



RIGHTS
OF
THE SIKKIMese

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In the year 1997, the State Government introduced the Employment Exchange (Compulsory Notifications of Vacancies) Act, 1959 in Sikkim. If this law was to be implemented in Sikkim, it would have certainly collided with the Sikkim Establishment Rules of 1974, one of the old laws of Sikkim which is protected under the Constitutional Law 'Article 371-F' of the country. However, with massive protest against the Employment Exchange Act by the people of Sikkim all across the State, the first Pawan Chamling (SDF) Government was reluctant to withdraw the Employment Exchange Act, 1959 from Sikkim.



Among the front runner associations, who stood firm against this Employment Exchange Act in the year 1997, was the Sikkim Students Association, Sikkim Government Employees Association and the (ASESE&UA) All Sikkim Educated Self Employed & Unemployed Association.

The writer, aged 16 yrs and studying at 10th Standard in the year 1997 actively participated with his fellow students' comrades against the Employment Exchange Act, 1959. The writer, during this agitation came in touch with the senior members of ASESE&UA, who were virtually in-charge of the agitation against the implementation of Employment Exchange Act in Sikkim. Since then there has been no looking back for the writer and his comrade. After completing his formal education, the writer became a permanent member of ASESE&UA and later on went to become the Vice President, the Working President, General Secretary and finally the President of ASESE&UA. Apart from ASESE&UA, the writer has also been part of many social organisations and Government and Non-Government institutions such as; BGP (Bharatia Gorkha Parishang), Sikkim University, Sikkim Parivar (Puja) Committee and the Sikkim Subject Bachao Committee.

The writer and his comrade, during all these years as social activists always stood for the Rights of the Sikkimese, especially those concerning the youths. As one entity, ASESE&UA led by the writer, always stood against the nepotism and favouritism practices in the recruitment process in the Government service, highlighted the corruption practices pertaining in Sikkim, raised voice against the mis-governance and mis-administration in the offices of Sikkim and stood firm against the Extension practice of the State Government that was given to the selective retired bureaucrat of the State Government. However, the main objective of the writer has always been the protection of the Constitutional provision meant for the Sikkimese read with Article 371-F of the Constitution.

On 22nd June, 2013 the writer along with his 200 comrades joined the active politics (Sikkim Democratic Front) and presently is the Secretary, Organisation of the Party. At the same time he (writer) is also the Vice-Convenor if SSBC, a committee that was initiated on November, 2010 in the wake of protecting the Rights of the Sikkimese.

**We Repeat The Old Saying, Sikkim For Sikkimese!
And Give Our New Call, All Sikkimese Unite!!**

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Acknowledgements

Every parent in Gujarat wants their children to a merchant. In urban U.P. and Bihar the trend is of becoming the I.A.S. (Indian Administrative Services). In Punjab and Haryana, it is joining the armed forces. And in Sikkim, every parent wants their children to join the State Government services by any means and somehow or the other. And likewise other parents of Sikkim, my and my associate's parents too had and have no other wish for us other than that of joining the lucrative State Government services. However, we have chosen the unconventional path. We were barely fifteen-sixteen years old in the year 1997 when the issue of Employment Exchange Act shook the whole State. But we were firm from that very age that we will dedicate ourselves for protecting and standing the rights of Sikkim and Sikkimese people for the rest of our lives. Till date we have not appeared for a single examination or an interview that has to do anything in becoming a State Government servant despite having earned all the requisite degrees to become the one. But this conviction (fighting for the people) of ours, however for most the time have affected our parents and also our other family member dearly. We have been struggling for a very long time and this book indeed is also part of our struggle. Hence, in preparing this book we first acknowledge our parents and family members who have supported us all these while in every given stage, come what may. At the same time we equally acknowledge the support, insight and inspiration we have been receiving from many leaders of Sikkim and our friends. And last but not the least, special acknowledgement to all our associates who have always been by our side for all these years.

Finally, I would like to thank those who read my Memo (Representation) in manuscript and corrected me with insight information: Shri Nar Bahadur Bhandari, Shri Pahalman Subba, Shri Jigme N. Kazi and Shri Zangpo Sherpa. In preparing this book, I was asked again and again, "*What are you doing Papa?*" For about two months, I was too busy to answer them. Now, as this book is finally complete, the answer to my kids: Sneha Sejal and Shashank Sheil, who have been most understanding, would be, "*I am trying to prepare a book, especially for your generation which will give some amount of information about the Right of the Sikkimese.*"

PREFACE

“If Article 371-F is challenged, Sikkim would no longer be part of India”. This was the verbal remark made by Hon’ble Mr. Justice D. P. Madon on 2nd of February, 1984, during the hearing in R. C. Paudyal’s case on Assembly seat reservation issue of Sikkim. Justice D. P. Madon was one of the Judges among the five-judge constitution bench of the Hon’ble Supreme Court in R. C. Paudyal and Anr. v. Union of India and Ors.

This book, written in the form of a memorandum addressed to the Hon’ble Chief Minister of Sikkim, Shri Pawan Kumar Chamling, mainly concerns the recent Residential Certificate Notification of the State Government and its effect with regard to Article 371-F and the Sikkimese (Sikkim Subjects). However, the main purpose of writing this detailed memo in the form of a book was chiefly aimed at enlightening the Sikkimese people on this vital issue. In this book (with important annexure enclosed herewith), I have tried my best to provide a detailed constitutional transition that took between 1950 till date and of course the legal position of the Sikkimese (Sikkim Subjects) during all these years.

On 26th of April, 1975, Sikkim became an integral part of the Indian Union and as the Hon’ble Supreme Court has mentioned in its judgment in State of Sikkim v. Surendra Prasad Sharma and ors., Article 371-F was introduced in the Constitution of India as a “reciprocation of the understanding on which Sikkim agreed to its merger with India to fulfil the aspirations of the Sikkimese people”. Article 371-F of the Constitution was, is and shall always remain a very strong subject in Sikkimese politics. If I am to explain what Article 371-F stands for in a nutshell it would be: Article 371-F is a special provision of the Constitution for the State of Sikkim which protects the Rights of the Sikkimese. And it is very important for our leaders not to compromise the Rights of the Sikkimese in any given circumstances.

Today, the population of Sikkimese roughly covers about seven lakhs (approx) in 1.25 billion plus population of this country. Having said that, comparatively even with a small population and historical facts of 1970s, today, every Sikkimese is a true national patriot and we Sikkimese proudly call ourselves as proud Indians. After 26th of April, 1975 Sikkim is undisputedly part and parcel of this great democracy and there can be no question of moving backwards. And I personally feel and always advocate “there isn’t any alternative to democracy”. Down the centuries and even today people in different parts of the world are desperately fighting for democracy. However the only drawback of ‘Democracy’ is that politicians tend to compromise everything for winning the votes of the people from different sections of society without realising that decision taken for vote-bank politics could be fatal for society and for the nation at large. No system is perfect. However, if

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'vote-bank' politics is given top priority the people must come forward and make the politicians do the right thing in the interest of the public in general. I, therefore, appeal to the Sikkimese public in general through this book to analyse every word written in this book and moreover go through the enclosed annexure which are very vital and important for us and for the survival of the Indians of Sikkimese origin.

I hope and trust that this book will help many Sikkimese who are really keen on preserving the RIGHTS OF THE SIKKIMese.

Nawin Kiran (Maskey)

To,

Shri Pawan Chamling,
Hon'ble Chief Minister,
Mintokgang, Gangtok,
Sikkim.

Date: 1st July, 2015

Subject: "Residential Certificate" vis-à-vis "Sikkim Subject Certificate/ Certificate of Identification".

Sir,

I, and on behalf of my associates, would like to draw your attention to the recent Notification No. 23/Home/2015, dated: 15.05.2015 of the Home Department, Government of Sikkim, and printed and published in the Sikkim Government Gazette No. 178, dated: 18th May, 2015 (**Annexure 1**). This notification deals with issuing of 'Residential Certificate' by the administration to the person (and their natural legal descendents) who have been residing in Sikkim prior to 26th April 1975.

2. Previous to this Notification, the Home Department, Government of Sikkim, had issued Notification No. 120/Home/2010, dated: 26/10/2010 printed and published at Sikkim Government Gazette No. 591, dated: 1st November 2010 (**Annexure 2**), dealing with the very same issue 'Residential Certificate'. However, no Residential Certificate has been issued to any individual vide Notification No. 120/Home/2010 as on date. I suppose that this time again, the Government's decision to bring about this fresh Notification No. 23/Home/2015 is in view of upcoming urban/municipal polls. It is indeed a fact that the population of Non-Sikkimese (persons and their descendents not registered under Sikkim Subject Regulation, 1961) residing in urban areas of Sikkim is quite high.
3. In this regard, I would like to recall your attention that I had objected to the issue of Notification No. 120/Home/2010, both as an

individual and as a member representing my former organisation ASESE&UA (All Sikkim Educated Self Employed & Unemployed Association) and SSBC (Sikkim Subject Bachao Committee).
(Annexure 3(a) and 3(b))

4. This time again, I express my opposition in toto in bringing the new Executive Order, Notification No. 23/Home/2015, dated: 15.05.2015 of the Home Department, Government of Sikkim, regarding issuing of 'Residential Certificate' to Non-Sikkimese residing in Sikkim for various submitted reasons. Further, I deem it essential and duty-bound to present you a detailed sequence of historical antecedent on issuing of 'Domicile Certificate' to the Sikkimese Origin in the State of Sikkim after 16th of May, 1975. I hope and trust you being the custodian of the Rights of the Sikkimese, that after going through this memorandum and enclosed annexure herewith, you will immediately quash the Residential Certificate Notification No. 23/Home/2015, dated: 15.05.2015 of the Home Department, Government of Sikkim, and come up with better ideas for of Non-Sikkim subjects residing in Sikkim before the 26th of April 1975 which will not affect the Rights of the Sikkimese.
5. First of all, I would like to submit that both these above mentioned notifications (No. 23/Home/2015 and No. 23/Home/2015) have been notified by the Home Department, Government of Sikkim without proper Act or a statute of the State Legislature. On both these occasions the State Government seems to have issued these controversial notifications in a hasty manner and without proper deliberations which would downplay the 'special provision' (in the days to come) with respect of Article 371-F of the Constitution exclusively meant for the protection of the people of Sikkimese Origin (Sikkim Subject and their descendents).
6. Before I place my further detailed submissions and concern with regard to the 'Residential Certificate' notifications of the government, I would like to make it abundantly clear that I am not opposed to any community or individual. My only contention in placing this representation before you and the public at large is for the safeguard and in the interest of the Sikkimese community. Having said that, it is on record that in recent years there have been occasions wherein various organisations of the Non-Sikkimese representing different communities, groups and also individuals have been approaching different forums *viz.* Executive, Legislature and the Judiciary of the

country with petitions and complaints demanding equal 'special provisions' at par with Sikkim Subjects (and their descendents) enshrined exclusively to the Sikkimese read with Article 371-F of the Constitution. Some have even demanded that the 'special provision' enshrined to the Sikkimese should forgo by referring to vague, illogical and false arguments.

7. Further I would like to put on record that in the year 2008, the Legislative Assembly of Sikkim had passed five major legislations namely: (1) Registration of Companies (Amendment) Act, 2008; (2) The Sikkim (Regulation of Societies, Associations and other Voluntary Organisations) Act, 2008; (3) The Sikkim (Reservation of Seats in Private Educational Institutions) Act, 2008; (4) The Sikkim (Sikkim Promotion of Local Employment) Act, 2008 and (5) The Sikkim (Land Tenancy) Act, 2008. As per these Bills passed by the Sikkim Assembly, reservation of different criteria in private institutions was made for the Sikkim Subject/Domicile (Residency) Certificate from 20-50 percentages. However, these vital Bills for the Sikkimese have not been assented and notified till date. One of the major factors for these Bills not to have been assented till date is some of the representatives from Non-Sikkimese community have been constantly opposing and approaching different forums against these Bills which were vital for Sikkimese. If these Bills were to be enacted, 20 to 50 percentage of seats would be mandatory for Sikkimese in NGOs, private institutions etc. here in Sikkim. It is pertinent to mention here that some of the Non-Sikkimese who have been rather acting as 'Anti-Sikkimese' doesn't seem to allow the Sikkimese themselves avail 20 to 50 percentage seats on private firms and institutions on the land of Sikkim.
8. We are Sovereign Socialist Secular Democracy Republic guided by the Constitution. The Constitution guarantees every citizen of this great nation within the parameter of 'fundamental rights' to speak and express one's conviction and opinion freely. Hence, if a person or the group standing opposite us (Sikkimese) have the right to express and demand their views and conviction, in the same manner, we, have been born as an Indian of 'Sikkimese Origin' and being the citizen of this great nation, it, also is our Fundamental Right and Duty to defend our rights enshrined to us by 'Article 371-F' of the Constitution and express our views freely defined under Article 19(1)(a) of the Constitution.

9. India is a large nation with the present population of 1.25 billion plus. On 15th August 1947 when India attained its Independence, the then members of the Constituent Assembly were well aware that a uniform law (civil) across the country was not possible in a nation with such diverse population with regard to culture, language, religion, geography, ethnicity, region, educational background, social status, historical background etc. Per say, if a uniform law was to apply to the whole nation, then certain section would easily dominate the weaker section or the other, which would eventually result in a chaotic situation across the nation and a Unified Bharat and a one-nation theory would not have been possible at all. Hence, when the Constitution was adopted by the Constituent Assembly on 26th November 1949, and came into force *m.e.f.* 26th January 1950, the constitution under various articles, sections and schedules has clearly defined certain special provision for certain section of the society or a region of the country.
10. In the context of Sikkim, as per merger terms, Sikkim was accorded Special Provision vide Article 371-F of the Constitution. At the same time it is important to note that Sikkim is not the only State which has been accorded with special provision within the framework of the Constitution. For instance, the State of Jammu and Kashmir was accorded special provision under Article 370 of the Constitution and under the same, was allowed to constitute their own Constitution. Accordingly, vide special provision *m.e.f.* Article 370, the legislature of the State of J&K is authorised to confer special rights and privileges upon person permanently resident in State as respects- (i) employment under the State Government; (ii) acquisition of immovable property in the State; (iii) settlement in the State; or (iv) Other form of aid from the State Government. In later years many amendments has been made within the constitution bringing about more States like Gujarat, Maharashtra, Assam, Nagaland, Manipur, Andhra Pradesh, Mizoram etc. under the special provision category to meet the regional demands and aspiration of the people of these States.
11. Looking into social aspect within our society, notwithstanding anything in the Constitution, there are different provisions within the Constitution which provide special provision to certain classes or section of the society under the basis of reservation or economic concession to make the underprivileged compete with the rest. To add, the Constitution under Article 331 even provides one of the very