The enactment of the Ancient Monuments and Archaeological Sites and Remains Act, 1955 had formulated legal base to protect the monuments/sites declared as of National importance in the country. And in order to give more legal strength, provisions have been instituted/substituted in amendment bill and notified in the Gazette of India in Part II-Section 1, No.13; Dated March 30, 2010 as Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010. Out of 3679 National monuments/sites as per the record of the Archaeological Survey, Government of India, namely, Andhra Pradesh 137, Himachal Pradesh 40, Orissa 78, Jammu & Kashmir 69, Pondicherry 7, Jharkhand 12, Punjab 33, Bihar 70, Karnataka (a) Bangalore Circle 207 (b) Dhawad Circle 299, Rajasthan 163, Chhattisgarh 47, Kerala 26, Sikkim 3, Daman & Diu 12, Madhya Pradesh 292, Tamil Nadu 403, List of monuments Thrisur circle 10, Koch 174, Maharashtra (a) Aurangabad 168 (b) Mumbai Circle 117, Goa 21, Uttar Pradesh (a) Agra Circle 264 (b) Lucknow Circle 365, Patna 112, Gujarat 202, Uttaranchal 44, Haryana 90, West Bengal 133, Assam 55, Arunachal Pradesh 3, Manipur 1, Meghalaya 8, Tripura 8 and 4 located in the State of Nagaland respectively. The 4 (four) monuments/sites in the State of Nagaland are under the jurisdiction of the Archaeological Survey of India (ASI) and for each sites/archaeological sites the Archaeological Survey of India (ASI) has to prepare site plans and heritage by-laws, As per provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 2010, for the purposes of construction and no private or public construction in the prohibited and regulated areas of the protected Monuments/sites have been held as valid and post-facto after completion of the structure or building in the prohibited and regulated area. The National Monument Authority will comprise of archeological and heritage experts and will work without any interference from the bureaucracy. Any construction in the prohibited and regulated area, shall be punishable with imprisonment not exceeding 2 (two) years or with fine which may extend to one lakh rupees or both.

The amended Act, 2010, vide Section 30 has increased the penalty from 3(three) months to 2 (two) years and fine of rupees five thousand to one lakh or the Sub-Section (I) a, destroys, re-erects, removes, alters, imperils or misuse a protected monuments or being the owner or occupier of a protected monument, contravenes an order made under Sub-section (i) of Section -9 or under Sub-Section (I) of Section-10 or removes from a protected monument any sculpture, carving, image, bas-relief inscription, or other like object – Similarly for violation of Sub-Section (2) of Section 30 has also been enhanced “Any person who moves any antiquity in contravention of a notification issued under Sub-Section (I) of Section 25 shall be punishable with imprisonment which may extended to 2 (two) years or fine which may extend to one lakh rupees or both.

Penalty for unauthorized constructions in the prohibited and regulated area have been prescribed vide Section 30A “Whoever raises, on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, any construction in the prohibited area, shall be punishable with imprisonment not exceeding 2 (two) years or with fine which may extend to one lakh rupees or both.” And Section 30 B “Whoever raises, on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, any construction in the regulated area without previous permission of the competent authority or in contravention of the permission granted by the competent authority, shall be punishable with imprisonment not exceeding 2 (two) years or with fine which may extend to one lakh rupees or both”. The Director General, Archaeological Survey of India has been empowered to call for information from the local bodies and other authorities for identification of all constructions made on or after the 16th June, 1992 in all prohibited and regulated areas[Section 35B(2)]

Section 12 states that the permission granted by the Archaeological Survey of India between 16th June, 1992 and enforcement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, for construction or reconstruction etc. except those granted ex-post-facto after completion of the structure or building in the prohibited and regulated areas of the protected Monuments/sites have been held as valid and not challengeable in any court, tribunal or other authority.

Extension of provisions of the enactment Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 in the State of Nagaland: A Conflict Scenario The State of Nagaland was created as the Sixteenth State of the Indian Union on December 1, 1963 and enjoys a unique position under Article 371-A of the Constitution of India which provides supremacy to the Naga customary laws and practices over formal laws passed by the Parliament.

In India, we have many Acts which are enacted for conservation of biological diversity such as - Indian Forest Act 1927, Wildlife (Protection) Act, 1972, Forest (Conservation) Act 1980, Protection of Plants varies and Farmers Right Act 2001, Biological Diversity Act, 2002 and The Schedule Tribe and other Forest Dwellers (Recognition of Forest Rights) Act 2006. But their applicability in the State of Nagaland is limited due to constitutional safeguard guaranteed under the Article 371-A of the Constitution. However, the Legislative Assembly of Nagaland has enacted relevant laws to protect the Naga customary laws and the Naga customary laws are the most important for the protection of the environment and the natural resources in the State of Nagaland.

The present paper therefore examines the validity of extension of provisions of the “Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010” enacted by the Union Government of India in the State of Nagaland, a State constituted under special provision (Article 371A) of the Constitution of India.
Nagaland, understanding the need to conserve the forest resources and protect the historic and cultural heritage of the various tribal communities, has enacted a series of local Acts/Rules to conserve and protect the forest viz., the Nagaland Forest Act, 1968; the Nagaland Rules for Protection of the Establishment and Control of Forest Villages, 1969; the Nagaland Rules for Protection of Forest from Fire, 1969; the Nagaland Village and Area Council Act, 1970; the Village and Area Council Act, 1970; the Nagaland Ancient Monuments, Remains of a Fort (Dimapur Ruins), ii) Memorials of Mr. G.H. Damant, Major and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, the National Monument Authority, Calcutta 1996, and the Nagaland Tree Felling Regulations, 2002.

No doubt, even the Government of India has enacted the Schedule Tribe and other Forest Dwellers (Recognition of Rights) Act, 2006, in order to protect and safeguard the rights of the tribal communities over forest resources. However, even the said Act cannot be extended in the State of Nagaland without complying with the provision of Article 371A of the Constitution of India (for an initial view of the text, see Jamir 2010) which the Schedule Tribe and other Forest Dwellers (Recognition of Rights) Act, 2006, was what is apparently clear is that the Act is mainly directed against those Schedule Tribe and other forest dwellers who are settled or under occupation of forest areas, owned by the Government and who are deprived of even the basic minimum rights and are almost refugees of the nation. However, due to the specific land holding system in the State of Nagaland, land and its resources belongs to the village/community/clan and individual. The State Government does not own any land except those which has been acquired from the land owners. As the Nagaland villagers are the free possessors of the land and its resources which includes the forest, the Naga people do not need the protection of right vide provisions of Schedule Tribe and other Forest Dwellers (Recognition of Rights) Act, 2006.

Therefore, before extending any Act, passed by the Government of India in the State of Nagaland be it the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, the Forest (Conservation) Act, 1980, the Biological Diversity Act, 2002 etc., the same has to be tested in the touchstone of Article 371A of the Constitution of India so as to preserve the socio-economic and cultural identity of the Nagas.

Since time immemorial, the socio-economic and cultural life of the Nagas has revolved around the forest and its resources. In fact, it is because of this reason that Article 371A has been incorporated in the Constitution of India so as to protect the socio-economic and cultural rights and interest of the Nagas. Nagaland has diverse culture with each tribe having its own distinct customary practices with regard to the use, ownership and transfer of land and its resources.

Article 371A of the Constitution, confers a special status to the State of Nagaland to the effect that no Act of Parliament in respect of (i) religious and social practices of Nagas; (ii) Naga customary law and procedure; (iii) administration of civil and criminal justice involving decisions according to Naga customary law and (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. As per Section 2(d) of the Nagaland Ownership and Transfer of Land and its Resources Act, 1990 (The Nagaland Act No. 1 of 1993), “Land and its resources means,” “advantages derived from the surface of the land and all that is below it and which is valuable or is a source of money or income and includes...”

It is therefore, imperative to examine the applicability of Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, to the Nagaland. The other extension of provisions to protect the present four Monuments: i) Remains of a Fort (Dimapur Ruins), ii) Memorials of Mr. G.H. Damant, Major Cook and Subedar Nurbir Sahi, Khonoma, iii) Stone Cairn to the memory of Mr. Damant, Kohima, and iv) Lt. H. Forbes' Grave, Suchitama (Archaeological Survey of India Guwahati Circle) shall defeat the very purpose of incorporating Article 371A in the Constitution of India. As such, it is necessary to discuss some of the relevant provisions of the Act in the touchstone of Article 371A of the Constitution of India.

It is worth to mention that only four monuments of the State of Nagaland had been identified as monuments of national importance where as the neighboring states have 55 monuments of National Importance. In matters relating to identification of monuments of National importance, the State of Nagaland could not get much recognition till date. Emergence and difficult terrain might have restricted the visit of the experts in exploring and identifying monuments of National importance in Nagaland. Perhaps, it is because of this reason that there are only 4 (four) monuments in the State identified as monuments of National interest. Once monuments/Sites are enlisted under the Monuments of National importance, the expenditure etc will be borne by the Union Government in the development of site plan and bye-laws (separate for each monuments/sites) and its management as per site plan and bye laws, tabled and approved in each House of the Parliament[Section 20E(6)]. The bye laws for four monuments of National importance will be finalized by ASI [Section 20E(2)] and will be tabled in each House of Parliament and same will be implemented in the State of Nagaland. Similarly management Plan of monuments sites will be finalized by the ASI [Section 20E(4)]. The provisions of enactment debar interference of the State Governments in respect of upkeep, management and maintenance of protected monuments/sites of national importance. However by virtue of Article 371 (A) the provisions of the said Act, cannot be extended in the State of Nagaland, unless the Legisative Assembly of Nagaland by a resolution so decides and after the said enactment of the Union Government of India in the State. The provisions of enactment states that 100 meters of prohibited area around the monument/site will be demarcated and a minimum area of 200 meters in all directions of the protected sites will be declared regulated. The National Monument Authority, constituted by the Government of India also consider to extend the definition of protected site and regulated areas on the basis of gradient and classification of monuments/archaeological sites and remains [Section 21(2) and 20A & B] for the purpose of construction and no private or public construction in the prohibited area will be allowed except those under taken by the ASI.

Nagaland State has a special status in the Indian Union. Article 371 A of the Constitution of India that the customs and tradition of the Naga people is protected and that land ownership continue to remain in the hands of the individuals, clans, communities and villages. State Government cannot be in control of the owner of the land and villagers are the undisputed owner of land in the State. Thus, the State Government does not own/possess any land, except those which were handed down by the Britshers when they left and a few areas acquired at later date either by paying land compensation or through donation received for villagers for specific purpose of common interest.

In the backdrop of the unique land ownership in the state of Nagaland, in the event the “Ancient Monuments and Archeological Sites and Remains (Amendment and Validation) Act, 2010” is extended in the state of Nagaland, it will give rise to serious conflict between the administrative machinery and the people residing within the protected and restricted areas. Therefore, National enactment should also incorporate the provisions of the Union Government of India. The people residing within the protected and restricted areas. Implementation of the provisions of the National enactment should also include the provisions of state enactments to restrict the conflict in application of the provisions of enactment of the Union Government of India.

The provision of Section 35B(2) empowers the Director General, Archaeological Survey of India, to call for information from the local bodies and other authorities for identification of all constructions made on or after the 16th June, 1992 in all prohibited and regulated areas. The provision made binding for local bodies and other authorities to furnish all desired information. States other than Nagaland are...
Analysis presented in the foregoing paragraphs may help the policy and law makers i.e. State Legislature and the stakeholders of the State of Nagaland to examine the crisis situation likely to emerge in near future while implementing the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, in the State of Nagaland. Presently, only four monuments had been kept in the category of monuments of national importance. Impact would increase with increase in number of monuments/sites of national importance in the State of Nagaland.

Land is the most valuable possession of mankind and man has always been envious of its ownership, extent of areas and unlimited right over it where the law recognizes Rights of each stakeholder. Thus, if at all a consensus is reached to implement the list of ASI Acts in Nagaland, prior to its resolution in the Legislative Assembly of Nagaland, the Rights granted to the State of Nagaland vide provisions of Article 371A of the Constitution of India needs to be harmoniously.

REFERENCES:
3. Archaeological Survey of India Guwahati Circle.
4. Archaeological Survey of India.
5. Article 371A of the Constitution of India.
8. Indian Forest Act, 1927, Government of India.