CBI vs States – Withdrawal of general consent

Why in news?

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The Andhra Pradesh and West Bengal governments recently withdrew general consent to the CBI for investigating cases in their respective states.

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What is the reason behind?

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- The two state governments said that they had lost faith in the CBI in the backdrop of its internal turmoil marked by the open war among the agency's top officers.
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- They have also alleged that the Centre is using the CBI to unfairly target Opposition parties.
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- However, the centre argues that there is no sovereignty for any state in the matter of corruption.
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- It accuses the states that this was motivated by a general fear of what investigations might reveal rather than by any particular case.
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What is a general consent?

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- The CBI is governed by the Delhi Special Police Establishment Act that makes consent of a state government mandatory for conducting investigation in that state.
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- There are two kinds of consent in the form of case-specific consent and general consent.
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- Central government through notification can ask CBI to investigate against central government employees against Income tax violations, conspiracy against nation, spying etc.,
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- As law and order belongs to the states, all states normally gave a general consent to CBI for these investigations.
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- “General consent” is normally given to help the CBI seamlessly conduct its investigation into cases of corruption against central government employees in the concerned state.
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- For example, if CBI wanted to investigate a bribery charge against a Western Railway clerk in Mumbai, it would have to apply for consent with the Maharashtra government before registering a case against him.
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- However, despite central government notification, CBI can’t investigate any case registered by state government against state government employees or institutions.
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- Thus the modality of CBI investigation into state government matters is that state governments has to request CBI with permission for a particular case.
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- This will be followed by a central notification to the CBI for that case.
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- Only if High courts or the Supreme court rules that there is a need for CBI investigation, then it is deemed that the consent of state government is there and thus central government notifies.
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- Withdrawal of a consent means that the CBI will not be able to register any fresh case involving a central government official or a private person without getting case-specific consent from the states.
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- This shows that a general consent is not sufficient enough to investigate and CBI has to get case-specific consent from the states.
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- It simply means that CBI officers will lose all powers of a police officer as soon as they enter the state unless the state government has allowed them.
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- It also makes them to seek permission of the state government for every case and every search it conducted on central government employees.
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- Over the years, several states have withdrawn general consent, including Sikkim, Nagaland, Chhattisgarh and Karnataka, which stands out as an example for the recent move.
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Does the CBI can no longer probe any case in the two states?

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- The general consent has been withdrawn by the two states under Section 6 of the Delhi Special Police Establishment Act, 1946.
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- Section 6 of the Act bars any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, without the consent of the Government of that State.
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- This is in stark contrast to Section 5 of the Act gives powers to the CBI over all areas in the country.
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- However, the CBI would still have the power to investigate old cases registered when general consent existed.
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- Also, cases registered anywhere else in the country, but involving people stationed in Andhra Pradesh and West Bengal, would allow CBI's jurisdiction to extend to these states.
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- There is ambiguity on whether the agency can carry out a search in either of the two states in connection with an old case without the consent of the state government.
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- However, there are legal remedies to that as well.
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- The CBI can always get a search warrant from a local court in the state and conduct searches.
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- In case the search requires a surprise element, Section 166 of CrPC allows a police officer of one jurisdiction to ask an officer of another to carry out searches on his behalf.
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- And if the first officer feels that the searches by the latter may lead to loss of

evidence, the section allows the first officer to conduct searches himself after giving a notice to the latter.
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What happens in fresh cases?

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- Withdrawal of consent will only bar the CBI from registering a case within the jurisdiction of Andhra and Bengal.
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- The CBI could still file cases in Delhi and continue to probe people inside the two states.
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- The Delhi High Court makes it clear recently that the agency can probe anyone in a state that has withdrawn "general consent" if the case is not registered in that state.
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- The order was given with regard to a case of corruption in Chhattisgarh, which also gives consent on a case-to-case basis.
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- The court ordered that the CBI could probe the case without prior consent of the Chhattisgarh government since it was registered in Delhi.
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- Thus, if a state government believes that the ruling party's ministers or members could be targeted by CBI on orders of the Centre, and that withdrawal of general consent would protect them, it would be a wrong assumption.
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- CBI could still register cases in Delhi which would require some part of the offence being connected with Delhi and still arrest and prosecute ministers or MPs.
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Source: Indian Express

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