



WHAT AILS CAG, WHAT CAN BE DONE?

Evolving Challenges for the National Auditor

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The institution of Comptroller and Auditor General (CAG) in India is patterned on the British model. In Britain, The Exchequer & Audit Department Act of 1866 created the office of CAG with a view to strengthen democracy and exercise parliamentary control over national finances. The office of CAG came into being, thanks to the missionary zeal of William Gladstone who was Finance Minister at the time and later became the Prime Minister. CAG was required to audit expenditure and report to the Parliament. This solved the dilemma which had baffled the Parliament for years, 'whether expenditure is to be controlled by in-expert parliamentarians or expert non-parliamentarians'.

After India became independent, it framed a new Constitution and established the position of CAG in its constitutional scheme. CAG was required to audit public expenditure and report to the Parliament. It also had to make the executive accountable for usage of public money, granted to it through budgetary allocations. Over the years, the role of government has substantially increased due to development planning and embracing the philosophy of a welfare state, resulting in a multi-fold increase in public expenditure. In keeping with the new demands, CAG has diversified its activities. It has entered the arena of performance audit, revenue audit and audit of PSUs (public sector undertakings) and

autonomous bodies which are substantially funded by the government.

Despite these initiatives, CAG faces the formidable challenge of putting in place a mechanism to ensure accountability in the usage of public money of the central and state governments. There are many publicly-funded institutions which evade audit. Government has embarked on new activities such as public-private partnership while leaving loopholes in the arrangement, which enables avoidance of public audit. Further, a good part of government's transactions have been computerised – they are prone to cyber attacks and computer frauds.

The existing institutional arrangement of the office of CAG does not seem capable of meeting current day challenges of public audit. That's primarily because it has not changed its administrative structure inherited from the colonial times and is virtually caught in a time warp. It is a highly centralised behemoth, with no delegation of duties to hundreds of field offices spread throughout India. It lacks professionalism and is devoid of effective power to prevent misuse and loss of public money and resources.

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It is imperative that the CAG be fundamentally restructured so that it can meet the current day challenges of public audit. This becomes relevant in an era of privatisation, globalisation and computerisation, where government operations have become increasingly complex. Napoleon had declared that, “institutions alone fix the destiny of nations” and Benjamin Disraeli, the eminent British Prime Minister had rightly observed, “it is institutions alone that can create a nation. Our courts, Parliament, and associations set the collective rule of engagement that provide for smooth and fair functioning of government, commerce and society”.

Audit in States - A Dysfunctional System

While India is a federal country, no statutory recognition has been given to the Accountants General (AG) /Principal Accountant General (PAG) who are responsible for auditing the finances of the states, which seriously impairs their functioning. There are numerous instances of chief ministers and other senior state functionaries trying to intimidate the AG when he has brought out uncomfortable facts during the course of an audit. He/she has no protection of law against unwarranted attacks. State AGs are also not able to deal effectively with the Public Accounts Committee (PAC) of the legislature. What's more, they are unable to take up issues of critical importance with state governments without

clearance from the headquarters. In many states, the PAC meets just a few times in a year and bulk of the audit reports get relegated as records without any action. There are huge ‘excess expenditure’ and ‘over-budgeted grants’ which remain unregularised for years, sometimes decades, in blatant violation of Article 205(b) of the Constitution.

The makers of the Indian Constitution were fully aware of the need to give a suitable status to the State AG, in view of our federal polity. The original draft, prepared by the drafting committee of the Constitution headed by Dr. B. R. Ambedkar had made a provision for Auditor-in-chief for the States.¹ (There was, however, a further provision, that the State Auditor-in-chief can be appointed only if the state legislature passes a resolution to that effect). The provision of the draft Constitution somehow got amended when draft articles came for approval of the Constituent Assembly and a single audit authority i.e Comptroller and Auditor General for centre and state was constituted.

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The National Commission to Review the Working of the Constitution (NCRWC, 2002), which had made a detailed study of the public audit system, recommended that, ‘appropriate legal recognition of the important role of the Accountants General [be given] to enable them to perform their duties as friends, guides and philosophers of the State Public Accounts Committees. The State AGs need to be given greater authority by the CAG, while maintaining its general superintendence, direction and control to bring about a broad uniformity of approach in the sphere of financial discipline’. (Para 5.26.4)²

Every democratic country in the world with a federal structure has a statutory provision of separate audit authority for the provinces/states. In UK, CAG audits only the central government expenditure. Following devolution, new auditor generals have been set up in Scotland (2000) and Wales (2005) to audit the expenditure of the new Parliament and Assembly. Northern Ireland had a separate Auditor General since its foundation in 1921.

In Commonwealth countries such as Australia and Canada which have a federal structure, there are separate auditor generals for the central government and provinces, enjoying legal status with wide-ranging powers. In USA, there are separate auditor generals for all the states, responsible to state legislatures. The Single Audit Act of 1984 establishes uniform audit requirements for states and local bodies receiving





federal assistance. In Germany, the Federal Court of Auditors (FCA) and the audit authority of constituent states known as Lander are autonomous independent units of government audit. The fiscal arrangement of the Federation and Lander are intertwined, necessitating close cooperation between the two in conducting audits.

There is a need to give statutory recognition to PAG and to raise his status to that of a High Court judge so that he is able to deal with the state government on an equal footing. An enhanced status will help him enjoy greater autonomy in the finalisation of audit reports which are presented to the legislature, and deal more effectively with the state PAC.

Collegiate Decision Making - An Audit Commission

Every year, the CAG presents about 40 reports of the central government to the Parliament and another 90-100 reports of the state governments. They deal with an entire gamut of government's functions. Lapses in defence deals and mega-contracts, evasion of taxes, poor outcome of development schemes, inefficient functioning of public enterprises and malfeasance on the part of public officials causing loss to exchequer are all part of the wide spectrum. The audit reports often adversely comment on the decisions taken by the government at the level of cabinet, Prime Minister, Chief Minister and other ministers.

Therefore, a great deal of objectivity and application of mind is required while making the observations.

CAG is expected to go through all this material personally before approving them for presentation to either the Parliament or the state legislatures. It is simply not possible for an individual to go through such voluminous material and update oneself about the findings. This situation calls for radical reforms. As a result, NCRWC, headed by Justice M.N. Venkatachaliah (2002) had recommended thus: (Para 5.16.3):

"The Commission recommends the constitution of an Audit Board for better discharge of the vital function of public audit, but the number of members to be appointed, the manner of their appointment and removal and other related matters should be dealt with by appropriate legislation, keeping in view the need for ensuring independent functioning of the Board."

Many advanced democratic countries have a multi-member audit commission or board and a system of collegiate decision-making before the audit reports are presented to the national legislature. Continental European countries such as France, Germany, Italy, Belgium and Austria have a system of audit courts. These courts are equipped with wide powers and can order recovery of illegally spent money from public officials. In France, the Cour des Comptes (audit court) has seven chambers, each

headed by a president and having jurisdictional authority over a defined range of central government activity. The Cour always acts as a collegiate body under the leadership of the premier president. 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. It is presided over by the premier president of the Cour and finalised after the collegial hearing of the audited entity.

In Germany, the President, Vice-President and Senior Audit Directors are members of the apex policy-making committee of the Federal Court of Auditors (Bundesrechnungshof). The committee works as a collective body and the contents of Bundesrechnungshof annual report, submitted to both the houses of the Parliament, are decided after giving the collegiate a hearing.

In Japan, there is an Audit Commission with three commissioners. All major decisions pertaining to audits are taken by the Commission, including finalisation of the audit report.

In Korea, the Board of Audit features seven commissioners including the chairman. Decisions on policy issues, such as audit and inspection, are taken with the approval of the council of commissioners who are required to reach a decision by majority.

In Sweden, the state audit office, known as *Riksrevisionen*, was





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reorganised in 2003, with the creation of three posts of auditor generals instead of one. The three auditors jointly decide on all policy matters while enjoying full autonomy for each of their areas of responsibility. In UK, the National Audit Office has been recently given a corporate structure with the CAG acting as chief executive and non-executive chairman, to broad-base decision-making.

In India there exists a strong case to convert CAG into a multi-member commission at the apex level. Each member may be assigned a specific sphere of responsibility such as audit of civil departments, defence services, revenue, commercial enterprises and such like. Subsequently, audit reports can be finalised as a collegiate body. The commission may have five to seven members, presided by the CAG, who may enjoy the same status and conditions of service as CAG, with CAG acting as the *primus inter pares* (first among equals). The Election Commission was restructured in 1993, and converted into a three-member outfit from a

single-member body. This has greatly enhanced its efficiency and credibility. It may be worth-mentioning that Human Rights Commission and Central Information Commission, which have been created by specific legislations are multi-member bodies both at the central and the state levels. They also function as collegiate bodies.

Evasion of Audit

Large numbers of autonomous bodies, which are funded or controlled by the central or state governments deliberately evade CAG audit. This seems in line with their complete disinterest in financial discipline and transparent dealings. They take umbrage behind complex arrangements through which public funds are routed to them, coupled with the ambiguous nature of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 or CAG's (DPC) Act, 1971.

A typical case is of Noida, Greater Noida and Yamuna Expressway authorities, who have been refusing to subject

themselves to audit by CAG. Their contention is that they are audited by the Examiner, Local Fund Account, which has a provision for such arrangement under the U.P. Industrial Area Development Act, the enabling legislation under which they are constituted. The position is untenable and inconsistent with the constitutional mandate of CAG. CAG should be allowed to do supplementary audit, in addition to preliminary and detailed audit by a designated agency, as is the case with many such autonomous bodies. *Common Cause* has taken up this matter and filed a PIL at Allahabad High Court (2015) and the matter is pending there. Meanwhile the new BJP government in Uttar Pradesh (UP), through an executive order (2017) has decided that these entities be audited by the CAG (AG of UP).

The framers of Indian Constitution had intended to give unfettered discretion to CAG to audit not only central and state governments' transactions, but any public body funded or controlled by them. The Supreme Court in 2014, in a case relating to the telecom service providers, ruled that the CAG has the authority to audit all bodies which deal with nation's resources and provide public goods and services.

Most democratic countries have legal provision to bring under the ambit of state-audit, any autonomous body or private company, where government has a substantive stake. In Germany and Japan, private companies





in which the government has invested substantially can be audited by the Supreme Audit Institution (SAI), irrespective of majority holding, but not so in India. Bharat Aluminium Co. Ltd. (BALCO) and Hindustan Zinc (HZL) were privatised some years back, but government still holds 49% shares in BALCO and 30% in HZL. It also has three of its nominees on their boards. While on the face of it government exercises substantial influence on their policies, but they evade parliamentary accountability.³ There is an urgent need to have a suitable enactment to the effect that every public entity which is controlled by the government or handles public funds and resources needs to fall under the ambit of CAG audit.

Empowering Public Audit

A fundamental task of public audit is to conduct Regularity Audit, which implies that public officials have followed provisions of laws, rules and regulations regarding usage of public money. It is also meant to ascertain that no irregularity, waste, fraud or misappropriation has taken place.

Audit parties visit hundreds of central and state government offices all over the country and examine millions of expenditure and revenue transactions. This exercise is undertaken to ensure that transactions have been incurred as per laid down rules and procedures. They often find that public officials misuse public

money and cause loss to the exchequer. When audit notices these irregularities, it points them out by way of audit objections. But very often, departmental officers don't take corrective action, and instead try to defend their positions. This results in voluminous correspondence going on for years, and audit objections dying with efflux of time. In the process, public money is lost forever.

Audit frequently faces great difficulty in getting departmental records. Audit parties visit government offices for a limited time-frame. Departmental officers adopt delaying tactics in giving access to records, which results in considerable waste of time and hinders audit scrutiny. The auditors are helpless as they enjoy no legal powers to compel timely submission of records.

CAG also conducts financial audit wherein it certifies the annual accounts of corporate entities and autonomous institutions. This is done to ensure that the accounts present a true picture of finances of these organisations. However, the management of such entities often delay the preparation of balance sheet and income & expenditure/profit & loss

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accounts. Also, they frequently do not follow the statutory time frame for their certification. Compounding the problem, they prepare erroneous financial statements and misrepresent their financial status. There are numerous entities whose annual accounts have not been certified for years together.

A committee constituted by the conference of chairmen of PAC and chaired by E Ayyapu Reddy, observed (February 1987): “It is very depressing to find that in spite of audit reports revealing loss of public funds or misuse or misapplication of public funds, there is no investigating agency charged with the duty to probe into these aspects and identify the culprits responsible for them.”⁴ It recommended that such audit paras which prima facie establish loss of public funds should be registered as First Information Reports. The committee further said: “The final step towards enforcing accountability relates to disciplinary and penal action against the inefficient and corrupt. Enforcing accountability can be realistic only when an officer or group of officers can be identified with an amount of clarity and certainty in proved cases of malfeasance and abuse of authority for greed or gain.” It called for a special enactment for dealing with delinquent officials.

In order to make the audit machinery effective there is a need to confer the following legal powers on it:

1. If, on preliminary investigation by field audit





party, it is found that there is loss of public money through negligence, unauthorised use and fraud, senior officers at the level of Accountant General/ Director of Audit should be given powers to summon departmental officers to give evidence on oath. After hearing and weighing evidence, if it is established that the loss was due to deliberate default and negligence of a public official, senior officers should have powers to adjudicate and pass orders for its recovery. The orders should also be sent for action to the concerned departmental officer's superior officers/ departmental head/ the concerned ministry.

2. If statutory provisions relating to preparation of annual accounts and their certification have not been followed and there has been deliberate attempt to falsify accounts, senior officers of the audit department should be given powers to impose monetary penalty on the concerned officers/ institution.
3. If records are not produced promptly within the required time frame, the audit department should be given powers to impose penalty on the departmental officers for obstructing audit investigation. A pattern similar to what is available to the Chief Information Commissioner under Right to Information Act can be followed.

All over the world, SAs have been entrusted with wide powers of investigation and adjudication to safeguard public money and property.

In France, the Cour des Comptes functions like a court and is assisted by a public prosecutor. If, during investigation the Cour finds that the official has failed to provide a satisfactory justification, he/she may be ordered to settle uncollected revenue or irregular expenses out of his/her own resources. Cases of fraud are communicated to the state prosecutors with a view to take criminal action.

In Japan, the Board of Audit has an adjudication system. If it finds an official guilty, it can order him/her to indemnify the loss. Disciplinary action can also be demanded when an official does not submit statement of accounts and /or voucher in violation of legal regulations.

In New Zealand, the Controller and Auditor-General is empowered to hold an enquiry under the Public Finance Act of 1977. He/she has powers for surcharge if it is found that there is loss of money or store caused through fraud, mistake, default, negligence, error or unauthorised use. If there is any unsatisfied surcharge, it is liable to be recovered as a debt in any court of competent jurisdiction.

In Australia, the Auditor General may direct a person to provide him/her with any information asked for. Individuals may also be dictated to attend and give evidence before him/her. In addition, citizens are required to

produce any document in their custody or under their control. If an individual makes a false or misleading statement, he/she is liable to a penalty of up to 12 months' imprisonment. SAs of China, South Korea and Thailand are also invested with similar powers of recovery of government money used illegally by public officials. In USA, under the Budget and Accounting Act, the Comptroller General has the power of subpoena and in case of refusal, can ask the court to compel departments to respond.

Accountability of CAG

Equity demands that the state audit, which enforces accountability of government institutions for proper public money usage, should itself be 'accountable'. Recognising this fact, the National Audit Act 1983 of UK established the Public Accounts Commission, a parliamentary committee of MPs, which oversees the work of the National Audit Office (NAO). The commission approves the budget, scrutinises its costs and performance while appointing external auditors of the NAO. Similar formats exist in Commonwealth countries such as Australia and Canada. In USA, General Accountability Office (GAO) works proactively with Congressional committees, where most of its work is done at the behest of the Congress, which oversees the GAO's working.

In India, the relationship between the CAG and PAC, can be termed, in the best of times, at arm's length. There is hardly





any rapport or prior consultation between the two on subjects of audit reports to be presented. This dysfunctional system results in most CAG reports remaining unexamined by the PAC. CAG annually submits around 35-40 reports to the Parliament, each report containing 150 to 200 pages of highly technical material. It is simply not possible for the PAC to do justice to them as it can have at best 30-40 sittings in a year. Therefore, the CAG needs to drastically cut down the volume of reports submitted to the Parliament, and instead, improve their quality.

Take for example the report on the accounts of the Union Government, which is a certification of its Appropriation Account and Finance Account, prepared by the CAG.

The latest report (No 47 of 2017 for the year 2016-17, of November 2017), runs into 250 pages (including 75 pages of annexure) with incomprehensible and irrelevant content. This particular report has been repeating itself in the same language over a long period, with just a change of figures with each passing year. This hardly serves any purpose.

The objective behind this report is to point out 'excess expenditure over voted Grants' so that the PAC can examine it and recommend regularisation by the Parliament, as required under Article 115(b) of the Constitution. A short note spanning just a few pages can serve this purpose. Some experts feel that a good number of audit

reports and paras are junk and contain trivial objections that neither the PAC nor Parliament should be burdened with. While it is true that some of the reports are outstanding, highlighting issues of national importance, it is imperative that the work be streamlined.

For more details on the powers, duties and limitations of the PAC, please read Dr. Govind Bhattacharjee's article on Page 18.

The Indian Parliament, and more particularly the PAC has not hitherto exercised its authority to make the CAG accountable. CAG's wider responsibility entails sound management of the country's finances and prevention of waste and misuse of public resources. When judged by this parameter, it does not have a complimentary record. While the CAG has been guaranteed independence, it should not be equated with immunity from a review of its operations. CAG works on behalf of the Parliament and cannot claim himself/herself to be a headless fourth branch of the government. The NCRWC had observed, "To fulfil the canons of accountability the Commission recommends a system of external audit of C&AG's organisation be adopted for both the Union and State level." (Para 5.17)

Appointment of CAG - Lack of Transparency

The manner in which successive CAGs are appointed by the government is totally opaque, shrouded in secrecy and unmindful of norms or criteria. From the time the Constitution

came into effect, the first few CAGs were professionals from the Indian Audit & Accounts Service (IA&AS). However, only officers from Indian Administrative Service (IAS) are being appointed to the post since 1980s. They are mostly superannuated officers, who have held the post of secretary to government and are ostensibly being 'rewarded for services rendered.' The appointment of a generalist with no background in audits and accounts has a demoralising effect on the audit department and impairs its efficient functioning.

The arbitrary manner of CAG appointment has been a cause for greater concern. *Common Cause* has been at the forefront of the movement for transparency in CAG appointment and has approached the courts several times by filing PILs (Public Interest Litigation). Unfortunately, its efforts have not been successful yet. It has also been making representations to the President, Prime Ministers, Finance Ministers and the Chairman of the PAC on the importance of institutional integrity in CAG appointment. The Indian Audit & Accounts Service Retired Officers Association has also been taking up this issue with the concerned authorities.

India is perhaps the only democracy in the world where the executive enjoys the exclusive power of being appointed as CAG, violating the tenets of institutional independence. Most democratic





nations have enacted laws mandating parliamentary approval for the appointment of heads of SAI, so that he/she is not under the influence of the executive. In UK, whose parliamentary traditions we follow, the 100-year old Exchequer & Audit Act was amended in 1983, with an added provision that the CAG appointment will happen post the Prime Minister's address in the House of Commons. In such a scenario, the Prime Minister should also be acting in agreement with the chairman of the Committee of Public Accounts. Before the recommendation, a high-level search team under the Committee chairman selects the suitable candidate, after issuing an open advertisement. The aim is to make the process transparent and bipartisan while also appointing someone with integrity, managerial skills and from a professional accounting and auditing background.

Commonwealth countries such as Australia, Canada and New Zealand have adopted procedures similar to Britain. Their auditor generals are appointed on the recommendation of Committee of Public Accounts as well as approval of House of Representatives. USA has an elaborate procedure for its Comptroller General appointment. The President appoints him/her on the advice and consent of the Senate. The latter makes recommendations after taking into account approvals of a commission featuring members of the

House of Representatives and Senate. Countries with widely divergent political systems such as Germany, Japan, South Korea, Thailand and South Africa, have legal provisions for the appointment of the head of SAI with the approval of House of Representatives or with both the Houses of Parliament.

Unfortunately, the PAC has not asserted itself in India. It has never demanded to have a say in the CAG appointment. Though the chairmen of PAC have occasionally expressed the need to be consulted for CAG appointment, there has been no formal resolution passed by the committee to that effect. The matter has also not been taken up by the PAC or its members, who are all MPs, either in the Parliament or before the Prime minister and the President.

Concluding Remarks

Public audit is a check on the exercise of power being used arbitrarily, capriciously or in disregard of public interest. Audit is the only safeguard against financial maladministration and the only vehicle for enforcing accountability. This does not suit the politicians and top echelons of bureaucracy, who crave unbridled power and hence are votaries of a weak and ineffective audit. This is precisely why a non-professional person, who is ' beholden to them,' is appointed as the country's top auditor. To make matters worse, no structural reforms have been introduced to make CAG an effective institution.

Also, the Indian Parliament has not been making efforts to strengthen the accountability

institutions, due to our weak democratic traditions. The members of Parliament, particularly those belonging to ruling dispensations, are more interested in following the party line, and fail to see the broader national interest. However, there is a silver lining to this seemingly despondent scenario. As our democracy matures, citizens are standing their ground in demanding an honest, responsible and accountable government. A large number of public spirited people, academics and NGOs have expressed faith in accountability institutions like the CAG, and professed their unstinted support for it. It is for the audit department, its officers and staff to honour the trust reposed on them, work with dedication and perform their duty as the true guardian of the public purse.

(Endnotes)

1. For Constituent Assembly draft and background of its amendment see, B. P. Mathur, Government Accountability and Public Audit: New Delhi, Uppal Publishing House, 2007, pp. 91-106.
2. Government of India, Ministry of Law, Report of the National Commission to Review the Working of the Constitution Volume 1, New Delhi: 2002, Ch V, Parliament and State Legislature; available at <http://legallaffairs.gov.in/volume-1>.
3. Another question that may be asked here is, why is the government not disinvesting its shareholdings if these companies have been privatised?
4. Lok Sabha Secretariat, New Delhi, Accountability in Administration- Report of the sub-committee constituted by the Conference of Chairman of Public Accounts Committee held in September, 1986. February, 1987

