

Concordia Discors

Deployment of Central Armed Forces in the Federal Units of India

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India is a classic case of a 'quasi-federal' country. There is a plethora of literature available separately on the Indian armed forces and Indian federalism. However, the deployment of India's Central Armed Forces in its federal units (States) is one of the most understudied and unexplained areas of research. To avert any grave disorder in the country, the Centre constitutionally enjoys power regarding the deployment of its armed forces in the federal units. However, in practice, there are various factors that come into play during the deployment. This study intends to throw light on the various aspects of force deployment: the rationale, the legal cover, and the state of civil power of the federal units during such deployment. In the process of inquiry, the study has relied on various primary sources that are available in the form of Indian Constituent Assembly Debates, the Constitution, pertinent legislations, parliamentary debates, judicial pronouncements, and government reports. In the end, the study offers certain policy recommendations for consideration.

Keywords: *Federalism, Armed Forces, Deployment, India, Constitution, Internal Security, Disturbed Area*

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INTRODUCTION

While looking at the deployment of Central Armed Forces in the different states of India, two concepts need to be comprehended at the outset: 'federalism' and 'Central Armed Forces'. Federalism is 'a constitutional mechanism for dividing power between different levels of government so that federated units can enjoy substantial, constitutionally guaranteed autonomy over certain policy areas while sharing power in accordance with agreed rules over other areas'.¹ As far as Indian federalism is concerned, it is unique in the sense that it combines the principles of unity and diversity, i.e., federal during normal times, but unitary in times of war. It is not without reason that, instead of the term 'federalism', the phrase 'Union of States' is found mentioned in the Indian Constitution.²

According to the Indian Code of Criminal Procedure (1973), the Central 'armed forces' means the military, naval, and air forces operating as land forces, and includes any *other armed forces of the Union* so operating' (emphasis by the authors).³ Presently, the 'other armed forces of the Union' include the Coast Guard, the Assam Rifles (AR), the Central Reserve Police Force (CRPF), the Border Security Force (BSF), the Indo-Tibetan Border Police (ITBP), the Central Industrial Security Force (CISF), the Sashastra Seema Bal (SSB), the National Security Guard (NSG), and the Railway Protection Force (RPF).

While looking at the deployment of the 'armed forces of the Union' in India's federal units (States), there are certain crucial questions that require answers: Under what circumstances can the Centre deploy the 'armed forces of the Union' in the federal units? Can the deployment be made *suo motu*? Or, is it done only on request by the states? What legal cover do the Union forces enjoy during such deployment? What happens to the civil power of the federal units during such deployment? The objective of this article is to address these questions in three sections: 'Rationale for the deployment of Central forces in States'; 'Legal Cover and State of Civil Power in the States during the deployment'; and the 'Conclusion'.

RATIONALE FOR THE DEPLOYMENT

Although the maintenance of public order is the responsibility of the concerned states, the deployment of the armed forces of the Union in the states is justified on various grounds: the defence of India, aid to the civil power of the states, protecting the property of the Union, and protecting the states from both external aggression and internal disturbance.

Under Entry 1 in the Union List (List I) of the Seventh Schedule of the Indian Constitution, the 'defence of India and every part thereof' is the responsibility of the Union government. This provision gives the power of deployment of the 'armed forces of the Union' in any of its federal units for the country's overall defence. The central forces can also be deployed in 'aid of the civil power', especially 'when there is a serious public disorder which threatens the security of the State or of the country itself'.⁴ However, such deployment cannot be unbridled. In *Naga People's Movement of Human Rights vs Union of India*, the apex court of India qualified the deployment by stating: 'there must exist a grave situation of law and order on the basis of which the Governor/Administrator of the State/Union Territory or the Central Government can form an opinion that the area is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary'.⁵

The Centre may also deploy its armed forces when any property of the Union situated in a State requires special protection which the concerned state government is unable to provide. There have been three instances when the Centre deployed its forces in the states without the latter's invitation (or consent) to maintain 'public order', or to protect Union's properties:

1. In September 1968, in Kerala to protect Centre's offices during a strike.
2. In 1969, in West Bengal to protect the Farakka Barrage.
3. In the same year, in West Bengal, to quell disturbances at the Durgapur Steel Plant.

Under Article 355 of the Indian Constitution, the Central forces can also be used to protect a state against 'external aggression and internal disturbance', irrespective of the concerned state's willingness. The phrase 'in aid of the civil power' in Entry 2A of the Union List and Entry 1 in the State List, denotes that the Centre's force deployment is in aid of the state's forces to maintain public order. In the case of a state's resistance to the deployment of the Union's forces, the right course, as per Article 355 of the Constitution, is to first issue directives to the concerned state and, 'in the event of the State not complying with the directive of the Central Government, the Centre can take further action under Article 356 by imposing President's rule'.⁶

Earlier, the Sarkaria Commission⁷ also accepted that Article 355 enables 'the Union to render all assistance including the deployment of its

Armed Forces notwithstanding the fact whether the State Government has made a specific request or not'.⁸ However, the Commission observed that any unilateral action 'may not be politically proper', though such an act may be constitutionally appropriate. The right course suggested was 'through concerted and coordinated action of the Union forces and the State instrumentalities concerned'. Most importantly, the Commission observed that 'it is implied in Article 355 that the Union Government has the overriding power to ensure such coordination'.⁹ The Commission suggested that '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'.¹⁰ A Task Force on Internal Security also advised that the central forces ought to operate with the 'cooperation of the state administration, especially the state police' while invoking Article 355.¹¹

At this juncture, it is important to understand what was the intention of the Constitution makers while introducing Article 355. The Article was not a part of the original draft of the Constitution, but got included as Article 277-A at a later date as an obligatory clause.

Giving the rationale for including the Article, Chairperson of the Drafting Committee, B.R. Ambedkar observed,

...if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of articles 278 and 278-A, it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we propose to introduce article 277-A.... There is nothing new in this and, as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Centre, it is in virtue of this obligation. It will be an act in fulfilment of the duty and the obligation, and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act.¹²

Thus, as per Article 355, there are two responsibilities of the Union: 'to protect every State against external aggression and internal disturbance', and 'to ensure that the government of every State is carried on in accordance with the provisions of this Constitution'.¹³ American

and Australian Constitutions were cited because they have similar clauses.¹⁴ However, Article 355 has hardly been invoked for safeguarding the internal security of the country, making it ‘merely a pious declaration’, which is precisely what Ambedkar did not want.

LEGAL COVER AND CIVIL POWER DURING FORCE DEPLOYMENT

Legal cover available to the ‘armed forces of the Union’ when deployed ‘in aid of the civil power’ is not completely uniform. It differs from force to force in two kinds of situations:

1. when a particular area is declared ‘disturbed’, and
2. otherwise

The concerned State police forces, however, enjoy powers prescribed under the Police Act 1861, irrespective of whether a particular area is declared ‘disturbed’ or not. The Central Police Forces are appointed and regulated under the respective Acts of each Force. Since they do not constitute ‘Police’ as per Entry 2 of the State List, but ‘armed forces of the Union’, they are not entrusted with all the privileges, functions, and powers, of State police under Section 8 of the Police Act, 1861.

Before examining the legal cover available to the ‘armed forces of the Union’, it is important to understand what a ‘Disturbed Area’ is all about. Section 2(b) of the Armed Forces Special Powers Act (AFSPA)¹⁵ simply states:

If, in relation to any state or Union Territory to which this act extends, the Governor of that State or the administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union territory, 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, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may by notification in the Official Gazette, declare the whole or such part of such State or Union territory to be a disturbed area.¹⁶

Those who challenged the AFSPA in the court of law pointed out the vagueness in the definition of a ‘disturbed area’ as a clear demonstration of the government’s disinterestedness in placing adequate safeguards regarding the application of the Act. The petitioners went on to contend before the Supreme Court that, ‘inasmuch as the term “disturbed area” has not been defined, the act of declaring an area to be “disturbed area”

is without any basis, and irrational. In other words, it is whimsical and fanciful, amounting to arbitrariness'.¹⁷ To this, the Government's defence was that a

sufficient guideline is to be found in the long titles and preambles and sections of the two enactments [The Assam Disturbed Areas Act, 1955 and The Armed Forces (Assam and Manipur) Special Powers Act, 1958] as to what is "disturbed area" (Supreme Court, 1983).

However, 'the long titles and preambles' of the above-mentioned Acts do not throw much light on the exact scope and meaning of a 'disturbed area'.¹⁸ Some clarity of what is a 'disturbed area' is available in the Disturbed Areas (Special Courts) Act of 1976, according to which, 'any area within a State [that faces] extensive disturbance of the public peace and tranquillity, by reason of differences or disputes between members of different religions, racial, language, or regional groups or castes or communities' may be declared 'disturbed'.¹⁹ Yet, the definition confines itself only to various aspects of group tensions. In the *Naga People's Movement vs Union of India*, the Supreme Court's observation, in this regard, is worth noting.

For declaring an area as a "disturbed area" under Section 3, there must exist a grave situation of law and order on the basis of which the Governor/Administrator of the State/Union territory of the Central Government can form an opinion that the area is in such a disturbed or dangerous condition that the use of the armed forces in aid of civil power is necessary.²⁰

Who can declare a particular area 'disturbed'? The concerned States? Or, the Centre? As per the original provision of the AFSPA, the authority to announce an area to be a 'disturbed area' was with the state governments. However, in 1972, through an amendment, the power was conferred to the central government as well.²¹ Though the central government has the power to declare an area 'disturbed', in practice, it is usually made after consulting the concerned state governments.

In terms of the time period of the validity of the declaration, Section 2(b) of AFSPA simply states: 'an area which is for the time being declared by notification under Section 3...'. The Supreme Court in *Naga People's Movement vs Union of India*, clarified that 'The words "for the time being" imply that the declaration under Section 3 has to be for a limited

duration, and cannot be a declaration which will operate indefinitely'. It was also observed that

the making of the declaration carries within it an obligation to review the gravity of the situation from time to time, and the continuance of the declaration has to be decided on such a periodic assessment of the gravity of the situation.²²

The periodicity of the review of the declaration is every six months. Thus, the time period can be taken as six months, subject to renewal.

Does the declaration automatically mean the deputation of the armed forces? The AFSPA is not specific about whether the Governor, after the declaration, has to request the Union government to deploy the armed forces, or does the central government, on the issuance of a notification, send the central forces to act in 'aid of the civil power' in the states. The deployment of the armed forces and their further role are 'thought to be implicit in the situation'.²³

While the Services (Army, Navy or Air Force) get legal cover under the AFSPA during deployment in a 'disturbed area', the Central Police Forces have legal cover under the legislations that regulate each one of them.

As far as the CRPF is concerned, as per Section 17 of the CRPF Act, 1949, legal protection against prosecution to its members is available for lawful action taken by them in the course of official duties. Apart from this, Section 16(1) of the same Act empowers the Union Government to 'confer or impose upon any member of the force any of the powers or duties conferred or imposed on a police officer of any class or grade by any law for the time being in force' (CRPF, 1949). Accordingly, by a separate notification, a member of the CRPF is entrusted with certain police powers, including power under certain sections of Criminal Procedure Code (Cr.P.C): 41(1) (arrest without warrant), 46 (how to arrest), 47 (searches), 48 (pursuit of offenders), 49 (arrested persons and unnecessary restraint), 51(1) (personal search of the arrested), 52 (seizure of offensive weapons), 74 (execution of warrant directed to another police officer), 102 (power to seize property connected to the offence), 129 (use of force to disperse of unlawful assembly), 13 & 149 (cognizable offences' prevention), 150 (communication to senior officer on cognizable offences), 151 (prevention of the commission of cognizable offences), and 152 (prevention of destruction of public property) (Ministry of Home Affairs, 1976). Sections 4 and 154 of the ITBP Act 1992, and Sections 4 and 153 of the SSB Act 2007, bear similar provisions.

However, it should be noted that a member of the CRPF has powers only that are essential to assist the State Police: registration of reports of offences (FIRs), investigation, summon persons for that purpose, prosecution of the offenders and trial and, in case of convictions, execution of sentences. Though 'the duty to detect and bring offenders to justice' is usual to a police officer (as per Section 23 of the Police Act) and a member of the Central Reserve Police Force (according to Section 7 of the CRPF Act, 1949), the actual powers and duties of the CRPF personnel are more restricted when compared with State police officers.

When it comes to the BSF, Section 139 of the BSF Act, 1968, empowers its personnel to exercise powers and discharge duties under Central legislations, like the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act, 1939, the Central Excises and Salt Act, 1944, the Foreigners Act, 1946, the Foreign Exchange Regulation Act, 1947, the Customs Act, 1962, the Passports Act, 1967, and the Narcotic Drugs and Psychotropic Substances Act, or of any cognizable offences committed under any other Central Act (that also includes the Criminal Procedure Code) within the specified areas adjoining the international borders. These powers pertain to the search, arrest and seizure within the prescribed border belt: 80 kms for Gujarat, and 50 kms for Rajasthan, West Bengal, Assam and Punjab. No such limit is laid in the case of Jammu & Kashmir and the five North Eastern states—Nagaland, Manipur, Meghalaya, Mizoram and Tripura.²⁴ No powers, however, exist in other states where BSF personnel are deployed for counter-insurgency, internal security (IS), anti-Naxal operations, and elections duties.²⁵ The purpose is to prevent cognizable offences under the specified Central Acts and to apprehend offenders. However, the BSF cannot exercise such powers outside the specified areas, except the powers and duties under Sections 130 and 131 of Cr.P.C. that are available by virtue of the BSF being an armed force of the Union.

One wonders why the BSF has to face these legal constraints despite having same challenges as other armed forces of the Union. As a result, the state governments often find the BSF deployment 'not so effective, except being of psychological value, in view of the fact that the personnel so deployed do not have the necessary powers of search, seizure and arrest'.²⁶ Such constrains are not faced by other central police forces. To rectify this anomaly, the Ministry of Home Affairs has proposed amendments to Sections 4 and 139 of the BSF Act, justifying them by pointing out

that other CPOs, like the ITBP (Sections 4 & 154), SSB (Sections 4 & 153) and the CRPF (Section 16), enjoy such powers.

As far as the Assam Rifles is concerned, Section 10(1) of the Assam Rifles Act says: 'A Commandant, Assistant Commandant or rifleman shall be entitled to all the privileges which a police officer has under section 125 of the Indian Evidence Act, 1872, and any other enactment for the time being in force.'²⁷ As per Section 10(2),

In any suit or proceeding against the Commandant, Assistant Commandant or rifleman for any act done by him in pursuance of a warrant or order of a competent authority, it shall be lawful for him to plead that such an act was done by him under the authority of such warrant or order (Assam Rifles, 1941).

Section 10(A), that was inserted by the Assam Rifles (Amendment) Act, 1962 (30 of 1962), empowered the Union government by 'a general or special order, to confer or impose upon any Commandant, Assistant Commandant or rifleman, any of the powers or duties conferred or imposed on a police officer of any class or grade by any law for the being in force'.²⁸

The National Security Guard (NSG) is a peculiar case. Section 137 of the National Security Guard Act, 1986, empowers the central government to confer powers on members of the NSG under any Central or State Acts. Section 138 of the same Act gives legal protection to an NSG member 'for any act done by him in pursuance of a warrant or order of a competent authority'.²⁹

As far as the Railway Protection Force (RPF) is concerned, the power to arrest and search without warrant is available to the RPF personnel under Sections 12 and 13 of the RPF Act, respectively. However, these powers are restricted to protecting Railway property, passengers, and passenger areas, or to aid the lawful discharge of the duty of the RPF personnel. Section 20 of the Act offers protection to the members of the Force.

In any suit or proceeding against any member of the Force for any act done by him in the discharge of his duties, it shall be lawful for him to plead that such act was done by him under the orders of a competent authority.³⁰

With the amendment to the Railways Act, 1989, the RPF is entrusted with the responsibility for the arrest and prosecution of those who commit a list of 29 minor offences that impinge upon the train

passengers and railway operations (Section 179). This was done 'with a view to supplement the efforts of the Government Railway Police and State Governments in maintaining Law & Order and help them concentrate better on serious crimes'.³¹ The remaining cases of crimes included in the IPC as well as sabotage-related cases (under the Railways Act Sections 50 to 152), are taken care of by the Government Railway Police (GRP) that falls under the control of the respective state governments. In addition, under the Railways Property (Unlawful Possession) Act, the 'power to arrest without warrant' (Section 6), the 'power to summon any person' (Section 9), and the 'power to issue a warrant through a local magistrate' (Section 10) are available to RPF personnel. In the light of several terror attacks on the railways, the Centre's attempts to further empower the RPF met with opposition from some states like Odisha, Tamil Nadu, and Gujarat, citing 'an infringement of their powers and against the federal structure of the Constitution. It is in violation of the provisions of the Indian Police Act, 1861, as well'.³² The tussle is still on, despite the push from the Centre.

The Coast Guards enjoy powers in the maritime domain similar to what the BSF enjoys within the defined territorial limit on land.³³ As per Section 121 (1) (i) of the Coast Guards Act, 1978, the Coast Guard has powers

for the purpose of prevention of any offence punishable under the Passport (Entry into India) Act, 1920, the Emigration Act, 1922, the Registration of Foreigners Act, 1939, the Foreigners Act, 1946, the Merchant Shipping Act, 1958, the Customs Act, 1962, the Passports Act, 1967, the Foreign Exchange Regulation Act, 1973, or the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or of any cognizable offence punishable under any other Central Act.³⁴

By Section 121 (2), the Union Government

may, by general or special order published in the Official Gazette, direct with the concurrence of the State Government concerned, that any of the powers or duties which may be exercised or discharged under a State Act by a police officer may, subject to such conditions and limitations, and within the local limits of such inland area adjoining the coast of India, as may be specified in the order, be exercised or discharged by a member of the Coast Guard who, in the opinion of the Central Government, holds a corresponding or higher rank.³⁵

Section 122(1) gives legal protection to any ‘member of the Coast Guard for any act done by him in pursuance of a warrant or order of competent authority’. Interestingly, such protection is available ‘notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order’.³⁶

It should be noted that protection against arrest is available to all the armed forces of the Union ‘for acts done or purported to have been done in discharge of official duties’ under Section 45 of Cr.P.C, 1973. What is common to all forces is available under Section 132 of the Cr.P.C, which provides legal cover to both Central and State officers ‘for any act purporting to be done under sections 129, 130 or 131’.³⁷ Section 11 of the Assam Rifles Act clearly states that,

For the purposes of Sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, a Commandant, Assistant Commandant, Subedar Major, Subedar or Jemadar of the Assam Rifles shall be deemed to be an officer, a Havildar Major, Havildar or Naik shall be deemed to be non-commissioned officer and a bugler or rifleman shall be deemed to be a soldier of the Indian Army.³⁸

However, such a provision is for a specific purpose to disperse an unlawful assembly, and to arrest and confine the members of such an assembly. It is not ‘an offence’ if an Executive Magistrate, or a police officer, or an officer or member of an armed force, acts ‘in good faith’ under Sections 129, 130 and 131. Prosecution against any officer shall be proceeded only with the sanction of the respective governments. It should be noted that the provisions under Sections 130 and 131 of the Cr.P.C. cannot be compared and assumed adequate to deal with those situations that warrant the use of Central forces in aid of civil power as envisioned by the AFSPA.³⁹

Not many are aware that Section 49(b) of Unlawful Activities (Prevention) Amendment Act (UAPA), 2004, gives protection to ‘any serving or retired member of the armed forces or the paramilitary forces in respect of action taken in good faith in the course of any operation directed towards combating terrorism’.⁴⁰ In fact, the Jeevan Reddy Commission recommended use of this legislation instead of the AFSPA for the following reasons.

- The UAPA defines terrorism in terms which cover the activities carried out by several insurgent groups in the North Eastern states.

- The UAPA not only defines 'terrorism' in expansive terms but also lists some of the organisations engaged in insurgent activities in the North East as is apparent from the Schedule appended to the Act.
- On the basis of the provisions of Section 49(b) of the UAPA, it can be said that this Act envisages the deployment of the armed forces or para-military forces in control of the Union for fighting insurgent activity carried on in some or all North Eastern states.
- Repeal of AFPSA would remove the feeling of discrimination and alienation among the people of the North Eastern states.
- The UAPA is a comprehensive law, unlike the AFPSA that deals only with the operations of the 'armed forces of the Union' in a disturbed area.⁴¹

It went on to suggest the insertion of Chapter VI-A in the UAPA comprising relevant provisions instead of suggesting a new legislation.

What happens to the state government's civil power during the deployment of the Central forces? As per entry 2A of List I (Schedule 7 of the Indian Constitution), the civil power of the States remains undisturbed despite the deployment of the Central Armed Forces, although the 'superintendence, control and administration' of the Central forces while on such deployment is vested with the Union. The Supreme Court clarified that the

power to make a law providing for deployment of the armed forces of the Union in aid of the civil power in the State does not comprehend the power to enact a law which would enable the armed forces of the Union to supplant or act as a substitute for the civil power in the State.⁴²

At the same time, it disagreed with the contention that,

during the course of such deployment, the supervision and control over the use of armed forces has to be with the civil authorities of the State concerned or that the State concerned will have the exclusive power to determine the purpose, the time period and the areas within which the armed forces should be requested to act in aid of civil power.⁴³

CONCLUSION

In the case of India, the requirement for the deployment of the Union armed forces occurs in cases of 'war', 'external aggression', 'internal

disturbance’, or ‘in aid of the civil’. This article shows that the dynamics of threats faced by India today is drastically different from the time when the Constitution was being framed. Apart from the aggravation of the existing threats, several new threats have come to the forefront. The threat matrix to India’s security is such that it is beyond the capability of the states to counter them effectively without the help of the central forces.

The state police are the ‘first responders’ in any threat situation, but are the weakest link in the response chain. Due to various limitations—like territorial restrictions and the lack of adequate resources—the police forces of the federal units of India find it difficult to handle security threats that are both pan-India and global in nature. As a result, the role of the Union government in managing internal security problems in the federal units have increased. It is in this context that the deployment of Central Armed Forces in the states has to be seen.

The Indian states have to seriously strengthen and modernise their police forces. On its part, the Centre could help all the states in modernising their police forces, and also in developing a national standard. In the process of modernisation, specific requirements at the local levels (districts, towns, and villages) could be taken into consideration. The rising educational levels of the police personnel, and inculcating the technological and scientific temper could be a part of the modernisation. In other words, India needs—as the Padmanabhaiah Committee advocated—a ‘highly motivated, professionally-skilled, infrastructurally self-sufficient, and sophisticatedly trained police force’.⁴⁴ Only such a police force could address the enormous internal security challenges faced by the country.

At the same time, it should be acknowledged that state police forces are best placed to address certain internal security functions due to their familiarity with the local communities, and the good network of relations with other local governmental and non-governmental actors in each of the states. They are also in a good position to detect and analyse suspicious irregularities, and to nurture local sources of information and intelligence. It should be noted that though the state police forces come under various states, there are country-wide uniformities in terms of: (i) overall structure of police forces as governed by the Police Act of 1861, (ii) key criminal legislations like the IPC, the Cr.P.C. and Evidence Act, and (iii) senior police officers of the state police are drawn from the Indian Police Service, recruited, trained and managed by the Centre.⁴⁵

Notably, over the years, there has been increase in not only the number of central police forces, but also their strength. Ironically, they have been raised in reaction to threats confronted from time-to-time, rather than in a proactive manner. They are made 'multi-dimensional forces' to involve in duties other than their primary tasks for which they were constituted. During such deployment, the study finds out that there is a disparity in legal cover available to the central forces that should be addressed on a priority basis. The Army is involved in counter-insurgency duties only with the cover of the AFSPA, unlike the other central police forces. Interestingly, these central police forces have legal cover under the Acts that regulate each of the forces. Apart from this, under Section 132 of the Cr.P.C, legal cover to both central and state officers is provided 'for any act purporting to be done under Sections 129, 130, and 131' (Government of India, 1974). At the same time, the BSF and RPF especially, require powers proportionate to their additional role in the internal security management and current threat dynamics in the country.

It is also imperative for revisiting those provisions of the Constitution that deal with the deployment of central forces in the states of India. As the Group of Ministers' Report on National Security rightly observes, 'The Union Government's ability to deal with situations caused by grave threats to internal security has eroded over the years, and needs to be strengthened. This capability should flow from the Constitution.'⁴⁶ To be fair, the Constituent Assembly took note of this; but only in the light of the then existing situation. The makers of the Indian Constitution expected the right kind of the internal security mechanism to 'emanate and get shaped by practice...'⁴⁷ However, this did not happen as expected. Colonial structures that 'worked at cross-purposes with the preferred ideals of the constitution' continue to linger.⁴⁸

In this regard, inserting a new entry titled 'Internal Security' in the Concurrent List of the Constitution may be considered. Such a clear-cut provision would enable an unambiguous role for the Centre with the concurrence of the concerned states.⁴⁹ Some of the under-utilised Constitutional provisions—like Centre's power to issue directives to States under Articles 256 and 257—require attention. The most under-utilised provision is Article 355⁵⁰ which provides the Centre 'the responsibility to protect every State against internal disturbances, and to ensure that the Government of every State is carried on in accordance

with the provisions of the Constitution'.⁵¹ Apart from these, Article 263(b) could be utilised in the form of carving area-specific Inter State Councils to address internal security threats that are pan-India in nature, like Left-Wing Extremism, or hinterland terrorism, or pan-region like North East militancy. The Constitution could also enhance coordination between the Centre and the states, and among the states, on matters concerning internal security. Formalising an Inter-State Council as a constitutional body to deal with internal security coordination may be explored.

As per the Group of Ministers' Report, the enactment of a supporting legislation to cover the following may be considered.

- The *Suo moto* deployment of Central Forces, if the situation prevailing in the states so demands; the legislation will spell out conditions in which such deployment may take place, as also its consequences.
- Defining powers, jurisdiction, privileges, and liabilities of the members of the Central Forces while deployed in States, in accordance with Entry 2A of the Union List.
- Specifying situations in which the central government can intervene to advise, direct, or act under Article 355.⁵²

It is also important to 'undertake a comprehensive review of the existing laws, with a view to removing from the statute book all laws, which are archaic or repugnant to the Constitution'.⁵³

It is well within the constitutional means for the Centre to assert its role on issues pertaining to internal security. In fact, the apex court has pointed this out through various judgements. It should also be acknowledged that some of the amendments like Entry 2A in List I and corresponding changes in Entries 1 and 2 of the List II in the Seventh Schedule, have been retained despite political changes. It only confirms the recognition of the Centre's overriding role in safeguarding the internal security of the country.

The fact that the Centre provides huge funding to the states for internal security purposes, an accountability mechanism is essential in respect of those centrally-funded schemes. To address this, as the Group of Ministers' Report advocates, the Ministry of Home Affairs 'may enter into MoUs with the concerned State Governments, with specific stipulations to ensure accountability'.⁵⁴ Such MoUs may go a long way in strengthening trust between the Centre and the states.

Serious issues like internal security have to be looked into at the national level. However, at the same time, the views and sentiments of the states and local governments have to be taken into consideration. It goes without saying that any effective response to threats to internal security needs greater cooperation among various levels of governments: central, state, and local. It is also suggested that there should be 'a blueprint for joint operations, and an effective mechanism for coordination between the civil, judicial, police and paramilitary authorities'.⁵⁵ As the Sarkaria Commission rightly observes, 'the very purpose of the deployment of the armed forces of the Union—to restore public order—cannot be achieved without the active assistance and co-operation of the entire law enforcing machinery of the State Government'.⁵⁶ Only the Centre is capable of coordination at the national level on matters concerning security.

However, differing perspectives on the subject continue to prevail. These hinder unity. The 'National Statist' view wishes to have an increased centralisation of power at the national level. The 'Federal Rights' perspective asks for giving increased power to the states at the expense of the Union government. As and when there are major terror attacks, especially motivated from the neighbourhood, there are calls for the centralisation of power towards the Centre only to fizzle out in due course.

There is a 'need for the Centre and the States to combine their efforts instead of blaming each other for internal security problems'.⁵⁷ Instead of 'competitive federalism', it is important to heed the observation made by the National Commission to Review the Working of the Constitution (NCRWC).

There is no dichotomy between a strong Union and strong States. The relationship between the Union and States is a relationship between the whole body and its parts. For a healthy body, it is necessary that its parts are strong. It is felt that the real source of many of our problems is the tendency of centralisation of powers and misuse of authority.⁵⁸

Due to political tussles among political parties, interdependence between the Centre and the States is ignored, especially on vital issues like internal security. The de-politicisation of security is important at this juncture. On the pretext of day-to-day administration, the spirit and morality of the Constitution should not be compromised. In this regard, Ambedkar had cautioned that:

The form of the administration must be appropriate to and in the same sense as the form of the Constitution ... [It] is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution ... Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it.⁵⁹

NOTES

1. Elliot W. Blumer, *Federalism*, International IDEA, Strömsborg, 2017, p. 3.
2. Article 1 of the Indian Constitution states: 'India, that is Bharat, shall be a *Union of States*' (emphasis by the authors), available at https://legislative.gov.in/sites/default/files/COI_English.pdf, accessed on 20 November 2022.
3. *The Code of Criminal Procedure, 1973*, Act No. 2 of 1974, Section 132 (3) (a), Government of India, available at https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_000010_197402_1517807320555§ionId=22521§ionno=132&orderno=154, accessed on 10 October 2022.
4. Sarkaria Commission Report, Chapter VII, 'Deployment of Union Armed Forces in a State for Public Order Duties', Inter-State Council Secretariat, Government of India, 1988, para 7.5.01, available at <http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTERVII.pdf>, accessed on 15 October 2022.
5. *Naga People's Movement of Human Rights vs Union of India*, Supreme Court of India, judgement dated 27 November 1997, available at <https://main.sci.gov.in/jonew/judis/13628.pdf>, accessed on 17 October 2022.
6. 'Task Force Report on Criminal Justice, National Security and Centre-State Cooperation', Commission on Centre-State Relations, Government of India, 2010, Annexure I, p. 13, para 5.2, available at http://interstatecouncil.nic.in/wp-content/uploads/2015/06/Suppl_VolI_Task_Forces.pdf, accessed on 18 October 2022.
7. Commission vide Ministry of Home Affairs Notification No. IV/11017/1/83-CSR, dated 9 June 1983, was appointed under the Chairmanship of Justice R.S. Sarkaria, with B. Sivaraman and Dr S.R. Sen as its members. The Commission submitted its report in January 1988, containing 247 recommendations, spreading over 19 chapters.
8. Sarkaria Commission Report, Chapter VII, 'Deployment of Union Armed Forces in a State for Public Order Duties', n. 4.
9. *Ibid.*

10. Ibid.
11. 'Task Force Report on Internal Security, Criminal Justice and Centre-State Co-Operation', Vol. V, Commission on Centre-State Relations, Government of India, March 2010, available at <http://interstatecouncil.nic.in/wp-content/uploads/2015/06/volume5.pdf>, accessed on 22 October 2022.
12. B.R. Ambedkar, *Constituent Assembly of India Debates*, Vol. IX, 3 August 1949, available at <https://loksabha.nic.in/writereaddata/cadebatefiles/C03081949.html>, accessed on 23 October 2022.
13. The Constitution of India, Ministry of Law and Justice, 1950, Article 355, available at https://legislative.gov.in/sites/default/files/COI_English.pdf, accessed on 25 October 2022.
14. While the US Constitution talks about 'internal commotion', the Australian Constitution talks of 'domestic violence', as against the Indian Constitution's usage of 'internal disturbance'.
15. To deal with the situation arising in certain provinces on account of the partition of the country in 1947, the Governor General issued Ordinances, namely, (1) The Bengal Disturbed Areas (Special Powers of Armed forces) Ordinance, 1947 (11 of 1947); (2) The Assam Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (14 of 1947); (3) The East Punjab and Delhi Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (22 of 1947). All these Ordinances were replaced by the Armed Forces (Special Powers) Act, 1948 (Act No. 3 of 1948).
16. Armed Forces (Special Powers) Act, 1958, Act No. 28 of 1958, Ministry of Home Affairs, Government of India, available at https://www.mha.gov.in/sites/default/files/armed_forces_special_powers_act1958.pdf, accessed on 26 October 2022.
17. *Indrajit Barua vs. The State of Assam and Another*, Supreme Court judgement dated 3 June 1983, para 25, available at <https://indiankanoon.org/doc/961037/>, accessed on 28 October 2022.
18. The long title of the Assam Act is, 'An act to make better provision for the suppression of disorder and for the restoration and maintenance of public order in disturbed areas in Assam'. The Preamble of the Assam Act reads: 'Whereas it is necessary to make better provisions for the suppression of disorder and for the restoration and maintenance of public order in the disturbed area in Assam'.
The long title of the AFSPA reads, 'An act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in the States of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram'.

19. Disturbed Areas (Special Courts) Act, 1976, Section 3(ii), Government of India, available at <https://legislative.gov.in/sites/default/files/A1976-77.pdf>, accessed on 30 October 2022.
20. *Naga People's Movement of Human Rights vs Union of India*, n. 5.
21. The reason for conferring such a power upon the central government is stated in the 'Objects and Reasons' appended to the Bill, which reads thus: 'The Armed Forces (Assam and Manipur) Special Powers Act, 1958 empowers only the Governors of the States and the Administrators of the Union Territories to declare areas in the concerned State of Union Territory as "disturbed". Keeping in view the duty of the Union under Article 355 of the Constitution, inter alia, to protect every State against internal disturbance, it is considered desirable that the Central government should also have power to declare areas as "disturbed", to enable its armed forces to exercise the special powers'.
22. *Naga People's Movement of Human Rights vs Union of India*, n. 5.
23. 'Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958 (also known as Jeevan Reddy Committee)', Ministry of Home Affairs, Government of India, 2005, p. 13, para 9, available at [https://andyreiter.com/wp-content/uploads/military-justice/in/Government%20Documents/India%20-%202005%20-%20Report%20of%20the%20Committee%20to%20Review%20AFSPA%20\(Reddy%20Report\).pdf](https://andyreiter.com/wp-content/uploads/military-justice/in/Government%20Documents/India%20-%202005%20-%20Report%20of%20the%20Committee%20to%20Review%20AFSPA%20(Reddy%20Report).pdf), accessed on 15 November 2022.
24. *The Border Security Force (Amendment) Bill, 2011*, 154th Report, Parliamentary Standing Committee on Home Affairs, Parliament of India, 24 October 2011, para 1.5, available at https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/15/15/154_2016_6_16.pdf, accessed on 1 November 2022.
25. While considering the conferring of necessary powers of search, seizure, and arrest in the hinterland under the provisions of Cr.P.C., the Ministry of Law and Justice was consulted by the Ministry of Home Affairs. While furnishing their opinion on the matter, the Ministry of Law and Justice stated that powers under Sections 41 (1), 46, 47, 48, 49, 51 (1), 52, 53, 74, 100, 102, 129, 149, 150, 151 and 152 of Cr.P.C. cannot be given to the BSF personnel in the hinterland unless Sections 4 and 139 of the BSF Act, 1968 are suitably amended. See *Ibid.*, para 1.1.4.
26. *The Border Security Force (Amendment) Bill, 2011*, n. 24.
27. The Assam Rifles Act, 1941, Assam Rifles, available at <https://legislative.gov.in/sites/default/files/A1941-05.pdf>, accessed on 2 November 2022.
28. The Assam Rifles (Amendment) Act, 1962, Assam Rifles, available at https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1962-30.pdf, accessed on 3 November 2022.

29. National Security Guard Act, 1986, Ministry of Home Affairs, Government of India, available at https://www.mha.gov.in/sites/default/files/NSGAct1986_0.pdf, accessed on 5 November 2022.
30. Railway Protection Force Act 1957, Indian Railways, available at https://legislative.gov.in/sites/default/files/A1957-23_0.pdf, accessed on 7 November 2022.
31. 'Crime in Railways,' in *Crime in India 2021*, Chapter 12-A, National Crimes Record Bureau, Government of India, available at https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%203.pdf, accessed on 5 November 2022.
32. Dasgupta, 'Federal brake on rail plan', *The Telegraph*, 2 March 2012.
33. The Coast Guards' territorial operation is confined to the 'maritime zones of India'. This means the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone, or any other maritime zone of India.
34. Coast Guard Act 1978, Ministry of Defence, Government of India, available at <https://www.mod.gov.in/sites/default/files/Coast%20Guard%20Act%2C%201978.pdf>, accessed on 7 November 2022.
35. Ibid.
36. Ibid., Section 122(2).
37. Section 129 talks of 'Dispersal of assembly by use of civil force'; Section 130 pertains to 'Use of armed forces to disperse assembly'; and Section 131 is related to 'Power of certain armed force officers to disperse assembly'.
38. The Assam Rifles (Amendment) Act, 1962, Assam Rifles, available at https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1962-30.pdf, accessed on 10 November 2022.
39. *Naga People's Movement of Human Rights vs Union of India*, n. 5.
40. The Unlawful Activities (Prevention) Amendment Act, 2004, Section 49, Ministry of Home Affairs, Government of India.
41. 'Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958 (also known as Jeevan Reddy Committee)', n. 23.
42. *Naga People's Movement of Human Rights vs Union of India*, n. 5.
43. Ibid.
44. 'Padmanabhaiah Committee on Police Reforms', Ministry of Home Affairs, Government of India, 2000.
45. G. P. Joshi, 'The Federal Police System in India', in Philipp Fluri and Marlene Urscheler, *Policing in Federal States*, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2011, p. 5.
46. 'Report of the Group of Ministers on National Security', Government of India, 2001, Chapter IV.

47. P.D. Sharma, *Police, Polity and People in India*, New Delhi: Uppal Publications, 1981, pp. 116–18.
48. Ibid.
49. G.K. Pillai, 'Inherent Structural Constraints Challenging India's Internal Security', *Journal of Defence Studies*, Vol. 12, No. 2, April–June 2018, p. 11.
50. In this regard, the Committee on Centre-State Relations observed: '... to effectively discharge its obligations under Article 355, it needs to be specifically provided that it empowers the Union Government to issue directions and play a positive role rather than only a passive role of wait and watch for providing support to the State Governments till it makes such a request.' See para 4.3.02.
51. Article 355, 1950, Ministry of Law and Justice, *The Constitution of India*.
52. 'Report of the Group of Ministers on National Security', n. 46.
53. Government of India, *Report of the Committee on Centre-State Relations, 'Internal Security, Criminal Justice and Centre-State Co-Operation'*, Vol. V, March 2010.
54. 'Report of the Group of Ministers on National Security', n. 46.
55. Round Table discussion on 'Internal Security and Centre-State Relations', Manohar Parrikar Institute for Defence Studies and Analyses, 20 January 2011, available at <https://idsa.in/event/InternalSecurityandCentreStateRelations>, accessed on 19 November 2022.
56. Sarkaria Commission Report, Chapter VII, 'Deployment of Union Armed Forces in a State for Public Order Duties', n. 4.
57. V.R. Raghavan, 'Internal Security's Diminishing Returns', *The Hindu*, 4 August 2000.
58. National Commission to Review the Working of the Constitution, Inter-State Council Secretariat, Government of India, 2002, available at <http://interstatecouncil.nic.in/ncrwc/>, accessed on 20 November 2022.
59. The Constituent Assembly of India Debates, Vol. VII, 4 November 1948, p. 38.