

**POLITICS AND INTERNAL SECURITY
THE ROLE OF CRPF IN U.P. (1977-91)**

*Dissertation submitted to The Jawaharlal Nehru University
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DECLARATION

Certified that the dissertation entitled "Politics and Internal Security: The Role of CRPF in U.P. (1977-91)" submitted by Amit Praksah in partial fulfillment of the requirements for the award of the degree of Master of Philosophy has not been previously submitted for any other degree of this University or any other University and is his own work.

We recommend that this dissertation may be placed before the examiners for evaluation.

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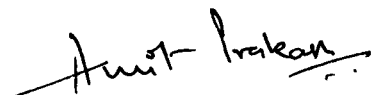
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Needless to add, responsibility of all the mistakes and lapses is solely mine.



(AMIT PRAKASH)

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I. INTRODUCTION: CONCEPTUAL CONCERNS AND THE PROBLEMATIC

I.1 Coercion, Legitimation and the State - Society Relationship.

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I. INTRODUCTION; CONCEPTUAL CONCERNS AND THE PROBLEMATIC.

More than four decades of independence have seen India as a functioning democracy, if not a thriving one. But, in a country with the size and diversity as India, challenges to the present structural arrangements are abundant in number. In fact, challenges to the political order and the nation-state are of a much more intense nature in multi-ethnic socio-political context. The very liberal notion of state is "based on the assumption that common citizenship rights accepted by the majority"(1) guarantees political stability. This becomes untenable in multi-ethnic societies. This is so because multi-ethnic states are seen as a coalition of ethnic groups which bargain for their rights collectively and their loyalty is based on consensus.

In the recent past, there has been "a rise in social conflict, the economy does not show an adequate rate of growth and democratic institutions, now being cited as reasons for the inability to cope with the social and economic problems, are losing their democratic character and are unable to stem the tide of violence in society"(2) Hence, there is an urgent need to focus on the processes in the society which go on to undermine the legitimacy of state institutions and necessitate strengthening of the coercive apparatus to enable political survival of the ruling coalition.

I.1 Coercion, Legitimation and the state-society relationship:-

As Kuldeep Mathur (3) points out, that coercion, "as the defining characteristic of the State, has a dual character." (3) On the one hand while it guarantees the perpetuation of a domination and order, on the other hand it also suppresses any challenges to authority which may arise. It also enable a de facto power to become de jure over a course of time, that is, it also creates conditions for voluntary obedience to laws and their legitimation.

But, on the other hand, coercion also undermines legitimacy of authority because continuous use of coercion to suppress dissent, resolve social conflict and maintain order undermines the governability of a State by a government.

All States, thus, depend on a delicate mixture of coercion and legitimacy to govern. Their attempt remains to use coercion in a way to maximize legitimacy of the institutions. This, in turn, would reduce the State's dependence on the use of coercion to maintain order. The stability of a democratic process is premised on its capacity to resolve conflicts with the minimal resort to open coercion.

A number of scholars have pointed out the nexus between political stability (which in turn leads to legitimisation of institutions and regimes) and the processes of modernisation and socio-economic development.

Huntington is of the opinion that "political order or it's absence in terms of violence, coups, insurrections and other forms of instability, - - - depend in part on the relation between the development of political institutions and the mobilisation of new social forces into politics".(4) He holds that instead of form, degree of government is more important. "Effective governments command the loyalties of their citizens and thus have the capability to tax resources, to conscript manpower and to innovate and to execute policy." In developing countries, like India, he discerns a "shortage of political community and of effective, authoritative, legitimate government".(5)

Further on, Huntington points out that evolution of developing countries in the post-1945 era has been "characterised by increasing ethnic and class conflict, rioting and mob violence, frequent military coups d' etat - - - arbitrary infringement of the rights and liberties of citizens, declining standards of bureaucratic efficiency and performance, the pervasive alienation of urban political groups, the loss of authority by legislatures and courts and the fragmentation, and at times, complete disintegration of broadly based political parties".(6)

Huntington attributes the political violence and "instability in developing countries to rapid social change and rapid mobilization of new groups into politics coupled with slow development of political institutions"(6). Modernisation has diversified and multiplied social forces in the society which, in turn, has undermined the traditional sources of political authority. Thus, there has emerged the problem of creating new bases of political association and political institutions which may combine legitimacy and effectiveness.

In a complex society characterised by a number of social forces, (ethnic, religious, territorial, economic or status groups) there exists a competition for political power and political space for the newly mobilised groups. For assimilation of these social forces, entrenched traditional interests need to be overthrown as well as incorporated with the new political groupings during the process of modernisation. In case the above does not happen, institutions tend to breakdown or lose legitimacy to govern. "What was not adequately envisaged was how participation would raise the aspiration of the people and become source of greatest challenge to the state".(7)

-6-

With reference to the Indian State, Rajni Kothari (8) argues that " Citizens become objects of three dominant projects of the State", namely, development, secularism and security. These three projects are seen by Kothari as inter-related as "development projects based on narrow principles of economism is centralising, homogenising and secularising". Hence, inevitably, ecological and ethnic tensions mount which, in turn, are "interpreted as law and order problems by the security project of the State". Thus, he finds the unbalanced development as the root of mounting political violence.

Furtheron, Kothari is of the view that the liberal conception of democracy contained in itself a certain view of relationship between State and society which was "based on moderation and restraint in the use and abuse of power". This set out a "set of legal and political norms and conventions" which legitimised the institutional framework as well as checked the excesses and concentration of power. "Today elites of most democratic societies are losing their original impulse towards moderation in the use and dispersal of power and faced by the challenge of unprecedented politicisation of masses, are succumbing to the temptations of using populist postures as a means of political survival".

With increasing political participation by the masses due to socio-economic modernisation", politics of performance" has been replaced by "politics of postures". The State, thus "takes recourse to authoritarian short cuts" and, in the last

resort, to "the sheer politics of survival". Kothari is of the firm opinion that this "Politics of deceit" generates tensions and the "decline in the mediating role of politics sows seeds of disaffection, parochial separatism and ultimate disintegration." Further, he says that, the State attempts to halt all this by resort to one more repression, by transforming issues of social management into issues of law and order and 'Security' and by increasing incidences of violence both horizontally (inter-community) and vertically (between State and the people). He calls these tensions the "crisis of institutions".

The view of non-accommodation of new social forces and newly mobilized groups as the root cause of most of the newly emerging tensions in the polity has been put forward by many scholars in various ways.

Francine Frankel emphasises the non- accommodation of "middle" castes and classes which, she hastens to point out, is "actually composed of the historically disadvantaged communities of the backward classes. Competition for power between numerous backward classes and the leading sections of the forward castes, bring new pressures on India's resilient democracy".(9)

J. Dasgupta emphasises the absence of proper accommodation of ethnic groups in the democratic and developmental process which generates ethnic activism. This undermines the legitimacy of state institutions.(10) Ghanshyam Shah, (11) on the other hand, points out the absence of enough political space for the newly mobilized grass-root sections (mobilised under organisational support of the left-

parties). He holds that developmental programmes of the government fail to associate grass-root level under - privileged groups, which, in turn, results in attempted repression by the State apparatus as well as by private armies. All this goes on to undermine the government's legitimacy at the local level.

James Manor, on the other hand, adds another section to complete the picture offered by the above the scholars. He emphasises the organisational decline of the political parties and their failure to accommodate and aggregate diverse interests as an important factor contributing to the decline in the governability of the Indian State. (12)

Atul Kohli, however, says that "the troubles of democracies are rather political in origin and represent crises of legitimacy " which in turn is only partially contingent on socio-economic factors - - -." Politically corrosive impact of social mobilisation seems considerable, so have been the consequences of the actions of a 'soft' state.(13) He feels that decay of institutions "generally reflect erosion of norms" (14) and leads to governments which do not govern well.

In a later writing, Atul Kohli holds that at one point of time or the other all developing societies become difficult to govern as has been the case with India lately. "India is still, of course, a functioning democracy, but increasingly it is not well governed."(15)

"Various social groups have pressed new and ever more diverse political demands in demonstrations that often have led to violence. The omnipresent but feeble state, in turn, has

vacillated; its responses have varied over a wide range: indifference, sporadic concessions and repression".(16)

Kohli traces the difficulty in governing India to colonial times when the foundations of a centralised and, therefore, a modern State was laid but the "writ of their law never carried far, colonial power seldom penetrated the tradition bound villages of India".(17)

He says that the national movement laid the basis of a new system of authority but also sowed seeds of divisiveness with the partition and post - partition events. Further on, he says, that despite a turbulent past, hopes of a stable India were cherished by Nehru & others in shape of new political institutions: the new Constitution kept the armed forces apolitical and established a federal structure to cater to the diversity of a vast country. Congress party, being wide based enough, incorporated previously unmobilised groups and the one party dominance offered legitimacy to the newly founded political institutions.

The new "Political arrangement - - - was clearly dominated by an educated, nationalist elite. The business class was also politically influential and the landed and caste elites were slowly brought into the ruling coalition. The new leaders enjoyed widely perceived legitimacy partly as a legacy of the national movement and partly because the traditional patterns of authority was still intact."(18) Also, the leaders as well as the masses had "considerable faith in the State's capacity to deal with" the problems of development and equity".

Kohli holds that, Since 1967, "the state's capacity to govern has declined". i.e. capacity to simultaneously promote development and to accommodate diverse interests has declined. This, he feels, is manifested in the widespread activism outside established political channels, often leading to violence. This is compounded by the incapacity of the state to deal with the pressing problems of law & order.

Kohli feels that the important cause of these political problems is "disintegration of India's major political institutions, especially the decline of its political entity, the Congress Party".(19)

The loss of Congress Party's hegemony coupled with the non-emergence of any other national party has left behind an organisational vacuum in India's political space.

"Over the past two decades, a legitimate and moderately stable State that was confident of its ability to lay out India's agenda for socio-economic change has evolved into a reactive state. The state is omnipresent but feeble, it is highly centralised and interventionist, and yet seems powerless". (20)

Further on, Kohli holds that the State's legitimacy to govern is undermined due to (a) absence of enduring coalitions (b) policy ineffectiveness (c) an incapacity to accommodate political conflict without violence.(21)

The decline in the State's legitimacy to govern has a reactionary impact on the primary function of the State- the authoritative allocation of resources. Faced with a situation where the State has been falling short of its legitimate function

of resolving conflicts in the society. As pointed out by Kuldeep Mathur, points out, the collective violence resulting from conflicts between religious groups, ethnic communities or caste agglomeration and of a nature which threatens the existence and cohesion of a country have " sharpened in the recent past after the State began to intervene more actively to initiate social and economic changes". He further opines that "concealed within the manifest forms of conflict are factors that emanate from the consequences of State development policy and initiative for change. - - - Unbalanced development has politicised civil relations and led to violence in form of inter-regional conflict and ethnic tension".(22) The feeble but omnipresent Indian State is unable to resolve the conflicts which are, largely products of its own policies.

I.2 Legitimacy and Coercions: Need to study the coercive apparatus of the state i.e. the police :-

In view of the above discussion, it is evident that all the major scholars agree that there has been an increasing and continuous loss of legitimacy of the Indian State. The State is faced with a difficult situation in which the citizens has been unwilling to submit to the authority of the State.

As pointed out earlier, all states in the world exercise their writ with a combination of legitimacy and the coercive capability. Faced with a declining legitimacy, the State naturally starts resorting to open coercion. As already discussed, Rajni Kothari is of the view that the State attempts to halt the decline in its legitimacy and growth of collective

violence by transforming issues of social management into issues of law and order and security". This, in turn, implies that such a State action again increases incidences of both horizontal (inter community) and vertical (between state and the people) violence.(23) The resultant is that this category of State action (transforming the issue of social management into those of law and order and using violence to suppress them) further on erodes the legitimacy of State action, necessitating further violence (23) and coercion by the State. Thus, a vicious circle is created which gives rise to what Kothari calls "crises of institutions" and Kohli calls the "Crisis of governability".

P.D. Sharma explains the same process as a "struggle between the force of conservation (i.e status quoist law and order administration) and pressures of social change" which is "symbolised by an animated coexistence between stability - oriented law and change - based order in society. - - - One of the major imperatives of development in a country like India can be identified as a shift from regulatory orientation to development orientation of law as an effective vehicle of social change". But the law enacted by the "Legislatures tend to arrest spontaneous social change of desirable variety. Police, as a mere executive arm of the government reinforces this effort of conservative laws, which the judiciary also stands to confirm and defend".(24)

Hence, in order to discern the dynamics of social change in India, it becomes important that the state's executive arm: the police apparatus- is examined for it tries to enforce a

legal framework which often militates against the need for social charge.

Admittedly, the loss of legitimacy for the state is a political problem and needs to be dealt with on a political plane. However, when the State is confronted with a difficulty to enforce its writ on account of declining legitimacy, it resorts to coercion. (Which in turn further injures the legitimacy in the longer run.) This is done with the help of the executive arm of the State, that is, the internal security apparatus: The police.

Therefore, it is important that the police apparatus and it's role in a democratic and multi-ethnic society is carefully examined because (a) Police, being the executive arm of the state, is often used by the state to pursue its political goals since it faces an impotence to enforce it's will on the citizenry on a political plane owing to declining legitimacy (b) Police is used in a way , so as to serve important political purposes of the coalition in power by enforcing the laws which uphold the present structure arrangement. These structural arrangements are favorable to the ruling coalition and the laws which uphold this arrangement becomes status quoist in their operation. Further more, on account of declining state legitimacy, coercion rather than political measures are used to enforce these laws. Conflicts in the society arising out of the policies of the states are attempted to be suppressed since political assimilation and resolution of the same becomes increasingly difficult with the declining state legitimacy. Hence, a careful examination of the police framework and its

operation becomes pertinent in order to discern the socio-political dynamics of the Indian State.

I.3 Brief History of Police in India:

Before we go on further to examine the Police apparatus, especially the Union's Police apparatus, it is important to attempt a brief survey of Police in India so as to put the rest of the discussion in context.

Policing has been amply developed in India ever since the ancient times. Police administration in India during the ancient times was premised on the concepts of Dharma and Danda. There were functionaries to ensure the operation of danda. Kautilya's Arthashastra talks of a rather detailed Police organisation. Police administration of every group of 200 villages was headed by a Kharvatika; every group of 400 villages had a Dronamukha while every group of 800 villages was headed by a Sthaniya. The basic unit of police administration was ten villages with a Sangrahna to oversee the police functions. (25)

The medieval State depended heavily on military power for its survival. Police functions of a town were under a Faujdar while a Jagirdar enforced order in the rural areas. These police officials were often responsible for revenue collection as well; a part of which formed their salary.

However, modern apparatus of internal security can be

traced back to the middle of the 19th century. Despite there being an almost unbroken thread of internal security concerns over the centuries, conceptual and practical bases of policing were altered by the British Government after the 1857 mutiny. The Royal Proclamation of 1858 declared " We hold ourselves bound to the nations of our Indian territories by the same obligation of duties which bind us to all other subjects; in their prosperity be our strength ; in their contentment our security and in their gratitude our best reward." (26)

This could be achieved only by organisation, activation and development of an efficient administration, especially, that of police. Police reorganisation was already an important concern of the Court of Directors since 1856 and a new Police Act had already been passed in Madras 1859; though with a slightly different objective.

The Government of India, appointed the Police Commission on August 17, 1860. The terms of references of this commission included them to bear in mind that the functions of police are either protective or repressive and the repressive functions of a civil police are different from functions purely military, and that this may not always be clear in India.

Here, it would be pertinent to point out that this philosophy of police reorganisation seems to have continued; albeit with minor modifications, even in post-Independence India. Notwithstanding the liberal-democratic state which was set up in 1947, as we shall subsequently see , police powers were retained

with the central government in the form of those conferred on the central forces and over-riding powers of the central governments.

I.2.1 POLICE COMMISSION 1860 :

The terms of reference of this commission appointed on 17th August, 1860, were:

- (a) To ascertain numbers & costs of the police and quasi-police of every description at present serving in each province throughout the British territories in India, who are paid by the government from the general revenue.
- (b) To suggest the government any measure whereby expenditure may be economised or efficiency increased in the existing police forces.

The six-member commission submitted its first report to the Governor-General-in-Council on 22 March 1861 which was sent to Bengal and NWFP as well. Final report was submitted on 17 January, 1862 which had separate reports for each province.

The main recommendations to His Majesty's Government were:-

- (i) Military police was to be eliminated and all kinds of policing to be entrusted to a civil constabulary.
- (ii) Civil Police to have own separate administration and establishment under an Inspector-General of Police in every

province.

- (iii) Superintendents of Police were to supervise village Police.
- (iv) Inspector-General of Police was to be responsible to the provincial government as the Superintendents of Police was to be to the Civil Collector.
- (v) Recruitment of Constabulary and Sub - Inspectors was recognised as the backbone of the Police force.
- (vi) The commission recognised the pivotal role of the Station-House Officer (SHO) in the new organisational structure and observed that service conditions , salary etc. of the SHO must be improved so as to attract talented men and there by improve the efficiency of functioning in the Police.

The major steps taken on these recommendations by the government of India were:-

- (a) Military Police was eliminated and the Police powers were taken from the DM and vested in a SP and I-GP.
- (b) Uniform Police System was developed all over India with a small degree of decentralisation in police powers.
- (c) Police was organised on provincial basis and was made generally subordinate to the magistracy.
- (d) The act which followed these recommendations avoided details and thus offered a general framework only.

I.1.2 Police Act of 1861. (Act V of 1861):

This act was framed broadly on the lines of the above recommended steps taken by the government in light of the recommendations of the Police Commission of 1860. It was enforced from 22 March 1861. Sections 3 & 4 of this Act vested the powers of police administration of a province in an IGP, DIGP and AIGP and that of a district in a S.P. & ASP under the general guidance and supervision of the District Magistrate.(DM)

Here, we must point out the continuity of the same structure of police organisation even after independence. We may also note that the linking between the D.M. and S.P. did not exist in England after 1829 and the Court of Directors had advised against it in 1856. However, the British experience in the 1857 Mutiny outweighed such an advice and the linking between the D.M. and SP was adopted to enable utilization of the police force to perpetuate the British rule in India.

I.1.3. Bombay Presidency :

All Provinces except Bombay adopted the Police Act of 1861. In Bombay, Regulation 12 of 1827 continued to govern the police till it was replaced by the Bombay District Police Act 1890. The post analogous to that of an IGP- that of a Police Commissioner- already existed in Bombay since 1855. This post was abolished in 1860 on grounds that it caused friction in administration. The duties of the Police Commissioner were transferred to the Divisional Commissioner . Sir James Ferguson

pointed out the laxity of this arrangement and emphasized the need for a definite police head in 1861. This view was accepted in 1884 and the first IGP for Bombay was appointed only in 1885. Henceforth, large powers of direction and control were left with the Revenue Commissioners

Similar powers were granted to Revenue Commissioners in other provinces as well by making them ex-officio Deputy Inspectors- General of Police. Recruitment to these posts was started via a Public Service Commission in 1893 on the basis of a competitive examination in England and by promotions of already serving officers.

I.2.4 Police In Indian States:

The police setup in the Indian States was varied and largely haphazard. For instance, Hyderabad had hardly any police organisation. However, states like Travancore - Cochin had a well organised police system under chieftains called 'Pramanis' who enforced laws, dispensed justice and collected taxes with the assistance of officials called Bala Sarwadhikaritikas and Parwatiyakars. Bhopal had a regular police force before 1857.

Despite furtherance of police reforms, the crimes did not register a downfall which sparked off widespread concern. In 1890, Bengal government appointed a committee under J. Beames, Commissioner of Bhagalpur. He made extensive recommendations. A similar committee was appointed in 1890 in Oudh under W. Kay (Member, Board of Revenue) who pointed out flouting of the

Cr.P.C. over 30 years of it's existence.

Consequent to

all this, another Police Commission was ordered in 1902.

I.2.5 POLICE COMMISSION 1902:

This commission was appointed by Lord Curzon on 3 February, 1902 with H.L. Fraser as Chairman [Chief Commissioner of Central Province] and 4 European & 2 Indian members plus a Secretary. The summary of the terms of reference of this Commission, summed up, are as follows:-

To enquire whether-

- (a) Organisation, training, strength and pay of different ranks of the district police, both superior and subordinate were adequate to secure the presentation of public peace.
- (b) Existing arrangements secure that crime is duly reported.
- (c) System of investigating offenses is capable of improvement.
- (d) Forms of statistical returns is satisfactory or capable of improvements.
- (e) General supervision of magistracy over police is adequate;
and
- (f) Elucidate on Railway Police organisation and relations to district police.

After an extensive study, the commission submitted it's

report on 30 May, 1903. The commission observed- 'Police force is far from efficient. It is defective in training and organisation; it is inadequately supervised ; it is generally regarded as corrupt and oppressive and has utterly failed to secure the confidence and cordial cooperation of the people.'

The recommendations included a number of improvements in training, appointments and service conditions. It also held that disciplinary control of police officials must vest in superior police officials themselves without much interference from the district civil administration.

However, the Government of India passed order on the commission recommendations only on 21 March 1905 and effected only a few minor changes:-

- (a) Recruitment to ASP was to be made via a competitive examination to be held in England.
- (b) The post of IGP was to be filled by a member of the Indian Civil Services and in a few exceptional cases from the police itself; the government having full discretionary powers in this regard.

I.2.6. POLICE COMMISSION 1912:

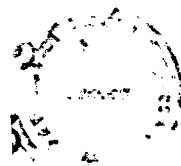
It accepted the eligibility of Indians for the competitive examination for recruitment into the Police and also advocated Indianisation of the police force to a great extent.

However, the following years saw a number of legal

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provisions which granted the police a wide range of coercive powers. Some of these were Explosives Act (VI of 1908), the Newspaper (Incitement of Offences) Act 1908 (Act XIV of 1908), The Indian Criminal Law (Amendment) Act 1908 (Act XIV of 1908) & so on.

No major reorganisation of the police was attempted there after . The Government of India Acts of 1919 & 1935 attempted some semblance of decentralisation but the over-riding authority was reserved for the Governor or the Viceroy. Even the 1935 Act which recognised police as provincial subject did not go far to alter this balance. Meanwhile, the role of police in defending the Empire was lauded by the British. To quote Mr.Lloyd:

"No force in the empire stands higher than the Indian Police. They maintain in loyal support of the government they serve, peace and order without which no political structure can subsist. To the self-governing India of future, the Indian Police force is not the least of the gifts which Britain has to offer. Truly, the Indian police has been one of the great organisations achieved under British leadership and developed by Indian rank. It has already stood by the side in the most difficult times."(27)

I.4 UTTAR PRADESH: Political Profile Calling For The Union Government's Action.

"Two trends - the growing democratisation of

traditional power relations in the civil society and the failure to create a rational basis of generating new leadership through formal political institutions- are at the heart of increasing authority vacuum in Indian politics. That vacuum, in turn contributes to the problem of governability" necessitating resort to coercion by the use of executive arm of the state i.e. the police and the para- military forces. This is symptomatic of an "increasing tendency to resort to violence to 'settle' political conflicts." (28)

This is true of both "economically developed as well as less developed areas. "Even though conditions are unique in Uttar Pradesh (U.P.), it has a thread which is common with other states of the Indian Union. Government controls large blocks of resources. The spread of democracy has mobilised a number of new groups. As a result, power conflict aimed at gaining access to the state's resources have proliferated.

U.P. has been selected for the present study for various reasons. It is the largest political unit in India- it sends 85 representatives to the Lok Sabha and has given all the Prime Ministers of India, save only three. It is the fourth largest state in terms of Land- area and largest in terms of population.

This state has an important place in the national politics of India since " in a federal system, the states are influenced by the national set up and, in turn, affect it. U.P. serves as a good laboratory for a clear understanding of

political experimentations and of the factors which effect political institutions and determine the behaviour of political actors in India." An analysis of the socio-political profile" and the "working of the government in U.P. gives an insight into those features of the political process which are common to all the federating units of India." (29) Hence, the choice of U.P. for the study of the role of union's para-military forces vis-a-vis the political conflict and resolution of the same.

According to Paul R.Brass, caste and religion are two basic social divides in U.P. ever since the nationalist phase."A traditional Hindu-Muslim conflict primarily on the issues of language and jobs developed in the 19th century in U.P.- - - The special privileges which muslims, in fact, enjoyed made the demands of muslim leaders for separate electorates and special representation in administrative services appear unjust to some U.P. Hindus, even though muslim grievances existed in other provinces. Conflict and tension increased in late 19th century and early 20th century." The muslims found organisational expression in the Muslim League and the Hindus in the Hindu Mahasabha and "The conflicts became increasingly violent.- - - The bitterness which develops between the two communities in this period has continued to be an important element in Uttar Pradesh politics."(30)

Caste conflict in U.P. has been less than marked than in many other provinces. However, with democratisation of the political plane and increasing mobilisation of the deprived

groups, caste-wars are becoming more marked. The 1981 killings of Harijans in caste rivalries at Deoli is an instance of the sharpened caste-conflicts in the state of U.P. Owing to the fact that the political failure is interpreted as law and order problem, the role played by the coercive apparatus of the state assumes great salience.

I.5 Uttar Pradesh and Union's Armed Forces : The problem and the Plan of Study:-

In the earlier discussion, it is evident that the prime concern of the study is that category of State action which interprets political failures as breakdown of law and order. The declining legitimacy of the State institutions can be dealt with the political plane but the Indian State resorts to an easier and ad hoc method - use of open coercion using the police machinery - even if the latter further injures legitimacy of the state in the longer run.

In the light of this, it would be relevant to attempt to discern if the Indian state has been resorting to coercion in instances of societal violence where political assimilation would have gone a long way.

In the state of Uttar Pradesh, political parties have not been very successful in the assimilation of Caste and Communal cleavages as is evident in the recurrent and not too

infrequent eruptions of collective violence on caste and communal lines. (Chapter V) The study attempts to arrive at conclusions about the role played by the Union's armed forces in the state of Uttar Pradesh.

The study attempts to point out that the deployment of CRPF has been in a pattern which indicates that the Police deployment has been made to suit the political needs. Admittedly, situational demand in an instance of collective violence is an important factor. However, the pattern in which CRPF deployment have been made combined with the political climate of U.P. vis-a-vis the Union government also indicates a highly political role being played by these deployments. The instances of collective violence and the deployment pattern when correlated, gives credence to our earlier contention that faced with a political problem of declining legitimacy, the State has resorted to coercion with the help of the Police apparatus. (Chapter V).

Chapter IV attempts to place the role of the Union government vis-a-vis the state responsibility of law and order administration in context. In this chapter, the study shall try to examine the centre-state dimension of the problem.

Chapters II & III attempt to examine the constitutional and legal frame work of the operation of the Union's police apparatus and armed forces in context. Chapter II attempts to clarify that the framework of operation vis-a-vis the Constitutional provisions is overly conscious about the security

issues. This is evident in our discussion about the spirit of the Constituent Assembly Debates. We have also attempted to point out the over-riding responsibility of the Union government as is evident in the Debates on the relevant sections of the Constitution in the Constituent Assembly. Relevant Constitutional provisions have also been examined in this chapter.

Chapter III attempts a critical examination of the Code of Criminal Procedure provisions applicable to the CRPF while under deployment in any state. No discussion about the deployment of the CRPF and the role played by it can be complete without an attempt to examine the legal frame work within which it operates, especially, in view of the fact that the laws become status quoist in their operation. (see I.2).

Conclusions have been summed up in Chapter VI.

- (1) B. Denitch. "Legitimacy and Social Order" in Denitch B. (ed.) Legitimation of Regimes. London: Sage, 1979 p .9.
- (2) Kuldeep Mathur " The state and the use of Coercive Power in India" in Asian Survey Vol xxxii No4 April 1992. p.337.
- (3) Ibid.
- (4) Samuel P. Huntington. Political order in Changing Societies. New Haven: Yale Univ. Press, 1968. p.Vii
- (5) Ibid.pp.1-2.
- (6) Ibid.pp. 3-4.
- (7) Kuldeep Mathur. Op. Cit. p. 338.
- (8) It is rather impossible to do justice to the full views of Rajni Kothari who has written profusely on the erosion of democratic norms and institutions in India. Above quotes are from his book State Against Democracy:In search of humane government. New Delhi: Ajanta Pub., 1988. pp.1-20.
- (9) Francine Frankel. " Middle Classes & Castes in India's Politics" in Kohli A (ed.) India's Democracy. New Delhi: Orient Longman, 1991. pp. 225-261 .
- (10) J. Dasgupta. " Ethnicity, Democracy & Development in India" in Ibid. pp 144-168.
- (11) Ghanshyam Shah. "Grassroots Mobilisation in Indian Politics" in Ibid.pp. 262-304.
- (12) James Manor. "Parties and Party System" in Ibid. pp. 62-98
- (13) Atul Kohli. India's Democracy. New Delhi: Orient Longman, 1988. p. 13
- (14) Ibid. pp.308-9

- (15) Atul Kohli. Democracy and Discontent: India's Growing Crisis of Governability. New Delhi: Cambridge, 1992. p.3
- (16) Ibid. p.3
- (17) Ibid. p.4
- (18) Ibid. p.4-5
- (19) Ibid. p.5
- (20) Ibid. p.6
- (21) Ibid. p.23
- (22) Kuldeep Mathur "Rural Violence in South Asia" in Bjorkman J.W. (ed.) Fundamentalism, Revivalists and Violence in South Asia. Delhi: Manohar, 1988. p.159.
- (23) Rajni Kothari Op. Cit.
- (24) P.D. Sharma. Police Polity and People in India. New Delhi: Uppal, 1981. pp. 79-80.
- (25) Second Report of the National Police Commission (Chairman: Dharma Vira). Government of India, New Delhi: Home Affairs (Ministry of), 1979 p. 10.
- (26) Quoted in G.R. Shah. Indian Police- A Retrospect. New Delhi Cosmo Pub. , 1989. p. 69.
- (27) Quoted in G.R.Shah. Op. Cit. p.66.
- (28) A. Kohli Democracy & Discontent. Op. Cit. p. 385.
- (29) Pushpa Sharma. Working of Parliamentary Democracy in India. Delhi; Modern, 1986. p.3.
- (30) Paul R. Brass. "Uttar Pradesh" in Weiner M. (ed.) State Politics in India. Princeton: Princeton Univ. Press, 1968. p.68.

CHAPTER II

INTERNAL SECURITY: THE CONSTITUTIONAL FRAMEWORK.

- II.1 Concern for security in the Constituent Assembly Debates:
Debates on the Fundamental Rights
- II.2 Union's Responsibility vis-a-vis Internal Security Duties:
The Spirit of the Constituent Assembly
- II.3 Over riding powers of the Union government: Dynamics of the
Constituent Assembly
- II.4 The Union and the States in Internal Security:
Constitutional Provisions
- II.5 Conclusions
- II.6 Notes

II: INTERNAL SECURITY: THE CONSTITUTIONAL FRAME WORK

In our attempt to discern the gamut of Internal Security apparatus in India, the most important document is the Constitution of India. Not only it lays down the basic principles of governance in India but also strikes down all laws which no longer conform to its principles. Hence, this study shall endeavor to place the operation of internal security apparatus in its Constitutional context.

Here, we may take the opportunity to point out that the Constitution ; despite the best efforts of the Drafting committee and the Constituent Assembly; is not far from ambiguities and obnoxious silences over issues of salience.

"Unlike the post-mutiny period of the British days, purposive thinking about the Police - Polity relationship in Republican India, has been conspicuous by its absence. Even the Constitution does not yield any major insight in this regard."(1) The compelling needs of centripetalism forced the Constitution makers to "concede to creations of Union's Police Agencies - - - Historical hangover, the elitist ethos and security needs of the country in the 50s were so paramount that any quest for a new philosophy of bureaucracy was simply out of place in the interest of continuity - - -. The Constitution of India has refrained from prescribing the structure and role of Bureaucracy and police so that the same may emanate and get shaped by the practice of democracy, secularism and nationalism.

But the continuity of these colonial structures and roles has worked at cross-purposes with the preferred ideals of the Constitution for the very reason that it has not specifically prohibited them from perpetrating the status quo." (2).

However, it is important to try to discern the dynamics of the making of India's Constitution for this very reason so as to attempt an understanding of the kind of framework of internal security administration and the kind of responsibility of the union government there in, our constitution makers had in mind. Without trying to uncover the trends patterns and ethos of the the Constitution Assembly Deliberations, any exercise to analyse the internal security apparatus in India and the operation there of would be incomplete. Before commenting on the operation of internal security apparatus and the role played by the union's para-military forces in it, we shall endeavor to point out the amount and kind of salience which was accorded to the security issues by our Constituent Assembly. If we discover that they consciously conferred a special responsibility on the union government vis-a-vis internal security, a very different set of questions shall arise than those which would arise if our analysis points out that the Constituent Assembly attempted to grant the constituent units autonomy as far as internal security administration is concerned.

Hence, the study, in this Chapter, shall first attempt to uncover the conscious intention of the Constituent Assembly vis-a-vis distribution of power with regard to internal security

administration. There on, we shall isolate Constitutional provisions and attempt to link them up to create the Constitutional framework of internal security administration.

**II.1 Concern for Security in the Constituent Assembly:
Debates on the Fundamental Rights**

The Indian constitution broke new grounds when it incorporated the chapter on Fundamental Rights. This chapter guaranteed certain basic rights to the individual. However, ironically enough, the mood of the Constituent Assembly vis-a-vis security issues and the extent of state-power to grapple with disturbances is also best reflected in the evolutionary proceeding of this chapter(part III of the Constitution).

The sub-committee on Fundamental Rights in it's draft report to the Constituent Assembly "formulated five specific rights of the citizens, viz.:

- (i) The right to freedom of speech and expression,
- (ii) The right to assemble peacefully and without arms,
- (iii) The right to form associations or unions,
- (iv) The right to secrecy of correspondence, and
- (v) The right to freedom of movement throughout the union, to reside and settle in any part of the union, to acquire property and to follow any occupation, trade, business or profession" (3)

Of the above rights formulated, only (v) i.e.,right of

freedom of movement, residence, occupation and acquiring of property was incorporated in clause 9 and was guaranteed. All the others were subject to general public order and morality. Thus, we find a curtailment of the rights of the individual in favour of granting coercive powers to the state so as to facilitate the administration of public order and hence internal security concerns.

This obsession of the framers of the constitution with security issues is further exemplified in Alladi Krishnaswami Ayyer's letter to B.N. Rau on 4th of April, 1947. A.K.Ayyer held:

"The recent happenings in different parts of India have convinced me, more than ever, that all fundamental rights must be subject to public order, security and safety though such a provision may, to some extent, neutralize the effect of fundamental rights guaranteed under the Constitution."(4)

There were dissents against such a 'high-security' framework for the operation of internal security apparatus in the country. K.T. Shah opined that he was not in favour of subordinating the rights to "public order and morality". However, his reasons for such a view were that this expression "was vague and implied different things for different cultures", especially in view of "the diversity in India." (5) He was not critical of the emphasis on law and order on grounds that it entailed a highly security-conscious state machinery but of a lack of clear exposition of the conditions in which such provisions in the Constitution could be operationalized.

In view of the members' comments, the select committee on Fundamental Rights reconvened on 14th April, 1947 where A.k. Ayyer succeeded in convincing the committee on the necessity of imposing restrictions on the rights to freedom in situations of grave emergency and danger to the security of the state. Hence, clauses 9-14 were recast as clause 10 and read as : "There shall be liberty for the exercise of the following rights, subject to public order and morality, or to the existence of grave emergency declared to be such, by government of the Union or the unit concerned whereby the security of the Union or the units, as the case may be, is threatened - - -. Provisions may be made by law to impose such reasonable restrictions as may be necessary in public interest." (6)

Thus, we notice a conscious attempt on the part of the Constituent Assembly to ensure that the government of the Union or that of a unit thereof was armed with enough to act on its during an emergency. A deliberate and conscious effort is discernible in the above by a Constituent Assembly which is overly conscious vis-a-vis security concerns. Dissents were directed, as we have seen in K.T. Shah's statement towards laying down of guidelines for implementing laws which would effect the security apparatus than towards abrogation of the same. The effort was towards listing of instances when executive power of the state may be exercised on security matters there-by controlling it's misuse rather than towards limiting the same .

Further on, Somnath Lahiri in the debate on the report of the sub-committee on 30th April 1947 in the Constituent Assembly, felt that "security of the union" phrase must be replaced with "defense of the union" on grounds that it was vague and could be taken advantage of by the Government. Patel, however, felt that "security" was a comprehensive term which included both external security as well as internal security while "defense" connotes external security only. Hence, such an amendment was untenable. (7)

Here, a consciousness is indicated by the Assembly towards the need to have an adequately strong Constitutional framework for the operation of the internal security apparatus. Both, external as well as internal security are given an almost equal importance. This indicates that the framers were apprehensive about the possible threats to internal security and saw a need for generating a rigorous response to it.

After 11 days of debate and recasting of many provisions, the restrictions on the Right to Freedom included the following clauses:

Cl. (2) "Nothing - - - shall effect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, sedation or any other matter which offends against decency or morality or undermines the authority or foundation of the state.

Cl. (3) Nothing - - - shall effect the operation of any

existing law or prevent the State from making any law imposing in the interests of the public order restrictions on the exercise of the rights conferred - - - .

Cl. (4) Nothing - - - shall effect the operation of any existing law or prevent the state from making any law imposing in the interest of the general public restrictions on the exercise of rights conferred - - - ". (8)

Thus, as is evident above , the Constituent Assembly severely restricted individual freedom in favour of public order, morality, tranquility etc. and there by generated a highly security conscious framework for the Indian State.

The security consciousness of the Assembly is also evident in the effort of the members to provide a 'comprehensive' description of all possible contingencies. In this endeavour, dissent amendments were often not accepted on grounds that they were virtually the same as existing provisions and were not comprehensive enough. The example of Jaya Prakash Narain's note illustrates this point rather lucidly. Jaya Prakash Narain described the entire article as " clumsily drafted" and held that the rights guaranteed were "considerably taken away" by the restrictive clauses. He suggested splitting the article into two: the first providing that, subject to public order and morality, the citizens would be guaranteed freedom to form union and associations, freedom to assemble peaceably without arms and secrecy of postal, telegraphic and telephonic conversation. The second of his draft articles guaranteed freedom of movement to

all citizens including that of sojourn and settling in any place subject to federal laws and preservation of public safety and peace.

Thus, he wanted to prescribe two different sets of restrictions for different rights. However, B.N. Rau opined that the first of these articles ~~was~~ virtually the same as contained in the draft. The second was also substantially the same but was not comprehensive enough. He held that the expression 'preservation of public safety and peace' was not sufficiently comprehensive since it might be important to impose restrictions on grounds of public morality or public health. Further, restrictions might be important on certain state subjects (e.g. prisons and mental hospitals) and such a power cannot be taken from the State. (9)

October, 1949 reprint of the draft further amplified the scope of the restrictive clauses as follows:

- (i) "or undermines the authority or foundations of the state" was to be replaced by the phrase " or undermines the security of or tends to overthrow the state".
- (ii) "in the interest of general public" to be replaced with the phrase "in the interest of public order and morality".
- (ii) "in the interest of public order, health, morality" to be replaced by the phrase "in the interest of general public".

Thus, the exceptions to the rights were amplified so as to grant to the state widespread powers vis-a-vis the security of

the state and public order, that is, widespread powers vis-a-vis operation of the internal security apparatus.

While introducing the Draft Constitution, Dr.B.R. Ambedkar defended the above provisions which granted the state widespread powers in the following terms:

"In support of every exception to the Fundamental Rights set out in the Draft Constitution, one can refer to at least one judgment of the U.S. Supreme Court. It would be sufficient to quote one such judgment - - -. In *Gitlow versus New York* in which the issue was the Constitutionality of a New York 'Criminal Anarchy Law' which purported to punish utterances calculated to bring about violent change, the Supreme Court said: "It is a fundamental principle long established, that the freedom of speech and of press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom." Dr. Ambedkar added : "what the Draft Constitution has done is that instead of formulating Fundamental Rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police powers, it permits the state directly to impose limitations upon the Fundamental Rights. There is really no difference in the result. What one does directly, the other does indirectly. In both cases, Fundamental Rights are not

absolute."(10)

Thus, Dr. Ambedkar also defended the paradigm of security consciousness. The restrictions on the Fundamental Rights premised on security considerations, especially, those of internal security, indicate a desire on the part of the Constituent Assembly to grant the state certain police powers which Dr. Ambedkar saw as inevitable. He implies that if such a power is not granted by the Constituent Assembly, it was more than likely that they would be granted by way of judicial interpretations to enable the State to contain centrifugal tendencies.

When the above Draft Article came up for consideration on 01 December, 1948, over a hundred amendments were proposed, of which the following three were accepted:

- (a) Mihir Lal Chattopadhyay sought deletion of the words "subject to other provisions of this article" in Clause (i) on grounds of redundancy.(11)
- (b) K.M.Munshi sought redrafting of Cl(ii) so as to omit 'sedation' and replacement of words 'undermines the authority or foundation of the State by words or undermines security of, or tends to overthrow the State' on grounds that Sedation in Section 124 A of Indian Penal Code had been a notorious one during the Independence struggle. (12)
- (c) Thakurdas Bhargava proposed the insertion of word 'reasonable' before restrictions in Clauses (iii) to (vi) so as to make the Supreme Court the final arbitrator.

These amendments, especially the second one further amplified the scope of the restrictions premised on security considerations as it provided for even pre-emptive action.

The above delineation clearly points out that the framers of the Constitution were clearly concerned to ensure that the State is granted enough powers to be able to deal with all contingencies. The discussion above has pointed out that the first restriction imposed on Fundamental Rights was that of it being subject to public order and tranquility. Probably, the existing internal security scenario at the time of the framing of the Constitution prompted the Assembly to concede to the highly security-conscious framework.

Hence, the questions which arise today are not about the operation of the internal security apparatus but about the need to review such a framework-Constitutional as well as legal. We shall examine this issue subsequently .

II.2 Union's Responsibility and Internal Security Duties:

The spirit of the Constituent Assembly:

Another important and contested area in the operation of our Constitution is that of the mutual responsibility of the union government and the states vis-a-vis internal security duties. Hence, the Constitutional provisions apart, here we shall attempt to discern what the framers of the Constitution desired in this aspect of our Federal polity. We shall try to follow the

dynamics under which the existing scheme of sharing of subjects between the union and the state governments emerged.

The scheme of power sharing envisaged under the Cabinet Mission Plan devolved the jurisdiction over foreign affairs, defense and communication and all powers incidental to these to the Union government. Rest of the powers including the residuary powers were vested in the state governments.

The first attempt to explain these powers was made by B.N Rau, the Constitutional Advisor to the Constituent Assembly in September, 1946. He tried to explain the scope of these Union powers and compared and contrasted them with other major Constitutions of the world as well as with the Government of India Act , 1935.

The Objectives Resolutions moved by Pandit Nehru on 13 December, 1946 envisaged a Republic of India wherein the various territories would possess or retain the status of autonomous units together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as were vested or assigned to the Union, or as were inherent or implied in the Union or resulted there from. (13)

However, in the debate on the Objectives Resolution, P.D. Tandon, (14) S.K. Sinha (15), S.P. Mookerjee (16), Dr. Ambedkar (17) and Ujjwal Singh (18) all underlined the need to have a strong centre. The consensus in the Assembly was towards

strong centre but indications were given that a scheme of limited powers to the centre might be accepted to secure the cooperation of the Muslim League in framing a Constitution for a United India.

Frequent reference to inherent, implied or resultant powers of the Union are sufficient indication of the Assembly's desire for a wide definition of Union's powers; as shall emerge in the subsequent discussion.

Alladi Krishnaswami Ayyar emphasized the principle of union/ federal laws having primacy and paramountcy over provincial laws with special attention needing to be paid to the execution of federal laws and subjects of states or provincial militia. (19)

A.K. Ayyar added that there was a need to recognise the doctrine of implied powers to save encroachment by the Union on subjects reserved for the units. (20)

K.M. Munshi, on the other hand, restricted himself to listing and restricting the subjects including certain entries in the Federal list of the Government of India Act 1935. In 'Defence', he listed 4 items, namely, "the raising, maintenance and control of naval, military and air forces and employment thereof for the defence of the Union and the execution of the laws of the Union. "(21)

A.K. Ayyar, in a similar vein, held that defence included "the employment of armed forces of His Majesty for the

defence of the province and for the maintenance and execution of the laws of the Union and of the provinces" including all aligned powers. (22) Thus, he offered a very wide definition for 'defence'.

As is evident by now, the Assembly desired to establish a centre which possessed enough powers to tower over the units in times of emergency. A consensus existed as far as the need for a strong centre is concerned. In addition to this, the Union power of 'defence' was interpreted widely enough to bring under it the internal security functions as well. Thus, we note that two important points emerged from the Constituent Assembly Debates : (a) A strong centre was needed (b) Defense was to be all-encompassing and comprehensive.

About the scope of the Union powers of defence, further discussion continued with B.N. Rau defining 'defence' so as to mean the defence of the Union and of every part thereof including all preparation of defence. In particular, according to him, 'defence' includes "(1) Raising, training, maintenance, control and employment of the naval, military and air forces of the union [e.g. the Indian Territorial Force constituted by the Act of 1920], not being forces raised for employment in Indian states or military and armed police maintained by provincial governments; - - -."(23)

On the question of the scope of 'defence' powers of the Union, the Union Powers Committee of the Constituent Assembly

concluded that 'Defence' includes "defence of the Union and every part thereof and includes generally all preparations for defence as well as such acts in times war as may be conducive to it's successful prosecution. In particular, 'defence' includes (1) The raising, training, maintenance and control of naval, military and air forces and employment there of for the defence of the Union and the execution of the laws of the Union and it's units - - -."(24)

Here once again we note that the power of 'defence' is construed to include internal security as well. This is especially so when combined with the understanding of 'security' as delineated earlier.

The Draft Report and the Final Report of the Union Powers Committee carried on the delineation of the scope of defence powers of the Union on similar lines and added matters incidental to it.

Meanwhile, partition of the country necessitated a fresh evaluation of Division of Powers. It also removed the need for limiting the Union's powers in order to secure the cooperation of Muslim League.

The notes submitted by stalwarts like K.T. Shah, K.M.Munshi, Gopalaswami Ayyanger and A.K. Ayyer to the Union Powers Committee show a wide measure of agreement on the essentials of the federal relationship: Union's jurisdiction would extend to all matters implied, inherent and resultant from

express powers and the primacy of Union's law in case of conflict with a provincial law on the Concurrent list subjects.

Gopalaswami Ayyanger recommended three legislative lists (25) while K.M. Pannikkar even suggested a 'Full Union' and abrogation of the federal principle to deal with the centrifugal tendencies (26).

After June 3 Plan and thus imminent partition the Union Powers Committee and the Provincial Powers Committee met jointly on June 5, 1947 and concluded:-

- (1) The "Constitution should be a federal structure with a strong centre".
- (2) "There should be three exhaustive lists viz. Federal, Provincial and Concurrent with residuary powers to the centre".
- (3) "The states should be at par with the provinces as regard to the federal list, subject to the considerations, if any, of special matter which may be raised when the lists have been fully prepared."
- (4) "Executive authority of the Federation should be co-extensive with its legislative authority ." (27)

Further, the Union Powers Committee in their report dated 17 April, 1947, recommended a Federal List. The entries there in vis-a-vis security issues were as follows:-

1. The defence of the Union and every part thereof and generally, all preparations for defence as well as all such acts - - -.

2. The raising, training, maintenance and control of naval, military, and air forces and employment thereof for the defence of the union and execution of laws of the Union and its units; the strength, organisation and control of existing armed forces raised and employed in the states.

In the 01 July, 1947 report, preventive detention was also included so as to override the similar entry in the provincial list on grounds of 'security of India'.

Criticisms to the report were many. However, vis-a-vis security issues, only K. Santhanam observed that the conception of a strong centre was not only making it responsible for every thing and giving it adequate powers, but also was making it autonomous enough.

A lack of debate on the scheme of division of powers which implied overriding powers of defence and public order to the Union, indicates a consensus on this issue within the Assembly.

Thus, we can hold that our Constitution makers had arrived at a consensus to vest the Union government with powers to defend the State or any part thereof and also authorised the Union government's control over the union's armed forces deployed in the states. This indicates a desire on their part to vest the Union with overriding police powers as seen in the latter being vested with implied, resultant and inherent powers as well as with the residuary powers. When this is combined with Dr. Ambedkar's statement that if such a power is not granted by the

Assembly, the Supreme Court is bound to grant such police powers to the Union government to deal with the centrifugal tendencies, a conscious generation of a strong Union government with overriding responsibility and powers vis-a-vis the states in internal security matters is indicated .

II.3 Overriding Police Powers of the Union Government: Dynamics of the Constituent Assembly:

In this section, attempt shall be made to examine the patterns, trends and opinions inherent in the Constituent Assembly debates vis-a-vis overriding police powers of the Union as under the Emergency Provisions. This shall not only serve the purpose of supplementing our discussion in the preceding section of this chapter but also investigate another contested area of the Indian Federal structure and the resultant internal security relation between the Union government and the state governments.

The desire of our Constitution makers to include enough provisions for the Union government to handle any emergency situation is more than clear in our discussion till now." One of the major issues to engage the attention of the Constituent Assembly was a desire to include adequate provisions in the Constitution which would enable unified, speedy and effective action in situations of an emergent nature." (28)

Under the Acts of 1909 and 1919, ample reserve powers were vested in the Governor-General and the Governors of the provinces. The Act of 1935 envisaged provincial autonomy with responsible ministries accompanied by a Constitutional delimitation of legislative and executive powers between the Federation and the units. This creation of autonomous provinces created two problems:

- (a) To generate mechanisms which would enable the centre to direct and control provincial policies and actions in an emergency such as war or internal disturbances.
- (b) To make provisions for carrying on the administration if the machinery for ministerial government in the States failed to function .

The Act of 1935 had answers to these questions: it provided for the provincial autonomy to be subordinated to the requirements of the emergency situation and the federal legislature had full powers to make laws on all matters, even those in the Provincial list where, in normal times, exclusive power would rest in the provincial legislature. (Sec.102 of Act of 1935). Vis-a-vis cases of failure of the ministerial government in the provinces, Sec. 93 of the Act of 1935 provided for the Governor to suspend the operation of any part of the Act as he considered necessary and assume powers otherwise with any of the ministries or the legislature. Similar powers were conferred on the Governor- General at the federal level.

However, the Union Constitution Committee in its meeting on 8 June, 1947 decided not to vest any special powers in the President on the lines of those of the Governor-General. All his functions were to be exercised on the advise of his Council of Ministers who, in turn, were responsible to the Federal legislature.

Regarding discretionary powers of the Governor of a province to declare a state of emergency, the Provincial Constitution Committee in its 9 June, 1947 meeting decided against vesting any such power in the Governor. In the joint meeting of the Union and Provincial Constitution Committee on 10 June, 1947, it was decided that if the Governor of a province apprehends any grave menace to peace and tranquility of a province or any part thereof, he would send a report to the President for further action (in effect the Union government). In sending such a report, the concurrence of the provincial ministry was not seen to be necessary. Here, it is more than evident that the role of the central government in internal security duties was conceived as of a supervisory and corrective nature. The Union's authority vis-a-vis peace and tranquility in states was thus seen as one greater than that of the states.

During the discussions on the Report of the Provincial Constitution Committee, K.M. Munshi moved an amendment designed to enable a Governor, if he was satisfied in his discretion that a grave situation had arisen which threatened the peace and tranquility of the province and it was not possible to carry on

the government in accordance with the advice of his ministers, to assume to himself by a proclamation, all or any of the powers vested in any provincial body or authority . The proclamation was to be communicated to the President immediately for appropriate action under his emergency powers and would cease to operate after two weeks (28). It was expected that the President would take suitable action within this period.

H.N. Kunzru opposed conferment of such drastic powers on the Governor and moved an amendment to limit the Governor's power to making a report to the President and it would be up to the President to take necessary action under his emergency powers. (29)

G.B. Pant supported the principle of Kunzru's amendment. Sardar Patel, as the chairman of the Provincial Constitution Committee and the person who piloted the Draft / Report in the Constituent Assembly, accepted this amendment. (30)

The Constitutional Adviser's Memorandum on the Principles of Union Constitution dated 30 May, 1947 did not contains provision for an emergency but conferred a special responsibility on the President for prevention of a grave menace to peace and tranquility of the Union or of any part of it, and so far as this special responsibility was concerned, the President could act on his own discretion, overruling or ignoring the Council of Ministers.

Both the above, the rejection of the provincial autonomy vis-a-vis security administration as evident in Kunzru's amendment as well as an effort to confer special responsibility on the President in case of grave threat to peace and tranquility of the Union or any part thereof, reflects an acceptance of a unitary feature in the Constitution. The Constituent Assembly accepted the need to place upon the Union government a higher responsibility which could over-ride provincial autonomy, if peace and tranquility were gravely threatened. Alladi Krishnaswami Ayyar and N. Gopaldaswami Ayyangar, in a joint memorandum, included a clause which conferred upon the Federal Parliament to make any laws on subjects in the provincial list, if the President declares, by a proclamation, that a grave emergency exists which threatens the security of India, whether by a war or internal disturbance. This would not curtail the units' legislative powers but in case of a clash, the Federal law was to prevail. (31)

Further, K.M. Pannikar, in his reply to the questionnaire on the functions of the President, suggested that he should be "responsible to see that the integrity of the Constitution was maintained and that necessary and sufficient action was taken to meet any emergency that might arise in the Union." (32)

S.P. Mookerjee held that in case of a grave emergency and in matters of conflict between two units, the President on advice of the Union Cabinet should have all the powers necessary,

including the power to suspend or annul the acts, executive or legislative, of a provincial government.

K. Santhanam wanted a separate section to be included on the "Emergency Provisions" which was to authorise the President (on receipt of the Governor's Report or by his own satisfaction) to suspend the provincial constitution, promulgate an ordinance applicable to the province and issue orders and instructions to the Governor. This proclamation was to be ratified by the Federal legislature within six months or it was to cease to operate. The President was to restore normal government in the provinces as soon as the emergency ceased to exist.(33)

Gopalaswami Ayyangar agreed to the need of such a provision but questioned the all comprehensiveness of the Presidential powers vis-a-vis the provinces as proposed by Santhanam.(34)

Thus, we note a consensus on the need to grant overriding powers to the Union government to deal with internal disturbances and 'threats to peace and tranquility.' That is to say that a consensus prevailed in the Assembly for a superior role of the Union Government in internal security affairs. Differences existed only on the form these provisions must take and how much power must be granted to the President and not to the Union government.

The Draft Constitution proposed by the Constitutional

Advisor in October, 1947 greatly enlarged the scope of such powers and included a separate clause which granted discretionary powers to the Governor vis-a-vis provincial Council of Ministers and other officials.(35)

Clause 182 of the Draft Constitution recognised the power of the President to declare, by a proclamation of emergency, if the situation warrants such a step, that security of India is threatened by war or internal disturbance. It also conferred on the President, the power, on receipt of the proclamation of the Governor, to issue a proclamation declaring that a grave emergency existed whereby peace and tranquility of the province is threatened. In both the above cases, the Federal legislature became vested with all legislative powers of the said province. Such proclamation were subject to the approval of the Federal Parliament within six months. (36)

Clause 191 vested the power in the central government to issue directions to the provincial government when a proclamation of emergency was in force as well as confer or impose authority and duties on federal officers , which otherwise is entrusted to the provincial officials.

The Drafting Committee reshuffled these provisions and talked of two levels of emergencies- the first one was the National Emergency which affects the security of the Union or any part thereof and the second kind being confined to the concerned state. These clauses empowered the President to proclaim an

emergency on his own, even in anticipation of a situation of the emergent kind, subject to Parliamentary approval within six months. (37)

Draft Article 276 empowered the Union government to issue directions about the manner in which the executive power of the province was to be exercised during a proclamation of an emergency and also entrusting of provincial functions to federal officers.

All the Rest Draft Articles were same in substance as that proposed by the Constitutional Advisor.

Thus, we note an almost unanimous inclusion of the provisions empowering the central government to exercise an overriding influence on the executive authority of of the province during an emergency.

Some members which included V.T. Krishnamachari, B.H. Zaidi, Sardar Singhji of Khetri and Sardar Jaidev Singh moved a resolution for inclusion of a new clause to which the Drafting Committee agreed . Draft Article 277 A was included which was later renumbered as Article 355 in the Constitution of India. This article speaks of a "Duty of the Union to protect states against external aggression and domestic violence".

After it was decided in the meeting of the Special Committee on 11 April, 1948 that the Governors were to be appointed by the President, they were stripped of all discretionary powers that were proposed by the Constitutional

Advisor (38).

Thus, the role of Governor was further reduced and autonomy of provinces further made subordinate to an overriding role of Union Government if 'peace and tranquility were gravely threatened'.

Objections were raised to such wide powers conferred on the President i.e. The Union government. H.V. Kamath was highly critical of the powers given to the centre as he felt that they would mean the Union government's invasion into state autonomy, especially, since it empowered the President to intervene on receipt of the Governor's report 'or otherwise'. (39) Shibban Lal Saxena felt that these provisions would reduce "provincial autonomy to a farce" (40).

However, A.K. Ayyar and others supported the Draft Provisions as did Dr. Ambedkar and T.T Krishnamachari.

On the whole, we can notice a near consensus all along in granting a larger role to the Union government vis-a-vis internal security duties.

The above attempt to highlight the fact that our Constitution makers were conscious to grant adequately comprehensive provisions to the Union government to deal with threats to peace and security indicates that a large role was envisaged by them for the Union government. The above survey makes it clear that the present over-interventionist role of the

Union government in the internal security matters is a direct consequence of the highly loaded paradigm granted to it by the Constituent Assembly.

II.4. The Union and the States in Internal Security Matters: Constitutional Provisions.

As already pointed out, the Constitution is ambiguous about the exact role and jurisdiction of the police powers of the states. However, Article 246 and the division of powers under it illuminates the plexus of Union- State relationship.

Entry no. 2 of State List of Schedule VII of the Constitution provides for "Police (including railway and village police - - -". However, the Constitution (42nd Amendment) Act, 1976 has qualified it as under:" - - - subject to provisions of entry 2 A of List I." (41)

This entry 2 A of List I added by the 42nd Amendment in 1976 provides for "Deployment of any armed force of the Union or any other force subject to control of the Union or any contingent or unit there of in any state in aid of civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment" (42) to be a Union subject. This, seriously reduces the autonomy of the state police administration even when a proclamation of emergency is not in operation.

Moreover, the Union government can conveniently involve itself in problems of police administration on account of the following provisions in the Union List and the Concurrent Lists:-

(a) Union List (43):

- (i) Entry no. 5: " Arms, firearms ammunitions and explosives.
- (ii) Entry no. 8: Central Bureau of Intelligence and investigation.
- (iii) Entry no. 9: Preventive Detention for reasons connected with defence, foreign affairs or the security of India, persons subject to such detention.
- (iv) Entry no 19: Admission into and emigration and expulsion from India; passports and visas.
- (v) Entry no. 27 : Ports declared by or under law made by Parliament or existing laws to be major ports, including their delimitation and the Constitutional power of port authorities there in.
- (vi) Entry no. 31: Posts and telegraph, telephone, wireless, broadcasting and like forms of communication.
- (vii) Entry no. 36 : Currency, coinage, legal tender, foreign exchange .
- (viii) Entry no. 59: Cultivation, manufacture and sale for export of opium.
- (ix) Entry no. 61: Industrial dispute concerning Union employees.
- (x) Entry no. 65 : Union agencies and institutions for:

(a) Professional, vocational or technical training including the training of police officers; or

(b) The promotion of special studies or research.

(c) Scientific and technical assistance in detection of crime .

(xi) Entry no. 70 :UPSC, All India Services, Union Public Services.

(xii) Entry no. 80 : Extension of the power and jurisdiction of members of a police force belonging to any state to any area outside that state, but not so as to enable the police of one state to exercise powers and jurisdiction in any area outside the state without the consent of the government of the state in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any state to railway areas outside the state.

(b) CONCURRENT LIST : (44)

(i) Entry no. 1: Criminal law including all matters included in Indian Penal Code at the commencement of the Constitution but excluding offences against laws with respect to the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the union in aid of civil power.

(ii) Entry no. 2 : Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of the Constitution.

- (iii) Entry no.3: Preventive Detention for reasons connected with security of a state, the maintenance of public order or the maintenance of supplies and services essential to the community; persons subject to such detention.
- (iv) Entry no. 13: Civil procedure, including all matters in the Code of Civil Procedure at the commencement of the Constitution; limitation and arbitration.
- (v) Entry no. 18: Adulteration of foodstuffs and other goods.
- (vi) Entry no.19: Drugs and poisons subject to entry 59 of List I.
- (vii) Entry no.31: Ports other than those declared by or under law made by Parliament or existing law, to be major ports.

As is more than evident in the subjects of the Concurrent list listed above, a vast range of powers are available to the Union government in both legislative as well as executive fields. This is especially so in view of the fact that in case of a clash between a Union and a state legislation on any subject on the Concurrent list, the former shall prevail. (45)

As far as actual deployment of Union's armed forces in the states is concerned, entries no. 1 & 80 of the union list are of great salience. Entry 1 confers on the union government the duty to defend "India and every part thereof ." (46). This, when viewed in the light of the spirit of the Constituent Assembly Debates, confers almost blanket powers of deployment of the Union's armed forces in defence of any part of India. Entry 80

empowers the union government to confer power and duties on the members of any police force for functioning in any other state. All this adds up to grant an undisputed control over the internal security apparatus to the union government. As K.K. Dass points out, "Armed Forces of the union include not only military (army, navy and air force) but also its armed forces such as CRPF & BSF." (47)

Further, actual deployments of the Union's armed forces are governed by Articles 254, 256, 257 (i), 355, 356 & 365. Article 246 which deals with the distribution of powers between the Union and the states, has already been discussed above.

Article 256 provides that "the executive power of every state shall be so exercised as to ensure compliance with Laws made by the Parliament and any existing law which apply in that state, and the executive power of the union shall extend to the giving of such directions to the state as may, appear to the Government of India to be necessary, for that purpose." (48)

Article 257 (i) deals with "Control of union over states in certain areas" (48) and lays down provisions similar to Article 256.

If the states refuse to comply with such directions, Article 365 may be invoked which provides that "Effect of failure to comply with, or to give effect to, directions given by the Union" shall be that "it shall be lawful for the President to hold that a situation has arisen in which the Government of the

State cannot be carried on in accordance with the provisions of this Constitution." (49) This implies that if such a situation arises in which a state government is unwilling to carry out the Union government's directives, a Constitutional emergency may be imposed by the President in the state concerned by a proclamation under Article 356.

The extreme measure available to the union government is to invoke Article 356 and there by take on the governance of the state concerned. (50)

K.K. Dass summarises the legal provisions but points out that the administrative aspects of Union-state relationship in the sphere of law and order are inseperable from the legal aspects. He is of the opinion that while "Law and order and protection of life and property is primarily the responsibility of the state governments, the Union has the authority to intervene if the former is not able or unwilling to discharge it's duties. "(51)

The importance of such powers is amply manifest in the events at Ayodhya on the 6th December, 1992. The state government was unwilling to secure the maintenance of public order. (52) The Union government certainly has over-riding powers under such circumstances, even though on 6 December, 1992, the union failed to act and the powers vested in it were not utilized.

Another important provision of the Constitution which needs a careful examination is Article 355. It reads:

"Duty of the Union to Protect states against external aggression and internal disturbance: It shall be the duty of the Union to protect every state against external aggression and internal disturbance and ensure that the government of every state is carried on in accordance with the provisions of the Constitution." (53)

Regarding this Article, K.K. Dass holds that though it figures in 'Emergency Provisions' (Chapter XVIII of the Constitution) "it makes no reference to such a situation." (54) Thus, he is correctly of the opinion that this provision is available to the union government; if situation demands, even in the normal times.

The states and the Union have different interpretations of this Article--whether it authorizes the union government for sou- motu deployments-- making it one of the most debated Articles in the Constitution . We shall discuss this issue in detail in Chapter IV.

II.5 Conclusions:-

To conclude, we may hold that the currents in the Constituent Assembly as well as the provisions of the Constitution which emerged from the Debates indicates a deliberate attempt to empower the union government with unitary powers. As is evident in the sections dealing with the undercurrents in the Constituent Assembly Debates, the framers of our Constitution were overly concerned about security issues due

to the conditions prevailing at that time. They saw both internal as well as external threats to security equally menacing and were careful to deliberately arm the Union government with sufficient powers to deal with centrifugalism. A near consensus existed in the Assembly vis-a-vis the need to have a strong centre as well as the need to provide for a loaded chapter on emergency powers. They also saw the union government as being responsible for protecting the states from internal security threats though day to day police functions were made a state subject . Any grave threat on the internal security front, they felt , called for central intervention.

This is exactly what has been the track-record of the operation of our internal security apparatus since the commencement of our Constitution. It appears as if a scheme of benevolent paternalism was conceived in which the states were autonomous only as far as there was no real threat to their security, peace, public order or tranquility. It is no surprise that such a scheme has been used by the union government to enhance its sphere of influence- just the way in which any executive of the world would operate. The scheme thus envisaged is federal only form; it is highly unitary in spirit.

Here, questions of state autonomy must not arise for the question which has been thrown up by this discussion is of an entirely different nature. If the state autonomy is to be promoted and preserved we must address the issues of reviewing the above scheme itself. As is clear enough in the above

discussion, state autonomy is threatened not only by the manner in which the internal security machinery operates but much more by the very spirit of the Constitutional Provisions themselves. The whole paradigm , as conceived by the Constituent Assembly militates against the concept of the federal autonomy and limited government.

II.6.

NOTES

- (1) P.D.Sharma. Police, Polity and People in India. New Delhi:Uppal, 1981. p.111.
- (2) Ibid. pp. 116 - 8
- (3) B. Shiva Rao. The Making of India's Constitution-A Study. New Delhi : IIPA, 1968. p. 211.
- (4) B. Shiva Rao. The Making of India's Constitution: Select Documents. Volume II. New Delhi: IIPA,1968. p.143.
- (5) Ibid. pp. 155, 157.
- (6) B. Shiva Rao, A Study. Op.Cit. p.213.
- (7) Ibid. A Study see pp. 215-7
- (8) Ibid. p. 218
- (9) see B. Shiva Rao.Select Documents Volume II. Op.Cit. pp 37-9.
- (10) Ibid.pp.40-1
- (11) Constituent Assembly Debates. Volume VII.Delhi: Government of India, Publication Division. p. 713.
- (12) Ibid. pp.730-1.

- (13) A Study. Op.Cit. pp.121-2
- (14) Constituent Assembly Debates Volume I. Op.Cit. pp.64-65
- (15) Ibid. p.86
- (16) Ibid. pp.93-4
- (17) Ibid. pp.99-100
- (18) Ibid. p. 103
- (19) Select Documents Volume II. Op.Cit. pp.714-5
- (20) Ibid. p.725
- (21) Ibid. p. 713.
- (22) Ibid p. 718
- (23) Ibid. p.724.
- (24) Ibid. p.738
- (25) Ibid. pp. 545-6.
- (26) Ibid. see pp.533-40.
- (27) Ibid. pp.553-4.
- (28) Debates Volume IV.Op.Cit. p.729.
- (29) Ibid. p. 798.
- (30) Ibid. p.810
- (31) Select Documents. Volume II.Op. Cit. p. 546
- (32) Ibid. pp. 528-9
- (33) Debates Volume IV. Op. Cit. p.1006.
- (34) Ibid. pp.1009-10.
- (35) Select Documents. Volume II. Op. Cit. pp. 65-6.
- (36) Ibid. Volume III. pp. 75-6.
- (37) Ibid. pp. 275-80.
- (38) Select Documents. Volume IV. Op. Cit. p.365.
- (39) Debates. Volume IX. Op. Cit. pp. 140-2.

- (40) Ibid. p.143.
- (41) Constitution of India (as on 01 February, 1990). New Delhi: Government of India, Law and Justice (Ministry of), 1991.p.156.
- (42) Ibid. p.152.
- (43) Ibid. pp.152-55
- (44) Ibid. pp. 158-60.
- (45) Ibid. p. 69 (Articles 251 & 254).
- (46) Ibid. p. 152.
- (47) K.K.Dass. "Union-State Relations: Administration of Law and Order" in Indian Journal of Public Administration Volume XVI No. 3, July - September, 1990. pp.233-40.
- (48) Constitution of India Op. Cit. p.70.
- (49) Ibid. p.106.
- (50) Ibid. pp.100-1.
- (51) K.K.Dass. Op.Cit.
- (52) see Times of India. 7th December, 1992 & 8th December, 1992.
- (53) Constitution of India. Op.Cit. p.100.
- (54) K.K.Dass. Op.Cit.

Chapter III

III: INTERNAL SECURITY AND THE LEGAL FRAMEWORK

-- CRPF Act, 1949 & The Cr.P.C.

- III.1 Proliferation of Union's Armed Forces.
- III.2 Brief History of CRPF.
- III.3 CRP Act and the Legal Framework.
- III.3.(i) CRPF and the Legal Cover: CRP Act and the Cr.P.C.
- III.3.(ii) CRP Act and Cr.P.C.: An Analysis.
- III.4 CRPF Operations at the ground level : A critique.
- III.5 Conclusions.
- III.6 Notes.

III. INTERNAL SECURITY AND THE LEGAL FRAMEWORK

-- CRP Act & The Cr.P.C.

Since the independence, there has been a multifarious increase in the demands on the internal security apparatus of India. Infact, the task environment of the security forces has undergone a radical change in view of the State's intervention to undertake socio - economic change. This development process has highlighted and sharpened social tensions of various kinds. Very often these tensions manifest themselves in forms of collective violence. In order to make the Indian Police and the internal security apparatus more responsive and efficient to the newly emerging demands on it, a major re-tailoring of the entire apparatus is needed. However, this task has been consistently neglected by the government due to it's preoccupation with demands of the poor internal security situations. "Unlike the post-mutiny period of the British days, purposive thinking about the Police - polity relationship in Republican India has been conspicuous by it's absence." (1)

The Indian state has been responding to increasing demands on it by a quantitative revision of the existing forces and creation of new forces under it's control.

III.1 Proliferation of Union's Armed Forces :

The growth in the Union's armed forces has been two - pronged. The number of such forces has increased as well as the strength of each one of them has undergone an upward revision. The important para- military forces available to the Union

government for deployment in the states are as follows:

(a) Indian Reserve Force: The Indian Reserve Force battalions were raised in 1971 by four states at the instance of the Union government. The raising of these forces was a temporary measure and a total of eleven battalions were raised. These battalions are maintained by the states but are available to the centre for deployment. They were gradually disbanded with only four being in service now.

(b) Armed Police battalions of the State Police Forces:

All states maintain armed police force battalions which can be drawn upon by the Union government and deployed in other state (except in the state of Nagaland). This power of deployment is available to the Union government vide entry 80 in List I (Union List) of Schedule VII of the Constitution and sections 3 & 4 of the Police Act of 1888. (An 'existing law') {see III.3.(i) Chapters II & IV}.

(c) Central Reserve Police Force:

The CRPF was created as the Crown's Representative Police Force in 1939 by the British government under the power extended to it by the Government of India Act, 1935. It was renamed as the Central Reserve Police Force by the CRP Act, 1949. It's present strength has increased to 83 duty battalions and 4 signal battalions. The total strength of CRPF is 107, 957 men.

(d) Assam Rifles:

Assam Rifles was originally raised as a Police

Force under the jurisdiction of the Ministry of External Affairs. The Assam Rifles Act, 1941 (An 'existing Law') converted it into a para-military of the erstwhile Imperial government. After independence, the Assam Rifles (Amendment) Act transferred it to the jurisdiction of the Ministry of Home Affairs as an Armed Force of the Union.

(e) Indo-Tibetian Border Police:

ITBP was raised in 1962 by the ITBP Act, 1962 to serve the specific purpose of patrolling the Indo-Tibetian border during the peace times. The ITBP(Amendment) Act conferred on it the status of an Armed Force of the Union with powers and duties akin to that of CRPF. The present strength of this force is 14 battalions with a total strength of 14,511 men.

(f) Border Security Force:

The Border Security Force was raised in 1965 under the BSF Act, 1965 for the specific purpose of patrolling the borders of India with the aim of curbing smuggling, illegal traffic and illegal migration across the borders. However, the BSF (Amendment) Act, 1968 conferred on it the status of an Armed Force of the Union government. Presently BSF has a sanctioned strength of 90 battalions (with a strength of 105, 850 men,) making it the second largest para-military force in the country.

(g) Central Industrial Security Force:

BUDGETARY TRANSACTIONS UNDER THE HEAD POLICE BY THE UNION GOVT.
(2)

YEAR	Rs. IN CRORES
1951	3.8
1961	18.76
1971	118.82
1984-85	595.30 (REVISED ESTIMATES)

The CISF Act, 1969 provided for the creation of the CISF to fulfill the specific purpose of guarding the Union government's investment in Public Sector undertakings. It guards 159 such undertakings and has a total strength of 47,462 men. The CISF (Amendment) Act, 1988 has upgraded it to the status of an Armed Force of the Union.

Thus, as we have seen above, the government has converted all the major Armed Forces created by it for specific purposes into full scale para-military forces to facilitate their deployments throughout India - as and when it feels that such a need has arisen. The budgetary transaction of the Union government is an important indicator of the proliferation and use of these forces. (see Table) We note a constant and continuous rise in the Union government's expenditure under the head 'Police', a major portion of which is spent on these armed forces of the Union.(2)

III.2 Brief History of CRPF

"CRPF is a versatile force, trained and equipped to deal with armed insurgents, infiltrators, anti-social elements, extremist, terrorist and violent mobs on the one hand and to provide rescue and relief operations against natural calamities and man created contingencies on the other." It is "the oldest Police force functioning under the Ministry of Home Affairs." (3)

CRPF was originally constituted on the 27th of July, 1939 under the Government of India Act, 1935. It was named

the Crown's Representative Police Force. It was designed to operate in detachments " under the superintendence and control of political agents of the locality in 'political relations' with the native state concerned." (4)

The force was organised and trained on military lines to come in aid to civil power in the princely states of pre-independence India. The head quarters of the force were chosen at Neemuch in the Mandsaur district of Madhya Pradesh. The reason for choosing this place was it's central location and proximity to the most of the erstwhile princely states. It was extensively deployed in the pre-independence era by the British government.

Between 1939 and 1946, the force was deployed for internal security duties in the princely states scattered all over central and western India. In 1946 six major deployments were made, namely; in the states of Rewa, Pataudi, Dujana, Datia, Chakari and Kothi (Nowgong). The next year - 1947 - saw another nine major deployments with an average of two months each in Loharu, Ratlam, Ajmer, Delhi, Rampur, Rajkot, Junagadh, Nowgong, Chamba and Virahi.(5). Heavy dependence on CRPF for internal security duties, thus, had its roots in the very dawn of independence - quite literally.

The second battalion of CRPF was raised in February 1948 which has multiplied to 83 duty and four signal battalions in 1987 - 88; including the Women battalion. Expenditure on the CRPF has been increasing by leaps and bounds which is symptomatic of the major role it has played in internal security duties.(see

EXPENDITURE INCURRED BY THE CRPF OVER THE YEARS

(2)

YEAR	EXPENDITURE (in Rs.)	PERCENT INCREASE
1970-71	1,62,41,000	-
1980-81	5,45,93,000	336.14
1986-87	8,43,33,515	99.52

Table) Between 1970 -71 and 1980 -81 there was a 336.14 percent increase in the expenditure incurred on the CRPF. The same figures for the period 1980 - 81 to 1986 - 87 speak of a 99.52 percent increase.(6) After independence, the CRP Act (Act LXVI of 1949), 1949 changed the name of this force to Central Reserve Police Force (CRPF) .With effect from 28 December, 1949, CRPF was constituted as an armed force of the Union under Schedule VII,entry 2 of List I of Article 246 . Section 16 (i) of the CRP Act 1949 provides that :

" The Central Government may , by general or special order confer or impose upon any member of the force powers or duties conferred or imposed on a police officer of any class or grade by any law for the time being in force." (7)

Since independence the CRPF has been extensively deployed and it's strength has multiplied manifold .In 1992 , a special battalion called the Rapid Action Force (RAF) was created as a specialised part of CRPF to be deployed in communally sensitive situation.This reflects a new thinking of the Indian State to create specially trained battalion for specific law and order situations to facilitate speedy and efficient response to any demand of law and order .

III.3 CRP Act And The Legal Framework :-

Of the numerous forces created by the Union government as an armed force of the Union , CRPF has been chosen for the study as a typical example because of two important reasons :-

(a) All other armed forces of the Union were created after the

CRPF. Hence , the power and duties conferred or imposed on the other armed forces of the Union are premised on those conferred or imposed on the CRPF.

(b) By virtue of being the largest armed force of the Union, the instances of CRPF deployment for various kinds of internal security duties are the largest in number than any other armed force of the Union .

III.3.(i) CRPF and the Legal Cover : CRP Act and the Cr.P.C.:

Legal cover to the members of the CRPF to facilitate them to carry out their duties when deployed in aid of civil power has been provided by extending certain sections of the Criminal Procedure Code Act (Act V of 1898) to it. This Act is still operational by virtue of the verdict of the Allahabad High Court in the case of Sagarmal versus the State in 1951.(8) The Court upheld all " existing laws " which do not clash with the spirit of the Constitution . (see Chapter IV)

The Criminal Procedure Code Act, 1974 (Act II of 1974) which became enforceable from 01 April ,1974 sought only to consolidate the provisions of Criminal Procedure without any major amendment .

However, all the provision extended to the CRPF under section 16 of the CRP Act, 1949 and are available to the members of the CRPF were existing sections in the old act as well. They were simply renumbered and reshuffled by the Cr.P.C. Act, 1974. All these provisions are available to the state police forces in

normal times.

Extension of these same provisions(9) to the members of the CRPF, creates, not only a clash of jurisdiction but leaves ample latitude in the hands of the members of the CRPF while deployed in sensitive law and order situations.

III.3.(ii) CRPF and the Cr.P.C.--An analysis

An analysis of the powers and duties conferred or imposed on the members of the CRPF shows certain noteworthy features/issues :-

Section 41 confers wide ranging powers of arrest on the members of the CRPF to arrest persons against whom 'reasonable' suspicion exists . This leaves a very wide latitude of discretion with the members of the CRPF. The provisions are further loaded with the onus of disproving such an allegation lying on the accused. [Section 46(b)] Further , it must be pointed out that for arresting a person under the offences listed in section 41, no warrant is needed by the police official . This, when combined with the 'reasonable suspicion ' clause [41(b)] , proves a direct threat to civil liberties and Fundamental Rights.

The provisions prescribing the procedure of arrest in section 46 serve the purpose of extending the blanket powers of arresting the person with the only restraint being applied is section 46(3) which forbids causing the death of the accused. Section 46(2) prescribing the use of 'all means necessary' in effecting the arrest of an accused reluctant to offer arrest hardly precludes torture just short of death. Needless to add, the person subjected to such a hardships may die of agony .

Section 47 seeks to grant almost blanket powers of search of a premises where, once again, 'reasonable suspicion' exists of harbouring an accused. Even damage to any exit or window of the premises is allowed with only redeeming feature being the provision which calls upon the police officer conducting such a search to honour the right of privacy of a woman, provided, she is not the one who is accused . Needless to add ,on actual ground level ,any woman who is not willing to turn over an accused (ofcourse, against whom only 'reasonable suspicion' exists) who has entered her house ,automatically becomes an accomplice of the accused and hence, an accused herself. So much so for civil liberties and human rights !

Section 48 simply provides for the perusal of any person to be arrested by a police officer without warrant who so authorised, to any place in India.The logic of such a move by a police officer of the CRPF in a federal setup where police is a state subject, is not free from questions .

Section 49, perhaps, seeks to limit the scope of section 46 by providing for 'no more restraint than necessary to prevent the escape' to be used in case of an accused arrested without a warrant .However,how much is 'necessary restraint ' could be amply debated.

Search of the person of an arrested person is provided for in section 51 which calls upon a police officer making an arrest without a warrant or a private person making such an arrest with a warrant, to furnish a list of all articles seized from the person of the arrested person . However, necessary

apparel has been excluded . Curiously enough , section 51 (2) which provides for a woman police officer to conduct the search of the person if the person arrested without a warrant is a woman, has not been imposed on the CRPF. Thus, even the routine restrictions on state police forces have been excluded from being imposed on the CRPF.

Section 52 is a necessary power conferred upon the police officers of the CRPF to seize any offensive weapon from the accused and produce the same in the Court.

Section 53 provides for the medical examination of an accused by a medical practitioner on the request of the police officer(s) concerned. However, in the case of CRPF, this can be exercised only by a member of the force above the rank of a Sub-Inspector in CRPF. No provision has been made for such an examination at the request of the accused.

Further on, from Chapter VI of the Cr.P.C., only section 74 which provides for the execution of the warrant by a police officer of the CRPF even though it might have been directed to another police officer, has been extended to the CRPF. Other provisions deal with the production of the accused/arrested person before the Magistrate and procedures there of have not been extended to the CRPF. This, in effect means that all powers of an executive magistrate which are necessary for the operation of CRPF have been extended to the force whereas the restraints on them in terms of responsibility to the judicial procedures have been excluded.

The Chapter on 'Processes to Compel the Production of

Things' of the Cr.P.C. has also been selectively extended to the CRPF. Section 100 which prescribes procedures for ingress into any place which is closed has been extended to CRPF. The person in-charge of such a place has been obligated to offer all reasonable facilities to the members of CRPF for the same. If willing ingress is not possible, the CRPF members are empowered to proceed as according to section 47 (2) i.e. break open the place for entry. This power again can exercised by a member of CRPF who is above the rank of a Sub-Inspector in CRPF. In this section, the restriction on search of a place in accordance with the respect of honour of any woman there in, has been imposed on the members of CRPF. [Section100(3)]

Section 100 also provides that if such a search has to be made, it shall be done in presence of two or more independent and respectable inhabitants of the area. Procedure for seizure of articles has also been prescribed.

Thus, certain restraint is sought to be imposed vis-a-vis powers enumerated in section 47, though not enough. Section 102, further on, deals with seizure of property. It also provides that all seizure must be reported to the SHO if the officer making the seizure is subordinate to one. However, CRPF under deployment is not under a SHO and hence, such an action is more of a matter of convenience in order to delegate follow up of the arrest / seizure in the Courts of law to the SHO .

Further, the Chapter of the Cr.P.C. on 'Maintenance of Public Order and Tranquility' has been again extended selectively to the CRPF . Only section 129 has been extended which can again

be exercised only by a member of the CRPF who is above the rank of a Sub-Inspector in the CRPF . It provides for dispersal of unlawful assemblies of five or more persons likely to cause a disturbance of public peace by commanding them to do so . However, if on being commanded so the assembly does not disperse, the member of the CRPF commanding . it to do so, may make the use of force and for the purpose may require the assistance of any person who is not a member of the force and is present at that place. The CRPF is also empowered to arrest members of such an assembly.

Sections 149,150,151 & 152 deal with the preventive action of the police force.It deals with the prevention of commission of cognizable offences and prevention of injury to public property. Such powers have been extended to CRPF from the Chapter on 'Preventive Action of the police' in the Cr.P.C. which are inevitable for the force when it is under deployment on law and order duties.

Thus, as pointed out above, the powers conferred on the CRPF by the Union Government are overloaded. They leave more than ample discretion with the members of the CRPF and impose too few restrictions. This is more so since, when CRPF is under deployment in a state, it takes orders from the Union Ministry of Home Affairs directly or from any person appointed by the Union Government . Local authorities, including the state -level judiciary and the newly constituted Human Rights Commission, have no jurisdictions over the force. The state - level authorities are required to coordinate their activities with those of the

CRPF and not vice versa . Local police and magistracy are obliged to render all possible assistance to the CRPF in its functioning.

III.4. CRPF Operations on the ground level: A Critique

The CRPF, working with the above all-encompassing legal cover without responsibility of it's actions to the judicial procedure, has won both bouquets as well as brickbats.

Brig. K.M. Pandolai is of the opinion that CRPF has made significant contribution in defence of our country as well as in maintenance of law and order. He foresees a high degree of dependence on the CRPF in future on account of (a) need to check divisive forces in the face of the state government's failure to take necessary action on many occasions; (b) It is the only force under the centre which can rise above parochial considerations, and (c) Army cannot be deployed on frequent occasions as it would effect the operational preparedness of the army.

He points out the large scale dependence of many states on the CRPF as is evident in the letter written by Shri L.P.Singh, the erstwhile Governor of Assam to Giani Zail Singh. Shri L.P. Singh felt that " when the strength of the CRPF was increased in the mid -1960s, it was expected that it would be the main central instrument for providing protection to the minority communities and the weaker sections of the population generally. In the light of my experience in the North-eastern region , I can say without hesitation that the force has fulfilled that expectation admirably."(10)

Further, Brig. Pandolai advocates restraint in CRPF deployments since such deployments are bound to impair the abilities and efficiency of state police. However, since all the states of the Indian Union have sought help of the Union's armed forces, it's "importance cannot be over stated".(10)

K.K.Dass, on the other hand , is of the view that centre has complete powers to deploy it's armed forces in any state but feels that new legislations are needed to ensure co-ordination between " the powers of the Union with the provisions of the Cr.P.C." Further, he advocates appointment of special magistrates by the Union to aid the CRPF when under deployment. He discards the question of removing CRPF and other Union's armed forces from the purview of the magistracy altogether since, any armed force must finally be under civil power.(11)

However, G.C.Singhvi in his comments on K.K.Dass' article feels that making the armed forces of the Union when deployed in states " beyond the control of magistracy or making them subject to a magistrate appointed by the Union would defy the purpose" since they come 'in aid of civil power' of the state government. Hence, they must be subordinate to the state government. The Union government has enough Constitutional provisions to deal with an errant state. (12)

The other side of the coin is represented by the views of Noorani,Sebestain and others. They are of the opinion that the Union's para-military forces have been resorting to excesses and use of disproportionate force in dealing with difficult law and order situations. Noorani believes that " lapses of these

ill-trained (CRPF and other Union's armed forces) give India a bad name." (13) The writers which support this point of view are of the opinion that since wide latitudes are available to CRPF etc. while under deployment in any state, excessive repression is resorted to with gross denials of Human Rights and civil liberties; not to speak of the violation of Fundamental Rights guaranteed to every citizen of India .

Most of the provisions of the Cr.P.C. extended to CRPF carry the term 'reasonable' . Thus the latitude available to the members of CRPF is really very wide with enough of scope of misuse.

Even though the consciousness about respect for Human Right by the security forces is not very old in India , the basic thrust of such a concern is old enough. The underlying notion behind every plea for respect of Human Rights is that the security forces must not interpret the wide latitude available to them for their functioning as unbridled power. .The misuse of these powers conferred on them by interpreting them in the widest possible sense leads to use of excessive force (and misuse of powers conferred) which is called the violation of even basic Human Right by some authors . For instance , right to life is a basic Human Right even if right to judicial remedies is a Fundamental Right available to all citizens of India. The law must not interpreted by the security agencies in a way that denies either of them to a person and last of all the former.

Noorani admits to India's credit that " Fundamental Right have found a place in our Constitution" and that India's

Human Rights record is the best in the Third World. But, he is of the opinion that " law enforcing agencies are not conscious enough". Noorani further points out that the Human Right Commission set up in 1993 would have no jurisdiction over paramilitary forces and the army. It will simply forward complaints against them to the government, hear it's responses and make a recommendation which may not be published.

Further on, he points out that the official spokesman of the Government of India on 20th May, 1993 said that India's commitment to Human Right is next to none. Noorani asks: if it is so, why have Amnesty International officials been denied permission to visit Kashmir where such violations by CRPF and BSF, galore ? According to Noorani, all that the government has done is to include a three page Chapter on Human Right in the 1992-93 Annual Report of Ministry of Home affairs and hold a training programme at the National Police Academy to sensitise officers about concern of respecting Human Right and not exceeding the law. But, he points out that a greater need to "sensitise the lower ranks of the forces" exists.(14) Training on Human Right is necessary for the " notorious BSF in Kashmir and CRPF."(15)

Regarding Punjab,A.G. Noorani writes that " torture and faked encounters" are common. He also lists out multiple cases of custodial deaths. He points that in Jammu and Kashmir, cases of atrocities by the police forces have been increasing in frequency but the national press and civil liberties groups have been unaware of the situation .

Here, we may point out, the Cr.P.C. does not allow the CRPF and other armed forces of the Union to torture or kill a person. Section 46 provides for a physical arrest only and section 46(3) explicitly proscribes causing the death of any person arrested on any ground. Thus, a clear violation of the Cr.P.C. is evident.

Clare Talwalkar delineates the atrocities committed by security forces in Manipur ,even though the force in question was Assam Rifles and not CRPF. However, this instance is equally important since both the above forces are governed by the same legal cover to facilitate their operations. Talwalkar points out that since a violent attack by NSCN (National Socialist Council of Nagaland) on a military out post at Oinam in June 1987 , the areas around Oinam have experienced retaliatory wrath of the Assam Rifles . " A hard-line combing operation launched in August 1987 has killed fourteen Manipuri villagers , tortured others and detained many more; 125 houses have been burnt down and dismantled, grain stores,vegetable plots, domestic goods and livestock looted. Women have been sexually abused,beaten ;nor have children been spared."(16)

A clear violation and gross misuse of sections 46(i) and (iii),47,49,100,102 and 129 of the Cr.P.C. are evident. As discussed in III.3, all these powers extended to CRPF and other armed forces of the Union do allow certain latitude but the action described by Clare Talwalkar above are a gross misuse of the above provisions.

Further, she points out that to initiate legal

proceeding against the excesses committed by the armed forces of the Union (in the above case, Assam Rifles), permission is needed form the central government which is " a stipulation that is nigh impossible, according to some villagers".(16)

Talwalkar also points out that " they go as far as to defy the restrictions of the Special Powers Act." For instance this Act provides that detainees must be handed over to the state police (or presented before a magistrate for judicial custody , as the case may be) and not held indefinitely." Yet Assam Rifles has been known to detain villagers for days, sometimes months on end . 'Unaccountable disappearances' are also recorded for people arrested by Assam Rifles."(17)

A.G.Noorani, while writing on Jammu and Kashmir is of the opinion that the Government of India has been indulging in be-rating the NGOs like the Amnesty International and Asia Watch. He, further on, questions the government if the latter can contest facts documented in the US government's Annual 'Country Reports on Human Rights 1993' . He quotes the US government's Report:"Human Rights abuses by both militants and security forces continued unabated in Jammu and Kashmir , India's only Muslim majority state. The Muslim population has been severely alienated both by the Central government because of the repressive tactics used by it's forces to combat insurgency, as well as by the militants for the acts of wanton violence, sometimes directed at innocent civilians. Hundreds and thousands of Indian Army and Para-Military Forces remain in the state to maintain the law and order and to check the militant separatist

movement. Under the J & K Disturbed Areas Act and Armed Forces (J&K) Special Powers Act, both passed in July 1990, security personnel have sweeping powers, including authority to shoot to kill suspected law-breakers or disturbers of peace and to destroy structures suspected of harbouring militants and arms. - - - Para-military forces and the army used excessive force against mass gatherings as well as in retaliation against attacks on them by militants. On 5th May, 1993 they killed four bystanders and wounded seven while returning fire in a militant attack on a motorcade accompanying the Union Communication Minister in Srinagar. Kashmir observers report that house to house searches, tortures and gang rapes of innocent civilians (especially in remote villages) increased following the launch of Operations Tiger and Shiva by security forces in September and October. These operations reportedly involved intensive cordon-searches, large-scale burning of homes and businesses suspected of aiding militants and 'faked encounter' killings of militants in police custody. "(18)

Ethics apart, from the legal point of view, the above cited acts of the security forces, especially the CRPF and BSF, are clear violations of Sections 41(a), 41(e), 41(g), 46(1), 46(2), 46(3), 47(1) (2) (3), 49, 51, 100, 129 and 149 of Cr.P.C. (19) These provisions have already been discussed in III.3.(ii) in which it has been pointed out that certain restrictions exist which the CRPF has to keep in mind while functioning under deployment in any state. However, all instances listed above in the US report are clear cases of exceeding the

authority and powers granted to the CRPF under Section 16(i) of the CRP Act. They also point out shirking of duties imposed on the CRPF and BSF under their respective Acts and the Cr.P.C.

A.G.Noorani concedes that the government has taken some actions against persons responsible for such acts. However, he points out that in Kashmir, 33 army and para-military personnel were imprisoned for exceeding their powers but only 27 of them received sentences of one month or less; "18 were dismissed and 45 others were demoted or reprimanded." He compares this data to that of Punjab where "135 policemen were dismissed and 75 were prematurely retired" and "3 senior officers were given jail sentences." Further, he points out that "security forces have perpetrated in Kashmir outrages of a kind unheard of in Punjab-- setting fire to houses." (20)

Further on, Noorani points out that concerned bodies that the Amnesty International and Asia Watch are not anti-India. To reinforce this point, he points out that scathing remarks made by the Amnetsy International on U.K., Iraq, Egypt, U.S., Turkey, etc. for violation of human rights by their respective security forces. They simply "seek to ensure that Human Rights issues are not sacrificed to political and military considerations." He points out that the 10 May, 1991 Amnesty International report entitled 'India : Human Rights violations in Punjab-use and abuse of law' condemns security forces and terrorist forces alike for it " condemns no less the unlawful imprisonment, kidnaping and torture by militant groups as well." (21)

Noorani goes on further to argue that "calling

people/organisations like Amnesty International and Asia Watch" as well as Indian Civic Rights bodies like PUCL, PUDR, CFD, etc. as" 'India-baiters' would be deliberate falsehood for they indict Kashmiri militants also for their excesses as well as other non-western governments."

He says that the 1993 report of Amnesty International is a "chilling document ('Getting away with Murder') by virtue of its documentation and objectivity." Noorani quotes from this report: "in India, more than 130 people were killed by the security forces in Bombay during violence which followed the destruction of the Babari Masjid in December 1992. - - - Eyewitnesses say that the police sided with the Hindu mobs attacking Muslims." Noorani holds that "the circumstances surrounding apparent political killing are often unclear. It is only the conduct of the state combined with a pattern of similar incidents that points to the probability that the killings were deliberate and unlawful." Noorani says that "scores of" such instances in India, especially in Punjab and Kashmir, exists.(22)

In sum, Noorani makes a strong case for ensuring a strict compliance with the law on the part of the security forces. He holds that Human Rights violations and other excesses by terrorists should not lead to a similar act on the part of the security forces as well. The latter must respect the letter and the spirit of the law; which in any case is already overloaded in favour of the security forces like the CRPF etc. Perhaps, he would like to argue for a revision of the legal provisions as well in order to make them more democratic and humane. However,

he refrains from doing so, probably, because he appreciates the difficult task which the security forces have at their hands. Therefore, he restricts himself to making a strong case for the adherence to the letter and spirit of the law by the security forces.

The Government of India has recently created the National Commission on Human Rights to ensure that they are not violated or abused by any individual, organisation or the State. However, P.A. Sebestain is critical of this effort for he holds that "even if the Commission were genuinely committed to Human Rights, it would be rendered ineffective unless it has an independent investigative machinery, appointed by and accountable to itself. According to the Ordinance (now a Parliamentary Law), however, the central government will, on request, make available to the Commission, police and investigative staff under an officer not below the rank of a Director- General of Police. The allegations of violation of Human Rights are invariably against the police. It is too much to expect that the same police will investigate and bring their colleagues to the book." Further on, Sebestain points out that the "main flaw in the ordinance is that the military and the para-military forces (like the BSF and CRPF) are virtually excluded from the purview of the Commission. It has no authority to investigate allegations against these forces. Today, the main areas of concern are Kashmir, the North-east and Punjab where it is mainly the armed forces who are dealing with the problem of law and order. There are allegations galore against the armed forces in all these states. - - - There

is a concerted and deliberate attempt to make holy cow of the armed forces and put them on a high pedestal beyond the pale of ordinary law. This is done in the name of unity, integrity and security of India. The objective is to create 'sacred' entities at whose altar the people of India can be sacrificed with impunity whenever it suits the interests of the powers that be." (23)

III.5. Conclusions:-

The main findings and conclusions arrived at in this chapter are as follows:-

- (a) The sections of Cr.P.C. extended to the CRPF and other para-military forces to provide them legal cover to carry out their duties leaves wide discretionary powers in the hands of the members of the force. This militates against the fundamental principle of democratic government that all armed forces must finally be under civilian control. Certain magisterial powers conferred on the members of these forces (e.g. arresting and breaking open or searching a house without a warrant) leaves wide latitudes of use and misuse of these provisions of the Cr.P.C. with the force itself. This creates a semi-martial law type of situation when these forces are deployed in any state.
- (b) Jurisdictional clashes are bound to occur between the CRPF (or any other armed force of the union which is deployed) and the local police since the powers and duties extended to the CRPF when under deployment are available to the local police during normal times. This creates problems and

- difficulties in coordination between the CRPF and local police force.
- (c) No duties have been imposed on the CRPF which would make it accountable to the Judiciary or the state level executive authorities. The state level police is supposed to answer questions which might arise due to excesses of CRPF, in a Court of Law since former is accountable to the Judiciary but the latter cannot be prosecuted without the permission of the Union government.
 - (d) There have been an increasingly wide interpretation of the powers available to the CRPF by the members of the force itself; when faced with a difficult internal security situation. Numerous instances of excesses committed by the armed forces in Punjab, Kashmir and the North-eastern region (some of which have been pointed out in III.4) underscore this point .
 - (e) The recent concern for Human Rights, as evident in responses of Amnesty International, Asia Watch, A.G. Noorani, P.A. Sebestain and others, raises a two-pronged issue: at the minimum level it demands that the letter and spirit of the law must be respected and stuck to by the security forces . Adequate machinery must be laid out to exercise proper checks on misuse of the legal provisions by the security forces. Officials guilty of violating the Law, Human Rights and Fundamental Rights and indulging in excesses by a more than liberal interpretation of the powers conferred must be awarded exemplary punishment. On the other hand, given a

favourable Governmental response towards the above minimal concern and abating of the difficult demand of law and order on the Indian State, they would like to press for humanisation and democratisation of the law itself.

III.6

Notes

- (1) P.D.Sharma. Police, Polity and People New Delhi: Uppal, 1981.p.111.
- (2) Source: P.R. Rajgopal. Violence and Response. New Delhi: Uppal, 1988.
- (3) K.M. Mathur. Police in India - Problems and Prospects. New Delhi: Gian Pub., 1991. p.118.
- (4) Ibid. p.118.
- (5) Ibid. pp. 119-121
- (6) Ibid.p.149
- (7) CRP Act, 1949 as quoted in Police Handbook for Police Officers.
- (8) AIR, 1951 (Allahabad 816).
- (9) For a compilation of all the relevant provisions see Appendix.
- (10) K.M.Pandolai. "Role of Para-military Forces" in The Economic Times, Volume VII, No. 240, 23rd November, 1980.p.5.
- (11) K.K.Dass. "Union - State Relations" in Indian Journal of Public Administration Volume XVI. No. 3. July - September, 1970. pp. 333 - 40.
- (12) G.C.Singhvi. in Comments on K.K.Dass' article in Indian Journal of Public Administration. Volume XVII. No. 2, April - June, 1971. pp. 276-81.
- (13) A.G. Noorani. "Teaching Human Rights to Police" in Economic and Political Weekly Volume XXVIII. No. 42. 16th October, 1993.p. 2252.

- (14) A.G.Noorani. "India's Report to U.N. on Human Rights" in Economic and Political Weekly. Volume XXVIII. No. 22. 29th May, 1993. p. 1079.
- (15) A.G.Noorani. "Teaching Human Rights to Police. Op.Cit.
- (16) Clare Talwalkar. "Security Forces Abuse Human Rights" in Economic and Political Weekly. Volume XXVI. No. 3. 19th January, 1991. pp.89-90.
- (17) Ibid.
- (18) Quoted in A.G. Noorani. "India-China Pact on Human Rights". in Economic and Political Weekly.Volume. XXVIII. No. 25.19th June, 1993. pp. 1273-4.
- (19) see Appendix for the text of the relevant provisions.
- (20) A.G.Noorani. "India-China - - -".Op.Cit.
- (21) A.G. Noorani. "India and Amnesty" in Economic and Political Weekly. Volume XXVI. No. 25.June 22, 1991. p. 1505.
- (22) A.G. Noorani. "Amnesty and India - Baiters" in Economic and Political Weekly . Volume XXVIII. No.45.6th November, 199 pp.2435-6.
- (23) P.A.Sebestain. "Protection of Human Rights: One more Ornamental Commission ?" in Economic and Political Weekly Volume XXVIII. No. 43.October 23, 1993. pp.2327-8.

CHAPTER IV

INTERNAL-SECURITY : THE CENTRE - STATE DIMENSIONS.

IV.1. The Saliency.

IV.2. Union Government's Authority over state police administration.

IV.2.(a). Conditioning the framework.

IV.2.(a).(i) Statutory Aspects.

IV.2.(a).(ii) Operational Aspects.

IV.2.(b) Influencing the state police administrations.

IV.2.(b).(i) Legally- through statutory staff agencies.

IV.2.(b).(ii) Conventional procedures of policing coordination.

IV.2.(c). Interference in the state police administrations.

IV.2.(d). Nibbling at the autonomy of state police administrations

IV.2.(d).(i). Formal avenues.

IV.2.(d).(ii). Informal avenues.

IV.2.(e). Taking over of state police administrations.

IV.2.(e).(i). During normal times.

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IV.2.(e).(iii) During National Emergency.

IV.3. View points of the states' and union governments.

IV.3.(i). Law and Order Versus Public Order.

IV.3.(ii). View - points of the States Regarding the Central Government's Power to Deploy the Union's Armed Forces in The States.

IV.3.(ii).(a) Views which agree with the ARC Recommendations.

IV.3.(ii).(b). Views which disagree with the ARC Recommendations.

IV.3.(iii) The Union Government's view point.

IV.3.(iv) Suggestions of the state governments.

IV.3.(v) Sarkaria Commission and it's recommendations.

IV.4 Notes.

IV: INTERNAL SECURITY : THE CENTRE- STATE DIMENSIONS.

Myron Weiner (1) points out that two political cultures exist in the Indian polity. First is the "elite culture" which pervades the educated elite, bureaucracy and the armed forces. This elite culture can be discerned at the capital- New Delhi. The second is the "mass culture" which pervades the state level and lower level political institutions. The latter is an expanding culture which has been progressively enveloping greater political space. However, it faces stiff competition from the more entrenched elite culture. In this context, it is inevitable that all issues of Indian polity would have a centre-state dimension: which in turn, is more confrontationalist than cooperative. In this chapter we shall endeavour to unravel the centre-state dimensions of the internal security framework; especially those aspects which governs the Union's para-military forces.

IV.1 The Salience:

As Prof. C.P.Bhambri points out, " In the current Indian situation, all political forces should be permitted to compete with one and another. The guaranteeing of such an opportunity to the various political parties to compete is an essential prerequisite of a federation - - - . The political parties of the Left find it difficult to perform their legitimate functions because the centre is armed to the teeth - - -. The Government of India is trying to impose uniformity on a social soil (by virtue of C.P.O.'s role) which is full of diversities

and complex contradictions."(2)

Kuldeep Mathur and Mohit Bhattacharya point out that "since independence, there has been, many important changes in the 'task environment' of the Police force - - - . Radical transformation of the Indian masses from largely passive, disorganised group to conscious and organised citizenry is a remarkable phenomenon in the post-independence India. Rise in literacy rate, intense political campaigns, involvement of youth in the political process -- all these have brought in their trail mounting public expectations from the government system." (3)

However, P.D.Sharma points out that the internal security apparatus in post-independence India has been characterised by the "absence of purposive thinking about Police-polity relationship. - - - Even the constitution does not yield any major insight in this regard." (4) The centrifugal trends in the post-partition period compelled our Constitution makers (see Chapter II) to concede to the creation of central Police agencies. This, when combined with the colonial hangover and the elitist ethos, deterred "any quest for a new philosophy of bureaucracy" as it was "simply out of place in the interest of continuity." (5)

V.2 Union Government's Authority Over State Police Administration:

The police administration in India, structurally, is characterised by three distinct features conceived by the colonial administration in India. These are, namely:-

- (i) Control of the Police machinery by the states or the provincial governments;
- (ii) Horizontal stratification, in terms of functions such as crime, intelligence, traffic, security etc.; and
- (iii) Differentiation between armed and unarmed Police units, to be employed during normal and abnormal situations, in terms of specialisation of the respective units.(6)

Such a structure of Police administration evolved over the colonial period starting with the Police Commission 1860 and taking the final shape in the Government of India Acts 1909 and 1919, culminating in the Government of India Act 1935 (see Chapter I).

The rationale of such a Police administration in colonial India can be understood in view of the paucity of senior white officers to contain the effervescent liberal non-violent nationalism. In addition to this, a peculiar unitary Constitution under the Government of India Act 1935, placed special responsibilities on the Governors of the provinces and the Governor-General of India. No debate emerged about the central Government's authority vis-a-vis provincial Police administration hence, quite naturally, the Police administrations of the provinces looked up to the central government for aid, advice, support and guidance. Federal tensions and anomalies being absent, central authority over state Police administrations was not the problematic area.

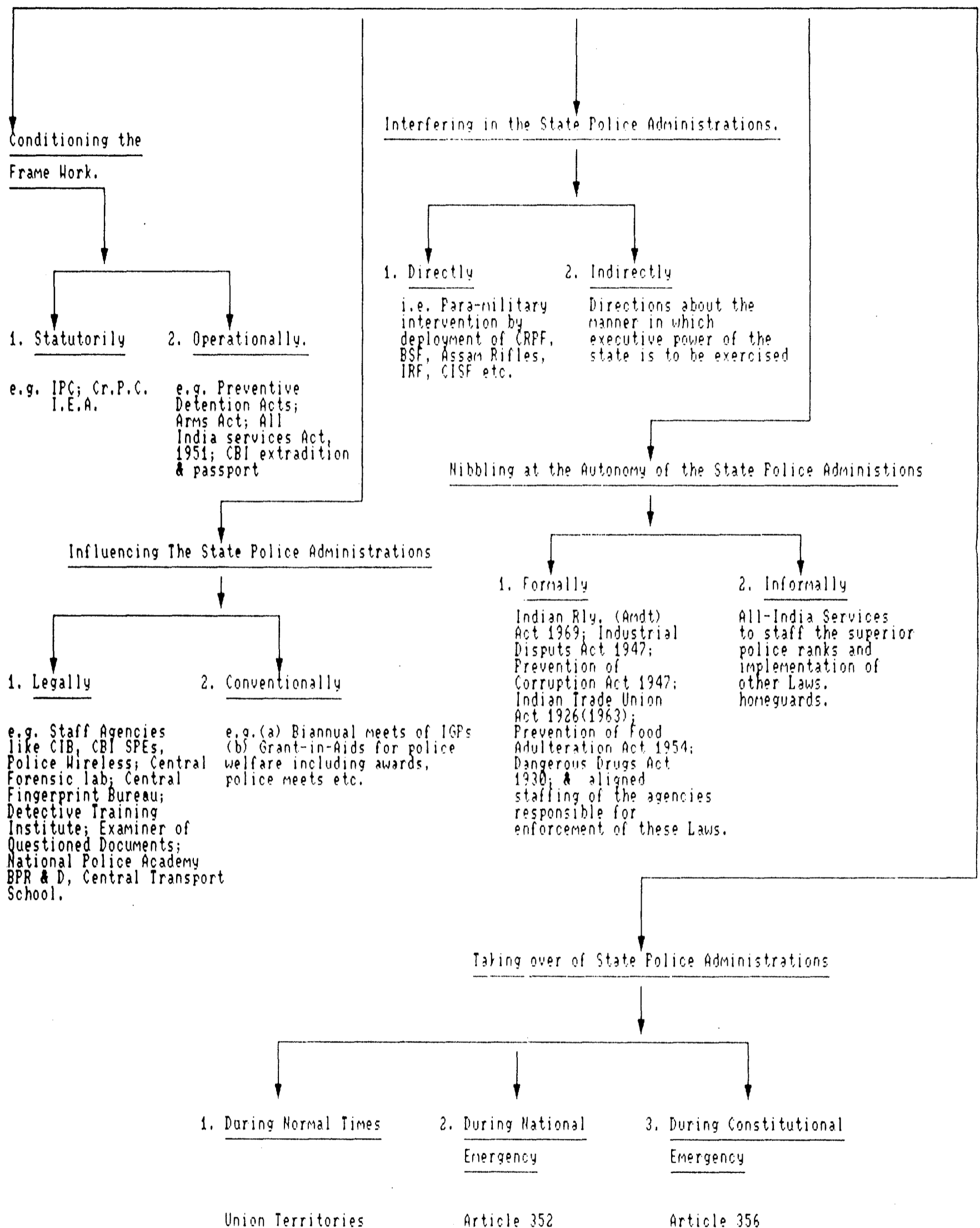
The Republican Constitution of India, did not tinker with this arrangement except for redistributing the areas and

subjects bordering or impinging on the Police administration with a definite positive tilt for the centre. Legally and Constitutionally, the Police continues to be a state subject. This implies that all policies, plans and procedures pertaining to administration of internal security matters, crime and order fall within the ambit of state Governments; though subject to certain safeguards and uniformities provided in the Union and Concurrent Lists.

Though the Constitution does not lay down elaborate administrative details, they can be discerned in the network provided in the form of legislative and administrative relations in the Constitution. The paramount responsibility of the police administration lies with the state governments; as is evident in the organisation, personnel and financial systems. Structurally, "the Police machinery is neither supposed to be uniform at the grass root, nor legally responsible or accountable to the central government, except in situation like the emergency." (7) The police administration is presided over by the Home Minister of the state who plans and formulates the policies and the programmes with the approval of the state legislatures, who in turn, are empowered to effect changes and innovations in the Police organisational setup.

The staffing and control of police hierarchy including alterations in the district based system are exclusively the domains of state governments, subject to being consistent with the frame work of All - India Police Services.

UNION GOVT.'S AUTHORITY OVER STATE POLICE ADMINISTRATIONS.



Moreover, funding of the police apparatus in normal times is again a state liability including the expenses on All - India Police officers assigned to the state in question, though the central government may issue ad hoc grants for specific purposes such as fleet modernisation or welfare of Police personnel.

However, the legacy of colonial past makes it difficult for the Police organisation to attune itself to the task of reorganising in the federal form and unitary spirit of the Constitution. Though not directly involved, the Indian Parliament can conveniently involve itself into the problems of police administration in state or states. "Constitutionally, the Union Home Minister cannot be called a Minister of Police Affairs but he can operate in a way so as to become the police department for the entire country." (8) [also see ChapterII]

The Union government can and does take upon itself the task of directing the state police administration.(9) (see Flow-Chart).

II.2. (a) Conditioning the Framework: (9)

The Union government's role vis-a-vis the police framework indicates a positive purposiveness and significant action. The conditioning of the framework on the part of the Union government is on a continuum with the two extremes being simple conditioning of the framework and the taking over of legislative and administrative apparatus. This conditioning of the framework has two aspects:-

IV.2.(a).(i) Statutory Aspects:

Certain statutes which fall straight away within the statutory domain of the Union government govern the basic structure and working of the police administration. The Police Act 1861 is the basis (10) on which the pattern of organisation of the Police for the entire country, its operational control by the state governments, its general duties, powers, rights and privileges and its relationship with the magistracy are laid down. The state government is competent only to amend the acts so far as the basic frame work is not altered. Three other acts form the basis of criminal law and procedure. These are (11):-

- (i) The Indian Penal Code (I.P.C.) 1860(Act XLV of 1860) as amended from time to time.
- (ii) The Code of Criminal Procedure (Cr.P.C.)1898(Act V of 1898) recast as Act II of 1974.
- (iii) The Indian Evidence Act 1861 as applicable from time to time.

IV.2. (a).(ii) Operational Aspects:

In operational terms, the conditioning of the framework of police administration by the Union government includes certain other laws apart from the basic other statutes. The Schedule VII of the Constitution lists certain subjects of allied and quasi police nature in the Union and Concurrent Lists. These subjects include All - India Services, C.B.I., Preventive Detention, Arms and Explosives, Extradition and Passports in the Union Lists. The Concurrent Lists includes other significant

subjects like Criminal Law and Procedure, trade in essential goods and price control. These areas bind the states' police power to a great extent to the primacy of the Union's initiative. Moreover, the sweeping nature of the subjects enlisted above keep sufficient leverage in the hands of the Union government. The states even when they are free to chalk out their policies and programmes, are sufficiently handicapped by the over riding pressures of procedures prescribed by the Union government which operates in the areas of Law and Order and Internal Security. Needless to add, the Constitutional provision of the primacy of the Union's law over a state law provides the conditioning frame work for the state government's functioning.

IV.2..(b) Influencing the State Police Administration

The Union government's influencing role over the state police administrations operates in several ways. A continuous and steady growth in legislations in allied areas has given birth to a plethora of organisations, agencies and institutions which curb the powers of the state police--both statutorily and conventionally. Acts like the Indian Arms Act, Preventive Detention Acts, Suppressions of Immoral Traffic Act and so on, considerably influence the state police behaviour in terms of modifying it's activities, policies and actions on the inter - state level, which in turn, is uniformed through out the country. Senior police officers encadred in the states under All_India Services Act, 1951 are a considerable central influence on the state in terms of (A) The officers of the IPS are outside the

purview of the state government's personnel management and (B) The psychological belonging of the IPS officers is at New Delhi than the state of encadrement.

The Union Home Ministry has been adding its might to the already strong centralising tendency in the Indian polity by influencing the state police administrations in two important ways;

IV.2.(b).(i) Legally--through Statutory Staff Agencies:

An extensive network exists all over India consisting of staff agencies for specialised police work. These agencies do offer invaluable and efficient support of a specialised kind to the state police, but , on the other hand ,also act in a centralising manner.They do create an impression of a supra-police force in case of local distrust in the state government . The most common instance of this nature is a demand for an investigation by the CBI into a matter about which the public does not trust local authorities . Such an investigation is also often conceded in order to pacify public suspicions and misgivings of a serious nature.

Certain agencies like Special Police Establishment (SPE), Central Investigation Bureau (CBI)and Directorate of Police Wireless were created as staff agencies but have converted themselves into regular line agencies ; sometimes also acting as a policing agency on the state police as well.

Further, Central Fingerprint Bureau, Forensic Laboratory, Detective Training Institute, National Police

Academy, Master of Mints, Examiner of Questioned Documents, Bureau for police Research and Development and Central Transport School were created to provide advisory and service functions. However, lately they have "emerged as specialised training institutions for state police personnel , which is increasingly getting all India in it's outlook." (12)

IV.2.(b).(ii) Conventional Procedures of Policy Coordination:

As far as policy coordination is concerned, Union Ministry of Home Affairs has evolved positive conventions . The Ministry convenes annual and biannual conferences of state Home Ministry and Inspectors-General of Police to lay down policy directives for the entire country. This coordination attains a special significance in terms of areas like distribution of arms, ammunition, ordnance stores, wireless equipments, vehicles etc. and the coordination of sharing of these resources between the states.

Though such coordination work of policy and plans is necessary and useful for evolution of uniform patterns and procedures of police working, in actual practice, it has converted the Union Home Ministry into a National police department with increasing powers of direction, supervision, coordination and control over police administrations in the various states of the Union.

IV.6.2.(C) Interference in the State Police Administrations:

This 'interference' of the Union government, in

administrative terms , carries a connotation of an illegitimate and undesirable kind of role, as perceived by the receiving end. The states police administrations stand circumscribed by the Union government-both Constitutionally as well as conventionally. Hence, the state police administrations see themselves in opposition to various line units and agencies which have been created by the union government all over the country. The creation and maintenance of such agencies as the para-police forces, are in consonance with the higher responsibilities assigned to the union government by the Constitution. But organisations and maintenance of such agencies by the central government on a national basis also explains the poor efficiency of state police forces. These agencies create a dyarchical situation in the police administration. Development of these para-military forces is also seen as a direct intervention of the Union government, especially, in situations in which the state police administration feels that the local police is competent enough to deal with a certain breakdown of law and order. Questions and issues arising out of such deployments of the para-military forces shall be addressed in a later section of this chapter.

Indirect intervention by the Union government can be seen in the directions issued to the state governments about the manner in which the executive authority of the state shall be exercised. Such directives issued by the Union government in exercise of it's powers under Articles 254, 256, 257(1) and 257(2) amounts to serious interventions in the state subjects of

police and maintenance of public order and peace.

IV.2.(d) Nibbling at the Autonomy of State Police Administrations:

Nibbling at the autonomy of the state police administration may be explained in terms of self-appointed guardianship by the Union government over the state police administrations. The statutory position of the state in the Constitutional framework is quite amenable to offer such an opportunity to the Union government. For analytical purposes, the actions of the Union government in this role may be classified into two :-

IV.2.d.(i) Formal Avenues:

Formal avenues utilised by the Union government in appropriating for itself powers of superintendence and control over certain areas of state police can be isolated in terms of legislations laying down rules and procedures of policing in areas in which otherwise state administrations are autonomous. Some of the important enactments of this category are: Indian Railway (Amendment) Act, 1967 (Act XLV of 1969); Industrial Disputes Act, 1947 (Act XIV of 1949); The Prevention of Corruption Act, 1947 (Act II of 1947); The Indian Trade Unions Act, 1926 (Act XVI of 1926); as modified upto July 1963; Prevention of food adulteration Act 1954 (Act XXXVII of 1954); Dangerous Drugs Act, 1930 (Act II of 1930) and so on. These laws make the state police administration subservient to the Union

government and also carve out a huge chunk of police powers for the latter in areas where formerly the state police ruled supreme.

IV.2.(d).(ii) Informal Avenues:

Informal avenues of nibbling at the autonomy of the state police administrations consist of the Union government's actions like the creation of a nation-wide system of Homeguards. Through these Homeguards the Union Ministry of Home Affairs has expanded its influence in the states. Further, the entire apparatus of staff aid, line assistance and coordinational guidance has been an exercise in central advance, which culminates into an over-all shrinking of the states' autonomy. The informal and voluntary submission of states before central authority has resulted in conventions, which are becoming legitimate with the passage of time.

IV.2.(e) Taking over of State Police Administrations:

This implies that the Union government has complete control over the state police administrations. Within this avenue of the union government's authority over the state police administrations, three distinct aspects can be discerned :-

IV.2.(e).(i) During Normal Times :

During normal peace times, the Union government exercises full control over the police administrations of the Union Territories or the centrally administered areas. The Union Territories being administered directly by the President

through the Lieutenant-Governors and Chief Administrators, the Union Home Ministry controls their police administration. Certain laws provide the legal cover to such an action. These laws include The Government of Union Territories Act, 1963; Uttar Pradesh (Direct Election to the House of the People) Act, 1969; Uttar Pradesh (Separation of Judicial and Executive Functions) Act, 1969; The Goa, Daman and Diu (Administration) Act, 1962. Delhi Police cadres have jurisdiction over the Union Territories of Andaman and Nicobar Islands as well. A separate cadre has been constituted for Goa, Tripura and Pondicherry. The Union Government remains in direct command of the police administrations of the Union Territories and the mini-states since the police administration of these areas are of vital importance.

IV.2.(e).(ii) During Constitutional Emergency:

The Union government can take over the civil and police administrations of a state on the basis of the report by the Governor of the state concerned on grounds of Constitutional breakdown of the state government machinery. Article 356 of the Constitution empowers the Union government to assume unto itself all or any powers of the state government on receipt of the reports of the Governor of the state concerned or 'otherwise'. Needless to add, the Union government rules supreme in this aspect since the Governors are appointed by the President himself.

IV.2.(e).(iii) During National Emergency:

The Constitution empowers the President to proclaim a National Emergency under Article 352. The potent reason for such a step has been laid down in the Constitution as 'external aggression or armed rebellion'. This, inevitably carries a connotation of a serious internal security disruption. In such circumstances the Union government functions as a unitary government exercising effective control all over India.

Thus the role of the Union government vis-a-vis state police administrations in India is vital systematic and continuous. The state governments differ very widely on such a vital and all-encompassing role of the Union government. Consequent to the dissatisfaction expressed by the state governments over the role of the Union government in internal security duties, the latter appointed a Centre- State Commission under the chairpersonship of Mr. Justice R.S. Sarkaria. This shall be considered in a later section of this chapter.

IV.3. Viewpoints of the States' and Union Governments:

The arena of administrative relations between the Union government and the states is a difficult terrain. The protest of the states against the central interventions using the para-military forces have generated ugly situations in the past. The states' feelings can be gauged from the 'West Bengal Memorandum' which holds: "During the past ten years the centre's tentacles have further spread to the states in the sphere of law and order, which is formally a state subject, through the

creation of the CRPF, the BSF and the CISF etc." (13)

IV.3.(i) Law and Order versus Public Order :

The Constitutional position has already been discussed and delineated in Chapter II . Though the Union government can issue directives to the state government under Articles 257 and 365, it is not without resentment that the latter follows the same. 'National Security' is the responsibility of the Central Government whereas 'Maintenance of Law and Order' falls under the jurisdiction of the states.

The concept of National Security emanates from threat to it from factors as diverse as international political balance of power, diplomatic rapport and commitments with other actors of the international arena, self sufficiency in military equipments, soundness of economic and industrial base, prevailing conditions in the social fabric within the country and the overall law and order environment. Thus, it combines both external threats as well as internal security dilemmas.

'Maintenance of Law and Order' is a concept which by and large entails threats to public peace, security, safety and tranquility.

Hence, it is well settled that 'Public Order' and 'Law and Order' are not the same. This has been delineated in two important Supreme Court verdicts:

Chief Justice M.Hidayatullah in **Arun Ghosh Versus State of West Bengal** observed that " the true test for determining

whether acts are connected with 'public order ' or with 'law and order' is not each individual act by itself but it's potentiality and if the acts have the effect of disturbing the even tempo of the life of the community of that specified locality then those acts relate to 'public order' and not to 'law and order'. It is the ' degree of disturbance ' and it's effect upon the life of the community in the locality which determines whether a disturbance amounts only to breach of public order .In one case it might effect specific individual only and therefore touches the problem of law and order only, while in another it might effect public order."(14)

Furtheron, in the case of **Ram Manohar Lohia versus State of Bihar**, (15), Justice Hidayatullah elaborated the concept further. He held that one has to imagine concentric circles with Law and Order representing the largest circle within which falls the next circle representing the public order and the smallest circle representing the security of the state. "Maintenance of Law and Order means the prevention of disorder of comparatively lesser gravity and of local significance."

However, the states of the Indian Union do not agree with the notion that the Union Government is competent under Article 355 of the Indian Constitution to locate and use it's armed forces in aid of civil power, anywhere in any state --even sou motu.

IV.3.(ii) View Points of the States Regarding Central Government's Power to Deploy it's Armed Forces in the States:

Owing to the divergences in view points of the states, it shall be convenient to classify them as under :

IV.3.(ii).(a) Views which agree with the ARC Recommendations:

The views of the state governments which agree with the recommendations of the Administrative Reforms Commission of the Government of India are as follows :

(a) The states agree that Article 355 arms the Centre with powers to protect the unity and integrity of India. However, they feel that the said Article cannot be construed or interpreted in way so as to mean that the Union governments has been allowed by the Constitution to assume direct control over the law and order machinery in any state. This Article, infact, imposes a duty on the Union government to ensure that the armed forces at it's disposal are made available to the state governments to aid their civil power.

(b) The state governments are emphatic in their view that as a matter of policy, deployments of the Union's armed forces must be made only with the consent of the state government concerned. Sou-motu deployments must be made only if the unity and integrity of India is directly threatened .

(c) The governments of the majority of the states are financially and resource-wise constrained which hinders their efforts to develop their own forces beyond a certain limit.

Hence, their own police forces are not competent enough to meet all contingencies of law and order. Therefore, central assistance must be made available to them on situational demand to enable them to implement an effective policing policies and preservation of public peace and security.

IV.3.(ii).(b). Views in disagreement with ARC Recommendations:

The views of the state governments which do not agree with the recommendations of the Administrative Reforms Commission of the Government of India are listed below. The primary dissenting states are Kerala and West Bengal.:-

(a) These states strongly feel that Article 355 does not confer any special power or responsibility on the Union government. All powers and responsibilities conferred or imposed on the Union government by Article 355 are simply those which are an implied extension of Articles 352 and 356. The Article does not provide for Sou-motu deployments in any state during normal times.

(b) These states, further, emphasize that the term 'in aid of civil power' necessarily carries the connotation of the consent of the state government concerned. Deployments of the central forces must be made only with the consent or on request of the state government(s) concerned.

(c) Moreover, the states which differ with the ARC recommendations, are of the firm opinion that sou-motu deployments go against the Constitutional scheme of the distribution of powers under Article 246. Schedule VII of the

Constitution lists 'public order' and 'police' as state subjects (16). Hence, the Union Government has no jurisdiction to interfere in the state police administrations without the express consent of the state government concerned .

IV.3.(iii) Union Government's View-point:

In response to the questionnaire sent by the Commission on Centre-State Relations (Sarkaria Commission) the Union Home Ministry has put forward it's views on the subject.(17)

The Union Home Ministry holds that it has a duty and responsibility vis-a-vis the security of the states. It feels that Article 355 expressly imposes on it a duty and a responsibility to protect each and every state of the Indian Union against external aggression and internal disorder. (See Chapter II) It holds that Article 355, in substance, calls upon the Union government to maintain unity and integrity of India and hence authorises it for sou-motu deployments also; the choice being contingent only upon the demands of a law and order scenario. Attaching any pre- conditions to the same would hinder the Union government from discharging it's Constitutional responsibilities under Article 355.

However, the Union government agrees that the sole responsibility of maintaining law and order in ordinary times lies with the state governments concerned . Article 355, the Union government is quick to point out, deals with non-ordinary problems of law and order administration . Hence, the Union government sees no clash between the states' police jurisdiction

and it's own interventions under Article 355. The Union Home Ministry sees a perfect harmony between the two and also adds that in normal course, the consent norm is followed. However, making this a Constitutional obligation is undesirable and not advisable .

Furtheron, the Union Ministry of Home Affairs points out that amongst the numerous instances of the deployments of the Union's armed forces in every state since independence, sou-motu deployments are, infact only three in number. :-

(a) In Kerala in September, 1968 for the protection of Union government's offices in Trivandrum during the strike by the Union government employees.

(b) In West Bengal in 1969 to protect the Farakka barrage.

(c) In West Bengal, again in 1969, in connection with t clashes between the U.P. Provincial Armed Constabulary (PAC) which was under deployment at Durgapur and the employees of the Durgapur Steel Plant.

The Union government agreed to withdraw its forces only in the last instance when the state government of West Bengal requested it to do so .

Hence, argues the Union government, keeping in view the facts that (a) All states of the Union of India have requisitioned the Union government's Armed Forces at one point of time of the other, and (b) The sou-motu deployments are more of a last resort than a routine operation, no Constitutional checks must be placed on the Union government's powers.

IV.3.(iv) Suggestions of the State Government's:

In response to the questionnaires of the Sarkaria Commission, (18) the state governments suggest the following measures in order to remove the anomalies:

- (i) Entry 2A of List I and Entry 1 of List II should be amended in such a way as to make it clear that deployment of Union's armed forces can be made only at the request or with consent of the state government concerned .
- (ii) Entry 2A of List I in Schedule VII of the Constitution must be amended to empower the Union government to determine the forms and conditions of deployments of central forces in the states with the concurrence of the Inter-State Council.
- (iii) Entry 2A of List I must be deleted and Entry I of List II must be amended to bring all public order situations requiring para-military deployments under the express jurisdiction of the states concerned.
- (iv) When a certain armed force of the Union is under deployment in a state, there should be no restriction, as at present, requiring them to take orders only from the Union government.
- (v) Legislations like the Disturbed Areas Act must be extended to a state only with the consent of the state government concerned.

- (vi) State police forces must be developed to ensure that their dependence on the Union's armed forces in every law and order situation is reduced .
- (vi) Undue expansion of the Union's armed forces must stop.

IV.3.(v). Sarkaria Commission Recommendations:

The Sarkaria Commission does not recommend any major change in the institutional or legal framework .(19) It only cautions the Union government to follow the consent norm, as far as possible. Further, it recommends :-

- (i) No change is necessary with regard to relationship between the state civil authorities and the Union's armed forces. However, consent of the state government concerned must be obtained, whenever and as far as possible, before deployments are made.
- (ii) State police cadres must be strengthened and state police must be modernised to ensure that central assistance is not required by the state police administrations in routine course and in not-so-serious law and order situations.

However, since the Sarkaria Commission submitted its report, the law and order situation has not quite looked up. Internal security has become a major concern of the government at both the state as well as the Union level in view of the rising civil unrest and subversive activities. The issue of the Union government's authority with regard to the internal security

matters, thus, remains a contentious one. However, the states govts. seemed to have reconciled themselves to the fact that the Union government's authority and their dependence on its help cannot be wished away. Probably, absence of a grievance redressal machinery as well as their Constitutional obligations to carry out the Union Government's directives (see Chapter II) hinders any serious protest or refusal on their part.

IV.6**Notes**

- (1) Myron Weiner. "Two Political Cultures" in Pye L.W. and Verba S. Political Culture and Political Development Princeton: Princeton Univ. Press, 1969.
- (2) C.P. Bhambri. "Role of Para-military Organisation" in Kurian K.M. & Varughese P.N. (eds.) Centre - State Relations. New Delhi: Macmillian, 1981. pp.165-6.
- (3) Kuldeep Mathur and Bhattacharya M. Top Management in Police. Mimeo. New Delhi: IIPA, 1976. p.2.
- (4) P.D. Sharma. Police Polity and People in India. New Delhi: Uppal, 1981. p.111.
- (5) Ibid. p.117.
- (6) D.H. Bayley. The Police and Political Development in India Princeton: Princeton Univ. Press, 1968. p.57.
- (7) P.D. Sharma. Indian Police - A Developmental Approach. Delhi: Research, 1977. p.197.
- (8) The possibility of such an action is inherent in list I (Union List) of Schedule VII in entry numbers 5, 8, 9, 19, 27, 31, 36, 59, 61, 65, 70, 73 & 77 and in Concurrent list in entry numbers 1, 3, 13, 17, 18, 19, 31, 33, 35 & 39.
- (9) P.D. Sharma. Indian Police - - -. Op.Cit. pp.199-206.
- (10) & (11) In Sagarmal Vs. The State 1951, (ALL. 816) The Allahabad High Court has maintained that "The distribut of legislative powers under the Article 246 of th Constitution does not effect laws which were in existence and in force prior to the promulgation of the Constitution. The legislations such as The Indian Police Act of 1861,

- remain in effect - - -." Quoted in R.B.Sethi, The Indian Police Acts. Allahabad: Law Books Co., 1959.p.11.
- (12) P.D.Sharma. Indian Police - - -. Op.Cit. p.203.
- (13) Government of West Bengal. Memorandum on Centre - State Relations. Calcutta, 1977.
- (14) Arun Ghosh Vs. The State of Bengal. AIR 1970(SC1128).
- (15) Ram Manohar Lohia Vs. The State of Bihar. AIR 1966 (SC 740).
- (16) Constitution of India. New Delhi: Government of India: Law and Justice (Ministry of), 1990. Schedule VII.
- (17) Government of India. Report of Commission on Centre State Relations Volume I . New Delhi: Publications Div. , 1986. pp. 191- 214.
- (18) Ibid.
- (19) Ibid.pp.215-6.

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CHAPTER V

POLITICAL DEPLOYMENTS : ROLE OF CRPF IN U.P.

- V.1. Brief Profile of Uttar Pradesh.
- V.2 Correlation between Deployment strength of CRPF and Incidences of Collective Violence.
- V.3 Political Homogeneity/Heterogeneity of U.P. and CRPF Deployments.
- V.3.(a) Political Stability of U.P. and CRPF Deployments.
- V.4. Summary of Findings.
- V.5. Inferences.
- V.6. Notes.

V. POLITICAL DEPLOYMENTS : THE ROLE OF CRPF IN U.P.

A salient feature of recent political developments in South Asia, in general and India, in particular, is the steady and frequent occurrences of incidences of collective violence. "These incidences result from conflicts between religious groups, ethnic communities or caste agglomerations and threaten the existence and cohesion of a country. Though most of the sources of conflict are embedded in the historical development of each society, these conflicts have sharpened in the recent past after the state began to intervene more actively to initiate social and economic changes. Concealed within the manifested forms of conflict are factors that emanate from the consequences of state development policy and initiatives for change." (1)

V.I Brief Profile of Uttar Pradesh:-

Uttar Pradesh is the fourth largest state in India. It has an area of 294,000 Square Kilometres and a population of 13.90 crores (1991 census unrevised figures). The population density of U.P. is therefore, 472 as against an All-India average of 267 persons per Square Kilometre. Hence, it has a sizable population pressure on per unit of it's area; next only to West Bengal, Kerala and Bihar (population densities being 766, 744, 497 persons per Sq.Km. respectively).

Ever since the British times, the area called Uttar Pradesh now (then known as United Provinces) was never easy to govern. It had seen a number of rebellious movements starting

with the Mutiny of 1857 through Rohilkhand movement and Arhar Movements and culminating in the National Movement. It may be pointed out that the Revolutionary Terrorism of 1919-1942 phase aim at securing independence for India as also the mass non-violent movements (e.g. the Civil Disobedience Movement and the Non-Cooperation Movement) were, infact, serious challenges to "public order" and peace for the erstwhile administration. U.P. has been more than active in all the phases of all the movements cited above. Thus, we can safely say that collective disruptions to public order has been inherent in the social history of U.P. It shall be too much to expect of the society that defied all governmental authority till 14 August, 1947, in order to secure independence to start obeying all governmental actions and laws from 15 August 1947, even though the top echelons changed.

Further more, we may point out that U.P. has the largest population in the country and the fourth largest population density. Regional imbalances in development are more than pronounced . So is the imbalance between various groups/sections of the population. Per capita income in U.P. is only Rs. 1618.00 (at 1981-82 prices). Even though Plan outlay has increased from Rs. 1.53 Crores in the First Five Year Plan to Rs. 1,19,49 crores in the VII Five Year Plan, per capita plan outlay in U.P. remains only Rs. 992.00 . It has registered only a modest decadal growth rate of 25.49% in the 1981-91 period.(2)

In such conditions, it is not surprising that conflicts between different sections of the populations have sharpened. As

already pointed out in Chapter I, historically, U.P. has witnessed social conflicts on lines of religion and caste. Of late, developmental imbalances combined with declining legitimacy of state action has further sharpened these existing social cleavages. These have found manifest expression in the steadily rising number of incidences of collective violence and riots.

Our discussion in Chapter I points out the manifest expression of social conflicts in terms of incidences of collective violence is, infact, a problem of social management. However, the State, "interprets it in forms of problems of law and order" and "security". Hence, it tries to deal with it by resorting to coercion with the help of its police apparatus. In this chapter, efforts shall be made to correlate the deployment strength of CRPF to incidences of collective violence as well as the political profile of the government in power. This shall be geared to discern if deployments made during 1979-91 were on situational demand or due to political reasons.

V.2. Correlation Between Deployment Strength of CRPF and Incidences of Collective Violence :-

Although, there has been a significant number of incidences of collective violence in U.P., an in-depth study of the role of CRPF in these incidents becomes increasingly difficult due to the obsession of our government with security, as already indicated earlier. Incessant refusal on the part of the government to part with any data on deployment makes such a correlation difficult. However, with the help of available data the study shall try to arrive at certain conclusions.

TABLE - A
CO-RELATION BETWEEN NUMBER OF INCIDENCES OF COLLECTIVE VIOLENCE
AND THE DEPLOYMENT STRENGTH OF CRPF IN 1977-1991 PHASE

YEAR	NUMBER OF INCIDENCES OF COLLECTIVE VIOLENCE(3)	NUMBER OF CRPF COMPANIES DEPLOYED IN EACH YEAR. (4)
1976	11,175	NOT AVAILABLE
1977	12,497	NOT AVAILABLE
1978	13,101	20
1979	12,663	9
1980	11,339	6 + Election deployment
1981	10,136	14
1982	10,027	14
1983	9,016	11
1984	11,997	2 (5)
1985	10,614	2
1986	9,228	11
1987	9,213	NOT AVAILABLE
1988	9,411	5
1989	9,818	NOT AVAILABLE (6)
1990	11,696	NOT AVAILABLE
1991	10,317	NOT AVAILABLE (6)
1992	Yet To Be Published	NOT AVAILABLE

Table A tells us that whenever Incidences of collective violence in U.P. have increased, the deployment strength of CRPF in U.P. has also shown an increase.

Though, deployments strength of the year 1977 is not available to us, 12,497 incidences of rioting were recorded which is fairly on the higher side. Similarly 1978 recorded 13,101 such incidences and in this year, the CRPF deployment went up to the highest number of 20 companies. 1978, thus, stands out for both highest number of incidences of rioting and collective violence as well as for the largest number of CRPF companies deployed.

The year 1979, again, recorded 12,663 incidences of rioting but CRPF deployment decreased to 9 companies. Perhaps, the already unsettled conditions of the Janta Government at Delhi and the delicate coalition government in U.P. had a role to play in this matter. We shall discuss this later.

In 1980, the incidences of rioting fell to 11,339 but, that too is a high figure. But only six companies of CRPF deployed apart from those deployments for election duties. Probably, the demand on the central government to deploy forces for ensuring a free and fair poll was heavier than the demands of day to day law and order duties. Perhaps, the announcement of elections resulted in the reduced interest of the caretaker government in the preservation of public order in an otherwise politically sensitive state.

The year 1981 and 1982 had 10,136 and 10,027 incidences of rioting and collective violence respectively, but the deployment strength of CRPF was maintained at 14 companies -

enough to contain any inflammation of rioting and collective violence.

The year 1983 saw a steep decline of incidences of collective violence to 9,016 and a corresponding decline in deployment strength to 11 companies.

In 1984, Mrs. Indira Gandhi was assassinated and U.P., along with other parts of India saw unprecedented collective violence and mob frenzy. The incidences of collective violence rose to 11,997 but the deployment of this year is not available. It is maintained that otherwise only two companies were deployed. The same deployment strength was maintained in 1985 with 10,614 incidences of collective violence.

In 1986, 9,228 incidences called for 11 companies while in 1988, 9,411 incidences needed a deployment of only 5 companies.

Deployment data for the years 1987, 1989, 1990 and 1991 are not available. Hence, no correlation can be established.

The above correlation, on first sight, seems to indicate that the number of companies deployed is contingent on situational demand—higher the number of incidences of collective violence, a proportionate rise in the number of companies deployed. However, two important points emerge:-

(a) 1982 and 1985, both witnessed about 10,000 incidences of collective violence but deployments were 14 and 2 companies, respectively. Such an anomaly indicates other factors which determine the deployment strength of CRPF—definitely not situational demand. Similar questions are raised by the number of

incidences in 1986 and 1988- the former had 9,228 incidences and 11 companies were deployed where as the latter had 9,411 incidences but only 5 companies were deployed.

(b) Even in years which show high number of incidences of collective violence and heavy deployment of CRPF has been necessary, there has been no proportion between the number of incidences and the number of companies deployed. In the year 1979, 12,663 violent incidences were recorded where as only 9 companies were deployed. On the other hand the year 1978 had a marginally higher numbers of collective violence than 1979 (1978 had 13,101 incidences) but the deployment strength of CRPF rose to 20 companies in 1979.

Similarly 1980 with 11,339 incidences of collective violence needed 6 companies of CRPF to maintain law and order where as 1984 with 11,997 incidences needed only 2 companies.

An attempt to correlate major incidences of collective violence in U.P. to the deployment strength, shows a certain pattern. (see Table B)

The years 1977 -8 were a period marked by sharpened caste rivalries leading to open conflicts. More than 20 companies were deployed during these years- a proportionate relationship is discernible here; more so when we note that incidences of collective violence in these 2 years averaged to about 12,782 incidences per year.

Moreover, the year 1978 was a difficult one for the internal security administration of U.P. Communal riots in parts

TABLE - B

YEAR	MAJOR INCIDENCE OF COLLECTIVE VIOLENCE IN U.P. (8)	NO. OF CRPF COMPANIES DEPLOYED IN EACH YEAR
1977-78	Caste rivalries & conflict in U.P.	20+
SEP.'77	Communal riots in U.P.	N.A.
AUG.'78	Communal riots in U.P.	
AUG.'78	13 killed in riots - Sambhal, U.P.	
OCT.'78	11 killed in riots- Aligarh, U.P.	20
1978	10 killed - riots Lucknow, Kanpur, Aligarh & other parts of U.P.	
1979	Police Unrest in U.P.	
1980	Communal riots - SEP.-OCT. IN U.P.	6
NOV.'81	24 Harijans killed -cast rivalries at Deoli in U.P.	14
1981-82	Dacoity problem	28
JAN.'82	General strike by opposition leaders & Trade Unions for withdrawl of NSA & ESMA turns violent	
1982	Meerut riots - SEP.-OCT.-28 Killed	
		14

of U.P. including riots at Lucknow, Aligarh, Kanpur and many other places took a heavy toll of life. Total number of companies deployed were 20 which is the highest number of companies deployed in the period under discussion.

Police unrest in 1979 sparked off another problem for the administration in U.P. Nine companies of CRPF were deployed to contain the situation and restore law and order.

August-September 1980 saw another renewed spate of communal violence in U.P. for which 6 companies of CRPF was deployed.

Caste rivalries and social tensions erupted in November 1981 once again. Twenty-four Harijans of Deoli village in U.P. were killed. This drew the attention of national media and the situation of law and order worsened in U.P. CRPF was once again deployed to restore law and order-14 companies were used.

Dacoity in south western U.P. became a problem in 1981-82. Though this menace to public order was tackled mainly by the state armed police with only marginal help from CRPF, the latter played a valuable role by relieving the state armed police from routine law and order duties. A total of 28 companies were deployed in the above 2 years with the collective violence incidences averaging 10,082.50 incidences per year.

January 1982 saw a general strike by Opposition leaders and Trade Unions for the withdrawal of National Security Act and Essential Services Maintenance Act. This was followed by the Meerut riots in September-October which took a toll of 28 people.

In this year 14 companies of CRPF were used in law and order duties-both to contain the rioting as well as in patrolling duties to ensure that law and order does not deteriorate in other areas. About the role of CRPF in Meerut, the Commissioner of Meerut Division wrote to the Director-General CRPF : "I feel much pleasure in appreciating the performance of the jawans of 71 battalion (Peace Keeping) of CRPF in the current Meerut communal riots. A number of houses and shops were burnt during the riots and your jawans were asked to rebuild them. I have inspected all the shops and houses repaired and rebuilt by your jawans and I must say that they have done it beautifully. They worked with speed and the quality of their work has been found very good. The best part of their performance is that they did the job willingly and devotedly. The citizens of Meerut and local administration have very much liked and praised the work and discipline of your jawans." (7)

From the above effort at establishing correlations between incidences of major collective violence and the CRPF deployment strength in U.P., it can be discerned that whenever a particularly difficult situation has emerged in the law and order scenario which can grow to menacing proportions and acquire national attention, proportionate deployment of CRPF has been made. Any serious incident of collective violence which threatens to snowball into a larger issue has been duly attended to by the Central government.

The overall conclusion which emerge from the above correlation exercise are as follows:-

(a) Whenever a serious threat of collective violence has emerged, especially of the kind which could endanger the political stability of the state as well as the Union Government, adequate deployment of CRPF has been made to aid the state police force.

(b) In cases of collective violence where number of incidences might increase but none of them are of a kind to cause concern to the state or the Union government, the response of the Union government has been differential.

V.3. Political Homogeneity/Heterogeneity of U.P. and CRP Deployment:

As already pointed out, U.P. is the most populous state in India and hence is very important for the Central government. It has had the distinction of being the home state of seven Prime Ministers of India. Added importance is acquired by this state in terms of being the state which sends the largest number of representatives to the Lok Sabha-85 out of the total of 542 elected members. The state assembly is 425 strong which in turn should mean that it would be difficult for any single party to secure an absolute majority.

However, we find that in the period 1977-91 (see Table C) the state government has enjoyed a relatively stable party position. The 1977-79 phase was one of a multi-party coalition ruling the state but one factor common amongst them was anti-Congress voting pattern responsible for their electoral victory. This SWA/JNP/JNP-JP coalition had 352 seats out of the 422 it had contested for with the Congress Party getting only 47 of the 395

TABLE- C

ELECT- ION	POLITICAL PARTY AT CENTRE	POLITICAL PARTY IN U.P.	HOMOGENEITY OR HETROGENEITY (9)
1977	BLD	SWA/JNP/JNP-JP	+(?)
1980	INC/INCI	INC/INCI	++
1984	INC	INC	++
1989	N.F. + (BJP)	J.D.	-(?)
1991	INC	BJP	- -

seats contested. Thus, this multi-party coalition enjoyed a stable majority- atleast collectively.

The 1980-84 phase saw a resurgence of the INC/INCI which won 309 seats in the state Assembly out of the 424 contested . This government was, thus, way beyond the majority mark of 214.

The 1984 election were, again, won by the Congress Party with 269 seats; although sympathy voting for the Congress has been alleged. However, a stable majority was achieved.

The 1989 and 1991 election saw the Janta Dal and Bharatiya Janta Party, respectively, securing an absolute majority.

At the centre, the 1977 elections saw the Bharatiya Lok Dal securing 295 of the 405 seats contested. That gave it a clear majority but the failure of the constituents of this party to arrive at a consensus made this government a short lived one .

The 1980 elections saw the INC winning 353 out of the 492 seats contested . (Elections were held only for 529 seats- 12 seats of Assam and one of Meghalaya were not polled for).

The 1984 elections saw the phenomenon of sympathetic voting for the Congress Party due to the assassination of Mrs.Gandhi. It won 415 (contested 517 seats) seats; there by securing a whooping majority in the Lok Sabha.

The 1989 elections saw another interval of support for the opposition parties. A coalition government was formed between the National Front and the B.J.P. while the Congress Party with 197 seats sat in the opposition benches.

This NF- BJP government was a short lived one and elections in 1991 returned the Congress as a minority government.

As Table C tells us, U.P. is the state in which there has been a relative political homogeneity-same parties have been ruling at the centre and in U.P. In case of the coalition government of 1977, the major constituent of the coalition in power at the centre and in U.P. was the same. The 1989 coalition government of National Front included the Janta Dal which was the ruling party in U.P. Since BJP had supported the National Front Government from outside only [not being a party to the formation of the government] we can hold that a difficult coalition and relative heterogeneity existed in the 1989-90 phase.

Clear political heterogeneity existed between the centre and the U.P. government only in the 1991-92 phase.

V.3.(a) Political Stability of U.P. and CRPF Deployment

Strength:

In trying to correlate the above, a look at the Tables A, B & C makes it clear that the phase 1977-79 was characterised by a relative homogenous government at the centre and in U.P. The years 1977, 1978 & 1979 saw 12,497 ,13,101 & 12,663 incidences of collective violence, respectively. The number of CRPF companies deployed in 1977 is not available. Deployment strength in 1978 and 1979 was 20 and 9 companies respectively. Clearly the year 1978, which was of phase of increased collective violence incidences and sharpened social tensions saw a higher level of CRPF deployment. However, the reduction of CRPF deployment

strength in U.P to 9 companies in 1979 cannot be seen as proportionate to the incidences of collective violence.

The second phase--1980-84--saw a homogeneity between the political profiles of the central and U.P. government. At both the levels comfortable majority existed for the Congress Party. Incidences of collective violence in this phase averages to about 10,500 incidences per year. Number of companies deployed were 6 in 1980, 14 in 1981, 14, again, in 1982, 11 in 1983 and 2 in 1984. (complete data for 1984 is not available) . In this phase no correlation---negative or positive---emerges. CRPF deployment strength was low when the collective violence incidences were high in 1980 but increased in 1981-82 although no marked increase in the number of incidences of collective violence can be discerned. Thus, we can deduce that no meaningful correlation can be established in this phase.

The third phase of 1985-1988 saw the same level of political homogeneity between the U.P. government and the Central government. Incidences of collective violence were 10,614 in 1985; 9,228 in 1986; 9,213 in 1987 & 9,411 in 1988. The deployment strength was 2,11,N.A. and 5 respectively. Here, once again, no meaningful correlation emerges since 1985 recorded the maximum number of such incidences but deployment was low. The 1989-91 phase is one of greater instability and political heterogeneity. But, unfortunately the deployment data of this period is not available-thanks to the highly security conscious Indian State. Probably, a meaningful relationship would have emerged in this phase. As of now, one thing may be pointed out

that between 1989 & 1991 , there has been a gradual rise in the incidences of collective violence. It was 9,818 in 1989 & has risen to 10,317 in 1991. Data for 1992 is yet to be published.

In sum, we can conclude that:

(a) Indications emerge which point out that in cases of political heterogeneity and phases of difficult political coalitions, the pattern of CRPF deployment seems to be consumerate to the situational demands.

(b) When a political homogeneity exists between the Central government and the U.P., the Union government has not been deploying the CRPF on any situational pattern. The correlations do not yield any meaningful indications and the deployment pattern seems to be random.

V.4. Summary of Findings:

In sum, we may conclude from the above discussion that certain salient indicators emerge about the role of CRPF in situations of collective violence in U.P. The main deduction from these indicators are as follows :

(a) Faced with a difficult internal security situation in U.P., the Union government has resorted to deployment of CRPF to restore law and order. The high number of incidences of collective violence in U.P. combined with the frequent deployments of the CRPF indicates that there is a heavy dependence on the CRPF for law and order duties. We can safely conclude that, as far as the internal security duties in U.P. are concerned, the CRPF has been playing a major role.

(b) In the years when there have been a mark increase in the number of incidence of collective violence in U.P., for instance 1978, the deployments strength of CRPF has also increased. This indicates that the Union government has been frequently resorting to the use of CRPF to restore law and order, especially, in situations which might take an ugly turn if not contained at an early stage.

(c) The deployment pattern in politically heterogeneous situations is that of a direct correlation between the incidences of collective violence and the deployment strength of CRPF in U.P.. Whenever the number of incidences of collective violence have shown a mark increase, in politically heterogeneous conditions, the number of companies of CRPF deployed has also shown as proportionate increase.

(d) Indications have also emerged which point out that whenever there has been political homogeneity between U.P. and the centre, no definite pattern or correlation has emerged between the number of companies of CRPF deployed and the number of incidences of collective violence.

V.5. Inferences:

In an attempt to arrive at answers to the question issues and problems raised in Chapter I, certain important inferences, based on the discussions in this Chapter, can be drawn. These inferences, based on the earlier attempts at correlational study of CRPF deployment strength, incidences of major collective violences in U.P. and the political climate of

U.P. vis-a-vis the centre are as follows:-

(a) The large number of incidences of collective violence in U.P. is symptomatic of a political failure of the State to resolve conflicts without resort to violence. The political structures and establish channels of political resolution of conflicts have failed to offer avenues which facilitate resolution of conflicts arising out of developmental initiatives of the state and sharpened communal and caste identities without resort to violence. Thus, arises what Kothari calls "crises of institutions" and Kohli calls "crisis of governability". The State has not been able to facilitate assimilation of social cleavages which have manifested themselves in the large numbers of collective violence incidences in U.P..

(b) The CRPF deployment strength has been proportional to the number of incidences of major collective violence in U.P. This means that increasing number of collective violence incidences calls for a larger CRPF deployment. This lends credence to our contention in Chapter I that the state has a tendency to interpret conflicts arising out of issues of social management and political failures in terms of law and order and 'security' problems. Further on, this also indicates that faced with declining legitimacy and consequent difficulty in enforcing it's writ, the state resorts to coercion with the help of it's executive arm--the police apparatus. CRPF is only one of these agencies of the executive arm. The increasing incidences of collective violence point out a declining legitimacy since the root cause of these violent incidences is sharpened social

cleavages; some of which have emerged due to unbalanced development under the State's initiatives. Hence, the State has failed to fulfil its legitimate functions of political resolution of conflict and as well as that of initiating a balanced development policy. Hence, the declining legitimacy of the State since it has failed to deliver its goods. Since the state is not able to enforce its writ by political action it has been resorting to repression which further endangers its legitimacy.

(c) Further on, we can also discern that the deployments of CRPF (use of coercion by the state) has political undercurrent also. The random and unpatterned deployments of the CRPF in a politically homogenous climate indicates that the CRPF was used only when it served a political purpose of suppression of conflict which could not be resolved by political avenues without resort to violence or the situation threatened to snowball into a much larger issue. When the same political parties are in power at both, the Centre and in U.P., indications exists which point out that the Union government resorted to CRPF deployments only as a last resort. Since political homogeneity ensured for the Central government that it faced no political threats from this politically important state, enough political space was left for the state government to attempt a political resolution of conflict.

Thus, indications exists which point out that in a politically homogenous climate, suppression of conflict, probably, was resorted to only if effort at political resolution

had completely collapsed. Before any CRPF deployment was made by the Union government, much political latitude was allowed to the state government to enable it to attempt a political resolution first. Coercion was resorted to, in all probability, as a last resort.

(d) Conversely, in a politically heterogeneous climate between U.P. and the Central government, deployment of CRPF is commensurate to the number of incidences of collective violence. This indicates that suppression of conflicts was resorted to as an early measure by the Union government. Such a step would mean political failure of the state government reflected in its inability to resolve the conflicts without resort to violence and suppressions. Frequent resort to coercion to contain conflict in the social fabric erodes the legitimacy of the heterogeneous state government. Thus political purposes of the Union government are furthered. The Union government's argument that no sou-motu deployment was resorted to in U.P. carries no credence on account of the virtual inability of the state government to refuse any 'directives' of the Union government without risking invocation of Articles 365 and 356. [Refer Chapters II and IV] .

In conclusion, we can hold that the CRPF has played an important role in U.P.--both politically as well as in internal security duties. Admittedly, CRPF is often deployed due to its immunity from local political pressures. However, the manner in which the CRPF has been used indicates that it has been a pawn in a larger political game which may topple the state government concerned. Instances are abundant in the political history of

U.P. when a Constitutional breakdown was alleged due to the state governments inability to resolve political conflicts without resort to violence. This resort to violence by the societal groups or the state governments [horizontal or vertical violence (See Kothari in Chapter I)] was seen as the loss of legitimacy by the state government calling for fresh elections/proclamation of a Constitutional Emergency.

Hence, coercion has emerged as an instrument in the hands of the State to further the political ends of the Union government.

This study, in an attempt to examine an important issue in the political dynamics of the Indian State has uncovered certain indicators which point towards a much larger role of CRPF in U.P. than merely 'aid of civil power'. Based on these indicators, a hypothesis can be developed to form the basis of a much larger and deeper study. A much more rigorous and in-depth examination of this 'political role' of the CRPF at the behest of the Union government is needed to arrive at conclusive opinions. An entirely independent and an altogether different study may be conducted, the basic material for which has been provided by this study.

Nonetheless, all indicators correlated in this Chapter point towards a highly political role of the CRPF.

- (1) Kuldeep Mathur. "Rural Violence in South Asia: Straws in the wind" in Bjorkman J.W.(ed.)Fundamentalism, Revivalists and Violence in South Asia. New Delhi: Manohar, 1988.
- (2) All Statistics taken from Statistics Diary 1991.Government of U.P.: State Planning Board, Economic and Statistics Department, 1991.
- (3) Source: Crime in India New Delhi: Government of India, Home Affairs (Ministry of), National Crime Research Bureau,BPR & D, Volumes from 1977 to 1991.
- (4) Source: K.M.Mathur. Police in India: Problems and prospects.New Delhi: Gian, 1991.pp.135-48.
- (5) In addition, Heavy Deployments were made in view of Mrs. Gandhi's assassination. Exact data of such deployment is not available.
- (6) Data not available but heavy deployment made for election duties apart from law and order deployments.
- (7) Quoted in K.M.Mathur. Op.Cit. p.139

(8) Source: K.M.Mathur. "Major incidences of collective violence in India in the last three decades." In Shukla S.K.(ed.) Collective Violence: Genesis and Response. New Delhi: IIPA, 1988. pp.309-28.

(9) + means relative stability and homogeneity.

++ means complete majority at both levels of government and homogeneity.

+ (?) means likely stability and homogeneity.

- (?) means heterogeneity is more likely and a difficult coalition exists.

- - means complete heterogeneity.

VI. CONCLUSIONS: NEED FOR RETROSPECTION AND RESTRUCTURING.

CHAPTER VI

VI. CONCLUSIONS: NEED FOR RETROSPECTIONS AND RESTRUCTURING.

"A democratic government rules not so much by continuous use of power as by the social sanction behind it's authority; but this authority will not be effective at the level of the people if the government exercising it falls short of basic moral character which is what ultimately vests a government with legitimacy." (1)

The Indian government seems to be falling terribly short of legitimacy to govern for it has been continuously failing to deliver what it had taken upon itself to undertake and deliver. "In a plural society [like India] laws' legitimate function is to help preserve harmony between different groups without giving an impression to any of the groups that it is enforced in a partial or partisan manner. The weaker and the deprived should not be driven to resort to violence out of a sense of frustration with the efficiency of the law as an agent of change. Those in authority who will not enforce the rule of law uniformly but only selectively are jeopardising the freedom of every citizen. When law assumes different connotations for different individuals depending upon their socio-economic and political position the rule of law ceases to exist. Such distortions cannot go without nature exacting a very high price." (2)

This, in a sense, sums up the basic findings of the study. The Indian State has been an omni-present but a feeble

State--what the authors Rudolph and Rudolph call a "Weak-Strong State".(3) The developmental policies pursued by the Indian State has yielded an imbalanced development. The State has not been able to carry out and implement difficult policy decisions. This has, in turn, sharpened the historical cleavages of the religious, ethnic, class, community, regional and lingual kind. These tensions in the social fabric which has been sharpened in the recent past have manifested themselves in form of incidences of collective violence. Thus State's legitimacy, having already been reduced due to ineffectualness of it's policies, is further threatened by such incidences of open conflicts. Faced by an increasing crisis of governability produced due to declining legitimacy, the State resorts to governance by means of coercion. This coercive effort of the State is manifested in stringent laws which leave amply wide latitude in the hands of the government officials and apparatuses of open coercion such as the police and the para-military forces. The state police forces are subject to local level political dynamics also which renders them ineffectual in situations of serious threats to law and order which carry political under-currents as well. The State, thus is left with only one recourse--the para-military forces. Apart from this the main deductions of this study may be summarised as follows:-

VI.I The Indian State has been overly security conscious since the very inceptions of an independent State in India. This is, partly, a colonial hangover, partly, a result of the post-

partition conditions of an almost continuous phase of a disturbed internal security environment .

Our Constituent Assembly was, similarly, almost obsessed with the idea of the granting enough powers to the State to enable it to deal with any contingency. It placed at equal levels the threats to both internal security and external security. The results of an excessively security conscious Constituent Assembly was the conceding of an extra-loaded framework of internal security to the Indian State. It was ensured that the State had enough unitary powers to override its constituent units as and when it desired to do so. It is not, therefore, surprising that the Indian State which is governed by the Constitution produced under such an environment by the Constituent Assembly (see Chapter II) continues to see the developmental side-falls and fall-outs as security problem and resorts to coercion at the first possible instance.

VI.2. The above framework created by the Constituent Assembly made way for adoption of the colonial Criminal Procedure Code without any major amendments. The same Cr.P.C. was extended in parts to the CRPF thereby granting it wide discretionary powers with almost no checks on it by the magistracy or the judiciary. Even the state governments [The executive power], under whose territorial jurisdiction the armed forces of the Union operate, have no control over them. Another extension of the same immunity granted to the CRPF and others is the denial of investigative jurisdiction on it to the newly

constituted National Commission on Human Rights.

VI.3. As far as the centre-states dimensions are concerned, once again, we may note that the very fundamental framework is unitary in nature with the Constituent Assembly being eager to grant enough unitary powers to the Union government. [See Chapter II] It appears that the states' governments were designed to function on a limited number of subjects during normal times under a paternalistic gaze of the Union government. As soon as any crisis arises, the latter would take over.

VI.4. Where speaking of excessive violence and violation of the law by security forces and pleading for respect of Human Rights by the security forces, what we do not note is the very wide latitude already at the disposal of the security forces. The use of term 'reasonable' in every clause of the Code of criminal procedure grants sweeping power to the security forces. It is hardly surprising that when faced with an extremely difficult and insurgent internal security scenario, members of the CRPF and other para-military forces- not speak of the state police forces -- interpret the 'reasonableness' in very wide terms. This, when combined with an ineffectual and almost non-existent checks on these forces make it natural for these forces to exceed their legal mandate. The recently constituted National Commission on Human Rights also has no powers over these forces making them answerable only to their superior officers who, it is very

unlikely, would not be a party to these exceedingly liberal interpretation of the law.

VI.5. The study of the role of CRPF in U.P. is seriously handicapped by the inavailability of detailed data. At Chapter V point out, we can safely infer that the high incidences of collective violence, CRPF deployment strength and the political climate of U.P. government vis-a-vis the Union government, when correlated indicates an important political role of the CRPF. The CRPF has served as a remote controlled arm of the Union government to further it's political goals. The Union government has used the CRPF deployment (or non-deployment) to offer or deny the state government enough political latitude to resolve the conflict without resorting the suppression/coercion. As we have seen in Chapter I & V, resorting to coercion/suppression undermines the legitimacy of the government in power-use of execssive coercion by the Union government in form of para-military deployment speedens up this process. Thus, CRPF serves the Union government's purpose to allow the state government to remain in power or not.

VI.6. Some Suggestions:

(i) First and foremost, the state must try to reorient it's policies so as to ensure balanced development. The State's policies and initiatives at social change must not sharpen historical cleavages which in turn get manifested in incidences of collective violence. This would need a reformulation of the

policies and programmes of the State. If the policies and programmes are conceived and implemented in a manner which blurs out these societal cleavages, greater assimilation on the political plane would be possible. This would serve the purpose of crystallising the legitimacy of the State action and reduce the need to resort to coercion.

(ii) While talking of excesses committed by the CRPF et. al., it is important to note that it is actually the worse operation of the legal and Constitutional framework. What is needed is a total and comprehensive review of the Constitutional framework, the Cr. P.C. and the relationship between the state police forces, the Union's armed forces and the magistracy. Purposive thinking on these lines is needed so as to reduce incidences of exceeding of the legal mandate by the security forces.

If the goal is that state's autonomy is respected, the security forces do not violate or exceed their Legal mandate and Human Rights are respected by them, the entire framework of the operation of the internal security apparatus needs to be reviewed and altered. State must bank on legitimacy of its action to enforce its writ rather than open coercion. Politics is more powerful than the gun - this must be the motto of State actions so as to resolve conflicts by assimilation and not coercion. Yet, coercions cannot be entirely given up-there might be situations in which order has to be instilled before political resolutions are possible. For such situations, effective checks against violation have to be devised and operationalised. Mere conventions, as suggested by the Sarkaria Commission Report would not serve the

purpose. No executive ever respects conventions when confronted with a do or die situation.

(iii) There might arise situations when blanket powers might be important for the security forces. Channels and procedures must be created so that such contingencies can be dealt with effectively. However, such operations must be a deviations (an abnormality) than a norm as it stands today.

(iv) Now, India faces the problem of making the forces adhere to the spirit of the law which includes exercise of the powers available to them with a view to cause minimum, unavoidable hardship to common man. Thus, adhering to the spirit of law would entail respect for Human Rights. This may be ensured by creating structures of checks on the armed forces and restructuring the entire framework of operation.

VI.7

Notes

- (1) P.R.Rajgopal. Social Change and Violence- The Indian Experience. New Delhi: Uppal, 1987. p. 157.
- (2) Ibid. p.160.
- (3) Llyod I. Rudolph and Rudolph S. H.In Pursuit of Lakshmi- The Political Economy of The Indian State. Bombay: Orient Longman, 1987. p.1.

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APPENDIX

(With reference to Chapter III)

The duties and powers conferred or imposed on the members of Central Reserve Police Force vide Section 16 (i) of the CRP Act, 1949 are existing provisions of the Code of Criminal Procedure 1973 and are available to the state police under normal circumstances. The powers and duties conferred or imposed on the members of the CRPF are as follows :-

1. Section 41(1). When Police may arrest without warrant

(1) Any Police officer may without an order from a magistrate and without a warrant, arrest any person-

(a) Who has been concerned in any cognizable offense or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so accused; or

(b) Who has in his possession, without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) who has been proclaimed as an offender either under this code or by order of the state government ; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having

committed on offence with regard to such things;
or

- (e) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts, to escape from lawful custody; or
- (f) Who is reasonably suspected of being a deserter from any of the armed forces of the union; or
- (g) Who has been concerned in, or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- (h) who, being a released convict, commits any breach of any rule made under sub-section (5) of Section 356;
- (i) for whose arrest, any requisition, whether written or oral, has been received from other police officer, provided that the requisition specifies the person to be arrested and the offence or other

cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(Sec. 41 corresponds to Sec. 54 of Act V of 1898)

Sub-section (2) of this section deals with police officers in charge of a police station and hence, has not been extended to CRPF by the Act of 1949.

This section, as is evident provides enough legal cover as far as arrests to be made by CRPF in discharge of its duties, is concerned. The procedure adopted for such an arrest is provided in Sec. 46 which is again extended to CRPF: Sec. 42 to 45 are not again relevant to CRPF operation.

2. Section 46.- Arrests how made

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such a person forcibly resists the endeavour to arrest him, or attempts evade the arrest, Such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause death of a person who is not accused of an offence punishable with death or imprisonment for life.

(Corresponds to See 46 of Act V or 1898).

Thus, as is visible from a mere reading of this section, abundant powers to make arrest are provided to CRPF for discharge of duty when deployed in aid of civil power.

As for as need to search a place in an attempt to establish order is concerned, CRPF is bestowed with enough powers as seen below :-

3. Section 47 - Search of place entered by person sought to be arrested,

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest has reasons to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress there to and afford all reasonable facilities for a search there in. (corresponds to see. 47/Act V/ 1898)

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful, in any case for a person acting under a warrant and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape , for a police officer to enter such place & search there in, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority

and purpose, and demand of admittance duly made , he cannot otherwise obtain admittance;

Provided that, of any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it. [corresponds to Sec. 48 of Act v of 1898]

(3) Any police officer or other person authorised to make and arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person, who , having lawfully entered for the purpose of making an arrest, is detained there in. [Corresponds to Sec. 49 of Act V of 1898]

With regard to pursuit of offenders, Sec. 48 of Cr.P.C. is extended to CRPF.

4. **Section 48: Pursuit of offenders into other jurisdictions.**

A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person to any place in India. [corresponds to sec. 58 of Act V of 1898].

However, certain restraints have been provided vis-a-vis arrests in Section 49.

5. Section 49 : No unnecessary restraint.

The person arrested shall not be subjected to more restraint than necessary to prevent his escape. [corresponds to Sec.50 of Act V of 1898]

Section 50 which provides for informing of grounds of arrest and his bail therefore have not been extended to CRPF.

6. Section 51 (1): Search of arrested person. (Only Sub-Sec.(1) extended)

(1) whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

Whenever a person is arrested without warrant or by a private person under a warrant, and cannot legally be admitted to bail or is unable to furnish bail,

the officer making the arrest or when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken possession by the police officer shall be given to such person.

Sub-section (2) provides for a female accused to be searched by another female with strict regard to decency is not extended to CRPF.

[correspond to Sec. 52 of Act v of 1891]

7. **Section 52:** Power to seize offensive weapons.

The officer or other person making any arrest under this code may take from the person arrested any offensive weapon which he was about his person, and shall deliver all weapons so taken to the court or officer before whom or which the officer or person making the arrest is required by this code to produce the person arrested.

[correspond to Sec. 53 of Act V 1898]

8. **Section 53:** Examination of accused by medical practitioner at the request of police officer :

(1) When a person is arrested on charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector [above the rank of sub-inspector in CRPF vide CRPF Act of 1949] and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) When the person of a female is to be examined under

this section, the examination shall be made only by, or under the supervision of, a female medical practitioner.

Section 54 providing for a medical examination of the accused at his request has not been extended to CRPF.

Further, we shall make a survey of provisions extended in CRPF from Chapter VI of Cr.P.C.

B. From Chapter VI: Process to complete appearance.

PART A - of this chapter deals with Summons & hence not relevant to CRPF. It is concerned more with the courts of law than police functions.

PART B- Warrant of Arrest.

9. Section 74: Warrant directed to a police officer.

A warrant directed to a police officer may be executed by another police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed. [corresponds to Sec. 79 of Act V of 1898]

Other sections of this chapter deal with the forms & procedures of the warrant and hence not extended to the CRPF.

PART C - again deals with Proclamations and Attachments and hence not extended to CRPF.

CHAPTER VIII: Process To Compel The Production Of Things.

This chapter contains various provisions empowering the police and the Courts to compel production of Things and Articles of evidentiary value. Only two sections here been extended to

CRPF :-

10. **Section 100: Persons in charge of closed places to allow search**

(1) Whenever any place is liable to search or inspection under this chapter is closed, any person residing in, or being incharge of, such place, shall, on demand of the officer (exercisable by a member above the rank of Sub-inspector in CRPF) or other person executing the warrant and on production of the warrant, allow him free ingress there to and afford all reasonable facilities for a search there in.

(2) If ingress into such a place cannot be obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency [corresponds to Sec. 102 of Act V of 1898].

(4) Before making a search under this chapter, The officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitants of the said locality is available

or is willing, to be a witness to the search to attend and witness the search and may issue order in writing to them or any of them so to do.

(5) The search shall be made in their presence and a list of all things seized in the course of such search and of the place in which they are respectively found, shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend court as a witness unless specially summoned by it.

(6) The occupants of the place searched, or some person in his behalf, shall in every instance, be permitted to attend during the search, and a copy of the list prepared under this section signed by the said witnesses, shall be delivered to such occupants or persons.

(7) When any person is searched under sub-section (3) a list of all things taken possession, of shall be prepared , and a copy thereof shall be delivered to such person .

(8) Any person who without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 IPC (45 of B60) [corresponds to Sec. 103 of Act of 1898]

[Sec. 187 IPC provides for punishment of a person who refuses to render assistance by action or omission to a

person/officer authorised to make such a demand].

11. Section 102 : Powers of Police officer to siege certain property.

(1) Any police official may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of commission of an offence.

(2) Such police officer, if subordinate to officer incharge of a police station shall forthwith report the seize to that officer. [CRPF is not subordinate to the state police machinery].

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the court, he may give custody there of the any person, on his executing a hand under taking to produce the property before the court as and where required and to give effect to the further orders of the court as the disposal of the same [corresponds to sec. 550 of Act V of 1898] [sub-section (3) has been inserted by Cr. P.C. (Amendment) Act 1978, Sec 10]

Further more, the CRPF Act extends one section of chapter X of Cr.P.C. :

C. From Chapter X: Maintenance of Public Order and tranquility.

A - Unlawful Assemblies.

12. **Section 129 : Dispersal of Assembly by use of Civil Force.**

(1) Any executive magistrate or officer in charge of a police station (sub-inspector in case of CRPF), or in absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command an unlawful assembly of five or more persons likely to cause disturbance of the public peace, to disperse; and it shall there upon be the duty of the members of such assembly to disperse accordingly (corresponds to Sec. 127 Act of V of 1898)

(2) If, upon being so commanded, any such assembly does not disperse, or if, without so commanded, it conducts itself in such a manner as to show a determination not to disperse, any executive magistrate or police officer referred to in sub-section (1) may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and of necessary, arresting and confining the person who forms part of it, in order to disperse such assembly or that they may be punished according to law. (Corresponds to Sec. 128 of Act V of 1898).

Here, we may make a note that Sec. 130 providing for use of armed forces to disperse an assembly, see Sec. 131 & Sec. 132 providing such powers to armed forces officers and legal protections there on have not been extended to CRPF. When ever deployment of CRPF entails use of armed force by CRPF Armed Forces (Special Powers) Act and Disturbed Areas Act are invoked which extend such powers to CRPF.

However, certain provisions of Chapter 11 of Cr. P.C. which provide for preventive action of the police have been extended to CRPF.

D. From Chapter XI : Preventive Action Of The Police

13. **Section 149 : Police to prevent cognizable offenses** .

Every police officer may interpose for the purpose of preventing and shall, to the best of his ability, prevent, the commission of any cognizable offence (Sec. 149 of act of 1898)

14. **Section 150 : Information of design to commit cognizable offence**

Every police officer, on receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and any other officers whose duty is to prevent or take cognizance of any such offence.

15. **Section 151 : Arrest to prevent commission of cognizable offence**

(1) Any police officer knowing of a design to commit any cognizable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding 24 hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this code or of any

other law for the time being in force.

(Corresponds to Sec. 151 of Act of 1898)

16. **Section 152 : Prevention of injury to public property.**

A police officer may of his own authority interpose or prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy of other marks used for navigation.

(Corresponds to Sec. 152 of Act V of 1898)
