

**NATIONAL COMMISSION TO REVIEW THE
WORKING OF THE CONSTITUTION**

Consultation Paper*

A

on

EFFICACY OF PUBLIC AUDIT SYSTEM IN INDIA:

C & AG – REFORMING THE INSTITUTION

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on

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Mechanism; Standards in Public Life

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I am of the opinion that this dignitary or officer (C&AG) is probably the most important officer of the Constitution of India. He is the one man who is going to see that the expenses voted by parliament are not exceeded, or varied from what has been laid down by Parliament in what is called appropriation Act. If this functionary is to carry out the duties- and his duties, I submit are far more important than the duties of the Judiciary.

Dr B R Ambedkar

1. CURRENT STATUS

Public audit is a vital instrument of ensuring supremacy of Parliament over executive and enforcing public accountability. Public audit institutions developed over time to help legislatures to implement the power of the purse. This power had two essential elements: the granting of the moneys and supervision of the expenditure. State audit in its present form was introduced first time in Great Britain as an integral part of parliamentary control over national finance with the enactment of Exchequer and Audit Department Act in 1866. The Act required all departments for the first time, to produce annual accounts known as appropriation accounts. The act also established the position of Comptroller and Auditor General (C&AG) and an Exchequer and Audit department to provide the supportive staff from within the civil service. The results of C&AG's investigations were considered by a dedicated parliamentary committee called the Committee on Public Accounts thus establishing a circle of parliamentary financial control.

2. The system of Government accounting and auditing and the organisational structure of the Indian Audit and Accounts department (IAAD) as it exists today in our country is the legacy of British Raj and is

more or less patterned on British model. The IAAD has a history dating back to 1858 when the East India Company administration was taken over by the British Government and an Auditor General of India, who looked after both audit and accounts functions, was appointed. The introduction of constitutional reforms in 1919 brought about statutory recognition to the Auditor General.. The Government of India Act 1935, gave further recognition to the importance and status of the Auditor General.

1.1 Constitutional and Statutory Mandate

3. The Indian Constitution gave special status to Comptroller & Auditor General (C&AG) as laid down in Articles 148 to 152. The C&AG's Act, 1971 regulate the duties, powers and conditions of service of the Comptroller and Auditor General.

4. Section 13, 16 and 17 of Act gives authority to C&AG to audit all expenditure from and receipt into the Consolidated fund of India and the State. Section 14, 15, and 20 of the Act authorises C&AG to audit the receipts and expenditure of bodies or authorities substantially financed by loans or grants from Union or State or Union Territory. Article 151 of the Constitution prescribes that Audit Reports on the accounts of Union and the States be submitted to Parliament /State Legislature.

1.2 Organisational Structure

5. The C&AG is the head of the Indian Audit and Accounts Department. The office of the C&AG directs, controls and monitors the activities of the various offices of the department and is responsible for development of organisational objectives and policies, auditing standards and systems, laying down policies for management of man power and final approval of the Audit report. For carrying on these responsibilities field formations exist for each specific areas of auditing and accounting.

6. The offices of IAAD are spread throughout the country. There are 34 Union Government Audit Offices headed by Director General/ Principal Director of Audit and 60 State Accounts and Audit offices headed by Principal Accountant General and Accountant General. There are 60000 personnel in the IAAD with about 500 Group A officers belonging to the Indian Audit and Accounts Service (IA&AS). The total budget of the IAAD is around Rs 846 crs bulk of which constitutes expenditure on pay and allowances of the staff.

1.3 Evolution of Audit since Independence

7. The traditional audit conducted by the supreme audit institutions (SAI) is known as **Regularity audit** which implies checking upon the legality of an action taken by a public official or a person using public funds and whether the decision or its implementation is according to the law, rules or regulations governing that activity. Gradually its dimension was extended to *Financial audit* and now to *Value for Money audit*. **Financial Audit** basically means audit of financial statement and whether they provide reasonable assurance that they present fairly the financial position, results of operations, and cash flows of an audited entity in accordance with generally accepted accounting principles. In Financial audit, State auditors do almost the same kind of job which the Chartered Accountants do while auditing a public limited company .

Value for Money or 3E's Audit: also known as Performance audit is an independent assessment of the performance of an organisation, programme, project or an activity in terms of its goals and objectives-how far expected results have been achieved from the use of available resources of money, men and material. Put it differently an examination is made regarding economy, efficiency and effectiveness of public spending, which has come to be known as 3E's audit.

- ❑ Economy: minimising the cost of resources used or required - *spending less*;
- ❑ Efficiency : the relationship between the output of goods and services and the resources to produce them- *spending well*;
- ❑ Effectiveness: the relationship between the intended and actual results of public spending - *spending wisely*.

8. The concept and technique of audit has undergone a major change during the last fifty years. Before India became independent, the government audit was mostly confined to check against provision of funds, rules and orders and competence of authority concerned to sanction expenditure. With the launching of the Five Year plans for economic and social development there has been change in the pattern of government expenditure necessitating shift in the emphasis, concept and practice of audit as

scrutiny of individual transactions became inadequate as it tended to mistake wood for the tree. The Parliament and the public are more interested to know whether various development and welfare programmes are being executed efficiently and whether they were producing the expected results. This led Audit department to enter in the area of *Performance Evaluation and Value for Money Audit*. Audit department is now producing a large number of performance reviews every year covering almost every facet of government's working.

9. *Audit of Revenue:* C&AG after some initial resistance on the part of revenue department was able to extend its dimension to audit of revenues which includes audit of tax assessment such as Income tax, Central Excise and Customs, Sales tax etc. The audit of receipts has helped bringing considerable revenue for the government by pointing out cases of under assessment of tax, and also assisted in better functioning of tax administration machinery by pointing out lacunae or loopholes in the Act/ Rules and deficiencies in the functioning of tax administration.

10. *Audit of Commercial Enterprises:* The audit of government companies was brought within the purview of C&AG's audit at the insistence of then CAG by introducing a suitable provision in the Companies Act 1956, although there were initial attempts to exclude his jurisdiction. Thus, while Chartered Accountants are required to certify Annual Accounts of government companies, C&AG has been granted right to conduct supplementary audit.

2. WEAKNESS OF THE EXISTING SYSTEM :

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2.1 No Powers to Enforce Audit Findings - Violation of Rules

11. One of the primary functions of audit is to see that provisions of law, rules and regulation are properly applied while incurring expenditure or collecting revenue. In order to regulate usage of money elaborate rules and regulations have been drawn by government. While audit notices systematic violation of law, rules and regulations by departmental officers it is unable to take an effective action to prevent them.

12. The Bihar fodder scam will illustrate the point. Serious financial irregularities and misappropriation of government funds were being committed by senior government functionaries and the Treasury officials all acting together in collusion. The Accountant General (AG) Bihar could not detect the irregularity in time as Treasury officers suppressed the vouchers through which money was drawn and did not transmit them to AG thus preventing its audit. C&AG has been making mention of excess drawl over voted provision in its Audit Report presented to Bihar Legislature but Public Accounts Committee, it is said did not even meet to discuss the report let alone take preventive action. After the scam became public knowledge, C&AG

has produced a well documented Audit Report but it is more a case of getting wise after the event—after crores of public money has been looted and shutting the stable door after the steed has been stolen.

13. The accounts keeping of State governments companies is in chaotic state. Out of about 900 State government companies the Annual Accounts of as about 700 companies is in arrears sometimes for periods as long as ten to twelve years. The Companies Act stipulates that the Annual Accounts of these companies should be got audited by Statutory auditors (Chartered Accountants) and C&AG within six months of the close of financial year viz. 30th September. Should a situation where management of these companies violate with impunity the legal provision laid down in the Companies Act be allowed? Similar is the situation with large number of autonomous bodies, which receive substantial grant from government every year. Many of them do not submit their Annual Accounts in time for audit. In numerous cases, accounts when prepared do not follow the accounting standards, contain serious mistakes and when pointed out, the concerned organisations refuse to rectify the errors . And yet they continue to get government grants every year. Should not C&AG be empowered to take legal action against management of such defaulting organisations, so that tax payer is assured that no misuse and misappropriation of public funds has taken place?

2.2 Legal position

14. Section 13 of the Comptroller and Auditor General's Act, lays down that it is the duty of audit: to ascertain that the money, which has been disbursed was legally available for the service or purpose on which it has been applied and there is a proper authority to spend the money. What happens when a

public official spends money, which is not legally available viz., it is in violation of laid down rules and regulations. The Act is silent about it – all that the last sentence of Section 13 says, “ in each case to report on the expenditure, transaction or accounts so audited by him.” *If the C&AG makes a report about the irregular usage of money to the Departments whose officials have committed the default and they contest C&AG’s decision or do not take any action, it virtually amounts to the departments sitting over judgement on C&AG’s findings and obstructing the duty he is required to perform under the law. In no other country of the world State audit finds itself in such a helpless situation.*

2.3 Position in Advanced Countries

15. Most Supreme Audit Institutions (SAI) have been vested with powers to fix responsibility on the officials who have caused loss to the exchequer and have legal power for its recovery. In **New Zealand** under the Public Finance Act of 1977, the Controller and Auditor General(CAG) is empowered to hold an enquiry which may require any evidence to be given either orally or in writing and to which the provisions of Crimes Act relating to perjury applies. The CAG has power for surcharge if he finds that there is deficiency or loss of money or store caused through fraud, mistake, default, negligence, error or improper or unauthorized use. In **Japan** the Board of Audit has powers to adjudicate and can order an official to indemnify the loss and direct the supervising officer to take disciplinary action against the delinquent official when it finds that the official has caused grave loss to the State either deliberately or by gross negligence. In **France** Cour des Comptes which functions like a court may order accounting officers to settle uncollected revenue or irregular expenses out of their own resources, if during an investigation it finds that the accounting officer has failed to provide satisfactory justification- on the ground that they have formal personal responsibility. Hindering Cour's investigation may give rise to a monetary fine. The judgements of Cour are legally binding and can be appealed only on points of law.

16. In **South Korea** , the Board of Audit and Inspection (BAI) law , confers authority to the Board to examine and adjudicate whether an accounting official or any other person is liable for reparation and the manner in which recovery is to be made and execute collection by applying mutatis mutandis provisions concerning disposition of taxes in arrears in the National Tax Collection Act. In **China** under the State Audit Act, an audited unit violating financial and economic laws and regulations, the audit organs may confiscate or instruct them to return the illegal gain; take over the embezzled state assets; take decisions to cut off such appropriations or loans; and impose fines. In **Thailand** under the State Audit Act of 1979, Auditor General can summon an official to deliver accounts and registers; attach money, properties, accounts registers, documents etc. of the audited agency and summon a person to testify as witness. If a person who has the duty to keep in his custody money or property or documents etc., damages, destroys, or causes loss he is liable for imprisonment upto five years or a fine or both. The Auditor General and the competent officials while performing their duties under the State Audit Act are treated as officials under the Penal Code.

2.4 Need for Conferring Legal Powers

17. *The situation in our country needs to be remedied by conferring legal power to Audit Officers to enable them to implement their findings by making suitable provisions in the C&AG's Act on the lines enjoyed by State audit institutions of other countries.* The Act should entrust Audit Officers with following powers: (a) powers to summon the concerned officers before it for evidence on oath and (b) where default is established, after giving due opportunity, they be required to make good the loss, (c) in case the official does not make good the loss and the default or neglect is established, a report be made to the superior authority of the department where officer is working for taking disciplinary action under the Civil Services Conduct Rule, (e) where action of public official involves criminal liability, the public prosecutor be informed either by Audit official or by the Department to which he belongs for initiating criminal action under the Penal code. *For discharging this quasi-judicial function the powers similar to those available under Commission of Enquiry Act be vested with the Accountant General / Principal Director of Audit who are heads of department by making suitable legal provision to that effect.* To make the system transparent and fair there should also be a provision of appeal with final appellate stage at the level of Addl / Dy Comptroller and Auditor General at the headquarters of C&AG's office.

3. C&AG'S AUDIT JURISDICTION

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3.1 Accountability of Public Sector Undertakings(PSU's)

18. Where autonomous bodies are created under a specific act, the statute setting them provides for the audit arrangement. There are a number of corporations, particularly in financial sector such as nationalised banks , IDBI, IFCI, LIC which have been kept outside the ambit of C&AG's audit . This is possibly on the ground that government audit is not suitable and hamstrungs their commercial operations. Audit of public enterprises by C&AG has always remained a controversial issue. In the 50's when PSU's were being set-up first time, there were attempts to bar C&AG's jurisdiction but the then C&AG resisted and the matter was resolved by amending the Companies Act and providing for supplementary audit of government companies by C&AG. Subsequently in the 70's, as a result of recommendation of Administrative Reforms Commission, an Audit Board system was introduced to provide commercial type audit for PSU's. In the wake of current privatisation programme, government is making policy pronouncements that government portion of equity will be brought down to a level of 49 or 26 percent. This is ostensibly being done to free them from government control including audit as they would no longer fall within the definition of government company. Will this not tantamount to evasion of public accountability as by retaining sizable share-holding government could still exercise policy control over these companies but will not be answerable to Parliament?

19. There is an opposite view that government control and agencies such as CBI, CVC, and CAG hampers decision making and risk taking necessary for a commercial organisation and largely responsible for their poor performance. Public enterprise managers and experts argue that in an era of globalisation and liberalisation where competition is the new *mantra* government companies have to be

provided the same level field as their compeers in private sector if they have to survive the market forces. They should therefore be given autonomy and supplementary audit by CAG be done away with.

20. In U.K nationalised industries were kept outside C&AG's audit from the beginning. However, British practice was more of an exception. France and Italy which have large public enterprises including banks fall within the jurisdiction of state audit. In USA under the Corporation Control Act, financial transactions of wholly owned corporations are audited by General Accounting Office.

21. *Keeping above factors in view what should be the best audit mechanism for public enterprises?*

3.2 Evasion of Audit

22. Of late there has been tremendous change in the pattern of public expenditure due to the policy of devolution of administrative functions and parceling out certain activities to non-government organisations. A substantial part of public funds are transferred through complex financing arrangements to these autonomous bodies and NGO's which have mushroomed in thousands. How to verify that they have properly utilised the money and fulfilled the objective is a major challenge, as CAG has no access to their book of accounts. Presently Chartered Accountants certify their accounts which forms the basis of utilisation certificates furnished by them. Is this arrangement satisfactory?

23. Government has set up District Rural Development Agency (DRDA), as a registered society headed by an elected representative, in every district of the country to which Central/ State government grants are given directly. DRDA's pass on money to Zila Parishad's for various poverty alleviation programmes. No satisfactory system of audit of DRDA/ ZP has been developed although money spent by them comes from the Consolidated Fund of India

/State and a staggering some of about Rs 10000 crs is spent annually. Chartered accountants certify their Annual Accounts on the basis of perfunctory information available to them regarding usage of money and they do not automatically fall within the audit jurisdiction of C&AG.

24. *It is for consideration whether a Constitutional provision be made, that all bodies which are publicly funded, fall within the audit mandate of Comptroller and Auditor General and any stipulation, which ousts his jurisdiction would be held ultra -vires.*

3.3 Local (Third Tier of) Government- Panchayats and Municipalities

25. Consistent with the philosophy of devolution of powers and strengthening of local self government institutions, the constitution, composition, power and duties of Panchayats and Municipalities were enshrined in the Constitution by making 73rd amendment in 1993. Bulk of finance for panchayats / municipalities comes from government but there is no satisfactory arrangement for their audit. Article 243 J and 243 Z states." The Legislature of a state may, by law, make provisions with respect to the maintenance of accounts by the Panchayats/ Municipalities and the auditing of such accounts." Hardly any State has made law in this regard. The old arrangement continues and the Examiner Local Fund Accounts, which functions under the Finance department, audits the accounts of these bodies. With the policy of progressive empowerment of the self- governing institutions receiving greater emphasis with attendant prospect of sizable percentage of state funds being handled by these institutions appropriate public audit mechanism need to be considered.

26. It may be noted that keeping in view the importance of Local bodies in **England** an Audit Commission has been constituted in 1982 for auditing Local Authorities and National Health Service. Similarly in **France**, Regional Courts of Accounts have been created in 1982 as part of wider policy of decentralisation which is empowered to audit all local authorities.

27. There is need for placing accounting and audit arrangement of Panchayats and Municipalities on sound footing and it is for consideration whether a Central legislation be enacted, with Comptroller and Auditor General having authority to lay down accounting and auditing standards and general superintendence over such audit.

4. QUALITY OF AUDIT- PROBLEMS DUE TO C&AG'S HIGHLY CENTRALISED SET-UP

4.1 Lack of Quality due to Unwieldy Structure

28. If Indian Audit and Accounts Department (IAAD) is to be given more teeth to be effective it must ensure very high standards of performance. Administrative departments often voice criticism of the manner of functioning of Audit department. They point out that audit often takes trivial objections, does petty fogging, and has a negative fault finding approach rather than coming out with solutions to the problems being faced by administration. Audit is also criticised for preparing reviews on the working of scientific and technical departments and on issues relating to economic policy making about which it has no expertise. There is considerable merit in these observations.

29. Much of the problems arise due to the existing structure of IAAD, which is highly centralised with all powers concentrated with C&AG in person or in his headquarter office with very little delegation to State Accountants Generals or Principal Directors of Audit who perform all the accounting and auditing functions. This tells upon the efficiency of the State Accountant's General and other field outfits and affects their morale. The problem can be seen from the fact the C&AG personally approves about 20 Audit Reports for Union Government and 75 Reports for State Governments. In addition C&AG has to certify Finance and Appropriation accounts of the Union government as well as each of the State governments and UT's having a separate legislature before they are placed in their respective Houses. Each of about 100 odd Audit Reports of the Central and State governments which the C&AG produces annually runs into 200 to 250 pages. It is humanly not possible to read through 20000 to 25000 pages of highly technical literature dealing with subjects as complicated as taxation laws, purchase of defence equipment etc., least of all to give any direction regarding meaningful conduct of audit. It is time to do some serious thinking on the issue and develop a more decentralised functioning of the institution of C&AG.

4.2 Public Audit in India – Violation of Principles of Federal Structure

30. Most of the problems of the Indian Audit & Accounts department arise from the fact that the organisational structure of C&AG is not in consonance with the federal arrangement as envisaged in the Constitution. While we have a separate Legislature, Governor and a High Court in every State there is no separate Auditor General. It is important to remember that the Constitution makers were conscious of this fact and draft Constitution as originally prepared had recommended separate Auditor General for every State. The original draft prepared by the drafting Committee, headed by Dr B R Ambedkar and submitted to the President of the Constituent Assembly on 21st May 1948, contained the following provision:

31. Auditors-in-Chief for the States- "Art 210(1) The Legislature of the State for the time being specified in the First Schedule may by law provide for the appointment of an Auditor-in-Chief for the State and when such a provision has been made an Auditor- in Chief for that State may be appointed by the Governor in his discretion and the Auditor –in-Chief so appointed shall only be removed from office in the manner and like grounds as a judge of the High Court of the State." The draft Constitution had a provision for control of Auditor General of India over State Auditor General. Art 210(6) read as follows : " Nothing in this article shall derogate from the power of the Auditor General of India to give such directions in respect of the accounts of the States for the time being specified in Part I of the first schedule as are mentioned in article 126 of this Constitution." The drafting committee had made the aforesaid provision on the basis of Government of India Act of 1935 which had envisaged separate Auditor General for the Provinces.

32. The provision of draft Constitution got amended at the stage when draft articles came for approval of Constituent Assembly on the basis of the recommendation of an Expert Committee which suggested doing away with provision of Provincial Auditor General. Was this a right step?

4.3 Position in other Federal Countries

33. Every country with federal structure has a provision of separate Auditor General for the provinces / states. Thus in **Germany** the Federal Court of Audit (FCA) and the constituent states known as Laender are autonomous independent unit of government audit. They not subordinate to one another, share audit responsibilities and may perform joint audits. In **USA** the General Accounting Office performs audit of federal government only. There is Auditor General in each State who enjoys separate legal status and is free to devise his systems to make his audit effective. Similar is the position in **Canada** and **Australia** where an act specifies provincial Auditor General's responsibility to examine the accounts of the province and its various agencies and requirement to report to the Assembly on the governments stewardship of public funds. In **UK**, **CAG** audits central government expenditure only. Following devolution in 1999, new Auditor Generals have been set up in Scotland and Wales to audit the expenditure of new Parliament and Assembly. There has been a separate Comptroller and Auditor General for Northern Ireland since the foundation of the state in 1921

4.4 No legal status to State AG in India

34. As stated above the provision for a separate Auditor General for the States was deleted at the stage of final passing of the draft Constitution. Nevertheless for audit of State finances the C&AG has to be accountable to State legislature and this was secured by inserting a provision in Article 148 and 149 of the Constitution stating that the Auditor General of Union will perform duties ' in relation to accounts of the States', and ' his reports will be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the States'. This position is somewhat anomalous. If C&AG is to perform duties in relation to Accounts of the State he should be available to State legislature and attend meetings of the State Public Accounts Committee. But how can one single individual discharge this function for 25 States? As matters stand today the Accountant General of the State discharges all the duties prescribed in the Constitution on behalf of the C&AG. Given this position it is imperative that a legal provision is made to this effect.

35. *It is therefore for consideration that in order to make State audit effective independent Auditor Generals for the States who have the same status as a High Court Judges are created by amending the Constitution. The appointment of State Auditor General be made with the approval of President of India on the basis of recommendations of an independent Committee headed by C&AG and qualification for holding the post be laid down. However the Auditor General of India should have power of superintendence over State Auditor Generals, in policy matters relating to accounts and audit, in the same manner that Supreme Court has over the High Courts.*

4.5 Indian Audit and Accounts Service and Department

36. Even if separate Auditor General's for State's are created, the existing status of IA&AS need not be disturbed and its members continue to be posted in the Accountant General's / Auditor General's offices as hitherto, on the basis of a policy evolved through Audit Services Board (comprising of representatives of CAG and State Auditor General's) which could be constituted for the purpose. Their current status of staff serving

in the IAAD need not be changed, and they may continue to be Central government servants. However, the newly created State Auditor General's, will have final say regarding their recruitment, promotion, transfer etc within some kind of uniform policy which could be worked out by consultation amongst CAG's office and the State Auditor General's.

5. NEED FOR COLLEGIATE DECISION: AUDIT COMMISSION

37. In most advanced democratic countries Audit Reports which are placed in Parliament are finalised through an Audit Board or Audit Commission system in which all the senior officers of the state audit department are represented. In **Germany** the Federal Court of Audit Act sets out the constitutional status of Bundesrechnungshof. All its members enjoy judicial independence and a constitutional status similar to that of judges. The Large Senate which is the main decision making body consists of 16 members and includes President, Vice President and the Directors of Audit. In **France** the Cour des Comptes is presided by Premier President and has seven chambers with 15 members. The Cour always acts as a collegiate body, whether in a judicial or non-judicial capacity. The draft annual reports on the accounts of the state and the management of the state services, agencies and companies are brought before the complete bench presided over by the President of the Cour. In **Japan** there is an Audit Commission consisting of three Commissioners. All major decisions pertaining to audit are taken by the Audit Commission including finalisation of the Audit report. In **Korea** the Board of Audit is composed of seven Commissioners including the chairman. Decisions on policy issues, such as audit and inspection, are taken with the approval of the Council of Commissioners.

38. In our country there is no system of finalisation of audit reports through a formal committee system in which the Dy CAG/ Accountant General / Principal Directors of Audit participate. The audit reports both of the Central and State governments are processed on files by the Dy CAG and Addl Dy CAG and approval of C&AG taken. The expenditure and revenue transactions of the government have increased hundred folds with tremendous growth in government's activities after independence. *It is simply not possible for one individual viz. C&AG to be responsible for all audit work of Central as well as State government. There is need for wider sharing of responsibility.* The existing system results in neglect of audit and poor quality of Audit Reports. There is also no system of discussion with Secretaries to government / heads of department before the Audit report is finalised. This leaves yawning gap in the Report, facts and conclusions are often challenged with the result that the main purpose of audit viz. improvement of the administrative set-up and the systems and procedure takes a back seat.

39. The existing system needs an overhaul. *Audit Reports should be finalised through collegiate decision making of an Audit Commission in which all the Dy CAG's and Addl Dy CAG's should be represented besides C&AG. The position of C&AG should be that of *primes inter pares*. For proposed Audit Commission to be effective its members should be given a status similar to that of a High Court Judge with age of retirement as 62*

6. APPOINTMENT OF COMPTROLLER AND AUDITOR GENERAL

40. The office of C&AG embodies an institution of great importance. However, an institution, however exalted, is only as good as the incumbent holding it. Do qualified individuals get appointed to the post? The Constitution grants C&AG independence and an exalted status (Article 148)- he is appointed by President by a warrant under his hand and seal, has the same status as a Supreme Court judge, cannot be removed from office, his conditions of service cannot be varied to his disadvantage, his salary is charged on the Consolidated fund of India etc. During last three decades the appointment of C&AG has always been mired with controversy. From the time the Constitution came into being in 1950, the four C&AG's appointed to the post, were senior members of the Indian Audit & Accounts Service . However from 1978 onwards the last four incumbents, are from the Indian Administrative Service(IAS). The appointment of C&AG who do not possess the requisite background of auditing and accounting has been subject of severe criticism by Chairman of the Public Accounts Committee, press, public spirited men, Officers and Staff association of the Audit department.

41. The Indian Constitution does not lay down qualification for the post of C&AG nor the manner of his selection. However the matter was discussed during the Constituent Assembly debates held in May 1949. From the debates it seems that framers of the Constitution's intention was that a person who had sufficient knowledge of finance and accounting systems and had practical experience of the work of Finance department and had worked as Accountant General would only be appointed. However, in practice this assurance has not been honored by successive governments.

42. **Position in Other Countries :** In **India** we have been following British traditions of parliamentary democracy and the post of C&AG has been patterned on British model. In **U.K** an act to strengthen Parliamentary control and supervision of expenditure of public money by making new provision for appointment and status of C&AG and establishing a National Audit Commission was enacted in 1983. The relevant provision regarding appointment of C&AG requires that the Prime Minister and Chairman of the Committee on Public Accounts should jointly select the incumbent and get it ratified by the House of Commons. In **Australia** Comptroller and Auditor General is appointed by the Governor General on the recommendation of the Minister, after the Minister has referred his recommendation to the Joint Committee of Public Accounts and Audit and the Committee has approved the same.

43. In **USA** under the Budget and Accounting Act of 1921, the Comptroller General of the United States and the Assistant Comptroller General of the

United States shall be appointed by the President with the advise and consent of the Senate. The Congress participates in the selection of the Comptroller General by providing a list of candidates from which the President may choose and by confirming the appointment. The GAO Act of 1980 further amplifies the selection process of Controller General, and stipulates establishing a Commission to recommend the name for the post.

44. In **Germany** the Bundestag and Bundesrat (Parliament) shall elect the president and Vice President of Bundesrechnungshof without debate. In **Japan** the Commissioners of the Board of Audit are appointed by the Cabinet, with the consent of both Houses of the Diet. In **Korea** the Chairman of the Board of audit is appointed by the President with the consent of the National Assembly. Similarly in **Thailand** the appointment of Auditor General must receive prior approval of national Assembly.

45. *In India it is necessary that the appointment of C&AG is kept outside the exclusive purview of the Executive. Recommendations regarding his appointment should be made by an independent committee. One could suggest that the committee should consist of the Prime Minister, Finance Minister, the Leader of the Opposition of the Lok Sabha and Chairman of the Public Accounts Committee. There is also need to prescribe qualification for appointment to the post and a person who has substantive experience of public sector accounting and auditing systems should only be appointed.*

46. The period for which CAG is presently appointed is 6 years with 65 as age of retirement. The President, Vice- President, members of Public Service Commission are all appointed for a 5 year term. There is a strong case to prescribe 5 year term with age of retirement at 65.

7. C&AG AND PARLIAMENT INTERFACE

7.1 Relations with Public Accounts Committee

47. The Comptroller & Auditor General audits the accounts and submits his Report to Parliament / State Legislature which are automatically remitted to the Public Accounts Committee(PAC) / Committee on Public Undertakings(COPU). Parliament has constituted PAC and COPU under Rule 308(1) and Rule 312 A of the Rule of Procedure and Conduct of Business of Lok Sabha.

7.2 Excess Expenditure - Violation of Constitutional Provision

48. In many States PAC's have not been able to discharge even the Constitutional obligation of regularising "excess expenditure" over budgetary grants. Under Article 205(b) of the Constitution, if any money has been spent on any service in excess of the amount granted for that service in the Annual Financial Statement, it would need regularisation by the Legislative Assembly. Under the Rules of Business framed by the Legislatures, the PAC examines the explanatory notes furnished by the Ministry/ department and the circumstances leading to such excesses and presents a report to the Legislature recommending regularisation of excess expenditure. As on March 1999 Excess expenditure" of the order of about Rs 94314 crs has not been regularised in various States. The position of some of the States is as follows : J&K: Rs 22767crs, UP :Rs 13618crs , Assam : Rs 12569crs , Bihar :RS 6059 crs. Thus in almost all the States huge amount of public money has been spent in violation of budgetary control envisaged in the Constitution and fraught with the risk of misappropriation of public money.

49. There is no time limit prescribed for placing Appropriation Accounts certified by Comptroller and Auditor General in Parliament/ State Legislature and the regularisation of excess expenditure over voted grants by the PAC. There is need for making statutory provision regarding the dates by which Appropriation Accounts is submitted to Parliament/ Legislature. *The Controller General of Accounts/ Accountant General should submit the same to CAG by 30th September and CAG should certify and arrange to place it in Parliament/ Legislature by 30th December of the following year to which the accounts relate. It is also for consideration whether a provision needs to be made that excess expenditure over voted grant be regularised by PAC/ Parliament/Legislature before the close of next financial year.* In UK under the Act, the Treasury is required to submit accounts to Comptroller and Auditor General by 30th September and he is required to certify the same and present to Parliament by January of the following year to which the accounts relate. In New Zealand under the Public Finance Act of 1989, the Treasury is required to forward the annual financial statement to the audit office by 30th August following the end of the financial year and the Audit office is required to give its opinion within 30 days of receipt and the same should be tabled in the House within six days of receipt by the Treasury.

7.3 Strengthening PAC

50. The two Parliamentary Committees PAC and COPU are able to examine only a few paras and reviews out of large number of audit reports submitted to them which defeats the very purpose of parliamentary financial control and the accountability of Executive which the Parliament is required to enforce. For example during 1997-98 out of 16 Reports submitted to Parliament containing 1209 paras/ reviews the number of paras / reviews selected for examination was 76, out of which only 16 could be discussed by the PAC. In States there is a huge backlog of work before the PAC's.

51. *In order to strengthen parliamentary control over executive it is necessary to devise a system which envisages that PAC examines all the reports submitted by CAG and submits its recommendations to Legislature within a time limit of say 18 months.* This is possible only if the volume of CAG's Audit reports is reduced and their quality and content improved and only matters of critical importance are included in the Audit Reports.(Other financial irregularities noticed during audit need to be settled with the concerned Ministries/ departments through forums such as Audit Committees which need to be

devised in consultation with Ministry of Finance). *For PAC to function effectively and its members to develop specialisation, the life of PAC be made five years co-extensive with the life of Parliament/ State legislature with one- third of members retiring every year. It for consideration whether PAC be given a Constitutional status with clearly defined mandate, duties and functions.*

7.4 C&AG and Parliament

52. In parliamentary democratic form State audit tends to be classified as part of the legislative branch as the institution has developed over time to implement the power of the purse. State audit with its access to information and review of governmental activities, fulfills an increasingly important role in providing legislature with detailed reliable information necessary for control. A realisation of this fact has lead to major restructuring of the audit department in **U.K** with the passing of the National Audit Act of 1983. Under the act C&AG has been made an officer of the House of Commons. Another Commonwealth country **Australia** has fallen in line with British system and under a 1997 act Auditor General will be an independent officer of Parliament. In **U.S.A** the General Accounting Office from the time of its constitution in 1921, has been recognised as an agency within the legislative branch of the government and enjoys a special working relationship with the American Congress.

It is for consideration whether C&AG should be made an officer of the Lok Sabha so that he could work in greater cooperation with Parliament and its Finance committees with a view to make parliamentary financial control more effective.

8. ACCOUNTABILITY OF C&AG - EXTERNAL AUDIT

53. The importance of audit mission, and what it entails by way of resources deployed by agencies subject to audit, underlines the importance of subjecting the State audit to regular and perceptive scrutiny. It is necessary that State audit demonstrates that its own operations stand the test of professional soundness, efficiency and effectiveness.

54. In India there is no external audit of C&AG's outfit. In practice C&AG nominates one of the Accountant General under him as an auditor for C&AG's office. This is not a very satisfactory arrangement. Commonwealth countries such as U.K and Australia have made legal provision not only for audit of National Audit Office by independent auditors but scrutiny of budget estimates by a parliamentary committee which oversees its functioning. *It is for consideration whether an external audit arrangement be made C&AG's set-up in line with the practice in UK.*

QUESTIONNAIRE

ON

EFFICACY OF PUBLIC AUDIT SYSTEM IN INDIA:

C & AG – REFORMING THE INSTITUTION

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Public response is sought to be elicited for making major reforms in the institution of C&AG to make its functioning more effective:

1) ***Should the appointment of C&AG be taken out of the exclusive purview of Executive and a high level independent committee consisting of Prime Minister, Finance Minister, Leader of Opposition in Lok Sabha and Chairman of Public Accounts Committee be constituted to select him? Is there a case for reducing the term of office of Comptroller and Auditor General from present 6 years to 5 years.***

Should qualification for the post of Comptroller and Auditor General be laid down and persons having extensive experience of the functioning of public audit and accounts systems should only be eligible to hold the office? (Refer Section VI)

2) Countries having federal structure such as USA, Germany, Canada, Australia and now U.K have separate Auditor General's for provinces. ***Should public audit systems conform to the federal structure of our country and constitutional status and autonomy be given to the State Accountant General and his status made equivalent to a High Court Judge so that he can effectively discharge his responsibility to the State Legislature?*** In that case should he be appointed by the President of India on the recommendations of an independent committee headed by Comptroller and Auditor General? How should a relationship that exists between Supreme Court and High Court be built between Comptroller and Auditor General and the State Accountant General with the later functioning within the overall policy framework of C&AG of India (Refer: Section IV)

3) Countries such as Germany, France, Japan and South Korea work through a system of Audit Court / Audit Board with members enjoying high legal status with President of the Court / Board's position that of *primus inter pares*. ***Should the office of CA&G be restructured and broad based by creating an Audit Commission which should have existing Dy CAG's enjoying the status of High Court Judge as members and function on the principle of collegiate decision for all policy matters relating to audit and accounts?*** (Refer Section V)

4) Audit officers in most countries such as New Zealand, Japan, Germany, France, Korea, China and Thailand have been entrusted with judicial powers so that they ensure that State money and property

is safeguarded. **Should quasi- judicial powers as available under Commission of Enquiry Act be given to senior officers of the Audit department who should have authority to summon public officials to give evidence on oath, surcharge them if they find that he has caused loss of State money and property through fraud, negligence and improper use and if that is not possible advise the Department where they are working to take disciplinary action under the Conduct Rules?** (Refer Section 2)

5) Presently Public Corporations in the banking and financial sector do not fall within the jurisdiction of Comptroller and Auditor General's audit. However, government companies are subject to state audit under the Companies Act. Are public enterprises at a disadvantage due to presence of C&AG's audit in the context of globalisation and competition and a level playing field is not available to them? **What should be the audit arrangement for Public Enterprises which should fulfill requirements of public accountability without impairing their commercial autonomy?** (Refer Section 3.1)

6) A large number of autonomous bodies, NGO's and public funded institutions which receive substantial government grants escape C&AG's audit jurisdiction due to complex financing arrangements. **It is for consideration that a Constitutional provision be made that all bodies which are publicly funded fall within the ambit of Comptroller and Auditor General's audit** and any stipulation which ousts his jurisdiction would be ultra-vires . (Refer Section 3.2)

7) With the policy of progressive empowerment of the local self-governing institutions receiving greater emphasis with attendant prospect of sizable percentage of State funds being handled by these institutions, appropriate public audit mechanism needs to be considered. **What should be the accounting and audit arrangement of Panchayats and Municipalities and whether a Central legislation be enacted**, with Comptroller and Auditor General(or the proposed Auditor General for the States) having authority to lay down accounting and auditing standards and general superintendence over such audit? (Refer Section 3.3)

8) Public Accounts Committee's have not been functioning effectively and most of the reports of C&AG remitted to it remain unexamined defeating the principle of parliamentary control over public funds prescribed under the Constitution. In the States a sum of over Rs 94000 crs of "excess expenditure" over voted Grants is awaiting regularisation under Article 205(b) of the Constitution. **To make the functioning of PAC effective should a time-limit, of say 18 months be prescribed, for it to examine the reports of C&AG and submit its recommendations? To develop expertise should the life of PAC be made five years, co-extensive with the term of legislature, with one-third of its members retiring every year. Should Constitutional status be given to Public Accounts Committee with clearly defined duties and responsibilities.** (Refer Section 7.2 & 7.3)

9) Public audit institutions tend to be classified as part of legislative branch as they help legislature to implement power of the purse. In U.K and Australia C&AG has been made an officer of the House of Commons. **What should be the relationship between C&AG and Parliament. Should practice similar to UK be followed in our country?** (Refer Section 7.3)

10) In UK Public Accounts Commission examines the budget and appoints the auditor of the National Audit Office. ***What should be the arrangement for audit of the office of the Comptroller and Auditor General?*** Should an external agency be entrusted this task to make the system transparent? (Refer Section 8)