

# **Constitutional Law and Public Administration in India**

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**Lecture-04**

## **Non-Constitutional Bodies - II (CBI)**

The next non-constitutional body that we will learn about is the Central Bureau of Investigation or CBI. It is quite popular in institutions in India. To know about the history of CBI, you will have to go back to the Special Police Establishment Act of 1941. Back in the day, India was a British colony, and the Second World War was happening. Huge amount was set aside for the activities connected with the war. And it was noted that certain officials and non-officials were appropriating money from this fund for their private use. So there was rampant corruption and bribery that was happening in the War and Supply Department. To curb this, the Special Police Establishment Act was enacted, and the Special Police Establishment Act had the power to investigate allegations of corruption or bribery in the War and Supply Department. Later, this power to investigate was extended to corruption cases in railways as well.

In 1946, the Delhi Special Police Establishment Act was enacted because even after the Second World War, the need for a centralized agency which would investigate certain matters including corruption cases was felt. So, this particular agency was now under the supervision of the Home Department. Earlier the Special Police Establishment was under the supervision of the War and Supply Department. And now the jurisdiction was widened to all departments of the government. So after this, after independence, in 1963 through an executive resolution, the Central Bureau of Investigation was then set up because a need was felt for a centralized agency that will conduct investigations on behalf of the central government into not just corruption cases but into passport frauds, major frauds, crimes committed in high seas or in airlines was felt and that is why CBI was set up. CBI is not a statutory body. It was set up through an executive resolution, but it derives its powers from the Delhi Special Police Establishment Act. So, it is not a statutory body. However, it derives its powers from the statute, this particular statute.

Also please note that states have something called Criminal Investigation Departments which is their department to look into certain crimes. CBI is the investigation agency of the central government. So, states have CID, or the Criminal Investigation Departments and the center has the Central Bureau of Investigation or CBI. Currently, CBI has seven

divisions including Anti-Corruption Division, Economic Offenses Division, and the Division to look into special crimes. So, the CBI has the authority to investigate central government areas and union territories. However, if the CBI wants to investigate in a state, it will have to get the consent of the state. We will talk about the general consent and the special consent of states in one of the following slides. But for the time being just keep this in mind. So, it is the main investigating agency in the country. Currently, CBI is under the Department of Personnel and Training which is under the Ministry of Personnel, Public Grievance and Pensions.

Regarding the composition of CBI, it is headed by a director and this director is assisted by a special director or an additional director. This director of CBI is appointed by a three-member committee consisting of the Prime Minister, Leader of Opposition in the Lok Sabha and the Chief Justice of India. And the director is appointed for a minimum term of two years, and it can be extended up to five years. So, like the State Police Department which has several ranks of police personals like DIGs, CBI also has different ranks of police personals like joint directors, Deputy Inspector General, Superintendent of Police and all other ranks of police personals.

Moving on to the functions of CBI. CBI as you know it investigates cases of corruption or bribery and even cases relating to the violation or infringement of other economic or fiscal laws. There are several other economic laws in the country. So, CBI can investigate an alleged violation of such laws as well. CBI has power to investigate serious crimes or assassinations or crimes committed by organized groups. Now this is what you might have known about CBI more. CBI also takes steps on the request of a State Government or in the direction of a Supreme Court or High Court, any case of public importance for investigation. So, the High Court or Supreme Court can also direct a CBI investigation into certain matters and the CBI also maintains crime statistics and disseminates criminal information.

Let us talk about the provision of prior permission. The Delhi Special Police Establishment Act had a section which was Section 6A which was inserted into the Act in 2003. As per the section, if the CBI wanted to investigate an alleged offense of corruption committed by an officer of the rank of Joint Secretary or above, it had to get a prior approval from the central government. CBI is free to move forward with investigation into an alleged offense of corruption committed by any other officers except if the officer is of the rank of Joint Secretary or above. In those cases, it required prior approval or permission from the central government for investigation. We talked about prior sanction for prosecution under prevention of corruption. This is prior permission for even starting an investigation. So, in 2014 in the *Subramanian Swamy v. Director of CBI* and another, the court looked into this particular section as it was challenged, and the court held that it is bile due to Article 14 and hence unconstitutional. What is Article 14 about? Article 14 talks about equality. So, it talks about protection of laws and equality before law.

If a particular group of public servants because they are higher ranking officials are given special treatment from or protection from the investigation form of CBI in corruption offences, then that does not sit well with the concept of equality as envisaged under Article 14. And exactly this is the reason why the court held that this is unconstitutional. The court held that the protection under Section 6A has the propensity of shielding the corrupt. And very recently in 2023, the Supreme Court held that this particular judgment that made it unconstitutional, that made Section 6A unconstitutional has retrospective effect. So even if there was an instance where the CBI wanted to move forward with investigation against an officer of this particular rank, which was before this particular judgment, it does not matter, the Section 6A is unconstitutional from the date of its insertion into the Act. So, that is from 2003, the date on which it was inserted into the Act, it is considered as unconstitutional. The next important thing that you should know when it comes to CBI is the Consent of States. So, as we mentioned before, CBI has the authority to investigate Central Government areas and Union Territories. However, when it comes to investigation into states, territory of different states, states will have to consent to that. So, states can either give a general consent or state can give a specific consent. So, if a state for example, the state of Kerala, if the state of Kerala gives a general consent for CBI, it means that once that consent is given, CBI can freely enter the state and conduct investigations, it does not have to approach the state government again and again for consent. It is a general consent for investigation. However, if Kerala is only giving a specific consent, which means if there is a case in Kerala that CBI wants to investigate or Kerala refers that matters to CBI, only in that case CBI can come and investigate. If there is another case the CBI wants to investigate in Kerala, for that they have to take a consent again from the government of Kerala. So that is case specific consent. And if the Supreme Court or High Court has referred a CBI investigation into a particular case, this consent of the state does not matter. The CBI can enter the state and investigate. Recently there has been a trend of several states withdrawing general consent for CBI investigation within their territories. Mizoram was the first one to withdraw general consent in 2015. Currently, Chhattisgarh, Jharkhand, Kerala, Meghalaya, Mizoram, Punjab, Rajasthan, Telangana, and West Bengal have all withdrawn general consent to CBI for investigation within their territories. So, this could possibly be because the states fear that CBI investigations are used as a political tool by the party in power and this has happened in the past as well where political parties that are in power have used CBI as a tool or a political tool. And even the Supreme Court has on some occasions remarked that CBI is a caged parrot. There are several other criticisms of CBI such as there is no accountability. All of these criticisms are there. However, CBI is still the main investigating agency of the country, and we learned about the composition, the history, the functions, and some of the important aspects related to CBI.