

Special Provisions for some States

Introduction

The Part XXI of the Indian Constitution consists of Articles on 'Temporary, Transitional and Special Provisions. Apart from Article 370, Articles 371, 371A, 371B, 371C, 371D, 371E, 371F, 371G, 371H, and 371J defines the special provisions given to some States of the Indian Union. However, in 2019, the Union Government has nullified the Special Status granted to the Jammu and Kashmir by the Indian Constitution. But the special provisions (Articles 371) granted to as many as 11 States continue to exist as a part of the Constitution. All these provisions take into account the special circumstances of the individual States and mention all the safeguards in relation to those circumstances. Recent developments indicate that States like Andhra Pradesh, Bihar, Goa, Odisha, and Rajasthan have been demanding the Special Category Status from the Government.

Historical Background

The Fifth Finance Commission provided certain disadvantaged States with preferential treatment like Central assistance, tax breaks, development of educational institutions, special development boards, etc. Dr. Gadgil Mukherjee was then Deputy Chairman of the Planning Commission. In the beginning, only three States; Assam, Nagaland, and Jammu and Kashmir were granted with the special status but later on from 1974 to 1979; Himachal Pradesh, Manipur, Meghalaya, Sikkim, and Tripura were also added under the Special Category Status. Arunachal Pradesh and Mizoram were added in 1990 and Uttarakhand in 2001.

Difference between Article 370 and Article 371:

Article 370 provided with special powers and status to the State of Jammu and Kashmir. It empowered the Jammu and Kashmir to form its own Constitution other than the Indian Constitution. The residents of the State had a dual citizenship and their own national flag. RTI, RTE, CAG, and the majority of Indian laws were not applicable there. Article 370 was abrogated in 2019 whereas Article 371 still continues to exist in the Indian

Constitution.

Benchmarks for Special Category Status:

In the past, the Special Category Status was granted by the National Development Council composed of the Prime Minister, Union Ministers, Chief Ministers, and members of the Planning Commission. The criteria for the special status are as follows:

- ❑ Hilly and difficult terrain.
- ❑ Low population density.
- ❑ Presence of a sizable tribal population.
- ❑ Strategic location along international borders.
- ❑ Economic and infrastructural backwardness.
- ❑ Non-viable nature of State finances.

Importance of Special Category Status:

Normal Central Assistance favours the Special Category States (Currently, 11 States) enjoy 30% of the total assistance and the rest 70% is divided among the remaining States. The nature of assistance is also different for the Special Category Status. Normal Central Assistance (NCA) is divided into 90% grants and 10% loans for these States whereas it is 30% grants and 70% loans for the States which are not under the Special Category.

Some of the major Benefits of Special Category Status:

- ❑ 90% of the State expenditure on all the schemes sponsored by the Centre and external aid is bore by the Central Government and the remaining 10% is provided as a loan to the State on 0% interest.
- ❑ For Central funds, preferential treatment is given to the States.
- ❑ To attract industries, concession on the excise duty is provided to the States.
- ❑ The Centre's gross budget of around 30% goes to the Special Category States.
- ❑ Benefits of debt relief schemes and debt swapping can also be availed by the States.

- ❑ These States are exempted from income tax, corporate tax, etc.
- ❑ Unspent money is carried forward to the next financial year.

Special Provisions for States:

Special Provisions for Maharashtra and Gujarat

- ❑ Under Article 371, the Governor has special responsibility for the formation of separate development boards for “Vidarbha, Marathwada, and the rest of Maharashtra”, “Saurashtra, Kutch, and the rest of Gujarat”.
- ❑ Provision is also there that a report on the working of these boards must be put before State Legislative Assembly every year. There should be an equal allocation of funds for the developmental expenditure of the above-mentioned areas.
- ❑ Apart from it, equal and adequate facilities for technical education and vocational training as well as adequate opportunities for employment shall be provided under the State Government.

Special Provisions for Nagaland

- ❑ These provisions are incorporated in Article 371A by the 13th Amendment Act, 1962.
- ❑ According to these provisions, without the agreement of the State Legislative Assembly, the Parliament is not allowed to legislate on the matters related to the Naga religion or social customary practices, the Naga law, civil and criminal justice including the decisions which are taken in accordance with the Naga customary law, ownership and transfer of land and its resources.
- ❑ This provision was inserted by a 16-Point Agreement between the Centre and the Naga People’s Convention in 1960 which led to the creation of Nagaland in 1963.

Special Provision for Assam

- ❑ Under Article 371B by 22nd Amendment Act, 1969, the President is empowered to provide for the constitution and functions of a committee of the Assembly which will consist of members elected from the State’s tribal areas.

Special Provisions for Manipur

- ❑ As per the provisions comprised in Article 371C by 27th Amendment Act, 1971,
- ❑ The President is authorized to provide for the

creation of a committee of the Manipur Legislative Assembly consisting of the members elected from the Hill Areas of the State.

- ❑ The President can also direct that the Governor shall have special responsibility to secure the proper functioning of that committee.
- ❑ The Governor should submit an annual report to the President regarding the administration of the Hill Areas.
- ❑ The Central Government can give directions to the State Government as to the administration of the Hill Areas.

Special Provisions for Andhra Pradesh and Telangana

These provisions are included in Article 371D by 32nd Amendment Act, 1973. With respect to these provisions,

- ❑ The President is empowered to provide for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and education and different provisions can be made for various parts of the State.
- ❑ For the above purpose, the President may require the State Government to organise civil posts in local cadres for different parts of the State and provide for direct recruitment to posts in any local cadre. He may specify parts of the State which shall be regarded as the local area for admission to any educational institution. He may also specify the extent and manner of preference or reservation given in the matter of direct recruitment to posts in any such cadre or admission to any such educational institution.
- ❑ The President may provide for the establishment of an Administrative Tribunal in the State to deal with certain disputes and grievances relating to appointment, allotment or promotion to civil posts in the State. The tribunal is to function outside the purview of the State High Court.
- ❑ No court (other than the Supreme Court) is to exercise any jurisdiction in respect of any matter subject to the jurisdiction of the tribunal. The President may abolish the tribunal when he is satisfied that its continued existence is not necessary.
- ❑ Article 371-E empowers the Parliament to provide for the establishment of a Central University in the State of Andhra Pradesh.

Special Provisions for Sikkim

- The 36th Constitutional Amendment Act of 1975 made Sikkim a full-fledged State of the Indian Union. It included a new Article 371-F containing special provisions with respect to Sikkim. These are as follows:
 - The Sikkim Legislative Assembly is to consist of not less than 30 members.
 - One seat is allotted to Sikkim in the Lok Sabha and Sikkim forms one Parliamentary constituency.
 - For the purpose of protecting the rights and interests of the different sections of the Sikkim population, the Parliament is empowered to provide for the:
 - ☞ number of seats in the Sikkim Legislative Assembly which may be filled by candidates belonging to such sections; and
 - ☞ delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to Assembly.
 - The Governor shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of the different sections of the Sikkim population. In the discharge of this responsibility, the Governor shall act in his discretion, subject to the directions issued by the President.
 - The President can extend (with restrictions or modifications) to Sikkim any law which is in force in a State of the Indian Union.

Special Provisions for Mizoram

- These provisions are contained in Article 371G which came into existence under 53rd Amendment Act, 1986.
- According to these provisions, without the agreement of the State Legislative Assembly, the Parliament is not allowed to legislate on the matters related to the Mizo religion or social customary practices, the Mizo law, civil and criminal justice including the decisions which are taken in accordance with the Mizo customary law, ownership, and transfer of land and its resources.
- The Mizoram Legislative Assembly is to consist of not less than 40 members.

Special Provisions for Arunachal Pradesh

- are encompassed under Article 371 H, 55th Amendment Act, 1986.
- As per these provisions, the Governor has a special responsibility in maintaining law and order. He can take individual action after consulting the Council of Ministers.
- In the discharge of this responsibility, the Governor, after consulting the Council of Ministers, exercises his individual judgement and his decision is final.
- This special responsibility of the Governor shall cease when the President so directs.
- The Arunachal Pradesh Legislative Assembly is to consist of not less than 30 members.

Special Provision for Goa

- Article 371-I, 56th Amendment Act, 1987 provides for 30 members as the minimum requirement for the Legislative Assembly of Goa.

Special Provisions for Karnataka

- Under Article 371J by 98th Amendment Act, 2012, the Governor has special responsibility for the formation of separate development boards for the Hyderabad-Karnataka region.
- Provision is also there that a report on the working of these boards must be put before State Legislative Assembly every year.
- There should be an equal allocation of funds for the developmental expenditure of the above-mentioned areas.
- Apart from it, reservation of seats in educational and vocational training institutions, as well as the reservation in State Government posts in the region, shall be provided for the persons belonging to the Hyderabad-Karnataka region.

Often these special provisions provided by the Constitution is given as an example for 'asymmetry' in Indian federalism.

Asymmetrical Federalism:

"Asymmetric Federalism" is understood to mean federalism based on unequal powers and relationships in political, administrative and fiscal arrangements spheres between the units constituting a federation.

Asymmetry in the arrangements in a federation can be viewed in both vertical (between Centre and States) and horizontal (among the States) senses

Evidences of this 'asymmetry' in India

- **A strong Union:** Residuary powers vested with it, it is an indestructible Union with destructible States constituting it, Emergency provisions give the Union overriding powers over the States to tackle any adverse exigency, power to initiate a constitutional amendment lies with the Union, President's Rule, Governor's office, etc.
- **Special provisions for some States:** Article 371 of the Constitution makes some special provisions for States or regions of States that are socio-economically backward, have internal security challenges, difficult geographical conditions, predominance of tribal populations with distinct identity and cultures, etc.
- Allocation of Parliamentary seats to the States is not uniform but on the basis of population.
- The Sixth Schedule envisage special provisions for and autonomy to tribal areas in four north-eastern States.
- Special Category Status (SCS) given to 11 States as a means of financially assisting States at a relative disadvantage due to various factors.

Reason for adoption of asymmetric federalism

This scheme of 'asymmetrical federalism' has been adopted by India due to its unique socio-economic and political circumstances:

- **Political:** in the interests of the nation's unity and integrity, resentment of some historically backward or indigenous population dominated States have to be addressed so that they do not give rise to separatist tendencies; a stable government at the Centre requires cooperation from all the States. This led to greater autonomy for States included in sixth schedule, special powers to J&K under article 370(now scrapped), union territories in India, greater powers to centre vis-à-vis State to ensure uniformity and unity etc.
- **Social:** Social development has not been uniform, in the country; the southern States have mostly been ahead than their counterparts (as revealed by their higher literacy, better maternal and child health, etc.), hence special provisions, packages and developmental focus were necessitated in favour of the States lagging behind. Ex: Protection to certain tribal areas in the country.

- **Economic:** industrial and economic growth has been geographically skewed in India which has also necessitated asymmetrical federalism, Ex: Special category provisions given to some States, higher share of Central government in Centrally Sponsored Schemes.

Specific socio-economic and political circumstances warrant the 'asymmetrical' federal structure of Indian polity. It is important to fulfil the aspiration of social and economic democracy and to promote egalitarian development throughout the country. It also serves to keep regional resentments under check which if neglected can lead to separatist tendencies as manifested in the demands for Statehood. Thus, national unity and integrity is also contingent on this scheme of federalism.

Importance of asymmetric federalism in India:

- **Secure rights:** These special provisions in the Constitution help in protecting fundamental rights, and compensate for initial inequalities in the social system.
- **Social justice:** Allowance for separate laws to govern different religious groups, and provisions for various kinds of affirmative action for extremely disadvantaged groups help in ensuring justice to them.
- **Ensure unity in diversity:** These provisions respect and preserve diversity of the country by protecting vulnerable group through special powers. This ensures unity in diversity.
- **Satisfy different needs:** It act as a solution to satisfy different needs of various federal units, as the result of an ethnic, linguistic or cultural difference. Asymmetric federalism has helped in reducing dissatisfaction among various States
- **Reduce radicalisation:** Special powers given to the State of Jammu and Kashmir helps in reducing radicalisation. The State of Jammu and Kashmir was given special power because the State though includes several diverse populations, but the majority of the population of the State is Muslim, and the State was also near the new country "Pakistan" which is a major 'Muslim' country.
- **Better representation in democracy:** It has helped in providing representation to minority areas and areas with less population providing them justice.