

THE ARMED FORCES (ASSAM
AND MANIPUR) SPECIAL POWERS
BILL, 1958

THE MINISTER OF STATE IN THE
MINISTRY OF HOME AFFAIRS
(SHRI B. N. DATAR): Sir, 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, as passed by the Lok Sabha, be taken into consideration."

You are aware, Sir, that under ordinary circumstances it is the police that have to take control of certain situations but, even under the normal provisions of the Code of Criminal Procedure, occasions arise where it becomes necessary for the Magistrate or the civil authority to call upon the military authorities to control a situation. For this purpose, we have already got sections 129 to 131. If we understand these provisions of the law to be in continuation of what was contemplated in those sections, the thing would become very clear. That is the reason why I would read out to you certain portions from sections 129 to 131 of the Criminal Procedure Code. Section 129 says:

"If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces."

By section 130:

"When a Magistrate determines to disperse any such assembly by the armed forces—what he is required to do is pointed out here—he may require any officer thereof in command of any group of persons belonging to the armed forces to disperse such assembly with the help of the armed forces under his command."

And, then, in sub-section (2), it has been stated that every such officer shall obey all such directions.

Section 131 says:

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

Now, Sir, these are all normal cases of excitement, where there is excitement here and there, not on a very wide scale extending over very wide areas as in the situation to which this Bill refers. Even in ordinary cases—

"When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it in order to disperse such assembly or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action."

You will find, Sir, in ordinary cases where there has been a disturbance, whenever it becomes necessary to have a particular assemblage of persons to be declared unlawful, the civil authority, namely, the police under the direction of the Magistrate or otherwise has to control the situation by taking effective steps but, even in respect of such cases, if it is found that the civil authorities may not be in a position to control such a situation, then the Magistrate, as the case may be, has the authority to call in the members of the armed forces and it has been said, Sir, that the armed forces shall obey the orders of the Magistrate. A further situation has been provided for wherein it may not be possible to communicate with the Magistrate. In

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such cases the officer of the armed forces can act independently to the extent that it is necessary for maintaining law and order and then he can communicate with the civil authorities. That is the position in the ordinary law. Now, let us take into account the situation that existed and that to a certain extent exists now in the eastern part of India. You are aware, Sir, that there are certain forces amongst certain communities which are out to defy law and order. They indulge in acts of vandalism and goondaism also. Therefore, sometime ago, in or about 1956, it became necessary to give certain powers to the armed forces in these areas. I am making reference to the Naga Hills area in particular. So far as that area was concerned, the regulation was issued first by the Governor of Assam in 1956 giving special powers to the army units in the Naga Hills to act in aid of the civil administration. Thereafter, there were some changes also. A new territory was formed consisting of the Naga Hills and the Tuensang Area and it was felt then that the powers that were given by this regulation ought to be continued in that area also. I may also point out to this House that as a result of the action that the Government took, the position has been and formerly also was under control. Now, in this respect, may I make it clear to the hon. House that the Government are following a policy which is characterised by two considerations: One is that so far as these Nagas are concerned—the Nagas or the other communities are concerned—they are citizens of India and are entitled to all the rights of Indian citizenship and our approach to the Nagas so far as this constructive part is concerned is that they should be treated on the same footing and our approach should be as friendly and as humane as possible. I may point out to the hon. House that this policy of persuasion, this human approach has succeeded to a very large extent but there are certain elements, there are certain stubborn, anti-social elements which

are creating trouble here and there. Now, they have been brought under control to a very large extent. So far as these Naga Hills and other areas were concerned . . .

SHRI V. PRASAD RAO (Andhra Pradesh): Then, why do you need this Bill?

SHRI B. N. DATAR: Let the hon. Member wait. Let the hon. Member allow me to go on. If he waits, he will hear exactly what he wants to know.

So far as these Naga Hills and other areas were concerned, what was done was this. Government naturally took strong action against those stubborn elements, against those elements which were defying law and order and were interested in keeping the conditions unsettled. For that purpose, by this regulation certain powers were given to the members of the armed forces.

Now as a result of this policy, which I have pointed out in the first place, so far as the general public there is concerned, we deal with them entirely on a human footing, and this is appreciated by them. But, as I stated, there are certain elements which require stern treatment. Then naturally in their case the law has also to be made stern. Otherwise you will find, Sir, just a few persons can disturb the peace of a locality or a village or any such thing. For that purpose, Sir, this policy had also to be followed so far as the anti-social elements were concerned.

May I now answer my hon. friend's query, Sir? This is the policy that we followed, namely, that of having a human approach so far as the lawful and peace-loving citizens were concerned, and a stern approach was made or the exercise of special powers was required in respect of those who were acting otherwise than peacefully and in a normal manner.

There these powers or this Regulation was highly helpful in controlling even the anti-social or turbulent activities of these people. Therefore the result was that on the whole the conditions were satisfactory though it has become necessary to keep that Regulation also in force so far as the other area is concerned. That is the reason, Sir, why a special Regulation was passed by the President on the 5th April 1958, which would remain in force for one year. So, so far as the anti-social elements are concerned, they must have the fear of this Regulation. So far as the other elements are concerned, the peaceful elements are concerned, there things have to go on on a normal footing, and all that can be done for improving their condition has to be done and is being done.

Now I may point out further, Sir, that as a result of this policy that we have been following, there has been a general improvement in the situation even in those hilly areas as a result of which to-day these stubborn elements, these anti-social elements are now coming to the plains. They believe that they cannot carry on their activities of depredation, etc., in the way they were doing because there the situation is brought under control. Therefore they are gradually infiltrating into the other hilly areas of the State of Assam and also of the Union territory of Manipur. That is the reason, Sir, why we had to approach the President in the first instance and the President had to pass an Ordinance. The need was felt again during the recess of Parliament, and then the Ordinance was issued by the President for conferring upon the Governor the power to declare a certain area as a disturbed area. Let the hon. Members understand, Sir, what was done by the Ordinance and what is being done by the present Bill. Now what was done by the Ordinance was this, that it was open to the Governor of Assam State or it was open to the Chief Commissioner of the Manipur State that if he finds that recourse to such a law was necessary,

then after taking all the circumstances into account, it was open to him, it was within his power to declare a certain area as a disturbed area. That is point number one. After such a declaration, after them, the persons who will be put in charge by these authorities, the officers of the army units, will be invested with certain powers, which are again powers of the nature which are conferred on the police. That should be understood clearly, Sir, in other words this is an extension of the police powers normally given for the purpose of maintaining or restoring law and order. Then certain officers have been mentioned. I shall read out certain of them. . . .

SHRI V. PRASAD RAO: Non-commissioned officers also?

SHRI B. N. DATAR: Army officers are to be invested with the powers.

SHRI V. PRASAD RAO: But there are the non-commissioned officers also.

SHRI B. N. DATAR: Already that was done in the Regulation; that was done in the Ordinance also, and that is being done here also. Now what was done? Certain categories of officers were to be invested with certain powers and these were, as I have stated, powers in the nature of those which were given to the police officers, and then afterwards they have to report, whenever a person has been arrested, to the nearest police station. Now when the Ordinance was issued, then it was felt that there was this need as the other party had started to gradually descend into the other areas, into the areas of the Assam State and also into the Union territory of Manipur. That was the reason why the Ordinance had to be issued during the recess of Parliament, and now we have come before this House and in the other House already this Bill was passed. We have come before this House for the purpose of its approval to the provisions of this Bill.

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With these remarks, Sir, I shall point out to you what the provisions are. Now so far as sub-clause 2 of clause 1 is concerned, it will be found, Sir, that it extends to the whole of the State of Assam and the Union territory of Manipur. Now it purposely has been made to extend so far because if, for example, you confine it only to certain portions, then it is quite likely, Sir, that the other party, the other anti-social elements—they are not bound by any laws—would infiltrate into and carry on depredations in other areas. That is the reason, Sir, why the power has been given to the Chief Commissioner in one case and to the Governor in the other to declare a certain area as a disturbed area. That is the condition precedent. Then the definition of "armed forces" is there, and "disturbed area" means an area which is for the time being declared by notification under section 3 to be a disturbed area.

Now I should like to read out to you, Sir, clause 3, and this is the condition precedent for the conferring of powers upon the members of the armed forces. Now what has to be done has been provided for here. It is this:

"If the Government of Assam or the Chief Commissioner of Manipur is of the opinion that the whole or any part of the State of Assam or the Union territory of Manipur, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, he may, by notification in the Official Gazette, declare the whole or any part of the State or Union territory to be a disturbed area."

Thus you will find, Sir, that the declaration of any area as a disturbed area is a condition precedent to the giving of certain powers to the armed forces. Now as regards the powers that are to be given, they have been

specified in the next clause. It is stated:

"Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may,"

—now my hon friend need not take exception to the expression "non-commissioned officer". They have a certain fairly high status also; they are responsible officers even though they may not be commissioned officers—"in a disturbed area,—(a, 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,"—action has to be taken only after the warning has been given to the other person, to the person or persons who are indulging in unlawful activities—"fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law"—this may be noted—"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"

So far as this concerned, let us understand the position. In the first place the civil authorities have to pass certain orders and then only in performance of the duty of maintaining public order he may take certain steps. It says here: "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." For example, an order may be passed under section 144 or there might be an abuse or violation of law. Under these circumstances for the purpose of maintaining the supremacy of the law, for the purpose of compelling compliance with any

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order passed by duly authorised civil authorities it may be open to the military officer to take certain action. And before he takes any action he has to give a warning and after giving a warning he can take certain steps. So far as these steps are concerned, in other Acts the words used are, he can use force etc., but here we are dealing with turbulent elements. Let the House kindly understand that and therefore the wording of the law ought to be sufficiently stern. When the wording is strong, it itself has a restraining influence. That is the reason why in this particular case very clear words have been put in. It is said here—'fire upon or otherwise use force, even to the causing of death'. In the other House some objection was raised to the expression 'even to the causing of death' and that is why I am pointing out here that we are dealing with a fairly large number of persons who are interested in defying order. Now, it is for those persons to understand what the extreme consequences of any such step would be. That is the reason why it has been mentioned that he can use force even to the extent of causing death. It does not mean that in every case every police officer can cause death with impunity. That is not the meaning at all. The meaning is that the other party, the anti-social elements, should understand that in proper cases it would be open to such an officer to take the strongest action and naturally the strongest action that would be necessary for controlling a situation would be the causing of death. If, for example, such a deterrent provision is made, in the first place it will have a restraining or a salutary effect upon these persons, upon the anti-social elements.

SHRI AKBAR ALI KHAN (Andhra Pradesh): Upon these persons, you said?

SHRI B. N. DATAR: It is very unfair, Sir.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI B. N. DATAR: That is the reason why it was considered that such expression should be used. It does not mean that in normal cases such action would be taken. In extreme cases for the purpose of maintaining or restoring law and order, for the purpose of bringing unsettled conditions under perfect control it might be necessary, it ought to be necessary, sometimes it may become absolutely inevitable to take such action. Therefore these words have been put in here. This is power No. 1

Then under 4(b) it says: "if he is of opinion that it is necessary so to do, destroy any arms dump....". They have to be destroyed because they have been taken possession of or they have been preserved by them in other ^{than} legitimate manner. Therefore it is not open to them to have these things and they have to be destroyed immediately. And for that purpose any structure can be demolished also or a hide-out. Sometimes these things are kept entirely concealed and therefore the officer concerned ought to have full liberty of taking effective steps.

The third power is that he can arrest without warrant any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence. So all these three eventualities have to be provided for. Under these circumstances the military officer will have the power of arresting without warrant any person. That is what our police officers do in ordinary cases.

Then the other power is that he can search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined. This sometimes happens. A peace loving person is wrongfully restrained by these people. Therefore his release also is a matter which has to be immediately attended to. In order to get his release it is open to the officer to enter and search without warrant any premises or to recover any property

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reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for that purpose use such force as may be necessary.

Then a corrective or safeguard has been introduced and that is in clause 5 where it is stated that after he has exercised any of these powers he has to get in touch with the officer in charge of the nearest police station. For that purpose what he has to do under the law has been mentioned here:

"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 far as this is concerned, the moment such a report is received, the moment such an arrested person is received by the officer in charge of the nearest police station, then naturally the normal course of the law under the Code of Criminal Procedure would take effect. You will find that certain circumstances occur—they did occur in certain parts—where the normal powers given to the police officer may not be sufficient. As I have already pointed out even under the Code of Criminal Procedure it has been contemplated that even in such cases of small-scale excitement confined to certain areas it is open for the Magistrate to call in aid the armed forces. Here these unlawful elements, these anti-social elements, are spread over a fairly large area; it is likely that if they carry on depredations in a small area they can be proceeded against or their actions stopped or arrested without any difficulty but if they carry on their acts of depredation in larger areas it might become difficult—as it has become difficult—to send police officers and to send magistrates everywhere. That is the reason why it has been considered necessary, in the interests

of maintaining law and order in these parts, in the interests of establishing, where necessary, peaceful conditions, that some more powers should be given to the armed forces. As I have already pointed out, armed forces can also be used under normal conditions under the Code of Criminal Procedure but on account of the difficulties of terrain, on account of the difficulty of finding a large number of magistrates to accompany them everywhere, it is considered necessary that army officers—certain categories of them—should be invested with police powers. It may be kindly understood that here the work that they are expected to do is the work of the police officers and therefore there ought to be no objection to have such powers conferred on them. And here I would emphasize the first point, namely, that all officers wherever they are, whether in Assam or Manipur, will not be invested with all these powers but only those in those areas which have been declared as disturbed. In that case it would be open to those military officers—the categories that have been pointed out—to take such action. You will thus find that only in a disturbed area action could be taken and secondly that action can be taken only under certain circumstances by a certain category of persons. If these conditions are satisfied, then naturally they ought to be given proper powers, adequate powers, for meeting the situation. Sometimes the situation is highly menacing; sometimes it has dangerous implications. Under such circumstances when it is difficult to get magistrates present or to get police officers present, these military officers can be called in aid of the civil power. Naturally, the military officers who would be called upon to maintain or restore law and order ought to be given effective powers and that is what is being done.

Sir, only one word and I shall finish. So far as the last clause is concerned, it is a clause of the usual order, a clause by which protection is to be given to officers when they act in a *bona fide* manner.

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That is what has been stated—no prosecution, suit, or other legal proceedings shall be instituted except with the previous sanction of the Central Government. You have got similar sections in the Code of Criminal Procedure and elsewhere also, and what has been done is that the previous sanction of the Central Government would be necessary. In the absence of such sanction no prosecution can lie, no suit or any other proceeding can lie. Therefore, you will find that these are normal powers for the purpose of giving due protection to officers who act naturally in a *bona fide* manner.

SHRI H. P. SAKSENA (Uttar Pradesh): May I put one question to the hon. Minister? Henceforth, will our State, which we have been accustomed to call a Welfare State, not be known as a Police State?

SHRI B. N. DATAR: No, Sir. The activities of the Welfare State will be carried on, but these powers will be used where necessary and inevitable.

MR. DEPUTY CHAIRMAN: 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, as passed by the Lok Sabha, be taken into consideration."

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at two minutes past five of the clock till eleven of the clock on Tuesday, the 26th August 1958.