

**PARLIAMENT OF INDIA
RAJYA SABHA**

154

**DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND FIFTY FOURTH REPORT

ON

THE BORDER SECURITY FORCE (AMENDMENT) BILL, 2011

**(PRESENTED TO THE CHAIRMAN, RAJYA SABHA ON 3rd NOVEMBER 2011)
(FORWARDED TO THE SPEAKER, LOK SABHA ON 3rd NOVEMBER 2011)**

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(LAID ON THE TABLE OF LOK SABHA ON ..., NOVEMBER 2011)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
NOVEMBER, 2011/ KARTIKA, 1933 (SAKA)**

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NEW DELHI**

NOVEMBER 2011/KARTIKA, 1933 (SAKA)

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**Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2010)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
4. Shri S.S. Ahluwalia
5. Shri Naresh Chandra Agrawal
6. Shri Prasanta Chatterjee
7. Shri Javed Akhtar^f
8. Shri Tariq Anwar
9. Dr. V. Maitreyan
10. Shri D. Raja

Lok Sabha

11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Dr. Kakoli Ghosh Dastidar
14. Shri Ramen Deka
15. Shri L. Raja Gopal
16. Shri Mohd. Maulana Asrarul Haque
17. Shri Naveen Jindal
18. Shri Jitender Singh Malik
19. Shri Lalubhai Babubhai Patel
20. Shri Natubhai Gomanbhai Patel
21. Dr. Nilesh N. Rane
22. Shri Bishnu Pada Ray
23. Adv. A. Sampath
24. Shri Hamdullah Sayeed
25. Shri Neeraj Shekhar
26. Dr. Raghuvansh Prasad Singh
27. Shri Ravneet Singh
28. Shrimati Seema Upadhyay
29. Shri Harsh Vardhan
30. Shri Bhausahab Rajaram Wakchaure
31. Shri Dinesh Chandra Yadav

^f Shri Javed Akhtar nominated w.e.f. 21 September 2010 *vice* Shri Tiruchi Siva, who has resigned from the Membership of the DRSC on Home Affairs w.e.f. the 13th September, 2010.

**Composition of the
Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2011)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
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10. Shri Javed Akhtar

Lok Sabha

11. Shri L.K. Advani
12. Shri Sansuma Khunggur Bwiswmuthiary
13. Shri Khagen Das
14. Dr. Kakali Ghosh Dastidar
15. Shri Ramen Deka
16. Shri Lagadapati Raja Gopal
17. Shri Mohammad Asrarul Haque
18. Shri Naveen Jindal
19. Shri Jitender Singh Malik
20. Shri Babulal Marandi
21. Shri Baijayant Panda
22. Shri Lalubhai B. Patel
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27. Shri Hamdullah Sayeed
28. Shri Neeraj Shekhar
29. Shri Ravneet Singh
30. Shri Harsh Vardhan
31. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri P.P.K. Ramacharyulu, Joint Secretary
Shri D.K. Mishra, Joint Director
Shri Bhupendra Bhaskar, Assistant Director
Shri Sanjeev Khokhar, Committee Officer

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Fifty-fourth Report on the Border Security Force (Amendment) Bill, 2011.

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred* the Border Security Force (Amendment) Bill 2011 (**Annexure-1**) as introduced in the Lok Sabha on 18th August, 2011 and pending therein, to the Committee on 19th August, 2011, for examination and report by 30th September, 2011. After the Bill was referred to the Committee, the Committee could not meet till 31st August, 2011 i.e. its last day of tenure due to engagement of Members in the Session of Parliament. The Committee was re-constituted w.e.f. 1st September, 2011 and the first meeting of the Committee was held on 23rd September, 2011, in which it heard the presentation of the Home Secretary on the Bill. After hearing the Home Secretary, the Committee sought extension of time from Hon'ble Chairman, upto 30th October, 2011, for presentation of the report on the Bill which was acceded to.

3. The Border Security Force (Amendment) Bill, 2011 seeks to amend Sections 4 and 139 of the Border Security Force Act, 1968.

4. The Committee considered the Border Security Force (Amendment) Bill, 2011 in three sittings held on 23rd September, 14th and 24th October, 2011. The Committee heard the official presentation of the representatives of the Ministry of Home Affairs on 23rd September, 2011 on the Bill. As per practice, the Secretaries and senior officers of the Legislative Department and the Department of Legal Affairs were also present in those sittings to respond to the queries of the Members.

4.1 The Committee in its sitting on 14th October, 2011 took up the Bill for clause-by-clause consideration.

* vide Rajya Sabha Parliamentary Bulletin Part II No. 48728 dated 19th August, 2011.

4.2 The Committee in its sitting held on 24th October, 2011 considered and adopted this Report. The Committee also authorized its Chairman to present the Report to the Chairman, Rajya Sabha.

5. The Committee has made use of the following documents in preparing the Report:-

- (i) The Border Security Force (Amendment) Bill, 2011;
- (ii) Detailed background Note on the Bill as received from the Ministry of Home Affairs;
- (iii) The Border Security Act, 1968;
- (iv) Oral evidence tendered by the representatives of Ministry of Home Affairs, Law and Justice; and
- (v) Replies received from the Ministry of Home Affairs on the queries raised by the Members.

6. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

M. Venkaiah Naidu
Chairman

Department-related Parliamentary
Standing Committee on Home Affairs

24th October, 2011/New Delhi

CHAPTER - I BACKGROUND

1.0 According to Statements of Objects and Reasons of the Border Security Force (Amendment) Bill, 2011, the Bill proposes to amend the long title, Section 4 and 139 of the Border Security Force Act, 1968 to enable the Central Government to deploy the BSF in areas other than the borders of India or its adjoining areas i.e. hinterland areas for internal security as well.

1.1.1 The Ministry of Home Affairs in the background note stated that the Border Security Force was raised as an Armed Force of the Union in 1965 for ensuring the security of the Borders of India and for matters connected therewith. The Border Security Force Act, 1968 was enacted to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith. Under Rule 15 of the BSF Rules, 1969, the BSF has been assigned following tasks while deployed along the borders:-

- (i) Promote a sense of security among the people living in the border area.
- (ii) Prevent trans-border crimes, un-authorised entry into or exit from the territory of India.
- (iii) Prevent smuggling and any other illegal activity.

1.1.2 The Ministry stated that as on date, the Central Government has given powers to the BSF personnel in border areas under the Customs Act, the Passport Act, the NDPS Act and the CrPC by way of issuing suitable notifications under the respective legislations. These powers, so conferred, primarily relate to arrest, search and seizure within the prescribed border belt, which is 80 Kms. in the State of Gujarat, 50 Kms. in the State of Rajasthan and 15 Kms. in the States of West Bengal, Assam & Punjab. No such limit has been prescribed in the case of J&K and five North Eastern States viz., Meghalaya, Nagaland, Mizoram, Tripura and Manipur.

1.1.3 The Ministry of Home Affairs in its background note apprised the Committee that in the recent times, apart from safeguarding the borders of the country (primarily with Pakistan and Bangladesh), the BSF has acquired country wide presence as it has been assigned multifarious roles and responsibilities in different parts of the country. A large segment of the force is deployed in North-East, J&K for handling counter insurgency/anti-militancy operations and in the naxal affected states like Chhatisgarh, Orissa etc. Besides, BSF is also extensively used during elections, communal riots and other law and order duties including the natural calamities in various States, in aid of civil authorities.

1.1.4 The Ministry of Home Affairs also apprised the Committee that recently, the BSF personnel posted in the hinterland are facing certain limitations as to

their effectiveness in aiding the State Governments because of the fact that they cannot exercise the powers of arrest, search and seizure under the CrPC in the absence of necessary legislation. While considering conferring of necessary powers of search, seizure and arrest in the hinterland under the provisions of CrPC, Ministry of Law and Justice was consulted by the Ministry of Home Affairs. Ministry of Law and Justice, while furnishing their opinion on the matter had 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 CrPC cannot be given to the BSF personnel in the hinterland unless Sections 4 and 139 of the BSF Act, 1968 are suitably amended.

1.2 Section 4 of the BSF Act, 1968 reads as under-

- “4.(1) *There shall be an armed force of the Union called the Border Security Force for ensuring the security of the borders of India.*
- (2) *Subject to provisions of this Act, the Force shall be constituted in such manner as may be prescribed and the conditions of service of the members of the Force shall be such as may be prescribed.”*

1.3 Section 139 of the BSF Act, 1968 was incorporated in the BSF Act, 1968 as an enabling provision which provides that-

*“The Central Govt. may, by general or special order published in the Official Gazette direct that, subject to such conditions and limitations, and **within the local limits of such area adjoining the borders of India**, as may be specified in the order, any member of the Force may:*

- (i) *for the purpose of prevention of any offence punishable under 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 or the Passports Act, 1967 or of any cognizable offence punishable under any other Central Act; or*
- (ii) *for the purpose of apprehending any person who has committed any offence referred to in clause (i), exercise or discharge such of the powers or duties under that Act or any other Central Act as may be specified in the said order, being the powers and duties which, in the opinion of the Central Government, an officer of the corresponding or lower rank is by that or such other Act empowered to exercise or discharge for the said purposes”.*

1.4 The Ministry of Home Affairs pointed out that though BSF has been used in the recent past for various eventualities, Section 4 restricts the role of BSF to ensure the security of the borders of India. Therefore, in order to deploy the BSF in any part of the country for any emergent duties, this Section needs to be

amended for the effective utilization of the service of BSF in the hinterland as well.

1.5 The Ministry of Home Affairs further stated that Section 4 and 139 of the BSF Act have a close inter-relationship and both these sections were initially formulated to suit the requirement of the Force in border areas. During the enactment of the Act, the legislation, probably could not foresee a situation where the BSF may have to be used for duties, other than those related to security of borders of India. Presently, due to legal constraints, the State Governments on whose request the BSF is deployed for maintenance of law and order, often find it 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. The Ministry felt that in the coming times, the deployment of BSF personnel in the hinterland for fighting the menace of naxalism and terrorism as also during elections and rioting, etc, is likely to increase and it is absolutely necessary that suitable enabling provisions may be incorporated in the present BSF Act so that the force can be put to best use in an effective manner without any legal complication in the absence of such power.

1.6 Accordingly, following suitable amendments in Sections 4 and 139 of the Border Security Force Act, 1968 have been proposed through the Border Security Force (Amendment) Bill, 2011

(i) Section 4 (1) would read as under : *“There shall be an armed force of the Union called the Border Security Force for ensuring the security of the borders of India and performing such other duties as may be entrusted to it by the Central Government.”*

(ii) Section 139 (1) would read as under : *“The Central Govt. may, by general or special order published in the Official Gazette direct that, subject to such conditions and limitations, as may be specified in the order, any member of the Force may :-*

(i) *for the purpose of prevention of any offence punishable under the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act, 1939, the Central Excise Act, 1944, the Foreigners Act, 1946, the Foreign Exchange Management Act, 1999, the Customs Act, 1962 or the Passports Act, 1967 or of any cognizable offence punishable under any other Central Act; or*

1.7 The Ministry of Home Affairs argued that proposed amendment in section 139(1) is consequential in nature as the Central Excises and Salt Act, 1944 has since been renamed as the Central Excise Act, 1944 and the Foreign Exchange Regulation Act, 1947 has since been replaced by the Foreign Exchange Management Act, 1999.

1.8 Justifying the proposed amendment in sections 4 and 139 the Ministry of Home Affairs stated that similar provisions already exist in Sections 4 and 154 of the ITBP Act, 1992 and Sections 4 and 153 of the SSB Act, 2007 as these Acts

were formulated in recent times. The Ministry also stated that as regards the Central Reserve Police Force (CRPF), Section 16 of the CRPF Act, 1949 enables that the Central 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. Accordingly, vide Notification No.S.O.2821 dated 27th July, 1976. The CRPF personnel have been empowered to exercise the powers of a Police Officer under the Code of Criminal Procedure, 1973 anywhere in the Country wherever they are called upon to perform their duties. The Ministry therefore stated that considering the legal constraints and the difficulties being faced by the State Governments as well as the Central Government in proper utilization of the BSF in the hinterland, suitable amendments in Sections 4 and 139 of the BSF Act have been proposed.

CHAPTER – II

PRESENTATION OF MINISTRY OF HOME AFFAIRS

2.0 The Committee in its sitting held on 23rd September, 2011, heard the Home Secretary on the Border Security Force (Amendment) Bill, 2011. The Secretary (Internal Security), Ministry of Home Affairs made presentation on the Bill. Further explaining about the need for change in the BSF Act, 1968, it was stated in the presentation that there had been significant changes in the nature of duties of BSF over a period of time from purely a border guarding force to other important additional duties like, Counter Insurgency, Internal Security, Anti-Militancy and Anti-Naxal Operations in North-East, J&K and LWE Affected Areas/ States, Deployment during Parliamentary and Assembly Elections. States also requested for Panchayat Elections, assisting the State Governments in aid to civil authorities for maintenance of Law & Order during internal disturbances including communal riots etc, assisting the State Governments during Natural calamities/ disasters in different parts of the Country.

2.1 Outlining the limitation of the Present Provisions, he stated that the powers given under the legislations like Cr.PC, etc. can be exercised only within the prescribed border belt, i.e. 80 Kms. in the State of Gujarat, 50 Kms. in the State of Rajasthan, 15 Kms. in the States of West Bengal, Assam & Punjab. No powers, however, exist in the States such as Chhattisgarh, Jharkhand, Odisha, Haryana, Karnataka, Kerala etc. though BSF personnel are deployed in the hinterland for Counter Insurgency, Internal Security (IS) and Anti-Naxal Operations, Elections duties, etc. He further stated that no powers can be conferred in the Hinterland in the absence of the enabling provisions under the Act.

2.2 Giving further Justification for amendments brought in the Act, the Secretary (IS), in his presentation made the following submissions:-

- The State Governments, on whose request the BSF is deployed are not able to use the force effectively as the BSF personnel so deployed do not have the requisite basic powers of search, seizure and arrest in the hinterland.
- In the absence of powers, deployment of BSF personnel is only of a psychological value.
- Such amendment shall further enable the Central Government to issue necessary notifications by virtue of which powers can be bestowed on BSF in areas other than Border areas
- Like the BSF, ITBP (Indo-Tibetan Border Police Force) and the SSB (Sashastra Seema Bal) are also the Border Guarding Forces

deployed on the Indo-China and Indo-Nepal Borders respectively and performing additional roles in the hinterland.

- Provisions bestowing powers on CRPF on similar lines already exist under Section 16 of the CRPF Act, 1949 and the CRPF personnel vide Notification dated 27th July, 1976 have been given powers of a Police Officer under the CrPC, 1973, wherever they are called upon to perform duties.
- Such an enabling provision would permit the deployment of BSF personnel for internal security duties in the hinterland and will allow the Government to empower them appropriately to perform their duties.
- Central Excises and Salt Act, 1944 has been renamed as Central Excise Act, 1944.
- Foreign Exchange Regulation Act, 1947 has been amended and renamed as Foreign Exchange Management Act, 1999.

Issues raised by the Committee and the replies given by the Ministry

2.3 During the course of discussion, the Members of the Committee raised certain issues which were replied by the Ministry. The issues raised and the replies of the Ministry are dealt in the next Chapter.

CHAPTER – III
ISSUES RAISED BY THE MEMBERS AND RESPONSE OF THE
MINISTRY OF HOME AFFAIRS THEREON

3.0 The Border Security Force (Amendment) Bill, 2011 seeks to widen the scope for deployment of the Force in the hinterland areas for counter-insurgency and anti-naxal operations, during election period or even in maintaining law and order situation with additional power to search, seizure and arrest which is otherwise not available to BSF. The proposed amendment, therefore, is in a way, an enabling provision for the BSF which is already available to SSB and ITBP.

3.1.1 During the sitting of the Committee held on 23rd September, 2011 the Members of the Committee raised some issues pertaining to the provisions and the implications of the proposed amendments in the Bill. The issues raised by the members and the comments of the MHA thereto, are enumerated as under:-

Issue Raised

3.2.1 Has there been any objection from any side on the issue of deploying the BSF in the interior areas as well as to look after internal security? It is, in a way, a shortcoming in the original law that is sought to be amended, though in actual practice, the government have been using them all along.

Response of the Government

3.2.2 Responding to the query, the Home Secretary stated that no objection has been received so far. The Home Secretary further stated that *the other paramilitary forces have enabling provisions. Government had conferred powers on them, under various Acts, and using the BSF off and on for internal security duties. But they have been handicap in performing their duties and discharging their duties because they do not have any power to arrest or search, etc.*

Issue Raised

3.3.1 Whether Amendment in section 4 will change the character, duties and responsibilities of the BSF? Whether amending section 4 will not be liquidating the entire Force to look after only the internal security matters?

Response of the Government

3.3.2 The home secretary responding to the query made the following submissions:-

“we are not changing the character of the Force. What is happening in our country is that the challenges, internal security challenges, are many. We have a Force for dealing with internal security challenges, i.e., the CRPF. Now, we have been finding that the strength of the CRPF is not enough and, often times, we need more personnel.

Now, one thing that I would like to clarify here is that whenever all these Forces are deputed for any law and order maintenance or any internal security duty, they are only deputed on the request of the State Government, on the requisition of the State Government. They are not deputed otherwise. By and large, we have been finding, in the Ministry of Home Affairs, that we run short of forces as compared to the demands from the State Governments because the challenges are many. There are challenges in the North-East; challenges in Kashmir; communal issues also crop up sometimes; and there is the challenge in Central India with the Left Wing Extremism. We have other border-guarding forces as well. We have the ITBP; we have the SSB; and we have the BSF. Now, apart from CRPF, we have had to use the battalions of ITBP, SSB and BSF whenever any pressing requirement comes up like elections or meeting any communal situation or if any problem exaggerates in the North East or in Kashmir. So, we have had to use whatever Forces we have available with us to meet such situations. The primary duties of the Force remain what they have been raised for. For example, the primary duty of the ITBP remains border-guarding in the Northern areas. The primary duties of the SSB remains border-guarding on the Indo-Nepal border and the primary duty of the BSF remains border-guarding on the Western border as well as the Bangladesh border. But we have battalions which we can deploy, because, we have reserve battalions in all these Forces and when an exigency comes up, we have to deploy them.”

3.3.3 The Ministry of Home Affairs in the written replies added further that the amendment would only make the legal position in line with the current practice of deployment of a small fraction of the Force for urgent duties based on the request of State Government.

Issue Raised

3.4.1 When BSF personnel deputed from the border areas into the internal security arrangement, they will tend to lose their focus and they will also lose their work culture and whether BSF has surplus personnel for deployment to additional assignment?

Response of the Government

3.4.2 Responding to the queries of the Committee, the Home Secretary made the following submission:-

“One, it is given that if we expose our forces more, their effectiveness reduces. In fact, over time, that is what has happened in our country. In fact, over-exposure always reduces effectiveness. We are aware of that

and that is why our insistence with the State Governments always has been that you must use your own State police first and only when you find that your State Police is not sufficient or that you need assistance over and above that, shall we deploy our Central paramilitary forces. So, we are very careful in making available Central paramilitary forces for either internal security or law and order duties. Now, in law and order duties, the CrPC is very clear that the forces are supposed to act under the command of a Magistrate. That is in law and order. In internal security that is not the situation. In internal security, the forces are supposed to act in widespread areas on their own and there they need these powers. They need the powers to be able to arrest any militant or any insurgent when they come across any militant or insurgent. Otherwise, they would be powerless and we will be deploying them with their hands tied behind their backs, especially in areas where there is insurgency. Now, Sir, insofar as border guarding is concerned, that remains, and will remain, the primary duty of the Border Security Force, as it is for the ITBP and the SSB. But there are exigencies when we have had to utilize their reserve battalions in the interior. But the essential tasks and border deployment does not get disturbed.”

3.4.3 In the written reply the Ministry of Home Affairs further added that the focus of BSF would remain as Border guarding. Even presently out of 168 Bns of BSF, only 13 Bns are deployed for Internal Security(IS)/ Anti Naxal Operations (ANO) duties and 7 Bns are in reserve for turnover of Units for rest and relief; as also to meet any exigency. Thus BSFs already deployed for IS and no additional force is being sought.

Issue Raised

3.5.1 Whether the officers and jawans who are deployed in NDRF, NSG, other paramilitary forces and agencies are getting any deputation allowance or not? Deputation allowance is a policy matter. BSF is going for some other responsibility. Will it be construed as deputation?

Response of the Government

3.5.2 No deputation allowance is being given to CAPFs for posting in NDRF / NSG. Only risk allowance is being given to NSG personnel.

3.5.3 The Home Secretary responded to the query as under:-

“NSG is deputationist-Force. That is why it was envisaged that the NDRF will be deputationist-Force so that the force-management will not become an issue. We depute people for the NSG. They get special allowance for the NSG. We depute people from the BSF or SPG. They get a special

allowance. We have converted battalions to NDRF. The whole battalion has been converted. So, it is not a deputation, and the personnel who go there are rotated every five year.”

3.5.4 Regarding the administration, it was stated that the administration continues with the BSF; promotions, etc., continue with the BSF. They don't have a separate cadre. The NDRF does not have a separate cadre. Clarifying further, the home secretary stated that the deputation happens when people go to another cadre. Here, the cadre does not change. They retain their promotional avenues in their parent Force. If the cadre is changed, then it becomes a deputation.

Issue Raised

3.6.1 Whether views of the State Governments were sought before bringing amendment to the BSF Act? If so, what are their views?

Response of the Government

3.6.2 In response to the above query of the Committee, the Ministry of Home Affairs informed the Committee that views/comments of all the State Governments on the proposed amendment to section 4 and 139 of Border Security Force Act, 1968 were sought by the Ministry of Home Affairs. The Ministry informed the Committee that comments were received from 13 states and 16 State Governments, where BSF is deployed, were reminded to expedite their views/comments, However, the comments were not received till the finalization of the report.

3.6.3 The Ministry of Home Affairs further informed the Committee that the States of Himachal Pradesh, Rajasthan, Uttarakhand, Goa, Karnataka, Mizoram, Orissa, Meghalaya, Arunachal Pradesh and West Bengal have concurred with the proposal of the Bill. The Government of NCT of Delhi informed that since the BSF is not deployed in NCT of Delhi, as it is not a State/Union Territory on the international border, the comments may be treated as nil.

3.6.4 The Ministry also stated that the Sikkim Government expressed that law and order is a state subject and it would be appropriate that BSF exercises these powers under the supervision of the concerned District Administration. In regard to the other states, the Ministry stated that they expressed no objection.

3.6.5 As regards, the final action taken to obtain the comments/views of the remaining State Governments on the provisions of the Bill, the Ministry of Home Affairs stated that consequent to the meeting of the Department-related Parliamentary Standing Committee, a reminder was issued on 27.09.2011 to the Chief Secretaries of the remaining 16 State Governments, with the request to expedite their comments/views on the proposal positively by 07.10.2011. It was also mentioned that, in the absence of their reply, the approval of the State

Government will be presumed as affirmation. Chief Secretaries had also been asked telephonically to expedite the comments of the State Government.

3.6.6 The Ministry of Home Affairs further informed that since no comments had been received till 13.10.2011, it may be presumed that they have no comments to offer.

Issue Raised

3.7.1 There is a talk of using Army to deal with left-wing extremism. Is there any hidden agenda to regularise this, because BSF is being used to combat some movements within the country, not on borders. Is it a step towards use of regular Army? What is the agenda of the Home Ministry?

Response of the Government

3.7.2 There is no proposal of using Army to deal with Left Wing Extremism. There is no hidden agenda of Govt. of India in getting the enabling provision inserted in the BSF Act. The proposed provisions are in line with the provisions already existing in other CAPF Acts.

Issue Raised

3.8.1 Will the BSF act under the State Government or will the BSF act independently with the powers confirmed by the Central Government?

Response of the Government

3.8.2 BSF would act under the State Government in aid of civil power and on the request of the State Governments.

Issue Raised

3.9.1 Why the Government should not raise a different force for maintaining internal security instead of empowering BSF, ITBP, SSB etc.?

Response of the Government

3.9.2 *In response to the query, the Home Secretary responded as under:-*

“The problem of raising a separate force would have been that the size of the Force was not going to be very big. So, that would have led to stagnation in the Force and the force-management would have become an issue. Therefore, on reflection, in the Ministry of Home Affairs, it was thought that instead of raising a separate Force just like the NSG, the NDRF can be a deputationist-Force.”

3.9.3 The Ministry of Home Affairs in its written reply further added that Internal Security situation is dynamic and sometimes the State Governments need additional forces beyond what can be given by CRPF which is the CAPF dealing

exclusively with IS/ANO in the Country. ITBP and SSB have already been enabled under their respective Acts to have such powers.

Issue Raised

3.10.1 Government wants more powers to perform other duties which may be entrusted by the Central Government. What does that mean? Will it infringe upon the federal structure of our Constitution?

Response of the Government

3.10.2 The Home Secretary during the deposition before the committee commented as below:-

“In the Home Ministry, we have been very conscious of the need to ensure that we do not, in any way, even slightly infringe upon the federal character. Basically, whatever records were shown to me, all deployments are made only on the specific request of the State Governments and repeated requests of the State Governments. There are enabling provisions and basically it has never been that the Government of India has ever or the Ministry of Home Affairs has ever acted unilaterally in these matters.”

3.10.3 The Ministry of Home Affairs further in its written reply informed that this will not infringe the federal character of our Constitution as BSF would be deployed only on the request of the State Government and in the aid of Civil Power. The enabling provision is required for enabling the State Governments to use the BSF effectively in the hinterland.

Issue raised

3.11.1 The BSF personnel so deployed do not have the power of search, seizure and arrest in the hinterland. What is the justification of seeking more powers?

Response of the Government

3.11.2 Elaborating justification, the Ministry of Home Affairs in the written reply submits as under:

“If we deploy BSF, for example, in the North-East and they come across some insurgent group in a particular area, they need to arrest those people. If they do not have the powers for arrest under the CrPC. then they cannot legally arrest any person. That is the problem. If we deploy BSF, for example, in Kashmir and they come across some militant, they need to arrest that militant. They need powers for that. Right now, those powers are limited only to a certain belt within the border area. If they are deployed in the hinterland, that power is not available to them. So, that limits their utility.”

3.11.3 The Home Secretary also stated:

“that the powers which were right now conferred on the BSF can be exercised only within a certain number of kilometers of the border, only in the border areas; but they have been asked to deploy the BSF in the interior areas also under various exigencies such as communal problems or even elections.

Issue Raised

3.12.1 What is the experience of ITBP and SSB of having such enabling provisions? Is it positive or otherwise?

Response of the Government

3.12.2 CRPF, ITBP and SSB Acts have similar enabling provisions. These powers have only facilitated deployment of units of these forces for assisting the State Governments in using this CAPF more effectively.

3.12.3 During the course of the discussion the Home Secretary stated that *SSB is a new force and it has a different character. He also stated that the experience with ITBP was very good and wherever they had deployed ITBP, they proved to be very effective. He also informed the Committee that there have never been any complaints.*”

Issue Raised

3.13.1 Ideally speaking, military and paramilitary forces should not be deployed to manage internal security matters. The Home Minister should advise or interact with State Governments in order to strengthen their existing police forces and modernize their existing police forces.

Response of the Government

3.13.2 Responding to the query of the committee, the Home Secretary stated as under:-

“Our attempt in the Home Ministry has been to strengthen the State Governments and we have been requesting the State Governments to fill up their vacancies. We have been giving them assistance and we have been urging them to modernize their police forces. We have had a scheme for modernization of police forces and we are seeking to extend it and enhance the Budget for the next five years. For this, we are in dialogue with the Planning Commission and the Finance Ministry. For this year, I have got that extension and I am quite certain that we will get extension for the next five years so that we can help the States to modernize their police forces. We have been emphasizing the need for the State Governments to strengthen their own police forces and fill up vacancies so that they are

able to manage their internal problems on their own. That is the message which we have been giving.

3.13.3 In the written reply the Ministry of Home Affairs stated that BSF is a Central Armed Police Force and there is no problem in deploying a CAPF to manage internal security matter in aid to civil power on the request of the State Governments concerned.

Issues raised

3.14.1 Why have the BSF personnel not been deployed in Indo-Bhutan border areas and in the Assam-West Bengal border areas? These two international and inter-State borders are very strategic and crucial. Because of the non-deployment of the BSF before 2004, the United Liberation Front of Assam and the National Democratic Front of Bodoland got upper hands to set up some camps inside Bhutan and still there is infiltration of maoists through Assam and West Bengal border via Bhutan. Why are the BSF and the Government of India not serious enough in this matter? The SSB people are deployed, but they are useless. Rather they were found involved in some timber trading business.

Response of the Government

3.14.2 The Ministry in the written reply informed the Committee that the Government, some time back, on the basis of a Report of the Group of Ministers, which was constituted to look into these issues, decided that one border will be managed by one force so that there is no multiplicity. So, the Indo-Bhutan border is to be managed by the SSB. The SSB is a new force. It was also stated that the government was trying to improve the forces, and that forces are not deployed between States.

Issue raised

3.15.1 In the case of natural calamities and communal riots, the Forces can be sent at the request of the State Government under the command of the State Home Secretary. But for maintenance of law and order, sending the Border Security Force in any part of the country cannot be allowed.

Reponses of the Government

3.15.2 During the course of the discussion the Home Secretary replied as under:-

“... all these deployments are made only on the request of the State Government or in consultation with the State Government. ... more often than not, we have not been able to give the State Governments the quantum of Force which they have asked for. ...the requirements of the State Governments or the demands from the State Governments have always outstripped the availability of the Forces which we have.because there are certain essential duties from which we cannot take our Forces away. It has never been the case that we have used or we have deployed some Force unilaterally.”

Issues raised

3.16.1 BSF will have to fight naxals who are staying in the hilly areas, in the jungles and are trained in the jungle warfare. To combat them, we also need Forces who are trained in jungle warfare and know how to survive in the jungle, with no food supply.

Response of the Government

3.16.2 On the issue raised, the Home Secretary during his deposition responded as follow:-

“The other point which was raised was regarding the specific nature of the Forces and the training required for different duties. Take the Border Security Force for example. Apart from their duties of guarding the border, they are also trained for operations in the jungle; they are also trained in internal security operations. That is a part of their training and that is why we are able to use them in the North-East and in J&K. So, we use them only if they have the required aptitude and the capability and they have been trained for it. Even when we have deployed them for duties in the North-East, etc., we put them through an orientation course.

Issue Raised

3.17.1 Will the patrolling and surveillance at Border not suffer quantitatively as well as qualitatively as a result of withdrawal of forces from border areas?

Response of the Government

3.17.2 Responding to the query, the Ministry of Home Affairs informed the Committee that patrolling of border would not suffer as there is no plan to thin out the Force at the borders for deployment for IS/ANO duties and only the reserve battalions are being deployed.

Issue Raised

3.18.1 Service conditions of BSF and similar other forces require a re-appraisal to make these more attractive.

Response of the Government

3.18.2 The Ministry of Home Affairs informed that the following steps have been taken to improve the service conditions of BSF personnel in the recent past:-

- (a) Better living conditions and amenities in BOPs and other establishments;
- (b) Increased Risk and Hardship Allowances;
- (c) Troops are encouraged to keep families at family station;
- (d) Troops are permitted to avail adequate leave;
- (e) In BOPs, jawans are given adequate rest and relief;
- (f) The Government has sanctioned a number of Key Locations Plans (KLP) in hinterland, which would facilitate the troops to keep their families in their home State; and
- (g) After implementation of 6th CPC, the rank of ADIG has been upgraded to the rank of DIG and the rank of ASI/GD has been introduced. Thus providing better promotional avenues. Moreover, the MACP scheme has also been extended to Force personnel assuring three financial up gradation in the career at 10, 20 and 30 years of service.

Issue Raised

3.19.1 Is there any proposal to accord facilities to these forces at par with Armed forces, taking into consideration the new tasks being assigned to them which are normally performed by Armed Forces at the Border?

Response of the Government

3.19.2 The Ministry in the written reply stated that the international borders are being manned by the BSF, and not by the Army. The BSF is deployed with Army only on the Line of Control, and in these areas, BSF is performing the similar tasks which is being performed by the Army at Line of Control. The Ministry also stated that in consideration of the risk and hardships being faced by the CAPFs, the risk and hardship allowances on the similar lines as granted to the Army, has been granted to the BSF.

Issue Raised

3.20.1 The Govt. should accord similar powers to Assam Rifles operating in N.E. Region. The Assam Rifles are under the Administrative control of Home Ministry.

Response of the Government

3.20.2 Assam Rifles is under operational control of Ministry of Defence and they have not sought any such power.

Issue Raised

3.21.1 Since the present bill is aimed to enable the Central Government to deploy Border Security Force in areas other than the borders of India or its adjoining areas, it will infringe the Constitutional rights of State Governments and Chief Election Commissioner and as such the Bill, in its present form, is unconstitutional.

Response of the Government

3.21.2 The Ministry of Home Affairs responded by stating that CAPFs are deployed only on the request of the State Governments or the Election Commission in the aid of civil power. Similar provisions already exist in the CRPF, SSB and ITBP Acts and the same have in fact helped in the effective use of the CAPFs so deployed in the State Governments either at the request of the State or the Election Commission.

CHAPTER- IV
CLAUSE-BY-CLAUSE CONSIDERATION OF THE BILL AND
RECOMMENDATIONS OF THE COMMITTEE

4.0 The Committee in its sitting held on 14th October, 2011 took up the clause-by-clause consideration of the Bill. The Home Secretary, Secretary, Department of Legal Affairs and Additional Secretary, Legislative Department were present during the course of clause-by-clause consideration of the Bill by the Committee.

Clause 2

4.1 **Clause 2** proposes amendment in Section 2 of the Border Security Force Act, 1968 which pertains to the long title. In the said Section of the principal Act, after the words “borders of India”, the words “or of any part of the territory thereof” are proposed to be inserted.

4.1.1 The Clause is adopted without any change.

Clause 3

4.2 **Clause 3** intends to amend Section 2, sub-section (1), clause (a), Sub-clause (ii) of the principal Act. The clause 3 proposes to insert the words “or in any part of the territory thereof” after the words “borders of India”.

4.2.1 The Clause is adopted without any change.

Clause 4

4.3 **Clause 4** of the Bill proposes to amend in Sub-section (I) of Section 4 of the principal Act, 1968. The proposed amendment intends to insert the words “or of such part of the territory thereof, as the Central Government, may by notification, specify” after the words “Borders of India”.

4.3.1 The Clause is adopted without any change.

Clause 5

4.4 **Clause 5** proposes two amendments i.e. (a) of sub-section (I) and (b) in clause (i) in Section 139 of the principal Act.

4.4.1 In the opening portion of sub-section (I), the words “adjoining the borders of India” are proposed to be omitted.

4.4.2 In clause (i) of sub-section (I) for the words and figures “the Central Excises and Salt Act, 1944, the Foreigners Act, 1946, the Foreign Exchange Regulation Act, 1947”, the words and figures “the Central Excise Act, 1944, the Foreigners Act, 1946, the Foreign Exchange Management Act, 1999” are proposed to be substituted.

4.4.3 The Clause is adopted without any change.

Clause 1, the Enacting Formula and the Title

4.5 **Clause 1**, the Enacting Formula and the Title are adopted without any change.

4.5.1 The Committee adopts the Bill without any changes and commends for being passed.

4.5.2 The Committee also suggests that the concerns expressed by the Members of the Committee, as enumerated in Chapter III may be addressed appropriately.
