

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

DR. W. S. BARLINCAY (Madhya Pradesh): Mr. Deputy Chairman, yesterday I was developing the point that there is nothing in article 377 of the Constitution of India to show that the Bill which has been brought before the Parliament by Government is in any way inconsistent with the provisions of the Constitution. If I may say so, Sir, there are three propositions which lie at the basis of the arguments on the other side, namely the arguments of Diwan Chaman Lall, Shri Hegde and Dr. Kunzru. But I would like to point out with all respect to them that although one might accept as true and correct everyone of these propositions, none-the-less the conclusion that they seek to draw from these propositions would not be correct. These propositions were very clearly enunciated by Shri Hegde. The first proposition is this. Shri Hegde says that article 377 is a self-contained article. Of course, he was very careful to explain that that did not mean that where there was a reference in the article itself to other articles of the Constitution, the other articles could not be read into the article. He admitted and quite rightly too, that when there was a reference to article 148 in article 377, both these articles have to be read together. I would go a little further and say that the very fact that the word "become" occurs in article 377 is significant. The occurrence of that word would show that ordinarily all the provisions of article 148 are also attracted and the entire article 148 has got to be read along with article 377, but barring, of course, certain matters in regard to which there is a specific mention in article 377.

This brings me to the second point of Shri Hegde. There also so far as the enunciation of the principle is concerned, he was **perfectly right**. He suggested with regard to article 148, when of course it is taken in connection with article 377, that the Parliament is competent to legislate with regard to the present incumbent of the

office in regard to those matters which are specifically laid down in article 377. There I submit, he was perfectly right. But as was pointed out yesterday, what would be the effect of this? The effect of this would merely be that the protection which is afforded to the present incumbent under article 377 would be restricted only to those matters which are specifically mentioned in article 377.

Now I come to one of the most important points in the arguments of those who are of a view contrary to the one expressed by Government. That third point is that when there is a general provision in any law with regard to certain matters and there is also a specific provision with regard to that matter, then the specific provision always over-rides the general provision with regard to that matter. And when this principle is taken along with the last portions of article 377, it is argued, and I submit that it is argued with great force, by the other side that unless you amend the Constitution, unless you amend article 377, you cannot pass a law; Parliament is not competent to enact a law which would provide that the term of office of the present incumbent could be extended. Now I suggest that this argument would have been perfectly valid. But there is the phrase there "shall be entitled to". Article 377 does not say, or rather, the phrase there is not that so far as the continuation or the extension of the term of office of the incumbent is concerned, he shall be governed by the provisions of the rules which were originally applicable to him. It does not say that. There was nothing which prevented the Constituent Assembly of India then functioning from putting in such a specific wording; but it has not done that. That shows that the purpose of that last sentence, the last phrase in article 377 operates again merely as saving the privileges of the present incumbent of the office, according to the rules which apply to him at present. It means nothing more than that.

SHRI K. S. HEGDE (Madras): May I know why the Constituent Assembly

did not make a general reference to article 148 instead of a limited reference to article 148?

DR. W. S. BARLINGAY: That is a very good point. The answer to that point is that the word "become" in article 377 is extremely significant. The word "become" means that originally there was some incumbent to that post and that incumbent becomes; the Comptroller and Auditor-General of India. He becomes that. That is to say, when the Constitution comes into force, the present Comptroller and Auditor-General will enjoy all the privileges and duties of the Comptroller and Auditor-General to be appointed under article 148, subject to certain restrictions which are provided specifically in article 377. This provision in article 377 has got to be taken merely as limiting the capacity of Parliament in certain specific ways. Suppose for instance, tomorrow Parliament wishes to pass a law that the present incumbent should not hold office for five years, but only for two years. Now, under the provisions of the Constitution that cannot happen. That is why I submit with great respect that the learned Finance Minister described article 377 as merely protective, he was perfectly right in doing so. There is just one other point.

SHRI J. S. BISHT (Uttar Pradesh): Can he be paid a salary of Rs. 7,000? Please see Schedule II, clause 2.

DR. W. S. BARLINGAY: Parliament can, if it likes, increase the salary to any extent it likes, provided it is consistent with commonsense.

SHRI J. S. BISHT: No, no. See Schedule II.

SHRI RAJAGOPAL NAIDU (Madras): May I point out the significance of the word "become" in article 377? In the 1935 Act there is no Comptroller but only the Auditor-General. Now in the present Constitution the Auditor-General who was serving under the 1935 Act becomes the Comptroller and Auditor-General of India. The signi-

ficance of the word "become" is only to that extent and to nothing, else.

DR. W. S. BARLINGAY: Well, I understand the point that has been made by Shri Rajagopal Naidu but I submit that there is nothing in the word 'become' or in article 377 to limit the interpretation in the way he tries to do.

Now, I come to the last point that I wanted to make in this connection. I am referring now to clause 4 of article 148. Clause 4 says that the Comptroller and Auditor-General shall not be eligible for further office either under the Government of India and so on and so forth. I was at pains to ask Diwan Chaman Lall as to whether he would not distinguish between the two phrases, namely, 'further office' and 'further term of office'. I am afraid, Sir, with all respect to him, when he tried to reply to this point of mine—at any rate that is my opinion—that he did not really meet the point.

DIWAN CHAMAN LALL (Punjab): May I interrupt my hon. friend? It is quite obvious that 'further office' is a much wider but larger conception than merely a 'further term of office'.

DR. W. S. BARLINGAY: Sir, we are not concerned with the question as to whether the connotation of these two phrases is wider or more restricted, whether one is wider than the other, or not. The question is whether they mean the same thing or they mean different things. This is all that matters and I submit with all respect that 'further office' means something different from 'further term of office'. 'Further office' means and involves two concepts, one, the concept of futurity and the second, the concept of difference. When these two concepts are added together, namely futurity and difference, you come to this phrase 'further office'. 'Further office', therefore, means that the office has got to be held in the future—that is, one—and (two) the office must be different from the one originally held.

I would submit one last thing.

DIWAN CHAMAN LALL: May I interrupt my hon. friend once again? When the Auditor-General, after he has completed his five years, enters upon his sixth year, is he entering upon an office or not?

DR. W. S. BARLINGAY: He is not entering upon a different or further office. I was just going to point out a difference. Suppose, for instance, the present Auditor-General ceases to hold office and then he is re-appointed then, that would be 'further office'. But suppose his term of office is extended, that would not mean that he is holding a different office or a further office. That is the distinction, Sir, which I humbly wanted to point out before you, Sir. This is what I wanted to say with regard to the legality or otherwise of the measure before this House.

With regard to the propriety, I have already made my submission and I would say that the precedents not merely in this country but, also in other countries go to show that where such high dignitaries of the State are concerned, it must be with the greatest reluctance that the legislature should extend their terms of office. Otherwise directly or indirectly they would tend to be under the thumb of the executive and once this dangerous principle of giving extension is established, you do not know where we are likely to stop. In this connection, Sir, I entirely agree with the sentiments expressed by Diwan Chaman Lall and Dr. Kunzru and I submit that the considerations which they have made out are weighty considerations and before this particular piece of legislation is pressed into law, the Government may do well to reconsider the matter. Thank you, Sir

9 A.M.

SHRI C. G. K. REDDY (Mysore): Sir, we have had a very complicated legalistic discussion yesterday and today. I probably will not be able to contribute to the same extent and in the same manner on this question. After all, Sir, in a matter in which

there are so many complications, a layman's contribution probably would be the correct and probably would be refreshing at least.

Sir, so far as I am concerned, there seem to be three aspects of this main question. There is the legal aspect; there is, I think, the aspect on the merits of the case and, there is also the aspect on the propriety of the case.

So far as the propriety of the case is concerned, I think we are all agreed. Sir, that it should be more or less the rule perhaps without any exception whatever, that there should be no extension given to any officer holding certain posts which have special guarantees and special privileges. The Comptroller and Auditor-General, holding a very great position with a great deal of responsibility, has been guaranteed certain privileges, and by extending his office or by increasing his emoluments or increasing his privileges, it is possible, Sir, that some influence may be brought to bear on him and we should not, as I said before and as all hon. Members seem to be agreed on this, under any circumstances whatever, think of giving extension to such officers.

THE MINISTER FOR FINANCE (SHRI C. D. DESHMUKH): Not all hon. Members. Some hon. Members said that if there was no legal bar, they would welcome an extension.

SHRI C. G. K. REDDY: So far as the legalistic point of the thing is concerned, I have not come to it at all. I am only talking about the propriety.

SHRI C. D. DESHMUKH: I said, Sir, that some Members have said that if there was no legal bar, they would welcome an extension.

SHRI C. G. K. REDDY: Tr. fact, the hon. the Finance Minister is anticipating my argument. I myself possibly welcome the extension of the office to this particular officer on the merits. On the propriety of it, I say it should not be done: but, on merits again, I say possibly there is a good case although,

as I said, there should be no extension whatever.

MR. DEPUTY CHAIRMAN: Mr. Reddy, the Constitution does not fix the period of the Auditor-General. Under 148(3) a law has to be passed and under that law they want to fix the period as six years for the Auditor-General and they want that to be extended for the present Auditor-General. That is all.

SHRI C. D. DESHMUKH: Yes, Sir, I shall be able to explain this very briefly.

MR. DEPUTY CHAIRMAN: There is no question of extension at all.

SHRI C. D. DESHMUKH: I should like to point out that much of the confusion has arisen by the use of the word 'extension'. Let us get rid of this term 'extension'.

MR. DEPUTY CHAIRMAN: There is no idea of extension.

SHRI C. D. DESHMUKH: Let us consider in terms of fixing a period and a salary and certain other privileges for the Comptroller and Auditor-General and say what will happen to "the existing incumbent.

SHRI C. G. K. REDDY: Sir, I think the hon. Minister is very wrong there.

*(Several hon. Members interrupted.)*

MR. DEPUTY CHAIRMAN: One at a time. Order, order.

SHRI H. N. KUNZRU (Uttar Pra-1 desh): It all comes to the same thing.

DIWAN CHAMAN LALL: May I, with your permission, Sir, ask my hon. friend as to what is exactly the result of what he is doing? Is it not an extension? Of course it is. We cannot hide ourselves behind the fact that it is not an extension. He may do it in this manner. He cancels the five years and makes the five years into six years but the actual effect of this is an extension by one year of a term already fixed by the Constitution.

MR. DEPUTY CHAIRMAN: Not by the Constitution.

SHRI C. G. K. REDDY: It is no doubt that there is the extension. He may be very naive in suggesting that there is no question of extension. If this Bill is not passed, the present incumbent to the office of Comptroller and Auditor-General will have to retire in August this year. Now if you are introducing a Bill to see that he retires next year, you may call it whatever you like but it is an extension.

SHRI C. D. DESHMUKH: It is not introduced for that purpose.

SHRI C. G. K. REDDY: There are so many other purposes but the main purpose is this. If that were Sir, I do not know why the hon. the Finance Minister should at all have allowed so much of discussion on a question which is merely hinging on extension or not. Let us take it as granted by all sections of the House that it is a question of extension. The present incumbent, according to the Constitution, according to the transitory provisions, was to retire this year in August. Even in his speech the hon. the Finance Minister said in the other House. Sir, that the time had come and he is to retire in this year itself but then if they were not able to pick up a person who is to succeed him, this Bill would give them some time to groom an officer for that office. In spite of all this, if the Finance Minister is going to turn round and say that it is no extension at all but merely for other reasons this Bill is being brought here .....

SHRI C. D. DESHMUKH: I am sorry to interrupt the hon. Member and I am also sorry that he anticipates what I am going to say afterwards. The problem is: Some time or the other during the incumbency of some Comptroller and Auditor-General we have to bring a Bill to fix the term of office. I am posing the problem. Suppose I assume that we are in the year 1960. Now there would be some Comptroller and Auditor-General in office and his term of office will be five years or

[Shri C. D. Deshmukh.] whatever it is under the Audit and Accounts Order. Now for some reason we say: Why only five years? The present arrangement is not suitable and so let us put eight years and since the science of health has improved and we are expected to live longer in India we say again: Let us put the age of retirement at 70 years in which case the problem still arises as to what happens to the then incumbent of the office of Comptroller and Auditor-General. Then it does become a question of extension whether you wish it to be or not. That is the point.....

SHRI H. C. MATH-UK (Rajasthan): Can we not make it applicable to the future incumbents?

SHRI C. D. DESHMUKH: No, you cannot.

SHRI H. N. KUNZRU: The hon. the Finance Minister said very clearly in another place that one of the important objects of the Bill was to extend the term of office of the present Comptroller or Auditor-General in India. He made no secret of it. Indeed he laid great stress on this fact.

SHRI C. G. K. REDDY: The hon. the Finance Minister may be kind enough to allow me to proceed in the same fashion as other Members have proceeded and if he were to know that I am more or less going to support his contention, possibly he will be more kind in the matter. *(Interruption.)*

So far as the propriety is concerned, I have said that there should be no extension whatever. But on the merits of this case there has been almost unanimity. It has been unanimously held that the present incumbent probably is the best man for the job who has done remarkable work as our Comptroller and Auditor-General.

Sir, the whole question seems to have been discussed between articles 148, 377 and the Schedule attached thereto. During the speech of my friend Diwan Chaman Lall, I tried to interrupt and ask him as to whether there is a specific

prohibition in any article of the Constitution, more especially in 148 regarding extension of the present incumbent.

SHRI K. S. HEGDE: An affirmative statement rules out a negative one.

SHRI C. G. K. REDDY: I am not going into the highly complicated legality or otherwise and I do not think I will be able to get out of it. But let me try and put forward a layman's point of view which probably will be clearer and less complicated and will probably not..... (interruption?)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI C. G. K. REDDY: What appears to me is this that so long as there is no clear prohibition against the extension, of the office of the present incumbent, I do not see how it can be contended that his office cannot be extended. It has been said that article 377 refers to this particular incumbent and whatever provisions there may be in article 148 they should not be applied to him in view of the fact that he has a special provision in 377. Now I should like to draw the attention of hon. Members to this fact that the objects of the articles that are in our Constitution right at the end have been for a very limited and specific purpose and those are what are called transitory provisions. Those refer to the then incumbents of like offices like for instance the Auditor-General and the High Court Judges and such other officers and what we are going to do with them on the 26th day of January 1950. Those provisions have only that limited purpose. The purpose is that the Auditor-General before the 26th January 1950 becomes on the 26th January 1950 automatically the Comptroller and Auditor-General of India. Now as soon as he becomes that, he is on an equal footing with any future incumbent and he will come under the relevant provisions relating to the Auditor-General and Comptroller of India. So if there are any articles in the Constitution which refer to the Comptroller and Auditor-General of

India, automatically after the 26th of January 1950 those articles must apply to him. There can be no doubt what-ever.

Article 377 is specifically for him but if there be other articles where the words "the Comptroller and Auditor-General of India" occur, they must automatically apply to him. That is the lay point of view that I put forward and that is how it appears to me. If there had been a provision in any article to say that according to article 377 the term of office shall be five years and no more and any other provision that there may be in the Constitution referring to the Comptroller and Auditor-General of India should not apply to the incumbent who becomes automatically on the 26th January 1950 the Comptroller and Auditor-General of India, there is a ease against the passing of this Bill. But I do not see any article, any subclause even in article 148 which has been extensively quoted, the grammar of which, the content of which and the commas and punctuation of which have been so fully examined. Even there is no specific prohibition.

For instance I would specially refer the attention of the hon. Members to article 148 where there is a specific mention of disadvantage. It has been said that the Government shall not, during the term of office of the Comptroller and Auditor-General of India, do something which will be to his disadvantage but there has been nothing said there as to whether anything can be done to his advantage or not. You may do for his advantage or you may not do but you cannot do anything to his disadvantage. If extension of service can be called an advantage to the officer concerned, well, there is nothing in the Constitution legally prohibiting us to extend the office of the present incumbent.

Therefore, Sir, my submission is that it is likely that once you get into an argument, you try to stick to your own. This is more so in legal arguments. As all lawyers know, Sir,—I say this with

40 C.S.D.

all due respect to them—soKatimes when you first see a brief, yrobably you do not believe it and when you start reading it, you will find all sorts of excuses for it and you will later on even swear by it. That is the correct thing, I think, Some of our hon. Members who are lawyers and who have contributed so much to this discussion are, I think, likely to get more and more complicated with the legalis tic issues involved here without seeing the intention of the Constitution. After all, Sir, even the lawyers must conceda that the intention of the legislature and the intention of the Constituent Assem bly is the most important thing .....

SHRI K. S. HEGDE: As expressed by the words.

SHRI C. G. K. REDDY: Although I am not a lawyer, I must impress upon my hon. friend Mr. Hegde that the law courts and all law authorities do give thought not only to the words -but also the intention of the legislators at the time of passing the **Bill**.

SHRI K. S. HEGDE: As expressed through the words.

SHRI C. G. K. REDDY: Through the words also the intention of the legis lature .....

(Cries of "No, no" by some hon. Members.)

SHRI C. G. K. REDDY: All right, Sir, I leave it at that. I have lost. Once I get into an argument with a lawyer, naturally I must lose. I shall leave it at that. Yesterday the hon. the Finance Minister read out extracts from the Constituent Assembly debates and there had been no mention at all. I was only trying to answer the argument of my very respected friend Dr. Kunzru who said that they were all exercised over this issue to see that no advantage is given by the Government, that nothing is done by the Government to see that the Comptroller and Auditor-General is in any way influenced by the Government. On the other hand, Sir, I understand that those who were in the Drafting Committee

[Shri C. G. K. Reddy.]  
—I wish we could get their opinion also  
—when they put down article 377, I  
understand that it was done in a great  
deal of hurry. It was merely for the  
specific purpose of.....

SHRI H. N. KUNZRU: Not in any hurry,  
no.

SHRI C. G. K. REDDY: Well, I may be  
misinformed. This is what I understand.  
Article 377 was merely put down there as a  
specific provision to see that the Auditor-  
General of India becomes, on the ushering in  
of the Constitution, automatically the Comptroller and Auditor-General of India. I have  
already expressed my lay opinion for  
whatever it is worth in so far as this issue is  
concerned.

I am sorry indeed that so much of time  
should have been spent and in spite of this if  
there are any doubts at all, I would suggest to  
the hon. the Finance Minister to see that no  
further discussion takes place and if there are  
too many doubts and there is a great deal of  
substance in those doubts, probably it would  
be better to see that all such risks are avoided  
and a better and more definite Bill is brought  
forward to achieve the same purpose.

Sir, after having dealt with that, now I  
come to clause 3 of the Bill. It says: "in the  
case of a member of the Indian Civil Service,  
shall not exceed one thousand pounds sterling  
per annum." Now, yesterday when the hon.  
the Finance Minister was introducing the Bill,  
I asked him for information as to whether any  
I.C.S. officer had held this post before the  
present incumbent. I was told that in almost  
every case it was an I.C.S. officer.

Probably, in the old scheme of things it was  
so. Every head of the Department, whether in  
the State Government or in the Central  
Government, invariably used to be an I.C.S.  
officer, but I think, Sir, that it should not be  
the rule, not even an exception, that hereafter  
the Comptroller and Auditor-General of India  
should be an I.C.S. officer. I think, Sir, for  
that job which

has one of the unique positions under  
our Constitution, we should see to it  
that a technical officer, who will really  
be able to look after the entire accounts  
and audit of the country, holds that  
office and not any individual who in  
the old scheme of things, with all due  
respect to the admirable exception  
whom we have in the Finance Minister  
of India today, I would say, was sup-  
posed to be good for any job in the  
world. You give any job to an I.C.S.  
officer and it was held that he must  
make a good job of it. He was sup-  
posed to be an expert of everything.  
He was the head of every Department  
in the old scheme of things and he  
probably passed the test because he  
had very limited responsibility. He  
had to carry on certain instructions and  
he carried them out well. After all the  
work of an I.C.S. officer at that time,  
and even at present, was to carry out  
orders. Regarding this particular  
office, I think, Sir, we must have a  
gentleman or a gentlewoman who is  
absolutely .....

SHRI V. K. DHAGE (Hyderabad):  
Gentlewoman?

SHRI C. G. K. REDDY: Yes, a lady can  
hold that job. There is nothing in the  
Constitution to say that a lady cannot hold the  
job of Auditor-General of India. I think only a  
technical person who is well versed in audit  
and in the control of accounts should hold this  
job.

It is not quite fair that I should pose specific  
questions in this regard. We have seen, during  
the last few years— whether it is the Public  
Accounts Committee or the Auditor-General's  
own Report or even certain charges levelled  
against certain officers and certain heads of  
Ministries—we find that there have been a  
great deal of irregularities. Sometimes there  
has been thorough corruption and  
dishonesty—more often there have been  
irregularities. I take it that only a senior officer  
of the I.C.S. will be posted as Comptroller and  
Auditor-General of India. Consider, Sir, that  
one of the senior secretaries of the  
Government of India is posted to this job. In  
almost every Ministry..

especially such Ministries headed by the seniormost officers, we find, according to the Reports of the Comptroller and Auditor-General and the Public Accounts Committee, a great deal of irregularities. You take, for instance, the Defence Department. Only the other day we had a very bad report of the manner in which the finances under the control of the Defence Department were being managed. After all, the head of that Department, as the Chief Executive, must bear the responsibility. Now I ask the hon. the Finance Minister, is it desirable that the heads of such Departments who have already been held responsible for irregularities—and serious irregularities—should be posted to this job? Can we, under the Constitution, for the protection of our public funds, post an officer who knows nothing very much about the job, who has not been trained to it and who has, in his whole career, at some time or other, himself been guilty of irregularities and of lack of control over public funds? Can we trust such an officer to be the sole custodian of the entire funds of the country?

I suggest, Sir, that hereafter in view of the fact that, first of all, the I.C.S. officer is not trained specially for this job, secondly because I feel that we ought to give up the notion that an I.C.S. officer, whatever the responsibility, will discharge it better than anybody else, and thirdly because almost every head of the Department and every officer has been found, at some time or other, to be guilty of lack of rigid control of funds, we cannot trust such officers to be the sole custodians of the funds of this country. Therefore, Sir, the mention of I.C.S. officers in this clause should be deleted so that hereafter at no time shall we have an I.C.S. officer at the head of the audit and accounts of this country.

SHRI H. C. MATHUR: Mr. Deputy Chairman, a peculiar aspect of this Bill is that it relates to one single individual and so it becomes a little bit embarrassing in offering our criticism since it is likely to be misconstrued.

MR. DEPUTY CHAIRMAN: Ordei, order. This does not relate to any single individual. It fixes the period of service of the Auditor-General and one of the clauses makes it applicable to the present incumbent.

SHRI H. C. MATHUR: I am coming to that, Sir. This definitely refers to one particular post and one particular office and in the present context it refers to a single individual. That is what I meant to say and therefore it becomes a little bit embarrassing in offering criticism which is.....

MR. DEPUTY CHAIRMAN: Do you mean to say, single office?

SHRI H. C. MATHUR: .....likely to be misconstrued as being directed against him. That is why, Sir, as a matter of fact most of the speakers found it necessary to say a few words in particular reference to the individual holding the office at present. Otherwise there was no occasion for the hon. Members speaking on this Bill to make any particular reference to the individual holding the office. But, Sir, when we are discussing matters of principle and policy, I do not think we should allow any quarter for sentiment. My mind is very clear on the point that this Parliament is not at all competent to extend the term of office. Article 377 of the Constitution is not only specific and special, but it is quite comprehensive so far as the Auditor-General of India holding office.....

MR. DEPUTY CHAIRMAN: This question has been debated in all its aspects.

SHRI H. C. MATHUR: But my point is entirely different.

MR. DEPUTY CHAIRMAN: Please avoid repetition.

SHRI H. C. MATHUR: My submission is that what has been said so far is different from what I am going to say. Article 148 is of general application and article 377 is specific and



[Shri H. C. Mathur.] special. I go a step further and say that article 377 is not only specific and special so far as the individual who was holding charge of the office.....

MR. DEPUTY CHAIRMAN: We are not concerned with individuals. We are concerned only with the office of Auditor-General.

SHRI H. C. MATHUR: Will you kindly bear with me for a minute and hear what I am saying?

MR. DEPUTY CHAIRMAN: Parliament has to pass a law regarding the term of office of the Auditor-General.

SHRI H. N. KUNZRU: This does apply to the existing incumbent, and anything relating to him should be done in the proper way.

MR. DEPUTY CHAIRMAN: That is right.

SHRI H. C. MATHUR: As a matter of fact the Finance Minister wanted to make this point very clear, and I wanted to interrupt him on this very point. My mind is perfectly clear on this point. I have no misapprehension about it. What I want to submit is that this article is very comprehensive and it covers all the aspects so far as the Auditor-General of India holding office immediately before the commencement of the Constitution becoming the Comptroller and Auditor-General is concerned. This article makes provision for his appointment as Comptroller and Auditor-General. That is one thing. This article further makes provision for his pension, leave, etc., which will be governed by article 148. This article goes further and refers to his term of office. What I mean to submit is that, apart from being specific and special, article 377 is comprehensive and covers all aspects. Of course, no matter of principle and policy is involved, as the Finance Minister has pointed out. But this article, besides being protective, is comprehensive and deals with all the aspects of the case which are likely to arise in respect

of the Auditor-General of India who becomes the first Comptroller and Auditor-General.

When this point was first raised, the hon. Finance Minister thought that with the explanation which he was likely to give and the authority of the Attorney-General which he was likely to quote, the House would be convinced and there would be no further argument on the point. But, Sir, as you have found, even after that, if there has been anyone point which has been stressed, it has been this very point which has been stressed by one member after another, and all enlightened legal opinion has gone the other way round. So, my humble submission is this. What ordinarily happens here is this. As we saw in the case of another Bill which was discussed here, in spite of the predominance of opinion on one side, the Bill was passed. I would respectfully submit that even if the hon. Finance Minister is not convinced, in spite of the very weighty and clear arguments advanced, the best thing would be that before the President is requested to give his assent to this Bill, this matter may be referred to the Supreme Court so that at least the Government may be saved from further complications. We on our part are very clear on this point. We are very clear and emphatic on the legal aspect of this question that no provision can be made in this Bill which will affect the present incumbent of the post.

I may be accused of emphasising the obvious. But I find that something which is very obvious and something which is very important is being ignored. We all talk about the independence of this office. We all talk about the importance of this office. We all know that the Comptroller and Auditor-General is the watchdog of our finances and that he should be kept beyond all influence. But if we are keen on keeping that officer beyond all influence, and if his independence is to be maintained, then he must definitely be kept beyond fear and favour. The proviso to clause (3) of article 148 lays down that the terms of service shall not be altered to his disadvantage during the

tenure of office. Therefore, he has absolutely nothing to fear. Sir, what I maintain is that tradition should provide that nothing should be done to alter the terms and conditions of service in a way which will be to the advantage of the incumbent during his tenure of office. It would have been really very awkward to make any such provision in the Constitution. It is nowhere made: it is only made by convention and tradition. I wish to emphasise- that if we want that this office should be beyond all influence, then the officer should feel that he has nothing to fear and he has nothing to gain through any favour shown. There is nothing further from my mind than to suggest that the present incumbent will be influenced in his future dealings by this extension or by this improvement in the terms of his service. But, Sir, we are not talking of personalities; we are talking of principles. It would have been equally true that the present incumbent would not have been influenced even if we were to change the terms of his service to his disadvantage. He may be such a personality. But we are not to take into consideration any personalities here. We are considering principles and policies here. Independence is affected by two elements. The two elements are the element of fear and the element of favour. The element of fear has been eliminated by a specific provision in the Constitution. The Constitution could not have provided for the elimination of the element of favour, but tradition should certainly provide for its elimination.

In this connection, I see no justification whatsoever why this particular Bill should have been brought at this time. When I interrupted the hon. Finance Minister, I asked: Why could we not see that these provisions did not apply to the present incumbent? And quick came the reply: We could not do it: that is not possible. I do not see how it is not possible. We can simply say that they will not apply to the present incumbent. We can certainly say that this Act will come into force on the 16th of August. What justification is there to bring this until

and unless its definite and clear purpose was to give the benefit of the improvement in conditions of service to the present incumbent? And as I have pointed out, this is a most highly objectionable thing which we are doing. We are certainly not setting a very good example and this practice is something of which we cannot be very proud of.

Sir, next I come to the question of pension. I see no justification whatsoever again for this increase in pension. In the Statement of Objects and Reasons the hon. Finance Minister has drawn our attention and has wanted us to see that the post of the Comptroller and Auditor-General should be brought in line with the other statutory offices like those of the Members of the Public Service Commissions. He draws the analogy for giving six years' tenure and he follows the provision of six years which are being given to the Public Service Commission Member". But I wish to ask one question and that is this: Are the Members of the Public Service Commission given this additional pension for this additional period of service which they put in? I, as a matter of fact, wrote and got a clear reply from the Finance Minister that the Members of the Public Service Commissions for their additional service get no additional pension. Then what are the justifications for giving this additional pension to the Comptroller and Auditor-General who we want should be treated on the lines of the statutory offices which have been mentioned in the Statement of Objects and Reasons?

SHRI J. R. KAPOOR (Uttar Pradesh). May I bring it to the notice of the hon. Member that Members of the Public Service Commissions can seek re-employment on other posts whereas on no post can the Auditor-General be employed?

SHRI H. C. MATHUR: Well, Sir, as I pointed out, if you read the Statement of Objects and Reasons, you will find that he has wanted us to see that these\* posts should be comparable. He himself has said it in the Statement of Objects and Reasons. Therefore, Sir\*

[Shri H. C. Mathur.] for the same reasons which I have advanced, I wish that this benefit of this provision should not go to the present incumbent because it undermines the principle which I have enunciated at length.

Again, Sir, regarding this tenure of office, I find that the superannuation age has not been fixed. The hon. Finance Minister wanted to explain this point. I tried to go through the proceedings and I read it and I found that there was no convincing argument to fix no superannuation age. I want to ask, in this connection, a point blank question. Suppose in our services we have got an exceptionally bright fellow who, at the age of 45, is considered most suitable for this post; then what will happen? He must retire at the age of 51. And I do not think that we ought to take it for granted or to understand that we are not to have any such exceptionally bright people in our services. When we enact laws, we make provision for all contingencies and I wish to know how we will proceed when we find that the most suitable person for the appointment is only running his 45th year in the I.C.S. or in any other service. What will happen then? We can give him only six years. So that gentleman must retire at the age of 51. As a matter of fact, Sir, when this was being discussed in the Constituent Assembly, a point was brought forward that for the post of the Comptroller and Auditor-General we should have only the (Chartered) Accountants, and we should not have people from the services. And it was found that it would be more desirable to have people from the services. So, I take it that mostly we are going to draw upon the services for appointment to this post. And in that way, if it is so, I think the more correct thing would have been to fix the age rather than this tenure, as we have in the case of Judges. It would have been much more advisable to say that the man will go up to the age of 60, so that we would not have found ourselves faced with any such contingency which I have just mentioned.

Again, Sir, in the Lower House, the hon. Finance Minister said.....(*Interruption.*)

MR. DEPUTY CHAIRMAN: No use saying 'Lower' and 'Upper'.

SHRI H. C. MATHUR: I mean the other House, Sir. I am thankful to Mr. Saksena.

SHRI C. D. DESHMUKH: It is permissible to refer to the discussions in the House of the People because there are many points which are covered in my discussion there, as for instance, the last point that the hon. Member has raised as to why only a tenure was fixed and not an age of retirement. Well, that point has been dealt with.....

MR. DEPUTY CHAIRMAN: He is only making a reference to your statement there for his argument.

SHRI H. C. MATHUR: I am only referring to what the hon. Finance Minister said there, Sir, and I am just reading what is within the inverted commas and what the hon. Minister is supposed to have said. He said:

"I find that within one year one ought to be able to make a choice and give the officer some kind of training and raise him as a Deputy or may be in any other capacity under the Comptroller and Auditor-General."

And this is the justification, Sir, for one year's implied extension—as I would call it—to the present incumbent. May I ask, Sir, why could not have this been done a year earlier— what the hon. Finance Minister now proposes to do, to train a man within a year's time? I should like to know why this could not have been done a year earlier. Am I to understand that some new talent will be born during this year's time or that they will make any fresh discoveries? I think he has hardly got at the most two or three persons in view. I do not see why we could not discover this thing a year earlier and put them under this training which now he proposes to give.

Then, Sir, we have to understand that the Comptroller and Auditor-General is responsible for the accounts and audit not only for the Centre but also for the States. And the hon. Finance Minister for certain reasons thought it necessary, while enumerating the difficulties of the present incumbent, to make a reference possibly to my correspondence. And what he stated was .....

MR. DEPUTY CHAIRMAN: Your correspondence with whom?

SHRI H. C. MATHUR: With the Finance Minister, Sir. And this is what he referred to during the course of his discussion in the other House:

"Only the other day I received a wry indicting letter from one Member in regard to the condition of accounts in Rajasthan. These are matters which cannot be corrected in a day, especially as one receives complaints in a general form and not in a form specific enough to enable us to follow them and track down the source of the evil. So still greater reforms have to be carried out in what would fairly be described as a century-old system of accounts and audit."

Sir, my submission to the hon. the Finance Minister was that the state of affairs so far as the audit and accounts in Rajasthan were concerned, was in the most deplorable condition.

MR. DEPUTY CHAIRMAN: It is not relevant here. Please speak on the Bill.

SHRI H. C. MATHUR: Here is the reference to which I am replying.

MR. DEPUTY CHAIRMAN: We have already taken two days on this Bill.

SHRI H. C. MATHUR: Do you mean to say that what I say is not relevant here?

MR. DEPUTY CHAIRMAN: We are not concerned here with your correspondence with the Finance Minister

Please be relevant to this Bill. Let us not discuss the audit in Rajasthan. We will have other occasions for it.

SHRI H. C. MATHUR: The unfortunate thing is that the Auditor-General is responsible for it. We can talk about it only here in the Centre. He is also responsible for the accounts and audit in the States.

If the hon. Minister wanted instances, I have got a feast here; I have at least two dozen very clear cases. I thought it was not necessary and it was not proper to give instances in relation to particular officers who are already in service—cases of pay slips not being issued, last pay certificate not being issued, etc.

MR. DEPUTY CHAIRMAN: You are going into too many details, which are not relevant to this Bill.

SHRI H. C. MATHUR: Then I will refer only to one point and then finish. That point is regarding the separation of the audit from the accounts. The hon. the Finance Minister in this respect is fully aware of the situation; I think he is quite alive to the necessity for this reform, but his difficulty appears to be administrative and financial, but, Sir, may I know if we can make a start in this matter? In that, it appears to me pretty certain that the present incumbent is going to stay in office for another year. Would it not be proper that we take advantage of the present incumbent's experience and make a beginning in this matter? Because the next man who comes will again find it very difficult, till he is fully settled, to take up this reform. The fact that some of the States have written to the hon. the Finance Minister to say that they are not prepared to take up the responsibility in respect of the accounts section is, I submit, no good argument. After all the State Governments must run their accounts and they must take the responsibility for them. How long can they throw this burden on the Central Government? It should be the policy of the Centre to make the State Governments realise that this is their responsibility

[Shri H. C. Mathur.] which they must shoulder. I hope that this much-desired reform will be taken up and a beginning made soon.

SHRI B. B. SHARMA (Uttar Pradesh): Sir, in connection with this Bill.....

MR. DEPUTY CHAIRMAN: Be brief, and be relevant to the Bill.

SHRI B. B. SHARMA: I will not say a word which is not necessary. In the consideration of this Bill, there has been a lot of confusion in the minds of many of our friends. The only thing to consider here is: Is't not necessary under the Constitution that a law under article 148(3) has to be enacted to determine the conditions of service of the Comptroller and Auditor-General? If the answer to this question is in the affirmative,—I believe it is—because there is no provision in the Constitution or anywhere else which determines the conditions of service and other tilings necessary to be determined by law which is being passed here today—Then the question is, what will be the effect of article 377 on this Bill? Is it a bar to this Bill or is it not a bar to this Bill? If it is a bar to this Bill, then certainly the Bill which we are massing is *ultra vires*. If it is not a bar, then I do not see any reason whatsoever for raising all these quibblings which have been raised here so far. My contention, Your Honour, is.....

SHRI RAJAGOPAL NAIDU: Force of habit.

SHRI B. B. SHARMA: My contention is that the framers of the Constitution intended that before a law as contemplated under article 148 of the Constitution is passed, the term of office and other conditions of service of the gentleman occupying the post of the Comptroller and Auditor-General will be governed by article 377. It is only an interim measure to be operative so long as a law is not passed by Parliament here. Therefore, Sir, as soon as the Bill which we are discussing here is passed, that article 377 becomes inoperative. Consequently it follows)

that whosoever be the incumbent in the office, whether today or tomorrow or three years hence or three years back,, he would be governed before the passing of this Bill by the conditions of service as provided in article 377, but after this enactment is passed, there is nothing in article 377 which deprives him of the benefit which that new legislation will confer upon him. My contention, therefore, is that this Bill is absolutely *intra vires* and not *ultra vires*. The confusion arises because of the fact that we are confusing the circumstances and the conditions of the provisions of this Bill with an obsession that it is operative in favour of the present incumbent in the office. If we disabuse our minds of this confusion, there is nothing objectionable in this Bill. The difficulty is that we are unable to disabuse our minds of that obsession. Article 377 says that the Auditor-General under the Government of India Act would automatically, *ipso facto*, on the commencement of the Constitution, become the Comptroller and Auditor-General of India. Then it further goes on to say that he will have the benefit of any legislation which will be passed under article 148(3). The explicit mention of that provision in article 377 gives him that benefit. Had it not been there, then the contention of my hon. friends who are holding that this Bill is *ultra vires*, would have been correct.

But as the present Comptroller and Auditor-General is to get the benefit of the provisions of clause (3) of article 148 as mentioned in article 377, certainly there is nothing to deprive him-of the benefit which accrued to him. The only thing which has been prohibited against in this law is under the provision of clause (3) of article 148 *i.e.*, nothing could be legislated which is disadvantageous to the Comptroller and Auditor-General. But for that there is nothing in the Act which prohibits anybody, whether the present incumbent of the office or the future holders of it, from the benefits accruing by the passing of this legislation. Therefore this is entirely out of question whether the present incumbent will have all the benefits from this **Bill**.

Those considerations cannot weigh. They are not worth weighing here. The provision which says 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 is only to operate so long as the Act is not passed. As soon as Parliament enacts a legislation under clause (3) of article 148, this portion becomes entirely inoperative and also part (e) of Second Schedule. Therefore my submission is that this Bill is altogether *intra vires* and not against the intentions of the provisions of the Constitution of India.

SYED NAUSHER ALI (West Bengal): Mr. Deputy Chairman, I am grateful to you for giving me an opportunity at this late stage of the debate to make a few observations on the provisions of the Bill. A flood of light has been thrown on the points involved but I am afraid there are yet some obscure points which require further elucidation and clarification and if I take a little bit of the valuable time 'A' this House at this late stage. I do so from a sense of duty with the object that I may have a little more light on those obscure points and the difficulties and doubts that are still lingering in my mind may be removed. Sir, it is undisputed and indisputable that by virtue of the powers conferred by article 148(3) Parliament is quite competent to legislate determining the salary and other conditions of service of the Comptroller and Auditor-General of India. It is also clear that the provisions of the Bill so far as they are intended to be applied to future incumbents of this office are *intra vires* of the Parliament. It is also clear that the provisions of the Bill barring the provision with regard to the tenure of office or the terms of appointment are *intra vires* of the Parliament. The controversy thus centres round that one point about the tenure of office or term of appointment of the present incumbent. Now 10 A.M. regarding this, various objections have been raised which may be summed up, I believe, in

two sentences. The first is the constitutional aspect of the question *viz.*, whether or not Parliament is competent to make provision in the Bill making the six years term applicable to the present incumbent of the office. The second part of it may be stated thus. Assuming that Parliament is competent, is it prudent, proper and desirable that it should be made applicable to the present incumbent? These are the two points on which the controversy is being raised for these 3 days. I have got my own doubts and the doubt, I am afraid, arises from certain lacunae in the Constitution itself but apart from that, whatever they may be,—and I will have no time to discuss that subject—we have got to proceed on the Constitution as it stands. Now with regard to the constitutional point, I don't like to dilate on the points on which various observations have been made but I should like to draw pointed attention of the House to one point *viz.*, a principle which was enunciated and stated before the House at the very earliest opportunity by Diwan Chaman Latif. He stated that you cannot do indirectly what you cannot do directly. That is a well-settled principle of construction of constitutional law. Now, Sir, the doubt that has arisen in my mind is this. Assuming that clauses 3 and 4 of article 148 apply to the present incumbent—about that also I have my own doubts and I don't think I will have time enough to dilate on that point—but assuming that these two clauses apply to the present incumbent—the point, arises in this way. Certainly it has been stated by the hon. Finance Minister that there is no question of extension. Sir, I am sorry to say that elsewhere the Finance Minister laid greater stress on this point of extension and I am convinced that but for the question of extension, the Bill would not have been brought up hurriedly on this occasion. The Bill itself is a fragmentary one. It is not a self-contained Bill. It is not an exhaustive Bill as we should expect under article 148(3). I, for myself, have not the slightest doubt that the reason why this Bill has been introduced at this stage in this form is the desire that the present incumbent

[Syed Nausher Ali.] should not go out. That is the main consideration. Of course, there may be other considerations also but that, in my opinion, is the main consideration. Leaving apart that question of fact, let us now turn to the question of law that we are discussing.

If you look at clause (3) of article 148, you will see that it says:

"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 comes the proviso which says:

"Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment."

I expressed my doubt at the very outset whether article 148 at all applies to the present incumbent barring that part which has been made expressly applicable under article 377. If you turn to clause (1) of this article, you will be pleased to see that it does not apply. Similarly if you turn to clause (2), you will see that that also does not apply. The words used are "appointed by the President". Then comes clause (3) that is to say, after his appointment. So, literally taken in all probability it refers to the Comptroller and Auditor-General appointed by the President, not the Comptroller and Auditor-General who becomes as such automatically, on the coming into operation of this Constitution unless he otherwise elects. And I am not quite sure if the rules that apply to the present incumbent should not apply to him until he retires from service on the expiration of his present term of office. But, as I have already said, I leave that aside. I leave it apart and I presume that clauses (3) and (4) of article 148 do apply to the present incumbent. Well, it has been emphasised times without number, and I

submit with great respect, rather too much emphasised, that this proviso and similar provisions are only for giving protection to the incumbent. It has also been stated that there is nothing to prevent this Parliament to do things in his favour, that proviso to clause (3) is a restrictive clause in his favour, that you cannot do anything against him, but you can do anything you like in his favour, because clause (3) gives you the power to legislate. But clause (3) is certainly controlled by clause (4). And clause (4) 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."

Now, if one is restrictive on the Government or the Parliament, whatever it may be, the other also is also equally restrictive. But they are restrictive for whose benefit? It has been stated that the one is restrictive for the benefit of the incumbent and the other is restrictive for the benefit of the State. I submit with the greatest respect that ultimately both the clauses are for the benefit of the State, for the benefit of the people at large, and none of these clauses is for the benefit of any incumbent or any particular individual. The principle underlying it is . this, that the Comptroller and Auditor-General should be above all suspicion, of susceptibility to control or influence by the executive Government. To ensure that, he is protected equally from the frowns of the Government as well as from the favours of the Government. The former clause protects him from the frowns of the Government and the latter clause protects him from the favours of the Government. The protection in both cases is against corrupting influence. Now, an officer may become corrupt, he may become less honest, he may lose his integrity, he may lose his honesty, he may lose his independence on account of either threat of punishment or frowns, as well as on account of favours. These two clauses consequently have got to be taken together. He has got to be above all favours and above all frowns

of the executive Government. Therefore, I submit with the greatest respect that nothing should be done which will have even the semblance or appearance of favours being done to a particular Comptroller and Auditor-General.

Sir, let me elaborate this point a little more. Leave aside for the moment the question of the present incumbent of the office. Leave that aside. Let us concentrate on the future incumbent of that office to be appointed under the law that we are going to make. Now, Parliament fixes the term of six years. The gentleman is appointed for six years. Then, before this period of six years expires, a Bill is introduced before us to the effect that the term should be extended to seven years; and the law is changed or amended accordingly. Then automatically that officer becomes entitled to stay on for seven years. Or take an extreme case. We say that it is desirable that the period should again be extended to ten years. So we amend the law and make it ten years again. What happens? We thus perpetuate a fraud on the Constitution. It is a well known maxim of law that you cannot evade the provisions of the Constitution, you cannot avoid the provisions of the Constitution. You cannot circumvent the provisions of the Constitution by doing indirectly what you cannot do directly. In other words, in legal phraseology, we say, that you are not allowed to perpetuate a fraud on the Constitution. Therefore, I submit with the greatest respect that while legislating, we should be careful. We should not tread on risky ground. The hon. Finance Minister stated the other day that this House is timid and does not like to take risks. Certainly we will take risks when taking of risk is demanded of us on appropriate occasions and cases.

But, at the same time, we should not tread on risky grounds on constitutional points and create precedent dangerous to the State.

Sir, I need not dilate on this point because if it is taken to court, the

matter will perhaps take days and, Sir, I have not got the time at my disposal, but I leave this matter here only by adding that if this is so in the case of future incumbents it is all the more so in the case of the present incumbent. Now, Sir, reading the articles as they stand, I feel that article 148 does not apply because it deals with appointment by the President. I can visualise the difficulty that will arise on the interpretation of this also: What will be the steps for removal? Article 148(1) runs thus: There shall be a Comptroller and Auditor-General who shall be appointed by the President by warrant under his hand and seal and shall always be removable from office in like manner and on like terms as a Judge of the Supreme Court. Now, this evidently applies to the Auditor-General appointed by the President. The next clause, clause (2) also runs as follows: "Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule." Here also, he is appointed by the President. Now, in clause (3), I have already drawn your attention, Sir, to the last word 'appointment' in the proviso. Then, 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 when he ceases to hold office. Now, the difficulty that will arise on this construction is this that there is no provision for his removal. Then there is also no provision regarding his holding any office after he has ceased to hold office but my answer to that would be, Sir,—I do not know, I am placing it before the House and the hon. the Law Minister and the hon. the Finance Minister for their consideration—I am not quite sure, if the rules under which the present incumbent was appointed as Auditor-General are not still in force in his case, subject of course to any modification that might have been made by the Constitution



[Syed Nausher Ali.] itself. If that is so, then this difficulty will also disappear. But, I am not quite sure and I cannot say definitely because I have neither the time nor the opportunity to consider that aspect of the question. But, leaving that aside, I made my submission in the very beginning on the assumption that it applies and, if it does not apply, then we fall back upon article 377; That article is not a comprehensive article and, as was pointed out by the hon. Finance Minister, as soon as legislation is passed, the Second Schedule is wiped out and what will happen to his emoluments and all that? Now, Sir, I have no time to dilate on that also and I leave that point by simply pointing out that in my humble opinion it is very risky and it is very dangerous. It is risky from the constitutional point of view; it is dangerous from the point of view of the interest of the country as a whole if you today, sitting here, pass this new legislation providing for a six-year term applicable to the present Comptroller and Auditor-General.

Now, Sir, the only other aspect of the question that has troubled me is about the propriety and the desirability of making this provision applicable to the present incumbent. Now, Sir, assuming that constitutionally we are competent to apply the provision of a six-year term to the present incumbent, is it desirable or is it .....

MR. DEPUTY CHAIRMAN: You have taken *twenty* minutes, Mr. Nausher Ali. You said you would be very brief.

SYED NAUSHER ALI: I resume my seat, Sir.

MR. DEPUTY CHAIRMAN: You are closing your speech?

SYED NAUSHER ALI: Yes, Sir. I am conscious that I began at a late stage of the debate and when you said .....

MR. DEPUTY CHAIRMAN: You may just wind up your speech. Close the point that you have referred to.

SHRI H. P. SAKSENA (Uttar Pradesh): "Please wind up your speech" he is saying.

SYED NAUSHER ALI: Now, Sir, I don't think I have got much time and so I would just state one more fact with regard to the proposal for the implied extension. You know, Sir, that extensions even in the case of ordinary employees should not be ordinarily granted except under exceptional circumstances in the interest of the State. That is the rule. Here this particular officer—I do not mean any slur on any individual because we are discussing in abstract—I understand, was due to retire at the age of 55. Now, he has continued in a very high position beyond that age of 55, I believe and now it is desired that he should continue for sometime more. A very exceptional case has got to be made out. I personally am very reluctant to believe that India is poor in talent; nobody is indispensable. I have been observing—what should I say, strong language comes to my mouth but I desist from using those expressions— inclination to neglect the younger generation in favour of people who have retired or who should retire on the ground of superannuation. I am sure this extension, if granted, will be grudged by the junior officers and I believe justly. There is no reason whatever why the Finance Minister could not have, traiped up another officer a year ahead or before if as he now says, he could be in a position to train up an officer in course of a year and I still believe—of course the judgment will be the judgment of the Government—that as a matter of principle wherever possible no extension should be given to anybody.

With these words, Sir, I would ask for elucidation on the point whether the Government believes that article 148 applied in its entirety to the present incumbent? That is the first point. Secondly, if it does apply, whether or not the two clauses, namely clause (3) and clause (4) of article 148, taken together should debar the Parliament from making the term of

six years proposed in the present legislation, applicable to the present incumbent. And if the whole of the article 148 is entirely applicable will not then article 377 become practically superfluous and nugatory? These are my submissions, Sir.

SHRI B. M. GUPTE (Bombay): I rise to support the contention that -clause 2 of the Bill is *intra vires*. The whole thing boils down to this whether we are justified in construing that the wording, "shall be entitled to continue to hold office" is synonymous with the wording "shall continue to hold office". That is the only point as far as I can see. I submit, Sir, that the interpretation that they are synonymous would be contrary to the rules of interpretation of a statute. To hold that the Legislature or the Constituent Assembly has used a different wording in two successive articles for one and the same meaning, would be quite wrong. At least the presumption is that the Constituent Assembly has intended to use them in different meanings. It cannot be held that the words "entitled to" in one article were superfluous. That would be against the interpretation of statutes. Let me point out why this difference has arisen. Let us compare the articles. Article 377 refers to the Comptroller and Auditor-General and 378 refers to the Public Service Commission. Both are comparable because both refer to terms of office. According to the 'wording used in article 377 the tenure of office of the Comptroller and Auditor-General is to be prescribed by law made by Parliament, whereas the tenure of office and the age of retirement of the Public Service Commission members are prescribed by the Constitution itself. So there is this difference that there is no chance of any injustice being done to the members of the Public Service Commission because their tenure is prescribed by the Constitution itself while in the case of the Comptroller and Auditor-General there is such a chance inasmuch as the period is to be fixed by Parliament. So there has to be some protection against in-

justice, and therefore this difference is made by the addition of the words "entitled to".

There is another ground also, and it is this. The members of the Public Service Commission shall be eligible again for appointment on expiry of their original tenure of office, as members or Chairmen of the other Public Service Commissions but the Auditor-General or the Comptroller has not that right. He is completely debarred from holding any office thereafter. Therefore he is entitled to some protection that the Parliament will not at least shorten the originally fixed period of his tenure of office. Because of these reasons, Sir, there is the difference in the wording. Of course the period of office of the Comptroller and Auditor-General may be lengthened but it cannot be shortened and therefore it should be held that the wording in article 377 is meant to give protection to the officer and not to prescribe the period of office. I submit therefore that this clause is *intra vires*.

SHRI RAJAGOPAL NAIDU: Sir, the views of the House in this matter have reached the saturation point.....

MR. DEPUTY CHAIRMAN: Super-saturated.

SHRI RAJAGOPAL NAIDU: ..... and I do not want to add anything more so that, in the words of the hon. the Deputy Chairman, it does not become super-saturated.

Sir, there are three expressions with reference to those articles namely 148 (3) and article 377 and also Schedule II There are the three expressions which we have to very carefully note. One expression is the word "salaries". The other expression is "rights in respect of leave of absence, pension or age of retirement" and the third expression is "other conditions of service". In my opinion this Parliament is competent to enact laws with reference to the present incumbent's office, with reference to his salary and also his rights in respect of leave of absence, pension or age of retirement. I feel, Sir, that this Parliament is not competent to enact any legislation with

[Shri Rajagopal Naidu.] regard to the fixation of other conditions of service for the present incumbent, such as fixing the tenure of office or elongating the present tenure of office or extending the present tenure of office. Sir, I will invite the hon. Minister's attention to the provisions in article 377. Much has been said about it but let me on the point of repetition invite the attention of the House to the first portion of article 377 and it is this. The Auditor-General of India, who was Auditor-General under the 1935 Act, by virtue of the passing of this Constitution becomes the Comptroller and Auditor-General and when he becomes such Comptroller and Auditor-General, he will be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided in clause (3) of article 148. You may note, Sir, that the words "other conditions of service" which are found in article 148 (3) have been omitted in the first portion of article 377. There is an express provision in the bottom portion of article 377 that the present incumbent will 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 there is the express provision that the conditions of service of the present incumbent would continue to be the same as they were under the provisions which were applicable to him immediately before the commencement of this Constitution. So, Sir, there is the specific provision made in article 377 with regard to the service conditions and the tenure of office of the present incumbent. Article 148(3) is of a general nature. I may even go to the extent of saying—in this I may be right or I may be wrong—that this Parliament cannot make any law with reference to the rights in respect of leave of absence, pension and age of retirement not only with regard to the present incumbent but even with regard to the future incumbent because we find in article 148(3) these words: "rights in respect of leave of absence, pension or age of retirement" have been expressly omitted

whereas they appear in the proviso underneath it.....

SHRI K. S. HEGDE: "Conditions of service" has a bigger connotation. Proviso is only an exception.

SHRI RAJAGOPAL NAIDU: Therefore I said that I may be right or I may be wrong because we find them expressly mentioned in the proviso which reads "Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment." It is a doubtful point, Sir, and this significant absence of these words in 148(3) makes one feel doubtful whether this Parliament can make a law with regard to the rights in respect of "leave of absence, pension" etc. of not only the present incumbent but even future incumbents.

Now turning to the Second Schedule

Part E, we find the first clause refers to the pay of the Comptroller and Auditor-General of India and probably the amount that is fixed there namely Rs. 4,000 might apply with regard to the future incumbents also. The second clause will certainly apply to the present incumbent because it clearly mentions "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 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."

So, Sir, paragraphs 1 and 2 of Part E of Schedule II definitely refer to salaries. The first paragraph refers to salaries in general and the second paragraph refers to salaries with particular reference to the present incumbent. Coming to the third paragraph,

what do we find? 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." So on a careful reading of these two articles and also Schedule II we can only come to the irresistible conclusion that this Parliament cannot enact any law with reference to the fixation of the conditions of service, or with reference to the fixing of the tenure of office or with reference to the extending of the life of (he office of the present incumbent, unless article 377 is amended. I shall leave it there and I shall not tire the House any longer with any further arguments about this matter.

Now, coming to the merits of this Bill, we know very well that the Comptroller and Auditor-General of India is the most important officer under the Constitution. His duty is to be the guardian angel of the purse of the country and to see that not a pie is spent unnecessarily and without the authority of Parliament. To perform such an onerous duty he is placed in a very independent position— independent of the Executive, and, as I could gather from some of the commenta-tors, he is independent of the Executive in four ways.

In the first way, though appointed by the President, he can be remo only by an address from both Houses of Parliament on the grounds of proved misbehaviour or incapacity, as any other Judge of the Supreme Court may be removed. Secondly, his salary and conditions of service are statutory and shall not be liable to be varied to his disadvantage during his term of office and this has been often repeated in this House. The third is, Sir, that he is disqualified from holding any

other Government office after retirement and the fourth is that the salary etc. of the Auditor-General and his staff and the administrative expenses of his office are all charged upon the revenues of the Government and are non-votable. So practically the rights and privileges of the Auditor-General of India are the same as of a Supreme Court Judge. Now, when he is in such an exalted, position by virtue of the provisions in the Constitution, we have got to be only careful in seeing that this Parliament does not enact any law which will be ultimately thrown out if the matter is taken up to any law court. On this occasion I should like to invite the attention of the hon. Minister—it may be of interest to the House as a whole—to article 151. It reads: "The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament." Sir, it is certainly laid before each Hjuse of Parliament, but I find that these reports though laid before each House of Parliament, it is only the House of the People that has the privilege to scrutinise the accounts by having a Committee named the Public Accounts Committee.

SHRI C. G. K. REDDY: That is not constitutional.

MR. DEPUTY CHAIRMAN: You need not go into that question, Mr. Naidu. Please confine yourself to the Bill. You need not go beyond the four corners of the Bill.

SHRI RAJAGOPAL NAIDU: I only wanted to say that when it is placed before this House, we should also have the right of scrutinising the reports.

MR. DEPUTY CHAIRMAN: That is another matter.

SHRI RAJAGOPAL NAIDU: Then, Sir, another point which I would like to submit on an occasion like this is that unlike in the previous Act of 1935 when every State had an Auditor-General of its own, we find now, with

[ Shri Rajagopal Naidu ] a view to centralising audit and with a view probably to be more economical and uniform in the matter of accounts, that there is only one Comptroller and Auditor-General of India. I may say, Sir, on this occasion that some of the accounts, especially with reference to the settlement of accounts with regard to procurement, purchase and distribution of food grains, are not yet settled in the States —accounts for the years 1948 and 1949. As a result of it, Sir, most of the merchants are put to enormous difficulties and that is why I want to submit that there should be a sort of an Auditor-General in the States who could be subordinate to the Comptroller and Auditor-General of India and who shall exercise independent judgement in certain matters so that there may not be delay in the matter of settlement of accounts relating to the procurement and distribution of food grains. Some accounts are settled, and they are again reopened at the instance of the Auditor-General. I therefore want to urge on this occasion upon the hon. the Finance Minister to pay special attention to this aspect and see that these accounts are settled as early as possible so that the merchants are not put to unnecessary difficulties.

And lastly, Sir, yesterday, I had mentioned that the presence of the Attorney-General in the House may be, if the Government felt necessary, arranged, especially when nearly two days have been spent in debating on this point whether this is *intra vires* or *ultra vires*, whether this Parliament has powers to legislate this kind of enactment or not. I do not know if the Attorney-General would be coming to the House today or whether the hon. the Finance Minister has taken further opinion of the Attorney-General, in view of the debate that went on yesterday. If that is so, I would earnestly request the hon. the Finance Minister to place this before the House so that further arguments on this matter may be put an end to as early as possible.

SHRI C. D. DESHMUKH: I have never been given a chance to say anything.

MR. DEPUTY CHAIRMAN: You will have it when you reply.

SHRI B. RATH (Orissa): Mr. Deputy Chairman, Sir, the present Bill before the House shows only to what extent our Government has become stale. The other day our Finance Minister while putting his case at some other place had brought in the argument of staleness into the debate and said that if the period is increased, then certain stateness will develop in certain officers and in order to keep them active, the period was limited. Now, Sir, we And that in spite of the Constitution that came into force some time in 1950, in spite of the fact that the present Government has come into office for the last one year, we are faced with a situation when the Finance Minister comes forward with the argument that unless the present incumbent is retained for a period of another year, a fresh hand cannot be trained and as such it is necessary to give this extension; otherwise we shall get a man who is not competent to discharge the responsibilities of the Comptroller and Auditor-General. Further he said that he felt himself drawn towards the conclusion that this country has become so poor that it has no man to discharge the responsibilities of a Comptroller and Auditor-General. That shows that the present services, the present high officers of Government are of such quality that they cannot be entrusted with this responsibility of discharging the functions of the Comptroller and Auditor-General unless they get a training for a period of one year at least under the present incumbent. That is why he has felt it necessary to bring the present legislation. And again, while bringing forward this legislation, he has not been able to make it a comprehensive legislation, but has limited it to certain specific items, such as the tenure of office and pension. But as regards service conditions, he wants us to still rely on the Second Schedule which refers to the 1936 Order. If the Government

wanted to bring forward a Bill under the provisions of article 148(3), they should have made it a comprehensive one so that no reference to the Second Schedule, which refers to some other Order, should have been there. It should have been complete in itself which the Finance Minister has failed to do.

30, Sir, while discussing that matter, naturally a point arises as to what would be the objection to having the present Comptroller and Auditor-General in office for another year. Now, about his working I have no full knowledge, and the best judge of that work is the Government, which, I submit, has become stale because of the reasons I have given. Now, Sir, we find that though he has discharged some of the responsibilities very well, he has failed, in spite of his independence, to control.....

MR. DEPUTY CHAIRMAN: No reflections on any particular officer.

SHRI B. RATH: I am not casting any reflections.

MR. DEPUTY CHAIRMAN: I will not allow any reflections to be cast on the Auditor-General.

SHRI B. RATH: I am discussing the question on its merits without casting any reflections on anyone.

MR. DEPUTY CHAIRMAN: But the hon. Member said that the Auditor-General had failed in his duty. No reflection can be cast on him. He is a person of high authority removable under the Constitution. If he has failed in his duty, there are certain ways of removing him.

SHRI B. RATH: That is going too far.

SHRI C. G. K. REDDY: What is the position when a particular officer who is protected by the Constitution is going to have his term of office extended?

40 C.S.D.

MR. DEPUTY CHAIRMAN: I will read the rule.

SHRI C. G. K. REDDY: I know that. How can we discuss this Bill? The term of office of an officer who is protected by the Constitution is going to be extended by a Bill. We have to say "Yes" or "No" to that extension. How is it possible to do that without going into the merits of the officer?

MR. DEPUTY CHAIRMAN: We have discussed it for two days, and till now I have not heard any speaker casting reflections on his ability.

SHRI C. G. K. REDDY: I only want a ruling as to how it will be possible for the House to say "Yes" or "No" to an extension Bill without going into the competency of the officer concerned. I may add that I do not agree with what the hon. Member is saying, but I only want a ruling on this matter from you, so that hereafter when occasion arises we may be guided by it.

MR. DEPUTY CHAIRMAN: We have discussed it for two days. It is an example to the other Members.

SHRI B. RATH: I submit to your ruling, and I proceed to the further point. I will not go into that discussion.

Now, Sir, the Audit Report of the Railways was presented to us only two or three months back. The Comptroller and Auditor-General has signed it some time in December--the date cannot be seen--and in the prefatory remarks, paragraph 4, he mentions that the Railway Board "has not yet been able to complete the Appropriation Accounts for the year 1950-51".

MR. DEPUTY CHAIRMAN: I would again remind the hon. Member that all this would be relevant only when we discuss the Railway Budget.

SHRI B. RATH: I am not going into the Budget of the Railway Ministry.

MR. DEPUTY CHAIRMAN: Please confine your remarks to the Bill which is before the House.

SHRI B. RATH: What I am submitting is that the Comptroller and Auditor-General should have brought the Railway Board to such a state that they would have been forced to complete their accounts for each year at the end of that year. Now two years have passed and still the accounts of the Railway Board could not be completed. And there are other reports. I am not going into them.

But while I make this submission, I submit at the same time that the Comptroller and Auditor-General has discharged his responsibilities to a satisfactory extent. He has brought out many things which prove the incompetence of our Government. He has brought out, in the Defence Appropriation Accounts and in the Railway Accounts also, certain items which show that the working of those departments is not proper. Not only that. Only recently he has submitted a report where he has categorically shown the bankruptcy of the administration—planes being misused, planes being sold away at throw-away prices .....

MR. DEPUTY CHAIRMAN: I am sorry I have to call the hon. Member to order. All these things are extraneous to the Bill before the House.

SHRI B. RATH: I am submitting that I feel that so long as a suitable man is not found, the present Comptroller and Auditor-General must be retained. With that end in view I submit all these points. They do come into the case, especially because a point has been raised whether he should be retained or not. While submitting that he has failed in discharging some of his responsibilities, I at the same time do admit that he has also done so much of good that he can be retained. I am pointing out to the House all that he has done and all that he has failed to do. I am just analysing the officer and nothing more. I am not casting any reflection. He has shown how Government's extravagance can be checked.

MR. DEPUTY CHAIRMAN: The hon. Member may profitably avoid both praise and abuse. He may speak on the Bill.

SHRI KISHEN CHAND: Several hon. Members were allowed during the last two days to refer to those matters.

MR. DEPUTY CHAIRMAN: I will read out the rule for the hon. Member's benefit: Rule 200f> says 'hat a member while speaking shall not "reflect upon the conduct of persons in high authority unless the discussion is based on a substantive motion drawn in proper terms". This is not a substantive motion to criticise the Auditor-General or to remove him. Please be relevant to the Bill.

SHRI B. RATH: I am discussing the office.

About the constitutional propriety of the case, I must submit that the Constitution embodies everything, and it is only the attitude of mind which has to accept one thing and reject the other. I feel that there is nothing prohibitory in the Constitution, nothing to say that during the tenure of office of the present incumbent his term of office cannot be extended. Already much has been said about articles 148 and 377 and Schedule II. I submit that article 377 is restrictive in scope, and it only applies if the Auditor-General elects to continue in office and becomes Comptroller and Auditor-General. If he does not elect to become the Comptroller and Auditor-General, then article 377 goes out of existence and a new man has to come in as Comptroller and Auditor-General and his pay and terms of service will be governed by Schedule II. The expression "be entitled to" has created a certain amount of confusion. If we read it as it stands, it creates some confusion: That is why, instead of going into the lawyers' interpretation, I went to the most authoritative source—the dictionary. I wanted to know what the expression meant, and I find that "entitle" means "to give a claim to". If we go by the dictionary meaning of the term, it only gives him a claim to

be in office for the unexpired-portion of the term for which he is entitled to act as Auditor-General. So that means that he cannot claim any further extension beyond that period. But if an extension is given to him and if he accepts it, there is no bar in article 377 which deprives him of enjoying the office any further. That is how I understand article 377. Because we are now going to make a law according to article 148(3), I will not take into consideration this Schedule II.

Now, there is one thing about which I have some doubt and which I would like to be cleared by the Finance Minister. Sir, clause (3) of article 148 says:

"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, Sir, here I feel that when we make any legislation under clause (3), that legislation must be complete in all respects. It is said "they are so determined". That includes everything in the rules and we cannot legislate on a part of the rules and leave another part to be guided by the rules. So, I feel that this provides for a legislation which must be comprehensive and which must determine all the terms and conditions of his office.

There is one more thing, Sir. If we read the proviso, we find it says:

"Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment."

I lay special emphasis on "age of retirement". It seems to me that the Constitution contemplates that the term of office must be determined in terms of age and not in terms of period of service. Therefore, I feel that there

must be some age restriction. What this clause wants is that while the Parliament legislates, it must legislate on salary and other conditions of service of the Comptroller and Auditor-General and it must be complete as something cannot be done at one time and the remaining at some other time. And secondly, if we legislate, the term of his service must be determined in terms of the age of a person and not in terms of the period of service. That is all I had to say, Sir.

SHRI C. D. DESHMUKH: Mr. Deputy Chairman, as I undertook yesterday, I sent the proceedings of the House of the 5th and 6th May to the Attorney-General. I have also had the advantage of a personal discussion with him accompanied by the hon. Law Minister and after all this discussion, this is the further opinion which the Attorney-General has furnished on this point. It says:

"I have perked the proceedings of the Council of States of the 5th and 6th May and have carefully considered the points raised by the hon. Members in regard to the proposed legislation regarding the Comptroller and Auditor-General. I have discussed the matter in the light of the points raised with the hon. Finance Minister and the hon. Law Minister. Having considered all the views expressed, I remain of the view which I expressed in my opinion dated the 29th March 1953."

11 A.M.

So, with all respect, Sir, I should like to say that after hearing all this discussion, I am also confirmed in the view that I took on the legal position. The Attorney-General first cleared the doubt in regard to the construction to be put on article 148(4). He said the first question to be determined is whether any incumbent of this post has ceased to hold his office and if by the operation of any law that may be passed under clause (3), a term is extended, then he continues to hold his office and does not cease to hold



[Shri C. D. Deshmukh.]  
office; and therefore, the question of considering whether he is now holding any further office or not does not arise. Now that being out of the way, we can proceed to consider this question of the exact scope of the operation of clause (3) of article 148 of the Constitution. I think, Sir, it is somewhat unfortunate that this Bill happens to have been passed—purely from the legal point of view—when the incumbent of this high office holds his office under article 377. But a similar situation would arise any time that we wish to pass a law under article 148(3). Imagine, Sir, that we are in the year 1960. There will always be a Comptroller and Auditor-General in office. Now the question is, as soon as we fix the term and fix the other conditions of service, whether those conditions apply to the then incumbent of the office? And if Parliament decides to extend the term which had then been in existence and which would obviously be a term as specified in the Second Schedule, i.e. to say, the existing term, if at any time we wish to increase that term, then this question will always arise as to whether the term of the then incumbent is to be affected or not. I go further and state that such a question would arise in the reverse direction, i.e. to say, if we change the term from 5 years to 3 years and if the then incumbent has held his office say only for one year but has passed his age of retirement, then also this question would arise whether the new term should apply to him.

SHRI C. G. K. REDDY: It could not be done.

SHRI C. D. DESHMUKH: Why can't it be done? I am coming to this.  
(Interruption.)

If hon. Members will have a little patience, I will explain the position. That is why I took this controversy out of the interpretation for the time being of article 377 which relates to the existing incumbent. I am saying that in the year 1960 there will be no question of the Second Schedule or

article 377. Therefore, you will have to consider and interpret only article 148(3). Now the proviso to article 148(3) says:

"Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment."

That is to say, if he has reached 55 and, as I said, he is due to hold his office for another four or five years, and Parliament in its wisdom decides that that period should be reduced to three years, there is nothing in this proviso to protect him. The plain meaning of these words is that it is entirely at the option of the Parliament. So far as the tenure of office is concerned, it is left entirely to the discretion of Parliament. In other words, it can fix a term of three years or five years. There is no question except that, as I say, in so far as we consider 377 in regard to the existing incumbent in that office, but in regard to any future incumbent, it is left entirely to Parliament, and I consider that it is open to Parliament to fix any term it likes.

PANDIT S. S. N. TANKHA (Uttar Pradesh):  
Read the proviso please.

SHRI C. D. DESHMUKH: I have read it. The age of retirement.....

SHRI J. R. KAPOOR: In the case of the Comptroller and Auditor-General, the age of retirement is the same as the tenure of office.

SHRI C. D. DESHMUKH: That is not the point.

SHRI J. R. KAPOOR: When he retires from service, he retires altogether and he cannot be re-employed.

SHRI C. D. DESHMUKH: Age of retirement is age of retirement and term of office is term of office. These two different terms have been used,

and they must have different meanings. Also the existing Accounts and Audit Order has made use of both "the age of retirement" and "term of office" and the age of retirement has been varied for certain specific purposes in order that an officer who has attained the age of 55 or completed 35 years of service in office may be enabled to hold his office for a term. Therefore it is wrong to say that the age of retirement means the term of office.

SHRI B. M. GUPTE: May I invite attention to article 316 in which both these terms, 'age of retirement' and 'period of tenure' have been used?

SHRI C. D. DESHMUKH: I think it is quite obvious. Somebody referred to the general law of interpretation. It is quite correct. It would be wrong to assume that the legislature would be using different terms in the same sense. If it had used different terms, it was deliberate and there was some meaning behind it. Therefore, I say that while it is not open to Parliament by law to change the age of retirement, it is open to Parliament to vary the term of office, and I think there is very good reason for it. Apart from the analogies which, I submit, Sir, .....

SHRI J. R. KAPOOR: Age of retirement from the post or the age of retirement from the service of the Government?

SHRI C. D. DESHMUKH: Service.

SHRI J. R. KAPOOR: Is it open to vary the age of retirement under clause (3) of article 148?

SHRI C. D. DESHMUKH: Every officer has an age and he has to retire.

SHRI J. R. KAPOOR: Is it the contention of the hon. the Finance Minister, if any particular incumbent is holding the office of the Comptroller and Auditor-General and he has been originally given a term of, say, five or six years, that it is open to this Parliament to legislate that, instead of six

years, his term of office shall be reduced to three years?

SHRI C. D. DESHMUKH: Yes.

SHRI J. R. KAPOOR: That means that that particular officer has no protection at all, because what will happen thereafter? He will have to retire not only from this post but in view of the fact that he is prevented from occupying any office whatsoever, he retires altogether from Government service. So, where is the protection then?

MR. DEPUTY CHAIRMAN: You have given a speech now, Mr. Kapoor.

SHRI C. D. DESHMUKH: Hon. Members may or may not like the implication of this, but it is the law as I see it. I think there is a very good reason for it because of the relationship of the Auditor-General with the Houses of Parliament. His reports will have to be presented before the Houses, and therefore I think the legislature has deliberately made this provision. Now, I only gave this in order, as I said, .....

SHRI J. R. KAPOOR: We would like the hon. the Finance Minister to have an open mind on this subject and not commit himself permanently. I do not know how far he is relevant.

SHRI C. D. DESHMUKH: I submit that it is very relevant because we have got to consider what the effect of any law that we may pass under 148(3) is going to be. The first proposition that I put forward is that any such law must apply to all incumbents; i.e. whatever the age, I am only talking of the term of office. My next argument is that whatever the term of office, it must apply to every incumbent. I leave the matter there. Then the question would be only a question of interpretation. In other words, there is no question of any law being against the Constitution. The Constitution desires us to pass a law to regulate the term of office of the Com-

[Shri C. D. Deshmukh.]  
ptroller and Auditor-General some  
time or the other. The Constitution  
does not intend us to rely on the  
Second Schedule for all time to come.  
Therefore, some time or the other,  
you must be faced with this situation.  
That is to say, you have to pass a  
law, and if for any reason—and there  
are many reasons—you regard the pre  
sent arrangement as | unsatisfactory,  
that is, the period of only five years,  
then I say the question is only of  
interpretation whether that particular  
term applies to all incumbents. There !  
is nothing that we can do to stop  
doubts being raised in regard to that I  
interpretation, but I would not accept  
this as an argument for not passing  
a law at all in regard to term of office.  
That is what the objections of many  
of my hon. friends amount to. When  
they exhort us not to have recourse to  
this law, what they really mean is that  
lor God's sake refrain from passing a  
law under article 148 (3) in so far as  
the term of office is concerned, because  
some time or the other there is going  
to be some question raised in regard  
to interpretation, but as, I said, .....

MANY HON. MEMBERS: No, no

SHRI C. G. K. REDDY: With the  
exception of the thep incumbent, everybody  
else can be controlled by that provision. The  
then incumbent cannot be brought under the  
operation of any law that is being passed.

SHRI C. D. DESHMUKH: The hon.  
Member has admitted that he is not a lawyer.  
All that he has argued is in regard to the force  
of this proviso. I am not talking in regard to  
any disadvantage. I am talking in respect of a  
possible advantage, and therefore I am  
saying that, if you increase the term from five  
years to six years, this question will always  
arise as to what happens to the present  
incumbent whoever he may be. You cannot  
escape it except by deciding not to pass a law  
in regard to the term of office.

SYED NAUSHER ALI: Why Sir? You can  
put in a proviso,

SHRI C. D. DESHMUKH: Then, the  
next issue is, on the point of passing  
that law whether you consider that  
any special provision is necessary in  
order to prescribe that that elongated  
term shall not apply to the existing  
incumbent. That, Sir, is open lo Par  
liament. If in the course of this Bill  
for instance some hon. Members were-  
to say: "Provided that nothing in this  
shall operate so as to extend the term  
to which the Auditor-General is entit  
ed under article 377", that certainly  
would be *intra vires* of the Legislature-  
but then that takes us to the ether  
issue of propriety as to whether there  
is sufficient reason for that or not.  
But my object at the moment is to  
establish that we have created a large  
number of bogies in regard to the  
legalistic interpretations which don't  
actually exist and that.....

SHRI K. S. HEGDE: Are we ignoring it?

SHRI C. D. DESHMUKH: We are not. The  
issue is very straightforward and a simple  
one. As soon as you make a law in regard to  
the term of office which is not to the  
disadvantage of the present incumbent, so that  
we are not concerned with the provisions of  
law, we merely put the question to ourselves:  
What happens now in regard to the term of  
office of the present incumbent? You cannot  
escape that question.

SHRI K. S. HEGDE: You h;ive not  
answered the question whether article-377 is a  
self-contained section. That is the main issue  
here.

SHRI C. D. DESHMUKH: No. That may be  
#ie maip issue at the moment. All the  
arguments that have been brought forward are  
of a general nature whether it is the present in-  
cumbent or whether it is some other  
incumbent. This question would always have  
to be determined and I am going to say that  
unless there is some special clause which says  
that this shall not apply to the existing  
incumbent, the extended term will apply  
subject to what tne provision is in

article 377. The next point is, could the legislature have had any particular object in denying something to the present incumbent and which they did not know then because that incumbent had to decide whether he would continue in that office? In order to take it out of the personal held, I will say: had the legislature in its mind some idea of differentiating between the present incumbent or future incumbents? Supposing this law had come in December 1950, still the question arises.....

SOME HON. MEMBERS: Certainly.

SHRI C. D. DESHMUKH: So, I say unless you make a special provision you cannot prevent the extended term from being applied to the existing incumbent.

SHRI B. B. SHARMA: There *in* nothing in the Act to prohibit that.

SHRI C. D. DESHMUKH: That is what I am saying and the same question arises here today. There are no amendments to that effect. So I say unless there are amendments to that effect, if you pass this law, whether that expression remains there or not, I go on to say that the extended term must apply. Then I wish to say this that it is the rule that one must interpret law so as to make sense, in a harmonious way. You cannot merely say that the Legislature in its wisdom somehow thought that the incumbent under article 377 should be prevented from certain advantages which must flow to all future incumbents under article 148(3). I cannot conceive of any reason why the Legislature should have thought so. Therefore, I think it is more probable that the Legislature intended to give the same tert of protection to the holder of that office as to the future holders *at* that office.

SHRI H. N. KUNZRU: This has happened actually in the case of Members of the Public Service Commission who, on the commencement of the Constitution became Members of

the Public Service Commission of the Union.

SHRI H. C. MATHUR: And we wanted to do it just to eliminate any element of favour.

SHRI C. D. DESHMUKH: I am sorry *my* point has not been understood. The element of favour is a common element we can apply to all incumbents, not only to the existing incumbents.

SHRI H. C. MATHUR: During the term of office.

SHRI C. D. DESHMUKH: I say that if we had passed " this law in the future, we should still have been accused of either favouring or disfavouring an existing incumbent unless we had legislated to the contrary.

SHRI K. S. HEGDE: YOU could have avoided all these difficulties if you had depended on the language of the article and not by imaginary inferences.

SHRI C. D. DESHMUKH: The inference, in so far as it is inference on article 377, does not arise in regard to a future incumbent.

SHRI K. S. HEGDE: It does not arise.

SHRI C. D. DESHMUKH: Therefore, in regard to a future incumbent this question of favouring or disfavouring does arise and it requires a positive remedy. I say that it is not necessary for you therefore to rely on article 377 in order to infer that remedy. I am suggesting a wider, a more comprehensive interpretation of law and I say that the legislature intended that that situation would be taken care of by the Parliament by applying its mind to that problem. It left it open to them and it is in view of this construction that one can interpret article 377 as a purely protective measure. That is to say, it only protects him and therefore it makes sense of the words "he shall be entitled to this and that". Therefore I have suggested a way in which all these interpretations can be reconciled and I

[Shri C. D. Deshmukh.] submit that any interpretation which does that is more acceptable than any other interpretation.

SHRI K. S. HEGDE: Don't you agree with me that an affirmative statement excludes the negative? You said it is more a protective right, and the last paragraph of article 377 says "his term of office shall be such and such."

SHRI C. D. DESHMUKH: It does not say so. He is loosely paraphrasing it. It says "he shall be entitled to continue to hold office until the expiration of his term of office". There is no controversy as to what term of office is. Everybody understands that it is so but it does not get over this. The words are: "he shall be entitled to" which are the same words as are the previous ones "he shall be entitled to such salaries and rights etc."

The next question is whether there is anything in the proceedings of the Constituent Assembly to throw light on this. I interjected my observations in this while Dr. Kunzru was speaking. Dr. Kunzru referred to the Drafting Sub-Committee and to many discussions that took place behind the scenes. I suggest that we must have some kind of law of interpretation here also. It is well known that in a court of law one cannot make reference to these proceedings or discussions or head-lines, or anything like that. The law has to be interpreted as it stands. In the House itself which makes laws it is permissible, I think, to refer to proceedings but I submit that it is not open to us to go behind these proceedings, for instance if the proceedings merely say that there is no point of principle involved, one must accept. It is no use hon. Members getting up and saying: "I well remember the day when after a cup of tea we discussed this section 310A and I well remember that Dr. Ambedkar said that it is our intention to do so, etc." That is entirely inadmissible for the purpose of this debate.

SHRI K. S. HEGDE Even the proceedings are inadmissible.

SHRI C. D. DESHMUKH: The proceedings cannot be inadmissible to the Parliament itself which makes the law. I think we are trying to convert ourselves into a court of law. We are the law-makers and in trying to make a law, we are entitled to rely on what we said before or what somebody else said. Anyway that has always been the practice that one freely makes reference to the proceedings and remarks. My point is a limited one that, if at all a reference is permissible, it is only the proceedings and not the behind-the-scene discussions. Therefore I submit that whatever Dr. Kunzru said in this regard is not valid at all and what is valid is this.

SHRI H. N. KUNZRU: For the matter of that even any reference to the debate is not valid. That does not bear on the interpretation of an Act.

SHRI C. D. DESHMUKH: I don't know whether you would like to give a ruling on this. I will refrain from reading it if you don't want it. The time will be saved but if the House is interested, as I think it will be, then the House ought to listen to what it says. As regards article 310A which is now the present article 377, Dr. Ambedkar's remarks are as follows:

"Sir, 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 matter of principle involved in these articles."

There we come to a blank. The next question is: Is it permissible to try and speculate as to what the Legislature could have meant because it is certainly very perplexing about article 148(3)? You have got the proviso, then there is article 377, then there is reference to "the Second Schedule which again refers to conditions of service which, it is accepted, include term of office. Therefore, the question would arise, was article 377 entirely necessary or could we not have done

without it? Was there not something inherent in clause 3 of Second Schedule?

MAJ.-GENERAL S. S. SOKHEY (Nominated) : Does not the Constitution seek to make a distinction between the present incumbent and the future incumbent? If there was no such intention to make a distinction between the two, then the first sentence in article 377 would have been enough. The existence of the rest implies that there is the intention that the Constitution makers had the intention to make a difference between the present incumbent and the future incumbent of this post.

SHRI C. D. DESHMUKH: I was going to give my own version why article 377 should have been included here. It seems to me that the reason is that there is a word like "appointment". And some hon. Members have referred to this word "appointment". And that has raised a doubt as to whether an officer who becomes the Comptroller and Auditor-General could be regarded as one who is appointed. The proviso itself goes on to say. It says neither his salary nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment." That again raises the issue whether "appointment" means appointment under article 148 or appointment in any other general way. It has been admitted by various speakers that there is difficulty if we regarded the word "appointment" as excluding the coming of the Comptroller and Auditor-General, because as the hon. Member pointed out what happens to article 148(1)—to the oath of allegiance, and to various other matters? He could not give an answer and thought some what very hopefully that the Second Schedule or the Audit & Accounts Order somehow were kept alive. But I may say that there is no such thing as keeping anything alive which is not kept alive specifically by the Constitution. That is to say, if there is no word in the Constitution.....

SYED NAUSHER ALI: Are there no provisions in the Constitution for keeping alive existing Law?

SHRI C. D. DESHMUKH: No, there is no such provision.

SYED NAUSHER ALI: There is some provision keeping existing law alive.

SHRI C. D. DESHMUKH: There is no such provision which apart from article 148(3) or article 377, keeps alive anything in the Second Schedule; with regard to the Comptroller and Auditor-General. That being so, one is driven to the conclusion that the word "appointment" must be used in a general sense. The draftsmen, as I said, were cautious and they thought they had better not take the risk. So it seems to me that the object of the insertion of the provision relating to the conditions of service in article 377 was to provide for the Auditor-General who becomes the Comptroller and Auditor-General under that article, the same safeguards as are provided in the proviso to clause (3) of article 148, as doubts might be entertained as to whether that proviso would apply to such Auditor-General in view of the use of the words "after his appointment." The reason why a special provision as to tenure of office was inserted in article 377 instead of merely referring to the tenure of office in addition to the references to salary and rights in respect of leave of absence and pension was to ensure that the term of office of the Auditor-General who continues as such after the commencement of the Constitution, would start from the date of his first appointment as Auditor-General, for if merely clause (3) of article 148 were applied, it might have been contended that a tenure of five years provided under the Order-in-Council read with the Second Schedule would start from the date of the commencement of the Constitution. Therefore, there was room for doubt in this and I think.....

SHRI K. S. HEGDE: Could the hon. Finance Minister kindly tell us why only a limited reference was made to article 148(3)?

SHRI C. D. DESHMUKH: That point I answered already yesterday. That is because the term of office is not protected by the proviso. Otherwise we would have protected only the age of retirement.

SHRI K. S. HEGDE: Is not term of office one of the incidents of the conditions of service?

SHRI C. D. DESHMUKH: It is a condition of service and therefore the term of office may be prescribed; but having prescribed the term of office once one has to consider whether that involves any disadvantage to the existing incumbent. Now that disadvantage is removed by the proviso to the extent to which it removes it. Now, for some reason which I have not been able to follow except generally, it was contended that so far as the tenure of office was concerned, it was entirely within the discretion of the Parliament, except with regard to the Auditor-General who becomes the Comptroller and Auditor-General under article 377 to deal with. In that respect it was thought worthwhile to protect his term of office and therefore they provided for it separately. But they used the same words. They stated "and shall be entitled to such salaries, pension" and so on.

Then an hon. Member asked, "What is to happen to the travelling allowance which is not mentioned in article 377?" because it speaks of only salaries, leave of absence and pension. But as I have stated the Audit Order also deals with the travelling allowance. The plain meaning of it is that if the Parliament wanted to change the travelling allowance, there is no direction given at all, because the Constituent Assembly, the Legislature was not interested in protecting the travelling allowance of the Comptroller and Auditor-General. Therefore you have the distinction. So far as the salaries etc. and the term of office are concerned, they are protected in two different places, so to say, in article 377 and because of the wording of the proviso to article 148 (:■»). But so far as travelling allow-

ance is concerned, it is not protected at all, as far as I can see, because the proviso itself says "neither the salary

.....nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage." So there is no reference here also to the travelling allowance. Therefore, the plain meaning of these words is that, if we had thought it fit to bring forward a more comprehensive Bill in which there was some reference to travelling allowance, then we could have done whatever we liked with regard to that particular item. Now that .....

DR. P. C. MITRA (Bihar): May I know whether the Legislature is competent to shorten the period of the present incumbent?

SHRI C. D. DESHMUKH: It is not competent, because of article 377 which is a protective article.

DR. P. C. MITRA: But it is competent to give the extension?

SHRI C. D. DESHMUKH: That is right.

DR. P. C. MITRA: Why?

SHRI C. D. DESHMUKH: That is what I claim.

DR. P. C. MITRA: Strange! For one thing it is competent and for the other it is not?

SHRI C. D. DESHMUKH: This apriori reasoning does not lead us anywhere. It is a profitless thing. Sir, I really think that the House would accept that the position now is very clear.

The next question asked is: Why is it that a comprehensive Bill has not been brought? I have already made some observations in regard to that. I read out the contents of that part, part II clause (1) of the Audit and Accounts—or is it the Accounts and Audit? I always forget which—Order of 1936 which deals with leave, then resignation, term of office then salary

and pension and travelling allowance and then some kind of general safe guard towards the end, and.....

DR. P. C. MITRA: Extension?

SHRI C. D. DESHMUKH: Term of office includes extension. So I pointed out that pension and term of office are taken care of. Salary we are quite content with, that is to say, we do not think that any particular change is required. With regard to travelling allowance, again we have no reason to make any substantial change with regard to the office of the Comptroller and Auditor-General. He is a member of one service or other and so he is governed by the rules that govern that service in this respect. There is no particular Parliamentary significance in trying to change those rules.

That leaves us with only these two questions. Now, the next question was "why is it that we could not have waited till, say, December 1960, after the present Comptroller & Auditor-General had retired?" On this, I say, we can't get over the difficulty of extension. As I pointed out then, there would be no Auditor-General who would be entitled to hold office under that order. Therefore, there again, you have to see whether we are to extend his term or not. So, you can never get away from this question of extension.

Then we come back to this old question of propriety. That is, I think, the essence of this discussion here today. Is there any reason why, when we are fixing a term, we should not take advantage of the experience of the Comptroller and Auditor-General who has been in office for nearly five years? Should we now wait for him to retire in order to bring forward another Bill which would give an automatic extension to some one who has not even been tried? Now, I submitted in the course of my speech in the House of the People that there were various considerations of public interest; I do not wish to enter into this field of

whether the work of the Comptroller and Auditor-General is praiseworthy or otherwise, except to say that it is always permitted to bring in some name if you want to censure some one while there are well-known rules which you read out, in accordance with which that duty must be performed, if there is a duty and, therefore, it is no argument for hon. Members to say that because some hon. Members praised the Comptroller and Auditor-General, then other hon. Members must censure him.

SHRI K. S. HEGDE: I never censured him.

SHRI C. D. DESHMUKH: There was one other hon. Member .....

DIWAN CHAM AN LALL: May I interrupt my hon friend for a minute?

SHRI C. D. DESHMUKH: Let me complete my sentence. There was one hon. Member who referred to some correspondence. Now, I have great sympathies with hon. Members who feel that there has been great delay in the passing of bills and audits and so on. We are not very happy over this. Hon. Members may be assured that the Comptroller and Auditor-General himself is not very happy. Many of these Part B States have been taken over and their original systems were not such as comparable with the system in existence in the rest of the country. It will take us a little time and when I say that, I did not name him and I did not indeed remember it was that hon. Member who referred to this correspondence. If he does know of any instances, confidentially, personally and privately he ought to let me know because the Comptroller & Auditor-General and, in my humble capacity, myself as well as the Member of Parliament—and there are others who have complained—should co-operate in trying to find out exactly where things are going wrong. The Comptroller & Auditor-General has a very big field to cover and unless his special attention is drawn to certain specific cases it is very difficult for him to institute a general enquiry into the



[Shri C. D. Deshmukh.] position of the audit and accounts in a particular State. I am not blaming him at all; I think he is helpful and, in particular, this is a standing invitation to all Members that any Member who has any complaint to bring forward, ought to entertain no hesitation at all in bringing it to my notice because, as I said, they can always count on our infinite willingness to try to improve matters. Now, that is this question of the state of accounts and -so on.

As I said, I do not wish to enter into this question of whether the present Comptroller and Auditor-General is praiseworthy or otherwise, but I do say that there are certain important matters in respect of which I think it would be valuable if we had some sort of assistance from such an experienced officer. The question is asked with reference to something that I said in regard to the choice of a successor as to why we did not think of bringing forward a Bill, say a year ago. That is only one of the justifications. May be that we have many other preoccupations and may be that many of the officers whom one could have thought of were perhaps not sufficiently mature in experience. I do not wish to give names but there was one of the officers who had just joined the I.A.A.S. They frequently change places from the I.A.A.S.; they come to the Finance Ministry and go somewhere else and, therefore, they have to have a certain amount of experience, specific experience in the same Department, that is to say, Audit and Accounts; they ought to have held office as First Class Accountants General, then perhaps as Deputy Auditor-General and so on and so forth. One has to also consider the age limit of various officers in that Service. Extension is the rule, I might say because the staff has not really been, numerically, able to cope with all the increased responsibilities that, I might say, have been thrust on this Department, and the Comptroller and Auditor-General has been doing the heroic job of work in trying to recruit people and to train

them. But, competent accountants and auditors do not grow on trees. There is a competitive examination which is quite stiff and, after that examination, they have to be put through their paces and all that takes time. Therefore, it occurred to us that it might be valuable if we had the assistance of the present Comptroller and Auditor-General for another year. That is all there is to be said for this.

DR. P. C. MITRA: But alas, man is mortal.

SHRI C. D. DESHMUKH: This is a very profound observation, Sir, but I do not really see what relevance it has to the present discussion.

SHRI K. S. HEGDE: He is reminding himself of it.

DIWAN CHAMAN LALL: I rose to interrupt my hon. friend. He had just finished one point and he went on to the second point. Do I take it that he has finished so that I may interrupt him now at this stage?

SHRI C. D. DESHMUKH: The hon. Member may remind me if I have left any point.

DIWAN CHAMAN LALL: The point is this: The hon. friend referred to the difficulty of passing legislation of this sort for the extension of the Comptroller and Auditor-General at any stage. May I ask my hon. friend whether he is not competent now during the incumbency of this office of the Comptroller and Auditor-General to pass legislation regarding the next man who is going to take his place?

MR. DEPUTY CHAIRMAN: That point has been asked and replied, Mr. Chaman Lall.

SHRI C. D. DESHMUKH: It will raise the same point whether the law applies to the present incumbent. I only referred to the other matter in order to try and establish an interpretation for article 377 which, according to me,

is in consonance with the spirit of 148(3) and its proviso. Therefore, that question really does not take us anywhere. In other words, we can never get rid of that question whenever we pass the law and, as I said, there was a special significance in our trying to pass the law now because then it would be possible for us to ensure that the present Comptroller & Auditor-General does not cease to hold any office and, therefore, will be available to us despite any interpretation that you might put on 148(4), to help us and assist us in regard to some of the important matters like the consolidation of the accounts and audit machinery in Part B States and the other matter about which hon. Members have made a reference, namely, the separation of Audit and Accounts.

Now, these are matters which are in hand and I myself consider that I shall be helped very greatly in putting through some of these things while the field of our activities in the public sector is expanding so fast to have at hand for another year the experience and competent assistance of the Comptroller and Auditor-General. I say 'experience' because he has handled all these matters; I cannot import any judgment for 'competent' is a wrong word because I should be neutral in this matter, but he certainly has had a great deal of experience in that; not only that, he has given thought to it and, indeed, this particular issue of the separation of audit and accounts is an issue which he has urged with Government at every possible stage and if there has been any, shall I say, resistance on whatever ground there may have been, they have been not on his part but on the part of the Central Government and on the part of the State Governments concerned.

Now, Sir, I think since I am on that point I might even now deal with it and that is this question of separation of audit and accounts. We have accepted it in principle. Then, all the hon. Members who spoke on it said that we must do some earnestness of that acceptance of this point in prin-

ciple and they pointed out that administrative difficulties could not be urged because such a change had already been carried out in the Railways and .....

SHRI H. N. KUNZRU: In the Defence Services.

SHRI C. D. DESHMUKH: ..... in the Defence Ministry.

Now I am aware that not only in this House but also in the other House hon. Members are attaching a very great deal of importance to it and I am glad to say that they are actively considering the extension of this system of separation to the civil and postal accounts and that is our intention also. I may in this connection inform the House that the transfer of the payments work of the Food and Supply accounts offices of Government as a first step in this process is also under consideration between the officers of the Comptroller and Auditor-General and our officers. I think I am right in saying, Sir, that the Comptroller and Auditor-General himself who, as I said, has been vigorously urging this matter, accepts that this process of separation will take some time and will have to be spread over a period and I feel myself that hon. Members who have advocated this will be content to leave things at that so long as, as I said, (a) we accept the principle and (b) we give some indication of our desire to implement that. I must point out that it is not merely the matter between the Comptroller and Auditor-General and the Central Government but also the Accountants-General in the States as they are keeping accounts of both the Central and of the State Governments, and all the accounting work so far as it relates to the State transactions has to be transferred to them. Now, that involves two things. The States have got to make their own arrangements for keeping their accounts. The States also have to agree to some kind of agency function for keeping our accounts because Central accounts pervade every field all over the country. Now this requires a great deal of

[Shri C. D. Deshmukh.] consideration with them but on the principle of the separation I think there is now no difference of opinion. A few States are somewhat timorous in this respect and they feel appalled, so to speak, at the prospect of having to manage these somewhat swollen accounts arising out of the large 'Development Programmes under the Five Year Plan. Well, now we are trying to persuade them and, as I said, we are trying to effect the separation as soon as it is practicable. Now that is with regard to this question of the separation of audit and accounts.

Then there were a few other issues which I think now become somewhat minor ones. One was the question of whether we would not be putting rather a great strain on the loyalty of the Comptroller and Auditor-General— not the present one but anyone—by making these changes. Well, I suggest, Sir, that that situation again will arise whenever you think of making any change in the salaries or leave rules or pension rules or the term of office and it seems to me that if Government's choice of the Comptroller and Auditor-General has been a good one, then I do not expect that that kind of inducement will play any part in influencing his work. In other words, I do not think that the Parliament ought to be deterred from doing the right thing. If for instance for some reason Parliament were to think that even as now the pension should be raised, there is no reason why one should make an exception of the existing incumbent and say "No, this new rule will not apply to you and you ought to continue to draw your old pension." Now I submit that there is not sufficient reason except this general suspicion for not applying any liberalised terms to an incumbent just as there is no reason why one should not apply a shorter term than the term open to the Comptroller and Auditor-General if for some reason the Parliament prompted by Government comes to that conclusion. Now therefore here any favour ought to be accepted from our consideration in

determining what sort of term one would prescribe.

Now as regards the actual term, one hon. Member has propounded an extraordinary theory that the term could only be defined in terms of the age of retirement because he argued backwards. He wanted to save the proviso to 148(3) and to make it more comprehensive than what it is because everyone says that it refers to the age of retirement and not to term of office, and therefore he argued, that the term of office can only be determined by referring to the age of retirement. Now I do not think that any trained legal mind would view it in that way. I do not know about his training and therefore I cast no reflection, but I do not even now know whether he has practised law.

SHRI B. RATH: No.

SHRI C. D. DESHMUKH: He says 'no'. I thought so. I do not think any trained legal mind will ever accept this that because the words 'age of retirement' appear in the proviso, therefore it is wrong for us to indicate the term as 'six years', and the law does not intend that the term shall be determined in the shape of an age of retirement. It cannot be right.

SHRI K. S. HEGDE: That is merely arguing backwards.

SHRI C. D. DESHMUKH: It cannot be right because the law has reference to the Second Schedule. Article 148 (3) refers to the Second Schedule. Therefore the law tolerates, I think, our maintaining the present position till we want to make a law changing the present position. The present position is in terms of other things as well as the age of retirement as I read out the other day from that 1936 Order. Therefore I say that this is not a very tenable view and that we can safely proceed to choose a proper term. Whether 'six' is the proper term or whether it should be

"eight' is another matter. I explained perhaps in the other House, Sir, that one has to have some kind of a golden means somewhere. It was undoubtedly open to us merely to have the age of retirement. In some countries it is limited only by an age of retirement. In other countries there is no age of retirement nor term of office but a convention exists by which the Comptroller and Auditor General or the incumbent of a comparable office retires, so to speak gracefully. But so far as we are concerned, I think, Sir, that the "time is not opportune for defining it in relation only to the age of retirement—not the age of retirement which is really the age of retirement, not the ordinary Service Rules but under some other rules like 62, 63, 64, and we have also taken into consideration the prevailing circumstances in the field of choice to-day and although I cannot obviously go into details I find that most of the officers who now stand a chance of being selected are young officers, perhaps between 50 & 54 and if we were now to define it by the age of retirement, there is a possibility that some of them or anyone of them may hold office for too long a period. Now that is where perhaps there is some validity and a point of sense in what the hon. Member said although he used that in quite a different sense. He agreed with the contents of the Bill but because he said that Government themselves were stale, therefore anything that Government suggested should not be accepted or something of that kind. Well, that is a misuse of that argument but there is.....

SHRI K. S. HEGDE: They always begin at the wrong **and**.

SHRI C. D. DESHMUKH: But he never comes to the right end. Anyway, Sir, the consideration that weighed with us was that there should be some sort of basis but we did not wish to take the risk of an officer continuing as Comptroller and Auditor-General subject to the provisions of 148(1) of course for twelve years or ten years or whatever it may be. So

that was the reason which guided us in making this choice.

Then there was a plea by the hon. the Leader of the Praja Socialist Party that we ought to omit all references to the I.C.S. pension because that would secure that no I.C.S. officer will be selected. I do not think that that result will follow because the pensions of the I.C.S. officers are protected by the Constitution and this is only by way of a sort of abundant caution that this has been inserted here. Even if we were not to make any reference to the particular pension of one thousand pounds sterling—it is called an annuity as a matter of fact—it would not secure that an I.C.S. officer would not be chosen. I do not think, Sir, it would be right for me to enter into a discussion of whether it would be right or wrong to make the choice from among the I.C.S. because I think that it will take us to a controversial territory, which really is not necessary for the purposes of this Bill. Therefore I will content myself by saying that this provision is there in order to draw attention to something which has been guaranteed to the Indian Civil Service officers under, I think, article 314. Now that deals with that point raised by the hon. Member. I am not aware of not having dealt with any other point made by hon. Members, but if there are and if I am reminded, I will try to deal with it.

There is only one point I would like to mention and that is, I think it was Shri K. S. Hegde who suggested that the Comptroller and Auditor-General might entertain a phobia towards the Finance Ministry.

SHRI K. S. HEGDE: You told me that there was no such recruitment from the Finance Department, and so I stopped at that. I suggested that there should not be recruitment for the Audit Department from the Finance Department.

SHRI C. D. DESHMUKH: That may be. But I suppose you used the word 'phobia' in the sense of 'phile'.

SHRI K. S. HEGDE: Yes.

SHRI C. D. DESHMUKH: Phobia means hate and phile means love. So there is no danger of anyone entertaining a Finance Ministry-phobia, but really that, observation itself proceeds on a certain misunderstanding with regard to recruitment to the Finance Ministry. Finance Ministry has no special cadre for itself. It has a cadre for the pool which is shared by the Commerce and Industry Ministry and that is made up both of I.C.S. officers, officers from Military Accounts and officer-s from the Audit and Accounts Service. Therefore whether it is phobia or whether it is phile, there is no way of getting rid of it, but I suggest, Sir, that we take a broader and more charitable view and come to the conclusion that when an officer is good enough to be selected for this high job, then there should be no question of his entertaining all these extraneous feelings apart from his own self-respect and his professional competence.

Only as an instance of that, and not as a comment on the work of the Comptroller and Auditor-General, I might draw your attention to the fact that the so-called concordat between the Government and the Comptroller and Auditor-General was repudiated by the present Comptroller and Auditor-General. This was done on the 17th April 1950. That concordat was entered into on 1st April 1937. It was known as the statement of the relations of the Auditor-General with the Executive Government under the Government of India Act, 1935, and the present Comptroller and Auditor-General says that in his opinion it was of doubtful propriety even under the Government of India Act, 1935. And he goes on to say that it is entirely unconstitutional under the Constitution of India. He had ascertained that no such confidential agreement exists in the United Kingdom between His Majesty's Government and the Comptroller and Auditor-General of the United Kingdom limiting the latter's discretion in any manner as to the comments he may make in his Audit

Report or Reports to the Parliament on the accounts of the Executive Government, including the Treasury. No phobia here at all. Whatever may have been the justification of a certain concordat when the Executive Government was still subject to a large measure of control by the Secretary of State for India and not of the Legislature in India, the Comptroller and Auditor-General of India holds that it would now be entirely improper and unconstitutional on his part to be bound by any pact with the Executive Government of the day which fetters his discretion or judgment in any manner as to the matters which he may bring to the notice of Parliament or of the State legislatures in the discharge of his duties, and, therefore, in categorical terms he proceeds to say: "I am accordingly to inform, you"—he does not ask whether he should do it—"that the concordat has no longer any force" and I submit that there cannot be any other basis for confidence in regard to the way in which the duties of such a job would be discharged by the incumbent whom one may select for this purpose. And I can assure hon. Members that the choice would be made after the greatest deliberation and at the highest level. So that is as regards that point.

12 NOON.

That also covers the other point made by some hon. Members that it is not the rule to extend the service in the case of high dignitaries. All these are false analogies or analogies which, like parables, ought not to be driven too hard. They give you a sort of general dimensional picture of things, but they should not be used for pointing an argument. I think, Sir, I have finished.

SHRI H. C. MATHUR: What is the justification for additional pension?

SHRI C. D. DESHMUKH: Because it is compared with pensions which are drawn by others. I think I read out the pensions which are drawn by other high dignitaries. His pension was regarded as somewhat too low—about Rs. 792 and odd. I think this is somewhat too low. If one were

to enter into a disquisition as to the general level of salaries and pensions, one would never come to any conclusion and therefore one has to take a decision only in the context of the level of salaries, pensions or other privileges that may exist in the field as it is today. And judged by that criterion, Sir, I think it will be admitted by most people that the present pension is inadequate for an officer who has to maintain his independence of judgment against, I might say, very great odds.

SHRI H. C. MATHUR: There was a particular reference to the Members of the Public Service Commission.

SHRI C. D. DESHMUKH: That point. I think, was answered by hon. Members. Most of them are retired officers and draw their own pension and there is a special rate of pay for them, whereas here it is important that we should secure the services of someone who is at the absolute prime of his powers in regard to the control of audit and accounts and therefore that is where analogies of that kind might become somewhat misleading. Sir, I have finished.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to regulate certain conditions of service of the Comptroller and Auditor-General of India, as passed by the House of the People, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill. The question is:

"That Clause 2 stand part of the Bill."

There is an amendment by Shri Kishen Chand.

SHRI KISHEN CHAND (Hyderabad): I do not move that, Sir.

40 C.S.D.

SHRI H. N. KUNZRU: Sir, I want to make some observations. The Attorney-General having confirmed his previous opinion, I do not want to discuss again, the question that we debated at length yesterday. I shall, however, permit myself to say that the manner in which Government are acting is completely against the spirit of the Constitution. Sir, as regards the clause before us, I should like to know from the Finance Minister whether the public interest requires that he should extend the service of only one officer connected with audit and accounts or that it also requires that he should extend the term of office of the senior people immediately below him so that they may have the same chance of being selected for the office of Comptroller and Auditor-General as they would have had, had the existing incumbent retired on 15th August 1953. I think if he is going to give an extension to the existing incumbent, he should be fair to the other officers also who come immediately below him. I think ultimately fairness requires this. He has said, at least in another place, that there is a great shortage of senior officers and for this reason several officers have had to be given extension.

SHRI C. D. DESHMUKH: I said it here also.

SHRI H. N. KUNZRU: I did not hear him say that here. But it is enough for me that he made this statement in the other House. If this is true, and I take it that it is, I should like to know what he is going to do with the other officers who will retire, who, because of the extension that is being granted to the existing incumbent, will retire before Government have an opportunity of selecting a successor to the present incumbent. If there is no intention on the part of Government to grant an extension also to the other senior officers about whom I have spoken, then it would appear that Government are giving an extension to the present incumbent only that he may keep the place warm for some person whom they have already fixed upon in their mind. It would be deplorable.

[Shri H. N. Kunzru.] if a reference were made to the public interest to extend the term of office of the existing incumbent only that he should be there long enough to allow some other person whom Government [ have in view to be free to assume the office of Comptroller and Auditor-General. I think that both public interest and fairness to the senior officers of the Audit and Accounts Department require that Government | should make their intentions with regard to these matters clear. The extension of the term of office of the present incumbent, though it may be justified because of his merit, should not place other officers at a disadvantage.

SHRI J. R. KAPOOR: Mr. Deputy Chairman, before making some observations on the provisions of clause 2, I would like to submit that there is absolutely no justification for the apprehension which my hon. friend Dr. Kunzru seems to entertain that unless the age of retirement of the junior officers in the Government, particularly in the Audit Department, is extended, their claims may not be considered for appointment to the post of Comptroller and Auditor-General.....

SHRI H. N. KUNZRU: The thing is unlikely.

SHRI J. R. KAPOOR: Even after their retirement from Government service they can yet be appointed to the post of Comptroller and Auditor-General.

SHRI H. N. KUNZRU: All that I say is, this has never happened, and this is most unlikely.

SHRI J. R. KAPOOR: It may not have ever happened, but for valid reasons, because under the old Government of India Act the age limit even for the Auditor-General was prescribed. But under our Constitution no age limit has been prescribed so far as the Comptroller and Auditor-General is concerned. Age limit has been prescribed in the case of High Court Judges, Supreme Court Judges, Members of

the Union Public Service Commission, and so on. It is laid down that they, cannot hold office after the age of 65 or 60, as the case may be. But so far as the post of Comptroller and Auditor-General is concerned, I am not aware of any provision in the Constitution—I hope I am correct—which prescribes; any age limit. A Man even at the age of 65, I suppose, if he is competent! enough to occupy this post, can be appointed. So, no junior officer in the Audit Department need have any apprehension that if he retires before the present incumbent of the office of Comptroller and Auditor-General retires, his claim will not be considered. That seems to me to be a very clear proposition.

Coming to the provisions of clause 2' and the Explanation that has been\* appended to it, I feel that we are doing a great injustice to the present' incumbent of the office by having it in the Explanation that the period of six: years shall be computed from the 15th day of August 1947. It may perhaps appear a bit curious to my hon. friends the Finance Minister and the Law Minister, but it does appear to me that by having this Explanation we are going contrary to the provisions of article' 377.

MR. DEPUTY CHAIRMAN: The hon.. Member is going back.

SHRI J. R. KAPOOR: I am not going back.

MR. DEPUTY CHAIRMAN: It has; been raised and replied to.

SHRI J. R. KAPOOR: If you will please bear with me for a minute, I hope my point may be appreciated. My contention is that we are infringing the rights and privileges of the Comptroller and Auditor-General as they have been conferred on him under article 377. My interpretation of article 377 is that the Comptroller and Auditor-General is entitled to continue' in office for the full period of five years from 26th January 1950, the date of the commencement of the constitution.;

and if that [Contention of name is correct, then he must continue in his own right under article 377 into his office up to 31st January 1955, and this explanation therefore substantially curtails his right, which it is not open to us to do under clause (3) of article 148 unless we subscribe to the astounding proposition mentioned by my hon. friend the Finance Minister during the course of his closing speech that it is open to Parliament to reduce the tenure of office during the occupancy of the office by a particular person. I do not subscribe to that view, and I am sure no other hon. Member of this House excepting, of course, the Finance Minister.....

MR. C. D. DESHMUKH: And the Law Minister.

SHRI J. R. KAPOOR:— and of course, the Law Minister—the Ministers over there .....

SHRI C. D. DESHMUKH: And the Deputy Finance Minister.

SHRI J. R. KAPOOR: Sir, it is a very dangerous proposition. I wish hon. Members of this House would realise clearly its implications. It is contended by the hon. Finance Minister that, though we are enacting today that the tenure of office shall be six years, it shall be open to us at any stage to reduce this period of six years to five, four or three years, and that such new enactment would be applicable even to the person occupying the post at that time. Let us realise now the dangerous implications of this Bill. This means that the Comptroller and Auditor-General would be at every moment at the mercy of the Government, of course at the mercy of the Parliament and Parliament for all practical purposes means the Government which has the majority in the House.

SHRI C. D. DESHMUKH: That is not a proper remark, Sir. That is my whole quarrel with the hon. Member. I say that when Parliament decides, the thing is decided on its merits and

"to argue that because the executive wants certain things to be done, therefore it brings forward a Bill, that is. I proper to say.

MR. C. L. K. REDDY: Is that not in reality?

MR. J. B. KAPOOR: It is not use not confining or not concentrating.....

MR. DEPUTY CHAIRMAN: Your remarks are a reflection on the Parliament.

SHRI X. R. KAPOOR: No, Sir. It is not a reflection. Far be from that, Sir, my remarks amounted to giving credit to the Parliament that it cooperates with the Government in every possible way.

MR. DEPUTY CHAIRMAN: But the ultimate authority is with the Parliament.

SHRI J. R. KAPOOR: True, Sir. But so good is the Parliament, so sensible, reasonable and wise is the Parliament that in its wisdom it always considers it desirable, in the interests of the country, to co-operate with the Government and agree to its suggestions, of course, unless it thinks that the suggestions are not in the interests of the country.

Very well, Sir, even then, if not at the mercy of the Government, at least the Comptroller and Auditor-General, would be at the mercy of the Parliament from time to time. Now that should not be. The whole scheme of the Constitution is that the Comptroller and Auditor-General must not be at the mercy of the Parliament and it is for this reason that it has been specifically provided that his salary shall be a charge on the Consolidated Fund of India. The Parliament, once it fixes the salary, has no control over it. The Parliament will not be called upon to vote that salary from year to year and the Comptroller and Auditor-General must go on automatically getting it until the expiry of his term of office. So, Sir, we must make it very clear here and now that we are not subscribing to the view which



[Shri J. R. Kapoor.] has been propounded by hon. the Finance Minister that it shall be open to the Parliament to reduce the tenure of office of any Comptroller and Auditor-Genera).

SHRI C. G. K. REDDY: He gave up that contention afterwards.

SHRI J. R. KAPOOR: He did not. Not only he sticks to it but he also sticks the hon. Law Minister to himself when he is sticking to this proposition.

MR. DEPUTY CHAIRMAN: Please wind up your remarks.

SHRI J. R. KAPOOR: No, Sir. It is an important subject and it must be considered in the light of my submission.

MR. DEPUTY CHAIRMAN: We have debated over it for three days nearly.

SHRI J. R. KAPOOR: But this point has never been considered. All along it has been contended that.....

MR. DEPUTY CHAIRMAN: You have not moved any amendments to the clause.

SHRI J. R. KAPOOR: Well, Sir, I always consider it advisable to place my viewpoint for the consideration of the Finance Minister and not to embarrass him with any amendments, so that if he is convinced with the propriety of my view, he may himself have the credit of moving an amendment. I never want to take to myself the credit of moving any reasonable amendment even and I always want the credit to go to the Finance Minister.

My submission, therefore, Sir, is that under article 377 the tenure of office of the present incumbent was five years as computed from 26th of January 1950. And elucidating this point, Sir, I would submit that the latter portion of article 377 must be construed, must be interpreted, to have some definite meaning, which meaning

would not have been possible to be imported in article 377 if these portions were not there.

MR. DEPUTY CHAIRMAN: We are not concerned with that, Mr. Kapoor. This clause fixes the period of service at six years. Then why go back to five years and all that?

SHRI J. R. KAPOOR: I am sorry, Sir, I have not been clearly understood by the Chair. The period now going to be fixed is six years but that is not for all. If the explanation were not there, it would be all right. But the period of six years.....(*Interruption*). What has been given by the substantive portion is being taken away by the Explanation.

SHRI KISHEN CHAND: From the date on which he enters upon his office.....

SHRI J. R. KAPOOR: True. But can we say that he entered upon this office on the 15th August 1948? No, because the present Comptroller and Auditor-General entered upon his office not on the 15th August 1948 but on the 26th January 1950. That is my whole contention. He entered on this office on the 26th January 1950, and according to article 377, his term of office begins from that date and not from the 15th August 1948. My submission is that the latter portion of article 377 properly interpreted would mean that the present Comptroller and Auditor-General shall have a tenure of office as determined under the provision-s which were applicable to him immediately before such commencement. Under this provision, no period was fixed. If under this provision any period was fixed, it would be a different matter. With due respect to the hon. the Finance Minister .....

MR. DEPUTY CHAIRMAN: You have not followed the Finance Minister.

SHRI J. R. KAPOOR: Previously, a definite period was not fixed. It so happens of course that if we interpret that Order with reference to the particular incumbent in the office, we may

come to the conclusion that his tenure of office was Ave years. So, my submission is that no definite period was fixed. We have to deduce what the tenure of office of the present incumbent is. Secondly, this is my important point, may be a little subtle, we have now to deduce, after the commencement of this Constitution, as to what is his term of office as Comptroller and Auditor-General with reference again to the provisions which were applicable to him immediately before such commencement. Now, we have to determine—the word used here is 'determine'—what is his tenure of office according to those old provisions.

MR. DEPUTY CHAIRMAN: You can tell the House what it should be according to your interpretation. That is all which is relevant. All the rest is irrelevant.

SHRI J. R. KAPOOR: I must bow to your verdict, no doubt.

MR. DEPUTY CHAIRMAN: Please tell the House what is his term of office according to your interpretation under clause 2. That would be relevant to the discussion under clause 2. You are going beyond clause 2.

SHRI J. R. KAPOOR: I, your ruling, Sir, that while considering clause 2, we need not refer to the constitutional position on this subject?

MR. DEPUTY CHAIRMAN: That has been referred to all these two days. In the light of that discussion and according to your interpretation what should be the period would be relevant. Please confine yourself only to that.

SHRI J. R. KAPOOR: My submission is that it is not open to us to do this. In fact, this is *ultra vires* of the Parliament to incorporate this explanation. This explanation must therefore go, and if this explanation goes, then the full period which will be available to the existing incumbent would be six years from the 26th January 1950. We *cannot do* anything less than that. Less than that it is not open to us

to do. It is very late in the day and I find that the patience of the House has indicated by the patience of the Chair itself is exhausted and perhaps it is.....

MR. DEPUTY CHAIRMAN: I have got a fund of patience but you have to be relevant.

SHRI J. R. KAPOOR: So my submission was that it is not open to us to reduce his tenure of office which obviously seems to me is the implication and the clean meaning of this explanation. One point that I was submitting was, I was going to quote the view of the hon. Minister for Finance himself. Yesterday while arguing on the subject he put a question as to what was really the intention of the latter half of article 377. It was a very relevant question and my submission is that if my contention is not acceptable to the House, then the whole of the latter portion of clause 377 becomes absolutely redundant. If the intention of article 377 was only to provide a tenure of 5 years to the present incumbent, then the latter portion was not at all necessary and the article could have very well stopped thus:

"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."

If this clause had stopped here, then he would have had all the protection that is being given to him now", but he was given a little more protection than that and that was that his tenure of office was not to expire only 5 years after the date of his appointment as Auditor-General originally but it was to be determined at a subsequent stage after the commencement of this Constitution. It was to be determined afresh.....

MR. DEPUTY CHAIRMAN: Mr. Kapoor, you are repeating your old arguments.

SHRI J. R. KAPOOR: I shall not. I know I will have no leniency if I err in the slightest way and I therefore now pass on to draw the attention of this House to the difference in phraseology of article 377 and sub-clause (3) of part (e) of Schedule II.

MR. DEPUTY CHAIRMAN: That also has been done Mr. Kapoor.

SHRI J. R. KAPOOR: All right. I feel I should not go on any further with these interruptions.

SHRI C. D. DESHMUKH: Mr. Deputy Chairman, I shall first deal with the points raised by the hon. Member who spoke last. He was very refreshing but I think all his arguments have gone up in smoke. Because he really has not established that by any stretch of imagination article 377 could be read so as to mean that the term of office of the present Comptroller and Auditor-General began with the commencement of the Constitution. I think he has tried to make a distinction which does not exist between the office of the Auditor-General and the office of the Comptroller and Auditor-General of India. The plain situation is that the Comptroller and Auditor-General who was formerly the Auditor-General was entitled to hold the office for the term for which he would have held it had it not been for this Bill or whatever law we might pass. All that has been assured to him from the date of his appointment originally which is 15th August 1948. Therefore I think this explanation is necessary. I don't want now to enter into the other point that even if he was right, it is open to the House to reduce the term but I will not go into that but that will again take me to article 377 and that is a general point which he made not in regard to the present Comptroller and Auditor-General. So far as the present Comptroller and Auditor-General is concerned, what I said in regard to the general situation does not hold and we must construe article 377 and all I can say is I don't accept the view that he has propounded that the term begins some

time in January 1950 and goes on till the 26th January 1955.

As regards the arguments which have been put forward by Dr. Kunzru, I thought he made a statement at one time that he was in favour of the extension. This is what my notes show, that he was . . . . .

SHRI H. N. KUNZRU: Yes, I am . . .

SHRI C. D. DESHMUKH: That he would be welcoming such an extension had the Constitution been amended. Now that I have pointed out the article under which we do it, he has now added further conditions and said that he would welcome the extension only under certain conditions. One of these conditions is that the extension should be given to almost everybody who is likely to be considered for selection to succeed the present Comptroller and Auditor-General, and that is because extensions are common in this Department and therefore there is no reason why the chances of younger people should be affected. Now, if one were to carry that kind of an argument too far, one would land oneself into the situation where extensions would have to be given to almost everyone in the public services, automatically. After all, the real point is, extensions are given in the public interest. I think in the course of his speech he used the words: "if extension be given on merit." I may say we are not giving the extension to the Comptroller and Auditor-General on merit. Again, and again I have tried to make the point that we are giving the extension—although it is a loose way of saying it—we are increasing the term not on his merits, but in view of certain public interests that . . . . .

SHRI H. N. KUNZRU: May I correct my hon. friend as to what I said? The hon. Minister thought that was being done in the public interest and I also thought that on the merits that step was justified.

SHRI C. D. DESHMUKH: Not on his merit, but on the merits of the case?

SHRI H. N. KUNZRU: I referred personally to the merits of the officer concerned.

SHRI C. D. DESHMUKH: That is the whole point. We are not considering the merit of the particular officer, but.....

SHRI H. N. KUNZRU: I did not controvert what the hon. Minister said with regard to public interest.

SHRI C. D. DESHMUKH: That is the whole point. We are not considering the merit of the particular officer. I do not controvert what the hon. Member said with regard to public interest, but that it should be done in the public interest .....

SHRI H. N. KUNZRU: But I added this part.

SHRI C. D. DESHMUKH: The latter part is really not very relevant. It is the public interest that is the important point when regarding this matter.

Well, if one does so, then one has to take into account or take into consideration what will happen to other aspirants or hopeful people in the service. After all, it is again a thing that has happened almost every day when extensions are given. As I said, in this department a very large number of extensions have been given. I do not see what difference is there between giving a series of extensions to Accountants-General and thereby blocking the prospects of many young men and giving extension to the Comptroller and Auditor-General and thus locking, as it were, the prospects of certain people who are likely to be considered. But actually I would like to point out that the danger itself against which he wishes to guard is an imaginary one. The appointment to the office of the Comptroller and Auditor-General is made from the best available persons with wide knowledge of administration and finance and accounts and is not necessarily confined to any particular service.

SHRI K. S. HEGDE: Is it not an office of selection and not of promotion?

SHRI C. D. DESHMUKH: That is right. Again, there is absolutely no age-limit either to the appointment or to the retirement, except in the case of a person who, before the age of super annuation, had completed the minimum period of five years service as Comptroller and Auditor-General.

Now, therefore, this question is whether any senior officer's prospect is debarred does not really arise. There is a very simple way out of it. For instance, if I were to sit down after this session is over, as I shall have to and try to suggest a candidate for the consideration of the Cabinet and if were to find that that particular officer is likely to retire, it would be the easiest thing for us to give him an extension. There is nothing to stop us from giving the necessary extension in order to ensure that he is available also, I think—although this position has never arisen in the past,—there is nothing to stop us from selecting a candidate who has already retired. Therefore, all this danger which the hon. Member contemplates does not arise and that enables me to deal with the point which was raised by another Member that we are ruining the chances of other people in the service. That is not so. Once public interest is served, as I said, once that view is conceded, whether anybody's promotion is likely to be delayed by a year: that can be the only consideration, other consideration that a man drops out of the field of selection does not exist, he will still be in the field of selection—and whether somebody will have to wait for the mantle to fall on his shoulder, I say that consideration is not strong enough to counterbalance the general considerations of public interest.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of Bill."

[Mr. Deputy Chairman.] The motion was adopted. Clause 2 was added to the Bill.

MR. DEPUTY CHAIRMAN: Motion moved:

"That clause 3 stand part of the Bill."

There is an amendment by Mr. Kishen Chand.

SHRI KISHEN CHAND: Mr. Deputy Chairman, I move:

"That at page 2, lines 1 to 5 be deleted."

MR. DEPUTY CHAIRMAN: Motion moved:

"That at page 2, lines 1 to 5 be deleted."

SHRI KISHEN CHAND: Mr. Deputy Chairman, Sir, the hon. the Finance Minister in his reply has said that pension given to the Comptroller and Auditor-General is very small compared to the pension granted to other officers by the Constitution. He pointed out that considering his eminent position and services to the country he should get more pension than he is entitled to and he has suggested this amending clause in this Bill. I have no objection to giving higher pension to the Auditor-General but I submit that this method is a wrong method of attaining that objective. We are counting the service of the Auditor-General three times over for giving him a higher pension. The normal pension of the I.A.S.S. officer has an upper limit of Rs. 8,000; I am saying it in round figures, but, it is a little less than Rs. 8,000. The Auditor-General on account of holding this high office gets an additional pension of Rs. 2,500 per annum for the same period of service and now we are giving an extra additional pension of Rs. 600 per year of service. On principle, I am against this method of giving additional pension. If you want to give a higher pension, it would be open to hon. the Finance

Minister to propose a sort of lumpsum amount of Rs. 12,000 per year as the pension of the Comptroller and Auditor-General of India, or he should have omitted the clause "the service as Comptroller and Auditor-General in either case being reckoned for the purposes of the relevant rules as service for pension". If he had omitted this sentence and altered sub-clause (b) to the effect: "Rs. 12,000 per annum in respect of each completed year of service" I would have had no objection, as then his sole idea would be to give a reasonable pension to the Auditor-General of India. With that object, I entirely agree but I do take strong objection to the method followed! because it is going to be a precedent and later on some other Bills may come before Parliament giving additional pensions counting the same-years of service. To safeguard against that I have suggested that clause 3(b) should be omitted but if the hon. the Finance Minister instead of omitting: 3(b) omits lines 25 and 26 and makes a suitable alteration in 3(b), it will be all right. The best course will be to delete this clause entirely and fix a statutory pension of Rs. 12,000 a year for non-I.C.S. and Rs. 13,350 for I.C.S. men. That will be better than counting the same years of service twice over, first for additional pension, a second time for extraordinary additional pension.

SHRI C. D. DESHMUKH: I do not know, Sir, that I quite got the hon. Member's point. He somehow feared, that by using this language in future if we were to extend the term or another term, then that would lead to an impossible figure. But since we have the maximum fixed, I do not see how that danger arises. So long as we work up to a ceiling, I do not think it matters how that ceiling is . . .

SHRI KISHEN CHAND: On a point of order, Sir. I did not say anything about the language of the clause, I said about 'counting the same year, of service three times over'.

SHRI C. D. DESHMUKH: It does not matter go long as the total maximum

is there and actually the present Comptroller and Auditor-General is not likely to benefit by counting all his six years and multiplying it by Rs. 600 because he already gets a pension of Rs. 9,500. So we are satisfied that it meets the situation and I do not consider it necessary to accept the amendment of the hon. Member.

MR. DEPUTY CHAIRMAN: Do you want me to press your amendment, Mr. Kishen Chand?

SHRI KISHEN CHAND: Yes, Sir.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 2, lines 1 to 5 be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill

Clause 4 was added to the Bill.

Clause 1, the title and the Enacting Formula were added to the Bill.

SHRI C. D. DESHMUKH: Sir, I beg to move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill be passed."

SHRI H. N. KUNZRU: Mr. Deputy Chairman, I do not want to give a resume of the discussion that has taken place in regard to the most salient features of the Bill but I consider it necessary to say that the discussion has emphasised the need for the amendment of clause (3) of article 148. If that clause stands as at present, the term of office of the Comptroller and Auditor-General can be changed from time to time. Now

this is very undesirable. Article 14JF' and a number of other provisions of a similar character applicable to other holders of high offices show that what the Constituent Assembly intended was that people in certain positions should run no risk of having their term of office threatened nor should they **have**' before them the temptation that would be placed in their way if Government had the power of increasing it.

Now, I think, Sir, that it is in order to ensure completely the independence of the Comptroller and Auditor-General, it is necessary that clause (3) of article 148 should be amended so as to make the period of service independent of the wishes of the Government of the day. I say 'of the Government of the day' because its lead will be accepted by the majority of the Members of Parliament which consists of its own supporters. This is obviously a danger and a threat to the independence of the Comptroller and Auditor-General. Public interest therefore requires that article 148 should be amended in the manner suggested by me as soon as possible and the period of service should be laid down, in the Act itself as it has been done in the case of members of the Public Service Commission of the Union and Judges of the High Courts and of the Supreme Court. Their salaries, it is true, have been fixed in the Second Schedule, but since the proviso to clause (3) of article 148 lays down that the salary of an incumbent shall not be varied to his disadvantage after his appointment, this gives sufficient protection to the existing incumbents. I do not remember, now, Sir, whether the Schedule can in the case of the Judges of the High Court be altered by a law passed by Parliament but if their salaries cannot, be altered by a law passed by Parliament but can be altered only by means of a constitutional amendment, then I submit that in this respect too the position of the Comptroller and Auditor-General should be made stronger. He should, in every respect, be above suspicion and he will not be above suspicion if

[Shri H. N. Kunzru.]  
his term of office can be extended or curtailed by Parliament inevitably at the instance of the Government whom it supports. As regards salary of an ; existing incumbent cannot be adversely affected during his term of office. I think it is, on general grounds, desirable that it should be fixed once for all. There is no reason why it should be left to Parliament to vary it if the power to vary the salaries of the Judges, for instance, has not been left to Parliament.

SHRI K. S. HEGDE (Madras): Mr. Deputy Chairman, I will not take much of the time of the House. All that I want to say is that I admire the forensic ability of the hon. Finance Minister. When he was elucidating questions of law, I almost thought that he must have been a lawyer all his life.

SHRI C. D. DESHMUKH: Studied it.

SHRI K. S. HEGDE: Like a good lawyer having a bad case, for the most part he has carried the House, and carried my vote also, with him, but has still left me unconvinced about the matter.

SHRI C. G. K. REDDY: That was previously arranged.

SHRI K. S. HEGDE: So far as I am concerned, with the experience that I gained during the course of this debate, I request the Government with all humility to have their measures more carefully examined, deeper thought given to them, and more respect shown to the articles of the Constitution.

SHRI C. D. DESHMUKH: Mr. Deputy Chairman, I have no observations to make in regard to the advice given by the hon. Member who spoke last. With equal humility we can say that we have paid all the attention that we could to the constitutional position as well as to the administrative position and the parliamentary significance of this particular post. Whether it is his experience that it has been inadequate

or not is a matter for which we really cannot hold ourselves responsible.

As regards the observations that fell from Dr. Kunzru, I think he has made a very important point. If what I urged some time ago is correct—and there is a danger of its being correct—that it would be open to Government to come forward with a Bill to reduce the term, and if Parliament itself were to agree with Government, then there is, in my view, a risk of the term of office being reduced. That would render nugatory two things. One is the proviso to article 148(3). It is no use guaranteeing a salary to a Comptroller and Auditor-General and terminating his office the next day, because he will not be there to draw the salary. Secondly, a law of Parliament is passed by ordinary majority whereas if he is to be removed from his office, then he has to be removed under the same procedure as in article 124(4), which, as the House is aware, requires a majority of a specific type, the presence of so many Members, and so on and so forth. It is a very elaborate procedure, and I consider—it is my personal view: Government have not considered this matter—that very serious attention should be given to this state of affairs, and one should not run the risk of terminating prematurely, shall we say, the appointment of a Comptroller and Auditor-General who can only be removed in accordance with this elaborate procedure of article 124(4). So, we take note of the point that has been made by Dr. Kunzru.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

**THE PATIALA AND EAST PUNJAB  
STATES UNION APPROPRIATION  
(NO. 2) BILL, 1953.**

MR. DEPUTY CHAIRMAN: In pursuance of sub-rule (2) of rule 162 of