The Law on General Consent

What is the issue?

The Supreme Court has expressed concern over a CBI report that stated that since 2018, around 150 requests for sanction to investigate have been pending with 8 state governments that have withdrawn general consent.

What is general consent?

- The CBI is governed by **The Delhi Special Police Establishment (DSPE) Act, 1946**, and must **mandatorily** obtain the consent of the state government concerned before investigating a crime in a state.
- The consent of the state government can be either case-specific or general.
- A "general consent" is normally given by states to help the CBI in seamless investigation of cases of corruption against central government employees in their states.
- In the absence of general consent, the CBI would have to apply to the state government in every case, and before taking even small actions.

> *According to **Section 6** of **The DSPE Act**, nothing contained in section 5 shall be deemed to enable any member of DSPE to exercise powers and jurisdiction in any area in a State,(not being a Union territory or railway area), without the consent of the Government of that State.*

Which states have withdrawn general consent?

- Eight states have currently withdrawn consent to the CBI - Maharashtra, Punjab, Rajasthan, West Bengal, Jharkhand, Chhattisgarh, Kerala, and Mizoram.
- At the time of withdrawing consent, all states alleged that the central government was using the CBI to unfairly target the opposition.

What is the view of the judiciary in this aspect?

- Calcutta High Court recently ruled that the central agency cannot be

stopped from probing an employee of the central government in another state which has been challenged in the Supreme Court

- In Vinay Mishra vs the CBI, Calcutta HC ruled that corruption cases must be treated equally across the country, and a central government employee could not be distinguished just because his office was located in a state that had withdrawn general consent.
- The court also said that withdrawal of consent would apply in cases where only employees of the state government were involved.
- In 2018, Delhi High Court ruled that the agency could probe anyone in a state that has withdrawn general consent, if the case was not registered in that state.

What are the powers of CBI in these states?

- The withdrawal of general consent means that the CBI will not be able to register any fresh case involving officials of central government or a private person in the state without the consent of state government.
- But the CBI retained the power to investigate cases that had been registered before consent was withdrawn.
- The agency can use the Calcutta HC order to its advantage.
- A case registered anywhere else in the country, which involved individuals stationed in these states, allowed the CBI's jurisdiction to extend to these states.
- Also, the CBI has the option to get a warrant from a local court in the state and conduct the search in connection with an old case.
- In case the search requires an element of surprise, Section 166 of CrPC allows a police officer of one jurisdiction to ask an officer of another to carry out a search on their behalf.
- The consent of state governments does not apply in cases where someone has been caught red-handed taking a bribe.

To what extent is the CBI "its master's voice"?

- After the 2018 **amendments to the Prevention of Corruption Act,** 1988, the Centre has come to exercise power over the CBI not just administratively, but also legally.
- In 2018, the amendments to Section 17A of the Act, made it mandatory for the CBI to seek the Centre's permission before registering a case of corruption against any government servant.
- This means that the 2018 amendment virtually means the agency can investigate only the officers that the government of the day wants

investigated.
- In fact, corruption cases registered by the CBI dropped by over 40 % between 2017 and 2019.

Reference

1. https://indianexpress.com/article/explained/sc-state-government-consent-cbi-investigation-7617317/

