

Article 371K and Special Constitutional Safeguards for Ladakh

Mains: GSII – Governance

Why in News?

The Union Government has proposed Article 371K to provide special constitutional safeguards for Ladakh, following an in-principle agreement to establish a directly elected UT-level body with legislative, executive, financial and planning powers.

What is Article 371?

- Articles 371 and 371A to 371J provide special constitutional arrangements for different States and regions.
- However, Article 371 was not originally designed as a special protection for tribal or Northeastern regions.
- **Historical Background -**
- **Post-Independence** - At Independence, India comprised British provinces and princely states.
 - Princely states joined India under different historical and administrative circumstances, which initially classified as Part B States.
- **Original Article 371 (1950)** - The original Article 371 provided for Central supervision over Part B States.
 - It was intended as a transitional arrangement during the early years of the Constitution.
- **Reorganisation of States (1956)** - The States Reorganisation Act and 7th Constitutional Amendment, 1956 abolished the Part A, Part B and Part C classification.
 - The original Article 371 consequently ceased to operate in its earlier form.
- **Emergence of Special Provisions** - Article 371 was subsequently replaced by provisions providing special arrangements for Maharashtra and Gujarat.
 - These focused on equitable regional development, including Vidarbha, Marathwada, Saurashtra and Kutch.
- **Different Forms of Article 371** - India adopted a flexible constitutional approach to accommodate regions with different:
 - Historical circumstances
 - Social and cultural structures
 - Administrative requirements
 - Regional inequalities
 - Political demands

- Thus, Article 371 evolved into an instrument of asymmetric federalism, allowing different regions to receive different constitutional arrangements.

What is the Evolution of Special Constitutional Provisions?

- **Article 371A - Nagaland** - Emerged from the Naga political movement and the 16-Point Agreement of 1960.
 - Protects Naga religious and social practices, customary law and procedure.
 - Provides protection to the ownership and transfer of land.
- **Article 371B - Assam** - Created in the context of demands from Assam's tribal and hill areas.
 - Provides for a special committee in the Assam Legislative Assembly.
- **Article 371C (Manipur)** - Introduced after Manipur became a full State.
 - Addresses the political relationship between the tribal hill areas and Imphal Valley.
 - Provides for a special committee of the Legislative Assembly consisting of members elected from hill areas.
 - The Governor has a special responsibility regarding the administration of hill areas.
- **Article 371D - Andhra Pradesh** - Emerged from regional tensions between Telangana and Andhra.
 - Based on the Six-Point Formula of 1973.
 - Seeks equitable opportunities in education and public employment across different regions.
- **Article 371F - Sikkim** - Introduced following Sikkim's integration into the Indian Union in 1975.
 - Intended to manage the constitutional and administrative transition of the erstwhile independent State.
- **Article 371G - Mizoram** - Emerged from the 1986 Mizo Peace Accord.
 - Protects Mizo religious and social practices, customary law and procedure.
 - Provides protection to customary administration of justice and ownership and transfer of land.
 - Certain Parliamentary laws on these matters do not automatically apply unless agreed to by the Mizoram Assembly.
- **Article 371H - Arunachal Pradesh** - Provides the Governor with special responsibility for law and order in the State.
- **Article 371I - Goa** - Provides that the Goa Legislative Assembly shall consist of not less than 30 members.
- **Article 371J - Karnataka** - Added to address regional backwardness in the Hyderabad-Karnataka region, now Kalyana Karnataka.

MAHARASHTRA & GUJARAT

(ART 371)

"Special responsibility" to Governor to establish "separate development boards" for "Vidarbha, Marathwada, and the rest of Maharashtra", and "Saurashtra and Kutch in Gujarat"; "equitable allocation of funds for developmental expenditure over the said areas"; "equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment" under the state government.

SIKKIM

(ART 371F, 36TH AMENDMENT ACT, 1975)

The members of the legislative Assembly of Sikkim shall elect the representative of Sikkim in the House of the People. To protect the rights and interests of various sections of the population of Sikkim, Parliament may provide for the number of seats in the Assembly, which may be filled only by candidates from those sections. Governor shall have "special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population". All earlier laws in territories that formed Sikkim shall continue, and any adaptation or modification shall not be questioned in any court.

ASSAM

(ART 371B, 22ND AMENDMENT ACT, 1969)

President may provide for the constitution and functions of a committee of the Assembly consisting of members elected from the tribal areas of the state.

ARUNACHAL PRADESH

(ART 371H, 55TH AMENDMENT ACT, 1986)

The Governor has a special responsibility with regard to law and order, and "he shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken". Should a question arise over whether a particular matter is one in which the Governor is "required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final", and "shall not be called in question...".

KARNATAKA

(ART 371J, 98TH AMENDMENT ACT, 2012)

There is a provision for the establishment of a separate development board for the Hyderabad-Karnataka region, the working of which will be reported annually to the Assembly; there shall be "equitable allocation of funds for developmental expenditure over the said region"; and "equitable opportunities and facilities" for people of this region in government jobs and education. An order can be made to provide for reservation "of a proportion" of seats and jobs in educational and vocational training institutions and state government organisations respectively in the Hyderabad-Karnataka region for individuals who belong to that region by birth or domicile.

ANDHRA PRADESH & TELANGANA

(ART 371D, 32ND AMENDMENT ACT, 1973; SUBSTITUTED BY THE ANDHRA PRADESH REORGANISATION ACT, 2014)

President must ensure "equitable opportunities and facilities" in "public employment and education to people from different parts of the state"; he may require the state government to organise "any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State", and allot them. The President has similar powers vis-à-vis admissions in any university or state government-run educational institution. Also, he may provide for setting up of an administrative tribunal outside the jurisdiction of the High Court to deal with issues of appointment, allotment or promotion in state civil services. [ART 371E allows for the establishment of a university in Andhra Pradesh by a law of Parliament. But this is not really a 'special provision'.]

MIZORAM

(ART 371G, 53RD AMENDMENT ACT, 1986)

Parliament cannot make laws on "religious or social practices of the Mizos, Mizo customary law and procedure, administration of civil and criminal justice involving decisions according to Mizo customary law, ownership and transfer of land... unless the Legislative Assembly... by a resolution so decides."

MANIPUR

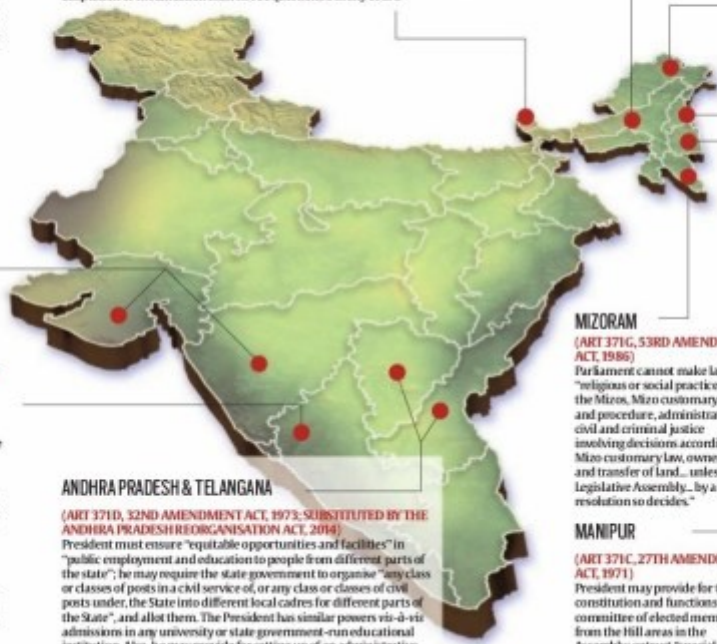
(ART 371C, 27TH AMENDMENT ACT, 1971)

President may provide for the constitution and functions of a committee of elected members from the Hill areas in the Assembly; entrust "special responsibility" to the Governor to ensure its proper functioning. The Governor has to file a report every year on this to the President.

NAGALAND

(ART 371A, 13TH AMENDMENT ACT, 1962)

Parliament can't legislate in matters of Naga religion or social practices, the Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law, and ownership and transfer of land and its resources, without concurrence of the legislative Assembly. This provision was inserted in the Constitution after a 36-point agreement between the Centre and the Naga People's Convention in 1960, which led to the creation of Nagaland in 1963. Also, there is a provision for a 35-member regional council for Tuensang district, which elects the Tuensang members in the Assembly. A member from the Tuensang district is Minister for Tuensang Affairs; Governor has the final say on Tuensang-related matters.



What Could Article 371K Mean for Ladakh?

• Proposed Constitutional Arrangement

- Article 371K could provide Ladakh with a special constitutional framework despite being a Union Territory without a legislature.
- It may establish a directly elected UT-level body with legislative, executive, financial and planning powers.

• Legislative & Administrative Powers

- The body could legislate on land, culture and language, forests, environment and natural resources.
- It may also exercise powers over subjects assigned to the UT under Article 240.
- The elected executive could supervise civil servants, including APAR-related matters, within its jurisdiction.
- Ladakh leaders have also sought control over law and order.

How Could 371K Differ from Existing Provisions?

- **Protection of Resources** - The demand for protection of land and natural resources resembles the protective framework under Articles 371A and 371G.
- **Democratic Institutions** - Unlike some existing provisions, Ladakh is seeking a substantial directly elected governing institution with legislative, executive and financial powers.
- **Application of Central Laws** - If certain Central laws are made applicable only with the approval of the proposed elected body.
 - This provision would resemble the stronger protective mechanism found under

Articles 371A and 371G.

- **Control over Administration** - If the elected executive receives control over bureaucracy and law and order,
 - The proposed arrangement would provide the UT-level leadership with substantial administrative authority.

What is the Significance of Article 371K?

- **Constitutional Accommodation** - It would demonstrate the flexibility of the Constitution to create region-specific governance arrangements.
- **Protection of Local Interests** - Special constitutional safeguards could provide greater protection to land, culture, language, environment and natural resources.
- **Democratic Decentralisation** - A directly elected UT-level body could provide greater local participation in governance and decision-making.
- **Asymmetric Federalism** - It would illustrate India's approach of accommodating regional diversity through differentiated constitutional arrangements.

Key Concerns: Scope of Article 371K

- The effectiveness of Article 371K will depend on the extent of powers constitutionally protected.
- Merely creating an elected body with legislative powers may offer limited safeguards.
- Stronger protection would require control over land, natural resources, recruitment and administration.
- A role in deciding the applicability of Central laws could provide additional protection.
- Greater control over law and order and bureaucracy would further strengthen the institution.

What could be done?

- **Clearly Define Powers** - The constitutional provision should clearly specify the legislative, executive, financial and planning powers of the proposed body.
- **Ensure Constitutional Protection** - Important areas such as land, natural resources, culture and local employment should receive clearly defined safeguards.
- **Strengthen Democratic Accountability** - The proposed institution should have appropriate mechanisms for representation and financial transparency.
- **Balance Local Autonomy and National Interests** - The framework should balance local aspirations and environmental concerns with India's strategic and national interests in the region.
- **Ensure Effective Implementation** - Constitutional safeguards should be supported by appropriate administrative, financial and institutional mechanisms.

What lies ahead?

- The evolution of Article 371 reflects India's constitutional ability to accommodate regional diversity through asymmetric federalism.
- For Ladakh, Article 371K could represent a new model of constitutional accommodation for a Union Territory without a legislature.
- Its effectiveness, however, will depend on the precise powers and safeguards ultimately incorporated into the constitutional provision.

Reference

[The Indian Express| Article 371K and Special Constitutional Safeguards for Ladakh](#)

