

**"In the ongoing Delhi violence, what action can the state government take in a UT where police are under the Centre? Under what circumstances can Delhi call for central forces? And if called, what is the state's role?"**

Amid the violence that has rocked Delhi, a Union Territory, a key question being raised is whether or not the government of the National Capital Territory of Delhi can take any action to bring law and order under control. The answer is not a straightforward one, with many factors coming into play.

**Can any official of the Delhi government request the Union government to deploy armed forces to maintain law and order?**

The NCT of Delhi, under Article 239 AA, has been given a special status, which gives powers of law-making and administration to an elected legislature and the council of ministers. The law, however, puts two subjects — public order and police — directly under the Union government.

Even here, there are exceptions. Two sections of Criminal Procedure Code (CrPC) —129 & 130 — give the Executive Magistrate certain powers relating to “unlawful assembly”. If a group is found in unlawful assembly under Section 129 CrPC, the Executive Magistrate can issue orders to these persons to disperse. If this fails, the magistrate can use the civil force — which is the police.

If these efforts too fail, the Executive Magistrate, under Section 130 CrPC, can call an officer of the armed forces of the Union to disperse the assembly. This section states that it can be invoked for “public security”. Therefore, under these two limited powers, the Executive Magistrate, who reports to the Chief Minister, can issue orders relating to public security.

**How does Section 130 CrPC operate ?**

It has three sub-sections. The first sub-section states that if the civil force is not being able to disperse an unlawful assembly —“and if it is necessary for the public security that it should be dispersed” — then the Executive Magistrate of “the highest rank who is present may cause it to be dispersed by the armed forces”.

The officer of a Union armed force must comply with a requisition made to him by the Executive Magistrate. However, Section 130 CrPC empowers the officer to decide, on his own, the manner in which the unlawful assembly has to be dispersed by forces under his command. The second sub-section under Section 130 reads: “Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate

may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law”.

The third sub-section states that the armed forces shall only use a “little force”. It states: “Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons”.

### **Does a full-fledged state have more powers to call the armed forces ?**

While public order and police are under the state list, the state government may request the Union government to make available armed forces to help restore public order. Even in circumstances where public disorder is not so serious as to fall in the category of an “internal disturbance” as defined in Article 355 of the Constitution, the Union Government may accede to the request. However, it is important to note that except for the limited purpose of dispersing an “unlawful assembly” and arresting its members — for which Section 130 CrPC empowers the Executive Magistrate to requisition the aid of the Army — neither the state government nor any authority under it has been conferred by the Constitution any legal right to call the armed forces while dealing with a public disorder or “internal disturbance”.

Also, the Seventh Schedule of the Constitution — which deals with the subject of public order in the state list — states that use of the armed forces in the maintenance of public order is outside the purview of the states.

### **When was the Army called in during the 1984 anti-Sikh riots in Delhi?**

P G Gavai, who was Delhi’s Lt Governor when the anti-Sikh riots broke out in 1984 following Prime Minister Indira Gandhi’s assassination, requested the government to deploy the Army. The Justice Ranganath Mishra Commission of Inquiry has found that there was a delay on the part of the Delhi administration (Lt Governor and Commissioner of Police) in calling the Army, though about 5,000 Army men were available by midnight of October 31, the day of the assassination. The Nanavati Commission too had agreed with the findings of the Justice Mishra Commission on the delay in calling the Army.

Tarlochan Singh, who was press secretary to the President of India and deposed before the Nanavati Commission, submitted that the President had contacted the Lt Governor on the phone and had told him “to take all possible measures to prevent the riots” ; and that the President had also told him that “if the situation was so bad Army assistance should be called”.

Among those who deposed was I K Gujral (later Prime Minister of India), who said that on the morning of November 1, 1984, he had contacted Lt Governor Gavai and told him to call the Army and that the Lt Governor had replied that “if the Army is called, there would be panic”.

Major General J S Jamwal, who was the General Officer Commanding of Delhi Area, deposed that on November 1, 1984 at about 11 am, he received a message from the Chief of Army Staff that he should be ready if any request is received for help from civil authorities, after which he contacted Lt Governor Gavai and told him that if any help is required from the Army, he should be informed. He deposed that the Army was deployed late in the evening of November 2 and it really became effective from November 3 in some areas.

### Expected Questions (Prelims Exams)

**Q. Articles-239 and 239AA are in news recently after the recent violence in Delhi. Consider the following statements in this context.**

1. Elected Government of Delhi according to Article-239AA cannot make laws related to Public order, policing and land rights.
2. According to Supreme Court the Lt. Governor will not act on the advice of the Council of Ministers of the Delhi Government under Article-239AA.

Which of the above statements are correct?

- (a) Only 1                      (b) Only 2  
(c) Both 1 and 2              (d) Neither 1 nor 2

**Note:** Answer of Prelims Expected Question given on 25 Feb., is 1 (b)

### Expected Questions (Mains Exams)

**'The powers of the state government to prevent the recent violence in Delhi appear to be limited. What kind of powers can be considered to be given to the Delhi government to deal with such situations? (250 words)**

**Note:** - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.

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