

LIMITS OF CBI JURISDICTION

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

Can States bar the Central Bureau of Investigation (CBI) from functioning in their territory?

Yes. The CBI is a national agency with police powers. Its primary jurisdiction is confined to Delhi and Union Territories. As policing (detecting crime and maintaining law and order) is a State subject, the law allows the agency to function outside only with the consent of the States. Andhra Pradesh and West Bengal have withdrawn their general consent to the CBI to operate within their territories.

Has it happened before? And why?

There are several instances of State governments withdrawing their consent. There was even an instance in Sikkim, when the State withdrew its consent after the CBI registered a case against former Chief Minister Nar Bahadur Bhandari, and before it could file a charge sheet. The most common reason for withdrawal of consent is a strain in Centre-State relations, and the oft-repeated allegation that the agency is being misused against Opposition parties. The decision by Andhra Pradesh and West Bengal has come amid concerns being voiced by Opposition parties that Central agencies such as the CBI, Enforcement Directorate and Income Tax Department are being used against them.

Under what law is it done?

The CBI draws its power from the Delhi Special Police Establishment (DSPE) Act. The Home Ministry, through a resolution, set up the agency in April 1963. Under Section 5 of the Act, the Central government can extend its powers and jurisdiction to the States, for investigation of specified offences. However, this power is restricted by Section 6, which says its powers and jurisdiction cannot be extended to any State without the consent of the government of that State.

What is the impact of States taking back their consent?

The withdrawal of general consent restricts the CBI from instituting new cases in the State concerned. However, as decided by the Supreme Court in Kazi Lhendup Dorji (1994), the withdrawal of consent applies prospectively and therefore, existing cases will be allowed to reach their logical conclusion. The CBI can also seek or get specific consent in individual cases from the State government.

How has the consent issue played out?

In most cases, States have given consent for a CBI probe against only Central government employees. The agency can also investigate a Member of Parliament. Apart from Mizoram, West Bengal and Andhra Pradesh, the agency has consent in one form or the other for carrying out investigations across the country.

What happens to cases in which there is a demand for a CBI probe?

The Supreme Court has made it clear that when it or a High Court directs that a particular investigation be handed over to the CBI, there is no need for any consent under the DSPE Act. A landmark judgment in this regard was the 2010 Supreme Court decision by which the killing of

11 Trinamool Congress workers in West Bengal in 2001 was handed over to the CBI.

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