

ED & CBI - JURISDICTION, POWERS & CONTROVERSIES



Context:

- Ruling Governments are often accused of misusing the power of various agencies under their jurisdiction.
- In the recent meeting of the I.N.D.I.A bloc with the Election Commission, the I.N.D.I.A bloc alleged that the central government has indulged in "blatant and brazen" use of state power, citing instances such as the arrest of a sitting Chief Minister of Delhi.

1. Highlight the key differences & similarities between ED and CBI?

Feature	ED	CBI
<p>About the body</p>	<ul style="list-style-type: none"> • The Directorate of Enforcement is a multi-disciplinary organization mandated with investigation of offenses of money laundering and violations of foreign exchange laws. • It functions under the Department of Revenue of the Ministry of Finance. • The origin of this Directorate goes back to 1st May, 1956, when an ‘Enforcement Unit’ was formed in the Department of Economic Affairs for handling Exchange Control Laws violations under Foreign Exchange Regulation Act, 1947 (FERA ’47). 	<ul style="list-style-type: none"> • The Central Bureau of Investigation (CBI) was established by a resolution of the Ministry of Home Affairs, Government of India, dated April 1, 1963. • The CBI is not a statutory body but derives its power to investigate from the Delhi Special Police Establishment Act, 1946. • The CBI functions under the Ministry of Personnel, Public Grievances and Pensions of the central government. • The CBI came into being during World War II, when the colonial government felt the need to probe cases of corruption in the War and Supply Department. A law came in 1941. It became the DSPE Act in 1946.

	<ul style="list-style-type: none"> • In 1957, this Unit was renamed as 'Enforcement Directorate', and another branch was opened at Madras (now Chennai). • In 1960, the administrative control of the Directorate was transferred from the Department of Economic Affairs to the Department of Revenue. 	<p>Role of CVC:</p> <ul style="list-style-type: none"> • The Central Vigilance Commission (CVC) exercises superintendence over the functioning of the Delhi Special Police Establishment (CBI) insofar as it relates to the investigation of offenses under the Prevention of Corruption Act, 1988; or offenses under the Code of Criminal Procedure, 1973 for certain categories of public servants. • CVC also gives directions to the Delhi Special Police Establishment (CBI) for superintendence insofar as it relates to the investigation of offenses under the Prevention of Corruption Act, 1988. • The Commission also reviews the progress of investigations conducted by the Delhi Special Police Establishment (CBI) into offenses alleged to have been committed under the Prevention of Corruption Act, 1988 or an offense
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		<p>under the Code of Criminal Procedure and review the progress of the applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.</p> <ul style="list-style-type: none"> • The appointment of the officers to the posts of the level of Deputy Director and above (including the Director) in the Directorate of Enforcement is recommended by a committee under the chairpersonship of Central Vigilance Commissioner and with Vigilance Commissioner and other officers of Government of India as members. • Further, the appointment of officers to the posts of the level of SP and above in the CBI (except Director, CBI) is recommended by a committee under the chairpersonship of Central Vigilance Commissioner and with Vigilance Commissioner
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		<p>and other officers of Government of India as members.</p>
<p>Appointment of Director</p>	<ul style="list-style-type: none"> • The ED Director is appointed by the central government on the recommendation of a committee: Chaired by the Central Vigilance Commissioner and Members comprising of Vigilance Commissioners, Home Secretary, Secretary DOPT and Revenue Secretary. 	<ul style="list-style-type: none"> • The Lokpal Act 2013 prescribed that the CBI director shall be appointed on the recommendation of a committee comprising the Prime Minister, Leader of the Opposition in the Lok Sabha and Chief Justice of India or a judge of the Supreme Court nominated by him
<p>Jurisdiction</p>	<ul style="list-style-type: none"> • Both FEMA and PMLA apply to the whole of India including Jammu and Kashmir. • So, the Enforcement Directorate can act against any person to which this act applies. • Cases under FEMA may lie in civil courts whereas PMLA cases will lie in criminal courts. 	<ul style="list-style-type: none"> • Section 6 of the DPSE Act authorizes the central government to direct the CBI to probe a case within the jurisdiction of any state on the recommendation of the concerned state government. • The courts can also order a CBI probe, and even monitor the progress of investigation. • CBI can suo-moto take up investigation of offenses

	<ul style="list-style-type: none">• The agency has jurisdiction over a person or any other legal entity who commits a crime whether he is a politician or a businessman.• All public servants come under the jurisdiction of the agency if they are involved in any offense related to money laundering.	only in the Union Territories.
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Similarities between ED and CBI:

- Both are under administrative control of the Central Government.
- Both are neither Constitutional nor Statutory Bodies.
- Both fight against economic crimes in India.

2. What are the Constitution/Legal provisions for ED/CBI?

Both ED and CBI are **non constitutional and non statutory bodies**.

The legal provisions for both ED and CBI are enlisted below:

ED	CBI
<p>The functions of the Directorate include enforcement of following Acts:</p> <ul style="list-style-type: none"> • Prevention of Money Laundering Act, 2002 (PMLA):ED has been given the responsibility to enforce the provisions of the PMLA by conducting investigation to trace the assets derived from proceeds of crime. • Foreign Exchange Management Act, 1999 (FEMA):ED has been given the responsibility to conduct investigation into suspected contraventions of foreign exchange laws and regulations. • Fugitive Economic Offenders Act, 2018 (FEOA): • It is a law whereby the Directorate is mandated to attach the properties of the fugitive economic offenders who have escaped from India warranting arrest and provide 	<ul style="list-style-type: none"> • The CBI derives its power to investigate from the Delhi Special Police Establishment Act, 1946. • Section 6 of the DPSE Act authorizes the central government to direct the CBI to probe a case within the jurisdiction of any state on the recommendation of the concerned state government.

<p>for the confiscation of their properties to the Central Government.</p> <ul style="list-style-type: none"> • Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA): Directorate is empowered to sponsor cases of preventive detention with regard to contraventions of FEMA. 	
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3. What are some amendments made in laws related to CBI & ED?

ED	CBI
<ul style="list-style-type: none"> • The tenure of the ED Director was brought in by amending the Central Vigilance Commission Act, 2003. 	<ul style="list-style-type: none"> • In 2003, DSPE Act was revised on the Supreme Court's recommendation in the Vineet Narain case. <ul style="list-style-type: none"> ▪ A committee that had members from Central Vigilance Commission, Secretaries from Home Ministry, Ministry of Personnel and Public Grievances would send recommendations to Central Government for the appointment of CBI Director.

	<ul style="list-style-type: none"> • In 2014, the Lokpal Act provided a committee for appointment of CBI Director consisting of the Prime Minister, Leader of Opposition and Chief Justice of India. • Director of CBI has been provided security for two year tenure, by the CVC Act, 2003.
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The President issued two ordinances in November 2021 that gave the Central Government permission to increase the terms of the **CBI and Enforcement Directorate directors** from **two to five years**.

4. Is ED more powerful than CBI?

ED	CBI
<ul style="list-style-type: none"> • Sections 48 & 49 of the PMLA empower the ED officers to investigate cases of Money Laundering. 	<ul style="list-style-type: none"> • CBI can investigate matters only with notification by the central government.
<ul style="list-style-type: none"> • Summon an individual whose attendance is essential, whether to give evidence or to produce any records, during investigation or proceedings. 	<ul style="list-style-type: none"> • Once consent is granted, the CBI can investigate economic, corruption, and special crimes (including national security, drugs and narcotics, etc.)
<ul style="list-style-type: none"> • Power to Seize/Attach assets. 	<ul style="list-style-type: none"> • CBI can suo-moto take up investigation of offenses only in the Union Territories.

<ul style="list-style-type: none"> • Power to penalize 	
<ul style="list-style-type: none"> • Power to compound contraventions: <ul style="list-style-type: none"> ▪ It is a procedure that allows a defendant to pay a monetary penalty rather than face prosecution and lengthy legal battles. ▪ The ED and the Reserve Bank of India (RBI) have the ability under Sec 15 of FEMA to compound contraventions listed in Sec 13 of the Act. 	
<ul style="list-style-type: none"> • ED does not require any consent from states to take any action. 	

5. Enlist such agencies in other countries?

Country	Agency
USA	Federal Bureau of Investigation(FBI): is responsible for detecting and lawfully countering actions of foreign intelligence services and organizations that gather information about the U.S. that adversely affects our national interests

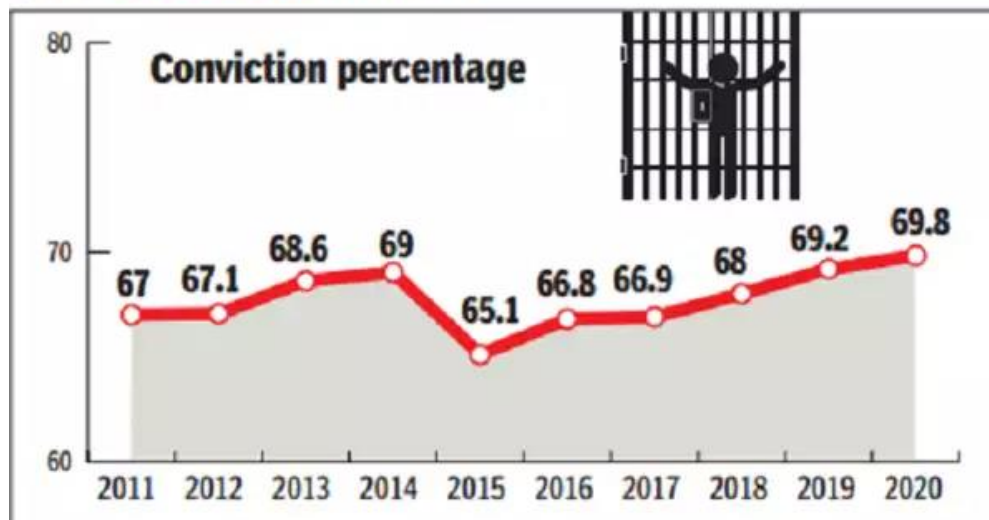
<p>UK</p>	<p>The National Crime Agency (NCA): It is the UK's lead agency against organized crime; human, weapon and drug trafficking; cybercrime; and economic crime that goes across regional and international borders, but it can be tasked to investigate any crime.</p>
<p>France</p>	<p>Directorate of Territorial Security (DST): is responsible for internal security, playing a role similar to that of the American FBI. It is controlled by the Ministry of the Interior.</p>
<p>Germany</p>	<p>Bundeskriminalamt (BKA): The Federal Criminal Police Office of Germany is the federal investigative police agency of Germany, directly subordinated to the Federal Ministry of the Interior.</p>

6. How UPA /NDA Used/Misused ED/CBI?

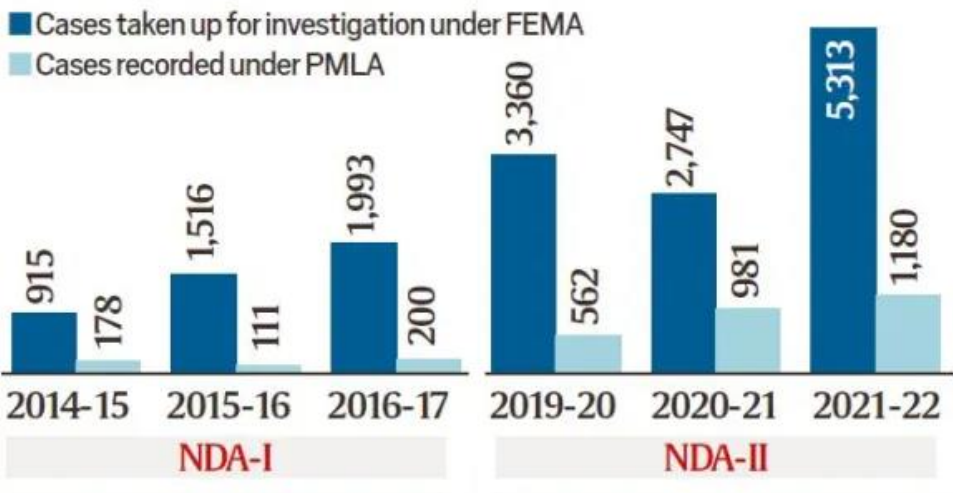
<p>ED</p>	<p>CBI</p>
<p>Shri Pankaj Chaudhary, the Union minister of state for finance, told the Lok Sabha in a written response, "Till March 31, 2022, ED recorded 5,422 cases under the PMLA, attached proceeds of crime of Rs 1,04,702 crore</p>	<p>According to the Central Vigilance Commission (CVC) annual report, the conviction rate of CBI is as high as 65 to 70%, which is comparable to the best investigation agencies in the world.</p>

(approximately), and filed prosecution complaints (charge sheets) in 992 cases, resulting in the confiscation of Rs 869.31 crore and the conviction of 23 accused."

CBI STRIKE RATE



FEMA, PMLA CASES ON THE RISE



7. What are the Criticisms related to ED and CBI?

ED	CBI
<p>Wide Powers: The ED has a set of powers that even CBI or state police forces don't have. These are:</p> <ul style="list-style-type: none"> • Statement before ED is admissible in court as evidence. • All offenses under PMLA are non-bailable. • The burden of proof is on the accused. 	<p>Limited Powers:</p> <ul style="list-style-type: none"> • The powers and jurisdiction of members of the CBI for investigation are subject to the consent of the State Govt., thus limiting the extent of investigation by the CBI. • Grant and withdrawal of general consent on political considerations has been common for states.
<p>Transparency:</p> <ul style="list-style-type: none"> • There is a lack of transparency in the way the ED functions as it is not known how the ED chooses its cases and what is the basis of picking a particular case. 	<p>Political Interference:</p> <ul style="list-style-type: none"> • Due to excessive political interference in its functioning it is often criticized.
<p>Enforcement Case Information Report (ECIR):</p> <ul style="list-style-type: none"> • The Enforcement Directorate registers an Enforcement Case Information Report (ECIR) in India, which bears similarities with a First Information Report (FIR) in criminal cases. 	<p>Lack of Accountability:</p> <ul style="list-style-type: none"> • CBI is exempted from the provisions of the Right to Information Act, thus, lacking public accountability.

<ul style="list-style-type: none">• It is considered an internal document and not given to the accused.	
<p>Use of PMLA for ordinary crimes:</p> <ul style="list-style-type: none">• At the start of 2024, news broke out about summons being issued under the PMLA to two farmers by the ED.• ED had summoned two farmers from Tamil Nadu, Kannaiyan (70 years old) and Krishnan (62 years old) for questioning in money laundering case (PMLA) in 2023 <p>What's the predicate offense?</p> <ul style="list-style-type: none">• Kannaiyan and Krishnan had set up electric fencing around their farm without permission in 2017 and two Indian bisons were electrocuted to death.• FIR was registered in 2017 under Sec 9 read with Sec 2(16), 2(36) and Sec 51(1) of Wildlife (Protection) Act, 1972.• Trial court acquitted both Krishnan and Kannaiyan on 28.12.2021.• ED has taken cognisance of this FIR (even after acquittal) and	

<p>launched money laundering investigation.</p> <ul style="list-style-type: none"> • Two years after acquittal, both the farmers were summoned for questioning in 2023. 	
<p>Low conviction rates:</p> <ul style="list-style-type: none"> • Since 2005, the ED has registered 5,906 cases but disposed only 23-25 cases, a mere 0.42% of the total cases. 	
<p>Political tool:</p> <ul style="list-style-type: none"> • It is often alleged that the government is weaponizing the ED against the opposition leaders. • As per the report published in The Indian Express in 2022, it was found that around 85% of the cases involving politicians were registered against those from the opposition. 	

What was the controversy in the appointment of director of ED and CBI?

ED	CBI
<ul style="list-style-type: none"> • The Supreme Court comprising Justices B.R. Gavai, Sanjay Karol and Vikram Nath on 27 	<ul style="list-style-type: none"> • Rakesh Asthana's appointment as CBI's special director in 2016 was opposed

July 2023, heard and granted the Union's request to extend the tenure of the incumbent Enforcement Directorate (ED) **Director, Sanjay Kumar Mishra** on till September 15, 2023, to serve 'public and national interest.'

- Earlier the same Bench delivered a Judgment in the challenge to the tenure extensions of CBI/ED Directors and held that the repeated **extensions of ED Director tenure were illegal.**
- The government had been given time till July 31 to find a replacement for Mr. Mishra, taking into consideration the government's submission that Mishra's presence was necessary for the ongoing evaluation by the Financial Action Task Force (FATF).

by non-governmental organization (NGO) Common Cause.

- The NGO claimed that Asthana allegedly accepted favors from Gujarat-based Sterling Biotech and Sandesara Group of companies when he was Surat police commissioner in 2011.

OPPOSITION IN ED NET

NDA-II | 2014 TO PRESENT

121 POLITICAL LEADERS UNDER PROBE

115 OPPOSITION LEADERS

6 BJP & ALLIES

UPA-I & UPA-II (2004 - 2014)

26 POLITICAL LEADERS UNDER PROBE

14 OPPOSITION LEADERS

12 CONGRESS & ALLIES

OPPOSITION INVESTIGATED PARTYWISE BREAK-UP

DURING NDA-II

THE 95%

Cong **24**, TMC **19**, NCP **11**, Shiv Sena **8**, DMK **6**, BJD **6**, RJD **5**, BSP **5**, SP **5**, TDP **5**, AAP **3**, INLD **3**, YSRCP **3**, CPM **2**, NC **2**, PDP **2**, Ind **2**, AIADMK **1**, MNS **1**, SBSP **1**, TRS **1**

DURING UPA

THE 54%

TMC **7**, BJP **3**, BSP **2**, BJD **1**, YSRCP **1**

Note: Data from court documents, agency statements and reports; numbers are of those booked, arrested, raided or questioned; leaders have been listed under the political parties they belonged to when action was initiated against them

From 60% in UPA to 95% in NDA: A surge in share of Opposition leaders in CBI net



7. What is the recruitment process for CBI & ED?

ED	CBI
<ul style="list-style-type: none"> Every year, the Enforcement Directorate (ED) recruits the positions for Assistant Enforcement Officers through the SSC CGL exam. 	<ul style="list-style-type: none"> One can apply for CBI after completing graduation from a recognised university in any discipline. To become a CBI officer, individuals have to go through

	<p>recruitment processes such as the</p> <ul style="list-style-type: none"> ▪ Departmental Competitive Examination ▪ SSC CGL Exam(Sub inspector) ▪ UPSC Civil Services Exam(through deputation)
<ul style="list-style-type: none"> • Group A Officers of the Enforcement Directorate are appointed through deputation from other services. 	<ul style="list-style-type: none"> • The Central Bureau of Investigation are having vacancies in the rank of SP to be filled by IPS officers as per IPS Tenure Policy on deputation basis.

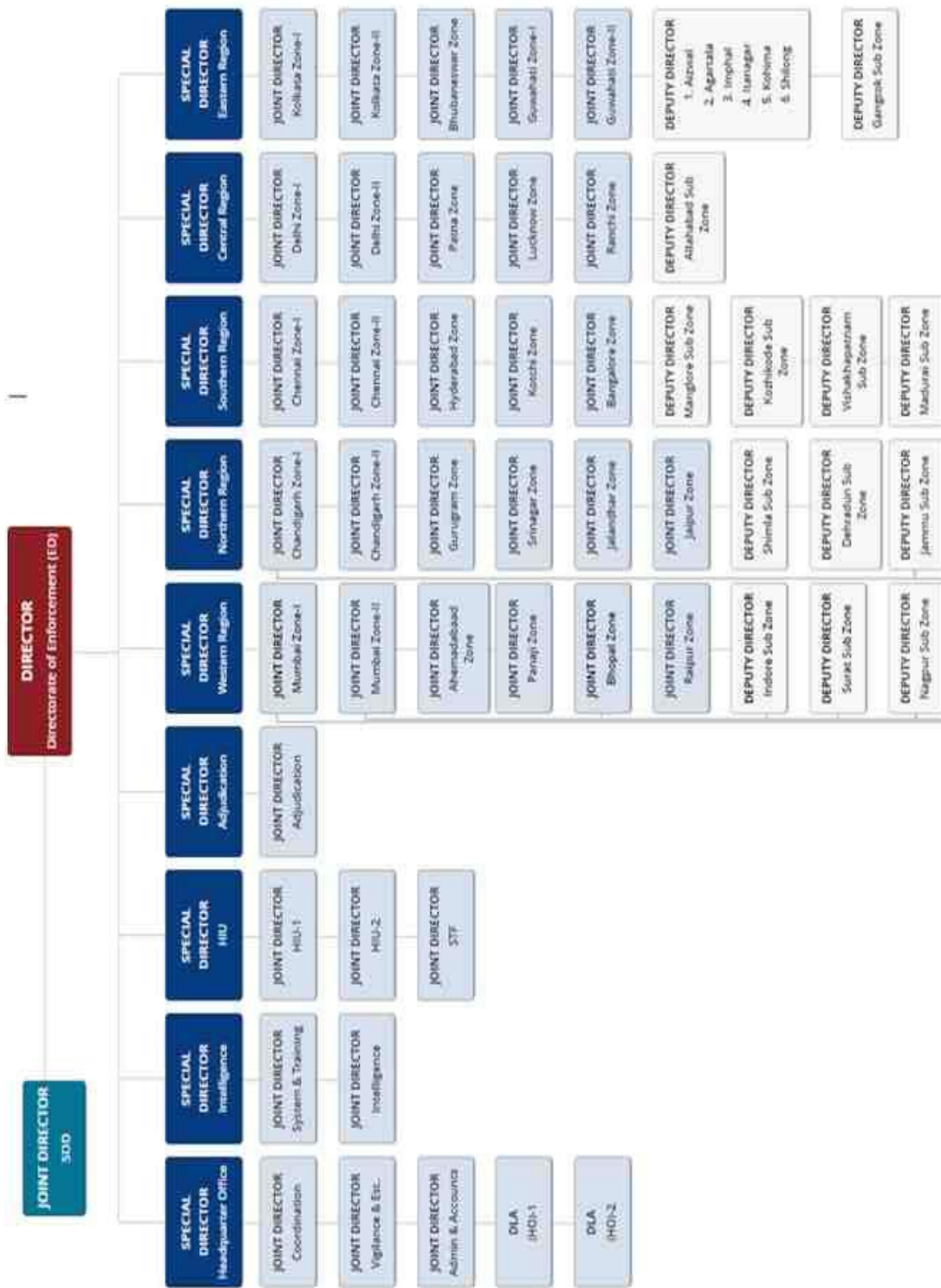


8. What is the organizational structure of CBI & ED?

ED	CBI
<ul style="list-style-type: none"> • The Directorate of Enforcement, with its headquarters at New Delhi, is headed by the director of enforcement. • Rahul Navin, a 1993-batch IRS officer, has taken charge as the acting director of the ED replacing Sanjay Kumar Mishra, an IRS officer of the 1984 batch. • There are five regional offices at Mumbai, Chennai, Chandigarh, Kolkata, and Delhi headed by special directors of enforcement. • Zonal offices of the directorate are at Pune, Bengaluru, Chandigarh, Chennai, Kochi, Delhi, Panaji, Guwahati, Hyderabad, Jaipur, Jalandhar, Kolkata, Lucknow, Mumbai, Patna, and Srinagar. • These are headed by a joint director. 	<ul style="list-style-type: none"> • The Central Bureau of Investigation is headed by a Director, an IPS officer with a rank of Director General of Police. • The current director of CBI is Praveen Sood, who was the former DG and IGP of Karnataka state police. • The director is selected by a high-profile committee constituted under The Delhi Special Police Establishment (DSPE) Act, 1946 as amended through The Lokpal and Lokayuktas Act, 2013, and has a two-year term which can be extended for another three years. • Other ranks in the CBI which may be staffed by the IRS (Indian Revenue Service) officer and the IPS are Special Director, Additional Director, Joint Director, Deputy Inspector General of Police, Senior Superintendent of Police, Superintendent of

<ul style="list-style-type: none">• The directorate has sub-zonal offices at Mangaluru, Bhubaneshwar, Kozhikode, Indore, Madurai, Nagpur, Allahabad, Raipur, Dehradun, Ranchi, Surat, Shimla, Visakhapatnam and Jammu which are headed by a deputy director.	<p>Police, Additional Superintendent of Police, Deputy Superintendent of Police. Inspector, Sub-Inspector, Assistant Sub-Inspector, Head constable, Constable which are recruited through SSC or through deputation from Police, Income Tax Department and Customs Department.</p>
<ul style="list-style-type: none">• The actual strength of ED is currently around 1,700, which includes all ranks at the top as well as assistant directors, enforcement officers, clerks, sepoy, multi-tasking staff, and stenographers.	<ul style="list-style-type: none">• The CBI has around 5,000 staff members, 125 forensic scientists, and 250 law officers.

ED's Organisational Structure:



THE CBI'S STRUCTURE



9. How is this topic relevant for UPSC?

GS Paper 2:

- Constitutional and non-constitutional bodies
- Government Policies and Interventions

GS Paper 3:

- Money Laundering

A previous years mains question:

Q. The jurisdiction of the Central Bureau of Investigation (CBI) regarding lodging an FIR and conducting a probe within a particular state is being questioned by various States. However, the power of the States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India. (2021)

Some questions from this year and previous years interview transcripts:

Board BB Siwan sir:

- Why can't ED and police work together in TN ?
- What are the issues ?

Board Dinesh Dasa sir:

- Tell me what would you do as a state police officer if ED/CBI comes to your state for investigation?
- Would you do the same if the Home minister transfers you again and again?

Board Dinesh Dasa sir:

- What do you think about the clashes between state police and ED CBI?

Board Dinesh Dasa sir:

- Can movies influence judicial outcome(CBI petition that a movie could influence witness)

Board Dinesh Dasa sir:

- Why do people ask for a cbi investigation in a case?
- There is a CID in state police. In CBI too, its cadre is there, how it's functioning is different from state police.
- There are demands for cbi investigation in many cases? Why?
- If things go like this, the organization will be overburdened. How cases are decided in CBI.

Board Suman Sharma mam:

- Tell about CBI general consent and some follow up questions?

Board Manoj Soni sir:

- What about the Collegium system ?
- Collegium for CBI and ECI

Some questions for QUIZ.

1. Consider the following statements regarding Enforcement Directorate (ED):
 1. It is under the administrative control of the Department of Revenue.

2. The ED Director is appointed by the central government on the recommendation of a committee chaired by the Prime Minister.
3. ED is responsible for enforcement of the Foreign Exchange Management Act, 1999 (FEMA), and certain provisions under the PMLA.

How many of the above statements are correct?

- (a) Only one
- (b) Only two
- (c) All three
- (d) None

Ans. (b)

2. Consider the following statements regarding Central Bureau of Investigation (CBI)

1. It is a statutory body created under the DSPE Act, 1946.
2. It functions under the Ministry of Home Affairs.
3. It is also the nodal police agency in India which coordinates investigations on behalf of Interpol Member countries.

How many of the above statements are correct?

- (a) Only one
- (b) Only two
- (c) All three
- (d) None

Ans. (a)

3. Consider the following bodies.

1. Central Bureau of Investigation
2. State Human Rights Commission
3. Niti Aayog

4. Enforcement Directorate
5. National Consumer Disputes Redressal Commission

How many of the above bodies are neither constitutional nor statutory in their origin?

- (a) Only two
- (b) Only three
- (c) Only four
- (d) All five

Ans. (b)

Some questions for POLL

1. Is ED misused by the ruling governments?
 - (a) YES
 - (b) NO
 - (c) Can't say.
2. Does CBI enjoy Independence in functioning?
 - (a) YES
 - (b) NO
 - (c) Can't say.
3. Should CBI & ED be made Constitutional Bodies?
 - (a) YES
 - (b) NO
 - (c) Can't say.

