

The Judicial Intervention Over the State of Sikkim's Unique Constitutional Status

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Abstract

This research article aims to determine the effects of judicial interference, specifically the judgments of the Supreme Court, and to shed light on the causes and compulsions behind Article 371F, which provides special status to the State of Sikkim under the Constitution. As an ardent believer in the importance of accurate information and the significance of verifiable facts, I have endeavored to endow the readers with an impartial comprehension of whether the aforesaid Article constitutes the bedrock for shielding the integrity of the State and its archaic Statutes. To collate this information, I have made recourse to a plethora of resources, comprising treatises, adjudications, periodicals, legal digests, newspapers, digital data, and the worldwide web. It is imperative to note that this composition is an entirely factual representation and is not impregnated by any presumptions, suppositions, sentiments, or affectations.

Keywords: Article 371F of the constitution, special status, constitution, State of Sikkim, the Sikkim government service establishment rules of 1974, ratio decidendi, the Sikkim code

INTRODUCTION

The Supreme Court's Authority

The Supreme Court of India has the power of judicial review, which allows it to examine the laws and actions of the government to ensure that they are consistent with the Constitution. This power is essential for upholding the rule of law and protecting the rights of citizens. The Supreme Court has used this power to deliver several landmark judgments that have had a profound impact on Indian law and society. These judgments are based on the principles and values enshrined in the Constitution, and they have had a significant impact on the country's social, political, and economic landscape.

The Constitution of India is a living document, a work in progress, and a constantly evolving document that reflects the changing needs and aspirations of the people of India [1]. It has been amended several times since its enactment, and these amendments have helped to strengthen the constitutional framework of the country.

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The Supreme Court has played a critical role in interpreting and enforcing these amendments, ensuring that they are in line with the fundamental principles of the Constitution [2]. As the guardian of the Constitution, the Supreme Court has a vital responsibility to uphold the rights and freedoms of citizens. Its judgments are based on a careful analysis of the law and the facts of the case, and they are intended to promote justice and equality for all.

The decisions of the Supreme Court have far-reaching implications for Indian society, and they are widely respected and followed by other courts and government institutions.

Article 141 of the Constitution of India states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. This means that all lower courts, including the high courts, are bound to follow the decisions of the Supreme Court.

The Supreme Court is the highest judicial authority in India, and its decisions are final. The Supreme Court has the power to interpret the law and decide cases brought before it. The Supreme Court also has the power to strike down laws that it finds to be unconstitutional.

The law laid down by the Supreme Court is binding on all courts because it is the highest authority on matters of law in India. The Supreme Court's decisions are binding, even if there is a difference of opinion among the judges. The Supreme Court's decisions are also binding on lower courts, even if the lower courts did not consider all the relevant aspects of the case.

The following are some cases that illustrate the binding nature of the Supreme Court's decisions:

- In the case of *Som Mittal v. Government of Karnataka*, (2008) SCC the Supreme Court held that the decisions of the Supreme Court and the high courts must be respected and carried out by the subordinate courts.
- In the case of *Union of India v. Kantilal Hematram Pandya*, (1995) 3 SCC 17 the Supreme Court held that the law laid down by the Supreme Court is always binding on all courts and tribunals.

The binding nature of the Supreme Court's decisions is important for ensuring the uniformity of law in India. It also ensures that the rights of citizens are protected.

Chief Justice Edward Coke and Blackstone, two of the most influential jurists in English history, were both proponents of the doctrine of stare decisis. This doctrine, which literally means "to stand by things decided," holds that courts should generally follow the doctrine of stare decisis, which means "to stand by decisions and not disturb the undisturbed," which is a fundamental principle of the common law system. It requires courts to follow the precedents set by previous decisions but not the judgment as a whole. The principle evolved in a judgment, the "*ratio decidendi*," is the legal principle or rule that is the basis for the decision. The *ratio decidendi* is applicable to future cases as a precedent.

The Constituent Assembly of India incorporated Section 212 of the Government of India Act, 1935, into the Constitution of India, though it was worded differently. Section 212 of the Government of India Act stated that "the law declared by the Federal Court shall be binding on all courts within the territory of India." Article 141 of the Constitution of India states that "the law declared by the Supreme Court shall be binding on all courts within the territory of India."

The doctrine of stare decisis is important for ensuring the stability and predictability of the law. It also helps to promote uniformity in the application of the law. However, the doctrine is not absolute, and courts may depart from precedent in certain cases. For example, a court may depart from precedent if the precedent is no longer relevant or if the precedent is inconsistent with a higher law, such as the Constitution.

Here are some of the reasons why courts may depart from precedent:

- The precedent is no longer relevant to the current case.
- The precedent is inconsistent with a higher law, such as the Constitution.
- The precedent has been overruled by a higher court.
- There is a strong public policy reason to depart from the precedent.

The decision of whether or not to depart from precedent is a difficult one that must be made on a case-by-case basis. Courts must weigh the various factors involved and decide what is in the best interests of justice.

ARTICLE 371F OF THE CONSTITUTION

Article 371F of the Constitution of India is a special provision that was created to protect the unique status of Sikkim. Sikkim was an independent kingdom until 1975, when it became the 22nd State of India [3]. Article 371F was included in the Constitution to ensure that Sikkim's distinct identity and cultural heritage were protected after its merger with India.

The special provisions in the Indian Constitution are designed to meet the aspirations of the people of backward regions, protect the cultural and economic interests of tribal people, deal with disturbed law and order conditions, and protect the interests of local people.

Article 371F specifically provides for the following:

- The Sikkim Legislative Assembly must have a minimum of 30 members.
- Sikkim has one Lok Sabha seat and the State is divided into one Parliamentary constituency.
- Parliament may make provision for the protection of the rights and interests of the different sections of the population of Sikkim.
- The High Court functioning in Sikkim before it became a State will continue to be the High Court for the State.
- All laws in force in Sikkim before it became a State will continue to be in force until amended or repealed by a competent legislature or authority.

Article 371F is a significant provision that ensures the protection of Sikkim's unique status and identity. It is a testament to the commitment of the Indian Government to the preservation of diversity and culture in the country.

It is generally accepted that the various Clauses under Article 371F embodies the historical incidents preceding the merger of Sikkim with the Union of India and judicially recognized as expression of the political commitments and solemn assurances given to the people of Sikkim when Sikkim had agreed to merge with India [4].

Article 371F of the Indian Constitution includes Clauses that are intended to protect the laws that were in force in the territories of Sikkim immediately prior to its merger with India.

Clause (k) of Article 371F states that all laws that were in force in Sikkim before it became a State will continue to be in force until they are amended or repealed by a competent legislature or authority. This means that the laws of Sikkim will not automatically be replaced by the laws of India.

Clause (l) of the same article provides for the adaptation and modification of these laws, if necessary, to bring them in line with the provisions of the Indian Constitution. This means that the laws of Sikkim can be changed to ensure that they are consistent with the Constitution of India.

The President of India is empowered to make such adaptations and modifications within a period of two years from the appointed day, which is considered to be April 26, 1975, the day on which Sikkim officially became a full-fledged State. Any adaptation or modification made by the President will be binding and cannot be challenged in a Court of law.

The laws that were in force in Sikkim prior to its merger with India were numerous and varied, having been promulgated through various means such as notifications, circulars, rules, by-laws, declarations, and proclamations by the Sikkimese kingdom [5]. A compilation of these laws, called "the Sikkim Code," is currently maintained by the Department of Law and Justice of the Government of Sikkim.

The expression “existing law” means any law that was in force in the whole or any part of the territories that now comprise the State of Sikkim before the appointed day, which is April 26, 1975. The term “law” is defined to include any enactment, proclamation, regulation, rule, notification, or other instrument that had the force of law in the whole or any part of the territory that now comprises the State of Sikkim immediately before the appointed day.

In other words, the existing laws of Sikkim are the laws that were in force in the State before it became a part of India. These laws will continue to be in force until they are amended or repealed by a competent legislature or authority.

The term “law” is broadly defined to include any instrument that has the force of law. This means that the existing laws of Sikkim include not only statutes passed by the Sikkim legislature but also ordinances, regulations, rules, notifications, and other instruments that have been given the force of law by the legislature.

The definition of “existing law” is important because it ensures that the unique status of Sikkim is protected. The laws of Sikkim will not automatically be replaced by the laws of India, and the people of Sikkim will continue to be governed by the laws that they are familiar with.

In this connection to fall within the meaning of existing laws under Clause (k) of Article 371-F of the Constitution the Hon’ble Supreme Court referred to the Constitution Bench decision in *Union of India vs. Gwalior Rayon Silk Manufacturing (weaving) Co. Ltd.* by which Hon’ble Supreme Court approved the ratio of the decision in *Rajkumar Narsingh Pratap Singh Deo vs. State of Orissa* in which it was held that whenever a dispute arises as to the true character of the order passed by an absolute monarch combines in himself all the three functions, legislative, judicial and executive and therefore all relevant factors must be considered before deciding whether the Act in question is legislative, that is, law.

This special protection in the Constitution given to the people of Sikkim has been tested and tried on several occasion before non-other than Hon’ble Supreme Court of India. In the case of *R.C. Poudyal vs Union of India* on 10 February 1993 the Supreme Court upheld the special status of the provisions of the Article 371F and has reiterated its overriding effect over all other provisions of the Constitution.

RC Poudyal challenged Clause (f) of Article 371F of the Constitution of India in the Supreme Court, arguing that it violated the Constitution, particularly the reservation of seats in the Sikkim Legislative Assembly for a religious institution (one Sangha seat) and for a particular tribe (12 Bhutia-Lepcha seats). The Supreme Court ruled that even if Article 371F conflicts with other provisions of the Constitution, it would still be valid.

The Supreme Court’s ruling was based on the principle of federalism. Federalism is a system of Government in which power is divided between a Central Government and Regional Governments. The Supreme Court held that Article 371F is a special provision that was included in the Constitution to protect the unique status of Sikkim. The Court also held that the reservation of seats for the Sangha and the Bhutia-Lepcha tribes was necessary to protect the religious and cultural identity of Sikkim.

The Supreme court’s ruling was controversial, and it has been criticized by some legal experts. However, the ruling remains the law of the land and it is likely to continue to be cited in future cases involving the interpretation of Article 371F.

Article 371F, Clause (f) of the Constitution of India states that Parliament may make provisions for the number of seats in the Legislative Assembly of the State of Sikkim that can be filled by candidates belonging to different sections of the population of Sikkim, in order to protect their rights and interests.

This provision was included in the Constitution to ensure that the unique status of Sikkim is protected. Sikkim is a multi-ethnic State and the different sections of the population have different needs and interests. The reservation of seats in the Legislative Assembly for these different sections is a way to ensure that their voices are heard and that their interests are represented.

The specific number of seats that can be filled by candidates belonging to each section is determined by Parliament. This number may be changed from time to time, as Parliament sees fit.

The reservation of seats in the Legislative Assembly for different sections of the population is a controversial issue. Some people argue that it is necessary to protect the rights and interests of these sections, while others argue that it is discriminatory. The Supreme Court of India has upheld the constitutional validity of this provision, but the debate is likely to continue.

In this seminal case, a crucial question presented itself before the Apex Court, was Article 371F in contravention of democratic principles enshrined in the Constitution of India?

The petitioner argued that the reservation system in Sikkim was unconstitutional because it violated Article 14 of the Constitution, which guarantees equality before the law. The petitioner also argued that Article 371F of the Constitution, which allows for the reservation of seats in the Sikkim Legislative Assembly for the Sangha and the Bhutia-Lepcha tribes, was in breach of the democratic and republican tenets of the Constitution. Additionally, the petitioner argued that the reservation of seats on religious grounds was in violation of Article 15 of the Constitution, which prohibits discrimination on the basis of religion.

The State countered these arguments by stating that a law regarding the terms and conditions for the admission of a new state, as laid down by Article 2 of the Constitution, could not be challenged in court. The State also argued that the reservation of seats in the Sikkim Legislative Assembly was necessary to protect the religious and cultural identity of the State.

The Supreme Court ultimately upheld the Constitutional validity of Article 371F and the reservation system in Sikkim. The Court held that Article 371F is a special provision that was included in the Constitution to protect the unique status of Sikkim. The Court also held that the reservation of seats for the Sangha and the Bhutia-Lepcha tribes was necessary to protect the religious and cultural identity of Sikkim.

The Supreme Court's ruling was controversial, and it has been criticized by some legal experts. However, the ruling remains the law of the land and it is likely to continue to be cited in future cases involving the interpretation of Article 371F.

The petitioners argued that Article 371F of the Constitution of India empowers Parliament to make reservations for communities that are under-represented in the Sikkim Legislative Assembly, even if such reservations go against the fundamental principles of the Constitution.

Article 371F is a special provision that was included in the Constitution to protect the unique status of Sikkim [6]. It allows Parliament to make laws for the State of Sikkim in a number of areas, including the reservation of seats in the Legislative Assembly.

The petitioners argued that this power to make reservations is absolute, and that Parliament can make reservations for any community, even if those reservations go against the fundamental principles of the Constitution, such as equality before the law and non-discrimination.

The Supreme Court rejected this argument, holding that Article 371F is not an absolute power. The Court held that Parliament can only make reservations for communities that are under-represented in

the Sikkim Legislative Assembly, and that these reservations must be reasonable and necessary to protect the interests of these communities.

The Court also held that the reservations must be consistent with the fundamental principles of the Constitution. This means that reservations cannot be made on the basis of religion, race, caste, or any other ground that is discriminatory.

The Supreme Court's ruling was a significant victory for the rights of minorities in India. It clarified that the special provisions in the Constitution cannot be used to violate the fundamental principles of the Constitution.

The Supreme Court held that the petition was maintainable and that laws related to the admission of new states are justifiable [7]. The Court acknowledged that the powers conferred upon the legislature under Article 2 are extensive. However, the Court clarified that Parliament does not enjoy unbridled authority and cannot be exempted from judicial scrutiny. The terms and conditions of admission cannot violate the bedrock principles of the Indian Constitution.

The Court's ruling was based on the principle of judicial review. Judicial review is the power of the courts to strike down laws that they deem to be unconstitutional. The Court held that the terms and conditions of admission of a new state cannot violate the bedrock principles of the Constitution, such as equality before the law, non-discrimination, and secularism.

The Court's ruling was a significant victory for the rule of law in India. It clarified that even the legislature is not above the Constitution, and that laws that violate the Constitution can be struck down by the courts.

The Court further opined that Article 2 and Article 371F ought to be construed in a complementary manner so as to not be discordant with the provisions of the Constitution [8]. This decision reaffirms the judiciary's responsibility to ensure that our Constitution remains true to its founding principles and that the basic tenets of democracy are protected at all times.

The Supreme Court held that Article 371F was valid because the Constitution does not require perfect mathematical equality of voters. Even if the reservation resulted in some discrimination, the Court held that such discrimination was justified in view of the historical realities of the state of Sikkim. The reservation was necessary because the beneficiary communities were minority groups who would not have adequate representation in the state assembly without such a reservation.

The Court also held that Article 371F is not violative of the basic features of democracy. The basic features of democracy include the principles of equality, liberty, and fraternity. The Court held that the reservation in Article 371F did not violate these principles because it was necessary to protect the interests of the minority communities in Sikkim.

The Court's ruling was a significant victory for the people of Sikkim. It ensured that the unique status of Sikkim would be protected and that the rights of the minority communities would be safeguarded.

Surendra Prasad Sharma, the petitioner, contested Rule 4(4) of the Sikkim Government Service Establishment Rules, 1974, which governs the appointment to government service, in a separate case titled *The State of Sikkim v. Surendra Prasad Sharma*, which was determined on April 19, 1994. There is a clause that States that non-Sikkimese people may only be appointed to government positions if there are no Sikkimese candidates who are appropriately qualified and experienced. He argued that this violated both the fundamental rights and the constitution's essential framework. Any laws that were in place before Sikkim joined the Union of India will still be enforceable, the court said.

The Hon'ble Supreme Court reiterated the relevant provision of Article 371F, Clause (k) reads thus "all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority"

The Honourable Court made a well-reasoned decision that established the politico-legal scenario leading up to the decision of the people of Sikkim to associate themselves with India through their leaders. The court emphasized the justifications for the 35th and 36th Amendments to the Indian Constitution as well as the inclusion of Sikkim as a State in the First Schedule. Special provisions had to be made for the new State, which led to the introduction of Article 371F through the 36th Amendment. Since many of these provisions were transitory in nature, it was necessary to grant them immunity from other provisions of the Constitution, which is why Article 371F begins with a non-obstante clause. The President of India was empowered to do anything, including adaptation or modification of any other Article, which he deemed necessary to remove any difficulty in giving effect to the preceding provisions of the Article, as stipulated in Clause (o) of the Article. The proviso, however, stated that no such order may be made after 2 years had passed since the designated day. The Court also noted that Constitutional provisions must be liberally construed to the extent the language permits it and should not be interpreted in a narrow and pedantic manner, especially in the case of transitory provisions.

This decision reinforces the idea that our Constitution is a living document that is intended to adapt and evolve with the changing times and the needs of the people it serves. The principles that underpin our Constitution, such as liberty, equality, and fraternity, must be upheld at all times, even as we continue to forge ahead on our path to progress and prosperity.

In the case of *Nirmala L. Mehta v. A. Balasubramaniam*, CIT (2004) (4) TMI 43-Bombay High Court, the Court further observed that the insertion of Article 371F was essential as the laws in Sikkim, before it became a part of India, were made for a society under a monarchy and were not consistent with the Indian Constitution, which provides for a free society. To fulfil the promises made to the Sikkimese people, it was necessary to create exceptional measures. Sikkim's peaceful transition from a monarchy to a democratic, free society was made possible by Article 371F.

THE CURRENT POSITION

The Hon'ble Supreme Court of India recently made a ruling in a writ suit filed by the Association of Old Settlers of Sikkim & Ors against the Union of India and the State of Sikkim, which shed light on the Kingdom of Sikkim's past.

The Court acknowledged that the Kingdom ruled over Sikkim for 333 years before merging with India in 1975. Subsequent to the merger, the Sikkim Subject Register was established to encompass the names of individuals who were either initially Sikkimese or who forsook their citizenship of other States and embraced Sikkim citizenship. However, some Indian families residing in Sikkim declined to abandon their Indian citizenship and were consequently excluded from the register, giving rise to disagreements regarding tax-benefits. The court stated that this exclusion was arbitrary, irrational, and not within its purview. It is worth noting that any novel law must comply with the features of the Constitution of India, however, if there is a contradiction between the old laws governing in Sikkim and the Constitution of India, the old laws will prevail, placing significance on Article 371F. The Court appropriately observed that Article 371F is critical to safeguard the welfare of the people of Sikkim, whose distinct culture and identity necessitates protection [9]. As a result, Article 371F is not only legitimate but also essential for the well-being of the populace of Sikkim.

If Indian citizens who had lived in Sikkim before it became an Indian state with effect from 26-04-1975 are eligible for an exemption under section 10(26AAA) of the Income-tax Act, 1961, and if the

provision that prevents a Sikkimese woman from receiving tax benefits after marrying a non-Sikkimese with effect from 1-4-2008 is ultra vires the Constitution? These were the main issues before the Hon'ble Court.

The Supreme Court invalidated Section 10(26AAA) of the Income Tax Act, 1961's exclusion of Indian migrants who had made permanent settlements in Sikkim before April 26, 1975, from the concept of "Sikkimese" in its ruling. The provision to Section 10(26AAA) that excludes "a Sikkimese woman, who marries a non-Sikkimese after 01.04.2008" from the exempted category was also struck down as being ultra vires to Articles 14, 15, and 21 of the Constitution of India, the Apex Court stated while clubbing the other similar petition.

The Apex Court stated that the benefit of income-tax exemption is currently only available to Sikkimese who meet the criteria outlined in the Explanation to Section 10(26AAA) of the I.T. Act, 1961, are Sikkimese as defined by the 1961 Regulation of Registration of Sikkim Subject Act, or are Sikkimese as defined by their place of residence in Sikkim. Any person who was a Sikkim Subject under the 1961 Regulation was to be assumed to be an Indian citizen starting on April 26, 1975, according to the Sikkim (Citizenship) Order, 1975, as amended by the Sikkim (Citizenship) Amendment Order, 1989, issued by the Government of India. Contrarily, it is believed that in order to benefit from the exemption under Section 10(26AAA) of the I.T. Act, 1961, all Indian citizens who had a residence in Sikkim on the day it united with India, that is, April 26, 1975, must be protected under the explanation.

The decision is to prevent the explanation from being declared unconstitutional in relation to those individuals, who make up a small percentage of Sikkimese, and to end discrimination and disparity in regard to the aforesaid category of Sikkimese who subsequently became citizens of India with effect from April 26, 1975, the Apex body added.

The Supreme Court continued, and last, it reads Proviso to Section 10 (26AAA) was also struck down as being ultra-vires Articles 14, 15 and 21 of the Constitution of India insofar as it excludes from the exempted category "a Sikkimese woman who marries a non-Sikkimese man after 1st April 2008."

THE RESPONSES

After this decision of the Apex Court there was a great apprehension that if the Court can strike down the definition of "Sikkimese" from the Proviso to Section 10 (26AAA) of the Income Tax Act of 1961 which was actually taken referring the provision of the eligibility criterion to get Sikkim Subject Certificate in Sikkim under the Sikkim Subject Regulation Act of 1961 and the same was considered protected under the non-obstante Clause of the Article 371F as one of the old laws of Sikkim (though repealed during 1975). Hence there is always a possibility and have no guarantee in future that the Hon'ble Court may ignore to recognize such other old laws of Sikkim if comes in conflict with the provisions of the Constitution, more especially with the Part-III.

Additionally, the Supreme Court has since deleted the statement that the Sikkimese-born Nepalese were of "foreign origin" that was included in the judgment. Additionally, the judgment's directive to amend the Income Tax Act of 1961 to include the old settlers in the definition of "Sikkimese" to enable them to enjoy the tax benefit had sparked widespread protests in the State.

The larger Sikkimese population is concerned that the definition change could allow the old settlers to claim other rights and privileges that they previously enjoyed. This is especially true given that the Court had previously extended the income tax relief based on Article 14 of the Constitution, which guarantees equality before the law.

Since Sikkim's pre-merger laws are still in effect thanks to the Non-Obstante Clause of Article 371F, which was added to the Constitution in 1975 when the State merged with India, Article 14 has not yet been implemented there.

Replying to the points and suggestions put forth by the Members from the civil society viz; recently formed Join Action Council, the Government of Sikkim called a special Assembly Session to discuss these issues.

Furthermore, in a ruling on a review petition submitted by the State, *Shri Tushar Mehta*, learned Solicitor General, appearing on behalf of the Union of India, and *Shri C. S. Vaidyanathan*, learned Senior Advocate, appearing on behalf of the State, have asked to make the appropriate observations that this Court has not made any rulings regarding the legality or interpretation of Article 371-F of the Indian Constitution. The Court ruled that as the constitutionality of or interpretation of Article 371-F of the Indian Constitution was not at all the subject matter before this Court, no such clarification was necessary. It is further made clear that, despite being repealed, the Sikkim Subjects Regulations of 1961 and the Sikkim Subject Rules of 1961 are nevertheless applicable for the explanation of Clause 26(AAA) of Section 10 of the Income Tax Act of 1961. This order should be seen as an integral part of the Supreme Court of India's decision in the case of *Association of Old Settlers of Sikkim v. Union of India*, which was rendered on January 13, 2023.

The aforementioned observation was “made” in response to applications submitted by the States of Sikkim and the Union of India to have certain language in paragraphs 10(a) and 77 of the original judgment from January 13, 2023, corrected.

The Sikkimese-Nepalese were referred to as “people of foreign origin” in the ruling, but the Supreme Court ordered that reference be removed on February 8th during the special session of the Sikkim Assembly after the State Government moved quickly to file a review petition before the Apex Court on February 2, 2023. The Chief Minister of Sikkim declared that the State administration will always uphold the dignity of its residents and that it has always honored the opinions of the Sikkimese people.

He also informed the House that a committee had been established by the State government to investigate the “applicability” of the inner line permit system in the State. The committee will investigate if the inner line permit could be implemented in Sikkim and what effect it will have on other North-eastern States.

After the above development as per the direction given by the Hon'ble Apex Court the Parliament of India brought an Amendment in the Clause 26 (AAA) of Section 10 of the Income Tax Act, 1961 wherein the definition Sikkimese has been expanded and defined as under:

- An individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (hereinafter referred to as the “Register of Sikkim Subjects”), immediately before 26th day of April, 1975;
- An individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No 26030/36/90-I.C.I., dated the 07th August 1990 and Order of the even number dated the 08th April, 1991;
- Any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grandfather or brother from the same father has been recorded in that register;
- Any other individual, whose name does not appear in the Register of Sikkim Subjects but it is established that such individual was domiciled in Sikkim on or before the 26th day of April, 1975;
- Any other individual, who was not domiciled in Sikkim on or before the 26th day of April 1975, but it, is established beyond doubt that such individual's father or husband;
- Paternal grandfather or brother from the same father was domiciled in Sikkim on or before the 26th day of April 1975.

Subsequently, on 10th April 2023, the Sikkim Legislative Assembly conducted a deliberative session to discuss the ramifications of the above insertion in the Finance Amendment Act of 2023. During the

session, the esteemed members of the House passed a resolution by acclamation seeking elucidation from the Centre regarding the extension of the definition of Sikkimese enshrined within the aforementioned Act. The Chief Minister of Sikkim, whilst addressing the House, reiterated the fact that Article 371F has remained impervious to any untoward modifications or alterations within the Finance Act, which functions as a corollary amendment to the seminal Income Tax Act of 1961. Additionally, he emphatically stated that the inalienable rights of the original denizens of Sikkim have not been compromised or imperiled in any manner whatsoever. It was further elucidated by the learned Union Finance Minister Nirmala Sitharaman and Shri Tushar Mehta, the distinguished Solicitor General that the expansion of the Sikkimese definition is merely circumscribed to the sole objective of Income Tax exemption, and does not entail any collateral ramifications.

Government Resolution No. 1 was passed during the Sixth Session (Part-IV) of the Tenth Assembly of the Sikkim Legislative Assembly, put forth, accompanied by a detailed explanation related to two Writ Petitions (Civil), namely No. 59 of 2013 and No. 1283 of 2021, which had been combined by the Hon'ble Supreme Court of India.

It was expressly mentioned in the Resolution that the learned Justices of the Hon'ble Supreme Court in this recent judgment erred grievously by overlooking the proper historical context of Sikkim's pre-merger/accession with the Union of India, and failed to grasp the import of Article 371F of the Constitution of India. In order to challenge Section 10 (26AAA) of the Income Tax Act, 1961, which excluded Indians who had settled in Sikkim prior to the state's merger with India on April 26, 1975, the Association of Old Settlers of Sikkim invoked Article 32 of the Indian Constitution.

The Association wanted to incorporate "Old Settlers" in the definition of "Sikkimese" in Section 10 (26AAA) of the Income Tax Act of 1961. However, the Hon'ble Court sadly disregarded the basic importance of Article 371F of the Indian Constitution, which calls for "Special Provisions" with regards to the State of Sikkim, when issuing its decision on January 13, 2023. The old Sikkim laws fall within the protection of Article 371F of the Indian Constitution and are thus fully protected by its provisions.

The old Sikkim's laws are in fact protected by Article 371F, which functions within the bounds of the Indian Constitution. This constitutional clause was added to the Indian Constitution by the Constitution (Thirty-Sixth Amendment) Act of 1975 in response to the momentous "Tripartite Agreement" on May 8, 1973, which made it possible for Sikkim to become the Union of India. The terms and conditions of the agreement were based on considerations for the aspirations of three ethnic communities in the State of Sikkim, namely the Sikkimese of Lepcha-Bhutia origin and Nepali of Sikkimese origin who have domicile in Sikkim and who have been registered in the Sikkim Subject Register in accordance with the Sikkim Subjects Regulation, 1961.

It follows that Article 371F, which offers unique protections for the Sikkimese people of three ethnic origins covered by the 1973 Tripartite Agreement, is in fact a constitution within the Indian Constitution. The constitutional provisions in question must be interpreted with a broad and liberal approach, as stipulated by the Hon'ble Court itself, and not in a narrow or pedantic manner, particularly when it comes to transitory provisions such as those applicable to Sikkim's unique circumstances.

It is submitted that there is a legal term called "*pacta sunt servanda*," which means an agreement must be kept. It is the principal of international law, which says that the signatories have to fulfill the provisions of treaty. It obliges the States that had ratified the treaty of human right to fulfill the international commitment. State cannot take the excuse of its national law (*Anthony Aust, *Pacta Sunt Servanda*, Oxford Public International Law Feb-2017> <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1449>).

Though Sikkim joined the Indian union and no longer remain a separate entity but having been one of the signatories representing the then political community the State Government being responsible is

constantly required to preserve the traditional laws and the protection provided by Article 371F of the Indian Constitution, and it works to preserve the distinctive character, categorization, and special status accorded to the Sikkimese as a distinct ethnic group. The State government has a responsibility to prevent any dilution of the term “Sikkimese” at all costs. The State Government has also prayed in the review petitions that the old settlers cannot be treated equally with those whose names are on the Sikkim Subject Register, keeping this in mind.

In light of the foregoing, the House has been presented with Government Resolution No. 1 of 2023 for consideration of the following resolutions:

1. Explain the aforementioned concerns to the Indian government;
2. Demand that the Indian government take the issues into consideration, provide all assistance and support necessary to safeguard the distinct identity of the Sikkimese people in accordance with Article 371F of the Indian Constitution, and make sure that the rights and protections promised to the Sikkimese people are not diminished;
3. Demand from the Indian government that the term “Sikkimese” and the unique classification/status accorded to the Sikkimese people cannot be changed;
4. Request the Government of India to acknowledge and maintain that the special status and distinct identity and classification granted to the Sikkimese people are commitments given to the people of Sikkim by the Government of India at the time of the merger of Sikkim with India. Underscoring the significance of the Tripartite 8th May Agreement signed between the Chogyal, Sikkimese political parties, and the Government of India, it was mentioned that this agreement laid down the fundamental principles and guidelines for the administration of Sikkim. These principles were subsequently given legal force through the enactment of the Government of Sikkim Act, 1974, which served as a de facto Constitution for the state. The Act not only outlined the powers and functions of the executive and legislature but also provided for the conduct of elections. A notable feature of the Act was its provision that ensured no particular group or community could dominate the affairs of Sikkim due to their ethnic origin, which was later enshrined in spirit in Clauses (f) and (g) of Article 371F of the Constitution of India.

It is worth mentioning here that with a view to protect the distinct identity of the Sikkimese people and to examine the provisions of Article 371F of the Constitution and to safeguard the interest of the people of Sikkim, the State Government of Sikkim constitute an All-Party Committee consisting of seven members on 10th of May, 2023. The committee has been empowered to examine the issues pertaining to Article 371F in the context of recent amendment of clauses (iv) and (v) of sub-section 26AAA of Section 10 of IT Act of 1961 and expansion of the definition of Sikkimese and provide recommendations to the State Government. The committee will watch out for any dilution of the Sikkimese people’s unique identity and protection.

CONCLUSION AND ADVICE

It is submitted that to ascertain the true meaning of the term “Sikkimese” reference may be drawn from various Sikkim Darbar Gazette, Royal Proclamations of 1952, 1966, 1969, and 1974 read with Tripartite Agreement of 1973 vis-a-vis the Sikkim Citizenship Order, 1975, the ascertained meaning and definition by the Committee may further be notified throughout Union Government of India through a Gazette Publication.

It is further submitted that the above decisions of holding an assembly and forming committees are all in an order and lawful if we refer the observation made by the Hon’ble Supreme Court in the case of *Samta Andolan Samiti vs Union of India (March, 2020)* on State’s resolutions against Central laws the Court acknowledged that the State Assembly in India can call upon the Parliament to abrogate the law by making resolutions against a Statute passed on a matter under List- I of the Seventh Schedule of the Constitution. However, such resolutions do not mean that the people to disobey the law made by the Parliament but State Governments have power that they can express their opinion on the Central

Laws in Assemblies and request the Central Government for doing suitable amendment or even to the extent of abrogation of the Statute.

It is important to note that the Indian Constitution clearly protects all agreements, treaties, bylaws, regulations, rules, proclamations, circulars, and notifications made before April 26, 1975. Samurais are similar to clauses (k) and (l), while clause (m) of Article 371F of the Indian Constitution states that neither the Supreme Court nor any other Courts in India shall have jurisdiction in this matter. Any dispute or matter originating from a treaty, agreement, engagement, or other similar document relating to Sikkim that was signed before the designated day and to which the Government of India or any of its predecessor Governments was a party shall not be subjected to the jurisdiction of the court. However, it is essential to note that this Clause does not derogate from the provisions of Article 143 of the Constitution of India.

In light of the above, Article 371F of the Constitution of India is protected from judicial and executive intervention, and therefore it is sacrosanct to the People of Sikkim forever.

The question of reasonable classification under Article 14 and presumption of its application in future for example, as far as our understanding goes may properly be made on geographical or territorial basis if that is germane to the purpose of the enactment.

The classification may also be based on historical considerations. Thus, after the enactment of the State Reorganizations Act, 1956, different Acts in different parts of the same State could be sustained on the ground that the differentiation arose from geographical classification based on historical reasons. For the same reasons, the Bhopal State Agricultural Income Tax Act, 1957 levying in Bhopal an agricultural income tax, which was not imposed upon agricultural income in the rest of the State of Madhya Pradesh, was held to be valid in the case of *State of M.P. V. Bhopal Sugar Industries Ltd.* AIR 1964 SC 1179: (1964) 4 SCR 846).

The immunity from civil process given to the ex-rulers of Indian States by Section 87-B CPC was justified as a reasonable classification on the ground that the rulers constituted a separate class on account of historical consideration since they were sovereign rulers before independence, and in return of the surrender of their sovereignty, they were offered a privy purse and certain other personal privileges a reference may be taken from the case of *Mohanlal Jain V. Sawai Man Singhji*, AIR 1962 SC 73: (1962) 1 SCR 702).

Article 14's usage of the phrase "within the territory of India" does not imply that every one of the nations must adhere to the same set of laws. One State may be covered by a statute but not another. Depending on the specifics, a law may apply to one section of a state but not to others that are geographically far from it.

The Marwar Land Revenue Act of 1949 was thus challenged in *Krishna Singh V. State of Rajasthan* (AIR 1955 SC 795; *Video Electronic Pvt. Ltd. V. State of Punjab*, (1990) 3 SCC 87) on the grounds that it only applied to the Marwar portion of the State of Rajasthan and not to the entire State. The Supreme Court determined that the law did not contravene Article 14. A specific law has to be enforced in Marwar portion of the State due to its unique circumstances. Similar to this, it was determined that setting varied dates for holding elections in different constituencies in accordance with the diverse local circumstances where the constituency was located would not violate Article 14.

Two Acts were passed to nationalize the road transportation in *Ram Chandra V. State of Orissa*, AIR 1950 SC 298. Due to the material differences in the two regions' conditions, one Act applied to one region of the State and the other to another. The Supreme Court upheld the Acts.

Where classification of territory was made into dangerously disturbed area under the East Punjab Public Safety Act of 1949 providing for a simple shorter and speedier trial of offences even in unrest, it was deemed legal because the foundation for categorization was logical and based on discernible differences, as determined in *Gopichand v. Delhi Administration AIR 1959 SC 509*.

State of M.P. 1962 Supp, 2 SCR 257, 1962 ASC 981, which extended the C.P. and Berar Sales Tax Act of 1947 to Vindhya Pradesh, was held not to violate Article 14 because the Sale Tax Law in Vindhya Pradesh was different from that in other parts of Madhya Pradesh of which it became a part. These different laws were upheld because the differentiation arose from the historical and geographical classification based on historical reasons.

In *Deepak Sibal v. Punjab University, AIR 1989 SC903:(1989)2 SCC 141*, the Supreme Court has stated that for a classification to be reasonable it need not be made with the mathematical precision. The Supreme Court further had stated that, while considering reasonable classification one has to see the main object, purpose and intention of such a classification. In addition, surrounding circumstances may be taken into account in support of the constitutionality of a law that may otherwise be hostile or discriminatory in nature, but the circumstance must be such that it justifies the discriminatory treatment or the classification as subservient to the object sought to be achieved. If the objective is illogical, unfair, or unjust, then the classification will unavoidably be held to be unreasonable.

Law and the Constitution are dynamic and susceptible to change, not static. This is because they are meant to serve the people, and should reflect their changing needs and circumstances. The goal of the law should be to promote justice, equality, and freedom, and its implementation should be efficient, transparent, and responsive to the needs of the people.

The Constitution is not just a document, but a living, dynamic process that involves functioning institutions and the people who operate them. A Constitution is only a compilation of aspirations and objectives without the political wisdom and traditions of the people who will be governed by it. Article 371F is an important provision that has helped ensure that the unique identity and cultural heritage of Sikkim are protected. It is a testament to the commitment of the Indian government to the principle of federalism, and it is a source of great pride for the people of Sikkim. The Article is intended to provide a departure from other Articles of the Constitution, as evidenced by the non-obstante clause with which it opens. But just having a constitution does not guarantee constitutionalism or a culture that upholds it. It is the responsibility of the people to be aware of the direction in which the Constitution is moving and who is operating it. Sometimes, the Supreme Court may need to step in to provide oxygen to alleviate congestion and clog in the implementation of the Constitution.

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