

JOINT COMMITTEE ON OFFICES OF PROFIT

(2014-2019)

(SIXTEENTH LOK SABHA)

SEVENTH REPORT

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

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)

Price : _____

CONTENTS

	PAGE
COMPOSITION OF THE JOINT COMMITTEE ON OFFICES OF PROFIT	(iii)
INTRODUCTION.....	(v)

REPORT

CHAPTER-I	Introductory
CHAPTER-II	The Ministry of Law & Justice
CHAPTER-III	The Ministry of External Affairs

APPENDICES

APPENDIX-II	Minutes of the Third Sitting of the Joint Committee on Offices of Profit (Sixteenth Lok Sabha) held on 31 March, 2015.
APPENDIX-III	Minutes of the Thirtieth Sitting of the Joint Committee on Offices of Profit (Sixteenth Lok Sabha) held on 11 May, 2016.

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 Seventh 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 External Affairs 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 External Affairs 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 External Affairs 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
8. Smt. Supriya Sule
- # 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 Jaikhani - 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 thier 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 places 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 principle 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 Courts 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 External Affairs 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 chapter pertaining to various Bodies/offices etc. under the administrative control of the Ministry of External Affairs. 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

2.1 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.”

Chapter -III

Ministry of External Affairs

Haj Committee of India:

3.1 It is listed in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

The Haj Committee of India is a statutory body of the Ministry of External Affairs, Government of India, constituted under the Haj Committee Act, 2002 (**Annexure II**). In terms of Section 4 of the Haj Committee Act, 2002, two Muslim Members of Parliament from Lok Sabha are nominated by Speaker, Lok Sabha. One Muslim Member of Parliament from Rajya Sabha is nominated by Chairman, Rajya Sabha.

3.2 Rule 11(1) of Haj Committee Rules, 2002 that-

The Chairperson, Vice Chairperson and members of the Haj Committee (other than ex-officio members) shall be entitled to travelling allowances and daily allowances for the meeting of the committee and undertaking tours whether in India or abroad, at the rates admissible to Group "A" Officers of the Government of India. However, it is provided that the Members of Parliament who are members of the committee, shall be entitled to the aforesaid allowances at the rates respectively admissible to them under the rules of House of the People and Council of States.

3.3 Vide letter No.M(Haj)-1183/74/2009 dt. March 15, 2011 MEA has clarified that the Members are given the TA/DA as admissible to Officers of rank of Joint Secretary to Government of India.

In terms of Section 37 of the Haj Committee Act, 2002, the office of a member of the Committee shall not be deemed to be an office of profit.

There is no pay/sitting fee payable to the members of the Committee.

3.4 In terms of Section 14(1) of the Haj Committee Act, 2002, the Central Government may by notification in the Official Gazette-remove Chairperson, a Vice-Chairperson of the committee or any member thereof, if he-

- i. Is or becomes subject to any of the disqualifications specified in section 12; or
- ii. Refuses to act or is incapable of acting or acts in a manner which the Central Government after hearing any explanation that he may offer,

- iii. considers to be prejudicial to the interests of the Committee or the interests of the pilgrims; or
- iv. Fails, in the opinion of the Committee, to attend three consecutive meetings of the Committee without sufficient excuse;

In terms of section 12, a person is disqualified if he-

- i. Is not a citizen of India,
- ii. Is not a Muslim, except for ex-officio members as provided in clause (iii) of section 4,
- iii. Is less than 25 years of age,
- iv. Is of unsound mind and stands so declared by a competent court,
- v. Is an undischarged insolvent,
- vi. Has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude,
- vii. Has been on previous occasion-
 - a. Removed from his office as a member or
 - b. Removed by an order of a competent authority either for not acting in the interest of the pilgrim or for corruption.

3.5 In terms of Section 9(1) of the Act, the duties of Committee shall be-

- i. to collect and disseminate information useful to pilgrims and to arrange orientation and training programmes for pilgrims.
- ii. to advise and assist pilgrims during their stay at the embarkation points in India, while proceeding to or returning from pilgrimage, in all matters including vaccination, inoculation, medical inspection, issue of pilgrim passes and foreign exchange, and to liaise with the local authorities concerned in such matters.
- iii. to give relief to pilgrims in distress.
- iv. To finalise the annual Haj plan with the approval of the Central Government and execute the plan, including the arrangements for travel by air or any other means and to advise in matters relating to accommodation.
- v. To approve the budget estimates of the Committee and submit it to the Central Government at least three months before the beginning of the financial year for its concurrence.
- vi. To co-ordinate with the Central Government, railways, airways and travel agencies for the purpose of securing travelling facilities for pilgrims.
- vii. To generally look after the welfare of the pilgrims.
- viii. To publish such proceedings of the Committee and such matters of interest to pilgrims as may be determined by bye-laws made in this behalf by the Committee.
- ix. To discharge such other duties in connection with Haj as may be prescribed by the Central Government.

3.6 Members of Parliament in Haj Committee

1. Shri Sirajuddin Ajmal (MP from Lok Sabha)
2. Shri M.I. Shanavas (MP from Lok Sabha)
3. Shri Salim Ansari (MP from Rajya Sabha)

The Ministry has recommended for the consideration of the Committee that the Haj Committee of India may no longer be included in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

Indian Council for Cultural Relations

3.7 ICCR is listed in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

i. The names of the committees under Indian Council for Cultural Relations (ICCR) are as under:

- a. General Assembly
- b. Governing Body
- c. Finance Committee

ii. These Committees are Standing in nature and constituted under Article 3 of ICCR's constitution **Annexure III.**

iii. The composition of Committees is as under:

General Assembly (GA)

- a. President
- b. Three Vice-Presidents
- c. Director-General
- d. Financial Adviser
- e. Five persons nominated by the Government of India
- f. Two members of Lok Sabha nominated by the Speaker of the Lok Sabha and one Member of the Rajya Sabha nominated by the Chairman of the Rajya Sabha.
- g. One representative each of the Lalit Kala Akademi, Sahitya Adademi and Sangeet Natak Adademi to be nominated by the competent authorities of these Academies.
- h. Not more than ten persons eminent in various spheres of Indian culture to be nominated by the President of the Council in their individual capacity.
- i. Ten eminent artistes from the fields of performing, fine and plastic arts to represent institutions and organisations of this category to be selected by the Governing Body.
- j. Fifteen representatives of universities or of institutions deemed to be universities, to be selected by the Governing Body.

- k. Five representatives of prominent scientific and technical institutions to be selected by Governing Body.
- l. Five representatives of research institutions and institutes of higher learning in areas of Humanities and Social Sciences and
- m. Five representatives of other organisations interested in the work and objectives of the Council to be selected by Governing Body.

Members of the General Assembly may be seen at **Annexure IV.**

Governing Body (GB)

- a. President
- b. Three Vice-Presidents
- c. Director-General
- d. Financial Adviser
- e. Three members nominated by the Government of India from among their nominees on the General Assembly, and
- f. Nine members to be elected by the General Assembly from amongst its members of whom at least one shall be a member of the Rajya Sabha and two of the Lok Sabha.

Members of Governing Body of ICCR may be seen at **Annexure VI.**

Finance Committee

- a. Director General
- b. Financial Adviser
- c. One nominee of the Government of India
- d. Two representatives of the General Assembly, and
- e. One representative of the Governing Body.

iv. The term of the members of the General Assembly and Governing Body are for a period three years. Regarding Finance Committee no specific term has been stipulated.

v. Council is not paying any remuneration to any of its statutory bodies members. However, non-government members are paid Rs.2000 (sitting fee) for attending meetings. Transportation is provided to the local members for attending the meeting. Board and Lodges, air fare and daily allowances are paid to outstation members for attending meeting.

vi. GA Members are appointed under Clause 4(a)(i) to (xiii), GB members under Clause 7(i) to (vi) and Finance Committee under Clause 10(i) to (v) of ICCR's constitution.

vii. There is no minimum qualification to become a member of ICCR statutory bodies. Members are selected under various categories of the ICCR constitution.

viii. Functions of the General Assembly are as under:

- a. to consider and formulate the programme of the Council in the light of policies laid down by the Government of India and to advise the Government of India on Foreign cultural relations.
- b. to adopt the annual budget of the Council approved by the Governing Body;
- c. to consider and approve programmes and specific projects proposed by the Governing Body and to give directions in this behalf;
- d. to receive the annual report;;
- e. to nominate auditors unless the Government of India arranges for the audit through Comptroller and Auditor General of India, and to receive the audited accounts and the auditor's report;
- f. to elect two Vice-Presidents from among its members;
- g. to elect members of the Governing Body in accordance with Clause 7(vi);
- h. to elect members of the Finance Committee in accordance with Clause 10 (iv);
- i. to frame its rules, regulations, bye-laws and rules of procedure; and
- j. to take such other measures as may be necessary to further the objectives of the Council.

Functions of the Governing Body are as under:

- a. to exercise the executive authority of the Council subject to policy directives of the General Assembly;
- b. to be responsible for the supervision and control of the work of the Council;
- c. to formulate programmes of the Council and specific projects for submission to the General Assembly;
- d. to approve the annual budget of the Council subject to the financial limitations prescribed by the Government of India to be submitted for adoption by the General Assembly;

- e. to approve the annual report and accounts of the Council for adoption by the General Assembly;
- f. to select representatives of universities and of scientific, educational and cultural organisations in India to be members of the General Assembly in accordance with Clause 4 (ix) to (xiii);
- g. to approve the appointment of the Director General of the Council by the President of the Council and other members of the staff except those the power to appoint whom is generally or specifically delegated by it to the President or Director General or to any other officer or Committee provided that posts, the scales of Pay of which exceed Rs.5000 per month (1979) will be filled in consultation with the Government of India. This latter condition will, however, not apply to non-administrative posts such as Council's Professors of Indian studies posted abroad and;
- h. to elect one representative to the Finance Committee in accordance with Clause 10(v).

Functions of the Finance Committee are as under:

- a. The Finance Committee shall consider the budget estimates of the Council and make recommendations thereon to the Governing Body;
- b. It shall consider and make recommendations on matters relating to the administration and programmes of the Council which may be referred to it from time to time by the President or the Governing Body or the General Assembly.
- c. It shall prescribe the terms and conditions of service in respect of all posts under the control of the Council.

Functions of each Committee is mentioned above. These Committees formulate the policies and programmes of the Council and monitor the same. Executive and financial powers are vested with President and Director General, ICCR.

The Ministry has recommended for the consideration of the Committee that ICCR may continue to be listed in Part II of the Schedule to the Parliament (Disqualification) Act, 1959.

Research and Information System (RIS) for Developing Countries

3.8 Research and Information System (RIS) for Developing Countries is listed in Part of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

RIS was set up by MEA in 1983 as a Society registered under the Societies Act, 1860 as a follow up of a resolution of the seventh NAM Summit. It is India's contribution to the fulfilment of the long-felt need of the developing world for creating a 'Think-Tank' on global issues in the field of international economic relations and development cooperation.

3.9 RIS has been envisioned as a forum for fostering effective intellectual dialogue among developing countries. RIS is also mandated to function as an advisory body to the Government of India on matters pertaining to multilateral economic and social issues, including regional and sub-regional cooperation arrangements, as may be referred to it from time to time. RIS functions in close association with various governmental bodies, research institutions, academicians, policy-makers, business and industry circles in India and abroad. RIS has a consultative status with UNCTAD, NAM and WTO has conducted policy research and other activities in collaboration with other agencies, including UN-ESCAP, UNCTAD, UNU, Group of 77, SARRC Secretariat, Asian Development Bank (ADB). The World Bank, and the South Centre. It has also been involved in setting up networks of think-tanks of multilateral fora such as BIMSTEC, ASEAN, BRICS, IBSA etc.

3.10 RIS publication programme covers books, research monographs, discussion papers and policy briefs. It also publishes journals entitled, Such Asia Economic Journal, Asian Biotechnology and Development Review, and RIS Diary.

General Body and Governing Council.

3.11 RIS is governed by the General Body and the Governing council, both have the same membership. The General Body gives directions to the Governing Council for carrying out and pursuing the objects and aims of RIS set forth in its Memorandum of Association. The General Body meets at least once a year. The activities and affairs of RIS are managed, administered, directed and controlled by the Governing Council in respect of policies and programmes of RIS.

3.12 According to its Memorandum of Association and Rules, the membership of RIS General Body/Governing Council includes the following:

- i. Ex Officio Members-Foreign Secretary, Secretary (ER), Secretary (Economic Affairs), Secretary (DST) and Commerce Secretary.

- ii. Any eminent person with specialization in the field of Social Sciences and S&T. Under this category, at the moment, Professor B.B. Bhattacharya, Commodore (Retd.) Uday Bhaskar and Professor Deepak Nayyar are members of the RIS General Body and Governing Council for a period of three years with effect from February 2014.

President/Chairman and Vice-President/Vice Chairman RIS

3.13 RIS has a President, Vice-President and other officers as designated by the Government of India from amongst the members of the RIS on honorary basis. The term of the President and Vice-President is three years. The President and Vice-President of the General Body are also the Chairman and Vice-Chairman respectively of the Governing Council.

3.14 Shri Shyam Saran was reappointed as Chairman RIS in January 2014 for a three year term. Shri V. Seshadri was appointed as Vice-Chairman of RIS in March 2014.

Members of Governing Council of RIS may be seen at **Annexure VI**.

3.15 Ministry has recommended for the consideration of the Committee that RIS may continue to be listed in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

Hindi Salahkar Samiti

3.16 Hindi Salahkar Samiti is constituted in the Ministries/Departments with a view to render advice for proper implementation of the Official Language Policy of the Government. It is ad-hoc in nature.

3.17 There are 30 members in which 15 are Officials of the Ministry. The break up of other 15 non-official members is as under:

Chairman- concerned Minister (EAM).

Non-official Members of the Committee:

1. Members of Lok Sabha - 2
2. Members of Rajya Sabha - 2
3. Members of Parliament nominated by the Committee of Parliament on Official Language -. 2
4. Representative of the Kendriya Sachivalaya Hindi Parishad - 1
5. Representative of an all-India Voluntary Hindi organisation engaged in publicising Hindi - 1

6. Scholars of Hindi and Official Language to be nominated by concerned Department (MEA) - 4
7. To be nominated by the Ministry of Home Affairs - 3

Joint Secretary (Hindi) is Member-Secretary of Hindi Salahkar Samiti.

3.18 Non-official members taking part in the meeting of the Committee are paid travelling and daily allowances at the rates prescribed from time to time by the Government of India.

3.19 Members are nominated by the Ministry of Parliamentary Affairs. Committee of Parliament on Official Language and other representative members are nominated by the concerned organisations. In case of dissolution of Parliament, MPs will not be members of the Hindi Salahkar Samiti. If it is reconstituted then fresh names are taken from respective Ministries/Department.

3.20 The Samiti gives advice with regard to the implementation of the provisions relating to Official Language contained in the Official Language Act and Rules. This Committee is advisory in nature regarding progressive use of Hindi in the Ministry.

3.21 The Ministry has recommended for the consideration of the Committee that MEA's Hindi Salahkar Samiti may continue to be not listed in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

3.22 The Composition of Hindi Salahkar Samiti as on 21.01.2015 may be seen at **Annexure VII.**

Indian Council of World Affairs

3.23 The Indian Council of World Affairs was established as an Institution as per the Indian Council of World Affairs Act, 2001 (**Annexure VIII.**)

Composition of the Governing Body

3.24 Governing Body of the Council shall be constituted by the Governing Council. The Vice President of India, ex-officio shall be the Chairperson of the Governing Body. The Chief Executive Officer of the Council shall be designed as the Director General and shall be appointed by the Council. The DG shall be at least equivalent to the rank of Additional Secretary to the Government of India and shall have a tenure not exceeding three years. Every appointment of the DG shall be made from a panel of at least two names recommended by the Government of India in the Ministry of External Affairs.

3.25 As per Section 7(2) of the ICWA Act, 2001, the Governing Council consists of 47 members and Governing Body of 15 members.

3.26 No remuneration is paid to the members. However, in case of outstation members, TA claimed for attending meetings as per provisions of Section 11 of ICWA Act 2001.

3.27 Members of the Council are appointed by Central Government as per Section 7(2) of ICEA Act, 2001 and removed by Central government in the manner prescribed in Section 8 (4) of ICWA Act, 2001.

3.28 The objectives of the Council, as per ICWA Act of 2001 are as follows:

- a. To promote the study of Indian and international affairs so as to develop a body of informed opinion on international matters.
- b. To promote India's relations with other countries through study, research, discussion, lectures, exchange of ideas and information with other organisations within and outside India engaged in similar activities.
- c. To service as a clearing house of information and knowledge regarding world affairs
- d. To publish books, periodicals, journals, reviews, papers, pamphlets and other literature on subjects covered under clauses (a) and (b).
- e. To establish contracts with organisations promoting objects mentioned in this section.
- f. To arrange conferences and seminars to discuss and study the Indian policy towards international affairs and
- g. To undertake such other activities for the promotion of ideas and attainment of the above mentioned subject.

3.29 At the outset, Foreign Secretary briefed the Committee during the course of evidence as under:

“Thank you, hon. Chairman and Members of Joint Committee on Offices of Profit, it is an honour to be here for oral evidence before this August committee on the bodies established by the Ministry of External Affairs and their notification under the Parliament (Prevention of Disqualification) Act, 1959.

Mr. Chairman, as hon. Members are aware, Article 102 clause (a) of the Constitution of India states that a person shall be disqualified for being chosen as and for being, a Member of either House of Parliament, if he or she 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.

The expression “office of profit” has not been defined either in the Constitution or in the Representation of People Act, 1951. The Courts have interpreted an “office of profit” to mean an office capable of yielding a profit or from which a person might reasonably be expected to make a profit. The Supreme Court has held that what was relevant was whether the Office was capable of yielding a profit or pecuniary gain, other than reimbursement of out-of-pocket/actual expenses.

By virtue of section 3 of the Parliament (Prevention of Disqualification) Act, 1959, certain offices of profit identified in the schedule do not disqualify their holders from being Members of either houses of Parliament. That is the issue that we are looking at today.

The MEA administers the following Committees/Bodies which have provisions regarding nomination of Members of Parliament:

- i. Haj Committee of India.
- ii. The Research and Information System for the Non-Aligned and Other Developing Countries (RIS).
- iii. Indian Council of Cultural Relations (ICCR).
- iv. Hindi Salahakar Samiti; and
- v. Indian council of World Affairs (ICWA).

The first three bodies namely Haj Committee of India, RIS and ICCR are included in the Schedule (Section 3k) of the Parliament (Prevention of Disqualification) Act, 1959. Our views regarding inclusion of these bodies in the Schedule to the Act are as follows:

Haj Committee: Members are given TA/DA as admissible to officer of the rank of Joint Secretary in the Government of India. But Section 37 of the Haj Committee Act, 2002 provides that “Notwithstanding anything contained in any other law for the time being in force, the office of a member of the Committee or State Committee shall not be deemed to be an office of profit”. In view of the above, the Haj Committee or any State Committee on Haj are not “office of profit” and therefore are no longer required to be included in the Part II of the Schedule to the Act.

ICCR: Members are paid Rs.2000 as sitting fee. Apart from this, DA/TA is paid to outstation members. ICCR may continue to be listed in the Schedule to the Act as a “sitting allowance”, which is in addition to DA and

TA, is also being paid. It, therefore, does not seem to be directly covered by definition of „compensatory allowance“ under Section 2(a) of the Act.

RIS: There is no Member of Parliament in the Governing Council as of now. However, the possibility of their inclusion in future cannot be precluded. As regards allowances, RIS bye-laws (clause 9) states that the members shall not receive any pay, fee, remuneration or other allowances except “sitting allowance” of Rs.2000 per day in case of non-official Members residing in NCR or Rs.3500 per day to non-official outstation Members. TA is also paid to them. This “sitting allowance” may not be directly covered under “compensatory allowance” under Section 2(a) of the Act. RIS may, therefore, continue to be included in Part II of the Schedule to the Act.

ICWA: In this case, no remuneration is paid. However, outstation members can claim TA for attending meetings as per provisions of Section 11 of ICWA Act, 2001. ICWA cannot be considered an “Office of Profit” as there is no provision for any “remuneration” for nominated members. Moreover, admissible TA is covered under the definition of “compensatory allowance” under the Act. Therefore, ICWA falls within the purview of bodies mentioned in Section 3(i) of the Act which do not disqualify the holder of that office. Thus, it is evident that ICWA not only may not be seen as an “office of profit” but it is also covered under the exemptions under the Act.

Hindi Salahkar Samiti: Non-official members taking part in the meeting of the Committee are paid TA and DA at the rates prescribed from time to time by Government of India. The logic applied to ICWA also applied in the case of the Samiti.

Therefore, to sum up, MEA considers that , in view of the Section 37 of the Haj Committee Act 2002 which specifically provides that membership of the Haj Committee or State Committees on Haj shall not be deemed to be an office of profit, the Haj Committee and State Haj Committees listed at number 14 and 53 Part II of the Schedule to the Act may be deleted from the list.

As regards the other two bodies administered by MEA viz. ICWA and Hindi Salahkar Samiti that are not included in the Schedule, MEA is of the view that they may not be considered as office of profit and there may be no

requirement for them to be specifically listed in Part II of the Schedule as they are covered under Section 3(i) of the Act. ICCR and RIS may however continue to be listed in Part II of the Schedule to the Act. MEA's recommendations are submitted for the consideration of the hon. Chairman and Members of the Committee who may take a view on the inclusion or non-inclusion of these bodies in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959."

3.30 On being observed by the Committee that some appointment of MPs may be vacant, Foreign Secretary stated as under:

"Only in RIS we do not have MPs now."

3.31 When the Committed asked as to whether there is provision for MPs, Foreign Secretary answered as under:

"We have provision."

Observations/Recommendations

Haj Committee of India

3.32 The Committee note that the Haj Committee of India is a statutory body of the Ministry of External Affairs, Government of India, constituted under the Haj Committee Act, 2002. In terms of Section 4 of the Haj Committee Act, 2002, two Muslim Members of Parliament from Lok Sabha are nominated by Speaker, Lok Sabha. One Muslim Member of Parliament from Rajya Sabha is nominated by Chairman, Rajya Sabha. The Committee note that Haj Committee is listed in the Table under Section 3(k) of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. In terms of Rule 11(1) of Haj Committee Rules, 2002 the Chairperson, Vice Chairperson and members of the Haj Committee (other than ex-officio members) are entitled to travelling allowances and daily allowances for the meeting of the committee and undertaking tours whether in India or abroad, at the rates admissible to Group 'A' Officers of the Government of India. However, the Members of Parliament who are members of the committee, are entitled to the aforesaid allowances at the rates respectively admissible to them under the rules of House of the People and Council of States. MEA has clarified that the Members are given TA/DA as admissible to Officers of rank of Joint Secretary to Government of India. There is no pay/sitting fee payable to the members of the Committee. In terms of Section 37 of the Haj Committee Act, 2002, which specifically provides that the office of a member of the Committee shall not be deemed to be an office of profit. According to the Ministry of External Affairs, the Haj Committee of India are no longer required to be included in the Schedule of the Act. Notwithstanding the provision of Section 37 of the Haj Committee Act. The Committee observe that the Haj Committee exercises various executive functions which makes it an "office of profit" entailing disqualification of a member. Moreover the Act of 1959 does not provide any such provision, which exempts Members from incurring disqualification, if the Act of the relevant Body/organisation etc. provides for a specific provision where membership of the Bodies/Organisations will not constitute office of profit, as in the instant case. The Committee, therefore, feel that it would be appropriate if Haj Committee of India continue to be listed in the Schedule of the Parliament (Prevention of Disqualification) Act, 1959.

Indian Council for Cultural Relations (ICCR)

3.33 The Committee note that there are three committees under Indian Council for Cultural Relations (ICCR) namely, (i) General Assembly (ii) Governing Body and (iii) Finance Committee. These Committees are Standing in nature and constituted under Article 3 of ICCR's constitution. General Assembly consists of 63 members, out of which, two Members of Lok Sabha are nominated by the Speaker of the Lok Sabha and one Member of the Rajya Sabha is nominated by the Chairman of the Rajya Sabha. General Assembly exercises executive powers. In Governing Body, out of 18 members, nine members are to be elected by the General Assembly from amongst its members of whom at least one shall be a Member of the Rajya Sabha and two of the Lok Sabha. In Financial Committee, out of six members, two representatives of the Assembly and one representative of the Governing Body are the members of the Financial Committee. Council is not paying any remuneration to any of its statutory bodies members. However, non-government members are paid Rs.2000 (sitting fee) for attending meetings. Transportation is provided to the local members for attending the meeting. Board and Lodges, air fare and daily allowances are paid to outstation members for attending meeting. The Committee observe that the functions of General Assembly are executive in nature. Governing Body also exercises the executive authority of the Council subject to policy directives of the General Assembly and responsible for the supervision and control of the work of the Council. Finance Committee consider the budget estimates of the Council and make recommendations thereon to the Governing Body. It also consider and make recommendations on matters relating to the administration and programmes of the Council which may be referred to it from time to time by the President or the Governing Body or the General Assembly. All These Committees formulate the policies and programmes of the Council and monitor the same. The Committee are of the view that membership of the Council, be in General Assembly or General Body or Financial Committee appears to fall with in the purview of the guiding principles enunciated for determining office of profit. In view of the foregoing, the Committee recommend that ICCR may remain listed under Section 3 (k) of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959, the membership of which should not disqualify a Member.

Research and Information System (RIS)

3.34 The Committee note that Research and Information System (RIS) for Developing Countries was set up by MEA in 1983 as a Society registered under the Societies Act, 1860 as a follow up of a resolution of the seventh NAM Summit. It has been listed in Table under Section 3(k) of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. RIS has been envisioned as a forum for fostering effective intellectual dialogue among developing countries. RIS is also mandated to function as an advisory body to the Government of India on matters pertaining to multilateral economic and social issues, including regional and sub-regional cooperation arrangements, as may be referred to it from time to time. RIS functions in close association with various governmental bodies, research institutions, academicians, policy-makers, business and industry circles in India and abroad. RIS is governed by the General Body and the Governing council, both have the same membership. The General Body gives directions to the Governing Council for carrying out and pursuing the objects and aims of RIS set forth in its Memorandum of Association. The activities and affairs of RIS are managed, administered, directed and controlled by the Governing Council in respect of policies and programmes of RIS. As per clause 9 of RIS bye-laws, members of the Governing Council do not receive any pay, fee, remuneration or other allowances except “sitting allowance” of Rs.2000 per day in case of non-official members residing in NCR or Rs.3500 per day to non-official outstation members. TA and DA is admissible to the members for attending meetings of the Governing Council. During the course of evidence, Foreign Secretary informed the Committee that there is no Member of Parliament in the Governing Council of RIS as of now. However, the possibility of their inclusion in future cannot be precluded. The “sitting allowance” does not cover under “compensatory allowance” under Section 2(a) of the Act. In view of the foregoing, the Committee recommend that RIS may remain listed in the Table under Section 3 (k) of the Schedule to the Parliamentary (Prevention of Disqualification) Act, 1959.

Hindi Salahkar Samiti

3.35 The Committee note that Hindi Salahkar Samiti is constituted in the Ministries/Departments with a view to render advice for proper implementation of the Official Language Policy of the Government. There are 30 members in

which 15 are Officials of the Ministry and 15 non-official members, out of which two Members each are from Lok Sabha and Rajya Sabha. Two Members of Parliament nominated by the Committee of Parliament on Official Language. Non-official members taking part in the meeting of the Committee are paid travelling and daily allowances at the rates prescribed from time to time by the Government of India. Members are nominated by the Ministry of Parliamentary Affairs. Committee of Parliament on Official Language and other representative members are nominated by the concerned organisations. In case of dissolution of Parliament, MPs will not be members of the Hindi Salahkar Samiti. If it is reconstituted then fresh names are taken from respective Ministries/Department. The Samiti gives advice with regard to the implementation of the provisions relating to Official Language contained in the Official Language Act and Rules. This Committee is advisory in nature regarding progressive use of Hindi in the Ministry. The Bhargava Committee were of the view that ordinarily Members of Parliament should be encouraged to go on such committees which are of an advisory in 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 officials' point of view. The Ministry is also of the view that Samiti may not be considered as an 'office of profit' and there may be no requirement for it to be specifically listed in the Schedule as the same is covered under Section 3(i) of the Act. In view of the foregoing, the Committee also feel that the membership of Samiti should not disqualify a Member of Parliament as the same falls within the purview of Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1959 which do not disqualify the holder of that office provided that Members are not entitled to any remuneration other than compensatory allowance as defined under the Act.

Indian Council of World Affairs

3.36 The Committee note that Indian Council of Word Affairs (ICWA) was established as an Institution as per the Indian Council of Word Affairs Act, 2001. As per Section 7(2) of the ICWA Act, 2001, the Governing Council consists of 47 members and Governing Body of 15 members, out of which five Members of Lok Sabha are nominated by the Speaker, Lok Sabha and three

Members of Rajya Sabha by the Chairman of the Rajya Sabha. Governing Body of the Council is constituted by the Governing Council. The Vice President of India, ex-officio is the Chairperson of the Governing Body. The Chief Executive Officer of the Council is Director General who is appointed by the Council. No remuneration is paid to the members. However, in case of outstation members, TA claimed for attending meetings as per provisions of Section 11 of ICWA Act 2001. Members of the Council are appointed by Central Government as per Section 7(2) of ICEA Act, 2001 and removed by Central government in the manner prescribed in Section 8 (4) of ICWA Act, 2001. According to the Ministry, ICWA cannot be considered as an "Office of Profit" as there is no provision for any "remuneration" for nominated members. Moreover, admissible TA is covered under the definition of "compensatory allowance" under the Act. Therefore, ICWA falls within the purview of Section 3 (i) of the Act which do not disqualify the holder of that office. MEA is of the view that ICWA may not be considered as office of profit and there may not be any requirement for it to be listed specifically in the Schedule to the Act. The Committee agree with the opinion expressed by the Ministry that the membership of ICWA should not be considered as an 'office of profit' and therefore, ICWA need not be included in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

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

* * * * *

MINISTRY OF COAL

* * * * *

MINISTRY OF EXTERNAL AFFAIRS

1. Dr. S. Jaishankar Foreign Secretary
2. Dr. Neeru Chadha AS(L & T)
3. Shri Satish C. Mehta DG (LCCR)
4. Shri Rajiv Kumar Bhatia Dg (lcwa)
5. Shri Thanglura Darlong Joint Secretary (CT, GCI & PP
& R)
6. Shri Ajit Vinayak Gupte Joint Secretary (HAJ)

7.	Shri Mridul Kumar	Joint Secretary (Gulf & Hindi)
8.	Shri Charan Jeet Singh	Joint Secretary (MER)
9.	Smt. Nutan Kapoor Mahawar	Joint Secretary (Parl & Coord)
10.	Shri Dinkar Asthana	DDG (ICCR)
11.	Shri Arun Kumar Sahu	DDG (ICCR)
12.	Shri Nagendra Kumar Saxena	DDG (ICWA)
13.	Shri Anwar Haleem	Joint Secretary (ICWA)

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 * * * * *
- 10. * * * * *
- 11. * * * * *
- 12. * * * * *
- 13. * * * * *
- 14. * * * * *
- 15. * * * * *
- 16. * * * * *
- 17. * * * * *
- 18. * * * * *

19. Thereafter, the representatives of the Ministry of External Affairs were ushered in.

20. The Chairperson welcomed the representatives of the Ministry of External Affairs and apprised them about the purpose of this oral evidence.

21. The representative of the Ministry submitted that there are five Committees/Bodies namely (i) Haj Committee of India; (ii) Research and Information System for the Non-Aligned and other Developing Countries (RIS); (iii) Indian

Council for Cultural Relations (ICCR); (iv) Hindi Salahkar Samiti; and (v) Indian Council of World Affairs (ICWA) under Administrative control of the Ministry of External Affairs - where provisions exist for nomination of Members of Parliament. Out of these, three bodies namely Haj Committee of India, RIS and ICCR are included in the Schedule [Section 3 (k)] of the Parliament (Prevention of Disqualification) Act, 1959. However, Haj Committee of India is no longer required to be included in the Schedule to the Act in view of Section 37 of the Haj Committee Act, 2002 - which provides that "Notwithstanding anything contained in any other law for the time being in force, the office of a Member of the Committee or State Committee shall not be deemed to be an 'Office of Profit'. ICCR and RIS, however, may continue to be included in the Schedule to the Act as Members are paid 'sitting allowance' in addition to TA/DA which is not directly covered under "Compensatory allowance" as defined in the Act.

As regards ICWA and Hindi Salahkar Samiti representative of the Ministry submitted before the Committee that Members nominated to these Bodies are not paid any remuneration except TA/DA - which is covered under the definition of 'Compensatory allowance' under the Act. In view of above, they may not be considered as 'office of profit' and there may no need for them to be specifically listed in the Schedules to the Act.

22. 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 Ministries of External Affairs and Law and Justice.

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.

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.

