

**JOINT COMMITTEE ON OFFICES OF PROFIT
(SIXTEENTH LOK SABHA)**

FOURTEENTH REPORT

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

Presented to Lok Sabha on 30.11.2016

Laid in Rajya Sabha on 30.11.2016



LOK SABHA SECRETARIAT

NEW DELHI

November, 2016/ Agrahayana, 1938(Saka)

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will be appended at the time of presentation.

INTRODUCTION

I, the Chairperson of the Joint Committee on Offices of Profit, having been authorized by the Committee to present the Report on their behalf, present this Fourteenth 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 Chemicals and Fertilizers (Departments of Chemicals and Petrochemicals; Fertilizers and Pharmaceuticals) were called to tender their oral evidence before the Committee on 28.05.2015. The representatives of the Ministry of Law and Justice were also called to remain present in the sitting of the Committee.

3. The Committee considered and adopted this Report at their sitting held on 25.11.2016

4. The Committee wish to express their thanks to the Ministry of Chemicals and Fertilizers 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 Chemicals and Fertilizers 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.

NEW DELHI

DR. SATYAPAL SINGH
Chairperson
Joint Committee on Offices of Profit

28 November, 2016

07 Agrahayana, 1938 (Saka)

JOINT COMMITTEE ON OFFICES OF PROFIT
(SIXTEENTH LOK SABHA)

\$ Dr. Satyapal Singh - **Chairperson**

**MEMBERS
LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Shri Bhagwant Maan
6. Shri M.K. Raghavan
7. Prof. Saugata Roy
8. Smt. Supriya Sule
- # 9. Kunwar Pushpendra Singh Chandel
- #10. Shri Janardan Mishra

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. Shri S.Lal Engzau Ngaihte - Committee Officer

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- \$ Appointed as Chairperson vide Bulletin Part-II 19.07.2016 (Para No.3780) vice Shri P.P. Chaudhary resigned from the Chairpersonship of the Committee w.e.f. 05.07.2016.
- # Nominated as Members to the Committee vide Bulletin Part-II dated 02.08.2016 (Para-3952) Vice Shri P.P. Chaudhary, and Shri Arjun Ram Meghwal resigned from the membership of the Committee consequent upon their appointment as Minister w.e.f. 05.07.2016.
- * Shri K.C. Tyagi ceased to be the member of the Committee consequent upon expiration of his term of Rajya Sabha on 07 July.2016.

REPORT

Chapter - I

Introductory

The concept of disqualifying a holder of Office of Profit under a Government for being chosen as, and for being, a Member of a Legislature originated from the need in a democratic form of 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 a 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 of profit' holders under the Government, as a rule, are disqualified for being a Members of Legislature. In India, the principal is embodied in Articles 102(1)(a) and 191 (1)(a) of the Constitution of India in regards to the Members of Parliament and State Legislatures respectively. Article 102(1)(a) of the Constitution reads as under:

“A person shall be disqualified for being chosen as, and for being, a Member of either House of Parliament-

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

1.3 In pursuance of the above Article, the Parliament (Prevention of Disqualification) Act, 1959 (**Annexure I**) was enacted by the Parliament, laying down which offices would not disqualify holders thereof from the membership of Parliament. Briefly, this Act provides that if a member/Director of a statutory or non-statutory body /company is not entitled to any remuneration other than the compensatory allowance, she/he would not incur disqualification for receiving those allowances. Under Section 2(a) of the said Act, “compensatory allowance” has been defined as any sum of “money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a Member of Parliament is entitled under the Salary, Allowances and Pension of Members of Parliament Act, 1954) any conveyance allowance, house-rent

allowance or travelling allowance for the purpose of enabling her/him to recoup any expenditure incurred by her/him in performing the functions of that office." The said Act has been amended from time to time to include office exempted from disqualification from the purview of the office of profit.

1.4 The expression "office of profit" has not been defined in the Constitution or in the Representation of the People Act, 1951 or in the Parliament (Prevention of Disqualification) Act, 1959, or in any Judgment rendered either by the High Court or Supreme Court evidently because it is not easy to frame an all embracing definition, covering all the different kinds of posts which exist under Government and those which might hereafter be created. Broadly speaking, it signifies that Government must not be in a position to seduce a member by placing him in a position where he can exercise authority, where he thinks he is somebody important, even if he gets no pecuniary remuneration. 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 thereto 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 somebody and either he has got some money or he is otherwise been 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 form of 'sitting fee' or 'attendance fee', not being daily allowance, it becomes a 'profit' even if it does not even purport to cover any actual expenses. Such consideration or remuneration is deemed to constitute 'profit' even though, on detailed accounting, it may be found that no financial advantage has, in fact, been gained by the member in question. Travelling allowance do not act as a disqualification if one draws not more than what is required to cover the actual out-of-pocket expenses. House rent allowance and conveyance are not profits as the allowances are utilised for the purposes of paying the house rent and meeting conveyance charges; they do not give a pecuniary benefit to the person to whom they are paid. If the quantum of daily allowance is such as not to be a source of income, no disqualification shall be incurred.

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

1.9 Unless otherwise declared by Parliament by law, a person is disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State. If any question

arises as to whether a Member of Parliament has become subject to any of the disqualification laid down in the Constitution including the one whether she/he is holding an office of profit or not, the question is referred for the decision of the President and her/his decision is final. However, before giving any decision on any such question, the President is required to consult the Election Commission in terms of Article 103 (2) of the Constitution. and the Commission may make such enquiry as it deems fit. It is important to note that in this matter the President does not act on the aid & advise of his Council of Ministers.

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

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

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

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

1.13 The Bhargava Committee in their Report had observed that ordinarily Members of Parliament should be encouraged to go on such Committees which are of an advisory character and represent the local or popular point of view in a manner which will effectively influence the officials' point of view. Members of Parliament by virtue of their

membership are in a position to say and represent certain matters with some authority and confidence, and their views are likely to go a long way in influencing the view-point of officials. It is at the same time felt that consistent with above view, Members of Parliament should not be permitted to go on Committees,

Commissions, etc. which jeopardise their independence or which will place them in a position of power or influence or in a position where they receive some patronage from Government or are themselves in a position to distribute patronage.

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

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

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

1.17 On 18 August, 2006, a Joint Committee of 15 Members of Parliament (10 from Lok Sabha and 5 from Rajya Sabha) was constituted to examine the Constitutional and Legal position relating to Office of Profit. The Committee inter-alia made certain observations and recommended the amendment of Article 102(1)(a) of the Constitution which provided

for disqualification for Members of Parliament for being chosen as, and for being, a Member of either House of Parliament on certain well delineated and defined conditions. The amendment of Article 191(1)(a) (for Members of State Legislatures) was also suggested by the Committee for amendment on the similar lines- in order to maintain uniformity in the matter. The Committee submitted its Report to the Parliament on 22 December, 2008. The Report was also forwarded to the Government of India for necessary action on the recommendations of the Committee contained in the Report.

Guiding Principles

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

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

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

- i. Whether the holder draws any remuneration, like sitting fee, honorarium , salary, etc. i.e. any remuneration other than the „compensatory allowance“ as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

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

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

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

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

1.21 The Joint Committee on Offices of Profit consisting of 10 Members of Lok Sabha and 5 Members of Rajya Sabha is constituted on a Government motion for the duration of the term of each Lok Sabha. The Joint Committee on Offices of Profit for the term of 16th Lok Sabha was constituted on 11 December, 2014 on the basis of the motion moved by the Government and adopted by Lok Sabha on 01.08.2014 and concurred by Rajya Sabha on 14.08.2014, After its constitution, the Committee in its first sitting held on 12 January, 2015, took note of various Committees/Bodies/Organisations mentioned in the Schedules annexed to the Parliament (Prevention of disqualification) Act, 1959 as amended from time to time., which though exempted from the angle of office of profit, ceased to exist. However, these Committees/Bodies/ Organisations are still being reflected in the Schedule of the said Act. The Committee, therefore, decided to scrutinise the Schedule to the Act. The Committee also decided to obtain ab-initio information/data/status of each Committee/Commission/Body/Organisation referred to in

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

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

- (a) The details of Committees/Boards/Corporations/Bodies, etc. included in the Schedule of the Act, 1959 as amended from time to time alongwith the present status of each such legal entity. In case such Committees/ Boards/ Corporations/ Bodies, etc. have ceased to operate/exist or nomenclature/title changed, details of changes in chronological order of such entities be furnished.
- (b) For the above said purpose, the information about the composition, character, etc. of all the other Committees/Boards/Corporations/ Bodies, etc. also be furnished wherein Members of Parliament have been nominated by virtue of some other specific Acts of Parliament i.e. other than the Parliament (Prevention of Disqualification) Act, 1959, as amended from time to time.
- (c) Further for the purpose of a thorough review, the complete details of all the other Centrally funded/sponsored schemes/programmes under the Administrative control of your Ministry for the implementation/monitoring of such schemes/programmes like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), Member of Parliament Local Area Development (MPLAD) Scheme, etc. wherein there may/may not be a provision for the nomination/election of Members of Parliament along with other such future schemes/plans wherein inclusion of Members of Parliament is proposed.

1.23 The process of scrutinising the Schedule of the Parliament (Prevention of Disqualification) Act, 1959 was initiated by the Committee and in this context, the Committee decided to call the representatives of the various Ministries/Departments of the Government of India, in a phased manner, to undertake their evidence for the purpose. In pursuance of the decision of the Committee, the Committee called the representatives of the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals, Department of Fertilizers and Department of Pharmaceuticals) on 28 May, 2016 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 Chemicals and Fertilizers (Department of Chemicals and Petrochemicals, Department of Fertilizers and Department of Pharmaceuticals). 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 held on 31.03.2015, briefed the Committee as under:

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

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

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

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

In this regard, a number of Hon. Committees were constituted. All these Committees made recommendations on the basis of which from time to time many amendments have been carried out. It is not that we are the only country where such provision exists. Even in the US, there is a provision that if anybody holds an office of profit, he shall not become a Member of the House of Representatives. So, such provision also exists in other countries. The reason is that is envisaged under the constitutional provisions by the founding fathers of the Constitution that our Members of Parliament be independent of the Government. The Government should not have any control over the Parliament and representatives 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 it is 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. 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 there is 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 membership 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 Chairmanship of which would entail disqualification and Part II of the Committee in which the office of Chairman or Secretary 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 up 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 CHEMICALS AND FERTILIZERS
(DEPARTMENT OF CHEMICALS AND PETROCHEMICALS)**

3.1 At present there are four Public Sector Undertakings (PSUs) and two Autonomous Bodies under the administrative control of the Department of Chemicals and Petrochemicals, which are as under:-

Public Sector Undertakings

1. Hindustan Insecticides Limited (HIL)
2. Hindustan Organic Chemicals Limited (HOCL)
3. Hindustan Fluorocarbons Limited (HFL)
4. Brahmaputra Cracker & Polymer Limited (BCPL)

Autonomous Institutions

1. Central Institute of Plastics Engineering & Technology (CIPET)
2. Institute of Pesticide Formation Technology (IPFT)

Hindustan Insecticides Limited (HIL)

3.2 Hindustan Insecticides Limited (HIL) was incorporated in March, 1954 for manufacture and supply of DDT. In 1957, the company set up a factory at Udyogamandal near Cochin for manufacture of DDT and in 1977 at Rasayani, Maharashtra for manufacture of Malathion, an insecticide. Today HIL has three units located at Udyogamandal in Kerala, Rasayani in Maharashtra and at Bathinda in Punjab.

Hindustan Organic Chemicals Limited (HOCL)

3.3 Hindustan Organic Chemicals Limited was incorporated on 12th December, 1960 as a Government company with the objective of setting up manufacturing capacities for Chemicals/intermediates which are required for production of dyes, dye-intermediates, rubber chemicals, pesticides, drugs and pharmaceuticals, laminates. etc. The products manufactured by HOCL include phenol, acetone, formaldehyde, nitrobenzene, aniline, nitro-toluene, nitric acid, di-nitrogen tetra-oxide (N_2O_4) and hydrogen peroxide. The raw materials used by HOCL are benzene, toluene, LPG, methanol, CNG and sulphur, most of which come from petroleum refineries. HOCL is the only manufacturer of liquid rocket propellant N_2O_4 in the country, supplying to ISRO. HOCL now has 58.78% Government share holding.

Hindustan Fluorocarbons Limited (HFL)

3.4 Hindustan Fluorocarbons Limited, a subsidiary company of Hindustan Organic Chemicals Limited, was incorporated on 14.07.1983. The company is engaged in the manufacture of Poly Tetra Fluoro Ethylene (PTFE) and Chloro DI Fluoro Methane (CFM-

22). PTFE is extensively used in chemical, mechanical, electrical and electronic industries and has strategic applications in defence and aerospace sectors. The factory is located at Rudraram, District Medak in Telangana.

Brahmaputra Cracker & Polymer Limited (BCPL)

3.5 The Assam Gas Cracker Project (AGCP) was initiated in pursuance of the Memorandum of Settlement signed between Central Government, All Assam Students Union (AASU) and All Assam Gana Parishad (AAGP) on 15 August, 1985. This project is of economic significance for the State of Assam and the North East Region. Cabinet Committee on Economic Affairs (CCEA), in its meeting held on 18 April, 2006, approved the setting up of the Assam Gas Cracker Project at a Project (AGCP) cost of Rs.5,460.61 crore. Accordingly, M/s Brahmaputra Cracker & Polymer Limited (BCPL) was incorporated as a joint venture of M/s Gail (India) Limited, M/s Numaligarh Refinery Limited, M/s Oil India Limited and Assam Government on 8 January, 2007 for implementing the project at Lepetkata, Distt. Dibrugarh of Assam alongwith certain facilities at Lakwa and Duliajan.

Central Institute of Plastics Engineering & Technology (CIPET)

3.6 Central Institute of Plastics Engineering & Technology is an autonomous organisation under the aegis of this Department registered on 21.06.1968 under Societies Registration Act, 1860. CIPET is an ISO 9001:2008 QMS, NABL, ISO/IEC 17020 accredited premier national institution devoted to Academic, Technology Support & Research (ATR) activities for the growth of polymer & allied industries in the country. CIPET operates at 23 locations spread across the country with its Head Office at Chennai.

Institute of Pesticides Formation Technology (IPFT)

3.7 Institute of Pesticide Formation Technology, Gurgaon was established in May, 1991 as a Government of India Society registered under the Societies Act. It is an autonomous Institution under the administrative control of Department of Chemicals and Petrochemicals and has been working towards the development of safer, efficient and environment friendly pesticide formulations.

3.8 The Parliament (Prevention of Disqualification) Act, 1959 provides list of offices of profit under the Government which shall not disqualify the holders thereof for being chosen as, or for being, Members of Parliament . Section 3(i) of the Act declares that

"the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule, (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule;"

3.9 The Part I of the Schedule of the Parliament (Prevention of Disqualification) Act, 1959 includes Bodies under the Central Government. The appointment of Board of Directors of HIL is already included in the Part I of the Schedule under Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1959. The appointment of Board of Directors of the other CPSEs and Governing Bodies/Councils of the Autonomous Bodies under the administrative control of this Department are not included in the Schedule under Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1959.

3.10 There are broadly three types of Directors in the Board of the Public Sector Enterprises, as mentioned below:-

- (i) Functional Directors -These are full time operational Directors responsible for day to day functioning of the Enterprise.
- (ii) Government Directors- These are appointed by the Administrative Ministries and are generally the officers dealing with the concerned Enterprises.
- (iii) Non-official Directors - They are men drawn from the Public, technocrats, management experts and consultants and professional managers in industry and trade with a high degree of proven ability.

3.11 Guidelines issued by Department of Public Enterprises (DPE) vide letter NO. 2(158)/70-BPE(GM) dated 13 October, 1972 relating to Composition of Board of Directors of Central Public Sector Enterprises, excluded Members of Parliament in the Board of Public Enterprises, which is based on the recommendations of the Krishna Menon Committee. The report of Krishna Menon Committee on State Undertakings stated that appointment of Members of Parliament in Corporations is altogether an unhealthy practice and is difficult to justify. Based on this report Government decided that Members of Parliament should not be appointed to Board of Directors. This same has been reiterated vide DPE O.M.No.2(9)/80-BPE dated 20 April, 1982.

3.12 No Member of Parliament is presently in the Board of aforesaid 4 PSUs and 2 Autonomous Bodies under the administrative control of Department of Chemicals and Petrochemicals (DCPC).

3.13 During the sitting of the Committee held on 28.05.2015, the Secretary of the Department briefed the Committee as under:

".....The Department of Chemicals and Petrochemicals has four Public Sector Undertakings and two Autonomous Bodies. The Public Sector Undertakings are, HIL, Hindustan Insecticides Limited; Hindustan Organic Chemicals Limited; Hindustan Fluorocarbons Limited and Brahmaputra Cracker and Polymer Limited. The two Autonomous Bodies are, Central Institute of Plastic Engineering and Technology and Indian Institute of Pesticide Formulation Technology.

As per existing arrangements, the HIL, the Hindustan Insecticides Limited is already included in Part I of Schedule under Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1959. Other PSUs and Autonomous Bodies are not included under this Section. So, that is the situation."

3.14 When the Committee asked about the justification/rationale for their inclusion in the Act of 1959, the Ministry in its written reply stated as under:

"No records/documents are readily available with the Department."

3.15 When the Committee enquired as to whether any Member of Parliament is there in the Hindustan Insecticide Limited, the Secretary of the Department responded as under:

"No sir, Under the Instructions of the Department of Public Enterprises, no Member of Parliament is posted either as Chairman-cum-MD or as Director on their Boards."

3.16 When the Committee as asked as to whether there is any provision under the Law. the Secretary of the Department stated as under:

"No, we have administrative instructions."

3.17 On being asked by the Committee as to whether there is any provision for the inclusion of Member of Parliament, the Secretary of the Department answered as under:

"Under the category of Independent Directors they can be included."

3.18 The Secretary of the Department informed the Committee that they are not aware as to whether any Member of Parliament has ever been nominated to the Board of HIL.

3.19 When the Committee asked as to whether the Ministry had taken up the matter for deletion of such entries from the Parliament (Prevention of Disqualification) Act, 1959, the Department in its written reply stated as under:

"Keeping in view the policy decision taken by the Government with regard to exclusion of sitting Members of Parliament in the Boards of Public Sector Enterprises, as per DPE guidelines vide OM No.2(158)/70-BPE (GM) dated 13.10.1972 and OM No.2(9)/80-BPE (GM) dated 20.04.1982, there is no need for deletion of HIL from the Act.."

3.20 On being questioned by the Committee as to whether there has been any change in the nature, character and composition of the Bodies/Committees after their inclusion in the Act, the Department in its written reply stated as under:

"Composition of Board of Directors of the Hindustan Insecticides Limited has kept on changing from to time based on the Directors appointed by the Government of India from time to time."

3.21 When the Committee asked as to whether the Department is remotely thinking of inclusion of Member of Parliament in any of the PSUs, the Secretary of the Department replied as under:

"As long as the instructions of the DPE is in operation, we are not competent to suggest."

3.22 On being asked by the Committee as to whether the Department has ever visualised to associate Member of Parliament in implementation/monitoring of various Centrally sponsored/Central Scheme, the Department in its written reply submitted as under:

"The work and functioning of the Department of Chemicals & Petrochemicals, including implementation and monitoring of various schemes/projects of the Department, is scrutinized and reviewed every year during the Budget session recess period by the Department Related Parliamentary Standing Committee on Chemicals & Fertilizers which comprises of MPs from both Houses of Parliament. Further, there is also the Consultative Committee of MPs of both Houses of Parliament attached to the Ministry of Chemicals & Fertilizers which provides a forum for discussions on policies and programmes of the Ministry/Department and the manner of their implementation. The Consultative Committee of the Ministry is required to hold at least four meetings in a year including at least once in a year for the Department of Chemicals & Petrochemicals."

3.23 When the Committee asked the opinion of the Ministry of Law and Justice (Legislative Department), the Secretary of the Department stated as under:

"Under the Prevention of Disqualification Act, Section 3 deals with two aspects. One is that it enlists certain offices the holder of which shall not incur any disqualification. That is given in various clauses.

Coming to clause (i) of Section 3, the first part of it specifies the office, the holder of which will not incur any disqualification. Then, it has a second part which says "but excluding" part is linked with the Schedule and the Schedule has two parts. The first part of the Schedule says "but including the office of the Chairman of any statutory or non-statutory body specified in Part I of the Schedule...." If we look at Part I of the Schedule, that contains the bodies under the Central Government which also include the Board of Directors of Hindustan Chemicals and Fertilizers Limited. This entry was inserted some time back in 1960 by an amendment meaning thereby that the second part of "but excluding" implies that if any Member of Parliament is holding the office of the Chairman of the body specified in Part I of Schedule, then, he will incur disqualification. Clause (i) is so worded that reading becomes a little difficult because in part it includes and in one part it excludes."

3.24 In this context, the Secretary of the Ministry of Law & Justice (Legislative Department) further submitted as under:

".....There are two categories. One category is covered under the Prevention of Disqualification Act and the other category is that there are a number of statutes where statutory bodies are created and a declaratory provision is made in that statute stating that holding of such and such office in the statutory body shall not incur any disqualification under the constitutional provision. I will give you an example. For example, under the Coffee Board Act and Coir Board Act, there are declaratory provisions. That is one way of dealing with the situation. Where a Member of Parliament is provided as a member of the statutory bodies under a declaratory provision of the Act, there it does not attract any disqualification. In the beginning, when the Committee was constituted for the first time headed by Pandit Bhargava, that Committee felt that it is not possible to enlist all those bodies and make a comprehensive list of the bodies which will or which will not incur disqualification. This depends upon the situation. By the passage of time, there may be new bodies created and then that is required to be looked at by a

Committee for which a recommendation was made that let there be a Parliamentary Committee to look into those aspects and make recommendations.."

3.25 When the Committee observed that if there is a separate provision in the respective Acts constituting that institution, then it will not incur disqualification. So the question is whether it is required to be provided under the Prevention of Disqualification Act of 1959 or it can also be provided in the Acts of the respective institutions under which the bodies are created. Responding to this, the Secretary of the Legislative Department stated as under:

"It flows from Article 102 of the Constitution of India which vests this power in the Parliament and Parliament may, by making a declaration the Act, exempt any statutory body."

3.26 When the Committee enquired as to whether the declaration should be made under the principal Act and not under various enactments, the Secretary of the Legislative Department stated as under:

"On this issue, my submission will be laws are enacted on the basis of need. Need based laws are enacted. When a particular law was enacted by Parliament, at that time it was felt that in ;such and such statutory bodies representation of Members of Parliament is a must so that they can advise as to what is to be done for the benefit of the people. That is the practice followed. Of course, we can assimilate and cull out and put them at one place."

3.27 The Committee observed that it would be useful if everybody could see the Prevention of Disqualification Act and not various Acts under which such statutory bodies are created and therefore, in the opinion of the Committee all such bodies can be put under one umbrella. When asked about the view of the Ministry of Law & Justice, the Secretary of the Legislative Department responded as under:

"It is possible. We can carry out a consequential amendment and add those statutory bodies in the Act itself."

3.28 On being asked by the Committee about bodies, the Secretary of the Department of Chemicals and Petrochemicals stated as under:

"As on today, HOCL and HFL are loss making units. BCPL is a new company. The construction is yet to be completed, it is in the final stages. Therefore, I do not find any justification for that."

The Secretary also added that there is no proposal for inclusion of MPs.

Observations/Recommendations

3.29 The Committee note that presently there are four Public Sector Undertakings (PSUs) and two Autonomous Bodies under the administrative control of the Department of Chemicals and Petrochemicals, which are as under:-

Public Sector Undertakings

1. Hindustan Insecticides Limited (HIL)
2. Hindustan Organic Chemicals Limited (HOCL)
3. Hindustan Fluorocarbons Limited (HFL)
4. Brahmaputra Cracker & Polymer Limited (BCPL)

Autonomous Bodies

5. Central Institute of Plastics Engineering and Technology (CIPET)
6. Institute of Pesticides Formation Technology (IPFT).

3.30 Out of four PSUs, the Board of Directors of HIL is included in Part-I of the Schedule under Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1959 implying that the office of Chairman of the Board of Directors of the HIL will incur disqualification from the angle of 'office of profit' even if the holder of the office is not entitled to any remuneration other than Compensatory allowance. The Committee also note that no records/documents are readily available with the Department about the justification/rationale for inclusion of the Board of Directors of the HIL in Part-I of the Schedule to the Act of 1959. The Committee further take note of the guidelines issued by the Department of Public Enterprises (DPE) vide letter No.2(158)/70-BPE (GM) dated 13 October, 1972 excluding Member of Parliament from the Board of Public Sector Enterprises and the same was reiterated vide DPE O.M.No.2(9)/80-BPE dated 20 April, 1982. According to the Department of Chemicals and Petrochemicals , they have no intention to include Member of Parliament in any of the PSUs under their control as

long as instructions of DPE are in operation. However, the Committee are of the view that if the intention of the Parliament is to include Members of Parliament as member of the Board (not as Chairman), then an anomaly seems to have been created by the executive/administrative instructions issued by BPE which exclude Members of Parliament from the Board even as an ordinary member of the Board. The Committee, therefore, recommend that the Department of Chemicals and Petrochemicals should take up the matter with DPE to rectify the anomaly created by them by their executive/administrative instructions on the issue.

3.31 According to the Ministry of Law & Justice (Legislative Department), a declaratory provision can be made in the Act of statutory body itself stating that holding of an office in such body by the Members of Parliament shall not incur any disqualification under Article 102 (1)(a) of the Constitution of India which vests such powers with the Parliament to exempt any statutory body. However, the Committee are of the opinion that it would be appropriate and useful if all such statutory bodies are put under one umbrella under the Act of 1959 which could easily be understood and seen by everybody instead of going through various Acts under which such statutory bodies have been created. The Committee, therefore, recommend that the Ministry of Law & Justice may take up the matter and add all those statutory bodies in the Act itself by carrying out consequential amendment therein.

3.32 The Committee would like to be apprised of the initiative under taken by the Department of Chemicals and Petrochemicals and the Ministry of Law & Justice (Legislative Department) on the issues as discussed above.

CHAPTER-IV

MINISTRY OF CHEMICALS AND FERTILIZERS (DEPARTMENT OF FERTILIZERS)

4.1 The first state owned fertiliser unit Sindri Fertilizer and Chemicals Ltd was set up in 1951 at Sindri in Bihar followed by another unit in Nangal in Punjab. Another fertilizer unit was set up at Trombay after some time. Hindustan Chemical and Fertilizers Limited floated by the Government of India in July 1959. Later, the Government set up the Fertilizer Corporation of India Limited (FCIL) in 1961 by merging Sindri Fertilizers and Chemicals Ltd. and Hindustan Chemicals & Fertilizers Limited, so as to bring all the public sector fertilizer units under the management of a single undertaking. Subsequently, in 1974 National Fertilizer Corporation Limited (NFL) was incorporated. In 1978, the Government of India decided to reorganize the FCIL and the NFL into five new companies. The Sindri fertilizer factory continued with the Fertilizer Corporation of India Limited along with Gorakhpur (Uttar Pradesh) Plant and three coal based fertilizer projects at Talcher (Orissa), Ramagundem (Andhra Pradesh) and Korba (Chhattisgarh). Newer plants and its Planning & Development Division were included in new companies, namely,. Rashtriya Chemicals & Fertilizer Limited (RCF), National Fertilizers Limited (NFL), Hindustan Fertilizer Corporation Limited (HFC) and Fertilizer (Planning & Development India Limited (FPDIL), latter renamed as Projects and Development India Limited (PD IL).

4.2 Madras Fertilizers Limited (MFL) was incorporated in December 1966 as a Joint Venture between Government of India (GOI) and AMOCO India Incorporation of USA (AMOCO) with GOI holding 51% of the equity share capital. The Company is engaged in the manufacture of ammonia, urea and complex fertilizers at Manali, Chennai. At present GOI is holding 59.50% shares of the MFL.

4.3 The FCI Aravali Gypsum and Minerals India Limited (FAGMIL) was incorporated under the Companies Act, 1956 as a Public Sector Undertaking on 14.02.2003 after being hived off the Jodhpur Mining Organisation (JMO) of FCIL.

4.4 The Fertilizers and Chemicals Travancore Limited (FACT) incorporated in the year 1943 was one of the first large scale fertilizer plants in India. Located at Udyogamandal, Kerala, FACT started production in 1947. Initially in the private sector promoted by the Seshasayee Brothers, FACT became a PSU in the year 1960 and towards the end of 1962, Government of India became the major shareholder of FACT.

4.5 Brahmaputra Valley Fertilizer Corporation Limited (BVFCL) was incorporated on 5 April, 2002 after segregation of Namrup units in Assam from parent company Hindustan Fertilizer Corporation Ltd. (HCL),. It has two operating Ammonia-Urea units namely Namrup-II and Namrup-III situated at Namrup, Assam.

4.6 At present there are nine Public Sector Undertakings (PSUs) under the administrative control of this Department which are as under:-

- (i) Brahmaputra Valley Fertilizer Corporation Limited (BVFCL), Namrup,
- (ii) FCI Aravali Gypsum and Minerals India Limited (FAGMIL), Jodhpur
- (iii) Fertilizers and Chemicals Travancore Limited (FACT), Kochi,
- (iv) Fertilizer Corporation of India Limited (FCIL), Noida,
- (v) Hindustan Fertilizer Corporation Limited (HFCL), Noida,
- (vi) National Fertilizers Limited (NFL), Noida
- (vii) Projects and Development India Limited (PDIL), Noida
- (viii) Rashtriya Chemicals & Fertilizers Limited (RCF), Mumbai, and
- (ix) Madras Fertilizers Limited (MFL), Chennai

4.7 The names of Sindri Fertilizer and Chemicals Ltd and Hindustan Chemicals and Fertilizers limited, which have been mentioned in the list of the Central Government Bodies under the Schedule of the Parliament (Prevention of Disqualification) Act, 1959, were in existence up to 1961. In January, 1961 both of these companies were merged to form a bigger company the Fertilizer Corporation of India Limited as detailed above.

4.8 Part I of the Schedule of the Parliament (Prevention of Disqualification) Act, 1959 mentioned Bodies under the Central Government. Board of Directors of the Hindustan Chemicals and Fertilizers Limited and Board of Directors of the Sindri Fertilizer and Chemicals Limited appeared in this Part.

4.9 There are three types of Directors in the Board of Public Sector Enterprises as mentioned below:-

- i) Functional Directors - These are full time operational Directors responsible for day to day functioning of the Enterprise.
- (ii) Government Directors: These are appointed by the Administrative Ministries and are generally the officers dealing with the concerned Enterprises.
- (iii) Non-official Directors - They are men drawn from the Public, technocrats, management experts and consultants and professional managers in industry and trade with a high degree of proven ability.

4.10 Guidelines issued by Department of Public Enterprises (DPE) vide letter NO. 2(158)/70-BPE(GM) dated 13 October, 1972 relating to Composition of Board of

Directors of Central Public Sector Enterprises, excluded Members of Parliament in the Board of Public Enterprises, which is based on the recommendations of the Krishna Menon Committee. The report of Krishna Menon Committee on State Undertakings stated that appointment of Members of Parliament in Corporations is altogether an unhealthy practice and is difficult to justify. Based on this report Government decided that Members of Parliament should not be appointed to Board of Directors. This same has been reiterated vide DPE O.M.No.2(9)/80-BPE dated 20 April, 1982.

4.11 No Members of Parliament is in the Board of aforesaid 9 PSUs under the administrative control of Department of Fertilizers.

4.12 Krishak Bharati Cooperative Limited (KRIBCHO) and Indian Farmers Fertilizer Cooperative Limited (IFFCO) are Multi State Cooperative Societies (MSCS). Initially Government of India has equity in both Societies. With the amendment of MSCS Act 2002, IFFCO and KRIBCHO returned the entire Government of India equity. At present there is no Government nominee Directors in both Societies.

Krishak Bharati Cooperative Limited (KRIBCHO)

4.13 KRIBHCO was incorporated on 17 April, 1980 as a national level Multi State Cooperative Society to implement first gas based "state-of-the-art" high capacity Fertilizer Complex consisting of 2X1350 MTPD Ammonia plants and 4X1100 Metric Tonne per day (MTPD) Urea plants each with annual installed capacity of 8.91 lakh at Hazira District-Surat, Gujarat.

4.14 At the time of incorporation of KRIBHCO majority of equity 67% (Rs.328 crore) was held by Government of India (GOI). Government in 2002 enacted amended MSCS Act 2002. The Section 35 of amended deals with retirement of Govt. equity, which provides that shares held in a multi state cooperative society shall be redeemable in accordance with the bye-laws of such multi state cooperative society. To keep conformity with the amended MSCS Act, KRIBHCO amended its Bye-laws [8(a)] in the year 2002, providing that KRIBHCO shall quarterly retire the shares held by the members other than cooperatives like Government of India, to the extent that the cooperative members subscribe to the equity of KRIBHCO in order to facilitate the greater participation and representation of co-operative members in KRIBHCO. On the strength of revised bye-laws 8 (a) and Section 35 of the Act KRIBHCO repatriated Government of India equity on its face value. During 2003 and 2009, KRIBHCO repatriated GOI equity amounting to Rs.138.31 crores reducing Government share to 48.38%. The equity repatriated by KRIBHCO was accepted. Subsequently, KRIBHCO in 2010 and 2011, further repatriated cheques amounting to Rs.91.40 crores reducing Government share to 24.96%. However,

Government did not accept the cheques and returned the same raising the issue of observance of transparency by KRIBHCO on the issue of allotment of shares to new as well as existing cooperative societies. Also meanwhile, Department of Agriculture & Co-operation, proposed an official amendment in MSCS Act, 2002 that repatriation of Government equity will be on face value or book value, whichever is higher. However, the Bill was lapsed with the dissolution of the 15th Lok Sabha. KRIBHCO in July, 2013 repatriated the remaining entire equity amounting to Rs.97.50 crore. Consequently, the share capital held by Gol has been reduced to NIL. Acceptance of repatriation of equity of Rs.91.40 crore (done in 2010/2011) and Rs.97.50 crore (done recently) by KRIBHCO is still under consideration in DoF.

Government control over KRIBHCO

4.15 In pursuance of DoPTs O.M. 399/9/2010-AVD-III dated 01.02.2013 conveying the opinion of Learned Attorney General of India that the members, office-bearers and employees of Multi-State Cooperative Societies would fall within the purview of Section 2(c) of the Prevention of Corruption Act and that the Central Vigilance Commission is duly empowered to exercise jurisdiction over NAFED and KRIBHCO and similar societies under Section 8 (1) of the CVC Act, 2003, this Department issued an O.M. dated 01.03.2013 mentioning that "activities of IFFCO and KRIBHCO stand covered under administrative jurisdiction of Department of Fertilizers." KRIBHCO has filed a Writ Petition before the Hon'ble High Court of Delhi for quashing the aforesaid O.M. of this Department. The matter of jurisdiction of Government of India over KRIBHCO is pending in the Writ Petition No.2616/2013.

Indian Farmers Fertiliser Cooperative Limited (IFFCO)

4.16 IFFCO is a Multi-state-cooperative society (MSCS) registered under MSCS Act in 1967, involves in production, marketing etc. of Fertilizers. The Government of India equity in IFFCO was Rs.281.69 crore till 2002, however after the amendment of MSCS Act in 2002, IFFCO had amended its bye laws and repatriated its entire GOI equity in 7 instalments during December 2002 to June 2004. At present there is no GOI equity in IFFCO and no Government nominee directors in the Board of IFFCO.

Government control over IFFCO

4.17 In pursuance of DoPT's O.M. 399/9/2010-AVD-III dated 01.02.2013 conveying the opinion of Learned Attorney General of India that the members, office-bearers and employees of Multi-State Cooperative Societies would fall within the purview of Section 2 (c) of the Prevention of Corruption Act and that the Central Vigilance Commission is duly empowered to exercise jurisdiction over NAFED and KRIBHCO and similar societies

under Section 8(1) of the CVC Act, 2003, this Department (Vig Divn) issued an O.M. dated 01.03.2013 mentioning that "activities IFFCO and KRIBHCO stand covered under administrative jurisdiction of Department of Fertilizers." IFFCO has filed a Writ Petition No.20.07.2013 before the Hon'ble High Court of Delhi for quashing the aforesaid O.M. to this Department. Hon'ble High Court vide its order dated 06.05.2013 stayed the operation of this Department's OM dated 01.03.2013.

4.18 In reply to a question regarding association of Members of Parliament in implementing/monitoring various Centrally sponsored/Central schemes, the Department of Fertilizers in its written reply stated as under:

"There is no centrally sponsored Central Scheme being implemented by Department of Fertilizers. Association of MPs in PSU is a policy matter and Department of Public Enterprises is the nodal Department for formulation of Policy of Central Public Sector Enterprises (CPSEs). As per the guidelines of the Nodal Ministry i.e. DPE, the Members of Parliament are excluded in the composition of the Board of Directors of the PSUs. "

4.19 When the Committee asked about the justification/rationale for inclusion of Bodies in the Parliament (Prevention of Disqualification) Act of 1959, the Department in its written reply stated as under:

"The two companies, under the administrative control of the Department of Fertilizers which found place in the Part I of Schedule referred in Section 3(i) of the Parliament (Prevention of Disqualification) Act of 1959, were merged in 1961 to form a single company FCIL. Since relevant records are not available, reasons/details for justification for their inclusion in the Parliament (Prevention of Disqualification) Act of 1959, cannot be definitely stated."

4.20 During the evidence undertaken by the Committee on 28.05.2016, the Secretary of the Department of Fertilizers stated as under:

"In Part I, there are Hindustan Chemicals and Fertilizers Limited and Sindri Fertilizers and Chemicals Limited. These companies were there only up to 1961. Sindri Fertilizers and Chemicals Limited was set up in 1951 and Hindustan Chemicals and Fertilizers Limited was set up in 1959. But in 1961, they were merged into a single company called Fertilizer Corporation of India Limited. After that, a series of re-organisation has taken place. We have submitted a detailed note. At the moment, these companies are no longer there."

The Secretary of the Department also added as under:

"We have nine public sector undertakings and about which we have given in details. As my colleague mentioned, because of the directive of the Department of Public Enterprises, in none of these Boards of these PSUs, we have any representation from the hon. Members of Parliament."

The Secretary of the Department further added as under:

"Sir, there are nine public sector undertakings. Out of nine, two are defunct but others are functioning."

4.21 When the Committee asked about KRIBCHO and IFFCO and as to whether KRIBHCO has returned money back, the Secretary of the Department stated as under:

"Sir, they have repatriated almost 100 per cent. We have accepted up to 48 percent deduction. Beyond that there is a dispute and it is under litigation. In IFFCO, there is no equity at all."

4.22 When the Committee specifically asked about KRIBCHO, the Secretary of the Department responded as under:

"Sir, KRIBCHO is today headed by a hon. Member of Parliament."

The Secretary further added as under:

"That is in the list, Part 4"

Observations/Recommendations

4.23 The Committee note that at present there are nine Public Sector Undertakings (PSUs) under the administrative control of the Department of Fertilizers which are as under:-

- (i) Brahmaputra Valley Fertilizer Corporation Limited (BVFCL), Namrup,**
- (ii) FCI Aravali Gypsum and Minerals India Limited (FAGMIL), Jodhpur**
- (iii) Fertilizers and Chemicals Travancore Limited (FACT), Kochi,**
- (iv) Fertilizer Corporation of India Limited (FCIL), Noida,**
- (v) Hindustan Fertilizer Corporation Limited (HFCL), Noida,**
- (vi) National Fertilizers Limited (NFL), Noida**
- (vii) Projects and Development India Limited (PDIL), Noida**
- (viii) Rashtriya Chemicals & Fertilizers Limited (RCF), Mumbai, and**
- (ix) Madras Fertilizers Limited (MFL), Chennai**

4.24 The Committee note that the Board of Directors of the Hindustan Chemicals and Fertilizers Limited and the Sindri Fertilizers and Chemicals Limited are listed in Part-I of the Schedule under Section 3 (i) of the Parliament (Prevention of Disqualification) Act, 1959 implying that the office of Chairman of the Board of Directors of the Hindustan Chemicals and Fertilizers Limited and the Sindri Fertilizers and Chemicals Limited will incur disqualification from the angle of 'office of profit' even if the holder of the office of Chairman is not entitled to any remuneration other than compensatory allowance. According to the Department of Fertilizers, Hindustan Chemicals and Fertilizers Limited and Sindri Fertilizers and Chemicals Limited were merged into a single Company called Fertilizers Corporation of India Limited (FCIL) in 1961 and as a result, these two Companies are now not in existence. The Committee also note that relevant records are not available with the Department about the justification/rationale for their inclusion in Part-I of the Schedule to the Act of 1959. In view of the foregoing, the Committee recommend that Hindustan Chemicals and Fertilizers Limited and Sindri Fertilizers

and Chemicals Limited may be deleted from the list contained in Part I of the Act of 1959 and the action may accordingly be initiated by the Department for the purpose.

4.25 In the context of guidelines issued by the Department of Public Enterprises (DPE) vide letter No.2(158)/70-BPE (GM) dated 13 October, 1972 read with DPE O.M.No.2(9)/80-BPE dated 20 April, 1982, which exclude Member of Parliament from the Board of Public Sector Enterprises, the Committee recommend that the Department of Fertilizers may also take up the matter with DPE to rectify the anomaly created by them by their executive/administrative instructions on the issue, as explained at para 3.30 in the case of the Department of Chemicals and Petrochemicals.

4.26 The Committee note that Krishak Bharati Cooperative Limited (KRIBHCO) and Indian Farmer Fertilizers Cooperative Limited (IFFCO) are listed in the Table under Section 3 (k) of the Parliament (Prevention of Disqualification) Act, 1959 implying that the holder of office of Chairman, Deputy Chairman, Secretary or member (by whatever name called) of KRIBHCO and IFFCO shall not incur disqualification for being chosen as, or for being, a Member of Parliament. According to the Department of Fertilizers, KRIBHCO and IFFCO are Multi State Cooperative Societies (MSCs). Initially Government of India has equity in both Societies. However, with the amendment of MSCs Act, 2002, IFFCO and KRIBHCO returned the entire Government of India equity. However, in the case of KRIBHCO, the Government has accepted equity amount repatriated by KHIBHCO reducing their share up to 48%. Presently, KRIBCHO is headed by a Member of Parliament. In the context of IFFCO, there is no shareholding of the Government of India and also there is no Government nominee Directors on the Board of IFFCO. According to the Department , an OM dated 01.03.2013 was issued by them stating that the activities

of KRIBCHO and IFFCO stand covered under administrative jurisdiction of the Department of Fertilizers. However, KRIBCHO and IFFCO filed a writ petition before the High Court of Delhi for quashing the aforesaid OM of the Department. While the matter of jurisdiction of Government of India over KRIBCHO is pending before the Court, in the context of IFFCO, High Court vide its order dated 06.05.2013 stayed the operation of the said OM dated 01.03.2013 of the Department. Both the matter still seems to be sub-judice. In view of above, the Committee are of the view that KRIBHCO and IFFCO may continue to remain in the Table under Section 3 (k) of the Parliament (Prevention of Disqualification) Act, 1959 and their continuation in the Table or deletion there from may be reviewed in the light of the outcome of the decision of the High Court over the administrative jurisdiction of the Department of Fertilizers over the activities of KRIBCHO and IFFCO.

CHAPTER-V**MINISTRY OF CHEMICALS AND FERTILIZERS
(DEPARTMENT OF PHARMACEUTICALS)**

5.1 The Department of Pharmaceuticals furnished nil information in connection with scrutiny of schedule to the Parliament (Prevention of Disqualification) Act, 1959.

5.2 During evidence of the Department on 28.05.2016, the Secretary of the Department of Pharmaceutical stated as under:

"Sir, under the Department of Pharmaceuticals, we have got five Central Public Sector Undertakings, Hindustan Antibiotics, IDPL, Rajasthan Antibiotics, Bengal Chemicals and Karnataka Antibiotics. There is no provision for inclusion of Hon'ble Members of Parliament in these organisations. So, there is no problem in this Sector.

We have seven National Institutes of Pharma Education and Research centres. They are in Mohali, Calcutta, Guwahati, Raibareilly, Hajipur, Ahmedabad and Hyderabad. Under the NIPER Act, 1998, there is a provision to include two MPs from the Lok Sabha and one MP from the Rajya Sabha. Earlier an attempt was made to include one MP from the Rajya Sabha in the National Institutes of Pharma Education at Mohali, Punjab. But later on that came up for discussion in the same Committee in the year 2013. Again it was discussed with the Department of Legal Affairs and it was decided that we can amend the NIPER Act suitably so that this provision is taken out. We also made attempt to see that these institutes are included in the list of exempted institutions under the Parliament Act. But now, it has been decided that we can go ahead and do the amendment in the NIPER Act. We have to start that process."

5.2 On being asked that this information could have been sent in writing also, the Secretary of the Department explained as under:-

"Sir, already it was discussed and decided that MPs inclusion in the NIPER will amount to disqualification. That is why, we have to amend NIPER Act suitably. We will take action to amend it."

5.3 On being asked by the Committee about the Development Council for Drugs, Dyes and Intermediates established under section 6 of the Industries (Development and Regulation) Act, 1951, the Secretary of the Department stated as under:

"Sir, there is no council under our Ministry. It will come under the Health Ministry."

5.4 When the Committee pointed out that there is also a Development Council for Alkalis and Allied Industries, the Secretary of the Department responded as under:

"Sir, we do not know about them."

5.5 On being inquired by the Committee about the Development Councils, the Secretary of the Ministry of Law & Justice (Legislative Department) submitted as under:

"Sir, the Industries (Development and Regulation) Act, 1951 makes provision for declaration of certain industries, which produce the articles specified in the Schedule industry. So, that is the old Act. It was amended. We have to check up this Act whether the Act still contains the provisions for constituting the Development Councils for different areas, for different articles, which are declared as Scheduled Industries under the IDR Act. We will check up and revert back to you."

5.6 When the Committee observed that some these Development Councils may be have become defunct, the Secretary of the Ministry of Law & Justice (Legislative Department) replied as under:

"Sir, the IDR Act is in force."

The Secretary also added as under:

"It contains a very exhaustive list of articles with respect to which the industries, which are producing those articles or processing or dealing with those articles are declared as a Scheduled Industry and the provisions of the IDR Act apply. So, we have to go through those provisions. That Act is available on the website of the Ministry and Industry."

The Secretary further added as under:

"But on the Councils, whether they exist or not, I think the Ministry of Industry will be in a position to inform the hon. Committee."

18 Observations/Recommendations

5.7 The Committee note that there are five Central Public Sector Undertakings under the administrative control of the Department of Pharmaceuticals namely Hindustan Antibiotics Limited (HAL Indian Drugs & Pharmaceuticals Limited (IDPL), Rajasthan Drugs & Pharmaceuticals Limited (RDPL), Bengal Chemicals & Pharmaceuticals Limited (BCPL) and Karnataka Antibiotics & Pharmaceuticals Limited (KAPL). However, there is no provision for inclusion of Member of Parliament in these organisations.

5.8 According to the Department of Pharmaceuticals, there are seven National Institutes of Pharma Education and Research (NIPER) centres and as per the NIPER Act, 1998, there is a provision to include two Members of Parliament from the Lok Sabha and one Member of Parliament from the Rajya Sabha. This issue was examined by the Committee during the year 2013 and in its 9th Report (15th Lok Sabha), the Committee came to the conclusion that the nomination to the Board of Governors attracts disqualification on the ground of holding an office of profit and that no exemption can be granted to the member for the nomination to the Board of Governors attract disqualification on the ground of holding an Office of Profit unless NIPER is exempted from disqualification under Parliament (Prevention of Disqualification) Act, 1959. The Committee had also recommended that there should be an express provision either in the Act requiring nomination/election of Member of Parliament for appointment to the Government Body or in the Parliament (Prevention of Disqualification) under Article 102 (1) (a) of the Constitution. In view of above, the Committee recommended that the action may be initiated promptly to amend the NIPER Act and apprise the Committee accordingly. The Committee are anguished to note that no follow up action has been taken up by the Department on the recommendation of the then Committee. During the course

of evidence, the Secretary of the Department informed the Committee that they have to take action to amend the NIPER Act suitably. The Committee expect the Department to take up follow up action on the issue with out further delay.

5.9 The Committee note that some of the Development Councils like for Drugs, Dyes and Intermediates or Acids and Fertilisers or Alkalis and Allied Industries established under section 6 of the Industries (Development and Regulation) Act, 1951, are listed in Part II of Schedule to the Parliament (Prevention of Disqualification) Act, 1959. According to the Secretary of the Department of Pharmaceuticals, there is no Council under their Ministry. The Secretary of the Ministry of Law & Justice informed the Committee that IDR Act of 1951 is in force. However, the Ministry of Commerce and Industry will be in a position to explain as to whether these Councils exist or not. The Committee are of the view that the Ministry of Law & Justice, being the nodal Ministry for notification of such Acts, should take up the matter with the Ministry of Commerce and Industry or other Ministries/Departments of the Government of India and come out with a proposal either to delete or to retain these Development Councils from/in the Schedule of the Parliament (Prevention of Disqualification) Act, 1959.

DR. SATYAPAL SINGH
Chairperson
Joint Committee on Offices of Profit

28 November , 2016
07 Agrahayana, 1938 (Saka)

