

**GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA**

UNSTARRED QUESTION NO:5199

ANSWERED ON:08.05.2012

AMENDMENT IN BSF ACT

Abdulrahman Shri ;Meghwal Shri Arjun Ram ;Singh Shri Rakesh

Will the Minister of HOME AFFAIRS be pleased to state:

- (a) whether the Government proposes to amend the Border Security Force (BSF) Act, 1968;
- (b) if so, the details of the proposed amendments;
- (c) whether the Chief Ministers of some States have opposed the proposed amendments;
- (d) if so, the details thereof and the reasons for the said opposition;
- (e) whether the Government is making efforts to address the issues/concerns raised by the said Chief Ministers; and
- (f) if so, the details thereof?

Answer

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI JITENDRA SINGH)

(a) & (b): Yes Madam, there is a proposal to amend the Border security Force Act, 1968. For this purpose, a Bill, namely, the Border Security Force (Amendment) Bill, 2011 has been introduced in the Rajya Sabha on 18.08.2011. The said Bill was further referred to the Department-related Parliamentary Standing Committee on Home Affairs for report. The Committee had adopted the said Bill without any changes and recommended for being passed in its 154th Report presented to the Hon'ble chairman, Rajya Sabha on 03.11.2011. The said Bill now been renamed as "The Border security Force (Amendment) Bill, 2012 and is presently pending in Rajya Sabha.

The following amendments in the BSF Act, 1968 are proposed vide the said Bill to make an enabling provision to ensure correction of the legal position for proper performance of duties by BSF personnel when deployed for law order duties, counter insurgency duties, election duties, disaster management duties, etc. in the hinterland when requisitioned by the State Governments:-

(i) In the Border security Force act, 1968 (hereinafter referred to as the principal Act), in the long title, after the words, after the words "borders of India", the words "or of any part of the territory thereof" shall be inserted.

(ii) In section 2 of the principal act, in sub-section (l), in clause (a), in sub-clause(ii), after the words "borders of India", the words "or in any part of the territory thereof" shall be inserted.

(iii) In section 4 of the principal act, in sub-section(l), after the words "Borders of India", the words "or of such part of the territory thereof, as the Central Government may, by notification, specify" shall be inserted." (amendment of section 4) (iv) In section 139 of the principal Act, in sub-section(l), -

(a) In the opening portion, the words "adjoining the borders of India," shall be omitted.

(b) In clause (i) for the words and figures "the Central Excises and Salt Act, 1944, the Foreigners Act, 1946, the Foreign Exchange Regulation Act, 1947", the words and figures "the Central Excise Act, 1944, the Foreigners Act, 1946, the Foreign Exchange Management Act, 1999" shall be substituted. (amendment of section 139)

(c) & (d): So far, the State Governments of Arunachal Pradesh, Assam, Goa, Haryana, Himachal Pradesh, Karnataka, Kerala, Manipur, Meghalaya, Odisha, Rajasthan, Sikkim, Uttarakhand, West Bengal and NCT of Delhi have concurred with the proposal. However, the Chief Ministers of Bihar, Andhra Pradesh, Chhattisgarh, Gujarat, Maharashtra have raised certain objections to this proposal. Main objections raised by these Chief Ministers are that

a) Conferring of powers of arrest, search and seizure to BSF, when deployed in the hinterland, is likely to conflict with functions of the local police.

b) It shall weaken the federal structure by the Central Government as it would be violative of the rights conferred upon the States.

c) The proposal may be further discussed with the State Governments.

(e) to (f): To address the objections raised by certain Chief Ministers, the matter was discussed during the Chief Minister Conference on Internal Security held on 16.04.2012. Home Minister has also written on 20.04.2012 to the Chief Ministers of the States who had expressed reservations against the said amendment, appraising them that there is no proposal to confer any additional powers upon the BSF. Such powers are already available in section 139 of the BSF Act, 1968 when deployed in the local limits of such area adjoining the border. However, as per the present legal position, BSF can be deployed only along or adjoining the borders of India. However, since in recent times, the BSF has been deployed in the hinterland, especially in the interior districts of Chhattisgarh and Odisha, the said deployments have been questioned. Besides, in their current deployment in the interior districts, a question has arisen whether they can exercise the now available powers under section 139 of the act. Therefore, to correct the legal position, it has been proposed to amend the relevant provisions of the BSF Act to permit deployment of BSF in other parts of the territory of India also. It was further clarified to the State Governments that BSF or any other Central Armed Police Force (CAPF) can be deployed in a State only at the request of the State concerned. This a constitutional limitation in view of Entry 2A of List 2A of the seventh Schedule of the Constitution. Besides, detailed guidelines/instructions issued by the Ministry of Home Affairs have made it clear that a CAPF may be deployed in a State only on the specific request of the State Government concerned.