

श्री विजय जवाहरलाल दर्डा : सर, हमारे यहां के बर्ताव से देश के अंदर लोग शंका कर रहे हैं...(व्यवधान)...

MR. DEPUTY CHAIRMAN: We will look into that also. We will examine why it happened, what happened and we will also try to rectify it according to the rules. ...(*Interruptions*)... Now Shri Avtar Singh Karimpuri. He is not present.

The Acts of Parliament (Application to Nagaland) Bill, 2010

SHRI KHEKIHO ZHIMOMI (Nagaland): Sir, I move:

That the Bill to provide for procedure for effectuating article 371 A (1) (a) of the Constitution of India in relation to the State of Nagaland, be taken into consideration.

Mr. Deputy Chairman, Sir, I rise to present a few of my viewpoints on the Representation of People (Amendment) Bill, 2010. Let me at the outset draw the Government's attention to the special position enjoyed under the Constitution of India. That special position is founded upon the existence and recognition of customary practices unique to the Nagas. Nagas are governed only by their age old customs as regards providing leadership in the villages and towns in Nagaland. A local self-governance of Nagas is not political party based. It is devoid of political competition and rancour. As the leaders are chosen by consensus according to customary practices, there are no incoherent voices and perceptions within the society. That is why Nagas have lived under one roof since time immemorial. While the Britishers were successful in their 'divide and rule policy' in other parts of this great country, they experienced a terrible failure wherever Nagas lived under their customary political institutions. For instance, at the height of the British Empire where 'never the sun set in the British Empire' was the order of the day, there existed free Nagas which is a unique recognition to any nation, out of acceptance of reality, which prevailed at that point of time. In the same way, Naga women enjoy no inferior status to men. Therefore, there is absolutely no ground for any gender inequality in the Naga society. This especially pertains to 33 per cent reservation to women, which is pending before the Parliament. It will be very unfortunate to apply it in the State of Nagaland because, under Article 371, it is clearly mentioned that no Act of Parliament shall be applicable to the State of Nagaland, unless the State Assembly passes the same with a majority. There is, thus, no relevance for women reservation in political institutions in the Naga society because pride, position and status are accorded to them as per customary law and practices. This is one reason why Nagaland has been exempted from Panchayati Raj, which is a provision in the Constitution of India. Somehow, maybe without proper application of mind, the part relating to municipality is being applied to Nagaland that

appears to be a patent Constitutional contradiction. When at the grassroots level, that is, at the village level, local self-governance is allowed in Nagaland, according to customary practices, it is not known why, at the level of Municipalities and towns, the Constitution of India is being applied to Nagaland at grave peril to Naga customary practices and law. Through you, I urge upon the Government of India to have a quick fresh look into this and exempt Nagaland from the application of Twelfth Schedule, as it has given exemption to Nagaland from Eleventh Schedule. The question of women reservation shall also not apply to Nagaland in view of the proud position of Naga women in Naga society under our own customs and traditions.

Sir, another point, I wish to make, is that the Government of India is insensitive, for a long time, the demand of the Legislative Assembly of Nagaland for an Upper House in Nagaland. A Resolution, in this regard, had already been passed by the State Assembly way back in 2005. On the other hand, some States passed resolutions, quite late, for the creation of an Upper House, but they have been provided an opportunity to have their own Upper Houses.

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I, therefore, urge upon the Government of India to immediately bring forward a Bill for creating an Upper House in Nagaland to meet the democratic aspirations of the people of Nagaland, because, in Nagaland, we have sixteen full-fledged recognized tribes, plus we have more than equal number of unrecognized tribes. In order to fulfil the aspirations of various tribes and also to have their close participation in the new system of the Government, this accommodation is very, very essential. This would only strengthen the climate of confidence in the context of ongoing peace talks. Sir, there is a ceasefire between the Government of India and the Naga national workers who are struggling and fighting for the independence of Nagas. The last ceasefire between the NSCN (IM) and the Government of India was concluded way back in 1997. Now, almost 16 years have passed, but, till now, no conclusive result has come out. Apart from that, even in the past, many ceasefire agreements have been entered into by various groups, but nothing has been materialized till now. So, having the ceasefire is not an end to itself. But ceasefire by any party is a means for the solution. So, the very objective shall have to be fulfilled and only then will there be a confidence in the minds of the Naga people.

Sir, these things need not wait for the consumption of peace talks. When different arrangements come by after the peace talks and if any modification needs to be made in the existing Constitutional and political arrangement, it can be made without constraints. Since the political talks are going on, it does not mean that the constitutional right for

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providing Upper House to the State of Nagaland should be ignored or should be kept waiting till the political settlement is over. They are two different chapters.

Sir, during my last tenure, I introduced a Bill for constituting a joint Committee of the Union and the State Governments to constantly filter Parliamentary laws from application to Nagaland in line with the letter and spirit of Article 371 A(1)(a) which is coming today. I would request the Chair and the Government that this Bill may be given a special consideration because it will pave the way for smooth relations of the youths of the two States; otherwise, there are a lot of contradictory constitutional issues that make the people of Nagaland feel that they are alienated. Sir, this time, an attempt has been made by the Government of India in response thereto, thereby giving an impression that the special position of Nagaland under Article 371 A(1)(a) is now coming up in the right direction. Sir, Nagaland has been demanding for increasing the number of seats in the Lok Sabha and in its State Legislative Assembly for quite some time.

Sir, to some of the Members it may look strange to mention about the enhancement of their seats in Parliament and in State Assembly. But in the context of Nagaland and also if one goes into the genesis of Nagaland, it is a desirable thing.

Sir, when the State of Nagaland was created, it was the only State which had come out as an offer. It was not at all a demand. When Pandit Jawahar Lal, in his wisdom, gave the statehood to Naga people in 1960, it preempted the Chinese influence on the Eastern sector of the North-East Region. Sir, in 1956, the Liberation War between two identities, the Federal Government of Nagaland and the Government of India, broke out, the revolution started. So, the then Prime Minister, Jawahar Lal Nehru, sent the then Gen. Thimayya to Nagaland on the battle front to have a negotiation with the Federal Government of Nagaland. On the warfront, the then General Thimayya offered the statehood to the Nagas but the Federal Government of Nagaland, the Prime Minister, Late Shri Sukai, refused it. General Thimayya took 50 *paise* coin and offered it to Mr. Sukai as a sign of offering the statehood instead of sovereignty. But Mr. Sukai, the then Prime Minister of Federal Government of Nagaland, instead offered him one rupee coin which indicates that 'we are for the sovereignty.' Then, General Thimayya went back to Delhi and had a serious discussion with the then Prime Minister of India and the then Prime Minister of India, Late Jawahar Lal Nehru, in his wisdom, started the process of giving statehood to Nagas because the Chinese influence after this debate started hovering on the North-East. The insurgency in the then Naga hills had become uncontrollable. So, under the given situation, if Nagas were not kept in control with certain measures, the Eastern front could have faced a serious problem by apprehending the Chinese aggression of 1962.

3.00 P.M.

Keeping that point of view in mind, the great Prime Minister of India, Shri Jawaharlal Nehru, initiated the Naga Peoples' Convention, a group of Naga intellectuals. After that the process of acquiring statehood began and later, statehood was given to the Nagas, but the Nagas were not at all happy with the State. It had been hurriedly arranged. It was because the Chinese aggression was hovering over the North-East that, in his wisdom, the then Prime Minister thought that the best option would be to take the natives into confidence, so that any such aggression could be prevented. In the North-East, gaining the natives' confidence helped get them victory during World War-II. Their last great battle was fought in the North-East, in Kohima and Imphal. The Japanese 15th Army, commanded by the great General, Lt. General Sato, was defeated in the North-East because of the help contributed by the natives. So, it was during the Chinese aggression of 1962 that the Nagas were given statehood. It was only then that a majority of the Naga people were satisfied, gave their cooperation and started having confidence in the leader, the then Prime Minister Jawaharlal Nehru's forward policy. I should say it was very, very successful. So, it was because of that that the Chinese aggression was contained. They had come inside the country to some extent, but they could not occupy the territory, because of the revolution and rebellion by the native people. So, these are the issues involved.

Now, it is in this connection that there is a demand for more Parliamentary seats and for increasing the number of Assembly seats. In the North-East and everywhere else in the country, whichever State has 60 seats has two Parliamentary seats or above, except in Nagaland, the 16th State of the Indian Union. If you take a look at other States that have 60 seats and above, no State has less than two Parliamentary seats except for the State of Nagaland. That is because, at that point of time, the Naga delegates refused to send their Naga representatives to the Indian Parliament, as the State of Nagaland had been placed under the Ministry of External Affairs; it was not placed under the Ministry of Home Affairs. So, when it was placed under the Ministry of External Affairs, they didn't think it was necessary to send their representatives to the Parliament. That was their thinking; that was the mindset of the Nagas. But after many considerations, the Constitutional and legal implications, and for the betterment of two nations, the Nagas were convinced to send, at least, one representative from their State to the Lok Sabha and one to the Rajya Sabha, and thus, to the Indian Parliament. So, accordingly, we were requested to send one Member each and they were sent. After that, when Election Commission started the process of delimitation, we couldn't become an exception and in the same year we also fell with other States under the delimitation process. Since ours is a different issue, still we are demanding passing the Resolution that our seat percentage in the Assembly and

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Parliament may be increased. In the north-east we have eight States apart from Assam. Sikkim has 30-Member Assembly and one MP; Mizoram has 40-Member Assembly and one MP; Arunachal Pradesh has two MPs; Manipur has two MPs; Meghalaya has two MPs, but we have only one MP with 60-Member Assembly. So, this is the consistent demand of our people. I would like to enlighten the House through you, Sir, that keeping in mind the above, it should be considered. The peculiarity and uniqueness of Nagas should be considered in all working systems. Sir, we also know that the Government of India is having a lot of problems in all fronts — political front, social front, economic front—yet the unique problem of the Nagas should be given the top priority. Time to time when any legislation or any Bill is passed in the Parliament, the Union Government tries to apply it uniformly to the State of Nagaland, and then, time to time, constitutional conflict occurs between the State of Nagaland and the Union Government. So, Sir, the State Assembly of Nagaland and the people came to the conclusion that there should be devices to avoid the constitutional conflict between the Government of India and the State of Nagaland. So, I would like to read out these devices to enlighten this House.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Would you take some more time? Your time is about to over.

SHRI KHEKIHO ZHIMOMI: It is a very important and valid point.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): It is better not to give a gap between the speeches.

SHRI KHEKIHO ZHIMOMI: Sir, under Article 371A, no Act of Parliament can be applied to the State of Nagaland unless a Resolution to that effect is passed by the Legislative Assembly of Nagaland. So, that is the bone of contention. Article 371A stipulates that no Act or law passed by the Union Parliament affecting the following provisions shall have legal force in the State of Nagaland unless it is specifically passed by a majority vote in the Nagaland Legislative Assembly: (i) religious or social practices of the Nagas, (ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law —the existing law relating to Naga administration of civil and criminal as provided in the rules of the administration of justice and police in Naga Hills District shall continue to be in force — and (iv) ownership and transfer of land and its resources.

These have been the most controversial and contentious issues all the time. So, any Bill, that is passed in the Parliament, shall have to be examined by constituting a Joint Committee, and any law that affects these four points, can only be implemented by

a resolution passed in the State Assembly. Otherwise, it cannot be applied to the State of Nagaland. So, to examine this one, a Joint Committee will have to be formed having representatives from the Government of India and the Nagaland Government. If a Bill relating to these issues comes, the Joint Committee will examine whether the law passed by the Parliament is outside the purview of Article 371A or not. If this is within the purview of Article 371A, then it will have to come through the State Assembly, and if it is outside the purview of Article 371A, it cannot be applicable to Nagaland State.

With this, I appeal to the Government, the Minister concerned and hon. Members to support the Bill by way of adopting it and then bringing it before the House for consideration and passing. Thank you.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Now, there are no names forwarded for speaking on this particular Bill. Therefore, I am calling the hon. Minister to make his observations.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI KIREN RIJIJU): Thank you, Mr. Vice-Chairman, Sir. I would like to state that I share the sentiments and the concerns expressed by the hon. Member. Sir, the Government of India is always sympathetic towards all the matters raised by any community or any State in the country. If you see the provision of the Constitution, Nagaland is already, in a way, a special State.

If you see the provisions under Article 371 A, you will find that it has already given certain freedom to the State of Nagaland. Article 371 A specifically mentions about religious or social practices of the Nagas, which means that they can have their own way of governing the local people. Further, it speaks about Naga customary law and procedure, and, administration of civil and criminal justice involving decisions according to Naga customary law. It also deals with the ownership and transfer of land and its resources, and, it requires a Resolution of the Legislative Assembly of Nagaland for its application to the State of Nagaland.

Mr. Chairman, Sir, in a way, it has been given ample power with regard to their age-old practices and usages, and the hon. Member has rightly stated that the Panchayati Raj system does not have any effect in Nagaland because Nagaland is governed by their own local customary laws. They have Village Council system, they don't have elected Members under Panchayati Raj system.

We are open to any kind of suggestions and discussions at the political level. Some of the points, which the hon. Member has mentioned about very important political

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issues, are being discussed from time to time. But some of the issues are not part of the provisions of the amendment which he envisages to move here in this Bill. So, I would not like to go into detail in those matters. But, I would just like to say that we understand the unique character of the Naga people and we acknowledge the contributions made by various leaders and personalities from Naga community.

On the issue of bicameral legislative system having the Upper House, I would say that it is also not part of the amendment which he has moved. Sir, there are some other issues, which he has brought out like more authority in the political sphere as also talks with some of the militant groups, which is going on, and, which I need not refer here because the Government of India is already dealing with it at various stages.

Sir, our Government, since we are not even two months old, is understanding the whole issue so that we can deal with the subject very effectively while understanding the emotions and sentiments of the people. Other than 16 recognized tribes in Nagaland, they have many unrecognized smaller groups. We will ensure that the concerns of those smaller communities are also taken care of.

Sir, the hon. Member has brought a Bill, which is, if I may say so, sweeping and drastic in nature, and, it is not possible for the Government to really bring that kind of an amendment. But, I want to make it clear that it is not in any way undermining the sentiments and the issues brought out by the hon. Member. Sir, as a Minister in the Ministry of Home Affairs, I and my Government are open to discussions for various purposes. But, if I may quote some of the lines, if we adopt this kind of amendment which will mean that upon passing of this Resolution, the Act shall deemed to have been applied to the State of Nagaland from the date of its enactment. Upon failure to pass a Resolution or failure of Resolution to be carried, when moved in the Legislative Assembly within six days, the Act shall be deemed to have applied to the State of Nagaland at the expiration of sixty days from the date of receipt of the report by the Government of Nagaland. Sir, according to the hon. Member's proposed Amendment Bill, all Acts enacted by the Parliament of India hereinafter, the declaration is that such Act shall apply to the State of Nagaland subject to Article 371A, sub-clause (1)(a) of the Constitution read with this Act. Sir, these are some of the very drastic amendment provisions which the hon. Member has moved. I am not denying the importance of it, but we have to go by the Constitutional provision of the country and the sanctity of the Constitution must be protected. On a personal note also, I would like to request the hon. Member that since our Government is very sensitive towards the Naga issues and things are going on at the various levels, we can discuss, we can look into the issues raised by him on many, many other platforms

which are available to us. So, without going much into the detail, I would like to request the hon. Member to re-consider withdrawing of this Bill. Further, the procedure envisaged in the Bill gives ultimate authority to the legislature of the State of Nagaland to decide whether or not an Act of the Parliament of India would apply to the State of Nagaland. Such a procedure will not be according to the spirit of the Constitution. So, I would like to humbly request the hon. Member to withdraw the Bill. At the same time, I share his sentiments also. Thank you.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Mr. Khekiho Zhimomi, would you like to make any reply?

SHRI KHEKIHO ZHIMOMI: Sir, Article 371A (1)(a) is the only backbone and foundation of Nagaland statehood. Had this clause not been enshrined, had it not been included in the Constitution, there would not have been the State of Nagaland. Because of the peculiarity, the uniqueness, for all that, we cannot be exceptional to other States. But unless this is preserved and protected, their nationhood cannot exist. So having understanding the necessity, the sentiment, at that point of time, at the time of making their Agreement, the then Prime Minister and the Naga leader felt that this is the only answer to have an understanding between the Nagas and the Government of India. And, accordingly, after accepting this Article 371A (1)(a), the Naga People's Convention leaders have agreed and it is executed. So, if the Government of India would like to back out, well, in a democracy, majority right doesn't mean that it satisfies all sections of the people. This is indispensable for the Nagas. On this depends the very foundation of the statehood of Nagaland. As this is a Private Member's Bill, there is no other option but to withdraw it. But before I withdraw it, I would rather make an appeal to the Government. You can polish this Bill and then bring it back to the House as a Government Bill so that it can be adopted. Every time there is a controversy on this issue. It is given in Article 371(1)(a)(iv). It is relating to ownership and transfer of land and its resources. This is the biggest bone of contention at the moment between the Union Government and the State of Nagaland.

Another thing, which I have already mentioned, is the Women's Reservation Bill giving them 33 per cent reservation. It was passed in the Rajya Sabha. But it is pending in the Lok Sabha. This is another contentious issue. I have already highlighted it in the Statement of Objects and Reasons. These are the things.

Instead of bringing it and then making it an issue between the Parliament and the State Assembly or between the Government of India and the Government of Nagaland, they should have formed a Joint Committee comprising members of the Government of

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India and the Government of Nagaland. Before the controversy starts, the Committee should be given an opportunity to examine any Bill and give its recommendations. Then misunderstanding between two parties can be easily avoided. This is a very important thing.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Try to conclude.

SHRI KHEKIHO ZHIMOMI: Many commitments have been made to the Nagas. But till now, no commitment is fulfilled. This is not a verbal commitment. It is a conditional commitment. If it is also going to be withdrawn, then how will the Nagas have confidence in the Government of India? There was a ceasefire agreement between the Government of India and the Naga Federal Government on 6th September 1964. Today, it is neither dead nor alive. It happened fifty years ago. Another agreement took place in 1975. It is also known as the Shillong Accord. It is neither dead nor alive. After that, there was another ceasefire agreement between the Government of India and the NSCN-IM. Seventeen years have passed since then. Another agreement took place in 2000 between the Government of India and the NSCN-K faction. It is still going on. Again, another ceasefire agreement with NSCN-Unification. How many ceasefires? This is because they have no confidence in each other. So, if this is also taken away, then, what will they have? They expect that from the Government of India. It is only a concessionary method. It is already provided. You just regulate, regulate as to how best it can work. Sir, the confidence of the people, who are living very close to the mainland, can also be boosted. But, if this is done away with, I think, it will just be a negative signal to the Nagas. I have clearly said that the forward policy of the then Prime Minister, Mr. Jawaharlal Nehru, was very, very successful. This has pre-empted the Chinese aggression. Otherwise, at that point of time, the mighty Federal Army may have reigned; then, the history would have been different.

Sir, through you, I appeal to the hon. Minister that it may kindly be adopted because if a Government Bill is brought forward, it will be a lengthy and peculiar process. The Government of India will nominate the officers from its side and the State Government will also nominate. They will work together and harmonise their relations. So, if at all there is no other option than to withdraw it, I would withdraw it because not several Private Members' Bills have been passed till date. But, simply withdrawing the Bill will only show a negative attitude. It would only bring the Naga people into a bad shape. So, I appeal that it may be adopted and they may work it out as to how best they can bring forward a Bill in the House. Thank you.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Mr. Zhimomi, are you withdrawing the Bill or shall I put the motion to vote?

SHRI KHEKIHO ZHIMOMI: So, it is better to withdraw than to vote it out. I still insist upon the hon. Minister that it can be adopted. He can work it out. If at all the Government is stubborn, then I would withdraw it.

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY; AND THE MINISTER OF LAW AND JUSTICE (SHRI RAVI SHANKAR PRASAD): Sir, may I request the hon. Member that there is a tradition of this House that whenever the Private Members' Bills raise some issues, the concerns are conveyed to the House and the Minister gives a reply? Normally, the tradition is of withdrawal. Normally, there is no tradition of voting. All the friends know that. All of us have a great concern for the cause that you have espoused. I have myself been to Nagaland, working in the North-East. Along with the hon. Minister, I appeal to the hon. Member to withdraw it. You have flagged the concerns and the Government of India have taken the concerns on board. I appeal to you to withdraw the Bill.

SHRI KHEKIHO ZHIMOMI: I again appeal to the hon. Minister of State to initiate it.

SHRI KIREN RIJJU: As hon. Law Minister has made a fervent appeal, I already stated earlier that we are open to discussion in future. Our Government is very sensitive to Naga cause. But in respect of this particular case, if the hon. Member withdraws, that will go with the tradition as well as harmonisation in the House and we will work together in future. So, I appeal to the hon. Member to kindly withdraw the Bill.

SHRI KHEKIHO ZHIMOMI: Sir, having received good gestures from the Government, I withdraw the Bill.

The Bill was, by leave, withdrawn.

The Endosulfan Pesticide (Prohibition) Bill, 2011

SHRI P. RAJEEVE (Kerala): I move:

That the Bill to prohibit the use of endosulfan pesticide in agricultural activities with a view to preventing its harmful effects on human beings, environment and to provide relief to persons affected by the harmful effects of endosulfan and for matters connected therewith and incidental thereto, be taken into consideration.

Actually, I have been waiting for the last three years for moving this Bill. It had been introduced on 5th August, 2011. Thereafter several things have happened. The Supreme