

# Central Bureau Of Investigation (CBI) [UPSC Notes for GS II]

## Central Bureau Of Investigation (CBI)

### Topic: Ministries and Departments of the Government

CBI - Formation and establishment, functioning, issues related to its autonomy and need for consent in investigations. And recent internal feud.

#### About CBI:

- The CBI was established as the Special Police Establishment in 1941, to enquire into cases of corruption in the procurement during the Second World War.
- Later, the Santhanam Committee on Prevention of Corruption recommended the establishment of the CBI. The CBI was then formed by a resolution of the Home Affairs Ministry. The Ministry of Personnel later on, took over the responsibility of the CBI and now it plays the role of an attached office.

#### Functions of CBI:

- The CBI is the main investigating agency of the GOI. It is not a statutory body; it derives its powers from the Delhi Special Police Establishment Act, 1946.
- Its important role is to prevent corruption and maintain integrity in administration. It works under the supervision of the CVC (Central Vigilance Commission) in matters pertaining to the Prevention of Corruption Act, 1988.
- Investigate cases connected to infringement of economic and fiscal laws, i.e., breach of laws concerning customs and central excise, export and import control, income tax, foreign exchange regulations, etc. But cases of this nature are taken up by the CBI either at the request of the department concerned or in consultation with the concerned department.
- Investigate crimes of a serious nature, that have national and international ramifications, and committed by professional criminals or organised gangs.
- To coordinate the activities of the various state police forces and anti-corruption agencies.
- At the behest of a state govt., the CBI can also take up any case of public importance and investigate it.
- Maintaining crime statistics and disseminating criminal information.
- The CBI is India's representative for correspondence with the INTERPOL.

#### Problems associated with CBI:

- The agency is dependent on the home ministry for staffing, since many of its investigators come from the Indian Police Service. The CBI also relies on the ministry of law for lawyers and also doesn't have functional autonomy to some extent.
- The CBI, run by IPS officers on deputation, is also vulnerable to the government's ability to manipulate the senior officers, because they are dependent on the Central government for future postings.
- Since police is a State subject under the Constitution, and the CBI acts as per the procedure prescribed by the Code of Criminal Procedure (CrPC), which makes it a police agency, the CBI needs the consent of the State government in question before it can make its presence in that State. This can lead to certain cases not being investigated and seeing a silent deadlock. Recently, states like Andhra Pradesh (consent again given after change of government in state) and West Bengal withdrawn consent.
- CBI which investigates cases of national importance has been censured for its mishandling of several scams owing to political pressure. It has also been denounced for interfering in the investigation of prominent politicians, such as Jayalithaa, P. V. Narasimha Rao, Lalu Prasad

Yadav, Mulayam Singh Yadav and Mayawati; this tactic leads to their acquittal or non-prosecution. Some of the examples in which CBI was misused are the Hawala scandal, Bofors scandal, 2G spectrum scam, coal scam and so on.

## Financial independence

Financial independence is vital for functioning of any organisation.

- **Issues:**

- CBI and RTI

- CBI is placed in the 2nd Schedule, Section 24 of the Right To Information Act. Sec 24 states, 'act not to apply to certain organizations'. It provides an exception to obtaining information from intelligence and security organisations specified in the second schedule to the RTI act or any information furnished by them to the government.
    - The CBI was not one of the organizations included in the exempted category. It was much later in 2012 that the CBI was brought in. There was a purpose as to why the CBI was not brought into the ambit of the RTI- this was because the CBI was not considered to be one of those organizations which really looks into the strategic interests of India.
    - Section 8 of the RTI Act, which guarantees various forms of exemption, begins by saying that all the information which has a strategic significance should not be disclosed. Further, since the Intelligence Bureau (IB), the Research & Analysis Wing or RAW and such organizations which gather intelligence, are dealing with strategic matters and so they were from the very beginning kept in the exempted category.
    - The CBI was never considered to be one which collects or maintains such information which are of strategic importance for the country.
    - However, the CBI made out a case that they are also investigating into all kinds of cases- and that these cases include those which are of strategic importance for India and therefore, if they would be subjected to the RTI, much of that information would go out into the public domain. The then government had agreed to this.
    - So CBI can still be brought under the RTI with all the exemptions already protecting its important information.

## Issue of Consent:

- Since police is a State subject under the Constitution, and the CBI acts as per the procedure prescribed by the Code of Criminal Procedure (CrPC), which makes it a police agency, the CBI needs the consent of the State government in question before it can make its presence in that State. This can lead to certain cases not being investigated and seeing a silent deadlock. Recently, states like Andhra Pradesh (consent again given after change of government in state) and West Bengal withdrawn consent.
- There are two kinds of consent:
  - case-specific and general– Given that the CBI has jurisdiction only over central government departments and employees, it can investigate a case involving state government employees or a violent crime in a given state only after that particular state government gives its consent.
  - “General consent” is in general, provided to aid the CBI easily perform its investigation into cases of corruption against central government employees in the concerned state. Almost all states have given such consent. Or else, the bureau would need consent in all cases.
- As per Section 6 of the Delhi Special Police Establishment Act, 1946, the state governments can withdraw the general consent accorded.
- The CBI would still have the authority to probe old cases registered when general consent existed. Also, cases registered elsewhere in India, but involving people stationed in states which have withdrawn consent, would allow CBI's jurisdiction to extend to these states as well.
- Withdrawal of consent will only bar the CBI from registering a case within the jurisdiction of states which have withdrawn consent. But, the CBI could still file cases in Delhi and continue to investigate

## **CBI VS. STATE POLICE**

- **Kolkata Police detained a team of Central Bureau of Investigation (CBI) officials**

The role of the (SPE) Special Police Establishment (which is a division of CBI) is supplementary to that of the state police forces. under the Delhi Police Establishment Act, 1946, together with state police forces, the SPE enjoys the concurrent powers of investigation and prosecution for offences. However, to avoid duplication and overlapping of cases between these two agencies, the following administrative arrangements have been made:

- The SPE shall take up those cases which are fundamentally and substantially concerned with the Central Government's affairs or employees, even if they also involve certain state government employees.
- The police force of the state shall take up such cases which are substantially concerned with the state government's affairs or employees, even if they also involve certain Central Government employees.
- The SPE shall also take up cases against public undertakings or statutory bodies employees established and financed by the Central Government.

## **CBI Autonomy**

In the infamous Coalgate scam case, the Supreme Court raised the question of the bureau's independence and said that "The CBI has become the state's parrot. Only screaming, repeating the master's voice" The SC had then asked the Centre to make the CBI impartial and said it needs to be ensured that the CBI functions free of all external pressures.

### **Why called "caged parrot"?**

- Increasing government interference like transfer, postings.
- suo motu cognizance not allowed.
- Barred from prosecuting high officials without prior permission e.g. Jain Hawala Case.
- Under supervision of CVC, which is further controlled by the government?
- Issue of consent
- Financial autonomy

SC over CBI's autonomy: In the Vineet Narain case, 1997 The Supreme Court agreed that the CBI had failed in its responsibility to investigate allegations of public corruption. It laid down guidelines to make sure of the independence and autonomy of the CBI and ordered that the CBI be placed under the supervision of the Central Vigilance Commission (CVC), which is an independent governmental body intended to be free from executive control or interference.

The Supreme Court gave the following directions:

1. The CVC should be given statutory status and given the responsibility to supervise the work of the CBI ensuring its efficiency and impartiality;
2. Its head should be selected by a team of the prime minister, the home minister and leader of the opposition in Parliament from a panel of eminent people and the CBI director be appointed for a minimum tenure of 2 years by a committee which would be headed by the CVC including the union home secretary and the secretary, personnel;
3. A report on the CBI's activities be submitted in 3 months.
4. A nodal agency be established for dealing with the emerging political-criminal-bureaucratic nexus;
5. A directorate of prosecution be set up.

The Government Of India has shown little interest in implementing many of these recommendations.

### **What needs to be done?**

- The first measure is to ensure that the Bureau functions under a formal and legal framework in the lines of contemporary investigative agencies. To safeguard the autonomy of CBI, a new act such as the CBI Act should be promulgated which would give it a statutory backing.
- The Lokpal Act recommends a 3-member committee comprising of the PM, the leader of the opposition and the chief justice of the SC to select the director. Even after Lokpal act political interference has been the main hurdle in the working of the CBI. In order to resolve this, a new Act should be promulgated and it must specify criminal culpability for government interference.
- CBI should develop its own dedicated cadre of officers who are not bothered about deputation and abrupt transfers. But all senior posts in the bureau are now held by IPS officers.
- Along the lines of CAG (Comptroller and Auditor General), CBI should be made to be accountable to the Parliament. A more effective parliamentary oversight over the CBI could be a way forward to ensure better accountability, notwithstanding concerns about political misuse of the oversight.
- The CBI recruitment should be done on the lines of UPSC exam. This warrants a fresh look at the service conditions for direct recruitment to the Central Bureau of Investigation.

#### Way forward:

- **L.P. Singh Committee (1978) and a Parliamentary standing committee (2008)** recommended the “enactment of a comprehensive central legislation to remedy the issue of autonomy. Government has to take into consideration these recommendations.
- A Parliamentary law for the autonomy, powers, etc. is the first step towards improving the CBI’s autonomy.
- CBI is an agency of the Central Government, it was formed with a dual responsibility to investigate grievous cases and provide leadership and direction in fighting corruption to the Police force across the country.
- Agencies like the CIA and FBI in USA are run exceptionally well by the government with a great autonomy so the goal of reforms should be to make CBI more autonomous in nature like the CIA and FBI. More political will is needed to attain it which should also keep in mind that it will not dispossess them of accountability.