

# JOINT COMMITTEE ON OFFICES OF PROFIT

NINTH REPORT

(SEVENTH LOK SABHA)

ON

EVOLVING OF UNIFORM PRINCIPLES IN  
REGARD TO DISQUALIFICATION FOR  
HOLDING OFFICE OF PROFIT  
UNDER ARTICLES 102<sup>2</sup>(1) AND  
191(1) OF THE CONSTITUTION



*Presented to Lok Sabha on 27th April 1984*  
*Laid in Rajya Sabha on 27th April 1984*

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CORRIGENDA TO THE NINTH REPORT OF  
THE JOINT COMMITTEE ON OFFICES OF  
PROFIT (SEVENTH LOK SABHA)

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143		10	(i) Jamilur Rahman	Shri Jamilur Rahman
		11	(ii) Shejwalkar	Shejwalkar
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JOINT COMMITTEE ON OFFICES OF PROFIT  
(SEVENTH LOK SABHA)

COMPOSITION OF THE JOINT COMMITTEE

Shri Gulsher Ahmød—*Chairman*

MEMBERS

*Lok Sabha*

- \*2. Shri Ajitsinh Dabhi
3. Shri Harish Kumar Gangwar
4. Shri Krishna Chandra Halder
5. Shri Virdhi Chander Jain
6. Shri Jamilur Rahman
7. Shri Rashid Masood
8. Shri S. A. Dorai Sebastian
9. Shri N. K. Shejwalkar
10. Shri Nandi Yellaiah

*Rajya Sabha*

11. Shri Syed Rahmat Ali
- \*\*12. Shri Dinesh Goswami
- \*\*13. Shri Robin Kakati
- \*\*\*14. Shri Lakhan Singh
- \*\*\*\*15. Shri Ram Bhagat Paswan

SECRETARIAT

Shri D. C. Pande—*Joint Secretary*

Shri S. P. Gupta—*Chief Personnel and Executive Officer*

Shri S. D. Kaura—*Chief Legislative Committee Officer*

Shri S. S. Chawla—*Senior Legislative Committee Officer*

---

\*Elected by Lok Sabha on the 21st July, 1982 *vice* Shri Jagan Nath Kaushal resigned from the Committee.

\*\*Ceased to be Member of the Joint Committee on his retirement from Rajya Sabha on the 9th April, 1984.

\*\*\*Ceased to be Member of the Joint Committee on his retirement from Rajya Sabha on the 2nd April, 1984.

\*\*\*\*Elected by Rajya Sabha on the 11th August, 1982, *vice* Prof. N. M. Kamble ceased to be member of the Joint Committee on his retirement from that house.



**SUB-COMMITTEE**  
**OF**  
**JOINT COMMITTEE ON OFFICES OF PROFIT**  
**(SEVENTH LOK SABHA)**

**COMPOSITION OF THE SUB COMMITTEE**

**Shri Gulsher Ahmed—Chairman**

**MEMBERS**

*Lok Sabha*

2. Shri Ajitsinh Dabhi
3. Shri Jamilur Rahman
4. Shri N. K. Shejwalkar

*Rajya Sabha*

- \*5. Shri Dinesh Goswami

---

\*Ceased to be Member of the Joint Committee on his retirement from Rajya Sabha on the 9th April, 1984.

# **REPORT OF THE JOINT COMMITTEE ON OFFICES OF PROFIT**

## **INTRODUCTION**

1. The Chairman of the Joint Committee on Offices of Profit, having been authorised by the Committee to present the Report on their behalf, present this their Ninth Report of the Committee.

2. At their sitting held on 17th September, 1982, the Committee decided to constitute a Sub-Committee consisting of five Members to go into the question of evolving of uniform principles in regard to disqualification for holding office of profit under Articles 102(1) and 191(1) of the Constitution.

3. The Sub-Committee analysed 22 Acts (Appendix I) on Prevention/ Removal of Disqualifications enacted by various States and Union Territory Administrations at their sittings held on 27th November, 1982, 9th February, 13th & 14th June, 8th July and 16th September 1983. Minutes of these sittings form part of the Report and are at Appendix III.

4. The Joint Committee also took evidence of the Ministry of Law, Justice and Company Affairs in this regard on 5th April, 1983. Minutes of the sittings of the Joint Committee are at Appendix IV.

5. The Joint Committee appreciate the cooperation rendered by the State Governments/Legislatures and Union Territory Administrations in supplying the relevant material which has enabled them to cover the various aspects of the subject under examination.

6. The report was considered and approved by the Sub-Committee on 5th April, 1984 and it was adopted by the Joint Committee on Offices of Profit at their sitting held on the same day.

7. The observations/recommendations of the Committee in respect of the matters considered by them are given in the succeeding chapters.

## CHAPTER I

### CONCEPT ON OFFICE OF PROFIT AND ITS BACKGROUND

#### *Background*

At their sitting held on 17 September, 1982, the Joint Committee on Offices of Profit, while considering constitution, composition etc. of the Transport and Communications Board, Water Resources Management Board and Housing Urban Renewal Ecology Board set up by the Government of Maharashtra, noted that in terms of Section 10(1) of the Bombay Metropolitan Region Development Authority Act, 1974, under which the said Boards were constituted, a member (including Chairman or Vice-Chairman) of the Authority or any of its Committees or Boards shall not be disqualified under Article 191(1) of the Constitution for being chosen as, and for being, a member of the State Legislature merely by reason of the fact that he was a member of the said Authority or any of its Committees or Boards although the Boards exercised executive and financial powers.

According to the guidelines, laid down by the Joint Committee on Offices of Profit, non-official members (including Members of Parliament), on their appointment to these bodies, would incur disqualification for being chosen as, and for being a member of either House of Parliament. As the position of Members of Parliament *vis-a-vis* Members of State Legislatures was anomalous so far as their appointment on such bodies was concerned, the Joint Committee on Offices of Profit decided that a Sub-Committee of the Joint Committee might be set up to go into that question in depth so that uniform principles could be evolved upon under which no Members of Parliament or that of any State Legislature would get exemption in such cases.

The Joint Committee were also of the view that their efforts should be to ensure that, as far as possible, Members of Parliament and of the State Legislatures were not lured to accept Offices of Profit. Members should not be permitted to go on Committees/Commissions etc. which would jeopardise their independence or which would place them in a position where they could receive some patronage from Government or were themselves in a position to distribute patronage. The Central and State Governments should not enact legislations to prevent their members from incurring disqualification for being chosen as, and for being, a member of either House of Parliament under Article 102 or that the State Legislative Assembly or State Legislature under Article 191 of the Constitution.

1.2 Accordingly, on 20th October, 1982, the Chairman, Joint Committee on Offices of Profit constituted a Sub-Committee consisting of the following members with a view to examine various offices under the State Governments, membership of which was likely to be considered as Offices of Profit on the basis of the nature and functions of the offices although under the relevant State Prevention of Disqualification Acts, holders of such

offices might have been exempted from disqualification for membership of the State Legislatures :—

- (1) Shri Gulsher Ahmed, M.P.—Chairman
- (2) Shri Ajitsinh Dabhi, M.P.
- (3) Shri Jamilur Rahman, M.P.
- (4) Shri N. K. Shejwalkar, M.P.
- (5) Shri Dinesh Goswami, M.P.

### *Historical Survey*

1.3 The principle of disqualification of Members of Parliament for holding an 'Office of Profit' proceeds on the basis that the independence of a Member of Parliament may be affected in his accepting such an Office from the Government and that there is a need to limit the control or influence of the Government over the House through an undue proportion of office-holders being members of the House. The position obtaining in this regard in the U.K. and other Commonwealth countries as well as in the U.S.A. and France is given at Appendix II.

### *Position in India before Independence*

1.4 In India, the concept of office of profit began to develop with the entry of non-official members in the Legislature. Section 1(2) of the Government of India Act of 1909 and Section 63(2) of the Act of 1915 referred to "vacancy" caused by "the acceptance of office" under the Crown. The Government of India Act, 1919, which provided for the election of 70 percent of the members of the Governor's Legislative Councils and limited number of nominated officials not more than 20 per cent of the total number of members (*vide* section 7) gave definite elaboration to this question of office in the service of the Crown in India, *i.e.* under the Crown. Section 14 referring to provincial legislatures and section 22(i) relating to the Central Legislature made stipulation in this regard as under :

"14. An official shall not be qualified for election as a member of a local legislative council, and, if any non-official member of a local legislative council, whether elected or nominated, accepts any office in the service of the Crown in India, his seat on the Council shall become vacant :

Provided that for the purpose of this provision a Minister shall not be deemed to be an official and a person shall not be deemed to accept office on appointment as a Minister.

22. (i) An official shall not be qualified for election as a member of either chamber of the Indian Legislature, and, if any non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant".

A clear and precise statement in this direction was made by the Government of India Act, 1935 under sections 26(1)(a) and 69(1)(a).

It provided for disqualification of members of both Federal as well as Provincial Legislative Assemblies on certain grounds. Sections 26 and 69

of the 1935 Act read with section 68(3)(a) provided for a number of disqualifications upon incurrance of which a member of Federal as well as a provincial Legislative Assembly became disqualified for being chosen as, and if already chosen-from holding the membership of either chamber. These included (i) holding of office of profit under the Crown; (ii) being of unsound mind and so declared by a competent court; (iii) being an undischarged insolvent; (iv) being guilty of corrupt practices relating to elections; (v) being guilty of a criminal or such other offence as might have resulted in a sentence of transportation or in a jail term of two years or more or (vi) having failed to lodge a return of election expenses within time either as a nominated candidate to either chamber of a Federal or Provincial Legislature or as an election agent of a person so nominated. Such disqualification was to take effect only after the expiration of one month from the last date of filing of return.

1.5 The 1935 Act also provided that the Governor-General or the Governor of a Province, acting in his discretion, could remove the disqualification only in respect of a person who had failed to submit within time, either as a candidate or his election agent, a return of election expenses. Alternatively, the person, so disqualified, could become qualified again for being chosen as and for being a member of Legislative Assembly of the Federation or of a Province upon lapse of a period of five years.

1.6 The office of the Minister of the Federation or of a Province were kept out of the purview of sections 26 and 69. Section 26(4)(b) also provided for exemption of persons from the purview of this law on certain other grounds.

1.7 The Drafting Committee of the Constituent Assembly of India was urged to delete the provision to exempt offices from the purview of the law but it declined to do so as it felt that it was not possible to define clearly the offices that might be required to be excluded from the disqualification. The offices which the Drafting Committee cited as an example were the offices of Parliamentary Secretary, Minister of State and membership of the Armed Forces in an emergency. The Committee apparently saw no harm once again in adopting unquestioningly a provision in the Government of India Act, 1935 which was obviously based on British legislation and practice.

#### *Position after Independence*

1.8 The provisions of Sections 26(1)(a) and 69(1)(a) of the Government of India Act, 1935, with consequential changes, were incorporated in the Constitution of India as Articles 102(1)(a) and 191(1)(a), respectively. The principle of disqualifying holders of offices under the Government is embodied in these Articles in regard to Members of Parliament as well as State Legislatures. Article 102(1)(a) of the Constitution provides

“102(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder.

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\*\*\*”

1.9 Clause (2) of the Article 102 also provides that a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either in Union or for such State. Article 191 makes analogous position in respect of membership of State Legislatures. The Constitution, however, has not defined what constitutes an office of profit the holding of which would disqualify a member within the meaning of the said Articles. Parliament has, however, been empowered to declare by law the offices the holding of which would not disqualify a member.

#### GUIDELINES ENUNCIATED BY THE JOINT COMMITTEE OF BOTH THE HOUSES OF PARLIAMENT (POPULARLY KNOWN AS THE BHARGAVA COMMITTEE)

1.10 When the Constitution came into force, Government had from time to time offered various positions to members in the public interest. On examination, it was found that some of the Offices which the members held, came within the purview of 'offices of profit', and from time to time Government had to save members from disqualification by introducing legislation in Parliament. This position was unsatisfactory as there were no guiding principles to determine whether a certain office of profit incurred disqualification or not. The Speaker considered that the whole thing was proceeding on an *ad hoc* and piecemeal basis. He, therefore, called an informal meeting of representatives of the various Parties in Parliament on the 30 April, 1954. It was suggested at the meeting that a Parliamentary Committee might be constituted to examine those cases and to lay down principles on the basis of which legislation could be brought before the House. The Government might also, in the first instance, place before the Committee for its opinion, any such legislation which they intended to bring before the House, so that Government would have the advantage of the considered opinion of a Committee in which all sections of the House were represented.

1.11 On 21 August, 1954, the Speaker (Shri G. V. Mavalankar) in consultation with the Chairman of Rajya Sabha, constituted a Joint Committee of the two Houses consisting of 10 members of Lok Sabha and 5 members of Rajya Sabha under the Chairmanship of Pandit Thakurdas Bhargava, M.P. to study various matters connected with disqualification of Members under Article 102(1)(a) of the Constitution and to make recommendations in order to enable the Government to consider the lines along which a comprehensive legislation on the subject with elaborate schedules providing a list of offices which were to be exempted and also a list of such offices as would disqualify the holder, should be brought before the House. This Committee popularly known as Bhargava Committee, *inter alia* recommended that :

“ . . . . ordinarily Members of Parliament should be encouraged to go on such Committees which are of an advisory character and represent the local or popular point of view in a manner which will effectively influence the officials' point of view. Members of Parliament by virtue of their Membership are in a position to say and represent certain matter with some authority and confidence, and their views are likely to go a long way in influencing the view point of officials. It is at the same time felt that consistent with the above view expressed, Members of Parliament should not be permitted to go on Committees, Commissions, etc. which jeopardise their indepen-

dence or which will place them in a position where they receive some patronage from Government or are themselves in a position to distribute patronage.”

1.12 The other important recommendations|observations of the Bhargava Committee are —

#### *Advisory Committees*

“71. Membership of committees formed for the purpose of advising Government, for making an inquiry into, or collecting statistics should be exempted from disqualification. . . . .”

72. . . . . The Committee feel that when Parliament itself elects one of its members to serve on such a Committee, the question of receiving patronage from Government which will affect the independence of the member does not arise. Therefore, the Committee recommend that such Members should be saved from disqualification” [Bhargava Committee Report on Offices of Profit, pt. 1, pp. 33-34, paras 71-72].

#### *Commodity Committees and Development Councils*

“73. . . . . The majority are therefore of the view that the members of such committees should be saved from incurring disqualification by making necessary provision in the relevant Acts themselves. In the case of certain commodity committees, such as Rubber Board, Coffee Board and Tea Board, such a provision already exists. . . . .” [Bhargava Committee Report on Offices of Profit, pt. 1, pp. 34-35, para 73].

#### *Members nominated by Speaker or Chairman*

“74. . . . . (3) Central Social Welfare Board and (4) Tea Board are committees on which Members of Parliament are nominated by the Speaker of Lok Sabha and the Chairman of Rajya Sabha. The Speaker of Lok Sabha and Chairman of Rajya Sabha are independent of the executive Government and, therefore, the nomination by them cannot be said to affect the independence of the Members. Hence, the membership so acquired cannot be said to be an office of profit, but in order to remove doubt, the Committee feel that they may be saved from incurring disqualification specifically. [Bhargava Committee Report, pt. 1, p. 35, para 74].

#### *Non-Advisory Committees*

“75. . . . . the Committee feel that non-advisory committee can be classified into two categories as follows :

- (1) Non-Advisory Committees for which exemption from disqualification may be given.
- (2) Non-Advisory committees membership of which should entail disqualification.

76. Regarding the first type of committees, the majority view of the Committee is that though they are non-advisory yet the membership of those committees does not give the members any power, influence or prestige in spite of the fact that these committees have

to undertake some executive functions and deal on occasions with funds, etc. The Members of Parliament if appointed on Committee dealing with problems of education, health, labour, under-developed industries, etc. can make useful contribution and therefore they should not be prevented from going on such committees. For the purpose of guidance a list of such committees is given in Annexure VI.<sup>1</sup>

77. The Committee recommend that a practice should be developed by which members on such committees may either be elected by Parliament or when it is not so possible, they may be nominated by the Speaker of Lok Sabha or the Chairman of Rajya Sabha.

78. The second category of committees enumerated above is of a serious character, as they are entrusted with executive, judicial or like powers or otherwise endowed with powers which give them influence or power or patronage and hence the membership of the Committees should entail disqualification. By way of illustration certain committees, have been enumerated in Annexure VII<sup>2</sup> which fall under this category.<sup>3</sup>

1.13 Besides recommending a comprehensive law on the subject with elaborate schedules providing a list of offices which were to be exempted and also list of such offices as would disqualify the holder, the Bhargava Committee also recommended that a standing Committee of Parliament should constantly keep a watch on new as well as the existing offices with a view to include them in, or exclude them from, the lists, since no such schedules could ever be exhaustive.

1.14 Following this, the Government introduced on 5th December, 1957 a Bill in Lok Sabha which became law on 4th April, 1959, known as the Parliament (Prevention of Disqualification) Act, 1959.

#### THE PARLIAMENT (PREVENTION OF DISQUALIFICATION) ACT, 1959

1.15 The Parliament (Prevention of Disqualification) Act, 1959, provides that if the member/director of a statutory or non-statutory body/company is not entitled to any remuneration other than the compensatory allowance, he would not incur disqualification on account of receiving those allowances. Under Section 2(a) of the said Act, 'compensatory allowance' has been defined as any sum of money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of Dearness Allowance to which a Member of Parliament is entitled under the Salary, Allowances and Pension of Members of Parliament Act, 1954), any conveyance allowance, house-rent allowance or travelling allowance for the

1. Extract from Annexure VI—

\* \* \* \* \*

iii "All India Handicrafts Boards.

\* \* \* \* \*

xxii National Library Council".

2. Extract from Annexure VII—

\* \* \* \* \*

iv "Bodh Gaya Temple Management Committee (Bihar).

\* \* \* \* \*

xii State Transport Authority, Orissa".

3. [Bhargava Committee Report on Offices of Profit, Pt. 1, pp. 35-36, Paras 75-78].



purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office.

1.15 In Part I of the Schedule to the said Act, bodies whose Chairmen have not been exempted from disqualification have been listed and in Part II those bodies have been specified whose Chairmen and Secretaries have not been exempted from disqualification.

### CONCEPT ON 'OFFICE' AND 'OFFICE OF PROFIT' AS INTERPRETED BY JUDICIAL PRONOUNCEMENTS

1.17 The expression 'Office of Profit' occurs in the Articles-58(2); 59(2); 64; 66(4); 102(1) (a) and 191(1) (a); of the Constitution.

1.18 The words 'under any local or other authority' which occur at the end of Articles 58(2) and 66(4) are absent in Article 102(1)(a). In the result, though the holding of an office of profit under an authority subject to the control of the Government is a disqualification for the office of the President or the Vice-President, it is not a disqualification for membership of the Legislature.<sup>1</sup>

#### *Principle underlying the disqualification*

1.19 The principle underlying the disqualification is that there should be no conflict between the duties of a member of the Legislature as such and his private interest, and that the indebtedness of a member to Government is incompatible with his independence as a representative of the people. In 1941 and again, in 1955, the question was considered by a Select Committee of the House of Commons<sup>2</sup> which explained that the main considerations underlying the principle of disqualifying holders of 'office of profit', generally for membership of Parliament were :—

- (i) incompatibility of certain non-ministerial offices with membership of the House of Commons (which must be taken to cover questions of a Member's relations with and duties to, his constituents);
- (ii) the need to limit the control or influence of the executive government over the House by means of an undue proportion of the office-holders being members of the House; and
- (iii) the essential condition of a certain number of ministers being members of the House for the purpose of ensuring control of the executive by Parliament<sup>3</sup>.

#### *'Office'*

1.20 It is hardly necessary to point out that in order to be an 'office of profit' it must first be an 'office' which means an 'employment' with 'fees and emoluments thereunto belonging'. 'Office' thus means a position or place to which certain duties are attached, which, in the present context, means duties of a public character. Hence, only holders of employments under the Government are disqualified.

1. Maulana Abdul Shakur V. Rikhab Chand and others. Supreme Court of India-1957 E.L.R. Vol. XII, p. 149.

2. 1955-56 H.C., p. 349.

3. May, 16th Ed., pp. 200-210.

### 'Profit'

1.21 'Profit' normally connotes any advantage, benefit or useful consequences. Generally, it is interpreted to mean monetary gain but in some cases benefits other than monetary gain may also come within its meaning. The amount of such profit is immaterial for the present purpose. "Office of Profit" is one to which some power of patronage is attached or in which the holder is entitled to exercise the executive functions, or which carries dignity, prestige or honour to the incumbent thereof.

1.22 The expression "*office of profit*" has not been defined in the Constitution or in the Representation of the People Act, 1951, or in the Parliament (Prevention of Disqualification) Act, 1959, evidently because it is not easy to frame an all embracing definition, covering all the different kinds of posts which exist under Government and those which might hereafter be created. Broadly speaking, it signifies that Government must not be in a position to seduce a member by placing him in a position where he can exercise authority, where he thinks he is somebody important, even if he gets no pecuniary remuneration. Thus, actual making of profit by the incumbent is not necessary to make an office an 'office of profit'; it is enough if the holder of the office may reasonably be expected to make a profit out of it.

1.23 However, courts and other authorities have enunciated certain broad criteria in this connection in their judgements from time to time. The relevant extracts from some of these judgements are set out as follows :

- (i) In order that an office may be 'an office of profit' it is not necessary that there must be some sort of regularity of income: neither is it necessary that there should be actual making of profit by the incumbent; it is enough if the holder of the office may reasonably be expected to make a profit out of it (*Thakur Doonger Singh vs. Ram Krishna Rathor*, 4 E.L.R., p. 34).
- (ii) In *Maulana Abdul Shakur vs. Rikhab Chand and others* (1957 E.L.R., Vol. XIII, p. 149), the Supreme Court has laid down the following tests for determining whether a person holds an office of profit under the Government within the meaning of article 191(1)(a) of the Constitution :—
 

"The power of the Government to appoint a person to an office of profit or to continue him in that office or evoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor."
- (iii) The word "profit" in the present context does not necessarily mean any remuneration in cash, but it certainly means some kind of advantage or gain which is tangible or which can be perceived. Hence, the mere influence which one gains by virtue of his position as member of a Committee which has no remuneration attached to it, is not profit within the meaning of article 102 or 191 and the member of such a Committee would suffer no disqualification by being a member thereof. (*Chander Nath v. Kunwar Jaswant Singh*, 3 E.L.R., p. 147).

- (iv) To constitute an "office of profit" for the purpose of incurring disqualification, prestige and like advantages alone attached to the office will not suffice. Pecuniary advantage is an essential element, and once there is, or there can be, pecuniary gain, its quantum is immaterial.

The expression 'office of profit' has been held to mean an office capable of yielding a profit or from which a man might reasonably be expected to make a profit. The actual making of profit is not necessary. Profit means gain or any material benefit, and the amount of such profit is immaterial (*Deorao Laxman Anande vs. Keshav Laxman Broker*, 13, E.L.R., p. 334).

- (v) The Supreme Court in several decisions has laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. These tests are : (i) Whether the Government makes the appointment; (ii) Whether the Government has the right to remove or dismiss the holder; (iii) Whether the Government pays the remuneration; (iv) What are the functions of the holder. Does he perform them for the Government; and (v) Does the Government exercise any control over the performance of those functions. (*Shivamurthy Swami Inamdar v. Veerabhadrapa Veerappa* 44 E.L.R. p. 119).

1.24 The Joint Committee on Offices of Profit (Seventh Lok Sabha) have in a number of cases applied these guidelines/tests and come to the conclusions as follows :—

- (i) With regard to the proposed nomination of Shri K. D. Sultanpuri, M.P. by the State Government of Himachal Pradesh as Vice-Chairman of the Himachal Pradesh Scheduled Castes Development Corporation, the Joint Committee on Offices of Profit held that on his nomination as Vice-Chairman of the said Corporation, he ought not to be exempt from disqualification because of the functions and powers to be exercised by him as Vice-Chairman being of executive and financial nature and also in view of the regular monthly payments of Rs. 300/- p.m. by way of conveyance allowance and Rs. 400/- p.m. as an allowance *in lieu* of the semi-furnished residence [First Report (Seventh Lok Sabha), para 2.17, p. 9].
- (ii) In the case of the Fruit Preservation Factory, Singtam (Government of Sikkim), the Committee recommended that the Chairman and non-official members, if appointed, were likely to attract disqualification under the provisions of Article 102(1) of the Constitution as the Members are paid sitting fee @ Rs. 100/- which exceeds the 'compensatory allowance' and the Board exercises executive and financial powers. While arriving at the above decision, the Committee noted the fact that the Sikkim Legislative Assembly Members Removal of disqualifications (Amendment) Act, 1981, prevented MLAs from incurring disqualification for holding the office of Chairman or a member of the Board of Directors of the Government, Fruit Preservation Factory for being chosen as, and for being,

a member of State Legislature [Fifth Report (JCOP-Seventh Lok Sabha), para 2.16, p. 10].

- (iii) While examining the case of nomination of a Member of Lok Sabha as non-official member of the Kanpur Development Authority, although members of the Authority were entitled to the payment of allowances which were less than the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959, the Committee recommended that membership thereof ought not to be exempt from disqualification as the non-official members exercised collectively executive and financial powers. [Second Report (JCOP/Seventh Lok Sabha), pp. 4-5, paras 4.2 to 4.5].
- (iv) In the case of the Mizoram State Sports Council, although no remuneration was admissible to the non-official members of the Council, yet in view of the discretionary powers of disbursement of funds, the Committee recommended that the non-official members ought not to be exempt from disqualification. [Fourth Report (JCOP—Seventh Lok Sabha), p. 11, paras 2.34 to 2.36].

#### STATUTORY EXEMPTIONS MADE IN REGARD TO DISQUALIFICATION

1.25 Even though an office is an 'office of profit' according to the foregoing tests, the holder of such office will not be disqualified, if Parliament so declares. Besides the offices which have been declared by the Parliament (Prevention of Disqualification) Act, 1959 as not to disqualify their holders for membership of Parliament, specific provision has also been made in certain enactments to the effect that an office created by such Acts shall not be deemed to be an 'office of profit' for the purpose of disqualification, *e.g.* :—

- (i) Muslim Wakfs Act, 1954.
- (ii) Rubber Act, 1947.
- (iii) Coffee Act, 1942.
- (iv) Tea Act, 1953.

## CHAPTER II

### ANALYSIS OF STATE ACTS ON PREVENTION/REMOVAL OF DISQUALIFICATIONS

2.1 In accordance with the provisions of Article 191(1)(a) of the Constitution, the following States and Union Territory Administrations have enacted Prevention/Removal of Disqualification Acts so far :—

#### States

1. Andhra Pradesh
2. Assam
3. Bihar
4. Gujarat
5. Haryana
6. Himachal Pradesh
7. Jammu & Kashmir
8. Karnataka
9. Kerala
10. Madhya Pradesh
11. Maharashtra
12. Meghalaya
13. Orissa
14. Punjab
15. Rajasthan
16. Sikkim
17. Tamil Nadu
18. Tripura
19. Uttar Pradesh
20. West Bengal

#### Union Territory Administrations

21. Arunachal Pradesh
22. Mizoram.

2.2 The Sub-Committee have scrutinised all the State Prevention/Disqualification Acts with a view to lay down uniform principles which would determine whether the holder of a certain office of profit incurred disqualification. On scrutiny of the Acts, it has been observed that there are provisions in most of the State Acts which prevented disqualifications of members of State legislatures on their appointment to Corporations/Boards/Committees etc. constituted by the State Governments/Union Territory Administrations whereas in view of the guidelines laid down, and recommendations made, by the Parliamentary Joint Committee on Offices of Profit, the members of Parliament, if appointed thereon, would incur disqualification by virtue of such bodies exercising excessive executive, financial or judicial powers; or are in a position to wield influence or power by way of patronage or confer powers of disbursement of funds, allotment of

lands, issue of licences, etc. or give power of appointment; grant of scholarships etc.; or entitle the member to a sum of money by way of remuneration or allowances etc. not covered by 'Compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. Such cases have been dealt with State-wise and Union Territory-wise in *seriatim* below :—

(i) ANDHRA PRADESH REMOVAL OF DISQUALIFICATIONS ACT, 1953

2.3 Under the Andhra Pradesh Payment of Salaries and Pension and Removal of Disqualifications Act, 1953, the Chairman of the following bodies have been exempted from incurring disqualifications :

- (a) Andhra Pradesh State Agro-Industries Corporation Limited (entry 21 in the Schedule to the State Act);
- (b) Andhra Pradesh State Electricity Board<sup>1</sup> (entry 24, *ibid*);
- (c) Andhra Pradesh Housing Board<sup>2</sup> (entry 29, *ibid*); and
- (d) Andhra Pradesh State Warehousing Corporation<sup>4</sup> (entry 52, *ibid*).

However, the Joint Committee on Offices of Profit (Fifth Lok Sabha) have held in the above cases that Chairman and members thereof ought to disqualify.

(ii) ASSAM STATE LEGISLATURE MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1950

2.4 Under the Assam State Legislature Members (Removal of Disqualifications) Act, 1950 holding of the following offices have been exempted from incurring disqualification of membership of the Assam Legislative Assembly although in the opinion of the Sub-Committee such bodies exercise executive/financial powers or holders of some of the offices draw remunerations which are more than the 'compensatory allowance' :—

- (a) The office of Chairman and Director of the Assam State Warehousing Corporation and of Public Sector Corporations like Major Industries Development Corporation etc. and Chairman and Vice-Chairman or members of any Committee, Board or Authority appointed by the Government of India or the Government of any State (*vide* entry 7 in the Schedule to the State Act);
- (b) The office of Government Pleader or Public Prosecutor (*vide* entry 2, *ibid*); and
- (c) The office of part-time Professor, Lecturer, Instructor or Teacher in Government Educational Institutions (*vide* entry 3, *ibid*).

1 Third Report (JCOP-Fifth Lok Sabha), para 11, p. 2

2 Tenth Report (JCOP-Fifth Lok Sabha), Para 24, pp. 6-7

3 Fourth Report (JCOP-Fifth Lok Sabha), para 19, p. 5

4 Fifth Report (JCOP-Fifth Lok Sabha), para 7, p. 11

2.5 The Sub-Committee note in particular that the Chairman of any Committee or Board appointed by the Government of India or any State has been exempted from disqualification *vide* entry 7 in the Schedule to the above Act, although under the Parliament (Prevention of Disqualification) Act, 1959, a Member of Parliament has been debarred from holding that post in the following bodies under the Government of Assam *vide* entries in Part I of the Schedule :—

- (a) Adhi Conciliation Boards;
- (b) Assam Evacuee Property Management Committee; and
- (c) Assam Text Book Committee.

2.6 In this connection, the Sub-Committee also note that the earlier Joint Committee on Offices of Profit have held in the case of the following bodies set up by the Government of Assam that Chairman|Directors|non-official members thereof ought to disqualify although on the contrary all these bodies fall in the category in respect of which exemption from disqualification has been given under the State Act as stated in paragraph 2.5 above :

(a) *Assam Government Marketing Corporation Limited*<sup>1</sup>

Besides drawing remuneration more than the 'compensatory allowance' the Board of Directors could grant loans and give guarantee of financial assistance to any particular concern up to an amount of Rs. 20 lakhs. Thus, the Directors are in a position to wield influence and patronage and as such, the Joint Committee have recommended that directorship of the Corporation ought not to be exempted from disqualification.

(b) *Assam Small Industries Development Corporation Limited*<sup>2</sup>

Directors are getting remuneration which are more than the 'compensatory allowance' and the Board also exercise executive and financial powers. As such, the Directorship of the Corporation ought to disqualify.

(c) *Planning Board for the Hill Areas of Assam*<sup>3</sup>

Non-official members are getting an honorarium of Rs. 100/- p.m. which is not covered under section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. As such, the Joint Committee on Offices of Profit have recommended that the membership of the Board ought not to be exempted from disqualification.

(iii) **BIHAR LEGISLATURE (REMOVAL OF DISQUALIFICATIONS) ACT, 1950**

2.7 In terms of entry 5 in the Schedule to the Bihar Legislature (Removal of Disqualifications) Act, 1950, the office of the Chairman or member of any Committee or body appointed by the Central or State Government is not disqualified for being chosen as, or for being, a member of the Bihar Legislative Assembly or the Bihar Legislative Council by reason only

<sup>1</sup> Fifth Report (JCOP-Fifth Lok Sabha), para 9, p. 2

<sup>2</sup> Fourth Report (JCOP-Fourth Lok Sabha), para 13, p. 5

<sup>3</sup> Fourth Report (JCOP-Fourth Lok Sabha), para 15, p. 6

of the fact that he holds any of the offices, being offices of profit. The sub-Committee note that in the cases of the Bihar State Small Industries Corporation<sup>1</sup> and Bihar State Construction Corporation Ltd.<sup>2</sup>, the Joint Committee on Offices of Profit have however, recommended that Directors of the said Corporations ought not to be exempt from disqualification are the corporations exercise executive and financial powers. Thus, in the present case an anomaly has arisen inasmuch as that membership in the said Corporation would disqualify a person for being a Member of Parliament whereas M.L.As have been exempted from incurring disqualification for membership under the provisions of the Bihar Legislature (Removal of Disqualifications) Act.

(iv) GUJARAT LEGISLATIVE ASSEMBLY MEMBERS  
(REMOVAL OF DISQUALIFICATIONS) ACT, 1960

2.8 Exemption from disqualification to holders of the following offices have been granted under the Gujarat Legislative Assembly Members (Removal of Disqualifications) Act, 1960 :

- (a) Office of Chairman or member of any Committee or body appointed by the Central or State Government provided that the holder of such office does not receive any remuneration other than compensatory allowance (*vide* entry 11 in the Schedule to the State Act).
- (b) Office of part-time professor or lecturer in a Government College (*vide* entry 2, *ibid*)
- (c) Office of Secretary of the District or Regional Development Boards constituted by the State Government; provided that the holder of such office does not hold any other office of profit under the State Government (*vide* entry 7, *ibid*).

2.9 The Joint Committee on Offices of Profit have, however, disqualified holding of offices of members (including Chairman) of the following bodies appointed by the Government of Gujarat in view of executive and financial powers exercised by them although under the State Act, those bodies will be exempted from disqualification as they are covered under entry 11 in the Schedule to the Act *ibid* :—

- (a) Gujarat Khadi and Village Industries Board.<sup>3</sup>
- (b) Gujarat Electricity Board.<sup>4</sup>
- (c) Gujarat State Financial Corporation.<sup>5</sup>
- (d) Gujarat Industrial Development Corporation.<sup>6</sup>
- (e) Gujarat Agro-Industries Corporation.<sup>7</sup>

The Sub-Committee note that in last two cases, the non-official members/Directors are entitled to remuneration which exceeds 'compensatory allowance' also.

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1. Fourth Report (JCOP-Seventh Lok Sabha), para 2.26.
  2. Nineteenth Report (JCOP-Fifth Lok Sabha), para 12.
  3. Eighth Report (JCOP-Fifth Lok Sabha), para 7, page 1.
  4. Eighth Report (JCOP-Fifth Lok Sabha), para 8, page 2.
  5. Eighth Report (JCOP-Fifth Lok Sabha), para 9, page 2.
  6. Eighth Report (JCOP-Fifth Lok Sabha), para 11, page 2.
  7. Eighth Report (JCOP-Fifth Lok Sabha), para 12, page 3.



(v) HARYANA STATE LEGISLATURE (PREVENTION OF DISQUALIFICATIONS) ACT, 1974

2.10 The Sub-Committee, while examining the Haryana State Legislature (Prevention of Disqualification) Act, 1974, have taken note of the exemption from disqualification of membership of the Haryana Legislature given to the holders of certain offices in the following bodies :—

- (a) Chairman/Vice-Chairman/President/Vive-President / Director/ member, whether elected, nominated or appointed either by the Union Government or the State Government or any of its officers, of any statutory or non-statutory body, whether he is or is not, in receipt of any remuneration including compensatory allowance during the performance of his duties [section 3 (a) of the State Act].
- (b) Chairman of an Improvement Trust constituted under the Punjab Town Improvement Act, 1922 (Punjab Act 4 of 1922), and the Chairman of the Haryana State Agricultural Marketing Board constituted under section 3 of the Punjab Agricultural Produce Markets Act, 1961 (section 3(h), *ibid*).
- (c) Chairman of the Haryana State Minor Irrigation (Tubewells) Corporation Limited and the Chairman of the Haryana Agro-Industries Corporation Limited [section 3(i), *ibid*].
- (d) Chairman or the Vice-Chairman or the Deputy Chairman or any member of the Haryana State Planning Board or the Haryana Khadi and Village Industries Board or the Haryana Harijan Kalyan Nigam or the Haryana State Social Welfare Advisory Board [section 3(j), *ibid*].

2.11 The Joint Committee on Offices of Profit have, however held that non-official Directors/members (including Chairman) of the following bodies ought not to be exempt from disqualification in view of executive and financial powers exercised by them :—

- (a) Haryana Agro-Industries Corporation Ltd.,<sup>1</sup>
- (b) Board of Directors of the Haryana Warehousing Corporation.<sup>2</sup>
- (c) Board of Industries, Haryana.<sup>3</sup>
- (d) Haryana State Electricity Board.<sup>4</sup>
- (e) Haryana Housing Board.<sup>5</sup>

2.12 Thus, the above recommendations of the Joint Committee on Offices of Profit applicable to members of Parliament only are not in consonance with the provisions of the Haryana State Legislature (Prevention of Disqualification Act) applicable to members of Haryana Legislature.

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1. Fifth Report (JCOP-Fifth Lok Sabha), para 14, P. 4.
  2. Nineteenth Report (JCOP-Fifth Lok Sabha), para 13, p. 3.
  3. Nineteenth Report (JCOP-Fifth Lok Sabha), para 14, p. 3.
  4. Nineteenth Report (JCOP-Fifth Lok Sabha), para 15, p. 4.
  5. Thirteenth Report (JCOP-Fifth Lok Sabha), para 26, p. 7.

(vi) HIMACHAL PRADESH LEGISLATIVE ASSEMBLY MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1971

2.13 In the definition of 'compensatory allowance' as given in section 2(a) of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971, allowances payable to the holders of an office includes Travelling Allowance, Dearness allowance, conveyance allowance, sitting allowance and House Rent allowance but the usual explanatory phrase 'enabling him to recoup any expenditure incurred by him' occurring in the Parliament (Prevention of Disqualification) Act, 1959 has since been omitted in the State Act. The Sub-Committee are of the opinion that inclusion of that explanatory phrase in the definition of 'compensatory allowance' is of utmost importance as the intention of the remuneration payable to a holder of an office is for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office and not for profiteering motive. Other salient features in the State Act which the Sub-Committee have noticed are inclusion of following offices in the Act for exemption from disqualification irrespective of executive and financial powers exercised by them :—

- (a) the office of the Vice-Chancellor of any University [*vide* section 3(j) of the Act]; and
- (b) the office of Chairman or Vice-Chairman, Director or Member of any statutory or non-statutory body other than any such body as is referred to in clause (i) if the holder of such office is not entitled to any remuneration other than compensatory allowance [*vide* section 3(m) *ibid*].

2.14 Although under the Parliament (Prevention of Disqualification) Act, 1959, no body under the Himachal Pradesh Government had been disqualified, the Joint Committee on Offices of Profit have since examined the following statutory bodies and recommended that non-official members therein ought not to be exempt from disqualification in view of executive and financial powers exercised by those bodies :—

- (a) Board of Industries.<sup>1</sup>
- (b) Himachal Pradesh State Small Industries and Export Corporation Ltd.<sup>2</sup>
- (c) Himachal Pradesh Housing Board.<sup>3</sup>

The Committee have not found any satisfactory reasons for granting exemption to the holders of offices of these bodies under section 3(m) of the State Act *ibid*.

(vii) JAMMU AND KASHMIR STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1962.

2.15 The following offices have been granted exemption from disqualification for being chosen as, or for being, a member of the Jammu and Kashmir State Legislature under the provisions of the Jammu and Kashmir State Legislature (Prevention of Disqualification) Act, 1962 :

- (a) Office of Chairman, Director or member of any statutory or non-statutory body if the holder of such office is not entitled to any remuneration [*vide* section 3(g) of the Act].

1. Sixth Report (JCOP-Fifth Lok Sabha), para 7, p. 1

2. Seventeenth Report (JCOP-Fifth Lok Sabha), para 27, p. 7

3. Seventeenth Report (JCOP-Fifth Lok Sabha), para 28, p. 7

- (b) Office of Chairman or member of a Committee, Commission or Board set up by the Government whether under a statute or by executive order, for in connection with the—
- (i) Prevention of corruption,
  - (ii) development of the State in planned manner,
  - (iii) *Land reforms*. [*vide* Section 3(*dd*), *ibid*].

2.16 In the opinion of the Sub-Committee members of Committees set up for prevention of corruption, development of the State in planned manner; and for Land reforms are generally in a position to wield influence or power by way of patronage to some extent and ought to have been disqualified.

2.17 The Joint Committee on Offices of Profit have taken the view that the non-official members of the following bodies ought not to be exempt from disqualification as they exercise executive and financial powers although they fall in the categories exempted by the Act of the State Legislatures :

- (a) Jammu & Kashmir State Industrial Development Corporation.<sup>1</sup>
- (b) Jammu & Kashmir Industries Ltd.<sup>2</sup>

(viii) MYSORE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1956

2.18 In the Mysore Legislature (Prevention of Disqualification) Act, 1956, the definition of 'compensatory allowance' under section 2(b) of the Act also include the payment of 'sitting fee' whereas under the Parliament (Prevention of Disqualification) Act, 1959, that has not been included. The Sub-Committee feel that inclusion of 'sitting fee' in the definition of 'compensatory allowance' will enable the State M.L.As. to draw more allowances as compared to a Member of Parliament and the Members of Legislative Assembly will still remain exempt from disqualification.

2.19 Under the provisions of section 3(d) of the Act, the following offices have been declared as not to disqualify their holders for being chosen as, or for being, members of the Karnataka Legislature :

"Office of the Chairman or a member of a Committee provided that the holder of any such office is not in receipt of or entitled to any remuneration other than the compensatory allowance". [*vide* Section 3(d) of the Act.].

2.20 In view of exercise of executive and financial powers, the Joint Committee on Offices of Profit have, however, recommended disqualification for holder of any offices under the following bodies set up by the Government of Karnataka for membership of Parliament although holders of offices under those bodies will be exempted from disqualification for membership of the Karnataka Legislature under the provisions of section 3(d) of the Act :

- (a) Karnataka State Handicrafts Development Corporation [limited.]

1. Fifteenth Report (JCOP-Fifth Lok Sabha), para 20, p. 5.

2. *Ibid* para 21, pp. 5-6.

3. Fifteenth Report (JCOP-Fifth Lok Sabha), para 41, p. 10.

(b) Karnataka State Transport Authority.<sup>1</sup>

In the case of the above body, in view of judicial powers exercised, members of the Authority have been recommended for disqualification for holding membership of Parliament.

(c) Karnataka State Forest Industries Corporation Limited.<sup>2</sup>

In the case of the above Corporation, non-official Directors are also entitled to sitting fee at the rate of Rs. 100/- per day which exceeds the 'compensatory allowance'.

(d) Mysore State Agro-Industries Corporation Limited.<sup>3</sup>

## (ix) KERALA LEGISLATIVE ASSEMBLY (REMOVAL OF DISQUALIFICATIONS) ACT, 1951

2.21 In the Kerala Legislative Assembly (Removal of Disqualification) Act also, provisions for exemption from disqualification of membership of the Kerala Legislative Assembly in respect of the following offices have been made although the holders of such offices exercise executive/financial powers :

- (a) Chairman, Vice-Chairman or a member of the State Planning Board constituted by the Government or a member of the Backward Classes Reservation Commission constituted by the Government [*vide* section 2(1) (viii) of the Act *ibid*];
- (b) Office of the Chairman of a Government Company [*vide* section 2(2) (1), *ibid*]; and
- (c) Office of the Chairman of a Corporation established or constituted by or under any Central or State Act and owned or controlled by the Government of Kerala [*vide* section 2(2) (ii), *ibid*].

2.22 The above provisions seem to be in conflict with the recommendations made by the earlier Joint Committee on Offices of Profit while examining the following bodies under the Kerala Government which have not, however, been exempted from disqualification by the Joint Committee on Offices of Profit as they exercise executive and financial powers :

- (a) Kerala State Housing Board.<sup>4</sup>
- (b) Kerala State Rural Development Board.<sup>5</sup>
- (c) Kerala Shipping Corporation.<sup>6</sup>
- (d) Kerala Urban Development Financial Corporation Ltd.<sup>7</sup>
- (e) Joint Town Planning Committee, Calicut Region.<sup>8</sup>
- (f) Kerala Agro Industries Corporation Limited.<sup>9</sup>
- (g) Kerala Handloom Finance Corporation Ltd.<sup>10</sup>

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1. Sixteenth Report (JCOP-Fifth Lok Sabha), para 12, p. 3.  
 2. Seventeenth Report (JCOP-Fifth Lok Sabha), para 31, p. 8.  
 3. Ninth Report (JCOP-Fifth Lok Sabha), para 10, p. 2.  
 4. Fourteenth Report (JCOP-Fifth Lok Sabha), para 24, p. 6.  
 5. *Ibid.*, para 25, pp. 6—7.  
 6. *Ibid.*, para 21, p. 7.  
 7. *Ibid.*, para 28, p. 7.  
 8. *Ibid.*, para 26, p. 7.  
 9. Eighteenth Report (JCOP-Fifth Lok Sabha), para 12, p. 8.  
 10. Fifteenth Report (JCOP-Fifth Lok Sabha), para 53, p. 13.

(x) MADHYA PRADESH VIDHAN MANDAL SADASYA NIRHATA-NIVARAN ADHINIYAM, 1967

2.23 According to entry 17 in the Schedule to the Madhya Pradesh Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam, 1967, as amended by 1982 Act the Chairman and Vice-Chairman or President and Vice-President or Managing Director and Director of a Statutory Body, or a member of any Committee shall not be disqualified for being chosen as, or for being a member of the Madhya Pradesh Legislative Assembly or the Madhya Pradesh Legislative Council by reason of the fact that he holds any of the offices of profit under Government.

Whereas the Joint Committee on Offices of Profit *vide* their Fifteenth Report (5LS), paras 42 to 49, have recommended that non-official members (including Chairmanship) of the following bodies ought not to be exempt from disqualification in view of executive and financial powers :

- (a) Madhya Pradesh State Mining Corporation;
- (b) Madhya Pradesh Licensing Board (Electrical);
- (c) Madhya Pradesh State Road Transport Corporation Board;
- (d) Madhya Pradesh Housing Board;
- (e) Madhya Pradesh Audyogik Vikas Nigam Ltd.;
- (f) Madhya Pradesh State Industries Corporation Ltd.;
- (g) Madhya Pradesh State Textile Corporation Ltd.; and
- (h) Madhya Pradesh State Corporation of Text Book Production and Educational Research.

The sub-Committee feel that it is not desirable to give blank exemption to holder of offices of profit on any statutory body or a member of any Committee.

(xi) MAHARASHTRA LEGISLATURE MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1956

2.24 While considering particulars of Transport and Communications Board, Water Resources Management Board and Housing Urban Renewal Ecology Board set up by the Government of Maharashtra, it has been observed by the Joint Committee on Offices of Profit that in terms of Section 10(1) of the Bombay Metropolitan Region Development Authority Act, 1974, under which the said Boards are constituted, a member (including Chairman or Vice-Chairman) of the Authority or any of its Committees or Boards shall not be disqualified under Article 191(1) of the Constitution for being chosen as, and for being, a member of the State Legislature merely by reason of the fact that he is a member of the said Authority or any of its Committees or Boards. Whereas, in regard to these Boards, the Joint Committee have taken the view that non-official members, including the Chairman thereof, are likely to attract disqualification for being chosen as, and for being, a member of either House of Parliament under Article 102(1) (a) of the Constitution in view of the executive and financial powers exercised by the Boards. Thus, the position of Members of Parliament *vis-a-vis* Members of State Legislatures is anomalous so far as their appointment to these Boards is concerned.

(xii) PREVENTIVE OF DISQUALIFICATION (MEMBERS OF THE LEGISLATIVE ASSEMBLY OF MEGHALAYA) ACT, 1972

2.25 The Sub-Committee on scrutiny of the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972 have found that exemptions from Disqualification of membership of the Meghalaya Legislative Assembly given to holders of the following offices are contrary to the views taken by Joint Committee on Offices of Profit from time to time :

- (a) The office of the Chairman, Vice-Chairman, or member of any Committee, Board or authority appointed by the Government of India or Government of any State (*vide* entry 7 in the Schedule to the State Act).
- (b) Office of the part-time Professor, Lecturer, Instructor or Teacher in Government Educational Institutions (*vide* entry 5, *ibid*).
- (c) Any office under the Government which is not a whole time office recommended either by salary or fees (*vide* entry 8, *ibid*).
- (d) The office of Chairman, Chief Executive Member or other Executive Member or ordinary member of a District Council in an autonomous District or any member nominated to such a District Council by the Governor (*vide* entry 9, *ibid*).
- (e) The office of Chairman or Member of the Committee of any Cooperative Society to which appointment is made by the State Government, or the office of Liquidator or Joint Liquidator to which appointment is made by the Registrar of Co-operative Societies or the office of nominee of the Registrar whether appointed individually or to a Board of nominee (*vide* entry 14, *ibid*).

The District Councils exercise executive and financial powers and are in a position to wield influence and as such the Sub-Committee feel that they ought not to be exempt from disqualification.

2.26 The Joint Committee on Offices of Profit have also examined the following bodies set up by the Government of Meghalaya and recommended that holders of any offices therein ought not to be exempt from disqualification as sums payable to the non-official members/chairman exceed 'compensatory allowance' and they exercise executive/financial powers :—

- (a) Meghalaya Industrial Development Corporation Ltd.<sup>1</sup>
- (b) Forest Development Corporation of Meghalaya Ltd.<sup>2</sup>

Both the above bodies will however, be exempted from disqualification for being chosen as, or for being a member of the Legislative Assembly under the provisions of the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972.

1. Fifteenth Report (JCOP-Fifth Lok Sabha), Para 50, pp. 12—13.

2. *Ibid* para 51, p. 13.

(xiii) ORISSA OFFICES OF PROFIT (REMOVAL OF DISQUALIFICATIONS) ACT, 1961

2.27 The Orissa Offices of Profit Act, 1961 has been enacted on the lines of the Parliament (Prevention of Disqualification) Act, 1959 and no substantive change has been made in any of the Sections of the Act when compared with the Parliament Act.

The Joint Committee on Offices of Profit have, however, examined the following bodies set up by the Government of Orissa where they have recommended that holders of offices in these bodies ought not to be exempt from disqualification for membership of Parliament in view of reasons given below :—

(a) *Districts Re-organisation Committee (Orissa)*<sup>1</sup>

The non-official Chairman and members of the Committee draw monthly allowance of Rs. 3,309 and Rs. 1,284, respectively, in addition to Travelling Allowance/Daily Allowance.

(b) *Orissa State Electricity Board*<sup>2</sup>

The Chairman of the Board, a non-official, is entitled to monthly pay of Rs. 2750/- and the Chairman and members exercise executive and financial powers.

(xiv) PUNJAB STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1952

2.28 Under Section 2(e) of the Punjab State Legislature (Prevention of Disqualification) Act, 1952, a member of any statutory body or authority, or a member of any Committee or other body, appointed or constituted by the Punjab Government, and who is not in receipt of a salary but who is paid only travelling and daily allowance during the performance of his duties will be exempt from disqualification for membership of the State Legislature. Thus the Act gives exemption to any statutory body or authority or a member of any Committee or other body in general without making it specific.

2.29 The Sub-Committee feel that Travelling Allowance/Daily Allowance should be defined specifically in the Act and the payment of Travelling Allowance/Daily Allowance should not be more than 'compensatory allowance' as defined in Parliament (Prevention of Disqualification) Act, 1959.

2.30 The Joint Committee on Offices of Profit have, however, recommended for disqualification for membership of the Parliament for holding any of the following offices as they draw remuneration which is more than the 'compensatory allowance' although holders of those offices will be

1. Fifteenth Report (JCOP-Fifth Lok Sabha), para 37, p. 9.  
2. *Ibid*, para 38, p. 9.

exempt from disqualification for membership of the Punjab Legislature under the provisions of Section 2(a) of the State Act *ibid* :—

(a) *Punjab Financial Corporation*<sup>1</sup>

The function of the Board are also of financial in nature.

(b) *Punjab Export Corporation*<sup>2</sup>

The Board of Directors also exercise executive and financial powers

(c) *Punjab Housing Development Board*<sup>3</sup>

Whole-time members of the Board are entitled to the gross salary which do not come within the ambit of 'compensatory allowance'. The Board also exercise executive and financial powers.

(d) *Punjab State Planning Board*<sup>4</sup>

(xv) RAJASTHAN LEGISLATIVE ASSEMBLY MEMBERS  
(REMOVAL OF DISQUALIFICATIONS) ACT, 1957

2.31 The following two Acts have been passed by the Government of Rajasthan :—

- (i) Rajasthan Legislative Assembly Members (Removal of Disqualification) Act, 1969; and
- (ii) Rajasthan Legislative Assembly Members (Prevention of Disqualification) Act, 1957.

Under the following sections of the Rajasthan Legislative Assembly Members, (Removal of Disqualification) Act, 1957, wide exemption from disqualification has been given :

- (a) The office of a Chairman, Director, member or any officer of a Statutory body; where the power to make any appointment to any such office or the power to remove any person therefrom is vested in the government [section 3(f) of the State Act].
- (b) The office of profit under an insurer the management of whose controlled business has vested in the Central Government under the Life Insurance (Emergency Provisions) Act, 1956 Central Act 9 of 1956). [Section 3(g) *ibid*]
- (c) The office of a Chairman or a member of the Committee other than any such Committee as is referred to in clause (c) of Section 3 of the Act. [Section 3(e) *ibid*]

(xvi) SIKKIM LEGISLATIVE ASSEMBLY MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1978

2.32 Under the provisions of Section 3(q) of the Act, the following offices have been declared as not to disqualify their holders for being chosen as, or for being, members of the Sikkim Legislative Assembly :

“The office of the Chairman, Deputy Chairman or a member or Secretary of any Committee, Commission, Corporation or similar other authorities constituted by the Government of India or the State Government or any other authority in respect of any public

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1. Sixteenth Report (JCOP-Fifth Lok Sabha), para 20, p. 6.  
 2. Nineteenth Report (JCOP-Fifth Lok Sabha), para 23, p. 6.  
 3. Ninth Report (JCOP-Fifth Lok Sabha), para 25, p. 7.  
 4. Ninth Report (JCOP-Fifth Lok Sabha), para 12, p. 3.



matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance or any residential accommodation or any arrangement for conveyance to facilitate the performance of the function of such office.

*Explanation.*—For the purpose of this Act, the office of Chairman, Deputy Chairman or Secretary shall include every office of that description, by whatever name called”.

The Sikkim Act thus gives exemption to holder of any office under a statutory body, authority or a committee if the holder of such office is not entitled to any remuneration other than ‘compensatory allowance’ or any residential accommodation or any arrangement for conveyance for official purpose. The Sub-Committee feel that although the definition of compensatory allowance given in the Act is on the lines of the definition given in the Parliament (Prevention of Disqualification) Act, 1959, yet the provisions for residential accommodation and/or conveyance to holders of aforesaid offices are usual features of the Sikkim Legislative Assembly Members (Removal of Disqualifications) Act, 1978 and inclusion of such perks will enable the State M.L.A. to enjoy more facilities as compared to a member of Parliament and State M.L.A. will still remain exempt from disqualification.

2.33 Under the provisions of Section 3(q) of the State Act, holders of offices in Government Food Preservation Factory, Singtam will be exempted from disqualification for membership of the Sikkim Legislative Assembly. But the Joint Committee on Offices of Profit have, however, recommended<sup>1</sup> disqualification for holding the offices of Chairman or non-official members of that body in view of the following reasons :—

- (a) Members of the Board are paid sitting for @ Rs. 100/- per sitting.
- (b) Chairman is entitled for a rent free house or House Rent Allowance of Rs. 400/- p.m. and free use of a government vehicle or a conveyance allowance @ Rs. 350/- p.m. in lieu thereof.
- (c) Board exercises executive and financial powers.

(xvii) TAMIL NADU LEGISLATURE (PREVENTION OF DISQUALIFICATIONS) ACT, 1967, AS AMENDED UPTO 1975

2.34 Out of 62 bodies specified in the Schedule to the Tamil Nadu Legislature (Prevention of Disqualifications) Act, 1967, for granting exemptions to holders of offices thereof, the Sub-Committee have examined the following four bodies :

- (a) Tamil Nadu Housing Board (entry 27)<sup>2</sup>
- (b) Tamil Nadu Warehousing Corporation (entry 28)<sup>3</sup>
- (c) Tamil Nadu Khadi and Village Industries Board (entry 26)<sup>4</sup>
- (d) Tamil Nadu Agro-Industries Corporation (entry 58)<sup>5</sup>

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1. Fifth Report (JCOP-Seventh Lok Sabha), para 2.16, p. 10.  
 2. Fifteenth Report (JCOP-Fifth Lok Sabha), para 33, p. 8.  
 3. Sixth Report (JCOP-Fifth Lok Sabha), para 14, p. 3.  
 4. Thirteenth Report (JCOP-Fifth Lok Sabha), para 27, p. 7.  
 5. Sixth Report (JCOP-Fifth Lok Sabha), para 8, p. 2.

Although holders of office of the above bodies have been exempted from disqualification for membership of Tamil Nadu Legislature yet in view of exercise of executive and financial powers, the Joint Committee on Offices of Profit have, however, recommended their disqualification.

(xviii) TRIPURA STATE LEGISLATURE MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1972

2.35 Unlike other Acts, the removal of disqualifications in the Tripura State Legislature Members (Removal of Disqualification) Act, 1972, is not subject to the usual provision "provided that the holder of any such office is not in receipt of or entitled to, any remuneration other than the 'compensatory allowance'. The sub-Committee feel that section 2 of the State Act should have been more explicit to the effect that exemption is subject to payment of Travelling Allowance/Daily Allowance only and the amount of Travelling Allowance/Daily Allowance will not be more than 'compensatory allowance'.

2.36 Under entry 5 of the Schedule to the State Act, the following offices have been exempted from disqualification :—

"The offices of the Chairman, Vice-Chairman, or members of any committee, board or authority, statutory or otherwise, appointed by the Government of India or the Government of any State" (entry 5 of the Schedule).

The State Act thus exempts all bodies under the Government of India or the Government of any State in general without making it specific.

2.37 The Joint Committee on Offices of Profit have, however, recommended disqualification for membership of Parliament for holding any office under the following bodies as they exercise executive and financial powers although holders of offices would be exempt from disqualification for membership of the Tripura Legislative Assembly under the provisions of entry 5 of the Schedule to the Act *ibid* :—

- (a) Tripura Khadi and Village Industries Board.<sup>1</sup>
- (b) Bishalgarh Agricultural Produce Market Committee.<sup>2</sup>
- (c) Tripura Road Transport Corporation.<sup>3</sup>

(xix) UTTAR PRADESH STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1971

2.38 Under section 3(n) of the Uttar Pradesh State Legislature (Prevention of Disqualification) Act, 1971, the office of Chairman, Deputy Chairman, Director, member or Secretary of any statutory or non-statutory body, if the holder of such office is not entitled to any remuneration other than compensatory allowance, has been exempted from disqualification for being chosen as, or for being, a member of the State Legislature. Under that provision, non-official members of the Kanpur Development Authority and State Transport Authority have been protected from incurring disqualification for membership of State Legislature. Whereas, the Joint Commit-

1. Fifteenth Report (JCOP -Fifth Lok Sabha), para 3 6, p. 9

2. *Ibid*, para 35, p. 9

3. *Ibid*. para 34, p. 8

tee on Offices of Profit (Seventh Lok Sabha) have held<sup>1</sup> that the membership (including chairmanship) of those bodies ought not to be exempted from disqualification as the Committee are of the view that the non-official members will exercise collectively executive and financial powers in the case of Kanpur Development Authority and executive and quasi-judicial powers in the case of State Transport Authority.

(xx) WEST BENGAL LEGISLATURE (REMOVAL OF DISQUALIFICATIONS) ACT, 1952

2.39 Unlike other Acts, there is no Schedule appended to the West Bengal Legislature (Removal of Disqualifications) Act, exempting certain offices from disqualification. Thus, no Committee or Corporation has been exempted specifically from disqualification under the West Bengal Act and each case has to be examined on merit to assess whether holder of certain offices of profit under the Government of India or the Government of any State ought or ought not to be disqualified for being chosen as, and for being a member of, the West Bengal Legislature.

The Sub-Committee have failed to find any reason for granting exemption to office which is not a whole-time office remunerated either by salary or by fees *vide* section 2(i)(b) of the State Act.

2.40 The Joint Committee on Offices of Profit have examined the following Corporations set up by the Government of West Bengal and recommended holders of any offices thereunder from disqualification for membership of Parliament in view of executive and financial powers exercised by them :

- (a) West Bengal State Fisheries Development Corporation Limited.<sup>2</sup>
- (b) North Bengal State Transport Corporation.<sup>3</sup>

In the above case the non-official members are also entitled to remuneration which exceeds the 'compensatory allowance'.

- (c) West Bengal Housing Board.<sup>4</sup>

In the above case, the non-official members are entitled to draw allowances which exceeds 'compensatory allowance'.

(xxi) ARUNACHAL PRADESH LEGISLATURE MEMBERS (PREVENTION OF DISQUALIFICATIONS) ACT, 1977

2.41 The Arunachal Pradesh Legislature Members (Prevention of Disqualifications) Act, 1977 *vide* entry 3 of the Schedule gives exemption to any Committee, Society, Board or authority appointed by the Government of India or the Government of any State or Union Territory in general without making it specific.

1. Second Report (JCOP-Seventh Lok Sabha), paras 4.2 to 4.5 and Fifth Report (JCOP-Fifth Lok Sabha), para 2.3, p. 3.

2. Tenth Report (JCOP-Fifth Lok Sabha), para 27, page 7.

3. Ninth Report (JCOP-Fifth Lok Sabha), para 16, p. 4.

4. Seventh Report (JCOP-Seventh Lok Sabha), para 2.3 pp. 2-3.

The Joint Committee on Offices of Profit have, however, recommended<sup>1</sup> disqualification for membership of the Parliament for holding the Membership of the non-official nominated members of the Pradesh Council of Arunachal Pradesh as they draw monthly salary.

(xxii) MIZORAM UNION TERRITORY MEMBERS' (REMOVAL OF DISQUALIFICATION) ACT, 1975

2.42 Under entry 8 of the Schedule to the Mizoram Union Territory Legislature Members' (Removal of Disqualification) Act, exemption has been granted to the following offices :—

“The Office of Chairman, Vice-Chairman or Members of any Committee, Board or Authority appointed by the Government of India or the Government of any State or Union Territory”.

The Mizoram Act, thus, exempts all bodies under the Government of India or Government of any State or Union Territory without making it specific.

The Joint Committee on Offices of Profit have, however, recommended disqualification for membership of Parliament for holding the following offices as they exercise executive and financial powers although holders of these offices will be exempted from disqualification for membership of the Mizoram Legislative Assembly under the provisions of entry 8 of the Schedule to the Mizoram Act :

- (a) Mizoram State Sports Council.<sup>2</sup>
- (b) Governing Body for the Serchhip College.<sup>3</sup>
- (c) Governing Body of the Champhai College, Mizoram.<sup>4</sup>

## CHAPTER III

### RECOMMENDATIONS

**3.1** The Committee have noted that members of State and Union Territory Legislatures have been appointed on various Corporations/Boards/Committees etc. set up by the State Governments and the Union Territory Administrations which enjoy wide and excessive powers. By virtue of the provisions contained in most of the State Removal/Prevention of Disqualification Acts, the members of State/Union Territory Legislatures are exempted from disqualification in spite of holding offices of Profit whereas in view of the guidelines followed by the Joint Committee on Offices of Profit, Members of Parliament, if appointed on those Corporations/Boards/Committees etc. would incur disqualification by virtue of such bodies exercising excessive executive, financial or judicial powers or members being entitled to draw remuneration more than the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

**3.2** The Committee have also found that in several State Removal/Prevention of Disqualification Acts like that of Assam, Haryana, Sikkim etc. the offices of Chairman or Members of any Corporation/Board/Committee etc appointed by the Government of India or the Government of any State have been exempted from disqualification without taking into consideration their nature of duties or remuneration. Examples of such cases are as follows :

- (i) In the Assam State Legislature Members (Removal of Disqualification) Act, 1950, vide entry 7 in the Schedule to that Act, holders of offices of Chairman, Director of State Public Sector Corporations and the offices of Chairman, Vice-Chairman and members of any body appointed by the Government of India or the Government of any State have been exempted from incurring disqualification.
- (ii) In Jammu & Kashmir State Legislature (Prevention of Disqualification) Act, 1962, the exemptions have been given to the extent that office of chairman or member of a Committee/Commission or Board set up even by an executive order, for or in connection with the (i) prevention of corruption, (ii) development of the State in planned manner, and (iii) Land Reforms are not to be disqualified although such bodies generally enjoy wide executive powers [Section 3(dd) of the Jammu & Kashmir State Legislature (Prevention of Disqualification) Act, 1962].
- (iii) Similarly members of Sikkim State Legislature enjoy more facilities by holding offices in certain Committees/Commissions/Corporations etc. under the provisions of Section 3(q) of the Sikkim Legislative Assembly Members Removal of Disqualification Act, 1978 which give exemption to holder of any office under a Committee/Commission/Corporation etc. constituted by the Government of India or the State Government if the holder of such office is not entitled to any remuneration other than the 'compensatory allowance' or any residential accommodation or any arrangement for conveyance for official purpose.

The Committee find that although the definition of the 'compensatory allowance' given in that Act is on the lines of the definition given in the Parliament (Prevention of Disqualification) Act, 1959, yet the provisions for the residential accommodation and/or conveyance to holders of aforesaid offices are unusual features of the Sikkim Legislative Assembly Members Removal of Disqualification Act, 1978. The Committee also feel that the members of State Legislature while enjoying more perks and facilities as compared to a member of Parliament would still remain exempt from disqualification. Thus the provisions of Act are against the spirit of the Constitution and against the decisions of the Supreme Court in that regard.

- (iv) The Committee also note with surprise that the definition of 'compensatory allowance' as given in Section 2(a) of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971, includes allowances payable to the holders of an office including Travelling allowance, daily allowance, sitting allowance, conveyance allowance and the house rent allowance but the limiting expression 'enabling him to recoup any expenditure incurred by him' occurring in the Parliament (Prevention of Disqualification) Act, 1959, has been omitted vide amendment made in the State Act in 1981. The Committee consider inclusion of that expression is of utmost importance as the sum of money payable to a holder of an office is for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office and not for any profiteering motive. Moreover sitting allowance is not included in the definition of 'compensatory allowance' given in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.
- (v) The Committee note that under Section 2(e) of the Punjab State Legislature (Prevention of Disqualification) Act, 1952, a member of any Committee or other body, appointed or constituted by the Punjab Government, and who is not in receipt of a salary but who is paid only travelling and daily allowance during the performance of his duties will be exempted from disqualification for membership of the State Legislature.

The Committee feel that the payment of travelling allowance and daily allowance not more than 'compensatory allowance' as defined in the Parliament (Prevention of Disqualification) Act, 1959, should be made specific in the State Act.

The Committee further feel that the provisions of the State Act give exemption to any statutory body or authority or a member of any Committee or other body in general without making it specific.

- (vi) The Committee note that the Haryana State Legislature (Prevention of Disqualification) Act, 1974 provides for general exemption without making it specific as is evident from Section 3(e) of the Act which gives exemption to following offices :

**Chairman / Vice - Chairman/President / Vice - President/ Director/member, whether elected, nominated or appointed either by the Union Government or the State Government or any of its officers, of any statutory or non-statutory body, whether he is or is not, in receipt of any remuneration including compensatory allowance during the performance of his duties.**

Similar provisions also exist in the Removal/Prevention of Disqualification Acts of the Gujarat, Jammu & Kashmir, Kerala, Meghalaya, Karnataka, Arunachal Pradesh, Mizoram, etc.

3.3 With a view to achieve uniformity in the matter, the Committee have examined various State Acts to find out whether any uniform principle could be decided upon to ensure that their appointments to these Committees are not anomalous.

3.4 In this connection, the Joint Committee had the benefit of hearing the views of the Secretary, Legislative Department, Ministry of Law, Justice & Company Affairs on 5 April, 1983. The Secretary, Legislative Department had opined in the matter as follows :—

“So, on principles, it would be ideal to have uniformity if that is possible. But as a matter of strict constitutional position, the power so far as Members of Parliament are concerned is with Parliament and the power so far as Members of State Legislatures are concerned is with the respective State Legislature. According to the Constitutional position, Parliament and the State Legislature have the plenary authority within their allotted fields of jurisdiction under the Constitution as it stands today to enforce any uniformity. A State is free to adopt whatever policy it likes. It is only through persuasion or discussion that it would be possible within the existing framework to achieve some degree of uniformity in this field”.

3.5 The Committee are inclined to agree with the above views of the Secretary, Legislative Department, Ministry of Law, Justice & Company Affairs and feel that the Joint Committee on Offices of Profit, cannot perhaps sit in judgement over the powers of a State Legislature, given to them under article 191 of the Constitution, to limit the control or influence of the State Executives over the members of respective State Legislatures. The Joint Committee on Offices of Profit are conscious of the fact that their functions as set out in the motion\* for its constitution are limited to recommending in relation to the ‘Committees’ examined by it what offices should disqualify and what offices should not disqualify and to scrutinise the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. In view of this, the Joint Committee on Offices of Profit can make recommendations for members of Parliament only.

3.6 The Committee however strongly feel the need for evolving of uniform principles in regard to disqualification for membership under articles 102(1)(a) and 191(1)(a) of the Constitution, and the only feasible method could be to amend the Constitution and make it obligatory for the State Legislatures to be guided by such principles as Parliament may by law provide in regard to the matter. Alternatively, as the State Legislatures are plenary authorities within their allocated spheres, the Committee would

\*1. For reference please see First Report (JCOP-TLS), Appendices I and II, pages 13-15.

like to recommend to the State Legislatures to take appropriate action to adopt the principles evolved by the Joint Committee on Offices of Profit.

3.7 The Committee in this connection may also like to draw attention to the fact that in view of the exercise of legislative powers by State Governments freely exempting various offices of profit under the respective State Governments, the power of legislation both in regard to membership in Parliament and State Legislatures should be confined to Parliament only by way of an amendment made in article 191 of the Constitution as was envisaged in the Constitution (Forty-second Amendment) Act, 1976, which reads as follows :—

“In article 191 of the Constitution, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely :—

“(a) if he holds any such office of profit under the Government of India or the Government of any State specified in the First Schedule as is declared by Parliament by law to disqualify its holder’.”

It will be seen that although article 191(1)(a) provides for disqualification of any person for holding an office of profit under the Government; it empowers State Legislature to exempt any office of profit from disqualification. But if article 191(1)(a) of the Constitution is amended on the lines of Constitution Amendment Act of 1976, only Parliament will be empowered to exempt any office of profit from disqualification and not the State Legislature as per existing provisions in the Constitution.

In the alternative the Committee are of the view that the objectives proposed to be served by the Constitutional Amendment can also be achieved to some extent by making a law to that effect by Parliament under Article 191(1)(e)\* of the Constitution whereby it can be provided that holders of offices which enjoy executive, financial, judicial/quasi judicial powers or which would place them in a position where they could receive some patronage from Government or are themselves in a position to distribute patronage or are entitled to any remuneration other than the compensatory allowance, as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959, would incur disqualification.

3.8 The Committee also recommend that exemption from disqualifying holder of an office of profit should be so restricted as to cover only those offices held by members in Corporations/Boards/Committees etc. directly constituted and controlled by the Legislature. The members appointed to Corporations, Boards, Committees etc. whether controlled by Government directly or by statutory or non-statutory agencies created by State, should not enjoy any such exemption.

The Committee feel although it may seem to be a drastic measure yet its implementation may bring about sanctity and independent functioning of Legislatures truly and fully free from the control of the executive.

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\*191 (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(e) if he is so disqualified by or under any law made by Parliament.



**3.9** The Committee are of the opinion that free exercise of legislative powers given under article 191(1)(a) of the Constitution without circumspection or restraint, has greatly undermined the independent functioning of the members of the Legislature in many parts of the country. Offer of blandishment to members through their appointment to various offices of profit in certain corporations/undertakings/boards etc. constituted by the State Governments and exempting those offices from disqualification by legislative enactment without great care are being resorted to freely and increasingly in recent times.

The relevant enabling clauses in the Constitution which are meant to be used sparingly and basically for saving from disqualifications the members of legislature who are to serve in various committees constituted by the Legislature, are availed of indiscriminately to save all sorts of offices of profit. The Committee feel that though such exemptions can be legally tenable, it is morally unsustainable and would be tantamount to abuse of power.

**3.10** The Committee are of the view that if the real spirit of articles 102 and 191 of the Constitution is to be maintained sacrosanct, the enabling exemption provisions should be kept within its bounds and restricted in its scope both in regard to the areas of operation and legislative competence. Otherwise, the object of the imposition of the disqualifications as envisaged in the Constitution will become frustrated.

The Committee, therefore, urge the Ministry of Law, Justice and Company Affairs to take necessary steps for bringing legislation to evolve uniform principles in regard to disqualification for holding office of profit under articles 102(1) and 191(1) of the Constitution, in consultation with the Central Government, State Governments and Union Territory Administrations, in the light of the recommendations/observations contained in this Report, at an early date.

GULSHER AHMED,  
Chairman,

*Joint Committee on Offices of Profit.*

NEW DELHI,

5th April, 1984

Chaitra 16, 1906(S)

## APPENDIX I

(vide para 3 of the Report)

### THE ANDHRA PRADESH

#### PAYMENT OF SALARIES AND PENSION AND REMOVAL OF DISQUALIFICATIONS ACT, 1953\*

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10. *Removal of certain disqualifications.*—No person shall be disqualified for being chosen as, or for being, a member of the Andhra Pradesh Legislative Assembly or Legislative Council on the ground only that he holds any of the offices specified in the Schedule to this Act.

11. *Salaries and allowances of members of the Legislative Assembly and Legislative Council.*—(1) Every member of the Andhra Pradesh Legislative Assembly or Legislative Council who does not hold any of the offices referred to in sections 3 to 5 and sections 12-A to 12-C shall be entitled to receive—

(a) a salary of five hundred rupees per mensem;

(b) travelling, daily and other allowances at such rates and upon such conditions as may be determined by rules made by the State Government;

(c) a Constituency allowance of four hundred rupees per mensem; and

(d) a Contingency allowance towards telephone and postal charges of one hundred rupees per mensem.

11. (1-A) Every member referred to in sub-section (1) shall be provided with railway coupons of the value of three thousand rupees per annum, which shall, subject to such rules as may be made by the State Government in this behalf, entitle such member or his or her spouse to travel singly or together with any other person or persons by any class by any railway in India.

(1-B) Every member referred to in sub-section (1) and his or her spouse shall, subject to such rules as may be made by the State Government in this behalf, be entitled to travel in any stage carriage vehicle operated by the Andhra Pradesh State Road Transport Corporation on any route.  
[Amendment came into force with effect from—

(1) in so far as it relates to railway coupons on the 17th August, 1978; and

(2) in so far as it relates to travel in any stage carriages on the 15th May, 1977]

*Explanation.*—For the removal of doubts, it is hereby declared that where a member and his or her spouse travel together for any distance by railway, in calculating the aggregate distance for the purpose of this sub-section they shall be deemed to have travelled double that distance.

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\*Corrected up to 1st September, 1981.

(11) (2) The salary referred to in clause (a) of sub-section (1) shall accrue to a member from the date on which he is declared, duly elected or in the case of a member nominated by the Governor to fill a seat in the Andhra Pradesh Legislative Council, from the date on which he is so nominated, or if such declaration or nomination is made before the vacancy occurs, from the date of occurrence of the vacancy;

Provided that the salary shall not be paid until the member has made and subscribed the oath or affirmation referred to in Article 188 of the Constitution.

11-A. Members of the Legislative Assembly and Legislative Council and their families to be entitled to free accommodation and medical treatment in State hospitals and to medical treatment elsewhere at Government cost : Subject to such conditions as may be determined by rules made by State Government, every member of the Legislative Assembly or Legislative Council who does not hold any of the offices referred to in sections 3 to 5 and sections 12-A, 12-B and 12-C, and the members of his family shall be entitled, free of charge, to accommodation in any hospital maintained by the State Government, and to medical treatment therein; and also at the cost of the State Government, to medical treatment in any hospital elsewhere, either within or outside India, and to the provision of artificial limbs, hearing aids, and the like.

11-B. (1) Every member of the Legislative Assembly or Legislative Council who does not hold any of the offices referred to in sections 3 to 5 and 12-A, 12-B and 12-C shall be entitled, without payment of rent, to the use of a furnished accommodation at Hyderabad, provided by the State Government during any period of his residence on duty :

Provided that where any such member is not provided by the State Government with such accommodation, he shall be paid an accommodation allowance at the rate of fifteen rupees for each day during any period of residence on duty.

(2) The State Government may make rules regarding :

(a) the nature of accommodation and the scale of furniture and other facilities to be provided under this section for members;

(b) the rates of rent to be charged from members for any period other than the period of residence on duty.

*Explanation.*—For the purpose of this section the expression “period of residence on duty” means the period during which a member resides at Hyderabad for the purpose of attending meeting of a House of the State Legislature, or a sitting of a committee thereof, and includes one day immediately preceding and succeeding such meeting or sitting as the case may be.

11-C. Every member of the Legislative Assembly or Legislative Council who does not hold any of the offices referred to in the sections 3 to 5 and 12-A, 12-B and 12-C shall be entitled to such telephone facilities as may be determined by rules made by the State Government in this behalf.

11—D. (1) There shall be paid to every person who has served for a period of not less than one year as—

- (i) a member of the Andhra Pradesh Legislative Assembly, or
- (ii) a member of the Andhra Pradesh Legislative Council, or
- (iii) partly as a member of the said Legislative Assembly and partly as a member of the said Legislative Council, a pension of fifty rupees per mensem for each year of his service as such member, so however that in no case the pension payable to such person shall exceed five hundred rupees per mensem.

*Explanation.*—For the purpose of this sub-section, (a) the period during which a person served as a member of the Legislative Assembly or Legislative Council or partly as a member of the Legislative Assembly and partly as a member of the Legislative Council, as it existed during the period commencing from the 15th August, 1947 and ending with the 1st November, 1956, of the former Province or State of Madras or State of Hyderabad or State of Andhra shall be taken into account in computing the number of years;

(b) the period of one year shall be counted from the date of declaration of results of the election or as the case may be from the date of the nomination;

(c) the fractions of a year not less than six months, except in the case of the first year of service as such member, shall be counted as one year and other fractions shall be disregarded.

(2) Where any person entitled to pension under sub-section (1) is also entitled to any salary from the Central Government or the State Government or any Corporation owned or controlled by the Central Government or the State Government or any local authority under any law or otherwise or has become otherwise entitled to any remuneration from such Government, Corporation, or Local authority, such person shall not be entitled to any pension under sub-section (1) for the period during which he continues to be entitled to such salary or remuneration :

Provided that where the salary or remuneration referred to in this sub-section is less than the pension to which he is entitled under sub-section (1) such person shall be entitled only to receive the difference as pension under this sub-section.

*Explanation I.*—For the purpose of this sub-section the expression 'salary' shall, in relation to a member of the Legislative Assembly or the Legislative Council, include the constituency allowance to which he is entitled under clause (c) of sub-section (1) of section 11.

*Explanation II.*—For the purpose of this sub-section the expression 'remuneration' shall not include pension to which a person is entitled from the Central Government or the State Government or the Corporation or the Local Authority referred to therein.

(3) In computing the number of years for the purpose of sub-section (1) the period during which a person has served as a Chief Minister, Deputy Chief Minister and Minister, the Speaker and Deputy Speaker the Chairman, Deputy Chairman, the Chief Whip in the Assembly and the Chief Whip in the

Council or held any of the offices specified in sections 12-A, 12-B and 12-C or both by virtue of his membership of the Legislative Assembly or the Legislative Council, shall also be taken into account.

12. *Relinquishment of salaries and allowances and cancellation thereof*:—(1) Any person entitled to any salary or allowance under this Act may relinquish the whole or any portion thereof,—

- (a) in the case of a Minister, or a Deputy Minister or the Chief Whip in the Assembly or the Chief Whip in the Council or a Parliamentary Secretary within two months from the date on which he enters upon office as such;
- (b) in the case of the Speaker or Deputy Speaker (or the Chairman or Deputy Chairman) within one month from the date on which he is chosen for the office;
- (bb) —Omitted.
- (c) in the case of a member of the Andhra Pradesh Legislative Assembly or Legislative Council within one month from the date on which he makes and subscribes the oath or affirmation referred to in Article 188 of the Constitution.

(2) Any relinquishment made by any of the persons referred to in sub-section (1) in respect of any allowance may be cancelled by him, if and only if the rules relating to that allowance are so revised as to alter the amount of the allowance to which he would have been entitled but for the relinquishment.

(3) Every relinquishment or cancellation made in pursuance of sub-section (1) or (2) shall be made in writing and shall take effect at such time and subject to such conditions as may be determined by rules made by the State Government.

12-A. *Application of provisions to Minister, to Chairmen of Planning and Development Committees*.—The provisions of this Act shall apply in relation to the holder of the following offices as they apply in relation to a Minister namely :—

- (1) Chairman of the Telangana Planning and Development Committee;
- (2) Chairman of the Rayalaseema Planning and Development Committee; and
- (3) Chairman of the Coastal Andhra Planning and Development Committee.

12-B. *Application of provisions relating to Minister, to Leaders of Opposition*.—The provisions of this Act shall apply in relation to the holder of office of the Leader of the Opposition in the Andhra Pradesh Legislative Assembly or Legislative Council, as they apply in relation to a Minister. (Amendment came into force with effect from 7th April, 1978).

*Explanation*.—In this Act, the term “Leader of the Opposition in the Andhra Pradesh Legislative Assembly or Legislative Council” means that member of the Andhra Pradesh Legislative Assembly or the Andhra Pradesh Legislative Council, as the case may be, who is, for the time being, the Leader in that House of the party in Opposition to the Government having the greatest numerical strength and recognised as such by the Speaker of

the Andhra Pradesh Legislative Assembly or the Chairman of the Andhra Pradesh Legislative Council, as the case may be :

Provided that where there are two or more parties in opposition to the Government, in the Andhra Pradesh Legislative Assembly or the Andhra Pradesh Legislative Council having the same numerical strength, the Speaker of the Andhra Pradesh Legislative Assembly or the Chairman of the Andhra Pradesh Legislative Council, as the case may be, shall having regard to the status of the parties recognise any one of the Leaders of such parties as Leader of the opposition for the purposes of this section and such recognition shall be final and conclusive.

12-C. *Application of provisions relating to Parliamentary Secretaries to Whips in the Legislative Assembly.*—The provisions of this Act shall apply in relation to the holder of the Office of a Whip as they apply in relation to a Parliamentary Secretary.

*Explanation.*—In this section, the term “Whip” means the Government Whip in the Andhra Pradesh Legislative Assembly.

#### THE SCHEDULE TO THE ANDHRA PRADESH REMOVAL OF DISQUALIFICATIONS ACT, 1953

(vide Section 10 of the Act)

1. The Office of the Chief Parliamentary Secretary, Parliamentary Secretary, Parliamentary Under-Secretary, Chief Whip in the Assembly, (Chief Whip in the Council) Deputy Chief Whip or Whip.

(1-A) (Omitted)

(1-B) The Office of the Chairman of the Telangana Planning and Development Committee or the Chairman of the Rayalaseema Planning and Development Committee or the Chairman of the Coastal Andhra Planning and Development Committee.

(1-C) Office of the Chairman, Urban Development Authority for the Hyderabad Development Area.

(1-D) The Office of the Leader of the Opposition in the Andhra Pradesh Legislative Assembly or Legislative Council.

2. Any office in the National Cadet Corps constituted under the National Cadet Corps Act, 1948 (Central Act XXXI of 1948) or in the Territorial Army constituted under the Territorial Army Act, 1948 (Central Act LVI of 1948).

3. The Office of the Chairman or member of any committee provided the holder of any such office is not in receipt of, or entitled to any remuneration other than compensatory allowance.

(3-A) The office of member of Andhra Pradesh State Law Commission.

4. Any office of profit under an insurer, the management of whose controlled business is vested in the Central Government under the Life Insurance (Emergency Provisions) Act, 1956 (Central Act IX of 1956).

5. Any office in the Auxiliary Air Force or the Air Defence Reserve raised under the Reserve and Auxiliary Air Force Act, 1952 (Central Act LXII of 1952).

6. The office of the Vice-Chancellor of any University.

7. Subject to the provisions of section 10 of the Representation of the People Act, 1951 the office of the Chairman, Director, Member or any other officer of a statutory body, where the power to make any appointment to any such office or the power to remove any such person therefrom is vested in the Central Government or any State Government, as the case may be provided the holder of any such office is not in receipt of, or entitled to, any remuneration other than compensatory allowance.

(7-A) (Subject to the provisions of section 10 of the Representation of the People Act, 1951) the office of member of the Andhra Pradesh State Road Transport Corporation constituted under the Road Transport Corporations Act, 1950 (Central Act LXIV of 1950).

8. The Office of member of any local authority, provided the holder thereof is not in receipt of, or entitled to, any remuneration other than compensatory allowance.

9. The Office of any part time professor or lecturer, in a Government College.

10. The office of any Honorary Medical Officer or Honorary Assistant Medical Officer in a Hospital under Government management.

(10A) The office of—

(i) a Government Pleader or a Public Prosecutor;

(ii) a standing counsel appointed by the Government for being engaged by a charitable or religious institution or endowment for conducting legal proceedings in its behalf.

11. The office of a village official or Watandar, namely Patel, Patwari, Deshmukh, Deshpanya or Hissedar in such Watan who is not himself performing any service connected with the office or Watan or who is not customarily entrusted with any such service and who is in receipt of any share of the Rustum or other emoluments to which he may be entitled as a hereditary Watandar or Hissedar in the form of Haq-i-Malikana or otherwise.

12. A person drawing his service pension, political pension or grant, mansab, charitable grant or commutation sum or compensation in respect of a jagir, inam or both or grant.

13. The Office of the Chairman,  
Andhra Pradesh Scheduled Castes  
Co-operative Finance Corporation Limited,  
Hyderabad.

14. The Office of the Chairman,  
Andhra Pradesh Backward Classes  
Co-operative Finance Corporation Limited,  
Hyderabad.

15. The Office of the Chairman,  
Andhra Pradesh Scheduled Tribes  
Co-operative Finance Corporation Limited.  
Hyderabad.

16. The Office of the Chairman,  
State Level Committee for Protection  
of Civil Rights, Hyderabad.

17. The Office of the Chairman,  
Command Area Development Authority,  
Board of Tungabhadra Project Command Area,  
Anantapur.
18. The Office of the Chairman,  
Command Area Development Authority,  
Nagarjunasagar Left Canal Command Area,  
Khammam.
19. The Office of the Chairman,  
Command Area Development Authority,  
Nagarjunasagar Right Canal Command Area,  
Guntur.
20. The Office of the Chairman,  
Command Area Development Authority,  
Sreeramsagar Command Area, Jagtial,  
Karimnagar District.
21. The Office of the Chairman,  
Andhra Pradesh State Agro-Industries  
Corporation Limited, Hyderabad.
22. The Office of the Chairman of  
Market Committee constituted under the  
Andhra Pradesh (Agricultural Produce and  
Livestock) Markets Act, 1966.
23. The Office of the Chairman,  
Krishna and Godavari Delta Drainage Board,  
Hyderabad.
24. The Office of the Chairman,  
Andhra Pradesh State Electricity Board,  
Hyderabad.
25. The Office of the Chairman,  
Andhra Pradesh State Film Development  
Corporation Limited, Hyderabad.
26. The Office of the Chairman,  
Andhra Pradesh Travel and Tourism  
Corporation Limited, Hyderabad.
27. The Office of the Chairman,  
Urban Development Authority,  
Visakhapatnam, Visakhapatnam.
28. The Office of the Chairman,  
Urban Development Authority,  
Vijayawada-Tanali-Mangalagiri,  
Vijayawada.
29. The Office of the Chairman,  
Andhra Pradesh Housing Board,  
Hyderabad.
30. The Office of the Chairman,  
Andhra Pradesh Women's Co-operative Finance  
Corporation Limited, Hyderabad.



31. The Office of the Chairman,  
Andhra Pradesh Industrial Infrastructure  
Corporation Limited, Hyderabad.
32. The Office of the Chairman,  
Andhra Pradesh State Textile Development  
Corporation Limited, Hyderabad.
33. The Office of the Chairman,  
Leather Industries Development Corporation  
of Andhra Pradesh Limited, Hyderabad.
34. The Office of the Chairman,  
Andhra Pradesh State Financial  
Corporation, Hyderabad.
35. The Office of the Chairman,  
State Level Committee on District Centres,  
Hyderabad.
36. The Office of the Chairman,  
Andhra Pradesh Industrial Development  
Corporation Limited, Hyderabad.
37. The Office of the Chairman,  
Andhra Pradesh Small Scale Industrial  
Development Corporation Limited, Hyderabad.
38. The Office of the Chairman,  
Andhra Pradesh State Trading Corporation Limited,  
Hyderabad.
39. The Office of the Chairman,  
Andhra Pradesh Mining Corporation Limited,  
Hyderabad.
40. The Office of the Chairman,  
Andhra Pradesh State Road Transport  
Corporation Limited, Hyderabad.
41. The Office of the Chairman,  
State Council for Women Education,  
Hyderabad.
42. The Office of the Chairman,  
Board of Intermediate Education,  
Hyderabad.
43. The Office of the Chairman,  
Sales Tax Advisory Committee,  
Hyderabad.
44. The Office of the Chairman,  
Advisory Committee for Mecca Masjid,  
Hyderabad.
45. The Office of the Chairman,  
Andhra Pradesh Meat and Poultry  
Development Corporation Limited,  
Hyderabad.
46. The Office of the Chairman,  
Andhra Pradesh Dairy Development  
Corporation Limited, Hyderabad.

47. The Office of the Chairman, Andhra Pradesh Fisheries Corporation Limited, Kakinada.
48. The Office of the Chairman, Andhra Pradesh Forest Development Corporation Limited, Hyderabad.
49. The Office of the President, Andhra Pradesh State Chamber of Panchayati Raj, Hyderabad.
50. The Office of the Chairman, Andhra Pradesh State Civil Supplies Corporation Limited.
51. The Office of the Chairman, Andhra Pradesh State Seeds Development Corporation Limited.
52. The Office of the Chairman, Andhra Pradesh State Warehousing Corporation.
53. The Office of the Chairman, Andhra Pradesh Khadi and Village Industries Board.
54. The Office of the Chairman, Andhra Pradesh State Irrigation Development Corporation Limited.
55. The Office of the Chairman, Tobacco Board, Guntur.
56. The Office of the Chairman, Andhra Pradesh Co-operative Housing Societies Federation Ltd., Hyderabad.
57. The Office of the Chairman, Andhra Pradesh State Scheduled Castes and Tribes Co-operative Housing Societies Federation Limited, Hyderabad.
58. The Office of the Chairman, Girijan Co-operative Corporation Limited, Visakhapatnam.
59. The office of the Chairman, Andhra Pradesh State Co-operative Bank Limited, Hyderabad.
60. The office of the Chairman, Andhra Pradesh State Co-operative Consumer's Federation Limited, Hyderabad.
61. The office of the Chairman, Andhra Pradesh Co-operative Central Agricultural Development Bank Limited, Hyderabad.
62. The office of the President, Federation of Sericulturists and Silk Weavers Co-operative Societies Limited, Hyderabad.
63. The office of the President, Urdu Academy, Hyderabad.
64. The office of the Chairman, Andhra Pradesh Children's Board, Hyderabad.
65. The office of the President, Andhra Pradesh State Wool Industrial Co-operative Society Limited, Hyderabad.
66. The office of the President, Hindi Academy, Hyderabad.
67. The office of the President Federation of Garment Manufacturer's Co-operative Society, Hyderabad.

68. The office of the Chairman, Krishi Engines Limited, Hyderabad.
69. The office of the Chairman, Andhra Pradesh State Board of Prevention and Control of Water Pollution, Hyderabad.
70. The office of the Chairman, Andhra Pradesh State Federation of Co-operative Spinning Mills, Hyderabad.
71. The office of the Chairman, Andhra Pradesh Heavy Machinery Engineering Corporation, Hyderabad.
72. The office of the Chairman, Nizam Sugar Factory Limited, Hyderabad.
73. The Office of the Chairman of a Zilla Parishad.
74. The Office of the President of a Panchayat Samithi.
75. The Office of the Mayor of a Municipal Corporation.
76. The Office of the Chairman of a Municipality.

- NOTE:—(1) Items 13 to 49 included by Amendment Act No. 7 of 1980 published in the *Andhra Pradesh Gazette*, dated 5th March, 1980 and came into force with effect from 29th October, 1975.
- (2) Items 50 to 55 included by Amendment Act No. 11 of 1981 published in the *Andhra Pradesh Gazette*, dated 15th April, 1981. Items 56 to 72 included by an Ordinance, dated 23rd June 1981 and published in the *Andhra Pradesh Gazette*, dated 23rd June, 1981
- (3) Items 73 and 74 included by an Ordinance, dated 1st September, 1981 and published in the *Andhra Pradesh Gazette*, dated 1st September, 1981.

**Explanation :—**In this Schedule—

(i) 'committee' means any committee, commission, council, board or any other body of one or more persons, whether statutory or not, set up by the Central Government or any State Government.

(ii) 'compensatory allowance' means such sum of money as the Central Government or the State Government concerned, as the case may be, may determine as being payable to the chairman or any other member of a committee by way of travelling allowance, daily allowance, conveyance allowance or house rent allowance for the purpose of enabling the chairman or other member to recoup any expenditure incurred by him in attending any meeting of a committee or performing, any other function as a member of that committee;

(iii) 'controlled business' shall have the meaning as in clause (2) of section 2 of the Life Insurance (Emergency Provisions) Act, 1956 (Central Act IX of 1956);

(iv) 'statutory body' means any corporation, board, company, society or any other body of one or more persons, whether incorporated or not, established, registered or formed by or under any Central Act or the law of any State for the time being in force or exercising powers and functions under any such Act or law.

THE ASSAM STATE LEGISLATURE MEMBERS (REMOVAL OF  
DISQUALIFICATIONS) ACT, 1950

ASSAM ACT XIII OF 1950\*\*

(Received the assent of the Governor on the 30th March, 1950)

(Published in the Assam Gazette, dated the 5th April, 1950)

An

Act

to provide for the removal of certain disqualifications for being chosen as and for being a member of the Assam Legislative Assembly.

**PREAMBLE.**—WHEREAS it is expedient to provide in accordance with the provisions of Article 191(1)(a) of the Constitution that the holders of the offices hereinafter mentioned shall not be disqualified for being chosen as, and for being, a member of the Assam Legislative Assembly;

It is hereby enacted as follows :—

1. **SHORT TITLE, EXTENT AND COMMENCEMENT.**—(1) This Act may be called the Assam State Legislature Members (Removal of Disqualifications) Act, 1950.

(2) It extends to the whole of Assam.

(3) It shall come into force on the date on which the Assam State Legislature Members (Removal of Disqualifications) Ordinance, 1950 (Assam Ordinance No. II of 1950), ceases to operate.

2. **REMOVAL OF CERTAIN DISQUALIFICATIONS.**—A person shall not be disqualified for being chosen as, or for being, a member of the Assam Legislative Assembly by reason of the fact that he holds any of the offices specified in the Schedule appended hereto.

SCHEDULE

1. The offices of the Parliamentary Secretary to the Government of Assam.
2. The office of Government Pleader or Public Prosecutor.
3. The office of part-time Professor, Lecturer, Instructor or Teacher in Government Educational Institutions.

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\*\*As amended by Assam State Legislature Members (Removal of Disqualifications) (Amdt.) Act, 1952, 1957, 1967 and 1974.

4. Medical Practitioner rendering part-time service to Government.
5. Gaonbura, Chowkidar whether called by this or any other title.
6. The office of the Minister of State and Deputy Minister to the Government of Assam.
7. The office of Chairman and Director of the Assam State Warehousing Corporation and of Public Sector Corporations like Major Industries Development Corporation, etc., and Chairman, Vice-Chairman or members of any Committee, Board or authority appointed by the Government of India or the Government of any State specified in the First Schedule to the Constitution of India.
8. Any office under the Government which is not a whole-time office remunerated either by salary or fees.
9. The office of the Chief Executive Member and the other Executive Members of a District Council in an Autonomous District and of the members nominated to such a District Council by the Governor.
10. Any office held in the auxiliary Air Force or Air Defence Reserve.

# THE BIHAR LEGISLATURE (REMOVAL OF DISQUALIFICATIONS) ACT, 1950<sup>1</sup>

(Bihar Act 16 of 1950)

[Governor's assent published in the Bihar Gazette, Extraordinary of the 29th March, 1950].

An Act to provide that holders of certain offices shall not be disqualified for being chosen as, or for being, Members of the Bihar Legislative Assembly or the Bihar Legislative Council.

Whereas it is expedient to provide that holders of certain offices shall not be disqualified for being chosen as, or for being, members of the Bihar Legislative Assembly or the Bihar Legislative Council;

It is hereby enacted as follows:—

1. *Short title.*—The Act may be called the Bihar Legislature (Removal of Disqualifications) Act, 1950.

2. *Removal of disqualifications for membership.*—A person shall not be <sup>2</sup>[and shall be deemed never to have been disqualified for being chosen as, or for being, a Member of the Bihar Legislative Assembly or the Bihar Legislative Council by reason only of the fact that he holds any of the offices, being offices of profit, mentioned in the Schedule.

3. *Repeal of Bihar Ordinance 1 of 1950*—The Bihar Legislature (Removal of Disqualifications) Ordinance, 1950, is hereby repealed.

## THE SCHEDULE

<sup>1</sup>[(1) The office of the State Minister and the Deputy Minister].

<sup>4</sup>[(2) The office of Parliamentary Secretary].

<sup>5</sup>(3) Any office in the Territorial Army constituted under the Territorial Army Act, 1948.

<sup>6</sup>(4) Any office in the National Cadet Corps constituted under the National Cadet Corps Act, 1948.

(5) The office of the Chairman or member of any committee or body appointed by the Central or a State Government or by a servant of the Government :

Provided that the Chairman or any member of such committee or body does not receive any remuneration other than compensatory allowance

<sup>1</sup> For Statement of Objects and Reasons, see the Bihar Gazette, Extraordinary dated 27th February, 1950.

<sup>2</sup> Ins. by Bihar Act 33 of 1956.

<sup>3</sup> Subs. by Bihar Act No. 25 of 1975.

<sup>4</sup> Subs. by Bihar Act 19 of 1952.

<sup>5</sup> cl. (2) renumbered as clause (3) *ibid*

<sup>6</sup> Add. by Bihar Act 34 of 1953.

<sup>1</sup>*Explanation.*—For the purpose of this item “compensatory allowance” shall mean—

- (i) the travelling allowance, daily allowance or any allowance in the shape of honorarium, which may be paid to the holder of the office for the purpose of reimbursing the personal expenditure incurred by him in attending the meetings of committee or body or performing any other functions as the holder of the said office; and
- (ii) the allotment of quarter and the provision of conveyance and, such other facilities, privileges and amenities to the holder of the office or cash payment in lieu thereof as the State Government, the Board or the Managing authority of the Committee or the body, as the case may be, may by order made in this behalf on such terms and conditions, as may be mentioned therein, from time to time, determine.]

<sup>2</sup>[(6) Any office under an insurer the management of whose controlled business has vested in the Central Government.

*Explanation.*—For the purpose of this clause, the expression “controlled business” and the word “insurer” shall have the meanings respectively assigned to them in the Life Insurance (Emergency Provisions) Act, 1956 (IX of 1956).

(7) The office or an agent or other like office under the Central Government or the State Government for the purpose of effecting sales of, or collecting subscription towards, National Plan Certificates for such commission as the Central Government may have fixed in that behalf or without such commission.

*Explanation.*—For the purpose of this clause, a National Plan Certificate includes—

- (i) 12 years’ National Savings Certificate;
- (ii) 10 years’ National Plan Certificate, and,
- (iii) any other Savings Certificate or Government securities notified as such by the Central Government.]

<sup>3</sup>(8) The office of a member in the Auxiliary Air Force or the Air Defence Reserve raised and maintained under the Reserve and Auxiliary Air Forces Act, 1952 (LXII of 1952)].

<sup>4</sup>[(9) The office of the acting chairman under clause (1) of Article 184 of the Constitution of India; and

<sup>5</sup>(10) The office of the acting Speaker under clause (1) of Article 180 of the Constitution of India.]

<sup>1</sup>Subs. by Bihar Act No. 10 of 1975.

<sup>2</sup>Ins. by Bihar Act 33 of 1956.

<sup>3</sup>Ins. by Bihar Act 11 of 1957.

<sup>4</sup>Added by Bihar Act No. 25 of 1975.

<sup>5</sup>Added by *Ibid.*

**THE GUJARAT LEGISLATIVE ASSEMBLY MEMBERS (REMOVAL  
OF DISQUALIFICATIONS) ACT, 1960\***

**CONTENTS**

**PREAMBLE.**

**SECTIONS.**

1. Short title and commencement.
2. Removal of certain disqualifications.
3. Repeal of Guj. Ord. No. V of 1960.

**SCHEDULE.**

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\*As modified upto the 30th April, 1981.



# GUJARAT ACT NO. 1 OF 1960.<sup>1</sup>

## [THE GUJARAT LEGISLATIVE ASSEMBLY MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1960.]

*Amended by Guj. 23 of 1962*

[22nd September, 1960]

*An Act to provide for the removal of certain disqualifications for being chosen, as and for being a member of the Gujarat Legislative Assembly.*

WHEREAS by the Constitution provision has been made for declaring by Act of the State Legislature any office of profit under the Government of India or the Government of any State specified in the First Schedule to the said Constitution not to disqualify its holder for being chosen as, and for being, a member of a State Legislature :

AND WHEREAS it is expedient to make such declaration : It is hereby enacted in the Eleventh Year of the Republic of India as follows :—

### *Short title and commencement*

1. (1) This Act may be called the Gujarat Legislative Assembly Members (Removal of Disqualifications) Act, 1960.

(2) It shall come into force on the 1st day of May, 1960.

### *Removal of certain disqualifications*

\*2. A person shall not be disqualified for being chosen as, or for being a member of the Gujarat Legislative Assembly merely by reason of the fact that he holds any of the offices specified in the Schedule appended hereto.

### *Repeal of Guj. Ord. No. V of 1960*

3. The Gujarat Legislative Assembly Members (Removal of Disqualifications) Ordinance, 1960 is hereby repealed.

## THE SCHEDULE

(See section 2)

1. The office of Parliamentary Secretary to a Minister of the Government of Gujarat.

2. The office of part-time professor or lecturer in a Government College.

3. Any office in the National Cadet Corps, the Territorial Army, the Air Defence Reserve and the Auxiliary Air Force.

4. Any office in the Home Guards.

5. Any office in a village defence party (by whatever name called) constituted by or under the authority of the State Government.

6. The office of a member of the Advisory Board constituted under the Bombay Wild Animals and Wild Birds Protection Act, 1951 or any corresponding law in force in any part of the State of Gujarat.

7. The office of Secretary of the District or Regional Development Boards constituted by the State Government (by whatever name called) :

1. For Statement of objects and Reasons, See Gujarat Government Gazette, 1960, Part V page 13.

\*Please see section 34 of the Gujarat Slum Areas (Improvement, Clearance and Re-development) Act, 1973.

Provided that the holder of such office does not hold any other office of profit under the State Government.

2. *Gujarat Legislative Assembly Members (Removal [1960 : Guj. 1] of Disqualifications) Act, 1960*

8. Any office under an insurer the management of whose controlled business has vested in the Central Government under the life Insurance Emergency Provisions) Act, 1956.

*Explanation.*—For the purpose of this entry, the expression “controlled business” and “insurer” shall have the meanings assigned to them in the Life Insurance (Emergency Provisions) Act, 1956.

9. The office of an Honorary Medical Officer or Honorary Assistant Medical Officer in a hospital under Government management.

10. The office of Chairman or member of the Labour Welfare Board constituted under the Bombay Labour Welfare Fund Act, 1953.

11. The office of Chairman or member of any Committee or body appointed by the Central or State Government :

Provided that the Chairman or any member of such Committee or body does not receive any remuneration other than compensatory allowance.

*Explanation.*—For the purpose of this entry, “Compensatory allowance” shall mean the travelling allowance, the daily allowance or such other allowance which is paid to the holder of the office for the purpose of meeting his personal expenditure in attending the meetings of the Committee or body or in performing any other functions as the holder of the said office.

12. The office of an examiner for any examination held by the Central or State Government or by the Union Public Service Commission or the Gujarat Public Service Commission.

13. The following offices held under the Employees’ State Insurance Act, 1948 to provide medical benefit to insured persons under the said Act, that is to say—

- (a) the office of an Insurance Medical Practitioner.
- (b) the office of a part-time medical officer or specialist in a hospital, dispensary, nursing home, maternity home or other institution established by the Employees State Insurance Corporation or the State Government and
- (c) the office of a medical practitioner appointed to provide medical benefit to insured persons in any private hospital, dispensary, nursing home or maternity home or other institution recognised for the purpose by the Employees’ State Insurance Corporation or the State Government.

[13-A. The office of a member of the Gujarat Industrial Development Corporation nominated under clause (b), (c) or (d) of sub-section (1) of section 4 of the Gujarat Industrial Development Act, 1962, (Guj. XXIII of 1962) by reason only of his holding such office.]

**THE HARYANA STATE LEGISLATURE (PREVENTION  
OF DISQUALIFICATION) ACT, 1974**  
**HARYANA ACT NO. 41 OF 1974**

[Received the assent of the Governor of Haryana on the 13th December, 1974, and first published in *Haryana Government Gazette (Extraordinary)*, Legislative Department, Part I, of December 16, 1974]

1	2	3	4
Year	No.	Short title	Whether repealed or otherwise affected by legislation
1974	41	The Haryana State Legislature (Prevention of Disqualification) Act, 1974	Amended by A. 24/80 Amended by A. 4/81

AN

**ACT**

*to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being selected as or for being, members of the Legislature of the State of Haryana.*

Be it enacted by the Legislature of the State of Haryana in the Twenty-fifth Year of the Republic of India as follows :—

*Short title*

1. This Act may be called the Haryana State Legislature (Prevention, of Disqualification) Act, 1974.

*Definitions*

2. In this Act, unless the context otherwise requires :—

- (a) "compensatory allowance" means any sum of money payable to the holder of an office by way of daily allowance, any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;
- (b) "non-statutory body" means any body of persons other than a statutory body;
- (c) "statutory body" means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force.

*Certain offices of profit and disqualify*

3. (1) It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of State of Haryana, shall disqualify the holder thereof for being elected as, or for being, a member of the Legislature of the State of Haryana, namely :—

- (a) Lambardar;
- (b) Sub-Registrar, whether departmental or honorary, notary, Oath Commissioner, Official Receiver, not being a wholetime salaried Government employee, or any other person who is serving under an insurer, the management of whose controlled business has vested in the Central Government under the Life Insurance (Emergency Provisions) Act, 1956 (Parliament Act 9 of 1956);
- (c) member of any force raised, maintained or constituted, as the case may be, under the National Cadet Corps Act, 1948 (Central Act 50 of 1948), the Territorial Army Act, 1948 (Central Act 31 of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (Parliament Act 62 of 1952), the Haryana Home Guards Act, 1974 (Haryana Act 31 of 1974);
- (d) officer, in the Army Reserve of Officers;
- (e) chairman, vice-chairman, president, vice-president, director or member, whether elected, nominated or appointed either by the Union Government or the State Government or any of its officers, of any statutory or non-statutory body, whether he is or is not, in receipt of any remuneration including compensatory allowances, during the performance of his duties;"
- (f) Parliamentary Secretary or Parliamentary Under-Secretary;
- (g) honorary adviser to the State Government in any department thereof;
- (h) chairman of an Improvement Trust constituted under the Punjab Town Improvement Act, 1922 (Punjab Act 4 of 1922), and the Chairman of the Haryana State Agricultural Marketing Board constituted under section 3 of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961);
- (i) chairman or the vice-chairman or the deputy chairman or any Corporation Limited and the chairman of the Haryana Agro-Industries Corporation Limited; and
- (j) chairman or the vice-chairman or the deputy chairman or any member of the Haryana State Planning Board or the Haryana Khadi and Village Industries Board or the Haryana Harijan Kalyan Nigam or the Haryana State Social Welfare Advisory Board;
- (k) an advocate appointed by the State Government to conduct any particular suit, case or other proceeding by or against the State Government before any court, tribunal or other authority.

or to assist the Commission of Inquiry, or to assist or represent any of the parties before the Commission of Inquiry, appointed under the Commissions of Inquiry Act, 1952, or any other law for the time being in force.”

(2) It is hereby further declared that none of the following offices in so far as it is an office of profit under the Government of India, the Government of the State of Haryana or the Government of any other State, shall disqualify the holder thereof for being elected as, or for being a member of the Legislature of the State of Haryana, namely :—

- (a) Minister;
- (b) State Minister;
- (c) Deputy Minister.

*Repeal*

4. The Punjab State Legislature (Prevention of Disqualification) Act, 1952, in its application to the State of Haryana, is hereby repealed.

**THE HIMACHAL PRADESH LEGISLATIVE ASSEMBLY  
MEMBERS (REMOVAL OF DISQUALIFICATIONS) BILL, 1971**

**ARRANGEMENT OF CLAUSES**

*Clauses*

1. Short title and commencement.
2. Definitions.
3. Prevention of disqualifications for membership of the Legislative Assembly of Himachal Pradesh.
4. Determination of question arising after the commencement of the Act.
5. Repeal and saving.

**THE HIMACHAL PRADESH LEGISLATIVE ASSEMBLY  
MEMBERS (REMOVAL OF DISQUALIFICATIONS) BILL, 1971**

(AS PASSED BY THE LEGISLATIVE ASSEMBLY)

A

**BILL**

*to declare certain offices of profit under the Government of India, or the Government of any State specified in the First Schedule to the Constitution not to disqualify their holders for being chosen as, or for being, members of the Himachal Pradesh Legislative Assembly.*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-second Year of the Republic of India as follows :

*Short title and commencement*

1. (1) This Act may be called the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971.

*Definitions*

(2) It shall come into force at once.

2. In this Act, unless the context otherwise requires :

- (a) "compensatory allowance" means such sum of money as the Government may determine as being payable to the holder of an office by way of travelling allowance, daily allowance, sitting allowance, conveyance allowance or house rent allowance for the purpose of performing the functions of that office;
- (b) "statutory body" means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force;
- (c) "non-statutory body" means any body of persons other than a statutory body.

*Prevention of disqualifications for membership of the Legislative Assembly of Himachal Pradesh*

3. A person shall not be disqualified for being chosen as, and for being, a member of the Himachal Pradesh Legislative Assembly by reason only of the fact that he holds any of the following offices of profit under the Government of India or the Government of any State :—

- (a) the office of a Deputy Minister or Minister of State;
- (b) any office held by a Minister, Minister of State, or Deputy Minister whether *ex-officio* or by name;
- (c) the office of the Speaker or the Deputy Speaker of the Himachal Pradesh Legislative Assembly or of Parliament or of the Legislative Assembly of any other State ;

- (d) the office of the Chief Parliamentary Secretary or Parliamentary Secretary;
- (e) the office of the Chief Whip, Deputy Chief Whip or Whip in any Legislative Assembly or in Parliament;
- (f) the office of village revenue officer whether called a lamberdar, malguzar, patel, deshmukh or by any other name, whose duty is to collect land revenue and who is remunerated by a share of or commission on, the amount of land revenue collected by him, but who does not discharge any police functions;
- (g) any office in the National Cadet Corps, the Territorial Army, the Air Defence Reserve and the Auxiliary Air Force under any law for the time being in force;
- (h) the office of a member of a Home Guard constituted under any law for the time being in force in any State;
- (i) the office of chairman or member of the Syndicate, Senate, Executive Committee, Council of court of a University or any other body connected with a University;
- (j) the office of the Vice-Chancellor any University;
- (k) the office of a member of any delegation or mission sent outside India by the Government of India or the Government of any State or sent outside the State of Himachal Pradesh by the Government of the said State for any special purpose;
- (l) the office of chairman or member of a committee (whether consisting of one or more members) set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;
- (m) the office of chairman or vice-chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (l) if the holder of such office is not entitled to any remuneration other than compensatory allowance;
- (n) the office of any honorary medical officer or honorary assistant medical officer in a hospital under Government management;
- (o) a person drawing his service pension, political pension or grant, mansab, charitable grant or commutation sum of compensation in respect of a jagir, inam or other grant;
- (p) the office of an agent or other like office for the purpose of effecting sales of or collecting subscriptions towards, National Plan Certificates or any other savings certificates or Government securities notified as such by the Central Government for such commission as the Central Government may have fixed in that behalf or without such commission;



- (q) the office of an examiner for any examination held by the Central or State Government or by the Union Public Service Commission or any State Public Service Commission;
- (r) the office of Sarpanch or member of a Panchayat under any law for the time being in force; and
- (s) notwithstanding any thing contained in clauses (1) and (m) of this section, the office of member of the Commission for Scheduled Castes and Scheduled Tribes appointed by the Govt. of India.

*Determination of question arising after the commencement of the Act.*

4. Any question arising after the commencement of this Act as to any office being an office of profit under the Government of India or the Government of any State shall be determined as if the provisions of this Act had been in force at all material dates.

*Repeal and saving*

5. The Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Ordinance, 1971 (Himachal Pradesh Ordinance No. 4 of 1971) is hereby repealed.

Notwithstanding such repeal, anything done or any action taken under the aforesaid Ordinance, shall be deemed to have been done or taken under this Act as if this Act had commenced on the 25th January, 1971.

THE JAMMU AND KASHMIR STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1962

ACT No. XVI OF 1962

(Received the assent of the Sadar-i-Riyasat on 16th July, 1962 and published in Government Gazette dated 18th July, 1962)

A Act to declare that certain office of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being members of the Jammu and Kashmir State Legislature.

BE it enacted by the Jammu and Kashmir State Legislature in the Thirteenth year of the Republic of India as follows :—

1. *Short title.*—This Act may be called the Jammu and Kashmir State Legislature (Prevention of Disqualification) Act, 1962.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

- (a) 'compensatory allowance' means any sum of money payable to the holder of an office by way of daily allowances (such allowance not exceeding the amount of daily allowance to which members of the Jammu and Kashmir State Legislature is entitled under the Salaries and Allowances of Members of Jammu and Kashmir State Legislature Act, 1960), any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;

- (b) 'statutory body' means any Corporation, Committee, Commission, Council, Board or other body of person whether incorporated or not, established by or under any law for the time being in force;
- (c) 'non-statutory body' means any body of persons other than a statutory body.

3. *Certain offices of profit not to disqualify.*—It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of Jammu and Kashmir or the Government of India, shall disqualify the holder thereof for being chosen as, or for being, a member of the Jammu and Kashmir State Legislature, namely :—

- (a) any office held by a Minister of State or Deputy Minister whether ex-officio or by name;
- (b) the office of the Chief whip, Deputy Chief Whip or Whip in either House of the Jammu and Kashmir State Legislature;
- (c) the office of a Chief Parliamentary Secretary or a Parliamentary Secretary or a Parliamentary Under Secretary;
- (d) the office of Chairman or member of the Syndicate, senate executive Committee council or Court of the University of Jammu and Kashmir or any other body connected with the said University;
- (dd) the office of Chairman or member of a Committee, Commission or Board set up by the Government whether under a statute or by executive order, for or in connection with the
- (i) Prevention of corruption,
  - (ii) development of the State in planned manner,
  - (iii) Land reforms;
- (e) the office of a member of any Delegation or Mission sent outside India by the Government for any special purpose;
- (f) the office of Chairman or member of a Committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;
- (g) The office of the Chairman, Director or member of any statutory or non statutory body other than any such body as is referred to in clause (dd) or clause (f) if the holder of such office is not entitled to any remuneration other than compensatory allowance.

*Explanation* :—For the purposes of this section, the Office of Chairman or Secretary shall include every office of that description by whatever name called.

4. *Repeal* :—The Jammu and Kashmir Legislature (Prevention of Disqualification) Act, 1957 is hereby repealed.

**GOVERNMENT OF MYSORE**  
**LEGISLATIVE DEPARTMENT**

**MYSORE ACT NO. 4 OF 1957**

*(First published in the Mysore Gazette on the Twenty-fourth day of January, 1957).*

**THE MYSORE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1956**

*(Received the assent of the Governor on the Fifteenth day of January, 1957).*

**AN ACT** to declare certain Offices of Profit not to disqualify their holders for being chosen as, or for being members of the Mysore Legislative Assembly and the Mysore Legislative Council.

Whereas it is expedient to declare that certain offices should not, under certain conditions, disqualify or be deemed to have disqualified, the holders thereof for being chosen as, or for being, members of the Mysore Legislative Assembly and the Mysore Legislative Council;

**BE** it enacted by the Mysore State Legislature in the Seventh Year of the Republic of India as follows :—

1. *Short title.*—This Act may be called the Mysore Legislature (Prevention of Disqualification) Act, 1956.

2. *Definitions.*—In this Act, unless the context otherwise requires :—

(a) “Committee” means any Committee, Commission, Council Board or any other body of one or more persons whether statutory or not, set up by the Government of India or the Government of any State;

(b) “Compensatory allowance” means such sum of money as the Central Government or the Government of any State, as the case may be, may determine as being payable to the Chairman or any other member of a Committee by way of travelling allowance, daily allowance, sitting fee, conveyance allowance or house rent allowance for the purpose of enabling the Chairman or other member to recoup any expenditure incurred by him in attending any meeting of a Committee or performing any other function as a member of a Committee.

(c) “Statutory body” means any corporation, board, company, society or any other body of one or more persons, whether incorporated or not, established, registered or formed by or under any Central Law or the law of any State for the time being in force or exercising powers and functions under any such law.

3. *Removal of certain disqualifications.*—It is hereby declared that the following offices shall not disqualify and shall be deemed never to have

disqualified, the holders thereof for being chosen as, or for being members of the Mysore Legislative Assembly or the Mysore Legislative Council :—

- (a) the office of a Deputy Minister, a Parliamentary Secretary, a Chief Whip or a Deputy Chief Whip;
- (b) the offices held in the National Cadet Corps raised and maintained under the National Cadet Corps Act, 1948 (Central Act XXXI of 1948), in the Territorial Army raised and maintained under the Territorial Army Act, 1948 (Central Act LVI of 1948), and in the Auxiliary Air Force and the Air Defence Reserve under the Reserve and Auxiliary Air Forces Act, 1952 (Central Act LXII of 1952);
- (c) the office of the Secretaries of the District Development Boards constituted by the State Government (by whatever name called) :

Provided that the holders of such office do not hold any other office of profit under the State Government.

- (d) the office of the Chairman or Member of a Committee.

Provided that the holder of any such office is not in receipt of or entitled to, any remuneration other than the compensatory allowance.

THE KERALA LEGISLATIVE ASSEMBLY  
(REMOVAL OF DISQUALIFICATIONS) ACT, 1951  
(ACT 15 OF 1951)

*Preamble* : Whereas, pursuant to sub-clause (a) of clause (1) of Article 191 of the Constitution of India read with Article 238 thereof, it is expedient to declare certain offices as offices which will not disqualify the holders thereof for being chosen as, and for being, members of the (Legislative Assembly of the State of Kerala).

It is hereby enacted as follows :—

1. *Short title and commencement*

(1) This Act may be called the Legislative Assembly (Removal of Disqualifications) Act 1951.

(2) It shall come into force at once.

2. *Removal of certain disqualifications for membership*

(1) A person shall not be disqualified for being chosen as, and for being a member of the Legislative Assembly of the State of Kerala by reason only :—

- (i) that he is in receipt of the salaries or allowances to which he is entitled under the law for the time being in force relating to the payment of salaries and allowances to members of the Legislative Assembly of the State of Kerala or of travelling; and daily allowances while serving as a member of any Committee or Board constituted by the Government of India or the Government of any State specified in the First Schedule to the Constitution of India, or
- (ii) that he holds under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India an office which is not remunerated either by salary or by fees payable out of the Consolidated Fund of India or of any such State, or
- (iii) that he is a member of the Committee constituted to translate the Constitution of India into Malayalam, or
- (iv) that he holds an office in any educational institution other than a Government institution; or
- (v) that he holds an office in the National Cadet Corps raised and maintained under the National Cadet Corps Act, 1948 (Central Act, XXXI of 1948), or in the Territorial Army raised and maintained under the Territorial Army Act, 1948 (Central Act LVI of 1948); or
- (vi) that he is a member of the Air Defence Reserve or the Auxiliary Air Force raised under the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952) or

- (vii) that he holds the office or Chairman or member of the Kerala State Law Commission; or
- (viii) that he is the Chairman or the Vice-Chairman or a member of the State Planning Board constituted by the Government or a member of the Backward Classes Reservation Commission constituted by the Government.

2. No person shall be disqualified or deemed ever to have been disqualified for being chosen as, and for being, a member of the Legislative Assembly of the State of Kerala by reason only :—

- (i) that he holds or has held the office of the Chairman of a Government Company.

*Explanation* :—For the purposes of this clause “Government Company” means a company in which not less than fifty-one per cent of the paid up share capital is held by the Government of Kerala or jointly by the Central Government and the Government of Kerala and includes a company which is a subsidiary of any such company; or

- (ii) that he holds or has held the office of the Chairman of a Corporation established or constituted by or under any Central or State Act and owned or controlled by the Government of Kerala.

*Removal of certain other disqualifications for membership*

A person shall not be deemed to be or to have been disqualified for being a member of the Legislative Assembly of the State of Kerala by reason only that such person had prior to the commencement of this Act held under the State Government an office which was not a whole time office or that he had held an office in any educational institution other than a Government institution.

# MADHYA PRADESH ACT

No. 16 OF 1967

## THE MADHYA PRADESH VIDHAN MANDAL SADSAYA NIRHATA NIVARAN ADHINIYAM 1967.

[Received the assent of the Governor on the 14th July 1967, assent first published in the "Madhya Pradesh Gazette" Extraordinary on the 17th July, 1967.]

An Act to declare certain offices of the profit not to disqualify their holders for being chosen as or for being members of the State Legislature.

BE it enacted by the Madhya Pradesh Legislature in the Eighteenth Year of the Republic of India as follows :—

### *Short title*

1. This Act may be called the Madhya Pradesh Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam, 1967.

### *Definitions*

2. In this Act, unless the context otherwise requires,—

- (a) "Committee" means any committee, council, board or any other body of persons whether a statutory body or not set up by the Central Government or any State Government;
- (b) "Statutory body" means any corporation, board, company, society or any other body of persons, whether incorporated or not, established, registered or formed by or under any law for the time being in force or exercising powers and functions under any such law.

### *Prevention of disqualification*

3. (1) A person shall not be disqualified for being chosen as, or for being, a member of the Madhya Pradesh Legislative Assembly or the Madhya Pradesh Legislative Council by reason only of the fact that he holds any of the offices of profit under Government specified in the Schedule.

### *Amendment of section 3*

2. In sub-section (2) of section 3 of the Madhya Pradesh Vidhan Mandal Sadasya Nirarhata Nivaran Adhiniyam, 1967 (No. 16 of 1967) (hereinafter referred to as the Principal Act), for the words (No person), the words, brackets and figure "subject to provisions of sub-section (1), no person" shall be substituted. (M. P. Act No. 8/73)

No person holding the office of the chairman or member of any Committee, shall be disqualified at any time for being chosen, as or for being a member of the Madhya Pradesh Legislative Council by reason only of the fact that he holds such office :

Provided that the holder of any such office is not in receipt of any fee, allowances or remuneration other than travelling or daily allowances not exceeding—

- (i) the travelling allowance and daily allowance admissible to a first-grade officer, serving under the State Government, if such holder is not a member of the said Legislative Assembly or the Legislative Council, and
- (ii) the travelling allowance and daily allowance admissible to a member of the House of People or a member of the State Legislative Assembly or the State Legislative Council according to the office held is under the control of the Central Government or the State Government if such holder is a member of the said Legislative Assembly or Legislative Council.

\* \* \*

*“Explanation.*—For the purposes of this sub-section expression ‘Chairman’ shall include ‘President’.

### THE SCHEDULE

#### List of Offices of profit under Government

[Vide section 3(1)]

1. Speaker and Deputy Speaker of the State Legislative Assembly.
2. Chairman and Deputy Chairman of the State Legislative Council.
3. Minister of State.
4. Deputy Minister.
5. Parliamentary Secretary.
6. Advocate General.
7. Government Pleader.
8. Public Prosecutor as defined in the Code of Criminal Procedure, 1898 (V of 1898).
9. Any person appointed as, or performing the functions of a Patel under the Madhya Pradesh Land Revenue Code, 1959 (20 of 1959) or a Manjhi or a Chalki in Bastar District.
10. Official Receiver appointed under the Provincial Insolvency Act, 1920 (V of 1920).
11. Sarpanch of an irrigation panchayat as defined in the rules made under section 62 of the Madhya Pradesh Irrigation Act, 1931 (III of 1931).
12. Any office in the National Cadet Corps or the Territorial Army.
13. Any office in the Auxiliary Air Force or the Air Defence Reserve raised under the Reserve and Auxiliary Air Forces Act, 1952 (LXII of 1952).
14. Member of the naval, military, air forces or any other armed forces of the Union during the period of the proclamation of Emergency.

#### *Amendment of Schedule*

3. In the Schedule to the Principal Act, the following items shall be added at the end, namely :

†\*\*\*“16. Leader of opposition in the Madhya Pradesh Legislative Assembly.

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\*Inst. by M. P. Act No. 9 of 1971

\*\*Added by M. P. Act No. 8 of 1973.

†Subs. by M. P. Act No. 8 of 1980.



*Explanation.*—For the purpose of item 16, the leader of opposition shall have the meaning assigned to that expression in the Madhya Pradesh Vidhan Sabha Sadasya Vetan Tatha Bhatta Adhiniyam, 1972.

17. Chairman and Vice-Chairman or President and Vice-President of a statutory body”.

*Amendment of Schedule*

2. In the Schedule to the Madhya Pradesh Vidhan Mandal Sadasya Nirarhata Nivaran Adhiniyam, 1967 (No. 16 of 1967), after item 17, the following item shall be added, namely :—

“16. Secretary of the Madhya Pradesh Khadi and Village Industries Board”.

MADHYA PRADESH ACT

No 42 of 1982

THE MADHYA PRADESH VIDHAN MANDAL SADASYA  
NIRARHATA NIVARAN (SANSHODHAN) ADHINIYAM 1982

(Received the assent of the Governor on the 8th November, 1982; assent first published in the Madhya Pradesh Gazette (Extraordinary)”, dated the 12th November, 1982).

An Act further to amend the Madhya Pradesh Vidhan Mandal Nirarhata Nivaran Adhiniyam, 1967.

Be it enacted by the Madhya Pradesh Legislature in the thirty-third year of the Republic of India as follows :

*Short title*

1. This Act may be called the Madhya Pradesh Vidhan Mandal Nirarhata Nivaran Adhiniyam, 1967 (No. 16 of 1967), for item 17, the

*Amendment of Schedule*

2. In the Schedule to the Madhya Pradesh Vidhan Mandal Sadasya Nirarhata Nivaran Adhiniyam, 1967 (No. 16 of 1967), for item 17, the following item shall be substituted, and shall be deemed to have been substituted with effect from the 17th March, 1972, namely :—

“17. Chairman and Vice Chairman or President and Vice President or Managing Director or Director of a statutory body or a member of any Committee by whatever name any of the aforesaid office be called.

*Explanation* :—For the purposes of item 17, the office mentioned therein shall include any other office held jointly with that office or any office held jointly with the office mentioned in item 17 in the statutory body.”

<sup>1</sup> Added by M. P. Act No. 1 of 1974

**THE BOMBAY LEGISLATURE MEMBERS (REMOVAL OF  
DISQUALIFICATION) ACT, 1956**

[Modified upto 31-3-1982]

**CONTENTS**

PREAMBLE

SECTIONS

1. Short title and commencement.
2. Removal of certain disqualifications.
3. Temporary provisions.
3. Repeal.

SCHEDULE I

SCHEDULE II

**BOMBAY ACT No. LII OF 1956**

[THE MAHARASHTRA LEGISLATURE MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT]

[This Act received the assent of the Governor on the 12th December 1956; Assent was first published in the *Bombay Government Gazette*, Part IV, on the 17th December 1956.]

Amended by Bom. 52 of 1958.

Adapted and modified by the Maharashtra Adaptation of Laws (State and Concurrent Subjects), Order 1960.

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Amended by Mah	3 of 1962.
" "	" 15 of 1962.
" "	" 23 of 1963.
" "	" 2 of 1964.
" "	" 10 of 1964 read with Bom. 69 of 1948.
" "	" 28 of 1965.
" "	" 4 of 1975 (26-1-1975)
" "	" 28 of 1977 (5-12-1977)
" "	" 7 of 1978 (26-12-1977)
" "	" 15 of 1980.
" "	" 23 of 1980 (24-11-1980)
" "	" 38 of 1981 (20-7-1981).

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AN ACT to provide for the removal of certain disqualifications for being chosen as, and for being, a member of [the Maharashtra Legislative Assembly and the Maharashtra Legislative Council].

WHEREAS by the Constitution of India provision has been made for declaring by Act of the State Legislature any office of profit under the Government of India or the Government of any State specified in the First

Schedule to the said Constitution not to disqualify its holder for being chosen as, and for being, a member of a State Legislature;

AND WHEREAS it is expedient to make such declaration; it is hereby enacted in the Seventh Year of the Republic of India as follows :—

*Short title and commencement*

1. [(1) This Act may be called the Maharashtra Legislature Members (Removal of Disqualifications) Act.]

(2) It shall be deemed to have come into force on the 1st day of November 1956.

*Removal of certain disqualifications*

2. A person shall not be disqualified for being chosen as, or for being a Member of the [Maharashtra Legislative Assembly] or the [Maharashtra Legislative Council] merely by reason of the fact that he holds any of the offices specified in Schedule 1 appended hereto.

*Temporary provisions.*

3. For the removal of doubt, it is hereby declared that a person deemed to have been elected or chosen as a member of the Bombay Legislature under section 28 or section 34 of the States Reorganisation Act, 1956 XXX-VII of 1956 shall not be deemed to be disqualified for being elected or chosen as, or for being, a member of the said Legislature merely by reason of the fact that he holds an office declared by any of the Acts specified in Schedule II or any other law in force immediately before the 1st day of November 1956, to be an office or profit which shall not disqualify the holder for being elected or chosen as, or for being, a member of a State Legislature.

*Maharashtra Legislature Members (Removal of Disqualifications) Act [1956 : Bom. LII]*

**Repeal**

4. The Bombay Legislature Members (Removal of Disqualifications) Act, 1951 is hereby repealed.

**SCHEDULE I\***

(See section 2)

1. The office of the Parliamentary Secretaries to the Ministers of the [Government of Maharashtra].

2. The office of part-time professors or lecturers in a Government college.

3. Any office in the National Cadet Corps, the Territorial Army, the Air Defence Reserve and the Auxiliary Air Force.

4. Any office in the Home Guards.

\*See also section 6(4) of Mah. 37 of 1961.

<sup>1</sup>These words were substituted for the words "Government of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

5. Any office in a village defence party (by whatever name called) constituted by or under the authority of the State Government.

\* \* \* \* \*

7. The office of the Secretaries of the District or Regional Development Boards constituted by the State Government (by whatever name called);

Provided that the holders of such office do not hold any other office of profit under the State Government.

8. Any office under an insurer the management of whose controlled business has vested in the Central Government under the Life Insurance (Emergency Provisions) Act, 1956. (IX of 1956)

*Explanation.*—For the purpose of the entry the expressions “controlled business” and “insurer” shall have the meanings assigned to them in the Life Insurance (Emergency Provisions) Act, 1956. (IX of 1956)

9. The office of an Honorary Medical officer or Honorary Assistant Medical Officer in a hospital under Government management.

<sup>3</sup>[9A. The office of Chairman or member of the committee of any co-operative society (which is registered or deemed to be registered under any law for the time being in force relating to the registration of co-operative societies) to which appointment is made by the State Government, or the office of liquidator or joint liquidator to which appointment is made by the Registrar of Co-operative Societies, or the office of nominee of the Registrar whether appointed individually or to a board of nominees.]

10. The office of the Chairman or member of the <sup>4</sup>[Labour Welfare Board constituted under the Bombay Labour Welfare Fund Act, 1953. (Bom. XI of 1953)]

<sup>5</sup>[10A. The office of a member of the Maharashtra Industrial Development Corporation nominated under clause (b), (c) or (d) of sub-section(1) of section 4 of the Maharashtra Industrial Development Act, 1961 Mah. III of 1960 by reason only of his holding such office.]

<sup>6</sup>[10B. The office of a member (including the Chairman, Vice-Chairman, member-secretary) of the Maharashtra State Khadi and Village Industries Board, or of the Maharashtra State Khadi and Village Industries Council constituted under the Bombay Khadi and Village Industries Act, 1960 (Bom. XIX of 1960) or the office of a member of any committee constituted under that Act.]

<sup>2</sup>Entry 6 was deleted by Mah. 2 of 1964, s. 3.

<sup>3</sup>Entry 9A was deemed always to have been inserted by Mah. 23 of 1963, s. 3.

<sup>4</sup>These words were substituted for the words “Bombay Labour Welfare Board” by the Maharashtra Adaptation of Law (State and Concurrent Subjects) Order, 1960.

<sup>5</sup>Entry 10A was inserted by Mah. 3 of 1962, s. 69.

<sup>6</sup>Entry 10B was inserted by Mah. 28 of 1965, s. 39.

11. The office of the Chairman or member of any Committee or body appointed by the Central or State Government :

Provided that the Chairman or any member of such committee or body does not receive any remuneration other than the compensatory allowance.

*Explanation.*—For the purpose of this entry, “compensatory allowance” shall mean the travelling allowance, the daily allowance or such other allowances which is paid to the holder of the office for the purpose of meeting the personal expenditure in attending the meeting of the committee or body or in performing any other functions as the holder of the said-office.

<sup>2</sup>[12. The office of an examiner for any examination held by the Central or State Government or by the Union Public Service Commission or the <sup>3</sup>[Maharashtra Public Service Commission].

13. The following offices held under the Employees’ State Insurance Act, 1948 (XXXIV of 1948) to provide medical benefit to insured persons under the said Act, that to say,—

(a) the office of an Insurance Medical Practitioner,

(b) the office of a part-time medical officer or specialist in a hospital, dispensary, nursing home, maternity home or other institution established by the Employees’ State Insurance Corporation or the State Government, and

(c) the office of a medical practitioner appointed to provide medical benefit to insured persons in any private hospital, dispensary, nursing home or maternity home or other institution recognised for the purpose by the Employees’ State Insurance Corporation or the State Government.]

<sup>4</sup>[14. The office of the Chairman or member of the Maharashtra State Police Commission appointed by the State Government.]

<sup>5</sup>[15. The office of a member of the Maharashtra Housing and Area Development Authority (including the President and the Vice-President thereof) constituted under the Maharashtra Housing and Area Development Act, 1976, Mah. XXVIII of 1977 or a member of any of the Housing & Area Development Boards (including the Chairman and the Vice-Chairman thereof) established under that Act, or a member of any *Panchayat* (including the *Sarpanch* and *Upa-sarpanch* thereof) established under that Act, by reason only of his holding such office.]

<sup>2</sup>Entries 12 and 13 were added by Bom. 52 of 1958, s. 2.

<sup>3</sup>These words were substituted for the words “Bombay Public Service Commission” by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

<sup>4</sup>Entry 14 was added by Mah. 15 of 1962, s. 2.

<sup>5</sup>Entry 15 was substituted by Mah. 28 of 1977, s. 192.

<sup>1</sup>[16. The office of the member (including the Chairman or Vice-Chairman) of the Authority constituted under the Bombay Metropolitan Region Development Authority Act, 1974 (Mah. IV of 1975) or of any of its Committees or Boards constituted under that Act.]

<sup>2</sup>[17. The office of the Chairman or a member of the Maharashtra State Law Commission constituted by the State Government.]

<sup>3</sup>[18. The office of a member (including the Chairman and the Vice-Chairman) of the Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950 LXIV of 1950 or of any of its committees constituted under that Act.]

<sup>4</sup>[19. The Office of the Chairman, Vice-Chairman or any other member of the Board of Directors (by whatever name called) of any other Corporation, owned or controlled by the State Government, which is not mentioned in any of the above entries in this Schedule and to which appointment is made by the State Government.

*Explanation.*—For this purpose of this entry,—

(1) the expression “a corporation” means any body corporate and shall include a society registered under the Societies Registration Act, 1860, in its application to the State of Maharashtra, or any body constituted under any law for the time being in force;

(2) the expression “a corporation controlled by the State Government” shall include a corporation in which not less than twenty-five per cent of the paid up share capital is held by the State Government.”]

## SCHEDULE II

(See section 3)

(1) The Hyderabad Legislative Assembly (Prevention of Disqualification) Act, 1955 (Hyderabad Act XVIII of 1955).

(2) The Madhya Pradesh Offices of Profit (Removed of Disqualifications) Act, 1950 (Madhya Pradesh Act VII of 1950).

(3) The Saurashtra Legislative Assembly (Prevention of Disqualification) Act, 1950 (Saurashtra Act VI of 1950).

(4) Section 28(5) of the States Reorganisation Act, 1956 (XXXVII of 1956).

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<sup>1</sup>Entry 16 was inserted by Mah. 4 of 1975, s. 10(2).

<sup>2</sup>Entry 17 was inserted by Mah. 7 of 1978, s. 2.

<sup>3</sup>Entry 18 was added by Mah. 23 of 1980, s. 2.

<sup>4</sup>Entry 19 was added by Mah. 38 of 1981, s. 2.

THE PREVENTION OF DISQUALIFICATION (MEMBERS OF  
LEGISLATIVE ASSEMBLY OF MEGHALAYA), BILL, 1972

A

Bill

to declare certain offices of profit not to disqualify their holders  
for being chosen as, and for being, members of the Legislative

Assembly of Meghalaya

Be it enacted by the Legislature of Meghalaya in the Twenty-third Year  
of the Republic of India as follows :—

*Short title and commencement*

1. (1) This Act may be called the Prevention of Disqualifica-  
tion (Members of the Legislative Assembly of Meghalaya) Act,  
1972.

(2) It shall be deemed to have come into force on the 21st day  
of January, 1972.

*Removal of disqualification in certain cases*

2. A person shall not be disqualified or shall not be deemed  
ever to have been disqualified for being chosen as, or for being, a  
member of the Legislative Assembly of Meghalaya by reason of the  
fact that he holds any of the offices specified in the Schedule in so  
far as it is an office of profit under the State Government.

*Repeal of Meghalaya State Ordinances 1 and 5 of 1972.*

3. The Prevention of Disqualification (Members of the Legis-  
lative Assembly of State of Meghalaya) Ordinance 1 of 1972 and  
the Prevention of Disqualification (Members of the Legislative  
Assembly of the State of Meghalaya) (Amendment) Ordinance 5  
of 1972 are hereby repealed.

THE SCHEDULE

(See Section 2)

1. Any office held by a Minister, Minister of State, Deputy Minister of  
Parliamentary Secretary for Meghalaya.

2. The office of the Minister of State or the Deputy Minister to the  
Government of Meghalaya.

3. The office of the Parliamentary Secretary to the Government of Meghalaya.

4. The office of Government Pleader or Public Prosecutor.

5. The office of the part-time Professor, Lecturer, Instructor, Teacher in Government Educational Institutions.

6. Medical practitioner rendering part-time service to Government.

7. The office of the Chairman, Vice-Chairman, or member of any Committee, Board of authority appointed by the Government of India or Government of any State specified in the First Schedule to the Constitution of India.

*Explanation 1*—"Committee" means any Committee, Commission, Council or any other body of one or more persons, whether statutory or not, set up by the Government of India or the Government of any State.

*Explanation 2*—"Board or Authority" means any corporation, company, society or any other body of one or more persons whether incorporated or not, established, registered or formed by or under any Central law or any State for the time being in force or exercising powers and functions under any such law.

8. Any office under the Government which is not a whole time office remunerated either by salary or fees.

9. The office of Chairman, Chief Executive Member, or other Executive Member or ordinary member of a District Council in an autonomous District or any member nominated to such a District Council by the Governor.

10. Any office held in the Territorial Army or National Cadet Corps.

11. The office of the Speaker or Deputy Speaker of the Legislative Assembly of Meghalaya.

12. The office of the Chairman or Vice-Chairman of the Municipal Board.

12. Any office in a Village Defence Party (by whatever name called) constituted by or under the authority of the State Government.

14. The office of Chairman or Member of the Committee of any Co-operative Society (which is registered or deemed to be registered under any law for the time being in force relating to the registration of Co-operative Societies) to which appointment is made by the State Government, or the office of Liquidator or Joint Liquidator to which appointment is made by the Registrar of Co-operative Societies or the office of nominee of the Registrar whether appointed individually or to a board of nominees.



## ORISSA ACT 26 OF 1961

THE ORISSA OFFICES OF PROFIT (REMOVAL OF  
DISQUALIFICATIONS) ACT, 1961

*[Received the assent of the Governor on the 21st December 1961, first published in an extraordinary issue of the Orissa Gazette, dated the 29th December 1961]*

AN ACT TO DECLARE CERTAIN OFFICES OF PROFIT UNDER THE GOVERNMENT OF INDIA OR GOVERNMENT OF ANY STATE NOT TO DISQUALIFY THEIR HOLDERS FOR BEING CHOSEN AS OR FOR BEING MEMBERS OF THE ORISSA LEGISLATIVE ASSEMBLY

Be it enacted by the Legislature of the State of Orissa in the Twelfth Year of the Republic of India as follows :—

*Short title and extent*

1. (1) This Act may be called the Orissa Offices of Profit (Removal of Disqualifications) Act, 1961.

*Definitions*

(2) It extends to the whole of the State of Orissa.

2. In this Act, unless the context otherwise requires,—

- (a) “compensatory allowance” means any sum of money payable to the holder of an office by way of daily allowance (such allowance not exceeding (i) in the case of Committees set up by or bodies under the Central Government, the amount of daily allowance to which a member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954 (30 of 1954) and (ii) in the case of Committees set up by or bodies under the State Government, the amount of daily allowance to which a member of the Orissa Legislative Assembly is entitled under the Orissa Legislative Assembly Members’ Salaries and Allowances Act, 1954) (Orissa Act 19 of 1954), any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;
- (b) “non-statutory body” means any body of persons other than a statutory body;
- (c) “Statutory body” means any corporation, Committee whether incorporated or not, established by or under any law for the time being in force.

*Certain offices of Profit not to disqualify—*

3. It is hereby declared that none of the following offices in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being a member of the Orissa Legislative Assembly, namely :—

- (a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether ex-officio or by name;
- (b) the office of the Speaker or the Deputy Speaker of the Orissa Legislative Assembly or of Parliament and Legislative Assembly of any other State;
- (c) the office of the Chief Whip, Deputy Chief Whip or Whip in any Legislative Assembly or in Parliament or the office of a Parliamentary Secretary;
- (d) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948 (31 of 1948), the Territorial Army Act, 1947 (56 of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952);
- (e) the office of a member of a Home Guard constituted under any law for the time being in force in any State;
- (f) the office of Chairman or member of the Syndicate, Senate, Executive Committee, council or court of a University or any other body connected with a University;
- (g) the office of a member of any delegation or mission sent outside India by the Government of India or of any State or sent outside the State of Orissa by the Government of the said State for any special purpose;
- (h) the office of Chairman or member of a Committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office, is not entitled to any remuneration other than compensatory allowance;
- (i) the Office of Chairman, Director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance but excluding (i) the office of Chairman or any statutory or non-statutory body specified in Part I of the Schedule, and (ii) the office of Chairman or Secretary of any statutory or non-statutory body specified in Part II of the Schedule;
- (j) the office of the village revenue officer, whether called a lambardar, Gauntia, Rarjoo, Raranam, Sarvarkar or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land revenue collected by him, but does not discharge any police functions

*Temporary suspension of disqualification in certain cases.*

4. If a person being a member of the Orissa Legislative Assembly who immediately before the commencement of this Act held an office of profit declared by any law repealed by this Act not to disqualify the holder thereof for being such member, becomes so disqualified by reason of any of the provisions contained in this Act, such office shall not, if held by such person for any period not extending beyond a period of six months from the commencement of this Act, disqualify him for being a member of the Orissa Legislative Assembly.

*Repeal*

6. The Orissa Offices of Profit (Removal of Disqualifications) Act, 1951 and any provision in any other enactment which is inconsistent with this Act are hereby repealed.

**SCHEDULE**

[See section 3(i)]

**BODIES UNDER THE CENTRAL GOVERNMENT**

Air-India International Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

Air Transport Council constituted under section 30 of the Air Corporations Act, 1953 (27 of 1953).

Board of Directors of the Expert Risks Insurance Corporation (Private) Limited.

Board of Directors of the Heavy Electricals (Private) Limited.

Board of Directors of the Hindustan Cables (Private) Limited.

Board of Directors of the Hindustan Insecticides (Private) Limited.

Board of Directors of the Hindustan Machine Tools (Private) Limited.

Board of Directors of the Hindustan Shipyard, Limited.

Board of Directors of the Nangal Fertilizers and Chemicals (Private) Limited.

Board of Directors of the National Coal Development Corporation (Private) Limited.

Board of Directors of the National Development Corporation (Private) Limited.

Board of Directors of National Instruments (Private) Limited.

Board of Directors of the National Small Industries Corporation (Private) Limited.

Board of Directors of the Navyeli Lignite Corporation (Private) Limited.

Board of Directors of the Sindri Fertilizers and Chemicals (Private) Limited.

Board of Directors of the State Trading Corporation of India (Private) Limited.

Central Warehousing Corporation established under section 17 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Coal Board established under section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952).

**Coal Mines Labour Housing Board** constituted under section 6 of the **Coal Mines Labour Welfare Fund Act, 1947 (32 of 1947)**.

**Commissioners for the Port of Calcutta.**

**Committee for the allotment of land in the township of Gandhinagar.**

**Company Law Advisory Commission** constituted under section 410 of the **Companies Act, 1956 (1 of 1956)**.

**Cotton Textiles Fund Committee** constituted under the **Textile Funds Ordinance, 1944 (34 of 1944)**.

**Dock Labour Board, Bombay**, established under the **Bombay Dock workers (Regulation of Employment) Scheme, 1956** made under the **Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948)**.

**Dock Labour Board, Calcutta**, established under the **Calcutta Dock Workers (Regulation of Employment) Scheme, 1956** made under the **Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948)**.

**Dock Labour Board, Madras**, established under the **Madras Dock Workers (Regulation of Employment) Scheme, 1956** made under the **Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948)**.

**Forwards Markets Commission**, established under section 3 of the **Forward Contracts (Regulation) Act, 1952 (74 of 1952)**.

**Indian Air Lines Corporation** established under section 3 of the **Air Corporations Act, 1953 (27 of 1953)**.

**Industrial Finance Corporation of India** established, under Section of the **Industrial Finance Corporation Act, 1948 (15 of 1948)**.

**Licensing Committee** constituted under rule 10 of the **Registration and Licensing of Industrial Undertakings Rules, 1952**, made under the **Industries (Development and Regulation) Act, 1951 (65 of 1951)**.

**Mining Boards** constituted under section 12 of the **Mines Act, 1952 (35 of 1952)**.

**National Co-operative Development and Warehousing Board** established under section 3 of the **Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956)**.

**Rehabilitation Finance Administration** constituted under section 3 of the **Rehabilitation Finance Administration Act, 1948 (12 of 1948)**.

**Tariff Commission** established under section 3 of the **Tariff Commission Act, 1951 (50 of 1951)**.

**Trustees of the Port of Bombay.**

**Trustees of the Port of Madras.**

**Trustees of Commissioners of any major port as defined in the Indian Port Act, 1908 (15 of 1908)** other than the **Port of Calcutta, Bombay or Madras.**

#### **BODIES UNDER THE GOVERNMENT OF ORISSA**

**Appeal Committee under the Board of Secondary Education**

**Orissa Board of Communications and Transport.**

Regional Transport Authority constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).

State Transport Authority constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).

Board of Directors of the Orissa Mining Corporation Limited.

Board of Directors of the Orissa State Warehousing Corporation.

## PART II

### BODIES UNDER THE CENTRAL GOVERNMENT

Advisory Committee for the Air-India International Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Advisory Committee for the Indian Air Lines Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Central Silk Board constituted under section 4 of the Central Silk Board Act, 1948 (61 of 1948).

Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942).

Coir Board constituted under section 4 of the Coir Industry Act, 1953 (45 of 1953).

Development Council for Acids and Fertilisers established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Alkalis and Allied Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Drugs, Dyes and Intermediates established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Food Processing Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Heavy Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Internal Combustion Engines and Power Driven Pumps established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Light Electrical Engineering Industries established under Section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Machine Tools established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

**Development Council for non-ferrous Metals including alloys established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).**

**Development Council for oil-based and Plastic Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).**

**Development Council for Sugar Industry established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).**

**Development Council for Textiles made of artificial silk including artificial silk yarn established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).**

**Development Council for Textiles made of wool, including woollen yarn hosiery, carpets and druggets established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).**

**Durgah Committee, Ajmer, constituted under section 4 of the Durgah Khawaja Saheb Act, 1955 (36 of 1955).**

**Indian Central Arecanut Committee.**

**Indian Central Coconut Committee constituted under section 4 of the Indian Coconut Committee Act, 1944 (10 of 1944).**

**Indian Central Cotton Committee constituted under section 4 of the Indian Cotton Cess Act, 1923 (14 of 1923).**

**Indian Central Jute Committee.**

**Indian Central Oil-seeds Committee constituted under section 4 of the Indian Oil-seeds Committee Act, 1946 (9 of 1946).**

**Indian Central Sugarcane Committee.**

**Indian Central Tobacco Committee.**

**Indian Lac Cess Committee constituted under section 4 of the Indian Lac Cess Act, 1930 (24 of 1930).**

**Rubber Board constituted under section 4 of the Rubber Act, 1947 (24 of 1947).**

**Tea Board constituted under section 4 of the Tea Act, 1953 (29 of 1953).**

#### **BODIES UNDER THE GOVERNMENT OF ORISSA**

**Board of Wakf constituted under the Muslim Wakf Act, 1954 (29 of 1954).**

**Board of Secondary Education constituted under the Orissa Secondary Education Act, 1952 (Orissa Act 10 of 1952).**

**Regulated Market Committee.**

**PUNJAB STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1952**

**PUNJAB ACT NO. VII OF 1952**

[Received the assent of the Governor of Punjab on the 7th of August, 1952, and was first published in the Punjab Government Gazette (Extraordinary) of the 9th August, 1952].

An Act to declare certain offices of profit not to disqualify their holders for being chosen as, and for being, members of the State Legislature.

It is hereby enacted as follows :—

1. (i) This Act may be called the Punjab State Legislature (Prevention of Disqualification) Act, 1952.

(2) It shall be deemed to have come into force on the 26th Day of January, 1950.

2. A person shall not be disqualified for being chosen as, and for being a member of the Punjab State Legislature by reason only of the fact that he holds any of the following offices of profit under the Government of India or under the Government of the State of Punjab, namely:—

- (a) Lambardar;
- (b) Sub-Registrar, whether departmental or honorary, notary public, oaths commissioner;
- (c) Officer, non-commissioned officer and other members of Indian Territorial Force;
- (d) Officer in the Army Reserve of Officers;
- (e) A member of any statutory body or authority, or a member of any Committee or other body, appointed or constituted by the Punjab Government, and who is not in receipt of a salary but who is paid only travelling and daily allowance during the performance of his duties;
- (f) A Parliamentary Secretary or a Parliamentary Under-Secretary.

3. The Punjab Legislative Assembly (Removal of Disqualifications) Act, 1937, and the Punjab Provisional Legislature (Prevention of Disqualification) Act, 1950 are hereby repealed.

THE RAJASTHAN LEGISLATIVE ASSEMBLY MEMBERS  
(PREVENTION OF DISQUALIFICATION) ACT, 1969  
(Act No. 5 of 1969)

AN

Act

*to declare certain offices of profit not to disqualify their holders for being chosen as, or for being members of the Legislative Assembly of the State.*

BE it enacted by the Rajasthan State Legislature in the Twentieth Year of the Republic of India as follows :—

1. *Short title.*—This Act may be called the Rajasthan Legislative Assembly Members (Prevention of Disqualification) Act, 1969.

2. *Prevention of disqualification of membership of the State Legislative Assembly*—(1) It is hereby declared that none of the following offices, in so far as it is an office of profit under the State Government, shall disqualify or shall be deemed ever to have disqualified the holder thereof from being chosen as, or for being, a member of the Rajasthan Legislative Assembly, namely :—

- (a) the office of a Government Pleader or Special Government Pleader or Advocate for the Government, appointed specially to conduct any particular suit, case or other proceeding by or against the State Government, before any court, tribunal, arbitrator or other authority;
- (b) the office of a Government Pleader, a Special Government Pleader or Advocate for the State Government, appointed specially to assist the Advocate General, Government Advocate or Pleader, or Special Government Pleader, or Advocate for Government, in any Particular suit, case or other proceeding by or against the State Government before any court, tribunal, arbitrator or other authority;
- (c) the office of a panel lawyer if the holder of such office is not entitled to any holder or salary, by whatever name called;
- (d) the office of a Pradhan or Pramukh as defined in the Rajasthan Panchayat Samitis and Zila Parishads Act, 1969 (Rajasthan Act 37 of 1969).

(2) Notwithstanding any judgment or order of any Court or Tribunal, the aforesaid offices shall not disqualify or shall be deemed never to have disqualified the holders thereof for being chosen as, or for being, members of the Rajasthan Legislative Assembly as if this Act had been in force on the date the holder of such office filed his nomination paper for being chosen as a member of the Rajasthan Legislative Assembly.

3. *Repeal and Saving.*—(1) The Rajasthan Legislative Assembly Members (Prevention of Disqualification) Ordinance, 1968 (Rajasthan Ordinance 8 of 1968) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.



**THE RAJASTHAN LEGISLATIVE ASSEMBLY MEMBERS  
(REMOVAL OF DISQUALIFICATION) ACT, 1959**

Act No. 7 of 1957

AN

Act

*to declare certain offices of profit not to disqualify their holders for being, or for being chosen as, members of the Legislative Assembly of the State.*

**WHEREAS** it is expedient to consolidate and amend the law declaring the offices of profit in the State which shall not disqualify their holders for being, or for being chosen as, members of the Legislative Assembly of the State;

**Be** it enacted by the Rajasthan State Legislature in the Seventh Year of the Republic of India as follows :—

**1. Short title and commencement.**—(1) This Act may be called the Rajasthan Legislative Assembly Members (Removal of Disqualification) Act, 1956.

(2) It shall come into force at once.

**2. Interpretation.**—(1) In this Act unless the subject as context otherwise requires, "State" means the new State of Rajasthan as formed by section 10 of the States Reorganisation Act, 1956 (Central Act 37 of 1956).

(2) The provisions of the Rajasthan General Clauses Act, 1955 (Rajasthan Act 8 of 1955) in force in the pre-reorganisation State of Rajasthan shall, as far as may be, apply *mutatis mutandis* to this Act.

**3. Removal and prevention of disqualification for membership of the State Legislative Assembly.**—It is hereby declared that the following offices shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of the State Legislative Assembly, namely :—

- (a) the office of a Minister of State or a Deputy Minister;
- (aa) the office of the Deputy Government Chief Whip;
- (b) the office of a Parliamentary Secretary or a Parliamentary Under Secretary;
- (bb) the office of the Leader of the Opposition in the Rajasthan Legislative Assembly;
- (c) the office of a chairman or the member of a committee set up for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter; provided that the holder of any such office is not in receipt of, or entitled to, any fee or remuneration other than compensatory allowance;
- (d) the office held by officers in the National Cadet Corps raised and maintained under the National Cadet Corps Act, 1948 (Central Act XXXI of 1948) or in the Territorial Army raised

and maintained under the Territorial Army Act, 1948 (Central Act LVI of 1948) or in the Auxiliary Air Force or the Air Defence Reserve raised under the Reserve and Auxiliary Air Force Act, 1952 (Central Act LXII of 1952);

- (dd) the office of the Dy. Govt. Chief Whip.
- (e) the office of a chairman or a member of the committee other than any such committee as is referred to in clause (c);
- (f) the office of a chairman, director, member or any officer of a statutory body; where the power to make any appointment to any such office or the power to remove any person therefrom is vested in the Government;
- (g) the office of profit under an insurer the management of whose controlled business has vested in the Central Government under the Life Insurance (Emergency Provisions) Act, 1956 (Central Act 9 of 1956).

*Explanation.*—In this section, unless the subject or context otherwise requires,—

- (i) “committee” means any committee, commission, council, board or any other body of persons, whether a statutory body or not, set up by Government;
- (ii) “compensatory allowance” means such sum of money as the Government may determine as being payable to the chairman or any other member of a committee by way of travelling allowance, daily allowance, conveyance allowance or house rent allowance for the purpose of enabling the chairman or other member to recoup any expenditure incurred by him in attending any meeting of a committee or performing any other function as a member of the committee;
- (iii) “daily allowance” means such daily allowance as shall not exceed the amount of daily allowance admissible to a member of the State Legislative Assembly in accordance with the provisions of the Rajasthan Legislative Assembly (Officers and Members Emoluments) Act, 1956, as amended from time to time, and the rules made thereunder.
- (iv) “insurer” means an insurer as defined in clause (5) of section 2 of the Life Insurance (Emergency Provisions) Act, 1956 (Central Act 9 of 1956);
- (v) “statutory body” means any corporation, board, company, society or any other body of persons, whether incorporated or not, established, registered or formed by or under any law for the time being in force or exercising powers and functions under any such law.

**4. Repeal.**—The Rajasthan Legislative Assembly Members (Removal of Disqualification) Ordinance, 1956 (Rajasthan Ordinance 10 of 1956) is hereby repealed.

**THE SIKKIM LEGISLATIVE ASSEMBLY MEMBERS REMOVAL  
OF DISQUALIFICATIONS ACT, 1978**

(Act No. 5 of 1978)

AN

Act

*to declare that certain offices are not to disqualify the holders thereof for being chosen as, or for being, members of the Legislative Assembly of the State of Sikkim.*

WHEREAS it is expedient to declare that certain officers are not to disqualify the holders thereof for being chosen as, or for being, members of the Legislative Assembly of the State of Sikkim.

It is hereby enacted in the Twenty-ninth Year of the Republic of India by the Legislature of Sikkim, as follows :—

*Short title*

1. (1) This Act may be called the Sikkim Legislative Assembly Members Removal of Disqualification Act, 1978.
- (2) it shall be deemed to have come into force on the 3rd day of November, 1977.

*Definitions*

2. in this Act, unless the context otherwise requires,—
  - (a) "Compensatory allowance" means any sum of money payable to the holder of an office by way of daily allowance, conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office.
  - (b) "Legislative Assembly" means the Legislative Assembly of the State of Sikkim.
  - (c) "non-statutory body" means any body of persons other than a statutory body.
  - (d) "State Government" means the Government of the State of Sikkim.
  - (e) "Statutory body" means any Corporation, Committee, Commission, Council, Board or other body of persons whether incorporated or not, established by or under any law for the time being in force:

*Certain Offices not to disqualify*

3. It is declared that none of the following offices under the Government of India or the State Government, shall disqualify or be deemed ever to have disqualified the holder thereof for being chosen as or for being, a member of the Legislative Assembly namely :—

- (a) the office of the Minister of the State or the Deputy Minister, either for the union or for the State of Sikkim;
- (b) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948, the Territorial Army Act, 1948, or the Reserve and Auxiliary Air Forces Act, 1952;
- (c) any office in the Home Guard constituted by or under any law for the time being in force under the authority of the State Government;
- (d) the office of the Chairman or a member of the syndicate, Senate, Executive Council or Court of a University or any Committee, by whatever name called, of any educational institution receiving aid out of the State funds;
- (e) the office of the Chairman or a member of the Committee of management of a Co-operative Society nominated or appointed by the State Government under any law relating to co-operative societies for the time being in force in the State of Sikkim;
- (f) the office of the Chairman or a member of the Planning Commission or Committee or Board or similar other authorities appointed by the State Government;
- (g) the office of the Chairman or a member of the Labour Commission appointed by the State Government;
- (h) the office of the Chairman or a member of the pay Commission appointed by the State Government;
- (i) the office of the Chairman or a member of Board of Directors of the State Trading Corporation;
- (j) the office of the Chairman or a member of the Board of Directors of the State Bank of Sikkim;
- (k) the office of the Chairman or a member of the State Electricity Advisory Board or the State Electricity Board appointed by the State Government;
- (l) the office of the Chairman or a member of the Sikkim Khadi and Village Industries Board appointed by the State Government;
- (m) the office of the Chairman or a member of the Board of the Sikkim Nationalised Transport appointed by the State Government;
- (n) the office of the Chairman or a member of the Board of Directors of the Sikkim Mining Corporation appointed by the State Government;

- (o) the office of the Chairman or a member of the Schedule Caste Welfare Board appointed by the State Government;
- (p) the office of the Block Mandal appointed by the State Government;
- (q) the office of the Chairman, Deputy Chairman or a member or Secretary of any Committee, Commission, Corporation or similar other authorities constituted by the Government of India or the State Government or any other authority in respect of any public matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance or any residential accommodation or any arrangement for conveyance to facilitate the performance of the function of such office.

*Explanation.*—For the purpose of this Act, the office of Chairman, Deputy Chairman or Secretary shall include every office of that description, by whatever name called.

*Repeal*

4. The Sikkim Legislative Assembly Members Removal of Disqualifications Ordinance, 1977, is hereby repealed.

THE TAMIL NADU LEGISLATURE (PREVENTION OF  
DISQUALIFICATION) ACT, 1967 (TAMIL NADU ACT  
NO. 3 OF 1967), AS AMENDED IN 1975.

(Received the assent of the Governor on the 19th April 1967—First published in the Fort St. George Gazette on 12th April 1967).

An Act to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, for being, members of the State Legislature.

BE it enacted by the Legislature of the Tamil Nadu in the Eighteenth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Tamil Nadu Legislature (Prevention of Disqualification) Act, 1967.

(2) It shall be deemed to have come into force on the 1st day of April 1964.

2. *Certain offices of profit not to disqualify.*—It is hereby declared that none of the offices specified in the Schedule shall disqualify, or shall be deemed ever to have disqualified, the holder thereof for being chosen as, or for being, a member of the Legislative Assembly or of the Legislative Council.

3. *Amendment of Tamil Nadu Act XX of 1951.*—In the Tamil Nadu Payment of Salaries and Removal of Disqualifications Act, 1951 (Tamil Nadu Act XX of 1951),—

- (1) in the long title, the words “and for the removal of certain disqualifications” shall be omitted;
- (2) in the preamble, the second paragraph shall be omitted;
- (3) in section 1, the words “and Removal of Disqualifications” shall be omitted; and
- (4) section 11 shall be omitted.

4. *Amendment of section 17, \*Tamil Nadu Act 3 of 1963.*—In section 17 of the Tamil Nadu Home Guard Act, 1953 (Tamil Nadu Act 3 of 1963),—

- (1) sub-section (1) shall be omitted; and
- (2) the brackets and figure “(2)” occurring at the commencement of sub-section (2) shall be omitted.

5. *Repeal of Madras Ordinance 4 of 1966.*—The Madras Legislation (Prevention of Disqualification) Ordinance, 1966 (Madras Ordinance 4 of 1966), is hereby repealed.

## THE SCHEDULE

(See section 2)

1. The office of Minister of State or Deputy Minister for the Union or for any State.
2. The office of Chief Government Whip, Deputy Chief Government Whip, Government Whip or Parliamentary Secretary.
3. The office of Sheriff in the City of Madras.
4. The office of member of any delegation or mission sent outside India by the Government for any special purpose.
5. The office of member of a committee (not being a body specified in item 11), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into or collecting statistics in respect of any such matter.
6. The office of member of any force raised or maintained under the National Cadet Corps Act, 1948 (Central Act XXXI of 1948), the Territorial Army Act, 1948 (Central Act LVI of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (Central Act LXII of 1952).
7. The office of member of a Home Guard constituted under any law for the time being in force in any State.
- 7-A. The office of member of a District Development Council.
8. The office of honorary medical officer or honorary assistant medical officer in any hospital maintained by the Government.
9. The office of examiner or assistant examiner for any examination held by the Central or State Government or by the Union or State Public Service Commission.
10. The office of director of the—
  - (1) Omitted.
  - (2) Neyveli Lignite Corporation Limited;
  - (2) (a) Tamil Nadu Handicrafts Development Corporation Limited;
  - (3) Omitted.
11. The office of \*\*\*Chairman, member or secretary of the—
  - (1) Advisory Committee for a Rural Extension Training Centre;
  - (2) Advisory Committee for Iron and Steel under Agricultural Quota and Agricultural Implements;
  - (3) Board of Examiners for Cinema Operators;

- (4) Board of Visitors under rule 41 of the Suppression of Immoral Traffic in Women and Girls (Tamil Nadu) Rules, 1958;
- (5) Committees for the Selection of Auxiliary Nurse Midwife Pupils;
- (6) Committee for the Selection of Nurse Pupils;
- (7) Forage Resources Board;
- (8) Tamil Nadu State Film Advisory Board;
- (9) Managing Committees for the Aftercare Homes at Madras and Vellore;
- (10) State agricultural advisory Committee;
- (11) State Campaign Committee for Freedom from Hunger;
- (12) State Committee on Employment;
- (13) State Level Co-ordination Committee on Training;
- (14) State Social Welfare Board;
- (15) Allocation Committee under the Employees State Insurance (Medical Benefit) Panel System Rules, 1954.
- (16) Board of Examinations, Tamil Nadu;
- (17) Board of studies to review the existing syllabi and curricula for the various courses conducted in the polytechnics and to suggest suitable modifications;
- (18) Greater Madras Road Development and Traffic Planning Committee;
- (19) Madras City Road Development and Traffic Planning Committee;
- (20) Tamil Nadu Road Development and Traffic Planning Committee;
- (21) Medical Service Committee;
- (22) Project Level Committees for Rural Industries at Nangumeri, Omalur and Sriperumpudur;
- (23) State Level Advisory Committee for Rural Industries;
- (24) Wenlock Downs advisory Committee;
- (25) Inspection Committee, Tamil Nadu;



- (26) Tamil Nadu Khadi and Village Industries Board established under the Tamil Nadu Khadi and Village Industries Board Act 1959 (Tamil Nadu Act 18 of 1969);
- (27) Tamil Nadu Housing Board constituted under the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act 17 of 1961);
- (28) Tamil Nadu Warehousing Corporation established under the Warehousing Corporations Act, 1962 (Central Act 58 of 1962);
- (29) Panchayat Development Consultative Committee on Administration and Works, Production Programmes and Welfare Services Programmes;
- (30) State Cotton Committee ;
- (31) All-India Handicrafts Board;
- (32) Central Advisory Committee for Consumer Co-operatives;
- (33) Central Committee on Employment;
- (34) Central Poultry Development Advisory Council;
- (35) Coal Development Council;
- (36) Committee on Untouchability, Economic Uplift and Educational Development of Scheduled Castes;
- (37) Court of the Forest Research Institute and Colleges, Dehra Dun;
- (38) Employees' State Insurance Corporation;
- (39) Export Advisory Committee for Books and Periodicals;
- (40) Film Export Advisory Committee;
- (41) Khadi and Village Industries Committee;
- (42) Indian Coconut Development Council;
- (43) Indian Sugarcane Development Council;
- (44) Medical Benefit Council of the Employees' State Insurance Corporation;
- (45) Mental Health Advisory Committee;
- (46) National Committee for International Council of Scientific Unions;
- (47) National Committee on Training in Community Development and Extension;
- (48) National Commission on Labour;
- (49) National Food and Agriculture Organisation Liaison Committee;
- (50) National School Health Council;
- (51) Panel for Air-conditioning and Refrigeration Industry;
- (52) Railway Catering and Passenger Amenities Committee;
- (53) Small Scale Industries (Official Level) Committee;
- (54) State Advisory Committee for the Territorial Army in Delhi;

- (55) Standing Technical Committee;
- (56) State Advisory Committee for the Territorial Army in the State of Bihar;
- (57) Selection Committees for the Marine Fisheries Training Centres at Colachel Tuticorin Mandapam, Nagapattinam, Cuddalore, Methur and Madras;
- (58) Tamil Nadu Agro-Industries Corporation;
- (59) Tamil Nadu State Board for Salt and Allied Chemicals;
- (60) Sub Committee to fix ex-mill and ex-depot prices of yarn produced in Co-operative Spinning Mills;
- (61) State Level Advisory Committee for Co-operative Spinning Mills;
- (62) Committee for selecting drama scripts and troupes on Family Planning.

THE TRIPURA STATE LEGISLATURE MEMBERS  
(REMOVAL OF DISQUALIFICATIONS)

ACT, 1972

(TRIPURA ACT NO. 6 OF 1972)

AN  
ACT

to provide for the removal of certain disqualifications for being chosen as and for being, a member of the Tripura Legislative Assembly.

BE it enacted by the Legislative Assembly of Tripura in the Twenty-third Year of the Republic of India as follows :—

*Short title, extent and commencement*

1. (1) This act may be called the Tripura State Legislature Members (Removal of Disqualifications) Act, 1972.
- (2) It extends to the whole of Tripura.
- (3) It shall be deemed to have come into force with effect from the twentieth day of March, 1972.

*Removal of certain disqualifications*

2. A person shall not be disqualified for being chosen as, or for being, a member of the Tripura Legislative Assembly by reason of the fact that he holds any of the offices specified in the Schedule in so far as it is an office of profit under the Government of India or the State Government.

SCHEDULE

(See section 2)

1. The office of the Parliamentary Secretary to the Government of Tripura.
2. The office of the Public Prosecutor, Government Pleader or Government Advocate.
3. The office of the Minister of State and Deputy Minister to the Government of Tripura.
4. The offices of the Speaker, Deputy Speaker and the Leader of the Opposition in the Tripura Legislative Assembly.
5. The offices of the Chairman, vice-chairman, or members of any committee, board or authority, statutory or otherwise, appointed by the Government of India or the Government of any State.
6. Any office under the Government of India or under the State Government, which is not a whole time office remunerated by honorarium, allowances, salaries or fees.
7. Any office held in the Territorial Army or National Cadet Corps.

THE UTTAR PRADESH STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1971

(UTTAR PRADESH ACT NO. 15 OF 1971)

[\*Authoritative English Text of the Uttar Pradesh Rajya Vidhan Mandal (Anaharta Nivaran) Adhiniyam, 1971]

AN

ACT

*to declare that certain offices of profit under the Government shall, not disqualify the holders thereof for being chosen as, or for being, members of the State Legislature.*

IT IS HEREBY enacted in the Twenty-second Year of the Republic of India as follows :—

*Short Title*

1. This Act may be called the Uttar Pradesh State Legislature (Prevention of Disqualification) Act, 1971.

*Definition*

2. In this Act, unless the context otherwise requires—

- (a) “compensatory allowance” means any sum of money payable to the holder of an office by way of daily allowance, conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office, such allowance in the case of daily allowance, house rent allowance or travelling allowance being not higher in rates and not admissible on conditions more favourable than those applicable under any law for the time being in force made under Article 195 of the Constitution;
- (b) “statutory body” means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not established by or under any law for the time being in force;
- (c) “non-statutory body” means any body of persons other than a statutory body.
- (d) “the State” means the State of Uttar Pradesh.

*Certain offices of Profit not to disqualify*

3. It is hereby declared that none of the following offices in so far as it is an office of profit under the Government of India or the State Government, shall disqualify or be deemed ever to have disqualified the

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\*For statement of Objects and Reasons, please see Uttar Pradesh Gazette (Extraordinary), dated July 23, 1969.

(Passed in Hindi by the Uttar Pradesh Legislative Council on May 8) 1970 and by the Uttar Pradesh Legislative Assembly on July 14, 1971).

(Received the assent of the Governor on July 17, 1971 under article 200 of the Constitution of India and was published in the Uttar Pradesh Gazette Extraordinary, dated July 19 1971.

holder thereof for being chosen as, or for being, a member of the State Legislature namely—

- (a) the office of Minister of State or Deputy Minister, or of Parliamentary Secretary to a Minister, either for the Union or for the State;
- (b) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948, (Act XXXI of 1948), the Territorial Army Act 1948 (Act, LVI of 1958), or the Reserve and Auxiliary Air Forces Act, 1952 (Act LXII of 1952);
- (c) while a Proclamation of Emergency under Article 352 of the Constitution is in operation, the office of an officer, by whatever name called, of the Indian Army, in the Indian Air Force or the Indian Navy, or of any Reserve Force, or of a member of any civil defence service;
- (d) any office in the Home Guards constituted by or under any law for the time being in force under the authority of the State Government;
- (e) any office in a village defence party (by whatever name called) constituted by or under any law for the time being in force or under the authority of the State Government;
- (f) the office of the Chairman or a member of the syndicate, senate, executive committee, council or court of a University or any other body connected with a University or of the managing committee, by whatever name called, of any educational institution receiving aid out of State funds;
- (g) the office of a member of any delegation or mission sent outside India by the Government of India or the State Government for any special purpose;
- (h) the office of Chairman or Deputy Chairman of the State Evaluation Advisory Board in the Planning Department of the State Government;
- (i) the office of the Chairman or a member of the Committee of management of a co-operative society nominated by the State Government under the Uttar Pradesh Co-operative Societies Act, 1965 (M.P. Act XI of 1966);
- (j) the office of the Chairman or a member of the Irrigation Commission appointed by the State Government;
- (k) the office of the Chairman or a member of the Labour Commission appointed by the State Government;
- (l) the office of the Chairman or a member of the Pay Commission appointed by the State Government;
- (m) the office of Chairman, Deputy Chairman or a member or Secretary of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government of India or the State Government or any other authority in respect of any matter of public importance or for

the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;

- (n) subject to the provision of section 10 of the Representation of the People Act, 1951 (Act XVIII of 1951), the office of Chairman, Deputy Chairman, Director, member or Secretary of any statutory or non-statutory body other than any such body as is referred to in clause (h), clause (i), clause (j), clause (k), clause (l), or clause (m), if the holder of such office is not entitled to any remuneration other than compensatory allowance;
- (o) the office of a village revenue officer, whether called *lambardar*, *pradhan*, *sargroh*, *malguzar* village Siana, Khat Saina, or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land/revenue collected by him, but who does not discharge any police functions;
- (p) the office of an agent (for commission or without commission), by whatever name called, for the sale or for the collection of subscriptions towards Government Securities as defined in the Indian Securities Act, 1920 (Act X 1920), or any savings certificates issued by the Government of India.
- (q) an office of profit in connection with the management of any property taken over by Government of India or the State Government for a limited period under a law made under sub-clause (b) of clause (l) of Article 31-A of the Constitution, when held by a person who was employed in connection with the management of that property before such taking over;
- (r) any office, which is not a whole-time office, for the performance of any special duty, if the holder of such offices is not entitled to any remuneration other than compensatory allowance;
- (s) the office of a panel lawyer (including a panel lawyer appointed under section 127-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950), if the holder of such office is not entitled to any retainer or salary, by whatever name called ;
- (t) the office of a Notary Public or Oath Commissioner, or a Commissioner or Receiver or *amicus curiae* appointed by any court or by the Collector or an Official Receiver but not including an Official Liquidator.

**Explanation**—For the purposes of this section, the office of Chairman, Deputy Chairman, or Secretary shall include every office of that description by whatever name called.

#### 4. The following Acts are hereby repealed :

- (1) The United Provinces Legislature Members Removal of Disqualifications Act, 1940 (U.P. Act VII of 1940);

(2) The Uttar Pradesh Parliamentary Secretaries (Removal of Disqualification) Act, 1950 (U.P. Act II of 1950);

(3) The Uttar Pradesh Legislature Members Prevention of Disqualification Act, 1951 (U.P. Act XIX of 1951);

(4) The Uttar Pradesh State Legislature Members Prevention of Disqualification Act, 1952 (U.P. Act IV of 1952);

(5) The Uttar Pradesh State Legislature Members (Prevention of Disqualification) (Second) Act, 1952 (U.P. Act XIII of 1952);

(6) The Uttar Pradesh State Legislature Members Prevention of Disqualification (Supplementary) Act, 1953 (U.P. Act XX of 1953);

(7) The Uttar Pradesh Legislature Members (National Plan Loan) (Prevention of Disqualification) Act, 1954 (U.P. Act XXIII of 1954);

(8) The Uttar Pradesh State Legislature Members (Prevention of Disqualification) Act, 1955 (U.P. Act XVI 1955);

(9) The Uttar Pradesh State Legislature Members (Life Insurance) (Prevention of Disqualification) Act, 1956 (U.P. Act XXXV of 1956);

(10) The Uttar Pradesh State Legislature Members (Prevention of Disqualification) (Supplementary) Act, 1956 (U.P. Act XIII of 1957).

WEST BENGAL ACT VI OF 1952<sup>1</sup>

THE WEST BENGAL LEGISLATURE (REMOVAL OF  
DISQUALIFICATIONS) ACT, 1952

Amended

{ West Ben. Act XXVII of 1954.  
West Ben. Act XXII of 1959.  
West Ben. Act XI of 1960.

[22nd July, 1952.]

*An Act to declare that the holders of certain offices of profit under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India shall not be disqualified for being chosen as, and for being, members of the West Bengal Legislative Assembly or the West Bengal Legislative Council.*

WHEREAS it is expedient to declare in accordance with the provisions contained in sub-clause (a) of clause (1) of article 191 of the Constitution of India that the holders of certain offices of profit under the Government of India or the Government of any State specified in the First Schedule to the said Constitution shall not be disqualified for being chosen as, and for being, members of the West Bengal Legislative Assembly or the West Bengal Legislative Council;

It is hereby enacted as follows :—

*Short title and Commencement*

1. (1) This Act may be called the West Bengal Legislature (Removal of Disqualifications) Act, 1952.

(2) It shall come into force immediately on the West Bengal Legislature (Removal of Disqualifications) Ordinance, 1952 (West Ben. Ord. III of 1952) ceasing to operate.

*Removal of the certain disqualifications for membership*

\*2. It is hereby declared that a person shall not be disqualified for being chosen as, and for being, a member of the West Bengal Legislative Assembly or the West Bengal Legislative Council by reason only of the fact—

<sup>1</sup>For Statement of Objects and Reasons, see the *Calcutta Gazette, Extra ordinary*, dated the 16th June, 1952, Pt. IVA, page 1248 ; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 21st June, 1952 ; and for proceedings of the West Bengal Legislative Council, see the proceedings of the meeting of the West Bengal Legislative Council held on the 4th July, 1952.

<sup>2</sup>This section was substituted for the original section by section 2 of the West Bengal Legislature (Removal of Disqualifications) (Amendment) Act, 1954 (West Ben. Act XXVII of 1954).



(i) that he holds any of the following offices of profit under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India, namely :—

(a) an office of a Parliamentary Secretary or a Parliamentary Under-Secretary;

(Section 3, 4)

(b) an office which is not a wholetime office remunerated either by salary or by fees<sup>1</sup>

<sup>2</sup>(c) an office in connection with the management of any property taken over by the State Government for a limited period under a law made under sub-clause (b) of clause (l) of article 31A of the Constitution of India, when held by a person who was employed in connection with the management of the property before such taking over; or

(ii) that he has been enrolled in the National Cadet Corps raised and maintained under the National Cadet Corps Act, 1948, (XXXI of 1948) or in the Territorial Army raised and maintained under the Territorial Army Act, 1948 (LVI of 1948), or in the West Bengal National Volunteer Force raised and maintained under the West Bengal National Volunteer Force Act, 1949 (West Bengal Act of I, 1949) [or in the Air Defence Reserve or the Auxiliary Air Force raised and maintained under the Reserve and Auxiliary Air Force Act, 1952 (LXII of 1952)] and receives emoluments consequent thereon.

3. The Bengal Legislature (Removal of Disqualifications Act, 1937 (Repeal of Bengal Act III of 1937) and the Legislative Assembly of West Bengal (Removal of Disqualifications) Act, 1950 (West Bengal Act XXXVIII of 1950), are hereby repealed.

#### *Savings*

4. On the West Bengal Legislature (Removal of Disqualifications) Ordinance, 1952 (West Bengal Ord. III of 1952), casting to operate, section 8 of the Bengal General Causes Act, 1899 (Ben. Act I of 1899), shall apply as if the said Ordinance were an enactment then repealed by a West Bengal Act.

<sup>1</sup>The word "or" was omitted by sec. 2(4) of the West Bengal Legislature (Removal of Disqualifications) (Amendment) Act, 1960 (West Ben. Act XI of 1960).

<sup>2</sup>Sub-clause (c) was inserted by sec. 2(8), *ibid.*

<sup>3</sup>These words were inserted by sec. 2 of the West Bengal Legislature (Removal of Disqualifications) (Amendment) Act, 1959 (West Ben. Act, XXII of 1959).

**THE ARUNACHAL PRADESH LEGISLATURE**  
**MEMBERS (PREVENTION OF DISQUALIFICATIONS)**  
**BILL, 1977**

*(As passed by the Assembly)*

**A**

**BILL**

to provide for the prevention of certain disqualifications for being chosen as, and for being, a member of the Arunachal Pradesh Legislative Assembly.

**Preamble**

Whereas it is expedient to provide in accordance with the provisions of Sec. 14(1)(a) of the Government of Union Territories Act, 1963 (No. 20 of 1963) that the holders of the offices hereinafter mentioned shall not be disqualified for being chosen as, and for being a member of the Arunachal Pradesh Legislative Assembly.

It is hereby enacted by the Legislative Assembly of Arunachal Pradesh in the *Twentyeighth* year of the Republic of India as follows :—

**Short title, extent and commencement**

1. (i) This Act may be called the Arunachal Pradesh Legislature Members (Prevention of Disqualifications) Act, 1977.
- (ii) It extends to the whole of Arunachal Pradesh.
- (iii) It shall come into force at once.

**Removal of certain disqualifications for membership**

2. A person shall not be disqualified for being chosen as, or for being, a member of the Arunachal Pradesh Legislative Assembly by reason of the fact that he holds any of the offices being offices of profit specified in the Schedule appended hereto.

**THE SCHEDULE**

*(See Section 2)*

1. Gaonbura, whether called by this or any other title.
2. Any office held in the Territorial Army or National Cadet Corps or Auxiliary Air Force or Air Defence Reserve.
3. The Office of Chairman, Vice-Chairman or members of any Committee, Society, Board or authority appointed by the Government of India or the Government of any State or Union Territory specified in the First Schedule to the Constitution of India.

**Explanation (1)** "Committee" means any Committee, Commission, Council or any other body of one or more persons, whether statutory or not, set up by the Government of India or the Government of any State.

**Explanation (2)** "Board" or "authority" means any corporation, company, society or any other Body of one or more persons whether incorporated or not, established, registered or formed by or under any Central law or law of any State for the time being in force or exercising powers and functions under any such law.

4. Any office under the Government, which is not a whole-time office remunerated either by salary or fees.
5. The office of part-time Professor, Lecturer, Instructor or Teacher in Government educational institutions.
6. Medical practitioner rendering part-time service to Government.
7. Any office in the Home Guard which is not whole-time and is not remunerated by salary or fees.
8. The office of Village Volunteer, in the SSB Organisation.
9. Any office held by a Minister of State or Deputy Minister for the Union or any State specified in the First Schedule to the Constitution of India.

**THE MIZORAM UNION TERRITORY LEGISLATURE MEMBERS'  
(REMOVAL OF DISQUALIFICATION)**

**BILL, 1975**

**(BILL NO. 5 OF 1975)**

**A**

**BILL**

to provide for the removal of certain disqualifications for being chosen as and for being a member of the Mizoram Legislative Assembly.

*Preamble*

Whereas it is expedient to provide in accordance with the provisions of Article 191(1) (a) of the Constitution of India that the holders of the Offices hereinafter mentioned shall not be disqualified for being chosen as, and for being, a member of the Mizoram Legislative Assembly.

It is hereby enacted in the twentysixth year of the Republic of India as follows :—

*Short Title, extent and commencement*

- (1) This Act may be called the Mizoram Union Territory Legislative Members' (Removal of Disqualification) Act, 1975.
- (2) It extends to the whole of Mizoram.
- (3) It shall be deemed to have come into force on the 10th May, 1972.

*Removal of certain disqualifications*

2. A person shall not be and shall be deemed never to have been disqualified for being chosen as or for being, a member of the Mizoram Legislative Assembly by reason of the fact that he holds any of the offices specified in the Schedule appended hereto.

**SCHEDULE**

1. Any office held by a Minister of State or Deputy Minister for the Union or for any State specified in the First Schedule to the Constitution of India.
2. The Office of the Parliamentary Secretary to the Government of India or to the Government of Mizoram.
3. The Office of the Chief Whip, Deputy Chief Whip or Whip in Parliament or in the Mizoram Legislative Assembly.
4. The Office of the Chairman, Vice Chairman or Member of any Autonomous District Councils and the President, Vice President or member of any village Councils constituted in Mizoram under any existing law or Regulation.

5. The Office of Government Pleader or Public Prosecutor.
6. The Office of the part-time Professor, Lecturer, Instructor or Teacher in Government Educational Institutions.
7. Medical Practitioner rendering part-time service to Government.
8. The Office of Chairman, Vice Chairman, or Members of any Committee Board or Authority appointed by the Government of India or the Government of any State or Union Territory specified in the First Schedule to the Constitution of India.
9. Any Office under the Government which is not a whole-time office remunerated either by salary or fees.
10. Any Office held in the Territorial Army or National Cadet Corps.
11. Any Office held in Auxiliary Air Force or Air Defence Reserve.

THE PARLIAMENT (PREVENTION OF  
DISQUALIFICATION) ACT, 1959

No. 10 OF 1959



[4th April, 1959]

An Act to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as or for being members of Parliament.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows :—

*Short title*

1. This Act may be called the Parliament (Prevention of Disqualification) Act, 1959.

*Definitions*

2. In this Act, unless the context otherwise requires,—

(a) “compensatory allowance” means any sum of money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954) (30 of 1954), any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;

(b) “statutory body” means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force;

(c) “non-statutory body” means any body of persons other than a statutory body.

*Certain offices of profit not to disqualify*

3. It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament, namely :—

(a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether *ex officio* or by name;

<sup>1</sup>[(aa) the office of a Leader of the Opposition in Parliament;]

(b) the office of Chief Whip, Deputy Chief Whip or Whip in Parliament or of a Parliamentary Secretary;

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<sup>1</sup> Ins. by Act 33 of 1977, s. 12 (w. e. f. 1-11-1977).

(c) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948, the Territorial Army Act, 1948, (31 of 1948, 56 of 1948, 62 of 1952) or the Reserve and Auxiliary Air Forces Act, 1952;

(d) the office of a member of a Home Guard constituted under any law for the time being in force in any State;

(e) the office of sheriff in the city of Bombay, Calcutta or Madras;

(f) the office of chairman or member of the syndicate, senate, executive committee, council or court of a university or any other body connected with a university;

(g) the office of a member of any delegation or mission sent outside India by the Government for any special purpose;

(h) the office of chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;

(i) the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule and (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule;

(j) the office of village revenue officer, whether called a *lambardar*, *malguzar*, *patel*, *deshmukh* or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land revenue collected by him, but who does not discharge any police functions.

<sup>1</sup>[Explanation 1—For the purposes of this section, the office of chairman or secretary shall include every office of that description by whatever name called.]

<sup>2</sup>[Explanation 2—In clause (aa), the expression “Leader of the Opposition” shall have the meaning assigned to it in the Salary and allowances of Leaders of Opposition in Parliament Act, 1977 (33 of 1977).]

#### *Temporary suspension of disqualification in certain cases*

4. If a person being a member of Parliament who immediately before the commencement of this Act held an office of profit declared by any law repealed by this Act not to disqualify the holder thereof for being such member, becomes so disqualified by reason of any of the provisions contained in this Act, such office shall not, if held by such person for any period not extending beyond a period of six months from the commencement of this Act disqualify him for being a member of Parliament.

1. Explanation numbered as Explanation I thereof by Act 33 of 1977, s. 12 (w.e.f. 1-11-1977).

2. Ins. by s. 12, *ibid.* (w.e.f. 1-11-1977).

*Repeals.*

5. The Parliament (Prevention of Disqualification) Act, 1950 (19 of 1950) the Parliament Prevention of Disqualification Act, 1951 (6 of 1951) the Prevention of Disqualification Act 1953 (1 of 1954) and any provision in any other enactment which is inconsistent with this Act are hereby repealed.

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**THE SCHEDULE**

[See section 3(i)]

**PART I****BODIES UNDER THE CENTRAL GOVERNMENT**

Air-India International Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

Air Transport Council constituted under section 30 of the Air Corporations Act, 1953 (27 of 1953).

Board of Directors of the Export Risks Insurance Corporation <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the Heavy Electricals <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the Hindustan Cables <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the Hindustan Insecticides <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the Hindustan Machine Tools <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the Hindustan Shipyard Limited.

Board of Directors of the <sup>2</sup>[Hindustan Chemicals and Fertilizers Limited.]

Board of Directors of the National Coal Development Corporation (Private) Limited.

Board of Directors of the National <sup>3</sup>[Industrial] Development Corporation <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the National Instruments <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the National Small Industries Corporation <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the Neyveli Lignite Corporation (Private) Limited.

Board of Directors of the Sindri Fertilizers and Chemicals <sup>1</sup>[\* \* \*] Limited.

Board of Directors of the State Trading Corporation of India (Private) Limited.

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1. The brackets and word "(Private)" Omitted by Act 58 of 1960, s. 3 & Sch. II.

2. Subs. by Act 58 of 1960, s. 3 and Sch. II for "Nangal Fertilizers and Chemicals Private Limited."

3. Ins. by s. 3, and Sch. II, *ibid.*



Central Warehousing Corporation established under section 17 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Coal Board established under section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952).

Coal Mines Labour Housing Board constituted under section 6 of the Coal Mines Labour Welfare Fund Act, 1947 (32 of 1947).

Commissioners for the Port of Calcutta.

Committee for the allotment of land in the township of Gandhidham.

Company Law Advisory Commission constituted under section 410 of the Companies Act, 1956 (1 of 1956).

Cotton Textiles Fund Committee constituted under the Textile Funds Ordinance, 1944 (34 of 1944).

Dock Labour Board, Bombay, established under the Bombay Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Dock Labour Board, Calcutta, established under the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Dock Labour Board, Madras, established under the Madras Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952).

Indian Air Lines Corporation established under section 3 of the Air Corporation Act, 1953 (27 of 1953).

Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948).

Licensing Committee constituted under rule 10 of the Registration and Licensing of Industrial Undertakings Rules, 1952, made under the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Mining Boards constituted under section 12 of the Mines Act, 1952 (35 of 1952).

National Co-operative Development and Warehousing Board established under section 3 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Rehabilitation Finance Administration constituted under section 3 of the Rehabilitation Finance Administration Act, 1948 (12 of 1948).

Tariff Commission established under section 3 of the Tariff Commission Act, 1951 (50 of 1951).

- Trustees of the Port of Bombay.
- Trustees of the Port of Madras.

Trustees or Commissioners of any major Port as defined in the Indian Ports Act, 1908 (15 of 1908), other than the Port of Calcutta, Bombay or Madras.

#### BODIES UNDER STATE GOVERNMENTS

##### *Andhra Pradesh*

Agricultural Improvement Fund Committee constituted under section 3 of the Hyderabad Agricultural Improvement Act, 1952.

Co-operative Agricultural and Marketing Development Fund Committee.

Livestock Purchasing Committee.

##### *Assam*

Adhi Conciliation Boards constituted under section 2A of the Assam Adhiars Protection and Regulation Act, 1948.

Assam Evacuee Property Management Committee constituted under section 12 of the Assam Evacuee Property Act, 1951.

Assam Text Book Committee.

##### *Bihar*

Mining Board for Coal Mines.

Text Book and Education Literature Committee.

##### *Bombay*

Allocation Committee (Allopathic) under the Employees' State Insurance Scheme.

Allocation Committee (Ayurvedic) under the Employees' State Insurance Scheme.

Board to conduct over-all supervision of the business and affairs of the *Narsinggiriji Mills*, Sholapur.

Bombay Housing Board constituted under section 3 of the Bombay Housing Board Act, 1948.

Bombay State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Bombay State Electricity Consultative Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

**Medical Service Committee under the Employees' State Insurance Scheme.**

**Pharmaceutical Committee under the Employees' State Insurance Scheme.**

**Regional Transport Authority for Ahmedabad, Aurangabad, Bombay, Nagpur, Poona, Rajkot and Thana constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).**

**Saurashtra Housing Board constituted under section 3 of the Saurashtra Housing Board Act, 1954.**

**State Transport Authority constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).**

**Vidarbha Housing Board constituted under section 3 of the Madhya Pradesh Housing Act, 1950.**

### *Kerala*

**Board of Examiners appointed under rule 8 of the Travancore-Cochin Boiler Attendants Rules, 1954.**

**Panel of Assessors constituted under rule 63 of the Travancore-Cochin Boiler Attendants Rules, 1954.**

**Panel of Assessors constituted under the Travancore-Cochin Economist Rules, 1956.**

### *Madhya Pradesh*

**Madhya Pradesh Housing Board constituted under section 3 of the Madhya Pradesh Housing Board Act, 1950.**

**Mahakoshal Housing Board.**

### *Tamil Nadu*

**Committee to select Books for Study for S.S.L.C. Examination.**

**Landing and Shipping Fees, Committees for Minor Ports.**

**Local Committee constituted under regulation 10A of the Employees' State Insurance (General) Regulations, 1950.**

**Madras Board of Transport.**

**<sup>2</sup>Tamil Nadu State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).**

**Madras State Electricity Consultative Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).**

**Port Conservancy Boards.**

**Port Trust Boards of Minor Ports.**

**State Board of Communications.**

**Text Books Committee.**

1. Subs. by the Madras State (Alteration of Name) (Adaptation of Laws of Union subject) Order, 1974, for "Madras" (w.e.f. 14-1-1969).

2. Subs. *ibid.*, for "Madras State Electricity Board".

*<sup>1</sup>Karnataka*

Board of Management, Mysore Iron and Steel Works, Bhadravathi.  
Board of Management of Industrial Concerns.

*Orissa*

Appeal Committee under the Board of Secondary Education.

Orissa Board of Communications and Transport.

Regional Transport Authority constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).

State Transport Authority constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).

*Punjab*

Punjab State National Workers (Relief and Rehabilitation) Board.

*Rajasthan*

City Improvement Trust, Kota constituted under the City of Kota Improvement Act, 1946.

Excise Appellate Board, Ajmer.

Rajasthan State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Urban Improvement Board, Jaipur.

*Uttar Pradesh*

Government Cement Factory Board.

Local Committees for Agra, Kanpur, Lucknow and Saharanpur appointed under section 25 of the Employees' State Insurance Act, 1948 (34 of 1948).

Sub-Committee to select books for Educational Expansion Department.

U.P. Sugar and Power Alcohol and Labour Housing Board constituted under section 10 of the U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950.

*West Bengal*

Licensing Board constituted under the regulations made under rule 45 of the Indian Electricity Rules, 1956.

West Bengal Housing Board constituted under the West Bengal Development Corporation Act, 1954.

**BODIES IN UNION TERRITORIES**

Delhi Development Authority constituted under section 3 of the Delhi Development Act, 1957 (61 of 1957).

Delhi Electricity Power Control Board constituted under section 5 of the Bombay Electricity (Special Powers) Act, 1946, as applied to Delhi.

1. Subs. by the Mysore State (Alteration of Name) (Adaptation of Laws on Union Subject) Order, 1974 for "Mysore" (w.e.f. 1-11-1973).

Delhi State Electricity Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

## PART II

### BODIES UNDER THE CENTRAL GOVERNMENT

Advisory Committee for the Air-India International Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Advisory Committee for the Indian Airlines Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Central Silk Board constituted under section 4 of the Central Silk Board Act, 1948 (61 of 1948).

Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942).

Coir Board constituted under section 4 of the Coir Industry Act, 1953 (45 of 1953).

Development Council for Acids and Fertilizers established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Alkalis and Allied Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Bicycles established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Drugs, Dyes, and Intermediates established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Food Processing Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Heavy Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Internal Combustion Engines and Power Driven Pumps established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Light Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Machine Tools established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Non-ferrous Metals including alloys established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Oil-based and Plastic Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Sugar Industry established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Textiles made of artificial Silk including artificial Silk Yarn established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Textiles made of Wool, including woollen yarn, hosiery, carpets and druggets established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Durgah Committee, Ajmer, constituted under section 4 of the Durgah Khawajah Saheb Act, 1955 (36 of 1955).

Indian Central Arecanut Committee.

Indian Central Coconut Committee constituted under section 4 of the Indian Coconut Committee Act, 1944 (10 of 1944).

Indian Central Cotton Committee constituted under section 4 of the Indian Cotton Cess Act, 1923 (14 of 1923).

Indian Central Jute Committee.

Indian Central Oilseeds Committee constituted under section 4 of the Indian Oilseeds Committee Act, 1946 (9 of 1946).

Indian Central Sugarcane Committee.

Indian Central Tobacco Committee.

Indian Lac Cess Committee constituted under section 4 of the Indian Lac Cess Act, 1930 (24 of 1930).

Rubber Board constituted under section 4 of the Rubber Act, 1947 (24 of 1947).

Tea Board constituted under section 4 of the Tea Act, 1953 (29 of 1953).

#### BODIES UNDER STATE GOVERNMENTS

##### *Andhra Pradesh*

Market Committee constituted under section 4 of the Hyderabad Agricultural Market Act No. II of 1339F.

Market Committee constituted under section 4A of the Madras Commercial Crops Markets Act, 1933.

##### *Bihar*

Bihar State Board of Religious Trusts.

Bihar Subai Majlis Awqaf.

Bodh Gaya Temple Advisory Committee constituted under section 15 of the Bodh Gaya Temple Act, 1949.

Bodh Gaya Temple Management Committee constituted under section 3 of the Bodh Gaya Temple Act, 1949.

*Kerala*

Administration Committee for Coir Purchase Scheme.

Malabar Market Committee constituted under section 4A of the Madras Commercial Crops Markets Act, 1933.

Tapioca Market Expansion Board.

*Tamil Nadu*

Area Committee for Hindu Religious and Charitable Endowments constituted under section 12 of the Madras Hindu Religious and Charitable Endowments Act, 1951.

Madras State Wakf Board constituted under section 9 of the Wakf Act, 1954 (29 of 1954).

*Punjab*

State Marketing Board constituted under section 3 of the Patiala Agricultural Produce Markets Act, 2004.

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<sup>1</sup> Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union subject) Order, 1970, for "Madras" (w.e.f. 14-1-1969).

## APPENDIX II

(vide para 1.3 of the Report)

### POSITION REGARDING 'OFFICE OF PROFIT' OBTAINING IN THE COMMON-WEALTH COUNTRIES, U.S.A. AND FRANCE

#### THE UNITED KINGDOM

Prior to the enactment of the House of Commons Disqualification Act, 1957, precedents and common law principles used to be applied to determine whether an office constitutes an 'office of profit'. The position relating to 'office of profit' has been simplified by the Act of 1957 (later enacted as the House of Commons Disqualification Act, 1975). The Act of 1975 replaces all previous statutes relating to this subject and forms an exhaustive code as to the offices or places of profit, the holders of which disqualify themselves for membership of Parliament, by enumerating them.

Under section I(4) of the Act of 1975, "except as provided by this Act, a person shall not be disqualified for membership of the House of Commons by reason of his holding an office or place of profit under the Crown or any other office or place." The provisions of the Act for disqualification of the holders of certain offices in fact apply to the majority of the offices which involved disqualification under the former statutory provisions before 1957, although certain anomalies have been removed, and the former provisions disqualifying pension-holders and government contractors are abolished but the main effect of the Act has been to replace the large number of statutory and common law provisions on disqualification by a single simple code. The Act does not, however, affect the law of disqualification in respect of aliens, persons under twenty-one, persons detained under the Mental Health Act, 1959, peers, bankrupts, persons convicted of treason, clergymen, returning officers, or persons who are implicated in corrupt or illegal practices at elections.

#### I. NON-POLITICAL OFFICE

The disqualification arising from the holding of a non-political office is dealt with principally in Section 1 of the Act of 1975. Disqualification is there defined partly by reference to employment in certain capacities in various branches of the public service and partly by reference to the holding of particular offices mentioned in the First Schedule of the Act.

##### *Public Service Disqualification*

(i) *The Civil Service* : All persons employed either whole-or-part-time in the Civil Service are disqualified. This disqualification applies equally to the Home Civil Service, the Civil Service of Northern Ireland, the Diplomatic Service and the Overseas Civil Service.

The regulations of the Civil Service regarding the requirement of resignation before becoming a candidate for Parliament, also preclude Civil Servants from sitting as Members.



(ii) *The Armed Forces* : Membership of the regular armed forces of the Crown is a disqualification. Officers in the retired or emergency list of any of the regular armed forces and those holding emergency commissions or belonging to any reserve of officers are not, however, thereby disqualified.

(iii) *Police Personnel* : Persons employed as members of any police force maintained by a police authority are disqualified under the Act.

(iv) *Members of Legislatures outside Commonwealth* : Members of Legislature of any country or territory outside the Commonwealth are disqualified for membership of the House of Commons.

Members of all-non-commonwealth Legislatures except that of the Republic of Ireland are already disqualified as aliens unless exceptionally they have dual nationality.

(v) *Judicial offices* : The holders of the Judicial Offices specified in Part I of the First Schedule of the Act of 1975 are disqualified for membership. These include Judges of the High Court, Court of Appeal and Court of Session, Circuit Judges, Stipendiary and Resident Magistrates, Sheriffs Principal and Sheriffs in Scotland and certain Commissioners and Umpires appointed under National Insurance and National Service Legislation. Justices of the Peace are not included in the list and are, therefore, eligible for membership.

(vi) *Statutory Bodies* : Part II of the First Schedule of the Act contains a list of public bodies all of whose members are disqualified. These include the Boards of the Nationalised Industries and a large number of Commissions, Tribunals and other statutory bodies whose members are appointed by the Crown.

(vii) *Ambassadors, Commissioners, etc* : A long list of residual offices which disqualify either on the grounds that their holders are appointed by the Crown or that their holding is incompatible with membership of the House of Commons, is given in Part III of the First Schedule of the Act. Among those listed are Ambassadors and high Commissioners, certain directors of companies in which the State has an interest and Election and Boundary Commissioners.

(viii) *Officers disqualifying for particular Constituencies* : Certain offices disqualify for particular constituencies. Thus the Lord Lieutenant or Sheriff of a county in England or Wales is disqualified for any constituency comprising the whole or part of the area for which he is appointed.

## II. POLITICAL OFFICE

Holders of political offices in excess of the number specified in the Act are disqualified. This means that ministers as a class are not exempted from the disqualification. Not more than 95 holders of ministerial offices shall be entitled to sit and vote in the House of Commons at any time.

If at any time the number of Ministers in the House of Commons exceeds the member authorised by the Act, the Ministers appointed after the limit was reached are disqualified from sitting and voting until the numbers have been reduced by death or resignation to the maximum permitted number.

*Effect and determination of disqualification* : If a Member of the House becomes disqualified under any of the provisions of the Act, his seat becomes vacant. In the case of a person disqualified under the Act being elected to the House while disqualified, the election is declared to be void. No special provision is made to cover the situation which arises from an election becoming void in this way; the normal procedure in the case of controverted elections will accordingly apply.

But the House may itself provide relief from the effects of disqualification if it appears to the House that the grounds of disqualification or alleged disqualification under the Act which subsisted or arose at the material time have been removed. Relief may not however, be afforded so as to affect the proceedings on any election petition or any determination of an election court.

*Jurisdiction of the Privy Council in disqualification* :

The Judicial Committee of the Privy Council has a jurisdiction to decide such matters insofar as disqualification under the Act of 1975 is concerned. Anyone who claims that a person purporting to be a Member of the House is disqualified by the Act, or has been so disqualified since his election, may apply to her Majesty in Council in accordance with prescribed rules for a declaration to that effect.

The Judicial Committee is empowered to make a declaration in such cases whether the grounds of the alleged disqualification subsisted at the time of a person's election or arose subsequently, subject to two provisos; they are denied jurisdiction where an election petition is pending or has been tried unless the grounds for the alleged disqualification which they are considering are different from those being tried by the election court; and they are further denied jurisdiction in the case of disqualification incurred by any person on any grounds if any order has been made by the House of Commons directing that the disqualification shall be disregarded.

The House of Commons may itself resolve that a case should be referred to the Judicial Committee of the Privy Council.

*Amendment of the House of Commons Disqualification Act, 1975*

The first Schedule to the Act in which the disqualifying offices are listed individually is subject to amendment by Order in Council on resolution by the House of Commons.

(Parliamentary Practice by Erskine May, London, 1976, pp. 45-53).

## AUSTRALIA

According to section 44(iv) of the Constitution of Australia—

“Any person who—

- (iv) holds any office of profit under the Crown or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth.

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-Section (iv) does not apply to the office of any of the Queen's Ministers of a State, for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's Navy or Army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth."

And Section 45 (i) states—

"If a senator or a member of the House of Representatives—

- (i) becomes subject to any of the disabilities mentioned in the last preceding Section his place shall thereupon become vacant."

[Parliamentary Hand Book of the Commonwealth of Australia. Twenty first edition, 1982, p. 467]

### SRI LANKA

In terms of Article 70(1)(c) of (d) of the Constitution of Sri Lanka, no person shall be qualified to be elected as a member of the National State Assembly or to sit or vote in the National State Assembly—

(c) If he is :—

- (i) a judge or other State Officer; or
  - (ii) the Clerk to the National State Assembly or a member of his staff; or
  - (iii) the Commissioner of Elections; or
  - (iv) the Auditor General ; or
  - (v) a State Officer holding any office the initial of the salary scale of which is not less than Rs. 6,720/- per annum; or
  - (vi) an officer in any public Corporation holding any office the initial of the salary scale of which is not less than Rs. 7,200/- per annum; or
  - (vii) a number of the Regular Force of the Army, Regular Naval Force or the Regular Air Force; or
  - (viii) A police officer or a State Officer exercising police functions; or
- (c) If he has any such interest in any such contract made by or on behalf of the State or a public corporation or may be prescribed by or under a law of the National State Assembly."

[Constitutions of the Countries of the World by Albert P. Blaustein and Gisbert H. Flanz (Eds.), July, 1973]

## CANADA

The Independence of Parliament Act, 1878, provisions of which are still in force, reads as follows :—

“No person accepting or holding any office, Commission or employment, permanent or temporary, in the service of the Crown or at the nomination of any of the officers of the Government of Canada, to which any salary, fee, wages, allowance, or emolument, or profit of any kind is attached, shall be eligible as a Member of the House of Commons, nor shall he sit or vote in the same.”

It has further been provided that nothing in the statute shall render ineligible persons holding several Cabinet offices “for any office which may be hereafter created, to be held by a member of the Queen’s privy Council for Canada, and entitling him to be a Minister of the Crown, or shall disqualify him to sit and vote in the House of Commons, provided he be elected while holding such office and be not otherwise disqualified.”

The offices of Sheriff, Registrar of Deeds, Clerk of the Peace or Country Crown Attorney in any of the provinces of Canada are expressly disqualified.

[Parliamentary Procedure and Practice in Canada by John George Bourinot, 1971, pp. 134-35]

## UNITED STATES OF AMERICA

Article I, Section 6(2) of the American Constitution says—

“No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.”

The first part of the clause disqualifies a member of Congress for appointment to a federal office which is created, or the emoluments of which are increased during his term of membership.

The second part disqualifies the holder of a federal office to become a member of Congress.

But a federal officer may be elected and may take his seat as member of Congress if he resigns his office before presenting his credentials to the House.

(Commentary on the Constitution of India by D.D. Basu, Fifth edition, 1965)

## FRANCE

Article 23 of the French Constitution of 1958 says—

“The functions of a member of the Government shall be incompatible with the exercise of any parliamentary mandate, with the holding of an office, at the national level in business, professional or labour organisations, and with any public employment or professional activity.”

A peculiar feature of this provision is that it not only disqualifies or unseats a member of Parliament by reason of his having accepted an office of profit, business under the Government and the like, but also for being appointed a Minister.

As a result of this provision, as soon as a Member of Parliament becomes a Minister, his seat in Parliament is vacated, for the remainder of the life of that Parliament. The provision also facilitates the appointment of a Minister from outside Parliament, including even a Government servant, (of course, he shall have to give up his service after being appointed a Minister), for any length of time.

[Commentary on the Constitution of India by D. D. Basu, Fifth Edition, 1965]

## HOUSE OF COMMONS DISQUALIFICATION ACT, 1975

[The Act is printed, as amended, pursuant to section 5(2) of the Act. The amendments are those in force on the 1st January 1978.]

An Act to consolidate certain enactments relating to disqualification for membership of the House of Commons.

[8th May 1975]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

### *Disqualification of holders of certain offices and places*

1.—(1) Subject to the provisions of this Act, a person is disqualified for membership of the House of Commons who for the time being—

- (a) holds any of the judicial offices specified in Part I of Schedule 1 to this Act;
- (b) is employed in the civil service of the Crown, whether in an established capacity or not, and whether for the whole or part of his time;
- (c) is a member of any of the regular armed forces of the crown or the Ulster Defence Regiment;
- (d) is a member of any police force maintained by a police authority;
- (e) is a member of the legislature of any country or territory outside the Commonwealth; or
- (f) holds any office described in Part II or Part III of Schedule I.

(2) A person who for the time being holds any office described in Part IV of Schedule I is disqualified for membership of the House of Commons for any constituency specified in relation to that office in the second column of Part IV.

(3) In this section—

“civil service of the Crown” includes the civil service of Northern Ireland, Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;

“police authority” means any police authority within the meaning of the Police Act 1964 (1964 c. 8.4) or the Police (Scotland).

Act 1967 (1967 c. 77) or the Police Authority for Northern Ireland; and "member" in relation to a police force means a person employed as a full-time constable;

"regular armed forces of the Crown" means the Royal Navy, the regular forces as defined by section 225 of the Army Act 1955, (1955 c. 18) the regular air force as defined by section 223 of the Air Force Act 1955, (1955 c. 19) Queen Alexandra's Royal Naval Nursing Service and the Women's Royal Naval Service.

(4) Except as provided by this Act, a person shall not be disqualified for membership of the House of Commons by reason of his holding an office or place of profit under the Crown or any other office or place; and a person shall not be disqualified for appointment to or for holding any office or place by reason of his being a member of that House.

#### *Ministerial offices*

2.—(1) Not more than ninety-five persons being the holders of offices specified in Schedule 2 to this Act (in this section referred to as Ministerial offices) shall be entitled to sit and vote in the House of Commons at any one time.

(2) If at any time the number of members of the House of Commons who are holders of Ministerial offices exceeds the number entitled to sit and vote in that House under subsection (1) above, none except any who were both members of that House and holders of Ministerial offices before the excess occurred shall sit or vote therein until the number has been reduced, by death, resignation or otherwise, to the number entitled to sit and vote as aforesaid.

(3) A person holding a Ministerial office is not disqualified by this Act by reason of any office held by him ex officio as the holder of that Ministerial office.

#### *Reserve and auxiliary forces, etc.*

3.—(1) Notwithstanding section 1(1)(c) above—

- (a) a person who is an officer on the retired or emergency list of any of the regular-armed forces of the Crown, or who holds an emergency commission in any of those forces, or belongs to any reserve of officers of any of those forces, is not disqualified as a member of those forces; and
- (b) a naval, army, marine or air force pensioner who is recalled for service for which he is liable as such is not disqualified as a member of the regular armed forces of the Crown.

(2) A person is not disqualified under section 1(1)(c) above by reason of his being an Admiral of the Fleet, a Field Marshal or a Marshal of the Royal Air Force, if he does not for the time being hold an appointment in the naval, military or air force service of the Crown.

(3) A person is not disqualified under section 1(1)(b) above by reason of his being a member of the Royal Observer Corps unless he is employed as such for the whole of his time.

*Stewardship of Chiltern Hundreds, etc.*

4. For the purposes of the provisions of this Act relating to the vacation of the seat of a member of the House of Commons who becomes disqualified by this Act for membership of that House, the office of steward or bailiff of Her Majesty's three Chiltern Hundreds of Stoke, Desborough and Burnham, or of the Manor of Northstead, shall be treated as included among the offices described in Part III of Schedule I to this Act.

*Power to amend Schedule 1*

5.—(1) If at any time it is resolved by the House of Commons that Schedule 1 to this Act be amended, whether by the addition or omission of any office or the removal of any office from one Part of the Schedule to another, or by altering the description of any office specified therein. Her Majesty may by Order in Council amend that Schedule accordingly.

*Effects of disqualification and provision for relief.*

(2) A copy of this Act as from time to time amended by Order in Council under this section or by or under any other enactment shall be prepared and certified by the Clerk of the Parliaments and deposited with the rolls of Parliament; and all copies of this Act thereafter to be printed by Her Majesty's printer shall be printed in accordance with the copy so certified.

6.—(1) Subject to any order made by the House of Commons under this section.—

- (a) if any person disqualified by this Act for membership of that House, or for membership for a particular constituency, is elected as a member of that House, or as a member for that constituency, as the case may be, his election shall be void; and
- (b) if any person being a member of that House becomes disqualified by this Act for membership, or for membership for the constituency for which he is sitting, his seat shall be vacated.

(2) If, in a case falling or alleged to fall within subsection (1) above, it appears to the House of Commons that the grounds of disqualification or alleged disqualification under this Act which subsisted or arose at the material time have been removed, and that it is otherwise proper so to do, that House may by order direct that any such disqualification incurred on those grounds at that time shall be disregarded for the purposes of this section.

(3) No order under subsection (2) above shall affect the proceedings on any election petition or any determination of an election court, and this subsection shall have effect subject to the provisions of section 124(5) of the Representation of the People Act 1949 (1949 c. 68) (making of an order by the House of Commons when informed of a certificate and any report of an election court).

(4) In any case where, by virtue of the Recess Elections Act 1975. (1975 c. 66) the Speaker of the House of Commons would be required to



issue during a recess of that House a warrant for a new writ for election of a member, in the room of a member becoming disqualified by this Act, he may, if it appears to him that an opportunity should be given to that House to consider the making of an order under subsection (2) above, defer the issue of his warrant pending the determination of that House.

*Jurisdiction of Privy Council as to Disqualification*

7.—(1) Any person who claims that a person purporting to be a member of the House of Commons is disqualified by this Act, or has been so disqualified at any time since his election, may apply to Her Majesty in Council, in accordance with such rules as Her Majesty in Council may prescribe, for a declaration to that effect.

(2) Section 3 of the Judicial Committee Act, 1833 (1833 c. 4) (reference to the Judicial Committee of the Privy Council of appeals to Her Majesty in Council) shall apply to any application under this section as it applies to an appeal to Her Majesty in Council from a court.

(3) Upon any such application the person in respect of whom the application is made shall be the respondent; and the applicant shall give such security for the costs of the proceedings, not exceeding £200, as the Judicial Committee may direct.

(4) For the purpose of determining any issue of fact arising on an application under this section the Judicial Committee may direct the issue to be tried—

- (a) if the constituency for which the respondent purports to be a member is in England or Wales, in the High Court;
- (b) if that constituency is in Scotland, in the Court of Session;
- (c) if that constituency is in Northern Ireland, in the High Court in Northern Ireland;

and the decision of that Court shall be final.

(5) A declaration under this section may be made in respect of any person whether the grounds of the alleged disqualification subsisted at the time of his election or arose subsequently; but no such declaration shall be made—

- (a) in the case of disqualification incurred by any person on grounds which subsisted at the time of his election, if an election petition is pending or has been tried in which his disqualification on those grounds is or was in issue;
- (b) in the case of disqualification incurred by any person on any grounds, if an order has been made by the House of Commons under section 6(2) above directing that any disqualification incurred by him on those grounds shall be disregarded for the purposes of that section.

*Relaxation of obligation to accept office*

8. (1) No person being a member of the House of Commons, or for the time being nominated as a candidate for election to that House, shall be required to accept any office or place by virtue of which he would be disqualified by this Act for membership of that House, or for membership of that House for the constituency for which he is sitting or is a candidate.

(2) This section does not affect any obligation to serve in the armed forces of the Crown, whether imposed by an enactment or otherwise.

*Interpretation*

9. In this Act—

“Minister of State” means a member of Her Majesty’s Government in the United Kingdom who neither has charge of any public department nor holds any other of the offices specified in Schedule 2 to this Act or any office in respect of which a salary is payable out of money provided by Parliament under section 3(1)(b) of the Ministerial and other Salaries Act 1975; (1975 c. 27).

“Parliamentary Secretary” includes a person holding Ministerial office (however called) as assistant to a Member of Her Majesty’s Government in the United Kingdom, but not having departmental responsibilities.

*Consequential amendment and saving 1949 c. 68*

10.—(1) Schedule 2 to the Representation of the People Act 1949 which contains Parliamentary Elections Rules shall be amended by substituting, for paragraph (2) of Rule 9 of the Parliamentary Elections Rules, the following paragraph

“(2) A candidate’s consent given under this rule shall contain a statement that he is aware of the provisions of the House of Commons Disqualification Act 1975, and that, to the best of his knowledge and belief, he is not disqualified for membership of the House of Commons.”

(2) Nothing in this Act shall be construed as affecting the enactments relating to the disqualification for membership of the House of Commons of priests in holy orders or ministers of any religious denomination.

*Short title and extent*

11.—(1) This Act may be cited as the House of Commons Disqualification Act 1975.

(2) This Act extends to Northern Ireland.

SCHEDULES

Section 1, 4, 5

SCHEDULE I

OFFICES DISQUALIFYING FOR MEMBERSHIP

PART I

JUDICIAL OFFICES

Judge of the High Court of Justice or Court of Appeal.

Judge of the Court of Session.

Judge of the High Court of Appeal in Northern Ireland.

Judge of the Court-Martial Appeal Court.

Chairman of the Scottish Land Court.

Circuit Judge.

Sheriff Principal or Sheriff (other than Honorary Sheriff) appointed under the Sheriff Courts (Scotland) Act 1907 (1907 c. 51) or Temporary Sheriff Principal or Temporary Sheriff appointed under the Sheriff Courts (Scotland) Act, 1971 (1971 c 58).

County Court Judge or Temporary County Court Judge in Northern Ireland within the meaning of the Government of Ireland Act 1920, (1920 c. of 67) or the deputy of such a Judge.

Stipendiary Magistrate within the meaning of the Justices of the Peace Act, 1949 (1949 c. 101).

Stipendiary Magistrate in Scotland.

Resident Magistrate appointed under the Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1935 [1935 c. 13 (N.I.)] of the Magistrates' Courts Act (Northern Ireland) 1964 [1964 c21 (N.I.)].

Chief or other National Insurance Commissioner.

Chief or other National Insurance Commissioner for Northern Ireland.

Umpire or Deputy Umpire appointed for the purposes of section 43 of the National Service Act 1948 (1948 c. 64).

## PART II

### BODIES OF WHICH ALL MEMBERS ARE DISQUALIFIED

The Advisory Board for the Research Councils.

The Agreement Board.

The Aircraft and Shipbuilding Industries Arbitration Tribunal.

The Appellate Tribunal constituted under the provisions of the National Service Act 1948 relating to conscientious objectors.

An Arbitration Tribunal established under Schedule 3 to the Industry Act 1975 (1975 c. 68).

An Area Electricity Board in England and Wales.

The Attendance Allowance Board.

#### *Sch. 1*

British Aerospace.

The British Airports Authority.

The British Airways Board

The British Film Fund Agency.

The British Gas Corporation.

~~The British National Oil Corporation.~~

~~The British Railways Board.~~

British Shipbuilders.

~~The British Steel Corporation.~~

~~The British Transport Docks Board.~~

The British Waterways Board.

~~The Central Arbitration Committee.~~

The Central Council for Agricultural and Horticultural Co-operation.

The Central Electricity Generating Board.

~~The Channel Tunnel Planning Council.~~

~~The Civil Aviation Authority.~~

The Civil Service Arbitration Tribunal.

A Colonial Currency Board.

~~The Commission for Local Administration in England.~~

~~The Commission for Local Administration in Wales.~~

The Commission for the New Towns.

The Commission for Racial Equality.

~~The Commonwealth Development Corporation.~~

~~The Council of the Advisory, Conciliation and Arbitration Service.~~

The Council on Tribunals.

The Covent Garden Market Authority.

The Crofters Commission.

The Crown Agents for Oversea Governments and Administrations

The Crown Estate Commissioners.

The Development Board for Rural Wales.

The Development Commission established under the Development and Road Improvement Funds Act 1909 (1909 c. 47).

A Development Corporation within the meaning of the New Towns Act 1965 (1965 c. 59) or the New Towns (Scotland) Act 1968 (1968 c. 16).

A Development Council established under the Industrial Organisation and Development Act 1947 (1947 c. 40).

The Eggs Authority.

The Electricity Council.

The Employment Appeal Tribunal.

The Employment Service Agency.

The Rural Opportunities Commission.

The Fair Employment Agency for Northern Ireland.

The Fair Employment Appeals Board.

A Financial Hardship Tribunal, within the meaning of section 27(1) of the Community Land Act 1975 (1975 c. 77).

The Foreign Compensation Commission.

The Forestry Commission.

The Freight Integration Council.

The Gaming Board for Great Britain.

The General Practice Finance Corporation.

The Health and Safety Commission.

The Health and Safety Executive.

The Health Services Board.

The Herring Industry Board.

The Highlands and Islands Development Board.

The Home Crown Cereals Authority.

The Housing Corporation.

The Immigration Appeal Tribunal.

An Independent Schools Tribunal constituted under Schedule 6 to the Education Act 1944 (1944 c. 31) or Schedule 7 to the Education (Scotland) Act 1962 (1962 c. 47).

The Independent Broadcasting Authority.

An Industrial Court established in Northern Ireland.

The Industrial Estates Corporation constituted in accordance with the Local Employment Act 1972 (1972 c. 5).

The Industrial Injuries Advisory Council.

The Intervention Board for Agricultural Produce and every committee of the Board performing functions of the Board.

A joint Planning Inquiry Commission constituted under Part III of the Town and Country Planning (Scotland) Act 1972 (1972 c. 52).

The Land Authority for Wales.

The Lands Tribunal.

The Lands Tribunal for Northern Ireland.

The Lands Tribunal for Scotland.

The Law Commission.

The Local Government Boundary Commission for England.

The Local Government Boundary Commission for Scotland.

The Local Government Boundary Commission for Wales.

The Location of Offices Bureau.

The Manpower Services Commission.

The Meat and Livestock Commission.

A Medical Appeal Tribunal constituted for the purposes of Part III of the Social Security Act 1975 (1975 c. 14) or Part III of the Social Security (Northern Ireland) Act 1975 (1975 c. 15) including any panel constituted for the purposes of any such Tribunal.

A Medical Board or Pneumoconiosis Medical Board constituted for the purposes of Part III of the Social Security Act 1975 or Part III of the Social Security (Northern Ireland) Act 1975, including any panel constituted for the purposes of any such Board.

#### **Sch. I**

A Medical Practices Committee constituted under section 7 of the National Health Service Act 1977 (1977 c. 49) or section 35 of the National Health Service (Scotland) Act 1947 (1947 c. 27).

The Medicines Commission and any committee established under section 4 of the Medicine Act 1968 (1968 c. 67).

A Mental Health Review Tribunal constituted under the Mental Health Act 1959 (1959 c. 72).

The Mental Welfare Commission for Scotland.

The Metrication Board.

The Ministry of Defence (Army Department) Teachers Selection Board.

The Monopolies and Mergers Commission.

A National Broadcasting Council.

The National Bus Company.

The National Coal Board.

The National Dock Labour Board.

The National Enterprise Board.

The National Film Finance Corporation.

The National Freight Corporation.

The National Health Service Staff Commission.

The National Insurance Advisory Committee.

The National Ports Council.

The National Radiological Protection Board.

The National Research Development Corporation.

The New Towns Staff Commission.

The North of Scotland Hydro Electric Board

The Northern Ireland Electricity Service.

The Occupational Pensions Board.

**E** A Panel of Chairmen of Re-instatement Committees constituted under section 41 of the National Service 1948 (1948 c. 64).

The Panel of Official Arbitrators constituted for the purposes of the Acquisition of Land (Assessment of Compensation) Act 1919 (1919 c. 57).

The Parole Board constituted under section 59 of the Criminal Justice Act 1967 (1967 c. 80).

A pensions Appeal Tribunal.

The Performing Right Tribunal.

A Planning Inquiry Commission constituted under Part III of the Town and Country Planning Act 1971 (1971 c. 78).

A Planning Inquiry Commission constituted under Part III of the Town and Country Planning (Scotland) Act 1972 (1972 c. 52).

The Police Complaints Board.

The Police Complaints Board for Northern Ireland.

The Post Office.

The Price Commission.

The Property Commission for Scotland established under section 224 of the Local Government (Scotland) Act 1973 (1973 c. 65).

The Red Deer Commission.

The Restrictive Practices Court.

The Review Board for Government Contracts.

A Rural Development Board.

The Scottish Committee of the Council on Tribunals.

The Scottish Committee of the Health Services Board.

The Scottish Development Agency.

The Scottish Land Court.

The Scottish Law Commission.

The Scottish Transport Group.

The South of Scotland Electricity Board.

The Staff Commission established under section 85(5) of the London Government Act 1963 (1963 c. 33).

The Staff Commission for England established under section 257 of the Local Government Act 1972 (1972 c. 70).

The Staff Commission for Scotland established under section 218 of the Local Government (Scotland) Act 1973 (1973 c. 65).

The Staff Commission for Wales established under section 258 of the Local Government Act 1972.

The Supplementary Benefits Commission.

The Traffic Commissioners for any area (including the commissioner for the Metropolitan Traffic Area).

The Training Services Agency.

The Transport Tribunal.

The Tribunal established under Part II of the Wireless Telegraphy Act 1949 (1949 c. 54).

The United Kingdom Atomic Energy Authority.

The University Grants Committee.

A Value Added Tax Tribunal.

The Water Resources Board.

The Welsh Committee of the Health Services Board.

The Welsh Development Agency.

The Welsh National Health Service Staff Commission.

The White Fish Authority constituted in accordance with Section 1 of the Sea Fish Industry Act 1970 (1970 c. 11) and the committee constituted in accordance with section 2 of that Act.



~~Part III~~

## OTHER DISQUALIFYING OFFICES

Accountant of Court appointed under section 25 of the Administration of Justice (Scotland) Act, 1933 (1933 c. 41).

~~Additional Commissioner of the Commission for Racial Equality.~~

~~Additional Commissioner of the Equal Opportunities Commission.~~

## SCH. 1

Adjudicator appointed for the purposes of the Immigration Act, 1971 (1971 c. 77).

Agent for Northern Ireland in Great Britain.

Ambassador representing Her Majesty's Government in the United Kingdom.

Assessor of Public Undertakings (Scotland).

Assistant Commissioner appointed under Part IV of the Local Government Act 1972 (1972 c. 70).

Assistant Commissioner appointed under Part II of the Local Government (Scotland) Act 1973 (1973 c. 65).

~~Attorney General of the Duchy of Lancaster.~~

Auditor of the Civil List.

Auditor of the Court of Session.

~~Boundary Commissioner or Assistant Boundary Commissioner appointed under Part I or Part II of Schedule I to the House of Commons (Redistribution of Seats) Act 1949 (1949 c. 66).~~

~~Certification officer or assistant certification officer appointed under section 7 of the Employment Protection Act, 1975 (1975 c. 71).~~

~~Chairman or Deputy Chairman of an Administrative Board constituted for the purposes of any scheme made, or having effect as if made, under section 2 or 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975 (1975 c. 16).~~

~~Chairman or Vice Chairman of the Advisory Committee on Distinction Awards.~~

**Chairman of the Advisory Committee on Distinction Awards in Northern Ireland.**

**Chairman or member of a panel of deputy-chairmen of an Agricultural Land Tribunal.**

**Chairman of an Appeal Tribunal constituted in accordance with Schedule 4 to the Supplementary Benefits Act 1976 (1976 c. 71) or under Schedule 3 to the Supplementary Benefits & c. Act (Northern Ireland) 1966 [1966 c. 28 (N.I)].**

**Paid Chairman of an Area Transport Users Consultative Committee established under section 56 of the Transport Act 1962 (1962 c. 46).**

**Chairman or Director General of the British Council.**

**Paid Chairman of the Central Transport Consultative Committee for Great Britain established under section 56 of the Transport Act 1962.**

**Chairman of the Cinematograph Films Council.**

**Chairman of any of the Consultative Councils established, under sections 7 and 7A of the Electricity Act 1947 (1947 c. 54) for the areas of Area Boards or the districts of the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.**

**Chairman of the Countryside Commission for Scotland and any other member of the Commission in receipt of remuneration.**

**Chairman or Vice-Chairman of the Dental Estimates Board or member of that Board appointed at an annual salary.**

**Paid Chairman of an Economic Development Committee.**

**Paid Chairman of a Health Board constituted under the National Health Service (Scotland) Act 1972 (1972 c. 58).**

**Chairman of a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 [S.T. 1972/1265 (N.I. 14)].**

**Paid Chairman of an Industrial Training Board constituted under the Industrial Training Act, 1964 (1964 c. 16) or of a committee appointed under that Act or paid Deputy Chairman of such a board.**

**Chairman, Vice-Chairman or member of the executive committee of the Land Settlement Association Limited appointed at a salary.**

**Chairman of the Local Government Staff Commission for Northern Ireland.**

**Chairman of a Local Tribunal constituted under section 94(2) of, and Schedule 10 to, the Social Security Act 1975 (1975 c. 14) or under section 94(2) of, Schedule 10 to the Social Security (Northern Ireland) Act 1975. (1975 c. 15).**

**Chairman or Deputy Chairman of a Local Tribunal constituted under the provisions of the National Service Act 1948 (1948 c. 64) relating to conscientious objectors.**

**Chairman or Reserve Chairman of a Military Service (Hardship) Committee constituted under Schedule 3 to the National Service Act 1948.**

**Chairman of the Mining Qualifications Board.**

**Paid Chairman of a National Economic Development Council Working Party.**

**Chairman in receipt of remuneration of the National Gas Consumers' Council or any Regional Gas Consumers' Council.**

**Chairman or Vice-Chairman of the National Seed Development Organisation Limited.**

**Chairman, or other member appointed by a Minister, of the National Water Council.**

**Chairman of the Northern Ireland Central Services Agency for the Health and Social Services.**

**Chairman of the Northern Ireland Council for Nurses and Midwives.**

**Chairman of the Northern Ireland Staffs Council for the Health and Social Services.**

**Any Chairman of the Plant Varieties and Seeds Tribunal.**

**Chairman of the Post Office Users' National Council.**

**Chairman of a Regional Economic Planning Council.**

**Chairman in receipt of remuneration of any Regional Health Authority, Area Health Authority or Area Health Authority (Teaching) or of any special health authority.**

**Chairman of a Regional Water Authority.**

**Chairman of the Scottish Dental Estimates Board or member of that Board appointed at an annual salary.**

**Chairman, Deputy Chairman or member of the Council of Management of the Scottish Special Housing Association, appointed at a salary.**

**SCH. 1**

**Chairman of the Staff Commission for Education and Library Boards in Northern Ireland.**

~~Chairman of the tribunal constituted under section 463 of the Income and Corporation Taxes Act 1970. (1970 c. 10.)~~

~~Chairman of the Welsh National Water Development Authority.~~

~~Chief Electoral Officer or Deputy Electoral Officer for Northern Ireland.~~

~~Clerk of the Crown and Peace in Northern Ireland.~~

~~Clerk or deputy clerk of a district council in Northern Ireland.~~

~~Clerk of the Peace in Scotland.~~

~~Clerk or Assistant Clerk of Petty Sessions in Northern Ireland.~~

~~The Commissioner for Local Administration in Scotland.~~

~~Commissioner or Assistant Commissioner appointed under section 50(1) or (2) of, or Schedule 4 to the Local Government Act (Northern Ireland) 1972. [1972 c. 9 (N 1).]~~

~~The Commissioner appointed by Her Majesty's Government in the United Kingdom under Article 3 of the Agreement confirmed by the Nauru Island Agreement Act 1920. (1920 c. 27.)~~

~~Commissioner or Assistant Commissioner of Police of the Metropolis.~~

~~Commissioner of the City of London Police.~~

~~Comptroller and Auditor General.~~

~~Comptroller and Auditor General for Northern Ireland.~~

~~Constable, Lieutenant or Major of the Tower of London.~~

~~Correspondent appointed by the Commissioners of Customs and Excise.~~

~~Counsel to the Secretary of State under the Private Legislation Procedure (Scotland) Act 1936. (1936 c. 52.)~~

~~Crown Solicitor for Northern Ireland.~~

~~Delegate for Her Majesty's Government in the United Kingdom to the Central Rhine Commission.~~

~~Director of the Agricultural Mortgage Corporation Limited nominated by a Minister of the Crown or government department.~~

~~Director of the British Petroleum Company Limited nominated by a Minister of the Crown or government department.~~

~~Director of the British Sugar Corporation Limited appointed by the Ministers as defined by section 17 of the Sugar Act 1956. (1956 c. 48.)~~

~~Director of Cable and Wireless Limited.~~

Director of the Cereals Committee Limited appointed by a Minister of the Crown or government department.

Director of the Commonwealth Institute.

Director of the Compagnie Financiere de Suez et de l'Union Parisienne appointed by a Minister of the Crown or government department.

Director of any company in receipt of financial assistance under the Distribution of Industry Act, 1945, (1945 c. 36), the Distribution of Industry (Industrial Finance) Act 1958, (1958 c. 41), the Shipbuilding Industry Act 1967, (1967 c. 40), the Local Employment Act 1972, (1972 c. 5), or Part II of the Industry Act 1972, (1972 c. 63), being a director nominated by a Minister of the Crown or government department.

Director nominated by the Secretary of State of any company in respect of which an undertaking to make advances has been given by the Secretary of State under section 2 of the Highlands and Islands Shipping Services Act 1960, (1960 c. 31.) and is for the time being in force.

Director of the Holding Company referred to in the Transport Act 1962. (1962 c. 46.)

Director appointed at a salary of Industrial Advisers to the Blind Limited.

Director of International Computers (Holdings) Limited nominated or appointed by a Minister of the Crown or government department.

Director appointed at a salary of the National Building Agency.

Director appointed at a salary of the National Institute for Housecraft (Employment and Training) Limited.

Director of the Peterhead Bay (Management) Company Limited.

Director, or Deputy Director, of Public Prosecutions for Northern Ireland.

Director appointed at a salary of Remploy Limited.

Director of S.B. (Realisations) Limited nominated or appointed by a Minister of the Crown or government department.

Director of the Scottish Agricultural Securities Corporation Limited nominated by a Minister of the Crown or government department.

Director General of Fair Trading.

Distributor of Stamps appointed by the Commissioners of Inland Revenue for the Stock Exchange at Manchester or Glasgow.

Examiner or member of a board of interviewers appointed by the Civil Service Commissioners.

Examiner for entrance examination to, or member of a board of interviewers for entrance to, the civil service of Northern Ireland.

General Manager or Secretary of the Scottish Special Housing Association.

Governor of the British Broadcasting Corporation.

Governor, Deputy Governor or Director of the Bank of England.

Governor, Lieutenant Governor and Secretary, or Captain of Invalids of Chelsea Hospital.

Governor, Medical Officer or other officer or member of the staff of a prison to which the Prison Act (Northern Ireland) 1953 [1953 c. 18 (N.I.)] applies.

Health Service Commissioner for England.

Health Service Commissioner for Scotland.

Health Service Commissioner for Wales.

High Commissioner representing Her Majesty's Government in the United Kingdom.

Industrial Assurance Commissioner or Deputy Industrial Assurance Commissioner appointed under the Industrial Assurance Act (Northern Ireland) 1924. [1924 c. 21 (N. 1).]

Judge Advocate of the Fleet.

Judge Advocate General, Vice Judge Advocate General, Assistant Judge Advocate General or Deputy Judge Advocate.

Lay observer appointed under section 45 of the Solicitors Act 1974. (1974 c. 47.)

Lay observer appointed under section 7 of the Solicitors (Scotland) Act 1976. (1976 c. 6.)

Lyon Clerk.

Lyon King of Arms.

Member of an Agricultural Marketing Board appointed by the Minister under Schedule 2 to the Agricultural Marketing Act 1958. (1958 c. 47.)

1933 c. 22 (N.I.).

1964 c. 13 (N.I.).

Members of an Agricultural Marketing Board appointed under section 2 of the Agricultural Marketing Act (Northern Ireland) 1933 [1933 c. 22 (N.I.)] or section 3 of the Agricultural Marketing Act. (Northern Ireland) 1964. [1964 c. 13 (N.I.)]

Member appointed by the Minister of Agriculture, Fisheries and Food of the Agricultural Wages Board for England and Wales or of an agricultural wages committee established under the Agricultural Wages Act 1948, (1948 c. 47), or chairman of such a committee.

Member appointed by the Secretary of State of the Scottish Agricultural Wages Board.

Member appointed by the Head of the Department or Minister of Agriculture for Northern Ireland of the Agricultural Wages Board for Northern Ireland.

Any member of the British Library Board in receipt of remuneration.

Any member in receipt of remuneration of the British Tourist Authority, the English Tourist Board, the Scottish Tourist Board or the Wales Tourist Board.

Any member of the Countryside Commission in receipt of remuneration.

Member appointed by the Secretary of State of the Horserace Betting Levy Board.

Member of the Council of the National Computing Centre appointed at a salary by a Minister of the Crown or government department.

Any member of the Nature Conservancy Council in receipt of remuneration.

Member of a panel of valuers appointed at an annual salary under section 4 of the Inland Revenue Regulation Act 1890. (1890 c. 21)

Member of the Permanent Joint Hops Committee appointed by a Minister of the Crown or government department.

Member of a Wages Council or Central Co-ordinating Committee appointed under paragraph 1 (a) of Schedule 2 to the Wages Councils Act 1959, (1959 c. 69), Chairman of a Committee appointed under paragraph 1(1)(a) of Schedule 3 to that Act.

Member of a Wages Council or Central Co-ordinating Committee appointed under paragraph 1 (a) of Schedule 1 to the Wages Councils Act (Northern Ireland) 1945 [1945 c. 21 (N.1)], or Member of a Commission of Inquiry appointed under paragraph 1(a) of Schedule 2 to that Act.

Northern Ireland Commissioner for Complaints.

Northern Ireland Parliamentary Commissioner for Administration.

Officer of the Board of Referees appointed for the purposes of section 26 of the Capital Allowances Act 1968. (1968 c. 1)

Officer or servant employed under the Commissioner of Police of the Metropolis or the Receiver for the Metropolitan Police District.

Officer or servant of the Crown Estate Commissioners.

~~Officer or other member of the County Court Service within the meaning of the County Courts Act (Northern Ireland) 1959. (1959 c. 25(N.1))~~

Officer, clerk or servant appointed or employed under section 20 of the Greenwich Hospital Act 1865. (1865 c. 89).

Officer of the Supreme Court within the meaning of sections 115 to 120 of the Supreme Court of Judicature (Consolidation) Act 1925. (1925 c. 49)

Officer of or attained to the Supreme Court of Northern Ireland to whom section 76 of the Supreme Court of Judicature Act the (Ireland) 1877 (1877 c. 57) applies.

Parliamentary Commissioner for Administration.

President, or member of a panel of chairmen, of industrial tribunals established under section 12 of the Industrial Training Act 1964. (1964 c. 16)

Principal Clerk of Judiciary appointed under section 25 of the Administration of Justice (Scotland) Act, 1933. (1933 c. 41)

Procurator fiscal or procurator fiscal depute appointed under the Sheriff Courts and Legal Officers (Scotland) Act, 1927. (1927 c. 15)

Public Works Loan Commissioner.

Receiver for the Metropolitan Police District.

Registrar or Assistant Registrar appointed under section 18 or section 19 of the County Courts Act 1959. (1959 c. 22)

Registrar or Assistant Registrar of Friendly Societies.

Registrar of the Privy Council.

Registration Officer appointed under Part III of the Local Government Act 1972. (1972 c. 70)

Sheriff clerk or sheriff clerk depute.

Solicitor in Scotland to any department of Her Majesty's Government in the United Kingdom.

Standing Counsel to any department of Her Majesty's Government in the United Kingdom.

Substitution Officer of the Royal Air Force.

Technical Adviser to the Commissioners of Customs and Excise.

~~Under-Sheriff appointed under section 1 of the Sheriffs (Ireland) Act 1920. (1920 c. 77)~~



## SCH. I

## PART IV

## Offices disqualifying for particular constituencies

<i>Office</i>	<i>Constituency</i>
Her Majesty's Commissioner of The Cities of London and West-Lieutenancy in the city of London.	Minister.
Her Majesty's Lieutenant for Greater London.	Any constituency comprising any part of Greater London.
Her Majesty's Lieutenant for a county in England and Wales.	Any constituency comprising the whole or part of the area for which he is appointed.
Her Majesty's Lord-Lieutenant or Lieutenant for a region in Scotland.	Any constituency comprising the whole or part of such part of the region as may be determined by Order in Council made by Her Majesty in which the Lord-Lieutenant holds office or in which the Lord-Lieutenant or Lieutenant discharge his functions.
Her Majesty's Lord Lieutenant or Lieutenant for an Islands area in Scotland.	Any constituency comprising the whole or part of the Islands area for which the Lord-Lieutenant or Lieutenant is appointed or for which the Lord-Lieutenant holds office.
Her Majesty's Lord-Lieutenant or Lieutenant for the district of the city of Aberdeen, Dundee, Edinburgh or Glasgow.	Any constituency comprising the whole or part of the district in which the Lord-Lieutenant holds office or for which the Lieutenant is appointed.
Governor of the Isle of Wight.	The Isle of Wight.
The High Sheriff of London.	Greater Any constituency comprising any part of Greater London.
High Sheriff of a county in England and Wales.	Any constituency comprising the whole or part of the area for which he is appointed.

## SCHEDULE 2

## Section 2

## MINISTERIAL OFFICES

Prime Minister and First Lord of the Treasury.

Lord President of the Council.

Lord Privy Seal.

Chancellor of the Duchy of Lancaster.

Paymaster General.

Secretary of State

Chancellor of the Exchequer

Minister of Agriculture, Fisheries and Food.

**President of the Board of Trade.**

**Minister of State.**

**Chief Secretary to the Treasury.**

**Minister in charge of a public department of Her Majesty's Government in the United Kingdom (if not within the other provisions of this Schedule).**

**Attorney General.**

Lord Advocate.

**Solicitor General.**

Solicitor General for Scotland.

Parliamentary Secretary to the Treasury.

Financial Secretary to the Treasury.

[Parliamentary Secretary in a Government department other than the Treasury, or not in a department.

**Junior Lord of the Treasury.**

**Treasurer of Her Majesty's Household.**

**Comptroller of Her Majesty's Household.**

**Vice-Chamberlain of Her Majesty's Household.**

**Assistant Government Whip.**

## APPENDIX III

(*vide para 3 of the Report*)

### I

## MINUTES OF THE SUB-COMMITTEE OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

### I

(*First Sitting*)

The Committee met on Saturday, 27 November, 1982 from 11.30 to 12.30 hours.

### PRESENT

Shri Gulsher Ahmed

*Chairman*

### MEMBERS

*Lok Sabha*

2. Shri Ajitsinh Dabhi

3. Shri N. K. Shejwalkar

*Kajya Sabha*

4. Shri Dinesh Goswami

### SECRETARIAT

Shri T. E. Jagannathan

*Senior Legislative  
Committee Officer*

2. The Sub-Committee took up for consideration Memorandum No. 110 regarding evolving of uniform principles in regard to disqualification of membership under Article 102(1)(a) of the Constitution.

3. At the outset, the Chairman briefed the Sub-Committee about the genesis of Memorandum No. 110 and discussed the procedure to be adopted for achieving uniformity in the matter.

4. After some discussion, the Sub-Committee considered the Bihar Legislature (Removal of Disqualification) Act, 1950 and noted that in terms of entry 5 in the Schedule to the Act *ibid*, the office of the Chairman or member of any Committee or body appointed by the Central or State Government should not be disqualified for being chosen as, or for being, a member of the Bihar Legislative Assembly or the Bihar Legislative Council by reason only of the fact that he held any of the offices, being offices of profit. The Sub-Committee noted that in the case of the Bihar State Small Industries Corporation the Joint Committee on Offices of Profit (Seventh Lok Sabha) had recommended that Members of the said Board ought not to be exempt from disqualification [*vide 4R(7LS), para 2.26*]. Thus in

the present case an anomaly had arisen inasmuch as that membership in the said Corporation would disqualify a person for being Member of Parliament whereas M.L.A.s had been exempted from incurring disqualification for membership under the provisions of the Bihar Legislature (Removal of Disqualification) Act *ibid*. The Sub-Committee felt that such cases of anomaly might come to light if Acts of other States were perused. The Sub-Committee, therefore, decided that detailed information might be called for from the State Governments in regard to the Committees/Bodies etc. of which members of the State Legislatures had been nominated or appointed and had been protected from incurring disqualification for being members of the State Legislatures under the provisions of the respective State enactments passed by the State Legislatures for removal of disqualification in spite of the executive, financial or judicial powers being exercised by the Committees/Bodies etc.

5. The Sub-Committee then desired that the requisite information, when received, from the State Governments might be circulated to the members of the Sub-Committee and sittings convened periodically to scrutinise the information. The Committee also desired that the information which had since been received by the Lok Sabha Secretariat in respect of Andhra Pradesh Bihar, Madhya Pradesh, Maharashtra and Uttar Pradesh might be circulated to the members of the Sub-Committee for their consideration at the next sitting.

6. The Sub-Committee also decided that the relevant pages of Vol. I of the Report of the Bhargava Committee dealing with "Offices of Profit" might be circulated to the members of the Sub-Committee to enable them to study various matters connected with disqualification of Members under Article 102(1) (a) of the Constitution. The Sub-Committee also desired that LARRDIS might be requested to prepare an elaborate note stating the latest position regarding "Offices of Profit" obtaining in the U.K., other Commonwealth countries and in the U.S.A. The Sub-Committee also wanted that a comparative study might be made by the LARRDIS on the relevant provisions contained in the Constitutions of Australia, U.K., Sri Lanka etc. relating to "Offices of Profit" and a note prepared and the same might be circulated to them for their consideration.

7. At the end, the members of the Sub-Committee observed that in a democracy it was of paramount importance that as far as possible Members of Parliament and that of the State Legislatures should not be lured to accept Offices of Profit. Members should not be permitted to go on Committees/Commissions etc. which would jeopardise their independence or which would place them in a position of power or influence or in a position where they could receive some patronage from Government or where they were themselves in a position to distribute patronage. Nor should the Central and State Governments enact legislations to prevent their members from incurring disqualification for being chosen as, and for being, a member of either House of Parliament (under Art. 102) or that of the Legislative Assembly or Legislature of a State (under Art. 191). The Committee reiterated their earlier view that the Parliament should not hesitate to take urgent steps to amend Articles 102(1) (a) and 191(1)(a) of the Constitution to achieve the aforesaid goal.

8. The Sub-Committee then authorised the Chairman to fix their next sitting after the requisite information had been received from the State Governments.

*The Sub-Committee then adjourned.*

## SECOND SITTING OF THE SUB-COMMITTEE

The Committee met on Wednesday, 9 February, 1983 from 11.00 to 12.30 hours.

### PRESENT

Shri Gulsher Ahmed

*Chairman*

### MEMBERS

#### *Lok Sabha*

2. Shri Ajit Sinh Dabhi
3. Shri Jamilur Rahman
4. Shri N. K. Shejwalkar

### SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer*
2. Shri T. E. Jagannathan—*Senior Legislative Committee Officer*

2. The Sub-Committee resumed consideration of Memorandum No. 110 regarding evolving of uniform principles in regard to disqualification or membership under Article 102(1)(a) of the Constitution.

3. At the outset, the Sub-Committee perused the following material :

1. Report of the Committee on Offices of Profit Part I (Bhargava Committee Report).
2. House of Commons Disqualification Act, 1975.
3. The Andhra Pradesh Removal of Disqualifications Act, 1953 (corrected upto 1981).
4. The Bihar Legislature (Removal of Disqualifications Act, 1959 corrected upto 1975).
5. The Madhya Pradesh Vidhan Mandal Sadasya Nirhata Nivaran Adhinyam, 1967 (corrected upto 1980).
6. The Maharashtra Legislature Members (Removal of Disqualifications) Act, 1956 (corrected upto 1981).
7. The Uttar Pradesh State Legislature (Prevention of Disqualification) Act, 1971.
8. Note stating the position regarding 'Office of Profit' obtaining in the Commonwealth Countries, U.S.A. and France.

4. After some discussion, the Sub-Committee decided that Acts relating to Prevention/Removal of Disqualifications of memberships, passed by other State Legislatures, might also be procured from the remaining States for scrutiny and examination by the Sub-Committee. In particular, the Committee desired that information might be obtained where office of profit was specifically mentioned in the Schedule to the State enactments.

5. Thereafter, the Sub-Committee decided that representatives of the Ministry of Law might be called at their next sitting for seeking clarifications on the following matters :—

- (i) While considering particulars of Transport and Communications Board, Water Resources Management Board and Housing Urban Renewal Ecology Board set up by the Government of Maharashtra, it was observed by the Joint Committee on Offices of Profit that in terms of Section 10(1) of the Bombay Metropolitan Region Development Authority Act, 1974, under which the said Boards were constituted, a member (including Chairman or Vice-Chairman) of the Authority or any of its Committees or Boards shall not be disqualified under Article 191 (1) of the Constitution for being chosen as, and for being, a member of the State Legislature merely by reason of the fact that he was a member of the said Authority or any of its Committees or Boards. Whereas, in regard to these Boards, the Joint Committee took the view that non-official members, including the Chairman thereof, were likely to attract disqualification, for being chosen as, and for being, a member of either House of Parliament under Article 102(1)(a) of the Constitution in view of the executive and financial powers exercised by the Boards. Thus, the position of Members of Parliament *vis-a-vis* Members of Legislative Assemblies was anomalous so far as their appointment to these Boards was concerned.
- (ii) There were other State enactments which prevented disqualification of Members of the State Legislatures on their appointments to certain committees/bodies whereas the Joint Committee had held the view that Members of Parliament, if appointed thereon, would incur disqualification. Such cases were mentioned as hereunder :—
  - (a) In the Andhra Pradesh Payment of Salaries and Pension and Removal of Disqualifications Act, 1953, the Chairman of the following bodies had been exempted from incurring disqualifications :
    - (1) Andhra Pradesh State Agro-Industries Corporation Limited, Hyderabad (S. No. 21 of the Schedule to the State Act at page 25);
    - (2) Andhra Pradesh State Electricity Board (S. No. 24, *ibid*);
    - (3) Andhra Pradesh Housing Board (S. No. 29, *ibid*); and
    - (4) Andhra Pradesh State Warehousing Corporation (S. No. 52, *ibid*).

However, the Joint Committee on Offices of Profit (Fifth Lok Sabha) had held in the above cases that Chairmen/members thereof ought to disqualify [3R (JCOP-5LS), para 11; 4R, *ibid*, para 12; 5R, *ibid*, para 7; and 10 R, *ibid*, para 24].

- (b) under section 3(n) of the Uttar Pradesh State Legislature (Prevention of Disqualification) Act, 1971, the Office of Chairman, Deputy Chairman, Director, member or secretary of any statutory or non-statutory body, if the holder of such office was not entitled to any remuneration other than compensatory allowance, had been exempted from disqualification for being chosen as, or for being, a member of the State Legislature. Under that provision, non-official members of the Kanpur Development Authority and State Transport Authority had been protected from incurring disqualification from membership of State Legislature. Whereas the Committee on Offices of Profit (Seventh Lok Sabha) had held that the membership (including chairmanship) of these bodies ought not to be exempted from disqualification as the Committee were of the opinion that the non-official members would exercise collectively executive and financial powers in the first case and executive and quasi-judicial powers in the second case [2R (JCOP-7LS), paras 4.2 to 4.5, Minutes (JCOP-7LS), 6-8-1982, paras 6-9].
- (c) According to entry 17 in the Schedule to the Madhya Pradesh Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam, 1967, the Chairman and Vice-Chairman or President and Vice-President of a Statutory Body, shall not be disqualified for being chosen as, or for being, a member of the Madhya Pradesh Legislative Assembly or the Madhya Pradesh Legislative Council by reason of the fact that he held any of the offices of profit under Government.

Whereas the Joint Committee on Offices of Profit (5LS) *vide* their Fifteenth Report (5LS), paras 42 to 49, had recommended that non-official members (including chairmanship) of the following bodies ought not to be exempt from disqualification in view of executive and financial powers :—

- (1) Madhya Pradesh State Mining Corporation;
  - (2) Madhya Pradesh Licensing Board (Electrical);
  - (3) Madhya Pradesh State Road Transport Corporation Board;
  - (4) Madhya Pradesh Housing Board;
  - (5) Madhya Pradesh Audyogik Vikas Nigam Ltd.,
  - (6) Madhya Pradesh State Industries Corporation Ltd.;
  - (7) Madhya Pradesh State Textile Corporation Ltd., and
  - (8) Madhya Pradesh State Corporation of Text Book Production and Educational Research.
- (d) The Bihar Legislature (Removal of Disqualifications) Act, 1950, provided that the office of the Chairman or member of any Committee or body appointed by the Central or a

State Government shall not be disqualified for being chosen as or for being a member of the Bihar Legislative Assembly or the Bihar Legislative Council by reason only of the fact that he held any of the Offices, being offices of profit (*vide* entry 5 in the Schedule to the Act, *ibid*).

In view of the above provision, members of the Board of Directors of the Bihar State Small Industries Corporation and Bihar State Construction Corporation Pvt. Ltd., were exempt from disqualification under the aforesaid Bihar Act but the Joint Committee on Officer of Profit recommended that members of the Board of Directors of the said bodies ought not to be exempt from disqualification vide 4R (4LS), para 2.26 and 19R (5LS), para 12 respectively.

- (iii) To ascertain from the Ministry's representatives as to how the guiding principles evolved by the Joint Committee from time to time for the prevention of disqualifications of Members of Parliament had been brought to the notice of the State Governments for dealing with cases of 'Offices of Profit' concerning Members of State Legislatures with a view to ensure uniform approach both by Parliament and State Legislature in these matters.

6. The Sub-Committee also desired that in order to enable the State Governments/Legislatures to be acquainted with past decisions of the Joint Committee on Offices of Profit, a case law as reflected in the various Reports of the Joint Committee since first Lok Sabha up-to-date might be prepared. The Committee also desired that 1000 copies of the Bhargava Committee Report on Offices of Profit might be got reprinted for circulation to the State Governments and also to M.L.As on demand when the Sub-Committee or the Joint Committee on Offices of profit undertook study visits to the various States. Hindi version of the said Report might also be get prepared and copies thereof printed to meet the demand therefor.

7. An article under the caption 'Many MLAs in Madhya Pradesh face disqualification' which had appeared in the *Indian Express* dated 29 December, 1982 was also persued by the Sub-Committee.

8. The Sub-Committee then authorised the Chairman to fix their next sitting some time in the second week of March, 1983.

*The Sub-Committee then adjourned.*



### III

#### THIRD SITTING OF THE SUB-COMMITTEE

The Sub-Committee met on Monday, 13 June, 1983 from 15.00 to 16.15 hours.

#### PRESENT

Shri Gulsher Ahmed—*Chairman*

#### MEMBERS

*Lok Sabha*

2. Shri Ajit Singh Dabhi
3. Jamilur Rahman
4. Shri N. K. Shejwalkar

#### SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer*

2. The Sub-Committee considered Memorandum No. 163 regarding analysis of various State Prevention/Removal of Disqualification Acts made in connection with evolving of uniform principles in regard to disqualification under Article 102(1) (a) of the Constitution.

#### (i) THE ASSAM STATE LEGISLATURE MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1950.

3. The Sub-Committee first scrutinised the above Act and noted in particular that holding of the following offices had been exempted from incurring disqualification of membership of the Assam Legislative Assembly although in the opinion of the Sub-Committee such bodies exercised executive/financial powers or holders of some of the offices drew remunerations which were more than the 'compensatory allowance' :—

- (a) The office of Chairman and Director of the Assam State Warehousing Corporation and of Public Sector Corporations like Major Industries Development Corporation etc., and Chairman and Vice-Chairman or members of any Committee, Board or Authority appointed by the Government of India or the Government of any State (*vide* entry 7 in the Schedule);
- (b) The office of Government Pleader or Public Prosecutor (*vide* entry 2 in the Schedule); and
- (c) The office of part-time Professor, Lecturer, Instructor or Teacher in Government Educational Institutions (*vide* entry 3 in the Schedule to the Act *ibid*).

4. It would thus be seen that the Chairman of any Committee or Board appointed by the Government of India or any State had been

exempted from disqualification *vide* entry 7 in the Schedule to the above Act, although under the Parliament (Prevention of Disqualification) Act, 1959, a Member of Parliament had been debarred from holding the following offices under the Government of Assam *vide* entries in Part I of the Schedule :—

- (a) Adhi Conciliation Boards;
- (b) Assam Evacuee Property Management Committee; and
- (c) Assam Text Book Committee.

5. The Sub-Committee noted that the previous Joint Committee on Offices of Profit had held in the case of the following bodies set up by the Government of Assam that Chairman/Directors/non-official members thereof ought to disqualify although on the contrary all these bodies fell in the category of exemption from disqualification given under the State Act as stated in paragraph 3(a) above.

- (a) Assam Government Marketing Corporation Limited [*Vide* 5R (JCOP—5LS), para 9, p. 2]

Besides drawing remuneration more than the 'compensatory allowance', the Board of Directors could grant loans and give guarantee of financial assistance to any particular concern up to an amount of Rs. 20 lakhs. Thus, the Directors were in a position to wield influence and patronage and as such, the Joint Committee had recommended that directorship of the Corporation ought not to be exempted from disqualification.

- (b) Assam Small Industries Development Corporation Limited [*Vide* 4R (JCOP—4LS), para 13 p. 5]

Directors were getting remuneration which were more than the 'compensatory allowance' and the Board also exercised executive and financial powers. As such, the Directorship of the Corporation ought to disqualify.

- (c) Planning Board for the Hill Areas of Assam [*Vide* 4R JCOP—4LS), para 15, p. 6]

Non-official members were getting an honorarium of Rs. 100/- p.m. which was not covered under section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. As such, the Joint Committee on Offices of Profit had recommended that the membership of the Board ought not to be exempted from disqualification.

(ii) **HARYANA STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1974.**

6. The Sub-Committee, while examining the above Act, took note of the exemptions from disqualification given to the holders of the following bodies from membership of Haryana Legislature :—

- (a) Chairman/Vice-Chairman/ President/ Vice-President/ Director/member, whether elected, nominated or appointed either by the Union Government or the State Government or any of its officers, of any statutory or non-statutory body whether

he is or is not, in receipt of any remuneration including compensatory allowance during the performance of his duties (section 3(e) of the Act).

- (b) Chairman, Improvement Trust and the Chairman of the Haryana State Agricultural Marketing Board (section 3(h) of the Act).
- (c) Chairman, Haryana State Minor Irrigation (Tubewells) Corporation Limited and the Chairman, Haryana Agro-Industries Corporation Limited (section 3(i) of the Act).
- (d) Chairman/Vice-Chairman/Deputy Chairman/any member of the Haryana State Planning Board or the Haryana Khadi and Village Industries Board or the Haryana Harijan Kalyan Nigam.... (Section 3(j) of the Act).

7. The Committee were informed that there was no mention of any particular body under the Haryana Government for disqualification under the Parliament (Prevention of Disqualification) Act, 1959 as that State was demarcated after 1959. The Joint Committee on Offices of Profit had, however, held that non-official Directors/members (including Chairman) of the following bodies ought not to be exempted from disqualification :—

- (a) Haryana Agro-Industries Corporation Ltd., [Vide 5R (JCOP—5LS), para 14, p. 4]
- (b) Board of Directors of the Haryana Warehousing Corporation [Vide 19R (JCOP—5LS), para 13, p. 3]
- (c) Board of Industries, Haryana (*ibid*, para 14, p. 3).
- (d) Haryana State Electricity Board (*ibid*, para 15, p. 4).
- (e) Haryana Housing Board [Vide 13R (5LS), para 25, p. 7].

8. Thus, the above recommendations of the Joint Committee on Offices of Profit applicable to members of Parliament only were not in consonance with the provisions of the Haryana State Legislature (Prevention of Disqualification) Act applicable to members of Haryana Legislature.

9. On being further informed that particulars of Committee constituted by the Haryana Government had not been received, the Committee desired that the State Government might be reminded to supply the particulars early for examination by the Joint Committee on Offices of Profit.

**(iii) HIMACHAL PRADESH LEGISLATIVE ASSEMBLY MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1971**

10. The Sub-Committee noted with surprise that in the definition of 'compensatory allowance' as given in section 2(a) of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971, allowances payable to the holders of an office included T.A., D.A., sitting allowance, conveyance allowance and H.R.A. and the sentence 'enabling him to recoup any expenditure incurred by him' which occurred in the Parliament (Prevention of Disqualification) Act, 1959, had been omitted. The Sub-Committee felt that inclusion of that sentence was of

utmost importance as remuneration payable to a holder of an office was for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office and not for profiteering motive. The Committee suggested that attention of the State Government should be drawn to the above point. Other salient features in the Act which came to the notice of the Sub-Committee were inclusion of following offices for exemption from disqualification irrespective of executive and financial powers exercised by them.

- (a) the office of the Vice-Chancellor of any University (*vide* Sec. 3(j) of the Act); and
- (b) the office of Chairman or Vice-Chairman, Director or member of any statutory or non-statutory body. . . . (*vide* Sec. 3(m) of the Act).

11. Although under the Parliament (Prevention of Disqualification) Act, 1959, no body under the Himachal Pradesh Government had been disqualified, the Sub-Committee noticed that the Joint Committee on Offices of Profit had examined the following statutory bodies and recommended that non-official members therein ought not to be exempted from disqualification in view of executive and financial powers exercised by those bodies :—

- (a) Board of Industries (*vide* 6R (5LS), para 7, p. 1).
- (b) H.P. State Small Industries and Export Corporation Ltd. (*vide* 17R (5LS), para 27, p. 7).
- (c) H.P. Housing Board (*vide* 17R (5LS), para 28, p. 7).

12. The Committee did not find any justification for exemption of these bodies under Section 3(m) of the State Act.

(iv) **GUJARAT LEGISLATIVE ASSEMBLY MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1960**

13. The Sub-Committee did not find any valid reasons for exemption from disqualifications of holders of the following offices under the above State Act :—

- (a) Office of Chairman or member of any Committee or body appointed by the Central or State Government; provided that the holder of such office does not receive any remuneration other than compensatory allowance (*vide* entry 11 in the Schedule to the Act).
- (b) Office of part-time professor or lecturer in a Government College (*vide* entry 2 in the Schedule to the Act).
- (c) Office of Secretary of the District or Regional Development Boards constituted by the State Government : provided that the holder of such office does not hold any other office of profit under the State Government (*vide* entry 7 in the Schedule).

14. The Joint Committee on Offices of Profit had, however, disqualified holding of offices of members (including Chairman) of the following

bodies under the Government of Gujarat in view of executive and financial powers exercised by them although under the State Act, these bodies would be exempted from disqualification as they were covered under entry 11 in the Schedule to the Act *ibid* (Please see paragraph 13(a) above) :—

- (i) Gujarat Khadi and Village Industries Board (*vide* 8R (JCOF—5LS), para 7, p. 1).
- (ii) Gujarat Electricity Board (*ibid*, para 8, p. 2)
- (iii) Gujarat State Financial Corporation (*ibid*, para 9, p. 2).
- (iv) Gujarat Industrial Development Corporation (*ibid*, para 11, p. 2).
- (v) Gujarat Agro-Industries Corporation (*ibid*, para 12, p. 3).

The Sub-Committee noted that in last two cases, the non-official members/Directors were entitled to remuneration which exceeded 'compensatory allowance' also.

*The Sub-Committee then adjourned to meet again on the 14th June, 1983.*

## IV

### FOURTH SITTING OF THE SUB-COMMITTEE

The Sub-Committee met on Tuesday, 14 June, 1983 from 11.00 to 12.00 hours.

#### PRESENT

Shri Gulsher Ahmed—*Chairman*

#### MEMBERS

*Lok Sabha.*

2. Shri Ajit Singh Dabhi
3. Shri Jamilur Rahman
4. Shri N. K. Shejwalkar

*Rajya Sabha*

5. Shri Dinesh Goswami

#### SECRETARIAT

1. Shri S. S. Chawla—*Senior Legislative Committee Officer*

2. The Sub-Committee resumed consideration of Memorandum No. 163 regarding analysis of various State Prevention/Removal of Disqualification Acts made in connection with evolving of uniform principles in regard to disqualification under Article 102(1)(a) of the Constitution.

#### (i) JAMMU AND KASHMIR STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1962

3. The Sub-Committee were not convinced for granting exemption to holders of following offices for being chosen as, or for being, a member of the Jammu and Kashmir State Legislature under the provisions of the Jammu and Kashmir State Legislature (Prevention of Disqualification) Act, 1962 :

- (a) Office of Chairman, Director or member of any statutory or non-statutory body if the holder of such office is not entitled to any remuneration [*vide* Section 3(g) of the Act].
- (b) Office of Chairman or member of a Committee, Commission or Board set up by the Government whether under a statute or by executive order, for in connection with the —
  - (i) Prevention of corruption,
  - (ii) Development of the State in planned manner, and
  - (iii) Land reforms.

[*vide* Section 3(dd) of the Act].

4. In the opinion of the Sub-Committee, members of Committees set up for prevention of corruption, Development of the State in planned manner, and for Land reforms were generally in a position to wield influence or power by way of patronage to some extent and ought to have been disqualified. The Sub-Committee desired that a clarification might be sought from the State Government enquiring the purpose/necessity for making such

a special provision in the Act protecting members of Sub-Committees irrespective of powers/influences exercised by them.

5. The Sub-Committee also noted that the Joint Committee on Offices of Profit had taken the view that the non-official members of the following bodies ought not to be exempted from disqualification as they exercised executive and financial powers although they fell in the categories exempted by the State Legislatures :

(i) J&K State Industrial Development Corporation.  
[vide 19R (JCOP-5LS), para 20, p. 5]

(ii) Jammu & Kashmir Industries Ltd.  
[vide 19R (JCOP-5LS), para 21, p. 5-6].

(ii) KERALA LEGISLATIVE ASSEMBLY (REMOVAL OF DISQUALIFICATION) ACT, 1951

6. The Sub-Committee regretted to note that in the above Act, also provisions for exemption from disqualification in respect of the following offices had been made although the Sub-Committee had reasons to believe that such offices exercised executive/financial powers :—

(a) Chairman, Vice-Chairman or a member of the State Planning Board constituted by the Government or a member of the Backward Classes Reservation Commission constituted by the Government [vide Section 2(1)(viii) of the Act *ibid*]

(b) Office of the Chairman of a Government Company [vide Section 2(2)(1) of the Act]; and

(c) Office of the Chairman of a Corporation established or constituted by or under any Central or State Act and owned or controlled by the Government of Kerala [vide Section 2(2)(ii) of the Act].

7. The Sub-Committee felt that the above provisions seemed to be in conflict with the recommendations made by the earlier Joint Committee on Offices of Profit while examining the following bodies under the Kerala Government which had not, however, been exempted from disqualification by the Joint Committee on Offices of Profit as they exercised executive and financial powers :—

(i) Kerala State Housing Board  
[14R (5LS), para 23, p. 6].

(ii) Kerala State Rural Development Board  
[14R (5LS), para 25, p. 6-7].

(iii) Kerala Shipping Corporation  
[14R (5LS), para 27, p. 7].

(iv) Kerala Urban Development Financial Corporation Ltd.  
[14R (5LS), para 28, p. 7].

(v) Joint Town Planning Committee, Calicut Region  
[14R (5LS), para 27, p. 7].

(vi) Kerala Agro Industries Corporation Limited  
[18R (5LS), para 12, p. 3].

(vii) Kerala Handloom Finance Corporation Ltd.  
[15R (5LS), para 53, p. 13].

(iii) MADHYA PRADESH VIDHAN MANDAL SADASYA NIRHATA  
NIVARAN (SANSHODHAN) ADHINIYAM, 1982

8. The Sub-Committee of the Joint Committee on Offices of Profit had examined in detail the provisions of the Madhya Pradesh Act at their sitting held on 9 February, 1983 *vide* paragraph 5(c) of the Minutes of that sitting. In Section 17 of the Act *ibid*, the words Managing Director or Director' had been added by the aforesaid amending Act published on 12th November, 1982 meaning thereby that besides Chairman, Vice-Chairman, President, Vice-President, Managing Director or Director of a statutory body or a Member of any Committee would be exempted from disqualification. The Sub-Committee felt that it was not desirable to give such blank protection to all such offices as in their opinion Directorship of public undertakings as a class should disqualify.

(iv) PREVENTION OF DISQUALIFICATION (MEMBERS OF THE  
LEGISLATIVE ASSEMBLY OF MEGHALAYA) ACT, 1972

9. The Sub-Committee on scrutiny of the above Act found that exemption given to holders of the following offices were contrary to the view taken by Joint Committee on Offices of Profit from time to time :

- (a) The office of the Chairman, Vice-Chairman, or member of any Committee, Board or authority appointed by the Government of India or Government of any State (*vide* entry 7 in the Schedule).
- (b) Office of the part-time Professor, Lecturer, Instructor or Teacher in Government Educational Institutions (*vide* entry 5 in the Schedule).
- (c) Any office under the Government which is not a whole time office remunerated either by salary or fees (*vide* entry 8 in the Schedule).
- (d) The office of Chairman, Chief Executive Member or other Executive Member or ordinary member of a District Council in an autonomous District or any member nominated to such a District Council by the Governor (*vide* entry 9 in the Schedule).
- (e) The office of Chairman or Member of the Committee of any Cooperative Society to which appointment is made by the State Government, or the office of Liquidator or Joint Liquidator to which appointment is made by the Registrar of Co-operative Societies or the office of nominee of the Registrar whether appointed individually or to a board of nominee (*vide* entry 14 in the Schedule).

10. The Sub-Committee desired that enquiries might be made from the Government of Meghalaya to find out whether they had taken into consideration the functions and powers of the District Council before exempting membership of District Council (*vide* entry 9 in the Schedule to the Act) as in the opinion of the Sub-Committee such a District Council exercised executive and financial powers and were in a position to wield influence. The Sub-Committee also desired to study the detailed functioning of the District Councils.



11. The Joint Committee on Offices of Profit (Fifth Lok Sabha) had also examined the following bodies set up by the Government of Meghalaya and recommended that holders of any offices therein ought not to be exempted from disqualifications as sums payable to the non-official members/chairman exceeded 'compensatory allowance' and they exercised executive/financial powers :—

- (a) Meghalaya Industrial Development Corporation Ltd.  
[vide 15R (JCOP-5LS), para 50, pp. 12-13].
- (b) Forest Development Corporation of Meghalaya Ltd.  
[vide 15R (5LS), para 51, p. 13]

Both the above bodies had, however, been exempted from disqualification under the provisions of the above Act.

12. While the Sub-Committee appreciated that under the powers given to the State Legislatures under Article 191 of the Constitution, they were competent to enforce independently any law best suited for their respective States, they felt that while enacting the State Acts on Prevention/Removal of Disqualifications, the *pros and cons* of the provisions made thereunder did not appear to have been gone into depth (For example, to grant exemptions to holders of any office under Government Corporations etc. although such bodies exercised financial powers). The purpose underlying the constitutional provisions, namely, to keep members of the Legislatures independent of the executive, had thus been defeated. The Sub-Committee, therefore, strongly urged the State Governments to have their Acts reviewed in greater perspective.

13. At the end, the Sub-Committee felt that subject to approval by the Speaker, Lok Sabha the Joint Committee on Offices of Profit might visit all the States to discuss with the representatives of the State Governments that the powers given to the State Legislatures under Article 191 of the Constitution were being utilised by the State Governments without examining the *pros and cons* carefully thus defeating the purpose underlying the constitutional provisions, namely, to keep the Legislatures independent of the Executive.

14. The Sub-Committee then discussed their future programme of work and decided to hold their next sitting on 8 July, 1983 at 11.00 hours.

*The Sub-Committee then adjourned.*

V

FIFTH SITTING OF THE SUB-COMMITTEE

The Sub-Committee met on Friday, 8 July, 1983 from 1500 to 1600 hours.

PRESENT

Shri Gulsher Ahmed—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Ajit Singh Dabhi.
3. Shri Jamilur Rahman.
4. Shri N. K. Shejwalkar.

*Rajya Sabha*

5. Shri Dinesh Goswami.

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. The Sub-Committee considered Memorandum No. 164 regarding analysis of various State Prevention/Removal of Disqualification Acts made in connection with evolving of uniform principles in regard to disqualification under Article 102 (1) (a) of the Constitution.

(i) MYSORE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1956

In the Mysore Legislature (Prevention of Disqualification) Act, 1956, the definition of 'compensatory allowance' under Section 2(b) of the Act also included the payment of 'sitting fee' whereas under the Parliament Prevention of Disqualification) Act, 1959, that had not been included. The Sub-Committee felt that inclusion of sitting fee in the definition of 'compensatory allowance' would enable the State M.L.A. to draw more allowances as compared to an M.P. and the M.L.A. would still remain exempted from disqualification.

4. The Sub-Committee examined in detail the provisions of Section 3(d) of the Act, under which the following offices of profit had been declared as not to disqualify their holders for being chosen as, or for being, members of the Mysore Legislative Assembly/Council :

"Office of the Chairman or a member of a Committee provided that the holder of any such office is not in receipt of or entitled to any remuneration other than the compensatory allowance." [*vide* Section 3(d) of the Act].

In view of exercise of executive and financial powers, the Joint Committee on Offices of Profit had, however, recommended disqualification for holders of any offices under the following Corporations set up by the Government of Karnataka for membership of Parliament although holders of offices under those bodies would be exempted from disqualification for membership of the Karnataka Legislature under the provision of Section 3(d) of the Act—

- (a) Karnataka State Handicrafts Development Corporation Limited.

[vide 15R (5LS), para 41, p. 10].

- (b) Karnataka State Transport Authority.

[vide 16R (5LS), para 12, p. 3].

In the case of the body at (b) above, in view of Judicial powers exercised, Members of the Authority were recommended for disqualification for holding membership of Parliament.

- (c) Karnataka State Forest Industries Corporation Limited.

[vide 17R (5LS), para 31, p. 8].

In the case of the above Corporation non-official Directors were also entitled to sitting fee at the rate of Rs. 100/- per day which exceeded the 'compensatory allowance'.

- (d) Mysore State Agro-Industries Corporation Limited.

[vide 9R (5LS), para 10, p. 2].

(ii) ORISSA OFFICES OF PROFIT (REMOVAL OF DISQUALIFICATIONS) ACT, 1961

5. The Sub-Committee noted that the Orissa Offices of Profit Act, 1961 had been enacted on the lines of the Parliament (Prevention of Disqualification) Act, 1959 and no substantive change had been made in any of the Sections of the Act when compared with the Parliamentary Act.

6. In that connection, the Sub-Committee were informed that the Joint Committee on Offices of Profit (Fifth Lok Sabha) had, however, examined the following bodies set up by the Government of Orissa where they had recommended that holders of offices in those bodies ought not to be exempt from disqualification for membership of Parliament in view of reasons given against each :—

- (a) Districts Re-organisation Committee (Orissa)

[vide 15R (5LS), para 37 p. 9].

As the non-official Chairman and members of the Committee drew monthly allowance of Rs. 3,309 and Rs. 1284, respectively, in addition to TA/DA, they had been recommended for disqualification.

- (b) Orissa State Electricity Board.

[vide 15R (5LS), para 38, p. 9].

As the Chairman of the Board, a non-official, was entitled to monthly pay of Rs. 2750/- and the Chairman and members exercised executive and financial powers.

(iii) PUNJAB STATE LEGISLATURE (PREVENTION OF DISQUALIFICATION) ACT, 1952

7. The Sub-Committee noted that under Section 2(e) of the Punjab State Legislature (Prevention of Disqualification) Act, 1952, a member of any statutory body or authority, or a member of any Committee or other body, appointed or constituted by the Punjab Government, and who was not in receipt of a salary but who was paid only travelling and daily allowance during the performance of his duties would be exempt from disqualification for membership of the State Legislature.

8. The Sub-Committee felt that TA/DA should be defined specifically in the Act and the payment of TA/DA should not be more than 'compensatory allowance' as defined in the Parliament (Prevention of Disqualification) Act, 1959.

9. The Sub-Committee further felt that the provisions of the Punjab Act gave exemption to any statutory body or authority or a member of any Committee or other body in general without making it specific.

10. The Joint Committee on Offices of Profit had, however, recommended for disqualification for holding any of the following offices from membership of the Parliament as they drew remuneration which was more than 'compensatory allowance' although holders of those offices would be exempted from disqualification for membership of the Punjab Legislature under the provisions of Section 2(e) of the Act *ibid* :—

(a) Punjab Financial Corporation

[*vide* 16R (5LS), para 20, p. 6]

The functions of the Board were financial in nature.

(b) Punjab Export Corporation

[*vide* 19R (5LS), para 23, p. 6]

The Board of Directors exercised executive and financial powers.

(c) Punjab Housing Development Board

[*vide* 19 R(5LS), para 25, p. 7]

Whole-time members of the Board were entitled to the gross salary which did not come within the ambit of compensatory allowance. The Board also exercised executive and financial powers.

(d) Punjab State Planning Board

[*vide* 9R (5LS), para 12, p. 3]

(iv) **RAJASTHAN LEGISLATIVE ASSEMBLY MEMBERS (REMOVAL OF DISQUALIFICATION) ACT, 1957**

11. The Sub-Committee scrutinised the following two Acts passed by the Government of Rajasthan :—

- (i) Rajasthan Legislative Assembly Members (Removal of Disqualification) Act, 1969; and
- (ii) Rajasthan Legislative Assembly Members (Prevention of Disqualification) Act, 1957.

12. The Sub-Committee noted that wide exemptions from disqualifications had been provided under the following sections of the Rajasthan Legislative Assembly Members (Prevention of Disqualification) Act, 1957:

- “(a) The Office of a Chairman, Director, member or any officer of a Statutory body; where the power to make any appointment to any such office or the power to remove any person therefrom is vested with the Government [*vide* Section 3(f) of the Act].
- (b) The Office of profit under an Insurer the management of whose controlled business has vested in the Central Government under the Life Insurance (Emergency Provisions) Act, 1956 (Central Act 9 of 1956) [*vide* Section 3(g) of the Act].
- (c) The office of a Chairman or a member of the Committee other than any such Committee as is referred to in clause (c) of Section 3 of the Act [*vide* Section 3(g) of the Act].”

13. The Sub-Committee also desired that clarification might be sought from the Government of Rajasthan about the reasons for granting exemptions from disqualification to an Insurer under Section 3(g) of the Act.

*The Sub-Committee then adjourned*

## VI

### SIXTH SITTING OF THE SUB-COMMITTEE

The Sub-Committee met on Friday, 16 September, 1983 from 1500 to 1600 hours.

#### PRESENT

Shri Gulsher Ahmed—*Chairman*

#### MEMBERS

*Lok Sabha*

2. Shri Ajit Singh Dabhi
3. Shri Jamilur Rahman
4. Shri N. K. Shejwalkar

#### SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. The Sub-Committee considered Memorandum No. 251 regarding analysis of Six State Prevention/Removal of Disqualification Acts, pertaining to Sikkim, Tamil Nadu, Tripura, West Bengal, Arunachal Pradesh and Mizoram, made in connection with evolving of uniform principles in regard to disqualification under Article 102(1) (a) of the Constitution.

#### (i) SIKKIM LEGISLATIVE ASSEMBLY MEMBERS REMOVAL OF DISQUALIFICATIONS ACT, 1978.

3. The Sub-Committee examined in detail the provisions of Section 3(q) of the Act under which the following Offices of Profit had been declared as not to disqualify their holders for being chosen as, or for being members of the Sikkim Legislative Assembly :

“The office of the Chairman, Deputy Chairman or a member or Secretary of any Committee, Commission, Corporation or similar other authorities constituted by the Government of India or the State Government or any other authority in respect of any public matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance or any residential accommodation or any arrangement for conveyance to facilitate the performance of the function of such office.

*Explanation* :— For the purpose of this Act, the office of Chairman, Deputy Chairman or Secretary shall include every office of that description, by whatever name called.”

The Sikkim Act thus gave exemption to holder of any office under a statutory body, authority or a Committee if the holder of such office was not entitled to any remuneration other than ‘compensatory allowance’ or any residential accommodation or any arrangement for conveyance for

official purpose. The Sub-Committee felt that although the definition of 'compensatory allowance' given in the Act was on the lines of the definition given in the Parliament (Prevention of Disqualification) Act, 1959 yet the provisions for residential accommodation and/or conveyance to holders of aforesaid offices were unusual features of the Sikkim Legislative Assembly Members Removal of Disqualification Act, 1978. The Sub-Committee also felt that inclusion of such perks would enable the State M.L.A. to enjoy more facilities as compared to a member of Parliament and the State M.L.A. would still remain exempted from disqualification. Thus, the provisions of the Act were against the spirit of the Constitution and against the decisions of the Supreme Court in that regard.

5. The Sub-Committee also observed that under the provisions of Section 3(q) of the Act *ibid*, holders of offices in Government Food Preservation Factory, Singtam would be exempted from disqualification for membership of the Sikkim Legislative Assembly yet the Joint Committee on Offices of Profit had, however, recommended disqualification for holding the offices of Chairman or non-official members thereof in view of the following reasons :

- (i) Members of the Board were paid sitting fee @Rs. 100/- per sitting.
  - (ii) Chairman were entitled for a rent free house or H.R.A. of Rs. 400/- p.m. and free use of a government vehicle or a conveyance allowance @Rs. 350/- p.m. in lieu thereof.
  - (iii) Board exercised executive and financial powers.  
(*vide* 5R (JCOP—7LS), Para 2.16 p. 10)
- (ii) TAMIL NADU LEGISLATURE (PREVENTION OF DISQUALIFICATION ACT, 1967, AS AMENDED UPTO 1975.

6. Out of 62 bodies specified in the Schedule to the Tamil Nadu Act for granting exemptions to holders of offices thereof, the Sub-Committee had examined the following four bodies :

- (i) Tamil Nadu Housing Board (Item 27).
- (ii) Tamil Nadu Warehousing Corporation (Item 28).
- (iii) Tamil Nadu Agro-Industries Corporation (Item 58).
- (iv) Tamil Nadu Khadi and Village Industries Board (Item 26).

Although holders of offices under the above bodies had been exempted from disqualification for membership of Tamil Nadu Legislature yet in view of exercise of executive and financial powers the Joint Committee on Offices of Profit in their following reports had, however, recommended disqualification for holders of any offices under the aforesaid Boards and Corporations :—

- (i) Tamil Nadu Housing Board, *vide* 15R(5LS), Para 33, p. 8.
- (ii) Tamil Nadu Warehousing Corporation, *vide* 6R(5LS), Para 14. p. 3.
- (iii) Tamil Nadu Khadi and Village Industries Corporation, *vide* 13R (5LS), Para 27, p. 7.

(iv) Tamil Nadu Agro Industries Corporation, *vide* 6R (5LS), para 8, p. 2.

(iii) TRIPURA STATE LEGISLATURE MEMBERS (REMOVAL OF DISQUALIFICATIONS) ACT, 1972.

7. The Sub-Committee noted that unlike other Acts, the Removal of Disqualification in this Act was not subject to the usual provision "provided that the holder of any such office is not in receipt of or entitled to, any remuneration other than the 'compensatory allowance'". The Sub-Committee felt that Section 2 of the Act *ibid* should have been more elaborate mentioning *inter alia* that exemption was subject to payment of TA/DA only and the amount of TA/DA would not be more than 'compensatory allowance' as defined in the Parliament (Prevention of Disqualification) Act, 1959.

8. The Sub-Committee also noted that under Section 5 of the Schedule to the Act *ibid* the following Offices had been exempted from disqualification :—

"The offices of the Chairman, Vice-Chairman, or members of any committee, board or authority, statutory or otherwise, appointed by the Government of India or the Government of any State" (Item 5 of the Schedule).

9. The Tripura Act thus gave exemption to all bodies under the Government of India or the Government of any State in general without making it specific.

10. The Joint Committee on Offices of Profit had, however, recommended disqualification for membership of Parliament for holding any office under the following bodies as they exercised executive and financial powers although holders of those offices would be exempted from disqualification for membership of the Tripura Legislative Assembly under the provisions of Item 5 of the Schedule to the Act *ibid* :—

(i) Tripura Khadi and Village Industries Board [15R (5LS), para 36, p. 9]

(ii) Bishalgarh Agricultural Produce Market Committee [15R (5LS), para 35, p. 9]

(iii) Tripura Road Transport Corporation [15R (5LS), para 34, p. 8]

(iv) WEST BENGAL LEGISLATURE (REMOVAL OF DISQUALIFICATION) ACT, 1952, AS AMENDED UPTO 1960.

11. While scrutinising the West Bengal Act, the Sub-Committee observed that unlike other Acts there was no Schedule appended to the Act exempting certain offices from disqualification. Thus, no Committee or Corporation had been exempted specifically from disqualification under the West Bengal Act and each case had to be examined on merit to assess whether holder of certain offices of profit under the Government of India or



the Government of any State ought or ought not to be disqualified for being chosen as, and for being a member of, the West Bengal Legislature.

The Joint Committee, however, could not appreciate the reasons for granting exemption to office which was not a whole-time office remunerated either by salary or by fees *vide* Section 2(i) (b) of the Act *ibid*.

12. The Joint Committee on Offices of profit had examined the following Corporations set up by the Government of West Bengal and recommended holders of any offices thereunder for disqualification from membership of Parliament in view of executive and financial powers exercised by them :

- (i) West Bengal State Fisheries Development Corporation Limited [10R (5LS), para 27, p. 7]
- (ii) North Bengal State Transport Corporation [9R (5LS), para 16, p. 4]

In the above case the non-official members were also entitled to remuneration which exceeds the 'compensatory allowance'.

- (iii) West Bengal Housing Board [7R(7LS) para 2.3, pages 2-4]

In the above case, the non-official members were entitled to draw allowances which exceeded 'compensatory allowance'.

(v) ARUNACHAL PRADESH LEGISLATURE MEMBERS (PREVENTION OF DISQUALIFICATIONS) ACT, 1977

13. The Arunachal Pradesh Act, *vide* Item 3 of the Schedule gave exemption to any Committee, Society, Board or authority appointed by the Government of India or the Government of any State or Union Territory in general without making its specific.

14. The Joint Committee on Offices of Profit had, however, recommended disqualification for membership of the Parliament for holding the following offices as they drew monthly salary.

Membership of the non-official nominated members of the Pradesh Council of Arunachal Pradesh *vide* 7R (5LS), para 15, p. 4—

(vi) MIZORAM UNION TERRITORY LEGISLATURE MEMBERS' (REMOVAL OF DISQUALIFICATION) ACT, 1975

15. The Sub-Committee noted that under Item 8 of the Schedule to the Mizoram Act, exemption had been granted to the following offices :—

"The Office of Chairman, Vice-Chairman or Members of any Committee, Board or Authority appointed by the Government of India or the Government of any State or Union Territory".

16. The Mizoram Act, thus gave exemption to all bodies under the Government of India or Government of any State or Union Territory without making it specific.

17. The Joint Committee on Offices of Profit had however, recommended disqualification for membership of the Parliament for holding the following offices as they exercised executive and financial powers although holders of those offices would be exempted from disqualification for membership of the Mizoram Legislative Assembly under the provisions of Item 8 of the Schedule to the Mizoram Act *ibid* :

- (i) Mizoram State Sports Council [4R 7LS), para 2. 34, p. 11]
- (ii) Governing Body for the Serchhip College, Mizoram [4R (7LS), para 2.38, p. 11]
- (iii) Governing Body of the Champhai College, Mizoram [4R (7LS), para 2.39, p. 12]

*The Sub-Committee then adjourned.*

## APPENDIX IV

(*vide* para 4 of the Report)

### MINUTES OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

#### XXVI

#### TWENTY-SIXTH SITTING

The Committee met on Friday, 17 September, 1982 from 11.00 to 12.15 hours.

#### PRESENT

Shri Gulsher Ahmed—*Chairman*

#### MEMBERS

#### *Lok Sabha*

2. Shri Ajitsinh Dabhi.
3. Shri Harish Kumar Gangwar.
4. Shri Virdhi Chander Jain.
5. Shri S. A. Dorai Sebastian.
6. Shri N. K. Shejwalkar.
7. Shri Nandi Yellaiah.

#### *Rajya Sabha*

8. Shri Syed Rahmat Ali.
9. Shri Dinesh Goswami.
10. Shri Robin Kakati.
11. Shri Lakhan Singh.
12. Shri Ram Bhagat Paswan.

#### SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
2. Shri T. E. Jagannathan—*Senior Legislative Committee Officer.*

2. The Committee took up for consideration Memoranda Nos. 90 to 95 relating to the following Committees/Board/Councils etc. constituted by Central and State Governments.

(i) **TRANSPORT AND COMMUNICATIONS BOARD (GOVERNMENT OF MAHARASHTRA)**—(MEMORANDUM NO. 90).

3. The Committee noted that the payments admissible to non-official members of the Maharashtra Transport and Communications Board (in-

cluding MLAs/MLCs, if any) other than the Chairman of a functional Board, by way of sitting fee (@ Rs. 50/- per day for attending the meeting), T.A. (admissible by the highest class of transport) and D.A. (@ Rs. 30/- per day), were more than the 'compensatory allowance'. However, in the case of a member of the State Legislature on the Board, if any, T.A. was governed in accordance with the Members of Bombay Legislature (Allowances) Rules, 1959, in respect of any journey undertaken within the area of the Bombay Metropolitan Region. Besides T.A. and D.A., the non-official Chairman of the Board was paid honorarium @ Rs. 1000/- p.m. and he was also entitled to other perks like free telephone and official vehicle which were not covered by the 'compensatory allowance'. The functions of the Board were also of executive and financial nature. As such, the Committee felt that all the non-official members (including the Chairman) were likely to attract disqualification for being chosen as, and for being, a member of either House of Parliament under Article 102(1) of the Constitution.

While arriving at the above decision, the Committee took note of the fact that in terms of Section 10(1) of the Bombay Metropolitan Region Development Authority Act, 1974, under which the said Board was constituted, a member (including the Chairman or Vice-Chairman) of the Authority or any of its committees or bodies shall not be disqualified under Article 191 of the Constitution for being chosen as, and for being, a member of the State Legislature or any local authority merely by reason of the fact that he was a member of the Authority or any of its Committees or Boards.

(ii) *WATER RESOURCES MANAGEMENT BOARD (GOVERNMENT OF MAHARASHTRA)*—(MEMORANDUM NO. 91).

4. The Committee noted that the payments admissible to non-official members of the Water Resources Management Board (including MLAs and MLCs, if any) other than the Chairman of a functional Board, by way of sitting fee @ Rs. 50/ per day for attending the meeting), T.A. (admissible by the highest class of transport) and D.A. @ Rs. 30/- per day), were more than the 'compensatory allowance'. However, in the case of a member of the State Legislature on the Board, if any, T.A. was governed in accordance with the Members of Bombay Legislature (Allowances) Rules, 1959, in respect of any journey undertaken within the area of the Bombay Metropolitan Region. Besides T.A. and D.A., the non-official Chairman of the Board was paid honorarium @ Rs. 1000/- p.m. and he was also entitled to other perks like free telephone and official vehicle which were not covered by the 'compensatory allowance.' The functions of the Board were also of executive and financial nature. As such, the Committee felt that all the non-official members (including the Chairman) were likely to attract disqualification for being chosen as, and for being, a member of either House of Parliament under Article 102(1) of the Constitution.

While arriving at the above decision, the Committee took note of the fact that in terms of Section 10(1) of the Bombay Metropolitan Region Development Authority Act, 1974 under which the said Board was constituted, a member (including the Chairman or Vice-Chairman) of the Authority or any of its committees or bodies shall not be disqualified under Article 191 of the Constitution for being chosen as, and for being, a member of the State Legislature or any local authority merely by reason of the fact that he was a member of the Authority or any of its Committees or Boards.

(iii) **HOUSING URBAN RENEWAL AND ECOLOGY BOARD (GOVERNMENT OF MAHARASHTRA)—(MEMORANDUM No. 92)**

5. The Committee noted that the payments admissible to non-official members of the Housing, Urban Renewal and Ecology Board (including MLAs and MLCs, if any) other than the Chairman of a functional Board, by way of sitting fee (@ Rs. 50/- per day for attending the meeting), T.A. (admissible by the highest class of transport) and D.A. (@ Rs. 30/- per day), were more than the 'compensatory allowance'. However, in the case of a member of the State Legislature on the Board, if any, T.A. was governed in accordance with the Members of Bombay Legislature (Allowances Rules), 1959, in respect of any journey undertaken within the area of the Bombay Metropolitan Region. Besides T.A. and D.A., the non-official Chairman of the Board was paid honorarium @ Rs. 1000/- p.m. and he was also entitled to other perks like free telephone and official vehicle which were not covered by the 'compensatory allowance'. The functions of the Board were also of executive and financial nature. As such, the Committee felt that all the non-official members (including the Chairman) were likely to attract disqualification for being chosen as, and for being, a member of either House of Parliament under Article 102(1) of the Constitution.

While arriving at the above decision, the Committee took note of the fact that in terms of Section 10(1) of the Bombay Metropolitan Region Development Authority Act, 1974, under which the said Board was constituted, a member (including the Chairman or Vice-Chairman) of the Authority or any of its committees or bodies shall not be disqualified under Article 191 of the Constitution for being chosen as and for being, a member of the State Legislature or any local authority merely by reason of the fact that he was a member of the Authority or any of its Committees or Boards.

6. During consideration of Memoranda Nos. 90—92, some members of the Committee pointed out that the Bombay Metropolitan Region Development Authority Act, 1974 exempted members of the State Legislature from disqualification on their appointment to the (i) Transport and Communications Board, (ii) Water Resources Management Board, and (iii) Housing Urban Renewal and Ecology Board (bodies set up by the Government of Maharashtra), whereas according to the guidelines, laid down by the Joint Committee on Offices of Profit, non-official members (including Members of Parliament), on their appointment to these bodies, would incur disqualification for being chosen, as, and for being a member of either House of Parliament. That was an anomalous position and as such, the members suggested that a Sub-Committee of the Joint Committee might be set up to go into that question in depth so that uniform principles could be decided upon under which no Members of Parliament or that of any State Legislature would get exemption in the matter. With a view to achieve uniformity in the matter; if it was considered necessary to amend the Constitution, the Committee should not hesitate to recommend the same.

The members further maintained that their efforts should be that as far as possible Members of Parliament and that of the State Legislatures should not be lured to accept Offices of Profit. Members should not be permitted to go on Committees/Commissions etc. which would jeopardise their independence or which would place them in a position of power or influence or in a position where they could receive some patronage

from Government or were themselves in a position to distribute patronage. Nor should the Central and State Governments enact legislations to prevent their members from incurring disqualification for being chosen as, and for being, a member of either House of Parliament (under Art. 102) or that of the Legislative Assembly or Legislature of a State (under Art. 191). After the Sub-Committee had made a report to the Joint Committee, the Chairman and members of the Committee should meet the Speaker, Lok Sabha so that some uniformity could be achieved in the matter both in regard to Members of Parliament as well as those of the State Legislatures. With that end in view, that matter could also be discussed in the Presiding Officers' Conference.

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*The Committee then adjourned.*

## VII

### SEVENTH SITTING OF THE SUB-COMMITTEE

The Committee met on Thursday, the 5th April, 1984 from 15.15 to 15.45 hours.

#### PRESENT

Shri Gulsher Ahmed—*Chairman*

#### MEMBERS

*Lok Sabha*

2. Shri Jamilur Rahman.

3. Shri N. K. Shejwalkar.

#### *Secretariat*

Shri S. S. Chawla—*Senior Legislative*

*Committee Officer*

2. The Sub-Committee considered their draft Ninth Report, on the evolving of uniform principles in regard to disqualification for holding office of profit and adopted it, subject to the following additions in Chapter III :—

(i) *After para 3.7, add the following new sub-paragraph :—*

'In the alternative the Committee are of the view that the objectives proposed to be served by the Constitutional Amendment can also be achieved to some extent by making a law to that effect by Parliament under \*Article 191(1)(e) of the Constitution whereby it can be provided that holders of offices which enjoy executive, financial, judicial/quasi judicial powers or which would place them in a position where they could receive some patronage from Government or are themselves in a position to distribute patronage or are entitled to any remuneration other than the compensatory allowance, as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959, would incur disqualification.'

(ii) *After para 3.8, add the following new paragraphs :—*

'3.9 The Committee are of the opinion that free exercise of legislative powers given under article 191(1)(a) of the Constitution without circumspection or restraint, has greatly undermined the independent functioning of the members of the Legislature in many parts of the country. Offer of blandishment to members through their appointment to various offices of profit in certain corporations/undertakings/boards etc. constituted by the State Governments and exempting those

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\*101 (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a state :—

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[e] If he is so disqualified by or under any law made by Parliament.

offices from disqualification by legislative enactment without great care are being resorted to freely and increasingly in recent times.

The relevant enabling clauses in the Constitution which are meant to be used sparingly and basically for saving from disqualifications the members of legislature who are to serve in various committees constituted by the Legislature, are avoided of indiscriminately to save all sorts of offices of profit. The Committee feel that though such exemptions can be legally tenable, it is morally unsustainable and would be tantamount to abuse of power.

3.10 The Committee are of the view that if the real spirit of articles 102 and 191 of the Constitution is to be maintained sacrosanct, the enabling exemption provisions should be kept within its bounds and restricted in its scope both in regard to the areas of operation and legislative competence. Otherwise, the object of the imposition of the disqualifications as envisaged in the Constitution will become frustrated.

The Committee, therefore, urge the Ministry of Law, Justice & Company Affairs to take necessary steps for bringing legislation to evolve uniform principles in regard to disqualification for holding office of profit under articles 102(1) and 191(1) of the Constitution, in consultation with the Central Government, State Governments & Union Territory Administrations, in the light of the recommendations/observations contained in this Report, at an early date.

3. The Sub-Committee then authorised the Chairman to submit their Report to the Joint Committee for their consideration at their sitting to be held on 5th April, 1984.

*The Sub-Committee then adjourned.*



THIRTY-SECOND SITTING OF THE JOINT COMMITTEE ON  
OFFICES OF PROFIT  
(SEVENTH LOK SABHA)

The Committee met on Tuesday, 5th April, 1983 from 15.00 to 16.40 hours.

## PRESENT

Shri Gulsher Ahmed—*Chairman*

## MEMBERS

*Lok Sabha*

2. Shri Ajitsinh Dabhi
3. Shri Krishna Chandra Halder
4. Shri Virldhi Chander Jain
5. Shri Jamilur Rahman
6. Shri S. A. Dorai Sebastian

*Rajya Sabha*

7. Shri Syed Rahmat Ali
8. Shri Dinesh Goswami
9. Shri Lakhan Singh

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY  
AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri R. V. S. Peri Sastri—*Secretary*.
2. Shri S. Ramaiah—*Addl. Secretary*
3. Shri A. C. C. Unni—*Deputy Legislative Counsel*.

## SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*.
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*.
3. Shri S. S. Chawla—*Senior Legislative Committee Officer*.

2. The Committee took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department) regarding evolving of uniform principles in regard to disqualification for membership under article 102(1)(a) of the Constitution.

3. The Committee first referred to Section 10(1) of the Bombay Metropolitan Region Development Authority Act, 1974, under which a member of the said Authority or any of its boards like Transport and Communications Board, Water Resources Management Board and Housing, Urban

Renewal and Ecology Board, would not be disqualified for being chosen as, and for being, a member of the State Legislature, whereas, in regard to these Boards, the Joint Committee on Offices of Profit (Seventh Lok Sabha) had taken the view that non-official members were likely to attract disqualification for being chosen as, and for being a member of either House of Parliament under Article 102(1)(a) of the Constitution in view of the executive and financial power being exercised by the Boards. Thus, there was apparently a conflict between the provisions as contained in the State Act and the opinion expressed by the Joint Committee in so far as the appointment of Members of Parliament *vis-a-vis* members of Maharashtra Legislative Assembly to the said Boards was concerned. The Committee, therefore, wanted to know from the representative of the Ministry of Law, Justice and Company Affairs (Legislative Department) whether there was a need for evolving uniform principles in regard to disqualifications for membership of Parliament or State Legislature under article 102(1)(a) or article 191(1)(a) of the Constitution in respect of persons holding the office of chairman/member etc. of certain bodies; and if so, how that objective could be achieved.

4. The representative of the Ministry of Law, Justice and Company Affairs (Legislative Department) stated that it would always be ideal to have some uniformity with regard to that matter as the role and function of Members of Parliament and State Legislature were of a similar nature. But under the existing provisions in the Constitution, it would not be possible to enforce any uniformity. According to the constitutional position, Parliament and State Legislature had the plenary authority within their allotted fields of jurisdiction. A State was free to adopt whatever policy it liked. So it was only through persuasion or discussion that it would be possible within the existing framework of the constitution to achieve some degree of uniformity in the field. The representative also stated that merely by making an amendment to the Parliament (Prevention of Disqualification) Act, 1959, it would not be possible to achieve the result. He further added that if the Government made up its mind to observe certain principles while making appointments and if the Central Government and the State Governments followed those principles in actual practice, such situation would not arise. He was of the opinion that even without a law, the object could be achieved. The power available to Parliament under the provision of article 102(1)(a) of the Constitution and to the State Legislatures under the corresponding provision in article 191 was only a limited power of removing a disqualification on the ground of holding an office of profit. The question of removal of a disqualification would arise only if the office was, in the first instance, an "Office of profit under the Government". 'Profit' had been construed by the Supreme Court as meaning pecuniary gain. If the Government, Central or State, so minded, whatever might be the law they could so formulate the conditions of service attached to a particular office as to exclude it from the purview of article 102 altogether. According to court decisions, if the remuneration was given for meeting the out-of-pocket expenses, it was not 'profit'. If the conditions of service were so formulated that there was no profit element in it, would not be an office of profit, and if it was not an office of profit, the question of removing the disqualification or exercising that power would not arise. However, some Members were tempted to such offices because of the patronage involved in those offices.

5. Thereafter, the Committee enquired from the representative of the Ministry of Law, Justice and Company Affairs whether any steps had been taken by that Ministry to bring to the notice of the State Governments the guiding principles evolved by the Joint Committee on Offices of Profit, from time to time, for the purpose of declaring certain offices which were likely to attract disqualification of Members of Parliament so as to deal with similar cases of offices of profit which might equally affect members of the State Legislature with a view to ensure uniform approach both by Parliament and State Legislatures in such matters. The representative of the Ministry stated that no such steps had been taken by them. He further maintained, "Whenever anything connected with the States is involved, it is for the Home Ministry to initiate the necessary contacts and try to evolve the necessary conventions." The Committee, however, suggested that the problem could be discussed in the next Law Ministers' Conference for which the Central Law Ministry should take action.

6. On being asked whether under the provisions of the first part of article 102(1) (a), a person holding an office of profit was disqualified and the second part—the State Government might declare certain offices would not disqualify the holder—was a small exception and if the State Government made a law where the first part of the article was totally made negative and the State Government was indirectly making a fundamental amendment to the Constitution itself, the representative of the Ministry of Law, Justice and Company Affairs (Legislative Department) replied "if any such law is made, I agree that it will be a good ground for challenging the validity of the law on the ground that the exception is becoming the rule. I completely agree." The Committee then enquired whether the State could pass an invalid law and frustrate the Constitution and whether it was not the responsibility of the Law Ministry to see that the sanctity of the provisions of the Constitution was maintained, the representative of the Ministry replied :

"If the State legislature passes an invalid law there is remedy provided in the Constitution by way of challenge but if the Committee so desires we will take note of it and raise it in the Law Ministers' conference whenever the next meeting takes place."

7. Referring to the observations made by the then Law Minister, Shri C. C. Biswas, in Lok Sabha on 24 December, 1953 during the debate on the Prevention of Disqualification (Parliament and Part C State Legislatures) Bill, 1953, to the effect that even where there was no monetary benefit, but other benefits such as exercise of executive or financial powers or some power or patronage was attached to some office, then that might be regarded as an office of profit, the Committee asked the representative of the Ministry of Law whether the Ministry agreed that even when there was no pecuniary gain, it could be an office of profit in view of exercise of executive or financial powers or power of patronage. The representative agreed that " 'Profit' means any benefit. The amount of such profit is immaterial."

8. The Committee then pointed out that the Joint Committee consistently had taken the view that Articles 102 and 191 were enacted to see that the independence of Members was maintained and not jeopardised because

of the receipt of patronage or distribution of patronage. The Committee further elucidated that even when the Committee confronted some of the State Governments, they might put the Supreme Court's judgement and say that there was no office of profit because there was no pecuniary benefit. When asked should there be not an amendment of the Constitution so that the principles laid down by the Joint Committee and the Bhargava Committee were clearly expressed in the Articles of the Constitution, the representative of the Ministry stated in reply—

“The opening words of section 3 in the Act say ‘In so far as it is an office of Profit’ and a disqualification arises, then it means we are removing the disqualification. Parliament itself has not said that it is an office of Profit”.

The Committee then enquired whether the Committee had exceeded their jurisdiction by recommending disqualifications on grounds other than pecuniary benefits, the representative replied—

“I would require time to answer this”. The Committee desired the Ministry of Law to give a considered note on it in writing later on.

9. In the light of the views expressed by the representative of the Law Ministry to the effect that if an office gave the power to receive and distribute “patronage but there was no pecuniary gain, holding of that office would be exempt from the disqualification, the Committee enquired did you not feel as a matter of policy in order to cover the decisions of the Supreme Court some amendments were needed to articles 102(1) and 191(1) because the decision does away with the policy which the Government has in mind”?

The representative of the Ministry of Law stated “In my capacity. I would say this is a matter which requires consideration.”

10. On being further informed by the representative of the Ministry of Law, Justice and Company Affairs that it was possible to formulate a definition of ‘office of profit’ by utilizing the Supreme Court's decision, the Committee asked “Why don't you tell your Minister that some kind of a change in the Constitution should be made to achieve that objective for which the framers of the Constitution had made provision in the Constitution, if those principles are violated by the States? You are concerned with it very much. You should take some interest in it.” The representative of the Ministry of Law, Justice and Company Affairs stated :

“If the Committee desire, I would certainly bring it to the notice of the Minister and take his orders.”

11. When the Committee pointed out that it was for the Law Ministry to see that the interpretation given by the Supreme Court was in Consonance with the provisions on which the law was framed and was it not really the duty of the Law Ministry to see that suitable amendments were made so that the law might be brought in consonance with the opinion of the Supreme Court, and the opinion of the House?” The representative of the Ministry stated “I will mention it to the Minister.”

12. The Committee then pointed out that under Section 3(n) of the U.P. State Legislature (Prevention of Disqualification) Act, 1971 and according to entry 17 in the Schedule to the Madhya Pradesh Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam, 1967, Chairman, Deputy/Vice Chairman, Director, Member or Secretary of any statutory or non-statutory body had been exempted from the disqualification if the holder of such office was not entitled to compensatory allowance although the offices of the bodies exercised executive/quasi-judicial/financial powers. On being asked whether he agreed that the time had come when the State Legislatures should also evolve uniform principles on the pattern of the Joint Committee on Offices of Profit to deal with disqualifications of their members under Article 191(1)(a) of the Constitution, so that no amendments were made indiscriminately by the State executive to suit particular cases, the representative of the Ministry agreed that the State Legislatures were more liberal in removing disqualifications.

13. The representative of the Ministry replied in negative when asked to clarify whether the present Joint Committee was competent to recommend to the State Legislatures to evolve uniform principles in the case of persons holding offices which were like to attract disqualifications for membership of their respective legislature under article 191(1)(a). To a pointed question in regard to the manner in which it could be possible to secure independence of Members of Parliament or of a State Legislature with a view to ensure that Parliament or the State Legislature did not contain persons who had received favours or benefits from the executive Government and who consequently, being under obligation to the executive, might be amenable to its influence, the representative of the Ministry assured that considered views of the Ministry would be sent subsequently in writing.

14. On a suggestion that Ministry of Law should find a way to ensure that no citizen was discriminated against another as was happening at present inasmuch as that a Member of Parliament was being disqualified for holding an office of profit whereas a Member of Legislature did not disqualify for the same office because the State Legislatures had passed a particular law in that regard, the representative of the Ministry was of the view that amendment of the Constitution was the only remedy for such problem and for amending the Constitution approval of the Cabinet was a necessity. When probed further he assured that the feelings of the Committee would be conveyed to the Law Minister to enable him to take up the matter with the Cabinet for removing such disparity.

15. The Committee then referred to a suggestion made to them that in view of the existence of misuse of legislative powers by the State Governments freely exempting various offices to serve their narrow interest, the power of legislation both in regard to membership of Parliament and State Legislatures should be confined to Parliament (and State Legislatures should not be empowered to make such laws) as that would give correct direction to legislative measures on the lines of well accepted norms. The Committee desired the representatives to send their considered views in writing in that regard subsequently.

16. The Committee also wanted the representative to send their written views as to what measures they would like to suggest to deal with the following proposition :

“It has been urged by some quarters that exempted categories (from disqualification of membership of Parliament/Legislatures) should be so restricted as to cover only those offices held by members in Committees and Commissions directly constituted and controlled by the Legislature. The members appointed to corporations, boards, committees, societies, whether controlled by Government directly or by statutory or non-statutory agencies created by State should not enjoy any such exemption. According to their view, only drastic measures of this nature and content would bring about sanctity and independent functioning of legislatures truly and fully free from the control of the executive.”

17. Thereafter, the Committee asked the representative of the Ministry to send their considered views in writing to all the points raised by them during the evidence after getting the same duly approved by the Minister of Law, Justice and Company Affairs. The representative assured the Committee that that would be done.

18. At the end, the Committee wanted to know the position in regard to drafting of a comprehensive Bill, based on the recommendations of the Joint Committee made in their various reports, which had been pending since long. The representative of the Ministry regretted that they had failed to send it by the target date due to paucity of staff and assured the Committee that it would be sent by the end of April, 1983.

*The Committee then adjourned.*

FIFTH-THIRD SITTING OF THE JOINT COMMITTEE ON OFFICES  
OF PROFIT (SEVENTH LOK SABHA)

The Committee met on Thursday, 5th April, 1984 from 15-45 to 16.15 hours.

*PRESENT*

Shri Gulsher Ahmed—*Chairman*

*MEMBERS*

*LOK SABHA*

2. Shri Virdhi Chander Jain
3. Shri Jamilur Rahman
4. Shri S. A. Dorai Sebastian
5. Shri N. K. Shejwalkar

*RAJYA SABHA*

6. Shri Syed Rahmat Ali
7. Shri Robin Kakati
8. Shri Ram Bhagat Paswan

*SECRETARIAT*

Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. At the outset, the Chairman presented to the Joint Committee the Report prepared by the Sub-Committee constituted to go into the question of evolving of uniform principles in regard to disqualification for holding office of profit under Articles 102(1) and 191(1) of the Constitution.

3. The Committee then considered the aforesaid draft Ninth Report and adopted it.

4. The Committee decided that the Ninth Report might be presented to Lok Sabha on 25th April, 1984. The Committee also decided that the Report might be laid on the Table of Rajya Sabha on the same day.

5. The Committee authorised the Chairman and, in his absence, Shri Jamilur Rahman, M.P. to present the Report to Lok Sabha on their behalf. The Committee also authorised Shri Syed Rehmat Ali, M. P. and, in his absence, Shri Ram Bhagat Paswan, M.P. to lay the Report on the Table of Rajya Sabha.

6. Thereafter the members of the Joint Committee expressed their thanks to the Chairman and Members of the Sub-Committee for having taken great pains in sifting the voluminous material & in preparing the valuable Report.

*The Committee then adjourned.*