

**CHAPTER VII**  
**DEPLOYMENT OF UNION ARMED FORCES**  
**IN A STATE FOR PUBLIC ORDER DUTIES**

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**CHAPTER VII**  
**DEPLOYMENT OF UNION ARMED FORCES IN A STATE FOR PUBLIC ORDER**  
**DUTIES**

## 1. INTRODUCTION

7.1.01 Public order, which connotes public peace, safety and tranquility, is primarily the responsibility of a State Government (Entry 1 of List II), which has the necessary infrastructure for the purpose, viz., the police, the magistracy, the judiciary, etc. However, when there is a serious public disorder which threatens the security of the State or of the country itself, the situation becomes a matter of concern for the Union Government also. The role of the Union Government *vis-a-vis* that of the State Government in dealing with such a situation has been discussed in detail in the Chapters on "Legislative Relations"<sup>1</sup> and "Emergency Provisions".<sup>2</sup>

7.1.02 As will be seen from these Chapters, the Union Government and a State Government have well-defined jurisdictions under the Constitution in the matter of dealing with a public disorder or internal disturbance which calls for the deployment of the armed or other forces of the Union in aid of the civil power in the State. It is obvious that, to restore public order quickly, the Union and the State Governments must act in concert. It is the purpose of this chapter to explore the possibility of improving Union-State co-ordination in this vital area and to remove some prevailing misconceptions.

## 2. THE PROBLEM

### Views of State Governments

7.2.01 In our Questionnaire<sup>3</sup> we invited comments on the conclusion arrived at by the Administrative Reforms Commission in its report on "Centre-State Relationships"<sup>4</sup>, that the Union is competent by virtue of Article 355 to locate and use its Central Reserve Police and other armed forces in aid of civil power in any State, even *suo motu*. The Questionnaire pointed out that some States had controverted this view and opposed such Central intervention. Among the State Governments which have replied to this Question, a majority agree with the Administrative Reforms Commission. The other observations made by some of them in this connection are given below :

- (i) The Articles in Part XVIII "Emergency Provisions" of the Constitution arm the Union with powers to ensure the unity and integrity of the country. These are meant to be used in a spirit of mutual trust. In particular, Article 355, which comes under this part, should be interpreted not as enabling the Union Government to assume direct control over law and order in a State but as imposing a duty on it to make available the assistance of its armed forces in aid of the civil power in the State.
- (ii) As a matter of general policy, armed forces of the Union should be deployed in a State with the consent of the State Government concerned. It is only when national security or integrity is threatened and the State Government adopts an intransigent attitude, that the Union Government should deploy its armed forces *suo motu*. This power should be used sparingly.
- (iii) State Governments cannot afford to build their police forces to a strength that would meet all contingencies. They have necessarily to draw upon the assistance of Union armed forces when the situation so demands.

7.2.02 A few State Governments do not agree with the Administrative Reforms Commission for reasons which are summarised below:

- (i) Article 355 does not confer any powers or responsibilities on the Union other than those implied in Articles 352 and 356. As neither of these Articles provides sanction for *suo motu* deployment of armed forces of the Union in a State, Article 355 cannot be deemed to confer this power on the Union.
- (ii) The word "aid" in the expression "in aid of the civil power" in Entry 2A of List I connotes that the armed forces of the Union can be deployed in a State only at the request or with the concurrence of the State Government. 'Aid' cannot be forced on its recipient.
- (iii) The proposition that the Union Government can deploy *suo motu* its armed forces in a State goes against the scheme of the Constitution. As 'public order' and 'police' fall entirely in the State sphere, the responsibility of a State Government in regard to these two subjects should be fully respected.

7.2.03 According to two State Governments, the constitutional responsibility of a State and its limited autonomy in regard to 'public order' and 'police' have been eroded by the Union through the creation and expansion of its police forces. One of them feels that the insertion of Entry 2A in List I and the simultaneous amendments of Entries 1 and 2 of List II in 1976 have also led to encroachment by the Union on the Jurisdiction of the States in regard to these matters.

7.2.04 Another State Government is of the view that it has the *right* to requisition the Central Reserve Police whenever its own police force has to be supplemented for dealing with a serious disturbance. It is only the State Government which may requisition this force.

7.2.05 The different types of suggestions made by these State Governments to correct the anomalies, as perceived by them, are:—

- (i) Entry 2A of List I and Entry 1 of List II should be amended so as to make it clear that Union forces can be deployed in a State only at the request or with the concurrence of the State Government.
- (ii) Entry 2A of List I may be amended so that the Union is empowered to determine, with the concurrence of the Inter-State Council, the terms and conditions of deployment of its armed and other forces in a State. However, the Union need not have the power, which that Entry, at present, confers on it, of prescribing the powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.
- (iii) Entry 2A of List I, which was incorporated in the Constitution in order to empower the Union to control forces like Central Reserve Police, Border Security Force, etc. when they are deployed in a State, should be deleted. Entry 1 of List II should be so amended that public order situations requiring the use of the para-military forces of the Union are brought within the jurisdiction of a State.
- (iv) While deployed in aid of the civil power in a State, there should be no restriction, as at present, requiring the Union forces to take orders only from the Union Government.
- (v) Legislations like the Disturbed Areas Act should not be extended to a State without the prior consent of the State Government.
- (vi) State Governments should build up their own police forces and cease to be dependent on the para-military forces, the intelligence services and grants provided by the Union Government for dealing with law and order problems.
- (vii) The undue expansion of the para-military forces of the Union should cease.

#### **Views of the Union Government**

7.2.06 The Union Ministry of Home Affairs have expressed the view that the Union Government has a duty and, therefore, the responsibility expressly imposed on it to protect every State against external aggression and internal disturbance *vide* Article 355. In substance, this duty is to maintain the unity and integrity of India. The Union Government is expected to use its armed forces for the discharge of this responsibility and, if the situation so demands, may do so *suo motu*, even if there is no request from the State Government concerned. According to the Ministry, it is clear from Entry 2A of List I that deployment of Union's armed forces in aid of the civil power is a matter entirely for the Union Government. If the consent of the State Government for such deployment were to be made a pre-condition, the Union Government would not be able to discharge its duty under Article 355.

7.2.07 A State Government has the sole responsibility for maintaining public order. However, Article 355 does not comprehend ordinary problems of public order but the more serious aspects of external aggression and internal disturbance. Thus the States, powers can co-exist in harmony with those of the Union.

7.2.08 In practice, the Union forces are deployed in aid of the civil power at the request of the State Government. But this practice cannot be construed as a legal requirement, nor can it detract in any way from the Union's responsibility under Article 355 and powers to discharge the same.

#### **Views of the Administrative Reforms Commission**

7.2.09 In its report<sup>5</sup> on Centre-State Relationships, the Administrative Reforms Commission observed that the Central Reserve Police and Border Security Force are armed forces raised by the Union to meet the security needs of the country, both external and internal. The use of armed forces in aid of the civil power of a State is a Union function under Entry 2 of List I and hence perfectly constitutional. Such aid could be provided at the request of the State Government or *suo motu*. The question whether such aid was needed was a matter of judgement by the Union. This was consistent with Article 355.

7.2.10 The Commission went on to recommend<sup>6</sup> as follows:

- (i) The use of the naval, military or air force or any other armed forces of the Union in aid of civil power can be made either at the instance of the State Government or *suo motu* by the Centre.
- (ii) The Centre may exercise its discretion to locate such forces in the States and to deploy them for maintaining public order for purposes of the Centre, such as protection of Central property, Central Staff, and works in which the Centre has an interest.

7.2.11 The Union Government stated in regard to the above recommendations that these had been noted and would be borne in mind when the situations envisaged arose.

### 3. CONSTITUTIONAL JURISDICTIONS OF UNION AND STATES

7.3.01 Such of the issues raised by the State Governments (*vide* paras 7.2.01 and 7.2.02) as relate to the constitutional jurisdictions of the Union and the States in the matter of putting down public disorder, particularly internal disturbance, have already been dealt with in Chapter II "Legislative Relations" and Chapter VI "Emergency Provisions". There, we have discussed in detail the scope of Article 355, Entry 2A of List I, Entry 1 of List II and Entry 2 of List III. In the light of the discussions and conclusions there, we have considered in the succeeding paragraphs their practical implications in regard to deployment of Union armed forces in aid of the civil power in a State.

7.3.02 A State Government has the sole responsibility for maintaining public order except where the use of the armed forces of the Union is called for (Entry 1 of List II). The Criminal Procedure Code contemplates that an unlawful assembly should normally be dispersed by an Executive Magistrate or, in his absence, a Police officer by commanding the persons forming the assembly to disperse. If this fails, he should disperse them by use of civil force, *i.e.*, by using the State police with the assistance, if required, of other male persons who do not belong to an armed force of the Union. If these efforts too do not succeed, the Executive Magistrate of the highest rank who is present, may require an officer of the armed forces of the Union to disperse the assembly with the help of the forces under his command and to arrest and confine members of the assembly. The officer of the armed forces so called upon has to obey the requisition "in such manner as he thinks fit". (Sections 129 & 130 of the Cr. P.C.).

7.3.03 In a situation where the measures described above are neither feasible nor appropriate, the State Government may request the Union Government to make available Union armed forces to help restore public order. Even where the public disorder is not so serious as to fall in the category of an "internal disturbance" as contemplated in Article 355 of the Constitution, the Union Government may accede to the request, unless it finds that the State Government's police force should, on its own, be able to deal with the disorder and restore normalcy.

7.3.04. An "internal disturbance", however, is far more serious than "public disorder" and differs from it in degree as well as kind. The former has the characteristics of domestic chaos and *inter alia* endangers the security of the State. It may be man-made (*e.g.* a wide-spread and violent agitation or a communal flare-up) or Nature-made (*e.g.* a natural calamity that paralyses administration in a large area of a State). Article 355 imposes a duty on the Union Government to protect a State against such an internal disturbance. By implication, the Article grants to the Union Government such powers as may be essential for effectively discharging the duty cast on it.

7.3.05 In the event of the an internal disturbance, the Union Government may discharge its obligation by providing assistance to a State Government in a number of ways. It may advise the State Government on how best the situation might be brought under control. It may provide assistance to it in the shape of men materials and finance. it may deploy its armed forces in aid of the State police and magistracy (Entry 2A of List I). The Union Government may also suggest or initiate measures to prevent the recurrence of the disturbance.

7.3.06 It is conceivable that a State Government is unable or unwilling to suppress an internal disturbance and may even refuse to seek the aid of the armed forces of the Union in the matter. However, the Union Government, in view of its constitutional obligation, cannot be a silent spectator when it finds the situation fast drifting towards anarchy or a physical breakdown of the State administration. In such an unusual, yet not entirely an improbable event, the Union Government may deploy its armed forces *suo motu* to deal with the disturbance and restore public order. The phrase "in aid of the civil power" in Entry 2A of List I and Entry 1 in List II signifies that the deployment is in aid of the instrumentalities of the State charged with the maintenance of public order. It does not necessarily imply that such deployment should take place only at the request of the State Government.

7.3.07 While the Union Government has, under Article 355, all the powers that it may need to deal with an internal disturbance, it cannot assume the sole responsibility for dealing with an internal disturbance by superseding or excluding the State police and other authorities responsible for maintaining public order. Neither can the Union Government deploy, in contravention of the wishes of a State Government, its armed forces to deal with a relatively less serious public order problem which is unlikely to escalate and which the State Government is confident of tackling. It would not be constitutionally proper for the Union Government to take such measures except when a national emergency under Article 352 or President's rule under Article 356 has been proclaimed.

7.3.08 The use of the armed forces of the Union in the maintenance of public order (Entry I of List II) has always been outside the purview of the States. Even before the insertion of Entry 2A in List I by the 42nd Amendment, the Union Government did have, by virtue of Entry 2 in List I, exclusive control over its armed forces and had the power to deploy them in aid of the civil power whether for maintaining public order or quelling an internal disturbance. What was implicit in Entry 2 was later made explicit by Entry 2A. The only difference is that, under the latter entry, not only an armed force of the Union but also a force which is not an armed force (*e.g.*, a force of technical experts), and which is subject to the control of the Union, may be deployed in a State in aid of the civil power.

7.3.09 Except for the limited purpose of dispersing an unlawful assembly and arresting and confining its members, for which Section 130 of the Code of Criminal Procedure empowers the Executive Magistrate of the highest rank to requisition the aid of the armed forces, of the Union neither the State Government nor any authority under it has been conferred by the Constitution any legal right to requisition and utilise in the manner it considers best the armed forces of the Union while dealing with a public disorder or internal disturbance in the State. It is entirely for the Union Government to decide whether its armed forces should be deployed, and the strength and manner of such deployment. Even under Section 130 of the Cr. P.C., the officer of a Union armed force who must comply with a requisition made to him by an Executive Magistrate, will decide, on his own, the manner in which the unlawful assembly has to be dispersed by forces under his command.

7.3.10 Another type of situation wherein the Union Government may deploy its armed forces, even *suo motu*, would be when Union property (*e.g.* installations, factories, office buildings etc.) situated in a State needs special protection which the State Governments are not able to provide. Protection of property is a function which is ancillary and incidental to the relevant subjects in the Union list to which the ownership of the property pertains. Such subjects could be Railways (Entry 22), Ports (Entry 27), Airways (Entry 29), Posts and Telegraphs (Entry 31), etc. of Property of the Union (Entry 32). Besides, the Union Government is not precluded from conferring on the members of the armed forces so deployed, such powers of a police officer as would be essential for the purpose of carrying out the function. The members of the armed force can then exercise these powers not only for the protection of Union property but also for dealing with the public disorder in the proximity of the property if it directly or imminently endangers the safety of that property or the employees working there. It has to be noted that conferment of such powers is only incidental to the implementation of this main purpose, in this case, the protection of Union property. Also, as pointed out in para 7.3.07 above, exercise of such powers does not mean superseding or excluding the jurisdiction of the State police.

7.3.11 When Union armed forces are deployed in a State, the State authorities concerned have to act in concert with the forces. It is implied in Article 355 that the Union Government has the overriding power to ensure such coordination. If a State Government or its authorities choose to withhold their cooperation

while dealing with an internal disturbance, the Union Government is empowered to issue a formal direction under Article 257 or even Article 355. This will, however, be as a last resort and only after efforts to persuade the State Government as also a warning to it, fail to secure the necessary cooperation. Failure to comply with such a direction may attract the sanction of Article 365 and action under Article 356 to proclaim President's rule.

7.3.12 Since the commencement of the Constitution, the Union Government deployed the Central Reserve Police Force *suo motu* only on three occasions, *viz.* once in Kerala in September, 1968 for the protection of Union Government offices in Trivandrum during the strike of Union Government employees, and twice in West Bengal in 1969, for the protection of Farakka Barrage and in connection with clashes between the workers of the Durgapur Steel Plant and the Uttar Pradesh Provincial Armed Constabulary stationed by the Union Government at the Plant. The Union Government, in the first two cases, did not agree with the demand of the State Government for the withdrawal of the Central Reserve Police Force but in the third case agreed to do so. In all these cases, it seems that care was taken by the Union Government not to provoke confrontation with the State Governments concerned and precipitate with the State Governments concerned and precipitate a constitutional crisis.

7.3.13 The foregoing analysis should help remove the misconceptions (*vide* paras 7.2.01 and 7.2.02 above) about the role and responsibility of the Union Government in regard to public order in a State and the circumstances in which may deploy its armed forces in aid of the civil power in the State, *suo moto* or otherwise.

#### 4. DECLARING AN AREA AS DISTURBED

7.4.01 We now consider the suggestion that the Union Government should not declare a particular area within a State as "disturbed", without obtaining the prior consent of the State Government [*Vide* para 7.2.02 (iii) above].

7.4.02 The Armed Forces (Special Powers) Act, 1958 and the Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983 are Union enactments which primarily relate to Entries 2 and 2A of List I, and incidentally to Entry 2, List III also. The former Act applies in the seven States in the north-eastern region and the latter in Punjab and Chandigarh. The Acts confer on certain authorities, *viz.*, the Governor or the Administrator, within the respective State or, as the case may be, the Union Territory and also on the President, the power to declare an area in any of these States or Union Territory as a "disturbed area" if, in the opinion of that authority, the area is in such a disturbed or dangerous condition that it is necessary to use the armed forces of the union in aid of the civil power. Specified categories of officers in the Union armed forces who are deployed in an area declared as 'disturbed' are can exercise, by virtue of the provisions of these Acts, certain enhanced powers, *e.g.*, to fire upon or otherwise use force even to the extent of causing death, to destroy arms dumps, etc.

7.4.03. The power to declare an area as "disturbed area" has been used by the Union Government in a State troubled by insurgency or violent public disturbances. Because of its responsibility to protect a State against such internal disturbance, the Union Government is competent to assess the situation and decide what special measures including powers for its armed forces are necessary for dealing with it. As pointed out above, the State Government also has been given this power.

#### 5. COOPERATION BETWEEN UNION AND STATE GOVERNMENTS ESSENTIAL

7.5.01 Maintenance of public order involves a whole range of functions starting with cognizance of offences, search, seizure and arrest, and followed by registration of reports of offences (FIRs), investigation, prosecution, trial and, in the event of conviction, execution of sentences. The Union's armed forces, where their members have been invested with powers under the Criminal Procedure Code, are responsible broadly for only the first four operations. The remaining have to be attended to by the State Criminal justice machinery, *viz.* the police, the magistrates, the prosecuting agency, the courts, the jails etc. Clearly, the purpose of deployment which is to restore public order and ensure that effective follow-up action is taken in order to prevent recurrence of disturbances, cannot be achieved without the active assistance and co-operation of the entire law enforcing machinery of the State Government. If the Union Government chooses to take unilateral steps to quell an internal disturbance without the assistance of the

State Government, these can at best provide temporary relief to the affected area and none at all where such disturbances are chronic.

7.5.02 Thus, practical considerations, as indicated above, make it imperative that the Union Government should invariably consult and seek the cooperation of the State Government, if it proposes either to deploy *suo motu* its armed forces in that State or to declare an area as "disturbed", the constitutional position notwithstanding. It need hardly be emphasized that without the State Government's cooperation, the mere assertion of the Union Government's right to deploy its armed forces cannot solve public order problems.

7.5.03 We recommend that, before deploying Union armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government, or before declaring an area within a State as a "disturbed area", it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought by the Union Government. However, prior consultation with the State Government is not obligatory.

## 6. OTHER ISSUES

7.6.01 To facilitate discussion, the remaining issues raised by State Government may be re-formulated as follows:

- (i) (a) Whether the Constitution permits an armed force of the Union, when deployed in a State in aid of the civil power, to take over completely the role of the State Police forces.
- (b) Whether the Union, using its power to deploy its armed forces, has in any way been encroaching on the jurisdiction and powers of the States in the fields of "Public Order" and "Police".
- (c) What should be the relationship between and Union armed force and the State Police when the former is deployed in the State in aid of the civil power.
- (ii) Whether State Governments are in fact becoming increasingly dependent on the Union para-military forces in the matter of dealing with public order, excluding however abnormal situations caused by State-wide violence, insurgency, terrorism, etc.
- (iii) How should State Governments strengthen their police forces in order that they may become fairly self-sufficient and their demands on the Union Government for its armed forces get reduced?
- (iv) How should the Union Government's assistance to State Governments in dealing with public order problems be made more meaningful and effective?

We consider that the question of undue expansion of Union armed forces, which has been raised by one of the State Governments, is strictly nor relevant to the subject under discussion. So long as Union-State relations in this field are worked on constitutional basis and all legitimate assistance is received by State Governments from the Union Government in dealing with public order problems, it should be left to the Union Government to decide as to what the strength of its armed forces should be. This suggestion made by another State Government regarding amendment of Entry I of List II and deletion of Entry 2A of List I has been dealt with in the Chapter on "Legislative Relations".<sup>7</sup>

## 7. ARRANGEMENTS FOR ASSISTING STATE POLICE IN REGARD TO PUBLIC ORDER

### General Considerations

7.7.01 The Union Government can meet the request of a State Government in need of assistance by detailing one or more units from (a) Union para-military forces (b) Armed Police Battalions belonging to other States, if available, or (c) the Army. For reasons explained below the Army is not deployed except as a last resort when the para-military forces cannot by themselves handle an acute internal disturbance situation.

### Need for Para-Military Forces

7.7.02 It has been recognised for the past three-quarters of a century and more that, in the day-to-day administration of law and order, resort to military force should be avoided. The Army is maintained, trained and equipped exclusively for the defence of the country, though it could be called in aid of the civil power

for very short periods and subject to clearly defined restrictions. Frequent use of the Army undermines the prestige and authority of the State Police. The deterrent effect of the Army on anti-social and criminal elements fomenting trouble tends to diminish rapidly when it is deployed time and again. Also, too frequent and too long a use of Army troops adversely affects their operational training and undermines their morale.

7.7.03 Keeping the above considerations in view, the Government of India, soon after Independence, decided that the Provincial Police should be asked to have their own armed units. This led to the creation of an "Armed Wing" for every State Police force. Every State Government has now, as part of its Armed Police Wing, a District Armed Reserve and Armed Police Battalions. According to the National Police Commission, the District Armed Police Reserves have remained more or less static. But there has been a gradual growth in the number of Armed Police Battalions in many States. (*Vide* para 51.3 of Seventh Report, May 1981).

7.7.04 The composition of a State Armed Police Battalion follows the infantry pattern in the Army. An armed police unit detailed for a specific task has to be accompanied by a local police officer or a magistrate and receive directions from him in regard to the action to be taken. An Armed Police Battalion is intended to be a strike force which makes its appearance at a psychological moment and creates awe among the troublemakers.

7.7.05 Mention may be made here of the India Reserve Battalions. Eleven armed police Battalions were raised in 1971 as a temporary measure by four State Governments at the instance of the Union Government. These were meant to be deployed in States mainly for tackling problems created by the massive influx of refugees, and the naxalite problem. As the problems gradually receded, the number of battalions was progressively reduced. Two State Governments now maintain four Reserve battalions. The Union Government initially met most of the cost of raising and training the battalions. At present, it reimburses a proportion of their recurring costs. The battalions, though maintained and controlled by the States, remain at the disposal of the Union Government for being deployed in such of the States as require assistance in dealing with law and order situations.

7.7.06. The armed police battalions (including the India Reserve Battalions) belonging to one State can operate outside the State on the following basis. The extension of the powers and jurisdiction of members of a police force belonging to one State to an area in another State, with the consent of the latter State, is a Union subject *vide* Entry 80 of List I. in exercise of the powers conferred by Sections 3 and 4 of the Police Act, 1888 (an "existing law"), the Union government has notified with the consent of all the State Governments, except Nagaland, that a Police Officer of any one of the consenting States may exercise in another among them, the powers and jurisdiction of a Police Officer of the latter state.

#### UNION PARAMILITARY FORCES ORIGIN

7.7.07. The Crown Representative's Police Force was raised in 1939 as a reserve force to aid the former Princely States in maintaining law and order in times of emergency. After independence, the Force was brought under a fresh Central Act and renamed as the Central Reserve Police Force (CRPF). At the time of its enactment, the Central Reserve Police Force Act, 1949, was relatable to "any other armed forces raised or maintained by the Dominion" mentioned in paragraph 1 of the Federal Legislative List of the Seventh Schedule to the Government of India Act, 1935, as adapted. We shall discuss presently the functions of this Force.

7.7.08. Though originally a police force, the character of Assam Rifles changed and it became an armed force when the Assam Rifles Act, 1941, a Central Act, came into force. This Act, which is an "existing law", has undergone amendments from time to time, and continues to regulate matters like appointments to the force, privileges of its members, etc. The Force has been assigned certain special functions in the north-eastern region, *viz.* security of international borders in certain sectors, counter-insurgency operations and assistance to civil authorities in maintaining law and order in sensitive areas.

7.7.09 Three other para-military forces were raised sub-sequently, *viz.* the Indo-Tibetan Border Police (ITBP) in 1962, the Border Security Force (BSF) in 1965, and the Central Industrial Security Force (CISF) in 1969. The Railway Protection Force was made an armed force in 1985. Like the Central Reserve Police

Force and the Assam Rifles, these too are armed forces of the Union. Their names broadly describe their functions.

### **Role of CRPF**

7.7.10. We shall first consider the role of the Central Reserve Police Force, which is normally deployed in aid of civil power in a State. The Central Reserve Police Force Rules, 1955 framed under section 18 of the Central Reserve Police Force Act, 1949, regulate *inter alia* the powers and duties of the members of the Force. A member of the Central Reserve Police Force may be employed in any part of the country for the restoration and maintenance of law and order and for any other purpose as directed by the Central Government (Rule 25 of CRPF Rule). "Active duty" for such a member means the duty to restore and preserve order in any local area in the event of any disturbance therein [section 2 of (1) CRPF Act]. It is the duty of every such member to obey and execute the orders and warrants lawfully issued to him by any competent authority, to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend (Section 7 of CRPF Act).

7.7.11. Though the organisation is designated as the Central Reserve Police, a member thereof is appointed under the Central Reserve Police Force Act and not under the Police Act, 1861. The latter Act invests the persons, who on appointment is issued a certificate under Section 8 of the Act, with all the powers, functions and privileges of a police officer. Consequently, the Central Reserve Police Force is not "Police" within the meaning of Entry 2 of List II. It is an armed force of the Union meant to be deployed in a State only in aid of the civil power for the purpose of restoring and preserving public order. Section 16(1) of the Central Reserve Police Force Act accordingly empowers the Central Government to confer and impose on a member of the Force limited powers and duties which he necessarily must exercise perform in the course of discharging his functions under the Act.

7.7.12. The only powers and duties that have been conferred and imposed on members of the Central Reserve Police Force are those under the Criminal Procedure Code (*vide* Annexure VII. 1). It will be observed that a member of the force has the powers of a police officer to arrest, in certain circumstances, without warrant; search a place where the persons to be arrested may have entered; pursue such a person; search him; seize offensive weapons; and seize property connected with the commission of an offence. A member of the Force has also the responsibility and the necessary powers of a police officer to take preventive action, *e.g.* arrest a person to prevent the commission of a cognizable offence and prevent damage to public property. A member of the Force not lower in rank than a Sub-Inspector has the power of a police officer to command an unlawful assembly to disperse; if the assembly does not disperse, to disperse it by use of civil force; and, if necessary, to arrest and confine the persons forming the assembly.

7.7.13. It is important to note that a member of the Central Reserve Police Force has only those powers which are necessary to assist the State Police and none other, *e.g.* the power to conduct investigation of a crime, summon persons for that purpose, forward a report on the investigation to a Magistrate, etc. Although "the duty to detect and bring offenders to justice" is common to a police officer (*vide* Section 23 of the Police Act, 1861) and a member of the Central Reserve Police Force (*vide* Section 7 of the Central Reserve Police Force Act, 1949), the actual powers and duties of the latter are much fewer and more restricted than those of a police officer.

7.7.14. Like the State Armed Police Battalion, the Central Reserve Police Force is organised on the infantry pattern of the Army. There is also a broad similarity in the functioning of the Central Reserve Police Force and State Armed Police Battalions, in that both these forces are meant to be utilised for certain specified tasks for a limited duration at a time. They ought not to be deployed on routine civil police duties or in a manner which deprives a Unit of the opportunity to operate as a well-knit group with a leader to guide and control them. However, there are some features which distinguish the two forces, *viz.*:

- (i) The Commander of a Central Reserve Police Force unit, during the period of its deployment in a State, functions under the general control and directions of the State civil authorities concerned. He is informed by them of the specific tasks to be performed by the force under his charge. But once the tasks have been allotted, the Commander of the Central Reserve Police Force unit is responsible for determining the manner in which the tasks will be performed and for the distribution and deployment of the men under his command. He continues to be accountable to

his superiors in the Central Reserve Police Force for the due completion of the tasks assigned to him.

- (ii) The Central Reserve Police Force unit obtains (a) information about local conditions from the civil authorities; and (b) local intelligence from the State Police.
- (iii) In the locality or area where the Central Reserve Police Force unit is deployed and is carrying out its assigned tasks, it does not in any way supplant the jurisdiction of the local civil authorities, including that of the State Police.
- (iv) The Central Reserve Police Force may arrest and hand over the offenders to the State Police. It is not responsible for registration of offences or investigation of cases.

7.7.15. It will be observed that the arrangements conform to the division of functions between the Union and the State described in para 7.5.01 above. These also provide for dialogue and coordination between them while carrying out their respective tasks. State Civil authorities are throughout responsible for public order while the Central Reserve Police Force is an instrumentality placed at their disposal to restore and maintain public order. The danger of overlapping jurisdiction, which would have resulted if the Central Reserve Police Force too had been made responsible for public order in the area of its deployment, is avoided. (Cf. Dr. B.R. Ambedkar, page 1186 CAD Volume IX).

#### **Role of BSF**

7.7.16. The Border Security Force has been set up for ensuring the security of the borders of India and for matters connected therewith. Under Section 139 of the Border Security Force Act, 1968, members of the Force have been empowered, when they function within the local limits of specified areas adjoining the borders, the exercise powers and discharge duties under Union Acts like the Passport (Entry into India) Act, 1920, Registration of Foreigners Act, 1939, etc. as also the Criminal Procedure Code. The purpose of their being so empowered is to prevent cognizable offences under these Acts being committed and to apprehend offences.

7.7.17. When a request is received from a State Government for the assistance of armed forces, the Union Government, after reviewing the availability of the State Government's own Armed Police, tries to meet the balance requirement by deploying Central Reserve Police Force units and, if these are insufficient, Border Security Force units.

7.7.18. However, the powers conferred on members of the Border Security Force under the Criminal Procedure Code cannot be exercised by them outside their specified areas, except the powers and duties under Sections 130-131 of Cr. P.C. which they have by virtue of their being members of an armed force of the Union. It is to be noted that Section 131 of Cr. P.C. provides for initiative being taken by armed forces of the Union, including the defence forces and the Border Security Force. In a public disorder situation, when a gazetted officer of the Force finds that he is unable to communicate with an Executive Magistrate, he may, with the help of the men under his command, disperse an unlawful assembly in the interest of public security and arrest and confine persons forming part of it. He should then communicate with an Executive Magistrate, if it becomes practicable to do so, and thereafter obey his instructions, (Section 131 of Cr.P.C.)

7.7.19. Consequently, the Border Security Force, when deployed in aid of civil power, has to function in the same manner as the Army does while on such duty. Neither of them exercises police powers. While carrying out the task assigned to them by State civil authorities for restoring normalcy in an areas affected by public disorder, they act on the principle that the measures taken are the minimum necessary to prevent serious crime and that all care and skill is exercised. The various connected police functions are performed by the members of the State police who coordinate with the Border Security Force or the Army unit deployed. It will be seen that the role of the Border Security Force or the Army when deployed in aid of the civil power, has none of the substantive characteristics of a police force. The State police continues to be responsible for maintaining public order and there can be no question of the Border Security Force or the Army encroaching on the jurisdiction and powers of the State Government either in the field of "Police" or "Public Order".

7.7.20. State Governments have all these years frequently requested for and obtained the assistance of the armed forces of the Union (including the Army etc.) for the maintenance of public order. There is no

State Government which has not at some time or the other made use of the Union forces. With the exception of the three occasions when the Union forces were deployed in States for the protection of Union property, personnel etc. (*vide* para 7.3.12 above). There has been no instance so far, since the inception of the Constitution, of any friction having been generated between the Union and a State Government in regard to the use of these forces for restoring public order.

7.7.21. We have been informed by the Union Ministry of Home Affairs that there have been no complaints either from the Central Reserve Police Force or the Border Security Force about any State authority not cooperating with them in dealing with public disturbances. Further, no complaints have been received from any State Government alleging misbehaviour on the part of the members of the Central Reserve Police Force or the Border Security Force. (The remaining paramilitary forces like the Indo-Tibetan Border Police, the Assam Rifles, the Central Industrial Security Force and the Railway Protection Force are seldom deployed outside their prescribed area of functioning).

7.7.22. We are, therefore, of the opinion that the existing relationship between the Union armed forces and the State civil authorities, and the manner of their functioning as prescribed in the relevant Union laws and procedures do not need any change. They fully conform to the division of powers in the Constitution between the Union and the States.

#### **8. POWERS, JURISDICTION, PRIVILEGES AND LIABILITIES OF MEMBERS OF CRPF, BSF AND OTHER UNION FORCES WHILE DEPLOYED IN STATES**

7.8.01. As mentioned in para 7.2.05 above, it has been suggested to us that Entry 2A of List I should be amended so that (a) it specifically provides that an armed or other force of the Union can be deployed in a State in aid of the civil power only at the request or with the concurrence of the State Government, and (b) the expression "powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment" occurring in the Entry is replaced by the expression "determination of terms and conditions of such deployment applicable to all States with the concurrence of the Inter-State Council". The point at (a) has been dealt with in paras 7.3.06 to 7.3.08 and 7.5.01 to 7.5.03 above. We now propose to deal with the point at (b).

7.8.02. The superintendence, control and administration of a force (whether armed or otherwise) of the Union has necessarily to vest in the Union Government. While on deployment in a State in aid of the civil power, the force is subject to the command, supervision, control and direction of such authorities and officers as may be appointed by the Union Government. As such, the powers, jurisdiction, privileges and liabilities of the members of the force while on such deployment can be prescribed by the Union alone. These provide the requisite statutory cover to the various actions that the members of the force have to take while carrying out their specified duties and responsibilities. Deletion of the expression "powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment" from Entry 2A of List I will create an operational vacuum.

7.8.03. The terms and conditions on which a force of the Union is deployed in a State in aid of the civil power have also to be determined by the Union. The existing terms and conditions of deployment are the same for all the States, except that some States like Jammu and Kashmir, Manipur, Tripura and Sikkim have been exempted from payment of charges of deployment of Union armed forces in those States. No, State Government has pointed out to us any lacuna these terms and conditions. Therefore, it seems pointless to involve the Inter-State Council in the matter of determining them. The Council, which is intended to be the highest constitutional forum for Union State and inter-State coordination, should not be burdened with a comparatively routine administrative task like concurring in the terms and conditions of deployment of Union forces in a State.

#### **9. LEVEL OF DEPLOYMENT OF CRPF & BSF IN STATES/UNION TERRITORIES**

7.9.01 On the basis of the data obtained from the Ministry of Home Affairs in regard to the strength of Central Reserve Police Force and Border Security Force contingents which were deployed in States and Union territories during the period from 1-1-1974 to 31-12-1985, the average strength deployed in each of the five Zones, the North-Eastern region and for the whole of India (excluding the two island territories) were calculated for each of the 12 years. While working out the figures of average deployment, the large increases in deployment in certain parts of the country (e.g. Punjab, Assam, Gujarat, etc.) in recent years,

necessitated by acute internal disturbance, were ignored, considering the fact that such deployment was of an *ad hoc* character. Since the aim was to arrive at the normal demand of the States for the use of the Union armed forces, inclusion of the deployment to meet unusual situations of an *ad hoc* character would have distorted the picture in respect of the extent of demand of the States for the Union armed forces for the usual public order purposes. The annual average deployments have been depicted graphically at Annexure VII.<sup>2</sup>

7.9.02. It is seen that the average deployment in the Northern and the Central Zones and in the north-eastern region has been fluctuating. But it shows a downward trend in the Eastern, Western and the Southern Zones. So does the average deployment for the country as a whole. However, as mentioned above the heavy deployments during the past few years in certain border States have not been taken into account in preparing the graphs. The trends shown by our analysis thus represent normal requirements.

7.9.03. These trends do not corroborate the view expressed by one of the State Governments that States are becoming increasingly dependent on the paramilitary forces. Further, no other State Government has expressed the view that deployment of the Union armed forces in the State has impaired its responsibility for maintaining public order.

#### 10. MEASURES TO STRENGTHEN STATE ARMED POLICE

7.10.01 An analysis of the extent of deployment of the union para-military forces in individual states during the years 1974—85 shows that internal disturbances which are not of an unusually serious nature (e.g. those extending over large areas of a State and for prolonged periods) can be dealt with by a majority of the States on their own if they augment their respective Armed Police Battalions. On the other hand, even the normal requirements of certain other States are much higher.

7.10.02 We recommend that each State Government may work out, in consultation with the Union Government, short-term and long-term arrangements for strengthening its own Armed Police. The objective will be to make each State largely self-reliant in the matter of Armed Police so that the assistance of the Union armed forces will be necessary only in cases of very severe disturbances.

7.10.03 It has come to our notice that there are often allegations against police in certain States that they display partisan attitudes when dealing with public disorders, particularly communal clashes. The State Governments concerned find it useful to requisition the Union armed forces or Armed Police Battalion from other States rather than deploy their own Armed Police. We also find that, in communal disturbances, the Union forces often inspire greater confidence in the local people, especially minorities, than the State Police.

7.10.04 We recommend that the Union Government, while advising and, if necessary, assisting a State Government in strengthening its Armed Police Force, may take into account the following factors:

- (i) the degree of confidence that the people of the State (particularly those living in disorder prone areas) have in the State Police, armed and unarmed;
- (ii) if large-scale public disorders are frequent, the causes therefor and the steps which the State Government should take on the social, economic and other fronts to prevent disorders, (Mere strengthening of Armed Police may not achieve the objective).
- (iii) the inadvisability of a State (particularly if it is a small State) expanding its Armed Police, if it cannot be fully utilised throughout the year; and
- (iv) the feasibility of more efficient utilisation of the State Armed Police.

#### **Better Utilisation of State Armed Police Through Regional Grouping**

7.10.05 It should be possible for a group of neighbouring States to have, by consensus, a standing arrangement for the use of the Armed Police of any of the States in another State within the group in case of need. The Zonal Council would be the best forum for achieving the consensus or mutual consent of the States within a zone for devising such an arrangement. The Union government may devise, by consensus, the regional groupings, keeping in view continuity and logistics and encourage states to participate fully in the arrangement. This will ensure that the Armed Police Force reserves within a group are put to optimal use, by taking advantage of the fact that varying strengths of Armed Police will be required at varying times by States within the group. Under this arrangement, the Union Government will monitor, co-ordinate

and control all such inter-State movements of State Armed Police. It is only when it is not possible to meet the requirements of a State within the group that the Union government will decide whether to draw from any of its own para-military forces or from Armed Police Battalions belonging to one or more States outside the group.

7.10.06 Although, it will take some time to evolve a system for integrating the operation within a State of the Armed Police with the demands placed for them by another State in the group, we recommend that a beginning should be made immediately to plan use of Armed Police forces inter-State within a region. This arrangement will only be for meeting special demands for short periods from the States in a group. Their Armed Police will not merge or get integrated but will remain distinct as hitherto.

#### **Improving Effectiveness & Morale of State Armed Police**

7.10.07 From a long-term point of view, it is important that State Governments should develop their capability to deal with public order problems on their own and they should seek the assistance of the Union armed forces only in exceptional circumstances and as a last resort. In this connection, we would commend for the consideration of State Governments the various measures recommended by the National Police Commission in their Seventh Report for improving the effectiveness and morale of State Armed Police.

#### **Problems in Management of Police Personnel**

7.10.08 We also recommend that the problems of cadre management, mobility, promotion prospects, etc. of police personnel in small States, especially in the north-eastern region, may be carefully examined by State Governments in consultation with the Union Governments.

#### **Interchange of Armed police officers with officers of Union Paramilitary Forces and Training**

7.10.09 We further recommend that there should be a system of interchange of the officers of the State Armed Police forces with those of the Central Reserve Police Force, Border Security Force and other Union armed forces. Common regional training centres for the State Armed Police and the Central Reserve Police Force, border Security Force, etc. may be set up in order to bring about better exchange of techniques and information between the two categories of armed forces and to facilitate a more integrated system of operations when the Union's armed forces are deployed in aid of the civil power in a State.

#### **Financial Assistance to states for strengthening armed Police**

7.10.10 Adequate finance would be needed by State Governments for augmenting and strengthening (by way of better equipment, more vehicles, etc.) their Armed Police Battalions. We suggest that, immediately, the question of financial assistance should be examined in relation to the grants that are already being made available by the Union Government for the modernisation of State police forces. The extent of such assistance for the next Plan period may be specifically referred to the next Finance Commission.

### ***11. COORDINATION BETWEEN THE UNION AND THE STATES***

7.11.01 When a request for the assistance of a Union armed force is received from a State Government, the Union Government checks up the availability of its para-military forces. If the demand is very large and urgent, as for example, when elections are to be held or there are prolonged disturbances, it may not be possible to meet it by the Union para military forces alone. Armed police units of other States may have to be deployed by requesting the concerned State Governments to release them.

7.11.02 For this purpose, the Union government receives up-to-date information about the status of deployment, including logistics, of the various battalions of its armed forces. But similar information in regard to availability and logistics of the State Armed Police Battalions for deployment outside their respective State is not available to the Union Government. This appears to be a major short coming in the system.

7.11.03 The State Police in every State has acquired computers for the processing, storage and retrieval of large quantities of data connected with the activities of the police. It should not be difficult for the States to communicate on a daily basis the latest position regarding the availability of State Armed Police Battalions for deployment.

7.11.04 In any case, we feel that it is essential that there should be advance planning of deployment including logistics, of the Union armed forces and State Armed Police battalions. For this purpose, we

suggest that the Union Government may get an expert study carried out for evolving such a system of planning.

## *12. RECOMMENDATIONS*

7.12.01 The existing relationship between the Union armed forces and the State civil authorities and the manner of their functioning as prescribed in the relevant Union laws and procedures do not need any change. However, before the Union Government deploys its armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government, or declares an area within a State as "disturbed", it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought, even though prior consultation with the State Government is not obligatory.

(Paras 7.5.03 & 7.7.22)

7.12.02 (a) Each State Government may work out, in consultation with the Union Government, short-term and long-term arrangements for strengthening its Armed Police. The objective will be to become largely self-reliant in the matter of Armed Police so that the assistance of the Union armed forces will be necessary only in cases of very severe disturbances.

(Para 7.10.02)

(b) While advising and, if necessary, assisting a State Government in strengthening its Armed Police force, the Union Government may take into account the following factors:

- (i) the degree of confidence that the people of the State (particularly those living in disorder prone areas) have in the State police, armed and unarmed;
- (ii) If large-scale public disorders are frequent, the causes therefor and the steps which the State Government should take on the social, economic and other fronts to prevent disorder, (Mere strengthening of Armed police may not achieve the objective);
- (iii) the inadvisability of a State (particularly if it is a small State) expanding its Armed Police, if it cannot be fully utilised throughout the year; and
- (iv) the feasibility of more efficient utilisation of the State Police.

(Para 7.10.04)

7.12.03 (a) A group of neighbouring States may, by consensus, have a standing arrangement for the use of the Armed Police of one another in case of need. The Union Government may devise by consensus the regional groupings, keeping in view contiguity and logistics and encourage States to participate fully.

(b) The Zonal Council would be the best forum for achieving consensus of the States within a zone for devising such an arrangement.

(c) The Union government will under this arrangement, monitor, coordinate and control any inter-State movements of State Armed Police. It is only when it is not possible to meet the requirements of a State from within its group that the Union Government will decide whether to draw from any of its own para-military forces or from Armed Police Battalions belonging to one or more States outside the group.

(d) A beginning may be made immediately to plan the use of Armed Police inter-State within a region.

(e) This arrangement will be only for meeting special demands for short periods from the State in a group. Their Armed Police will not merge or get integrated but will remain distinct as hitherto.

(Paras 7.10.05 & 7.10.06)

7.12.04 The various measures recommended by the National Police Commission in their Seventh Report for improving the effectiveness and morals of State Armed Police are commended for the consideration of State Governments.

(Para 7.10.07)

7.12.05 The problems of cadre management, mobility, promotion prospects, etc. of police personnel in small States, especially in the north-eastern region, need to be carefully examined by the State Governments in consultation with the Union Government.

(Para 7.10.08)

7.12.06 There should be a system of interchange of the officers of the State Armed Police Forces with those of the Central Reserve Police Force, the Border Security Force and other Union armed forces. They should also have common regional training centres, so as to facilitate better exchange of techniques and information and a more integrated system of operations when the Union armed forces are deployed in aid of the civil power in a State.

(Para 7.10.09)

7.12.07 (a) Adequate finance will be needed by State Governments for augmenting and strengthening (by way of better equipment, more vehicles, etc.) their Armed Police Battalions. The Union Government may, therefore, examine immediately the question of financial assistance to State Governments for this purpose, after taking into account the grants that are already being made available to them for the modernisation of their police forces.

(b) the extent of Central assistance to be made available to State Governments for the above purpose during the next Plan period may be specifically referred to the next Finance Commission.

(Para 7.10.10)

7.12.08 It is essential that there should be advance planning of deployment including logistics, of the Union armed forces and State Armed Police Battalions. For this purpose, the Union Government may get an expert study carried out for evolving such a system of planning.

(Para 7.11.04)

ANNEXURE VII.1

**Powers and duties under the Criminal Procedure Code Conferred and imposed on Members of the CRPF by the Central Government under Section 16 of the CRPF Act, 1949**

(Note: Powers marked with an asterisk are exercisable by a member above the rank of Sub-Inspector of the CRPF)

No.	of Cr. P.C.	Sl.	Section	Broad nature of power/duty		
		1	2	3		

#### CHAPTER V– ARREST OF PERSONS

- |    |       |   |
|----|-------|---|
| 1. | 41(1) | Arrest without warrant.   |
| 2. | 46    | Arrest how made.  |
| 3. | 47    | Search of place entered by person sought to be arrested.                              |
| 4. | 48    | Pursuit of offenders into other jurisdictions.  |
| 5. | 49    | Person arrested not to be subjected to unnecessary restraint.                         |
| 6. | 51(1) | Search of arrested person.  |
| 7. | 52    | Powers to seize offensive weapons.  |
| 8. | *53   | *Examination of accused by medical practitioner at the request of the police officer. |

#### CHAPTER VI–PROCESSES TO COMPEL APPEARANCE

##### *B–Warrant of Arrest*

- |    |    |  |
|----|----|--|
| 9. | 74 | Execution of warrant directed to another police officer. |
|----|----|--|

#### CHAPTER VII–PROCESS TO COMPEL THE PRODUCTION OF THINGS

##### *C–General Provisions relating to searches*

- |     |      |   |
|-----|------|---|
| 10. | *100 | *Search or inspection (while executing a search-warrant) of a place which is closed.  |
| 11. | 102  | Power to seize property which is alleged or suspected to have been stolen or which creates suspicion of the commission of an offence. |

#### CHAPTER X–MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY

##### *A–Unlawful Assemblies*

- |     |      |   |
|-----|------|---|
| 12. | *129 | Dispersal of unlawful assembly by use of civil force. |
|-----|------|---|

#### CHAPTER XI–PREVENTIVE ACTION OF THE POLICE

- |     |     |  |
|-----|-----|--|
| 13. | 149 | Prevention of cognizable offences.   |
| 14. | 150 | Communication to senior officer of information received on design to commit cognizable offences. |
| 15. | 151 | Arrest to prevent the commission of cognizable offences.   |
| 16. | 152 | Prevention of injury to public property.   |

ANNEXURE VII.2

**Graphs showing Average Strength of BSF and CRPF Deployed in various Zones**

GRAPH	ZONE
1.	NORTHERN ZONE
2.	NORTH-EASTERN REGION
3.	EASTERN ZONE
4.	CENTRAL ZONE
5.	WESTERN ZONE
6.	SOUTHERN ZONE
7.	ALL INDIA