

the 17th November, 1969, has adopted following motion further extending the time for presentation of the Report of the Joint Committee of the Houses on the Patents Bill, 1967 :—

MOTION

'That this House do further extend the time appointed for the presentation of the report of the Joint Committee on the Bill to amend and consolidate the law relating to patents up to the first day of the third week of the Budget Session (1970).'

THE COMPTROLLER AND AUDITOR-GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) BILL, 1969

MOTION FOR REFERENCE OF BILL TO A JOINT COMMITTEE OF THE HOUSES

THE MINISTER OF SUPPLY AND MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI R. K. KHADILKAR) : Mr. Vice-Chairman, I beg to move :

“That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses . . .

SHRI MULKA GOVINDA REDDY (Mysore) : Mr. Vice-Chairman, we do not know who that Minister or that person is.

SHRI BANKA BEHARY DAS (Orissa) : Mr. Shah, you should introduce him.

THE LEADER OF THE HOUSE (SHRI K. K. SHAH) : Sir, I beg to introduce . . .

SHRI A. D. MANI (Madhya Pradesh) : Not the Bill.

SHRI K. K. SHAH : . . . Mr. Khadilkar to the House as the Minister of Supply and Minister of State for Finance.

SHRI R. K. KHADILKAR : Sir, I move :

“That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to determine the conditions of service of

the Comptroller and Auditor-General of India and to prescribe his duties and powers and for matters connected therewith or incidental thereto and resolves that the following Members of the Rajya Sabha be nominated to serve on the said Joint Committee, namely—

1. Shri M. Anandam
2. Shri Anant Prasad Sharma
3. Shri Gurmukh Singh Musafir
4. Pandit Bhawaniprasad Tiwary
5. Shri C. D. Pande
6. Shri T Chengalvaroyan
7. Shri Sundar Mani Patel
8. Shrimati Sarla Bhadauria
9. Shri Kalyan Roy and
10. Shri Thillai Villalan.

श्री जगदम्बी प्रसाद यादव (बिहार) : भारतीय जनसंघ की तरफ से कोई भी आदमी नहीं लिया गया है ।

SHRI R. K. KHADILKAR : The Lok Sabha, at its sitting held on the 30th August, 1969 recommended to the Rajya Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to determine the conditions of service of the Comptroller and Auditor-General of India and to prescribe his duties and powers and for matters connected therewith or incidental thereto and communicate to the Lok Sabha the names of ten Members to be appointed by the Rajya Sabha to the Joint Committee. I have accordingly moved the Motion and have also given the names of the Members.

Article 148(3) of the Constitution provides that the salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by law and until so determined, shall be as specified in the Second Schedule to the Constitution. Further, article 149 of the Constitution lays down that the Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament. It is also provided that until his duties and powers are prescribed in that manner, the Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India before the commencement of the Constitution.

At present the Comptroller and Auditor-General (Conditions of Service) Act, 1953, passed under article 148(3) of the Constitution regulates the term of office and the pensionary entitlements of the Comptroller and Auditor-General. In respect of his other conditions of service, the provisions of paragraph 12 of the Second Schedule to the Constitution which refers to salary and rights in respect of leave of absence and other conditions of service and the Government of India (Audit and Accounts) Order, 1936 continue to remain in force. The duties and powers of the Comptroller and Auditor-General in relation to the accounts of the Union and the States are governed by the Government of India (Audit and Accounts) Order, 1936 which continue to be in force under article 149 of the Constitution.

The Bill seeks to provide comprehensively for the conditions of service and duties and powers of the Comptroller and Auditor-General in replacement of these several provisions. It broadly follows the existing provisions both in respect of conditions of service and duties and powers but also makes certain modifications which have been dealt with in the Statement of Objects and Reasons and Notes on Clauses appended to the Bill. While drafting the Bill, the experience gained in the past years and the recommendations of the Estimates Committee and the Administrative Reforms Commission having a bearing on the subject have also been kept in view.

The provisions of the Bill have been explained in the Statement of Objects and Reasons and Notes on Clauses appended to the Bill. I will not, therefore, take up the time of the House in repeating them. Sir, I move.

The question was proposed.

SHRI M. RUTHNASWAMY (Tamil Nadu) : Mr. Vice-Chairman, Sir, this is a very important Bill which seeks to confirm a great administrative reform. It tries to bring together provisions scattered in the main part of the constitution, in the Second Schedule and in the rules prescribed by the late lamented British Government.

Sir, audit is one of the administrative inventions of the nineteenth century although we hear of an auditor in the old Chinese Empire centuries ago. The Chinese, as you know, invented many things which the Europeans applied only long after. One of them was an auditor

who looked into the finances of the Chinese Emperor. If he made any unfavourable report, tradition says, he was prepared to commit suicide. No such threat fortunately hangs over the heads of our Auditor-General.

The Auditor-General occupies a very important place in the administration of the country. He is charged in fact with the duty of watching over the finances of the Government, State or the Centre. He is a watchdog, so to speak, of Parliament so that the monies sanctioned by Parliament are spent in the manner prescribed and directed by Parliament and therefore he is given very important powers and duties.

He is called upon to examine the way in which Governments, whether at the Centre or in the States, spend the monies sanctioned by Parliament, whether the money spent by them was spent according to the wishes and directions of Parliament. So he is practically an officer of Parliament to look after its finances.

As I said, he is vested with important powers. He is entitled to call for any papers connected with the accounts of a government. He has the right to have access to all documents and papers connected with the financial administration, whether of the Central or of the State Governments. In fact he is burdened with duties which have not been imposed upon Auditors-General in other countries.

Following the old British practice, the Auditor-General and his officials are called upon also to compile the accounts of the Central and State Governments, a duty which is not imposed upon any other Auditor-General in any part of the world. Each State Government and the Central Government has its own accounting officers, its own Accountant-General appointed by the State or by the Central Government and is responsible to the State or the Central Government. But just because it may be expensive, audit and accounts have not been separated in this country. Just because it is an old practice which has worked successfully, accounts and audit have been kept together. But a more efficient administrative practice would be to separate accounts from audit because each State Government and the Central Government must be saddled with the responsibility of accounting for its finance, or keeping its accounts. Just as any householder would be called upon to keep his

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or her own account, so also every Government should be saddled with the responsibility of keeping its own accounts. This is a reform which has been suggested for many years. But, as I said, just because it is an old practice to which the country has been used, to which Government have been used and it costs the States nothing, the State Governments do not have to pay for the services rendered by the Accountants-General of the States. Fortunately, in this Bill in a proviso to clause 10 there is a possibility of any Government—Central or State—being saddled with the responsibility of keeping the accounts of that or that department. It offers the possibility of an experiment. It offers a possibility of making a Government department or the whole Government keeping its own accounts. This is necessary not only with a view to casting responsibility directly upon the Government concerned but also it has been pointed out in a report on the English financial administration, this practice of each department, of each Government having its own Accountant or Accountant-General counts not only for greater accountability but also for the promotion of sound and prudent administration of the State or department. Because every Government or department is faced with the responsibility of keeping its accounts as efficiently as possible and as correctly as possible; its accountant is called upon to account for every paisa spent by the Government. But now the Accountant-General in each State is saddled with so much work, to carry out the duties of the Auditor-General in the States and also to compile the accounts of the State and the local treasuries that the task becomes impossible; and I am sure the accounting of the State departments would greatly improve if audit was separated from accounts. There is some lacuna in the Bill which I should like to point out, if not for consideration by the Select Committee on this Bill, at least for consideration on some future occasion because this is only the first Bill concerning the Auditor-General that we are faced with. No account is taken in this Bill of the federal character of our Government. Our Government is composed of the Governments of a number of separate, autonomous States. Now in every other federal Government, in the United States of America, in Canada, not only accounts but even auditing is separate for each State Government. So I look forward to the time when the Auditor-General will be relieved of the responsibility of auditing

the accounts of all the 15 or 16 States and also of the local self-government units that may exist still, and he will pay more direct and efficient attention to the accounts of the Central Government which are growing, as you know, by leaps and bounds. I hope that will be the next step. As I said, this Bill is important because it deals with audit and, at present, the accounting of the finances of the Central and State Governments. The Comptroller and Auditor-General is a very important official. I am glad that provision is made for his salary, for his pension, for his duties and powers. Parliament, as I said, is directly concerned with the work of the Auditor-General because the Auditor-General implicitly, if not so mentioned in the Constitution, is an officer of Parliament and we look to him for the efficient accounting of our finances and more important, for the efficient auditing of the finances of our Governments.

SHRI K. CHANDRASEKHARAN (Kerala) : Mr. Vice-Chairman, Sir, moving the draft Constitution before the Constituent Assembly, Dr. Ambedkar, who piloted the draft, stated that the provisions contained in Chapter V of Part 5 of the Constitution in relation to the Comptroller and Auditor-General of India, were probably the most important provisions contained in the Constitution. In the course of the discussion on the draft Constitution, hon. Members of the Constituent Assembly had suggested that the Comptroller and Auditor-General should be given a special and unique status almost on par with, if not higher than, the Supreme Court of the country. In principle Dr. Ambedkar accepted the suggestion but stated that these provisions were somewhat of a compromise. It was not exactly a judicial forum that was constituted in the Comptroller and Auditor-General of India. He had to discharge executive functions of an administrative nature and it was thought, therefore, that an absolutely independent forum could not be created. But nonetheless it was stated that provisions had been made in articles 148 and 149 of the Constitution for Parliament to legislate upon not only the duties, powers, functions and service conditions of the Comptroller and Auditor-General, but also regarding the staff in relation to that high office. It is really strange, Sir, that many of the enactments that Parliament is constitutionally bound to enact have been enacted about 20 years after the adoption of the Constitution itself. It is strange that even now the laws that are contemplated by

article 148 of the Constitution are not fully being enacted particularly with regard to the staff of the office of the Comptroller and Auditor-General of India, and also in relation to the general services under the Central Government. Parliament has got powers to enact laws and that is the principal provision made in the Constitution in article 148(5) and in article 309 of the Constitution. Article 309, in relation to the general services, states that the service conditions of the Central Government employees would be as enacted by Parliament. There is a proviso to article 309 which states that during the interregnum, between the date of the commencement of the Constitution and the enactment of laws to this effect by Parliament, the President may issue such orders and rules as he thinks fit in relation to the Central Government employees for fixation of their service conditions. Even now, Sir, not a single law has been enacted under the principal provision in article 309 of the Constitution. The position is so, or rather was so, in respect of all the States in the country. The employees under the State Governments have got the safeguard of their conditions of service being regulated and fixed by the legislatures of those States, and the Governor under the proviso to article 309 may issue orders during the interregnum period. But the only State Government which has enacted a law under this principal provision in article 309 in relation to the service conditions of the State Government employees, I am proud to say, Sir, is the Government of Kerala. It was only some months ago that the legislature of Kerala State passed a law under article 309 of Constitution. But even in that State, that Act is yet to be implemented because the subordinate legislation necessary in the shape of rules has not yet been formulated and placed before the Assembly for approval.

Now, Sir, the bill that is now before us is just in respect of Comptroller and Auditor-General under article 148 (3) and 149. Article 148 (5), as I submitted earlier, refers to the making of law by Parliament in relation to the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General being prescribed in terms of this Constitution. About a year ago, the matter came up before this House and when I brought this lacuna in regard to article 148 (3) and 148 (5) to his notice, the hon. Minister Mr. K. C. Pant, who

was Minister of State in charge of Finance at that time, stated before this House that the necessary legislations in regard to articles 148 (3) and 148 (5)—i. e. in relation to the main office of the Comptroller and Auditor-General, and the subordinate offices of the staff of the Comptroller and Auditor-General throughout the country, in the various State Capitals—would be brought and that they were all under Government's consideration. But today the law that has been brought is confined only to one aspect. It does not refer to Article 148(5) and the staff of the Comptroller and Auditor-General at the headquarters and the staff in the various offices of the Accountants-General in the country. The Statement of Objects and Reasons does not refer to this particular aspect of the matter at all. And what is the law governing the very large number of employees spread throughout the country in the various offices of the Accountants-General? It is really strange that the law that is applicable to the staff in the various offices of the Accountants-General and the office of the Comptroller and Auditor-General of India is a law that was formulated by the Government of India under the British rule as far back as 1932 in the shape of circulars issued by the Viceroy and the Governor-General of India under the Government of India Act of 1918 and 1919, reissued under Section 243 of the Government of India Act of 1935, and now continuing to be the law, years after the Constitution, under the emergency provisions contained in the Constitution under Article 372. Article 372 is an emergency provision which states that till such time as the Parliament makes the necessary laws in that regard, the laws, already prevailing in the country would continue to be the laws in force as under this Constitution. It is strange that the large number of employees of the various offices of the Accountants-General in the country should be governed by outmoded regulations, feudalistic regulations, absolutely dictatorial regulations. And to day we have seen the result of it after the Government of India employees struck work on the 19th September last year. After that one-day token strike, as you know, the Government of India in the Ministry of Home Affairs withdrew the recognition given to five major service organisations in the country including the P&T Employees Association, the All-India Railwaymen's Federation and some others and including the All-India Non-gazetted Audit and Accounts

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Association—that is the major organisation of the staff of the offices of the Accountants-General in the country. After the token strike was over, during the months past, the Government of India considered and re-considered the issue and, as you know, several Central Government Orders have been issued relaxing certain orders previously passed, erasing the difficulties that were caused on account of the issue of the Government Orders earlier. Now, Sir, the Home Ministry has directed the Ministries and the Departments concerned that the recognition that was withdrawn in respect of the major service organisations—five in number referred to by me—should be restored. The All-India Railwaymen's Federation's recognition has already been restored. The matter in relation to the P&T Federation is under the consideration of the Ministry and the Department concerned and there are some litigations and some interim orders passed by the courts in the country. So far as the All-India Non-gazetted Audit and Accounts Association is concerned, although the direction of the Home Ministry was received by the Comptroller and Auditor-General of India, the Comptroller and Auditor-General of India seems to have taken the position that he is not bound to obey the directives given by the Government of India in the Home Ministry. As a result, even though the Cabinet has decided to restore the recognition, the Comptroller and Auditor-General of India has not restored the recognition to the All-India Non-Gazetted Audit and Accounts Association. On the other hand, what has happened is recently a new union, a cadre union, that is in the category of SAS Accountants, something like a supervisory cadre in the offices of the Accountants-General, has been started under the name and style of the All-India Association of SAS Accountants and that new union has been recognised by the Comptroller and Auditor-General of India. I submit that this is absolutely a wrong step that a modern administrator would take . . .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : You are dealing with the Bill.

SHRI K. CHANDRASEKHARAN : I know that, Sir, I am dealing with the Bill. I am dealing with the necessity of legislation under Article 148(5) also. I can emphasise it with reasons. You must have also understood that, I am sure.

In fact, the original Association, the All-India Non-gazetted Audit and Accounts Association, should have been restored its recognition. I submit that this matter should certainly be gone in to by the Government of India although not in terms of the provisions of this Bill exactly, but in terms of the necessity to bring in a legislation under Article 148(5) of the Constitution. I have already stated that the provisions of this Bill so far as they go, are undoubtedly good, undoubtedly necessary, and my only criticism is that this Bill has been long overdue and when this long overdue Bill is being considered by a Joint Committee, I commend to the Joint Committee to consider the question of a legislation under Article 148(5) in relation to the staff and I should think that it will certainly be within the ambit, within the Jurisdiction, of the Joint Committee to make recommendations in that regard also, particularly in comparison with what has happened to the Indian Medicine and Homoeopathy Central Council Bill which went to a Joint Committee. The Joint Committee on the Indian Medicine and Homoeopathy Central Council Bill has come with a rather extraordinary recommendation and it is a welcome recommendation no doubt. I say it is extraordinary because I thought it was something outside the scope of the Joint Committee. I am emboldened to state that this aspect also can be considered by the Joint Committee because of the recent precedent where the Joint Committee on the Indian Medicine and Homoeopathy Central Council Bill has affixed a draft of a legislation along with its recommendations on the particular Bill. Thank you.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : I have no other name here. I hope the members who want to speak on this will kindly give their names so that we may have an idea.

SHRI T. N. SINGH (Uttar Pradesh) : May I catch your eye, Sir ?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : All right, Mr. T. N. Singh. Please be brief.

SHRI T. N. SINGH : I am always brief.

Mr. Vice-Chairman, Sir, I have been associated with the Public Accounts Committee for a number of years, for 8 or 9 years. I have also worked as its Chair-

man. I must start by saying that the work of the Public Accounts Committee of the Parliament or of the State Legislatures will not be possible without the assistance of the Comptroller and Auditor-General. The Constitution also provides that not only audit shall be held, but accounts shall be maintained in the manner as stated or as ordered by the Auditor-General. There are two important things. One is the audit and the second is accounts. Accounts have to be maintained as required by the Auditor-General. That is the provision. But nowhere does the Constitution say that he shall be directly responsible for maintaining accounts, yet, according to tradition this additional responsibility has been imposed on him, which should not have been done.

The Auditor-General, as far as possible should be an independent authority. The moment his responsibility also includes the Accounts Service, Accounts personnel start owing allegiance to other authorities. The Accounts Officers or the Chief Accounts Officers as they are called in other Departments, have got dual loyalty to discharge. Firstly, they are supposed to be loyal to the finance people, because they do the financial advising. Then as Audit Officers they are under the charge of the Auditor-General. Now this concept is not proper.

As early as 1953 or 1954 the Public Accounts Committee recommended the separation of audit and accounts. But for one reason or another this reform was postponed. Now I find that the *status quo* is being perpetuated and the present position is continuing. No doubt there is a provision in the Bill to permit the President to separate accounts from audit if he so desires in certain Departments but I wish it were made obligatory to separate the two Departments under this Bill. It may be a little expensive but it is not proper that the Indian Audit and Accounts Service should have to play dual roles at different times. Audit must be independent of the executive control in any form whatsoever. The audit people today look for their advancement to other departments of the executive, and that vitiates their independence.

I think most of the IA and AS people are looking for promotions in other Departments, so much so that many of them want to be attached to Finance Ministry or to some other Department in order to get promotions. Why is that happening?

We have recruited more men than the Audit Service alone can absorb. Therefore you must provide scope for them. If there is no scope for them, they will be debarred from promotions. Therefore there is resistance to separation of Audit and Accounts. If you intend any time to divide the Indian and Audit Accounts Service, it is essential that there should be separate recruitment for the two services. So long as that is not done, the provision that the President can separate Audit from Accounts where necessary will simply not materialise. Therefore I suggest that the independence of the Audit should be maintained. The accounts work can easily be handed over to a separate Accounts Service with a separate line of promotion. Then it will function all right. The present type of recruitment in the IA & AS makes it incumbent on the Government to continue the existing system. Therefore I say that if the principle of separation is good, it is better that action should be initiated now itself in the matter of recruitment. If that is not done the I.A. and A.S. men will look to other Departments for their promotion. So this should be prevented.

Another point is that we are starting corporations, companies and all those things. All the moneys for them are drawn from the Consolidated Fund. Not only that, we have earmarked certain fund, say, cesses, etc. As a Member of the Public Accounts Committee and as its Chairman later on, I had some difficulty in getting hold of these accounts. Now there is a separate clause in this Bill, clause 20, which refers to bodies formed by the State Governments and which can be brought under audit only if the Governor wants. Now what I feel is that wherever even a pie out of the Consolidated Fund is spent, the authority of the Auditor-General is attracted; we should not take away the Auditor-General's authority simply because somebody has made a corporation or a body. A corporation I can understand, because the Legislature has passed a special law, but a body may not be statutory. Therefore the jurisdiction of the Auditor-General should not be taken away in case of such bodies. That is very important. Even in regard to Corporations, in every statute it has been specifically laid down that the Auditor-General should audit their accounts, and invariably that is the system to be followed. We should not think contem-

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plate Corporations going out of the jurisdiction of the Auditor-General. These two provisions in the Bill are dangerous.

Moreover, wherever the audit of Corporations is concerned, the House has to apply its mind on their functioning. Now who is the Adviser? The principal Adviser of the House in regard to the accounts of such concerns is the Auditor-General. The House cannot recognise any private Auditor for that purpose. Therefore I suggest that it is necessary that the Auditor-General's jurisdiction in such matters should not be taken away and no attempt should be made in that direction.

The third thing is this: I wish we should give some thought to the principle of independence of the Auditor-General. Today an Auditor-General's appointment takes place on the recommendation of the Finance Minister. This is not good as every aspiring officer cannot afford to displease the executive. An Auditor-General should function as if he were a judicial personality; he should be able to express his views undeterred by any consideration that he is obliged to the executive for his appointment. So some thought should be given to this aspect of the question. I would make a suggestion at the appropriate time. I hope the Joint Committee will consider it. It is essential that the Auditor-General's independence should be ensured and for this the method of his appointment today needs to be looked into. I know from personal experience how one has to run about for such jobs; it depends on the goodwill of a particular Minister. I have been associated with the administration in Delhi for nearly 20 years as M. P. and in other capacities. So I can say with some knowledge that today the Auditor-General is not likely to be such an independent personality as he ought to be. I hope the Select Committee will apply its mind to this aspect. I do not want to create any bias by making my suggestion now; I am restraining myself from making some proposal in this regard later. But I would like the Select Committee to consider the method of appointment of the Auditor-General. The President appoints him no doubt but he appoints him on somebody's recommendation. How is that recommendation made? That is something which has to be considered to ensure his independence.

Sir, I have studied this Bill to the best of my capacity. It is an old Bill, sub-

mitted on May 9, and it is this old Bill which is being placed before us now. I wish Government had had some further thinking on the subject. A lot of money of Government is spent which is not well looked after. The Auditor-General's staff and personnel have to be strengthened for that purpose. Then, today we need, what much more important, a kind of performance audit. Government today is not merely an administrator or a law and order Government or a mere, welfare Government. It is much more. We are running undertakings, business enterprises, and their performance audit is of outmost importance. If it were in my power, I would suggest here specifically that one of the duties and functions of the Auditor-General will be to ensure performance audit of public undertakings. I remember, we had a seminar, I think it was in 1960, in which I also participated. On the question of performance audit, Sir, the then Auditor-General, I must say, was frank enough to say that he had not got the staff to undertake this responsibility. Yet, this responsibility is essential not only for the sake of the Government but for this House to function well. This House cannot function well unless it gets the audit reports on the performance of the various public undertaking, not just auditing of the general type which we have today. Therefore specific provision in this regard and responsibility for it should be laid down so that he can recruit the necessary staff for that purpose. This is the third suggestion which I wanted to make.

Sir, perhaps you are getting impatient because you wanted me to be brief. I have no desire to take any more time of the House. There are many points which I could have stressed here, but the three points I have tried to place before the House need to be considered by the Select Committee. I hope some importance would be attached in any case to some of these points when the matter is looked after by the Select Committee. At the same time I attach the highest importance not only to the independence of the Auditor-General but also to the manner in which he is appointed, and with this emphasis, Sir, I close my remarks.

श्री जगदम्बी प्रसाद यादव : उप सभाध्यक्ष महोदय, नियंत्रक तथा महा-लेखा परीक्षक बिल देर में आया है लेकिन दुस्त नहीं आया।

अगरचे वह देर से आया और दूरस्त आया होता तो मैं सरकार की इस बारे में प्रशंसा करता। संविधान में इस तरह का विधेयक लाने के बारे में शीघ्रता का आदेश दिया गया था। इस तरह का आभास संविधान से निकलता है लेकिन सरकार जानबूझकर इस प्रकार के विधेयक को शीघ्रतापूर्वक नहीं लाई। इसके नहीं लाने का कारण भी किसी से छिपा नहीं है। अगर सरकार का खर्चा देखा जाय तो मालूम होगा कि सरकार आज शासन को चलाने में ही खर्चा नहीं कर रही है बल्कि सरकार बड़े बड़े अडरटेकिंग्स को भी चला रही है। आपने देखा होगा कि जब कभी भी सदन में पब्लिक अडरटेकिंग्स की बात आई तो उसमें केवल घाटे की बात ही नहीं थी बल्कि करोड़ों रुपयों का घोटाला भी सामने आया। जब सरकार महा-लेखा परीक्षक को अपने अन्तर्गत रखती है, तब ही वह अपनी मर्जी के मुताबिक हर क्षेत्र में काम कर सकती है। अगर वह अपने अन्तर्गत नहीं रखती है तो उस हालत में वह किसी तरह का घोटाला करने में हिचकती है। यही कारण था कि सरकार इन 20 वर्षों तक इस तरह का विधेयक सदन के सामने नहीं लाई।

आज जब प्रदेशों की कांग्रेस सरकारें टूटने लग गई हैं और अधिकांश प्रदेशों की सरकारें समाप्त हो गई हैं तब वह आज इस तरह का विधेयक लाने की सोच रही है। आज तो सरकार का केन्द्र में भी बहुमत नहीं रहा है। आज तो ऐसा लगता है कि सरकार कुछ दलों के भरोसे पर ही जीवित रह सकती है। (interruptions) आज सरकार को कम्युनिस्टों और स्वतंत्र सदस्यों के ऊपर ही निर्भर रहना पड़ रहा है। आज यह सरकार दूसरों के भरोसे पर टिकी हुई है और इस तरह से यह कांग्रेस की सरकार नहीं कही जा सकती है। आज इस सरकार की प्रधान मंत्री को कांग्रेस पार्टी ने अलग कर दिया है और आज यह भी पता नहीं है कि केन्द्र में किस पार्टी की सरकार काम कर

रही है। आज केन्द्र में किस दल की सरकार है। जो अपने को आफिशियल कांग्रेस पार्टी कहते हैं उनकी सरकार है या जिन्हें कांग्रेस पार्टी से निकाल दिया गया है और जिनका सरकार में बहुमत नहीं है उनकी सरकार है।

उपसभाध्यक्ष (श्री अकबर अली खान) : आप बिल पर बात कीजियें।

श्री जगदम्बी प्रसाद यादव : बिल भी तो सरकार का ही है। बिल के नाम का तो पता है मगर सरकार के नाम का पता नहीं चल रहा है।

उपसभाध्यक्ष (श्री अकबर अली खान) : यह बिल तो सिलेक्ट कमेटी में जा रहा है।

श्री जगदम्बी प्रसाद यादव : श्रीमान, जिस सरकार के प्रधान मंत्री को कांग्रेस पार्टी ने प्राथमिक सदस्यता से भी हटा दिया है उसके बारे में हमको मालूम होना चाहिये कि यहां पर किस की सरकार है और कौन सरकार यहां पर विधेयक ला रही है। आज जब कि कांग्रेस की सरकार प्रदेशों से जा चुकी है और आशा करते हैं कि यहां से भी जल्दी चली जायेगी।

श्रीमान, जब यह विधेयक लाया गया है तो उसको पूरे रूप में लाना चाहिये था। महा-लेखा-परीक्षक के कर्तव्य, शक्तियों और सेवा की शर्तों के बारे में इसमें कहा गया है। जिस तरह से हमने न्यायपालिका को कार्यपालिका से अलग कर दिया है उसी तरह से हमको महा-लेखा परीक्षक को सरकार के अन्तर्गत से अलग कर देना चाहिये क्योंकि सरकार आज तरह तरह के व्यावसायिक कार्यों में लग गई है और उनमें जो आय और व्यय होता है उनका नियंत्रण तथा निरीक्षण करना बहुत आवश्यक है। अभी तो इस संबंध में कोई निराकरण की व्यवस्था नहीं है। अभी तक महालेखा परीक्षक के दफ्तरों में काम करने वाले यह सोचते थे कि कोई ऐसा विधेयक आयेगा जिससे उन्हें संतोष होगा ताकि वे अपने कार्यकलापों और अपनी व्यवस्था से संतुष्ट हो सकें। लेकिन जो

[श्री जगदम्बी प्रसाद यादव]

यह विधेयक आ रहा है उससे उन्हें संतोष नहीं होगा। मैं चाहूंगा कि मंत्री जी इस बात पर विचार करें। सिर्फ ज्वाइन्ट सिलेक्ट कमेटी में भेजने से उनकी मांगों का निराकरण नहीं होगा बल्कि सरकार को खुले दिल से और खुले दिमाग से उस कमेटी के विचारों को ग्रहण करना होगा तब ही उन लोगों को निराकरण होगा। जब तक हम खुले दिल से इस तरह की वार्ता को नहीं रखेंगे, जब तक हम इम्पार्शल बनकर उनके विचारों को ठीक ठीक ग्रहण नहीं करेंगे तब तक जो नियंत्रण की महत्ता है उस महत्ता को स्वीकार नहीं कर सकते हैं। इसीलिए हमारे पूर्व वक्ता ने इस कार्यालय के और इस पद की महत्ता का विवेचन किया। इसकी महत्ता का विवेचन इसलिए किया क्योंकि भारतवर्ष में आज शासन व्यवस्था में और व्यवसाय में जो आय और व्यय हो रहा है उसकी ठीक तरह से जांच पड़ताल करना आवश्यक है। इस तरह की जांच पड़ताल करने के लिए किसी बौड़ी का होना आवश्यक है जो सचमुच में आर्थिक ढांचे को बिगड़ने न दे और उस ढांचे को बनाये रखने में सक्षम हो।

इसलिए मैं पुनः अपने मंत्री जी और अपनी सरकार से आग्रह करना चाहूंगा कि ईस सेलेक्ट कमेटी में माननीय सदस्य जो विचार प्रकट करें उनको खुले दिल से ग्रहण करने की क्षमता लेकर बैठिए एवं उनको स्वीकार करें।

SHRI A. P. CHATTERJEE (West Bengal) : Sir, the Bill is being referred to a joint Select Committee and therefore there is not much to be said before the entire Bill is considered by the Select Committee but then one or two observations might be made so that the Select Committee itself might bestow some thought on these things.

It is clear that as far as the post of Auditor-General is concerned it is a very important post. The duties are also very important for the purpose of independent functioning of the accounting of the Union and the States. It is also true that unless the Auditor-General exercises his functions conscientiously and meticulously it is quite possible that the finances of the State may

technically and for other reasons go from bad to worse but also on the financial front many a corrupt act may creep in and therefore for the purpose of guarding against corruption as well as for the purpose of strengthening the finances of the country the Comptroller and Auditor-General's post is very important as far as the Government is concerned. But the very interesting part of it is this that the Constitution was adopted in 1950 and this Government has taken almost twenty years in order to realise the necessity of bringing in such a legislation laying down the conditions of service of the Comptroller and Auditor-General as well as laying down the powers of the Comptroller and Auditor-General. Of course better late than never no doubt and it is good. I do not know whether the present conditions inside the Congress Party have given a fillip to the question of setting forth the conditions of service as well as precisely formulating the powers of the Comptroller and Auditor General.

One thing I would like to point out Mr. Vice-Chairman, is this that usually the Comptroller and Auditor-General is recruited from a cadre of service which has nothing to do with the Administrative Service. The Administrative Service should be kept separate from the Service of Comptroller and Auditor-General in order to keep this post of Comptroller and Auditor-General as independent as possible. I will not cast any reflection on any of the incumbents of the post but I have to say that of late a deviation has occurred in this respect and we have found that the Auditor-General has been appointed from the cadre of the Indian Administrative Service.

SHRI M. RUTHNASWAMY (Tamil Nadu) : When?

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : Have you finished?

SHRI A. P. CHATTERJEE : How can I finish? What is this? Whenever I stand up you ask me if I have finished. You seem to take me for Mr. Rajnarain.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : Because you were turning to the other side I thought you had finished.

SHRI A. P. CHATTERJEE : I won't take long I can assure you. I think this practice should be continued for this

reason that if a person is recruited from the Indian Administrative Service to the post of Comptroller and Auditor-General then naturally two or three difficulties may arise. The first difficulty is that he may bring along with him the mentality and the attitude which is proper for a person of the Indian Administrative Service. That is the first disadvantage. Even though that person may try to keep his mind free of administrative bias, even then after serving for a number of years in the Administrative Service it would be difficult for him to free or rid his mind of his prejudices in favour of Administration. That is the first thing. Secondly it is not merely a question of psychological prejudice but it is also a question of the famous maxim applicable usually in another field that justice must not merely be done but also appear to be done. If you take a Comptroller and Auditor-General from the cadre of the Administrative Service then there is bound to be created an impression that perhaps he will be influenced by purely administrative considerations and not by considerations of financial integrity and financial viability of the State. Therefore when the Select Committee will go into this Bill they will make it a rule, and an invariable rule, that the Comptroller and Auditor-General should not be recruited from any Service other than the Indian Audit & Accounts Service and there should not be any exception or any departure from that rule.

Secondly, Mr. Vice-Chairman, I myself have been a member of the Public Accounts Committee for the last one and a half years and what I feel is this. Of course, I am rather thinking aloud. Again I will say that I am not making any reflection, I do not want to make any reflection, on anybody, any person, any incumbent but then one thing has occurred to me. As a member of the Public Accounts Committee we have found that though the Public Accounts Committee is expected to go into the lapses, failings and irregularities of public accounts kept by the Union or by the States what happens is this that we really are called upon to examine only those paragraphs of the Audit Report which are placed before us by the Comptroller and Auditor-General. Of course, a question may be put to me what is the way out? Would I suggest that the Public Accounts Committee will pick and choose its own paragraphs in the Audit Reports?

SHRI M. RUTHNASWAMY : I thought it was the Finance Ministry that did that.

SHRI A. P. CHATTERJEE : I do not know theoretically who does it but the paragraphs that are placed before the Public Accounts Committee are the paragraphs chosen by the Comptroller and Auditor-General practically. I really do not know the theoretical aspect of it. As to who is expected to do it. But then this is the position; this is the experience which I have had as a member of the Public Accounts Committee. I myself have felt sometimes while attending the sittings of the Public Accounts Committee that perhaps there are certain paragraphs in certain Audit Reports which require greater attention than certain paragraphs which are placed before the Public Accounts Committee. I do not know how this situation can be remedied or corrected because Parliament is the supreme body which must have the final say as far as accounts, expenditure or revenue of the country is concerned but if the Public Accounts Committee through which the Parliament acts as far as supervision over the public accounts and public expenditure is concerned is spoonfed with paragraphs or excerpts from certain Audit Reports prepared by certain individuals then I think that the parliamentary sovereignty and supremacy over public accounts and public expenditure to that extent is curbed and reduced. It is not for me to suggest a way out. If you ask me for my suggestion for a way out I will frankly say that I do not know because I do not know how the Public Accounts Committee consisting of 35 or 35 members can possibly go into the different paragraphs of each Audit Report pertaining to different fields of expenditure and revenue in the different Ministries and choose its own paragraphs or try to see that the revenues are properly realised and properly expended. I do not know, I cannot say, but I think that the Select Committee, which is a compact body which will go into this question and which will go into the powers and duties of the Comptroller and Auditor General, perhaps will have to come to grips and I would suggest they should come to grips with this problem. These are the two things which I would suggest.

As far as the other matters are concerned, conditions of service, etc., of course they are matters for the Select Committee, but in regard to conditions of service I would merely add a word of caution and it is this. It is true that the Constitution says that after the tenure of service of Comptroller and Auditor-General expires, he

[Shri A. P. Chatterji]

will not accept—may I just refer to the provision itself—any further office either under the Government of India or under the Government of any State after he has ceased to hold his office. Now, that is good so far as it goes, but I would further say this that there should be a provision, if not in the Constitution, at least in the conditions of service that a Comptroller and Auditor-General, after his retirement, cannot and should not take up any post anywhere in the private sector as well. There are cases—I do not want to take names—of retired C and A-Gs who have taken up service in private companies and private concerns. This is also a point which may be kept in mind by the Select Committee while formulating the conditions of service of the C and A-G.

Thank you.

SHRI R. K. KHADILKAR : Mr. Vice-Chairman, I have very attentively listened to the speeches and certain observations made at this stage when I have moved a motion for reference of the Bill to a Joint Select Committee. I do not propose to deal with all the points or suggestions put forward, but I would try to deal with some of the points which are very relevant at this stage.

One point was made as to why this legislation was delayed. On this I would like to state that the question of promoting a comprehensive legislation to determine the conditions of service and to prescribe the duties and powers of the Comptroller and Auditor-General had been under consideration for some considerable time past. The legislation could not, however, be finalised earlier because of continuing differences with the Comptroller and Auditor-General regarding the provisions to be included in the Bill, e.g., those relating to production of secret documents before the Comptroller and Auditor-General, the appointment of an auditor to audit the sanction of expenditure by the Comptroller and Auditor-General, the responsibility for the maintenance of accounts, etc. Several discussions were held with the Comptroller and Auditor-General and his officers and even during the last nine or ten months one or two fresh points were raised, e.g., relating to the Comptroller and Auditor-General's pension. These were all, however, sorted out, but differences persisted on three main questions in regard to which the Comptroller and Auditor-General had

the support of the Administrative Reforms Commission and the Estimates Committee viz., Audit of accounts of companies with minority investment by Government, audit of accounts of contractors with whom negotiated contracts have been entered into and audit of accounts of recipients of subsidies. These three issues were discussed not only by the Finance Secretary with the Comptroller and Auditor-General, but also at two meetings of Secretaries taken by the Cabinet Secretary at the second of which (which was held on 17th December, 1968), the Comptroller and Auditor-General was personally present. It was only on 1st April, 1969. It was finally decided not to accept the C. and A-G's suggestions on these three points. Thereafter the proposals were submitted to Cabinet on the 18th April, 1969 and the Cabinet considered them on the 30th April, 1969. However, due to the delay in getting printed copies of the Bill from the Press, the copies could be made available to Members of Parliament only on the morning of 15th May with the result it could not be introduced by the 16th May, the date on which the last session of the Lok Sabha came to an end. At our request the Speaker directed that the Bill be published in the Gazette under rule 64 of the Rules of Procedure and Conduct of Business in Lok Sabha before its introduction. The Bill was published in the Gazette on the 20th May, 1969 and was introduced in the Lok Sabha on 23rd July, 1969. It might be added that it is not as if the Comptroller and Auditor-General's conditions of service or his duties and powers have remained undefined. These are contained respectively in the Constitution and the Comptroller and Auditor General (Conditions of Service) Act, 1953 and the Government of India (Audit and Accounts) Order, 1936, which continues to be in force in terms of article 149 of the Constitution. Some of the provisions of the Order which were held to be not consistent with the provisions of the Constitution are, however, not in force, e.g., the provision relating to production of secret documents and the provision empowering the President or the Governor to specify the Head of Account under which a transaction is to be included. Moreover, the C. and A-G has not brought to the notice of Government any practical difficulties in discharging his duties for want of a law by Parliament. The present Bill also more or less follows the existing provisions in the 1953 Act and the 1936 Order referred to above.

Certain other points were made from the experience of those who have had occasion to serve on the PAC. I would deal briefly with some of the matters that have been brought to the notice of the House by hon. Members on this occasion. The Bill also provides that the Comptroller and Auditor-General, in relation to the audit of the accounts of Government companies and of corporations established by law made by Parliament, will perform his duties and exercise his powers in accordance with the provisions of the Companies Act, 1956 and of the respective statutes establishing the corporations as the case may be. In so far as corporations established by law made by a State or a Union territory legislature are concerned, the C and A-G will conduct their audit if so requested by the Governor of a State or the Administrator of the Union territory as the case may be in the public interest and after consultation with the C and A.G. and after giving a reasonable opportunity to the corporation to make representations with regard to the proposal for such audit. This provision has become necessary because the matter cannot be left to be governed by a State or Union territory law as the Comptroller and Auditor-General's duties and powers are required to be regulated by an Act of Parliament under article 149 of the Constitution.

The second point was made by my friend, Mr. T. N. Singh, regarding certain difficulties experienced by him while he was a Member and Chairman. I also happened to be a Member and I also experienced similar difficulties. This needs to be clarified. The Bill also provides that the Comptroller and Auditor-General may, if so requested after consultation with him by the President or the Governor of a State or the Administrator of a Union territory as the case may be, undertake the audit of the accounts of any authority or body not otherwise entrusted to him by or under law made by Parliament. Such audit will be entrusted to the Comptroller and Auditor-General only in public interest and after giving a reasonable opportunity to the concerned body or authority to make representations with regard to the proposal for such audit. Under the provisions of the Bill, the Comptroller and Auditor-General may also propose to the President or a Governor of a State or the Administrator of a Union territory that he may be authorised to undertake the audit of any body or authority not entrusted to him.

The Comptroller and Auditor-General is at present responsible for keeping and compiling the accounts of the Union and of each State except the accounts relating to Railways and Defence and a few other Departments such as Food Department, Supply Department, Lok Sabha Secretariat, etc., in which the accounts are kept and compiled by the Departments themselves. The Administrative Reforms Commission has recommended that as a general policy the responsibility for maintaining the accounts should continue to vest in the Comptroller and Auditor-General except where separate Accounts Offices have been set up for the purpose. The Bill accordingly provides for the maintenance of *status quo*. However, the President or a Governor may after consultation with the Comptroller and Auditor-General relieve him from the responsibility for keeping the accounts of any particular service or department; likewise the President may relieve the Comptroller and Auditor-General from the responsibility for keeping the accounts of any particular class or character.

There are two other points to which I would like to refer. One point was, as autonomous States are there, whether the States should have an independent authority. Under the Constitution one authority has been provided for each State, office of the Accountant General, separately. That matter could be taken up by the Joint Select Committee. Another point was made regarding the service conditions. I think that point should be borne in mind and I am sure the Joint Select Committee will give due consideration to the service conditions and certain other difficulties that were mentioned, and perhaps as was just now brought to the notice of the House, if some such modifications could be made regarding service conditions, it is a matter for the Joint Select Committee to consider. All other points that were made on the floor of the House, I am sure would be taken into consideration by the Joint Select Committee.

With these observations I move that the motion be adopted.

THE VICE-CHAIRMAN (SHRI
AKBAR ALI KHAN) : The question is :

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to determine the conditions of service of

[The Vice-Chairman]

the Comptroller and Auditor-General of India and to prescribe his duties and powers and for matters connected therewith or incidental thereto and resolves that the following Members of the Rajya Sabha be nominated to serve on the said Joint Committee, namely—

1. Shri M. Anandam
2. Shri Anant Prasad Sharma
3. Shri Gurumukh Singh Musafir
4. Pt. Bhawaniprasad Tiwary
5. Shri C. D. Pande
6. Shri T. Chengalvaroyan
7. Shri Sundar Mani Patel
8. Shrimati Sarla Bhadauria
9. Shri Kalyan Roy
10. Shri Thillai Villalan."

The motion was adopted.

THE INDIAN SOLDIERS (LITIGATION) AMENDMENT BILL, 1968

THE MINISTER OF DEFENCE
STEEL AND HEAVY ENGINEERING
(SARDAR SWARAN SINGH): Mr.
Vice-Chairman, I beg to move :

"That the Bill further to amend the Indian Soldiers (Litigation) Act, 1925, be taken into consideration."

Mr. Vice-Chairman, this is, I hope, a non-controversial piece of legislation and by this amendment certain types of proceedings are intended to be brought within the purview of the facilities that are afforded to the Defence personnel in matters of litigation. The only concession that is granted under the scheme of the parent Act is that if a soldier or a sailor or an airman is unable to attend to a piece of litigation in which he may be a party, then on his Commanding Officer certifying that the defence personnel concerned is so employed the proceedings are postponed so that no *x-parte* proceedings are taken against the member of the Armed Forces. Certain lacunae were discovered, the principal one being that in the original Act only suits were mentioned and the expression used was "courts". As is well known to you, Mr. Vice-Chairman, with your vast experience of the new legislative enactments that have been passed by the State Legislatures as well as by the Central Parliament, there are a number of proceedings which are before tribunals and before other bodies which do not strictly come within

the definition of a court. For example cases relating to rent and then several cases are such which are not necessarily court proceedings but they are of the same type, and by the present amendment the intention is that those tribunals and those proceedings which are judicial or quasi-judicial in character should also be conducted in the same manner as ordinary civil proceedings and whatever are the facilities that are available to the members of the Armed Forces should be available even in relation to such proceedings before the rent courts or before arbitration tribunals and several other forums. The opportunity has also been taken to specifically say that persons who are subject to the Indian Navy Act should also be specifically mentioned. Formerly this was achieved by means of a notification because there was no separate Navy Act. Now that the Indian Navy Act has been enacted, the intention is that specifically it should be incorporated in one of the clauses.

There is one other important point which I would like to mention at the present stage. Historically this is an old legislation which was on the Statute Book of India from the time of the foreign rule, and there were provisions in this which had to be adapted to suit the changed situation after independence. Then again the problems that our Armed Forces face today have materially altered. Today as the House is no doubt aware, we have got our soldiers and airmen who have to be at distant places on our borders both in relation to Pakistan and also on the Chinese frontier. Instead of specifying in the Act itself, power is being taken that Government by notification will declare as to which are the categories of members of the Armed Forces serving in certain areas to whom these concessions should be available.

This is a very welcome measure and a non-controversial measure. We always talk of helping the members of the Armed Forces, and this is only a very small gesture. It is also based on sound principles that no decision should be taken against a person *ex parte*. And in this particular case, if a particular person is serving the country and is at a far-flung place where probably even letters do not reach in the ordinary course and when he is prevented from coming on leave from that distant place because the nature of his duties is such that he cannot be away from his place of duty, the minimum that w