

CBI v/s CBI

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Manifest pedagogy

It is a highly politicized issue. Political issues are not asked in UPSC as bureaucracy is expected to be neutral. But in these politicized issues, analytical issues related to Constitution, Policy, Ethics etc. are deduced and asked as question. For example, the tussle between the Lieutenant Governor of Delhi and the Chief Minister though a highly politicized one had Constitutional (Constitutional Amendment 69 and Federalism) aspects to which were asked twice in the exam. So such issues required perspicacity to look beyond the issues.

In the issue of CBI, Corruption and lack of ethics is an immediate issue. When we look beyond the issue, we can deduce the topic of Institutions and their importance in India as these are institutions time and again that their institutional autonomy (RBI, Judiciary, ECI, and now CBI) is under threat in India.

In news

Allegations of corruption against Special Director, Rakesh Asthana by a whistleblower Satish Sana, subsequent removal of CBI Director, Alok Verma by CVC and issues related to it.

Placing it in syllabus

1. Statutory, regulatory and quasi-judicial bodies
2. Governance – transparency and accountability
3. Ethics – institutions and integrity

Static dimensions

1. CBI- formation, composition, appointment, powers and functions.
2. Its role in transparency and accountability.
3. Declining role of CBI.

Current dimensions

1. Legal framework governing CBI and issues related to it.
2. Independence and autonomy of CBI.
3. POCA issue of prior consent in CBI.
4. Institutions and their importance in Indian political system.
5. Whistle blowers Act.

Content

Establishment of CBI

CBI was set up in 1963 by a resolution of Ministry of Home Affairs (MoHA) under the Prime Ministership of Lal Bahadur Shastri. Delhi special police establishment (DPSE), set up in 1941, is merged with CBI. It was later transferred to Ministry of Personnel, Public Grievances and Pensions (MoPPP). It is not a statutory body. It derives its powers from DSPE Act, 1946.

The CBI is the main investigating agency of the Central Government. It plays an important role in preventing corruption and maintaining integrity in administration. It also provides assistance to the Central Vigilance Commission.

Composition

- The CBI is headed by a Director, an IPS officer with a rank of Director General of Police. The director is selected based on the CVC Act 2003, and has a two-year

term.

- 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.

Appointment

The amended DPSE Act empowers a committee to appoint the director of CBI. The committee consists the following people:

- Prime Minister – chairperson
- Leader of Opposition – member
- Chief Justice of India or a Supreme Court Judge recommended by the Chief Justice – member

Jurisdiction, powers and restrictions

The legal powers of investigation of the CBI are derived from the DSPE Act 1946, which confers powers, duties, privileges and liabilities on the Delhi Special Police Establishment (CBI) and officers of the Union Territories.

The central government may extend to any area (except Union Territories) the powers and jurisdiction of the CBI for investigation, subject to the consent of the government of the concerned state. Under the act, the CBI can investigate only with notification by the central government.

Functions:

- The CBI being a Union subject may investigate:
- Cases of corruption, bribery and misconduct of the Central government employees.
- Cases relating to infringement of fiscal and economic laws.

However, such cases are taken up either in consultation with or at the request of the department concerned.

- Serious crimes committed by organized gangs of professional criminals, having national and international ramifications.
- Coordinates the activities of the anti-corruption agencies and the various state police forces.
- Takes up, on the request of a state government, any case of public importance for investigation.
- Maintains crime statistics and disseminating criminal information.

Provision of Prior Permission

The CBI is required to obtain the prior approval of Central Government before conducting any enquiry or investigation into an offence committed by officers of rank of Joint Secretary and above in Central Government and its authorities.

State's Consent

The High Courts and the Supreme Court have the jurisdiction to order a CBI investigation into an offence alleged to have been committed in a state without the state's consent.

The court clarified this is an extraordinary power which must be exercised sparingly, cautiously and only in exceptional situations.

POCA issue of prior consent in CBI

The power of superintendence over the CBI lies with the central government save for the cases of corruption under POCA 1988 in which the superintendence rests with the CVC.

The CBI had acquired a high reputation and won the confidence of the people for its motto: **Industry, Impartiality and Integrity**. But never before has any major rift – this time between the top two in the agency, the Director and the Special Director – played out in the open.

And never before has the agency registered a serious case of corruption against its own Special Director, for allegedly accepting bribes amounting to crores from someone under investigation.

A gradual decline

1. The CBI's decline has been gradual. The first setback came in the Rajiv Gandhi era, with the

Single Directive requiring the CBI to take prior permission of the government before initiating an inquiry against "decision-making-level officers".

2. The Supreme Court, in Vineet Narain and Others v. Union of India (1997), apart from passing several orders to uphold the integrity of the CBI, the CVC and the Enforcement Directorate, quashed the Single Directive as unconstitutional.
3. But the political class brought the directive back in the CVC Act of 2003, which was again set aside by the court.
4. The government got the corruption law amended in the last monsoon session of Parliament, requiring the CBI to take prior approval for initiating investigation against all categories of government servants.

Whistle Blowers Act, 2011

This issue is dealt here because of the act of whistleblowing by Satish Sana against Asthana.

Features of the act:

- The Act seeks to protect whistle blowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offense by a public servant.
- Any public servant or any other person including a non-

governmental organization may make such a disclosure to the Central or State Vigilance Commission.

- Every complaint has to include the identity of the complainant.
- The Vigilance Commission shall not disclose the identity of the complainant except to the head of the department if he deems it necessary. The Act penalizes any person who has disclosed the identity of the complainant.
- The Act prescribes penalties for knowingly making false complaints.

Need of the hour

1. The CBI came into existence through a Government of India resolution. Even today, the agency continues to function under the archaic Delhi Special Police Establishment Act of 1946, for its powers of investigation and jurisdiction.
2. In pursuance of the orders passed by the court in the Vineet Narain case, the CVC Act of 2003 was passed, and later, the Lokpal Act. Both these Acts partly deal with the powers and functions of the CBI, including providing some much-needed safeguards.
3. But till date, the CBI does not have an Act of its own, although the need for a Comprehensive Act has been felt for a long time now.
4. The Estimates Committee of Parliament, under Jaswant Singh, had recommended that the CBI should be given statutory status and have legal powers to investigate cases with inter-State ramifications.
5. Implementation of Santhanam Committee recommendation: Amendment of Article 311 of the Constitution in such a manner that the judicial process in corruption cases could be simplified and expedited.
6. Implementation of Lokpal Act and Lokayuktas Act in right spirit.

Yet, while providing some safeguards to the CBI, the CVC Act

also created impediments. It vested in the CVC the "superintendence" of the DPSE (and thus the CBI) in relation to investigation under the Prevention of Corruption Act, 1988.

For the remaining areas, the act left the "superintendence" to the government. So, the "superintendence" over the CBI is something which is shared today between the CVC and the government.

Thus, while the answerability for the CBI's functioning is with the government, the power of "superintendence" in corruption cases lies with the CVC. The present crisis owes a lot to this diarchic arrangement in the CVC Act.

Some Food for Thought on the topic of Institutions

Institutions are systems functioning on the basis of rules, regulations and principles. These rules are confined to prevent confusion and misuse. Personalities on the other hand work within these framework. They run them, they add value to it. They have to follow the rules, regulations and principles.

Human beings are falliable. They can make mistakes. They may become authoritative. The rules of institutions moderate the arbitrary expressions of power of human beings.

Indian Political System made of Institutions like Parliament, Judiciary, and President etc. The importance of Institutions in India:

- a) Check authoritative rule of personalities.
- b) Bring about the rule of law and avoid rule of *human* beings.
- c) Bring about procedural correctness in achieving an action.
- d) Establish checks and balances system for effective diffusion of power.
- e) Institutions are integrated systems which function of

principles of autonomy and independence

The drawbacks of too many institutions are Institutional inertia, red-tapism effectively lead to slow development.

Test Yourself: Mould Your Thoughts

A separate law is required to restore the credibility of CBI, which is in limbo due to multiple interpretations about the legal framework governing it. Critically comment.