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Q11

The jurisdiction of the Central Bureau of Investigation(CBI) regarding lodging an FIR and conducting probe within a particular state is being questioned by various States. However, the power of States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India.

UPSC Civil Services Mains 2021 · GS II · 15 marks · Federal Structure and Devolution

Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein.

Core demand of the question

- The jurisdiction of the CBI regarding lodging an FIR and conducting probe within a particular state is being questioned by various States. However, the power of States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India
- Honour the official stem. Use general consent, **Andhra Pradesh and West Bengal** withdrawals, and the DSPE Act
- Keep the explanation within a 15-mark length

Revision summary

Police is a State List subject; the CBI enters a State under the DSPE Act, 1946, mainly through **Section 6** consent.

General consent was the administrative convenience; **Andhra Pradesh and West Bengal** showed it can be withdrawn, forcing case-specific permission for new FIRs.

- **The power is not absolute:** court-ordered probes, Union Territories, and already-attached investigations are not killed by a political letter.

Vineet Narain insulated the agency's working; it did not abolish federal consent.

A clear CBI statute would reduce standoffs without pretending India has a U.S.-style dual police sovereignty.

Introduction

Police is a State subject; the Central Bureau of Investigation is a Union investigating police that enters a State only through a constitutional and statutory gate. That gate is consent under the **Delhi Special Police Establishment Act, 1946**. Federalism explains both why States question CBI FIRs and why their power to withhold consent is not a complete veto.

Body**Federal design and the CBI's legal basis**

- Entry 2 of the State List puts police with the States; Entry 80 of the Union List allows the Union's police to extend to a State only with that State's consent, which is the federal hinge.

- **The CBI traces to the DSPE Act, 1946:** it is not a fully independent constitutional police of the kind **Article 246** would invent from scratch, which is why States can call it a Union agency on their soil.
- **Vineet Narain v. Union of India** sought insulation of the CBI from executive pull, but it did not repeal the consent requirement or convert the Bureau into a federal police with a free run of the Map.

General consent, specific consent, and FIR lodging

- **Section 6** of the DSPE Act requires the State Government's consent for the CBI to exercise powers in that State; practice grew a 'general consent' so every case would not need a fresh letter.
- Withdrawal of general consent, as **Andhra Pradesh and West Bengal** did in 2018-20 (with other States at times joining the pattern), means the CBI must seek case-specific consent to register a fresh FIR and investigate inside that State.
- States argue that without this gate, a Union ministry could plant a police force on a rival State government - a classic federal grievance in a competitive party system.
- The CBI and the Union argue that corruption in central employees, multi-State crime, and court-ordered probes cannot be held hostage to a State's political weather.

Why the State's power is not absolute

- Consent is not needed in Union Territories, where the Union is the local police authority in the relevant sense.
- High Courts and the Supreme Court can order a CBI investigation under **Articles 32 and 226**; judicial federalism then overrides a withheld political consent because fundamental rights and a fair probe are not a State's patronage.
- Once a valid investigation has begun, or where the offence is committed in a place already within DSPE jurisdiction, a later political withdrawal of general consent does not automatically kill every pending case; courts have treated abrupt withdrawal as unable to erase jurisdiction already attached.
- Central employees and specified central offences can still draw the CBI where the statutory notifications and the consent matrix so provide; the State cannot rewrite the Union's power over its own servants by a press release.
- The Supreme Court's federalism cases, including the NCT Delhi line on collaborative federalism, cut both ways: the Union must not treat States as field offices, and States must not treat national investigating agencies as foreign police when the Constitution has already shared the field.

Federal character: a two-sided limit

- India's federal character is not dual sovereignty of the U.S. type; it is a Union of States with a strong Centre, a single citizenship, and All-India Services - yet police remains the most sensitive State List entry.
- **A healthy federal bargain is therefore:** CBI for complex, inter-State, and court-mandated cases; State police for ordinary crime; consent as a default courtesy, not as a shield for State-level impunity.
- **Recommendation:** a comprehensive CBI statute that clarifies consent, mandatory court-monitored probes in specified classes, and a federal crime list, so Andhra/West Bengal-style standoffs are not the only way to argue jurisdiction.

Flow diagram

State List police -> s.6 DSPE consent
 s.6 DSPE consent -> General consent
 General consent -> Andhra WB withdrawal
 Andhra WB withdrawal -> Case-specific consent
 SC HC ordered probe HC ordered probe -> CBI FIR and investigation FIR and investigation
 Union Territory -> CBI FIR and investigation
 Case-specific consent -> CBI FIR and investigation

Conclusion

States question CBI FIRs because police is a State subject and the DSPE Act makes consent the federal key. That key is real, as **Andhra Pradesh and West Bengal** showed by withdrawing general consent, but it is not absolute: court orders, Union Territories, pending jurisdiction, and central subjects still open the door. Indian federalism here is a negotiated police power, not a State veto and not a Union walk-in.

Facts & figures

DSPE Act, 1946, **Section 6**

Requires State consent for the Delhi Special Police Establishment (CBI) to exercise powers in that State.

Entry 2, State List / Entry 80, Union List

Police with the States; Union police extension to a State with consent - the federal hinge.

Andhra Pradesh and West Bengal

Major States that withdrew general consent to the CBI, crystallising the 2021 controversy.

Vineet Narain v. Union of India

Sought CBI insulation from executive interference; did not erase the consent architecture.

Articles 32 and 226

Allow constitutional courts to order a CBI probe even when a State withholds political consent.

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