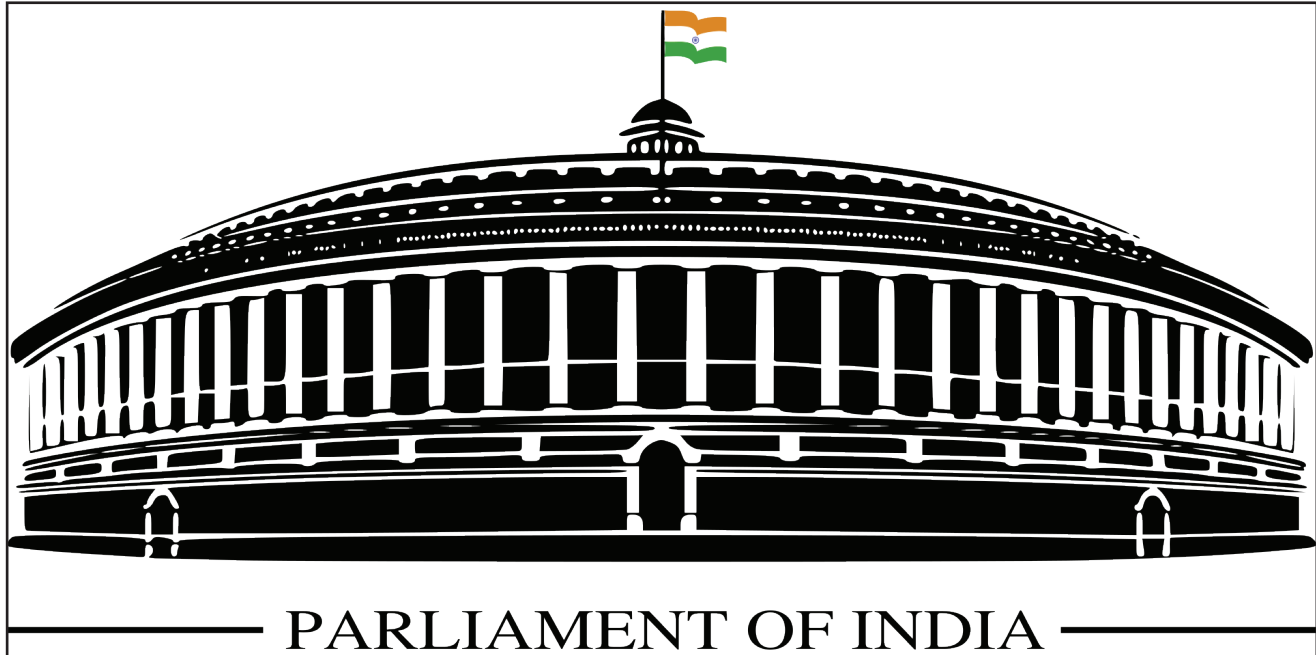




PARLIAMENTARY OVERSIGHT OF CAG

Auditor and PAC: An Uneasy Relationship

Dr. Govind Bhattacharjee*



A nation can never afford to forget its history. When CAG's Performance Audit Report on the "Allocation of Coal Blocks and Augmentation of Coal Production" was tabled in Parliament in August 2012, the country witnessed a lot of high-pitched drama and hyperbole. The BJP, then in opposition, promptly demanded the resignation of Prime Minister Manmohan Singh who was also the Coal Minister during most of the period in question. On the other hand, the Congress spokesperson, Manish Tewari, slammed the CAG for not understanding the basics of 'development economics' on the ground that auctioning of

coal blocks would have hiked the input cost for power plants, making electricity costlier. But the response of the then Minister of State in the Prime Minister's Office, V Narayanasamy, was a case study in how politicians often use an ingenuous bundle of half-truths, quarter-truths and outright lies to distract attention, so as to defend corruption and confuse gullible citizens. The Hon'ble Minister stated that CAG's coal report was only a "draft report" without any proof (and hence without substance), and that it had to be "tested by the Parliament" and "examined by the Public Accounts Committee (PAC)" before any definitive conclusion

could be drawn, while grudgingly admitting that "unfortunately the CAG has a constitutional mandate".

It is not often that a Union Minister displays such ignorance of constitutional provisions and parliamentary procedures regarding the CAG and his reports. Article 151(1) of the Constitution mandates that the reports of the CAG would be submitted to the President who "shall cause them to be laid before each House of Parliament." It is not a "draft report" once it is submitted by the CAG to the President. Similar to the minister's repeated assertions about the

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PAC: A History and Functions

The PAC was conceived to hold the government accountable for its actions. The Committee on Public Accounts was first set up in 1921 in the wake of the Montague-Chelmsford Reforms. It was chaired by the Finance Member till 1949. Realising that this restricted the free expression of views and criticism of the executive, the Constitution of India made PAC a parliamentary committee. The PAC is now constituted every year under Rule 308 of the “Rules of Procedure and Conduct of Business in Lok Sabha.” Its 22 members are elected every year according to the principle of proportional representation - 15 from the Lok Sabha and seven from the Rajya Sabha. By convention, since 1967, the Chairman is appointed by the Speaker from the Opposition party members of the Lok Sabha. A minister cannot be a member of the PAC. The PAC commands considerable respect in our parliamentary system and enjoys a higher status than other parliamentary committees.

Rule 308(1) defines the functions of the PAC, which primarily includes examination of appropriation and finance accounts of the government and the report of the CAG thereon. However, the PAC is at liberty to examine any other matter as well. In that sense, its functions extend “beyond the formality of expenditure to its wisdom, faithfulness and

examination of CAG reports by the PAC, statements have been made, for example, by Sheila Dixit, the then Chief Minister of Delhi. She made identical comments when the CAG’s Commonwealth Games reports kicked up a furious storm of indignation at unprecedented corruption. She too attempted to downplay the scam, extraordinary in the context of an international sporting event, and tried to deflect the uncomfortable questions raised.

“The citizens are never told by politicians that the PAC only makes recommendations which are in no way binding on the government, which may reject any or all of its suggestions.”

The former Chief Minister strived to get around them by asserting that the PAC would examine the report and would take appropriate action. It was

claimed that if anyone was found guilty, they would of course be brought to book. Nothing was heard of what the PAC had examined and what action had been taken against the guilty. The nation later learnt with disbelief that the CBI has forgotten to mention the name of a certain Suresh Kalmadi in the charge-sheet it had framed in the case.

The citizens are never told by politicians that the PAC only makes recommendations which are in no way binding on the government, which may reject any or all of its suggestions. The contention that once the report goes to the PAC, all ills will be remedied, is nothing but a tactic at prevarication. These are strategies politicians are adept at using in order to stonewall any opposition or charges against them. The PAC reports are also not taken up for discussion in the Parliament, which is why people are remarkably ignorant about what happens to the CAG reports and PAC recommendations.



economy". The Committee can thus examine cases involving losses, nugatory expenditure and financial irregularities, and call upon the concerned ministry/ department to explain the action taken to prevent a recurrence of such irregularities. It can "record its opinion in the form of disapproval or pass strictures against the extravagance or lack of proper control by the ministry or department concerned". While it discusses financial discipline, a detailed examination of the questions involving principle and system is a major function of the Committee, though it steers clear of questions of policy in the broad sense.¹

The Committee selects the most important paragraphs from the audit reports for detailed examination after consultation with the CAG and submits its reports on them to the Lok Sabha. Unlike in the UK, the Indian CAG is not an officer of the Parliament or the PAC, but has been described as the "friend, philosopher and guide of the PAC." After examining the CAG's reports, the PAC submits its recommendations to the lower house and the government is required to submit Action Taken Notes on them within six months. These notes, after consideration by the PAC, is presented to Parliament as the Action Taken Report.

The PAC usually calls secretaries of the concerned ministries/ departments to depose before it, but they often get away by promising action, which rarely goes beyond issuing circulars

and directives. The PAC is supposed to be apolitical, base its observations only on the merit of the case and look at each issue professionally and dispassionately. Its recommendations should be prudent, practical and pragmatic to address the problem adequately. By and large, all PACs have remarkably lived up to these expectations. However, perhaps for the first time in its history, during the examination of the CAG report on 2G scam, this covenant of non-partisanship broke down irreparably, when the entire committee was divided along political lines and the report could not be finalised.

The CAG submits around 40 reports pertaining to the Centre every year, besides three to five reports pertaining to every state. But the PAC, for constraints of time and non-availability of its members who are usually busy with their own constituencies, is unable to examine more than five to 10 percent of the

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observations contained in these reports. To deal with the huge number of reports and paragraphs submitted by the CAG to Parliament, the PAC usually works through its sub-committees. There are currently eight sub-committees, each dealing with specific areas like reports on revenue, expenditure, railways, telecom, defence, etc. A system similar to the PAC also operates in every state. CAG's reports on commercial undertakings are discussed by a separate Committee of Parliament/ State Legislatures known as the Committee on Public Undertakings (COPU).

Table 1: Number of Audit Reports and Paras - Central Reports

Wing	AR 2014-15		AR 2015-16		AR 2016-17	
	PAs	Paras	PAs	Paras	PAs	Paras
Civil +PT	3	62	6	74	4	59
Defence	-	122	3	36	-	44
Scientific	-	44	2	13	1	15
Revenue	8	86	6	26	3	28
Railways	4	50	3	33	2	8
AB	4	-	3	22	6	-
Commercial	-	23	-	34	-	49
Total	19	387	23	238	16	203

(PA: Performance Audit, each is considered a topic for the PAC. Paras refer to compliance/ financial audit observations, each of which is also considered a topic.)

(AR: Audit Reports, AB: Autonomous Bodies)

Table 2: Meetings held-Union Government Reports (except Commercial, discussed by PAC)

Year	2013-14	2014-15	2015-16	2016-17	2017-18
Topics proposed	161	81	62	119	161
Topics Carried Over from Past	49	60	90	156	49
Fresh Topics Selected	120	48	56	181	120
Topics Discussed	22	30	27	66	22
No of Meetings Held	43	49	58	81	43

Table 1 shows the number of performance audit reports and compliance/ financial audit observations reported in the CAG's Audit Reports presented to the Parliament during the three-year period 2014 to 2017. Table 2 shows the number of topics selected by the PAC during the five-year period 2013 to 2018, and those actually discussed by it. It is evident that only a miniscule number of topics could be discussed by the PAC out of the total number selected, which again was a small

fraction of the total number of observations contained in CAG reports.

Matters are worse in the state PACs, with many paragraphs pending for discussion for the last decade or more in many states, which casts serious doubts on the efficacy of the PAC mechanism itself.

Table 3 shows the number of reports presented to the respective Lok Sabhas by the Central PAC. While their numbers vary widely, since the

Table 3: Reports presented by the PAC¹

Lok Sabha	Tenure	No. of Reports Presented
1st Lok Sabha	1952-57	025
2nd Lok Sabha	1957-62	043
3rd Lok Sabha	1962-67	072
4th Lok Sabha	1967-70	125
5th Lok Sabha	1971-77	239
6th Lok Sabha	1977-79	149
7th Lok Sabha	1980-84	031
8th Lok Sabha	1984-89	187
9th Lok Sabha	1989-91	022
10th Lok Sabha	1991-96	119
11th Lok Sabha	1996-97	024
12th Lok Sabha	1998-99	011
13th Lok Sabha	1999-04	063
14th Lok Sabha	2004-09	084
15th Lok Sabha	2009 -14	100
16th Lok Sabha	2014 -	102

13th Lok Sabha, the number of reports presented has consistently been going up. However, what actions, if at all, the government has taken on those reports is not known. As already stated, the PAC reports contain only recommendations and the government is at liberty to reject any or all of them, after citing reasons which may be arbitrary.

Constitutional Mandate of the CAG

An All India Conference of PACs of Parliament and State/Union Territory Legislatures was hosted in 2015 after a gap of 14 years, which examined the changing role of PAC and the structural and external challenges faced by it. The conference highlighted that during the 15th Lok Sabha, the then PAC had suggested that it should be consulted before the appointment of the CAG, who should be part of the legislature, as is the practice in the UK and Australia. Among its major recommendations were the engagement of experts for examining technical subjects, giving power to the CAG and PAC to examine PPP projects and bringing finances of NGOs under the audit's purview. It also stressed on setting a time limit for ministries to furnish Action Taken Notes on audit observations and PAC recommendations. The need for complete independence of CAG, making it a part of the PAC, need for harmony between CAG at the centre and the states and the need for better accountability of CAG were also underscored.

An assortment of issues that could increase the capacities of the Supreme Audit Institution as well as safeguard it were also identified and discussed. The need for the legislature to recognise and protect the institution of CAG whenever it comes under attack and the tendency of state government officials to refuse and delay records and files to audit were focussed on. Other topics that came under the scanner during the conference were the tendency of the government to keep audit out of public spending, and the need to make PAC recommendations mandatory and not to treat it as a mere advisory body.²

The suggestion that CAG should be made accountable to the Parliament sparked a great deal of controversy in the context of constitutional guarantees and autonomy provided to the audit institution. An MP asserted that “CAG should also be answerable to someone” and that “Parliament is supreme.” Responding to the statement, a former CAG who did not wish to be identified, contested that “Parliamentarians have always held that Parliament is supreme. But, actually it is the Constitution that is supreme. The CAG is meant to be autonomous according to the Constitution. Tomorrow they may want the Election Commission to report to Parliament.”

Indeed, the demand was rather strange and bizarre, but one can be certain that such appeals would be raised in future too. The constitutional mandate

of the CAG is to ensure the accountability of the executive. The executive is controlled by the legislature. If CAG is made accountable to the legislature, then there will be no protection for his/her independence in extreme situations, particularly when there's a single ruling party at the Centre. The government can then prevent audit scrutiny of transactions it has reasons to hide, and withhold CAG's reports from being tabled in legislature whenever the same has the potential to damage its electoral prospects.

The attack on CAG after the presentation of the 2G report inside and outside the Parliament was extraordinary. The brazen, no-holds-barred verbal assaults heaped upon the institution by senior ministers of the ruling dispensation who denigrated it and questioned its credibility on a daily basis is something which had never happened in the past. It is also something that ought not to be forgotten ever. In the backdrop of these events, the suggestion to make the CAG accountable to Parliament would make a mockery of all the safeguards built into the Constitution to ensure the independence of this public interest watchdog. It would rather facilitate the scope for dilution of those safeguards by an authoritarian government in the future. It would also violate the UN-approved international treaties and agreements that India is signatory to, like the Lima Declaration or Mexico Declaration, which assert CAG's

independence in the most unambiguous terms, even when the CAG is made an agent of Parliament:

The independence of Supreme Audit Institutions provided under the Constitution and law also guarantees a very high degree of initiative and autonomy, even when they act as an agent of Parliament and perform audits on its instructions. The relationship between the Supreme Audit Institution and Parliament shall be laid down in the Constitution according to the conditions and requirements of each country. (*Section 8, Relationship to Parliament, Lima Declaration*)

While respecting the laws enacted by the Legislature that apply to them, SAls are free from direction or interference from the Legislature or the Executive in the selection of audit issues; planning, programming, conduct, reporting, and follow-up of their audits; organization and management of their office; and enforcement of their decisions where the application of sanctions is part of their mandate. (Principle 3, Mexico Declaration)

In fact, both the executive and legislature should rather strive in unison to uphold the CAG's authority and unfettered independence, instead of trying to constrain these through legislative/ constitutional amendment. The CAG does not have the power to obtain any record he/she needs within a specific time, something even an ordinary citizen enjoys under

the Right to Information (RTI) Act. He has no power to penalise or even recommend initiation of disciplinary proceedings against those who refuse to cooperate with his/her officers by withholding essential records/documents and responses to his/her queries. The government has the discretion to lay the CAG's reports before the legislature at a time chosen by it, there being no time limit prescribed in the CAG's DPC Act or the Constitution. Many state governments have used this loophole to withhold the reports perceived as damaging or inconvenient till impending elections. Since the contents of the reports are protected by legislative privileges, voters are denied any knowledge of events that may influence their choice, besides obviating the scope for timely legislative scrutiny and remedial action. This inevitably militates against the concepts of public accountability and public interest.³ Of course the Supreme Audit Institution also urgently needs to put in place measures to ensure improved systems of internal accountability and quality control of their report contents. They must also improve the quality of their recommendations which, save a few good exceptions, are often rather poorly framed and lacking in insight. However, that does not mean that the powers of the CAG should be curbed and his independence fettered.

When it comes to empowerment of the CAG, the government's record is dismal. CAG had proposed an amendment to

the DPC Act to UPA-I seeking comprehensive audit of public funds and bodies rendering public services. It had also called for ensuring a structured, time-bound response to the audit observations, but the government has so far remained unmoved. The procedure for appointment of the CAG remains shrouded in secrecy and opacity, but no government has shown even the slightest inclination to remedy that. Irrespective of their political affiliations, all governments fear that a transparent process may result in an outcome which might sweep them off their feet in the event of some unforeseen and unfavourable contingency. This would bring even bitter political rivals to collude and collaborate for undermining the spirit behind the constitutional provisions related to the CAG.

International practices with respect to the CAG vary widely. Even where the CAG functions as an officer of Parliament, like in UK or Australia, the established conventions, strict media and public scrutiny, as well as other ethical practices zealously protect the CAG's independence. In these countries, the PAC proceedings have never been hamstrung by the fractious nature of debates between rival political parties as witnessed during the discussions on CAG reports on 2G or Coal scams. A comparison with those countries would thus be inapt.

Audit Institutions Across the Globe

In most Commonwealth countries which follow the so-

called Westminster model of audit institution, the Auditor-General, whose reports form the bedrock of Parliamentary oversight, reports directly to Parliament/PAC. In some countries, the Auditor-General is an officer of Parliament which guarantees his/her independence from the executive, like UK or Australia. In others, like India, CAG is independent of both the executive and the legislature. But in all these countries, including India, Parliament or PAC is fully empowered to examine any issue, *suo moto*, which has not been reported by the Auditor General but which affect the delivery, accountability, transparency or integrity of the public system of financial governance. How then the system is working in UK or Australia where the CAG is functioning under the control and direction of the Parliament, and why can the same system not work in India would be a legitimate question.

In India, the institution of the CAG is not audited, which is a major weakness in the system. The CAG in India has introduced a loose system of peer review by other members of the global SAI (Supreme Audit Institution) community (INTOSAI). This does not serve even the minimal requirements of assurance on the adequacy of internal controls existing within the organisation. Accountability of the CAG and his/her organisation must be ensured by devising a proper system. However, politicians should be kept out of it because they will use every opportunity

to subvert the institution and damage its credibility, being directly impacted by its reports.

Three constitutional watchdogs at Westminster are known as Officers of Parliament- the Comptroller and Auditor General, Parliamentary Ombudsman and Parliamentary Commissioner for Standards. The term Officer of Parliament indicates a special relationship with Parliament. It emphasises the independence of the officer to be protected by strong safeguards like restrictions on his dismissal and direct appointment of staff as non-civil servants.

The core idea is to protect the independence of such an officer from the government or the official Opposition, who might be guided more by partisan considerations than by public interest. The basis of such independence is set out in the statute itself in unambiguous terms.⁴ During the 1990s, other Commonwealth countries like Australia and New Zealand similarly amended their respective audit acts to make the Auditor General an Officer of Parliament with similar powers. The US Government Accountability Office has, since its inception, acted as a legislative branch agency. It reports on a wide variety of subjects ranging from federal fiscal issues and debt control, to aviation security, gun control and counter-terrorism matters.⁵

The idea behind the creation of an Officer of Parliament was thus to safeguard the

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independence required by the officer to discharge his/her duties which may run counter to what the government wishes. It was also meant to protect him/her from ministerial caprices, while ensuring his/her accountability. Mechanisms like protection against arbitrary dismissal do serve this end, but they also determine his relationship with the Parliament. There needs to be a balance between independence and interdependence so that the power of an unelected officer over the elected may not harm the system. Essentially, the architecture of a robust audit structure must be defined by elements like:

- Transparency in appointment
- Independence from government and political opposition
- Reporting responsibilities to Parliament and its committees
- Institutional support for the officer within Parliament
- Power to recruit, appoint and dismiss staff at the disposal of the officer
- Availability and assurance of adequate funding and resources at all times
- Authority, power and

wherewithal to perform and discharge the assigned duties including investigative and enforcement powers on behalf of Parliament

Experts assess that CAG's status as an Officer of the House of Commons in UK has enhanced his/her relationship with the latter. It has also protected his/her independence and autonomy under the National Audit Act of 1983. Members of the House of Commons often approach the CAG requesting for inquiry into specific subjects, which the CAG may or may not oblige, just as he/she may not always accept the recommendations of the PAC regarding what to investigate. Although other departmental select committees of the House of Commons may discuss the National Audit Office (NAO)'s reports and use them for policy decisions, CAG is never called to appear as witness before them. His/her authority to conduct economy, efficiency and effectiveness audit is enshrined in the Audit Act itself, which precludes him/her from examining matters related to policies of the elected government.

Being an Officer of Parliament⁶ also has its own advantages. It gives the CAG Parliamentary privileges and freedom from arrest or obstruction in the discharge of his/her duties. Most importantly, failure or denial by a department/ ministry/ office to provide the CAG with documents requisitioned by him/her would make them guilty of

contempt of the House as well as in breach of the relevant statutes.

I am not sure if such powers and discretion would ever be given to the CAG in India, even if he/she is made an officer of our Parliament. To ensure such independence, the first and foremost requirement is that the process of appointment of the CAG be made rule-based, transparent, objective and consultative.

In India, despite several PILs, such openness and transparency still remains wishful thinking. Also, the process of appointment of the CAG is likely to remain arbitrary, opaque and politically-determined in the foreseeable future. Would the government and the political Opposition ever agree to amend the Constitution or CAG's DPC Act to make the CAG appointment process as objective as in the UK, to be ratified by the Parliament? Instead, the ultimate objective of Indian politicians is to gain control over the institution of the CAG by any means and make it subject to their wills and wiles.

Despite the executive and legislative indifference, if not obstruction, to expanding the powers of the CAG, the existing constitutional safeguards have so far ensured the institution's political neutrality. They have

also bolstered objectivity in selection of audit areas, robustness of processes and procedures and integrity in reporting. Even the judiciary has not been spared. Apart from the Election Commission, no other institution commands as much respect and credibility as the CAG. Despite the flaws and shortcomings and less than perfect internal controls, the reports of the CAG are widely consulted by researchers, academics, media and policymakers. They are also keenly followed by the common citizen. During the last 150 plus years of its existence, the institution of CAG has so far stoutly stood the test of time, zealously guarding its independence, objectivity and political neutrality. It has successfully weathered the relentless political onslaught, refusing to be drawn into nasty partisan politics. If, as a nation, we cannot protect one of our most cherished institutions from the crafty machinations of politicians, it will indeed speak very poorly of our democracy and civil society.

(Endnotes)

1. Financial Committees. (n.d.). Retrieved August 21, 2018, from http://164.100.47.194/Loksabha/Committee/CommitteeInformation.aspx?comm_code=26&tab=0

2. Parliament of India, Lok Sabha Secretariat. (2015, September 9). Public Accounts Committee (2015-16) [Press release]. Retrieved August 21, 2018, from http://164.100.47.193/lsscommittee/PublicAccounts/pr_files/PressRelease-pressconference.docx
3. A private member's Bill, introduced in 2013 by MP Mr. Baijayant Panda and subsequently withdrawn for lack of support, sought to compulsorily ensure tabling of CAG reports to the legislature by the executive within seven days of their receipt from the CAG.
4. Gay, O and Winetrobe, B.K. (April 2003). Officers of Parliament-Transforming the Role. The Constitution Unit. Retrieved August 21, 2018 from <https://www.ucl.ac.uk/political-science/publications/unit-publications/100.pdf>.
5. Mathur, B. P. (September 3, 2012). "CAG has only done its job". The Daily Mail. Retrieved August 21, 2018 from <http://www.dailymail.co.uk/indiahome/indianews/article-2197813/CAG-job.html>.
6. The UK Act does not define an Officer of Parliament. Only New Zealand has developed a set of criteria designed to identify Officers of Parliament which include: (1) An Officer of Parliament must only be created to provide a check on the arbitrary use of power by the Executive; (2) An Officer of Parliament must only be discharging functions which the House of Representatives itself, if it so wished, might carry out; and (3) Parliament should consider creating an Officer of Parliament only rarely.