

JOINT COMMITTEE ON OFFICES OF PROFIT

(SIXTEENTH LOK SABHA)

NINTH REPORT

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

Presented to Lok Sabha on 11.08.2016

Laid in Rajya Sabha on 11.08.2016



LOK SABHA SECRETARIAT

NEW DELHI

August, 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 | Ministry of Law & Justice |
| CHAPTER-III | Ministry of Commerce and Industry Department of Commerce |
| CHAPTER-IV | Ministry of Commerce and Industry Department of Industrial Policy and Promotion |

APPENDICES

| | |
|---------------------|--|
| APPENDIX-I | Minutes of the Third Sitting of the Joint Committee on Offices of Profit (Sixteenth Lok Sabha) held on 31 March, 2015. |
| APPENDIX-II | Minutes of the Twenty Eighth Sitting of the Joint Committee on Offices of Profit (Sixteenth Lok Sabha) held on 7 April, 2016. |
| APPENDIX-III | Minutes of the Thirty Fifth Sitting of Joint Committee on Offices of Profit held on 4 August, 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 Ninth 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 representatives 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 Commerce and Industry were called to tender their oral evidence before the Committee on 31.03.2015 and 07.04.2016. 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 04.08.2016.

4. The Committee wish to express their thanks to the Ministry of Commerce and Industry and the Ministry of Law and Justice for furnishing the requisite information to us in connection with the examination of the Bodies under the administrative domain of the Ministry of Commerce and Industry 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

09 August, 2016

18 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
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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.

Nominated as Members to the Committee w.e.f. 02 August, 2016. vide Bulletin Part-II (Para-3952) dated 02 August 2016 Vice Shri P.P. Chaudhary, Chairperson of the Committee and Shri Arjun Ram Meghwal resigned from the membership of the Committee consequent upon their appointment as Minister w.e.f. 05 July.2016.

* Shri K.C. Tyagi ceased to be the member of the Committee due to expiration of his Rajya Sabha term on 07 July.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 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 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 thinks he is 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 or 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 & advice 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 jeopardize 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 licenses, 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 Schedule 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 Department of Commerce on 31 March, 2015 and the Department of Industrial Policy and Promotion on 07 April, 2016, of the Ministry of Commerce 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 Commerce and Industry , (i) Department of Commerce and (ii) Department of Industrial Policy and Promotion. The detailed analysis along with Observations/Recommendations of the Joint Committee are stipulated at the end of each 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

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, the 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 „Practice 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 Legislative 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 Commerce and Industry (Department of Commerce)

Agricultural and Processed Food Products Export Development Authority (APEDA)

3.1 Agricultural and Processed Food Products Export Development Authority (APEDA) finds place in the Table of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

3.2 Three Members of Parliament are there as per Section 4 (4) (d) of APEDA Act (**Annexure-II**), which reads "Three Members of Parliament of whom two of shall be elected by the House of the People and one by the Council of States. Currently, three members (a) Shri Gokaraju Ganga Raju, LS (b) Smt. Kothapalli Geetha, LS (c) Shri Mahant Shambhuprasadji Tunidy, RS were appointed by Gazette Notification S.O.2476 (E) dated 13th September 2014.

3.3 There has been no change in the composition of APEDA Authority since its inception and there is also no proposal of the Ministry for inclusion of any fresh entry in the Act.

3.4 Members of Parliament are involved with the activities of APEDA as they are Board members of APEDA. The Governing Board of the Authority decides on the proposals for assistance under various components of APEDA's Plan Scheme.

3.5 APEDA does not pay any remuneration to the Members of Parliament as members of the APEDA Board. Only Travelling/Daily allowance is paid for attending the meetings of the APEDA Board.

Marine Products Export Development Authority (MPEDA)

3.6 Marine Products Export Development Authority (MPEDA) is a statutory body established under section 4(1) of the MPEDA Act, 1972 (**Annexure-III**). Hence, the Authority is a standing body.

3.7 Under section 4(3) of the MPEDA Act, 1972, the Authority shall consist of 30 members of whom 3 are Members of Parliament, 16 are officials and 11 are non-officials.

Three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States.

3.8 Section 9 of MPEDA Act, 1972 provides the powers and functions of the Authority as under:

(1) It shall be the duty of the authority to promote, by such measures as it thinks fit, the development under the control of the Central Government of the marine products industry with special reference to exports.

(2) Without prejudice to the generally of the provisions of sub-section (1), the measures referred to therein may provide for-

- (a) developing and regulating off-shore and deep-sea fishing and undertaking measures for the conservation and management of off-shore and deep-sea fisheries.
- (b) registering fishing vessels, processing plants or storage premises for marine products and conveyances used for the transport of marine products;
- (c) fixing of standards and specifications for marine products for purposes of export;
- (d) rendering of financial or other assistance to owners of fishing vessels engaged in off-shore and deep-sea fishing and owners of processing plants or storage premises for marine products and conveyances used for the transport of marine products, and acting as an agency for such relief and subsidy schemes as may be entrusted to the Authority.
- (e) carrying out inspection of marine products in any fishing vessel, processing plant, storage premises, conveyance or other place where such products are kept or handled, for the purpose of ensuring the quality of such products.
- (f) regulating the export of marine products,
- (g) improving the marketing of marine products outside India,
- (h) registering of exporters of marine products on payment of such fees as may be prescribed,
- (i) collecting statistics from persons engaged in the catching of fish or other marine products, owners of processing plants or storage premises for marine products, or conveyances used for the transport of marine products, exporters of such products and such other persons as may be prescribed on any matters relating to the marine products industry and the publishing of statistics so collected, or portions thereof or extracts there from;
- (j) training in various aspects of the marine products industry, and
- (k) such other matters as may be prescribed.

(3) The Authority shall perform its functions under this section in accordance with and subject to such rules as may be made by the Central Government.

3.9 On being asked as to whether the functions of the Authority are purely advisory in nature, in its response the Ministry stated in writing as under:

"The Authority has statutory powers to implement the provisions as envisaged in the MPEDA Act and Rules.

Under section 34(1) of the Act, the Authority may make Regulations not inconsistent with the Act and Rules made thereunder, for enabling it to discharge its functions under the Act.

Under Section 8 of the Act, the Authority may appoint such Committees as may be necessary for the efficient discharge of its duties and performance of its functions under the Act."

3.10 The Members of Parliament as members of the Authority participate in the discussions on the policy matters which are coming in the Authority meeting.

3.11 The Authority exercises the executive powers and disburses funds received from Government under various schemes for promotion of export and export-oriented production of marine products.

3.12 The Members of Parliament as the member of the Authority is paid only their actual travelling cost and daily allowance while attending the meetings as and when held as per the rates applicable to them under the Salary, Allowance and Pension of Members of Parliament Act, 1954.

Their local transport and accommodation is provided by the office while attending the meeting. No other remuneration or facilities are given to the members of the Authority.

3.13 MPs nominated in MPEDA Board do not hold any "office of profit". They contribute as a Board member for the development of the marine products exports and give their valuable directions and suggestions for MPEDA's Plan schemes.

Commodity Boards (Tea Board/Rubber Board/Coffee Board/Spices Board)

3.14 Commodity Boards viz. Tea Board, Coffee Board, Rubber Board and Spices Board has the representation of three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States. Tea Board was constituted under Tea Act, 1953 (**Annexure-IV**), . Rubber Board was constituted under Rubber Act, 1947(**Annexure-V**), . Coffee Board was constituted under Coffee Act, 1942 (**Annexure-VI**), and Spices Board was constituted under Spices Board Act,

1986 (**Annexure-VII**), . Under these various Acts , the Central Government can appoint person who in the opinion of the Central Government is capable of representing Parliament. Here, it would be pertinent to mention that generally members representing tea, coffee, rubber and spices area/belt are appointed as Board members.

3.15 Under various Rules under aforementioned Acts, no remuneration is payable to any Board members including the Members of Parliament (who are Board members) other than travelling allowances and halting allowances. Accordingly, it is stated that no salary, perks, perquisite except travelling and halting allowance is payable to the Members of Parliament (who are Board members).

3.16 Tea Board, Coffee Board and Rubber board are listed in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

There is no change in the nature, character and composition of the Bodies after they got included in the Act. The Ministry also does not have any proposal for inclusion of any fresh entry in the Act.

3.17 To a question about the justification/rationale for their inclusion in the Act of 1959, the Ministry stated in writing that the member of Board is entitled allowances e.g. travelling allowance and daily allowance at the highest rates admissible to Government servants of the first grade under the rules and orders made by the Central Government and for the time being in force and is not entitled for any other remuneration and hence the inclusion.

3.18 The Commodity-wise details of schemes sponsored by Government of India for the benefit of respective commodity stake holders, are as under:

Coffee Sector

- i. Development Support for Coffee in Traditional areas
- ii. Coffee Development Programme (CDP) in non-traditional areas
- iii. Coffee Development Programme (CDP) in North East Region
- iv. Rainfall Insurance Scheme for Coffee (RISC)
- v. Support for Mechanisation of Coffee Estate Operations
- vi. Market Development
- vii. Export Promotion and
- viii. Support for value Addition

Rubber Sector

- i. Plantation Development & Extension
- ii. Strengthening Research
- iii. Technology Upgradation and Market Development
- iv. Human Resource Development
- v. Infrastructure Development
- vi. Statistical Services, Information Services and e-Governance Programme

Tea Sector

- i. Plantation Development
 - ii. Quality Upgradation and product diversification
 - iii. Market Promotion
 - iv. Human Resource Development
 - v. Research & Development
 - vi. Small Grower's development
 - vii. National programme of Tea regulation
Spices Sector
- i. Oriented production
 - ii. Export development and promotion
 - iii. Export Oriented Research
 - iv. Quality Improvement
 - v. Human Resource Development

3.19 In response to a question as to whether the Ministry has ever visualized to associate Members of Parliament in implementation/monitoring various centrally sponsored /central schemes, the Ministry in its written reply stated that involvement of MPs in monitoring schemes of Commodity Boards is implicit in their functions as members of the respective Boards. Further, their association with the Parliamentary Committee and Consultative Committee of the Department as applicable further affords MPs such an opportunity.

Tobacco Board

3.20 As per Section 4(4) of the Tobacco Board Act, 1975 (Annexure-VIII), three Members of Parliament are appointed to the Board, two of which are from Lok Sabha and one from Rajya Sabha. At present one Member of Parliament from Rajya is a member of the Board. Lok Sabha Secretariat has been requested to send nominations for the remaining two positions which are vacant at present. This Organisation does not pay any remuneration to the Members of Parliament as members of the Board. Only Travelling/Daily allowance is paid for attending the meetings of the Board as per Rule 30-A(1) of the Tobacco Board Rules, 1976.

Indian Central Tobacco Committee

3.21 The Indian Central Tobacco Committee is listed in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. It was established on 12 November 1945. In September 1965, the Committee was abolished and the Research Centre under the Committee and the research work undertaken at the centres were transferred to the Indian Council of Agricultural Research and Central Tobacco Research Institute was formed. The development and marketing aspects on tobacco was taken over by the Government of India in the Ministry of Agriculture as a subordinate office under the Union Ministry of Agriculture with the headquarters of the

erstwhile Indian Central Tobacco Committee at Chennai. The Directorate of Tobacco Development is also now abolished.

As the successor bodies of Indian Central Tobacco Committee are/were under Ministry of Agriculture, the question of the Committee remaining on statute books falls within the remit of the Ministry of Agriculture.

3.22 Tobacco Board has no relationship with the abolished Indian Central Tobacco Committee. The Government of India established the Tobacco Board, in place of the erstwhile Tobacco Export Promotion council under the Tobacco Board Act of 1975, recognising the need to regulate production of FCV tobacco, promotion of overseas marketing and to control recurring instances of imbalances in supply and demand (which lead to market crisis).

Export Risk Insurance Corporation (ERIC) Limited/Export Credit Guarantee Corporation (ECGC) Limited

3.23 ECGC Limited is a functional private limited company incorporated under the Companies Act, 1956. It provides export credit insurance facilities to exporters and banks in India. It was registered with IRDA in 2002 and is governed by IRDA regulations like other general insurance companies.

3.24 The Export Risks Insurance Corporation Limited (ERIC) (now ECGC Ltd.) is included in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. There is no explicit information/record available to suggest a Member of Parliament held the position of Director on ECGC's Board. As such there does not appear any need for its continuation in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. There is no proposal to nominate a Member of Parliament on the Board of Directors of ECGC Ltd. As such, there does not appear any need for its continuation in the Schedule of the Parliament (Prevention of Disqualification) Act, 1959.

State Trading Corporation (STC) of India Limited

3.25 State Trading Corporation (STC) of India Limited is a Central Public Sector Enterprise of the Government of India registered under India Companies Act, 1965, under the administrative control of Department of Commerce.

3.26 Present composition of the Board of STC is Chairman and Managing Director, five Functional Directors, two part-time Government Directors and Eight part-time non-official Directors. No Member of Parliament has ever been nominated/elected on the Board of STC as appointment of functional and independent Directors to such Boards are made as guidelines of the Department of Public Enterprises (DPE) guidelines. The Ministry has stated that since there is no nominated/elected Member

of Parliament since its inception so there is no question of reviewing the position of nominating MPs on Board.

3.27 STC finds place in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. In terms of clause 3(i) of the said Act, the office of the Chairman of the Board of Directors of STC is not exempted from disqualifying the holder for being chosen as, or for being, a Member of Parliament whereas other members of the STC Board are exempted from such disqualification.

3.28 During the course of evidence, the representative of the Ministry of Commerce and Industry briefed the Committee as under:

“Hon. Chairperson and Members, I will not deal with the legal provisions which the Law Secretary has already dealt with. I will describe the organisations under the Ministry where hon. Members of Parliament have provisions.

We have seven statutory bodies under the Ministry of Commerce where MPs are represented. These are Tea Board, Coffee Board, Tobacco Board, Spices Board, Rubber Board and APEDA and MPEDA. The last two are for agricultural products and marine products. In these seven bodies, through there is a provision for two Members of Lok Sabha and one Member of Rajya Sabha to be represented in the Boards of each of these bodies, none of them draw any remuneration at all. So, all of them are exempted. There is no allowance, no remuneration and only when meetings are called, they may be given some travelling allowance. So, they do not attract any provision under this Act. “

3.29 On being asked by the Committee about the Export Credit Insurance Corporation which was registered in July, 1957 and its present status, the representative of the Ministry replied as under:

“There is no MP there. This can be excluded.”

3.30 When the Committee enquired as to whether the Ministry is contemplating such a type of provision for appointment of Member of Parliament, the representative of the Ministry stated as under:

“I have no such information at this stage.”

3.31 When the Committee desired to know as to whether MP cannot be in India Trade Promotion Board, the representative of the Ministry replied as under:

“Chairman can appoint anybody. The Government appoints but in that office of profit law would attract because along with that some allowances and remuneration would be there, their terms of appointment, if some entitlements

are waived then law would attract. Therefore it would not be appropriate to made provisions for that.”

3.32 On being asked about STC Ltd, the representative of the Ministry replied as under:

“ As I told that Chairman could appoint anybody but Director or CMD is appointed only on the recommendation of Department of Public Enterprises. There is no role of MP therein.”

Observations/Recommendations

3.33 The Committee were informed that the Ministry of Commerce and Industry (Department of Commerce) has seven statutory bodies where Members of Parliament are represented. These bodies are Agricultural and Processed Food Products Export Development Authority (APEDA), the Marine Products Export Development Authority (MPEDA), Tea Board, Rubber Board, Coffee Board, Spices Board, Tobacco Board. .

Agricultural and Processed Food Products Export Development Authority (APEDA)

3.34 The Agricultural and Processed Food Products Export Development Authority (APEDA) was established by the Government of India under the Agricultural and Processed Food Products Export Development Authority Act passed by the Parliament in December, 1985. As per Section 4 (4)(d) of the APEDA Act, three Members of Parliament are appointed to the Authority, two of which are elected by Lok Sabha and one by Rajya Sabha. Since Lok Sabha and Rajya Sabha are independent of executive Government, the Committee are of the opinion that the selection of Members of Parliament for their appointment to the Authority will not affect the independence of the Members and therefore, the membership of Authority so acquired by the Members of Parliament can not be treated as office of profit. Further, as stated by the Ministry, APEDA does not pay any remuneration to the Members of Parliament as members of the Authority except Travelling/Daily allowance which is paid to them for attending the meetings of the Authority. The Committee are, therefore, of view that Members of Parliament do not incur disqualification as, for being members of the APEDA. However, in order to remove any doubt, the Committee note that APEDA has been listed in the Table under Section 3(k) of the schedule to the Act of 1959, as amended from time to time. As a consequence, the office of Chairman, Secretary or Member of APEDA have been exempted from disqualification as for being Members of Parliament. Since there has been no change in the composition of APEDA since its inception and there is also no proposal of the Ministry for any fresh entry in the Act, the Committee recommend that APEDA may continue to be listed in the Table under Section 3(k) of the Parliament (Prevention of Disqualification) Act of 1959.

Commodity Boards (Tea Board/Rubber Board/Coffee Board/Spices Board)

3.35 The Committee note that under various Commodity Acts viz. Tea Act, 1953, Rubber Act, 1947, Coffee Act, 1942 and Spices Board Act, 1986, the Central Government can appoint person who in the opinion of the Central Government is capable of representing Parliament. It was stated by the Ministry that generally members representing tea, coffee, rubber and spices area/belt are appointed as Board members. Commodity Boards viz. Tea Board, Coffee Board, Rubber Board and Spices Board has the representation of three Members of Parliament of whom two Members are elected by the Lok Sabha and one Member by the the Rajya Sabha. According to the Ministry, under various Rules under the aforementioned Acts, no remuneration is payable to any Board members including the Members of Parliament who are Board members, other than travelling allowances and halting allowances. Accordingly, no salary, perks, perquisite except travelling and halting allowance is payable to the Members of Parliament as being members of the Board. The Committee also note that as per the relevant provision of the respective Acts, office of member of the respective Boards has been exempted from disqualification as being chosen as, or for being, a member of the Parliament.

The Committee note that Coffee Board, Rubber Board and Tea Board are listed in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. Therefore, as per Section 3(i) of the Act of 1959, the office of the Chairman or Secretary of the Board are being treated as 'office of profit', for being chosen as, or for being , a Member of Parliament. In this context, the Committee would like to refer to the observation/recommendation of the Bhargava Committee contained in its report (1955) with reference to Commodity Committees (para 73). The Bhargava Committee in its recommendation relating to Commodity Boards like Rubber Board, Coffee Board and Tea Board, were not prepared to treat office-bearers of these Committees/Boards like Chairman, Vice-Chairman or Secretary on the same level as ordinary members of these Boards and therefore, recommended that these offices should be treated as 'offices of profit'. According to the Bhargava Committee, duties of these office holders entail regular long hours of work and powers exercised by them are of considerable executive and administrative character.

Since there is no change in the nature, character and composition of the Bodies/committees as per the relevant provision of the respective Acts and there is also no proposal of the Ministry for inclusion of any fresh entry in the respective Acts, the Committee recommend that Tea Board, Coffee Board,

Rubber Board may continue to be listed in Part II of the Schedule to the Act of 1959.

3.36 So far as Spices Board is concerned, it may be stated that the same does not figure in the Schedule to Act of 1959. However, the Committee note that under the Spices Board Act of 1986, the office of the member of the Spices Board has been exempted from disqualifying a Member of Parliament. The Committee also note from the Act of 1986 that the Spices Board exercises various executive functions for development, promotion and regulation of export of spices. It also undertake programmes and projects for promotion of export of spices and give licences to the manufacturers of spices for export. If the recommendation of the Bhargava Committee is kept in view, the membership of the Spices Board needs to be treated on the same footing as other Commodity Boards like Rubber Board, Coffee Board or Tea Board or Tobacco Board and consequently, the membership of the Spices Board as an ordinary member may not be considered as an 'office of profit'. However, if the Member of Parliament is appointed as the Chairman or the Secretary of the Board, then he would disqualify as a Member of Parliament and therefore, Spices Board need to be included in Part II of the Schedule of the Act of 1959. The Committee, therefore, recommend that Spices Board may be appropriately included in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 and action may be initiated by the Ministry accordingly.

Tobacco Board

3.37 The Tobacco Board was constituted under the Tobacco Board Act of 1975 and it also does not figure anywhere in the list of Bodies indicated in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. As per Section 4(3) of the Act of 1975, three Members of Parliament are appointed to the Board, two of which are from Lok Sabha and one from Rajya Sabha. As stated by the Ministry, Members of Parliament are not being paid any remuneration as members of the Board except Travelling/Daily allowance for attending the meetings of the Board. Since Members of Parliament are not being paid any remuneration as members of the Board except Travelling/Daily allowance for attending the meetings of the Board, they are exempted under Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1959. However, following a uniform policy as in the cases of other commodity Boards, office bearers of the

Board namely, the Chairman or Secretary, if they happens to be Members of Parliament, would also be treated as an 'office of profit'. The Committee, therefore, recommend that the name of Tobacco Board may be appropriately listed in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. The Committee expect the Ministry to take action in the matter accordingly.

Indian Central Tobacco Committee

3.38 The Committee note that Indian Central Tobacco Committee is listed in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. It was established on 12 November 1945. In September 1965, the Committee was abolished and the Research Centre under the Committee and the research work undertaken at the centres were transferred to the Indian Council of Agricultural Research and Central Tobacco Research Institute was formed. The development and marketing aspects on tobacco was taken over by the Government of India in the Ministry of Agriculture as a subordinate office under the Union Ministry of Agriculture with the headquarters of the erstwhile Indian Central Tobacco Committee at Chennai. The Directorate of Tobacco Development is also now abolished. According to the Ministry of Commerce and Industry, as the successor bodies of Indian Central Tobacco Committee are/were under Ministry of Agriculture, the question of the Committee remaining on statute books falls within the remit of the Ministry of Agriculture. Tobacco Board has no relationship with the abolished Indian Central Tobacco Committee. Notwithstanding the position as explained by the Ministry, the Committee are of the view that since the Indian Central Tobacco Committee was originally under the administrative control of the Ministry of Commerce and Industry, therefore, onus lies on them to take up the matter in coordination with the Ministry of Agriculture for deletion of the Indian Central Tobacco Committee from the list enumerated in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. As regards the inclusion or otherwise of successor bodies of Indian Central Tobacco Committee, the same need to be considered by the Ministry of Agriculture. The Committee, therefore, recommend that action may be initiated by the Ministry of Commerce and Industry in coordination with the Ministry of Agriculture on the issue accordingly.

Marine Products Export Development Authority (MPEDA)

3.39 The Committee note that the Marine Products Export Development Authority(MPEDA) was set up under Section (4) of MPEDA Act, 1972. It is a statutory body functioning under the Department of Commerce and is responsible for development of the marine products industry with special reference to exports. The Committee also note that MPEDA does not figure anywhere in the schedule to the Parliament (Prevention of Disqualification) Act of 1959. The Committee were informed that in MPEDA, two members are nominated from the Lok Sabha and one member is nominated from the Rajya Sabha. Since Members of Parliament are nominated by the Lok Sabha and Rajya Sabha, they are said to be independent of the Executive and their membership do not fall with in the ambit of 'office of profit'. However, according to the Ministry, the Authority exercises the executive powers and disburses funds received from Government under various schemes for promotion of export and export-oriented production of marine products. Members of Parliament contribute as a Board member for the development of the marine products exports and give their valuable directions and suggestions for MPEDA's Plan schemes. However, the Authority does not pay any remuneration to the Members of Parliament as members of the Board except travelling/Daily Allowance which is paid for attending the meetings of the Board as per the rates applicable to them under the Salary, Allowances and Pension of Members of Parliament Act, 1954. Therefore, as per Section 3(i) of the Parliament (Prevention of Disqualification) Act of 1959, Members of Parliament will be exempted from disqualification as for being members of MPEDA.

In this context, the Committee note from the MPEDA Act of 1972 that as per Section 4(6) of the Act, the Authority may elect from among its members a Vice-Chairman who shall exercise such of the powers and perform such of the functions of the Chairman as may be prescribed or as may be delegated to him by the Chairman. The Committee, therefore, feel that if the Member of Parliament is elected as Vice-Chairman of the Authority to function as Chairman, he would be wielding influence in exercise of such powers in that capacity as prescribed or delegated to him and as a consequence, he would disqualify as, for being a Member of Parliament. The Committee, therefore, recommend that the office of Vice-Chairman of MPEDA may appropriately be included in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

Export Risk Insurance Corporation (ERIC) Limited/Export Credit Guarantee Corporation (ECGC) Limited

3.40 The Export Risks Insurance Corporation Limited (ERIC) (now ECGC Ltd.) ECGC Limited is a functional private limited company incorporated under the Companies Act, 1956. It provides export credit insurance facilities to exporters and banks in India. It was registered with IRDA in 2002 and is governed by IRDA regulations like other general insurance companies. The Export Risks Insurance Corporation Limited (ERIC) (now ECGC Ltd.) is included in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. Hence, in terms of section 3(i) of the Act of 1959, the office of Chairman of ERIC/ECGC Ltd. falls within the ambit of 'office of profit'. According to the Ministry, there is no explicit information/record available to suggest that a Member of Parliament held the position of Director on ECGC's Board. The Ministry had also stated that there is no proposal to nominate a Member of Parliament on the Board of Directors of ECGC Ltd. As such, there does not appear any need for its continuation in the Schedule of the Parliament (Prevention of Disqualification) Act, 1959. In view of the foregoing, the Committee agree with the submission of the Ministry and recommend that action may be initiated by the Ministry to delete ERIC (now ECGC Ltd.) from the list contained in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959

State Trading Corporation (STC) of India Limited

3.41 The Committee note that State Trading Corporation (STC) of India Limited is a Central Public Sector Enterprise of the Government of India registered under India Companies Act, 1965, under the administrative control of Department of Commerce. Present composition of the Board of STC is Chairman and Managing Director, five Functional Directors, two part-time Government Directors and eight part-time non-official Directors. No Member of Parliament has ever been nominated/elected on the Board of STC as appointment of functional and independent Directors to such Boards are made as per guidelines of the Department of Public Enterprises (DPE) guidelines. The Committee also note that STC is listed in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. In terms of clause 3(i) of the said Act, the office of the Chairman of the Board of Directors of STC would disqualify for being chosen as, or for being, a Member of Parliament whereas other members of the STC Board are exempted from such disqualification. Since no Member of Parliament has ever been appointed as member of the Board of STC, the Committee feel that

its entry in Part I of the Schedule of the Act of 1959 serves no purpose and therefore, the Committee recommend that the entry in this regard from the Act of 1959 may be deleted for which action may be initiated by the Ministry accordingly.

Chapter-IV

Ministry of Commerce **(Department of Industrial Policy and Promotion)**

4.1 The following Bodies/Committees are under the administrative control of the Ministry of Commerce (Department of Industrial Policy and Promotion):

- (i) Licensing Committee
- (ii) Tariff Commission
- (iii) Hindi Salahakar Samiti

Licensing Committee

4.2 The Licensing Committee is a Standing Committee constituted under Section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), read with Sub-rule (2) of Rule 10 of the Registration and Licensing of Industrial Undertakings Rules, 1952 (**Annexure-IX**).

4.3 The Composition and functions of the Licensing Committee are as under:

Composition of the Committee

Chairperson

Secretary, Department of the Industrial Policy and Promotion (DIPP) or his nominee.

Members

- 1) Secretary of the concerned Administrative Department or his nominee [not below the level of Joint Secretary (JS)]
- 2) Secretary, the Ministry of Home Affairs or his nominee(not below the level of JS)
- 3) Director General of Foreign Trade (DGFT) or his nominee(not below the level of JS)
- 4) Development Commissioner (Small Scale Industries) MSME or his nominee (not below the level of JS)
- 5) Industries Secretary or Commissioner of Industries of the concerned State Government.
- 6) Joint Secretary (SIA), DIPP (Member Secretary).

Note: There is no non-official member in the Committee.

Functions of the Committee

- (a) The function of Licensing Committee is basically to consider proposals received from investors for setting up of new industrial undertaking or substantial expansion of the existing unit or production of new articles in respect of such schedule industries which falls in the category of compulsory licensing.
- (b) To examine applications for Industrial License and according approval for issue of Industrial License. The committee also suggest/recommend policy changes in respect of items covered under compulsory licensing.

The Committee's function is recommendatory in nature. (Minutes of the licensing Committee are approved by Hon^{ble} Commerce and Industry Minister (CIM)).

4.4 Members of the committee are appointed in their ex-officio capacity under sub-rule (2) of rule 10 of the Registration and Licensing of Industrial Undertaking Rules, 1952.

The committee is empowered to recommend grant of Industrial License to eligible investors/applicants.

Tariff Commission

4.5 Tariff Commission (1951) set up under the Tariff Commission Act, 1951, functioned under the Ministry of Finance till 1976 before it was repealed vide Tariff Commission (Repeal) Act, 1976. The present Tariff Commission was set up by the Government in September, 1997 by Resolution No. A-42012/24/91-E.-IV dated 2nd September, 1997 (**Annexure-X**). As such the present Tariff Commission set up in 1997 is distinct from the Tariff Commission, 1951 and is not governed by the Parliament (Prevention of Disqualification) Act, 1959.

4.6 The Commission is headed by a full time chairman of the rank of Secretary to the Government of India and assisted by a full time member to be designated as Member-Secretary in the rank of Additional Secretary. The other members of the Commission are part-time members whose number may vary between 3 and 5 with the option to convert some of the part-time members in to full time members depending upon exigencies of work. The Chairman and members are drawn from persons of eminence from relevant fields including administration, finance, economics, industry, commerce, agriculture and science and technology. The initial appointment of the Chairman will be made for a term of 3 years. The Commission have a Secretariat with core staff and are engage the services of experts and consultation for specific studies, etc as per the existing government guidelines and instructions.

4.7 The Commission function as an independent expert committee. The Chairman and the Member-Secretary have appropriate administrative powers to order the production of any document, book, register or record in the possession of or power of any person having the control of or employee in connection with, in an industrial undertaking on the lines of the provision of Section 19 of Industries (Development & Regulation) Act, 1951 and to examine any person having the control of or employed with in connection with, in an industrial undertaking. The Commission is empowered with the necessary flexibility to sub-contract research work to specialised agencies both within the Government and outside.

4.8 The terms of reference of the Tariff Commission are as follows:

- i. To render advice and make recommendations as an expert body, on matters referred to it by Government regarding fixation of tariff and all tariff related issues in relation to traded goods, keeping in view the interest of the industrial and production sectors, export and import trade and consumers.
- ii. To render advice on issues referred to it by Government on classification of goods and products along with the applicable Tariffs on such goods and products.
- iii. To carry out technical studies on cost of production of different on classification of goods and products along with the applicable Tariffs on such goods and products.
- iv. To undertake such other tasks as may be assigned by Government from time to time.
- v. To present an annual report to Government of its activities.

Hindi Salahakar Samiti

4.9 The Committee is a standing body. Its main function is to advise Department about proper implementation of Government's Official Language . The functions of the Committee are purely advisory in nature. The Composition of the Committee has been given at **Annexure-XI**.

4.10 Four Members of Parliament are nominated by M/O of Parliamentary Affairs and Two are nominated by Parliamentary Committee on Official Language. As per instant directives, other non-official members should be well-versed with the subject and should have knowledge of work performed by the Department concerned. A member should be engaged in writing/propagation of Hindi..The term of the Member of Parliament as non-official Member in the Committee is three years. The role of Member of Parliament is to advise/give suggestions for propagation of Hindi/implementation of Official Language policy in the Department. The Government exercise control over the appointment to and removal from the office and over the performance and functions of the office. The nomination as Member to Hindi Salahakar Samiti does not confer power of disbursement of funds, allotment of land, nor perform executive power and nor wield influence or power by way of patronage.

4.11 TA/DA is paid to MPs for attending the meetings of the Committee as per admissible rates, prescribed by M/o Parliamentary Affairs. The allowances payable to the Member of Parliament as a Member of the Committee are covered under the Compensatory Allowance defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959. No facilities, other than the remuneration is given to the Member of Parliament as a Member of the Committee.

Centrally Funded/Sponsored Schemes/programmes

4.12 Details of the Centrally funded/sponsored schemes/programme under the administrative control of the Ministry are as under :

1. Freight Subsidy Scheme (FSS), 2013

FSS is to facilitate the process of industrialisation in hilly, remote and inaccessible areas. Association of Members of Parliament in the scheme is not visualised.

2. North East Industrial & Investment Promotion Policy (NEIIPP), 2007

NEIIPP is to promote investment and industrialisation in the States of NER. Association of Members of Parliament in the scheme is not visualised.

3. Special Package for States of J&K, Himachal Pradesh and Uttarakhand

Special Package Incentives to J&K was implemented w.e.f. 15.06.2002 and was extended to Himachal Pradesh and Uttarakhand from 07.01.2003. The Special Package has been extended for 12th Five Year Plan i.e. for J&K from 15.06.2012 to 14.06.2017 and for Himachal Pradesh and Uttarakhand from 07.01.2013 to 31.03.2017. The schemes are reviewed from time to time by the Department Related Parliamentary Standing Committee (DRPSC). Association of Members of Parliament in the scheme is not visualised.

4.13 During the course of evidence, the Secretary of the Department briefed the Committee as under:

“There are two bodies listed in the schedule to the Parliament (Prevention of Disqualification) Act, 1959 relating to our Department. One is the Licensing Committee and the other is the Tariff Commission. In the Licensing Committee, all the members are official; there is no non-official member here. Function of the Licensing Committee is to consider proposals received from investors for setting up of new industrial undertaking. But there is no non-official member envisaged in the membership.

In the Tariff Commission, which was first set up under the Tariff Commission Act, 1951, and it was repealed by the Tariff Commission Repeal Act, 1976. So, the Tariff Commission is no longer there. In 1997, the Government set up the present Tariff Commission through a resolution. It is distinct from what was set up under the Tariff Commission Act, 1951 and it is not governed by the Prevention of Disqualification Act, 1959 because of the repeal of the Act.

These are the two bodies as I mentioned one more body which was not mentioned in the schedule is the Hindi Salakaar Committee, it has many MPs but its role is only advisory. No remuneration or salary is paid; only TA/DA are reimbursed for actual. Perhaps this may not get covered by the office of profit definition.

There are three Centrally sponsored schemes- under the administrative control of the Ministry. One is the Freight Subsidy Scheme, 2013. It is to facilitate industrialisation in hilly, remote and inaccessible areas, association of MPs in the scheme is not visualised.

There is another scheme-North East Industrial and Investment Promotion Policy, 2007. In this also, association of MPs is not visualised. The third scheme that we are implementing-Special Package for States of Jammu & Kashmir, Himachal Pradesh and Uttarkhand. In this also, the association of MPs is not visualised. This is the status of the Department and the various committees and boards that we have.”

4.14 On being asked by the Committee as to why the Licensing Committee and Tariff Commission were included in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 and was there a provision of non-official members of MPs in these Committees, the Secretary of the Department responded as under:

“I am not sure about the history. We would come back to the Committee. As regards the membership of the Licensing Committee, it consists only the Secretary of the administrative department, a nominee-Secretary, Home Affairs, a nominee- DGFT, Development commissioner, SSI, Industry Secretary or the Commissioner of Industries of the concerned State Governments, JS, DIPP. Right now, the composition is purely official.”

4.15 While observing that Licensing as such has been abolished in the country since 1991, the Committee asked as to why a Licensing Committee is needed any more, the Secretary of the Department clarified as under:

“There are some specific areas where licensing is still there. For example, defence, explosives, tobacco products, narcotics in these areas, industrial licensing is still there.”

4.16 The Secretary of the Department informed the Committee as under:

“In the Tariff Commission at present, we have the Member-Secretary, there is no Chairman or Member.”

4.17 On being asked by the Committee as to what the Tariff Commission does, the Member-Secretary, Tariff Commission stated as under:

“The Tariff Commission was constituted from a Cabinet Resolution. In the resolution, it was stated that it would be headed by a Chairman, who would be in the rank of Secretary, Government of India and Member –Secretary in the rank of Additional Secretary, Government of India. No full time member is envisaged. Part-time ex-officio members used to be there in the DICT which was merged in the Tariff Commission. So, in Tariff Commission as such only these two people are there.

Regarding the functions, it was constituted in the wake of liberalisation . In the old Tariff Commission which was in the Ministry Finance in 1951, it was to enable protection of the industry. In the new Tariff Commission, which was by Cabinet Resolution, it was in the wake of liberalisation, rationalisation of duty structure. Currently which is occupying the Tariff Commission is the inverted duty structure. When you liberalize sometime duties on products and raw materials are such that manufacturing in India gets jeopardized because you are able to import the products more easily than raw material.

So we are rationalising inverted duty structures and we have already studies 100 products and given our report and that helps Make in India programme like anything. We are also analysis the Free Trade Agreements and see how they impact our manufacturing.”

4.18 About the duties looked in to by the Tariff Commission, the Member-Secretary, Tariff Commission added as under:

“Mainly we are seeing customs duty structures but if other duties come, we study and give recommendations. If there is a regulatory body for that, then we refer it to that body. We are basically a study based organisation. We give our informed study inputs to the concerned Ministry and then based on our study the Ministry can take action on that. We do not have any recommendatory power.”

4.19 When the Committee observed that Tariff Commission is an advisory body, the Member-Secretary, Tariff Commission stated as under:

“We give study reports on the basis of grassroots data and also on secondary data and on the basis of the study the Department can decide what action is to be taken.”

In this regard, the Secretary of the Department also added as under:

“Basically, whenever the Government asks the Tariff Commission to advise on a particular matter, they do the study and they render advice. So, they are supposed to react to any suggestion from the Government to give advice as an expert boy on matters referred to it by the Government or on various products, on classification of goods and products along with applicable tariffs, on fixation of tariffs etc. so basically it is an advisory body.”

4.20 While pointing out that Licensing Committee is included in Part of the Schedule of the Act of 1959 but as per the constitution of the Committee, the Member of Parliament is not envisaged, the Committee asked as to whether there is any proposal now to include the Member of Parliament, the Secretary of the Department responded in negative and that they will move a suggestion for amendment both for Licensing Committee and Tariff Commission.

Observations/Recommendations

Licensing Committee

4.21 The Committee note that Licensing Committee is a Standing Committee constituted under Section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), read with Sub-rule (2) of Rule 10 of the Registration and Licensing of Industrial Undertakings Rules, 1952. The function of Licensing Committee is recommendatory/advisory in nature. The Licensing Committee is empowered to recommend grant of Industrial License to eligible investors/applicants. The Committee note that Licensing Committee has been listed in Part I under Section 3(i) of the Act of 1959, thereby Member of Parliament would incur disqualification if he holds office of Chairman of the Licensing Committee. However, the Committee note that the Licensing Committee consists of the Secretary of the Administrative Department or his nominee, Secretary, Ministry of Home Affairs or his nominee, DGFT, Industries Secretary or the Commissioner of Industries of the concerned State Governments and Joint Secretary, Department of Industrial Policy & Promotion (DIPP). The Secretary, DIPP or his nominee is the Chairperson of the Licensing Committee. There is no non-official member in the Licensing Committee and none of the Members of the Committee are appointed in their ex-officio capacity under sub-rule (2) of rule 10 of the Registration and Licensing of Industrial Undertaking Rules, 1952. During the course of evidence, the Secretary of the Department also apprised the Committee that there is as such no proposal to include Members of Parliament in the Licensing Committee. The Committee, therefore, are of the view that since Members of Parliament are neither members of the Licensing Committee nor they are envisaged to be included therein, the listing of Licensing Committee under section 3(i) in Part I of the Schedule of Act of 1959, therefore, does not serve any purpose and its listing in the Schedule is irrelevant. The Committee, therefore, recommend that entry of Licensing Committee in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 may be deleted and action may accordingly be initiated by the Department for the purpose.

Tariff Commission

4.22 The Committee note that Tariff Commission was set up under the Tariff Commission Act, 1951. It functioned under the Ministry of Finance till 1976 before it was repealed vide Tariff Commission (Repeal) Act, 1976. The present Tariff Commission was set up by the Government in September, 1997 by Resolution No.

A-42012/24/91-E.-IV dated 2nd September, 1997. According to the Department, the present Tariff Commission set up in 1997 is distinct from the Tariff Commission, 1951 and is not governed by the Parliament (Prevention of Disqualification) Act, 1959. As per Resolution, the Tariff Commission would be headed by a Chairman, who would be in the rank of Secretary, Government of India and Member–Secretary in the rank of Additional Secretary, Government of India. No full time member is envisaged in the Tariff Commission. It is an advisory body. The Committee also note that Tariff Commission is listed in Part I of the Schedule under Section 3(i) of the Act of 1959 as a consequence, the Member of Parliament would incur disqualification if he holds office of Chairman of the Tariff Commission. Since Members of Parliament are neither members of the Tariff Commission nor they are envisaged to be included therein, the listing of Tariff Commission under section 3(i) in Part I of the Schedule of Act of 1959 does not serve any purpose. The Committee, therefore, recommend that the listing of Tariff Commission in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 may be deleted and action may accordingly be initiated by the Department for the purpose.

Hindi Salahkar Samiti

4.23 The Committee note that the main functions of Hindi Salahkar Samiti is to advise the Department about proper implementation of Government's Official Language. As per the composition of the Samiti, four Members of Parliament are nominated by Ministry of Parliamentary Affairs and two are nominated by Parliamentary Committee on Official Language. As per instant directives, other non-official members should be well-versed with the subject and should have knowledge of work performed by the Department concerned. A member should be engaged in writing/propagation of Hindi. The term of Member of Parliament as non-official Member is three years. The Government exercises control over the appointment to and removal from the office and over the performance and functions of the office. The Samiti does not confer powers to disbursement of funds, allotment of lands etc. or does not wield influence or power by the way of patronage. TA/DA is paid to Members of Parliament for attending the meetings of the Samiti as per admissible rates prescribed by Ministry of Parliamentary Affairs. In the opinion of the Committee, the functions of the Samiti are of advisory in character and therefore, its membership should not be considered as an 'office of profit' which would disqualify a Member of Parliament provided that Members are entitled to no remuneration other than travelling and daily allowance as defined under Section 2(a) of the Act of 1959, purportedly to cover actual out-of-pocket expenses incurred by

him in performing the functions of the Samiti. However, to save the Members of Parliament from incurring disqualification, the Committee recommend that Hindi Salahkar Samiti may be listed in the Table under Section 3(k) of the Schedule to the Parliament (Prevention of Disqualification) Act of 1959 and action may accordingly be initiated by the Department for the purpose.

NEW DELHI
04 August, 2016
13 Sravana, 1938 Saka

Dr. SATYA PAL SINGH
Chairperson
Joint Committee on Offices of Profit

**EXTRACTS OF 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

1. Shri Anil Swarup Secretary

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)

- Shri Rajani Ranjan Rashmi - Addl. Secretary

MINISTRY OF CIVIL AVIATION

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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. Then, the representatives of the Ministries of Law and Justice (Department of Legal Affairs and Legislative Department) and Commerce and Industry (Department of Commerce) were ushered in.

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. The representative of the Ministry of Commerce and Industry (Department of Commerce) submitted before the Committee that there are seven Statutory bodies viz Tea Board, Coffee Board, Tobacco Board, Spices Board, Rubber Board, Agricultural and Processed Food Products Export Development Authority (APEDA) and Marine Products Export Development Authority (MPEDA) under the Ministry of Commerce where Members of Parliament are represented and they do not draw any remuneration except when meetings are called and then they may be given some travelling allowance. About Export Risks Insurance Corporation Ltd., the witness stated that there is no representation of Member of Parliament. The witness also stated that there is no role of Member of Parliament in the State Trading Corporation and in case of India Trade Promotion Board, the provision of the 'Office of Profit' will be attracted.

7. Thereafter, the Hon'ble chairperson thanked the representative of the Ministry of Commerce & Industry (Department of Commerce).

8. The representative of the Ministry of Commerce & Industry (Department of Commerce), then, withdrew.

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

The Committee then adjourned.

* matter not related with this Report

**MINUTES OF THE TWENTY EIGHTH SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 07 APRIL, 2016**

The Committee met on Thursday, 07 April, 2016 from 1500 hrs. to 1645 hrs. in Committee Room No.'62' Parliament House New Delhi.

PRESENT

Shri P.P. Chaudhary - Chairperson

MEMBERS

LOK SABHA

2. Shri T.G Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Prof. Saugata Roy
6. Dr. Satya Pal Singh
7. Smt. Supriya Sule

RAJYA SABHA

8. Shri C.P. Narayanan
9. Shri Dilipbhai Pandya
10. Shri K.C Tyagi

SECRETARIAT

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

LIST OF REPRESENTATIVES

THE MINISTRY OF LAW AND JUSTICE

(I) LEGISLATIVE DEPARTMENT

| | | |
|----|------------------------|---|
| 1. | Dr. N.R Battu | Joint Secretary and Legislative Counsel |
| 2. | Shri. R.S Jayakrishnan | Assistant Legislative Counsel |

(ii) DEPARTMENT OF LEGAL AFFAIRS

| | | |
|----|--------------------------|---------------------------|
| 1. | Shri Mahendra Khandelwal | Addl. Government Advocate |
|----|--------------------------|---------------------------|

THE MINISTRY OF COMMERCE AND INDUSTRY

DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION

| | | |
|----|----------------------|--------------------------------------|
| 1. | Shri Ramesh Abhishek | Secretary |
| 2. | Smt. Smitha Chugh | Member Secretary (Tariff Commission) |
| 3. | Shri Atul Chaturvedi | Joint Secretary |
| 4. | Ms. Ravneet Kaur | Joint Secretary |
| 5. | Shri Rajiv Aggarwal | Joint Secretary |
| 6. | Smt. Kalpana Awasthi | Joint Secretary |
| 7. | Shri G.R Raghavender | Joint Secretary |

THE MINISTRY OF HEALTH AND FAMILY WELFARE

(I) DEPARTMENT OF HEALTH RESEARCH

| | | |
|----|------------------------|-----------------------|
| 1. | Dr. Soumya Swaminathan | Secretary (DHR) |
| 2. | Shri Manoj Pant | Joint Secretary (DHR) |
| 3. | Shri. R.P Meena | Joint Secretary (DHR) |

THE MINISTRY OF HEALTH AND FAMILY WELFARE

(ii) DEPARTMENT OF HEALTH AND FAMILY WELFARE

| | | |
|----|--------------------|------------------|
| 1. | Shri. B.P Sharma | Secretary (H&FW) |
| 2. | Shri. Ali R. Rizvi | Joint Secretary |
| 3. | Shri K C Sharma | Joint Secretary |
| 4. | Shri Anshu Prakash | Joint Secretary |
| 5. | Shri Sunil Sharma | Joint Secretary |
| 6. | Shri Rakesh Kumar | Joint Secretary |

**THE MINISTRY OF AYURVEDA, YOGA & NATUROPATHY, UNANI, SIDDA AND
HOMEOPATHY (AYUSH)**

| | | |
|----|-----------------------|-----------------|
| 1. | Shri A K Ganeriwala | Joint Secretary |
| 2. | Shri Jitender Sharma | Joint Secretary |
| 3. | Shri Anurag Srivastav | Joint Secretary |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and briefly apprised them about the agenda of the sitting i.e oral evidence of the representatives of the Ministries of Commerce and Industry(Department of Industrial Policy and Promotion) , Health and Family Welfare, (Departments of Health Research and Health and Family), Ayurveda, yoga and Naturopathy, Unani, Sidda and Homeopathy (AYUSH) and Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) - in connection with the Review of Committees/Boards/Organisations, etc., referred to in Schedule to the Parliament (Prevention of Disqualification) Act, 1959, as amended from time to time.

3. The representatives of the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) and the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) were, then, ushered in.

4. The Chairperson welcomed the representatives of the Ministries to the sitting of the Committee and apprised them about the purpose of the sitting.

5. Thereafter, the Secretary Department of Industrial Policy and Promotion apprised the Committee that there are only two bodies listed in the Schedule to the Act and are under the administrative domain of the Department namely the (i) Licensing Committee (ii) Tariff Commission but neither of them provides for nomination of non-official Members. It was further added that the Licensing Committee is a Standing Committee which considers proposals received from investors, for setting up of new industries, undertaking and its function is basically recommendatory in nature, in the form of granting license for setting up of industries to the eligible investors/applicants. Whereas the Tariff Commission, was established under the Tariff Commission Act, 1951, which stands repealed by the Tariff Commission Repeal Act 1976. However, in the year 1997 Tariff Commission which was brought into existence is an altogether distinct body, other than the erstwhile 'Tariff Commission'. The Secretary further informed the Committee that there is no proposal for inclusion of Members of

Parliament in these two bodies, therefore, the Department would soon be making a suggestion for amending the Schedule for removing these bodies from the Schedule of the Act.

6. The Secretary further stated that besides these two bodies, Hindi Salahkar Samiti is also working under their administrative control though it does not find mention in the schedule to the Act. The Committee has got many MPs on its roll and works in an advisory capacity, however, no remuneration of any sort is being paid to its Members except TA/DA for attending the sitting of the Committee that too at the admissible rates prescribed by the Ministry of Parliamentary Affairs.

7. As regards, the Centrally Sponsored Schemes under the department the Secretary apprised the Committee that there are three such schemes namely (i) Freight Subsidy scheme 2013, for facilitating industrialisation in hilly, remote and inaccessible *areas*; (ii) North East Industrial and Investment and Promotion Policy, 2007; and (iii) Special package for States of J&K, Himachal Pradesh and Utrakhand but in none of these schemes association of MPs has been visualized.

8. Thereafter, the Chairperson thanked the representatives for appearing before the Committee and for having useful discussion on the issue.

The representatives of the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) then, withdrew.

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16. The witnesses, then, withdrew.

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

18. The Committee then adjourned.

*** Matter not related to this Report.

**MINUTES OF THE THIRTY FIFTH SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 04 AUGUST, 2016**

The Committee met on Thursday, 04 August, 2016 from 1500 hrs to 1530 hrs. in Chairperson's Room No. 135, First Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. Satya Pal Singh - Chairperson

MEMBERS

LOK SABHA

2. Shri. T.G Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Prof. Saugata Roy
6. Smt. Supriya Sule
7. Kunwar Pushpendra Singh Chandel
8. Shri. Janardan Mishra

RAJYA SABHA

9. Shri. C.P Narayanan
10. 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 Hon'ble Chairperson introduced himself as the new nominated Chairperson of the Committee and solicited the cooperation and support from the Members of the Committee . Thereafter , the Chairperson welcomed the existing as well as two newly nominated Members to the sitting of the Committee and apprised them about the agenda of the sitting.

3. Then, the Chairperson conveyed his deep appreciation for Shri. P.P Chaudhary, the hitherto Chairperson for his in-depth study, hard labour and unprecedented steering for bringing this Committee on a high pedestal. Other Members present also echoed the same sentiments.

4. Thereafter, the Committee considered the draft Ninth Report concerning with the review of Schedule to the Parliament (Prevention of Disqualification) Act, 1959 in respect of Bodies under the administrative domain of the Ministry of Commerce and Industry.

5. The Committee then considered and adopted the draft Ninth Report without any modification.

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

7. The Committee also decided to undertake an on the spot study visit of the Committee in the first week of the September 2016 in connection with the review of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959

The Committee then adjourned.

