



Consent of States for CBI Investigations

For Prelims: [Central Bureau of Investigation](#), [Federalism](#), [Bharatiya Nyaya Sanhita](#), [Seventh Schedule](#), [Central Vigilance Commission](#)

For Mains: Issues Related to CBI and Recommendations, Institutional Reforms,

Source: [IE](#)

Why in News?

The Government of Madhya Pradesh announced that the [Central Bureau of Investigation \(CBI\)](#) would now require written consent from the state government to initiate any inquiry against state officials.

- This move comes amidst a backdrop of **several [states withdrawing general consent for CBI investigations](#)**, prompting discussions about the need for new legislation to define the CBI's status, functions, and powers.

Why did Madhya Pradesh Mandate Prior Consent for CBI Inquiries?

- This decision considers changes in the [Bharatiya Nyaya Sanhita \(BNS\)](#) and recent consultations with the CBI.
 - Also under **Section 17A of the [Prevention of Corruption Act, 1988](#)**, agencies need permission to conduct inquiries against government officials.
 - It provides that **no enquiry or inquiry or investigation shall be conducted** by a police officer into any offence alleged to have been committed by a public servant under the PC Act **without prior approval from the appropriate authority**.
- All previous general consent for any other offences and any consent given by the state government on a case-by-case basis for any other offence will also continue to apply.
- Several states, including Meghalaya, Mizoram, West Bengal, Jharkhand, Kerala, and Punjab, have withdrawn general consent for CBI investigations.
- **Implications of Madhya Pradesh's Decision:**
 - The requirement for written consent could slow down the process of initiating CBI inquiries against state officials.
 - It may **increase the administrative burden on both the state government and the CBI**, potentially affecting the efficiency of corruption investigations.
 - The decision reflects a broader trend of states asserting more control over central investigative agencies, impacting the **dynamics of [federal governance in India](#)**.

What are the Key Facts About the Central Bureau of Investigation?

- **About:** Following recommendations by the [Santhanam Committee on Prevention of Corruption \(1962-1964\)](#), the CBI was officially established in 1963 by a resolution of the Ministry of Home Affairs.
 - It derives its investigative powers from the **Delhi Special Police Establishment Act**,

1946.

- Operates under the **Ministry of Personnel, Public Grievances, and Pensions**, which falls under the Prime Minister's Office.
 - Investigations under the **Prevention of Corruption Act**, CBI is supervised by the **Central Vigilance Commission**.
- It acts as the **nodal police agency for coordinating investigations with Interpol member countries**.
- The director of the CBI is also the **Inspector General of Police (IGP) of the Delhi Special Police Establishment (DSPE)** and is responsible for the administration of the organisation.
- **Appointment of CBI Director: Initially appointed under the DSPE Act, 1946. Following the Supreme Court's recommendations in the Vineet Narain case, the process was revised in 2003.**
 - Current System, under the Lokpal Act, 2014, a committee comprising the **Prime Minister, Leader of the Opposition, and Chief Justice of India (or a Supreme Court Judge)** recommends the appointment.
 - The Director enjoys a tenure security of two years, **extendable up to five years in the public interest**.
 - In 2021, the **President** issued two ordinances to extend the tenures of the directors of the CBI and the **Enforcement Directorate** from two years to up to five years.
 - The chiefs of the CBI can now be given three annual extensions, as per the amendments made to the DSPE Act, 1946.
- **Legal Framework Governing the CBI's Jurisdiction:**
 - The CBI operates under the **Delhi Special Police Establishment (DSPE) Act, 1946**.
 - Section 6 of the DSPE Act mandates that **CBI officers need state government consent to exercise powers in any state area**, excluding **Union Territories** or **railway** areas.
 - The legal foundation of the CBI is based on **Entry 80 of the Union List**, allowing the **extension of police powers to other States** with their permission.
 - The CBI, being a force for Union Territories, can only investigate States with their consent, as determined in the **Advance Insurance Co. Ltd case in 1970**.
 - **Consent can be either case-specific or general. General consent is usually provided to facilitate investigations into corruption among central government employees within states, as 'police' is Entry 2 in the State List under the Seventh Schedule of the Constitution.**
- **Primary Functions:**
 - **Anti-Corruption Crimes:** Investigates cases under the Prevention of Corruption Act against public officials, central government employees, and public sector undertakings.
 - **Economic Crimes:** Handles major financial scams, economic frauds, bank frauds, cyber crimes, and smuggling of narcotics, antiques, and other contraband items.
 - **Special Crimes:** Investigates serious and **organised crimes** such as terrorism, bomb blasts, kidnapping for ransom, and mafia-related activities.
 - **Suo Moto Cases:** Can initiate investigations in Union Territories and, with central government authorisation, in states with their consent. The Supreme Court and High Courts can also direct the CBI to investigate crimes anywhere in the country without state consent.

BHARATIYA NYAYA SANHITA (BNS), 2023

BNS 2023 replaced Indian Penal Code 1860, incorporating 358 sections (511 in IPC), maintaining most of the IPC provisions, introducing new offences, eliminating court- struck-down offences, and enhancing penalties for various offences.

New Offences

- **Promise to Marry:** Criminalising “deceitful” promises to marry
- **Mob Lynching:** Codify offences linked to mob lynching and hate-crime murders
- Ordinary criminal law now covers **Organized Crime and Terrorism**, including a broader scope for terror financing in BNS compared to UAPA
- **Attempt to Suicide:** Criminalises attempts to commit suicide with intent to compel or restrain any public servant from discharging official duty
- **Community Service:** Added as possible form of punishment

Deletions

- **Unnatural Sexual Offences:** Section 377 of the IPC, which criminalised homosexuality among other “unnatural” sexual activities repealed completely
- **Adultery:** Offence of adultery omitted in consonance of apex court judgement
- **Thugs:** Section 310 of IPC fully omitted
- **Gender Neutrality:** Some laws dealing with children modified to bring gender neutrality



Drishti IAS

Other Modifications

- **Fake News:** Criminalisation of publishing false and misleading information
- **Sedition:** Introduced under a new name ‘deshdroh’ with wider definition
- **Mandatory Minimum Sentence:** In several provisions, mandatory minimum sentences prescribed which may limit scope for judicial discretion
- **Damage to Public Property:** Carry a graded fine (i.e. fine corresponding to the amount of damage caused)
- **Death by Negligence:** Elevates punishment for causing death by negligence from two to five years (for doctors - 2 yrs imprisonment)

Key Issues

- **Criminal Responsibility Age Discrepancy:** Criminal responsibility starts at seven, extendable to 12 based on maturity, potentially conflicting with global recommendations
- **Inconsistencies in Child Offense Definitions:** It sets child age below 18, but age criteria for offenses like rape differ, causing inconsistency
- **Retention of IPC Provisions on Rape and Sexual Harassment:** Maintains IPC provisions on rape and sexual harassment, omitting **Justice Verma Committee's 2013** suggestions for gender-neutral rape and recognizing marital rape as an offense.

What Issues Highlight the Need for New Legislation for the CBI?

- **Need for Clear Legislation:** A parliamentary panel in 2023 emphasised the need for new legislation to clearly define the CBI’s status, functions, and powers.
 - The current legislative framework complicates the CBI’s ability to conduct investigations due to states’ growing reluctance to provide general consent.
- **Staffing Issues: There are around 1,700 vacant posts in the CBI against a sanctioned strength of 7,295. Vacancies in executive ranks, law officers, and technical officers are increasing the pendency of cases.**
 - The quality of investigations and overall effectiveness of the agency are impacted by these vacancies.
- **Transparency in CBI's Functioning:** The details of cases registered with the CBI, progress in

their investigation, and outcomes are not publicly available. The annual report of CBI is also not accessible to the general public.

- **Criticism:** The CBI is still guided by the **DPSE Act 1946**, which hampers its accountability and autonomy. It has been criticised for being **politically biased and vulnerable to undue pressure**.
 - In 2013, the Guwahati HC deemed **CBI unconstitutional for lacking statutory backing**, but the **Supreme Court later stayed the decision**. Instances of corruption and nepotism have also been reported.

Way Forward

- A parliamentary panel in 2023 recommended **enacting a new law to define the status, functions, and powers of the CBI** and to ensure objectivity and impartiality in its functioning. The recommendation came in response to states' growing reluctance to provide general consent, complicating the CBI's ability to conduct investigations.
 - Such legislation could address the ambiguities and challenges currently faced by the CBI in executing its mandate across different states.
- The panel recommended that the **Director of CBI** should monitor the progress of filling vacancies quarterly. The CBI should reduce **dependence on depositions and recruit more permanent staff**, particularly for the ranks of inspector of police and deputy superintendent of police.
- CBI should **publish case statistics and annual reports on its website**. Providing access to information would make CBI's functioning more accountable, responsible, efficient, and transparent.
- The panel suggested that CBI should have a **centralised case management system**, containing case details and progress. The system should allow tracking of case progress and be accessible to the public.

Drishti Mains Question:

Q. Evaluate the need for new legislation to clearly define the Central Bureau of Investigation's status, functions, and powers.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Mains

Q. The jurisdiction of the Central Bureau of Investigation (CBI) regarding lodging an FIR and conducting a probe within a particular state is being questioned by various States. However, the power of the States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India. **(2021)**