

**Mr. Speaker:** There are no amendments to the clauses

The question is

"That clauses 2 to 4, clause 1, the Enacting Formula and the Title stand part of the Bill"

*The motion was adopted*

*Clauses 2 to 4, clause 1, the Enacting Formula and the Title were added to the Bill*

**Shri Datar:** I beg to move:

"That the Bill be passed"

**Mr. Speaker:** The question is:

"That the Bill be passed"

*The motion was adopted.*

13-24 hrs

#### ARMED FORCES (ASSAM AND MANIPUR) SPECIAL POWERS BILL

**The Minister of Home Affairs (Pandit G. B. Pant):** I beg to move:

"That the Bill to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in the State of Assam and the Union Territory of Manipur, be taken into consideration"

As the House is aware, in the Naga Hills District and Tuensang area, owing to the hostile activities of certain misguided sections of the Nagas, Government has to take special measures to restore normalcy. The matter has come up before this House from time to time. So, it is not necessary for me to give a connected account of all that has happened there.

Sometime back, in 1956, the armed troops had to be brought to render assistance in this Naga Hills—Tuensang area. At that time, a regulation, more or less on the lines of this Bill, was applicable to that area. The

misguided Nagas have been indulging in mischievous activities and the administration there took special measures to quell their activities and to put an end to the hostilities there. With the combined efforts of all concerned, there has been considerable improvement in that particular area which was formerly disturbed.

Last year more or less about this time, a convention of Naga representatives met and they resolved that hostilities should be brought to an end, that the claim for independence should be abandoned and that the Government of India should be asked to help in measures for relief, etc. Since then, those representatives have been there in that Naga Unit, as it is now called. Hon Members might just recall that we had to bring a Bill for that purpose, in order to give a sort of self-contained status to this unit. There has been, as I said, through the use of forces against the miscreants and the extension of works of relief, etc., great improvement in this area, but the hostile Nagas who have not yet reconciled themselves to the line that has commended itself to a vast majority in the Naga Union Territory, have now shifted their scene of activity from this unit to other neighbouring units of Assam and Manipur. There they are indulging in arson, murder, loot, dacoity, etc. So, it has become necessary to adopt effective measures for the protection of the people in those areas. In order to enable the armed forces to handle the situation effectively, wherever such problems arise hereafter, it has been considered necessary to introduce this Bill.

This is a very simple measure. It only seeks to protect the steps that the armed forces might have to take in the disturbed areas. It is not possible over such a vast area to depute civil magistrates to accompany the armed forces wherever there may

be trouble, because it happens unexpectedly. They might intrude into any village and action has to be taken immediately.

So, the regulation that was imposed and that is imposed in the Naga Unit is now being virtually extended to the disturbed areas of Assam and Manipur. But it will be applied only to such parts as have been declared by the administrations concerned as being disturbed only when some dacoities or other heinous offences have been committed in a locality and the administration has reached the conclusion that it is necessary to declare that area as a "disturbed area"; then such a declaration will have to be made and after such a declaration has been made, then alone the provisions of this Bill will be applicable to that particular area. I do not think it is necessary for me to say more in this connection. It is a simple measure. It does not create any new offences. It only provides for the protection of the army when it has to deal with hostile Nagas. As I said, they have been virtually squeezed out of the Naga land. Now things have improved there. Schools are running. Those school buildings which had been burnt by them are being re-built and the children are attending schools. In other ways too, normal life is being restored. But some among them do not take a reasonable view of things and they go out of their area and attack the Assam border or the Manipur border and raid villages there and commit similar crimes in those areas. It is with a view to put an end to those wanton raids etc. that this Bill has been framed. An Ordinance had to be issued, as in the affected areas of Assam and Manipur, necessary protection became urgently imperative and immediately necessary. So, this Bill has to be introduced. I hope the House will adopt it unanimously. I move.

Mr. Speaker: Motion moved:

"That the Bill to enable certain special powers to be conferred

upon members of the Armed Forces in disturbed areas in the State of Assam and the Union Territory of Manipur be taken into consideration"

Shri Mahanty (Dhenkanal): I want to raise a point of order. My point of order is that we cannot proceed with this Bill unless certain constitutional obligations imposed under article 352(1) of the Constitution are fulfilled. It can be said that this particular legislation does not come under the impact of the emergency conditions as enumerated in Chapter XVIII of the Constitution. But certain parts of it do directly come under Chapter XVIII of the Indian Constitution. In this context, I invite your attention to clause (6) of the Bill, which says:

"No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act."

This immediately takes away, abrogates, pinches, frustrates the right to constitutional remedy which has been given in article 32(1) of the Constitution. Here let me bring it to your notice that article 32(1) of the Constitution ensures and guarantees the constitutional remedies. It says

"The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

Then the next clause says:

"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranta* and *certiorari*, whichever may be appropriate, for the enforcement

[Shri Mahanty]

of any of the rights conferred by this Part."

Then sub-clause (4) of this article says:

"The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

Now, what has been provided for in this Constitution? It has been provided for in the Constitution that whenever an emergency is declared by the President under article 352(1) of the Constitution, then the entire Chapter III of the Constitution shall be suspended. Naturally, if there is an emergency, article 32(1) can be abrogated and then, and then only, clause 6 can stand the test of any appropriateness.

But we find that no emergency has been proclaimed. We are fully aware that the Nagas have been a menace. We are happy that the hostile Nagas are brought to book. That the Naga problem should be settled as quickly as possible, there can be no two opinions in this House. But that is a completely different issue from what I have been trying to raise in this point of order.

It has to be conceded that there are enough materials to show that there is an emergency. But the emergency provisions of the Constitution have been invoked without the President declaring an emergency. My point is very simple. Certain emergency provisions in Chapter XVIII of the Constitution have been invoked, have been incorporated in this legislation, in clause 6, without the President declaring an emergency. Had the President declared an emergency under article 352(1) then, of course, the whole of Chapter III of the Constitution could have been suspended. They could have invoked the emergency provision for the whole of Assam or any part thereof. But that has not been done.

The President has not declared any emergency.

We are aware of the fact that the President has issued an Ordinance. But issuing an Ordinance is not a proclamation as contemplated under article 352 of the Constitution. Now, in view of the fact that no emergency has been proclaimed, how can clause 6 stand the test which has been laid down in the Constitution?

**Mr. Speaker:** Am I to understand that the hon. Member wants to say that under the Constitution everybody has got a right to complain against any person, whoever he might be, if he does something and, therefore, legal proceedings can be taken, and this is a restriction upon that right?

**Shri Mahanty:** In this clause it is stated:

"No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government."

This is in conflict with article 32. This restricts that constitutional safeguard. The rights conferred by this Part can be taken away only in an emergency.

**Mr. Speaker:** That is to say, insofar as the right conferred by this Part is guaranteed, as and when a particular case occurs, the Supreme Court will decide whether that case comes within these items or not. Those rights that have been guaranteed under this Chapter, for which proceedings can be taken in the Supreme Court, they ought not to be prevented. That is the object of the point of order. Now who is to decide whether a right is one which has been guaranteed under this article? The Supreme Court will decide it.

**Shri Mahanty:** My humble submission is this. I am not asking the Chair

to judge whether it is *ultra vires* or *intra vires*. My only limited and humble submission is that this Bill does not fulfil the mandatory obligations of article 352(1) of the Constitution, and so far as that aspect is concerned, it is certainly within your competence and within the competence of the House to take cognizance of that fact. How can we rush through that legislation with our eyes wide open when it has obviously this constitutional lacuna?

**Mr. Speaker:** I am putting my questions only for the purpose of clarification. I am not able to follow the argument. Do I understand him to say, when he referred to clause 6, that clause 6 takes away the right of the individual to move the Supreme Court in other proceedings? He refers in this regard to article 32. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed, i.e., the right to move the Supreme Court in so far as what is guaranteed is in relation to those rights guaranteed by that particular Part. Then, it is for the Supreme Court to decide whether this infringes those rights, otherwise the Supreme Court does not come into the question. Therefore as and when a particular case arises the Supreme Court will decide it. If that is not the point...

**Shri Mahanty:** "The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution". That is article 32(4).

**Mr. Speaker:** "The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution". It does not appear that there is any desire to suspend this article.

**Shri Mahanty:** There is no desire but the effect is there. Article 359 may also kindly be seen. Article 359 says:

"Where a Proclamation of Emergency is in operation, the

President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended....."

Now, clause 6 in fact.....

**Mr. Speaker:** All that I am concerned is that why should I decide whether a particular point comes within Part III and whether by this Bill the jurisdiction of the Supreme Court is taken away. Supreme Court's jurisdiction continues notwithstanding this Bill regarding matters for which no provision is made or which do not come under Part III. Whether a particular matter or right comes under Part III or not will be decided by the Supreme Court in each case. If it finds that it comes under Part III, it will declare that this does not affect so long as the Constitution has not been amended. Why should I take the responsibility in advance to say that a particular matter, when the matter is not before us, i.e., the jurisdiction of Supreme Court is taken away. Jurisdiction of the Supreme Court cannot be taken away in so far as certain rights are guaranteed under the Constitution.

With respect to the other thing as to what exactly comes under Part III and what does not come under it is a matter for consideration when each matter occurs.

I wanted to know one other thing. Shri Mahanty had referred to article 352. Does he mean that this Bill cannot be passed?

**Shri Mahanty:** That is what I am submitting.

**Mr. Speaker:** It is the duty of the President from time to time to declare when there is internal disturbance that a particular portion is a disturbed

[Mr. Speaker]

area. Thereafter he can confer particular rights. Whether the delegation of that right, as it appears to the Union Government, is right under this Proclamation.....

**Shri Mahanty:** Sir, the whole trouble is . .

**Mr. Speaker:** If I have understood him correctly, he did not want to raise a point of order under article 352. But since he referred again and again to article 352(1), I want to know whether he means to say that the declaration of an emergency is the exclusive jurisdiction of the President and that this particular portion amounts to a declaration of an emergency when a notification is issued, which right is the exclusive right of the President and the Union and the State Governments cannot do so. Is that his point?

**Shri Mahanty:** My humble submission is

**Mr. Speaker:** If that is not his point he need not elaborate on that.

**Shri Mahanty:** My point is exactly what you have stated, probably in a more cogent manner. What I am urging is that this cannot be brought into force unless an emergency has been declared under article 352(1).

**Mr. Speaker:** I understand his point.

**Shri Mahanty:** Then, another thing is there. You will kindly notice that it uses a word which is unknown to the Constitution. In the Constitution only the words "external aggression or internal disturbance" have been used. Now this legislation in clause 2, sub-clause (b) uses the words "disturbed area" and it defines "disturbed area" as an area which is disturbed.

**Mr. Speaker:** That is the same thing as declaring a particular area by issuing a Proclamation.

**Shri Tyagi (Dehra Dun):** How can it be disturbed without disturbance?

**Shri Mahanty:** I have no quarrel with this legislation. What I say is that unless the President makes a declaration under article 352(1), we cannot proceed with this legislation as there is no justification to proceed with it.

**Dr. Krishnaswami (Chingleput):** Sir, I submit that this Bill is out of order. The Bill contravenes the provisions of the Constitution since it does not satisfy certain Constitutional requirements. It seeks to confer powers on the Armed Forces, and to take complete control of areas in the State of Assam when such areas have been declared to be a disturbed area. This virtually transfers the executive power in respect of such areas to the Centre. This is not tantamount to calling of the military in aid of the civil power to quell a local disturbance where the State authority retains the power to regulate the movement of the forces.

As you will realise, under List III—Concurrent List—the power is given to the States at times to requisition armed forces for quelling local disturbance. What the Bill contemplates is to make over the area, under clause 4, completely to the Armed Forces thereby divesting the State of all powers in respect of that area. This is a state of affairs that can be brought about only by a Proclamation of emergency promulgated under article 352 of the Constitution. The Bill seeks to circumvent these provisions and attempts to usurp the powers of the State not warranted by the Constitution.

**Mr. Speaker:** This proclamation is issued under clause 3 by the Government of Assam or the Chief Commissioner of Manipur.

**Dr. Krishnaswami:** The proclamation of declaring a disturbed area is different. But in clause 4 the power

is given practically to the Armed Forces and the civil authority is divested of all control

**Mr. Speaker:** Therefore they need not declare it a disturbed area

**Dr. Krishnaswami:** Who?

**Mr. Speaker:** The Government of Assam

**Dr. Krishnaswami:** The Government of Assam is entitled under the Constitution to declare any area to be a disturbed area and to requisition military

**Mr. Speaker:** Not under the Constitution

**Dr. Krishnaswami:** and to requisition military forces for certain purposes from the Centre Under the Concurrent List, Item 1, it is stated that the use of naval, military or any other armed forces of the Union shall be excluded and it shall be used only in aid of the civil power It is only in aid of the civil power that these military forces can be given to quell local disturbances and therefore which is a disturbed area But what I am suggesting is that if clause 4 of the Bill had been drafted on the lines of the relevant section in the Code of Criminal Procedure, this objection would have been amply met But the Bill goes further than the requisition of military power to aid the civil power for, as it is, clause 4 is virtually a replica of the corresponding provisions in the Defence of India Rules made under the Defence of India Act after a proclamation of emergency was issued under the Government of India Act, 1935

**Mr. Speaker:** My difficulty is that the hon Member refers to the Armed Forces going to the help of the civil power Now, it is true that the armed forces can be requisitioned to aid the civil power even under the existing law But the existing law is sought to be amplified by clothing the local Government with greater power to entrust the entire administration to

the Armed Forces. They are not taking away the power from the State Government On the other hand, the State Government, under the existing law, can only bring the Armed Forces in aid of the civil power. They can entrust, if they so like—we will assume—in a particular case they do not want to entrust it to the Police or to the local authorities but they want to hand over thoroughly, entirely and completely to the Armed Forces. Today the State Government has no such jurisdiction Therefore, far from taking away any jurisdiction vested in the State Government today this clothes the State Government with additional power to entirely place it in the hands of the Armed Forces or requisition the Armed Forces under the ordinary law in aid of the civil power Therefore, so far as the State Government is concerned, no jurisdiction of the State Government is taken away Additional jurisdiction is sought to be given How does it affect the rights of the State Government? They can invoke and they can declare a particular area as disturbed or they need not If they do not want the civil authorities to be superseded, they need not declare It is not the Union Government that declares, it is the State Government that declares

**Dr. Krishnaswami:** That sort of power cannot be conferred

**Mr. Speaker:** That is another matter

**Dr. Krishnaswami:** unless it is done under a Proclamation under article 353(b) of the Constitution

**Mr. Speaker:** Therefore, it amounts to this Jurisdiction ought not to be conferred on the State Government to declare a state of emergency in any disturbed area and it is only the President that can do so Again, it resolves to Shri Mahanty's objection

**Dr. Krishnaswami:** It is slightly different Under article 353(b) whatever power is entrusted to the army, it can only be responsible to the Centre. That is the main issue that

[Dr. Krishnaswami]

I wish to bring before you. The power of the State Government to declare it to be a disturbed area is not called into question. What is called into question is whether we can have ordinarily the same powers which would be exercised by the army in a state of emergency.

I also wish to point out that this raises an important issue as to whether the Chair could take cognisance of a point of order relating to any unconstitutionality. On this matter, there have been several rulings and I should like to place them also for your kind consideration. The view that questions of competence and questions of *ultra vires* should be left to the courts of law and should not be settled by the Chair was first propounded by the President of the Legislative Assembly on a point of order raised in the Multi-Unit Co-operative Societies Bill in 1942. But, there was a subsequent occasion when this ruling has been qualified. In 1951, the Speaker of the Provisional Parliament, Shri Mavalankar, on a point of order raised by Shri Naziruddin Ahmad, on clause 11 of the Code of Criminal Procedure (Amendment) Bill, suggested it was *ultra vires* and observed that the Chair is generally not willing to disallow any measure or any clause being considered on its own merits and the House to its own decision on such matters, except in cases where the matter is so obviously *ultra vires* that the Chair will intervene. I suggest, here, the unconstitutionality is so patent that we are justified in requesting the Chair to rule that the measure is *ultra vires*.

Shri Naushir Bharucha (East Khadesh): Sir, I am afraid the points of order raised by both of my learned friends cannot be upheld. The first point is that by putting down a clause in clause 6 that no prosecution, suit or other legal proceeding shall be instituted . . . etc, the power of the Supreme Court under article 32 is detracted from. That is not so. It has already been held that these words

"or other legal proceedings" are what is known as *ejusdem generis* and they, have to be construed narrowly, that is, whether the legal proceedings are of the same kind as prosecution.

The second point is, even assuming that the wider legal interpretation is given, so long as the constitutional right under article 32 stands, that right cannot be taken away or abridged. In the first place, therefore, I submit that clause 6 is not so wide in its interpretation as to encroach upon article 32.

The next point that has been advanced is that under article 352 an emergency has to be proclaimed before anything can be done. That also is not correct. It is up to the President and if he feels satisfied that there is so much of disturbance on such a scale, it may be, even the provisions of the Constitution may have to be suspended, then only he may issue a proclamation. For instance, in case of war he may issue a proclamation. He is not bound to issue a proclamation. Therefore, for the purposes of this Bill, he is not bound to issue a proclamation. If he is not bound to issue a proclamation, it cannot be said that it is a condition precedent to this Bill being brought before the House.

The next point which my hon friend Dr Krishnaswami has brought is that the administration of the particular area which is described as disturbed area is bound to be handed over to the military. Nothing of the kind. Because, the executive power in all other respects will function normally except that where there is a disturbance, instead of a magistrate issuing the order for firing, it is now proposed that particular officers of particular ranks shall do that. I do not for a moment defend the Bill on its merits. On that I have got a lot to say. Now I am looking at it from the strict legal point of view. For instance, assuming for a moment a disturbed area is notified, the executive administration in the disturbed area will

continue. If any land revenue is to be collected or anything has to be done in that area, that would be normally done. In no respect whatsoever the executive authority is taken away. In fact, as you observed, some additional facility or convenience or powers have been placed at the disposal of the particular Government. From all these points of view, while I say that I have a lot to say against the Bill on merits, from the legal aspect, there is no flaw.

**Pandit G. B. Pant:** I wonder if the arguments advanced by the hon. Members really call for any elaborate reply. We have to see what the Bill really provides for and what is its scope and what encroachment, if any, it makes on the Constitution or on the executive authority of the State. The Bill only says that in any area, which has been declared as disturbed by the local Government, the army may take steps in order to prevent the commission of offences or in order to arrest the offenders. No power is transferred from the executive authority. The magistrates are there. The police is there. All other activities which are usually in the hands of the civil administration will, even hereafter, be in their hands. If you will kindly refer to clause 5, it says,

"Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest."

So that, the police has to deal with the matter, the magistrate has to deal with the matter and there is hardly anything which calls for any sort of interference with the executive power of the State. Before the army can act in this manner, it has to be empowered in a way by the State Government itself, because unless it has declared that area as disturbed, no one can proceed under clause 4.

As to the reference to the articles, I think they are altogether irrelevant. Reference has been made to article 352 where a proclamation of the nature contemplated in article 352 has to be made in order that action may be taken to deprive the State Government of its constitutional powers. That is the only purpose. The article says:

"While a Proclamation of Emergency is in operation, then—

- (a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised,
- (b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, " and so on.

It is plain enough that if such a Proclamation is issued, then the constitutional authority, the legislative authority and executive authority may altogether or partially be transferred from the State authorities to the Central authority. It is only then that a Proclamation of this nature will be necessary. In no other case can a Proclamation be necessary. I do not see how such a condition precedent can be invoked by any one in this case. There is no provision like that. Under the Constitution, the Supreme Court has supreme authority regardless of anything that may be done. With regard to *habeas corpus*, with regard to other matters, article 226 and other articles come in. Nobody can deprive the Supreme Court of this authority. All that is said here is that the local Government may make use of the army, if it so chooses in the manner provided in this Bill, and can use the army only for this limited purpose, and thereafter the ordinary processes of law are to be followed.



14 hrs.

[Pandit G. B. Pant]

So, I submit that there is absolutely no point of law involved. There are already provisions in the Criminal Procedure Code to the effect that in many cases including cases of this nature, no proceedings can be initiated in courts without the sanction of the Government. So, there is nothing unusual in this Bill, and I do not think the points of order have any validity whatsoever.

**Mr. Speaker:** There are two or three points that have been raised.

Does the hon. Minister mean that this is only in addition to the provisions of the Criminal Procedure Code? Normally, under the Criminal Procedure Code, whenever a magistrate wants the assistance of the armed forces to disperse an assembly, he can send a requisition and the armed forces can come, but they cannot shoot; they can use force only to some extent, and that for the purpose of dispersing the assembly. Here, in a disturbed area if any person, whether an assembly or otherwise, breaks the law or is attempting to break the law, the army can shoot, that is what is said

In clause 4(a) it is said

"if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;"

It is not merely dispersal of the assembly. A person who does in a disturbed area many other things which are said to be bad can be shot

at. Is this supposed to be in addition to the powers of the armed forces who are sent in requisition? They can be taken not only for dispersing assemblies, but for these purposes also, if it is declared a disturbed area.

**Pandit G. B. Pant:** Under this clause, the armed forces can act in the areas which have been declared as disturbed by the Government of that particular area. They have been given powers to act in this manner, but they have to arrest these people wherever they can arrest them, and there are provisions in the Constitution as well as in the Code of Criminal Procedure under which minimum force has to be used. That governs every clause in every Bill that we may introduce here. So, these persons have the authority to act only within the limits that have been prescribed generally in the Criminal Procedure Code or in the Constitution.

**Mr. Speaker:** Article 21 says that no person shall be deprived of his life or personal liberty except according to procedure established by law. Does the hon. Minister feel that this is the procedure, he can shoot if it is a disturbed area, that is the procedure prescribed by law. He can shoot anybody can be killed or shot at, but is this the procedure prescribed by law, does it go to that extent? Article 21 says that no person can be deprived of his life. Here any person can be deprived of his life by any commissioned officer, he can shoot.

**Pandit G. B. Pant:** No, no. In accordance with law, that is the law passed by this House.

**Mr. Speaker:** In accordance with the procedure established by law. That is, is it open to this House to say when once it is declared a disturbed area, he can shoot and that is in accordance with the procedure established by law?

**Pandit G. B. Pant:** But that does not raise any point of order. I submit that if the House does not approve of

this and says it does not want to give this power, the House can throw out this Bill

**Mr. Speaker:** What was pointed out was that this is a right guaranteed under the Constitution. Except in accordance with the procedure established by law, nobody's life can be taken away, and when any such thing is done, the right to move the Supreme Court is guaranteed under article 32. Clause 6 of the Bill says other legal proceedings cannot be instituted except with the permission of the Central Government. That is, the Supreme Court's right to intervene in this matter so far as rights guaranteed under the Constitution are concerned is affected, or sought to be restricted by the previous sanction of the Central Government.

**Pandit G. B. Pant:** No. So far as the right of the Supreme Court is concerned, it is not controlled by clause 6 because the Supreme Court has, under article 226, plenary power in all cases. It is not bound by anything that this clause or any other clause may prescribe, but such a provision exists in the Criminal Procedure Code too that no court will take notice of any such case unless the Government has given its sanction. Section 132 is there, it is exactly in the same terms.

**Mr. Speaker:** Does it mean then that for moving the Supreme Court for appropriate proceedings, the Central Government's sanction is necessary?

**Pandit G. B. Pant:** No.

**The Deputy Minister of Law (Shri Hajarnavis):** May I say a word? It has been held by the Supreme Court that a clause of this nature is not sufficient to deprive either the Supreme Court or the High Court

**Shri Tyagi:** Which other courts can be deprived?

**Shri Hajarnavis:** Civil courts only. Shri Bharucha was right in his in-

terpretation, and it is supported by the authority of the Supreme Court itself, that this applies only to civil courts, where there is a prosecution in a civil court.

**Mr. Speaker:** Therefore, what he means to say is that by the ruling of the Supreme Court, notwithstanding a provision of this kind in any law, the right guaranteed under the Constitution to any person who wants to move the Supreme Court is not taken away. This does not stand in the way.

The second point is this. When an emergency is declared, Parliament can empower the local Government itself to exercise those powers. Parliament can authorise any person, including the local Government or the Commissioner, as the case may be. The normal law is abrogated and extraordinary powers are vested. An emergency can be declared only by the President and that power is sought to be given away to the State Government and to the Commissioner.

The other point is that the extraordinary power to abrogate the ordinary law is conferred on the President, and that after he declares that there is a state of emergency. Now, this state of emergency is sought to be declared, or that power to declare a state of emergency so far as that particular area is concerned, is given to the State Government and the Commissioner. Thereafter, these powers for the armed forces to shoot and do other things will come in. What is the answer to that point?

**Pandit G. B. Pant:** To which point?

**Mr. Speaker:** The point is, the Constitution allows the President to declare any particular area as a disturbed area, or to declare an emergency though it does not use the expression "disturbed area" here. The President can declare a state of emergency, for the whole of the country or a particular area of the country. In which case it is on account of any disturbance in a particular area. Thereafter, many

[Mr. Speaker]

consequences follow. That right is now sought to be given away to the State Government, that is, the right to declare certain areas as disturbed. . .

**Shri Tyagi:** Without using the word "emergency".

**Pandit G. B. Pant:** Under article 258, the Central Government may delegate any of its powers to any State Government. The article reads:

"Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends."

**Mr. Speaker:** But there must be a proclamation of emergency in operation.

**Pandit G. B. Pant:** There is nothing of proclamation in this article.

**Mr. Speaker:** This article reads:

"Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or its officers functions in relation to any matter to which the executive power of the Union extends."

But, is this a matter of declaration of a proclamation of emergency?

**Pandit G. B. Pant:** Where is the declaration of proclamation here? We call an area a disturbed area. There is no proclamation here. By proclamation, you confer certain powers on Parliament, that is, a proclamation has to issue under the Constitution when certain powers which the State Government enjoys under the Constitution are taken away from the State Government and are conferred on Parliament; that is the only purpose for which a proclamation under that

chapter is necessary. It does not require a proclamation for any another purpose. There are a hundred and one things which have to be done, and we have not to issue a proclamation for everything that we do; from day to day, there are many administrative matters which are done by the Centre and which are sometimes delegated by the Centre to the States. The proclamation is necessary, as you will kindly be pleased to see, only when certain powers are taken away from the State, that is, constitutional powers which have been conferred on the State by the Constitution itself.

I hope you are referring to Part XVIII which deals with emergency provisions. There, it is only for giving effect to what is provided in this; that is, the purpose is to deprive the State Government of certain authorities, or to transfer the authority that the State Government possesses, to the Central Government, or that the State Assembly possesses to the Central Government or to Parliament. Nothing like that is being done here. So, how does this chapter come in the way at all? If we had done anything like that, then you could have said that and referred us to article 353 which says:

"While a Proclamation of Emergency is in operation, then—

(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities

of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List.”,

that is, you could have said, that the powers are in a way taken over by the Centre, that is, the powers that are possessed by the State; it is only then that we may issue a proclamation and there may be President's rule. Or, we may take away some of the powers and not all, and then a proclamation is necessary. But we are not in any way encroaching upon their field. There is nothing that we want to do; we are really trying to help them, leaving them free to make use of the Armed Forces. 'Armed Forces' are mentioned in the Central List.

Shri Tyagi: In List I or the Concurrent List?

Pandit G. B. Pant: Of course, they are mentioned in List I, obviously.

We are giving them some opportunities to quell the disturbances in the disturbed areas where they think that this method is necessary and inevitable—to make use of these Forces. I do not see how the need for any proclamation does arise.

Again, the provision that has been made has been made only to deal with a challenge to the authority and only when the State Government is satisfied that exceptional circumstances call for exceptional treatment; in those circumstances alone, it can be applicable.

Then, the authority of the Supreme Court etc. is not in any way disturbed by this, because it cannot be disturbed, and the authority or the power has been given by the Constitution itself, and anything that we may say here does not in any way deprive the Supreme Court of the inherent powers that it possesses and all the powers that are conferred upon the Supreme Court.

So, I do not see how there could be any objection to this Bill. In fact, the

clause that we have here is more or less exactly the clause that we have in the Criminal Procedure Code.

Shri Tyagi: May I just seek a clarification? May I take it that what the Home Minister means is that he is conferring on his officers, his military and other officers, not the powers which are vested in the Central Government, but those of the State Government, so that the officers can act as their agents? Under article 258, this is the meaning. And the Home Minister has referred to article 258 which reads:

“Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.”,

which to my mind means that we can confer only such powers as are vested in the Central Government. Is that the meaning? For, as I understand it, the phrase here is:

“to its officers functions in relation to any matter to which the executive power of the Union extends.”.

So, is it the intention of the Home Minister that we are authorising the State Government to exercise such powers as they cannot normally exercise—because it is not in the State List—that is, such powers as are vested in the Central Government?

Pandit G. B. Pant: I do not see what the difficulty is. My meaning is that under the law, the Armed Forces are under the Central Government. The Central Government can use them in any way it likes. Under the law, the civil authority even in States can seek the assistance of the Armed Forces whenever they are faced with disturbed conditions. We are thus authorising them to use these Forces without any reference to us, under this clause.

[Pandit G. B. Pant]

There is nothing that is unusual about it. Either the power is vested in the one or in the other. Either the State Government possesses it, in which case it may not be adding to its powers, or we possess it and we are delegating it. It must be the one or the other. - So, there is nothing that this clause pretends to do which is not within the scope of the one or the other.

**Shri Mahanty:** May I make one submission before you give your ruling? Now that article 258 has been mentioned, and we are enlarging the jurisdiction of the State under article 258 of the Constitution, may I know from the Home Minister whether the consent of the Government of the State of Assam has been obtained, and if so, whether he will kindly lay a copy of the letter of the Government of Assam on the Table of the House?

**Pandit G. B. Pant:** If I say it has been done with the consent of the Assam Government....

**Shri Mahanty:** With all humility, may I seek your protection? What I am saying is this. Article 258 reads:

"Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State..

**Pandit G. B. Pant:** . . .then my words should be sufficient for the purpose. It has been done with the consent of the Assam Government

**Shri Mahanty:** We want to know it

**Pandit G. B. Pant:** If the Assam Government does not want to make use of this Bill, it is open to it not to do so, because unless the Assam Government declares an area as a disturbed area, it cannot automatically be applicable to any particular inch or unit.

**Shri Tyagi rose—**

**Mr. Speaker:** I have heard enough about the point of order. Other clarifications may be sought elsewhere. Now, two points have been raised in the points of order moved by Shri Mahanty and Dr. Krishnaswamy objecting to further proceedings on this Bill. One is that under article 352(1) of the Constitution, unless a state of emergency has been proclaimed by the President, this Bill cannot be proceeded with, that the powers conferred upon the Government of Assam or the Chief Commissioner of Manipur under clause 3 of the Bill, to declare any particular area as a disturbed area, virtually amounts to a proclamation of emergency in respect of which power is vested in the President, and only thereafter the other things may follow. It has been stated by the hon Home Minister that the proclamation regarding a state of emergency applies only to cases where the Centre declares a state of emergency and takes over the powers of the State. Only in cases where in the interest of administration, on account of some emergency having arisen, the Centre itself wants to take charge or give directions in regard to matters which otherwise, under the Constitution, are within the exclusive jurisdiction of the State, and then they issue a proclamation of emergency. In this particular case, the Bill does not seek to take away any of the powers or the jurisdiction of the State Government. Therefore, Chapter XVIII does not apply to this case

So far as the other point is concerned, namely that clause 6 of this Bill seeks to take away the jurisdiction which the Supreme Court has under article 32 of the Constitution, it is stated that it has been decided by the Supreme Court that notwithstanding similar provisions in any of the Acts passed, the powers of the Supreme Court are not taken away. In many Acts, particularly the Criminal Procedure Code, and the Civil Procedure Code there are provisions which state that if any suit is to be field or proceeding sought to be taken against any

officer of Government, the previous sanction of Government is necessary. Prosecution of such persons in the discharge of their lawful duty has to be with the sanction of Government. This under particular circumstances, is not interference with the powers of the Supreme Court, in relation to fundamental rights guaranteed under the Constitution. This article has never been declared to stand in the way of similar provisions like clause 6 of this Bill being incorporated in other Acts.

No doubt, it has been pointed out by Dr Krishnaswamy that in a previous case which was brought up before the House, my predecessor said that wherever it was patent on the face of it, that this House had no jurisdiction to pass any piece of legislation, it was open to the Speaker to say that it was *ultra vires* of this House. But generally the Speaker does not take the responsibility of deciding the question of *vires* and it is in accordance with past precedents.

Personally I do not see that article 352(1) applies here. That relates to provisions interfering with the jurisdiction of the State Government under the Constitution. So far as clause 6 is concerned, similar provisions exist both in the Civil Procedure Code and the Criminal Procedure Code, notwithstanding this provision, the Supreme Court is not debarred from exercising those rights. So I do not see any force in the points urged in either point of order, nor is the Bill such an obvious case for me to declare it *ultra vires* of this House. Under these circumstances, the Bill will proceed.

**Shrimati Mafida Ahmed (Jorhat)**  
May I know from the hon Home Minister whether the Assam Government were consulted before taking decision to introduce this Bill?

**Mr. Speaker.** The same question was asked by Shri Mahanty and answered.

**Pandit G. B. Pant:** In fact, the Assam Government made a request to us.

**Mr. Speaker:** It is not merely consent.

Hon Members will kindly remember that 2 hours have been allotted for this Bill.

**Shri Tyagi:** Not for point of order.

**Mr. Speaker.** Point of order is always included in the time taken. It does not arise out of context.

**Shri Naushir Bharucha:** May I suggest that the time may be extended till 4 p.m.?

**Mr. Speaker:** Let us see.

**Shri Mahanty:** While we yield to none in our anxiety to see that this Naga trouble is quelled at the earliest, we are constrained to observe that this Parliament is giving its seal of approval to a legal monstrosity to quell another kind of monstrosity.

This is a unique legislation, the kind of which has never been contemplated since this Indian Parliament came into existence. (*An Hon Member Regulation*) Regulation is not legislation, it is an administrative and executive fiat. What I am trying to submit is that this is a martial law. This is martial law as defined in article 34 of the Constitution. It is being sought to be introduced in this House as a most innocuous measure. If anybody analyses this Bill, one will find that it seeks to indemnify any person for any act done for quelling disturbance in an area declared so by either the Governor of Assam or the Chief Commissioner of Manipur within their respective jurisdiction. We would have expected a little more honesty about the business. There is nothing wrong in declaring a certain portion of Assam or a part of the territory of Manipur as a disturbed area. The President could have issued

[Shri Mahanty]

the proclamation and the rest would have followed. A havildar can shoot a person without order from a Magistrate. He can attach any property. He can destroy any building. He can put any person behind the bars or in a concentration camp. For all this, no action can be against him except with the permission of the Government of India. This is one aspect.

The other aspect is this. It is high time that the Government took us into confidence and let us know what is the real nature of the Naga trouble. I have with me a statement circulated by the Minister of Home Affairs narrating the circumstances which necessitated the promulgation of the Ordinance. It states that on account of military pressure, the Naga trouble, though quelled in the Tuensang area—of which mention has been made in this House often—is spreading now to the plains of Assam and Manipur.

14.29 hrs.

[MR DEPUTY-SPEAKER *in the Chair*]

This is really a very disturbing situation. If it is being confirmed in the statement that the Naga trouble is dying out in its own homeland, namely, the Tuensang area, but is spreading into the plains of Assam and Manipur, certainly it is high time that we considered it in terms of article 352(1) of the Constitution. But without doing that, we are taking recourse to a most extraordinary measure. We are empowering the havildars and non-commissioned officers—to shoot any person they like and choose, to attach any property, to destroy any building and so on and so forth, and also arrest persons without warrant. This could have been possible and unexceptional had there been an emergency, but the Government hesitate to declare an emergency obviously because of the fact that there is no emergency.

In this context, we would also like to know how long this Government—this mighty Government of India—with its military budget shooting up every year in a mercurial way is going to take to meet this trouble. It is also within our competence to know and ascertain whether we are going to solve this problem by this kind of measure. It pains me that we have an occasion in this House to give our assent to a martial law which was forced on us by an Ordinance. What stopped the Government of India from bringing in this legislation when the prolonged Budget Session was on? The hon. Member owes a reply to the House and to the country.

The Naga menace is not a matter of yesterday. This has been there, we know, and we have been debating this menace for years together. Even when the External Affairs Ministry was under discussion this year, the Naga trouble came up for a prolonged discussion in this House. Government is well aware of this. What prevented them from bringing in this legislation during the prolonged Budget Session? Why have they smuggled this legislation in this way? It is really a challenge to the concept of democracy and freedom that we have.

Let me also take this House into confidence and say that we want a free India. But, we do not want a free India with barbed wires and concentration camps, where the Havildars can shoot at sight any man. If that is the concept of free India, I think I may as well be a traitor.

While there is no justifying condition for it, the Governor thinks that there is an emergency and disturbance exists and he just issues a notification in the gazette and the rest of this extraordinary legislation takes its course. That does not mean that I yield to anybody in my anxiety to see that peace is restored and the hostile Nagas are brought to book. But, I ask in all humility, are we

going to solve this problem by this extraordinary legislation.

While concluding, I once again appeal to Government through you. It is high time that this House is taken into confidence and we are told what is the extent and what is the nature of this disturbance. This trouble is spreading. It is really a very alarming picture. We knew the Naga trouble was confined to the Tuensang areas; but now we are told that it is spreading to the plains of Assam and Manipur. Therefore, it is not a simple measure or an innocuous measure that has been brought in by the hon. Home Minister for whose views we have the greatest esteem. We do consider it an exceptional measure and it should not have been brought into this House in this manner in the shape of an Ordinance. While the Government was well aware of the fact, what stopped the Government of India from bringing in this legislation in the legitimate manner without having recourse to the Ordinance?

**Shri Naushir Bharucha:** While I do not see eye to eye with my hon. friend Shri Mahanty on the point of order, I fully share the views he has expressed on the merits of this measure. It will be appreciated by this House that this Ordinance was promulgated on 22nd May 1958; that is to say, within 12 or 13 days after the Budget Session. I should like to ask Government what was it within these 12 or 13 days that had cropped up justifying that particular Ordinance. If the trouble was there, truly it must have been there even in the month of April or in the beginning of May. Why is it that Government did not bring this particular Bill at the fag end of the Budget Session? The Government has not merely to explain there was arson, looting and murder but it has also to explain that it occurred only after the session and within 12 days before the Ordinance was promulgated. If the arson, looting and murder was there and the Government

was aware of it in April, I ask why this measure was not brought in April. That is my first question.

My submission is that the resort to Ordinance was with the object of avoiding for the time being the excitement and the criticism of the extraordinary powers that the Government now seek to invest the Governor with.

So far as the scheme of the Bill is concerned, it will be seen that the Armed Forces are defined.

“armed forces” means the military forces and the air forces operating as land forces, and includes any other armed forces of the Union so operating;”

That probably means that the Government very mercifully has not permitted the air forces to shoot or strafe the area....

**Shri Tyagi:** Or to bomb.

**Shri Naushir Bharucha:** ...or to bomb. But what is the difference when the parachute troops are dropped? One does not know if it is air force or land force. They can have a spray of bullets on the people below.

The Bill gives power to the Government of Assam and the Chief Commissioner of Manipur to declare not only particular portions of Assam as disturbed but the whole of Assam can be declared as disturbed. I am going to ask this Government 12 or 13 questions and this Government has to answer them before it can justify its action before the public.

The first question that I should like to ask is that already the armed Forces (Special Powers) Regulation was promulgated in so far as Kohima and Mokokchung areas of the Naga Hills district and Tuensang area was concerned. In these two districts, which we know are a bit boisterous, in precisely the same



[Shri Naushir Bharucha]

language wide powers have been vested by a Regulation. We thought that that was more than enough to contain the trouble in the newly constituted administrative unit.

Let it be appreciated that out of the six frontier divisions in the NEFA area, the Kameng, Subansi, Siang, Lohit and Tirap divisions—these 5 divisions—have been quiet. But only in the sixth, the Tuensang area, there was disturbance. We formed an administrative unit, the Centre incurring an annual expenditure of Rs 3 crores and more. What for? They set up a unit. What do we find the trouble instead of being contained in the Naga Hills, Tuensang area, has spread to the plains to such an extent that the Governor may declare the entire Assam as a disturbed area. What type of an administration is this I ask.

Therefore, I have got to ask this question of Government. Is there anything like a threat that the whole of Assam may be invaded by Naga Hostiles that you give powers to the Governor of Assam to declare the whole of Assam and power to the Chief Commissioner of Manipur to declare the whole of Manipur as disturbed area? Is the threat so great or is the threat confined only to contiguous areas of the Tuensang areas of the Naga Hills?

The second point is have the Nagas or persons in areas adjoining the Naga Hills now become so powerful in their forests that such vast powers are to be given to the Armed Forces? If you say, 'yes' then the entire policy there has failed, if you say, 'no', then there is no reason for bringing this Bill. I want to know what is the answer.

Thirdly, what exactly is the nature of the threat and from whom and in what areas of Assam? I should like to know. It is not even sufficient to say that the newly constituted area is boisterous. Not the whole of it, only a part of it, the Tuensang area.

It is only some portions of the Naga Hills that the disturbance is there. If they say that the disturbance has percolated into the plains of Assam, has it percolated to such an extent as to include the whole of Assam that they want this power to be given to the Governor of Assam to declare the whole of Assam as a disturbed area?

Then, since the five divisions of NEFA area are quiet, does the threat to the whole of Assam and Manipur spring only from that small area?

All these questions have got to be answered. Whom are we fearing that we are giving so much power? Which is that particular area or particular district? It should be noted that for Kohima and Mokokchung areas we have already provided this. Therefore this trouble is within Assam itself. Which particular area of Assam is boisterous?

If this is so has not our policy failed in this area notwithstanding the Central Government agreeing to bear Rs 3 crores of expenditure more per annum? I should like to ask this. A pamphlet was issued 10 years' progress in NEFA. Who writes the foreword to this? The Prime Minister. What does he say?

"In dealing with human beings anywhere, the wrong approach is the approach of a superior person."

This is not even the approach of a superior person, it is the approach of the slave-driver.

'It is wrong even when it is well-intentioned and wants to do good.'

Referring to the NEFA area, he says:

"To me and to all of us, NEFA is a problem and a challenge. The questions it raises are different from those that have to face in other parts of the country."

NEFA offers adventure certain-

ly, but the adventure should be of the human spirit....."

Not shooting down.

"2 and the human approach so that we win over the minds and hearts of the people"

Now, is this the way? In other words, the policy outlined by the Prime Minister in the NEFA area is completely negated from start to finish by this Bill

The hon Minister has said that the Assam Governor concurred in this May I point out what was the message of the Assam Governor in connection with this? He says

"We should proceed in such a manner that the sincerity of our motives should never be called in question We could be sure that our motives will not be called in question if we learn to appreciate the points of view of the people in these area and if we try to understand their temperaments and respect their traditions, otherwise even with the best of intentions, we cannot hope to instil in them either the necessary confidence in our mission or a sense of identity with the rest of the country"

There is a complete departure from the policies which the Governor has laid down Therefore, my question to the hon Minister is this Does this Bill not depart radically from the policy and our approach to the Naga people as had been laid down by the Prime Minister and the Governor of Assam and if so, let the hon Minister admit it clearly

Then, why is this iron curtain between Naga Hill Tuensang area and the rest of India? We are taking of iron curtains by Soviet Russia. But to day, the Naga Hill Tuensang area people are separated. These are our people of Indian nationality Why is it that nothing is said to us about this?

Why was the Parliament always told that the situation was under control and that the hostilities were fizzling out? How, why and when did this situation necessitating the issue of an Ordinance arise? Day in and day out we are told that the situation is well in hand That reminds me of a story. A particular correspondent of a journal was wiring the headquarters that the situation was well in hand and the view of the headquarters was that the situation was deteriorating and ultimately they asked the situation is well in hand, but in whose hands, our hands or enemy's hands. You have been telling us that it was well in hand I ask whose hand, yours or Phizo's? We do not know that Let us have a clear view of these things

I do not know whether it is correct or not but it has been said that the hostiles are in league with Pakistan Has the Government got any material? If so, boldly lay it on the Table of the House Let us have it If you feel that Pakistan conspiracy is there and therefore, greater powers are necessary, this House will not grudge it

I also want to know whether the policy of shoot to kill underlying this Bill will not have a psychological effect, first on the Nagas and secondly on the army personnel Shoot to kill instils in the people in whose hands power is placed a sense of carelessness and callousness There is a feeling: We are protected, we can shoot to kill I am not for a moment alleging that our defence forces are so callous as that But human nature being what it is, having regard to the fact that our Army may have to work in very difficult and trying circumstances wherever they are, troops may be overworked and they may resort to these because a psychological impression is created in the minds of the troops we can shoot to kill, nobody can question us I ask what type of policy is this to win the hearts of the people whom you are trying to incorporate and integrate as part of India. Shoot to kill Whom are our armed

[Shri Naushir Bharucha]

forces being given powers to shoot to kill? Indian nationals. Let that be understood. There is no emotional integration so far. Let the House not lose sight of the fact that the power which is sought for the army is for shooting down Indian nationals and therefore, a very great justification must be offered by the Government before it can come to this House and demand these extra-ordinary powers

What is more, there is no time-limit for this Bill; it is not temporary for a year or six months. What does that indicate? Government has lost all hopes of bringing the situation under control by peaceful and reconciliatory means. It is going to be the type of affair which was in vogue during the British regime in connection with the NWFP. They want to rule by bullets and that too permanently. They have not put down any time-limit

With regard to this particularly mischievous clause, 4(a), I should like to know how it is going to be put into practice. This Bill authorises the military to shoot if there were five or more people assembled. Suppose some Magistrate has issued an order in a district that five or more people must not assemble in a region where communications are extra-ordinarily difficult and where the aeroplane is frequently used and where the paratroopers sometimes jump to a particular locality which is otherwise inaccessible and where food supplies are air-dropped, it would be sheer, ordinary human curiosity for the human beings. It is conceivable that the man in the plane or paratroops might consider that this is violation of an order and immediately they can be shot. Perhaps a warning has to be given. But in which language? In the NEFA area, there are thirty different languages and as many different dialects, none of which our armed forces know. Unless they get interpreters to go with them, how is this preliminary order to disperse to be given. People may not even under-

stand and the result may be that they may be shot for not understanding or for congregating out of just ordinary human curiosity.

These are the implications that are in the Bill. I am not at all happy that we should give this authority. When the time comes, I shall move my amendment that the armed forces need not be used. Unless the Government makes it a very strong case, I for one am not prepared to authorise our armed forces and so brutalise them that they should be able to shoot at Indian nationals to kill.

Shri Warlor (Trichur): Sir, the situation as envisaged in the statement is very clear. They say that the regulation promulgated by the Governor of Assam sometime back expired on 22-12-1957. The present Ordinance comes later. In the meantime we have had 3½ months. During the Budget discussion, when this question came up here, it was said that things were getting better and that the Nagas were coming round. In the statement of the Ordinance, it reads: "though it has improved to some extent." When it is improving, more stringent measures are brought in. The whole of Assam and Manipur is going to come under Martial Law though the Martial Law and an emergency are not declared. The provisions of this Bill stipulate such a condition.

Further, Sir, there are many reports in the Calcutta Press recently to show that the situation is getting worse and worse day by day. They point out that it had been our own internal problem previously, but that the problem is now becoming more and more an external problem.

Shri Bharucha in his speech referred or hinted about the affairs of the Pakistan link with the Naga problem. Recent reports also go to show—they may be very much exaggerated in the Calcutta Press, but still there is something hidden in them—that the hostile Nagas or the

misguided Nagas, as they are called by our Government, are now guided towards the Pakistan camp and they are now even 'crossing over to Pakistan. There was a report that dead Phizo had crossed over to Pakistan, Phizo had been dying so many times. Sometime back also it was reported that he was dead, but the more recent report is that he or his lieutenants have crossed over to Pakistan.

It is not only a question of Pakistan having some collusion with these people. More things have developed in recent months since the international affairs worsened in the Middle East. We understand that the border of Pakistan is closed in the east, and the people there are put to much harassment. Not only the prices of things have shot up in the markets of Manipur and other places, things necessary for the ordinary life of the people are not even available. Apart from that, we understand that even civil aviation routes, internationally recognised, are not at present allowed near the borders on the Afghanistan side of Pakistan, and our international flights are now diverted from the Pakistan Air into some other airways. This shows that things are very bad. Border incidents are not an exceptional affair now in India alone. Burma has also got this very same complaint about certain friendly countries interfering and taking their things into the border and creating trouble in the border.

As I said, Sir, this Naga affair has at present become a larger affair, from an internal problem it has become something like an international problem, and the situation is getting worse every day. That is a very serious thing. If it was only in our own area, by taking some punitive measures we could have expected that the situation will become more and more under control, and we could have also pacified them.

But now when we speak about the Naga problem and the trouble there, the main question is the one which Shri Bharucha posed. What is the

approach of the Government? If it is approaching the problem just like the Britishers, when they approached the North-West Frontier Problem in their time, then, assuredly, not only this measure but more stringent measures, more drastic measures, more military measures should be employed, and we will be compelled to employ that in the NEFA area. If otherwise, the Government even now comes to its senses and the problem is approached from a political angle from a human angle, there is every possibility of a solution being reached. After all is said and done, the Nagas are our own people. The Prime Minister had mentioned that particular aspect of the question often times in this Parliament. But our approach to the Naga problem is an exact repetition of what the British had been doing here. We know, Sir, how they divided our people at that time, how some people were made against some other people, how some people were caught hold of and bribed by the Britishers to be used against our national movement to suppress our movement, to suppress our legitimate claims. An exact repetition of those things, Sir, very painfully is repeated now. It is now seen in the Naga Hills.

Sometime back there was a conference. Much fanfare was made about that conference of the 'loyal Nagas', as they are called. Whether they are loyal or they are disloyal is to be seen, otherwise, it is not a question of loyalty and disloyalty alone. It is a question of who can deliver the goods. They were not able to deliver the goods. We banked too much upon them. We had full confidence that the entire area will be pacified. What happened? The Government is now forced to come to this House with a *fait accompli* of an Ordinance. We cannot now retrace our steps. They passed an Ordinance empowering the State of Assam, the Government of Assam, the Commissioner of Manipur to declare any area as a disturbed area, requisition the military—not only the Land Force but the Air Force

[Shri Warior]

also—and then shoot down and kill the people "Shoot to death" means killing—after killing comes death

Therefore, Sir, the situation is not as stated in this statement. This statement is a very simple thing. This says that the situation is improving. Still, because of our measures being very successful, these hostile Nagas left their camp in the hills and went to the plains. It is in the hills, that is what we believe, that the rebels will find it easier to carry on their operations. It is in the hills that they can more easily find shelters, where they can avoid the repressive measures of Government. But we find that they have gone to the plains now.

In this connection I wish to make mention of one fact. There were reports in the Calcutta Press—other papers are not so much interested in that, it is a problem affecting more the people of Assam and Bengal—about this invasion of the plains by the Naga people. I do not give much credence to all those reports, but when so many reports come if we really filter them there must be some truth, at least a minimum quantity of truth must be there, that there is so much of trouble in the plains. Those reports show that small groups of Nagas in the Cachar District and other areas—I have a list of them—have come there to get food. Apart from that, the reports say, there was actually no firing, no looting or any other thing. It is said they were harassed in their former shelters, they had to get food and they were roaming about in search of food. If the Government of Assam is making too much of these reports, then the situation is not actually as big as we find it.

But that is not the main thing. The main thing is not the fact that they have come to Manipur and other places. The actual thing is that we could not satisfy their political demands—they might have been making excessive demands, they might have been asking for more, but

that is always there in any bargaining, and even if they ask for more when they get a bit of their demands fulfilled they might feel satisfied. But as soon as they find that this Government is not going to meet them at least half way, they become desperate and they get embroiled in all sorts of collusions with other neighbouring countries, neighbouring States, whichever is ready to take them in. Then we find ourselves in a very difficult situation.

Therefore, Sir, my suggestion is that the problem must be approached more politically than military. Of course, if the situation is this, there is no doubt that the military affair is also very important. But the statement of this Ordinance clearly says that the situation is improving, whereas the Bill contains provisions just contrary to that statement. The Act is very drastic, very stringent. The explanation in the Ordinance says that the situation is improving, that there are slight things to be mended and the Ordinance is only for that purpose. I think the Government must consider this situation as a whole in the new international experience, in the new international situation. Apart from that our approach must be radically remedied and for that, as far as this question is concerned, I again, along with Shri Bharucha and other hon. Members, suggest that the Parliament must be taken into confidence. The fact that there are hidden things is patently clear. Those things must come out. We must have a frank discussion and a new political and human approach must be clearly thought of, chalked out, and that must be adopted. Then only this problem could be solved. Otherwise, this problem cannot be solved. As it is, I do not either oppose or support the Bill. I only want to amend it so that more lenient measures will be adopted by our Government.

15 hrs.

Mr. Deputy-Speaker: Shri Achaw Singh. The Members ought to be very

brief now. We are already trespassing on other business.

**Shri Basumatari** (Golpara—Reserved—Sch. Tribes). This is mainly concerned with Assam

**Shri Goray** (Poona) We may extend the time

**Mr. Deputy-Speaker:** We can extend, if necessary, by half an hour. There are amendments to clauses also. How much time will the hon. Member require for them?

**Shri Goray:** When the basic thing is argued, they may not need much time.

**Mr. Deputy-Speaker:** Then, we may give 15 minutes for the amendments.

**Shri Naushir Bharucha:** 20 minutes.

**Mr. Deputy-Speaker.** Most of the things have been said. Therefore, the hon. Members must be brief. I shall try to accommodate as many Members as possible. **Shri Achaw Singh**

**Shri L. Achaw Singh** (Inner Manipur) I rise to oppose this Bill. I do not find any occasion or any reason why there should be such a measure to be adopted by the Central Government. It seems the Central Government wants to enact into law the ordinance which it has promulgated on the 22nd May last. This Bill is meant to be enacted in respect of the infiltration of Naga hostiles mostly in the North Cachar and Mikir Hills district of Assam and the Naga areas or the tribal areas in the Union territory of Manipur. I want to make it quite clear that they have got only these two districts, the tribal sub-divisions of Manipur and the tribal areas of North Cachar and Mikir hills, in their mind when they introduced this Bill.

In my humble opinion this measure is unnecessary and also unwarranted. This Bill is sure to bring about complications and many difficulties in those areas which are going to be

declared as disturbed areas. I fail to understand why the military authorities are to be invested with special powers. I have found that these military authorities have always committed excesses in many cases, especially in the sub-divisions of Kohima and Mokokchung. In such a situation I do not like that the officers should be invested with such special powers. Recently, such an incident took place in the headquarters of the North Cachar and Mikir Hills district. Instead of rounding the hostile Nagas, some military personnel trespassed into the houses of some retired tribal official and committed rape on the widow. So, such things have deteriorated the situation. The tribal people have risen against the military people there. It is, therefore, dangerous to invest the military authorities with extraordinary powers of killing and of arrest without warrant and of house-breaking.

I have got reports of the operations of the armed forces in these tribal sub-divisions of Manipur, especially in the sub-division of Tamenglong where these armed forces have by force occupied the religious institutions, in spite of the protests of the local people. Most of them are Christians there and they hold their churches sacred. But these armed forces would occupy these institutions. There are schools, and the armed forces could easily occupy them, but then, in spite of the protests of the people, they encroached upon, and trespassed into the houses.

Then, very often persecutions and also harassments would take place. I would rather request the Government not to encourage such things in the tribal areas. They would wound the religious susceptibilities of the people there and would create more difficulties.

This piece of legislation is an anti-democratic measure and also a reactionary one. Instead of helping to keep the law and order position in

[Shri L. Achaw Singh]

these areas, if they declare some areas as disturbed areas, it would cause more repression, more misunderstanding and more of unnecessary persecutions in the tribal areas. This is a black law. This is also an act of provocation on the part of the Government. How can we imagine that these military officers should be allowed to shoot to kill and without warrant arrest and search? This is a lawless law. There are various provisions in the Indian Penal Code and in the Criminal Procedure Code and they can easily deal with the law and order situation in these parts. I am afraid that this measure will only sever the right of the people and harass innocent folk and deteriorate the situation.

The stationing of troops in the border areas of Assam and Manipur and also in the Naga Hills has been a very disturbing feature to the tribal people. It will not help the situation, and the sooner these troops are withdrawn, the better. Now that the conditions have come to normal in the Naga Hills and most of the tribal areas, it is better that the troops are withdrawn and let things take their own course. Those who commit crimes and murders in these areas can be dealt with under the ordinary provisions of the law.

Coming to the Naga hostile activities in the Union territory of Manipur, I am quite sure that there have been no violent killings, no violent activities, in any of those areas. There has been no murder. It is true that some of them have infiltrated into the tribal areas of Manipur and have looted some houses or committed some dacoity. But then they have never killed or done any violence. So, it is not necessary that the military authorities should be invested with special powers. We have a bitter experience in the Kohima and Mokokchung areas and those things should not be repeated. These repressive measures will only help the situation to deteriorate and force the innocent tribal people to join the ranks of the hostiles. Some

of the Naga people in Manipur have got naturally some sympathy with the Naga movement in the Naga Hills, and this measure will give them a good handle to rise against the Government. I am sure there are lower Nagas and by and large the tribal people in Manipur are loyal to the Government and their hands should be strengthened, and this Bill will not at all be able to give them a strong hand. Such drastic measures and desperate measure should be avoided.

The Government have said that the situation is under control. On the other hand, they say, "give us more powers. We have to control it." This is very ambiguous.

I would like to ask one question at the end. Why the Government has been following all the time such a negative policy? For example, in Shillong, they have maintained the family of Phizo, and they have educated the children of Phizo at a cost of Rs 500 per mensem. On the other hand, they are rounding up the Naga hostiles. How is it that on the one hand they are helping them, and, on the other hand, they have been trying to round them off? This is an ambiguous position. Government should take up a positive policy from now.

Shri P. C. Borooah (Sibsagar). I rise to support this Bill and I believe that with all the eloquence of my friends opposite, there is an overwhelming majority in favour of the Bill, because the House is well aware of the recent incidents taking place in the border areas of Assam, Manipur and also in the Naga Hill proper. Also, the note that has been circulated by the Ministry explaining the circumstances under which the ordinance had to be promulgated is before us. With all these before us, I believe the Bill will have an easy sailing so far as the point of law and order is concerned.

But my feeling is this that, if we confine ourselves to treat the Naga problem as a law and order problem alone, we will be doing a great wrong and we will never be able to solve the complicated problem of the Nagas. They are a virile and vigorous community, although their number is only a little over 2 lakhs, they have got the gut and stamina to rise against the mighty armed forces of a regime of 38 crores. All efforts must be made to understand them, their feelings and to know where their fear or suspicion lies.

District autonomy was given to the six hill districts of Assam by the sixth schedule of the Constitution. But only five hill districts enjoying their autonomy. This was refused by the Nagas. There were 3 constituencies in the Naga Hills in the Assam Legislature. But in the first Assembly, none came forward to be representative and all the seats remained vacant. Although in the second Assembly one seat was somehow filled, that was also a short-lived one on account of the fact that administrative set-up changed in the meantime.

Then came the Kohima Convention which was held towards the end of last year and the liberal Nagas—their number is very small—made an attempt to bring about a settlement between the hostile Nagas and the Government. As a consequence of that, a general amnesty was declared, but very few hostiles surrendered. Then came the decision from the Centre that the Naga Hills area will be transferred from the administrative control of the Assam Government and along with that Tuensang, a district of the NEFA also. While taking this decision, the people of Assam were not consulted. Naga Hills was always forming a part of Assam and from ancient times, the Assamese and the Nagas have been living very peacefully and as brothers. Assamese is the only language that is being understood by the different tribes of the Nagas. They have got different tribes speaking different dialects and one tribe does not understand the dialects

of the other. Assamese is the only language which is acting as the *lingua franca* of the Naga Hills.

We do not know how long this position of the Assamese language will continue, because we have the sorry experience of the activities of the over-enthusiast pro-Hindi officers in the NEFA area. The history of Assam for the last 11 years tells a sad tale. When in other parts of India, we were combining the different States to make fewer stronger States—Saurashtra and Maharashtra have been combined, liquidation of Hyderabad to strengthen Andhra, Mysore and Bombay was done, combination of Madhya Bharat and Madhya Pradesh effected,—Assam has been cut to pieces administratively. The big district of Sylhet went to Pakistan at the time of partition of the country.

**Mr. Deputy-Speaker:** The hon. Member has taken up a very wide subject. He must confine himself to the Bill.

**Shri P. C. Borooah:** I am showing how Assam has been butchered administratively.

**Mr. Deputy-Speaker:** That might be done at some other moment. We are hard-pressed for time now.

**Shri P. C. Borooah:** The local people have become very apathetic and all the charm is lost. Nothing is done for solving the NEFA and Naga problems.

As I have already said, the Naga problem should not be viewed as a problem of law and order alone. The problem is one of removing the suspicion and fear from the minds of the 2½ lakhs of Naga population about our *bona fides*. It is a challenge to the Indian statesmanship; and I believe our statesmanship will not fail and soon we will be able to see the hostilities end, Nagas happy and the people of Assam live peacefully.

With these words, Sir, I support the Bill.

**Shri Basumatari (Goalpara—Reserved—Sch Tribes):** I have nothing to say against this Bill, as the circumst-



[Shri Basumatari]

ances prevailing in that area have compelled the Government of India to bring forward this Bill. But the question is, why has such a situation arisen? If you read the past history from beginning to end, you will find that things are quite different, because the relations of the Naga people and the tribal people in the plains were very cordial and they had even inter-marriage and inter-dining. The Naga people have 24 different dialects, and they do not understand each other but through broken Assamese. They exchange their views. So, the relations were very cordial, but the British wanted to separate them under the policy of divide and rule. They were kept in excluded and partially excluded areas and for a long time, they were kept isolated from the rest of Assam and India. So, suspicion and fear grew in the minds of these people. It was done by the British people, but I do not understand why after independence, the same divide-and-rule policy has been pursued by the Government of India. I think they have been misguided by some of the officers left out by the British.

From the very beginning of my life, I was closely connected with the Naga people. Although my friend said just now that they did not participate in the elections, in between 1952 and 1957, some of them came down as goodwill mission before election of 1957 and they wanted to discuss the politics and the situation there and they did with this end in view, we also from Congress side invited our President of the Indian National Congress, Dhebar Bhai before the 1957 elections. Dhebar Bhai came via Manipur and while we all reached Mokokchang, just before 15 minutes, we got the message that Dhebar Bhai would not be allowed to meet these people. The meeting was convened by us at Kohima where about two thousand people from all parts came to meet our President Dhebar Bhai but when all of a sudden came to know that they were not allowed to see Dhebar Bhai, they changed

their minds and became very virulent and suspicious since then. I want to ask, if they wanted to meet the President of the Indian National Congress, why they were not allowed to do so. I think Dhebar Bhai will be more competent person to reply to it. We discussed the matter with some of our friends and Naga leaders and found that all of them were very angry. They even wanted to insult us because they knew that we were the men who deceived them by convening a meeting there. So, as I said, some of my friends came in the name of goodwill mission to have discussions with leaders and Ministers of Assam before the election of 1957. One of them was a lady, very intelligent lady who worked as an interpreter. She used to call me brother and came to my place in Kohima Circuit House. She told me "you have missed the bus". She further said that all the leaders wanted to forego their independence issue. She was going on saying "You have deceived us badly; you have insulted us" Sir, They are simple unsophisticated people. At the same time, they are very proud. They cannot tolerate and stand these things. That is the nature of the tribals. Then came to Kohima Convention and there also the Government of India was ill advised and misguided by the officials where in they followed a wrong approach by taking action which they should not have taken. They separated the Naga and Tuensang area from the neighbouring area and took it away from the Assam Government. I can not support this measure. Though I cannot support Shri Bharucha's amendments, but I fully endorse what he said; I am a tribal man. I was all along among the tribal people. I know them well. They do not want to be deceived. They do not want domination from outside. And if there is to be domination, that should be by discussion and by winning the heart of the people. If you try to approach them by force, and by bullet you will never succeed you have to approach them in a psychologically, friendly, and with brotherhood. It is only them

that you will be able to succeed if the Government of India thinks that they can succeed by following the policy that was pursued by the British Government, they are very much mistaken.

Shri Rangsung Suissa (Outer Manipur-Reserved-Sch. Tribes): Mr Deputy Speaker, Sir, I shall neither support the Ordinance, nor criticise it. But, I am afraid, as a Naga and as a person who has come from the locality where there is trouble for some time. I have to be very frank, because I want to see that the Naga problem is solved as soon as possible I would not mind if I have to offend any person or any leader, because we have taken the risk of our lives into our own hands since 1946. As soon as we got the news that the British regime was coming to an end, there was difference of opinion amongst the Nagas. One view was that the Naga territory must be separated from the Indian Union, and the other view was that instead of having separation they should have their own autonomy within the Union, and that they should not try to get separation from the Indian Union. Whatever that view may be, we shall never welcome any kind of foreign interference in relation to the Naga problem. So, I think I have to be very frank.

Instead of speaking against the Ordinance or about the Naga problem, as time at my disposal is very short, I want to ask the Government very seriously, very frankly and very bluntly: are the conditions such that this Ordinance is necessary in Manipur? Do the Government think that such kind of an Ordinance will solve the problem? I want to ask the Government this question very frankly because the Naga problem has become a thorn in the flesh of the Government. If the leaders of today solve the problem, then the Naga problem will not arise for ever. But if this problem is not solved, even if the Nagas are physically suppressed and physically eliminated, the problem will be there and after some time the future generation will have to reap the fruits of

the mistakes that are committed by us now. That is why I am asking them this question very frankly and very sincerely.

In spite of trying our best according to our ability according to our understanding, to solve the problem, I am sorry to say, that either the local Government or the Central Government have not taken these Nagas into confidence. Whenever they want to do anything they get reports either from the CID or the Intelligence Bureau or the military officers or local officers and do something which is quite contrary to the feelings of the local people.

I think you will all admit that some Nagas have lost their lives because they wanted to see that Naga territory is separated from the Indian Union. There are still some Nagas who are co-operating with the Government and who are standing by the side of the Government. So, why don't Government ask those people who are co-operating with the Government whether such an Ordinance is necessary or not and what kind of policy they have to follow in regard to this problem. All these Ordinances and sending of Armed Forces will not solve the problem. I can tell the House very clearly and very frankly that it is only creating more bitterness, and harm. We know what a soldier is. A soldier is trained in the art of killing and destruction. He cannot appreciate the yearning of the human soul. As soon as he finds a colleague of his is killed, his anxiety is to kill some other people, whether they belong to the rebel party or not. So, we have to learn one lesson from the past actions. I wonder whether any people in the world, during the last two world wars, have suffered more than the Nagas. But are they kneeling down? They will not kneel down. They are being suppressed. Physically you may suppress them and eliminate them. But the problem will still remain there. It will be in their hearts.

[Shri Rungsung Suisa]

I had approached the local Government to give more food to the straving population. They said they have not enough food to supply, because their demands have not been fully met by the Centre. How can we be sure that the Indian Government is sincere to the Naga people unless they feed the people? Feed them, do something good for them, instead of killing them, instead of passing all these Ordinances. Let the people know that the Indian Government is spending crores of rupees for feeding the Naga people. We are the people who are on the side of the Government but see, what is there now? It is only destruction and illtreatment. How are we to placate the people? Tell us, very frankly. We are only with the Government but the Government is not helping us by taking our words in confidence. Certainly, I am not supporting the policy of approaching to the Naga problem because of several reasons. I say as the first person among the Nagas who says that we would not invite any kind of foreign intervention in relation to the Naga problem. We do not welcome even the British people. If they loved us as at all then they should have made special provisions for us. But they have left us to decide our own ways. So we have to decide our problem according to our own ways with the Indian Government.

Moreover, the question whether there is a possibility or not does not arise. But it is not advisable for the Nagas to get separation from the Indian Union as economically it is not possible and physically also it is not possible. I confess that whatever I may say now the people will not believe saying that he had protested against the Naga demand for complete separation from India since 1946. My words will not count. I know that. Moreover I am in the Congress Party and so I am not important in this Naga problem. But there are some Nagas who are standing with the Government and who are ready to help the Government and who are working

for the integrity of the nation. Only thing is that they cannot speak openly and very frankly just because of two reasons. Firstly, because there are rebels among the Nagas and secondly because the present Government have not taken these very people into confidence. But I say please take them into confidence and instead of passing such Ordinances, ask them very frankly whether the Ordinance is required whether the army is required or not and whether the stationing of Armed Forces is required there or not. If they say—I say it is a Naga very frankly—if these Naga people who are co-operating with the Government say that the stationing of Armed Forces is still required, then station it. If they say that they will settle among themselves, then have confidence in them and get the advice from them as to how to do it and how to deal with this problem. Let me say to this very Government very frankly that when we have several problems with Pakistan and when we have got more problems to deal with, why should we send so many armed forces to the Naga area where there are some people who co-operate with the Government.

I want to tell this House very frankly I am not convinced of district autonomy for the Nagas nor am I in favour of separation of the Naga territory from the Indian Union. But on the other hand we have to see that we have to solve the problem with whomsoever we have got any problem. Unless we invite Phizo's party, how can we solve the problem? We have to invite them. Since we had difference of opinion we had fightings, but now let us seek for a compromise. After all we are Indians. We are brothers and sisters. Let us come and get to a compromise. They may give up their demand for complete separation of the Naga territory from the Indian Union. How do you expect the Nagas to be happy when these Nagas are in Burma, some are in this new unit Naga area and some in NEFA, and some north Cachar Hills and some are in Manipur? Can you

expect the Nagas to be happy whereas all other different elements of the Indian Union have been grouped together according to their own communities so far as geographical position permits? So we have to see all these problems from the practical point of view. If the Nagas are going to yield to this separation of Naga people into separate units then why should they fight and why should they protest?

**Mr. Deputy-Speaker:** The hon. Member has to conclude now.

**Shri Rungsung Suisa:** I am afraid I will take one more minute. So, I am saying it very frankly. I know that the Government will not like it. I am afraid my words may not be words that can be expected from the same party man. But I have to speak very frankly because I want to see Naga problem solved once for all if I have to criticise the Government policy. I say it will take me hours. I do not need any preparation. The words will come out themselves. I have my own eye-witnesses. I have been to Tuengsang and Makokchung Kohima and several places. I had interviews with these leaders, and with those people who are co-operating with the Government. I can say that this kind of Ordinance is not necessary in Manipur at all so long as we, the Nagas who are in Manipur, do not welcome this. They will never come to Manipur, but if we want to join the rebels then who will prevent us. Then, the Indian Armed Forces can kill us but they cannot prevent us. I am not going to be afraid of offending anybody, it is what it is.

We have got our own MNC in Manipur. It is completely under our control. Ask these leaders to go to the border areas. Send these leaders to convince their own brothers not to join their own brothers who are using force in place of the Armed Forces and soldiers who are going to create all sorts of bitterness, destruction. Let these Naga leaders go to the border areas and convince their brothers. It is not advisable for us to

make Naga people resort to fighting today if we do not have any confidence in violence for the solution of Naga problem. We must see that through non-violence and through negotiation only something is done. How can the Government of India be justified in the eyes of the world that whereas the Naga people have been demanding for complete separation from India, the Indian Government have not been offering to the Naga people anything more than district autonomy.

**Mr. Deputy-Speaker:** The hon. Member has said enough.

**Shri Rungsung Suisa:** So, I would like to request the Government to say very frankly whether they sincerely believe in such kind of policy in making such kind of ordinances without taking the feelings of the people into consideration and without learning any lesson from the past occasions or whether they have to change their approach to the Naga problem in a human way and to invite the Nagas to sit side by side with the Indian leaders and arrive at a compromise. I say to the Government that it will be the greatest credit for the Indian Government and for the Indian nation to get this Phizo's party side by side to work with us through non-violence. Then the world will see that Indian people believe in non-violence and it solves every problem through non-violence.

**The Minister of State in the Ministry of Home Affairs (Shri Datar):** Mr. Deputy-Speaker, Sir, my hon. friend, Shri Bharucha, read from a preface written by the hon. Prime Minister to a pamphlet on Naga Hills area and what the Government have been doing in that respect. Government stands by every word that the Prime Minister has stated. The policy of the Government towards Nagas or towards all such people is one of a human approach, a friendly approach and to the extent that it is necessary also a persuasive approach and I might point out to this House that in spite of the powers that have been taken where they are necessary or

[Shri Rungzung Suisa]

unavoidable Government have been using them sparingly and a large class of people amongst the Nagas themselves have seen the futility of the ways of some of them and are co-operating in a friendly manner with Government. That is the approach that the Government have always had. These people are Indians. They are our citizens. The Government are always interested in improving the conditions there, the conditions of the people, and also the un-settled conditions that are brought about, that are sought to be kept there by certain misguided sections. Therefore, may I point out that so far as the Government approach is concerned, Government approach is a constructive approach and we are anxious to develop that area and to improve their conditions to the fullest extent.

Consistently with this general policy, if, for example, as unfortunately it is in this area, there is a small section of people who are trying their best to defy order and the settled conditions, naturally, Government have to see to it that the conditions are settled there. If, for example, conditions are not settled, you will kindly see that the evil results therefrom will have to be experienced by the Nagas themselves. In order to save the Nagas themselves from the hostile and ruinous actions of their own brethren, it becomes necessary for the Government to arm themselves with powers, but to use them as sparingly as possible and only when it becomes absolutely essential.

So far as the present Bill is concerned, it does not deal with the Naga Hills area or with the Kohima area. It deals with Assam and Manipur areas. What happened is, so far as the other area is concerned, we had a Regulation in 1956 and certain powers were taken. Afterwards it was found that though conditions had radically improved, still, the presence of such a Regulation on the statute-book itself had a restraining influence. Therefore, in the other area also, you

will find that this particular Regulation has been issued and continues in force even now. Here, we are concerned only with the State of Assam and the territory of Manipur. What has happened is that in the adjoining area, the trouble that was created by these people has been, to a large extent, brought under control. Therefore, what they are trying to do is, they are trying to move their area of operation to the adjoining area in Assam and Manipur. That is the reason why the Government are considering it necessary to have a precautionary or preventive measure.

So far as the present Bill is concerned, it was contended that after the last Parliament went into recess, within a few days, the Ordinance had to be issued. It is true that an Ordinance had to be issued. When we find that there are certain unruly or turbulent elements which create trouble and if the trouble requires immediate attention, naturally, an Ordinance has got to be issued. That is the reason why towards the end of May, an Ordinance was issued. Here, we are not dealing with an ordinance. We are having a law. That is why the present Bill has been brought forward. Under these circumstances, we have to take into account the particular position that is there.

In the first place, this particular Bill is not a martial law at all. Neither is it an extraordinary law as some hon. Members have contended or stated in this respect. May I point out here, what has been done in this particular case is, on the model of the law that we had in the other territory, here, it was considered that such a law ought to be on the statute-book. That is the reason. So far as these two areas Assam and Manipur are concerned, what we have done is to have power with the State Government or with the territorial administration for the purpose of using or exercising these powers whenever a necessity arises. Most of the hon. Members,

very unfortunately and unrealistically, stated that power has been taken over a whole area. If, for example, the area of operation of the other unruly elements is extended to the whole area, the Government of Assam or Manipur must have such power. What has been done is, powers have been taken with a view to avoid, as far as possible, any occurrence of trouble in this particular area.

The next question that arises is whether the powers are being given to the Army authorities in an absolutely unjustifiable manner. In this particular case, may I point out what is being done? We have got already provisions in the Code of Criminal Procedure so far as calling in of military aid is concerned. What has been done there is, wherever there has been such trouble occurring here and there on account of certain excitement, naturally, it is open to the police and to the magistracy to control the situation. In circumstances where such incidents are not so many and are not spread over a very large area, it is open to the civil authorities to call in the military and it has been stated there that the military has to comply with or take orders from the magistrate. This has been pointed out in sections 129 to 131 of the Code of Criminal Procedure. The Magistrate can call them in and they have to obey. It should be understood that even in the normal provisions of the Code of Criminal Procedure, you have section 181 where it is stated that the members of the Armed Forces are entrusted with the work of keeping law and order by taking necessary action. This is what is stated in section 131.

"When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with,.....".

It is open to such a military officer to take necessary action. This circumstance may kindly be noted. What

has not been done is this. It is not possible, it may not be possible when you have got a large disturbed area as it may arise and as it did arise in the adjoining area, it may be difficult to send a police force or keep magistrates present whenever certain proclamations have to be made or certain orders have to be passed. Here we are dealing with a peculiar situation where though the number of such persons is small, they are fairly well organised in modern warfare and also they are in possession of excellent up-to-date military instruments or weapons. If, for example, the area of their operation is likely to be very large, it is open always to the Government of Assam or to the Chief Commissioner of Manipur to declare a certain area as disturbed area. If, unfortunately for us, the whole territory or the whole State becomes the field of operation, unlawful operation, destructive operation of these people, and naturally, in the interests of the maintenance of law and order, it becomes necessary, he can entrust that work to certain military officers. After there has been such an entrustment—then only—can the military officers carry on certain work and they are given certain powers. It should be understood that so far as the fundamental position is concerned, what has been done is, not that the military is being stationed there. My hon. friend was entirely wrong in dilating or waxing eloquent over the evils of stationing military. That is not the point here at all. Here, we are dealing with a territory, and a State. When it is found that the civil authorities like the magistracy or police could not do, only that work has to be entrusted for the time being to the military officers. This should be understood very clearly.

May I also point out, it has been stated that as soon as a person is arrested or a certain action is taken, immediately a report thereof has to be given to the nearest police station. Let that matter be understood very clearly. Therefore, here there is no

[Shri Rungnung Suisa]

emergency, no proclamation of an emergency, nothing wrong, only there is some extension of the powers already given under the normal provisions of the Code of Criminal Procedure to certain officers, because these officers come on the scene; and they will come on the scene only when the civil authorities find that they cannot cope with the situation. Then only they have to carry out all these things.

My hon. friend Shri Bharucha suggested: why should there be use of the expression "death"; why should not general words like "force" or "minimum force" be used? May I point out to him the restraining influence of all such provisions to the extent that it is necessary? It does not mean that every military officer must shoot. It is not a case of shooting to kill, as he unfortunately put it; it is a case of preventing further trouble, and if a particular element, a particular person or a gang of persons is intent upon spreading disorder or disturbance, then the final and the most effective weapon has also to be unfortunately but inevitably resorted to. This is the reason why this particular expression has been put in.

Therefore, let the other party also understand that merely ordinary actions will not be taken, that merely they will be detained or held or arrested, but that, if for keeping law and order or preventing disorder and the emergency of disturbances it becomes necessary to have recourse even to the last effective action, then the power ought to be given to the authorities. That is the reason why it has been mentioned here specifically.

Therefore, you will kindly see that in the present Bill there is the safeguard that immediately the action has to be reported, and that naturally in all such cases you will find that the minimum force is used, but it does not mean that in an extreme case maximum force cannot be used. That

is the reason why the matter has been made specifically clear, and that is the reason why this Bill has been brought forward.

It is not that the whole of these two States are going to be declared as disturbed areas. We have got a Government there, a popular Government, an elected Ministry there, and therefore we ought to trust these people. Therefore, after gauging the situation, after assessing the situation, if they feel that the trouble can be located in a particular area, they will declare that area as a disturbed area. Otherwise, unfortunately, if it becomes necessary to curb all such elements, they may have to have the whole area declared as a disturbed area. Then only will the further powers be given to the officers. The officers also have been mentioned by their designations, and therefore the powers have been given to high officers so that they should not be used indiscriminately, and the final remedy of making a report, sending full information to the nearest *thana* is there. Therefore, even the military officers will have to act with restraint, but if necessary, they will have to act as firmly as the conditions require.

Under these circumstances, I would point out in all humility that this Bill is neither an extraordinary measure, nor is it martial law. It is a Bill meant for meeting the situation, the peculiar situation that arises there or that might arise there. That is the reason why these powers are sought, and they would be utilised only in a proper case and whenever circumstances require their use.

**Shrimati Benu Chakravarty (Basirhat):** There is just one point. The hon. Minister has not answered the basic point made in all the speeches, that the real way of dealing with it is to come to a political settlement. What is the idea of having an ordinance and the military?

**Mr. Deputy-Speaker:** This is exactly what he has said. He is trying to deal with that political situation.

The question is:

"That the Bill to enable certain special powers to be conferred upon members of the armed force in disturbed areas in the State of Assam and the Union territory of Manipur be taken into consideration."

*The motion was adopted.*

**Mr. Deputy-Speaker:** The question is:

"That clauses 2 and 3 stand part of the Bill".

*The motion was adopted.*

*Clauses 2 and 3 were added to the Bill.*

**Clause 4—(Special powers of the Armed Forces)**

**Shri Naushir Bharucha:** I beg to move:

"Page 2, lines 9 and 10,—

for 'fire upon or otherwise use force, even to the causing of death' substitute—

'fire upon or otherwise use minimum necessary force'".

**Shri L. Achaw Singh:** I beg to move:

"Page 2, (1) in line 8, omit 'such'; and

(11) in lines 8 and 9, omit 'as he may consider necessary'

Page 2, lines 9 and 10, omit 'even to the causing of death'"

**Mr. Deputy-Speaker:** I shall now put the above amendments.

The question is:

"Page 2, lines 9 and 10,—for 'fire upon or otherwise use force, even to the causing of death' substitute 'fire upon or otherwise use minimum necessary force'".

*The motion was negatived.*

**Mr. Deputy-Speaker:** The question is:

"Page 2, (i) in line 8, omit 'such'; and (ii) in lines 8 and 9, omit 'as he may consider necessary'".

Page 2, lines 9 and 10, omit 'even to the causing of death'".

*The motion was negatived.*

**Mr. Deputy-Speaker:** The question is:

"That clause 4 stand part of the Bill".

*The motion was adopted.*

*Clause 4 was added to the Bill.*

**Mr. Deputy-Speaker:** Clause 5. Any amendments? None.

The question is:

"That clause 5 stand part of the Bill"

*The motion was adopted.*

*Clause 5 was added to the Bill.*

**Mr. Deputy-Speaker:** Is the amendment No 1 proposing new clause 5A going to be moved? No

The question is:

"That clauses 6 and 7 stand part of the Bill."

*The motion was adopted.*

*Clauses 6 and 7 were added to the Bill.*

**Mr. Deputy-Speaker:** The question is:

"That clause 1, the Enacting Formula and Title stand part of the Bill".

*The motion was adopted.*

*Clause 1, the Enacting Formula and Title were added to the Bill.*



Shri Datar: I beg to move:

"That the Bill be passed".

Mr. Deputy-Speaker: Motion moved:

"That the Bill be passed".

Shri Jaipal Singh (Ranchi west-Reserved-Sch. Tribes) rose—

Mr. Deputy-Speaker: Yes, only two minutes. We must start the next item by 4.

Shri Jaipal Singh: I regret that Government, every time they have come forward for enabling powers, have always made sanctimonious declarations in regard to the very brave people of Nagasthan. They have always told us that they have tried to approach this and other problems of similar people, that is the expression they use, from the human angle. They have refused not only once, but again and again to come in touch with, to make that human approach to, the Nagas. Government have miserably failed in this regard. I cannot state this too strongly.

This problem began about eight to nine years ago, when the Prime Minister himself refused to meet the original rebel. Now, of course, his regiment, his battalion, has become enormous. It is no good the Treasury Benches trying to tell us that only a small section has to be dealt with; hence this extraordinary piece of legislation, martial law being made into ordinary law—that is what it is. Let them not run away from this fact

I for one certainly do want to give every power, military or otherwise, that Government do require in that frontier province. If my humble words can reach the Naga people, whether they are in India or outside India, whether it is in the no man's land east of India or it is in Burma or north of Burma, all that I say is that we, all of us, stand by them

in their demand, for that feeling of oneness, to have one consolidated Nagasthan within the territory of India. We are with them, but it must be only with that one point. We must make them feel one. We are not doing that. May I continue?

Mr. Deputy-Speaker: The next item has to be taken up at 4.

Shri Jaipal Singh: Since it cannot be finalised, the discussion continues I think.

Mr. Deputy-Speaker: No. I do not think. There is no other speech to be made I only allowed Shri Jaipal Singh two minutes.

Shri Jaipal Singh: May I, in that case, have my name recorded as opposing the Bill?

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

Those in favour will say "Aye".

Some Hon. Members: Aye.

Mr. Deputy-Speaker: Those against will say "No".

Some Hon. Members: No.

Mr. Deputy-Speaker: The "Ayes" have it.

Shri Jaipal Singh: The "Noes" have it. I wish to have my name recorded.

Mr. Deputy-Speaker: Only the name has to be recorded of Shri Jaipal Singh? Or, does he want a division?

Shri Jaipal Singh: My name may be recorded, and my division number.

Shri Tyagi: Unless there is a division, there is no way of recording.

Mr. Deputy-Speaker: Anyway, he is saying again and again that his name should be recorded.

**Shri Tyagi:** That has gone into the proceedings.

15 hrs.

**Shri Jaipal Singh:** I think my hon. friend has forgotten the position. I think he is becoming more or less an interpreter of the rules of this House. I think it is very clear that I am entitled to have my name recorded.

**Shri Tyagi:** No.

**Mr. Deputy-Speaker:** His name has been recorded, and his opinion has been recorded, namely that he is opposing it. The point is whether he wants division now. I have declared that the 'Ayes' have it.

**Shri Jaipal Singh:** No.

**Mr. Deputy-Speaker:** The 'Ayes' have it, the 'Ayes' have it

*The motion was adopted.*

— — —

16.01 hrs.

**MOTIONS FOR ADJOURNMENT**  
—contd.

**BREAKDOWN OF WATER SUPPLY IN DELHI**

**Shri Goray:** Sir, I beg to move:

"That the House do now adjourn".

16.01 hrs.

[Mr. SPEAKER in the Chair]

एक मिनट, सबस्य : पाच घंटे हो गये  
सदस्यों को पानी नहीं मिला है ।

**Shri Goray:** I am grateful to you for admitting this motion of adjournment. Sir, how acute the position is regarding the supply of water to this metropolitan city of Delhi can be imagined from the fact that Members of this Lok Sabha have not been able to have even a glass of water in this House up to this minute.

**Shri Naushir Bharucha** (East Khandesh): That is complete mismanagement.

**Shri Goray:** We were told in this House that....

**Mr. Speaker:** There is no water available here?

**Shri Nath Pal:** No water even now.

**Shri Goray:** . . . water will be made available in this House, but not a drop has been coming since then, and still it is only in the realm of promise. . .

**Mr. Speaker:** I will make arrangements immediately.

**Shri Goray:** . . .and so far, no action has been taken.

It is not only because the Members of Parliament have been deprived of water that I am raising this question but because a million people in this city have been victims of this inefficiency and lack of imagination on the part of the department concerned. I listened very carefully to the statement made before this House by the Minister, Shri Karmarkar. He said 'I would like to take into confidence the Members of House', but I found that he did not take us into confidence at all. What he told us was a rehash of what everyone of us had read in the morning papers.

He said that it was not possible for his department or his engineers to give sufficient water because the Jamuna was behaving in a very unpredictable manner. I think this city of Delhi has been on the banks of the Jamuna for quite a long time, and this vagrancy of the Jamuna is not new. She must have been behaving like that for centuries. I think we are not living in the age of Mohenjodaro where a civilisation was completely overwhelmed perhaps by the floods. We have the modern techniques; we have the modern know-how. In *Bhagirath*, we are told every day that our engineers are second to none, and