

Limits and borders: On the territorial jurisdiction of the Border Security Force

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Litigation concerning the territorial jurisdiction of the Border Security Force (BSF) in Punjab seems to be the result of the lack of effective consultation between the central and State governments on the issue. Punjab has filed a suit against the Union government under Article 131 of the Constitution, challenging the decision to increase the operational jurisdiction of the BSF from 15 km to 50 km. The border State sees the Centre's move as a breach of federal principles and an encroachment into the law and order powers of the Punjab police. West Bengal has a similar view, and both States have got resolutions passed in their Assemblies against the expansion. In this backdrop, the Supreme Court's decision to examine the questions that arise from the expansion of the BSF's area of operations acquires significance. In October 2021, the Centre had issued a notification under the provisions of the BSF Act, standardising the area over which the BSF would have jurisdiction to operate. In Punjab, West Bengal and Assam, the distance was raised from within 15 km from the border to 50 km, while it was reduced from 80 km to 50 km in Gujarat. For Rajasthan, it was kept unchanged at 50 km. The Union government said in a reply in the Rajya Sabha in December 2021 that the extension of the BSF's jurisdiction will help it discharge its border patrol duty more effectively.

While the Union government may have valid reasons for its move, it should not be seen as encroaching into the domain of the State governments, which have the constitutional responsibility to maintain public order and exercise police powers. The BSF mainly focuses on preventing trans-border crimes, especially unauthorised entry into or exit from Indian territory. It does not have the power to investigate or prosecute offenders, but has to hand over those arrested and the contraband seized from them to the local police. In practice, BSF personnel usually work in close coordination with the police and there ought to be no clash of jurisdiction. It is possible to argue that the expanded jurisdiction merely authorises the BSF to conduct more searches and seizures, especially in cases in which the offenders manage to enter deep into the country's territory. However, it goes without saying that there ought to be strong reasons for the expansion of the jurisdiction of any central force. In this regard, the most relevant questions among those framed by the Supreme Court are whether the Centre's notification encroaches upon the State government's domain; and what factors ought to be taken into account while determining the "local limits of areas adjoining the borders of India".