

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

**TWENTIETH REPORT**

**Review of the Schedule to the Parliament (Prevention of Disqualification) Act,  
1959 in respect of Bodies under the Ministry of Development of North  
Eastern Region**

Presented to Lok Sabha on 11.04.2017

Laid in Rajya Sabha on 11.04.2017



**LOK SABHA SECRETARIAT  
NEW DELHI  
April, 2017 / Chaitra, 1939 (Saka)**

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

**\$ Dr. Satya Pal 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. Shri Sharad Yadav

**SECRETARIAT**

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

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\$ Appointed as Chairperson *vide* Bulletin Part-II dated 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 Member of the Committee *vide* Bulletin Part-II dated 02.08.2016 (Para No.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 Sharad Yadav nominated as Member of the Committee *vide* Bulletin Part-II dated 02.08.2016 (Para No.3952).

## 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 Twentieth 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 North Eastern Region were called to tender their oral evidence before the Committee on 20.01.2016. 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 07 April, 2017.

4. The Committee wish to express their thanks to the Ministry of Development of North Eastern Region and the Ministry of Law and Justice for furnishing the requisite information to them in connection with the examination of the Bodies under the administrative domain of the Ministry of Development of North Eastern Region 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:**

**10 April, 2017**

**20 Chaitra, 1939 Saka**

**DR. SATYAPAL SINGH**

**Chairperson,**

**Joint Committee on Offices of Profit**

# 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 (7<sup>th</sup> 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 16<sup>th</sup> 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 along with 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 Development of North Eastern Region on 20 January, 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 Development of North Eastern Region. The detailed analysis along with Observations/Recommendation 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 DEVELOPMENT OF NORTH EASTERN REGION

There are three Corporations under the administrative control of the Ministry of Development of North Eastern Region which are as under:-

- (i) North Eastern Development Finance Corporation Limited (NEDFi)
- (ii) North Eastern Regional Agricultural Marketing Corporation (NERAMAC); and
- (iii) North Eastern Handicrafts and Handlooms Development Corporation Ltd. (NEHHDC)

#### **North Eastern Development Finance Corporation Ltd. (NEDFi)**

3.2. NEDFi was incorporated as a Public Limited Company on August 09, 1995 with an authorised capital of Rs.500 crore and a paid up capital of Rs.100 cr with its registered office at Guwahati. It was formally inaugurated on February, 1996 with the initial Paid up capital of Rs.100 . There is no equity contribution by Central/State Government. It was notified as a Public Financial institution in July, 1996 under Section 4 A of the Company Act, 1956, NEDFi is categorised as a Non-Banking Financial Company (NBFC)-Loan Company and was registered with the Reserve Bank of India on 20.12.2002.

3.3 With its 15 Branch offices and 5 Representative offices in all the North East States, the Corporation is playing an important role in entrepreneurship and industrial development in the region.

#### **Composition of Board of Directors**

3.4 The Board of Directors of NEDFi comprises of the Chairman & Managing Director, representatives from shareholder institutions, DoNER, State Governments NEC and individuals having wide experience in Industry, Economics, Finance and Management.

#### **Financing for Development**

3.5 Over the years, NEDFi has positioned itself not merely as a lending institution but also as an agency providing escort and other support services to the first

generation entrepreneurs (including women) of the Region to acquire competitive edge.

Apart from extending financial assistance, the Corporation also undertakes developmental promotional services viz. Advisory and Consultancy Services, Techno Economic Development Studies of the Region, maintaining a web based portal called "NER Databank", NEDFi Databank Journal - an economic journal on the North Eastern region. NEDFi also act as Nodal Agency for the disbursement of Central subsidies.'

3.6 During the course of evidence of the Ministry on 20.01.2016, the Secretary of the Ministry briefed the Committee as under:-

" Sir, as you rightly observed that we have got three corporations. We start with the North Eastern Development Finance Corporation. It has a Chairman cum Managing Director. On the Board we have two Chief Secretaries on rotation. There is also one nominee of the North Eastern Council, one Government nominee from the Ministry and two independent Directors and one woman Director. This, in our view, does not come under any provision of the offices of profit.

3.7 When the Committee enquired as to whether there is any provision to make any MP as non-official Director or a woman Director, the Secretary of the Ministry responded as under:-

" Sir, this company has no Government stake. It is 100 per cent contributed by IDBI, SIDBI, IFCI, ICICI, the banks and the financial institutions. We do not have any Government equity in this."

3.8 When the Committee asked about the kind of remuneration being paid to the Directors, the representative of the Ministry stated as under:-

"We have got only one full time Director and others are all part time Directors and they get sitting fees for attending meetings."

3.9 On being enquired about independent Directors, the representatives of the Ministry stated as under:

"There is Dr. T.K. Mukhopadhyay. He is a retired CGM of the IDBI Bank.

3.10 When the Committee asked about the allowance being paid to the independent Directors, the representative of the Ministry responded as under:

"There is no allowance. They are getting sitting allowance for attending Board and Committee meetings. For Board Meeting, it is Rs.20000 per meeting and for other Committee meetings it is Rs.15000/- per meeting.

The Second person is Shri Ram Krishna Garg. He is a banker. He is CGM of State Bank of India. He was appointed last year."

3.11 On being asked about the details of the woman Director, the representative of the Ministry replied as under:-

"She is the Managing Director from Griha Vikas Bank which is under SEWA Bank."

### **North Eastern Regional Agricultural Marketing Corporation (NERAMAC)**

3.12 North Eastern Regional Agricultural Marketing Corporation (NERAMAC) Ltd. an initiative of Government of India is Central PSE under the Ministry of Development of North Eastern Region (DoNER) with 100% shareholding by the Government of India. NERAMAC was set up by the North Eastern Council, Shillong during March 1982. The authorised capital of NERAMAC is only Rs.10.00 Cr and the paid up capital till now is only 7.62 Cr. Its registered and corporate office is at Guwahati, Assam.

3.13 NERAMAC has taken up its role as essentially to support the farmers of North East. It endeavours to give importance to sustain farmer's interest in production by application of post harvest technology thereby arrest decline in prices arising from larger output of farm produces. It has to play a significant role by sourcing, procuring & marketing cash crops like ginger, fresh pineapple, cashew nut etc. from the farmers of NER but unable to intervene due to working capital constraint.

### **3.14 Board of Directors**

A list indicating the names of Chairman and Directors of the NERAMAC may be seen at Annexure-II.

### **3.15 Performance of NERAMAC (Rs.in crore)**

<b>Financial Year</b>	<b>Turnover</b>	<b>Net Profit</b>	<b>Net Loss</b>
2010-2011	101.65	1.47	-
2011-2012	100.18	1.00	-
2012-2013	44.00	-	2.82
2013-2014	55.25	-	12.79
2014-2015 (Un-audited)	28.50	-	5.88

3.16 About the Board of Directors, the representative of the Ministry, during the course of evidence of the Ministry held on 20 January, 2016 stated as under:-

"Shri Rajan Lohia is the independent at Director. "

3.17 When the Committee asked as to whether there is any provision for MP as non-official Director, the representative of the Ministry replied as under:-

"There is no provision for that."

3.18 When the Committee observed that there is no bar on that also, representative of the Ministry responded as under:

"This is totally silent on that aspect. You cannot say that you cannot take. In the last couple of years, this attempt was never made. We have never taken on Board any Member of Parliament."

**North Eastern Handicrafts and Handlooms Development Corporation Ltd. (NEHHDC)**

3.19 The North Eastern Handicrafts and Handlooms Development Corporation Ltd. (NEHHDC) was set up in the year 1977 with its Registered Office at Shillong, Meghalaya under the Company Act, 1956 as a Company. The objectives of the NEHHDC are promotion and development of handicrafts and handlooms of the North Eastern Region.

3.20 NEHHDC undertakes various activities viz., training and capacity building, R&D, Awareness generation, Seminars and Workshops, design intervention and skill development, marketing and exports. The Corporation also organises various marketing events viz., Crafts Bazaars and Exhibitions where the artisans and weavers from the North Eastern Region are provided stalls for display and Sale of their artefacts directly to the consumers. For online marketing the NEHHDC has launched its shopping portal at [www.nehhdc.in](http://www.nehhdc.in).

3.21 The Chief Executive of the NEHHDC is the Managing Director (Functional Director). The policy decisions of the Corporation are taken by the Board of Directors. The Corporation has six Directors on the Board as of now. As per the provision of the Article of Association and Memorandum of Association, the Company should have minimum of five Directors and maximum of ten Directors on the Board. The Joint Secretary in the Ministry is the Ex-officio Chairperson of the Corporation.

3.22 During the course of evidence, the representative of the Ministry informed the Committee as under:

"We have submitted a revival package in 2011. The Cabinet has already approved it. So, we are in the process of reviving this NEHHDC into a profit making unit. Whatever we have calculated, they are doing it by 2017-18. The break even point will come out and then we will be in profit.

He also added as under:-

The Joint Secretary of the Ministry of DONER – that is myself – is the Chairman; Shri Dhiraj Thakuria is one of the Members. Two of the official Directors are Development Commissioner (Handicrafts) and Development Commissioner (Handlooms) of the Ministry of Textiles. Then, Shri Nirmal Sinha, CMD of the HHEC, is also one of the Directors. Then, we have S.K. Shri Guliya who is the Executive Director, TRIFED. There are six at present and then Directors are on the Board, including the Chairman. These are all official Directors. There is no nominee."

3.23 When the Committee observed that there is no nominee and the nomination is only by the Ministry, the representative of the Ministry replied as under:-

" We have moved a file where we are going in for non-officials and exclusively one woman Director as suggested by the hon. Secretary also in the last fifteen days. Now, we are putting the file also to include one of the woman Director as one of the Board member."



## Observations/Recommendations

3.24 The Committee note that the Ministry of Development of North Eastern Region have three corporations working under its administrative domain viz. North Eastern Development Finance Corporation Ltd. (NEDFi), North Eastern Regional Agricultural Marketing Corporation (NERAMAC) Ltd.; and North Eastern Handicrafts and Handlooms Development Corporation Ltd. (NEHHDC).

### North Eastern Development Finance Corporation Ltd. (NEDFi)

3.25 The Committee note that NEDFi was incorporated as a Public Limited Company in August, 1995 with the registered office at Guwahati. The Board of Directors of NEDFi comprises of the Chairman & Managing Director, representatives from shareholder institutions, DoNER, State Govts., NEC & individual having wide experience in Industry, Economics, Finance & Management. The Committee also note that although so far no member of Parliament has been appointed as Independent Director, the fact remains that there is as such no embargo on appointment of Member of Parliament as Independent Directors of the Company. The Committee also note that Independent Directors are getting Rs.20000 per Board meeting and for other Committee meetings it is Rs.15,000/- per meeting. The Committee feel that Members of Parliament, if appointed as independent Directors of NEFDi, may incur disqualification as the remuneration being paid to the independent Directors is not covered under Section 2 (a) of the Parliament (Prevention of Disqualification) Act of 1959 which defines 'Compensatory Allowance' payable to the holder of an office unless and otherwise, their membership is saved from incurring disqualification. Keeping this aspect in view the Committee, therefore recommend that NEFDi may appropriately be included in the schedule to the Parliament (Prevention of Disqualification) Act, 1959 and the action may accordingly be initiated by the Ministry.

### North Eastern Regional Agricultural Marketing Corporation (NERAMAC)

3.26 The Committee note that NERAMAC Ltd. is a Central PSE under the Ministry of DONER with 100% shareholding by the Government of India. NERAMAC has taken up its role as essentially to support the farmers of North East. The Committee also note that Joint Secretary to the Government of India, Ministry of DoNER is the Chairman of NERAMAC. The Company has

also 10 Directors in its Board of Directors. During the course of evidence, the Committee were informed that there is no provision for appointment of Member of Parliament as independent Director of the Company and they have never taken any Member of Parliament on Board. But the Committee also note that there is as such no bar if a Member of Parliament is appointed as independent Director of the Company. The Committee also note that performance of NERAMAC is not satisfactory and it is incurring losses since 2012-13. The Committee feel that the local person who is representing the people will have a stake in reviving the company and its fortune in the interest of the people of the region. It will therefore be in public interest if Member of Parliament is included as member of the Board as independent Director and he/she is also saved from incurring disqualification as holder of an Office of Profit. Keeping this aspect in view, the Committee, therefore, recommend that NERAMAC may appropriately be included in the schedule to the Parliament (Prevention of Disqualification) Act, 1959 and the action may accordingly be initiated by the Ministry.

**North Eastern Handicrafts and Handlooms Development Corporation Ltd. (NEHHDC)**

3.27 The Committee note that NEHHDC was set up in 1977 with its registered office at Shillong, Meghalaya under the Company Act, 1956 as a Company. The objectives of the NEHHDC are promotion and development of handicrafts and handlooms of the North Eastern Region. The Committee also note that the Chief Executive of the NEHHDC is the Managing Director (Functional Director). The policy decisions of the Corporation are taken by the Board of Directors. The Corporation has six Directors on the Board as of now. As per the provision of the Article of Association and Memorandum of Association, the Company should have minimum of five Directors and maximum of ten Directors on the Board. The Joint Secretary in the Ministry is the Ex-officio Chairperson of the Corporation. During the course of evidence, it was informed to the Committee that the Ministry has moved a file for nomination of non-officials and exclusively one woman Director as Board members. In this context, the Committee are of the view that it would be appropriate if one of the fashion icon is included as member of Board to popularise the products/artefacts to the consumers. However, if a Member of Parliament is

included in the Board of NEHHDC as non-officials/independent Director in public interest, then it would be imperative that he/she is also saved from incurring disqualification. The Committee, therefore, recommend that the NEHHDC may appropriately be included in the Schedule to the Act of 1959 and the action may accordingly be initiated by the Ministry.

New Delhi  
07 April, 2017  
17 Chaitra, 1939 (Saka)

**DR. SATYAPAL SINGH**  
Chairperson,  
Joint Committee on Offices of Profit

**MINUTES OF THE TWENTY THIRD SITTING OF  
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)  
HELD ON 20 JANUARY, 2016**

The Committee met on Wednesday, 20 January, 2016 from 1500 hrs to 1630 hrs. in Committee Room '139', Parliament House Annexe, New Delhi.

**PRESENT**

1. Prof. Saugata Roy - In the Chair

**MEMBERS**

**LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Smt. Meenakshi Lekhi
4. Shri Arjun Ram Meghwal
5. Shri M. K. Raghvan

**RAJYA SABHA**

6. Shri C. P. Narayanan

**SECRETARIAT**

1. Smt. Rita Jaikhanani - Director
2. Smt. Maya Lingi - Additional Director

**REPRESENTATIVES OF THE MINISTRIES**

**THE MINISTRY OF LAW AND JUSTICE**

**(i) LEGISLATIVE DEPARTMENT**

1. Dr. Mukulita Vijayawargiya Additional Secretary
2. Smt. Veena Kothavale Additional Legislative Counsel
3. Shri R. S. Jayakrishnan Assistant Legislative Counsel

**(ii) DEPARTMENT OF LEGAL AFFAIRS**

1. Shri Mahendra Khandelwal Addl. Government Advocate

**THE MINISTRY OF CONSUMER AFFAIRS FOOD & PUBLIC DISTRIBUTION**

**(i) DEPARTMENT OF FOOD & PUBLIC DISTRIBUTION**

**\*\* \*\* \*\* \*\* \*\***

**(ii) DEPARTMENT OF CONSUMER AFFAIRS**

**\*\* \*\* \*\* \*\* \*\***

**THE MINISTRY OF DEVELOPMENT OF NORTH EASTERN REGION**

1. Shri Naveen Verma Secretary
2. Shri S.N. Brohmo Choudhary Sr. Eco. Adviser
3. Shri Arvind Madhav Singh Joint Secretary
4. Shri Vijay Bhushan Pathak Joint Secretary
5. Shri Jitendra Kumar Sinha Joint Secretary
6. Smt. Jhanja Tripathy JS&FA
7. Shri S.L. Meena Joint Secretary
8. Shri S.K. Baruah Executive Director, NEDFi
9. Sri Iboyaima Meitei Managing Director, NERAMAC
10. Shri Dhiraj Thakuria Managing Director, NEHHDC

**2. In the absence of the Chairperson, the Committee chose Shri Saugata Roy to act as a Chairperson for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha. Thereafter, the Chairperson**

welcomed the Members to the sitting of the Committee and briefly apprised them about the agenda of the sitting i.e. to take oral evidence of the representatives of the Ministries of Consumer Affairs ,Food and Public Distribution (Departments of Food and Public Distribution and Consumer Affairs) ,Development of North Eastern Region and Law and Justice (Department of Legal Affairs and Legislative Department) - in connection with Review of Committees/ Boards/Organisations, etc. referred to in the Schedules to the Parliament (Prevention of Disqualification) Act, 1959, as amended from time to time.

3.     \*\*       \*\*       \*\*       \*\*       \*\*       \*\*

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6.     Thereafter, the representatives of the Ministry of Development of North eastern Region were ushered in. The Chairperson welcomed the representatives of the Ministry and apprised them about the purpose of oral evidence. The representatives of the Ministry submitted before the Committee that there are three Corporations under the administrative control of their Ministry. However, in none of them , Members of Parliament have been nominated. These are North Eastern Development Finance Corporation Ltd.(NEDFi), North Eastern Regional Agricultural Marketing Corporation Ltd. (NERAMAC) and North Eastern Handicrafts and Handlooms Development Corporation Ltd. However, as regard , NEDF , it was inter-alia discussed that there is no specific embargo on nomination of MPs to these bodies in capacity of independent Directors.

7.     Thereafter, the Chairperson thanked the representatives of the Ministry of Development of North eastern Region for appearing before them and for useful discussion on the issue.

8.     The witnesses, then, withdrew.

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

10.    The Committee then adjourned.

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\* Matter not related with this Report



## REPRESENTATIVES OF THE MINISTRY

### MINISTRY OF LAW AND JUSTICE (Legislative Department)

1. Dr. N.R. Battu Joint Secretary
2. Ms. Veena Kothavale Additional Legislative Counsel
3. Shri R.S. Jayakrishnan Assistant Legislative Counsel

### MINISTRY OF LAW AND JUSTICE (Department of Legal Affairs)

1. Shri Suresh Chandra Law Secretary
2. Shri Inder Kumar Additional Secretary
3. Shri P.K. Behera Deputy Legal Adviser

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting, i.e to consider (i) Draft Twentieth Report regarding the Review of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 in respect of Bodies under the Ministry of Development of North Eastern Region; and to take oral evidence of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) regarding the nomination of Shri Ram Swaroop Sharma, MP, Lok Sabha as Member in the Himachal Pradesh Tribes Advisory Council .

3. The Committee then considered the above mentioned draft Report of the Committee and adopted without any modification. The Committee authorised the Chairperson to finalise and present the same to the Parliament during the current Budget Session 2017.

4. xx xx xx xx

5. The Committee then adjourned.

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x Not related to the subject matter.



