www.crackIAS.com

Introduces the most scientific & easiest way of preparing

CURRENT AFFAIRS

SUBJECT-WISE NEWS SOURCES

PIB » The Hindu » Live Mint » HT » TOI » RBI ET » Indian Express
PRS Blog » IDSA » Government of India & UNO Official Sites
NASA & Nature into these subject separately.

MoJo 30

Subject-wise News for
GS (Pre-cum-Mains) 2019
every Month

Download your copy from crackIAS.com
Monthly Archive on subject wise news for GS Pre & Mains
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.
Recreating the classic ‘mohalle ki Diwali’ on Digital?

In the recent global RTI ratings, a programme founded by the Centre for Law and Democracy (CLD), a Canada-based non-governmental organisation, along with Access Info Europe, India has slipped a rung further this year to the sixth position. Ironically, India ranks lower than smaller nations like Afghanistan — which adopted the RTI later than India — and Serbia, in these ratings, made on the basis of 61 indicators.

According to CLD, the global RTI rating is a system for assessing the strength of the legal framework for guaranteeing the right to information in a given country. It is, however, limited to measuring the legal framework only and does not gauge the quality of implementation.

It is surprising to note that despite the RTI statute in India remaining the same along with its legal framework, India has slipped from its second position (2011) to fourth, fifth and sixth in 2016, 2017 and 2018 respectively. According to the rating agencies, India scored 128 out of a possible total of 150 points. Out of the 61 indicators, there are nine indicator categories under which India’s points have been downgraded.

Presumption for access subject to limited exceptions is indicator number two. Section 8(2) of Indian RTI Act specifically overrides Official Secrets Act 1923, and has made disclosure a rule and secrecy an exception. Yet, India was given one instead of two points.

The seventh indicator is the non-exclusion of executive and administrative units like ministries, local bodies, police, armed forces and bodies controlled or owned by the above. Our public authority definition covered these aspects, but CLD says that jurisdiction exclusion of the state of Jammu and Kashmir and broad exemption to 18 bodies under Section 24 reduced India’s points.

The 22nd indicator was of a clear maximum timeline for processing requests and India got one out of two points — though our Act states that information should be given as soon as possible, with a maximum limit of 30 days. In contrast, two points were given to Afghanistan which also said the same — “as soon as possible” — without maximum limit.

India and Sri Lanka prescribe fees for information, but on this, the 24th indicator, India was given one while Sri Lanka got two points. No charges and limitations on the reuse of information obtained under RTI was the 27th criterion. The Indian Act does not prohibit it, and the courts have said it can be used as evidence. Still, India was given zero out of two.

For the 30th criterion, pertaining to the “harm test”, India was given only one point while Afghanistan was awarded four points for equally applying the harm test to all clauses of exemption. In India, Section 8(2) says that notwithstanding the Official Secrets Act 1923, nor any of the exemptions in Section 8(1), access to information cannot be denied if public interest in disclosure outweighs the harm to protected interest. It is clear that the mandate of the International Agency for meeting this indicator is fully met by the Indian RTI Act.

Criterion 51 deals with a system for redressing the problem of public authorities which systematically fail to disclose information or underperform. India provides for sanction against officers and compensation against authorities, which is ignored. Afghanistan gets two points.
here, though it does not mention anything in law, while India was given one.

Legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (whistleblowers) is criterion 53. The rating agency maintains that in India there are no such protections, while Afghanistan and Serbia do have them. Section 21 of the Indian RTI Act says, “No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder”. This gives immunity to all persons who give information under this Act. But this is ignored. The rating agency mentions: “A bill is currently in Parliament (as of September 2011), but at the time of review there was no such protection”. The agency overlooked the fact that the Whistleblowers Protection Act was actually passed by the Parliament in 2014. On this count, depriving India of points would be unfair, though it should be mentioned that the Act does not consider any information-seeker under RTI as a whistleblower.

It is evident that had the rating agency gone through the RTI Act and the legal framework of India more closely, India would have got 140 of 150 points and retained its position on the top, if not among the top three.

The point which needs reconsideration at present is the blanket exemption of some organisations from furnishing information under Section 24 of the Act. The preamble of the RTI aims at promoting accountability and minimising corruption. Then how can a premier police agency like the CBI, which aims to fight corruption, be exempt from furnishing information on corruption? This is an anomaly which we must seriously seek to ponder on.
LIMITS OF CBI JURISDICTION

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.

YES | Om Routray Women can expose men and cost them their jobs. Power is a language that men understand om-routray Om Routray Judge Brett Kavanaugh was

Our existing notification subscribers need to choose this option to keep getting the alerts.