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"The Constitution is more than a written text. It embraces the entire global system of rules and principles which govern the exercise of Constitutional authority."

— Supreme Court of Canada, Reference re Secession of Quebec [1998]

ARTICLE 371F AND THE CONSTITUTIONAL AFTERLIFE OF A KINGDOM

Toward a Transitional Identity Doctrine for Merger-Compact Constitutionalism in India

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Abstract. When a kingdom is absorbed into a Constitutional order, who defines the people it leaves behind? This article argues that the Sikkimese question — who qualifies as 'Sikkimese' for legal purposes — reveals a structural gap in Indian Constitutional doctrine that no existing framework can adequately address. Through close analysis of Article 371F, the Supreme Court's 2023 ruling in *Association of Old Settlers of Sikkim v. Union of India*, the Finance Act 2023, and the Sikkim High Court's 2025 judgment, this article introduces the 'transitional identity doctrine': a Constitutional framework with a four-part judicial test for protecting merger-compact identity categories against ordinary legislative erosion. Drawing on archival material from the Sikkim Code and merger-era documents, and engaging with Indian Constitutional scholarship by *Bhatia, Baxi, Khosla, and Choudhry* alongside comparative insights from Germany, Canada, New Zealand, and Spain, this article demonstrates that Sikkim is a theory-generating case — one whose Constitutional problem cannot be solved by existing doctrine but can be resolved by the framework this article proposes.

Keywords: *Article 371F · Merger-Compact Constitutionalism · Transitional Identity Doctrine · Identity Lock · Constitutional Continuity Protection · Asymmetric Federalism · Finance Act 2023 · Sikkim*

Note on Sources and Methodology: This article adopts a doctrinal-comparative methodology. Primary sources include the Constitutional text of Article 371F, Supreme Court and High Court judgments, parliamentary legislation, the Sikkim Code (Law Department, Government of Sikkim, 2003), the Gangtok Resolution (October 2018), the United States State Department archival telegram series (Foreign Relations of the United States, 1969–76, Vol. E-8), and contemporary parliamentary and political documentation. Secondary sources draw on the Constitutional law literature on asymmetric federalism, Constitutional identity, and State succession. Comparative analysis draws on published Constitutional jurisprudence from Germany, Canada, New Zealand, Denmark/Greenland, Spain, and the United Kingdom. The submission is anonymized for peer review.

I. INTRODUCTION: SIKKIM AS A CONSTITUTIONAL PROBLEM

On the morning of 26 April 1975, the Kingdom of Sikkim ceased to exist. Parliament passed the Constitution (Thirty-sixth Amendment) Act, inserting Article 371F and making Sikkim India's twenty-second State.¹ The referendum that preceded it — 59,637 votes in favour, 1,496 against, with an estimated 20,000 to 40,000 Indian troops deployed in a State of 200,000 people² — was, among other things, a political settlement that carried lasting legal consequences for the identity of the people it absorbed. Those consequences have never been fully worked out.

The Constitutional problem surfaced acutely in 2023. In January, the Supreme Court answered the Sikkimese question in one way and produced a Constitutional storm.³ Parliament answered it in March 2023 and produced a political one.⁴ The Sikkim High Court offered a judicial resolution in 2025 that contains the immediate problem but does not resolve the underlying Constitutional difficulty.⁵ What unites these three moments is a single diagnostic: there is no adequate doctrinal framework in Indian Constitutional law for the question they raise.

¹ Constitution (Thirty-sixth Amendment) Act, 1975. The Statement of Objects and Reasons appended to the Bill recorded that the Sikkim Legislative Assembly had 'unanimously adopted a resolution' on 10 April 1975 declaring that 'the institution of the Chogyal is hereby abolished and Sikkim shall henceforth be a constituent unit of India.' See *The Constitution (Thirty-eighth Amendment) Bill, 1975* [enacted as the Thirty-sixth Amendment], reproduced at constitutionofindia.yolasite.com/36th-amendment.php.

² The referendum of 14 April 1975 returned 59,637 votes in favour of merger and 1,496 against — a 97.5 per cent majority — on a turnout of approximately 59 per cent. The poll was conducted under the presence of an estimated 20,000 to 40,000 Indian troops in a state with a population of only 200,000. The *Sikkim Express* recorded on 16 April 1975: 'The result has exceeded even the most optimistic expectations of the ruling party.' The contested character of the poll is surveyed in Raghu Mathan Pillai, 'Sovereignty by Referendum?' (2002) 44(3) *Indian Journal of International Law* 412, 418–425.

³ *Association of Old Settlers of Sikkim v. Union of India*, 2023 SCC Online SC 38 (decided 13 January 2023), per Shah and Nagarathna JJ. Justice Nagarathna's concurrence would have upheld the Explanation's three substantive clauses as a reasonable classification and struck down only the spousal disqualification proviso.

⁴ Finance Act 2023, s. 2, substituting a new Explanation (v) into s. 10(26AAA): 'Sikkimese' means 'any individual, being a citizen of India, who is domiciled in the State of Sikkim as on the 26th April, 1975.'

⁵ *Dr. Doma T. Bhutia v. Union of India*, WP (C) [2024], HC of Sikkim at Gangtok, per Somadder CJ and Madan Rai J (order 2025), (2025) Live Law (HC of Sikkim) 12. The Court held that the Finance Act 2023 definition operated solely for income tax purposes and did not alter the meaning of 'Sikkimese' under Art. 371F or any other law.

This article argues that the Sikkimese question matters theoretically, not only to the people of Sikkim. It exposes a structural failure in existing doctrine that affects every State operating under an asymmetric Constitutional arrangement. Five features coincide in Sikkim that have never coincided before in Indian Constitutional law: a sovereign kingdom was absorbed through a negotiated compact; the compact generated a specific Constitutional provision expressly preserving the predecessor legal order; that preserved order includes a foundational identity category with concrete material consequences; ordinary legislation subsequently threatened to redefine that category without Constitutional warrant; and no existing doctrine could stop it. The transitional identity doctrine this article proposes is rooted in the Sikkimese experience, but its application extends to every constitutionally embedded identity category that ordinary legislation might erode.

This article proceeds in ten parts. Hereinafter, Part II surveys existing scholarship. Part III grounds the analysis in Sikkim's specific history and the material content of what this article calls the 'identity lock.' Part IV defines Constitutional identity with precision. Part V explains the article's methodology. Part VI derives identity protection from Article 371F's text, structure, purpose, and Constituent intent. Part VII shows why existing doctrine is insufficient. Part VIII analyses the 2023 judgment and the Finance Act 2023. Part IX presents the transitional identity doctrine, its four-part test, and addresses counterarguments. Part X explains why Sikkim matters beyond Sikkim.

II. EXISTING SCHOLARSHIP AND THE GAP THIS ARTICLE FILLS

Four bodies of scholarship are relevant and have until now operated in isolation from one another.⁶

A. Article 371F Scholarship

The scholarship directly on Article 371F is sparse. *Tej Vir Singh's* 1976 article gave the foundational political-legal account of the merger. *Rohan J. Alva's* 2024 contribution is the most analytically sophisticated recent work, arguing that the definitional power over 'Sikkimese' is reserved under Article 371F (k) and cannot be reallocated by Parliament through its taxation power.⁷ Neither Singh nor Alva proposes a general doctrinal framework — a test with defined elements, burden allocation, and levels of scrutiny — capable of guiding Courts and legislators through future disputes. That is this article's primary doctrinal contribution.

⁶ The four bodies of relevant scholarship: (i) Art. 371F specifically: Tej Vir Singh, 'The Anatomy of the Merger' (1976) 11(2) *Journal of Constitutional and Parliamentary Studies* 147; Rohan J. Alva, 'Taxonomy of a Constitutional Promise' (2024) 36(1) *National Law School of India Review* 88; (ii) asymmetric federalism: Gautam Bhatia, 'Power Dispersed' (2022) SSRN 4169659; (iii) constitutional identity: Gary Jeffrey Jacobsohn, 'Constitutional Identity' in Choudhry, Khosla and Mehta (eds.), *Oxford Handbook of the Indian Constitution* (OUP, 2016) 110; Upendra Baxi, 'The Crisis in, and of, Constitutional Identity' in Hirschl and Roznai (eds.), *Deciphering the Genome of Constitutionalism* (CUP, 2024) 89; (iv) state succession: Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 1983.

⁷ Rohan J. Alva, 'Taxonomy of a Constitutional Promise' (2024) 36(1) *National Law School of India Review* 88, 107–112.

B. Asymmetric Federalism Scholarship

Gautam Bhatia's work on asymmetric federalism and Constitutional pluralism demonstrates that India's special provisions 'originated not out of a normative commitment to Constitutional pluralism, but out of political demands that became impossible or too costly to ignore,' and identifies a persistent 'centralising drift' in their application.⁸⁹ This article accepts Bhatia's descriptive account unreservedly. But it contests the normative inference that his analysis implies: that political contingency of origin diminishes the Constitutional force of a provision once enacted and judicially confirmed. The transitional identity doctrine is, among other things, a doctrinal response to the centralising drift Bhatia describes — a mechanism to resist it, specifically, in the domain of merger-compact identity categories.¹⁰

C. Constitutional Identity Scholarship

Gary Jeffrey Jacobsohn defines Constitutional identity as encompassing 'the textual, historical, and philosophical commitments that define what is essential about a particular Constitutional order.'¹¹ *Upendra Baxi's* 2024 contribution adds the prescriptive dimension: Constitutional identity 'is never merely descriptive; it is always also prescriptive — it commits the Constitutional order to treating certain features as inviolable.'¹² Neither scholar applies this framework to sub-national community identity within a merger arrangement. *Madhav Khosla's* account of the amending power establishes that constituted power is bounded by the Constitutional order that creates it,¹³ an argument this article extends to ordinary fiscal power. *Sujit Choudhry's* work on language rights demonstrates that constitutionally embedded minority identity protections persist against majoritarian legislative erosion.¹⁴ This article applies *Choudhry's* framework to Sikkimese civic-territorial identity.

D. The Contribution

No existing work has examined all four bodies of scholarship — Article 371F doctrine, asymmetric federalism theory, Constitutional identity theory, and State succession law — together,

⁸ Gautam Bhatia, 'Power Dispersed: Asymmetric Federalism and Constitutional Pluralism under the Indian Constitution' (2022) SSRN 4169659, Part IV.

⁹ Gautam Bhatia, 'the Indian Constitution through the Lens of Power — III: Asymmetric Federalism', *I•CONnect* (November 2024).

¹⁰ Bhatia's empirical account of centralising drift is accepted; his implicit normative inference that political contingency diminishes constitutional normativity is not. See Gautam Bhatia, 'Power Dispersed' (2022) SSRN 4169659, Part IV. The article's position: centralising drift describes the problem; the transitional identity doctrine provides a doctrinal mechanism to resist it in the specific domain of merger-compact identity categories.

¹¹ Gary Jeffrey Jacobsohn, 'Constitutional Identity' in Choudhry, Khosla and Mehta (eds.), *Oxford Handbook of the Indian Constitution* (OUP, 2016) 110, 115.

¹² Upendra Baxi, 'The Crisis in, and of, Constitutional Identity' in Hirschl and Roznai (eds.), *Deciphering the Genome of Constitutionalism* (CUP, 2024) 89, 92. Baxi's formulation — that constitutional identity is 'never merely descriptive; it is always also prescriptive' — is adopted in this article as the correct characterisation of the Sikkimese civic-territorial category under Art. 371F.

¹³ Madhav Khosla, 'Constitutional Amendment' in Choudhry, Khosla and Mehta (eds.), *Oxford Handbook of the Indian Constitution* (OUP, 2016) 218, 231.

¹⁴ Sujit Choudhry, 'Language' in Choudhry, Khosla and Mehta (eds.), *Oxford Handbook of the Indian Constitution* (OUP, 2016) 180, 195.

and derived from that combination a testable doctrinal framework. More fundamentally, no existing work has framed Sikkim as what this article argues it is: not a local dispute about fiscal exemptions, but the Constitutional problem that reveals what existing doctrine cannot do.

III. SIKKIM'S HISTORY AND THE MATERIAL CONTENT OF THE IDENTITY LOCK

A. The Kingdom, the Compact, and the Diffuse Promise

The Kingdom of Sikkim was not an ordinary princely State. Unlike the 565 princely States that acceded to India between 1947 and 1948, Sikkim chose a protectorate arrangement under the 1950 Indo-Sikkim Treaty — maintaining internal sovereignty while conceding defence, external affairs, and communications to India.¹⁵ This arrangement lasted twenty-five years, during which Sikkim operated its own legal system, legislature, administrative apparatus, and crucially, its own system for defining who was a Sikkimese subject. The protectorate was, in American diplomatic estimation as late as September 1974, an arrangement of uncertain content: a US State Department briefing to Secretary Kissinger observed that it was 'not clear the extent to which Sikkim retains its right to autonomy in regard to its internal affairs.'

The merger was rapid and contested. Anti-monarchy agitation — with documented Indian intelligence involvement — produced the May 8, 1973 tripartite agreement between the *Chogyal*, the Government of India, and Sikkimese political parties. This produced the 1974 elections, conducted under Indian Electoral Commission supervision, which returned *Kazi Lhendup Dorjee's* Sikkim National Congress with 31 of 32 Assembly seats. The Assembly resolved on 10 April 1975 that 'the institution of the *Chogyal* is hereby abolished and Sikkim shall henceforth be a Constituent unit of India.' The referendum followed four days later.

The legal obligations India assumed upon merger were never articulated in a single negotiated instrument. They were distributed across the Government of Sikkim Act 1974, the referendum, the Thirty-sixth Amendment, and what became Article 371F. This diffuse and implicit character of the merger compact is not a defect in historical narration; it is a Constitutional fact of legal significance. It means that the obligations the absorbing State assumed cannot be read off a single document. They must be inferred from the purpose and architecture of Article 371F as a whole — which is precisely the interpretive methodology this article employs.

B. The Material Content of the Identity Lock

The phrase 'identity lock' describes a specific Constitutional mechanism: the preservation of pre-merger legal categories by Article 371F (k), operating under the non obstante clause, in a way that binds Parliament and the Courts. The Sikkim Law Department's publication of the pre-merger

¹⁵ Indo-Sikkim Treaty, 5 December 1950, Art. III: India was responsible for Sikkim's defense, external affairs and communications; Sikkim retained autonomy in internal affairs. A US State Department briefing memorandum to Secretary Kissinger, September 1974, noted: 'It is not clear the extent to which Sikkim retains its right to autonomy in regard to its internal affairs specified in the 1950 treaty.' Foreign Relations of the United States, 1969–76, Vol. E-8, Doc. 253 (history.state.gov).

laws as the 'Sikkim Code' in 2003 — explicitly recognising that Article 371F (k) required their preservation¹⁶ — confirms that the identity lock is not metaphorical. It has concrete, material content. Three domains illustrate this.

The first is land. Land Revenue Order No. 1 of 1917 — a royal proclamation issued by Political Officer C.A. Bell on 17 May 1917, preserved today under Article 371F(k) as a continuing pre-merger law — prohibits any Bhutia or Lepcha from selling, mortgaging, or sub-letting land to any person other than a Bhutia or Lepcha without state sanction.¹⁷ This century-old order is enforceable only if 'Bhutia' and 'Lepcha' remain legally defined categories. The identity lock, here, is not an abstract Constitutional principle: it is a land restriction that protects indigenous communities from alienation and has done so for over a hundred years.

The second is political representation. A reserved seat for the Buddhist Sangha in the Sikkim Legislative Assembly — preserved by Articles 371F (f) and (k) — is candidatable and electable only by Sangha members.¹⁸ This seat functions only if 'Buddhist Sangha member' is a legally preserved and defined category. It is the clearest demonstration that the identity lock is structural: alter the identity categories, and you alter the electoral map of Sikkimese democracy.

The third domain is contemporary civic practice. The Gangtok Resolution of October 2018 — signed by Constitutional law experts, anthropologists, and former senior officials — called on the Government of India to extend Scheduled Tribe status to all Sikkimese communities 'in alignment with the provisions of Article 371(F).'¹⁹ *Bhaichung Bhutia's* demand in 2021 for an Inner Line Permit was explicitly framed as a measure to 'safeguard Article 371(F).'²⁰ These are not populist reactions. They reflect a community understanding — shared across ethnic, linguistic, and professional lines — that Article 371F is a living Constitutional guarantee. Constitutional scholars should take this community understanding seriously as evidence of the provision's continuing normative force.

¹⁶ Government of Sikkim, Law and Parliamentary Affairs Department, *A Brief History* (2024), sikkim.gov.in. The Department published the pre-merger laws as 'Sikkim Code' (2003), the 'Sikkim Law Manual' (2018), and the companion 'Pre-Merger Central Acts — Extension and Enforcement' (2018). These official compilations are primary evidence that the Government of Sikkim treats Art. 371F (k)'s continuing-laws clause as a living legal obligation.

¹⁷ Land Revenue Order No. 1 of 1917, Sikkim, reproduced in *Sikkim Code*, Vol. II, and Ch. I (Law Department, Government of Sikkim, 2003): 'No Bhutia or Lepcha is to be allowed to sell, mortgage or sub-let any of their land to any person other than a Bhutia or Lepcha without the express sanction of the Durbar.' This proclamation issued by the Political Officer for Sikkim C.A. Bell on 17 May 1917 and now preserved under Art. 371F (k), is over a century old. Any redefinition of who is 'Bhutia' or 'Lepcha' directly alters who can own land under it.

¹⁸ The Buddhist Sangha constituency: a dedicated legislative seat, reserved for candidates from and elected only by members of the Buddhist Sangha, preserved under Arts. 371F (f) and (k). See Pooja Thapa and Anand Inbanathan, 'Religion and State in Sikkim: The Place of the Buddhist Sangha', ISEC Working Paper 548 (Institute for Social and Economic Change, 2019).

¹⁹ The Gangtok Resolution, adopted at the Sikkim Summit for Tribal Status, 26 October 2018, called on the Government of India to extend Scheduled Tribe status to all communities of Sikkim 'in alignment with the provisions of Article 371(F) of the Constitution of India.' Signatories included constitutional law expert Shomona Khanna, anthropologist T.B. Subba, former Ministry of Tribal Affairs Secretary Hrushikesh Panda, and former Union Minister Kishore Chandra Deo. Reported in *Gulf News*, 27 October 2018.

²⁰ Former India football captain Bhaichung Bhutia, founder of the Hamro Sikkim Party, stated on 20 August 2021: 'The implementation of Inner Line Permit in Sikkim is the only measure which can safeguard Article 371(F) which protects and preserves the rights of the Sikkimese people.' The Deccan Herald, 20 August 2021 (PTI). The ILP demand reflects the community's understanding that the identity-lock created by Art. 371F is existentially threatened by demographic change — a threat that statutory redefinition of 'Sikkimese' would accelerate.

C. The Identity Lock as Constitutional Entrenchment

The 'identity lock' is not merely a descriptive label for what Article 371F preserves. It is a Constitutional mechanism that requires theoretical elaboration, because the type of Constitutional protection it provides is different from — and in some respects stronger than — ordinary Constitutional entrenchment.

Ordinary Constitutional entrenchment, as *Khosla* explains, requires Parliament to use a special procedure — the Article 368 amendment — to alter the Constitution's provisions.²¹ The identity lock achieves something structurally different: it places pre-merger identity categories in a protected zone that ordinary legislation cannot reach (because it would require confronting Article 371F's non obstante clause and the 'competent Legislature' question), while formal Constitutional amendment could theoretically reach it (because Article 368 can, in principle, amend any Constitutional provision not protected by the basic structure). The identity lock is therefore neither full Constitutional entrenchment nor ordinary statutory protection. This article proposes calling it *Constitutional Continuity Protection*: a Constitutional mechanism that preserves a pre-merger legal category in its original form as a default, modifiable only through constitutionally designated channels.

What exactly is locked? The civic-territorial definition of 'Sikkim Subject' as it existed under the Sikkim Subject Regulations 1961 on 25 April 1975 — the day before the appointed day. That definition is the baseline. Parliament may extend welfare benefits to a broader class without disturbing it. But Parliament cannot substitute a new, incompatible definition for that baseline through ordinary legislation, because doing so would be altering a category whose content is locked by the non obstante clause into the Constitutional order.

Who holds the key? This article argues that two key holders exist at different levels. At the level of ordinary modification, the key is held by the Sikkim Legislative Assembly — the democratically accountable institution of the Sikkimese community, whose consent is required for any alteration of the identity category for non-fiscal purposes. At the level of fundamental alteration, the key is held by Parliament acting under Article 368 — with the caveat that such alteration must not damage the basic structure dimensions of Article 371F's federal architecture.

When can it be unlocked? The lock permits three things: (a) fiscal extensions that do not alter the civic-territorial baseline, provided they are expressly ring-fenced; (b) modifications by the Sikkim Legislative Assembly with community consent; (c) formal Constitutional amendment under Article 368. It prevents one thing: unilateral redefinition by Parliament through ordinary legislation, without community consent, disguised as fiscal or administrative action. The Finance Act 2023 falls on the wrong side of this line only because it lacks the express ring-fence. With that ring-fence, it would be a permissible fiscal extension. Without it, it is a potential identity substitution — depending on how Courts read it in future non-fiscal contexts.

D. Constitutional Timeline

Year	Event	Legal Instrument
1917	Bhutia/Lepcha land restriction enacted	Land Revenue Order No. 1
1950	Indo-Sikkim protectorate arrangement	Indo-Sikkim Treaty, Art. III
1961	Sikkim Subject status defined	Sikkim Subject Regulations 1961
1973	Tripartite agreement; democratic transition	May 8, 1973 Agreement
1975	Referendum and merger	36th Amendment Act; Article 371F
2003	Pre-merger laws compiled: 'Sikkim Code'	Law Department, Government of Sikkim
2008	Income tax exemption created	Finance Act 2008; s. 10(26AAA)
2018	Gangtok Resolution on tribal status	Community demand citing Art. 371F
2023	Supreme Court ruling	Association of Old Settlers
2023	Parliament redefines 'Sikkimese'	Finance Act 2023
2025	High Court limits Finance Act definition	Dr. Doma T Bhutia v. Union of India

IV. DEFINING CONSTITUTIONAL IDENTITY: WHAT IS PROTECTED?

The term 'Sikkimese identity' requires precision. Four distinct concepts appear in the discourse and must be distinguished.

Ethnic identity — shared cultural characteristics (language, ancestry, custom) — is not constitutionally protected as such by Article 371F. Ethnicity is not a legal category in Indian Constitutional law.

Civic-territorial identity — the legal status of being a Sikkim Subject under the pre-merger Sikkim Subject Regulations 1961. The Regulations defined a Sikkim Subject as any person of Sikkimese origin or any person resident in Sikkim for at least 15 years who had registered on the relevant roll. This was always a civic-territorial category; open to residents of diverse backgrounds who made Sikkim their permanent home — not a purely ethnic category. It is this category that Article 371F (k) preserves.

Constitutional identity — following *Jacobsohn and Baxi*²²²³ — the constitutionally embedded commitments that define what is essential about the Sikkimese Constitutional arrangement. Baxi's prescriptive formulation is precise: once the civic-territorial Sikkimese category is embedded in Article 371F, the Constitutional order is committed to treating its preservation as non-negotiable.

Political identity — the allocation of political representation along community lines under Article 371F (f) — is derived from and dependent on civic-territorial identity. The reserved-seat architecture requires defined community categories. Allowing ordinary legislation to redefine the civic-territorial category is therefore not merely a fiscal matter; it alters the foundations of Sikkimese democratic self-government.

Period	Definition of 'Sikkimese'	Legal Source	Constitutional Status
Pre-merger (1961–1975)	Sikkim Subject (Sikkimese origin or 15-yr residence + registration)	Sikkim Subject Regulations 1961	Preserved by Art. 371F(k)
2008–2023	Enrolled in Subjects Register	s. 10(26AAA) as originally enacted	Partial reflection of preserved category
Post-2023	Indian citizen domiciled in Sikkim on 26 April 1975	Finance Act 2023	Broader than Constitutional category; ring-fenced to income tax by HC (2025)

V. METHODOLOGY

This article adopts a doctrinal-comparative methodology.²⁴ The primary sources are: Constitutional text (Article 371F and related provisions), Supreme Court and High Courts judgments, parliamentary legislation (Finance Acts 2008 and 2023), the Sikkim Code and pre-merger Regulations, parliamentary debates, and archival documents including the merger-era statement of objects and the US State Department telegram series. The comparative analysis draws on published Constitutional jurisprudence from Germany, Canada, New Zealand, Denmark/Greenland, Spain, and the United Kingdom. Secondary sources are drawn from the Constitutional law literature on asymmetric federalism, Constitutional identity, and State succession.

The article reads Article 371F using four established methods of Indian Constitutional interpretation: textual construction, structural inference, purposive reading, and the Constitutional identity methodology endorsed by *Jacobsohn and Baxi*. These methods are not alternatives — they are cumulative. Where all four converge on the same conclusion, as they do here, the interpretive result commands strong authority.

²⁴ This article adopts a doctrinal-comparative methodology. The primary sources are: constitutional text (Art. 371F), Supreme Court and High Court judgments, parliamentary legislation (Finance Act 2008 and 2023), the Sikkim Code and pre-merger regulations, parliamentary debates, and archival documents (the Sikkim Code, the Gangtok Resolution 2018, the US State Department telegram series). The comparative analysis draws on published constitutional jurisprudence of Germany, Canada, New Zealand, Denmark/Greenland, Spain, and the United Kingdom. Secondary sources are drawn from the constitutional law literature on asymmetric federalism, constitutional identity, and state succession. The article does not rely on interviews or non-public sources.

VI. DERIVING IDENTITY PROTECTION FROM ARTICLE 371F

A. The Textual Argument

Article 371F's non obstante clause — 'Notwithstanding anything in this Constitution' — was confirmed as constitutionally operative, not merely declaratory, in *State of Sikkim v. Surendra Prasad Sharma* (1994).²⁵ Clause (k) preserves 'all laws in force immediately before the appointed day,' including the Sikkim Subject Regulations 1961.²⁶ A law that defines the Sikkimese people is a law that defines Sikkimese identity. To preserve that law under a non obstante clause is, by necessary implication, to preserve the identity category it creates with Constitutional priority.

B. The Structural Argument

Articles 371F (f) and (k) are interlocking provisions.²⁷ Clause (f) protects representation along community lines; clause (k) preserves the legal framework that defines those lines. This interlocking is not incidental: the Buddhist Sangha seat, the Bhutia/Lepcha land restriction, and the ethnic seat reservations all require legally defined community categories to operate. Allowing Parliament to redefine the civic-territorial category through fiscal legislation alters the structural foundations of the entire arrangement — without touching Article 371F's text.

C. The Purposive Argument

The Statement of Objects and Reasons appended to the Thirty-sixth Amendment Bill established that the special provisions of Article 371F were designed to ensure that the people of Sikkim 'retain their way of life, their institutions, and their legal customs.'²⁸ A purposive construction, consistently applied by the Supreme Court to special Constitutional provisions, requires that clause (k)'s 'continuing laws' be read so as to fulfil, not frustrate, this purpose.

D. The Constitutional Identity Argument

Once the civic-territorial category of 'Sikkim Subject' is embedded in Article 371F, Baxi's prescriptive formulation applies: the Constitutional order is committed to treating its preservation as

²⁵ Art. 371F opens: 'Notwithstanding anything in this Constitution, the following provisions shall apply to the State of Sikkim.' Confirmed as constitutionally operative in *State of Sikkim v. Surendra Prasad Sharma*, (1994) 5 SCC 282, paras 15–19.

²⁶ Art. 371F(k): 'all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue in force therein until amended or repealed by a competent Legislature or other competent authority.'

²⁷ *R.C. Poudyal v. Union of India*, (1994) Supp (1) SCC 324. Arts. 371F(f) and (k) are interlocking: (f) protects representation along community lines; (k) preserves the legal definitions those lines depend on. The Buddhist Sangha seat (fn 9) demonstrates this: it functions only if 'Sangha member' is a legally defined category preserved under (k).

inviolable.²⁹ *S.R. Bommai* (1994) establishes that federal units have constitutionally guaranteed identities not reducible to central legislative preference;³⁰ *Kesavananda* (1973) suggests that the federalism dimension of Article 371F may itself form part of basic structure.³¹ Together: this article argues that Sikkimese Constitutional identity is a constitutionally protected interest, not a historical courtesy.

VII. WHY EXISTING CONSTITUTIONAL DOCTRINE IS INSUFFICIENT

Four existing doctrinal frameworks might appear to address the Sikkimese question. Each is insufficient. Understanding why they fail is a necessary precondition for accepting why a new doctrine is needed.

A. Articles 14 and 21: Individual Rights, Collective Problem

Article 21's identity right, confirmed in *Puttaswamy*, is individual — it protects a person's right to define and express their own identity.³² It does not address the Constitutional status of a community's collective identity category embedded in a merger compact. Article 14's reasonable classification test is a negative constraint — it prohibits arbitrary classifications — but imposes no positive obligation to preserve a constitutionally embedded identity category.³³ The Finance Act 2023's new definition may well survive an Article 14 challenge; it is not obviously irrational. But surviving Article 14 is not the same as being constitutionally authorized to alter an Article 371F-protected category.

B. The Basic Structure Doctrine: Wrong Level of Operation

The basic structure doctrine prevents Parliament from altering the Constitution's basic features through Article 368 amendment.³⁴ The Finance Act 2023 amended Section 10(26AAA) of the Income Tax Act through ordinary legislation — not Article 371F itself. The doctrine therefore cannot directly invalidate it.³⁵ This is not a gap in the basic structure doctrine's logic; it is a structural

³⁰ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1, para 251; paras 88–89 per Sawant J on federalism as basic structure.

³¹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225. The federalism dimension of Art. 371F — reflecting constitutional absorption of a sovereign kingdom — may itself constitute a basic structure element.

³² *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, para 127 per Chandrachud J: 'The right to privacy ... extends to the identity of the individual.'

³³ Art. 14's reasonable classification test: *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75. Art. 21's extension to identity: *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1. Art. 14 is a negative constraint (prohibiting arbitrary classifications); it does not impose a positive obligation to preserve a constitutionally embedded identity category. Art. 21's identity right is individual, not collective.

³⁵ The Finance Act 2023 amended s. 10(26AAA) of the Income Tax Act — not Art. 371F — through ordinary legislation. The basic structure doctrine, operating on Art. 368 amendments, cannot directly invalidate it.

consequence of how the Finance Act was framed. The gap requires a doctrine operating at the level of ordinary legislation measured against merger-compact obligations.

C. The Federalism Framework: Systemic, Not Specific

S.R. Bommai (1994) protects the general architecture of Centre-State relations.³⁶ It tells us Parliament cannot abolish State Governments. It does not generate specific protection for an individual State's constitutionally embedded identity categories. The level of specificity required — protection of a particular State's particular merger-compact identity category against ordinary legislative erosion — is beyond the federalism framework's existing reach.

D. Article 371F (m) and the Paradox of the Disabled Protector

Article 371F(m) bars all courts, including the Supreme Court, from jurisdiction over disputes arising out of pre-merger treaties or instruments.³⁷ This provision creates a Constitutional paradox: the merger compact is protected from judicial interference by the very clause designed to honour it. Article 371F (m) means that a challenge to Parliament's redefinition of 'Sikkimese' grounded directly in the pre-merger merger compact instruments cannot be taken to Court. This makes it even more urgent that a doctrinal framework — operating through the Constitutional text of Article 371F (k) rather than through the pre-merger instruments directly — be available to Courts.

E. The Five-Point Structural Gap

Taken together, these failures reveal a five-point structural gap in Indian Constitutional doctrine.³⁸ Articles 14 and 21 cannot protect a community's collective identity category. The basic structure doctrine operates only on Constitutional amendments. The federalism doctrine protects institutional existence, not specific identity categories. Article 371F (m)'s ouster clause disables direct challenge through merger compact instruments. And no existing doctrine operates simultaneously at the level of ordinary legislation, collective community identity, and merger-compact Constitutional obligation. The transitional identity doctrine is designed to operate at exactly this intersection.

³⁶ *S.R. Bommai* protects the general architecture of centre-state relations — the existence of state governments and their institutional powers. It does not protect the specific content of a single state's constitutionally embedded identity categories.

³⁷ Art. 371F(m): 'Neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day.'

³⁸ The five-point gap is developed in the body at Section VII.E. Art. 371F (m)'s ouster clause — barring all courts from jurisdiction over pre-merger treaty disputes — is discussed at Section VII.D.

VIII. FROM KINGDOM TO TAX CODE: SECTION 10(26AAA) AND THE 2023 JUDGMENT

A. The Design and Defect of the Exemption

Section 10(26AAA), inserted by Finance Act 2008 with retrospective effect from assessment year 1989–90, provides an income tax exemption for 'Sikkimese individuals'.³⁹ The Explanation defined 'Sikkimese' by reference to the Subjects Register.⁴⁰ The design excluded long-resident Indians who had not enrolled in the Register because enrolment required relinquishing Indian citizenship — a condition many could not or would not meet. A gendered disqualification proviso additionally denied the exemption to Sikkimese women who married non-Sikkimese men.⁴¹

B. The 2023 Judgment: Equity and Its Unintended Consequence

The Supreme Court's ruling in *Association of Old Settlers* was constitutionally correct on equality grounds. By extending 'Sikkimese' beyond the Subjects Register to all 1975-domiciliaries, the Court produced a broader statutory definition that coexists in tension with the Constitutional category preserved by Article 371F (k). The tension was not the Court's intention. It was the doctrinal consequence of applying ordinary equality analysis to a question that requires a merger-compact framework to answer.

The Finance Act 2023 codified this broader definition without an express ring-fence to income tax purposes or an affirmation of the Constitutional category's continued force elsewhere.⁴² The Sikkim Legislative Assembly responded with a unanimous resolution calling for withdrawal of the amendment. Protests, prohibitory orders, and political declarations followed. The community's reaction was constitutionally informed, not merely political: once Parliament enacts the only statutory definition of 'Sikkimese' in Indian law, that definition will be read by Courts in other contexts — land law, employment, electoral rolls — unless Parliament expressly says otherwise.

The stakes of definitional instability were demonstrated — dramatically — by the 'foreign origin' crisis to the majority community of February 2023. Justice *Nagarathna's* concurring judgment in *Association of Old Settlers* described Sikkimese Nepalese as 'persons of foreign origin settled in Sikkim.' The characterization immediately triggered a 48-hour State-wide *bandh* and the resignation of Sikkim's Health Minister. Review petitions were filed by the State of Sikkim, individual petitioners, and — most significantly — the Ministry of Home Affairs itself, which stated on the

³⁹ Section 10(26AAA), Income Tax Act 1961, inserted by Finance Act 2008 with retrospective effect from assessment year 1989–90.

⁴⁰ *Association of Old Settlers*, 2023 SCC online SC 38, paras 6–11 (on the Subjects Register and its limitations).

⁴¹ The original proviso to s. 10(26AAA) denied the exemption to a Sikkimese woman who married a non-Sikkimese individual on or after 1 April 2008. This violated Arts. 14, 15, and 21 simultaneously and was struck down in *Association of Old Settlers*, 2023 SCC online SC 38.

record: 'the sanctity of Article 371F of the Constitution safeguards the Sikkimese identity, which should not be diluted.'⁴³ The Court modified the judgment on 8 February 2023.⁴⁴

The 'foreign origin' episode proves two propositions central to this article. First, the identity of *Sikkimese Nepalis* — the majority community in Sikkim, present in the kingdom since the Eighteenth century and enrolled as Sikkim Subjects under the 1961 Regulations — is constitutionally grounded in Article 371F, not in ethnicity or ancestral origin. The Union Government said so explicitly: they are 'Nepali of Sikkimese origin,' not persons of foreign origin. Second, the episode reveals the Constitutional danger of definitional instability. By broadening 'Sikkimese' beyond the Subjects Register in the same judgment, the Court inadvertently created a hierarchy — original subjects versus old settlers — that the 'foreign origin' language then made legally explicit. The transitional identity doctrine, by anchoring the Constitutional category to the civic-territorial baseline of the Sikkim Subject Regulations, prevents this hierarchy from being judicially or legislatively created.

The High Court's 2025 holding is notable for a reason the article has not yet emphasized: its language. The Court, in upholding the Finance Act 2023 definition, held that 'the sanctity of the rights and privileges reserved for genuine indigenous Sikkimese ... carefully preserved and protected under Article 371F (k) of the Constitution of India' was not touched by the expanded definition.⁴⁵ The Court thereby acknowledged — explicitly — that there exists a class of 'genuine indigenous Sikkimese' whose Constitutional rights under Article 371F (k) are distinct from, and cannot be affected by, the Finance Act's broader domicile-based definition. This is precisely the civic-territorial category this article argues is constitutionally protected. The High Court intuited the answer; the transitional identity doctrine gives that intuition a doctrinal framework.

But judicial containment is not structural insulation. The Bhutia/Lepcha land restriction, the Buddhist Sangha seat, the tribal-status demands of the Gangtok Resolution — each of these will eventually generate litigation that asks: for *this* purpose, which definition of 'Sikkimese' governs?

⁴³ Ministry of Home Affairs, Government of India, official statement, 6 February 2023 (via @HMOIndia): 'Government of India reiterated its position about the sanctity of Article 371F of the Constitution that safeguards the Sikkimese identity, which should not be diluted. Further, the observation in the said order about persons of foreign origin settled in Sikkim like Nepalese the major community should be reviewed as the said persons are Nepali of Sikkimese origin.' The MHA simultaneously filed a review petition in the Supreme Court, making it the first instance of the Union Government formally petitioning for modification of a Supreme Court judgment on Sikkimese identity grounds. See also Indra Hang Subba MP, statement reported in *India Today NE*, 6 February 2023; and *Open Magazine*, 'Tensions Mount in Sikkim over Judicial Dilution of Identity', 8 February 2023.

⁴⁴ *Bharat Basnet and Anr. v. Union of India*, Modification Order dated 8 February 2023, per Shah and Nagarathna JJ: 'We think it just and proper to correct certain words in paras 10A and 68.8 of my judgment by making the following corrections: In paragraph 10A, the second sentence stands deleted.' The modification order is reported at Bar and Bench, 8 February 2023. The significance of the episode for this article is not the error itself but the institutional response to it: the State of Sikkim, the Union of India, individual petitioners, and the Lok Sabha member for Sikkim all filed review/modification applications, each grounding their objection in Article 371F's constitutional guarantee of Sikkimese identity. The breadth of the institutional response confirms that the Sikkimese identity category is understood — across the executive, legislative, and community levels — as constitutionally protected and not available for casual judicial or legislative redefinition.

The transitional identity doctrine provides the answer that the High Court's 2025 judgment gestured towards but did not fully supply.

IX. THE TRANSITIONAL IDENTITY DOCTRINE: PRINCIPLE, TEST, AND OBJECTIONS

A. The Principle

When a State merger creates, by Constitutional provision, an obligation to preserve the pre-merger laws and legal categories of the absorbed jurisdiction, the identity-defining categories within those preserved laws acquire heightened Constitutional status. They may not be modified by ordinary parliamentary legislation without satisfying a demanding Constitutional standard, and Parliament bears the burden of demonstrating satisfaction of that standard.

B. The Four-Part Judicial Test

A pre-merger identity category qualifies for protection where four conditions are satisfied:⁴⁶

First — pre-merger legal existence. The category existed before merger with defined legal consequences for ownership, employment, political representation, or civic status. The 'Sikkim Subject' category, in force since 1961, determined land ownership (the 1917 Order), Government employment preferences, and electoral representation.

Second — merger-arrangement embeddedness. The category is incorporated into the merger arrangement expressly or by necessary implication. The Sikkim Subject category is expressly preserved by Article 371F (k) and impliedly preserved by Article 371F (f).

Third — ongoing legal consequence. The category continues to affect political, land, employment, or representation rights. The Sikkimese category currently affects reserved Assembly seats, land ownership under the 1917 Order, the Buddhist Sangha constituency, and income tax exemptions.

Fourth — substantial effect. The proposed alteration substantially affects the protected community's relationship with those rights. It produces concrete, identifiable consequences — not trivial, theoretical, or de minimis effects.

Where all four conditions are satisfied, the burden shifts to Parliament to demonstrate Constitutional justification. The protected community does not bear the burden of proving unconstitutionality; Parliament bears the burden of proving that its action falls within a constitutionally permitted category of modification.

⁴⁶ The four-part test draws by analogy on Art. 14's 'reasonable classification' doctrine (*Anwar Ali Sarkar*), adding a constitutional embeddedness dimension specific to merger-compact obligations. The 'substantial effect' limb is calibrated by analogy with the 'substantial question of law' threshold under Art. 132.

C. Three Categories of Legislative Intervention

Fiscal extensions — welfare expansions that do not alter the underlying Constitutional category — are permissible, provided Parliament expressly ring-fences the extended definition to the fiscal purpose and affirms the Constitutional category's continued force for all other legal purposes. The Finance Act 2023 is a fiscal extension that fails only in omitting these two provisions.

Definitional modifications — changes that go beyond welfare extension — require: a demonstrated Constitutional purpose; proportionality to that purpose; and consent of the affected community through the Sikkim Legislative Assembly, as the 'competent Legislature' for identity-defining purposes.

Identity substitutions — replacements of the Constitutional category with a different, incompatible category — are constitutionally impermissible through ordinary legislation and require formal Constitutional amendment under Article 368.⁴⁷

The doctrine's limits must be stated explicitly.⁴⁸ It does not apply to identity categories that were not legally defined before merger. It does not prevent the Sikkim Legislative Assembly from modifying the civic-territorial category with community consent. It does not affect the validity of existing pre-merger laws; it constrains only new legislation that alters their foundational identity categories. And it applies to the legislative output, not to Parliament's intent: a well-intentioned welfare extension that fails to ring-fence its definition can still produce a constitutionally problematic result.

D. Objection I: The Competent Legislature

The strongest textual objection: Article 371F (k) preserves pre-merger laws 'until amended or repealed by a competent Legislature'; Parliament is a competent Legislature; therefore Parliament may amend the Sikkim Subject category.⁴⁹

The response requires a distinction that the objection collapses: general legislative competence is not the same as Constitutional authority to alter a merger-compact identity category. Indian Constitutional law has always recognized that Parliament may have the general power to

⁴⁷ Principle against colourable legislation: *K.C. Gajapati Narayan Deo v. State of Orissa*, AIR 1953 SC 375. Parliament cannot use its fiscal power to achieve indirectly — redefinition of a constitutionally protected identity category — what would require constitutional amendment if pursued directly.

⁴⁸ The limits of the transitional identity doctrine: (1) It does not apply to identity categories that were not legally defined before merger. (2) It does not prevent the Sikkim Legislative Assembly from modifying the civic-territorial category with community consent. (3) It does not apply to welfare legislation that extends benefits beyond the constitutional category without altering the category itself, provided Parliament provides an express ring-fence. (4) It does not affect the constitutional validity of existing pre-merger laws — it only constrains new legislation that purports to alter their foundational identity categories.

⁴⁹ The 'competent Legislature' objection in full: Art. 371F (k) preserves pre-merger laws 'until amended or repealed by a competent Legislature'; Parliament is a competent Legislature; therefore Parliament may amend the Sikkim Subject category. The transitional identity doctrine's response (in text) is that 'competent Legislature' for identity-defining purposes means the Sikkim Legislative Assembly, not Parliament acting under Entry 82 of List I. Parliament bears the burden of demonstrating that the specific law it seeks to modify falls within its competence as measured against Art. 371F's special constitutional architecture.

legislate in a field while lacking the specific Constitutional authority to legislate in a particular way within that field. Parliament has general legislative power over taxation; it does not have the power to use that taxation power to circumvent a Constitutional provision — *K.C. Gajapati Narayan Deo* established this principle against colourable legislation.⁵⁰ The argument from Article 371F (k) is analogous: Parliament may be 'competent' in the general sense to legislate on fiscal matters, but it is not constitutionally authorized to redefine, within that legislation, the foundational identity category that Article 371F (k) places under a non obstante clause.

The correct 'competent Legislature' for the specific purpose of altering the civic-territorial Sikkimese category is the Sikkim Legislative Assembly. The pre-merger Sikkim Subject Regulations were enacted by the Sikkimese constituent authority; their successor, for identity-defining purposes, is the elected representative institution of the Sikkimese community. Article 371A for Nagaland provides the explicit Constitutional model: Parliament cannot apply its laws to Naga customary law without the Nagaland Assembly's resolution.⁵¹ The transitional identity doctrine derives an equivalent requirement for Sikkim from Article 371F's structure, where it is implicit rather than express. General competence to tax does not include Constitutional authority to alter a merger-compact identity category preserved under a non obstante clause.

E. Objection II: The Purely Fiscal Argument

Parliament has unrestricted power to define terms within its tax legislation; 'Sikkimese' in Section 10(26AAA) has no Constitutional implications beyond the Income Tax Act.

This objection fails for two reasons. First, Parliament enacted the only statutory definition of 'Sikkimese' in Indian law without ring-fencing it to the Income Tax Act. Second, the principle against colourable legislation⁵² applies: Parliament cannot use its fiscal power to achieve indirectly — definitional substitution of a constitutionally protected identity category — what would require Constitutional amendment if pursued directly.

F. Objection III: The Bhatia Challenge

Bhatia's centralising drift account implies that because asymmetric provisions are politically contingent and structurally fragile, they cannot bear significant doctrinal weight.

⁵¹ Art. 371A (Nagaland): 'no Act of Parliament in respect of (i) religious or social practices of the Nagas; (ii) Naga customary law and procedure; ... shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.' Art. 371G (Mizoram) contains an equivalent provision. These are the Indian constitutional system's only explicit community-consent requirements for parliamentary override of protected identity categories — and they confirm that the constitutional order recognizes the principle, even if Art. 371F does not express it explicitly.

The response separates Bhatia's empirical diagnosis — which this article accepts — from his implicit normative inference.⁵³ Constitutional force does not depend on nobility of political origin. The Ninth Schedule was politically motivated; Article 370 was a compromise; Article 371F was the product of a contested merger. None of that affects their Constitutional normativity once enacted and judicially confirmed. If anything, Bhatia's account of centralising drift strengthens the case for the transitional identity doctrine: it is precisely *because* India's asymmetric provisions are structurally fragile that a doctrinal mechanism to resist their erosion is needed.

G. Remedies: What Follows if a Court Accepts the Doctrine?

A Constitutional doctrine that provides no guidance on remedies is an incomplete doctrine. This article proposes that a Court accepting the transitional identity doctrine would have four remedial options, in order of invasiveness.

First: Interpretive ring-fencing. The Court reads the Finance Act 2023 definition as applying only for income tax purposes — precisely the approach taken by the Sikkim High Court in 2025.⁵⁴ This is the least invasive remedy: it preserves the legislation while constraining its scope. Its weakness is that it depends on each future Court making the same interpretive choice, without legislative clarity. It is an appropriate first-order remedy for a fiscal extension that lacks an express ring-fence.

Second: Declaration of Constitutional incompatibility. The Court declares that the Finance Act 2023 definition, in the absence of an express ring-fence, is constitutionally incompatible with Article 371F (k) to the extent that it operates beyond income tax purposes. This declaration does not strike down the legislation but invites Parliament to cure the defect — by adding the express ring-fence and the affirmation of the Constitutional category's continued force. This remedy is proportionate and respectful of parliamentary authority.

Third: Read-down with prospective effect. The court reads down the Finance Act definition to exclude its application in any legal context other than income tax, with the read-down operative prospectively. This provides immediate structural insulation without retrospective disruption to existing tax assessments.

Fourth: Suspension of invalidity pending legislative remedy. Drawing on the approach of the Supreme Court of Canada in *Reference re Manitoba Language Rights*, [1985] 1 SCR 721, the Court declares the Finance Act definition constitutionally deficient but suspends the operation of that declaration for a defined period — say, twelve months — to allow Parliament to enact the appropriate ring-fence. This remedy is appropriate if the Court considers that immediate invalidation would produce greater Constitutional disruption than the deficiency it addresses.

Of these four options, this article submits that the second remedy — declaration of Constitutional incompatibility with an invitation to Parliament to add the ring-fence — is the most appropriate for the specific defect in the Finance Act 2023. It acknowledges the legislature's fiscal authority while vindicating the Constitutional category's protected status. And it gives Parliament the opportunity to do what this article argues it should have done in 2023: enact the only statutory definition of 'Sikkimese' in Indian law with an express provision affirming that the civic-territorial Constitutional category remains in force for all non-fiscal legal purposes.

X. WHY SIKKIM MATTERS BEYOND SIKKIM

A. Sikkim as a Theory-Generating Case, Not a Curiosity

Sikkim is a small State on India's north-eastern border, with a population of roughly 650,000. Constitutional scholars outside India could be forgiven for treating it as a marginal case — interesting locally but theoretically thin. This Part argues the opposite. Sikkim is the case that generates Constitutional theory from the inside of a specific and irreducible experience. The theory this article proposes — the transitional identity doctrine — could not have been developed from a more familiar case. It required a case where: a sovereign kingdom was absorbed; the absorption was constitutionally formalised through a provision that expressly preserved the predecessor legal order; that order contained a foundational identity category with concrete material content; and ordinary legislation then threatened to erode that category without the Constitutional vocabulary to stop it. This combination does not appear anywhere else in Indian Constitutional law. Sikkim made the problem visible.

B. What Sikkim Reveals About Merger Compacts

The Sikkimese question reveals something about merger compacts that Indian Constitutional law has not yet acknowledged: a merger compact is not a one-time political settlement. It is an on-going legal relationship that generates obligations on the absorbing State that persist indefinitely after the moment of incorporation.

The 1917 Land Revenue Order is the sharpest illustration of this. A century-old royal proclamation of the *Chogyal's* Durbar is today a live legal instrument — preserved under Article 371F (k), enforceable in Sikkimese courts, directly affecting who can buy and sell land in Gangtok. India did not simply absorb a territory in 1975; it absorbed a legal order with a century of accumulated obligations. The merger compact imposes the duty to take those obligations seriously — not as historical curiosities but as legally binding instruments.

The international law of State succession encodes this principle in the Vienna Convention (1983): the obligations of the Predecessor State do not evaporate upon absorption by the successor.⁵⁵

⁵⁵ Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 8 April 1983, UN Doc. A/CONF.117/14. India has not ratified the Convention. It is cited here not as directly applicable domestic law but as evidence of a broader principle of legal continuity that also appears in the domestic constitutional practice of multiple

India has not ratified the Convention, but the principle reflects customary international law. More importantly, it reflects a Constitutional logic that Article 371F itself embodies. The merger compact was not completed on 26 April 1975. It is completed — or broken — each time the Constitutional promise embedded in that date is honoured or ignored.

C. What Sikkim Reveals About Constitutional Identity

Baxi's account of Constitutional identity as prescriptive commits the Constitutional order to treating certain features as inviolable.⁵⁶ Sikkim reveals the specific form that this commitment takes when applied to sub-national community identity within a merged Constitutional order. The civic-territorial category of 'Sikkim Subject' is inviolable in a precise sense: it cannot be redefined by ordinary legislative majority without engaging the affected community through its representative institutions.

The identity lock — the Constitutional mechanism by which Article 371F (k) freezes a pre-merger identity category — is this article's central conceptual contribution. The lock is not permanent: it permits change through proper channels (the Sikkim Legislative Assembly, with community consent; or formal Constitutional amendment). What it prevents is unilateral dissolution by ordinary Parliament. This is what *Baxi* means by 'inviolable': not unchangeable, but protected from change by forces other than those the Constitutional order designates as authorized to make it.

The Finance Act 2023 episode illustrates the mechanism of Constitutional identity erosion. It does not happen through dramatic rupture — through an explicit amendment of Article 371F. It happens through a Finance Act passed on a weekday, redefining a single term for fiscal purposes, without ring-fencing, without community consultation, without Constitutional amendment. Each such act, in isolation, may be technically defensible. Cumulatively, they constitute what *Baxi* calls the 'crisis in, and of, Constitutional identity': the incremental detachment of a Constitutional commitment from the doctrinal mechanisms that make it enforceable.

D. What Sikkim Reveals About Asymmetric Federalism

Bhatia diagnoses a centralising drift in India's asymmetric federal provisions. Sikkim reveals the specific doctrinal mechanism through which this drift operates in the identity domain: the redefinition of protected identity categories through ordinary legislation, below the threshold of Constitutional amendment, and therefore invisible to the basic structure doctrine. The Finance Act 2023 is not an aberration; it is the mechanism of asymmetric federalism's erosion rendered visible.

The implications for Articles 371A and 371G are direct. Article 371A protects Naga customary law from parliamentary override without the Nagaland Assembly's resolution. Article 371G does the same for Mizoram. These provisions are explicit — they contain the consent requirement in their text. Article 371F does not. The transitional identity doctrine fills this gap

jurisdictions — Germany, New Zealand, and Canada among them. The claim is that this principle of continuity is reflected in Art. 371F's own constitutional logic, not that the Convention is binding on Indian courts.

through Constitutional inference, deriving an implicit consent requirement from the interlocking architecture of Article 371F (f) and (k). What Article 371A says expressly, the transitional identity doctrine derives from Article 371F structurally.

The wider implication is this: every special Constitutional provision in India depends, for its continuing force, on a doctrinal framework that prevents its erosion through ordinary legislation. The basic structure doctrine operates only on Constitutional amendments — not on the accumulation of ordinary legislative acts that achieve the same result by smaller steps. The transitional identity doctrine provides what the basic structure doctrine cannot: a Constitutional brake at the level of ordinary legislation, operating specifically in the domain of merger-compact identity obligations.

E. The Comparative Convergence: A Universal Principle

The comparative material in this article converges on a single principle: merger arrangements create on-going identity obligations that the absorbing State cannot unilaterally dissolve without engaging the affected community through its representative institutions. This principle emerges from treaty law (New Zealand),⁵⁷ Constitutional compact theory (Canada),⁵⁸ explicit eternity clauses (Germany),⁵⁹ self-government legislation (Greenland),⁶⁰ autonomous community law (Spain),⁶¹ and Constitutional convention (UK).⁶² The convergence of six different jurisdictions on the same principle through six different doctrinal routes is strong evidence that the principle is not parochial but reflects a general Constitutional logic — one that the transitional identity doctrine renders available to Indian Courts.

XI. CONCLUSION

This article began with a question — who qualifies as 'Sikkimese' for legal purposes? — And has argued throughout that it is a Constitutional question of the first order, not a fiscal one. On a textual, structural, purposive, and Constitutional identity reading, Article 371F contains, this article submits, an implied guarantee of civic-territorial identity-preservation that ordinary parliamentary legislation cannot dissolve.

The article demonstrated that existing doctrine — Articles 14 and 21, the basic structure doctrine, the federalism framework, and Article 371F (m) — is structurally incapable of answering the question. Each doctrine fails at a specific point: individual versus collective, amendment versus ordinary legislation, systemic versus specific, and the paradox of a protector whose enforcement

⁵⁷ Treaty of Waitangi 1840 (NZ); Treaty of Waitangi Act 1975 (NZ). The Waitangi Tribunal provides on-going constitutional accountability for Crown actions inconsistent with Treaty principles.

⁵⁸ *Reference re Secession of Quebec*, [1998] 2 SCR 217, paras 49, 67–76.

⁵⁹ Treaty on the Establishment of German Unity (*Einigungsvertrag*), 31 August 1990, BGBl II 889, Arts. 8–9 (transitional protection for GDR laws). See Donald Kommers and Russell Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 3rd edn. (Duke UP, 2012) 71.

⁶⁰ Greenland Home Rule Act 1978 (Denmark); Greenland Self-Government Act 2009 (Denmark).

⁶¹ Constitution of Spain 1978, Arts. 143–158; STC 31/2010 (Constitutional Court of Spain) (Statute of Autonomy of Catalonia).

⁶² Scotland Act 1998 (UK), s. 28(8) (Sewel Convention). *R (Miller) v. Secretary of State for Exiting the European Union*, [2017] UKSC 5: the Sewel Convention constrains the political exercise of parliamentary sovereignty.

mechanism is disabled. The transitional identity doctrine fills this five-point structural gap with a four-part test that is concrete, principled, and operationalisable — with defined elements, burden allocation, levels of scrutiny, explicit limits, and a specific remedy for the Finance Act 2023.

Engaging with Bhatia, this article accepts the empirical diagnosis of institutional fragility in India's asymmetric provisions and proposes the transitional identity doctrine as a doctrinal mechanism to resist ordinary legislative erosion of constitutionally embedded identity categories. Engaging with *Baxi*, the article adopts his prescriptive formulation of Constitutional identity and applies it to the civic-territorial Sikkimese category. Engaging with *Khosla*, the article extends his account of the boundedness of constituted power to ordinary fiscal power. Engaging with *Choudhry*, the article transposes his language-rights framework to the merger-compact identity context.

Sikkim is this article's occasion, not its limit. The doctrine it develops — from a century-old royal land order, a Buddhist *Sangha* legislative seat, a referendum of contested legitimacy, and a Finance Act passed fifty years later — is applicable wherever a merger compact has created a constitutionally embedded identity category that ordinary legislation threatens to erode. Sikkim made the problem visible. The transitional identity doctrine makes it answerable.

Ambedkar warned the Constituent Assembly that the Constitution's survival depends on those called to work it.⁶³ The people of Sikkim have worked their Constitution in good faith for five decades — through a contested merger, through successive Governments, through the loss of a kingdom and the construction of a State. What the Constitutional order owes them — and every community protected by a special provision — is the acknowledgment that a merger compact is a legal commitment, that an identity lock is a Constitutional instrument, and that the question of who is Sikkimese is not one that Parliament can resolve by fiscal legislation alone. It is a question the Constitutional order, properly understood, already has the resources to answer — if it chooses to use them.

⁶³ Dr. B.R. Ambedkar, Constituent Assembly Debates, Vol. XI, 25 November 1949, at 979. The warning that the Constitution's survival depends on those called to work it implies a corollary: when the people of a state have worked their constitution in good faith for five decades, the constitutional order owes them fidelity to its original commitments — including the commitment implicit in the merger compact that produced Art. 371F.



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