

# A MAKEOVER FOR CBI

Relevant for: Governance in India | Topic: Important aspects of Governance, Transparency & Accountability incl. RTI

Recreating the classic 'mohalle ki Diwali' on Digital?

The Central Bureau of Investigation (CBI) owes its origin to the Special Police Establishment (SPE), which was established by the colonial government in 1941 through an executive order to deal with corruption involving war-time purchases and supplies. In 1946, the then government enacted the Delhi Special Police Establishment Act to give the organisation a statutory cover.

The Act of 1946, which continues to govern the CBI, is a very small piece of legislation, comprising six sections. It permits the agency to investigate only those offences which are notified by the central government. The organisation cannot exercise its powers and jurisdiction in any area in a state without the consent of the government of that state. Without the state government's invitation, the only way the CBI can work there is when the Supreme Court or some high court asks it to do so. The Act vests the superintendence of the CBI in the central government, though, now it vests partly in the Central Vigilance Commission (CVC), too. This amendment in the provision about the superintendence over the agency, including the one about the procedure for appointment of its director, was introduced by the CVC Act, 2003.

The CBI figures in the Union List of the Seventh Schedule of the constitution of India. Sl. No. 8 of this List reads: "Central Bureau of Intelligence and Investigation." Considering the importance that the framers of the Constitution had attached to this organisation, it is strange, indeed ironic, that its working is still governed by an antiquated piece of legislation enacted during British rule, for a somewhat limited purpose. India is no longer the country of 1946 and CBI is no longer what the Delhi Special Police Establishment was in those days. The size of the organisation has expanded, the pattern and incidence of crime which it is required to investigate have altered, its charter of functions has enlarged considerably, the political environment in which it is functioning has been transformed, citizens' expectations from this agency have grown, and the norms and standards of police investigation work all over the world have seen a sea change.

The legislation governing an important organisation like the CBI must reflect these developments. It must recognise the paramount obligation of the organisation to function according to the requirements of the constitution. It must mandate them to function to protect and promote the rule of law. Legislation must define the word "superintendence", and establish institutional and other arrangements to insulate the organisation from undesirable and illegitimate external control, pressures and influences. It must ensure that the central government's control over the agency is so exercised as to ensure that its performance is in strict accordance with the law. The Act must make it a statutory responsibility of the government to establish an efficient and impartial system of investigation. It should set objectives, define performance standards and establish monitoring instrument, prescribe procedures for appointment and removal of officers, delineate the CBI's powers as well as functions, outline the philosophy and practices expected of the agency, and, prescribe mechanisms to ensure their accountability. There should be no provision that can be used to provide impunity.

The Parliamentary Standing Committee of the Ministry of Personnel, Public Grievances, Law and Justice repeatedly recommended the enactment of a new law to govern the working of the CBI in its fifth, 14th and 19th reports on the ministry's Demand for Grants. The committee, in its Twenty Fourth Report on the Working of CBI, regretted to note that the enactment of a "separate Act for CBI in tune with the requirement of the time, rather than deriving its powers from the

Delhi Special Police Establishment Act, 1946”, had not been carried out by the government. “The Committee regrets to note that no proactive steps have so far been taken in this regard in spite of strong recommendations made by this Committee. The Committee strongly opines that unless CBI is suitably empowered statutorily it cannot investigate cases and take it (sic) to logical conclusion.”

The Government of India has been stubbornly resisting the demand for a separate enactment of law for the CBI. In its Thirty Seventh Report, the Department Related Standing Committee on Action Taken Replies of the government felt that sufficient thought had not been given to the recommendations of the committee with regards to strengthening the CBI in terms of the legal mandate. “The Committee notes that the Ministry, in its reply, has admitted that the functions and operations of the CBI have been enlarged. The Committee fails to understand how such a premier organisation can function efficiently and to its full potential, when it is lacking in terms of legal backing.”

Thus, despite being established in April 1963, the CBI is being regulated by a law that is as anachronistic as the Police Act of 1861, which has governed police forces in the country. Just as the state governments have shown reluctance to accept the National Police Commission’s recommendations to replace the colonial-era legislation with a new Police Act that is framed in accordance with the requirements of a modern democratic Constitution, similarly, the Centre has been obstinate in refusing the need for a new law to manage and strengthen the CBI. The reason for this unwillingness to change, in both cases, is the same — the political executive must exercise superintendence over the police organisations, so that they can misuse them for illegitimate and partisan purposes.

**END**

Downloaded from [crackIAS.com](http://crackIAS.com)

© **Zuccess App** by crackIAS.com

Crack