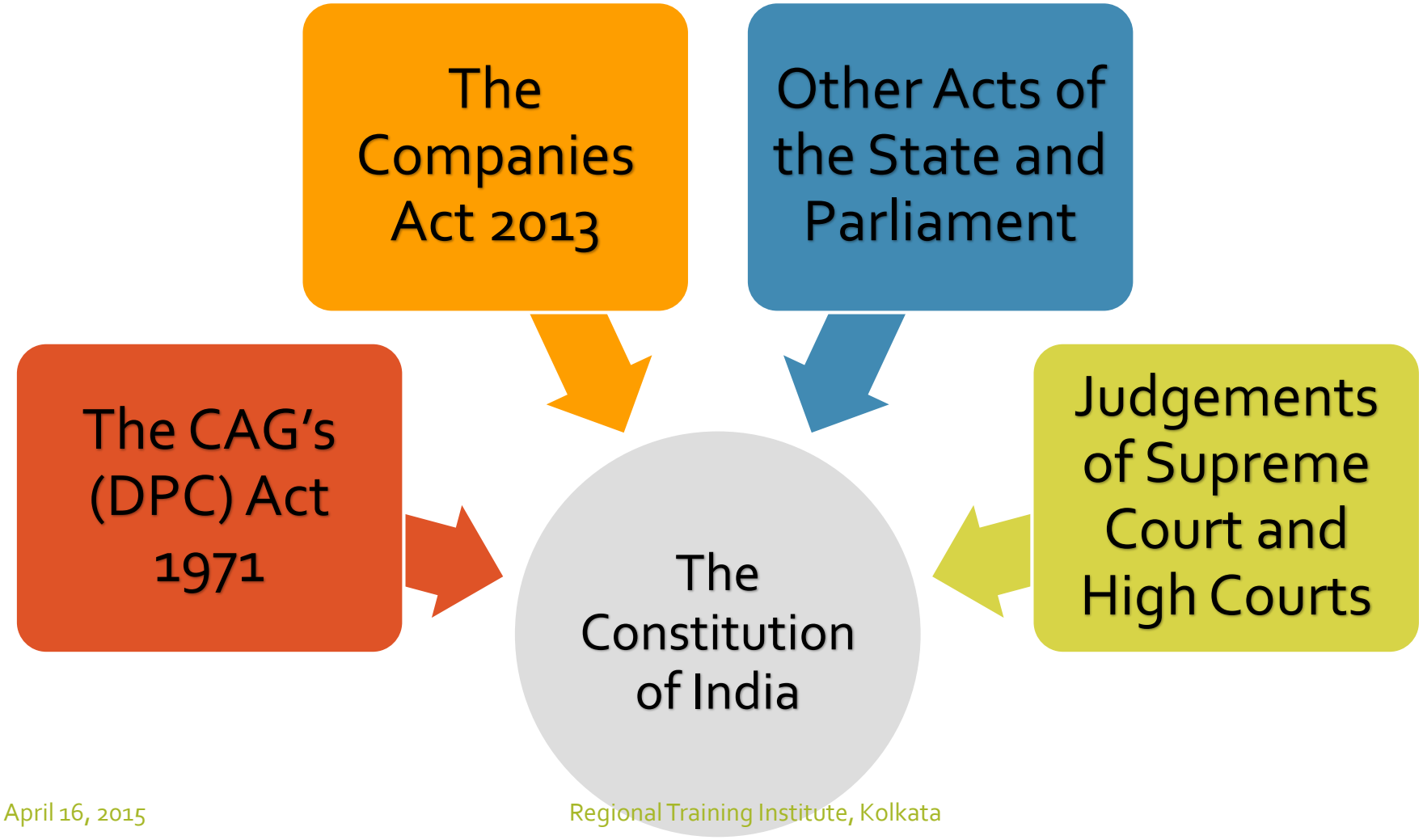
The Comptroller and Auditor General of India

Sources of his authority: A brief Introduction

Sources of CAG's Mandate

Click on the topic

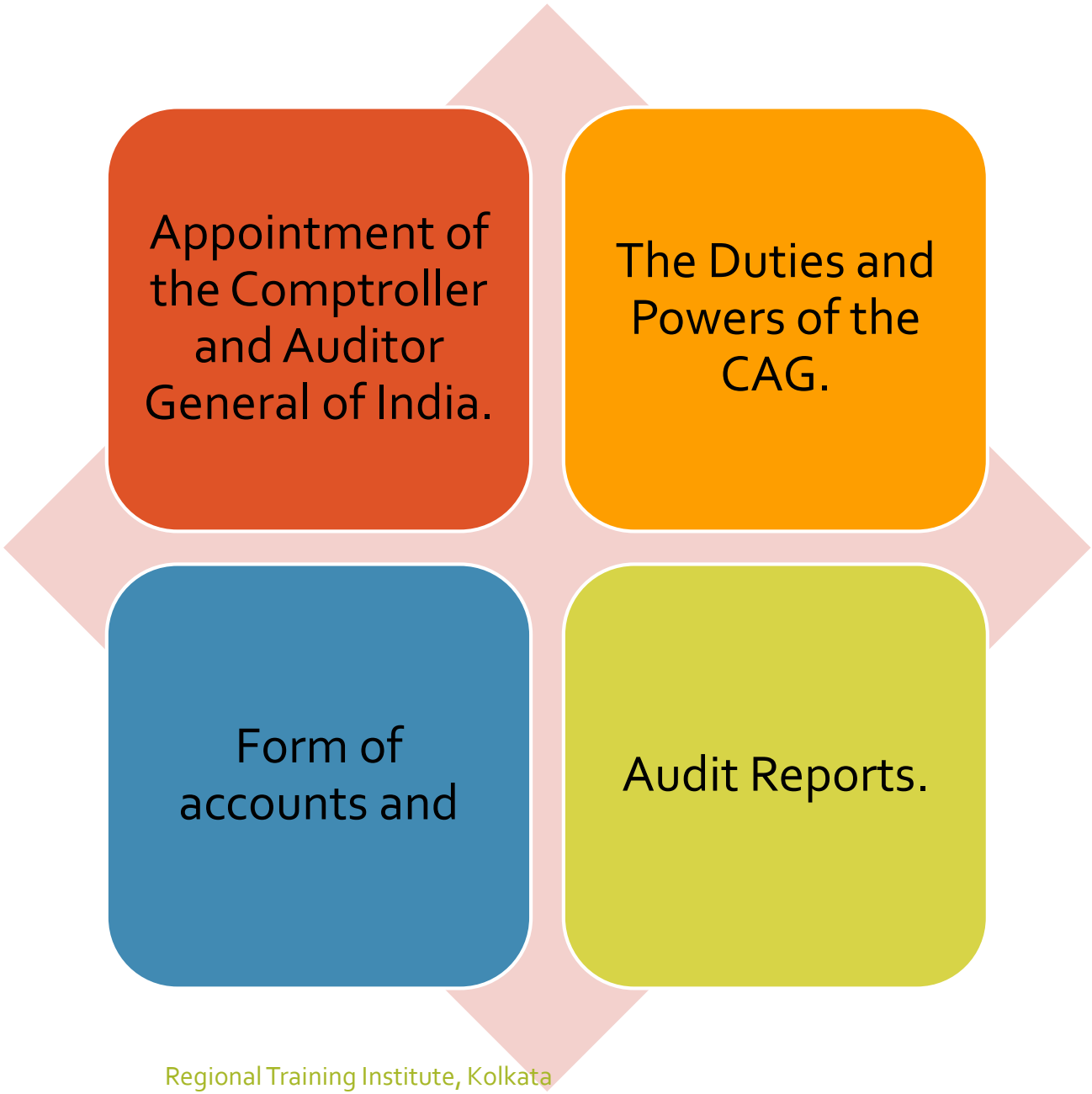


CAG's mandate in Constitution

As per provisions of the Constitution of India.

The Constitution deals with:

Click on the topic



Article 148 (1 & 2): Appointment of CAG

(1)There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on like grounds as a Judge of the Supreme Court.

(2)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.

Article 148 (3): CAG's Pay and service condition

(3) 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:

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.

Article 148 (4, 5 &6): Ensuring CAG's Independence

(4) 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.

(5) Subject to the provisions of this Constitution and of any law made by parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

Duties and Powers of the Comptroller and Auditor-General: Article 149

The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the provinces respectively.

Forms of Accounts: Article 150

The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe.

Audit Reports: Article 151

(1) 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.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

CAG's (DPC) Act, 1971

pursuant to Article 148(5) of the Constitution

The CAG's (DPC) Act, 1971: Introduction

The Comptroller and Auditor General's (Duties, Power and Conditions of Service) Act, 1971 was passes by the parliament in pursuant to Article 148(5) of the Constitution. This act had subsumed and repealed the following sources of CAG's mandate:

1. The Comptroller and Auditor General's (Conditions of Service) Act 1953 and
2. The Government of India (Audit and Accounts) Order, 1936 (continued since pre-independence by virtue of Article 149).

The CAG's (DPC) Act, 1971: Provisions

The CAG(DPC) Act, 1971 elaborates on three distinct features of constitutional provisions.

1. Chapter I: Section 1 to 9 deals with his conditions of service, ensuring his independence.
2. Chapter II: Section 10 to 12 deals with accounts of the Union and the States.
3. Chapter III: Section 13 to 30 deals with provisions relating to Audit. and
4. Chapter IV: deals with Miscellaneous provisions.

The CAG's (DPC) Act, 1971:

Click on the topic

Conditions of Service

Accounts of the Union and the States

Provisions relating to Audit

Miscellaneous Provisions

Judgements of Courts

CAG's Conditions of service

As per CAG's(DPC) Act,1971

Section 3: Salary

There shall be paid to the Comptroller and Auditor- General a salary which is equal to the salary of the Judge of the Supreme Court:

Provided that if a person who immediately before the date of assuming office as the Comptroller and Auditor-General, was in receipt of, or, being eligible so to do, had elected to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or any of its predecessor Governments, or under the Government of a State or any of its predecessor Governments, his salary in respect of service as Comptroller and Auditor-General shall be reduced-

(a) by the amount of that pension; and

(b) if he had, before assuming office, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension ;

Section 4: Term of office

The Comptroller and Auditor-General shall hold office for a term of six years from the date on which he assumes such office:

Provided that where he attains the age of sixty-five years before the expiry of the said term of six years, he shall vacate such office on the date on which he attains the said age:

Provided further that he may, at any time, by writing under his hand addressed to the President, resign his office.

Explanation:- For the purpose of this section, the term of six years in respect of the Comptroller and Auditor-General holding office immediately before the commencement of this Act, shall be computed from the date on which he had assumed office

Section 5 to 9: Other Conditions of Service

The other conditions of CAG's service is elaborated in section 5 to 9 as summarised below:

SECTION(5.) Leave.

SECTION(6.) Pension.

SECTION(8.) Right to subscribe to General Provident Fund.

SECTION(9.) Other conditions of service relating to various allowances and perquisites.

CAG's Accounting mandate

As per CAG's(DPC) Act,1971

Section 10: Comptroller and Auditor-General to compile accounts of Union and States.

(1) The Comptroller and Auditor-General shall be responsible-

(a) for compiling the accounts of the Union and of each State from the initial and subsidiary accounts rendered to the audit and accounts offices under his control by treasuries, offices or departments responsible for the keeping of such accounts; and

(b) for keeping such accounts in relation to any of the matters specified in clause (a) as may be necessary:

Provided that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for compiling-

(i) the said accounts of the Union (either at once or gradually by the issue of several orders) ; or

(ii) the accounts of any particular services or departments of the Union

Section 10: Comptroller and Auditor-General to compile accounts of Union and States. Contd.....

Provided further that the Governor of a State may, with the previous approval of the President and after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for compiling-

(i) the said accounts of the State (either at once or gradually by the issue of several orders) ; or

(ii) the accounts of any particular services or departments of the State :

Provided also that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for keeping the accounts of any particular class or character.

Section 10: Comptroller and Auditor-General to compile accounts of Union and States. Contd.....

(2) Where, under any arrangement a person other than the Comptroller and Auditor-General has, before the commencement of this Act, been responsible-

(i) for compiling the accounts of any particular service or department of the Union or of a State, or

(ii) for keeping the accounts of any particular class or character, such arrangement shall, notwithstanding anything contained in subsection (1), continue to be in force unless, after consultation with the Comptroller and Auditor-General, it is revoked in the case referred to in clause (i), by an order of the President or the Governor of the State, as the case may be, and in the case referred to in clause (ii), by an order of the President.

Section 11: Comptroller and Auditor-General to prepare and submit accounts to the President, Governors of States and Administrators of Union territories having Legislative Assemblies.

The Comptroller and Auditor-General shall, from the accounts complied by him or (by the Government or any other person responsible In that behalf, prepare in each year accounts (including, in the case of accounts compiled by him, appropriation accounts) showing under the respective heads the annual receipts and disbursements for the purpose of the Union, of each State and of each Union territory having a Legislative Assembly, and shall submit those accounts to the President or the Governor of a State or Administrator of the Union territory having a Legislative Assembly, as the case may be, on or before such dates as he may, with the concurrence of the Government concerned, determine:

Section 11: Comptroller and Auditor-General to prepare and submit accounts to the President, Governors of States and Administrators of Union territories having Legislative Assemblies. Contd.....

Provided that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for the preparation and submission of the accounts relating to annual receipts and disbursements for the purpose of the Union or of a Union territory having a Legislative Assembly:

Provided further that the Governor of a State may, with the previous approval of the President and after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for the preparation and submission of the accounts relating to annual receipts and disbursements for the purpose of the State.

Section 12: Comptroller and Auditor-General to give information and render assistance to the Union and States.

The Comptroller and Auditor- General shall, in so far as the accounts, for the compilation or keeping of which he is responsible, enable him so to do, give to the Union Government, to the State Governments or to the Governments of Union territories having Legislative Assemblies, as the case may be, such information as they may, from time to time, require, and render such assistance in the preparation of their annual financial statements as they may reasonably ask for.

CAG's Audit Mandate

As per CAG's(DPC) Act,1971

Section 13: General provisions relating to audit.

It shall be the duty of the Comptroller and Auditor-General-

(a) to audit all expenditure from the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to ascertain whether the moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it;

(b) to audit all transactions of the Union and of the States relating to Contingency Funds and Public Accounts

(c) to audit all trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts kept in any department of the Union or of a State ; and in each case to report on the expenditure, transactions or accounts so audited by him.

Section 14: Audit of receipts and expenditure of bodies or authorities substantially financed from Union of State Revenues.

(1) Where any body or authority is substantially financed by grants or loans from the Consolidated Fund of India or of any State or of Union territory having a Legislative Assembly, the Comptroller Auditor-General shall, subject to the provisions of any law for being in force applicable to the body or authority, as the case audit all receipts and expenditure of that body or authority and to report on the receipts and expenditure audited by him.

Explanation.-Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than rupees twenty five lakhs and the amount of such grant or loan is not less than seventy five per cent of the total expenditure of that body or authority, such body or authority shall be deemed, for the purposes of this sub-section to be substantially financed by such grants or loans as the case may be.

Section 14: Audit of receipts and expenditure of bodies or authorities substantially financed from Union of State Revenues. Contd.....

(2) Notwithstanding anything contained in sub-section the Comptroller and Auditor-General may, with the previous approval of the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, audit all receipts and expenditure of any body or authority where the grant or loan to such body or authority from the Consolidated Fund of India or of any State, or of any Union territory having a Legislative Assembly, as the case may be, in a financial year is not less than rupees one crore.

(3) Where the receipts and expenditure of any body or authority are, by virtue of the fulfilment of the conditions specified in sub- section (1) or sub-section (2), audited by the Comptroller and Auditor-General in a financial year, he shall continue to audit the receipts and expenditure of that body or authority for a further period of two years notwithstanding that the conditions specified in sub-section (1) or sub-section (2) are not fulfilled during any of the two subsequent years.

Section 15: Functions of Comptroller and Auditor-General in the case of grants or loans given to other authorities or bodies.

(1) Where any grant or loan is given for any specific purpose from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly to any authority or body, not being a foreign State or international Organisation, the Comptroller and Auditor-General shall scrutinise the procedures by which the sanctioning authority satisfies itself as to the fulfilment of the conditions subject to which such grants or loans were given and shall for this purpose have right of access, after giving reasonable previous notice, to the books and accounts of that authority or body:

Provided that the President, the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, may, where he is of opinion that it is necessary so to do in the public interest, by order, relieve the Comptroller and Auditor-General, after consultation with him, from making any such scrutiny in respect of any body or authority receiving such grant or loan.

Section 15: Functions of Comptroller and Auditor-General in the case of grants or loans given to other authorities or bodies. Contd.....

(2) Except where he is authorised so to do by the President, the Governor of a State or the Administrator of a Union territory having legislative Assembly, as the case may be, the Comptroller and Auditor General shall not have, while exercising the powers conferred on him by sub-section (1), right of access to the books and accounts of an corporation to which any such grant or loan as is referred to in sub-section (1) is given if the law by or under which such corporation has been established provides for the audit of the accounts of such corporation by an agency other than the Comptroller and Auditor- General:

Provided that no such authorisation shall be made except after consultation with Comptroller and Auditor-General and except after giving the concerned corporation a reasonable opportunity of making representations with regard to the proposal to give to the Comptroller and Auditor-General right of access to its books and accounts.

Section 16: Audit of receipts of Union or of States.

It shall be the duty of the Comptroller and Auditor-General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon.

Section 17: Audit of accounts of stores and stock.

The Comptroller and Auditor-General shall have authority to audit and report on the accounts of stores and stock kept in any office or department of the Union or of a State.

Section 18: Powers of Comptroller and Auditor-General in connection with audit of accounts.

(1) The Comptroller and Auditor-General shall in connection with the performance of his duties under this Act, have authority-

a) to inspect any office of accounts under the control of the Union or of a State, including treasuries and such offices responsible for the keeping of initial or subsidiary accounts, as submit accounts to him;

b) to require that, any accounts, books, papers and other documents which deal with or from the basis of or are otherwise relevant to the transactions to which his duties in respect of audit extend, shall be sent to such place as he may appoint for his inspection ;

c) to put such questions or make such observations as he may consider necessary, to the person in charge of the office and to call for such information as he may require for 8o the preparation of any account or report which it is his duty to prepare.

(2) The person in charge of any office or department, the accounts of which have to be inspected and audited by the Comptroller and Auditor-General, shall afford all facilities for such inspection and, comply with requests for information in as complete a form as possible and with all reasonable expedition.

Section 19: Audit of Government companies and corporations.

(1) The duties and powers of the Comptroller and Auditor General in relation to the audit of the accounts of Government companies shall be performed and exercised by him in accordance with the provisions of the ~~Companies Act, 1956 (1 of 1956).~~ **Companies Act, 2013 (18 of 2012).**

(2) The duties and powers of the Comptroller and Auditor-General in relation to the audit of the accounts of corporations (not being companies) established by or under law made by Parliament shall be performed and exercised by him in accordance with the provisions of the respective legislations.

(3) The Governor of a State or the Administrator of a Union territory having a Legislative Assembly may, where he is of opinion that it is necessary in the public interest so to do, request the Comptroller and Auditor-General to audit the accounts of a corporation established by law made by the Legislature of the State or of the Union territory, as the case may be, and where such request has been made, the Comptroller and Auditor-General shall audit the accounts of such corporation and shall have, for the purposes of such audit, right of access to the books and accounts of such corporation:

Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General and except after giving reasonable opportunity to the corporation to make representations with regard to the proposal for such audit.

Section 19A: Laying of reports in relation to accounts of Government companies and corporations.

(1) The reports of the Comptroller and Auditor-General, in relation to the accounts of a Government company or a corporation referred to in section 19, shall be submitted to the Government or Governments concerned.

(2) The, Central Government shall cause every report received by it under sub-section (1) to be laid, as soon as may be after it is received, before each House of Parliament.

(3) The State Government shall cause every report received by it under, sub-,section (1) to be laid as soon as may be after it is received, before the Legislature of the State.

Explanation.-For the purposes of this section, "Government" or "State Government", in relation to a Union territory having a Legislative Assembly, means the Administrator of the Union territory.

Section 20: Audit of accounts of certain authorities or bodies.

(1) Save as otherwise provided in section 19, where the audit of the accounts of any body or authority has not been entrusted to the Comptroller and Auditor-General by or under any law made by Parliament, he shall, if requested so to do by the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, undertake the audit of the accounts of such body or authority on such terms and conditions as may be agreed upon between him and the concerned Government and shall have, for the purposes of such audit, right of access to the books and accounts of that body or authority: Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General.

(2) The Comptroller and Auditor-General may propose to the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, that he may be authorised to undertake the audit of the accounts of any body or authority, the audit of the accounts of which has not been entrusted to him by law, if he is of opinion that such audit is necessary because a substantial amount has been invested in, or advanced to, such body or authority by the Central or State Government or by the Government of a Union territory having a Legislative Assembly, and on such request being made, the President or the Governor or the Administrator, as the case may be, may empower the Comptroller and Auditor-General to undertake the audit of the accounts of such body or authority.

(3) The audit referred to in sub-section (1) or sub-section (2) shall not be entrusted to the Comptroller and Auditor-General except where the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, is satisfied that it is expedient so to do in the public interest and except after giving a reasonable opportunity to the concerned body or authority to make representations with regard to the proposal for such audit.

Miscellaneous

As per CAG's(DPC) Act,1971

Section 21: Delegation of power of Comptroller and Auditor-General.

Any power exercisable by the Comptroller and Auditor-General under the provisions of this Act, or any other law may be exercised by such officer of his department as may be authorised by him in this behalf by general or special order :

Provided that except during the absence of the Comptroller and Auditor-General on leave or otherwise, no officer shall be authorised to submit on behalf of the Comptroller and Auditor-General any report which the Comptroller and Auditor-General is required by the Constitution or the Government of Union Territories Act, 1963 (20 of 1963) to Submit to the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be.

Section 22: Power to make rules.

(1) The Central Government may, after consultation with the, Comptroller and Auditor-General, by notification in the Official Gazette, make rules for carrying out the provisions of this Act in so far as they relate to the maintenance of accounts.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the manner in which initial and subsidiary accounts shall be kept by the treasuries, offices and departments rendering accounts to audit and accounts offices;

(b) the manner in which the accounts of 1*[the Union or of a State or of] any particular service or department or of any particular class or character, in respect of which the Comptroller and Auditor-General has been relieved from the responsibility of compiling or keeping the accounts, shall be compiled or kept;

(c) the manner in which the accounts of stores and stock shall be kept in any office or department of the Union or of a State, as the case may be ;

(d) any other matter which is required to be, or may be, prescribed by rules.

Section 22: Power to make rules. Contd.....

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 22: Power to make regulations

The Comptroller and Auditor-General is here by authorised to make regulations for carrying into effect the provisions of this Act in so far as they relate to the scope and extent of audit, including laying down for the guidance of the Government Departments the general principles of Government accounting and the broad principles in regard to audit of receipts and expenditure.

Section 23: Power to make regulations

The Comptroller and Auditor-General is here by authorised to make regulations for carrying into effect the provisions of this Act in so far as they relate to the scope and extent of audit, including laying down for the guidance of the Government Departments the general principles of Government accounting and the broad principles in regard to audit of receipts and expenditure.

Section 24: Power to dispense with detailed audit

The Comptroller and Auditor-General is hereby authorised to dispense with, when circumstances so warrant, any part of detailed audit of any accounts or class of transactions and to apply such limited check in relation to such accounts or transactions as he may determine.

Section 25 *deals with repeal of the CAG's (Conditions of Service) Act, 1953 and* ***Section 26*** *deals with removal of doubts.*

CAG's Mandate as interpreted by the Courts

As per decisions of Honourable Supreme Court and High Courts

ARVIND GUPTA Vrs. UNION OF INDIA
(2013) Supreme Court Cases 293
(BEFORE Hon'ble Judges R.M. LODHA AND ANIL R. DAVE, JJ

In this case decided by the Supreme Court, the Petitioner submitted that CAG of India has no power to give performance audit report and the provisions in the Regulations of Audit and Accounts, 2007 framed under the CAG (DPC) Act, 1971 empowering the CAG to conduct performance audit is violative of the Constitution.

The Supreme Court held that the CAG's functions to carry out examination into economy, efficiency and effectiveness with which the Government has used its resources, is in-built in the 1971 Act. Performance Audit Reports prepared under the Regulations have to be viewed accordingly. The Court observed no unconstitutionality in the Regulations.

Reghu Nath Kelkar Vrs. Union of India and others
IN THE HIGH COURT OF BOMBAY
Public Interest Litigation No. 40 of 2008
Decided on: 24-3-2009
(Before Hon'ble Judges / Coram: Swatanter Kumar, CJ and D.Y. Chandrachud, J)

In this case decided by the High Court of Bombay, an allegation was made about the failure of the CAG to conduct a comprehensive audit. The Court considered scope of Section 23 of the CAG (DPC) Act. The Court observed that the time, scope and extent of audit are all matter which fall within the jurisdiction of the CAG and is not a matter on which Court ought to tread.

National Dairy Development Board Vrs. CAG of India.

IN THE HIGH COURT OF DELHI

W.P. (Civil) 4834 of 1998

Decided on: 27-1-2010

(Before Hon'ble Justice Sanjeev Khanna)

In this case decided by the Delhi High Court, the powers of the CAG to conduct audit under section 14, 15 and 19 of the CAG (DPC) Act was considered. The Petitioner challenged the authority of the CAG to invoke and exercise the powers under Section 14 (2) of the 1971 Act to conduct audit of accounts of the NDDB which is governed by its own Act viz. NDDB Act, 1987, and which has a provision of overriding effect to the NDDB Act over any other law. The Court laid down the following preposition:-

(i) CAG Act is a Special Act as distinguished from a General Act.

National Dairy Development Board Vrs. CAG of India.
IN THE HIGH COURT OF DELHI
W.P. (Civil) 4834 of 1998
Decided on: 27-1-2010
(Before Hon'ble Justice Sanjeev Khanna)

(ii) CAG's power to audit under Section 14 (1) can be curtailed, conditional or even prohibited under any law applicable to the Body or Authority.

(iii) Section 14 (2) is an independent section which will apply once the conditions mentioned in the said Section are satisfied and the fact that the body or authority cannot be subject to audit under Section 14 (1) is irrelevant.

(iv) Section 15 confers power to undertake scrutiny of the accounts/records of the sanctioning authority to ensure that proper procedure was followed while sanctioning any grant/loan.

(v) Section 15 and Section 14 (2) are independent sections and come into operation when the pre conditions mentioned therein are satisfied. Section 15 cannot be read to override Section 14 (2) or vice-versa.

National Dairy Development Board Vrs. CAG of India.
IN THE HIGH COURT OF DELHI
W.P. (Civil) 4834 of 1998
Decided on: 27-1-2010
(Before Hon'ble Justice Sanjeev Khanna)

(vi) The provisions of the Section 19 are clarificatory in nature. Section 19 (2) does not override the provisions of Section 14 (2) and other provisions of the CAG (DPC) Act. Section 19(2) protects the power and right given to the CAG to audit accounts of Corporations under the Law made by Parliament by which they are established. This means that CAG can conduct audit under Section 14 (1), 14 (2) or 15 of the CAG Act in respect of any corporation when under the respective legislation annual financial audit is not undertaken by the CAG.

Arun Kumar Aggarwal Vrs. Union of India
IN THE SUPREME COURT OF INDIA
W.P. (Civil) 469 of 2012
Decided on: 9-5-2013
(Before Hon'ble Justice K. S. Radhakrishnan & Justtice Dipak Misra)

In this case the Supreme Court considered, whether a CAG Audit Report by itself can be accepted by the Court to grant relief or as a basis for initiating action. The Court held that CAG's Report is always subject to scrutiny by the Parliament and it is for the Parliament to decide whether after receiving the report to make its comments on the CAG's report.

Shri S. Subramaniam Balaji Vrs. the Government of Tamil Nadu and others.
IN THE SUPREME COURT OF INDIA
Civil Appeal 5130 of 2013
Decided on: 25-7-2013
(Before Hon'ble Justice P Sathasivam and Justice Ranjan Gogoi)

In this case decided by the Supreme Court, the Petitioners prayed that CAG of India has a duty to examine expenditures even before they are deployed.

The Court while considering the various issues observed that in addition to the Legislative control, the founding fathers of the Constitution have also thought it fit to keep a check on Government account and expenses through the agency outside the Legislature also. Article 148 has created a Constitutional functionary in the form of CAG of India. CAG examines the propriety, legality and validity of all expenses incurred by the Government and exercises effective control over the Government accounts.
As a result, the duty of the CAG will arise only after the expenditure has incurred.

TELECOM JUDGEMENT of HON. SUPREME COURT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4591 OF 2014
(@ Special Leave Petition (Civil) No.1804 of 2014)

Association of Unified Tele Services Providers & Others .... Appellants

Versus

Union of India .... Respondent

WITH

CIVIL APPEAL NO. 4592 OF 2014
(@ Special Leave Petition (Civil) No.2925 of 2014)

WITH

CIVIL APPEAL NO.10748 OF 2011

AND

CIVIL APPEAL NO.10749 OF 2011

TELECOM JUDGEMENT
of
HON. SUPREME COURT

Appeal before the court was concerned with the scope and ambit of the powers and duties of the Comptroller and Auditor General of India (CAG), the Telecom Regulatory Authority of India (TRAI) and the Department of Telecommunications (DoT) in relation to the proper computation and quantification of Revenue in determining the licence fee and spectrum charges payable to Union of India under Unified Access Services (UAS) Licences entered into between DoT and the private service providers.

TELECOM JUDGEMENT of HON. SUPREME COURT

The Honourable Supreme Court:

1. Extended the provisions of " any other authority or body as may be prescribed" under article 149 of the constitution to those entities that exercised State functions such as control over natural resource like 'spectrum'.
2. Extended CAG's mandate to ascertain that as per provisions of Article 266 of the Constitution all money is indeed deposited into the Consolidated Fund of India (CFI) including revenue generated by private entity that ought to be credited into the CFI.
3. Held that the word 'transaction' had widest amplitude and included within its meaning 'lease agreement.'
4. Held that the expression "all receipt" in section 16 of the CAG's (DPC) Act, 1971 does not distinguish between revenue receipts and non-revenue receipts.
5. Held that under section 18(1)(b) of the CAG's (DPC) Act, 1971 delineates the powers of the CAG to call for the books of accounts, papers and other documents which form the basis of various transactions to which his duties extend including that of private entities.

One may conclude that this judgement mandates CAG to audit all revenue that accrues to the Government and will entail examination of books and records of private entities where necessary.

Perhaps the most Important observation of the Supreme Court was:

"Duties and powers conferred by the Constitution on the CAG under Article 149 cannot be taken away by the Parliament, being the basic structure of our Constitution, like Parliamentary democracy, independence of judiciary, rule of law, judicial review, unity and integrity of the country, secular and federal character of the Constitution, and so on."

CAG's Mandate in Companies Act, 2013

As per provisions of the Companies Act, 2013

Companies Act 2013 : *Section 143 (6) and (7)*

The Comptroller and Auditor-General of India shall within **sixty days** from the date of receipt of the audit report under sub-section (5) *(i.e. audit report of the CA appointed by CAG for a Government Company)* have a right to,—

(*a*) conduct a supplementary audit of the **financial statement** of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and

(*b*) comment upon or supplement such audit report. ***Section 143 (6)***

Without prejudice to the provisions of this Chapter, the Comptroller and Auditor- General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit. ***Section 143 (7)***

139 (5): Authority to appoint Statutory Auditor

Notwithstanding anything contained in sub-section (*1*), in the case of a Government company or **any other company owned or controlled, directly or indirectly,** by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

139 (7): Authority to appoint the first Statutory auditor

Notwithstanding anything contained in sub-section (*1*) or sub-section (*5*), in the case of a Government company or any other company **owned or controlled, directly or indirectly**, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

143 (5): Authority to give directions to the statutory auditor

In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

Other Legislation

The following lists are not exhaustive.

Some of the Acts that allow for Audit by the CAG are :

- ✓ Section 33(2) of the **State Road Transport Corporations Act, 1950**
- ✓ Section 37(6) of the **State Financial Corporations Act, 1951**
- ✓ Section 31 (8) the **Warehousing Corporation Act 1962**.
- ✓ Section 34(1) of the **Employees' State Insurance Act, 1948**
- ✓ Section 34(2) and Section 35(2) of the **Protection Of Human Rights Act, 1993**
- ✓ Section 100(2) and 104(2) of the **Electricity Act, 2003**
- ✓ Section 18(2) of the **Legal Services Authorities Act, 1987**

The above list is not exhaustive and there are several Acts of Parliament and State legislatures that provide for audit by the CAG. Additionally, the acts also provide for Maintenance of accounts in manner prescribed after consultation with the CAG.

Correct

Wrong, please try again.

QUIZ

Best of Luck

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Quiz 1 : Who appoints the CAG?

1. President of India — CLICK ME
2. Chief Justice of Supreme Court — CLICK ME
3. Prime Minister — CLICK ME

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Quiz 2: Which of the following is provided in the constitution to ensure CAG works with out fear or favour:

1. He receives no further employment from Government of India.
2. His salary cannot be reduced.
3. His office expenditures are not subject to vote by parliament.

1. All three — CLICK ME
2. None of the above — CLICK ME
3. Only 3 — CLICK ME

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Quiz 3: The Union Audit Reports are.....by the CAG. (Fill in the blank)

1. Submitted to the Parliament — CLICK ME
2. Submitted to the President of India — CLICK ME
3. Published in Newspaper — CLICK ME

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Quiz 4: Which of the following is false?

1. CAG retires upon attaining 65 years of age. CLICK ME
2. CAG is appointed every 6 years. CLICK ME
3. CAG's pay is equal to that of a judge of the Supreme court. CLICK ME

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Quiz 5 : Which of the following provisions may not be met before CAG takes over audit of private entities that do not receive any Government funding?

1. Request should come from the President/ Governor. CLICK ME
2. It must serve public interest. CLICK ME
3. CAG must be consulted before entrustment of Audit. CLICK ME
4. There is strong reason to believe that the entity has engaged in fraud and corruption. CLICK ME

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Quiz 6 : The supplementary audit of annual accounts of Government Companies is done by the CAG as per provisions of:

1. The CAG's (DPC) Act, 1971. CLICK ME
2. The Constitution of India. CLICK ME
3. The Companies Act 2013. CLICK ME
4. Government of India (Audit and Accounts) Order 1936. CLICK ME

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Quiz 7 to 9: True or False?

7. The State Financial Corporations Act provide for Audit of annual Accounts by The CAG.

TRUE FALSE

8. Transaction Audit of State Warehousing Corporation is as per State Warehousing Corporation Act.

TRUE FALSE

9. Performance Audit of State Financial Corporation by Audit is done because it is provided by Government of India(Audit and Accounts) Order, 1936.

TRUE FALSE

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Quiz 10 : While delivering Judgement on the telecom case, the Hon. Supreme Court of India referred to which of the following to justify CAG's authority to Audit private telecom companies:

1. Section 16 of the CAG's (DPC) Act, 1971. CLICK ME
2. Article 149 of the Constitution of India. CLICK ME
3. Section 18(1)(b) of the CAG's (DPC) Act, 1971. CLICK ME
4. All of the Above. CLICK ME

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THANK YOU

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