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News: Central Bureau of Investigation (CBI)

- 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.

Central Bureau of Investigation (CBI)

- The Central Bureau of Investigation (CBI) is the premier investigating agency of India.
- CBI is constituted as per the recommendations of **Santhanam committee**.
- It **derives its powers from the Delhi Special Police Establishment Act (DSPE), 1946**.
- The CBI is required to obtain **the prior approval of the Central Government before conducting any inquiry or investigation into an offence committed by officers of the rank of joint secretary and above** in the Central Government and its authorities.
- Operating under the jurisdiction of the **Ministry of Personnel, Public Grievances and Pensions**, the CBI is headed by the Director.

- CBI director is appointed, for not less than a term of 2 years, by the Appointment Committee on recommendation of Home Ministry as mentioned in DSPE Act 1946 amended through the Lokpal & Lokayukta Act 2013.
- Recently, the president promulgated Central Vigilance Commission (Amendment) Ordinance 2021 and the Delhi Special Police Establishment (Amendment) Ordinance 2021 regarding the term of CBI director.
- As per the ordinances, the Chiefs of the top agencies can be given extensions, every year for up to three years after they complete the two-year term. The ordinances said, no such extension will be granted after the completion of a period of five years in total including the period mentioned in the initial appointment.
- CBI director enjoys the pleasure of President.
- The CBI's functioning is superintended by the Central Vigilance Commission when the offenses being investigated come under the Prevention of Corruption Act, 1988.
- 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 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.

Appointment Committee (Mandated in Delhi Special Police Establishment Act, 1946 amended by Lokpal and Lokayukta Act, 2013)

- Initially the members of CBI were appointed under the DSPE Act, 1946. Following the Supreme Court's recommendations in the Vineet Narain case, the process was revised in 2003.
- Prime Minister as Chairperson, Leader of Opposition in Lok Sabha, or on his/her absence – Leader of the single largest opposition party in Lok Sabha (added in the Delhi Special Police Establishment (Amendment) Act of 2014), Chief Justice of India (CJI) or an SC Judge nominated by CJI as its members.
- CBI is exempted from the provisions of the Right to Information Act.
- CBI is India's officially designated single point of contact for liaison with the Interpol.
- CBI requires a general consent of the state to enquire in its jurisdiction into cases of corruption against central government employees.

- In case, any state revokes such consent, the CBI has to get case – specific consent from the respective State government, except in cases assigned by High Court(s) or Supreme Court.
- The revoke of such general consent does not affect cases that are already registered with CBI.
- Mizoram, West Bengal, Chhattisgarh, Rajasthan, Maharashtra, Kerala, Jharkhand, Punjab, Madhya Pradesh, Meghalaya and Tamil Nadu had withdrawn their general consent given to CBI as of September 2024.
- Three types of cases are handled by CBI; Anti-Corruption, Economic Offences and Special Crimes Division (Internal Security, Murders etc.).
- The Central Bureau of Investigation may also refer any case or matter to the Advisory Board for Banking Frauds (ABBF) constituted under Central Vigilance Commission (CVC) where it has any issue or difficulty or in technical matters with the PSB concerned.

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, cybercrimes, 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.

News: Governor's Immunity

- Recently, the **Supreme Court (SC)** of India agreed to examine the question of immunity to Governors from any kind of criminal prosecution, granted under **Article 361** of the Constitution.
- This came after the Chief Justice of India heard a plea from a female **Raj Bhavan** employee who filed a sexual harassment complaint against the **West Bengal Governor**.

Immunity Provided to Governor

Origin of Governor's Immunity

- Origin of Governor's Immunity is linked to the Latin maxim "rex non potest peccare," or "the king can do no wrong".
- During the **Constituent Assembly's** discussion on Article 361, member **H V Kamath** questions the extent of criminal immunity for the President and Governors, particularly regarding the initiation of proceedings against them for **criminal acts**.
- Despite these concerns, the **article was adopted without further debate**.

Immunities under Article 361

- **Non-Answerable to Courts:** Article 361(1) states that the **President or the Governor of a State is not answerable to any court for the exercise of their powers and duties**, or for any act done in the exercise of those powers and duties.
- Article 361 is an **exception to Article 14** (Right to Equality).
- **Protection from Criminal Proceedings:** Under Article 361(2), **no criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.**
- **No Arrest:** under Article 361(3), **not any arrest or imprisonment processes can be issued against the President or Governor during their term of office.**
- **Protection from Civil Proceedings:** Under Article 361(4), **no civil lawsuits can be filed against the President or Governor of a State during their term of office for any personal acts until two months after giving written notice.**
- The notice **must include the nature of the proceedings, the cause of action, the party filing the lawsuit, and the relief being sought.**

Courts interpreting Article 361

- **Dr SC Barat And Anr vs. Hari Vinayak Pataskar Case, 1961:** In this case, a distinction was made between the Governor's official and personal conduct. While complete immunity is granted for official actions, civil proceedings can be initiated with the prior notice of 2 months for the Governor's actions.
- **Rameshwar Prasad vs. Union of India Case, 2006:** The Supreme Court acknowledged the Governor's "complete immunity" under Article 361(1) for constitutional actions but allowed judicial scrutiny for malafide actions.
- This case established that while official actions are protected, there are mechanisms for accountability.
- **Madhya Pradesh High Court, 2015:** In the Vyapam scam case, the court ruled that Governor Ram Naresh Yadav had "absolute protection" under Article 361(2) from malicious publicity while in office.
- His name was removed from the investigation to prevent undue legal harassment, maintaining the integrity of the office.
- **State of UP vs. Kalyan Singh Case, 2017:** The Supreme Court held that Kalyan Singh, then Governor of Rajasthan, was entitled to immunity under Article 361 while in office. Charges related to the Babri Masjid demolition would proceed once he ceased to be Governor, reinforcing the protection of the Governor's duties and dignity.

- **Telangana High Court Judgment (2024):** In this, HC observed that “there is no express or implicit bar in the Constitution which excludes the power of judicial review in respect of an action taken by the Governor”.
- Further, the court stated that Article 361 immunity is personal and does not exclude judicial review.