

MESSAGE FROM THE LOK SABHA

THE TRADE AND MERCHANDISE MARKS
BILL, 1958

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:—

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Trade and Merchandise Marks Bill, 1958, as passed by Lok Sabha at a sitting held on the 27th August, 1958."

Sir, I lay the Bill on the Table.

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

MR. CHAIRMAN: Mr. Datar.

THE MINISTER OF STATE IN THE
MINISTRY OF HOME AFFAIRS
(SHRI B. N. DATAR): Mr. Chairman,
Sir.....

SHRI BHUPESH GUPTA (West
Bengal): Sir, there are other
speakers.

MR. CHAIRMAN: On this Bill?

SHRI H. D. RAJAH (Madras): Yes.

MR. CHAIRMAN: I thought he was
going to reply. Please be as brief as
possible.

SHRI H. D. RAJAH: Sir, I will
speak on this Bill.

(Shri Jaswant Singh stood up to
speak)

SHRI P. N. SAPRU (Uttar Pra-
desh): Sir, I have spoken on this. I
just wanted to tell you that no other
names were given to the Chair yes-
terday.

MR. CHAIRMAN: He has slept last
night and then found out that he had
something to say.

SHRI JASWANT SINGH (Rajas-
than): Mr. Chairman, Sir, the hon.
Minister of Home Affairs has stated
that this Armed Forces (Assam and
Manipur) Special Powers Bill, 1958, is
a very simple one. But if we go into
the provisions of the Bill that is
before us, we will find that it is
indeed a very serious Bill and that it
seeks to give very wide powers to the
armed forces, powers much more
than what the situation requires. If
we analyse these provisions, we will
find that it is not short of martial law
as defined under Article 34 of the
Constitution. We will also find that
the Bill seeks to indemnify any per-
son for any act done in quelling the
disturbances in any area declared as
disturbed by the Governor of Assam
or the Chief Commissioner of Manipur.
Military personnel can shoot a per-
son without any order from the
magistrate. He can attach any pro-
perty. He can destroy any building.
We have been told by the Home Minis-
ter from time to time that the Naga
situation is under control. We would
like to know from him, if the situation
is under control, then why such vast
powers are being given to the armed
forces at this time? At the time of
the promulgation of the Ordinance
a statement was circulated by the
Ministry of Home Affairs that though
the Naga trouble has been quelled in
the Tuensang Area on account of the
military pressure, it has now spread
to the plains of Assam and Manipur.
It is rather a very serious position.
We would like to know the real posi-
tion and we would also like to know
as to how long this trouble is likely
to last. We can well understand that
in the hill area the Nagas could be
troublesome and that it is difficult
for our armed forces to fight them on
the same level because they are not
accustomed to fight the Nagas in the
terrain. Now that the Naga trouble
has been quelled in the hill area, and
it has spread to the plains, it should
be very easy for our armed forces or
even our police to deal with them.

If we are not in a position to deal with this trouble in the plains, with half-armed and uncivilised people like the Nagas, then I do not know what the position of our armed forces is. Of course, our armed forces have got a great tradition and our armed constabulary is also very effective. If these people are not able to deal with the unarmed or half-armed Nagas in the plains, then the position really becomes very serious.

By going through the provisions of this Bill, we cannot say whether this enactment is on a permanent basis or for a short period. It appears to me that the Government is thinking of bringing it as a permanent law and naturally, in such a case, it will be a very serious thing if such wide powers are given to the armed forces. Is it our opinion that this Naga trouble will be a permanent one with us and that we will never be able to quell it? Our Prime Minister has stated time and again—our Home Minister has also said it—that we want to be considerate to the Nagas; we want to win them over by love and affection. By this policy, to a certain extent, some success has been achieved. But surely, it cannot be thought for a moment that this trouble is going to be a permanent one. Phizo is still at large and he has still got some followers and if this hostility is there for ever, then it is a serious thing. From the provisions of the Bill, it appears that the Government wants a permanent law and therefore, automatically it means that they envisage that they will never be able to have control over the Nagas and that this trouble will continue for ever.

Then, Sir, there is another question also. I do not know whether those Nagas who have been co-operating with us were consulted or not before this Bill was brought before the two Houses of Parliament. If they have not been consulted and if this Bill has been brought forward as an administrative measure, then according to me, a very serious situation may arise

with regard to those Nagas who are co-operating with us, because the hostile Nagas would like to play upon the serious provisions which have been incorporated in this Bill. Therefore the position of the co-operating Nagas would become very awkward *vis-a-vis* those who are still hostile.

Sir, it is a good feature that the term "armed forces" has been defined as "the military forces and the air forces operating as land forces, and includes any other armed forces of the Union so operating". So, as far as that goes, it is satisfactory that only the army will be used and the air force will not strafe or bomb the people.

In conclusion, Sir, I am not very happy in regard to the promulgation of the Ordinance. It will be seen that the Ordinance was promulgated on the 22nd May, 1958, that is, within only a fortnight of the conclusion of the last session of Parliament. We would therefore like to know as to what actually happened which justified the promulgation of the Ordinance. We would like to be informed if the situation was so serious during this period. If the situation was not serious and if it was well in hand, as certain reports said, then the Government could easily have waited till Parliament again met when the measure could have been brought before the Houses of Parliament. Of course, Sir, there is a provision in our Constitution for the promulgation of Ordinances, but they are not to be promulgated under any ordinary excuse. There should be a genuine case for the promulgation of Ordinances. But here it appears that the Government wants to make use of these Ordinances even in routine matters. It is therefore high time, Sir, that this practice should come to an end. It is not only in this case, but there are several other cases also where the matter could have easily waited for some days till our Parliament met. But even in ordinary cases such Ordinances have been promulgated. In this case the Ordinance was promulgated soon after the conclusion

[Shri Jaswant Singh.]
of the last session of Parliament. Therefore, Sir, we do not feel happy about this matter. So these are my grounds by way of objection to the passing of this measure. And, therefore, Sir, I do not find myself in a position to support this Bill. Thank you.

SHRI H. D. RAJAH: Sir, this Bill is a pathetic confession of our inefficiency in dealing with the Nagas. I had brought it to the notice of our Prime Minister in this House that the Nagas were in revolt not because there was anything intrinsically wrong with our dealing with them, but they were subsidised and armed by our eternally unfriendly neighbour, Pakistan. I said to the Prime Minister that there were persistent rumours that those Nagas were armed by Pakistanis, and I asked him about the steps that the Government had taken for dealing with that situation. The Prime Minister at that time said, "We are not aware of it, but if the hon. Member can give us some information on this point, we shall pursue it further." Now, Sir, after about 8 months of that statement in this House we are told by the Government that the Pakistanis are arming those Nagas. So, I look at it from that point of view. Since then much water has flowed down the Ganges. We saw that a deputation of Nagas came to our country, had a talk with our Prime Minister, and there was some resilience with regard to the administration of the Naga areas. But the trouble did not stop there. It is demonstrably true that the Government is in possession of the facts which have created a crisis, and which forced it to issue an Ordinance. Now it is being converted into a law. Now, Sir, I would like to know how long it would take the army to deal with the situation there and to bring that situation to normalcy. Is there any time-limit prescribed in this Bill? We do not find any. We find that wide and sweeping powers are being given and the President has no right to declare an emergency. It is a matter of perpetual emergency which we are

facing now in that area, and the military there is more or less a dictatorship in that area. You are surrendering almost all your rights to the military, and they are to do whatever they like. There is no question of putting any check on them even though they may commit excesses there or whether they behave properly or not. And there is no time-limit about that dictatorship. They are not subjected to civil authorities. Therefore now the whole position is this. I put it as a perpetual hide and seek game by the Pakistani forces and Indian military. Now Nagas are there in the hills. Can our Government say that they manufacture arms there? Can our Government say that they are equipped with the arms produced locally? You are not able to get any arms of a particular type to deal with these frontier or border troubles and with Pakistanis. But they are possessing excellent arms to deal with your army. And what is the reason behind it? Therefore again I wish to bring it to the notice of our Government that an unfriendly power is interested in creating a perpetual state of siege in the eastern area, and this Naga trouble must be looked at from that point of view, and not only from your military point of view. You can deal with a few Nagas. but you cannot deal with an unfriendly neighbour in any other language except the language which they can understand. That is the position, and when that is the position, your conferring power on the military will have no significance at all. You have to deal with the Nagas in the most proper manner as citizens of this country, and you have to deal with the enemy in the language which the enemy will understand. That is the position which we have to realise today.

Therefore, Sir, I am thinking very seriously whether it is not left to us to take up this issue with the Pakistan Prime Minister who is now coming to Delhi and ask him not to indulge in fostering enmity by supplying arms to hostiles. That is the most important point which you have to take into consideration. You may pass this Bill,

but the solution really is not contained in this Bill. According to me, the solution of this problem can be had in two ways. The first way is to deal with our Nagas as our nationals aspiring for a decent existence as other Indian citizens do. Your military rule is not an answer to that. Secondly, we can make the Nagas see reason by depriving them of the extraneous influences which operate to get them armed. That is the real position, Sir. When these two diplomatic overtures are effected by us in a satisfactory way, well, the Naga problem will be solved. Till that position materialises, you will be in perpetual agony on the eastern border and these borders will continue to be violated and the Nagas armed by them. And ultimately they will threaten the very peace and security of Assam, Manipur and other places. Merely shooting a few Nagas on this side or on that side by your army will not solve the problem. I would therefore, Sir, again appeal to the Government to look at this problem from this point of view, in a most rational manner, and see that something is done to put an end to these unfortunate happenings. Thank you.

SHAH MOHAMAD UMAIR (Bihar): Sir, I had no intention to speak on this Bill, but seeing the attitude of the Opposition friends and the sweeping remarks made by them against this useful Bill, I was simply compelled to take my stand here. Sir, I could not follow the logic of my friends on the other side. They have admitted that there are so many factors which are disturbing the peaceful atmosphere in that area—the Assam area—and there are so many incidents which are daily taking place about which we sometimes discuss in this House in the form of questions and other motions. It has been repeatedly stated by my eminent friend, Mr. Bhupesh Gupta, that there are certain foreign elements also which are a party to these sorts of disturbances which are taking place in the Assam area. Therefore, Sir, in view of these difficulties and also in view of the circumstances in which the Assam area

has been placed, I could not follow the logic of my Opposition friends that this Bill should be treated as only a waste paper and all the provisions contained in this Bill should be considered as useless and inopportune. My hon. friends on the other side are aware and they are in the know of things that lots of subversive elements are there working underground and underhand in the Assam area, outside and inside that area. And in addition to that there are also some misguided friends who think that this sort of affairs in the Assam area can be corrected and those people can be reconciled simply by their speeches and words. I do not understand how the Nagas had been brought into the discussion of this Bill. There is not a word about the Nagas in any of the provisions or clauses of this Bill.

SHRI JASWANT SINGH: The whole thing relates to the Nagas.

SHAH MOHAMAD UMAIR: Yes. At the same time you cannot establish this particular point about the Nagas to justify or not to justify the provisions of the Bill. Of course, we have to deal with the disturbance of public order in that area. If at any time the Assam Governor or the Chief Commissioner of Manipur thinks that such an occasion has arisen or such public disorder has taken place or such circumstances have developed that this sort of provisions that are in this Bill should be enforced, then the military or the army personnel will be armed with the provisions of this Bill so that they may deal with that situation. There is no question of the Nagas. Of course, there may be many subversive elements, leaving alone the Nagas, elements from Pakistan and others. I say there may be many subversive elements in this country and in Assam area who may be required to be dealt with under the provisions of this Bill.

SHRI BHUPESH GUPTA: The hon. Minister is feeling highly embarrassed by this kind of support.

SHAH MOHAMAD UMAIR: Under such circumstances, I think it is highly necessary and opportune and highly

[Shah Mohamad Umair.]
desirable that this Bill should have been brought before this House and I again congratulate the Minister in the Ministry of Home Affairs, Shri B. N. Datar, for having taken this opportunity to bring forward this Bill so that any disorder in the Assam area may be controlled effectively, if at any time the occasion requires it.

With these words, I support the Bill.

SHRI JASWANT SINGH: I want elucidation on one point, Sir. As my hon. friend will agree, there are other and worse disturbed areas than Assam and Manipur in the country. May I know why Assam and Manipur have been particularly selected?

SHAH MOHAMAD UMAIR: According to the version of Mr. Bhupesh Gupta, there are so many subversive elements there, outside and inside, also foreign elements in that area.

SHRI SANTOSH KUMAR BASU (West Bengal): Mr. Chairman, Sir, even if it be conceded that this Bill has been necessitated by the state of affairs with regard to the Naga areas of this country, I think there is ample justification for taking the line that the Government has been at last compelled to take because the approach of the Government so long has been to conciliate the Nagas to the utmost possible extent. I have heard on high authority in Assam itself that one of the former Governors of Assam had actually gone to seek an interview with Phizo in his house and he was made to wait for fully half an hour on the plea that Phizo was shaving himself. In other words, the extent to which Government have gone for the purpose of taking up a conciliatory attitude towards the Nagas and their pro-independence faction, I think, has exhausted the patience of Government so far as conciliatory methods are concerned and rightly and justly so.

Conciliation has borne fruit with regard to a large section of the Naga community, indeed a very large section, and they have come

over to the side of the Government. But there is one absolutely irreconcilable faction which always thinks of military measures being adopted in a surreptitious manner against the people in the border areas, and in the recalcitrant Naga areas. It is for the purpose of dealing with such people and as a last resort that the Government have taken up this attitude and brought the provisions embodied in this Bill. The very fact that an emergency measure like an Ordinance was thought of by the Government which are in possession of the facts and the realities of the situation in that area, would go to show that things are not at all what they ought to be, or anything like that, in that area. Government is proceeding, so far as I understand, on materials which have been obtained by them and they are of a character which cannot possibly be ignored. And therefore this extreme step has been taken. It will not do for us to judge this measure by ordinary standards applicable to other places. I take my stand on the theory and on the view that it is the Naga trouble that is sought to be checked by this Bill. I do not depart from that stand at all. That being the position, it is essentially necessary that such a Bill should be passed without delay. You know very well—I am appealing to all the hon. Members of this House—that Pakistan is also fishing in these troubled waters. If that be so, then it is all the more necessary that their military intentions and also semi-military intentions should be met by military measures as is contemplated by the provisions in this Bill. It is sacred ground upon which we should not tread in a light-hearted manner, because it involves the question of safety and security of India. I hope hon. Members will approach this question from that point of view. These few words I have uttered as a warning on this occasion.

SHRI AKBAR ALI KHAN (Andhra Pradesh): Just two words, Sir. With your permission, Sir, I would like to request the Government to see that,

notwithstanding this measure, this very unpleasant measure which may be inevitable, the process of conciliation and negotiation will continue so far as the Nagas are concerned. Thank you.

SHRI B. N. DATAR: Mr. Chairman, in the course of the debate yesterday and today, a number of points have been raised including some of a constitutional nature. I should like to discuss these latter first, before I reply to the points on what may be called the merits of the Bill.

The first contention that was raised by Shri Rajagopal Naidu was to the effect that in all such cases action ought to be taken under Article 352 of the Constitution. Now, may I point out . . .

SHRI AKBAR ALI KHAN: I think the same doubt was expressed by Dr. Kunzru.

SHRI B. N. DATAR: No, Dr. Kunzru raised another point. He did not refer to this one.

Now, so far as Article 352 is concerned, it has to deal with a question of maintaining the security of the land, when there is either external aggression or internal disturbance of such an order as to call it an emergency. Here may I point out that so far as all these acts with which this measure has to deal are concerned, they are not of such a nature that they can be called an emergency? There is no question arising regarding the security of India as a result of these actions. Therefore, I may point out that article 352 does not apply in this case at all. It has to be treated entirely as a law and order matter and nothing more nothing less. Therefore, article 352 does not come into operation.

Another point that was raised was whether by the passing of this Bill the Central Government was delegating its authority under article 258. I would submit that it is not a case of delegation of authority. It is a case

of conferment of certain powers on the State Government. May I point out in this connection that under entry number one of the State List, we have got public order. Now, so far as public order in general is concerned, that is entirely a State matter but when the army is to be called, naturally any measure dealing with that question has to be passed only by Parliament. Therefore, Sir, this particular Bill has been brought before the Parliament though criminal law, as you are aware, Sir, is in the Concurrent List also. One more point should also be noted so far as this question is concerned. We have got the Criminal Procedure Code as it stands at present and sections 129 to 131 are there under which on occasions where the magistrate is present, it is open to him to confer powers upon the military officers in aid of the civil authority. Similarly, also, there are occasions which have been provided for wherein, if the magistrates are not available, the officers of the armed forces can themselves take action. Now, all that is being done by this Bill is to confer more powers, confer more direct powers on the officers of the armed forces for the reason that the officers may be enabled to act in cases where there are such troubles here and there. May I point out that the troubles are at a number of places where it would not be possible for the civil authorities to maintain their magistrates. That is the reason why we have gone a step further here and have conferred powers upon the military officers for purposes of aiding the civil authority. If, for example, this point is appreciated very clearly—and this point has been mentioned in the two clauses dealing with this aspect—there would be no difficulty at all. Dr. Kunzru also referred to clause 3. It says, “.... use of armed forces in aid of the civil power.....” If we understand this position, then it would be very clear, Sir, that the civil authority is not abdicated at all, is not abrogated at all. I would now like to read clause 4(a): “If he is of opinion that it is necessary so to do for the maintenance of public order,

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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....” Then, a further description of that person is given. “....any person who is acting in contravention of any law or order for the time being in force....” The law is the law of the land and here, in this case, in the case of Assam or Manipur, “.... law or order for the time being in force in the disturbed areas 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”. We will find here, Sir, that the law is the civil law, the ordinary law that applies either to Assam or to Manipur. The civil authority passes an order say, under section 144 of the Criminal Procedure Code or some similar order whereby 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, is prohibited. In those circumstances where the military forces are called in, they are there only in aid of the civil power and the civil authorities continue to function and, only for the purpose of finding an effective remedy, certain powers are given to them in aid of the civil power. If this position is understood then there would be no difficulty at all. All that has been done is to go a step further and give the armed forces, certain specified officers of the armed forces, powers for aiding the civil authority in respect of violations that may take place in certain places of the orders and laws of the civil authority. If that position is appreciated—if my hon. friend Dr. Kunzru will understand that these military officers are acting in aid of the civil power—then naturally no difficulty would arise.

SHRI H. N. KUNZRU (Uttar Pradesh): May I interrupt the hon. Minister? Does my hon. friend mean that the words “in aid of the civil

power” authorise the civil authorities to exercise continuous control over the actions of the military officers?

SHRI B. N. DATAR: I have to point out here that the military officers have been given direct powers by this Bill.

[MR. DEPUTY CHAIRMAN in the Chair:]

So far as the civil authorities are concerned, their powers over the area are not abrogated or are not cancelled at all. They are there and both can work in aid of each other. Secondly, whenever such an order has been passed by the Governor or the Chief Commissioner declaring a particular area as a disturbed area, it is perfectly open to him to recall that order or to modify that order if he considers it to be necessary to do so. I need not quote here the relevant sections of the General Clauses Act. I believe it is section 21 wherein it is said that the authority that passes an order has also the power to rescind that order or to take it back. Therefore, there is no difficulty so far as this particular question is concerned.

SHRI H. N. KUNZRU: The whole question yesterday was that so long as a notification relating to a disturbed area is in force, the civil authority can exercise no control over the actions of the military officers.

SHRI B. N. DATAR: I have pointed out that such a difficulty or conflict will not arise at all because ordinarily, or normally, the civil authorities are in charge and only for a specific purpose the military officers come into the picture and they come into the picture in aid of the civil authority. If that is taken into account, there is no conflict at all.

DR. R. P. DUBE (Madhya Pradesh): Won't they come into the picture ordinarily?

MR. DEPUTY CHAIRMAN: Who will control them?

SHRI H. N. KUNZRU: You will appreciate the fact that legally speaking, the civil authorities and the military authorities become co-ordinate authorities.

SHRI P. N. SAPRU: Quite right.

SHRI B. N. DATAR: Naturally, in such a case, the civil authorities have full authority. They can take away the powers, recall the powers. What will the military officers do then?

MR. DEPUTY CHAIRMAN: Till that is done, till the declaration is recalled, who will control the actions of the military officers?

SHRI B. N. DATAR: So far as general control is concerned, the civil authorities. So far as military or special control is concerned . . .

SHRI H. D. RAJAH: Where is it provided?

DR. R. P. DUBE: Sir, . . .

SHRI B. N. DATAR: I cannot answer all the hon. Members at once, Sir.

SHRI BHUPESH GUPTA: The point that you have made, Sir, should be answered properly. You have asked, so long as this declaration remains, who controls the acts of the military officers. He says that it is the civil authority and I would like the hon. Minister to point out from this particular Bill how the civil authority can control. Under which provision can this be done?

SHRI B. N. DATAR: May I point out to the hon. Members that this Bill is by way of further extension of what is provided for in the Code of Criminal Procedure? It should also be noted, Sir, that here what the military authorities have to do is to do certain things in respect of the general law or in respect of the orders passed by the civil authorities and, therefore, they would be working in full harmony with each other, but, assuming for the sake of argument . . .

MR. DEPUTY CHAIRMAN: Let us understand the position. Under the normal law, under the Criminal Procedure Code, when the military is called in, a magistrate will be there in charge of the situation and only in the presence of the magistrate will the military be ordered to shoot or asked to arrest some persons.

SHRI B. N. DATAR: They will have to carry out his orders.

MR. DEPUTY CHAIRMAN: Yes, they will have to carry out his orders. Now one of the reasons given out in your earlier speech is that the magistrate cannot go to every place and certain areas, and even the whole State may be declared a disturbed area.

SHRI B. N. DATAR: Quite possible.

MR. DEPUTY CHAIRMAN: In that case it is only the Governor or the Chief Commissioner who can recall that notification. The magistrate will not be there to act in every place. In that case the military authorities will have full power . . .

SHRI B. N. DATAR: They will have full powers only to carry out the objectives.

MR. DEPUTY CHAIRMAN: That is true.

SHRI B. N. DATAR: There is no . . .

MR. DEPUTY CHAIRMAN: And that power will continue as long as that declaration by notification is not recalled.

SHRI B. N. DATAR: Yes, that power has to be exercised for the purpose of helping the civil authority or in aid of the civil power, and they will do it.

MR. DEPUTY CHAIRMAN: Who will control them?

SHRI B. N. DATAR: There is no dispute at all that the armed forces are there in aid of the civil power and

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the military officers to carry out the objectives will exercise the powers that have been given to them. There is no dispute about it.

MR. DEPUTY CHAIRMAN: That is true. But who will control them? Is it the local magistrate or the Governor or the Chief Commissioner? Should it not be that they should act under such instructions and conditions as laid down in the directive by the Governor or the Chief Commissioner? That is what is wanted by Dr. Kunzru and also by the Opposition. Please explain that position.

SHRI B. N. DATAR: I am explaining that position. Now, as I have stated, military officers come into the picture in aid of the civil authority; therefore the civil authority is not completely abrogated at all. But I would . . .

MR. DEPUTY CHAIRMAN: According to your own premise, the civil authority will not be there.

SHRI B. N. DATAR: You could have waited for just a minute. I could conceive of cases where the military officers would be in full charge because there are no magistrates at all. Under those circumstances they will have to exercise their powers according to their discretion; there is no dispute at all.

SHRI H. N. KUNZRU: Even where there are civil officers, for instance, when the Collector of a district is functioning, he cannot issue any instructions to the military officers who may be working in his district.

SHRI B. N. DATAR: He can discuss the matter with the military officers and supposing, for the sake of argument, there is a deadlock, then the Governor would come into the picture. Then the Governor would come into the picture and in such cases, as you have pointed out, Sir, general instructions in conformity with the provisions of this Act will be issued.

MR. DEPUTY CHAIRMAN: The only power that the Governor or the Chief Commissioner will have is to cancel the declaration.

SHRI B. N. DATAR: Yes, cancel the declaration; that would be an extreme measure.

MR. DEPUTY CHAIRMAN: He has no other powers.

SHRI B. N. DATAR: That is an extreme step. Here we have got the civil authority; we have got the military authority . . .

MR. DEPUTY CHAIRMAN: If in the Bill you incorporate some such amendment as "under such instructions and conditions as laid down in the declaration" or "subject to such conditions and instructions as laid down by the local civil authorities . . .

SHRI B. N. DATAR: It would be difficult.

MR. DEPUTY CHAIRMAN: . . . because you are taking out the jurisdiction of the civil authority, of the District Magistrate or the Collector.

SHRI B. N. DATAR: "In aid of the civil power", that is what I have stated; the ultimate objective is the same.

MR. DEPUTY CHAIRMAN: Whatever they do will be in their aid, but suppose you are . . .

SHRI B. N. DATAR: We have to trust our military officers.

MR. DEPUTY CHAIRMAN: You have to examine whether you are not giving almost unrestricted powers to the military; the District Magistrate has no power.

SHRI B. N. DATAR: My simple answer is this. All these misapprehensions, are unwarranted. The military officers also have to act subject to certain ordinary rules, and in case they do something, Sir, then the last act would be to recall the declaration . . .

MR. DEPUTY CHAIRMAN: But they are protected.

SHRI B. N. DATAR: . . . to recall the notification.

DR. R. P. DUBE: The notification will be only recalled by the Governor or the Chief Commissioner and not by the magistrate who is there.

SHRI B. N. DATAR: No, no, the magistrate will have to report to the Governor or to the Chief Commissioner as the case may be.

(Interruptions.)

I cannot answer if all the hon. Members ask questions together, and how can I reply?

MR. DEPUTY CHAIRMAN: If in your clause 4 you put in this amendment "subject to the control of the Governor or the Chief Commissioner", after the portion "Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area," if you put in an amendment like that, I think that will satisfy the hon. Members.

SHRI B. N. DATAR: It may not be necessary though I shall consider the question. It will not be necessary; that is my apparent reaction. All the same I shall consider this point.

SHRI BHUPESH GUPTA: The point I would like to get cleared is the point you raised and to which you drew our attention. Supposing in an area there is no civil authority for the purpose of this Bill, say, a magistrate . . .

SHRI B. N. DATAR: The military is always there—there is no dispute about it—in aid of the civil power; this is not martial law.

SHRI BHUPESH GUPTA: Evidently you are raising a hornet's nest. There is some dispute. There is no magistrate; the military has come into the picture. He has been saying he will come into the picture; then he says he will aid . . .

MR. DEPUTY CHAIRMAN: I feel the Governor or the Chief Commissioner must give some instructions. You may just consider.

SHRI B. N. DATAR: I shall consider.

SHRI PURNA CHANDRA SHARMA (Assam): This legislation would not have been necessary at all if the civil authorities could exercise their jurisdiction over that area. That is the point.

MR. DEPUTY CHAIRMAN: That is conceded, but in the absence of the civil authorities the powers given to the defence forces should not be unrestricted.

SHRI B. N. DATAR: I shall reply.

SHRI SANTOSH KUMAR BASU: Mr. Sharma has made the position absolutely clear. The whole point is: What is a disturbed area? Once that is decided by the civil authority, the Governor of Assam or the Chief Commissioner of Manipur, once that is decided, then the power is deliberately and purposely given under this Bill to the armed forces.

MR. DEPUTY CHAIRMAN: That is a point which the House knows.

SHRI SANTOSH KUMAR BASU: Let us admit that position; let us concede that utmost power is given to the military authorities. It will be the business of the civil authority to take entire stock of the situation before coming to a decision that an area is a disturbed area. There all this circumspection will be necessary. Once that decision is made, then the military must be given power to deal with the situation as has been provided for in clause 4, and after that, if any person is arrested, he will be made over to the ordinary police as per clause 5.

SHRI BHUPESH GUPTA: Is it the contention of the Government that if the military is given power the military will reign supreme, subject

[Shri Bhupesh Gupta.]

to no other control, direction or anything so long as the area remains declared a disturbed area?

SHRI B. N. DATAR: Well, the military has to carry out their work in exercise of the powers given here: there is no dispute about it. But that is in aid of the civil authorities; that is what I have pointed out.

SHRI H. D. RAJAH: Just one question. In the case of the civil and military authorities functioning together, according to the statement of the Minister, where there is a difference, which authority will prevail ultimately?

MR. DEPUTY CHAIRMAN: The matter has sufficiently been made clear.

SHRI B. N. DATAR: The point has been made clear. We are not dealing with the NEFA area at all. A large portion of the arguments or speeches by the hon. Members proceeded almost on the footing that here we are dealing with the other NEFA area or the Naga Hills. We are dealing only with Assam and therefore that question does not arise.

Now another point was raised by my hon. friend, Dr. Kunzru. He made a reference to the Naga Hills-Tuensang Area Act and he stated that there the wording was "in the State of Assam." May I point out in this connection, Sir, that these words have been advisedly used, and in this connection it would be better to understand the constitutional position. So far as the States now are concerned, the States are governed in respect of their ordinary administration by Part VI of the Constitution, but in respect of Assam there are certain special considerations which have been dealt with in Schedule VI of the Constitution. In Schedule VI two matters have been discussed in paragraph 20. There are two Parts of the Table given there.

Sir, one deals with certain areas. In those areas, what is dealt with is the question of the administration of what are known as autonomous districts.

That is point No. 1. There is also another question, which has to be taken into account. Out of the areas in the Assam State it is open to have separate administrative units. They have been referred to—I should like to point out here—in paragraph 18 and paragraph 20. So far as the Part A of the Table under paragraph 20 is concerned, it only deals with the question of administration of autonomous District Councils. But take Part B. In understanding the relevancy of Part B of the Table in paragraph 20 one has to understand the provisions in paragraph 18. There it has been said:

"Subject to the previous approval of the President, by Public notification, apply all or any of the foregoing provisions of this Schedule to any tribal area specified in Part B of the Table appended to paragraph 20 of this Schedule or any part of such area and thereupon such area or part shall be administered in accordance with such provisions."

Therefore, you will understand that two areas have been referred to in Part B of the Table in paragraph 20 and so far as this question is concerned, they continue to be within Assam State but they are different administrative units. So far as these units are concerned, clause (2) of paragraph 18 lays down that the administration of such area or part thereof, as the case may be, shall be carried on by the President through the Governor of Assam as his agent and the provisions of article 240 shall apply thereto as if such area or part thereof were a Union territory, and article 240 makes provision for the administration of such territories. Under these circumstances even though constitutionally these two parts—with which we are not directly concerned—are within Assam

State, all the same they are different administrative units and it is the duty of the President to carry on the administration through the Governor. It is only for this purpose that these two administrative units have been referred to. Therefore there is no inconsistency in the use of the words 'within the State of Assam' and may I point out to him—I am sorry he is not here now—that in paragraph 20 of Sixth Schedule the same expression has been used:

"The areas specified in Parts A and B of the Table below shall be the tribal areas within the State of Assam."

And this has been followed in the Naga Hills-Tuensang Area Act. Thus we have got two areas, one is the NEFA area and the other is the Naga Hills-Tuensang area.

MR. DEPUTY CHAIRMAN: According to you it is in the State of Assam. Is it Centrally administered or Centrally administered by the Governor as agent? Will this Bill apply to that area?

SHRI B. N. DATAR: No; it will not. That is the next question I am going to deal with. So far as the Naga Hills area was concerned, we had certain difficulty and in 1956 for the first time the then Governor of Assam issued a regulation which was in force and early this year . . .

SHRI BHUPESH GUPTA: He issues so many orders. I do not know what he is referring to. Let him be quite clear.

SHRI B. N. DATAR: I am making it clear. In the case of other areas with which we are not directly concerned here, they are governed by regulations. The first regulation was passed by the Governor in 1956 and early this year a regulation has been passed—Regulation II of 1958—to have certain special powers conferred upon the officers of the armed forces in that area. That regulation is in

force and it will continue till the next year. Therefore we are not concerned with that area; the matter has been provided for by a regulation. What we are now concerned with is the other area minus the areas in Part B. May I point out that in Part B there are two areas? Though they are within the State of Assam, still administratively they are different and different provisions have been made. Now, this is the difficulty that arose. Formerly, in this Naga Hills Area there were certain troubles. These troubles were brought under control on account of the regulation on the one hand and on account of the implementation of welfare schemes in those areas on the other. Now the situation is fairly under control on account of these two circumstances. One is the existence therein of the regulation and the other is that welfare schemes are implemented or as my hon. friend here said the policy of conciliation is followed there. But there are certain rowdy elements that require to be controlled by stern measures and therefore we have got a regulation which is almost on the same lines as the present Bill. On account of these two circumstances the situation in the Naga Hills Area was brought under control. When it was brought under control there arose certain difficulties. These hostile people felt difficulty in getting arms and other material and when they found that the situation there was not any longer congenial for carrying on their activities they turned their attention towards the other areas and it is with those areas that we are now concerned. Ordinarily, we can call this area the plains part of Assam State. Assam, as you are aware, is a normal State and we have got a popular Ministry there. So these anti-social elements began to infiltrate into this portion of Assam State and tried to carry on their work there, the same undesirable activities that they were formerly carrying on in the other area but which have been brought under control. And it is for this purpose that the Assam Government

[Shri B. N. Datar.]
felt in May this year that the matter could not wait longer. We received a number of reports; we received a number of strong recommendations from the State Government. They desired that with a view to controlling the situation within the State it was absolutely essential that something should be done and they wanted to have similar laws as we had in the other area. Therefore let hon. Members understand it correctly that in the other area the regulation is already in force and it is almost identical with the present Bill. Thus in one area we have a law which can bring such situations under control but if in the adjoining or neighbouring area we have no such law, then naturally these anti-social elements will station themselves in the, what can be called, safe area and carry on their acts of depredation. That is the reason why the Government had to issue an Ordinance on 22nd May.

Some hon. Members asked why within a few days after Parliament went into recess there was such a necessity to issue the Ordinance. May I point out to this House that it is exactly for such instances that the President has been armed with powers to issue Ordinances and it has been made clear therein that if the President is satisfied that there are certain circumstances which call for the promulgation of an Ordinance, then it is his duty to do so and the corrective is that that particular Ordinance will become null and void after six weeks after Parliament reopens? Under the circumstances I submit that it was a matter entirely within the jurisdiction of the President. If he is satisfied, if he is subjectively satisfied that there is need or necessity for such an Ordinance to be promulgated, then that is a matter which has to be left to his discretion. And the number of Ordinances he has issued is not very large; you will kindly note it, Sir. They are issued only when it becomes absolutely essential for the administration to be carried on or for law and order to be maintained. Here the

Assam Government was very anxious that there should be special powers for the military; they felt that without the conferment of such powers the situation could not be brought under control. That is what my friend, Shri Basu, rightly pointed out that it is not like any ordinary State. I was happy that Shri Basu as also two hon. Members from that side have very correctly appreciated the position. They stated that the conditions there were not like 1 P.M. those elsewhere and that is the reason why special powers had to be given for the purpose of maintaining law and order, for the purpose of maintaining a progressive administration, a welfare administration.

MR. DEPUTY CHAIRMAN: You may continue after lunch. You may also please examine whether passing of this law will not override the regulations that might have been passed under rule 18 of the Sixth Schedule. You may just examine that position also, because Parliament is supreme and when Parliament passes this Bill . . .

SHRI B. N. DATAR: This will apply. It will not in any way affect our position.

MR. DEPUTY CHAIRMAN: But you said earlier that it will take away that particular area, the Naga and Tuensang area, out of the jurisdiction of this Act.

SHRI B. N. DATAR: My point is this. When an area comes under the administrative jurisdiction of the President, it is open to the President to issue a regulation.

MR. DEPUTY CHAIRMAN: But the Parliament's power to pass an Act for that area is not taken out.

SHRI B. N. DATAR: But Parliament will agree that it is article 240. I will read to you article 240.

DR. R. P. DUBE: Are we not having lunch?

MR. DEPUTY CHAIRMAN: You may just consider it during the lunch.

SHRI B. N. DATAR: But you will kindly see article 240.

MR. DEPUTY CHAIRMAN: I have seen it. You may just examine the position with regard to the provisions of article 240 and also rule 18. The House stands adjourned till 2.30

The House then adjourned for lunch at one minute past one of the clock.

The House reassembled after lunch at half past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI B. N. DATAR: Mr. Deputy Chairman, I have considered the question and I am advised that no amendment is necessary and that the Bill can go through as it is. The objections, therefore, are without substance. Then, I was dealing with certain other matters brought before the House by certain hon. Members. I have submitted . . .

SHRI BHUPESH GUPTA: The hon. Minister has said he has been advised, but on what grounds?

SHRI B. N. DATAR: The law Minister will be coming and addressing the House and so I need not go further into that matter. I understand that the Law Minister is coming here and would address the House.

SHRI H. N. KUNZRU: On what point?

SHRI B. N. DATAR: On the point that was raised, namely, the point raised by the hon. Member yesterday. On that question he states, it is his opinion as he will explain it, that as it is no amendments are necessary at all and that the object can be achieved even under the Bill as it is.

MR. DEPUTY CHAIRMAN: What about the control of the military when a particular area. . . .

SHRI B. N. DATAR: That is what he will deal with. If you like I am prepared to deal with it. I have already dealt with it. My point is this, if you desire I would explain it further here. Now, whenever it is found by the Governor or the Chief Commissioner that certain areas are dangerous, then in that case he can issue a notification and declare it as a disturbed area. Then, so far as certain questions referred to in clause 4 are concerned, the military officers are clothed with the powers. That does not mean that the civil authority has completely abrogated itself. Therefore, it is open to the military authorities to carry out the purposes that have been mentioned here.

[At this stage the Minister of Law (Shri A. K. Sen) entered the House.]

So, let him deal with this question and then I shall deal with the other points that have been raised.

SHRI N. M. LINGAM (Madras): I think that will be better.

SHRI H. N. KUNZRU: Is the Law Minister going to deal only with the question I raised yesterday or also with the position of the Naga Hills and Tuensang area? Is he also going to tell us that it does not form part of Assam?

SHRI B. N. DATAR: I have already discussed that question. He was not here unfortunately.

SHRI H. N. KUNZRU: Though I was not here I know what was said. Probably the Law Minister will speak on that point too.

(Interruptions.)

MR. DEPUTY CHAIRMAN: There are two points. One is the constitutional point. That is, whether to a tribal area—which is said to be a

[Mr. Deputy Chairman.]

part of the State of Assam, but it is almost a Union Territory, and the Governor will be acting as an agent of the President—this Bill applies or it will be excluded? I think the hon. Mr. Datar said that it is excluded.

SHRI B. N. DATAR: I stated that it was governed by the regulation issued by the President.

MR. DEPUTY CHAIRMAN: Suppose this Bill comes into force, assuming it is governed by it . . .

SHRI B. N. DATAR: It does not matter, because both are the same.

THE MINISTER OF LAW (SHRI A. K. SEN): It is really academic.

SHRI H. N. KUNZRU: I thought the contention of the mover of the Bill was that this Bill would not apply to the Naga Hills-Tuensang area. But how can the authority of Parliament be subordinate to that of the President?

SHRI B. N. DATAR: Now, I pointed out that though technically these two areas are in Assam, it has been so mentioned not only in the Act, namely, the Naga Hills-Tuensang Area Act, but also in the Sixth Schedule. In para 20 it has been specially mentioned that that would be in Assam State, but as it has been . . .

SHRI H. N. KUNZRU: That is due to this Act, the Naga Hills-Tuensang Area Act.

SHRI B. N. DATAR: Already it is there, Let the hon. Member kindly see it.

SHRI H. N. KUNZRU: The Naga Hills-Tuensang Area Act has changed the Sixth Schedule in that respect.

SHRI B. N. DATAR: But still the wording is the same.

MR. DEPUTY CHAIRMAN: But according to article 240, and you were referring to rule 18, till Parliament makes the regulation, it is the regulation by the President that will govern.

SHRI B. N. DATAR: I was pointing out that even after the passing of this Bill, under the Constitution itself it is stated that even in respect of tribal areas which are administered Centrally, they continue to be within Assam. The hon. Member might see paragraph 20, which reads:—

“(1) The areas specified in Parts A and B of the Table below shall be the tribal areas within the State of Assam.”

So, this expression “within the State of Assam” has been repeated in the Naga Hills-Tuensang Area Act. Therefore, while they continue to be under Assam, still as I have pointed out according to other provisions of the Constitution they are under the administration of the President whose agent the Governor is. I would refer you to article 240 to show that all these areas are to be treated as if they are Territories. And then a provision has been made that in such cases a regulation can issue and the regulation will have the force of law also. And, therefore, I pointed out that so far as these areas were concerned, the regulation had been issued by the President and it is still in vogue. So far as the rest of Assam is concerned . . .

MR. DEPUTY CHAIRMAN: Does it mean that this Bill, when passed, will not apply to that particular area?

SHRI B. N. DATAR: The answer is two-fold. Now, my first point is that the regulation is there, and the regulation can be passed under the Constitution.

MR. DEPUTY CHAIRMAN: Does a subsequent Act of Parliament, when

this Bill becomes an Act, override the regulation, supersede the regulation or not? That is the point.

SHRI B. N. DATAR: It need not supersede, because regulation will have the force of law also. That is what has been pointed out in the Constitution itself.

MR. DEPUTY CHAIRMAN: But this will be a subsequent enactment by Parliament, assuming that the enactment is passed.

SHRI BHUPESH GUPTA: I want to know what happens . . .

MR. DEPUTY CHAIRMAN: The Minister is speaking.

SHRI B. N. DATAR: That is what I was pointing out. That is the reason why I put it in an alternative way. My first contention is that the regulation will govern those areas and the regulation will have the force of law, and such regulation has been issued just this year. That regulation is already in operation.

SHRI SANTOSH KUMAR BASU: Under what article?

SHRI B. N. DATAR: Under article 240 of the Constitution. I am reading the preamble to that regulation, Regulation 2 of 1958: In exercise of the powers conferred by article 240 of the Constitution . . .

SHRI SANTOSH KUMAR BASU: It does not refer to those areas at all. It only says the Andaman and Nicobar Islands; the Laccadive, Minicoy and Amindivi Islands.

MR. DEPUTY CHAIRMAN: It will have to be read with para 18 of the Sixth Schedule.

SHRI B. N. DATAR: It will have to be read with paragraph 18 of the Sixth Schedule and therein it is stated that the administration of such area or part thereof, as the case may be, shall be carried on by the President through
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the Governor of Assam as his agent and the provisions of article 240 shall apply thereto as if such area or part thereof were a Union territory specified in that article.

MR. DEPUTY CHAIRMAN: Now, among the Union Territories, they have mentioned only Manipur in this Bill.

SHRI B. N. DATAR: No, not merely Manipur. Here there are two areas in this Bill—Assam and Manipur.

(Interruptions.)

MR. DEPUTY CHAIRMAN: The whole of Assam and Manipur.

SHRI B. N. DATAR: Let the hon. Member wait for a minute. Now, so far as Manipur is concerned, it is already a Territory. So far as this, Naga Hills-Tuensang area is concerned, it is to be treated, though in Assam, as a Centrally Administered Territory under article 240, read with paragraph 18. Under the circumstances it is perfectly open to the President to issue a regulation. That regulation has been issued, has been in force.

MR. DEPUTY CHAIRMAN: Now, what I want to know is this. You consider that area as a Union Territory. It is to be considered as a Union Territory and it is not mentioned in this Bill. Does this Bill when it becomes an Act apply to the particular area or not? That is what Dr. Kunzru wants to know.

SHRI B. N. DATAR: I was answering that question in a double manner. My first point is that it is governed by a regulation, and the other point is . . .

MR. DEPUTY CHAIRMAN: When a declaration is made under this Bill, the Bill says it is in aid of civil authority, and the military authorities are given full powers to shoot, to arrest persons and to recover properties—some of these powers are given. Who

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is the authority that controls them when once any area of Assam is declared a disturbed area? Does the civil authority become *functus officio* or does it continue to control the military authorities, though it has been declared a disturbed area? These are the two points on which the House wants your opinion.

SHRI A. K. SEN: Sir, with regard to the first point, the House will remember that when Regulation II of 1958 was passed, it applied only to the tribal territories governed by the Sixth Schedule and article 240 of the Constitution. It was found later on in the course of actual operations that these disturbances, to cope with which the regulations were passed, were not strictly confined to the territory of the tribal areas, and more often than not they affected the State of Assam. So far as the State of Assam is concerned, therefore, a law would naturally be necessary to cope with the situation, and that could only be done by an Ordinance or an Act of Parliament. So far as the Union Territories were concerned, they could have been dealt with by the regulations as they were in existence. Instead of leaving certain areas to be governed by the regulations and certain areas of the State of Assam to be governed by the Act and the Ordinance, it was thought desirable to consolidate all the powers under one Act. The present Act would govern not only the tribal territories but also the rest of Assam, and the areas to be chosen would depend upon the Governor. Clause 3 provides—

“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.”

Necessarily this would govern not only the State of Assam but also the tribal territories.

MR. DEPUTY CHAIRMAN: Where is it mentioned?

SHRI A. K. SEN: The State of Assam includes under the Constitution the tribal areas also.

So, that is the intention of the Act, Sir, and I can tell you that it was thought necessary, because I had a hand in the drafting of the Bill, that it was best to pass one Act of Parliament to govern the State of Assam including the tribal areas rather than have two laws in operation, one to regulate the tribal areas and the other to regulate the rest of Assam, though the provisions may be same. It is a pure question of draftsmanship to produce one consolidated Act to govern the entire territory covered by the State of Assam including the tribal areas.

Now, Sir, the next question is not really a constitutional point but a point of interpretation so far as the provisions of the Bill are concerned as to what would happen when once the Governor makes up his mind to issue the necessary notification declaring a particular area as the one contemplated by clause 3. Then, Sir, the powers are mentioned. If you proceed to clause 4 of the Bill, you will find that the subjective opinion to be formed is the opinion of any military officer. Clause 4(a) says—

“Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, 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, 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 firearms, ammunition or explosive substances”.

This opinion is to be formed entirely by a military officer as mentioned in clause 4, and he is to take action accordingly. Once the area is notified as a disturbed area, the condition precedent for the taking of action, namely the opinion to be formed is left to the army officer mentioned. It is a mere question of interpretation. It may be argued as to whether it was proper to leave the forming of opinion entirely to the military officers or not, but it is not a constitutional point, if I may submit respectfully. Then (b): “if he is of opinion”—that again is the opinion of the military officer. Then the powers are given to arrest without warrant and to enter and search without warrant. Then clause 5 is salutary:

“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.”

That means that after the arrest the course of the civil law would have its run.

May I explain why it is thought necessary to leave the condition precedent, namely the forming of opinion to the military officers and not to the civil authorities in the disturbed areas? As the hon. Members will easily appreciate, civil authorities cannot function every second, every moment, when there is danger. The Governor, the highest authority in the State, makes up his opinion that a particular area is disturbed, and that it is of such a character that these extraordinary

powers are to be made over to the military officers; and then when he does that, the very fact that he forms that opinion shows that the ordinary civil authorities cannot cope with the situation and the circumstances are such as to warrant the taking over of certain duties by the military authorities and not by the civil authorities. Therefore, if once that is conceded, the forming of opinion as regards certain actions to be taken must necessarily be left to the military officers, but more than arrests, more than quelling the disturbances, more than carrying out searches, no further power is given, and so far as ordinary punishment for offences is concerned, that is left to the civil authorities, because once the man is arrested, he should be made over to the nearest police station.

That, Sir, is the core and substance of the Bill and in my submission, having regard to the notoriety that that area has acquired regarding constant disturbances, constant threat to life and property, incursions by armed raiders into peaceful villages, such powers were necessary, and the Government contemplated giving those powers only after all other steps had been found to be insufficient to cope with the situation.

SHRI H. P. SAKSENA (Uttar Pradesh): What will happen to the relation of the President when this Bill becomes law?

SHRI A. K. SEN: It is common knowledge that, if with regard to the same area there are regulations by the President and at the same time an Act of Parliament, the Act of Parliament must govern. That is paramount.

SHRI H. P. SAKSENA: It means that the regulation will be ineffective.

SHRI A. K. SEN: To the extent that it is superseded by the Act.

One thing I have got to say. The regulations were intended to operate for one year only. That is also the

[Shri A. K. Sen.]

reason why this Act consolidated all the provisions and made them applicable to the areas concerned.

SHRI H. N. KUNZRU: The point that I want to raise is this. A riot may take place in a city and the situation may be such as to pass out of the control of the civil authorities. They then ask for the help of the army. But when the army is acting, it is still there, I mean, the civil control is not abrogated.

SHRI A. K. SEN: Under the Criminal Procedure Code, yes.

SHRI H. N. KUNZRU: I mean, the magistracy will still have power there. But in this case when the military is called in, that is, when a notification has been issued declaring an area to be a disturbed area, the military officers cannot be controlled in any way.

A magistrate may feel that in a certain border area more firing should not go on. He thinks that politically it will be better if the military officers acted with great restraint there or if he transferred their activities to another part of the area. Can he issue a direction then to the military officers? No. I anticipated that reply. It is obvious that no civil authority can issue, not even the Governor can issue, any direction to these military officers. Would it not be better even now to consider this point and insert a provision in the Bill which, in case of need, may enable at least the Governor to issue directions either himself or through the Collector or the Commissioner of a Division?

SHRI A. K. SEN: May I answer this, Sir? It is not true that the army would be uncontrolled, because after all, the army is subordinate to the civil authorities in this country. There is the Defence Minister.

SHRI H. N. KUNZRU: The civil authority is the Central Government, not the Government of Assam.

SHRI A. K. SEN: There is the Defence Minister responsible to Parliament. It is true that the ordinary provisions of the Criminal Procedure Code, Sections 129 to 131, do confer powers on the civil authorities to requisition the help of the military in certain circumstances. If those powers were considered sufficient, this Bill would not have been necessary. Since they were found insufficient, since they were found impracticable where the disturbances were taking place continuously and in various areas by armed raiders—I mean, more or less in a military way—it would be difficult to entrust the civil authorities with the authority to give directions to the military authorities. The policy is quite clear and that is why the condition precedent for judging such a situation is left to the opinion of the Governor who is a responsible person. Once that opinion is formed and an area is described as 'disturbed', the consequences of the Bill must follow. It is now for Parliament to determine whether the judgement of the Governor would be fair or not. It is the considered view of the Government that, to cope with the situation which has arisen in that area, these powers would be necessary and the day-to-day functioning of the civil authorities for the purpose of quelling the never-ending disturbances would not be a practical proposition.

MR. DEPUTY CHAIRMAN: Is it the Central Defence Ministry? Can that issue orders?

SHRI SANTOSH KUMAR BASU: Just one question.

SHRI A. K. SEN: I have no doubt that the army will be keeping the Government informed of its day-to-day operations.

SHRI SANTOSH KUMAR BASU: Although I have given my full support to the measure in my earlier observations, now that the Law Minister is here, may I just ask him one question with regard to clause 3? It provides

for a notification being issued by the Governor of Assam or the Chief Commissioner of Manipur to declare a particular area as a disturbed area. Now, does that notification contemplate that a time-limit should be set for that area to be a 'disturbed area'? Where is the provision in this Bill except the General Clauses Act provisions, namely, the authority which issues a notification can also cancel it? Is that the general law under the General Clauses Act which is relied upon? Otherwise . . .

SHRI A. K. SEN: It is not necessary to repeat that the Governor can at any time revoke the notification.

MR. DEPUTY CHAIRMAN: (To Shri B. N. Datar) Anything further to add?

SHRI B. N. DATAR: Yes, I have to deal with some further points, Sir. It was contended during the course of the arguments that there was no need at all for such a Bill, much less for the Ordinance. Secondly, it was also stated that the Government should not have a merely negative approach, but they should, so far as those tribal areas are concerned, have also a positive, a constructive, approach. These are the two points which require some consideration.

So far as the first point is concerned, may I point out that there were circumstances that required the passing of the Ordinance in the first place, and that required the passing of this Bill by Parliament? The condition in the adjoining areas as also in the Assam proper was far from satisfactory. Here, we were not dealing with only sporadic attempts at disturbing peace and order. There were organised attempts by certain gangs to carry on depredations there as also in the Assam area. That was the reason why the Government had to take certain strong actions.

I might point out here the nature of these various depredations. There were a large number of dacoities so far

as private persons were concerned. There were raids on Government offices. There were also raids on railways. In certain cases, houses were burnt and a number of acts were done for threatening the people. The tea labourers were also threatened. The effect was that in a number of villages, people had to run away from their places. These were not ordinary actions. Therefore, the Government had to control the situation. May I point out here why the Ordinance was necessary and the present Bill is necessary? There were numerous raids carried out by armed gangs of Naga hostiles. In many cases, they were equipped with automatic weapons and villages were looted, innocent persons killed or kidnapped and other atrocities were perpetrated.

SHRI P. N. SAPRU: May I just interrupt? The point is whether these incidents took place between the 10th May and the 22nd May, the day on which the Ordinance was promulgated, or they had been occurring before? If they had been occurring before, then the criticism is that the Ordinance could have been—and should have been—brought before the Legislature, before it rose.

SHRI B. N. DATAR: They had been taking place, Sir, even from before the date of the Ordinance. There is no doubt about it. But may I point out also that the State Government were considering whether the ordinary powers were sufficient to deal with the situation? But they found, round about the time when the Ordinance was issued, that these powers were not adequate at all so far as the control of the situation there was concerned. Here, naturally, the judges are not the Government of India, but the Government of Assam and the Administration of Manipur.

SHRI P. N. SAPRU: Is it that the initiative in this matter was taken by the State Government after the 10th of May?

SHRI B. N. DATAR: Sir, all along, we have been receiving reports. These two Administrations considered it absolutely inevitable that they must have more powers than what they had under the ordinary law. They were the best judges of the situation. It should be understood very clearly that the Heads of these Administrations in Assam and Manipur were the authorities who were the judges of the situation and who reported to us that more powers were necessary if effective control had to be had so far as these Assam and Manipur areas were concerned. That is the reason. We had a very correct and effective assessment of the situation accompanied by a recommendation that additional powers ought to be given to them. Then as Parliament was in recess, the President had to issue an Ordinance.

I was dealing with the nature of the various depredations that were being carried on there. A large number of families have been the victims of these brutal raids. A number of persons have been kidnapped and some have even been done to death. This has been occurring almost during the last six months and dacoities have been committed in other parts of Assam. You will kindly note, Sir, that so far as these dacoities are concerned, they are being committed in the plain areas of Assam proper and a large amount of cash and arms was looted. A major raid carried out by the Naga hostiles was on a railway station and on project offices in certain areas. There was an encounter with a police party at another place. These are not ordinary matters, let us understand it clearly. So far as the police or the magistracy is concerned, they are in a position, under the Code of Criminal Procedure, to deal with such matters so long as they are within certain normal limits.

If, for example, the normal limits are exceeded and if
3 P.M. more powers are necessary for controlling the situation, then naturally we have to give those powers. That is the reason, Sir, why I have pointed

out that this is an extension of the powers that the Code of Criminal Procedure has already given in these respects. I may point out that as a result of the exercise of the powers given under the Ordinance the whole situation has been brought under control. Therefore, Sir, unless we have a measure of this nature or a Bill of this nature, it might be difficult to control the situation there. And we have introduced as many development projects there as possible, because they are also the citizens of India and they are also entitled to all the facilities to which we on the plains are entitled. I shall point out, Sir, how that policy is being carried on progressively so far as the tribal area is concerned. And if there has been any organised defiance, then naturally the Government must be armed with powers. The civil power, namely, the magistracy and the police, could not control the situation there. Therefore the House will agree that the conditions prevailing there are far from normal, in the sense that they require certain more powers to be given to the military officers. So far as the law and order situation is concerned, such powers are considered necessary.

Then, Sir, I would like to deal with the positive aspect of the question. I have dealt with what was called the law and order situation. I would not call it a negative approach because unless law and order is maintained, no development is possible and no progressive work is possible at all. Therefore, Sir, after having dealt with the law and order position, and after having satisfied the House with the requirements of the law and order situation, I would like to point out that so far as the adjoining tribal area is concerned, namely, the area popularly known as the Naga Hills-Tuensang area, a new administrative unit was formed after Parliament had been pleased to pass the necessary Act. That is about eight months back. During this period, Sir, Government have been able to normalise the administration to a very large extent and to

introduce certain developmental measures. I may point out in this connection, Sir, that it is estimated that broadly Rs. 1.5 crores is going to be expended on the developmental activities in the area during the current year. Already some amount had been set apart by the Assam Government so far as this particular area was concerned. But it was thought advisable to have a larger amount. Therefore, Sir, the Government is considering the matter, and it is probable that we shall be in a position to spend about Rs. 1.5 crores on developmental activities in the area during the current year. Out of this amount, Sir, Rs. 75 lakhs will be spent for the development of communications. Naturally, Sir, so far as these areas are concerned, the condition of communications there is far from satisfactory. We had these raids and as a result of these raids and depredations the conditions which were already bad have become worse. Therefore, Sir, Rs. 75 lakhs or so will have to be spent on the development of communications.

Then, Sir, as I have pointed out, there is the development department, the work of which had almost come to a standstill, but as a result of the formation of a new administrative unit things are coming round, and Administration now is more or less on a firm footing and functionaries belonging to these departments are now able to go about in the area without a scare, and the people in their return are also taking advantage of the improved conditions. Then, Sir, as far as medical facilities are concerned, 20 additional doctors have been enrolled and many new dispensaries are also running. Previously we could not spend much on medicines etc. because the conditions were far from normal. But now we are gradually towards normalcy, and a large quantity of medicine is necessary. That also has been supplied. Then, Sir, in respect of schools, it may be noted that there has been a very good attendance. So far as these schools are concerned, there are as many as 6 High Schools, and in one High School it is gratify-

ing to note that the attendance is as much as 1,000. There are 6 High Schools, 40 Middle Schools and 200 lower primary schools functioning in the area.

SHRI H. N. KUNZRU: In which area?

SHRI B. N. DATAR: In the Naga Hills-Tuensang area. So far as the rest of the area is concerned, it is already under popular Government and developmental works are going on in a large measure, of course, subject to the arrest of progress on account of such activities. Now the moment this situation is brought under control, the other area also in the State of Assam will have full advantage of all developmental activities.

SHRIMATI MAYA DEVI CHETTRY (West Bengal): Who is managing the schools, the State Government or the Central Government?

SHRI B. N. DATAR: Naturally, Sir, the Central Government. So far as this particular area is concerned, it is being managed by the Governor as the agent of the Central Government. And may I point out, Sir, that in this area there are 7 N.E.S. Blocks functioning? During the period from December to March Rs. 40 lakhs to Rs. 50 lakhs were spent on buildings and roads. A number of buildings for hospitals and schools are presently under construction, and encouragement is given also to cottage industries. In this connection I may also point out, Sir, that in all some 40 villages which had been practically deserted due to these disturbances have more or less been resettled. That would show how the whole work is being carried on. Rice is being supplied in the area at subsidised rates, and the Social Welfare Board has already taken charge of the various items intended for social welfare. And, Sir, a three-year plan involving an expenditure of Rs. 4.5 lakhs in the field of social welfare has been drawn up and is being presently discussed with the Central Social Welfare Board.

[Shri B. N. Datar.]

Lastly, Sir, the Administration is reverting to normalcy during this period with a marked emphasis on the effective functioning of the development departments. People there are now able to come before the officials with their problems and difficulties and are thus availing themselves of the developmental activities carried on by the Administration. And, Sir, due to change in the conditions, when these N.E.S. Blocks are introduced, naturally some contribution is expected from the people also, and happily that contribution is coming forth. Therefore, what does all this show? It shows that things are returning to normalcy and people are now not so nervous because normal conditions have been prevailing everywhere. They are not only trying now to help the Government, but also to help themselves by their contribution. Under these circumstances. Sir, looking at the whole problem either from the law and order point of view or from the developmental point of view, you will be satisfied that so far as these powers are concerned, they are necessary in the interests of that area itself.

MR. DEPUTY CHAIRMAN: The question is:

"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 motion was adopted.

MR. DEPUTY CHAIRMAN: Now we take up the clause by clause consideration of the Bill.

Clause 2—Definitions

MR. DEPUTY CHAIRMAN: I have got these amendments. But when were they tabled?

SHRI B. N. DATAR: Only this morning.

MR. DEPUTY CHAIRMAN: The amendments have come late. If the House has no objection, I shall permit them to be moved. If the House objects, I shall have to rule them out.

SHRI P. N. SAPRU: Have they been circulated?

MR. DEPUTY CHAIRMAN: Yes, they have been circulated. Unless there is objection from the House I cannot rule them out.

(No hon. Member objected.)

Yes, Mr. Gupta.

SHRI BHUPESH GUPTA: Sir, I move:

2. "That at page 1, line 11, after the words 'means an area' the words 'where violent activities of the hostile Nagas are continuously taking place gravely threatening the life and property of the inhabitants of that area and' be inserted."

(The amendment also stood in the names of Dr. R. B. Gour and Shri V. Prasad Rao.)

MR. DEPUTY CHAIRMAN: The clause and amendment are now for discussion.

SHRI BHUPESH GUPTA: Sir, I am glad the House did not object to the consideration of this amendment.

SHRI H. P. SAKSENA: May I ask the . . .

MR. DEPUTY CHAIRMAN: An hon. Member is already on his legs.

SHRI BHUPESH GUPTA: The hon. Member is too late. I was also alert. I make it clear that we shall continue as we like and therefore, there should not be any misgivings on that score. Right from the beginning, let me make that clear.

I am grateful to the House that although we did not give notice of this

amendment yesterday, the House was good enough not to object. This is the first time I heard Mr. Deputy Chairman asking the House if the House has any objection. He was within his right. However, in six years for the first time now I heard it. Maybe I was not present here.

MR. DEPUTY CHAIRMAN: It is in the rules, Mr. Gupta.

SHRI BHUPESH GUPTA: I know you are absolutely within the rules. But here this rule was clearly pronounced today.

MR. DEPUTY CHAIRMAN: I have done it on several occasions.

SHRI BHUPESH GUPTA: Maybe I was not present on those occasions.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): The hon. Member's memory is short.

MR. DEPUTY CHAIRMAN: The difficulty is, you don't put on your ear-phone when speaking, Mr. Gupta.

SHRI BHUPESH GUPTA: But I remember and I note all these things.

MR. DEPUTY CHAIRMAN: Yes.

SHRI BHUPESH GUPTA: Anyway, you are absolutely within the rules, there is no doubt about it. All the same, I must thank the House for the kindness and indulgence that it has shown. Now that the rules have been brought in, I would like to make a few general observations about the way we get these things. When Bills are passed and they come to this House, we do not have adequate notice. Sometimes we do get, sometimes we do not. I am the Leader of this Group, but I do not exactly know how many Bills are coming in the course of the next few days in this House—except the one I have now got—and in what order. I know from the proceedings what is passed. But what is coming to this House and included in the list of business of this House I do not know. That makes it

difficult for our Party to arrange its work. That difficulty I have got. Therefore, hon. Members will bear with us if we have not been in a position to give the amendments early enough in order that hon. Members may give sufficient time and thought to them. I hope they will appreciate our difficulty, although it was none of our intention to put them in this difficulty. Therefore, I would submit before this House through you, Sir, that we should have a clear picture of the Legislative business at least for a week. Otherwise the only Party which can fulfill its duty will be the Government.

MR. DEPUTY CHAIRMAN: This Bill has been circulated two days ago.

SHRI BHUPESH GUPTA: I know this has been circulated. But this difficulty has arisen in the case of so many other Bills. There have been Bills which we took up at shorter notice than is provided for under the rules. I am not at all seeking justification. But you will agree that we also do heavy legislative work here. The difficulty is we do not know what is coming and what is not coming, whereas the Government has a clear picture of it all in mind.

MR. DEPUTY CHAIRMAN: You must take things as they come.

SHRI BHUPESH GUPTA: I know, I have to. But I have a right to submit to the House that things should not come that way. We of the Opposition feel that things should come in a better way. If the Government thinks that the Opposition should be treated in this manner, let it declare it so.

MR. DEPUTY CHAIRMAN: Come to your amendment.

SHRI BHUPESH GUPTA: No, I have to make this submission and you will kindly listen to such things, because we speak for the Party in Opposition.

[Shri Bhupesh Gupta.]

They should not forget that we are the Party in Opposition. Whether they like it or not, we are the main Opposition in both Houses of Parliament and whenever we say something, we do so after some thought, and if we bring some difficulties before the House about a matter, I hope the House will kindly consider. There was a proposal for the debate on **Foreign Affairs**. But we thought the Food debate would come and naturally we were prepared in a particular way. Suddenly we learn the Food debate is to take place next week. We do not know, I don't know what will come and when. Naturally, we are disturbed a little in the arrangement of our work. This is the point. I shall not be prepared to take it from the Government. From you, of course I will take it, because I have no remedy, but I shall not be prepared, let me make it clear, to take it from the Government, this manner of their dispensation in such legislative matters. The Minister of Parliamentary Affairs should consult the Parties . . .

SHRI JASPAT ROY KAPOOR: There is the Business Advisory Committee of which, I understand, the hon. Member himself is a member. This is an important point and I am supporting the hon. Member. This is an important point he has raised.

SHRI B. N. DATAR: May I say one thing?

SHRI JASPAT ROY KAPOOR: I think it may be properly thrashed out in the Business Advisory Committee of which the hon. Member is also a member. I am in entire agreement with my hon. friend that on such things a better procedure ought to be chalked out.

SHRI H. N. KUNZRU: This cannot be thrashed out in the Business Advisory Committee. We have given expression to the complaint now put forward by Mr. Bhupesh Gupta, repeatedly in this House. Every year twice or thrice, we put forward the

same complaint. But the Government pays no attention to it.

MR. DEPUTY CHAIRMAN: This will be brought to the notice of the Government.

SHRI H. N. KUNZRU: This is a source of great inconvenience and causes derangement of work when we are suddenly confronted with any legislation on which we are not prepared to speak.

SHRI JASPAT ROY KAPOOR: My point is, we have the Business Advisory Committee. The Chairman has appointed the Business Advisory Committee and I think we are within our rights to expect the Business Advisory Committee to deal with the question thoroughly and submit a report to us. And then we can consider the whole question. Did the Business Advisory Committee find any difficulty in thrashing out this problem?

SHRI H. N. KUNZRU: The point is, the Business Advisory Committee deals with the business of this House, it cannot regulate the proceedings of the other House. We are complaining about things that come from the other House and the order in which they come.

MR. DEPUTY CHAIRMAN: True.

SHRI H. N. KUNZRU: Therefore, we have to speak to the Government and Government alone can see to it that Bills from the other House come to us in a certain order, of which we ought to be informed previously.

SHRI JASPAT ROY KAPOOR: Is it not within the scope of the . . .

MR. DEPUTY CHAIRMAN: How many times do you get up, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: As many times as may be necessary to finalise this thing, Sir. Others also have been on their legs. Only one point I have to mention. I will not

take much time. Is it not within the competence of the Business Advisory Committee to advise the Government on this subject also?

SHRI BHUPESH GUPTA: You are also in difficulty, I find Sir. The whole House is in difficulty. Dr. Kunzru is quite right. What can we do in the Business Advisory Committee? What are you going to discuss? Things come from the other House. Many of the Bills could have been introduced in this House itself, in order to arrange the business better. But I do not know how the Government behaves in this particular matter. Now suddenly the Working Journalists Bill has come. Naturally it was passed by the other House and yesterday or the day before, we were informed that it was coming. Naturally, it requires study by us and the whole work gets upset. That is the difficulty with us and I feel that we should inform the hon. Minister for Parliamentary Affairs that he should mind his business a little better than he is minding it at the moment. He would lose nothing by consulting us, Members of the other Parties and independent leaders in order to arrange matters. That is enough for the present. I say this because sometimes we are also in difficulty. I cannot give you the guarantee that we will not be forced to table amendments in the last hour if things go on that way. I have had to work late up to the night and get up very early morning to draft my amendments for the Working Journalists Bill.

MR. DEPUTY CHAIRMAN: Let us proceed with the business.

SHRI BHUPESH GUPTA: As the hon. Member said, the Business Advisory Committee has not met and I cannot call it.

SHRI JASPAT ROY KAPOOR: Any hon. Member can send a requisition, I suppose.

SHRI BHUPESH GUPTA: About this particular amendment to the Bill, I say, Sir, that nowhere is it

mentioned that this Bill relates to the activities of the hostile Nagas. It is all very general. It is all unsaid and understood, unsaid in the sense that it is not said in the Bill. What is the guarantee, when this Bill becomes an Act, that it will not be used for other purposes, for purposes not connected with the suppression of the violent activities of the hostile Nagas. There is nothing in it. Government can give an assurance and say whatever it likes but some Governor or Government might take into his or its head to use these powers for some other reasons. I have no protection against such acts under the provisions of this Bill to say that that should not be done. We are investing the military authorities with emergency powers more or less, bringing in a state of situation which is envisaged in the Constitution in the relevant article that deals with an emergent situation but then, this Bill does not state the reason why these specific powers are being taken. My amendment makes that thing clear. I say that after the words "means an area" the following:

"Where violent activities of the hostile Nagas are continuously taking place gravely threatening the life and property of the inhabitants of that area and".

should be inserted. I make the whole thing precise, that is to say, no body will be empowered under this power to invoke the authority of this law for any other purpose than for dealing with the violent activities of the hostile Nagas. This should be clearly stated. You will say that Government has given an assurance, that Parliament has discussed but then, Sir, the provisions do not incorporate these things. Nowhere in this Bill will you find the object clearly mentioned and therefore, I have given notice of this amendment and I think this should be accepted. We have all the more grounds for apprehension because we know that sometimes some of the laws are not used for the purposes for which they were brought before the House. We had

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been given all kinds of assurances on the Preventive Detention Act. It was stated that it will not be used for dealing with trade-union activities or similar other activities. We had been told that in this House and in the other House. When we demanded that such a statement should be incorporated in proper form in the legislation itself, Government said that it was not necessary. What do we find in practice? We find that this measure is used against trade-unionists and to suppress normal trade-union activities in certain places. When I go before the Advisory Committee, I have no remedy because the measure does not say that this should not be used against normal trade-union activities. Such wide and sweeping powers are always liable to be abused especially when we have in mind the bureaucratic and aggressive officials as we have in our country. That is why I want this thing to be taken note of. I entirely agree with the House when it tries to protect and safeguard the life and property of the people and that is why I have included here that violent activities threatening life and property should be covered by this measure. I have said, "continuously taking place". For instance, in one place it might have taken place just once and for nine or ten months there might not have been any activity. Government should declare an area to be a disturbed area only if there are reasonable and probable grounds to believe that there is likely to be some kind of a recrudescence of such activity. So, some kind of an objective test should be there. It was sought for yesterday but here I am now suggesting to the Government such a test and I hope the Government would accept it. Otherwise, innocent people will suffer. I will remind the House to remember the days of the Terrorist Movement. I confess that some of us were guilty, a few hundred and perhaps thousands all over Bengal—but Government took power for suppression under an Act called the Suppression of Terror-

rists' Outrages Act. It took such steps that some of us were caught and many of us escaped but then the suppression was carried out against common people in the name of suppressing the terrorists. Such things happened and some of these old officers are there even today. That is how it will be done and so I say that Government should accept the amendment. The hon. Minister has said that no amendment is going to be accepted. He has been advised. Who gave him that advice, what has been the advice, what have been the grounds for that advice, nobody knows. All these things are his personal matters. I would like to know why this amendment is not going to be accepted by the Government if the hon. Minister does not accept this amendment.

SHRI SANTOSH KUMAR BASU: May I just ask one question? My hon. friend's contention has great force. At the same time, the way in which he has worded his amendment rather falls short of the requirements of the situation because, it is not merely the hostile Nagas who have to be dealt with but those who are aiding and abetting them, those who are giving them succour and those who are making it possible for them to carry on these raids and the others from the other side of the western border who are helping them. The point is whether this amendment includes those people also. That is the whole difficulty.

SHRI BHUPESH GUPTA: I am prepared to accept it if it can be drafted that way.

SHAH MOHAMAD UMAIR: Sir, this is the same point which was referred to by me in my earlier speech. This Bill is not intended wholly or exclusively for the Nagas. The Nagas may also be there; that may be underlying object of the Government to deal with such kind of Nagas but the Nagas are not the exclusive element for which this particular Bill has been brought before the House.

The amendment seeks to include the entire area of the Nagas. In fact, this sort of provocative legislation is not good and will alienate the Nagas. We have got to reconcile them, we have got to befriend them and we have to make serious efforts as the hon. Minister stated just now, in the form of development work, etc., to bring them round. Instead of that, if we specifically say, "Nagas", I think it will be the greatest blunder committed. I will appeal to my friend Mr. Bhupesh Gupta to think over this that the word "Naga" does not include those subversive, those inimical, elements who are opposed. They will be excluded and they will be free and the poor innocent ones will be taken into this measure. Therefore, I strongly oppose this amendment on the ground that it will not only suppress those who are inimical and subversive but also the others.

SHRI V. PRASAD RAO: (Andhra Pradesh): Mr. Deputy Chairman, it has been made clear even on behalf of the Government that this measure has been necessitated because of certain activities of the hostile Nagas who have left their abodes and have come to the plains of Assam. If Government intends to act only against those people then certainly I find no reason why it should not accept this amendment. If certain verbal changes are to be made, we are prepared for it. For instance, if instead of "where violent activities of the hostile Nagas are continuously taking place...." you want something else to be said, we can say, "where violent activities are continuously taking place gravely threatening life and property of the inhabitants of this area by hostile elements" or some such thing. Sir, if this legislation is intended not to leave omnibus powers in the hands of the Governor and the Chief Commissioner to suppress, under the guise of hostile Nagas, any other elements—for instance, it has been stated by the hon. Minister for Home Affairs that so many times the tea estates had been raided, there may be so many raids

on the tea estates for so many reasons,—and yet if some District Magistrate or some other officer takes it into his head that ~~this~~ is also a situation where the armed forces are to be invoked, then nothing in this Bill prevents him from using these powers against those people. So exactly to prevent such an eventuality we want to limit the powers of the Governor and the Chief Commissioner given in clause 3 to declare only such areas as disturbed areas where violent activities are continuously taking place gravely threatening the life and property of the inhabitants of that area.

SHRI BHUPESH GUPTA: By hostile elements.

SHRI V. PRASAD RAO: Yes, Sir, where violent activities by hostile elements are continuously taking place gravely threatening the life and property of the inhabitants of that area. So if the intentions of the Government are all right, if they mean actually what they say, then certainly I think they will see no objection to accept this amendment. Thank you.

SHRI PURNA CHANDRA SHARMA: Sir, I oppose this amendment. Mr. Gupta is under a wrong apprehension that it might be affecting some of our own people. As a matter of fact Mr. Gupta does not know against whom this is ordinarily meant. It is not the Naga hostiles themselves. The Naga-Hills district is surrounded by four or five districts. In the north there is the Sibsagar district and in the north-west there is the United North Cachar and Mikir Hills. In the west it is bounded by Cachar and in the south by Manipur, and on its eastern frontier there is Burma. In all these four districts, Sir, there have been found some elements who have been giving shelter to these Nagas. In Cachar there had been reports that some Pakistani Muslims were helping these Nagas to smuggle arms from Pakistan to their district. There had been reports in the Mikir Hills that some Mikir gangsters had also joined these

[Shri Purna Chandra Sharma.]
 Naga people. So also in the North Cachar Hills some Cachars had joined them. Actually these Naga hostiles have been moving around their own borders and they are trying to organise groups of people in different localities to create disturbances and to help them in carrying on loots and plunders.

Now, Sir, if it is confined only to the Naga hostiles then these other elements will be carrying on their activities with the support of these Naga hostiles. So this legislation does not ordinarily affect any of the population except those who actually join these Naga hostiles or join in these activities. About the fears of Mr. Gupta that it might sometimes be used against some of his own colleagues I wonder why Mr. Gupta should be apprehending any such trouble on their own part when after their Amritsar resolution they have given up violence. To our knowledge there are no such activities on the part of the Communist Party anywhere in the country except that we saw some reports of their activities in Kerala, or wherever it is.

SHRI BHUPESH GUPTA: He wants this Bill for Kerala?

SHRI PURNA CHANDRA SHARMA: So there can be no fear on that account. Even before, when the revolutionary Communist Party was having its activities and was committing violence in many parts of the country, such legislation was never brought forward; they could be controlled under the ordinary law and they were well controlled. But this legislation has become necessary under a particular circumstance prevailing in that part of the country, not only against the Nagas but those helping the Nagas, aiding their activities and causing disturbances in that area.

So I think the amendment is unnecessary. Mr. Gupta should not entertain any fears on that account and he should certainly join us in seeing that those others, other than the Naga

hostiles, who are actively participating in these activities should also be brought under control by this legislation.

SHRI H. P. SAKSENA: I wanted to enquire just one thing from the hon. Minister who sponsored the Bill as to whether it was by an accident or whether purposely and definitely that he omitted to tell us what was the reaction of those areas where these developmental activities were carried on by the Government? What were their reactions to those activities? Do they co-operate fully?

SHRI B. N. DATAR: That is what I had made clear.

SHRI H. P. SAKSENA: I never could follow it at least.

SHRI P. N. SAPRU: Sir, I frankly sympathise with the point of view which has been placed before the House by Mr. Basu, I mean the amendments he suggested to the amendment which has been proposed by Mr. Bhupesh Gupta. I think there is a great deal to be said for improving the language of the Title. It is obvious that the trouble is not confined only to the Nagas. There are other elements of the population also who are involved. I may suggest for the consideration of Mr Datar that he may accept the amendment in such a form as brings out the meaning quite clearly, but it seems he has just made up his mind even before listening to what the Members of the House had to say. I hope we are not enacting a farce. We are discussing a serious measure which affects the liberties and happiness of large numbers of people in the country. I am suggesting that we might have some such words added in the Title, namely, "for dealing with the violent activities of the hostile elements of the population in these areas." They won't alter the reading of the Act. They won't subtract anything from what you have got in the Act. These words would include the Nagas and other hostile elements, and they would make the purpose of 'his Act very clear. This is a drafting change which should be acceptable.

Except it be for the fact that it is the Upper House or it is the Council of States suggesting this change, I can see no valid objection to this amendment.

SHRI B. N. DATAR: Sir, may I point out that I have considered very carefully the suggestion that my hon. friend has made? There are two defects so far as this matter is concerned. One is that there is reference only to "hostile Nagas".

SHRI P. N. SAPRU: "hostile elements".

SHRI B. N. DATAR: That appears to be more or less the purpose of the amendment . . .

SHRI BHUPESH GUPTA: No purpose.

SHRI B. N. DATAR: . . . because everywhere, wherever there is this question considered, reference is only to hostile Nagas.

SHRI BHUPESH GUPTA: We are prepared to accept "hostile elements". Because you spoke of Naga hostiles we put it that way.

SHRI B. N. DATAR: Therefore, I am submitting that it is not merely the hostile Nagas; there might be other elements; we are dealing with the hill districts also. There might be other persons who might be instigating or who may collude with these people, and therefore the best course would be to leave the whole matter to the Governor or the Chief Commissioner and he will consider all these questions and his hands need not be tied by any restrictive expressions of the nature that the honourable mover of this amendment has in view. May I point out in this connection, Sir, that in clause 3 it has been stated, "If the Governor 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" etc. The word "dangerous" is

there; the word "disturbed" is also there. Now these two words are comprehensive enough to include all that the hon. Member has in view. Under these circumstances I cannot accept this amendment. The matter should be left exclusively to the discretion of the Chief Commissioner or the Governor, as the case may be.

SHRI H. N. KUNZRU: Can I speak after the hon. Minister?

MR. DEPUTY CHAIRMAN: He has already replied.

SHRI H. N. KUNZRU: Was that a reply?

MR. DEPUTY CHAIRMAN: Yes.

The question is:

2. "That at page 1, line 11, after the words 'means an area' the words 'where violent activities of the hostile Nagas are continuously taking place gravely threatening the life and property of the inhabitants of that area and' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—Power to declare areas to be disturbed areas

MR. DEPUTY CHAIRMAN: There are four amendments. Amendments Nos. 4 and 6 are barred because it is the same principle—hostile Nagas.

SHRI BHUPESH GUPTA: First of all I do not think so. It does not mean that we cannot say that here. This relates to the condition created by the violent activities of the hostile Nagas.

MR. DEPUTY CHAIRMAN: They are the same words; we have to take the amendment as it is.

SHRI BHUPESH GUPTA: We can always change it but even then it does not get automatically barred.

MR. DEPUTY CHAIRMAN: Yes, they get barred.

SHRI BHUPESH GUPTA: How?

MR. DEPUTY CHAIRMAN: You may move amendments Nos. 3 and 5. I rule amendments Nos. 4 and 6. as barred.

SHRI BHUPESH GUPTA: Now, Sir, I do not quite appreciate as to why it should be barred. And you have ruled out the whole of amendment No. 6? I do not know how the whole thing could be ruled out. You can rule out the paragraphs where the words 'hostile Nagas' occur.

SHRI V. PRASAD RAO: Surely, the last proviso cannot be barred. It only provides for the declaration to be placed on the Table of both Houses of Parliament and for a report of any action taken under this measure.

MR. DEPUTY CHAIRMAN: You can move the last proviso. The first three are ruled out.

SHRI BHUPESH GUPTA: This is a question which at some convenient time we might discuss. I am here only envisaging certain circumstances for restricting the operation of this measure. The law does not say that it immediately applies to the entire area.

MR. DEPUTY CHAIRMAN: When the House has rejected that restriction in the earlier amendment, naturally this is barred. You can speak on the last proviso.

SHRI BHUPESH GUPTA: That I am quite conscious of. What I am trying to make others conscious of is that this also needs some little attention. I would ask hon. Members here before I take up what has not been ruled out to consider whether this kind of ruling out is within the rules of the House. I think we can discuss it here.

There are parliamentary practices and other things and we can discuss it.

SHAH MOHAMAD UMAIR: Can any observations be made after the ruling has been given by the Chair?

SHRI BHUPESH GUPTA: Hon. Member should realise that hands down I have submitted to the ruling. They are rules subject to change by this House and there are experienced members like Pandit Hriday Nath Kunzru, Mr. Sapru and others who should ponder over this as to how this state of affairs will turn out if we do not look after our rules which allows such ruling out. Personally, I am inclined to think that it calls for some serious thought.

Anyway I shall move the other things which you have not ruled out because fortunately the word 'Nagas' does not occur there. It seems that the word 'Nagas' is the cause of trouble here also.

Sir, I move:

3. "That at page 1, line 19, the words 'the whole or' be deleted."

5. "That at page 2, line 2, the words 'the whole or' be deleted."

6. "That at page 2, after line 3, the following proviso be inserted, namely:—

'Provided that every declaration made under section 3 shall, at the earliest opportunity, be placed together with a statement containing the grounds for such declaration and a report of any action taken by the armed forces under it before both Houses of Parliament and also before the Legislative Assembly of the State of Assam or the Territorial Council of Manipur, as the case may be, for consideration by Parliament and by the Assembly or the Territorial Council concerned.' "

(Amendment Nos. 3, 5 and 6 also stood in the name of Shri V. Prasad Rao.)

MR. DEPUTY CHAIRMAN: The clause and the amendments are before the House.

SHRI BHUPESH GUPTA: Now, this Bill provides for the operation of the measure in the entire area. The whole of Assam and Manipur may be declared as a disturbed area. I do not think that is right, either from the point of view of jurisdiction or from the point of view of the range of the power. I have suggested that the words 'the whole or' should be deleted so that it will read any part of the State. Any part of the State may mean even the entire State, depending on where the disturbances take place. Whenever disturbances take place you may declare it to be a disturbed area; therefore I say, make it any part. It is a strange thing that the Government does not see that they are giving all the powers to the military. They say that the military will be called in aid of the civil authorities but the fact is all powers are being made over to the military and civil authorities will remain only as a kind of a pretext. It will be the military that will dominate the entire scene with almost unbridled powers. You are doing that and you say that the entire Assam and Manipur may be declared as a disturbed area. It would be complete bankruptcy on the part of the Government if a situation were to so develop that except under the powers of this measure, except by declaring the entire State of Assam and the Centrally administered area of Manipur as disturbed area you cannot rule. I do not think the situation is as bad as that. I can understand the dismay in the mind of some hon. Members opposite who are habituated to sit on the Treasury Benches; I can also understand the difficulties they are facing but I do not think they are in such a terrible plight that they have to envisage a situation when the entire State of Assam and the whole of Manipur would have to be declared as a disturbed area. Here we have got States; we have got a certain Constitution. The States enjoy a certain amount of autonomy and we

should not pass such a legislation which looks outrageous from the point of view of States' autonomy and the autonomy of the Centrally administered areas. Now, what will happen? Assuming that the entire State of Assam is declared by some Governor or by some Government as a disturbed area, immediately the military shall be ruling over the entire place. There will be very little control over the military and they would be in a position to use military force as they like. Is it right? Now we talk about democracy; we talk about the rule of law and we get very noisy when we hear certain allegations when they come from the southern part of India but when it comes here we pass sweeping measures. We even envisage that the entire State may be declared as a disturbed area. I think it only represents a mental disturbance on the part of those people who have conceived this inconceivable measure.

Then I have said that every declaration made under section 3 shall at the earliest opportunity be placed, together with a statement containing the grounds for such declaration and also a report of any action taken, before Parliament and in the State Assembly in the case of Assam and in the Territorial Council in the case of Manipur. Let Parliament have an opportunity to look into this thing. It is no use coming and telling us that these things have been done. We want to keep our eyes wide open and see what is happening. After all the military is being given very extraordinary powers to deal with a situation and we are the custodians of the rights and liberties of the people. Therefore, we should keep a watch and I consider it to be our duty to do so from our point of view. From the point of view of the Administration this would act as a sort of deterrent if some of them were to think in terms of behaving very very violently—officials and others—and using excessive powers. If we had an arrangement for such reporting, it would mean that those authorities who are responsible for making the declaration would be extremely

[Shri Bhupesh Gupta.]

cautious and extremely objective because they will always have in mind the fact that their action or their declaration will be called in question in the State Legislature, in the Territorial Council and of course in Parliament. Again the military officers and others will also bear in mind that their actions will be equally called in question either by Parliament or by the relevant legislative bodies. That will have a good effect. That will combine their responsibility for dealing with an emergency situation with their responsibility for safeguarding the civil liberties, rights and so on. That is why I say that this arrangement should be made.

I do not know of any democracy in the world—some of you think that the Western democracies are very good—United Kingdom, France or Scandinavian countries or United States of America for that matter or the South American countries, where such powers are given so easily without having some checks and safeguards by Parliament. I cannot think of a measure like this being passed to invest the military with so much power, for example in the United Kingdom. You have seen what happened in the Little Rock Island when it was necessary for the Federal Forces to intervene in protection of the Federal Constitution, what caution they had to take, because they had certain Bills of Right and constitutional autonomy of the constituent States of the American Republic. President Eisenhower was in great difficulty that way. But they did not think of even changing the law. Such things do happen. But here we are dealing with the States. Whenever we like we pass in two minutes' time measures investing military with power, no matter what happens, no matter how it looks to this wide world, no matter how they are liable to be abused by the military and other authorities concerned. The Prime Minister speaks of mental approach, the basic mental approach. I think there is something basically wrong in this mental approach. This

is what I say, basically wrong in this mental approach. Whenever you could not deal with a situation politically, whenever your statesmanship is found wanting, whenever your political acumen fails you, you go in for military measures, quasi-military measures, extreme measures, Ordinances and other things. We are getting into an extraordinarily bad habit, if I may say so; we are getting into an extraordinarily bad practice, if I may say so. I am not at all under-estimating the gravity of the situation that we face here. But then the gravity should not make us lose our head. We should on the contrary, be extremely cautious especially when we have taken into our hands certain extraordinary powers which are not normally given to the executive, much less to the military. Nothing of the kind. Mr. Datar accepts and says everything is all right. He is quite satisfied. Well I do not think the world is satisfied because Mr. Datar says that he is satisfied. That is not so. (*Interruption.*) I would ask the hon. Member to cite one example from any Western country where such power could be so readily given to the military. I challenge the Government to give an example of this kind. I understand they are also knowledgeable persons. They consult the Constitutions of other countries. They have some knowledge of the affairs of other States. Except in the dictatorial and semi-dictatorial States where the democratic movement and the people have got to be suppressed rather than politically dealt with. I would like to know where such powers have been given to the military.

SHRI SHEEL BHADRA YAJEE (Bihar): Consider U.S.S.R. along with U.K. and America.

SHRI BHUPESH GUPTA: Well, even in respect of America which some of you like very much, I gave you the example of the Little Rock Island incident. What happened there? Therefore . . .

MR. DEPUTY CHAIRMAN: No repetitions.

SHRI BHUPESH GUPTA: No repetition. Therefore, you advise no interruption also. That is what I would like to know. It is a serious thing. I was a little surprised, I must confess, when such a thing was so easily passed in the other House. Since we are seized of it, I think hon. Members should give a little deeper consideration than they have done to this measure. I do not mean in a sort of narrow political sense. What I say is if Parliament even gets accustomed so easily and readily to pass measures of this kind, well, I do not know what will happen to the future of our democracy. This is what I am asking you to consider and I hope the hon. Members will consider it. India is not going to go to the dogs just because these measures are not there. If we have to deal with the situation, if necessary some more restrictive, safeguarded powers may be given to certain definite authorities, with certain clear terms under which the powers should be exercised. I can understand it. But I do not understand such broad powers being given with no definition, no restriction, nothing of the kind. This is what I do not understand. I would ask Congress Members opposite to reflect over it, even if the hon. Minister by the rule of thumb somehow or other gets it passed in this House tonight, because it presages certain very bad things. If we do not prevent this kind of mental and basic approach overpowering the men in Government, I do not know how we can protect the interests of the people and solve our vital problems.

SHRI N. M. LINGAM: Sir, the intentions of the Government in framing this Bill are fairly clear and the hon. Minister has explained at some length the provisions, but the wording of clause 3 seems to be somewhat at variance with the intentions. If Government envisage a state of affairs when the whole State is threatened by chaos, then, I think, it is for the

Government to invoke article 352 of the Constitution.

SHRI V. PRASAD RAO: Are you conjuring up things?

SHRI N. M. LINGAM: Here what we envisage and what Government, I believe, fear is sporadic disturbance in the State of Assam and it is precisely to meet such a state of affairs that this Bill is brought before the House. That is a disturbed area, as the House knows very well. There are disturbances from all sides, from the rebels, from the Burma side, from the Karens, from the Pakistani side, from the Nagas.

SHRI V. PRASAD RAO: It is not intended for things like that . . .

MR. DEPUTY CHAIRMAN: Order, order.

SHRI N. M. LINGAM: As the hon. Minister explained, all efforts are being made, constructive measures are being taken, we are spending large amounts of money on developmental activities. On the political plane also we are sparing no effort to see that peace prevails in this region. This is only, as the Minister said, to empower the authorities to ensure law and order. I would even go to the extent of saying that it is at best only a negative step. So, as the deeper causes of the trouble are dealt with by means other than the provisions of this Bill, it is too much to envisage a state of affairs where we fear total disruption of normal life, prevalence of dangerous conditions and chaos in Assam.

MR. DEPUTY CHAIRMAN: You are not speaking on the amendment. Only two amendments are there. One amendment is that you should not apply it to the whole of Assam; the other amendment is that whatever regulations are passed must immediately be placed on the Table of Parliament. Speak on these two. You need not go into the other aspects.

SHRI N. M. LINGAM: I am speaking on the amendments only. It would be better if the wording of clause 3 is changed, as our hon. friend has suggested in his amendment that the words "the whole or" be deleted, because that would mean that we foresee, on account of the trouble in the North East Frontier Area that the whole of Assam will be threatened. If that is the possibility, then it is a threat to the whole country and that would necessitate invocation of article 352 of the Constitution. So, I would appeal to the hon. Minister to see if this could not be suitably amended.

SHRI V. PRASAD RAO: Mr. Deputy Chairman, I think unless the Home Ministry is conjuring up nightmares there is no necessity at all of extending the whole thing to the whole of Assam, because it has been pointed out that it is only a few dacoities that are taking place. After all even if all the Nagas turn to be hostile, the whole of Assam can never be a disturbed area. I do not think even now such a contingency is going to arise. As and when the whole of the State is going to be declared as a disturbed area, this power, I think, is entirely unnecessary. If at all small 4 P.M. areas, maybe a district or two districts even, are to be declared disturbed areas, ample power is there to declare them to be disturbed areas. So, I think there need be no provision for the whole of the State of Assam to be declared as a disturbed area. I think my hon. friends coming from Assam will perfectly agree with me that there will be no contingency when the whole of the State of Assam should be declared as in a state of emergency.

Then, Sir, coming to the proviso, I think it is a very salient proviso that should be added there. As my hon. friend Dr. Kunzru has pointed out, there is no possibility here of the civil authority exercising its control over the actions of the military. In such a case this would be a good deterrent on the actions of the mili-

tary officers because they will feel that Parliament will be discussing every action of theirs. As the Home Ministry is always a good believer in deterrents, certainly this proviso will be a deterrent against the excesses which are not very uncommon as and when the military is called. Certainly, it will be a deterrent against such excesses. So I think there need be no difficulty about that. Also, as Mr. Deputy Chairman has pointed out earlier, practically there is no civil authority excepting the Governor. Even the Governor also could only declare a particular area to be a disturbed area. Sir, he cannot individually control the actions or excesses of particular officers. In that case it will be a very salutary provision if this proviso were added that all the actions of the military officers are to be justified here on the floor of the House.

SHRI H. N. KUNZRU: Sir, I have a great deal of sympathy with the proviso that you have allowed the hon. Member, Shri Bhupesh Gupta, to move. I think Government will lose nothing if it places before this House each declaration made by the Chief Commissioner of Manipur or the Governor of Assam under clause 3 of the Bill together with a statement containing the grounds for such a declaration, etc. But I think the words "for consideration by Parliament and by the Assembly or the Territorial Council concerned" may be deleted, because the statement, when laid before the appropriate body, can be discussed at any time by that body.

I am not in favour of the third and the fifth amendments to clause 3. One is the omission of the words "the whole or" at page 1, line 19, and the other is omission of the same words at page 2, line 2. The omission of the words, "the whole or" would be a sort of safeguard, but I fear that this safeguard is illusory. Let us suppose that when disturbances break out in Assam the Governor leaves out a portion of a western district of Assam and then declares the rest of the territory of

Assam to be a disturbed area. That will not serve our purpose at all. We have therefore to rely on the good sense of the Governor. He will have to reckon with public opinion, and I think the Central Government also will exercise a certain amount of supervision over areas that are declared to be disturbed either in Assam or in Manipur, because the aid of the military officers will be required by the civil power. Apart from this, we have all experience of cases in which mischief-makers, when prevented from carrying on their nefarious activities in a particular area, have shifted them to another area where adequate precautions have not been taken to restrain their activities. And here in the territory of Assam I think we can easily realise that those who are carrying on violent activities, violent or hostile or unlawful activities, in any part of the territory of Assam, are not ordinary people. They are determined people and they will go wherever there is a loop-hole. On the merits of the case, therefore, I do not think that there is any case for the omission of the words "the whole or". The Governor ought to be allowed to judge whether in a particular situation which he regards as dangerous, the whole of Assam is to be declared as a disturbed area or only a part of it. So long as he has this power there is little doubt that the activities of the unsocial elements will be confined only to a certain portion of Assam. But if the Governor does not have this power, then disorders can break out at any point in the rest of the State, I mean in that part of the State which has not been declared to be a disturbed area.

Before I sit down I should like to repeat that I am in sympathy with the proviso moved by Shri Bhupesh Gupta and that I support it.

SHRI P. N. SAPRU: Mr. Deputy Chairman, my point of view on this matter is much the same as that of Dr. Kunzru. In fact, I was going to suggest myself that this proviso should be accepted—

"Provided also that every declaration made under section 3 shall, at the earliest opportunity, be placed together with a statement containing the grounds for such declaration and a report of any action taken by the armed forces under it before both Houses of Parliament."

I would just stop there. I would not have brought in the Legislative Assembly of the State or the Territorial Council. I am not sure whether we can bypass the Legislative Assembly. I shall tell you the reason why. Law and order is primarily a State subject, and under article 163 the Governor has to act upon the advice of the Council of Ministers. Now as far as this proclamation in regard to that portion of Assam which is governed by responsible Ministers is concerned, the Governor will have to act upon the advice of the Council of Ministers in relation to that portion. The Ministers are responsible to their legislatures. Therefore, he cannot deprive the Legislative Assembly of the right of requiring the Ministers to give explanations for what they have done before it. Apart from that, I do not know whether the Governor-in-Council—I will put it like that—can go to the extent of eliminating himself completely. Here, so far as the maintenance of law and order either in any part or in the whole of Assam is concerned, once the transfer of power to the armed forces takes place, it then becomes the responsibility of the armed forces. Is such a wide delegation permissible under the Constitution? This delegation is not within any canalised limits. One of the points which was raised by Mr. Rajagopal Naidu yesterday was that the delegation of authority under this Bill was not within any canalised limits. No doubt delegation is permissible but we ought to have limits under which delegation of authority can take place.

There are seven big judgments of the Supreme Court on this question of delegated legislation. But as far as

[Shri P. N. Saprui.]

I have been able to find out, the majority of the judgments say that the delegation must be within canalised limits and must not go to the extent of effacing the legislature. Here there is no limit. The Governor can do nothing after he has parted with power. The disturbed condition may continue for an unlimited period. The Governor-in-Council just goes out of the picture altogether. I do not know whether this wide delegation of authority is possible and whether the legislative department or Mr. Datar ever exercised their minds on this question. I would like to have a clear answer on this matter because we do not want to have any legislation which may not stand the scrutiny of law courts. We do not want to place the law courts in a difficult position. It becomes a very awkward situation for a law court to declare an Act *ultra vires* the Constitution. If we have any doubt as to whether the law is or is not according to the Constitution, we should look into it carefully. Therefore, I would suggest to Mr. Datar that he should apply his mind to this question which I am raising and give us an answer which will go to satisfy us.

श्री शीलभद्र याजी : उपसभापति महोदय, कामरेड भूपेश गुप्त ने इस बिल के सम्बन्ध में जितने अमेंडमेंट और प्रोवाइजो पेश किये हैं और जिनको माननीय कुंजरु साहब ने सपोर्ट किया है, मैं उन सब की मुखालिफत करता हूँ। कामरेड भूपेश गुप्त अभी जब बोल रहे थे, मुझे एक कहावत याद आ गई "चोर की दाढ़ी में तिनका"। वह कुछ इसी तरह से इस बिल को समझ रहे हैं। आप सब लोग जानते हैं कि इस समय आसाम की हालत किस तरह की है। आसाम की सरहद में नागा उपद्रवी लोग और पाकिस्तानी किस तरह की परिस्थिति पैदा कर रहे हैं, यह सब आप लोग अच्छी तरह से जानते हैं। इन्हीं कारणों से सरकार की ओर से आर्डिनेंस निकाला गया और उसके बाद यह बिल प्राज सदन के सामने है।

कामरेड भूपेश गुप्त तो यह समझते हैं कि जितने भी बिल आते हैं और आगे आने वाले हैं उनका सम्बन्ध उन्हीं से है, जो कि उनका गलत ख्याल है। लेकिन हो सकता है कि जिस तरह से हिन्दुस्तान के इतिहास में उन्होंने मुस्लिम लीग से मिलकर पाकिस्तान बनाया तथा वे द्रविड़ कडगम से मिले, उसी तरह से वे नागाओं के साथ गठ-बंधन कर सकते हैं। कामरेड भूपेश गुप्त डेमोक्रेसी की बहुत दुहाई देते हैं और इस सम्बन्ध में वे अमरीका और इंग्लैंड के उदाहरण प्रस्तुत करते हैं। यह तो वैसी ही कहावत हुई जैसे "डेविल क्वोटिंग दी इस्कुर-चर"। वे बार बार डेमोक्रेसी के बारे में यू० के० और युनाइटेड स्टेट्स की डेमोक्रेसी का उदाहरण देते हैं मगर खुद वे मोब.क्रेसी करते हैं। वे इस बारे में चीन और रूस की दुहाई नहीं देते हैं। क्या मैं उन से पूछ सकता हूँ कि जितनी आजादी से वे यहां पर बोलते हैं क्या उतनी आजादी से किसी और मुल्क में बोल सकते हैं? क्या जितनी सिविल लिबरटीज यहां पर हैं उतनी रूस और चीन में भी हैं? वे जिस तरह से जिन देशों के कांस्टीट्यूशन की बातें करते हैं क्या उनके कांस्टीट्यूशन में इस तरह की सिविल लिबरटीज दी गई है जितनी कि यहां लोगों को मिली है? कामरेड भूपेश गुप्त जो कुछ बोलते हैं उसका जवाब तो दिया जायेगा ही, लेकिन उनको यह समझना चाहिये कि जब वे बोलते हैं उन्हें सोच समझकर बोलना चाहिये कि मुझे क्या बोलना है। उन्हें यह बात समझनी चाहिये कि आज आसाम में क्या परिस्थिति हो रही है। यदि वे समझते हैं और फिर भी इस तरह की बातें करते हैं तो जैसी मैंने कहावत कही कि "चोर की दाढ़ी में तिनका" तो वही बात उन पर लागू होने वाली है। वे एक बहुत गलतफहमी में हैं और जिस तरह की भयानक परिस्थिति में यह बिल इस सदन के सामने लाया जा रहा है उसको मूल रूप में पास किया जाना चाहिये। हमारे माननीय सप्रू साहब और

कुंजर साहब कहते हैं कि यह बिल अल्ट्रा वायरस हो जायेगा । अगर अल्ट्रा वायरस हो जायेगा तो हम इसको फिर यहां पर पास करेंगे : आखिरकार पार्लियामेंट देश में सब से सर्वोच्च संस्था है । अगर हम इसी तरह की कानूनी पेचीदगियों में ही फंसे रहेंगे तो हम देश में समाजवाद की स्थापना नहीं कर सकते हैं ।

इन शब्दों के साथ मैं कामरेड भूपेश गुप्त के अमेंडमेंट की सख्त मुखालिफत करता हूँ ।

SHRI B. N. DATAR: Sir, the point raised by amendment Nos. 3 and 5 has already been answered by other hon. Members. Whenever there are disturbances here and there, the Government should naturally have the authority and they would declare such areas as 'disturbed areas.' But, unfortunately, if a situation arises under which it becomes necessary to declare the whole of Assam State or Manipur as a disturbed area, that contingency has also to be provided against. That is the reason why these words 'the whole or any part' have been used. Under these circumstances, it is not necessary for me to say anything more so far as these amendments are concerned.

Sir, you have allowed a discussion on the last proviso in amendment No. 6. What has been stated there is that the declaration and also a report should be placed on the Table of the House for consideration. Before I deal with this question in general, may I point out an obvious defect that the Territorial Council in Manipur is not a substitute for a legislative assembly at all? It has got entirely different functions and has nothing to do with this question. Therefore, apart from other objections with which I shall be dealing, the Territorial Council has no place even in this proviso as conceived by my friend.

SHRI V. PRASAD RAO: Are you going to accept it without it?

SHRI B. N. DATAR: I am not going to accept anything. I am merely pointing out the defects. That is why I stated initially that this is wrong.

So far as the general question is concerned, Dr. Sapru raised a point . . .

SHRI BHUPESH GUPTA: Even without the advice of the Law Minister, we know about the Territorial Council.

SHRI B. N. DATAR: Dr. Sapru stated that the Governor acts on the advice of the Minister or, so far as the tribal areas are concerned, he acts in his discretion. In clause (3) of paragraph 18 of the Sixth Schedule, in respect of the tribal areas which are under the administration of the President through the Governor, it is stated:

"In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President the Governor shall act in his discretion."

These are the words used. Let us take into account two circumstances. One is that there is a declaration about a disturbed area in that tribal portion. In that case, it is the action of the Governor and ultimately, it is the action of the President and we are answerable to Parliament so far as that question is concerned, because it would be open to any hon. Member to hold us responsible and answerable for whatever is done by the Governor in the tribal area. We are answerable to Parliament. Then, Sir, so far as the other portion of the Assam area is concerned, it has a popular Government, and whatever action the Governor takes, that action, as pointed out by Shri Sapru, would be on the advice of the Ministers who are answerable to the local Legislature in the State of Assam. And further, Sir, the Legislative Assembly there can hold that Ministry responsible for such action. Thus it will be found, Sir, that in respect of the tribal areas we shall be responsible to Parliament and

[Shri B. N. Datar.]

in respect of the other area in the State, the local Cabinet, the State Cabinet will be responsible. Under the circumstances, even under the Constitution as it is, it would be open to Parliament in certain cases to hold us answerable for whatever is done by the Governor. Therefore, Sir, it is not necessary to have such a declaration placed before Parliament or any report before Parliament. After all, Sir, these are executive acts. We have to understand that matter very clearly. Now, for example, some action has been taken under the Code of Criminal Procedure under sections 129 to 131, then is it the wish of Parliament that in every case where the armed forces have been called in, a report should be placed here? My submission is that this is only an extension of the powers under the Code of Criminal Procedure. The executive is always responsible to the Legislative Assembly. Therefore, Sir, it would be impracticable to have all these things. Now it would be open, as I have stated, to Parliament or to the State Legislature to call in question whatever the Ministry here or there is doing, and therefore if anything wrong has been done, it can be righted. Parliament can go into the matter even under the Constitution. Therefore, Sir, I submit that this is not at all necessary, nor would it be practicable to have either such declaration or any report placed before Parliament.

MR. DEPUTY CHAIRMAN: The question is:

3. "That at page 1, line 19, the words 'the whole or' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

5. "That at page 2, line 2, the words 'the whole or' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

6. "That at page 2, after line 3, the following proviso be inserted, namely:—

'Provided that every declaration made under section 3 shall, at the earliest opportunity be placed together with a statement containing the grounds for such declaration and a report of any action taken by the armed forces under it before both Houses of Parliament and also before the Legislative Assembly of the State of Assam or the Territorial Council of Manipur, as the case may be, for consideration by Parliament and by the Assembly or the Territorial Council concerned'."

(After a count) Ayes—10; Noes—23.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4—Special powers of the armed forces

SHRI V. PRASAD RAO: Sir, I move:

7. "That at page 2, lines 4-5, the words 'warrant officer, non-commissioned officer or any other person of equivalent rank' be deleted."

8. "That at page 2, lines 9-10, the words 'even to the causing of death' be deleted."

9. "That at page 2, line 13, after the word 'persons' the words 'engaged in violent activities or preparing for such activities' be inserted."

(Amendment Nos. 7, 8 and 9 also stood in the names of Shri Bhupesh Gupta and Dr. R. B. Gour.)

MR. DEPUTY CHAIRMAN: The clause and amendments are now before the House.

SHRI V. PRASAD RAO: Mr. Deputy Chairman, Sir, I do not know whether the Home Ministry has given any thought to the implications of this clause. The words used here are "Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces . . .". Now, Sir, the term 'non-commissioned officer' necessarily includes a lance-naik, a naik, a havildar etc. A lance-naik may be slightly better than a soldier, but he, by his training and disposition, is never asked to display his initiative even in the case of some military action. And it is surprising that to him the Government is trying to give such wide powers—to arrest without warrant and to enter and search without warrant any premises. Ordinarily we are not prepared to give these powers to a sub-inspector even. But here the Ministry wants to give these powers to a lance-naik who is almost a lance-corporal. I think it looks absurd on the very face of it. That means you are giving such powers to almost every soldier, namely, to arrest without warrant any person, to enter and search without warrant any premises and to shoot any person that he likes. I can understand if such powers are given to an officer who has had some training or who is supposed to exercise a certain amount of restraint in such matters as these. But I cannot understand almost every soldier being given these powers. Therefore, Sir, I think the Government will have no difficulty in accepting this position, provided they are reasonable. Thank you.

[THE VICE-CHAIRMAN (SHRI P. N. SAPRU) in the Chair]

SHRI B. N. DATAR: Mr. Vice-Chairman, Sir, I am not accepting these amendments for the reason that what the hon. Member has stated is not as it appears to be. Now, Sir, a commissioned officer is a second lieutenant.

He wants to omit from this list the warrant officer; he did not say anything about the warrant officer, though the amendment includes it. Now a junior commissioned officer is also a commissioned officer. So, so far as the commissioned officers and warrant officers are concerned, they are almost on the same footing. Then, Sir, so far as the non-commissioned officers are concerned, they are also fairly senior officers. They are responsible officers in the sense that they have to carry on very important work. Of course, at a particular stage they are non-commissioned officers, but they are likely to be commissioned officers any day. Therefore, Sir, they ought to be on the same footing and no distinction should be made at all.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Whom would they correspond in the civil line?

SHRI B. N. DATAR: I can only speak subject to correction—inspector or thereabout—

SHRI BHUPESH GUPTA: Is it right, Sir, when you are asking as to whom they correspond, the hon. Minister says 'subject to correction'? It seems he does not know it. That is the trouble with such legislation. Therefore, I suggest that the House might adjourn for, say, five minutes for him to collect the information.

SHRI V. PRASAD RAO: May I have some clarification from the hon. Minister, Sir? How many persons does a lance-naik command, and what are his responsibilities?

SHRI B. N. DATAR: His responsibilities are of a fairly high order. (Interruption.) Well, I am not here for being cross-examined by you.

SHRI BHUPESH GUPTA: Sir, I take exception to what he says. There is no question of cross-examination. We are passing a measure, and therefore we would like to know who they are whom you are giving such wide powers.

SHRI B. N. DATAR: Sir, they are very responsible people. They are fairly responsible people and therefore they have to be invested with these powers.

SHRI H. N. KUNZRU: The fact is a warrant officer is an officer of a fairly good status; but a non-commissioned officer cannot be said to be a responsible officer.

SHRI B. N. DATAR: I do not accept this interpretation of Dr. Kunzru, that a non-commissioned officer is not a responsible officer.

SHRI H. N. KUNZRU: He is in charge of a few soldiers, but he cannot be said to be an officer of a high status.

SHRI B. N. DATAR: I am surprised at Dr. Kunzru. He first stated that this officer is not a responsible officer, and when I objected, he says he is not an officer of a high status.

SHRI H. N. KUNZRU: These were the words that the hon. Minister himself had used. I repeated them. When he objected to the word "responsible" I corrected myself and I repeated the words that he himself had used; but still he objects to it.

SHRI B. N. DATAR: I have said that they are all responsible officers.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The question is:

7. "That at page 2, lines 4-5, the words 'warrant officer, non-commissioned officer or any other person of equivalent rank' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The question is:

8. "That at page 2, lines 9-10, the words 'even to the causing of death' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The question is:

9. "That at page 2, line 13, after the word 'persons' the words 'engaged in violent activities or preparing for such activities' be inserted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The question is:

"That clause 4 stand part of the Bill."

adopted
The motion was ~~negatived~~.

Clause 4 was added to the Bill.

Clause 5 was added to the Bill.

Clause 6.—*Protection to persons acting under Act*

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): There are two amendments proposed to this clause.

SHRI BHUPESH GUPTA: Sir, I move:

10 "That at page 2, lines 37-38, for the words 'No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of Central Government' the words 'Prosecution, suit or legal proceeding may be instituted with previous notice in writing to the Central Government' be substituted."

11. "That at page 2, the existing clause 6 be renumbered as sub-clause (1) of clause 6 and after the clause as so re-numbered, the following be inserted, namely:—

'(2) Any person against whom any such prosecution, suit or legal proceeding has been instituted involving allegations of excessive use of force or gross abuse of powers or gross misconduct shall be withdrawn from the operations in the disturbed area during the pendency of such proceedings'."

(Amendment Nos. 10 and 11 also stood in the names of Dr. R. B. Gour and Shri V. Prasad Rao)

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Clause 6 and the amendments are now for discussion.

SHRI BHUPESH GUPTA: Sir, these amendments relate to proceedings. In this Bill itself, it is provided that in certain cases proceedings may be started with the previous sanction of the Government. The general tendency of the Bill is not to allow legal proceedings or legal action being taken. But then for some reason or the other, the Government has thought it fit to provide that in certain contingencies prosecutions or legal proceedings can be started, provided the previous sanction of the Central Government has been obtained. Therefore, even according to that—I make it clear because this has a bearing on the argument that I have to offer—even according to the Government, the idea of prosecution, proceedings etc. is not completely ruled out. And so what I would say would not be something diametrically and drastically opposed to the position the Government has taken. I hope I am quite clear.

Now, the hon. Minister has just now given us an idea of responsible people. Certainly, every man in his own sphere is responsible. A non-commissioned officer in his sphere, within his limits, is undoubtedly responsible. But we have some other type of responsibility in mind when we are giving such powers. The hon. Minister knows when he was a Deputy Minister that he was responsible, and certain powers were given to him. Today he has become a Minister of State and is given a little more power. That does not mean that he is responsible today and was not responsible before. And when he becomes something else, when he climbs up the ladder and he is given some more power, it does not mean that he is an irresponsible person today. That is not the point. There must be a relation between the powers that we are giving and the rank to which those powers are being given. That is the point. There is no use trying to wax eloquent and make a demagogic appeal that they are also responsible people. I know how you treat them. I know how

these non-commissioned officers are treated there in the various barracks of the army. We are aware of these things. I wish that kind of an attitude or acknowledgement of their qualities were there when you deal with them in their barrack lines, that they were treated as proper human beings. Just now, for convenience sake, we are told that they are responsible for being given such sweeping, unlimited and extraordinary powers. This is the way they are dealing with public matters. Whatever is convenient you use, no principle, no scruple, no rules, nothing of the kind. I have decided and I shall use whatever argument I like. That seems to be their line. Strange way of behaving on the part of the Government.

Anyway, since this has been done and power is given, since we have passed this particular provision, what shall we do now? I do not make any reflection on non-commissioned officers. Let me make that perfectly clear. But I do not like, if I may say so, so much power to be given to people who have not been properly perhaps trained, and who would not have that mental and other qualities to exercise for comprehending, for measuring and assessing a situation and the implications of their actions and then decide upon a course of action. This is my objection and that is why our friend over there opposed it in that form. But then a lecture was delivered about responsibility and irresponsibility. All that I could understand from the lecture was that the lecturer was not behaving in a very responsible manner in this matter.

Since you have already provided for judicial proceedings, don't be afraid of our amendment. It only says that proceedings may be instituted with prior notice to the Government in writing. Therefore, Government will be informed of the intention to launch proceedings. This power to launch proceedings we have given to be exercised at the discretion of the aggrieved party or person. He can decide whether to launch proceedings

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or not. I have not said that proceedings shall be launched. Obviously you cannot bind people. It should be open to any person to launch proceedings by giving prior notice to Government. As I said earlier, Government does not itself think that all proceedings are to be ruled out in all cases. It has recognised a contingency where there may be need for such proceedings. I only seek to make it consistent and logical and so I provide for proceedings whenever a party feels aggrieved. He can go to a court of law by writing to the Government that he is going to the court of law. Why do I say this? I say this because the action should be liable to testing in a court of law. You have not placed any restraint on the authority or on the power you have given to the military. At least, let our courts have some power and if things are brought to their notice they can go into them and see whether the law has been properly administered. The court will not go outside the bounds of this measure.

I am foreseeing a situation when the court will examine whether the powers under this enactment have been properly used and have not been abused. That remedy should be given. Now, Sir, who are likely to go to a court of law? Surely, Mr. Phizo and his combatant bands are not going to come to the Supreme Court. It is obvious he will not come. He and his followers have taken a decision to settle matters themselves. We do not approve of it but we do not envisage a situation when Mr. Phizo will be filing a petition or a writ in the High Court of Assam or in the Supreme Court of India. We do not envisage such a situation at all. Neither are his friends who are aligned with him in his activities or who are underground are likely to file such petitions. The question will arise only in respect of the other citizens against whom the power may have been improperly used, the inhabitants of the locality. I can easily

visualise the situation that once the military is invested with so much of arbitrary power, it will use it arbitrarily and, on many occasions without respect for the rights and privileges of the people. We want to give such people, our people, some opportunity of redress. The Constitution provides for the guarantee of fundamental rights but where will the fundamental rights exist once the military is in a position to take whatever action it likes to search a house, apprehend any one without warrant and shoot at sight even to the point of causing death? In such circumstances, the fundamental rights of the people become null and void. If you think any such situation has arisen, then face the court of law. Let the common people, the aggrieved people, go to the court of law, challenge your conduct. You should face up to the challenge and answer the charges that may be made against you. Why should the Government be afraid of it? If Government have got a clean heart, then they should not be afraid. Some hon. Members made an appeal to me. I do not know why they were appealing to me. They should be addressed to other quarters. The hon. Minister would not see the need for it and all the time we were suggesting this thing, he said that there was no need for it at all. I say that the process of law should not be completely given go-by. After all, it is you who talk particularly and emphasise about the rule of law sometimes although you never practise it. What will happen to the rule of law? Where are we going? Suppose an area is declared as a disturbed area, does the rule of law exist in that area? In what form does it exist? It does not exist at all. It is military law, semi-martial law that comes into operation. Courts are out of the picture and fundamental rights become a distant echo for the people in that locality. They have no remedy except to write to the Government to seek its consent. We know that the consent will be denied to launch proceedings and our executive becomes order of the day.

SHRI AKBAR ALI KHAN: It is very satisfactory, Sir, my learned friend addressing this House on the rule of law.

SHRI SHEEL BHADRA YAJEE: It is not a public meeting.

SHRI BHUPESH GUPTA: I pity the hon. Member's experience because he comes from an area where the rule of law never existed.

SHRI V. PRASAD RAO: That is natural. He comes from a place where there was no rule of law for years.

SHRI BHUPESH GUPTA: When we have to have the interpretation of the Razakar law, I shall yield much more readily than I have done in this case, because I think he can give a better interpretation.

Now, Sir, where is the rule of law? Tell me. Has it occurred to you that in a disturbed area there would not be even a semblance of the rule of law? You say that it is not a military situation; you say that it is not a war situation and you say that it is a law and order, your law and your order, situation. If it is an internal law and order situation, then the rule of law should have some place. They are not even accepting the suggestion that the thing should be placed before Parliament. They will not accept it. You talk about the rule of law and if it had been any other place, such talk would be regarded as hypocrisy but when the hon. Minister indulges in such talks it becomes something else perhaps. In another place, when a common man of common clay indulges in such talks, it is called hypocrisy. We cannot call any of us hypocrite here.

Now, the rule of law completely disappears. It is accepted that Parliament will be in the picture because they are responsible to the Parliament. Well, we have had a number of measures which provided that papers should be laid on the Table of the House, rules and regulations shall be

placed on the Table of the House. Why do you then, since you are responsible to Parliament, have a provision for laying papers and rules before the Parliament or on the Table of the House? You say that now because this argument is convenient and you use it. I have never seen or known such ready business, such playing at of arguments that the Government has indulged in in this matter. It is clear, therefore, Sir, that they are envisaging a situation when they deliberately want to rule out the rule of law. Let there be no mistake about it. We cannot countenance such a situation without any protest. We would not like such a situation to arise. We would at least like some protection to be given in this measure itself and therefore it is that we say that our amendment should be accepted.

The last amendment reads thus:

"Any person against whom any such prosecution, suit or legal proceeding has been instituted involving allegations of excessive use of force or gross abuse of powers or gross misconduct shall be withdrawn from the operations in the disturbed area during the pendency of such proceedings".

I would request the hon. Minister to follow this. Suppose, under this measure, a case has been started against an officer with the allegations that he had exceeded his authority or used excessive force or abused his powers or is guilty of gross misconduct. In such cases, is it right to allow this officer to continue? It will not be right. You will ask, "Where will we find the men?" Take him away from the area. You can have replacements. He has to answer certain charges. Find somebody else who can go there. That will be a good thing. The very fact that there is a provision of this kind is enough to have a sobering effect on the officers concerned; they will behave properly and will try to see that they do not exceed their authority. Why should you not do it? Of

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course, we do not do such things. I know that if ministerial officers in the Government, ministerial employees in the administration, are suspected of some trade-union activities, they are summarily suspended, dismissed, discharged, charge-sheeted, victimised and persecuted. When it comes to big people and officers, the people who are entrusted with arbitrary powers to ride roughshod over the liberties of the people, whenever they exceed their authority, go beyond the scope of their powers, they are not called to book. On the contrary, sometimes they are given promotions. We have got the example here in the Central administration. We brought certain serious allegations about the conduct of a Union Secretary but nothing is being done. He has not been compulsorily retired. No action has been taken. I believe, Sir, the same thing will be done here. The officers guilty of excesses will be allowed to continue their operations there and this will have a demoralising effect. This will lead to further excesses; this will lead to abuses and this will complicate the situation, aggravate the problems and the Government will then come and seek to justify the conduct of such officers. We do not like such things. There are enough officers. You can always find replacements. If some people go wrong, if all people are going wrong, exceeding their authority and behaving in such a manner that the local residents there bring up charges against them, we should presume that something is vitally wrong: Governor or no Governor, something is vitally wrong and if you cannot gain the confidence of the local people, it presupposes that you are doing something fundamentally and basically wrong, violating the authority of the law and abusing your powers. Only those people are likely to go to the court of law who are responsible, peaceful residents of the locality, who may feel aggrieved by the excesses and the abuses of authority. If these people begin to go to the court of law, it will mean that you are applying the mea-

sure not against the hostile elements, not against those people who have taken to arms but against the common people there, the peaceful inhabitants of the locality, in the name of aiding the civil authority, for the sake of law and order. I think it would be utterly wrong. Mr. Vice-Chairman, you are a lawyer; you have been a Judge for many years; you have good grasp of jurisprudence and you know the rule of law.

(Interruptions.)

Your rule of law is not the same thing. You will not understand these things because the rule of law is beyond your gaze. I know that.

The rule of law is one which must not be prostituted for an expediency, and I understand here, quite clearly, that the rule of law is being prostituted by this Government for the exigencies of a situation which he cannot meet politically. That is my charge against the Government.

(Interruptions.)

I do not know why the gentleman from Bihar is getting up.

Sir, that is my contention. I am horrified by the cavalier manner in which the Minister of State in the Ministry of Home Affairs is trying to get this measure passed. All suggestions and all amendments from this side of the House have been given the go-by, those given even by liberal people like Pandit Kunzru could not be found to be acceptable to them. Even your advocacy, Mr. Vice-Chairman, from their own benches with the legal knowledge and experience behind you would make no sense to them, and when we speak of course there is always the ideological red herring before them in order to sidetrack the real issue. Such is the attitude of this Government. I therefore strongly protest against the attitude of the Government in sponsoring this Bill in this

manner without reflecting on what they are doing and, moreover, without listening to any of our suggestions.

SHRI V. PRASAD RAO: Sir, the hon. the Minister for Home Affairs is very fond of talking about restraints, deterrents and restrictions. May I ask him a simple question? Do these deterrents, restraints and restrictions apply only to the people? Do you consider that these officers just come from the mouth of *Brahma* and they are above the common people and there can be no launching of cases against them in courts? I ask him, Sir, if that permission is to be sought from the Government, how many times the Government had given permission to proceed against a military officer as such? I do not understand why a specific provision is necessary here at all because, under the Navy Act, under the Army Act and under the Air Force Act, if for anything any particular military officer has to be proceeded against, it is necessary that permission has to be sought. Again am I to understand that Government is not satisfied with those provisions in the Army Act, in the Navy Act and, in the Air Force Act that they want double insurance for their officers since even under those Acts nobody can proceed against an officer when he is doing his duty? So I do not understand this provision unless the Government means to reassure these officers that even if they commit excesses here is a Government that will protect them. Am I to understand, Sir, in this democracy, that the ordinary rights should not be given to a citizen to proceed even against an officer? Here the hon. Minister might say that with the permission of the Government any citizen can bring up a case against an officer for committing excesses, but from my own experience I can say this. I had written for permission to proceed against a police officer for shabbily dealing with a woman and for three years I tried my best to get the permission from the State Government, but I failed to get the permission in that regard. And here even

if excesses are committed, in the name of so many considerations, in the name of the morale of the army, the discipline of the army, I do not think Government is going to accord permission for legal proceedings against the erring officers. Will the hon. Minister satisfy us as to how many times hitherto the Government had given permission for the launching of prosecutions and for the filing of suits or legal proceedings against the officers, especially against the military officers, officers of the navy, officers of the army, officers of the air force, say, against the officers of the armed forces in general when excesses were committed by them? If he does, then I shall be satisfied. But, Sir, the record of the Government so far shows that it goes out of the way to save a particular officer even knowing that a particular officer had committed excesses. So I think, Sir, this is a very salient provision and it should be accepted if they do not mean to unduly go out of the way to protect a wrongdoer. Even if that provision is not there, as I pointed out previously, there were so many provisions already so that undue harassment of these officers will not be there.

SHRI BHUPESH GUPTA: May I ask the hon. Minister to give an adequate answer?

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The Prime Minister.

THE PRIME MINISTER (SHRI JAWAHARLAL NEHRU): Sir, I came here and I was fortunate enough to hear, even apart from this, his discussing the rule of law, which pleased me very much, coming as it did from the hon. Member opposite. It is a happy development here in this Parliament that even a Member sitting opposite, whose conception of the law is normally considered to have nothing to do with our conception of the law . . .

SHRI BHUPESH GUPTA: I have never discussed my conception of the law with you.

SHRI JAWAHARLAL NEHRU:

... or the State's conception of the law or the Constitution's conception of the law, has now become a convert to the rule of law. That is a great gain, and I hope that it represents a real conversion and not merely a temporary aberration.

A great deal of heat has been engendered in this particular matter. I have no doubt my colleague will deal with a number of points that have been raised. But what is all this about? Here we have been dealing in the last two years or more with a situation in the north-east which, if it had occurred anywhere else, would, I am sure, have been dealt with in a very different way. Throughout this period our objective has been not to rely so much on the force of the State, on the coercive apparatus of the State, on the armed forces, etc., but always to realise that the people whom we are dealing with were misled and had taken to wrong activities under a misapprehension, or whatever you might call it. It has a long history of the past.

I have spoken repeatedly on this subject expressing not only my admiration of the people of the north-east, even those who were opposed to us and who were hostile to us, always working for winning them over, to make them integrated in mind and spirit to India and to what we stand for. I doubt and I am not aware of any instance anywhere in any country where a Government has treated with such friendliness, with such approach to winning over an insurrectionary group as the Government of India did in regard to these elements in some of the north-eastern parts of our country, and I can say with some confidence now that the policy we pursued has met with a very large measure of success, and it has met with success not because merely of the firmness we showed in dealing with violence and insurrection, which any Government must show because, if a Govern-

ment does not, it means a spread of that violence and enormous misery to the people who suffer from it. But the other aspect of our policy was always to win over fellow-citizens, to make them feel that they were fellow-citizens, to make them feel that they were co-sharers in the freedom of India and all that. Some people there talk of independence. When I met them some time ago I said: I quite agree with you. You are independent; you ought to be independent and you are as independent as I am, as any one else. but independence does not mean indulging in insurrection and violence and all kinds of other misdeeds against the law.

5 P.M.

Any Government, whatever it is, has to deal with that situation. Now, normally the violence of, let us say the petty violence of, the dacoit or somebody is dealt with by the normal processes of the law. Where it increases and goes beyond the normal anti-social elements and assumes some kind of an organised form, it is sometimes called an insurrectionary movement. Whether it is big or small, it is another matter. Normally, when that happens it is dealt with very sternly by any State. Surely, no hon. Member here can fail to appreciate that if we had taken the hard line which normally States take in such matters, if we had taken measures which normally States take, hard measures, stern measures, we would have succeeded from the point of view of just suppressing the insurrection much more quickly but because we did not want to do that, we functioned, firmly certainly, but always with a certain gentleness, always with the idea of winning them over. That is why it took a little longer but although it took longer, that is the course we think, which brings ultimately good results. And what is more, we have, as I said, in a large measure succeeded because the situation in those Naga Hills and the surrounding country has improved very

greatly and when I say improved, I am not talking only strictly in the law and order sense but in the sense that the people of the e areas are now co-operating in restoring a sense of normality there in a hundred ways. But although they are co-operating, there are groups, small groups, misled, who, not being able to function in this way in those particular areas, break out into other areas roundabout—whether it is Manipur or whether it is roundabout—and it is not an easy matter when even small groups of dacoits as in Madhya Pradesh or somewhere else behave in that way. It is not an easy matter to deal with them and one has to adopt some special measures. Therefore, this particular measure that is placed before the House for its consideration is to deal with these outbreaks on the fringes of that particular situation, or inside it. It is a repetition of something that we have been doing; it is nothing very new. Only power is taken to deal with those people in a particular way and I do submit, far from being an extraordinary thing, it is rather less than the normal measures which a State takes on such occasions and I am quite sure that this House therefore will approve of this and realise that the policy of the Government in regard to the north-eastern areas has been firm certainly as it has to be. No infirm Government can function anywhere. Where there is violence it has to be dealt with by Government, whatever the reason for it may be; because otherwise you drift; the country drifts into,

if I may use the word, Fascist methods, all groups, private groups and others, indulging in violence and trying to coerce the governmental authority by organised violence. That is normally called Fascism; at any rate, it is a method adopted by Fascism and there is far too much of that kind of thing happening although it may be said to be happening for the noblest of motives. But in fact it has the most harmful consequences. Therefore it is necessary, where this occurs, to deal with it firmly but never, I hope, in India from the point of view of dealing with an enemy. As fellow-citizens we have to win them over but in winning them over we cannot afford to allow large numbers of people to be terrorised over by small armed bands. And that is the whole purpose of this, and I do not understand why hon. Members opposite should speak in such strong terms as if something very unusual, something extraordinary, was taking place. Thank you, Sir.

SHRI BHUPESH GUPTA: Sir, the reply . . .

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five minutes past five of the clock till eleven of the clock on Friday, the 29th August 1958.