



# Consent of States for CBI Investigations

## Why in News

Recently, a [Supreme Court](#) bench has referred a case, in which the [CBI \(Central Bureau of Investigation\)](#) had filed an affidavit on the withdrawal of 'general consent' to the CBI by several States, for consideration of the Chief Justice of India.

## Central Bureau of Investigation (CBI)

- The CBI was **set up in 1963** by a resolution of the **Ministry of Home Affairs**.
  - Now, the CBI comes under the administrative control of the **Department of Personnel and Training (DoPT)** of the **Ministry of Personnel, Public Grievances and Pensions**.
- The establishment of the CBI was recommended by the **Santhanam Committee on Prevention of Corruption (1962-1964)**.
- The CBI is **not a statutory body**. It derives its powers from the **Delhi Special Police Establishment Act, 1946**.
- The CBI is the **main investigating agency of the Central Government**.
  - It also provides assistance to the [Central Vigilance Commission](#) and [Lokpal](#).
  - It is also the nodal police agency in India which coordinates investigations on behalf of [Interpol Member countries](#).

## Key Points

- **Background:**
  - **Withdrawal of Consent:** Eight States have withdrawn consent to the CBI for launching investigations in their territory.
    - **Eight States** — West Bengal, Maharashtra, Kerala, Punjab, Rajasthan, Jharkhand, Chhattisgarh and Mizoram have withdrawn consent to the CBI for launching investigations in their territory.
  - **Argument of CBI:** According to the CBI, such widespread withdrawal of consent is **rendering it redundant with regard to investigation of corruption charges against Central employees** and undertakings working within the territorial jurisdiction of various States.
    - While the States' responses were primarily an **act of politico-legal ring-fencing** against the politics of the Central Government employing its agencies, the withdrawal of general consent by a number of States **has left the CBI handicapped**.
- **About the Consent Given by State Government:**
  - **Legal and Constitutional Basis:** According to **Section 6** of the [Delhi Special Police Establishment Act of 1946](#) under which the CBI functions, the State's consent is required to extend CBI investigation beyond Union Territories.
    - The legal foundation of the CBI has been construed to be based on **Entry 80** of the

**Union List** which provides for the extension of powers of the police force belonging to one State to any area in another State but not without its permission.

- "Police" is Entry 2 in the **State List** under the **Seventh Schedule** of the Constitution.
- **Types of Consent:**
  - There are **two types of consent** for a probe by the CBI.
    - **General Consent:** When a state gives a general consent (Section 6 of the Delhi Special Police Establishment Act) to the CBI for probing a case, **the agency is not required to seek fresh permission every time** it enters that state in connection with investigation or for every case.
      - A general consent is given to facilitate that seamless investigation in a case of corruption or violence.
    - **Specific Consent:** When a general consent is withdrawn, CBI **needs to seek case-wise consent** for investigation from the concerned state government.
      - If specific consent is not granted, the CBI officials will not have the power of police personnel when they enter that state.
      - This hurdle impedes seamless investigation by the CBI.
- **SC Judgement:**
  - In the **Advance Insurance Co. Ltd case, 1970**, a Constitution Bench held that the definition of "State", as contained in **The General Clauses Act**, includes Union Territories as well.
  - Hence the CBI, being a force constituted for Union Territories as recognised under the Delhi Special Police Establishment Act of 1946, **can conduct investigation into the territories of the States only with their consent.**
- **Impact on Pending Investigation:**
  - The withdrawal of general consent does not affect pending investigation (**Kazi Lendhup Dorji v. CBI, 1994**) or the cases registered in another State in relation to which investigation leads into the territory of the State which has withdrawn general consent, **nor does the withdrawal circumscribe the power of the jurisdictional High Court to order a CBI investigation.**

## Way Forward

- The fundamental impediment lies in the law that does not clearly envisage the CBI as a federal police force.
- The **United Nations** Convention against Corruption to which India is a signatory requires firm **impartial steps to combat corruption at all levels.**
- The predicament of withdrawal of consent by a number of States **may lead to the legislative move of creating a federal agency** with manifest powers and autonomy while retaining the process of appointment of the CBI chief by a committee consisting of the constitutional trio, the Prime Minister, the Leader of the Opposition and the Chief Justice of India preferably by consensus.
  - In case of such a legislation, **Section 6 of the Delhi Special Police Establishment Act may give way to a clearer legal provision** which guarantees fair investigation and prosecution.

**Source: TH**