

CBI: Appointment of its Director and the Controversy

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Two frontrunners in the race for the post of Director, Central Bureau of Investigation (CBI) who were also believed to be the government's top choices, were eliminated after Chief Justice of India NV Ramana invoked the 'rule of law'. The two candidates, 1984-batch officers YC Modi and Rakesh Asthana, among the frontrunners to the post, were dropped after Chief Justice of India N V Ramana cited a Supreme Court guideline on appointment of police chiefs.

In news: After CJI Ramana cites 'rule of law', Rakesh Asthana and YC Modi out of CBI chief race

Placing it in syllabus: Law & Policy

Dimensions

- CBI
- Composition
- Appointment
- SC rulings on the Appointment Process
- Powers , Functions and Criticisms
- Suggestions to make the Appointment process transparent and strengthen the body

Content:

CBI:

- The Central Bureau of Investigation (CBI) is the **premier investigating police agency** in India.
- It functions under **Dept. of Personnel, Ministry of Personnel, Pension & Public Grievances**, Government of India.
- It is also the nodal police agency in India which

coordinates investigations on behalf of Interpol Member countries.

Origin:

- The Central Bureau of Investigation (CBI) owes its origin to the Special Police Establishment, constituted by the British government in 1941, which was substituted by the **Delhi Special Police Establishment (DSPE) Act, 1946.**
- The Government of India set up Central Bureau of Investigation **by a resolution** dated 1st April, 1963
- The establishment of the CBI was recommended by the **Santhanam Committee on Prevention of Corruption (1962-64)**

The CBI is **not a statutory body**. Its investigative and jurisdiction powers are governed by the DSPE Act, 1946.

Composition:

- The CBI is headed by a Director and he is assisted by a Special Director or an additional director.
- Additionally, it has a number of joint directors, deputy inspector generals, superintendents of police and all other usual ranks of police personnel

As on date, CBI has the following Divisions:

- Anti Corruption Division
- Economic Offences Division
- Special Crimes Division
- Directorate of Prosecution
- Administration Division
- Policy & Coordination Division
- Central Forensic Science Laboratory

Appointment:

Till 2014, the CBI Director was appointed on the basis of the DSPE Act, 1946. In 2014, the Lokpal Act provided a committee for the appointment of CBI Director.

The Lokpal and Lokayuktas Act (2013):

It amended the Delhi Special Police Establishment Act (1946) and made the following changes with respect to the composition of the CBI:

- The Central Government shall appoint the director of CBI on the recommendation of a three-member committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and the chief justice of India or judge of the Supreme Court nominated by him.
- There shall be a Directorate of prosecution headed by a Director for conducting the prosecution of cases under the Lokpal and Lokayuktas Act, 2013. He shall function under the overall supervision and control of the Director of the CBI. He shall be appointed by the Central Government on the recommendation of the Central Vigilance Commission and hold office for a period of two years.
- The Central Government shall appoint officers of the rank of SP and above in the CBI on the recommendation of a Committee consisting of the Central Vigilance Commissioner as Chairperson, the Vigilance Commissioners, the secretary of the Home Ministry and the Secretary of the Department of Personnel.

Delhi Special Police Establishment (Amendment) Act, 2014:

- It made a change in the composition of the Committee related to the appointment of the Director of C.B.I.
- It states that where there is no recognized leader of the Lok Sabha, then the leader of the single largest

opposition party in the Lok Sabha would be a member of that committee.

SC rulings on the Appointment Process:

- In Vineet Narayan vs. Union of India (1998), the apex court laid down that the director, CBI shall be appointed on the recommendation of a committee comprising the Central Vigilance Commissioner, vigilance commissioners, secretary (home) and secretary (personnel), and that he shall have a **minimum tenure of two years.**
- In pursuant with SC order, the CBI Director has been provided security of tenure in office by CVC Act 2003
- In July 2018, Supreme court had passed a slew of directions on police reforms and restrained all states and Union territories from appointing any police officer as acting DGPs to avoid favouritism and nepotism in such high-level appointments.
- In **Prakash Singh Case (2019)**, Supreme Court judgment that said officers with less than six months left in service should not be considered for the position of DGP
- Dispelling confusion regarding an order issued in July 2018, a Bench led by Chief Justice of India Ranjan Gogoi said senior police officers with a residual tenure of six months before normal retirement could be considered for the post of DGP or higher.

CJI Ramana had set a new precedent in selection of CBI chief. The Prakash Singh judgment was about appointment of DGPs of state police.

CBI appointments are guided by the Vineet Narain judgment, the CVC Act and the Lokpal Act. This could now spill over to appointments in the IB and R&AW, too, if the government weighs in CJI Ramana's point

Powers, Functions and Criticisms

The CBI is a multidisciplinary investigation agency of the Government of India and undertakes investigation of corruption-related cases, economic offences and cases of conventional crime.

It normally confines its activities in the anti-corruption field to offences committed by the employees of the Central Government and Union Territories and their public sector undertakings.

It takes up investigation of conventional crimes like murder, kidnapping, rape etc., on reference from the state governments or when directed by the Supreme Court/High Courts.

The CBI acts as the “National Central Bureau” of Interpol in India. The Interpol Wing of the CBI coordinates requests for investigation-related activities originating from Indian law enforcement agencies and the member countries of the Interpol.

Powers and Functions of CBI

- Investigating cases of corruption, bribery and misconduct of Central government employees
- Investigating cases relating to infringement of fiscal and economic laws, that is, breach of laws concerning export and import control, customs and central excise, income tax, foreign exchange regulations and so on. However, such cases are taken up either in consultation with or at the request of the department concerned.
- Investigating serious crimes, having national and international ramifications, committed by organized gangs of professional criminals.
- Coordinating the activities of the anti-corruption agencies and the various state police forces.
- Taking up, on the request of a state government, any case of public importance for investigation.
- Maintaining crime statistics and disseminating criminal

information.

Criticisms

Limited Autonomy:

- 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.

Political Misuse:

- The CBI has often been criticised for its alleged failure to function impartially and objectively as an agency of law and acting at the government's behest.
- However, simultaneously there has always been an ever-increasing demand for investigation of complicated cases involving influential persons to be handed over to the CBI.
- There have been allegations that the government misuses the CBI to target opposition parties and settle political scores.
- This has largely been responsible for the state governments' opposition to enacting a Central law for the CBI.
- In 2013, the Supreme Court called it a "caged parrot".

Legislative Issues:

- The charter of duties of the CBI are not protected by legislation. Instead, its functions are based merely on a government resolution that draws its powers from the Delhi Special Police Establishment Act, 1946- a colonial law.
- Critics are of the opinion that this makes CBI merely the premier investigative arm of the Union government.

Overlapping functions:

- A Parliamentary Standing Committee (2015) observed that there is an overlap in jurisdictions of CVC, CBI and Lokpal in certain cases with potential to create serious functional problems.
- The Committee observed that existing provisions make it possible for a complaint of corruption against an official being simultaneously dealt by multiple agencies.

Shortage of Manpower:

- It also faces an acute shortage of manpower in the ranks of Constable, Head Constable, Inspector and Superintendent of Police.
- The CBI faces challenges in investigating many crimes and quality of investigation has been questioned.
- This in turn, has caused enormous delays in concluding investigations when Supreme Court and High Courts hand over a large number of sensitive cases to the CBI for investigation without additional manpower.

Exclusion from RTI:

- The role and transparency of the CBI investigation raised public debate in the Bofors scam, Jain hawala, 2G scam, coal scam and other prominent cases.
- However, even after the enactment of the RTI Act, 2005, the CBI has managed to keep itself outside the purview of the Act.

Suggestions to make the appointment process transparent and strengthen the body:

- A comprehensive new central law should be formulated for the governance of the CBI and ensure autonomy to the agency. Further, the charter of duties should be clearly defined and stated.

- Measures should be taken to restore the institutional integrity of the CBI and boost public confidence in the institution
- CBI should develop its own dedicated cadre of officers who are not bothered about deputation and abrupt transfers.
- The infrastructure and human resources should be strengthened for effective investigation and to avoid delays in concluding investigations
- Measures should be taken to ensure transparency in the process of investigations by CBI. Further, there should be public discourse on whether CBI should be brought under the RTI Act.

Mould your thought: How is the Director of CBI appointed? Critically evaluate the functions of CBI in this regard. ***Approach to the answer:***

- Introduction
- Discuss the method of appointment of CBI director (including the recent changes)
- Briefly write the functions of the CBI
- List out the major criticisms of CBI functioning
- Give suggestions to improve the situation
- Conclusion