues of Centre-State Relations. Regarding centre-state relations, the initiative came from the Centre and the States as well. Some of the Commissions

³⁵¹ Brass Paul. n. 324. 173-174.

³⁵² Paul Brass. n. 85. 17-19.

appointed by the Government of India are Administrative Reform Commission (1966), The National Development Council Resolution (1978), the Sarkaria Commission (1983), the Punchhi Commission (2007).

4.5.1. The Administrative Reform Commission 1966

In order to review the Centre-State Relation and to recommend the Union Government the change required in the Constitution for improving the Centre-State relations, the Ministry of Home Affairs, on 5 January 1966, by resolution no.40/3/65-AR (P), under the Government of India constituted the Administrative Reform Commission (ARC). Morarji R. Desai was its chairman but was later replaced by K. Hanumanthaiah as the former was appointed as the Deputy Prime Minister of India. The Committee submitted its report in 1969 which proposed “strong centre and strong state”. It was the first time that a committee made such a proposition on centre-state relations in Indian history. Dealing on this topic of autonomy and devolution of the state powers, ARC’s “recommendations were based on these principles: arrangements for devolution should be such as to allow the States’ resources to correspond more closely to their obligations, devolution should be in a manner that enables an integrated view of the plan as well as the non-plan needs of both the Union and the States and thirdly advancement of loans should be related to what the team referred to as the productive principle”.³⁵³ The report states that “the Governor of a State is a link with the Centre [...] he is appointed and dismissed by the President [...] The Constitution thus provides explicitly for a departure from the strict federal principles, and it is relevant to observe that this departure is not fortuitous or casual [...] the Constitution makers did not intend the Governor to be only a component in the apparatus of governance

³⁵³ Commission on Centre-State Relation, Report of the Commission on Centre-State Relations, Evolution of Centre –State Relations. Vol.1, March 2010, 73.
<http://interstatecouncil.nic.in/wp-content/uploads/2015/06/volume1.pdf> accessed on: 11.04.2017.

at the State level”.³⁵⁴ One of the main recommendations given by this Committee on the North East Frontier Agency (NEFA) was that there is no need for the change in the restriction imposed on the entry of the outsiders into NEFA through the imposition of “Inner Line”. There is, however, need for an Organized Settlement Programme in those areas where there is a lack of population.³⁵⁵

4.5.2. Sarkaria Commission 1983

Given the growing demand from the various states for review of the centre-state relations, the Government of India announced on 24th March 1983, its decision of appointing a Commission under R.S. Sarkaria, who was then a former judge of the Supreme Court. This Commission submitted the report in 1988. The Commission consisted of R.S. Sarkaria (Chairman), B. Sivaraman the Cabinet Secretary, S.R. Sen a former Executive Director of the IBRD (International Bank for Reconstruction and Development) and Ramasubramaniam (Member Secretary).

³⁵⁶

“The Sarkaria Commission constituted vide the Ministry of Home Affairs Notification No. IV/11017/1/83 CSR dated 09.06.1983. Its term of reference was to examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate and which examining, reviewing and making recommendations, it has to keep in view the social and economic development, etc. [...] and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people”.³⁵⁷ The Commission defined federalism as a “dynamic process of co-

³⁵⁴ A.D. Ray Choudhuri. *Existing Centre State Relationship Patterns: Impact of Political Party System of Government* in U. N. Gupta (eds.), “Indian Federalism and Unity of Nation: A Review of Indian Constitutional Experiences”. (Allahabad: Vohra Publishers & Distributors, 1988) 98.

³⁵⁵ Virender Kumar. *Committee and Commission in India 1966* (New Delhi: Ashok Kumar Mital, 1978) 177.

³⁵⁶ Prakash Chandra. *Indian Government and Politics: A Study of Indian Political System*. (New Delhi: Cosmos Bookhive (P) Ltd, 2001) 85.

³⁵⁷ A.D. Ray Choudhuri. n.354. 95.

operation and shared action between two or more levels of government, with increasing inter-dependence and centrist trends”.³⁵⁸ The Report emphasised that federalism as a concept has varying nature over the centuries. Federalism, according to the Commission, is a changing notion and not a static paradigm.

The Commission suggested that centre ahead of passing any law should hold consultations with the state on the entire Concurrent subjects. Above all, the Commission, under Art. 263 prepared a robust case for Inter-State Councils.³⁵⁹ It also wanted the Office of the Commission of Linguistic Minorities to be activated. The Commission also said that “The external aggression in Kashmir and the outbreak of extremist violence in some part of India underscored the imperative of building a strong Centre capable of protecting the Independence and the integrity of the country against danger from both within and without”.³⁶⁰ The Commission continued to say that “One of the most significant developments has been the rise of linguistic chauvinism, rearrangements of the boundaries of the states on linguistic basis, imposition of the language of the majority in a state on the minorities and disregard of the special provision relating to language spoken by a section of the population of the State (Article 347), resulting in fissiparous tension”.³⁶¹

Para 4.03.09 (B) stated that the Governors of Nagaland and Arunachal Pradesh have been delegated with distinct duty concerning law and order in their corresponding states. While discharging their duties, the concerned Governors has to exercise his judgment after consenting with his Council of Ministers [Article 371

³⁵⁸ Lawrence Saez. *Federalism without a Centre: The Impact of Political and Economic Reform on India's Federal System* (New Delhi: Sage publications, 2002) 72.

³⁵⁹ Article 263 “The President can establish an Inter-State Council for enquiring into and advising upon inter-state disputes, if at any time it appears to him that the public interests would be served by the establishment of such Council”. Dr. Durga Das Basu, “Introduction to the Constitution of India”. (Agra: Wadhwa and Company Publishers, 2004) 343.

³⁶⁰ “Sarkaria Commission Report on Centre-State Relations”14.

<http://www.scribd.com/doc/150667861/Sarkaria-Commission-Report-on-Centre-State-Relations> accessed on:29.08.2016.

³⁶¹Sarkaria Commission Report on Centre-State Relations.

H (1) and 371 A (1) (b)]. They are the only two provisions in the Constitution which use the expression ‘individual judgment’ and make prior consultation with the Council of Ministers obligatory.

The authority for the final verdict lies solely with the Governor. Regarding the second case, the Governor is not obliged to pursue or accept the advice of his Council of Ministers.³⁶² Regarding the “issue concerning sub-clause (a) (iv) of Article 371 A (1), as raised by the Government of Nagaland, dialogue and discussions between the Union and the State Government should be achieved in a spirit of reciprocity and trust, as represented by the Sixteen Point Agreement between the Government of India and the Naga People’s Convention in 1969. The State’s requirements and national interest would be served best by espousing a pragmatic approach to the whole issue”.³⁶³

4.5.3. Second Administrative Reform Commission 2005

On 31 August 2005, the Second Administrative Reform Commission (ARC) was constituted as a Commission of inquiry with Veerappa Moily as its chairman—for preparing a detailed blueprint for revamping the public administrative system. The Commission dealt extensively on the North East regions regarding the socio-economic, political and cultural and also the special constitutional provisions under Sixth Scheduled and also the special provision under Article 371A-C, 371 F-H. It also focused on the problems of insurgency and the ethnic conflict, which still prevails in the North East. Some of the recommendations given by the Commissions are: “in order to address the genuine and legitimate concern of the

³⁶²Sarkaria Commission (First Commission on Centre-State Relations)
<https://sites.google.com/site/errajanikantissuediscussion/committee-commissions/sarkaria-commission-1>

accessed on 29.08.2016.

³⁶³Rajani Kant Indra. *Information and Analysis, Sarkaria Commission (First Commission on Centre-State Relations)*.

<https://sites.google.com/site/errajanikantissuediscussion/committee-commissions/sarkaria-commission-1>

accessed on: 29.08.2016.

local people, there is need of political dialogue among various stakeholders, and therefore steps should be taken to upgrade the capacity and capability of the police forces of the States so that they are able to uphold the law”.³⁶⁴ Moreover, considering the safety of the land, the cross border movement of insurgent and also other measures along with the diplomatic efforts should be stepped up. For the tribal areas that neither come under the Sixth Schedule nor the Seventy-Third Constitutional Amendment, the Commission also recommended that the State Government undertake measures to form bodies at the district level, which consists of both elected as well as traditionally selected representatives. In order to encourage those states which exhibit initiatives and takes the lead in this matter are to be given incentives.³⁶⁵ The North Eastern Council (NEC) should establish an autonomous body as an apex Regional Academy for Human Resource Development with academic and executive flexibility.³⁶⁶ The Commission also recommended that the directive of the Academy may encompass the whole range of services under the government. On the state of Nagaland, the Commission said that “Nagaland has made commendable efforts to usher in a paradigm of decentralised village self-governance through effective use of Social Capital. The Ministry of Rural Development should formally recognise this arrangement for the implementation of various development and poverty alleviation initiatives in this State”.³⁶⁷

The Second Administrative Reforms Commission (ARC) under the chairmanship of Veerappa Moily has advocated extensive powers to the Centre to deploy armed forces in case if any state face “major public order problems”, and the revoke of the controversial Armed Forces (Special Powers) Act, 1958, in its fifth report on “Public Order”, submitted to Prime Minister on June 25, 2007.³⁶⁸

³⁶⁴ Government of India. Second Administrative Reform Commission “*State and District Administration*”. Fifteenth Report, New Delhi, April 2009, 183-184.

³⁶⁵ Government of India. Second Administrative Reform Commission. 211.

³⁶⁶ Government of India. Second Administrative Reform Commission. 219.

³⁶⁷ Government of India. Second Administrative Reform Commission. 264.

³⁶⁸ Vinay Kumar. “ARC for repeal of Armed Forces Act”. The Hindu, June 26, 2007. 12.

The Commission favored the repeal of the Act by stating that its elimination would erase the feeling of discrimination and alienation amongst the populaces of the northeastern States. The Act grants security forces extra power to deal with any terrorist or anti-national activities. However, various cases have revealed its misuse, and hence, on humanitarian ground appeals have been made from various quarters for its removal. Again, the Commission, while issuing the AFSPA of 1958 recommended its repeal and advised to substitute it with facilitating legislation for the deployment of Central forces in the North Eastern States. “The Unlawful Activities (Prevention) Act, 1967, should be amended by inserting a new Chapter VI A as recommended by the Committee to Review the AFSPA. Chapter VI A would only apply to North Eastern states”, it said.³⁶⁹

The Administrative Reform Commission (ARC) made an important observation that the whole cause behind the constant turbulence in the North Eastern states ensued because of the governments’ failure. Veerappa Moily, the ARC chairman, said, “The main cause of the conflict in the region is the failure of the Government to initiate dialogues and discussions on issues confronting society. The problem is the failure on the part of the Government to understand the ground realities in the region”.³⁷⁰ The Commission also said that “the laws enacted by New Delhi were not in line with the ground realities happening in the North Eastern states. Focusing on a military strategy alone to curb the long-term problems would fail to identify and resolve the real problem. The Government of India should realise that the solution could be realised by welcoming a sincere dialogue and not merely smoking them out through an all-out military operation”.³⁷¹

³⁶⁹ Government of India. Second Administrative Reform Commission “*Public Order*”. Fifth Report, New Delhi, June 2007, 243.

³⁷⁰ Government of India. Second Administrative Reform Commission “*Public Order*”. 247

³⁷¹ David Buhrik. AFSPA: Chained in Chain Reaction, http://www.e-pao.net/epSubPage_Extractor.asp?Src=liesure.El. David accessed on: 27.08.2016.

4.5.4. Justice Madan Mohan Punchhi Commission 2007

The then United Progressive Alliance government (UPA) appointed the Commission on April 28, 2007, with former Chief Justice of India, Madan Mohan Puncchi as its chairman. The Commission gave its report on April 20th, 2010. It started with four members: “Justice Punchhi as chairman, Dharendra Singh and V.K. Duggal, Prof. N. R. Madhava Menon. Later, Dr. Amaresh Bagchi was also made a member of the Commission”.³⁷²

The Commission was constituted to review the relative roles and responsibilities of the numerous stages of government and their inter-relations. The terms of reference of the Justice Punchhi Commission are inclusive and are a step forward for Justice Sarkaria Commission set up in 1983. The terms of reference is that the Commission will inspect and analyse the functioning of the prevailing provisions between the Union and the States as per the Indian Constitution in regard to the powers and functions, administrative relations, emergency provision, economic and social planning, Panchayati Raj institution. “The Commission will keep in view the social and economic developments that have been placed over the years particularly over the last two decades and have due regard to the scheme and framework of the Constitution, in ensuring good governance for promoting the welfare of the people, strengthening the Unity and integrity of the country”.³⁷³ The Commission suggested that the inter-state council should be reinforced and activated as the notable player in the inter-governmental relations.

Several Regional Consultations on the subjects connected mainly to the region were organised by the Commissions. Thus, on September 30, 2008, and October 01, 2008, the North- Eastern Regional Consultation was held at Shillong,

³⁷²Rajani Kant Indra. “Punchhi Commission (Second Commission on Centre-State Relations)”. <https://sites.google.com/site/errajanikantissuediscussion/committee-commissions/sarkaria-commission-1> accessed on: 27.08.2016.

³⁷³Report of the Commission on Centre-State Relations, *Evolution of Centre –State Relations*, Vol.1, March 2010. 4-8.

Meghalaya. One of the thematic areas for discussion in this conference were associated with the Decentralized Planning and Governance with special reference to the functioning of the Autonomous District/Regional Council under the Sixth Schedule of the Constitution. The States of Meghalaya, Arunachal Pradesh, Assam, Manipur, Mizoram, Nagaland, Sikkim and Tripura participated in the Consultation.³⁷⁴

The Commission also extensively surveyed the insurgency problem in the North East. The ethnic groups in North East had started voicing for autonomy, which resulted in the insurgency in numerous portions such as Manipur, Mizoram, Assam Nagaland and several other areas. Over time, through the strong review and progressive procedure besides administrative actions, the situation in several parts of the region has been brought under control, while there is ongoing efforts to resolve the issue in other areas. “The Government of India has all along held to the position that the ‘sovereignty’ issue has to be kept beyond the scope of discussion and no such discussion on another issue can start unless the armed rebellion is given up”.³⁷⁵

One of the issues of this Commission is that maximum of the three decades post-independence, the notion of security in the country focus mainly on external advisories. “The internal security threats, by all count, are limited and confined to some selected pockets such as Jammu & Kashmir and the North-Eastern region. Therefore in dealing with the internal security and in terms of protection of people, groups and assets from hostile environs, it will be the well-coordinated skills of the Centre and the States in the pooling resources, technological and human, that will eventually stand to test. The combined spirit of the various constitutional provision, as they relate to Internal Security Management, therefore should empower the

³⁷⁴Report of the Commission on Centre-State Relations. 20-21.

³⁷⁵Report of the Commission on Centre-State Relations.70.

“State” (Union and State taken together) to be proactive and preempt the anti-State efforts by hostile groups and contain and control the post-event damage”.³⁷⁶

The Commission also recommended the empowerment of the Rajya Sabha as a federal second chamber by amending the Constitution to introduce an equal representation of members to Rajya Sabha representing their respective states.³⁷⁷ The commission has concluded that “cooperative federalism” will play a vital role in preserving India’s unity and integrity and social and economic development in the days to come. The principle of cooperative federalism thus may have to perform as a practical guide for Indian polity and governance.

4.6. State Governments’ initiatives

There are different initiatives taken by the state government because of the growing centralization and interference of the central government in making the ethnic and cultural minorities in particular, apprehensive. Over the years, regional consciousness and regional demands have been articulated by regional parties and movements represented by regional political parties like the DMK and AIADMK in Tamil Nadu, the Akali Dal in Punjab, the NSCN in Nagaland etc. In this context, it can be said that the regional movements in post-independence India may be characterized as a response to the imposition of the nation-building in the framework of a single political community. Therefore, various states, particularly at the periphery and homelands of ethnic groups, have expressed this feeling of deprivation and desire for autonomy both individually and collectively. There are different committees initiated by the State government such as the Rajamannar Committee 1971, the Memorandum of the West Bengal Government 1977, the Anandpur Sahib Resolution of the Shiromani Akali Dal 1977, the National Development Council Resolution 1978.

³⁷⁶Report of the Commission on Centre-State Relations. 91.

³⁷⁷Balveer Arora, K. K. Kailash. n.258. 106.

4.6.1. The Rajamannar Committee 1971

The Rajamannar Committee on Centre-State Relation was set up in 1970 and submitted its report on 27th May 1971 by the D.M.K. Government of Tamil Nadu. Former Chief Justice of Madras P. V. Rajamannar headed it, and the committee included A. Lakshmanaswamy Munda and P. Chandra Reddy as members”. The Committee’s term of reference of the Committee is “to suggest suitable amendments to the constitution to secure to the state the utmost autonomy”. The Committee suggested the constitution of a high-power commission to reallocate powers between the Centre and the States. The committee also recommended the immediate formation of an inter-state council as provided for under Article 263 of the Constitution.³⁷⁸ They also said that the Governor should be appointed in consultation of the State government and he should be ineligible for a second tenure. The committee summed up that “there is a theme of subordination of the State running right through the Constitution”.³⁷⁹ The 282 pages of Rajamannar Committee came out in 1971, but it failed to attract the attention of the Centre as it expresses the narrow thinking of the DMK party. Moreover, the committee failed to articulate any constructive and purposeful theory of Centre-State relations.

4.6.2. The Memorandum of the West Bengal Government 1977

During the early 1980s, the Leftist Government of West Bengal articulated the need for redefining the centre-state relation in India. The memorandum of the West Bengal Government (1977) also made useful recommendations and suggested amidst substitution of the word ‘Federation’ for ‘Union’, transfer of residuary powers to the States, devolution of Union powers from state list, non-deployment

³⁷⁸S. R. Maheshwari. n.316. 380.

³⁷⁹S. R. Maheshwari. 381.

of Central Police Force to State, and to make constitutional amendment more rigid. It specifically mentioned, in order to have a robust and cohesive India, it should nurture the democratic ambitions and the uniqueness of the people of the diverse states with respect and not treated with contempt.³⁸⁰ They also suggested deleting Article 356/357, which empowers the President to dissolve the state administration. Overall, it sought more considerable power for the states. They also demanded both political and financial autonomy, and it was supported by the State government of Tamil Nadu, Kerala, Jammu and Kashmir in this matter.³⁸¹ They claimed for a 'strong states' but on no account want a 'weak centre' too. Morarji Desai, the then Prime Minister, said that the constitution had been framed 'wisely' and there is no need for revision in terms of centre-state relations. Chandrasekhar, the president of the ruling Janata Party, also gave an equally vague response. He claimed that they were still 'keen on decentralization' while however, he said he did not comply with the demands of the state autonomy.³⁸² Though Rajamannar Committee and West Bengal Memorandum were different, a comparison would show a fundamental similarity in their essential features. However, both sets of the proposal are directed towards different ends and for the pursuit of a totally different kind of political lifestyle.

4.6.3. The Anandpur Sahib Resolution 1977 (Akali Dal, Punjab)

The Akali Dal in its Anandpur Sahib Resolution which was formally adopted by the Dal at Amritsar on 23rd August 1977 asserted that the authority of the centre should be confined only to the defence of the country, foreign relations, communications, railways and currency. The resolution also asserted that the determination of the Akali Dal is to make the Constitution accurately federal and ensure that the authority and representation of all states are equal at the Centre.³⁸³

³⁸⁰ A. D. Ray Choudhuri. n.354 .99.

³⁸¹ S. R. Maheshwari. n.316. 390.

³⁸² Hari Hara Das and Sanjukta Mohaptra. *Centre-State Relations in India*. (New Delhi: Ashish Publishing House, 2007) 198.

³⁸³ Prakash Chandra. n. 356. 85.

A fundamental alteration in the organizational form of political power, that is, a fundamental revolution of the system in its entirety was needed.

4.6.4. The National Development Council Resolution 1978

The Resolution adopted by the National Development Council in March 1978 says that the strength of the Centre lies in the strength of the states and vice-versa. Neither can be strong without the other. It advocated for a meaningful restructuring of Centre-State relations. It is worth mentioning that President Sanjiva Reddy on the Republic Day in 1978, in an interview with a news magazine said, “India is a big country and trying to centralize everything from Delhi is not possible for long. It can only lead to a breakup. The federal structure must become a little more flexible with some subjects important subjects being kept in the central sphere”.³⁸⁴

A federal system is, in a sense, the result of a kind of synthesis between organized centrifugal and organized centre-petal forces which determines the character of the resulting federal system. However, in India, the centrifugal forces immediately after the independence were in total disarray. As we can see before 1947 and immediately after independence, there were three types of centrifugal forces such as communal, regional and linguistic. They had been asserting themselves before independence to protect their particularistic interest but within the broad framework of Indian unity. Indian social system is a very complex system because of the various types of diversities such as geographical, cultural, linguistic, administrative, religious etc. One of the main issues that exist in India is the problem of minorities, which is the most critical problem before the states and also before the centre. Minorities feel alienated with the system, which leads them to frustrations, and they also indulge them in politics of violence which we can see in the day today situations that prevail in India. Indian federalism, constitutionally as

³⁸⁴A.D. Ray Choudhuri. n. 354.99.

well as politically has always leaned towards a strong centre guiding the destiny of the states.

Tohra, in his speech, mentioned that India is “a multinational society” with “a variety of nations, nationalities and minorities” living in it ³⁸⁵ and in such a situation national integration was possible only through maintaining and strengthening the pluralist character of society which demanded a truly federalist character. When we looked at the different commission appointed by the Centre as well as the state initiatives hardly we could see any provision of character which deals with the North East region in general and the state of Nagaland in particular. It is no doubt that the North East is still witnessing with the insurgency movements that are driven by the issues of protecting land, territory and identities. Moreover, most of the North Eastern states heavily relied upon central subvention and weak resource mobilization. Therefore, in order to come to a consensus or rather an approachable way towards the people of North East, the Centre should check in the gap and loopholes and form a more North East-friendly commission which can focus more on developing the states as well as rebuilding the strained relationship between the Centre and states and at the same time they will not feel alienated being the citizen of the country.

³⁸⁵ G.S. Tohra. *Federal Polity (The Question of Autonomy: its Meaning, Necessity and Framework)*, a speech while moving the main Political resolution on the Autonomy of States, on 29 October, 1978, Shiromani Akali Dal (SAD) Amritsar. 16.

CHAPTER 5

INSTITUTIONS AND SOCIO-POLITICAL PROCESS IN NAGALAND: AN OVERVIEW

This chapter presents an overview of the state of Nagaland, discussing the historical background of the evolution of the insurgency movement, which will help us in understanding the insurgency trends and issues in Nagaland. It will also discuss the Indian state responses towards the insurgency movement, and also about the electoral politics, its continuities and connections between the traditional and modern electoral system.

Nagaland comprises of diverse tribes with rich culture and traditions. It is one of India's smaller hill states. Nagaland was part of Assam till it attained its statehood in 1963 and became the 16th State of India with special constitutional protection provided under Article 371(A) of the Indian Constitution to safeguard the culture, traditions and way of life of the Nagas.

The Nagas of Nagaland inhabits the North-Eastern part of India, and ethnically they belong to the Mongoloid group and linguistically comes under the Tibeto-Burman family of language who migrated to the present Naga-inhabited areas from the east a few thousand years ago are quite distinct from the rest of the Indians, who are of Aryan, Dravidian origin. Neville Maxwell describes the Nagas as, not Indian in any sense, nor outlook, nor in language, nor appearance, nor habits, neither in origin, they have been brought to Indian province only by historical accident.³⁸⁶ Naga is a generic name given to the communities inhabiting Nagaland, and the Colonial Britishers gave them the term 'tribal'. As mentioned by Nongbri, the term 'tribe' itself is a colonial construct born of the administrators need for

³⁸⁶ Neville Maxwell. India and the Nagas, *Minority Rights Group Report No.17*, London, 1973. 5.

classified information on the people they governed which resulted in the gigantic task of mapping the population into ‘tribes’ and ‘caste’.³⁸⁷

As the name indicates, Nagaland is the land of the Nagas, a group of tribes racially and culturally distinct from other tribal groups. Many communities comprise the people of Nagaland state, and these communities have their own distinct culture and tradition, dialect, customary law and social set up. It is a hilly state with agriculture as the primary economic activity, and Christianity is the predominant religion of Nagaland.

5.1. Brief Overview of Nagaland

Nagaland is situated in the far North Eastern part of India, surrounded by Assam in the west, Myanmar in the East, Arunachal Pradesh and part of Assam in the North with Manipur in the south. They are typically a hill people, a characteristic that sharply distinguishes them from the plains people living in Assam in terms of their worldview and lifestyle. There is also a sharp difference in their physical features, cultural expressions, political history and religious beliefs from the people living in mainland India.³⁸⁸ Historically, the ancestral homeland of the Naga people covered some parts of the states of Arunachal Pradesh, Assam, Nagaland and Manipur in India and certain parts of Myanmar. It lies in the 93/20’ E to 95/15’E and latitude 26/60’N to 27/40’N. It is originally a tribal state with a population of 1.98 million (2011), with a total area of 16,527 sq. Km. (approx), one of the smallest states of India. Kohima is its state capital, and Dimapur is its largest city.

³⁸⁷Nongbri. T. *Development, Ethnicity and Gender: Select essays on Tribes in India*. (New Delhi: Rawat Publication, 2003) 19.

³⁸⁸ Mar Imsong. *God-Land-People: A Ethnic Naga Identity*. (Dimapur: Heritage Publishing House, Nagaland, 2009) 21.

Nagaland was formally inaugurated on December 1st, 1963, as the 16th State of the Indian Union. It has 11 districts: Mokokchung, Zunheboto, Kohima, Mon, Longleng Phek, Wokha, Peren, Dimapur, Kiphire and Tuensang inhabited by 16 major tribes and 40 other sub-tribes, which are again divided into many sub-tribes and clans. The Ao, Sema, Konyaks and Angami tribes are the largest Naga Tribes. Each district usually has a predominant concentration of one of these tribes, making the district discrete in their socio-political, traditional, cultural and linguistic character.³⁸⁹ Vashum writes, “Naga society is one of the most interesting anthropological archetypes of unity in diversity”.³⁹⁰

According to the Linguistic Survey of India, the Naga languages and dialects are grouped under the Tibeto-Burman family³⁹¹, with over 80% of the State population living in rural areas. There is a lack of common written language and thus speaks 60 different dialects belonging to the Tibeto-Burman family of language. All tribes have their distinct language, customs and dress. Though each tribe has ethnic similarity and each has its dialect different from others, all have a common base in Tibeto-Burman language. Not only do the dialects vary from tribe to tribe, and hill range to range but also from village to village. The Nagas do not have their original written script. Thus, they have adopted Nagamese, a spoken derivative of Assamese, Bengali and Hindi as their medium of communication and English language, introduced by the British and American Baptist missionaries, as the official language.³⁹² Nagamese, however, is not a written language. The literacy rate of the State of Nagaland is 67.11%.

Nagaland is considered a Christian State since Christianity is the dominant religion there. Nagaland is one of the three Christian-majority states in India with

³⁸⁹ M. Amarjeet Singh. *The Nagas Conflict* (Bangalore: National Institutes of Advance studies, India, 2012)10.

³⁹⁰ R. Vashum. *Naga's Right to Self Determination: An Anthropological-Historical Perspectives*. (New Delhi: Mittal Publication, 2000) 22.

³⁹¹ Murkot Ramunny. *The World of Nagas*. (New Delhi: Northern Book Centre, 1998) 9.

³⁹² Biswakesh Tripathy. *Terrorism and Insurgency in India*. (New Delhi: Pacific Press Lexington, 1987)174.

a record of 1,790,349 (90.02% of the State population) Christian population as per the 2001 census. Nagaland is the only state where 90% of the population are Christians. However, there are still a small minority of the population less than 0.3%, who practices the traditional religions. Among the Christians, Baptists are the predominant group constituting of more than 80% of the State's population. The non-Naga populations of the state comprise of Hindus and Muslims constituting 7.7% and 1.8% of the population respectively.³⁹³

Governor is the constitutional head of the state, who represents the President of India. The state legislature comprises of 60 member Assembly. Unlike most the other states of India, Nagaland has a high degree of state autonomy, with special powers and also an autonomy for Naga tribes to conduct their affairs. Each tribe has a hierarchy of council at from the village, range and tribal levels for dealing with local disputes. There is also a special regional council for Tuensang district, elected by the tribes of the area.

5.2. Inner Line Permit (ILP) and Restricted Area Permit (RAP)

According to the British Administrators in 1873, the British promulgated the Inner Line Regulation mainly for two reasons. First, they wanted to protect the developing Assam tea plantations against Naga raids. Second, merchants and traders from the plains had been exploiting the Nagas economically.³⁹⁴ However, the Nagas resented the "Inner Line Permit" (ILP) because it created an artificial boundary that denied the traditional free access to the forest and its resources. The Regulation prohibited outsider from entering the Hill area without official approval and established rules concerning trade and land ownership beyond the line. Many people blame the British authorities that they attempted to maintain separation between the Naga and the plains' people of Assam. The British authorities were

³⁹³"*Nagaland: State Human Development Report 2004*". Department of Planning and Coordination, Government of Nagaland, 2004. 14.

³⁹⁴Verrier Elwin. *Nagaland*, P. Dutta for the Research Department. (Shillong: Adviser's Secretariat, Assam, 1961) 44.

even accused of attempting to preserve the Nagas as a “museum specimen”, also accused of using segregation as a front wall for a policy of divide and rule. Even today, any foreigner who would like to visit Nagaland will have to obtain a “Restricted Area Permit” (RAP) from the Home department in Delhi, in addition to obtaining a visa from the Indian consulate. Non-Naga Indians have to obtain an “Inner Line Permit” (ILP) from the Commissioner’s Office in Nagaland.

During the British in India, Nagas saw two main British strategies of controlling the independent Naga spirit of ethnicity and identity. First, the aggressive British policy of swift and bitter retaliation for Naga raids and two, there was a peaceful mode of relationship with the Nagas, a policy of non-interference. The dual policies of the British may indicate that the British annexation of the Naga Hills was primarily because of economic interest, to safeguard British tea plantations.³⁹⁵

5.3. History of the Formation of Nagaland

On 1st December 1963, Nagaland, the Sixteenth state of the Indian union was inaugurated at the state capital, Kohima, by Dr. S. Radhakrishnan, the then President of India. Speaking on occasion, the President said, “Understanding and friendship help to build a society, while hatred and violence tend to disrupt it [...] let all past rancour and misunderstanding be forgotten and let a new chapter of progress, prosperity and goodwill be written on the page which opens today”.³⁹⁶

The Ahoms were the first outsiders that the Nagas encountered in the thirteenth century followed by the British in 1832. The British never intended to

³⁹⁵ Mar Imsong, n. 388. 97-98.

³⁹⁶ Nehemiah Panmei. *Naga Movement and its Ramifications*. in R. Vashum and others (eds.). “Nagas At Work”, New Delhi, Naga Students’. (New Delhi: Union Delhi Publication, 1996) 85.

annex the Naga Hills since they realized that the expense of administering them would be many times more than the income. However, in order to prevent the Naga raids into the British territory, it was expedient to establish some control over the Naga Hills. So in 1866, the Naga Hills district was formed with Samugudting (Chumukedima near Dimapur) as the Deputy Commissioner's Headquarter,³⁹⁷ which was administered loosely and kept as an "Excluded Area" from the normal provincial administration³⁹⁸, when Nagaland was only a district of Assam province and later on Assam state. With the entry of the British, both Christianity and developments like education and political consciousness started to grow in Nagaland. Eventually, with these foreign influences, the insurgency in Nagaland came into being. To know and understand about 'Naga Insurgency' first we have to understand the political development in Nagaland.

The 'Naga Club' that was formed at Kohima was the Nagas' first fruitful endeavor to form a collective/national socio-political organization was in the year 1918 (inclusive of villages' headmen, government officials, Nagas- Allied force Labour Corps of World War I, who returned from France). The club was social and political. Under this organization, the Nagas for the time made a formal presentation to the British Commission for Constitutional Reforms in British-India also known as Simon Commission when it visited Kohima in 1929 to decide about their future political status. In the presentation, the Nagas unequivocally made it clear that they 'do not wish for any reforms' in the then proposed future reform scheme 'but to be left alone' as they were before the British conquered them³⁹⁹. It further stated that "Our language is quite different from those people of the plains and we have no social affinities with Hindus or Muslims. We are being looked down upon by one for our **beef** and others for our **pork**"⁴⁰⁰ Ramunny clearly states

³⁹⁷ Nehemiah Panmei. 86.

³⁹⁸ Biswakesh Tripathy. n.392. 174.

³⁹⁹ R. Vashum. "Challenges and prospects of peace process in Nagaland". New Delhi. *Naga Journal of Indigenous Affairs* (2002) June-November. Vol-1. No-2. 22.

⁴⁰⁰ Kuhoi K Zhimomi. *Politics and Militancy in Nagaland* .(New Delhi: Deep and Deep Publication Pvt. Ltd, 2004)

“[...]that at no time were they (Nagas) conquered by their neighbors. The Nagas never asked for reforms, and they did not wish for reforms. They wanted to be left alone to determine their fate”.⁴⁰¹

The Nagas also pointed out that they (Nagas) wish to be under the direct administration of the British government rather than to be handed over to India or the Myanmar (erstwhile Burma) government such that their rights are protected and guarded against all encroachment from the non-Nagas.⁴⁰² Consequently, in the Government of India Act of 1935 which followed, the Naga territory was left as ‘Naga Hills Excluded Area’, a part of the composite state of Assam, to be administered directly by the Governor and not by the provincial legislature.⁴⁰³ This satisfied the Naga leaders, particularly those of the Naga Club who had put the memorandum to the Simon Commission.

In April 1945, Mr C.R Pawsey, the Deputy Commissioner from 1937-1947, established an institution, which was then called the Naga Hills District Council, “with the aim of uniting the Nagas and repairing some of the damage done during World War II”. In the following year in February 1946, the Council underwent a transformation, and it became a political organization and changed its name to Naga National Council (NNC).⁴⁰⁴ Though it was initially aimed at welfare and social aspiration of the Naga people, its range of activities soon enlarged to the field of politics: unification of the Naga tribes and satisfaction of political aspiration.⁴⁰⁵

The Nagas saw a positive turn in their assertion for rights to self-determination at the formation of the Naga National Council in February 1946. Under the banner of Naga National Council, the Nagas for the initial time verbalize

⁴⁰¹Mar Atsongchanger. *The Historical Memoranda of the Nagas and their Neighbours*. (Mokokchung: Tribal Communication & Research Centre, 1995) IV.

⁴⁰² R. Vashum. n. 399. 22-23.

⁴⁰³Bhupinder Singh. “*Autonomy Movements and Federal India*”. (New Delhi: Rawat Publications, 2002) 64.

⁴⁰⁴Verrier Elwin. n. 394. 51.

⁴⁰⁵Bhupinder Singh. n.403. 64.

their ambition and determination for constituting a Naga nation-state when it was imminent that the British rulers would soon leave South and South-East Asia.⁴⁰⁶ The Nagas formed a fully-fledged political organization in February 1946; Elwin has rightly described it as “a national extension of the traditional system of the Naga village/tribe to the ultimate scale - the whole of the Nagas”.⁴⁰⁷

As the momentum of the Naga movement for Independence picked up, there was some confusion among the Nagas regarding the next stage in their campaign for the attainment of complete independence. While one group of Nagas favored direct independence, some moderates favored the maintenance of governmental relations with India in some modified form until they were sufficiently schooled in the art of running a modern state. There was also a third minority which wanted to bring Nagaland into the position of a Mandatory State under the British Government for a specified period.⁴⁰⁸

In the memorandum submitted on 20th February 1947 to the British Government and the British – India Government, the Nagas, under the leadership of the Naga National Council drew up a plan for a ‘protected state status’. They requested for setting up an interim Government for themselves and for the appointment of the Indian Government as the Guardian power at the end of which, the Nagas would be left to decide their political future.

In June that year, the British Indian Government represented by Sir Akbar Hydari, the then Governor of Assam, entered into a “Nine Point Agreement” with the Naga National Council also known as the “Hydari Agreement”. Other than recognizing the Naga National Council as the only national political authority of the Nagas, it was agreed that the Assam Government will represent the Government of India and would have a special responsibility for ten years to make certain that

⁴⁰⁶R. Vashum. n.399. 23.

⁴⁰⁷Verrier Elwin. n. 394. 71-72.

⁴⁰⁸Nehemiah Panmei. n.396. 87.

the agreement was kept. At the end of this period, the Naga National Council would be free to either extend the agreement or go for a new one regarding the future of the Naga people. The Agreement laid down the power of the Naga National Council regarding Agriculture, Education, Public Work Department, Judiciary and Legislative matters and accepted the total authority of the Naga National Council over land and its resources.⁴⁰⁹ But this Agreement turned sour when controversy arose regarding the interpretation of the 9th part of the Agreement, which states, “The Governor of Assam as the agent of the Government of India Union will have a special responsibility for a period of ten years to ensure the due observance of this agreement; at the end of this period the Naga National Council will be asked whether they require the above agreement to be extended for a further period, or a new agreement regarding the future of the Naga people arrived at”.⁴¹⁰ The Nagas interpreted this as a provision for the liberty to demand complete secession after the interim period while the Indian leader maintained that it only allowed scope for more acceptable arrangements within the Union of India. Although the Agreement was short of sovereignty, yet it was regarded as a satisfactory state to a majority of the Nagas.

On 19th July 1947, a Naga delegation met Mahatma Gandhi and put forth their claim for Independence to which Gandhi assured them, “If you do not wish to join the Union of India nobody will force you to do that”. However, there was no change in the plans of the Government of India.⁴¹¹ So, with the implicit blessing of Mahatma Gandhi, the Nagas declared Naga National Independence on 14 August 1947, the day before India’s Independence. The declaration was then carried out to various concerned authorities including Government of India, the King of England and to the Secretary-General of the United Nation Organization.⁴¹² However, in the following year, the Nagas received two terrible blows in the passing away of

⁴⁰⁹Luingam Luithui and Nandita Haksar. *Nagaland File: A Question of Human Rights*. (New Delhi: Lancer International, 1984) 21-22.

⁴¹⁰ Nehemiah Panmei. n.396. 88.

⁴¹¹Luingam Luithui and Nandita Haksar. n.409. 22.

⁴¹²R. Vashum, n.399. 24.

Mahatma Gandhi in January 1948 and Sir Hydari on 28th December of the same year. Because when a Naga delegation met Gopinath Bordoloi (Premier of Assam) in Shillong on 9th November 1949 and brought up the “Hydari Agreement” for discussion, Bordoloi denied of India being a party to the Agreement ever. The Nagas understandably felt cheated and thus hardened their attitudes toward India; moreover, the Government of India did not recognize the Naga Declaration for Independence. This is how the Indo-Naga conflict began. The Nagas further rejected the government of India’s offer to create an Autonomous Hill District Council for the Nagas.

The Naga leaders in 1951 organized a Plebiscite. “When all the villages were visited, signatures or thumb impressions are taken, and oaths were administered in the tribal fashion to fight for Naga Independence”,⁴¹³ wherein 99% Nagas voted in favor of Naga Independence. However, the Government of India declined to recognize the Naga Plebiscite of 1951 (May to July) and thus the Nagas boycotted the 1st General Election of Independent India in 1952 and also boycotted the visit of the then Prime Minister Jawaharlal Nehru and his counterpart U. Nu, the then Prime Minister of Burma, in 1953.⁴¹⁴

In the first General Election of free India in January 1952, the Naga National Council resolved to boycott the Election as a practical expression of the non-acceptance of the Indian Constitution. The decision, to this effect, had already been made as early as February 18th 1950, that the Nagas should not send their representatives to the Legislative Assembly of Assam, the Parliament of India and no District Council would be set up in the Naga Hills. The boycott was a complete success when not a single Naga, as declared, sought election to the Indian Parliament or the Legislative Assembly of Assam.⁴¹⁵

⁴¹³ Nehemiah Panmei. n.396. 89.

⁴¹⁴R. Vashum. n.399. 24.

⁴¹⁵Verrier Elwin, n.394. 53-54.

In 1953, the Nagas boycotted the visit of the then Prime Minister Jawaharlal Nehru and his counterpart U. Nu, the then Prime Minister of Burma in whose country reside a sizeable Naga population. It was thought that a visit by the Prime Minister would help in appeasing the Naga upsurge and also in bringing about a lasting peaceful solution, but unfortunately, it brought about a reverse outcome. Due to the incompetent handling of the situation by S. Barkakati, the then Deputy Commissioner of Kohima, this important public meeting at Kohima turned out to be a fiasco. The Nagas, infuriated by the report that they would not be allowed to address the meeting, resorted to a mass walk-out, some allegedly forced by the NNC volunteers from the meeting ground, leaving only the officials and interpreters to listen to Nehru and U. Nu. This unfortunate episode hardened the attitude and stood of both the Nagas and the Indian Government.⁴¹⁶

The year 1953 was a watershed, and from there on, the Naga Hills went into a grip of disturbances and disorder caused due to armed conflict between the Indian armed forces and the Nagas who had gone underground to evade arrest and fought a guerilla war against the Government of India (GOI).⁴¹⁷ However, there was no let-up in the growing upsurge against the Government of India. The sending in of more police force only contributed towards making more people join the undergrounds. This is how insurgency started in Nagaland. The then President of the Assam Pradesh Congress, Mr. Bimala Prasad Chaliha, visited the inner areas of the Naga Hills in September 1953 and recognized that besides the Voluntary Plebiscite, the boycott of the General Election was ample evidence of the Naga people for Independence. The Nagas again boycotted the Second Indian General Election in 1957, with not a single Naga seeking election. Despite this fact, the Indian Government nominated three Nagas to represent the Nagas in the Assam Legislative Assembly without the knowledge of the Naga masses.⁴¹⁸

⁴¹⁶ Nehemiah Panmei. n. 396. 89-90.

⁴¹⁷ Kuhoi K. Zhimomi. n.400.36.

⁴¹⁸ Verrier Elwin n.394. 54.

The state of affairs in the Naga Hills grew very restless by the year 1954. The Indian Paramilitary and Armed Forces were directed to curb the Naga Movement. Many Nagas were molested, tortured and killed, houses were also burnt down with reports of enormous human rights violations being reported in all the Naga areas. The Government of India gave wide-ranging powers to the police and army so that they could go ahead about their terrorizing activities with legal protection through the promulgation of the Assam Maintenance of Public Order (Autonomous District) Act, 1953, and the Assam Disturbed Area Act, 1955. The armed forces were asked to take over the responsibility in the Naga Hills District. Besides the Acts mentioned above more other laws were passed in order to curtail the Insurgency Movement, the Armed Forces (Special Powers) Regulations, 1958, the Armed Forces (Assam and Manipur) Special power Ordinance 1958, and later, the Nagaland Security Regulation 1962 etc.⁴¹⁹

In September 1954, The Naga Nationalist Council (NNC) under the leadership of Phizo formed a Government of the Nagas called the “People’s Sovereign Republic of Free Nagaland” with Hongkin as the President. By then there were two sections of people among the Nagas- moderates and extremists. Moderate leaders in the NNC were alarmed by the violent plans the extremists were preparing at the NNC meeting held in March 1955. Some of the leaders who were not in favor of taking up of arms resorted to issuing notice on 26th October 1955, appealing to the Nagas to realize the adverse effects of resorting to violent methods reminding them of the morally attractive policy of non-violence which was the declared policy on NNC.⁴²⁰ Later, on March 22, 1956, a newly formed body called the Federal Government of Nagaland (FGN)⁴²¹ replaced the Hongkin government while the NNC itself became its political wing. It framed a constitution which declared Nagaland to be the Sovereign Republic with an elaborate scheme for a

⁴¹⁹ Kaka. D. Iralu. *Nagaland and India: Blood and Tears (A Historical Account Of the 52 years Indo-Naga war and the story those who were never allowed to tell it)*. Kohima, Unpublished, 2000. 83-97.

⁴²⁰ Nehemiah Panmei. n.396. 91.

⁴²¹ R. Vashum. n.399. 24.

parliamentary set-up, administrative, legal and foreign affairs. It declared “Nagaland will maintain permanent military neutrality”. With the mounting of people joining the rebels, the Indian Government called in the army to take control of the situation in 1956, followed by constant fighting between the rebels and the armed forces. Army outposts were attacked; convoys and patrolling parties were ambushed; the army also resorted to burning down of many villages, and people were rendered homeless. The civilian Nagas, caught in the crossfire between the two groups, had to undergo much suffering. After so much violence and killings, people were looking for ways and means to bring about peace.

So, during this war-like circumstances in the Naga Hills, some Moderates Nagas, liberal leaders and the Church condemned violence and began appealing to the people to restore peace and order, floated Naga People Convention (NPC) in August 1957 to mediate for Indo-Naga political negotiation. The rebels boycotted the meeting that was attended by representatives from all tribes. The foremost resolutions of the Convention advocated resolve of the Naga issue through negotiations and, pending a final political solution, the then Naga Hills District of Assam and Tuensang Division of the North East Frontier Agency (NEFA) to be instituted into a single administration under the External Affairs Ministry.⁴²²

The Second Naga Peoples’ Convention (NPC) was held at Ungma village in Mokokchung district in May 1958. The Convention appointed a ‘Liaison Committee’⁴²³ to explore possibilities for a negotiated settlement of the Naga problem; the Committee constituted 8 (eight) members. The ‘Liaison Committee’ ostensibly tried but could not persuade the leaders of the Naga underground to parley with the Union government.⁴²⁴ The Convention leaders also tried to contact

⁴²² Nehemiah Panmei. n.396. 92.

⁴²³ The Liaison Committee members were, Imkongliba, Vizol, Takasonang, Lazinonong, Kevichusa, Khelhose, Sangba and Etsorhomo. See Ashikho Daili Mao. *Nagas, Problems and Politics*. (New Delhi: Ashish Publishing House, 1992) 67.

⁴²⁴ Ram Narayan Kumar with Laxmi Murthy. *Four years of the Ceasefire agreement between the Government of India and The National Socialist Council of Nagalim: Promises and Pitfalls*. (New Delhi: Civil Society Initiatives on the Naga Peace Process and Other Media Communications, 2002) 53.

the underground Nagas with the prospect that they will abandon resorting to violence and work for a peaceful solution to the end the issues in Nagaland. On the other hand, because of the stubbornness and rebellious mindset of the underground Nagas, any hopes of the Convention leaders were in vain.⁴²⁵

The Third session of the Naga Peoples' Convention (NPC) was held in October 1959, concluded in drafting a 16th Point Memorandum for the constitution of Naga Hills Tuensang Area into a distinct state to be called 'Nagaland' within the Indian Union. The outcome of these negotiations resulted in creating the state of 'Nagaland' through the 13th Amendment Act of 1962;⁴²⁶ placing it under the Ministry of External Affairs. The Naga Peoples' Convention (NPC) which was supposed to be the mediator between the Government of India and the Underground Nagas became the negotiator and signed the 16th Point- Agreement which led to the creation of the state of Nagaland.

Phizo and the underground refused to accept the Delhi Pact signed between Naga People's Convention (NPC) and the Government of India stating that they will not negotiate for anything short of Independence. Because earlier, when the 'Liaison Committee' contacted the underground Nagas in 1958, regarding negotiation with the Government of India, the underground Nagas laid down certain preconditions for any negotiations with the Indian government. The first condition was the recognition of their Naga Federal Government, and second, was the acceptance of their demands of a sovereign Independent Naga state.⁴²⁷ Therefore, the Agreement could not be reached, and the Naga rebels continued with their anti-India activities.

The Nagas are not only divided geographically, but they are also separated on the issue of future political aspirations. Julian Jacobs broadly categorized this

⁴²⁵Ashikho Daili Mao. *Nagas, Problems and Politics*. (New Delhi: Ashish Publishing House, 1992) 67.

⁴²⁶Bhupinder Singh. n.403. 67.

⁴²⁷Ashikho Daili Mao. n.425. 67.

division as two kinds of Naga nationalism: ‘Separatist’ and ‘integrationist’.⁴²⁸ Hokioshe Sema, a Naga politician and a scholar, represents the integrationist view by advocating that Naga people should support Indian nationalism because India is a nation with diversity that advocates freedom of religion, secularism, equality and economic and political fraternity among all communities. He terms Naga nationalism as sub-nationalism within Indian nationalism.⁴²⁹ However, on the other hand, the Naga insurgent groups such as the Naga National Council (NNC) and the National Socialist Council of Nagaland (NSCN) represent the sovereignty view of complete separation from Indian and Myanmar rule.

5.3.1 Peace talk with the Insurgent

Though in itself was not the solution for the ill-ridden land, attaining Statehood for Nagaland was an accomplishment for the sensible and nationalist Nagas. The hostile Nagas could not be appeased, and the word of contention persisted in its original place. Accepting Nagaland as a constituent state of India was the only way to restore peace and order in the land, and for which, the rebels Nagas had to abandon their violent path. While commenting on the statehood of Nagaland, J.H. Hutton, an American Anthropologist said that by the formation of the State of Nagaland, though guarded as it is by the clauses in the Constitution of India, the Nagas seem to have gotten more than what has been expected or even desired, i.e. complete internal home rule financed by the Government. Indeed they have won the wars, but in order to take advantages of their victory; the underground must be persuaded to surrender their arms and peace, and order in the hills must be restored.⁴³⁰ Therefore, comprehensive initiatives for ensuring permanent peace and an agreeable solution to the vexed political issues indeed took concrete and encouraging shape. In this endeavor for peace and order in Nagaland, the critical

⁴²⁸ Julian Jacobs. (eds). *The Nagas Hill Peoples of Northeast India: Society, Culture, and the Colonial Encounter*. (New York: Thames and Hudson, 1990) 151.

⁴²⁹ Mar Imsong. n.388. 35.

⁴³⁰ J. H. Hutton. *The Angami Naga*. (London: Macmillan, 1921) 10.

part was anchored by the Nagaland Baptist Church Convention (NBCC) an umbrella organization of the Baptist Churches in Nagaland which the entire Naga Christian community virtually belonged.

However, one may question as to why the initiatives for peace in Nagaland originated from the Baptist Church leaders and neither from the Indian nor Nagaland Government. This could be due to the inability of the moderate Nagas and the Indian Government in their earlier attempts. The moderate and the nationalist Nagas who were in the Government of Nagaland since 1957 sincerely tried to persuade the hostile Nagas to abandon violence and aid in the restoration of peace but to no avail. The Government even granted amnesty to the hostile Nagas, who were ready to live peacefully in the country.⁴³¹ However, the rebel Nagas were adamant to either the State or Central Government. Given such situation/circumstances, only a non-political and non-government organization like the church could succeed in resolving the crisis. This could be the reason why the Baptist Church leaders took the initiatives for the restoration of peace and order.

On 23rd September 1964, the peace talks began with the first meeting at Chedema near Kohima between the Indian Government and the Nagaland Government on the one hand and the underground Nagas on the other to formulate strategies for the restoration of peace and normalcy and order in Nagaland. Since the underground Nagas found it unsafe to be in Kohima, Chedema- an underground Naga village was then selected as the venue for the peace talks.

Y. D. Gundevia, leader and the then Secretary to the Ministry of External Affairs, while welcoming the underground Naga representatives at the Peace talks said, “we have to remove all bitterness from our hearts [...] he also told the Naga underground representatives that in 1947, when India became Independent, the Naga Hills district became part of the dominance of India under the province of

⁴³¹Ashikho Daili Mao. n.425. 95.

Assam. Legally and constitutionally, there ⁴³²were never any disputes about any area that now comprised Nagaland. Therefore, Nagaland was an integral part of India and the Government was competent and in a position to govern and administer the area and the people”. At the same time, the Underground Nagas were told that though the Government had accepted their delegation and was talking to them, it did not recognize their Federal Government.⁴³³

The Government of India wanted that instead of calling it ‘Ceasefire’ it should be termed as ‘cessation of hostilities’ which was not acceptable to the rebels. Lastly, the Indian Government surrendered to the views of the rebels and agreed to treat the agreement as ‘Ceasefire’⁴³⁴. Though the ‘Ceasefire’ agreement was officially declared on 6th September 1964, the actual agreement was signed on May 23rd 1964. The ‘Ceasefire’ was welcomed by all peace-loving people of Nagaland. After the declaration of ‘Ceasefire’, there was a series of peace talks mainly among the member of the peace mission, the underground leaders and the team of peace observers. Ultimately, the intensity of talks took a progressive turn which resulted in the shifting of the venue to Delhi ending in six rounds of talks from 1966 to 1967 between Indira Gandhi, the then Prime Minister and the underground leaders.

On 5th October 1967 (the Sixth and the last round of the peace talk), the then Prime Minister abruptly stated to the underground leaders that there is no solution to the Naga issue apart from the framework of the Indian constitution, which triggered the Naga rebels to fight for their old agenda of complete Independence for Nagaland. This further convinced the Government of India that the underground Nagas would never accept anything apart from Independent Nagaland. Subsequently, Indira Gandhi understood that any further deliberation was futile.⁴³⁵ Thus, all the desired peaceful democratic solution of the Naga problem was stalled,

⁴³²Ashikho Daili Mao. 106.

⁴³³Hokishe Sema. *Emergence of Nagaland: Socio-Economic and Political Transformation and the Future*. (New Delhi: Vikas Publishing House Pvt. Ltd., 1986) 116.

⁴³⁴Kukhoi K. Zhimomi. n.400.84.

⁴³⁵Ashikho Daili Mao. n. 425. 126-127.

and with it, the four years of talks between the Government of India and the Naga underground leaders were also in vain. The subsequent course of the event in Nagaland was such that the ceasefire agreement stayed only in paper with the Naga rebel resuming their hostility after 1967. However, the Government decided not to give an extension to the cessation of fire agreement (Ceasefire) anymore.⁴³⁶

In the meantime, there was a split in the underground movement, Kaito Sema, the former C-in-C of the Naga Federal Government, attempted a coup. He wanted to take control of the Naga Affairs and expedite the settlement of the Naga problem. Efforts were made to win him back by the rebel leaders but to no avail. His eventful murder on 3rd August 1968 led to the distancing of the Semas from the Underground Movement. The Kaito group established a new party called the Council of Naga People with representatives from nine tribes and was headed by Kughato Sukhai and Scato Swu. The new group pledge itself to toil for a nonviolent solution to the Naga problem and the unity of the Naga people⁴³⁷. One significant aspect of the Revolutionary Government of Nagaland was that most of the leaders who had conducted negotiations earlier were in it. They had openly given up violence and were soon to declare that they would work within the Indian Union.

The moderate underground leaders of the Aos had meetings followed by that of Chakhesangs and Lothas in order to find out ways of forging unity among the Nagas and a peaceful solution acceptable to Nagas and the Government of India. Meanwhile, some Lotha underground group favored a solution within the Indian Union condemning the extremist policy. The leaders of the Council of Naga People categorically stated that they were prepared for a peaceful settlement for the Naga problem and came out openly that they would not insist on sovereignty for Nagaland but were prepared to accept a solution within the Indian Union.

⁴³⁶ Ashikho Daili Mao. 143.

⁴³⁷ Murkot Ramunny. n. 391. 277.

At the same time in Mokokchung, underground Col. Imkongmar Jamir took over the Khensa Peace camp and issued a statement, “For the last 14 years the people of Nagaland have been striving for Independence. The Nagas have tried their level best to achieve their goal. However, during the ceasefire period, there arose disunity and suspicion among the Nagas. It was very difficult to achieve our goal even when we all united, but there is very little chance of it as we are divided into groups”, he further stated that, “It is my personal view at this juncture, it will be the best for the Nagas to be within the Indian Union and have a settlement politically. With this view, I with the member of the 27th Battalion of the Federal Army declare to the world that we enter under the settlement”.⁴³⁸

There were both overt and covert renewed efforts and negotiations carried out between the Naga underground, the Nagaland Government, the Indian Government, the church leaders and the Nagaland Peace Council. The Naga people had undergone tremendous suffering and hardship and wanted peace. The entire underground 16th Battalion of the Naga Army from lower Sema area came over the ground in July 1975 followed by the Ao and Lotha tribes. Due to many factions and splits, the movement was weakened, and many underground leaders became pessimistic which eventually led to the signing of the Shillong Accord.

5.3.2. Shillong Accord

It is the signing between the Government of India and some representatives of the Naga (rebels) on 11th November 1975. Here, it is important to point out that the last National Assembly of Naga National Council (NNC) was held on 4th September 1974 between Lazemi (Sema) and Tophima (N.Angami) where it reaffirmed the verdict of the 1951 plebiscite where 99% of Nagas opted for Sovereignty.⁴³⁹ The large scale surrender of underground Nagas in 1975, however,

⁴³⁸ Murkot Ramunny. 281-282.

⁴³⁹ Vashum R. and Others, (eds.). *Nagas at Work*. (New Delhi: Naga Students' Union Delhi (NSUD) Publication, 1996) 94.

did not mean the complete ending of the Naga hostilities nor the establishment of lasting peace. While the enlightened underground Nagas surrendered, some of the hard-core Phizo group and members of the Federal Government of Nagaland were still engaged in hostile activities.⁴⁴⁰

The refusal of Phizo to accept any agreement that is short of complete sovereignty with India can be inferred from the message to his brother Keviyallay, on the eve of Shillong Accord which read as “Greetings to you all/ Received and noted word by word of all your discussions up to fourth September (1975). We are confident that the Indian Government will see reason and agree to settle the long-standing issue without further bloodshed. The World is closely watching the situation of Nagaland. Remain as ever Phizo, Khodao Yanthan”.⁴⁴¹ “Remain as ever” implied to stick to the old stand of the demand, i.e., the demand for complete independence. Another member (Veeniyi Rhakho, one of the representatives of the Underground, Isaac Swu and Th. Muivah who returned from China in 1975) denouncing the Shillong Accord was indeed a shocking message to the signatories and the Government of India. The disowning of the Accord by Phizo weakened it and put its future in jeopardy. Thus 34 years have passed since the agreement was signed and the signatories have not been able to formulate the “other issues”. In retrospect, the Accord can arguably be said to have been stillborn.⁴⁴²

5.3.3. After Shillong Accord

Attempts were made to contact the underground leaders, particularly Th. Muivah and Isaac Swu, since some felt that the Accord could not be implemented without their participation; however, there had been no news from the other side. Instead of responding to the call to join the “final settlement” of the Naga issue, Isaac and Muivah formed the Nationalist Socialist Council of Nagaland (NSCN), a

⁴⁴⁰Ashikho Daili Mao. n.425. 147.

⁴⁴¹Murkot Ramunny. n. 391. 344-345.

⁴⁴²Vashum R., and Others. n.439. 94.

breakaway party from the Phizoist group of the Naga National Council in the early 1980s and since then, they have been growing in strength. This new party got all the material and moral support from China and Burmese.⁴⁴³

Another split took place in April 1988 between the Khaplang groups (from the Burmese Naga side) and the Th. Muivah group, owing to the fight among the top leaders. They have shocked the Indian Government by daringly having a three day “National Assembly” session for the first time on Indian Territory at “Jordan Camp”, in Dimapur, Nagaland on November 6, 1989. The Assembly resolved to uphold forever the historic national decision arrived at through the Plebiscite of 1951, to decide the future of Nagaland.⁴⁴⁴ Today, the Th. Muivah and Isaac group are considered as the more adequate force, though others also have their part of the impact.⁴⁴⁵ Briefly, numerous factional leaders continued to be problematic. In the succeeding year, the NSCN-IM became one of the most significant groups in the country.

5.4. The response of the Central Government to secession

In response to the Nagas’ fight for independence, the Indian Government armed the security forces with excessive powers by promulgating draconian laws. The Armed Forces (Special Powers) Act 1958 besides empowering the armed forces to conduct raids and arrest without warrant, sanctions the right to the rank of a Havildar and above to give the order to shoot to kill just on mere suspicion. This Act is the most significant blemish of the image of India, which is supposedly the greatest democracy in the world. Violation of human rights like molestation of women, the killing of innocent civilians and destruction and looting of property have been inflicted upon the Nagas by the security forces in the name of tackling the law and order problems.⁴⁴⁶ The raping of four minor girls on the pulpit of

⁴⁴³ Ashikho Daili Mao. n. 425. 153-154.

⁴⁴⁴ Vashum R., and Others. n.439. 95.

⁴⁴⁵ M. Amarjeet Singh. n.389. 3.

⁴⁴⁶ M. Amarjeet Singh. 96-97.

Yankeli Church, Yankeli, Nagaland by the Commander of 1st Maratha Regiment of Mountain Division and his soldiers on the 11th of July, 1971⁴⁴⁷, is one example of the scores of barbaric acts of the security forces' personnel.

5.5. Transfer of jurisdiction from Ministry of External Affairs to the Home

Nagaland for the first time was shifted from the Ministry of External Affairs to the Home Ministry. The Sixteen Point Agreement that was signed in 1960 between the Naga People's Convention (NPC) and the Indian Government directly put Nagaland under the President of India to be administered by the Governor of Assam on the President's behalf under the Ministry of External Affairs.⁴⁴⁸ However, on 1st June 1972, the affairs of Nagaland State were shifted from the Ministry of External Affairs to the Ministry of Home Affairs to present the Naga struggle for political rights as a "law and order" problem,⁴⁴⁹ because the External Affairs Ministry deals with no other state's problems. However, Muivah, leader of the NSCN-IM said, the Naga problem is not a law and order problem but political.

5.6. Ceasefire Agreement 1997

The mid-1980s witnessed a renewed burst of violence in the State. The factional confrontation amongst the different "Naga groups" and "the State authorities" resulted in the loss of life, severe disruption in the public order and downward shift in the economic development of the State. The people of Nagaland had become disenchanted with the violence and longed for peace. Meanwhile, a 'Ceasefire' came into being on 25th July 1997, with the announcement of the then Prime Minister Mr. I. K. Gujaral both in the Lok Sabha and in Rajya Sabha that the government, after talks with Isaac- Muivah group of the Nationalist Socialist

⁴⁴⁷ "Armed Forces (Special Powers) Act 1958, License To Kill: INSAF (Indian Social Action Forum)" January, 2005. 16. <http://www.insafindia.org>, accessed on:09.06.2011.

⁴⁴⁸ Ashikho Daili Mao. n. 325. 62.

⁴⁴⁹ "Naga History: Chronology of Events from NISC (The Naga International Support Centre)". (Amsterdam: A Human Rights Organization, December 24, 2002) 5.

Council of Nagaland (NSCN-IM) declared a ceasefire or cessation of operation with effect from August 1, 1997, for, a period of three months. The ceasefire has been on the extension since then. Another separate ceasefire agreement was also signed with the Khaplang (NSCN-K) group from 2001, although separate talks have been underway devoid of any significant result. The causes of this upheaval have several issues.⁴⁵⁰ The NSCN-IM has been trying for the integration of the Naga areas under one administrative unit. They also wanted an extension of the jurisdiction of the ceasefire beyond Nagaland. This demand was endorsed by Nagaland Legislative Assembly in 2003 by passing a resolution. However, with several groups fighting for the integration of Naga-populated areas, a new demand arose for the division of Nagaland to enable the formation of a new state. Public rallies were held at several places on January 2011, demanding the formation of a new state containing the district of Tuensang, Mom, Kiphiri and Longleng.⁴⁵¹

Lanunungsang Ao identifies eightfold of conflict between the Indian State and the Nagas. First, though India does not accept this claim, the Naga political identity has grown from village/ tribal level to the national level. Second, the Nagas fighting for their collective rights and the movement is neither insurgency nor secessionist. Third, the Nagas are not Indian; Indians and Nagas are from different sources of origin and racial stock. Fourth, the Nagas claim that they are independent and have lived independently in their territory since the time of immemorial, but the Indian state does not recognize this claim. Fifth, India claims that Nagaland is an integral part of the country by virtue of being the successor to the British, and on the other hand, the Nagas maintain that since the British left, they should be set free. Sixth, Indian wants settlement within the scope of its constitution; but the Nagas does not accept this constitution. Seventh, the creation of Nagaland divided the Nagas. Finally, the Nagas reiterate that their sovereignty will not be surrendered to any authority and is non-negotiable, but the government does not want to discuss the issue at all.

⁴⁵⁰ M. Amarjeet Singh. n. 389. 1-2.

⁴⁵¹ M. Amarjeet Singh. 16.

The conclusion given by M. Amarjeet Singh in his book entitled, “The Conflict Nagas” will be appropriate to ponder upon here; he said that to satisfy the aspiration of multi-ethnic groups of Northeast India while preserving the territory of the existing state is the option to grant non-territorial/cultural autonomy. This type of autonomy could be granted to all members of an ethnic group, irrespective of their belonging to a specific administrative boundary. He also has taken the case of the Naga Hoho (Council of Tribal Elders), the highest traditional body of the Nagas. It is a federation of all Nagas working towards a better understanding amongst themselves and other communities. Its jurisdiction covers all the areas of the Nagas’ lives. This model could be used to relieve the pressure for demands based on geographical territories.⁴⁵²

5.7. Brief History of State Assembly of Nagaland

Nagaland Legislative Assembly is a unicameral legislature. So far, Nagaland has experienced twelve intensely contested state assembly elections and also four times, impositions of the President’s Rule. During these times of democratic experiences, no satisfactory economic base was built, and no areas of economic activities were established.⁴⁵³ As we have seen earlier, since the 50s, Nagaland had endured a constant fluctuation between elevated violence and the hope of peace. The State has been for a decade’s under the showdown of armed conflict and turbulence over the Naga people’s right to self-determination, which was involved based on their distinct identity and unique history. Therefore, in the face of the armed conflict, the government of India tried to repress the movement normally reacted with the presence of security and operations. In this process, the people of Nagaland rejected the electoral system offered by the Indian state and boycotted the first and the second general elections held in 1952 and 1957

⁴⁵² M. Amarjeet Singh. 34-36.

⁴⁵³ Hokishe Sema. n.433. 172.

respectively. However, with the granting of statehood on 1st December 1963, the first election for the State Assembly was held in 1964.⁴⁵⁴

As mentioned earlier, the first general election in Nagaland was held in 1964 with the Naga National Organization (NNO) and Democratic Party Nagaland contesting the election. There was no external incident, and, the polling was intense. Out of the entire 46 seats, direct election was to fill 40 seats, and the remaining six seats were allocated to Tuensang District (which included the present Mon District) to be filled by the persons chosen by the member of its regional council. The Naga National Organization (NNO) party won the election by 34 seats (including the six members from Tuensang).⁴⁵⁵ However, on 8th December 1964 all the 12 MLAs of the Democratic Party including its leaders Mr. Vizol resigned. Therefore By-elections was conducted in June 1965 whereby the NNO party took all the 12 seats, becoming an all NNO Government without opposition. In 1974, the strength of the State Legislative Assembly was increased to the current strength of 60 members.

The second General Election was held on 6th February 1969. Tuensang was given 12 seats, which increased the strength to 52. It was a contest among the NNO, the United Front of Nagaland (UNF) and Independent candidate. Again, the NNO, along with the members of Tuensang and Independent candidates, formed the government.⁴⁵⁶

The third General Election was conducted on 12th, 14th, and 16th February 1974. With the allotment of the full quota of 20 seats to Tuensang district, the total strength of the Assembly was again raised to 60. It was contested among the NNO,

⁴⁵⁴Moamenla Amer. "Electoral dynamics in India: A Study of Nagaland". *Journal of Business Management and Social Sciences Research (JBM&SSR)* (2014), Vol.3, No.4, April, 6.

⁴⁵⁵"Key Highlights of General Election, 1964 to the Legislative Assembly of Nagaland, Election Commission of India". New Delhi, http://eci.nic.in/eci_main/SR_KeyHighLights/SE_1964/StatReport_NL_64.pdf accessed on: 18.08.2016.

⁴⁵⁶ "Statistical Report on General Election 1969 to Legislative Assembly of Nagaland, Election Commission of India". New Delhi. http://eci.nic.in/eci_main/statisticalreports/SE_1969/StatisticalReport%201969%20Nagaland.pdf accessed on: 18.08.2016.

the United Democratic Front (UDF) and Independent candidates. However, with none of the parties securing an absolute majority, the Independent candidates were left to decide the fate of the State. Eventually, the government was formed by the UDF along with the Independents.⁴⁵⁷ However, on 22 March 1975, President's Rule was considered mandatory in Nagaland due to grave political crises in the State. The President's Rule continued for 32 months in Nagaland, which is so far considered the longest in the country.

The fourth General election was held on November 18, 1977, and, was contested amongst the Indian National Congress (INC), UDF, National Convention of Nagaland (NCN), and Independent.⁴⁵⁸ The UDF emerged again as the winner and won an absolute majority.⁴⁵⁹ The fifth general election was held on 10th November 1982, contested amongst INC, Naga National Democratic Party and Independent. The Congress Government forms the government.⁴⁶⁰ Again during the sixth general election, which was held on 18th November 1987, Congress came to power and formed the government. It was contested amongst Bharatiya Janata Party, INC, Naga National Democratic Party, Nagaland Peoples Party and Independent but the Congress government lasted only for 8 months as it was reduced to a minority in the house when 13 of its legislators resigned from the party on July 30, 1988.⁴⁶¹

⁴⁵⁷ “Statistical Report on General Election 1974 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/StatisticalReports/SE_1974/Statistical%20Report%20Nagaland%201974.pdf, accessed on: 18.8.2016.

⁴⁵⁸ “Nagaland Assembly Election Result in 1977”.
<http://www.elections.in/nagaland/assembly-constituencies/1977-election-results.html>, accessed on: 18.08.2016.

⁴⁵⁹ Statistical Report on General Election 1977 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/statisticalreports/SE_1977/Statistical%20Report%20Nagaland%201977.pdf accessed on: 18.08.2016.

⁴⁶⁰ Statistical Report on General Election 1982 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/SR_KeyHighLights/SE_1982/Statistical_Report_Nagaland_1982pdf.pdf accessed on: 18.08.2016.

⁴⁶¹ Statistical Report on General Election 1987 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/statisticalreports/SE_1987/StatisticalReport%201987%20Nagaland.pdf accessed on: 18.08.2016.

Again Congress won the seven general elections by absolute majority held on 21st January 1989, which was contested amongst the INC, Nagaland Peoples Conference, National Peoples Party and Independent⁴⁶². However, there were some hiccups down the line, and President's Rule was imposed again in Nagaland on 2nd April 1992, and it continued till 22nd February 1993. The eight general elections were held on 15th February 1993, Bhartiya Janata Party (BJP), INC, Nagaland Peoples Council, Democratic Labour Party and Independent contested the election. Moreover, Congress again forms the government.⁴⁶³ The Ninth general elections were held on February 23, 1998, once again, with a renewed mandate the Congress ministry was installed on 5th March 1998⁴⁶⁴, the Indian National Congress (INC) won 53 out of 60 seats in the Legislative Assembly. It was contested between the Indian National Congress and Independent as most of the opposition political parties boycotted the elections⁴⁶⁵ on the slogan, 'Solution, not Election'. During these elections, they realized the political implications of participation in the institutional mechanism and seemed to have transformed that slogan into 'Election for Solution'.⁴⁶⁶

The tenth general elections were held on February 26, 2003, and the Indian National Congress (INC) won 21 out of 60 seats in the Legislative Assembly. It was contested amongst Bharatiya Janata Party, Indian National Congress, Nationalist Congress Party, All India Trinamool Congress, Janata Dal (United),

⁴⁶² Statistical Report on General Election 1989 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/SR_KeyHighLights/SE_1989/Statistical_Report_Nagaland_1989.pdf
 accessed on: 18.08.2016.

⁴⁶³ Statistical Report on General Election 1993 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/StatisticalReports/SE_1993/Statistical%20Report%20Nagaland%201993.pdf
 accessed on: 18.08.2016.

⁴⁶⁴ Statistical Report on General Election 1998 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/StatisticalReports/SE_1998/StatisticalReport-NGL98.pdf
 accessed on: 18.08.2016.

⁴⁶⁵ India/Nagas (1947-Present).
<http://uca.edu/politicalscience/dadm-project/asiapacific-region/indianagas-1947-present/>
 accessed on: 18.09.2016

⁴⁶⁶ Rajesh Dev. "Nagaland: More Space for Democratic Politics". *Economic and Political Weekly* (2003). Mumbai. Sameeksha Trust Publication, Vol. XXXVIII, No.17, April 26, 1639.

Rashtriya Lok Dal, Samata Party, Nationalist Democratic Movement, Nagaland Democratic Party, Nagaland Peoples Front and Independent⁴⁶⁷. The Nagaland People's Front (NPF) won 19 seats in the Legislative Assembly. Neiphiu Rio of the Nagaland People's Front (NPF) and leader of the Democratic Alliance of Nagaland (DAN)⁴⁶⁸ which consisted of 38 seats in the Assembly formed the government on 6th March 2003⁴⁶⁹. The opposition party which boycotted the previous election participated in full form. The defeat of the S. C. Jamir led INC government had been the main agenda of the combined strength of the opposition led by the newly formed Nagaland Peoples Front (NPF). The formation of DAN in January 2003 virtually sealed the fate of Mr. Jamir's INC in the tenth elections to the assembly⁴⁷⁰.

The eleventh general election was held on 5th March 2008 and was contested amongst Bharatiya Janata Party (BJP), Indian National Congress (INC), Nationalist Congress Party, Janata Dal (United), Janata Dal (Secular), Nagaland Peoples Front (NPF), Lok Jan Shakti Party, Rashtriya Janata Dal, Adarsh Political Party, United Naga Democratic Party, Independent⁴⁷¹. Out of the total 60 seats in the Legislative Assembly, NPF and INC won 26 out of 60 respectively. So this time again the NPF led DAN formed the government.

The twelfth elections were held on February 23, 2013, with Bharatiya Janata Party (BJP), Indian National Congress (INC), Nationalist Congress Party, Janata Dal (United), Nagaland Peoples Front (NPF), Rashtriya Janata Dal, United Naga

⁴⁶⁷ Statistical Report on General Election 2003 to Legislative Assembly of Nagaland, Election Commission of India, New Delhi, 2003.
http://eci.nic.in/eci_main/StatisticalReports/SE_Feb_2003/StatReport2003_NL.pdf accessed on: 18.08.2016.

⁴⁶⁸ Democratic Alliance of Nagaland (DAN) is a combined effort s of the NPF, BJP, JD (U), and Samata Party

⁴⁶⁹ India/Nagas (1947-Present).
<http://uca.edu/politicalscience/dadm-project/asiapacific-region/indianagas-1947-present/> accessed on: 18.09.2016.

⁴⁷⁰ Rajesh Dev. n.466.1639.

⁴⁷¹ Statistical Report on General Election 2008 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/StatisticalReports/AE2008/StatReport_MAR_2008_NAGALAND_after_IC.pdf accessed on: 18.08.2016.

Democratic Party, Independent⁴⁷² contesting for it. The Nagaland People's Front (NPF) won 38 out of 60 seats while the Indian National Congress won only 8 out of 60 seats in the Legislative Assembly. These are a summary of the electoral politics in Nagaland.

Politically, the state of Nagaland has witnessed all the major tendencies of the Indian electoral scene, such as one-party dominance, factionalism, defection, coalition government etc. One sticking features of electoral politics in Nagaland has been the phenomenon of constant defections and mergers among the different political parties. Modern representative politics in Nagaland has undergone tremendous transformation to be affected by the methods and values of liberal democracy. As we can see from these elections, a large number of political parties came into existences and disappeared at regular intervals.

From 1964 till the 1980s, the political landscape of the state was dominated by the regional parties such as the Naga National Organization (NNO), United Democratic Front (UDF) and the Naga National Democratic Party (NNDP). The Indian National Congress has been able to dominate the state politics for a long time (1982-2003). However, Congress dominance came to an end after the Assembly Election of 2003, which brought Naga Peoples Front (NPF) led Democratic Alliance of Nagaland (DAN) coalition to power which continues till date. The Assembly Election of 2003 is significant for many reasons. It not only introduced a factor of competition in the politics of the state so far hegemonised by the Congress but also created room for the entry of new political forces in the state such as the Nationalist Congress Party (NCP), All India Trinamool Congress (AITC), Janata Dal (United) (JD(U)), Rashtriya Lok Dal (RLD) and Samata Party (SAP). This election is also significant in the sense that for the first time the BJP, considered to be a Hindu nationalist party made its electoral debut by winning seven

⁴⁷² Statistical Report on General Election 2013 to Legislative Assembly of Nagaland, Election Commission of India. New Delhi.
http://eci.nic.in/eci_main/StatisticalReports/AE2013/StatisticalReport_2013_NL.pdf accessed on: 18.08.2016.

seats in a predominantly, Christian state of Nagaland.⁴⁷³ The BJP has been a partner of the DAN, a coalition headed by the NPF which out powered the Congress in 2003 and subsequently retained the power after the 2013 election for the third straight term in the State. Nagaland is the only state in the predominantly Christian North East state where BJP has been able to make its presence felt since 2003.

In 2003 election, while the manifestation of all parties spoke about a solution to the Naga problem, the INC manifesto highlighted the personal role of S. C. Jamir in being the leading facilitator in the process of peace by withdrawing the warrants of arrest against the NSCN-IM leaders despite attempts on his life by the members of the group. The NPF, on the other hand, urges the 'Naga citizens' to realize that a mere statehood was not the final solution to the Naga problem. Thus its manifesto requested a mandate from the people to go deeper into achieving the desired goals of the people.⁴⁷⁴

During elections, the main focus taken up by all the political parties is the issues of the protections of Naga identity and culture. On the larger scale, every election in Nagaland to State Assembly or the Parliament has been dominated by the unresolved 'Indo-Naga political issue'. This issue has been the centrepiece of all party manifestoes since the election of 1974. For instance, both the Congress-I and the NPF in their manifesto for the 2008 Assembly election, states that they are dedicated for an early, lasting and peaceful solution of the Naga political issues. Another issue which we mainly see during the election is the question of greater Nagaland or Nagalim. The aim is to bring all the Naga inhabited areas into a single political unit. The Nagas occupy both side of the hilly border region between India and Burma, in the Northeastern states of Nagaland, Manipur, Assam and Arunachal Pradesh and Burma's Sagaing Division and Kachin State. This issue was dominated in the electoral campaign not only in State Assembly election but also in the Lok

⁴⁷³ Moamenla Amer. n. 454. 6- 7.

⁴⁷⁴ Rajesh Dev. n.466. 1639.

Sabha election of 2009.⁴⁷⁵ It is thus clear that in Nagaland, local issues largely eclipse national issue for both Assembly and Lok Sabha elections.

5.8. Naga Village Administrative System

Since time immemorial, the village was the basis of the local administrators, in the form of a 'village state'. Cultural anthropologists like Hutton and Elwin were surprised to see a sophisticated and neatly organized village polity among the Ao ethnic groups.⁴⁷⁶ Major Butler reflected the European impression of the Naga village administration and said, "Everyman follows the dictates of his own will, a form of the purest democracy which it is very difficult indeed to conceive as existing for even a day; and yet that it does exist here is an undeniable fact".⁴⁷⁷ British administrators/anthropologist Hutton further compared Naga villages that have some 'democracy' to the Hindu communities that are fragmented by the caste system. Hutton wrote, "The least that can be said of the Naga is that in general, they have a mental outlook and mental process far more consistent with those of the European than has the ordinary native of India, whose thought has for generations been stunned by the cumbrous wrapping of caste and Hinduism".⁴⁷⁸ The Naga villages are far more egalitarian than the Greek city-states or the Hindu caste society. It is because, if any new information and issues are doing the rounds, they discussed the problem first at home, then at the level of the clan, then at the village council and finally at the meetings of the entire ethnic group. The Ao ethnic group especially follows this structure. At present, Nagas have formed an apex body that includes the entirety of the Naga ethnic groups, the Naga Hoho (NHO). In customary law, every Naga has a privilege of a jury hearing when certain issues are not resolved, and once a decision is reached, every Naga is ready to obey it. The Nagas have great respect for the village elders, and the chief as the mediator and

⁴⁷⁵Moamenla Amer. n. 454. 8.

⁴⁷⁶William Carlson, Smith. *The Ao Naga Tribes of Assam: A Study in Ethnology and Sociology*. (London: Macmillian C. Ltd, 1925) 93.

⁴⁷⁷Major Butler in J.H. Hutton. n.430 .143.

⁴⁷⁸J.H. Hutton. 38.

coordinator of order in a village but never as a dictator. This village administrative system is what the British consider the ‘nobility’ of Naga democracy.⁴⁷⁹

5.9. Social and Clan Identity

For a Naga, the clan is an important social unit, from which a person derives the social identity. Hutton mentioned in his book *The Angami Nagas*, “Although the village may be regarded as the unit of the political and religious side of the Naga, the real unit of the social side is the clan”.⁴⁸⁰ The clan is made up of people generally claiming descent from the same male ancestor. As the Nagas practices exogamy, a person’s clan’s identity becomes essential for social relationships, such as courtship and marriages. One of the crucial functions of the clan is to protect its female members. Mills says, “A Naga woman always has her clan behind her if there is a problem in the marriage”. Among the Ao Naga, it is the elders who select and send two members each from their respective clan to the village council (top village political administration) to manage the village administration. In this fashion, a Naga clan provides an unwritten code of ethics and procedures for the orderly operation of the village administration, society and religion.

5.10. Women and Political Participation

In the political field, the face of the Naga women is very dim. In Nagaland, women are at par with men. Be it at home or outside world; women have an equal and respectable position in the state. However, when it comes to politics, the male seems to have dominated the domain. Women in Nagaland constitute half of the electorate of the state (47.82%) and are more inclined to vote than their male counterparts,⁴⁸¹ yet they have failed to evolve as an autonomous political identity. They were able to establish their visibility in politic only as a voter. A significant

⁴⁷⁹Mar Imsong. n.388. 172.

⁴⁸⁰J.H. Hutton. n.430.109.

⁴⁸¹J.H. Hutton. 7.

aspect of electoral politics in Nagaland is that despite the effective intervention of the Naga Mothers' Union and women in general towards Naga unity and efforts' for peace, their efforts towards winning the elections or secured seat in the assembly is still beyond their reach. Since the inception of contesting election in the State, i.e., from 1964 till date, altogether only 15 women have contested the elections from different political parties, but none of them won their respective seats⁴⁸² in the State Legislative Assembly. So far, the state has elected only one woman to parliament: Mrs. Rano Shaiza, in 1977 and none after her. The Naga social and political life revolves around their traditional institutions, and so the rights of women have never been considered as primary decision makers.

Quoting an old saying of this community would be helpful for better understanding about gender and identity within the Ao/Naga community of Nagaland that says "*Lipok nung tetsur yimli mali*" means "women do not have status, power, rights and position since genesis". Women had no place in the village council, decision making control or ownership over land, and they held no position and status. This very line defines and trivializes women in the community that has been emphasized in the context of ruling and its making since genesis. This is the cornerstone of women's exclusion and justification for male domination by tracing the genesis of the community.⁴⁸³ For instance, the apex decision-making body of the Naga people—the Naga Hoho, which has representation from all the different Naga tribes do not have a woman representative till date. Similarly, at the grassroots level, traditions do not allow women to participate in the decision making of the Village Council, the highest decision-making body.⁴⁸⁴

⁴⁸² Election Result: Full Statistical Reports.

http://eci.nic.in/eci_main1/ElectionStatistics.aspx accessed on: 15.05.2016.

⁴⁸³ Nunghshimenla Jamir. M. Phil thesis on "Naga Women and Identity" submitted at the Department of Sociology. University of Hyderabad. 2003

⁴⁸⁴ Moamenla Amer. n. 454. 8.

5.11. Continuities and Connections between the Traditional and Modern Electoral Systems

More than 50 years after granting statehood, the political mobilization in Nagaland has been the influence and role of traditional political authorities on the nature and outcome of modern liberal multi-party democracy. The traditional institutions and organizations exist alongside modern institutions of governance. Jelle J.P. Wouters in his article, *Performing Democracy in Nagaland: Past Politics and Present Politics* says, “the Naga tribes possess the agency to appropriate, reinterpret and rework the idea of modern democracy along the lines of their traditional politics, ideologies, and pre-statehood political culture. Those Naga tribes are both the repositories and enactors of their particular versions of democracy, appropriation which may run counter to some of the modern democracy elevated principles”.⁴⁸⁵

Naga tribes portray various pattern from near-dictatorship to extreme democracy. It is casteless and classless. While the Sema and Changs have hereditary chieftainship, the Konyaks have powerful Chiefs-Ahngs who are considered sacred and whose word is law, and while the Aos are managed by a body/group of elders from the main family groups. The Angamis, Rengmas and Lothas, however, are very democratic in choosing their elders.⁴⁸⁶ Tribal politics is democracy in action. The Village Council is a system where everybody is a partner, where even the chief or headman tills the land. In such a system, any decision is reached through consensus when a group of villagers or elders sit together.⁴⁸⁷ In a typical village election scenario, a preliminary vote or a prearranged agreement takes place between village elders and political parties to select to a consensus candidate to be supported by the entire village. Any disturbance by anybody is met

⁴⁸⁵Jelle J. P. Wouters. “Performing Democracy in Nagaland: Past Politics and Present Politics”. *Economic and Political Weekly* (2014) Mumbai, Sameeksha Trust Publication. Vo. XLIX, No.16, April 19. 60.

⁴⁸⁶Murkot Ramunny. n.391. 6.

⁴⁸⁷ R. Vashum. n.399. 25.

with strong punishment according to the customary law of that respective village. This decision is usually taken by the village council, by virtue of it being the highest decision making body at the village level. Aggressive involvement of village and ward council, which are statutory bodies is to be seen during the time of the election. At times the council takes upon itself the responsibility of voting for the entire electorate under its jurisdiction⁴⁸⁸. In most of the instances, the village elders/village councils decide the fate of the political candidate. Even after six decades of democracy, the unopposed power of the grassroots authority has not been curbed.⁴⁸⁹ Therefore, misuse of power by grassroots and local bodies can sometimes be more dangerous than an abuse of power at a higher level because it has a direct effect on the people.

Jelle J. P. Wouters in his article argued towards “a more contextualized, a more culturally embedded understanding of Nagaland’s electoral processes, one which renders bare the incongruence between modern democracy and different traditional Naga politics, but also one which bestows Naga Communities with the agency to remould, tailor and adopt modern democracy to their uses and advantages”.⁴⁹⁰ In his articles, he also mentioned that Nagaland politics is not a politics of manifestos, party ideologies, competing long term visions, public platforms and debates though these too play a role but little in the case of Naga politics. However, it is a politics of “primordial” affiliations of clan, village and tribes and mapping of traditional politics unto the democratic playing field. He continued to say that Nagaland politics is not a politics of technology but who gets “voted in” largely hinges on traditional modes of decisions making and age-old loyalties.

⁴⁸⁸ Amongla N. Jamir. “Nagaland: Behind the Curtain”. *Economic and Political Weekly* (2009). Mumbai. Sameeksha Trust Publication, Vol. XLIV, No.39, September 26. 171.

⁴⁸⁹ Amongla N. Jamir. 173.

⁴⁹⁰ Jelle J.P. Wouters. n.485. 60.

Jelle J. P. Wouters has given four different types of models to provide precise insight into the Nagaland's electoral politics. The models are the Angh (Sovereign) or Chieftainship model, Village consensus candidate model, the Clan model and the Household model where he has clearly shown how the traditional politics play a crucial role in the decision making. The Angh (Sovereign) or Chieftainship model is prominent among the Konyaks and somewhat to the Sema Nagas. The basic premise of this model is that the traditional leverages of Konyaks and Sema aristocrats have, to an extent, been remapped unto the democratic playing field with traditional rulers now influencing the voting patterns of the commoners.⁴⁹¹ Similarly, among the Sema, they are called Kukami (the Ruler), who are more or less confined to their respective villages, unlike the Angh of Konyaks, they have no power over other villages. These rulers make decisions based on the advice of their ministers called Chochomi, who are selected by Kukami from various clans or families in the village. Although the position and the rank of the rulers are protected and kept in high regard, yet the real function in decision-making generally depends on the representatives of the people. These Anghs among the Konyaks tribes and Kukamis among the Semas are hereditary chieftainship.⁴⁹² Though the introduction of the state bureaucracy diminished the absolute authority the Anghs and Chiefs once enjoyed, they continue to have a significant say in village affairs and by extension in who will be elected as the member of the legislative assemblies in their constituencies by extending their support through the 'declaration' that this particular village will support this particular candidate during this election.

For instance, during the 2013 State Assembly elections, the following 'declaration of support' from a Konyaks village appeared in the Nagaland dailies: "The Zangkham Village citizens [...] unanimously resolved to support and vote for the young and capable NPF (Naga People's Front) aspirant candidate [...]" This declaration, promising collective vote from the entire village, was signed by the

⁴⁹¹Jelle J.P. Wouters. 61.

⁴⁹²Hokishe Sema. n.433.167.

chief Angh and countersigned by the local party president. Similarly, in Sema villages, Gaonbura, chairperson and the secretary of the Unity Village who stated in the newspaper that, “We the Sumi Community Council reaffirms the decision [...] to fully and sincerely support the intending NPF candidate”.⁴⁹³

Village consensus candidate model features most prominently among the Ao Naga people, although it is also practiced in various villages belonging to other tribes. In this model, the unit of voting is not an individual but the village where the village collective vote is deliberated at the level of the village council (Putu Menden), and the village’s apex body called the *Senso Mungdang*. A *Senso Mungdang* is only held once in a while, and the control of affairs lies within the village council. The Ao Naga system of government is peculiar. There are neither chiefs nor any hereditary rulers⁴⁹⁴. Despite this occasional tussle between “modern” and “traditional” constellations of authority, the dispositions of the traditional Ao Naga polity appears to have reconstituted itself in the sphere of electoral politics, with councillors assuming a leading role in adjudicating the collective vote of the village. Among the Ao Naga, this often results in the selection of a village consensus candidate; a village resolution which is subsequently declared in the local dailies, and signed by the president and secretary of the *Senso Mungdang*. For instances, in Merangkong, another Ao Naga village, declared, “Merangkong *Senso Mungdang* in a general meeting... unanimously resolved to extend full support to the Independent Candidate for the forthcoming legislative assembly election”. It was further resolved, “Heavy penalty and strict action will be imposed against any citizen of Merangkong who acts against the aforesaid resolution”.⁴⁹⁵ Again in Asangma, the researcher’s village, during the 2013 legislative Assembly election, two candidates came forward to contest the election from the same village and the same constituency. To this, the Village Council had a meeting and then called the apex body, *Senso Mungdang* where they discussed which candidate to be sent to

⁴⁹³Jelle J.P. Wouters. n. 485.61.

⁴⁹⁴ J. P. Mills. “The Ao Nagas”, *The Journal of the Royal Asiatic Society of Great Britain and Ireland* (1927) Royal Asiatic Society of Great Britain and Ireland. No.2. 264-265.

⁴⁹⁵Jelle J.P. Wouters. n.485. 62.

contest the elections. So after much deliberation, they decided to send one between the two candidates. The Village Council/Putu Menden is so strong that no individual or body will go against it, if somebody tries to overlap the decision taken by them then he /she will be outcaste from their village for 5-6 years.

The clan model is perhaps most prominent among the Lotha Naga, although clan unity and clan-wise electoral support are also prominent amongst various other Naga tribes. Lotha electoral politics is more of an inter-village affair compared to the first two models. The clan-model suggests that electoral politics is predominantly a tussle between competing clans with each clan uniting behind a particular candidate, subsequently, trying to convince other clans to align with them. Every clan and candidate must seek alliances with other clans in order to win the election. In this model, the most effective tactic of a political party to out power another party's candidate is to try and set up a rival candidate in his clan, so potentially splitting the candidate's vote bank. During the February 2013 elections, the Ngullie Lotha clan came out with a public declaration, informing that, "a general meeting of the Ngullietsu Ekhung [all Ngullie union] was held in Yanthamo village and attended by more than 2000 Ngullies' clansmen representing all the villages". During this meeting, they resolved to select a certain veteran Ngullie politician as the "official Candidate from the Ngullies clansmen". The public declaration further qualified that although the Ngullietsu Ekhung did not want to "infringe on the exercise of democratic rights by any individual", they had "blessed and endorsed" the candidature of the veteran politician, then adding that "no individual member is above the Ngulliestu Ekhung" and that any violation of its resolutions may compel the Ekhung "to take measures as per customary norms and practices".

Last but not least; the fourth model is the Household model and is mostly practised by the Angami and the Chakhesang Naga tribes. Here, traditional aristocrats are absent; instead, the individual and household deliberations are more active and 'social pressure' to vote collectively. In the household model, traditional

aristocrats are absent, while the village council and clan leader have little or no influence over the voting behaviour of the ordinary villagers. Comparatively, among the Naga people, the Angami and Chakhesang (formerly eastern Angami) tribes appear to come closest to the elevated democratic principles of free, fair and autonomous individual deliberation. Also, in this model, Shame is spoken of a household in which members cast their votes for different candidates, and compared to the breakdown of the family, even to divorce. We can see from the declaration of support where a previously RJD worker also resigned and publicly declared that he had done so “along with 31 households [...] to support the Indian National Congress Candidate”. Moreover, another declared, “I, President Khezhakeno Unit (youth wing) and my followers resigned from my post and primary membership of the Congress and joined the NPF”.⁴⁹⁶

Jelle J. P. Wouters, in his article, clearly shows the tribes and their types of participation during the electoral process. After going through the details of these four electoral models given by him, the presence of these models suggests that the Naga tribes are both the repositories and enactors of their particular versions of democracy, remoulding its institutions and principles into their traditional politics. The case of Naga shows that democracy is not so much resisted, as it is actively appropriated, reinterpreted and reworked to suit local political cultures.

When we look at the participation of the people in electoral politics in Nagaland, we can see much difference in the voting behavior between the urban and the rural areas in Nagaland. Since the population in urban areas are a mixture of different tribes and mostly educated with high exposure to the media, it became practically impossible for the town/municipal communities or ward council to issue complete support to a particular candidate as we have seen earlier. However, the scenario is different in rural areas, since much authority is vested in the Village Council; the councils can easily impose order to vote for a certain candidate. History tells us that Naga villages were referred to as “little republic”, which

⁴⁹⁶Jelle J.P. Wouters. 63-64.

practiced an undiluted form of democracy between the local bodies and politicians point to something quite disturbing. For instances, in the Lok Sabha election 2004, the NPF candidate got 69% of the votes and the Congress candidate 29%. In the 2009 election, history repeats itself with the Congress candidate getting only 26% of the votes and the NPF candidate bagging 73%.⁴⁹⁷

5.12. Insurgency and Electoral Politics

Naga insurgent group have traditionally opposed participation in the elections. However, reports have suggested that the Underground elements play significant roles in determining electoral outcomes, though the collective leadership of the NSCN-IM⁴⁹⁸ maintained their unwillingness to participate in the elections and also they categorically emphasized that they would not disrupt the polling process in the state. This practically indicates a softening of their “commitment to a sovereign, independent Nagalim”⁴⁹⁹ and an urge to solve the Naga problem through political negotiations. The groups, like NNC,⁵⁰⁰ unreservedly condemned the elections as an institutional ploy by the state of India to integrate the Nagas, but another main player, the NSCN-K,⁵⁰¹ chose to maintain an ominous silence on its stand on the election.⁵⁰² Political parties have a complex relationship with all the factions of the Naga insurgency, as occasion demands, the agenda of Naga Nationalism. Politician often attempts to use them for their political gains and vice versa. Therefore, this alleged connections between them lead to the draining of development funds. Also, corruption has increased due to the Government of India’s policy of financial liberations in order to buy peace in the state.⁵⁰³

⁴⁹⁷ Amongla N Jamir. n.488. 172.

⁴⁹⁸ The Nationalist Socialist Council of Nagaland- Isaac Swu and Th.Muivah (NSCN-IM).

⁴⁹⁹ Means all unifying areas inhabited by the Naga people in the Northeast India and Burma.

⁵⁰⁰ Naga National Council.

⁵⁰¹ The Nationalist Socialist Council of Nagaland- Khaplang.

⁵⁰² Rajesh Dev. n.466, 1638.

⁵⁰³ Moamenla Amer. n.455.10.

Udayon Misra, in his article, *Nagaland Election* also clearly mentioned about the involvement of the underground during the electoral politics. During the State Legislative Assembly election in 1987, both Indian National Congress and the Naga National Democratic Party (NNDP) emphasized the need to find a quick solution to the ‘unresolved political problems’ of the State. The NNDP’s elections manifesto made the underground issue the dominant issues and stated that “the NNDP will continue to give the topmost priority to the search for the lasting peace in the Naga homeland by means of a peaceful solution of the Naga political problem through a policy of reconciliation”. In fact, the larger sections of the NNDP leadership was manned by former underground activists just before the poll the Congress I leadership made it clear that “the Congress I leadership was too eager to reach an understanding with the underground”.⁵⁰⁴

The role of the armed groups’ during the 2003 elections was also a major issue where Congress-I claimed the interference of the NSCN-IM, its traditional rival, led by a Thangkul and Sema Naga from Manipur, the opposition claimed the role of the NSCN-K, led by a Nemi Naga and supported by the Aos and the Angamis, in influencing the prospects of S.C. Jamir and the Indian National Congress (INC). Despite denial by the political parties, here are some instances which can prove the involvement of the armed groups in the elections, Naga People’s Front (NPF) bagged the maximum number of seats in the southern parts of the state which are considered the traditional support base of the NSCN-IM, while the INC bagged most of its seats in areas dominated by the NSCN-K. While the NPF and the opposition received majority support from the Semas, Chakhesang and Zeliangs dominating the southern part of the state, the INC received support from the Aos, Konyaks, Angamis and Lothas and this reflected the tribal affiliations of members elected from the respective parties to the 10th Assembly elections.⁵⁰⁵

⁵⁰⁴Udayon Misra. “Nagaland Elections”. *Economic and Political Weekly*. (1987) Mumbai. Sameeksha Trust Publication. Vol .XXII, No. 51. December 19, 2193-2194.

⁵⁰⁵ Rajesh Dev. n.466. 1939-40.

We can see that party politics as an ideological phenomenon plays an insignificant role in the outcome of the elections in the state where tribal affiliations, tribal chiefs and armed groups play a more dominant role.

CHAPTER 6

CONTESTATIONS ON ACCOMMODATING THE CULTURAL AND ETHNIC RIGHTS OF THE NAGAS

In this chapter, I will discuss the Sixth Schedule and the special provisions of Article 371A, which gives special status to the state of Nagaland. This chapter will also focus on the working of centre-state relation and how the constitutional dimension of federalism accommodated the Naga ethnic rights.

The Nagas are an ethnic group situated in the tri-junction of China, India and Myanmar. The term ‘Naga’ covers a group of people geographically widespread and culturally diverse. The meaning and origin of the term ‘Naga’ are unknown. The Nagas are found in the North Eastern states of India, namely, Arunachal Pradesh, Assam, Manipur and Nagaland and the north-western regions of Myanmar (Burma). During the period between 1935 and 1945, the British divided the Naga-inhabited areas into two parts. One-third of the Naga territory was placed under the administration of Burma (Myanmar). Two-thirds of the total area was given to the Government of India. The Government of India further divided the Naga territory into the states mentioned above after Independence.

As I have mentioned earlier in the fifth chapter, Nagaland came into existence in 1963, when the 13th Constitutional Amendment paved the way for the creation of Nagaland with a special constitutional status to protect Naga customary law, social/religious practices, the administration of civil and criminal justice, and the ownership/transfer of land. Earlier, the Nagaland state came under the Ministry of Foreign Affairs because of its strategic location in the region. However, in the later period, the authority in the matters concerning Nagaland was shifted from the Ministry of Foreign Affairs to the Ministry of Home Affairs.

Accommodation of the ethnic and cultural rights of the Nagas has been discussed during the debates of the Constitution Assembly. As discussed in the third chapter, during the debates the Tribal Areas of the North East received the proper care when the discussion of setting up of a Sub-Committee was formed in order to assist the Assembly in this regard to Report on the North East Frontier Tribal Areas and Assam Excluded and Partially Excluded Area. The main purpose was to see the aspirations of the people of the areas are met and on the other, to assimilated these areas with the mainstream of the country. During the debates, some members of the Constituent Assembly opposed to the Regional Council, Jadubans Sahay says for the first time in the history of India, “we are going to set up the Tribal Advisory Council”. And also, he continues to say, “the more we are able to know of these tribes the better it is for the country as a whole and to assimilate those tribal people as fast as we can in the whole society of the nation as we are now.”⁵⁰⁶ Brajeshwar Prasad opposed setting up of the Sixth Schedule as it will lead to anarchy. However, he was happy with a provision ensuring the social, educational and cultural advancement in the tribal areas of Assam.⁵⁰⁷ Even Lakshminarayan Sahu says, setting up of the regional council for the Naga Hills neither benefits these people nor us as their customs and traditions differ from mainland India.⁵⁰⁸ During the debate, there were discussions on if this Sixth Schedule was introduced in these areas, the Naga Hills people would raid Assam or go off to Tibet.

The provision in the Fifth Scheduled and Sixth Scheduled ensures for protection of cultural identities customs and economic and political interest of the original inhabitants of these areas. In the scheduled tribes in tribal areas, the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. Brajeshwar Prasad, during his discussion at the Assembly, says “Assam is on the border with foreign

⁵⁰⁶*Constitutional Assembly of India Debates (Proceedings)* n.217– Vol. IX. (7.132.179) 5th September 1949.

⁵⁰⁷*Constitutional Assembly of India Debates (Proceedings)* n.220 – Vol. IX. (9.133.25) 6th September 1949

⁵⁰⁸*Constitutional Assembly of India Debates (Proceedings)* n.223– Vol. IX. (9.133.56) 6th September 1949

States, and there are lots of conflict in the region”. He said that the whole of the tribal area should be lifted from the Province of Assam and should be made a centrally administered area.⁵⁰⁹ Rohini Kumar Chaudhuri out rightly opposed the Scheduled VI by saying, “this autonomous district is a weapon whereby steps are taken to keep the tribal people perpetually away from the non-tribals”.⁵¹⁰

Gopinath Bardoloi on the trend of criticism on the amendments for giving more power to the Autonomous Council says, “He did not agree with this view and stated that as a matter of fact, most of those provisions were nothing more than translating something which already prevailed in the tribal societies.”⁵¹¹ Whereas J. J. M. Nichols Roy says “the Sixth Schedule would give a certain measure of self-government to these areas but at the same time expressed the controlling and inadequacy feelings that the Sixth Schedule had brought upon the people of the hills. He further urged the people to agree, given the circumstances, to bring peace between all parties. Because it is the process by which they will be unified, Nicholas Roy said that in order to keep the frontier area safe, “We cannot use force upon them. If you want to win them over for the good of India, you will have to create a feeling of friendliness and unity among them so that they may feel that their culture and ways of living have not been abolished and another kind of culture thrust upon them by force”.⁵¹²

Ambedkar, in response to the discussion of the Sixth Scheduled, regarding the Hill tribes of Assam and also the creation of the Regional and District Council says “the tribal people in areas other than Assam are more or less Hinduised”. He further added that if they correctly studied the provisions of this Schedule, they

⁵⁰⁹*Constitutional Assembly of India Debates (Proceedings)* n.237 – Vol. IX. (9.132.161) 5th September, 1949.

⁵¹⁰*Constitutional Assembly of India Debates (Proceedings)* n.250– Vol. IX. (9.133. 37-39). 6th September 1949

⁵¹¹*Constitutional Assembly of India Debates (Proceedings)* n.248 – Vol. IX. (9.133.35-36). 6th September 1949

⁵¹²*Constitutional Assembly of India Debates (Proceedings)* n.255– Vol. IX. (9.133.85) 6th September 1949.

would not have raised the point that creating those Regional and District Councils was creating a kind of segregated population. He also mentioned that the Regional and District Councils would provide the tribal people with enough representation in the Legislature of Assam itself, as well as in the Parliament so that they would play their part in the laws making of both for Assam and also the whole of India.

The constitution-makers, while drafting the Constitution recognized the significant difference in the lifestyle and administrative set up of the North Eastern region from the rest of the country, provided for special institutional arrangements for the tribal areas in the region, giving them a high degree of self-governance through autonomous District councils under the Sixth Schedule of the constitution. Even critics agree that the Sixth Schedule has to some extent satisfied tribal aspirations and has thus prevented many conflicts.⁵¹³ Moreover, to bring down the idea of insurgency movement, the central government made several attempts, and one of them was the reorganizations of states. It profoundly affected the state's politics, especially in the state of Assam. It energized movements for separation and discouraged a politics of accommodation, and it is evident in the case of the movement for a Bodo homeland.⁵¹⁴

Under Sixth Scheduled constitutional arrangements were introduced for autonomous district councils for the tribal areas of Assam, Meghalaya, Tripura and Mizoram. The Nagas were not satisfied with the provision laid down under the Sixth Schedule. As they were demanding the secession from India. So they rejected the Sixth Schedule. However, the accommodation of the people of Nagaland into the Indian Union was not a smooth ride. As the Nagas said that they were never part of India even during the British time, they were left alone without any interference. Even they want India to leave them alone, but after the British left, the Nagas were

⁵¹³ Conflict in North East India,

http://www.mdoner.gov.in/sites/default/files/ARC_7thReport_Ch12.pdf accessed on: 12.07.2017

⁵¹⁴Sanjib Baruah. *India Against Itself: Assam and the Politics of Nationality*. (New Delhi: Oxford University Press, 1999) 106-107.

forcefully brought under the control of the Indian Union which created lots of resentment among the people of Nagaland which strained the centre-state relation.

As we have seen in the fourth chapter about the granting statehood to Nagaland. The state of Nagaland in India's North East which was created in 1963 was perhaps the sole exception to the pattern in the 1950s and 1960s where it was given based on linguistic lines. It was created after the prolonged struggle of the Naga tribes against the Indian state for a sovereign land, independent from India, in recognition of their tribal identity. The basis of reorganizations was tribal insurgency for separations and statehood. With the coercion used by the Central Government by imposing Armed Forces (Special Powers) Act, 1958 in order to curtail the armed struggle by the insurgency affect the centre-state relation as in the relation between the Government of Nagaland and the Centre. The main reason for intensifying the situation in Nagaland is that the Government of India termed the Naga Problem as law and order problem and not a political problem. Instead of using Armed forces, a serious of political dialogue could have been conducted between the Government of India and Naga insurgent to solve the problem and could have been a better solution for the ongoing problem. As it's high time, the Government of India should term the Naga problem as a political problem rather law and order problem.

6.1. Unique Socio-Cultural Aspects

The Nagas culture is entirely different from that of the Indian cultural patterns though there may be certain similarities. The caste system is unknown in the Naga Society, which makes the Nagas all the more different from the Indians. The Naga culture and religion, customs and traditions are all different from Indians because Nagas are neither Hindus nor Muslims. No doubt, there are differences in Naga culture such as language, dress and customs, but in general, they are one.

Every Naga village is ruled by the nominated village councillors/elders that represents every clan or a group of families except that of Sumis and Konyaks. Under this principle, all the general decisions are taken by the consensus exhibiting the real democratic spirit, where the advice of the elders is crucial in decision making. This practice was in practice since time immemorial exhibiting an indigenous model of pure democracy, even without a political party and electoral system (like that of the Indian system), the Nagas could maintain real democratic principles through consensus.⁵¹⁵ The entire Naga society is a village-based society where every village is self-contained and maintains its autonomy. They follow a robust and well-knitted self-rule village administrative system.

6.2. Sixth Schedule

The most prominent and important structural change in the administration of India is the granting of political autonomy and statehood in the North East region. The Constituent Assembly of India appointed an Advisory Committee which in turn set up a sub-committee on North East Frontier (Assam) Tribal and Excluded areas, under the Chairmanship of the first Assam Chief Minister, Gopinath Bardoloi, popularly known as the Bordoloi Sub- Committee. The tribal areas of Assam which were referred to as Excluded and Partially Excluded Areas were brought under the Sixth Schedule to the Constitution of India. It is a significant landmark in the constitutional development of the hill areas of North-East India. With minor modifications, the recommendations of the sub-committee were accepted and incorporated in the Sixth Schedule to the Constitution of India. The Committee recommended setting up of autonomous district council to provide due representative structures at the local level to the tribal population. Moreover, it recommended protection to certain ethnic minorities having a distinct culture, tradition, language, etc., who needed a separate administrative mechanism for

⁵¹⁵ “Uniqueness of Naga History: A Sociological Debate”. (Mokokchung: Concerned senior citizen’s forum, Nagaland, 2005) 23-24.

maintaining their ethnic and cultural identities from the dominant tribal community.⁵¹⁶

The origin of the Sixth Schedule of the Constitution of India could be traced back to the Government of India Act, 1935, under which the hill areas of Assam were divided into Excluded Area, and partially Excluded Area. The Mizo Hills (Lushai Hills by then), the Naga Hills and the North-Cachar Hills were included in Excluded Area, while the Khasi and Jaintia Hills, the Garo Hills and Karbi-Anglong (Mikir Hills by then) were included in the Partially Excluded Area.⁵¹⁷ The administrations of the Excluded Areas were entrusted to specially appointed officials (Superintendent), who administered the people loosely through Village Chiefs.

Originally, Sixth Schedule was designed to accommodate principally the Nagas and other tribal groups in the hills areas of Assam. However, the Nagas rejected the provision by saying that it did not meet the demands of the people of Nagaland, which was rightly stated in the Nine-point Agreement (1947).

The Constituent Assembly by considering the distinct ethnic identities of the hill people of Assam constituted Autonomous District Councils in 1952 to preserve their culture, tradition, language, and most importantly, their land. With the conviction that it would “secure conditions of an enlarged democratic setting,” the Sixth Schedule was envisioned with limited internal self-rule for

⁵¹⁶ThSiamkhum, Fifth and Sixth Schedule of Constitution of India: A comparative analysis, Part 3, E-Pao, May 20, 2017
http://e-pao.net/epSubPageExtractor.asp?src=education.Human_Rights_Legal.Fifth_and_Sixth_schedule_of_Constitution_of_India_A_comparative_analysis_Part_3_By_Th_Siamkhum, accessed on: 23.011.2018.

⁵¹⁷ThSiamkhum, Fifth and Sixth Schedule of Constitution of India: A comparative analysis, Part 2, W-Pao, May 20, 2017
http://www.e-pao.net/epSubPageExtractor.asp?src=education.Human_Rights_Legal.Fifth_and_Sixth_schedule_of_Constitution_of_India_A_comparative_analysis_Part_2_By_Th_Siamkhum, accessed on: 23.011.2018.

Tribals⁵¹⁸. However, this did not apply in the Naga Hills as the NNC (Naga National Council) spearheaded independence from India thereby rejecting the proposal for the creation of Autonomous District Council and boycotted the election, making the Council dysfunctional.

On 15th August 1947, Independent India proclaimed authority over Naga areas. On 9th May 1948 the then Assam Governor, Sir Akbar Hydari reaffirmed that the Nine Point Agreement would be incorporated in the Sixth Scheduled. On 22nd June 1948, the Governor and the Premier of Assam, Gopinath Bordoloi, again in writing, reaffirmed the Government of India's commitment to implementing the Nine-Point Agreement and assured the Nagas that the draft Constitution was in no way an impediment to honoring the agreement. Despite this, the Indian Government continued its programme of setting up its state machinery in Naga Areas, treating the Nine-Point Agreement as a commitment of a bygone era. Even Bordoloi, on 9th November 1948, admitted to the Naga delegation that the Government of India did not consider the Agreement valid. But after the end of the ten year's "interim arrangement" when it was clear that their demand for self-determination was not addressed by the Bordoloi Committee's report, which instead recommended sub-State autonomy under the Sixth Schedule not only for the Nagas but also for the erstwhile tribal areas of Assam,⁵¹⁹ the representatives of the Naga National Council refused to accept the Sixth Schedule. The Sixth Schedule did not address a key demand of the Naga nationalist, that is, recognition of their self-determination. The Nagas were far from being satisfied with the provision of the Indian Constitution and became all the more irritated and dissatisfied. Following this, the Naga declared independence on 14th August 1947. In addition to this, the Naga leaders also organized a Plebiscite in 1951 where 99% voted in favor of Naga Independence. They also vehemently boycotted the First general elections in 1952. This is how the Indo-Naga conflict began. The Nagas further rejected the government of India's

⁵¹⁸ Khan Suan Hausing. n.281. 91.

⁵¹⁹S.K. Chaube. Hill Politics in North east India. (New Delhi: Orient Longman, 1999), 100.

offer to create an Autonomous Hill District Council for the Nagas, and it started a violent secessionist movement making Naga insurgency the oldest in India.⁵²⁰

The reluctance of the Indian state to engage and accommodate Naga nationalist claims after the Nagas rejected the Sixth Schedule of Indian constitution created a political vacuum which significantly constrained Indian state-nation building and democracy in Nagaland for over a decade. The Nagas nationalist adopted armed struggle to realize their nationalist aspirations and the Indian government responded with coercion and cooperation. Suan Hausing says, “If the Indian state was blamed for its rigid stand and its refusal to uncouple itself from its exclusive claim of a monistic and an indivisible sovereignty on the Nagas, the collective leadership of the Naga independentist groups had to share the blame for their unrelenting stand and their persistent refusal to accept a shared and negotiated sovereignty which was made possible by incorporating Article 371A in the Indian’s Constitution”.⁵²¹

6.2. Article 371A for the State of Nagaland

In India, Jammu and Kashmir and Nagaland are the two states different from other states on account of their special treatment guaranteed by the Constitution under Article 370 and Article 371A respectively. After the rejection of the Sixth Schedule, and ending up with the State of Nagaland, the Government of India incorporated Nagaland under Article 371A of the Constitution of India with special provisions for the tribal people. Along with the formation of the State of Nagaland, certain measures were also taken to provide for the specific conditions prevailing within Nagaland. Article 371(A) of the Indian Constitution is to safeguard the culture, traditions and way of life of the Nagas. In this regard not only the customary law, social practice and belief of the people of Nagaland but also the resources of

⁵²⁰R. Vashum. n. 399. 24.

⁵²¹ Hausing.n.281. 92-95.

the state is verily remain safeguarded from the intervention of the union government and its various policies unless the State Assembly so decides by resolution.

Under the Constitution of India, Article 371A provides special provision with respect to the state of Nagaland:

- a) No Act of Parliament in respect of:
 - (i). Religious or social practices of the Nagas
 - (ii). Naga customary law and procedure
 - (iii). Administration of civil and criminal justice involving decisions according to Naga customary law,
 - (iv). 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;⁵²²

Article 371A laid down that no Act of Parliament in respect of religious or social practices of the Nagas; their customary law and procedure, Social/religious practices, administration of civil and criminal justice involving decisions according to Naga customary law, 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 special status in the North East and Nagaland contributes to India becoming a case of asymmetrical federalism. Further, the Governor of Nagaland was also given special responsibility with respect to law and order in the State of Nagaland for so long as, in his opinion, internal disturbances continued to occur in Nagaland. In this situation, he is empowered to exercise his individual judgment after consulting with the Council of Ministers.⁵²³

⁵²²P.M. Bakshi. The Constitution of India. (New Delhi: Universal Book Traders, 1993) 214-216.

⁵²³Ashikho Daili Mao. n. 425. 85-86.

Naga traditional life revolved around the village. However, the formation of the state of Nagaland in 1963 was a critical step in the evolution of Nagaland, which gave the people the opportunity for peace, stability, accelerated investment and economic development. The Naga people have a very distinct and complex relationship with modern democracy. So far, they have participated in ten general elections. In the past five decades, there has been a remarkable extension of the administrative reach to the far-flung corners of Nagaland. Today in partnership with the state government, Village Councils are an essential component of the modern governance system in Nagaland.

The present administrative framework in Nagaland is substantially similar to that in other states of the country. However, within this broader framework, Nagaland has distinct characteristics, imparting uniqueness to the governance experience in the state. Article 371A of the Indian Constitution remains a cornerstone to policymaking in the state and has ensured protection and preservation of the unique traditions and customary laws of the state. On the other hand, it has contributed to depriving the state economic benefits of institutional credit, the inflow of private investment, etc. The major strength that contemporary Naga society has inherited is the “Social capital” that has stemmed out of the traditional institutions and practices where there is a strong social bonding and community spirit and absence of caste and social discrimination.

Besides religious and linguistic diversity, Indian paid some attention to the diversity embodied in tribal ways of life where Tribal communities are given special rights to govern themselves by following their customary law and distinct

social and religious practices. In this way, cultural differences and diversity were protected.⁵²⁴

6.2.1. The Nagaland Petroleum and Natural Gas Regulation, 2012 (NPNGR)

Except for Jammu and Kashmir which has a separate Constitution under Article 370 of India's Constitution, Nagaland Legislative Assembly is the only legislative assembly in India which has the exclusive power to make inapplicable any law made by the Parliament on "owing and transfer of land and its resources" by passing a resolution. Giving this special status, Article 371 leverages a flexible and pragmatic way of securing negotiated sovereignty for the Nagas. So on July 26, 2010, making use of the exceptional power it enjoys under this constitutional provision, Naga Legislative Assembly passed a resolution to assert its sovereignty over "land and its resources" by making all Union laws on this matter inapplicable in Nagaland with retrospective effect. This resolution is significant that it makes the widest possible reading of "land and its resources", a provision of Article 371A to encompass mines and minerals including petroleum and natural gas. Therefore, the Nagaland Legislative assembly framed the Nagaland Petroleum and Natural Gas Regulations 2012 and Nagaland Petroleum and Natural Gas Rules, 2012⁵²⁵ to regulate and develop eleven oil blocks it identified across nine districts of the state.

However, the resolution was held irrelevant by the Centre and flaunt objection against the framing of such regulation by upholding central dominion over the resources of the state. The central government further object the regulation by explaining the state that the provision under Article 371(A) did not guarantee

⁵²⁴Gurpreet Mahajan. Negotiating Cultural Diversity and Minority Rights in India, in Judith Large, Reginald Austin, Timothy D. Sisk & Co. "Democracy, Conflict and Human Security: Pursuing Peace in the 21st Century". (Sweden: International IDEA, 2006) 114.

⁵²⁵Oken Jeet Sandham, Nagaland Legislative Assembly: July 12 meet on Article 371 (A) likely to be stormy.

E-Pao. July 10 2013. <http://e-pao.net/GP.asp?src=35..110713.jul13> accessed on: 15.04.2017

the complete state control over its resources and provisions to make laws as it only provides the state with a right to implement the laws made by the Centre. On June 13, 2013, Veerappa Moily, the then Union Minister of Petroleum and Natural Gas, asked the Nagaland Legislative Assembly (NLA) to withdraw the Nagaland Petroleum and Natural Gas Regulation, 2012 (NPNGR). The Petroleum and Natural Gas Ministry raised a 'red flag' over the resolution formed under the ambit of 371A.⁵²⁶ He also termed the decision of the state government floating the Expression of Interest as ultra vires of the Constitution to frame their own Rules and Regulations on petroleum and Natural Gas (Oilfields Regulation and Development Act, 1948). To this the then Chief Minister T. R. Zeliang argued that the 13th Amendment of the Constitution of India, December 1963 by which Article 371A was inserted into the Constitution and Statehood for Nagaland was created had, in effect, over-ruled the 1948 Act.⁵²⁷

Chief Minister Neiphiu Rio, said that the provision in the Article 371A which makes it very clear that "No act of parliament governing petroleum and natural gas shall be applicable to the state of Nagaland, and all such Acts shall be deemed to have become inapplicable to the state from the date of enactment of Art 371A." The then Chief Minister T. R. Zeliang also stressed on the importance of Article 371A of the Constitution of India saying, "India is the most fortunate to have specific mention in the Constitution about protection of traditions, culture and religious practices of the Nagas and more importantly, assurance of ownership of the land and its resources". He continued to say "Nagaland is the only state in the Union of India which owns not only the land but also the resources of the land".⁵²⁸

⁵²⁶Ningreikhan Wungkhai. Article 371A of the Indian Constitution. E-Pao. February 21, 2016. http://e-pao.net/epSubPageExtractor.asp?src=education.Human_Rights_Legal.Article_371A_of_Indian_Constitution_Special_status_to_Nagaland_By_Ningreikhan_Wungkhai accessed on 15.04.2017.

⁵²⁷Art.371A is most precious to Nagas: CM, Eastern Mirror. June 4, 2016. <http://www.easternmirrornagaland.com/art-371-a-is-most-precious-to-nagas-cm/> accessed on: 12.09.2017.

⁵²⁸Art.371A is most precious to Nagas: CM, Eastern Mirror, June 4, 2106. <http://www.easternmirrornagaland.com/art-371-a-is-most-precious-to-nagas-cm/> accessed on: 23.08.2018

In response to the intervention from the Ministry of Petroleum and Gas, The Government of Nagaland convened a meeting with various Naga tribe Hohos and Civil Society in Kohima on July 12, 2013. The meeting not only resolved to “reject” the request of Ministry of Home Affairs and Union Ministry of Petroleum and Natural Gas but also used the occasion to demand the Government of India to immediately restore Nagaland under the Ministry of External Affairs and implement unfulfilled clauses of the 16 Point Agreement of July 1960. Ten days later Nagaland Legislative Assembly resolved to defend its right under Article 371A, and the matter now lies with the Government of India.⁵²⁹ T. R. Zeliang also said such kind of decision by the Government of India at this juncture would have an “adverse impact on the on-going peace negotiations to resolve the Naga Political issue, which is in an advanced stage now”. He stated that Article 371A of the Constitution of India is one of the critical issues to be resolved in the Naga political dialogues.⁵³⁰

6.2.2. Municipal Election

Another issue which attracted the nation towards the diverse aspect is the 33 per cent reservation during the Municipal Election, the question of extending 33 per cent reservation of seats for women was debated. Although Nagaland passed a Municipality Act in 2001, it did not provide 33 per cent reservation of seats for women, which is mandated by the pan-Indian legislation, for instance, the Constitution (Seventy-fourth Amendment) Act, 1993. When this inconsistency was sought to be rectified by inserting Section 23A to Nagaland Municipality Act 2001 by way of an amendment in 2006, it was vehemently opposed by apex Naga Hohos body (Naga Hoho, Eastern Nagaland People’s Organization (ENPO) and all the Naga tribes Hohos) in Nagaland. The patriarchal Naga Tribal Organization were fiercely in opposition to reserve municipalities seats for women in a profoundly

⁵²⁹ H. Kham Khan Suan, Op-Ed; Adding fuel to the fire, The Hindu, 9 August 2013, accessed on:23.08.2018

<https://www.thehindu.com/opinion/lead/adding-fuel-to-the-fire/article5004098.ece>

⁵³⁰ Art.371A is most precious to Nagas. n.528.

problematic interpretation of Naga “way of life”. They contended that reservation of seats for women is “unsuitable” and “would disintegrate the Naga society and strong administration of the Naga way of life. The Kohima bench made judgment in favor of 33 per cent reservation of seats for women in Nagaland Municipalities but the Guwahati bench took a sympathetic view of the stand taken by the Government of Nagaland that the question of reservation must be put on hold till the select committee of the Naga Legislative Assembly (NLA) decide on whether Nagaland can be exempted from the application which deals with municipalities of Part IXA of Indian’s Constitution. In its report which was endorsed by the Nagaland Legislative Assembly in September 2012, the Select Committee considered that Part IXA infringed on Article 371A and recommended that Nagaland Legislative Assembly should instead frame its “own laws for the conduct of Municipal and Town Act.”⁵³¹

The Naga Hoho president, Chuba Ozukum says: “We have never forbidden women to form fighting elections as candidates; we welcome them. We are against 33 per cent reservation in the councils. When there is no difference between men and women in our society, why should there be any reservation for them”. He continued to say that the reservation for women goes against the customary practices of the Naga and therefore is a breach of the Article 371A of the Indian Constitution.⁵³² The then state Minister Shurhozelie Liezietsu rejected 33 per cent reservation for women and said his organization is against the amended provisions of the Municipal Act which were not in consonance with Article 371A of the Indian Constitution that protects customary rights of Naga Tribes. Sangyu Yaden, president of Ao Senden, also opposed reservation by stating that it is against the constitutional provision of Article 371A.⁵³³ On 24th January 2017, The Nagaland

⁵³¹ Hausing, n.281. 94.

⁵³² Linda Chhakchhuak. Demand for women-Reservation in Nagaland is only one reason for a spate of violence in the state, Outlook, February 8, 2017. <https://www.outlookindia.com/website/story/demand-for-women-reservation-in-nagaland-is-only-one-reason-for-a-spate-of-viole/297853> accessed on: 19.05.2018.

⁵³³ Jitendra, Naga Women approach Supreme Court for reservation of seats in Local bodies, Down to Earth, July 4, 2015 <https://www.downtoearth.org.in/news/naga-women-approach-supreme-court-for-reservation-of-seats-in-local-bodies-40206> accessed on: 23.08.2018.

Bar Association (NBA) said, “one of the major factors in deciding the increasingly fractious confrontation between the state government and the Naga tribe Hohos on the issue of election to urban local bodies with 33 per cent reservation of women is that Part IX-A of the Constitution of India which pertains specifically to municipalities is not applicable to the state of Nagaland.”⁵³⁴ They even suggested that in place of the exiting Nagaland Municipal Act, Nagaland can have its own version ‘because ample provision is given to us’ through the Article 371A, the government and the stakeholders should sit together and come out with some solution which will be best for the State of Nagaland.

6.2.3. Naga Mothers’ Association

The Naga Mothers Association (NMA), an organization that has been an anchor, a shelter and a mediator during the time of war between the Government of India and the Naga Insurgent were shattered by the denial of the 33 per cent reservation in the Municipal election. The Naga Mother’s Association came into existences on 14 February 1984, with a preamble that stated, “Naga mothers of Nagaland shall express the need of conscientising citizens towards more responsible living and human development through the voluntary organization of the Naga Mothers Association”.⁵³⁵ From its inception, the Naga Mothers Association has rendered valuable service for the cause of peace. The Naga Mothers Association after 34 years of working tirelessly for the Naga society were being blamed for causing violence with their “stringent” demand for implementation of the 33 per cent in the State and were asked to disband itself by all the male apex tribal bodies platform called the Joint Coordination Committee (JCC).⁵³⁶ Since 1984, the Naga Mothers Association has been working untiringly to bring the

⁵³⁴Municipal Act is null and void: Nagaland Bar, Eastern Mirror, 25 January 2017. <https://www.easternmirrornagaland.com/municipal-act-is-null-and-void-nagaland-bar/> accessed on: 16.07.2018.

⁵³⁵ Rita Manchanda. *Women, War and Peace in South Asia: Beyond Victimhood to Agency*. (New Delhi: Sage Publication, 2001) 160.

⁵³⁶Linda Chhakchhuak. n.532

warring factions of the Naga movement to the negotiating table and bring to the fore the impact of the violence on the women, youth and children.

By supporting 33 per cent reservation for women in 2006, the Watsu Mungdang was the first women's organization to be ostracized by its own apex tribal body, the Ao Senden and were asked to disband. Rosemary Dzuvichu and Abieu Meru, who represented the Naga Mother's Association (NMA) were highly critical of the stand taken by various Naga tribal bodies and Nagaland Legislative Assembly against reservation of seats for women. Abiew Meru, the then Naga Mother's Association president considered it "illogical and unfair".

Actually the debates on the Act started as there was a growing realization that the Municipal Act accepted by the state in 1993 had elements in it that puts the tribes in a complicated position of eventually having to pay tax on their lands, reserve seats for castes and general category populations, etc. in the hilly council which is said to have created a fear psychosis among the people of Nagaland which clearly violated the Article 371A. Monalisa Chankija lamented, "It is the patriarchal structure and the patriarchal mindset which prevented women from entry". As the matter has reached the Supreme Court and is still pending, it is still unclear as to how long the Naga women would have to wait to gain entry into municipalities and Nagaland Legislative Assembly.

Latest issues with Article 371A was regarding the Citizenship Bill, Nagaland Chief Minister Neiphiu Rio has written a letter to the then Union home minister Rajnath Singh saying that the Citizenship (Amendment) Bill does not apply to the state. In the letter he said, "the Bill, even if enacted, will not be applicable to Nagaland in view of the constitutional provision contained in Article 371A of the Constitution of India that guarantees the Nagas their way of life un-interfered by any parliamentary enactment, unless the legislative assembly of

Nagaland by a resolution so decides”.⁵³⁷ The Nagaland government passes a resolution in the assembly which out rightly rejected the Citizenship (Amendment) Bill, stating that it cannot be implemented in Nagaland as the proposed legislation will impact the “Unique history and the status of the Nagaland under the constitution”. The resolution also expressed solidarity with the State and communities of the North East in opposing the bill, as it has the potential of “Changing the demographic profile, which will be against the interest of indigenous tribes and can divest them of their constitutionally guaranteed political, cultural and economic right”.⁵³⁸ Rio further says “This is necessary to ensure that the historic and unique cultural traditions and customary practices of Nagas are protected and safeguarded for which special constitutional provisions under Article 371A have also been incorporated”.⁵³⁹

The creation of the state of Nagaland and the expansion of Indian state and democracy could not end the war in Nagaland nor could it meet the Naga’s self-determination claims. Yet, Article 371A which came out as an offshoot of the Sixth Schedule must be credited for opening up possible pathways for entrenching Naga exceptionalism and negotiated sovereignty within India’s federal polity. It also laid down a critical foundation for Indian state-nation and democracy building in one of the least emotionally integrated parts of its northeastern periphery.⁵⁴⁰

⁵³⁷ Citizenship Bill Inapplicable to Nagaland under Article 371A, say CM Rio, News 18, January 22, 2019
<https://www.news18.com/news/india/citizenship-bill-inapplicable-to-nagaland-under-article-371a-says-cm-rio-2009587.html> accessed on: 20.01.2019.

⁵³⁸ Nagaland Government Passes Resolution Against Citizenship Bill, NDTV, February 26, 2019 accessed on: 20.03.2019.
<https://www.ndtv.com/india-news/nagaland-government-passes-resolution-against-citizenship-bill-1999613>

⁵³⁹ Bikash Singh. Citizenship Bill not be applicable to Nagaland: CM to Rajnath Singh. The Economic Times. January 22, 2019. accessed on 20.03.2019
<https://economictimes.indiatimes.com/news/politics-and-nation/citizenship-bill-not-be-applicable-to-nagaland-cm-to-rajnath-singh/articleshow/67633771.cms>.

⁵⁴⁰ Hausing. n.281, 98-101.

Therefore, from this, we can see that Article 371A has given significant power to the state of Nagaland in the matters of religious and social practices, customary laws and procedure, administration of civil and criminal justice and ownership and transfer of land. With this special category status, the region is also given preferential economic and financial regime, wherein they are entitled to grant loan ratio of 90:10 from the Union. Members of Scheduled Tribes are also exempted from income tax under Section 10(26) of the Income Tax Act, 1961.⁵⁴¹

North East in general and Nagaland in particular also continue to witness sustained 'insurgency' movements driven by the issues of protecting land, territory, and identities. We also saw about the counter-insurgency strategies from the Government of India by imposing the Armed Forces (Special Powers) Act, 1958 (AFSPA) which have clearly failed to restore the law and order situation in Nagaland which ultimately led to the ceasefire agreement between the Government of India with the Nationalist Socialist Council of Nagalim-Isak-Muivah (NSCN-IM) since 1997. Nagaland is still declared as "disturbed". Therefore Armed Forces (Special Powers) Act, 1958 (AFSPA) keeps on extending every six months. The Ministry of Home Affairs has recently extended the operation of the Armed Forces (Special Powers) Act, 1958 (AFSPA) for another six months with effect from June 30 2019.⁵⁴² This has generated renewed debates on the territoriality of politics and its impact on inter-community and inter-state relations in the region. In order to bring peace in the region, the Government of India and the NSCN-IM signed a cease-fire agreement in 1997 which keeps on extending. On April 15, 2019, the Home Ministry extended the ceasefire agreement by one year with two insurgent groups in Nagaland. The ceasefire is in operation between the Union government and the Nationalist Socialist Council of Nagaland (Neopao Konyak/ Kitovi) and Nationalist Socialist Council of Nagaland/Reformation (NSCN/R). It was decided

⁵⁴¹Balveer Arora, K. K. Kailash, Rekha Saxena. n. 258. 131-132.

⁵⁴²Entire Nagaland declared Disturbed Area for six more months under AFSPA, India Today, July 1, 2019.
<https://www.indiatoday.in/india/story/nagaland-disturbed-area-under-afspa-1559856-2019-07-01>
accessed on: 02.07.2019.

to extend the suspension of operation agreement with NSCN/NK and NSCN/R for a period of one year with effect from April 28, 2019, to April 27 2020.⁵⁴³ So for the time being, the situation in Nagaland regarding the insurgent movement has been still, but no one knows when they will erupt as it is just a matter of time for the insurgent to take their violent stand.

The Naga's sovereignty claims over their land and resources under the Asymmetrical federal framework has opened up new sites of consideration of dialogue between the Naga Hohos, Individual landowners and Government of Nagaland on one hand and Government of India on the other hand over the question of having effective voice and participation in negotiating and decision making process. It is about time that the politically dominant Naga tribes should also be amenable to give equal participation to the women and to share their negotiated sovereignty under India's constitutional provision. This will ensure maximum advantage to have democratic deliberation, reason and pragmatic engagement between the Government of Nagaland and India.

Over the years, the Indian state has also introduced different political and administrative structure, in the form of multi-level federalism to accommodate the special concern of communities within a region. There is a diversity of religion, language and culture and each kind of diversity, whether religion, language or tribe has been subjected to construction both by the state and the Union government. Also, in a diverse country like India, it is not an easy task to avoid conflict. As when the state endorses and express their identity of one community, other communities within the polity are disadvantaged. This is the common source of ethnic conflicts at the national and the regional level. So to minimize these conflicts, the state has to explore ways of accommodating all communities as equals.⁵⁴⁴ During the debate

⁵⁴³Govt. signs Ceasefire Agreement with three naga Insurgent group for 1 year, Business Standard, April 15, 2019
https://www.business-standard.com/article/pti-stories/govt-signs-ceasefire-agreement-with-three-naga-insurgent-groups-for-1-year-119041500799_1.html accessed on:02.07.2019

⁵⁴⁴Gurpreet Mahajan. n. 525. 117-119.

on India's national integration and ethnic tensions, the nature of functioning of the federal power structure occupies an important place because the foundation of federalism was laid down on the grounds of concern for the unity and integrity of a culturally diverse nation.

The diversity of the North East in general and Nagaland, in particular, continue to pose challenges for federal ethnic-conflict regulation. Violent incidents occur in these states with depressing regularity. Though India has successfully accommodated the severe challenges posed by linguistic identities, challenges remain about the accommodation of Kashmir and demands for the creation of new federal units, especially in the North East. In the North East, Nagas and Mizos not only asserted their cultural distinctiveness, but they also claimed that they were never part of India. They pressed their demand for independence and secession from India. Thus, the nation-state was under pressure. However, in this situation of growing discontent, the presence of a federal structure played a critical role in accommodating these communities and keeping the country united.⁵⁴⁵ So federalism is seen as a valuable source in accommodating it, but we can see that the accommodation of cultural identities is not easy or readily accepted.

Now the situation in Nagaland is not that intense as was before because of the ongoing ceasefire between the Government of India and Naga Insurgent group, and this ceasefire is kept on extending every year. This year it extended from April 28, 2019, to next year April 27 2020. However, the situation is still hanging as we cannot predict when this situation or ceasefire will collapse or violated by any party and take the situation back to the original stage.

However, we can see the success story of the cooperative federalism in some parts of the North East regarding the Armed Forces (Special Powers) Act,

⁵⁴⁵Gurpreet Mahajan. n. 189. 87-88.

1958 (AFSPA). Currently, the Armed Forces (Special Powers) Act, 1958 (AFSPA) is active in Mizoram, Nagaland, Manipur, Assam, Jammu & Kashmir and parts of Arunachal Pradesh. However, it was removed from Meghalaya on 1 April 2018. In 2015, it was lifted in Tripura. Also, in Arunachal Pradesh, it was partially lifted in 2019. It was lifted from this States because this states has been declared as “free Insurgency”⁵⁴⁶ and if any disturbances arise the state police forces can handle the situation. However, in the case of Nagaland, the entire state of Nagaland has been declared as “disturbed area” for six more months till December 2019.

Federalism has to continuously maintain a balance between the centre and the states as no legal or institutional formula can guarantee the smooth functioning of a federal polity. Ultimately, the people and the political process must develop a culture and a set of values like mutual trust, tolerance and a spirit of cooperation. Thus, federalism celebrates both unity as well as diversity. National unity cannot be built by streamlining differences. Such forced unity only generates more significant social strife and alienation and tends to destroy unity finally. A responsive polity sensitive to diversities and the demands for autonomy alone can be the basis of a cooperative federation.

⁵⁴⁶ Shaswati Das, Why AFSPA has been removed from some areas? Livemint, 24 April 2018

CHAPTER-VII

CONCLUSION

In this final and concluding chapter, I will recapitulate the themes of the first six chapters of the thesis coupled with overall assessment and arguments.

The first chapter introduces the idea of federalism, its connotation and contradiction. A qualitative interpretation of the idea of federal structure with its varied dimension had given elaborately. The basic problem for which the idea of federal nature is considered are the ethnic diversities. Hence the chapter introduced the ideas that drew the attention of the scholars to deal with the concern of accommodating the diversities into the structure.

In the second chapter, “Theoretical Ideas of Federalism and their Intertwining with Ethnic and Cultural Right”, I have attempted to discuss the historical, origin, evolution and the spread of federalism as an idea and principles of political organization and also compared the institution of federalism in the Multi-Ethnic States. Further discussed the institutions of federalism in Multi-ethnic states and finally, the suitability of federalism in accommodating cultural diversity as part of creating a democratic order. We can also see and understand the origin and evolution of federalism and also the connection between ethnic and cultural rights towards federalism. As far as the basis of creating a federal arrangement is concerned there are two different types of approaches, depending on factors such as: firstly, the heterogeneity or homogeneity of ethno-linguistic structure, socio-economic and secondly, political systems of the subjects of a federation. Some writers argue that ethnicity should be the basis of a federation, while others consider the territorial principle as the basis, irrespective of ethno-cultural factor. The federal arrangements that exist in the world today fall under either of the two categories. Countries such as Nigeria, India and former USSR are known to have a federal

arrangement based on ethnic principle, while others like the USA, Germany and Brazil are known to have a territorial basis of arrangements.

In the third chapter, “Constituent Assembly Debates 1946-1950: An Evaluation”, I have given an account of the Constituent Assembly Debates 1946-1950 (Volume I-XII) where I focused on the cultural and minority rights and the special provisions for the North East Frontiers Agency, Scheduled Tribes Areas and Tribal Autonomous Council and also discussed the federal system in Indian Constitution. Moreover, I also looked if there was any participation from the members of the Northeast during the Constituent Assembly Debates.

It took two years, eleven months and seventeen days for the Constitution Assembly Debates to draft the Constitution for Independent India. This perhaps was the most significant achievements of India after attaining its Independence. Framing of the constitution was a remarkable and challenging task considering the size, diversity and complex problem of India. However, with all those trials and tribulations, the Constituent Assembly members finally gave shape to the multi-tasking work during that critical period. The Constituent Assembly was assigned such a task as to draft a constitution that would provide a framework for a democratic government and an institutional structure capable of both sustaining and quickening social change and political stability.

On 13th December 1946, Jawahar Lal Nehru laid down the Objective Resolution, also known as the “terms of reference of the Constitution of India”, the basic aspirations of which is expressed in the Preamble today. It was also seconded by Purushottam Das Tandon. Nehru further added that the Objective Resolution shall grant and secure to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and also mentioned that adequate safeguards shall be provided

for minorities, backward and tribal areas, and depressed and other backward classes.

However, Ambedkar finds the Resolution suffering from certain other lacuna. He said, “Although it expressed certain rights, does not speak of remedies”. He continued to say that, “all of us are aware of that fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. Even the usual formula like no man’s life, liberty and property shall be taken without the due process of law, finds no place in the Resolution”. When we proceed and look into the Constituent Assembly Debates, nowhere can we find any member of the Naga Hills people or the tribal people participating in the debate. Scheduled V and VI were actually for the tribal people, but we do not find any tribal participating in the debate. Some people represented their respective regions in the Advisory Committee, but nowhere can we find their participation in the discussions. Though we can find Rup Nath Brahma representing the plain tribes of Assam and also Mayang Nokcha representing the North-Eastern Tribal Areas, their participation is missing from the Assembly debates. Even though the drafting of the Constitution was one of the greatest things that India could achieve after its Independence, yet the framers of the Constitution had been criticised widely in India for not letting the people know more about the debate.

In the fourth chapter, “The Federal Process: Reforming Centre-State Relations”, I discussed the Reorganization of Indian states and the background of the State Reorganization Commission. Indian federation began with three types of states, which were identified in the Constitution as Part A, Part B, Part C types of States. Part A States, nine in number were mostly regions that were previously provinces of British India placed under the jurisdiction of the Governor General. Part B States, eight in number were formerly ruled by the princes. Many of them had treaties with the British through which they recognized the sovereignty of the latter. Part C States included both provinces of British India and princely states. This Unit of the federation was formed primarily for the reasons of administrative

continuity and convenience to political necessity. Cultural identities received little recognition during the formation of these groups of states. The framers of the Constitution were aware of the existing diversity, they also recognised the need to treat different communities as equals, but after the partition of the country, they were extremely reluctant to make cultural identities the basis of political identity at any level. Cultural communities were accommodated through special rights but not political rights. At the time of independence, concern for national unity and integrity dominated and provided the core reason for keeping political arena free of political divisions based on cultural identities. I discussed S. K. Dhar Commission (14th June 1948), J.V.P. Committee (Jawaharlal Nehru, Sardar Patel, Pattabhi Sitaramayya) 1948 and the 1st State Reorganization Commission 1956. I also discussed centrally appointed commission as well as state government initiatives and their comparison in carrying out the initiatives. Detailed discussion was also made on the North East states in the centre-state relations in India including the history of state reorganization in the North East, North East under the emergency rule and also on the various institutions and organizations created for the development of the North East region. In this chapter, I also discussed the asymmetrical federation, where I compared the case of the North East with that of Jammu and Kashmir. In the North East states of India, the citizens enjoy special constitutional status within the Indian Constitution and also about the Armed Forces (Special Powers) Act, 1958.

The fifth chapter, “Institutions and Socio-Political process in Nagaland: An Overview”, in this chapter I tried to give the overview of the state of Nagaland, discussing the historical background of the evolution of the insurgency movement which helped us in understanding the insurgency trends and issues in Nagaland. It also discussed the Indian state responses towards the insurgency movement, and also about the electoral politics, its continuities and connections between the traditional and modern electoral system. It also analysed the cultural question of Nagaland in Indian federalism. Here we can see the questions that were raised regarding the safeguards that the Indian Constitution is providing for the people of

the Northeast and especially to the people of Nagaland. We can see that there are lots of cultural differences between the Northeast and mainland India and also Nagaland and India. In fact, when we look in depth, we can also see the cultural difference within the people of Nagaland, their dialect, customs and traditions, etc. As no single tribe speaks the same dialect as the other. I also discussed the Inner Line Permit (ILP) and the Restricted Area Permit (RAP), which is still prevailing in the state of Nagaland in order to safeguard the culture and tradition of the people of Nagaland. We have also seen in-depth the discussion on the insurgency movement in Nagaland which is one of the oldest insurgency movements in India-transferring the Nagaland issue from External affairs to the Home Ministry, the ceasefire agreement and how the insurgency play a very prominent role during the time of elections which in reality is like running a parallel government.

The Sixth chapter, “Contestations on Accommodating the Cultural and Ethnic Rights of the Nagas”, here in this chapter, I discussed the Sixth Schedule and Article 371A which gives special status to the state of Nagaland. In this chapter, I also discussed the working of centre-state relation and how the constitutional dimension of federalism accommodated the Naga ethnic rights. Firstly, in this chapter, I mentioned about Nagaland being divided into two parts, one in Burma (now Myanmar) and two-thirds in India. When the British were governing India, they could occupy only the southwest part of Nagaland, but after Independence, all the remaining parts were brought under their control of the Indian government. From this, we can see that the British could take and control only the Southwestern part of Naga territory during the period 1881-1947, which came to be known as the British Naga Hills District.

The significance of the shifting of control and authority over Naga issues from the Ministry of Foreign Affairs to the Ministry of Home Affairs is emphasized in this chapter. I extensively deliberated on the Sixth Schedule and why the Nagas rejected to come into the preview of the Sixth Schedule in the beginning when this was mainly introduced in the Constituent Assembly by keeping the ‘Naga Hills’ in

mind by the Assembly members. After the rejection of the Sixth Schedule, the government of India embodied the Nagas with Article 371A of the Indian Constitution to safeguard the culture, traditions and way of life of the Nagas.

In this regard not only the customary law, social practice and belief of the people of Nagaland but also the resources of the state is verily remain safeguarded from the intervention of the union government and its various policies unless the State Assembly so decides by resolution. Article 371A prevented the central government from legislating in those matters regarding religious or social practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law, ownership and transfer of land and its resources, etc. It also authorized the state's legislative assembly to decide in such matters including the applicability legislation made by the central government. This special status in the North East and Nagaland are the closest India comes to asymmetrical federalism. I also discussed the issues on the Nagaland Petroleum and Natural Gas Regulation, 2012 (NPNGR) Municipal Election, Municipality Act in 2001 and also Naga Mothers Association (NMA) on the denial of the 33 per cent reservation to women during the Municipal election.

Since the adoption of federalism in 1787 by the U.S. constitution-makers, the federal system has become a popular pattern of governance around the world. A noted scholar on federalism, Daniel Elazar has observed that "federal principles and arrangements have become a widespread because they suit the modern temper and federalism is designed to achieve some degree of political integration based on a combination of self-rule and shared-rule."⁵⁴⁷ The simplest possible definition of federalism is self-rule plus shared rule. At present more than 20 countries have a federal system, while more than 21 have certain federal arrangements.

⁵⁴⁷ H.M. Rajashekara, "The Nature of Indian Federalism: A Critique, Asian Survey, University of California Press, Vol. 37, No.3 (March, 1997), p.245 Accessed on: 16.11.2017

There are 3000 ethnic or tribal groups in the world who conscious of their respective identities, out of which more than 160 politically “sovereign” states are now in existences and more than 140 are multiethnic in composition. Moreover, also more than one-third of the states are involved in the formal arrangements using the principles of the federalism in some way to accommodate demands for self-rule or shared rule within the boundaries or in partnership with other politics.⁵⁴⁸

The roots of Indian federalism can be traced to the British colonial regime. The unsuccessful working of their unitary system led the British to introduce a federal system and ultimately “the Act of 1935 served to perpetuate a belief in the inevitability of federal system”.⁵⁴⁹ With its history of colonial subject-hood and a constitution that is more the result of the transfer of power than a concerted, organized, violent quest for independent statehood, based on a contract, Indian stands apart from the world’s major federations. The history of the evolution of India’s federalism is a striking contrast to the union of pre-existing political units as in the case of the USA. India, though it is not among the world’s oldest federal political systems, federalism is nevertheless steadily emerging as a key feature of its political system.

As explained in the previous chapter that during the Constituent Assembly Debates, some members of the constitution-making body did not favor federalism for an Independent India whereas majority of the members did support it as a suitable model for a large country like India with wide regional variations as a desirable political system for plural societies influenced the framers in favor of federalism. The Chairman of the drafting committee, B. R. Ambedkar, did not favor federalism in the beginning and he refused to insert the word “federal” as demanded by some members. In November 1948, he said, “what is important is that the use

⁵⁴⁸ Daniel J Elazer, “Exploring Federalism”, (Tuscaloosa and London: The University of Alabama Press, 1987) 83-84.

⁵⁴⁹ H.M. Rajashekara, n.1, p. 245

of the word ‘union’ is deliberate... because it is indestructible”.⁵⁵⁰ Therefore we can see that many leading scholars on federal government also have not regarded India’s system as true federalism. According to Ashok Chandra, “it is a ‘unitary constitution’, and various foreign scholars have called it a quasi-federation, an administrative federation, organic federalism and territorial federations”.

Many questions have been raised regarding India by different scholars as well as were skeptical with her multi-ethnic society, structural asymmetry of constituent units, mass illiteracy and poverty, and the uphill task of state-formation and nation-building. Despite being a heterogeneous society, India can stay strong and put while accommodating many different groups in society and the country. The flexibility of the federal process has made it possible for the state in India to accommodate ethno-national movements in the forms of new regions, thus gradually increasing both the number of states and the governability of the Union.

Therefore in this kind of scenario, a special political system is required or needed to accommodate all the different ethnic communities under one umbrella. So if multi-ethnic states are to avoid instability and, in a worst-case scenario, civil war, they have to address the challenges of ethnicity. This is mainly because the root cause for the problem of these communities lies, to a certain extent, in the genesis of multi-ethnic states, which is often predicated on suppressing ethnic diversity. When a state readily acknowledges the ethnic diversity that characterizes the society that it seeks to regulate and provide practical expression to it, the state can manage the tension among ethnic groups and assist in the achievement of social cohesion and promotion of national unity. Also, for this federalism, as an institutional design that is underlined by the principles of self-rule and shared rule, is an appropriate institutional response (though not the only one) that can help states to address the multi-ethnic challenge in cases where ethnic groups are generally

⁵⁵⁰ Government of India, *Constitutional Assembly Debates*, Fourth Reprint, (New Delhi: Lok Sabha Secretariat, 2003) Vol. 7, p. 43, accessed on 10th April 2014

territorially concentrated. The success of federalism depends, among other things, on the particular nature of the federal design and the capacity of that design to successfully respond to the ethnic-related exigencies of the society in question. The institutionalization of ethnicity not only encourages the political mobilization of ethnicity but also elevates ethnic identity to a primary political identity. Such institutional response does not merely put a country in the league of states that recognize ethnic diversity; it instead places it in the league of states that encourage ethnicity to permeate their political, social and economic systems and risk, in all likelihood, the imminent danger of disintegration.

Being a single nation constructed out of diverse ethnic regions, India is one of the most interesting countries in the world. In fact, with its multiple identities, it has seen the unique political experiment in human history than ever before. Though the Constitution of India undoubtedly accepts the federal concept - the symmetrical distribution of the sovereign power between the co-ordinate constitutional entities - the Union and the States; the significant role of Asymmetry is very evident with States like Jammu and Kashmir and North East enjoying their special status under its Constitution; even without its appearance in the salient features of the federal system of India. Of all the inherent problems of a diverse region, the most incessant problem is faced by its citizens of the North-Eastern region, who have been demanding for their rights to protect their traditions and customs and also safeguard their distinct ethnic identity through several insurgent and ethnic groups. When it comes to the North East and narrowing it down to the state of Nagaland, we see a different kind of society prevailing there.

The people of Nagaland are socio-ethnically and culturally different from the mainland India and being part of India still raises question time and again with the presence of the insurgency movement which has been existing for the past few decades. Bringing under the Indian Union has created many problems which led the government of India to impose the “disturb Area Act” and simultaneously the Armed Forces (Special Powers) Act, 1958 which is still active in Nagaland. The

Nagas are distinct in terms of ethnic-cultural as in language, customs, traditions, etc., from mainland India.

The 13th constitutional amendment set out special provisions for the new state of Nagaland (created in 1962 with an overwhelmingly tribal and Christian population) to protect Naga customary law, social/religious practices, the administration of civil and criminal justice, and the ownership/transfer of land. Subsequently, other new states like Mizoram and Sikkim were given a similar constitutional status of 'special category' states—a sub-state level autonomy under the Sixth Schedule. This means that they received preferential treatment in terms of central government grants loans. Besides Jammu and Kashmir, asymmetrical arrangements have been included in the constitution for north-east India. Under the Sixth Schedule, innovative constitutional arrangements were introduced for autonomous district councils for the tribal areas of Assam. The Fifth Schedule, which applies in the rest of India, allows for the establishment of Tribes Advisory Councils to advice on tribal affairs and contains a provision allowing the Governor of a state to restrict the transfer of tribal lands. The Sixth Schedule goes much further, providing for the district and regional councils in tribal areas with the law-making power.

By now, we understand that India assumes asymmetrical federalism as a stabilizing tool within the federal state. It promotes peaceful coexistence of diverse community, the value of self-rule, territorial unity and national security, etc. However, there are strong arguments against this. Many are of the view that the more asymmetry there is, the stronger the national minority becomes and the more autonomy it seeks to the point where the federation unravel. It can also provoke separatist tendencies, the disintegration of tribal communities, creation of institutions based on ethnic identities that disproportionately empower sub-state national communities, while simultaneously disempowering other individuals and groups. Though India's constitution contains some nods to asymmetry, with regard to Jammu and Kashmir and the tribally dominated states of the North-East; it is

also seen that such asymmetry has (i) not been centrally important for India's ability to "hold together" and (ii) not entailed special protection for the rights of cultural minorities in India in a manner suggested by the political philosophy that has developed in Canada and Spain around the idea of asymmetrical federalism.

The process of homogenization involved in creating a shared national culture and the failure to accommodate different cultural communities on an equal footing are today the major sources of ethnic conflict in all societies. Ethnic conflicts, in turn, pose a challenge to national and international peace and security, and since the 1990s it is the ethnic conflicts emerging within a nation-state that has gradually escalated into wars involving other states. Thus, federalism is expected to serve the interest of democracy and the nation-state by offering an opportunity for communities to govern themselves and determine the future in accordance with their way of life. It is also believed that federalism can enhance and accommodate diversity, thereby minimizing, if not eliminating, conflicts within society. Thus the federal system has worked where they have served to manage ethnic or inter-communal conflict with some variations in degree across regions and communities that cannot be ignored. In areas or communities such as the Nagas, that are still aspiring to be a separate nation-state, the sense of identity with India is lower.⁵⁵¹

However, what is noteworthy is that identities that have been successfully accommodated through the federal arrangement and recognized as distinct cultural groups have been able to nurture a sense of pride in their national identity. Providing Special provision to Nagaland-Article 371A clearly shows the asymmetrical form of federalism which is bestowed to hold together by acknowledging and respecting the distinct ethnic identities, culture and traditions that is existing in the state of Nagaland. Though the process is not as easy as we think the Government of India by and large provide an opportunity for these cultural

⁵⁵¹Gurpreet Mahajan, *Federal Accommodation of Ethno Cultural Identities in India* in in Baogang He, Brian Galligan, Takashi Inoguchi (eds.), *Federalism in Asia*, (Cheltenham: Edward Elgar Publishing Limited, U.K., 2007) 89-90

communities to enjoy some degree of political autonomy in their region through the federal structure. As we have seen that the federal framework has the capability to accommodate different cultural groups and communities and can provide peaceful coexistence. In a situation, where cultural communities are concentrated in one geographical space, federalism can offer them the right to self- governance within the existing structure of a sovereign nation-state. In this way, it can deepen the democracy and most importantly mitigate the reasons of ethnic conflict.

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ANNEXURE I

I. NAGA MEMORANDUM TO SIMON COMMISSION

Dated

10th January, 1929

To,

The British Statutory Commission

Camp-India

SUB: **MEMORANDUM OF THE NAGA HILLS**

Sir,

We the undersigned Nagas of the Naga Club at Kohima, who are the only persons at present who can voice for our people, have heard with great regret that our Naga Hills is included within the Reformed Scheme of India without our knowledge, but as administration of our Hill is continued to be in the hands of the British officers and we did not consider it necessary to raise any protest in the past. Now we learnt that you have come to India as representative of the British Government to enquire into the working of the system of Government and the growth of education and we beg to submit below our view with the prayer that our Hills may be withdrawn from the Reformed Scheme and Placed outside the Reforms and we do not wish for any reforms.

Before the British Government conquered our country in 1879-80, we were living in a state of intermitten warfare with the Assamese in the South. They never conquered us, nor were we ever subjected to their rule. On the other hand, we were always a terror to these people. Our country within the administered area consists of more than eight regions quite different from one another, with quite different language which cannot be understood by each other, and there are more regions outside the administered area which are not known at present. We have no unity among us and it is only the British Government that is holding us together now.

Our education is poor. The occupation of our Country by the British Government being so recent as 1880, we have had no chance or opportunity to improve in education and though we can boast of two or three graduates of an Indian University in our country, we have not got one yet who is able to represent all our different regions or master our languages much less one to represent us in any council of a province. Moreover our population numbering 1, 02,000 is very small in comparison with the population of the plains district in the province; and any representation that may be allotted to us in the council will be negligible and will have no weight whatever. Our language is quite different from those of the plains and we have no social affinities with the Hindus or Mussalmans. We are looked down upon by the one for “beef” and the other for our “pork” and by both for our want in education, is not due to any fault of ours.

Our country is poor and it does not pay for its administration. Therefore, if it is continued to be placed under the Reformed Scheme, we are afraid that new and heavy taxes will have to be imposed on us, and when we cannot pay, then all lands will have to be sold and in the long run we shall have no share in the land of our birth and life will not be worth living then. Though our land at present is within the British territory, Government have always recognised our private rights in it, but if we are forced to enter the council majority of whose number is sure to belong to the other districts, we also have much fear, the introduction of foreign laws and customs to superseade our own customary laws which we now enjoy.

For the above reasons, we pray that the British Government will continue to safeguard our right against all encroachment from other people who are more advanced than us by withdrawing our country that we should not be thrust to the mercy of other people who could never be subjected; but to leave us alone to determine ourselves as in ancient times. We claim not only the members of the “Naga Club” to represent all those region to which we belong viz. Angamis, Kacha Nagas, Kukis, Semas, Lothas and Rengmas, but also other regions of Nagaland.

Signed by (1) Nihu Angami HeadInterpreter (2) Hisale Peshkar, (3) Nisier Angami, Master (4) Khosa Doctor, (5) Gebo Kacha Naga, Interpreter , (6) Vipuny Angami, Potdar, (7) Goyiepra Angami, Treasurer (8) Ruzhukhrie Angami, Master, (9) Dikhrie Angami Sub-Overseer, (10) Zapuzhulie Angami, Master, (11) Zepulie Angami, Interpreter, (12) Katsuno Angami, Interpreter, (13) Nuolhoukielie Angami, Interpreter, (14) Inzevi Sema, Interperter, (15) Apamo Lotha , Interpreter, (16) Resile Rengma, Interpreter, (17) Lengjang Kuki, Interpreter (18) Nikhriehu Angami, Interpreter, (19) Miakrao Angami, Chaprasi (20) Levi Kacha Naga, Clerk.

SOURCE: R. Vashum, and Others (ed), Nagas at Work, New Delhi, Naga Students’ Union Delhi (NSUD) Publication, 1996.

ANNEXURE II

II. THE NINE POINT AGREEMENT

THE NINE POINT AGREEMENT ARRIVED AT BETWEEN THE NAGA NATIONAL COUNCIL AND THE GOVERNOR OF ASSAM, SIR AKBAR HYDARI IN JUNE 27-29, 1947.

Preamble: The right of the Nagas to develop themselves according to their freely expressed wishes is recognised.

1. Judicial:

All cases whether civil or criminal arising between Nagas in the Naga Hills will be disposed, or be duly constituted Naga courts according to Naga customary law, or such law as may be introduced with the consent of duly recognised Naga representative organizations, save that where a sentence of transportation or death has been passed there will be right of appeal to the Governor.

In cases arising between Nagas and non-Nagas in (a) Kohima and Mokokchung town areas, and (b) in the neighbouring plains districts, the judge if not a Naga, will be assisted by the Naga assessor.

2. Executive:

The general principle is accepted that what the Naga National Council is prepared to pay for the Naga National Council should control. This principle will apply to the work done as well as the staff employed.

While the District Officer will be appointed at the discretion of the Governor, Sub-Division of the Naga Hills should be administered by a Sub-divisional Council with a full time executive President, paid by the Naga National Council, who would be responsible to the District Officer, for all matters falling within the latter's responsibility, and to the Naga National Council for all matters falling within their responsibility.

(a) Agriculture: The Naga National Council will exercise all the powers now vested in the District Officer.

(b) PWD - The Naga National Council will take over full control.

(c) Education and Forest Department- The Naga National Council is prepared to pay for all the services and staff.

3. Legislative:

That no laws passed by the Provincial or Central Legislature which would materially affect the terms of this agreement or the religious practices of the Naga shall have legal force in the Naga Hills without the consent of the Naga National Council.

In cases of dispute as to whether any law did so affect this agreement, the matter would be referred by the Naga National Council to the Governor who would then direct that the law in question should not have legal force in the Naga Hills Pending the decision of the Central Government.

4. Land:

That land with all its resources in the Naga Hills should not be alienated to a non-Naga without the consent of the Naga National Council.

5. Taxation:

That the Naga National Council will be responsible for the imposition, collection, and expenditure of land revenue and house tax, and of such other taxes as may be imposed by the Naga National Council.

6. Boundaries:

That present administrative divisions should be modified so as to (1) bring back into the Naga Hills District all the Forests transferred to the Sibsagar and Nowgong Districts in the Past, and (2) bring under one unified administrative unit, as far as possible, all Nagas. All the areas so included would be within the scope of the present proposed agreement.

No areas should be transferred out of the Naga Hills without the consent of the Naga National Council.

7. Arms Act:

The District Officer will act on the advice of the Naga National Council in accordance with the provisions of the Arms Act.

8. Regulations:

The Chin Hills Regulations and the Bengal Eastern Frontier Regulations will remain in force.

9. Period of Agreement:

The Governor of Assam as the agent of the Government of India Union will have a special responsibility for a period of ten years to ensure the due observance of this agreement; at the end of this period the Naga National Council will be asked

whether they require the above agreement to be extended for a further period, or a new agreement regarding the future of the Naga people arrived at.

SOURCE:R.Vashum and others (eds), Nagas at Work, New Delhi, Naga Students' Union, Delhi, 1996

ANNEXURE III

III. ARTICLE 371-A IN THE CONSTITUTION OF INDIA 1949

371A. Special provision with respect to the State of Nagaland

1). Notwithstanding anything in this Constitution,

(a) No Act of Parliament in respect of

(i) Religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

(iii) Administration of civil and criminal justice involving decisions according to Naga customary law,

(iv) 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;

(b) the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken: Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment: Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State

of Nagaland, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(c) in making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand;

(d) as from such date as the Governor of Nagaland may by public notification in this behalf specify, there shall be established a regional council for the Tuensang district consisting of thirty five members and the Governor shall in his discretion make rules providing for

(i) the composition of the regional council and the manner in which the members of the regional council shall be chosen: Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman ex officio of the regional council and the Vice Chairman of the regional council shall be elected by the members thereof from amongst themselves;

(ii) the qualifications for being chosen as, and for being, members of the regional council;

(iii) the term of office of, and the salaries and allowances, if any, to be paid to members of, the regional council;

(iv) the procedure and conduct of business of the regional council;

(v) the appointment of officers and staff of the regional council and their conditions of service;

(vi) any other matter in respect of which it is necessary to make rules for the constitution and proper functioning of the regional council

2. Notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council, by public notification specify in this behalf,

- (a) the administration of the Tuensang district shall be carried on by the Governor;
- (b) where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State of Nagaland as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State;
- (c) no Act of the Legislature of Nagaland shall apply to the Tuensang district unless the Governor, on the recommendation of the regional council, by public notification so directs and the Governor in giving such direction with respect to any such Act may direct that the Act shall in its application to the Tuensang district or any part thereof have effect subject to such exceptions or modifications as the Governor may specify on the recommendation of the regional council: Provided that any direction given under this sub clause may be given so as to have retrospective effect;
- (d) the Governor may make regulations for the peace, progress and good government of the Tuensang district and any regulations so made may repeal or amend with retrospective effect, if necessary, any Act of Parliament or any other law which is for the time being applicable to that district;
- (e)
 - (i) one of the members representing the Tuensang district in the Legislative Assembly of Nagaland shall be appointed Minister for Tuensang affairs by the Governor on the advice of the Chief Minister and the Chief Minister in tendering his advice shall act on the recommendation of the majority of the members as aforesaid;
 - (ii) the Minister for Tuensang affairs shall deal with, and have direct access to the Governor on, all matters relating to the Tuensang district but he shall keep the Chief Minister informed about the same;
- (f) notwithstanding anything in the foregoing provisions of this clause, the final decision on all matters relating to the Tuensang district shall be made by the Governor in his discretion;
- (g) in articles 54 and 55 and clause (4) of Article 80, references to the elected members of the Legislative Assembly of a State or to each such member shall

include references to the members or member of the Legislative Assembly of Nagaland elected by the regional council established under this article;

(h) in Article 170

(i) clause (1) shall, in relation to the Legislative Assembly of Nagaland, have effect as if for the word sixty, the words forty six had been substituted;

(ii) in the said clause, the reference to direct election from territorial constituencies in the State shall include election by the members of the regional council established under this article.

(iii) in clauses (2) and (3), references to territorial constituencies shall mean references to territorial constituencies in the Kohima and Mokokchung districts

SOURCE: P.M. Bakshi, The Constitution of India, (New Delhi: Universal Book Traders, 1993) 214-216

ANNEXURE IV

IV. THE ARMED FORCES (SPECIAL POWERS) ACT, 1958 (AS AMENDED IN 1972)

An Act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in States of Assam, Manipur, Meghalaya, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram. Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

1. This Act may be called the Armed Forces (Special Powers) Act, 1958.
2. It extends to the whole of the State of Assam, Manipur, Meghalaya, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram.

a) "Armed Forces" means the Military and the Air Forces of the Union so operating:

b) "Disturbed area" means the area which is for the time being declared by notification under Section 3 to be disturbed area;

c) All other words and expressions used herein, but not defined in the Air Force Act, 1950, or in the Army Act, 1950, shall have the meanings respectively assigned to them in those Acts.

3. If in relation to any State or Union Territory to which this Act extends, the Governor of the State or the Administrator of the Union Territory, or the Central Government in either case, is of the opinion that the whole or any part is in such a disturbed or dangerous condition that the use of Armed Forces in aid of civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in

the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area.

4. Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces may, in a disturbed area

a) if he is of the opinion that it is necessary to do so for maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms, ammunition or explosive substances;

b) if he is of the opinion that it is necessary to do so, destroy any armed dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made, or any structure used as a training camp for armed volunteers or utilized as a hideout by armed gangs or absconders wanted for any offence;

c) arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exist that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;

d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises; and may for that purpose use force as may be necessary.

5. Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

6. No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act.

SOURCE: Rekha, Chaturvedi, Manual of Military Law in India, New Delhi, Universal Law Publishing Co.Pvt.Ltd, 2001.

ANNEXURE V

V. THE SIXTEEN POINT AGREEMENT

THE SIXTEEN POINT AGREEMENT ARRIVED AT BETWEEN THE NAGA PEOPLE'S CONVENTION AND THE GOVERNMENT OF INDIA IN JULY 1960.

The points placed by the delegates of the Naga People's Convention before the Prime Minister on 26th July 1960, as finally recast by the Delegation in the light of discussions on 27th and 28th July 1960 with the Foreign Secretary.

1. The Name:

The territories that were heretofore known as the Naga Hills-Tuensang Area under the Naga Hills-Tuensang Area Act 1957 shall form a State within the Indian Union and be here-after known as Nagaland.

2. The Ministry In charge:

The Nagaland shall be under the Ministry of External Affairs of the Government of India.

3. The Governor of Nagaland:

(a) The President of India shall appoint a Governor for Nagaland and he will be vested with the executive powers of the Government of Nagaland. He will have his head-quarters in Nagaland.

(b) His administrative secretariat will be headed by a Chief Secretary stationed at the Headquarters with other Secretariat Staff as necessary.

(c) The Governor shall have special responsibility with regard to law and order during the transitional period and for so long as the law and order situation continues to remain disturbed on account of hostile activities. In exercising this special responsibility, the Governor shall, after consultation with the Ministry, act in his individual judgement. This special responsibility of the Governor will cease when normalcy returns.

4. Council of Ministers:

(a) There shall be a Council of Ministers with a Chief Minister at the head to assist and advise the Governor in the exercise of his function.

(b) The Council of Ministers shall be responsible to the Naga Legislative Assembly.

5. The Legislature:

There shall be constituted a Legislative Assembly consisting of elected and nominated members as may be deemed necessary representing different Tribes. (Further a duly constituted body of Experts May be formed to examine and determine the principles of representation on democratic basis).

6. Representation in Parliament:

Two elected members shall represent Nagaland in the Union Parliament, that is to say one for the Lok Sabha and the other for the Rajya Sabha.

7. Acts of parliament:

No Act or Law passed by the Union Parliament affecting the following provisions shall have legal force in the Nagaland unless specifically applied to it by a majority vote of the Nagaland Legislative Assembly:

- (a) The Religious or Social Practices of the Nagas.
- (b) Naga Customary Laws and Procedure.
- (c) Civil and Criminal Justice so far as these concern decision according to Naga Customary Law.

The existing laws relating to administration of civil and criminal justice as provided in the Rules for the Administration of Justice and Police in the Naga Hills District shall continue to be in force.

- (d) The ownership and transfer of land and its resources.

8. Local Self-Government:

Each tribe shall have the following units of rule-making and administrative local bodies to deal with matters concerning the respective tribes and areas:

- (a) The Village Council;
- (b) The Range Council; and
- (c) The Tribal Council

These Councils will also deal with disputes and cases involving breaches of customary laws and usages.

9. Administration of Justice:

- (a) The existing system of administration of civil and criminal justice shall continue.

(b) Appellate Courts:

(i) The District Court-cum-session courts (for each district), High Court and Supreme Court of India

(ii) The Naga tribunal (for the whole of the Nagaland) in respect of cases decided according to customary law.

10. Administration of Tuensang District:

(a) The Governor shall carry on the administration on the Tuensang District for a period of 10 (ten) years until such time when the tribes in the Tuensang District are capable of shouldering more responsibility of the advanced system of administration. The commencement of the ten-year period of administration will start simultaneously with the enforcement of detailed workings of the constitution in other parts of the Nagaland.

(b) Provided further that a Regional Council shall be formed for Tuensang District by elected representatives from all the tribes in Tuensang District, and the Governor may nominate representatives to the Regional Council as well. The Deputy Commissioner will be the Ex-officio Chairman of the Council. The Regional Council will elect members to the Naga Legislative Assembly to represent Tuensang District.

(c) Provided further that on the advice of the Regional Council, steps will be taken to start various Council and Courts, in those areas where the people feel themselves capable of establishing such institutions.

(d) Provided further that no Act or Law passed by the Naga Legislative Assembly shall be applicable to Tuensang District unless specifically recommended by the Regional Council

(e) Provided further that the Regional Council shall supervise and guide the working of the various Councils and Tribal Courts within Tuensang District and wherever necessary depute the local-officers to act as Chairman thereof.

(f) Provided further that Council of such areas inhabited by a mixed population or which have not as yet decided to which specific Tribal Council to be affiliated to shall be directly under the Regional Council for the time being. And at the end of ten years the situation will be reviewed and if the people so desire the period will be further extended.

11. Financial Assistance from the Government of India:

To supplement the revenues of the Nagaland, there will be need for the Government of India to pay out of the consolidated Fund of India.

(a) A lump sum each year for the development programme in the Nagaland; and

(b) A grant-in-aid towards meeting the cost of administration.

Proposal for the above grants shall be prepared and submitted by the Government of Nagaland to the Government of India for their approval. The Governor will have general responsibility for ensuring that the funds made available by the Government of India are expended for purposes for which they have been approved.

12. Consolidation of Forest Areas:

The delegation wished the following to be placed on record:

The Naga delegation discussed the question of the inclusion of the Reserve Forest and of contiguous areas inhabited by the Nagas. They were referred to the

provision on Articles 3 and 4 of the Constitution, prescribing the procedure for the transfer of areas from one state to another.

13. Consolidation of Contiguous Naga Areas;

The delegation wished the following to be placed on record:

The Naga leaders expressed the wish for the contiguous areas to join the new State. It was pointed out to them on behalf of the Government of India the Articles 3 and 4 of the Constitution provided for increasing the area of any State, but that it was not possible for the Government of India to make any commitment in this regard at this stage.

14. Formation of Separate Naga Regiment:

In order that the Naga people can fulfil their desire of playing a full role in the defence forces of India, the question of raising a separate Naga regiment should be duly examined for action.

15. Transitional period:

On reaching the political settlement with the Government of India, the Government of India will prepare a Bill for such amendment of the Constitution, as may be necessary, in order to implement the decision. The Draft Bill, before presentation to Parliament, will be shown to the delegates of the NPC.

There shall be constituted an Interim Body with elected representatives from every tribe, to assist and advise the Governor in the administration of the Nagaland during the transitional period. The tenure of office of the Interim Body will be 3 (three) years subjected to re-election.

16. Inner Line Regulation:

Rules embodied in the Bengal Eastern Frontiers Regulations, 1873 shall remain in force in the Nagaland.

SOURCE: R. Vashum and others (eds), Nagas at Work, New Delhi, Naga Students' Union, Delhi, 1996

ANNEXURE VI

VI. SHILLONG ACCORD 1975

The Shillong Accord of 11th November 1975 between the Government of India and the underground Nagas:

1. The following representatives of the underground organizations met the Governor of the Nagaland Shri L.P.Singh, representing the government of India, at Shillong on 10 and 11 November, 1975:

1. Shri I.Temjenba
2. Shri S.Dehru
3. Shri Veeniyi Rhakhu
4. Shri.Z.Ramyo
5. Shri M.Assa
6. Shri Kevi Yallay

2. There was a series of four discussions. Some of the discussions were held with the Governor alone; at other, the Governor was assisted by the two Advisors for Nagaland, Shri Ramunny and Shri H.Zopianga and Shri M.L.Kampani, Joint Secretary in the Ministry of Home Affairs. All the five members of the Liaison Committee namely Rev Longri Ao, Dr. Aram, Shri L.Lungalang, Shri Kenneth Kerhuo and Shri Lungshim, Shaiza, participated in the discussion.

3. The following were the outcome of the discussion:

i). The representatives of the underground organizations conveyed their decision, of their own violation, to accept, without condition, the Constitution of India;

ii). It was agreed that the arms, now underground, would be bought out and deposited at appointed places. Detailed for giving effect to this agreement will be worked out between them and representatives of the Government, the security forces, and members of the Liason Committee;

iii). It was agreed that the representatives of the underground organizations should have reasonable time to formulate other issues for discussion for final settlement.

Beseto Medom Keyho

Pukrove Nakru

Z. Ramyo

I Temjen

Dated, 11 November, 1975

Shillong

I Temjen

On behalf of the Government of India

S. Dehru

Z. Ramya

M. Assa

Kevi Yallay

On behalf of the representatives of underground organizations

L.P. Singh

Governor

SOURCE: MarAtsongchanger, “The Historical Memoranda of the Nagas and their Neighbours”, Tribal Communication and Research Centre, Mokokchung, Nagaland, 1995

ANNEXURE VII

VII. SUPPLEMENTARY AGREEMENT TO THE SHILLONG ACCORD ON 5 JANUARY, 1976

Implementation of the Clause II of the Shillong Accord of 11 November, 1975.

1. It was decided that the collection of arms initially at collection centres, would commence as early as possible, and will be completed by 25 January 1976. Initial place of collection to be decided through discussion between Commissioner, representatives of underground organizations and member of the Liaison Committee.

2. Once all arms are collected, these will be handed over to Peace Council team at the respective places of collection.

3. Peace Council team will arrange to transport the arms from collection centers to Chedema Peace Camp and arrange guards, etc. for safe custody of arms.

4. Similar arrangement at agreed place/places will be made in Manipur with concurrence of the Manipur Government.

5. The underground may stay at Peace Camps to be established at suitable places, and their maintenance will be arranged only by the Peace Council. Any Voluntary contribution from any source will be made the Peace Council, who will utilise the fund according to necessity.

Beseto Medom Keyho

L.P.Singh

Pukrove Nakru

Governor

Z. Ramyo

I Temjen

Dated, 5 January, 1976

Shillong

SOURCE: Mar Atsongchanger, “The Historical Memoranda of the Nagas and their Neighbours”, Tribal Communication and Research Centre, Mokokchung, Nagaland, 1995

Social and political life of women in Nagaland

* J. Nukshimenla Lemtur

Abstract

Since time immemorial women have been at the receiving end and face tremendous discrimination from its own fellow being whether it's in the field of social, political or economic etc. Women bears almost all responsibility for meeting basic needs of the family, yet are systematically denied the resources, information and freedom of action they need to fulfill this responsibility. However things have change and women are coming up and taking higher positions in their respective works. Nonetheless, the scenario in Nagaland is quite different. People from outside Nagaland tend to think and perceived that they are free and Independent and also think that the state of Nagaland is very liberal towards women. The fact is that the women in Nagaland are very free in the family matters but once they step out of their homes, all their freedoms are gone and are bounded by the social norms. Gender equality is, first and foremost, a human right. Women are entitled to live in dignity and in freedom from want and from fear. Empowering women is also an indispensable tool for advancing development. In mainland India, though the women is considered as a subordinates they are somewhat free towards women in the field of social and political life compare to Nagaland.

Keywords: Discrimination, Gender Equality, Human Rights, Empowerment

Nagaland is a state located in the far north- eastern part of India, bounded by Myanmar in the East, Assam in the west, Arunachal Pradesh and part of Assam in the north with Manipur in the south. The State of Nagaland was formally inaugurated on December 1st, 1963, as the 16th State of the Indian Union. It offers rich incomparable traditional and cultural heritage. The state capital is Kohima and the largest city is Dimapur. It is divided into 11 districts: Kohima, Phek, Mokokchung, Wokha, Zunheboto, Tuensang, Mon, Dimapur, Kiphire, Longleng and Peren, inhabited by 16 major tribes along with other sub-tribes. Each tribe is distinct in character from the other in terms of customs, language and dress.

As in the name indicates, Nagaland is the land of the Nagas, a group of tribes racially and culturally distinct from other tribal groups. All communities comprise the people of Nagaland state and these communities have their own distinct culture and tradition, dialect, customary law and social set up. It is largely mountainous state. Agriculture is the most important economic activity in Nagaland. Christianity is the predominant religion of Nagaland.

The Nagas of Nagaland inhabiting the North-Eastern part of India ethnically belong to the Mongoloid group and linguistically comes under the Tibeto-Burman family of language who migrated to the present Naga-inhabited compact areas from the east, a few thousand years ago. Naga is a generic name given to the communities inhabiting Nagaland and they were given the term 'tribal' by the Colonial Britishers. As mentioned by Nongbri, the term 'tribe' itself is a colonial construct born of the administrators need for classified information on the people they governed which resulted in the gigantic task of mapping the population into 'tribes' and

'caste'.¹

Since time immemorial women have been at the receiving end and face tremendous discrimination from its own fellow being whether it's in the field of social, political or economic etc. Though woman has been an important factor as man, yet her status in the society is not treated equally in many places. Women bears almost all responsibility for meeting basic needs of the family, yet are systematically denied the resources, information and freedom of action they need to fulfill this responsibility.

We find different opinion with regards to the position of women in the tribal societies. Some would say that tribal societies generally assigned a high status to women were no better than a mere sex object or a second sex or otherwise of an inferior sex.

The stereotyped idea that tribal societies are free from gender discrimination- a perception that is rooted in the romanticized view of the so called primitive and small-scale societies documented in the earlier anthropological and ethnographic literature are far from the truth and can be seen from the study.² There is no denying of the fact that Naga women are better in position and status compared to the fellow women of caste societies but they are never equal to men.

Verrier Elwin remarks, "... tribal women is in herself exactly the same as any other women, with the same position, love and fears, the same devotion to the home, to husband and children, the same faults and the same virtues". While Haimendorf notes, "... many women in more civilized parts of India may well envy the women of the Naga Hills, their high status and their free and happy life and if you measure the cultural level of the people by the social position and personal

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VIOLATION OF HUMAN RIGHTS: A STUDY OF ARMED FORCES (SPECIAL POWERS) ACT, 1958 (AFSPA) WITH SPECIAL REFERENCE TO NAGALAND

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India is one of the most interesting countries in the world; in fact with its multiple identities has seen the unique political experiment in human history than ever before was a single nation constructed out of diverse and ethnic regions. However, one of the main problems faced by the citizens of the North-Eastern region is the existences of several insurgent groups and central Government imposing the Armed Forces (Special Powers) Act, 1958 and amended in 1972. People are living in a turmoil state where the rights of the people have been violated by imposing the Armed Forces (Special Powers) Act, 1958 (AFSPA) by the Government of India. The Act has been at the heart of concerns about human rights violations in the region, such as arbitrary killings, torture, cruel, inhuman and degrading treatment and enforced disappearances. Its continued application has led to numerous protests, notably the longstanding hunger strike by Ms. Irom Chanu Sharmila in Manipur. Human Rights are fundamental to our every existence without which we cannot live as human beings. The Bills of Rights in the US Constitution, the Fundamental Rights in the Indian Constitution etc are nothing but the natural rights of man. Constitutions are made in order to protect and preserve natural rights of man. The Act is both on its face and in its practical application, incompatible with India's obligations under International Human Rights law, in particular, the International Covenant on Civil and Political Rights (ICCPR). The Asian Human Rights Commission and Human Rights Alert call on India to consider these findings urgently and to give effect to the rights recognized in the Covenant, as required by the ICCPR and India's constitution. This paper is divided into two parts: In part one; I will be focusing on the background and consequences of the Act. In part two, I will be examining, the role of international law in tackling this kind of situation. As various provisions and articles in the UN Charter, Universal Declaration of Human Right (UDHR) and also in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Civil Rights (ICESCR) have clearly mention about the protection of Human Rights.

Keywords: AFSPA, Human rights, UDHR, ICCPR and ICESCR.

Introduction

The Armed Forces (Special Powers) Act, 1958 (AFSPA) initially known as Armed Forces (Assam and Manipur) Special Powers Ordinance, came into force in May 1958, and was passed by the Parliament on 11th September 1958. This Act is the 28 Act of 1958 and was enacted by the Parliament in the Ninth Year

CULTURAL RIGHTS IN INDIAN FEDERALISM: A STUDY OF NAGA ETHNIC RIGHTS

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