

FORTY-FIRST REPORT

PUBLIC ACCOUNTS COMMITTEE

(1980-81)

(SEVENTH LOK SABHA)

EXPENDITURE ON
NEW SERVICE/NEW INSTRUMENT
OF SERVICE

MINISTRY OF FINANCE
(Department of Expenditure)



Presented in Lok Sabha on 29-4-1981

Laid in Rajya Sabha on 29-4-1981

LOK SABHA SECRETARIAT
NEW DELHI

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PART II*

Minutes of the sittings of the Public Accounts Committee held on 8 January, 1981 and 20 March, 1981

*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library.

PUBLIC ACCOUNTS COMMITTEE
(1980-81)

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1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri D. C. Pande—*Chief Financial Committee Officer*
3. Shri K. C. Rastogi—*Senior Financial Committee Officer*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Forty-First Report of the Public Accounts Committee on paragraph 26 relating to Expenditure on New Service/New Instrument of Service included in the Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil). Paragraph 26 dealt with some cases where the prescribed limits of expenditure were exceeded and the expenditure constituted "new service" or "new instrument of service", but no advance from the Contingency Fund was obtained nor prior approval of Parliament taken. The Committee have deprecated the tendency on the part of the Ministries/Departments to continue to spend large sums of money without Parliament's authority year after year. This is illustrative of laxity in control over expenditure on the part of internal finance. The Committee have desired that the matter should be discussed by the Ministry of Finance with the C & AG of India with a view to devising ways and means to strengthen internal finance as well as internal audit.

2. The Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil) was laid on the Table of the House on 12 June, 1980. The Public Accounts Committee (1980-81) examined this paragraph at their sitting held on 8 January, 1981. The Committee considered and finalised this Report at their sitting held on 20 April, 1981. The Minutes of the sittings of the Committee form Part II* of the Report.

3. A statement containing the main conclusions and recommendations of the Committee is appended to this Report (Appendix III). For facility of reference these have been printed in thick type in the body of the Report.

*Not printed. (One cyclostyled copy laid on the Table of the House and 5 copies placed in Parliament Library).

4. The Committee place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and Auditor General of India.

5. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Expenditure), Ministry of Energy (Department of Power), Ministry of Planning (Department of Statistics) and Department of Science and Technology, for the cooperation extended by them in giving informations to the Committee.

NEW DELHI;

April 24, 1981

Vaisakha 4, 1903 (S)

CHANDRAJIT, YADAV.

Chairman,

Public Accounts Committee.

REPORT

Audit Paragraph

Expenditure on "New Service/New Instrument of Service."

1.1. In July 1970, on the recommendations of the Public Accounts Committee, Government had, *inter alia*, prescribed certain limits for different categories of expenditure beyond which the expenditure constituted "new service" or "new instrument of service" and required prior approval of Parliament. During test check in audit of the accounts for 1977-78 and 1978-79, the following cases were noticed in which the prescribed limits were exceeded and the expenditure constituted "new service" or "new instrument of service", but no advance from the Contingency Fund was obtained nor prior approval of Parliament taken.

(i) *Ministry of Energy*

(Grant No. 29—Power Development for 1978-79)

1.2. The Department of Power paid Rs. 36.11 lakhs during 1978-79 as subsidy to the Bharat Heavy Electricals Ltd. against a provision of Rs. 20 lakhs in the Budget Estimates. The additional payment of subsidy of Rs. 16.11 lakhs was in excess of the prescribed limit of Rs. 10 lakhs and was met by re-appropriation within the grant.

(ii) *Department of Science & Technology*

(Grant No. 77—Deptt. of Science & Technology for 1977-78)

1.3. The Department of Science and Technology paid Rs. 77.94 lakhs during 1977-78 as grants-in-aid to the Bose Institute, Calcutta against the provision of Rs. 40 lakhs for the purpose in the Budget Estimates. The increased payment was stated to be mainly for enabling the Institute to meet additional expenditure on speedy construction of laboratory building for which a provision of Rs. 2 lakhs had been included in the Budget Estimates. The additional payment of Rs. 37.94 lakhs was in excess of the prescribed limit of Rs. 10 lakhs and was met by re-appropriation within the grant.

(iii) Ministry of Planning

(Grant No. 73—Statistics for 1978-79)

1.4. The Ministry of Planning (Planning and Statistics) paid Rs. 361.63 lakhs during 1978-79 as grants-in-aid to the Indian Statistical Institute, Calcutta against a provision of Rs. 287.10 lakhs in the Budget Estimates. The increased payment was stated to be for enabling the Institute to meet additional expenditure on existing services (Rs. 54.53 lakhs) and expenditure on the new scheme of Development of the Bangalore Centre (Rs. 20 lakhs) for which no provision was made in the original budget. The additional payment of Rs. 74.53 lakhs exceeded the prescribed limit of Rs. 30 lakhs and was met by re-appropriation within the grant.

[Paragraph 26 of the Report of the Comptroller and Auditor General of India for the year 1978-79—Union Government (Civil)]

1.5. In terms of Article 115(1)(a) of the Constitution, when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the Annual Financial Statement for that year, another statement showing the estimated amount of that expenditure should be laid before both the Houses of Parliament and necessary appropriation law got enacted in terms of Article 115(2). The term 'New Service' has not been defined in the Constitution.

1.6. In 1967-68, the Public Accounts Committee considered the question of prescribing guidelines for determining items of expenditure, from the Consolidated Fund of India, which would constitute expenditure on 'New Service' attracting the provisions of Article 115(1)(a) of the Constitution. In their 11th Report (4th Lok Sabha), the Committee *inter-alia* specified the items of expenditure that would constitute 'New Service/New Instrument of Service' requiring Parliament's approval.

1.7. Accordingly, Ministry of Finance (Department of Economic Affairs) issued instructions *vide* their O.M. No. 8(60)-B/69 dated 27th July 1970 requesting the Ministries etc. of the Government of India to note the above limits and to examine cases of New Service/New Instrument of Service etc. arising thereafter in the light of these instructions *vide* O.M. No. F. 5(49)-B (R & A)/78 dated 12 April 1979 (Appendix I).

1.8. The audit para points out that inspite of above-said instructions having been brought to the notice of Ministries by the Minis-

try of Finance, during test check of the accounts for the years 1977-78 and 1978-79, three cases relating to the Ministry of Energy, (Department of Science and Technology) and Ministry of Planning (Deptt. of Statistics) were noticed in which the prescribed limits were exceeded and the expenditure constituted "New Service" or "New Instrument of Service" but no advance from the contingency fund was obtained nor prior approval of Parliament taken.

1.9. The Committee called for detailed notes from the Ministries concerned explaining the circumstances in which the expenditure was incurred. The information furnished to the Committee is reproduced below:

Ministry of Energy.

"The provision of Rs. 20 lakhs was made for the first time in the Budget 1978-79 to cover the period from 1-10-1976 to 28-2-1978, as proposed by BHEL. The additional requirement of Rs. 16.11 lakhs was to cover the period 1-3-1978 to 31-12-1978. Apart from the period covered, there was no change in the scope or the purpose etc. of the scheme. As was reported to the Parliament under 'New Service' through the Demands for Grants 1978-79, the subsidy represented the differential between the higher interest rate payable by BHEL on Central loans and the rate charged by BHEL to the State Electricity Boards. The actual quantum of subsidy depends on the particular spares (and their value) lifted by the State Electricity Boards for repairs from time to time and BHEL, presumably had some difficulty in estimating the same for future periods."

The Committee desired to know when and at what level the additional subsidy was sanctioned and when the payment was made. The Ministry have replied:

"The additional subsidy was sanctioned to BHEL on 28th December 1978 and January, 1979 with the approval of Joint Secretary and Financial Adviser to the Department of Power. The actual payments were made on 31-1-1979 and 2-2-1979.

Initially, a sum of Rs. 20 lakhs was provided in the Budget Estimates 1978-79 for payment of subsidy to BHEL for the period 1-10-1976 to 28-2-1978. Against this, a sum of

Rs. 36.11 lakhs was proposed in the Revised Estimates 1978-79, to cover the period upto 31-12-1978. As the Ministry was of the view that the additional requirement of Rs. 16.11 lakhs did not constitute New Instrument of Service and as necessary savings to meet these requirements by re-appropriation were available in the revenue grant, this was agreed to."

"The Department of Power were aware that payment of subsidy to BHEL would involve the principle of New Service. Therefore, at the time of framing the budget, this item was included in the Statement showing details of New Service/New Instrument of Service at the end of Part (II) Demands for Grants 1978-79. In the statement, it was clarified that the subsidy represents the differential between higher interest rate payable on Central loans and the rate charged by the BHEL to the State-Electricity Boards.

... the release of additional subsidy was not the result of a new policy decision. The Department of Power were, therefore, of the view that this did not attract or infringe the instructions issued by the Ministry of Finance in July, 1970 regarding New Instrument of Service particularly in view of the fact that in the same year itself, i.e. 1978-79, the case was reported to Parliament as New Service and the payment was in relation to the activities of the Government which had been approved by Parliament in the past and which were visualised in the demand."

1.10. The Committee enquired as to when the Ministry of Energy (Department of Power) became aware that the additional payment would require prior approval of Parliament and what action was taken thereafter. In reply, the Department of power have stated:

"When Audit pointed out, after scrutiny of the draft Appropriation Accounts for 1978-79 that.....the additional subsidy payment of Rs. 16.11 lakhs would attract the principle of New Instrument of service, immediate action was taken to bring the matter to the notice of Parliament through appropriate mention in the Notes on Demands for Grants 1980-81 *vide* para 5.7 on page 7 of the Demands for Grants, Part II, 1980-81."

1.11. Asked whether the Ministry of Finance were consulted regarding payment of additional subsidy to BHEL, the Department of Power in a note have stated:

“The Department of Power did not consult the Finance Ministry in regard to the payment of additional subsidy to BHEL; this case was brought to their notice by the Director of Audit, Central Revenues, after the close of the financial year 1978-79”.

1.12. During evidence the Committee enquired as to why the proposal for grant of additional subsidy was not included in the Supplementary Demands for Grants. The Financial Adviser, Department of Power replied:

“In this particular case, the additional subsidy of Rs. 16.11 lakhs could be covered by re-appropriation from the savings available in the Grants. Since it was not thought at that time that it attracted the provisions of New Instruments of Service, no proposal for the supplementary demands for grants was made in the budget.”

The Secretary, Department of Expenditure pointed out:

“This is really the nub of the case. Certainly the department would have asked for more supplementary grants if the amount of Rs. 16 lakhs and odd had been construed as being a new Instruments of Service because it exceeds the 10 lakhs limit. The department considered reappropriation from the savings and they did not go in for the supplementary demands for grants.”

1.13. Asked if in this case the instructions issued by the Ministry of Finance, had not been violated, Secretary, Department of Expenditure replied:

“Strictly speaking, they should have asked for a supplementary demand.”

Department of Science & Technology

1.14. The audit para states that the Department of Science and Technology paid Rs. 77.94 lakhs during 1977-78 as grants-in-aid to the Bose Institute, Calcutta against the provision of Rs. 40 lakhs for the purpose in the budget estimates. In this connection, the Committee desired to know whether the sanctioning authority was aware

that the payment of additional expenditure would require prior approval of Parliament under the instructions issued by the Ministry of Finance in July 1970. The Department of Science and Technology have stated:

“The additional requirement arose mainly for the laboratory building for which a token provision of Rs. 2 lakhs had been included in the budget. The Department was under the impression that with the inclusion of the token provision for the laboratory building in the budget, additional funds for its construction could be provide by re-appropriation from savings.”

1.15. In reply to a question as to: when the additional grant-in-aid was sanctioned, and when the payments were actually made the Ministry have furnished a detailed note indicating the initial proposal, its examination and advice given at various stages till its finalisation. The same is reproduced below:

“The additional grant in aid of Rs.37.94 lakhs was released in instalments during 1977-78 ad indicated below:—

Amount Rs.	Date	Remarks
A. For construction of buildings :		
8.00 lakhs	July, 1977	Excludes Rs. 2 lakhs provided in th budget 1977-78
10.00 lakhs	Oct., 1977	
6.00 lakhs	Feb. 1978	
3.44 lakhs	March, 1978	
B. For other expenditure :		
1.00 lakh (Plan-recurring)	Januray 1978	A total amount of Rs. 3 lakhs was released and this included for budget provision of Rs. 2 lakhs.
2.50 lakhs (Non-plan recurring)	January, 1978	A total amount of Rs. 7,25,000 was released which included the budget provision of Rs. 4,75,000.
2.00 lakhs (Plan-recurring)	Feb. 1978	
3.00 lakhs (Plan Non-recurring)	Feb., 1978;	
2.00 lakhs (Plan-recurring)	March, 1978	

1.16. The additional grant-in-aid was sanctioned in instalments with the approval of Financial Adviser (DST) in the light of the progress of construction of the building and other requirements as also fund availability and need for economy.

1.17. The Institution's first request for release of Rs. 20 lakhs came in April, 1977. It was examined in the Department and with the approval of FA, DST, it was decided to release a sum of Rs. 10 lakhs. It was also felt that the Institute should be requested to go slow on the construction. The Institute, however, wrote to the Department in August, 1977 stating that the situation regarding availability of Cement had considerably improved and that the rainy season was also over and consequently the building work had gained momentum. The institute therefore requested for the release of Rs. 15 lakhs. This request was considered by the Department and it was decided with the approval of FA, DST to release a further amount of Rs. 10 lakhs and the sanction was issued in September, 1977. A meeting of the Building Committee had also taken place in July, 1977 when it decided that it would be necessary to take action for conclusion of contracts for electricity, sanitary and water supply and in view of this in September, 1977, the Institute requested for additional funds. The Institute was advised in October, 1977 that they should take up only such items which required to be taken up along with the civil construction and the remaining items could be left to be taken up during the next financial year (1978-79). The Institute again pressed for the funds in January, 1978 for release of Rs. 10 lakhs. This matter was considered by the Department and the Department agreed for a sum of Rs. 6 lakhs and with the approval of FA, a sanction was issued for Rs. 6 lakhs in January, 1978. The Institute continued to press for the release of the balance of Rs. 4 lakhs and as some savings could be located towards the end of the financial year, an amount of Rs. 3.44 lakhs was released in March, 1978."

1.18. Asked as to when the Department became aware that the additional expenditure required prior approval of Parliament, the Department have stated:

"The Department came to know of it when it was pointed out by the Audit in their letter dated 7th March 1979 when no action was possible to regularise it."

1.19. Asked if there was any consultation between the Department of Science and Technology and the Ministry of Finance before

or after the additional amount of Rs. 37.94 lakhs was authorised for payment the Department have replied:

“the Ministry of Finance was not consulted before the release of additional amount of Rs. 37.94 lakhs to the Bose Institute Calcutta by the Department of Science and Technology. The latter made a reference to the Ministry of Finance much afterwards in November 1979 on receipt of audit objection.”

Ministry of Planning

1.20. The audit para states that the Ministry of Planning (Planning and Statistics) paid Rs. 361.63 lakhs during 1978-79 as grants-in-aid to the Indian Statistical Institute, Calcutta against a provision of Rs. 287.10 lakhs in the Budget Estimates. The additional payment of Rs. 74.53 lakhs exceeded the prescribed limit of Rs. 30 lakhs and was met by re-appropriation within the grant. In this connection, the Committee desired to know as to when the additional grants were sanctioned and payments made. In reply, the Department of Statistics have stated:

“The Statutory Committee of the Indian Statistical Institute appointed under Section 8(1) of the ISI Act, 1959 recommended in November 1978 revised grants-in-aid to the Institute for 1978-79 as under:

NON-PLAN Rs. 239.05 lakhs (as against Rs. 206.50 lakhs)

PLAN Rs. 122.58 lakhs (as against Rs. 80.50 lakhs).

The additional amount of the grants-in-aid were included in the Revised Estimates 1978-79 and referred to the Ministry of Finance on 7-12-78 for approval. After approval of the Revised Estimates 1978-79 by the Ministry of Finance on 12-12-78 (at the level of Joint Secretary, Department of Expenditure) fair copies of statement of Accepted Estimates were issued on 12-12-78. Sanction for payment of additional amount of grants-in-aid was issued on 13th February, 1979 by the Department after obtaining the approval of additional Secretary, Department of Statistics and in consultation with the Internal Financial Adviser. The payment of these additional grants was made to the ISI on 13th March, 1979.

1.21. Asked if it was within the knowledge of the sanctioning authority/Finance Adviser in the Ministry that this additional payment required prior approval of Parliament under the instructions

issued by the Ministry of Finance in July, 1970 the Ministry have stated.

“It is regretted that the instructions issued by the Ministry of Finance in July 1970 prescribing *inter-alia* certain limits for different categories of expenditure beyond which the expenditure constitutes “New Service” or New Instrument of Service” and required prior approval of Parliament were lost sight of in the Department of Statistics. However, in this connection it may be stated that under Demand No. 73—STATISTICS of the Demands for Grants of the Ministry of Planning for the subsequent year 1979-80 submitted to Parliament, figures of Rs. 122.58 lakhs (Plan) and Rs. 239.05 lakhs (Non-Plan) were indicated against the head A1(4)(1)-Grants to Indian Statistical Institute, Calcutta under the column “Revised Estimates 1978-79” with a parallel exhibition of the figures of Rs. 80.50 lakhs (Plan) and Rs. 206.60 lakhs (Non-Plan) under the column “Budget Estimates 1978-79”. In future it will be ensured that the approval of the Parliament is explicitly obtained where the additional grant exceeds the limits laid down in the Ministry of Finance O.M. No. F. 8(60)/B/69 dated 27-7-1970.”

1.22. In reply to a further question as to when the Ministry of Planning became aware that the additional payment required prior approval of Parliament and what action was taken thereafter, the Minister have replied:

“On 17-1-1980 the Director of Audit, Central Revenues, New Delhi pointed out that the augmentation of the grant-in-aid to ISI, Calcutta by an amount of Rs. 74.53 lakhs was beyond the limits prescribed in the Ministry of Finance O.M. No. F. 8(60)/B/69 dated 27-7-1970 and attracted the provision of “New Service/New Instrument of Service” which required prior approval of Parliament. No action was possible to regularise it at that stage.”

1.23. Asked whether there was any consultation between the Ministry of Planning and the Ministry of Finance before or after this additional amount of Rs. 75.53 lakhs was authorised for payment, the Ministry of Planning have replied.

“While it is true that the Department of Statistics had consulted the Expenditure Division of the Ministry of Fin-

ance before the funds were reappropriated for meeting expenditure on account of additional grants to the ISI, it may be pointed out that under Rule 19(4) of the Delegation of Financial Powers Rules, 1978 and guidelines issued by the Ministry of Finance in July, 1970 it is necessary to obtain prior approval of Parliament for diversion of funds to meet such expenditure. Even the Ministry of Finance concurrence is not sufficient for this purpose. This case was brought to the notice of the Budget Division of the Ministry of Finance by audit after the close of the financial year 1978-79."

1.24. During evidence, the Secretary, Department of Expenditure admitted:

"In the case of Indian Statistical Institute, there has been a lapse. We would have taken a supplementary demand."

1.25. The Committee desired to know, if, besides the three cases mentioned in the audit para, any other case had come to the notice of the Ministry of Finance since 1970, where the instructions issued had been violated. In reply, the Ministry of Finance (Department of Expenditure) have stated that seven cases as detailed below were brought to their notice by the concerned Ministries/Departments:

Sl. No.	Year in which expenditure was incurred	Name of Ministry	Amount of additional expenditure incurred (Rs. in lakhs)	Purpose for which additional expenditure was incurred	Circumstances in which additional expenditure was incurred and reasons why prior approval of Parliament was not obtained or report to Parliament was not made
(1)	(2)	(3)	(4)	(5)	(6)
1.	1974-75	Ministry of Planning (Deptt. of Statistics)	27.70	Grant-in-aid to Indian Statistical Institute, Calcutta	The expenditure was met under the impression that additional requirements could be met by reappropriation of available savings

(1)	(2)	(3)	(4)	(5)	(6)
2.	1975-76	Ministry of Planning (Deptt. of Statistics)	23.33	Grant-in aid to Indian Statistical Institute, Calcutta	
3.	1975-76	Deptt. of Science & Technology	72.00	Grant-in-aid to National Remote Sensing Agency Hyderabad.	
4.	1976-77	do	19.22	Grant-in-aid to Raman Research Institute, Bangalore.	
5.	1977-78	Ministry of Health and Family Welfare	10.5	Grant-in-aid to Central Drug Research Institute, Lucknow	
6.	1978-79	Department of Civil Supplies and Co-operation.	52.5	Subsidy to the National Agricultural Co-operative Marketing Federation (NAFED) for their price support operations of ginger in Mizoram & gur in Uttar Pradesh.	The expenditure was met under the im- pression that ad- ditional requirements could be met by reappropriation of available savings.
7.	1979-80	Department of Chemical and Fertilisers	268.08	Loan to Hindustan Antibiotics Ltd. for repayment of outstanding Govt. Loans and an interest thereon.	The additional funds were met by reappropriation of savings and a report to Parliament was made in the Detail Damands for 1980-81.

1.26. The Ministry further added that the Ministry of Finance (Budget Division) was not consulted for release of funds in any of the above cases.

1.27. In a further note submitted in February 1981 the Ministry of Finance reported six more cases as detailed below in which the requirement of obtaining prior approval of Parliament or of reporting to Parliament subsequently has not been observed (Replies have

yet to be received from a few Ministries):

Sl. No.	Year in which expenditure was incurred	Name of Ministry	Amount of additional expenditure incurred (Rs. in lakhs)	Purpose for which additional expenditure was incurred	Circumstances in which additional expenditure was incurred and reasons why prior approval of Parliament was not obtained or report to Parliament was not made.
(1)	(2)	(3)	(4)	(5)	(6)
1.	1979-80	Delhi Admn.	758.20	Grant-in-aid to Delhi Development Authority for Slum Clearance (Rs. 264.11 lakhs). Resettlement Colonies and Other Schemes (Rs. 494.09 lakhs).	The expenditure was met under the impression that additional requirements could be met by reappropriation of available savings.
2.	Do	Do.	632.63	Funds to Delhi Development Authority for Jhuggi, Jhonpri Removal Scheme	Do.
3.	Do.	Do.	989.01	Loans to Delhi Development Authority for : Water Supply and Drainage Schemes (Rs. 100.00 lakhs); Rural Piped Water Supply Scheme (Rs. 140.00 lakhs); Regularisation of Unauthorised Colonies (Rs. 249.01 laks). Electrification in Resettlement Colonies. (Rs. 500.00 lakhs)	Do.
4.	1979-80	Delhi Admn.	25.00	Loans to Delhi Tourism Development Corporation .	Do.

(1)	(2)	(3)	(4)	(5)	(6)
5.	1979-80	Commerce, Civil Supplies & Co-operation (Deptt. of Civil Supplies.)	32.85	Grant-in-aid to the Trade-Fair Authority of India.	The expenditure met under the impressions that additional requirements could be met by reappropriation of available savings.
*6	1979-80	Health & Family Welfare (Deptt. of Health)	11.43	Grant to Hastimal Sancheti, Memorial Trust, Pune for getting up Centre for Orthopaedically Handicapped Children.	Do.

*At the time of factual verification, Audit have pointed out that in addition to the above cases, there are following three more cases of new service as included in the Audit Report, 1979-80. :

Year in which expenditure was incurred.	Name of the Ministry	Amount of additional expenditure	Purpose for which Addl. expenditure was incurred.
(i) 1977-78	Home Affairs	221.87	Grants-in-aid to M.C.D.
(ii) 1979-80	Steel & Mines (Deptt. of steel)	39.00	Grants-in-aid to National Mineral Development Corporation.
(iii) 1978-79	Industry (Deptt. of Textiles)	132.74	Expenditure on new schemes relating to establishment of rural marketing and service centres for village artisans, common facility services etc.

(In lakhs of Rs.)

1.28. The Committee enquired why none of these cases was detected by Internal Audit. The Secretary Department of Expenditure replied:

"In the new system of departmentalised accounting for the individual Ministries, which is now operating from 1976, when sanctions are issued by the competent authority, the payments are subject to pre-check in the Pay & Accounts Office. This is an area where perhaps payments not covered by sanctions which are valid could be prevented. While one may be able to do this in the headquarters in Delhi, how far it is practicable to do this in the field areas where there are paying offices is to be seen. There may be difficulties. I would like to go into this in further detail with the C&AG."

1.29. Asked if there was no other mechanism excepting the C&AG's office, by which unauthorised expenditure by the various Ministries could come to the notice of the Ministry of Finance, the witness replied:

"In the present system there is none."

1.30. Asked if the Ministry had applied their mind to the creation of such a mechanism, the witness stated:

"One of the areas we are examining is the prevention of this even at the payment stage."

1.31. In a further note on the subject the Ministry of Finance have stated:

"Ministries/Departments concerned have reported that none of the cases was detected by Internal Audit/check wing. It may be mentioned in this connection that the Internal Audit/Check Wings of various Ministries/Departments have been entrusted with specific items of scrutiny mainly pertaining to checking of accounts records maintained in Pay and Accounts Offices and in the offices of Cheque Drawing DDOs etc. Apart from a general review of the accounts, they are required to conduct detailed check of the accounts records of the office concerned, of one month in a year. Unless any peculiar features noticed while scrutinising the accounts or vouchers etc. flowing from sanctions, sanctions issued by a Ministry with the Integrated Financial Adviser's approval are not normally subjected to scrutiny by internal audit. Scrutiny of the accounts of Pay and Accounts Offices is also taken up in internal audit, in the course of a cycle of programmes chalked out, depending on such constraints as number of audit parties available etc. When a Pay and Accounts Office is taken up for internal audit, the accounts of the month in which a sanction (including a reappropriation order) was issued, may or may not happen to be the month selected for detailed audit. Apart from this, the internal audit of such sanctions being ex-post-facto, would not be an effective instrument to bring out cases of non-observance of the monetary limits for remedial action within that financial year."

1.32. The Committee enquired whether non-observance of these instructions had ever been discussed in the meeting of Financial Advisers. The witness replied:

"I am told that after April 1979, this topic has not been discussed in the meeting of Financial Advisers."

1.33. The Committee desired to know what steps the Ministry of Finance proposed to take to ensure compliance with the instructions regarding new service/new instrument of service. The Secretary, Department of Expenditure stated:

"These cases relate only to the new instrument of service. There has been violation of the principle governing the new service being brought to Parliament's notice or approval. Sir, in these five years or so, since 1975, when one looks at the number of cases they are perhaps not as many as would cause a very serious concern. I am not for a moment minimising the fact that they have occurred and there have been lapses. The 1970 instructions did say where there was doubt in the mind of the Ministry concerned, they would refer to the Budget Division of the Finance Ministry. In some cases references were received and clarifications were given and also acted upon. Sir, over the years we have also been repeating these instructions and asking the Ministries for their supplementary demand estimates which we do propose every year. Sir, these instructions were first issued in 1970 and repeated in April, 1979 and June, 1980."

1.34. Asked if at least in some of the cases, the Ministries concerned could have obtained advance from the Contingency Fund of India, the Secretary, Department of Expenditure replied in the affirmative and added:

".....The Ministries should have treated these as items which ought to be brought to Parliament's notice for approval in supplementary demands. They have not done so. If they had read the position correctly and if they had taken the correct steps, it would not have happened. They could

move for a contingency fund advance. These cases came to the notice of the Ministry of Finance only after the event, that is, when the cases were brought to the notice by audit when the financial year was over. Otherwise, we would not be in this muddle now."

1.35. The representative of the Department of Economic Affairs added:

".....where during the course of the financial year, it comes to the notice of the Ministry and the Ministry of Finance, that in any item attracting the limits of new service or new instrument of service, the Ministry has by mistake allowed a reappropriation then we advise the Ministry to come to the Finance Ministry back and take an advance from the Contingency Fund of India and cancel that reappropriation; and then regulate this advance through a supplementary demand.... We have issued instructions to that effect in 1967 (Appendix II). There have been a few cases like this where we have done so."

1.36. Asked as to what action the Ministry of Finance proposed to take in cases where the instructions issued by them in 1970 and reiterated in 1979 had been over looked by the Ministries/Departments, the Secretary, Department of Expenditure stated during evidence:

".....We will be reiterating these instructions and I can assure you that lapses will not be treated lightly."

Review of extent instructions:

1.37. In reply to a question if the present arrangements placed any constraints/limitations on the functioning of the Ministries, the witness stated.

".....Actually the amount or limit was laid down several years ago and since then costs have gone up tremendously. Building costs have gone up sky-high.... On the other hand, other view is held that you should not raise this too much; Parliament should have its role to play to keep a check on the expenditure and so on and so forth."

What we feel is, if in the July 1970 general instruction the limit could be reviewed, that would be better. Instead of going in for general escalation, a provision like this would be all right. I think this will help all-Parliament, the Committee, the Government and the Executive."

1.38. The Committee enquired if any other Ministry or Department had approached the Finance Ministry for review of the instructions issued in 1970, the Joint Secretary, Department of Economic Affairs stated:

"Not formally, but informally. There was a meeting of the Financial Advisers chaired by the Secretary, Expenditure. Various view points were expressed. Some favoured relation. They said these existing orders placed some limitations and so on. PAC's recommendations apart, suppose from Equity you want to change to Loan for public sector undertakings, you cannot do it straightway unless you have prior approval of Parliament. When we have Parliament's approval for investment, in public sector undertaking, it is felt, whether it is equity or loan, this difference should not be so material as to necessitate us to go back to Parliament and necessarily bother Parliament on it. Also, you should not reduce the element of flexibility available to Government and the Departments concerned. There is already some provision for execution of work by certain agencies for instance. But if for administrative reason, the Department thinks it better to change the agency and entrust the work to somebody else, under the present arrangement and instruction, we cannot do that. We will have to go to Parliament. One suggestion was that this freedom should be given to the departments if the purpose is being maintained."

1.39. The witness further stated:

"Another suggestions was that we should increase the limits for subsidies. These were laid down in 1970. The quantum of subsidies being given to FCI was very small, only Rs. 50 crores; today, it is of the order of Rs. 600 crores and above. These could perhaps be liberalised—that was another view expressed. These were the informal views made from time to time, but we in the Ministry of Finance always

want to be conservative, However, if the Committee were to agree to some relaxations, we would be very happy."

1.40. Subsequently at the instance of the Committee the Department of Economic Affairs furnished the following note commending some of the suggestions received by them from Financial Advisers of the various Ministries from time to time for the revision of existing monetary limits to provide flexibility in operation:

Statement A of O.M. dated 27-7-1970 Item I(iii) Additional investment in loans to existing Government Companies:

(1) In the case of releases to Public Sector Units for financing projects under construction, the concept of New Instrument of Service should not be invoked and reappropriations permitted within the overall approved cost estimates already brought to the notice of Parliament and availability of funds. Reappropriation of funds in such cases does not involve any new policy decision or an expansion of existing service.

(2) Loans and equity should be taken together, even in cases where there is Budget Provision in one form—equity or loans, Reappropriation from equity to loan and vice versa should be freely permissible as it is the total quantity of budget support to a public sector undertaking which is really relevant.

(3) The existing monetary limits have become inadequate in the case of term lending institutions e.g. Industrial Development Bank of India, Agricultural Refinance and Development Corporation, Rural Electrification Corporation, Shipping Development Fund Committee, etc. due to manifold increases in their operations. As such, the paid up capital of these institutions does not now constitute an appropriate yardstick for fixing the limits; the limits would be twice the existing limits in these cases.

(4) As the period of repayment of working capital loans now extends upto 5 years to public sector units, Note 2 needs amendment to conform to the present position.

(5) In the case of Port Trusts and other autonomous bodies, like Delhi Municipal Corporation, the concept of paid up capital is not relevant. In such cases either capital assets of the institution at the end of previous financial year or Central loans outstanding against them as at the end of previous year the latter would be more convenient could be reckoned as the basis for applying these limits.

*Item II (b)—Investments in/loans to private .Sector Companies/
Private Institutions:*

In Note 2, Khadi and Village Industries Commission would merit the same treatment as Port Trusts and Delhi Municipal Corporation and may be included in note 3 below Item I.

2. Note 3 may be amplified to provide flexibility in the case of private sector units coming under Government management. Parliamentary approval for such take over having been obtained, the limits for investment in or loans in such cases may be 1 crore as prescribed for an existing company/institution.

Item III—Grants in aid to Private Institutions:

Where a lumpsum provision is made for providing grants-in-aid for a particular scheme, in the absence of an institution-wise break-up at the time the provision is made, release to individual institutions within the sanctioned provision should not attract the prescribed limits, subject to details of releases to such institutions being reported to Parliament.

Item IV—Grant-in-aid to statutory and public institutions:

1. The existing limits are not adequate in the case of many institutions financed with grant-in-aid from the centre e.g. University Grants Commission, Kendriya Vidyalaya Sangathan, IITs, All India Institute of Medical Sciences, etc. Even sanction of one instalment of additional dearness allowance to the employees of some of these institutions entails expenditure of more than Rs. 50 lakhs necessitating approval of Parliament. In such cases the monetary limit could be 10 per cent of the original budget provision or Rs. 2 crores whichever is less.

2. Public sector undertakings in receipt of any grant and wholly Government aided institutions may be treated on par with statutory and public institutions for applying the limits.

Items V (I)—Subsidies under Export Promotion Schemes and on foodgrain transactions:

In the case of Export Promotion Schemes, the Budget provision is at present split up as under:—

- (i) product promotion assistance (for fabricated products like engineering and sports goods, etc.)
- (ii) Commodity Development assistance (for iron and steel, ferrous scrap, etc.)
- (iii) Export credit development schemes (for subsidies to banks).
- (iv) Grants-in-aid and contributions to export development organisations (Export Promotion Councils, etc.)
- (v) Grants-in-aid for market development (for market research, fairs, exhibitions, publicity, etc.)

and Parliament's approval is taken when it becomes necessary to augment the total provision for Export Promotion Schemes or provision under any of the heads referred to above by more than Rs. 1 crore.

The scheme of cash compensatory support is an important export promotion scheme covering a wide variety of products and a compact one. Moreover, principles for determination of cash compensatory support are the same whether it is for manufactured goods or for primary commodities or for textiles. However, the provision for cash compensatory support is at present split up under three heads viz. Product Promotion assistance, Commodity Development assistance as also partly under Export Development Organisations. There is, therefore, little merit for having separate heads for these three categories. The provisions cannot also be split up item-wise as these run into several hundreds. All these items may, therefore, be clubbed under one head, viz. 'Product Promotion and Commodity Development'.

There is also no basic difference between the activities financed by Export Development organisations or other Market Development schemes. In such cases, grants-in-aid are given to various institutions, recognised export houses in public and private sectors and various recognised Export Promotion Councils. It would be preferable to club these under a single head viz. 'Grants-in-aid for Export Promotion and Market Development'.

No change is however, suggested in respect of head Export Credit Development Schemes (for subsidies to commercial banks).

To sum up, provision for Export Promotion Schemes may be exhibited only under the following three sub heads:

- (i) Product Promotion and Commodity Development (this sub-head will accommodate payments of cash compensatory Support on all items of exports including textiles).
- (ii) Grants-in-aid to Export Promotion and Market Development Organisations (this sub-head would accommodate grants to Export Promotion Councils and other organisations like TDA, IIFT etc., for their establishment expenditure as well as developmental activities and also to recognised Export Houses for specified export promotion activities).
- (iii) Export Credit Development (this will continue to cover payments made to commercial banks towards interest subsidy under the Export Credit Subsidy Scheme).

Item VI (ii) Expenditure on new Works:

The existing limit of Rs. 25 lakhs has become quite unrealistic in existing conditions and may be raised to Rs. 1 crore.

Item VI (iii) Other cases of Government Expenditure:

In the case of payments to Commodity Boards fed by cess collections, augmentation of the sanctioned provision exceeding Rs. 10 lakhs requires prior approval of Parliament. (Para 2(1) of this Ministry's O.M. No. F. 5(49)-B(R&A)/78 dated 12-4-1979). This limit has become inadequate especially in the case of Tea Board whose Cess Budget is now over Rs. 4 crores. It is suggested that the limits for payments to the Commodity Boards should be the same as applicable to grants-in-aid to statutory and other public institutions.

Statement B of O.M. dated 27-7-1970:

The limits laid-down will require to be suitably modified in the light of the conclusions on the suggestions made above.

2. The existing instructions require report of cases coming within the ambit of Statement B either through the ensuing batch of Supplementary Demands for Grants or through Notes on Demands for Grants. It is suggested that report to Parliament may also be permitted through incorporation of a suitable annexure in Detailed Demands for Grants of the Ministry concerned.

Constitutional Position

1.41. The Committee enquired if Government had examined the question of regularisation of such additional expenditure by Parliament in view of the specific provisions embodied in Article 115 of the Constitution. In a note, the Ministry of Finance have stated as follows:

“Presumably the reference is to expenditure inadvertently incurred without approval of Parliament and adjudged as on a ‘New Service’ after the close of the financial year.”

“Presumably the reference is to expenditure inadvertently incurred without approval of Parliament and adjudged as on a ‘New Service’ after the close of the financial year in which it was incurred. In cases where the irregularity is discovered within the financial year itself, instructions for regularisation of the expenditure were issued as far back as June, 1967, pursuant to the recommendation of the Public Accounts Committee in their 39th Report (3rd Lok Sabha). These instructions provide that when it is discovered that expenditure on a ‘New Service’ has been incurred, immediate steps should be taken to obtain an advance from the Contingency Fund to cover the expenditure already incurred or to be incurred before a Supplementary Grant becomes available and to come up with a Supplementary Demand Proposal.

2. As regards ex-post-facto regularisation of expenditure incurred without prior approval of Parliament and adjudged as on a ‘New Service’ after the close of a financial year, the matter has been examined on various occasions since 1958. The Public Accounts Committee in para 392 of their Seventh Report (Second Lok Sabha 1957-58) considered a case wherein a sum of Rs. 10,000 was spent by the Government of Uttar Pradesh from their Consolidated Fund on a certain exhibition (considered to be a new service after the close of the year) from out of the sayings available under other heads without obtaining a token Supplementary Grant during the financial year. When the matter of regularisation of such expenditure (incurred without the authority of Law) came up before the Public Accounts Committee in January 1958 the representative of the Ministry of Law explained in evidence that there was no provision in the Constitution at present to regularise such cases of technical excesses which did not result in excess over the Grant as a whole and that such expenditure could not be regularised by obtaining an exceptional grant under Article 206(1) (c)/116(1) (c) as exceptional grant did not mean regularisation of an irregular expenditure. Thereupon the Committee suggested that the matter be further examined in

consultation with the Attorney General. Following the suggestion of the Committee, the Ministry of Finance examined the case in 1956 and obtained the opinion of the Attorney General on it in May, 1958. In his opinion the Attorney General agreed with the Law Ministry that there was no provision in the Constitution to regularise by law an "excess" expenditure of this kind. According to him, the provisions of article 115(1) (a) and (b) were not applicable to this case inasmuch as both parts of article 115(1) (a) contemplate a supplementary, additional or excess grant during the "current financial year" and article 115(1) (b) contemplates excess expenditure for a particular service over the amount granted for that service for that year. The Attorney General also observed that taking the natural and ordinary meaning of language used in article 116(1) (c), it would be difficult to regard such an expenditure as being legitimately a subject of an 'exceptional grant'. However, the only possible method would be to approach legislature in order to regularise the expenditure by putting a strained construction on the language of article 116(1) (c).

3. Pursuant to the opinion of the Attorney General (on a case of expenditure incurred on a service adjudged as 'New Service without causing any excess over the grant as a whole), the Committee in para 82 of their 42nd Report (Second Lok Sabha—1961-62) recommended/concluded as under:—

4. "The Committee are of the opinion that as in the pre-Constitution days cases of expenditure incurred without prior approval of Parliament on an item adjudged as 'New Service' after the close of the year can be brought before Parliament for approval, without violating any of the provisions of the Constitution, by moving a resolution in appropriate terms and getting its approval, *ex post facto* to the money spent on such items. However, in cases where by incurring such expenditure, the amount authorised by Parliament for a particular demand (Service) for that year has been exceeded, the provisions of Article 115(1) (b) of the Constitution will be attracted, and the excess will have to be regularised under those provisions."

Subsequently, the Public Accounts Committee (1963-64) in para 12 of their Twenty-fifth Report (3rd Lok Sabha) had also dealt with a case of such New Service wherein they had recommended regularisation of the expenditure in the manner recommended by the Committee in their 42nd Report (quoted above). The Committee had also desired Government to expedite their decision with regard to the procedure recommended by the Committee.

5. The Ministry of Finance (Department of Economic Affairs) submitted a note to the Attorney General in January 1964, for considering the question whether the Committee's recommendation (in para 82 of its 42nd Report 2nd Lok Sabha) regarding the moving of a resolution for the purpose in question could be given effect to under the Constitution.

6. In February 1964, the then Attorney General gave his opinion concurring with the view expressed by his predecessor in May, 1958 and observed that the legislative function of permitting or validating expenditure from the Consolidated Fund of India could be performed only by following the procedure laid down in articles 112 to 116 and not in any other manner such as by a Resolution of the Parliament. The Ministry of Finance (DEA) in a note submitted to the PAC in May, 1964 suggested that in view of the constitutional position explained above and pending the amendment of the Constitution for providing expressly for the regularisation of such technical excesses, by appropriation by Law, the object that the Committee have in view would perhaps be served by bringing such instances specifically to the notice of Parliament in their Reports.

7. In para 18 of their 39th Report (3rd Lok Sabha 1964-65) the Committee concluded as under:—

8. "In view of the legal opinion expressed it appears that the regularisation of an expenditure on a New Service which is adjudged as such after the close of the year *cannot be made by resolution of Parliament*. In the circumstances, the only alternative to get over this lacuna appears to be to make a suitable amendment to the Constitution laying down a procedure for regularising expenditure not covered by the grant. The Committee desire the Ministry of Finance to initiate action accordingly in consultation with the Ministry of Law and the Comptroller and Auditor General of India at an early date."

9. The matter was further examined in consultation with the Ministry of Law and the Comptroller and Auditor General. By this time, recommendations of the Public Accounts Committee in their 11th Report (4th Lok Sabha) for determining expenditure on New Service/New Instrument of Service were available. It was felt that with the observance of guidelines suggested by the P.A.C. in their above mentioned reports, cases involving expenditure adjudged as on a 'New Service' after the close of a financial year *would be very rare and as such Government was not in favour of a Constitutional amendment for this purpose*. A procedure was also devised in consultation with the Comptroller and Auditor General that any cases

noticed during the course of audit would be brought to the notice of this Ministry to ensure avoidance of such lapses in future. The Public Accounts Committee were apprised, in this Ministry's Note No. F.8(21)-B-67 dated 12-9-68, of these arrangements and were requested not to press for an amendment of the Constitution.

10. Pursuant to the above procedure decided, New Service cases which came to the notice of Audit after the close of the financial years 1977-78 and 1978-79 have been circulated to all Ministries/Departments while emphasising the need for strict adherence to the guidelines issued in July 1970."

1.42. Explaining the concept of "New Service"/"New Instrument of Service", the Joint Secretary and Legal Adviser, Ministry of Law stated in evidence:

"The expression "New Service" occurs only in two Articles in the Constitution and the expression "New Instrument of Service" does not occur anywhere in the Constitution. Regarding the meaning and scope of this expression, we had obtained the opinion of the Attorney-General more than once. In 1976, the (Attorney-General) said that the expression "New Service" must necessarily mean a service not contemplated in the annual financial statement for that year. To arrive at the correct meaning, any particular demand for grant stated in the annual financial statement cannot be construed either too widely or too narrowly. The demand stated has to be examined objectively, and to ascertain its limit no general rule can be laid down in this behalf. But he added that the matter is essentially one for the legislature and perhaps eventually for the Speaker to decide. Financial limits have nothing to do with the question whether a service is new or not. A question was asked whether the limit laid down by the PAC will have any legal implication. The Attorney General said that laying down of such limits would violate Article 115(1) (a) and 205(1) (a). The Attorney General said something about it in 1979 also. The same issue was considered by the successor Attorney-General. He said the expenditure from the Consolidated Fund of India for a new activity or new form of investment can be regarded as an item of new service within the contemplation of Article 115, Clause 1, sub-clause (a). Likewise the

relative large expenditure arising out of important expansion of the existing activity being only a new instrument of service would fall within Article 115(1) (a). The limit fixed to provide for effective parliamentary control over government expenditure is in order since it is not a question of any constitutional provision but one based on pragmatic considerations."

143. The Committee enquired if the question of amending the Constitution or referring the matter to the Law Commission for a special study so as to remove the lacuna had been considered. The Joint Secretary and Legal Adviser, Ministry of Law stated:—

"Regarding the amendment of the Constitution, the Attorney-General right from 1958 has said that this kind of expenditure cannot be regularised under the existing scheme of the Constitution—Articles 112 to 116. Then the only way would be an amendment of the Constitution and the question whether the Constitution should be amended or not is a large one. Normally, the Constitution is amended only when there is a mischief of such a magnitude that has to be remedied. If through the process of these guidelines it could be remedied, then there is no need. As far as your suggestion for making a reference to the Law Commission is concerned, certainly it can be asked to study and report on this."

1.44. To this, the Secretary, Department of Expenditure added:—

".....out of the very very large number of cases of reappropriations which are permitted and which are done by the Ministries every year, this is an odd case where it has happened. I am not justifying the lapse. The lapse has happened. All I am saying is that the system has been working in such a way that these lapses are absolutely minimal in number and in terms of amounts also. And we can keep reiterating our instructions, keep on re-educating our Finance Divisions of the Ministries concerned and, I am sure, this kind of thing will become more and more rare. The Chairman has given some suggestions earlier. We will of course consider certain directions in which the existing instructions of 1970 could be thought of for modification without relaxing the accountability to Parliament and the Parliament's control."

“.....we had taken a view in the past.....the question was examined by the Committee and at the instance of the Committee by the Government also, and they were of the view that the number of such cases may not be of that order which would call for amendment of the Constitution. Now this view has been put before the Committee and there the matter rests. Now if the Committee wishes that it should be taken up again, then we would certainly have no objection.”

1.45. In reply to a further question whether the Ministry did not consider that the circumstances were so compelling that Parliament must amend the Constitution, the witness stated:

“That is not the way we look at it. Our view is that amendment of the Constitution is not necessary.”

1.46. At the instance of the Committee, the Department of Economic Affairs furnished copies of the notes containing the opinions of Attorneys General of India dated 12th August, 1976 and 29th January, 1979. The same are reproduced in Appendix II.

1.47. In pursuance of the recommendations made by the Public Accounts Committee,* the Ministry of Finance issued instructions in July, 1970 setting down the limits to be observed in respect of expenditure on New Service/New Instrument of Service beyond which prior approval of Parliament was required or report to Parliament was necessary alongwith the ensuing batch of Supplementary Demands for Grants/Notes on Demands for Grants.

1.48. The Committee observe that in addition to the three cases reported by Audit as a result of test check of accounts for the years 1977-78 and 1978-79, Ministries have reported another 13 cases where the prescribed limits were exceeded and the expenditure constituted New Service or New Instrument of Service, but neither prior approval of Parliament was taken nor the expenditure was reported to Parliament before close of the financial year. Of these 13 cases, one relates to each of the years 1974-75, 1976-77, 1977-78 and 1978-79; two relate to the year 1975-76 and the remaining seven relate to 1979-80.

1.49. The Committee find that the Delhi Administration incurred an additional expenditure of as much as Rs. 2401.84 lakhs in 1979-80 by way of grants-in-aid to Delhi Development Authority for slum

*Note : c.f. 11th Report (4th Lok Sabha)
c.f 50th Report (4th Lok Sabha).

clearance (Rs. 264.11 lakhs), resettlement colonies and other schemes (Rs. 494.09 lakhs); funds to Delhi Development Authority for Jhuggi Jhonpuri Removal Scheme (Rs. 632.63 lakhs); loans to Delhi Development Authority for water supply and drainage schemes (Rs. 100 lakhs), rural piped water supply scheme (Rs. 140 lakhs), regularisation of unauthorised colonies (Rs. 240.01 lakhs), electrification in resettlement colonies etc. (Rs. 500 lakhs) and loans to Delhi Tourism Development Corporation (Rs. 25 lakhs). The explanation put forth is that the expenditure was incurred under the impression that additional requirements could be met by reappropriation of available savings.

... ..

1.50. The Committee are constrained to observe that large expenditure of over Rs. 24 crores was incurred by Delhi Administration during 1979-80 without obtaining the prior approval of Parliament. The Committee do not consider this as a plausible reason as the possibility of re-appropriation is not relevant to the question of New Service. The Committee desire that the displeasure of the Committee should be communicated to the authorities concerned and they should be asked to ensure that such grave irregularities do not recur.

1.51. During the same year viz. 1979-80, the Department of Chemicals and Fertilizers incurred an additional expenditure of Rs. 262 lakhs by way of loan to Hindustan Antibiotics Ltd. for repayment of outstanding Government loans and interest thereon. The additional funds were obtained by reappropriation of savings and a report to Parliament was made in the detailed Demands for 1980-81. The Committee would like to be informed why prior approval of Parliament was not obtained in this case.

1.52. The Committee further find that the Department of Science and Technology paid Rs. 77.94 lakhs to the Bose Institute, Calcutta in 1977-78 against the budgetary provision of Rs. 40 lakhs. The additional requirement arose mainly for the laboratory building for which a token provision of Rs. 2 lakhs had been included in the budget. Here again the explanation given is that "the Department was under the impression that with the inclusion of the token provision for the laboratory building in the budget, additional funds for its construction could be provided by reappropriation from savings."

1.53. It is seen from the Department's reply that the additional grant-in-aid of Rs. 37.94 lakhs was released in instalments during 1977-78. Bulk of the amount (Rs. 27.44 lakhs) was released for the laboratory building in July 1977 (Rs. 8.00 lakhs), October 1977 (Rs. 10.44 lakhs), February 1978 (Rs. 6.05 lakhs) and March 1978 (Rs. 3.44

lakhs). The remainder amount of Rs. 10.5 lakhs was released in five instalments to meet other expenditure. The Department of Science and Technology have admitted that the Ministry of Finance was not consulted before the release of the additional amount. Reference was made to that Ministry much afterwards in November 1977 on receipt of audit objection.

1.54. As enough time was available to obtain a supplementary grant during the course of the financial year, the Committee cannot but deprecate the manner in which the extent guidelines were flouted in this case.

1.55. Two other instances of lapses on the part of the Department of Science and Technology have been brought to the notice of the Committee. One is the release of an additional amount of Rs. 72 lakhs to the National Remote Sensing Agency, Hyderabad in 1975-76 and Rs. 19.22 lakhs to the Raman Research Institute, Bangalore in 1976-77. In both the cases, the expenditure was met under the impression that additional requirements could be met by re-appropriation of available savings.

1.56. The Committee trust that the Department of Science and Technology will ensure that the prescribed procedure is followed in future.

1.57. Some more instances of such financial irregularity reported to the Committee pertain to the Ministry of Planning (Department of Statistics). The Department released additional grants to the Indian Statistical Institute, Calcutta, amounting to Rs. 27.70 lakhs in 1974-75 and Rs. 23.33 lakhs in 1975-76. Here again the additional requirements were met by reappropriation from available savings and no report to Parliament was made.

1.58. A more serious lapse of this nature occurred in 1978-79 when additional grants-in-aid to the tune of Rs. 74.53 lakhs were made to the Institute. As this exceeded the prescribed limit of Rs. 30 lakhs, prior approval of Parliament was necessary. In this case, sanction for payment of the additional amount of grants-in-aid was issued in February 1979 after obtaining the approval of the Ministry of Finance to the revised estimates for 1978-79. The Secretary, Department of Expenditure admitted in evidence that "In the case of Indian Statistical Institute, there has been a lapse. We should have taken a Supplementary Demand."

1.59. The Committee regret that even the Ministry of Finance did not exercise the requisite amount of vigilance in this case and the additional expenditure was reported to Parliament only in the

subsequent year viz. 1979-80 after the irregularity was pointed out by audit in January 1980. The Committee trust that such instances will not be allowed to recur and the Ministries will ensure that Parliament's approval is not taken for granted.

1.60. The Committee observe that in none of the 16 cases (pus three more cases reported by Audit) reported to them, advance from the Contingency Fund of India was taken. In fact, the cases came to notice of the Ministry of Finance only after the event, that is when these were pointed out by Audit or even later, when enquiries were made at the instance of the Committee. The list is not exhaustive as replies have yet to be received from a few Ministries.

1.61. The Committee desire that the Ministries/Departments which have not yet furnished the requisite information should be asked to do so within three months and the Committee should be apprised of the position.

1.62. The Committee find that the instructions issued in this behalf by the Ministry of Finance in December 1965 were reiterated in June 1967. It was stressed that advance from the Contingency Fund of India should invariably be obtained before incurring any expenditure for the particular service for which the advance is asked for. It was further decided that if in an exceptional case the expenditure has already been incurred on a 'New Service' whether partly or fully due to inadvertence and this fact is noticed before the close of the year, an advance from the Contingency Fund should be asked for during the year itself to cover the expenditure already incurred as also for the expenditure, if any, likely to be incurred before a supplementary grant for that service be made available.

1.63. Strictly speaking, no money can be spent on New Service/ New Instrument of Service without prior approval of Parliament. The Committee take a very serious view of the repeated violations by Ministries/Departments of the guidelines issued by the Ministry of Finance in pursuance of the recommendations made by the Public Accounts Committee. The Committee deprecate the tendency on the part of the Ministries/Departments to continue to spend large sums of money without Parliament's authority year after year. The Committee consider that these cases are illustrative of laxity in control over expenditure on the part of internal finance of the Ministries/Departments. The Committee recommend that the matter

should be discussed by the Ministry of Finance with the C&AG of India with a view to devising ways and means to strengthen the system of internal finance as well as internal audit so that such serious financial improprieties could be detected at an early stage and it may be possible to take remedial action within the financial year itself.

1.64. The Committee take note of the contention of the Ministry of Finance that amendment of the Constitution is not necessary considering the small number of cases that have been reported over the last few years since the matter was last reviewed by the Committee. The Committee also take note of the findings recorded by the Attorney General of India in January 1979 reproduced below (for details please see Appendix III):

"I take the view that the expenditure from the Consolidated Fund for a new activity or a new form of investment can be regarded as an item of "new service" within the contemplation of Article 115(1)(a) and likewise relatively large expenditure arising out of an important expansion of the existing activity, being only a new instrument of service, would fall within Article 115(1)(a)

The limits fixed to provide for effective Parliamentary control over Government expenditure are in order since that is not a question of any constitutional provision out one based on pragmatic considerations."

1.65. In view of the foregoing and also taking into consideration the inflationary pressures on the economy over the years, the Committee consider that upward revision of the limits of expenditure set out in July 1970, beyond which Parliament's prior approval should be taken, is called for. The Committee have taken note of the proposals made by the Financial Advisers of different Ministries as reproduced in Para 1.40 of this Report. The Committee desire that the Ministry of Finance should examine the suggestions in consultation with the Comptroller and Auditor General of India and submit revised guidelines proposed to be issued to the Ministries for consideration and approval by the Public Accounts Committee.

NEW DELHI;
April 24, 1981

Vaisakha 4, 1903 (Saka).

CHANDRAJIT YADAV,
Chairman,
Public Accounts Committee.

APPENDIX I

(Vide Para 1.7 of Report)

IMMEDIATE

No. F.5(49)-B(R&A)78

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

Department of Economic Affairs

New Delhi, the 12th April, 1979

OFFICE MEMORANDUM

SUBJECT.—*New Service/New Instrument of Service Limits to be observed pursuant to the recommendations of the Public Accounts Committee.*

Some instances have come to this Ministry's notice wherein the instructions contained in this Ministry's O.M. No. F8(60)-B/69 dated the 27th July, 1970 on the above mentioned subject were not taken into account by the administrative Ministries while considering proposals for Supplementary Grants, issuing reappropriation orders, etc. These instructions prescribe limits beyond which expenditure on a service requires either (a) prior approval of Parliament or (b) report to Parliament. A copy of the above Office Memorandum is recirculated for the guidance of all Ministries/Departments for strict compliance (Annexure).

2. Types of cases requiring prior approval of Parliament are listed in statement 'A' appended to the Office Memorandum dated the 27th July, 1970. In addition, prior approval of Parliament is also necessary for expenditure in the type of cases mentioned below:—

- (i) Payments to the Commodity Boards fed by cases in excess of the sanctioned provision by Rs. 10 lakhs or more during the course of the year.
- (ii) Proposals involving write off of loans amounting to Rs. 1 lakh or more or for providing grants to private bodies/individuals for repayment of Government loans involving individual payments of Rs. 1 lakh or more.

3. Types of cases requiring reporting to Parliament have been listed in Statement 'B'. These cases are required to be reported

to Parliament through the *ensuing* batch of Supplementary Demands for Grants.

4. It should be noted that no expenditure can be incurred from the Consolidated Fund of India without prior approval of Parliament for types of cases mentioned in paragraph 2 above. In cases of urgency recourse can be had to an advance from the Contingency Fund of India, to be recouped by obtaining a Supplementary Grant in the *first* session of Parliament immediately after the advance is sanctioned. But when Parliament is in session, a Supplementary Grant should preferably be obtained before incurring expenditure. However, where this is not practicable (the need having arisen after presentation of the Supplementary Demands during a session or in a case of extreme urgency where the expenditure cannot await passing of the related Supplementary Demands), an advance may be taken from the Contingency Fund of India. In such cases, the following procedure recommended by the Sixth Lok Sabha Committee on Papers laid on the Table in their 4th Report should be observed:

“As far as possible, before such withdrawal is made, the concerned Minister may make a statement on the floor of the Lok Sabha for information giving details of the amount and the scheme for which the money is needed. In emergent cases, however, where it is not possible to inform the Members in advance, the withdrawal may be made from the Contingency Fund and soon thereafter a statement may be laid on the Table of the Lok Sabha for the information of the Members.”

5. Whenever a doubt arises about the application of the limits of new service/new instrument of service, a reference may be made to the Budget Division for clarification.

Hindi version will follow:.

Sd.

M. D. PAL,

Deputy Secretary to the Government of India.

To

1. All Ministries/Departments with an additional copy for Financial Advisers.
2. All Controllers of Accounts.
3. Controller General of Accounts (Department of Expenditure).
4. Posts and Telegraphs Board.
5. Ministry of Finance (Defence Division).

No. F. 8(60)-B/69

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

Department of Economic Affairs

New Delhi, the 27th July, 1970

OFFICE MEMORANDUM

SUBJECT—*New Service/New Instrument of Service—Limits to be observed pursuant to the recommendation of the Public Accounts Committee.*

The undersigned is directed to invite a reference to this Ministry's O.M. No. F. 8(10)-B/68 dated the 2nd November, 1968 and 25th January, 1969 on the above mentioned subject with which copies of 'Action Taken Statements', incorporating the views of the Government on the recommendations of the Public Accounts Committee contained in their 11th Report (4th Lok Sabha) were circulated to all the Ministries, etc. These 'Action Taken Statements' have been considered by the Committee and their observations thereon are contained in their 50th Report (4th Lok Sabha). For the convenience and guidance of the Ministries, etc. and for deciding the cases of the types, the limits to be observed in deciding whether a case relates to New Service/New Instrument of Service and for determining whether it be reported to Parliament, have been indicated in the enclosed statement drawn up on the basis of the Government decisions on the recommendations of the Committee. Ministries, etc. are requested to note these limits carefully and examine cases arising hereafter, involving 'New Service'/New Instrument of Service', etc. in the light thereof. All doubtful cases may, however, continue to be referred to this Ministry for consideration.

Sd/- B. MAITHREYAN,

Joint Secretary to the Govt. of India.

To

All Ministries/Departments, etc. and All Financial Advisers in the Department of Expenditure (with five spare copies).

No. F.8(60)-B/69

Copy forwarded for information to:—

1. Lok Sabha Secretariat (PAC Branch)—With regard to the recommendations of the Public Accounts Committee contained in Para 1.16 of their 50th Report (4th Lok Sabha), attention is invited to this Ministry's 'Action Taken Statement' No. F. 8(60)-B/69 dated 14-11-69.
2. Comptroller & Auditor General of India, New Delhi.
3. Deptt. of Expenditure (E. Coord. Branch), Deptt. of Revenue and Insurance (CBE&C and CBDT), Deptt. of Banking, Admn. III Branch of Deptt. of Economic Affairs (for circulation in the Department and its attached and subordinate offices).
4. Finance Secretaries of all the State and Union Territory Governments.

Sd/- K. S. SASTRY,
Deputy Secretary to the Govt. of India.

NEW SERVICE/ 'NEW INSTRUMENT OF SERVICE' — LIMITS TO BE OBSERVED IN DECIDING CASES RELATING TO

A—CASE FOR LIMIT BEYOND WHICH PRIOR APPROVAL OF PARLIAMENT IS REQUIRED.

1	2
Nature of transactions	Limits beyond which prior approval of Parliament is required.
1. <i>Public Sector Undertakings/</i> <i>Departmental Undertakings.</i>	
(i) Setting up of new Government Companies splitting up of an existing Company amalgamation of two or more Government Companies and taking up of a new activity by an existing Government Company or a departmental undertaking.	All Cases
(ii) Additional investments in an existing Departmental Undertaking	Rs. 1 crore
(iii) Additional investment in or loans to an existing Government Company	<i>Paid up Capital of the existing Company</i> upto Rs. 1 crore Rs. 20 lakhs Above Rs. 1 crore and upto Rs. 25 crores. Rs. 2 crores Above Rs. 25 crores and upto Rs. 100 crore Rs. 10 crores Above Rs. 100 crores Rs. 15 crores

- Note 1* While applying the above limits, loans and Capital investments are to be taken together.
- Note 2* Short term loans (Working Capital) of during not exceeding one year, need not be treated as New Instrument of service but should be reported to Parliament with the ensuing batch of Supplementary Demands.
- Note 3* For loans to Port Trusts, Delhi Municipal Corporation, Financial Institutions, etc. limits as in the case of Public Sector Companies are to be applied.
- Note 4* Where there is no budget provision, prior approval of Parliament will be necessary in the case of loans exceeding Rs. 20 lakhs to an existing Government Company. This limit will apply only in the case of long term loans.

II. Private Sector Companies/Private Institutions

- | | |
|---|--------------|
| (a) Investments to be made for the first time | All cases |
| (b) Additional investments or loans to an existing Company/Institution. | Rs. 1 crore. |

- Note 1.* While applying these limits, Loans and Capital investments are to be taken together.
- Note 2.* In the case of Loans to statutory and other public institutions like University Grants Commission, Indian Institute of Technology, Khadi and Village Industries Commission, etc.; limits as applicable to Private Sector Companies/Private Institutions should be applied.
- Note 3.* Where there is no budget provision, prior approval of Parliament will be necessary in the case of loans exceeding Rs. 10 lakhs.

III. Grants-in-aid to Private Institutions

Recurring—Rs. 5 lakhs and Non-recurring Rs. 10 lakhs subject to the following:—

- (a) The limits for non-recurring and recurring grants-in-aid to private institution would apply with reference to moneys disbursed by an individual Ministry/Department and not by Government as a whole.
- (b) In the case of recurring grants exceeding Rs. 5 lakhs per annum, the financial implications would be reported to Parliament where the grant is to be made for two years or more.
- (c) In the case of *Grants-in-aid under Export Promotion Schemes*, the limits applicable to Subsidies under these schemes will apply to Grants-in-aid also.

IV. *Grants-in-aid to statutory and other public institutions.*

	<i>Limit</i>
(i) Institutions in receipt of grants-in-aid of less than Rs. 1 crore.	Rs. 10 lakhs.
(ii) Institutions in receipt of grants-in-aid of more than Rs. 1 crore but less than Rs. 2 crores.	Rs. 20 lakhs.
(iii) Institutions in receipt of grants-in-aid of Rs. 2 crores and above but below Rs. 3 crores.	Rs. 30 lakhs.
(iv) Institutions in receipt of grants-in-aid of Rs. 3 crores and above.	Rs. 50 lakhs.

Note

These limits would apply with reference to moneys disbursed by an individual Ministry/Department and *not* by Government as a whole.

V. *Subsidies*

- (i) Subsidies under Export Promotion Schemes and on Foodgrain transactions.

- (a) *Export Promotion Schemes :*

The budget provision should be split up as under :—

- (i) Product Promotion assistance (for fabricated products like engineering and sports goods, etc.)
- (ii) Commodity Development assistance (for iron and steel, ferrous, scrap, etc.)
- (iii) Export credit development schemes (for subsidies to banks)
- (iv) Grants-in-aid and contributions to export development organisations (Export Promotion Councils, etc.)
- (v) Grants-in-aid for market development (for market research, fairs, exhibitions, publicity, etc.)

Parliament should be approached whenever it becomes necessary to augment the total provision for Export Promotion Schemes or provision under anyone of the heads referred to above by more than Rs. 1 crore.

(b) *Food grains transactions :*]

Parliament will be approached whenever it becomes necessary to augment existing budget provision by more than Rs. 1 crore.

(ii) Other Subsidies

Rs. 10 lakhs.

VI *Others Cases :*

(i) New Commissions or Committees of Enquiry.

Rs. 4 lakhs (total expenditure)

(ii) Expenditure on a 'new Works'.

Rs. 25 lakhs.

(iii) Other cases of Govt. expenditure.

Each case to be considered on merits.

VII. *Post & Telegraphs*VIII. *Defence*IX. *Railways*

All the above limits including those relating to Works Expenditure (Rs. 25 lakhs) applicable to other Ministries/Departments will apply in the case of these Ministries / Departments; subject to considerations of security in the case of Defence and that for investment in Ordnance Factories the limit of Rs. 1 crore should be made applicable with reference to investments in all the Factories as a whole. Civil Works, which do not form part of any project of the Departmental Undertakings (Ordnance Factories should be treated like Ordinary Defence Works). As such they would attract the limits of new instrument of service, if the cost thereof exceeds Rs. 25 lakhs or should be reported if the cost thereof exceeds Rs. 10 lakhs but does not exceed Rs. 25 lakhs. A list of such works should, however, be supplied to the Director of Audit, Defence Services.

B. Cases, for limits beyond which Report to Parliament is necessary along with the ensuing batch of Supplementary Demands for Grants/ Notes on Demands for Grants.

Nature of transaction

Limits beyond which report to Parliament is necessary .

1

2

I. Additional investment in an existing Departmental Undertaking.

Rs. 50 lakhs and above but below Rs. 1 crore.

II. Additional investment in or loans to an existing Public Sector Undertaking/Government Company.

*Paid up capital**Limit*

Up to Rs. 1 crore Rs. 10 lakhs and above but below Rs. 20 lakhs.

Above Rs. 1 crore and upto Rs. 25 crores. Rs. 1 crore and above but below Rs. 2 crores.

Above Rs. 25 crores and upto Rs. 100 crores. Rs. 5 crores and above but below Rs. 10 crores.

Above Rs. 100 crores. Rs. 7.50 crores and above but below Rs. 15 crores.

Note— While applying the above limits Loans and Capital investments are to be taken together.

III. Additional investment in or Loans to a Private Sector Company/Institution.

Rs. 50 lakhs and above but below Rs. 1 crore.

Note— While applying the above limit Loans and Capital investments are to be taken together.

IV. Subsidies.

Subsidies under Export Promotion Scheme

Augmentation of total provision by re-appropriation of over Rs. 25 lakhs (and less than Rs. 1 crore) or re-appropriation of Rs. 25 lakhs. (and the less than 1 crore) from one sub-head to another but any without overall augmentation of the total provision.

Subsidies on Foodgrain transactions.

Re-appropriations in excess of Rs. 25 lakhs (but less than Rs. 1 crore).

V. Expenditure on a 'new Work'

Rs. 10 lakhs and above but below Rs. 25 lakhs.

VI. Transfer or a gift of Government assets of Public Corporations/Companies, Autonomous Bodies, Private Parties/Institutions, etc.

Rs. 1 lakh. (To be reported through the Notes on Demands for Grants).

Note— In cases of urgency, where it may not be possible to wait till the matter is brought to the notice of Parliament through the notes on Demands of Grants, arrangements may be made by entrusting the management of the property to the body or institution but the formal transfer of the title to the Property should be effected only after a mention is made in the Notes on Demands for Grants.

APPENDIX II

(Vide Para 1.46 of Report)

STATEMENT OF THE CASE FOR THE OPINION OF THE LEARNED COUNSEL

In this case, the Hon'ble Speaker has desired that this matter might be examined and straightened after consulting the Attorney General.

2. In the case of the Central Government, article 115(1) (a) of the Constitution provides *inter alia* that—

“when a need has arisen during the current financial year for supplementary or additional expenditure upon some ‘New Service’ not contemplated in the Annual Financial Statement for that year,.....

The President shall cause to be laid before both the Houses of Parliament another Statement showing the estimated amount of that expenditure.”

3. Thereupon, the supplementary estimates so presented are subject to the provisions of article 113 and 114 of the Constitution. Thus, no expenditure on a ‘New Service’ not contemplated in the Annual Financial Statement can be incurred from the consolidated Fund of India until Parliament has granted the estimated expenditure and has passed the connected Appropriation Act authorising payment and appropriation of the amount from and out of the Consolidated Fund of India.

The term ‘New Service’, has not been defined in the Constitution. This expression was also not used in the Government of India Act, 1935. It is not practicable to arrive at an exclusive definition of ‘New Service’. Consequently, the meaning and scope of the term ‘expenditure on New Service’ has been left to be decided by the evolution of a body of case law on the basis of decision taken in the light of the views expressed by Audit and the Public Accounts Committee.

4. There may be two extreme approaches in regard to the scope of ‘New Service’, namely:

- (i) No expenditure from the Consolidated Fund would constitute a ‘New Service’ as long as it is, according to the form of the accounts prescribed by the Comptroller and Auditor General in pursuance of article 150 classifiable

under any of the accounts heads against which estimates of other items of expenditure already appear in the Annual Financial Statement and, at the time, it does not require the addition of a new entry among the "Services and Purposes" specified in the Schedule to the Appropriation Act already passed by the Legislature; and

- (ii) Every expenditure, however, insignificant, from the Consolidated Fund for which the estimates have not already been included in the Annual Financial Statement (say, the Expenditure involved following the creation of a new post) has to be treated as constituting expenditure on 'New Service' within the contemplation of article 115(1) (a) of the Constitution.

5. Obviously, neither of the two extreme approaches mentioned above is workable, for loss desirable. This is another reason why, in a matter like this, it is inescapable to proceed on conventions and practices decided upon in consultation with the Public Accounts Committee. Broadly, expenditure from the Consolidated Fund arising out of a new policy decision (not brought to the Legislature's notice earlier), including a new activity or a new form of investment is regarded as an item of 'New Service', within the contemplation of article 115(1)(a) or 205(1)(a), as the case may be. Like-wise, relatively large expenditure arising out of an important extension of an existing activity is treated as a 'New Instrument of Service' which, though a slight variant from 'New Service' is in practice subjected to the same restrictions as are applicable to 'New Service', although the activity itself might have otherwise been contemplated and provided for in the Annual Financial Statement. The question of laying down guidelines for treating certain items of expenditure, from the Consolidated Fund, as 'New Service' or 'New Instrument of Service' had been examined by the Public Accounts Committee of Parliament which made its recommendations in the Eleventh Report (Fourth Lok Sabha) and Fiftieth Report (Fourth Lok Sabha). Based on the recommendations contained in these Reports of the Public Accounts Committee of Parliament, a Statement was drawn up by the Ministry of Finance, indicating the nature and, in certain cases, financial limits beyond which expenditure from the Consolidated Fund of India would be deemed to constitute 'New Service'/'New Instrument of Service', thereby attracting the provisions of article 115(1) (a) of the Constitution. Accordingly, instructions for the guidance of all the Ministries etc., were issued in July, 1970; a copy of the relevant Office Memorandum No. F.8(60)-B/69 dated 27-7-1970 is enclosed for reference. Similar guidelines and limits have also been laid

down by the State Governments, with the approval of the PAC/EC of the State Legislature, in so far as expenditure from their Consolidated Fund on 'New Services', within the contemplation of article 205(1) (a) of the Constitution, are concerned.

6. It will be observed that for determining whether an expenditure from the Consolidated Fund, not provided for in the Annual Financial Statement, would constitute a 'New Service' or not, the Public Accounts Committee also had found it necessary to lay down, apart from the nature of expenditure, certain financial limits within which expenditure from the Consolidated Fund would not be deemed to constitute expenditure on 'New Service'. Thus, the term 'New Service', within the contemplation of article 115(1) (a) or article 205(1) (a) of the Constitution, being not susceptible of a definition in absolute terms, the spirit and letter of these articles of the Constitution cannot be deemed to have been violated if, for this purpose, certain financial limits are laid down, with the approval of the Public Accounts Committee or the Estimates Committee of the Legislature, and expenditure from the Consolidated Fund within such limits are not treated as expenditure on 'New Services'.

7. However, on the 20th and 21st March, 1975, when the Lok Sabha took up for consideration a batch of Supplementary Demands for Grants of the Government of Gujarat for 1974-75, some Hon'ble Members in the Opposition expressed the view that for 'New Service', within the contemplation of article 115(1) (a) or article 205(1) (a) of the Constitution, there could be no financial limit and, therefore, such limits, even though prescribed with the approval of the Public Accounts Committee or the Estimates Committee of the appropriate Legislature, would go against the spirit and letter of the relevant provisions of the Constitution. The particular of the item in respect of which the Hon'ble Members raised the points was as follows:

In the original Budget for 1974-75 of the Government of Gujarat, Parliament authorised an expenditure of Rs. 15 lakhs for 'Welfare of Scheduled Castes', classifiable in the accounts under Major Head "288-Social Security and Welfare", in Grant No. 49 for the Service "Social Security and Welfare". During the course of the year, the State Government sanctioned an Apprentice Training Scheme, under 'Half a million jobs programme', at an estimated cost of Rs. 1.49 lakhs. The expenditure on the new scheme so sanctioned was also classifiable, in the accounts, under the Major Head '288-Social Security and Welfare' and was also adjustable under Grant

No. 49 for that year. According to the financial limits prescribed with the approval of the Estimates Committee of the Gujarat Legislature for determining 'New Service', a new scheme involving non-recurring expenditure not exceeding Rs. 2 lakhs, though not included in the original Budget, would not constitute a 'New Service' within the contemplation of article 205(1)(a) of the Constitution. Consequently, the State Government incurred expenditure on the new training scheme from out of the funds otherwise sanctioned in Grant No. 49, without obtaining specific prior approval of the competent legislature by way of Supplementary Grant. However, as the total expenditure on Service No. "49-Social Security and Welfare", including that on the new scheme, during the whole year 1974-75 was estimated to exceed the provision of Rs. 15 lakhs otherwise authorised by Parliament for that Service, a Supplementary Demand for Grant was presented to Parliament in March 1975 after a part of the estimated expenditure on the new scheme had been incurred, though without causing, by then, any excess over the amount otherwise granted for the relevant Service No. 49.

8. The Hon'ble Members held the view that in the context of the provision relating to expenditure on 'New Service' in article 205(1)(a) of the Constitution, expenditure from the Consolidated Fund of the State on a new programme taken in hand during the course of the year would constitute expenditure on 'New Service', and, consequently, it could not be incurred without first obtaining a Supplementary Grant. It was clarified by the Minister of Revenue & Expenditure that for the purposes of determining 'New Service' financial limits had been prescribed, with the approval of the Public Accounts Committee/Estimates Committee of the appropriate legislature not only at the Centre and in Gujarat but also in the other States. But, as stated above, the Hon'ble Members insisted on the view that the financial limits, even though prescribed with the approval of the Estimates Committee of the State Legislature, were violative of the requirements of the latter part, relating to expenditure on 'New Service', of article 205(1)(a) of the Constitution. The Hon'ble Speaker directed that, in view of the doubts raised in the House, the particular item mentioned above might be deleted from the Supplementary Demands for Grants because it would not be appropriate for Parliament to make Supplementary Grants, under article 205(1)(a) of the Constitution, towards expenditure already incurred from the Consolidated Fund on an item which is liable to be held as a 'New Service'. In view of the extreme urgency in getting the other items of Supplementary

Demands approved by Parliament before the close of the financial year, the item was deleted.

9. In the circumstances, the learned counsel is requested to give his opinion on the following questions, namely:—

- (1) What shall be the nature of expenditure from the Consolidated Fund for the purpose of determining 'New Service' within the contemplation of article 115(1) (a) or article 205(1) (a) of the Constitution;
- (2) Whether, for the purpose of determining 'New Service' within the contemplation of article 115(1) (a) or article 205(1) (a) of the Constitution, laying down the financial limits, with the approval of the Public Accounts Committee/Estimates Committee of the appropriate Legislature, beyond which expenditure from the Consolidated Fund would constitute 'New Service', would be violative of the letter and spirit of the said articles of the Constitution; and
- (3) Generally.

NEW DELHI;

(P. G. GOKHALE)

Dated the 29th June 1976.

Secretary to the Government of India.

OPINION

This is pursuant to the Statement of case dated 29th June, 1976 prepared by Shri P. G. Gokhale, Secretary, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs, and the Supplementary Statement of case dated 26th July, 1976 prepared by Shri M. B. Rao, Joint Secretary and Legal Adviser, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs.

2. The main question really is the correct meaning of the expression "new service" in Articles 115(1) (a) and 205(1) (a) of the Constitution.

3. A "New Service" must necessarily mean a service "not contemplated in the annual financial statement for that year" as stated specifically in both the above Articles.

4. The papers sent to me include a copy of the Gujarat Appropriation Act, 1974 but not the annual financial statement for 1974-75. Column 2 of the Act mentions the various "services and purposes". To arrive at the correct meaning of the expression "new service", any particular demand for grant, stated in the annual financial statement cannot be construed either to widely or too narrowly. The demand stated has to be examined objectively to ascertain its limits. No general rule can be laid down in this behalf.

5. The matter is essentially one which is for the appropriate legislature and, perhaps, eventually for the Speaker to decide. But as a specific question, namely, question (2), has been asked of me in paragraph 9 of the Statement of case it is my view that in order to find out whether a service is a "new service" within the meaning of Article 115(1) (a) or Article 205(1) (a), one has to examine whether the service does or does not fall within any demand contemplated in the annual financial statement; *financial limits have nothing whatsoever to do with the question whether a service is "new" or not...*

6. Two following examples have been given in the Supplementary Statement of case and I have been asked as to whether the said expression "new service" applies or not:

- (a) In the Schedule to the Gujarat Appropriation (No. 2) Act, 1974 (No. 24 of 1974) Item 49 reads "Social Security and Welfare (Agriculture, Forests and Cooperation Department)" and a sum of 15 lakhs was granted against this item. During the course of the year the State Government sanctioned an apprenticeship scheme under the "Half-a-million jobs programme" at an estimated cost of Rs. 1.49 lakhs. The question is whether this expenditure of Rs. 1.49 lakhs would relate to "new service".
- (b) Whether the expression "new Service" applies to a Government Company engaging in such activities, e.g. setting up a subsidiary company or splitting up or reconstructing into separate Government companies or amalgamating with other Government companies or undertaking a new activity, when no such activity would require any grant from the Consolidated Fund.

7. The answer to the first question referred to in the next preceding paragraph depends on whether in the annual financial statement there was a demand for grant in terms similar to Item 49 of the

Schedule to the Appropriation Act and the apprenticeship scheme related to agriculture or forests or cooperation. If the answer is in the affirmative, the apprenticeship scheme would not, in my view, be new service. If the answer is in the negative, the scheme would, in my view, be a new service.

8. The answer to the second question would depend entirely upon the Language of the purpose and service for which the demand is made in the annual financial statement in favour of the Government Company. For instance, if the demand is in favour of the Government Company generally without restricting the grant to any particular activity of the Company and the objects of the Company, as stated in its Memorandum, permit the activities in the example given above, I would take the view that none of the activities would come under the expression "new service."

9. In question (vii) as asked in para 11 of the Supplementary Statement of Case I have been asked whether the word "not" occurring in the last sentence of para 6 of my opinion dated 3rd March, 1976 is a typographical error. The answer is in the negative. The sentence in my previous opinion refers to Article 116(1) (c) and reads "The word 'exceptional' in the sub-clause would, in any case, not cover all expenditure spent on new services not contemplated in the annual financial statement." The sentence is not correctly quoted in paragraph 10 of the Supplementary Statement of Case. Nevertheless, there is a typographical error in the sentence. The word "all" should read "any". The reason is as follows.

10. The expenditure on some new service not contemplated in the annual financial statement may be needed during the *current financial year*. This is covered by Article 115(1) (a). Article 116(1) (c) refers to an exceptional grant which forms no part of the current service of *any financial year*.

11. The answers to the questions asked in paragraph 9 of the Statement of Case are as follows.

Question (1)—What shall be nature of expenditure from the Consolidated Fund for the purpose of determining 'new Service' within the contemplation of article 115(1) (a) or article 205(1) (a) of the Constitution?

Answer—Vide paras 4 and 5 hereof.

Question (2)—Whether, for the purpose of determining 'New Service' within the contemplation of article

115(1) (a) or article 205(1) (a) of the Constitution, laying down the financial limits, with the approval of the Public Accounts Committee/Estimates Committee of the appropriate legislature, beyond which expenditure from the Consolidated Fund would constitute 'New Service', would be violative of the letter and spirit of the said articles of the Constitution?

Answer—It would certainly be violative of Articles 115(1) (a) of the Constitution.

12. The answers to the questions asked in paragraph 11 of the Supplementary Statement of Case are as follows.

Question (i)—Whether the expenditure on the Half-a-Million Jobs Programme at an estimated cost of Rs. 1.49 lakhs (in accordance with Government guidelines and which was earlier approved by the Public Accounts Committee) by the State of Gujarat, referred to in para 3 supra, is in order?

Answer—Vide para 7 hereof.

Question (ii)—The precise scope, within the contemplation of the Constitution, of the expression 'Supplementary or additional expenditure upon a "new service" not contemplated in the Annual Financial Statement' occurring in Articles 115(1) (a)/205(1)(a) of the Constitution;

Answer—Vide paras 4 and 5 hereof.

Question (iii)—Whether taking up a new activity by a government-organization without involving 'supplementary or additional' expenditure from the Consolidated Fund of India over and above the estimate included in the Annual Financial Statement, could come within the scope of 'New Service' mentioned in Article 115(1) (a) of the Constitution, thereby requiring prior approval of Parliament?

Answer—Vide para 8 hereof.

Question (iv)—Whether the provisions of Article 115(1) (a) would be attracted if an existing government-company sets up a subsidiary company of itself (and therefore another government company within the meaning of Section 617 of the Companies Act, 1956) wholly out of the principal Company's funds; which do not form part of the Consolidated fund of India?

Answer—Vide para 8 hereof.

Question (v)—Whether Article 115(1) (a) would be attracted when, without involving any expenditure from the Consolidated Fund of India, (a) an existing government-Company is split up or reconstructed into separate government-companies; (b) two or more existing companies, are amalgamated into one or more government-companies; (c) a new activity is undertaken by an existing government company?

Answer—Vide para 8 hereof.

Question (vi)—In case the provisions of Article 115(1) (a) are not attracted to the activities referred to in (iii) and (iv) above, whether prior approval of Parliament is, under any provision of the Constitution, required before such activities are undertaken and, if so, what would be the form of such prior approval?

Answer—No prior approval of Parliament is necessary.

Question (vii)—Whether the word 'not' occurring in the last sentence of para 6 of the Learned Counsel's Opinion dated 3rd March, 1976 is a typographical error?

Answer—No. But vide paras 9 and 10 hereof.

Generally—There is nothing to add.

Sd/-

(NIREN DE)

Attorney General for India.

NEW DELHI;

Dated 12 August, 1976.

STATEMENT OF THE CASE FOR THE OPINION OF THE LEARNED COUNSEL

Under Article 115(1) (a) of the Constitution, when a need has arisen during the current financial year for supplementary or additional expenditure upon some 'new service' not contemplated in the annual financial statement for that year, the President shall cause to be laid before both the Houses of Parliament, another statement showing the estimated amount of that expenditure. The supplementary estimates so presented are subject to the provisions of

articles 113 and 114 of the Constitution. Thus no expenditure on a 'New service' can be incurred from the Consolidated Fund of India until the Parliament has approved of the demand for the estimated expenditure and passed the connected Appropriation Bill authorising payment and appropriation of the amount from and out of, the Consolidated Fund of India, and the Appropriation Bill has received the President's assent. Similar provisions with regard to the States exist in article 205(1) (a) of the Constitution.

2. The term 'new service' has not been defined in the Constitution. After the commencement of the Constitution, the scope and meaning of the term 'expenditure on a new service' was left to be decided by the evolution of a body of case law on the basis of decisions taken and views expressed by the Public Accounts Committee and Audit from time to time. Broadly, expenditure from the Consolidated Fund arising out of a new policy decision (not brought to the notice of the legislature earlier) including a new activity or a new form of investment is regarded as an item of 'new service' within the contemplation of article 115(1) (a). Likewise, relatively large expenditure arising out of an important expansion of an existing activity is treated as a 'new instrument of service' which, though slightly different from 'New Service' is, in practice, subjected to the same restrictions as applicable to 'new service', although the existing activity might have otherwise been contemplated and provided for in the annual financial statement.

In order to provide effective Parliamentary control over Government expenditure certain monetary limits beyond which expenditure on new works would constitute 'New Instrument of Service' requiring prior approval of Parliament were prescribed for the first time by the Central Public Accounts Committee in 1963. In fixing these limits note was taken of the fact that too low a monetary ceiling not to speak of absence of a ceiling altogether, would entail numerous applications for Supplementary Grants for items of little significance and cause practical difficulties in working. In 1968 and 1969 the Committee examined in detail the question of laying down suitable guidelines for determining the nature and categories of expenditure which would constitute 'new service'/'new instrument of service' requiring prior approval of Parliament under article 115(1) (a) of the Constitution. The Committee made their recommendations in this regard in their 11th Report (4th Lok Sabha) and after further examination of the views of the Government, modified them in their 50th Report (4th Lok Sabha). Based

on the recommendations of the Committee in their 50th Report instructions were issued in this Ministry's Office Memorandum No. F.8(60)-B/69 dated the 27th July, 1970 (copy enclosed) for the guidance of all the Ministries and Departments of the Central Government.

It will be seen that under these instructions:—

- (i) certain categories of expenditure, for example setting up new Government companies, would constitute new service without any monetary limits;
- (ii) certain other categories of expenditure, such as *additional* investment in *existing* Government companies, in excess of the prescribed monetary limits would constitute new service.

Cases falling in categories (i) and (ii) above would require prior approval of Parliament under Article 115(1) (a) of the Constitution; and

- (iii) in regard to cases falling under the second category, if the additional expenditure is less than the prescribed monetary limit but above a lower monetary limit laid down for the purpose, a report is to be made to Parliament.

The above scheme is aimed at securing effective Parliamentary control over essential proposals of Government expenditure.

Further, these guidelines have helped Government Departments in identifying more or less precisely the items of expenditure which constitute 'new service' requiring prior approval of Parliament.

It is understood that similar guidelines and limits have also been laid down by certain State Governments with the approval of the Public Accounts/Estimates Committee of the concerned State Legislature, for expenditure on 'new service' from their Consolidated Funds.

3. In March 1975, some Hon'ble Members of the Lok Sabha expressed the view that for a 'new service' within the contemplation of articles 115(1)(a) 205(1)(a) of the Constitution, there could be no financial limits and, therefore, such limits, even though prescribed with the approval of the Public Accounts Committee/Estimates Committee of the appropriate legislature would be violative of the spirit and letter of the relevant provisions of the Constitution. Pursuant thereto, the Hon'ble Speaker desired that the matter

might be examined and straightened after consulting the Attorney General. Accordingly, in June, 1976, the matter was placed before the then Attorney General and his opinion was solicited *inter alia* on the following points:

- (i) what shall be the nature of expenditure from the Consolidated Fund for the purpose of determining 'new service' within the contemplation of article 115(1)(a) or article 205(1)(a) of the Constitution;
- (ii) whether for the purpose of determining 'new service' within the contemplation of article 115(1)(a) and article 205(1)(a) of the Constitution, laying down financial limits with the approval of the Public Accounts/Estimates Committee of the appropriate Legislature, beyond which expenditure from the Consolidated Fund would constitute 'new service', would be violative of the letter and spirit of the said articles of the Constitution.

4. The learned Attorney General in his opinion (no. AG/76/9) dated the 12th August, 1976 in regard to the above points observed *inter alia* that:—

- A 'new service' must necessarily mean a service "not contemplated in the annual financial statement for that year". as stated specifically in both the articles 115(1)(a) and 205(1)(a) of the Constitution.
- To arrive to the correct meaning of the expression 'new service', any particular demand for grant stated in the annual financial statement cannot be construed either too widely or too narrowly. The demand stated has to be examined objectively to ascertain its limits. No general rule can be laid down in this behalf. The matter is essentially one which is for the appropriate legislature and, perhaps, eventually for the Speaker to decide. But as a specific question has been asked, "It is my view that in order to find out whether a service is a 'new service' within the meaning of Article 115(1)(a) or Article 205(1)(a), one has to examine whether the service does or does not fall within any demand contemplated in the annual financial statement; financial limits have nothing whatsoever to do with the question whether the service is 'new' or not."

The learned Counsel finally replied to the second question referred to in the preceding paragraph by stating that it would certainly be violative of Articles 115(1)(a) and 205(1)(a) of the Constitution.

5. The learned Counsel had observed that it was essentially for the legislature and perhaps eventually for the Speaker to decide whether a particular expenditure constitutes 'New Service'. In this view, it is the prerogative of the legislature or the Speaker to lay down norms for determination of 'New Service'. The Public Accounts/Estimates Committee is appointed or elected by the House or nominated by the Speaker and works under the directions of the speaker. Their Reports are laid before the respective legislatures. These Committees represent the respective legislatures and their recommendations are to be deemed as reflecting the views of the Legislature. The recommendations become binding on Government once they are accepted by Government.

The guidelines referred to in para 2 above, issued pursuant to the recommendations of the Central Public Accounts Committee, and similar guidelines laid down in certain States with the approval of the concerned Public Accounts/Estimates Committee, could, therefore, be deemed to satisfy the wishes of the respective Legislatures.

6. In the circumstances mentioned above, the learned Counsel is requested to give his opinion on the following issues, namely:—

- (a) whether in the light of the opinion dated 12th August, 1976 of the former Attorney General, it would not be in order to go by the existing conventions established on the basis of the recommendations of the Public Accounts Committee for determining whether a particular expenditure attracts the provision of "new service",
- (b) if not, what would be the precise nature of expenditure from the Consolidated Fund and criteria for determining 'new service' within the contemplation of article 115(1)(a) or article 205(1)(a) of the Constitution; and
- (c) generally.

SUPPLEMENTARY OPINION

The questions now for consideration are given in paragraph 6 of the Statement of Case for Opinion. The questions are:

- (a) whether, in the light of the opinion dated 12th August, 1976 of the former Attorney General, it would not be in

order to go by the existing conventions established on the basis of the recommendations of the Public Accounts Committee for determining whether a particular expenditure attracts the provision of "new service",

- (b) if not, what would be the precise nature of expenditure from the Consolidated Fund and criteria for determining "new service" within the contemplation of Article 115 (1) (a) or Article 205 (1) (a) of the Constitution; and
- (c) general.

2. In order to answer these questions one must first turn to the provisions of the Constitution in article 112 to 116 and Articles 202 to 206. Article 112 provides that the President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for the year, or shortly "the annual financial statement." Clause 2 of Article 112 provides that the estimates of expenditure embodied in the annual financial statement shall show separately:—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and
- (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.

Clause (3) of Article 112 sets out expenditure *charged* on the Consolidated Fund of India. Among other items sub-clause 3 (f) mentions any sums required to satisfy any judgment decree or award of any Court or tribunal and sub-clause 3 (g) mentions any other expenditure declared by the Constitution or by Parliament by law to be so charged. Sub-clause (2) requires not actual expenditure but the *estimates* of expenditure under two heads, first being the *expenditure charged* upon the Consolidated Fund and the second sums required to meet *other expenditure* proposed to be made from the Consolidated Fund. Article 113 provides for procedure in Parliament with respect to the estimates and provides that so much of the estimates as relates to expenditure charge upon the Consolidated Fund shall not be submitted to the vote of Parliament and clause (2) thereof provides of the said estimates as relates to *other expenditure* shall be submitted in the form of demands for grants to the House of the people so that the House of the people may assent or refuse to assent the any demands or assent to any demand subject to the reduction of the amount specified therein. Clause (3) of

Article 113 provides that no demand shall be made except on the recommendation of the President. This has to be followed up by an Appropriation Act. Article 114 (1) provides that as soon as may be after the grants under Article 113 have been made by the House of the people, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of all moneys required to meet:—

- (a) the grants so made by the House of the People; and
- (b) the expenditure charged on the Consolidated Fund but not exceeding in any case the amount shown in the statement previously laid before Parliament.

Clause (2) of that Article is of no consequence in the context of the questions posed for consideration. Clause (3) of Article 114 is a provision which is really the basis for provisions in Articles 112, 113 and 114. It contains a prohibition that subject to the provisions of Article 115 and 116, no moneys shall be withdrawn from the Consolidated Fund of India except under appropriation made by law in accordance with the provisions of Article 114, which of course, must be proceeded by the requirements of Articles 112 and 113. The only distinction between estimates relating to expenditure charged upon the Consolidated Fund and other expenditure is that the first is not subject to any vote of Parliament but the second must be submitted in the form of demands to the House of the people for vote. In both cases the estimates have to be followed up by an appropriation bill. Clause 1 (b) of Article 114 emphasises that even in the matter of expenditure charged on Consolidated Fund the bill must not exceed in any case the amount shown in the statement previously laid before parliament. Clause (1) (b) of that Article emphasises that the sanction and the destination shall remain within the limits of the statement previously laid before Parliament under Article 114.

3. Since no moneys can be withdrawn from the Consolidated Fund of India except under an appropriation recourse must be had to the provisions of Articles 115 and 116, which is permitted under clause (3) of Article 114. Where the expenditure charged on the Consolidated Fund of India is concerned, there is a constitutional obligation to ensure that whatever is charged under the Constitution or by Parliament by law, must necessarily be paid but even an amount in excess of that mentioned in the statement previously laid before Parliament may be needed as where, for instance, a decree has to be met [see item (f) of Article 112. (3)]. Clause (2) of Article 114 underlines this for it provides that no amendment shall be pro-

posed to any such bill in either House of Parliament which shall have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India. In situations where moneys are required out of the Consolidated Fund of India recourse can and must be had to Articles 115 and 116. Article 115 deals with supplementary, additional or excess grants.

4. It is in the light of this background that one must turn to the language of clauses (a) and (b) of Article 115. The grants made under clause (a) of Article 113 (2) read with Article 114 (1) (a) are the *limits* unless the House of the People under Article 115 or under Article 116 provides the expenditure by a supplementary, additional or excess grant. In these two cases the President shall have to lay before the both Houses of Parliament another statement showing the *estimated* amount of that expenditure or caused to be presented to the House of the people, a demand for the *excess* expenditure [as the case may be, that is whether it falls under clause (e) or clause (b)]. It seems to me that clause (a) of Article 115 (1) would apply to the amount authorised by the appropriation Act whether it is in respect of amount charged on the Consolidated Fund or for other expenditure. If the amount authorised by the Appropriation Act to be expended for a particular service for the current financial year is found insufficient for the purpose of that financial year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year. The cases falling for instance under Article 112 (3) (f) or (g) or for that matter any other item may prove inadequate because the particular service, by which I understand the service covered by the Appropriation Act on the basis of Annual Financial Statement of the year in question is found inadequate for the year in question. Again where a particular service for which the amount was sanctioned by the Appropriation Act is continued but the estimates and therefore the Appropriation Act sanctions an amount which is found to be inadequate, recourse must be had to Article 115 (a). Secondly, where a need has arisen, which means has arisen during the current financial year for the first time in that year for a supplementary or additional expenditure, not for the service which was covered by the Annual Financial Statement but a *new service*, recourse may be taken again to Article 115 (1) (a). This again would apply whether the Appropriation Act was in respect of the expenditure charged on Consolidated Fund or in relation to a demand under Article 114 or rather in the Annual Finan-

cial year for supplementary or additional expenditure upon some clearly applies to an *old service continued* but the amount sanctioned by the Appropriation Act is insufficient for the purpose. The second part of clause (a) deals with a situation where a need has arisen in the year in which the demand is made for the year in which a supplementary or additional service is sought provided the service was not contemplated in the Annual Financial Statement for the year in question. The first part would take in a particular service which was continued from the year for which the Appropriation Act was passed but the requirement of that service is found in the year in question to be insufficient for the purpose of that year. Here no question of a new service is involved. It is the *second* part which needs consideration for the purposes of answering the questions. Both parts of clause (a) of Article 115 (1) enable Parliament to make a supplementary or additional grants but not excess grants which are covered by clause (b). There is some confusion created in the *second* part of Article 115 (1) (a) by reason of the use of the words "for supplementary or additional expenditure" before the words "upon some new service not contemplated in the Annual Financial Statement for that year." If by the expression "new service" is to be understood a service which was not reflected at all in the Annual Financial Statement for that year, then the words "supplementary or additional expenditure" are not understandable but in order to reconcile the two, the meaning to be given to the expression "new service" not contemplated in the Annual Financial Statement of that year must be that the service is new only in the sense that it was *not visualised in the Annual Financial Statement but that the service was one already provided for. Where, for instance, fresh investments are to be made or an activity in a service covered by the Appropriation Act is to be undertaken, it would in the context be a "new service".* The words "new service" cannot in the context mean something *totally* new in the sense that there was no such service at all in the Annual Financial Statement of that year. It would cover cases where the service itself was old but the extension was not contemplated in the Annual Financial Statement. It is only when the service is the same that is still relatable to a service *broadly categorised* in the Annual Financial Statement but not included within the expenditure. It cannot be a new service altogether; it is an extension of an old service; otherwise the words "supplementary or additional expenditure" would be wholly un-understandable. Since the grant is to be sought for a supplementary or *additional expenditure the expression "new service" has a limited content. It does not envisage a service which is entirely new.* In other words an activity which was not contemplated as part of the service mentioned in the

Annual Financial Statement for the year in question is covered by the second part of Article 115 (1) (a). On this consideration, I take the view, that the expression "new service not contemplated in the Annual Financial Statement" for the year is not a totally new service but refers to an item not contemplated in service specified in the Annual Financial Statement but an old service where some activity involving supplementary or additional expenditure is undertaken. This is emphasised by the expression "when a need has arisen during the current financial year for supplementary or additional expenditure".

5. Clause (b) of Article 115 (1) contemplates a different situation. It deals with *post facto* sanction because the words are "if any money has been spent on any service during the financial year" and the amount granted for that service exceeds expenditure covered by an Appropriation Act, that recourse may be had to clause (b). Clause (a) deals with the case of insufficiency of the amounts covered by an Appropriation Act or a need has arisen for the first time during the current financial year by reason of a new activity in a specified service, which activity was not contemplated in the Annual Financial Statement for that year. Clause (b) is clearly *post facto* and does not involve any new service. If the expenditure on any service which could be only on old service specified in the financial year exceeds the amount granted for that service and for that year by the Appropriation Act, it is a pure case of *excess* over sanctioned expenditure. The view I take of the *second part* of clause (a) of Article 115 (1) is strengthened if a reference is made to Article 116. The very marginal note in that Article "Votes on account, votes of credit and exceptional grants" show the distinction between Articles 116 and 115. Clause (a) of Article 116 speaks of a *grant in advance* in respect of the *estimated expenditure* for a part of any financial year pending the procedure there mentioned, clause (b) speaks of making grant for meeting an *unexpected demand* upon the resources of India in the circumstances there mentioned; and clause (c) speaks of an exceptional grant which forms no part of the *current service* of any financial year. Clauses (a), (b) and (c) of Article 116 (1) state the exceptions to Article 113 as the very words "notwithstanding anything in the foregoing provisions of this Chapter" in Article 116 (1) show, for which the ground is already prepared by clause (3) of Article 114. Under the second part of clause (a) of Article 115 (1) the words "new service" have to be

construed by reference to "service not contemplated in the annual financial statement for the year" and by the words "for supplementary or additional expenditure upon some new service". In view of what proceeds and follows the words "new service" have only a limited meaning and do not comprehend a service which is entirely new. If the scope of the words "new service" is to be extended, it can only be by the deletion of the words "for supplementary or additional expenditure" but that does not seem possible in view of the clear intention appearing from the marginal note "supplementary, additional or excess grants". The question, therefore, arises whether a *wholly new service* can be brought in under any of the clauses (1) of Article 116. The word "service" is used only in clause (b) but in the context of the circumstances in which a grant can be made under that clause [namely, that an expected demand upon the resources of India on account of the magnitude or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in an annual financial statement], it does not seem open to bring a *wholly new service* under clause (b) nor does it, in my opinion, fall under clause (a) for it contemplates a grant in advance *in respect of an estimated expenditure*. Is it then possible to take the view that clause (c) can be invoked? It is possible that a wholly new service could be covered by clause (c) unless the view is taken that clause (c) is limited to what is only *exceptional cases* as in England. Since there is no provision for a wholly new service it seems that it is possible to take the view that a wholly new service that is one which does not form part of the *current service* of any financial year, could be brought in. A lacuna cannot be attributed to the Constitution in such a vital matter.

6. While the resolutions of Parliament accepting the recommendations of the Public Accounts Committee and Audit may be binding on Government, they would have no vitality if they are contrary to any of the provisions of Articles 112 to 116. There are no limits in the matter of a "new service in Article 115(1) (a) [Second Part.]

7. I may now turn to the questions for consideration;

(a). Although there is no definition of the expression "new service" in the constitutional provisions examined earlier. I agree with the former Attorney General (Mr. Niren De) that it *would not be in order to go by the existing conventions on the basis of*

the recommendations of the Public Accounts Committee for determining whether a particular expenditure attracts the provisions for a new service. The only place where the expression "new service" is used is in the second part of clause (a) of Article 115 (1) and Article 205 (1) (a).

(b) The expression "new service" used in Article 115 (1) (a) and likewise in Article 205 (1) (a) does not extend to a wholly new service; it covers only an activity of an old service but which was not contemplated in the Annual Financial Statement for the year in question.

(c) Rule 8 made under the Contingency Fund Act cannot assist to give a wider meaning to the expression "new service" in an Article of the Constitution. It must be limited to the content of the expression "new service" in Article 115 (1) (a). I take the view that the expenditure from the Consolidated Fund for a new activity or a new form of investment can be regarded as an item of "new service" within the contemplation of Article 115 (1) (a) and likewise relatively large expenditure arising out of an important, expansion of the existing activity, being only a new instrument of service, would fall within Article 115 (1) (a). *The limits fixed to provide for effective Parliamentary control over Government expenditure is in order since that is not a question of any constitutional provision but one based on pragmatic considerations.* Item (i), namely, certain categories of expenditure such as for setting up new Government Companies would constitute "new service" only if they fall within the expression "new service" as I have interpreted. Item (ii), namely, expenditure such as additional investment in the existing Government Companies is in order. Guidelines laid down by the public Accounts Committee that Public Accounts and Audit are not open to objection inasmuch as I take the view that some of the items mentioned are within the content of the expression "new service" in Article 115 (1) (a). I do agree with the former Attorney General in the view taken by him that eventually the Legislature or even the Speaker may decide whether a particular expenditure constitutes "new service" provided it is not in conflict with the meaning of the expression "new service" as interpreted by me. I have taken the view in paragraph 5 of my earlier opinion that the words "current service" taken with the words "in a financial year" clearly underline that a current service may be a service, new (wholly) as well as old if it has not figured in a financial year.

8. Lastly the best course to adopt is to have deleted the words "supplementary or additional expenditure" from the second part of clause (a) of Article 115(1) and add another part of clause (a) dealing with a "wholly new service" or add between clauses (b) and (c) a clause expressly providing for a grant for a wholly new service not contemplated in the Annual Financial Statement for the year in question.

NEW DELHI;

Sd/-

(S. V. GUPTA)

Attorney General of India.

APPENDIX III
Statement of Conclusions/Recommendations

Sl. No.	Para of Report	Ministry/Deptt. concerned	Recommendation
1	1-47	Finance (Deptt. of Expenditure)	In pursuance of the recommendations made by the Public Accounts Committee*, the Ministry of Finance issued instructions in July, 1970 setting down the limits to be observed in respect of expenditure on New Service/New Instrument of Service beyond which prior approval of Parliament was required or report to Parliament was necessary alongwith the ensuing batch of Supplementary Demands for Grants/Notes on Demands for Grants.
2	1-48	Finance (Deptt. of Expenditure)/ Energy/Planning/Deptt. of Science & Technology	The Committee observe that in addition to the three cases reported by Audit as a result of test check of accounts for the years 1977-78 and 1978-79, Ministries have reported another 13 cases where the prescribed limits were exceeded and the expenditure constituted New Service or New Instrument of Service, but neither prior approval of Parliament was taken nor the expenditure was reported to Parliament before close of the financial year. Of these 13 cases, one relates to each of the years 1974-75, 1976-77, 1977-78 and 1978-79; two relate to the year 1975-76 and the remaining seven relate to 1979-80.

c.f. 11th Report (4th Lok Sabha)
c.f. 50th Report (4th Lok Sabha)

3 1.49 Finance
(Deptt. of Expenditure)

The Committee find that the Delhi Administration incurred an additional expenditure of as much as Rs. 2401.84 lakhs in 1979-80 by way of grants-in-aid to Delhi Development Authority for slum clearance (Rs. 264.11 lakhs), resettlement colonies and other schemes (Rs. 494.09 lakhs); funds to Delhi Development Authority for Jhuggi Jhopari Removal Scheme (Rs. 632.63 lakhs); loans to Delhi Development Authority for water supply and drainage schemes (Rs. 100 lakhs), rural piped water supply scheme (Rs. 140 lakhs), regularisation of unauthorised colonies (Rs. 249.01 lakhs), electrification in resettlement colonies etc. (Rs. 500 lakhs) and loans to Delhi Tourism Development Corporation (Rs. 25 lakhs). The explanation put forth is that the expenditure was incurred under the impression that additional requirements could be met by reappropriation of available savings.

4 1.50

Do.

The Committee are constrained to observe that large expenditure of over Rs. 24 crores was incurred by Delhi Administration during 1979-80 without obtaining the prior approval of Parliament. The Committee do not consider this as a plausible reason as the possibility of re-appropriation is not relevant to the question of New Service. The Committee desire that the displeasure of the Committee should be communicated to the authorities concerned and they should be asked to ensure that such grave irregularities do not recur.

5 1.51

Do.

During the same years viz. 1979-80, the Department of Chemicals and Fertilizers incurred an additional expenditure of Rs. 262 lakhs by way of loan to Hindustan Antibiotics Ltd. for repayment of outstanding Government loans and interest thereon. The additional funds were obtained by reappropriation of savings and a report to Parliament was made in the detailed Demands for 1980-81. The Committee would like to be informed why prior approval of Parliament was not obtained in this case.

6 1.52

Finance

(Deptt. of Expenditure)

Deptt. of Science & Technology

The Committee further find that the Department of Science and Technology paid Rs. 77.94 lakhs to the Bose Institute, Calcutta in 1977-78 against the budgetary provision of Rs. 40 lakhs. The additional requirement arose mainly for the laboratory building for which a token provision of Rs. 2 lakhs had been included in the budget. Here again the explanation given is that the Department was under the impression that with the inclusion of the token provision for the laboratory building in the budget, additional funds for its construction could be provided by reappropriation from savings.

7 1.53

Do:

It is seen from the Department's reply that the additional grant-in-aid of Rs. 37.94 lakhs was released in instalments during 1977-78. Bulk of the amount (Rs. 27.44 lakhs) was released for the laboratory building in July 1977 (Rs. 8.00 lakhs), October 1977 (Rs. 10.00 lakhs), February 1978 (Rs. 6.00 lakhs) and March 1978 (Rs. 3.14 lakhs). The

remainder amount of Rs. 10.5 lakhs was released in five instalments to meet other expenditure. The Department of Science and Technology have admitted that the Ministry of Finance was not consulted before the release of the additional amount. Reference was made to that Ministry much afterwards in November 1977 on receipt of audit objection.

8 1.54 Finance
(Deptt. of Expenditure)
Deptt. of Science & Technology

As enough time was available to obtain a supplementary grant during the course of the financial year, the Committee cannot but deprecate the manner in which the extent guidelines were flouted in this case.

9 1.55

Do.

Two other instances of lapses on the part of the Department of Science and Technology have been brought to the notice of the Committee. One is the release of an additional amount of Rs. 72 lakhs to the National Remote Sensing Agency, Hyderabad in 1975-76 and Rs. 19.22 lakhs to the Reman Research Institute, Bangalore in 1976-77. In both the cases, the expenditure was met under the impression that additional requirements could be met by re-appropriation of available savings.

10 1.56

Do.

The Committee trust that the Department of Science and Technology will ensure that the prescribed procedure is followed in future.

11 1.57 Planning

Some more instances of such financial irregularity reported to the Committee pertain to the Ministry of Planning (Department of Statistics). The Department released additional grants to the Indian Statistical Institute, Calcutta, amounting to Rs. 27.70 lakhs in 1974-75 and Rs. 23.33 lakhs in 1975-76. Here again the additional requirements were met by reappropriation from available savings and no report to Parliament was made.

12 1.58 Finance
(Deptt. of Expenditure)
Planning

A more serious lapse of this nature occurred in 1978-79 when additional grants-in-aid to the tune of Rs. 74.53 lakhs were made to the Institute. As this exceeded the prescribed limit of Rs. 30 lakhs, prior approval of Parliament was necessary. In this case, sanction for payment of the additional amount of grants-in-aid was issued in February 1979 after obtaining the approval of the Ministry of Finance to the revised estimates for 1978-79. The Secretary, Department of Expenditure admitted in evidence that "In the case of Indian Statistical Institute, there has been a lapse. We should have taken a Supplementary Demand."

13 1.59 Do.

The Committee regret that even the Ministry of Finance did not exercise the requisite amount of vigilance in this case and the additional expenditure was reported to Parliament only in the subsequent year viz. 1979-80 after the irregularity was pointed out by audit in January 1980. The Committee trust that such instances will not be allowed to recur and the Ministries will ensure that Parliament's approval is not taken for granted.

14 1.65 Finance
(Deptt. of Expenditure)

The Committee observe that in none of the 16 cases (plus three more cases reported by Audit) reported to them, advance from the Contingency Fund of India was taken. In fact, the cases came to notice of the Ministry of Finance only after the event, that is when these were pointed out by Audit or even later, when enquiries were made at the instance of the Committee. The list is not exhaustive as replies have yet to be received from a few Ministries.

15 1.61 Do.

The Committee desire that the Ministries/Departments which have not yet furnished the requisite information should be asked to do so within three months and the Committee should be apprised of the position.

16 1.62 Do.

The Committee find that the instructions issued in this behalf by the Ministry of Finance in December 1965 were reiterated in June 1967. It was stressed that advance from the Contingency Fund of India should invariably be obtained before incurring any expenditure for the particular service for which the advance is asked for. It was further decided that if in an exceptional case the expenditure has already been incurred on a 'New Service' whether party or fully due to inadvertence and this fact is noticed before the close of the year, an advance from the Contingency Fund should be asked for during the year itself to cover the expenditure already incurred as also for the expenditure, if any, likely to be incurred before a supplementary grant for that a service be made available.

17. 1.63 Finance
(Deptt. of Expenditure)

Strictly speaking no money can be spent on New Service/New Instrument of Service without prior approval of Parliament. The Committee take a very serious view of the repeated violations by Ministries/Departments of the guidelines issued by the Ministry of Finance in pursuance of the recommendations made by the Public Accounts Committee. The Committee deprecate the tendency on the part of the Ministries/Departments to continue to spend large sums of money without Parliament's authority year after year. The Committee consider that these cases are illustrative of laxity in control over expenditure on the part of internal finance of the Ministries/Departments. The Committee recommend that the matter should be discussed by the Ministry of Finance with the C&AG of India with a view to devising ways and means to strengthen the system of internal finance as well as internal audit so that such serious financial improprieties could be detected at an early stage and it may be possible to take remedial action within the financial year itself.

The Committee take note of the contention of the Ministry of Finance that amendment of the Constitution is not necessary considering the small number of cases that have been reported over the last few years since the matter was last reviewed by the Committee. The Committee also take note of the findings recorded by the Attorney General of India in January 1979 reproduced below (for details please see Appendix II.):

"I take the view that the expenditure from the Consolidated

Do.

18. 1.64

Fund for a new activity or a new form of investment can be regarded as an item of "new service" within the contemplation of Article 115 (1) (a) and likewise relatively large expenditure arising out of an important expansion of the existing activity, being only a new instrument of service, would fall within Article 115(1) (a).....

The limits fixed to provide for effective Parliamentary control over Government expenditure are in order since that is not a question of any constitutional provision but one based on pragmatic considerations."

19. 1.65 Finance
(D. pt., of Expenditure)

In view of the foregoing and also taking into consideration the inflationary pressures on the economy over the years, the Committee consider that upward revision of the limits of expenditure set out in July 1970, beyond which Parliament's prior approval should be taken, is called for. The Committee have taken note of the proposals made by the Financial Advisers of different Ministries as reproduced in Para 1.40 of this Report. The Committee desire that the Ministry of Finance should examine the suggestions in consultation with the Comptroller and Auditor General of India and submit revised guidelines proposed to be issued to the Ministries for consideration and approval by the Public Accounts Committee.