

**JOINT COMMITTEE ON OFFICES OF PROFIT
(2014-2019)**

(SIXTEENTH LOK SABHA)

SIXTH REPORT

**Review of the Schedule to the Parliament (Prevention of Disqualification)
Act, 1959 in respect of Bodies under the Ministry of Civil Aviation.**

Presented to Lok Sabha on 03.08.2016

Laid in Rajya Sabha on 03.08.2016



LOK SABHA SECRETARIAT

NEW DELHI

July, 2016/Sravana, 1938(Saka)

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INTRODUCTION

I, the Chairperson of the Joint Committee on Offices of Profit, having been authorised by the Committee to present the Report on their behalf, present this Sixth Report of the Committee.

2. The Committee undertook the exercise of scrutiny of the Bodies under the administrative control of various Ministries/Departments of the Government of India or the State Governments, as the case may be from the angle of office of profit and update the list of Bodies as reflected in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. Office Memoranda were issued to all the Union Ministries and Chief Secretaries of State Governments and Union Territories on 14.02.2015, inviting information pertaining to various Bodies falling under their respective administrative domain to facilitate their examination from the angle of "Office of Profit". In this context, the Committee decided to call the representative of the various Ministries/Departments of the Government of India and State Governments in a phased manner, to undertake their evidence for the purpose. In pursuance of this decision of the Committee, the representatives of the Ministry of Civil Aviation were called to tender their oral evidence before the Committee on 31.03.2015. The representatives of the Ministry of Law and Justice were also called to remain present in the sitting of the Committee.

3. The Committee considered and adopted this Report at their sitting held on 11 May, 2016.

4. The Committee wish to express their thanks to the Ministry of Civil Aviation and the Ministry of Law and Justice for furnishing the requisite information to them in connection with the examination of the Bodies under the administrative domain of the Ministry of Civil Aviation from the angle of 'Office of Profit'.

5. The Observations/Recommendations made by the Committee in respect of the matters considered by them are given in this Report in bold letters. The Recommendations of the Committee will, however, remain advisory in nature and as such cannot give any protection from disqualification under the law until the Recommendations are given statutory effect by the Government by suitably amending the Parliament (Prevention of Disqualification) Act, 1959.

NEW DELHI

Dr. SATYAPAL SINGH
Chairperson
Joint Committee on Offices of Profit

28 July, 2016

06 Sravana, 1938 (Saka)

JOINT COMMITTEE ON OFFICES OF PROFIT
(SIXTEENTH LOK SABHA)

\$ Dr. Satyapal Singh - Chairperson

**MEMBERS
LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Shri Bhagwant Maan
6. Shri M.K. Raghavan
7. Prof. Saugata Roy
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- # 9. Vacant
- #10. Vacant

RAJYA SABHA

11. Shri Naresh Agrawal
12. Shri C.P. Narayanan
13. Shri Dilipbhai Pandya
14. Shri Sukhendu Sekhar Roy
- *15. Vacant

SECRETARIAT

- | | | | |
|----|----------------------|---|-------------------------|
| 1. | Shri U.B.S. Negi | - | Joint Secretary |
| 2. | Shri Rita Jaikhanani | - | Director |
| 3. | Smt. Maya Lingi | - | Additional Director |
| 4. | Shri T.R. Nauriyal | - | Deputy Secretary |
| 5. | Km. Vandana | - | Sr. Committee Assistant |

\$ Appointed as Chairperson w.e.f. 19 July, 2016 vice Shri P.P. Chaudhary resigned from the Chairpersonship of the Committee w.e.f. 05 July, 2016

Shri P.P. Chaudhary, Chairperson of the Committee and Shri Arjun Ram Meghwal resigned from the membership of the Committee due to their appointment as Minister w.e.f. 05.07.2016.

* Shri K.C. Tyagi ceased to be the member of the Committee due to expiration of his Rajya Sabha term on 07.07.2016.

REPORT

Chapter - I

Introductory

The concept of disqualifying a holder of Office of Profit under the Government for being chosen as, and for being, a Member of the Legislature originated from the need in democratic Government to limit the control and influence of the Executive over the Legislature by means of an undue proportion of office holders being Members of the Legislature. Further holding of certain offices was considered incompatible with membership of legislatures due to physical impossibility of a person attending in two placed or heavy duties being usually attached to those offices. Exception was, however, made in the case of Ministers and other members of Government with a view to having effective coordination between the executive and the legislature.

1.2. In democracies, including the United Kingdom and U.S.A. , office holders under the Government, as a rule, are disqualified for being Members of Legislature. In India, the principal is embodied in Articles 102(1)(a) and 191 (1)(a) of the Constitution of India in regards to the Members of Parliament and State Legislatures respectively. Article 102(1)(a) of the Constitution reads as under:

“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.”

1.3. In pursuance of the above Article, the Parliament (Prevention of Disqualification) Act, 1959 (**Annexure I**) was enacted by the Parliament, laying down which offices would not disqualify holders thereof from the membership of Parliament. Briefly, this Act provides that if a member/Director of a statutory or non-statutory body /company is not entitled to any remuneration other than the compensatory allowance, she/he would not incur disqualification for 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 daily 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 purpose of enabling her/him to recoup any expenditure incurred by her/him in performing the functions of that office.” The said Act has been amended from time to time to include office exempted from disqualification from the purview of the office of profit.

1.4. 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, or in any Judgment rendered either by the High Court or Supreme Court 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 signified 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 things he somebody important, even if he gets no pecuniary remuneration. Its scope has, therefore, to be gathered from the pronouncements on the subject made by courts, election tribunals and other competent authorities on what constitutes, “office”, “profit”, “office under the Government”, and so on.

1.5. The term 'office' is not capable of being accurately defined. In the usual sense of the word an 'office' means a right to exercise a public or private employment and to take the fees and emoluments thereunto belonging. The term connotes the elements of tenure, duration, emoluments and duties. It has also been held that an office is an employment on behalf of Government in any state or public trust and not merely transient, occasional or incidental . "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. "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.

1.6. Shri C.C. Biswas, the then Union Minister of Law and Minority Affairs, speaking on 24th December 1953 in the debate in the Lok Sabha relating to the Prevention of Disqualification (Parliament and Part C States Legislatures) Bill, 1953 said:

"....As the disqualification mainly arises from the office being an office of profit, it is necessary to consider what profit means....Now, so far as profit is concerned, generally no doubt profit is interpreted in terms of rupees, annas, pies- it means monetary profit. But in some cases the view has been taken

that office includes something more than that. Even where it is not monetary profit, but other benefits, that also may come within the meaning of the word 'profit'. For instance, if the office is one to which some power or patronage is attached, the office is one in which the holder is entitled to exercise executive functions, an office of dignity, of honour that might be regarded also an office of profit, the idea being that Government must not be in a position to seduce a Member of Parliament by placing him in a position where he can exercise authority, where he thinks he is a somebody and either he has got some money or he is otherwise made very important. All these temptations must be removed. That being the object, the word 'profit' has been given a larger interpretation."

1.7. When a Member of a body is permitted to get some monetary benefit, the question of its quantum assumes importance and becomes a matter of serious consideration. This monetary benefit may be in the nature of a salary attached to the membership or office. When it is a salary attached to the office, it immediately and indisputably makes the office an 'office of profit', but when the monetary benefit is in the nature of an allowance or fee, it makes the question of declaring the office to be an 'office of profit' a bit difficult one.

If consideration is paid in the shape of 'sitting fee' or 'attendance fee', not being daily allowance, it becomes a 'profit' inasmuch as it does not even purport to cover any actual expenses. Such consideration or remuneration is deemed to constitute 'profit' even though, on detailed accounting, it may be found that no financial advantage has, in fact, been gained by the member in question. Travelling allowance do not act as a disqualification if one draws not more than what is required to cover the actual out-of-pocket expenses. House rent allowance and conveyance are not profits as the allowances are utilised for the purposes of paying the house rent and meeting conveyance charges; they do not give a pecuniary benefit to the person to whom they are paid. If the quantum of daily allowance is such as not to be a source of income, no disqualification shall be incurred.

1.8. It is being contended that a person serving on a committee or holding an office, for which remuneration is prescribed, may not draw the allowance or remuneration and thus escape disqualification under the relevant provisions of law, However, Shri S.K. Sen (Chief Election Commissioner) in one of his judgement held that for the purpose of deciding the question of disqualification, so long as any profit was attached to any office, it did not matter whether the profit has in fact been appropriated or not and therefore, there was no distinction for the purpose between members who drew their allowance and those who did not.

1.9. Unless otherwise declared by Parliament by law, a person is disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State. If any question arises as to whether a Member of Parliament has become subject to any of the disqualification laid down in the Constitution including the one whether she/he is holding an office of profit or not, the question is referred for the decision of the President and her/his decision is final. However, before giving any decision on any such question, the President is required to consult the Election Commission in terms of Article 103 (2) of the Constitution. and the Commission may make such enquiry as it deems fit. It is important to note that in this matter the President does not act on the aid & advise of his Council of Ministers.

1.10. The underlying object of this constitutional provision is to secure the independence of the Members of Parliament or a State Legislature and to ensure that Parliament or the State Legislature does not consist of persons who have received favours or benefits from the Executive Government and who consequently, being under the obligation to the Executive Government, might be amenable to its influence. Obviously, the provision has been made in order to eliminate or reduce the risk of conflict between duty and self-interest among the legislators.

1.11. If the Executive Government were to have untrammelled powers of offering to a Member any appointment, position or office which carries emoluments of one kind or the other with it, there would be a risk that an individual Member might feel herself/himself beholden to the Executive Government and thus lose her/his independence of thought and action and cease to be a true representative of her/his constituents.

1.12. Although certain enactments had been passed by Parliament, keeping in view the provision of Article 102(1)(a), it was widely felt that none of the Acts met comprehensively the needs of the situation. In this background, and following presentations from Members of Parliament, speaker G.V. Mavalankar, in consultation with the Chairman of the Rajya Sabha, appointed, on 21 August, 1954, a Committee of Offices of Profit under the Chairmanship of Pt. Thakur Das Bhargava to:

“study various matters connected with disqualification of Members and to make recommendations in order to enable the Government to consider the lines along which a comprehensive legislation would be brought before the House; and collect facts, data and make suggestions as to how the matter should be dealt with.”

1.13. The Bhargava Committee in their Report had observed 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 matters 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 above view, Members of Parliament should not be permitted to go on Committees, Commissions, etc. which jeopardise their independence or which will place them in a position of power or influence or in a position where they receive some patronage from Government or are themselves in a position to distribute patronage.

1.14. The Bhargava Committee recommended, inter-alia, the introduction of a comprehensive Bill having schedules enumerating the different offices which should not incur disqualification, offices to which exemption was to be granted, and offices which would disqualify. The Bhargava Committee felt that since a schedule of that nature could never be exhaustive or complete and frequent scrutiny would have to be made in cases of new bodies as well as the existing ones, a Standing Committee should be appointed to undertake the work of such continuous scrutiny. It also recommended that all proposed appointments of Members of Parliament to any office or Committee or Commission be communicated to the Standing Parliamentary Committee, for its consideration. Further, any future legislation undertaken affecting such office or Committees should be duly considered before a Bill is brought before Parliament.

1.15. In pursuance of the recommendations of the Bhargava Committee, the Government introduced in the Lok Sabha the Parliament (Prevention of Disqualification) Bill on 5 December, 1957. It was referred to a Joint Committee of the Houses and its Report was presented to the Lok Sabha on 10 September, 1958.

1.16. The Bill, as introduced, did not contain any Schedules as recommended by the Bhargava Committee. The Joint Committee felt that the enactment should contain a Schedule enumerating the Government Committee whose membership would disqualify. The Joint Committee, accordingly, proposed a Schedule to the Bill, Part I of which enumerated the Committees, membership of which would entail disqualification and Part II, the committees in which the office of Chairperson, Secretary, or Member of the Standing or Executive Committee would entail disqualification. The Bill, as further amended and passed by Parliament, received the assent of the President on 4 April, 1959.

1.17. On 18 August, 2006, a Joint Committee of 15 Members of Parliament (10 from Lok Sabha and 5 from Rajya Sabha) was constituted to examine the Constitutional and Legal position relating to Office of Profit. The Committee inter-alia made certain observations and recommended the amendment of Article 102(1)(1) of the Constitution which provided for disqualification for Members of Parliament for being chosen as, and for being, a Member of either House of Parliament on certain well delineated and defined conditions. The amendment of Article 191(1)(a) (for Members of State Legislatures) was also suggested by the Committee for amendment on the similar lines- in order to maintain uniformity in the matter. The Committee submitted its Report to the Parliament on 22 December, 2008. The Report was also forwarded to the Government of India for necessary action on the recommendations of the Committee contained in the Report.

Guiding Principles

1.18. In order to determine whether an office held by a persons is an office of profit under the Government, the Joint Committee on Offices of Profit, in their Tenth Report (7th Lok Sabha), presented to Lok Sabha on 7 May, 1984, laid down the following guiding principles:

“The broad criteria for the determination of the question whether an office held by a person is an office of profit have been laid down in judicial pronouncements. If the Government exercises control over the appointment to and dismissal from the office and over the performance and functions of the office and in case the remuneration or pecuniary gain, either tangible or intangible in nature, flows from such office irrespective of whether the holder for the time being actually receives such remuneration or gain or not, the office should be held to be an office of profit under the Government. Otherwise, the object of imposition of the disqualification as envisaged in the Constitution will become frustrated. This first basic principle would be the guiding factor in offering positions to a member of the Legislature.

1.19. Keeping the above position in view, the Joint Committee on Offices of Profit have been following the undernoted criteria to test the Committees, Commissions, etc. for deciding the questions as to which of the offices should disqualify and which should not disqualify a persons for being chosen as, and for being a Member of Parliament:

- i. Whether the holder draws any remuneration, like sitting fee, honorarium , salary, etc. i.e. any remuneration other than the

„compensatory allowance“ as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

(The Principle thus is that if a member draws not more than what is required to cover the actual out of pocket expenses and does not give him pecuniary benefit, it will not act as a disqualification.)

- ii. Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licences, etc, or gives powers of appointment, grant of scholarships, etc. and
- iii. Whether the body in which an office held enables the holder to wield influence of power by way of patronage.

If reply to any of the above criteria is in affirmative then the office in question will entail disqualification.

1.20. One of the functions of the Joint Committee on Offices of Profit is to scrutinise from time to time the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 and to recommend any amendments in the said Schedule, whether by way of addition, omission or otherwise. The Ministry of Law and Justice (Legislative Department) drafts Bill to amend the Parliament (Prevention of Disqualification) Act, 1959 so as to give effect to the recommendations of the Committee made from time to time. Before introducing a Bill in either House of Parliament, the Ministry of Law and Justice (Legislative Department) forwards to the Lok Sabha Secretariat a copy of the draft Bill to see whether it is fully in accord with the recommendations made by the Committee. On receipt, the Bill is examined by the Secretariat in the light of the recommendations of the Committee and then placed before the Committee, with the approval of the Chairperson. The Report of the Committee on the Bill is presented to the House and thereafter the Ministry of Law and Justice (Legislative Department) proceeds with the introduction of the Bill in Parliament.

1.21. The Joint Committee on Offices of Profit consisting of 10 Members of Lok Sabha and 5 Members of Rajya Sabha is constituted on a Government motion for the duration of the term of each Lok Sabha. The Joint Committee on Offices of Profit for the term of 16th Lok Sabha was constituted on 11 December, 2014 on the basis of the motion moved by the Government and adopted by Lok Sabha on 01.08.2014 and concurred by Rajya Sabha on 14.08.2014, After its constitution, the Committee in its first sitting held on 12 January, 2015, took note of various Committees/Bodies/Organisations mentioned in the Schedules annexed to the Parliament (Prevention of disqualification) Act, 1959 as amended from time to time., which though exempted from the angle of office of profit, ceased to exist. However,

these Committees/Bodies/ Organisations are still being reflected in the Schedule of the said Act. The Committee, therefore, decided to scrutinise the Schedule to the Act. The Committee also decided to obtain ab-initio information/data/status of each Committee/Commission/Body/Organisation referred to in the Schedule annexed to the Act from the concerned authorities. It was also decided that changes in the composition/character etc. of such Committee/Commission/Body/Organisation, since their inclusion in the Schedules, be also ascertained. Further, similar information be also obtained in respect of Government Bodies where Members of Parliament, have been nominated by virtue of specific Acts of Parliament. The Committee also took note of the fact that various Centrally sponsored Schemes/Programmes, such as MGNREGA and other flagship programmes, are under implementation where Members of Parliament play a pivotal role in the implementation/delivery mechanism of such Schemes/programmes. The Committee, therefore, desired that such schemes/Programmes be reviewed by them and role of Members of Parliament be considered in the implementation of these Schemes/Programmes, without attracting disqualification from the angle of Office of Profit and the relevant/appropriate information/data on the subject be obtained from the concerned authorities.

1.22. In pursuance of the said decisions of the Committee, this Secretariat vide their O.M. No.21/2/1/2015/CII dated 14.2.2015 asked information and comments from all Ministries/Departments of the Government of India and State Governments on the following points:-

(a) The details of Committees/Boards/Corporations/Bodies, etc. included in the Schedule of the Act, 1959 as amended from time to time alongwith the present status of each such legal entity. In case such Committees/Boards/Corporations/Bodies, etc. have ceased to operate/exist or nomenclature/title changed, details of changes in chronological order of such entities be furnished.

(b) For the above said purpose, the information about the composition, character, etc. of all the other Committees/Boards/Corporations/Bodies, etc. also be furnished wherein Members of Parliament have been nominated by virtue of some other specific Acts of Parliament i.e. other than the Parliament (Prevention of Disqualification) Act, 1959, as amended from time to time.

(c) Further for the purpose of a thorough review, the complete details of all the other Centrally funded/sponsored schemes/programmes under the Administrative control of your Ministry for the implementation/monitoring of such schemes/programmes like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), Member of Parliament Local Area Development (MPLAD) Scheme, etc. wherein there may/may not be a provision for the nomination/election of Members of Parliament

along with other such future schemes/plans wherein inclusion of Members of Parliament is proposed.

1.23. The process of scrutinising the Schedule of the Parliament (Prevention of Disqualification) Act, 1959 was initiated by the Committee and in this context, the Committee decided to call the representatives of the various Ministries/Departments of the Government of India, in a phased manner, to undertake their evidence for the purpose. In pursuance of the decision of the Committee, the Committee called the representatives of the Ministry of Civil Aviation on 31 March, 2015 to tender evidence before the Committee in connection with review of the Committees/Boards/Organisations etc. under the administrative domain of the Ministry. The representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) were also called to remain present throughout the sitting of the Committee.

1.24 This Report contains chapters pertaining to various Bodies/offices etc. under the administrative control of the Ministry of Civil Aviation. The detailed analysis along with Observations/Recommendations of the Joint Committee are stipulated at the end of the Chapter. The Joint Committee expect the Ministry of Law and Justice to undertake an exercise to draft a Bill enumerating clearly the Bodies/offices which would disqualify Members of Parliament, Bodies/ offices for which exemption need to be granted and Bodies/offices which would not incur disqualification of Members of Parliament, in the light of the Observations/Recommendations of the Joint Committee

Chapter II

The Ministry of Law and Justice

Initiating the process of the scrutiny of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 the Secretary of the Ministry of Law and Justice during the sitting of the Committee, held on 31.03.2015, briefed as under:

“.... The concept came into existence for the first time when British Parliament passed an Act of Settlement and second law was enacted by British Parliament in 1701. Under these two laws, for the first time this concept of office of profit germinated. Under that law, any office which was associated with any profit or any persons who was entitled to any royal pension was not allowed to be Member of the House of Commons. From here it began. It travelled through decades and after 300 years, there was an Act of 1957 in the United Kingdom.

In this regard, I would like to mention that after independence when our Constitution made provision under Article 102 and 191, three laws were enacted in 1950, 1951 and 1953. One law deleted some of the offices which were temporary in nature. These two other laws provided for certain offices which were considered and declared as offices of profit, not to contradict the provisions of Article 102 of the Constitution.

During those days, it was not considered appropriate that the three laws covered the area adequately and therefore representation was made in Parliament and on the basis of that representation, first time a Committee was constituted headed by Pandit Thakur Das Bhargava. The Committee went to examine in details all the issues relating to office of profit and made a detailed report on the basis of which a present law that we are considering today came into existence. This is the precise background, historical background.

In this law, the basic principles which were enunciated were, though there were certain offices which otherwise could constitute office of profit under constitutional provisions but if Parliament by law so declared that this office will not constitute office of profit, then that office stands exempted from the provision of the Constitution. So this power has been given to Parliament to identify the offices.

In this regard, a number of Hon. Committees were constituted. All these Committees made recommendations on the basis of which from time to

time many amendments have been carried out. It is not that we are the only country where such provision exists. Even in the US, there is a provision that if anybody holds an office of profit, he shall not become a Member of the House of Representatives. So, such provision also exists in other countries. The reason is that is envisaged under the constitutional provisions by the founding fathers of the Constitution that our Members of Parliament be independent of the Government. The Government should not have any control over the Parliament and representation of the people. To ensure this, the provision has been made and it has been left to the Parliament to decide about the offices which would constitute office of profit or not.

It was not provided in the Constitution as to what would constitute office of profit, neither in the Act of 1959 nor in the Representation of People Act. Nowhere is it provided what would constitute what would be the definition of office of profit. But it has been left exclusively with the Parliament to decide and enact a law.

Further, it envisaged three things- first one, there must be an office. Second, there is a control of the Government and third, there is some pecuniary benefit. A number of judgements have been pronounced since the Act came into existence and on the basis of those judgements what emerges has been very nicely summarised by none else than Shri P.D.T. Achary, former Secretary General of Lok Sabha. He has summarised perhaps all the judgments in one paragraph as to what are the elements we should look for before we decide on any office whether it would constitute office of profit or not. If i may be permitted, i will just read that paragraph. That is a very small paragraph. This is from Chapter VI of the book „Pradice and Procedure of Parliament“ by Shri P.D.T. Achary. The relevant paragraph goes like this:

“It has also been held by the Supreme Court that all the determinative factors need not be conjointly present. The critical circumstances, not the total factors, prove decisive. A practical view, not pedantic basket of tests, should guide in arriving at a sensible conclusion.”
“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.”

he has enumerated the tests as follows:

“those tests are whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder,

whether the Government pays the remuneration, what are the functions of the holder, does he perform them for the Government, and does the Government exercise any control over the performance of those functions.”

These are the five questions which he has summarised on the basis of the judgements and these five questions, if answered in the affirmative constitute an office of profit. These are the five questions to be answered if you look at an office which he has summarised from the so many judgements he has covered in his book in this chapter. If the answer for these questions is a „No“, it is not an office of profit. He has very nicely summarised it in this chapter.

Why was a necessity felt to keep a provision in the Constitution? If we wade through the chapter and the background under which these provisions came into being, it was felt necessary that there are a number of statutory bodies, a number of non-statutory bodies where hon. Members of Parliament can guide the Executive and guidance given to the Executive will enable the people at large in formulating or taking any decision. It was considered necessary that in those bodies let Members of Parliament participate and guide the Executive in taking those decisions but at the same time it was appropriate to make a provision so that the Members of Parliament in no way come under the control of the Government. So, there is a balance which has to be harmonised or maintained and that has been left very eloquently with the Parliamentarians only; no authority has been envisaged under the Constitution to decide as to what constitutes and what does not constitute that. But it has been left with the Members of Parliament and it is for the Parliament to examine the offices whether those offices are useful, where the representation of the Members of Parliament in those offices are useful for guiding and providing guidance for the benefit of taking policy decisions. All this has been left to the Parliament meaning thereby that the Constitution though provides for disqualification with certain objections but a law permitting through parliamentary legislation to examine certain offices where representation is a must. This is the background and the circumstances. In this background whatever suggestions come, if they require any amendments, we are available in the Legislative Department because the subject matter of office of profit as regards legislation is the concern of the Legislation Department. We are always available at your service.”

2.2 In this context, the Secretary of the Ministry of Law and Justice also added as under:

“.....Section 3 says that it is hereby declared that none of the following offices in so far as they relate to the office under the Government of India shall disqualify the holder from such and such. None of the following offices is plain and simple way of writing things and anybody can know the import of the provision. But when we sail through the clauses like (i), this not for the first time it is said. At the time when the bill was introduced particularly on this clause it was mentioned in the Statement of Objects and Reasons that this was the most controversial item in the entire Bill as it raised the question of desirability of appending a schedule to the bill enumerating the committees members of which would entail disqualification. The Committee have given their most careful thought to the question and have come to the conclusion that law on the subject of disqualification of Members of Parliament should be clear and unambiguous.

The Committee, therefore, decided that on the model of the British House of Commons Disqualification Act, 1957, the bill should contain a Schedule which should enumerate the Committee whose membership should disqualify, the Committee have accordingly attached a Schedule to the Bill, the Part I of which enumerates the committee’s membership of which would entail disqualification and Part II of the Committee in which the office of Chairman, Secretary or member of the Standing or the Executive Committee would entail disqualification but not the office of the member only. So, from the beginning this clause (i) was considered as a controversial item. We can, if we are given directions, try to make an attempt and come with a simplified form that clause which makes it easier to understand.”

2.3 When the Committee pointed out that this is a legislative defect, the Secretary of the Ministry of Law and Justice responded as under:

“Sir, I will not call it exactly a legislative defect because Parliament when enacted, then we have no right to say anything on this.”

Observations/Recommendations

2.4 In its submission before the Committee during the course of evidence, the Ministry of Law and Justice stated that the Constitution of India, the Representation of People Act, 1951 or the Parliament (Prevention of Disqualification) Act of 1959 does not provide as to what would constitute office of profit or what would be its definition and it has been left exclusively with in the domain of the Parliament to decide and enact a law on the issue of office of profit. According to the Ministry of Law and Justice, the Supreme Court, in its 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. Those tests are whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder, whether the Government pays the remuneration, what are the functions of the holder, does he perform them for the Government, and does the Government exercise any control over the performance of those functions. If these questions are answered in the affirmative then the office constitutes an office of profit. It has also been held by the Supreme Court that all the determinative factors need not be conjointly present. There are a number of statutory bodies and non-statutory bodies where Members of Parliament can guide the Executive and guidance given to the Executive will help them to formulate a policy or to take a decision in the public interest. It was, therefore, considered necessary that Members of Parliament may be the member in those bodies and guide the Executive in taking decisions but at the same time it was appropriate to make a provision so that in no way the Members of Parliament come under the control of the Government. It has been left very eloquently with the Parliament to examine the offices which are useful for guiding and providing guidance for the benefit of taking policy decisions.

2.5 In the context of Section 3 (i) of the Parliament (Prevention of Disqualification) Act of 1959, the Ministry of Law and Justice further stated that at the time of introduction of the bill, the question of desirability was raised for appending a schedule to the bill enumerating the committees, members of which would entail disqualification. The Joint Committee came to the conclusion that law on the subject of disqualification of Members of Parliament should be clear and unambiguous and, therefore, decided that on the model of the British House of Commons Disqualification Act, 1957, the bill

should contain a Schedule which should enumerate the Committee whose membership should disqualify. Accordingly the Part I and Part II of the Schedule enumerated the list of Bodies under the Central Government, the membership of which would entail disqualification, for being chosen as , or for being, a Member of Parliament. According to the Ministry of Law and Justice, from the beginning clause (i) was considered as a controversial item and if directions are given to them they would make an attempt to come out with a simplified form of the clauses which would make it easier to understand.

2.6 The Joint Committee note that Part I and Part II of the Schedule to the Act of 1959 contain lists of Bodies, the holder of which would result in disqualification. This is a sort of negative list and if a Body is listed in this negative list then it would result in disqualification of member, for being chosen as or for being a Member of Parliament and if a Body does not happen to figure in the list then it would not incur disqualification. The Joint Committee are of the view that there may be a number of Bodies/Offices which may not have been included in the said list and as a consequence, this gives an impression that the membership of Bodies/offices which are outside the negative list are safe and would not jeopardize the membership of the Members of Parliament, which, of course, is not a convincing position as each and every Body/office , which are outside the negative list, need to be examined with reference to principles/guidelines laid down for the purpose. The Joint Committee, therefore, feel that it is imperative that Section 3(i) may be reviewed to make it clear and logical in its entirety. While also taking note of the submission of the Ministry of Law & Justice, the Joint Committee strongly recommend that a fresh exercise may be undertaken by the Ministry of Law and Justice to review Section 3 (i) containing a negative list of Bodies in Part I and Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959, with a view to streamline the import of Section 3(i) so as to avoid any ambiguity and to make it easier to understand while examining any Body/office from the angle of office of profit.

Chapter -III

The Ministry of Civil Aviation

3.1 The Schedule to the Parliament (Prevention of Disqualification) Act, 1959 contains the following Bodies in respect of Air India:

- (i) Air India International Corporation established under Section 3 of the Air Corporation Act, 1953.,
- (ii) Indian Airlines Corporation established under Section 3 of the Air Corporation Act, 1953.,
- (iii) Air Transport Council constituted under Section 30 F of the Air Corporations Act, 1953.
- (iv) Advisory Committee for the Air India International Corporation appointed under Section 41 of the Air Corporations Act, 1953,
- (v) Advisory Committee for the Indian Airlines Corporation appointed under Section 41 of the Air Corporations Act, 1953.

3.2 With regard to Bodies mentioned at (i) and (ii) above, it may be mentioned that erstwhile Air-India and Indian Airlines were established in 1953 under the Air Corporations Act, 1953. Subsequent to the enactment of "Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, erstwhile Air-India and Indian Airlines were transferred to and vested in Air-India Limited and Indian Airlines Limited, Public Limited Companies registered under the Companies Act, 1956 with effect from 1 March, 1994. The Air Corporation Act, 1953 stands repealed vide Air Corporations (Transfer of Undertakings and Repeal) Act, 1994.

3.3 The Amalgamation of Air India Limited and Indian Airlines Limited with National Aviation Company of India Limited was approved by the Ministry of Corporate Affairs on 22 August 2007 and it became effective w.e.f. 27 August, 2007. In view of the amalgamation, Air India Limited were dissolved without being wound up.

3.4 The Board desired to restore the name of Air India Limited in place of National Aviation Company of India Limited due to the fact that the brand equity of Air India was visible in many part of the globe. Accordingly, the name was changed from National Aviation Company of India Limited to Air India Limited effective 24 November 2010. The present Board of Directors of Air India is at **Annexure II**. Air India does not have any Hon"ble Member of Parliament on its Board of Directors.

3.5 As regards the Air Transport Council, Section 30 of the Air Corporation Act, 1953 provides for constitution of Air Transport Council by the Central Government by notification in the Official Gazette. The Act provided that the Air Transport Council

shall consist of a Chairman and such members not exceeding eleven, including at least be one person with experience in financial matters and one person who is an employee of either of the Corporations with experience in labour matters. As per the Act, the main functions of the Air Transport Council were as follows:

- i. Any matter regarding operation of scheduled air transport services, frequency of services, passenger fares and freight rates etc. on mutual consultation between the two Corporations.
- ii. Any matter of importance referred to it by the Director-General of Civil Aviation or the Director-General of Posts and Telegraphs relating to matters of common interest, between either of the Corporations and the Director-General of Posts and Telegraphs, including rates for the carriage of postal articles by air.
- iii. To investigate any matter relating to the fares, freight rates or other charges levied by either Corporation in respect of any service or facility provided by the Corporation and of the adequacy or efficiency of such service or facility.
- iv. To tender advice to the Government in regard to financial and economic analysis, accounting, costing and statistical techniques and financial reporting relating to air transport.³⁷ As regards the 4th and 5th items regarding Advisory Committees for the Air India International Corporation and Advisory Committee for the Indian Airlines Corporation both appointed under section 41 of the Air Corporations Act, 1953, Air India has informed that Advisory committees dealing with matters pertaining to welfare of employees were constituted and were known as Labour Relations Committee. With the repeal of the Air Corporation Act, 1953 vide Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, the two committees have ceased to exist.

3.6 On being asked by the Committee to furnish information about the composition, character etc. of all Committees/Boards/Corporations/Bodies etc. where in Members of Parliament have been nominated by virtue of some other specific Acts of Parliament i.e. other than the Parliament (Prevention of Disqualification) Act, 1959, the Ministry of Civil Aviation has mentioned that in so far as AI Division is concerned, no Members of Parliament has been nominated in any of the five bodies mentioned in para 29 above.

3.7 The Ministry of Civil Aviation has furnished „Nil“ report with regards to details of all other Centrally funded/sponsored schemes/programmes under the administrative control of the Ministry of Civil Aviation wherein there may/may not be a provision for the nomination/election of Members of Parliament along with other such future schemes/plans wherein inclusion of Members of Parliament is proposed.

3.8 In Ministry of Civil Aviation there is a provision of Airport Advisory Committee at each airport chaired by the concerned Hon“ble MP of the constituency in which the airport is located including other ex-officio members. No financial benefits are accorded to ex-officio members.

Thus, there is no committee in the Ministry of Civil Aviation covered under office of profit.

3.9 During the course of evidence held on 31 March,2015 , the Secretary of Ministry of Civil Aviation briefed the Committee as under:

“Sir, regarding the Offices of Profit, we have submitted a background note to the Committee Secretariat in which it has been clarified that there is no Committee in which such an office of profit is held. We only have an Advisory Committee at each Airport which is chaired by the Hon'ble Member of Parliament of that constituency and it also includes MPs from that district and the local MLA. Now, none of the members of this Committee are given any benefits which would make them define as Offices of Profit. So, this is the position as far as civil aviation is concerned.”

3.10 On being asked by the Committee as to whether consequent upon repealing the Ministry of Civil Aviation had undertaken up the matter for deletion of entities from the Parliament (Prevention of Disqualification) Act, 1959 and if so, what are the details thereof and if not, what are the reasons for it, the Secretary of the Ministry stated as under:

“I will have to verify and furnish it to the Committee as this happened a number of years ago. On whether we have actually taken up for deletion of entities from the Schedule of the Act, I will verify and furnish you the report.”

3.11 On being pointed out by the Committee about the philosophy and underlying idea of nominating Members on the erstwhile Air India and Indian Airlines Board of Directors and whether any MP occupy any position in the Board, the Secretary of the Ministry responded as under:

“yes, we will furnish the details to you.”

In this regard, CMD, Air India Ltd. added as under:

“Air Corporation Act was repealed way back in 1994. 21 years have passed, repealment is quite old. Even before that, I am not aware of any public representative being part of the Board. There has not been a single MP or MLA who has been the member of the Board.”

Observations/Recommendations

3.12 The Committee note that Schedule to the Parliament (Prevention of Disqualification) Act, 1959 contains the following Bodies in respect of Air India:

- (i) Air India International Corporation established under Section 3 of the Air Corporation Act, 1953.,**
- (ii) Indian Airlines Corporation established under Section 3 of the Air Corporation Act, 1953.,**
- (iii) Air Transport Council constituted under Section 30 F of the Air Corporations Act, 1953.**
- (iv) Advisory Committee for the Air India International Corporation appointed under Section 41 of the Air Corporations Act, 1953,**
- (v) Advisory Committee for the Indian Airlines Corporation appointed under Section 41 of the Air Corporations Act, 1953.**

While Bodies mentioned at (i), (ii) and (iii) are listed in Part I, Bodies mentioned at (iv) and (v) are listed in Part II , of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

Air India International Corporation and Indian Airlines Corporation

3.13 The Committee note that erstwhile Air-India and Indian Airlines were established in 1953 under the Air Corporations Act, 1953. Subsequent to the enactment of “Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, erstwhile Air-India and Indian Airlines were transferred to and vested in Air-India Limited and Indian Airlines Limited, registered under the Companies Act, 1956 with effect from 1 March, 1994. The Air Corporation Act, 1953 stood repealed vide Air Corporations (Transfer of Undertakings and Repeal) Act, 1994. Subsequently, the Air India Limited and Indian Airlines Limited were amalgamated with National Aviation Company of India Limited on 22 August 2007 and it became effective w.e.f. 27 August, 2007. The name was further changed from National Aviation Company of India Limited to Air India Limited effective 24 November 2010. Air India does not have any Member of Parliament on its Board of Directors. The Committee were also informed that even before that Member of Parliament had never been member of the Board in erstwhile Air India International Corporation and Indian Airlines Corporation. In view of the foregoing, the Committee are of the view that the names of

erstwhile Air India International Corporation and Indian Airlines Corporation in the list in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 do not have any purpose and are redundant and therefore the Committee recommend that the action may be initiated by the Ministry of Civil Aviation to delete the aforesaid names from the Schedule to the Act of 1959.

Air Transport Council

3.14 As regards the Air Transport Council, Section 30 of the Air Corporation Act, 1953 provides for constitution of Air Transport Council by the Central Government by notification in the Official Gazette. The Act provided that the Air Transport Council shall consist of a Chairman and such members not exceeding eleven, including at least be one person with experience in financial matters and one person who is an employee of either of the Corporations with experience in labour matters. The name of Air Transport Council figures in Part I of the Schedule to the Act of 1959 which means that the holder of office of chairman of the Council is disqualified as for being a Member of Parliament. The Ministry has informed that no Member of Parliament has ever been nominated in Air Transport Council and there does not seem to be any provision for appointment of Members of Parliament as members of the Council. The Committee feel that listing of Air Transport Council in Part I of the Schedule to the Act of 1959 does not seem to serve any purpose and therefore, recommend that the same may be deleted from Part I of the Schedule to the Act of 1959 for which action may be initiated by the Ministry accordingly.

Advisory Committees for the Air India International Corporation and Advisory Committee for the Indian Airlines Corporation

3.15 As regards Advisory Committees for the Air India International Corporation and Advisory Committee for the Indian Airlines Corporation both constituted under section 41 of the Air Corporations Act, 1953. Air India has informed that Advisory committees dealing with matters pertaining to welfare of employees were constituted and were known as Labour Relations Committee. With the repeal of the Air Corporation Act, 1953 vide Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, the two

committees have ceased to exist. In view of the submission of the Ministry, the Committee recommend that the names of Advisory Committees for the Air India International Corporation and Advisory Committee for the Indian Airlines Corporation may be deleted from Part II of the Schedule to the Act of 1959 and action may be initiated by the Ministry accordingly.

NEW DELHI
28 July, 2016
06 Sravana, 1938 Saka

Dr. SATYAPAL SINGH
Chairperson
Joint Committee on Offices of Profit

**EXTRACTS OF THE MINUTES OF THE THIRD SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 31 MARCH, 2015**

The Committee met on Tuesday, 31 March, 2015 from 1430 hrs to 1700 hrs. in Committee Room No.'E', Parliament House Annexe, New Delhi.

PRESENT

Shri P.P. Chaudhary - Chairperson

MEMBERS

LOK SABHA

2. Shri Bhagwant Maan
3. Shri Arjun Ram Meghwal
4. Prof. Saugata Roy
5. Dr. Satya Pal Singh
6. Smt. Supriya Sule

RAJYA SABHA

7. Shri Dilipbhai Pandya
8. Shri Sukhendu Sekhar Roy
9. Shri K.C. Tyagi

SECRETARIAT

1. Shri R.S. Kambo - Joint Secretary
2. Shri Shiv Kumar - Director
3. Smt. Maya Lingi - Additional Director

REPRESENTATIVES OF THE MINISTRIES

MINISTRY OF LAW AND JUSTICE(LEGISLATIVE DEPARTMENT)

1. Dr. Sanjay Singh - Secretary
2. Dr. Ms. Mukulita Viyayawargiya - Joint Secretary and
Legislative Counsel.

(DEPRATMENT OF LEGAL AFFAIRS)

1. Shri D. Bhardwaj - Joint Secretary & Legal Adviser
2. Shri Mahendra Khandelwal - Addl. Government Advocate

MINISTRY OF COMMERCE & INDUSTRY

(DEPARTMENT OF COMMERCE)

* * * * *

MINISTRY OF CIVIL AVIATION

1. Shri V. Somasundaran Secretary
2. Ms. Gargi Kaul Joint Secy. & FA
3. Shri Anil Srivastava Joint Secretary
4. Shri Arun Kumar Joint Secretary
5. Shri G. Ashok Kumar Joint Secretary
6. Shri B.S. Bhullar Joint Secretary
7. Shri R.K. Srivastava Chairman, AAI
8. Shri Rohit Nandan CMD, AI Ltd.
9. Dr. B.P. Sharma CMD, PHL
10. Shri Alok Shekhar Secretary, AERA

MINISTRY OF COAL

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MINISTRY OF EXTERNAL AFFAIRS

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2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and briefly apprised them about the agenda of the meeting i.e oral evidence of the representatives of the Ministries of Commerce & Industry (Department of Commerce), Civil Aviation, Coal, External Affairs and Law and Justice (Department

of Legal Affairs and Legislative Department) - in connection with Review of Committees/Boards/Organisations, etc. referred to in Schedules to the Parliament (Prevention of Disqualification) Act, 1959, as amended from time to time. The Chairperson, then, discussed the provisions of the Parliament (Prevention of Disqualification) Act, 1959 with Members of the Committee. The Members actively participated in discussion and thereafter the committee stressed the imperative need to review the Schedules thoroughly - for making the provisions of the Act unambiguous.

3. * * * * *

4. At the outset, the Chairperson welcomed the representatives of the Ministries to the sitting of the Committee and apprised them in details about the purpose of this oral evidence.

5. Thereafter, the representative of the Ministry of Law & Justice (Legislative Department) briefed the Committee about the brief history of the concept of 'Office of Profit' and background and circumstances under which Parliament (Prevention of Disqualification) Act, 1959 got enacted. The Committee were apprised that what would constitute an 'Office of Profit' has not been provided in Constitution neither in the Act of 1959 nor in the Representation of People Act. Certain criteria have evolved on the basis of the various judgments pronounced by various Courts. A provision debarring holder of a "Office of Profit to become a Member of Parliament has been kept in the Constitution to keep Members of Parliament independent of the Government and the Government should not have any control over the Parliament and peoples' representatives. However, the witness stated that it has been left to the Parliament to decide about the offices, which, would constitute office of profit or not. The witness further stated that the idea behind granting exemption from angle of 'Office of Profit' by enacting the Parliament (Prevention of Disqualification) Act, 1959 is that association of Member of Parliament to certain Bodies/Committees would provide guidance to the Executive in taking policy decisions. About the institutional mechanism that exists to review the nature, character and composition of the Bodies referred to in the Act, the witness stated that after constitution of the Committee, Ministries and State Governments were asked to review the Bodies included in the Schedules and suggest for inclusion of new Bodies or omission from the Schedules. About the background and justification for including Bodies like Dalit Sena, Bahujan Prerna Charitable Trust, Uttar Pradesh Co-operative Bank Limited, etc. in the exempted category, the representative of Legislative Department stated that after going through the relevant files, proper reply to this will be submitted to the Committee. Thereafter the Hon'ble Chairperson

asked the witness to also furnish written response to the questionnaire being sent by the Committee in the matter

6. * * * * *

7. * * * * *

8. * * * * *

9 Thereafter, the representative of the Ministry of Civil Aviation were ushered in.

10. The Chairperson welcomed the representatives of the Ministry of Civil Aviation and apprised them about the purpose of this oral evidence.

11. The representative of the Ministry of Civil Aviation stated that Air India International Corporation, Air Transport Council, Indian Airlines Corporation, Advisory Committee for the Air India International Corporation, Advisory Committee for the Indian Airlines Corporation, etc. have ceased to exist due to repeal of the Air Corporation Act, 1953. There is a provision of Airport Advisory Committee at each airport chaired by the concerned MP of the constituency, in which, the airport is located and it also includes MPs from that district and the local MLA. None of the Members of this Committee are given any benefits, which, would make them define as 'office of profit'. The witness submitted before the committee that there is no Committee in the Ministry of Civil Aviation covered under 'office of profit'. Further on the question of whether the Ministry of Civil Aviation did take up the matter for deletion of the aforesaid entities from the Parliament (Prevention of Disqualification) Act, 1959 consequent upon repeal of the Air Corporation Act, 1953, the representatives stated that after verifying, information to this aspect will be furnished as this happened a number of years ago.

12. Thereafter the Hon'ble Chairperson asked the witness to furnish written response to the questionnaire being sent by the Committee in the matter and thanked the representatives of Ministry of Civil Aviation.

13. The representatives of Ministry of Civil Aviation, then, withdrew.

14-22 * * * * *

23. The witnesses, then, withdrew.

24. A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.

The Committee then adjourned.

**MINUTES OF THE THIRTIETH SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 11 MAY, 2016**

The Committee met on Wednesday, 11 May, 2016 from 1500 hrs to 1600 hrs. in Chairperson's Room No. 135, First Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri P.P. Chaudhary - Chairperson

MEMBERS

LOK SABHA

2. Smt. Meenakshi Lekhi
3. Shri Bhagwant Maan
4. Shri Arjun Ram Meghwal
5. Prof. Saugata Roy
6. Dr. Satya Pal Singh
7. Smt. Supriya Sule

RAJYA SABHA

8. Shri Dilipbhai Pandya

SECRETARIAT

1. Shri U.B.S. Negi - Joint Secretary
2. Smt. Rita Jailkhani - Director
3. Smt. Maya Lingi - Additional Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

3. Thereafter, the Committee considered the draft Sixth, Seventh and Eighth Report concerning with the review of Schedule to the Parliament (Prevention of Disqualification) Act, 1959 in respect of Bodies under the administrative domain of (I)

The Ministry of Civil Aviation; (II)The Ministry of External Affairs and (III) The Ministry of Coal.

4. The Committee considered and adopted the draft Sixth, Seventh and Eighth Report without any modification.

5. The Committee also authorized the Chairperson to finalize the Report and present the same to the Parliament in the current Budget Session, 2016.

The Committee then adjourned.