

Bill, when the Bill was first received, the Law Ministry advised that it was a Money Bill. It was subsequently referred to the Select Committee and thereafter considered by the House of the People on the 23rd April 1953. The Speaker raised the question himself as to whether the Bill as amended by the Select Committee was a Money Bill and directed that the Law Ministry be approached and asked again to reexamine the position as also to give the grounds on which they think that the Bill was a Money Bill. The Ministry of Law replied on the 24th April 1953 saying that the Bill as passed by the Select Committee was a Money Bill and gave reasons for their advice. Thereupon the Speaker came to the decision on the 25th April 1953 that the Bill as passed by the House of the People was a Money Bill and later signed the certificate embodying this decision.

It will be observed that every care was taken by the Speaker to seek the advice of the Law Ministry at various stages, although there was no obligation on him to do so. Unfortunately, the Law Minister himself, though undoubtedly responsible for the advice of his Ministry, was not himself aware of these references at that time. As soon as the Law Minister became aware of this on April 30th, he brought the facts to the notice of the Chairman of the Council of States.

These are the facts. An error, which is regretted, led to a good deal of misapprehension and some feeling in both Houses. The dignity of either House of Parliament is precious to everyone of us. Not only is each House anxious to maintain its own dignity, but, I am sure, that it is equally anxious to maintain the dignity of the other House, which is equally a part of Parliament. The dignity of each House is represented by the Chairman and the Speaker and every Member of Parliament, in whichever House he may be, must respect that dignity and authority.

I earnestly trust that these unfortunate incidents will be treated as closed now and that any feeling of resentment that might have arisen will pass away and the two Houses will function in friendship and co-operation, maintaining the high dignity of Parliament and furthering the public good.

THE LEADER OF THE COUNCIL (SHRI C. C. BISWAS) : May I, Sir, have your permission to say just a few words to completely associate myself with the statement which the Prime Minister has just made? Nobody more deeply regrets than myself the unfortunate incidents which marred the serenity, and if I may add without disrespect, the dignity of either House of Parliament during the last weekend. It grieves me to think that I happened to be the cause of all this trouble. Hon. Members will remember that I took the earliest opportunity to assure them and all concerned that I had not the remotest intention to cast any reflection upon the Speaker of the House of the People, or upon the dignity of that House. There appears, however, to be a good deal of misapprehension in certain quarters about the meaning and intention of my remarks. They have been misconstrued as a slur on the Speaker and on the House. All that I need say is that if by the words I had used on that occasion, I had unwittingly given any offence to anybody, I am sincerely sorry, and tender to him my profoundest apology. I hope the curtain will now finally be rung down on this episode, and relations of the utmost cordiality will be restored between the two Houses.

**THE COMPTROLLER AND AUDITOR-  
GENERAL (CONDITIONS OF  
SERVICE) BILL, 1953—continued.**

MR. DEPUTY CHAIRMAN: The Finance Minister will continue.

SHRI H. N. KUNZRU: Will the Finance Minister be good enough just to give us a gist of his arguments so far? I do not think I am a particularly dull man, but there may be others like myself in this House who have not been able to follow the point at which

[Shri H. N. Kunzru.] the hon. the Finance Minister was driving in dealing with the conditions of service of the Comptroller and Auditor-General of India under the Audit and Accounts Order, 1936.

SHRI C. D. DESHMUKH: Sir, I was dealing with the point made by the hon. Member that in the past no extension had been granted to the existing holder of the Auditor-General's post, and I was trying to deal with the significance of that point. As background material. I read out the actual conditions of service of the Auditor-General from the Audit and Accounts Order. Then I went on to make the point that these conditions were never changed, and since they were not changed, the question whether—whatever you might call it, extension or their application to the changed conditions—the question of applying any changed conditions to an existing incumbent never arose. That being so, one could draw no inference from past practice. Past practice merely meant that the incumbent of the office of Auditor-General continued to hold it under unvaried conditions of service laid down by the Audit and Accounts Order. 1936.

Now I am coming to the interpretation of article 377. And I think, Sir, it would be best if I more or less read out the opinion of the Attorney-General with your permission. This is the opinion:

"The point for consideration is whether clause (3) of article 148 applies in its entirety to the Auditor-General of India holding office immediately before the commencement of the Constitution who has, under the terms of article 377, become the Comptroller and Auditor-General of India. Clause (1) of the article provides for the appointment of a Comptroller and Auditor-General of India. Clause (2) prescribes an oath or affirmation to be made by every person appointed to be the Auditor-General of India. Clauses (3), (4) and (5) lay down provisions applicable generally to the Comptroller and Auditor-General. It is suggested

that the provisions of clause (3) will apply only to a Comptroller and Auditor-General who is appointed pursuant to clause (1) of the article, and not to a person who has become Comptroller and Auditor-General under article 377. I do not agree". That is the opinion of the Attorney-General. "I think", he goes on to say, "that the general provisions which one finds in clauses (3), (4), (5) and (6) would be applicable to or are in relation to all persons holding that office whether as a consequence of an appointment under clause (1) or by reason of his having come to hold that office under article 377. The scheme of the transitional provisions contained in articles 374(1), 376(1), 377 and 378(1) is to make the holders of certain offices before the commencement of the Constitution, If they so elect, holders of certain other offices created by the Constitution. The permanent provisions of the Constitution provide for the manner of appointment to these offices as in articles 124(1), 148(1), 217(1) and article 316(1). After having made a provision for the manner of appointment, articles 124, 148, 217 and 316 proceed to enact various provisions applicable to the holders of these offices. It appears to me to be clear that these latter provisions in these articles apply equally to all holders of these offices, whether they be appointed or whether they become the holders thereof under the transitional provisions. For example, the provisions of clause (4) or clause (7) of article 124 will apply equally to a Judge of the Supreme Court, whether he be a Judge appointed under article 124(1) or whether he has become such a Judge by virtue of the provisions of article 374(1). Article 377, while specifically providing that the person becoming Comptroller and Auditor-General under that article shall be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148, proceeds to lay down that he shall be entitled to continue to hold office until the expiration of his term of office as determined, under the provisions which were

applicable to him immediately before such commencement. Is it the intention of the Constitution by these concluding words in article 377 to prescribe the term of office of the Auditor-General of India who has become the Comptroller and Auditor-General under the article? The Constitution prescribes specifically the term of office of the Supreme Court and High Court Judges by providing that they shall hold office until they attain the age of 65 and 60 years respectively. A similar specification of the term of office of the person becoming the Comptroller and Auditor-General under that article .....

SHRI RAJAGOPAL NAIDU: The wording is "be entitled to hold office". That is the wording in article 377.

SHRI C. D. DESHMUKH: If these words are on their true construction a specification of the term of that office held pursuant to that article, it is clear that Parliament cannot, by enacting a law under clause (3) of article 148, enlarge that term. In making such an enactment Parliament would be contravening a provision contained in article 377, i.e. to say, if this condition were to be true. On the whole, I am inclined to take the view that the concluding words of article 377 mentioned above do not specify or lay down the term of office of the person becoming the Comptroller and Auditor-General under that article. These words merely provide that the person shall be entitled to continue to hold office until the period mentioned. This language may be contrasted with the language of article 378(1) which says that the persons mentioned therein shall continue to hold office until the expiration of their term. I think that the words "be entitled to continue to hold office until the expiration of the period mentioned" direct attention to the right of the office holder to continue in that office for the term mentioned. His term of office cannot be made shorter than what he would have been entitled to in his own office. These words do not have the effect of fixing or specifying his term of office so as to prevent Parliament acting under its powers

under clause (3) of article 148 from determining the duration of the tenure of his office by the enactment of a law in exercise of its powers under Entry 75 of the Union List. That Parliament has power under clause (3) of article 148 to determine as part of the conditions of service of the Comptroller and Auditor-General, the duration or the tenure of his *office*, is clear by reason of the proviso to the clause which prevents among other things the age of retirement being varied to the disadvantage of a person after his appointment. This provision indicates that it would be open to Parliament by the contemplated legislation to deal with the duration or the tenure of the appointment except in the manner mentioned in the proviso. For the reasons mentioned I take the view that Parliament has power to make a law providing for the present Comptroller and Auditor-General a longer term of office than he would enjoy in accordance with the provisions which were applicable to him immediately before the commencement of the Constitution.

And that concludes, Sir, this opinion, I have myself no doubt, Sir, that this opinion is absolutely correct. Article 377 belongs to the "Temporary and Transitional Provisions" and it is concerned only with certain safeguards and protections. But it does refer back to article 148(3) which is the main article. Therefore, the conclusion is that it does not prescribe, in the sense of period or the term of *office*, but it only safeguards the term of office to which the then existing incumbent was entitled under the rules in force before any legislation under article 148(3) comes into operation. Therefore, there is no question of prescribing a term of office, and it is open to Parliament to prescribe a new term. Well, once that is conceded, then the other difficulties which have been pointed\* out by the hon. Member vanish like mist. For instance, let us take this question of the application of clause (4) of the same article 148 which says:

"The Comptroller and Auditor-General shall not be eligible for

[Shri C. D. Deshmukh.] further office either under the Government of India or under the Government of any State after he has ceased to hold his office."

But if we pass this law, he will not have ceased to hold his office. He will hold his office as long as the new law permits him to hold it and the question whether he can hold further office and whether that further office is the office of the Comptroller and Auditor-General or any other • employment or office, those are questions into which, under this construction, one need not enter because there are two facts. One is that article 377 by itself does not prescribe the term of office and there is a danger of one's coming to the •opposite conclusion by a loose paraphrase of the words of that article, and secondly the real term has to be determined by Parliament under article 148(3) and as long as the term has not expired, the Comptroller and Auditor-General will not have ceased to hold his office.

Now, there are certain points which, as I see, have become subsidiary and perhaps void of significance and with which I shall proceed to deal. He says, quoting some case of 1907, that a clause has to be interpreted by reference to a previous ruling or by a long practice. Granted. That is the commonsense. But there is no practice in this respect at all. There is nothing in the way of practice to rely upon, as I said in the beginning of my speech. Therefore the question of how to interpret this article 148(4) does not arise here. We grant that the same meaning should be attached to these words "further office" and "after he has ceased to hold office" that was attached to these words in section 166(2) of the Government of India Act, 1935. But then there is no practice or no ruling which sheds any light on what that further office is—whether it should be that of the Comptroller and Auditor-General or whether it should be any other employment. What the legislature meant by drawing a distinction between 'office' and 'employment',

these are very interesting questions, but they do not arise here.

Then, Sir, the hon. Member made the point that if we take a risk, we shall be sorry afterwards because it would always be possible for someone to apply for a writ. Now, Sir, if that kind of fear were to influence our actions, I think, we might as well, in view of the very liberal provisions of the Constitution, cease to make laws altogether.

We shall be wondering what sort of laws are going to be assailed in the courts and what sort of laws are not going to be assailed in the courts. So I think we must do our duty as it is and then leave the matter in the hands of the prospective litigant and this elaborate system of legislature which we have created for the benefit of the citizen of the country. Therefore, I do not think that this argument need influence us.

PANDIT S. S. N. TANKHA (TJtar Pradesh): Our duty, Sir, is to make good laws and not bad laws.

SHRI C. D. DESHMUKH: It is a profound truism. Nevertheless, the point that I made holds that, where a constitutional issue has been raised, it is for us, for this House, to come to a conclusion and leave the question of the interpretation to the courts. You cannot possibly impose upon yourself the duties of the courts, nor should the Houses of Parliament be deterred from making laws because someone says that we are just on the edge of a dangerous situation, because every moment there is some possibility or prospect of someone going to a court of law. As it is, there is hardly a law which is not challenged in the courts.

SHRI K. S. HEGDE: Many of them have been invalidated also.

SHRI C. D. DESHMUKH: In spite of the exercise of great care by both Houses of Parliament.

SHRI B. K. P. SINHA: **Many** have been upheld also.

SHRI C. D. DESHMUKH: Now, Sir, this is one set of points. The other set of points is in regard to the influence which this so-called extension will have on the present incumbent and on the position of the Parliament and the Government. I think that this is a point with which I should deal a little later in my final reply. Now, I only undertook to deal with the legal situation. The final point that I make is that I cannot accept the position that tenure is not part of the conditions of service. In order to bolster up his point if I may say so, the hon. Member went to the length of saying that tenure is not a condition of service, and therefore article 148(3), although it allows Parliament to prescribe the salary, does not allow Parliament to fix the term of office. That, Sir, is not sustainable, and my authority for that is what I referred to yesterday, viz., "The Audit and Accounts Order", and, in interpreting this, I would draw the attention of the hon. Member to the same rule which he quoted 1936. Here conditions of service are interpreted in one way and continue to be interpreted in the same fashion. This is what the Order says: Section II, the first part is entitled "Conditions of Service of the Auditor-General", and then under that there are paragraphs 3 to 10. Paragraph 3 deals with salary. "The salary of the Auditor-General shall be at the rate of Rs. 60,000 per annum". Then paragraph 4. Under this, there is an undertaking which is demanded of the Auditor-General that "he will not, after he has held his office, accept any employment in the service of any local authority". By the way, Sir, that deals with the point which some hon. Member raised yesterday whether the Auditor-General can, after retirement, engage himself in certain employments. Here, under the old rules, he was required to give "an undertaking that he will not accept any employment in the service of a local authority or railway company in India, or of an Indian State or Ruler, or, save with the previous consent, of the Governor-General in his discretion, any other employment in India". Paragraph 5 says, "The Auditor-General

may at any time by writing under his hand addressed to the Governor-General resign his office". Paragraph 6 is the one which I quoted. Paragraph 7 goes on to deal with leave. Paragraph 8 regulates the power of the Governor-General to grant or refuse leave. Paragraph 9 deals with pension. Paragraph 10 deals with travelling allowances, and the proviso deals with the safeguard with which we are all familiar. Therefore, if these were regarded as conditions of service, I take it, Sir, that conditions of service include salary, pension, all that we want to regulate now by law.

It is a matter of speculation as to what would have happened if we had undertaken this legislation not in the year of grace 1953 but in the year 1950 soon after the Constitution came into effect. If we had not waited all this time, then would this excessive suspicion about the attitude of the officer, the Government and the Parliament being influenced, have arisen because at that time the Auditor-General would just have completed about two years of his service and would still have a major part of his service afterwards? If we had not waited till now when there is only a narrow period of time between the passing of the legislation, if it is passed, and the date of his retirement, would such considerations have arisen? Therefore, I suggest that these are all fortuitous.

SHRI S. BOSE (Nominated): I want to know whether, when the Auditor-General was appointed first, there was any term of office implicitly contained in the appointment. In other words, when this particular gentleman holding the office of Auditor-General was appointed, was it implicitly understood that he would hold office for five years? If it were so, then when we introduce this legislation at this stage, will this be in the spirit of the article 148(3)?

SHRI C. D. DESHMUKH: There was nothing implicit. It was strictly in accordance with the Order to which I have made reference.

SHRI K. S. HEGDE (Madras): Sir, I have heard with rapt attention to the statement made by the hon. the Finance Minister. I regret I am unable to accept the reasoning advanced by the learned Attorney-General. I may say in this connection that the analysis advanced by my hon. friend, Diwan Chaman Lall, was not only lucid but even convincing, and I am in entire agreement with his interpretation of the two articles, 148 and 377 of the Constitution, but I am unable to go the whole hog with him in certain respects. Before I deal with the legislative competence of the Parliament to enact this law, it is desirable to find out the philosophy behind these two sections. The philosophy or the reasons which compelled or impelled the Constituent Assembly to pass these articles will give a good clue in interpreting these particular articles in question. The Auditor-General was considered to be one of those statutory authorities holding no obligation to the Government of the day and who, once appointed, will continue to hold office for his term under the conditions under which he is appointed without any change in his conditions of service. The reason is obvious, Sir. The officer in question will have to deal with the Government at several levels, and the view of the Government and his view may not be invariably the same. I am not meaning to say that they will be different, but their emphasis on the immediate problems of the day are likely to differ at different levels. I am one with my hon. friend, Diwan Chaman Lall, when he pays a compliment to the present incumbent. I am sure the House will associate itself when he says that we have had an officer of the highest integrity who has discharged his duties and functions to the satisfaction of one and all. So, if we advance any argument against the continuation of his term, let it be clearly understood that it is not from any reason that we have anything to complain against him. Far from it. But we must all appreciate the fact that any extension at this stage might make a later incumbent to look for an

extension from the hands of the Government or the legislature of the day, and that is the point of view that we should not lose sight of.

Now, I do know that character is not a thing of sudden growth but it is to be nurtured and built up for a long time but at the same time we should not also forget that constant care and attention is necessary and conditions in which the best in us could be maintained, should be created so that good\* shall always triumph as against the bad. It was absolutely necessary that certain statutory authorities should be beyond the purview of the Governmental influence either directly or remotely. If the Government of the-day could persuade the Parliament to\* extend the term of the officer in question, would it not be likely that in future the incumbents will look t\* Government—not all but at least some of them—for an extension and thereby try to be on the right side of Government. Is it a contingency that we should provide for or a situation that we should create which might, may be in a remote sense, demoralize the officer-in question? Very likely the present officer will not be influenced by it and he will resist it and I am glad this measure in a way is a compliment to his services and in a way it is a compliment to Government which in spite of the fact that the officer in question in more ways than one has found out the irregularities in the working of the Governmental machinery and has been responsible for unearthing many-scandals, yet the Government has shown moral courage in coming before the Parliament • for extending his services. That shows the moral stature of the Government. I am grateful to them but I am not considering the case from that context or with reference to the present incumbent. What worries me is what is going to be its reactions in the future years to come. With this point of view I should like the Minister to *de novo* examine the articles of the Constitution so far as it relates to the present subject. Article 148 relates to the Comptroller and Auditor-General of India in

general. Article 377 relates to the present incumbent. When my friend Diwan Chaman Lall was advancing the interpretation I interjected and asked him would he not consider that article 377 is a self-contained article. Obviously he missed the point of my interjections and he said nothing in the world is independent and everything in the world is interconnected. Philosophically it is true but legally speaking it may not be true. I am afraid if a careful analysis of article 148 and article 377 is made, it will be found that article 377 is a self-contained article without any assistance whatsoever from article 148.

SHRI RAJAGOPAL NAIDU: What about Schedule II?

SHRI K. S. HEGDE: I do see that article 377 is a transitory provision and article 148 is a permanent provision. In one sense a transitory provision may be considered as something supplemental to a permanent provision as in article 148. That aspect has to be borne in mind but another principle of law also will have to be borne in mind. When one article deals with general cases and another deals with particular cases and when we come to a particular case the article that governs is the particular article and not the general article.

SHRI C. D. DESHMUKH: May I ask whether article 377 by itself prescribes the salary or leave of absence or pension?

SHRI K. S. HEGDE: I shall come to that certainly. Article 377 only to a certain extent makes reference to article 148(3). That part of article 148(3) becomes a pari of article 377 and the very reference to article 148(3) shows that the other portions of article 148 has no application. That is one consideration of law.

■ KM C. D. DESHMUKH: We are only concerned with terms of service. Article 377 says the terms of service as determined by article 148(3).....

MR. DEPUTY CHAIRMAN: He does not agree.

SHRI K. S. HEGDE: That is the mistake probably that the Attorney-General has done and that is unfortunately, with all respects I say, which you are making also. Article 377 makes particular reference to terms of office. I will read it:

"The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 etc."

Article 148(3) has several things. One point is salary and other conditions of service. These words are omitted in article 377. You are now trying to extend his office under "conditions of service". That particular word deliberately was omitted from article 377 and if that is so, the interpretation of the law is when you make reference to a particular sub-clause of an article and you omit a particular portion, the intention of the legislature is that it was not intended to be incorporated in that article.

PRINCIPAL DEVAPRASAD GHOSH: The article goes on to lay down the terms of service.

SHRI K. S. HEGDE: I am grateful to the Professor. It goes on to say:

"and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148."

SHRI C. C. BISWAS: Sir, without expressing any opinion on the legal point which is being argued, I would draw your attention to the terms of article 148(3) particularly to the proviso, the article says:

[Shri C. C. Biswas.]

"The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule."

Then there follows the proviso in which specific reference is made to three things, first salary, then leave of absence, then pension and then age of retirement. I should say that the term, condition of service, used in the substantive part of this article includes not merely salary but these three things—leave of absence, pension and age of retirement, Article 377 however states:

"The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension etc."

Nothing about the age of retirement. That is excluded. In respect of salary, leave of absence and pension the provision under clause (3) of article 148 is to apply. Then a separate provision is made as regards the age of retirement or duration of his term of office. There it is said:

"He shall be entitled to continue to hold office until the expiration of his term of office etc."

So I say in so far as article 377 makes article 148 applicable to the person who became the Comptroller and Auditor-General, it will apply only in respect of salary, leave of absence and pension. In respect of age of retirement there is a separate and special provision. That is what I am pointing out.

MR. DEPUTY CHAIRMAN: The Law Minister is supporting Mr. Hef/Je.

SHRI K. S. HEGDE: I am grateful to the hon. Law Minister for supporting my contention.

SHRI C. D. DESHMUKH: He is not supporting his contention. May I say that this is really drafting? Either you could have said 'He is entitled to—then you could have gone on to say—such condition of service as so and so' or one can split that up and deal with salary, leave of absence, pension under one thing and then under another form of words; the words "shall be entitled to" are common in both parts. Towards the end of that article, we say "entitled to such salaries". It is followed not by a verb but by various things—salaries, pensions etc. Then in the latter part because the term has been excluded, it is provided for again by repeating the words 'shall be entitled to continue to hold that office'. It might have been open to the draftsmen to have said "and to the tenure" so that it could be brought under article 148(3).

Now, I would like to put one critical question to the hon. Member before he continues. If this article 148(3) does not apply, is there any particular article which determines the term, of office of the Auditor-General? You can only derive that by the application of article 148(3). You cannot escape that. It is by article 148(3) that you do that. Until they are determined by Parliament by law, they shall be as specified in the Second Schedule. You omit 148(3) in regard to tenure and I suggest you are left with no term of office at all for the Auditor-General.

MR. DEPUTY CHAIRMAN: His argument is that it is covered by the provisions which were applicable to him immediately before the commencement of the Constitution—the old rules. That is his argument.

SHRI C. D. DESHMUKH: True, but the old rules can only be derived on their being enacted in some place.

SHRI K. S. HEGDE: Article 377 is titers.



SHRI C. D. DESHMUKH: The old rules are contained in the Second Schedule.

MR. DEPUTY CHAIRMAN: The whole argument against your proposition is that article 377 excludes the question of term of office from the operation of article 148(3) and it is governed only by the provisions which were applicable to him immediately before the commencement of the Constitution. This is the argument and you will have to meet it.

SHRI K. S. HEGDE: If I may continue my arguments, Sir. The difficulty that the hon. Finance Minister has presented himself, I don't think arises and a proper interpretation of article 377 and particularly the last few lines, will convince him that so far as the term of office of the present incumbent is concerned, it is limited and controlled by the conditions of service when he took over the new office under the Constitution.

Now, when the hon. Minister was reading and dealing with this question, I formed a rather vague impression—I hope it is a vague impression—that the Attorney-General was under extreme difficulties and by negative.....

SHRI RAJAGOPAL NAIDU: Stretching the point.

SHRI K. S. HEGDE: And negatively he was trying to find an excuse .....

MR. DEPUTY CHAIRMAN: Just as we all here are doing.

SHRI K. S. HEGDE: He was trying to find out what exactly was the intention in drafting the article—article 377 as it is today. It has been very appropriately said that nobody can know the intentions of an individual, that even the devil does not know its own mind. And the courts of law have invariably found it very difficult to find the intention of the legislators. The only test that they have laid down is that we will know the intention of

the legislature from the expressions that are used, from the language employed, from the terms employed and the sequence of the clauses. If you apply these tests, there is absolutely no doubt in my mind that when they enacted article 377 they had meant it to be a self-contained article. They said particularly .....

SHRI H. N. KUNZRU: Certain purposes only.

SHRI K. S. HEGDE: Yes, for the purposes enumerated in article 377. I do not mean to say that for purposes not enumerated in article 377 we cannot take assistance from article 148. So far as term of office is concerned, that is one of the purposes which were contemplated and provided for in article 377. If that be so, I do not think that this Parliament will have legislative competence to ignore the limitations that have been imposed by article 377 and by any stretch of imagination infer the intention of the Constituent Assembly by other extraneous consideration.

SHRI B. K. P SINHA: It creates a right; it does not impose any disability.

SHRI K. S. HEGDE: It has, but every right has got its own limitations. To the extent that the right is earmarked or contained, to that extent it has got limitations; you will not be allowed to go beyond those limitations. That is what it says. I would invite the attention of my learned friend to the last portion of the article where it is said that he is entitled to continue to hold the office until the expiration of his term of office as determined in the provisions which were applicable to him immediately before the commencement of the Constitution and he will continue to hold office, up to what? Up to the point when he was entitled to the old rules. Is that not a limitation? Clearly it is a limitation. If you read only up to that point I fail to see how they can have any other meaning. To my mind it is surprising. If I am elected to hold a seat in the legislature for, say 6 years I can be there only

[Shri K. S. Hegde.]

for six years. Can I say that it must be again provided that I cannot hold office on the seventh year unless reelected? Is that required? It is the normal interpretation, the normal implication that flows out of the article.

Then there is another difficulty and a more fundamental difficulty than the others. A reference is made to article 148 in article 377. If no reference had been made to article 148, I could at least have considered that the Legislature intended article 377 to be merely supplementary to article 148. If the limited reference is made to article 148, how are you going to forget the point of that reference? It says only article 148(3) will be applicable. Only thus far and no farther. If that be so, I am afraid we are going outside the purview and the limits of the Constitution when we say we can legislate beyond that. I am convinced very rightly—I hope I am wrong—of that but I would still want the Iron Finance Minister in the light of the discussions that have taken place, to consult the Attorney-General over the question. Ultimately his opinion must prevail, because he is our Attorney-General. But one knows that even the best of judges often times come to wrong conclusions if both sides of the question are not presented to them. Indeed some of the interpretations of the Privy Council in *ex parte* cases on many of the texts of Manu and Yagnyavalka will make those law givers "to shudder in their graves if only they knew what these interpretations were. The difficulty is, often times, that first impression is not the correct impression. The Attorney-General might have given his consideration from a set point of view from an objective examination of certain reasons in the coolness of his chamber where the opposite points of view are not presented to him. If they were available to him the conclusion might have been entirely different. That is probably the reason why often times our legislation, in spite of having the best legal advice.....

SHRI C. C. BISWAS: I may say the opposite point of view was very fully placed before the Attorney-General.

SHRI H. N. KUNZRU: Before whom?

SHRI K. S. HEGDE: I am afraid, what is full and competent to the hon. Law Minister may be doubted by the other sections. After all it is a question of law and.....

SHRI C. C. BISWAS: On a point of law the question is who is to have the last word on it? And the authority who says the last word—his opinion prevails, whether for instance it is the High Court or the Privy Council or the Supreme Court.

SHRI B. RATH: Why not the Law Minister hear first?

SHRI K. S. HEGDE: The last word lies here with us. The Attorney-General is only our adviser. We respect his advice, but we may, under certain circumstances reject his advice. We are not bound by his advice. It is not something that binds our hands and feet. It is only something helpful to us. Please see it from the point of view presented by us. Do not kindly close your eyes, but try to examine and analyse it and find out if there is any lacuna. We say all this from that point of view, to be helpful, we try to be helpful. We are not here as destructive critics, we are not here to tie down your hands, but to help you, to try to see that our enactments are respected and upheld by the courts of law. Only from that point of view we present the difficulties, not from any other point of view.

This to my mind, as a lawyer of some years' experience, I find on reading the two sections together it leaves no doubt that so far as the term of office is concerned, this House or the other House may not have legal competence to determine that term.

It may be remarked—as was remarked by the Deputy Chairman—that these are legal niceties. But then we are dealing with the law and it is

only when we deal with law in an illegal manner more difficulties come. If we have to deal with law we must appreciate the legal niceties, for they are part and parcel of the entire thing. It is not a mere political question. It is a legal question.

Now, coming to the other objection raised by my hon. friend Diwan Chaman Lall, about "further office" I am sorry I am unable to agree with my learned friend. In this context further office means an office other than the one that he is holding. That is different from the one that he is holding. If he is re-employed then it will be a further office. Extension of the same service will never be a further office. The juxtaposition of the different articles and the reading of the articles along with the other articles will satisfy that the connotation that was intended by Parliament by the expression "further office" is something different from the office that he was holding.

Quoting the decision of the Privy Council my hon. friend said that the previous decision, the interpretation given, the practice established—the accepted practice—as he termed it, could be taken as giving a definite connotation. But that cannot be applicable here.

SHRI H. N. KUNZRU: Will my hon. friend consider clause (4) of article 148 with regard to the interpretation that he has given?

SHRI K. S. HEGDE: Yes.

SHRI H. N. KUNZRU: It says: "The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office". If all that is meant is that he shall not continue to hold the same office, it was not necessary to refer to the State Governments in this clause, because the Auditor-General's office is only under the Government of India.

SHRI K. S. HEGDE: Article 148(4) says that after retirement the officer shall not be re-employed by any State Government in any capacity whatsoever. That is what it says. I submit the question of fixing the term of office was not within the view of the Legislature when it enacted article 148(4). May I clarify myself? Supposing the next Auditor-General is to be appointed after the present incumbent's term of office is over, his term of office could be fixed by article 148(3), but for the present incumbent you cannot do it because he is out of article 148(3).

Another difficulty that was adverted to by Diwan Chaman Lall was with reference to article 377.

So far as that aspect is concerned, it has been dealt with by the hon. the Finance Minister.

SHRI B. B. SHARMA: One point that I would like to ask is sub-clause (4) of article 148 says that "the Comptroller and Auditor-General shall not be eligible for further office either under the Government of India" and then it says "or under the Government of any State after he has ceased to hold office". "After he has ceased to hold office" governs only employment under the Government of any other State but not for holding office under the Government of India.

SHRI K. S. HEGDE: I am afraid I am not in agreement with my learned friend that the word covers only a portion of the clause and not the clause as a whole.

But, one thing is important; I would invite the attention to the phraseology used in 148(3) and the phraseology used in 377. The phraseology that is used in 148(3) is "shall not be eligible for further office". The phraseology that is used in article 377 is "entitled to continue to hold office". They make a fundamental distinction between "eligible for further office" and "entitled to continue to hold". When two different expressions are used one of the canons of interpreta-

[Shri K. S. Hegde.] tion is that they must have different meanings; if the meaning is the same, two different words are not employed. Of course, as a rule of perfection this may have its own limitations.

Now, I have dealt with sufficiently with the legal aspect of the case.

Now, coming to a few of the points, I would like to bring to the notice of the House and the hon. the Finance Minister the undesirability of having the same cadre of service for the Finance Department and the Audit Department.

SHRI V. K. DHAGE: That is coming later on.

MR. DEPUTY CHAIRMAN: He is considering the entire Bill.

SHRI K. S. HEGDE: We are considering the entire Bill. The present practice is that the officers of the Audit Department are recruited from the Finance Department. Let me not be understood to say that in any manner officers of the Finance Department influence the decisions of the Audit Department. Far from it. We have got enough character and men of ability. They try to be as impartial as possible but we are only providing for a contingency. Supposing an officer in the Finance Department is recruited to the higher cadre in the Audit Department, when he himself will have to deal with the advice given by the Finance Department, by an officer who in that cadre is superior to him, in the very nature of things he will find it difficult to differ from the officer of the Finance Department. Yet another difficulty that he may be faced with, Sir, is that often times he would have developed a Finance Department psychology. I would not call it phobia but a mere psychology; if that psychology is there, he is bound to approach that subject from the point of view with which he has been nurtured and brought up in the Finance Department. The psychological approach of the two Departments may not be funda-

mental but certainly should psychologically be different and for this purpose a complete separation of the Finance Department from the Audit Department is absolutely essential.

SHRI K. S. HEGDE: If there is the close association between the two Departments.....

MR. DEPUTY CHAIRMAN: Clause (5) of article 148 provides for that.

SHRI K. S. HEGDE: Clause 5 says, "subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General, shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General". My information, Sir, subject to correction, is that even up to date a good deal of recruitment for the Audit Department is being done from the Finance Department.

SHRI C. D. DESHMUKH: No.

SHRI K. S. HEGDE: If that be so, if there are two independent services then I shall not press my point at all.

Now, one other aspect which I may say, only to emphasise and with which probably the Finance Minister is in agreement with the spirit of the idea is that we must immediately separate the accounts from audit. Unfortunately today, accounts is being maintained by the Audit Department. I do not propose to advance more arguments because this has been emphasised by several speakers here and in the other House and it is not necessary for me to repeat them but I am sure the hon. Finance Minister would take early steps to separate the maintenance of the accounts from the auditing of accounts.

Just one other aspect. Sir, for your consideration. Is it not desirable also to have separate Comptroller so far as the States are concerned? Today there is a good deal of mixing up and

a good deal of difficulty. Apart from the difficulty for the Comptroller to have to closely scrutinise and supervise the accounts of the Government of India and the Governments of the several States, there is always a likelihood of a certain amount of conflict between the States and the Centre and this will have some important bearing on the manner in which we are auditing the accounts of the two different legal entities. Again, without elaborating this point, I suggest this for the consideration of the hon. Finance Minister.

With these things, I commend the Bill for the acceptance if it is legally found sustainable. 11 A.M.

SHRI KISHEN CHAND: Mr. Deputy Chairman, we have heard eminent lawyers, who are Members of this House, trying to give legal interpretation to these articles 377 and 148. I will in a few words deal with the same articles from their construction point of view.

[The Vice-Chairman, Shri K. S. Hegde, in the Chair.]

If you see article 377. Sir, from the point of view of 'a sentence of the English language' you will find that the words "shall be entitled to" are repeated. That means that if the words "be entitled to" were not repeated, then the whole thing could have become one clause. But on account of the repetition of the words "shall be entitled to" we can really split up this article into two separate parts and yet retain the full meaning of the article. That means that, in interpreting this article, we can say that "the Auditor-General shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148\* \* \* and shall be entitled to continue to hold office until the expiration of his term of office". That means article 148(3) is not at all applicable to the second part of this article but I beg to disagree with the subsequent conclusion drawn by the hon. Member who preceded me. If

you again go to the exact meaning of the words "be entitled to" from the dictionary point of view, the words "entitled to" mean that the person has a claim to it. But this does not mean that it deprives him of the right to claim, the benefit from the fixing of a longer period or term of office. I again draw your attention to the word "entitled" because the word "entitled" does not denote 'compulsion'. It means that it is the privilege and right of the Comptroller and Auditor-General to continue until the expiration of his term of office. If instead of the words "be entitled to continue to hold office" the words "shall hold" had been there, then it would have been an obligation. But by putting in the words "entitled to" it becomes not an obligation but a privilege, and being a privilege we cannot alter the term to his detriment but we can certainly alter it to his benefit. The presence of the words "entitled to" has not been fully taken notice of by those hon. Members who preceded me. They have taken the word "entitled to" to mean an 'obligation' in the fixing of his tenure of office, but reference to the dictionary will convince those hon. Members that the word "entitled" is not an obligation but a 'privilege'.

SHRI GOVINDA REDDY: Does the word mean to imply that he is entitled to anything. Sir?

SHRI KISHEN CHAND: It means that the Parliament may fix any tenure of office which is to his advantage.

THE VICE-CHAIRMAN: You kindly read the proviso to article 148(3).

SHRI KISHEN CHAND: Article 377 refers to the tenure of office. Article 148(3) governs his salary, leave of absence and pension. I am particularly referring to the second part of article 377 where it appears "and be entitled to hold office until the expiration of his term of office" and I am trying to interpret that sentence only, and in trying to interpret that sentence I am trying to find out the meaning of the words "be entitled to" because the whole sentence is governed by the

[Shri Kishen Chand.] meaning of those words. I am trying to interpret the meaning of these words as they appeal to me. The first part of article 377 says that the Auditor-General of India, if he has not elected otherwise, shall become the Comptroller and Auditor-General of India and on becoming such he becomes entitled to such and such salaries, etc. On the other hand if he does not elect to become the Comptroller and Auditor-General of India then all these conditions and privileges do not come in. His salaries, etc. are governed by article 148(3). About his tenure of office he is given a minimum tenure of office; it is a minimum guarantee and that is "until the expiration of his term of office". The word "entitled to" leaves a loophole to him that "this is the minimum guarantee but if the Parliament passes an enactment which extends the period from five years to six years he can be entitled to that benefit also."

SHRI B. B. SHARMA: Under what article can that intention be taken for granted?

SHRI KISHEN CHAND: It is not a question of taking anything for granted. It is a negative decision. The negative decision is that his term of office cannot be reduced below five years.

THE VICE-CHAIRMAN: Order, order. Kindly allow him to proceed without interruption.

SHRI KISHEN CHAND: I am looking at it not particularly from the legal point of view but I am trying to interpret it as a sentence in the English language and from the point of view of the English language that word "entitled to" gives a loophole to him. That is my contention. Of course the hon. Members may disagree with it.

Therefore I submit, Sir, that Parliament is empowered to make any legislation which will prescribe the term of office for any Comptroller and Auditor-General and apply that to the present incumbent also provided that such application does not deprive him of a certain privilege which is granted to him by the previous Rules ap-

pertaining to this matter. With these wards, Sir, I close this chapter and I come to other clauses of the present Bill.

I have sent in an amendment to clause 3 which I shall explain in greater detail later on. Suffice it to say here that if we read clause 3(a) we shall find that there are two categories of rules applicable to the Comptroller and Auditor-General for fixing his pension. After clause 2(a) (i) and (ii) line 25 reads "the service as Comptroller and Auditor-General in either case being reckoned for the purpose of the relevant rules as service for pension." That means that the period of service as Comptroller and Auditor-General is taken into account in determining the pension to be awarded to him. This does not rest here and it continues further to clause (b) at the beginning of which it reads "to an additional pension of six hundred rupees per annum in respect of each completed year of service as Comptroller and Auditor-General". I am surprised, Sir, that in calculating the pension the period of service as Auditor-General is taken into account first as per rules applicable to that post and then over and above that, the same period of service for an additional pension. Such a procedure is not followed.....

THE VICE-CHAIRMAN: Would it not be better if you say all these things in connection with your amendment that you may be moving.

SHRI KISHEN CHAND: I expect the hon. Finance Minister to give a general reply to this also. I will go into this in greater detail later. I am giving a general outline of all the points that arise out of it. So I was pointing out that the hon. the Finance Minister will give due consideration to the fact that in calculating the pension the period of service as Auditor and Comptroller-General is not counted twice over by once utilising it for calculating the pension as per rules and for giving additional pension.

Again, in the same clause it says: "Provided that the aggregate of all pensions payable to the Comptroller

and Auditor-General shall not, (i) in the case of a member of the Indian Civil Service, exceed one, thousand pounds sterling per annum; or (ii) in the case of a member of any other service, exceed twelve thousand rupees per annum." I submit that we are still carrying on, even after independence, that distinction between the I.C.S. officers and the non-I.C.S. officers. I want that our Statute Book should not be marred by this type of distinction between the same class of officers, in respect of their origin of service. And if this is allowed, there is a possibility that people who may have joined the Finance Department from the I.C.S. in 1945 or 1946 may become some day Auditor-General of India, 30 years hence. Do we want this type of privileges to continue eternally in our country? Would it not be better that we word the clause in such a way that this type of privilege to the I.C.S. and the payment of pension in pounds sterling does, not- arise? I had sent in an amendment which was not permitted by the Chair wherein I had submitted that this proviso should be entirely replaced by another clause that the maximum pension, should not exceed Rs. 13,330. The "underlying idea is that our Government should not guarantee the payment of pension in a foreign currency. We should no longer have on our Statute Book any rule or regulation which' commits the Consolidated Fund of India to pay any amount in a currency which is not legal tender in this country. Therefore I had sent in that amendment that instead of saying here one thousand pounds, we may replace it at the present par of exchange, *i.e.*, by Rs. 13,333-5-4. To have such a thing on our Statute Book does not look nice, nor is it in conformity with the dignity of a Republic. Therefore, Sir, I will say that with these alterations, I give support to this Bill.

Stami V. K. DHAGE: Mr. Vice-Chairman, Sir, I have listened, with rapt attention, to the opinion given by the Attorney-General

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of India, and I agree with you, Sir, when you spoke, last that this opinion seems to have been given in rather trying to find a way out in order to give extension to the office of the present Comptroller General of India. I quite agree with you, Sir, that article 377 of the Constitution is self-contained and also with the arguments that you advanced as well as Diwan Chaman Lall did with regard to article 148(3) and article 377.

But, Sir, assuming that article 377 is not self-contained, you come to article 148(3). In article 148(3) it is specified that "the salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule." Now that is the provision made. That is to say, if the Parliament so desires it may fix the period, but if it is not so fixed, then the provisions in Second Schedule shall govern. Now, Sir, the Second Schedule governs conditions of service, etc. and I shall read them to you. Part E, article 12(1) says: "There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem." That is fixed. That will also be applicable to the present Incumbent as well as the one who shall come hereafter. I am taking the condition that if the period is not fixed now, what would the other gentleman who will follow hereafter be entitled to? That is what I am trying to say.

Sir, sub-clause (2) in Part E governs the gentleman who is the present incumbent of the office. It says: "The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on such commencement the Comptroller and Auditor-General of India under article 377 shall in addition to the salary specified in subparagraph (1) of this paragraph be

[Shri V. K. DHAGE.]

entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing as Auditor-General of India immediately before such commencement." And I presume, Sir, he is drawing more than Rs. 4,000. Just now the hon. the Finance Minister said that under the Government of India Act, he was entitled to Rs. 60,000 per year which means Rs. 5,000 per month. So even now he draws the salary mentioned under paragraph (2), i.e., Rs. 5,000 per month, while paragraph (1) had fixed it at Rs. 4,000.

Now, let us take paragraph (3). It says: "The rights in respect of leave of absence and pension and the other conditions of service of the Comptroller and Auditor-General of India shall be governed, or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed\* as references to the President." Now, Sir, it means that this paragraph (3) repeats what has been stated in article 377 towards the end, that is to say, "be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of

article 148.....". In article 377 we find that the Comptroller and Auditor-General of India shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement—which repeats more or less paragraph (3) of Part E in Schedule II. So, Sir, the period that has been specified in article 377 towards the end is also 'on par' with paragraph (3) of Schedule II and that being the case, it is not necessary for us to pass this law. This law states that it will be applicable even to the future incumbent of this office and he will have the

same conditions of service as are applicable to the present incumbent. That being the case, article 377 specifically lays down that his office must end according to the terms and conditions provided at the time of its commencement. Article 377 restricts the period of the term of the present incumbent of office. That is all.

SHRI R. C. GUPTA (Uttar Pradesh); Sir, I will confine myself only to the legal and constitutional question. If we read article 377, all the points are covered by it. The first is the salary, the second is leave, the third is pension and the fourth one is the period of service i.e. the tenure of office. It is true that the first three are governed by clause (3) of article 148. There is not the slightest doubt about it. Now at the end of article 377 it is said:

"The Comptroller and Auditor-General of India shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement."

So far as article 377 is concerned it lays down that the tenure of office shall be confined to the period to which he is entitled under the provisions which were in force before the commencement of the Constitution. But this is a specific provision for a specific purpose. Article 148 figures under Chapter V, Part V and that Chapter V lays down the general provisions with regard to the Comptroller and Auditor-General of India. Therefore, we have got two sets of provisions—general and special. It is true that if there is any conflict between the two provisions, the special provisions shall override the general ones. That is the maxim of law which cannot be disputed. But equally well-established is another principle that if the two provisions can be so read together that there may be no conflict between them and the interpretation may be put in



such a way, that the conflict could be avoided, then my submission is that.....

The VICE-CHAIRMAN: You mean the harmonious construction?

SHRI R. C. GUPTA: Yes. So far as the term of office is concerned, it can be divided into two parts because in respect of one part I feel that the Parliament may not be entitled to pass legislation which may affect the term of office of the present incumbent to his disadvantage. I may give you a concrete case, Sir. Supposing there was an Auditor-General at the commencement of this Constitution whose age was 45. Under the law or under the rules of 1936 he was entitled to continue, if he belonged to the non-I.C.S., till he completes the age of 55. That is, he could continue in office for ten years. Now, if we alter the law confining the tenure to six years, will that alteration not be to the disadvantage of that incumbent? Under article 377 such an alteration is not possible because if you fix the period of six years you are really reducing the period of service to which he is entitled under article 377 because his age was then 45 and he could have gone up to the age of 55. Therefore, you cannot reduce the period from ten years to six years. But at the same time in the case of the present incumbent, I understand he can continue up to the age of 59 and therefore there will be no such invalidity because we are not shortening the period of his service. In the instance which I have cited, if the age of the Auditor-General was 45, we would really be shortening the age of service. But in the case in question we are not doing that and therefore my view is that there will be no invalidity so far as the present case is concerned. Of course if you were to shorten the service, you could not do it because it is the right of the incumbent to continue to hold office till the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement-

ment. So I agree to this extent that the new Bill would be *ultra vires* if we were to apply it to the case of a person who could hold office for more than six years. But if we are concerned with the concrete case here in which we are not really shortening his period of service, but extending" the period of service, I think there will be no invalidity.

There are certain other reasons which I would like to advance at this stage. Under the Constitution there are three services—the Judges, the Auditor-General and the Members of Public Service Commission.

The VICE-CHAIRMAN: And the Election Commission.

SHRI R. C. GUPTA: Yes. Now the provisions for these services are more or less similar. If we refer to article 376(2), we find certain distinction. It says:

"The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine."

These words "notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article" are very important and they make it perfectly clear that the intention of the Legislature was that the general clauses should govern the cases of those incumbents who were the first incumbents after the Constitution came into force but you find these words missing in article 377. Well, the reason is very important because

[Shri R. C. Gupta] under article 377 they did not want to restrict the general provisions of article 148 at all. But under article 376(2) they wanted to place that restriction and therefore they had said so. The fact that these words do not figure in article 377 clearly indicates that it was intended that the provisions of Chapter V, Part V, shall apply to all incumbents, irrespective of the fact whether or not they were incumbents when the Constitution was passed. This clearly indicates to my mind that a distinction was intended to be made and this distinction was that in the case of the Auditor-General the Parliament will have a right to alter the period of service of course with a proviso which is added to article 148(3) that it could not be altered to his disadvantage. Now, to my mind the interpretation is this that you can alter the salary, the leave privilege, the pension privilege as well as the tenure of office by passing a law in the Parliament but subject to the proviso that you cannot alter it to the disadvantage of the incumbent. Therefore, I think there is nothing wrong in the Bill so far as the case of the present Auditor-General is concerned.

My reading of the law is that, although Parliament has got no right whatsoever to curtail the tenure to which he is entitled under article 377 by passing any legislation, but in this particular case, I think Parliament is perfectly entitled to pass the Bill under discussion. The proviso to clause 3 of article 148 really also indicates that Parliament has a right or has been given the right to pass a law which may affect the age of retirement. Otherwise, this proviso should not have been added:

"Provided that neither the salary of a Comptroller and Auditor-General nor his right in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment." This applies not only to the incum-

bent who was there when the constitution was passed but also to those who may come hereafter.

SHRI H. N. KUNZRU: Sir, the Bill before us deals with two matters, the tenure of service, salary and other conditions of service of persons appointed to the office of the Comptroller and Auditor-General of India in future, and the tenure of service, leave, pension, etc. of the person taken over from the past administration and appointed immediately after the commencement of the Constitution as the Comptroller and Auditor-General of India. I shall refer only to the second aspect of the Bill at present. The Bill before us affects the conditions of service of the present Comptroller and Auditor-General of India who was taken over from the past administration broadly speaking in two ways: It increases his term of office and increases his pension. There has been a good deal of question about the authority under which Government have acted in bringing forward provisions relating to these matters. Both article 148 and article 377 have been referred to in this connection. Article 148 is of a general kind. It deals among other things with the salary and other conditions of service of the Comptroller and Auditor-General of India, but there is another article 377 which deals specifically with the case of the present holder of the office of Comptroller and Auditor-General of India who held the post of Auditor-General of India before the commencement of the Constitution, if it were not for this article the provisions of article 148 would apply in their entirety to all holders of the post of Comptroller and Auditor-General, but as article 377 exists, we have to consider whether it is to be regarded as having some effect or it is an entirely superfluous article in view of the generality of the application of article 148 or whether article 377 in any way restricts the application of article 148 to the present holder of the office of Comptroller and

Auditor-General. I am sure H will not be said that article 377 is wholly superfluous. The opening words of this article are:

"The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India."

It is obvious that to the extent that this article provides for the continuance in office of the old Auditor-General of India it is not superfluous. Will it then be justifiable for us to assume that the rest of the article is superfluous? I think, Sir, that we cannot fairly come to that conclusion. What are the rest of the words of this article? After the words I have already quoted, the article continues as follows:—

".....and shall thereupon....."

I.e. becoming on the commencement of the Constitution the Comptroller and Auditor-General of India".

".....be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148, in respect of the Comptroller and Auditor-General of India....."

If article 148(3) could be applied to all persons holding the office of the Comptroller and Auditor-General of India, whether they were appointed immediately on the commencement of the Constitution or thereafter, then these words would be superfluous.

THE VICE-CHAIRMAN: Probably 377 will apply but legislative action will be taken under 148.

SHRI H. N. KUNZRU: If it is held that clause (3) of article 148 is of the utmost general application, then

it was not necessary to provide in article 377 that the existing Comptroller and Auditor-General of India will, in respect of his leave of absence and pension be governed by clause 3 of article 148. Obviously, it was thought that as a special provision was being inserted in the Constitution to deal with the case of one person viz., the Auditor-General of India who became immediately on the commencement of the Constitution the Comptroller and Auditor-General of India, it was necessary to lay down that clause (3) of article 148 would apply to him and not merely to persons appointed in the future to the office of Comptroller and Auditor-General of India.

PRINCIPAL DEVAPRASAD GHOSH: In respect of these items.

SHRI H. N. KUNZRU: In respect of these items. This shows at least one thing that the framers of the Constitution did not think that it would be enough to provide for the continuance of the old Auditor-General of India and leave the matter there. They, after giving due consideration to the matter, came to the conclusion that other matters should be provided for in this article i.e., article 377, to give him adequate protection. Article 377 therefore referred to salary, the rights in respect of leave of absence and to pension of the existing Comptroller and Auditor-General of India, and makes the provisions of clause (3) of article 148 applicable to them. Now we come to the remaining one of this article "and be entitled to continue to hold office until the expiry of his term of office as determined under the provisions which were applicable to him immediately before such commencement". Before arguing about the correct meaning of the word 'entitled' let us first consider the provision relating to the expiry of the term of office of the existing Comptroller and Auditor-General of India under the rules which were applicable to him before the commencement of the Constitution. The

[Shri H. N. Kunzru.] rule relating to his term of office was this. It is paragraph 2 of clause 6 of the Indian Audit and Accounts Ord. 1936 Part II:—

"Any other Auditor-General (that is an Auditor-General who does not belong to I.C.S.) shall vacate his office on attaining the age of 55 years or if at the date of his appointment he had attained the age of 50, after holding office for 5 years."

This means that had this rule continued to apply to the existing Comptroller and Auditor-General, he would have to vacate office on the completion of 5 years of service as Comptroller and Auditor-General. Now, Sir, we are told that the words "shall be entitled to" make all the difference in regard to his future tenure, of service. I think this interpretation must have caused more surprise to the members of the Drafting Sub-Committee of the Constituent Assembly, some of whom are Members of Parliament even now, than it could have done to any other Member of Parliament. Those persons who were Members of the Constituent Assembly know that there was a great deal of discussion behind the scenes with regard to the position of the last Auditor-General of India. The article relating to him is the result of this discussion. The Constituent Assembly meant, I have no doubt whatsoever, that the period of service of the person who was to become Comptroller and Auditor-General of India immediately on the commencement of the Constitution was to be 5 years. Again, is there really any difference between the words "shall be entitled to hold office" and "shall continue in office". Before the Finance Minister read out the opinion of the Attorney-General to us. I should have said that the interpretation put upon the words "shall be entitled to" was a Pickwickian interpretation. But after all I shall not be so disrespectful now but shall attempt to consider as seriously as I can the view of

the Attorney-General which has commended itself to the Government.

SHRI KISHEN CHAND: Does the hon. Member mean that the opinion of other hon. Members may be termed Pickwickian except that of the Attorney-General?

THE VICE-CHAIRMAN: It is a matter of opinion.

SHRI H. N. KUNZRU: The hon. Member has completely misunderstood me and if I had felt that the word Pickwickian could not be understood, I would not have used it. It has a well-understood meaning and it does not cast reflection on any Member of this House. I am sure the hon. Finance Minister understands that perfectly.

SHRI C. D. DESHMUKH: I regard this is somewhat libertine sense.

THE VICE-CHAIRMAN: We shall agree to hold each other's opinion.

SHRI C. D. DESHMUKH: I am sorry to interrupt. I was going to ask Dr. Kunzru to consider what would have happened if under article 148(3) we had fixed the pay of the Comptroller and Auditor-General at, say, Rs. 6,000. Because, in that case that pay would have applied to him under article 148(3).

SHRI H. N. KUNZRU: Does article 148(3) prevent you from doing it now?

SHRI C. D. DESHMUKH: It does not. Therefore article 377 is a protective section which says.....

SHRI H. N. KUNZRU: If you make the salary Rs. 6,000 a month, the clause would continue to be protective. The Comptroller would lose nothing thereby but would only gain.

SHRI C. D. DESHMUKH: But the clause does apply then to him,

SHRI H. N. KUNZRU: The clause applies to him. Certainly article 148 but in respect of matters referred to

In article 377, it applies only in the manner laid down in that article. That is my point.

SHRI C. D. DESHMUKH: That is right. Therefore since the proviso does not come into operation, he will be entitled to Rs. 6,000. Is it not? In other words, article 377 permits of better terms and it does not permit of worse terms.

SHRI H. N. KUNZRU: I understand the drift of my hon. friend's question. But he has not allowed me to finish my argument.

SHRI C. D. DESHMUKH: I am sorry for the interruption.

SHRI H. N. KUNZRU: No, I do not complain of the interruption. I am very glad the hon. Minister puts question to me and I know what is in his mind.

I ask him now to consider another point. This point has been drawn attention to by you, Sir, and by my hon. friend Diwan Chaman Lall and possibly by some other Members also. That is that while article 377 of the Constitution allows the application of clause (3) of article 148, in respect of certain definite matters, namely, salary, leave, pension etc. of the Comptroller and Auditor-General, 'of the first Comptroller and Auditor-General.....

THE VICE-CHAIRMAN: And not conditions of service.

SHRI H. N. KUNZRU: It does not allow its application to the last part of the article which refers to the term of office. Now, is this difference between the two parts of article 377, the one relating to certain conditions of service referred to in the article and the other to the term of his office accidental? Did the Drafting Sub-Committee of the Constituent Assembly or the Constituent Assembly treat the two parts to which I have referred to differently in a fit of absent-mindedness?

SHRI C. D. DESHMUKH: May I answer that question?

SHRI H. N. KUNZRU: Yes.

SHRI C. D. DESHMUKH: They did not because so far as the salary, leave of absence, pension and age of retirement were concerned, the proviso itself protected the Comptroller and Auditor-General.

THE VICE-CHAIRMAN: Which Comptroller and Auditor-General?

SHRI C. D. DESHMUKH: All. It does not make any reference to the present or future. The last words in article 148(3) will apply to all, including the existing one. That proposition is upheld, I think.

SHRI H. N. KUNZRU: No, no.

SHRI C. D. DESHMUKH: Because if it is not, then there is no meaning in saying that he shall be entitled to such salaries and such rights in respect of leave of absence etc. provided in clause (3) of article 148. That is to say all these conditions shall apply to him, subject, of course, to the proviso. Now, the proviso itself protects the Comptroller and Auditor-General in respect of certain existing things. They are as I said, his present salary, leave of absence, pension or age of retirement. For some reason which is not known now, this proviso does not mention the term of office. Therefore, since the term of office was left out of this protective device it has to be mentioned separately in article 377.

THE VICE-CHAIRMAN: Is not the proviso an exception to article 148(3)?

SHRI H. N. KUNZRU: Sir, I do not think the argument of the hon. Finance Minister is correct. Even though article 148(3) refers to.....

THE VICE-CHAIRMAN: Salaries and conditions of service.

SHRI H. N. KUNZRU: Tenure of services is referred to because it is

[Shri H. N. Kunzru.] not provided for in clause (3) of article 148.

[MR. DEPUTY CHAIRMAN *in the Chair.*]

12 NOON.

The first part of clause 3 says "the salary and conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and until they are so determined shall be as specified in the second Schedule". One of the paragraphs in part E of the Second Schedule says: "the rights in respect of leave of absence and pension and the other conditions of service—of which the term of service is one—of the Comptroller and Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which may be applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President." The inclusion of this Schedule was Quite enough.

SHRI C. D. DESHMUKH: No. There are three stages: the first is how are the salary and conditions of service of the present Comptroller and Auditor-General or any Comptroller and Auditor-General to be determined so long as a law is not made? Now, so long as the law is not made, you have recourse to the Second Schedule. Then the question arises, *it* you do pass a law, irrespective of the question of its application to any existing incumbent, if you pass a law, how does it affect the incumbent under article 377? Now, if you did not have any other rules, supposing you did not have 377, then only 148(3) with its proviso would apply and we might, for instance, have retained only the first part of article 377 which says that he shall be our Comptroller and Auditor-General, and left it at that.

SHRI H. N. KUNZRU: I think the argument is not correct.

SHRI C. D. DESHMUKH: Let me finish the argument.

Then, we could have left it at that but We could not have left it there because the proviso did not go far enough so far as his term of service was concerned. The proviso said that no matter what salary and what leave of absence and so on, you determine, you could not alter to the disadvantage of the Comptroller and Auditor-General his terms of service, and that is repeated again. It says that he shall be entitled to such salaries and such rights in respect of leave of absence as are provided in clause (3) of article 148 and that shall govern henceforth the conditions of service of the Comptroller and Auditor-General whether he is the old or the new one.

SHRI K. S. HEGDE: In its entirety?

SHRI C. D. DESHMUKH: In its entirety, subject to the protection that is given by virtue of going from article 377 through article 148(3). Now, if the proviso had been complete in itself, then, I submit, that there would have been no need for the concluding portion of article 377. We might have left the matter at that; we may not have a set of conditions of service as provided for in article 148(3) but the proviso merely refers to leave of absence, pension or age of retirement and, curiously enough, it does not refer to term of office. There is nothing wrong but it leaves some matter uncovered and that matter is specifically covered in the last four lines of article 377.

SHRI S. BOSE (Nominated): The hon. Finance Minister, if I understood him rightly, argued that while we cannot legislate anything which will be to the disadvantage of the present incumbent, it is perfectly within our rights or perhaps perfectly legal to legislate something which will be to his advantage. Now, what I mean to say is this: there is, in the.....

SHRI H. N. KUNZRU: Is the hon. Member putting a question or making observations now?

SHRI S. BOSE: I sit down because I always bow down to legal.....

(Interruptions)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI H. N. KUNZRU: All that I mean to say is that I have not finished.

MR. DEPUTY CHAIRMAN: Let Dr. Kunzru continue.

SHRI H. N. KUNZRU: I have not finished my observations. If my hon. friend wants to put a question, I shall certainly give way to him but if he wants now to begin his own observations I shall request him to wait for a little longer.

SHRI H. P. SAKSENA (Uttar Pradesh): It is for the Chair to decide who is to continue,

MR. DEPUTY CHAIRMAN: Order, order, Mr. Saxena.

SHRI H. N. KUNZRU: That is a very wise remark, Sir, with which I entirely agree.

MR. DEPUTY CHAIRMAN: Please continue, Dr. Kunzru.

SHRI H. N. KUNZRU: Now, Sir, my hon. friend the Finance Minister is putting forward an argument which he had not thought of before. It seems to me now.....

SHRI C. D. DESHMUKH: Because it arose out of observations which came after the conclusion of my speech.

SHRI H. N. KUNZRU: I think it is not so. This was, in a different way referred to also by my hon. friend Diwan Chaman Lall but there would

be no humiliation to my hon. friend in confessing that this argument has occurred to him now.

PROF. G. RANGA: Yes, he has said so.

SHRI H. N. KUNZRU: The debate is not concluded and he will be perfectly within his rights in putting forward a second argument.

SHRI K. S. HEGDE: There is nothing like after thought in a legal argument.

SHRI H. N. KUNZRU: Mr. Deputy Chairman, the Finance Minister has laid great stress on the importance of the proviso and has expressed the opinion that as the proviso did not refer to the tenure of the present Comptroller and Auditor-General of India, it was necessary to refer to it in article 377. But, Sir, under clause 3, with the proviso it is laid down that the salary and other conditions of service of the Comptroller and Auditor-General of India shall be such as may be determined by Parliament by law and until they are so determined shall be as specified under the Second Schedule. Now, Sir, the other conditions of service, as pointed out by the Finance Minister himself in replying to Diwan Chaman Lall, include the term of office. Now, this term of office is referred to in the Second Schedule. The last paragraph in part E of the Second Schedule makes this quite clear. It says, "the rights in respect of leave of absence and pension and the other conditions of service—which include the term of office—of the Comptroller and Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution, etc." My hon. friend will, therefore, see that even if no reference had been made to the tenure of the Comptroller and Auditor-General of India, the matter would not have been left unprovided for

SHRI C. D. DESHMUKH: That is not so. The Second Schedule would have been washed out by any law that the Parliament makes and it has to be restored to any length that we want to go to and that is done by the concluding portion of article 377. In other words, as soon as the law is passed, the Second Schedule ceases to have any significance.

SHRI H. N. KUNZRU: As soon as a law by Parliament is passed.

SHRI C. D. DESHMUKH: Yes.

SHRI H. N. KUNZRU: Quite so, but Parliament itself allowed part E to be inserted in the Constitution.

SHRI C. D. DESHMUKH: No.

SHRI H. N. KUNZRU: Of course, it was the Constituent Assembly. Most of the Members of the Constituent Assembly are here and these provisions were passed because the Government of the day then—which was practically the same as the Government in office now—agreed to these provisions. There was practically no danger, therefore, of the present Comptroller and Auditor-General of India losing anything. Secondly, an assurance having been given to the existing Comptroller and Auditor-General of India, it was unthinkable that Parliament could go back on it. What is then, Sir, the effect of article 377 if it is not to lay down the terms of office of the first Comptroller and Auditor-General of India? The effect of it is to take this matter out of the ambit of clause 3 of article 148 with respect to the increase in the term of office. That is its effect and a very important effect and the reason for it is quite apparent. But for the last words of article 377, it would have been clause 3 of article 148 that would have been applied and Government could, in that case, have increased the term of office of the present Comptroller and Auditor-General of India. But, the framers of the Constitution did not want that the

Government of India should do this—and they, therefore, laid down in article 377 that he shall be entitled to the terms of service to which he was entitled under the rules relating to him immediately before the commencement of the Constitution. The reason for it, Sir, is quite plain. We were all anxious that the Comptroller and Auditor-General of India should occupy a position of complete independence. Dr. Ambedkar, in his speech, regarding article 377 laid great stress on the importance of the office of the Comptroller and Auditor-General of India. It is apparent from it that the Constituent Assembly wanted that his independence should not be affected by the ability of the Government to increase his term of office. Had the Comptroller and Auditor-General of India known, as soon as the Constitution commenced, that he can, by pleasing the Government, persuade them to pass a law increasing his term of office, it is obvious that his attitude towards the executive would have been seriously affected and the Constituent Assembly wanted to prevent this undesirable result.

SHRI C. D. DESHMUKH: Would the hon. Member make reference to the debates in the Constituent Assembly?

SHRI H. N. KUNZRU: I have to a certain extent, though I confess I do not remember the particular date.

SHRI C. D. DESHMUKH: I have got them here. The clause was suggested by Shri Ambedkar: "Sir, with your permission, I move a slightly amended 310(b)" and then it goes on: One is about the Public Service Commission and the other is equivalent to 377. It was then called 310(a) and in the speech that he made he observed as follows: "These articles merely provide for the continuance of certain incumbents of the posts which are regulated by the Constitution, such as the Members of the Public Service Commission and the Auditor-General. There is no important principle involved in these articles."



SHRI H. N. KUNZRU: I was speaking from what I remembered of the observations that he made with regard to the importance of the post of Comptroller and Auditor-General of India. Apart from this we were all anxious that the Comptroller and Auditor-General of India should not stand to the Government of India in the position in which the Auditor-General of India stood to the Government of India at the time the Constitution was being drafted. We wanted to strengthen his position. We knew that the Auditor-General of India was under the complete control of the executive and we were fully dissatisfied with this position because we had seen the result of this dependence of the Auditor-General on the Government of India during the War when he could not question certain items of expenditure. He was completely dependent, with regard to his future, on the goodwill of the executive. We wanted that a person who occupied a similar position in future should be in a much stronger position vis-a-vis the Government of India and not to be in a position where he would be able to look forward to any further preferment from the executive. And this purpose would have been completely lost had any reference to clause (3) of article 148 been made in that part of article 377 which refers to his term of office.

Now, Sir, I shall put forward only one point more with regard to this matter. The Finance Minister has told us that the Attorney-General of India has attached great importance to the words "shall be entitled to" and he referred in the course of his opinion to certain other articles too, for instance, clause (1) of article 378 which relates to the future of those Members of the Public Service Commission who held their posts immediately before the commencement of the Constitution. Let us see, Sir, what clause (1) of article 378 says, "The members of the Public Service Commission for the Dominion of India holding office immediately before the

commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members." Now, Sir, the only difference between; article 377 and clause (1) of article 378 is that while the words "shall be entitled to hold office" are used in article 377, the words "shall continue to hold office" are used in article 378(1). Now, Sir, is the legal construction of these articles to depend entirely on these words? It is not purely a legal matter though we must treat the opinion of the Attorney-General with all respect. We know what ordinary English words mean. If Government were inclined to be subtle, they could say "shall continue to hold office" which means that a person who was a member of the Central Public Service Commission before the commencement of this article had the right to hold his office for a certain term and nobody could threaten it. But nothing is laid down in the statute, I mean nothing is laid down in article 378 debarring Government from increasing his term of office, I mean this argument could have been as easily put forward in the case of the old members of the Central Public Service Commission as it has been in the case of the existing Comptroller and Auditor-General of India. But we know that the persons who were members of the Federal Public Service Commission which existed immediately before the commencement of the Constitution and who immediately after its commencement became members of the Public Service Commission for the Union held office only for the period to which they were entitled under the rules applicable to them immediately before the com-

[Shri H. N. Kunzru.] mancement of the Constitution. Their term of office was not increased. It was five years and it continued to be five years. Taking the plain words as they are and applying the little bit of knowledge of English that we have to understand the meaning of ordinary English words, I see that there is no difference between the two phrases used in articles 377 and 378. The reason for the difference, if any, is because these articles were drafted in different times and apparently a little variation was made in the language Of the articles from time to time. Such variations exist in respect \*)r other articles though I cannot point them out just now. But to base the whole case on the use of the words "shall be entitled to" seems to me to s&etch the language" too far. Let us suppose that Government is right there, but so long ^as clause (3) of article 148 does not apply to the term of office of the existing Comptroller and Auditor-General of India, though he may legally be able to stay in his office for a longer period than five years, where have the Government got the power to enable him to do so? The term of office,can be increased only under clause (3) of article 148 and if that does not apply to him, then whatever may be the position of the Comptroller and Auditor-General, whatever rights legally he may enjoy in future, Government cannot increase his term of office. Because, as I have already said, there must be some enabling provision in the Constitution so that the Government may increase his term of office. That provision is contained in clause (3) of article 148 and if that does not apply to the tenure of office as referred to in article 377, then I venture to think that the Government has not got the power to increase the term ■of office of the present Comptroller and Auditor-General.

SHRI C. D. DESHMUKH: That is arguing in a circle. If the law is passed, then we have the powers to do that.

MR. DEPUTY CHAIRMAN: Government is not doing it. Government

wants the Parliament to enact a law for doing that.

SHRI H. N. KUNZRU: I am only saying that Parliament should not accept his view.

SHRI C. D. DESHMUKH: That is another matter.

SHRI H. N. KUNZRU: That is all I can say. I am putting forward my view. I cannot debar the Finance Minister from bringing forward any Bill he likes. I cannot debar him from having recourse to any arguments he likes in his support. All that I can do is to appeal to the Council not to accept his view if they consider it to be erroneous.

DR. RADHA KUMUD MOOKERJI: Please argue the point whether con- ditions of service include tenure of office.

SHRI H. N. KUNZRU: If the hon. Member was dozing when I was speaking, I cannot help it. I am afraid that the Chair will not allow me to go over the whole ground again.

Before I leave this matter, I should like to point out that I personally entertain a very high opinion of the work done by the present Comptroller and Auditor-General of India. I think that he has discharged his duties not merely with ability, but with independence and integrity. He has been placed, owing to circumstances beyond his control, in very difficult positions but he has discharged his duty without fear of offending the Executive. To me personally, therefore, it would be a matter of pleasure if his term of office were extended. Had Government brought forward a Bill dealing entirely with his case and asking for an amendment of article 377, they would have had my complete support. I know how depleted the i'adr<sub>c</sub> of the Indian Audit and Accounts Service is.

SHRI K. S. HEGDE: The goodness of the Auditor-General is promoting them to make a bad law.

SHRI H. N. KUNZRU: I do not want it to be supposed that I am opposed to any extension of the term of office of the present Auditor-General. I do

not want that anything that we say should leave a slur on him, or should lead anyone outside this "House to feel that we did not have complete confidence in him. But it is still open to Government to bring forward a Bill to amend article 377. But so long as they do not do this, I think the Constitution debar us from passing any law which will, among other things, increase the term of office of the existing Comptroller and Auditor-General of India.

Now, Sir, just a word about another matter which I should like to refer to, though it does not directly deal with this. I referred to it in the course of the discussion on the Appropriation Bill. The Public Accounts Committee on the representation of the Comptroller and Auditor-General of India, has recommended the complete separation of accounts from audit. I know the Finance Minister's views on this subject and if I refer to it, it is not to controvert what he has said, but it is in order to emphasize the importance of the matter. The Government of India have already accepted this principle. It has been given effect to in the case of the Railways and the Defence Services. So far as the Central Government is concerned, the question is only one of extension of this system to the other Departments. The case of the States stands on a different footing. The system recommended by the Public Accounts Committee was given effect to in U.P., I think, in 1927 or 1928. I do not know whether it is still in existence there. Probably it is not.

SHRI C. D. DESHMUKH: Given up.

SHRI H. N. KUNZRU: I do not know. In any case it will not be enough for us to agree to the separation of accounts from audit. It would also be necessary that the accounts side was so strengthened as to be able to deal effectively with all those matters that are now dealt with by the officers of the Comptroller and Auditor-General. We do not want that this separation of accounts from audit should lead to

inefficiency. But if steps are taken to increase the cadre or to train more men wherever this is necessary, there is no reason why the separation should lead to inefficiency. All that I am saying is that the matter is one of cardinal importance and the Auditor-General should not continue to be responsible for keeping the accounts and making disbursements, either on behalf of the Central Government or on behalf of the Government of any State. I hope that my hon. friend the Finance Minister who is well acquainted with the importance of this matter will not, while proceeding cautiously or prudently, hesitate to take some steps in the immediate future to make it clear that the separation of accounts from audit is his aim and that he wants it to be done as quickly as possible.

DR. W. S. BARLINGAY (Madhya Pradesh): Mr. Deputy Chairman, Sir, I do not want to go over the ground already covered by several speakers in this House. But before I go on to discuss the legality or otherwise of the Bill before this House, I should like to make one or two observations. The first observation that I should like to make is that it will be recognised that with regard to an office of this sort, namely where the highest dignitaries of the State are concerned, the normal rule should be that we should not extend their terms of office. That should be the normal rule. Of course, I say this subject to the exigencies of the situation. I have no quarrel with the present incumbent. On the other hand, I join with other Members of this House in bestowing any amount of praise on the present Comptroller and Auditor-General.

There is no question about this matter and if there is no alternative, then I suppose we will have to support the Government in this regard. But I was merely saying that normally the rule should be that with regard to such important posts like these, there should not be any extension of

[Dr. W. S. Barlingay.] service. I am reinforced in this by the further consideration that even with regard to the legality of this Bill there has been such a controversy in this House and I am sure this controversy, this legal controversy, will have its repercussions outside also. In such circumstances, it is worthwhile to consider whether it is—shall I say—wise on the part of the Government to press certain provisions of this Bill being passed into law. The Bill could be suitably amended and if those particular provisions are deleted which refer to the present incumbent, I do not suppose that this House will have any objection to the passing of this Bill. I am aware of the contention of our worthy Finance Minister when he says that such legal interpretations ought to be left to the courts and this House or the Parliament should not be afraid of passing laws which they think it is worthwhile to pass. That is true enough, but we know it very well that even in the Supreme Court two Judges do not agree on points of law and it may very well be the case that if this Bill goes before the Supreme Court in some form or the other, several Judges of the Supreme Court may come to several different conclusions,

SHRI C. D. DESHMUKH: Sir, the point is that even if we were to omit the explanation, the question still arises whether the new term will not apply to the present Comptroller and Auditor-General. We are bound to hold that it does apply and therefore unless the Parliament says "Provided that nothing in this clause shall operate to extend the term ....." and unless it is in that positive form, the extended term is bound to apply to the Comptroller and Auditor-General under our interpretation.

DR. W. S. BARLINGAY: I agree with the Finance Minister in whatever he has said just now. But I was only pointing out a consideration which might weigh with him so far as the legal interpretation of these provisions is concerned, I must say,

I am entirely one with the Attorney-General and the Finance Minister and I hold that the interpretations which they have put upon the provisions in the Constitution are perfectly correct.

As I said, I would not like to go over the same ground again but there are one or two important points which I should like to place before this House. Let us read this article 377 very carefully. It is like this.

MR. DEPUTY CHAIRMAN: It has been read and re-read.

DR. W. S. BARLINGAY: I do not want to read the entire article. I want to read only those portions of it which are relevant for the purpose of my argument. It says:—

"The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India ....."

The word that is very important here is 'become'. After the commencement of this Constitution, this article says, there is an identity between the former incumbent i.e. to say, the incumbent before the Constitution and the present incumbent. There is an identity; that is a very important point. That shows that normally article 148 would apply also to the present incumbent, namely the Auditor-General of India.

SHRI K. S. HEDGE: Where is a special reference to that?

DR. W. S. BARLINGAY: I will make myself quite clear. Once this identity is established between the office as it obtains before the Constitution comes into force and as it is after this Constitution comes into force, what happens is this, that the present incumbent of the office is invested with all the rights and duties that attach to the Comptroller and Auditor-General of India under article 148 of the Constitution. There are certain other matters namely, leave of absence and pensions and so on and

so forth. Now, with regard to these, I entirely agree with Mr. Hegde that his interpretation is quite correct as far as it goes, namely that article 148(3) applies and has got to be read along with article 377 only in respect of those matters which are specifically mentioned in article 377. There is no doubt at all about this. But then there is again one little fallacy. As has been very ably pointed out by the Finance Minister, the provisions of article 377 are again only protective. The protection is that Parliament by law shall not curtail the privileges which are already enjoyed by the Comptroller and Auditor-General. That is the protection. And therefore the effect of the entire argument of hon. Shri Hegde is that the protection offered by article 377 will be only in respect of those matters and no more. The protection will operate only in respect of those matters which are specifically mentioned in article 377 and no more. If there are other matters outside article 377 then the protection offered by article 377 will not operate in respect of these matters at all, but what will operate will be article 148 as a whole because 148 has to be read along with 377.....

MR. DEPUTY CHAIRMAN: We will continue tomorrow, Dr. Barlingay. There is the Half-an-Hour discussion now by Dr. Seeta Parmanand.

SHRI RAJAGOPAL NAIDU: Sir, before we proceed to the next business marked for the day, may I suggest that in spite of the Attorney-General's opinion there seems to be a unanimous opinion from all sections of the House "that somehow or other, the Attorney-General's opinion has not convinced the House thoroughly? May I suggest therefore, Sir, in view of the provisions of article 88 of the Constitution, the Attorney-General of India can be asked to come to the House? He has every right to take part in the proceedings of the House. May I therefore request the Deputy Chairman on behalf of the House to request the Attorney-General to be present in the

House tomorrow so that he can take part in the proceedings and enlighten us further on this matter?

MR. DEPUTY CHAIRMAN: Government will consider that.

SHRI H. N. KUNZRU: If the suggestion is admissible, may I suggest that he should be asked to consider the matter again in the light of the observations made here.

SHRI C. D. DESHMUKH: That will be done in any case.

#### HALF-AN-HOUR DISCUSSION ON SMUGGLING OF GOLD

DR. SHRHMATI SEETA PARMANAND (Madhya Pradesh): Sir, as the House is aware that with regard to question No. 400 on the 15th April 1953 on the smuggling of gold, the feeling was general in the House that the Government was not able to supply all the necessary information asked for. Government had enough time to collect all the information necessary as the question was on the agenda even about 3 weeks earlier and at a certain stage was withdrawn and then it came up for discussion at a later stage. Sir, the smuggling of gold is a very serious offence, and as all would agree, especially when that offence is committed by people of high cultural status, moneyed people, people who enjoy high repute, people who had made it an international affair in conspiracy with foreigners, and people with diplomatic status, it becomes a very serious offence indeed, and this is the reason why this half-hour discussion was requested to throw some light on such an important matter, and with a view to pointing out to the Government that clemency in such matters does not help anybody, does not help the Government, does not help the people concerned but only causes confusion about the Government's policy. Sir, everyone is aware and particularly I am sure the hon. the Finance Minister who is so well-versed in Sanskrit, is aware that according to