

# CBI-Freeing the caged parrot

September 30, 2022

## **Manifest Pedagogy:**

The SC has called the CBI a caged parrot, and CJIs have expressed doubts over its credibility and said it is no longer trusted. Attempts to secure its independence have been opposed or overturned by successive governments. The judiciary has to decide what it wants to do with the hopes of 135 crore Indians for transparency and probity in public life. CBI must be reformed if they are not to be used as instruments of intimidation, blackmail by governments.

**In News:** Under the BJP-led NDA-II's eight years in power so far, even as the Opposition's political footprint has shrunk, at least 124 prominent leaders have faced CBI probes and as many as 118 of them are from the Opposition – that's 95 per cent.

**Placing it in the Syllabus:** Polity and Governance.

## **Static Dimensions**

- Background
- About Central Bureau of Investigation (CBI)
- Functions of CBI

## **Current Dimensions**

- Struggle to fix processes
- Structurally constrained CBI
- Issues associated with CBI
- Suggestions to reform CBI

## **Content**

### **Background**

- In May 2013, as multiple corruption scandals dogged the

government, the Supreme Court made an observation about the Central Bureau of Investigation (CBI) that has stuck to the agency ever since. A Bench described the CBI as “a caged parrot speaking in its master’s voice”.

- The observation was made in the context of government interference in the functioning of the CBI in its investigation of the coal blocks allocation cases.
- The apex court has since criticised the CBI for its “actions and inactions” on several occasions, and flagged fundamental problems with the functioning of the agency.
- When it comes to the CBI, it possessed immense trust of the public in its initial phase. But with the passage of time, like every other institution of repute, the CBI has also come under deep public scrutiny.
  - Its actions and inactions have raised questions regarding its credibility in some cases.

### **About Central Bureau of Investigation (CBI)**

- It is the main investigation agency of the central government for cases relating to corruption and major criminal probes.
- It has its origin in the **Special Police Establishment set up in 1941** to probe bribery and corruption during World War II.
- CBI was set up by a resolution of the Ministry of Home Affairs in 1963 after the **Santhanam committee** recommendation.
- The superintendence of CBI rests with CVC in corruption cases and with the Department of personnel and training in other matters.
- Presently it acts as an attached office under DOPT.
- Although DSPE Act gives legal power to CBI, CBI is not a statutory body as: Word ‘CBI’ is not mentioned in the DSPE act.
- Indian agency to coordinate investigation on behalf of

Interpol Member countries.

### **Functions of CBI**

- Corruption Cases
- Economic Crimes like financial frauds, narcotics, antiques, smuggling etc.
- Special Crimes like Terrorism, ransom for kidnapping etc.
- The CBI was empowered to probe cases concerning any of the Central subjects enumerated in the Union List in the Seventh Schedule of the Constitution.

### **Struggle to fix processes**

- The struggle to free elite law-enforcement agencies such as the CBI and Enforcement Directorate (ED) from the stranglehold of governments and political parties has been ongoing since the 1990s.
- The landmark 1997 **Vineet Narain judgement** of the Supreme Court (**Vineet Narain & Others vs Union Of India & Anr**) dealt with this issue in detail.
  - The Supreme Court fixed the tenure of the CBI Director at two years, gave statutory status to the Central Vigilance Commission (CVC), and stipulated that a panel headed by the CVC and including top secretaries to the Union government would draw up a panel from which the Director of the ED would be selected.
- **The Lokpal Act, 2013**, laid down that the CBI Director should be chosen, unanimously or by majority vote, by a search committee headed by the Prime Minister and also comprising the Leader of Opposition and the CJI or his representative.

### **Structurally constrained CBI**

- The CBI has been stymied both by the legal structure within which it functions, and by the

changes made by governments in the Rules governing it.

- Over the years, these have progressively made the agency subservient to the Union government.
- To prosecute any MLA, state minister, or MP, the CBI needs sanction from the Speaker of the state Assembly (in case of MLAs) or the Governor (for state ministers).
  - In the case of an MP, sanction is sought from the Speaker of Lok Sabha or Vice Chairman of Rajya Sabha.
  - Since all these sanctioning authorities have links to the ruling dispensation, Opposition parties feel they are unfairly targeted.

#### ▪ **Few Instances**

- In the Narada Sting Operation case, the CBI chargesheeted Firhad Hakim, Subrata Mukherjee, Madan Mitra, and Sovan Chatterjee -all ministers in the TMC-led West Bengal government at the time of the offence – after getting sanction from the Governor.
  - However, other MLAs and MPs have not been chargesheeted, including TMC-turned-BJP leader Suwendu Adhikari, for lack of sanction from the West Bengal Assembly Speaker and Lok Sabha Speaker. Adhikari was an MP when the sting operation was conducted.
- In 2012, CBI sought sanction to prosecute former Maharashtra Chief Minister Ashok Chavan in the Adarsh Cooperative Housing case, which was denied in 2013 by then Governor K Sankarnarayanan.
  - In February 2016, after the Narendra Modi government came to power and a new Governor,

C Vidyasagar Rao, was appointed, the sanction came through.

### Issues associated with CBI

- **Dilution**-The SC judgement and the CVC Act (of 2003) have been progressively diluted by various governments over the years.
- The advent of Lokpal diluted it even more. The current situation is that central agencies such as CVC, CBI, and ED have become completely defunct
- Apart from following instructions from the government, they are doing nothing. And it is happening blatantly.
- **Independence**-The entire struggle for independence of CBI and ED is being defeated.
  - It's very clear that the agency has no freedom to probe anyone on its own. It is the government, at the Union or in states, or the court, which will decide who will be investigated.
- The work of the agency has been further constrained by the increasingly hostile relations between the Centre and the state governments. As many as nine states have withdrawn general consent to the CBI.
  - In March this year, **Meghalaya government** withdrew general consent.
- Critics have also pointed to the way in which successive governments have used the lure of post-retirement jobs to make CBI Directors to their line.
  - Former CBI Director was appointed Governor of Nagaland by the UPA in 2013.
  - Other former CBI chiefs got post-retirement jobs as members of the National Human Rights Commission under the UPA.
- **Tenure**-The government last year amended the DSPE Act to give the CBI Director a tenure of five years, but added a caveat that after completion of the SC-mandated two-year tenure, the Director would get an extension of

tenure each year at the pleasure of the government.

- Many saw this as dangling a carrot before the Director.
- The CBI is not financially independent as administrative and financial control wrests with the Ministry of Personnel.
- **Manpower**-CBI faces enormous delays in concluding the investigation due to a lack of manpower and resources.

### **Suggestions to reform CBI**

- **2nd ARC:** New legislation should be there for CBI's governance
- **Parliamentary standing committee (2007):** Strengthen Human & financial resources, better investments and more autonomy.
- The court must ensure that the Vineet Narain judgement is implemented in letter and spirit.
  - All the dilutions that have been brought in should be rectified. Any government which dangles carrots before judges in terms of post-retirement appointments is damaging the institution.
  - SC judges also must refuse such offers in the interest of the integrity of the institution,"
- Effective administration of anti-corruption laws at the grass roots is the key to responsible governance.
  - The state and their anti-corruption agencies would, therefore, need to be equally insulated from the state government's interference on similar lines.
- **The manner of the appointment of the CBI Director** should be broad based as in the case of the CVC members, whereas the other inductions/appointments in the CBI should be brought under the overarching supervision of the CVC.
- In the cases assigned to it by the CVC, the CBI should be made functionally and financially independent of the

controls of any government ministry/department.

- The professional supervision over the investigations of the CBI should rest only with the CVC.
- The CVC should have an adequately experienced team to technically examine and assess the gravity of a complaint, which can then be assigned to the CBI for investigation or can be investigated by this team.
  - After assessing a complaint by this broad-based CVC, there should be no need to seek prior permission from the government.
- **Twenty fourth report of Department related parliamentary standing committee** on personnel, public grievances, law and justice on working of CBI recommended the following:
  - Strengthening human resources by increasing strength of CBI,
  - Better investments in infrastructural facilities,
  - Increased financial resource and administrative empowerment with accountability,
  - Give more Powers (related to Union, State and Concurrent list of the 7th schedule of Indian constitution), to the CBI,

### **Conclusion**

It is for the nation to demand that the country's premier investigating agencies like the CBI, income tax authorities and the ED are not used as instruments of blackmail and intimidation by the government of the day. Rather they should work with complete objectivity and in the interest of the nation.

### **Mould your thoughts**

1. CBI has lost its independence and is acting as an agent of the central government, sometimes being called a caged parrot. Critically analyse the working of CBI and suggest measures to reform the institution. (250 words)

## Approach to the answer

- Introduction, about CBI, functions
- Working of CBI
- Issues faced by CBI
- Reformative measures
- Wayforward and conclusion.